

**Commonwealth of Puerto Rico
CIVIL RIGHTS COMMISSION**

**INVESTIGATION ON THE INTERVENTIONS OF THE FBI WITH THE PUERTO
RICAN PRESS ON FEBRUARY 10, 2006 AT 444 DE DIEGO CONDOMINIUM,
RÍO PIEDRAS, AND OTHER RELATED INCIDENTS**

OCTOBER 2006

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INTRODUCTION

As a result of certain incidents that occurred between agents from the Federal Bureau of Investigation (hereinafter, “FBI”) and members of the country’s press on February 10, 2006, while the former were serving a search warrant on an apartment at 444 De Diego Condominium, in the Río Piedras Ward of San Juan, Puerto Rico, in which several journalists and civilians were affected by the alleged undue use of force and the effects of pepper spray that was used against them, the Civil Rights Commission of the Commonwealth of Puerto Rico decided to conduct an investigation of the events to determine the possible violation of the civil rights of any of the people involved or affected, and other related incidents.

On February 21, 2006, four organizations that represent journalists and photojournalists or that defend their rights in Puerto Rico—to wit, the Puerto Rico Journalists Association, the Photojournalists Association, the Overseas Press Club, and the Center for the Freedom of the Press in Puerto Rico—filed a complaint with the Civil Rights Commission officially requesting the corresponding investigation on the facts of February 10, 2006.¹ This complaint, together with the information we compiled through the media and the people

¹ For the internal purposes of the Commission, this complaint was assigned number 2006-03-0062.

involved, helped us define the scope and methodology of this investigation.

By virtue of the provisions of the Organic Statute of the Civil Rights Commission, Public Law No. 102 of June 28, 1965², as amended, this agency has the power to conduct studies and investigations on the effectiveness of the fundamental rights in Puerto Rico, including complaints and grievances by citizens in connection to violations of those rights. Furthermore, this act establishes the authority of the Commission to order the appearance and testimony of witnesses and the filing of any papers, books, documents, and other evidence through subpoena³. The holding of the corresponding public hearings is in turn regulated by the Regulations for Civil Rights Commission Hearings, passed on January 19, 1970.

As part of the investigation conducted by the Civil Rights Commission, and as established in the Regulations for Civil Rights Commission Hearings, a notice

² 1 L.P.R.A. section 151 et seq.

³ Section 6 of Public Law No. 102 of June 28, 1965, supra, provides the following:

“The Commission and its Executive Director shall have authority to administer oaths and receive testimonies, and to subpoena witnesses to appear for testifying and producing any papers, books, documents or other evidence, through subpoena.

Should a witness summoned by the Commission fail to appear and testify, or to produce the required evidence, or refuse to answer any question in connection with any study or investigation being conducted by the Commission in the discharge of its functions, the chairman of the Commission may request assistance from the San Juan Part of the Court of First Instance of Puerto Rico to compel such witness to appear and testify, or to produce the required evidence, as the case may be. The Secretary of Justice shall tender to the Commission the necessary legal assistance for said purposes.

Once the petition is filed in the San Juan Part of the Court of First Instance of Puerto Rico, said Court shall subpoena the witness to appear and testify or to produce the evidence requested, or both, before the Commission; disobedience of the order issued by the Court shall be punished by said Court as civil contempt.” [OFFICIAL TRANSLATION]

of public hearing was published in two of the principal newspapers of general circulation in Puerto Rico. Public hearings were held on April 17, 18, 20, and 21, 2006, as well as on July 10, 14, and 31, 2006.

Originally, the FBI, the Superintendent of the Puerto Rico Police Department, and the Chief of the San Juan Municipal Police Department were officially summoned through subpoena. As the hearings progressed, names of other people emerged and they were later subpoenaed.

The investigation panel for this case before the Civil Rights Commission was made up by the following people:

Dr. Palmira N. Ríos González – Chairperson of the Commission

Mr. René Pinto Lugo, Esq. – Commissioner

Mr. José I. Irizarry Yordán, Esq. – Commissioner

Mr. Héctor Pérez Rivera, Esq. – Commissioner

Mr. Osvaldo Burgos Pérez, Esq. – Executive Director

Ms. Elisa V. Abruña Ortiz, Esq. – Legal Advisor

Ms. Jessica Gotay Martínez, Esq. – Legal Advisor

The following people or entities testified at the public hearings:

Monday, April 17, 2006:

Mr. Daniel Rivera Vargas – El Nuevo Día Reporter (Written Press)

Miss Cosette Donalds Brown – WKAQ Reporter (Radio)

Mr. Joel Lago Román – Reporter from Cadena Radio Puerto Rico (Radio)

Tuesday, April 18, 2006:

Mr. Normando Valentín – Noticentro 4 Reporter (Television)

Puerto Rico Journalists Association, represented by its president, Mr. Oscar Serrano, and its vice president, Mr. Leonardo Aldrich

Photojournalists Association, represented by its president, Miguel Rosa

Overseas Press Club, represented by its president, Miss Annette Álvarez, reporter for TUTV Channel 6 (Television)

Center for the Freedom of the Press in Puerto Rico, represented by Miss Annette Álvarez

Mr. Víctor Guillermo Fernández – Photojournalist for Las Noticias de Univisión (Television)

Thursday, April 20, 2006:

Ms. Lilliana Laboy – owner of the searched apartment at 444 De Diego Condominium

Miss Lilliana Natalia Hernández Laboy – Ms. Lilliana Laboy's daughter

Mr. Pedro Aponte Vázquez – eyewitness to the events

Ms. Judith Ortiz Roldán – eyewitness to the events

Dr. Julio A. Muriente Pérez – eyewitness to the events

Friday, April 21, 2006:

Mr. Adalberto Mercado Cuevas – Head of the Programmatic Area for Public Safety of the Municipality of San Juan

Mr. Nelson Canals – Administrative Advisor of the Commission for the Prevention of Violence (COPREVI, Spanish acronym)

Dr. Sheila Rodríguez Madera – Executive Director of the Commission for the Prevention of Violence (COPREVI, Spanish acronym)

Monday, July 10, 2006:

Ms. Lucy Centeno – Administrator of 444 De Diego Condominium

Friday, July 14, 2006:

Mr. Pedro Toledo Dávila, Esq. – Superintendent of the Puerto Rico Police Department

Monday, July 31, 2006:

Sergeant Mary Ann Rodríguez – Security Officer at 444 De Diego Condominium

Mr. Jorge Blanco – Reporter for WAPA Radio (Radio)

Mr. Rafael Benítez – Security Officer at 444 De Diego Condominium

Mr. Joel Lago Román – Reporter for Cadena Radio Puerto Rico (Radio)⁴

Besides the testimonies of the abovementioned people and organizations, the following documents and pieces of evidence are part of the record of the investigation conducted by the Civil Rights Commission and have been taken into consideration to prepare this report:

- a. Complaint filed with the Civil Rights Commission by the Puerto Rico Journalists Association, the Photojournalists Association, the Overseas Press Club, and the Center for the Freedom of the Press in Puerto Rico, dated February 21, 2006;
- b. Record of the Special Congressional Session before Congressman John Conyers held in the United States Congress on March 28, 2006, including the written participation of the Civil Rights Commission;
- c. Official Subpoena served on Mr. Luis Fraticelli, Special Agent in Charge of the FBI in Puerto Rico, dated April 12, 2006, to appear before the Civil Rights Commission on April 21, 2006;

⁴ Mr. Joel Lago Román originally testified on April 17, 2006, but [we] needed to corroborate some information with him on August 31, 2006.

- d. Official Subpoena dated April 12, 2006, addressed to Mr. José Figueroa Sancha, Special Deputy Agent in Charge of the FBI in Puerto Rico and person in charge of the February 10, 2006 operation, to appear before the Civil Rights Commission on April 21, 2006;
- e. Letter from the United States Attorney for the District of Puerto Rico, Humberto S. García, dated April 17, 2006, indicating that Mr. Luis Fraticelli and Mr. José Figueroa Sancha would not appear before the Civil Rights Commission.
- f. Letter from the Puerto Rico Civil Rights Commission to Mr. Miguel A. Fernández, Esq.—person appointed by US Attorney Humberto S. García [to receive any] future correspondence regarding this case—dated April 19, 2006, reiterating the position of the Civil Rights Commission that the FBI personnel who were subpoenaed had to appear before the Commission;
- g. Letter from Mr. Miguel A. Fernández, Esq., to the Civil Rights Commission dated April 21, 2006, supporting the FBI's position that the subpoenaed agents would not appear before the Civil Rights Commission;
- h. Official Subpoena served on the Police Superintendent, Mr. Pedro Toledo Dávila, Esq., dated April 12, 2006, to appear before the Civil Rights Commission on April 21, 2006;
- i. Letter from the Police Superintendent, Mr. Pedro Toledo Dávila, Esq., to the Civil Rights Commission dated April 19, 2006, indicating that he would not be able to appear at the public hearing and pointing out that the information that the Puerto Rico Police Department had about the events under investigation had already been disseminated in the media;
- j. Letter from the Civil Rights Commission to the Police Superintendent dated June 22, 2006, summoning him to a public hearing on July 10, 2006.
- k. Letter from the Police Superintendent dated June 26, 2006, maintaining his position of not appearing at the public hearing and reaffirming that the information that the Puerto Rico Police Department had about the events under investigation had already been disseminated in the media;

- l. Letter from the Civil Rights Commission to the Police Superintendent dated June 30, 2006, insisting on his appearance at the public hearing on July 10, 2006;
- m. Letter from the Police Superintendent dated July 10, 2006, maintaining his position not to appear at the public hearing and again reaffirming that the information that the Puerto Rico Police Department had about the events under investigation had already been provided to the media;
- n. Official Subpoena served on the Head of the Programmatic Area for Public Safety of the Municipality of San Juan, Mr. Adalberto Mercado Cuevas, dated April 12, 2006, to appear before the Civil Rights Commission on April 21, 2006;
- o. Written presentation from Mr. Daniel Rivera Vargas, a journalist for El Nuevo Día;
- p. Pictures of 444 De Diego Condominium;
- q. Raw audio of the February 10, 2006 radio coverage provided by Mr. Joel Lago Román from Cadena Radio Puerto Rico;
- r. Recording of the February 10, 2006 broadcast provided by journalist Cosette Donalds Brown from WKAQ Radio.
- s. Videos of the events of February 10, 2006 provided by the Puerto Rico Journalists Association.
- t. Articles about the February 10, 2006 incidents published in El Nuevo Día and Primera Hora on February 11, 2006;
- u. Newspaper articles about the incidents of February 10, 2006 that have been published to date in all newspapers of general circulation in Puerto Rico;
- v. Pictures from El Nuevo Día and Primera Hora about the incident between the FBI and the journalists on February 10, 2006;
- w. Written presentation from the Puerto Rico Journalists Association, the Photojournalists Association, the Overseas Press Club, and the Center for the Freedom of the Press in Puerto Rico before the Civil Rights Commission.

- x. Ms. Liliana Laboy's written presentation before the Civil Rights Commission;
- y. Forty-six (46) pictures of the FBI operation and of the incident with the journalists provided by Ms. Liliana Laboy⁵;
- z. Mr. Pedro Aponte Vázquez' written presentation before the Civil Rights Commission;
- aa. Letter from the Puerto Rico Journalists Association, the Photojournalists Association, the Overseas Press Club, and the Center for the Freedom of the Press in Puerto Rico addressed to the Special Agent in Charge of the FBI in Puerto Rico, Mr. Luis S. Fraticelli, dated February 14, 2006, asking him for a meeting to discuss the events at 444 De Diego Condominium on February 10, 2006;
- bb. Unedited version of the video of the February 10, 2006 incidents provided by the Photojournalists Association;
- cc. List of San Juan municipal police officers who were on the De Diego Street in Río Piedras on February 10, 2006;
- dd. Written presentation from the Commission for the Prevention of Violence (COPREVI, Spanish acronym);
- ee. Subpoena served on Sergeant Mary Ann Rodríguez, officer in charge of the security of 444 De Diego Condominium on the day of the events;
- ff. Subpoena served on Ms. Lucy Centeno, administrator of 444 De Diego Condominium;
- gg. Notes from Ms. Lucy Centeno, administrator of 444 De Diego Condominium, about the incidents of February 10, 2006;
- hh. Newspaper articles about the appearance of the Police Superintendent before the Civil Rights Commission on July 14, 2006;
- ii. Subpoena served on Mr. Jorge Blanco, WAPA Radio reporter;
- jj. Subpoena served on Mr. Rafael Ángel Rivera, photojournalist for El Vocero newspaper;

⁵ These pictures were taken by Mr. Rubén Ramos Acosta, husband of Mrs. Roxana Badillo, Esq., Ms. Liliana Laboy's legal representative.

- kk. Subpoena served on Officer Rafael Benítez, who replaced Sergeant Mary Ann Rodríguez in the security of 444 De Diego Condominium on February 10, 2006;
- ll. Recording of WAPA Radio's broadcast on February 10, 2006 and its corresponding transcript;
- mm. Transcript of all public hearings and executive sessions held in relation to this case;
- nn. Complaint filed by the Journalists Association, the Overseas Press Club, Normando Valentín, Víctor Sánchez, Joel Lago Román, Cossette Donalds Brown, Víctor Fernández, and Annette Álvares[sic] with the United States District Court for the District of Puerto Rico against the FBI for the February 10, 2006 incidents.
- oo. Opinion and Order issued on September 26, 2006 by the United States District Court for the District of Puerto Rico in the complaint filed by the Department of Justice of the Commonwealth of Puerto Rico.

The report herein includes a breakdown of the findings of the Civil Rights Commission regarding the events of February 10, 2006. These findings prompted a profound reflection on the freedom of the press and other rights affected by what happened at 444 De Diego Condominium and the handling of such events by both the local and the federal authorities in Puerto Rico. As part of this report, we are including an analysis of those rights and a list of conclusions and recommendations of the Civil Rights Commission resulting from that analysis.

This is not the first time that the Civil Rights Commission has analyzed the freedom of the press in Puerto Rico. Almost thirty years ago, we published several reports about this important right. In 1977, we published report 1977-CDC-006E, *La Prensa en Puerto Rico* (The Press in Puerto Rico), prepared by Dr. Robert Anderson, as well as report 1977-CDC-007E, *Las Relaciones de la*

Prensa y el Gobierno en un Estado Democrático (The Relationship between the Press and the Government in a Democratic State), and report 1977-CDC-024, ***El Derecho del Público a Obtener Información Gubernamental*** (The Public's Right to Obtain Government Information); the latter were prepared by Mr. Gustavo Marrero Irizarry, Esq. The conclusions and recommendations of these three reports from the Civil Rights Commission are extremely relevant and currently valid. Therefore, although this report is related to specific events, it must be considered as a complement to the previous works, and the statements of those three reports are made a part of this report by reference.

Additionally, in 1967, although it was limited to the interventions of the Puerto Rico Police Department with the citizenry, the Civil Rights Commission published report 1967-CDC-009 entitled ***Informe Especial sobre los Derechos Civiles y las Intervenciones de la Policía con los Ciudadanos*** (Special Report on Civil Rights and Police Interventions with the Citizenry). Likewise, in 1970, we published report 1970-CDC-014, ***La Vigilancia e Investigación Policiaca y los Derechos Civiles*** (Police Surveillance and Investigation and Civil Rights). The recommendations of both reports are relevant to the analysis at hand. Although on those occasions we expressed our opinion on the matter of law enforcement officers at the state level and the protection of civil rights when they intervene with the citizenry, what is stated therein is equally applicable to law enforcement officers at the federal level, since the constitutional principles that apply in both cases have remained unaltered.

Finally, in 1989, the Civil Rights Commission published report 1989-CDC-028 entitled ***Discrimen y Persecución por Razones Políticas: La Práctica***

Gubernamental de Mantener Listas, Ficheros y Expedientes de Ciudadanos por Razón de su Ideología Política (Politically Motivated Discrimination and Persecution: The Government Practice of Keeping Lists, Files, and Records of Citizens Due to their Political Ideology), which recognized the surveillance and harassment against independence supporters in the island. The findings, conclusions, and recommendations of the abovementioned report are relevant within the historical context in which the February 10, 2006 events occurred, as discussed hereunder.

PRECEDENTS

To place the investigation of the Civil Rights Commission and the February 10, 2006 incidents into context, it is important to point out some events that had occurred in the island previously with regards to FBI interventions, as well as other simultaneous incidents that occurred on the day of the events under investigation.

On February [sic] 23, 2005, the FBI conducted an operation in the Municipality of Hormigueros, in the western part of Puerto Rico, with the purpose of arresting Mr. Filiberto Ojeda Ríos, leader of the pro-independence group called the “Ejército Popular Boricua” and commonly known as “los macheteros.” Mr. Ojeda Ríos had been a fugitive from justice since 1990. Mr. Filiberto Ojeda Ríos died as a result of this operation under circumstances that had not been clarified as of the date of this report and which several groups have categorized as a murder perpetrated by the FBI on the very day when the 137th anniversary of the Grito de Lares, or proclamation of the first Republic of Puerto Rico in 1868, was being commemorated in the island. This activity has a high patriotic value,

especially for those who defend the ideal of independence for Puerto Rico.

The death of Mr. Filiberto Ojeda Ríos exacerbated the fervor of various sectors of the Puerto Rican people, who began to fruitlessly demand answers from the FBI and the Government of the United States about what happened there. Since then, people began staging numerous demonstrations in the island against the FBI and its actions, particularly those against independence supporters.

On February 10, 2006, the events of September 23, 2005 were still alive in the collective memory of the Puerto Rican people, and there was an atmosphere of resentment and distrust against federal organizations on the island among the pro-independence groups of the country. On that day, the FBI conducted operations in several areas of Puerto Rico—San Juan, Trujillo Alto, Isabela, Aguadilla, Mayagüez, and San Germán—in which they searched the homes and businesses of six people who were independence activists in the island, including the home of Ms. Lilliana Laboy at 444 De Diego Condominium in Río Piedras.

These incidents serve as a frame of reference to understand the prevailing atmosphere in the island and to place the events under investigation in this report into context.

In addition, even though the federal authorities have publicly reiterated that the February 10, 2006 operations were in no way related to the provisions of the so-called Patriot Act of 2001 or to terrorism investigations—

although recently the [official] version about the operations related to independence groups has changed—it is important to point out the current policy in the United States as a result of the events of September 11, 2005 [sic], when that country was the target of terrorist attacks in New York, Philadelphia, and Washington, D.C.

Following those events, several acts, such as the so-called Patriot Act, were passed in the United States disrupting what were until then the civil liberties recognized in that jurisdiction, and various security organizations were created, such as the US Department of Homeland Security, an umbrella department created in 2002 grouping a series of agencies in charge of protecting Americans and their territory. Under these new legislations and organizations, the domestic and foreign policy of the United States has been intensified against anything identified as a threat to national security, including among these activities some that they attribute to independence groups in Puerto Rico, such as “los macheteros.”

It was within this historical context summarized above that the events of February 10, 2006, object of the report herein, occurred.

INVESTIGATION ON THE INTERVENTIONS OF THE FBI WITH THE PUERTO RICAN PRESS ON FEBRUARY 10, 2006 AT 444 DE DIEGO CONDOMINIUM, RÍO PIEDRAS, AND OTHER RELATED INCIDENTS

FINDINGS

After analyzing all the testimonies and documentary evidence presented at the public hearings as well as the videos and recordings of the events of February 10, 2006, at 444 De Diego Condominium in Río Piedras, together with the other documents included in the record of this investigation, the Civil Rights Commission has made the following findings:

1. 444 De Diego Condominium is a residential building with 178 apartments divided in 19 floors and located at 444 José de Diego Street (De Diego Street) in the Río Piedras Ward of the Municipality of San Juan, Puerto Rico.⁶
2. This condominium is separated from the street by a concrete and metal fence with 4 gates made of metal tubes, two of them for the entrance and exit of vehicles and two for the entrance and exit of pedestrians. These gates are located at both sides of a security booth. If we were on the De Diego Street facing the building, the distribution of these gates and the security booth would be as follows from left to right: a vehicle exit gate, followed by a

⁶ Ms. Lucy Centeno's presentation, July 10, 2006.

pedestrian gate to its right, the security booth, a vehicle entrance gate, and another pedestrian gate.⁷

3. The pedestrian gate that is right next to the security booth is a means of access to the condominium through a corridor some three or four feet wide with concrete walls on both sides.⁸
4. Some time before February 10, 2006, there had been a short circuit in the electronic control of the abovementioned gate, which could be activated from the security booth before that happened; therefore, the corresponding key had to be used in order to open it.⁹
5. The other pedestrian gate is separated from the security booth and used by residents with a key.¹⁰
6. All the gates of the condominium are built in such a way that any person can climb over them without great difficulty and gain access to the premises of the building.¹¹
7. On February 10, 2006, Sergeant Mary Ann Rodríguez, employee of a private security company called Security Guard Affairs, was the person in charge of the security of 444 De Diego Condominium and was working at said condominium from 6:00 am to 2:00 pm, when

⁷ See nine pictures of 444 De Diego Condominium identified with numbers 1 through 9 for the purpose of the hearing; presentations of Ms. Lucy Centeno, July 10, 2006, and Sergeant Mary Ann Rodríguez, July 31, 2006.

⁸ Ibid. Pictures #6 and #8; Ms. Lucy Centeno's presentation, July 10, 2006.

⁹ Sergeant Mary Ann Rodríguez' presentation, July 31, 2006.

¹⁰ Picture #9; Miss Liliana Natalia Hernández' presentation, April 20, 2006.

¹¹ Ibid. and Mr. Pedro Aponte Vázquez' presentation, April 20, 2006.

she was replaced by Officer Rafael Benítez, from the same security company.¹²

8. Around 10:00 am a resident arrived at 444 De Diego Condominium and went in with his vehicle through the vehicle gate, which is a means of access to the condominium. A black Trooper with tinted windows went in right behind this vehicle.¹³
9. A woman identified as an FBI agent got out of the passenger side of the Trooper and went to the security booth where Sergeant Rodríguez was. She told Sergeant Rodríguez that they would be conducting an operation there and ordered her to keep the vehicle access gate to the condominium open until the last FBI vehicle had gone in and to keep all the other gates closed.¹⁴
10. This FBI agent only identified herself with her badge as an agent of that organization and did not give Sergeant Rodríguez her name. Her identification was not visible either, so that Sergeant Rodríguez could see her name.¹⁵
11. The FBI agent instructed Sergeant Rodríguez not to allow the

¹² Presentations of Sergeant Mary Ann Rodríguez and Mr. Rafael Benítez, July 31, 2006.

¹³ Sergeant Mary Ann Rodríguez' presentation, July 31, 2006.

¹⁴ Ibid.

¹⁵ Ibid.

entrance or exit of any people to or from the condominium.¹⁶ FBI agents also gave these instructions to the administrator of the condominium, Ms. Lucy Centeno.¹⁷

12. After this, other vehicles with FBI agents who were heavily armed—including submachine guns—went into the condominium and stopped at the back of the building in the parking lot. A total of seven (7) vehicles went in, including one ambulance.¹⁸
13. The FBI agents parked their vehicles in the private parking spaces of several titleholders of the condominium without requesting their authorization to do so.¹⁹
14. After they went in, the agents who arrived at the scene—which were dozens²⁰—moved to various areas of the condominium, to wit, lobby, staircases, elevators, and several floors of the property.²¹
15. Sergeant Rodríguez tried to leave the security booth, but the female FBI agent did not let her. Because of this, Sergeant Rodríguez could not contact the administrator of the building, Ms. Lucy Centeno, whose offices are on the back of the building.²²

¹⁶ Ibid.

¹⁷ Ms. Lucy Centeno's presentation, July 10, 2006.

¹⁸ Sergeant Mary Ann Rodríguez' presentation, July 31, 2006.

¹⁹ Ibid.

²⁰ There were only two women among the agents: the first one who talked to Sgt. Mary Ann Rodríguez and another one whom she identified as a dark-skinned woman who spoke English. The woman who talked to Sgt. Mary Ann Rodríguez spoke Spanish and was described by her as "tall, about 5 feet 11 inches, chubby, robust, with strawberry blonde hair and brown eyes."

²¹ Presentations of several deponents before the Civil Rights Commission, among them, Sgt. Mary Ann Rodríguez, Ms. Lucy Centeno, and others.

²² Ibid. Ms. Lucy Centeno's presentation, April 10, 2006.

16. Ms. Lucy Centeno found out about what was happening because the residents of several apartments in the building called her at the administration office when they realized what was going on and because there were FBI agents on their floors.²³
17. Ms. Lucy Centeno went to the security booth where she had to stay because the FBI agents told her that she had to decide between staying there or going to her office, but that she could not leave once she decided where to stay.²⁴
18. Sergeant Rodríguez remained locked inside the security booth—which does not have air-conditioning, only a fan—from 10:00 am to 2:00 pm, when her work shift ended; the administrator of the condominium was also there.²⁵
19. The FBI agents forbade Sergeant Rodríguez and Ms. Centeno to make any telephone calls.²⁶
20. Initially, the instructions given by the female FBI agent to Sergeant Rodríguez were to forbid the entrance or exit of any person from or to the condominium; around 11:40 am, the agent instructed her to allow access and exit only through the pedestrian gate, and at 12:00 pm, she told her that she could allow cars to go in and out.²⁷

²³ Ibid. Ms. Centeno testified that residents of the 6th, 9th, and 16th floors told her that there were FBI agents on their floors.

²⁴ Ibid.

²⁵ Sgt. Mary Ann Rodríguez' presentation, July 31, 2006.

²⁶ Ms. Lucy Centeno's presentation, July 10, 2006.

²⁷ Sgt. Mary Ann Rodríguez' presentation, July 31, 2006.

21. Sergeant Rodríguez was in charge of the gates of the condominium at all times, no FBI agent was with her.²⁸
22. Close to 10:00 am, on February 10, 2006²⁹, a man identified as FBI Agent Lezcano phoned Ms. Lilliana Laboy and told her that he had a search warrant and that she had to open the door immediately and get out of her apartment.³⁰
23. Ms. Lilibian Laboy is retired after having worked for the State Insurance Fund Corporation for over 30 years, she has been militant in the independence movement since she was young, and was politically active in the Puerto Rican Pro-Independence Party in her teens and early youth and, later on, worked with most of the pro-independence organizations in the island.³¹
24. Ms. Laboy has been a labor and community leader besides being a human rights activist both in Puerto Rico and abroad. She is currently the Executive Secretary of the Caribbean and Latin American Coordinating Group of Puerto Rico, a human and civil rights organization in Puerto Rico.³²
25. Ms. Laboy has lived in apartment 603 (sixth floor) of 444 De Diego Condominium, located at number 444 De Diego Street in Río

²⁸ Ibid.

²⁹ That same day and simultaneously with the search in Ms. Lilibian Laboy's home, the FBI conducted several searches in homes and businesses of people identified with or militant in the independence movement in Puerto Rico. These searches were conducted in various areas of the island.

³⁰ Ms. Lilibian Laboy's presentation, April 20, 2006.

³¹ Ibid.

³² Ibid.

Piedras, for thirty (30) years and is well-known among her neighbors for her contributions to the community and her peaceful lifestyle.³³

26. Ms. Laboy is in her fifties, is no more than five feet tall, is sick, and, as of the date of the events under investigation herein, lived alone in the abovementioned apartment.³⁴
27. Ms. Laboy told Agent Lezcano that she was going to call her attorney, but he answered that there was no time and that she had to open the door immediately and get out of the apartment.³⁵
28. When Ms. Laboy opened the door, she found several men who looked like soldiers to her with long guns and in a combat position at both sides of the door to her apartment. The agents who were at both sides of the door were pointing at Ms. Laboy with their guns when she opened the door.³⁶
29. Other agents who were equally armed stood along the hallway of the sixth floor where Ms. Laboy's apartment is located. There were between ten and fifteen agents in the hallway, all of whom were heavily armed.³⁷
30. These agents were identified only as FBI agents and did not show any identification nor were their names or last names visible

³³ Ibid.

³⁴ Ibid. Miss Liliana Natalia Hernández' presentation, April 20, 2006.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

anywhere in their uniforms.³⁸

31. When Ms. Laboy opened the door to Agent Lezcano, he did not have the search warrant with him, so he had to call another agent who was not in the hallway to bring it to him, and they gave her the search warrant after they had already gotten her out of her apartment.³⁹
32. Agent Lezcano told Ms. Laboy that there was no arrest warrant against her, so she was free to go whenever she wanted. Ms. Laboy told him that that apartment was her home and that she could not leave it open with them inside.⁴⁰
33. Initially, Ms. Laboy was not allowed to call her attorney until, at her insistence and after more than ten minutes since she was removed from her apartment, Agent Lezcano called his supervisor to ask him for authorization and she was able to make the call.⁴¹
34. Ms. Laboy was taken to the escape ladder of the condominium by Agent Lezcano where she was searched and kept under the custody of Agent Lezcano and another agent for around two hours, until, after 12:00 pm, Agent José Figueroa Sancha, who identified

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

himself as the agent in charge of the operation, arrived and informed her that her attorneys⁴² had arrived.⁴³

35. Ms. Laboy's search was conducted by Agent Lezcano and another agent without the participation of any woman.⁴⁴

36. Another group of agents, additional to the ones who were in the hallway, went into Ms. Laboy's apartment to conduct the search after Ms. Laboy had been taken to the escape ladder, from where she could not see inside her apartment.⁴⁵

37. That morning, a press conference had been held at La Fortaleza (the governor's residence) with the presence of the Police Superintendent, Mr. Pedro Toledo Dávila, Esq., where the press learned about some operations that the FBI was conducting in several areas of the island. Information about the operation at 444 De Diego Condominium emerged there.⁴⁶

38. While the search was being conducted in the apartment, the members of the press who learned about the operation began arriving at the area surrounding 444 De Diego Condominium. Students, workers, teachers, university professors, and other

⁴² Mrs. Roxana Badillo, Esq., and Ms. Jan Susler, Esq.

⁴³ Ms. Liliana Laboy's presentation, *ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Journalist Joel Lago Román's presentation, April 17, 2006.

people, including children, also arrived at the place of the events after finding out through the media that that operation was being conducted.⁴⁷

39. Some of the civilians who went to the place, especially [some] university students identified with the pro-independence movement in the island, began yelling slogans against the FBI agents while they were bringing out the property object of the search. Among the slogans were words such as “murderers, criminals”⁴⁸ and other English expressions such as “mother fuckers,” “fucking gringos,” “racists,” “Yankee go home,” “fucking white people.”⁴⁹
40. While this was happening, the journalists who arrived at the place were doing their job trying to cover the news, without there being evidence of any of them attacking any FBI agent either physically or verbally.⁵⁰
41. The FBI agents did not provide information about what was happening other than to say that a search was being conducted, that there was no arrest warrant, that [they] had to call a certain

⁴⁷ Presentations by Ms. Liliana Laboy, April 20, 2006, and Mr. Pedro Aponte Vázquez, April 20, 2006. Mr. Pedro Aponte Vázquez estimated the number of people gathered there at around 60.

⁴⁸ As we had previously pointed out, on September 23, 2005, an operation was conducted by the FBI to arrest Mr. Filiberto Ojeda Ríos, leader of the Ejército Popular Boricua (“Los Macheteros”), in which he was killed by the federal agents. Therefore, on February 10th, this incident was alive in the collective memory, particularly of those who favor independence for Puerto Rico. The Civil Rights Commission wishes to clarify that, although it understands the feelings of these young people, it does not in any way endorse using sexist, racist, xenophobic, or any other type of expressions that could reflect discriminatory attitudes.

⁴⁹ WAPA Radio recording of February 10, 2006 and broadcast from the place of the events.

⁵⁰ Testimonies of the deponents and analysis of the recordings and videos.

telephone number for any additional information, and that the FBI would later make a statement⁵¹. Some journalists tried to obtain information through the telephone number provided by the agents, but nobody answered.⁵²

42. None of the gates at 444 De Diego Condominium was guarded by FBI agents, and there were times when they were completely unprotected.⁵³

43. Ms. Laboy asked Agent Figueroa Sancha to bring her attorneys to where she was, and the agent told her that that was not possible, but that, since she was not under arrest, she could go down to the street where the attorneys were.⁵⁴

44. Agent Figueroa Sancha warned Ms. Laboy that if she went down to the street, she would find the journalists, who were there like “vultures.”⁵⁵

45. Later on, Ms. Laboy was escorted to the lobby of the condominium where she met her attorneys; both Ms. Laboy and her attorneys insisted on watching the search of the former’s property, but the agents did not allow it.⁵⁶

⁵¹ Journalist Cosette Donalds Brown’s presentation, April 17, 2006.

⁵² Journalist Daniel Rivera’s presentation, April 17, 2006.

⁵³ Presentations by several deponents, among them, Mr. Pedro Aponte Vázquez, Miss Liliana Natalia Hernández, and Dr. Julio Muriente, April 20, 2006; journalists Joel Lago Román and Daniel Rivera, April 17, 2006; and journalist Normando Valentín, April 18, 2006.

⁵⁴ Ms. Liliana Laboy’s presentation, April 20, 2006.

⁵⁵ Ibid.

⁵⁶ Ibid.

46. While this search was being conducted, Ms. Laboy was never allowed to talk with her attorneys in private because the agents stayed too close to them to the point that they had to whisper in each others' ears.⁵⁷
47. When the agents finished the search, they called Ms. Laboy to sign an inventory of what they had taken from her apartment, identifying the documents as "miscellaneous documents." Some of the documents they took were Ms. Laboy's tax records for over 30 years, including the evidence of income tax payments.⁵⁸
48. Later on, Ms. Laboy noticed that the agents had taken things she owned that were not identified on the inventory they had prepared, among them, a folder with more than \$700.00 belonging to an organization called "Puerto Rico Pa'lante" for which Ms. Laboy is treasurer.⁵⁹
49. During the public hearings, when explaining how she felt after the search, Ms. Laboy said that she compared it to how a rape victim would feel because it was an intrusion in her privacy.⁶⁰

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

50. After 12:00 pm on February, 10, 2006, a helicopter identified as belonging to the Homeland Security federal agency flew over the area and landed on a piece of land next to the San Francisco Hospital—a hospital that is close to 444 De Diego Condominium—and some of the journalists who were in front of the condominium headed towards it.⁶¹
51. Several FBI agents with identifications that read “FBI Miami Special Tactics Weapons”, uniforms of a military camouflage type, long guns, helmets, and their faces covered got off the helicopter, got on two vehicles, and headed to the condominium where the search was being carried out. The helicopter left the area.⁶²
52. While this was happening, in the area where the helicopter landed, the journalists approached an FBI agent—whom we will identify as “**FBI Agent X**”⁶³ for the purposes of this report—, who was on the ground signaling to the helicopter, to interview him about what was happening.⁶⁴
53. FBI Agent X was also identified as part of the agents from the FBI Miami Special Tactics Weapons.⁶⁵

⁶¹ Presentations by journalists Daniel Rivera and Cosette Donalds Brown, April 17, 2006.

⁶² Presentations by journalists Daniel Rivera and Cosette Donalds Brown, April 17, 2006.

⁶³ There are duly identified pictures of this agent in the documents included in the records of this report and on the newspapers of the island that reported the incidents of February 10, 2006 the next day. It was this agent who later on used pepper spray against the reporters and other people who were present, as detailed hereunder.

⁶⁴ Reporter Joel Lago Román’s presentation, April 17, 2006.

⁶⁵ This information came from several deponents and was verified with the pictures and videos of the events.

54. One of the journalists who approached FBI Agent X was radio reporter Joel Lago Román, whose microphone was pushed away several times by the abovementioned agent.⁶⁶
55. This same FBI agent pushed away the microphone of television journalist Annette Álvarez, who also tried interviewing him at that place, and he went so far as to cover with his hand the camera lens of the cameraman who accompanied her.⁶⁷
56. At Reporter Joel Lago Román's insistence on interviewing the agents who had arrived on the helicopter, one of them pointed his firearm at the reporter.⁶⁸
57. After that, the reporters and photojournalists who were at the area where the helicopter landed went back to 444 De Diego Condominium.⁶⁹
58. Around 1:30 pm, Ms. Laboy's daughter, Liliana Natalia Hernández Laboy (hereinafter "Natalia") arrived at the premises of 444 De Diego Condominium anxious to know about her mother. Afterwards, Ms. Laboy's sister, Ms. María de los Ángeles Laboy, Natalia's aunt, arrived there.⁷⁰
59. Natalia and her aunt accessed the premises of the condominium through the pedestrian gate that is farther away from the security booth because they told a resident who they were and she let them

⁶⁶ Ibid.

⁶⁷ Testimony of Journalist Annette Álvarez on April 18, 2006.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Miss Liliana Natalia Hernández' presentation, April 20, 2006.

go in through that gate⁷¹. That gate was not guarded by FBI agents, so any person with a key could go in and out that way.⁷²

60. When this happened, a journalist—whose identity we were not able to determine—gained access behind them.⁷³

61. Natalia and her aunt went to the entrance to the condominium lobby and asked an FBI agent—who was later identified as Keith Breyers⁷⁴—about Ms. Liliana Laboy, and he ignored them, only saying that the journalist could not be there.⁷⁵

62. It was at this time when they both realized that the journalist had gone in behind them, and Natalia's aunt asked the journalist to leave to see if they could then get information about Ms. Laboy.⁷⁶

63. The journalist left the area and both Natalia and her aunt asked Agent Keith Breyers about Ms. Liliana Laboy again, and again the agent ignored them. To attract Agent Breyers' attention, Natalia told him "hey," which he interpreted as an insult telling Natalia that she was not polite.⁷⁷

⁷¹ They had previously tried going in through the pedestrian gate that is next to the security booth, but Sergeant Mary Ann Rodríguez, a security guard at the condominium, told them that they could not go in if they were not residents. Liliana Natalia Hernández' presentation, April 20, 2006.

⁷² Miss Liliana Natalia Hernández' presentation, April 20, 2006.

⁷³ Ibid.

⁷⁴ This agent was identified by several deponents during the public hearings as Keith Bayer, Keith Bayers, and Keith Breyers.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

64. Upset by the incident, Natalia started making a hand gesture that she says was meant for the demonstrators who were outside the fence to continue yelling at the agents.⁷⁸
65. At that moment, another FBI agent came out of the condominium and, at Natalia's questions, told her that her mother was fine, but he did not let her see her and did not tell her where her mother was.⁷⁹
66. Natalia's gesture to the demonstrators was interpreted by the journalists as an invitation to come into the condominium.⁸⁰
67. By this time, many of the agents were in their vehicles on the back of the condominium ready to leave the area.⁸¹
68. At that moment, the journalists began coming in through the pedestrian gate right next to the security booth. About twenty journalists and photojournalists went in.⁸²
69. We do not know who opened the abovementioned gate.⁸³
70. While this was going on, Journalist Cosette Donalds Brown was doing a live radio broadcast over her cell phone and had her back turned to the pedestrian gate when she heard a man's voice saying

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Journalist Normando Valentín's presentation, April 18, 2006.

⁸¹ Journalist Cosette Donalds Brown's presentation, April 17, 2006.

⁸² Journalist Joel Lago Román's presentation, April 17, 2006. The journalists who gained access inside the fenced area included Televiscentro 4 Journalist Normando Valentín, Radio Puerto Rico Journalist Joel Lago Román, WKAQ Radio Journalist Cosette Donalds Brown, Channel 6 Journalist Anette Álvarez, Photojournalist André Kang, Channel 2 Journalist José Estevez, Radio Isla Journalist Carlos Alejandro, and many other journalists and photojournalists.

⁸³ During the hearings, no evidence was presented about who opened the gate, although it is obvious that it must have been somebody with a key because that was the only way to open it since the electronic system was not working.

“come in” so she went inside with the other journalists. This reporter walked among her fellow journalists until she was standing in the front row.⁸⁴

71. The space through which the journalists entered [the condominium premises] is narrow, so they practically had to walk in single file.⁸⁵
72. When the journalists were already inside, the agents who were about to leave arrived and stood in front of the journalists pushing them back and yelling at them “go back, go back.”⁸⁶
73. In view of the fact that a funnel had formed and that all the journalists could not go out at the same time due to the narrowness of the pedestrian gate corridor, one of the journalists asked the FBI agents to open the vehicle gate so that they could go outside, which was never done.⁸⁷
74. The agents started pushing some of the journalists hard and hitting them on the side while they pushed them back to the point that Televiscentro 4 Journalist Normando Valentín yelled at one of the agents, “What’s the point of hitting me if I can’t move?”⁸⁸

⁸⁴ Cosette Donalds Brown’s presentation, April 17, 2006.

⁸⁵ Miss Liliana Natalia Hernández’ presentation, April 20, 2006, and pictures identified with numbers 1 through 9 included in the records.

⁸⁶ Presentations by several journalists and Miss Natalia Hernández.

⁸⁷ Journalist Normando Valentín’s presentation, April 18, 2006.

⁸⁸ Presentations by journalists Joel Lago Román, April 17, 2006, and Normando Valentín, April 18, 2006.

75. Immediately afterwards, FBI Agent X—that is, the same agent who had already pushed away the microphones of journalists Joel Lago Román and Annette Álvarez when they were in the area where the helicopter landed—took out a can of pepper spray and began spraying it directly on the journalists, including without limitation, Normando Valentín, Cosette Donalds Brown, Joel Lago Román, Annette Álvarez, Ana Celia Hernández, Carlos Alejandro Robles, Amber Lee Vélez, André Kang, and others.⁸⁹
76. Journalist Cosette Donalds Brown who was still on the air through the WKAQ radio station started screaming and coughing, so she had to interrupt the broadcast because she could not catch her breath; she could not see either and she felt a burning sensation in her throat.⁹⁰
77. Journalist Joel Lago from the Radio Puerto Rico Station felt when the pepper spray fell on his face; he felt as if something hot was falling on him. He fell on the ground and FBI Agent X sprayed pepper spray directly on his face and eyes and kicked him while the journalist was lying on the floor; one agent even dragged him by his trousers to the area outside the pedestrian gate.⁹¹
78. During his presentation before the Civil Rights Commission, Journalist Joel Lago Román narrated his experience as follows:

“At a given moment, I heard them start screaming and I started hearing a spraying sound. Suddenly, when I turned around, I felt something hot fall on my face. I completely

⁸⁹ Testimony of several deponents, recordings of radio broadcasts, and videos of the incident.

⁹⁰ Journalist Cosette Donalds Brown’s presentation, April 17, 2006.

⁹¹ Presentations by Joel Lago, April 17, 2006, and Liliana Natalia Hernández, April 20, 2006.

lost my sight. I didn't know what was going on. I had never felt a sensation like that. I felt somebody push me. When I fell on the ground, I realized that I had lost the microphone. I tried to feel around with my hand to see where it was. And at that time, I felt an agent trying to push me with his feet and trying to grab me by the shoulder. Apparently, the person wasn't able to lift me by the shoulder and he simply decided to let go of me and grab me by my trousers and drag me to the area outside the pedestrian gate. Before the person could get me out of there and just after I had fallen on the ground, I felt when one of the agents approached me and sprayed pepper spray directly on my face and eyes. It was the second time I was sprayed with pepper spray in less than 10, 15 seconds, might have gone by after the first time. I felt it pretty close. I felt the jet [of spray], so to speak, directly on my face, specifically on the eye area."

Since it was so concentrated, the lack of air forces you to open your mouth, and when I opened my mouth, well, I also got pepper spray directly on my mouth. And I began coughing as well. Well, I completely lost all sense of what was going on..."⁹²

79. Both Journalist Joel Lago Román and TV Reporter Normando Valentín had to receive first aid at the area from 911 emergency system personnel and from civilians and, later on, had to be taken to the San Francisco Hospital. Photojournalist Víctor Sánchez, who was also affected by pepper spray, also had to get medical attention at that hospital.⁹³
80. In the case of Journalist Joel Lago Román, he had to get medical treatment for the damage to his eyes and throat and for a stomach irritation caused by the pepper spray.⁹⁴

⁹² Journalist Joel Lago's presentation, April 17, 2006.

⁹³ Presentations by journalists Joel Lago and Normando Valentín, April 17 and 18, 2006, respectively.

⁹⁴ Ibid.

81. Just like the other journalists who were affected, Mr. Joel Lago Román had to interrupt his work and the broadcast he was doing up to the time when FBI Agent X sprayed them with pepper spray.⁹⁵
82. In the case of Journalist Normando Valentín, who was also directly sprayed with pepper spray by FBI Agent X, he narrated his experience as follows:

“It was at that moment when this member of the specialized team appeared and started taking out the spray can, shake well before using. And the first spray went directly to my eyes. And, then, well, I lost all sense and I started hearing voices, cries, and they began pushing me. Then, later on, came a second spray which I got all over my left side, I felt it, I mean, like... that second spray was like a stream of water falling on you when you turn on your shower. Basically, I felt it drenching me and that all that liquid was running through all the area of the left side of my face. I started feeling a terrible burn, an itch, I couldn't catch my breath. Obviously, desperate, I felt I was being pushed and that I was being taken through someplace through which I went outside; I felt I was losing my balance and that, well, people sort of... I felt hands as if... I assume that at that time they were preventing me from falling down and all that, until I got to the sidewalk and there, at that moment, well, it was really exasperating. It feels as if your face were on fire and, at the same time, well, a lot of mucus, a lot of tears. And it is an exasperating moment, you feel incredibly helpless. I was practically blind. The only thing I heard was voices, and of people who with very good intentions approached you and, well, helped you in whatever way they could, with water and all that.”⁹⁶

83. Journalist Normando Valentín, who has had respiratory tract problems since he was a child, suffered respiratory problems as a

⁹⁵ Journalist Joel Lago's presentation, April 17, 2006.

⁹⁶ Journalist Normando Valentín's presentation, April 18, 2006.

result of the damage produced by the pepper spray, and was hoarse for five days, which made it impossible for him to work in radio or television during that period of time. For one week, he woke up with his nose bleeding and also had tonsil problems. He said that his respiratory, throat, and tonsil problems have increased as a result of this incident.⁹⁷

84. FBI Agent X did not only spray pepper spray on the people who had gained access to the area inside the gates of 444 De Diego Condominium, but also even sprayed outside the gate where there were other journalists and civilians.⁹⁸
85. One of the persons who were outside the gates of the condominium was Univisión Photojournalist Mr. Víctor Guillermo Fernández, who was sprayed by FBI Agent X with pepper spray through the fence.⁹⁹
86. During the whole time this operation lasted, all of the services of 444 De Diego Condominium were brought to a halt, including maintenance and cleaning services.¹⁰⁰
87. Even though there was an ambulance among the vehicles used by the FBI for this operation, the people who were affected by the

⁹⁷ Ibid.

⁹⁸ Dr. Julio Muriente's presentation, April 20, 2006, Photojournalist Víctor Guillermo Fernández' presentation, and videos of the events.

⁹⁹ Mr. Víctor Guillermo Fernández' presentation, April 18, 2006.

¹⁰⁰ Ms. Lucy Centeno's presentation, July 10, 2006

pepper spray were not offered medical attention or first aid.¹⁰¹

88. None of the FBI agents at the scene in any way prevented or tried to prevent the agent who sprayed the pepper spray from continuing to do so, even when some of these agents were right next to him when the events occurred.¹⁰²
89. After these incidents, the agents got on their vehicles and left the scene.¹⁰³
90. When the FBI agents abandoned the premises of 444 De Diego Condominium, they did so violently, at a speed prohibited in the area, affecting the safety of the people who were in their path.¹⁰⁴
91. While the agents were abandoning the area, several demonstrators threw stones and other objects at their vehicles.¹⁰⁵
92. The last vehicle with FBI agents to leave the condominium was an SUV whose rear window had been broken¹⁰⁶ and, from the inside, an agent pointed the firearm he was carrying at the people who were in front of the condominium.¹⁰⁷

¹⁰¹ Ms. Lucy Centeno's presentation, July 10, 2006.

¹⁰² Videos and pictures of the moment when the agent used the pepper spray against the journalists and other people who were there.

¹⁰³ Presentations by eyewitnesses and videos of the events.

¹⁰⁴ Ms. Liliana Laboy's presentation, April 20, 2006; Dr. Julio Muriente's presentation, April 20, 2006.

¹⁰⁵ Mr. Pedro Aponte Vázquez' presentation, April 20, 2006.

¹⁰⁶ During the hearings, there were conflicting versions about whether the window had been broken by a stone thrown by a demonstrator or by the agent who was in the back of the vehicle.

¹⁰⁷ Journalist Cosette Donalds Brown's presentation, April 17, 2006.

93. While the search was being conducted and before the incident with the journalists, a student who was in the demonstration in the area outside the gates at 444 De Diego Condominium leaped on the vehicle exit gate and spat at an FBI agent who immediately drew his weapon and pointed it at the student.¹⁰⁸
94. All the evidence presented before the Civil Rights Commission showed that the FBI agents did not establish any perimeter at 444 De Diego Condominium; in fact, several deponents agreed on the fact that there were people and even cars that freely went in and out of the condominium. There was no evidence whatsoever showing that the journalists attacked the agents at the scene in any way.¹⁰⁹
95. During the more than four hours that the federal operation at 444 De Diego Condominium lasted and, despite the fact that a considerable number of onlookers and demonstrators went there, there were never law enforcement officers—either federal, state, or municipal—controlling traffic or protecting the safety of the people who were there or the people who were driving by.¹¹⁰

¹⁰⁸ Presentation by Miss Liliana Natalia Hernández and Ms. Judith Ortiz Roldán, April 20, 2006.

¹⁰⁹ This information was reiterated through the presentations of journalists and eyewitnesses who deposed before the Civil Rights Commission. Both security agents of the condominium, Sgt. Mary Ann Rodríguez and Rafael Benítez, agreed on the fact that vehicles and people entered and exited the area without any FBI agent guarding any of the gates. Testimonies offered at the hearing of July 31, 2006.

¹¹⁰ Miss Liliana Natalia Hernández' presentation, April 20, 2006; Presentation by the Police Superintendent, Mr. Pedro Toledo Dávila, Esq., July 14, 2006.

96. Due to the large amount of people who had crowded in front of 444 De Diego Condominium and the vehicles who would stop to investigate what was happening, there was traffic congestion in the area.¹¹¹
97. One of the eyewitnesses who was at 444 De Diego Condominium on February, 10, 2006, Dr. Julio Muriente, said that a young police officer from the Puerto Rico Police Department arrived at around 3:00 pm and told him that they had received instructions to stay far away from that place, not to be there.¹¹²
98. Likewise, Journalist Joel Lago Román said that around 12:40 pm or 12:50 pm, three state police officers on motorcycles and a state officer on a bicycle arrived there, as well as another state or municipal officer, he could not remember which; and they stood close to the entrance to 444 De Diego Condominium. The abovementioned journalist said that he approached these officers to ask them if they would be providing security in the area and that at that moment a captain from the state police department went by and signaled the officers to leave.¹¹³
99. The Superintendent of the Puerto Rico Police Department, Mr. Pedro Toledo Dávila, Esq., said during an executive session before the Civil Rights Commission that the FBI never notified him about the searches that were being carried out in different areas of the

¹¹¹ Mr. Rafael Benítez' presentation, July 31, 2006.

¹¹² Dr. Julio Muriente's presentation, April 20, 2006.

¹¹³ Journalist Joel Lago Román's presentation, April 17, 2006. This information was also corroborated by Journalist Normando Valentín in his presentation on April 18, 2006.

island and that he found out about this operation through the media. The following statements were part of Mr. Toledo Dávila's testimony:

“Well, I found out about that when it happened, in the press, obviously, it was on the radio, it was on television, the journalists called us to ask us whether the police department was involved. We were never informed about that, about that search. I found out through the press. Obviously, afterwards, I saw some visuals about what had happened there and I made some comments to the press, based on what I saw... based on what I saw in the videos on television. And, later on, when I had the opportunity to talk to some of the journalists who were affected, to Normando Valentín and some others.[sic] So, what I have said publicly is that, just as in the case of the operation in Hormigueros, we found out after the operation had begun. In the case of Hormigueros, contrary to this one, well, I found out through a call I received from Mr. Figueroa Sancha in the afternoon, asking us for help to establish a perimeter, because there had been problems in that operation in Hormigueros. Here, well, there was no communication from the FBI to us, none at all.”¹¹⁴

100. The Puerto Rico Police Department has a contact officer with the FBI—Captain Octavio Cruz—whom, this time, the FBI did not inform in any way about the operations they would conduct in several areas of the island, including the search at 444 De Diego Condominium.¹¹⁵
101. According to his testimony, the Police Superintendent knew about the search at 444 De Diego Condominium—although, according to what he said, [he learned about it] through the media after it had

¹¹⁴ Presentation by Mr. Pedro Toledo Dávila, Esq., July 14, 2006.

¹¹⁵ Ibid.

begun. Nevertheless, he did not give out instructions for state officers to go to the place to protect the safety of the people who were there.¹¹⁶

102. From the visuals that the Police Superintendent saw on television about what had happened at 444 De Diego Condominium, he thought that at least the agent who had used the pepper spray had acted improperly and that the matter should be investigated for possible civil rights violations or even for battery against the journalists, as shown by his testimony before the Civil Rights Commission:

“When they interviewed me about my opinion of what I had seen, that I gave my opinion about what I had seen.[sic] And I submitted to you my congressional presentation, in which I thought, at least, my... what I saw is that, at least, one of the FBI agents acted improperly. I think that I used that word, it could... it should be investigated, even possible civil rights violations, and that it could border on battery towards the journalists.”¹¹⁷

103. With regard to the controversy about whether the FBI had established a perimeter in this case or not, the Police Superintendent—who knows about FBI procedures since he was an agent of that organization—pointed out that leaving the fence of the condominium unattended was not effective because, if they wanted to establish a perimeter, somebody should have stayed guarding that fence.¹¹⁸

104. On its part, the San Juan Municipal Police Department did not know about the searches before they began and, when several municipal

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

officers who provide security in neighboring communities approached the area—alerted by citizens who told them what was going on at 444 De Diego Condominium—the situation had already returned to normal.¹¹⁹

105. The administrator of 444 De Diego Condominium testified that all these events of February 10, 2006, affected the peaceful coexistence inside the condominium and that some of the residents have felt anxious and fearful since that time. She received complaints from residents who felt that their freedom had been restrained. In fact, she said that, while the operation was being conducted, a resident who receives assistance in her apartment by a nurse who visits her had to receive the assistance in the administration office that day because she did not feel comfortable going up to her own apartment as a result of what was going on there.¹²⁰

106. Ms. Lucy Centeno described the situation with the residents as follows:

“I received many complaints from the residents; they felt intimidated, they felt that, well, they had restrained their freedom, because many of them could not go in or out at a given point. [They were] very nervous and worried because seeing so many federal agents like that and heavily armed, anyone would have thought that something very serious was going on, or a bomb, I don’t know. I was very tense, very... it was a really unpleasant moment. We had never had that experience and we really had to summon up our courage to be able to... and also keep the residents calm and under control.”¹²¹

¹¹⁹ Mr. Adalberto Mercado Cuevas’ presentation, April 21, 2006.

¹²⁰ Ms. Lucy Centeno’s presentation, July 10, 2006.

¹²¹ Ibid.

107. Ms. Centeno testified that life in the condominium has changed “greatly” after February 10, 2006, as a result of what happened, indicating that the residents had let her know that they “are tense” and “feel unsafe” since then.¹²²
108. On the evening of February 10, 2006, the FBI issued a press release indicating that the use of pepper spray had been necessary because the press had attacked the federal agents.¹²³
109. On February 13, 2006, Mr. Luis Fraticelli, Special Agent in Charge of the FBI in Puerto Rico, sent another press release to the media justifying the actions of the FBI agents indicating that the journalists “illegally crossed the perimeter” and that “at least two members of the media were observed on video throwing objects at the agents.”¹²⁴
110. Likewise, the United States Attorney for the District of Puerto Rico, Humberto S. García, said in an interview with Journalist Carmen Iris Torres from the El Nuevo Día newspaper that he would not prosecute any agent under his command at that time.¹²⁵
111. On February 14, 2006, the Puerto Rico Journalists Association (ASPPRO, Spanish acronym), the Photojournalists Association, and the Overseas Press Club sent a letter to Mr. Luis S. Fraticelli,

¹²² Ibid.

¹²³ Journalist Cosette Donalds Brown’s presentation, April 17, 2006.

¹²⁴ FBI Press Release published in the various media outlets of the island on February 14, 2006.

¹²⁵ Presentation from the Puerto Rico Journalists Association, the Photojournalists Association, the Overseas Press Club, and the Center for the Freedom of the Press in Puerto Rico, April 18, 2006.

with a copy to Mr. Humberto S. García, requesting a meeting with him to discuss the matter stated on the abovementioned press release and telling him that the journalists associations rejected its contents because they understood that they were not true.¹²⁶

112. The FBI never arranged the meeting requested by the abovementioned organizations or answered the letter they had sent.¹²⁷

113. According to the journalists, the events of February 10, 2006, at 444 De Diego Condominium “have had the real effect of affecting the already damaged relationship between the press and the FBI.”¹²⁸

114. Several journalists affected by the actions of the FBI agents filed a formal complaint with the Department of Justice of the Commonwealth of Puerto Rico to criminally prosecute the agents responsible.¹²⁹

115. On February 17, 2006, the Department of Justice of the Commonwealth of Puerto Rico served an official subpoena for investigation on both Mr. Humberto S. García, US Attorney for the District of Puerto Rico, and Mr. Luis Fraticelli, Special Agent in Charge of the FBI in Puerto Rico, requiring both of

¹²⁶ Letter dated February 14, 2006, signed by Mr. Oscar Serrano, ASPPRO President, Miss Aixa Vázquez, Overseas Press Club Vice President, and Mr. Xavier Araujo, Photojournalists Association Vice President.

¹²⁷ Mr. Oscar Serrano’s testimony, April 18, 2006.

¹²⁸ Presentation by the Puerto Rico Journalists Association, the Photojournalists Association, the Overseas Press Club, and the Center for the Freedom of the Press in Puerto Rico, April 18, 2006.

¹²⁹ See Complaint of the Commonwealth of Puerto Rico against the federal authorities, *supra*.

them to produce the following information in relation to the incidents of February 10, 2006, to wit:¹³⁰

- a. The name, rank, division, address, and telephone number of two FBI agents specifically identified through pictures attached to the subpoena;
- b. An official picture of each of the two identified agents;
- c. The protocols related to the use of force and pepper spray applicable to these two agents.

116. In the subpoena, the Department of Justice of the Commonwealth of Puerto Rico told the federal agents that the information requested was necessary to investigate whether crimes were committed under the local laws of Puerto Rico both by the use of force and by the use of pepper spray.¹³¹

117. Both Mr. Humberto S. García and Mr. Luis Fraticelli ignored the official subpoena issued by the Department of Justice of the Commonwealth of Puerto Rico and, in turn, filed a motion with the US District Court for the District of Puerto Rico to halt the request of the Department of Justice.

118. On March 1, 2006, the Secretary of Justice of the Commonwealth of Puerto Rico, Hon. Roberto J. Sánchez Ramos, sent a letter to the United States Attorney General, Hon. Alberto R. Gonzáles,

¹³⁰ Official subpoenas of the Department of Justice of the Commonwealth of Puerto Rico to the federal authorities, copies of which are included in the records of this investigation before the Civil Rights Commission.

¹³¹ Ibid.

asking him to intervene in the matter and be provided the requested information without having to resort to a lawsuit.¹³²

119. The federal authorities maintained their position of not providing any information, as requested, to the Department of Justice of the Commonwealth of Puerto Rico and, therefore, the latter filed a complaint¹³³ with the US District Court for the District of Puerto Rico on March 23, 2006, requesting that court to issue a declaratory judgment recognizing the rights of the Commonwealth of Puerto Rico and the Secretary of Justice, as head of the Department of Justice of the Commonwealth of Puerto Rico, to conduct a full investigation about the events of December [sic] 10, 2006, that allegedly caused damages to members of the press and the public as a result of the excessive use of force by FBI agents.
120. In the complaint filed by the Department of Justice of the Commonwealth of Puerto Rico with the US District Court for the District of Puerto Rico, the former also requested that the court order the defendants to refrain from withholding information that was relevant to the investigation that the plaintiff was conducting

¹³² A copy of this letter is included in the records of this investigation.

¹³³ The persons that appear as defendants in this complaint are the United States of America, Mr. Alberto R. González in his capacity as United States Attorney General, Mr. Robert Mueller in his capacity as FBI Director, Mr. Humberto S. García, United States Attorney for the District of Puerto Rico, and Mr. Luis Fraticelli in his capacity as Special Agent in Charge of the FBI in Puerto Rico. This complaint was identified with number 06-1306 (DRD).

and order the defendants to provide the information required on February 17, 2006.¹³⁴

121. The Department of Justice of the Commonwealth of Puerto Rico depends on the final resolution of this complaint to conclude its investigation of the events.
122. On March 28, 2006, Congresspersons John Conyers, Robert C. (Bobby) Scott, Charles B. Rangel, Nydia M. Velázquez, José Serrano, and Luis V. Gutiérrez held a special hearing in Washington D.C. about the events of February 10, 2006. The following persons appeared at that hearing:
 - a. Mr. Eduardo Bhatia, Esq., Executive Director of the Puerto Rico Federal Affairs Administration, on behalf of the Governor of Puerto Rico, Hon. Aníbal Acevedo Vilá, and the Superintendent of the Puerto Rico Police Department, Mr. Pedro Toledo Dávila, Esq.;
 - b. Prof. Ramón Bosque Pérez, Center for Puerto Rican Studies at Hunter College;
 - c. Mr. Julio Fontanet Maldonado, Esq., President of the Puerto Rico Bar Association;
 - d. Mr. Oscar Serrano, President of the Puerto Rico Journalists Association;
 - e. Ms. Jan Susler, Esq., on behalf of Ms. Lilliana Laboy.
123. For the March 28, 2006 hearing in Washington, the following written documents were submitted:
 - a. Letter from Dr. Palmira N. Ríos González, Chairperson of the Civil Rights Commission of the Commonwealth of Puerto Rico;

¹³⁴ Ibid.

b. Written presentation of the Overseas Press Club.

124. As of the date of this report, no pronouncement has been made in relation to the special hearing held on March 28, 2006, and we do not know of any steps taken in the United States Congress in relation to the February 10, 2006 incidents.
125. On April 7, 2006, the Civil Rights Commission published a notice of public hearings in two of the principal newspapers of general circulation in Puerto Rico—El Nuevo Día¹³⁵ and El Vocero¹³⁶—notifying the citizens about the holding of public hearings regarding the interventions of the FBI with the Puerto Rican press, in particular during the incidents of February 10, 2006, and regarding possible civil rights violations and other related incidents.
126. Both notices included the dates of the public hearings—initially scheduled for April 17, 18, 19, 20, and 21, 2006—and invited anyone interested in participating in same to contact the Civil Rights Commission to reserve a turn to make a statement or file written presentations.¹³⁷
127. On April 12, 2006, the Civil Rights Commission delivered two official subpoenas for investigation to the offices of Mr. Humberto S.

¹³⁵ El Nuevo Día, Friday, April 7, 2006, page 31.

¹³⁶ El Vocero, Friday, April 7, 2006, page 26.

¹³⁷ Ibid.

García, US Attorney for the District of Puerto Rico. The first subpoena was addressed to Mr. Luis Fraticelli, Special Agent in Charge of the FBI in Puerto Rico, and the second one, to Mr. José Figueroa Sancha, Special Deputy Agent in Charge of the FBI in Puerto Rico, who had been identified as the person in charge of the operation at 444 De Diego Condominium on February 10, 2006. Copies of these subpoenas were also notified to both FBI officials through the certified mail service of the United States Postal Service¹³⁸.

128. Both subpoenas had four pictures attached, which were identified as Exhibits 1 through 4 and showed several agents who intervened with the journalists on February 10, 2006.
129. The Civil Rights Commission requested both Mr. Luis Fraticelli and Mr. José Figueroa Sancha to appear at a public hearing on Friday, April 21, 2006, at 6:00 pm, at the offices of the Commission, and to provide the following information in relation to the events of February 10, 2006:
 - a. The name, rank, division, address, and telephone number of all the agents who participated in the search of the apartment at 444 De Diego Condominium; specifically of those identified in the four pictures that were included as part of the subpoena;
 - b. The protocols related to the use of force and pepper spray applicable to the incidents of February 10, 2006;
 - c. The protocols related to the establishment of perimeters during the searches conducted by the FBI.

¹³⁸ The official subpoena to Mr. Luis Fraticelli was sent to him by certified mail number 7001 0360 0002 3441 4786; the subpoena to Mr. José Figueroa Sancha was sent to him by certified mail number 7001 0360 0002 3441 4793.

- d. All pictures, videos, or similar [evidence] taken by the FBI during the searches conducted on February 10, 2006, specifically those related to the intervention with the journalists at 444 De Diego Condominium.
130. In the subpoena to both FBI officials, the Civil Rights Commission gave them an alternative to offer their testimonies in an executive session (private session behind closed doors) if they requested it.
131. On April 18, 2006, Mr. Humberto S. García sent a letter by fax to the Executive Director of the Civil Rights Commission indicating that, since the matter related to the searches at 444 De Diego Condominium was under the consideration of the federal court because of the complaint filed by the Commonwealth of Puerto Rico with that judicial forum, the United States Department of Justice did not authorize the appearance of Mr. Luis Fraticelli and Mr. José Figueroa Sancha at the hearing scheduled by the Civil Rights Commission.¹³⁹
132. In this letter, Mr. Humberto S. García said that any correspondence related to this matter should be sent to his assistant, Mr. Miguel A. Fernández, Esq.¹⁴⁰
133. On April 19, 2006, the Executive Director of the Civil Rights Commission sent a letter by fax, regular mail, and personal delivery to Mr. Miguel A. Fernández, Esq., with a copy to Mr. Humberto S.

¹³⁹ Letter from Mr. Humberto S. García to Mr. Osvaldo Burgos Pérez, Esq., dated April 17, 2006, and received at the Civil Rights Commission by fax (787) 764-8686 on April 18, 2006.

¹⁴⁰ Ibid.

García, telling him that the Commission disagreed with his interpretation and that the investigation that the Commission was conducting was different, separate, and independent from the one that the Department of Justice of the Commonwealth of Puerto Rico was conducting, and that it was limited to the principles established by Public Law No. 102 of June 28, 1965, *supra*.¹⁴¹

134. In the letter of April 19, 2006, the federal authorities were informed that, pursuant to the provisions of the acts known as The Freedom of Information Act, 5 USC §552 et seq., and The Government in the Sunshine Act, 5 USC §552b, the United States Department of Justice had the obligation to disclose the information that had been properly requested by the Civil Rights Commission. In view of the foregoing, the Commission reaffirmed the subpoena of Mr. Fraticelli and Mr. Figueroa Sancha to the public hearing on April 21, 2006, at 6:00 pm.¹⁴²
135. On April 21, 2006, at 4:08 pm, that is, two hours before Mr. Fraticelli and Mr. Figueroa Sancha were scheduled to appear before the Civil Rights Commission, Mr. Miguel A. Fernández, Esq., sent a letter to the Executive Director of the Commission by fax in response to the letter of April 19, 2006, reaffirming that the

¹⁴¹ Letter from Mr. Osvaldo Burgos Pérez, Esq., addressed to Mr. Miguel A. Fernández, Esq., dated April 19, 2006.

¹⁴² *Ibid*.

- subpoenaed FBI officials would not appear at the public hearing.¹⁴³
136. Neither of the FBI officials appeared at the public hearing and, as of the date of this report, they have not provided any information to the Civil Rights Commission nor have in any way cooperated with the investigation conducted by the Commission in relation to the events of February 10, 2006.
137. As of the date of their respective appearances, out of all the people who testified before the Civil Rights Commission, only the journalists who filed complaints with the Department of Justice and the administrator of the condominium had been interviewed by the prosecutors of that department. None of the other journalists or eyewitnesses who participated in the hearings of the Commission or even Ms. Liliana Laboy had been interviewed by the Department of Justice about the events of February 10, 2006; the Puerto Rico Police Department had not interviewed them so far either.¹⁴⁴
138. On September 18, 2006, FBI agents went to the homes of several independence supporters in the island, including 444 De Diego Condominium, and, without showing search or arrest warrants,

¹⁴³ Letter from Mr. Miguel A. Fernández, Esq., to Mr. Osvaldo Burgos Pérez, Esq., dated April 21, 2006.

¹⁴⁴ Testimonies of all the deponents before the Civil Rights Commission. At least, the Civil Rights Commission has not received any information with regard to them being interviewed either by the Department of Justice or by the Puerto Rico Police Department after their respective presentations.

asked questions without explaining the purpose or intention of those “visits,” and then left without conducting any intervention.

139. On September 20, 2006, the Puerto Rico Journalists Association, the Overseas Press Club of Puerto Rico, and journalists Normando Valentín, Víctor Sánchez, Joel Lago Román, Cossette Donalds Brown, Víctor Fernández, and Annette Álvarez filed a civil complaint with the US District Court for the District of Puerto Rico against the FBI and its agents.¹⁴⁵
140. In that case, the plaintiffs request that the court, among other things, declare that the conduct of the defendants constituted a violation of the freedom of expression and of the press protected by the Constitution of the United States, prohibit defendants from using force against journalists in future interventions, and require the FBI to establish procedures that will assure the members of the press that they will be able to do their job in the future without becoming victims of attacks by FBI agents. They also request to be compensated for the damages suffered as a result of the incidents of February 10, 2006.

¹⁴⁵ The caption of this case reads as follows: ASOCIACIÓN DE PERIODISTAS DE PUERTO RICO (Puerto Rico Journalists Association); OVERSEAS PRESS CLUB OF PUERTO RICO; NORMANDO VALENTÍN; VÍCTOR SÁNCHEZ; JOEL LAGO ROMÁN; COSSETTE DONALDS BROWN; VÍCTOR FERNÁNDEZ; ANNETTE ÁLVAREZ; each in their individual capacity and on behalf of their respective Conjugal Partnerships comprised by them and their respective spouses vs. ROBERT MUELLER, in his official capacity as Director of the Federal Bureau of Investigation, and TEN UNKNOWN AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, Agent KEITH BYER, AGENT LUIS FRATICELLI, AGENT JOSE FIGUEROA SANCHA, each individually and in their official capacities and on behalf of their respective Conjugal Partnerships comprised by them and their respective spouses.

141. On September 26, 2006, the US District Court for the District of Puerto Rico dismissed the complaint filed by the Department of Justice of the Commonwealth of Puerto Rico on March 23, 2006, against the federal authorities in relation to the events under investigation.
142. The Secretary of Justice of the Commonwealth of Puerto Rico immediately indicated that he would appeal the decision of the federal district court to the United States Court of Appeals for the First Circuit in Boston.

PRINCIPLES AND LAW APPLICABLE TO THE CONTROVERTED FACTS

A. REGARDING FREEDOM OF THE PRESS

Section 4 of Article II—Bill of Rights—of the Constitution of the Commonwealth of Puerto Rico provides that “No law shall be made abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.” **[official translation]**

When this section of our Constitution was being discussed in the Constitutional Convention, some statements were made that deserve to be highlighted herein in order to understand the magnitude of the freedom of the press as conceived by the members of the Constitutional Assembly that created this section. According to the Diary of Sessions for December 19, 1951¹⁴⁶, Delegate at Large Mr. Jaime Benítez stated:

“The third principle is that which refers, Mr. President, to other high matters of freedom, freedom of thought, freedom of the press, freedom of expression, freedom of assembly, right to petition. All these are expressed in the clear manner that has historically represented each of these freedoms, the way they are expressed in the federal constitution.”¹⁴⁷

In the report submitted by the Bill of Rights Commission of the Constitutional Convention on December 14, 1951, Section 4, Article II, of the Constitution of the Commonwealth of Puerto Rico was described as follows:

“This section corresponds to the remaining provisions of the first amendment of the federal constitution and incorporates into our constitution all historically established rights concerning the

¹⁴⁶ Thirty-fifth day of session of the Constitutional Convention.

¹⁴⁷ Diary of Sessions of the Puerto Rico Constitutional Convention, Commemorative Edition of July 25, 2003, Volume II, page 1004.

freedom of speech, of the press, and of assembly, and the right to petition. Sections 3 and 4 cover the general scope of the freedom of conscience, of thought, and of expression, and of the proper activities to fully exercise all of these rights within the broadest of freedoms.”¹⁴⁸

On its part, the First Amendment of the Constitution of the United States of America establishes that:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”¹⁴⁹

The Supreme Court of Puerto Rico has had the opportunity to construe Section 4 of our Bill of Rights recognizing that it “unequivocally consecrates the supremacy of the freedom of expression in our constitutional structure” and also that “well-known historic considerations support the preeminence of this right, indisputable root of the democratic system of government.”¹⁵⁰ Our highest judicial forum has also pointed out that the freedom of speech, of the press, and of assembly “are vital to the very existence of democracy”¹⁵¹.

In Pérez Vda. de Muñiz v. Criado Amunategui, 151 DPR 355 (2000), citing abundant previous caselaw¹⁵², the Supreme Court of Puerto Rico held that both our Constitution and the US Constitution define the freedom of the press as a

¹⁴⁸ Diary of Sessions of the Puerto Rico Constitutional Convention, Commemorative Edition of July 25, 2003, Volume IV, page 2564.

¹⁴⁹ Translator’s Note: The text of note 149 in the original Spanish document has been omitted herein because it cited the original English text of the First Amendment, since a Spanish translation was provided in the text above.

¹⁵⁰ Mari Brás v. Casañas, 96 DPR 15 (1968); Aponte Martínez v. Lugo, 100 DPR 282 (1971).

¹⁵¹ Pueblo v. Burgos, 75 DPR 551 (1953).

¹⁵² Méndez Arocho v. El Vocero, 130 DPR 867 (1992); El Vocero v. ELA, 131 DPR 356 (1992); Pueblo v. Arandes de Celis, 120 DPR 530 (1988); Santiago v. Bobb y El Mundo, Inc., 117 DPR 153 (1986); Soto v. Secretario de Justicia, 112 DPR 477 (1982); Aponte Martínez v. Lugo, 100 DPR 282 (1971).

fundamental right, indicating that it is an integral part of the freedom of expression and that the latter is the indispensable condition of almost any other form of freedom¹⁵³.

The Supreme Court of the United States has ruled that the freedom of the press is part of the freedom of expression protected by the First Amendment of the Constitution and that both freedoms have the same characteristic of being a fundamental right¹⁵⁴ that cannot be restricted by the states without the due process of law established in the Fourteenth Amendment:¹⁵⁵

“The First Amendment, in conjunction with the Fourteenth, prohibits governments from ‘abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.’ These expressly guaranteed freedoms share a common core purpose of assuring freedom of communication on matters relating to the functioning of government.”¹⁵⁶

Likewise, the Supreme Court of the United States has held that the protection of the press under the First Amendment is extended to the most diverse forms of disseminating information—brochures, flyers, signs, magazines, newspapers, advertisements, books, movies, and radio and television broadcasts—indicating that this protects both individuals and the institutional

¹⁵³ In turn, citing Justice Cardozo of the Supreme Court of the United States in Palko v. Connecticut, 302 US 319 (1937).

¹⁵⁴ Grosjean v. American Press Co., 297 US 233 (1936); Richmond Newspapers, Inc., 448 US 555 (1980).

¹⁵⁵ The Fourteenth Amendment of the Constitution of the United States of America establishes, among other things, that no State may “deprive any person of life, liberty, or property, without due process of law.”

¹⁵⁶ *Supra*, page 575.

press¹⁵⁷. This is so because, according to the Supreme Court of the United States, the freedom of expression and the freedom of the press have been traditionally considered as inseparable, coextensive, and, therefore, constitutionally speaking, a redundancy.¹⁵⁸

In Thornhill v. Alabama, 310 US 88 (1940), the Supreme Court said the following about the freedom of expression and of the press:

“The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times... Freedom of discussion, if it would fulfill its historical function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.”

On the other hand, Article 19 of the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948, provides the following:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

¹⁵⁷ Lovell v. City of Griffin, 303 U.S. 444 (1938); Schneider v. New Jersey, 308 U.S. 147 (1939); Thornhill v. Alabama, 310 U.S. 88 (1940); Roth v. United States, 354 U.S. 376 (1957); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); New York Times v. Sullivan, 376 U.S. 254 (1964); Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976); Greenbelt Cooperative v. Bresler, 398 U.S. 6 (1970); Time, Inc. v. Hill, 385 U.S. 374 (1967); Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969); Estes v. Texas, 381 U.S. 532 (1965).

¹⁵⁸ O’Brien, David M., Constitutional Law and Politics, Volume II: Civil Rights and Civil Liberties, W.W. Norton & Company, New York, New York, 1991, pg. 505.

As we stated in a previous report from the Civil Rights Commission, “the freedom of the press, together with the freedom of speech, of assembly, and of association, and the right to petition, is one of the fundamental rights of the freedom of expression that is recognized and guaranteed to all persons in our legal system. These rights of expression, considered jointly or separately, consecrate the broadest freedom to be able to individually or by agreement say, write, publish, distribute, and do what is not prohibited by law. On the other hand, insofar as the law is limited by these freedoms thus recognized, it cannot previously or subsequently restrict their peaceful or lawful exercise. Likewise, these rights of expression constitute an annotation to the coercive power of the State, that is, in all government actions, through its agencies and officials, the government shall respect and protect the effective exercise of these human rights by any person.”¹⁵⁹

On November 22, 1969, the American Convention on Human Rights was approved, and it was signed by the United States of America on June 1, 1977¹⁶⁰. The provisions of Article 13 of that document, which establish the following in relation to the obligation of the signatory states with regards to the freedom of thought and expression, are relevant to this report:

¹⁵⁹ See Civil Rights Commission Report 1977-CDC-007E, *Las Relaciones de la Prensa y el Gobierno en un Estado Democrático*, prepared by Mr. Gustavo Marrero Irizarry, Esq., July 13, 1977, pages 1 and 2.

¹⁶⁰ We must point out that, although the United States of America signed the Human Rights Convention in 1977, it has not since ratified it.

“Article 13. Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. Respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

On the other hand, in 2000, the Inter-American Commission on Human Rights, of which the United States of America is a member, adopted the Inter-American Declaration of Principles on Freedom of Expression. Due to the importance of this document and its relevance to the events in question, we thought it prudent to fully transcribe it below.

“INTER-AMERICAN DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION

Approved by the Inter-American Commission on Human Rights (of
which the United States is a member) in 2000

PREAMBLE

REAFFIRMING the need to ensure respect for and full enjoyment of individual freedoms and fundamental rights of human beings under the rule of law;

AWARE that consolidation and development of democracy depends upon the existence of freedom of expression;

PERSUADED that the right to freedom of expression is essential for the development of knowledge and understanding among peoples, that will lead to a true tolerance and cooperation among the nations of the hemisphere;

CONVINCED that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process;

CONVINCED that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of governmental activities and the strengthening of democratic institutions;

RECALLING that freedom of expression is a fundamental right recognized in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59(1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Covenant on Civil and Political Rights, as well as in other international documents and national constitutions;

RECOGNIZING that the member states of the Organization of American States are subject to the legal framework established by the principles of Article 13 of the American Convention on Human Rights;

REAFFIRMING Article 13 of the American Convention on Human Rights, which establishes that the right to freedom of expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication;

CONSIDERING the importance of freedom of expression for the development and protection of human rights, the important role assigned to it by the Inter-American Commission on Human Rights and the full support given to the establishment of the Office of the Special Rapporteur for Freedom of Expression as a fundamental instrument for the protection of this right in the hemisphere at the Summit of the Americas in Santiago, Chile;

RECOGNIZING that freedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information;

REAFFIRMING that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

CONSIDERING that the right to freedom of expression is not a concession by the States but a fundamental right;

RECOGNIZING the need to protect freedom of expression effectively in the Americas, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopts the following Declaration of Principles:

PRINCIPLES

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.
2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.
3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.
5. Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.
6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.
7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.

8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.
9. The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.
10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.
11. Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information.
12. Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information. In no case should such laws apply exclusively to the media. The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.
13. The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of

communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

All these international documents we have mentioned are binding on the United States of American and, therefore, are applicable in the analysis of the controverted facts in the report herein.

Although the freedom of the press is a generally recognized human right, it has not been exempt from attacks. Our hemisphere has not been the exception, and this has been a cause of concern throughout history. Given the problems and difficulties that this fundamental right has faced in America, on March 11, 1994, the Chapultepec Declaration was adopted by the Hemisphere Conference on Free Speech held in Mexico City and it has been signed by over 20 heads of state and other chief executives in America, including the then President of the United States, William J. (Bill) Clinton. In Puerto Rico, former governors Pedro Rosselló González and Sila María Calderón have endorsed this Declaration. “Thousands of ordinary citizens, heads of labor unions, journalists, and others have appended their signatures in copies of this document.”¹⁶¹

¹⁶¹ Mieremil Rodríguez, “*Conociendo la Libertad de Prensa*” [Getting to Know the Freedom of the Press], Conference before the Center for the Freedom of the Press in Puerto Rico.

The Chapultepec Declaration outlines the importance of the freedom of the press for democratic societies by adopting ten (10) fundamental principles.

Due to the relevance of the Chapultepec Declaration in the context of the investigation herein, we thought it prudent to also transcribe it fully as part of this report:

“Chapultepec Declaration (1994)

Adopted by the Hemisphere Conference on Free Speech held in Mexico City on March 11, 1994

Preamble:

On the threshold of a new millennium, the Americas envision a future rooted in democracy. A political opening has taken hold. Citizens have a heightened awareness of their rights. More than at any time in our history regular elections, governments, parliaments, political parties, labor unions, associations and social groups of every kind reflect the hopes of our people.

In this environment of democratization, several developments engender optimism but also suggest prudence. Institutional crises, inequalities, backwardness, unresolvable frustrations, the search for easy solutions, failure to grasp the nature of democracy and special interest groups constantly threaten the advancements made. They also represent potential hurdles to further progress.

That is why we who share this hemisphere, from Alaska to Tierra del Fuego, must consolidate the prevailing public freedoms and human rights.

Democratic rule must be embodied in modern institutions that represent and respect the citizenry; it must also guide daily life. Democracy and freedom, inseparably paired, will flourish with strength and stability only if they take root in the men and women of our continent.

Without democracy and freedom, the results are predictable: Individual and social life is stunted, group interaction is curtailed, material progress is distorted, the possibility of change is halted, justice is demeaned and human advancement becomes mere fiction.

Freedom must not be restricted in the quest for any other goal. It stands alone, yet has multiple expressions; it belongs to citizens, not to government.

Because we share this conviction, because we have faith in the creative force of our people and because we are convinced that our principles and goals must be freedom and democracy, we openly support their most forthright and robust manifestation: Freedom of expression and of the press, whatever the medium of communication. The exercise of democracy can neither exist nor be reproduced without these.

We, the signatories of this declaration, represent different backgrounds and dreams. We take pride in the plurality and diversity of our cultures, considering ourselves fortunate that they merge into the one element that nurtures their growth and creativity: Freedom of expression, the driving force and basis of mankind's fundamental rights.

A free society can thrive only through free expression and the exchange of ideas, the search for and the dissemination of information, the ability to investigate and question, to propound and react, to agree and disagree, to converse and confront, to publish and broadcast. Only by exercising these principles will it be possible to guarantee individuals and groups their right to receive impartial and timely information. Only through open discussion and unfettered information will it be possible to find answers to the great collective problems, to reach consensus, to have development benefit all sectors, to practice social justice and to advance the quest for equality. We therefore vehemently reject assertions which would define freedom and progress, freedom and order, freedom and stability, freedom and justice, freedom and the ability to govern as mutually exclusive values.

Without freedom there can be no true order, stability and justice. And without freedom of expression there can be no freedom. Freedom of expression and the seeking, dissemination and collection of information can be exercised only if freedom of the press exists.

We know that not every statement and item of information can find its way into the media. We know that the existence of press

freedom does not automatically guarantee unrestricted freedom of expression. But we also know that a free press favors an environment that nurtures freedom of expression and thereby benefits all other public freedoms.

Without an independent media, assured of the guarantees to operate freely, to make decisions and to act on them fully, freedom of expression cannot be exercised. A free press is synonymous with free expression.

Wherever the media can function unhindered and determine their own direction and manner of serving the public, there is a blossoming of the ability to seek information, to disseminate it without restraints, to question it without fear and to promote the free exchange of ideas and opinions. But wherever freedom of the press is curtailed, for whatever reasons, the other freedoms vanish.

After a period when attempts were made to legitimize government control over news outlets, it is gratifying to be able to work together to defend freedom. Many men and women worldwide join us in this task. But opposition remains widespread. Our continents are no exception. There are still counties whose despotic governments abjure every freedom, particularly those freedoms related to expression. Criminals, terrorists and drug traffickers still threaten, attack and murder journalists.

But that is not the only way to harm a free press and free expression. The temptation to control and regulate has led to decisions that limit the independent action of the media, of journalists and of citizens who wish to seek and disseminate information and opinions.

Politicians who avow their faith in democracy are often intolerant of public criticism. Various social sectors assign to the press nonexistent flaws. Judges with limited vision order journalists to reveal sources that should remain in confidence. Overzealous officials deny citizens access to public information. Even the constitutions of some democratic countries contain elements of press restriction.

While defending a free press and rejecting outside interference, we also champion a press that is responsible and involved, a press

aware of the obligations that the practice of freedom entails.

Principles

A free press enables societies to resolve their conflicts, promote their well-being and protect their liberty. No law or act of government may limit freedom of expression or of the press, whatever the medium.

Because we are fully conscious of this reality and accept it with the deepest conviction, and because of our firm commitment to freedom, we sign this declaration, whose principles follow.

1. No people or society can be free without freedom of expression and of the press. The exercise of this freedom is not something authorities grant, it is an inalienable right of the people.
2. Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.
3. The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector. No journalist may be forced to reveal his or her sources of information.
4. Freedom of expression and of the press are severely limited by murder, terrorism, kidnapping, intimidation, the unjust imprisonment of journalists, the destruction of facilities, violence of any kind and impunity for perpetrators. Such acts must be investigated promptly and punished harshly.
5. Prior censorship, restrictions on the circulation of the media or dissemination of their reports, forced publication of information, the imposition of obstacles to the free flow of news, and restrictions on the activities and movements of journalists directly contradict freedom of the press.
6. The media and journalists should neither be discriminated against nor favored because of what they write or say.
7. Tariff and exchange policies, licenses for the importation of paper or news-gathering equipment, the assigning of radio and television frequencies and the granting or withdrawal of government advertising may not be used to reward or punish the media or individual journalists.
8. The membership of journalists in guilds, their affiliation to professional and trade associations and the affiliation of the media

with business groups must be strictly voluntary.

9. The credibility of the press is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. The attainment of these goals and the respect for ethical and professional values may not be imposed. These are the exclusive responsibility of journalists and the media. In a free society, it is public opinion that rewards or punishes.

10. No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.

The struggle for freedom of expression and of the press is not a one-day task; it is an ongoing commitment. It is fundamental to the survival of democracy and civilization in our hemisphere. Not only is this freedom a bulwark and an antidote against every abuse of authority, it is society's lifeblood. Defending it day upon day is honoring our history and controlling our destiny. To these principles we are committed."

The previous discussion leaves no doubt that when we are talking about freedom of the press, we are talking about one of the most significant rights for our society, and that when that freedom is affected, it affects one of the principal foundations on which the democratic society in which we live is built. This freedom of the press is intimately related to the freedom of expression and includes not only the right of the press to obtain information, but also and more importantly the right of the people to be kept appropriately informed.

Therefore, when a journalist is attacked or prevented access to information, the whole society that is waiting for the information is also being attacked, and the freedom of all the people to obtain that information is being restricted. When this occurs, it is the State's responsibility to act with the utmost diligence to investigate the facts and punish those responsible. Otherwise, we

would have a double violation of human rights: the first, due to the deprivation of the freedom of expression and of the press, and the second, to the impunity.

The case is even more serious when the information whose dissemination and disclosure is being prevented is related to the actions of the State itself, insofar as the people in a democratic society are the entity that supervises the actions of the State.

The state cannot completely and arbitrarily hinder the right of the people to be kept informed under the pretext of maintaining order. As the Supreme Court of the United States well said in McNabb v. United States, 318 US 332 (1942):

“Regardless of how good the guardian might be, there is always the problem of who keeps watch on him. *Quis custodiet custodiam*. When the means are neglected, when the fundamental rights are demeaned in the name of a desired order, what perishes in the end is freedom, and, with it, the democracy they wanted to defend.”¹⁶²

[our translation]

B. REGARDING THE CRIME OF BATTERY AND OF PLACING OBSTACLES TO THE APPEARANCE OF WITNESSES OR PERSUADING THEM NOT TO APPEAR

The Penal Code of Puerto Rico¹⁶³ categorizes the different modalities of the crime of battery in articles 121 et seq. The crime of **simple battery** is defined in Art. 121 of the abovementioned Code as follows:

“Any person who illegally, by any means or in any way, causes injury to the bodily integrity of another shall be guilty of a misdemeanor¹⁶⁴.”

¹⁶² Cited in Pueblo v. Lebrón, 108 DPR 342 (1979).

¹⁶³ Law No. 149 of June 18, 2004, as amended.

¹⁶⁴ A misdemeanor is any crime entailing an individualized fine of up to \$5,000 or imprisonment of up to 90 days. Art. 16 of the Penal Code of Puerto Rico, *supra*.

On its part, Art. 122 defines the crime of **aggravated battery** as follows:

“If the battery described in Art. 121 causes an injury that does not leave permanent damage, but requires medical attention, professional or specialized assistance, or outpatient treatment, the person shall be guilty of a felony in the fourth degree¹⁶⁵.

If the battery causes an injury requiring hospitalization, prolonged treatment, or generates permanent damage, the person shall be guilty of a felony in the third degree¹⁶⁶. This modality also includes mutilating injuries; those in which a disease, syndrome, or condition requiring prolonged physical treatment is transmitted; or those requiring prolonged psycho-emotional treatment.”

Likewise, Art. 287 of the Penal Code categorizes **placing obstacles to the appearance of witnesses or persuading them not to appear** as a crime as provided below:

“Any person who, without legal justification, prevents or dissuades another, who is or may be a witness, from appearing or offering his or her testimony in any investigation, proceeding, hearing, or judicial, legislative, or administrative matter, or in any other procedure authorized by law, shall be guilty of a misdemeanor.”

If any of the crimes categorized in the Penal Code is committed or attempted within the jurisdiction of the Commonwealth of Puerto Rico, the Puerto Rico Police Department, as the entity destined to ensure the order and safety of all citizens, shall be responsible for conducting the corresponding investigations to identify those responsible and bring them before the judicial forums to be prosecuted.

¹⁶⁵ A felony in the fourth degree is punishable by imprisonment between 3 years, 1 day, and 15 years. Art. 16 (c) of the Penal Code of Puerto Rico, *supra*.

¹⁶⁶ A felony in the third degree is punishable by imprisonment between 6 months, 1 day, and 3 years. Art. 16 (d) of the Penal Code of Puerto Rico, *supra*.

Art. 3 of Public Law No. 53 of June 10, 1996, better known as the Puerto Rico Police Act of 1996, provides the following in relation to the responsibilities of the Puerto Rico Police Department:

“A civil organization for public order to be known as the “Puerto Rico Police” is hereby created in the Commonwealth of Puerto Rico, whose duties shall be to protect persons and property, maintain and keep the public order, **pursue and procure the most complete protection of the civil rights of the citizens, prevent, discover, investigate and persecute crime** and, within the scope of its authority, enforce obedience of the laws and municipal ordinances and regulations promulgated thereunder. The members of the Police Force shall be included in the Career Service.” (Our underlining). **[official translation]**

On its part, the Department of Justice is responsible for prosecuting any person believed to have committed or attempted to commit a crime within our jurisdiction, regardless of who it may be. In the discharge of such responsibility, the Department of Justice has the legal authority to conduct investigations and require through a subpoena the production of information and evidence leading to the person or persons responsible for the crime in question so that they can be criminally prosecuted.

Any person who, having been subpoenaed by any judicial, legislative, or administrative organization with the authority to do so for the purpose of appearing or offering his or her testimony in any investigation, proceeding, hearing, or judicial, legislative, or administrative matter, and, without legal justification, prevents or dissuades another from appearing before those organizations shall be guilty of a misdemeanor in our jurisdiction. This is established by Art. 287 of our Penal Code, *supra*.

In view of the foregoing, it is in the first place the responsibility of the Puerto Rico Police Department to ensure order and safety, to protect the civil rights of the citizens, and to investigate and persecute crime, without any exceptions. Secondly, it is the duty of the Department of Justice to ensure that the crimes committed in our jurisdiction are prosecuted.

On its part, the San Juan Municipal Police Department, although it has a smaller jurisdictional scope than the Puerto Rico Police Department, is also destined to ensure order and safety within the limits of the capital city as well as to work in close collaboration with the Puerto Rico Police Department in the exercise of its duties.

There is no exception to the penal rules of our country or to the procedures that must be followed to prosecute those who break them. Not even law enforcement officers themselves are exempt from observing these rules.

Our legal system deserves everyone's respect, without distinction. The first who must respect our system are precisely those persons in charge of protecting public safety and order. A system in which the first who disobey the rules are its own officers loses legitimacy before its citizens.

In a democratic society, the legitimacy and respect of its institutions are among the most important criteria and, therefore, their protection is everyone's

responsibility. Thus, the people have the right and the obligation to require, in the first place, full respect of the established rules from its authorities and, secondly, the investigation and prosecution of those who violate them, without distinction.

C. REGARDING THE ABUSE OF AUTHORITY

The abuse of authority within the context of the actions of law enforcement officers can be defined as all actions or omissions by a law enforcement officer that deviate from what he or she is allowed to do under the Law, the applicable regulations, and the current system. Among the actions that constitute a misuse or an abuse of authority from law enforcement officers within our jurisdiction, we can list the following: a) illegal or unreasonable arrests or detentions; b) illegal or unreasonable searches, raids, and seizures; c) unjustified or excessive assault and/or battery; d) discrimination on the basis of political or religious beliefs, socioeconomic status, or any other basis not applicable to all people in general; e) undue delay in bringing an arrested or detained person before a judge; f) use of unjustified violence, physical or psychological coercion, intimidation, or undue delay on a person who is arrested or detained for the purpose of investigation; g) refusal from the officer to allow a person who has been arrested or involuntarily detained to contact his or her closest relative or an attorney; h) interception, recording, or any other transgression of private communications through

physical, chemical, or electronic devices¹⁶⁷; i) incitement to commit a crime in cases when the person would not have committed or attempted to commit the crime if this incitement had not occurred; j) malicious persecution; k) slander, libel, or defamation; l) false representation or imposture; m) use of false evidence linking a person to the perpetration of a crime; n) initiation and continuation of an evident, notorious, and intense surveillance or investigation on a person when, due to these characteristics, it would lose all effectiveness as a prudent and discreet mechanism of police investigation; o) illegal or unreasonable obstruction, hindering, or interruption of the legal and peaceful exercise of the freedoms of speech, of the press, of assembly, and of association, and of the right to petition through public channels or in public places.

When a state, municipal, or federal law enforcement officer abuses his or her authority, an atmosphere of unease is created in the general community and a feeling of distrust is generated not only towards the person or persons who abused their authority, but also towards the whole law enforcement corps to which they belong. Society expects the people chosen by the State to protect their security to be suitable persons incapable of abusing the power they were granted when they joined the law enforcement corps in question. Therefore, the responsibility is shared between the State and the law enforcement officer; the State because of its obligation to recruit men and women who are capable of fulfilling their task without abusing their authority, and the law enforcement

¹⁶⁷ Regarding this matter, we must clarify that, although they are expressly prohibited in our Constitution, tapping telephone conversations and recording private conversations is permitted in the federal jurisdiction under certain circumstances that we will not discuss here because they are irrelevant to the facts of the report herein.

officers because of their duty to obey the rules whose respect they are called to protect.

When a law enforcement officer abuses his or her authority and, as a result of his or her acts or omissions, inflicts damages on third parties, civil causes of action that protect the affected people would apply in addition to the criminal penalties that the state may impose in cases when the abuse of authority also constitutes a crime.

In our jurisdiction, Article 1802 of the Civil Code of Puerto Rico¹⁶⁸ establishes the following with regard to liability for damages due to a negligent action or omission:

“A person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage so done. Concurrent imprudence of the party aggrieved does not exempt from liability, but entails a reduction of the indemnity.”
[official translation]

On its part, Article 1803 of the same code¹⁶⁹ establishes what is known in our legal system as vicarious liability, through which a natural person or a legal entity is liable not only for his or her own actions, but also for the actions of all those under his or her authority. To such effects, the abovementioned article provides:

“The obligation imposed by §5141 of this title is demandable, not only for personal acts and omissions, but also for those of the persons for whom they should be responsible.

The father, and, in the event of his death or incapacitation, the mother, is liable for the damage caused by the minor children living with them.

Guardians are liable for the damages caused by minors or

¹⁶⁸ 31 LPRA §5141.

¹⁶⁹ 31 LPRA §5142.

incapacitated persons who are under their authority and live with them.

Owners or directors of an establishment or enterprise are likewise liable for any damages caused by their employees in the service of the branches in which the latter are employed or on account of their duties.

The Commonwealth is liable in this sense under the same circumstances and conditions as those under which a private citizen would be liable.

Finally, masters or directors of arts and trades are liable for the damages caused by their pupils or apprentices while they are under their custody.

The liability referred to in this section shall cease when the liable persons mentioned therein prove that they employed all the diligence of a good father of a family to preclude the damage.” (Our underlining). **[official translation]**

These liabilities imposed by the Civil Code of Puerto Rico are separate and independent from other causes of action that could arise from the violation of constitutional rights or special acts at both the local and the federal level. For example, in the case of damages caused by the violation of civil rights protected by the Constitution of the United States, there is also a cause of action under federal jurisdiction by virtue of the provisions of section 1983 of the Federal Civil Rights Act¹⁷⁰, which provides that:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act

¹⁷⁰ 42 USCA §1983.

or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

Both the Puerto Rican courts and the federal forums have had the opportunity to discuss the provisions transcribed above in the light of the abuse of authority by law enforcement officers, and have censured all sorts of cases in which such abuses have been evidenced and imposed civil liability (and criminal liability in applicable cases) not only on the officers who abused their authority, but also on those who could have intervened to avoid or halt such abuse but did not do so.¹⁷¹

Liability has also been imposed on the supervisors of such officers when they knew or should have reasonably known about the volatile or violent character of the officers and did nothing to prevent such volatile or violent officers from, in the future, causing damages to third parties in the exercise of their duties. This liability could be of a vicarious nature as established in Article 1803 of the Civil Code of Puerto Rico, *supra*, or due to the negligence of the supervisor in his or her supervisory duties when the supervisor shows a careless or oblivious indifference toward the constitutional rights of the affected person which

¹⁷¹ Graudeault v. Municipality of Salem, 923 F.2d 203 (1st Cir. 1990); O’Neill v. Kreminski, 839 F.2d 9 (2d Cir. 1988); Torres Rivera v. O’Neill Cancel, No. 03-2627, resolved by the United States Court of Appeals for the First Circuit on May 3, 2006.

could be categorized as a pardon or acquiescence in the supervision that may be characterized as gross negligence.¹⁷²

We must recognize that the work of the law enforcement officers, among them of the FBI, is oftentimes delicate and dangerous and that, therefore, it requires a great deal of tact without ceasing to be firm and efficient, and that the use of physical or lethal force greatly depends on the officer's judgment in tense and emotionally-charged situations. Nevertheless, it is precisely because of these circumstances in which the work of law enforcement officers develops that they are required to possess a specific character and specialized training that will help them channel their impulses in a reasonable manner. Those who are not able to manage their violent or aggressive impulses in situations requiring control cannot—or at least, should not—act as law enforcement officers.

D. REGARDING STATE VIOLENCE OR INSTITUTIONAL VIOLENCE

Another aspect that warrants our consideration in this report is the effect that the violent acts of state organizations have on the citizenry. Therefore, we thought it prudent to include the statements of the Commission for the Prevention of Violence, better known as COPREVI [Spanish acronym]¹⁷³, in their

¹⁷² Leyva v. Aristud, 132 DPR 489 (1993).

¹⁷³ COPREVI is an entity that was created in 2004 through an Executive Order of the then Governor of the Commonwealth of Puerto Rico, Hon. Sila María Calderón, to deal with the problem of violence in the island. It is made up of members of the civil society devoted to, with the assistance of specialized personnel, producing and disseminating the necessary scientific knowledge and information to the government and the various sectors of the society on the subject of violence and their way of dealing with and preventing it.

presentation before the Civil Rights Commission in relation to the facts under investigation:

“A legitimate ambition of all peoples in the world is to live in peace and calm. This ambition is consecrated in the Universal Declaration of Human Rights approved by the UN in 1948. The people of Puerto Rico do not have lesser ambitions than other peoples. In fact, the government program of the party governing Puerto Rico states that we are going to create a peaceful generation so that we can all live in Puerto Rico without fear.

Nevertheless, events such as the ones caused by the intervention of the Federal Bureau of Investigation, FBI, last February 10th threaten the public peace and the peaceful coexistence of our citizens. The armed and violent incursion in the homes of Puerto Rican citizens and the public aggression against journalists constitute serious violations of the civil and constitutional rights of the citizens and infringe the freedom of the press and its corollary, the right of the Puerto Rican people to be duly informed.

The foregoing picture is notoriously serious since this intervention was conducted by an organization of the government of the United States of America that should protect and offer security and protection to the citizenry. In its World Report on Violence and Health, the World Health Organization identified this type of violence as ‘institutional violence.’

This type of violence committed by state organizations is, according to Ramsey Clark, former US Attorney General, the worst type of violence because, being committed by the State, it creates feelings of vulnerability since there are scarcely any forums to which [people can] resort to seek justice against that violence.

...

We are also concerned about the bad example set by this event in a society where violence is a serious problem. This type of intervention not only disturbs the public peace, but also provides a negative and bleak model for the citizenry. Furthermore, this type of violence in Puerto Rico from the federal police of the United States of America against people of a pro-independence ideology and against journalists has the direct effect of terrifying the

population so that it does not exercise its civil and constitutional rights to the freedom of expression and of political beliefs.

The legally-recognized chilling effect works as a deterrent so that citizens will not claim their rights for fear of reprisals. We need to let the general population know that this type of aggressive and violent conduct is not acceptable, even when it is displayed by police forces.”

These statements by COPREVI are more than enough to illustrate what is considered institutional violence and the effects it creates on the society that experiences it.

CONCLUSIONS

The findings of the investigation conducted by the Civil Rights Commission, together with the analysis of the applicable law, lead us to the following conclusions:

1. The display of force and FBI agents used to search Ms. Liliana Laboy's apartment was excessive, unreasonable, and unjustified in the light of the circumstances surrounding the operation of February 10, 2006 at 444 De Diego Condominium.
2. Using dozens of FBI agents armed with assault weapons to search the apartment of a defenseless woman in her fifties, who is sick, lives alone, and has no known violent history is not justified.
3. Seizing the whole 178 apartment condominium and not allowing people to go in and out of the place for almost two hours to search just one of those apartments is not justified within the circumstances of this case either.
4. The way in which this operation was conducted at 444 De Diego Condominium constituted an excessive use of force by the FBI.
5. The FBI did not establish any perimeter that would allow the journalists and the other people to know how far they could go. As a matter of fact, the FBI did not guard any of the gates of 444 De Diego Condominium although it knew that it was easy to climb over them and that there were

demonstrators outside who were against the operation.

6. The FBI knew or should have reasonably known about the prevailing atmosphere in Puerto Rico regarding its work—particularly among the supporters of the pro-independence movement in the island—after the incident in which Mr. Filiberto Ojeda Ríos died on September 23, 2005, and should have therefore taken all necessary measures to avoid any act of violence or confrontation during the operation at 444 De Diego Condominium. In spite of the foregoing, the FBI did nothing in this regard and did not even request assistance from the Puerto Rico Police Department.
7. It was completely foreseeable, given the prevailing atmosphere in the island, that a considerable number of journalists and demonstrators would gather at that place because of the public interest that this type of FBI operation generated in Puerto Rico as of February 10, 2006.
8. In the circumstances of this case, the seizure of 444 De Diego Condominium violated the right to freedom of all the people who live in the condominium and were not allowed to go in or out of the property for at least two hours.
9. The FBI action of forcing the security officer of the condominium, Ms. Mary Ann Rodríguez, to stay in the security booth for four hours without communication constituted an unreasonable detention and an abuse of authority by the FBI. Likewise, given the circumstances surrounding this

- operation, it was an unreasonable act to leave the surveillance of the condominium gates in the hands of Ms. Mary Ann Rodríguez.
10. It was also unjustified to deprive the administrator of the condominium of her freedom by forcing her to stay at a specific place during the operation as well as to bring all the services in the whole condominium to a halt.
 11. The operation conducted by the FBI at 444 De Diego Condominium was of such magnitude that it unreasonably and negligently disturbed the peace of that community.
 12. The conduct of the FBI in this case constituted an act of institutional violence that had the effect of creating a feeling of unease in the Puerto Rican society.
 13. Failing to inform the press about what was happening there was an unreasonable act by the FBI that promoted an atmosphere of uncertainty and distrust in the citizenry about the actions of the FBI.
 14. None of the journalists attacked any of the FBI agents who were conducting the operation either physically or verbally.
 15. The action of FBI Agent X of spraying pepper spray on the journalists was abusive, unreasonable, unjustified, and disproportionate in light of the circumstances surrounding the incident that occurred when the journalists entered the condominium premises.

16. There were less drastic measures that could have been used to get the journalists and any other person who had entered the condominium premises out without needing to resort to an excessive use of force and to hitting journalists or attacking them in any way.
17. The FBI could have opened the vehicle gate so that the journalists and other people could leave the area without needing to resort to the unreasonable use of force and the use of pepper spray. As a matter of fact, that gate was opened and closed several times without any problems before the incident with the pepper spray.
18. The FBI agents who were intervening with the journalists when FBI Agent X sprayed pepper spray on them had the opportunity to stop FBI Agent X from spraying it or from continuing to do it, but they did nothing to prevent it.
19. Law enforcement officers—including FBI agents—have the obligation to intercede on behalf of any citizen whose constitutional rights are being violated in his or her presence by other officers. In the events of February 10, 2006 at 444 De Diego Condominium, the FBI agents failed to fulfill this obligation.
20. The aggression against the journalists at 444 De Diego Condominium was an aggression against the freedom of the press in our country and against the right of the people to be kept properly informed.

21. These actions by the FBI in the circumstances of the case object of this investigation constitute a violation of the First Amendment of the Constitution of the United States of America and of section 4 of the Bill of Rights of the Constitution of the Commonwealth of Puerto Rico.
22. In this case, there might also have been violations of international rules that are binding on the United States, including Article 19 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948, Article 13 of the American Convention on Human Rights, and the Inter-American Declaration of Principles on Freedom of Expression.
23. Likewise, what happened with the press on February 10, 2006 at 444 De Diego Condominium violates the principles of the Chapultepec Declaration of 1994.
24. Although the FBI agents had an ambulance among their vehicles, they never offered nor obtained medical attention for the people who were affected by the pepper spray, which is contrary to their duty of protecting people's lives and security.
25. The FBI agent who pointed his firearm at Journalist Joel Lago Román when he was trying to obtain information about the operation abused his authority by acting in this manner.

26. The FBI agent who pointed his firearm at the student who spat at him abused his authority by doing that. In this case, there are legal mechanisms to punish the student's behavior without justifying pointing a firearm at him.
27. The fact that the FBI agents did not initially allow Ms. Lilliana Laboy to contact her attorneys and, later on, did not allow her to speak [to them] in private was an unreasonable action by these FBI agents.
28. Ms. Liliana Laboy had the right to be shown the search warrant issued against her apartment at the moment when the agents intervened with her to begin the search. The FBI agents had the obligation to show it to her at that time and they did not do so.
29. In light of the circumstances, the way in which the FBI agents drove their vehicles when leaving 444 De Diego Condominium was unreasonable and done in clear contempt of the life and safety of the people who were in their path.
30. The position assumed by the US Attorney for the District of Puerto Rico and informed to the press in terms of not prosecuting any person under his command is contrary to his ministerial obligations.
31. The action of the agent in charge of the operation of February 10, 2006 at 444 De Diego Condominium when calling the journalists "vultures" shows a clear contempt for the important duty that the press performs in our country and for the freedom of the press protected in our

Constitution and in the Constitution of the United States of America.

32. The FBI has refused—without any valid justification—to cooperate with any investigation that has been conducted in relation to these events both in Puerto Rico and in the United States.
33. The stance adopted by the FBI creates a feeling of impunity for its actions that is detrimental to the civil rights of our people.
34. The Police Superintendent could and should have given instructions for state police officers to deploy to the area surrounding 444 De Diego Condominium and ensure the safety of all the people involved.
35. He could have also gotten in contact with the San Juan Municipal Police so that they would go to the premises of 444 De Diego Condominium and ensure the order and safety of those present.
36. The actions of the police captain who instructed the state police officers to leave the area were unreasonable in light of the circumstances surrounding this case.

RECOMMENDATIONS

In light of the foregoing, the Civil Rights Commission recommends the following:

1. Request that the FBI conduct an internal investigation and administratively prosecute all the agents who violated the corresponding protocols and regulations applicable to the events of February 10, 2006.
2. Request that the FBI investigate the record of FBI Agent X to determine whether he had committed acts of unjustified violence before February 10, 2006, as well as his personality record in order to determine whether his supervisors knew or should have reasonably known about his volatile or violent character, in which case his supervisors may be liable for negligence in their supervisory duties.
3. Require the United States Commission on Civil Rights to investigate the events of February 10, 2006.
4. Request that the Superintendent of the Puerto Rico Police Department conduct an internal investigation in his agency to determine the identity of the agents who arrived at the area surrounding 444 De Diego Condominium and of the colonel who told them to leave, as well as the identity of the person who gave the instructions to stay away from that place, and to impose the corresponding responsibilities.

5. Recommend that the Department of Justice of the Commonwealth of Puerto Rico interview the eyewitnesses to the events of February 10, 2006 so that, once it obtains the cooperation of the FBI or once the agents responsible for criminal acts, if any, are identified, they are prosecuted immediately.
6. Require the Government of Puerto Rico to formulate clear and conclusive public policy against all attacks on the press of the country or against all conduct constituting a restriction on the freedom of expression of our people.
7. Refer this report to the Inter-American Commission on Human Rights, the Organization of American States Special Rapporteur for Freedom of Expression, the United Nations High Commissioner for Human Rights, and the United Nations Decolonization Committee to request their intervention in the matter.
8. Request that the Resident Commissioner in Washington, Hon. Luis Fortuño, require that the government organizations in the federal capital [order] the cooperation of the federal authorities with the investigations that are currently being conducted on this matter and with those initiated in the future.
9. Submit a copy of this report to the Governor of the Commonwealth of Puerto Rico, the Presidents of both legislative bodies in Puerto Rico, the Supreme Court of Puerto Rico, the Superintendent of the Puerto Rico Police Department, the Puerto Rico Secretary of Justice, the Chief of the San Juan

Municipal Police Department, the United States Attorney General, the US Attorney for the District of Puerto Rico, the Special Agent in Charge of the FBI in Puerto Rico, the FBI Director, United States Congressional Representatives John Conyers, Robert Scott, Charles B. Rangel, Nydia M. Velázquez, Luis V. Gutiérrez, and José Serrano, the Resident Commissioner in Washington, the United States Commission on Civil Rights, and the members of the press in the country.

10. Refer a copy of this report to the Puerto Rico Bar Association, the American Civil Liberties Union of Puerto Rico, National Chapter, and Amnesty International.
11. Send a copy of this report to Ms. Lilliana Laboy and the journalists affected during the incidents of February 10, 2006.
12. Send a copy of this report to the Puerto Rico Journalists Association, the Photojournalists Association, the Overseas Press Club, and the Center for the Freedom of the Press in Puerto Rico.
13. Send a copy of this report to the Puerto Rican Legal Defense Fund, the Center for Constitutional Rights, the Commission for the Defense of Human Rights in Central America (CODEHUCA, Spanish acronym), the Ibero-American Federation of Ombudsmen, and the Inter-American Press Association.
14. The Civil Rights Commission will prepare an information booklet to orient the citizenry about their rights when they are subjected to an intervention by FBI agents.

15. The Civil Rights Commission will continue monitoring the incidents related to the events of February 10, 2006 and related events.

In San Juan, Puerto Rico, on October 2, 2006.

[illegible signature]
Dr. Palmira N. Ríos González
Chairperson

[illegible signature]
Mr. Héctor Pérez Rivera, Esq.
Vice Chairperson

[illegible signature]
Mr. José Ismael Irizarry Yordán, Esq.
Secretary

[illegible signature]
Mr. René Pinto Lugo, Esq.
Commissioner

Certified Correct:

[round seal: Civil Rights Commission
(logo) 1965
Commonwealth of Puerto Rico]

[signature: Osvaldo Burgos Pérez]
Mr. Osvaldo Burgos Pérez, Esq.
Executive Director

APPENDIX 1

PRESS RELEASES FROM THE CIVIL RIGHTS COMMISSION

COMMONWEALTH OF PUERTO RICO
CIVIL RIGHTS COMMISSION

[logo]

PO BOX 192338
SAN JUAN, PUERTO RICO 00919-2338
TEL. (787) 764-8686 FAX (787) 765-9360
1-800-981-4144

PRESS RELEASE

CIVIL RIGHTS COMMISSION ANNOUNCES MEASURES TO BE TAKEN IN RELATION TO THE EVENTS OF FEBRUARY 10, 2006

FOR IMMEDIATE RELEASE

Thursday, February 16, 2006

The Puerto Rico Civil Rights Commission [CDC, Spanish acronym] rejects the disproportionate and exaggerated use of force against members of the media by the agents of the Federal Bureau of Investigation (FBI) during the searches of several homes and offices throughout the island on February 10, 2006. These events threatened the safety and integrity of our journalists and the fundamental rights of the persons with whom they intervened, their relatives, and neighbors.

The right to free expression and the freedom of the press are fundamental and inalienable rights recognized both in our legal system and in the international human rights system. The international community has clearly established that the right to the freedom of expression and of information is not suspended due to the fight against terrorism.

The Civil Rights Commission, aware of its obligations to the People of Puerto Rico, demands from all law enforcement authorities full respect of the right of the members of the press to do their work of seeking, receiving, and disseminating information without restrictions or abusive actions. The efforts of the federal and state authorities against crime are subject to public scrutiny guaranteed by the press by giving us the information. Otherwise, government authorities would be immune to attacks and would not be liable to the people, who are sovereign in democratic nations.

The CDC joins the efforts to clarify the events of February 10th and, thus, will take the following measures:

1. Hold Public Hearings to which it will subpoena the complainants, victims, eyewitnesses to the events, expert witnesses, and agents of the FBI, as well as any other public official who may provide information about the facts surrounding the

- violation of the right to the freedom of the press.
2. The CDC shall inform the United States Commission on Civil Rights, the Commission for the Defense of Human Rights in Central America (CODEHUCA, Spanish acronym), and the inter-American and international entities on human rights about the events.

The Commission invites any person with knowledge [of the events] to cooperate with these efforts by contacting our office.

Telephone numbers of the Civil Rights Commission

San Juan Metropolitan Area	(787) 764-8686
Outside Metropolitan Area	1-800-981-4144

Contact Person: **Mr. Osvaldo Burgos Pérez, Esq.**, Executive Director of the Civil Rights Commission, (787) 764-8686 or (787) 649-4674.

COMMONWEALTH OF PUERTO RICO
CIVIL RIGHTS COMMISSION

[logo]

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SAN JUAN, PUERTO RICO 00919-2338
TEL. (787) 764-8686 FAX (787) 765-9360
1-800-981-4144

PRESS RELEASE

CIVIL RIGHTS COMMISSION CLARIFIES THE SCOPE OF THE HEARINGS

For immediate release

**San Juan, Puerto Rico
July 13, 2006**

In view of the information that has appeared in some media outlets regarding the public hearings held by the Civil Rights Commission (CDC, Spanish acronym) in relation to the incident between the FBI and the Puerto Rican press at 444 De Diego Condominium on February 10, 2006, this entity has been forced to clarify some details about this process for the benefit of the people of Puerto Rico.

Mr. Osvaldo Burgos Pérez, Esq., Executive Director of the CDC, informed that: “Following the incidents of February 10, 2006, at the previously mentioned condominium, the Civil Rights Commission thought it prudent to initiate an investigation of the events in order to determine whether there was any violation of the civil rights of the parties involved. On February 21, 2006, four organizations that group or defend the interests of journalists and photojournalists in Puerto Rico—the Puerto Rico Journalists Association (ASPPRO, Spanish acronym), the Photojournalists Association, the Center for the Freedom of the Press in Puerto Rico, and the Overseas Press Club—filed a formal complaint with the CDC about the events in question.”

Burgos Pérez continued saying that, “On Friday, April 7, 2006, the CDC published a notice of public hearings in two of the principal newspapers of the country notifying the citizenry about the investigation that the Commission would conduct and inviting all people who were interested in participating in same to do so. Originally, only the FBI, the Police Superintendent, and the Head of Security of the Capital City were officially subpoenaed; the FBI because it is the respondent and the other two because they are the highest figures in charge of security in the island and the Municipality of San Juan, respectively. The other people who have been subpoenaed afterwards are those whose names have been brought up during the testimonies of the witnesses who have appeared to testify.”

Burgos Pérez said that, “The FBI raised its objection to appear at the hearings saying that the matter is ‘sub judice’ before the federal court. On his part, the Police Superintendent informed [us] about his intention not to appear at the hearings arguing that the only information that his

agency had about the events had been given to the media. Nevertheless, yesterday, he agreed to appear at an executive session this next Friday.”

Burgos Pérez continued saying that, “In view of the importance of the CDC’s investigation and since there are angles within the investigation that warrant clarification by the Police Superintendent, we reiterated the subpoena to a public hearing without Mr. Pedro Toledo, Esq., having appeared. The CDC cannot conduct a responsible investigation based on the information that arises from the media without having the opportunity to interrogate the Police Superintendent directly about what has been disseminated therein. In view of the foregoing, we are satisfied with his decision to finally appear before the CDC this next Friday.”

As of today, 9 journalists and photojournalists, 4 journalists or photojournalists organizations, 3 eyewitnesses, the Commission for the Prevention of Violence, and the Head of Security for the Capital City, as well as the owner of the apartment searched on February 10, 2006, her daughter, and the administrator of the condominium where the events occurred, have appeared to testify before the CDC. All these people or organizations, except for the administrator of the condominium and the Head of Security for the Capital City, have appeared before the CDC voluntarily without any subpoena.

“Notwithstanding the foregoing, as of today, the CDC is still open to receiving any testimony that may add information to clarify the events under investigation. Any person interested in participating in the public hearings or with any information that could help in the investigation that is being conducted can contact the CDC at (787) 764-8686 or 1-800-981-4144 to reserve a space to testify in the continuation of the hearings that will be held on July 31, 2006, beginning at 9:00 am,” Mr. Burgos concluded.

Contact Person: Mr. Osvaldo Burgos Pérez, Esq., Executive Director of the Civil Rights Commission, (787) 764-8686 or (787) 649-4674.

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APPENDIX 2

**LETTER FROM THE CIVIL RIGHTS COMMISSION TO
US CONGRESSIONAL REPRESENTATIVE
HON. JOHN CONYERS, JR.**

APPENDIX 3
NOTICES OF PUBLIC HEARINGS

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*Commonwealth of Puerto Rico
Civil Rights Commission*

PUBLIC HEARINGS

FBI INTERVENTIONS WITH THE PUERTO RICAN PRESS

- * *Incidents with the country's press on February 10, 2006*
- * *Possible civil rights violations*
- * *Other related incidents*

*April 17, 18, 19, 20, and 21, 2006
Starting at 6:00 pm
Civil Rights Commission*

*#416 Ponce de León Ave.
Union Plaza Building Suite 901
Hato Rey, Puerto Rico*

Pursuant to Public Law No. 102 of June 28, 1965, as amended, the Civil Rights Commission shall hold public hearings related to the FBI interventions with the Puerto Rican press, particularly regarding the incident of February 10, 2006 with members of the press and other related incidents.

The Commission shall receive the testimony of all those people interested in participating with regards to the events of February 10, 2006 and other related incidents and their effects on civil rights. Due to space limitations, the Commission may require your presentation in writing. The deadline for presentations is April 21, 2006, at 8:00 pm.

To testify, call (787) 764-8686 or 1-800-981-4144 before April 12, 2006 at 4:30 pm.

**Commonwealth of Puerto Rico
Civil Rights Commission**

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PUBLIC HEARINGS

INTERVENTIONS OF THE FBI WITH THE PUERTO RICAN PRESS

- **Incidents with the country's press on February 10, 2006**
 - **Possible civil rights violations**
 - **Other related incidents**

April 17, 18, 19, 20, and 21, 2006
Starting at 6:00 pm
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To testify, call (787) 764-8686 or 1-800-981-4144 before April 12, 2006 at 4:30 pm.

APPENDIX 4

PICTURES OF 444 DE DIEGO CONDOMINIUM