

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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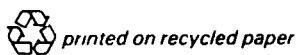


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Barbed wire surrounds the courtyard at the Krome Avenue Detention Facility in Miami, Florida.

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