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**Hearing
Before the
United States
Commission on Civil Rights**

**POLICE PRACTICES AND
CIVIL RIGHTS**

**HEARING HELD IN
PHILADELPHIA,
PENNSYLVANIA**

FEBRUARY 6, 1979; APRIL 16–17, 1979

Volume I: Testimony

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

Louis Nuñez, *Acting Staff Director*

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Morning Session, February 6, 1979

The public hearing was convened, pursuant to notice, at the Green Federal Building, 600 Arch Street, Philadelphia, Pennsylvania, Arthur S. Flemming, Chairman, presiding.

PRESENT: Arthur S. Flemming, Chairman; Frankie M. Freeman, Commissioner; Louis Nunez, Acting Staff Director; Frederick Dorsey, Acting General Counsel; and Gail Gerebenics, Assistant General Counsel.

PROCEEDINGS

CHAIRMAN FLEMMING. I ask the hearing to come to order.

The Commission on Civil Rights, pursuant to its statutory authority, determined in the spring of 1978 to make a study of police practices in order to appraise the laws and policies of the Federal Government and gather data and information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution in the administration of justice.

This current Commission project has four distinct phases. The first phase, completed in December 1978, consisted of a consultation held in Washington, D.C., at which noted authorities and spokespersons appeared and discussed significant issues with respect to police conduct and accountability. The second phase, which brings us to Philadelphia, consists of a field investigation and two hearings—one today and another on February 20 and 21. The third phase will consist of an investigation and hearing in Houston, Texas. The fourth and final phase will consist of the development of a report of our findings and recommendations to be submitted to the Congress and the President.

This current phase, the Philadelphia hearings, was recommended by our Pennsylvania State Advisory Committee and by representatives of Philadelphia organizations working with problems of police administration. It is important to note that neither these hearings nor the current field investigation are designed or intended to investigate individual allegations of police misconduct.

The Commission has four basic objectives for this Philadelphia study:

To ascertain the nature of police conduct;

To identify formal and informal department policies and procedures relating to police conduct and discipline;

To identify the officials and agencies legally responsible for investigating and resolving allegations of police misconduct; and

To evaluate the availability and effectiveness of existing systems of accountability, both internal and external.

The hearing today is intended to gather data essential to the Commission's study from city officials. Persons subpoenaed today have been asked to bring with them specific data indicating policy, procedures, statistics, and other information relative to police standard, actual conduct, accountability, and responsibility.

The only testimony anticipated today will relate to explanation or clarification of the documents submitted. In-depth testimony relating to issues raised by these documents is anticipated at the full Commission hearing later this month.

My colleague, Commissioner Freeman, will now briefly explain the rules of the Commission pertaining to hearings.

COMMISSIONER FREEMAN. Thank you, Dr. Flemming.

At the outset, I should emphasize that the observations I'm about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly the special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use that evidence or testimony.

When we use the term "executive session," we mean a session in which only the Commissioners are present, in contrast to a session such as this one in which the public is invited and present. In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to

them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well publicized. Therefore, the Commission, when appropriate, convenes in executive session prior to the receipt of anticipated defamatory testimony.

Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses, even though those witnesses have been subpoenaed to testify in public session.

An executive session is the only portion of any hearing which is not open to the public. The hearing which begins now is open to all.

All persons who are scheduled to appear have been subpoenaed by the Commission: All testimony at the public session will be under oath and will be transcribed verbatim by the official reporter.

Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of cost. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of the hearing of his or her testimony. Such request will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections. Should any witness fail or refuse to follow any order made by the Chairman or the Commissioner presiding in his absence, his or her behavior will be considered disorderly and the matter will be referred to the U.S. Attorney for enforcement, pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions which, in the discretion of the Commission, may be put to the witness. Such person also has the right to request that witnesses be subpoenaed on his or her behalf. All witnesses have the right to submit statements, prepared by themselves or others, for inclusion in the record, provided they are submitted within the time required by the rules.

Any person who has not been subpoenaed may be permitted, in the discretion of the Commission, to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize that we consider this a very serious matter, and we will do all in our power to protect witnesses who appear at the hearing.

Copies of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies.

Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming or the Commissioner presiding in his absence will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. Attorney when required.

The Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures, and their orders are also to be obeyed.

This hearing will be in public session only today, Tuesday, February 6, 1979, beginning at 10 a.m.

CHAIRMAN FLEMMING. Thank you very much, Commissioner Freeman.

Counsel will call the first witness.

MR. DORSEY. Commissioner Joseph O'Neill, Chief Inspector Frank A. Scafidi.

[Frank A. Scafidi and Joseph O'Neill were sworn.]

TESTIMONY OF FRANK A. SCAFIDI, CHIEF INSPECTOR, INTERNAL AFFAIRS BUREAU, PHILADELPHIA POLICE DEPARTMENT; JOSEPH F. O'NEILL, POLICE COMMISSIONER, CITY OF PHILADELPHIA

MR. DORSEY. Commissioner O'Neill, I would ask at this time if you are prepared to submit the documents referred to in the subpoena served upon you?

MR. O'NEILL. Respectfully refer that to counsel, Mr. Sheldon Albert, sir.

MR. ALBERT. If the panel please, my name is Sheldon Albert. I'm the solicitor for the city of Philadelphia, counsel for the police department.

Commissioner O'Neill has been served with a subpoena which has requested the production of certain documents. I would like the record to show that in searching for these documents, the police department has expended a total of \$3,831. With regard to the specific subpoena addressed to Commissioner O'Neill, Roman numeral one we are supplying, and the documents are in this room. Roman numeral two we are supplying, and the documents are in this room. Roman numeral three we are supplying; the documents are in this room. I would like to skip for the moment Roman numeral four. Roman numeral five we are supplying; the documents are in this room—Roman numeral six, Roman numeral number seven, and Roman numeral number eight. With regard to Roman numeral number nine, I'd like the record to show that for the period covering November 1971 to the present date, there are 751 disciplinary cards listing a total of 999 disciplinary cases with dispositions of more than 3 days or dismissal.

It is our estimate that it would take another week to complete this project. However, those particular 900—751 cards are available at the Police Administration Building. We can either continue to try to duplicate these and produce them in the near future, or we invite any of the staff to come down and review them at their leisure at the Police Administration Building. We do not have those cards with us at present.

With regard to Roman numeral 10, we are supplying that. I believe that the duplication has not been completed. We have the original with Chief Inspector Scafidi, but that has to be duplicated.

Now, going back to Roman numeral four, these refer to certain records concerning 31 named police officers. For the record, there are no files existent with regard to Officer [name deleted] who is listed as number one.

MR. DORSEY. If I may—

CHAIRMAN FLEMMING. Counsel?

MR. DORSEY. Mr. Albert, with your concurrence, if we could relate to the individuals listed simply by the number immediately preceding their name, I would appreciate it.

MR. ALBERT. Sure, no problem.

With regard to number one, there is no file. With regard to number four, there is no file. With regard to number nine, there is no file. With regard to number 10 there is no file. With regard to number 19, there is no file. With regard to number 25, there is no file.

Putting that aside—as a result of my advice and instruction, the police department is objecting to producing the balance of number four, and the objection is predicated on the following reasons: All these records involve defendants in civil suits for which my department is responsible, and much of the materials have been conducted at our request and under our direction, and I believe that there is a privilege and a work product question involved.

Many, if not all of the files, contain statements that were compelled by our city charter. The city charter—that section of the city charter which allows the compulsion of the statements, notwithstanding, the fifth amendment has been stricken by various courts, including the Appellate Courts of the Commonwealth of Pennsylvania. The material in there cannot be used against the officers in either civil matters or criminal matters. I believe that they are protected.

All of these files are also the subject to a Federal grand jury investigation which is investigating the area of police violations, and they are subject to a State grand jury which has just been convened yesterday. The files contain the statements of witnesses who have been guaranteed protection by the city of Philadelphia, by the police department, and contain statements and names of complainants who have been guaranteed confidentiality.

I will tell you that there is a grand total in these files of 60 separate investigations. Further, I believe that, as Commissioner Freeman indicated, that because these files, at least, if nothing more, defame the officers and the persons mentioned therein, that there are certain requirements and safeguards that would have to be undergone, even if I was wrong on my prior objection. But I'll tell you for a fact that they are quite defamatory, the files, because they contain the statements and allegations of people who claim that they've been abused by these officers.

Now, in the interest of your time, Chief Inspector Scafidi is here, and he was served with a subpoena. The subpoena—the paragraphs of the subpoena are not numbered, but I have taken the liberty of numbering them. You'll notice that there are no numbers in front of each request. But, for the sake of the record, I have numbered them, starting from one and going down to nine A and B.

Nine A and B, we have. And number eight, which is the log, can be duplicated before the close of the day. There's no problem with that. With regard to paragraphs one through seven, they are essentially, and in fact are the same documents that I just referred to with regard to Commissioner O'Neill.

And the objections—I make these objections respectfully—are the same. However, I would like to add that we have gone through these and we find that they total approximately, or will total approximately, 9,369 pages.

In 1976 there were 1,292 complaints against police. That includes complaints by citizens, that includes complaints by officers in what we call internal, and complaints by prisoners. When I talk about police in that sense, we're talking about complaints at the Philadelphia State Prison.

In 1977 there were 1,394, and in 1978 there were 1,128. They total 3,123 reports. These reports have been located, and the average is approximately three pages per report. So, the burden of duplicating them is just, in my opinion, onerous.

Oh, may I correct the record? Commissioner O'Neill indicates that with regard to officer number one, in the subpoena that was addressed to him, that we do have a record. So, my initial statement was in error with regard to that one.

MR. DORSEY. Mr. Albert, with respect to certain other documents listed, particularly item 10 under Commissioner O'Neill's subpoena, you had indicated that there was considerable difficulty in Xeroxing that material and that it's not yet completed. And as to nine, you had indicated that substantial time will be involved in the duplication, but that information could be made available to staff at the police headquarters.

MR. ALBERT. Yes, it struck me that with the total number of cards—751— that would just be an easier way for everybody to handle it. But I'm not registering an objection to the production of those.

MR. DORSEY. With respect to the 9,369 pages which you referred to a moment ago with respect to documents subpoenaed from Inspector Scafidi—

MR. ALBERT. Yes, the inspector—for the record, that is also the Roman numeral four for Commissioner O'Neill. They would be essentially the same files. In other words, Officer X is investigated. Every document is, therefore, contained in Officer X's file. They are not filed by document. We don't keep, for example, document A in one file with all the officers there. We keep them under the name of the officer.

MR. DORSEY. Would I be correct in assuming that the files listed under four for Commissioner O'Neill would contain, in fact, more than the documents contained under items one to seven requested from Chief Inspector Scafidi?

MR. ALBERT. They might and they might not—not necessarily—because the subpoena to Chief Inspector Scafidi uses the specific forms that are used by the police department in investigation, while the subpoena to Commissioner O'Neill asks simply for—in so many words—for the entire file, any documents, support notes of any description whatsoever from any source. But essentially, they would all be contained in the particular package that would be Officer One's file, for example, or Officer Five's file, or Officer Nineteen's file.

MR. DORSEY. What I am attempting to get at is whether or not, in fact, the actual complaint enumeration, that is to say, the complaint, for example, by a citizen could be separated from, in fact, the totality of the officer's file involved in that complaint.

MR. ALBERT. Of course, as a physical matter it could. I would then register my objection on the basis of the legal objections I had to Commissioner O'Neill's subpoena in that aspect.

Now, of course, we are supplying the log which would contain, not the complaint form itself, but the fact that a complaint was registered against Officer X by Citizen Y on such and such a date.

MR. DORSEY. If I could for a moment, in view of the fact that we do have two different issues that are being raised to the Commission, as I understand them, one with respect to the individual officers, and the other with respect to the individual complaints against officers, I would ask, if you could, would you indicate whether or not your objection is the same as to both?

MR. ALBERT. My objection to producing the actual complaint against the officer would, of course, be predicated upon the fact that that complaint is defamatory toward that officer. Since it's just the complaint, obviously, the objection as to anything that once we took over that complaint would not stand for the actual complaint. But the complaints are defamatory to the officer. And I think that under your own laws—I know you'll correct me if I'm wrong—that that officer would be entitled to certain protections.

MR. DORSEY. That would be as distinguished from, as I understand, not producing them at all.

MR. ALBERT. Right, the substantive objection. Now I do want to emphasize that you will find approximately 3,123 complaints. Now, these range, of course, from verbal abuse to physical abuse to anything.

CHAIRMAN FLEMMING. Have you got the matter clarified now, counsel? I was going to suggest that you address yourself to the objections raised by the solicitor relevant to request number four.

MR. DORSEY. Well, with the indulgence of the Commissioners and with the indulgence of the witnesses, we do have time, and I would like approximately 3 to 5 minutes of recess before I actually give you a response.

CHAIRMAN FLEMMING. The hearing will come to order. Recognize counsel of the Commission.

MR. DORSEY. Mr. Albert, I do need to ask just a couple more questions, if I could. The first is with respect to the civil and criminal matters to which you alluded. Of the individuals and actions which we requested, could you identify which, if any, of those are currently pending civil or criminal matters?

MR. ALBERT. Of my own personal knowledge, and only of my own personal knowledge and only because I happen to personally recognize the names—8, 9, 11, 13, 16, 18, 21, 22, 23, 24, either 26 or 27—the last name, as you see, is the same—28, 30. Thirty-one has been found not guilty in the criminal case. The civil case still exists.

MR. DORSEY. You indicated just now number nine has pending action?

MR. ALBERT. Yes.

MR. DORSEY. I believe that was one of the numbers that was indicated as no file existent.

MR. ALBERT. Then I may—I'm only going by last names that I recognize. I may be thinking of another officer whose last name that is.

MR. DORSEY. Let me ask you a question along the same line.

MR. ALBERT. Excuse me. Let me strike that, okay? I have number 16 and number 9 confused. Strike number 9. I was actually referring to number 16. When I saw the name originally, I thought that was—do you notice the similarity in the names?

MR. DORSEY. Let me follow up on that just for one second. As to the phrase "no files existent," does that indicate that there has been no investigation or there is no disciplinary action?

MR. ALBERT. No, that means that we just do not have a file. It may be because the allegation or the investigation was years ago. It may be because—and I don't know this for a fact—that the entire file was transferred over to the law department because of a civil action. But they do not exist in the police department.

MR. DORSEY. You have indicated that some of the records with respect to item four are subject to civil and criminal protections, apart from the issue of self-incrimination. Apart from that issue, are any of the specific documents requested under a particular protective order in a civil or criminal case?

MR. ALBERT. No, not a specific civil or criminal case. But I would, as counsel for the department, consider the grand jury investigation as an overall protection—the Federal grand jury investigation. Insofar as the State grand jury, let me tell you that all I know is that I read in the newspaper that the State grand jury was convened yesterday and that they were going to investigate police abuse. But that's strictly from the newspapers. I don't have those kinds of particular communication with the local district attorney. But I would assume that once they start, then that would also be part of it.

MR. DORSEY. Is there a general protective order issued in either of the grand jury cases, as you understand?

MR. ALBERT. Not a specific order. I would assume because of the nature of the grand jury and the general rules of law that apply with grand juries that these documents would come under that aegis.

I might say, so that the entire panel will understand, that we have had and continue to have complete cooperation with the U.S. attorney in these matters. Our files are open to the grand jury and to the U.S. attorney and have been. In fact, they have people actually stationed in the Police Administration Building.

I have a correction on something else. I gave you totals for complaints against police. I see now that they are further broken down. For example, I told you in 1976 there were 1,292 complaints against police. Of those 1,292, 201 involved a complaint of physical abuse. In 1977, I told you, there were 1,394 complaints against police. Of those 1,394, 166 contained allegations of physical abuse. I told you in 1978 there were 1,128 complaints against police. Of those 1,128, 192 involved physical abuse. I apologize. But I did not see that notation on the document that I was reading from.

MR. DORSEY. Mr. Chairman, if I may, as I understand Mr. Albert's objections, there were basically five categories of objection. And if I may, I'll go through my understanding, and then Mr. Albert can correct me if I'm in error. One is that certain matter which we subpoenaed, in fact, would involve the production of work products with respect to Mr. Albert's office and the conduct of representation for the city and the city's employees, particularly the police officers. Two, that the matters subpoenaed raised issues involving self-incrimination—of possible self-incrimination on the part of the officers involved, by virtue of their having submitted certain reports to the department, which reports were required by them to be filed and which reports might or could incriminate those officers. Thirdly, the matters which we subpoenaed are subject to civil and criminal protections by virtue of their current or past litigation. Fourth, that this area is currently the subject of Federal and State grand jury proceedings and, as such, fall within a general though not specifically ordered protection. And fifth, as to the individual officer's files which we have requested, that clearly not just the individual officers listed in section four but the officers as noted in all the complaints requested raise issues of defame and degrade with respect to those officers, and therefore, if not entitled to an excuse from the subpoena, clearly are entitled to certain protections.

Before actually addressing myself to each of the—does that basically cover your objections, Mr. Albert?

MR. ALBERT. Generally, yes, sir.

MR. DORSEY. Before addressing those individually, I would like to indicate, since Mr. Albert raised this, the staff is, in fact, fully prepared and quite willing—Mr. Chairman, with your permission—to assist in the compilation of the documents which Mr. Albert has, in fact, indicated would be made available to us.

Specifically, I'm referring to items 9 and 10 of the subpoena issued to Commissioner O'Neill, and with your permission, we would, at this point, indicate that we will accept your offer and, in fact, assist in that work.

CHAIRMAN FLEMMING. The Commission concurs in that judgment.

MR. DORSEY. As to the files nonexistence, the subpoena, as I'm sure all parties are aware, would be considered null and void as to any document requests which in fact do not exist.

As to the individual objections, Mr. Chairman, I would respectfully submit the following with respect to the work project, the items, and documents—

CHAIRMAN FLEMMING. If I could interrupt here—you're talking about the workload, in effect?

MR. DORSEY. No. We're referring to the specific legal protection and the term of art referred to within the legal profession as work product, being those papers, writings, memoranda, etc., which are specifically developed by an attorney in and for the process of representation of a client.

CHAIRMAN FLEMMING. Okay.