

Hidden from View:

Human Rights Conditions in

the Krome Detention Center

April 1991

by the Minnesota Lawyers International Human Rights Committee

and Physicians for Human Rights



**HIDDEN FROM VIEW:
HUMAN RIGHTS CONDITIONS
IN THE KROME DETENTION CENTER**

**A report of the
Minnesota Lawyers International Human Rights Committee
and
Physicians For Human Rights**

April 1991

MINNESOTA LAWYERS INTERNATIONAL HUMAN RIGHTS COMMITTEE

The Minnesota Lawyers International Human Rights Committee, founded in 1983, is a nongovernmental organization of 1,000 members that works to promote and protect international human rights. The Committee advocates against individual human rights abuses, works to strengthen institutions and laws that protect human rights, researches and investigates human rights conditions in the U.S. and other countries, and educates the public about human rights issues. The Committee offers free legal services to asylum applicants through its Refugee and Asylum Policy Project, which involves over 150 attorneys.

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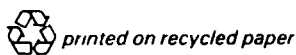


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Barbed wire surrounds the courtyard at the Krome Avenue Detention Facility in Miami, Florida.

PREFACE

This report is an account of the human rights conditions at the Immigration and Naturalization Service's Krome Avenue Detention Center in South Dade County, Florida. The minimum-security short-term federal facility opened approximately ten years ago to house detained aliens awaiting adjudication of asylum claims, deportation appeals, and exclusion hearings, and has historically housed mainly Haitians and Cubans.

Two factors prompted the organizations' interest in Krome. First, Krome has been the subject of serious and ongoing allegations, ranging in substance from denial of due process to active physical abuse, since its opening. A high degree of frustration and desperation within the detained population has been suggested by reports of internal disorder, hunger strikes and suicide attempts at Krome. Second, the policies implemented at Krome raise several fundamental issues concerning U.S. immigration policy, particularly administrative detention of aliens not yet legally admitted to the U.S., and their treatment in immigration proceedings.

METHODOLOGY

The goal of the joint delegation was to document conditions of confinement and to evaluate the facility's observance of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Principles"),¹ which stresses the importance of detainee access to the outside world and independent inspection of detention conditions. The delegation also evaluated compliance with internal standards promulgated by the Immigration and Naturalization Service ("INS") as set forth in the INS Detention Officers Handbook ("Handbook") which applies to detention officers at all INS facilities, and in the INS Post Orders specific to Krome ("Post Orders"). Because Krome has been the subject of frequent litigation involving various aspects of its operation, the delegation also considered the facility's adherence to applicable court rulings, settlements, statutes, and administrative policies.

This report is based on interviews, inspections, affidavits, and background research conducted by a joint delegation of the Minnesota Lawyers International Human Rights Committee ("Minnesota Lawyers Committee" or "MLC") and Physicians for Human Rights

¹ Adopted by consensus on December 9, 1988 as U.N. General Assembly Resolution 43/173. Attached as Appendix 1.

("PHR"). The report presents information, contradictory at times, from all available sources, in order to paint as full and credible a picture as possible of the conditions of detention at Krome.

The joint delegation visited Miami on November 18-21, 1990. The members of the delegation interviewed former detainees, attorneys with clients detained at Krome, and various community leaders. Among those interviewed were Mr. Ringo Cayard of the Haitian American Foundation, Inc. in Miami; Reverend Luc Dessieux of the United Methodist Church; Mr. Roland Dorancy, Executive Director of the Haitian Refugee Center; Mr. Mark Dow and Ms. Janine Todaro, former teachers at Krome; Ms. Martha Galacia, office administrator of the law office of Candace Jean; attorneys Ms. Esther Cruz, Ms. Joan Friedland, Ms. Dorothy Gomez, Mr. Ira Kurzban, Ms. Cheryl Little, and Ms. Donna Pasha, all of whom have represented detainees at Krome. Krome detainees and former detainees cited in this report are not identified by name for their protection.

The joint delegation was guided by INS officials on a day-long tour of the entire facility, including dormitories, recreational areas, health services, dining and food preparation spaces, sanitary facilities, detention and isolation units, courtrooms, intake and processing areas, and visitor and attorney meeting spaces. Key INS officials at the facility were available and cooperated in extensive questioning, although they refused to temporarily relieve subordinate personnel, such as detention officers, to speak with delegation members. Among those interviewed were Ms. Constance Weiss, Supervisory Detention and Deportation Officer; Ms. Weiss' Assistant, Mr. Mike Rozos; Ms. Elena Stinson, Chief Government Counsel at Krome; Mr. George Waldroup, Special Assistant to the Miami District Director of the INS; Captain Joseph A. Kennedy, Jr., Chief of Detention; and Immigration Judges Foster and Villageliu. The delegation provided the Miami District Director and the Commissioner of INS with a copy of this report two weeks before the release date, along with a request for INS' comments for inclusion in the report. A copy of the delegation's request and the INS response is attached as Appendix II.

Delegates from Physicians for Human Rights inspected the Public Health Service ("PHS") unit, a health care facility located at Krome but operated by the United States Public Health Service independent of INS control. The physicians' group was permitted to randomly inspect records, interview personnel, and interview and physically examine several detainees.

Minnesota Lawyers Committee members observed exclusion proceedings conducted at Krome, interviewed immigration judges, and spoke with counsel for both the government and detainees. The joint delegation also arranged to conduct two full days of private interviews with individuals detained inside the facility. The INS initially granted permission for private interviews but, as detailed in Section III.D of this report, withdrew permission

midway through the visit before any such interviews were conducted. Thus the only private interviews with current detainees were those conducted by the PHR team members at the PHS clinic.

This report also draws upon affidavits sworn by detainees and gathered by their attorneys. Although the delegation received approximately 95 affidavits and statements of detainees and former detainees, the only affidavits cited in this report are those which relate first-hand experience and observation and are consistent with information contained in other affidavits. Unless otherwise noted, all affidavits were written and sworn while the detainee affiant was detained at Krome, and refer only to incidents reported to have taken place in 1990. For the protection of detainee affiants, some of whom are still detained at Krome, they are identified in this report only by random letters. Krome detention officers and other officials, many of whom are named in detainee affidavits and interviews, are accorded the same anonymity. While reliance on affidavits is less preferable than reliance on direct detainee interviews, the INS withdrawal of permission to conduct private interviews with detainees requires that the reports contained in the affidavits be given serious consideration.

Minnesota Lawyers Committee delegates were Mr. Howard S. (Sam) Myers III, a Minneapolis immigration attorney and President-Elect of the American Immigration Lawyers Association; Ms. Deepika Udagama, staff attorney with the Minnesota Lawyers Committee; and Ms. Polly A. Maier, a Minneapolis attorney. Physicians for Human Rights delegates were Ronald Schansky, M.D., Medical Director of the Illinois Department of Corrections, and Charles Rosenberg, M.D., Consultant, Health Systems Management Corrections Health Care, Miami. Michele Klopner, Psy.D., Director, Haitian Mental Health Unit, the Cambridge Hospital, Cambridge, Massachusetts, accompanied the mission as a consultant and interpreter.

This report was written by Ms. Polly A. Maier and Dr. Ronald Schansky, and was edited by Mr. Myers and Ms. Udagama. Editorial assistance in the structure of the report was also provided by Ms. Nancy Arnison of Physicians for Human Rights, and Mr. Peter Ackerberg, Mr. Wood Foster, Ms. Barbara Frey, and Professor David Weissbrodt of the Minnesota Lawyers Committee.

The Minnesota Lawyers Committee gratefully acknowledges the assistance of Adele O'Shaughnessy and the generous financial support of Popham, Haik, Schnobrich & Kaufman, Ltd. in the presentation of this report. Physicians for Human Rights acknowledges the indispensable financial support for this project provided by the John Merck Fund, the J. Roderick MacArthur and Aaron Diamond Foundations and the Fund for Free Expression.

I. SUMMARY AND RECOMMENDATIONS

A. Summary of the Report.

The Krome Avenue Detention Facility has been the subject of serious allegations of due process and human rights abuses which violate U.N. and INS standards, as well as applicable case law and statutory standards. The gravity of these reports is compounded by INS refusal to allow independent fact-finding by outside groups.

The fact that the Krome facility and the independently-operated Public Health Service facility appeared to be generally operated in a proper manner during the two days of the MLC/PHR visit demonstrates that the INS is capable of operating Krome in a way that respects the rights of the detainees and maintains order. There is no justification for failure to operate Krome properly on an ongoing basis.

1. Access by Outside Fact-Finders

Independent groups seeking to inquire into reports of misconduct at Krome are frequently denied direct access to detainees who could confirm or deny many of those reports. For example, after initially authorizing the MLC/PHR delegation to conduct private interviews with detainees, the INS subsequently revoked that permission and denied access to detainees midway through the visit.

2. Prejudice of Rights under U.S. Immigration Law

Information supplied by the INS, detainees, their attorneys, and direct observations by the delegation, suggest that INS procedures impede detainee access to legal counsel, thereby jeopardizing the substantive rights of detainees under U.S. immigration law. Specifically, INS officials fail to adequately inform detainees about opportunities for pro bono legal representation and refuse to allow others to so notify detainees. Telephone access at Krome is limited and fails to provide a reliable medium of client-attorney communication. Evidence suggests that one of Krome's Creole-speaking interpreters, who assists unrepresented Haitian detainees in completing immigration forms, has exercised independent discretion to add or subtract substantive information on immigration applications.

3. Physical and Sexual Abuse

Interviews with former detainees, as well as detainee affidavits, describe extremely serious incidents of physical and sexual abuse of detainees by detention officers as well as higher level administrators. INS officials refused to comment on allegations of physical and sexual abuse on the grounds that these allegations were the subject of an ongoing FBI/Department of Justice investigation.

4. Detention of Minors

INS, detainee, and community sources concur that minors have been brought to and detained at Krome, although there is disagreement as to the frequency and duration of their detention.

5. Health Care and Sanitation

The U.S. Public Health Service facility located at Krome but operated independent of INS authority provides adequate health care services to detainees. Staffing, facilities, and record-keeping meet contemporary standards and the PHS staff demonstrated competence and concern. The delegation's major health concern relates to inadequate sanitation in the bathroom of the male dormitory and in the kitchen and waste disposal area.

6. Grievance and Disciplinary Procedures

The delegation received consistent reports of arbitrary punishments and failure to follow existing internal grievance and disciplinary procedures. In addition, the lack of a disinterested outside appellate authority for adjudicating disputes between detainees and Krome officials, lends itself to abuses of authority by Krome officials.

7. Segregation

The delegation received several reports that solitary confinement and threats of such confinement were used in instances where detainees had committed minor infractions, or, in some cases, no infraction at all. Further, physical conditions in solitary confinement cells did not meet INS and international standards when inspected by the delegation, due to lack of adequate drinking water, unsanitary toilets, and nonfunctioning sinks.

8. Diet and Nutrition

Meals observed were ample, diverse, and nutritious. During the delegation's visit, detainees appeared to have adequate time in which to eat, although detainees have frequently complained that they were often rushed through their meals.

9. Dormitories and Recreational Facilities

The physical structure of the facility generally appeared safe, clean and orderly, and the delegation observed no apparent discomfort among the detainee population during its visit. However, detainees, former detainees, and community activists consistently reported that limited access to toilets and showers is a recurring problem.

10. Overcrowding

There was no indication that the facility's population exceeded its capacity during the delegation's visit. However, the delegation expresses concern regarding detainee reports that there is periodic overcrowding and that maltreatment by guards increases during such periods.

11. Transfers

Detainees have been transferred from Krome to distant facilities in Louisiana and Texas, isolating them from attorneys and other contacts in the Miami area. Affidavits describe transfers carried out in violation of advance notice and other requirements. While some transfers appeared to occur at random, others reportedly followed abuse of the transferred detainee in Krome. The delegation is concerned that transfers may be used to conceal abuses occurring at the facility.

12. Detention Officers: Training, Discretion, and Attitude

According to detainee, former detainee, and community sources, as well as observation by the delegation, many detention officers perform their duties properly, while others exhibit open hostility toward detainees. The lack of even quality among detention officers is exacerbated by the wide degree of individual discretion granted to the officers by the Detention Officers Handbook. The Handbook also contains discriminatory and otherwise objectionable procedures particularly in its provisions relating to detained homosexuals.

B. Recommendations to INS and the Krome Avenue Detention Facility.

The Minnesota Lawyers Committee and Physicians for Human Rights recommend that the Krome Avenue Detention Facility:

1. Allow independent human rights groups to enter the facility for periodic and unannounced visits, including confidential detainee interviews, to monitor human rights conditions in the facility.
2. Increase detainee access to attorneys by updating the list of free legal services and ensuring its distribution to all detainees. Allow legal services attorneys to educate detainees about legal programs and detainees' rights. Install at least fifteen additional incoming telephone lines by which attorneys and accredited representatives can communicate with their clients. Limit interpreters to performing appropriate interpreting functions only.
3. Cease any physical or sexual abuse by officials at Krome.
4. Cease any detention of minors at Krome.

5. Continue cooperation with the Public Health Service in its provision of quality health care, and more rigorously observe PHS sanitation guidelines. Ensure unobstructed access to the PHS facility for all detainees.
6. Develop and observe internal grievance and disciplinary procedures, establish an appellate authority outside the facility for adjudicating disputes brought by detainees or by Krome personnel, and re-establish informal internal grievance panels.
7. Conform the physical conditions of solitary confinement to INS and international standards, limit the use of solitary confinement to situations where it is clearly warranted under those standards, observe proper preliminary procedures, and appropriately limit the duration of solitary confinement.
8. Allow all detainees at least thirty minutes for each meal.
9. Permit adequate access to basic amenities such as toilets and showers.
10. Avoid any unnecessary over crowding at Krome through increased parole and cooperation with local alien assistance resources.
11. Cease any use of unwarranted transfers and transfers effected for the purpose of concealing detainee victimization. Follow proper transfer procedures where transfers are necessary.
12. Promptly investigate allegations of misconduct by detention officers and appropriately sanction officers found to be involved in misconduct. Rewrite portions of the Detention Officers Handbook that do not comply with international standards, with particular focus on minimizing the wide discretion currently allowed detention officers, and deleting or updating objectionable sections of the Handbook such as those relating to homosexuals.

II. INTRODUCTION

A. Background: Synopsis of Administrative Detention Law and Policy.

U.S. immigration law sharply distinguishes between aliens in exclusion and deportation proceedings for due process purposes. Aliens subject to deportation, i.e., aliens who have already entered the U.S., even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.²

An alien subject to exclusion, however, i.e., one who has not yet entered the U.S., has far fewer due process rights: "Whatever the procedure authorized by Congress is, it is due process as far as the alien denied entry is concerned."³ For example, the U.S. Supreme Court has approved indefinite detention of excludable aliens without judicial testing of the substantive merits or procedural validity of the detention order.⁴ Detention pending inquiry into entitlement to entry has been mandated for aliens "who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land."⁵ Under the so-called "entry doctrine" aliens who have reached a U.S. border but have not been formally admitted, even if they are in fact physically present in the U.S. (such as in a U.S. airport or INS detention facility), are processed as excludable aliens.

The policy of detaining aliens in exclusion and deportation hearings pending adjudication of their claims has shifted twice in this century. Prior to 1954, administrative detention of aliens, particularly potentially excludable aliens, was commonplace. With the 1954 closure of Ellis Island, however, the U.S. government announced its policy that detention of aliens was to cease, except in cases of aliens likely to abscond or who threatened national security or public safety.⁶ In 1958, the Supreme Court noted

² Kaoru Yamataya v. Fisher, 189 U.S. 86, 100-101 (1903).

³ U.S. ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 544 (1950).

⁴ Shaughnessy v. U.S. ex rel. Mezei, 345 U.S. 206 (1953).

⁵ 8 U.S.C. § 1225(b) (1952).

⁶ See generally, address of the Attorney General, November 11, 1984, reported in 32 Int.Rel. No. 12, "New Detention Policy of Immigration & Naturalization Service."

that this non-detention policy reflected the "humane qualities of an enlightened civilization."⁷

During the period of that policy, the INS processed the bulk of undocumented entrants without formal extended detention, utilizing sponsor programs in conjunction with non-governmental groups such as the National Council of Churches, through which the INS released aliens to sponsors and gave them work authorization. Between 1971 and 1981, for example, the INS routinely paroled many of the estimated 35,000-45,000 undocumented Haitians that arrived in the U.S.,⁸ many through sponsor programs.

U.S. alien detention policy shifted again with the Mariel Boatlift in the spring of 1980, which brought some 125,000 Cubans to the United States--mainly to Florida--within a number of weeks. At the same time, the flow of immigrants from Haiti that had begun in the early 70's reached unprecedented levels. The combined influx from the two countries strained resources in the southeastern U.S. and focused national attention on the issue of illegal immigration.

In March 1981, President Reagan appointed a task force to address the issue. That task force estimated that 3-6 million undocumented aliens were living in the U.S. The government's response included a general amnesty for undocumented aliens residing in this country since 1982, increased sanctions against employers of illegal aliens, stricter criminal penalties for harboring illegal aliens, and a crackdown on undocumented aliens themselves.

In the early 1980s, there was confusion regarding the role of detention in the administration's new policy. The INS began detaining aliens arriving by boat off the southern coast of Florida, without first following federal statutory procedures for promulgation of new administrative policies.⁹ During that period, low-level INS officials responsible for detaining and paroling aliens in detention facilities such as Krome exercised their discretion without any real guidance or supervision. In

⁷ Leng May Ma v. Barber, 357 U.S. 185, 190 (1958).

⁸ See generally Jean v. Nelson, 711 F.2d 1455 (1983), and Haitian Refugee Center v. Civiletti, 503 F.Supp. 442 (S.D. Fla. 1980).

⁹ Under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* (1966), an administrative agency is prohibited from adopting any substantive rule unless it first publishes notice of the proposed rule and provides interested parties an opportunity to comment. 5 U.S.C. § 553 (1966).

1983 a Florida federal court observed that "no one in the chain of command from the Attorney General to the immigration officers at Krome . . . admitted to ever receiving or giving guidance as to who should be free and who should be incarcerated. . . . Left without guidance as to how to implement an undefined policy, the immigration inspectors enforced the detention policy as if it was intended to apply solely, and uniformly, to Haitians."¹⁰

In 1982 a district court ruled that the detention policy was void and unenforceable due to failure to comply with notice and comment procedures in the Administrative Procedure Act.¹¹ Following that decision, the INS finally promulgated formal regulations allowing administrative detention of undocumented aliens pending determination of immigration status.¹² The U.N. High Commissioner for Refugees, however, has commented that these regulations violate the 1967 U.N. Protocol Relating to the Status of Refugees, and others have suggested that they violate the Refugee Act of 1980.¹³

B. Haitian Interdiction Agreement.

A 1981 agreement between the United States and the Government of Haiti, then headed by President-for-Life Jean Claude Duvalier, has shaped U.S. immigration policy toward Haitians over the past decade. That agreement, concluded amidst threats by the United States to cease economic aid to Haiti, allows U.S. interdiction of Haitian refugees on the high seas, and permits refugees to return to Haiti "without prejudice." In accordance with the agreement, the United States Coast Guard intercepts boats of Haitians on the high seas and tows them back to Haiti, or sinks boats that cannot be towed and brings Haitian passengers on board Coast Guard vessels. Officials conduct cursory exclusion hearings on board Coast Guard vessels.

Between 1981 and September 1989, more than 20,000 Haitians were returned to Haiti under this program, while only six were brought to the United States for adjudication of their asylum

¹⁰ Jean v. Nelson, 711 F.2d 1455, 1473 and 1482 (11th Cir. 1983).

¹¹ Louis v. Nelson, 544 F.Supp. 973 (S.D. Fla. 1982). See also n.9, supra.

¹² 47 Fed. Reg. 30,044-46 (1982), codified at 8 C.F.R. §§ 212.5 and 235.3 (1982).

¹³ See Helton, The Legality of Detaining Refugees in the United States, 14 N.Y.U. Rev. L. & Soc. Change 360 (1986).

claims.¹⁴ The \$30 million a year program reduced by more than 90 percent the number of Haitians entering the U.S. shores in small boats in 1989-90.¹⁵

The interdiction program has been marked by controversy. There are serious questions as to whether Haitians receive proper exclusion hearings on the high seas, far away from legal counsel. There are also reports that Haitians intercepted within U.S. territorial waters are treated as excludable aliens in these hearings, rather than being accorded the broader rights of aliens in deportation proceedings.¹⁶

In 1981, widespread denial of due process to aliens in both exclusion and deportation proceedings led to a 1981 consent decree forbidding the exclusion or deportation of Haitians applying for entry after May 1981 and detained in U.S. facilities at the time of the ruling, who were not represented by counsel.¹⁷

C. Overview of Krome Avenue Detention Center.

The Krome Avenue Detention Center opened in the early 1980s amidst controversy regarding illegal immigration, administrative detention, and interdiction on the high seas. Suspected excludable and deportable aliens are held at Krome pending hearings on their right to enter the U.S.

As of November 19, 1990, the day of the joint delegation's visit, the detainee census at Krome was approximately 520, approximately 70% of whom were males.¹⁸ The facility housed detainees of 35-40 nationalities, with approximately 320 Haitians, 75 Chinese, and the balance a mixture of other nationalities. Approximately 80-90% of detainees were in contested exclusion proceedings, most involving asylum claims. The majority had been apprehended at the airport with documents believed by INS officials to be fraudulent. Others had been seized within the

¹⁴ Refugees at our Border: The U.S. Response to Asylum Seekers, 13 The U.S. Committee for Refugees, September 1989.

¹⁵ "Patrols Keep Haitians from U.S.," Sun-Sentinel, 6A, Friday, May 18, 1990.

¹⁶ For a thorough discussion of the Haitian interdiction program, see Refugee Refoulement: The Forced Return of Haitians under the U.S.-Haitian Interdiction Agreement. Lawyers Committee for Human Rights, March 1990.

¹⁷ Louis v. Meissner, 530 F.Supp. 924, 930 (S.D. Fla. 1981).

¹⁸ But see Section III.B.7. Other Krome officials provided delegation members with contradictory population figures.

territorial waters of the U.S. The population also included many Haitians apprehended under the high seas interdiction program.

Approximately 125 INS employees, including approximately 75 detention officers, staffed the Krome facility at the time of the MLC/PHR visit.¹⁹ Department of Justice employees including immigration judges, government counsel, clerks and interpreters also work at the facility. Approximately 30 Public Health Service employees staffed the medical clinic located in the Krome compound. In addition, approximately 30 teachers employed by Dade County work at Krome.

Krome was never intended to be a "long-term" detention facility. In 1981, the U.S. Attorney General and the Commissioner of the INS testified before Congress to that effect.²⁰ Despite congressional intent, Krome officials say that the facility often holds detainees for eight months or longer pending adjudication of their cases.

Krome has, at times, held alien felons along with the facility's general population. In October 1985, over 40 felons escaped from the facility. INS immediately announced its intent to remove felons from Krome, but by 1986, had failed to do so. In 1987, Congress passed legislation prohibiting the use of federal funds to detain alien felons at Krome unless the INS took measures to increase security by February 28, 1988.²¹ According to the INS, the last felons were removed by February 1988, and Krome currently houses no felons.

As detailed in this report, Krome has been the subject of serious and consistent allegations of physical and sexual abuse, as well as denial of due process to aliens in immigration proceedings. The FBI, supervised by the Department of Justice,²² is currently investigating charges of sexual and physical abuse.

¹⁹ Starting salaries for detention officers, set at approximately \$17,500, are lower than the salaries for metro police and Dade County and Florida State detention personnel.

²⁰ See Chiles v. Thornburgh, 865 F.2d 1197, 1201 (11th Cir. 1989).

²¹ Pub. L. No. 100-202, 101 Stat. 1329-12 (1987).

²² The INS has cited the FBI/Department of Justice investigation as justification for denying full access to the facility by the MLC/PHR delegation and other independent monitoring groups. In response to the MLC/PHR delegation's requests for a written directive indicating that the FBI investigation precludes visits by independent monitoring groups, Mr. Wayne L. Joy, Acting District Director of the INS in Miami, explained in a February 1, 1991 letter to the MLC that there is no such written directive. Rather, he said there is a "general policy of the

Department/Agency not to comment about issues if/when there is an ongoing investigation."

III. FINDINGS

A. Due Process.

1. Access to Legal Counsel.

Practices and policies at Krome impede detainee access to legal counsel, thereby jeopardizing the detainees' ability to pursue their substantive rights. The delegation is particularly concerned about three areas: failure of the INS to provide adequate information about available pro bono representation; inadequate telephone access to attorneys; and marginal respect for attorney/client confidentiality and privacy at the facility.

a. Information Regarding Pro Bono Representation.

Detainees derive a number of rights involving legal counsel from both federal law and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter "U.N. Principles" or "Principles"). Aliens in exclusion proceedings have the right to receive a list of free legal services.²³ A 1983 federal court decision upheld the right of the Haitian Refugee Center, a Miami provider of legal services, to inform detainees of pro bono resources. That court held that subject to "reasonable restrictions necessitated by the requirements of security and management of the prison community," legal counsel may inform individuals of their legal rights when doing so "as an exercise of political speech unaccompanied by expectation of remuneration."²⁴ This case comports with N.A.A.C.P. v. Button,²⁵ which struck down on First and Fourteenth Amendment grounds a Virginia statute that prohibited N.A.A.C.P. lawyers from distributing intake sheets to prospective recipients of the organization's free legal services, on the grounds that such distribution constituted "solicitation." In addition, a 1981 consent decree forbade exclusion or deportation of Haitians detained in INS facilities at the time of the ruling who were not represented by counsel.²⁶

The U.N. Principles affirm the right of detainees to legal counsel (Principle 17(1)). A detainee who lacks counsel is entitled to counsel assigned by a judicial or other authority "in all cases where the interests of justice so require and without

²³ 8 C.F.R. § 236.2(a) (1990).

²⁴ Jean v. Nelson, 711 F.2d 1455, 1509 (11th Cir. 1983).

²⁵ 371 U.S. 415 (1963).

²⁶ Louis v. Meissner, 530 F. Supp. 924 (S.D. Fla. 1981).

payment by him if he does not have sufficient means to pay." (Principle 17(2)). Further, detainees must be informed of their right to counsel (Principle 17(1)) and of their other rights as detainees (Principle 13).

Ms. Elena Stinson, government counsel at Krome, indicated to the delegation that detainees receive adequate information about pro bono representation. According to Stinson, detainees have three opportunities to receive a list of free legal services: first, when they are taken into detention at the airport; second, at the processing center at Krome; third, at the master calendar hearing. According to Ms. Stinson, this list is updated annually by the Executive Office of Immigration Review, and contains names of organizations and private practitioners who have requested inclusion.

There is some question, however, whether most detainees actually receive the list. Detainee affidavits repeatedly describe cases in which the affiant did not receive a list of available legal services.

Moreover, there is compelling evidence that the list that is sometimes provided is outdated to such a degree as to be useless. Ms. Stinson provided the delegation with a list of 16 organizations that she represented as a list routinely given to detainees. Of the 16 organizations listed, only three were both willing to provide free legal services to qualifying Haitians (the majority of Krome detainees), and were also accessible by telephone through reasonable efforts. When contacted by telephone in December 1990, three organizations on the list said that they did not represent Haitians; three telephone numbers had been disconnected; one number was listed incompletely; one number was answered only by a recording asking the caller to leave a message; and one required a \$20 "donation." There was no answer at two of the numbers, despite repeated attempts to call at various times of different days. The two remaining organizations on the list told callers to call at another time after three calls were placed at various times on different days.

It would seem that few detainees, many of whom do not have strong English skills, would be able to negotiate this obstacle course and locate appropriate counsel on the basis of the list provided by the INS. Some of those obstacles are outside INS control; yet the fact that so few of the organizations on the list are actually available to perform services seriously undermines the INS contention that provision of the list satisfies INS' duty under federal law, common law, and the U.N. Principles to inform detainees about available free legal services.

Finally, local attorneys are not permitted to exercise their common law and Constitutional rights to advise detainees of their availability. For example, since late 1988 the Haitian Refugee Center, Inc. ("HRC"), has persistently attempted to obtain

permission to distribute an intake sheet to Haitian detainees to determine which detainees qualify for their assistance. Their initial request was denied on the grounds that distribution of the intake sheet would constitute "solicitation." According to HRC attorney Cheryl Little, subsequent requests have been denied or have simply gone unanswered. Similarly, the INS has refused to allow HRC attorneys to address detainees en masse regarding their legal rights. This violates the spirit and the letter of both Jean v. Nelson and N.A.A.C.P. v. Button, as well as the detainees' informational rights regarding representation under the U.N. Principles.

b. Telephone Access to Counsel.

Adequate telephone access is crucial to supporting the substantive rights of detained persons. The Detention Officers Handbook ("Handbook") permits detainees "reasonable use of the telephone to communicate with attorneys, relatives, and friends." (p. 12-4). In a 1989 settlement, the INS agreed to improve telephone and other communication systems at Krome to ensure better detainee access to counsel.²⁷ More broadly, U.N. Principle 15 states that "communication of the detained or imprisoned person with the outside world, and in particular with his family or counsel, shall not be denied for more than a matter of days." U.N. Principle 18(1) specifically provides for communication and consultation with legal counsel.

The joint delegation observed that both men's and women's living quarters contained a number of telephones that were unobstructed and apparently in use or working order during the visit. According to INS officials, two lines are reserved for incoming attorney calls. However, none of the telephones in the men's area could receive incoming calls, and none could be operated with coins. Detainees were therefore only able to make outgoing collect calls.

In brief conversations with mission members during the facility tour, detainees indicated that telephones had been repaired shortly before the delegation arrived at the facility. This is consistent with complaints by local attorneys, as well as reports in detainee affidavits, suggesting that unobstructed access to working telephones is not the norm at Krome. As of September 25, 1990, according to one detainee affidavit:

Nearly half of the telephones are broken, and the ones that work are not sufficient given the number of detainees and the fact that only at certain times are we allowed to make phone

²⁷ Michel v. Milhollan, 89-1040 Civ. Nesbitt (D.C. Fla. 1989).

calls. Sometimes the male detainees are permitted to make phone calls by section, and sometimes everyone is allowed to call at once. At times you can stand in line and never get a chance to make a call because time runs out. Other times you may have to wait over half an hour to make a phone call. If you get to the telephone you only have five minutes at most to talk because others are waiting to make calls.

(Affidavit of Detainee P, September 25, 1990).

Of particular concern is an apparent pattern of denial of telephone access to the outside following disturbances at Krome. One detainee, whose allegations are typical of other detainee complaints regarding lack of access after disturbances, reported several incidents of telephone restriction and added that:

On several occasions we are not allowed to use the phone. For example, today October 17, 1990 because _____ [a detainee] tried to kill himself we have no access to the phone. Today we wanted to use the phone to let the outside know what is going on but the phones were cut off.

(Affidavit of Detainee F, November 18, 1990).

Finally, all telephones were situated in public areas and in banks affording detainees little, if any, privacy. This is objectionable in light of the sensitive topics detainees often must discuss by telephone, and the ease with which more privacy could be provided.

c. Attorney-Client Confidentiality.

The Handbook provides for meetings in "private rooms" between detainees and attorneys and specifies that "attorneys are not permitted to come in contact with aliens other than those they represent." (p. 12-2). U.N. Principle 18 requires adequate time and facilities for confidential communication with counsel. It prohibits censorship, delay, aural monitoring, and suspension of communication under most circumstances.

Attorney-client conference space consists of 5-6 cubicles separated by ordinary office cubicle dividers with doors on to a common hallway. The attorney's cubicle is separated from the client's cubicle by a wall with a square, barred opening through which it is possible to speak or exchange documents.

Attorney conference rooms are available between 6:00 a.m. and 10:00 p.m. According to the INS, there is no time limit on

duration of conferences, although attorneys are discouraged from holding conferences for several hours, and attorney-client interviews are not monitored by any means.

Miami immigration attorneys who use the facility regularly complain that the booths are constructed in such a way as to preclude privacy because sound carries very easily into adjoining booths and it is often impossible to whisper with interpreters and clients unfamiliar with English. According to Joan Friedland, a Miami attorney who regularly represents clients at Krome, this presents particular difficulties for clients who are discussing sensitive topics such as fear of persecution with their attorneys. Further, space in the attorneys' cubicle is barely sufficient to accommodate both an attorney and an interpreter.

Although the booths afforded some degree of privacy, the delegation's on-site observation confirmed that attorneys and clients must speak in very low tones in order not to be overheard in the next cubicle. The physical arrangement tests the limits of the Handbook requirement of a private room, as well as international standards for confidential attorney-client communication. While the delegation was unable to verify whether booths were monitored electronically or by other means, it observed no evidence of electronic monitoring during its visit.

2. Handling of Detainees' Documents.

Substantial disparity exists between the Krome policy and the reported practice in handling detainees' documents. According to Krome Post Order procedures for Processing Officers, as well as information provided the delegation by the administrative staff, incoming detainees are processed at the intake section of the facility where their belongings are taken, stored and recorded by receipts. Where detainees have documentation, all documentation is to be placed in the detainee's file. On Sundays detainees have access to their belongings, including documents, which are stored in a warehouse.

Practice, however, appears to deviate from official policy. When the delegation interviewed Krome personnel responsible for processing documentary property of aliens, the staff exhibited some initial confusion. Eventually, however, they agreed that all documentary material, particularly that believed to be fraudulent, was taken and placed in the alien's immigration file. Statements from former and current detainees allege frequent loss and intentional destruction of their papers, particularly those which may support their claims. For example, a former detainee interviewed by the MLC alleged that his documents were taken and never returned and that he witnessed detention officers throwing other aliens' documents, including documents supporting potential immigration claims, into trash bins. (Interview of Former Detainee O, November 18, 1990.)

These allegations, along with the staff confusion witnessed by the delegation, raise concerns that INS personnel may be mishandling alien documents and failing to observe Post Order standards, resulting in interference with aliens' ability to prove their claims for benefits under U.S. immigration law.

3. Translation Assistance.

U.N. Principle 14 provides that persons who do not understand or speak the language used by detention and other authorities are entitled to receive key information related to their arrest in a language they understand; they are also entitled to have the "assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings." U.S. law affirms that persons acting as interpreters in hearings before immigration judges shall be sworn to interpret and translate accurately.²⁸

Krome provides interpreters to detainees to translate government forms for detainees who cannot afford attorneys or who do not qualify for free legal services. Government interpreters are also present at hearings to translate testimony and court proceedings. Krome's translation assistance has received strong judicial criticism in the past, particularly with respect to Creole translators in Haitian immigration proceedings.²⁹ One Creole-speaking interpreter in particular has been the target of several allegations of mistranslating or otherwise interfering with information detainees provide for him to translate for English immigration forms. Several detainees and their attorneys allege that he has advised detainees to omit from their application forms key information that would be helpful in pursuing their relief under immigration law. Attorney Esther Olavarria Cruz, for example, who has represented detainees at Krome, explains that the interpreter has no formal asylum training, and fails to explain questions to detainees. According to Ms. Cruz, detainees therefore misunderstand questions and do not provide information which could support an asylum claim, although once the terms on the forms are defined, many detainees do present information relating to the well-founded fear of persecution required for a showing of asylum entitlement. She cites as an example two of her asylum clients at Krome who had

²⁸ 8 C.F.R. § 242.12 (1987).

²⁹ See Augustin v. Sava, 735 F.2d 32, 35 at n.5 (1984) ("Our court is not the first to be concerned with the ability of Creole translators in Haitian immigration proceedings."); Jean v. Nelson, 711 F.2d 1455, 1463 (11th Cir. 1983), vacated 727 F.2d 957 (11th Cir. 1984) (en banc) ("Overwhelming evidence established that Creole translators were so inadequate that Haitians could not understand the proceedings nor be informed of their rights.").

5. Outcome of Parole and Asylum Proceedings.

Parole is the legal status whereby an unadmitted alien is released from administrative detention pending determination of admissibility in an exclusion hearing. A paroled alien is still not considered admitted to the U.S., although he is physically present in the country.³⁴ There is no mandatory right to parole in lieu of detention. In 1983, a federal court held that Haitian detainees at Krome had been discriminatorily and impermissibly denied parole. The court ordered relief including the continued parole of Haitians, record-keeping for purposes of insuring non-discriminatory parole in the future, and an injunction against discriminatory enforcement of the detention policy.³⁵

Krome Supervisory Detention and Deportation Officers Weiss and Rozos occasionally conduct discretionary parole hearings.³⁶ Their determinations are appealable, as a matter of discretion, to Assistant District Director Powers in Miami. The regulatory criteria for parole, typically with an associated bond between \$1,000 and \$2,500, are based primarily on humanitarian factors such as youth, pregnancy, close family relations in the area of detention, old age, or illness. According to Krome officials, parole is granted in approximately 20-25% of the cases in which it is requested by aliens of all nationalities in exclusion proceedings at Krome. According to INS statistics, 80-85% of paroled aliens abscond, and Krome officers expressed reluctance to grant parole in view of this statistic.

INS figures show that from September 1 to November 30, 1988, 156 of the 165, or 95%, of the Cubans at Krome were paroled. In contrast, of the 534 Haitians at Krome, only 33 were paroled. This represents only 6% of the detained Haitian population.³⁷ Ringo Cayard, President of the Haitian-American Foundation, said in an interview with the delegation that although Haitians, like Cubans, often have relatives in the Miami area, the Haitians' lesser political clout in the area renders them less able to press for parole.

³⁴ 8 U.S.C. § 1182(d)(5) (1952).

³⁵ Jean v. Nelson, 711 F.2d 1455 (11th Cir. 1983).

³⁶ Pursuant to standards set forth at 8 C.F.R. 212.5 (1990).

³⁷ Letter of Ms. Margaret Snyder, FOIA/PA Specialist, U.S. Department of Justice, Immigration and Naturalization Service, May 22, 1989.

Similarly, at Krome and elsewhere in the U.S., Haitians are rarely granted political asylum, that is, the right to enter the U.S. based on persecution or a well-founded fear of persecution. Nationally, less than 1% of Haitian asylum applicants annually are granted asylum.³⁸ Fewer than 60 Haitians were granted asylum between 1981 and 1989.³⁹ U.S. District Judge Eugene Spellman issued an opinion in the summer of 1990 in the case of a Haitian asylum applicant who was not informed by the INS that free legal services were available to him, noting that "Repeatedly, this court and other federal courts have found that INS has engaged in illegal practices and policies with respect to Haitians," and has singled out Haitians for "special discriminatory treatment."⁴⁰ In general, according to Krome personnel, of the total detainees at Krome who apply for asylum at Krome, no more than 5% ultimately receive asylum status.

B. Conditions of Detention.

1. Physical Abuse.

International and INS standards prohibit physical mistreatment in detention facilities. U.N. Principle 1 requires that all detained persons be "treated in a humane manner and with respect for the inherent dignity of the human person." U.N. Principle 6 prohibits "cruel, inhuman, or degrading treatment or punishment." A related provision, Principle 8, requires that persons in detention be "subject to treatment appropriate to their unconvicted status." In addition, the Detention Officers Handbook is replete with provisions proscribing physical abuse.

INS officials cited the ongoing FBI investigation as reason for refusing to answer any questions regarding allegations of physical abuse at the facility. (See supra, note 22). As a consequence, reports of ongoing physical abuse at the Krome facility were not rebutted by INS officials in the course of the MLC/PHR fact finding visit. Furthermore, because the INS revoked its permission for delegates to interview detainees personally, the delegation was unable to confirm or dismiss the allegations, which are presented below.

The most serious allegations concern physical brutality by detention officers and higher-level administrators, verbal abuse, and the threats and use of unwarranted confinement in isolation.

³⁸ Helsinki Watch, Detained, Denied, Deported: Asylum Seekers in the United States, App. (1989).

³⁹ Id.

⁴⁰ Molaire v. Smith, 743 F.Supp. 839, 850 (S.D.Fla. 1990).

Reverend Luc Dessieux of the United Methodist Church told the delegation that near the time of the MLC/PHR mission, a female detainee reportedly was abused by detention officers and a higher-level Krome official after she threatened to jump from a tree at Krome. A detainee witness described the incident as follows:

During the first week of November [1990], another problem happened at Krome that was very upsetting. There was a Haitian woman who had asked to return to Haiti a long time ago but had not been sent back. She became very upset. She took off her uniform and climbed a tree. All the other women and the men that were going to the cafeteria became upset. When I came I saw that two female officers trying to put handcuffs on the woman. Two male officers came and started to rough up the woman. One of these male officers is a Haitian named _____, the other one is Jamaican. The officers put the handcuffs on the woman very tightly. The woman was crying. She was on the ground and began to roll over. One of the female officers put her foot on the woman. The woman rolled over again and the officer lost her balance and fell to the ground. One of the male officers then grabbed the woman by the handcuffs and lifted her up. The woman started screaming from pain. The detainees who were watching this started yelling at the officer that he should not mistreat the woman like this. Some of the Haitian detainees wanted to talk to the woman to calm her down. The woman fell down to the ground again. _____, one of the supervisors then came and sat on top of the woman. He pressed his forearm to the woman's neck to push her head to the ground. All the detainees started to scream when they saw _____ on top of this woman. We were all ordered inside the building. A Haitian detainee started yelling you can't do that to the woman. A male officer whose name I think is _____ hit the Haitian detainee who was yelling. This Haitian guy hit the officer back so he was taken away to isolation. _____ [the supervisor] then said that if you hit an officer you will be put in prison like a criminal for a few years.

(Affidavit of Detainee M, November 28, 1990).

Another incident also alleged to have taken place near the time of the delegation's visit, is described as follows:

On November 27, 1990, around 6:30 p.m. . . . the Supervisor stopped me at the cafeteria and grabbed me by the shirt. Officer _____ held me by the arm. I asked them to release me again. Officer _____ started to curse at me saying "when I fucking talk to you, you have to understand what I tell you. This is not your fucking country." Officer _____ grabbed my right hand and struck it against a mailbox. Officer _____ took me to the cafeteria and told me to turn my back against the wall and not watch him. I did this because I did not want any problems. He next walked me across to the courtyard where I was questioned. I told the officers that they did not have the right to treat me like this. I told them I can speak English, Creole and other languages. Officer _____ said he "did not care who the fuck I was." He asked me for my worker ID [sic] and my card number. I told him I was going to call my lawyer. He said he did not care.

I was taken to PHS [Public Health Service] to have my hand checked and get my belongings. Then I was taken to isolation. I have been in isolation since that time. Everyday [sic] I ask when I will be released. I have a bad cold, my nose is congested and it is very cold in the isolation cell. The supervisor _____ told me I am lucky to have clothes on me because they could have stripped me.

(Affidavit of Detainee Y, November 29, 1990).

One detainee, according to his affidavit, was taken by two officers to an isolation cell around 4:00 one morning with no explanation. He stated that:

I started to take off my shirt, because it looked like that's what they wanted. When I had it half over my head, so I couldn't see and my arms were tangled up, one or both -- I couldn't really tell, because of my shirt --

shoved me sideways, so I slid down the wall of the cell. I got kicked, too. Somebody punched me in the ribs. When I landed on the floor, my shirt had slipped so I could see. I saw [Officer] _____ lift his foot and then he stepped on my head. He set his foot near my left ear and pressed. Then they took my wallet, address book, and little Bible out of my inner shirt pocket . . . Maybe I lay [sic] on the floor three minutes, but then they made me stand facing the wall, with my arms out. That's when this supervisor said, in Spanish, "If you make me mad, I'll break your face." I don't know if he thought I understood or not.

(Affidavit of Detainee H, July 13, 1990).

A former detainee related by affidavit an incident which took place in May of 1990:

I was assaulted by two guards at Krome. At about 11:00 A.M., I was awakened by a guard who grabbed my blanket. I was sleeping at that time because I had been unable to sleep the night before due to the noise in the dormitory where I was confined . . .

The guard, whose name I do not know, swore at me in English. I speak very little English, but I understood the words "mother fucker" and "son of a bitch." The guard ordered me to clean the dormitory. I asked why I had to clean.

The guard then threw me down on the bed. I got up and asked what was going on. I put my hands up to protect myself. The officer then closed the doors and went to look for his supervisor, whose name I also don't know. They talked with each other.

The guard and his supervisor then took me to the isolation section at Krome. They held me there for about a half hour. One of them twisted my arm. The other kicked me in the ribs. I didn't say anything to them.

The guards told me that if I complained about what had happened, they would put me in isolation.

They then took me out of the isolation section.

(Affidavit of Former Detainee K, October 19, 1990). This detainee relates that the incident ultimately was investigated. He was questioned by various officials at Krome concerning what happened, photos and x-rays of his injuries were taken, and he was confined for his own protection at the PHS until he was released from Krome. (Affidavit of Former Detainee K, October 19, 1990).

Another detainee alleged in an affidavit that he was pushed and hit by an officer after he stood in line with a section other than his own to enter the cafeteria, because he had been delayed working at his job at the facility's laundry. According to the detainee, when the officer later met the detainee in isolation, the officer "tried to strangle me. I screamed and made a lot of noise. Other officers came in and took [the officer] out." (Affidavit of Detainee W, August 2, 1990).

Approximately four affidavits of female detainees corroborate reports of an incident in mid-February, 1990, in which female detainees were forced to clean the walls, floors and windows of a compound building very late into the night. The next morning, they were told to pick up garbage in the compound yard, and when the papers were picked up, a guard ordered the detainees to pick up sharp rocks without gloves. That incident followed a reported altercation between a Cuban female detainee and a female detention officer in which the detention officer physically threatened the detainee.

Affidavits of scores of current detainees, as well as interviews with former detainees, yielded consistent descriptions of another form of physical abuse: denial of access to toilets. Krome Post Orders require that restrooms be locked "when preparing for [detainee] feeding," and before and during the headcounts required by the Post Orders at 6:00 a.m., 6:00 p.m., 8:00 p.m., and midnight. The same section of the Post Orders requires detention officers to inform the detainees in the section one half hour prior to headcount that the restrooms will be closed within 15 minutes. (Bldg. 8 Section Officers Day Shift Post Orders, and Bldg. 2 Dorm Officers Post Orders).

According to detainees, however, they have frequently been denied access to bathrooms for periods exceeding those brief periods mandated in the Post Orders, and have been forced to use soda cans, shampoo bottles, or towels to relieve themselves. One detainee, for example, reports that detainees are "very often" locked in their sections from after breakfast until 2:00 p.m., and that while they are locked in, detainees are "forced to use a 'soda can' to urinate because the bathroom is locked." (Affidavit of Detainee F, October 18, 1990).

At least one source links such abuse to disturbances at the facility:

When there are demonstrations outside Krome they always lock everyone in the dormitories and close the bathrooms. The guards open up the bathroom for the detainees and let them go in groups of two. But because of the wait many detainees can't hold it in and urinate in the section.

(Affidavit of Detainee P, September 25, 1990). Others link denial of access to bathrooms to headcounts:

When the guards are doing head counts sometimes we suffer, while they are counting they lock up the bathroom [sic], we have to wait until the completion of headcount to use the bathroom [sic]. This takes time, because if the officer miscount than [sic] he has to start all over, sometimes it may take the guard 3 or 4 time [sic] of starting over in order to get the right count. Headcount is after the evening meal. The time varies depending on the guard. It may take 30 mins. It may take one hr. or 2 hrs.

(Affidavit of Detainee E, November 28, 1990). A female detainee relates an incident when bathrooms were locked during a headcount:

Sometimes they repeat headcount over and over, for example, they lock the bathroom when they do that. There were these two women who begged _____ [a detention officer] to let them into the bathroom during one of those -- they just had to. She wouldn't. They had to relieve themselves in a soda can, and then she told them how filthy they were and made them scrub the bathroom.

(Affidavit of Detainee T, February 28, 1990). In addition, Reverend Luc Dessieux of the United Methodist Church has spoken with detainees who report that officers sometimes lock detainees inside bathrooms as a form of punishment.

2. Sexual Harassment.

International and INS Standards preclude sexual abuse or harassment of detained persons. Sexual harassment violates U.N. Principles 1 and 6 (quoted supra, Section III.B.1.), and the Detention Officers Handbook and Post Orders generally require standards of conduct by all INS employees who come in contact with detainees that preclude sexual abuse.

Citing the ongoing FBI investigation into allegations of sexual abuse at Krome, INS officials have refused to discuss

allegations of sexual abuse with the delegation. As a consequence, these reports were not rebutted by INS officials in the course of the visit. Furthermore, the INS revocation of permission for the delegation to interview detainees personally prevented the delegation from confirming or denying reports of sexual abuse.

Among the more serious allegations of abuse at Krome are persistent reports of sexual harassment of female detainees by detention officers and other Krome employees. For example, a former detainee alleges in her affidavit:

[O]ne Sunday in September, 1989, I was brought to Mr. _____ 's office. Mr. _____ is a guard at Krome. Once I got there, Mr. _____ told me that he called me because he missed me and wanted to see me and have my friendship. I told Mr. _____ I didn't understand what he was saying, because I was uncomfortable.

Mr. _____ often told me that he liked me, implying that he wanted more than friendship. . . .

Shortly before I was released [November 1989] a Krome guard by the name of _____ came around and touched a lot of the women who were in line to go to the cafeteria. He touched their back, their shoulders, their heads and tried to kiss them. One woman slapped him when he did this. . . .

I often told the other Haitian women, especially the ones who had just arrived, not to let the officers abuse them because I know the officers like to do that. . . .

If an officer at Krome likes a female detainee then he just arranges to have her sent to PHS, which is where they keep the detainees who are sick, and they meet them there.

The Krome officers often told the male detainees at Krome that they had sex with the female detainees. They bragged about this and laughed and thought it was real great.

(Affidavit of Detainee D, January 23, 1990).

Approximately five female detainees reported that detention officers and other Krome employees promised to influence the immigration status of female detainees if they would comply with their sexual demands. Female detainees who refused were threatened. In an interview with the MLC, Janine Todaro, a former teacher at Krome through the Dade County Public School System, said that she frequently witnessed male detention officers touching female detainees in sexually offensive manners. At least 25 of her female detainee students told her that they had had sexual relations with detention officers who promised to secure their release from Krome. Todaro said that additional students told her that they had resisted sexual advances from officers representing that they could influence their immigration status, and these detainees feared that they would be deported as a result.

Another form of sexual harassment is described in at least four detainee affidavits. One witness stated:

The weekend of the 10th [of February, 1990], after they had some of us clean the bathroom, they called all of us women into the bathroom to make fools of us and they did. Around 10:00 at night, they got a Haitian male prisoner here, like us, and told him to tell us what to do with our kotex. He spoke English so he translated into Creole what we were supposed to do. When he was doing this, all the guards, mainly men, laughed real hard at us. We were embarrassed by this, and I know I was real humiliated. The Haitian prisoner who was telling us this also looked embarrassed, he wasn't laughing either.

(Affidavit of Detainee B, February 28, 1990). In addition, female detainees cited a general shortage of Kotex and threats by detention officers to withhold them as a form of punishment.

Allegations of sexual abuse at Krome continue to emerge. A female detainee reported in March of 1991 that she was raped and forced to perform oral sex by a Krome detainee officer on January 23, 1991.⁴¹ The woman, whose affidavit and medical reports were provided to the MLC delegation, was eventually paroled, although the detention officer suspected of the rape continued to work at Krome for at least two months after the alleged rape occurred. According to the detainee, she told Krome medical personnel about the incident within two days. Medical personnel then took blood and urine samples but did not conduct a gynecological examination.

⁴¹ "Guard accused of rape," Miami Herald, March 28, 1991, 1B.

3. Detention of Minors.

Krome Post Orders' only provision for minors requires that when the smaller barracks in the PHS are occupied by minors, adult female detainees, who normally await medical attention there, should wait instead in the PHS lobby. (PHS-1 Post Order).

INS officials stated that unaccompanied minors are segregated from adults upon arrival at Krome. Accompanied minors remain with their accompanying adult. According to the INS, minors are rarely, if ever, detained at the facility for more than 24 hours. Minors are placed instead in voluntary facilities throughout the Miami area.

The American Friends Service Committee Immigration Law Enforcement Monitoring Project collected the statements of two minors who were detained at the Krome Public Health Service Facility early in 1990. A detainee affiant alleged that there were "four or five who are fifteen or sixteen years old" in Krome as of February 1990. (Affidavit of Detainee N, early February 1990). Another detainee affidavit states that

This place really affects kids. There's at least one here right now. His name is _____, and he came on the same boat I did. He says he is seventeen and he looks it: very young and small. They had him in Boys' Town for twenty-two days and then they sent him back here. They couldn't decide about his teeth or something.

(Affidavit of Detainee J, early February, 1990).

4. Grievance and Disciplinary Procedures.

The Detention Officers Handbook sets out grievance procedures to be observed at the facility. The Handbook requires each detention officer to "submit all complaints and suggestions in writing to his supervisors" (p. 2-5), to "bring complaints from aliens, orally or in writing, to the attention of his supervisor without delay, and advise the alien that this has been accomplished" (p. 2-5), and always to "remember that he cannot be arresting officer, prosecutor, jury and judge. He should submit his report then forget it and hold no grudge" (p. 9-14). Krome Post Orders generally direct officers to "make every attempt to secure an answer" to case-related questions raised by detainees (Bldg. 11 Dorm Officers Post Orders and Bldg. 8 Desk Officer Post Orders).

These procedures generally comport with U.N. standards, but are less detailed and stringent than those standards require. U.N. Principles limit detention authorities to

exercising "only the powers granted to them under the law" and mandate that "the exercise of these powers shall be subject to recourse to a judicial or other authority" (Principle 9). The U.N. Principles also require that conduct constituting disciplinary offenses at a detention facility, as well as associated punishments, be specified and published (Principle 30(1)). Furthermore, detainees have the right to be heard before being subjected to disciplinary action, to appeal such action to higher reviewing authorities (Principle 30(2)), and may make confidential complaints to appropriate authorities regarding treatment at any time (Principle 33). Finally, they may appeal rejected complaints before a judicial or other authority (Principle 33(4)).

INS officials describe the grievance/disciplinary panel system in effect at the facility as follows: All detainees receive a disciplinary guide, available in three languages, describing internal disciplinary processes. Detention officers or detainees may file a written grievance, which is reviewed by a three-member panel consisting of one randomly-selected non-detention staff officer, the Assistant Supervisory Detention and Deportation Officer, and the Chief Detention Officer. This grievance panel reviews the conduct of the party against whom a complaint is made in order to determine whether to take action. Appeals from the grievance panel are taken to Constance Weiss, the Supervisory Detention and Deportation Officer at Krome. According to Ms. Weiss, there have not been any appeals beyond her.

According to the INS, disciplinary action is taken within 24 hours of an alleged infraction. Where the accused is a detainee, action may consist of revocation of privileges such as access to vocational training and recreational facilities. More severe punishment for detainees includes solitary confinement or transfer from the facility.

In addition to the troublesome fact that Krome grievance procedures fall short of U.N. standards, the delegation received reports that Krome officials do not even observe the INS grievance procedures that are in place. A former detainee interviewed by the delegation, for example, reported that one detention officer collectively deprived detainees of telephone privileges as a punishment for failing to clean the toilets to the officer's satisfaction. (Interview of Former Detainee 1, November 18, 1990). The same former detainee also reported that one detention officer threatened collective food deprivation in response to a dispute between two female detainees.

Detainee affidavits raise additional concerns that the grievance procedure, particularly the composition of the grievance panel, may discourage a fair hearing of detainees' claims. For example, a detainee describing the aftermath of an altercation with a detention officer states that:

When I woke up the next morning, November 28, 1990 I found a paper in my [isolation] cell called a disciplinary incident report. An officer explained what the paper said that I refused to obey an order [sic]. I was later given another sheet of paper which said I was being charged with disrespect and disobeying an officer. I was told that I was entitled to a hearing. I did not want to go to a hearing because it would be two officers against me. I felt that if I went to a hearing I would not get my bond reduced either. I signed the sheet of paper because I felt I had no choice.

(Affidavit of Detainee Y, November 29, 1990). A similar statement by another detainee alleges that following an incident during which he was beaten by a detention officer, he was put in isolation, where three officers brought him a paper and urged him to sign it without telling him what the paper said. One officer told the detainee "if I didn't sign that he would give the judge another piece of paper that would make it worse for my political asylum case." (Affidavit of Detainee W, August 2, 1990). Both incidents violate U.N. standards prohibiting taking "undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess [or] to incriminate himself." (Principle 21(1)).

A commendable effort to air detainee grievances informally was begun approximately 1 1/2 years ago but has subsequently been discontinued. Captain Joseph Kennedy, the facility's Chief of Detention, explained that he started a series of panels in which detainees could speak with him about conditions in the facility. He discontinued the panels within the two months preceding the delegation's investigation, because too many individuals asked him about their particular immigration cases rather than general conditions in the facility.

5. Segregation.

Segregation is an internal disciplinary measure that may be used for a variety of specific purposes listed in the Handbook, as well as "punishment for some infraction" (p. 9-14), and "for other specified and recorded reasons" (p. 9-14). According to the Handbook, "[A]liens shall be segregated for as long as necessary to achieve the purposes intended," including cases where "segregation must be maintained indefinitely" (p. 9-16). The Detention Officers Handbook confers final authority, as well as broad discretion, upon the Supervisory Detention and Deportation Officer and the facility supervisor in deciding whether to place a detainee in isolation (Handbook, p. 14-3).

Conditions of segregation are detailed in both the Handbook and the Post Orders. The Handbook sets forth segregation conditions, including provisions that segregation quarters should be appropriately heated and maintained in a sanitary condition (p. 9-15) and that segregated aliens shall have the opportunity to maintain an acceptable level of personal hygiene (p. 9-16). Krome's Post Orders for Isolation Officers, which state that the "primary function" of that post is "to ensure that the safety and well being of detainees in isolation is maintained," provides for visual checks of detainees on an irregular basis but at least twice an hour. Under the Post Orders, detainees in isolation are also entitled to "showers, exercise, phone calls, Attorney [sic] visitation, and uniform changes."

More generally, U.N. Principle 6, which proscribes cruel, inhuman, or degrading treatment or punishment, is also applicable to segregation conditions, as is Principle 1, requiring treatment that is humane and respectful of the "inherent dignity of the human person." Furthermore, the U.N. standard prohibiting denial of communication between a detainee and the outside world for "more than a matter of days" prohibits lengthy incommunicado detention, in isolation or otherwise (U.N. Principle 15).

The isolation unit at Krome consists of seven cells, one empty and each of the others containing a sink, a toilet, and one bed bolted to the floor. Cells are approximately seven feet by seven feet and contain no windows; cell doors contain one-way mirrors through which detainees may be observed from the hallway. Beds appeared clean during the MLC/PHR visit, although toilets were unsanitary, and the three sinks examined by the delegation were not in working order.

According to Mr. Rozos, isolated detainees may shower daily and are escorted outside for daily recreation. Correctional officers, according to the INS, are to check on isolated detainees every fifteen minutes. Health care personnel visit daily. Detainees in disciplinary isolation are seen daily by a registered nurse, five days a week. The physician visits the isolation area on weekends. Daily medication is also provided in isolation as necessary. According to INS officials, inmates were housed in isolation for no more than 72 hours at a time and only one detainee at a time is isolated in a single cell.

A milder form of isolation occurs in what is referred to as Section G, which is a screened-off area in the men's building consisting of 18 bunks in which there is no television or other recreational amenity. In all other respects, it is quite similar to a dormitory structure. This larger isolation area is apparently utilized for isolation up to ten day periods of time.

The delegation observed and received approximately fifteen reports of violations of the standards and procedures cited above. One detainee interviewed by a PHR delegate, for example,

reported that he had been isolated once for ten days and another time for eleven days. Another indicated he had been isolated for thirteen days. Further, a former detainee interviewed by an MLC member stated that he was forced to drink water from the back of the cell's toilet due to the lack of a working sink in his cell. (Interview of Former Detainee O, November 18, 1990).

Detainee affidavits suggest that confinement and threats of confinement in the isolation unit are swift and commonplace where detainees have committed minor violations, or, in some cases, where detainees have committed no infractions at all. For example an affidavit written by a detainee approximately one month before the MLC/PHR visit states that:

Two weeks ago, I witnessed a young boy who was sent to isolation by a guard. The reason was because the guard told the detainee 'fuck you Maricon' [.]. The detainee said 'non-Maricon.' The guard took him behind the neck and took him to the 'dark little room' (isolation).

(Affidavit of Detainee F, October 18, 1990.) (See also Section III.B.1 for reports of abuses connected to segregation.)

6. Diet and Nutrition.

Since Krome is a federal facility, it is not subject to periodic local or state sanitary inspections. However, the Handbook sets forth detailed and generally adequate standards for dietary planning and food preparation, service and storage (Handbook, p. 12-6 - 12-10). Post Orders detail numerous sanitation procedures associated with clean-up and maintenance, including noting and correcting deficiencies (Cafeteria Post Order). Further, Dr. Rivera, head of the Public Health Service clinic staff, along with Krome's contract dietitian, conducts inspections.

Detainees take their meals in large groups in a dining hall, which also houses food preparation and serving areas. Female detainees all eat at once and male detainees are fed in groups of approximately 100-150 at a time. According to the INS, a dietitian monitors detainees' nutrition and calorie intake twice a week, and special religious diets are provided upon request.

The PHR delegates noted that the recommendations of the PHS clinic and the contract dietitian are not necessarily heeded. This presents a potential public health hazard. The physicians in the delegation observed several instances of substandard conditions in food areas, including unsanitary food preparation, improper food and trash storage, and a lack of sanitary amenities in a bathroom adjacent to the kitchen. For example, a PHR delegate noted a civilian contract food service worker mixing macaroni salad with his bare hands and arms up to his elbows; he

wore no gloves. However, cooler and freezer storage appeared adequate in that temperature gauges had appropriate readings, and there was no evidence of roaches, rodents or vermin.

Meals served during the delegation's tour of Krome's dining facilities appeared ample, diverse, and healthy. The delegation observed many detainees returning uneaten food to the kitchen area. On the day of the visit, detainees appeared to have sufficient time to eat, and Mr. Waldroup, Assistant District Director, stated that in his opinion, the facility had been unfairly accused of rushing detainees through their meals.

While the delegation did not witness any irregularities first-hand, detainee allegations that certain guards frequently force them to rush through meals and throw away food are extremely common and similar. A former detainee interviewed by the delegation alleged that some guards pour water over, or expectorate into, detainees' food trays in order to force them to throw food away and leave the dining area quickly (Interview of Former Detainee O, November 18, 1990.)

Detainees have engaged in hunger strikes to protest general treatment at the facility, according to INS officials and detainee statements. In October 1990, for example, forty-five Chinese detainees began a hunger strike (Their statement is attached as Appendix III.) Another detainee reports: "All the time the officers here tell us the only reason we came to this country is for food, so I stopped eating to let them know I left Haiti for political problems, not for food." (Affidavit of Detainee R, February 28, 1990). Another detainee describes a hunger strike by the female detainees the week of February 12, 1990, explaining, "It didn't seem like there was any use in eating if we were going to be treated like animals." (Affidavit of Detainee B, February 28, 1990).

7. Dormitory, Sanitary and Recreational Facilities.

Post Orders require detainees to make their beds and clean their immediate living areas (Bldg. 8 Section Officers Day Shift Post Orders; Bldg. II Dorm Officers Post Orders). The Handbook sets out additional detailed sanitation and safety procedures that govern the physical upkeep of dormitory, sanitary, and recreational facilities. A related section provides that "[u]nder no circumstances should detention officers enter the dormitories of detainees of the opposite sex, except in the presence of an officer or employee of the opposite sex, or upon direct orders of a supervisor." (Handbook, p. 2-4). International standards also require reasonable access to educational, cultural and informational material subject to the demands of security and good order (U.N. Principle 28.)

Male detainees at Krome are housed in a dormitory on the second floor of a two-story building. According to INS, at the

time of the MLC/PHR visit, the male census was approximately 450-500. The ground floor of the building includes a well-equipped weight room, a kiln room, laundry facilities, telephone banks, an industrial shed, and a modified isolation section referred to as Section G, which contains eighteen bunks. A central bathroom contains seventeen sinks, eleven toilets, nine urinals and twenty showers. The men's bathroom area was quite poorly maintained during the delegation's visit.

All women sleep on bunk beds in large dormitory rooms. According to INS, at the time of the mission, the female census was approximately 153. The women's building also includes recreational space, a snack shop, a beauty shop, a small collection of books, mostly in English, an office for INS personnel, and telephone banks. Sanitary facilities in the female dormitory appeared clean during the delegation's visit, and included sixteen sinks, thirteen showers, and twelve toilets. Soap, towels, toilet paper and sanitary pads are kept at the office desk for distribution by the officers.

Much of Krome's dormitory and sanitary facilities meet INS and international standards. With the exception of the males' bathroom areas mentioned above, dormitories and sanitary facilities appeared fairly clean and well-maintained on the day of the delegation's visit.

Recreational facilities at Krome are quite adequate. Both men's and women's facilities contain a number of working televisions. Courses in trade, crafts, and English are taught to the detainees by Dade County employees. In addition, there are a number of jobs in the facility available to detainees who chose to work, for which detainees may earn \$1.00 per day, which rate is set by federal statute. For example, ten detainee workers are assigned to the dining room (Cafeteria Post Orders). According to facility officials, there is a waiting list for detainee employment and it is considered to be a privilege which may be withheld for disciplinary purposes. According to the INS, the 20% of the detainee population who work do so on a voluntary basis.

Detainees reported concerns with respect to water, male access to female dormitories, and the lack of an adequate library. The delegation also received reports indicating that there may be instances where detainees are forced to clean the facility.

Water quality at Krome is the subject of frequent complaints. The PHR delegates observed the tap water in the women's facility to be a dirty yellow color and the water from the hot water tap only tepidly warm. This observation comports with numerous detainee affidavits, many of which also complain of a lack of hot water:

For approximately fifteen days there has been

no hot water in the showers. Because of this, many detainees bathe in the area of the bathroom where the sinks are located, throwing water on their bodies with their hands; there is hot water in the sinks. The floors of the bathrooms have been a mess.

(Affidavit of Detainee P, September 25, 1990).

The delegation observed that male detention officers freely walked through the female dormitory, in violation of the Handbook provision cited above, and that a male detention officer monitored a desk located in the center of that dormitory. This violation is of heightened concern in light of allegations that female detainees have been sexually abused by male Krome officers. (See section III.B.2, supra.)

There is no law library at the facility, having been destroyed during a detainee riot a little over four years ago. There is apparently activity underway to replace the law library, although Mr. Rozos indicated that the facility had been unable to locate sufficient books and funds to complete it. The female dormitory contains a small non-law library containing books mostly in English, with some books in the languages of detainees.

Finally, there is conflicting evidence as to whether detainees are required to clean the facility themselves. The Post Orders do not require cleaning by detainees beyond making their beds and cleaning their "immediate living area." (Bldg. 8 Section Officers Day Shift Post Orders: Bldg. 11 Dorm Officers Post Orders). Ms. Weiss told the delegation that detainees were not required to clean the facility, as a punishment or otherwise. A Spanish-speaking detainee confirmed this, telling a delegation member that she and a friend voluntarily cleaned the bathrooms connected to the women's dormitory in the PHS facility because it appeared that no INS employee was assigned to clean them and they had become quite dirty, but she said that she had not been forced to do so by authorities. A former detainee interviewed by the delegation, however, said that during her confinement at Krome early in 1990, detainees regularly cleaned toilets on a rotating schedule, with each detainee cleaning them about twice a week (Interview of Former Detainee I, November 18, 1990.) Approximately four affidavits of female detainees report an incident in February 1990 in which female detainees were forced to clean a building late into the night (See Section III.B.1, supra).

8. Overcrowding.

INS and federal law sources provide contradictory indications as to Krome's capacity. In the course of 1981 litigation between the State of Florida and the federal government regarding overcrowding at Krome, the government represented that it would