



CIVIL RIGHTS COMMITTEE
WASHINGTON STATE BAR ASSOCIATION

OLYMPIC PENINSULA RACIAL DISCRIMINATION SUBCOMMITTEE

WHITE PAPER

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I. INTRODUCTION

This Final Report (“Report”) produced by the Washington State Bar Association (“WSBA”) Civil Rights Committee (“CRC”) Olympic Peninsula Racial Discrimination Subcommittee (“Subcommittee”) offers a glimpse of racial and ethnic issues in Hoquiam and Aberdeen, primarily among school children that were reported in *THE SEATTLE WEEKLY* and confirmed by the Subcommittee. The Report describes incidents of prejudice and discrimination in which the “n” word is still used, black children are subjected to physical abuse and fights, Confederate symbols are worn to school, and Latino immigrants separate themselves into violent gangs at the schoolhouse. This investigation was authorized under the WSBA Bylaws, including Article VIII § B(1) “to investigate and study matters relating to the general purposes and business of the Bar which are of a continuous and recurring nature” and the following WSBA CRC mission statement: “The Civil Rights Committee studies and investigates matters relating to American civil liberties, to keep the spirit of civil rights alive within the bar and the community.” Civil Rights Committee, *available at* www.wsba.org (last viewed on May 5, 2007).¹

The problems raised in this Report can be mitigated with local community and WSBA leadership. On the whole, it may be that Hoquiam and Aberdeen are tolerant and fair communities. The Subcommittee only heard evidence of a few students on a few occasions whom made life difficult for people of different origins. Clearly, though, incidents of racial intolerance are not limited to the Olympic Peninsula.² Therefore, these issues are suitable for the state-wide attention of the WSBA. The WSBA has unique resources among its state-wide membership to provide solutions, energy, and commitment to educate citizens about the law and

¹ Graphic language is quoted in this Report because those are the harsh facts experienced by an African-American family in Hoquiam. The Subcommittee does not wish to shield itself or the readers of this Report from the real pain that these remarks caused a vulnerable family. To assist this family and other minorities, it is important to fully understand their experience.

² See Ex. A (Email from Robert Gaudet to WSBA CRC listserv (July 22, 2006) (listing dozens of hate incidents in the State of Wash.)); *see also* Ex. B (“WSBA Civil Rights Committee Remembers Martin Luther King, Jr.” (Jan. 13, 2006) (press release issued by CRC, listing racial incidents reported in popular press in State of Wash. in 2005), *available at* www.wsba.org (last viewed on May 27, 2007).

to support efforts of local leaders to protect civil rights. These purposes align with the goals stated in the WSBA Bylaws, including Article I § A(9) to “[p]romote understanding of and respect for our legal system and the law.” Under Article I §B(19), the WSBA may “[m]aintain and foster programs of public information and education about the law and the legal system.”

Change, however, must first come from *within* the WSBA with a renewed commitment to the standards reflected in the WSBA Bylaws and an appreciation for the legal profession’s unique ability to increase awareness of civil rights issues among lawyers and citizens. The victims involved in the incidents that led to this investigation could not find a lawyer to represent their interests in Hoquiam.³ Moreover, this investigation met resistance from the start within the WSBA and such resistance continued months and even more than one year after the formation of the Subcommittee.⁴ To address these internal challenges and still continue with this investigation took enormous commitment and resolve from the Subcommittee’s volunteer lawyers. This Report describes the start of the Subcommittee’s inquiry, *infra* at 1 - 6; the investigation into criminal allegations, *infra* at 10 - 14, and collaboration with the local community, *infra* at 17, culminating in a large meeting in Aberdeen with local officials, *infra* at 22 - 28, to hear their concerns. Many solutions that the WSBA may undertake, and which were

³ See Telephone conversation between Michael Brown and Angela Walker (Nov. 20, 2006) (on file with R. Gaudet and M. Brown) (“Thad Martin was the attorney who told the Walkers to file a complaint with the ACLU. Unfortunately, Angela threw away all of the written documentation because she was so upset about the events. However, Martin did nothing further, and there has been no other attorney who has helped them (note: this was in response to my question about whether there were any attorneys working with them)”).

⁴ The CRC Co-Chair, Reba Weiss, initially opposed the formation of the Subcommittee but a majority of CRC members voted for the formation of a Subcommittee to investigate the allegations in the Seattle Weekly article. One to three months later, Ms. Weiss suggested in the general meeting of the CRC that the Subcommittee had no real purpose and should be dissolved but, again, CRC members supported the continued work of the Subcommittee. At a public meeting of the WSBA BoG on September 14, 2006, WSBA General Counsel, Bob Welden stated in reference to the Subcommittee’s August 5, 2006 meeting in Aberdeen High School at the request of local officials the following: “In my personal opinion, the Bar has no business going to a high school in Aberdeen.” See also Ex. C, at 13 (Minutes of Public Session of WSBA BoG, Seattle, Wash. (Sept. 14 – 15, 2006)) (“Welden reported...it is highly doubtful that advising about civil rights issues within public schools are [sic] are within the purpose of the standing committee”). When the Subcommittee reported to the general CRC on its meeting in Aberdeen and the desire of those school officials to receive general information about constitutional rights of students, Mr. Welden (in his capacity as staff liaison to the CRC) noted that it would be inappropriate for the CRC to distribute any such brochures or materials to Aberdeen High School. Two Subcommittee members, Karrin Klotz and Michael Brown, had prepared rough drafts containing general information about constitutional rights in schools but those drafts have not been refined or distributed due to this admonition. The 2005 – 2006 staff liaison to the CRC, Kate Mullen, informed past president, Brooke Taylor in late 2006, that the CRC was “out of control” and running “amok”, in part because of the Subcommittee’s investigative work.

specifically requested by community leaders and teachers in Aberdeen, *infra* at 26 - 28, are discussed in this Report, *infra* at 31 - 34, of this Report as proactive opportunities to strengthen civil rights throughout the State, particularly for immigrant and minority youth.

II. INVESTIGATION

A. The Article That Sparked an Inquiry

This inquiry was initiated by the WSBA CRC as the result of a cover-page article published in THE SEATTLE WEEKLY on March 16, 2005 titled “Black and White in Grays Harbor County” by Rick Anderson. *See* Exhibit C. The author of the article grew up in the Olympic Peninsula and had first-hand knowledge of racial issues and challenges. Mr. Anderson subsequently confirmed in a meeting with the Subcommittee that the racial incidents had occurred as wrote about them in the article.

Mr. Anderson’s article describes the challenges facing Angela Walker’s African-American family in Hoquiam. The incidents range from the mild (e.g., people asking to touch her son’s hair because it is different (Ex. D, at 1)) to *chasing her son with an ax and calling him a “fuckin’ nigger.”* Ex. D, at 1-2 (emphasis added). Individuals in Hoquiam have said “I never felt a colored person’s hair before.” Ex. D, at 1 (emphasis added). Ms. Walker is “mixed” but her five children and husband are “black.” Ex. D, at 1. Because of their race or for some other reason, an unknown individual put “sugar or something” in the gas tank of the family van. Ex. D, at 1 (emphasis added). The family’s children are *called “nigger” by other children* but they sometimes manage to form friendships with the name-callers. Ex. D, at 1 (emphasis added). Caucasian children have driven past and yelled “niggers!” to Mrs. Walker’s family. Ex. D, at 2. A Caucasian female told the Walker family that “*she was on a ‘nigger hunt.’*” Ex. D, at 2 (emphasis added).

Mrs. Walker’s son, Jordan, was “chased home by two kids with an ax and a knife, calling out, ‘You fuckin’ nigger.’ Two other kids were outside one day with bats.” Ex. D, at 2. A child at school wrote the following racially disparaging remarks about Mrs. Walker’s daughter at

school: “Walker’s teen daughter came home from a dance in tears after someone *wrote on the school bleachers that ‘Tashianna is a stupid nigor!!!!!!’*” Ex. D, at 2 (emphasis added). A few weeks later, a male student called Mrs. Walker’s daughter, Tashianna, a “*slave.*” Ex. D, at 2 (emphasis added). The Hoquiam school “talked to” the student but it is not clear whether there was any discipline. Ex. D, at 3. In January, 2005, a female “drove wildly up onto a grassy area in west Hoquiam where Jordan was standing, causing him to jump over a fence. ‘She was trying to hit me, no question,’ says Jordan.” Ex. D, at 3. The community response has been appeared inadequate: “Sometimes, when Mrs. Walker reports incidents, police tell her to contact the schools, and the schools tell her to contact police.” Ex. A, at 3. These struggles appeared particularly ironic in light of the unjustly “reputed racial harmony” of the Pacific Northwest. Ex. D, at 3.

Mrs. Walker believes that city and school officials “don’t recognize patterns of harassment.” Ex. D, at 4. Mrs. Walker “asked if someone could give a school talk on the hurtfulness of racism” but *Hoquiam school officials “would not allow racism to be discussed.”* Ex. D, at 4 (emphasis added).⁵ A Hoquiam principal allegedly told Mrs. Walker, “They’re black, deal with it – I can’t eradicate racism.” Ex. D, at 4. Mrs. Walker “pulled [her sons] from classes and now homeschools both” for their own safety. Ex. D, at 5. The Hoquiam School District principals would not comment on the claims. Ex. D, at 5. The School Superintendent, Tim McCarthy, said the schools are “dealing with students who commit offenses” and using “progressive discipline.” Ex. D, at 5. The *U.S. Department of Education Seattle Office of Civil Rights has done nothing*, claiming that the principal of the school never received properly documented complaints of the racial discrimination, and that the “principal’s complaint log did not reflect that he had received such a complaint.” Ex. D, at 5.

⁵ Hoquiam school officials had tentatively agreed through local lawyer, Ben Winkelman, to meet with the Subcommittee during its trip to Aberdeen High School on August 5, 2006 but they later backed out. The Subcommittee, therefore, has not had any substantive conversations with Hoquiam school officials.

A local police officer spoke to Mrs. Walker of “your people” and said they “always play the victim, shunning responsibility”; he also *threatened to withdraw “police protection”* from Mrs. Walker’s family if she filed a complaint against him. Ex. D, at 6 (emphasis added). Mrs. Walker’s neighbor called her family members “nigger” in one dispute involving a mop handle and allegations of roughness between the neighbor and her sons. Ex. D, at 5-6 (emphasis added). The chief of police in Hoquiam, Rick Thomas, says that Mrs. Walker has received fair treatment and that “if we can pursue a prosecution we will do so.” Ex. D, at 7.⁶ In addition to the Walker family’s troubles, THE SEATTLE WEEKLY article mentions incidents affecting other people:

[A] *black Aberdeen eighth-grader was attacked by schoolmates*, and a Samoan U.S. Coast Guard officer at nearby Westport asked to be transferred after her car was keyed and she was harassed by locals. Eighteen months earlier, a black Coast Guard officer was transferred because of similar harassment. On Feb. 15, a man associated with white supremacists was arrested at his relatives’ home in Hoquiam for conspiracy to sell C-4 explosives. He was nabbed in a multicounty sweep that included an alleged Seattle gunrunner who once bragged about trying to kill Martin Luther King Jr. On Feb. 17, police arrested an Aberdeen man on suspicion of unlawful imprisonment and rape of a black girl, a 16-year-old from Maryland. Arriving in the midst of this was a new book, *Death on the Fourth of July*, reopening the wounds of July 4, 2000, in the resort towns of Ocean Shores, where a Vietnamese man from Bellevue was attacked by a group of skinheads waving a Confederate flag and shouting, “Gooks go home!”

Ex. D, at 2 (emphases added). There may be 200 African Americans, 3,000 Latinos, and 1,000 Asian-Americans in Grays Harbor County. Ex. D, at 4. The editor of the local newspaper, THE DAILY WORLD, in Aberdeen is quoted in the article: “*there is racism here*, but it’s hard for me to quantify.” Ex. D, at 7-8 (emphasis added).

Feeling that these issues were something that the CRC should at least deliberate upon, CRC member Rob Gaudet distributed THE SEATTLE WEEKLY article, published on March 16, 2005, to the CRC membership through the CRC Yahooogroups! email listserv. The matter was

⁶ The Subcommittee discovered that no charges were filed over any of these incidents, except for one. Reckless driving charges were filed against the driver of the vehicle that swerved off the road and nearly hit Jordan as he walked home from school. A warrant was later put out for the driver’s arrest. See *infra*, at 12. None of these allegations or police reports were forwarded by Hoquiam officials to the Grays Harbor Prosecutor’s Office for review at the time of the Subcommittee’s investigation. See *infra*, at 12; see also Ex. K, at 1.

discussed in CRC meetings. On May 3, 2005 and, again, on November 11, 2005, Mr. Gaudet re-distributed the article to the listserv. *See* Ex. E. By May 3, 2005, several voting members of the CRC had volunteered to join the Subcommittee. Ex. E (listing Jim Kaufman, Joe Marra, Rob Gaudet, others).

The CRC decided to investigate these issues to find out if there was truth to the claims. The power to investigate is described in the CRC mission statement, as posted on the WSBA website: “The Civil Rights Committee studies and investigates matters relating to civil liberties, to keep the spirit of civil rights alive within the bar and the community.” Civil Rights Committee, *available at* www.wsba.org (last viewed on May 5, 2007). Moreover, the WSBA Bylaws state that “[e]ach committee shall carry out various tasks and assignments...as the committee may determine consistent with its function.” *See* WSBA Bylaws Article VIII § G. Therefore, the CRC established a Subcommittee chaired by Rob Gaudet to investigate allegations of racial discrimination in the Olympic Peninsula, including Hoquiam and Aberdeen, and to report back to the CRC with the results.

The CRC Chair, Richard Reed, asked the Subcommittee to keep him informed of its results. The Subcommittee subsequently made monthly reports to the CRC of its progress. *See, e.g.*, Ex. F, at 1 (CRC Minutes dated May 16, 2006); Ex. G, at 4 - 5 (CRC Minutes dated Nov. 8, 2005); Ex. H, at 2 (CRC Minutes dated Jan. 17, 2006); Ex. J, at 1 (CRC Minutes dated March 21, 2006); Ex. K, at 1 (CRC Minutes dated July 18, 2006).

B. Conducting the Investigation

1. Obtaining records from City of Hoquiam

On May 16, 2005, Mr. Gaudet telephoned Hoquiam Police Chief, Rick Thomas, to request police records concerning the incidents reported by Mrs. Walker. Ex. V (Telephone Conversation Between Rob Gaudet and Richard Thomas dated May 16, 2004). Mr. Thomas said that requests for records should run through the city attorney, Steve Johnson, and he recommended that Mr. Gaudet contact Mr. Johnson. Ex. V, at 1. Mr. Thomas affirmed that

police records would be available to the public. Mr. Thomas said there was no actual discrimination report that Mrs. Walker had filed. He said that she had filed a couple of reports that her children were being harassed and that there were racial preferences. She filed a third report but he was not sure whether she declined to move forward with that one. Ex. V, at 2. Mr. Thomas suggested that Mr. Johnson might request from the police department “any and all city records and law enforcement reports re: Angela Walker” over the previous three years and, then, Mr. Johnson would be able to deliver those documents to the Subcommittee upon receipt. Ex. V, at 2. Mr. Gaudet phoned Mr. Johnson on the same day and left a voicemail. Ex. V, at 3.

Around December 16, 2005, the Hoquiam City Attorney, Steve Johnson, affirmed that he would request that the Hoquiam Police Department provide him with “copies of all relevant reports involving Angela Walker.” Mr. Johnson suggested that the Subcommittee speak with Mrs. Walker, noting “I think that she is happier with the City of Hoquiam than she was when the article was written several months ago.” The Subcommittee subsequently discussed the matter and determined that it was possible that, even if Mrs. Walker had reached a “truce” that made her comfortable, there were still issues to explore. Nobody denied that the incidents had occurred and those incidents, in and of themselves, justified further investigation into the state of civil rights. The Subcommittee concluded that fulfillment of its mission was not limited to Mrs. Walker’s particular circumstances at any given time but, more broadly, it included the investigation of racial discrimination in the Olympic Peninsula, including the background behind the incidents affecting Mrs. Walker as just one example.

In a letter dated January 28, 2006 from the Hoquiam City Attorney, the Subcommittee received police reports regarding Mrs. Walker and her family. The Subcommittee reviewed the records. *See infra*, at 10 - 12; Ex. L. A second letter dated February 17, 2006 was received from the City Attorney, and it included letters from witnesses and participants that had been attached to the original police reports but were not forwarded to the Subcommittee with the January 28, 2006 letter. *See Ex. M.* The second letter was sent in response to a request from Mr. Gaudet for

those statements, as he had noticed they were referenced in the police reports but not enclosed in the initial mailings. *See* Ex. N, at 1 (Subcommittee Minutes dated March 6, 2006).

2. Contacting Angela Walker Directly

In mid- to late-November 2005, the Subcommittee contacted Angela Walker, the victim of discrimination whose family's troubles were reported in THE SEATTLE WEEKLY article. Specifically, Mike Brown contacted her on behalf of the Subcommittee. They spoke. Mr. Brown got the impression that Mrs. Walker felt she had a "truce" with the community and was reluctant to break the truce or create any further trouble. *See* Ex. I, at 2. She had been given gainful employment with the City of Hoquiam after publication of THE SEATTLE WEEKLY article. Mr. Brown transcribed notes recording this telephone call. *See* Ex. I. Mrs. Walker told Mr. Brown that, after moving to Hoquiam, her children "started getting into trouble e.g., selective punishment, even when they were the victims." Ex. I, at 1. She "filed a complaint with the ACLU" but the *Hoquiam "school would not cooperate"* with the ACLU investigator. Ex. I, at 1 (emphasis added).

The attorney who recommended that Mrs. Walker contact the ACLU "did nothing further, and there has been [no] other attorney who has helped them." Ex. I, at 1. Moreover, "[l]ocal attorneys have ties to the school board, etc. and all are in denial."⁷

At the time Mrs. Walker spoke with Mr. Brown, she reported that, "[i]n general, things are going better, although a football player has been bullying her boys and telling (?) them about a neo-Nazi group." Ex. I, at 1. She reported that, apparently at school, "one of her sons was jumped by two boys and one girl, who pushed him." Ex. I, at 1. Apparently, the "*school does have policies, but it doesn't enforce them.*" Ex. I, at 1 (emphasis added). In addition to racial problems, "*[g]ays and the disabled also have problems*" at the school in Hoquiam. Ex. I, at 1 (emphasis added).

⁷ The legal profession appears to have failed Mrs. Walker and her family in their time of need, emphasizing the importance of intervention by state-wide authorities such as the WSBA.

These events “caused Angela [Walker] to have depression for a period of about three months, staying within her home during the period.” Ex. I, at 1. It is hard to overstate the traumatic effect that these incidents have had on Mrs. Walker: “Angela has received death threats. She...sat in front of her window with a coffee pot, because she was afraid to go to sleep.” Ex. I, at 2.

Regarding the incident where a driver ran off the road and attempted to hit her son with a car before he jumped over a fence in fear (*infra* at 10 - 12), one “officer said ***don’t expect anything” from the authorities***. Ex. I, at 2 (emphasis added). The writer from THE SEATTLE TIMES, Rick Anderson, subsequently “got on it.” Ex. I, at 2. Two other officers opined that the incident may have been a case of “vehicular assault” (Ex. I, at 2) but the case was eventually prosecuted under the lesser charge of “reckless driving.” *See infra*, at 12. Mrs. Walker and her family “never learned of what happened”, so they were apparently not well-informed by the prosecutorial authorities. Ex. I, at 2.

Regarding the incident where a young female student at school pulled down the pants of Mrs. Walker’s son, Jordan, the police blamed the victim and tried to intimidate Mrs. Walker for reporting the incident:

An officer tried to pin the pants down incident on the Walker family and scolded them for reporting the incident, saying, ‘you people,’ and as he said this, he had his hand on his gun and tried to force himself into the home, ‘f bitch’...The officer complained about the trouble caused by...the Walkers...reporting the incident.

Ex. I, at 2. In addition, Mrs. Walker’s “***husband is pulled over all the time” by the police***, indicating inappropriate harassment and racial profiling by the police. Ex. I, at 2 (emphasis added). Perhaps out of fear of retaliation, Mrs. Walker did not follow-up with Mr. Brown to provide the names of particular officers. Ex. I, at 2. In the opinion of the Subcommittee, Mr. Brown’s conversation with Mrs. Walker added further credence to the allegations reported in THE SEATTLE WEEKLY were accurate.

III. CRIMINAL ALLEGATIONS

A. Racial Slurs and Harassment of Black Children in Hoquiam

Further confirming allegations reported in THE SEATTLE WEEKLY, the children of Angela Walker were subjected to “racial and physical abuse by several children in the area.” *See* Exhibit L, at 2 (Letter from S. Johnson dated Jan. 28, 2006 with attached “LAW Incident Table” from Hoquiam Police Dep’t (“HPD”)). Ms. Walker called “911” to report the abuse, and the HPD recorded that this abuse occurred on October 18, 2002. The Investigation Narrative describes:

Walker told me that her children have been harassed and racial slurs are common especially from a 11 yoa female by the name of Erica Weston and her younger brother Devin. The problem is so bad, the school has been notified that they were asking for a civil rights investigation and she went on to advise me that her children have been having the problems going to and from school as well as at school. Yesterday, she reports that her daughter and another friend who is also black, were accosted by these and several children at Eklund and Fillmore on the way home from school. Aa [sic] fight erupted and several punches were thrown by all involved. I spoke with the two girls who told me they were accosted by Weston, her younger brother Devin and several others who *called them “niggers” and made other racial slurs*. A punch was thrown and all started to fight.

Exhibit L, at 2-3 (emphasis added). Mrs. Walker confirmed that this event occurred when approached by a member of the Subcommittee, Mike Brown, via telephone. Ex. I.

B. Attempt to Hit Black Child With Automobile in Hoquiam

In Hoquiam, the children of Angela Walker were subjected to racial slurs and, then, one of them was targeted by an automobile as he walked home from school. The automobile veered off the road in the direction of Ms. Walker’s son. This account is corroborated by the “Arrest Narrative” recorded by HPD. *See* Ex. L, at 5-6. According to the record, another child at school taunted Ms. Walker’s children, called them by racial slurs, pulled down the pants of Ms. Walker’s son, and threatened Ms. Walker’s daughter outside. The aunt of this belligerent child then picked her up in a car and, shortly thereafter, veered off the road in the direction of Ms. Walker’s son.

The police report records the full “Arrest Narrative”:

On 01-10-05 at approximately 1836 hours I, Officer Beebe, responded to 252 Chenault in regards to a Juvenile Problem. Upon arrival I spoke with Angela Walker who advised her children had been involved in an altercation at the Hoquiam Middle School at around 1745 hours during the School After School program. Walker stated that her daughter Tashianna had accidentally spilled glue on Angel Pettis’ new shoes, pants, and CD player. Pettis got upset and kicked Tashianna. Walker stated words were exchanged between the two girls including the “N” word being used against her daughter. Walker stated she did not want to pursue any charges against Pettis for the assault, she only wanted to make the incident known in case there were problems in the future. \

Walker went on to say that when her children were walking home on West Eklund a car driven by who they described as Pettis’ sister swerved and attempted to hit Tashianna’s brother Jordan. Kayla, Tashianna and Jordan’s sister, had dropped some school work in the middle of West Eklund and Jordan was picking it up when the car sped towards him and swerved up into the grass along side the Emerson School ball field to the point where Jordan dove over the three foot chain link fence to avoid being hit. The children had described the incident to Walker and she provided a typed statement. I also requested Tashianna, Jordan, Kayla, and any other witnesses provide written statements as to what had happened. Walker was adamant [sic] that her son was in danger of being struck by the vehicle and she was wanting to pursue a reckless driving/vehicular assault complaint against the driver of the vehicle. I obtained statements from Kayla Nelson, Tashianna Walker, Aziza Wirth, Jordan Harrington, and Angela Walker. All of the children stated that they felt the vehicle was attempting to strike Jordan. See attached statements.

Walker also provided me with digital photos of tire tracks from the grass on the south side of West Eklund.

Ex. L, at 5.

One of the parties involved in the assault on Mrs. Walker’s children admits that she called Mrs. Walker’s children by the “N” word shortly before her aunt veered off the road to try and hit Jordan with her automobile:

I contacted Angel Pettis at her grandmothers residence, 713 Polk, and asked what had happened today at School After School. She explained that she had gotten mad at Tashianna for getting glue all over her shoes and pants. She stated *she kicked Tashianna in the side once and called her names including the “N” word* and that she and several other kids were yelling and cussing at each other.

Pettis went on to say that it was her aunt Mary, (Mary Pettis), that had picked her up from school. She explained that she was still yelling at Tashianna and the other kids and Mary told her to get in the car and quit yelling. Her uncle John, (John Pettis), was also in the vehicle and was telling Angel to be quiet. They all stated that Angel got in the car and they left.

Ex. L, at 6 (emphasis added). The driver of the car, Mary Pettis, admits that she saw someone jump over a fence but she denies that she swerved off the road to hit him. Ex. L, at 6. These accounts were corroborated by admission statements signed by the involved parties. Ex. M, at 7 – 8 (Jordan Harrington’s statement dated Jan. 11, 2005); Ex. M, at 9 (Tashianna Walker’s statement dated Jan. 11, 2005); Ex. M, at 10 (Kayla Nelson’s statement dated Jan. 11, 2005); Ex. M, at 10 (Aziza Wirth’s statement dated Jan. 11, 2005).

C. City of Hoquiam’s Attorney Brought Charges For Reckless Driving

The City of Hoquiam brought charges against Mary Pettis for reckless driving. Ex. M, at 1. As of March 2007, a warrant was out for the arrest of Mary Pettis. Ex. M, at 1. No charges were brought against Angel Pettis for pulling down Jordan’s pants or for threatening him; the Hoquiam City police apparently did not timely refer this matter to the juvenile division of the Grays Harbor County Prosecutor’s office. *See* Ex. K, at 1.

D. Grays Harbor Prosecutor’s Office Has Done Nothing

At the time of the Subcommittee’s investigation, and over 16 months after the incidents occurred, the Grays Harbor Prosecutor’s Office had not yet opened a file or maintained any records regarding Mrs. Walker or her family. *See* Exhibit O, at 1 (Minutes of the Subcommittee meeting dated July 11, 2006). It does not appear that the City Attorney of Hoquiam referred the matters regarding Ms. Walker’s family to the Gray’s Harbor County Prosecutor. Ex. K, at 1 (Minutes dated July 18, 2006) (“Ben Winkelman, attorney in Grays Harbor County, talked to Stu Menefee (Harold S. Menefee) with the Grays Harbor County Prosecutor’s office – no file has been opened”).

The Subcommittee asked Jim Kaufman and Ben Winkelman to contact Prosecutor Stew Menefee and the Deputy Prosecutor (i.e., a lawyer who handles juvenile matters for the Gray’s

Harbor Prosecutor's Office has known Mr. Winkelman for years) to learn more about the situation. They learned that no juvenile cases relating to this incident had been referred to the Grays Harbor Prosecutor's Office. As of March, 2007, the charge of reckless driving against Mary Pettis was outstanding with a warrant for Mary Pettis's arrest. This, being less than a felony which occurred within the city limits of Hoquiam, would be subject to municipal/district court jurisdiction and would be the responsibility of municipal – as opposed to county – authorities to handle.

E. Criminal Charges That Might Have Been Brought

Under various sections of the Revised Code of Washington, there were several possible criminal charges arising out of these incidents that could have been prosecuted but which were not prosecuted. Ex. O. A charge might have been brought for “malicious harassment,” consisting of the commission of a crime with race or other bias as an aggravating factor.⁸ Another might have been brought for “vehicular assault” regarding the incident in which Mary Pettis swerved off the road and nearly hit Mrs. Walker's son., Jordan. The City of Hoquiam attorney did, in fact, issue an arrest warrant against Ms. Pettis for “reckless driving” (RCW 46.61.500 *et seq.*) but no charges were brought for “vehicular assault”.⁹

The Subcommittee considered the practicality of bringing these criminal charges, even if they were otherwise theoretically viable. One concern expressed by former prosecutor, Jim Kaufman, was that the charges may have become “stale,” i.e., it was unlikely for the city attorney or the county prosecutor to pursue the charges simply because of the passage of time. *See Ex. P*, at 1 - 2; *see also* Brown April Notes. As a practical matter, execution of a warrant for

⁸ RCW 9A.36.078, 080; *See also* Notes taken by Michael Brown on Olympic Peninsula Subcommittee Meeting (March 6, 2006) (on file with M. Brown) (“Brown March Notes”).

⁹ The RCW defines “reckless driving” as, *inter alia*: “(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)). It is not clear which of the specific sections the charge against Ms. Pettis was based on. *See Ex. P* (Minutes of Olympic Peninsula Subcommittee dated April 14, 2006); *See also* Notes taken by Michael Brown on Olympic Peninsula Subcommittee Meeting (April 14, 2006) (on file with M. Brown) (“Brown April Notes”).

criminal acts after approximately three years becomes difficult because of the fading memory of witnesses and the possibility that witnesses and/or parties may have moved.¹⁰

The incident in which Angel Pettis pulled Jordan's pants down did not result in the filing of a criminal charge.¹¹ The age of at least one of the perpetrators, Angel Pettis, who had pulled down Jordan's pants, could make prosecution difficult. She was only fourteen years of age at the time of the incident.¹² The Subcommittee speculated that the age of fourteen may have been sufficient in the prosecution of some types of crimes but, nevertheless, it could give rise to speculation as to whether a prosecutor would be willing to bring charges against her.¹³ Another factor that could make prosecution difficult was the element of intent. According to Jim Kaufman, charges involving race-based crimes can be difficult to prove because of the intent element.¹⁴ On the other hand, the local judge in whose court any criminal proceedings against a juvenile would take place had a reputation for taking juvenile criminal violations strictly.¹⁵ Perhaps further charges should have been brought against the responsible minors.¹⁶ Members of the Subcommittee felt that the Hoquiam school could have done more to discipline the responsible minors.¹⁷

F. Angela Walker's Perspective

On November 20, 2005, Mike Brown telephoned Angela Walker at her home on behalf of the Subcommittee. Mr. Walker had been at his job for four years, and things had begun to settle down since the publication of THE SEATTLE WEEKLY article. Since they moved to the area, Mrs. Walker and her family experienced unusual little incidents, but they were not certain that

¹⁰ Brown March Notes.

¹¹ Brown April Notes.

¹² Brown March Notes.

¹³ Brown March Notes; Brown April Notes.

¹⁴ Brown March Notes.

¹⁵ Brown April Notes.

¹⁶ Brown March Notes. Subsequent information gathered by the Subcommittee indicated that juvenile justice proceedings would likely go through the city prosecutor's office which, ultimately, did not pursue formal proceedings against Angel Pettis.

¹⁷ Brown March Notes.

the incidents were race-based. Then, the Walker children started getting into trouble at school, receiving what the Walker family believed was *selective punishment at school*, even when they were the victims in the incidents. At one point, *Mrs. Walker received death threats*, and she used to sit in front of her window with a coffee pot because she was afraid to go to sleep. In the spring of 2004, acting upon the advice of a lawyer, Thad Martin, the Walker family filed a complaint with the ACLU, which assigned Mr. Steven Reilley to investigate. The Walkers hoped to change the system – not necessarily seek monetary damages. Mrs. Walker felt that gays and disabled people also had problems in the area and that local attorneys and the school board were in denial. She thought that, although the school does have policies, it does not enforce them.¹⁸

According to Ms. Walker, after the ACLU investigation started, the school did not cooperate with Mr. Reilley. Ms. Walker speculated that the actions of another African American family in Aberdeen, who had exaggerated and lied about racial incidents, may have contributed to the apathy of all involved. In a fit of frustration about the inefficacy of the investigation, Mrs. threw away all of the written documentation. Subsequently, Mr. Martin did nothing further, and there were no other attorneys who were willing to help the Walker family. The events caused Ms. Walker to have depression for a period of about three months, causing her to stay within her home during the entire period.¹⁹

Following the incident in which Mary Pettis swerved her car off the road in the direction of Mrs. Walker's son, Jordan, three police officers responded. Two of the officers said it was attempted vehicular assault, but a *third officer told her to not expect anything*. It was at that point that Mr. Rick Anderson of THE SEATTLE WEEKLY began a journalistic investigation that led to the publication of an article that sparked the formation of this Subcommittee. The Hoquiam City Attorney contacted the Walker family and took photographs but, to Mrs. Walker's

¹⁸ Telephone Conversation Between Angela Walker and Mike Brown (Nov. 20, 2005) (notes on file with M. Brown).

¹⁹ Id.

knowledge, the City Attorney never filed charges against Mary Pettis. As of the time of Mrs. Walker's conversation with Mike Brown on behalf of the Subcommittee, the Walker family had not received any news of what, if anything, the City Attorney had done about the reckless driving and vehicular assault by Mary Pettis.²⁰ The Subcommittee learned from the City Attorney, directly, that "reckless driving" charges had been brought. Ex. M, at 1.

After the incident in which Angel Pettis pulled down the pants of one of Mrs. Walker's sons, Jordan, a *police officer scolded the family for reporting the incident*, saying, "you people." *See also, supra*, at 9. As he railed against the family, the Hoquiam police officer kept his hand on his gun, tried to force himself into their home, and *called Mrs. Walker a "f***** bitch."*²¹

Mrs. Walker's family has no immediate plans to move, as the situation seems to have settled down. However, a football player has been bullying her sons and telling them about a neo-Nazi group. *See supra*, at 8. Further, police officers have continued to pull over her husband while he is driving. *Id.* Mrs. Walker told Mr. Brown of the Subcommittee that she does not wish to reopen these issues because she appears to have a "truce" between her family and the City of Hoquiam. Mrs. Walker noted that others may have information about the incidents and racial relations in the area, including Doug Waddington who is affiliated with the prison, and Margaret Huff, a liaison for the mayor's office.

The Subcommittee did not follow-up with Mr. Waddington or Ms. Huff because Mr. Brown refused to turn over his notes on the conversation to the Subcommittee for over one year. Mr. Brown was not entirely sure if he was authorized by Mrs. Walker to share the results of their conversation with the Subcommittee, even though he introduced himself to her at the start of the conversation as an agent for the Subcommittee who was calling in pursuit of the Subcommittee's

²⁰ *Id.*

²¹ *Id.*

investigation. Mrs. Walker did not respond to subsequent e-mails sent to her by Mr. Brown, and there was no further contact between the Subcommittee and any member of the Walker family.²²

IV. HOSTILITY AND NON-RESPONSIVENESS FROM STATE AND COUNTY BAR LEADERSHIP

For reasons of practicality and courtesy, the Subcommittee attempted to work through the WSBA, including the BoG governor responsible for the Olympic Peninsula, and the Grays Harbor County Bar Association to pursue its investigation. The Subcommittee's attempt to collaborate with the Grays Harbor County Bar Association was supported by WSBA Bylaws Article VIII § H which states: "Each committee shall cooperate with...like committees and sections of local bar associations..."

The Subcommittee had great difficulty finding lawyers in Grays Harbor County with whom to collaborate. The Subcommittee reached out by email and telephone to the BoG Governor for the Grays Harbor area. *See Ex. R.*, at 1 – 2. Through the BoG Governor for that area, the Subcommittee had hoped to keep the BoG apprised of its work and to pursue its investigation through official channels in cooperation with state, county, and local bar associations. Therefore, Subcommittee members attempted to contact the WSBA governor for Hoquiam, Mr. Howard Graham, at that time. Mr. Graham, the WSBA governor, did not respond to two e-mail messages from Mr. Gaudet or to one or two phone calls from another CRC member, Jerrilyn Hadley. *Exs. R, S, T.* The Subcommittee agreed that Jim Kaufman would send a third e-mail to Mr. Graham with a copy to the WSBA Executive Director, Jan Michaels.²³

The Subcommittee speculated on its own that Mr. Graham might be the outgoing governor and that perhaps a new incoming governor would be responsible for the district of Hoquiam on behalf of the WSBA. Confirming this belief, Subcommittee member Jim Kaufman determined that Mr. Sal Mungia of Tacoma would be the new incoming governor for the Hoquiam district on behalf of the WSBA. Mr. Mungia said he had not received earlier email

²² *Id.*

²³ Notes on Subcommittee Meeting dated August 25, 2005 (on file with Michael Brown).

correspondence from the Subcommittee, but he offered to be of assistance where he could be of assistance, and that was relayed to the Subcommittee by Mr. Kaufman. Mr. Kaufman forwarded to Mr. Mungia a copy of THE SEATTLE WEEKLY article that initiated the Subcommittee's investigation. Ex. R, at 2. It had taken many months to finally reach the WSBA governor responsible for the Hoquiam district, after many unreturned email messages and phone calls to the outgoing and incoming governor by several different people acting on behalf of the Subcommittee.

Mr. Kaufman determined from Mr. Mungia that Paul Strittmatter, who comes from Hoquiam and maintains an office there, might have some interest in assisting the investigation. On December 19, 2005, the Subcommittee noted in its meeting that Paul Strittmeyer may be interested in assisting.²⁴ Jim Kaufman, who had attempted to reach both Mr. Mungia and Mr. Strittmatter, confirmed that Strittmatter had indicated some interest in the matter via e-mail.²⁵ However, the Subcommittee and Mr. Kaufman never heard back from Mr. Strittmatter.

The Subcommittee tried to reach young lawyers in Grays Harbor by working through the trustee for that region in the Washington Young Lawyers Division. The first attempts were unsuccessful, and one Subcommittee member reached out to the Young Lawyers Division trustee four times by email and telephone without receiving a response. Ex. U. The Subcommittee eventually reached Jennifer Brugger, the Young Lawyers Division trustee for Grays Harbor County. To assist the Subcommittee, Ms. Brugger subsequently contacted about one dozen young lawyers in the Hoquiam region and asked if they would be interested in attending a social function and/or helping the Subcommittee's investigation. None was interested.

As an example of the Subcommittee's strenuous attempts to reach lawyers in Grays Harbor, the Subcommittee planned a meeting for September 19, 2005 (subsequently postponed) with the following agenda: (i) Jim Kaufman's efforts to reach BoG member responsible for that area; (ii) Mike Brown's efforts to reach Grays Harbor County Bar Association president; (iii)

²⁴ Notes on Subcommittee Meeting dated December 19, 2005 (on file with Michael Brown).

²⁵ Notes on Subcommittee Meeting dated December 19, 2005 (on file with Michael Brown).

Rob Gaudet's efforts to work with the WYLD Trustee responsible for that area. Ex. S; Ex. T. Mr. Brown never did receive a return call or message from the Grays Harbor County Bar Association president, Therese Wheaton.

Throughout the investigation, the Subcommittee attempted to engage the WSBA, county, and local officials and lawyers. On August 25, 2005, the Subcommittee specifically considered how to work through the local channels. The Subcommittee made plans to contact Jennifer Brugger of the Young Lawyer's Division whose jurisdiction included the Hoquiam area. The Subcommittee also informed WSBA President Brooke Taylor of its investigation.²⁶

Rather than let the investigation die due to non-responsiveness from the Grays Harbor County Bar Association and the WSBA governors, Mr. Gaudet directly contacted the Hoquiam police department to request reports of incidents involving the Walker family. He was referred to the Hoquiam City Attorney. In January and February, 2006, Mr. Gaudet received police records from Steve Johnson, the Hoquiam City Attorney. Exs. L, M.

As of March, 2006, however, the lack of any further response from Mr. Mungia made it impossible to determine whether he had, in fact, discussed the matter with Paul Strittmatter, as he had promised to do.²⁷ At the April 14, 2006 meeting, Jim Kaufman reported that further efforts to contact Mssrs. Mungia or Strittmatter might be moot because of their *apparent lack of interest* in the matter, as evidenced by their repeated failures to communicate with Mr. Kaufman.²⁸

On March 30, 2006, Sharon Payant of the Subcommittee, made a renewed effort to locate a local lawyer in Grays Harbor County. She made this effort after the Subcommittee reported to the CRC that it had experienced great difficulty in finding a local lawyer. See Ex. J, at 1 ("The subcommittee is still trying to locate a lawyer in Hoquiam that will assist with the investigation.

²⁶ Notes on Subcommittee Meeting dated August 25, 2005 (on file with Michael Brown).

²⁷ Notes on Subcommittee Meeting dated March 6, 2006 (on file with Michael Brown); see also Ex. N, at 3 ("Gov. Mungia, the WSBA governor for the Hoquiam area, was supposed to contact Strittm[atter], but we have received no word about whether he had ever done so").

²⁸ Ex. P (Minutes of Subcommittee Meeting dated April 14, 2006); see also Notes on Subcommittee Meeting dated April 14, 2006 (on file with Michael Brown).

Sharon will start by contacting 3 of the 10 lawyers practicing in Hoquiam”). Ms. Payant contacted attorneys in Hoquiam and Aberdeen via email, asking if any of them would be willing to serve as a contact person for the Subcommittee in relation to the investigation. She received an almost immediate response from Ben Winkelman, who is in private practice in Hoquiam. Mr. Winkelman agreed to be an area contact and liaison for the Subcommittee.

The Subcommittee agreed that, in spite of failed attempts to communicate with non-responsive WSBA governors, the attempts at communication had been worthwhile. The Subcommittee members were outside the Peninsula, and they had tried to respect the local community as well as the governance structure of the WSBA.²⁹ However, the Subcommittee also reached a consensus that it should continue its investigation despite of *lack of communication or support from WSBA governors responsible for that region*. The Subcommittee also resolved to seek local initiatives and to work with a local lawyer in the community, i.e., Ben Winkelman, in reaching out to Hoquiam school administrators. The Subcommittee also resolved to contact Katie Svova, the new lawyer in the Grays Harbor County Prosecutor’s Office who handled juvenile matters, for additional information.³⁰

On April 14, 2006, the Subcommittee met again. Mr. Winkelman attended the meeting and decided to go beyond his role as a liason and become a member of the Subcommittee to assist in the investigation. Mr. Winkelman's wife, Jennifer Winkelman, is a counselor at Aberdeen High School. Mr. Winkelman also said that he had a contact at the Juvenile Division of the Gray's County Prosecuting Attorney's office, and he agreed to be in touch with her regarding the incidents discussed in the Criminal Allegations section, *supra*.

During the April 14 meeting, Mr. Winkelman confirmed that the area around Hoquiam had had a *history of race-based incidents*, including fights.³¹ Mr. Winkelman related to the

²⁹ Ex. P; *see also* Notes on Subcommittee Meeting dated April 14, 2006 (on file with Michael Brown).

³⁰ Ex. P (Minutes of Subcommittee Meeting dated April 14, 2006). Subsequent events led the Subcommittee to the conclusion that Grays Harbor County Prosecutor, Brett Colocurcio, never brought charges regarding the incidents against the Walker family and that Ms. Svova, who replaced him after his departure in January 2005, never brought charges either. The Subcommittee learned that the Grays Harbor County Prosecutor’s Office did not even have police records on these incidents, as they had apparently not been forwarded by the City of Hoquiam.

³¹ Notes on Subcommittee Meeting dated April 14, 2006 (on file with Michael Brown).

Subcommittee that he was aware of some of the incidents, after having read about them in the local papers. He stated that he had become aware of a *growing problem of racism* in Hoquiam during his campaign for city council and had even witnessed fights in the same location where the school fight involving Angel Pettis and Tashianna Walker had occurred. The fights appeared to have been racially motivated and racial epithets were used.

At its June 20, 2006 meeting, the Subcommittee continued to emphasize the importance of local partnership and resolved to contact the Grays Harbor County Prosecutor's Office. Ms. Payant agreed to gather Teaching Tolerance materials.³² Karrin Klock, who had just joined the Subcommittee, agreed to forward information to CRC Liaison Kate Mullen to keep her apprised of the work of the Subcommittee.³³

On July 21, 2006, a message was posted to the listserv of the WYLD Membership Committee (Ex. W) inviting young lawyers to go to Aberdeen High School for a meeting of school officials to listen and discuss possible implementation of the We The Jury program which had been previously taught by WYLD (Ex. X) in several high schools. There was no response to the invitation. Again, the Subcommittee attempted but failed to generate interest and support within the WSBA for its investigation. Subcommittee members traveled to Aberdeen to listen to the concerns of local officials on August 5, 2007. Ex. K. This was perhaps the most critical stage of the investigation, and the Subcommittee members demonstrated great interest and sensitivity. The meeting was productive and local officials requested follow-up assistance and education from the CRC. The Subcommittee members promised to pass on their requests to the general CRC for deliberation and possible action.

On or around August 15, 2006, most of the work of the Subcommittee came to a standstill when the WSBA leadership accused the Subcommittee of having exceeded its role under the applicable WSBA Bylaws by interfering in what it referred to as a local matter and for the alleged failure of the Subcommittee to inform and/or otherwise respect protocol concerning

³² Notes on Subcommittee Meeting dated June 20, 2006 (on file with Michael Brown).

³³ Notes on Subcommittee Meeting dated June 20, 2006 (on file with Michael Brown).

intervention in such matters.³⁴ In subsequent events, including the WSBA president's extraordinary threat to dissolve the decades-old CRC for considering a resolution to the Washington Attorney General on the separate topic of wiretapping, the work of the CRC as a whole, including the Subcommittee, came to a standstill from the fall of 2005 for a period of several months. As of the writing of this Final Report, the work has never fully resumed.

V. ABERDEEN MEETING

A. Introductions

Members of the Subcommittee traveled to Aberdeen for a meeting with local lawyer, Ben Winkelman, and teachers, counselors, and the principal of Aberdeen High School to hear their concerns about civil rights matters. Mr. Gaudet informed participants that the meeting was “largely a continuation of that investigation” sparked by THE SEATTLE WEEKLY article. Ex. K, at 2. The meeting took place on Saturday, August 5, 2006 from noon to 4:00 pm. The meeting was held in a classroom at the high school. The hosts provided coffee and snacks.

Mr. Gaudet clarified that the Subcommittee was not there to give legal advice but only to pursue an investigation and *listen to their concerns and create dialogue*. Ex. K, at 2; *see also* Ex. K, at 5 (“Rob and Ben clarified that the WSBA CRC cannot provide legal advice to the school, but the CRC members are capable of studying particular issues to educate themselves and the community and that the results of any such study could be shared with others”). Detailed minutes were taken by Anita Redline and Rob Gaudet and later distributed among all participants. *See* Ex. K.

As an opening exercise at the meeting, everyone introduced themselves and described their ethnic backgrounds. There was a surprising amount of diversity within each individual at the meeting. Ex. K, at 1 - 2. Mr. Gaudet introduced the Subcommittee and its work, noting that it was appropriate to have the meeting at a school because “half of all hate crimes are committed by people under the age of 20 which is roughly the same as school age.” Ex. K, at 1. Moreover,

³⁴ Notes on Subcommittee Meeting dated August 15, 2006 (on file with Michael Brown).

“[s]chools are in the best position to influence these students.” *Id.* Mr. Gaudet clarified that the meeting was being “held to see if there were any concerns and, then, to see if there were ways that the CRC could help address them.” Ex. K, at 1 - 2. The Subcommittee posed a simple question: “Is there a problem?” Ex. K, at 3. The answer was, “yes.”

B. Demographics of the School

The school has about 1,000 students in grades 9 through 12, including 45 students taking English Language Learning. There are “some Native Americans, some Laotians, some Vietnamese, and a few African-Americans.” Ex. K, at 3. Most students are Caucasian. Ex. K, at 3. There is a “Diversity Club” that encompasses “all the groups” and “does not focus on any one group.” Ex. K, at 3. Although most of the students are “accepting”, a small number has challenges. Ex. K, at 3.

1. African-Americans

The African-American students “have been *called ‘Brillo pad’ or ‘nigger’ at school.*” Ex. K, at 6 (emphasis added). There is a “small number of African-Americans” at Aberdeen High School. Ex. K, at 2. The number may be as little as “one or two.” Ex. K, at 6.

2. Native Americans

Native American students at school “are sometimes *called ‘apple’ which means red on the outside and white on the inside.*” Ex. K, at 6 (emphasis added). “They are also called ‘tomato’ on occasion.” Ex. K, at 6 (emphasis added).

3. Asians

There are some students of Asian origin at Aberdeen High School. They include some Laotians and Vietnamese. Ex. K, at 3. “Sometimes, an Asian student will call another Asian student a ‘nigger.’” Ex. K, at 6 (emphasis added).

4. Latinos

The Latino students are sometimes “*called ‘beaners’.*” Ex. K, at 6 (emphasis added). They are *also “called ‘wetback.’*” Ex. K, at 6 (emphasis added). About 12 percent of the

students are Latino, said the principal, Dave Tobin. Ex. K, at 3. Mr. Tobin noted that the school has “two different Hispanic gangs” and a “Caucasian gang with Confederate flags.” *Id.* (emphasis added). The Latino gangs’ membership carries over from the regional homes of the immigrants:

The Hispanic gangs are based on two different parts of Mexico that the students come from. As soon as a new Hispanic student arrives into the ELL [i.e., English Language Learning] program, he or she is immediately placed by peers into one or the other gang. One gang looks down at the other gang because of the part of Mexico from which they came. There are about 45 students in the ELL program and this is roughly the size of the membership in the gangs. The *Hispanic gangs “act out with violence.”* There used to be a person who put up graffiti but he is gone, maybe in jail. He used to write the word “bictH” as graffiti on different walls and he seems to have had some trouble spelling the word properly.

Ex. K, at 2 (emphasis added). These tensions lead to physical violence, sometimes serious:

Regarding fights, they happen during school, after school, during class. They are usually low-level without injury. *Sometimes the ambulance comes because the injuries are more serious.* There will be cameras in the new school building that is under construction. The Hispanic girls may fight too. It is less racial – ie no Hispanic on white fighting – and more personal.

Ex. K, at 4 (emphasis added).

There is a “code of silence” in which students are reluctant to tell on their friends. Ex. K, at 2. The school officials were asked if they think a “‘quiet’ reporting system”, as noted in the Teaching Tolerance materials of Southern Poverty Law Center (“SPLC”), would be useful at the school. Ex. K, at 2. This would involve a “box planted in [a] subtle area [that] might serve a purpose and keep pulse on student body and nip potential problems. With a confidential box, students could leave notes about problems.” Ex. K, at 2.

Students are supposed to report to a counselor, such as Ms. Winkelman, and the counsel can keep the student’s name confidential, if so desired by the student. Ex. K, at 4. In 2005, the

school created “an anonymous tip line...for people to leave messages about threatening things they heard about...This was an effort to deal with the violence.” Ex. K, at 4. The principal asks the “staff to be visible at the start of the year and to be aware.” Ex. K, at 4.

5. Gays and Lesbians

Ms. King, a teacher at the school (Ex. K, at 2), noted that there is a gay population and that “*there is some prejudice against gays*, especially among the boys.” Ex. K, at 3 (emphasis added). Ms. King works with special education students with low IQs, and they often “get talked into doing socially inappropriate things” and they call each other “retarded.” Ex. K, at 3. There is no lesbian or gay organization at the school. Ex. K, at 6 (emphasis added). Students who want to form such a club “are not allowed to do so [but] may nonetheless belong to the ‘diversity club.’ It is a catch-all and includes gays and lesbians, as well.” Ex. K, at 6 (emphasis added)

6. Caucasians

The majority of the students are Caucasian. There is a “small group of students on the campus [who] *wear the Confederate flag* on their clothes and put the symbol on their vehicles.” Ex. K, at 4 (emphasis added). Mr. Tobin elaborated, as here reflected in the minutes:

Some students fly the flag from their vehicles or put it on their car windows as a sticker. They also put it on their tailgates. If it becomes harassment, then it will be an easier issue to deal with because it will be more clear-cut. There are about 5 to 10 kids who participate in this. It is possible that they don’t know what it is. They are not from the South. It could be some interest in the Dukes of Hazzard. The school staff, however, is offended by it. Some students are offended by it. It was noted that the Confederate flag[] upsets staff more than students.

Ex. K, at 4. The school is not entirely sure “how to address this” (Ex. K, at 4) in terms of balancing their rights but also protecting the rest of the student body and the sensibilities of the teachers. At this point, the teachers “try to minimize their own reactions to the flag so as not to embolden further such behavior or make the students think it is more important than it is.” Ex.

K, at 4 – 5. The school is thinking of treating it as “a dress code issue” that possibly “disrupt[s] the learning environment” (Ex. K, at 5) but they have not yet taken any action. As an example, “a Maltese cross representing the Nazi regime would be disruptive” as a violation of the dress code. Ex. K, at 5. Mr. Tobin feels that drug symbols and low-cut dresses are clearer violations of the dress code than the Confederate flag.

7. Teachers

The school officials were asked “if there was a *problem with bigoted teachers* at AHS.” The answer: “Yes, it was noted that there are some bigoted teachers.” Ex K, at 4 (emphasis added). Mr. Tobin said that “some teachers may ignore inappropriate things that are said in class or they just let the comments pass.” Ex. K, at 4. There is a “policy on what to do about harassment” that all teachers read and sign. Ex. K, at 4.

C. School’s Request For Assistance

1. Teaching Materials For Students

The principal of the school, Mr. Tobin, said that what he “would like to see as a result of the meeting is things [that] can be applied to the classrooms and that teachers can use any materials or ideas to help students understand tolerance and the importance of diverse groups.” Ex. K, at 2. Moreover, Mr. Tobin “*would like to hear ideas on how to create a better situation.*” *Id.* (emphasis added). He thinks that “[p]art of the population can use some help with education and information and understanding that we are all part of the community.” *Id.*

Mr. Pier, a teacher at the school, said that “he would like to have materials that he could distribute to students. He asked the WSBA CRC to put together a list of resources that would be available to them and they could then calendar various ideas on their school calendar for the upcoming year.” Ex. K, at 4. They would like to receive about 65 copies of the “Responding to Hate” materials distributed by the SPLC. Ex. K, at 4. Ms. King said that the teachers could also use “some conflict resolution training and student mediators so that students who get caught in fights can appear in front of their peers.” Ex. K, at 4.

2. Constitutional Law Questions

The school was greatly interested in receiving general information on the parameters of students constitutional rights while at school, especially regarding searches of their lockers, breath (e.g., alcohol), and backpacks:

The school is open to being educated, receiving thoughts, and obtaining new ideas on how to conduct searches without violating constitutional rights of students. They understand that they may search lockers if students have drugs or weapons. They are concerned about the “process” of conducting searches. Davie takes another person with him whenever he does a locker search for in case the student later claims that something was stolen. Dave said the school would be interested in knowing, what’s the best procedure or practice?

Ex. K, at 5 (emphasis added). In addition, they sometimes conduct “backpack searches.” Ex. K, at 5. The school would like to know “about the standards, protocols, and best practices out there.” Ex. K, at 5. It was thought that the WSBA CRC might be able to provide general educational materials on the constitutional rights of students and limits on the authority of schools, in general, when conducting such searches. Ex. K, at 5.

Regarding searches with dogs, the “school is again ‘open to education’ on the best practices and constitutional law issues and whatever is ‘correct’ in procedure.” Ex. K, at 6. It was thought by participants that “[t]his would be another useful topic for the CRC to study and share with the community.” Ex. K, at 6. The school confirmed that they “would be interested in the latest case law on this issue. They try to keep abreast of what is current. It would be purely informational.” Ex. K, at 6. There is a contract lawyer outside the county in Seattle to whom the school may direct legal questions. Ex. K, at 6. However, this “is rarely done.” Ex. K, at 6.

Regarding the breathalyzer that was used, e.g., at school dances in Hoquiam to check for alcohol, the school would like to know whether such devices are generally permissible and what the parameters for its use might be: “They did have a breathalyzer at Hoquiam High School that they used randomly at dances. Are there any civil rights problems with these procedures? Would breathalyzer at a school dance be a violation of constitutional rights?” Ex. K, at 6.

VI. FOLLOW-UP TO ABERDEEN MEETING

The school asked the Subcommittee to research issues relating to locker searches and the use of dogs and breathalyzer tests. The School also asked the Subcommittee if it was aware of any civil rights concerns relating to students having or wearing confederate flag emblems. Other topics discussed were implementing a confidential reporting system, asking lawyers to attend law day, and putting together a street law class and a "We the Jury" program using a civil rights scenario.

A. Research

When the School asked about civil rights issues relating to locker searches, the use of dogs and breathalyzer tests, and the confederate flag, the Subcommittee became concerned about providing guidance on these issues without crossing the line into providing legal advice. Ex. K, at 6. This concern was discussed extensively at the Subcommittee meeting and at the Civil Rights Committee general meeting. Ex. K, at 6. School officials were told at the meeting that the Subcommittee cannot provide legal advice, and that the School should address specific concerns regarding particular issues to its attorney. Ex. K, at 5.

Nevertheless, the Subcommittee decided that it would look into at least some of these issues while it was decided how or even whether this information would be disseminated to Aberdeen or any other school, as these are issues of concern to many schools, and the WSBA may be called upon to address these issues in the future. Ex. K, at 6.

Michael Brown and Karrin Klotz prepared draft memos addressing constitutional issues of concern to schools. The memos were not distributed to the Aberdeen High School. They were held by the Subcommittee because WSBA leadership had expressed concerns about the CRC giving "legal advice" to the school. Therefore, the CRC decided to wait until such concerns were fully addressed. The Subcommittee later noted that brochures offering general information on legal issues, such as tenant-landlord rights, were freely available and distributed in the WSBA lobby. Similar brochures could be distributed to schools, containing general advice without reference to any specific application at any particular school.

B. Confidential Reporting of Hate Crimes

The school raised a concern that, if there were incidences of racism at the school, students might be reluctant to tell a teacher or staff member out of fear of retaliation by other students. The school was also concerned that if they put up an anonymous box, similar to a suggestion box, they would receive information on which they would need to follow up, but they would have no way to know the identity of the student who submitted the comment or concern. Specifically mentioned was the fear that someone would write about wanting to harm herself/himself or someone else. If the school were to create a confidential reporting system, it would have to (1) enable students to report incidents to a teacher or staff member that he/she trusted, while (2) allowing the School to know the identity of the student, yet (3) keeping the fact of the report from other students.

When this concern was mentioned at the next Subcommittee meeting, Sharon Payant said she remembered seeing a confidential reporting system on the Teaching Tolerance website, a service of the Southern Poverty Law Center, and would forward that information to Jennifer Winkelman. The confidential reporting system on the Teaching Tolerance website, the "Safe Contacts Policy,"³⁵ designates certain teachers or staff members as "safe contacts people" to whom the students can turn when they wish to discuss issues relating to harassment or bias. Ms. Payant forwarded the link, via email, to Jennifer Winkelman, with the message that the material might be of interest to her, given their concerns about implementing a confidential reporting system.

C. Law Day

The school mentioned that it would be helpful if members of the CRC attended Law Day at their high school and spoke to students about opportunities for minorities in the legal profession. This was raised at the general meeting of the CRC, and two members, Corbett Gordon and Tracy Flood, volunteered to contact the school about attending this event during the

³⁵ Safe Contacts Policy, Teaching Tolerance, available at http://www.tolerance.org/rthas/section4_3_1.jsp (last visited 5-12-07).

next school year. The event was postponed and then eventually cancelled so Ms. Flood and Ms. Gordon were never actually able to attend career day, as planned.

D. Street Law Class

One or more teachers at the school were interested in receiving materials about a Street Law program that might be used in their classrooms to teach their students about basic legal rights. The Subcommittee resolved to follow-up through a friend of Sharon Payant who was familiar with Street Law. There was no subsequent follow-up on this issue due, in part, to the controversy that WSBA leadership rose in relation to the Subcommittee's activities.

E. We the Jury Program

Another resource that was considered was a "We the Jury" program that could be introduced in schools, such as Aberdeen High School, and would serve the dual purpose of introducing kids to the legal system and educating them about civil rights issues. Two or more teachers at the school said that they would like to receive these materials.

The "We the Jury" program already exists, developed by the American Bar Association, and it offers curriculum and mock trials on different civil and criminal law issues; the Washington Young Lawyers Division has already used such a program in schools around the State (Ex. X). The materials that are available, however, do not pertain to civil rights issues. Sharon Payant contacted the Young Lawyer's Division and asked if they had any materials relating to civil rights or hate crimes, but she was told that they had no such scenarios. A similar inquiry of the Association of Trial Lawyer's of America netted the same results. Ms. Payant reported these results to the Subcommittee, but she said that she would keep searching for materials that would fit the Subcommittee's needs. Rob Gaudet also suggested searching recent case law for civil rights or hate crime scenarios that might be suitable for a "We the Jury" type program that could be crafted by the CRC.

There was some interest in the Subcommittee in creating a "We the Jury" type video and transcript of a trial regarding a hate crime that had been prosecuted in the State of Washington.

Such materials could be developed by the CRC as a training and educational program for students. Corbett Gordon and Rob Gaudet resolved to work on this issue, but they made no progress due to the obstacles raised by WSBA leadership to the activities of the Subcommittee.³⁶

VII. REMEDIES

The potential remedies offered, here, by the Subcommittee align with goals stated in the WSBA Bylaws, including Article I § A(9) to “[p]romote understanding of and respect for our legal system and the law.” Under Article I §B(19), the WSBA may “[m]aintain and foster programs of public information and education about the law and the legal system.” In the Subcommittee’s continuing efforts to investigate and further the purposes of the CRC under the authority vested in it by the WSBA Bylaws, the Subcommittee proposes implementation of the following solutions.

A. We The Jury

The Civil Rights Committee, or the WSBA as a whole, should work with attorneys and/or civil rights professors to develop a We the Jury-type program that utilizes civil rights scenarios, just as the Washington Young Lawyers Division has already done (Ex. X). The Texas Bar Association has developed its own We the Jury program, through its Young Lawyers Association. According to the Texas materials, a portion of the contents were reproduced from The Association of Trial Lawyers of America and The National Institute for Citizen Education in the Law materials.³⁷ The mock trial in Texas's materials involves a criminal possession of marijuana case, so although their focus is somewhat different than ours, it is notable that at least one other state bar has funded such a project. The CRC could take the lead in developing such a program. Budgetary funding from the BoG, on par with funding allocated toward the creation of a diversity training DVD, would be of great assistance to this project.

³⁶ WSBA General Counsel, Bob Welden, e.g., said at the October, 2006 public WSBA BoG meeting that “the bar has no business going to a school in Aberdeen.” Neither the WSBA president nor any member of the BoG clearly countered this statement by Mr. Welden.

³⁷ We the Jury, a Jury Service Project of the Texas Young Lawyers Association *available at* <http://www.tyla.org/pdfs/Jury.pdf> (last viewed 5-12-07).

B. Empower CRC To Create and Distribute Brochures

The CRC should be explicitly authorized by the BoG to draft and develop suitable brochures describing the constitutional rights at the schoolhouse for general distribution to the public, including schools, students, parents, and anyone who asks. Such brochures should be posted on the CRC website and otherwise made available wherever the WSBA displays similar brochures on other legal topics.

C. Empower CRC To Investigate Future Incidents

The BoG should encourage the CRC to form subcommittees to investigate current and future civil rights abuses. To counter the negative reaction from WSBA leadership over the past two years to the Subcommittee's investigation, the BoG should expressly re-affirm that the CRC has the authority to carefully investigate matters pertaining to civil rights.

D. Encourage Partnerships With WSBA Diversity Committee

The Diversity Committee has produced a wonderful DVD that can be used and distributed among school and, perhaps, shown by volunteer lawyers at schools or career fairs. The Diversity Committee should be encouraged to distribute the DVD and make presentations at schools and venues targeted for special importance by the CRC. The Diversity Committee might brainstorm and promote other ideas to spread the message of tolerance, including education on the laws against discrimination in the State of Washington. In Aberdeen and Hoquiam, it appears from the Subcommittee's investigation that instruction on sensitivity and legal rights regarding Native Americans, African-Americans, Latinos, gays and lesbians, and disabled people may be needed. The Diversity Committee has special capabilities to assist and encourage lawyers to volunteer on these projects.

E. Educate County Prosecutors

The WSBA should encourage programs to educate county prosecutors on the tools that are available to them to prosecute hate crimes and racial incidents. They should also be encouraged to open and keep files on all hate incidents. They must also be encouraged to work with their local police departments to request such information, particularly today when the U.S.

Department of Justice has placed classic crimes of racial and national origin discrimination on the back-burner. *See* Ex. Y. In addition, federal criminal civil rights law does not prohibit sexual orientation discrimination, so the State of Washington's county prosecutors should be encouraged to make a special effort at collecting information on sexual orientation discrimination from their local police departments. In the course of this investigation, the Subcommittee discovered that the incidents regarding the Walker family were not reported to the Grays Harbor County Bar Association by the local police department.

F. Strengthen Relationships Between WSBA and County Bar Associations

The WSBA should strongly encourage its "governors" to establish and maintain relationships with the County bar associations within their respective jurisdictions. This will enable governors to better respond to inquiries, updates, requests for assistance from WSBA Committees regarding activities in their territories.

G. Increase budget of CRC

The WSBA should increase the budget of the CRC to pay for some of the basic expenses in its investigations. The trip to Aberdeen High School, e.g., was paid for by each participant but WSBA funding for transportation or one night of hotel would have been helpful for many lawyers traveling from Seattle. In addition, the WSBA should encourage staff liaisons to the CRC and other committees to use www.freeconferencecall.com for free conference calls because a great deal of funding is currently wasted on conference calls that cost hundreds of dollars per meeting, sapping the small budget of the CRC and other committees. In fact, the CRC budget was not able to pay for the last two conference calls of the Subcommittee that were scheduled for the end of 2006. Therefore, the Subcommittee either had to cancel those calls or find a free way using www.freeconferencecall.com to host its final two calls to conduct business.

H. Encourage Distribution of Teaching Tolerance Materials

The CRC should have resources, such as Teaching Tolerance materials from the Southern Poverty Law Center, available for schools that are concerned about intolerance. Teaching

Tolerance is an online resource for "people interested in dismantling bigotry and creating, in hate's stead, communities that value diversity."³⁸ In addition to resources available to educators, the website also has materials available for fighting intolerance and bias in the workplace and the community. The CRC should have a link on its website to www.teachingtolerance.org and adopt a policy of referring educators to the Teaching Tolerance website. Many educators may be unaware of the materials available free of charge through the Teaching Tolerance website.

I. Require WSBA Governors to Respond In Timely and Helpful Fashion to WSBA Committees and Their Requests

WSBA Governors failed to respond to numerous attempts to reach them by telephone and email made on various occasions by different members of the Subcommittee. The Subcommittee was diligent in recording these attempts and pursuing follow-up calls because the Subcommittee wished to operate professionally, play by the book, be courteous, and maximize its effectiveness by absorbing all useful knowledge from the people who were most knowledgeable about the area surrounding Hoquiam and Aberdeen. These attempts failed, largely because of the failure of WSBA governors to return messages or otherwise follow-up on requests made by the Subcommittee. This is unacceptable practice. The WSBA governors must lead by example, activism, and communication – not by mere title of their office.

VIII. CONCLUSION

The Subcommittee confirmed allegations made in THE SEATTLE WEEKLY article that the family of Angela Walker had been subjected to racial discrimination. However, this is the tip of the iceberg. There are systemic problems in (a) the way the school in Hoquiam failed to deal with the issue, (b) the way some police officers blamed the victims and further harassed them; (c) the utter failure of the Hoquiam school officials to cooperate in any way with this investigation, (d) the racial name-calling in the region, including schoolhouses, (e) the lack of substantial interest or activism by lawyers in Grays Harbor County, with one exception, to

³⁸ Southern Poverty Law Center, ABOUT US, available at <http://www.tolerance.org/about/index.html> (last viewed on May 12, 2007).

address these issues, and (f) the hostility and non-responsiveness of WSBA leadership to deal with such a pressing issue. Change must occur, starting within the WSBA leadership, in order to successfully address racism and intolerance in the State of Washington.