BASKET THREE: IMPLEMENTATION OF THE HELSINKI ACCORDS

HEARINGS

BEFORE THE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

IMPLEMENTATION OF THE HELSINKI ACCORDS

Volume VIII

U.S. COMPLIANCE: HUMAN RIGHTS
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IMPLEMENTATION OF THE HELSINKI ACCORDS: U.S. COMPLIANCE: HUMAN RIGHTS

TUESDAY, APRIL 3, 1979

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,
Washington, D.C.

The Commission met, pursuant to notice, at 10 a.m., in room 1202, Dirksen Senate Office Building, Hon. Claiborne Pell, Cochairman, presiding.

In attendance: Commissioners Pell, Javits, Bingham, Buchanan, and Fenwick.

Also in attendance: R. Spencer Oliver, staff director and counsel; Guy E. Coriden, deputy staff director.

OPENING STATEMENT OF COCHAIRMAN PELL

Cochairman PELL. The Commission on Security and Cooperation in Europe will come to order.

In the absence of our chairman—Congressman Fascell has to be out of the city today—I'm delighted to open this hearing.

The 3 days of Commission hearings which we begin today on U.S. compliance with the Helsinki Final Act, as well as the comprehensive report which the Commission will issue later on this year, constitute, I believe, an unprecedented milestone in the CSCE process. It's the first time that any of the 35 member states of the Conference has, since the signing of the Final Act in Helsinki on August 1, 1975, undertaken a comprehensive look at its own compliance record, taking into account criticism by other signatories and private domestic monitoring groups.

Heretofore, official studies and reports of CSCE member states have generally focused on either one of two areas: criticism of the performance record of other CSCE states, or uncritical, self-serving appraisals of one's own performance. The work of our Commission itself, up to now, has largely fallen into the first category, although I hasten to add we have not hesitated, in previous studies, to point out and suggest remedies for domestic implementation shortcomings in a number of areas.

The purpose of these hearings on domestic compliance is to review the U.S. record to ascertain the progress that has been made, to learn what remains to be done, and to proclaim a reaffirmation of the U.S. commitment to the full implementation of the Helsinki Final Act. While we strongly believe that overall U.S. compliance is second to none, we acknowledge that no country, including the United States, has a perfect implementation record and that all have an unfinished agenda for the future.

At the same time, it should be remembered that CSCE is a long-term process of incremental progress. With this in mind, we hope that these hearings will help demonstrate the U.S. commitment to fulfillment of the promises made in Helsinki and will set a compelling example to other CSCE states.

We fully realize that the hearings will uncover areas in need of improvement. This is exactly what they are supposed to do, and we have no qualms about discussing our own problems, nor will we hesitate to criticize our own Government or to recommend remedial measures. This, in our minds, is how the Helsinki process should operate throughout all the 35 participating states. Ideally, all 35 governments should be open to and guided by the views of private organizations and individual citizens who, in the last analysis, are what the Helsinki Final Act is all about.

Today and tomorrow, we will concentrate on human rights, including political, civil, economic, and social rights. Thursday, the hearing will examine U.S. visa laws and procedures. Later this year, the Commission will issue a comprehensive report examining all areas of U.S. compliance with the Helsinki Accords. This report will be the result of an intensive and wide-ranging effort by the Commission and its staff, involving in-depth research and extensive interviewing, to produce a thorough first look at U.S. compliance.

For today's hearing, we have brought together expert witnesses from both the Government and the private sector. I will introduce them individually later on, but I would like to point out here that most of the witnesses from the private side are part of, or associated with, Helsinki Watch: An organization set up in part to monitor U.S. compliance and to point out shortcomings.

Taken as a whole, the organizations testifying with Helsinki Watch cover a broad gamut of civil rights issues. Parenthetically, I would suggest that Helsinki Watch and a similar organization to testify tomorrow can be seen as analogous to groups and individuals in other CSCE countries, who, rather than being offered a public platform, are subjected to persecution and imprisonment by their own authorities.

Finally, I would note two or three caveats about the testimony we are about to hear. First, I hope that witnesses will limit their testimony to material covered under the provisions of the Helsinki Final Act. Second, I would point out that the major role of the Commission in setting these hearings is to pursue its mandate to monitor and encourage implementation of the Helsinki Final Act and to provide a forum for a thorough discussion of the U.S. compliance record. In turn, we hope that this discussion will lead to renewed efforts by all concerned to improve that record.

Congressman Bingham.

REMARKS OF COMMISSIONER BINGHAM

Commissioner BINGHAM. Thank you, Chairman Pell.

The Commission's hearings this week carry special importance, in that they underscore the importance which the United States attaches to the fulfillment of the Helsinki Final Act. In the past, the Commission, in its role of monitoring and encouraging implementation of the Final Act, has produced a substantial body of materials documenting the more egregious violations of the Act

permitted by the governments of certain other CSCE states, especially in the area of human rights. Today, we turn our attention to our own implementation record, including areas where we may have fallen short and where improvement is indicated.

By turning our focus inward, we believe that we not only demonstrate to the other Helsinki states and the world at large our determination to fulfill in good faith all the provisions of the Helsinki Final Act, but just as importantly, we keep faith with ourselves as Americans in trying to build a more perfect society.

It has long been a truism of our form of government that the right to criticize is the best guarantor of human liberties and civil, economic, and social rights. Other CSCE member states have proceeded from a different premise, holding that it is up to the government alone to determine what is right and just for its citizens.

These hearings constitute only a part of the Commission's overall effort to examine U.S. compliance with the Helsinki accords. The major part of this effort is an extensive domestic compliance report, which the Commission staff has been preparing since the Belgrade CSCE review meetings. This report, which is being prepared in conjunction with responsible Government agencies, State and local authorities, and private organizations and individuals, will provide the first comprehensive and objective evaluation of any Helsinki state since the signing of the Final Act.

The report will consider, evaluate, and respond to criticism of the U.S. record coming from other CSCE states and private U.S. organizations. It is our hope that other CSCE states will undertake similar studies, for if they do, we can all be certain that the CSCE process will be advanced and the position of the individual citizens of the 35 Helsinki countries will be improved.

I welcome the contribution our witnesses today will make to this end.

Thank you.

Cochairman PELL. Thank you very much, Congressman.

Our first witness today is Mr. Peter Bell, who has been very much a part of the Carter administration, and with whom I've had many conversations over the preceding months and years. We'll be glad to hear what you believe is being done to implement the Helsinki accords by HEW.

STATEMENT OF PETER BELL, DEPUTY UNDERSECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. BELL. Mr. Chairman, distinguished members of the Commission, I want to thank you for inviting the Department of Health, Education, and Welfare to participate in these hearings. Secretary Califano is sorry that he could not be here with you today.

The most important activities of the Department bear directly on the implementation of Principle VII of the Helsinki Agreement. Thus, we welcome the opportunity to comment on the role of our programs in advancing human rights in America.

The United States has used the legislative process to express its commitments to the protection of the most vulnerable members of this society, to the enhancement of human dignity, and to the development of the full potential of all of our citizens. Many of the landmark pieces of legislation which give tangible evidence of that

commitment are the responsibility of the Department of Health, Education, and Welfare.

The principal milestones of recent decades include the following: Passage of the Social Security Act in 1935, which established this Nation's basic programs of social insurance for its workers and protection against poverty for many of our most vulnerable citizens; enactment of the landmark Civil Rights Act of 1964, and subsequent legislation, under which we are committed to the protection of the rights of every citizen regardless of race, sex, age, religion, national origin, or handicapping condition; passage in 1965 of two significant laws, the one establishing programs of health insurance for the elderly and poor—medicare and medicaid—and the second establishing for the first time a major Federal role in public education through passage of the Elementary and Secondary Education Act; enactment over the years of a broad range of social welfare legislation.

It is a proud record, and one in which HEW is honored to have a leading part. America has a long history of concern and action in areas related to the protection of human rights, a tradition to which President Carter has recommitted his administration. We believe that the Final Act represents an international codification of many of the beliefs and policies which the United States has sought for years to implement within its own society.

It is possible to review today only a few of the many programs administered by HEW that relate to human rights by providing direct income support or by providing health, education, and social services to American citizens. However, I will submit for the Commission's use in preparing its implementation report, a listing of the HEW programs which may be of interest as well as detailed answers to the Commission's written inquiries.

In the time I have with you today, I would like to touch briefly on some of the areas in which HEW programs are contributing to the enhancement of human rights, identify some of the areas of continuing need, and mention some of our efforts to address the problems that remain.

Comparisons over the past 20 years indicate a marked improvement in the conditions of life for most Americans. The number of persons living in poverty has dropped significantly in the last two decades, from a little more than one-fifth of the population in 1960, to just under one-eighth during the 1970's.

Not so many years ago, most Americans lived in fear of spending their old age in poverty and ill health. Today that fear has been significantly relieved. Social security insures a level of basic income support, and medicare provides a means of paying for the high costs of medical care.

Many of the dread diseases of the past are virtually unknown in modern America. Our children no longer fall victim to many of the infectious diseases which continue to haunt children in many other lands.

Overall mortality rates, including infant mortality and maternal death rates, have been dramatically reduced, giving Americans a life expectancy of nearly 73 years.

The average American now receives nearly 12 years of schooling, making our society as a whole the most educated in history. By

1976, nearly two-thirds of adult Americans had completed high school, as compared to two-fifths in 1960.

Increasingly, children with physical and mental impairments are able to enjoy the full benefit of free public education.

And perhaps most significantly, in a short period of time, we have gone from a society in which discrimination on the basis of race was permitted by law to a society in which all forms of arbitrary discrimination are prohibited by law, and we have championed programs of affirmative action in order to overcome the injustices and inequities of past practices.

These dramatic social changes have been accomplished in part through a vast array of programs which touch the lives of every American and which will represent Federal expenditures in fiscal year 1980 of nearly $200 billion or 37.5 per cent of the Federal budget. These programs are in three major areas: income security and social services, health, and education.

With regard to income security and social services, under the administration's proposed fiscal year 1980 budget, HEW will spend $130 billion for income security programs from a combination of trust fund moneys paid into the social security system and general revenues. States will contribute an additional $7 billion for cash welfare assistance. These payments will go to more than 45 million Americans, most of whom are elderly, disabled, or young children. Our social security system alone makes nearly 34 million payments each month to retired or disabled workers and their dependents.

One measure of the importance of social security may be seen in figures related to poverty among the elderly. As recently as 1959, 35 percent of those over 65 were poor; 14 percent of the elderly were poor in 1977. The number of households of older people in poverty would be approximately double its present level if social security payments were not being made.

Those whose needs cannot be met through our social insurance programs will be assisted by nearly $12 billion in Federal funds, through the public assistance programs of aid to families with dependent children—AFDC—and supplemental security income—SSI.

While substantial, those resources will not eliminate poverty. Nearly a third of black Americans are poor. So, too, are a third of families headed by women. The progress of recent years has been experienced largely by two-parent white families, but the commitment to ending poverty among all groups is real. It is, for example, reflected in the commitment of the administration and many members of the Congress to meaningful welfare reform in the near future.

Of special relevance to the human rights efforts of this administration is support of the domestic resettlement of refugees who seek haven in the United States. A more comprehensive, rational, and equitable approach to Cuban, Indochinese, and other refugees is being recommended in legislation recently submitted to the Congress.

Closely related to our income security programs are the many social services provided to poor and vulnerable citizens of our society. In fiscal year 1980, the Department will spend nearly $6 billion

for services to individuals with special needs: children and youth, the elderly, the disabled, and the poor.

The title XX program, which makes grants to the States for a wide range of social services, including child care, will account for nearly $3 billion. Rehabilitation programs, in the amount of $919 million, will serve over 1.7 million handicapped persons, half of whom are severely disabled, and for whom new efforts will help them to lead more nearly independent lives.

Service programs for the elderly, in the amount of almost $560 million, will make available meals in group settings and meals-on-wheels, as well as transportation and legal services. Approximately $900 million will be spent for a variety of services to children. Perhaps the best known of these is Head Start, which will serve 414,000 children next year. The President has allocated 85 million new dollars to a proposal to provide for reforms of our child welfare and foster care services, as well as a new program of adoption subsidies for hard-to-place children.

With regard to health, in fiscal year 1980, the Department will spend $52 billion on health-related programs, a 25-fold increase since 1965. These funds will be used to help meet the costs of health care for the poor and the elderly, and to support the training of medical professionals, operate community health centers, develop preventive health services, promote the spread of health maintenance organizations, immunize children, and provide services to the mentally ill.

I will mention only a few of these efforts by way of illustration. Nearly $600 million will be committed to improving the care available to low-income pregnant women, mothers, and children through a new child health assurance program—CHAP—and our ongoing maternal and child health programs.

Over $45 billion will be spent in the medicare and medicaid program, which now reimburses some 50 million poor and elderly people for a major part of the cost of care. Over 4 million people are being served by 900 community health centers supported by HEW. In 1980, there is a commitment of $30 million for expanding this program so that 1 million more people will be served.

Over 2 million individuals are currently served by 670 community mental health centers, supported by HEW, and a new mental health initiative would develop community-based mental health services for those groups who are now regarded as underserved.

Programs providing the primary source of care for nearly 2 million migrant workers and their families and native Americans will spend approximately $575 million next year.

Now turning to education, the Federal role in education is limited: Only 9 percent of all public money spent on education comes from Federal sources. In fiscal year 1980, that will amount to $11.6 billion. The Federal role has been critical, however, in developing new strategies for reaching underserved segments of the population and in insuring that education is provided on a nondiscriminatory basis. Four areas are particularly relevant.

Through title I of the Elementary and Secondary Education Act—ESEA—the Department provides funds to schools in low-income areas to improve programs for educationally deprived children. Financial assistance also helps to meet the special education-

al needs of the children of migrant workers and Indians and children who are handicapped, neglected, or delinquent; 6½ million children will be served by these programs in the next fiscal year.

Nearly 4 million handicapped students are the beneficiaries of new efforts to provide all youngsters with a free and appropriate education program. Approximately 340,000 children with limited proficiency in English will be served under the authority for bilingual education programs, and more than $6.6 billion of assistance will be provided to 6 million students in postsecondary schools through student loans guaranteed by the Federal Government and through basic educational opportunity grants.

Recent evidence has revealed that our progress in eliminating illiteracy has been slower than we had hoped. As a direct consequence, a new program has been established in 1978 to help schools achieve the fundamental goal of competency for all their students in reading, writing, and basic mathematics. The fiscal year 1980 budget includes, under our programs for adult education, funds for a special effort focused on 2 million functionally illiterate individuals over the age of 16.

Going beyond this brief sampling of HEW programs, I wish to emphasize that the Department plays a significant role in protecting the human and civil rights of Americans. The responsibility for promoting a goal as fundamental as that enunciated in the Helsinki accords cannot be described by a mere catalog of programs administered and dollars committed to them. It is a matter of underlying philosophy and national spirit, a moral more than a budgetary charge.

Given our responsibility for the poorest and most vulnerable members of American society, we must administer our programs in a way that respects the fundamental human rights of all our citizens. It is in this sense that I wish to mention very briefly two final areas of HEW activity: protection of the rights of research subjects and civil rights enforcement.

In 1974, legislation was signed into law establishing the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The Commission was charged with developing ethical guidelines for the conduct of research involving human subjects. That charge has taken the National Commission into the sensitive and controversial areas of research involving prisoners, children, the institutionalized mentally infirm, and human fetuses.

Among their far-reaching activities are consideration of what constitutes consent on the part of any individual participating in a research project, the policies of other Federal departments and agencies, and the scope of regulations to protect individuals who may be asked to participate in any social, medical, or other type of research experiment.

With regard to civil rights, HEW's Office for Civil Rights—OCR—was created in response to the national determination in the 1960's to end discrimination against members of ethnic and racial minority groups. The 1964 Civil Rights Act gave the office authority to terminate Federal funding when discrimination was proved to exist and voluntary efforts had failed to end it. Legislation passed in the 1970's has given the Office of Civil Rights additional legal

tools to protect the educational and employment rights of women and the handicapped.

The Office for Civil Rights is a vital force in the Federal effort to guarantee full civil rights for every citizen. By monitoring and enforcing those laws which ban Federal assistance to programs or institutions that discriminate on the basis of race, color, national origin, sex, age, or physical and mental handicap, it plays a critical role in every sphere of HEW influence.

By defending the rights of those who enjoyed little or no legal protection in the past, the Office for Civil Rights gives life to the birthright of every American and to HEW's claim to active participation in the Helsinki accords.

In his memorandum of December 6, 1978, to Department and agency heads on the implementation of the Final Act of the Conference on Security and Cooperation in Europe, President Carter noted that, "our record of implementation has been second to none among the 35 participating states, but our work is not complete. The Final Act pledges us to strive constantly for improvement both domestically * * * and internationally."

The Department of HEW has an essential role in the domestic implementation of the Final Act. I think we are fulfilling that role, but we are not only looking back to our past accomplishments. The Department is looking ahead to the challenges that remain as we seek to insure that citizens who are vulnerable to poverty, discrimination, or disability are fully integrated into American society.

Mr. Chairman, that completes my prepared statement, but I will be pleased to answer any questions that you may have.

[Mr. Bell's written statement follows:]

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— Passage of the Social Security Act in 1935, which established this nation's basic programs of social insurance for its workers, and protection against poverty for many of our most vulnerable citizens;

— Enactment of the landmark Civil Rights Act of 1964, and subsequent legislation, under which we are committed to the protection of the rights of every citizen regardless of race, sex, age, religion, national origin, or handicapping condition;

— Passage in 1965 of two significant laws, the one establishing programs of health insurance for the elderly and poor (Medicare and

Medicaid), and the second establishing for the first time a major federal role in public education through passage of the Elementary and Secondary Education Act;

-- Enactment over the years of a broad range of social welfare legislation.

It is a proud record, and one in which HEW is honored to have a leading part. America has a long history of concern and action in areas related to the protection of human rights, a tradition to which President Carter has recommited his administration. We believe that the Final Act represents an international codification of many of the beliefs and policies which the United States has sought for years to implement within its own society.

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— The number of persons living in poverty has dropped significantly in the last two decades, from a little more than one-fifth of the population in 1960, to just under one-eighth during the 1970's.

— Not so many years ago, most Americans lived in fear of spending their old age in poverty and ill health. Today that fear has been significantly relieved. Social Security insures a level of basic income support, and Medicare provides a means of paying for the high costs of medical care.

— The dread diseases of the past are virtually unknown in modern America. Children no longer fall victim to many of the infectious diseases which continue to haunt children in many other lands.

— Overall mortality rates, including infant mortality and maternal death rates, have been dramatically reduced, giving Americans a life expectancy of nearly 73 years.

— The average American now receives nearly 12 years of schooling, making our society as a whole the most educated in history. By 1976, nearly two-thirds of adult Americans had completed high school, as compared to two-fifths in 1960.

— Increasingly, even children with physical and mental impairments are able to enjoy the full benefits of free public education.

— Perhaps most significant, in a remarkably short period of time, we have gone from a society in which discrimination on the basis of race was permitted by law, to a society in which all forms of arbitrary

discrimination are prohibited by law. And we have championed programs of affirmative action in order to overcome the injustices and inequities of past practices.

These dramatic social changes have been accomplished in part through a vast array of programs which touch the lives of every American, and which will represent federal expeditures in FY 1980 of nearly $200 billion, or 37.5 percent of the federal budget. These programs are in three major areas: income security and social services; health; and education.

Income Security and Social Services

Under the Administration's proposed FY 1980 budget, HEW will spend $130 billion for income security programs, from a combination of trust fund monies paid into the social security system, and general revenues. States will contribute an additional $7 billion for cash welfare assistance. These payments will go to more than 45 million Americans, most of whom are elderly, disabled, or young children. Our social security system alone makes nearly 34 million payments each month to retired or disabled workers, and their dependents.

One measure of the importance of social security may be seen in figures related to poverty among the elderly. As recently as 1959, 35% of those over 65 were poor; by 1977 14% of the elderly were poor. The number of households of older people in poverty would be approximately double its present level if social security payments were not being made.

Those whose needs cannot be met through our social insurance programs will be assisted by nearly $12 billion in federal funds through the public assistance programs of Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI).

While substantial, those resources will not eliminate poverty. Nearly a third of Black Americans are poor. So too are a third of families headed by women. The progress of recent years has been experienced largely by two-parent, white families. But the commitment to ending poverty among all groups is real. It is, for example, reflected in the commitment of the Administration and many Members of Congress to meaningful welfare reform in the near future.

Of special relevance to the human rights efforts of this Administration is support of the domestic resettlement of refugees who seek haven in the United States. A more comprehensive, rational, and equitable approach to Cuban, Indochinese, and other refugees is being recommended in legislation recently submitted to the Congress.

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- The title XX program which makes grants to the States for a wide range of social services, including child care, will account for nearly $3 billion.

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- o Rehabilitation programs in the amount of $919 million, will serve over 1.7 million handicapped persons — half of whom are severely disabled and for whom new efforts will help them to lead more nearly independent lives.
- o Service programs for the elderly in the amount of almost $560 million will make available meals in group settings and meals-on-wheels, as well as transportation and legal services.
- o Approximately $900 million will be spent for a variety of services to children. Perhaps the best known of these is Head Start, which will serve 414,000 children next year. The President has allocated $85 million new dollars to a proposal to provide for reforms of our child welfare and foster care services, as well as a new program of adoption subsidies for hard-to-place children.

Health

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- o Nearly $600 million will be committed to improving the care available to low income pregnant women, mothers, and children

through a new Child Health Assurance Program (CHAP) and our on-going Maternal and Child Health programs.

- o Over $45 billion will be spent in the Medicare and Medicaid program which now reimburses for a major part of the cost of care to some 50 million poor and elderly people.
- o Over 4 million people are being served by some 900 community mental health centers. In 1980 there is a commitment of $30 million for expanding this program so that one million more people will be served.
- o Over 2 million individuals are currently served by 670 community mental health centers supported by HEW. A new mental health initiative would develop community-based mental health services for those groups who are now regarded as under-served.
- o Programs providing the primary source of care for nearly two million migrant workers and their families, and Native Americans, will spend approximately $575 million dollars next year.

Education

The federal role in education is a limited one: only 9% of all public money spent on education comes from federal sources. In FY 1980 that will amount to $11.6 billion. The federal role has been critical, however, in developing new strategies for reaching underserved segments of the population, and in ensuring that education is provided on a non-discriminatory basis. Four areas are particularly relevant:

- o Through Title I of the Elementary and Secondary Education Act (ESEA), the Department provides funds to schools in low-income

areas to improve programs for educationally deprived children. Financial assistance also helps to meet the special educational needs of the children of migrant workers and Indians, and children who are handicapped, neglected, or delinquent. Six and one-half million children will be served by these programs in FY 1980.

- o Nearly 4 million handicapped students are the beneficiaries of new efforts to provide all youngsters with a free and appropriate education program.
- o Approximately 340,000 children with limited proficiency in English will be served under the authority for bilingual education programs.
- o More than $6.6 billion of assistance will be provided to six million students in post-secondary schools through student loans guaranteed by the federal government and through Basic Educational Opportunity Grants.
- o Recent evidence has revealed that our progress in eliminating illiteracy has been slower than we had hoped. As a direct consequence, a new program was established in 1978 to help schools achieve the fundamental goal of competancy for all their students in reading, writing, and basic mathematics. The FY 1980 budget includes, under our programs for Adult Education, funds for a special effort focused on 2 million functionally illiterate individuals over the age of 16.

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Human Rights and Research

In 1974, legislation establishing the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research was signed into law. The Commission was charged with developing ethical guidelines for the conduct of research involving human subjects. That charge has taken the National Commission into the sensitive and controversial areas of research involving: prisoners, children, the institutionalized mentally infirm, and human fetuses. Among their far-reaching activities are consideration of what constitutes "consent" on the part of any individual participating in a research project; the policies of other federal departments and agencies; and the scope of regulations to protect individuals who may be asked to participate in any social, medical, or other type of research experiment.

Civil Rights

HEW's Office for Civil Rights (OCR) was created in response to the national determination in the 1960s to end discrimination against members

of ethnic and racial minority groups. The 1964 Civil Rights Act gave the office authority to terminate federal funding when discrimination was proved to exist and voluntary efforts had failed to end it. Legislation passed in the 1970's has given OCR additional legal tools to protect the educational and employment rights of women and the handicapped.

The Office for Civil Rights is a vital force in the federal effort to guarantee full civil rights for every citizen. By monitoring and enforcing those laws which ban federal assistance to programs or institutions that discriminate on the basis of race, color, national origin, sex, age, or physical and mental handicap, it plays a critical role in every sphere of HEW influence. By defending the rights of those who enjoyed little or no legal protection in the past, the Office for Civil Rights gives life to the birthright of every American, and to HEW's claim to active participation in the Helsinki Accords.

In his memorandum of December 6, 1978, to Department and agency heads on the implementation of the final act of the Conference on Security and Cooperation in Europe, President Carter noted that "our record of implementation has been second to none among the 35 participating States, but our work is not complete. The final act pledges us to strive constantly for improvement both domestically ... and internationally ..." The Department of HEW has an essential role in the domestic implementation of the final act. I think we are fulfilling that role. But we are not only looking back to our past accomplishments. The Department is looking ahead to the challenges that remain as we seek to insure the victims of poverty, discrimination, or disabiltiy are fully integrated into American society.

That completes my prepared statement, but I will be pleased to answer any questions you may have.

Questions and Remarks

Cochairman Pell. Thank you very much indeed, Mr. Bell. You pointed out in your testimony, using statistics, that we've made great strides in the last 18 years in improving the conditions for those at the more unfortunate end of the spectrum of our society. Do you believe that we've sort of peaked in our efforts and that from now on you're not going to find the same continuous rise?

Mr. Bell. Well, Mr. Chairman, that is a difficult and complex question to which to respond, and, of course, the answer to that question goes far beyond the purview of the Department of Health, Education, and Welfare. The answer really must lie in a national response, not only of the Department of Health, Education, and Welfare, but of the entire Federal Government, state governments, voluntary agencies, private institutions, and families throughout the country.

With regard to that part of the answer that lies within HEW, first of all I must say that there continue to be important inequities within this society, and that what I have called in my statement the vulnerable groups—primarily racial minorities, the elderly, children—within the society will continue to demand special attention. The Department of Health, Education, and Welfare and the President, through his budget for the coming fiscal year, have made a number of proposals which we think will help in closing the gaps which remain.

Among those, of course, will be the proposal for national health insurance, the administration's bill for hospital cost containment, the child health assurance program, which I mentioned in my statement, the refugee resettlement program, and a number of other initiatives which we think will be helpful in maintaining the momentum that was induced back in the 1960's.

Cochairman Pell. Well, I think that statistics show that nearly 10 percent of our people have no health insurance at this time, and that low income families, young adults, and the unemployed lack much in the way of health coverage. Do you believe that the administration's health plan will be effective in reducing this problem?

Mr. Bell. Mr. Chairman, it is true that nearly 10 percent of Americans have no health insurance. People fail to have health insurance for a variety of reasons. For example, their employer may not provide economical coverage, or they may be too poor to afford it on their own.

The Department's national health plan does deal with this problem in a number of different ways. For example, employer coverage of full-time employed individuals and their families will be mandated; publicly financed health care programs will provide coverage for the aged, poor, and disabled; and for those not protected by either of these two measures, the Federal Government will guarantee the opportunity to buy health insurance at a reasonable rate.

Cochairman Pell. The CSCE Final Act encourages participating States to support the teaching of native languages to children of migrant workers. How is the bilingual education program coming along amongst the migrant workers?

Mr. BELL. Mr. Chairman, the bilingual education program does serve some 340,000 children in the United States, whose first language is not English. Part of the population it serves is the population of children of migrant workers. We do not have precise figures as to how many of the children served are the children of migrant workers, but there are some 565 bilingual educational school projects, and many of them are in sites where we know that large numbers of migrant families live—for example, in Florida and the Rio Grande Valley of Texas, and in areas to which the migrant families go to engage in the harvesting of crops, as in California and in upper New York State, Illinois, and in rural Michigan.

So while I cannot give you precise numbers of such children who are served, we do know that some thousands of them are being served through the Bilingual Education Act. In addition, the Office of Education administers the migrant education program, which provides primary support to State projects aimed at meeting the special educational needs of migrant children, and within those programs, particular attention is given to instructional programs related to language skills, including speaking, reading, and writing in both English and Spanish.

Cochairman PELL. Thank you very much. Congressman Bingham?

Commissioner BINGHAM. Thank you, Mr. Chairman.

Mr. Bell, on the first page of your statement, you say: "The most important activities of the Department bear directly on the implementation of principle VII of the Helsinki Agreement." I think that's your only reference to the Helsinki accords.

What strikes me about your statement is that the first several pages, dealing with such matters as education, social security, health, and so on, all the way over to page 9, where you speak of human rights, deal with matters which, while they are extraordinarily important—they have to do with the degree to which we are meeting our challenges in this country to provide a better life to our citizens—I don't see that they have a great deal to do with the Helsinki accords.

As I reread Principle VII, which you refer to, I find really only two words there which would make your first pages pertinent, and those appear in the second paragraph: "The participating States will promote and encourage the effective exercise of civil, political, economic, social, cultural, and other rights and freedoms" and so on. The words "economic" and "social" do appear there. They are not spelled out, so far as I know, anywhere else in the Helsinki accords, and I'm just wondering if we're not falling into some kind of—I won't say a trap here, but whether we're not dealing with an area of our social problems which are not necessarily pertinent to our performance under the Helsinki accords, which have to do, I would have said, primarily with what we in this country usually consider to be human rights and fundamental freedoms.

I would call your attention, for instance, to the heading of Principle VII, which is "Respect the human rights and fundamental freedoms, including the freedom of thought, conscience, religion, or belief."

Now, this is not to say that we don't have great failings in other areas, and it's not to say that the matters that you've dealt with

are not important, but I wonder if, in preparation of your statement, you were thinking in terms of our performance under the Helsinki accords or whether you were thinking in terms of our performance under the general responsibilities of the Department of HEW.

Mr. BELL. Congressman, you cited the second paragraph of article VII. In preparing my statement, my attention was drawn to that paragraph. It was also drawn to the fourth paragraph of article VII, which says that:

> The participating States on whose territory national minorities exist, will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for actual enjoyment of human rights and fundamental freedoms, and will in this manner protect their legitimate interests in this sphere.

As we thought about this statement, we thought about the need to assure basic equality of opportunity within this country to the various groups, including minority groups and other groups that are vulnerable within the society, so that they might, in turn, enjoy the exercise of both civil liberties and other freedoms within the society. And it seemed to us that the two are really inseparable, and that they go very much hand-in-hand. A person who does not enjoy basic equality of opportunity within this economy and within this society will not have the opportunity to exercise his civil liberties fully either.

So it was within that spirit that we prepared my statement.

Commissioner BINGHAM. Well, to some degree I agree with that, except that there's very little reference to that type of thing in your first few pages. I guess what I'm getting at is: I think there's a little bit of a danger here that we don't broaden this inquiry too far. It would be conceivable for a society to do very well on the matters of education, health, nutrition, and so on and still be abysmally unsatisfactory in terms of what we consider as the essential qualities of a free society.

I also have to say that I think if we really are to explore our performance in these respects, we must look for those areas in which we're not doing well and not simply pat ourselves on the back in terms of those areas in which we've improved. I don't see, for example—now assuming the relevance of your first few pages—I don't see any kind of recognition on the sort of conditions that exist in a substantial part of my congressional district in Bronx County, N.Y., where the conditions under which people have to live are below any reasonable standard of an advanced society—shockingly bad in terms of fear, in terms of housing, in terms of sanitation.

If we simply record the nice things, as is typical, let's say, of a campaign speech by an incumbent, we're not going to get very far in our assessment of our performance.

Would you care to comment on that?

Mr. BELL. I couldn't agree more. I think that it is true that over the last couple of decades in particular, this country has made very significant progress in relation to the improvement of the lot of the poor and the more vulnerable people within this country. This is really the same old story as: is the glass half full or half empty?

I think it is possible to go down the ledger and, in one area after another, cite significant progress. At the same time, we continue to fall short in a large number of areas as well. It's very important that we continue to identify those areas and to work toward overcoming them.

In my statement, I did mention, for example, that it is true that almost a third—that is, 29 percent—of the black families within this country are poor still today, and that approximately a third—33 percent—of the poor families within the country are headed by women. Even today, nearly 12 percent of the total population in this country is below the poverty line. We are not satisfied with the fact that the United States ranks 15th in the world in the area of infant mortality, even though significant progress has been made over the last several decades.

With regard to education, we have great concern about the numbers of Americans who remain functionally illiterate. Approximately 20 percent of adult Americans were functionally illiterate in 1975, and 40 percent of those persons came from families with income below $5,000. Only 8 percent came from families with annual income of $15,000. This gets me back to the initial point that I was making about the enjoyment of our freedoms: That is, unless you know how to read and to write, freedom of the press is not terribly meaningful in a direct way.

Of the functionally illiterate people within this society, 44 percent of them are black; 56 percent of them have Spanish surnames, whereas only 16 percent of them are white.

I could go on at some length listing other serious social problems which, I think, undermine the enjoyment of civil liberties and civil rights within this country by many Americans. In most of these instances, our Department is attempting to design proposals to get at these problems.

Commissioner BINGHAM. Thank you.

Cochairman PELL. Congressman Buchanan?

Commissioner BUCHANAN. Thank you, Mr. Chairman.

Mr. Secretary, I share some of the concerns of my colleague, the gentleman from New York. If you improve your grade from, say, a numeric grade of 20 to 40, you've made a 100 percent increase, but you're still failing.

There's no question, I think, in the minds of most of the people here that if you compare us with the other super power, there's a world of difference—between night and day. But if you look at us over against where we ought to be in light of our Constitution, our tradition, our commitment to human rights and human freedom, I wonder if you would not agree that there's a great deal left to be done, especially as applied to ethnic minorities and women.

Mr. BELL. There's no question about it. There's an enormous amount still to be done, and it's very important that the country be aware of the fact that it will take continued great effort on all of our parts to achieve the kinds of goals that I think most Americans want for this society.

Commissioner BUCHANAN. You mentioned disparities in income by age, sex, and race, and that they were significant disparities. Would you expand on the administration's efforts to reform the welfare system and how this would provide more adequate cover-

age of the poor and improve the level of some of these people? You mentioned that on page 5 of your statement.

Mr. BELL. The Administration is preparing a welfare reform proposal which may not eliminate poverty in America, but it will reduce it through work opportunities and income assistance. For example, lack of employment and training has been one impediment to economic advancement for many groups. Our proposal will attempt to deal with this, not just by requiring people to work, but by providing additional opportunities for employment and training.

Furthermore, our proposals regarding the benefit structures of assistance programs will concentrate on those areas where benefit levels are lowest, thus making the distribution of benefits more equal.

Those are at least two ways in which the welfare reform proposal will attempt to get at problems of continued inequities and gaps related to age, sex, and race.

Commissioner BUCHANAN. Some critics, particularly women's action groups, maintain that some aspects of the social security system discriminate against women. For example, title IV grants aid to two-parent families with dependent children if the father is unemployed, but in identical circumstances, no aid is granted if the mother is unemployed.

Now, this comes in a context in which 70 percent of the women in the work force are either heads of households or married to husbands with incomes of less than $7,000 a year, and they comprise, as you know, a very significant portion—like 44 percent—of the total work force, where a two-working-parent family, for better or for worse, has become the norm in the United States, and many of these women feel that employment is essential to provide opportunities like education for their children.

Now, do you have any comment on this basic situation?

Mr. BELL. Yes, sir. I believe that you're referring to what we call the Unemployed Fathers Program, which provides assistance to two-parent families if the father is unable to find work. The program operates at the option of the States, and I believe that some 28 States have the Unemployed Fathers Program.

There have been, I understand, several court suits that have found that the Unemployed Fathers Program is discriminatory because it does not apply to mothers, and I have also learned that the Supreme Court has accepted one of these cases, and that most people apparently believe that it will ultimately strike down the Unemployed Fathers Program as discriminatory.

In working on our welfare reform proposal, we plan to extend the Unemployed Fathers Program to all of the States and to modify the program so that it will not be discriminatory.

Commissioner BUCHANAN. Thank you.

Cochairman PELL. Thank you. I have one final question, and that is that in arguments—discussions—with the Soviets, they always stress the fact that economic security is the most important security of all: the right to a job, to shelter, to a certain standard of life—far more important than any ideological frills or luxuries.

We do not subscribe to that. We believe that what they call "frills and luxuries" are essential to the proper flowering of a

human being. How would you answer that argument of the Soviets?

Mr. BELL. I think underlying the Soviet approach is a kind of materialistic determinism that is their explanation for human behavior. Our philosophy in this country is very different. Our society is not only an idealistic society, it's a pragmatic society as well. I think there's a generally shared belief in this society that human freedoms and materialistic concerns—that is, for satisfying basic human needs—go hand-in-hand, and that we need both. I think that's a very widely shared belief among Americans.

Cochairman PELL. Following that thought up, how do you handle the argument that one-quarter—perhaps it's even one-half—of black teenagers who seek work cannot find it? I ask you to correct me if I'm wrong with that figure. How does one answer that argument?

Mr. BELL. During December 1978, the unemployment rate for black teenagers in the age 16 to 19 group was 34.9 percent—seasonally adjusted.

I think we can only say that as long as that—whatever the condition is, whether it is 25 percent or higher—as long as that situation continues within America, it is a blot on our overall record with regard to the economic security and really, in a sense, the freedom of a significant portion of our population.

I think it can be said that through a large number of programs and initiatives, this Government and the American people are demonstrating their commitment to working on the problem. Part of the problem is an educational and training problem, and we are making very significant progress on that part of the problem. Another part of the problem, which is more difficult to control, relates to the condition of the economy overall at this moment, a matter over which at least the Department of Health, Education, and Welfare and sometimes, I suspect, even the Federal Government does not have full control.

But we need to make progress on both scores: the specific educational and training programs, as well as with regard to the health of the economy more generally.

Cochairman PELL. Thank you very much indeed. I see that Mrs. Fenwick has arrived. Do you have any questions? We're just about to let him go.

Commissioner FENWICK. I'm sorry that I'm late. I had to go to a Cypriot meeting. Thank you, no, I have no questions.

Cochairman PELL. Fine. Thank you very much indeed for being with us, Mr. Bell.

Is Mr. Forrest Gerard, the Assistant Secretary for Indian Affairs, in the room? I think he wished to have the hearing postponed—or his appearance postponed until tomorrow, but if he was here, I wanted to give him an opportunity to come forward.

[See p. 445 for Mr. Gerard's statement and accompanying materials submitted for the record.]

Cochairman PELL. Since he's not here, we will move on, then, to Mr. Louis Nunez, Staff Director of the U.S. Commission on Civil

Rights, who I believe is in the room, if he would take his place and introduce his associate.

I can assure you that if you wish to summarize your statement, it will appear in full in the record, but be guided by what you wish to do.

STATEMENT OF LOUIS NUNEZ, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS

Mr. NUNEZ. Fine. Good morning. I am Louis Nunez, Staff Director of the U.S. Commission on Civil Rights. With me is William T. White, Jr., Assistant Staff Director for National Civil Rights Issues.

The U.S. Commission on Civil Rights is an independent, bipartisan, fact-finding agency established by Congress in 1957. By statute, the Commission appraises the laws and policies of the United States with respect to civil rights. It holds public hearings, conferences, and consultations, and it publishes studies concerning discrimination or denial of equal protection of the law because of race, color, religion, sex, age, handicap, or national origin. It submits findings and recommendations to the President and to the Congress.

Members of the Commission are appointed by the President and serve on a part-time basis. They include Arthur S. Flemming, Chairman; Stephen Horn, Vice Chairman; Attorney Frankie M. Freeman, of St. Louis; Attorney Manuel Ruiz, Jr., of Los Angeles; and Rabbi Murray Saltzman of Baltimore.

On behalf of the Commission on Civil Rights, I am pleased to assist you in your effort to evaluate this Nation's implementation of the human rights provisions contained in Principle VII of the Helsinki Final Act of 1975. My appearance here today is also responsive to the President's request, contained in his memorandum of December 6, 1978, that all Federal agencies help fulfill the U.S. Government's obligations under the act. My comments concern what this Commission considers to be the current status of basic civil rights issues and also the performance of the Federal Government in civil rights enforcement since the signing of the Helsinki Final Act.

Today, in addition to the traditional overt and obvious civil rights denials, this Nation confronts complex and often subtle discriminatory patterns. To deal with them, our society must go beyond neutral or nondiscriminatory behavior by individuals and institutions. We have to institutionalize our efforts to insure that equal opportunity exists throughout our society. This requires not merely new civil rights laws, but more effective enforcement of existing laws, regulations, and policies.

Using this Commission's work as a base, I will briefly review current civil rights trends and developments in employment, education, housing, and political participation, as they affect minorities and women.

In late 1978, unemployment among minorities was substantially higher than that among whites. The unemployment rate for adult white males had dropped to 3.3 percent, but for black males, it was 7.6 percent; for Hispanic men, the figure was 8.6 percent. Unemployment among adult black women was the highest of any group:

10.3 percent, compared to 8.7 percent for Hispanic women and 4.8 percent for white women.

Unemployment among teenagers, particularly blacks, has also been a serious problem throughout this period. In late 1978, unemployment among black youth stood at 35.8 percent. Using the white male as its benchmark in the 1978 report, "Social Indicators of Equality for Minorities and Women," the Commission documented a widening gap in unemployment of minorities and women, and offered recommendations to insure that the Federal Government routinely calculates and analyzes measures of equality in order to assess adequately the impact of social and economic reform programs and to insure adequate representation of minorities in surveys seeking information on the state of the Nation.

The President has taken a first step toward these goals by directing his reorganization task force to address the problem of improving the coordination and policy relevance of Federal statistical activities.

In a 1977 report, "Last Hired, First Fired: Layoffs and Civil Rights," the Commission had already evaluated the particularly harsh effects of seniority-based layoff systems upon minorities and women. It called for layoff alternatives, such as work-sharing, and for full employment policies to insure equal employment opportunity for these groups.

One promising recent development, we feel, is the President's reorganization of Federal programs for enforcement of equal employment opportunity. The Federal Equal Employment Opportunity Commission has been given greater responsibility and authority, allowing it to assume new, aggressive leadership. Responsibility for protection of the equal employment opportunity rights of Federal employees was also shifted from the Civil Service Commission to the EEOC.

The Federal Government's contract compliance program, formerly the responsibility of the Department of Labor and 11 other Federal agencies, has been consolidated in the Labor Department. This consolidation was recommended by our Commission to streamline Federal efforts to combat job discrimination and follows Commission recommendations for such reform. Adequate staffing and funding are essential, of course, if this program is to achieve its vital objectives.

Recent legal developments in the area of employment discrimination have generally involved two issues: The question of discriminatory intent with regard to an employment practice, and seniority rights and benefits. In a decision in 1976, the U.S. Supreme Court restated its requirement that in civil rights cases, except those brought under title VII of the Civil Rights Act of 1964, the plaintiff must prove, in order to prevail, that the defendant acted with a discriminatory intent. The Court emphasized that this has always been required, even though some lower courts had issued a number of civil rights decisions earlier that seemed to state that once discriminatory effect was shown, intent could be presumed. The intent requirement has also been raised in cases in education and housing.

In another case, the Court ruled that, under title VII, retroactive seniority may be awarded to redress the rights of blacks discrimi-

nated against in employment. Another major Court decision, however, upheld the legality under title VII of seniority systems which perpetuated the effects of discriminatory acts that occurred prior to 1965.

Because affirmative action efforts by public and private employers are still inadequate, and minorities and/or women remain significantly underrepresented in some segments of the workplace, this Commission continues to recommend the use of goals and timetables to improve employment and educational opportunities for all Americans.

In any society, a good education remains a prerequisite for a good job. To insure a quality education for all children and young people, regardless of their race or ethnicity, school desegregation is essential.

Twenty-five years after the *Brown* decision, this effort is far from finished. In 1976, the latest year for which such data are available, the Commission found that 46 percent of all minority pupils were attending public schools in at least partially segregated districts.

Most school districts have implemented desegregation programs since 1975, and have adjusted relatively calmly. Desegregation plans of varying scope were effected in Dallas, Dayton, Milwaukee, Buffalo, Kansas City, Missouri, San Diego, and Los Angeles. Major cities, including Chicago and Cleveland, approached the threshold of significant desegregation, albeit reluctantly. Seattle has voluntarily implemented a desegregation plan, and a metropolitan plan was implemented involving Wilmington, Delaware, and surrounding suburbs.

The desegregation process clearly remains slow, however. Community leadership is lacking in some cases. Many districts are still involved in litigation. In a 1976 report, the Commission urged leaders at the national, State, and local levels to accept the fact that school desegregation is a constitutional imperative. The Commission called upon the Federal Government to strengthen and expand programs designed to facilitate the desegregation process and to take more vigorous action to enforce laws which contribute to the development of desegregated communities.

Since 1977, the Department of Health, Education, and Welfare has strengthened its enforcement of title VI of the Civil Rights Act of 1964. This came about in part as a result of settlement in December 1977 and January 1978 of three long-standing lawsuits that charged HEW with inadequate enforcement of title VI and also of title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted programs.

The settlement order in *Adams* v. *Califano* calls for resolution of backlogged individual discrimination complaints and more frequent title VI compliance reviews in elementary, secondary, and higher education. The Department has been given nearly 900 new positions to carry out these tasks.

This Commission has recommended that the President designate an appropriate White House official to coordinate, in addition to other duties in the civil rights area, all of the resources of the executive branch to accomplish the desegregation mandate. We have urged the Secretary of HEW to cut off Federal funds to those school districts which fail to take appropriate steps to halt discrim-

ination. We have called upon the Congress to turn back efforts to provide positive support for the constitutional imperative of desegregating our public schools rather than creating more legislative roadblocks.

New congressional restrictions now prevent Federal agencies from directing, permitting, or withholding funds for the purpose of requiring or encouraging the use of transportation for desegregation of schools. This has undermined the actions and efforts of the executive and judicial branches to guarantee the Nation's children and young people their constitutional rights.

Minority enrollment in higher education rose rapidly between 1966 and 1976. Minority enrollment in professional schools, however, slowed. It remains disproportionately low. The controversy over affirmative action programs in higher education may be significant in this respect.

In June 1978, the Supreme Court, in the *Bakke* case, approved the use of race-conscious admissions programs, while disallowing specific minority quota plans. The Court's findings in *Bakke* concerning the legitimacy and importance of considering race among the factors to be weighed in admissions decisions were similar to those discussed in a Commission report, "Toward Equal Educational Opportunity: Affirmative Admissions Programs at Law and Medical Schools."

Another important civil rights issue is bilingual-bicultural education. Most States with substantial language minority pupil enrollments now have bilingual programs in their public schools. Questions remain about the effectiveness of their implementation in some states and about their future funding.

As housing costs have soared in recent years, the goal of home ownership for many Americans, particularly minorities and women, has receded. Sale prices of new homes rose by 16 percent between 1977 and 1978. Blight and deteriorating housing conditions still characterize many minority neighborhoods.

In recent years, Federal fair housing and subsidized housing programs have generally failed to improve the situation. A Commission report on the Federal fair housing enforcement effort, to be released next week, criticizes its effectiveness. The Department of Housing and Urban Development has committed itself to strengthen its programs and combat discrimination consistent with the requirements of title VIII of the Civil Rights Act of 1968, but it has lacked the necessary authority to do so. The Commission strongly endorses legislation now before the Congress which would provide HUD with cease and desist powers that could give real impetus to its fair housing enforcement efforts.

In the area of women's rights, much still remains to be done. Some progress has been made by women in recent years towards full participation in all aspects of our national life. However, significant gaps remain between women and men in terms of employment, income, and occupational status. Women are still more likely than men to hold low-income, low-status jobs. The Commission's social indicators report cited 1974 figures which revealed that the poverty rate among female-headed households is three times greater than that among other groups.

On the positive side, women have entered occupations previously closed to them, though in small numbers, particularly at the higher levels. They have also been admitted to military academies, and the percentages of women in enlisted and officer ranks of the military have increased. Finally, public understanding and Government response to the critical issues of domestic violence and rape have increased.

A major national effort to insure women the constitutional guarantees of equal treatment under the laws, namely ratification of a Federal equal rights amendment, has not yet succeeded. Three more States must ratify for the Federal ERA to become law, but no State legislatures have approved the amendment since 1976. Last year, Congress extended the deadline for ratification from March 1979 to June 1982. Last December, the Commission observed that, "women continue to be disadvantaged by gender-based laws and practices, despite the enactment of equal opportunity laws" and that enactment of the Federal ERA is needed to "prompt the changes necessary to provide men and women with status as equal persons under the law."

The effort to eliminate sex discrimination in education also has continued. Title IX of the education amendments of 1972, which bans sex discrimination in education programs, represents a positive step forward, but much remains to be done in implementing this law.

Important developments that affect women on the job have occurred in recent years. The Congress amended title VII to include a prohibition of discrimination based on pregnancy, childbirth, and related medical conditions as discrimination based on sex. The bill requires employers to include pregnancy among conditions which make employees eligible for benefits under employee disability plans.

Turning to the area of the administration of justice, over the years, this Commission has received complaints of police misconduct from persons all over the country. Recently the volume of these complaints has increased, and requests for a major national Commission investigation into patterns of police misconduct have come from groups as well as individuals in many cities.

Allegations of police misconduct range from verbal abuse to the use of physical force to incidents involving the unwarranted use of deadly force. In response to the widespread concern that police are depriving individuals, including many minorities, of their constitutional rights, the Commission is embarking on such a study.

We will investigate police departments as institutions and study the mechanisms which encourage or discourage misconduct and complaint reconciliation. We shall seek to determine how the system, under which a police office operates, can be modified to minimize the potential for abuse while still adequately protecting the due process rights to which officers are entitled. The crux of many complaints against the police is that there is no effective recourse to police misconduct.

Many minority communities are also concerned about Federal policy relating to the apprehension of undocumented workers. The Hispanic community in particular alleges civil rights violations by the Immigration and Naturalization Service, both of legally ad-

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mitted aliens and undocumented workers. It charges misconduct by border patrol officers, illegal mass raids, and the abuse of due process rights for aliens in INS proceedings. However, no major legislation to deal with these issues has yet been passed by the Congress. The undocumented worker question remains critical, not only in the Southwest, but also in large cities with substantial Hispanic and Asian-American populations.

The status of American Indians in the constitutional and historical fabric of American society is unique. Indians are legally unlike any other group of persons in American society. This reality is not generally understood. It complicates all Indian issues.

Indian tribes are governmental entities which retain many domestic powers of sovereignty. They are political units which exercise power over people and geographic areas. Membership in an Indian tribe provides the individual Indian with benefits and responsibilities that have no analogy for other Americans.

The role of the Federal Government is also unique. It is a long-settled constitutional doctrine that the United States stands in a trust relationship with Indian tribes and their members. While the exact parameters of this trust relationship are not clearly delineated, they at least extend to protection by the United States of Indian lands and natural resources. Other elements of this relationship in this period of Indian self-determination relate to improvement in tribal governing capacity.

Indians also have some of the same attributes of members of minority groups. Racially and culturally, they are distinct, identifiable groupings. As a group, Indians tend to be poor, have high unemployment and low educational attainment. This combination means that in some settings, Indian issues can be addressed in generalized civil rights terms, using classic equal protection analysis.

In many situations, however, even where a surface similarity exists, Indian issues must be dealt with outside of the minority group's framework. The classic illustration of this situation is the U.S. Supreme Court's decision in *Morton* v. *Mancari*. An Indian employment preference of the Bureau of Indian Affairs was challenged by non-Indians as racially impermissible discrimination. In this day of Bakke and Weber, most might assume that the arguments focused on the use of race or color as a form of affirmative action aimed at overcoming all the past discrimination that Indians had suffered. Not at all! The rationale used by the Supreme Court to sustain the employment preference was quite simple and only applicable to Indians.

In the context of the Federal trust relationship, the classification of Indians by the Federal Government to provide benefits was not a racial classification. It is a political classification and, as such, is not invidious discrimination.

Indian issues differ region to region and tribe to tribe. Off-reservation issues differ from reservation issues. Indian tribal governments' concerns may be different from those of Indians as individuals. Some of the classic civil rights issues in the reservation areas relate to voting rights. As Indian people in reservation areas have become more active in relation to State and county governments, there is an observable tendency on the part of these governments

to attempt to manipulate voting procedures so that the Indian vote would be diluted. These maneuvers are clearly civil rights violations.

In communities adjacent to reservations and in urban areas, the treatment of Indians by the Justice agencies has long been a serious problem, involving such components as abusive treatment by the police, unequal patterns of law enforcement and sentencing, and service of Indians on juries. In the off-reservation communities and cities, access to the range of public services has been and can be a serious issue for Indian people. The pattern of neglect and mistreatment by these institutions, coupled with an apparent Indian perception that regular social service systems will not serve them well, has given rise to an increasing tendency for Indians to attempt to develop and rely on Indian institutions.

All areas of traditional or classic equal protection analysis of Indian issues are affected by some of the overriding Indian issues today. Indian rights, under treaty and statute, as interpreted by the courts, are the focus of heated battles in the media and public arena. These rights relate to fishing, hunting, water, land, natural resources, and the jurisdictional authority of tribes. Each issue is different and complex. In the public debate, however, all appear linked, and frequently the veneer and rhetoric of civil rights analysis is utilized to urge against the unique character of Indian rights.

Turning to political participation, the passage of the Voting Rights Act of 1965 and its extension in 1975, was a major civil rights development. It protects and strengthens minority citizens' rights to vote throughout the United States. In many parts of the South, it has been used to remove unfair qualifications for voting and to correct unfair administration of the election system. In 1975, the act was amended to provide voting protections for language minority citizens. It has led to increased registration, voting participation, and election of minorities to public offices in many States.

Ten years ago, for example, there were just 408 black elected officials in the South; today there are 2,000. Blacks have been elected mayors of major cities, including Los Angeles and Detroit. In Texas, voting registration among Mexican-Americans reached 591,950 in 1978: a 21-percent gain from the figure in 1976.

The participation of women in political processes also continues to increase, but very slowly. Women now serve as governors or lieutenant governors of eight States. Women now comprise 10.2 percent of the membership of all State legislatures, increasing in number from 703 to 761 as a result of the 1978 elections.

It is well to remember, however, that despite some recent gains, minorities and women generally remain significantly underrepresented in key positions in Government, whether Federal, State, or local.

This brief summary of issues is based on the research and fact-finding conducted by the Commission on Civil Rights and its 51 State advisory committees during the last several years. Early next week we will provide you with a more comprehensive statement citing specific U.S. Civil Rights Commission and State advisory committee reports and findings and recommendations.

As the U.S. Government prepares for the Madrid Conference in 1980, I want to reiterate that this Commission is fully supportive of the hearings you are conducting. We trust that they will be as productive as we believe this type of fact-finding hearing has been for us over a period of 22 years. You will find, in studying the Commission on Civil Rights reports, that the Civil Rights Acts of 1960, 1964, 1966, 1968, 1970, 1972, and 1974, and some Presidential Executive orders and various court decisions, reflect findings and recommendations made by the U.S. Commission on Civil Rights.

Thank you for inviting me. I will be pleased to answer any questions.

[Mr. Nunez's written statement follows:]

STATEMENT OF MR. LOUIS NUNEZ, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS

Good Morning, I am Louis Nunez, Staff Director of the United States Commission on Civil Rights. With me is William T. White, Jr., Assistant Staff Director fo National Civil Rights Issues.

The U.S. Commission on Civil Rights is an independent, bipartisan, fact-finding agency established by Congress in 1957. The Commission holds public hearings, conferences, and consultations, and publishes studies, which include findings and recommendations to the President and the Congress, concerning discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin. By statute the Commission also has the responsibility to appraise the laws and policies of the United States with respect to civil rights. Members of the Commission who are appointed by the President and serve on a part-time basis are Arthur S. Flemming, Chairman, Stephen Horn, President of California State University, Long Beach, who is Vice Chairman; Frankie M. Freeman, an attorney specializing in estate and corporate law, St. Louis; Manuel Ruiz, Jr., an attorney specializing in international law, Los Angeles; and Murray Saltzman, Rabbi, Baltimore Hebrew Congregation, Baltimore.

On behalf of the Commission on Civil Rights, I am pleased to appear before the Commission on Security and Cooperation in Europe to assist you in the evaluation of United States implementation of the human rights provisions contained in Principle VII of the Helsinki Final Act of 1975.

My appearance here today is also responsive to the request by the President, contained in his Memorandum of December 6, 1978, calling for the cooperation of Federal agencies to fulfill the United States Government's obligations under the Helsinki Final Act. My comments concern what this Commission considers to be the current status of basic civil rights issues and also the performance of the Federal Government in civil rights enforcement since the signing of the Helsinki Final Act.

Today, in addition to the traditional overt and obvious civil rights denials, the Nation confronts complex and often subtle discriminatory patterns. Our society must go beyond neutral or nondiscriminatory behavior by individuals and institutions and to institutionalize efforts to ensure that equal opportunity exists throughout our society. This effort does not merely require new civil rights laws but more effective enforcement of existing laws, regulations, and policies.

I will now briefly review certain recent civil rights trends and developments in employment, education, and housing, and political participation, as they affect minorities and women based on the Commission's work.

Employment

In late 1978, unemployment among minorities was again substantially higher than that among whites. For example, the unemployment rate for adult white males had dropped to 3.3 percent, while for black males, the figure was 7.6 percent. For Hispanic men, the figure was 8.6 percent.

Unemployment among adult black women was the highest of any group -- 10.3 percent, compared to 8.7 percent for Hispanic women and 4.8 percent for white women.

Unemployment among teenagers, particularly blacks, has also been a serious problem throughout this period. In late 1978, black youth unemployment stood at 35.8 percent. A 1978 report by this Commission, Social Indicators of Equality for Minorities and Women, documented this inequality in employment and other areas and offered recommendations to ensure that the Federal Government routinely calculates and analyzes measures of equality in order to assess adequately the impact of social and economic reform programs and to ensure adequate representation of minorities in surveys seeking information on the state of the Nation. The President has taken a first step toward these goals by directing his reorganization task force to address the problem of improving the coordination and policy relevance of Federal statistical activities.

In a 1977 report, Last Hired, First Fired: Layoffs and Civil Rights, the Commission evaluated the particularly harsh effect of seniority-based layoffs upon minorities and women and called for layoff alternatives, such as worksharing, and for full employment policies to ensure equal employment opportunity for these groups.

We believe that a promising recent civil rights development in the employment field has been the President's reorganization of the Federal program for enforcement of equal employment opportunity. The ineffective Equal Employment Opportunity Coordinating Council was abolished, and its

duties were transferred to the Equal Employment Opportunity Commission (EEOC) which was provided with new aggressive leadership. Responsibility for protection of the equal employment opportunity rights of Federal employees was also shifted from the Civil Service Commission to the EEOC.

The Federal Government's contract compliance program, formerly the responsibility of the Department of Labor and 11 other Federal agencies, has been consolidated in the Labor Department. This new structure streamlines the Federal program for combating job discrimination and follows Commission recommendations for such reform. Adequate staffing and funding of this new program are essential, of course, along with strong support by the Administration, if this program is to achieve its vital objective.

Recent legal developments in the area of employment discrimination have generally involved two issues -- the question of discriminatory "intent" with regard to an employment practice and seniority rights and benefits. In a decision in 1976, the U.S. Supreme Court restated its requirement that in civil rights cases, except those brought under Title VII of the Civil Rights Act of 1964, the plaintiff must prove, in order to prevail, that the defendant acted with a discriminatory intent. The Court emphasized that this has always been required, even though some lower courts had issued a number of civil rights decisions earlier that seemed to state that once discriminatory effect was shown, intent could be presumed. The intent requirement has also been raised in cases in education and housing.

In another case, the Court ruled that under Title VII, retroactive seniority may be awarded to redress the rights of blacks discriminated against in employment. Another major Court decision, however, upheld the legality under Title VII of seniority systems which perpetuated the effects of discriminatory acts that occurred prior to 1965.

Our studies indicate that affirmative action efforts by employers, public and private, have been inadequate, and minorities and/or women remain significantly underrepresented in some segments of the workplace. To improve the situation, the Commission in 1977 recommended the use of goals and timetables to improve employment and educational opportunities for all Americans.

Education

A good education remains a prerequisite for a good job in our society. School desegregation remains the best guarantee of a quality education for all children and young people, regardless of their race or ethnicity.

Twenty-five years after the Brown decision, the school desegregation effort remains far from finished. In 1976, the latest year for which such data are available, the Commission found that 46 percent of all minority pupils attended school in at least partially segregated districts.

Most school districts undergoing desegregation since 1975 have adjusted relatively calmly. Desegregation plans of varying scope were implemented in Dallas, Dayton, Milwaukee, Buffalo, Kansas City, Missouri, San Diego and Los Angeles. Major cities, including Chicago and Cleveland, approached the threshold of significant desegregation, albeit reluctantly. Seattle has voluntarily implemented a desegregation plan, and a metropolitan plan was implemented involving Wilmington, Delaware, and surrounding suburbs.

The desegregation process clearly remains slow, however, with community leadership lacking in some cases and with many districts involved in litigation. In a 1976 report, the Commission urged leaders at the national, State and local levels to accept the fact that school desegregation is a constitutional imperative. The Commission called upon the Federal Government to strengthen and expand programs designed to facilitate the desegregation process and to vigorously enforce laws which contribute to the development of desegregated communities.

In this respect, the Department of Health, Education, and Welfare (HEW) has acted since 1977 to strengthen its enforcement of Title VI of the Civil Rights Act of 1964. This came about in part as a result of settlement in December 1977 and January 1978 of three longstanding lawsuits that charged HEW with inadequate enforcement of Title VI and also of Title IX of the Education Amendments of 1972, which prohibits sex discrimination in Federally-assisted programs. The settlement order in Adams v. Califano

calls for resolution of backlogged individual discrimination complaints and more frequent Title VI compliance reviews in elementary, secondary, and higher education. The Department has been given nearly 900 new positions to carry out these tasks. This Commission has urged the Secretary of HEW to cut off Federal funds to those school districts which fail to take appropriate steps to halt discrimination.

The Commission has called upon the Congress to turn back efforts to thwart school desegregation and instead provide positive support for the constitutional imperative of desegregating our public schools. We have recommended that the President designate an appropriate White House official to coordinate, in addition to other duties in the civil rights area, all of the resources of the Executive branch in order to bring about vigorous and effective enforcement of the desegregation mandate.

We regret to note,however, that new Congressional restrictions prevent Federal agencies from directing, permitting or withholding funds for the purpose of requiring or encouraging the use of transportation for desegregation of schools. Their enactment has undermined the ability of the Executive and judicial branches to guarantee the Nation's children and young people their constitutional rights.

Minority enrollment in higher education rose rapidly between 1966 and 1976. Minority enrollment in professional schools, however, has slowed and remains disproportionately low. The controversy over affirmative action programs in higher education may be significant in this regards.

In June 1978, the Supreme Court in the Bakke case approved the use of race-conscious admission programs while disallowing the use of specific set-aside or minority "quota" plans. The Court's findings in Bakke concerning the legitimacy and importance of considering race among the factors to be weighed in admissions decisions were similar to those discussed in a Commission report, Toward Equal Educational Opportunity: Affirmative Admissions Programs at Law and Medical Schools.

Another important civil rights issue in education is bilingual-bicultural education. Most States with substantial language minority pupil enrollments, such as Texas, Massachusetts, and Florida, now have bilingual programs in their public schools. Questions remain about the effectiveness of their implementation in some States, however, and also about future funding for these important programs.

Housing

The goal of home ownership for many Americans, particularly minorities and women, has receded in recent years as housing costs have soared. In the past year sale prices of new homes rose by 16 percent over 1977. Blight and deteriorating housing conditions continue to characterize many minority and low-income neighborhoods throughout the Nation.

Federal fair housing and subsidized housing programs have generally failed in recent years to make a meaningful impact on these problems. A new Commission study of the Federal fair housing enforcement effort, to be released April 11, evaluates the effectiveness of that program. The

Department of Housing and Urban Development (HUD) has committed itself to strengthen its program to combat discrimination consistent with the requirements of Title VIII of the Civil Rights Act of 1968, but it has lacked the necessary authority to do so. The Commission strongly endorses legislation now before the Congress which would provide HUD with "cease and desist" powers that could greatly strengthen its fair housing effort.

Women's Rights

Although much remains to be done, some progress has been made by women in recent years toward full participation in all aspects of life in this Nation. Women have entered occupations previously closed to them, though in small numbers, particularly at the higher levels. They have also been admitted to military academies, and the percentages of women in enlisted and officer ranks of the military have increased. Finally, there has been increasing public understanding and government response to the critical issues of domestic violence and rape.

Gaps remain between women and men, however, in employment, income and occupational status. Women are still more likely than men to hold low-income, low-status jobs. The Commission's social indicators report cited 1974 figures which revealed that the poverty rate among female-headed households is three times greater than that among other groups.

A major national effort to ensure women the constitutional guarantee of equal treatment under the laws, namely, ratification of the Equal Rights Amendment, has not yet succeeded. No State legislatures have approved the amendment since 1976, and three more States must ratify for the ERA to become law. Last year Congress extended the deadline for ratification from March 1979 to June 1982. Last December the Commission observed that, "women continue to be disadvantaged by gender-based laws and practices, despite the enactment of equal opportunity laws," and that enactment of the Federal ERA is needed to "prompt the changes necessary to provide men and women with status as equal persons under the law."

The effort to eliminate sex discrimination in education also has continued. Title IX of the Education Amendments of 1972, which bans sex discrimination in education programs, represents a positive step forward, but much remains to be done in implementing the law.

Important developments that affect women on the job have occurred in recent years. For example, the Congress amended Title VII to include a prohibition of discrimination based on pregnancy, childbirth, and related medical conditions as discrimination based on sex. The bill requires employers to include pregnancy among conditions which make employees eligible for benefits under employee disability plans.

Administration of Justice

The U.S. Commission on Civil Rights has, over the years, received complaints of police misconduct from persons all over the country. Recently the volume of complaints has increased, and requests for a Commission investigation into patterns of misconduct have come from groups, as well as individuals, in many cities.

In making these requests, individuals have brought to the attention of the Commission allegations of police misconduct ranging rom verbal abuse to the use of physical force to incidents involving the unwarranted use of deadly force. In response to these complaints, many of which have come from minorities, and the widespread concern that police are depriving individuals of their constitutional rights, the Commission has determined that an investigation of police practices is both timely and warranted. The crux of many of the complaints received is that there is no effective recourse to police misconduct.

The Commission will investigate police departments as institutions and study the mechanisms which encourage or discourage misconduct and complaint reconciliation. We shall seek to determine how the system under which the officer operates can be modified to minimize the potential for abuse, while still protecting adequately the due process rights to which officers are entitled.

Also of major concern to many minority communities is Federal policy concerning the apprehension of undocumented workers and possible violations by the Immigration and Naturalization Service (INS) of the civil rights both of legal aliens and Hispanic and other minority citizens. Allegations of misconduct by U.S. -Mexican border patrol officials, illegal "mass raids", and the abuse of due process rights for aliens in INS proceedings have fueled this growing controversy. No major legislation to deal with these issues has yet been approved by the Congress, however, and the undocumented worker question remains critical, particularly in the Southwest, but also in large cities with substantial Hispanic and Asian American populations.

American Indians

The status of Indian people in the constitutional and historic fabric of American society is unique. Indians are legally unlike any other group of persons in American society. This reality is frequently not understood, and it complicates all Indian issues.

Indian tribes are governmental entities which retain many domestic powers of sovereignty. They are political units which exercise power over people and geographic areas. Membership in an Indian tribe provides the individual Indian with benefits and responsibilities that have no analogy for other Americans. Another factor that is unique to Indians is the role of the Federal Government. It is long-settled constitutional doctrine that the United States stands in a trust relationship with Indian tribes and their members. While the exact parameters of this trust rela-

tionship are not clearly delineated, the trust relationship at least extends to the protection by the United States of Indian lands and natural resources. Other elements of this relationship, at least in this period of Indian self-determination, relate to improvements in tribal governing capacity.

Indians have some of the same attributes of members of minority groups. Racially and culturally, Indians are distinct identifiable groupings. In addition, Indians as a group trend to have low indicia of economic status and high indicia of societal problems, such as unemployment and low educational attainment.

This combination of factors means that in some settings, Indian issues can be addressed in generalized civil rights terms utilizing classic equal protection analysis. In many situations, however, even where surface similarity exists, Indian issues must be dealt with outside of the minority group's framework. The classic illustration of this situation is the U.S. Supreme Court's decision in Morton v. Mancari. An Indian employment preference of the Bureau of Indian Affairs was challenged by non-Indians as racially impermissible discrimination. In this day of Bakke and Weber, most might assume that the arguments focused on the use of race or color as a form of affirmative action aimed at overcoming all the past discrimination that Indians had suffered. Not at all! The rationale used by the Supreme Court to sustain the employment preference was quite simple and only applicable to Indians. In the context

of the Federal trust relationship, the classification of Indians by the Federal Government to provide benefits was not a racial classification. It is a political classification and, as such, is not invidious discrimination.

Indian issues today leapfrog over a great many concerns. They differ region to region and tribe to tribe. They also differ whether one is speaking of off-reservation issues or reservation issues, or of Indian tribal governments or Indians as individuals.

Some of the classic civil rights issues in the reservation areas relate to voting rights. As Indian people in reservation areas have become more active in relation to State and county governments, there is an observable tendancy on the part of these governments to attempt to manipulate voting procedures to that the Indian vote would be diluted. These maneuvers are clearly civil rights violations.

In communities adjacent to reservations and in urban areas, the treatment of Indians by the justice agencies has long been a serious problem, involving such components as abusive treatment by the police, unequal patterns of law enforcement and sentencing, and service of Indians on juries. In the off-reservation communities and cities, access to the range of public services has been and can be a serious issue for Indian people. The pattern of neglect and mistreatment by these institutions, coupled with an apparent Indian perception that regular social service

systems will not serve them well has given rise to an increasing tendancy for Indians to attempt to develop and rely on Indian institutions.

All areas of traditional, or classic equal protection analysis of Indian issues are affected by some of the overriding Indian issues today. Indian rights under treaty and statute, as interpreted by the courts, are the focus of heated battle in the media and public arena. These rights relate to fishing, hunting, water, land, natural resources, and the jurisdictional authority of tribes. Each issue is different and complex. In the public debate, however, all appear linked, and frequently the veneer and rhetoric of civil rights analysis is utilized to urge against the unique character of Indian rights.

Political Participation

Passage of the Voting Rights Act of 1965 (and its extension in 1975) was an important civil rights development in this Nation. It protects and strengthens minority citizens' rights to vote throughout the United States. In many parts of the South, it has been used to remove unfair qualifications for voting and to correct unfair administration of the election system. In 1975, the Act was amended to provide voting protections for language minority citizens.

The Voting Rights Act has led to increased registration, voting, and election of minorities to public offices in many States. Ten years ago, for example, there were just 408 black elected officials in the South: today there are 2,000. Blacks have been elected mayors of major cities, including Los Angeles and Detroit. In Texas, voting registration among Mexican Americans reached 591,950 in 1978, a 21 percent gain from the figure in 1976.

The participation of women in the political process also continues to increase but very slowly. Women now serve as governors or lieutenant governors of eight States. Women state legislators now number 761, an increase of 57 as a result of 1978 elections.

It is well to remember, however, that despite these notable recent gains, minorities and women generally remain significantly underrepresented in key positions in government, whether Federal, State, or local.

Concluding Comments

These brief observations I have just made are based on extensive research and fact-finding conducted by the Commission and its 51 State Advisory Committees during the last several years.

Your Commission will receive early next week a more comprehensive statement citing specific U.S. Civil Rights Commission and State Advisory Committee reports and findings and recommendations that will further buttress my observations.

As the U.S. Government prepares for the Madrid Conference in 1980, I want to reiterate that the U.S. Commission on Civil Rights is fully supportive of the hearings you are conducting. We trust they will be productive as we believe this type of fact-finding hearing has been for us over a period of twenty-two years. You will find, in studying the Commission on Civil Rights reports, that the Civil Rights Acts of 1960, 1964, 1965, 1968, 1970, 1972 and 1974, and that some Presidential Executive Orders and various court decisions, reflect findings and recommendations made by the United States Commission on Civil Rights.

Thank you for inviting me. I will be pleased to answer your questions.

QUESTIONS AND REMARKS

Cochairman PELL. Thank you, Mr. Nunez. One of the questions that comes to my mind is that for the enjoyment of civil rights, there's also an obligation to be familiar with the language of the country. I'm wondering what your reaction is to the thought that perhaps one of the reasons why non-English-speaking people seem more likely to have their civil rights abused is because they are not fluent in English.

For instance, specifically, is it your view that in Puerto Rico any graduates of high school age should be able to speak fluent English, because they are American citizens and have to be able to maintain a competitive position in the United States as a whole, and you can't ask the different police officers across the country to learn the different minority languages?

Mr. NUNEZ. Well, the Senator—you are referring to Puerto Rico or Puerto Ricans in the United States?

Cochairman PELL. I'm referring to Puerto Rico itself, because I think if they did a better job of making sure that every graduate was fluent in English, that the civil rights they would enjoy in the country as a whole, because they are American citizens, would be more fulfilled.

Mr. NUNEZ. Well, I think we should recall that Puerto Ricans in Puerto Rico were made U.S. citizens in 1917 by an act of Congress. As I recall that act, there was no specific requirement, when Congress decided to make them U.S. citizens, that they speak English as a condition, so there is no legal requirement. I think it's a question of policy.

I would agree with you that for people who come to the continental United States to work it would be an advantage; it would be good for them to know English, so that they could participate more fully in the general society. However, I do not see it as a legal requirement, and that should not take away from their basic civil rights—the fact that they do not speak English.

They are American citizens, and they were made American citizens by this Congress.

Cochairman PELL. But don't you agree that it's very hard for a police officer in Kansas to be expected to be familiar with Spanish or with other Eastern European languages, if they would come from there? There's an automatic obligation to learn English in order to enjoy the civil rights in the country.

If I go to France, as an American citizen speaking English, I expect, if I get in trouble, that it would be advisable to be able to either speak French or have an interpreter with me.

Mr. NUNEZ. I agree with you, Senator, that it does create problems, but I think any law enforcement authority in our society does have to have the training and the orientation to be able to deal with whatever community they confront. I think that, as a matter of fact, the major police departments, where there are large numbers of Spanish-speaking citizens—in New York, Los Angeles—do have special programs.

I doubt whether a police force in Kansas would have that same necessity.

Commissioner FENWICK. Will the Senator yield?

Cochairman PELL. Certainly.

Commissioner FENWICK. There are 42 languages required in Detroit on account of the bilingual program—42 the schools have to cope with.

Now, what I ask you is: Do we really feel we're doing our citizens a service? Would it not be better if, like all those who arrived in this country earlier—and most of us are of immigrant origin—they learned English? Otherwise what are we condemning them to? A life of social work among those who don't speak English? If they want to be president of General Motors or a bank, which is what we want if they want it, or President of the United States, they're going to have to speak English. And I wonder if we're doing our children a service. Forty-two languages is no joke and a great expense without, I think, the benefit that should accrue to the children.

Mr. NUNEZ. Well, the issue of bilingual education, as you all know, is under title VII. This Congress has adopted a policy of support of bilingual education, and I might point out that bilingual education is a method to learn English. The Commission has taken a position stating that bilingual education presents the most promising methodology that we know of at the moment to deal with language minority students in our society. This was our position.

Now, we are not saying—I don't think the debate is whether people should retain their foreign language and not speak English. We are saying that there were, until very recently, enormous numbers of Spanish-speaking youngsters, for example, who were going through the school system in a monolingual mode and were really not benefiting from the benefits of our educational system.

We are saying that through the process, the methodologies that have been developed through bilingual education, they more effectively can learn English. The intent of bilingual education is not to retain the foreign language and not learn English. I don't think that is current national policy, and I would also add that the Commission would not support that.

We recommend that bilingual education as a method of bringing young people into the mainstream of our society be encouraged. That's our position on it.

Cochairman PELL. I thank you very much indeed, Mr. Nunez. I'm going to have to depart now, and I've turned the gavel over to Congressman Bingham.

Commissioner BINGHAM. Thank you, Chairman Pell.

I don't really have a question, Mr. Nunez. I would like to just say a word about your Commission. Our Commission, holding these hearings, is just embarking on what is going to be, at best, a brief survey of U.S. performance under the obligations we undertook in the Final Act of Helsinki. To the extent that those obligations include the obligation to provide equal opportunity to all citizens, regardless of race, color, religion, sex, age, handicap, and so on, your Commission has really been doing this for the life of its existence, and I think doing a spectacular job.

I think it's one of the greatest things about our society, that we are capable of maintaining and funding a commission of this kind, which really does nothing but keep digging into our failings to live up to our ideals as a society. I think it has performed enormous service over the years, and will continue to perform that function. You're kind of ombudsman, if you will, for the disadvantaged in our society on a broad scale, and I think your participation here is an indication of that.

I personally want to thank you, and through you, the members who've served on the Commission over the years, for the really distinguished work that you've done in pointing out to ourselves in this country our shortcomings. Thank you.

Mr. Buchanan?

Commissioner BUCHANAN. Thank you, Mr. Chairman.

I would share the appraisal of the Chairman, and further reflect that the very existence of a commission like your own, on a long-term basis, doing the job you're doing, reflects something of the commitment in this country to civil rights and to human rights.

Let me make this a brief reflection and ask you to respond to it. I approach this work of reviewing domestic compliance with the Helsinki accords with very mixed emotions. I've always felt that the Voice of America, the International Communications Agency, had a very difficult job to do in telling the truth without fiction about our country as we go along, and at the same time revealing the totality of the reality of our country.

Part of the reality one can get from AP, UPI, the television channels, and the other news media here tends to give emphasis to the negative, the spectacular, the newsworthy, and the great realities of this country are not usually so communicated. For example, every time I go home to Birmingham, Ala., and I am with people—black, white, blue collar, silk stocking, young, old—I am once again moved to think how beautiful these people are; to be impressed with the goodness that lies at the heart of the greatness of this country, the sense of fairness, of compassion that marks American people typically; to observe the abundance, the freedoms, and all the other things that are truly great about this country.

And yet, I come back to Washington, D.C., thinking that this country is truly great and we're going to make it, and I'm confront-

ed with the problems like those with which you deal every day in your work, and I wonder if the physician doesn't have to heal himself. I wonder if the performance of the Federal Government itself doesn't leave something to be desired.

Let me make it very concrete and specific. The Federal Government is this Nation's largest employer. In my own considered judgment, it is also this Nation's greatest discriminator, and part of it is because of the civil service system, but it appears to me that the Federal Government of the United States is run by a white male establishment, with the possible exception of EEOC, which is run by a black male establishment, or has been.

Perhaps this has something to do with our inability to enforce adequately, either in or out of the Federal establishment, the effort to which your Commission is dedicated full-time. Would you respond, please, to that dissertation?

Mr. NUNEZ. Well, Congressman, I think that the Federal Government has a unique responsibility in providing equal employment opportunities for all American citizens. I don't really agree with you that the Federal Government is perhaps the worst offender.

I think that the reality of the Federal Government is that, percentage-wise, minorities and women probably—as a gross figure—are probably proportionately in greater numbers represented in the Federal civil service.

Commissioner BUCHANAN. But at what level?

Mr. NUNEZ. I think the problem really ends up being one of where they're at. They're generally at the bottom of the ladder, and as you move up the ladder of civil service, at every level beyond the first rung of the ladder, you see a declining number—a declining percentage as you go up the ladder.

I think that this administration is very well aware of this, and I think that the recently enacted civil service reforms are a precursor, if you will, of possibly a new mindset.

In dealing with young, black, and Puerto Rican militants in New York 15 years ago, I recall they made a comment that has always stayed with me, the comment being: "Who makes the rules of the game makes the rules so that they will always win."

And the civil service procedures, the way we've evolved them over the years, perpetuated the people who were in leadership roles. I think our Federal Government is beginning to realize that the way the process—the process by which you develop rules, the testing procedures, the selection procedures all eventually impact on the work force that you end up having. I think that more work has to be done on that.

I'm aware that people are concerned about the opposite—the concept of reverse discrimination, the concept of lowering of standards. I maintain that procedures, processes, qualifications can be developed so that we have a truly representative work force representing our total national diversity at every level of government. And I think that the people who are in charge—Jules Sugarman, Alan Campbell at the Office of Personnel Management, and ultimately the President—are beginning to work toward that goal.

As you may know, contrary to popular wisdom, the Federal civil service is not growing; it's at a fairly stable kind of percentage. In fact, it's going slightly backwards. So to make changes in a stable

work force is difficult. We're aware of that, and that probably is a problem in the private employment field.

It's obviously much easier to develop effective affirmative action programs in an economy that is growing very rapidly, in a work force that is growing and expanding. It is much more difficult, we're aware of, in a society or in an economy which is fairly stable as to the jobs.

Commissioner BUCHANAN. Thank you.

Commissioner BINGHAM. Mrs. Fenwick?

Commissioner FENWICK. Thank you, Mr. Chairman.

I am familiar with the Civil Rights Commission.

Mr. NUNEZ. I know you are, Congresswoman.

Commissioner FENWICK. I worked for it for 15 years. I wrote the reports for New Jersey for the Commission——

Mr. NUNEZ. Yes.

Commissioner FENWICK [continuing]. On housing and employment and voting. I would like to ask you one question relating to Helsinki specifically. What did you do when Amnesty listed 16 violations of civil rights under the Helsinki accords in this country? What did the Commission on Civil Rights do?

Mr. NUNEZ. Well, the short answer to that is that those complaints were not brought to our attention.

Commissioner FENWICK. That is not the point. They were in the paper. What did you do?

Mr. NUNEZ. I would say that our work in this area is our support of your Commission and the Department of State, but to be very specific, we did nothing by picking it up in the papers, that's true.

Commissioner FENWICK. Mr. Nunez, there were accusations against this country that, for example, two Indians were held in California for many months without trial. You did not look into that as a violation of our citizens' civil rights?

Mr. NUNEZ. Well, Congresswoman, I recall that complaint.

Commissioner FENWICK. There were 16.

Mr. NUNEZ. This Commission has, for the last 4 years, been in the process of developing a report on the Indian communities of the United States. It represents perhaps the most massive investigation of Indian affairs.

Now, the question——

Commissioner FENWICK. These were specific violations.

Mr. NUNEZ [continuing]. Is a specific civil rights complaint, and I would——

Commissioner FENWICK. Right.

Mr. NUNEZ [continuing]. Point out that this Commission has no authority whatsoever to resolve any individual's civil rights complaints.

Commissioner FENWICK. No, but do you not, as we did, bring it to the attention of those who have the duty? In other words, surely your Commission—and the Commission as I knew it when we worked on it—has a responsibility to consider civil rights in this country, and if there are accusations by a reputable group such as Amnesty—not just Indians; there were many others who were not Indians—surely I hope that the Commission could take that under consideration, because we are responsible as the Helsinki Commission. I received letters finally, written by the Attorney General in

California, showing Xerox copies of the letters of the doctor and the lawyer who had requested the delays for their two clients.

But I wondered that we never heard anything from the U.S. Commission on Civil Rights.

Mr. NUNEZ. Well, we will look into the complaints.

Commissioner FENWICK. Thank you.

Mr. NUNEZ. But I might further point out for the Committee that our work is fact-finding across general social problems involving large groups—groupings in our society, because what we're trying to do is influence public policy. We're trying to influence the Congress; we're trying to influence the Executive——

Commissioner FENWICK. Could I have your——

Mr. NUNEZ [continuing]. By the kinds of reports we do.

Commissioner FENWICK. Could I have your opinion on something?

Mr. NUNEZ. Yes.

Commissioner FENWICK. Suppose that any given Indian tribe on a reservation voted to get rid of the reservation by majority vote, what would be the position of the U.S. Commission on Civil Rights?

Mr. NUNEZ. Get rid of——

Commissioner FENWICK. Of the reservation status for the land.

Mr. NUNEZ. That's an interesting question. I don't believe—I'll have to check on this—that they have the right to abolish the tribe on their own. It is set up by treaty, by obligations. Let me back up on that. That's——

Commissioner FENWICK. It's a problem, isn't it?

Mr. NUNEZ. That's a question I would probably have to research and get back to you. It is basically a legal question, and I withdraw my initial response.

Commissioner FENWICK. It's really a human rights question, isn't it? Because regardless of what the legalities might be, the question is are we—or are we not—prepared to cut off their rights because of some earlier treaty. They are human beings living now, and if they vote in a certain way, have they the right or have they not the right, under our Constitution?

Now, if our other constitutional provisions, such as equal protection of the law, apply to them, it would be difficult to say that, because they're Indians, there is some ethnic bar against their being able to vote and get the results that they voted for.

Well, perhaps we could get a ruling from you at some time.

Thank you, Mr. Chairman.

Mr. NUNEZ. Well, I'd be happy to respond to that, but, you know, in all our work amongst Indian tribes, I don't think that issue has arisen. In fact, the contrary issue has arisen—the allegation that there are a lot of forces to abolish Indian tribes. I think that most——

Commissioner FENWICK. But you remember when the Indians sold their land——

Mr. NUNEZ. The majority of Indians, in fact, do want to retain the tribal——

Commissioner FENWICK. Well, it depends. That's the view of the leaders, but I wondered about the votes. Thank you. We'll hear from you.

Thank you, Mr. Chairman.

Commissioner BINGHAM. Thank you. I might just remind the gentlelady that we do have on our list of witnesses—he was not able to be here today, but will be here at a future hearing—Forrest Gerard, Assistant Secretary for Indian Affairs of the Department of the Interior.

Mr. Nunez, thank you very much for your testimony, and once again my thanks for your ongoing work.

Mr. NUNEZ. Thank you very much, and I very much appreciate your very kind words about the work of the Commission over the years it's been in existence. As I said in my prepared testimony, this Commission will continue to cooperate fully with the activities of your Commission, and we will continue in this work because we feel that it is crucial to civil rights in the United States as throughout the World.

Commissioner BINGHAM. Fine. By the way, I notice that you did abbreviate your statement somewhat. It will appear in the record as if given in full. [See p. 33.]

Mr. NUNEZ. Thank you very much.

Commissioner BINGHAM. Would Mr. Robert Bernstein come forward with such members of Helsinki Watch as are here? We're not sure just who was able to make it.

Good morning, Mr. Bernstein. Do you have some of your associates with you, and would you identify them for us, please?

HELSINKI WATCH PANEL PRESENTATION

Mr. BERNSTEIN. Well, starting at the right of the table is Brent Simmons, who will represent the NAACP legal defense fund; next to him is Gilbert Padilla, secretary-treasurer of the United Farm Workers of America; next to me on my right is Amy Anawaty of the International Human Rights Law Group, who will be speaking in place of Phyllis Segal of NOW, who is detained in New York because there has been fog and a few of our members have not arrived, including John Carey, who is Chairman of the Domestic Compliance Subcommittee of the Helsinki Watch committee. At my left is David Fishlow, who is the executive director of the Helsinki Watch committee.

Commissioner BINGHAM. Could you give us again the affiliation of Ms.—Melotty, is it?

Mr. BERNSTEIN. Anawaty: A-N-A-W-A-T-Y. She will be speaking—her affiliation is the International Human Rights Law Group, but in this case she will be substituting for Phyllis Segal of NOW legal defense fund, who maybe will arrive as we're speaking.

Commissioner BINGHAM. Fine. Thank you.

Mr. BERNSTEIN. Besides introducing the group, I'm going to just try to ad lib for John Carey, who also may arrive as I'm speaking. Phyllis Segal has arrived before I started speaking. She is now at my left.

Commissioner BINGHAM. You have submitted, Mr. Bernstein, what appears to be a very comprehensive statement on behalf of the Helsinki Watch, and that will appear in the record in full. [See p. 76.]

We hope you can summarize those aspects of it that you deem to be essential for our purposes today.

Mr. BERNSTEIN. All right.

STATEMENT OF ROBERT L. BERNSTEIN, CHAIRMAN, HELSINKI WATCH COMMITTEE

Mr. BERNSTEIN. Congressman Bingham, and members of the Commission on Security and Cooperation in Europe, we greatly appreciate your giving time to our newly formed Helsinki Watch to testify before you. Since this is our first official appearance in Washington, let me briefly tell you how the committee came into existence and the reasons for it.

The idea of a citizens' group acting on public issues has, of course, a long tradition in the American system of government. Perhaps Louis Brandeis best expressed it when he said, "The most important role in a democracy is the role of the private citizen."

So many important parts of the Helsinki Final Act deal with the rights of the individual citizen under his government. With that in mind, Arthur Goldberg, when he came back from Belgrade after the first follow-up meeting of the 35 signatory nations to check on compliance with the Final Act, suggested that a citizens' committee could be especially effective in breathing life into a document in which they so obviously—the citizens—have a vested interest.

The Helsinki Watch was organized in January of 1979, funded by a $400,000 grant from the Ford Foundation, which will enable the group to carry on its work through the next Helsinki Conference in Madrid in November 1980. It has announced four main objectives: One, to monitor, encourage, and report on U.S. implementation of the Final Act; two, to encourage, and assist when appropriate, the activities of citizens' Helsinki Watch groups in other signatory countries; three, to help in the process of educating opinion-makers and the American public on the significance of the Helsinki process and to inform them of the record of the participating states; and four, to develop information and proposals for the follow-up conference in Madrid.

The Helsinki Watch will concentrate its efforts on those provisions of the Final Act dealing with human rights and fundamental freedoms, with human contacts and the exchange of information.

Membership of the committee now includes over 50 American citizens: Leaders drawn from business, education, law, science, and many minority groups. It is still in formation, and other members will be added to make it as representative as possible.

As Chairman of the Helsinki Watch, I would like to emphasize my admiration for the work that has been done by the Commission on Security and Cooperation in Europe, particularly by its Chairman, Dante Fascell, in conscientiously gathering information and making it readily available. It is my belief that many countries that have signed the Helsinki Final Act are not only not fully complying with it, but are blatantly ignoring many of its provisions.

For both moral and legal reasons, I believe that we must pursue a determined effort to make countries live up to what they have signed. To do this, it is important that we come to the table with our own house in order, and so I think it is particularly appropriate that you are concentrating on U.S. compliance in these hearings.

There can be no question that our willingness to entertain criticism of our country is one of our great strengths and a source of national pride. In fact, I know of no other country whose government is holding such hearings and providing its citizens, at partial government expense, with the information that is indispensable for effective monitoring of Helsinki and of the human rights situation in general.

On the other hand, it constantly surprises me that members of the press, particularly the editors who decide what goes into the newspapers and what prominence each story will receive, have rarely, in the long period since 1948, when the Universal Declaration of Human Rights was signed, given major space to conferences and events concerning the very freedoms that enable their own craft to exist.

I have read brilliant statements by prominent Americans presented to this very committee on which there has never been a line of press. It is one of the hopes of Helsinki Watch that we will be able to draw their consistent concern and coverage in this crucial area.

A final point: Soviet officials have frequently told me with great pride that the Final Act was printed in full in Pravda, making Soviet citizens more aware of it than Americans. However, section VII of the Final Act states that all of the signatories "confirm the right of the individual to know and act upon his rights and duties" in the field of human rights and fundamental freedoms.

Soviet citizens reading Pravda's report took it seriously. The very name "Helsinki Watch" comes from the Soviet Union, where the first citizens' committee to monitor government compliance was established. Subsequently, more than 15 members of the Soviet Helsinki Watch Committee have been jailed or exiled.

As we begin this meeting, I want everyone in the room to consider the fact that the man who occupied my post in the Soviet Union—a man named Yuri Orlov, Chairman of the Citizens' Helsinki Watch Committee of Moscow, a distinguished scientist—is serving 7 years at hard labor in a strict regimen labor camp, to be followed by 5 years of internal exile. I think this state of affairs sets our work dramatically in perspective.

At this point, I was going to introduce John Carey, who has prepared this report with the other groups here, and as I said before, heads our Subcommittee on Domestic Compliance. The opening statement in our report was his report, and I will try to briefly go through that without reading all of it.

He says that the U.S. commitment to safeguarding the human rights of its citizens, of course, predates Helsinki and goes considerably back into our history. Private citizens' groups have a crucial role to play in evaluating their governments' records of compliance, and we respectfully suggest that the CSCE consider another round of hearings, at which a broader representation of domestic, political, and civil rights organizations would have the opportunity to testify.

In attaching the Bill of Rights to the Constitution, the framers recognized that governments often have interests which conflict with the fundamental rights of their citizenry. We need only look

about us for examples of the excesses wrought by unchecked bureaucracy.

We can find no higher praise for the courageous efforts of the Eastern European Helsinki monitors than to emulate their example, admittedly in circumstances involving significantly less risk than their own. The principle which they espouse, that private citizens must take responsibility for safeguarding their own rights, is valid under any circumstances.

He adds that we ought to welcome the criticisms of foreign governments and private parties of our nation's performance. The establishment of a constructive dialogue on human rights is one of the principal aims of the Final Act.

It is my hope that when all of these reports are picked up by foreign press, we will get an equal chance to inquire into some of the things going on in countries other than our own.

The Commission has done excellent work in monitoring Helsinki compliance in Eastern Europe and should continue in this endeavor. Review of our own compliance is an essential accompaniment to reviewing the efforts of others.

In the spirit of Helsinki, the U.S. Government should examine its participation in other international agreements as well. Our failure to ratify the Genocide Convention, International Covenants, the Convention on Elimination of All Forms of Racial Discrimination, and other international agreements, while often based on legitimate constitutional concerns, gives the appearance of calling into question the sincerity of our dedication to the cause of human rights. We should take positive steps, consistent with the requirements of our own law, toward ratification.

Since we have already signed the International Covenants, the Executive branch should make every effort to adhere to them in practice. Our compliance with agreements we have already ratified—the Convention on the Political Rights of Women, to name one—also merits careful attention.

In fact, the Helsinki Final Act obligates the signatories to observe a broad range of standards. Article VII's last two sentences deserve close study:

> In the field of human rights and fundamental freedoms, the participating states will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights.

These purposes and principles are well-known. The next sentence goes further:

> They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including, inter alia, the International Covenants on Human Rights, by which they may be found.

What are some of the declarations and agreements referred to? As a sample, there are U.N. declarations on the elimination of all forms of racial discrimination; elimination of discrimination against women; protection from being subjected to torture; the rights of children; protection of women and children in emergency and armed conflict; social progress and development and many others.

An instrument worthy of special attention is the Standard Minimum Rules for the Treatment of Prisoners. We should also pay

heed to our compliance with the Employment Policy Convention ratified by the United States a decade ago.

It is clear from this partial list that we have a heavy agenda. Both the Government and private organizations have important responsibilities in working for fuller implementation of the Helsinki Final Act.

The Helsinki Watch has solicited the comments of several citizens' groups in evaluating U.S. compliance for inclusion in the record of these hearings. The Committee for Public Justice, Indian Law Resource Center, International Human Rights Law Group, Lawyers' Committee for International Human Rights, NAACP, NAACP Legal Defense and Educational Fund, National Organization for Women Legal Defense and Educational Fund, and the United Farm Workers have submitted individual reports which form the bulk of our written submission.

Because Helsinki is a new area of interest for many of these organizations and preparation time was short, the reports are general in nature. They nevertheless point up a number of significant areas in which the U.S. compliance record might be questioned.

Broadly speaking, their criticism of U.S. performance focuses on discrimination and civil liberties abuses which are either sanctioned by law or caused by a failure of Government to enforce existing remedial statutes. Not surprisingly, they indicate that minority groups in this country bear the brunt of the United States' failure to live up entirely to its Helsinki commitments.

For example, despite the remedial legislation of the 1960's, blacks in this country still are the victims of discrimination because of the Government's failure to provide the equal protection and equal access to services which are mandated by law. The reports of the NAACP and the Legal Defense Fund outline inequities in the administration of justice, in employment, and in educational opportunities.

Farm workers in this country also suffer the status of second-class citizens. The United Farm Workers' report recommends the passage of legislation which would provide an effective framework for organizing agricultural workers.

Taken together, these submissions confirm the unique fitness of citizens' groups in this country to assess the compliance of the United States with the terms of the Final Act, partly because their assessments are based more on the measurement of results than they are on the statement of intentions. Governments are, for obvious reasons, more prone to state their intentions than they are to concentrate on that which remains undone.

The concept of citizens' monitoring of the Helsinki accords did not originate in the United States, but it is an idea which should be developed.

Mr. Carey, would you like to read the last paragraph of your report? Or, would you rather that I even stop as you arrive and—we have just gone through it up to the last paragraph—and perhaps make some comments?

Commissioner JAVITS. Mr. Chairman?

Commissioner BINGHAM. If you'd hold just a minute. Senator Javits?

Commissioner JAVITS. May I just interrupt one minute? I just wanted to apologize to the witnesses, and especially to my friend Bob, and to the Mayor. I'm upstairs at a hearing on workers' compensation. I came down to see you and get a feel of what was going on. I just want you to know why I come and go so episodically.

Thank you, Mr. Chairman.

STATEMENT OF JOHN CAREY, CHAIRMAN, SUBCOMMITTEE ON DOMESTIC COMPLIANCE

Mr. CAREY. Mr. Chairman, apologies for coming in at a time like this. The transportation facilities between here and New York are not very good this morning.

I would like to make some very brief comments touching on the purpose of our being here today and mentioning certain of the features of the reports of the organizations that are included in our written submission.

We would like to stress that the performance of American society in the field of human rights now can and should be measured according to international standards. Our written submission suggests what some of those standards are, and the written submissions of the organizations included do so as well.

For example, when we speak of prison conditions in the United States, which are referred to by several of the organizations, such as the Legal Defense Fund, we now must consider this range of American problems not only in the light of the Federal Constitution and Federal and State law, but also in the light of international instruments, such as the Standard Minimum Rules for the Treatment of Prisoners, which were approved by the U.N. General Assembly and by the Economic and Social Council, possibly during the time when you, Congressman Bingham, were at the U.S. Mission.

They are not, perhaps, technically binding upon the United States, being embodied only in declarations, but as the National Organization for Women has pointed out in its submission to the Commission [see p. 166], it is possible to say that a nation is bound, in a certain sense at least, by a declaration of the U.N. General Assembly for which it has voted, and NOW makes this point in connection with the Declaration on the Elimination of Discrimination Against Women.

One might also consider other United Nations declarations in this light: For example, the Declaration on the Rights of the Mentally Retarded and the Declaration on the Rights of Disabled Persons, recent enactments at the United Nations which, while not treaties in any technical sense of the word, having had the support of our representatives at the United Nations, should be considered as binding upon us, at the very least in a moral sense if not in a legal sense.

Two of the organizations that have made written submissions here, and perhaps will supplement them orally, have made the point that the President—this is in the words of the NAACP: "The President, while addressing human rights violations in foreign lands, has not delivered a nationwide address on human rights concerns in this country."

And again, the Committee for Public Justice says: "The President has not hesitated to campaign on behalf of those whose right to free speech has been violated by other Helsinki signatory states, but he is less consistent a defender of these rights in the United States."

Now, not to single out any one individual in the United States, but let us look into our own consciences and see whether we are performing adequately if we focus on Helsinki violations in other countries and do not adequately focus on the shortcomings of our own society now judged in the light of these international standards.

The Legal Defense Fund has also pointed out in its submission [see p. 95] that human rights in the United States can be and have been advanced by virtue of criticism abroad. We frequently overlook shortcomings in our society if we do not heed and take seriously the criticisms that originate in foreign countries.

Of course, the phenomenon of discrimination in American society, as our introduction points out, is referred by a number of the organizations that are represented here. For example, the NAACP Legal Defense Fund states on page 27 that "discrimination against blacks pervades every stage of the criminal justice system," and they make this point very graphically in connection with capital punishment.

An interesting comment is made by the United Farm Workers [see p. 150], with which I would like to conclude these introductory remarks, because I'm not sure that I personally agree with it. They say:

> We know that the principal focus of these hearings is civil rights, rather than economic rights, and that the Commission is not in a position to do very much about the problems we raise here, but we think the right to organize a union—an effective union, with legal protection—is a fundamental part of the freedom of association.

I would like to suggest that the principal focus in these hearings is not necessarily civil rights rather than economic rights, and we might very well ask the Commission to consider that in the mid-1960's, the United States, through its constitutional process of ratification, became a party to the Full Employment Policy Convention, originating in the International Labor Organization, thus creating, for anyone who wishes to be technical about it, a full-fledged, legally binding obligation to do something about creating and pursuing a full employment policy. This is a very clear-cut example of why I would like to suggest that the Commission should concern itself with American performance, not only as to civil rights, but also as to economic rights.

With these few remarks, Mr. Chairman, I would like to close and thank you very much, on behalf of the Helsinki Watch and the other organizations that are represented here, for this opportunity to present our viewpoints.

There are four persons here who would like to address you, and it is my privilege to introduce them. I will do so now. The first is Mr. Brent Simmons of the NAACP Legal Defense Fund, who is speaking on behalf of Jack Greenberg, who had hoped, up until very recently—a few days ago—to be here, but was prevented from doing so at the last moment.

Mr. Simmons?

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STATEMENT OF BRENT SIMMONS, STAFF ATTORNEY, NAACP LEGAL DEFENSE FUND

Mr. SIMMONS. Thank you. It's a pleasure to be here, members of the committee.

I'm going to read portions of Mr. Greenberg's prepared comments, but I would just like to make one observation before beginning, and that is that the rights and freedoms that are set forth in the Universal Declaration of Human Rights, I believe, are the very essence of our universal humanity and the key to our survival. Without our common humanity, we would lose control of those forces which would divide and ultimately destroy us.

But there can be no redemption in those rights and freedoms if they are not available to each human being. Thus, equality before the law is intrinsic to the concept of human rights, and so states the Universal Declaration.

In commenting on American observance of the Helsinki accords, an American, particularly a civil rights lawyer, has a special responsibility. U.S. society is afflicted with a large measure of grave injustice. Racial injustice has been a part of the American heritage since slaves were first brought to our shores in chains centuries ago.

But our legal system allows for redress of many wrongs, and private citizens, as well as government, participate actively in undoing such injustice. Twenty-five years ago, a signal victory in that struggle was achieved when the U.S. Supreme Court held unconstitutional racial segregation in public education. Progress on various fronts continues to be made.

We cannot, however, close our eyes to wrongs which continue to occur. It is particularly apt that we address ourselves to such wrongs in the international context of the Helsinki accords. Human rights in the United States have been advanced because of criticism from abroad, and when we want to condemn other nations for human rights violations, it is important that we acknowledge our own defects.

In these observations on American human rights, I address myself to three subjects: Higher education, prison conditions, and capital punishment. These are among some of the areas in which the NAACP Legal Defense and Educational Fund has been actively involved.

Racial discrimination in public higher education in America remains a substantial problem. Ironically, the Supreme Court decided that racial discrimination and segregation in public higher education was unlawful prior to its watershed decision in *Brown* v. *Board of Education*—1954—that racially segregated public education in the elementary and secondary levels was unconstitutional.

In 1950, in *Sweatt* v. *Painter* and *McLaurin* v. *Oklahoma State Regents* concerning graduate facilities, the Supreme Court decided that segregation in public higher education was without lawful justification, and that the only way equality in education could be guaranteed was to eliminate racial separation. Lower courts implemented these decisions at all levels of higher education. Nevertheless, colleges and universities were part of the civil rights battleground in the 1950's and 1960's, where southern governors and

officials took stands in the schoolhouse door against the forces of integration.

The relative success of integration of elementary and secondary schools throughout the southern States in subsequent years did not extend to higher education institutions.

In public higher education, ineffective desegregation remedies have been tolerated long after they were replaced in the elementary and secondary schools with desegregation plans that promised realistically to work and that actually did work. Only recently has this situation of a right without a remedy begun to change.

Thus, in a Legal Defense Fund action, *Adams* v. *Califano,* the U.S. Department of Health, Education, and Welfare was sued in Federal court in the District of Columbia in 1970, because HEW refused to discontinue Federal funding to demonstrably segregated colleges and universities. Only in 1976 and 1977 did HEW comply with court orders to formulate guidelines and procedures for determining standards for desegregation.

While these standards leave much to be desired in terms of specificity and strength, the guidelines promise to start the long-overdue process of substantial desegregation.

The problem of prisons in this country can be grouped into three main problem areas: Overincarceration, the lack of rehabilitation or treatment of those incarcerated, and the terrible state of prison conditions. All of these are interrelated. Each would be serious in its own right, but they have significant negative impact on one another.

The rate of incarceration in this country is excessive in two senses. First, it is far in excess of either the need for or the purposes of incarceration. It seems to serve neither the purpose of deterrence nor rehabilitation. Rather, it serves to isolate those who have committed crimes, prolong the human suffering and waste of incarceration—particularly in light of the often horrible conditions and the almost complete absence of rehabilitative programs—and to further isolate and impede the reintegration of this segment of the population back ito society.

Second, incarceration in this country continues at a rate far in excess of the resources that the country is willing to devote to this purpose. This is one of the major contributing causes to the problems of lack of programs and grossly inadequate conditions.

While incarcerated, most inmates are cut off from any sort of meaningful programs. Most work in prisons is either make-work or for the economic self-sufficiency of the prison. The most common prison tasks are working on in-house maintenance, maintaining the prison farm which provides some of the prison food, and working in a license plate factory. None of these provides the inmate with the kinds of skills that are necessary in the outside world.

Few prisons provide much in the way of vocational training. When there are such programs, they are severely limited and not available to the majority of the prisoners. The result is that many go through our correctional systems uneducated, uncared for, illiterate, and without vocational skills. When they are released, they lack the capability to integrate into society. This reinforces the vicious cycle of incarceration and reincarceration.

Many of this Nation's prisons incarcerate people in conditions that fall below elementary standards of humanity. Of course, each system, and often each prison, is unique in terms of its problems and conditions. However, there are overall patterns that can be identified as typical of prisons in this country.

Overcrowding is perhaps the most serious problem of prisons. Many prisons have been housing two to three prisoners in cells barely adequate, according to professional penological standards, for one. Aside from the physical aspects of the problem, overcrowding overtaxes all the facilities of a prison, exacerbating all its other problems: Already rudimentary medical services are strained; deteriorating facilities deteriorate faster; sparse educational and rehabilitative programs are stretched to the breaking point; the physically overcrowded conditions under which prisoners are housed create tensions resulting in fights, destruction, and homosexual activity, both consensual and coerced.

In prisons, violence is the way of life. The inmates often resort to violence to solve their personal problems—problems that often stem from the pressures and tensions of overcrowding, from the jealousies and desires of homosexual activities, or from disagreements arising over drugs, gambling, or other such activities.

Even at the most maximum security institutions, the guard staff is often inadequate, ill-trained, or poorly deployed and unable to protect inmates from each other. Weapons are rampant in many prisons, and regular shakedown searches are not enough to keep up with the manufacture of weapons by the prisoners.

The quality of medical care in many prisons falls far below normally accepted standards of competency, adequacy, and decency. Psychiatric care is almost nonexistent.

In the area of capital punishment, there have been no involuntary executions in the United States since 1967, a period of almost 12 years. This de facto abandonment of capital punishment was consistent with the trend, since World War II, toward legal abolition of capital punishment in the vast majority of Western nations.

It is probably no coincidence that the world's leading executioner is also the most blatantly racist. A correlation between the state's willingness to kill and oppression of racial minorities is evident in the United States as well. In fact, it would not be an exaggeration to say that the history of capital punishment in the United States is a history of racial discrimination.

Would it be possible to have the balance of the statement placed in the record, in the interest of time? I realize we're running short here.

Commissioner BUCHANAN. Certainly. We do not object to that. [See p. 95.]

Mr. CAREY. Mr. Chairman, the next organization represented here today is the National Organization for Women Legal Defense Fund, through its legal director, Phyllis N. Segal.

STATEMENT OF PHYLLIS N. SEGAL, LEGAL DIRECTOR, NOW LEGAL DEFENSE AND EDUCATION FUND

Ms. SEGAL. I welcome the opportunity to be here today, and appreciate the efforts of the Helsinki Watch for issuing the call to action to the NOW Legal Defense and Education Fund. I under-

stand that time is running short, and I will attempt to give highlights from my prepared statement which is itself just an attempt to touch on some of the ways in which we believe the United States is falling short of its part of the Helsinki bargain.

The Helsinki Final Act pledges participating states to respect, promote, and encourage the effective exercise of human rights and fundamental freedoms without distinction as to sex. To meet the international standards set by the Final Act, the United States must act in conformity with that pledge and with the Universal Declaration of Human Rights and other international human rights declarations and agreements, which are expressly incorporated into Principle VII of the accords, and to which the United States is independently bound.

The rights that these declarations proclaim, "without distinction of any kind, such as sex," include that "all are equal before the law"; that "men and women * * * are entitled to equal rights as to marriage, during marriage, and at its dissolution"; that women have equal rights with men in education at all levels; and that women have the right to equal remuneration with men and to equality of treatment for work of equal value.

Yet according to the Federal Government's own reports, it is clear that such rights still have not been extended fully to women, and that sex-based discrimination continues to be a problem of major proportions. Until this problem is more adequately remedied, our country's human rights performance cannot measure up to the international standards to which it is pledged.

The Federal Government's failure to assure economic and civil rights for women is illustrated by policies which impact the family and define marital rights. The Universal Declaration recognizes the importance of the family and its right to protection by society and the state, and it expressly recognizes the equal status of marital partners.

Despite these commitments, however, current Government policies impacting the family expose it to risk and undermine the concept of spousal equality. One striking example is the provision in title IV of the Social Security Act, which grants income and medical assistance to two-parent families with dependent children if the father is unemployed, but denies such aid to the identically situated family if it is the mother who is out of work.

Since the second family could qualify for assistance if one of the parents leaves, the pressure for the family to break up is great. This direct assault on family stability is targeted, however, only on the family where the mother alone can qualify as the unemployed breadwinner. Does that family's departure from the traditional model of homemaker-wife and wage-earner husband make it less worthy of protection?

In denigrating the value of the working mother's contribution to her family, this sex-based program defines her as unequal during the marriage.

The U.S. imposes unequal status on marital partners in other ways as well. Present gift and estate tax provisions, for example, require a spouse in common law property states to prove financial contribution to purchase or improvement of property in order to be exempted from inheritance taxes upon his or her spouse's death.

This standard fails to recognize, however, the nonmonetary contributions of a nonemployed spouse, traditionally the wife, to the marriage.

Another example of noncompliance is with Principle VII of the Helsinki Final Act, which confirms the right of individuals to know and act upon their human rights and the responsibility of the State to promote the effective exercise of such rights.

Yet in the United States, the right of privacy in matters of reproduction, recognized recently in a woman's right to terminate a pregnancy, is currently without meaning to poor, rural, and young women unable to afford the cost of, or have access to, medical care for an abortion. Congressional action which continues to deny funding to many for such medical care violates a woman's ability to know and act upon an express human right. Congress clearly has failed to comply with our international commitments to human rights when it undermines any real meaning of reproductive freedom for women.

In the area of education, our Government's statutory commitment to equality is, on its face, more consistent with the international standards. Federal legislation known as title IX prohibits every public and most private educational institutions from discriminating in their policies or practices on the basis of sex.

Enforcement of this statute would help realize the rights that our international declarations assure. Unfortunately, however, title IX has not been implemented in a meaningful way. A court order was required to prompt action on the hundreds of title IX complaints that have been filed with the Department of Health, Education, and Welfare since the law's enactment in 1972. It took that agency 3 years to even adopt regulations implementing title IX, and the record of other agencies charged with title IX enforcement responsibilities is even worse. In most, the regulations necessary to begin compliance with title IX have still not been adopted, although it has been 7 years since the law took effect.

Moreover, we are faced with serious threats to the very existence of title IX. Proposed changes in HEW's title IX regulations currently under consideration would eliminate from the law's coverage appearance codes, no matter how blatantly they discriminate between boys and girls. The proposed HEW policy interpretation of the regulations concerning title IX's application to athletic programs would create loopholes large enough to virtually exempt revenue-producing sports from any requirement of gender-based equality.

But there is an even greater threat that if, through a political maneuver, this policy interpretation is brought to Congress for its review, the result would be still more serious erosion in the law itself.

In short, title IX is not enforced, and discrimination in educational facilities remains widespread. Not only does this violate the right of equal access in education generally, but also undermines several basket III provisions of the Helsinki accords. For instance, international sports exchanges and competitions are encouraged by the Final Act to expand international cooperation and contact, yet American girls and women are unable to participate fully in these exchanges while title IX remains unenforced and male athletic

programs receive a disproportionate share of funding and attention. Full participation in cultural and scientific exchanges are similarly curtailed by the Federal Government's failure to enforce title IX.

This brief statement can only highlight some of the areas in which the United States is not fulfilling its part of the Helsinki bargain. Violations are found in other areas as well. But perhaps the most insidious example of this country's noncompliance with its international human rights commitments is that the Equal Rights Amendment still has not been added to our Federal Constitution.

The Universal Declaration proclaims that all are entitled, without any discrimination, to equal protection of the law, and the Declaration on the Elimination of Discrimination against Women expressly calls for embodying the principle of equality of rights in each national constitution. Yet, more than 75 years after the ERA was first proposed, the constitutional embodiment of this principle still eludes us.

Until the ERA is ratified, the U.S. will fail to guarantee the principle of equality before the law and continue to fall grievously short of satisfying the human rights mandate of the Helsinki accords.

Thank you.

Mr. CAREY. Mr. Chairman, the next organization to appear here is the United Farm Workers, AFL–CIO, through its secretary-treasurer, Gilbert Padilla, who is a former farmworker and last March served as an adviser to the U.S. delegation to the United Nations Human Rights Commission in Geneva.

STATEMENT OF GILBERT PADILLA, SECRETARY-TREASURER, UNITED FARM WORKERS OF AMERICA, AFL–CIO

Mr. PADILLA. Thank you. I'd like to thank the Commission for the opportunity to appear here and listen to the other testimonies.

I'd like to just refer to a couple of articles and I will try to make it very brief.

Article XXIII of the Universal Declaration of Human Rights endorses the right to work, to free choice of employment, and the right to form and join trade unions. Article XXV confers the right to an adequate standard of living, including "food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, (or) old age."

I'd like to just elaborate a little bit on that. I'd like to say that, in the United States, the only place where workers have a right to join a union under a free democratic process is California. In California, we have a law that allows workers to join a union of their own free choice. There is not another State in this Union that has that right—where workers have that right. There is no legislation in another State in this country.

I'd like to say that we should very seriously consider doing something about other States, to get some legislation to provide the democratic process to workers to join unions to protect themselves. One of the reasons that necessitates this is the fact that automation has been coming into the fields of this country, and in the not

very far future, workers will be out of jobs, and we will have in this country large numbers of our community on unemployment.

Knowing that the agricultural workers are perhaps the most uneducated people in our country, I'd like to say that I am very pleased to be here today and listen to the testimony, and for you to take my comments under consideration.

Mr. CAREY. Thank you. Finally, Mr. Chairman, the executive director of the International Human Rights Law Group, Amy Young-Anawaty, has a presentation.

STATEMENT OF AMY YOUNG-ANAWATY, EXECUTIVE DIRECTOR, INTERNATIONAL HUMAN RIGHTS LAW GROUP

Ms. YOUNG-ANAWATY. It is a pleasure for me to be here. As the time is running late, I hope that I will be able to keep my statement brief.

This is the first time the International Human Rights Law Group has appeared before a congressional body, and therefore, I'd like to take just a moment to introduce ourselves. The International Human Rights Law Group is a nonprofit legal organization established by the Procedural Aspects of International Law Institute in September 1978, with the assistance of funding from the Ford Foundation and the Rockefeller Brothers Fund.

The Law Group provides legal services on a pro bono basis to individuals or to nongovernmental organizations concerned with promoting the observance of international human rights. Assisted by lawyers, paralegals, and law students who volunteer their professional skills and time, the Law Group has identified cases of human rights violations and seeks the appropriate remedies in international or domestic legal fora.

While our primary focus is not U.S. compliance with international human rights standards, concern for the international observance of human rights has brought to our attention several instances in which the United States is in violation of its human rights obligations under the Helsinki accords.

Actions taken by the U.S. Government which violate any international human rights declarations or agreements also contravene provisions of the Helsinki accords. Under Principle VII of the Declaration Guiding Relations Among Nations—Basket I—the United States has reaffirmed its commitment to fulfill obligations under the U.N. Charter, the Universal Declaration on Human Rights, and all binding international human rights agreements and declarations.

When the United States, therefore, fails to observe obligations imposed by these international instruments, it undermines that recommitment to human rights publicly professed at Helsinki.

The Law Group has identified the following three cases, among many others which we could have mentioned today, which are currently in our files, and which illustrate specific violations by the United States, not only of international human rights agreements, but of the spirit and commitment to human rights embodied in the Helsinki accords.

The first case concerns U.S. adherence to its international obligations in the treatment of refugees. Thousands of Haitians have migrated to southern Florida in the past decade. Many have ap-

plied for political asylum, based on their belief that they will be persecuted if they return to their homeland.

Last October I went down to Miami along with several nongovernmental organizations to do an investigation. The situation down there was appalling. There are over 8,000 Haitian refugees there, many of whom are applying for political asylum, and there are only eight attorneys there who are able or willing to handle these cases.

Around September, the INS accelerated the pace of the hearings there from 10 a day, which is a normal, average rate of hearings, to over 100 a day and sometimes reached 150 a day. It was impossible for these eight attorneys, even with the assistance of interns, to be in as many as 20 places at the same time where their hearings were scheduled.

There are many other travesties which are accounted for in my written statement [see p. 144] which I will not elaborate on here, but if the United States is going to fulfill its obligations, as it professed to do so when it ratified the U.N. Protocol Relating to the Status of Refugees, my advice would be to reassess domestic policies toward refugees. Right now, the standards that are being applied domestically are not consistent with those that are found in the U.N. protocol.

The second case concerns U.S. trade relations with Romania. In June 1978, President Carter requested a renewal of a waiver of prohibitions under the Jackson-Vanik amendment for Romania to be granted most-favored-nation trading status. In the absence of congressional veto, that status was retained.

The President, in requesting a waiver, must determine that the granting of favorable trade relations will benefit that country's human rights situation. As the latest Amnesty International report on Romania reveals, acts perpetrated by the Government of Romania against the Hungarian minority have been identified as a consistent pattern of gross human rights violations.

Under the new trade relations, the United States now is importing many Romanian goods, including pig skins, frog legs, and sausage products, which were made or processed in part by Hungarian dissidents living in forced labor camps. Perpetuating this trade practice ignores the intent and purpose of the Jackson-Vanik Amendment, not only to safeguard the right of emigration, but to promote human rights in communist countries.

Significantly, the United States here is flouting provisions of the Tariff Act of 1934 and international obligations under the Supplementary Convention on the Abolition of Slavery, ratified in 1967, which forbid import of goods made by forced labor or indentured labor.

A third instance concerns the U.S. failure to affirmatively enforce the prohibition against discrimination. Under provisions of the U.N. Charter and the Universal Declaration of Human Rights, as incorporated in Principle VII of basket I of the Helsinki accords, the United States is obligated to promote and observe fundamental human rights without regard to race, color, sex, language, religion, or national origin. This obligation to refrain from discriminatory acts imposes a corollary duty on the United States to enact, imple-

ment, and enforce domestic legislation which prohibits discriminatory treatment within U.S. territory.

Saudi Arabian Airlines, a government-owned airline which consistently has denied persons of Jewish background passage without a visa from the Saudi Arabian Government, last November applied to the Civil Aeronautics Board for a permit to fly a direct United States-Dharan air route. In addition to international standards which impose a duty on the United States to prohibit discrimination, CAB regulations state, quote:

> No air carrier or foreign air carrier shall * * * subject any particular person * * * to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

At this time, Saudi Arabian Airlines has been granted a temporary permit by the CAB. This is clearly an abuse of government action, by which the United States is abrogating its own agency regulations, and instead of promoting the right to be free from discrimination, the United States is actually cooperating in the discriminatory treatment of Jews.

Signing the Helsinki accords obligated the United States actively to renew and reaffirm its commitment to human rights, yet in each of these three instances, the United States has failed vigorously to enforce its own laws or to fulfill obligations under international human rights agreements and declarations by which it is bound.

These missed opportunities to comply with or to enforce international human rights norms undermines international commitment to respect human rights and leaves the United States in a weak position with regard to other signatories of the Helsinki accord.

Mr. CAREY. Mr. Chairman, members of the Commission, in conclusion, besides thanking you again for the opportunity afforded to all of us, both to testify and make written submissions, we on the Helsinki Watch Committee believe that those who argue that the United States, simply because it does not imprison religious leaders or deny exit visas to its citizens, therefore does not require vigorous monitoring of its compliance—such people are advancing what Professor Leon Lipson calls the "deep freeze theory" of human rights, which holds that because our human rights record is equal to or better than that of most other nations, we can put all improvement attempts in cold storage until everybody else catches up.

Instead, the United States should marshal its energies towards the steady improvement of human rights with the same competitive zeal that has marked the arms race. We would welcome a human rights race, in which we could compete with East European countries and any country in the world that wants to enter the contest.

Thank you very much.

Commissioner BUCHANAN. Thank you, Mayor Carey and Mr. Bernstein, ladies and gentlemen. Without objection, your complete statements will be included in the record [see p. 76] and I assure you, will receive the very closest attention of this Commission.

I'm going to exercise the prerogative of the Chair. The gentlelady to my left is the person who truly created the Commission on which we serve; it was her brainchild, growing out of her long-term commitment to human rights in the World and in this country, and her concern that the Helsinki accords become something more

than promises on paper. Where she sits is the head of the table in this Commission, and I'd be pleased to yield to her.

QUESTIONS AND REMARKS

Commissioner FENWICK. I thank you. I just want to say first, I don't know who these "deep freeze" people are, Mr. Carey—Mayor Carey. We're not "deep freeze" people, if you are chiding us. We are not content when any violation of civil rights takes place in this country, and I hope that you were not directing your remarks to us.

I would like to ask you specifically if you could give us those examples of violation of free speech to which you referred. Maybe you haven't got them right at hand, but I'm very keen that such allegations should not go uninvestigated. I have applauded the Civil Liberties Union in its stand on Skokie; the Mayor of New Orleans, I thought, gave us all a lesson on what it is to be a citizen when he allowed the Klan to march and gave it the protection of the police.

I'm sure you have examples, but perhaps you can furnish this Committee with a list of those violations, because I think we should not rest if there are these violations and we know about them.

I would like to say to Mr. Simmons, as a life member of the NAACP, which I have been for many years—you're so right about our prisons. We have in my State probably one of the most shocking examples. It's been condemned by every commission. I was president of a State-wide prison reform group. We have four men in one cell that was built in 1835 for the occupancy of one person, and we are hoping to move now—money was appropriated in our State in 1952 to repair this horrible situation and was used for other purposes—voted by the people of the State, I should say, in a bond issue.

Now again, we are trying to use money that's been voted to improve the situation, and I am delighted to see the emphasis that you placed on that situation. I was able, in that capacity, to get work release approved, and that's probably one of the most sensible programs. We've had some difficulty with it, as we always will, but it has been most productive, and I was very grateful for your emphasis on that field.

I would like to ask Ms. Anawaty two things. One, could you give us a list of the forced labor camps in Romania and their location? We have trade status for Romania, and I would be very grateful for a list of those forced labor camps to which you referred and their location if possible. It would be a great help to us in trying to make sure that that doesn't continue.

But I would like to ask you something that's puzzling to me. There are only 35 countries, I think, that Amnesty says haven't got gross violations of human rights. Now, are all aliens who wish to come into this country to be accorded refugee status on the basis of those Amnesty reports? Could this country possibly do what you're asking us to do?

It means that everywhere where there is a substantial record of lacking human rights according to the standards that Amnesty, I think very wisely, has adopted—incarceration for political reasons

and torture being the two outstanding ones that cannot be tolerated—in every country where human rights are lacking—and that would be about 117—should we admit all who wish to come and give them refugee status automatically?

I notice in your paper that the refugees, as you call them, from Haiti, did not wish to talk. Now, they were resting, I suppose, on the right that we have not to incriminate yourself, but what do we do if they're not willing even to explain that they belong to some group which is especially discriminated against in that country? Or should we accept them all on the basis of coming from a country where Amnesty says civil rights are violated?

Ms. YOUNG-ANAWATY. You're asking several very complex questions, and I would not attempt to be able to answer all of them. I think the information that Amnesty International provides is very helpful and useful to both the State Department and to the INS in making their decisions.

In this particular instance, the status of the immigrants who have come from Haiti—I think what we're trying to say is that our complaint is not so much what's going on in Haiti as what's going on in the United States.

Commissioner FENWICK. Yes, but what I'm asking you is, you see, what status do they automatically get? We have from Vietnam—hundreds of thousands—and many from the countries of the Caribbean, as you know—hundreds of thousands—and from Mexico, millions.

Now, in each country—what I'm asking you is: In each country, don't they have to prove when they come here, if they want refugee status—they have to talk to us and tell us?

Ms. YOUNG-ANAWATY. Yes.

Commissioner FENWICK. But apparently they insist on being silent, and their lawyers must be telling them to, and that would suggest that they're taking the status automatically of refugee.

Ms. YOUNG-ANAWATY. Yes, I understand what you're asking. These immigrants who are applying for political asylum status have kept silence at the counsel of their attorneys because in many instances, their attorneys were unable to represent them, and therefore, the attorneys were afraid they might say something that would prejudice their case or bias their case.

It is true that they are given an opportunity to make a statement. What I witnessed in Miami was that this opportunity was being—well, there were so many procedural irregularities that what was supposed to be a full and fair hearing turned out to be a summary——

Commissioner FENWICK. Execution, so to speak.

Ms. YOUNG-ANAWATY. Exactly, a summary execution, and then each alien receives a rubber-stamped denial from the INS, often dated the same day.

Commissioner FENWICK. But isn't it true, Ms. Anawaty, that—the immigration from Haiti has the same roots as the immigration from Mexico. Isn't it true that the reason they come here is that there is intolerable poverty in that island, that the economic conditions are desperate? Isn't that the reason, really?

Now, what are we going to do about that? What would you suggest that we should do? Should we just patrol the seas so that

they can't come in ships? Can we really, with 8,000—and it might be many, many more—What are your suggestions practically speaking? How do you look at it?

I agree with you that once here, they've got to get decent treatment. We can't have people in court without an interpreter, and that is one of the things I did, Mr. Padilla, in my State: No migrant laborer can be in court without an interpreter. It's absolutely essential, I agree with you.

But what do you suggest practically?

Ms. YOUNG-ANAWATY. You're asking me for a suggestion on how to keep these people out?

Commissioner FENWICK. Yes.

Ms. YOUNG-ANAWATY. I dont' know if I would want to come up with one. I don't know that we should keep these people out.

Commissioner FENWICK. But can we absorb everybody? You see, that's what I'm asking you. How does a nation which wants to be decent deal with the problem that we have? It's estimated, you know, sometimes up to eight million, illegal aliens who are already here, and people flooding in every day? What do you suggest?

Ms. YOUNG-ANAWATY. I know it's a very difficult problem. I really don't have any answers for that. What I wanted the Commission to focus on is that people who do arrive here, who have been able to survive the perils of sea travel to get to the United States—each one of them has the opportunity, under international law, to assert a claim for political asylum, and this country, since it has ratified the Protocol, has an obligation to give each person that asserts that claim——

Commissioner FENWICK. You're right.

Ms. YOUNG-ANAWATY [continuing]. A full and fair hearing, and that's not what is being done at this time.

Commissioner FENWICK. I can't deny that. You're right.

Ms. YOUNG-ANAWATY. Yes. And that's all that we're asking for: That each one of these people——

Commissioner FENWICK. Well, as long as you don't hold that everybody from a country that Amnesty does not approve is automatically a political refugee, I'm with you.

Ms. YOUNG-ANAWATY. Oh, no. No. There's a definite procedure—a domestic and international procedure to——

Commissioner FENWICK. If they get here, they've got to get decent treatment. Thank you.

Thank you, Mr. Chairman.

Commissioner BUCHANAN. Mr. Simmons, what action, in your judgment, is most needed to redress the areas of injustice which you've listed?

Mr. SIMMONS. Well, in the area of higher education, we've already taken some steps—at least, I should say, the Department of Health, Education, and Welfare, with the fund cut-off mechanism, and certainly that's a persuasive force.

I think, however, that in applying that particular leverage against our institutions of higher education, certainly HEW needs to look at its guidelines and its regulations. Very often, when we take HEW to task, that agency is not altogether clear as to what its objectives are and what the most effective means are for achiev-

ing those ends. So I think that's something that the Government can do in putting its own house in order.

We know where we need to go; it's just simply a question of clarifying the regulations, establishing the guidelines, and applying them. We have to come in, and very often we assist HEW in terms of drafting specific provisions in those guidelines. But that's certainly one area in the area of higher education.

Prison reform; the age-old problem there that we hear from the different States and agencies, of course, is one of money. But, you know, we can't put a dollar sign on human rights. It's a difficult problem; we're aware of that, but certainly steps must be taken to improve the conditions of our prisons.

One of the things that we need to concentrate on in reducing the overcrowding is in the area of rehabilitation, is in giving those presently incarcerated in these facilities the idea that, "We're going to give you the skills and the ability to make it on the outside", and the encouragement to make it on the outside so that we can reduce the problem of recidivism and keep them active and integrated in society at large.

These programs have to be emphasized, and I think much work needs to be done in that area.

In the area of capital punishment, of course, the Declaration of Human Rights is not clear on whether or not capital punishment is a violation of human rights, but as in Mr. Greenberg's testimony, we're raising the point that, on the very dubious assumption that capital punishment does not violate human rights, there's still a concern that it is not being applied equitably. Undoubtedly, the record in this country reflects minorities, by and large, far and away, are more apt to be victims of State execution than any other group or category of individuals. Again, this is an area of the law that desperately needs remedying.

Commissioner BUCHANAN. As you are well aware, our life pertains specifically to the Helsinki accords, and I would appreciate, as a lawyer, any case you might make, citing passage of the act, to justify the interpretation of capital punishment being included. While the rights protected are normally broadly interpreted, I don't believe that capital punishment has heretofore been so listed, and I would appreciate whatever case you can make.

Mr. SIMMONS. Again, what I am primarily focusing on at this point is the equality or inequality of application, and I think certainly article VII in the Universal Declaration of Human Rights, "All are equal before the law and are entitled, without any discrimination, to equal protection of the law"—et cetera.

Many of the suits that we bring in this country are based on the due process provisions of the U.S. Constitution, which applies the equal protection of the 14th Amendment to the Federal Government, and I think that those have related provisions here in the Universal Declaration of Rights. So again, what we're focusing on here in this particular issue, is that where the death penalty is invoked, it is done so without any discrimination and inequalities against members of minority groups.

Commissioner BUCHANAN. Thank you, sir.

Ms. Segal, you speak for the majority, but I'm afraid a divided majority in this country, in the matter of the role of women in this

society. As you aware, it's been a changing role, and our laws—social programs have not tended to keep up with the change.

How would you evaluate the Federal Government's response to the need to modify our present system? Has it been adequate? If not, how would you suggest it be improved?

Ms. SEGAL. I have to conclude that the Federal response to date has not been adequate. One example, which I already spoke about earlier, is in the area of education and the question whether there is to be any meaning to the prohibition of discrimination on the basis of sex in educational programs funded by the Federal Government.

Title IX has, in many ways, been just a farce to this point. It is not being implemented; it is under threat of erosion.

In the area of employment, which I did not address orally—there are comments in my written statement—I think that there are inadequacies across the board. One is the failure of the Federal Government to put its own house fully in order, and another deals with the failure to fully enforce and implement the anti-discrimination in employment laws with respect to private employers.

This failure has opened up the Federal Government to the charge recently launched by private industry that the Federal Government is doing such a poor job, the private sector should be relieved of its responsibilities under those laws.

I think that in both of those cases, the Federal Government has been doing an inadequate job. With respect to family life and the necessary proposition that marital partners are joining in an economic partnership as well as an emotional partnership upon marriage, the Federal Government and the Congress are slow to reach a full understanding so that the laws will reflect that very important reality.

The current impetus and effort to reform the Social Security Act is very important, and hopefully will be successful. I think that serious attention needs to be given to the tax structure with respect to understanding and appreciating the nonmonetary contribution of the spouse who works at home.

One resource that I would commend to the Commission's attention is a 400-page report issued in the fall by the Justice Department's Task Force on Sex Discrimination, which outlines in quite extensive detail the ways in which problems exist in each of the Federal agencies. It is a very telling document, and I think it is very important to the work of this Commission.

Commissioner BUCHANAN. Thank you very much.

Mr. Bernstein, Mayor Carey, and ladies and gentlemen, again we thank you, not only for your presentation this morning and for your full remarks that will be incorporated into the record but also for your existence, your dedication. I want to assure you that this Commission will look forward very much to working with you, paying close attention to your counsel and the fruit of your own labor, and we will be supportive of your efforts in the hope that we can work cooperatively toward the fulfillment of the Helsinki accords in this country as well as elsewhere.

Prof. Joyce Hughes, who was in Yugoslavia as part of our delegation, said in an intervention, that her experience in the United States had caused her to believe that promises on paper can

become realities in the World, and I feel sure that the members of your group share that faith and the commitment that that shall indeed be the case for the Helsinki accords.

Thank you so much for your testimony this day.

[Complete Helsinki Watch submission follows:]

STATEMENTS BY HELSINKI WATCH, ROBERT BERNSTEIN, CHAIRMAN; ORVILLE SCHELL, VICE CHAIRMAN

This submission contains material prepared independently by each of the following organizations:

COMMITTEE FOR PUBLIC JUSTICE
INDIAN LAW RESOURCE CENTER
INTERNATIONAL HUMAN RIGHTS LAW GROUP
LAWYERS' COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND
NATIONAL ORGANIZATION FOR WOMEN LEGAL DEFENSE AND EDUCATIONAL FUND
UNITED FARM WORKERS OF AMERICA, AFL-CIO

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HELSINKI WATCH

INTRODUCTORY STATEMENT

UNITED STATES COMPLIANCE WITH
THE HELSINKI ACCORDS

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STATEMENT OF JOHN CAREY

In signing the Helsinki Final Act in 1975, the United States joined thirty-four other governments in an innovative approach to East-West relations: one in which fundamental standards of human rights and civil liberties figure prominently in the maintenance of international stability and the foundation of a durable peace. The Final Act legitimizes the principle that human rights performance is an essential ingredient of security and cooperation and thus subject to international inquiry. While none of the signatories envisioned that thirty-five strokes of the pen would eradicate governmental abuses of fundamental individual rights, the signing of the Final Act set in motion an incremental process directed towards that end.

The United States commitment to safeguarding the human rights of its citizens, of course, predates Helsinki by some 200 years. Given that commitment, it is incumbent on Americans to pursue the implementation of the Final Act. The C.S.C.E. hearings on domestic compliance represent an important step in this area, and the Helsinki Watch welcomes the opportunity to

participate. We feel strongly, however, that this hearing should be only the first step in a continuing process of self-scrutiny.

If the potential of the Helsinki Accords is to be realized, it is imperative that the United States set an example. The Final Act has no self-enforcing mechanisms. It provides only for periodic reviews of progress by the representatives of the 35 signatories, and the review process gives each signatory an insuperable veto over all CSCE statements and decisions. In the final analysis, Helsinki implementation is contingent on uni-lateral efforts by the signatory states. As President Carter pointed out in his last report to the Commission on Helsinki implementation, "The success of the CSCE process will depend on the efforts of all governments to inspect their records of performance and to work continually for realization of the goals contained in the Final Act."

We would only add to this that private citizens' groups have a crucial role to play in evaluating their governments' record of compliance. We respectfully suggest that the CSCE consider another round of hearings, at which a broader representation of domestic political and civil rights organizations would have the opportunity to testify.

In attaching the Bill of Rights to the Constitution,

the framers recognized that governments often have interests which conflict with the fundamental rights of their citizenry. We need only look about us for examples of the excesses wrought by unchecked bureaucracies.

We can find no higher praise for the courageous efforts of the Eastern European Helsinki monitors than to emulate their example, admittedly in circumstances involving significantly less risk than their own. The principle which they espouse--that private citizens must take responsibility for safeguarding their own rights--is valid under any circumstances.

The abuses and deficiencies of our governmental system differ both qualitatively and quantitively from those of the governments of other countries. This does not mean, however, that deficiencies do not exist, nor that our record, even where it is good, cannot be improved. U.S. performance in the area of human rights compares favorably with that of any country in the world--in large measure due to the vigilance of citizens' organizations such as those who wrote these reports. Yet is is by no means perfect.

The Helsinki Final Act offers the United States a new and important challenge. No longer is it enough to focus on the fundamental freedoms embodied in our own Constitution, now we must measure our human rights performance against the international standards of the Helsinki Final Act. These

standards complement our own law, sometimes expressing similar concepts in different language intended to be clear to persons with different legal traditions, and sometimes posing new goals for us to seek.

We ought to welcome therefore the criticisms of foreign governments and private parties of our nation's performance. The establishment of a constructive dialogue on human rights is one of the principle aims of the Final Act.

The Commission has done excellent work in monitoring Helsinki compliance in Eastern Europe and should continue in this endeavor. Review of our own compliance is an essential accompaniment to reviewing the efforts of others.

We have heard the argument that human rights are purely internal affairs; that to discuss their observance in another state is a violation of that state's sovereignty. It is an argument that was refuted by Ambassador Arthur Goldberg in his final statement at the Belgrade Conference last year:

> By virtue of principle VII, human rights are direct concerns of all Final Act signatories. Under the terms of the United Nations Charter, the Universal Declaration of Human Rights, the the International Covenants--as well as the Final Act--they are the subject of international undertakings. They are, without question, the proper subject of the diplomatic examination and debate we have had in Belgrade. And they will remain, after Belgrade, the proper focus of continuing comment and efforts.

The argument against international scrutiny will be raised again, and we must refute it by our actions as well as our words. We must

take the criticism of other signatories seriously and seek to improve our performance when even-handed investigation bears out the criticism. We must also continue to speak out on behalf of those who attempt to do so in their own countries.

In the spirit of Helsinki, the U.S. government should examine its participation in other international agreements as well. Our failure to ratify the Genocide Convention, International Covenants, the Convention on Elimination of All Forms of Racial Discrimination, and other international agreements, while often based on legitimate Constitutional concerns, gives the appearance of calling into question the sincerity of our dedication to the cause of human rights. We should take positive steps--consistent with the requirements of our own law--toward ratification.

Since we have already signed the International Covenants, the Executive branch should make every effort to adhere to them in practice. Our compliance with agreements we have already ratified, the Convention on the Political Rights of Women to name one, also merits careful attention.

In fact, the Helsinki Final Act obligates the signatories to observe a broad range of standards. Articles VII's last two sentences deserve close study:

> In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights.

These purposes and principles are well-known. The next sentence goes further:

> They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be found.

What are some of the declarations and agreements referred to? As a sample, there are U.N. declarations on:

a) elimination of all forms of racial discrimination;

b) elimination of discrimination against women;

c) protection from being subjected to torture;

d) the rights of the child;

e) protection of women and children in emergency and armed conflict;

f) social progress and development;

g) eradication of hunger and malnutrition;

h) use of science and technology to benefit mankind;

i) rights of mentally retarded persons;

j) rights of disabled persons; and

h) principles of international cultural cooperation.

An instrument worthy of special attention is the Standard Minimum Rules for the Treatment of Prisoners. We should also pay heed to our compliance with the Employment Policy Convention, ratified by the United States a decade ago.

It is clear from this partial list that we have a heavy agenda before us.

Both the government and private organizations have important responsibilities in working for fuller implementation of the Helsinki Final Act. The Helsinki Watch has solicited the comments of several citizens' groups in evaluating U.S. compliance for inclusion in the record of these hearings. The Committee for Public Justice, Indian Law Resource Center, International Human Rights Law Group, Lawyers' Committee for International Human Rights, NAACP, NAACP Legal Defense and Educational Fund, National Organization for Women Legal Defense and Educational Fund, and the United Farm Workers, have submitted individual reports which form the bulk of this submission. Becuase Helsinki is a new area of interest for many of these organizations and preparation time was short, the reports are general in nature. They nevertheless point up a number of significant areas in which the United States compliance record might be questioned.

Broadly speaking, their criticism of United States performance focuses on discrimination and civil liberties abuses which are either sanctioned by law or caused by a failure of government to enforce existing remedial statutes. Not surprisingly, they indicate that minority groups in this country bear the brunt of the United States' failure to live entirely up to its Helsinki commitments.

For example, the "plenary" authority of the Congress to legislate in relation to Indian affairs, a power which the

government has over no other group of people of any race, has led to a steady diminution of Indian resources, according to the report of the Indian Law Resource Center. This, it is argued, represents a violation of Principle VII of the Final Act, and of numerous provisions of the Universal Declaration of Human Rights.

Despite the remedial legislation of the 1960's, Blacks in this country still are the victims of discrimination because of the government's failure to provide the equal protection and equal access to services which are mandated by law. The reports of the NAACP and of the NAACP Legal Defense and Educational Fund outline inequities in the administration of justice, in employment, and in educational opportunities, which violate the civil, economic, social, and political rights of black people in the United States.

Farm workers in this country also suffer the status of second class citizens. The United Farm Workers' report recommends the passage of legislation which would provide an effective framework for organizing agricultural workers; the right to join a union is conferred by Article 23 of the Universal Declaration.

Taken together, these submissions confirm the unique fitness of citizens' groups in this country to assess the compliance of the United States with the terms of the Final Act, partly because their assessments are based more on the measurement of results than they are on the statement of intentions. Governments are,

for obvious reasons, more prone to state their intentions than they are to concentrate on that which remains undone.

The concept of citizens' monitoring of the Helsinki Accords did not originate in the United States, but is an idea which should be developed. The Helsinki Watch believes that the refusal of some governments to allow it to take place is among the greatest abuses of the "spirit of the Helsinki process."

If we, as citizens of one of the 35 signatories, can make a contribution to the development of the Helsinki process, it is in demonstrating that even-handed evaluation of one's own country's compliance is both constructive and necessary for the process to go forward.

Those who argue that the United States, because it does not imprison religious leaders or deny exit visas to its citizens, does not require vigorous monitoring of its compliance advance what Professor Leon Lipson calls the "deep freeze theory" of human rights, which holds that because our human rights record is equal to or better than that of any other nation, we can put all improvement attempts in cold storage until everybody else catches up. Instead, the United States should marshal its energies toward the steady improvement of human rights with the same competitive zeal that has marked the arms race. In this case, we would welcome competition from the nations of Eastern Europe.

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REPORT ON THE STATUS OF IMPLEMENTATION OF THE HELSINKI ACCORDS IN REGARD TO NATIVE AMERICANS

The application of international law and internationally recognized standards to the treatment of Indian peoples by the United States is of special importance for two reasons. First, the United States domestic law regarding Indian peoples and Indian nations is, surprisingly, racially discriminatory and, not so surprisingly, has long been used by the United States to legitimize the domination of Indian people and the expropriation of Indian land and resources. Secondly, Indian nations were initially dealt with by European nations as fully sovereign states and subjects of international law. Many Indian nations still assert their original, recognized right to nation-state status, and even more have sought the protection of international law in their relations with the United States.

This paper will outline and highlight some of the principal issues raised by United States treatment of Indian peoples in relation to the standards adopted in the Helsinki Final Act. It is not our purpose within the scope of this paper to document and "prove" the matters discussed below. Rather, we hope to draw to the Commission's attention the most serious problems in this field, with a view toward monitoring United States policy and action in regard to these issues. Documentation and other evidence of the matters discussed below is available and can be produced at an appropriate time.

I. Racial Discrimination In United States Domestic Law

Surprising as it seems, domestic United States law is expressly discriminatory against Indian people and Indian nations (sometimes called "tribes"). Discrimination in the law is addressed first because it is a compound problem which results in Indians being unable to vindicate their fundamental rights in the courts of the United States, or to redress their grievances.

Express discrimination against Indian people is prominently shown in Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955). In that case the Supreme Court stated that the United States may take Indian land and other Indian property without due process of law, for any purpose and without payment of compensation. This is a legal doctrine which applies only to Indian property. All other property is protected by the Due Process Clause of the Constitution and by other law. This doctrine is today expressly supported and utilized by the present administration, particularly the Justice Department and Department of the Interior. This legal doctrine plays a crucial role in the pending Indian land claims and is at the heart of federal authority to control Indian land and resources.

Related to the Tee-Hit-Ton doctrine is the so-called plenary power doctrine, which is equally discriminatory. This court-created rule holds that Congress has "plenary" authority to legislate in relation to Indian affairs. Never has an act of Congress affecting distinctly Indian rights or property been held unconstitutional. It is only within the past few years that the Supreme Court has held that Congress' power over Indians is subject to any Constitutional limitation. Today, Congress and the

administration enjoy practically unlimited authority over Indian peoples - a power which the government has over no other group of people of any race.

This racial discrimination in the law is violative of several provisions of the Final Act, particularly Principle VII of the Declaration on Principles Guiding Relations Between Participating States. That provision calls for respect for fundamental freedoms without distinction as to race, and obliges participating states on whose territory national minorities exist to "respect the right of persons belonging to such minorities to equality before the law,..." [We do not intend to suggest that all Indian peoples constitute "national minorities," but it would appear that many do.] It would also appear that Principle VIII is violated, as that principle states: "The participating states will respect the equal rights of peoples..." Because race discrimination clearly violates the Universal Declaration of Human Rights and customary international law, the issues raised above also fall under the provisions of the Final Act calling for adherence to international law, e.g. Principle X.

[It must be noted that not all discrimination relating to Indians is violative of international law or the Final Act, only that discrimination which is invidious or harmful to Indian people and others.]

II. Expropriation of Vital Indian Resources: Land, Water, Minerals, Hunting and Fishing Rights

The United States claims to have fee title to virtually all Indian land, without regard to Indian consent, sale or cession. The United

States' self-proclaimed role as "trustee" along with the plenary power of Congress, has left the federal government with vast and essentially unbridled power to control the use and disposition of Indian land and resources. The United States as "trustee" is wholely unaccountable except in its own courts, which are bound to apply the law of the United States. There is no true accountability as there is regarding genuine trusteeships.

There is overwhelming evidence that Indian resources, resources vital to the continued survival of Indian communities and nations, are being turned over for exploitation by non-Indian interests, under the direction and supervision of the federal government. The extent of the plundering of Indian resources and the extent of non-Indian use of Indian lands, with the approval of the federal government, is said by some to be genocidal. The United States has adopted a water rights policy which virtually assures that Indian water rights are abrogated in favor of non-Indian users. The federal government and state governments with federal acquiescence routinely limit or deny altogether the Indians' hunting and fishing rights, which are frequently guaranteed by treaty provisions.

The steady diminution under federal auspices of Indian resources would appear to violate the provision of Principle VIII declaring the right of all peoples "to pursue as they wish their political, economic, social and cultural development." Principles VII and X also appear to be violated. It is particularly important to note here that United States violation of its treaty agreements with Indian peoples would constitute a violation of general international law and thus a violation of the Final Act. Principle X.

III. Denial of Self-Determination

The hundreds of treaties entered into by the United States with various Indian nations and the judicial decisions of the United States all recognize and sanction the right of Indian people to self-determination. It would also appear that Indian nations are "peoples" within the meaning of that word in the various international instruments providing for the self-determination of peoples, and within the meaning of Principle VIII of the Final Act, although there is by no means concensus on that matter in international law and practice.

Indian peoples differ in their history and circumstance and differ in their desire for political independence. Some Indian nations desire and seek complete political independence, others seek a closer relationship with the United States, but almost all are dissatisfied with their present status.

This denial of self-determination takes many forms. Perhaps the most pernicious and virulent but most easily recognized policy has been the policy and long practice of establishing western-style, elective governments in place of indigenous Indian governments. These governments, initiated and supported almost entirely by the Federal Bureau of Indian Affairs and in many cases imposed by the Bureau in spite of the express wishes of the vast majority of Indian peoples, function in a manner almost identical to the pattern of British indirect rule in the former British colonies. The establishment of such regimes under the auspices of federal law and federal administrators and the fact that such regimes are designed

to be compliant with federal wishes and dependent on federal financial and political support results in the suppression of traditional governmental forms and the ultimate denial of true self-government.

The denial of self-determination is aggravated by judicial decisions which have steadily reduced the authority of Indian governments. In Oliphant v. Suquamish Tribe, the Supreme Court abandoned its long-established principles of treaty interpretation, abandoned well-established legal doctrine regarding Indian jurisdiction, and determined that Indian governments do not have jurisdiction over non-Indian persons on their reservations. There is growing evidence that the Oliphant decision was not a fair and scholarly judicial decision in the proper sense but was rather a political decision designed expressly to diminish Indian governmental authority and enhance the political and economic power of non-Indian interests which have gained a foothold on Indian reservations.

We believe that the United States' position regarding Indian self-determination is violative not only of Principle VIII, but also of Principles VII and X and prohibition of the use of force in Principle II. In a great many instances, the denial of full self-government is in direct violation of United States treaty obligations. In such instances the denial is grave breach of international law. Principle X.

IV. Sterilization of Indian Women

Much has already been written and much documentation is already available regarding the unconscionable practice of the Indian Health Service in sterilizing large numbers of Indian women. The publicity which was given to the abusive practices of the Indian Health Service

resulted in a dramatic change in federal regulations governing such sterilizations. Nevertheless, there is little satisfaction with the new regulations and there is no assurance that the federal government has in any way altered its fundamental policies. Indian people, quite rightly, regard the widespread sterilizations as genocidal and are continuing to monitor and organize against federal practices. Federal actions in this regard are viewed as a violation of human rights and fundamental freedoms generally, protected by Principle VII of the Final Act.

V. The Administration of Justice

Another area of grave concern is the abuses of the criminal justice system toward Indian people. The case currently being given most attention is the matter of Leonard Peltier. Peltier's representatives have already filed a communication with the Human Rights Commission of the United Nations protesting the use of admittedly false affidavits in securing his extradition from Canada and other aspects of his treatment by the criminal justice system. Review of his case was recently denied by the United States Supreme Court.

Especially disquieting to Indian people is the frequency of extremely abusive and racist prosecutions of Indian people. Just last year the truly incredible case of Paul Skyhorse and Richard Mohawk finally concluded in their acquittal. Rarely has there been such a blatant example of perfectly baseless and racially motivated prosecution, brought apparently for the purpose of discrediting and destroying the American Indian Movement on the West Coast.

Over the past five years there have been many such abuses of the criminal justice system: the two prosecutions of Leonard Crow Dog, the repeated prosecution of Russell Means and Dennis Banks which exposed the extent of legal wrongdoing by the federal government in connection with the Wounded Knee incident, the attempted further prosecution of Dennis Banks by the State of South Dakota which prompted the governor of California to refuse to extradite Dennis Banks, and numerous other cases which have received less publicity.

Attention is also being given to the conduct of federal and state law enforcement authorities. Much evidence of abuse has been developed regarding FBI conduct on western reservations, in particular the Pine Ridge reservation. Abuse by state law enforcement authorities has been a problem in New York State, and legal proceedings are now underway in that state. The frequency and extent of such abuse is so great that many Indian organizations are amassing evidence and regard this subject as a matter of the gravest concern and the highest priority.

Such abuses are violative of fundamental freedoms and are racially discriminatory. Principle VII is most pertinent, in regard to the right to equality before the law and to freedom from discrimination, but we believe that the pattern of federal action is also violative of international law generally (Principle X) and tends also to deny the full right of equality and self-determination (Principle VIII).

Conclusion

By no means have all matters been listed which relate to the Final Act. The right of Indian people to practice their traditional religions, the interference with cultural and social rights, the tearing apart of Indian families through child care programs, the abuses of federal Indian education policy are all matters of deep concern which likewise fall under the principles of the Final Act.

What is essential is that the United States begin to be accountable under international standards for its treatment of Indian peoples. Until today there has been no such accountability, and we must now begin the work of genuinely assessing federal Indian law and policy.

March 26, 1979

OBSERVATIONS OF JACK GREENBERG, DIRECTOR-COUNSEL
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IN CONNECTION WITH THE HELSINKI WATCH

In commenting on American observance of the Helsinki Accords, an American, particularly a civil rights lawyer, has a special responsibility. United States society is afflicted with a large measure of grave injustice. Racial injustice has been part of the American heritage since slaves were first brought to our shores in chains centuries ago. But our legal system allows for redress of many wrongs and private citizens as well as government participate actively in undoing such injustice. Twenty-five years ago, a signal victory in that struggle was achieved when the United States Supreme Court held unconstitutional racial segregation in public education. Progress on various fronts continues to be made.

We cannot, however, close our eyes to wrongs which continue to occur. It is particularly apt that we address ourselves to such wrongs in the international context of the Helskinki Accords. Human rights in the United States have been advanced because of criticism from abroad. And when we want to condemn other nations for human rights violations it is important that we acknowledge our own defects.

In these observations on American human rights I address myself only to three subjects: higher education, prison conditions, capital punishment. These are among the areas in which the NAACP

legal Defense and Educational Fund is active. Other subjects, of course, deserve attention, and I may comment on them at a later date.

PUBLIC HIGHER EDUCATION

Racial discrimination in public higher education in America remains a substantial problem. Ironically, the Supreme Court decided that racial discrimination and segregation in public higher education was unlawful prior to its watershed decision in Brown v. Board of Education (1954) that racially desegregated public education in the elementary and secondary levels was unconstitutional. In 1950, in Sweatt v. Painter and McLaurin v. Oklahoma State Regents, concerning graduate facilities, the Supreme Court decided that segregation in public higher education was without lawful justification, and that the only way equality in education could be guaranteed was to eliminate racial separation. Lower courts implemented these decisions at all levels of higher education. Nevertheless, colleges and universities were part of the civil rights battleground in the 1950's and 1960's where southern governors and officials took stands in the schoolhouse door against the forces of integration.

The relative success of integration of elementary and secondary schools throughout the southern states in subsequent years did not extend to higher education institutions. Instead, dual systems of public higher education have remained largely intact: traditionally black institutions still remain, few black students are enrolled in the formerly all-white institutions, few

black faculty and administrators serve in other than black schools, and traditional funding disparities between white and black institutions continue. This picture is true in all the southern states: perhaps, the only new development is the concentration of the black students who do attend formerly white schools in 2-year and community college programs rather than regular 4-year institutions. Indeed, the patterns are most stark and extreme at precisely the level that was the subject of Supreme Court rulings in Sweatt and McLaurin, i.e., graduate education. Thus, a quarter century after Brown v. Board of Education, the task remains to obtain substantial desegregation of dual systems of higher education that have remained in continuous existence since the period before 1954.

In public higher education, ineffective desegregation remedies have been tolerated long after they were replaced in the elementary and secondary schools with desegregation plans that promised realistically to work and that actually did work. Only recently has this situation of a right without a remedy begun to change. Thus, in a Legal Defense Fund action, Adams v. Califano, the U.S. Department of Health, Education and Welfare was sued in federal court in the District of Columbia in 1970 because, inter alia, HEW refused to discontinue federal funding to demonstrably segregated colleges and universities. (At the elementary and secondary levels, such fund "cut-offs" have proven to be a powerful enforcement technique.) Only in 1976 and 1977 did HEW comply with court orders to formulate guidelines and

procedures for determining standards for desegregation. While these standards leave much to be desired in terms of specificity and strength the guidelines promise to start the long-overdue process of substantial desegregation. Those standards have been applied or are in the process of being applied in the states of Georgia, Virginia, Oklahoma, Florida, North Carolina and Arkansas. The HEW standards will soon be applied in other southern and border states.

LDF has also filed a private enforcement action, Geier v. Blanton, to specifically desegregate the public higher education system in the state of Tennessee. In a case originally filed in 1968, the district court in 1976-1977 ordered the merger of a white school, the University of Tennessee at Nashville, into the preexisting traditionally all-black Tennessee State University in order to promote elimination of the dual system in the capital of Tennessee, Nashville. The Geier case also concerns the statewide system, integration of formerly all-white schools and faculty and staff hiring and assignments. The case is now on appeal.

LDF is monitoring the results of the Adams and Geier litigation, and considering other initiatives to make sure that dual systems of public education are eliminated root and branch. We hope that through the Adams litigation, the full power of the national government will be marshalled in this effort, and separate schools for the races eliminted at every level.

PRISON CONDITIONS

INTRODUCTION:

The problems of prisions in this country can be grouped into three main problem areas: overincarceration; the lack of rehabilitation or treatment of those incarcerated; and the terrible state of prison conditions. All of thsese are interrelated; each would be serious in its own right, but, they have significant negative impact on one another.

A. OVERINCARCERATION:

Perhaps the starting point of any assessment of the disregard of the human rights in this country's prisons is the fact of overincarceration. We incarcerate more people for longer periods of time than almost any other Western nation. This is so despite the fact that these sentences are mitigated by the availability of parole. The current trend is toward somewhat shorter definite sentences without chance of parole, a scheme that would carry the danger of locking in our tendency to overincarcerate.

The rate of incarceration in this country is excessive in two senses. First it is far in excess of either the need for or the purposes of incarceration. It seems to serve neither the purpose of deterrence nor rehabilitation. Rather, it serves to isolate those who have committed crimes, prolong the human suffering and waste of incarceration--particularly in light of the often horrible conditions and the almost complete absence of rehabilitative programs, -- and to further isolate and impede the

reintegration of this segment of the population back into society. Second, incarceration in this country continues at a rate far in excess of the resources that the country is willing to devote to this purpose. This is one of the major contributing causes to the problems of lack of programs and grossly inadequate conditions.

The overincarceration problem is greatest in the South. According to the Institute for Southern Studies, as reported in the New York Times, Nov. 14, 1978, A 20, col. 2, the rate of incarceration in the South in 1976 was 35% higher than the national average despite the fact that the crime rate in the South, both for property crimes and crimes against the person, was below the national average. (Crimes against the person were 322 per 100,000 population in the South, 460 per 100,000 nationwide; against property - 4250 per 100,000 in the South, 4806 per 100,000 nationwide.) The four worst states were North Carolina, South Carolina, Florida, and Georgia. In 1977, this nation had imprisoned 136 people for every 100,000 population. In these four southern states the rates were: NC 261 per 100,000; SC 250 per 100,000; Fla. 239 per 100,000; and Ga. 234 per 100,000. Despite the higher rate of incarceration, the South spends far less on corrections than the rest of the nation. The national average is $5,919 per convict per year. In the South, it is $3,916 per convict per year.

B. LACK OF PROGRAMS:

While incarcerated, most inmates are cut off from any sort of meaningful programs. Most work in prisons is either make-

work or for the economic self-sufficiency of the prison; the most common prison tasks are working on in-house maintenance, maintaining the prison farm which provides some of the prison food, and working in a license plate factory. None of these provide the inmate with the kinds of skills that are necessary in the outside world. Few prisons provide much in the way of vocational training; when there are such programs they are severely limited and not available to the majority of the prisoners.

There is also a virtual absence of educational, rehabilitative, or psychiatric counselling programs. The marked lack is due to a complex of factors. It is a problem of budgeting -- Tennessee, for example, devotes only 2% of its correctional budget to rehabilitation, -- of too many incarcerated, of a lack of will, and of a vindictive attitude amongst the public and many involved in corrections.

The result is that many go through our correctional systems uneducated, uncared for, illiterate, and without vocational skills. When they are released, they lack the capability to integrate into society. This reenforces the vicious cycle of incarceration and reincarceration.

This problem is further exacerbated by the conditions in many prisons. Most prisons are places that make rehabilitation impossible; indeed, they facilitate deterioration. Unfortunately, efforts in the courts to require the provision of programs to pre-

vent such deterioration have not met with success. In Newman v. Alabama, 559 F. 2d 283, 291 (5th Cir. 1977), the United States argued that states have a duty to prevent the mental, physical, and emotional deterioration of their charges. The court did not accept this argument.

C. CONDITIONS:

Many of this nation's prisons incarcerate people in conditions that fall below elementary standards of humanity. Of course, each system, and often each prison, is unique in terms of its problems and conditions. However, there are overall patterns that can be identified as typical of prisons in this country.

Overcrowding: Perhaps the most serious problem of prisons, overcrowding is pandemic. Many prisons have been housing 2-3 prisoners in cells barely adequate, according to professional penological standards, for one. In Florida, there was a time when the system was so crowded that inmates were being housed in tents in open fields. Even that became so crowded that a federal court ordered daily sweeps of the prison, releasing inmates. Costello. In other states, inmates have been housed in dormitories so crowded with double-tiered bunks, often side by side, that the guards could not even see into the dormitories to provide the observation necessary for even rudimentary security. Guthrie.

Aside from the physical aspects of the problem, overcrowding overtaxes all the facilities of a prison, exacerbating

all its other problems. Already rudimentary medical services are strained; deteriorating facilities deteriorate faster; sparse educational and rehabilitative programs are stretched to the breaking point; the physically overcrowded conditions under which prisoners are housed create tension resulting in fights, destruction, and homosexual activity, both consensual and coerced.

Violence: In prisons, violence is the way of life. The inmates often resort to violence to solve their personal problems, problems that often stem from the pressures and tensions of overcrowding, from the jealousies and desires of homosexual activities, or from disagreements arising over drugs, gambling, or other such activities. Even at the most maximum security institutions, the guard staff is often inadequate, ill-trained, or poorly deployed and unable to protect inmates from each other. Weapons are rampant in many prisons, and magnetometers and regular "shakedown" searches are not enough to keep up with the manufacture of weapons by the prisoners.

In some institutions, tensions erupt in violence with some regularity. This has been our experience in the Georgia State Prison in Reidsville, Ga., in the Guthrie case. As a result of the continuing interracial violence, the prison goes through cycles of integration and resegregation. This past February, the prison was reintegrated for the third time in the past ten years. One of the reasons why the problem has been so intractable is that the guard staff -- which was all white prior to Guthrie, and is still overwhelmingly white -- foments racial unrest amongst the

white prisoners, harrasses the blacks, and has been known to either supply the white prisoners with weapons or look the other way when they obtain them.

A not insignificant amount of violence in prisons might be called official violence. Prison guards too often take advantage of their position of power to abuse the inmates. Widespread patterns of beating after riots and the like are only the visible tip of the iceberg. Guard violence is an almost daily occurence in many prisons; the most frequent response of prison administrations is overt condonation.

Finally, homosexual rape is as common to prisons as jaywalking is to the outside world. Again, prison officials rarely do anything to contain the problem; often, they look the other way in order to pacify otherwise violent and troublesoms prisoners.

Medical care: The quality of medical care in many prisons falls far below normally accepted standards of competency, adequacy, and deceny. In the Georgia State Prison, for example, primary medical needs are provided by a medical staff that consists solely of doctors with institutional licenses. In fact, for a long time, the acting medical director was an inmate physician who had been convicted of getting female patients addicted to drugs and then extorting sexual favors in return for prescriptions. In Texas, according to testimony in the Ruiz case, inmates

perform most minor surgery.

As bad as is the medical care, psychiatric care is almost non-existent. Often, those who can be made controllable via tranquilizing drugs are simply maintained. Acute cases are usually sent to state mental hospitals. But others receive no treatment at all. In Georgia, our experience was that acute patients who had been sent to the state mental hospital would be returned directly into the prison population as soon as they showed signs of recovery. Often, they were not ready for such a stressful situation and would end up being committed again in short order. This "ping-pong" effect was a direct result of the total lack of mental health care personnel or facilities at the prison.

Contact with the outside world: Although recent years have seen many favorable decisions limiting the powers of prison administrators to constrict inmates' contact with the outside world, that power is still rather broad and often invoked. Many prisons continue to interfere with prisoners' mail; outgoing letters to courts and attorneys do not always find their way to the addressee. Incoming mail may be opened and is often read. Prisons will often limit the kinds of magazines that may be received, though courts have increasingly struck down such regulations. Many prisons, including all federal prisons, limit the receipt of books to those mailed from reputable publishers or bookstores. This effectively bars the indigent inmate from receiving books at all, since he can rarely afford to purchase

new books. The validity of this practice is currently before the Supreme Court in Bell v. Wolfish.

Many prisons have also placed unreasonable limits on visitation. Only one state, Mississippi, allows conjugal visits on a systematic basis. Many others, however, do not even allow for contact visitation, where the inmate can touch and kiss his loved ones. Rather, they force their prisoners to visit through steel and glass booths and communicate through telephones, which often do not function. Several courts have held this "inhuman and cruel in fact." We are involved in two cases seeking to protect inmates' rights to contact visitation. In one, O'Bryan v. County of Saginaw Mich., we have filed as amicus curiae in a case appealing the ruling of the district court ordering contact visits for those awaiting trial. In another, Feamster v. Brierton, we are suing on behalf of the death row inmates in Florida in an effort to have contact visits restored. In Florida a ten year program of contact visitation was ended after one escape from death row that was not related to contact visitation.

A final world should be said about the conditions under which those waiting trial are housed. Pre-trial detainees are, under our system of law, considered innocent until proven guilty. Yet, by and large, they are housed in conditions that are generally far worse than those of their convicted counterparts. This is often so because of the extremely limited resources of counties and municipalities, the units of government that are generally responsible for those awaiting trial.

Currently we are involved as amicus curiae in Bell v. Wolfish, a case before the Supreme Court that will determine the standard to be applied in cases involving the conditions of confinement of pre-trial detainees. We are also representing the pre-trial detainees in the Mobile County Jail in Mobile, Alabama, in a case seeking to improve the inhuman conditions there. In Mobile, the inmates are on twenty four hour lock-up in cells that have no light, get 45 minutes of exercise every other day, and have no programs other than one television for each cell block of twenty four men.

CAPITAL PUNISHMENT

There have been no involuntary executions in the United States since 1967, a period of almost twelve years. This de facto abandonment of capital punishment was consistent with the trend, since World War II toward legal abolition of capital punishment in the vast majority of western nations. All of Western Europe, except for France and Spain, have illegalized official murder by the state in peacetime, and the post-Franco Spanish government abolished it for all but treason. France invokes the penalty extremely infrequently, approximately one a year or less. Canada and the majority of the central and South American nations have also rejected death as an appropriate punishment for criminal offenses.

With the United States Supreme Court's denial of review in a Florida case last week, it appears that the American moratorium

on executions may soon end. A return to state homicide will put us in the company of South Africa, Uganda, Iran and several of the communist nations. South Africa, leading the world in annual executions, killed 132 people last year. Only a few of those executed were white.

It is probably no coincidence that the world's leading executioner is also the most blatantly racist. A correlation between the state's willingness to kill and oppression of racial minorities is evident in the United States as well. In fact, it would not be an exaggeration to say that the history of capital punishment in the United States is a history of racial discrimination.

Of the 3,859 people executed for all crimes since 1930, 54.6% have been black. Of the 455 executed for rape, a practice recently ruled unconstitutional by the U.S. Supreme Court, 89.5% were non-white. All executions for rape were in the South, border states, or D.C. In five of those states and D.C. not a single white was executed for rape from 1930-1972 while 66 blacks were executed. In five other states, five whites were executed (one per state) while 71 blacks were executed. Blacks have consistently comprised only 10% of the populations. Studies have shown that the disparity in homicide and rape executions cannot be accounted for, based on any variable other than race, including poverty.

Prior to the Civil War, statutes in the southern states explicitly differentiated between blacks and whites. Blacks could be executed for crimes for which whites could not. In the post-war era, the explicit differentiation was eliminated, but it appeared to be widely understood that the old rules were to apply. It is, perhaps, no coincidence that 75% of the people currently on death row in the United States are in southern states, and that the number of blacks sentenced to death continues to be disproportionately high. The studies have shown that the discrimination against blacks pervades every stage of the criminal justice system -- a disproportionate number are indicted, are charged with more serious crimes once indicted, are more likely to receive the death penalty after conviction and are less likely to have the sentence commuted. Comparisons between types of statutes under which defendants were sentenced yielded the same results: it made no difference whether the statute left discretion to the judge or jury to impose sentence, or made the penalty mandatory once guilt of a capital offense was found. Blacks still received the death sentence in disproportionately greater numbers than whites. (Mandatory statutes have subsequently been ruled unconstitutional by the U.S. Supreme Court.)

Racial discrimination polluted the system of capital sentencing in still another way -- the likelihood of being sentenced to death depends not only on the race of the defendant, but on the race of the victim as well. While the disproportion was most egregious in sentencing for rape, it exists as well in

sentencing for murder. For example, statistics have shown that in Florida, which now has the largest number of people on death row, 92% were given a death sentence for killing whites but only 8% for killing blacks, while the victims of homicides were 52% black and 48% white. For felony-murder, the figures show that 63% of felony-murder arrests result in a death sentence when the victim is white, as opposed to 15% when the victim is black. Similar proportions are known to exist in Texas and Georgia, the two states with the next largest numbers of people sentenced to die, and in states where the death row populations are not yet large enough for statisticians to label the disparity as "statistically significant."

STATEMENT OF MICHAEL MEYERS, Assistant Director, NAACP to Commission on Security and Cooperation in Europe regarding U.S. Implementation of the Helsinki Final Act, at hearings in Washington, D.C. April 4, 1979.

I am Michael Meyers, an Assistant Director of the National Association for the Advancement of Colored People, and director of its Office of Research, Policy and Plans. The NAACP is this nation's oldest and largest civil rights organization. We have some 450,000 members, and some 1,700 branches and youth councils across the nation . Our youth membership alone totals more than 65,000.

Established in 1909, the NAACP has ever since been in the forefront of the movement against racial discrimination in the United States, whether it be in education, housing, employment, the civilian or the military sector. We have utilized every legal means available to us, through protection of the First Amendment, to insure the political, educational, social and economic equality of minority group citizens; to achieve equality of rights and eliminate race prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of Federal, state and municipal laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional and human rights and to take all lawful action to secure the exercise

thereof, and to take purposeful actions in furtherance of the objective of achieving racial equality.

The NAACP was established also to put an end to lynchings in America, when Negro persons were the victims of racial violence at the hands of mobs and "law enforcement" officials. At that time neither the Federal nor state governments made any attempt to bring white lynchers to justice. Lynchings were usually done quite openly and the lynchers appeared proud of their savagery. Likewise, racial segregation was for a long-time the custom and law in America, and the doctrine of "spearate but equal" was approved by the United States Supreme Court which sanctioned Jim Crow accomodations for Negroes in public facilities, modes of transportation, and educational institutions.

We have come a long way since those times, but we still have a very long way to go in this nation if the nation's egalitarian principles are to be salvaged, and if the United States, severally and as a whole, are to eliminate "root and branch" the remaining vestiges of slavery, racial segregation, and centuries of injustices practiced against the Negro people in every aspect of life.

We welcomed the United States' signing of the Helsinki Accords, because we believe in the principles of human rights and individual liberty, and because, like the Universal Declaration of Human Rights, international instruments committing the United States to honor

fundamental rights of its citizenry can and will strengthen our efforts to get the nation to address and remedy the pervasive racial discrimination and egregious violations of human rights which still exist in this country. They will support our cause because the world community will be offended and will speak out in behalf of our struggle for human rights.

This testimony will be restricted to an expression of particular problems raised in the United States affecting black people which in our view, raise serious questions and doubts about the U. S.' compliance with the Helsinki Accords and its commitment to the Universal Declaration of Human Rights. Specifically, we are herein concerned with Principle 7 of the Helsinki Final Act which commits participating States to respect the right of persons belonging to (national) minorities to "equality before the law," and "afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms." Moreover, the Act commits each state to "recognize the universal significance of human rights, and fundamental freedoms" and therefore the United States has pledged to act "in conformity with the purpose and principles of...the Universal Declaration of Human Rights."

We call your attention to Articles 3,5,7,8,19,21,23,25 and 26 of the Universal Declaration of Human Rights for the principal guarantees of human rights with which we hold that the United States is not in full compliance.

Article 5 states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment of punishment." Yet the highest court of the land has approved under some circumstances the institution of capital punishment, which, we hold, is cruel, inhuman and degrading punishment. In this country, the overwhelming majority of prisoners are non-white. Socio-economic factors and racial discrimination in the decisions to arrest, prosecute, and sentence, account for this disproportion in the prison population. There is the possibility that homicide in the ghetto is consistently high "because it is not controlled, if not encouraged, as an aspect of the total network of the human exploitation of the ghetto," says psychologist Kenneth B. Clark. Clark adds that "the unstated and sometimes stated acceptance of crime and violence as normal for a ghetto community is associated with a lowering of police vigilance and efficiency when the victims are also lower-status people."

This is a clear example of government failure; the denial or discriminatory deliverance of police services which deprives black citizens of the equal protection of the law. Moreover, the failure of the federal government to aid directly and adequately cities in distress is indication of its acquiescence to the second-class status of primarily non-white persons. In the context of the ghetto, where prejudice holds that the population coddles and nurtures criminal elements, it is too easy for police officials

to routinely deprive persons of their life, liberty and security. Police actions against black and non-white citizens, amounting to brutality (cruel, inhuman treatment and punishment) are occurring in black and brown communities throughout the nation, without, in many cases, the intervention of Federal authorities, despite federal laws which are intended to protect individuals from being deprived of their civil rights and life without due process of law. The United States Commission on Civil Rights is presently documenting the complaints of discriminatory patterns of police killings of black and brown people and of abhorrent police practices generally that rob the citizenry of Article 3 guarantees of "the right to life, liberty, and security of person" and Article 5, that would protect each person in the United States from being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

There is, with the cooperation of responsible public officials and national leaders in the United States, increasing public pressure toward harshness in sentencing, promoted primarily by law enforcement groups. The core of the public clamor for longer prison sentences and "certain" punishment is fear-laced racism, as claims of fiscal austerity have reduced the national treasury's resources available to be committed to eliminating poverty and social inequality. There are racial disparities, gross inequities and patent injustices in terms of arrest, arraignments, prosecutions, -- "charging,"

and "overcharging." The conditions of incarceration before trial, and the length of pre-trial incarceration, vitiate so much against the presumption of innocence (Article 11) as to encourage plea bargaining irrespective of guilt or innocence. And the deplorable conditions of most prisons, federal and state, to which persons are sent, and confined, are further evidence of inhuman treatment, which represent racial and class bias.

Article 7 asserts that all are equal before the law and are entitled without any discrimination to equal protection of the law. The NAACP has continuously documented before the Congress, the Administrative and enforcement agencies, and has shown in courts the patterns and practices, enmeshed with state actions, that deny black people equality before the law. We have used every means available to us to issue the call for national action to secure the Negro's civil and human rights.

In the Armed Forces, there is still racial discrimination. Although the Armed Services have made some progress in the area of equality of opportunity and race relations, the number of black officers is still disproportionately low, institutional discrimination and prejudicial decisions still result in the unequal dispensation of military justice, lower officer efficiency report ratings given to black officers, and racial imbalances in the discharging

of military personnel under "less-than-honorable" conditions. Today, hundreds of thousands of young men and women who saw service in the military are burdened with the stigma of the administrative discharges, which are used by the civilian sector to deny these persons equality of opportunity for re-entry into society, access to jobs, and colleges and professional training. These discharges are virtually impossible to change without costly legal assistance and vigorous watchdogging and action by civil rights advocates.

Equal protection of the law for Negroes is under attack in the United States under the aegis of "reverse discrimination" lawsuits, just as enforcement machinery for the protection of civil rights was put into operation on the side of blacks. The U.S. Supreme Court is increasingly imposing the requirement of a showing of "intent" on the part of state authorities whose actions in effect discriminate against Negro people in housing opportunities, employment decisions, and access to educational benefits. This standard of proof is onerous and, in the view of historical, pervasive, intensive, documented discrimination against non-white people, an unnecessary and costly burden on black petitioners seeking equal protection of the laws. This constitutes a violation of Article 8, that everyone have the right to an effective remedy by competent tribunals for acts violating the fundamental rights granted him by the constitution and laws.

We have urged the President of the United States to deliver a nationwide address on the subject of establishing an agenda for enforcing affirmative action and to help dispel the perceived public mood that the wrongs which have been inflicted upon black Americans over the past 300 years have been corrected, and to call upon the American people to help the Negro people overcome the institutional barriers to equality that continue to advantage whites through the operations of race prejudice and discrimination, and which will require remedial efforts to protect Negroes' rights. The President, while addressing human rights violations in foreign lands, has not delivered a nationwide address on human rights concerns in this country.

Article 19 of the Universal Delcaration of Human Rights gives everyone the right to freedom of opinion and expression, and Article 21 attempts to guarantee that everyone has the right to take part in the government, directly or through freely chosen representatives. We are especially pleased that the federal Congress has proposed a constitutional amendment to finally give the primarily black residents of Washington, D.C. the right to vote in national elections for President and representatives in Congress. That proposed Amendment has been submitted to the

various states for ratification, and the Administration is supporting the measure. However, the NAACP has discerned a systematic attack on black political leadership by government officials and agencies, in an atmosphere which harasses and impedes the progress which blacks have made in getting elected to political office. A double standard of morality and accountability to law has applied to the detriment of black elected officials and leadership. The harassment of black leadership by the Internal Revenue Service, Federal Bureau of Investigation, Central Intelligence Agency, and prosecuting attorneys of the state and federal government constitutes an ominous threat to the advancement of human rights in our nation. This harassment continues against black leadership in the form of relentless assaults on the integrity and credibility of black elected officials by law enforcement agencies and monitoring private behavior in ways which chill protected associational rights and invade personal privacy.

In the United States everyone should have "the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment." (Article 23(1)). Also, everyone should "without any discrimination," have the right to equal pay for equal work. The Administration, through reorganization of the federal civil rights enforcement agencies, has taken purposeful action to step up the national attack on racial discrimination in the workplace. The U.S. Equal Employment

Opportunity Commission, under the able leadership of Eleanor Holmes Norton, Esq., is taking aim at patterns and practices of discrimination within major employing institutions. That agency is committed to a policy of advancing Affirmative Action to increase the representation of minorities in the workplace, as well. But mere enforcement of existing civil rights laws is not enough to insure everyone work, to insure their "free choice" of employment. Because of discriminatory practices in educational institutions, and pervasive preference for white males in the workplace, the lack of job training programs and federally-financed job-creation, development and job-guarantee mechanisms, black Americans are massively unemployed and underemployed. Thirty percent of the black population is in officially-defined poverty -- three times their proprtion of the total population. During the first quarter of 1978, 44% of the black population lived in officially-designated poverty areas, compared with only 8.3% of the white population. Presently, black family income has declined to 59% of white family income, leaving about the same gap between blacks as existed in 1954.

The unemployment rate among blacks has been consistently more than twice that among white workers, and the unemployment rate among black teenagers -- for the past twenty yars -- has been around

40%. In some ghetto areas, the unemployment rates for black youth soars to 60% and 86%. The disproportionately high drop-out rate from school among non-white youth, the urban pockets of exploitation, poverty, and powerlessness, all add up to a definite underclass. The failure of the federal government to address this gaping racial inequality among its citizenry, its decision to increase spending for military hardware and defense, and Foreign aid, and to simultaneously reduce spending to remedy these social, domestic crises, amounts to a governmental pronouncement that unemployed, underemployed, able-bodied but non-white people are expendable as human beings and not entitled to the benefits accorded other citizens. This is particularly true in view of the historic involvement of the federal government in structuring the National workforce and limiting the access of racial minorities to the benefits accorded white males.

Among doctors, less than 2% are black in America. Among lawyers, less than 3% are black in America. Among engineers, less than 2% are black. And so on and so on.

When the talented blacks present their credentials, they are deemed "unqualified" or not "as qualified" as white males. The communications industry, television/radio, is the major molder of ideas and public opinion. It is also a major offender, as it has been cited by the U.S. Commission on Civil Rights in its report "Window-dressing on the Set" as hiring blacks in token numbers, and, thereby, building up an industry for white males to communicate

their facts and opinions to millions of people. When blacks demand access to these communications systems, in order to help develop, shape or redefine public policy, they are either concentrated in a tiny section of the system or shut out.

This country, and its institutions, have not been fair to black people.

We submit to you that the failure of the federal government to enact welfare reform, to provide the citizenry with national health insurance, its decision to favor military spending at the cost of adequate provision of health, welfare, education and essential services to needy persons and distressed areas, its failure to enact meaningful tax reform to raise revenues for these necessary programs and reduce the unequal tax burden on the wage-earner and poor, amount to a violation of the spirit and meaning of Article 25 of the Universal Delcaration of Human Rights.

We have studies, reports and documents to support every statement in this testimony. This information, we are sorry to say, is not unknown or novel to the decisionmakers of this country. The Congress knows full well of the terrible plight of the Negro minority. Whatever it has done to address the problems of Urban, rural, and black America have not been all it could do. They know it. And we know it. What we are saying is that time is running out, and we're tired of decision-making <u>after</u> the riots. No riot can direct America to live up to the majesty of its Constitution,

and the international instruments of human rights it embraces before the world and at the United Nations.

The President's National Advisory Commission on Civil Disorders in March, 1968 published the blueprint for change, and diagnosed the problems in clear and telling language. That Report laid the causes of racial turbulence in America at the doorstep of white racism, -- "the racial attitude and behavior of white Americans toward black Americans." That finding remains true today.

The monumental task posed is that of the re-education of white Americans to do not only what is in the national interest, but what is required to do justice, and to live up to its humanitarian principles. It would not be advisable or even pragmatic to narrowly construe the meaning and language of these international instruments, the very sources of moral authority to initiate purposeful action to remedy domestic human rights problems.

What is needed among our people and our decisionmakers is a large vision, generous heart, and the intelligent commitment of resources to achieve racial equality and social justice.

* * * * * * *

THE LAWYERS COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS

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Principle VIII of the Helsinki Final Act of August 1975 provides:

> The participating States will respect the equal rights of peoples and their rights to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.
>
> By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.
>
> The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle. (emphasis added).

In its administration of the trust territory of the Pacific Islands, Micronesia, the United States has failed and continues to fail to conform to this principle, as well as its commitments to the United Nations.

The United States' primary international obligation in this area is determined by the U.N.'s Trusteeship Council which meets for three weeks each year to consider one piece of business, Micronesia. The Trusteeship Council was established shortly after World War II to oversee the operations of the Administering Authority. The Council in turn is responsible to the U.N.'s General Assembly.

The Trusteeship Council receives reports from administering nations attesting to conditions in their territories. It is also empowered to receive petitions from the inhabitants requesting reforms or inspections of the territory to ensure it is being administered in their best interests. The Administering Authority in Micronesia, the United States, has committed itself to terminating the trusteeship relationship in 1981. The degree of success achieved by the Council and the United States, in Micronesia, is crucially dependent on actions that are taken during the next three years.

Under the Trust Agreement and the United Nations Charter, the United States, by administering Micronesia, has obligated itself "to promote the political, economic, social, and educational advancement of the inhabitants...and their progressive development toward self-government or independence as may be

appropriate." (Article 76(b) of the Charter)

This summary focuses on the performance of the Administering Authority in attempting to fulfill the obligation it owes the people of Micronesia. Part I provides background information about Micronesia, and Part II briefly surveys the Trusteeship period. In Part III, the comments of representatives to the May, 1978 meeting of the Trusteeship Council are examined in relation to the major issues currently facing Micronesia.

PART I

MICRONESIA - HISTORICAL BACKGROUND

Micronesia (meaning "small islands") is a collection of 2,100 islands, with 115,000 inhabitants. Nine major indigenous languages are spoken, with many more dialectical variations from island to island. The Trust Territory is divided into six districts: Palau, Yap, Truk, Ponape, and Kosrae, all in the Carolines; and the Marshall Islands District (see map). A seventh district, the Mariana Islands, decided in 1975 to separate from Micronesia and pursue a separate "commonwealth" status with the United States.

The United States is the fourth nation to control most or all of Micronesia since Ferdinand Magellan dropped anchor in Saipan, in the Marianas, in 1521. During the 1890's control of

the islands devolved to Germany. That nation retained dominion until the outset of World War I, when Japan seized nearly all of Micronesia. After the War, Japan administered the islands under a League of Nations mandate. During World War II, Micronesia was a pivotal and costly steppingstone in the American drive across the Pacific; 3,500 Americans and 23,000 Japanese died in the twenty-four day battle for Saipan alone.

PART II

THE TRUSTEESHIP ERA

A. Initial Years (1947-1961)

American involvement in Micronesia began following its capture from Japan during World War II. In 1947, the United States accepted the role of administrator under a Trusteeship Agreement with the United Nations Security Council. Until 1951, the islands remained under military governance, with the Secretary of the Navy, in Washington, D.C., responsible for their administration. The decision to delay, until 1951, the transfer of the Trust Territory to civilian rule was an early indication of the strong United States interest in the strategic value of the islands, an interest which has significantly colored the Micronesian experience as a trustee beneficiary of the United States.

Beginning in 1946 and 1947, the Bikini and Eniwetok atolls in the Marshalls became the site for many United States nuclear tests. Several hundred residents of each atoll were forcibly evacuated. Twenty years later, in an attempt to rehabilitate Bikini, the entire island was bulldozed to reduce radiation, and all old coconut trees were destroyed. Ninety thousand new coconut trees were planted and forty homes constructed. A survey finally was taken in May, 1978, indicating conclusively that excessive levels of radioactivity remained on Bikini. This resulted in a second forced evacuation of approximately one hundred residents who had returned, postponing any subsequent return for at least another thirty years.

In November, 1952, President Truman ordered the Marianas returned to Navy administration after less than a year of civilian control under the Interior Department. The reason for this seemingly arbitrary decision to sever the northern Marianas from the rest of Micronesia was not announced then, nor has it been since. However, with the publication of the Pentagon Papers in 1971, it became known that a twenty-eight million dollar C.I.A. facility was built on Saipan for the planning of operations in the Far East and the training of personnel.

For Micronesians, the establishment and the subsequent abandonment of the C.I.A. facilities in 1962 had far-reaching effects, separating the Marianas from the remainder of Micronesia. This caused them to press for and receive a status separate from the rest of the Trust Territory. Possibly most damaging, however, to the emergence of a unified Micronesia was the concentration of development in Saipan, which increased the inclination of Marianians to reintegrate with their fellow Chamarros on Guam.

B. The "Soloman" Years (1961-1969)

In 1961, a visiting mission to Micronesia from the United Nations sharply criticized American administration in almost every area. However, the effect of the initial United Nations report combined with an international atmosphere increasingly hostile to colonialism in any form spurred the Kennedy Administration to spend significantly more funds for health, education, and welfare programs in Micronesia. The annual appropriation tripled between the late 1950's and 1963.

The driving purpose behind this leap in funding was not apparent until April 18, 1962, when a memorandum, issued by President Kennedy established as United States (secret) policy "the movement of Micronesia into a permanent relationship with

the United States within our political framework." Pursuant to this policy, a mission headed by Harvard Economics Professor, and current Undersecretary of the Treasury, Anthony Soloman, was sent to Micronesia in early 1963 to report on conditions there and make recommendations regarding the orchestration of a plebiscite favorable to the United States. The mission recommended a plan of capital investment and also suggested the establishment of the "appearance" of self-government through an elected legislature but with the United States maintaining control through the office of High Commissioner and the absolute veto power of the Interior Department. Wholesale implementation of Soloman's policy was prevented by the death of President Kennedy, although action had begun along those proposed lines.

C. 1969 to the Present

During the Nixon Administration, the Interior Secretary, Walter Hickel, was informed that the United States was likely to be severely criticized during the next session of the United Nations General Assembly for (mis)handling its Micronesian responsibilities. Armed with fresh enthusiasm and wary of international censure, Hickel visited Micronesia and, with Presidential approval, proposed to begin negotiations on the subject of

Micronesia's post-trusteeship status. Those negotiations, begun in 1969, have been lengthy and complicated.

In 1970, the Nixon Administration proposed that Micronesia become permanently affiliated with the United States as a sort of "commonwealth." Making Micronesia an unincorporated territory like Guam or the Virgin Islands. The delegation from the Congress of Micronesia (then still representing the whole territory in negotiations with the United States) viewed the offer as falling short of allowing significant internal self-government, and flatly rejected it. Instead, the Congress delegation proposed an affiliation based on "free association" that would give the islands control of their internal affairs, leaving defense and foreign policy to the United States. It offered four principles which would guide their effort to negotiate such a status with the United States: (1) that sovereignty in Micronesia resides in Micronesians and their duly constituted government; (2) that the right to self-determination permits Micronesia to choose a status of independent or self-government in free association with any nation; (3) that the people of Micronesia have the right to adopt, amend, or revoke their own constitution; and (4) that "free association" should be in the form of a revocable compact, terminable unilaterally by either party. The United States, still

desirous of a more permanent affiliation, less restrictive of their control, rejected these principles, which are in conformity with the basic guarantees of Principle VIII of the Helsinki Final Act.

Marianas Separate

In 1971, the people of the Marianas found more cause for disagreement with the other districts of Micronesia when the Congress of Micronesia passed territory-wide tax legislation, which stipulated that the funds collected would go into a general fund for use throughout Micronesia. At the close of the fourth round of United States-Micronesia negotations in 1972, representatives from the Marianas requested and, with rare dispatch, received from the United States approval to hold separate negotiations. Although the United Nations Trusteeship Council urged a halt to the dual negotiations, the United States refused. In 1975, an agreement was signed to make the Marianas a commonwealth "in political union" with the United States. On July 8th, this agreement was ratified by the voters of the Marianas.

Constitution

The Micronesian Constitution, drafted in 1975, called for a sovereign Federated States of Micronesia. This structure was

objected to by represenatives of two of the remaining six districts, Palau and the Marshalls. These districts were eventually also permitted to negotiate separately with the United States. When the Constitution was approved by the four central districts (Yap, Truk, Ponape, and Kosrae) in the July 12, 1978 referendum, a new national governmental scheme was created, which will become operative for those districts in one year. This new government will be empowered to negotiate as such, the terms of its post-trusteeship relations with the United States.

Agreement for Free Association

At Hilo, Hawaii, on April 9, 1978, the United States and the three Micronesian delegations (Palau, Congress of Micronesia, and the Marshalls) achieved a major negotiating break-through with their "Statement of Agreed Principles for Free Association" intended to define the final nature of post-trusteeship relations between the United States and Micronesia. Although the United States originally expressed reservations about the compatibility of the Constitution and "free association" status, this objection has lapsed. There is, however, uncertainty about the degree to which the statement will define the final relationship between the other two Micronesian entities (Palau and the Marshalls) and the United States.

The Hilo agreement provides that the Micronesians will "enjoy full internal self-government" as well as "authority and responsibility for their foreign affairs including marine resources." The United States will have "full authority and responsibility for security and defense matters in or relating to Micronesia, including the establishment of necessary military facilities and the exercise of appropriate operating rights." In addition, Micronesia agrees to "refrain from actions which the United States determines to be incompatible with its authority and responsibility for security and defense matters...." Clearly any dispute regarding what military facilities are "necessary" and what actions are "incompatible" will be decided by the United States.

Secondly, the United States accepted a provision for unilateral termination of the free association agreement, subject to the United States having "full authority and responsibility for security and defense matters" for a period of at least 15 years and thereafter as mutually agreed. However, in practice, Micronesia may not be able to avail itself of this right because of a qualification in Principle 8, which states that at the time of such termination the United States "shall no longer be obligated to provide the same amounts of economic assistance... as initially agreed." Accordingly, Micronesia's economic dependence on the United States will weight heavily on their ability to terminate the free association agreement.

PART III

CURRENT ISSUES

With regard to the scheduled termination of the Trusteeship in 1981, each of the Micronesian entities shares three broad concerns. First, in what form will the right to self-determination be realized, pursuant to Principle VIII of the Final Act at Helsinki, and what ties, if any, will be permitted among the islands? Secondly, what relation will the Micronesians have with the United States, and what right will be afforded to Micronesia in their dealings with foreign nations and international bodies? Thirdly, what steps will the United States take to foster a realistic plan for economic advancement in order to alleviate the economic dependence it has imposed upon Micronesia?

A. Self-determination

Fragmentation

The United Nations has repeatedly proclaimed a policy favoring preservation of the territorial integrity of all Trust and Non-Self-Governing Territories during the course of decolonization. Yet in Micronesia a gradual fragmentation threatens to completely destroy the territorial integrity of the entire Trust Territory.

This issue was discussed at length during the 45th session of the U.N.'s Trusteeship Council in May, 1978. President Carter's

representative to the negotiations on the Future Political Status of Micronesia, explained the position of his government: to allow "unity among all the districts of the Trust Territory during the post-trusteeship period." However, this sentiment is not consistent with actions taken by the United States government in the Marianas, where a separate agreement governing future status has now come into force.

Termination

During the 1978 Trusteeship Council meeting, one representative from Micronesia expressed the view that the President of the Federated States of Micronesia must be permitted to assume all the functions of a chief executive, especially those involving the budgetary process in order to ensure a smooth termination of the Trust Agreement. He emphasized that such experience myst be gained prior to the assumption of self-government. He warned that for this authority to be exercised effectively a concurrent reduction in the use of the veto power by the United States Interior Department also must be forthcoming.

Concern was also expressed as to potential problems raised by the Agreed Principles developed at Hilo. While it is true that the Micronesians are permitted to terminate unilaterally any agreement of free association "by the processes through which it was entered", opting out will bot be a simple matter. The United States through the Hilo agreement, has substantially more negotiating leverage than the Micronesians, a situation which

makes unilateral termination difficult in practice. This difficulty will be compounded by the Micronesian economy, which depends almost entirely on American largesse. Principle 8 of the Hilo Agreement contains the qualification that if the free association agreement is unilaterally terminated by the Micronesians the United States "shall no longer be obligaged to provide the same amounts of economic assistance for the remainder of the term initially agreed." Clearly the Micronesians' economic dependence on the United States will have a significant impact on their ability to opt out of the agreement.

Security Council Consideration of Termination Agreements

Although Article 83(1) of the Charter provides that "any change in the status of the Pacific Islands . . . is within the competence of the Security Council," current American position clearly disregards this requirement. United States representatives have stated that they will only consult the Security Council in 1981, after the final status agreements with Micronesia have been determined, thus placing U.S. policy in conflict with the language and spirit of the U.N. Charter. Refusal to abide by this international obligation also constitutes a violation of Principle X of the Helsinki Final Act which require participating states "fulfill in good faith their obligations under International Law, both those obligations arising from the generally recognized principles and rules of international law and those obligations

arising from treaties or other agreements, in conformity with international law, to which they are parties."

Foreign Relations

The Micronesians are required by the Hilo Agreement to "consult with the United States in the exercise of authority in foreign affairs and will refrain from actions which the United States determines to be incompatible with its authority and responsbility for security and defense matters in, or relating to, Micronesia" (emphasis added). In this area, a number of Micronesian officials have repeatedly expressed concern as to whether a free association agreement with the United States will permit them sufficient authority to deal effectively with other nations on issues of economic and marine resources development. Other Micronesia leaders apparently believe that this problem has been resolved by Principle 6 of the Hilo Agreement.

Partially in an effort to carve out independent authority in foreign affairs, the Congress of Micronesia has passed a bill creating its own 200-mile fishing zone and setting up an administrative mechanism, the Micronesian Maritime Authority, to regulate activity in the zone. Yet whether these or other actions will succeed depends greatly on the details of the final agreement worked out with the Administering Authority and the manner of implementation.

With regard to the land and economy of Micronesia, Article 6,

paragraph 2 of the Trust Agreement, amplifying the language of Article 76(b) of the Charter, provides that the Administering Authority shall "promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources, encourage the development of fisheries, agriculture and industries, protect the inhabitants against the loss of their lands and resources, and improve the means of transportation and communications." The Reports of the Trusteeship Council, of its visiting missions and of the Special Committee are replete with documentation and commentary of the failure of the Administering Authority to live up to this obligation.

With regard to the Micronesian economy, the Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1976 (U.N. Doc. T/1774 at 41) records that "The Mission is somewhat disappointed at the state of the local infrastructure, such as agricultural roads and small harbours." How many agricultural roads and small harbours have been developed since then? Again, the Visiting Mission (id. at 41) remarked: "The present Mission, while acknowledging that the people of Micronesia enjoy a standard of living which compares favourably with that of many developing countries, must also report that there has been disappointingly little progress towards self-sufficiency." As the Mission also noted (id. at 42) "in 1974/75, imports amounted to just over $38 million. Commodity exports

amounted to just under $4 million and earnings from tourism to about $5 million. Thus, the deficit in the balance of payments was over $26 million."

Figures for 1976-77 in the Trust Territory (excluding the Northern Marianas*) contained in the Administering Authority's 30th Annual Report (Part XIII, 19,20) indicate that total exports to outside destinations amounted to only $10,334,100 (a figure which, incidentally, includes nearly $2 million in receipts from tourism). Imports for the same period cost $44,224,900. The deficit, in short, was about $34,000,000, or over 75 percent of the cost of imports. These figures raise serious questions concerning what has happened after thirty years of reports to "the economic advancement and self-sufficiency of the inhabitants" promised under the Trust Agreement.

Several Micronesia representatives have proposed the formation of a joint United States-Micronesia economic study group. This group, taking into account the realities of the economic situation in Micronesia, would help to develop data and guidelines which would be the basis for discussions concerning future United States financial aid.

Serious concerns have been voiced that in Micronesia the quality of roads, docks, harbours, and communications facilities has deteriorated since the period of Japanese administration

*Apparently only export figures are given for the Northern Marianas in the Aministering Authority's Annual Report. Both export and import figures are given for other districts.

before World War II, have been negligible. The conclusions of The Soloman Report (1963) are still true today. It noted that "Per capita Micronesian cash incomes were almost three times as high before the war as they are now and...the Micronesians freely used the Japanese-subsidized extensive public facilities."

A United Nations Development Programme report has concluded that the trend of high government employment in Micronesia has been counter-productive to the motivation of the people for successful economic growth and has had an anti-development impact on economic growth.

In response to this situation several suggestions for immediate action have been made by Micronesian representatives. for which the United States will provide annual capitalization as well as manpower and management training assistance. Secondly, two programs should be set up to aid the once robust Palau agricultural sector. The first program would assist in staffing and training a small extension service to assist cottage farmers. The second, larger program would provide annual capitalization for agricultural projects on a commercial scale. Both the industrial and agricultural development programs would strive to entice foreign investment into Micronesia.

A number of additional suggestions have been made aimed at aiding economic growth in Micronesia as a whole. A study group has concluded that compensation for the lands seized by American and

Japanese forces during World War II has been inadequte and the agreements which landowners have signed were confusing and contradictory. Micronesian representatives have suggested that termination of these agreements, and re-purchase by the Trust Territory Government of land would not only be an equitable resolution of a difficult problem, but would provide an economic stimulus as well. These representatives have also expressed concern about the actions by the United States Office of Management and Budget to defer the $12 million appropriation for the construction of an airport at Kosrae. It has been suggested that this action would delay regular, safe air service to and among the islands and, consequently, be an impediment to the development of Micronesia's economy.

Finally, they have urged final settlement of World War II damage claims that have yet to be resolved.For a number of years inhabitants of the Territory with adjudicated damage claims have been trying to obtain payment of these claims. The latest chapter in this unhappy saga is faithfully recorded in the 1977 Report of the Administering Authority (at 132): "Public Law 95-134, enacted on October 15, 1977, authorizes in Sec. 105 the appropriation of 'such sums as may be necessary to satisfy all adjudcated claims and final awards made by the Micronesian Claims Commissions to date under Title I and Titel II of said 1971 act, for full payment of such awards...' provided that no further payments may be made

on Title I awards until the government of Japan contributes to the Government of the Trust Territory of Pacific Islands goods and services which the secretary of the Interior determines have a value equivalent to not less than one-half of Title I awards. Consideration is being given to the scheduling of a request for this authorized appropriation. The legislation also authorized full payment of Title II awards subject to the exclusion of interest from such awards." It is difficult to know what this language really means in dollars and cents. It is clear that no action has been taken, and the United States continues to rely on the proviso that no further payments may be made on Title I awards (those relating to wartime claims) until the Japanese Government contributes.

CONCLUSION

Throughout the period of the Trusteeship, the welfare of the citizens of Micronesia has been of secondary concern to the government of the United States. Now, as the Trusteeship era approaches its end, the importance of fair dealing by the Administering Authority is magnified. There is much that the United States can do, even at this late date, to redeem the unfortunate aspects of its administration. After all, in most areas of the world, America has little opportunity to allow its genuine idealism to improve the conditions of a people. In Micronesia, it has the authority, and the means, as well as the obligation, to show the world that American conduct of its foreign responsibilities is characterized by goodwill and competence.

INTERNATIONAL HUMAN RIGHTS LAW GROUP

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The International Human Rights Law Group is a non-profit legal organization established by The Procedural Aspects of International Law Institute in September 1978 with the assistance of funding from the Ford Foundation and the Rockefeller Brothers Fund. The Law Group provides legal services on a pro bono basis to individuals or to non-governmental organizations concerned with promoting the observance of international human rights. Assisted in its work by lawyers, paralegals and law students who volunteer their professional skills and time, the Law Group identifies cases of human rights violations and seeks the appropriate international or domestic legal remedies.

While the primary focus of the Law Group is not U.S. compliance with international human rights standards, concern for the international observance of human rights has brought to our attention several instances in which the U.S. is in violation of its human rights obligations under the Helsinki Accord. Actions taken by the U.S. government which violate any international human rights declarations or agreements also contravene provisions of the Helsinki Accord. Under Principle VII of the Declaration Guiding Relations Among Nations (Basket I), the U.S. has reaffirmed its commitment to fulfill obligations

under the U.N. Charter, the Universal Declaration on Human Rights and all binding international human rights agreements and declarations. When the U.S., therefore, fails to observe obligations imposed by these international instruments, it undermines that recommitment to human rights publicly professed at Helsinki. The Law Group has identified the following three cases currently in our files which illustrate specific violations by the U.S. not only of international human rights agreements but of the spirit and commitment to human rights embodied in the Helsinki Accord.

FAILURE TO OBSERVE HUMAN RIGHTS
PROVISIONS RELATING TO REFUGEES

Thousands of Haitians have migrated to southern Florida in the past decade. Many have applied for political asylum, based on their belief that they will be persecuted if they return to their homeland. Between December 1972 and November 1977, an estimated 3,500 Haitians arrived in the United States. Since November 1977, the number of Haitians that have been processed by the Immigration and Naturalization Service's (INS) district office in Miami has increased substantially. Presently there are over 8,800 exclusion and deportation cases involving Haitians pending before the INS in southern Florida.

Since the Duvalier family assumed power in 1956, Haiti has been faced with an ongoing pattern of serious violations of human rights. These violations have been documented by non-governmental human rights organizations such as Amnesty International. In August 1978, Amnesty released a statement noting the initiation

of large scale deportation hearings in Miami. The statement expressed concern that "the United States Government not deport any of these persons to Haiti without fully assuring itself that they will not face imprisonment or persecution on their return."

By mid-1978, however, as a result of the increased number of Haitian cases, the INS came under increased pressure to expedite the deportation hearings. Consequently, the number of hearings began to increase from an average of 5 to 15 per day during the first half of 1978 to an average of 60 per day in August. By mid-September, the daily average was over 100 and occasionally exceeded 150 hearings per day. Many of these cases have involved applicants seeking political asylum within the United States.

This escalated rate of hearings has served to undermine minimal due process protections for the Haitians. It is also clear that those Haitians who have valid claims for political asylum are being denied the opportunity to have a fair hearing and full consideration of the merit of their claims. The lawyers who are working on these cases are also faced with severe problems in adequately representing their clients. The simultaneous scheduling of deportation hearings and asylum interviews has resulted in several instances where individual attorneys have been faced with as many as fifteen or even twenty hearings and 100 interviews at one time. The problem is further compounded by the fact that the asylum interviews are neither recorded nor fully transcribed. Rather, a summary of each answer given by the person is typed out, providing an entirely inadequate record which

forms the basis for future hearings and proceedings. Several aliens who have protested these procedures or have invoked their right to remain silent during court hearings have been imprisoned.

These actions taken by the INS, involving the application process for political asylum and the timing and procedures in deportation cases, are a procedural scheme which arbitrarily and capriciously seeks to deport all Haitian aliens without regard to the merit of individual cases. Such acts deprive the Haitian aliens of their right to equal protection and to life and liberty, in violation of provisions of the Helsinki Accord relating to refugees and international agreements subsumed under the Helsinki Accord. The U.N. Protocol Relating to the Status of Refugees, ratified in 1968, obligates the United States to give a full and fair hearing to each individual applicant on the merits of his political asylum claim.

FAILURE TO PROMITE THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSONS

In June 1978, President Carter requested a renewal of a waiver o prohibitions under the Jackson-Vanik Amendment for Romania to be granted most-favored-nation trading status. In the absence of Congressional veto, that status was retained. The President, in requesting a waiver, must determine that the granting of favorable trade relations will benefit that country's human rights situation. As the latest Amnesty International report on Romania reveals, acts perpetrated by the government of Romania against the Hungarian minority have been identified as a consistent pattern of gross human rights violations.

Under the new trade relations, the U.S. now is importing many Romanian goods including pig skins, frog legs and sausage which were made or processed in part by Hungarian dissidents living in forced labor camps. Perpertuating this trade practice ignores the intent and purpose of the Jackson-Vanik Amendment, not only to safeguard the right of emigration but to promote human rights in Communist countries. Significantly, the U.S. here is flouting provisions of the Tariff Act of ~~1934~~ and international obligations under the Supplementary Convention on the Abolition of Slavery, ratified in 1967, which forbid import of goods made by forced labor or indentured labor.

FAILURE TO AFFIRMATIVELY ENFORCE THE PROHIBITION AGAINST DISCRIMINATION

Under provisions of the U.N. Charter and the Universal Declaration of Human Rights, as incorporated in Principle VII of Basket I, the U.S. is obligated to promote and observe fundamental human rights without regard to race, colour, sex, language, religion or national origin. This obligation to refrain from discriminatory acts imposes a corollary duty on the U.S. to enact, implement and enforce domestic legislation which prohibits discriminatory treatment within U.S. territory.

Saudi Arabian Airlines, a government owned airline which consistently has denied persons of Jewish background passage without a visa from the Saudi Arabian government, last November applied to the Civil Aeronautics Board (CAB) for a permit to fly a direct U.S. - Dharan air route. In addition to international standards which impose a duty on the U.S. to prohibit discrimination,

CAB regulations state "no air carrier or foreign air carrier shall . . . subject any particular person . . . to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever." (72 Stat. 760, as amended by 86 Stat. 95, 49 U.S.C. 1374).

At this time, Saudi Arabian Airlines has been granted a temporary permit by the CAB. This is clearly an abuse of government action by which the U.S. is abrogating its own agency regulations, and instead of promoting the right to be free from discrimination, the U.S. actually is encouraging and is cooperating in the discriminatory treatment of Jews.

Signing the Helsinki Accord obligated the U.S. actively to renew and reaffirm its commitment to human rights. Yet, in each of these three instances, the U.S. has failed vigorously to enforce its own laws or to fulfill obligations under international human rights agreements and declarations by which it is bound. These missed opportunities to comply with or to enforce international human rights norms undermines international commitment to respect human rights and leaves the United States in a weak position with regard to other signatories of the Helsinki Accord.

UNITED STATES COMPLINACE WITH
THE HELINSKI ACCORDS

United Farm Workers

When the United States signed the Helsinki Agreement, it committed itself to respecting certain standards for employment and social services which are in many cases denied to farm workers in this country.

The United States is not the only country which has problems of poverty and unemployment, but it is a country which has always advertised itself as one where every working person has an even opportunity. Farm workers do not have the same opportunities as others in this regard.

In Principle VII, the Helsinki Agreement states the intention of all thirty-five signers to "promote and encourage the effective exercise of civil, political, economic, social [and] cultural rights." Article 23 of the Universal Declaration of Human Rights endorses the right to work, to free choice of employment, and the right to form and join trade unions. Article 25 confers the right to an adequate standard of living, including "food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, [or] old age."

It is true that the section of "Basket II" on "Economic and social aspects of migrant labour" applies only to Europe, but what can be said of migrant workers in Europe could as well be said of agricultural workers in the United States:

> [T]he movements of migrant workers...have reached substantial proportions, and...they constitute an important economic, social and human factor for host countries....

and the United States would be participating in the Spirit of Helsinki if it took the necessary steps

> ...to ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work and to social security, and to endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions.

We need also to take a look at the provision of the Accords which declares that each country will

> ...endeavour to ensure, as far as possible, that migrant workers may enjoy the same opportunities as nationals of the host countries of finding other suitable employment in the event of unemployment.

The Helsinki Accords oblige each country to

> ...ensure that the children of migrant workers ...have access to the education usually given [to children of the country in which they work] and, furthermore, to permit them to receive supplementary education in their own language, national culture, history and geography....

The United Farm Workers do not claim that there have been no efforts whatever by the United States to remedy the absence of some of these protections. But the Final Act provision which -- in our opinion -- is most important, the right to form and join labor unions, is not a reality for agricultural workers, of whom a very high proportion are migrants.

In truth, most of those who migrate to the United States in search of farm work are not from Helsinki countries. They are from Mexico, from the West Indies, from the Philippines, from the Middle East.

But they work in a Helsinki country: the U. S. A.

In one state only, California, does legislation provide a framework for effective organizing of farm worker unions. It is no coincidence that in California alone does there appear to be, at this point, any progress at all in alleviating the misery of the farm laborers' existence.

In other states, legislation either makes no provision at all for agricultural unions, or is designed actively to inhibit their development. Federal legislation covers industrial workers, but does not cover agricultural workers, and even if it did, it would do more harm than good: a sixty-day cooling off period would be of little help to workers who sought

to strike during a two-week harvest season.

We know that the principal focus of these hearings is civil rights, rather than economic rights, and that the Commission is not in a position to do very much about the problems we raise here, but we think the right to organize a union -- an effective union, with legal protection -- is a fundamental part of the freedom of association. If ever there were a group of people who needed more freedom to "know their rights and act upon them," it is farm workers.

We know also that the United States is not alone in having this problem. In almost every country in the world, farm workers have less money, worse housing, worse medical care, and worse educational opportunity than any other group.

We know that when the Helsinki Conference addressed the problems of migrant workers in Europe, it was thinking largely of individual migrants who left their families behind and went to the more industrialized countries in search of work.

The situation in the United States is in some ways different, but in important ways it is the same.

Workers who migrate across the U.S. each year and who return home to the border areas where they live travel distances as great as those travelled by any workers in Europe.

The language, cultural, and practical difficulties they face are as great as any faced by European workers. In some ways, such as in the absence of cheap, reliable rail transportation they are worse off.

And while a very large proportion of the migratory farm workers in this country are citizens, or permanent residents of the United States, they continue as foreigners in the land they inhabit.

We believe that unionization of farm workers will do much to improve the economic conditions of migratory workers, to reduce the amount of migration, and to promote the effective exercise of their rights.

We would like to see at least two changes made, both of which will improve the performance of this country in light of the Helsinki Agreements:

1. Legislation such as that now in effect in California should be extended to cover the other areas where agriculture is an important industry so that workers can exercise their right, under the Universal Declaration, to organize effectively on their own behalf.

2. The government should be required to recognize its responsibilities insofar as unemployment is caused by

mechanization. The Department of Agriculture, the land grant colleges, and many other institutions supported by taxation pour millions every year into the development of machinery which is designed to make agricultural laborers obsolete.

When that mechanization takes place, the displaced workers are thrown onto the unemployment market, left to their own resources as soon as the very meager unemployment benefits, to which only a very few workers are entitled, run out.

Surely those development efforts should be linked to the responsibility for providing alternative sources of employment at decent wages for the workers displaced by the research efforts of their own government.

Taking steps such as these would go a long way toward guaranteeing migrant workers and all farm workers equal treatment before the law, and to use the reason and conscience with which they are endowed to exercise effectively their civil, political, economic, social, cultural and other rights, without distinction as to race, sex, language or religion.

Fundamental rights and freedoms are no less essential for the free and full development of migratory workers than for anybody else.

Gilbert Padilla
Secretary-Treasurer
United Farm Workers of America
AFL-CIO

UNITED STATES COMPLIANCE WITH THE HELSINKI ACCORDS

Committee for Public Justice
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The Committee for Public Justice is grateful for the opportunity afforded us by the Helsinki Watch to comment to the Commission on Security and Cooperation in Europe on U.S. compliance with the Helsinki Accords.

The Final Act of the Helsinki Conference is based in large part on principles deeply-rooted in the American Constitutional tradition. The core of Principle VII is the declaration that each of

> "[t]he participating states will respect . . .freedoms, including. . .thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion,"

and that "[t]hey confirm the right of the individual to know and act upon his rights and duties in this field."

These principles relate closely to the daily work of our organization which primarily involves monitoring the policies and actions of the U.S. Department of Justice on civil liberties and other issues and developing and fostering proposals relating to reform of our nation's intelligence-gathering agencies.

Obviously, an exhaustive survey of U.S. compliance with Principle VII, or with the human rights provisions of Basket III, let alone with the entire Final Act, would be beyond the

scope of these hearings. We strongly agree, however, with the Commission's decision to initiate this inquiry today. For if the Final Act is a statement of intention, it is the close scrutiny of government actions which will give meaning to the "Helsinki process."

Our testimony covers the following subjects:

1. National Security and Civil Liberties
2. The CIA and Academia
3. Wiretapping
4. Judicial Appointments.

I. NATIONAL SECURITY AND CIVIL LIBERTIES

The most striking aspect of the Carter Administration's performance in the area of civil liberties is the gap between the President's words and his deeds.

Among the innovations of the Helsinki Agreement is the linkage it makes between increased international security on the one hand, and the free flow of information and protection of fundamental individual rights on the other. The President has not hesitated to campaign on behalf of those whose right to free speech has been violated by other Helsinki signatory states, but he is less consistent a defender of these rights in the United States. Indeed, his administration, like others before it, has often justified its lapses on civil liberties issues on the basis of American national security interests. The implicit argument that the national security of the United States and the fundamental freedoms of its citizens are at

times antithetical clearly runs counter to the intention of the Helsinki Final Act.

Thus, Principle VII of the Final Act calls on the signatories to "respect. . .the freedom of thought, conscience, religion or belief. . .." The Universal Declaration of Human Rights, incorporated by reference in Principle VII of the Final Act, contains several important civil liberties provisions. Article 12, for example, confers on the individual "the right to protection of the law against. . .arbitrary interference with his privacy, family, home or correspondence." Article 19 gurantees the "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Nearly five years have passed since the massive abuses of these rights by American intelligence agencies were first revealed. Yet legislation is still needed to insure that these abuses will not recur.

The Carter Administration, with some exceptions, has shown a reluctance to take steps toward passage of remedial legislation. Most disturbing, though, is the Administration's continued defense of past abuses as seen in the litigation policies of the Department of Justice and the Administration's pursuit of a policy which would limit public disclosures of future abuses.

Since its early days, the Carter Administration has focused on plugging leaks rather than imposing controls on intel-

ligence abuses. In May, 1977, for example, the Justice Department formally refused to consider a request by Victor Marchetti, a former CIA official, to dissolve or modify an injunction obtained by the Nixon Administration in 1972 censoring his writing and public speeches.

In October, 1977, the President's first draft Executive Order on national security information was circulated for comment. The draft permitted any agency handling classified information to exact "secrecy agreements" from all of its employees. In light of the promiscuous use of the classification system to conceal embarrassing mistakes, waste and corruption, such proposed secrecy agreements could have easily been used to hide from view government operations that are of legitimate public concern. After encountering sharp criticism, the Administration agreed to drop the objectionable secrecy provisions. Nevertheless, in its handling of two ex-CIA officials, the Carter Administration continued to show that it considered plugging leaks more important than curbing the excesses of the agencies.

Only a few days after disclosure of the Administration's draft Executive Order, the Carter Justice Department unveiled its plea bargain with former CIA Director Richard Helms, who had been charged with committing perjury before the Senate in order to cover up the CIA's involvement in unseating the popularly elected Allende government in Chile. Mr. Helms was allowed to plead nolo contendere to two misdemeanor counts and was fined $2,000, a "punishment"

that he promptly characterized as a "badge of honor," and which Senator Clark of Iowa more accurately labeled a license to lie to protect secrets.

At virtually the same time, the Justice Department filed suit against Frank Snepp, an ex-CIA official who wrote a critical book about the U.S. pull-out from Vietnam without first submitting it to the Agency for approval. Although the CIA has admitted that the book did not reveal CIA sources and methods, the Snepp case served notice that the Justice Department intends to use Admiral Turner's strategy of punishing "whistleblowers" through civil court procedures.

The Carter Administration's efforts to induce silence on the part of persons who have knowledge of U.S. human rights abuses violates not only the civil liberties of those individuals, but, more fundamentally, calls into question the country's commitment to the principles embodied in the Helsinki Final Act.

II. THE CIA AND ACADEMIA

The CIA's refusal to guarantee its compliance with the guidelines developed by several academic institutions to regulate their dealings with the intelligence community jeopardizes the realization of the Final Act Basket III goal of increased contacts between the signatory states.

In May, 1977, Harvard became the first university to put guidelines into effect. The following regulations are noteworthy:

- No faculty member was to serve as a recruiter for the CIA without the professor's name being on public file at the University placement office.
- Because of the special problems faced by foreign students, the name of such a student was never to be forwarded to the agency without the permission of the individual.
- Covert operations were not to be conducted by any member of the University faculty.

After more than a year of negotiations, CIA Director Turner indicated that the Agency would ot abide by these restrictions. The CIA would feel free to approach members of the Harvard community to ask them to engage in covert operations and to assist in covert recruitment. The agency has consistently adhered to this policy in responding to other universities which subsequently adopted guidelines. Thus far, drafts of a new CIA charter have not precluded the use of academics for these purposes.

The use of American academics for operational purposes abroad and the covert recruitment of foreign students hardly creates an atmosphere which, in the words of Basket III, "facilitates freer movement and contact" between individuals from the signatory states. American scholars will not be welcomed abroad if they may be working for the CIA, nor will foreign governments be encouraged to send their students to U.S. schools if they are secretly recruited by our intelligence services. Prohibition of these CIA activities would be a sign of our commitment to Basket III aims.

III. WIRETAPPING

Despite some foot-dragging by the Carter Administration,

recent legislation covering "national security" wiretapping to spy on American citizens was among the most serious domestic human rights abuses of the post-war period, and the President made his strong opposition to it felt throughout his presidential campaign. The draft legislation which the Administration circulated in February, 1977, thus came as something of a surprise.

Like an earlier Ford Administration bill, S. 3197, the Carter legislation permitted taps on Americans, not suspected of espionage, who secretly "collect or transmit information" that might be harmful to the national security. However, it went far beyond S. 3197 by authorizing taps on foreign visitors to the United States who are engaged in noncriminal and undefined "clandestine intelligence activities," as well as on American citizens or foreigners who "aid or abet" someone engaged in these undefined activities. Thus, the Carter bill ignored the conclusion of the Church Committee that "no American [should] be targeted for electronic surveillance except upon a judicial finding of probable criminal activity." It ignored as well Principle VII of the Helsinki Final Act.

Fortunately, the objections of concerned citizens' organizations helped convince Congress to accept modifications in the legislation. The bill which eventually passed Congress contained a reasonably restrictive criminal standard for wiretaps and provided a civil remedy for foreign visitors in the United States. It was not the President, however, who called for the restrictions, statements about the "significance"

of Helsinki principles notwithstanding.

One may debate the "relaities" of international politics and the necessity of using extra-legal methods in the pursuit of foreign policy abroad. The United States must recognize, however, that insofar as it operates outside its own Constitutional processes in its foreign relations, it will be subject to legitimate foreign criticism for its violations of Principle VI, Principle VII, Basket II, and related Final Act provisions.

IV. JUDICIAL APPOINTMENTS

The Helsinki Accords clearly require governments to take whatever steps are necessary to guarantee equal protection of the laws to their citizens, and to facilitate the right of equal access to public service by all citizens. Appointments to the Federal bench are crucial for symbolic and practical reasons: (1) those who serve as judges are symbolic of the people as a whole; and (2) no element of government has a greater effect, under the American system, on the protection of rights guaranteed by the Helsinki Accords and the Constitution than the federal judiciary. If the courts are to be effective in protecting the rights of all, judges must have the sensitivities which stem from diverse backgrounds. It is absolutely crucial that judicial appointments go only to individuals with a deep and abiding commitment to equal justice.

Historically, federal judgeships have gone to the politically well-connected. Minorities and women, since they lacked political power, have been barred from consideration.

As of January, 1979, there were only twenty-nine black or Hispanic federal judges and a mere nine were women. Almost half of these appointments were made in the last two years.

Over the years, the link between party politics and federal judge selection has not encouraged the appointment of excellent judges, nor have the ways of patronage strengthened public trust in the judiciary. To be sure, in its better moments cronyism has given us some very good judges, but in the main it has rewarded mediocrity and given us some very bad judges. Federal Judge William Harold Cox, for example, was a law school roommate of retiring Senate Judiciary Committee Chairman James Eastland (D., Miss.) Appointed to a district judgeship seventeen years ago, Cox is best remembered for having repeatedly frustrated federal efforts in the early 1960s to secure blacks the right to vote in Mississippi. Judge Cox once called blacks appearing in a case before him "chimpanzees."

The creation of 152 new federal judgeships by the Omnibus Judgeship Act signed into law last October has given President Carter a significant opportunity to broaden and upgrade the composition of the federal judiciary. Upon signing the Judgeship Act, the President pledged to appoint more than a token number of qualified minorities and women to these new positions. We commend the President for this commitment. It must be recognized, however, that even if substantial gains are made in filling the new judgeships, there will still be a long way to go before the goal of a diverse and representative federal judiciary is achieved.

CONCLUSION

The Helsinki Agreement has broad significance for the preservation and extension of civil liberties in America. the government and citizens' organizations share the responsibility for seeing to it that our country lives up to its commitments under it. The process begun at these hearings represents an encouraging step in that direction.

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STATEMENT TO THE COMMISSION
ON SECURITY AND COOPERATION
IN EUROPE

Phyllis N. Segal, Legal Director
NOW-Legal Defense & Education Fund

The Helsinki Final Act pledges participating States to respect, promote and encourage the effective exercise of human rights and fundamental freedoms without distinction as to race, sex, language, or religion.[1] To meet the international standards set by the Final Act, the United States must act in conformity with that pledge and with the Universal Declaration of Human Rights and other international human rights declarations and agreements, such as the Declaration on the Elimination of Discrimination against women, which are expressly incorporated into Principle VII of the Accords[2] and to which the United States is independently bound.[3] The rights that these declarations proclaim, "without distinction of any kind, such as sex,"[4] include that "all are equal before the law;"[5] "men and women...are entitled to equal rights as to marriage, during marriage, and at its dissolution;"[6] women have equal rights with men in education at all levels;[7] and women have the right to equal remuneration with men and to equality of treatment in respect of work of equal value.[8]

Yet, according to the federal government's own reports, it is clear that such rights still have not been extended fully to women, and that sex-based discrimination continues to be a problem of major proportions.[9] Until this problem is more adequately remedied, our country's human rights performance cannot measure up to the international standards to which it is pledged.

The federal government's failure to assure economic and civil rights for women is illustrated by governmental policies which impact the family and define marital rights. The Universal Declaration recognizes the importance of the family and its right to protection by society and the State,[10] and expressly recognizes the equal status of marital partners.[11]

Despite these commitments, however, current government policies impacting the family expose it to risk and undermine the concept of spousal equality. One striking example is the provision in Title IV of the Social Security Act which grants income and medical assistance to two-parent families with dependent children if the father is unemployed, but denies such aid to the identically situated family if it is the mother who is out of work.[12] Since the second family could qualify for assistance if one of the parents leaves, the pressure for the family to break up is great. This direct assault on family stability is targeted, however, only on the family where the mother alone can qualify as the unemployed breadwinner. Does that family's departure from the traditional

model of homemaker-wife and wage-earner husband make it less worthy of protection? In denegrating the value of the working mother's contribution to her family, this sex-based program defines her as unequal during the marriage.

This particular statutory provision has been challenged, and found by the U.S. District Court of Massachusetts to unconstitutionally deny to women equal protection of the law.[13] But the United States government has refused to accept this result and has asked the Supreme Court to reverse the lower court and reinstate this blatantly discriminatory statute. Here, it seems, our government is too busy defending inequality to even notice the inconsistency of its laws with national as well as international commitments to equality.[14]

The U.S. imposes unequal status on marital partners in other ways as well. Present gift and estate tax provisions, for example, require a spouse in common law property states to prove financial contribution to purchase or improvement of property in order to be exempted from inheritance taxes upon his or her spouse's death. This standard fails to recognize the non-monetary contributions of a non-employed spouse, traditionally the wife, to the marriage. This failure similarly pervades the social security program and federal pension plans, resulting too often in a denial to the non-covered spouse, again traditionally the wife, of a major portion of assets which she helped to acquire throughout the marriage. It also deprives such spouse of protection in her own right in the

event of disability, old age or unemployment, directly contravening Article 25 of the Universal Declaration.

Principle VII of the Helsinki Final Act confirms the right of individuals to know and act upon their human rights and the responsibility of the State to promote the effective exercise of such rights. Yet in the United States the right of privacy in matters of reproduction, recognized recently in a woman's right to terminate a pregnancy, is currently without meaning to poor, rural, and young women unable to afford the cost of, or have access to, medical care for an abortion. Congressional action which continues to deny funding to many for such medical care violates a woman's ability to know and act upon an express human right. Congress has clearly failed to comply with our international commitments to human rights when it undermines any real meaning of reproductive freedom for women.

In the area of education, our government's statutory commitment to equality is, on its face, somewhat more consistent with the international standards set forth in the Universal Declaration of Human Rights -- which proclaims the right to education to all persons on an equal basis -- and the Declaration on the Elimination of Discrimination against Women -- which expressly requires equality between women and men in education at all levels. Federal legislation known as Title IX prohibits every public and most private educational institutions from discriminating in their policies or practices on the basis of sex.

Enforcement of this statute would help realize the rights that our international declarations assure. Unfortunately, Title IX has not been implemented in a meaningful way. A court order was required to prompt action on the hundreds of Title IX complaints that have been filed with the Department of Health, Education and Welfare since the law's adoption in 1972.[15] It took that agency three years to even adopt regulations implementing Title IX. And the record of other agencies charged with Title IX enforcement responsibilities is even worse. In most, the regulations necessary to begin compliance with Title IX have still not been adopted,[16] although it has been seven years since the law took effect.

Moreover, we are faced with serious threats to the very existence of Title IX. Proposed changes in HEW's Title IX regulations currently under consideration would eliminate from the law's coverage appearance codes, no matter how blatantly they discriminate between boys and girls.[17] The proposed HEW policy interpretation of the regulations concerning Title IX's application to athletic programs would create loopholes large enough to virtually exempt revenue producing sports from any requirement of gender-based equality.[18] But there is an even greater threat that if, through a political maneuver, this policy interpretation is brought to Congress for its review, the result would be still more serious erosion in the law itself.

In short, Title IX is not enforced and discrimination in educational facilities remains widespread. Not only does this violate the right of equal access in education generally, but also undermines several specific provisions of the Helsinki Accords. For instance, international sports exchanges and competitions are encouraged by the Final Act to expand international cooperation and contact.[19] Yet American women and girls are unable to participate fully in these exchanges while Title IX remains unenforced and male athletic programs receive a disproportionate share of funding and attention. Full participation in cultural and scientific exchanges are similarly curtailed by the federal government's failure to enforce Title IX.

This brief statement can only highlight some of the areas in which the United States is not fulfilling its part of the Helsinki bargain. Violations are found in other areas as well. For example, in employment, where federal anti-discrimination laws have been inadequate to remedy the persistent -- indeed growing -- gap between women and men's earnings. Women and men are not treated equally for work of equal value;[20] job traditionally performed by women consistently are accorded less status and lower pay.

But perhaps the most insidious example of this country's non-compliance with its international human rights commitments is that the Equal Rights Amendment still has not been added to our federal constitution. The Universal Declaration proclaims

that all are entitled without any discrimination to equal protection of the law, and the Declaration on the Elimination of Discrimination against Women expressly calls for embodying the principle of equality of rights in each national constitution.[21] Yet more than 75 years after the ERA was first proposed, the constitutional embodiment of this principle still eludes us. Until the ERA is ratified, the United States will fail to guarantee the principle of equality before the law and continue to fall grievously short of satisfying the human rights mandate of the Helsinki Accords.

Footnotes

1. Principle VII.

2. Principle VII, ¶ 8.

3. The United States voted for the adoption of the Universal Declaration of Human Rights (hereinafter, the "Universal Declaration") in General Assembly of the United Nations, December 10, 1948. The Declaration on the Elimination of Discrimination against Women (hereinafter, the "Declaration on Discrimination") was unanimously adopted (the United States voting) by the General Assembly of the United Nations, November 7, 1967.

4. Article 2, Universal Declaration.

5. Article 7, Universal Declaration.

6. Article 16(1), Universal Declaration.

7. Article 9, Declaration on Discrimination. See also, Article 26, Universal Declaration.

8. Article 10(b), Declaration on Discrimination.

9. See, e.g., Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice, Interim Report to the President (Oct. 1978); U.S. Civil Rights Commission, Statement on the Equal Rights Amendment (1978).

10. Article 16(3), Universal Declaration.

11. Article 16(1), Universal Declaration, quoted above.

12. 42 U.S.C. § 607.

13. Califano v. Westcott, ___ F. Supp. ___ (D. Mass. 1978), prob. juris. noted, 47 U.S.L.W. 3408 (1978).

14. Ironically, the Justice Department's own Task Force on Sex Discrimination has described this provision as "overtly and substantively discriminat(ing) against women." See Interim Report, supra, at 155.

15. See consent order in Adams v. Califano, No. 3095-70 and WEAL v. Califano, No. 74-1720 (D.D.C. Dec. 29, 1977).

16. See National Advisory Council on Women's Educational Programs, The Unenforced Law: Title IX Activity by Federal Agencies Other than HEW (1978).

17. 43 Federal Register 58076 (December 11, 1978).

18. 43 Federal Register 58070-58075 (December 11, 1978).

19. See, e.g., Co-Operation in Humanitarian and Other Fields, Sec. 1(g), Helsinki Final Act.

20. This directly contravenes Article 10(b), Declaration on Discrimination, quoted above.

21. Article 2, Declaration on Discrimination.

Commissioner BUCHANAN. The Commission stands adjourned until 9:30 a.m. in the morning.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

IMPLEMENTATION OF THE HELSINKI ACCORDS: U.S. COMPLIANCE: HUMAN RIGHTS

WEDNESDAY, APRIL 4, 1979

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,
Washington, D.C.

The Commission met, pursuant to notice, at 9:30 a.m., in room 2200, Rayburn House Office Building, Hon. Dante B. Fascell, chairman, presiding.

In attendance: Commissioners Fascell, Yates, Bingham, and Buchanan.

Also in attendance: Mark Schneider, Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs, representing Commissioner Derian; R. Spencer Oliver, Commission Staff Director and Counsel; Guy Coriden, Commission Deputy Staff Director.

OPENING STATEMENT OF CHAIRMAN FASCELL

Chairman FASCELL. The Commission will come to order. This morning, we resume our hearings on U.S. Domestic Compliance with the Helsinki Final Act in the area of human rights.

Yesterday, we heard testimony from witnesses of the Department of Health, Education, and Welfare and the U.S. Commission on Civil Rights. In addition, we were privileged to hear statements from and ask questions of officials of Helsinki Watch, a private Helsinki monitoring group based in New York.

Representatives of civil rights groups associated with Helsinki Watch also provided useful testimony for our hearings.

Today, we continue our examination of the U.S. human rights record under the Helsinki accords with another distinguished group of witnesses from the Government and the private sphere.

We are fortunate to have with us today from the Government side the Secretary of Labor, Ray Marshall; Special Assistant to the President, Sarah Weddington; and Deputy Assistant Attorney General for Civil Rights, John Huerta.

The private sector will be represented by the Washington Helsinki Watch Committee for the United States and a number of constituent civil rights organizations.

Yesterday, we had some testimony which I believe aptly sums up one of the main purposes of these hearings, and I want to quote it. Robert Bernstein, Chairman of the Helsinki Watch, said yesterday:

> There can be no question that our willingness to entertain criticism of our country is one our great strengths and a source of national pride. In fact, I know of no other country whose government is holding hearings such as these and providing its citizens with the information that is indispensable for effective monitoring of Helsinki and of the human rights situation, in general.

I fully agree with that assessment and I feel certain that these hearings and the comprehensive report on domestic compliance that the Commission will issue later this year will constitute an unprecedented development in the CSCE process.

This is the first time that any of the 35 Helsinki states has taken a thorough objective look at its own performance record, taking into account criticism by other CSCE signatories and private domestic monitoring groups.

Therefore, we believe that these hearings will make a unique contribution to the accomplishment of the aims of the Final Act, and we invite the governments of the other CSCE countries to give their citizens the same opportunity, the same right to be heard and have their views taken into account.

I am pleased and privileged to call our first witness this morning, Sarah Weddington, Special Assistant to the President for Women's Affairs, formerly General Counsel for the Department of Agriculture. Ms. Weddington.

I know you have a very thorough, extensive and well prepared statement.

Ms. WEDDINGTON. I do not intend to read it, Mr. Chairman.

Chairman FASCELL. Without objection, we will include it in the record in its entirety and you may proceed as you desire. [See p. 179.]

Ms. WEDDINGTON. Thank you.

REMARKS OF SARAH WEDDINGTON, SPECIAL ASSISTANT TO THE PRESIDENT

Ms. WEDDINGTON. Mr. Chairman and members, I simply want to express appreciation for your invitation to participate and especially your letter of invitation, which does point out that I have not been put under oath and will be allowed to answer questions at my discretion.

Chairman FASCELL. We certainly appreciate your cooperating with the Commission. We understand your position and I assure you that we will respect your wishes.

Ms. WEDDINGTON. It is a pleasure to appear before the Commission. I first recognized the importance of this Commission's work in looking at the principle that equality and human rights had an essential component that applies to women in this country.

I have submitted a lengthy statement, which you have referred to, and rather than going through it, I would simply like to summarize its contents. Its content points out that there have been a number of things happening since the 1975 Helsinki accords, not only through the United Nations recognizing the importance of the U.N. Decade for Women, the 1975 Mexico Conference, and our preparations for a 1980 mid-decade conference in Copenhagen, but also in this country we now have a number of different elements within the Government that are trying to address these same issues.

The National Advisory Committee for Women, for example, is one which the President appointed to be composed of citizens to look at these issues. Within the Government, we have not only the Interdepartmental Task Force on Women, which I chair, but a

number of other Government entities which I have included in a list at the back of the testimony.

There certainly has been a great deal of progress in these areas, but as is true of all progress, there is also much that remains to be done. At this particular time in the history of our Government, I think we have to recognize that governmental resources are limited, and, therefore, that the ideal solutions to all problems are not possible immediately. And, while progress is sometimes somewhat slower than we would hope, the road to progress is an important one to travel down.

In the White House, we have chosen as our central theme "choice as it affects women." We are trying to help make options and choices of life roles available to women—the choice of being wife and mother and being honored and respected and not penalized for that choice; the option of combining family and work outside the home; and the option of emphasizing professional aspects of one's life.

And as we look at Governmental actions, we are trying to conscientiously see that all of those choices be made available through a variety of ways. Now, certainly, there are challenges even within that. Social security, as has been pointed out, is a major problem for many women regardless of their choice.

At this time, HEW, through the Social Security Administration, has been conducting a very thorough investigation of the problems in social security; has made some recommendations, including one that social security earning records of married couples be credited, half to the husband and half to the wife. This proposal certainly would have a great impact on the social security system, so there are likely to be hearings and further consideration. My office is very involved in looking at those issues and proposals.

The issue of domestic violence is one that affects more and more women. I visited with the President as recently as Wednesday about the possibility of a memorandum which would help coordinate all of the various activities of Government on domestic violence. There are 10 agencies currently involved in that work.

In the employment area, Congress, last session, passed bills dealing with pregnancy disability in the private sector and with part-time and flexi-time employment in the Federal sector.

We have also looked at appointments at the highest levels. Certainly the President has been most active in encouraging the Congress to include that in the selection process of women.

It does appear at this point that when the President took office there was only one woman sitting in a circuit Federal bench and only one other in the history of the country. Within a very few months we could have at least 1 woman on at least 8 of the 11 circuits and perhaps 2 women on one or two of the circuits. At the district court level, last year we had 10 women sitting on district courts. We feel that we will at least double that number and perhaps be slightly above that. There has never been a woman on the Supreme Court. While the President is certainly not in a position to make a commitment, he has discussed with me and others the possibility of an appointment of a woman should there be a vacancy during his term. I think he would very much like to

appoint a woman. So there are many things in a positive sense that we are trying to do.

As a final remark, I think that passage of the ERA is paramount, primarily because it would put within our own national Constitution the kind of principle of treating people based on their merits and not based on whether they are male or female—a principle that I think this country does agree with, in the majority of its citizens and in the majority of its States. It simply has not yet been reflected in our Constitution.

The President, in his State of the Union message, commended to Congress the need for the Equal Rights Amendment to be adopted by the States and gave a word of appreciation for Congress support in that regard.

So I come to simply tell you that I think there has been progress; part of it is outlined in my statement. I think there is much yet to be done, also partially outlined in my statement.

We in the White House, working in cooperation with Congress, the members of this Commission, and the people of this country, are determined to help in making that progress and the principles of the Helsinki accord a reality as they affect women.

[Ms. Weddington's prepared statement follows:]

STATEMENT OF MS. SARAH WEDDINGTON, SPECIAL ASSISTANT TO THE PRESIDENT

I. INTRODUCTION

Mr. Chairman, members of the Commission, I am pleased to be here today to participate in your review of the United States' efforts to implement the Final Act of the Conference on Security and Cooperation in Europe. I am delighted that the Commission recognizes the importance of equality and choice for women as an essential part of the United States' commitment to promote the effective exercise of human rights.

Today I would like to discuss our progress in providing equality and choice for women, and suggest some directions in which we need to go. My focus will be on the role of the Federal government, but the Commission should recognize that because of limited resources, the Federal Government cannot effect change without the help of the private sector. I hope that in the years ahead, the Federal Government and private citizens and industry will work together towards freedom of choice both for women and for men.

Let me start with a brief review of the increasing attention that issues affecting women are receiving internationally and in the United States. Then, I will turn to the underlying causes of the changes in women's roles that we are seeing in the United States, and to a discussion of specific policy issues.

Since the Helsinki accords, human rights issues have received much attention. For instance, the United Nations undertook a major effort to address important human rights issues. As part of that effort, 1975 was designated International Women's Year. The

United States not only sent delegates to the International Conference on Women held in Mexico City in 1975, but also established the National Commission on the Observation of International Women's Year and the Interdepartmental Task Force on International Women's Year.

The Commission, a public body, developed a major research document on the status of American women entitled To Form A More Perfect Union. This document pointed out many of the ways in which women in our country were being denied freedom of choice and equality. The Task Force, a governmental body, analyzed the effect of government programs and policies on different groups of women and recommended modifications.

At the end of 1975, the Congress showed its support for American women by directing that the National Commission convene a National Women's Conference to develop a Plan of Action to promote and effectuate equality. As you know, the conference was held in Houston in 1977 and 26 planks were adopted as the National Plan of Action. Many of the recommendations made under each of these planks have been implemented. However, in recognition of how much work remains to be done, the U.N. has designated 1975-1985 as International Women's Decade. Through the State Department, we are now preparing for the Mid-Decade Conference on Women, scheduled for Summer 1980, to evaluate the progress which has been made since 1975.

Another international body, The Organization In Economic Cooperation and Development (OECD), has also focused on issues

affecting women. In 1973, the OECD convened a conference in Washington, D.C. to address issues concerning the employment of women. Recently, the OECD's Working Party on the Role of Women in the Economy issued its final report. In addition, the OECD decided to extend the mandate of this Working Party and convene another OECD conference on this subject in early 1980.

The Carter Administration spearheaded the successful effort to convene this High Level Conference on the Employment of Women. The specific topics to be addressed include:

- 0 differential impacts of economic recession on women, men, and youth;
- 0 the extent and causes of segregation of women into a limited member of occupations; and
- 0 the transition of young women from school to work, including how well their skills match those needed in the labor market.

President Carter has made further commitments to promote full equality and choice for American women. In 1978, the President signed an Executive Order creating the National Advisory Committee for Women, a group drawn from all sectors of private life, to advise him on women's concerns, and creating the Interdepartmental Task Force on Women, a governmental body to promote full equality for women in all federal programs and policies. At the President's request, I chair the latter. The membership of the Task Force is drawn from both the policy and staff levels of major departments and agencies of the Federal government. Over time the

Task Force will work on a variety of issues. However, our initial emphasis is on economic issues, specifically:

- the effects of inflation, and of the inflation control program, on women;
- the provision of retirement income, welfare benefits, and health insurance for women under different circumstances;
- issues in private employment, including access to educational opportunities, child care, and non-traditional jobs;
- Federal tax treatment of the family;
- coordination and monitoring of efforts to implement International Women's Year recommendations;
- Federal statistics and regulations affecting women; and
- issues in Federal employment of women.

We feel that, with the commitment of the President and the Task Force members, we can be effective in fulfilling our mandate to promote full equality for American women.

The Carter Administration has also created several other Task Forces within the Federal Government to focus on specific women's issues, and a list of these is attached. These groups are performing valuable policy guidance. For instance, the Justice Department's Task Force on Sex Discrimination is responsible for examining all Federal statutes, policies, programs, and regulations regarding sex discrimination. A Task Force with the Department of Health, Education and Welfare recently released a report

entitled "Social Security and the Changing Roles of Men and Women." This document points out, as I will mention later in my remarks, the desperate need for change in our social security system and makes two excellent suggestions for methods of implementing change. The Interagency Task Force on Women Business Owners developed a report called The Bottom Line: Unequal Enterprise in America. This report, in turn, led to the development of a proposed executive order to ensure the equal participation of women owned businesses in our economy. The Executive Order is under review at the moment and should be issued in the near future.

The level of activity of these Task Forces, the United Nations, and many groups within the private sector indicates that we are now at a point when womens' issues are receiving the attention they deserve. Much of this attention is due to dramatic changes that have occurred in the social and demographic characteristics of the American population. Before discussing specific policy areas, I would like to describe some of these changes.

II. THE CHANGING STATUS OF WOMEN

Federal and private groups studying women have documented the changing role and status of women in our society. The work of these groups has shown that increases in life expectancy, reductions in family size, a high divorce rate, and increases in the number of women in the labor force have converged to signifi-

cantly alter our society and to open new choices to both women and men.

Due to increased life expectancy, women can now expect to spend many years alone after their husbands die. White women now live 10 years longer, on average, than in the 1930's; black women, 16 years longer. By comparison, male life expectancy has increased only 5 years for whites and 10 years for blacks.

While life expectancy has increased, the size of the average family and the age by which most women complete their childbearing has decreased. While family size grew somewhat through the 1950's, it has steadily declined in the last 10 years. In addition, women today are likely to have their last child while in their early thirties; whereas, in the 1930's and 40's, significant numbers of women continued having children in their late thirties and early forties.

As you know, the divorce rate has also risen rapidly. It is expected that between 30 and 40 percent of individuals now marrying for the first time will eventually divorce. Interestingly, most divorced individuals remarry, but divorced women remarry less frequently than divorced men. As a result, the number of families headed by women has increased -- female-headed households have risen from 4 percent in 1930 to over 10 percent of all households today.

All of these factors have increased the need and the opportunity for women to work outside the home. Female participation in the labor force has been rising steadily and is likely

to continue to increase throughout the next decade. For example, thirty years ago, 35 percent of adult women worked outside the home. Today that number has risen to 56 percent. During the coming decade, the number is expected to rise to 67 percent. Thus, two-thirds of all women between the ages of 20 and 64 will be in the labor force at any one time. It is estimated that 90 percent of today's women will be employed at some time in their lives.

The most dramatic increase in labor force participation has occurred among women with young children. In 1948, only 11 percent of married women living with their husbands, with children under six were in the labor force. In 1978, the number had risen to 42 percent. By 1990, it is expected to rise to 56 percent.

These changes in the role of women in society have created major problems, including:

- 0 institutional impediments facing women who combine both family and career responsibilities, and
- 0 limited options for those women who have chosen to focus on family responsibilities and who later find themselves displaced by divorce or widowhood.

The key here is the need to provide choice for all women without social, legal or economic hindrance. Choice is the basis of the freedom this commission is trying to promote. Our social institutions must respond adequately to all women --

those who choose the responsibilities of homemaking, those who choose a career, and those who choose to combine homemaking with a career. This theme of providing choice will reappear throughout the remainder of my statement -- in my discussions of both specific policy areas and institutions that need modification in light of our changing society.

III. SPECIFIC POLICY AREAS

Since many women are now, either by necessity or choice, actively seeking paid employment, we need to work toward assuring women equality in the labor market. Such equality involves many different factors: access to desirable, well-paying jobs; equal training and educational opportunities; and freedom to combine work with family responsibilities. I will now discuss each of these factors.

Access to Jobs -- Employment Increases

During the Carter Administration, unemployment has already dropped from 8 percent to 5.6 percent. Because of the large number of women entering or reentering the work force, women have been among the largest beneficiaries of this improved job market. Adult female employment has increased by 3.5 million, or 11 percent, since 1976. The Administration is working towards reducing the unemployment rate still further. Last year, the President supported and signed into law the Humphrey-Hawkins bill, which makes a 4 percent unemployment rate our national goal.

Access to Jobs -- Federal Employment

Giving women access to the highest level of federal government jobs is important for three reasons:

- to give women the opportunity to serve their government in an important, active way;
- to insure that women's issues are adequately addressed at the highest policy levels;

- to insure that the government hires the most qualified candidates for policymaking positions, without regard to sex, race or other irrelevant factors.

More women than ever before are now serving as Federal judges, and in appointed and high level Federal government jobs. One hundred and four women are currently serving in appointed positions, more than at any other time in our history. For example, of the five women cabinet secretaries in our history, two were appointed by President Carter in 1977: Juanita Kreps, Secretary of Commerce and Patricia Roberts Harris, Secretary of Housing and Urban Development. President Carter also appointed the first women to serve as major regulators of the banking industry: Nancy Teeters of the Board of Governors of the Federal Reserve System and Anita Miller of the Federal Home Loan Bank Board. In one regulatory agency, the Consumer Product Safety Commission, both the chair and two of the four commissioners are women. Further, seven of the fourteen Federal agency general counsels appointed in 1977 were women. Finally, of the 12 new inspector general positions now being filled in Cabinet departments, three will be held by women.

A determined effort is being made by the Carter Administration to bring more women to the Federal judiciary. Qualified candidates are being recommended to fill the vacancies caused in large measure by the enactment of the Omnibus Judgeship Act, which has increased the size of the Federal bench by 152 seats or 25 percent. Of the 19 persons recommended for Federal judgeships to the Senate by the President to date, five are women.

Two Executive Orders issued by the President will insure that candidates are selected for the Federal judiciary on the basis of merit, and should help to bring more women to the bench.

While the number of women appointed to high level government jobs and judgeships has increased, we must continue to give women the opportunity to compete for these sought after jobs. One of my responsibilities as Special Assistant to the President is to continually seek qualified women to fill judgeship openings and vacancies in Federal policy making positions as they occur.

Access to Jobs -- Elective Office

Finally, perhaps the most work remains to be done in the area of access to elective office. Although women compose 51.3 percent of our population, they represent only 10 percent of this country's elected officials. In the United States Congress, the ratio is an even more disappointing 30 to 1. Of the 435 members of the House of Representatives in the 96th Congress, only 16 are women -- precisely the same number found in this august body as many as 40 years ago. Before 1979, every woman who had served in the United States Senate had begun her Congressional career with appointment by virtue of widowhood -- named to fill the seat of a deceased spouse.

The picture on the state level is somewhat more encouraging. Women account for only 10.2 percent of all state legislators. However, while this figure also does not correspond to the representation of women in the population at large, it is nonetheless double the percentage in 1969.

While these statistics and comparisons may paint a somewhat gloomy picture of the situation currently facing women political

aspirants, I do not wish to be overly pessimistic. Women have made progress in the political arena, especially since 1975. The political establishment of this country has become more sensitive to the need to include women more fully in the political process. In fact, I would say the establishment has begun to recognize the significant contribution women can make to effecting better government.

As perhaps the most obvious example of this increased awareness, I would like to mention the Democratic Party rule enacted in 1976, that one-half of the delegates to the party's 1980 national convention be women. This was indeed a major step toward insuring that women's voices are heard in the political decision making process.

Actions like this one are beginning to bear fruit. As I mentioned earlier, the representation of women in our state legislatures has fully doubled in the past decade. We now have two women governors, six lieutenant governors, ten secretaries of state and six state treasurers. Women's greatest political gains have been at the state level and this, after all, is the level from which tomorrow's national leaders will be drawn.

Of course, any discussion of women's progress in the fight for elected office must include mention of Nancy Landon Kassenbaum's recent election to the United States Senate. Her victory has made her the first female United States Senator who did not begin her Congressional life as a widow.

Access to Jobs -- Entrepreneurial Activities

If women are to have the choice and opportunity to participate fully in modern society, it is important that they have access to credit, either for business or for personal use. The passage of the Equal Credit Opportunity Act (ECOA) in 1972 went a long way towards eliminating sex discrimination in the granting of credit. However, not all women are aware of all of their rights under this important Act. Therefore, the Department of Housing and Urban Development has recently developed a large scale program to educate women about their credit rights. Farmer's Home Administration (FmHA) has also recently set aside $50 million in loans for women and minorities.

However, the Equal Credit Opportunity Act has not helped women who wanted to undertake small, entrepreneurial efforts. The original act exempts business loans of under $25,000 from coverage. The Federal Reserve Board is currently amending Regulation B to extend the protection of the ECOA to these small business loans.

On August 4, 1977 the Task Force on Women Business Owners began its work and issued a final report, The Bottom Line: Unequal Enterprise In America on June 28, 1978. Among the many problems which women entrepreneurs face are lack of adequate capital, lack of marketing opportunities, and lack of management and technical skills. The task force report concluded that these deficiencies resulted at least in part from discriminatory practices and recommended the establishment of an Interagency Committee on Women's Business Enterprise to implement, coordinate, and monitor efforts on behalf of women's business by the Federal government.

To recognize the vital and increasing role women business owners can play in the American economy as well as the obstacles to their becoming successful entrepreneurs, a Federal initiative in the area of women's business enterprise is expected to be announced soon. It is recognized that the nation must now encourage women to become business owners, mitigate conditions and practices that place women at a competitive disadvantage, and increase and improve Federal assistance to women entrepreneurs.

Access to Jobs -- Enforcement of Equal Opportunity Laws

The Federal government has attempted to quarantee women freedom of choice through equal access to the job market by passing many laws prohibiting discrimination on the basis of sex. The Administration is now reorganizing enforcement responsibility for the Civil Rights Act of 1964, which was spread among several different agencies. Funds for overall civil rights enforcement will increase in the 1980 budget by almost $37 million.

In addition, the Equal Employment Opportunity Commission (EEOC) has been given increased funding, staffing, and responsibility. The proposed budget of $124 million for EEOC reflects an increase which will allow the agency to move ahead in the implementation of the President's reorganization of equal employment programs, and continue its already successful program to reduce its backlog.

In addition to EEOC, the Office of Federal Contract Compliance has been reorganized and granted increased authority. Increased funding for HEW's Office of Civil Rights in 1978 and 1979 allowed that office to fill 898 new positions to reduce its huge backlog.

The Administration has attempted to substantially improve the enforcement of fair housing laws by seeking cease and desist authority for the Department of Housing and Urban Development, which would allow that department to enjoin discriminatory acts and direct appropriate remedies to discrimination cases. Further, the President has proposed a $3.7 million program to provide grant assistance to states which help enforce fair housing laws.

Access to Jobs -- Occupational Segregation

Improved enforcement of discrimination laws has not meant the end of discrimination in the job market. For instance, even though Title VII of the Civil Rights Act has attempted to assure women equal access to jobs, promotions and training, and equal pay for equal work, it has not succeeded in raising the wages of women in relation to those of men. Comparing year-round, full-time workers, a woman's paycheck in 1977 was less than 60 percent the size of a man's. Women's median earnings were only $8,600 compared to $14,600 for men.

One of the reasons that the earnings gap has not been reduced by the host of Federal laws on equal employment is that women continue to be concentrated in traditionally low paying jobs such as clerical workers, sales clerks, school teachers, and waitresses. An increasing number of experts are beginning to look at ways in which women are "occupationally segregated" and to determine why this has occurred. Several determinants now attracting attention are:

- actual productivity differences which may occur when women make certain training and occupational choices or are

denied the opportunity to make other choices;

- 0 socially absorbed or imposed attitudes and preferences that are reflected in their occupational assignments;
- 0 lack of accurate information about jobs on the part of women applicants or about potential female applicants on the part of employers; and
- 0 outright discrimination in employment - the obvious, the subtle, and the elusive.

An example of the above factors is that women obtain professional training less often than men, resulting in productivity differences. Further, women may be likely to enter occupations with lower unemployment risks because they have been taught to avoid those risks. Alternatively, they may choose an occupation based upon the belief that it represents only a temporary incursion into the labor force because of a lack of information about how women's life cycle behavior has changed. Finally, women may be less likely to invest the necessary time and effort in training when past discrimination has convinced them that they will not be able to secure a job in the field.

One of our goals for the immediate future should be to find ways to move women out of these traditionally female jobs. Freedom of choice in the job market means the opportunity to make an informed choice, to make a choice based on access to good training, to make a choice without the fear of direct or indirect discrimination.

Access to Training and Education

We are now trying to insure that women have access to the educational and training opportunities necessary to widening

their employment choice. The recent passage of Title IX of the 1972 Education Amendments was designed to eliminate traditionally sex-stereotyped access to certain educational programs. Men have been discouraged from taking courses in nursing or teaching, and women discouraged from studying mathematics and science.

Title IX is designed to insure that schools and colleges supported by Federal tax dollars offer everyone -- male and female -- an equal opportunity to learn a skill, win advancement, choose a course of study, engage in sports, or receive a scholarship.

Another piece of legislation significant for educational opportunities for women is the Women's Educational Equity Act (WEEA), the purpose of which is "to provide educational equity for women in the United States." From fiscal 1976 through 1978, 237 grants and contracts, totalling $21,625 million, were awarded.

In addition, $9 million was appropriated for WEEA in 1979, and the Administration has requested $10 million for 1980. Sample activities funded under WEEA include technical assistance, the development of materials to help organizations comply with Title IX, and other educational materials on equal educational opportunity.

Women's access to vocational training has also improved in recent years. Legislation passed in the 94th Congress provides grants for support services to women who enter programs designed to prepare them for jobs traditionally limited to men. These services include counseling, job development, and job follow-up services. In addition, the law provides mechanisms to acquaint

counselors with the changing work patterns of women, ways of effectively overcoming occupational segregation, and development of improved career counseling materials.

These and other activities have provided the basic groundwork for the advancement of women into a wide range of occupations in the 1980's. However, it is not sufficient to offer young women access to fields which have traditionally been filled by men. We must actively encourage women to participate in a full range of training and study. We need to provide expanded educational counseling to open new doors to technical skills and professions that will result in higher paying jobs and more opportunity for advancement. We will never succeed in eliminating the rigid stereotyping of the labor market unless we begin to educate women about their choices. We need to push forward with strong enforcement of Title IX and to develop some innovative means of awakening both women and men to their full educational and career opportunities.

Access to Training -- CETA

We are now taking steps to help women who are displaced from their roles as homemakers by death or divorce. These women have often been afforded little assistance from our social institutions. Widows who are too young do not qualify for social security. Similarly, widowed or divorced women whose children are grown are not eligible for welfare. If these women have spent most of their lives caring for their families, they may find themselves without skills necessary to enter the labor force. While many homemakers have marketable experience as volunteer workers, employers often fail to recognize these skills. Thus, displaced homemakers operate

under the double burden of age and lack of paid work experience.

The Congress and the President recently took a major step to help displaced homemakers adjust to their changed situations and to re-enter the labor force. The Comprehensive Employment and Training Act (CETA) now includes authority to assist displaced homemakers through job training, counseling, and placement services, as well as referral to health, financial, or legal services in their community.

However, one Federal program is not sufficient to help these women successfully enter the work force. Not only must we work with private employers to overcome the prejudices against sex, age, and unpaid experience, but we also must develop additional training programs, counseling assistance, and support services, for the displaced homemaker.

Freedom to Combine Work and Family -- Part-time and Flexible Time Jobs

Women who combine career and family responsibilities often are severely limited in their job options. Those who can only work part-time or must have flexible working schedules in order to care for their children often are forced into low paying jobs and have little opportunity for career advancement. Others are at times prevented from accepting full-time employment because this prevents them from meeting their family responsibilities.

The Administration supported the recent passage by Congress of two bills which give these women greater rights and employment opportunities. The Part-time Employment Act establishes uniform Federal policy on part-time employment also requires agencies to

establish part-time career and employment programs. Part-time employment is especially helpful to women with young families. It is important to insure not only that these women have the flexibility to allow them to carry out their family responsibilities, but also that they receive credit for their on-the-job accomplishments and are provided good career development opportunities.

Similarly, the Flexible Schedule for Federal Employees Act authorizes the Civil Service Commission to conduct a three year experiment in the use of flexible and compressed-work schedules.

Both of these bills provide assurances of greater flexibility for working parents. However, additional efforts may be needed to achieve equal pay for part-time employees doing the same tasks as full-time employees and to offer equal career development opportunities to part-time employees. In other words, progress may still be needed to eliminate any attitudes that part-time and flexible-time workers are not as valuable as full-time workers, or that they are working only for short-term financial reasons, rather than for long-term career reasons.

Freedom to Combine Work and Family -- Pregnancy Disability Protection

Many women who are trying to combine work and family have found it difficult to obtain a job or to claim the employment-related benefits to which they are entitled because of pregnancy. To end this sort of discrimination, the Congress last session enacted the Pregnancy Disability Benefits Act. This Act declares that discrimination based on pregnancy, childbirth, or related

medical conditions is illegal in all aspects of employment, including discrimination in hiring, promotion, seniority rights, and fringe benefit programs such as disability plans.

Again, while this legislation is a step towards treating pregnant women as equal members of the labor force, we may still need to examine our attitudes to ensure that pregnant workers are being given the freedom to choose the type of work they desire and are capable of doing.

Freedom to Combine Work and Family -- Day-Care Options

One of the chief factors affecting women's choice to be in the job market is the ability to find adequate, low-cost day-care facilities for their children. At present, there are 6.2 million preschool children whose mothers work; by 1990, that figure will increase to over 10 million.

We have made some progress towards helping working parents provide day care for their children. The Federal government now provides day-care assistance through a variety of programs. The Tile II Program offers child-care services to low and middle-income families. The Work Incentive Program provides support services for welfare mothers receiving Aid to Families with Dependent Children (AFDC) benefits who need child care in order to work. In addition, AFDC recipients can presently deduct child-care expenses from income for purposes of determining welfare benefits. Child-care services are offered by many states through their Federally-assisted child-welfare programs. Finally, many working parents may claim a tax credit for child-care expenses when filing their Federal income tax forms.

However, statistics show that these programs only provide a small fraction of all child care. Three-quarters of preschool children with mothers in the work force are cared for by relatives, 20 percent by non-relatives, and the rest by day-care centers.

It is clear that the continued movement of women into the labor force simultaneously will increase the demand for child care and reduce the current pool of providers of low-cost care. By 1990, the need for caretakers could be as much as 60 percent more than are presently providing care. The result is likely to be an increased reliance on formal day-care facilities. The capacity of such facilities to provide quality child care at low cost will inevitably influence the decision of some mothers to work. Both the Federal government and private employers must start to look for ways of providing quality child care at a reasonable cost if women are truly to have equal access to the job market and the choice of where and when to work.

In this section, we have discussed many aspects of women's employment and policies designed to lead to full equality for women. Yet, many women prefer to remain at home as full-time homemakers for all or part of their lives. In order to accomodate both of these choices some of our social institutions need modification, some problems need resolution, and the right of choice must be protected. In the next section I will discuss two of those institutions -- the Federal income tax system and the Social Security system -- as well as the problem of domestic violence and the need to safeguard the right of choice through passage of the Equal Rights Amendment.

IV. CHANGING SOCIAL INSTITUTIONS

The Federal Income Tax System

An important economic issue affecting women is the Federal tax system. Since 1975, many changes have taken place which improve its treatment of women. Significant legislation easing the burden on working wives was enacted as part of the Tax Reform Act of 1976. Most important was the credit allowed for child care expenses. There was also a provision giving a tax incentive to businesses to make capital investments in child care facilities.

There were also several changes brought about the by Tax Reform Act of 1978. Of those affecting women, the most important was in the estate tax treatment of family-owned farms and businesses. A wife now can earn credit for up to half-ownership of the business or farm by materially participating in its operation. This amount is then excluded from her husband's estate. Several other changes in the estate and gift tax laws (i.e., greater marital deduction for purpose of estate tax calculation, greater lifetime gifts exclusion for gifts between spouses, and election to pay gift tax on property when creating joint ownership), allow for greater flexibility in the allocation of property between spouses.

However, many further changes are necessary in our tax system before we achieve a tax system that does not influence women's decisions to participate in the labor force, but is neutral in regard to choices made by married women to become

full-time homemakers, work part-time, or pursue full time careers outside the home.

Presently, the tax system is based on the assumption that all married couples with the same income should be treated alike. At the moment, a couple where each spouse earns $10,000 a year will be treated the same as a couple where only the husband is employed and earns $20,000 a year. However, due to differences in tax rates between single and married taxpayers, when two single people earning $10,000 a year marry, they will pay more in tax, about $460 in 1979, than they did before they married. This phenomenon is commonly known as the "marriage penalty".

The same feature of the tax system which causes two wage earners to pay more in taxes when they marry than when they were single also creates unequal treatment of families in which both spouses contribute equally to family earnings. Many couples now benefit as a result of their ability to split income through joint filing. Income splitting generally benefits those families where one spouse earns more than the other, with greatest benefits received by couples in which only one spouse is employed.

For this reason, our current tax system strongly encourages one spouse, generally the wife, to contribute to her family's well-being by remaining a full-time homemaker rather than by being employed outside the home. Despite this factor, however, women are greatly expanding their participation in the labor force. Hence, the number of couples who benefit from joint filing is decining and the number subject to the "marriage penalty" is increasing.

Because the changing economic behavior of married women is shifting the earnings distribution of married couples, we can expect increasing pressure for modification of the tax treatment of such couples. Three major policy responses have been suggested to alter relative tax burdens:

- maintain joint taxation of married couples but allow some portion of the second earner's income to tax-free;
- require all individuals, regardless of marital status, to file their own tax returns based on their own income; and
- allow married couples to choose between joint and individual filing, depending on which option is more advantageous in their circumstances.

Our goal for the 1980's will be to seek a tax system that does not influence women's decision's to participate in paid employment or to be full-time homemakers but is neutral in this regard.

The Social Security System

Like the tax system, the social security system was designed with the traditional family in mind - a breadwinner husband and a dependent wife and children. Therefore, it is not particularly well suited to respond to the needs of married women who devote part of their lives to family responsibilities and part of their lives to paid employment. Further, those women who focus primarily on homemaking during part or all of their lives may lack adequate protection if their marriages end due to divorce.

Under the present system, families where the wives are not employed receive a larger return for their social security tax dollars than do unmarried workers and couples where both husband and wife are employed. Upon retirement, some women discover that the benefits to which they are entitled as workers are actually less than the benefits to which they are entitled as dependent spouses. Therefore, they receive benefits as dependents to the degree that they exceed their benefits as workers.

For married women who are employed, social security tax payments made during their working years may have no impact on retirement benefits when compared with what they would have received had they remained at home and paid no social security taxes. Further, the survivor of a couple where both spouses worked will probably receive lower benefits than the survivor of a couple where only one spouse worked and earned the same amount.

Another problem concerns the increasing number of women who have chosen to focus on family responsibilities for all or part of their lives. Questions are being raised about the adequacy of their social security benefits. Women who are homemakers have no social security coverage in their own rights and may find themselves ineligible for any dependents' benefits should they be displaced by divorce.

We have recently made a small stride forward by reducing from 20 to 10 the number of years which divorced women must have been married in order to be eligible for dependents' benefits. Likewise, we recently eliminated the provision which had discouraged widows.

from remarrying by permitting them to retain their benefits as widows after remarriage.

Despite these improvements, a continuing problem for displaced homemakers, even those who later return to the work force, is the adequacy of the benefits they eventually receive. Benefits received by divorced homemakers who do not remarry tend to be low, especially while their ex-husbands are alive. In addition, no distinction is made between homemakers whose marriages last most of their lives and those who divorce at a younger age. Homemakers divorced late in life are able to work in paid employment for only a limited number of years. Because the system bases pensions on earnings averaged over an extended period, those women have difficulty generating adequate social security benefits as workers in their own right. Furthermore, the small benefits a divorced homemaker may be entitled to as a retired worker cannot be combined with her benefits as a divorced wife; she will receive only the higher of the two amounts. Finally, if she elects to take the benefits based on her husband's record, she will have to wait until her husband decides to retire before she can collect her benefits. Even if he goes on working past 65, she must wait until he retires.

Many ways of resolving these problems have recently been under study. One approach which has been suggested with respect to the problems of homemakers is to offer credits to homemakers for their work in the home. Under another approach, earnings sharing, spouses would pool social security credits and share them equally during years of marriage. In both cases, all dependents'

benefits for spouses would be eliminated and spouses would be entitled to benefits in their own rights. A third approach would also eliminate derived benefits but would substitute nothing in their place. That is, individuals would receive benefits based only on their own earnings. Supporters of all these alternatives generally combine them with a long phase-in period to avoid dislocations in older persons' financial planning for retirement and to provide a period in which younger persons could adjust their employment behavior if they so desired.

The social security system needs to take the changing role of American women into account. Women must be given the freedom to choose how they live, without economic and social restrictions. The social security system should be used to enhance women's choices rather then reduce them.

Domestic Violence

In our effort to provide women with freedom of choice within our social institutions, we also must acknowledge and confront difficult problems within those institutions. One area of serious concern to women is domestic violence.

Every year, three to six million severe acts of violence occur against women in their own homes. Victims from every race and socio-economic level are often seriously injured. A substantial majority of all domestic violence victims require hospitalization. in 1975, one-fourth of all murders in this country occurred within families. Moreover, family violence continues to be a major source of death or injury to our police officers.

The Administration is committed to helping those who are victims of domestic violence and, ultimately, working to end this problem. Many agencies are now providing some form of assistance to battered spouses, including: ACTION, the Community Services Administration, the Legal Services Corporation, and the Departments of Justice, Health, Education and Welfare; Labor; Housing and Urban Development; and Agriculture. However, these efforts could be greatly improved if they were coordinated. A way of providing an integrated package of services for domestic violence victims is needed if we are to directly and comprehensively address their needs.

The Equal Rights Amendment

Certainly another area in which action is desperately needed is the passage of the Equal Rights Amendment. This obviously is a goal which is directly related to the directive of the Helsinki Final Act, "to respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion." Although many Federal laws have been passed which prohibit discrimination on the basis of sex, we must remember that the ERA is still essential if equal treatment of women is to be fully achieved.

Current Federal laws have not been comprehensively revised to achieve complete equality. As I have noted in my discussion of different topics, many problems remain. In addition, some legal areas, such as state property laws, and economic entities, such as businesses which do not engage in interstate commerce, are not subject to Federal law. In cases such as these, Federal equal opportunity laws are ineffective.

Let me elaborate on both of these points. In many states, a woman loses property rights when she marries. In some states, a husband is given a right to manage and control marital property, even if the wife paid for the property. In one state, a couple's home is considered to belong to the husband, even if she paid for it. These laws and others like them not only directly affect women's legal rights to property, but also interact with Federal laws designed to give women equal legal protection. For instance, although the Federal Equal Credit Opportunity Act prohibits a creditor from discriminating against anyone on the basis of sex in granting credit, nothing prohibits the creditor from considering state property laws in determining creditworthiness. The ERA would require a reevalutation of these property laws and consequently affect related areas as well.

Similarly, the Equal Employment Opportunity Act prohibits employers from discriminating in hiring on the basis of sex. However, this law does not apply to those businesses with under 25 employees, to businesses which do not engage in interstate commerce, or, for that matter, to the Congress of the United States. The ERA would extend anti-discrimination tax protection to those not presently covered.

The passage of the ERA is a goal which I know is an active concern of this Commission. As President Carter has stated, the United States should be "a beacon light for those who believe in human rights all over the globe." Our failure to pass the Equal Rights Amendment, a noble and necessary change in our Constitution, hurts us as we try to set a standard of commitment to human rights throughout the world."

V. CONCLUSION

The women and men of the United States continue to be concerned about equality and freedom of choice for women. As we move toward the 1980 Mid-decade Conference on Women, the Task Force which I chair and many other groups will be examining the employment, education, and health issues which the United Nations has selected as the main topics for consideration at the Conference. The continuing attention to women's issues and the progress which has already been made on them are heartening. As a member of the Administration, I feel particularly pleased to be a part of the growing voice which American women have in our Federal decisionmaking process. And, while I am a conduit to the President for women's concerns, I am certainly not alone in my efforts.

There are now many avenues for women to reach top policymakers. For instance, the Task Forces I mentioned at the beginning of my statement bring together men and women, often from many different agencies, to focus attention on specific issues affecting women. In addition, many of the women's programs in the Federal government have been upgraded. As an example, the Women's Bureau of the Department of Labor was recently made part of the Secretary's office. In addition, the Task Force which I chair has, through its various members, access to the top levels of almost every Federal Agency and Department.

I believe these are indicators of the new importance being paid to examining the effects of various programs and policies on different groups of women. I think we can be proud of our new status and our accomplishments, and I look forward to moving closer each day toward our goal of choice and equality for all women.

QUESTIONS AND REMARKS

Chairman FASCELL. Thank you very much. What, in your judgment, is the principal area or issue affecting the equality of women in the United States today?

Ms. WEDDINGTON. I think it is twofold. I think that any time you talk about basics, certainly attitudes are very basic. We, in this country, have come a long way in terms of changing our attitudes about the appropriate roles for women.

And I think that it is important that we encourage a basic belief in choices being available to all women and in breaking down stereotypes that in the past have limited the options, both in terms of education and employment and the life roles that have been available to women.

The second, to me, has to be——

Chairman FASCELL. Well, let me just interrupt you.

Ms. WEDDINGTON. Certainly.

Chairman FASCELL. If I may—certainly the changing of attitudes is slightly possible by changing laws, but it is extremely difficult. Are we agreed on that as a general philosophy?

Ms. WEDDINGTON. Yes. I think that leadership is important though. And certainly this Commission and others can be important in the leadership.

Chairman FASCELL. Well, the President's leadership is important, too. And I am, of course, delighted to see your position as a focal point in the administration for that purpose. The thought that I had in mind is: Suppose that the state, however, made all women equal by giving all women jobs, by mandating jobs. Is that equality?

Ms. WEDDINGTON. I obviously would not favor that. And that is the entire purpose of our having adopted our theme of choices, to say that the choice of wife and mother should also be available.

Chairman FASCELL. Independence and equality, then, without a state mandate?

Ms. WEDDINGTON. I certainly would not favor a state mandate.

Chairman FASCELL. You started to get to the second point.

Ms. WEDDINGTON. The second, I think, is that of economic concerns. If you look, for example, at the status of women in this country it still is true that, while there has been progress, the median wage of full-time working women is 60 percent of that of full-time working men.

It becomes particularly crucial when you look at the increasing divorce rates. About 4 out of 10 of those currently marrying are likely to be divorced. We have had an increase in the number of families headed by women from 4 percent some years ago to 10 percent today. And that trend is increasing. The number of women going into the labor force is also increasing.

So it becomes more and more the case that women are the economic support of themselves and their families, or an important contributing economic partner in a family, and the economic impact of their wage level becomes a crucial thing that we must deal with.

It is a long-range solution, though. I think that we have, in this country, adopted equal pay for equal work. And we have strength-

ened enforcement efforts to achieve that goal. EEOC, for example, in the last budget year was given a 40-percent increase in budget and many new positions in an attempt to enforce equal employment standards, in part as to sex.

Yet women continue to go into primarily the traditionally female occupational categories. Eighty percent of women are employed in categories that are other than professional, other than managerial, other than technical. And the result of this occupational segregation is that women tend to be in the lower-paid categories.

Chairman FASCELL. Is this an enforcement problem?

Ms. WEDDINGTON. I think by and large it is not. There are some enforcement aspects that could be improved on, but I think it is a matter of education—that women, when they finish high school, often have not had the math or science education that would be necessary to go into a wide range of occupations.

In part, it has been women's thoughts of themselves as people who would most likely not be in the work force when the fact is today that 90 percent of all women will be in the work force for a fairly major portion of their lives.

And I think it is in part that the old kinds of stereotypes that limited women certainly apply to those women who previously entered the work force, and that many of the opportunities now available for the younger women were not available at a time when older women entered the work force.

Chairman FASCELL. On this administration's spending a great deal of effort in improving the rights for women, I gather from your testimony that you feel that the record has been good since 1975 in the improvements for women, particularly under this administration, and that improvements will continue but that it will be a slow process.

Ms. WEDDINGTON. And that we must look not only to Government for that progress, but we must also look to private industry and individuals.

Chairman FASCELL. Has any effort been made by any of the women's groups in this country or the administration, for that matter, to do any kind of a comparative study on the rights of women around the world?

Ms. WEDDINGTON. The administration has not done so. Of course, we are now in preparation for the 1980 Mid-decade Conference for Women which has chosen as its three themes the employment, education, and health of women around the world. This Government will be preparing our own record in those areas which will be submitted to the U.N. Commission for comparison with other groups.

Chairman FASCELL. You are very able and intelligent and articulate as a lawyer. I used to have a legal mind, but I would like to see somewhere, sometime a balance sheet. I would like to see all of the pluses and all of the minuses itemized as specifically, as reasonably and sensibly in terms of women in this country and women in other countries, in particular in major areas, but not limited to major areas.

I don't know why we couldn't reach some basic principles that would be common to all countries. It would be a very fascinating

thing to see and might put to rest a lot of arguments that are really meaningless about who is doing what to whom.

Ms. WEDDINGTON. The United Nations has recently selected a woman to chair the 1980 conference. I will be visiting with her in the future and that is one idea that I could share with her.

Chairman FASCELL. I don't know if it is practicable but it just occurred to me.

Ms. WEDDINGTON. The second thing I should point out is that we in the United States have now suggested to the OECD—the Organization for Economic Cooperation and Development—that a high level ministerial conference be held on women and employment which would be another opportunity to compare the progress and status of women in those countries on the specific issue of employment.

Chairman FASCELL. Well, I think that it would be useful. I think that it is always nice to improve and we want to improve our own position, but it is also nice to count your blessings. Mr. Bingham?

Mr. BINGHAM. Thank you, Mr. Chairman. First of all, Ms. Weddington, I would like to compliment you on this statement. I haven't had a chance to go through it, but from just the little bit that I have been looking at it I think that it is full of very interesting information and very useful documents.

I am struck by the figures on employment which I hadn't realized that in this dramatic change in employment profile in this country in terms of employment of women since 1948—of married women with families in the labor force—I am looking at this study—what—I think that this is a wonderful thing.

What strikes me is that this may affect our unemployment statistics in a way that make them look worse than perhaps they are in a comparative sense. Have you thought about that? Was this record of employment of women with families—if that presumably means that there are more women in that category who are looking for jobs and can't find them and then they count on the unemployment statistics?

Ms. WEDDINGTON. Two comments in that regard. First, in terms of the last 2 years, we have increased by about 11 percent the number of jobs held in this country by women. We have in a positive sense expanded the number of jobs available to everyone and have reduced unemployment for the population generally and also for women.

It is true that, as more people enter the labor force, there may be some impact on unemployment. We have begun to look at that a little bit in terms of other groups who, as more jobs are available, may become more active in seeking jobs.

I think that the important issue, though, is to remember that at least two-thirds of the women in the work force are working because either they are the sole support of themselves or their families or because their husbands make $10,000 or less, so that the economic necessity of most of the women working is clearly there. The proper option is not to discourage women from entering into the labor market, but rather to help provide the services and, hopefully, the jobs under the Humphrey-Hawkins bill that are necessary.

Mr. BINGHAM. Well, certainly, and I didn't mean to imply otherwise. I think it is an admirable objective to increase the number of people in the working world. I just meant that it might to some degree distort our unemployment figures when compared with earlier times——

Ms. WEDDINGTON. That is right.

Mr. BINGHAM. Or when compared with other countries. In relation to the income figures, as compared with the average income of men, how do those figures relate to the percentages of college graduates as between women and men?

Ms. WEDDINGTON. While I do not know the exact statistics, it still is true that women college graduates are substantially below the earnings of male college graduates.

There have also been several studies, even within professions—for example, the legal profession—that look at salaries approximately 5 to 10 years after graduation of men as compared to women. And even in that category, women were lower. I do not think it was by the 60 percent figure, but they were substantially lower than their male counterparts.

Mr. BINGHAM. In terms of the comparative figures for the United States and the other countries, I wonder if the U.N. Status of Women Commission doesn't produce reports of this type. Can you answer that?

Ms. WEDDINGTON. They may very well, and I am sorry that I have not seen those, though I will take it upon myself to become more familiar with them.

Mr. BINGHAM. I believe that they do. That Commission has been in business for quite some time. I think you might be interested in having a look. Let me just ask one more question.

I am curious to know, since we are looking at this from a point of view of compliance with the Helsinki Final Act, to what extent were you aware of Helsinki as a factor or as an incentive in your job before you received the invitation to testify before this Commission?

Ms. WEDDINGTON. Mr. Bingham, it happens that Mr. Oliver is a person who comes from Texas, my native State as well. And he has made me quite aware of this Commission for some time. [Laughter.]

I also very much appreciated some of the time of the staff of the Helsinki Commission in helping me analyze whether or not our consideration of the equal rights amendment might well fall within the confines of the Helsinki accords.

And I think that a very good argument can be made that it does and so have been, frankly, visiting with people around the country about that aspect of it in regard to the ERA consideration.

Mr. BINGHAM. But isn't it true that our incentive for achieving greater equality for women in every respect is something that stems from our own ideals——

Ms. WEDDINGTON. Yes.

Mr. BINGHAM. And our own—our own ideas in this country and wasn't something that started the day that the Helsinki accords were signed?

Ms. WEDDINGTON. I would agree entirely. In fact, I would think that much of the progress that we have made since the Helsinki

accords really was made possible by our momentum and the change in attitudes that have been established in this country prior to the 1975 accords.

Mr. BINGHAM. Thank you.

Chairman FASCELL. Well, I guess that we just ought to put on the record Ester Morris was the lady who gave women the right to vote the first time anywhere in the territory of Wyoming, and she was also the first female justice of the peace.

I would say that the women's movement in the United States antedates Helsinki by one heck of a long time.

Mr. Schneider.

Mr. SCHNEIDER. Thank you, Mr. Chairman. If I could, I would like to put into the record a statement for the Department with regard to these hearings.

Chairman FASCELL. Without objection, we will include the statement in the record at this point.

[Mr. Schneider's prepared statement follows:]

Statement of Mr. Mark Schneider, representative of the Assistant Secretary of State for Human Rights and Humanitarian Affairs, Ms. Patricia Derian.

THANK YOU MR. CHAIRMAN,

I AM PLEASED TO BE HERE TODAY REPRESENTING ASSISTANT SECRETARY DERIAN AND THE DEPARTMENT OF STATE. THESE HEARINGS ARE A SIGNIFICANT, TIMELY, PERHAPS EVEN OVERDUE REFLECTION OF THE UNITED STATES' TOTAL COMMITMENT TO THE HELSINKI FINAL ACT AND TO THE PROCESS SET IN MOTION FOUR YEARS AGO BY THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE.

AMERICAN DIPLOMACY HAS BEEN TIRELESS IN EMPHASIZING THAT THE 35 NATIONS OF EUROPE AND NORTH AMERICA SHOULD WORK TOGETHER TO FULFILL THE COMMITMENTS OF THE HELSINKI SUMMIT. OUR VOICE WAS PROMINENT AT BELGRADE. IT WILL BE PROMINENT AGAIN AT MADRID IN 1980 WHEN THE CSCE STATES AGAIN GATHER TO PURSUE THE HELSINKI FOLLOW-UP PROCEDURE. IN THE PERIOD BETWEEN BELGRADE AND MADRID, THE DEPARTMENT OF STATE, EFFECTIVELY ASSISTED BY THE COMMISSION, HAS BEEN ENGAGING IN WIDE-RANGING CONSULTATIONS.

HITHERTO ALMOST ALL OF THIS ACTIVITY HAS BEEN DIRECTED AT THE INTERNATIONAL ASPECTS OF THE FINAL ACT, IN PARTICULAR AT THE DISAPPOINTING LEVELS OF IMPLEMENTATION OF THE HUMAN RIGHTS AND HUMANITARIAN COOPERATION PROVISIONS ACHIEVED IN THE SOVIET UNION AND EASTERN EUROPE. THE SLOW PACE OF

IMPLEMENTATION IN THESE COUNTRIES--AND CASES OF REAL REPRESSION AGAINST INDIVIDUALS IN SOME OF THOSE COUNTRIES WHO HAVE SOUGHT ONLY TO ENCOURAGE THEIR OWN GOVERNMENT'S BETTER PERFORMANCE--ROUSES A LEGITIMATE CONCERN THAT WE MUST AND SHALL CONTINUE TO EXPRESS.

INCREASINGLY, HOWEVER, WE HAVE COME TO REALIZE THAT MORE ATTENTION MUST ALSO BE PAID TO THE UNITED STATES' OWN IMPLEMENTATION RECORD. WE ARE, OF COURSE, PROUD OF THAT RECORD. TO A CONSIDERABLE EXTENT THE FINAL ACT REFLECTS WESTERN STANDARDS. WE HAVE ACHIEVED MUCH, AND OUR RECORD IS AS GOOD AS THAT OF ANY SIGNATORY. BUT NO ONE WOULD DENY THAT MORE SHOULD BE DONE. THE FINAL ACT COMMITS US INTERNATIONALLY TO STRIVE FOR A FULLER REALIZATION OF THE IDEALS IN OUR OWN CONSTITUTION, LAWS AND TRADITIONS. BY THE NATURE OF THOSE COMMITMENTS THERE REMAINS ROOM FOR IMPROVEMENT, PERHAPS PARTICULARLY IN THE AREA OF HUMAN RIGHTS AND IN THE PROCEDURES BY WHICH WE REGULATE TRAVEL TO THE UNITED STATES.

FURTHERMORE, WE CAN ONLY EXPECT TO CONVINCE THE SOVIET UNION AND THE EASTERN EUROPEANS THAT WE DO NOT SEEK TO USE THE HUMAN RIGHTS PROVISIONS OF THE FINAL ACT AGAINST THEM IF WE DEMONSTRATE THAT WE ARE OURSELVES OPEN TO CONSTRUCTIVE CRITICISM AND ARE AT WORK IMPROVING OUR OWN RECORD.

IT WAS IN THIS SPIRIT THAT PRESIDENT CARTER INSTRUCTED THE EXECUTIVE BRANCH BY MEMORANDUM DECEMBER 6, 1978 TO GIVE INCREASED ATTENTION TO U.S. DOMESTIC IMPLEMENTATION OF THE FINAL ACT. THE DEPARTMENT OF STATE HAS BEEN QUICK TO RESPOND. WE HAVE ALREADY HELD SEVERAL MEETINGS WITH OTHER DEPARTMENTS AND AGENCIES AND OUR NEXT SEMI-ANNUAL REPORT TO THE COMMISSION WILL FOR THE FIRST TIME INCLUDE A SUBSTANTIAL SECTION ON DOMESTIC IMPLEMENTATION. THERE HAS ALREADY BEEN A POSITIVE INTERNATIONAL RESPONSE TO THIS NEW EMPHASIS IN OUR CSCE POLICY.

BY THE NATURE OF THINGS IN OUR SYSTEM OF GOVERNMENT, HOWEVER, THE PRIMARY FOCUS OF THE DEPARTMENT OF STATE MUST BE ON THE INTERNATIONAL ASPECTS OF THE FINAL ACT. THE COMMISSION IS PARTICULARLY WELL PLACED TO TAKE UP THE IMPORTANT THEME OF DOMESTIC IMPLEMENTATION, AND PRESIDENT CARTER HAS INSTRUCTED ALL PARTS OF THE EXECUTIVE BRANCH TO COOPERATE WITH THE COMMISSION.

WHAT BEGINS TODAY IS HISTORIC. IT MARKS THE FIRST TIME THAT CONCERTED ATTENTION IS BEING GIVEN TO THE DOMESTIC IMPLICATIONS OF THE SOLEMN POLITICAL AND MORAL COMMITMENTS THE UNITED STATES UNDERTOOK AT HELSINKI. IT IS A SIGN OF OUR GROWING REALIZATION THAT IN A WORLD SEEKING INCREASINGLY TO ESTABLISH AND IMPLEMENT BASIC COMMON HUMAN RIGHTS STANDARDS, DOMESTIC AND FOREIGN AFFAIRS COME TOGETHER.

THE OPPORTUNITY THAT WE AFFORD AND THE ATTENTION THAT WE PAY TO THOSE WHO OFFER CONSTRUCTIVE CRITICISM WILL CONTRAST WITH THE REPRESSION SUFFERED BY HELSINKI MONITORS IN CERTAIN COUNTRIES. THE DEPARTMENT OF STATE WELCOMES THIS OPPORTUNITY TO MAKE OUR SYSTEM WORK BETTER, TO PROVE THAT WE TAKE OUR INTERNATIONAL COMMITMENTS AS SERIOUSLY OURSELVES AS WE WISH OTHERS TO TAKE THEIRS, AND TO DEMONSTRATE AGAIN THE SPIRIT OF HONEST AND OPEN COOPERATION, WITH OUR PEOPLE AND WITH THE OTHER SIGNATORY STATES, THAT WE STRIVE FOR IN THE CSCE PROCESS. WE SHALL DO ALL WE CAN TO ASSIST THE COMMISSION IN ITS IMPORTANT WORK.

Mr. SCHNEIDER. Ms. Weddington, the one question that I did have with regard to the discussion of income earnings is whether over the course of recent years as a result of additional attainments on the part of women you see that 60 percent figure narrowing.

Ms. WEDDINGTON. We have not. In fact, there is some indication that the earnings gap may be slightly increasing and I think it is partially because so many of the women entering the labor force, again, tend to go into the more traditional occupations.

Mr. SCHNEIDER. Have you looked to see whether with regard to the educational system there are constraints with regard to the acquisition of those professional skills that presumably would be one step toward a greater income possibility?

Ms. WEDDINGTON. Yes. I think we would all have to agree that in the past the education system did create some problems. There was an old saying that sexism is catching and you catch it most often in the public schools. Congress certainly responded with the 1972 Education Amendments in title IX which we are still in the process of implementing.

In this particular year, the administration is proposing an increase from $9 to $10 million in terms of the funding for the Women's Educational Equity Act which is specifically aimed at helping make changes in those problems within the educational system. Congress in the past has authorized additional sums to that. We also have made some recent changes in technical and vocational education trying to encourage the availability of more skilled training to women.

So there is progress. I think that education still remains a problem and one that we need to work on. I would say it is a priority issue.

Mr. SCHNEIDER. In the education area what would be the two most important steps that you would like to see taken either with regard to executive action or with regard to congressional action?

Ms. WEDDINGTON. Excuse me?

Mr. SCHNEIDER. With regard to education and these two problems, what would be the two steps that you would like to see taken?

Ms. WEDDINGTON. I think that, of course, the administration has an official position in terms of the funding of WEEA. If I personally had to select two issues within the budget that I would say are primary concerns to women, that would be one of them. And Congress, certainly, will have an independent review of the suggestion of the administration with regard to that figure. That would be one possibility.

I think that the other is clearly the enforcement action under title IX on some of the educational acts of the past.

Chairman FASCELL. Well, thank you very much, Ms. Weddington. I want to thank you on behalf of the Commission for cooperating so splendidly by submitting a very, very thorough statement and for participating in our discussions here this morning.

I can assure you that what you presented will be a very significant contribution to our deliberations and I want to thank you very much.

Ms. WEDDINGTON. Thank you. We appreciate the invitation and look forward to working with the Commission as you continue your work.

Chairman FASCELL. Thank you. Our next witness is Hon. Ray Marshall, Secretary of the Department of Labor. He is a very busy man these days—every day, all day. It must be spring. I am tempted to ask whether or not there is a settlement, but I won't.

We are delighted to welcome you here, Mr. Secretary, and we know that you just left a meeting hurriedly on the Economic Planning Council and we appreciate your taking the time to appear personally before this Commission.

I can assure you that your testimony is vital and significant and will be read in many corners of the world by a great many people. It is a cornerstone of what these hearings are all about as the United States undertakes to do something that has never been done before, at least in the terms of the Helsinki accords which is to take a good, hard look at itself and invite everybody else to throw a few punches in the process.

So we are delighted to have you here and glad to hear from you. We will put your entire statement in the record if you like and you can proceed extemporaneously or any way you want to.

REMARKS OF RAY MARSHALL, SECRETARY OF THE DEPARTMENT OF LABOR

Mr. MARSHALL. Thank you, Mr. Chairman. I would like to begin by saying that I am very pleased to be here and to contribute to your report on American compliance with the Helsinki accords. I would like to have you insert my prepared remarks into the record [see page 225] and I would like to summarize and elaborate on those remarks and then reserve as much time as possible for questions that you or other members of the Commission might have.

I think that this is an extremely important undertaking. Human rights are obviously important not only from an international prospective, but also because of the indivisability of human rights around the world. I think that we have seen throughout our his-

tory that the international aspect of human rights have an important bearing on human rights on our own country.

It is very difficult for us to preach human rights to other people and not grant human rights to people here. We have even seen the reverse of that. We have seen, when we undertook efforts to spread the so-called white man's burden, that it strengthened undemocratic forces in our own country around the turn of the century. So this is indivisible.

I believe that the United States can and should, by our example, show other nations the importance which we attach to the accords and to the value of human life and liberty.

I think that if you view this problem, and in particular that part of it that I am most concerned about—the employment rights of workers—in the context of American history, you will see that we have had an evolution in our attitudes about workers' rights in this country. That evolution has naturally taken place as we evolved from a preindustrial to an industrial society. The essence of the process is that we have, though first concerned primarily with political freedoms and political rights, extended overtime Government protection into the area of economic rights.

The Government has taken action as the economy evolved to help make it possible for workers to improve their conditions through self determination in the formation of labor organizations as well as in the democratic political process. Because, while our society was essentially free and open and one of the most free and open in the world, throughout our early economic history, it generated a number of problems for workers.

One problem that we generated was depressions, unemployment and recessions. Another problem that was generated was the dependence of the worker on the employer for his job and inequality in that bargaining process.

We have taken significant measures as a nation to deal with those two essential problems, protecting the workers' job rights as a nation as a whole and trying to move toward fuller employment. We have most recently adopted the Humphrey-Hawkins bill which commits us to reach the goal of unemployment by 1983.

We have in the interim developed a number of measures to employ in the achievement of that goal, beginning with the Employment Act of 1946 and public employment and training activities, the use of monetary and fiscal policies to reduce the overall unemployment.

We have also made it possible for workers to resolve their own problems and to overcome the unequal bargaining power problem that workers faced until the 1930's. The essential problem was that the worker in an industrial society becomes dependent on a job for livelihood.

And in bargaining with an individual employer, that worker has a power disadvantage, particularly if you have periods of unemployment as we have had throughout most of our early history. That meant—as I believe it was Oliver Wendell Holmes who once said, "Nothing is more unjust that the equal treatment of unequals." We attempted to rectify that with a series of legislation during the 1930's to strengthen the right of workers to organize and bargain collectively. And that has been an evolving process.

It was embodied most significantly in the National Labor Relations Act in 1935 which is still the basic law of the land. And that is that workers have the right to organize and bargain collectively, to elect representatives of their own choosing or to refrain from it, but the choice is theirs.

And what we have done is have the Government protect that right. We have provided the mechanism for workers to hold secret ballot elections and to be represented in collective bargaining or not to be.

We have also established the rules of the game, enforced by the National Labor Relations Board so that the collective bargaining process can proceed.

This is an extremely important right and one that we are continuing to evolve and to protect. Most recently, we extended that right by law to the employees of the Federal Government in the form of the Civil Service Reform Act that was passed by the last Congress.

Now, in addition to protecting workers and their right to organize and bargain collectively, we have done a number of other things to help workers overcome the problems that they face in an industrial society.

One was to recognize that the open market didn't always work very effectively when it came to wages. And, therefore, we could not permit competition to establish the wage rate because there was no assurance that competition would establish a rate that was adequate for workers to support themselves and their families.

As a consequence of that, also during the 1930's, we passed a series of laws to establish floors. We passed the Fair Labor Standards Act to establish a minimum wage to protect people who do not have an adequate power to protect themselves in the market.

We also have established prevailing wage legislation like the Davis-Bacon Act of 1931. The reason for that prevailing wage legislation is to guarantee workers that the Government will not use its power to bid their wages down. It is a recognition that the Government is an important purchaser in the market and, therefore, we recognize the equity of the proposition that on Government contracts the prevailing wage should be paid and not the lowest that we can cause contractors to bid.

In addition to protecting the minimum wage and the prevailing wages, we have done a number of other things to protect workers' rights. One of the most significant of these is the Employment Retirement Income Security Act passed in 1974 to protect workers and their pensions. One of the worst things that could happen to a worker is to work all of his or her life and then find that an expected pension is not available at the end of the working life. The ERISA Act is designed to prevent that.

Another significant area in the evolution of workers' rights in the United States is that we have developed an impressive array of protections for workers against discrimination against them because of things unrelated to their merit and productivity.

This began significantly during World War II with the Executive orders first promulgated by President Roosevelt and which has continued to be strengthened since that time. It has expanded into State legislation to prohibit discrimination because of race, color,

sex, religion, or national origin, and was embodied in the Civil Rights Act of 1964, title VII, which gave Federal protection against discrimination.

Not only have we passed this legislation but there obviously has been a growing acceptance of the idea that it is good for the country to eliminate discrimination. And we have seen it expand from concerns of race to sex, age, and other characteristics of people that cause them not to be able to either develop themselves in accordance with their ability and desires.

We have, in addition, passed legislation to protect the workers' safety and health in the work place. And here there has been a similar evolution and acceptance, I think. It has been recognized that protection of workers' safety and health is a legitimate cost of doing business. And to the extent that we can, our policy has been to internalize that cast to the firms and to the enterprises responsible for the occupational safety and health of workers.

We do it in the coal mines through the Mine Safety and Health Act which is administered by my department and also through the Occupational Safety and Health Act for nonmining activities. The basic idea is to establish minimum standards so that occupational safety and health will not be elements in economic competition.

One of the problems that we had previously was that even those employers who wanted to have safe and healthy work places frequently had difficulty doing it because of economic competition.

Now, my view is that an overwhelming majority of employers want to have safe and healthy work places. This legislation assures them that if they provide for safe and healthy work places their competitors will have to do likewise and, therefore, will not acquire competitive advantage.

Another area of interest to workers is the antipoverty program launched President Johnson in the form of the Economic Opportunity Act of 1964. This has been a very successful program and we see the continuing decline in both absolute numbers of poor people as well as the declining percentage.

In 1964, 36 million Americans or 19 percent of the population were below the poverty level. By 1975, this number had been reduced to 26 million persons, a decline of 10 million people. And that was 12.3 percent of the population rather than 19 percent of the population.

One of the most significant areas of evolution in workers' rights has been the evolution of the concept that we have a responsibility to try to maintain full employment and to try to use our powers to reduce unemployment as much as we can.

We have done this first with the Employment Act of 1946 and most recently with the Humphrey-Hawkins bill, the Full Employment and Balanced Growth Act of 1978. This, I think, is extremely important legislation. It commits the Government to doing everything within its power to reduce unemployment to 4 percent by 1983.

When President Carter was elected, this became one of our most pressing objectives because when the President was elected, unemployment was about 8 percent. That means that about 8 million people were willing and able to work and actually seeking work and unable to find it.

As a consequence of the array of things that we have done to try to reduce unemployment, the most recent figure is that unemployment, instead of being 8 percent is 5.7 percent and we believe that since we are more than half way towards that Humphrey-Hawkins objection, that we can obtain it.

The work force growth and total employment has been extremely impressive. It has been unprecedented. Total employment has increased by nearly 8 million since December 1976. This increase exceeds the employment growth during any similar period since World War II.

The employment growth has been shared by all elements in the society. Before these programs went into operation, black unemployment, for example, was rising while white unemployment was going down. After the present stimulus program went into operation, black unemployment declined faster than white unemployment and black employment grew much faster than the growth of white unemployment.

We believe that now the overall level of unemployment has been reduced to under 6 percent, that the most pressing remaining objective is to concentrate on those people and places with the highest rates of unemployment, young blacks, Hispanics, young people generally, women. And our structural programs are designed to do that as we will concentrate more in absolute and relative terms on the unemployment problems of these groups. A rough indication of the extent which this concentration takes place is that in 1976 we spent about $3 billion on employment training programs for the disadvantaged. In the 1980 budget we will have $9 billion, 200 percent of that earlier level.

We have also developed the concept of targeting and trying to develop important training programs to reach particular groups in the society. Since half of the unemployed are under 24 years of age, we worked with the Congress to pass the Youth Employment and Demonstration and Projects Act of 1977, which provides an array of youth programs designed to meet their special needs and make it possible for them to get training, get educated, get meaningful work experience early in life and to enter into the mainstream of the work force.

Another group that we have targeted resources on are the migrant and seasonal farm workers. This has been a group that has been most disadvantaged historically in our society, partly because of their racial or ethnic background, and partly also because of the migratory nature of their work. And it is hard in our society for people to get educated and get adequate public services if they are in motion.

The migrant and seasonal workers have suffered historically as a result of that and as a consequence of that we have developed a number of programs designed to improve their conditions.

Essentially, they fall into two categories. One category of programs is designed to make it possible for migrant and seasonal farm workers to get out of the migrant and seasonal stream—the migrant stream particularly—and to become permanent employees with permanent residencies in places where they can educate their children and get relatively stable employment.

The reason this is significant is that the demand for migrant and seasonal farm workers has declined. There are now less than 200,000 migrant workers in the United States. There are, of course, more seasonal farm workers than that—about 1½ million altogether if you include the migrants, but the migrant population is declining. And opportunities will decline.

What will happen, though, is there will be better opportunities for fewer people. So what we have to do is to see to it that those few people who remain in the migrant stream have better opportunities, that they get training, that we provide better labor market information for them and their job opportunities are improved. There are a number of programs designed—outlined in my paper that attempt to do that—to improve the conditions of migrant workers.

I might say a little about our efforts to improve our unemployment statistics because some criticism has been made of the way we measure unemployment.

This is an area that has evolved like most of the rest that I am talking about. That is, when we started collecting unemployment statistics, the nature of the unemployment problem was quite different from the present problem that we face.

During the Great Depression of the 1930's unemployment was homogenous and fairly uniform. It touched all groups within the society and it was pervasive. The main reason that you wanted to get unemployment statistics in those days was to get some general idea of the magnitude and direction of movement of unemployment.

The unemployment that we face now is quite different and the purposes of unemployment statistics are now quite different. The only purpose for these early unemployment statistics was to publish them. They were not used for decisionmaking. They were not used to allocate funds among geographic units in our society.

We, therefore, now require much better statistics than we did earlier. We recognize that there are problems with the statistics and we have a commission trying to improve those statistics.

But let me say that I think we could make three statements about the unemployment statistical system in the United States. First, it is statistically sound and one of the best in the world. Second, very few people believe that the statistics are not objective. That is to say, very few people believe that there is a political or an ideological bias in the numbers that we put out.

We have tried to see to it that the Bureau of Labor Statistics is above any kind of political interference in the way that the numbers are put together and when they are released and how concepts are defined. And I think that we need to jealously guard the objectivity of those numbers.

The third statement that we can make about the statistics is that they are improving, as they are evolving like most of the rest of our policies. And we think that the present Commission that we have—the Commission on Unemployment Statistics—will do a lot to improve the nature of those statistics.

So let me conclude, Mr. Chairman, by saying that we have done a lot to evolve our protection of workers' rights. I believe that we can justly take pride in our efforts so far to make these improve-

ments and that we can take pride in our compliance with the 1975 Helsinki accords. We have made significant progress in dealing with poverty, unemployment, discrimination, and worker safety and health.

We will continue to strive to do better. One measure of our commitment to full economic rights for all people was the passage of the Humphrey-Hawkins Act. This act established the 1983 goal of 4 percent overall unemployment, and 3 percent adult unemployment. And it commits us to eliminate as much as possible the differences in unemployment rates experienced by different demographic groups, including minorities, women, and teenagers.

Now, these goals are ambitious, but we will do our best to achieve them. I am confident that we can achieve them even though I don't believe it will be easy. I think that we have learned enough to know how to achieve those objectives.

We believe that we not only need more jobs for workers in our society, we need better jobs so that the workers' protections are equally important.

Thank you, Mr. Chairman. I will be glad, now, to try to answer any questions that you might have.

[Mr. Marshall's prepared statement follows:]

STATEMENT OF RAY MARSHALL
SECRETARY OF LABOR
BEFORE THE
COMMISSION ON SECURITY
AND COOPERATION IN EUROPE

April 4, 1979

Ladies and Gentlemen of the Commission, I would like to begin my statement by saying that I am very proud to be here, and to contribute to your report on American compliance with the Helsinki Accord.

For most of recorded history, mankind has been noted more for the barbarity with which we have treated our fellow man than for recognition of the innate value of every person. Principle VII of the 1975 Helsinki Accord commits the 35 signatory nations to respect human rights and fundamental freedoms, including freedom of thought, conscience, religion or belief, and to promote and encourage the exercise of civil, political, economic, social, cultural and other rights and freedoms. I believe that the United States can and should, by our example, show other nations the importance which we attach to the Accord and to the value of human life and liberty.

As Secretary of Labor, I am the Government official perhaps most directly responsible for American compliance with the provisions concerned with the encouragement of the economic rights among our people.

Commitment to freedom of thought, conscience, religion and speech is deeply imbedded in Western liberal thought and was recognized by our founding fathers in the Bill of Rights. Government support for economic rights -- freedom to bargain collectively, freedom from poverty, and the right to full opportunity for a job at fair rates of pay in a healthful environment -- is a more recent phenomenon. These concepts have evolved at the Federal level primarily since the turn of the century.

To trace this development, it is important to recognize the changing nature of the American economy. In the early days of the Nation, most economic activity was undertaken by individuals working for themselves as farmers, craftsmen,

or tradesmen. With the industrial revolution came vast changes in the organization of work. Today, over 90 percent of the workforce are employees working for another individual or for a more impersonal firm or corporation. The country has, at the same time, been evolving from a largely rural, agrarian society to the more industrialized, urban-oriented economy we have today.

Throughout this process the American economy has been the most free and the most open of any in the world. Individuals have been free to engage in any economic activity of their choice. Today they are free to quit a job, to look for and apply for another job, to start a new business, or not to work at all.

I do not want to leave the impression that American workers have led a life of idyllic peace and comfort. Freedoms that the American worker has enjoyed have not automatically been translated into higher living standards, greater leisure, or improved working conditions. The fact is that

for the typical worker the road to these benefits has required intensive work effort, often excessive hours, and occasionally bitter confrontation between employees and their employers. Such conditions, however, were far more typical of the early days of American industrialization than they are today.

Particularly in the last decades of the 19th century, the changing structure of the economy led to certain abuses and excesses which handicapped the individual employee in his quest for economic security and advancement. In effect, although the individual employee was free to protest, his employer held the preponderance of power and authority, and the employee, in order to support himself and his family, was often forced to work at low wages, long hours, and unhealthy working conditions. Moreover, the employer had the authority to deny any work to individuals with particular racial or religious backgrounds towards which he was antaganistic.

Over the years, workers developed organizations with greater effectiveness to protect their own interests; but these unions often found themselves unable to cope with the much stronger power of the corporate forces in the American economy. But as Americans became more aware of the unequal distribution of power in the workplace, legislation was introduced to provide government support for employees' basic economic rights. The landmark National Labor Relations Act of 1935 provides protection for all workers who wish to organize into trade unions, and guarantees the right of such unions to bargain with their employers. Even earlier, the Clayton Act of 1914 included the famous principle that "labor is not a commodity...." Other major legislation assuring worker rights are the Norris-LaGuardia Act of 1932, which prohibited injunctions in labor disputes, and the 1959 Landrum-Griffin Act providing guarantees to union members to assure union democracy.

Efforts on the Federal level to ensure fair rates of pay for workers date from the passage of the Davis-Bacon Act in 1931. This Act recognizes the necessity for providing basic wage protection to laborers on Federal or federally assisted construction projects. In 1938 the Fair Labor Standards Act established the first federally mandated minimum wage. Since 1938 the Federal minimum wage has been increased from $.25 to $2.90 per hour and coverage has been broadly expanded.

In another area of employee concern, the Employee Retirement Income Security Act, passed in 1974 established rules and procedures to ensure that workers who contribute to employer pension funds will, in fact, receive pensions when they retire.

In the areas of employment, Federal involvement in job creation and labor exchange activities dates from the 1930's. It was not until 1946, however, that the Federal Government explicitly recognized its responsibility to promote employment for all Americans who wanted to work. In

1964, we as a people committed ourselves to equal employment opportunity for all Americans regardless of race, color, sex, religion or national origin.

In the area of health and safety, in 1969 with the Coal Mine Health and Safety Act and in 1970 with passage of the Occupational Safety and Health Act, we committed the Federal Government to insure a safe and healthful work environment for every American worker.

Recognition of these responsibilities has been a fairly continuous and evolving process and, I believe that we can be proud of the progress we have made.

When President Johnson signed the Economic Opportunity Act of 1964, approximately 36 million Americans, or 19 percent of the population were below the poverty level. By 1975 this number had been reduced to 26 million persons or 12.3 percent of the population. Since the signing of the Accord we have made further progress. By 1977, the number of Americans living in poverty

had been reduced by another million persons, and the percent of Americans below the poverty line had shrunk to 11-1/2 percent.

The success of this Nation in promoting employment opportunities for all Americans has been even more dramatic.

When President Carter was elected, the United States was entering its second year of recovery from the disastrous 1974-1975 recession. The employment situation had improved from the depths of the recession in early 1975. However, the unemployment rate was still 7.8 percent. There were 7.5 million Americans out of work, and over 30 percent of the unemployed had been without a job for 15 weeks or longer. Unemployment among black workers was 13.2 percent, and teenage unemployment was over 19 percent.

Upon taking office, President Carter made finding jobs for unemployed Americans the first

priority of his new administration. We felt strongly that everyone willing and able to work should have an opportunity to contribute their skills and energy through meaningful employment.

I believe that during the past two years, we have made good progress towards this goal, and towards implementing the Helsinki Accord.

- The February unemployment rate of 5.7 percent represents a 26 percent reduction from December 1976 and 6.6 percent decrease from a year ago.
- In February there were 1.5 million fewer people unemployed than there were in December of 1976, and 211,000 fewer than a year ago. This occurred despite an increase of 6.5 million in the number of persons entering the job market.
- Total employment has increased by nearly 8 million since December, 1976. This increase exceeds the employment growth during any similar period since World War II.

- Since President Carter took office, young people, who had been disproportionately hurt by the recession, received special attention. Since December 1976, employment growth among teenagers has outpaced overall employment growth, rising 11.5 percent while the latter increased by 9.0 percent. Employment of black teenagers has increased by 20.8 percent since December 1976.

- Employment opportunities for women and minorities in general have also increased dramatically. Adult female employment has increased by 3:7 million or 11.4 percent. Black employment has increased by 1.1 million persons or 12.2 percent.

While much progress has been made, there remain significant groups within our population -- women, blacks, Hispanics, and young people who do not have equal access to good jobs. Whether because of a lack of skills, experience, or education, or because of racial, sexual, ethnic,

or age discrimination a significant number of Americans still have difficulty in finding and keeping employment.

Recognizing the seriousness of these problems, employment programs for the economically disadvantaged have been a high priority in this Administration. The Department's expeditures for employment and training programs has increased by 123.8 percent since FY 1976 to the current level (FY 1979) of over $11.2 billion. The fundamental basis for this expansion is an awareness that the labor market has not provided sufficient employment opportunities for low-skilled inexperienced workers and that government intervention can alleviate problems of structural unemployment.

In 1977 the Administration's Economic Stimulus Package more than doubled the number of public service employment (PSE) slots under the Comprehensive Employment and Training Act (CETA) to a level of 750,000. During FY 1978, 77.9 percent of the participants in PSE programs were economically disadvantaged.

A second major initiative introduced in 1977 under the Youth Employment and Demonstration Project Act (YEDPA) created four programs to meet the special employment needs of youth. Specially targeted to serve low income youth, the Youth Employment and Training Program (YETP) seeks to improve career preparation and job prospects for those youth who have the most severe problems entering the labor market. During fiscal year 1978, 81.8 percent of the participants in YETP were economically disadvantaged.

The Youth Community Conservation and Improvement Projects (YCCIP) had 84.4 percent participation by economically disadvantaged youth in FY 1978.

Two other ongoing programs under CETA which serve disadvantaged youth almost exclusively are the Summer Program for Economically Disadvantaged Youth (SPEDY) and the Job Corps. Over 1 million youth participated in the two programs during FY 1978. Overall, the economically disadvantaged have been served in significant numbers since the initiation of the stimulus expansion -- representing more than 86 percent of all new CETA enrollees for all Titles.

Another group with which we are concerned is the migrant and seasonal farmworker. Because of the special nature of their problems -- chronic seasonal unemployment and under employment -- the primary objectives of CETA Title III, section 303 are to assist migrant workers in obtaining employment in other occupational areas and in improving the living and working conditions of those farmworkers and their families who prefer to remain in the agricultural labor market. The Department of Labor also administers the Farm Labor Contractor Registration Act which protects migrants from exploitation by unscrupulous farm labor contractors by requiring registration by the contractor and that certain standards of protection are afforded the farmworkers. Of course, the minimum wage standard of the FLSA is also applicable to migrant farm- workers on the Nation's larger farms.

The CETA reauthorization legislation, enacted in the fall of 1978 provides for even greater concentration of employment and training services and the needs of the disadvantaged. A structural

employment progam has been implemented under Title II of the reauthorization legislation, and eligibility and wage provisions of the Act were generally tightened.

The Administration's new Welfare Reform proposal if enacted will provide employment and training for parents in low-income families. A primary goal of this proposed program is to insure that individuals with family responsibilities have the opportunity to earn a basic income above poverty level through wages from a private sector or public service job and supplementary income assistance.

A series of demonstration projects is currently being planned to test and evaluate organizational and program models to address the needs of that segment of the population which would be eligible for welfare reform.

In order to measure the seriousness of our unemployment problems and to gauge the success of our programs to alleviate them, the United States uses the largest monthly labor force survey in the world, covering 57,000 households. This large sample size allows fairly detailed estimates

of the status of minority group members of the United States population and comparative information among the geographic and political subdivisions of the country. The concepts of employment and unemployment used in the survey have been used since 1940 in the United States, and are now the standard worldwide.

To insure that the statistical system and methods used to measure employment and unemployment remain responsive to data users and that they accurately reflect the true situation, two advisory councils meet several times a year. In addition, two comprehensive reviews of the methods have been undertaken by groups of scholars and representatives of various interests in the United States. The first of these, by the 1962 President's Committee to Appraise Employment and Unemployment Statistics, stated,

> "After careful investigation, the Committee unanimously and categorically concluded that doubt concerning the scientific objectivity of the agencies

> responsible for collecting, processing, and publishing these data is unwarranted. The Committee remains highly impressed by the professional qualifications and the scientific integrity and objectivity of those responsible for the system of reporting the official data on employment and unemployment."

The second review is currently underway by the National Commission on Employment and Unemployment Statistics. It is likely that this Commission will recommend specific improvements in the current system. A preliminary report of the Commission states that, "Changes in the composition of the workforce, the increase in multiearner families, and the availability of supplemental income sources undoubtedly give today's workers more choices about labor market behavior than previous generations had." The report goes on to infer that more and new kinds of information are now needed. Preliminary indications are that the Commission will recommend an expansion

of the monthly labor force survey to provide even more information on the status of minorities and youth and the aged, and more accurate information for geographical subdivisions of the Nation. The Commission is also exploring ways of providing information on the link between unemployment, family income, and economic hardship. We in the United States eagerly await the final report of this Commission, in order to have its guidance as we seek to improve an already outstanding system of labor market and social statistics.

I believe that the United States has also dealt forthrightly with the problems of occupational safety and health.

Work-related diseases and accidents pose a serious problem for every industrial Nation. This is a problem that we recognized with the passage of one of the most comprehensive safety and health laws in the world, the Occupational Safety and Health Act of 1970. The goal of this law is to "provide every working man and woman

in the Nation with a safe and healthful workplace." While we have not yet reached this goal, we are making significant progress toward it.

The Administration and Labor Department recognize the importance of industrial safety and health and are taking vigorous action to improve conditions in the Nation's workplaces. We have increased the number of Federal safety inspectors and hygenists from 754 in 1974 to 1504 in 1978.

We have ordered our inspectors to concentrate on firms where workers have complained about hazardous conditions and in industries where the injury data indicates the most serious hazards exists.

Special efforts are made whenever a problem suddenly surfaces (e.g., grain storage silos, or shoring and trenching). OSHA recently instituted a major grant program in the area of training and education to increase employee and employer awareness of safety and health hazards. Research is underway in OSHA and our sister agency in HEW, the National Institute for Occupational Safety and Health, to analyze specific types of accidents

and evaluate the effectiveness of specific safety standards. This effort, we feel certain, will help us improve the focus on OSHA's efforts in the safety area.

When we look at industrial safety, the best measurement of the size of the problem we face is the lost workday injury rate. Using this indicator, which covers injuries resulting in at least one lost workday, we find that about 1 out of 27 workers suffered an injury in 1977.

While the figure of 1 out of 10 workers has been mentioned in connection with our on-the-job injury rate, I would like to point out that this statistic includes both serious lost workday cases as well as a much larger number of minor injuries that do not result in lost workdays. We use a very broad definition of what injuries should be recorded, and keep track of both major and minor injuries because we feel data on these "near misses" helps us target our standard-setting and enforcement efforts.

OSHA was designed to protected workers not only from injury, but also from invisible chemical hazards in the workplace.

Here, also we have made significant progress. We have issued, or are currently working on, standards covering carcinogens, asbestos, pesticides, lead, benzene, and cotton dust. We do not intend to stop until every significant health hazard in the workplace is under control. However, we realize that the state of knowledge about occupational exposure and disease in humans is just developing. The long latency periods between exposure and onset of disease make it difficult to determine cause-effect relationships. We are presently moving about as fast as developing knowledge and technology permit.

One of our preliminary research efforts in the health area surveyed a sample of the Nation's workplaces to determine the potential workplace exposure to toxic compounds and processes. While this survey found that nearly one of every four workers was potentially exposed, the limitations of the survey did not permit us to equate this potential exposure with actual exposure.

Along with other industrialized nations, we will have to continue our research on this very complex set of problems.

In summary, I would like to say that I believe that we can justly take pride in our effort so far to comply with the 1975 Helsinki Accord. We have made significant progress in dealing with poverty, unemployment, discrimination, and worker safety and health. We will continue to strive further. One measure of our commitment to full economic rights for all our people was the passage, last year, of the Humphrey-Hawkins Act. This Act establishes 1983 goals of 4 percent overall, and 3 percent adult unemployment and commits us to eliminate, as much as possible, the differences in unemployment rates experienced by different demographic groups including minorities, women, and teenagers.

These goals are ambitious, but we will do our best to achieve them.

Thank you. I will now answer any questions you may have.

QUESTIONS AND REMARKS

Chairman FASCELL. Mr. Secretary, thank you very much for that excellent summary of your statement giving us a philosophical and legislative and other overview of the entire labor situation in the United States.

I found it extremely interesting, personally, to get refreshed on many of the things that have been done and some of the things we are still seeking to do.

You didn't mention workmen's compensation—at least I didn't hear it—did you?

Mr. MARSHALL. No; worker's compensation is basically a State program. It is one of the protections that we are strengthening. We now have, of course, before the Congress proposals to have Federal standards on worker's compensation, but it was the earliest of the protective legislation, though it has been mainly a State effort.

The earliest law was passed in 1908, 1909, or 1910. Wisconsin, in 1911, is usually credited with the first continuous comprehensive worker's compensation program. But I think that we have a system that is pretty good. It has been improving and there are still things that we can do to make it better.

The problem with worker's compensation now is about 35 percent of the total amount that the employers pay for worker's compensation does not go to the worker. I think that that portion can be reduced by improving the administration of that whole system and improving protection. I didn't elaborate on that, but it is a very important worker protection.

Chairman FASCELL. Mr. Yates?

Mr. YATES. I have no questions.

Chairman FASCELL. Mr. Buchanan?

Mr. BUCHANAN. Thank you, Mr. Chairman. Mr. Secretary, one of the capabilities of this Commission is that we have quite an impressive language capability. We have a staff of people who speak almost any language there is. But I am the resident expert personally on the official language of Southern Baptist. [Laughter.]

And I want to commend you for your eloquent testimony without any accent at all. [Laughter.]

Mr. MARSHALL. I won't accept that. [Laughter.]

Coming from the North.

Mr. BUCHANAN. Mr. Secretary, would you consider the 4 percent unemployment figure envisioned in the Humphrey-Hawkins to be tantamount to full employment?

Mr. MARSHALL. I think that as much as we know now about the meaning of full employment, I would. I think that when we get there we will be in a better position to know. I think that this is the kind of thing that will evolve like other things.

I think that the important thing to recognize is that there is some level of unemployment that tends to be kind of an irreducible minimum which is "frictional unemployment" or people between jobs.

Now, those countries in the world that say that they don't have any unemployment have obviously not used the same definitions that we have because if you didn't have any unemployment you

couldn't expand your work force, you wouldn't have people between jobs and you would have a very rigid situation.

Now what that level of frictional unemployment is is difficult in a complex society like ours to determine with precision. It is easy for me to tell you what it is, but it is very difficult for me to go out and make the actual measurements.

But right now, we think that a good interim definition is about 4 percent unemployment.

Mr. BUCHANAN. For all practical purposes, when we say "3 or 4 percent" we are talking about what other countries might call full employment.

Mr. MARSHALL. Yes.

Mr. BUCHANAN. I have long felt that to get from where we are to where we need to be requires more than anything else commitment especially on the part of Government, but also on the part of business and labor.

Are you satisfied with our progress given the changing role of women in our society and employment opportunities for women?

Mr. MARSHALL. I think that we can be satisfied with the direction of movement, but not with the absolute position. I think that what is happening is that the employment opportunities for women are expanding, but they are expanding mainly in what can be called traditional jobs. They are those places where women ordinarily work. The direction of movement into the nontraditional jobs is a good direction. I would say that we are making some progress there, but we cannot be satisfied with the level of activity and the stereotyping that goes on about what women can do and what they cannot do.

I think that we have the same type of stereotyping that we have with women that we used to have with respect to blacks. There were certain kinds of jobs that they simply could not do. Well, that obviously is not the case and it is not the case with women.

You can't say that about any individual woman—that is, say that there are jobs that she cannot do.

We are seeing now an expansion of the employment of women into nontraditional jobs like coal mining, for example. There is a growing proportion of women in the coal mines. There is a growing proportion of women in the construction industry. But it is still very low. The penetration is very low.

I think overall—now the aggregate problem that we face is that since the women are increasing their labor force participation rate and since young people are increasing their labor participation rate, there are those who say that the full employment level has to be raised because they will automatically have higher unemployment rates.

I don't accept that. I think that if the reason that you get higher unemployment rates is because of a structural change in the economy, then the way that you counteract that rising unemployment is through a structural program, in other words to deal directly with the problems of young people and women rather than assuming the change in supply of money in the whole economy is going to automatically cause the problems of women and young people and others disappear. We need to recognize that we need to complement the general monetary fiscal policy with specific structural

efforts to deal with them and I think that is a more logical position than to say: "Well, let's reduce our sights, and let's be satisfied with a higher level of unemployment."

Mr. BUCHANAN. Thank you, Mr. Chairman.

Chairman FASCELL. Mr. Bingham?

Mr. BINGHAM. Thank you, Mr. Chairman. First, I would like to compliment you on what you have just said. I think that is a splendid statement of not sufficiently recognizing the importance of structural reforms, if you will, to meet the particular problems of unemployment. I happen to believe that structural changes, too, are probably more of a solution to our problems of inflation.

Mr. MARSHALL. I agree.

Mr. BINGHAM. Than monetary and economic—macroeconomic changes. But that is a little off the general subject.

I was enormously impressed in listening to you and reading your statement, Mr. Secretary, about how much has been accomplished, really, by Government action in the last half century at a time when more and more Government action is being questioned so widely as sort of a trend that: "Well, we ought to be getting back to the good old days of free enterprise systems."

To listen to your recital of what Government has achieved in preserving the rights of working men and women in this country and their opportunities for a better life, I find particularly striking.

I wish you would comment a little more on the work of OSHA because, while I don't get it in my district, I hear so much adverse comment on the Hill about OSHA as being perhaps the most unpopular Government agency that there is today except perhaps for the Internal Revenue Service.

I would like to hear your comments particularly on the work of OSHA as it compares with that in other countries. I had occasion a couple of months ago to go through a sugar mill in the Dominican Republic. And you walked right by on these horrible grinding machines without any protection whatever and somebody said: "Well, OSHA would have a field day here." And I am sure that that is true. It probably means lower costs for that sugar mill, but in terms of the attitudes of our workers—of our organized workers and our unorganized workers—how do they feel about OSHA and how are we doing in that respect compared to other industrialized countries?

Mr. MARSHALL. I think that in some respects we are doing well and in others we are not. Let me elaborate on that. I think that we all have come to the same general position that prompted the passage of the Occupational Safety and Health Act.

And that basic proposition was that somebody will pay the cost of accidents, death, and occupational disease. There is no such thing as that being a cost-free thing. What happened before was that it was either paid by society or by those workers or by their families.

What OSHA and the Mine Safety Act attempted to do was to internalize those costs to the firm, saying that Congress agreed at that point that the cost of occupation and health is a legitimate cost of doing business; and, therefore, ought to be a part of the regular cost mechanism within the firm. And the workers in the

society ought not to pay those costs as long as you could internalize them to the firm.

It was also based on the assumption—I think it is absolutely sound economically—that the best way to deal with the health problem was preventative. About 40 percent of all cancer comes from on the job, for example.

It is a lot easier to prevent cancer than it is to cure it. Just in economic terms, the medical system for trying to cure a disease is much more expensive than the cost of prevention. And that doesn't even say anything about the very important human suffering that goes with that process.

Those were the ideas that prompted the passage of the Occupational Safety and Health Act. And I think that they are still as valid as they ever were.

The problem that we had early on was in the administration and implementation of that concept in an occupational safety and health program. As is frequently the case, it is easier to enunciate the general principle than it is to develop the mechanism to carry that principle into operation.

So what happened to OSHA—for whatever reason—is that during its early years, it was not well managed. It did a lot of silly things. It opened itself—opened the whole system—to ridicule. Instead of focusing on the need to keep workers from being hurt—workers who didn't have to get hurt or from getting cancer when cancer could have been avoided and getting killed when it could have been avoided—we permitted people to focus on silly things like applying money penalties or writing citations because they had a split toilet seat. I haven't figured out yet what a split toilet seat had to do with the safety and health of workers. I am sure that somebody could come up with an explanation. But I don't know what it is.

Chairman FASCELL. Well, I guess they would have had a hard time trying.

Mr. MARSHALL. The other problem is that we had 14 pages of regulations about how to put a ladder up against a wall. And we had detailed regulations on how high the fire extinguishers needed to be from the floor.

Now, those kinds of things are silly. I was informed that we told farmers—but I haven't found where they did it—that if you had cow manure on a concrete floor it is slippery. [Laughter.]

We didn't need to tell anybody that. The consequence of that was that we let people divert their time and resources to those things. OSHA failed to focus on the basic purpose of the law. We burdened people too much with unnecessary paper work. We were collecting so much information that it was useless because it couldn't be analyzed. We couldn't make simple decisions.

So what we first tried to do with OSHA was to refocus the attention on the important things; we were chasing the minnows and letting the sharks get away so we began to focus on the sharks.

We tried to simplify the system and eliminate almost all of the paperwork requirements for small employers and tried to give them more technical assistance in complying with the law.

We eliminated, at one time, about 1,000 of these regulations like the ones that I have mentioned. By simplifying, we made it possi-

ble to concentrate and to know more about what we were doing and to improve the administration of it and to get more public support for it. We tried to change the philosophy which appeared to be based on the assumption that most employers were out to beat you on OSHA.

The philosophy that we tried to adopt was that most employers are not out to beat you: that most employers want to have a safe and healthy work place; and they will help you do it if you let them. They will be as interested as you are in going after those employers who are attempting to gain a competitive advantage in having an unsafe and unhealthy workplace.

I think that we have done some things to turn that around, but we still have a lot to learn. I am convinced that ultimately what we would have to arrive at is more self-regulation, more attention in each workplace to the problems of safety and health. We have to get more education about the problems of health and safety. It is technically a very complex problem. It is something that most workers on the worksite are very much concerned with and, therefore, quite willing to learn about how to protect themselves.

We will not solve the problem by, say, using 1,400 OSHA inspectors to cover 5 million workplaces through the inspection process. We have got to have some imaginative ways to induce self-regulation and gain greater support. We have far too much litigation. We get too many challenges that other countries would not permit.

In Scandinavia, for example, if you ask how OSHA is perceived there, they find it astounding, when I talk with my counterparts in those countries, that we can be challenged in our courts on a standard to prevent cancer.

Other countries don't have a lot of litigation. We have much more litigation to try to block our standards and keep the standards from going into effect than any of those countries. The attitude that they take is that this is a scientific and not a judicial decision—that if you don't violate some obvious due process in developing the standards, then once their counterpart of OSHA makes its scientific decision, then they don't get many challenges to it.

Now, we have got to work on that. I don't know the full extent of the resources that we devote to litigation nor all the reasons behind it, but I am convinced that it is far too much. So in that respect, I think that we would have a disadvantage relative to other countries.

Mr. BINGHAM. How do we compare with the Communist countries, specifically the Soviet Union?

Mr. MARSHALL. I haven't really been there and made a systematic study but the kind of casual empiricism that I get is that we are far ahead of them. And I think you have to assess it on a case-by-case basis. I think that this is an aspect that somebody ought to investigate, but the impression that I get particularly in the mine safety area—but probably others as well—is that the Communist countries will tolerate standards that we will not tolerate.

The people who have been in the Russian mines, for example, tell me that.

Mr. BINGHAM. Could I just ask you one question that I have asked the other witnesses, how do you relate your view of your job to commitments under Helsinki?

Mr. MARSHALL. Well, I think that what I am concerned about is very central to that. My job is to protect and promote the interest of American workers. That is the mandate of the Secretary of Labor and of the Labor Department. And it seems to me that this is central to the basic purposes of the Helsinki accord.

Mr. BINGHAM. Thank you.

Chairman FASCELL. Mr. Yates?

Mr. YATES. I have one question. In the Appropriations Subcommittee for the Department of Interior we also have budgeting jurisdiction over the Forest Service. Among the programs that we finance, are those for the YCC. I think that the Forest Service works with the Department of Labor on that program.

Mr. MARSHALL. Yes.

Mr. YATES. It has been my experience that those programs are really not open to urban black youths. The Forest Service, when I inquire about this, says "We take the applicants in chronological order."

And, yet, when I have asked them for lists and addresses—lists of those who have received the jobs and their addresses, I find very few from urban centers. I was particularly interested in the city of Chicago, of course, because I happen to come from there.

Most of them come from the suburbs. And I wonder why we aren't expanding the YCC program and why we aren't offering the opportunities to the black young people in our cities to go out West and to do the things that they used to do in the WPA during the depression.

I know that in our national parks some of the best installations we still have are those that were built back in the 1930's as WPA projects. And, yet, I don't find that happening and I wondered why. Can you tell me?

Mr. MARSHALL. I think that it is important to distinguish the YCC program, which we do not participate in, and the summer program.

Mr. YATES. Oh, you have the YACC.

Mr. MARSHALL. It is the YACC. That is one that we are jointly responsible for with the Department of Interior and Agriculture. We have the same concern that you have and this is part of the kind of tension, if you could call it that, in the system.

We believe that the program ought to be more open and it has opened up more because the agreement is that we recruit the people now that they take. And I believe—I can get you the exact figure—but I believe it is up over 40 percent disadvantaged who are participating in the YACC program.

Now, I too believe—we modeled that program after the CCC programs of the 1930's. And I think it is a good question. The policy question is should it be limited only to the disadvantaged. We could not get an agreement on that.

Now, we do have a similar program in the Job Corps, which is limited to the disadvantaged, which is a very good program and which does take a lot of people from Chicago and the inner city

which we are doubling and we are in the process of expanding that program as fast as we can.

It deals with the severely disadvantaged, but they also do these useful things. Some of the rural programs have been involved in work very similar to the YACC. And some of our youth employment training programs are doing the same kinds of things, now, except they are not residential. The Job Corps is a residential program for the most part.

Mr. YATES. Yes.

Mr. MARSHALL. The YACC program is not. It is people mainly in the inner city. But the CETA reauthorization of 1978 concentrates all of CETA on the disadvantaged. And, therefore, we are targeting more. I think that it would be good if we didn't have budget restraints to have programs that you could let all young people into. The YACC is 38 percent disadvantaged, so I missed it a little. I believe it has gone down a little bit.

Mr. YATES. Yes.

Mr. MARSHALL. There is now in YACC 51,855 participants and the economically disadvantaged number 27,798.

Mr. YATES. How long do individuals participate in YACC programs?

Mr. MARSHALL. The participation in there is about a year. In the Job Corps it is about 6 months.

Mr. YATES. Yes. They go out to camp?

Mr. MARSHALL. Yes. In the Job Corps, they live in residential areas. The Job Corp camps are run by a variety of different agencies—some private corporations, some unions and some nonprofit organizations and the like.

Mr. YATES. Thank you, very much. Thank you, Mr. Chairman.

Chairman FASCELL. Mr. Schneider.

Mr. SCHNEIDER. Mr. Secretary, as you are aware, frequently when we are participating in an international forum such as the United Nations Human Rights Commission, one of the efforts that other countries make to deflect criticism is to point to our own problems that you cited in your testimony.

One of the particular areas that has been raised recently is with regard to migrant workers. And in that regard, I just noticed that in testimony that is about to be given by one of the Helsinki monitoring groups, they raised questions with regard to the status of H-2 workers that cite allegations that when those individuals complain about working conditions they are frequently terminated and expelled. This goes, I suppose to the question that President Carter raised in his speech in Mexico, the determination of the protection of the basic rights of those who are in this country regardless of their status.

I was wondering whether in this particular area that the Labor Department has begun to take any action.

Mr. MARSHALL. Yes, we have tried to. The H-2 program is a rather small program of 15,000 workers a year who are admitted as H-2 nonimmigrant alien workers for a limited period. I think that it is a concern that we have and one of the problems that we have is that too often employers prefer the foreign workers to people who are already here and for precisely for that reason—that is to

say, that they are more easily controlled and more likely to be satisfied with those working conditions.

Now, it is our view, and what our regulations are designed to try to accomplish is that workers who come here ought to come legally. They ought to come with full and legal rights and those rights ought to be protected.

There ought to be some mechanism to see that their rights do get protected. Now, I think that because of the nature of foreign workers worldwide there is a problem all over the world, not just the United States—which is that it is more difficult for foreign workers to protect themselves in any country than it is for citizens of that country.

But I think that the reason that we are concerned about it is that if you have foreign workers here who cannot protect themselves then it is very difficult for us to protect domestic workers, native workers who are here. I think that is true in an international context. And that is the reason I believe we need to be concerned about international fair labor standards and not just the fair labor standards at home.

If workers in other countries are getting cancer because of the carcinogens, it is more difficult for our employers to defray the cost of a safe and healthy workplace. The same thing is true if you've got a group of workers in your country who do not have full legal protection.

Our labor laws, for example, depend very heavily on complaints by workers for enforcement. We would have great difficulty in ever enforcing those laws if you have workers who are afraid to complain. And then you undermine one of the important assumptions that you make about the enforcement of those laws.

Now, what we have been trying to do is to concentrate more of our directed enforcement activities to where foreign workers are likely to be employed because we know that they are less likely to be able to complain.

Let me say, however, that the H-2 program is insignificant relative to the problem of undocumented workers or illegal immigration which is much larger in magnitude. Nobody knows how large it is. But it involves millions of workers, not thousands and they have less ability to protect themselves. The H-2's have some protection because there are frequently agreements made between the United States and the Governments, say, of the British West Indies. They exercise some supervision over the conditions under which those workers are employed here.

But with the undocumented workers there are no such safeguards. And they are completely at the mercy of employers in the system. And I think it is a serious problem. It is one that we are making some progress to try to resolve. We have tried to propose legislation to improve the foreign worker protections in the United States. And I think it is one of the most serious problems that we face and we need to continue to push on that.

Mr. SCHNEIDER. Thank you. One further question in the same general area: You mentioned in your testimony, the Farm Labor Contractor Registration Act, and I was wondering if you could give us some indication as to the increase in the use of that legislation and its increase in effectiveness.

Mr. MARSHALL. Yes, I have, in fact, detailed information about it if you—both the services and the Farm Labor Contractor Registration Act—and I would be glad—why don't I just make this available to you. It would probably be easier.

Chairman FASCELL. Why don't you submit that for the record.

Mr. MARSHALL. We can put it into the record rather than going into all of the details. [See p. 260.] I think it is an important piece of legislation for migrant workers because a lot of the abuses are by the contractors and it becomes important, therefore, to get as much regulation of the labor contractors as you can in order to see to it that they don't abuse the rights of people who are in their crews.

And that is what the Farm Labor Contractor Registration Act is designed to do. This relates to all migrant workers as well as the Farm Labor Contractor Registration Act procedure. So why don't I make this available to you for the record.

Mr. SCHNEIDER. You mentioned the desirability of comparing the status of working conditions in different countries. I was wondering whether ILO has undertaken some comparative studies in this regard—both with regard to safety and health standards and with regard to general working conditions.

Mr. MARSHALL. They have done some and they are in the process of doing it. We—although we are no longer in ILO—are working with ILO. We recently made a grant of $250,000 to ILO for the International Occupational Safety and Health Hazard Alert System, that we want to participate in worldwide. That is one of the issues in the labor standards area that we've got a fair amount of agreement about.

Chairman FASCELL. Mr. Secretary, central to our philosophy of working people in this country is the basic right to work or not to work. Is that correct? There is no mandate.

Mr. MARSHALL. Yes. There is no mandate. That is correct.

Chairman FASCELL. Now, the Government has placed itself by a series of steps over a long period of time in the position of I guess you might say "referee." Is that a fair analogy?

Mr. MARSHALL. It is "referee" in some senses, but also in the sense of establishing minimum conditions.

Chairman FASCELL. To enforce it.

Mr. MARSHALL. That is right.

Chairman FASCELL. And this is between two great economic forces. And the rest of the theory is that for those who are disadvantaged or disabled or otherwise not able to work under our system, we seek to try to provide for those people.

Mr. MARSHALL. Yes.

Chairman FASCELL. Now, if the right to work or not to work is central to our philosophy of our society, how do we relate to those societies which have a universally mandated labor force?

Mr. MARSHALL. Well, the difference, of course, is that instead of having a planned allocation of the work force and training and, therefore, mandatory employment, we would have much more selection by individuals about what they want to do given their opportunity framework.

What we have tried to do is to make information available and provide the opportunities and overcome the barriers that exist for

people participating in the work force, rather than directing it. I guess that is the best way to say what the major distinction is. It is that ours operates much more decentralized decisionmaking, both by individual workers and by firms and organizations in the society and less by central direction.

Chairman FASCELL. Well, some societies dictate what job an individual shall have and may have that job for the rest of his natural life. How do we relate to those kinds of things?

Mr. MARSHALL. Well, we obviously don't have that principle here at all.

Chairman FASCELL. We have been criticized because we don't have that principle. How do you think that our work force would feel?

Mr. MARSHALL. I think that they would have trouble with it. [Laughter.]

I think that what we need to do is to be sure that people who are willing and able to work have work opportunities. I think that we need to strive for that and that is essentially what we have committed ourselves to in the Humphrey-Hawkins bill. But I think then we say that the choice is theirs if they want to work under the opportunity structure that gets provided.

Chairman FASCELL. It is our philosophy that using the power of Government to assist the laboring force to make its own decisions——

Mr. MARSHALL. I guess another way to put it is that, in our society, we basically rely on the free market system recognizing that there are some defects in that if you are concerned about trying to provide jobs for everyone who is willing and able to work and actively seeking a job.

So the role of the Government is first to try to keep the general level of the economic activity in a healthy state and second, to deal with people who are unable to participate in that private economy for whatever reasons by trying to overcome the obstacles to their participation.

Chairman FASCELL. How do we look on the laboring force of a country that has so-called universal mandated central labor? Do we recognize those people as laborers? Do we recognize some of their representatives as labor representatives?

Mr. MARSHALL. Well, we have trouble doing that. We have trouble recognizing, say, that their labor organizations are in the same category as labor organizations here.

Chairman FASCELL. Because they are not free to organize?

Mr. MARSHALL. They are not free. The concept of a free labor movement, for example, is that you are free from governmental, political or confessional control and that the organizations are, therefore, controlled by the membership and responsive to their desires and interests.

If you have an organization that is subject to Government control, which is the case in many countries, then that is not a free labor movement and it is hard to recognize the leaders of those organizations as freely chosen labor leaders.

Chairman FASCELL. The United States has been criticized in the past because we have sometimes denied visas to so-called Communist labor leaders?

Mr. MARSHALL. Yes.

Chairman FASCELL. What should our position be?

Mr. MARSHALL. Well, I think that it is a complex question and it depends on the purpose of the visa. We certainly should——

Chairman FASCELL. We certainly should talk to them?

Mr. MARSHALL. Well, I think we should talk to them. And if their main reason is to come is to consult with Government or whatever—and I think that the problems that the unions have—and I think that they've got a legitimate concern—is that if these peple are represented as being representatives of a free labor movement in the sense that they are, then they resent that—that they are hand picked, chosen to come for a particular purpose and present a propaganda line and then they resent that.

Chairman FASCELL. In other words, it should be done at a Government level then.

Mr. MARSHALL. I think that you need to look at each case and to say what is the purpose of this.

Chairman FASCELL. Mr. Oliver?

Mr. OLIVER. Mr. Secretary, in some other societies where every job classification or every Government agency or every organization is really an instrument of the State, under their philosophy, under their constitution, would you apply the same restrictions to say a journalist because he was from a paper that was a Government newspaper rather than being a journalist that would be the equivalent of our free press, for instance?

Should we keep out someone who is a trade unionist because he comes from a country which doesn't allow free trade unions in our concept and by the same token should we keep out a journalist because under their system they don't allow freedom of the press in the same way that we do.

In other words, what I am saying is that we could extend this philosophy to every facet of society that was organized in such a way that everybody was subordinate to the State or subject to control of the State. So it wouldn't just be trade union leaders, it would be journalists. It would be farmers or it would be anyone else because they were all, in effect, subject to the control of the State. So if you extended the philosophy we wouldn't let anybody come here.

Mr. MARSHALL. Yes, I think that by that extension that would be the case. I think that the question is whether the analogy applies, to say whether the question is whether you should keep anybody out.

My view is that we ought to lean in the direction of letting people come. I think that the more people who observe the society and what we are trying to do, the better off we are. And I would not be very restrictive in the kinds of people that we let come. I believe in a fairly open exchange. I think that, therefore, that is the reason you need to examine the purpose.

But I think that by the same token you cannot have completely open entry—you have got to examine each situation and say "How does that conform to our interests and concerns?" And that is the reason, of course, that we have an immigration policy and have the need for visas in the first place.

I don't believe that the border ought to be just completely open because there are people who would come for a variety of purposes to do damage to our interests. And, therefore, we need to make some distinction. But I wouldn't make many. I think that it should be as free and open as we can be.

What I guess I would do is to try to demand reciprocity as a way to open up some of these other countries. That is to say that if they select the people who are going to come here then there is some question about whether we ought not to be able to send people to their country.

And I think that, for example, the AFL-CIO would be ready to make a deal with them. You let us send the people and let them go wherever they want to and do the same thing that you are going to let those people do who come here and we will do it.

Chairman FASCELL. I like the idea of reciprocity, too, Mr. Secretary.

Mr. MARSHALL. Thank you.

Chairman FASCELL. Thank you, very much, Mr. Secretary. I know that you are an extremely busy man. I want to thank you very much for cooperating with the Commission and presenting your testimony and answering our questions at length.

As I said at the outset, I knew that this was going to be a significant contribution to the deliberations of this Commission and will benefit a great many other people as well. I want to thank you for that. I also want to suggest that as busy as you are, I hope that you get the opportunity to testify before a lot of other committees of the Congress on the perspective of working men and women in this country and the story of what has happened in the last 50 years in this country. It needs to be told to a lot of people who have seemed to have forgotten the old days—no country store and all of that stuff and the Pinkertons are still around but doing other things. Thank you, very much, Mr. Secretary.

Mr. MARSHALL. Thank you, Mr. Chairman.

[Materials submitted for the record by Mr. Marshall follow:]

Migrant Workers

In response to the criticism of the treatment of migrant workers in the U.S., the Department's implementation of the Farm Labor Contractor Registration Act and programs for migrants and reasonal farmworkers under CETA Title III should be noted.

Investigations under this Act, which have increased significantly in recent years (for example, from 2,327 in FY 1977 to 3,823 in FY 1978), have uncovered numerous violations involving: failure to register; failure to post terms and conditions of employment; failure to disclose to workers at the time of recruitment the area of employment, the crops and operations on which they would be employed, wage rates, period of employment, information on transportation, housing and insurance, etc.; and employing undocumented aliens. Special attentions was given in FY 1977 and 1978 to inspections of housing for farmworkers, to ensure that it met safety and health standards, and extra effort has been made recently, through a computer tracer system, to identify and investigate contractors having repeated serious violations.

The Program for Migrants and other reasonably employed farmworkers under Title III, section 303 of CETA provides training, education and other services to migrants and other seasonally employed farmworkers and their familaries to enable them to seek alternative job opportunities and to improve the well being of those who remain in the agricultural labor market.

Programs may include training, education, outreach, extended education, emergency services, residential support, self-help housing, legal services, transportation and relocation assistance, and such other services as seem appropriate for farmworkers in the area.

During FY 1978 farmworkders received the following services from grantees.

18,000	participated in classroom training
4,600	participated in on-the-job training
2,900	participated in work experience projects
196,000	participated in supportive services such as health, medical, nutritional, legal, child care, etc.
22,000	entered employment outside agriculture in wide variety of entry level jobs such as factory, construction, clerical and technical jobs.

FARM LABOR CONTRACTORS REGISTRATION ACT

The aim of the Farm Labor Contractor Registration Act of 1963, as amended in 1974 (FLCRA) is to improve conditions for migrant farm workers. The Act now requires farm labor contractors, their full-time or regular employees and users of such migrant workers, to observe certain rules with reference to their employment. The 1974 Amendments provided greater protection to more workers.

FARM LABOR CONTRACTORS

A farm labor contractor (also called "crew leader") is any person who, for a fee for oneself or on behalf of another person, recruits, hires, furnishes or transports migrant workers (regardless of numbers) for agricultural employment, whether within a state or across state lines. The term applies to individuals, partnerships, associations, joint stock companies, trusts and corporations.

EXEMPTIONS

The following persons or organizations are exempt from the requirements of the Act:

- Nonprofit charitable organizations and public or nonprofit private educational institutions;
- Employers who personally recruit migrant farm workers solely for their own operations;
- An employer's regular or full-time employee who engages in farm labor contractor activities only on an incidental basis and only for the employer;
- Common carriers engaged solely in transporting migrant workers;
- In certain cases, persons who obtain foreign migrant workers for employment in the United States under an agreement between this country and the foreign nation;
- A farm labor contractor who engages in contracting activity within a 25-mile intrastate radius of his or her permanent home, provided the contractor does not engage in contracting activity for more than 13 weeks in a calendar year.

REGISTRATION

A farm labor contractor covered by the law must register with the U.S. Department of Labor and must obtain a certificate of registration. This certificate must be carried on the contractor's person at all times and must be shown to recruited workers and to anyone with whom the contractor deals in the capacity of contractor. In addition, any full-time or regular employee of a [illegible] farm labor contractor who acts in the contractor's behalf must obtain a farm labor contractor employee identification card. These employees are bound by the same rules and regulations that apply to contractors.

A certificate of registration and a farm labor contractor employee identification card are obtained by filing applications with the local state employment office of the United States Employment Service. A completed application for a certificate of registration must be accompanied by:

- A set of fingerprints on appropriate forms;
- A statement identifying each vehicle and any housing owned or controlled by the applicant and to be used for transporting or housing migrant workers;
- Written proof that such vehicles or housing meet federal and state safety and health standards;
- A certificate for each liability insurance policy issued to the applicant in the amounts required under regulations of the Interstate Commerce Commission, if the applicant seeks a certificate of registration with authorization to transport workers;

An applicant for a certificate of registration must authorize the Secretary of Labor to accept service of legal process for a suit filed subsequently against the applicant in the event that the applicant is not available to accept the summons.

A certificate of registration and a farm labor contractor employee identification card are effective only during the calendar year for which each has been issued. If application for renewal is made before December 1, the farm labor contractor or registered employee may continue to operate until the application is acted upon.

A certificate of registration or a farm labor contractor employee identification card is not transferable from one person to another. An employee identification card is good only when the employer holds a valid farm labor contractor registration certificate.

WHAT A FARM LABOR CONTRACTOR IS REQUIRED TO DO

- When recruiting workers, clearly inform them in writing and in a language in which they are fluent, of all living and working conditions, including location of work site, crops to be worked, wages, housing facilities, transportation and insurance, the period of employment, charges to be made for the services provided, the existence of any labor dispute at the work place, or any kickback arrangement between the farm labor contractor and local commercial or retail merchants who deal with the workers;

DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATE

A certificate of registration or an employee identification card may be denied to anyone or suspended or revoked (subject to administrative and judicial review) if such person:

- Makes a false statement on an application or in the written proof required for housing and vehicle statements;
- Gives misleading information to workers regarding terms, conditions, or existence of employment;
- Fails, without justification, to keep a work agreement with the workers or the farm operator;
- Fails to comply with the applicable Interstate Commerce Commission rules;
- Knowingly employs or continues to employ a person, to assist or participate in the contractor's farm labor contractor activities, who has done anything that could be used as a basis for refusing to issue a certificate of registration under the Act.
- Knowingly hires an illegal alien, that is, one who does not hold a permanent resident visa or has not been authorized by the Attorney General to accept such employment;
- Fails to keep the required insurance in effect;
- Knowingly makes application as a front for a contractor who has been previously denied a certificate, and a certificate revoked, or does not qualify for a certificate;
- Has been convicted of certain crimes within five years prior to making application;
- Uses vehicles or housing (under the farm labor contractor's ownership or control) that fail to meet federal and state health and safety standards;
- Has failed to comply with any provisions of the Act or regulations thereunder.

FARM OPERATORS

No person shall engage the services of any farm labor contractor to obtain farm laborers without determining that the contractor possesses a valid certificate from the U.S. Department of Labor.

If it is determined that a person knowingly has engaged the services of a contractor who does not possess the required certificate, such person may be denied the facilities and services authorized by the Wagner-Peyser Act (the employment service) for a period of up to three years and may be subject to a civil money penalty of up to $1,000 for each violation of

Anyone furnished with migrant labor by a contractor must maintain all payroll records required by federal law. The person must also keep on file duplicates of the individual worker's records, which the contractor is required under the law to provide.

DISCRIMINATION PROHIBITED

No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant worker because the worker has: (1) filed a complaint, (2) instituted or caused to be instituted any proceeding under or related to this Act, (3) has testified or is about to testify in any such proceedings, or (4) has exercised any right or protection afforded by this Act, on behalf of said person or on behalf of others.

Any worker who believes, with just cause, that he or she has been discriminated against may, within 180 days, file a complaint with the Secretary of Labor alleging such discrimination. If, after an investigation, the Secretary determines that prohibited discrimination has occurred, the Secretary may bring an action in any appropriate United States District Court to seek an order for appropriate relief, including rehiring or reinstatement of the worker, with back pay or damages.

PENALTIES

Failure to comply with this Act and its regulations may result in criminal prosecution, civil injunctive action, civil money damages, and assessment of civil money penalties of up to $1,000 for each violation.

Q. What percentage of farmworkers are covered by the FLSA minimum wage provisions?

A. Out of a possible coverage of 1.4 million farmworkers, 565,000 are covered.

Economically Disadvantaged Participants
Served by CETA Titles - FY 1978

CETA Title	Total Number of Participants	Number of Economicallly Disadvantaged	Percent Economically Disadvantaged
Title I	1,314,565	1,041,132	79.2
Title II	210,291	130,460	62.0
Title VI	1,008,431	819,211	81.2
Title IV - Youth Programs:			
SPEDY	943,972	882,458	93.5
YETP	296,382	244,314	82.4
YETP-Gov.	16,695	11,926	71.4
YCCIP	32,929	27,798	84.4
YACC*	51,855	19,880	38.0
Job Corps	70,520	---*	---*
itle III Programs			
Migrants	94,949	94,700	99.7
STIP	15,015	13,903	92.6
Indians	5,290	4,641	87.7
Other	6,263	3,432	54.8
Governor's Grant:			
State Manpower Service	98,572	73,309	74.4
** Vocational Education	116,724	92,486	79.2

* Virtually all of the Job Corps enrollees are economically disadvantaged

** The Governor's Grant Vocational Education participants are also included in Title I.

Chairman FASCELL. Our next witness is the Honorable John Huerta, Deputy Assistant Attorney General for Civil Rights, the Department of Justice.

REMARKS OF JOHN HUERTA, DEPUTY ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS, DEPARTMENT OF JUSTICE

Mr. HUERTA. Mr. Chairman.

Chairman FASCELL. Mr. Huerta, we are delighted to have you here, today. I see you have prepared a very thorough and extensive statement and without objection we will put it and whatever attachments are with it in the record and we will allow you to proceed extemporaneously to summarize or anyway you wish.

Mr. HUERTA. Well, thank you, very much. I would like to start by introducing the individuals who have accompanied me here, today. I have Ms. L-a-n-i G-u-i-n-i-e-r, Special Assistant to the Assistant Attorney General for Civil Rights, and Mr. Thomas Stuen, one of the lawyers in our Office of Indian Rights.

Chairman FASCELL. How do you spell your name, Mr. Stuen?

Mr. STUEN. It is S-t-u-e-n.

Chairman FASCELL. Thank you very much. We are delighted to have both of you here this morning.

Mr. HUERTA. I will proceed with a summary of my testimony. On behalf of the Attorney General, I wish to thank the Commission for this opportunity to describe the measures which the Department of Justice has undertaken to insure our Nation's adherence to Principle VII of the Final Act of the Conference on Security and Cooperation in Europe.

As you are aware, Principle VII provides that participating states will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language, or religion.

These principles are by no means novel and, for the most part, are encompassed by such international covenants as the U.S. Charter and the Universal Declaration of Human Rights. Moreover, they are basic to this Nation's philosophical underpinnings. A number of Constitutional provisions, such as the 1st, 8th, and 14th amendments, and the more recent corpus of Federal civil rights statutes all reflect our national concern with individual liberties and minority rights.

It is within this latter context—the enforcement of Federal nondiscrimination laws and related provisions—that the activities of the Department of Justice and, in particular, its Civil Rights Division, touch upon the principles of the Helsinki Final Act.

As you are aware, that agreement neither creates enforceable rights nor establishes any mechanism by which the Attorney General can require compliance with its provisions. Given these constraints, the Department of Justice has primarily focused upon strengthening coordination of Federal efforts to eliminate domestic human rights violations and upon infusing our own programs and policies with the spirit of Helsinki. The outcome, I believe, has been a greater recognition of international human rights norms in the domestic context.

In the area of interagency coordination the Department has endeavored to apprise other Federal agencies of the mechanisms it

has available to examine allegations of the domestic human rights violations and has urged these agencies to refer such matters. For example, the U.S. Commission on Civil Rights, despite its lack of enforcement authority, is often the recipient of domestic human rights complaints. With the Commission's cooperation, such matters have been referred to our Civil Rights Division for evaluation and appropriate enforcement action. The result, I believe, has been a greater responsiveness on the part of the Federal Government to citizen complaints involving this area.

Our most notable successes in the area of interagency coordination, however, have resulted from our cooperative endeavors with the Department of State. Not surprisingly, the Department of State has received allegations of domestic human rights violations from individual complainants, domestic public interest groups, and international commissions and organizations.

Prior to this administration, no mechanism existed to insure that such complaints, most of which fall outside the State Department's jurisdiction, were referred to the appropriate Federal enforcement agency.

Since then, however, I am happy to report that the Departments of Justice and State have entered into an agreement regarding the handling of such matters. Specifically, the State Department has agreed to refer such complaints to the Civil Rights Division which, in turn, either acts directly upon these matters or guides them toward the appropriate office within the Department of Justice.

To date, the Civil Rights Division has reviewed approximately 70 complaints of domestic human rights violations in this manner. These have involved a variety of grievances, including prison conditions, criminal civil rights violations, and violations of the rights of American Indians. The majority of these have fallen squarely within the jurisdiction of the Civil Rights Division and have enabled us to examine incidents which might otherwise have gone unnoticed.

In addition, our cooperative efforts with the State Department have also insured that the actions of this Nation in the defense of human rights are fully understood in international forums. A recent example is a complaint submitted to the United Nations by several civil rights organizations alleging police brutality in Memphis, Tenn. Based on this complaint, an expert screening group of a subcommission of the U.N. Human Rights Commission made a preliminary recommendation that the United States be cited for serious human rights violations, along with a number of other countries. Utilizing information provided by the Civil Rights Division, demonstrating the investigations and prosecutions the Department of Justice had undertaken with respect to police brutality matters in Memphis, the Department of State was able to submit a document which thoroughly replied to the allegations. As a result, the recommendation to cite the United States was not approved by the full subcommission.

As I mentioned, interagency coordination is only one of the aspects of our efforts to insure recognition of the Helsinki Final Act and fundamental human rights. The bulk of the activities that the Department of Justice has undertaken in this regard stem from the responsibilities of the Civil Rights Division to enforce Federal

nondiscrimination provisions. These responsibilities largely predate the Helsinki Final Act but since 1975 have been undertaken with a knowledge of that agreement and an understanding of the need to incorporate its principles into our enforcement policies.

Over the years, the enforcement role of the Civil Rights Division has changed considerably in response to the expansion of our statutory authority and the evolution of civil rights law in the courts. Among the major changes are transitions from a program designed to eradicate blatant forms of discrimination to one which seeks to eliminate today's more subtle, sophisticated, and complex practices, as well; from a largely prosecutorial role to one that includes more frequent participation as amicus curiae in diverse private civil rights cases; from a focus on cases involving only racial discrimination against black citizens to broad-based challenges of unlawful practices directed against other groups, that is, women, Hispanics, American Indians, Asian-Americans, and persons involuntarily confined to penal and other institutions; from a regional focus to one that is national in scope; from an exclusively litigative role to one that encompasses diverse administrative and regulatory responsibilities; and, finally, from a crisis-oriented enforcement program to one that is institutionalized in nature.

Since the 1975 signing of the Helsinki Final Act, the Civil Rights Division has vigorously pursued its enforcement responsibilities. In the fiscal year 1978 alone, the Division filed 55 civil actions challenging "patterns and practices" of discrimination affecting, in some cases, literally thousands of people. In addition, it has initiated 36 criminal prosecutions and participated in 180 other lawsuits.

In the employment area, for example, the Division has obtained consent decrees in nationwide suits against the steel and trucking industries. The steel industry action resulted in back pay awards of over $31 million, and one trucking suit alone resulted in back pay awards of $1.8 million for 47 individuals.

More recently, the Division has settled litigation against seven Texas State agencies which employ approximately 30,000 individuals. The agreements, which cover blacks, Hispanic, and female victims of discrimination, provide for prospective hiring goals and timetables and individual relief including back pay.

The Division has also participated as an amicus curiae in a number of cases which have substantially influenced the evolution of the law surrounding employment discrimination. The *Bakke* and *Weber* cases are good examples of our recent activity in this area.

In the criminal civil rights area, the Civil Rights Division has initiated 147 prosecutions from 1975 to 1978. The bulk of these have been against State and local law enforcement officers charged with unlawful beatings of citizens. Among these were the Memphis police prosecutions mentioned above and a number of highly visible prosecutions which the Department has undertaken to vindicate the civil rights of Hispanics in the Southwest. The latter include *United States* v. *Hayes,* arising in Castroville, Tex., in which we secured a conviction and life sentence of a former town marshall; and *United States* v. *Denson,* in which we continue to appeal the low sentences imposed upon Houston police officers convicted of causing the death of a Mexican-American. I would also like to indicate that the Fifth Circuit on April 2 granted our motion for a

rehearing on the granting of probation to the police officers involved in that prosecution.

It should be noted that the Attorney General has announced a dual prosecution policy pledging to prosecute appropriate criminal civil rights cases notwithstanding a local prosecution arising out of the same incident. Under this more vigorous approach to these matters, the Department of Justice makes an independent determination of whether a victim's civil rights have been violated regardless of prior action at the local level. Given the dynamics of police prosecutions, we believe that this approach will provide a more equitable framework for assessing the necessity of Federal action.

In the area of education discrimination, the Division has been involved in every major desegregation in the South and in most of those in the North. In addition, the Division has become involved in several nontraditional types of equal education opportunity cases. Examples include cases involving the rights of limited or nonspeaking students and litigation to support the enforcement program of the Department of Health, Education, and Welfare. More recently, the Division has also joined with HEW in reviewing public schools and colleges to insure the elimination of sexual bias and other forms of discrimination in the delivery of educational services.

The Civil Rights Division has also involved itself in a substantial amount of litigation touching upon the rights of prison inmates and others who are involuntarily confined. Since 1975, we have achieved several successes in this very important area. Favorable rulings have dealt extensively with issues pertaining with the first and eighth amendments. Court orders have set out timetables to remedy severe overcrowding, unsanitary conditions, and lack of adequate medical treatment.

In this regard, it should also be noted that the Department is also formulating standards which will govern the conditions of confinement in Federal penal institutions. These are likely to reflect a greater sensitivity to the basic human rights of prisoners and should substantially exceed the protections currently afforded by the applicable constitutional provisions. The Department has also instituted a formal grievance procedure for all Federal inmates which insures prisoners will receive a written response to their complaints and grants them the right to appeal such matters to authorities outside the particular institution in which they are incarcerated.

In addition to the efforts described above, as well as others in the areas of housing and credit discrimination, nondiscrimination in the delivery of federally assisted services and voting rights, which are discussed in detail in my written statement, the Civil Rights Division has attempted to insure that its enforcement mechanisms are available to all minorities and other groups protected by civil rights provisions. With respect to the Hispanic community, for example, in addition to those cases previously mentioned, we have brought litigation involving the right of Mexican-American children to bilingual education and have recently participated in a case which establishes the right of undocumented alien children to public education.

The Division is, of course, keenly aware of incidents of violence directed against Mexican and Mexican-Americans in the Southwest. As I have mentioned, we have diligently pursued allegations of police brutality which have been directed to us by the Mexican-American community and have attempted, through criminal prosecutions, to deter any such abuses by local law enforcement officers. Moreover, the Division has also endeavored to eradicate violence against the Hispanic community by private individuals. Within the last year, for example, we secured the conviction of three Ku Klux Klansmen charged with harassment of a Mexican alien legally within the United States.

Similarly, the Civil Rights Division has endeavored to utilize its various jurisdictional bases to eliminate discrimination against women. As the attached summary of our pending sex discrimination cases indicates, in many instances this has involved us in major litigation under virtually every Federal civil rights statute with the exception of title VI, which does not include sex discrimination. Moreover, the Division, pursuant to Presidential directives, has established a Task Force on Sex Discrimination to coordinate the executive branch's review of Federal statutes, regulations, programs, and policies to insure they do not operate in a sexually discriminatory manner.

The Civil Rights Division has also established a separate unit to deal with matters involving American Indians. Created 5 years ago in response to a 6-month study which found that racial discrimination played a significant role in the social and economic deprivation suffered by American Indians, the Office of Indian Rights enforces all Federal civil rights provisions as they apply to this group.

As the attached summary of our activities in this area indicates, the Office of Indian Rights has been involved in a wide variety of litigation since its inception. Generally, voting rights cases have been accorded the highest priority and have resulted in major gains for the American Indian electorate in portions of Arizona, Wisconsin, and Nevada. In addition, the Office has also initiated litigation to redress discrimination against American Indians in access to State and local services, particularly medical facilities, and has sought to improve the conditions of detention facilities that have predominantly Indian populations.

In short, I believe that this overview of the Civil Rights Division's most recent activities demonstrates the Department of Justice has aggressively sought to safeguard the fundamental human rights and liberties encompassed by the Helsinki Final Act. It would be disingenuous, however, to convey the impression that we have succeeded in eliminating all human rights abuses. Serious problems do remain, and the Department is attempting to formulate appropriate solutions.

Among the foremost difficulties which we face in this field is the lack of jurisdictional legislation which clarifies our authority to initiate suits challenging the conditions of confinement in penal institutions.

As I mentioned, the Civil Rights Division has involved itself in a number of major suits to insure that inmates of such institutions are not subjected to abuses and indignities. Its role, however, has

been largely limited to that of amicus curiae or plaintiff-intervenor. An independent jurisdictional basis in this area would free us of this reactive posture and allow us to more keenly focus our resources on such violations. In this regard, I strongly urge this Commission to support the passage of pending legislation, S. 10 and H.R. 10, which would remedy this omission in our enforcement authority.

Other obstacles which confront our efforts to eliminate human rights abuses are inherent in the nature of our Federal system. For example, many complaints involve domestic relation matters, such as child custody issues, which generally fall within the exclusive purview of the States.

The intricacies of the Federal system can be particularly significant when applied to individuals who have been imprisoned solely on State criminal grounds. In the much publicized *Wilmington 10* case, for example, the Civil Rights Division spent a considerable amount of time reviewing the record, in response to requests for Department of Justice participation, to determine whether there was a basis for Federal involvement in the defendants' post-conviction proceedings.

The Division began its investigation pursuant to Federal criminal civil rights statutes on the basis of allegations that a key witness had been threatened because of his recantation of his 1972 trial testimony. Other Federal agencies were also involved at an earlier stage in the investigation of the firebombing and the sniping from which the defendants' convictions arose.

Our review of the record in the *Wilmington 10* case uncovered irregularities in the defendants' prosecution which were sufficiently serious for us to bring them to the attention of the Federal district court before whom the defendants' two habeas corpus actions are pending. On November 14, 1978, we filed a friend-of-the-court brief urging the Federal district court to give serious considerations to the defendants' claims.

The *Wilmington 10* case was unique in that we conducted a lengthy investigation of the facts in the case, including the convening of a Federal grand jury, although defendants were incarcerated on the basis of State criminal convictions. The Civil Rights Division's involvement stemmed from allegations of State prosecutorial misconduct which could have formed the basis for Federal prosecution under 18 U.S.C. 241 and 242. Having declined to prosecute the Federal charges, the United States filed an amicus brief, the one remaining available step to make our position clear within the structure of our Federal system.

The *Wilmington 10* case is a case in which the United States actively attempted to encourage a resolution of the issues at the State level and in which the petitioners themselves went to extraordinary lengths to exhaust all other available remedies, including a petition for pardon directed to the Governor of North Carolina. The petitions for habeas corpus presented the final opportunity for the relief for the *Wilmington 10,* one of whom is still in prison and will not be eligible for parole until January 1980.

Because of its prior involvement, the Justice Department took the unusual step of presenting its analysis of the case to the Federal district court to urge the court to hold an evidentiary

hearing, to make an independent assessment of the prosecution's case, and to review the State case against the petitioners on an individual basis. In most State criminal proceedings, however, the Department has no authority to investigate or otherwise to involve itself in the circumstances surrounding the prosecution. Similarly, and very importantly, the pardon power of the Federal Executive is of no avail to individuals imprisoned solely on State criminal grounds.

Another difficulty which the Department must overcome in its efforts to protect human rights is reflected in the ad hoc manner in which the Civil Rights Division must on occasion approach individual matters. To a certain extent this problem is inherent in the litigative nature of our enforcement responsibilities. As you may be aware, each complaint presents a unique matrix of facts, and a decision to proceed must consider its individual merit.

Beyond this, however, our case-by-case approach is the result of the resources at our disposal. In fiscal year 1978, the Civil Rights Division consisted of 185 attorneys, 60 paralegals, and 150 other support personnel. In that same period, the Division received approximately 10,000 complaints in the criminal civil rights area alone. Moreover, as described above, our civil litigation is continuously expanding into increasingly complex areas such as redlining, which require a greater commitment of resources. Given these strains, the Division has been forced to be selective in the matters it pursues, allocating its resources to those cases which will have the greatest impact.

In closing, let me state that, despite these impediments, the Department of Justice will continue to take whatever actions it can to guarantee that all people within our Nation's borders are afforded the protections of Principle VII of the Helsinki Final Act. These protections parallel those provided by our own Constitution and by the multitude of Federal statutes which secure individual and minority rights in our society. Through their enforcement, as well as continued cooperation with the Department of State and other Federal agencies, the Department of Justice hopes to achieve greater recognition for the principles of the Helsinki accords within a domestic context.

I will be glad to answer any questions you may have.

[Mr. Huerta's written statement follows:]

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STATEMENT OF JOHN E. HUERTA, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

On behalf of the Attorney General, I wish to thank the Commission for this opportunity to describe the measures which the Department of Justice has undertaken to insure our nation's adherence to Principle VII of the Final Act of the Conference on Security and Cooperation in Europe. My remarks will primarily pertain to the activities of that departmental component which is most directly involved in protecting individual rights and liberties - the Civil Rights Division. I assure you, however, that the entire Department is fully cognizant of the importance of the Helsinki Final Act and unqualifiedly supports the President's desire to achieve its full implementation.

As you are aware, Principle VII provides that participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion; that they will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his or her free and full development; and that these States will respect the rights of minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interest in this sphere.

These principles are by no means novel and, for the most part, are encompassed by such international covenants as the United Nations Charter and the Universal Declaration of Human Rights. Moreover, they are basic to this nation's philosophical underpinnings. A number of Constitutional provisions, such as the First, Eighth and Fourteenth Amendments, and the more recent corpus of Federal civil rights statutes all reflect our national concern with individual liberties and minority rights.

It is within this latter context - the enforcement of Federal nondiscrimination laws and related provisions- that the activities of the Department of Justice and, in particular, its Civil Rights Division, touch upon the principles of the Helsinki Final Act. As you are aware, that agreement neither creates enforceable rights nor establishes any mechanism by which the Attorney General can require compliance with its provision. Given these constraints, the Department of Justice has primarily focused upon strengthening coordination of Federal efforts to eliminate domestic human rights violations and upon infusing our own programs and policies with the spirit of Helsinki. The outcome, I believe, has been a greater recognition of international human rights norms in the domestic context.

In the area of interagency coordination, the Department has endeavored to apprise other Federal agencies of the mechanisms it has available to examine allegations of the domestic human rights violations and has urged these agencies to refer such matters. For example, the U. S. Commission on Civil Rights, despite its lack of enforcement authority, is often the recipient of domestic human rights complaints. With the Commission's cooperation, such matters have been referred to our Civil Rights Division for evaluation and appropriate enforcement action. The result, I believe, has been a greater responsiveness on the part of the Federal government to citizen complaints involving this area.

Our most notable successes in the area of interagency coordination, however, have resulted from our cooperative endeavors with the Department of State, particularly the Office of the Assistant Secretary for Human Rights and Humanitarian Affairs and the Bureau of International Organization Affairs. Not suprisingly, these offices often receive allegations of domestic human rights violations from individual complainants, domestic public interest groups and international commissions and organizations. Prior to this Administration, no mechanism existed to insure that such complaints, most of which fall outside the State Department's jurisdiction, were referred to the appropriate Federal enforcement agency.

Since that time, however, I am happy to report that the Departments of Justice and State have entered into an agreement regarding the handling of such matters. Specifically, the State Department has agreed to refer such complaints to the Civil Rights Division which, in turn, either acts directly upon these matters or guides them toward the appropriate office within the Department of Justice.

To date, the Civil Rights Division has reviewed approximately 70 complaints of domestic human rights violations in this manner. These have involved a variety of grievances, including prison conditions, criminal civil rights violations and violations of the rights of American Indians. The majority of these have fallen squarely within the jurisdiction of the Civil Rights Division and have enabled us to examine incidents which might otherwise have gone unnoticed.

In addition, our cooperative efforts with the State Department have also ensured that the actions of this nation in defense of human rights are fully understood in international forums. A recent example is a complaint submitted to the United Nations by several civil rights organizations alleging police brutality in Memphis, Tennessee. Based on this complaint, an expert screening group of a subcommission of the U. N. Human Rights Commission made a preliminary recommendation that the United States be cited for serious human rights violations, along with a number of other countries. Utilizing information

provided by our Civil Rights Division demonstrating the investigations and prosecutions the Department of Justice had undertaken with respect to police brutality matters in Memphis, the Department of State was able to submit a document which thoroughly replied to the allegations. As a result, the recommendation to cite the United States was not approved by the full subcommission.

As I mentioned, interagency coordination is only one aspect of our efforts to ensure recognition of the Helsinki Final Act and fundamental human rights. The bulk of the activities of the Department of Justice in this regard stem from the responsibilities of its Civil Rights Division to enforce Federal nondiscrimination provisions. These responsibilities largely pre-date the Helsinki Final Act but, since 1975, have been undertaken with a knowledge of that agreement and an understanding of the need to incorporate its principles into our enforcement policies.

The Civil Rights Division was established in late 1957 following passage of the first federal civil rights legislation since Reconstruction. For the first six years, our litigation efforts were directed primarily against voting discrimination and violations of criminal civil rights laws. In 1964, the Division's authority was greatly expanded

by the first comprehensive civil rights act designed to eliminate racial, ethnic and in certain instances, sex discrimination by public schools, private employers, places of public accommodation, public facilities, and recipients of federal financial assistance.

Expansion of the Attorney General's authority to enforce civil rights law in new areas has continued steadily since 1964, with passage of the Voting Rights Act in 1965, and its amendments in 1970 and 1975; the Civil Rights Acts of 1968; the Education Amendments and Equal Employment Opportunity Act Amendments of 1972; the Equal Credit Opportunity Act Amendments of 1976; and the Overseas Citizen Voting Rights Act of 1976.

Over the years, the enforcement role of the Civil Rights Division has changed considerably in response to the expansion of our statutory authority and the evolution of civil rights law in the courts. Among the major changes are transitions:

.from a program designed to eradicate blatant forms of discrimination to one which seeks to eliminate today's more subtle, sophisticated and complex practices, as well;

.from a largely prosecutorial role to one that includes more frequent participation as amicus curiae in diverse private civil rights cases;

.from a focus on cases involving only racial discrimination against black citizens to broad-based challenges of unlawful practices directed against other groups, i.e. women, Hispanics, American Indians, Asian-Americans, and persons involuntarily confined to penal and other institutions;

.from a regional focus to one that is national in scope,

.from an exclusively litigative role to one that encompasses diverse administrative and regulatory responsibilities; and, finally,

.from a crisis-oriented enforcement program to one that is institutionalized in nature.

Since the 1975 signing of the Helsinki Final Act, the Civil Rights Division has vigorously pursued its enforcement responsibilities under each of the civil rights provisions mentioned above. In fiscal year 1978 alone, the Division filed 55 civil actions challenging "patterns and practices" of discrimination affecting, in some cases, literally thousands of people. In addition, it has initiated 36 criminal prosecutions and participated in 180 other lawsuits.

In the employment area, the Division enforces the prohibitions against discrimination set forth in Title VII of the 1964 Civil Rights Act and Executive Order 11246. Our

activities in this regard are primarily directed at the discriminatory employment practices of State and local governments and Federal contractors. Since 1975, the Division has filed 36 lawsuits in this area. These have included major successful litigation against the Chicago police and fire departments, the Philadelphia and San Francisco police departments and the cities of Atlanta, Buffalo, Los Angeles, and San Diego. In addition, the Division has obtained consent decrees in nationwide suits against the steel and trucking industries. The steel industry action resulted in a back pay award of over 31 million dollars and one trucking suit alone resulted in a back pay award of 1.8 million dollars for 47 individuals. Most recently, the Division settled litigation against seven Texas state agencies which employ approximately 30,000 individuals. The agreements, which cover black, Hispanic and female victims of discrimination, provide for prospective hiring goals, and timetables and individual relief including back pay.

During this period, the Division has also participated as an amicus curiae in a number of cases which substantially influenced the evolution of the law surrounding employment discrimination. These have included Franks v. Bowman in which the Supreme Court held that identifiable victims of employment discrimination were entitled to retroactive seniority as well as more recent cases such as Regents of University of

California v. Bakke which have called upon the court to more clearly delineate the contours of affirmative action.

In the criminal civil rights area, the Civil Rights Division is responsible for the enforcement of a number of statutes designed to preserve personal liberties. Two of these laws, passed during Reconstruction, prohibit persons from acting under color of law or in conspiracy with others to interfere with an individual's federal constitutional rights. Two others prohibit the holding of individuals in peonage or involuntary servitude. In addition, the 1968 Civil Rights Act renders it a Federal offense to use force or threats of force to injure or intimidate any person involved in the exercise of certain federal rights and activities.

In Fiscal Years 1975 through 1978, the Division has initiated 147 prosecutions under these statutes and secured 163 convictions. The bulk of these have been against State and local law enforcement officers charged with unlawful beatings of citizens. Among these were the Memphis police prosecutions mentioned above and a number of highly visible prosecutions which the Department has undertaken to vindicate the civil rights of Hispanics in the Southwest. The latter include U. S. v. Hayes, arising in Castroville, Texas, in which we secured a conviction and life sentence of a former town marshall; and U. S. v. Denson in which we continue to appeal the

low sentences imposed upon Houston police officers convicted of causing the death of a Mexican-American.

In this regard, it should be noted that the Attorney General has announced a dual prosecution policy, pledging to prosecute appropriate criminal civil rights cases notwithstanding a local prosecution arising out of the same incident. Under this more vigorous approach to these matters, the Department of Justice makes an independent determination of whether a victim's civil rights have been violated regardless of prior action at the local level. Given the dynamics of police prosecutions, we believe this approach will provide an equitable framework for assessing the necessity of Federal action.

Our activities in the criminal civil rights area, however, extend beyond police brutality prosecutions. In recent years, the Civil Rights Division has also been in the forefront of activities to minimize violence in Boston, Massachusetts, and Louisville, Kentucky, in the wake of court ordered desegregation in those cities. In such instances, we have worked with the Department's Community Relations Service to insure conflicts are resolved in a rational manner. Where necessary, the Division has initiated prosecutions after receiving evidence of interference with court orders and of attempts to intimidate citizens who were exercising their constitutional right to equal educational opportunity.

In the area of educational discrimination, the Civil Rights Division enforces Title IV of the 1964 Civil Rights Act, which prohibits segregation in public schools and colleges. Moreover, in conjunction with the Department of Health, Education and Welfare and other Federal agencies, the Division enforces Title VI of the 1964 Act and Title IX of the 1972 Education Amendments, which prohibit discrimination in the delivery of federally-assisted educational services. Currently, the Division is involved in over 200 school desegregation cases involving more than 500 school districts. In most cases, final student assignment plans are in effect, and the remaining responsibilities include solving problems that arise in the desegregation process. Examples of such problems are discriminatory demotion and dismissal of minority teachers, the creation of predominantly white splinter school districts and the sale of public school property to segregated academies.

The Division has also become increasingly involved in school cases involving Northern cities and in lawsuits designed to desegregate hiring in education systems. Recent

litigation in this vein, for example, has included actions against school districts in St. Louis, Missouri, and Tucson, Arizona. In addition, the Division has become involved in several new types of equal education opportunity cases. Examples include cases involving the rights of limited or non-English speaking students and litigation to support the enforcement program of the Department of Health, Education and Welfare. Most recently, the Division has also joined with the Department of Health, Education and Welfare in reviewing public schools and colleges to insure the elimination of sexual bias and other forms of discrimination in the delivery of educational services.

The Civil Rights Division has also involved itself in a substantial amount of litigation touching upon the rights of prison inmates and others who are involuntarily confined. We have, for example, on numerous occasions exercised our authority under Title III of the 1964 Civil Rights Act to file civil actions to eliminate discrimination in prisons as well as other publicly-owned facilities. As I am sure the Commission is aware, many of the problems in this field however, are not necessarily related to racial discrimination. Rather they involve the denial of the rights, regardless of race, to be free from cruel and unusual punishment and to be accorded the fundamental protections of due process. The Division has vigorously pursued the interest of the United States in insuring such denials are redressed, directing our efforts toward entire State penal systems rather than individual prisons or jails.

Since 1975, we have achieved several notable successes in this very important area. Favorable rulings have dealt extensively with issues pertaining to First and Eighth Amendments rights. Court orders have set out timetables to remedy severe overcrowding, unsanitary conditions and the lack of adequate medical treatment. The Division's recent litigation includes cases against state prisons in Texas, Louisiana, Florida, Oklahoma, Mississippi and Illinois.

In this regard, it should also be noted that the Department, is also formulating standards which will govern the conditions of confinement in Federal penal institutions. These are likely to reflect a greater sensitivity to the basic human rights of prisoners and should substantially exceed the protections currently afforded by the applicable Constitutional provisions. The Department has also instituted a formal grievance procedure for all Federal inmates which insures prisoners will receive a written response to their complaints and grants them the right to appeal such matters to authorities outside the particular institution in which they are incarcerated.

The Division has also vigorously pursued the rights of individuals involuntarily confined in other institutional settings. Such persons include residents of State and local mental hospitals; mental retardation facilities; juvenile reformatories or detention centers; homes for dependent and neglected children; homes for the aged; and facilities for the physically handicapped and diseased. In one recent

case, at the urging of the Division as well as private plaintiffs, the court ordered the responsible officials to develop the necessary community based placements for all residents of the District of Columbia's residential facility for mentally retarded individuals, including the formulation of community living arrangements, day-care programs and other appropriate services. Another suit has challenged the constitutionality of conditions and treatment of the Willowbrook Developmental Center in New York. Additionally, the Division has participated in litigation seeking such fundamental guarantees as the right of the mentally ill and retarded to minimum standards of treatment and the right of black children to be free from discriminatory I.Q. testing.

In the areas of housing and credit discrimination, the Civil Rights Division enforces Title VIII of the 1968 Civil Rights Act which prohibits discrimination in access to dwelling units and other aspects of the real estate industry, and the Equal Credit Opportunity Act, which prohibits discrimination in credit transactions. The Division's housing cases have involved a wide variety of defendants ranging from small trailer parks to large real estate firms, apartment management companies and municipal governments. For the most part, the Division has been highly successful in securing the implementation of comprehensive affirmative action programs to guarantee the housing rights of minority groups. Moreover, a number of consent decrees stemming from these cases have resulted in monetary awards to victims of discrimination. The largest of these, entered against a

Memphis, Tennessee, apartment management company, required the defendant to offer over $150,000 in free rent to individuals against whom it had allegedly discriminated.

The Division's equal lending responsibilities are relatively new, having only been assigned to us in 1976. Already, however, we have brought a number of significant cases in this area and have participated as amicus curiae in one case in which the Equal Credit Opportunity Act was attacked as unconstitutionally vague.

In the area of nondiscrimination in the delivery of federally-assisted services, the Civil Rights Division has twofold responsibility. First, it enforces Title VI of the 1964 Civil Rights Act, the fundamental Federal prohibition in this area, and a number of other more narrowly-focused provisions which are specifically applicable to Federal programs such as general revenue sharing, comprehensive employment training and community development block grants. Second, pursuant to Executive Order 11764, the Civil Rights Division also coordinates the Title VI enforcement programs of approximately 30 other Federal agencies.

As an enforcer of Title VI and related provisions, the Civil Rights Division has in recent years brought a number of lawsuits to insure nondiscriminatory access to federally-assisted services. These cases have, for example, addressed discrimination in both services and employment by agricultural extension services operated by the states of Texas, Alabama, North Carolina and Mississippi. Another involved the provision of Spanish-

speaking welfare workers by the Connecticut State Department of Social Services.

As interagency coordinator of Title VI enforcement the Civil Rights Division has undertaken a number of measures to guarantee effective Federal action in this sphere. Most notably, the Division, through the Department of Justice, has issued regulations which bind Federal agencies to certain minimum enforcement standards. In addition, the Division has consulted with affected agencies to insure uniform Title VI regulations and effective compliance programs; assisted the Law Enforcement Assistance Administration in conducting major civil rights compliance reviews of criminal justice agencies which receive federal funds; and reviewed the civil rights programs of a number of Federal agencies, including the Office of Revenue Sharing.

With respect to voting rights, the Civil Rights Division is responsible for the enforcement of a number of provisions which pertain to nondiscrimination in this area. These include the 1965 Voting Rights Act, as amended in 1970 and 1975, the Overseas Citizens Voting Rights Act and the Twenty-Sixth Amendment to the Constitution. Pursuant to these provisions, the Division is empowered to initiate litigation to redress discrimination in the electoral process. Additionally, under Section 5 of the Voting Rights Act of 1965, the Attorney General may be called upon

to review changes in local voting practices and procedures to determine whether they have the purpose or effect of discriminating against racial or language minorities. Although a detailed discussion of this administrative procedure falls beyond the scope of my testimony here today, the vitality of the Division's efforts in this area, I believe, are reflected in the fact that since 1976 fiscal year we have reviewed more than three times the number of Section 5 submissions in all other previous years combined.

With respect to voting rights litigation, the Division has become increasingly involved in more subtle forms of discrimination. Many of our cases now deal with changes in the electoral process which dilute the impact of affected minority voters. For example, the use of at-large elections in certain areas of Texas has been challenged as having such an impact upon Mexican-American and black voters. Also among the Division's more recent endeavors are suits challenging the implementation of state home rule legislation by units of local government and actions to invalidate discriminatory voter residency requirements which violate the Twenty-Sixth Amendments.

Beyond the voting area, the Civil Rights Division has attempted to insure that its enforcement mechanisms are available to all minorities and other class groups protected by Federal civil rights provisions. With respect to the Hispanic community, for example, in addition to those cases previously mentioned, we have brought litigation involving the right of Mexican-American children to bilingual education and have recently

participated in a case which established the rights of undocumented alien children to public education.

The Division is, of course, keenly aware of incidents of violence directed against Mexicans and Mexican-Americans in the Southwest. As I mentioned, we have diligently pursued allegations of police brutality which have been directed to us by the Mexican-American community and have attempted, through criminal prosecutions, to deter any such abuses by local law enforcement officers. Moreover, the Division has also endeavored to eradicate violence against the Hispanic community by private individuals. Within the last year, for example, we secured the conviction of three Klu Klux Klansmen charged with harassment of a Mexican alien legally within the United States.

Similarly, the Civil Rights Division has endeavored to utilize its various jurisdictional bases to eliminate discrimination against women. As the attached summary of our pending sex discrimination cases indicates, in many instances this has involved us in major litigation under virtually every Federal civil rights statute. Moreover, the Division, pursuant to Presidential directives, has established a Task Force on Sex Discrimination to coordinate the Executive Branch's review of Federal statutes, regulations, programs and policies to insure they do not operate in a sexually

discriminatory manner. This Task Force has primarily addressed itself to correcting problems of substantive, rather than purely terminological, sex bias in these areas. For example, it has worked extensively with the Department of Agriculture to guarantee nondiscrimination in the lending programs of the Farmers Home Administration.

The Civil Rights Division has also established a separate unit to deal with matters involving American Indians. Created five years ago in response to a six month study which found that racial discrimination played a significant role in the social and economic deprivation suffered by American Indians, the Office of Indian Rights enforces all Federal civil rights provisions as they apply to this group as well as the provisions of the Indian Civil Rights Act of 1968. The latter provision was intended to afford persons subject to tribal jurisdiction freedoms comparable to those provided by the Constitution. It should be noted, however, that the Supreme Court's recent decision in Santa Clara Pueblo v. Martinez has clouded our jurisdiction with respect to the 1968 Act, and we currently have this matter under consideration.

As the attached summary of our activities in this area indicates, the Office of Indian Rights has been involved in a wide variety of litigation since its inception. Generally, voting rights cases have been accorded the highest priority and have resulted in major gains for the American Indian electorate in portions of Arizona, Wisconsin and Nevada. In addition, the Office has also initiated litigation to redress discrimination against American Indians in access to state and local services, particularly medical facilities, and has sought to improve the conditions of detention facilities that have predominantly Indian populations.

In short, I believe this overview of the Civil Rights Division's recent activities demonstrates, the Department of Justice has aggressively sought to safeguard the fundamental human rights and liberties encompassed by the Helsinki Final Act. It would be disingenuous, however, to convey the impression that we have succeeded in eliminating all human rights abuses. Serious problems remain, and the Department is attempting to formulate appropriate solutions.

Among the foremost difficulties which we face in this field is the lack of jurisdictional legislation which clarifies our authority to initiate suits challenging the conditions of confinement in penal and other institutions. As I mentioned, the Civil Rights Division has involved itself in a number of major suits to insure that inmates of such institutions are not subjected to abuses and indignities. Its role, however, has been largely limited to that of amicus curiae or plaintiff-intervenor. An independent jurisdictional basis in this area would free us of this reactive posture and allow us to more keenly focus our resources on such violations. In this regard, I strongly urge this Commission to support the passage of pending legislation (S. 10 H.R. 10) which would remedy this omission in our enforcement authority.

Other obstacles which confront our efforts to eliminate human rights abuses are inherent in the nature of our federal system. For example, many complaints involve child custody issues and other domestic relations matters which generally fall within the exclusive purview of the states. Similarly, regulations governing a political party's ability to gain a position on the ballot for the most part fall beyond the limits of Federal authority.

The intricacies of the Federal system can be particularly significant when applied to individuals who have been imprisoned soley on state criminal grounds. In the much publicized Wilmington 10 case, for example, the Civil Rights Division spent a considerable amount of time reviewing the record, in response to requests for Department of Justice participation, to determine whether there was a basis for federal involvement in the defendants' post-conviction proceedings. The Division began its investigation pursuant to federal criminal civil rights statutes on the basis of allegations that a key witness had been threatened because of his recantation of his 1972 trial testimony. Other federal agencies were also involved at an earlier stage in the investigation of the firebombing and the sniping from which defendants' convictions arose. Our review of the record in the Wilmington 10 case uncovered irregularities in defendants' prosecution which were sufficiently serious for us to bring them to the attention of the federal district court before whom is pending defendants' two habeas corpus actions. On November 14, 1978, we filed a friend of the court brief urging the federal district court to give serious consideration to the defendants' claims.

The Wilmington 10 case was unique in that we conducted a lengthy investigation of the facts in the case including the convening of a federal grand jury although defendants were

incarcerated on the basis of state criminal convictions. The Civil Rights Division's involvement stemmed from allegations of state prosecutorial misconduct which could have formed the basis for federal prosecution under 18 U.S.C. 241 and 242. Having declined to prosecute the federal chages, the United States filed an amicus brief, the one remaining available step to make our position clear within the structure of our federal system.

The Wilmington 10 case is a case in which the United States actively attempted to encourage resolution at the state level and in which the petitioners themselves went to extraordinary lengths to exhaust all other available remedies, including a petition for pardon directed to the Governor of North Carolina. The petitions for habeas corpus present the final opportunity for relief for the Wilmington 10, one of whom is still in prison and will not be eligible for parole until January 1980. Because of its prior involvement, the Justice Department took the unusual step of presenting its analysis of the case to the federal district court to urge the court to hold an evidentiary hearing, to make an independent assessment of the prosecution's case, and to review the state case against the petitioners on an individual basis. In most state criminal proceedings, however, the Department has no authority to investigate or otherwise involve itself in the circumstances surrounding the prosecution. Similarly, the pardon power of the Federal Executive is of no avail to individuals imprisoned soley on state criminal grounds.

Another difficulty which the Department must overcome in its efforts to protect human rights is reflected in the ad hoc manner in which the Civil Rights Division must on occasion approach individual matters. To a certain extent this problem is inherent in the litigative nature of our enforcement responsibilities. As you may be aware, each complaint presents a unique matrix of facts, and a decision to proceed must consider its individual merit. Beyond this, however, our case by case approach is a result of the resources at our disposal. In Fiscal Year 1978, the Civil Rights Division consisted of 185 attorneys, 60 paralegals, and 150 other support personnel. In that same period, the Division received approximately 10,000 complaints in the criminal civil rights area alone. Moreover, as described above, our civil litigation is continuously expanding into increasingly complex areas such as redlining, which require a greater commitment of resources. Given these strains, the Division has been forced to be selective in the matters it pursues, allocating its resources to those cases which will have the greatest impact.

In closing, let me state that, despite these impediments, the Department of Justice will continue to take whatever actions it can to guarantee that all people within our nation's borders are afforded the protections of Principle VII of the Helsinki Final Act. These protections parallel those provided by our own

Constitution and by the multitude of Federal statutes which secure individual and minority rights in our society. Through their enforcement, as well as continued cooperation with the Department of State and other Federal agencies, the Department of Justice hopes to achieve greater recognition for the principles of Helsinki within a domestic context.

EXHIBIT A

SUMMARY OF PENDING

SEX DISCRIMINATION LITIGATION

FOLLOWS

CIVIL RIGHTS DIVISION SEX DISCRIMINATION CASES

I. EQUAL EMPLOYMENT

A. Plaintiff

CRD FILED	CASE	STATUS
7/20/70	U.S. v. Libbey-Owens Ford, et al., CA No. C-70-212 (N.D. Ohio) First DJ suit with sex discrimination as sole Title VII allegation	* Consent Decree 2/3/71 (Transfer rights relief)
9/9/71	U.S. v. Obear-Nester Glass Co., et al, CA No. 71-127 (E. D. Ill.) Racial and sex discrimination	* Consent Decree 1/3/72 (Back pay and transfer relief for women)
2/29/71	U.S. v. Household Finance Corp. CA No. 72-C-515 (N.D. Ill.) Combination housing and employment case; racial, national origin and sex discrimination	* Consent Decree 2/29/72 (Hiring goals and back pay for women)
7/27/72	U.S. v. Philadelphia Electric Co., et al., CA No. 72-1483 (E.D. Pa.) Racial, national origin and sex discrimination	* Consent Decree 9/21/73 (Back pay and promotion opportunities relief for women)
8/7/72	U.S. v. Los Angeles Fire Department, CA No. 72-1806 (C.D. Cal.) Racial, sex and national origin discrimination	Consent Decree 7/27/74

* Transferred to EEOC on 3/24/74 pursuant to EEOA of 1972, amending Title VII of the 1964 Civil Rights Act.

CRD FILED	CASE	STATUS
1/18/73	EEOC, Labor and United States v. AT&T, CA No. 73-149 (E.D. Pa.) Racial, sex and national origin discrimination	Consent Decree 1/18/73; joint motion for entry of supplemental decree filed on 5/14/75, and granted 8/20/76 (back pay and hiring goals for women); appealed by defendants 10/3/76; oral argument 2/14/77; 3rd Circuit aff'd. district court's opinion 4/22/77; petition by intervenors for rehearing denied May 1977; intervenor's motion for stay filed 7/7/77; intervenor's petition for cert. filed 8/12/77; cert. denied 7/3/78. Decree expired 1/18/79.
3/12/73	U.S. v. Eastex, et al., CA No. B-73-CA-8 (E.D. Tex.) Racial and sex discrimination	* Consent Decree 2/8/74 (back pay and hiring goals for women)
4/5/73	U.S. v. Dallas Fire Department, CA No. 3-7038 EM (N.D. Tex.) Racial, national origin and sex discrimination	Settlement agreement - joint motion for dismissal without prejudice filed 5/10/76.
4/16/73	U.S. v. Delta Airlines, et al., CA No. 18175 (N.D. Ga.) Racial and sex discrimination.	* Consent Decree 4/27/73 (back pay and hiring goals for women); defendant's notice of appeal filed 1/3/75; U.S. filed brief 7/10/75; oral argument 11/18/76.
4/17/73	U.S. v. United Airlines, et al., CA No. 73-C-927 (N.D. Ill.) Racial, sex and national origin discrimination	Consent Decree April 1976.

CRD FILED	CASE	STATUS
5/17/73	U.S. v. New Orleans Public Service, Inc., CA No. 73-1297-Sec E (E.D. La.) Racial and sex discrimination	Trial 7/8-9/74; decision on coverage and injunctive order entered 11/13/74; defendants appealed 1/3/75; U.S. brief filed 7/10/75; decision from 5th Circuit affirmed E.O. 11246 application, vacated injunction and directed administrative enforcement 6/6/77; petition for cert. filed 9/30/77; cert. granted; remanded to district court 6/5/78 (judgments vacated) On Remand - Motion for Summary Judgment filed - no hearing date.
6/29/73	U.S. v. Oklahoma State University, CA No. 73-441-B (W.D. Okla.) Suit to halt termination proceedings against female professor with pending EEOC charge of sex discrimination	Injunction granted 6/30/73; case closed 6/30/73.
8/14/73	U.S. v. Buffalo Police Department, CA No. 1973-414 (W.D.N.Y.) Racial, national origin and sex discrimination	Trial April 1975; U.S. brief and proposed findings filed 9/17/75; supplemental brief filed 10/8/76; motion for additional relief filed 1/7/77. Final Order 12/10/78; Notice of appeal filed by defendant.
8/14/73	U.S. v. Chicago Police Department, CA No. 73C-2080 (N.D. Ill.) Racial and sex discrimination (Title VII and Revenue Sharing allegations)	Final decree 2/2/76 (hiring goals for women and minorities); U.S. brief filed in 7th Cir. as appellee 5/17/76 on revenue sharing fund issue; oral argument 6/14/76; memorandum decision 9/7/76; U.S. filed motion for reconsideration

CRD FILED	CASE	STATUS
		9/24/76; motion denied 10/1/76; city withdrew motion for stay of mandate filed in 7th Circuit 2/7/77; petition for cert. filed by intervenors 4/8/77; Ct. authorized release of remaining revenue sharing funds impounded during litigation; U.S. opposition to cert.filed 8/5/77; petition denied 10/3/77; motion to require back pay 7/31/78; hearing 9/11/78; Govt. submitted brief.
12/26/73	U.S. v. State of Nevada, CA No. R-2989 BRT (D. Nev.) Suit alleging that state female protective statutes violate Title VII by restricting job opportunities for women	Dismissed for mootness 6/17/75 (legislature repealed the statutes 5/27/75).
1/4/74	U.S. v. Maryland State Police, CA No. 74-8 (D. Md.) Racial and sex discrimination	Consent Decree 1/7/74
2/19/74	U.S. v. City of Philadelphia, et al., (Police Department), CA No. 74-400 (E.D. Pa.) Sex discrimination	Consent order (after trial) 3/5/76 (hiring goals for women); order re transfer of women police officers 12/10/76; order requiring 20% hiring goal for class of 350 entered 7/14/77; U.S. filed amicus brief in support of Brace in Brace v. O'Neill (3rd Cir., 12/30/76)

CRD FILED	CASE	STATUS
		U.S. filed appeal brief in Philadelphia 8/29/77; oral argument re Brace 9/8/77; oral argument re Philadelphia 11/12/77; TRO entered enjoining continuance of training of a class of 99 male officers until defendants appoint and include in class all available female applicants 2/24/78; 3rd Circuit upheld District Court's orders providing for interim hiring relief for women and transfer and assignment opportunities for female officers; reversed holding that dismissal of pregnant officer solely on basis of pregnancy is lawful 2/28/78; U.S. filed application for TRO and motion for preliminary injunction asking court to order defendants to reinstate 5 female trainees into the academy (dismissed for failing a firearms qualifying test) 4/3/78; petition for cert. filed by the city in Supreme Court 5/30/78; cert denied 10/2/78; city directed to submit a plan; 3/6/79 govt. objections to plan; 3/14/79 briefs.

CRD FILED	CASE	STATUS
3/22/74	U.S. v. City of Jackson, Civ. No. J-74-66 (S.D. Miss.) Racial and sex discrimination	Consent decree 3/25/74; (back pay and hiring goals for women); motion to intervene denied 4/3/74; intervenor brief filed 6/12/74; affirmed 9/25/75; hearing on private plaintiff's motion for preliminary injunction and U.S. motion as amicus in support granted 4/29/77; U.S. response in opposition to motion to intervene, motion for injunctive & declaratory relief & motion to consolidate 7/29/77; temporary restraining order denied 8/10/77; motion to amend or supplement finding of fact & conclusion of law; to alter, amend, or vacate and reconsider judgment, or for new trial 8/8/78; agreed order 11/21/78; motion to consolidate appeals to incorporate record on former pending appeal, and to reschedule time for filing briefs 12/8/78; appellants opposition to U.S. motion to dismiss & motion to enlarge time for filing briefs for appellants 12/21/78; record on appeal 1/6/79.
4/12/74	U.S. v. Allegheny-Ludlum, et al., (Nationwide Steel Industry) CA No. 74-P-339 (N.D. Ala.) Racial, national origin and sex discrimination	Consent order 4/12/74; affirmed 517 F. 2d 926 (5th Cir. 1975) (back pay and hiring goals for women); Intervenor's appeal 1/8/76; cert. denied on intervenor's appeal 4/19/76; order entered 3/21/78 directing parties to show cause why the consent order should not be amended to allow employees and applicants for employment at steel

CRD FILED	CASE	STATUS
		plants covered by decrees to maintain suits in district courts having venue of their plants.
4/25/74	U.S. v. Buffalo Fire Department, CA No. 1974-195 (W.D.N.Y) Racial, national origin and sex discrimination	Trial 4/75; decision pending; U.S. filed revised proposed order and reply brief asking for interim hiring goals for women firefighters 10/8/76; motion for additional relief filed 1/7/77; interim hiring orders entered 5/6/77 and 6/23/77; final order 12/10/78.
5/16/74	U.S. v. City of Memphis, CA No. 74-286 (W.D. Tenn.), Racial and sex discrimination	Partial consent decree 11/27/74; trial 4/19/76; partial consent decree 7/13/76 (hiring and promotion goals, standards); court approved consent decree and ordered back pay 8/27/76; stipulated order entered 12/30/76.
5/30/74	Secretary of Labor, et al. v. AT&T, CA No. 74-1342 (E.D. Pa.) Sex discrimination in management positions	Consent decree 5/30/74 (back pay for women); notice of motion to intervene 5/14/75; notice of appeal 9/3/75; oral argument 2/14/77; order filed 2/1/79; joint motion to dismiss & proposed order 2/14/79; order filed 3/2/79.
8/8/74	U.S. v. Mississippi Light and Power, CA No. J-74-160(R) (S.D. Miss.), Racial and sex discrimination (enforcement of E.O. 11246)	Order entered 5/27/75, appeal by defendant 5/27/75; U.S. brief (appellee) filed 9/30/75; oral argument 11/18/76; 5th Cir. decision 6/6/77 - affirmed E.O. 11246 application, vacated injunction & directed administrative enforcement; defendants filed petition for writ of cert. 10/25/77; cert. granted; case remanded to dist. ct. (judgments vacated) 6/5/78; hearing on motion for summary judgment (remand) 4/9/79.

CRD FILED	CASE	STATUS
10/17/74	U.S. v. City of Milwaukee Police and Fire Department, CA No. 74-C-480 (E.D. Wisc.) Racial and sex discrimination	Fire Department: Consent decree 10/17/74; order on hiring of women entered 3/19/76; motion to dismiss filed 5/25/76; U.S. response filed 6/10/76; U.S. motion for summary judgment served 10/19/76; final judgment 3/17/78. Police Department: Summary judgment on police matron issue served 10/19/76; trial on matron issue 10/21/77; court ordered equal and back pay for matrons 12/12/77; U.S. filed motions for TRO and preliminary injunction to enforce consent decree seeking reinstatement and back pay for women dismissed from Training Academy and further adjudication of Fire Department's duties under consent decree 3/20/78; court entered TRO 3/23/78.
12/16/74	U.S. v. City of Socorro, et al., CA No. 74-624 (D. N.Mex.) Sex discrimination	Trial 6/23-24/75; opinion and order 1/9/76; judgment entered 3/4/76 (back pay and reinstatement for female ambulance attendant, affirmative action program).
5/27/75	U.S. v. Jefferson Co., et al., CA No. 75-P-0666S (N.D. Ala.) Racial and sex discrimination	Motions to dismiss denied 6/30/75; trial on testing issue re fire and police 12/20-22/76; order entered granting relief 1/10/77 defendants' appeal filed 3/25/77;

CRD FILED	CASE	STATUS
		U.S. cross-appeal 4/7/77; U.S. filed brief 7/5/77; appellant's brief filed 8/8/77; our reply brief filed 11/11/77. (5th) No scheduled oral argument.
6/4/75	U.S. v. City of Wichita Falls Police Department, CA No. 7-75-31 (N.D. Tex.) Sex discrimination	Consent Decree 10/7/55 (hiring goals for women)
8/11/75	U.S. v. Sweet Home School District, et al., CA No. 75-337 (W.D. N.Y.) Sex discrimination against female administrators	Consent decree proposed 12/9/76 and rejected 1/18/77; U.S. obtained $12,000 settlement 6/14/77.
8/13/75	U.S. v. Pima County Sheriff's Department, CA No. 75-195 (D. Ariz.) Sex discrimination	Consent decree 8/20/75; amended 1/16/76 (back pay and hiring goals for women)
9/4/75	U.S. v. Duquesne Light Co., et al., CA No. 75-110 (W.D. Pa.) Racial and sex discrimination	Defendant filed motion to dismiss 10/31/75; U.S. response 12/15/75; amended complaint 2/26/76; supplemental reply brief 3/11/76; order denying defendants motion to dismiss the complaint re one of its facilities 11/30/76.

CRD FILED	CASE	STATUS
10/6/75	U.S. v. Michigan State Police, CA No. G-75-472-CA5 (W.D. Mich.) Racial, sex and national origin discrimination	Consent decree 9/20/77
10/7/75	U.S. v. New Jersey State Police, et al., CA No. 75-1734 (D.N.J.) Racial, sex and national origin discrimination	Consent decree 10/7/75; amended 12/29/76.
10/23/75	U.S. v. North Carolina State Highway Patrol, CA No. 75-0328 Civ. 5 (E.D. N.C.) Racial and sex discrimination	District court held AG had no authority to bring pattern or practice suit absent referral from EEOC 1/27/77; U.S. filed notice of appeal 3/22/77; U.S. filed brief as appellant 6/15/77; U.S. reply brief filed 7/29/77; argued 2/7/78. remand to district court 9/12/78; motion to stay discovery pending petition for cert.
10/31/75	U.S. v. Woburn School Committee, CA No. 75-4552-F (D. Mass.) Sex discrimination in job assignments, pay and benefits	Motion for partial summary judgment filed 5/78; hearing held 6/14/78; response filed 6/21/78; reply filed shortly thereafter; decision pending.
12/11/75	U.S. v. Fresno Unified School District, CA No. F-75-220-Civ. (E.D. Calif.) Sex discrimination against female applicants for professional, administrative and supervisory positions	Complaint dismissed 4/27/76; notice of appeal filed 6/9/76; U.S. brief (as appellant) filed in 9th Circuit 8/25/76; argued 12/5/78 (9th).

CRD FILED	CASE	STATUS
12/19/75	U.S. v. Pima County Community College, CA No. 75-280 (D. Ariz.) Employer retaliation against female employees who filed EEOC charges	Order dismissing U.S. complaint 3/22/76; U.S. motion to amend judgment 4/1/76; motion filed 5/76 requesting court to rule on previous motion; motion to file amended complaint granted 10/6/76; amended complaint dismissed 1/25/77; U.S. filed notice of appeal 3/25/77; U.S. filed brief as appellant 6/22/77; court denied U.S. motion for entry of judgment 7/5/77; court issued order staying all matters pending issuance of "mandate" from 9th Circuit. Argued 12/5/78 (9th).
12/29/75	U.S. v. City of Miami, CA No. 75-3086 (S.D. Fla.) Racial, sex and national origin discrimination in city employment	Consent decree (back pay, hiring and promotion goals) 3/29/77; defendants' appeal filed 4/19/77; motion for stay pending appeal filed 5/2/77; U.S. response filed 5/11/77; U.S. appeal brief filed 2/13/78.
2/6/76	U.S. v. City of Pompano Beach, CA No."FL" 76-6059-Civ-NCR (S.D. Fla.) Sex and racial discrimination in city employment	Consent decree 3/25/77.
4/29/76	U.S. v. City of Seal Beach, California (Police Department) CA No. 76-1389 (C.D. Calif.) Sex discrimination in recruitment, assignment, and hiring practices	Consent decree 4/21/77

CRD FILED	CASE	STATUS
7/29/76	U.S. v. Wattsburg Area School District, CA No. 76-101 (Erie) (W.D. Pa.) Refusal to hire teacher on basis of sex	Trial 1/2-4/77; court found that U.S. had made a prima facie case of discrimination; instructed parties to prepare order directing defendants to provide complainant back pay and hire her at later time 4/18/77; final order entered 7/27/77 requiring reinstatement with seniority, back pay and fringe benefits and an affirmative action program.
10/13/76	U.S. v. South Carolina State Police, CA No. 76-1494 (D.S.C.) Discrimination against women in highway patrol jobs	Consent order 6/17/77 requiring women to be included in next police training program.
12/14/76	U.S. v. Indiana State University, CA No. TH 76-198-C (S.D. Ind.) Sex and national origin discrimination	Trial began 12/28/77; court denied defendants' motion for summary judgment. Settlement pending.
12/20/76	U.S. v. Indiana University (Fort Wayne), CA No. F76-138 (S.D. Ind.) Discrimination in hiring of black man based on race and sex	Trial set for 9/21-22/77; U.S. filed post-trial brief 3/22/78; U.S. filed reply brief 5/24/78; relief denied 7/12/78.
12/21/76	U.S. v. City of San Diego, CA No. 76-1093 (S.D. Calif.) Discrimination against women, Chicanos, and blacks in fire department and against women and Chicanos in all other city agencies except police department	Motion to enjoin cut-off of LEAA funds 1/26/77; orders entered 2/1/77 and 3/30/77 granting extension of fund suspension date; consent decree 12/20/77.

CRD FILED	CASE	STATUS
12/21/76, amended 2/23/77	U.S. v. San Diego County, CA No. 76-1094 (S.D. Calif.) Discrimination against women, Chicanos, and blacks in all departments of county government	Motion to enjoin cut-off of LEAA funds 1/26/77; U.S. submitted consent decree providing for long-term and interim hiring goals 3/30/77; consent decree entered 5/6/77; U.S. motion for supplemental relief denied 2/27/78; U.S. filed motion for preliminary injunction to enjoin use of existing Sheriff Sergeant's eligible list 4/20/78; court granted U.S. request for TRO to stop promotions to Sheriff Sergeant until U.S. motion for preliminary injunction is heard 4/28/78; court granted U.S. motion for preliminary injunction 5/8/78; modification of TRO denied 3/14/79; hearing 5/16/79.
12/23/76	U.S. v. Commonwealth of Virginia; Burgess, Superintendent of Va. State Police, CA No. 76-0623-R (E.D. Va.) Racial and sex discrimination (enforcement of Title VII, CRA 1964, and Omnibus Crime Control and Safe Streets Acts of 1968)	Court entered order 2/4/77 granting state police a preliminary injunction under provisions of 42 U.S.C. 3766 (c)(2) (E); U.S. argued appeal in 4th Circuit 1/9/78; 4th Cir. reversed and remanded order 2/9/78; trial on merits 2/9-21/78; defendants filed motion for preliminary injunction 2/28/78 that would have prevented LEAA fund cut-off; court denied defendants motion 3/7/78; U.S. filed post-trial brief 3/24/78; court heard defendants' motion for rehearing and reconsideration of 3/7/78 denial 3/29/78 and ruled that

CRD FILED	CASE	STATUS
		LEAA's interpretation of the "suspend payment" provision of 42 U.S.C. 3766 (c)(2)(E) was overbroad; U.S. filed notice of appeal to 4th Circuit 5/30/78; final order 9/18/78; brief on merits submitted 1/22/79 (4th Cir.).
12/27/76	U.S. v. Kentucky Utilities Co., CA No. 76-189 (E.D. Ky.) Racial and sex discrimination (enforcement of E.O. 11246)	Discovery; under submission for motion for summary judgment.
6/2/77	U.S. v. City of Los Angeles (Police Department) CA No. 77-1986-JWC (C.D. Calif.) Discrimination on basis of race, sex and national origin in recruiting, hiring and assigning	U.S. filed motion 6/2/77 to stay proceedings re sex discrimination allegations pending decision of similar private suit; court heard motion for preliminary injunction by defendants to prevent suspension of LEAA funds and cross motion for preliminary injunction by U.S. to prevent City from hiring additional officers 7/11/77; motion for preliminary injunction denied 7/14/77; U.S. filed notice of appeal in 9th Circuit 9/7/77; U.S. filed brief in 9th Circuit 12/23/77; U.S. filed reply brief in 9th Circuit attempting to reverse the district court's injunction against termination of LEAA funds 3/2/78; argued 8/8/78 (9th Cir.).

CRD FILED	CASE	STATUS
6/29/77	U.S. v. City of Alexandria, et al., CA No. 77-2040-Sec. I (E.D. La.) Discrimination based on race and sex	Partial consent decree filed 6/29/77; district court denied entry of partial consent decree 7/1/77; U.S. filed motion for alteration of judgment 8/1/77; proposed amended consent decree filed 8/17/77; court refused to enter partial consent decree 1/4/78; U.S. filed brief as appellant asking 5th Circuit to reverse district court's refusal to enter partial consent decree. Oral argument scheduled 4/23/79 (5th Cir.)
8/15/77	U.S. v. Austin, Texas (Fire Department) CA No. A77-CA158 (W.D. Tex.) Racial, sex and national origin discrimination	Consent decree 8/18/77.
9/8/77	U.S. v. New York State Police, CA No. 77-CV343 (N.D. N.Y.) Discrimination against blacks, Spanish-surnamed and women in hiring of state troopers	U.S. filed motion for preliminary injunction 9/8/77 to enjoin appointment of new state police class; court granted defendants' motion for preliminary injunction 10/17/77 to prevent suspension of LEAA funds, but enjoined appointment of state troopers pending resolution of suit; court entered order 11/18/77 dismissing portions of complaint alleging jurisdiction under §707, acknowledged jurisdiction existed under Crime Control and Revenue

CRD FILED	CASE	STATUS
		Sharing Acts; court granted defendants' motion for modification of injunction 1/16/78, allowing appointment of 150 troopers - directed state to appoint 12 blacks, 8 Hispanics and 4 females; trial commenced 5/31/78; post trial briefs submitted.
9/21/77	U.S. v. Nassau County, N.Y. (Police) CA No. 77-C-1881 (E.D.N.Y.) Discrimination against women, blacks and Spanish-surnamed	Court entered order 12/29/77 granting U.S. application that police department be restrained from hiring, promotion or processing of any sworn officers until U.S. motion for preliminary injunction is heard; hearing held 5/16/78 on U.S. motion for preliminary injunction enjoining hiring and promotion of sworn personnel and on defendants' motion for preliminary injunction enjoining termination of LEAA and Revenue Sharing funds; U.S. motion denied, defendants' granted 7/18/78; U.S. moved for sanctions 1/79; sanctions granted.
12/22/77	U.S. v. San Francisco (Police Department) CA No. 77-2884 (N.D. Calif.) Discrimination against women, blacks, Hispanics and Asians in employment practices	Pending - Settlement decree pending.

CRD FILED	CASE	STATUS
2/1/78	U.S. v. State of Arkansas (State Police) CA no. LR-C-78-25 (E.D. Ark.) Racial and sex discrimination (Crime Control and Safe Streets Acts)	Consent decree 2/1/78.
3/15/78	U.S. v. Milwaukee County, CA No. 78-C-163 (E.D. Wisc.) Sex discrimination by Sheriff's Department	Defendant's motion to dismiss filed 3/28/78; court denied defendant's motion for preliminary injunction against cut-off of LEAA grants 4/28/78; decision and order 5/3/78; supplementary memo in opposition to defendants motion to dismiss; notice of appeal 11/14/78; appellants brief 1/9/79.
5/10/78 amended 7/11/78	U.S. v. Baltimore County, Maryland, CA No. H-78-836 (D. Md.) Race and sex discrimination in employment in all aspects of county government except school system (Title VII, Revenue Sharing and Safe Streets Acts)	Hearing on defendant's motion to dismiss filed 6/3/78 on 7/3/78; motion to dismiss denied on jurisdictional grounds but granted on technicality with leave to amend complaint 7/3/78; amended complaint filed 7/11/78; protective order filed 11/14/78; motion to join additional parties defendants 12/5/78; hearings on motions 12/20/78; answer to request to produce 2/26/79.
5/24/78	Louisiana Cooperative Extenstion Service, CA No. 78-213 (M.D.La.) Racial and sex discrimination in hiring and promotion	Consent decree 5/24/78.

CRD FILED	CASE	STATUS
6/12/79	U.S. v. Village of Schiller Park (Police Department) CA No. 78-C-2329 (N.D. Ill.)	Consent Decree 8/28/78.
6/29/78	U.S. v. Indianapolis (Police & Fire) CA. No. IP 78-388-C) (S.D. Ind.)	Consent Decree 7/19/78(race) 1/9/79 (sex)
8/28/78	Norfolk (Police & Fire) CA No. 78-418N) (E.D. Va.)	Consent Decree 8/28/78
19/19/78	U.S. v. Fairfax County, CA No. 78-862-A (E.D. Va.)	Trial April 1979
12/21/78	U.S. v. Texas CA No. A-78-286 & A-78-287 (W.D. Tex.)	Consent Decree 12/21/78.
	B. Plaintiff-Intervenor	
11/18/71	Bazemore, et al v. Friday, et al., CA No. 2879 (E.D. N.C.) Racial and sex discrimination in employment and use of federal funds by state extension service	Motion to amend complaint to add Title VII sex discrimination allegation filed 2/28/75; oral argument held 2/13/76; U.S. filed supplemental motion for leave to file amended complaint in intervention 9/10/76.
7/15/75	Poole and U.S. v. Texas Agricultural Extension Service, et al., CA No. 72-H-150 (S.D. Tex.) Racial, sex and national origin discrimination in employment	Consent decree 7/22/76 (relief in hiring, promotions, training and assignments, and salary equalization.

CRD FILED	CASE	STATUS
	C. Defendant	
1974	Jersey Central Power and Light v. GSA, CA No. 74-1083 (D. N.J.) Race and sex discrimination (E.O. 11246)	Motion to dismiss filed 9/3/74; denied, partial summary judgment granted 9/5/74; argument on union's expedited appeal heard 11/15/74; vacated summary judgment and remanded 1/30/75; appellee's petition for rehearing en banc filed 2/13/75; denied 3/4/75; EEOC petition for cert. filed 8/1/75; memo for U.S. in support of cert. 11/11/75; cert. granted; court of appeals decision vacated 5/24/76; remanded to district court 1976.
May 1975	Legal Aid Society of Alameda County v. Usery, CA No. 74-2954, Private enforcement of EO. 11246 involving allegations that the Dept. of Agriculture failed to enforce E.O.'s requirement that federal contractors have valid affirmative action plans for hiring of minorities and women	U.S. filed brief May 1975; oral argument 10/15/76 (9th Cir.)
1/9/76	Board of Governors of Wayne State University v. Lowell W. Perry (EEOC) CA No. 670039 (E.D. Mich.) Sex discrimination in pension program	U.S. motion to dismiss filed 3/9/76; hearing held 3/29/76; U.S. motion under advisement; U.S. motion to dismiss granted 12/17/76.

CRD FILED	CASE	STATUS
4/7/76	St. Regis Paper Co. v. Marshall, et al, CA No. Civ.-76-375E (D. Colo.) Sex discrimination at one of government contractor's company plants (GSA issued show cause notice to contractor)	Amended complaint 5/18/76; U.S. filed motion to dismiss and to stay further discovery 9/27/76; oral argument 9/26/78 (10th Cir.)
12/22/77	Romeo Community Schools v. HEW, et al., Nos. 77-1691 and 77-1692 (6th Circuit) Issue on whether Title IX of the 1972 Education Amendments covers sex discrimination against employees	U.S. filed notice of appeal 7/18/77; U.S. filed brief 12/23/77; U.S. filed reply 3/27/78; oral argument not scheduled (6th Cir.)
9/8/77	Seattle University v. HEW CA No. C-77-631-S (W.D. Wash.) Issue of whether Title IX of the 1972 Education Amendments was intended to protect only students from sex discrimination	U.S. filed notice of appeal 3/13/78 from district court order holding that Title IX was not meant to prohibit sex discrimination in employment practices of covered educational institutions; U.S. filed brief in 9th Circuit 5/17/78; briefs 8/23/78; no oral argument scheduled (9th Cir.)
3/3/78	Cannon v. The University of Chicago, et al, (7th Cir.) Private right of action under Title IX (20 U.S.C. 1681)	7th Circuit affirmed its earlier decision that there exists no private right of action under Title IX 8/9/77; U.S. filed brief in Supreme Court on behalf of HEW (defendant-appellee) supporting Cannon's right to sue University 3/3/78; argued 1/9/79 in Supreme Court.

CRD FILED	CASE	STATUS
5/12/78	Brunswick School Board v. Califano, CA No. 77-168SD (D. Maine) Whether Title IX of 1972 Education Amendments covers sex discrimination in employment	District court held that Title IX does not prohibit sex discrimination in employment 5/12/78; U.S. filed notice of appeal in 1st Circuit 7/11/78; argued 12/6/78 (1st Cir.) Govt. 3/9/79/
5/12/78	Isleboro School Committee v. Califano, CA No. 78-10SD (D. Maine) Whether Title IX of 1972 Education Amendments covers sex discrimination in employment	District court held that Title IX does not prohibit sex discrimination in employment 5/12/78; U.S. filed notice of appeal in 1st Circuit 7/11/78; argued 12/6/78 (1st Cir.) Govt. 3/9/79
10/2/78	Junior College of the District of St. Louis v. Califano - Title IX employment	Oral argument 3/13/79 (8th Cir.)
12/20/78	Dougherty Co. School System v. Califano Title IX employment	Briefs in 5th Circuit.
	D. Amicus Curiae	
	Phillips v. Martin Marietta, Rejection of female applicants, but not male applicants, with pre-school children	400 U.S. 542 (1971) (U.S. filed amicus brief)
	Cleveland v. LaFleur (Ohio) and Cohen v. Chesterfield (Virginia) Forced maternity leave policy of public school districts	414 U.S. 632 (1974) (U.S. filed amicus brief)

CRD FILED	CASE	STATUS
	Hail v. White (Oakland, Calif. Police Dept.) No. 74-1038 (S. Ct.) Selection standards for promotion which have adverse impact on women	Vacated and remanded in an unpublished opinion by 9th Circuit 7/21/75 (U.S. filed amicus brief)
	California Department of Industrial Relations, et al v. Homemakers, Inc. of Los Angeles (S. Ct. No. 74-1213) Legality of certain state statutes and regulations which require employers to pay premium overtime wages to women employees, but are silent as to overtime compensation for male workers	U.S. filed amicus brief 10/24/75; Supreme Court denied cert. (44 U.S.L.W. 3396)
	Liberty Mutual Ins. Co. v. Wetzel; Gen Electric v. Gilbert and Gilbert v. G.E., No. 74-1245, 74,1589-90 (S.Ct.) Whether exclusion of pregnancy disability from otherwise comprehensive employment disability insurance program violates Title VII	Wetzel: U.S. amicus brief filed 1/10/76; judgment entered vacating judgment of court of appeals with instructions to dismiss petitioner's appeal 3/23/76 424 U.S. 737 (1976) Gilbert: argued 1/19-20/76; reargued 10/13/76; S. Ct. decided exclusion of pregnancy did not constitute violation of 1964 CRA 12/7/76 429 U.S. 125 (1976)
	Fitzpatrick v. Bitzer and Bitzer v. Mathews, No. 75-251 and 283 (S. Ct.) In suit re discriminatory effect of state retirement program against (1) whether Congress has power under 14th Amendment to authorize award of monetary relief in private Title VII suits against state notwithstanding 11th Amendment, and (2) State's petition on 11th Amendment preclusion of award of attorney's fees	Amicus brief filed 2/27/76; opinion supporting U.S. position 6/28/76 427 U.S. 445 (1976)

CRD FILED	CASE	STATUS
	Drew Municipal Separate School District v. Andrews, No. 74-1318 (S. Ct.) Legality of school policy of refusing to employ unwed parents	Amicus brief filed 2/20/76; writ of certiorari dismissed as improvidently granted 5/3/76 (425 U.S. 559 (1976)
March 1973	Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations, S. Ct. No. 72-419. Whether it is a denial of due process to prohibit the arranging and publication by a newspaper of help-wanted ads in sex-designated columns	Supreme Court affirmed decision of the Commission (ordering Press to cease from using sex-designated headings) 6/21/73.413 U.S. 376 (1973).
11/30/76	Cramer v. Virginia Commonwealth University, CA No. 76-1937 (4th Cir.) Alleged discrimination against white males in hiring 586 F2d 297 (4th Cir. 1978)	U.S. filed amicus brief in 4th Circuit 11/30/76; remanded 8/15/78.
3/12/77	Weber v. Kaiser Aluminum Chemical Corp. and the United Steelworkers of America, No. 76-3266 (5th Cir.) Alleged discrimination against white males by affirmative action plan	U.S. filed amicus brief 2/12/77; U.S. filed supplemental amicus brief 4/27/77; oral argument 3/28/79 Supreme Court.
4/16/77	Dothard v. Rawlinson, No. 76-422 (S. Ct.) Challenge of (1) height and weight minimums for employment as prison guards in state penitentiary and (2) regulation excluding women from positions in all-male penitentiaries	U.S. filed amicus brief 4/16/77; oral argument 4/19/77; Supreme Court denied motion of U.S. to file amicus brief out-of-time 4/15/77; Supreme Court affirmed that portion of district court order holding that Title VII prohibits application of statutory height and weight requirements;

CRD FILED	CASE	STATUS
		reversed and remanded to district court the ruling that being male is not a bona-fide occupational qualification defense under §703 6/27/77. 433 U.S. 321 (1977)
12/30/77	City of Los Angeles v. Manhart, No. 76-1810 (Supreme Court) Challenge of legality of gender-differentiated annuities under Title VII and Equal Pay Act	U.S. filed brief as amicus 12/30/77; oral argument 1/18/78; S. Ct. held that Title VII forbids an employer from requiring female employees to pay more than males for equal retirement benefits. 435 U.S. 702 (1978)
1/18/78	Leake v. University of Cincinnati, (6th Circuit) Sex discrimination in promotion	U.S. filed amicus brief 1/18/78 arguing that implied right of action exists under §901 of Title IX of 1972 Education Amendments. (6th Cir.)
5/8/78	Reichardt v. Kinder, Nos. 75-3031 and 3032 (9th Circuit) Sex discrimination in premiums and coverage of private insurance disability policies	U.S. filed amicus brief, presented oral argument in 9th Circuit 5/8/78; Court of Appeals for 9th Circuit accepted our position 1/11/79.
5/17/78	Blake v. City of Los Angeles (Police Department), Nos. 77-3595 and 77-3601, sex discrimination -- use of height requirement and physical ability test	U.S. filed brief in 9th Circuit as amicus 5/17/78.

CRD FILED	CASE	STATUS
	Great American Federal Savings and Loan Association v. Novotny, No. 78-753 Novotny was an officer and director of GAF and was fired in retaliation for his advocacy of equal employment for women employees of the savings and loan. His suit under Title VII and 42 U.S.C. 1985(c) (the Ku Klux Act) was dismissed by the district court. This dismissal was unanimously reversed by the Third Circuit en banc. The position for certiorari presents three issues (1) whether officers and directors of one corporation are capable of forming a conspiracy under 42 U.S.C. 1985(c) (2) whether a deprivation of Title VII rights is a deprivation of equal privileges and immunities under Section 1985(c) and (3) whether the commerce clause supports the application of Section 1985(c) to this conspiracy.	Cert. granted 1/8/79; Memorandum to the Solicitor General requesting amicus participation sent 2/26/79; no response yet.
	II. FAIR HOUSING	
2/15/74	U.S. v. Crestview Corp., et al., CA No. 74-0081 R (E.D. Va.) Racial discrimination in apartment rentals. Amended complaint filed 1/7/75 re refusal to consider wife's income in determining financial qualifications for rental	Consent decree 6/13/75.
10/7/74	U.S. v. Davis, et al., CA No. 74-317-N (M.D. Ala.) Racial discrimination in apartment rentals. Amended complaint filed 1/30/75 re refusal to rent to single men	Consent decree 3/2/75.

CRD FILED	CASE	STATUS
7/8/75	U.S. v. George P. Mueller and Sons, Inc., et al., CA No. 75-C-228 (N.D. Ill.) Refusal to consider wife's income in qualifying couples for tenancy, and refusal to consider alimony and child support payment for divorced women in qualifying tenants for occupancy	U.S. filed motion for summary judgment 11/1/76; motion denied 12/20/76; consent decree entered 5/9/77; motion for civil contempt filed 4/20/78.
9/9/75	U.S. v. Alvin Aubinoe, Inc., CA No. Y-75-651 (D. Md.) Sex discrimination (counting only the higher salary of a married couple in qualifying them for tenancy)	U.S. filed motion for supplemental relief 10/29/76; district court denied U.S. motion 4/7/77.
3/14/75	U.S. v. Shindler-Cummins Property Management, Inc. and Fred Rizk, CA No. 75-H-423 (S.D. Tex.) Refusal to count wife's income in determining eligibility of couple for apartment rental	Amended complaint filed 8/20/75; complaint alleging sex and racial discrimination dismissed 9/13/77; U.S. obtained revised consent decree 9/13/77.
9/19/75	U.S. v. Reece, CA No. 75-98-BLG (D. Mont.) Refusal to consider alimony and child support when qualifying divorced women for tenancy and refusal to rent to single women who don't own cars	U.S. filed motion for partial summary judgment 1/24/77; Court granted U.S. motion for leave to file amended complaint 7/27/77 alleging sex discrimination -- U.S. filed motion for summary judgment on count relating to sex discrimination; order entered 4/10/78 granting U.S. motion for partial summary judgment on issue of sex discrimination and enforcement of HUD conciliation agreement.

CRD FILED	CASE	STATUS
11/5/75	U.S. v. Kilgore, d/b/a Rent-a-Home, CA No. LR-75-C337 (E.D. Ark.) Racial and sex discrimination in rental referral service	Consent decree 11/5/75.
9/25/75	U.S. v. Spartan Management Co. of Va., et al., CA No. 75-456-R (E.D. Va.) Discrimination in rental to black persons and refusal to consider full income of wife in determining financial qualifications of applicants for apartments	Consent decree 4/8/76.
3/25/76	U.S. v. Brown-Kessler Co., Inc., CA No. 76-0486 (D.D.C.) Sex discrimination against males in terms and conditions of rental	Consent decree 3/25/76.
4/15/76	U.S. v. Jefferson Mortgage Corp., CA No. 76-0694 (D. N.J.) Discrimination in lending against women by employing different and more stringent standards to determine the credit-worthiness of a wife's income	Consent order 2/28/78.
4/15/76	U.S. v. Prudential Federal Savings and Loan Assoc., CA No. C-76-124 (D. Utah) Sex discrimination by discounting all or part of the wife's salary in determining eligibility for home mortgage	Consent decree 2/1/78.
6/18/76	U.S. v. Solumin Holding Co., CA No. 76-1170 (D.N.J.) Sex discrimination in apartment rentals (failure to count wife's income in determining eligibility to rent)	Consent decree 11/16/76.

CRD FILED	CASE	STATUS
7/26/76	U.S. v. Alma Parker, CA No. 3-76-0988 (N.D. Tex.) Racial and sex discrimination in rental and sales	Dismissed 9/6/78.
8/16/76	U.S. v. Pyramid Construction Co., Inc., CA No. H-76-323 (D. Conn.) Refusal to rent apartments to blacks and refusal to consider income of working wives or alimony and child support payment to divorced women in qualifying applicants for tenancy	Consent Decree 12/6/78
9/8/76	U.S. v. John Hoffelt, d/b/a Hoffelt's Town and Country Trailer Park, CA No. C-76-615 (W.D. Wash.) Refusal to rent to blacks and single women	Consent decree 9/8/76.
9/23/76	U.S. v. Builder's institute of Westchester and Putnam Counties, Inc., CA No. 76-CIV-4228 (CBM) (S.D. N.Y.) Sex discrimination in establishing rental standards for working wives and mothers	Consent decree 9/24/76.
3/17/78	U.S. v. Apartment Computerized Finders, Inc. and Ruth Fulton, CA No. CIV-78-0222-D (W.D. Okla.) Codes used on applications and records that reflect race, sex and national origin	Complaint filed 3/17/78; consent order 6/15/78.
4/27/78	U.S. v. Huie, et al., CA No. CA3-78-0511-D (N.D. Tex.) Refusal to rent to blacks and imposing different standards and conditions of rental for black persons and divorced women than are used for white males	Consent order 4/27/78.

CRD FILED	CASE	STATUS
5/31/78	U.S. v. Sumer Advertising Agency, Inc., et al. CA No. S.A. 78-CA199 (W.D. Tex.) Discrimination on basis of race and national origin in violation of 1968 FHA and discrimination on basis of race, national origin, age, sex and receipt of public assistance in violation of the ECOA	Complaint filed 5/31/78; consent decree entered 9/21/78 resolving case as to 3 D's - case pending as to remaining two D's.
7/17/78	U.S. v. The Welles Bowen Company, CA No. C 78-307 (N.D. Ohio). Race and sex discrimination in sale and rental of residential property (Title VIII)	Complaint filed 7/17/78; discovery (as of 3/79).
9/26/78	U.S. v. Dominion Management Co. and Snell Construction Co. CA No. 78-657-A (E.D. Va.) Sex discrimination in apartment rentals (failure to consider a wife's income in determining a couple's eligibility to rent) (Title VIII - 1968 FHA)	Complaint filed 9/26/78; consent decree 11/2/78.
10/18/78	U.S. v. Citizens Mortgage Corporation CA No. 78-699-A (E.D. Va.) Sex discrimination in mortgage lending filed under 1968 FHA & ECOA - disallowance of alimony & child support in the making of mortgage loans and application of more stringent qualifications for divorced persons	Complaint filed 10/18/78; consent decree 10/18/78.
11/16/78	U.S. v. Larry Lee Cheek, CA No. C 78-1978A (N.D. Ga.) Apartment rental discrimination on basis of race, religion and sex (refusal to count income of young working wives in qualifying applicants for tenancy) (Title VIII - 1968 FHA)	Complaint filed 11/16/78; pending.

CRD FILED	CASE	STATUS
11/16/78	U.S. v. Federated Department Stores, Inc. CA No. C-1-78-730 (S.D. Ohio) Failure to consider alimony and child support in processing credit card applications in violation of the ECOA	Complaint filed 11/16/78; consent decree 11/16/78.
1/3/79	U.S. v. Citizens Bank & Trust Co., et al, CA No. 79-1 (E.D. Ky.) Refusal to consider the income of married women and giving preference to men in designating persons who may co-sign loan applications	Complaint filed 1/3/79; consent decree 1/3/79.
1/11/79	U.S. v. Direct Mail Specialists, Inc. CA No. S79-0014(c) (S.D. Miss.) (Fair Housing Act) Discrimination on basis of race, color and sex; refusal to solicit married couples, where the wife was the only employed spouse, as prospective purchasers of property in recreational land developments	Complaint filed 1/11/79; consent decree 1/15/79.
1/28/79	Markham v. Colonial Mortgage Service Co. CA No. 77-0232. Credit was denied to a couple because they were unmarried. Married couples aggregate their incomes to qualify for credit while unmarried couples must apply for credit on the basis of two separate incomes	Permission to file amicus 1/28/79.
3/1/79	U.S. v. Gorman, CA No. CN 79-227 D (W.D. Okla.) (Fair Housing Act) Sex discrimination in apartment rentals for failure to rent to groups of single women	Complaint filed 3/1/79; consent decree 3/1/79.

III. EQUAL EDUCATIONAL OPPORTUNITY

CRD FILED	CASE	STATUS
Title IX Intervention 8/9/65	McFerren and U.S. v. Fayette County Board of Education, CA No. C-65-136 (W.D. Tenn.) Proposal to segregate high schools by sex	School district filed proposal to desegregate high schools by establishing sex segregation 12/15/69; U.S. filed opposition 12/19/67; hearing; order rejecting proposal entered 1/9/70.
8/9/66	U.S. v. Amite Co., CA No. 3983 (S.D. Miss.) Sex segregated schools	U.S. brief filed 12/74 in support of new desegregation plan to eliminate sex segregation; 8/2/75 order to show cause pending in Fifth Circuit; decided under EEOA of 1974 9/21/77; remanded to district court; 10/18/77 district court directed pairing of schools by 11/1/77.
2/4/68	U.S. v. Crisp County Board of Education, CA No. 663 (M.D. Ga.) Sex segregated schools	Consent decree eliminating sex segregated schools 2/23/76.
10/22/69	U.S. and Ridley v. Taylor Co. Public Schools, CA No. 2771 (M.D. Ga.) Sex segregated schools	U.S. motion challenging use of sex segregation to avoid impact of desegregation; 10/5/77 U.S. filed motion for summary judgment. Sex segregation eliminated by consent.

CRD FILED	CASE	STATUS
10/22/69	U.S. and Ridley v. Lamar County Public Schools, CA No. 2771 (M.D. Ga.) Sex Segregated schools	Consent decree 7/15/74 providing for elimination of sex segregation at beginning of 1974-75 school year.
4/30/76	U.S. v. Massachusetts Maritime Academy, CA No. 76-1696-M (D. Mass.) Sex discrimination by state operated school in refusing to accept women as full time students	Defendants have agreed to admit women and have since 1977.
1/19/77	Vorcheimer v. School District of Philadelphia, No. 75-37 (Supreme Court) Challenges public school district's maintenance of sex segregated schools	U.S. filed amicus memorandum 1/19/77; oral argument 2/22/77; decision affirming 3rd Circuit 4/19/77, 430 U.S. 703 (1977) affirming by an equally divided court, 532 F. 2d 880 (3rd Cir. 1976).
	IV. CRIMINAL	
1970	U.S. v. Lupton (C.D. Calif.) Forced disrobing of female victims by police officer	Indicted; pled guilty 4/16/76.
2/6/74	U.S. v. Jones and Dehart, (N.D. Ala.) Police officers charged with sexual mistreatment of female victim	Indicted 2/6/74; acquitted 5/17/74.
4/14/75	U.S. v. John Shelton (S.D. Ohio) Attempted rape by police officer	Indicted 4/14/75; pled guilty 6/10/75.

CRD FILED	CASE	STATUS
1978	In Re Donna Downs Police officer charged with sexual abuse of 20 year old escapee from a mental institution while she was held in Pittsburg County jail	3 count indictment 5/10/78; pled guilty to one count 5/30/78 (remaining two counts were dismissed).
	United States v. Smith, 78-6001-5 (W.D. Ark.) Because of his sexual preference, a transvesite suffered extensive physical abuse by police officers	Indictment returned 2/6/78; 18 U.S.C. 241 and 242 convictions 5/2/78.
	United States v. Brumett, et al., (E.D. Ark.) When victims were jailed, an incarcerated female, who was having sexual relations with one of the defendants, plied victims with liquor and marijuana. Defendants raped one victim several times and molested two other victims against their wills	Indictment returned 12/3/75; Not guilty 7/28/76 on 241 and 242.
	United States v. Shah (S.D. Fla.) Victim, a 10 year old female from Sierra Leone, was held in involuntary servitude and, in addition to physical abuse, was sexually assaulted by the male defendant	Indictment returned 1/14/77.
	United States v. Crook, Victim went to sheriff's office to discuss arrest of her son. After some conversation, sheriff advised victim she was arrested. He then took her outside where upon he began to beat her and to mace her	Indictment returned 2/6/78; awaiting trial.

CRD FILED	CASE	STATUS
	United States v. Douglas, 78-05-023-E (E.D. Ill.) Victim was incarcerated for a reckless driving charge. In early morning, victim allegedly created a disturbance. Police officers removed her from the cell and shortly thereafter proceeded to beat her	Indictment returned 5/23/78; Awaiting trial.
	United States v. Funderburke, Defendant, a judge, required young soldiers turned over to him for "counselling" which constituted homosexual assault by the court	Indictment returned 10/21/70; Pled guilty 11/20/70 - sentence: 30 days in jail.
	Duren v. State of Missouri, No. 77-6067. Duren,a criminal defendant, challenged Missouri's statutory automatic exemption from jury duty for women (Mo. Const. Art. 1 §22(b), Mo. Rev. Stat. §494.031(2)). He produced evidence that only 14.5% of jurors in Jackson County, Missouri, for a ten month period before his trial were women. The State failed to rebut his prima facie case with proof that the disparity resulted from neutral causes. The Missouri Suprme Court rejected Duren's challenge. We filed an amicus brief arguing that under Taylor v. Louisiana, 419 U.S. 522 (1975), Missouri's blanket exemption violated the fair cross section rule of the Sixth Amendment. The Supreme Court reversed 8-1,holding that the Missouri statute was unconstitutional	Amicus brief filed 7/21/89 in Supreme Court ; decided 1/9/79.

V. PUBLIC FACILITIES

CRD FILED	CASE	STATUS
3/31/75	Adams and U.S. v. Mathis, CA No. 74-70-S (M.D. Ala.) Conditions of confinement in Houston County jail and violations of prisoners' rights, including sexual abuse of women inmates	Consent decree entered 2/17/77 prohibiting incarceration of females, mentally ill, alcoholics and juveniles; court issued opinion February 1978, 458 F. Supp. 302; case now in compliance.
3/27/75	Finnesand v. Kleppe, CA No. A-75-43 (D. Alaska) Constitutionality of BIA regulations -- whether it was permissible for the secretary to establish a gender base eligibility for social welfare payments	Consent decree filed 12/12/75; defense of Secretary of Interior; entered a consent decree with Alaska Legal Services which changes rules governing eligibility for BIA general assistance in Alaska; we agreed to abandon rule which irrebutably presumed the male to be head of household.

VI. INDIAN RIGHTS

4/26/77	Santa Clara Pueblo v. Martinez, No. 76-682 (S.Ct.) Validity of Pueblo ordinance that denies tribal membership to the children of women, but not men, who marry outside the tribe	U.S. filed memorandum as amicus in support of petition for writ of cert. 4/26/77; S. Ct. granted cert. 5/16/77; S. Ct. denied our motion for leave to file amicus brief after time limit specified by court rules (we had lodged the brief and filed a motion for leave to file it on 11/1/77) 11/14/77;S. Ct. ruled that suits against the tribe under the Indian Civil Rights Act are barred by the tribe's sovereign immunity and that the Act does not impliedly authorize a private cause of action for declaratory and injunctive relief against the Pueblo's Governor 5/15/78.

EXHIBIT B

LITIGATIVE ACTIVITIES OF THE

OFFICE OF INDIAN RIGHTS

The Office of Indian Rights has been involved in a wide variety of litigation since its inception. Attorneys with this Office are responsible for coordinating their activities with other sections when statutes enforced by those sections are at issue.

Voting

Voting rights cases have received priority since the creation of the Office. The first major case we brought was United States v. State of Arizona, 417 F.Supp. 13 (D. Ariz. 1975), aff'd sub nom., Apache County v. United States 97 S. Ct. 225 (1976), which challenged the apportionment of county commissioner districts in Apache County, Arizona. We obtained a court ordered reapportionment plan which gave Indian voters the opportunity to control county government. In recent years we successfully blocked an attempt by the Town of Bartelme, Wisconsin, to deannex the Stockbridge-Munsee reservation and thereby disenfranchise Indian voters.

United States v. Town of Bartelme, Wisconsin, Civ. No. 78-C-101 (E.D. Wisc. 1978). This Office also obtained a federal court order requiring Humboldt County, Nevada, to specially register residents of the Fort McDermitt reservation prior to the September, 1978, primary election. United States v. Humboldt County, Nevada, Civ. No. 78-0144 BRT (D. Nev. 1978).

Presently, we have four voting rights cases in litigation. In United States v. South Dakota, et al., Civ. No. 78-5018 (D. S.D. 1978), we challenged the refusal of state and county officials to allow residents of unorganized Shannon County an opportunity to be candidates for those county offices which serve Shannon County. Unorganized county residents are predominantly American Indian and had previously established their entitlement to vote for county office. We also enjoined enforcement of a reapportionment plan for county commissioner districts in Tripp and Todd Counties, South Dakota. The plan had not

received preclearance as required by Section 5 of the Voting Rights Act of 1965, as amended. We recently filed a motion for supplemental relief in this case in an effort to force the defendants to devise and preclear a new reapportionment plan. United States v. Tripp County, South Dakota, Civ. No. 78-3045 (D. S.D. 1978). In United States v. Board of Supervisors of Thurston County, Nebraska, we challenged the legality of at-large elections for electing county commissioners on the theory that this type of system diluted Indian voting strength. The defendants have indicated their willingness to change the system to single-member districts in 1980 and in future election years. A negotiated settlement is a possibility. Lastly, we represent the United States in a suit filed by Apache County High School District No. 90 which seeks to validate the results of a school bond election. The Attorney General had objected to the election pursuant to Section 5 of the Voting Rights Act because he determined that the school district had not complied with

the minority language provisions of the Voting Rights Act in its conduct of the election. Apache County High School District No. 90 v. United States, Civ. No. 77-1815 (D. D.C. 1977).

It is likely that voting rights cases will continue to demand a substantial amount of the resources of this Office for the immediate future. We recently received approval for two more voting rights suits, one alleging failure to provide adequate bilingual assistance and one alleging dilution of Indian voting strength in a system used to select county commissioners. We know of several other potential voting rights violations which are in the early stages of review.

Access to State and Local Services

This Office has also devoted substantial effort to insuring that Indians enjoy access to state and local services. We have settled two cases which challenged the legality of local hospitals referring Indians who sought

emergency room treatment to nearby Indian Health Service hospitals. The settlements specified the conditions under which referrals could be made to IHS facilities and required certain safeguards to insure the well-being of the patient when a referral is warranted. United States v. Board of Trustees of Anadarko Hospital, Civ. No. 74-300 D (W.D. Okla, 1974); Penn and United States v. San Juan Hospital, Civ. No. 74-419 (D. N.M. 1974). In United States v. City of Oneida, New York, Civ. No. 77-CV-399 (N.D. N.Y. 1977), we obtained a consent decree which requires the City of Oneida to provide fire and police protection to a tract of Indian land located within the city's boundaries. Most recently, we negotiated a settlement with the City of Sault Ste. Marie, Michigan, which requires the city to provide sewer and water services to a HUD-financed Indian housing project located within the city limits. United States v. Sault Ste. Marie, Michigan, Civ. No. M 78-33 (W.D. Mich.1978). We are currently investigating two other instances involving the denial of sewer and water services to proposed Indian housing projects.

Correctional Institutions

This Office has been instrumental in improving conditions in five local detention facilities that have predominantly Indian populations. In Cotton and United States v. Sciples, Civ. No. E-75-10 (S.D. Miss. 1976), we achieved a negotiated settlement which resulted in the closing of the Kemper County, Mississippi, jail and a transfer of prisoners to constitutionally adequate facilities. Since the decree was signed, the county has opted to construct a new jail which meets the standards articulated in the decree. We obtained a consent decree which required the Jackson County jail in North Carolina to provide better medical care and supervision to inmates and particularly to those who are intoxicated when incarcerated. United States v. Jackson County, North Carolina, Civ. No. B.C. 77-14 (W.D. N.C. 1977). As a result of our investigative efforts and negotiations, we have persuaded three other detention facilities, one local and two tribal, to improve

medical care, supervision and general jail conditions in their facilities. One of the tribal facilities is presently planning a new detention facility.

Representation of Other Federal Agencies As Defendants

Upon occasion this Office has represented other federal agencies in lawsuits which raise important civil rights issues affecting Indians. In Finnesand v. Kleppe, Civ. No. A-75-42, (D. Alaska, 1975), we persuaded the Department of the Interior to change a rule regarding Bureau of Indian Affairs general assistance in Alaska in order to enable households headed by female Alaskan Natives to receive such assistance. We assisted the Solicitor General's Office in preparing a brief in Morton v. Mancari, 417 U.S. 535 (1974), which upheld the validity of Indian preference in the Bureau of Indian Affairs. Thereafter, we represented the Department of the Interior in other cases involving challenges to Indian preference and obtained dismissals in those cases. Nogle v. Morton, Civ. No. 74-199-D (W.D. Okla. 1974; Frazier v. Morton, Civ. No. 74-1006 (D. S.D. 1974). In Whiting v. United States, et al., Civ. No. 75-3007, (D. S.D. 1974),

we persuaded the Bureau of Indian Affairs to enter a consent decree which provided for use of the tribal laws defining membership for Indian preference purposes. We also supported the tribe's position in Wounded Head v. Oglala Sioux Tribe, et al., 507 F.2d 1079 (8th Cir.), by arguing that the 26th Amendment did not compel the tribe to permit 18 year olds to vote in tribal elections. In White v. Califano, 437 F.Supp. 543 (D. S.D. 1977), aff'd, 581 F.2d 697 (8th Cir. 1978), we unsuccessfully attempted to persuade the court that the State of South Dakota had the authority and the obligation to involuntarily commit Indian residents of reservations to state mental hospitals when the tribal courts had signaled their acquiesence in the process by appointing a guardian for the incompetent.

Criminal Prosecutions

In previous years this Office has prosecuted police officers for violating the civil rights of Indian citizens. We obtained three convictions in such cases. United States v. Litzau, Crim. No. 73-1027 (D. S.D. 1974); United States v. Gates, Crim. No. CL-74-72 (D. N.D. 1974); United States v. Boni, Crim. No. 75-460 PHX-WEC (D. Ariz. 1975).

We also obtained six convictions and one acquital on assault charges stemming from an attack on lawyers for Indian activists which occurred on the Pine Ridge reservation in South Dakota. United States v. Wilson, et al., Civ. No. 75-5040 (D. S.D. 1975).

Due to a turnover in personnel with criminal experience and an increasingly heavy caseload in civil litigation, this Office no longer has any direct involvement in criminal cases. When we learn of a possible criminal violation, we forward this information to the Division's Criminal Section which, in turn, keeps us apprised of any action it plans to take.

Amicus Participation

The Appellate Section of the Civil Rights Division handles all briefs filed by this Division in courts of appeal. The trial units recommend whether to appeal from adverse decisions involving the United States or a client agency and whether to file amicus briefs in cases of interest to the United States. This Office informs the Appellate Section of important Indian law cases and assists that section in developing the position of the United States. We recommended that the United States file an amicus brief in Oliphant v. Suquamish

Indian Tribe, 435 U.S. 191 (1977), Tonasket v. Thompson, 419 U.S. 871 (1974), and in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). 1/ Additionally, we persuaded the Department to file amicus briefs in cases involving the question of whether Indian students and Indian prisoners have a first amendment right to wear traditional hair styles. New Rider v. Pawnee County Board of Education, 480 F.2d 693 (10th Cir. 1973); Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975). We also filed a brief in Schantz v. White Lightning, 502 F.2d 223 (8th Cir. 1974), on the issue of whether a federal district court had jurisdiction to hear an action arising out of an automobile accident on a state highway passing through a reservation.

Indian Civil Rights Act

Prior to the Supreme Court's decision in Martinez, supra, which greatly limited the role of federal courts in enforcing the Indian Civil Rights Act of 1968, this Office took the position that the United States could sue for violations of this statute in federal court. However, we followed a policy of attempting to negotiate changes in tribal practices prior to suit in order to minimize federal court involvement in tribal affairs. For example, we persuaded the Warm Springs reservation in Oregon to abandon its prohibition on allowing licensed attorneys

1/ The United States filed a brief in Martinez but did so belatedly, and it was not considered by the Court.

to practice in tribal court. In United States v. San Carlos Apache Tribe, Civ. No. 74-52-GLD (JAW) (D. Ariz. 1974), we negotiated a consent decree which provided for certain changes in tribal election procedures. We also expended a great deal of effort in attempting to persuade the Navajo tribe to reapportion prior to the 1978 tribal elections.

After the Martinez decision was handed down, we had to reappraise the question of whether federal courts could entertain actions by the United States based on alleged violations of the Indian Civil Rights Act. We voluntarily dismissed United States v. Red Lake Band of Chippewa Indians, Civ. No. 6-78-125 (D. Minn. 1978), alleging a refusal on the part of the tribe to allow criminal defendants in tribal court access to an attorney, pending a resolution of the question. The Assistant Attorney General for the Civil Rights Division is presently considering whether the Martinez decision allows the United States to seek equitable relief in federal court for violations of the Indian Civil Rights Act.

QUESTIONS AND REMARKS

Chairman FASCELL. Thank you very much, Mr. Huerta, for that excellent summary of your statement. In cases involving brutality by local law enforcement officials, what is the process by which an individual can get heard as far as the Federal Government is concerned? How easy or how difficult is it for that individual to file a complaint?

Mr. HUERTA. Any individual who is a victim of police brutality or a witness to any action of police brutality can file a complaint either directly with the Civil Rights Division, with the U.S. attorney in the region in which it took place or with the local office of the Federal Bureau of Investigation.

The U.S. attorney and the Civil Rights Division will examine the complaint and, if on its face it appears valid, will automatically ask the FBI to investigate. The FBI goes through a similar process. After they receive the complaint, they review it and, if it presents a prima facie case of police brutality, they will automatically investigate it.

Chairman FASCELL. So an individual has three avenues by which his complaint can get processed at the Federal level.

Mr. HUERTA. That is correct.

Chairman FASCELL. And does that have to be in writing and sworn to?

Mr. HUERTA. No. The statement will be taken orally by any of the three agencies mentioned. We try to get as complete a statement as possible in writing, but that is not 100 percent necessary.

Chairman FASCELL. Is the individual required to have an attorney?

Mr. HUERTA. No, he is not.

Chairman FASCELL. Would the Civil Rights Division undertake the investigation or have the FBI investigate it, or what?

Mr. HUERTA. The Federal Bureau of Investigation does all investigations for the Civil Rights Division and they would undertake the investigation.

Chairman FASCELL. And then the investigation goes back to where?

Mr. HUERTA. Within 21 days, the FBI reports back to the Civil Rights Division. We have what is called a "standard preliminary investigation form" that gives the FBI guidance as to what questions should be asked.

Chairman FASCELL. Assuming on referral back to the Civil Rights Division, the Division decides that some action should be taken, how is that pursued? Is it referred to the U.S. attorney or does the Civil Rights Division do it directly?

Mr. HUERTA. We would be in contact with the U.S. attorney's office. There is a great deal of variety through-out the country in terms of the availability of U.S. attorneys to handle these matters.

I can state very positively that with this administration several U.S. attorneys throughout the country have taken a very active role in civil rights prosecutions. We work very closely with them.

If any U.S. attorney would like to handle one of these matters, we would support him 100 percent and work very closely with him.

So our position in the Civil Rights Division because of our limited resources——

Chairman FASCELL. But if a U.S. attorney for one reason or another can't get involved in the case, the Civil Rights Division will undertake it.

Mr. HUERTA. That is correct.

Chairman FASCELL. One of the barriers or one of the problems that you say you have to overcome is the ad hoc approach to individual cases. Is there any way, where you have systemic discrimination, that the Department can involve itself without the ad hoc approach?

Mr. HUERTA. In most of our civil litigation, we take the systematic approach, that is, we only file lawsuits where there is a pattern and practice discrimination. Right now, we set priorities for each section—we are divided up according to various civil rights statutes—set goals for those sections, and establish criteria which prioritorize the litigation that each should bring.

Chairman FASCELL. Would it be the same thing on the other side?

Mr. HUERTA. In the criminal area, each prosecution depends on the individual merits of the prosecution involved—the facts of the situation. Every death case, for example, is reviewed at the highest level of the Division. Both deputy assistants, and the assistant attorney general.

Chairman FASCELL. So you do set priorities on the criminal side.

Mr. HUERTA. That is right. And any allegation of serious misconduct gets a very close review—any time that there is a very serious injury.

Chairman FASCELL. Is there any way for the Department to approach a series of investigations where it appears that there might be a systemic pattern in a given area, in a State or locality?

Mr. HUERTA. Yes, sir. We currently have four investigations in major cities, which I can't disclose to you, which are underway, looking at systemic approaches, not in terms of police prosecutions but civil remedies to try and get at the basic problem of police malpractice.

These are at a very tenuous stage in that we are collecting the evidence right now and working on the legal theories that would allow us to bring such an action, so we are trying several different remedies.

The main statute that we work with is title VI, which prohibits discrimination in the expenditure of Federal funds. If police brutality occurs in a nondiscriminatory manner, it is difficult to remedy that problem with that particular statute. We are, however, looking at cases to see if there is a discriminatory impact in the administration of police brutality, if I can use that terminology. I think that you understand what I mean.

Chairman FASCELL. Yes, I understand. Is it possible that some how an injunction would be possible?

Mr. HUERTA. Well, it would depend upon the underlying theory. We have brought civil actions against prisons and mental institutions for unconstitutional conditions of confinement based upon the theory that the Attorney General has the inherent authority to

enforce the Constitution of the United States and the 14th amendment.

The Fourth Circuit Court of Appeals in October 1977 held in *U.S.* v. *Solomon* that the Attorney General did not have such authority. We are now looking to see if our criminal prosecution statutes, 18 U.S.C. 241 and 241, may not give us an extra step up on reinforcing that theory in order to try to secure civil injunctions against these criminal acts.

Chairman FASCELL. Well, it occurs to me without even knowing anything about that state of the law at that point. It seems to me that if you had a provable discriminatory practice of violence and brutality in a local department of enforcement that there ought to be some way to enjoin that department even though the brutality is nondiscriminatory since brutality certainly is on its face discriminatory even though it is applied in a nondiscriminatory fashion.

Mr. HUERTA. It is certainly a violation of human rights norms. A third area in which we have been involved since the Helsinki accords and in which we have retained an expert in international law to advise the Civil Rights Division is the use of international norms as a basis for civil actions to remedy violations of human rights.

In my prepared remarks, I addressed the problems of the Federal structure, and you as a Congressman are aware of the sensitivity of the Federal-State balance. It is an area that we are examining closely to see if there is some basis for Federal action that would not impinge upon the Federal structure.

Chairman FASCELL. I am well aware of the sensitivities. I wouldn't favor a Federal police force, either, or total Federal enforcement of all laws. I just think that that would be something that we are not interested in. But the steps that you are investigating seem to me to be extremely beneficial.

The Department went to great efforts, and you went to great length in your testimony to discuss the involvement in the *Wilmington 10* case. Is that an exception or is there now a policy decision at the departmental level that will allow the Department to become just as involved in similar cases?

Mr. HUERTA. Well, I don't know whether there are similar cases. But Ms. Lani Guinier, who is accompanying me today, spent a little over a year working on that case with a team of lawyers.

Our actions were the result of the Department's earlier involvement, which I mentioned, as well as the Bureau of Alcohol, Tobacco and Firearms in the Department of Treasury. Because the Federal Government had developed information in this case, we believed that we had a special responsibility to share it with the Federal district court in its deliberations.

To the extent that another case in a similar posture would arise, I think we would treat it with similar sensitivity.

Chairman FASCELL. The Mexican-American legal defense and education fund among others has charged that the Immigration and Naturalization Service is carrying out its enforcement activities against undocumented Hispanics in the southwest and is consistently violating their legal and human rights.

What is the Department doing about those allegations?

Mr. HUERTA. Well, you are going to have the opportunity, tomorrow, to address that same question to Leonel Castillo, Commissioner of the INS. The Civil Rights Division has conducted investigations of border patrol abuse, and in the past we have also prosecuted border patrol and customs agents for violations of the civil rights of aliens in this country.

In addition to that, INS has established an internal review process by which anytime a complaint is lodged against say a member of the border patrol, the Office of Professional Responsibility will conduct an internal investigation to see whether disciplinary action is warranted or to refer it to the Civil Rights Division for prosecution.

Chairman FASCELL. How does the individual involved in that case who has been abused get his complaint heard? Is it simple or complex?

Mr. HUERTA. It would arise the same way. The complaining party would either complain to the Civil Rights Division, INS, the FBI or the U.S. attorney. All four would refer the matter to the Office of Professional Responsibility of the Immigration Naturalization Service, and ask them to conduct a review of the matter, make a recommendation for further action, and take it to either the Civil Rights Division for prosecution or to Internal——

Chairman FASCELL. And it comes back to the Division for review?

Mr. HUERTA. I am not certain of that. I have seen those come back where further prosecutive action is necessary. Our assumption, I think, is that if it does not come back, some internal disciplinary action took place or the allegation, for some reason, wasn't completely founded or provable.

Chairman FASCELL. Well, it seems to me that if the complainant in the first instance comes to the Division, the Division has the responsibility to determine the disposition of the matter.

Mr. HUERTA. Within the Department there is an allocation of responsibility, a relationship between agencies, regarding action on such matters. But I share your view, and I will take that up with them.

Chairman FASCELL. It seems to me that there is a vulnerability there if the complaint is reviewed by a professional review board of INS and disposed of in that review. Because the question will always remain that the complainant complained of the persons who review him. And without some disposition by the Civil Rights Division, that opening is always going to be there, it seems to me.

And it ought to be a reasonably easy matter within the Department to eliminate that problem.

Mr. HUERTA. You are right. It has the appearance of a conflict of interest. Our experience with the internal review process, however, has been a positive one. We believe that it is a credible, good faith review of the merits of the issue presented.

Chairman FASCELL. I believe that, too, unless you have been abused and then you don't believe it. That is the problem.

Mr. HUERTA. That is correct.

Chairman FASCELL. As I see it. Mr. Schneider?

Mr. SCHNEIDER. Thank you, Mr. Chairman. At the outset, let me express to the Department our appreciation for the cooperation of the Division with respect to the handling of the complaints that

have come to the Department from various international organizations.

In that regard, you noted that the investigation is taking place of some 70 cases. And I was wondering if those investigations had resulted in any official action, either by the Division or by any other Federal agencies at this point?

Mr. HUERTA. As you may be aware, this is a fairly recent event in terms of our having a relationship with the Department of State. It took us about a year to negotiate it. We got a batch of complaints last summer and have started processing those.

We were able to incorporate several of those into litigation that is going on now in *U.S.* v. *Texas,* litigation involving prison conditions. Based on these complaints we were able to contact certain Texas prisoners and use them as witnesses in our pending case.

I haven't really followed through on all of the matters that have been brought over, but most of those complaints that we have received have been within the last 2 or 3 months, I believe.

Mr. SCHNEIDER. With respect to the chairman's question concerning systemic discrimination and patterns of violations of rights, some time ago the Civil Rights Commission published a report on the administration of justice in the southwest.

Mr. HUERTA. That report was published in 1968 and I think you could change the third digit to make it 1978 and not a lot would change in that report. I am very familiar with it.

Mr. SCHNEIDER. That was my question. With regard to the recommendations of that Commission report, is there any area for the Division to take leadership? The reason I raise it is I know that in the submission that we are about to hear there is a case involving the shooting of three Mexican nationals in New Douglas, Ariz. And apparently a suit was brought against the Department with regard to the prosecution of those defendants for civil rights violations.

I was wondering how that related to the earlier statement with regard to the dual prosecution policy.

Mr. HUERTA. Well, there is really not much of a relationship to the dual prosecution policy, although there was a State prosecution in that case. We are still examining that case, and, hopefully, within another month, we will have made a determination one way or the other.

But the problem is whether we can get any Federal jurisdiction at all. That factor of a State prosecution is not the hindrance in that matter. We are examining Federal statutes to see if there is any handle that we can get to bring a prosecution.

Mr. SCHNEIDER. One other specific question. Some time ago in California, an individual was killed during a strike. I believe it is still going on. And several years ago there were similar incidents. I was wondering whether the Division has inquired into that particular case?

Mr. HUERTA. I do not have knowledge of that particular case, but we have 3,500 investigations done a year. There are currently about 1,500 underway, and, while that may have received some notoriety, I am not aware actually of that investigation. I would assume it is being carried out.

Chairman FASCELL. Mr. Oliver?

Mr. OLIVER. Mr. Huerta, in your testimony, you pointed out the extraordinary lengths that the Federal Government went to to involve itself in the *Wilmington 10* case. I was curious as to what prompted the exceptional treatment that you have given to this case. Was it prompted from the executive branch of government? Was it from the publicity that was attendant to it, from the international criticism that we received? What caused you to go to these extraordinary lengths?

Mr. HUERTA. After we received this complaint that I referred to about one of the witnesses being threatened, we did a preliminary investigation and gathered data which revealed serious questions about the underlying prosecution.

Mr. Days, the Assistant Attorney General, was concerned that these serious irregularities be conveyed to the court where this matter is now pending and so informed the attorney general. I think it was his concern and that of the Attorney General.

I think that all of the attendant publicity made it more difficult for us to get in at an earlier time. There are more levels of review, more people concerned about what we are doing, whether we are saying the right thing. On a day to day basis we are conducting investigations throughout the country on any number of cases that could be a so-called hot publicity item eventually, and there is very little review that takes place on those matters.

Chairman FASCELL. Is a complaint in that case an individual complaint or an organizational complaint?

Mr. HUERTA. We have probably had numerous complaints generated. Ms. Guinier——

Chairman FASCELL. Ms. Guinier, if you would like to say something go ahead.

Ms. GUINIER. The original complaint that we received was that the key witness in the prosecution had been threatened because of his recantation. It was an individual complaint.

Mr. OLIVER. You pointed out that you now have an international lawyer in the Civil Rights Division.

Mr. HUERTA. He is not employed by us. He is a consultant. He is Prof. Richard Lillitch of the University of Virginia who is well-known and his credentials are good.

Mr. OLIVER. What can we expect in the future when he determines or suggestš that perhaps we might be in violation of international agreements, even those by which we are not legally bound such as the Helsinki Final Act or the International Covenants which we haven't ratified, but which the President has taken some initiative on to try to seek ratification? Can we assume that in the future that he will be taking a look at the practices within the United States that fall under the jurisdiction of these international agreements?

Mr. HUERTA. I don't know whether I can commit the Department to the fact that we will do that. I think that it is our intention to fully comply with the spirit of the Helsinki Agreement, and with the spirit of the U.N. Charter and the Declaration of Human Rights, by fully utilizing within Federal structure, the statutory and constitutional power of the Federal Government to insure that the international norms are fully supported.

Mr. OLIVER. For instance, we have an organization such as Amnesty International which issues a report saying that there are a certain amount of political prisoners in the United States in violation of various international agreements. Would that prompt your Division to call up your international law consultant to take a look into these cases?

Mr. HUERTA. No, what Mr. Lillitch is doing for us is interpreting how international norms correspond to civil rights statutes. For example, he has given us one paper on their applicability to sex discrimination. He has gone through and analyzed all of the various international norms that affect sex discrimination and how those tie into Federal civil rights statutes which prohibit sex discrimination and has discussed the standards and the cases to give us an idea of how they can be used in our litigation.

With respect to your question on Amnesty International, if the organization didn't complain to us directly, we might, nevertheless, read about it in the paper and conduct an investigation. This is another area which I didn't mention and I should have. Even if an individual doesn't complain to us about a civil rights violation, if we read about it in the paper we will normally conduct our own investigation.

Chairman FASCELL. Is there any prohibition against any organization submitting a complaint to the Department?

Mr. HUERTA. None at all, and we do act on such complaints.

Chairman FASCELL. You don't have to read about it in the newspaper unless they want it that way.

Mr. HUERTA. That is correct. And, as I say, we have a cooperative arrangement with the Department of State and whenever they refer any complaints to us that allege a violation of human rights norms, we will conduct investigations where we have statutory authority to do so.

Mr. OLIVER. You mentioned in your testimony the role that your Division played in responding to the complaints that were filed against the United States in the U.N. Human Rights Subcommission.

Mr. HUERTA. Yes.

Mr. OLIVER. If complaints about the United States violating the Helsinki Final Act, for instance, were raised in Belgrade or in Madrid at a conference where the United States was officially represented, could we refer some of those complaints to you and expect you to give us some assistance and looking into these matters?

Mr. HUERTA. Certainly. What I had told the Department of State and what I will inform you is that we will undertake an independent investigation and make an objective evaluation of such a complaint. We do not consider ourselves an agency to whitewash the United States noncompliance with Helsinki and to the extent that our review indicates civil rights violations we will say that the United States is not complying with its own domestic norms.

To the extent that you are willing to accept that type of criticism, we will be glad to participate with the Commission.

Mr. OLIVER. That is very encouraging. Thank you.

Chairman FASCELL. I want to thank you very much, Mr. Huerta, for your testimony in responding to our questions. It has been very

important and an excellent review of what our activities are in this country.

Mr. Stuen, do you want to say anything before you leave?

Mr. STUEN. I don't think that there is anything further that I can add. Thank you.

Chairman FASCELL. Thank you, very much.

Mr. HUERTA. I appreciate the opportunity to participate.

Chairman FASCELL. One moment. Mr. Schneider has one more question.

Mr. SCHNEIDER. It is not really a question. I just want to make a comment and that is that the kind of submission that we have here in terms of the appendices, particularly the attachments, I think do reflect very well on the efforts—the good faith efforts being made in this area.

And I think that they reflect very well in comparative terms with the failure in some of the other signatory countries to consider these kinds of questions and to devote the resources of the Government to deal with them.

Chairman FASCELL. Thank you, very much.

Mr. HUERTA. Thank you.

Chairman FASCELL. Our next witness is Mr. Morton Sklar, who is watch chairman and an attorney at the Center for National Policy Review. And accompanying him are Mr. Alvin Bronstein, executive director of ACLU, national prison project; Ms. Maudine Cooper, deputy director, Washington office of the National Urban League; Mr. Robert Coulter, director, Indian Law Resource Center; Mr. Dale Swartz, director, Lawyers Committee for Civil Rights Under Law, alien rights law project; Mr. Bert DeLeeuw, director, Movement for Economic Justice; and Mr. Ted Mitchell, executive director, Micronesia Legal Services Corp.

PANEL ON THE WASHINGTON HELSINKI WATCH COMMITTEE FOR THE UNITED STATES

Chairman FASCELL. Mr. Sklar, we are delighted to have you ladies and gentlemen of this panel. And we would be delighted to hear from the Washington Helsinki Watch Committee. Mr. Sklar?

REMARKS OF MORTON SKLAR, COMMITTEE CHAIRMAN, WASHINGTON HELSINKI WATCH COMMITTEE FOR THE UNITED STATES

Mr. SKLAR. Thank you. Chairman Fascell, it is a privilege for us to come together with you today, particularly because so many of us have worked with you in the past on civil rights legislation and we know of your commitments in the civil rights area.

I would like to introduce the group of people who are with me today, starting with Rick Swartz of the Lawyers Committee for Civil Rights Under Law, the alien rights law project; Tim Coulter of the Indian Law Resource Center; Maudine Cooper of the National Urban League; Al Bronstein of the American Civil liberties Union Foundation, national prison project; and Ted Mitchell of the Micronesia Legal Services Corp. who is with us, today, from Micronesia.

Our committee represents a coalition of private civil rights, civil liberties, and poverty groups that have been involved with domestic compliance issues for some years. With our Government's affir-

mation of human rights principles under the Helsinki Agreement, and the emergence of a body of very clear-cut human rights standards worldwide, we believe it is important that our Government give attention to the question of how these human rights standards are being fulfilled domestically.

Rather than read our formal submissions in detail, we would like to just highlight a few of the major points from the papers. And I regret that representatives from the Center for Women Policy Studies, the Mexican-American Legal Defense Fund, the United States Catholic Conference and the Movement for Economic Justice could not be with us this morning.

Chairman FASCELL. Well, we would be happy to accept all of the statements for the record and they will be included in the record [see p. 390.]

Mr. SKLAR. Thank you. Their comments and findings are included in our overall submission, as well.

In my own brief introductory comments, I would like to emphasize four very critical points by way of overview that have come up time and again during yesterday's session as well as today's.

The first is the question of recognizing the importance of domestic compliance issues. Yesterday, Congresswoman Fenwick very effectively and I think very appropriately criticized the U.S. Commission on Civil Rights for failing to respond adequately to various compliance issues brought to its attention over the course of the last several months.

Regretfully, the same criticism can be leveled against the U.S. Department of Justice for its refusal at the insistence of the Department of State to include international human rights standards among the authorities that it cites in court cases involving civil rights issues. Mr. Schneider pointed this out in his questioning period with Mr. Huerta.

Mr. Huerta mentioned the 55 civil cases, the 36 criminal prosecutions and the 180 other kinds of involvements in lawsuits that they have been involved with in the past period of time. And this was an indication to him of the vigorousness of their carrying out the Helsinki human rights mandates.

But I would suggest to you that it is important that those human rights mandates be mentioned in these lawsuits, not just that they be relying solely on domestic jurisdiction. I think that it is symptomatic of the Government's inability or unwillingness to acknowledge Helsinki human rights standards that these kinds of incorporations of human rights principles are not made part of our prosecutions and our regular handling of agency matters.

I also regret to say that the same observation could be made about every other Federal agency including this Commission, despite what I know to be the sincere and dedicated civil rights commitment that many of you have expressed over the years through legislative involvements.

It is unfortunate and noteworthy, I think, that in the past hearings of the Commission a great many other members of the Commission were present for the testimony. It is unfortunate that that attendance is not represented in our hearings today on domestic issues.

For the most effective and persuasive argument that we could possibly make for obversance of Helsinki human rights provisions worldwide is that our Government—our own Government—takes them seriously here at home.

A core concept of international human rights is that violations are not simply domestic matters. Under the U.N. Charter and the Helsinki Agreement every nation enjoys a separate responsibility to raise questions of noncompliance wherever they occur. We are not asking that that be changed, that the United States not raise these principles outside of our own country, but rather that more equal attention to human rights standards be provided domestically, as well.

Our human rights initiatives under Helsinki should not be slackened abroad, but they should be joined with an equal commitment and interest here, at home. This should begin with this Commission with considerably more hearings and reports dealing with domestic matters, followup hearings in the field and meetings with other private groups not part of our coalition that might have important information about domestic compliance violations.

And, as well, an assignment of a staff to the task of monitoring domestic performance of the Federal agencies in addition to the one person that has been working on these issues on a regular basis in the past.

The second overall question is relating domestic issues to Helsinki's human rights standards. Senator Pell, yesterday, and one other questioner this morning raised the question of how much of Helsinki's requirements are really reflected in these various kinds of domestic problems that are being discussed.

It is important to understand that the Helsinki provisions, by specific reference in Principle VII, tie in with and affirm our Government's commitment to abide by the major body of international standards that have come to be adopted and universally recognized in the human rights area.

We are not dealing solely with the rather limited number of human rights issues that Helsinki itself uses as examples, but a much larger body of issues upon which that reference is based.

Our Government has bound itself to these principles through ratification of the U.N. Charter, adoption of the Universal Declaration on Human Rights, signature of the Human Rights Covenants and the American Convention, and through support in international bodies of other such basic instruments as the U.N. Standard Minimum Rules on the Treatment of Prisoners.

It is a grave misconception to fail to understand that Helsinki human rights standards are broad ranging and very detailed. Indeed, our Government has taken this very approach to Helsinki's application with respect to noncompliance situations in other countries.

We would do well to voice and act upon a similar recognition for ourselves.

A third brief issue is the question of comparing the human rights observance between this country and other nations. More than once this kind of comparison has been made in these hearings. That sort of comparison is fallacious and counterproductive.

Helsinki's human rights standards are absolute. The fact that we may be doing better than others in achieving compliance does not have relevance to the question of whether or not we are in violation of the basic international commitments that Helsinki incorporates.

We do discredit to ourselves by using this sort of approach to justify the continued existence of violations or to deny the usefulness of continuing to work strenuously toward more effective and complete compliance.

Our objective must be to show dramatically what can be done, not to avoid with shallow arguments the necessity for doing them. Our energies and our commitments to others are better devoted toward more effective reform efforts.

And, finally, a fourth point, the extent of our own noncompliance. And I think that this is a very critical issue. There has been an unfortunate tendency to belittle the extent of noncompliance that exists in this country with Helsinki human rights standards.

Even the President has done this on occasion. As chair of the Washington Helsinki Watch Committee, I have been in the position to see in very concrete terms the nature and extent of the problems that our groups have been working with.

Despite my considerable experience as a civil rights lawyer and advocate, some of which was spent with the Civil Rights Division of the Justice Department, I was shocked when I reviewed these submissions.

I was also shocked to learn that more than half of our State prison systems—at least among the ones we have filed lawsuits against—have been found by Federal courts not to meet minimum constitution and Helsinki standards for the humane treatment of prisoners.

I was shocked to learn of the actions and legal positions still being taken by our Government to deprive Indian nations and our Micronesian trust territories of their land, many of their basic freedoms and their economic viability.

I was shocked to learn of the extent of problems involving discrimination that remain unresolved for our minority population and women. It is true that our Government has passed some legislation in recent years to deal with some of these problems, but it is also unfortunately true that much of the legislation remains unused and unenforced.

The duty of our Government under Helsinki is not to sweep these issues under the rug. Nor are we fulfilling our obligations just by the fact that we are allowing the issues to be raised publicly.

Our legal and moral duty under Helsinki go much further than that. We must identify and document the existing problems and we must take affirmative action to remedy them. At this point in time there are too many areas of substantial importance where major violations exist and have been documented but where these steps have not been taken by Federal agencies.

Ms. Fenwick was correct in her observation of yesterday. Our Government has an affirmative responsibility to bring noncompliance problems to light and to act aggressively in dealing with them.

These hearings and the President's memorandum of last December concerning human rights compliance domestically are a good beginning. But they are only a beginning and it would be a grave mistake and a great injustice to our own people if the Government does not move beyond the verbal assurances in these hearings to a more active and effective implementation of the Helsinki standards in connection with our domestic noncompliance problems.

Our committee and our constituent groups are committed to that principle ourselves and believe very strongly that the U.S. Government must now understand and accept its responsibility in this regard as well.

We thank you for the opportunity to present our views to you.

Chairman FASCELL. Thank you, very much, Mr. Sklar. How about the others? Are they going to make a statement?

Mr. SKLAR. Yes, they are.

Chairman FASCELL. Fine.

Mr. SKLAR. Dale Swartz of the Lawyers Committee for Civil Rights Under Law will begin.

REMARKS OF DALE F. SWARTZ, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Mr. SWARTZ. I would first like to reinforce Mr. Sklar's remarks about the importance of on-going investigation into issues of domestic compliance, both to insure that our Nation does comply with and does satisfy international commitments that we have made, and also because of the international implications of our domestic practices.

I would hope that the chairman or the Commission as a group might commit itself to conduct hearings on the issue of domestic compliance on a regular and ongoing basis, so that these questions can be asked and answered regularly and in depth.

The work that the Lawyers Committee is doing in the area of aliens rights is broad reaching and includes representation of individuals and groups in a variety of areas. We have tried to identify in the written submission a number of critical areas of U.S. law, policy or practice which in our judgment either clearly violate Helsinki standards or at least raise questions about domestic compliance with Helsinki standards.

I would like to focus very briefly on three particular areas. The first involves H-2 programs. We currently have statutes which authorize admission of temporary migrant workers. Last year, approximately 15,000 temporary workers were allowed to enter the United States.

The Carter administration currently is considering a significant expansion of the program to authorize the admission of up to 500,000 temporary workers. The H-2 program, which is similar in many respects to the Bracero programs of the past, raises serious questions under the Helsinki Final Act agreements.

H-2 workers are not accorded rights equal to those accorded to domestic workers and to citizen workers. The employers of H-2 workers, for example, are not obligated to make payments into unemployment insurance and social security programs.

Further, any H-2 worker who asks for a raise or tries to improve working conditions would, by the very terms of the statute and the

regulations, no longer would be authorized to work within the United States and would be subject to being sent or deported back to his country. This raises serious, complicated questions. The Helsinki Final Act states that migrant workers are to be accorded equality of rights with citizens or domestic workers.

The second area that I would like to focus on is an existing Presidential Executive order—Executive Order 11935—which prohibits, with very limited exceptions, any noncitizen, lawfully admitted permanent resident alien, from even competing for Federal civil service jobs.

Noncitizens, who when there was a draft were subject to conscription, who are obligated to pay all of the taxes that citizens are obligated to pay, and are lawfully admitted for permanent residence in the United States, may not even compete for any Federal civil service jobs—including custodial jobs, secretarial jobs, as well as policy making jobs.

In my judgment this Executive order raises very serious questions about the equality of opportunity, of employment opportunity, between alien workers who are lawfully admitted to the United States and citizen workers.

The Mexican American legal defense fund and other organizations have been working very strenuously to attempt to persuade the Carter administration to rescind or to at least modify this Executive order. Thus far these efforts have been unsuccessful.

I think that the Commission should devote particular attention to Executive order 11935.

The final matter that I would like to focus on this morning involves practices and procedures for political asylum within the United States, particularly the procedures being used to process asylum claims filed by approximately 9,000 Haitians in the south Miami area.

Right now, sitting on INS Commissioner Castillo's desk, are new proposed regulations regarding the standards and procedures by which persons within the United States may seek political asylum.

A number of persons active in the immigration field and the civil rights field submitted very critical comments to INS with regard to the proposed regulations. These comments raised a number of issues.

First, the proposed regulations are not clearly in conformity with the U.N. protocol relating to the status of refugees. They provide a different and more difficult standard for the asylum applicant to satisfy than does the Protocol.

I think that in that very particular regard, the proposed regulations are in clear violation of the Helsinki Final Act.

Second, despite Mr. Huerta's representations that the Justice Department is making every effort to work closely with the State Department in a number of areas, these proposed regulations totally eliminate the role of the State Department in investigating and making recommendations on political asylum claims.

These regulations were proposed in September. There may have been some changes made on the regulations that are now on Commissioner Castillo's desk and hopefully some of those changes would allow the State Department to maintain its involvement.

From the perspective of an attorney attempting to represent political asylum applicants, it is critical that the State Department be allowed to retain an important and effective investigatory and advisory role. It is unreasonable to rely on immigration judges to know and make judgments about conditions in North Yemen as opposed to South Yemen, or to be sensitive to the realities of persecution in various countries.

Finally, I would like to talk briefly about the situation involving Haitians in Miami. Approximately 9,000 Haitian nationals have come to the United States by boat over 800 miles of open seas from Haiti, or from the Bahamas. Many have been in this country for quite a long time.

Many of them, thousands of them, have filed applications for political asylum. Beginning in July of this year, the Immigration Service began processing these applications at the rate of 60 a day and in September at the rate of 125 a day with only three or four attorneys available and willing to provide representation.

As a result, the limited number of attorneys involved often had 15 or 20 hearings scheduled simultaneously in different locations, and were not able to provide effective representation.

Further, in November 1977, the Immigration Service, in what many believed was a very thoughtful and necessary step, authorized the issuance of work authorizations to Haitians who had asylum claims pending. However, INS subsequently revoked the work authorizations that the Haitians had been issued and used identifying information acquired in issuing the work authorizations to initiate deportation proceedings.

Thousands of Haitian asylum applicants are sitting in Miami. Thousands have been deprived of their rights in many respects—including their rights under the U.N. protocol. Also, rights the Haitians are granted under applicable statutory and regulatory provisions are being violated in a wholesale manner. I think that the treatment of the Haitians in Miami is another area where the Commission should conduct a very serious investigation.

The Helsinki accords also mandate equality of social security or access to social security for migrant workers or for alien workers as compared to citizen workers.

There currently exist a number of Federal laws and regulations which severely restrict the access of noncitizens to various government benefit programs. Senator Percy and others have proposed legislation recently which would provide that any noncitizen, lawfully admitted noncitizen, who has been in this country less than 5 years and receives any form of benefit based upon need under a State program, or local program or Federal program will be prima facie deportable. Thus, under these proposed bills, aliens authorized to reside in the United States, who when there was a draft were subject to conscription, and who must pay all taxes imposed upon citizens, would be held prima facie deportable by the Federal Government if they receive any form of Government benefit based upon need. These proposals, and similar existing federal laws, raise serious questions under the Helsinki Final Act.

Those are the three areas that I wanted to focus upon this morning.

Chairman FASCELL. Thank you, very much. Mr. Sklar?

Mr. SKLAR. In introducing Tim Coulter, of the Indian Law Resource Center, I also would like to make mention of the unfortunate fact that the Bureau of Indian Affairs representative from the Department of the Interior was not present at these hearings, though I know that you have invited him to attend. And I think it is important that that representative——

Chairman FASCELL. Well, he is either going to testify or submit a statement.

Mr. SKLAR. Yes.

Chairman FASCELL. He was scheduled to testify, today, but we can't hear him today.

Mr. SKLAR. Tim Coulter of the Indian Law Resource Center.

REMARKS OF TIM COULTER, INDIAN LAW RESOURCE CENTER

Mr. COULTER. Thank you. My name is Robert T. Coulter. I am the director of the Indian Law Resource Center which is a privately funded educational and legal organization here in Washington.

My statement has been submitted and I would request that it simply be inserted into the record [see p. 357].

Now, I would like to highlight two of the principal problems regarding the treatment of Indian people by the Federal Government which I think constitute major violations of the principles set down in the Helsinki Final Act.

These two problems are first the so-called trust relationship which the United States asserts over Indian peoples and their property. The second is the overt racial discrimination that continues to exist in U.S. law.

Now, there are a good many other problems regarding the treatment of Indian peoples that I think also constitute violations of the principles in the Final Act—sterilization of Indian women, abuse in the criminal justice system, and other forms of discrimination.

But I want to focus on these two areas because they involve group rights. And I think that is a bit different than many of the other rights that are being discussed here. Indian people have in the main survived as distinct nations, having, in general, their own governments, their own laws, their own territories. And in many cases, if not most cases, they have regarded themselves as independent sovereignties that either do or ought to have the full rights of self government or at least the right of true self determination.

The first problem that I want to highlight, as I said, is the so-called trust relationship of the United States with regard to Indian properties and Indian peoples. The United States claims to be the trustee over almost all Indian land and with respect to almost all Indian affairs.

You heard it said, yesterday, by the representative of the U.S. Commission on Civil Rights that this trust responsibility is long established constitutional doctrine. But that is not so. That is not so.

And if you simply ask to be shown where in the Constitution or where in the treaty or where in an act of Congress this trust responsibility arises, I suggest that you won't find it. You never will be shown any such document.

The trust responsibility is a major problem because by asserting the role of trustee, the United States actually claims legal title to almost all of the Indian lands. It is a title that the United States didn't acquire by purchase, conquest session or by any other legal means. The United States simply declares itself to be trustee.

And exercising that authority, the United States controls the disposition of Indian property, and this gets to be a matter of extreme importance because of the vast mineral resources that lie on and under Indian land.

But the United States also claims much wider authority as trustee. The United States claims the right to intervene in internal Indian governmental matters. The United States claims the right to actually go in and suspend an Indian government—suspend an Indian government that has existed for maybe a thousand years—suspend it, put it out of commission if possible and impose another government. It is doing that right now in several places, in fact, and actions in this regard are justified under the theory that the United States is the trustee for Indians and that the United States has the obligation to act in what it perceives to be the Indians best interests, even if the Indian people, themselves, reject that and don't want it.

I think that violates Principles VII, VIII, X, and you might find some others such as II, prohibiting the use of force in the Final Act. The trusteeship is a problem not just because of the arrogation of power that is involved, but because ultimately there is no accountability.

This trustee, this self-proclaimed trustee, isn't accountable to anyone except to itself. The only way that this trust obligation can be enforced is to go into the court of the trustee itself, the United States, and ask the trustee, itself, to abide by the law that it, itself, establishes.

So, you see, that is no accountability, at all. And I think that it is simply a sham, and there is really nothing else to call it. It is not like the trusteeship that the United States is legally supposed to exercise over other territories.

If there was U.N. supervision of United States trusteeship over Indian affairs, it might be somewhat different. I realize that that is not working very well for Micronesia either, but at least Micronesia has the advantage of some external accountability for the United States.

The other and second major problem that I want to highlight is the continued overt racial discrimination in the law. The existing law of the United States, established by the Supreme Court, is that the United States has the right and the power to take—and that is absolutely take—Indian land without due process of law, without compensation, for any purpose, whatsoever, and without any legal protection, whatsoever.

That applies only to Indian peoples and Indian lands.

Chairman FASCELL. On what theory was that judgment rendered?

Mr. COULTER. Well, one is at a loss to determine that. The Supreme Court suggested that—and I am paraphrasing it—that every school boy knows that the Indians were conquered. But that doesn't happen to be true. The United States has never claimed a

right to Indian land by right of conquest. And it certainly wouldn't, today.

Chairman FASCELL. Well, let me ask you a question just strictly for information. Now, that the Supreme Court has said it, is it the law?

Mr. COULTER. There is some question about the continuing viability of that Supreme Court determination. It was made in 1955. The Justice Department asserts it, espouses it, and refuses to review it, today. So does the White House. So does the Interior Department. Everybody in the land who knows about it, believes that it is law.

I think that there are possible ways to challenge it, but as of now it is generally regarded as the absolute law of the land. It does apply to about three-fourths of all Indian land.

There are some kinds of Indian lands that do have due process protection, but the great bulk don't. Now, I think that is just plain shocking. I think that every decent right-thinking person would have to say that that ought not be the law of this land. That cannot be reconciled with the U.S. Constitution. It certainly can't be reconciled with the Helsinki Final Act.

But it is important for you to know and recognize that all of the Federal agencies that have any involvement in this area adhere to that law and in some cases actually espouse it and actively exercise that power and they refuse to review it. They refuse to review it. The U.S. Commission on Civil Rights, the so-called conscience of the U.S. Government has deliberately refused to review this—what I regard as overt racial discrimination under law in America.

We also failed in our efforts to have the White House review this. The Justice Department actively asserts this rule of law against us, regularly.

You may have many questions on this. And I hope you will ask questions concerning this matter to representatives from the Interior Department when they are able to testify. Thank you very much. I appreciate this opportunity.

[Mr. Coulter's prepared testimony follows:]

STATEMENT OF ROBERT T. COULTER
EXECUTIVE DIRECTOR
INDIAN LAW RESOURCE CENTER

The protection of the human rights of American Indians involves special considerations, especially the recognition of native peoples as distinct nations or groups.

The most fundamental human rights of Indian people, and those most threatened by the United States, are group rights - rights Indian people have or ought to have as members of Indian nations or groups. These rights include the right to true self-determination (a group right by definition); the right to property (most Indian land is held in common); and the right to cultural and social survival. Thus many Indian human rights are of a different nature than the rights of the individual as such. The failure of the United States government regarding the treatment of Indians is principally the failure to protect the group rights or national rights of Indian people, though, to be sure, there have been widespread abuses of the criminal justice system and sterilization abuses which violate fundamental individual rights.

The fundamental rights of Indian peoples as groups, those rights which ought to be recognized and protected by international law are set forth in the Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere which is attached and made part of my

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The Indian Law Resource Center is a non-profit education and legal organization providing legal service to Indian governments in the United States and Latin America. The Center is supported by grants and contributions from churches, foundations and inviduals.

testimony. The Declaration was unanimously adopted by the more than 100 American Indian delegates to the NGO Conference on Discrimination Against Indigenous Populations: The Americas,1977 at the U.N. in Geneva, Switzerland. The Declaration was made part of the Final Report of the Conference.

The most serious failure of the United States to respect Indian human rights is the deliberate denial of self-determination. Throughout the country the United States presumes to govern Indian peoples, often without their consent and in absolute violation of treaty obligations. United States authority is forceably asserted over Indian lands to which the United States has no legitimate right and which surviving Indian governments still claim the right to rule.

The United States legislates without Indian consent and in violation of treaties under the so-called "plenary power" doctrine - virtually without Constitutional limitation. The United States imposes alien governments on Indian reservations and imposes vast social and economic programs through these federally-established "tribal" governments. Federal programs frequently undermine indigenous institutions and foster economic dependency.

The United States exercises its vast power describing itself as a trustee. As "trustee" the United States claims to have title to almost all Indian land. With respect to most Indian lands, the United States has no legitimate or actual source of title - only its own self-serving claim. The United States would have you believe that Indian governments have freely chosen to have the federal government as trustee over their lands and affairs. With certain exceptions, this is not true. This false "trusteeship" has been

imposed upon Indian nations and peoples who have been threatened with absolute termination of their Indian rights as the only alternative.

The so-called trusteeship of the United States is not benign: it is a pretext for controlling and manipulating Indian people and for controlling and even confiscating Indian lands. The United States "trusteeship" is a sham and a fraud. There is no trust created by the Constitution and no genuine trust created by acts of Congress either. The United States has merely declared that a trust exists.

Most damning is the fact that the United States is accountable to no one respecting its activities as "trustee". The only recourse permitted by the United States is a lawsuit in the United States' own courts, which are themselves bound by the acts of Congress, the acts of the so-called "trustee". The United States has never acknowledged any accountability to other authority. This is no true trust. This is not at all like the trusteeship of the United States over Micronesia, which is supervised, albeit ineffectively, by the United Nations.

We do not deny that the United States is and ought to be bound by the legal obligations of a trustee or fiduciary where the United States has unjustly acquired the control of vital Indian resources or where Indian people have been deliberately forced into dependency by the United States. But it is a shameful misrepresentation for the United States to proclaim itself to be a trustee as a pretext for exercizing legally unjustified authority over Indian lands and virtually all elements of Indian life.

Particularly abhorrent to international law and to fundamental human rights is the asserted "legal" authority of the United States to take Indian

land without due process of law, without compensation and without any legal protection. This supposed legal authority was upheld by the Supreme Court in Tee-Hit-Ton Indians v. United States, 348 U.S. 272(1955). This bit of doctrine is overtly racially discriminatory. It applies to no one other than Indians.

The federal government today espouses and exercises its power under the Tee-Hit-Ton doctrine. The present adminsitration has been requested in writing to review its policy but it has failed to review the matter or to take corrective action. Even the United States Commission on Civil Rights has deliberately refused to examine this racist legal doctrine. Likewise, the United States Commission on Civil Rights has failed to examine or question the United States claim of trusteeship. Not one federal agency even questions the asserted federal authority over Indian lands and resources.

The blatant denial of self-determination, the assertion of a sham "trust" relationship, and the failure to respect Indian land rights are all in direct violation of the principles of the Helsinki Final Act, particularly Principles II, VII, VIII, and X.

The issues addressed in my testimony and the applicable provisions of the Final Act are more fully set forth in the papers submitted by the Indian Law Resource Center as part of the United States Helsinki Watch Committee (Washington, D.C.) and Helsinki Watch (New York).

April 4, 1979 Robert T. Coulter

Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere

PREAMBLE:

Having considered the problems relating to the activities of the United Nations for the promotion and encouragement of respect for human rights and fundamental freedoms,

Noting that the Universal Declaration of Human Rights and related international covenants have the individual as their primary concern, and

Recognizing that individuals are the foundation of cultures, societies, and nations, and

Whereas, it is a fundamental right of any individual to practice and perpetuate the cultures, societies and nations into which they are born, and

Recognizing that conditions are imposed upon peoples that suppress, deny or destroy the culture, societies or nations in which they believe or of which they are members,

Be it affirmed that,

1. RECOGNITION OF INDIGENOUS NATIONS

Indigenous peoples shall be accorded recognition as nations, and proper subjects of international law, provided the people concerned desire to be recognized as a nation and meet the fundamental requirements of nationhood, namely:

a. Having a permanent population
b. Having a defined territory
c. Having a government
d. Having the ability to enter into relations with other states

2. SUBJECTS OF INTERNATIONAL LAW

Indigenous groups not meeting the requirements of nationhood are hereby declared to be subjects of international law and are entitled to the protection of this Declaration, provided they are identifiable groups having bonds of language, heritage, tradition, or other common identity.

3. GUARANTEE OF RIGHTS

No indigenous nation or group shall be deemed to have fewer rights, or lesser status for the sole reason that the nation or group has not entered into recorded treaties or agreements with any state.

4. ACCORDANCE OF INDEPENDENCE

Indigenous nations or groups shall be accorded such degree of independence as they may desire in accordance with international law.

5. TREATIES AND AGREEMENTS

Treaties and other agreements entered into by indigenous nations or groups with other states, whether denominated as treaties or otherwise, shall be recognized and applied in the same manner and according to the same international laws and principles as the treaties and agreements entered into by other states.

6. ABROGATION OF TREATIES AND OTHER RIGHTS

Treaties and agreements made with indigenous nations or groups shall not be subject to unilateral abrogation. In no event may the municipal laws of any state serve as a defense to the failure to adhere to and perform the terms of treaties and agreements made with indigenous nations or groups. Nor shall any state refuse to recognize and adhere to treaties or other agreements due to changed circumstances where the change in circumstances has been substantially caused by the state asserting that such change has occured.

7. JURISDICTION

No state shall assert or claim to exercise any right of jurisdiction over any indigenous nation or group or the territory of such indigenous nation or group unless pursuant to a valid treaty or other agreement freely made with the lawful representatives of the indigenous nation or group concerned. All actions on the part of any state which derogate from the indigenous nations' or groups' right to exercise self-determination shall be the proper concern of existing international bodies.

8. CLAIMS TO TERRITORY

No state shall claim or retain, by right of discovery or otherwise, the territories of an indigenous nation or group, except such lands as may have been lawfully acquired by valid treaty or other cessation freely made.

9. SETTLEMENT OF DISPUTES

All states in the Western Hemisphere shall establish through negotiations or other appropriate means a procedure for the binding settlement of disputes, claims, or other matters relating to indigenous nations or groups. Such procedures shall be mutually acceptable to the parties, fundamentally fair, and consistent with international law. All procedures presently in existence which do not have the endorsement of the indigenous nations or groups concerned, shall be ended, and new procedures shall be instituted consistent with this Declaration.

10. NATIONAL AND CULTURAL INTEGRITY

It shall be unlawful for any state to take or permit any action or course of conduct with respect to an indigenous nation or group which will directly or indirectly result in the destruction or disintegration of such indigenous nation or group or otherwise threaten the national or cultural integrity of such nation or group, including, but not limited to, the imposition and support of illegitimate governments and the introduction of non-indigenous religions to indigenous peoples by non-indigenous missionaries.

11. ENVIRONMENTAL PROTECTION

It shall be unlawful for any state to make or permit any action or course of conduct with respect to the territories of an indigenous nation or group which will directly or indirectly result in the destruction or deterioration of an indigenous nation or group through the effects of pollution of earth, air, water, or which in any way depletes, displaces or destroys any natural resource or other resources under the dominion of, or vital to the livelihood of an indigenous nation or group.

12. INDIGENOUS MEMBERSHIP

No state, through legislation, regulation, or other means, shall take actions that interfere with the sovereign power of an indigenous nation or group to determine its own membership.

13. CONCLUSION

All of the rights and obligations declared herein shall be in addition to all rights and obligations existing under international law.

Chairman FASCELL. Thank you.

Mr. SKLAR. The next member of our panel is Maudine Cooper who is the vice president of the National Urban League.

Chairman FASCELL. Ms. Cooper?

REMARKS OF MAUDINE COOPER, NATIONAL URBAN LEAGUE

Ms. COOPER. Thank you. It is really good to be here to bring to your attention the focal points of domestic human rights violations. I think that, in the past, most of what you have heard has probably been—or at least in the 95th Congress—focused on European human rights violations rather than those that are occurring here in the United States.

However, I would hope that after these hearings are over that we do more than just complete and make a record, that some system is developed and implemented to make sure that there is followup, to make sure that those who have testified earlier—Secretary Marshall, the Department of Justice—are held accountable for what they have promised here, today.

I think that it goes without saying that the denial of basic human rights—that is the right of the individual to freedom, equal opportunity and equal access—has and continues to be a serious problem within these United States.

In a country as wealthy as the United States, many citizens have to be concerned every day with minimal human rights for food, clothing, shelter and employment—basic survival. I think that with the election of President Carter, many of us believed that there would be a tremendous focus on domestic human rights.

To the contrary, the focus on international human rights, we think has in many instances detracted from the visability of what has happened here domestically. There is no denying that the United States has made strides toward equal opportunity. That goes without saying.

But we should not be deluded into believing that serious human rights problems do now continue to exist. The dimunition of the struggles for equal opportunity for blacks and the poor should serve as a model for other countries. We should not be so moralistic in this country as to believe that we are without sin.

None of the things that I have talked about can occur unless there is a definite knowledge of the nature and the dimensions of the problems encountered daily by black people and poor people—and I would like to add other minorities of this country.

I, too, was rather shocked to hear the previous witness lay out the concerns of the Indian Nation because I was not aware of the depth of the problem that they encounter.

But, needless to say, our focus—that is, the National Urban League—has been primarily on the concerns of black people. I would be remiss in my responsibility if I did not mention that.

I have brought with me here, today, two copies of a document called "The State of Black America" which had been issued this year, and is issued annually by the National Urban League, which lays out very succinctly some of the concerns that we recognized throughout 1978.

Chairman FASCELL. I would be happy to receive copies of that for the Commission files.

Ms. COOPER. I have also brought along another document, "The Illusion of Black Progress." That document was developed by our research department as a refutation of the American myth that blacks have finally arrived and there is no need for the recognition of human rights violations, affirmative action and on and on—that now we can go about the business of letting those who are interested in becoming full participants in the system.

In that document, the "Illusion of Black Progress," a number of items are highlighted laying out evidence of the disparity between the black and white populations. Despite the arguments of some, those positions and accusations are refuted in that document. We know that historically racism and political oppression have been, and still continue to be, the cornerstones of the denial of human rights of black Americans.

The conditions of slavery, social and economic discrimination, housing, school bias, are all embedded in the structure of American law. And as a result it has served to impede the progress and the development of black people.

You raised the question about the legal basis for the Supreme Court decision concerning Indian lands. The Supreme Court has throughout its history made decisions based upon the times. For example, we cannot forget Dred Scot although that decision has fortunately been turned around.

The Supreme Court is not "without sin" in its decisionmaking process. At any rate, I brought those two documents here for you. In the interest of time, I will not present the narrative in my testimony. I just ask that my entire testimony be submitted for this record [see p. 366].

Also laid out in that testimony are some items that we would like to see this Commission focus specifically on—to look at allegations of violations of basic human rights and violations of equal opportunity and equal access. Those items are submitted in rather a shopping list form. They include things like the elimination of school desegregation.

How can we talk about human rights violations without making sure that every American is initially aware of what those human rights are. We talk about, in that shopping list, equal educational opportunities for we know that, despite the hue and cry over busing, despite the belief by many that schools are in fact integrated, that is not true.

We are, especially in the black communities, pushing young people out of schools, pushing them out into a world as functional illiterates. We know there is something wrong when we look at the comparative levels of educational opportunities for inner city versus suburban young people.

We also would like to see this Commission, as a part of its mandate, look at what is going on in the area of jobs and employment. As Secretary Marshall has pointed out, there are a number of programs in the Department of Labor designed to address the problems of the structurally unemployed.

But we are now hearing clear signals that the prime sponsors who are the recipients of the CETA dollars are having problems filling those jobs. To me that is ludicrous. We are in the process

now of getting our Urban League affiliates to begin to document their relationship with the prime sponsors.

We know that Congress is preparing at this point to consider cutting back the dollars that are allocated to the jobs programs under the Department of Labor.

And, if I may, in closing, I would just like to again commend this Commission, but to say that the human rights violations in this country are indeed occurring. The Amnesty International Report was very interesting and timely in that it was issued simultaneously, as I recall, with the statements of Ambassador Young.

I think until that issue became a focal point for these United States, that there are in fact political prisoners here, we were paying no attention to the issue. The Wilmington 10 was about all that we were focusing upon. The Angela Davises were past. But I would suggest that a lot of those who are in prison—and I suspect a disproportionate number are black—are there not only because of crimes but also their philosophy. That is, they have said things within their communities against the system—whatever that may or may not be—which has alienated many. Their incarceration may therefore be, in large part, due to those statements rather than the crimes which they are supposed to have committed. Thank you.

[Ms. Cooper's prepared testimony follows:]

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Testimony of

MAUDINE R. COOPER
ASSISTANT VICE PRESIDENT
FOR PUBLIC POLICY
NATIONAL URBAN LEAGUE, INC.

Before the
HELSINKI COMMISSION

On
U.S. DOMESTIC COMPLIANCE

Wednesday, April 4, 1979
Rayburn House Office Building
Room 2200

9:30 A.M.

It is indeed gratifying that this Commission is providing a forum through which this group can provide the same information and data on domestic human rights as has been provided in the past on international human rights issues — more specifically Eastern European human rights issues.

We would hope that out of these hearings will come a system for addressing the problems identified by participants in the Helsinki Watch Committee for the United States. Although some of what is reported here today by the various groups may be remedied by similar solutions, it is nevertheless important that each problem area be isolated and examined in each of its parts.

The National Urban League, as a non-profit community-based civil rights organization with 115 affiliates located across the country, is pleased to provide information reflecting the concerns

of a primarily Black constituency. Since our founding in 1910, we have sought to provide methodologies by which the poor and minority population, particularly the Black population would have access to this nation's mainstream.

The denial of basic human rights -- the right to individual freedom, equal opportunity and equal access — has and continues to be a serious problem which affects the day-to-day living of Blacks and the poor in this country. In a country as wealthy as the U.S., many citizens have to be concerned every day with problems of shelter, employment, health, and poverty. President Carter's recent focus on the issue of international human rights has been one which aroused positive hopes for many of these individuals — hoping that those concerns would be parallelled in the area of domestic human rights. Initially, many have concluded that this Administration is one which is sincerely concerned about the plight of the poor and Blacks, and one which will attempt to enforce existing executive orders and laws in the strongest possible manner. Today, many believe that the President's focus on human rights abroad only perpetuates this country's lack of a domestic commitment to the poor and Blacks who have been continuously confronted with serious problems of domestic human rights.

There is no denying that the U.S. has made strides towards equal opportunity in recent years. But we should not be deluded into believing that serious human rights problems do not continue to exist. The diminution of the struggles for equal opportunity

for Blacks and the poor should serve as a model to other nations seeking to practice human rights ideals.

I think it is important to reiterate as was pointed out in the State of Black America, 1979, an overall assessment of the National Urban League's perception of the problem. "It is apparent that the most serious problems confronting Black America are its intolerably high level of unemployment, especially among young Blacks; the threat of a recession; the continuing assaults onthe principles of affirmative action, and the creeping malignant growth of a "new negativism" that calls for a weak passive government and indifference to the plight of the poor. These are not problems that lend themselves easily to solution, but their existence is a clear signal that "The State of Black America, 1979" is a most troubled one that poses a challenge to the American people as the decades of the 70s draws to a close.

"The challenge is to find within ourselves the wisdom to understand the price we all must pay when so many of our people are still locked in poverty and shorn of hope. The challenge is to make that commitment of resources and boldness that will enable us to deal effectively with those hindrances that still prevent millions of our citizens from sharing in the fruits of our society that most Americans take pretty much for granted. The challenge is to repair the damages caused by historic neglect so that this nation can be what it has the potential to be but has never been -- a truly open pluralistic, integrated society."*

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* The State of Black America, 1979. Published by the National Urban League, Inc., January 17, 1979.

None of this can occur, however, unless there is objective knowledge of the nature and dimensions of the problems encountered daily by Black and poor Americans.

In an overall examination of Black America in 1978, one disturbing element emerges that helps explain why things seem to remain as they are. That element is that many white Americans, for whatever reason, hold a number of basic misconceptions about the nature of life within Black America thus making them increasingly resistant toward efforts to endorse actions designed to bring about racial equality in the areas of housing, employment, education and economic security. The most glaring of these misconceptions is that Blacks have made such significant progress over the past decade that now most of them are so safely anchored in middle class status that total equality of opportunity has been achieved, and there is no need for special efforts on behalf of Blacks and other minorities.

The facts, however, show something quite different.

Dr. Robert B. Hill, Director of the National Urban League's Research Department, has highlighted this in his recent publication, The Illusion of Black Progress.* In his summary of major findings, Dr. Hill pointed out the following facts:

- o Contrary to popular belief, the economic gap between Blacks and whites is widening. Between 1975 and 1976, the Black to white family income ratio fell sharply from 62 percent to 59 percent.

- o Not only is Black unemployment at its highest level today, but the jobless gap between Blacks and whites is the widest it has ever been. At the peak of the 1975 recession, the Black job-

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* The Illusion of Black Progress. National Urban League's Research Department, 1978.

less rate was 1.7 times the white rate, but by the first half of 1978, the Black jobless rate was a record 2.3 times higher than the white jobless rate.

- Employment opportunities have declined sharply for Black male heads of families due to the unrelenting recession. Between 1969 and 1976, the proportion of Black men heading families who were unemployed or not in the labor force jumped from 18 to 30 percent.

- The proportion of middle-income Black families has not significantly increased. In fact, the proportion of Black families with incomes above the Labor Department's intermediate budget level has remained at about one-fourth since 1972.

- The proportion of upper-income Black families has steadily declined. Between 1972 and 1976, the proportion of Black families above the government's higher budget level dropped from 12 to 9 percent.

- The two Black societies thesis of a widening cleavage between middle-income and low-income Blacks is not supported by national income data. The proportion of Black families with incomes under $7,000, as well as those with incomes over $15,000 has remained relatively constant in recent years.

- The statistical evidence strongly contradicts the popular belief that persistent high unemployment among Black youth is primarily due to their educational or skill deficiencies -- when job opportunities are greater for white youth with lower educational attainment. White high school dropouts have lower unemployment rates (22.3%) than Black youth with college education (27.2%).

- Contrary to conventional wisdom, it has been the white labor force, not the Black, that has had the largest influx of women and teenagers. Between 1945 and 1977, the proportion of white adult women and teenagers in the total labor force soared from 30 to 41 percent, while the proportion of Black adult women and teenagers in the labor force increased from only 5 to 6 percent over that 23 year period.

- o High levels of Black unemployment are mainly due to the unavailability of jobs to Blacks rather than to their unsuitability for these jobs. And the lack of jobs to Blacks is a result of racial discrimination, depressed economy and ineffective targeting.

- o The persistence of many popular misconceptions about the actual nature and extent of Black progress suggests that such terms as "structural" unemployment and "underclass" may become new codewords for "unsolvable" and "intractable" to justify governmental inaction on behalf of racial minorities.

This bleak status notwithstanding, we know that historically, racism and political oppression have been the cornerstones of the denial of human rights for Black Americans. The conditions of slavery, social and economic discrimination, housing and school bias are all embedded in the structure of American law and as a result have served to impede the progress and development of Black people. Although the pursuit of human rights and liberties brought the settlers to these shores, basic violations of human rights were laid with the foundation of this nation, starting with the assault upon the American Indian population, and the capture and enslavement of millions of Blacks.

Today, as evidence of that source of conduct, there are many indications of those basic denials. It is astounding that Americans can so clearly see the problems of other countries, particularly European countries and not recognize the struggles that prevail here for the same rights. Much has been said about the political prisoners in the Soviet Union and other European countries, while little is done here to bring political justice to the identified political prisoners here.

We could begin by citing the Wilmington 10s in this country, or even question why a disproportionate number of those incarcerated today are Black. We could question how many Blacks owe their imprisonment not to crimes but to philosophies inconsistent with that of some unidentifiable establishment, or system. We could question the conventional wisdom which has allowed the politically powerful, the wealthy to escape long prison sentences or avoid the traditional prisons to which the poor and Blacks are assigned.

But questioning is not enough. We must conscientiously seek political justice. We must seek an end to those conditions which have created and fostered anti-social behavior. We must seek an end to the economic and social conditions which signal a lack of this nation's commitment to promotion of human rights for the politically powerless and the poor.

Today, even domestic policies reflect a lack of this commitment. While many Americans attempt to maintain a stable economic base on little or no real wage, this Administration along with the Congress has identified "social" programs as the cause of domestic problems and identified their cuts as the cure. Thus, it would appear that a decent home, education, employment, etc., are not perceived as critical human rights as we in the National Urban League believe them to be.

Already, hawks, doves, liberals and conservatives have taken out after "social" programs as though their elimination or reduction will cure all of this nation's ills.

If this nation is serious about domestic human rights then we must take on a number of difficult steps, difficult only because

some oppose them so vigorously.

1. We must remove all vestiges of school desegregation.

2. We must provide equality education for all within that system.

3. We must provide a job for every person ready, willing and able to work.

4. We must provide equal opportunity and equal access for those in that work force.

5. We must identify and remove discriminatory service delivery at all levels of government, federal, state and local.

6. We must recognize the hypocrisy, and the inconsistencies, of many of our national policies, such as immigration laws, trade agreements, etc. as they relate to European countries versus countries where the populations are people of color.

7. We must examine a criminal justice system which imprisons the poor and politically powerless, while slapping the wrists of the wealthy and powerful.

8. We must examine a prison system which has a statistically disproportionate number of minorities as inmates.

9. We must examine a judicial system and a law enforcement system which is controlled by a statistically disproportionate number of non-minorities.

10. We must examine Congress and other elected positions which contain a statistically disproportionate number of non-minorities.

11. We must examine the status of America's Black youth some of whom are experiencing unemployment in some areas as high as 75 percent, dropping out or being pushed out of school, engaging in anti-social behavior, etc.

The listing could go on. But it is clear that if this nation is to serve as a human rights model, we must, most importantly, examine our national priorities. We must honestly state what it is that this country is ready, willing and able to do for its citizens. We must discontinue the false promises, and the high hopes. The noticeable rightward drift in the nation, most perceptible in 1978, while appearing as a part of the solution is actually a part of the problem. This trend must be reversed. Only when America wakes up to the implications for its future relative to the human rights of all Americans will this nation stand out as a human rights model.

Thank you.

Chairman FASCELL. Thank you, Ms. Cooper.

Mr. SKLAR. The next member of our panel is Al Bronstein of the American Civil Liberties Union Foundation in the National Prison Project.

Chairman FASCELL. Mr. Bronstein?

REMARKS OF AL BRONSTEIN, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, NATIONAL PRISON PROJECT

Mr. BRONSTEIN. Thank you, Mr. Chairman. What I would like to stress, today, is a matter of perception. We read from time to time about gross happenings in our country's penal institutions—the State prisoner in Virginia who was last year overdosed by an incompetent doctor in a State prison with heavy psychotrophic drugs and wound up paralyzed for life because of that neglect. Or the seven prisoners in Alabama who were housed in a dark cell together—a cell that was no bigger than this table, that Judge Johnson characterized as torture.

But that figment of perception in this country of those isolated instances is what I would like to focus on. I think that it would shock most Americans to learn that most of our local jails and most of our State prisons, most of our Federal prisons meet no international standards, meet none of the American professional standards and meet none of the standards that derived from our own Constitution.

The courts, Federal and State in this country, have already declared dozens and dozens of jails, including a relatively new Federal jail in New York to be in violation of the Constitution.

The courts have declared the entire prison system or the major prisons of 16 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands, as being in violation of the Constitution. And there are similar litigation presently pending in 14 States in which conditions are no better.

So at this point, 30 States plus the District of Columbia, Puerto Rico, and the Virgin Islands, have either been declared, or found to have an entire prison system that was unconstitutional or presently under attack.

And these violations found by the courts have not been marginal. I mentioned in my statement some of the kinds of things which a State court in Tennessee recently characterized as shockingly unconstitutional. And "shockingly" was the court's own words.

In every one of these cases these things don't happen in the abstract. The government officials—State, local, and Federal have been implicated for their knowledge or the existence of the violations and their failure to correct or eliminate the unlawful conditions.

And I would like to comment briefly on my friend John Huerta's statement. He knew I was going to challenge him with coming here with what I call the party line. Nothing that I say would in any way suggest that I don't have the greatest respect for the Civil Rights Division or the people in that Division who do attempt to vigorously enforce the Constitution. Unfortunately, they must get approval from people in the Department who don't have the same enthusiasm and I refer specifically to the Attorney General, to the Office of the Deputy Attorney General and in cases involving appeals, to the Office of the Solicitor General.

They have been consistantly holding back the Civil Rights Division, constantly weakening their positions in cases involving State and Federal institutions. For example, I would point out at this point that our office with seven lawyers has three times as much pattern and practice litigation in this field than the Civil Rights Division does with 185 lawyers although clearly they have other areas of interest, too. But their Institutional Section has many more than seven lawyers.

We have three times the pattern and practice docket that that office——

Chairman FASCELL. Don't forget, they have 60 paralegals and 150 support people.

Mr. BRONSTEIN. That is right. I have eight support people altogether including paralegal.

The statement submitted by the Department talks about their formulating standards which are called—and I refer to them in my statement. Those are the Federal draft standards for corrections. They were issued last summer.

First of all, they are much weaker than the standards of every other professional organization in this country including those ultra radical liberal groups of the American Bar Association. [Laughter.]

The American Correctional Association. Both of those groups have objected to the Federal department standards because of their minimizing the rights of prisoners and because of their violating other professional standards.

Beside which, in a case just recently argued by the Solicitor General, I would point out that when the Civil Rights Division assists in litigation aimed at elimination of practices in State and local institutions, they use one standard.

But when their own Federal institution is being challenged, then the Department of Justice applies another standard. In the recent case of *Bell* v. *Wolfish,* the Bureau of Prisons and the Department are seeking in the Supreme Court over the objection of the Civil Rights Division, to overturn two lower Federal court decisions which found that pretrial detainees in a Federal jail in New York were being subjected to unconstitutional conditions and practices.

For example, the Civil Rights Division argues with respect to the Houston County Jail in Alabama that double celling is unconstitutional. At the Federal Correctional Center in New York where a lower court found double celling to be unconstitutional, they are arguing that it is not unconstitutional.

In addition to which, the Department argued against the imposition of their own draft standards in that case and characterized them as "wishes"—wishes for the future but not minimum standards in spite of the preface to the document which calls them "minimum standards."

So I think—one other point on the Department's statement that I would like to mention is the mention on page 13 that they had instituted a formal grievance procedure for all Federal inmates which insures that prisoners will receive a written response to their complaint and grants them the right to appeal such matters to authorities outside the particular institution.

That is a disingenuous statement. The person outside the institution that that person appeals to is the former warden who is now the regional director of the Bureau of Prisons in that region. All of the regional directors who hear the appeals are former wardens.

The Department and the Bureau of Prisons have resisted any kind of outside review. There is no accountability other than this review internally. And that statement, I think, is slightly misleading.

In the area of first amendment rights, due process, access to courts, privacy rights, health care, there are gross violations throughout the country. I would like to close by commenting a little more on the last paragraph in my statement.

I mentioned that it is a sad commentary on our prisons and sentencing practices to point out that they have recently been condemned by the courts of another country. In December, the Supreme Court of Sweden recommended that the Government of Sweden refuse to extradite an American citizen sought by the State of Kentucky because of the excessiveness of the sentence and the conditions of the Kentucky State penitentiary.

I know that that happened. I was there. The Supreme Court of Sweden based their decision in great part on my testimony as an expert witness on the conditions in America's prisons and in particular the Kentucky State prison. And they refused to send this offender back because in their opinion he would be subjected to conditions that violated every international standard as well as their own standards.

It is interesting and sort of sad and worth this Commission knowing. I would like to submit this for the record. I didn't have this at the time that the statement was prepared. It is an editorial in the Los Angeles Times—actually it is syndicated by the Washington Post. I haven't seen it in the Post, yet. I just have the Los

Angeles Times editorial. It is on this case in Sweden. And the headline is "Sweden Shows its Enlightment. The World Learns America's Dirty Secret—Its Prisons."

Chairman FASCELL. I didn't know it was a secret. I don't know when the last prison reform report was issued, but I don't think that it has been any secret.

Mr. BRONSTEIN. Well, it is something——

Chairman FASCELL. The Times may have rediscovered the issue in 1979. That doesn't surprise me.

Mr. BRONSTEIN. Thank you.

Chairman FASCELL. Thank you, very much, Mr. Bronstein. And that editorial will be made part of the record at this point.

[The information referred to follows:]

Los Angeles Times

TUESDAY, MARCH 20, 1979

SWEDEN SHOWS ITS ENLIGHTENMENT

The World Learns America's Dirty Secret—Its Prisons

BY COLMAN McCARTHY

For a number of celebrated reasons, Sweden has earned an international reputation for its progressive social policies.

Another display of enlightenment appeared recently in a case before the Supreme Court of Sweden.

The U.S. Embassy had asked that an American—a Kentucky physician—be extradited because he was a convicted felon who had jumped bail and fled to Uppsala, Sweden, before imprisonment.

Absolutely not, the Swedes said. The court wanted no part of a process that would condemn a person to the inhumane conditions of an American prison.

In addition, the Swedes balked about the sentence of 59 years. The physician, convicted of sexual offenses against young males, was guilty of one of the most repugnant crimes.

Colman McCarthy, a syndicated columnist, writes from Washington.

But, to the Swedish mind, a sentence of 59 years in a U.S. prison had a repugnance of its own.

According to Alvin Bronstein, the director of the National Prison Project for the American Civil Liberties Union, this is the first time that a foreign nation has refused to extradite a person in a nonpolitical case because of American prison conditions.

Bronstein, who went to Sweden to assist the court in reaching a decision, says that the physician now receives psychiatric care, is living with his family, regularly reports to the court and works in a Swedish hospital.

Although it is too much to hope that other countries will refuse to send back American felons to our prisons, the jarring defiance of the Swedish court is bracing news.

It is not merely a few American civil libertarians who denounce the U.S. prison system, nor is it only judges in Arkansas, Florida, Louisiana, the District of Columbia, Alabama, Massachusetts and other states who have declared their prisons unconstitutional. Suddenly, the whole world is in on our dirty secret—and wants no part of it.

Whether we can be shamed into reforms is now the question. It isn't that we don't know the abysmal reality: Imprisonment doesn't stop crime, it is extravagantly costly, and conditions run from the inhumane to the squalid. It is equally known just what does work: programs for alternative sentences, restitution for crimes, halfway houses and early parole.

A touch of initiative can get results. In Washington, D.C., a Roman Catholic sister working for Lutherans Involved in Ex-Offender Employment Opportunities goes to the Lorton Prison once a month to stand up for parolees. In 1978, she found 67 quality jobs for former offenders, with a recidivism rate of 5%; the national rate has been as high as 80%.

The spunk and foresight of this lone Catholic sister is foreign to the dim thinking that dominates the U.S. Bureau of Prisons. Its officials keep moaning about overcrowding, keep getting more and more money from Congress for more and more prisons, and keep spouting the lock-'em-up line.

As a result, America, along with Russia and South Africa, is a part of the Big Three among the world's prison-happy nations. Other countries are more advanced. The National Moratorium on Prison Construction reports a per-capita incarceration rate of 250 per 100,000 in the United States. In France, the figure is 56 per 100,000. The Netherlands' figure is 22 per 100,000, less than a tenth of America's. Another contrast is striking: In the Netherlands, the average sentence is 35 days, while nearly three-fourths of all U.S. sentences are for four years or more.

Calling the useless prison system to account demands a boldness that few politicians care to risk. Elections are won by promises to "get tough" on crime. When a public official even mildly questions the prison system, he is jumped on.

In Maryland recently, the new corrections commissioner said that overcrowding would be better eased by imprisoning fewer people than by building more cells. Then a leading judge derided him for this "pie-in-the-sky solution."

In discussing prisons, slogans like that usually carry the day. The public, which has little patience with a low-priority issue like abolishing prisons, is seldom asked to consider the crucial distinction: Criminals deserve to be punished, but no one deserves to be punished by our prisons. Other forms of punishment exist. □

Mr. SKLAR. The person who has come the farthest to be with us on our panel is Ted Mitchell of the Micronesia Legal Services Corp.

Chairman FASCELL. Mr. Mitchell, I am very happy to welcome you to Washington, D.C., again. It is nice to see you.

REMARKS OF TED MITCHELL, MICRONESIA LEGAL SERVICES CORP.

Mr. MITCHELL. I should—without intending any disrespect to the Commission—tell you that I did not make the trip solely for this purpose.

Chairman FASCELL. That is alright. We surmised as much. [Laughter.]

Mr. MITCHELL. I am pleased to be here. I should have brought a map. They say that whenever a Micronesian is sent off to school in the United States he takes with him, not a map of the United States to find his way but a map of Micronesia to show everybody where it is.

Chairman FASCELL. That is a good point. It is a few dots out there someplace.

Mr. MITCHELL. More than a few—about 200 inhabited islands, out of a total of 2,000 or so to be found between Hawaii and Manila. It is an area that was very much in the news during the Second World War. The United States and Allied forces fought fierce battles there resulting ultimately in victory in the Pacific theater.

At the end of the war because of the rather painful lesson learned—a lesson of the strategic value of those islands—the United States held on to them. The United States does not today exercise sovereignty there, but is responsible for the area pursuant to a trusteeship agreement to which the United States and the United Nations are parties.

Micronesians are the beneficiaries of that agreement but had nothing to say about its terms or its existence. The arrangement was never intended to be a permanent one. As the trusteeship agreement itself sets forth, the responsibility of the United States was to develop the people and the area to the point where they could go on their own, either to become independent or otherwise acquire a status that would constitute true self-determination.

The trusteeship system began in 1947 under the auspices of the United Nations. It included 14 trusteeship areas. Only one remains, Micronesia. All the others have long since been terminated. The last, the Solomon Islands, only last year acquired independence and became a nation in its own right.

There are ongoing negotiations between the United States, represented by Ambassador Peter Rosenblat and various Micronesian groups to hammer out a termination of the trusteeship agreement and to work out arrangements for a new status for Micronesia.

But it is timely, I think, for this Commission to take a look at what the United States has been able to accomplish in fulfilling its obligations under this trusteeship agreement, an international agreement that I think fits squarely under Principle X, and then we should take a look at those ongoing negotiations to see where they are headed in relation to the record of 35 years of American effort in Micronesia.

The terms of the trusteeship agreement said all of the right things. Indeed, one could say that it is a blueprint for the formation of a good and healthy nation—everything from the development of the appropriate political institutions, to economic development, and health, to protection of the natural environment and to adequate education is required of the United States.

But in the 35 years that the United States, with all of its expertise and money, has spent there, the record does not reflect the fulfillment of those obligations.

I have detailed in the written statement which has already been included in the record [see page 436], some of the significant aspects of that United States effort, but I want to touch here briefly on only two features of the U.S. obligations.

First, the responsibility of the United States to assist the Micronesians in achieving self-determination. And closely related to that is the development of an economy which would enable Micronesians to be self-sufficient, an absolutely indispensable requirement for any kind of political self-determination on an international scale.

For the first 21 years of the trusteeship, there was absolutely no direct involvement whatever of Micronesians in the Government of Micronesia itself. It was in 1965, and then only at the insistence of a number of Micronesian leaders, that the Congress of Micronesia was permitted to come into existence by virtue of a Department of Interior secretarial order.

At this point it is important to realize that while the Congress of the United States has primary authority for exercising the United States responsibility in Micronesia, all of that authority has been delegated successively to the President and then to the Secretary of the Interior. So there is no want of authority to deal with any problem whatsoever.

Hence, the secretarial order was the means by which the Congress of Micronesia was permitted to come into existence. The Congress of Micronesia thrived. It provided opportunity for some very talented and capable and dedicated Micronesian leaders to begin to grapple with their own problems.

And one of the first things—one of the first official acts that they took was to call upon the United States to begin formal talks about termination of the trusteeship. It is the history of the United States and its dealings with this one political institution—the Congress of Micronesia—as detailed very thoroughly by Don McHenry who is now Ambassador Young's deputy at the United Nations in New York. I have cited his fine book to you in my prepared statement and I recommend it highly.

In sum, what happened is that the Congress of Micronesia, which began as a legislature with all too little the power as it was—it could not override an executive veto, it had no advice and consent powers—that in the space of 10 years it was reduced to a shambles. This was accomplished largely by Ambassador Franklin Hayden Williams, who represented the United States under the previous administration.

So now there is no Congress of Micronesia. In its place, there are three Micronesian governmental entities that are currently split

among themselves and the Marianas Islands is a fourth group that has already become a de facto commonwealth of the United States.

Instead of the development of a strong, national Micronesian government, one that would have some chance of dealing on an international scale with the United States or any other nation, there is factionalism. There are now four in my view, weaker governments in the place of one.

Concerning economic development, in the written statement you will see that I have cited you the statistic of $500 annual per capita income for Micronesia. A recent study that has been completed, one that I learned about. It quotes a figure of $350 per year per capita income—just one measure of what has been accomplished in the way of economic development.

There is no industry. There is no coherent policy—there is no significant development of the two principle resources available to Micronesians—marine resources and tourism—tourism, admittedly presenting more serious problems that the development of the marine resources.

As a result, after 35 years, the United States has failed in its obligations in one instance in which it undertook in a formal and conscious way to govern a whole area and a whole group of people for the express purpose of developing—assisting them in developing—a capacity to become a nation in their own right.

Thank you, very much, Mr. Chairman. I shall be happy to respond to any questions.

QUESTIONS AND REMARKS

Chairman FASCELL. I appreciate that summary, Mr. Mitchell. The thought occurred to me that maybe we ought to admit our failure and let somebody else try it.

Mr. MITCHELL. That is a thought that has occurred to me.

Chairman FASCELL. I gather that you are not for that really. What you would like to do is to go on and complete the negotiations.

Mr. MITCHELL. I think that before the negotiations result in cutting Micronesia loose, the obligations to create or assist the Micronesians in creating a nation need to be fulfilled.

Chairman FASCELL. Well, I need to know more about it to engage in a philosophical discussion with you about it, but I would have to think twice before someone convinces me that they want to put industry out there. But that is neither here nor there.

And I don't know what economic viability is. It is certainly not on a per capita basis. I know when I am hungry. But, nevertheless, it is a real problem. And we have been a long time trying to solve it and haven't done too well. There is no doubt about that.

Mr. Bronstein, I can't recall how long ago it was that I read the prison reform report and I don't recall what it suggested. Maybe you could refresh my memory as to what is our ultimate objective in elminating the abuse, protecting the rights of inmates, eliminating unconstitutional conditions, personal harassments, and so forth.

Mr. BRONSTEIN. Well, we have to start at the beginning and first recognize that in this country we have far too many people in

closed institutions who don't belong there at a great cost to the society.

Chairman FASCELL. Well, how about the penal system itself? I mean, is that what you are suggesting? I am trying to get to the basic philosophy involved?

Mr. BRONSTEIN. If you really want——

Chairman FASCELL. Not building new jails or that kind of thing.

Mr. BRONSTEIN. If you want to get to the basics then we have to go back to some of the Urban League's agenda. We have to do something about those evils in our society which create——

Chairman FASCELL. Keep them out of jail is what you are saying.

Mr. BRONSTEIN. That is right. But in the present system there are two levels of looking at it. There is one view with what is going on with society in terms of housing, employment and education which we don't seem to be prepared to do anything about.

But in the criminal justice system we've got to reduce the number of people who are in there who don't belong there and then make sure that for those people who—I don't know any other answer for it—if they must be kept isolated from society, that they have conditions which are minimally human and decent—and those are the two goals.

Chairman FASCELL. OK.

Mr. BRONSTEIN. I do cite some figures in my statement comparing the rates of incarceration and lengths of incarceration between this country and some of the countries in western Europe.

The only other country which approaches us in terms of the number of people which we incarcerate is South Africa and Russia. But every other western, industrialized nation incarcerates between one-half and one-tenth as many people as we do and then for one-tenth to one-twentieth as long a time.

Chairman FASCELL. Well, I have heard all my life as an old lawyer that first of all we have too many lawyers and then we had too many laws. And maybe we ought to just follow Carter's policy and deregulate everything.

Mr. BRONSTEIN. Well, I think that there is an awful lot of stuff that if you look historically, criminal law is a fairly recent invention. Most things we have dealt with in terms of civil law. And we have to begin to look——

Chairman FASCELL. I thought it was religious law.

Mr. BRONSTEIN. Pardon?

Chairman FASCELL. I thought it was religious law.

Mr. BRONSTEIN. But that was a civil law, too. We have to look toward mediation and restitution and other kinds——

Chairman FASCELL. The penalties were pretty tough.

Mr. BRONSTEIN. Well——

Chairman FASCELL. I am just teasing now.

Mr. BRONSTEIN. Not necessarily, but we have broadened the criminal law to such an extent that we have created this monster that is now costly to operate, dehumanizing, degrading, and not doing society any good because people come out much worse than when they went in.

Chairman FASCELL. Well, you made me feel that about the only accomplishment we made since the Magna Carta was not to throw people in jail for debt.

Mr. BRONSTEIN. Well, we do that, too, in this country. [Laughter.]

Chairman FASCELL. Another myth is exploded.

Mr. BRONSTEIN. We do that both de jure—we do actually have some people in for not paying alimony and so on—and we do it de facto. Many of the minority groups are really going to prison because of the economic and social systems which imposes upon them disadvantages which they can't cope with any other way but, you know, by having to steal a loaf of bread.

Chairman FASCELL. I used that argument very unsuccessfully when I was practicing law to keep men from paying alimony, but it just didn't work. I want to tell you. But I happen to agree with you. Mr. Buchanan?

Mr. BUCHANAN. Thank you, Mr. Chairman. First of all, Mr. Sklar, let me just comment on two subjects. First of all, we had intended to perceive the domestic compliance from the outset of the life of the Commission.

Maybe our order should have been reversed, but this has been a part of the commitment of the Commission from the outset. You may be assurred that we will vigorously pursue it, and we appreciate your work and your testimony toward that end.

Second, regrettably, attendance is not always a measure of interest around this place, as you are well aware. I had three committees going at once this morning. I don't know what the situation of other persons was, but my wife says that the Congress of the United States runs its business less well than does 2-year-olds. She may be right. There are many conflicts and I really think that that has a lot to do with the absences. I just want you to be assured of this strong interest of the members of the Commission which you saw reflected with Ms. Fenwick and others yesterday in the subject of domestic compliance.

If no other value came out of it than to attack closed problems that we do have in the United States, I would find great value in that.

Mr. SKLAR. I think that those are good observations. I really will look forward to seeing the kind of followup that might take place in the future including the fact that additional hearings are probably required at length on each of these subjects.

Chairman FASCELL. Well, let me just step right in there because I know what the panel has been doing all during the testimony. I appreciate your testimony and your interest and your sincerity and your detailing for the record the kinds of things that we are looking for. And we want to do that. I assume that you have testified before all of the Legislative Committees that have some jurisdiction.

And while we are interested and we feel a responsibility, let me assure you that we have no legislative mandate in this. And if anybody even assumes that we are going to take up individual cases and pursue them as a Department of Justice or assign as you say "more than half a person"—which, by the way, is not accurate—to following domestic compliance, it is not realistic.

In fact, it is downright naive. And I say that with no malice at all. But just as a matter of fact, we have no legislative authority. I don't want anybody in this room—much less the panel, and I know that the panel knows better—to think that we have the power or

authority to pursue anything to an ultimate satisfactory conclusion with respect to righting a wrong that exists.

We are doing well to establish a record. And we will pursue it to the fullest of our ability as Mr. Buchanan has said, but we have only limited recommendatory authority. We might be persuasive. I don't know.

I have been on occasion persuasive. On other cases, the juries ruled against me.

Mr. SKLAR. I understand you.

Chairman FASCELL. I just want the record to be clear, though, because I don't want to go out of here with this burden, and I am willing to accept most burdens, but only when the saddle fits. And in this case it doesn't quite fit.

So we have to be quite clear on that. I don't want a lot of groups or individuals who are relying, and properly so, on the presentation of their cause to think that all of a sudden some magic wand is going to be waved and the Helsinki Commission is going to supplant the Congress of the United States and the President of the United States, tell the Justice Department what to do and change the attitudes of 100 or 200 million people.

Now, I am sorry to have to make that speech, but I felt that it was absolutely essential to put it on the record here and now and to do it publicly now and later. Now, what the Commission will do in terms of pursuit of all of these items remains to be seen. It depends a great deal on what we are really able to do as a Commission.

We are going to do something, otherwise we wouldn't be holding hearings, but I will not make any commitment on behalf of the Commission. The Commission will decide for itself and it will do what it wants to do further on about these matters and how we intend to pursue it.

Mr. SKLAR. I understand that you are limited in terms of carrying through on specific cases, and that really is not what we are asking you about.

Chairman FASCELL. No; I understand that.

Mr. SKLAR. We are concerned, instead, and as a matter of fact, I think that you do have a legislative mandate. In your creation statute it does talk about your monitoring observance of Helsinki compliance in all nations and that would include the United States.

So I think that you do have a mandate to do considerably more in terms of looking into the problems and issues domestically that you have until now. I think also the role that you could play with the other Federal agencies is substantial.

I think that the kinds of hearings that we are talking about and that we have asked you to have would be a very effective way of getting more of a response from agencies like the Department of Justice or the Department of Interior.

Chairman FASCELL. Mr. Sklar.

Mr. SKLAR. Yes.

Chairman FASCELL. I don't have to tell you about the U.S. Government and I want to tell you that we are lucky to hold these hearings at all. It is only because of the commitment of the President of the United States who issued a directive to the other

agencies to comply that we could even hold a hearing. Otherwise, we would be in the process of an independent commission trying to subpena members of the executive branch—which we cannot do.

So what we are doing here is by way of cooperation, persuasion and enlightenment, education and publicizing. And we are going to keep doing that. And we believe that your contributions here—all of you—are very important. That is the reason we have asked you to come here.

We need to get it on the record one more time in as much detail as possible. Maybe we will do more. I don't know. I didn't mean to interrupt you, but I just felt that I had to get the record a little bit straight here for the Commission members to give them the opportunity and some flexibility to act with no misunderstandings. We are laying all of the cards on the table.

Mr. SKLAR. I would add one more thing in response to what you are saying, though, and that is that the responsibility under Helsinki with respect to the Federal Government's compliance must rest somewhere. I can understand the limits——

Chairman FASCELL. It can rest with the Executive and the Congress has undertaken to try to help the Executive a little bit to carry out that responsibility. That is the reason that we passed the law that created this Commission.

Mr. SKLAR. That is what we should be asking for, then, something more effective being done at the Executive level—the creation of a White House unit.

Chairman FASCELL. That I don't know, Mr. Sklar, but it is worthy of consideration now that we have raised the issues. I think that the formation of watch groups in this country is an important event. And we have encouraged this in all other countries. We have encouraged other signatory nations, for example, to emulate the organization of a Commission of this kind and to get their Parliaments and other organizations involved in the process to get a broader base.

Let me get back to Mr. Buchanan and let him finish.

Mr. BUCHANAN. Well, Scrips-Howard, I think, has a slogan that goes something like this: "Give light and the people will find their way." And, you know, there is some value in expressing on the record things like the testimony this morning and then reports that, if nothing more, some light can come.

Mr. SKLAR. There is a danger in that approach, though, which is that we tend to believe that if the problem is aired then somehow the American people and the American Government will respond and solve it. Unfortunately, that isn't always the case. And I think that it is vital that in addition to airing the problems we try to make the Federal agencies that are dealing with these issues more effective in the way that they are dealing with these problems and not just rest on the issue of publicity.

Chairman FASCELL. Well, I agree with that. One of the important things for me, Mr. Buchanan, if you will yield again, is the fact that, with the President's cooperation, we are asking and urging the agencies—directing the agencies—to cooperate with this study and force them to take a look at their own operations.

Maybe they have done it before, I don't know. But simply in the process of pulling together the testimony—and no matter how erro-

neous it may be from anybody's viewpoint—and the necessity of having all of the agencies who have participated review this record is going to be an important element. That is part of the pursuit that you are talking about.

Mr. SKLAR. Yes.

Chairman FASCELL. Because we intend to do that, of course.

Mr. SKLAR. But perhaps the most important contribution then is that you are able to point out to the other Federal agencies the inadequacy of their present response to some of these issues and problems.

Mr. BUCHANAN. If I could pursue just briefly the subject of light, again. I think that also part of the problem has to be an inadequate understanding on the part of the American people, and perhaps too many people in this Government, of the extent of the problems which do, in fact, exist in the United States and the necessity of doing something about it.

For example, let me ask Ms. Cooper and Mr. Bronstein, do you find a correlation between unemployment and crime? Everybody I know in Birmingham, Ala., is concerned about crime and rightly so. Not everybody I know is concerned about the extent of unemployment of black young people and other young people in the United States.

Mr. BRONSTEIN. There is an empirically reported correlation in the last 10 years between unemployment and certain areas of crime, particularly property crimes. It absolutely correlates.

Mr. BUCHANAN. Yes.

Ms. COOPER. There is a definite correlation between criminals and their unemployment and education levels.

Mr. BUCHANAN. Do you have any comment on your comment that too many people are in prison who ought not to be there and about conditions in prisons? What about educational training opportunities for those who are incarcerated?

Mr. BRONSTEIN. Oh, absolutely. The one thing that we do know how to do in prison—we do know how to teach literacy. We do know how to teach reading skills. We do know how to teach vocational training. We do very little of it.

I would like to pursue a little bit without tending to embarrass you, Mr. Buchanan, but in your own State in Alabama, as you know, as a result of Judge Johnson's court order, the State was required with outside experts to declassify the entire prison population.

And the results of those show that instead of 32 percent of the people in prisons being maximum security, there were only 3 percent who were really maximum security risks. And instead of 8 percent being community custody, 32 percent were community custody.

Today, we have over 800 people in work-release programs in Alabama when 3 years ago at the time of the trial there were 68. There has been no—to my knowledge—no community uproar about that, no increase in crime rates, but yet 800 people there are now back in the community being productive not costing as much to maintain by the State. And these things are important.

As you also know, there were practically no vocational training programs and this is true of all of the other States, too, but I happen to be familiar with Alabama.

Mr. BUCHANAN. Oh, you are not embarrassing me, Mr. Bronstein, Alabama has been run by Democrats. [Laughter.]

And Frank Johnson is an Alabama Republican.

Mr. BRONSTEIN. That is right.

Ms. COOPER. In Virginia, people are not as sensitive, I think, to the problem of prisoners—hard-core—as they are to the problems of young people. Yet, in Alexandria, where they have the juvenile justice centers, there is no linkage to the educational system. So, you have young people in those institutions knowing that when they get out, if they are under 16, they are obligated to go back into the educational system. Yet there is no curriculum within the correctional educational institution in which they are incarcerated.

So when we talk about high rates of youth recidivism, what else is there for them to do. They are behind, perhaps, a year or two their classmates in the educational system. They learn no trade. Rather than go back into that system and be there with the kids who are 2 and 3 years younger than they are, it is easier to go back into the criminal system.

And there is no community uproar over that, either.

Mr. BUCHANAN. Mr. Chairman, I guess that I will have to say in fairness that Frank Johnson may have more democratic friends than Republican friends in Alabama at this point, just to balance the record.

Chairman FASCELL. Why? Does he have to run? [Laughter.]

Mr. Oliver?

Mr. OLIVER. Mr. Sklar, I just want to point out for the record that the Helsinki Commission in its first report made 15 recommendations, the majority of which had to do with domestic compliance.

Over 2 years ago, our first 3 days of hearings were held on U.S. compliance. You would find that a number of the recommendations—one of which you just recommended was in our report of 1976—that the U.S. Government create a mechanism to look into its own domestic implementation of the Helsinki Final Act.

That was one of the earliest decisions that was made by the Commission at its formation. We have been doing so ever since the Commission began. And I just wanted to point that out to you.

If you had bothered to read the record, you might have found that the facts are otherwise than you stated in your opening remarks. And also, as staff director, I want to tell you that I could not go back to my office without telling you that a major part of the time of all of the members of our staff since Belgrade has been devoted to domestic compliance and it is overseen by someone who is not a part-time employee. And a number of the things that we have done, not only in connection with these hearings or this report, have been in connection with domestic compliance.

And if you talk to Justice and INS and State and a number of other Government agencies, they can tell you that we have been on their backs for 2½ years about the lack of compliance or attention by the U.S. Government.

I also want to point out that we don't have any legal obligations based on the Helsinki Final Act. It is not a legally binding treaty. It specifically states in there that it is not.

A number of the articles that have been written and a number of the statements that have been made have pointed that out, but we have pointed out that we have a very strong political and moral obligation to try to enforce compliance with the Helsinki Final Act in the United States.

Just for the record, Mr. Chairman, I wanted to point that out:

Chairman FASCELL. I think you touched a sensitive spot in Mr. Oliver's makeup. [Laughter.]

I am very proud of the Staff. They are committed. And I am sure you are familiar with the work of the Commission and we will keep doing our best. I don't know how many of our recommendations ultimately—either administratively or legislatively will be adopted. We did successfully lead a 2 year fight to change one little statute.

What is it Mr. Schneider?

Mr. SCHNEIDER. I just want to spend half a second to add to Mr. Oliver's comment on the legal obligations under Helsinki. I understand the limitations of the Helsinki Agreement. They themselves are morally binding but they are not legal documents.

However, what they do do, because of their reference to the international obligations that are binding, is provide you with a means of identifying and monitoring questions of compliance under legally binding standards.

Chairman FASCELL. We are doing it whether we have got the legal authority or not, Mr. Sklar, so it doesn't really make any difference. I don't need a brief on that. But you might want to give the Justice Department a brief, considering the difficulty that they are are having with utilizing the U.N. Charter, the Universal Declaration, and the Covenants as legal authority for their pursuit of some civil rights cases.

Now, you evidently have got a lot of good legal talent right there in front of me. And maybe the Justice Department needs a little help in the preparation of that brief.

Mr. SKLAR. I would agree with you that they do.

Chairman FASCELL. Mark?

Mr. SCHNEIDER. Mr. Chairman, just briefly with regard to the earlier discussion, that one of the purposes of the Executive order that the President issued was, in fact——

Chairman FASCELL. Which one, Mark?

Mr. SCHNEIDER. The one in December. It was to require the Federal agencies to examine what they are doing with regard to the compliance with the Helsinki Final Act, not only to engage and cooperate with this Commission, in attempting to explore that, but also to report to the State Department in this area. This information would be part of the State Department's semi-annual report to the Commission.

And my assumption is that that will be an opportunity for you, as well, to examine those statements and to comment on them. And I think that each of the agencies will undoubtedly be responsive in some way to those comments.

Mr. SKLAR. We will appreciate that opportunity. I am glad that you mentioned it.

Mr. SCHNEIDER. In the same general area, if there are other recommendations as to follow-up, that you or the panel feel would be appropriate, given the testimony that we have heard here for the last several days with regard to actions by any of the Federal agencies, I am sure that the Commission would appreciate receiving it.

Chairman FASCELL. Well, I think the big thing—just to follow up on that—would be specific action and the Commission has recommended the creation of an internal mechanism for review. And a report on compliance. Now, that report process has tickled the top echelons in the U.S. Government for nothing more than clearance purposes.

But that process is there. It is institutionalized now and at the very least we will make improvements in recognition and sensitivity at the levels where it really needs to be done which is at the Executive level.

At the Congressional level, we don't have much choice except to proceed with the efforts, for example, of each Department, like Justice and the President in submitting the H.R. 10. And I don't know the value of H.R. 10 one way or the other, but I assume that the Justice Department initiative in dealing with the rights of inmates and giving them an independent juridical base is an important step. I haven't examined that, but we will. And I assume that you would support that. Is that correct, Mr. Bronstein?

Mr. BRONSTEIN. Well, we support the legislation as it was originally drafted, but unfortunately it has been watered down.

Chairman FASCELL. The committee has decided to do otherwise.

Mr. BRONSTEIN. The House bill is still in fairly good shape. The Senate bill, as result of compromises with Senator Hatch and to get his co-sponsorship includes some things which we think will make the situation worse rather than better. And we have very mixed feelings about the legislation, right now.

Chairman FASCELL. Let me once again, Mr. Sklar, on behalf of the Commission, thank you and the panel for taking the time to prepare the statements and to come up here and give us the specifics by way of summary and answering the questions.

We remain open to any additional information or details that you want to give us and any suggestions or recommendations. We will do the best we can. I just don't want to make any promises that I don't think we can keep.

Mr. SKLAR. We appreciate the opportunity. Thank you.

[The complete submission of the Washington Helsinki Watch Committee for the United States follows:]

Statement of the

WASHINGTON

HELSINKI WATCH COMMITTEE

FOR THE UNITED STATES

Morton Sklar, Committee Chairman

A coalition of civil rights, civil liberties and poverty organizations, seeking more effective domestic application of the Helsinki Final Act's human rights standards

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Other Affiliated Groups

American Friends Service Committee
Americans for Democratic Action
Immigration Law Center
International League for Human Rights
Italian-American Forum
National Council of Churches
National Indian Youth Council
World Council of Churches

April 4, 1979

AN INITIAL SURVEY OF THE STATUS OF HUMAN RIGHTS COMPLIANCE BY THE UNITED STATES GOVERNMENT UNDER THE HELSINKI AGREEMENTS

prepared by the

Washington Helsinki Watch Committee for the United States

I. Introduction

The Washington Helsinki Watch Committee for the United States is a coalition of approximately twenty organizations working on civil rights, civil liberties and poverty issues in this country. It was organized early in 1978 as a citizen-based effort to evaluate the status of our nation's compliance with human rights requirements under the Helsinki Agreements and related international human rights instruments incorporated in the Helsinki Final Act.

Each of our affiliate organizations has been involved for many years with a specific aspect of domestic human rights compliance, such as discrimination against minorities and women, the treatment of imprisoned persons, and the status of Native Americans. We have come together with the hope that our nation's renewed commitments to international human rights, as reflected in the Helsinki Agreements and other recent initiatives, will lend additional support and attention to basic and serious human rights deficiencies that continue to exist in our own country.

We believe the United States government should provide a model for the type of effective and responsive treatment of domestic human rights violations that we seek from the Helsinki signatories, and other nations worldwide. Under the Helsinki Agreements, and the United Nations Charter, our government has a responsibility to work towards improving human rights observance in other

countries. Attention to our own nation's needs and shortcomings must be an equal partner in that effort. It is not our intention to curtail our government's human rights initiatives abroad, but to strengthen them, by assuring that a firmer foundation exists in our human rights performance here at home.

It serves no purpose, and damages the seriousness of our efforts both here and abroad, to make comparisons of the extent and seriousness of human rights violations between our own country and elsewhere. The human rights standards incorporated in the Helsinki Agreements are for the most part absolute. They bind our government and require complete compliance of all the signitories. Our government has supported this principle with respect to human rights problems in other Helsinki signatory nations, and correctly raised the issue of their noncompliance for a broad variety of violations. We are no less bound ourselves, whether or not our government's violations are greater or lesser in quality or quantity than those committed elsewhere. No implications or comparisons are intended by our Committee in the summary of issues that follows, and none need be drawn. We intend only to evaluate the current status of United States performance with the hope that prompt and effective efforts will be taken to assure compliance with Helsinki's human rights standards.

Our Committee and our affiliate organizations will be working in the coming months to monitor the actions taken by the federal government to deal with the violations we have identified. A report on our findings and a more thorough analysis of continuing noncompliance issues will be prepared by the end of this year.

There are those who question the utility or appropriateness of raising domestic compliance issues in the context of the Helsinki Agreements and

the other international human rights obligations they incorporate. They see the traditional domestic protections in our Constitution and statutues as adequate, and the remedies they provide often more direct and effective. But the basic concept of international human rights is to make national governments responsible for assuring that the protections are being met. This obligation goes beyond the simple prohibition of certain violations. It mandates affirmative action by way of on-going monitoring and remedial efforts. This element of direct and affirmative governmental responsibility means that in evaluating compliance we must determine whether, and to what extent, our federal officials have acted effectively to remedy violations that continue to exist, even where our own laws do not mandate such action.

Moreover, there are many instances where our government, through actions by the legislative and/or executive branches, has itself promoted or participated in the existence or maintenance of a human rights violation. Often, resort to the courts in these cases will not remedy the situation because of the reluctance of the courts to come into direct conflict with the other branches of government. Recent legislation and executive action affecting the treatment of Indian lands, the status and rights of permanent, non-citizen residents, and limiting school desegregation, are three cases in point. When this occurs, it is important to be able to bring standards and enforcement procedures into play that are not based solely on our own legal system. The Helsinki Agreements and the other international human rights standards they incorporate provide this outside framework for the examination and testing of our government's own actions where internal remedies may not be available or satisfactory.

The very heart of the Helsinki Agreements is that governments must take responsibility for assuring compliance within their own countries.

Our government has been pressing this responsibility on other signatories on human rights issues. Yet, sadly, the focus of our own government's Helsinki efforts has been almost exclusively outward. Little mention has been made of domestic issues in any of the five annual reports submitted by the President to the Commission on Security and Cooperation in Europe. By the same token, none of the Commission's hearings or reports over a span of four years, other than these two days of hearings, and some recommendations included in a report of a survey trip to Europe, have mentioned domestic compliance matters.

It was not until December of 1978, that the President took steps to bring the attention of federal officials to their responsibilities for monitoring and promoting domestic human rights observance. That first effort took the form of a memorandum from the President to the heads of all major federal departments and agencies, requesting "they carry out their respective responsibilities to assess implementation and identify areas where American performance can be improved."

Pursuant to the President's December memorandum at least three meetings have been held between representatives of major government departments to discuss ways to evaluate human rights observance for areas and issues they are separately responsible for.

The holding of three days of hearings on domestic compliance matters by the Helsinki Commission is another signal that domestic application may be becoming a more recognized part of the government's Helsinki and human rights related activities.

What remains to be seen is whether this refocusing will be limited to a surface recognition of a domestic responsibility, or will encompass active and ongoing procedures and efforts aimed at securing real progress in areas of existing noncompliance.

Our groups urge a more realistic merging of our government's domestic compliance responsibilities under Helsinki with our current, almost exclusively outward focus. This approach would be more consistant with our expressed concerns that other signatory governments take their own compliance responsibilities more seriously. It also would serve to provide a model for the kind of internal procedures we would like to see adopted by all the signatories for identifying and remedying noncompliance problems. Among the specific steps we would urge upon the Commission in this regard are:

--expansion of membership of the Commission to include representatives from the private sector;

--establishment of a formal unit in the White House to provide ongoing monitoring and coordination of how the executive departments and agencies are carrying our their human rights compliance responsibilities; the present series of informal meetings pursuant to the President's December, 1978, memorandum have not carried out this function effectively.

--reaffirmance of the Helsinki Commission's mandate and jurisdiction to review compliance by every signatory, including the United States, by making inquiries and references to domestic human rights compliance issues a basic part all future Helsinki Commission meetings, hearings and reports, with at least as much emphasis, time and resources devoted to these domestic concerns as are given to the question of violations elsewhere;

-- holding of additional hearings on domestic compliance matters, including regional hearings in the southwest and other areas where major problems exist involving Indians, migrants and resident aliens;

--sponsorship, with the White House, of a national conference on domestic human rights compliance.

It is most important that these hearings, and the related meetings and reports on domestic matters that have been initiated by various federal agencies, not be viewed simply as a "talking point" for future discussions with other Helsinki signatories. Compliance with Helsinki human rights standards must not be viewed or taken simply as a negotiating strategy in our foreign policy, or for future Helsinki follow-up meetings. The critical measure is whether and to what extent each signatory government has taken concrete and substantive steps to eliminate violations and assure compliance through adoption and use of effective monitoring and remedial procedures. Our own government has barely begun to satisfy this responsibility. Our

most forceful argument in support of obtaining human rights compliance by other signatory governments is that our own government has moved effectively to achieve real substantive progress with existing violations. Thus, far, however, our government has barely begun delivering on this legal and moral commitment.

The fact that the United States is a federal system, with states exercising significant governmental responsibilities, complicates the issue of human rights compliance. Ratification of the Equal Rights Amendment to eliminate bias against women ingrained in many of our existing laws, and the operation of our criminal justice system (including prisons) are two areas where states share a major portion of responsibility with the federal government.

Helsinki's human rights standards require compliance whether the area of jurisdiction is federal or state. Often this fact has been cited as a reason for blocking ratification and acceptance of international obligations. A reservation to this effect has been proposed to the Human Rights Covenants. It is important that ways be found to deal effectively with compliance issues in areas affected by this problem without simply claiming an exemption or immunity from coverage because of our federal approach. In the end, it must remain the federal government's responsibility to assure compliance even in areas normally subject to state control, just as federal jurisdiction is given precedence in many other areas where superceding interstate interest are present. Thus far, efforts to find reasonable and effective ways of making this possible have been sidetracked by the simplistic, and questionable claim that the federal system makes application of human rights standards to the states impossible or unmanageable. Part of our compliance with Helsinki's obligations will mean seeking more constructive approaches to this issue.

Special mention must be made in this overview to the status of our government's ratification of the United Nation's Human Rights Covenants. The United States is the only one of the major Helsinki signatories, other than France, that has not ratified the Covenants.

As noted in Section H of this report, the very fact of our nonratification raises serious questions as to the seriousness of our commitment to Helsinki human rights standards. As important, the Covenants provide a concrete system for monitoring and evaluating governmental compliance through annual reports and review sessions of a far more effective order than the Helsinki follow-up meetings. No step we could take would do more towards making Helsinki's human rights commitment a reality than to lend our support and participation, through ratification, to the monitoring system established under the Covenants.

If we do not ratify, other signatories to Helsinki might well claim that the United States lacks the standing to press for more effective observance in other nations, and that the Covenant procedures should be the exclusive means for raising and dealing with claims of violations. Whether or not this argument is correct, the United States government can not expect to have its human rights initiatives taken seriously until we demonstrate our own commitment to human rights observance domestically. Ratification of the Covenants is pivotal to that position, particularly since so many of the Helsinki human rights standards we cite to others for observance come not from direct principles stated in the Helsinki Agreements, but by reference to international standards such as the Covenants incorporated in the Accords.

Despite these factors, our government's ratification efforts have been halting, and burdened by serious flaws and reservations that we would never accept as legitimate from any other Helsinki signatory, notably the incomprehensible declaration that the Covenent's protections are not binding without enforcement legislation by Congress. As we have noted, Helsinki's standards are meaningful because they apply principles to governments

regardless of the actions taken by their national legislatures or executives. We can not apply a different standard to ourselves.

II. Summary of Findings

There is substantial evidence of major violations of our nation's human rights obligations under the Helsinki Agreements and the international standards they incorporate. When questioned about the status of our government's human rights compliance, federal officials frequently cite deficiencies in our immigration policies by way of acknowledging that some minor problems may well exist. Our analyses indicate that our government's noncompliance goes well beyond these minor items. Even in the area of discrimination against minorities and women, where the government has passed legislation in recent years in order to remedy significant problems, there remain substantial areas of persistent noncompliance. In many instances, the failure of the federal government to effectively implement statutory mandates has been a major factor contributing to continues, serious violations.

In many other areas, such as prison conditions and the treatment of Native Americans and our Micronesian Trust Territories, the extent of the existing problems, and the scant attention paid to them by the government, also raise serious concern. As a nation, we have barely begun to recognize and give appropriate treatment to these issues.

In none of the areas we reviewed did we find adequate machanisms and procedures within the federal government to provide the ongoing monitoring and self-evaluation called for in our international obligations. Without that willingness to initiate and maintain regular procedures for oversight and remedial action, a commitment to observance is a hollow one. There is considerable evidence that even in areas such as nondiscrimination, where some

review procedures have been adopted, a basic lack of commitment remains on the part of federal officials to make oversight effective, and to back it up with prompt and meaningful remedial action.

There is no denying that our government has initiated some reforms aimed at achieving greater equality of opportunity in recent years. That commitment must be recognized as an important first step even though it has not been fully realized. But the fact that we have begun to make progress should not deter our acknowledgment that many serious human rights deficiencies remain unrecognized and uncorrected.

Nor should the fact that our overall human rights record may be better in some respects than other nations' be used as a justification for ignoring or downplaying the significance of our own remaining problems. Most of the government's obligations under the Helsinki Agreements and the other internationally recognized human rights standards it incorporates are absolute, not relative to the state of compliance elsewhere. Others, such as some of the economic and social obligations, are intended to be pregressive, to build towards complete compliance over a period of time based on the extent of the problems and the resources of the signatory nation. It is hard for a nation of our wealth and capability to justify the extent of unemployment and poverty, particularly for minorities, women, youth and people of more advanced years, that continue to exist amidst our relative abundance.

Among the most serious violations we identified were:

--denial of rights of property and self-governance to Indian nations;

--maintenance of laws and procedures that foster bias against women in labor regulations; property rights; rules on divorce, alimony and domicile; and policies related to pregnancy;

--disproportionate unemployment for minorities, women and minority youth, with extensive underrepresentation and underutilization of these groups in the government sector as well as by private employers;

--abuse of due process and search and seizure standards by federal, state and local law enforcement officials against Hispanics;

--police misconduct and other abuses of the criminal justice system directed against Hispanics and blacks (see glossary of cases compiled by the Micheljohn Civil Liberties Institute);

--massive noncompliance with established standards relating to health, safety, overcrowding and sentencing practices affecting inmates in our prisons and jails;

--failure to eliminate conditions of poverty, unemployment and substandard housing for large segments of the population;

--denial of self-determination and trust protected rights of Micronesia;

--refusal to ratify basic and widely recognized human rights instruments, including the United Nations' Human Rights Covenants.

All these areas of noncompliance fit directly within the human rights provisions of the Helsinki Agreements. Most frequently they are covered by the general requirements of Principle VII, whereby our government has committed itself to respect

--human rights and principles of nondiscrimination;

--effective exercise of civil, political, social, cultural and religious rights; and

--standards and norms spelled out in greater detail in other binding international agreements, including the United Nation's Charter and the Human Rights Covenants.

The rights of Indians and the Micronesian people find special protection in Principle VIII, as well, reaffirming the principle of self-determination

set out as a basic part of so many other binding international documents, including the U.N. Charter and Covenants.

Aliens, migrants and refugees have additional protections deriving from Sections One and Six.

Perhaps what is most important, there is a large (and in this country not adequately known or understood) body of internationally recognized norms of conduct that bind our government because of their universality and common acceptance, and have thereby been reaffirmed as part of our Helsinki obligations under the incorporating provision of Principle VII. Among them are the extensive protections of the Human Rights Covenants, and the InterAmerican Convention on Human Rights that have worldwide and regional effect. Our intention to be bound by these standards has been expressed in the clearest terms, including signature of the instruments, even through we have not yet ratified them.

In a similar status are the Standard Minimum Rules for the Treatment of Prisoners, and the U.N. Protocal Relating to the Status of Refugees.

It is important that our government recognize the binding effect of these instruments, and their applicability to our Helsinki responsibilities through the terms of Principle VII, if our initiatives abroad and domestically are to be successful.

In the sections that follow the specific issues and areas of noncompliance are reviewed in greater detail, with specific citations to the applicable provisions of the Helsinki Agreements and other incorporated international human rights standards.

III. Survey of Areas of Actual and Potential Noncompliance

A. Immigration Law and Policy

(Based on submissions and analyses prepared by the Alien Rights Law

Project of the Washington Lawyers Committee for Civil Rights Under Law, 733 15th St., N.W., Washington, D.C. 20005, telephone (202) 638-4207. contact Rick Swartz or Juan Mendez.)

1. Migrant Labor

The Helsinki Accord (under "Cooperation in the Field of Economics, Science and Technology and of the Environment, Section 6: Cooperation in Other Areas - Economic and Social Aspects of Migrant Labor") addresses the phenomenon, increasingly found in many signatory countries, of the flow of workers across borders of economically less developed countries into industrial and commercial cernters of more developed nations. These migration patterns are strongly evident in the United States, which recieves great numbers of both documented and undocumented workers. A major problem arising in connection with these migration trends is that immigrant workers in the United States often have great difficulty obtaining lawful permanent residence status.

This problem arises from provisions of the Immigration and Nationality Act (INA) which generally limit premanent residence to a few categories of persons with close family ties in the United States and to those who obtain "labor certification." The "labor certification" process is intended to protect American workers by determining if any are available and willing to take the position offered the alien. The operational effect of this process may well conflict with the Helsinki Accord, in that it heavily discriminates in favor of highly skilled professionals or technicians. Certification of common workers is all but impossible.

Current federal immigration law also provides for the issuance of "H-2" visas authorizing the admission of temporary workers. These visas, valid for work only for a specific employer and for a specified period of time, grant no other benefit or right to the bearer. They are widely used by agricultural

enterprises in a manner similar to the "bracero programs" of the past. The Administration is considering expansion of the H-2 program to authorize the admission of as many as 500,000 temporary workers annyally. The H-2 program should be carefully scrutinized against the Helsinki Accord. H-2 workers have few freedoms or protections. They may not change employers. Often, H-2 workers who complain about working conditions are terminated, returned to their country of origin, blacklisted and not again allowed to work in the United States. Further, employers of H-2 workers need not contribute toward Social Security or Unemployment Insurance. This appears to violate the principle stated in the Final Act, to "ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work. . ."

Public attention in the United States often is focused on real or imaginary effects of a large influx of undocumented workers while the underlying causes of this influx receive less scrutiny. As a result, measures proposed to deal with migrant problems often do not contribute to a long-term solution and, in the short term, often cause or are thought likely to cause serious difficulties not only for undocumented workers, but also for documented workers and for U.S. citizens of certain ethnic origins. For example, some states have enacted laws imposing sanctions on employers who knowingly hire undocumented workers, and the Administration has proposed a federal "employers sanction" law. Preliminary studies conducted by the Brookings Institution indicate that these employer sanction laws are likely to heighten employment discrimination against citizens and lawful permanent residents of certain nationality and ethnic groups.

The final Act also establishes equality in regard to social security. It must be noted that most state and federal welfare programs are increasingly

restrictive, drastically reducing the benefits available to lawful permanent residents, and making undocumented and temporary workers ineligible. Permanent resident aliens, however, assume virtually all the obligations the government imposes upon citizens. For example, they are subject to all forms of taxation and to conscription into the armed services. Over 1,600 permanent resident aliens were stationed in Vietnam during the peak of the war in June, 1969 and today there are approximately 10,000 resident aliens in the Service.

Nontheless, current federal laws severly restrict the access of lawful permanent resident aliens to many government benefit programs. Moreover, Senator Percy and others have proposed legislation which would render deportable any lawful permanent resident who receives any form of government benefit based on need within five years of becoming a permanent resident. These proposals appear to be in direct conflict with the social security provisions of the Helsinki Accords. Further, by denying these benefits, with certain exceptions, to aged, blind and disabled permanent resident aliens, these proposed bills would adversely affect lower and middle class United States citizens who wish to bring their relatives here. The humanitarian implications of their being unable to do so are grave.

As for undocumented workers, the Houston-North study conducted in Los Angeles demonstrated that whereas such workers contributed $50 million in taxes paid they received only $2 million in government benefits. In fact, in many areas of the country children of undocumented aliens are denied access to public education in contravention to the Buenos Aires Protocol of 1938, ratified by the United States and therefore part of the government's Helsinki commitment pursuant to Principle VII.

While it is true that many aliens are statutorily eligible for "employment authorization" while they seek more permanent status, the INS has a long

history of unconscionable delays (up to one year) in issuing work authorizations to people in this circumstance. Coupled with statutory ineligibility for social services, these delays have imposed great hardships on non-citizens allowed to remain in the United States pending adjudication of their applications.

The United States has further agreed, pursuant to the Helsinki Accords, ". . . to endeavor to ensure, as far as possible, that migrant workers may enjoy the same opportunities as nationals of the host countries of finding other suitable employment in the event of unemployment. . . ." Nonetheless, lawful migrant workers are often ineligible for state and federal training and placement programs, such as the Comprehensive Employment and Training Act (CETA), and are thus handicapped in securing job assistance services when they are laid off.

Government policies often are directly responsible for causing employment discrimination against lawful permanent residents. For example, many states have enacted laws restricting certain sectors of their civil service to United States citizens. In the federal system, Executive Order 11935 prohibits, with very limited exceptions, the hiring of non-citizens for over 2.8 million federal civil service jobs.

2. Human Contacts

The third part of the Final Act ("Cooperation in Humanitarian and Other Fields, Section 1: Human Contacts") contains several important principles that are relevant to United States immigration law and policy. The standards established under (a) "Contacts and Regular Meetings on the Basis of Family Ties" and (b) Reunification of Families" are in contrast with widespread practices excluding those applying to enter the United States to visit relatives, on grounds they may be suspected of intending to stay permanently. Many relatives are denied visitors' visas for this reason.

Since the 1976 Amendment if the INA, parents of United States born

children are not able to obtain permanent resident status based upon immediate family relationships until the child is over 21 years of age. This may result either in the "de facto" deportation of American citizen children, or in the separation of families.

Further, current United States practices impose restrictions on travel abroad by foreign nationals who are awaiting processing of applications for certain visas or benefits, such as political asylum or adjustment of status. Such persons often are deemed to have abandoned their claims or petitions if they travel abroad.

The Helsinki Agreement also sets forth standards to be applied to "(c) Marriage between Citizens of Different States." In this regard, the INS practice of investigating marriages between United States citizens and aliens must be strongly criticized, as it often abridges the privacy rights of the couple. An important role in these matters is played by United States Consular officials abroad, who enjoy broad and often unbridled discrition to adjudicate visa applications. These determinations are not subject to judicial review, and many Consular officials often abuse the discretionary authority.

Title (d) "Travel for Personal or Professional Reasons", creates a standard for the acceptance of journalists and professional visitors. Current United States policy seems to fall below Helsinki standards in that the INA establishes an absolute ground of excludability of persons who profess or have professed idealogies listed in Sec. 212 (a)(28) of the INA (8 U.S.C. §1182 (a)(28)).

The McGovern Amendment, passed in 1977 to improve United States compliance with Helsinki standards, requires the State Department to recommend that the Justice Department approve a visa for foreign visitors who are members of

proscribed organizations. Last year, however, Senator Howard Baker expressed an intention to amend the McGovern Amendment in order to clear the way for reversion to earlier practices whereby the Justice Department could refuse visas unless the State Department requested a waiver allowing admission. Congress' treatment of this issue must be carefully reviewed in the context of Helsinki's more open treatment of visitors policies for journalists and other professionals.

3. Human Rights and Fundamental Freedoms for Refugees

The Helsinki Accord declares the commitment of each signatory State to human rights standards established in the UN Charter and in the Universal Declaration on Human Rights and other applicable covenants. United States refugee policy must be scrutinized against those standards. The existing law (Sec. 203 (a)(7) INA (8 U.S.C. §203(a)(7)) discriminates in its treatment of refugees based on the country of origin. The Attorney General's "parole authority" (Sec. 212(a)(5) INA 8 U.S.C. §212(d)(5)), permitting special entry of refugees for humanitarian reasons, likewise has been applied inequitably based on nationality. For example, more than 500,000 Cubans have been admitted under this authority, but only a few thousand from other repressive Latin and South American countries. Persons fleeing from "favored" nations need only assert their interest in entering the United States to receive authorization, while persons seeking refuge from less-favored nations carry a much higher burden of proving the necessity and motivation for their action.

Frequently, refugees seeking asylum who are not from the favored nations find themselves subjected to deportation proceedings that infringe basic due process protections. Current INS practices regarding over 9,000 Haitian nationals in Miami, many of whom are seeking political asylum, provide a case

in point. These Haitian immigrants, and other refugees seeking lawful status in the United States on the basis of claims for political asylum are not always granted rights guaranteed by the U.N. Protocol Relating to the Status of Refugees (ratified in 1968). Under Principle VII of Helsinki, the United States recommitted itself to fulfill obligations imposed by all international agreements by which it is bound. However, since ratifying the Protocol the United States has done little to bring domestic standards for determining refugee status in line with Protocol requirements, or with the humanitarian concern for freedom of immigration embodied in the Accord.

B. Native American Rights

(Based on submissions and analyses prepared by the Indian Law Resources Center, 1101 Vermont Avenue, N.W., Washington, D.C. 20005; telephone (202) 347-7520; contact: Tim Coulter.)

1. Introduction

In addition to the general protection of Principle VII, several other specific provisions in the Accord and in incorporated international agreements are directly relevant to the rights of Native Americans that are being violated. Principle VIII guarantees "the equal rights of peoples and their right to self-determination." It also assures freedom to determine "their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development." All these protections are infringed (as discussed below) by the government's methods of administering Indian nation territories, denying the Indians their land and property rights, and otherwise infringing on the ability of Indian nations to control their own resources and living circumstances.

Several other internationally binding standards incorporated through

Principle VII affirm similar standards of self-determination, property rights and protection against racial and ethnic discrimination, including the U.N. Charter, the Universal Declaration, the Human Rights Covenants, the InterAmerican Convention, and the Convention Against Racial Discrimination.

Special mention should be made of the reference in Principle VII to the rights of national minorities, and the additional protections for these groups outlined in considerable detail in the International Labor Organization's Convention 107 and Recommendation 104.

2. Expropriation of Indian Resources: Land, Water, Minerals, Hunting and Fishing Rights

The United States government claims and exercises legal title to many Indian lands and resources by claiming trust relationship. This asserted power to control the use and disposition of land and resources has been used to deprive Indian tribes and nations of property rights guaranteed by formal treaties, or legally assured because of long-standing occupancy. Rights to lands and resources necessary to the survival of Indian nations are, with the direction and approval of the federal government, being regularly transferred to coal and uranium mining interests, real estate developers, and agricultural businesses. Often, the government itself is involved directly in the illegal taking.

Because of the well-known, unique relationships between Indian cultures and Indian nations and their land, this rapid, governmentally approved erosion of land and resources threatens to destroy the Indian nations' ability to retain their independence, their way of life, and the essential conditions for keeping alive as a people.

In purely economic terms, deprivation of these resources seriously aggrevates already pressing problems of poverty among Indian people. In the

area of water rights, for example, present governmental policies legitimize priority being given to non-Indian uses. Treaty guarantees for water rights essential for the livlihood of Indians have been abrogated many time as a result. Fishing rights quaranteed to Indian nations by treaties, parcitularly in the northwest and west, are infringed with government approval, not only by non-Indian commercial interests, but by state and federal government policies as well.

2. Denial of Self Determination

A basic cornerstone of international human rights is the protection of the rights of self-determination for indigenous peoples. Hundreds of treaties ratified by the United States, and many judicial decrees, reaffirm these rights for Indian people. Specific mention is made to this protection in Principle VIII. Yet there has been consistent denial of self-determination rights by direct action of the federal government.

Perhaps the most pernicious and easily recognized policy of this type has been the long-standing practice of establishing western-style, elective methods of governance in place of indigenous systems of government. These methods of administration often are imposed by the Interior Department's Bureau of Indian Affairs in spite of the express wishes of the majority of the affected tribes. The establishment of such methods of administration under the auspices of federal law, and the fact that they are designed to be compliant with federal policies and dependent upon federal financial support, results in the suppression of traditional governmental forms, and the denial of true self-government. In several recent cases, efforts by Indians to replace these federally sponsored governments with more traditional systems have been rejected and undermined by federal officials. (See Harjo and Cravatt cases).

Authority and jurisdiction of tribal governments have also been steadily

eroded through governmental interpretations of treaties. The Supreme Court decision of Oliphant v. Suquamish Tribe abandoned long-standing principles of Indian jurisdiction by holding that Indian governments do not have power to deal with non-Indian persons within reservation boundaries. This diminution of authority makes it even harder for Indians to deal effectively with their economic interests.

3. Sterilization of Indian Women

The government's Indian Health Service has played a major role in fostering the sterilization of large numbers of Indian women. The direct relationship of this practice to the maintenance and viability of Indian peoples is self-evident. Although there have been some changes in federal regulations covering these practices, considerable questions remain as to whether the basic policy and its consequences have been fundamentally changed. Published reports estimate that more than one-fourth of Indian women of childbearing age have been sterilized under federally funded programs.

4. Administration of Justice

There have been serious abuses of the criminal justice system that undermine efforts by Indians to improve their situation. One case receiving considerable attention is the matter of Leonard Peltier, convicted of the murder of two FBI agents on the Pine Ridge reservation in 1976. Admittedly false affidavits were used to secure his extradition from Canada, and other abuses in the handling of his case also have been alleged.

But criminal justice abuses are not limited to a few well-publicized cases involving Indian leaders. The racially motivated prosecutions of Indian people is one of the most disquieting and frequently recurring problems Indians face. The unsuccessful attempts to prosecute Paul Skyhorse and Richard Mohawk provide much documentation on the pernicious use of the criminal justice system to

discredit and control the Indian population. Equally discouraging is the widespread practice by both state and federal law enforcement personnel to abuse their investigative and policing authority in their treatment of Indians, and in their conduct on Indian lands.

Serious discrimination against Indians also is reflected on the civil side of our nation's legal system. Due process and just compensation are basic to our laws. Yet the government has successfully asserted that these standards need not apply to expropriations of Indian property and lands (Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955)). Many other basic protections are regularly denied Indians in the course of Congress' asserted power to regulate Indian people and their property without being subject to normal constitutional restraints (the "plenary power" doctrine).

C. Discrimination Against Women

(Based on submissions and analyses prepared by the Center for Women Policy Studies, Suite 508, 2000 P Street, N.W., Washington, D.C. 20036; telephone: (202) 872-1770; contact: Jane Chapman).

1. Introduction

According to Principle VII, the United States is bound to respect the human rights and fundamental freedoms of every individual without discrimination. The United Nations Charter and the Universal Declaration of Human Rights, specifically incorporated in Principle VII, clearly forbid discriminatory treatment based on sex.

Principle VII also reaffirms the U.S. commitment to fulfill obligations under other international human rights instruments by which the United States is legally bound. International agreements to which the United States is a party and which secure the rights of women against discrimination include the InterAmerican Convention of the Granting of Political Rights to Women

(ratified 1948) and the American Declaration of the Rights and Duties of Man (adopted 1948). The following sections discussing specific discriminatory acts against women indicate a failure of the United States to observe these commitments.

2. Institutionalized Bias in the Treatment of Women

Many aspects of our nation's laws and methods of administration contain built-in elements of discrimination based on sex. The U.S. Commission on Civil Rights has found such bias to exist "in every facet of American society", as pervasively "as the discrimination experienced by racial, ethnic and religious minorities", to the extent that it is reflected and fostered by basic elements of our legal system.

One of the major issues of noncompliance with human rights standards has been the failure of governments in the United States to make a determined effort to evaluate and reform their laws and methods of administration in light of the objective of nondiscrimination based on sex. For no single factor so influences the continuation of practices involving bias against women as the maintenance of dual standards of treatment within the very fabric of our laws. Among the areas where this dual standard is most apparent are:

--labor legislation involving arbitrary job qualifications, age distinctions based on sex, and arbitrary restrictions on types of jobs and work conditions aimed at women;

--laws and regulations relating to pregnancy;

--laws and regulations relating to property ownership, divorce and alimony, and domicile.

Many private efforts have been made through the courts and elsewhere to eliminate and reform these institutional and legal biases. Yet these piecemeal efforts have reached only a small portion of the problem at best. Revisions

of individual laws and governmental practices take considerable time and resources. That is why the establishment of a clear and uniform national standard, through adoption of the Equal Rights Amendment, is critical to effectively dealing with built-in legal biases on a nation-wide basis. The failure to ratify the ERA therefore stands as a clear indictment against the ability and commitment of our federal and state governments to eliminate sex bias in our laws and institutions.

3. Employment

Because of the increasing number of female-headed households, (a quarter of the total), the issues of poverty and opportunity for employment are critical to women. Women make up 63 percent of the 16 million Americans living below the poverty level. The national unemployment rate for women is 7 percent, as compared to 5 percent for men. Unemployment among minority women is twice as high as it is for white women.

Even those women who work find serious barriers to equal treatment affecting their earning capacity. Women are segregated into lower-paying, less responsible positions than men, and often are paid less for the same work than their male counterparts. Job training programs do not provide adequate emphasis on expanding opportunities for displaced homemakers, minority women, women on welfare, and the substantial number of women among the "discouraged" long-term unemployed. Adequate day-care programs are not provided to ease these problems.

What is most significant about many of these deficiencies is that they are tied to practices of discrimination that are prohibited by laws that are not being adequately enforced by the federal government. For example, statistics on workforce makeup, job classifications, and salary levels for state and local government agencies show long-standing and extensive bias against women. The statistics are collected annually by the Equal Employment Opportunity Commission.

Yet, outside of a few scattered lawsuits involving primarily law enforcement agencies, where the problem is most blatant, the federal government has failed to deal with this widespread problem. It is a problem made more significant by the fact that employment opportunities in public sector jobs should be the model for how employers can act to secure improved entry and job upgrading for women.

Recent reductions in federally supported job training programs, and inadequate government funding for child-care and health programs, have also had a direct bearing on the adequacy of job opportunities available to women.

One of the most pernicious factors contributing to sex discrimination in the public employment sector is the use of a veterans preference for job placement and advancement, a practice that severly disadvantages women because of the male predominance in the armed services. Even the federal government itself follows this policy, not only for federal employment, but for many job training programs supported with federal funds.

4. Health

Many women encounter widespread discrimination in governmentally supported provision of maternal and child care, and reproductive health and family planning services. Not only has the federal government failed to act to require a broader and more uniform standard of treatment to eliminate these biases, it has itself incorporated many discriminatory policies in its own regulations and laws, particularly regarding reproductive health. Sterilization abuse is another health related area where direct federal action is evident, with particular detriment to minority women.

5. Rape and Physical Abuse

Three to five million women a year are severely battered by their husbands. From one-third to two-thirds of rapes are not reported to the police, and the prosecution and conviction rates in rape cases are only about 50 percent.

Victims of both types of abuse face skepticism, embarrassment and lack of concern from law enforcement authorities.

While these physical abuses are privately instigated, governments bear the responsibility for effective treatment of cases through law enforcement; for broader public education on causes and prevention; and for provision of adequate facilities and programs to assist victims. These responsibilities are not being carried out effectively.

Twenty-five states have no existing legislation on domestic violence. In 23 states, one spouse may not sue the other for physical injury damages. Many state rape statutes place an onus on the assaulted to prove her state of mind, and require her to be confronted with the necessity of openning her past sexual history to public scrutiny when a complaint is pressed.

6. Education

Women's sports programs receive only 4 percent of the total annual college athletic expenditures. Vocational training reflects and perpetuates the channeling of women to lower paying, sex stereotyped jobs, with one-third of women and girls studying supportive office skills, and more than one-half in home economics. Women teachers are grossly underrepresented in tenured faculty at institutions higher education, and receive an average of $1,500 less per year than their male counterparts.

Federal legislation already exists prohibiting these practices. But it has not been adequately enforced.

7. Social Security and Pensions

The present federal social security system, and most private pension plans, are structured to discriminate against women. Men receive larger benefits on the average in more than 20 percent of pension plans. Widows are entitled to benefits only so long as there are children below the age of 18, or

if she reaches age 60. Benefits to one-earner families exceed benefits paid to two-earner families receiving equal salaries. Part-time workers, many of whom are women with child care responsibilities, are not eligible under many plans. Widows often receive only 50 percent of the benefits that would have been paid a pensioner before his death. Women generally have no rights to their husbands' pension benefits.

While financial abuses in pension systems recently have been remedied through federal legislation, many other problems acutely affecting women remain, including those in the federal government's own social security program.

8. Credit

Single women, or married women applying as separate individuals, often have more trouble obtaining credit from lending institutions than men similarly situated. Husbands are required to co-sign notes. A wife's income is not counted in determining credit limits and ratings. Women who have divorced have difficulty obtaining credit in their own names.

Recent federal statutes and regulations apply much more stringent standards to banking and credit institutions regarding treatment of women. It is not clear, as yet, whether the responsible federal agencies will be effectively monitoring these new standards, and applying sanctions in cases of violation. In recent years, the federal government has not effectively carried out its responsibilities to assure equal credit opportunities for women.

D. Discrimination Against Blacks

(Based on submissions and analyses prepared by the Center for National Policy Review and the Washington Office of the National Urban League, contact Morton Sklar (202) 832-8525, or Maudine Cooper (202) 393-4332.

1. Introduction

Principle VII of the Helsinki Agreement makes specific reference to the obligation of signatory governments to "respect human rights and fundamental freedoms. . . for all without distinction as to race. . . " In addition, provisions of the United Nations Charter, the Universal Declaration of Human Rights, and the American Declaration of the Rights and Duties of Man, all incorporated under Principle VII as binding international agreements, make the prohibition against discrimination a cornerstone of international law and practice. The Convention Against Racial Discrimination also establishes detailed standards relating to racial bias that are part of the universal body of recognized law that binds the United States both morally and legally.

The failure of the United States government to observe these widely recognized standards that are reaffirmed in the Helsinki Accord is amply demonstrated in the practices described below.

2. Public School Desegregation

In a recent report on the status of school desegregation, the United States Commission on Civil Rights notes that, "While the Supreme Court of the United States holds fast to established constitutional principles that mandate school desegregation, the Congress has taken steps that severly impede the ability of . . . the Department of Health, Education and Welfare to enforce the Civil Rights Act of 1964." In consequence, 46 percent of the nation's minority pupils--almost 4.9 million--still attend schools that are classified as "moderately segregated" or worse. In the Northeast and North Central states the situation is even more severe, with 65 to 68 percent of minority pupils attending segregated school.

There is no issue that demonstrates more concretely the value of applying

international human rights obligations domestically than school desegregation. After its initial push for equal educational opportunities in the South, the government, through legislation and executive action, has itself taken action that perpetuates the existence of segregated conditions. Courts find it difficult to overturn many of these actions, both as a practical matter, and because of a tendency towards judicial restraint where conflicts with the other branches of government are in question. International human rights standards provide a means for evaluating and challenging these actions outside of our own legal system, according to principles that are universally applicable. This enables us to reach the question of whether the government's own action, or refusal to act, may have contributed to a violation.

In recent years, substantial evidence has been uncovered that government action has contributed to the continuation of segregated educational opportunities for Blacks and other minorities. One indication of the government's complicity in the perpetuation of school segregation is the finding of a federal district court in a lawsuit filed by private plaintiffs (Adams v. Richardson) that the Department of HEW has not been carrying out its compliance responsibility with reasonable speed and effectiveness.

2. Discrimination in Employment

Unemployment rates for minorities have remained more than twice that of non-minorities over recent years, with the jobless rate of Black youths greater than twice that again.

The statistical evidence strongly contradicts the popular belief that persistent high unemployment among Black youth is primarily due to their educational or skill deficiencies. White high school dropouts have lower unemployment rates (22.3%) than Black youth with college education (27.2%). Joblessness among Black teen-agers is presently (February, 1979 statistics)

35.5 percent, compared to 16.1 percent for all youth.

Unemployment in Black America, including those who have given up looking for work and those who hold only part-time jobs because they can not find fulltime employment, is 23.1 percent, or roughly one of every four Black workers.

Median income for Black families is $9,242 as compared to $16,740 for white families. The median income for Blacks has increased at only half the rate (3.5%) as for whites (7.7%). Twenty-eight percent of Black families have incomes that classify them as poor, compared to seven percent of white families. The number of white families below the poverty level declined by 20,000 between 1976 and 1977, while the number for Blacks increased by the same amount.

Outright practices of discrimination are the major factors in establishing and perpetuating these gaps. The existence of serious and widespread discrimination in employment opportunities has been thoroughly documented in both the public (goverment employment) and private sectors. Statistics compiled annually from employers by the Equal Employment Opportunity Commission show that Blacks and other minorities:

--receive less pay for comparable work than non-minorities;

--tend to be given lower levels of pay and job classifications through stereotyped placement practices and outright occupational exclusions for some types of work;

--do not receive equal opportunity through upward job mobility to higher paying, more responsible positions;

--are subjected to more stringent discipline and termination policies.

A fairly substantial body of laws and remedies have been adopted by the federal government to combat employment discrimination practices that so severely restrict job and income opportunities for Blacks. Yet one must

question the commitment, or at least the effectiveness, of government efforts that result in:

--more than a three year backlog in the handling of employment discrimination complaints;

--the virtual absence of lawsuits against state and local governments, except in limited areas such as law enforcement, despite overwhelming evidence of job bias in public sector employment;

--long-standing refusal to apply the sanctions of fund termination and contract debarment against employers who have been found in non-compliance.

These problems have been compounded in recent months in the aftermath of the Supreme Court's recent Bakke decision. Many federal agencies are severely cutting back on their commitment to require employers to take "affirmative action" to overcome the consequences of past discrimination practices. In the absence of serious affirmative action efforts, it would take many years for the large number of employers with long standing exclusionary records to bring their workforces up to a nondiscriminatory standard. Hiring Blacks only in proportion to their current representation in the workforce does not do away with the results of past bias.

Employment discrimination is another area, like school segregation, where the government's own actions or failures to act have been an important contributory element to the perpetuation of serious human rights violations.

3. Federal Financial Assistance Programs

Each year the federal government distributes more than $100 billion to state and local governments for a variety of programs and services, ranging from job retraining and placement services under the Comprehensive Employment and Training Act (CETA--$11 billion), to the general budgetary support of the

General Revenue Sharing Program (GRS--$6 billion). Federal law makes it an obligation of the government to assure that discrimination does not take place in the way these programs are administered by state and local government. This responsibility has not been carried out effectively. For example, the Office of Revenue Sharing refused to terminate federal funds to a local government (Chicago), even after a federal court had found discrimination in the employment practices of that city's agencies receiving GRS funds.

That refusal has been symptomatic of a general reluctance of federal agencies to apply required administrative sanctions in cases of discrimination. More recently, the government's largest aid program, CETA, was found by Justice Department and private investigations to suffer from the very same refusal to deal with cases of established noncompliance. (see Equity Under CETA, M. Sklar, Legal Services Corporation Research Institute Report.)

E. Discrimination Against Hispanics

(Based on submissions and analyses prepared by the Mexican American Legal Defense and Educational Fund, 1411 K St., N.W., Washington, D.C. 20005; telephone: (202) 393-5111; contact: Mark Schacht or Al Perez.)

1. Introduction

Discrimination against Hispanics and other racial and ethnic minority groups is prohibited by the terms of Principle VII of the Helsinki Agreements, as well as provisions of the United National Charter, the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man, incorporated by reference under Principle VII.

Principle VIII. reference to protection for the rights of national minorities has a special applicability to groups, such as Hispanics, that retain their ethnic identity and seek preservation of their cultural and language identity as guaranteed in the Human Rights Covenants. So do the foreign language protection provisions of section 4(d) under the Co-operation in Humanitarian

and Other Fields section of the Accords.

2. Immigration

Chicanos and other Hispanics bear the brunt of the government's enforcement activities in the immigration field. Abuses of human rights that take place in connection with these activities are widespread, particularly in the Southwest where the Immigration and Naturalization Service (INS) concentrates its operations. These abuses affect U.S. citizens and lawful residents of Hispanic descent, as well as undocumented persons.

Although the INS, by definition, works within a framework of statutory authority, this framework is biased against the rights of undocumented persons, making significant abuses of fundamental human rights inevitable. Moreover, since the target group of undocumented Hispanics is indistinguishable from the lawful resident population of U.S. Hispanics, the law has been applied so as to produce general discriminatory treatment of the Hispanic population as a whole. This officially promoted discrimination has, in turn, fostered private citizen abuses directed at Hispanics that seems to be given official license.

Complaints involving restrictions of free movement, abusive interrogations and detainments, and summary deportations of persons of Latin appearance are commonplace in the Southwest border area. Current laws and policies permit the arrest without warrant, interrogation and "voluntary" deportation of undocumented persons without any notice of their rights, without benefit of counsel, without notice to families and friends, and without many other established due process protections. Excessive use of force often accompanies many of these cases.

Private anglo citizens have joined in these practices with vigilante-type activities. One of the most notorious of these was the kidnapping, torture and

shooting of three Mexican nationals looking for work near Douglas, Arizona, in late 1976. Although three prominent ranchers were charged with 22 felony counts for this incident, an all-Anglo jury acquitted them. MALDEF has brought suit against the U.S. Department of Justice for its failure to prosecute these defendants for federal civil rights violations.

These abuses are not limited to the Southwest border region. Mass, military-type raids against businesses where the undocumented are thought to work have been performed in many areas, often under conditions that violate constitutional guarantees against unwarranted searches and seizures. In July, 1978, for example, the entire town of Onarga, Illinois, was surrounded by INS and local police officers, and every person of Latin or Hispanic appearance was stopped and interrogated. These military-type raids of barrio communities have created a genuine atmosphere of terror among citizens and undocumented Hispanics alike.

2. Discrimination in the Administration of Justice

Police misconduct against Chicanos in the Southwest has been documented as being widespread for some time. Citing 56 documented cases of police brutality against Chicanos arising during the past two years, MALDEF has petitioned the U.S. Department of Justice to take action to seek elimination of these practices. Such action must include monitoring of local law enforcement procedures that have permitted these violations to occur, and adoption of national legislation that would prevent such human rights violations as

--excessive arrests and interrogation of Hispanics on a "dragnet" basis;

--misuse of firearms, arrest procedures, and abusive (often deadly) physical force;

--officially sanctioned coverups of officers taking part in incidents of abuse and brutality.

3. Bilingual Education and Services

In 1974, the Supreme Court determined that school districts must adapt their educational programs to meet the specific needs of children with limited English proficiency by offering native language alternatives (Lau v. Nichols, 414 U.S. 563, (1974)). This was in recognition of the fact that availability of bilingual programs is critical to Hispanics and other language minorities in obtaining equal educational opportunity.

By mid-1978, according to a U.S. Civil Rights Commission survey (Desegregation of the Nation's Public Schools: A Status Report), there was still an extremely large number of school systems that had not taken adequate action to identify students needing bilingual education, and to develop appropriate programs.

Bilingual needs are not limited to the classroom. Across the broad range of government supported and administered programs, from job training to welfare services, Hispanics will not be able to receive their fair and intended share of services and benefits unless a reasonable proportion of the counsellors, program administrators and other staffers serving the public have Spanish language capability. This is especially critical for those communities where the Spanish speaking population is substantial.

F. Prison Conditions and Detainees Rights

(Based on submissions and analyses prepared by the National Prison Project of the American Civil Liberties Union Foundation, 1346 Connecticut Avenue, N.W., Suite 1031, Washington, D.C. 20036; telephone (202) 331-0500; contact: Alvin J. Bronstein or Matthew L. Myers.)

1. Human Conditions for Prisoners

One of the cornerstones of international human rights is the protection of certain rights of prisoners (sentenced prisoners and pre-trial detainees).

The most important of those rights include personal health, safety and privacy, freedom of speech and association, due process and the right not to be subjected to cruel and unusual punishment. Specific standards have been promulgated by the United Nations, as well as various American professional associations, spelling out minimum conditions that must be provided by governments to all prisoners. These include the United Nations Standard Minimum Rules for the Treatment of Prisoners (adopted in 1955), and the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted in 1-75.) Under Principle VII of the Helsinki Accord, the United States has reaffirmed its commitment to these universally recognized standards of conduct.

It will undoubtedly shock many Americans to learn that most of our local jails, state prison systems and federal prisons, meet neither these international and American standards, nor those which derive from our own Constitution. The courts have already declared that dozens of local jails, including a federal institution, were being operated in violation of the Constitution; that the entire prison system or the major prison of 16 states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands, were being operated in violation of the Constitution; and there is similar litigation presently pending in 14 states in which the conditions are no better. Furthermore, these violations have not been marginal. In a recently issued 63 page opinion, a state court in Tennessee found a series of shockingly unconstitutional violations in the entire state prison system, including gross overcrowding, wholly inadequate medical and mental health care, extraordinary levels of violence due to lack of any meaningful classification system and a total lack of compliance with minimum environmental and public health standards.

In all of these cases, government officials have been implicated for

their failure to eliminate unlawful conditions and to comply with minimum standards for the treatment of prisoners.

Although the federal government, through the Civil Rights Division of the Department of Justice, has frequently assisted in court suits aimed at eliminating unlawful conditions and practices in state and local institutions, it has resisted a court ruling requiring the elimination of unconstitutional conditions and practices at a federal institution operated by the Federal Bureau of Prisons of the Department of Justice. In the recent case of Bell v. Wolfish, the Bureau and the Department are seeking in the Supreme Court to overturn two lower court decisions which found that pre-trial detainees in a federal jail in New York were being subjected to unconstitutional conditions and practices. In addition to arguing for a different standard than the federal government had previously sought to have imposed on state and local facilities, the Department of Justice argued against the imposition of its own Draft Federal Standards for Corrections issued last summer.

There have also been recent allegations of serious abuses at the Federal Women's Prison in Alderson, West Virginia (excessively punitive conditions in a special maximum security unit) and at the Federal Penitentiary in Lewisburg, Pennsylvania (the beating with axhandles of a large number of chained and shackled prosoners.)

2. Prison Practices and Procedures

In addition to the problems with physical conditions and treatment, there are a number of areas relating to the practices and procedures in our prison systems in which the rights of prisoners are not being adequately protected.

Among the most serious are:

--First Amendment Protections, including adequate access to mail and publications, free exercise of religion, access to the media and visitation. A lawsuit is presently pending against the Federal Bureau of Prisons

regarding its overly restrictive mail and publications policies. (Abbott v. Richardson)

--Due Process, in the areas of disciplinary procedures, classification, furloughs and the adequacy of administrative grievance procedures.

--Access to Courts and Legal Assistance, including the availability of minimally adequate law libraries.

--Privacy Rights, including the question of body cavity seraches and the intrusion of opposite sex staff in a prisoner's personal functions. The federal Bureau of Prisons is presently defending their claimed right to conduct frequent, extensive and degrading body cavity searches of pre-trial detainees. (Bell v. Wolfish)

--Health Care, including punishment which is labelled as treatment. There have been cases of excessive and forced drugging for control purposes (Virginia and Iowa), the use of adversive behavior modification programs (the START program at the Federal Prison Medical Center in Missouri), and the transfer of women prisoners to a mental institution without notice or hearing (New York). In addition, the medical care of entire state prison systems has been found to be so grossly inadequate as to constitute cruel and unusual punishment (Alabama, Florida, Oklahoma, Rhode Island and Tennessee).

3. Excessive Use of Incarceration as a Punishment Sanction

A comparison between the use and length of incarceration in this country and other countries demonstrates an excessive reliance on imprisonment by our government. We presently incarcerate over 200 persons per 100,000 of total population, which is a higher rate than any other Western European country. For example, the incarceration rate per 100,000 in Sweden is 39.7, in Denmark 44 and in Holland only 18. In addition, the average length of time actually

served in prison is far greater in this country--about 3 years--than other countries--Denmark is 3.4 months and in Sweden, 91% of sentenced prisoners serve less than 1 year and 76% serve less than 4 months.

It is a sad commentary on our prisons and sentencing practices to point out that they have recently been condemned by the courts of another country. In December, the Supreme Court of Sweden recommended that the government of Sweden refuse to extradite an American citizen sought by the State of Kentucky because of the excessiveness of his sentence and the conditions in the Kentucky State Penitentiary. The government of Sweden has denied extradition.

G. Economic Conditions and Unemployment

(Prepared with the assistance of the Movement for Economic Justice, 1605 Connecticut Ave., N.W., Washington, D.C. 20009; telephone (202) 462-4200; contact Bert DeLeeuw.)

1. Introduction

Unlike all the other human rights protections discussed in this paper, the economic, cultural and social standards are not considered absolute, that is, they do not have immediate and complete applicability. Instead, a government's compliance with these standards must be measured according to the extent of the existing problems, and the national resource capacity available to be channelled into reform measures. Moreover, it is expected that compliance in these areas will be progressive, with a nation moving towards complete observance steadily and within a reasonable period of time.

Coverage of these protections derives primarily from Principle VII and its incorporation of the Universal Declaration and the Covenent on Economic, Social and Cultural Rights, which is now in force and details universally accredited standards in these areas.

As important, with the emphasis placed on economic and social rights by

several other Helsinki signatory nations, it would be foolheardy for the United States to ignore its own responsibilities in these areas, or to claim their inapplicability because more specific standards are not included directly in the Accords. Hopefully, we are past the point where economic and social rights would not be given acknowledgement as a basic part of international human rights obligations. Principle VII recognizes this joindure by binding the signatory governments to "promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms" (emphasis supplied.)

2. Unemployment

Latest figures on unemployment show a February, 1979, rate of 5.7 percent of the workforce, down from 5.8 percent the previous month. Much is made of this slight improvement, and the similar declines registered during the past year. At the same time this jobless rate presents questions relating to compliance with human rights standards. These standards make the goals of a job and a living income for every person progressive ones. That is, each nation must act according to its resource capacities, and the extent of its jobless problem, to reach these goals within a reasonable period. Apart from benefitting the general effects of current economic improvements, the government has done little over the past year to make progress against the core problems causing a base rate of 5 to 6 percent unemployment. Equally disturbing, the resource commitments currently planned for dealing with these issues over the coming months are being reduced still further.

An unemployment rate of 5.7 percent means approximately 5.8 million persons out of work. Many of these are jobless only temporarily, because of layoffs or other short-term changes, However, a significant number of these jobless are considered "structurally unemployed", that is, they face

long-standing problems in obtaining work due to an absence of jobs suitable to their skills, or other chronic problems. Many other jobless people are not even included in the overall 5.7 percent figure, since they consider themselves to be "discouraged workers" who may not any longer be seraching for work even-though they would like to be employed. Many homemakers would fit this category, along with many long-term unemployed persons.

What is the government doing about these "structural" jobless? The primary means of assisting them is the Comprehensive Employment and Training Act program (CETA), which provides about $11 billion a year for training and placement support. CETA expenditures over the past few years undoubtedly helped to alleviate unemployment during the most recent recession period, although there were well documented reports that CETA assistance was not reaching those most seriously in need in proportion to their numbers and income requirements. Even more serious is the recognition that CETA has made only a very small dent into the ranks of the "structurally unemployed". Government economists and officials speak frequently and openly about 5 to 6 percent or so of unemployment being an "acceptable" level, and as close to a fully employed economy as we can expect to achieve. It is disturbing that our government is not taking a more affirmative approach towards lessening so large a number of long-term jobless persons through programs of job creation and training. In fact; such programs as do exist are being cut back still further in the name of economy and inflation fighting. These actions are not consistent with our international human rights obligations in the economic and social field that require progressive and increasing efforts to see that jobs are available for all persons willing and able to work. Nor can they be justified when measured against our nation's gross national product and our

economy's demonstrated capacity to sustain its high level of ourput and productivity while absorbing larger numbers of employed persons.

3. Housing

It is now established that 14 million families live in substandard housing, or in homes costing excessive amounts relative to their income. In 1949, with the passage of the National Housing Act, the federal government articulated the goal of "a decent home and suitable living environment for every American family." Our failure to reach that goal is directly attributable to the unwillingness of the federal government, particularly in the last few years, to devote adequate resources to our nation's housing needs.

President Carter's most recent housing proposals signal a major retreat from even this inadequate commitment, with every major proposal for expanding housing opportunities for low and moderate income persons having been rejected. Significantly, the only housing program that would receive increased funding under the President's proposals would be one to support low interest loans to middle income homeowners for rehabilitation purposes. If anything, this step would reduce housing opportunities for the poor, by making purchase and restoration of inner city dwellings more attractive for the more well to do, at the expense of low income families likely to be displaced from their homes because they themselves are not eligible for loans due to their economic condition.

Displacement of low and moderate income poeple from their homes in the face of an influx of higher income renovators, or urban renewal projects, has been the fastest growing problem affecting the poor in respect to housing. While the basic concept of renovation and urban reinvestment is a desirable one, there remains a responsibility on the part of the federal government to deal with the resulting loss of housing availability faced by lower income residents

of the rehabilitated areas. This is not being done. In Denver, for example, 6,000 poor, elderly and minority residents were displaced last year, primarily because of conversion of rental units into condominiums. These displaced people find it difficult to locate acceptable housing alternatives without government subsidies because the demand is greatly exceeding a shrinking supply. More effective government regulations on the handling of displacement by developers would help alleviate the problem as would making available increased assistance to those displaced, and to those lower income people who have an interest in rehabilitating their own homes.

4. Job Health and Safety and Other Work Related Rights

The recent nuclear power accident at the Three Mile Island facility has brought very close to home some of the dangers of the use of nuclear fuels. It also has demonstrated some problems associated with the job health and safety of workers in these facilities. Similar problems have been raised with respect to workers involved in the manufacture and use of asbestos and pesticides.

The United States government's acknowledgment and treatment of these problems has been slow and begrudging at best. As significant, our government's recent withdrawal from the United Nation's International Labor Organization undermines that agency's long-standing efforts to apply internationally recognized employment standards to these and other areas of concern, including those relating to such basic human rights as freedom of association and the prohibition against forced labor.

The commitment to these standards that our government reaffirmed in Principle VII of Helsinki must begin with a return to membership in the ILO, and include a more determined effort to carry out job related protections contained in the various ILO conventions and standards. Continuing our

withdrawal from the ILO raises questions about our own commitment to job standards, and also does severe damage to one of the most effective of the international monitoring and enforcement mechanisms in the field of employment and human rights.

H. Ratification and Adoption of International Human Rights Standards

As President Carter has noted, international human rights standards "are concerned about the rights of individual human beings and the duties of governments to the people they are directed to serve. . . ." (Emphasis added.) This "duty" begins with the willingness of a government to adopt for itself, through its treaty ratification process, a commitment to be bound by the standards locally. Ratification establishes a basis in domestic law that allows the process of implementation to begin. It is a translation, an acceptance, of the international standards into our domestic system of laws.

By the same token, a failure or refusal of a government to ratify standards of human rights that are in force worldwide, and given general recognition as universal standards of conduct, in itself raises an important question of compliance. If a standard of humanitarian conduct is in force worldwide, the act of a government in refusing to join in that acceptance officially may be seen as a failure to take the first step required for implementation, namely, formal adoption of the requirements in the domestic legal system.

The record of the United States in ratifying internationally recognized human rights obligations has been a dismal one. Over the years we have approved a relatively small number of human rights related treaties (Status of Refugees, Political Rights of Women, Anti-Slavery), but have failed to

ratify a much larger number of major conventions and treaties that have come to be recognized worldwide as the core of a bill of human and humanitarian rights. Among them are the four treaties President Carter recently signed and urged upon the Senate--the Convention on Elimination of Racial Discrimination, the American Convention on Human Rights, and the two Covenants on Economic and Social, and Political and Civil Rights, as well as the previously signed but unratified convention on Genocide.

Worse still is that fact that the President's letter of transmittal of these documents to the Senate requests inclusion of reservations (provisos) to the treaties that effectively deprive them of binding effect domestically, exactly the result we claim to be seeking in terms of application of these standards in other nations.

> ". . . declarations that treaties are not self-executing are recommended. With such declarations, the substantive provisions of the treaties would not of themselves become effective as domestic law."
>
> (President's Treaty Message to the Senate, Feb. 23, 1978.)

This approach is essentially undermining and destructive of one of the basic precepts of international human rights--that is, that governments are bound, have an inescapable duty, in the President's words, to observe and implement the standards. By its failure to ratify, and its present approach of asserting the nonbinding effect of the standards domestically, the government of the United States has taken two steps that put it in serious noncompliance with internationally recognized human rights obligations that are incorporated in the Helsinki Agreements. The Helsinki signatories tie their observance of the Accords to human rights obligations to which they may be bound through other instruments or practices. Even though our nation has not ratified the

Economic and Social, and Political and Civil Rights Covenants, the President, through his signature and accompanying statement, has recognized their binding nature. Moreover, these covenants do no more than provide more detailed explanation of the general human rights principles we have formally accepted through ratification of the United Nations Charter and approval of the U.N. Universal Declaration on Human Rights. Our nation also is bound by these standards by virtue of their having become generally recognized as universally accepted standards by the world's governments.

Ratification of the Covenants and the other principle international human rights instruments without reservations is critical to all of our efforts to make the assurances of Helsinki a reality both at home and abroad.

I. Micronesia

(Based on information provided by the Micronesian Legal Services Corporation, 1424 16th St., N.W., Suite 300, Washington, D.C. 20036; telephone (202) 232-5021; contact Theodore R. Mitchell or Martin Yinug.)

1. Introduction

From the end of World War II to the present, the United States has retained control of the Marshall, Carroline and Mariana islands. Because the islands lie across vital western Pacific lines of communication between Hawaii and Southeast Asia, and Japan and Australia, possession of them has significant military value, as the war with Japan so clearly demonstrated. The opening of trade with the People's Republic of China has also increased the significance of these islands.

United States military forces occupied the islands and governed the Micronesians who survived the war until 1947 when Presiden Truman decided against annexation, a course of action favored by the Pentagon, in favor of

submitting Micronesia to the newly formed trusteeship system under Chapters XI-XIII of the Charter of the United Nations. It was not until 1951, however, that civilian authority replaced the military, when all "executive, legislative and judicial"authority for administration of Micronesia was given to the Secretary of the Interior. The Secretary still possesses that plenary power (48 U.S.C. §1681(a)) and exercises the primary responsibility of the United States to fulfill its obligations to the 130,000 Micronesians under the terms of the Trusteeship Agreement, the United Nations Charter and the Helsinki Agreements.

By virtue of Guiding Principle X, the United States is pledged to "fulfill in good faith" its obligations under the Charter and any treaty or other international agreements and it acknowledges that this principle is of "primary significance"and shall be "unreservedly applied". In contrast to the relationship of the United States to its own citizens and others under its sovereignty, Micronesians are the intended beneficiaries of some very specific United States promises under the Trusteeship Agreement For The Former Japanese Mandated Islands (July 18, 1947, 61 Stat. 3301, T.I.A.S. No. 1665), an international agreement with the status of a treaty (People of Saipan v. U.S. Depart. of Interior, 502 F.2d 90, 97-99 (9th Cir. 1974)). This Trusteeship Agreement is based upon the objectives of Article 76 of the Charter, the key provisions of which are incorporated into it, and its precise terms were dictated almost entirely by the United States. To determine, then, whether the United States has been obedient to Principles VII, VIII and X, with respect to Micronesia, we must measure its conduct over the past 35 years by the duties freely undertaken by it in the Trusteeship Agreement.

By virtue of Article 6, the United States "shall"

> . . . foster the development of [suitable] political institutions. . .

(48)

> and promote the development of the inhabitant. . . toward self-government or independence. . .
>
> . . . promote economic advancement and self-sufficiency of the inhabitants. . . protect [them] against the loss of their lands and resources; and improve the means of transportation and communication. . .
>
> . . . promote the social advancement of the inhabitants. . . and protect the rights and fundamental freedoms of all elements of the population. . .
>
> . . . protect the health of the inhabitants. . .
>
> and . . . promote [their] educational advancement. . . and facilitate. . . vocational advancement. . . encourage higher education, including training on the professional level. . . .

We shall briefly examine the United States' record of performance and each of the laudable objectives.

2. Self-Determination

For 21 years of the trusteeship there was no direct participation in government by Micronesians. The first involvement came with establishment of the Congress of Micronesia in 1965, a popularly elected legislative body. It was permitted to exercise a broad scope of legislative power, but was not given advice and consent power, nor could it override an executive veto. (Dept. of Interior Order No. 2876, Jan. 30, 1964.) Executive and judicial authority have been retained by the United States from the beginning to the present day. While in recent years more Micronesians have been employed in administrative positions of the Trust Territory government, all of the key policy and decision making positions are held by Americans. A Micronesian was appointed for the first time to the High Court bench in 1977.

A bicameral body, the Congress of Micronesia, thrived for the first 10 years of its existence as a focal point for Micronesian political activity and as a voice for Micronesian aspirations to an ever-greater degree of self-determination. It does not exist today, having been disbanded earlier this year

in favor of separate legislatures for each of the Marianas, Marshalls and Palan island groups and a federation of the remaining island groups, Yap, Truk, Ponape and Kosrae.

One of its first official acts was to call upon the United States to commence negotiations for termination of the trusteeship, at a time when United States policy was to hang on in perpetuity. After a grudging start in 1969, they started in earnest in 1972 with appointment of Ambassador F. Hayden Williams. The long and complicated course of events which ensued are capably treated by Donald F. McHenry in Micronesia: Trust Betrayed--Altruism vs. Self Interest in American Foreign Policy (N.Y., Carnegie Endow. for Int. Peace, 1975).

In the space of barely four years, Ambassador Williams succeeded in splitting the Marianas away from the rest of Micronesia and, in effect, annexing them, humiliating and disheartening the Congress of Micronesia and setting into play the forces of division which have resulted in the fractionation referred to earlier. As if to spite the Micronesians for demanding the talks in the first place, the United States has unilaterally determined to end the trusteeship by 1981, whether or not it has created a viable economic and political entity in Micronesia.

The central aim of Article 6, Paragraph 1 is the creation of a competent, stable, appropriate Micronesian government for Micronesia. Instead, United States policy has sown dissension and turmoil and it leaves behind an eloquent example, in the remnants of its own Trust Territory government, of the antithesis of good government--a massive, ineffective bureaucracy.

3. Economic Development

Micronesia, after 35 years of United States administration has an economy which consists of what remains of the traditional Micronesian sub-

sistence agriculture and fishing activities, and an enormous governmental structure. The amount spent annyally for consumption of imported goods approximates the $100 million annual budget of the government, while exports amount to about $6 million per year. The government payroll is tantamount to a welfare program which has, since the mid-1960's, brought Micronesians to a state of great dependence on U.S. largesse.

U.S. economic policy for Micronesia has stressed large-scale, high technology development of marine resources and international tourism, repeating the familiar pattern of large investment by outside sources of capital and return of profits to the same sources, with creation of comparatively little employment (skilled or unskilled) per unit of investment.

Government funds or government guaranteed bank financing has been inadequate to foster creation of the kind of entrepreneurial capacities which are within practical reach of the Micronesian merchant, fisherman, or craftsman, in sufficient numbers to provide employment and exploit the existing potential.

Providing adequate means of transportation and communication is no small task in an ocean area the size of the continental United States, but both are essential to developing and maintaining adequate economic activity, not to mention other important functions from general social intercourse to governmental functions. As it is now, the only general means of transportation throughout Micronesia is airline service so costly as to be beyond the means of the average Micronesian, where annual per capita income is less than $500. Telephone communications between the islands is difficult to impossible. From Saipan one may barely converse at the top of one's lungs with Majuro or any of the other island centers, for example, but no two island centers can communicate at all .

The aim of Article 6, Paragraph 2, is economic self-sufficiency for

Micronesia. Now, barely two years before the United States plans to end its trusteeship, there is almost nothing but dependency on U.S. governmental programs and payroll.

4. Health

There are nine hospitals in Micronesia, to serve 135,000 people on over 200 islands. Almost without exception, they are understaffed and poorly managed. Typically the hospitals are staffed with a few American medical personnel who come and go on two year contracts and Micronesian paramedical and other personnel. Ponape and Truk have received new hospitals in recent years, but elsewhere medical facilities are deplorable, equipment obsolete, and drug supplies chronically low or depleted.

In September last year, the Majuro hospital was found to be unsanitary, rat-infested, undersupplied and understaffed, by a journalist from Honolulu. The resultant publicity forced the United States High Commissioner to order immediate attention to the problem, but the Majuro hospital, and those in Ebeye, Yap, Ponage and Saipan, has been that way for years. At Majuro, cats, dogs and chickens ran through the hospital at will, cockroaches were crawling around in closets which should contain sterile materials, patients were fed a steady diet of rice and fish three times a day regardless of actual need, and essential drugs such as penicillin and insulin had been depleted for weeks. At Saipan a recent visit by an HEW inspection team found 45 major deficiencies in the hospital, disqualifying it for medicare and medicaid programs.

New hospitals, as we have noted, have been recently completed in Truk and Ponape, Another is under construction in Yap and one is planned for Saipan. It is a mixed blassing, however, because the Trust Territory government has begun to cut back its activities and funding in anticipation of the end of the trusteeship; and funds are not available to maintain these new,

larger and more costly facilities. That same Majuro hospital will suffer a budget cut from $1.65 to $1.0 this year. Trust Territory officials were before Congress last week, proudly defending substantial reductions in their budget request, while scores of other federal agencies fought for increases.

The health needs of the people of the atolls of Enewetak, Rongelap, Uterik and Bikini deserve special mention. Enewtak and Bikini atolls were used by the trustee as nuclear weapon test sites for 10 years. Rongelap and Uterik were accidently exposed to large amounts of radioactive fallout in 1954 when the cloud of a thermonuclear test at Bikini was carried "upwind".

To date these needs have been met reasonably well by the United States. A special team of environmental and medical personnel has travelled regularly to Rongelap and Uterik. The United States has agreed to clean up and rehabilitate Enewetak at a cost of over $100 million and that program, currently underway, is planned for completion in 1981. Much remains to be done to assist the Bikini people, who are not presently permitted to return to their atoll because of excessive amounts of residual radiation.

Congressman Phillip Burton, and a member of this Commission, Sidney R. Yates, have made great contributions of time and effort on behalf of these expecially needy Micronesians.

Aside from the unresolved problems of finding a suitable permanent settlement for displaced Bikinians, the one remaining health need is for a program of long range radiological monitoring for both environment and people, in the post-trusteeship period. This will he essential for the people of Rongelap. Uterik and Enewetak.

5. Education

In an Micronesian population of 135,000, there is one medical doctor, one journalist, fourteen attorneys and no one with an academic doctorate.

No economist, no sociologist, no agronomist, no historian, no psychiatrist. Many young Micronesians have received elementary education, but in some districts the high schools are inadequate to take them further and the small Community College of Micronesia in Ponape is essentially what used to be called a "teachers college". Scholarship funds to attend college and professional schools outside Micronesia are inadequate and it is the rare student whose family can support the high cost of college training. In recent years, the Micronesian Occupation Center in Palau has produced graduates with skills in the machanic, construction and other trades, but there is still a great lack of supply.

The most serious fault of the educational system instituted and maintained by the administration is its failure to reflect the Micronesian cultures. An educational system, after all, is a means by which a society shapes, indoctrinates and conditions its younger members to be good and useful members of that society. "Education" in the minds of U.S. administrators (and all too many Micronesians) is a unique creation of American society. The net effect has been a rather poor copy of an American elementary and secondary education system, deposited here and there throughout Micronesia. The student it turns back into Micronesian society after twelve years of "education" no longer respects his Micronesian beginnings or identity and is so poorly "educated" in American terms that he can neither get a job (if one were available) nor succeed at college (if he had the money to try.) Unless he is the exceptionally gifted individual, he is likely to be a functional illiterate in two languages--English and his own Micronesian language--and a social misfit who has been taught to disparage his own culture and aspire to becoming what he can never be: a middle class white American. In short, he becomes a "juvenile delinquent," like many of his peers throughout Micronesia, giving rise to the most serious current social problem in Micronesia.

Article 6, Paragraph 4, requires the United States to assist Micronesians in the development of an educational system uniquely suited to Micronesia, in order to promote stability and self-esteem in Micronesian individuals and to provide Micronesian society with the knowledge and capability--the human resources--to achieve all of the other aims of good government, economic development, social advancement, health, and of course, a good educational system itself. It has failed to fulfill that obligation.

6. Conclusion

The task undertaken by the United States in 1947, to serve as administering authority of Micronesia was a difficult one--to assist Micronesia in building a nation, stable, self-sufficient and appropriate for Micronesians. It has not been accomplished and yet the Micronesians are being told by the United States that it is now time to end the trusteeship. Micronesia's post-trusteeship status is to be determined by her, by "the freely expressed wishes of the people concerned" (Article 6, Para. 1), but it is hard to see how a truly free choice can be made by the Micronesians until the United States has fulfilled the obligations outlined above. The central issue, of course, is the economic one. How can it be regarded as a free choice when the alternatives are, for example, continued financial support from, and dependence upon, the United States, or political independence and immediate loss of all aid. An abrupt return to the subsistence economy of two generations ago is the alternative.

Yet if it were important enough to the relevant parts of the Executive Branch, a few in the White House and a few more at the Interior Department, it is a job which could be done. The Congress has been generally willing and has often taken the lead in the right direction without executive enthusiasm. The courts have been generally responsive to Micronesian pleas. What it missing is the right kind of leadership from the most visible advocate of human rights —President Jimmy Carter. The Micronesian problem can be solved, but thus far the United States government has left it ignored and forgotten.

Chairman FASCELL. Thank you, very much. We stand adjourned subject to the call of the Chair.

[Whereupon, at 1:20 p.m. the public hearing was adjourned.]

STATEMENTS AND LETTERS SUBMITTED FOR THE RECORD—APRIL 3-4, 1979

STATEMENT OF FORREST J. GERARD, ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE, WASHINGTON, D. C.

Mr. Chairman:

My name is Forrest J. Gerard. I am a Blackfeet Indian and serve as Assistant Secretary for Indian Affairs of the Department of the Interior. I appreciate the opportunity to appear before this Commission to discuss the progress made since 1975 in the protection and assertion of the human rights of Native American nations, tribes and peoples.

At the request of the Commission, we are preparing and will soon submit a report on the International Dimensions of Human Rights of American Indian and Alaska Native People.

Indian tribes and their citizenry occupy a unique status in American society. This status may seem to be an anomaly until one remembers that it is as old as the Nation itself and, though frequently overlooked, is part of the fabric of American government in society. The rights which have been accorded the Native people to a continuing political existence, to land and natural resources and to cultural distinctness are special, inherent and unique rights, to which they adhere with the determination that accounts for their remarkable survival in the face of the pressures through history.

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Looked at from the perspective of the world's relations among nations, the continuing recognition of these rights by the U.S. constitutes a voluntary limitation of sovereignty by a powerful nation, which has few precedents in the history of the race.

The United States relationship with the Indian tribes was described by John Marshall as like that of a larger nation extending its protection to a smaller one. This relationship is marked by the peculiar demands which necessarily result from the intimacy of being intermingled and interdependent in a way that is unlike other nations. The United States has recognized that the quality of our protection has not always matched its finest tradition. In our report, we discuss ways in which we have worked and are working to enhance this quality of protection.

Most American people deal with the federal government because of some particular characteristic giving rise to eligibility for a program or some activity subject to federal regulatory power.

Indian people relate to the federal government as nations and tribes and citizens of nations and tribes, and on that basis first and in other ways only incidentally. Under United States law, Indian people enjoy benefits arising from their dual-citizenship in the United States and in their tribes. The Indian interest of the federal government cuts across all categories. There is virtually no activity or agency of the government which has no relation to Indians, no Indian counterpart and no impact on the trust relationship.

Each Indian culture is in a state of transition, adapting to new circumstances, as is the whole of American society. The actions of government can affect, but cannot control, vast cultural changes and, as our governments relate to each other on policy and program levels, it sometimes seems that the complexity in the interrelated nature of problems is so overwhelming as to make effective action impossible. But, in my experience I have found that substantial progress is possible, if we do not allow ourselves to be intimidated by the scope and complexity of the problems or to use them as an excuse for inaction. If we realize there is no single answer, we can proceed in an atmosphere of mutual trust prepared to make honest mistakes and correct them.

There are several things in the Indian field that can be said with certainty. One is that neither Indian rights nor Indian problems disappear if they are ignored. Another is that the American people are as insistent on justice for the Indian tribes as are the Native people themselves and their friends throughout the world. And finally, the true anomaly that must be resolved is that the Indians are the only poor people in the Nation with the resources to lift themsleves out of poverty. Our report provides examples of the ways in which the United States is assisting in this process, particularly over the past five years.

The art of government is that of balancing competing interests. The United States has undertaken a special legal and moral obligation with respect to Indian tribes. It is not unrealistic to say that the national honor depends on how we discharge this trust and there is accuracy in the Indian view that their survival in society is largely dependent on the United States' fidelity to this trust.

I have some recommendations of a general nature to make as a concept First, we must recognize the tremendous power that the United States asserts over the Indian tribes and the potential for abuse. We must

acknowledge the historical record of abuse. Our system does not, by its nature, require judicial review of the exercise of discretion by the critical departments of the government, but we do have the resourcefulness to assure that the tribes have an ample opportunity to be heard in the policy-making processes and that political decisions affecting their vital interests are made openly. In my experience, I have found the Indian tribal leadership to be realistic in seeking fairness.

Second, even in the present era of tight budgets, we have ample resources to attend to the shocking and debilitating poverty of reservations. The responsibility to assist the tribes is that of the United States, not just the Bureau of Indian Affairs, and all agencies must cooperate in finding and funding long-term solutions in partnership with the tribes. With the present resources of the Bureau of Indian Affairs, the Indian Health Service and the special Indian programs in other agencies, we are just beginning to meet the needs dictated by the symptoms of poverty. We have learned from past experience that only a coordinated and solution-oriented interagency effort will led to substantial progress.

The historic fundamental principles of federal Indian policy, are: (1) recognition of Indian tribal self government; (2) recognition of Indian rights to land and natural resources; and (3) recognition of cultural distinctness of Indian tribes. In recognizing these principles, and particularly in signing nearly 400 treaties with various Indian nations and tribes, the United States assumed a federal-Indian trust relationship, which has many of the elements of a protectorate relationship among members of the international community of nations.

But also, down through the years, the United States has tended to pursue these humane policies in a paternalistic way, which has stifled the growth and development of Indian society socially, politically and economically. Thus, although the United States is a leader among the world nations in its human rights policies with respect to indigenous people, it has many steps to take toward the successful implementation of these policies. The major recent step has been the policy of Indian self-determination, as best exemplified in the Indian Self-Determination Act. Implicit in the Indian self-determination operational policy is a subtle shift in emphasis which is of the greatest moment for human rights policy, as well as for Indian policy: no longer is federal policy preoccupied with programs that forced Indians to abandon their tribal identity and assimilate individually into American society.

The present policy is designed to put Indians, in the exercise of their self-government, into a decision-making role with respect to their own lives. The assumption on which human rights policy must ultimately be based is not that this approach will simply be a better way of accomplishing the goals the majority society has chosen for Native peoples, but instead, assuming that they have available to them all the tools they need to make informed decisions, that they will make and be responsible for their own decisions.

Consequently, it is difficult to measure the actual impact of recent trends in Indian policy. The educational level of Indians is improving; the health conditions are improving; economic conditions are improving, but slowly, and there is admittedly a long road ahead toward the solution of the serious economic problems of Indian reservations. Despite recent funding trends made necessary by government-wide budget-tightening, the overall funding level for Indian programs has risen dramatically in the past 20 years.

The major impact, however, is in the degree to which Indian tribes are managing their own resources, controlling their own assets and administering their own programs. Throughout the field of Indian affairs, the major problems now are largely the result of the implementation of positive programs and the resolution of problems stemming from active tribal governments.

Tribes are now included as full participants in major policy initiatives, most recently in the planning and implementation of the President's water policy. Federal assistance has been made available to tribal and intertribal organizations to enable them to make their own decisions with respect to energy and other natural resources development. The education functions with the federal structure are being reviewed and organized in cooperation with Native people. As a result of recent Congressional action, the Indian governments and families now have increased capability to protect their most valuable asset - the Indian children. And, the federal agencies are actively reviewing and revising their policies and practices as they work with Native people to implement the American Indian Religious Freedom Act.

Tribal governments are expanding their activities in all areas: taxation, regulation and the delivery of services. Tribes and states, once adversaries, are entering into joint studies of intergovernmental cooperation to define areas of possible aggrievement, even while mindful of the remaining areas of competition.

The allegations against the U.S. with respect to the treatment of Indians are directed at both process and results, that is, the degree to which Indians control their own affairs and the conditions associated with the poverty of reservations and urban Indian communities. The historic federal practice has been to deal with the symptoms of poverty paternalistically, in derogation of tribal rights of self-determination. This practice has not been successful.

The present federal policy and practice is based on the assumption that only the tribes can find and implement permanent solutions to their own problems. Many successful tribally-run programs throughtout the country give us reason to believe that we can look forward to increasing concrete results in dealing with reservation problems. Self-determination is an end in itself, both in domestic policy and in international human rights protection, and recent trends in federal policy have shown substantial progress toward that end. But, self-determination is also perceived to be the most efficient and effective means of achieving results of social and economic progress and, although it is too early to claim conclusive victories, we feel we have every reason to be optimistic.

{Mr. Gerard's responses to questions submitted to him in writing by the Commission follow:}

1. What has the Bureau of Indian Affairs been doing to implement the provisions of the Helsinki Final Act respective to Indians (see Principles VII and VIII) since the agreement was signed in August, 1975?

2. Identify and describe some of the federal programs now in existence that serve to bring the U.S. into compliance with Helsinki provisions that have a bearing on Indian rights.

13. Any comments you may wish to make to support or to counter other testimony given at the Commission's hearings will be welcome.

A: (Combined answer for questions 1, 2, and 13.)

Over one-hundred measures expressly affecting American Indian and Alaska Native nations, tribes and peoples have been enacted since 1975. The 95th Congress alone created seventy-nine new laws pertaining to Native Americans. While some of these laws affect only one or a few tribes of individual Indians, many Congressional acts of this period represent policy statements of major significance affecting Native governments and peoples thoughout the United States. Many of these new laws have particular meaning in connection with Principle VII (Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief) and Principle VIII (Equal rights and self-determination of peoples) of the Helsinki Final Act.

Beginning with the Indian Self-Determination and Education Assistance Act of 1975, vital legislation has been enacted for the purpose of addressing basic human rights and needs of Indian people in the areas of health, education, child welfare, religious freedom, economic development, land and natural resources management and protection, increased access to the various courts and tribal recognition and restoration. Legislation enacted during this period follows a consistent policy line repudiating disasterous terminationist and assimilationist policies of the 1950s, removing barriers to Indian self-determination and local-level control, and enhancing the basic quality of life of Native American peoples.

Thus, the United States has demonstrated and codified its commitment to and compliance with the Helsinki provisions that have bearing on Indian rights. The President stated this commitment in no uncertain terms in his 1978 message to the Indian people

> I consider it my solemn duty and obligation as President to see that we fulfill our trusteeship responsibilities within the framework of self-determination for American Indians. In particular,

> I would like to reaffirm my resolve to honor this country's legal and moral responsibilities to American Indians in protecting their land, water, and natural resources. And I am fully committed to the task of protecting the human and civil rights of all Native Americans.

The mandates of the President, the Congress and the courts relative to Indian rights are implemented by many departments and agencies, with much of the administrative responsibility residing with the Secretary of the Interior. Within the Department of the Interior, three offices (Office of the Assistant Secretary - Indian Affairs, Office of the Associate Solicitor - Indian Affairs and the Bureau Indian Affairs) have roles and functions with respect to the special responsibilities, programs, services and benefits relating to Indian people and their property. In addition to the Indian participation in programs of the BIA, the Indian Health Service and other federal programs specifically designed for Indians, the tribal governments are eligible participants in many programs designed for states and other local units of government, including the Labor Department's CETA prime sponsorship program, the Agriculture Department's farm and rural development programs, HUD's housing and community development programs, a variety of EPA programs, and programs under the Omnibus Crime Control and Safe Streets Act, the State and Local Fiscal Assistance Act, Uranium Mill Tailings Act, the Agricultural Credit Act, Revenue-Sharing, and others.

Indian Self-Determination and Education Assistance Act

The first of the mandates of Congress during the period of discussion is the Indian Self-Determination and Education Assistance Act, P.L. 93-638, which provides a mechanism for conceptually and operationally converting the BIA and the Indian Health Service from managerial organizations dominating Indian lives to service and support agencies working in partnership with and at the direction of the Native governments and people. The Act authorizes and provides standards for contracts between the United States and Indian tribes and organizations to enable them to run many of the programs previously run by the BIA and the IHS. This Act provides an opportunity for Indian tribes to receive the federal dollars appropriated for Indians and to design the programs and hire the personnel of their choosing on their reservations and in their communities. It is an attempt on the part of the United States to further the policy of Indians determining what is best for them, shaping their own futures and even making their own mistakes, without the outside influences which have stultified tribal growth and development in the past.

This ambitious and far-reaching law presently determines the framework of the relationship between the federal and tribal governments and the future course of this relationship. In this Act, the Congress included a statement of findings demonstrating the seriousness of purpose with which a new relationship between the federal government and the Indian people was launched:

> (A) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds:
>
> > (1) The prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians the full opportunity to develop leadership skills crucial to the realization of self-goverment, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and
> >
> > (2) The Indian people will never surrender their relationships both among themselves and with non-Indian governments, organizations, and persons.

This Act also contains a declaration of policy so fundamental to an understanding of the situation of the American Indian in the United States today that it bears quoting in full:

450A. Congressional Declaration of Policy

(A) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(B) The Congress declares its commitment to the maintenance of the Federal government's unique relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct and administration of those programs and services.

(C) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to complete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

To repeat, the present policy is designed to put Indians, in the exercise of self-government, into a decision-making and goal-setting role with respect to their own lives, while assisting in the attainments of the tools needed to make informed decisions. More and more tribes and tribally-sanctioned organizations utilize this important contracting mechanism to administer and deliver federal services at the local level. To date, the BIA has entered into some 250 contracts, involving over $175 million. As a greater number of federal functions and programs are contracted, the role of the affected federal agencies is altered in significant ways -- the bureaucracy emphasizes its role as a technical service agency and protector of trust resources, disengaging itself from internal tribal decision-making and the day-to-day tribal operations and initiatives. Thus, the Self-Determination Act itself promotes efficiency, effectiveness and better management in the federal trustee functions and delivery systems, as well as in the tribal governmental and administrative systems.

Tribal Land Acquisition and Resource Protection

Recognizing that the future of Indian tribal governments and tribal economies are largely dependent on a sufficient land base to support their populations, it is a continuing United States policy to assist tribes with land acquisition and land consolidation programs. During the years from 1975 to 1978, Congressional legislation has authorized acquisition by tribal groups of about 400,000 additional acres of land, assisting some thirty tribes to expand their land base. Enacted in 1975 and known as the submarginal lands legislation, P.L. 94-114 declared that 345,610.33 acres of submarginal land of the United States would be held in trust for certain Indian tribes and be made a part of their reservations. This Act conveyed lands to the Bad River Band of Chippewa Indians, Blackfeet Tribe, Cherokee Nation, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Lower Brule Sioux Tribe. Devils Lake Sioux Tribe, Ft. Belknap Indian Community, Assiniboine and Sioux Tribes, Lac Courte Oreilles Band of Chippewa Indians, Keweenaw Bay Indian Community, Minnesota Chippewa Tribe, Navajo Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Shoshone-Bannock Tribes, and Standing Rock Sioux Tribe.

Also, during this period, individual laws were enacted conveying land or authorizing the Secretary to acquire land for the following tribes: Laguna, Zuni, Zia and Santa Ana Pueblos, Cheyenne and Arapaho Tribes, Creek Nation, Papago Tribe, Salt River Pima-Maricopa Indian Community, Mille Lacs Band of Chippewa, Susanville Indian Rancheria, and the Paiute-Shoshone Tribes of Fallon Colony.

Another example of recent mandates affecting Indian resource rights is found in the President's Water Policy, which includes tribes as full participants in the planning and implementation. In his water policy message on June 17, 1978, President Carter announced a broad set of policy initiatives concentrating on four key areas:

- Enhancing federal-state cooperation;
- Making water planning process more efficient;
- Providing a new national emphasis on water conservation;
- Increasing environmental sensitivity for water resources planning and management.

Special attention is given to Indian water resource issues in the President's Water Policy, extending his statement before the election that "Indians have a historic, legal and moral right to a fair share of available water resources."

The President's July 12 memorandum on federal and Indian reserved water rights policy gave the Bureau of Indian Affairs two major tasks. The first of these requires the development of technical criteria for the classification of Indian lands which reflect and make allowances for water use associated with the maintenance of "permanent tribal homelands." A work group was established to carry out this directive and has completed its first draft of the land classification study. The second part of the Presidential directive requires the development of a plan for the review of Indian water claims to be conducted within the next ten years. The BIA, working with the Indian people is developing an implementation plan and schedule for this comprehensive inventory. The policy recognizes the Indian rights to maintenance of permanent tribal homelands and pursuit of water cases in court. However, because litigation is so lengthy, costly, divisive and often inconclusive, the President's approach favors settlement of water claims through negotiation. Should negotiations fail, the policy favors litigation in the federal forum.

The Indian Child Welfare Act

The Indian Child Welfare Act of 1978, P.L. 95-608, is designed to protect the most valuable tribal resource - the children of Native America. This Act offers protection against procedural onslaughts which have threatened the integrity of Indian families in the past.

It eliminates abusive child-welfare practices that have resulted in unwarranted Indian parent-child separations; it ends discrimination that has prevented Indian parents from qualifying as foster or adoptive families; and it provides Indian communities with comprehensive child-welfare and family-service programs.

Overall, it recognizes that Indian tribes, as local governments, have a vital role to play in any decision about whether Indian children should be separated from their families, assuring that Indian families will be accorded a full and fair hearing when child placement is at issue. Specifically, the Act provides that no placement of an Indian child who is residing or domiciled on an Indian reservation shall be valid unless made pursuant to an order of the appropriate tribal court. In the case of Indian children not residing or domiciled on the reservation, the act directs state courts having jurisdiction over an Indian child custody proceeding to transfer the proceeding to the appropriate tribal court upon the petition of the parents or the Indian tribe. To help ensure that the due process rights of Indian families are respected, the Act provides that an indigent Indian parent or custodian will have a right to court-appointed counsel in any involuntary state proceeding for foster care placement or termination of parental rights. Where state law makes no provision for such appointment, the Secretary of the Interior is authorized to pay the reasonable expenses and fees of counsel. Other sections of the act impose standards of evidence on state court proceedings involving Indian child placements, establish priorities in the placement of Indian children (first preference will be given to members of the child's extended family), and authorize the Secretary of the Interior to assist Indian tribes in the establishment and operation of Indian family development programs.

The objective of these programs will be to prevent the break-up of Indian families and to ensure that Indian children are removed from their families only as a last resort, if remedial services to help the family stay together have failed. The Act also protects the adoptive child's right to tribal membership and to benefits associated with that membership. The Indian Affairs offices within Interior are working with Native people to finalize the regulations for implementation of this new law.

The American Indian Religious Freedom Act

Another important Indian self-determination and human rights step was taken with the passage of the American Indian Religious Freedom Act, P.L. 95-341. While the concept of religious freedom is basic to American values, past insensitivity to traditional Native religions and religious customs has resulted in considerable hardship and federal interference in the daily lives of many Native peoples.

Upon signing the Resolution into law on August 11, 1978, President Carter made the following statement

> This legislation sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express and exercise their traditional religions. In addition, it calls for a year's evaluation of the Federal agencies' policies and procedures as they affect the religious rights and cultural integrity of Native Americans.
>
> It is a fundamental right of every American, as guaranteed by the First Amendment of the Constitution, to worship as he or she pleases. This act is in no way intended to alter that guarantee or override existing laws, but is designed to prevent government actions that would violate these Constitutional protections. In the past government agencies and departments have on occasion denied Native Americans access to particular sites and interfered with religious practices and customs where such use conflicted with Federal regulations. In many instances, the Federal officials responsible for the enforcement of these regulations were unaware of the nature of traditional native religious practices and, consequently, of the degree to which their agencies interfered with such practices. This legislation seeks to remedy this situation. I am hereby directing that the Secretary of the Interior establish a task force comprised of representatives of the appropriate federal agencies. They will prepare the report to the Congress required by this Resoltuion, in consultation with Native leaders. Several agencies, including the Departments of Treasury and Interior, have already taken commendable steps to implement the intent of this Resolution. I welcome enactment of this Resolution as an important action to assure religious freedom for all Americans.

The task force to implement P.L. 95-341 is now collecting and reviewing the reports from participating agencies and is working with Native people to prepare the report to the Congress. The preparation of this report accords the federal agencies the opportunity to rethink antiquated policies, to develop uniform standards, approaches and procedures, and to measure existing practices against practical experience.

The implementation of the American Indian Religious Freedom Act is not a federal program for Indians per se, but it is expected to have a long-term effect on the protection of the Indian rights in the United States and will undoubtedly result in the creation of a variety of procedures and special arrangements for Indians in a number of federal agencies.

Education Acts and Policy

Indian control of Indian education is the primary goal of current U.S. Indian education policies. Several major pieces of legislation - beginning with the Indian Self-Determination and Education Assistance Act in 1975 and continuing through 1978 with the Tribally-Controlled Community Colleges Act - provide tribes and parents with the means to control and determine the educational needs of their communities and to provide their tribal and community members with the kind of education needed to realize their full potential as individuals within the context of tribal, community and national life.

The intent of this policy is not only to increase Indian participation and involvement in the educational process but also to improve the quality of Indian education through the development of programs designed to meet the unique educational needs of Indian tribes and communities. The present policy sharply contrasts with previous policies and practices in Indian education.

Until a few years ago, many policy-makers viewed education as the key element in the policy of Indian assimilation and often regarded Indian culture and history as impediments to the full participation of Indians in American life. The excesses of this period of Indian education resulted in great damages to Indian people, producing the statistics of low educational achievement of Indians and a host of other related problems, including the disruption of Indian families and cultural and tribal life styles. These conditions and problems, have been thoroughly documented in numerous studies in Indian education and through Congressional hearings and reports.

As a result of these studies, and through the initiative of Indian people themselves, the older policies were phased out in the early 1970s and were replaced with a more enlightened policy of today. Under the current policy, the choice of assimilation is a matter for the individual Indian to make. Indian history and culture are viewed as positive assets, rather than negative impediments in Indian adjustment to contemporary American life, and the control of Indian education is in the hands of the people most directly affected by the education being provided, the Indian tribes and Indian parents.

Two important acts of 1978 hold great promise for improving the practical systems of education for Indian students. First, the Tribally-Controlled Community College Assistance Act of 1978, P.L. 95-471, authorizes grants to the more than 20 Indian controlled community colleges, for administration, operation and maintenance. Indian community colleges have enjoyed great success in designing curricula which meet the needs and interests of Indian college-level students, both young people and older adults. They are located within reach of Indian communities and serve the communities at the same time they are instructing students.

Second, Title XI, Indian Education of the Education Amendments Act of 1978, embodies significant structural changes in the BIA Indian school and public school systems. This legislation requires the BIA to undertake, over the next two to three years, actions to accomplish major and significant changes in the operation of its educational program. Among the mandates of P.L. 95-561 are these: establishment of academic and dormitory standards for BIA schools; revision of the formula for distributing JOM supplemental educational funds; bringing all BIA schools into compliance with applicable health and safety standards; funding for each school directly under an equitable formula; giving local school boards the opportunity to assume authority for financial planning and personnel management; establishment of a management information system; revision of BIA education policies; and development of rules and regulations to insure rights of Indian students attending the Bureau schools. P. L. 95-561 also establishes direct line authority for the Director of the BIA Office of Indian Education Programs to direct all field education personnel in the delivery of education services; the lack of this line authority has been identified by Indian people and the Congress as a barrier to the successful implementation of current policies in education.

These changes in policy direction have not overcome the educational problems faced by Indian people. While the overall impression is that the changes are resulting in creative, positive results, too little time has passed to assess the true effects. However, the need now exists for Indians to control their education in order to solve the problems which a hundred years of bureaucratic control has failed to solve and, in fact, has played a major role in creating for Indian people.

Under P.L. 93-638, the Congress declared that it was the obligation of the United States to "respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities."

This commitment to the policy of self-determination, participation and responsiveness has been the basis for the implementation of P.L. 95-561/471. Implementation of these new laws is directed from the Office of Assistant Secretary, where a major effort has been undertaken to insure the active involvement of the Indian community in realizing a quality Indian education program. Twelve task forces have been established to carry out the provisions of P.L. 95-561/471. Of the 150 task force members, only 54 are BIA employees, while the balance is comprised of non-BIA Indian people who were nominated by tribal governments. Never before have so many Indian people been so directly involved in producing rules and regulations to guide the BIA in implementing its educational program. Not only is this a significant step toward strengthening Indian involvement in the BIA educational program, but an important step toward establishing new approaches to Indian consultation and participation, as well.

3. What steps has the BIA taken to better educate the American public about Indian cultures and about the unique relationship that Indians have with the federal government?

A. Since assuming the post of Assistant Secretary of the Interior for Indian Affairs, I have actively pursued a practice of open communications with such groups as the National Conference of State Legislatures, National Association of Counties, the National Governors Association and other organizations representing a broad spectrum of citizen groups. The purpose of opening the communciations was to convey to them the unique nature of federal-Indian relations, the trust responsibility role of the United States Government in behalf of federally recognized tribes and our effort to seek reasoned resolution to the range of conflicts over scarce natural resources today. On the other hand, I have made clear to these groups that, if litigation is the only course open to us, the agents of the trustee are obligated to fulfill our fiduciary responsibility to the tribes involved in this trust relationship.

Our basic message to these and other groups is that Indian people and their non-Indian neighbors can and must co-exist in harmony, for our world is too small to accommodate traditional border-town acrimony. The BIA has ongoing programs to assist the tribes and Native peoples to better present their diverse histories, cultures and goals to the general public through the

media, school curricula and all available channels of communication. The BIA Institute of American Indian Arts, in Santa Fe, New Mexico, has an international reputation for its presentation and promotion of the rich artistic traditions of tribes and their creative citizenry of this age. Today, the Indian people are working on models for cooperative agreements with states, counties, federal agencies, school boards, private industry - across the whole of American society - seeking and finding a future based on mutual understanding and respect. The BIA and the Department support and encourage these activities, recognizing that the initiatives and direction must come from the Indian people, not from the Indians' agency.

4. When conflicts of interest arise within the Interior Department, how are they reconciled? How does the Department determine which of the competing interests - the general public interest or the special interest of Indians - is overriding in any given situation? (For example: disputes over land and resources in Indian country sometimes bring the BIA, the BLM and the FWS into play.)

A. Conflicts are resolved within the Department with full recognition of the Department's trust responsibility to American Indian tribes. In this connection, it must be emphasized that there is no conflict between the so-called special interest of Indians and the public interest of the citizens generally. When the United States Government discharges our Nation's obligations to Indians, such as those embodied treaties or other obligations, it is serving the general public interest. Trust responsibility to Indians is taken seriously by this Department.

As to process, I am satisfied that the Secretary has established a decision-making process that guarantees that the Indian interest will be properly weighed against others when conflicts arise. Having an Assistant Secretary who represents Indian interests at the level of the Office of the Secretary enables me as that individual to bring the Indian point of view within the Secretary's decision-making process. Moreover, I have an opportunity to enjoy direct contact with the major decision-makers within the Department - the Secretary, the Under Secretary and the Solicitor. There is no question that there are bona fide conflicts of interest between Indians and other interests represented within this Department. I must underscore, however, that the Secretary's decision-making process and the Assistant Secretary Council provide an excellent opportunity for the Indian view to be involved in decision-making at its final stage. Admittedly, the Indian view has not always prevailed. On the other hand, the Indian interest has been fully considered and has prevailed over competing interests on a number of key issues involving valuable natural resources.

5. The Interior Department serves as the prime, but not the sole, governmental agent for carrying out the trust responsibility of the U.S. Government to Indian people. Does Interior coordinate well with other government agencies whose responsibilities may directly or indirectly affect Indian interests? (I am particularly interested in knowing about BIA's cooperation with the Justice Department.)

A. I think we need to speak in terms of interdepartmental efforts on two levels: legal and programmatic. This Commission is well aware that the Attorney General heads the Department of Justice and represents the United States in litigation. The major link between our Departments is through the Solicitor's Office, the chief legal arm of the Department of the Interior. The Assistant Secretary for Indian Affairs and the Associate Solicitor for Indian Affairs, who is within the Solicitor's Office, have many opportunities to coordinate with the Solicitor and to influence the substance of this interaction with the Department of Justice.

At the beginning of this Administration, the Department of the Interior's perception of the United States trust responsibility to Indians differed somewhat from that articulated by some officials in the Department of Justice. Once these differences surfaced, both Departments devoted considerable effort to examining the subject with some care and have now reached an understanding as to the respective roles of the two agencies in carrying out the governments trust responsibility to American Indian tribes and individuals.

We have found that, in most instances, the Justice Department has been extremely cooperative with views and positions advanced by this Department. The Justice Department's representation of Indian interests has been effective, skillful and wholehearted.

With respect to interdepartmental cooperation with other agencies on programmatic matters, this area is discussed frequently by members of Congress and within Indian communities and this Department, all recognizing a need to improve our efforts in bringing federal resources to bear on Indian issues and problems in the Indian community. This coordination is easy to talk about but difficult to attain because, as a practical matter, the subject concerns the authorities and responsibilities of the various departments and brings into play the protection of one's turf. The greatest opportunity for the best use of federal resources on the reservations and in Indian communities is through high-level coordination. We have some tools at our disposal that can be used and we and the tribes are pursuing them: the Joint-Funding Simplification Act, which provides an

opportunity to package programs in a single contract in conjunction with Indian Self-Determination and Education Assistance Act contracts, is one example of an available but little-used coordination vehicles.

6. The federal government has been criticized for protecting Indian rights in the abstract while not maintaining them in actual practice. Over the years, as you have acknowledged in your written statement, the BIA has been perceived as a paternalistic agency that is insensitive to Indian concerns. What has BIA done to improve its image and to enhance its credibility?

A. A serious continuing problem is the lack of a sound management system for the BIA, which precludes assurance to Indian people and top federal managers and policy makers that the BIA programs, responsibilities and funds are being properly carried out and expended. A major effort is underway to establish a sound management structure and system for the BIA. Enclosed is a copy of a report on the status of this effort recently submitted to the Congress. An improved image can only result through an improved management system; thus, our concentration is on the latter.

7. Much is being said about backlash legislation now pending before the Congress (i.e., legislation meant to impede Indian progress toward self-determination and control of economic resources on Indian lands and out of Indian hands). Please identify such legislation and tell how the BIA is serving as an active advocate for Indian interests on the Hill?

A. The above-described bills currently pending in the 96th Congress are:

H.R. 2738 - Michigan state regulation of Indian hunting and fishing rights in Michigan.

H.J. Res. 246 - Regulation by states of Indian hunting and fishing rights.

The dual role of the BIA as an advocate and trustee on the one hand, and as an agency in the Executive Branch of the United States Government on the other hand contributes to (1) the problem of negative views or images of BIA as "insensitive to Indian concerns" and lacking "credibility", as well as its failure to serve "as an active advocate for Indian interests on the Hill."

The BIA does serve as an advocate for Indian interests within the Executive Branch of the United States Government. However, the BIA's relations with the Congress are subject to certain restrictions on lobbying. Further, as part of the Executive Branch, the BIA is also subject to the legislative report and proposal coordination and clearance procedures administered by the Office of Management and Budget on behalf of the President.
In many instances, the views of the BIA do not conflict with those of the Executive Branch and, on occasion where the views are in disagreement with those of another part of the Executive Branch, the OMB has agreed to let each agency present its view to the Congress. However, the BIA can be barred from presenting its views on a bill to the Congress when such views conflict with the views of the Executive Branch, as determined by the OMB, subject to the possibility of an appeal by the Secretary of the Interior to the President.

8. Which legislation now being considered by the Congress do you characterize as positive legislation for Indians?

A. The relatively few miscellaneous "Indian bills" introduced so far in the 96th Congress include several aimed at achieving a fair (or fairer) settlement of claims by various Indian groups against the Federal Government:

S. 341 and H.R. 2101 - Three Affiliated Tribes of Ft. Berthold land claim payment.

S. 668 and H.R. 2822 - Cow Creek Bank of Umpqua Tribal claims.

H.R. 2711 and H.Res. 175 - Alabama Coushatta land claims.

H.R. 797 - Tigua Indian claims.

9. How does the federal government interact with state and local authorities to resolve problems arising between Indian and non-Indian communites?

A. On a case-by-case and issue-by-issue basis. Generally speaking, however, there is a directed effort by the top officials of the Department of the Interior to speak to both Indian and non-Indian groups in an attempt to achieve an understanding of the legal basis upon which special claims for Indian tribes are made. One of the most frequently heard questions these days asks why Indian tribes should have rights different from those of other people in America. We stress that Indian tribes did not achieve this status through a legal loophole or accident of history. Rather, the tribes are exercising powers they have always exercised or had the inherent authority to exercise.

In the Nineteenth Century, vast areas of Indian land passed out of Indian ownership into the hands of non-Indians. To obtain these lands, the United States, through treaties, agreements, statutes, and case law agreed to several propositions, which are the basic foundation for Indian self-government today.

First, Indian tribes in giving up land did not surrender their rights of self-government. They retained those rights of self-government which Congress did not explicitly remove from them. In some instances, the tribes ceded ninety percent of their holdings, but retained all of the powers they had prior to the cessions on their reserved lands.

Often, within these treaty provisions, the United States agreed that it would provide services for Indians. These services often provided the tribes with the basic necessities for life, since the loss of land to many tribes meant the loss of their traditional subsistence lifestyle. These services often were in the form of rations, a blacksmith, or a school teacher. Today the services are in the form of education, technical assistance, social services and so forth.

Second, it is important to keep in mind that Indian tribes maintain all rights and authorities, save those expressly removed by Congress; and those powers derive from the inherent sovereignty of Indian tribes, not from a grant of Congress, while the states have only those powers in relation to Indians and their property explicitly granted by Congress.

To recognize these rights is not to foster separatism, but to acknowledge the Indian right to remain distinct within the fabric of American society. It is our policy to respect and protect these rights reserved by Indian tribes and to defend, if need be, the treaties and agreements through which our Nation was ceded a massive territory.

10. What was BIA's response to the Oliphant ruling (Oliphant v. Suquamish Tribe, Supreme Court, March 6, 1978) that Indian tribal courts do not have jurisdiction to prosecute and punish non-Indians for offenses committed on a reservation?

A. The BIA and the Solicitor's Office held numerous conferences around the country in an effort to understand the meaning of the Oliphant ruling and the limitations that it places on tribal government. The BIA police were impressed with the additional importance of their positions as federal law enforcement officers following the Oliphant decision, due to the fact that arrests

which had previously been performed by tribal police would now have to be performed by federal police. Although it is the opinion of the Solicitor that tribal police officers may arrest offenders, even though they be non-Indian, and deliver them up to the proper state or federal officials, even though the tribal officers hold no state or federal commissions, this is not a clearly decided matter. One of the most troublesome issues to arise following the Oliphant decision was the question of jurisdiction over so-called victimless offenses. Although Oliphant did not shift the federal/state jurisdictional responsibilities, it did make for closer examination of them.

Prior to Oliphant, many tribes were arresting and trying non-Indians on their reservations for offenses which are referred to as victimless. There is no deciding case determining who has jurisdiction over an offense which has no clearly identifiable victims. Some people apply to victimless offenses the rationale of early Supreme Court cases which had found state jurisdiction over offenses by non-Indians against non-Indians. We found this reasoning legally correct and practically acceptable in situations which are truly victimless, but not in situations where Indian lives or property are in danger (such as driving recklessly in a school yard or firing a gun in an Indian public gathering). In such a situation the public policy to give federal protection to Indians and Indian property comes into play and federal jurisdiction must exist.

On April 10, 1978, the Solicitor issued an opinion that there is federal jurisdiction when a non-Indian commits an offense which endangers Indian lives or property. Prior to the public commitment by the Department of Justice to that position, both Interior and Justice representatives conducted extensive research on the legal issue and meetings were held amongst the offices of the Solicitor, the Assistant Secretary for Indian Affairs and the Criminal Division of Justice. The Assistant Secretary's Office, the BIA, the Solicitor's Office and law enforcement officers throughout the United States cooperated in a massive effort to compile information related to the need for federal jurisdiction over victimless offenses and for increased exercise of federal jurisdiction over offenses by non-Indians against Indians in those types of crimes where tribes had previously been exercising their own jurisdiction. This report was discussed with those people in the Department of Justice responsible for making the decision concerning jurisdiction over victimless offenses.

11. How does Oliphant affect the quality of law enforcement on Indian reservations, and what alternative ways can be provided to fill the vacuum left in the wake of Oliphant?

A. Oliphant affects the quality of law enforcement in that now there is no tribal jurisdiction over criminal offenses by non-Indians against Indians. The jurisdictional picture with regard to non-Indian offenses against non-Indians has not changed. Clearly since 1882, such offenses have been under the jurisdiction of the states. However, there are many crimes, particularly minor crimes, over which tribes had with increasing frequency and effectiveness begun to exercise jurisdiction. Whereas the tribes had shared with the federal government concurrent jurisdiction over these crimes, the burden for the crimes now is borne exclusively by the federal government, meaning that the federal government must play the role of local police, prosecutor and judge. Such an effort on the part of the federal government calls for additional resources in Indian country, among them the designation of Assistant U.S. Attorneys to handle prosecutions in states where numerous violations by non-Indians occur. There is also a need for appointment of U.S. Magistrates to hear cases on Indian reservations where the potential case load of minor federal violations warrants it. Although FBI agents do not perform the function of local police in Indian country because they do not have patrol responsibilities, their investigative functions in Indian country must take into account the exclusive federal jurisdiction over offenses by non-Indians against Indians. The "quality-versus-quantity" directive to the FBI should not apply in Indian country. Focusing FBI efforts on serious crimes is appropriate where prosecution of less serious crimes can be left to state authorities. Cross deputization of all officers working in Indian country, so that each has clear unquestioned authority to arrest for crimes under the jurisdiction of the others, is sorely needed. All of these needs have been discussed with representatives of the Department of Justice. Some of them are within the functional authority of the Department of Justice to resolve, others are not; although the Department of Justice could be extremely helpful in achieving their resolution.

12. At the Commission hearings, a non-government spokesman asserted that "United States domestic law regarding Indian peoples and Nations is... racially discriminatory and ... has long been used by the U.S. to legitimize the domination of Indian people and the appropriation of Indian land and resources." It was alleged that, due to the very nature of the trust relationship, the federal government cannot be held accountable by Indians for its mistreatment of them, except through recourse to international law and through international public opinion. What is the BIA's response to this assertion?

A. I do not agree with the assertion. It is true that the special federal Indian relationship has in the past been used as a source of federal power over Indian land and resources. However, recent cases have held that Indian tribes may judicially enforce trust responsibilities against this Department and the federal government in general. In addition, over the years, many cases in the court of claims have been brought against the United States for breach of trust. As trustee for Indian lands, natural resources, and funds, the United States can be and has been successfully sued for breach of its trust responsibilities to Indian tribes. Recent examples of such cases are:

Manchester Band of Pomo Indians v. U.S., 363 F Sipp. 1238 (1973)

Cheyenne and Arapaho Tribes v. U.S., 512 F12 1390 (1975).

Written Statement of Dr. Vladislav Bevc, Economic Documentation Center, Synergy Research Institute

Q. 1. Please state your name, address and affiliation.

A. 1. I am Vladislav Bevc, my business address is: P. O. Box 561, San Ramon, California 94583. I maintain the Economic Documentation Center in Danville, California, a private foundation which collects and disseminates information on violations of economic human rights in the United States of America and lobbies for correction of such violations.

Q. 2. Please state for the record the specific human rights with which the Economic Documentation Center is concerned.

A. 2. Following are the human rights defined in the Universal Declaration of Human Rights which are of specific concern to the Economic Documentation Center:

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Article 26.(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit

Article 27.(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

I have set this forth here, althought the Declaration is generally available because I am reasonably sure that existence of these articles is unknown to the Commission.

In the first version of the Declaration of Human Rights the above rights were not included, it was only in the later versions that it became recognized that political or civil rights are quite meaningless if economic rights are nonexistent.

Q. 3. Is it your understanding that the economic rights you quoted are included among those to be observed by the governments that signed the Helsinki agreement?

A. 3. Yes. Article 1.(a) VII pledges "Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief." Economic rights certainly are not excluded. In fact the Article states specifically: "[The] participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights."

Q. 4. Does your testimony pertain to violations of human rights in the United States?

A. 4. Yes, my testimony pertains to specific violations of human rights within the United States in situations where the United States government exercises control.

Q. 5. What are the specific locations where violations of human rights have occurred?

A. 5. On the basis of available documentation which is not complete I am quoting the following instances of violations of human rights [Articles 22, 23(1), 27(2)]:

1) Argonne National Laboratory, Argonne, Illinois (Robert Sachs, Director): 250 scientists or engineers deprived of their right to work in their profession of favorable and just conditions of work and of protection against unemployment.

2) Stanford Linear Accelerator, Palo Alto, California (Wolfgang Panofsky, Director): 80 scientists and engineers deprived of their right to work in their profession, of favorable and just conditions of work and of protection against unemployment.

3) Lawrence Radiation Laboratory, Livermore, California, and Berkeley, California (Roger Batzel and Andrew Sessler, Directors): 475 scientists and engineers deprived of their right to work in their profession, of favorable and just conditions of work, and of protection against unemployment.

4) Brookhaven National Laboratory (George Vineyard, Director): 225 scientists and engineers deprived of their right to work in their profession, of favorable conditions of work, and of protection against unemployment.

These are, of course, only the cases that were admitted in published articles [Physics Today, April 1973, p 82]. If the Commission has some time and funds left over from its expeditions in the Soviet Union, the personnel records of the above institutions as well as of other United States National scientific laboratories would probably be available to its staff investigators. In contrast with the cases of political opportunists in the Soviet Union who have become embroiled in agitation, the scientsists and engineers in the national physics laboratories were doing good work in pursuit of their professional interest which contributed to the well being and security of the United States. These people were ruthlessly thrown in the street to make room for reorganization and cheaper personnel. The national laboratories where these violations occur as a matter of policy all are supported by funds from the federal government if not directly operated by the

governent. Examination of statistics published by the National Academy of Sciences [Physics in Perspective, Volume I, NAS, Washington, D.C. 1972, pages 603 - 605] show that the number of physicists employed at these laboratories who are 40 years old or more is rapidly falling off and is quite out of proportion with those found in a normal age distribution. This is indicative of age discrimination.

Q. 6. Have these facts been brought to the attention of the United States Government?

A. 6. Yes. Statistical data and specific complaints have been made to the Department of Labor which, however, is not at all interested in looking into this matter. Only recently the Department of Labor [Mr Weldon J. Rougeau, Director, Employment Statndards Administration, Office of Federal Contract Compliance Programs, Department of Labor, Washington, D.C.] was apprised of an advertisement for employment by the Los Alamos Scientific Laboratory which restricted applicants to a few temporary positions with respect to age. Eventually the Department of Labor [Guy Guerrero, Special Assistant, Wage-Hour Division, Department of Labor, 450 Golden Gate Avenue, San Francisco] wrote to the Los Alamos Scientific Laboratory that it was in violation of Section 4(e) of the Age Discrimination in Employment Act but hastened to add that the Department would take no action if the laboratory promises to desist from such practices in the future. No attempt whatsoever was made to compel the laboratory to correct the advertisement and make the positions open to all qualified persons. On February 28 Los Alamos laboratory even declined to

give the Department of Labor assurances that it would not continue these practices in the future. In the meantime we received several letters from the Department of Labor hastily telling us that they really have no jurisdiction in this matter. This incident is quite typical of what happens when the government's own violations of labor and employment acts are brought to its attention.

Q. 7. Can you point to other instances of violations of Article 23 (1) of the Universal Declaration of Human Rights?

A. 7. Yes. The very conservative statistics of the United States Statistical Abstracts [1976, pge 616] show that there are at least 16,000 unemployed scientists in the United States. Many more have no access to resources necessary to carry out their research and there are many others still whose existence is merely a series of survivals from one reduction-in-force to another in an atmosphere which stiffles creativity and the will to innovate. Men of whom everyone has made some more or less important contribution in his field are now frequently forced to earn their bread far from the field of their knowledge and interest. This represents a calamity of incomparably greater proportions than is the sum total of all the alleged "cases" that the Commission has been able to ferret out in distant lands while neglecting its own backyard.

Q. 8. Do you wish to offer testimony concerning Article 27(2) of the Declaration, that is, protection of interests resulting from a person's scientific, literary or artistic work?

A. 8. Yes. I wish to point out that in the United States persons who work for a corporation or the government must assign

to their employer all rights to any patent he may obtain while employed. The inventor is entitled to no royalties, reward, or other compensation. It is a standard procedure in the United States to require a waiver from all patent rights from prospective employees as a condition of employment. In addition, private inventors, working with their own equipment and funds, are not safe either. Only recently, for instance, the newspapers reported that Carl R. Nicolai and his associates who with their own private resources developed a radio and telephone communications protection device were ordered by the National Security Agency not to patent or even talk about their invention [Science News, vol. 114, No. 11, Washington, D.C., September 9, 1978, p 186]. Another case was the attempt by the Department of Commerce at suppressing the result of a study on computer security by George Davida at the University of Wisconsin [ibid., vol. 113, No. 23, June 10, 1978] which, however, was successfully resisted. There have, no doubt, been other cases in which the government refused to protect the rights of inventors so that they were robbed of the benefits of a work of a lifetime. At supposedly open scientific conferences of the American Physical Society, and no doubt other scientific societies as well, agents of the Atomic Energy Commission and its successor agencies screen contributions of independent scientists to forestall disclosure of scientific results which the government wishes to appropriate for its own exclusive use. Contributed papers are routinely censored or even blocked from being published. I have had personal experience with such censorship at the meeting of

the American Physical Society's Division of Plasma Physics in Albuquerque in 1974 where an agent of the Atomic Energy Commission censored the entire text of my contributed abstract. It was only two months later that the full text could be published.

Q. 9. You also mentioned Article 26(1), the right to education. Would you comment on this.

A. 9. Article 26(1) guarantees the right to education to everyone. This right includes technical and professional education. It is well known that thousands of Americans are studying medicine abroad because there is no room for them in the medical schools in the United States and the United States government steadfastly refuses to establish adequate instructional facilities. Only recently an applicant to the medical school of the University of California at Davis had to spent several years and a sum of approximately $150,000 to gain admission to the medical school. The case is well-known. The University of California, on the other hand, had spent an equal or even larger sum in trying to keep this man out. The United States government, too, was involved in the case and was doing its best to keep the man out of the medical school. In my opinion this was a gross violation of Article 26(1) of the Universal Declaration of Human Rights.

Q. 10. Does this conclude your testimony?

A. 10. Yes. I would like to request the Commission to devote at least equal attention to investigating the violations of human rights in the United States as it does in other countries. A wide open field is presenting itself to it right here at home.

WRITTEN STATEMENT OF ANN FAGAN GINGER, PRESIDENT,

MEIKLEJOHN CIVIL LIBERTIES INSTITUTE

I welcome this opportunity to present testimony to the Commission on Security and Cooperation in Europe studying U.S. compliance with the Helsinki Final Act. It comes right at the conclusion of eighteen months of research by Meiklejohn Institute on human rights litigation pending in state and federal courts between October 1977 and October 1978. The 1,600 cases collected and described in HUMAN RIGHTS DOCKET US 1979 provide the basis for an assessment of U.S. compliance not otherwise available.

First, a quick introduction. Meiklejohn Civil Liberties Library was founded in 1965 in Berkeley, California as a non-profit law center to serve the national legal community by answering requests for research assistance from lawyers, scholars, legislators, judges, law students on current constitutional questions, and by preserving valuable briefs, memoranda and pleadings drafted by lawyers. After a few years the name was changed to Institute to reflect additional functions, including publishing material on human rights issues and training law students and librarians in human rights work. The Institute has received commendations from the American Association of Law Librarians for its work. The Directors of the Institute are Associate Justice Frank Newman of the California Supreme Court, practicing attorneys Siegfried Hesse, Marshall W. Krause, and Doris Brin Walker, philosopher Frances Herring, and myself.

As founder and president, I rely on 32 years of experience as a human rights lawyer in three states, 7 years teaching human rights subjects

at the University of California--Hastings College of the Law and other Bay Area law schools, and the insights I have gained interviewing and writing about human rights lawyers across the nation. Writing articles for student-run law reviews, and talking to my sons and their friends, force me constantly to re-examine the definition of human rights and to reconsider the nature of violations in the United States. One son attended Ole Miss Law School and worked for four years as a criminal and civil rights lawyer in Jackson, Mississippi. The other quit high school to become a printer and seek an apprenticeship in a union shop in the Bay Area. Their experiences have sharpened my perceptions.

U.S. compliance with the Helsinki Final Act includes, inter alia, compliance with all of the items to which the signatory nations agreed in paragraph VII:

1. Respect for "human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief for all without distinction as to race, sex, language or religion."

This formulation more than doubles the scope of familiar guarantees found in the First Amendment to the U.S. Constitution by adding "no distinction as to race," which became part of the Constitution through amendments after the Civil War, and adding no "distinction as to ... sex," which has yet to be added to the U.S. Constitution.

2. Promotion and encouragement of "the effective exercise of civil, political, economic, social, cultural and other rights and freedoms."

This formulation increases by at least three-fifths the scope of familiar U.S. constitutional guarantees of civil and political rights by adding those "economic, social, cultural and other rights and freedoms" which have not yet been amended into our federal and state constitutions. These economic and social rights nonetheless became part of the body of internal U.S. law, first through passage of New Deal legislation in the 1930s, with the full agreement of the majority of U.S.

voters, legislators and administrators, and later through U.S. ratification of the United Nations Charter, particularly Articles 55 and 56.

3. Respect for "the right of persons belonging to [national] minorities to equality before the law."

The repetition of protection for racial and national minorities (see ¶1 above) indicates the centrality of equal protection to the achievement of all other human rights set out in the Helsinki Final Act.

4. Action "in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights."

This commitment underlines the understanding of the United States that the UN Charter, as a treaty ratified by the U.S., is part of the supreme law of the land under the U.S. Constitution, and as such is entitled to equal weight with other federal laws passed by Congress and signed by the President. The coupling of the Universal Declaration with the Charter underscores the applicability of language in the Declaration to explain and define the language of the Charter.

The commitments in paragraph VII necessitate consideration of cases in five human rights areas: civil liberties; due process of law; equal protection; economic and social rights; and national, international and citizenship rights. These five categories find their sources of law not only in Helsinki paragraph VII, but also in the U.S. Constitution and amendments, in statutes and Executive Orders, and in the UN Charter. They include cases going beyond those studied in civil liberties and constitutional law courses, like the following litigation concerning clear violations of the human rights of 550 Americans over a period of 23 years:

The Deering Milliken company laid off 550 workers in November 1956 because they voted for the Textile Workers Union to become their collective bargaining agent in an election conducted by the National Labor Relations Board. The company closed its Darlington, South Carolina mill. It was ordered to rehire the laid-off workers at one of its other 27 mills and to pay back wages for the period

between layoffs and rehiring. That NLRB order, upheld repeatedly in federal courts, has never been obeyed. Nor has the Company been jailed, fined, or otherwise punished for its violations of the human rights of its workers or for its contumacy. [The litigation is described in Textile Workers Union of America v Darlington Manufacturing Co., 380 U.S. 263 (1965); Eames, "The History of the Litigation of Darlington As An Exercise in Administrative Procedure," 5 Toledo L. Rev. 595 (1974); and Deering Milliken v Irving, 548 F.2d 1131 (4th Cir. 1977).]

This case is not unique. The eighteenth effort to put an end to violations of human rights by J. P. Stevens Co., known as J. P. Stevens 18 (563 F.2d 8 (2d Cir 1977)), and depicted in the popular movie, "Norma Rae," tells a similar story. The actions of the two companies violate the human rights to employment and to participate in labor unions guaranteed in the due process clause of the Fifth Amendment and in the First Amendment to the U.S. Constitution; the National Labor-Management Relations Act, 29 U.S.C. §§141 et seq.; the statutes and decisional law forbidding contempt of administrative and court orders; the United Nations Charter, Art. 55(a), as further defined in the Universal Declaration Arts. 23 (1) and (4), and included in Helsinki ¶ VII.

STANDARDS FOR DETERMINING U.S. COMPLIANCE WITH THE HELSINKI FINAL ACT

Every violation of human rights in the United States should be recorded and collected, so that it can be redressed, and also to permit its inclusion in an overall assessment of U.S. compliance with the Helsinki Final Act. Obviously, every person whose human rights have actually been denied in this country does not decide to sue, find a lawyer, file suit, and see it through to its successful conclusion. And no mechanism now exists for the collection of every human rights violation that does become a lawsuit.

This Commission is to be commended for its efforts to begin the kind of collection of facts and analysis of their meaning from which a valid assessment can be made.

Meiklejohn Civil Liberties Institute is evidently the only entity in the

United States that has set itself the task of collecting information on litigation from which an assessment can be made of the level of human rights violations in the U.S., and from which it is possible to assess US.compliance with the Helsinki Final Act. The 1,600 cases collected by the Institute in the past 18 months are described in GINGER, ed., HUMAN RIGHTS DOCKET US 1979 (Meiklejohn Institute 1979), a copy of which will be sent to the Commission on publication date later in April. The 1,600 reported cases include:

1) All cases decided by the U.S. Supreme Court in the October 1977 Term;

2) All cases the U.S. Supreme Court agreed to hear by Oct. 10, 1978;

3) All cases described in publications of 150 organizations concerned about one or more aspects of human rights law, if specift facts were made available by counsel, court clerks, or the organizations;

4) All cases clipped from the New York Times, Bay Area newspapers, or called to the attention of the Institute. (At least 750 cases had to be deleted because attorneys or court clerks did not respond to inquiries for more specific information.)

Cases raising human rights issues comprise an infinitesimal part of all litigation and even of all litigation that reaches the U.S. Supreme Court. And these 1,600 human rights cases are just the tip of the iceberg of all human rights cases filed. We have learned, however, in the course of publishing 14 previous volumes of the CIVIL LIBERTIES DOCKET (1955-1969, limited to civil liberties, due process, and equal protection) that fairly accurate projections can be made about the state of human rights from the filing of ten cases in a particular field of law. For example, one case charging police misconduct, regardless of who wins in court, indicates innumerable deeply felt complaints by citizens of a community against the operation of the local police department. Ten suits against the police of a major city indicate widespread unrest, as was indicated by the filing of Monroe v. Pape, 365 U.S. 167 (1961). See Ginger, ed., HUMAN RIGHTS CASEFINDER 1953-1969 (Meiklejohn Institute 1972).

It would be helpful to put in the record the 350 categories of cases collected under the five major headings, to give the number of cases collected thereunder, and the description of at least one case in every major category. Since space limitations prohibit this approach, what follows are only a few examples of the 1,600 cases, and the conclusions that scream out from the data.

CRITICAL AREAS OF HUMAN RIGHTS VIOLATIONS IN THE U.S. CURRENTLY

1. Race discrimination leers through every category of cases reported in HUMAN RIGHTS DOCKET US 1979. It is in no way confined to cases alleging overt race discrimination. Many claims of denials of civil liberties, of invasions of privacy, of police misconduct, of unfairness in prison disciplinary proceedings, of procedural unfairness in administrative agencies include allegations of discrimination on the basis of race or national or ethnic origin. Such allegations are common in deportation, extradition and repatriation cases.

Consider case 304.NJ.11 Vasquez v McNally, described in the DOCKET as follows: (DC NJ #77-1036). 1976: Def-police officers released police dog on Pl farmworker, arrested him. Pl charged w/ assaulting Def officer. Muni Ct trial: Pl acquitted. 5/77: Pl sued police officer, police chief, mayor, borough of Glassboro under 42 USC §1983, 28 USC §1331 for illegal assault and arrest, improper medical care. 3/31/78: Parties agreed to $3000 settlement. 4/78: DC dismissed claim w/out prejudice.
Michael S Berger, ACLU, Farm Workers Rights Project, 30 E High St, Glassboro, NJ 08028.

It is also clear, not only from the cases reported in the DOCKET, but from the bulging 750-case docket of school desegregation cases in the U.S. Department of Justice, and from observations at almost any city public school in the country, that the U.S. Supreme Court decision ordering desegregated education for all American children has been flouted from South to North to West and Middle West. The lack of respect for "the right of persons belonging to [national] minorities to equality before the law" is demonstrated by innumerable suits alleging employment discrimination by government entities at the local, state, and federal levels.

U.S. government officials have not sought to educate the public about the dangers inherent in the growth in membership of the American Nazi Party, the Ku Klux Klan, and similar groups, as numerous incidents become lawsuits, enlightened by no new legal concepts, nor the use of the old concept of group defamation to defeat the ideology of the superiority of the white race, the very antithesis of the Helsinki Final Act.

A return to capital punishment in several jurisdictions has, at its root, fear based on race and the use of execution to "solve" a perceived problem in a spirit directly contrary to the commitments at Helsinki and their earlier manifestations in UN declarations supported by the U.S.

2. Tens of thousands of women, represented by hundreds of lawyers, have recently alleged that they are being discriminated against because of sex. One typical example from the DOCKET:

578.504 Chewning v Seamans
(DC DC #76-0334). Def-fedl Energy Research and Development Admr denied full-time job to woman Pl, expert in nuclear plant work-pattern analysis, claiming no positions open; employed Pl as "part-time" employee 39 1/2 hrs per wk plus occasional overtime. 1976: Pl filed Title 7 class action suit for herself, 255 other women scientists, professionals at ERDA, alleged widespread sex discrimination, including assigning clerical work to Pl that should have been done by lower-ranking men in office. Discovery revealed records showing clear pattern of sex discrimination re salaries, promotions, work assignment. Def offered no defense, agreed to satisfy damage claims. 7/14/78: DC entered consent decree awarding several million dollars to Pl-class members.
Gary Howard Simpson, 4720 Montgomery Lane #407, Bethesda, MD 20014.

Again, the allegations range from discriminatory treatment in universities (with overlays of academic freedom violations), to violations of the right of privacy on reproductive matters (both forbidden abortions and forced sterilizations), unequal treatment by banks, landlords, educational and employment agencies, and brutality by husbands, former husbands, police officers, and jailers.

3. The allegations of degrading treatment of the poor and the elderly and the disabled are legion. This 1979 DOCKET of human rights cases describes a

plethora of cases now being filed to begin to redress such treatment, with counsel supplied by federally-funded Group Legal Services or by special-purpose private agencies. But litigation is a slow remedy for delay, and delays in finding people entitled to social security benefits are one of the most acute problems for those without financial means.

Since blacks, Hispanics, Native Americans and other racial minorities, women, and the elderly comprise, with youth, the bulk of the poor, the denials of due process to the poor constitute a flouting of several commitments in the Helsinki Final Act.

4. It may be that the 64 cases described in the DOCKET in which plaintiffs seek damages and/or injunctive relief from police misconduct, plus the 18 criminal charges of civil rights violations being prosecuted by the federal and state governments are the most significant measure of U.S. compliance with Helsinki. It has long been recognized that litigants are entitled both to justice, and to the appearance of justice. Unless both factors are present in a judicial system, the system cannot operate because victims will not bring their grievances into the judicial arena for trial and settlement, having no confidence that justice will be done.

The extent and geographical spread of suits alleging misconduct by police agencies is ground for indignation. The lengthy character of such proceedings is also ground for indignation. Few suits, indeed, have been settled quickly by admission of wrongdoing by the defendants. When such suits have been won in the trial courts, they have almost uniformly been appealed by the defendants. When such suits have been won by the plaintiffs, often after years of litigation, seldom has the federal or state government then prosecuted the individual police officers for their violations of the human rights of the plaintiffs, although this has happened on some noteworthy occasions.

Consider a case little known outside Michigan, 394 Mich. 28 Bergman v Kelley: (WD Mich S Div #G77-6 CA). 5/14/61: Pl-Detroit teacher participated in freedom ride to Alabama; assaulted; permanently crippled. 1/20/77: Pl sued Def-FBI director,

employees under 42 USC §§1983, 1985(3), 1986, alleging FBI connivance in assault: FBI told Birmingham police Sgt when Freedom Riders would arrive, though Sgt known KKK agent; Sgt informed KKK of arrival time, allowing time to attack Freedom Riders w/out police interference; FBI knew of police complicity via informant Gary Rowe. Discovery pending.
William Goodman, 3200 Cadillac Tower, Detroit, MI 48226; Neal Bush, Marjory B Cohen, 1455 Centre St, Detroit, MI 48226; Kenneth Weidaw III, 306 Fedl Sq Bldg, Grand Rapids, MI 49503.
See related cases: Peck v Kelley, 304.Ala.15; Liuzzo v Kelley, 304.Mich.29; Alabama v Rowe, 590.47.

The DOCKET also describes 24 cases under the Freedom of Information Act against the political police agencies, the FBI and the CIA, seeking copies of dossiers on individual and organizational exercisers of the political freedoms guaranteed in the First Amendment, the Helsinki Final Act, and other sources of U.S. law. The typical file obtained, when such litigation is successful, includes, along with a great many excisions, reports of conferences sponsored, e.g., by the American Civil Liberties Union in 1948, or the work of a couple urging adoption of desegregation policies by a Parent Teachers Association in 1961, as well as reports of conversations at bridal showers and funerals, and of demonstrably inaccurate information about people's personal relationships. Lawyers and clients engaged in FOIA litigation express total disbelief that the administrators who asked and paid for this kind of information have all been replaced by administrators and agents with a totally different understanding of the role of federal police agencies in a country committed to the principles set forth in the U.S. Bill of Rights and, more recently, in the Helsinki Final Act signed by other nations as well.

5. Violations of human rights by officials in penal institutions are described in six cases filed by women prisoners and 68 cases filed by prisoners from Alabama to Wisconsin. Violations of human rights by officials in nonpenal institutions, including hospitals and other health care facilities, are also numerous enough to indicate a very serious situation nationally.

6. Crossly unequal treatment of aliens, and denials of elemental due process

to those with the wrong political reasons for entering the U.S., including particularly refugees from Haitian and Chilean dictatorships, are also recorded in the current HUMAN RIGHTS DOCKET.

7. The highly-touted U.S. freedoms--of speech, expression, association, assembly--are important to people when they can be exercised where the people spend most of their time on issues that are most important in their lives. The DOCKET records numerous examples of fundamental denials of these First Amendment liberties at the workplace. An advance has been made since the blacklisting days of the Cold War. People fired for calling attention to bad conditions on their jobs, the whistleblowers, are increasingly suing to get their jobs back. These suits take such a long time that no figures are available on their success to date.

8. The most basic reason underlying the Helsinki Final Act—the desire and urgent need for peace—has seldom surfaced in litigation, or in legislative or administrative actions at the state or federal levels. Proponents of peace continue to allege limitations on the exercise of their political rights caused by official secrecy, distortion of facts, lack of equal access to the media, and complicity of federal government officials in actions that could lead to war. The DOCKET records a few suits alleging CIA involvement in destruction of the elected Allende government of Chile and civil and criminal charges arising from refusal to stop dealing with the apartheid (and murderous) government of South Africa.

CONCLUSION

The effort to assess the present state of compliance with the Helsinki Final Act in the United States must lead to the conclusion that, while we started ahead of many nations in our commitment and practice of human rights, and while we have made considerable progress in the past decade away from some repressive and racist practices, it will take concentrated effort on the part of every person, and especially every legislator, administrator, and judge to make a serious dent in the denials of human rights in each part of our nation. The 1,600 cases studied indicate that we are not in compliance. We are clearly in no position to boast of our accomplishments or to chide others for their shortcomings.

STATEMENT OF THE DEPARTMENT OF THE INTERIOR IN RESPONSE TO TESTIMONY OF THE WASHINGTON HELSINKI WATCH COMMITTEE OF THE UNITED STATES CONCERNING MICRONESIA

Rather than attempt to comment in detail, we would point out only that the United States and this Department have encouraged self-government in the Trust Territory of the Pacific Islands and the increasing assumption of authority by the Micronesians themselves. The Secretary of the Interior created the elected bicameral Congress of Micronesia in 1964. Since the governmental structure was modelled on the American Three-branch system of shared powers, the High Commissioner was authorized a veto of legislation enacted by the Congress. His veto could be overridden with an appeal to the Secretary of the Interior if the legislation were again vetoed.

The Congress of Micronesia was "dissolved" at the end of 1978 because the Micronesians themselves had determined that they wanted to establish separate governmental structures under locally drafted and adopted constitutions and because the Marshall Islands and the Palau districts had been petitioning for legislative separation. This interim step anticipated the coming into effect in 1979 of the Constitution of the Federated States of Micronesia approved by the voters of Yap, Truk, Ponape and Kosrae, and the Constitutions of the Marshall Islands and Palau.

In terms of personnel, there are currently less than 77 United States Civil Service employees on the payroll of the Trust Territory Government out of a total employment of more than 5,000 persons. The Deputy High Commissioner and heads of all of the Executive Branch agencies are Micronesians as are the Governors or District Administrators of all of the districts, save Palau. One of the four justices of the High Court is a Micronesian.

In the field of education, the United States has fostered a system of universal education that provides facilities through the 12th grade for an enrollment of 34,000 in the 1977/78 school year. In addition, in 1977 - 78, the College of Micronesia had an enrollment of about 570, including extension centers, with another 1,150 students in post-secondary institutions abroad. Of this number, 88 were pursuing graduate studies. United States Federal Assistance is available to these post-secondary students.

In the field of health, the Trust Territory has approximately 160 dispensaries in addition to 8 hospitals and 1 sub-hospital serving a population estimated at 114,000. There are 15 expatriate medical doctors employed in health services and 31 Micronesian Medical Officers. The United States has consistently pursued training programs for Micronesian medical personnel at the Fiji Medical School in Fiji, the University of Hawaii and at medical schools elsewhere in the United States.

Economic development of the territory's limited resources has been primarily limited to Micronesians rather than by expatriate "colonists" or investors as had been the case with previous administering powers. In 1974 the territory was opened to foreign investment in an effort to encourage more rapid development of the area's potential.

With respect to War Claims, the Micronesian Claims Commission adjudicated claims for war damage (Title I of the Micronesian Claims Act) in the amount of $34 million. Because of the treaty between the United States and Japan, only $10 million was available to pay those claims and it has been paid to the claimants. Thus, $24 million worth of claims remain unsatisfied. It must be borne in mind, however, that under the principles of international law such claims are not compensable. Hence the $10 million put up by the United States and Japan is for payments ex-gratia, not as of right. Nevertheless, the United States in Public Law 94-134 has expressed its willingness to pay its half of the unsatisifed balance of the Title I claims if Japan agrees to pay its half of such balance.

Title II of the Micronesian Claims Act also provided for compensation for damage sustained after the "date of secure" of each island. The Claims Commission adjudicated claims in this category totalling approximately $33,000,000 and these claims have been paid in full.

The following is a statement on political status negotiations that has been provided us by the Office of Micronesian Status Negotiations:

NEGOTIATIONS FOR THE FUTURE POLITICAL STATUS OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS

1. The Northern Mariana Islands.

Since the cessation of the hostilities of World War II in the Northern Mariana Islands in 1945, the people of those islands have expressed a strong and consistent interest in becoming permanently a part of the United States. The history of this aspiration is recorded in the annals of the Mariana Islands District Legislature which consisted of popularly elected representatives from all of the islands and municipalities of the Northern Marianas chain. In testimony before the Subcommittee on Territorial and Insular Affairs of the House of Representatives Committee on Interior and Insular Affairs, the then President of the Mariana Islands District Legislature supplied background documentation on the many resolutions of that legislative body expressing its peoples' desire to affiliate permanently with the United States. (See Hearing Record, July 14, 1975, Serial No. 94-28, pp. 606-623.)

In 1972, the representatives of the Northern Mariana Islands who were members of the Congress of Micronesia's negotiating body, the Joint Committee on Future Status, requested parallel future status negotiations with the United States to explore formally the option of commonwealth. While the report of the Lawyers Committee for International Human Rights, on p. 52, alleges that the "cause" for the desire for the Marianas to seek a separation from the rest of Micronesia in the post-trusteeship period is directly attributable to the establishment of CIA facilities on Saipan Islands, the reasoning expressed by elected representatives of the Marianas people differs quite substantially. The Joint Committee on Future Status had in 1970 turned down an offer by the United States of the very political status which the Marianas people had been seeking for 23 years. The leaders had no choice but to continue to represent and petition for the choice of political future which their electors had long preferred. After commonwealth negotiations commenced between the United States and the Marianas Political Status Commission in December of 1972, the Marianas representatives remained as active participants in the work and negotiations for Micronesia-

wide free association conducted by the Joint Committee on Future Status with the United States. This information is offered in response to the comments made by the Lawyers Committee for International Human Rights (pp. 55 and 59) and by the Micronesia Legal Services (p. 45).

2. The free association negotiations.

Contrary to the assertion of the Lawyers Committee for International Human Rights (p. 55), the United States accepted the four principles of the Congress of Micronesia and free association as a basis for the political status negotiations. Negotiations on free association began in earnest very soon, in 1971, after the four principles were articulated. Indeed, the Hilo Agreement of April, 1978 on the principles of Free Association repeats almost in their original form these four principles.

The Hilo Agreement was agreed to by the United States and the official political status commissions from Palau, the Marshall Islands and the Federated States of Micronesia. The principles which it articulates will form the basis of the foreseen free association compact between the United States and the three

Micronesian political entities which officially emerged from the July 12, 1978 referendum on a single constitution. That constitution was approved by the districts of Kosrae, Yap, Ponape and Truk which will form the Federated States of Micronesia. Palau and the Marshall Islands both disapproved the constitution in the referendum, which was called pursuant to Congress of Micronesia law and observed by the United Nations, and will therefore implement their own constitutional government structures. The voting population in all three areas will have an opportunity to exercise their inherent right of self-determination, as recognized by the United Nations Trusteeship Agreement and the Hilo Principles, in a United Nations observed plebiscite after the negotiations are completed. There should therefore be no uncertainty about the meaning of the Hilo Agreement, as is mentioned on page 56 of the report of the Lawyers Committee for International Human Rights.

The Hilo Agreement reads as follows:

[Insert Hilo Principles] (Attached)

In reaching the Hilo Agreement, the three Micronesian political status commissions each recognized their mutual interest with the United States in recognizing United States responsibility for the defense and international

security of the area. The Hilo Agreement also notes the mutual interest of the United States and the Micronesian peoples in promoting the economic self-sufficiency of the latter. To this end and in order to provide government of Micronesia with the resources they need to decrease their reliance on outside assistance did the United States agree to provide economic assistance during the first 15 years of free association. It is the hope of all parties to the negotiations that the Micronesian governments will be able to convert this assistance into productive programs which will insure long-term self-reliance. While the Hilo Agreement provides that any of the governments of Micronesia or the United States may terminate the relationship and political status of free association at any time, it was agreed at Hilo that all the parties interests are served by assuring the predictability of a continuing relationship irrespective of a change of political status for 15 years.

3. Termination of the Trusteeship Agreement.

The Trusteeship Agreement was entered into in 1947 between the United States and the Security Council of the United Nations which, very soon thereafter, delegated

its authority under the U.N. Charter regarding the strategic trust of the Pacific Islands to the United Nations Trusteeship Council. Since 1949, the Trusteeship Council has, pursuant to this direction, been performing annually the functions of the Security Council and reporting to the Security Council its findings on conditions in the Trust Territory. It is therefore precisely because of rather than in contravention to (as stated by the Lawyers Committee on International Human Rights, p. 56), an act of the United Nations that the United States has reported to the Trusteeship Council on the affairs of the Trust Territory.

Nevertheless, in recognition of the formal though now delegated role of the Security Council, the United States has stated that it will take up the question of the termination of the Trusteeship Agreement with the Security Council at such time as the political status negotiations have resulted in an agreement which has been approved by the peoples and governments of Micronesia and the Government of the United States. It remains the intention of the United States to seek termination of the Trusteeship Agreement by 1981. This intention has been endorsed by the United Nations Trusteeship Agreement for four successive years.

"HILO PRINCIPLES"

STATEMENT OF AGREED PRINCIPLES FOR FREE ASSOCIATION

1. An agreement of free association will be concluded on a government-to-government basis and executed prior to termination of the United Nations trusteeship. During the life of the agreement the political status of the peoples of Micronesia shall remain that of free association as distinguished from independence. The agreement will be subject to the implementing authority of the United States Congress.

2. The agreement of free association will be put to a United Nations observed plebiscite.

3. Constitutional arrangements for the governance of Micronesia shall be in accord with the political status of free association as set forth in these principles.

4. The peoples of Micronesia will enjoy full internal self-government.

5. The United States will have full authority and responsibility for security and defense matters in or relating to Micronesia, including the establishment of necessary military facilities and the exercise of appropriate operating rights. The peoples of Micronesia will refrain from actions which the United States determines after appropriate consultations to be incompatible with its authority and responsibility for security and defense matters in or relating to Micronesia. This authority and responsibility will be assured for 15 years, and thereafter as mutually agreed. Specific land arrangements will remain in effect according to their terms which shall be negotiated prior to the end of the Trusteeship Agreement.

6. The peoples of Micronesia will have authority and responsibility for their foreign affairs including marine resources. They will consult with the United States in the exercise of this authority and will refrain from actions which the United States determines to be incompatible with its authority and responsibility for security and defense matters in or relating to Micronesia. The United States may act on behalf of the peoples of Micronesia in the area of foreign affairs as mutually agreed from time to time.

7. The agreement will permit unilateral termination of the free association political status by the processes through which it was entered and set forth in the agreement and subject to the continuation of the United States defense authority and responsibility as set forth in Principle 5, but any plebiscite terminating the free association political status will not require United Nations observation.

8. Should the free association political status be mutually terminated the United States' economic assistance shall continue as mutually agreed. Should the United States terminate the free association relationship, its economic assistance to Micronesia shall continue at the levels and for the term initially agreed. If the agreement is otherwise terminated the United States shall no longer be obligated to provide the same amounts of economic assistance for the remainder of the term initially agreed.

An early free association agreement based on the foregoing eight principles shall be pursued by the parties.

Hilo, Hawaii April 9, 1978

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