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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

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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.

MR. DORSEY. Those documents would not include any submissions to a court or any other quasi or actual public release of those documents for the purposes of litigation.

With respect to the work product objection of Mr. Albert as to the documents in four, and again as to the documents one to seven for Inspector Scafidi, the subpoena is intended to refer solely to those records, documents, notes, reports which were generated by the department for the department's investigation with respect to complaints, either internally or externally, made to the department regarding the conduct of an officer. Such subpoena provisions were not intended to refer to those notes, memoranda, and other writings which were generated or requested by the office of the solicitor for the city of Philadelphia in preparation for any litigation which may have resulted or might have been anticipated with respect to the behavior listed in the complaints. For that reason, Mr. Chairman, I would suggest that the work product objection, when understood in that context, would be inappropriate for you as a basis of excusing the production of these documents.

With respect to self-incrimination, I would bring to the attention of the Chair, the case of *Hannah v. Larche*, with which the Commission, of course, is familiar. But for the benefit of counsel, I might quote very briefly from, as a context for my suggestion that that particular objection is not appropriate:

The Commission does not hold trials or determine anyone's civil or criminal liability. It does not issue orders, nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property.

In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

That may be found in *Hannah v. Larche*, 363 United States Reports at page 441.

I would suggest to the Chair, that with respect to these documents the staff is fully prepared to deal with all of the documents requested on a no-name basis. The sole purpose of the request for these documents is to enable the Commission to note the path, the process, the procedure with which complaints, either internal or external, are subjected for the purposes of determination and resolution.

The only reason that individual files have been requested or identified is to provide a singular complaint, a singular case, if you will, by which to note the manner of the process actually conducted, as compared to the writings or official procedures outlined in departmental directives, to ascertain the extent to which there is or is not consistency.



It is hoped that that particular evaluation will assist the Commission in developing findings and recommendations with respect to procedures of complaint resolution which may be helpful to the legislature—the United States Legislature—and the President in recommending specific national programs, standards, policies, or laws with respect to the remediation of allegations of misconduct.

In that regard, Mr. Chairman, I believe that the Commission's jurisdiction in this matter does not give rise to a valid complaint of the possibility of a denial of the right against self-incrimination.

With respect to the civil and criminal protections, as the Chair is well aware since the Chair has made this requirement of staff in the past and continues that requirement, staff is not and has not been involved in any pending legal action with respect to the compulsion of a document or record essential to that action or in which that action is the primary subject.

The documents that we have requested with respect to records, reports, notes, and investigations, it is our understanding, relate to those which the department has concluded. It is our further understanding, based not only on statements but also on transcripts of record, that it is not the tradition, practice, or policy of the department to reopen such matters as a result of civil or criminal findings.

In that regard, I would contend to the Chair that the documents, writings, etc., with respect to departmental findings are, therefore, inappropriate to be sheltered by the contention of civil and criminal litigation.

Fourth, with respect to the Federal and State grand juries, though I am quite willing to hear further from counsel with respect to the general protection granted by those proceedings and those bodies, it is my understanding of the state of the law that the mere conduct of Federal—State grand jury process, absent a protective order and absent the pending civil, criminal liability, as indicated by the initiation of a suit, does not give rise to any specific protection against the execution of a valid subpoena process. I would, however, be open to case citations or holdings of law to the contrary.

As to number five, I believe we've covered that before. Our defame and degrade requirements relate to two specific issues. First of all, they do not invalidate an otherwise valid subpoena on the part of the Commission. Secondly, they would only require the holding of an executive session in which to deal with those matters.

However, as I've suggested originally, the use of elimination of all name designations from these files would, I believe, constitute sufficient protection with regard to our defame and degrade procedures.

CHAIRMAN FLEMMING. Mr. Albert, do you care to comment on counsel's comments?

MR. ALBERT. Yes, sir. With regard to discussion on the work product, it's been alluded that the Commission staff is only interested in the departmental investigation, as opposed to the investigation con-

ducted by the law department. In fact, they cannot be segregated. We know, as a matter of fact, in the city of Philadelphia that there will be a civil lawsuit against an officer the moment there's an allegation of physical abuse. If you have been in the city for any length of time, you'll recognize that so long as the citizen alleges that he or she has been touched or hit by the police, it becomes a front-page story in our local papers.

As a matter of fact, for some time now and many years past, the police department's investigation has been twofold. There's been investigation to find out the facts for its own department, and primarily it has been an investigation on behalf of my department and, in many cases, supervised by people assigned to my department, because we know, in fact, that there will be a civil suit, if not worse actions. So, I do not believe that they can be physically segregated. The Commission cannot and should not say: "Well, we're only interested in the police department's investigation; we don't want the law department's investigation." But, in fact, the police department's investigation is the law department's investigation.

Now, with regard to the comments about self-incrimination, I recognize that technically the Commission does not hold trials and does not impose sanctions and cannot take affirmative action; it can only find facts. But, I would suggest that in the present aura that, in fact, incrimination does attach to individuals whose names are mentioned, to individuals whose files are produced. And it doesn't matter that just this Commission can't incriminate somebody. In fact, the proceedings, and it's not your fault—I'm not suggesting it's your fault—but the proceedings are incriminatory. And, certainly, there is no question in my mind, as an attorney, that in fact incriminate does attach, especially from any information that can flow from the Commission. None of us can guarantee, no matter how well meant we are, that the items, the names, the documents are going to stay within the purview of the Commission or its staff.

I am most impressed with the comment outlining the purpose for the request. You have been told by your staff that the purpose for the request is to see the procedure, the path, and the process and the manner of the process. I suggest that you do not need individual files to ascertain that path, the procedure, or the process. I would certainly agree to produce certain files involving people who we know, for a fact, that the grand jury has refused to indict and we know, for a fact, that there is no civil suit, as examples as to how the procedure goes.

I think you will find more than enough documents in the boxes, in the stacks that we've produced, and those that we've offered to be reviewed to see the procedures, the path, and the process. There is no way, in my opinion, that the specific request for 31 investigations, and I don't know where the names came from. Maybe these names came from the Justice Department. Maybe the names came from the grand jury. Maybe these names were just ascertained from the newspapers.

But there is no legitimate—and I use the term “legitimate” respectfully—reason to request a particular file if, in fact, the Commission and the Commission’s staff is concerned with the procedures, the path, the process, and the manner of the process.

We can certainly give the staff enough examples in cases that we know neither criminal or civil liability is going to attach. I can think of one where we know for a fact that the grand jury publicly refused to indict and the U.S. attorney refused to indict. I would have no hesitation, for example, allowing that file to be used as an example.

Now, there’s been talk about the protection and the aegis of the grand jury. I suggest to you that, in fact, there is pending civil and criminal liability—potential pending civil and criminal liability with regard to all of these files. I would have to take the position that unless, for example, I was told differently by the grand juries, or unless the statute of limitations has passed, I would be very loath to produce individual documents and individual files.

And I make those objections and statements most respectfully, Mr. Chairman. I would say, too, that it’s physically impossible to delete names from the amounts of pages I’ve described to you that are involved here.

MR. DORSEY. If I may, just a few words—with respect to item one, segregation of the investigative reports initiated by the department as opposed to those initiated by the law department, the documents which we have requested—again, I submit to the Chair—have to do with official reports required, albeit, also by the law department, by the requirements of the law enforcement agency itself; and that, even in the absence of no suit, those reports would still be required for the police officers to conduct; and that, notwithstanding the fact that they may be of extreme value and the participation by the law department in those investigations may, in fact, improve or expand those investigations, the report themselves are required by law and by department policy.

Secondly, I would like to bring to the Chair’s attention that the possible incrimination which counsel refers to that might attach, by virtue of this Commission reviewing the files of an individual, notwithstanding the fact that we have suggested that those files need not be named, is something which, if the Commission were to uphold, would, in fact, prevent its investigation of any individual or individuals with respect to denials of equal protection of the laws. That is to say, in my experience with the Commission, I have not found any area which could not by some argument suggest that individuals being studied by the Commission could be held by their community to have incriminated themselves by virtue of having drawn our attention. We do have fairly extensive procedures, as indicated by Commissioner Freeman, to ensure that such an aura does not attach to an individual without a considerable amount of attention, deliberation, and discussion by the Commissioners.

Third, I would suggest, with all due respect, that the value to be obtained from review of specific case files, with respect to the actual processing and investigation of complaints, is better determined by your staff than by the subject of the study, evaluation, or investigation. And so long as the actual case files involve the specific subject of the investigation and study and, therefore, are unquestionably relevant, that under existing United States Supreme Court case law, the subpoena is, by its own nature, a valid one.

CHAIRMAN FLEMMING. We'll take just a brief recess. Commissioner Freeman and I will discuss the objections. I'll make that specific; we'll take a recess for 10 minutes.

CHAIRMAN FLEMMING. Mr. Albert, you have raised certain objections to the production of certain documents by Commissioner O'Neill and Inspector Scafidi. The Commission has taken those objections under consideration. As you will appreciate, our response is to the two witnesses who have been subpoenaed and who have been requested to provide these materials.

First of all, I'd like to make it clear that the Commission will be governed, of course, by any protective order that is issued as to any particular case. The second place—I think the Commission, through the statement made by Commissioner Freeman at the opening of the hearing, has made very clear that it regards the question of defaming and degrading a person as a very sensitive issue. And we would like to say this: that, if the staff plans to introduce any materials arising out of the consideration of any case into the public hearing, we will hold an executive session prior to the public hearing, so that the question or possibility of a person being defamed or degraded can be explored very carefully by us.

Of course, we understand, Mr. Albert, that you would undoubtedly be present at such a hearing as counsel. With those considerations in mind, as a Commission, we have decided to overrule the objections that have been stated to the presentation of these files.

We have taken notes of the dialogue relative to the possibility of their being handled on a no-name basis. We recognize the practical difficulties that you've identified in that connection. To the extent that it can be done, why, we'd be very happy to have it done.

MR. ALBERT. Thank you. And on behalf of the department and—respectfully, I will instruct the commissioner and Inspector Scafidi that I do think the subpoena was overbroad and improper for the reasons that I've outlined. I will instruct them, respectfully, not to turn over these documents. And I am prepared, sir, to argue the matter before the district court.

CHAIRMAN FLEMMING. Under those circumstances, the Commission will refer the matter to the U.S. attorney for this district, as we are authorized to do under our law, so that the matter can be presented to the appropriate Federal district judge.

MR. ALBERT. Thank you, Mr. Chairman.

MR. DORSEY. If I may, Mr. Chairman, I would ask at this time that for the purposes of certifying the record that you find that a refusal to comply with respect to—may I hold that for just one moment. I need to clarify something else.

CHAIRMAN FLEMMING. Okay, go ahead.

MR. DORSEY. It is my understanding, Mr. Albert, that the discussions that we've had relative to section four of the commissioner's subpoena and one through seven of the Chief Inspector Scafidi's subpoena are the sole issues of contention and that the remaining documents will, in fact, be supplied at this time.

MR. ALBERT. That's correct. I think most of them are here in the room. The ones that are not, you have cordially accepted our invitation to have the staff come over and, you know, do what they want to do at the Police Administration Building.

Yes, our objection is solely to the documents you've just cited and solely for the reasons that I've cited.

COMMISSIONER FREEMAN. Are they in this room now?

MR. DORSEY. Those items that are available, I would ask at this time if they could be submitted to staff.

MR. ALBERT. Sure; they're right over there.

I would say, too, for the record, Mr. Chairman, if there is any question of interpretation of any of these documents, our people will always be available to assist.

CHAIRMAN FLEMMING. My understanding is that what we now have would comply with items one, two, three, five, six, seven, and eight in their totality; is that correct?

MR. ALBERT. The commissioner has learned—he says, “State that you're reasonably sure.” Yeah, we're pretty sure. There may be a logistical problem. I mean, I don't want to swear under oath that every single piece of paper is in those boxes. But if there's anything that's not in there, you're more than welcome—I would suggest that the police department has all those things.

MR. DORSEY. Mr. Chairman, I would request that the Commission find that the refusal to obey the subpoena with respect to item four on the commissioner's subpoena, with respect to the commissioner, and items one through seven on Chief Inspector Scafidi's subpoena, with respect to Chief Inspector Scafidi, constitutes failure to obey a subpoena and is contumacious.

And we further request that, pursuant to our statute, that you allow me to refer this matter to the U.S. attorney for this district for the purpose of seeking an order from the Federal district court requiring that Commissioner O'Neill and Chief Inspector Scafidi appear before the

Commission at a time designated to produce the requested documents without waiving their individual constitutional rights to refuse to answer to any specific question.

CHAIRMAN FLEMMING. Without objection, the Commission concurs with that request.

[The witnesses were excused.]

### Afternoon Session, February 6, 1979

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CHAIRMAN FLEMMING. Counsel will now call the next witness.

MR. DORSEY. Sheldon Albert, Irvin R. Davis, Robert L. Greenberg, William G. Klenk.

MR. SHELDON. If the Chair please, again, Sheldon Albert, the city solicitor. I am here in response to the subpoena issued to my department.

CHAIRMAN FLEMMING. Would you mind at this point, then, standing and raising your right hand and being sworn as a witness.

[Sheldon Albert was sworn.]

#### TESTIMONY OF SHELDON ALBERT, SOLICITOR, CITY OF PHILADELPHIA

MR. ALBERT. I am also here on behalf of the director of finance, Mr. Davis, the city treasurer, Mr. Greenberg, and city controller, Mr. Klenk. Having discussed the matter with them, I guess—very simply with regard to the subpoenas issued to them—they cannot, through their records, segregate payments by their departments because of the specific nature of a lawsuit.

Their records are solely *Smith v. City of Philadelphia*, whether it's a traffic accident, employment case, any type of case. They do not have a method of segregating payments for cases where the allegation, to quote from the subpoena, "was excessive, inappropriate, deadly, or illegal use of physical force."

COMMISSIONER FREEMAN. Excuse me, Mr. Albert. Is Mr. Irvin R. Davis here?

MR. ALBERT. No, ma'am.

COMMISSIONER FREEMAN. Is Robert L. Greenberg here?

MR. ALBERT. No, ma'am.

COMMISSIONER FREEMAN. Is William G. Klenk, II, here?

MR. ALBERT. No, ma'am. When I met—so the record is clear—when I met with your staff last Thursday, they indicated that these hearings were for the purpose of submitting the documents. Since these people do not—cannot submit the kind of documents that are requested, I thought it would be appropriate, as their counsel—I am their counsel—that I come down to make that statement.

With regard to the subpoena to the law department, I do have—certain—for the record, some copies of some things here. I turned the request over to my staff and they prepared what I have just submitted. It complies, we feel, with the subpoena to the best that we are able to with the facilities that we have. The compendium is civil rights unit, and it indicates the total amount—first, the total amount of cases opened beginning in 1976. The subpoena goes back to 1968. I became the solicitor in '74, and we categorized the civil rights unit in 1976. Before then, we did not categorize cases with regard to allegations of civil rights. There is no way that we can go back before 1976 and tell you whether or not a particular case involved an allegation of police violence or police brutality or excessive force; it's just physically impossible.

However, in 1976, because of the publicity that was given to these matters and because of the increase in lawsuits against the city of Philadelphia with regard to these matters, we did open a civil rights unit.

Now, I'd best explain that I have these caveats here. A case when it comes in is assigned to the civil rights unit, so long as there is an allegation or complaint of a civil rights violation; it may be an employment case, it may be an illegal firing case, it may be a prison case, it may involve deputy sheriffs. I have been a defendant in certain cases.

We do not categorize them in the department, nor have we categorized them in the department with regard to whether or not the allegation of a civil rights violation was a police assault case or a police violence case. So, the figures that I give you, when it comes down to dollars, are for all cases where an allegation of a violation of civil rights occurred. The only way that we could segregate a case, as to what the actual complaint was involving the police department, would be actually by opening the file and looking through the file and finding out what was alleged in the complaint.

So, with that caveat, we have here the total amount of cases that have been opened. We have here a list of cases that we tried for the 3 fiscal years beginning in July 1976 and the dollar amounts and the verdicts. We have next the dollar amounts that have been paid out where the allegation was a civil rights violation. But, again, I've got to caution the Commission that it may involve an employment case, it may involve a hiring case, it may involve a case against the civil service commission. Included in those dollar amounts are dollars which were paid out because of a finding of physical activity by a police department.

Now, the second caveat is that the dollars are given for the years of which they were paid out. They may, however, in some cases refer to prior years. In other words, from our records, we can tell you how many dollars we paid out where the allegation was a violation of a civil right. But, the dollar is given for the year in which it is paid, whereas

the allegation might have been in 1969 or a 1970 case or a 1971 case. I've tried to explain those in the caveat.

The next pages consist of a list of the names of the plaintiff and the dollar amounts. Now, I have indicated in ink with a V where that dollar amount was a verdict. Where there is no V, it is safe to assume that the dollar amount was a settlement.

We have retrieved—this is not contained on these sheets—but we have retrieved from our budget request before city council that in fiscal 1975, which would be July 1974 to June of 1975, civil rights cases cost us \$169,064.28. And for fiscal '76, which would be July '75 to June of '76, civil rights cases were budgeted for \$289,227.89. Those figures come solely from the budget document that was submitted to city council, which I have copies for the law department. Whoever prepared that budget document—I don't know—could have been anyone in the law department who may or may not still be there. Where they got these figures, I could not vouch for it, but they are contained in our budget as civil rights cases.

Included in the figures that I've given you are dollars that were paid out as a result of allegations of police abuse. I don't want you to be mistaken about that. But there are dollars involving others matters, and we just cannot physically segregate those matters.

In the next document is a list, according to our files, all open cases where the allegation was a civil rights violation, and attached here to a caveat, that these cases are not limited to allegations of force by the police department. But, that's the way we have them set up. We have them set up as civil rights violations. To the best of the department's ability, at the present time, that is the only compliance that we can make with the subpena as it was issued. However, I will make our files, to the extent that they reveal these types of documents, and my staff available to your staff for any questions that they may want to ask in defining these things or going into these things, with the exception that—as with regard to the first case, I will not allow a perusal of the actual physical file itself. But we were not asked to produce any files, just the compilations.

CHAIRMAN FLEMMING. I'd like counsel to comment both on Mr. Albert's response on behalf of his clients, Mr. Davis, Mr. Greenberg, and Mr. Klenk, and also a response in connection with the subpena that was served on him.

MR. ALBERT. In fact, if I may, Mr. Chairman, as I just look through this, I can see that, for example, we settled a case last year. We didn't settle it. It actually went up to the Supreme Court of the United States and we ultimately paid it. The case goes back into the late sixties, and I do not see the name on here, you know, and that's conceivable. This list conceivably cannot have certain names on it. And it may have names that shouldn't be on it, on this list.

MR. DORSEY. If I may, I would like to first address the issue with respect to the the three other individuals subpoenaed to appear at this



time. I would ask counsel as representatives of those three individuals, if—allow me to back up for a second.

First, I would request of the Chair that the subpoenas, with respect to those individuals, remain in force, and that the Chair assume the good faith of the individuals and request that they appear at the earliest possible opportunity, on this very date, for the purpose of either submitting the requested documentation or answering specific questions directed by the Commission to those individuals, with respect to the availability of the information sought by those subpoenas, so that the Commissioners do, in fact: one, have validly enforced subpoenas obeyed, as is their custom, and, two, have the opportunity to discuss the particular difficulties with respect to the data requested so that they might make a more informed judgment as to the necessity to refer this matter to the U.S. attorney for disobedience of its subpoena authority.

In line with that request of the Chair, I would ask that Mr. Albert be asked to convey to his clients the wishes of this Commission with respect to their appearance, so that we might avoid any possibility that their behavior be misunderstood and misconstrued as being contumacious.

MR. ALBERT. May I address myself to that, Mr. Chairman?

CHAIRMAN FLEMMING. Yes, certainly.

MR. ALBERT. Just last Thursday, your staff, including counsel who's just made these statements, sat down with me, with Mr. Teddy, Miss. Eselrot [phonetic] of my staff, and told us that today the subpoenas were solely for records. They told us that, in fact, because I frankly was a little offended, I said, "Why weren't they sent into records custodians?" and they said, "Well, we might have a question about the documents."

So, to even have the hint or inference that there's an impropriety—and frankly, I'm offended by counsel's statement—that there's an impropriety because Mr. Davis, Mr. Greenberg, and Mr. Klenk, with whom I spoke personally about these subpoenas, are not here I think is just unfortunate and should not have occurred.

Number two, I communicated with Mr. Klenk, with Mr. Davis, and Mr. Greenberg. They have told me that once a document comes from the law department, it has what's called an "M document," which is an order for payment. And the caption is "Smith versus so and so," and there is a settlement recommendation attached that, short of reviewing every single settlement recommendation that they may or may not have in their files, they cannot segregate a dollar payment where the case was limited to involving allegations of excessive, inappropriate, deadly, or illegal use of physical force by members of the police department.

Now, I think that because Mr. Davis is director of finance, Mr. Greenberg is the city treasurer, Mr. Klenk is the city controller that if there was any question about these things that, the least the staff

could have done is go down and interviewed them personally. To suggest that they put aside everything that they have to do—and I happen to know that Mr. Davis and Mr. Greenberg are busy today with another matter—and come here just for that purpose, I think is inappropriate.

I have no objection to the staff visiting the finance director or the city treasurer or the city controller and asking them any question that they want.

MR. DORSEY. If I may, I would suggest—I would definitely apologize for any illusion which counsel may have taken from words as to a suggestion of bad faith. I specifically attempted to word my comments in such a way as to ensure that that would not be the interpretation given to what I had to say. I merely wished to clear—quite clearly on the record—the fact that Commission subpoenas are personal to the individual and they, in fact, require a personal appearance in order to be in obedience with them.

MR. ALBERT. Well, that is not what you suggested to us at our meeting.

MR. DORSEY. I beg to differ with counsel, but—

MR. ALBERT. You can differ all you want.

MR. DORSEY. —notwithstanding that, I am suggesting that counsel is well aware of the compulsion which attends a subpoena—

MR. ALBERT. No, sir. I'm used to dealing with attorneys who tell me something, and I rely on what they tell me. It was made crystal clear to us that these hearings today were for the purpose of looking at records and that the only necessity for somebody coming down might be to explain a particular record. And that was all it was.

Now, where no records exist, it's obviously not necessary for the finance director or the city treasurer or the city controller to come down here and tell you something that you could have learned by just walking into their office with me if you had a question to ask them.

MR. DORSEY. To clarify our conversation of last week and to avoid additional misunderstanding, the item on which my statement with respect to testimony was predicated had to do with the fact that there would be no testimony apart from an explanation or clarification of the documents request. That is not the same as excusing any witness from a subpoena, because that is clearly beyond my ability, since it was on the face of the subpoena clear that the staff was not empowered to issue subpoenas and, therefore, would not be empowered to withdraw them.

And, I do not believe there was anything in that meeting which suggested that the subpoenas, which had been served, had at that time either been withdrawn or modified in their effect.

MR. ALBERT. You said quite clearly it was for the purpose of getting records, that they could just as well have been addressed to records custodians, librarians. I will remind you how offended that I was that the commissioner—that I, that Inspector Scafidi, and the other high

city officials have been subpoenaed, when it turned out that you merely wanted documents. There is no way—there is no way that I can guarantee the availability of these three gentlemen today.

CHAIRMAN FLEMMING. Counsel states accurately the fact that it is under our law, it is only the members of the Commission that can issue a subpoena, and it is only the members of the Commission that can agree to the withdrawal of a subpoena.

I would like to listen to a little discussion as to the point that had been raised as to the availability of these particular records. Do you have any comment to make on that, growing out of your investigation up to the present time?

MR. DORSEY. No, I do not.

CHAIRMAN FLEMMING. Commissioner Freeman and I feel that the subpoena should be honored. We would appreciate and request that contact be made with the three witnesses, and indication given us as to when they will come.

MR. ALBERT. If the Chairman is directing me to contact them, of course, I shall.

CHAIRMAN FLEMMING. Thank you.

Now, in the interest of time—there was a time, certain of course, fixed in the subpoena. Conceivably, we should agree on a certain time now, so that there won't be any possibility of misunderstanding.

MR. ALBERT. If Mr. Chairman will allow me, I'll have one of my cocounsel try to ascertain right now on the telephone.

CHAIRMAN FLEMMING. Would you do that? I would appreciate that very much. Now, you're going to contact them? Pardon me just a minute—we would like to fix the time at 1 o'clock if possible.

MR. ALBERT. It's quarter to 12. Whatever—they're going to call, I have no idea—I happen to know that Mr. Greenberg and Mr. Davis are involved in a bond issue today, that's why I said I knew for a fact that they would have a problem. Mr. Klenk, I don't know.

CHAIRMAN FLEMMING. Okay, 1 o'clock.

Now, counsel, I would like your comments on the explanation that Mr. Albert has given relative to his response to the subpoena that was addressed to him as the law director.

MR. DORSEY. Yes, Mr. Chairman. The staff has made a preliminary review of the document, and especially with respect to the gracious offer of counsel to have staff clarify the documents which were offered, that the documents are, in fact, given the explanation of counsel, quite adequate to our purpose.

CHAIRMAN FLEMMING. Thank you very much. That then completes the proceedings up to this particular point. And we will recess until 1 o'clock.

MR. ALBERT. Thank you, Mr. Chairman.

CHAIRMAN FLEMMING. I ask the hearings to come to order, ask counsel to call the next witness.

MR. DORSEY. Irvin Davis, Robert Greenberg, William Klenk.

MR. ALBERT. If the Commission please, Mr. Greenberg and Mr. Davis are here. Mr. Greenberg is to my immediate right. Mr. Davis is to the far right. We did place a call to Mr. Klenk. I understand Mr. Klenk did speak on the telephone to either counsel or the Commission staff. I do not know what they were able to arrange.

CHAIRMAN FLEMMING. Our understanding is that he is on his way, but we thought, in the interest of conserving time, we could get started. I'd like to ask Mr. Davis and Mr. Greenberg if they would stand and raise their right hands and be sworn.

[Irvin R. Davis and Robert L. Greenberg were sworn.]

**TESTIMONY OF IRVIN R. DAVIS, DIRECTOR OF FINANCE, AND ROBERT L. GREENBERG, CITY TREASURER, CITY OF PHILADELPHIA**

CHAIRMAN FLEMMING. Will counsel proceed?

MR. DORSEY. Before I address questions to Mr. Davis and Mr. Greenberg, I would ask if I might digress for just one moment with Mr. Albert.

The data that you submitted this morning—there was just one thing that on preliminary examination was unclear. The designation in the current status column of major—could you explain that designation?

MR. ALBERT. Well, we have—inhouse, they're broken down to major cases, which is a jurisdictional phrase, court of common pleas, the demand is in excess of \$10,000 is jurisdictional. So that goes to the major unit.

Then, there are arbitrations. There probably are some small claims cases in there, but that would be a designation. It doesn't mean it's a major case. It means that for court purpose the allegations is for dollar amount, and it's assigned to what we call a major trial unit.

MR. DORSEY. I appreciate that clarification.

MR. ALBERT. Frankly, I don't think any of them are major cases.

MR. DORSEY. Mr. Davis, if I may, the subpoena addressed to you requested copies of requisitions for the payment of money to any person involved as a party in civil litigation against any police officer, commissioner, or the city of Philadelphia from 1968 to 1979. The subpoena attempts to limit the documents requested to those in which an allegation of excessive, inappropriate, deadly, or illegal use of force was made in the complaint.

We understand from Mr. Albert that the documents as described in the subpoena are not available. I would ask you at this time, if you could explain to the Commissioners how your file of requisition is broken down and the manner of retrieval of information from that system, so that we may best understand what possible alternative avenues might be available.

But, first, let me—it is our understanding that such data is not available as listed in the subpoena; is that correct?

MR. DAVIS. That's correct.

MR. DORSEY. Could you address yourself to the second aspect of that question?

MR. DAVIS. Well, it's a general policy of the city to retain financial records for 2 unaudited years. Now, the audit for FY '77 has been completed for some time. The audit for '78 has just been completed. In fact, the report [inaudible] those issues last week. Any records prior to FY '77 have been destroyed. The material that we retain is a microfilm of the face of the voucher which was used to initiate the payment of money out of the city treasury. The documentation in support of the payment is not photocopied, but it is destroyed. We do retain, as I indicated, 2 years of previous information. The kind of information that comes to the finance department which triggers a payment is a multipart payment voucher to which is attached a settlement recommendation. The settlement recommendation describes the claim against the city, the findings of the attorneys that looked into the matter, and the recommendations as to the payment to be made. If a judge has been involved, it indicates who he was and what his recommendation was. The recommendation of the judge is not necessarily always the same as the recommendation of the attorney. It's, hopefully, in the interest of the taxpayers, lower.

All such documents are reviewed by personnel under my jurisdiction. In some instances, I may personally look at one if the amount is substantial or if it involves a procedural error on the part of the city which could be remedied so as to avoid a recurrence of cost on the taxpayer, then I might become involved. Otherwise, it's a fairly perfunctory function that I perform and those of my staff.

MR. DORSEY. If I could follow up on a couple of issues—speaking solely of the material which accompanies a voucher that is maintained for 2 years—

MR. DAVIS. Yes, sir.

MR. DORSEY. That material would have within it a description of the matter which caused the request for a voucher?

MR. DAVIS. Yes, it would.

MR. DORSEY. Am I correct in interpreting your testimony as indicating that all such material is, in fact, maintained for a 2-year period?

MR. DAVIS. That is correct.

MR. DORSEY. Notwithstanding an intervening audit?

MR. DAVIS. I don't understand your question.

MR. DORSEY. Well, as I understood your original statement, you maintain files for 2 unaudited years. Was that correct or incorrect?

MR. DAVIS. Generally 2 years—we retain information for 2 years. If, in fact, the audit on that information has not been completed, then we retain it also.

MR. DORSEY. I see; I misunderstood.

MR. DAVIS. We don't destroy any information until it has been audited.

MR. DORSEY. So that, in any case, there is a 2-year period of time during which those files are maintained.

MR. DAVIS. That is correct.

MR. DORSEY. So that you would be expected to have such material for 3 years at the present time, the 2 years awaiting lapse and the current year?

MR. DAVIS. To be precise, we have the voucher and the settlement recommendations dating from July 1, 1976, forward.

MR. DORSEY. And that information is still available?

MR. DAVIS. It's in the files of the finance director's office.

MR. DORSEY. With respect to the data which is reduced to microfilm, that data reflects solely the face of the voucher?

MR. DAVIS. Right, which contains the name and address of the payees, the number of the claim, and the amount of money.

MR. DORSEY. The number of the claim is the number which is placed on the file by which department?

MR. DAVIS. The law department.

MR. DORSEY. If I could interrupt for one moment to get a point of clarification from Mr. Albert—Would the number on the face of the voucher correspond in your records to a case file number?

MR. ALBERT. Yes, it would be a C number, I believe, yes, claim number. Every time a claim is instituted against the city, not necessarily by suit but just by letter, defender damage, that's assigned a C number. That number stays with the case throughout its history.

MR. DORSEY. So, I would be correct in assuming that starting with the voucher face, it is, in fact, possible to get back to the case file?

MR. ALBERT. I would assume that's possible.

MR. DAVIS. Not through his office.

MR. ALBERT. If a C number was given to the law department we may or may not have the file, depending on our records retention.

MR. DORSEY. To digress, Mr. Davis, one second—With respect to the records of the solicitor's office, what is the retention rate on case files?

MR. ALBERT. Oh, I would have to ask my staff. I have no idea.

MR. DORSEY. Could you make that information available to the Commission?

MR. ALBERT. Oh, sure. It's the standard city of Philadelphia printed record retention schedule; whatever that has for my department is what it is.

MR. DORSEY. With respect to your files, have you had occasion to maintain a microfilm in excess—a microfilm of certain data—in excess of the time frame required by the city?

MR. ALBERT. No, not that I'm aware of.

MR. DORSEY. Thank you very much.

Mr. Davis, I would assume from your testimony that a review of the vouchers for any fiscal year could, in fact, identify the actual cases on which the vouchers are based?

MR. DAVIS. It could. A determination or classification could be made by physical inspection of the departments involved. In cases involving police, it would require a visual, physical taking from the files the documentation and a sorting out the documents and then a thorough review. And I'm not sure that the content of the settlement recommendation deals with the details underlying the case in a sufficient fashion or a sufficient degree to indicate what—

MR. DORSEY. But all the vouchers would have on them the name of the payee?

MR. DAVIS. Yes.

MR. DORSEY. So that it is conceivable that with a listing of all payees on a given type of case, then a review of the vouchers for payment schedules would be simplified. Is that correct?

MR. DAVIS. Yes, procedurally, it would be simplified.

MR. DORSEY. Mr. Greenberg, as I understand the statement of Mr. Albert, the information which was listed on the subpoena which was addressed to you is not, in fact, available in the manner and in the classification as listed on the face of this document. Is that correct?

MR. GREENBERG. That is correct, sir.

MR. DORSEY. With respect to the information maintained by your office relating to the information—relating for a moment to the information to which we seek and have requested—is there any identifying data maintained by your office which reflects the case number, either of the city's financial record or the file number of the law department?

MR. GREENBERG. The piece of paper that we would retain the longest would be the check. The check has on it a check number. It has on it a dollar number. It has the name of the person who we're paying. In the case of a law case, usually it's the name of the attorney and the client.

Mr. Dorsey. Is it ever solely the name of the attorney?

MR. GREENBERG. Conceivably, it could be. I really couldn't answer that question.

MR. DORSEY. Is the number which is reflected on the voucher, of which Mr. Davis took note, contained on the check?

MR. GREENBERG. I don't believe that it is.

MR. DAVIS. Could I respond to that?

MR. DORSEY. Sure.

MR. DAVIS. It's my recollection that the voucher number probably appears on the check. Now, what Mr. Greenberg receives is one of the multipart form that originally comes to the finance department. It is used as a jacket for the check and inserted in a window envelope. It's merely to facilitate the mailing process. That's the sole function it performs with respect to his operation.

MR. DORSEY. But to your recollection, that does, in fact, contain the same voucher number.

MR. DAVIS. It may; I'm not positive we can get a determination on that.

MR. DORSEY. Could you provide that information to the Commission?

MR. DAVIS. [Nodding affirmatively.]

MR. DORSEY. Again to Mr. Davis, you indicated just a moment ago that the multicopy form that goes through your office—or does it originate in your office?

MR. DAVIS. No, it originates in the law department.

MR. DORSEY. A copy of that goes to Mr. Greenberg as I understand it. Now, aside from that form is there any document which you maintain which accompanies that form to Mr. Greenberg, which reflects, in any way, information about the case?

MR. DAVIS. Yes, for the 2 years indicated.

MR. DORSEY. And what would that information be?

MR. DAVIS. The information that accompanies the voucher is the settlement recommendation.

MR. DORSEY. You maintain a copy of that; is that correct?

MR. DAVIS. I believe we do.

MR. DORSEY. And you forward one?

MR. DAVIS. Not to the treasurer. I believe that the controller may have a copy. I'm not sure that I keep that. I may forward it to the controller with his copies of the voucher.

MR. DORSEY. But, as to your relationship, your office with the office of Mr. Greenberg, do you forward documentation to Mr. Greenberg which reflects any information with respect to the individual case?

MR. DAVIS. No, none whatsoever.

MR. DORSEY. And I am correct, Mr. Greenberg, in my interpretation of your testimony, that the only document that you retain relative to the case is, in fact, the check?

MR. GREENBERG. I believe that is so, yes.

MR. DORSEY. Mr. Chairman, I believe that Mr. Klenk is now present. [William G. Klenk, II, was sworn.]

**TESTIMONY OF WILLIAM G. KLENK, II, CITY CONTROLLER, CITY OF PHILADELPHIA**

MR. DORSEY. Mr. Klenk, I appreciate your appearing this afternoon. I would ask for clarification of our record with respect to the information which appears on the face of your subpoena. I am correct, am I not, in my recollection of the solicitor's testimony that, as it is described, that information is not available?

MR. KLENK. We would maintain—well, let me back up and just say this, I am actually the city's auditor and as such, part of each of the payment vouchers which come from, in this case, Mr. Albert to the finance director then to us, are retained by our office. We do for a period, and it would be the same problem—I don't remember what the



retention period is—whatever the retention period is, we would maintain a copy of the voucher. And attached to that voucher, if my memory serves me correctly, would be the settlement recommendation or some notation with regard to any settlement conference which had been held by any judge. So that to that extent, we would have that information.

MR. DORSEY. Am I correct that that information comes to you by way of Mr. Davis' office?

MR. KLENK. The way you would track it is the issuing department. In this case, the law department would initiate the document. It would then go to Mr. Davis' department. From Mr. Davis' department, it would come to our office to our preaudit section. And from our preaudit section, it would go to the city treasurer for payment. In fact, what you have are two separate preaudit procedures.

MR. DORSEY. Am I correct in understanding that your office does not maintain the record of vouchers by subject matter or type of complaint?

MR. KLENK. No, we would have no reason to under our—we would maintain them in terms of department number.

MR. DORSEY. With respect to your office's functioning, as I understand it, your office is the final step in the chain of authorizing actual payment by the drawing of a check.

MR. KLENK. I think it's fair to say that legally, that is true. There is the file—when we receive it, the check is already attached to the voucher and the final act is that of the city treasurer actually applying the signature to the check. But that is a function which is routinely done.

MR. DORSEY. So that your office would have the similar set of records from which you could retrace—that is the path of the check—from the voucher number, theoretically, back to whatever file number might still remain present in the law department; is that correct?

MR. KLENK. We should have the same C number. We should have a copy of that same document which has the C number on it, yes.

MR. DORSEY. Mr. Chairman, based on the information provided by the witnesses, I would ask at this time if you would request of the witnesses an expansion of the subpoena, that is, to request permission for the staff to review the voucher document, maintain those that are retained for the 2-year period, in addition to which, request that the staff be permitted to review the microfilm record so as to compile a list which reflects those cases which result in a payment by the city which are based on actions—suits with respect to police conduct.

MR. ALBERT. You want to look at the payments, let's say to whether X or Y get that C number and then track it back to my—is that what you're talking about?

MR. DORSEY. No, I believe the process has to go the reverse. That is, starting with the case number of—let me rephrase that.

MR. ALBERT. If you're saying that if you have the name of a plaintiff, or the number of the plaintiff, can that then be tracked from the law department through to finance? I think the answer is correct.

MR. KLENK. You could go backwards or forwards.

MR. ALBERT. I think that physically could be done. I have no particular problem with that.

MR. DORSEY. And I would simply request of the Chair to formally request of the witnesses present the opportunity for staff to make such a review.

MR. ALBERT. I would suggest, if you have your staff contact Mr. Tatey [phonetic] rather than myself, because I'll be tied up with other things; he'll be happy to make those arrangements.

CHAIRMAN FLEMMING. Counsel has suggested that we ask whether or not—Mr. Albert has indicated his willingness to cooperate.

MR. ALBERT. To this area that we're talking about, certainly—where they either come to us with a number or a name and then track it either backward or forward, I have no problem with that.

CHAIRMAN FLEMMING. Mr. Davis, would you be able to cooperate with that particular procedure?

MR. DAVIS. Yes. The number would be extremely difficult for me to deal with, because there is no recordation of that in my records. It would have to be a name.

MR. DORSEY. Okay.

CHAIRMAN FLEMMING. Okay. Mr. Greenberg?

MR. GREENBERG. Yes, sir.

CHAIRMAN FLEMMING. Mr. Klenk?

MR. KLENK. I have no problem because you're going to either deal with Mr. Davis or us, it would seem, because the documents will be exactly the same. I just have one copy of the same document he has.

MR. DORSEY. Mr. Chairman, based on those agreements, as indicated by the witnesses and by counsel, it is my opinion that the subpoenas have, in fact, been complied with, based on that.

CHAIRMAN FLEMMING. The Commission concurs. Thank you very, very much.

This hearing is in recess.

[The hearing was adjourned at 1:20 p.m.]

## UNITED STATES COMMISSION ON CIVIL RIGHTS

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Morning Session, April 16, 1979

The U.S. Commission on Civil Rights convened, pursuant to notice, in the Federal Building, 300 Spring Garden Street, Philadelphia, Pennsylvania, Arthur S. Flemming, Chairman, presiding.

Present: Arthur S. Flemming, Chairman; Stephen Horn, Vice Chairman; Murray Saltzman, Commissioner; Louis Nunez, Staff Director; Frederick D. Dorsey, Acting General Counsel; and Gail Gerebenics, Assistant General Counsel.

### PROCEEDINGS

**CHAIRMAN FLEMMING.** The hearing will 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 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 persons 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 of which was held on February 6 and the hearing beginning today, April 16, and resuming tomorrow, April 17. However, today's hearings do not necessarily signal the end of our investigation in Philadelphia. The data and records subpoenaed on February 6 may require further study and clarification by officials at some future date.

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.

The hearing today and tomorrow is for the purpose of eliciting testimony from citizens, public officials, and police department administrators, among others, concerning the practices, policies, and procedures of the Philadelphia Police Department. In addition to examining the internal workings of the department, we will also be hearing testimony on various perspectives of the nature and extent of the problem and the external remedies available to victims of misconduct.

Finally, beginning at 1:45 tomorrow, April 17, we will hear testimony from persons who have not been subpoenaed. Those persons who wish to testify may sign up with staff at the table in the projection booth in the rear of the auditorium. However, those wishing to testify will be permitted to speak for 5 minutes and must speak only about practices of the Philadelphia Police Department. They may not give any testimony which may tend to defame, degrade, or incriminate any person. They will not be questioned by either the staff or members of the Commission. The first 20 persons to sign up will be recognized tomorrow afternoon.

The Vice Chairman of the Commission, Commissioner Horn, will now briefly explain the rules of the Commission pertaining to these hearings.

VICE CHAIRMAN HORN. Thank you, Mr. Chairman. At the outset, I should emphasize that the observations I'm about to make of 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 procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

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 such evidence or testimony.

When we use the term "executive session," we mean a session in which only the Commissioners are present in contrast with sessions such as this one in which the public is invited and present. In providing for an executive or closed session where testimony 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 provide the person 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. Testimony which may tend to defame, degrade, or incriminate another person is not permitted by witnesses in the open 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 and the public is invited and urged to attend all of the open session. 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 requests 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 clients to reasonable examination within the scope of the questions asked by the Commission. He or she may also 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 a 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 in this public hearing. Such state-

ment will be reviewed by members of the Commission and made a part of the record.

Witnesses, including those in the open session, 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 to be 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's staff. Persons who have been subpoenaed have already been given their copy.

Finally, I should point out that these rules were drafted with the intent of ensuring that the Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond the 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 today, Monday, April 16, and tomorrow, Tuesday, April 17. The session today begins at 9 a.m. and will continue until 5:30 p.m., with an hour and a half break for lunch. The session will resume at 7:15 p.m. this evening and will continue until 9:30 p.m. Tomorrow's session will begin at 9 a.m. and continue until 4 p.m., with an hour and 15 minute break for lunch.

As noted by Chairman Flemming, persons wishing to appear in the open session should be in contact with members of the Commission's staff in the projection booth in the rear of the auditorium. The open session will begin tomorrow at 1:45 p.m. and will continue until 4 p.m. The first 20 people who sign up to testify about police practices in Philadelphia will, on a first-come first-served basis in the sign-up procedure, will be given the opportunity to speak on the subject for 5 minutes.

Persons wishing to testify are limited by two Commission requirements. They may not defame or degrade any person in their testimony, and their statements must be directed to practices of the Philadelphia police.

CHAIRMAN FLEMMING. Thank you, Commissioner Horn.

At this point I am very happy to have the opportunity of presenting Ms. Grace Alpern, who is the Chairperson of the Pennsylvania State Advisory Committee. Ms. Alpern has rendered outstanding service as Chairperson of our State Advisory Committee for the Commonwealth of Pennsylvania. We deeply appreciate the time that she and her associates have put into a consideration of the many issues in the field of civil rights that confront the people of this commonwealth. The recommendations that have come to us from this Advisory Committee have been excellent and included in the recommendations, she'll undoubtedly point out, was one that we conduct the kind of hearings that we are conducting today and tomorrow. Thank you so much for all that you have done for all of us in the civil rights field, and we are very, very happy to have you with us on this occasion.

**WELCOMING STATEMENT OF GRACE ALPERN, CHAIRPERSON,  
PENNSYLVANIA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL  
RIGHTS**

Ms. ALPERN. Thank you.

Chairman Flemming and Commissioners and members of the staff of the Commission, it is with great pleasure and anticipation that I welcome you to Philadelphia on behalf of the Commission's Pennsylvania Advisory Committee and on behalf of the citizens of Philadelphia, who view the issue of police misconduct as an increasingly serious problem.

The Pennsylvania Advisory Committee first became involved in the issue of police abuse in 1969 when asked to investigate charges against the police department of denial of equal protection of the laws to minority citizens and charges that citizens could not look to the city government or the police for redress of grievances against the police. During the latter part of 1970 community tensions escalated, and a major racial crisis threatened Philadelphia as a result of the shooting of three police officers and the subsequent police raid on Black Panther headquarters.

In response to numerous requests, in 1971 the Pennsylvania Advisory Committee conducted public hearings of police-community relations in Philadelphia. Our report was published in June 1972. Frank Rizzo, who had been police commissioner at the time of our hearing, had been elected mayor of Philadelphia.

Many issues were identified in our report, several of which are relevant to the hearings being conducted today. First, the use of excessive or unwarranted force was a repeated complaint. The Committee found that while Puerto Ricans, some poor whites, and some youth did not enjoy equal or adequate protection of the laws, blacks in particular suffered to an inordinate degree.

We found that the Philadelphia Police Department "operated as a closed system in terms of responsibility and accountability, immune to

complaints of police abuse, with an attitude that the department is a law unto itself and that only the police are capable of policing themselves."

The Committee concluded that there was, in fact, no effective avenue of redress of citizen complaints. We further concluded that the role of the police, with some exceptions, in the minority community appeared to be one of containment and control, rather than protection and service.

Because of the enormity of the problem, we made very specific recommendations related to complaint reconciliation. First, that there be a clearly designated, publicized, centrally located facility for the filing and recording of all citizen complaints against the police or individual policemen; definite time limits for investigation and disposition of complaints; mandatory reporting to complainants of the outcome of investigations and disposition of their complaints; and public reporting of the number, type, and disposition of all complaints.

These recommendations were made in 1972, 6 years before the police department took partial steps by implementation of its directive 127, which merely is a first step towards formulating an official complaint-handling procedure, and that only after more than 44 very representative and respected groups were sufficiently disturbed that they drafted and are presently supporting an ordinance, still before the Philadelphia City Council, which would protect the full rights of citizens and police and provide full access to public records of police investigations and dispositions of citizen complaints.

In April 1978 the Pennsylvania Advisory Committee wrote a letter officially requesting that the Commission conduct an investigation of police abuse in Philadelphia. We acted in response to our own concern and because of repeated urgent requests from a wide variety of religious and civic organizations and leaders in Philadelphia.

Some of the events which prompted our request were the startling fact that the situation had not improved during the 6 years since our report. If anything, there was mounting citizen frustration, with the police department still generally perceived as a closed system immune to complaints of various kinds.

The mayor of Philadelphia had stated publicly that he would stand behind every policeman, right or wrong, and when wrong trying to do what is right. This was widely perceived as meaning that the end justifies the means and that good intentions justify or should condone abuses of various kinds.

The police commissioner, following a number of citizen complaints and charges by the media of police abuse, stated that to his knowledge police abuse does not exist in Philadelphia—this despite the fact that the courts have awarded over \$1 million to victims of police abuse in Philadelphia in the last 2-1/2 years.

This lack of response by the police department and city administration to police misconduct heightens the public's fear of and animosity



towards its police. This increased tension and fear, in effect, jeopardizes the lives of both citizens and police officers. Community tensions continue to escalate. There are volatile situations in Philadelphia today that require sensitive, responsible decisions and actions by the leadership and the entire police department and city administration.

It is our hope that your thorough and objective investigation, for which the Commission is known and respected, will help you to develop models for reform and propose legislative and policy changes on the national level which, hopefully, can correct problems of police abuse and protect the civil rights of the citizens and police in Philadelphia and cities across the country.

Thank you.

CHAIRMAN FLEMMING. Thank you very, very much. We appreciate those comments very much.

Counsel will call the first witnesses.

MR. DORSEY. Sister Falaka Fattah, Anthony Jackson, Angel Ortiz, Mark Segal.

Mr. Chairman, I do not believe Mr. Ortiz has arrived yet. I would suggest that we proceed and include him upon his arrival.

CHAIRMAN FLEMMING. Okay, fine.

[Falaka Fattah, Anthony E. Jackson, and Mark Segal were sworn.]

**TESTIMONY OF FALAKA FATTAH, EXECUTIVE DIRECTOR, HOUSE OF  
UMOJA; ANTHONY E. JACKSON, DIRECTOR, POLICE PROJECT, PUBLIC  
INTEREST LAW CENTER OF PHILADELPHIA; AND MARK SEGAL, PUBLISHER,  
PHILADELPHIA GAY NEWS**

MR. DORSEY. Starting with Sister Falaka Fattah, would each of you state your full name, organizational affiliation, and title, if any?

SISTER FATTAH. My name is Sister Falaka Fattah. My title is executive director. My organization is the House of Umoja.

MR. JACKSON. I'm Anthony Jackson, director of the police project, Public Interest Law Center of Philadelphia.

MR. SEGAL. Mark Segal, publisher of the *Philadelphia Gay News*.

MR. DORSEY. Thank you.

Mr. Jackson, your organization has been very active with respect to the whole issue of police conduct. I wonder if you would outline briefly the function of the project for which you have responsibility and indicate, if you would, some of your more significant studies and findings.

MR. JACKSON. Thank you, Mr. Dorsey. Thank you, members of the Commission, for inviting me here today.

Briefly, the police project, Public Interest Law Center of Philadelphia, was established—its funding began in September of 1975 with Law Enforcement Assistance Administration [LEAA] funds, which were geared towards handling complaints that citizens of Philadelphia

had against the Philadelphia Police Department. Indeed, part of the purpose, part of the objectives of the police project was to develop innovative means, innovative remedies for resolving problems of police abuse in Philadelphia.

Since that time, since September of 1975, the law center has handled—opened over 1,500 complaints of citizens here in Philadelphia with complaints. We have handled, either by opening files or telephones or inquiries, over 2,500 complaints of citizens here in Philadelphia.

We have been funded each year by the Governor's justice commission with LEAA funds. We are currently in our last year of funding, which would expire September 30 of this year.

We have over that period of time issued periodic annual reports reflecting the number of complaints we've received on an annual basis and certain characteristics that were observed in those. We have not published an annual report in 2 years. We would hope to have one now in 2 weeks. We have just completed the data processing of all of our files, again, with over 1,500 files. And we would hope that we'd be able to identify certain characteristics that we feel might be helpful to the police department.

I might also add, on Thursday of this week we will release a study on the use of deadly force by the Philadelphia Police Department. We have looked at the shootings by the Philadelphia Police Department from 1970 through 1978. We have identified over 469 people who have been shot by the Philadelphia Police Department. Sixty of those persons have been juveniles, and more than half of them have been unarmed or fleeing. There are a number of other characteristics that we will show in that report, such as the number of times that certain police officers have had prior complaints against them, whether or not the police officer was off duty or on duty, and whether or not adults in the study had been armed and fleeing.

That's perhaps the latest findings. It has been a monumental task. But again, I apologize for not having it prepared today. Given a few administrative problems in our office, we won't have it until Thursday.

MR. DORSEY. I would ask, Mr. Chairman, if those documents, not only the study on the use of deadly force but also the document reflecting the annual statistics for the past 2 years, be submitted for the record and a spot be reserved in the record at this point for acceptance of those documents.

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. JACKSON. Thank you very much.

MR. DORSEY. I would like to know briefly if you would state—your responsibility was basically to resolve complaints, or at least to investigate and submit those complaints to the department. What is the status of your relationship with the department? How much interaction have you had with the department, and what has been your level of success with respect to resolving these kinds of complaints?

MR. JACKSON. The level of success has been very minimal, and that is perhaps based on the relationship that we have with the police department. Unfortunately, the mayor of Philadelphia as well as the police commissioner, have pretty much labeled anyone who criticizes acts of the police as antipolice. Consequently, the relationship that we would hope to develop within the police department has just been not forthcoming.

Again, we are viewed as antipolice and, consequently, any criticisms, any comments that we might want to make to the police department are just not accepted. We occasionally refer cases to the Philadelphia Police Department, perhaps 50 cases a year for resolution by the police department itself.

We have, up to this date, referred approximately 200 cases to the Philadelphia Police Department for resolution. To this day, there has only been one case which resulted in disciplining of a police officer, and, indeed, where that person was invited to appear before the PBI, the Police Board of Inquiry.

Consequently, given the fact that many people are not invited to give their comments at the PBI, and no disciplinary action is taken against police officers, many complainants are reluctant to appear before the police or to make a complaint to the police, since they feel it is just a futile effort. We have attempted on many occasions to develop a dialogue with the police department, but they have thus far been unresponsive to that.

MR. DORSEY. Based on your statistics and your experience, can you give us some idea of the characteristics of police complaints as you have experienced them? That is to say, do you have some idea of the racial and age breakdown, for example, or also anything you have with respect to the degree of recidivism that you have encountered with respect to these complaints?

MR. JACKSON. Based on the studies that we have performed in the area, here in Philadelphia, we know that 65 to 70 percent of all complaints are from minority persons. It breaks down to perhaps 10 percent for Hispanics and I guess it would be about 55 to 60 percent blacks.

What you have to understand or, at least, what we sense in the number of complaints that we've received, is that there are a great number of people who have perhaps valid complaints against the police department [and], for one reason or another, just have decided not to complain to our office.

Now, since last year the district attorney's office has established a police brutality unit, and to some extent many of the complaints that we would normally receive have now gone to the district attorney's office. But we have found that most of the complaints that come to our office, 65 percent are employed. Another 10 percent—I'm sorry, 65 percent are either students or employed. Eighty percent of the people who come in to complain have no prior police record. Eighty percent

of those people who are charged with cover charges—"cover charges" is an expression we use for police officers who commit certain acts against individuals, and they then charge that individual to cover their own illegality, if you will: resisting arrest, assault and battery on a police officer, and disorderly conduct.

MR. DORSEY. Excuse me for 1 second.

MR. JACKSON. Certainly.

MR. DORSEY. The statistics are coming so fast I want to back up to make sure I'm keeping up with you. With respect to the prior criminal record of the complainant, what was that statistic again?

MR. JACKSON. It's 80 or 85 percent of those have never been arrested at all for anything. I don't have the specific percentages of those who have perhaps been arrested but not convicted, but 80 to 85 percent have never had any police contact whatsoever.

MR. DORSEY. that does not include the next statistic which you referred to, namely, the cover charges; is that correct?

MR. JACKSON. Yes, this is a separate statistic.

MR. DORSEY. That 80 percent might have cover charges for the current incident?

MR. JACKSON. Oh, yes, absolutely.

MR. DORSEY. The cover charge figure was also 80 to 85 percent?

MR. JACKSON. I'm sorry. It's 89 percent, 89 percent of those who are charged with cover charges never result in any conviction whatsoever, which suggests, of course, that—only again to use it in reverse—only 11 percent of those people that the police department charged with those cover charges are ever convicted. This suggests, of course, that the police department is overcharging, or the district attorney and the judges certainly see that the police department is overreacting in charging the various people that are brought into the court.

MR. DORSEY. I'm sorry I interrupted you.

MR. JACKSON. That's okay.

I think the other characteristics that might be significant in terms of repeaters on the part of the Philadelphia Police Department, PILCOP, the Public Interest Law Center of Philadelphia, the police project, has now about 3,500, maybe 4,000 files of police officers who had some type of complaint against them at least since 1969. We are not suggesting that each and every one of these complaints are valid. We are simply saying that we have information on at least 3,500 police officers here in Philadelphia.

In the deadly force report that I alluded to earlier, you will find in certain years where deadly force was used by officers more than 70 percent of those officers had some prior complaint of some kind either to our office or before the police board of inquiry, which suggests, again, that if there are a number of police officers who are coming back, whose name we see over and over again, without any disciplinary action on the part of the police department, one begins to wonder just what, if anything, the police department is doing to correct the problem.

MR. DORSEY. Have you attempted to compile statistics with respect to the amount of money which police misconduct or allegations of police misconduct cost the city in terms of judgments, settlements, this sort of thing?

MR. JACKSON. Yes, sir, Mr. Dorsey.

In fiscal 1976-77 and 1977-78, we have estimated that the City of Philadelphia has paid out over \$2 million in awards and settlements to victims of police abuse here in Philadelphia. We might also add that that figure is augmented or should be augmented by the amount of taxpayers' dollars that are going into the salaries and support staff of the city solicitor's office. There are, as I understand it, six or seven attorneys in the city solicitor's office who handle these civil rights cases, and, of course, they have a corresponding support staff. I might also add that police officers who are charged either criminally or civilly are paid by the City of Philadelphia while they are appearing in court, which adds another total that we have not been able to estimate.

So I think the figure is obviously staggering. We're talking about approximately two and a half million dollars for a 2-year period of time in this crisis, where we're looking for funds, that the City of Philadelphia has pretty much just turned its head and said, "We're going to pay." And as Ms. Alpern said earlier, where the mayor has indicated that "right or wrong, we're going to defend you." I think that attitude just has to be stopped if we ever hope to change the attitudes of those abusive police officers here in the Philadelphia Police Department.

MR. DORSEY. I do want to follow up on one aspect. As you know, the figure with respect to the cost of the city in judgments and settlements is a matter of considerable dispute.

MR. JACKSON. Yes, sir.

MR. DORSEY. In order to help clarify that dispute, at least from the standpoint of your calculations, what are your estimates based on?

MR. JACKSON. The estimates are based on—when we receive complaints, we are prohibited by our funding source from pursuing cases where there are civil damage potentialities, where a person may get some money for their injuries. We refer those cases out to a panel of over 100 lawyers here in the city of Philadelphia. What we do is, occasionally, frequently, monitor those cases that we have referred out to ask what the status of those cases are. We have, unfortunately, been thwarted to some extent in our efforts to get an accurate reading of all of those cases, because the City of Philadelphia, oftentimes when they settle a case with an attorney, they require that the attorney and the claimant sign this agreement where they will not divulge the fact that the case was settled, they will not divulge the amount of the settlement, and they would specifically not tell PILCOP what the terms of the settlement are.

Now, we have fortunately been able to assure some of the attorneys that we would use the figures in an aggregate sense, as I've given here

today, and not specifically identify those cases that have been settled, so as not to create a problem for them in the future. But, unfortunately, we cannot, because of the assurances we have given to the attorneys, we cannot give you, at this point at least, an accurate or an identification of each and every case that has been settled with the City of Philadelphia.

Now, we had gone into the records of the city controller of Philadelphia to assist us in identifying a number of the cases that the Philadelphia Police Department has paid. We have identified at least two cases that we know plaintiffs have received money. But we have not as yet been able to locate the vouchers from the police department attesting to the fact that those cases have been paid.

Now, the only reason that I bring that up is because there are certain cases that we know about, there may be others that we don't. There are certain complainants and lawyers who file these cases and feel no need to contact us. So we don't—I don't want to suggest that we know of every case; but there are certain cases we know that people have received money, and there is no reflection in the City of Philadelphia's police vouchers that would, again, attest to the fact that money has been paid.

I don't know at this point whether the city is hiding the money or using some other voucher system of paying it. But it just suggests again that there might be some effort being put forth to hide the actual amount of money being used to pay those figures.

And I might point out one other thing, that when we went into the city controller's office to look at these vouchers of the police department in settlement of cases, we found out after that that the city solicitor's office itself has a voucher system where they can pay some of these police claims. We had assumed that only the police department's budget would be used to pay police abuse, complaints. But we have now been advised that the city solicitor's office, up to a certain amount—and that's a matter of conjecture right now—but the city solicitor's office also has an amount of money that they can settle claims that would not be reflected in the City of Philadelphia's police department's voucher system.

VICE CHAIRMAN HORN. Can I ask counsel, Did we subpoena those records in terms of what payments have been paid the city controller, city solicitor?

MR. DORSEY. Yes, we did. I might as well take this opportunity to explain. The testimony that we received on February 6 was that the voucher system is such that the face of the voucher system would not, in and of itself, reflect the case, that is, the basis of the case which results in a judgment; that is to say, that it would not indicate anything on the face except the case number. So that, if you didn't know that case number X was a police tort case, then you would not know that that voucher was the result of a police tort judgment. And therefore, it is necessary, in order to use the voucher system, to start with the case and work forward to the voucher system.

COMMISSIONER SALTZMAN. Is there any way, counsel, of getting at that information?

MR. DORSEY. We are attempting to do that at the present time.

MR. SEGAL. Mr. Jackson has already indicated the statistics which he has reflecting the breadth of the problem, some of the characteristics of the problem, with respect to police conduct in Philadelphia. I wonder if you might indicate for us the characteristics which you, by virtue of your particular information and experience, may have which reflects also on the characteristics of police conduct.

MR. SEGAL. Over the last 8 years I've been involved with the gay community in Philadelphia. For the most part, this is a community which lives a double life. Most people that are in our community don't let their families know that they are gay, because of society's pressures and their belief about homosexuality. Therefore, they don't want to be found out.

In Philadelphia the police department has abused, in my estimation, the gay community. They have on frequent occasions gone down to areas which are frequented by gays—such as Spruce Street, gay clubs, and so forth—walked in, in uniform, and pulled out forms and asked people their names, where they are employed, and, on occasions, they have called the employer.

Three weeks ago from this Thursday there was a raid on a club in Philadelphia. Thirteen people were arrested, one of which was under psychiatric care for suicide. The person's parents did not know that he was gay. The police, on that occasion, hinted that that person's parents might be notified. When the lawyer finally showed up for these 13 people, the person was in a suicidal frame of mind. Other people there were getting into hysterics.

This raid took place approximately 3 in the morning. Most of the people were parked in towaway zones. When a lawyer just asked if he could have the keys of the people who were parked in towaway zones, free traffic in center city, they were told that they were not allowed to have them, thereby causing more problems and hysterics for people who were arrested.

Along Spruce Street, which is sort of a gay promenade—a great deal of gay people live in that area of center city—police often walk down the street taking names and phone numbers and other information. What they do with this information, I don't know. I believe it might be kept on file.

I met with Inspector Curt [phonetic] and other people in the police department many times, tried to find out what is done with this information, why it is necessary to constantly do this—it puts the gay community in a feeling of constant harassment. Inspector Curt was unyielding in any information, unyielding to discuss the problem, totally refused to go into any detail at all.

MR. DORSEY. Has any organization within the gay community, to your knowledge, made an effort to compile any statistical information with respect to these incidents of police misconduct?

MR. SEGAL. Many gay organizations have recommended people to contact PILCOP and other organizations. Later on you'll be—I saw your schedule—talking to Barry Kohn. A lot of the other complaints were transferred over to that office. But no gay organization has compiled that information.

If I may, I'd like to talk about a squad of the Philadelphia police force called the morals squad. We had been trying to find out what the budget of the morals squad is. We cannot find that out. We've also met with members of the morals squad about 2 years ago, and the reason for this meeting I think is very important.

The morals squad has, to our estimation, a large budget, and that budget is being used to harass gay people. I don't know what other things that part of the police department does, but let me describe to you what they've done inside the gay community.

As I've mentioned, many gay people are living clandestine lives, because of society's pressures. These are the people, unfortunately, that the morals squad thrives off of. They have gone places where these people go for relief and have harassed them. For the instance, in Philadelphia there are some adult movie houses which cater to gays. Those places are under constant surveillance by the morals squad. Then our tax dollars are used for these officers to go into these adult movie houses, and they harass and arrest gay people. This is done every single week.

My office is having calls from people who, unfortunately, were in an adult peep show place, and officers have exposed themselves, trying to make passes at gay people. And when a gay person makes a pass at an officer, they are arrested. This is pure and simple harassment.

My newspaper has a classified section where people write in saying they're looking for someone. On several occasions we've been told that the morals squad has called up people from our classified and invited them to a hotel room and then arrested them. I'd like to know what the cost of all this is costing the taxpayers; and, worse, they're causing people mental anguish.

MR. DORSEY. You've indicated several varying kinds of incidents that gays are subjected to and, just for the sake of the record, are these all coming to you by virtue of your newspaper, or have some of them been by virtue of personal observations?

MR. SEGAL. All those I've mentioned thus far are via the newspaper, except I have walked down Spruce Street and been stopped by police many times myself. I find it very strange that one person was stopped more than once in a 3-month period, but that has happened to me many times.

MR. DORSEY. What has been the response of the gay community; what kinds of efforts are being made to improve the situation?

MR. SEGAL. In the gay community, we tried to meet with police officials, but that has been discouraging to say the least. The meetings I've been in, the police just seem disinterested. It's almost as though you're



talking to manikins. They sit there, they listen, they nod their head—that's it, no comments whatsoever.

I can remember an incident that took place approximately 2 years ago. I've mentioned Spruce Street as an area where gay people live and frequent. There are a lot of shops there that cater to gays and so forth. There is an area around 20th and Spruce where gay people walk and meet other gay people, not too dissimilar to a singles bar, but only it's on the street.

About 2 years ago some of the residents in that [area] decided they didn't want gay people. So the police department decided they would try to move gay people out of that area. So the one thing they did was block the streets off late at night with cars. Then they started having police walk the beat in that area. One of the officers, known as Officer [name deleted by order of the Chairman], that I've mentioned to your investigator, was along the Spruce Street area for quite a while. This officer has in many instances harassed gay people physically with his stick.

MR. DORSEY. Any information which you'd like to refer to us with respect to individual officers we are not to take in open session, and any further indication that you would have directed at a particular officer I would appreciate it if you would refer it to counsel apart from this open session. In addition to that, in compliance with our statute, Mr. Chairman, I would have to respectfully ask that that portion of this transcript which reflects the comments with respect to that individual officer be excluded from the record.

CHAIRMAN FLEMMING. That will be done.

MR. DORSEY. Thank you.

I'm sorry, did you have another matter that you wanted to discuss apart from that?

MR. SEGAL. Okay. On occasion there have been officers in the gay community who have physically abused gay people. There is one specific officer, who I won't mention, who on many occasions has done so. He has since been transferred. But, in order to get that man transferred, it took months of work and calls by various members of the gay community.

You would think that the beating of one person would immediately set a procedure to stop this action by a police officer; it was not done. It took many, many months before that change came about, thereby meaning that many other people were physically abused by the same officer.

MR. DORSEY. Thank you.

Sister Fattah, I wonder if you might share with us your experiences with the Philadelphia Police Department, particularly with respect to your own particular organization and its interaction?

SISTER FATTAH. The House of Umoja has been concerned basically with young black males, in terms of their survival in Philadelphia. Our attention first was based on the phenomenon of children killing each

other, which is known as gang warfare in the city. In dealing with that problem, it came to our attention that many times police officers would deliberately drop off gang members in the turf of another gang in order to precipitate an incident.

We also found that, during the times that we would call for gang conferences, there would be harassment in the form of all of the cars that were parked outside of the building would be ticketed. For instance, this year House of Umoja paid \$1,500 in tickets. I'm not saying that we don't deserve some of them, but I do doubt that we deserve all of them. We also noticed that during the no-gang-war campaign, that in instances where groups had made a pledge for peace, that these were the groups that were singled out for specific attention. At the time that I'm dealing with, we tried to bring this to the media and to the general public. The response was lukewarm. Most people felt that gang members, since they were involved in negative activities, that they just pretty much deserved what they got.

However, when the rate of gang deaths began to decline and the harassment on young black male youths continued and spread to other youths who were not involved in negative activity, I think that this is when some attention was paid. I think it's interesting to note that, between 1960 and 1970, 90 percent of the persons who were killed were blacks in the city. I think that, from the statements that have been given previously by authorities in the field, you can see that this particular population—young black males—seem to suffer mostly from the problem.

MR. DORSEY. Do you believe the situation is improving or deteriorating?

SISTER FATTAH. I do not believe that it has improved. I would like to cite three instances that bring me to this conclusion: the killing of Nelson Artis on June 24 of last year, the killing of Winston C.X. Hood on July 30 of last year, and the killing of Cornell Warren on September 30 of last year. All of these instances involve young black males. All of these instances involve young men who were the victims of unusual force. Two of the victims were shot while they were handcuffed.

In the case of Nelson Artis, he simply made the mistake of driving off in a taxicab belonging to another driver. He was a taxicab driver himself. And he was stopped at Ward Jefferson on suspicion of stealing the cab. He was stopped by the police and was spreadeagled against the cab, and a few minutes later he was shot. It was reported that the police officer's gun went off by accident.

In the case of Winston C.X. Hood, he was shot pointblank through the heart while his hands were handcuffed. This was eyewitnessed by several people in the community.

I participated in the funeral march, and, within the area where this occurred, they circled throughout the different areas where Winston had lived, and they came past the area where the shooting occurred.

I looked out of the window of the car that I was in, and I saw a police officer standing there laughing at the mourners. I note this because it shows the insensitivity even to the grief of the people in the community.

In the case of Cornell Warren, he had been threatened earlier, according to the media report. I don't know about this case specifically, except that it was reported that he was shot in his right temple. And this case is now currently in litigation.

But I would like to note that over 2,000 people demonstrated after these killings in 92 degree weather. During the demonstrations, usually what happens when people are trying to express their indignation, they have met with an excessive number of, like for instance, if there are 1,000 demonstrators, there are over 3,000 police there. You can see them on the rooftops of the buildings with submachine guns. I mean, it is an excessive reaction to the outrage of the community.

I would also like to cite that I was part of the meeting last week, to make it more current, where the community was outraged about reactions of the police in the 14th police district. I was a part of the delegation that met with Captain Francis O'Shea [phonetic], and there will be a followup meeting tomorrow night.

The people in the community were there with specific complaints. They were there with bruises that were apparent to anyone, and yet, when you went through the police station to go into the area where the meeting took place, the attitude of the police officers was one of that this was some sort of joke.

MR. DORSEY. Thank you. I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Sister, you mentioned that the police had deliberately dropped off members of some youth gang in the turf, so-called, of other youth gangs to invoke incidents. Do you have any written statements from members of those youth gangs?

SISTER FATTAH. Yes. At the time that this occurred, we held a press conference, and the youths who were involved in that crime were from the Zulu Nation at 8th and Donovan Street. The parents of the youths were also there and gave statements. I do believe that is a matter of public record.

VICE CHAIRMAN HORN. Do you have any written statements or transcripts of that press conference where we hear the actual charges made by people who were participants?

SISTER FATTAH. I would have to dig for it. I probably could come up with it.

VICE CHAIRMAN HORN. Well, would you? I think that's very important.

SISTER FATTAH. Yes.

VICE CHAIRMAN HORN. I don't think we should say things without backing them up with evidence, and I think the evidence ought to be in the record in terms of the particular police practices. So, Mr. Chair-

man, I would ask that at this point in the record such exhibits might be produced of either individual statements from youth gang members who were deliberately dropped off in the turf of another, trying to provoke incidents in that area—a transcript of that press conference or appropriate clippings or transcripts of radio tapes made at that conference be inserted at this point in the record.

SISTER FATTAH. Mr. Horn, would you like to see the gang members themselves?

VICE CHAIRMAN HORN. I want statements for our record. Now, if the counsel wants to go out and interview them and put them in the record, fine. I would suggest that a member of the staff do go out and interview them.

SISTER FATTAH. They are available. I'm saying that the youths themselves are available, so that, if I cannot find the substantiation that you would like to have, the people are still alive and willing to come and testify.

VICE CHAIRMAN HORN. It could be that those people would like to sign up for our open session tomorrow afternoon, the 5-minute portion, and lay the record down.

CHAIRMAN FLEMMING. Without objection, the material identified by Commissioner Horn will be inserted in the record at this particular point.

SISTER FATTAH. I would like to give you the definition that is documented of what young people consider police brutality to be: verbal abuse—name calling, racial slurs, profanity; threats of repeated harassment; physical violence—death, physical abuse, beating, many times without arrest; sexual abuse of young women; tight handcuffs to cut off the flow of blood to the hands; bumpy rides to the station or around town while handcuffed with hands behind the back, which causes the victim to be thrown around in the van and banged up against the wall, without any protection from impact; repeatedly arresting the same person or relatives and friends of the victim; the placing of cover charges—arrest charges that are placed against the person or persons who have been physically abused by the police officer. This is done to justify abuse, and the cover charges most often used on young people are resisting arrest, disorderly conduct, drunk and disorderly—even if the person has only had a beer—and failure to disperse.

VICE CHAIRMAN HORN. Now, let me ask you, When these incidents have occurred, have you personally made complaints to the civil affairs unit?

SISTER FATTAH. What we have done is we have turned over our records to, particularly involving the MOVE incident, that we decided to document that, and what we did was we turned over all of our records of that particular incident to the district attorney. And they involved open abuse by entire units of the police in front of their superiors and involved three police riots at 33rd and Spring Garden Street. It involved the use of horses against bystanders to break up the groups; in

fact, one horse was ridden into the home of a resident. And it involved the beatings of area residents, and there were three witnesses to those beatings.

VICE CHAIRMAN HORN. You have turned the records and statements over to the district attorney?

SISTER FATTAH. Yes.

VICE CHAIRMAN HORN. You have not dealt directly, then, with the civil affairs unit?

SISTER FATTAH. No, I have not, and with good reason.

VICE CHAIRMAN HORN. Okay. I want to get clear from reading background reports here on who is doing what and what their evaluations were. I'm trying to get it in the record.

SISTER FATTAH. We have participated in a number of hearings on police brutality. We have joined with other community groups and coalitions to try to bring about a difference in the way that police complaints are handled. We have picketed a councilman's place of business to bring attention to what was going on in the city, and we have also traveled to Washington to see the Attorney General on this.

VICE CHAIRMAN HORN. What was the reaction of the district attorney to the bulk of the complaints which you've made?

SISTER FATTAH. The reaction was that he was aware of the problem, that he was, in fact, going to make changes, that he had instituted a special unit to deal with the problem, but that the scope of the problem is so great that he had to concentrate on where the use of force, fatal force, had to have the priority over some of the lesser instances of abuse.

VICE CHAIRMAN HORN. Well, in summary, would you say the district attorney—the staff of the district attorney—was trying to be helpful in this area?

SISTER FATTAH. Yes, but I would also state that I do not think that his staff is large enough to handle a problem of this dimension.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Jackson, is yours a citizen's group?

MR. JACKSON. We're not part of the local government. We are a nonprofit public interest law center.

COMMISSIONER SALTZMAN. What recommendations would your organization make for the remedying of the situation in Philadelphia?

MR. JACKSON. The recommendations would be severalfold. I would suggest—there has been, as you probably know, many forums here in Philadelphia. There was the NAACP hearings in the summer of 1977. We had a State subcommittee hearing here in Philadelphia. There were many hearings of the city council.

One of the continuing themes is we hear what the problem is, and steps towards solutions have always been thwarted, oftentimes by the politicians, the leaders of this city. There is a bill pending right now in city council, bill 1063 in the public safety committee, [of] which

James Tayoun is the chairman. That bill provides that the police department's disciplinary mechanism be open, that there be public access. This public access is important to me and to a number of Philadelphians because it is viewed as the only mechanism that citizens of Philadelphia have of looking over the shoulders of Philadelphia police officers.

We've heard—and you've perhaps been privy to the information—that the mayor and the police commissioner say that there is no police brutality, there is no police abuse in Philadelphia. And Mayor Rizzo says that he has talked to Police Commissioner O'Neill, and Commissioner O'Neill has assured him there is no police abuse.

But there is no exchange of information, that we are aware of, of what investigation, in fact, Commissioner O'Neill participates in to make that determination. We think public access to this information would go far to assure the public that, if in fact the police department is meting out discipline, that it is fair, that it is impartial, and that complainants who have a complaint will have an impartial forum in which to present those complaints. That does not exist in Philadelphia today.

We believe that, since there has not been any efforts—I'm sorry, solutions brought about by the State or the local authorities, that Federal intervention and activity is absolutely necessary. I would—I'm sorry.

COMMISSIONER SALTZMAN. With respect to that last point, one question: do you think there is any Federal legislation necessary to help in the remedying of the State and local problem?

MR. JACKSON. Yes, and I think there are several ways, some of which are indirect. I think that most importantly, as you probably know, in the *Monell v. New York* case, the Supreme Court of the United States has now indicated that it is indeed possible to sue a municipality for violations of civil rights.

However, the Court did not delineate all of the reasons, all of the circumstances and grounds that one might sue a municipality for the acts of its employees. I think an appropriate amendment to 1983, wherein it is specified what acts would be charged to the municipalities. I think in Philadelphia we have an abundance of cases that should certainly be considered in terms of what appropriate amendments, what appropriate grounds for amendment to 1983 should be.

The City of Philadelphia, as well as a number of police departments across the country, receives revenue sharing funds and LEAA funds. There are mechanisms presently to withhold those funds. However, it has been our experience in trying to trigger those mechanisms that it is a very cumbersome process. Indeed, right today, if we go outside and see the police department, if for some argument they just decided to abuse everyone who is outside this street, and we said that ought to be reason enough to cut off revenue sharing funds or LEAA funds, from my investigations that is not possible. There are so many administrative—well, so many things that can be done to push it off. I know

for a fact that there has been a request made in Washington for withholding of LEAA funds and revenue sharing funds. That has not been done.

The Office of Civil Rights Compliance, LEAA, has a very small staff to monitor the police departments around the country. I think if, in fact, the Federal Government is serious and sincere in its goal of determining whether or not police departments are complying with civil rights actions, then they ought to provide the appropriate staff to do the monitoring that's requested.

In some municipalities there still exists governmental immunity, wherein a police officer may commit some act of violence against someone; the person can sue that individual and perhaps receive some money against that police officer. Some States, of course, still grant immunity to their police departments. And I think where it still exists it ought to be abolished, so that the governments who are charged with hiring police officers, it should make them more responsive in the actions of their police officers. Right now, in many localities across the country, if a city hires an abusive police officer, they don't feel any fear of any money being taken from them, because they are immune from any liability.

COMMISSIONER SALTZMAN. Thank you.

MR. JACKSON. Thank you, sir.

CHAIRMAN FLEMMING. The fourth panel member just arrived.

[Angel Ortiz was sworn.]

**TESTIMONY OF ANGEL ORTIZ, DIRECTOR, COMMUNITY LEGAL SERVICES  
OFFICE, NORTH PHILADELPHIA**

CHAIRMAN FLEMMING. Does counsel want to question this witness?

MR. DORSEY. Rather than go through the questions that were presented already, I'll just ask you to reflect on your experiences and your information with respect to the area of police conduct in Philadelphia and the background that you have in that area.

MR. ORTIZ. My name is Angel Ortiz. I'm an attorney in the city of Philadelphia. I run and I direct the Community Legal Services office in north Philadelphia in the black and Puerto Rican community.

The feeling and the background that I can speak to is fear. In north Philadelphia, in the Puerto Rican community, a pervasive fear of the police seems to be the controlling aspect in the relationship between community and police department. We've had a series of incidents in the Puerto Rican community that have given rise to this fear that I'm talking about.

Last year the killing of Jose Reyes while in his home by Mr. Salerno and, as of today, Mr. Salerno is still on the force, and we do not know any of the facts of the so-called police investigation. We have asked for the police to divulge the facts of where their findings have led them. As of now, we have not gotten anything from the police.

My involvement during the Jose Reyes incident led the police department to call the executive director of my office. At that time my office was directed and we were committed to preventing a bloodletting in north Philadelphia.

The feeling of the community at that time was one of rage, was one of fear, and very close to a violent outbreak. The resources of my offices were put forward to try to prevent that outbreak, and what that led to was my participation in a series of community meetings and of my staff, and a call from Inspector Fensel to my executive director asking us what was the role of the Community Legal Services attorney in the community, a call that led to my being called down to the executive director's to explain my actions in the community, which, essentially, I perceive it as a chilling effect from whatever activities I do within the community.

Fortunately, they did not have any effect on what we did. Later on I myself had a gun pulled on me by a policeman that was jiggling the door of my office, and as I ran up to him, I remembered where I was. And without asking any questions—I was obviously unarmed—and the policeman just unholstered his gun. He was accompanied. I had a soft-ball tee shirt with a Puerto Rican name on it. He pointed the gun directly at my head. That is not conducive to good police-community relations.

There have been countless other incidents within the community—people who have gotten stopped, searched, beaten, and they have come to our offices. We have no way of really being able to hold this police department accountable.

I have participated in countless demonstrations in terms of legal observers and counsel for many of the groups. The one thing that is always in the back of everybody's mind, as they exercise their first amendment rights, is are they going to get beaten today, or are they going to get arrested.

This is what we have in Philadelphia. This is, I guess, the reason for these hearings. We have a police that is seen as an occupying army, not as a defender of rights and keeper of safety. We have a community that is afraid. And that's where we're at in Philadelphia today.

CHAIRMAN FLEMMING. Thank you very much.

Mr. Nunez, do you have any questions?

MR. NUNEZ. Aside from your involvement with the legal services, do you feel that you represent other groups in the community; are you an attorney for other groups?

MR. ORTIZ. Yes, I am. We represent Puerto Rican Action Committee that is very active in the justice field, as it's called. They've been very active in the Paul Val de Tava issue. Paul Val de Tava is a Puerto Rican who was arrested, accused of killing a person—what is called the museum murder.

It just happens that he has just been granted a new trial. Paul Val de Tava, at the time of his arrest, was beaten, and a confession or



statements incriminating to him were gotten from him, at that time. And now a new trial is coming up. We had a talk with DA Rendell the other day, and even the whole case might be dropped.

We also represent community groups who have been active in the housing field, and who demonstrate against HUD, PHA, for the dastardly living conditions, awful conditions that they are forced to live in Philadelphia.

And in each one, the one overriding fear in every demonstration or exhibition of first amendment rights is, What type of action is the police going to take?

MR. NUNEZ. I just wanted to question, How large, would you say, is the Puerto Rican, Hispanic community in Philadelphia?

MR. ORTIZ. The Puerto Rican community in Philadelphia ranges from 125,000 to 150,000, plus you also have to count metropolitan Philadelphia, which includes Camden, and we have population in gross proportions there.

MR. NUNEZ. What would you say would alleviate some of these situations with the police department in terms of fear of the community; what would you specifically recommend to alleviate or deal with this?

MR. ORTIZ. The Philadelphia police are distinguished by several things. One is lack of knowledge—

CHAIRMAN FLEMMING. If you could make your reply brief.

MR. ORTIZ. Lack of knowledge of the Puerto Rican community at all. There are very few Puerto Rican policemen. There is very little hope that the number is going to increase.

I agree with Anthony Jackson here in terms of the public accountability of the police. There is none. The investigations are done behind doors. The information stays behind doors, and a group of people, a body which has the force of investigating accusations of police brutality, investigating and informing the public as to the findings of those investigations is needed.

VICE CHAIRMAN HORN. Excuse me, are you saying they don't even issue a summary of what happened, regardless of the name?

MR. ORTIZ. I have never read one.

VICE CHAIRMAN HORN. I can understand withholding the name. I deal with personnel at the university—we don't release anyone's name. But you can release a summary of what happened in particular cases without mentioning names.

MR. ORTIZ. No, my information as to what happens in the police department I get from the *Philadelphia Inquirer*.

MR. JACKSON. If I might just interject one second, Commissioner Horn, what happens, the Philadelphia Police Department does not have any classification for police abuse in terms of disciplinary action that they may take. The closest thing that approximates police abuse would be "conduct unbecoming an officer" but, as you possibly know, this can take in a great many things. The police department has thus

far felt no responsibility to issue any reports that would reflect the number of officers who are disciplined for conduct unbecoming an officer—or any other classification of disciplinary action.

CHAIRMAN FLEMMING. May I express to the members of the panel our deep appreciation for your being here and providing us with the information that you have. Thank you very, very much.

Counsel will call the next witnesses.

MS. GEREBENICS. Dr. Rufus Cornelson, Spencer Coxe, Ian Lennox.  
[Rufus Cornelson, Spencer Coxe, and Ian H. Lennox were sworn.]

**TESTIMONY OF RUFUS CORNELSON, EXECUTIVE DIRECTOR, METROPOLITAN CHRISTIAN COUNCIL; SPENCER COXE, FORMER EXECUTIVE DIRECTOR, PHILADELPHIA AMERICAN CIVIL LIBERTIES UNION; AND IAN H. LENNOX, EXECUTIVE VICE PRESIDENT, CITIZENS CRIME COMMISSION**

MS. GEREBENICS. Beginning with you, Mr. Lennox, would you give your full name for the record and your organizational affiliation and position in that organization?

MR. LENNOX. My name is Ian H. Lennox. I'm the executive vice president of the Citizens Crime Commission in Philadelphia.

MS. GEREBENICS. Mr. Coxe?

MR. COXE. My name is Spencer Coxe, and I'm on the faculty of the Antioch University of Philadelphia and formerly the executive director of the American Civil Liberties Union in Philadelphia.

MS. GEREBENICS. Dr. Cornelson?

DR. CORNELSON. I'm executive director of the Metropolitan Christian Council of Philadelphia. That's a cooperative organization of the protestant orthodox Christian denomination in the metropolitan region.

MS. GEREBENICS. Thank you.

Beginning with you, Dr. Cornelson, could you briefly give us your comment on the state of police-community relations in Philadelphia as you perceive it today?

DR. CORNELSON. Chairman and distinguished members of the Commission, staff of the Commission, as I've already stated, I am executive director of the Metropolitan Christian Council of Philadelphia. Our offices are at 1501 Cherry Street. While the council's member denominations have more than 1,200 congregations in the five-county metropolitan area, more than 500 of these congregations are in the city of Philadelphia, including approximately 700,000 citizens of this city. And it is on their behalf and others that the council has expressed concern over allegations of police misconduct in recent years.

The Metropolitan Christian Council shares the conviction with members of city government that law enforcement and peace-keeping functions are vital and necessary services in the life of the city. Without that, even the City of Brotherly Love could not survive. I testify before this hearing in the spirit and support of these functions. At the same

time, I realize that effective exercise of these responsibilities calls for friendly, trustful, and mutually supportive relationships between police and community.

Early in 1977 leaders of the council became concerned over the many reports carried by the major daily papers on alleged police brutality and abuses otherwise of the rights of citizens. These allegations became widely notorious throughout the community and contributed to mistrust, dissension, and fear among the people and endangered the social peace of this city.

The officers of the Metropolitan Christian Council and the chief executives of its member denominations have conferred with Mayor Rizzo at length on these matters on two different occasions, and in one of these the commissioner of police was also present. We did not presume to pass judgment on the allegations but registered our concern and urged that every effort be made to examine them and correct such misconduct as might exist.

We realize that the U.S. attorney's office and the Department of Justice were the proper instruments to inquire into these allegations and undertake the necessary prosecutions. At the same time, we felt that the situation was becoming critical enough to warrant the U.S. Commission on Civil Rights to undertake a thorough investigation in the interest of determining whether civil rights of citizens might have been violated in the alleged incidents and whether appropriate measures to make the necessary corrections should be recommended. Accordingly, in a letter to Chairman Flemming of this Commission, we respectfully requested that the Commission undertake such an investigation, and we are grateful that this is in process.

Furthermore, in order to assure citizens with complaints against police that they will be promptly and fairly heard, and in the interest of improving relationships between the police and the people, the board of directors of the Metropolitan Christian Council has officially endorsed city council bill 1063, to which reference has already been made here this morning, and has urged the city council to take deliberate and prompt action and vote the bill into law. We believe this ordinance is a significant step in reestablishing public confidence in the integrity of the police department.

I am pleased with the opportunity to appear before this distinguished Commission, and I assure you that I and other officers of the Metropolitan Christian Council of Philadelphia are ready to cooperate with your efforts in every possible way in order to assure more justice and equal protection in the law enforcement and peace-keeping practices of the city of Philadelphia. Thank you.

MS. GERBENICS. Thank you, Dr. Cornelson. I have one question. You spoke of two meetings with the mayor, I believe; was there any response from the mayor to any suggestion you might have raised during that discussion?

DR. CORNELSON. We suggested to the mayor that he respond, not only to us but to the total community, stating the concern he expressed in meeting with us about the allegations of police brutality—that if it did exist, he publicly welcomed testimony of witnesses from the public about such allegation, and that he supported any cooperative effort on the part of—whether it was churches or other voluntary groups in the city in bringing such allegations to light, in seeing that they were investigated.

We did get a response in a very brief statement which I have from him, and I shall make that available for your files. He simply stated that, if police brutality existed, they had the means and would use those means to prosecute those who were guilty of it. But there was never any admission on the part of the mayor or the commissioner of police that there was any factual basis to the allegations that were actually made.

VICE CHAIRMAN HORN. When you met with him personally, did he take the comments well? Did he appreciate a citizen group such as yours making these suggestions?

DR. CORNELSON. At the first meeting that appeared to be the mood, but not at the second meeting.

VICE CHAIRMAN HORN. What happened in the second meeting?

DR. CORNELSON. Well, he became very defensive that we were coming back, and we came back on the basis of the promise of the first meeting: if we felt any reason to talk to him further, he would welcome the meeting.

Since the allegations of police misconduct continued, we had asked for another meeting, and there was at first a strong defensiveness against our coming and asking for the second meeting. Towards the end of the meeting when he was a bit more relaxed, there was a somewhat franker exchange, and that was when he promised to write a letter to us which then could be made public.

He was constantly saying that he never received a fair statement or fair treatment from the press—they quoted only parts of what he said and, consequently, out of context. That's why we said, "Why don't you write us a letter and say things exactly the way you want to say them. And we shall make that letter available to all the constituency of the churches and to the general public, so that you can state your case in your own words."

I have a very brief—a few sentences—letter from him, which simply says that he wants to set the record straight, that if there is any police brutality, the city will deal with it promptly.

VICE CHAIRMAN HORN. That letter is part of the record, counsel?

MS. GERE BENICS. No, it's not.

DR. CORNELSON. I have a copy of it.

VICE CHAIRMAN HORN. I ask that it be placed in the record at this time.

CHAIRMAN FLEMMING. Without objection, that will be done.

MS. GEREBENICS: Mr. Coxe, I was wondering if you could tell us briefly your impression of the state of police-community relations over the years, whether it's deteriorating or getting better?

MR. COXE. Well, I think it's deteriorating. My experience with the American Civil Liberties Union goes back to 1952, and I would say that in the first 10 years—for the first 8 years anyway—there was a frankness and a desire on the part of the city administration to face the problem of police abuse. The city was not always successful in doing so, but there was none of the stonewalling that characterizes the present administration with respect to allegations of police abuse and suggestions for remedies.

MS. GEREBENICS. I understand that under your direction of the ACLU your staff is monitoring the proceedings of the police board of inquiry. I wonder if you could briefly explain that project for us.

MR. COXE. Yes. I think this is important because, when faced with charges that there is unredressed police abuse, the police department states that they have adequate remedies for police abuse. One is the police board of inquiry, and the other is the internal mechanism for handling complaints of police abuse.

I think it's important to realize what the police board of inquiry is. The police board of inquiry is essentially a labor-management device, established by the police department in order to make sure that an individual policeman faced with charges which might result in discipline or dismissal from the force has a fair hearing. And the board is made up in each case of three members of the police department. I think one of them has to be of a rank no higher than the officer who is being charged.

The purpose of the board of inquiry is not to hear complaints of police abuse. As I heard Tony Jackson point out earlier today, there is indeed no category of charge before the police board of inquiry called police abuse. There are broad categories like disobedience of orders, conduct unbecoming an officer. But there is no way of telling from the statistics, such as they are, how many cases of police abuse are being handled.

Because of the nature of the police board of inquiry, which is a perfectly adequate body to perform its major function, no civilian has any standing to ask for a hearing, nor has he a right to appear. It is totally within the discretion of the police department itself which cases are referred to the PBI.

We did observe—the American Civil Liberties Union did observe some 30 sessions of the board of inquiry. We observed more, but my statistics show only toward the end of November. But we went to 30 sessions of the board of inquiry between February 22 and November 21 of 1978. We missed only three sessions. So I think what we saw is probably statistically significant.

We observed during those times 99 cases. There were an equal number of cases documented, but not heard, and many of these

hearings are continued or dropped for some reason. Of the 99 cases observed, there were only 16 which involved abuse of civilians, and, interestingly enough, about half of those 16 were during the first 3 months of the period we observed, as if the police were at that time trying to show that their new directive, directive 127, was working.

Anyway, if our statistics of 16 cases in this period is an adequate reflection of what the police board of inquiry does, and our later observations tend to confirm that, it means that there were only about 20 or 21 cases a year heard by the police board of inquiry involving civilian abuse.

Now, the police department gives a much higher figure. In some testimony that Commissioner O'Neill gave before the city council at the end of last year, he said there were approximately 80 cases a year, at the rate of 80 cases a year.

We can explain that discrepancy. The discrepancy is—and we know this from our own observations—the police list as civilian complaints any complaint where there is a civilian witness against the police. So, for example, where a civilian caught a policeman stealing pipe from a building, that was listed as a civilian complaint. Or, where a landlord complained to the police department that the policeman had failed to pay his rent, that was solicited as a civilian complaint.

Now, Commissioner O'Neill, in my estimation, deliberately misrepresented the function of the police board of inquiry in handling civilian complaints when he stated that they had handled 80 complaints of civilian abuse a year. We know that isn't true.

His statistics also were very suspect. In May of last year in response to an inquiry from Councilman Tayoun, who is the chairman of the city council committee considering this ordinance, number 1063, Commissioner O'Neill stated that there had been 25 complaints, civilian complaints heard by the police board of inquiry in the period February 15 to May 31. That is in utter contradiction to his testimony later on at the city council, that during the period from February to the end of November, there had been 33 such complaints. It's hard to believe that these two things could both be true unless the rate of complaint during those 3 months was about five times higher than it was during the year.

Now, he also stated in his letter to Mr. Tayoun—oh, and we, of course, analyzed as best we could that 25 figure which Commissioner O'Neill gave. And we found that only 10 of the cases that he listed as 25 involved civilian abuse, and eight officers were charged. Some of the complaints apparently involved more than one officer.

He said also in his letter to Tayoun that six policemen were dismissed. I, frankly, don't believe that for one minute, and we asked Mr. Tayoun to solicit from the police commissioner the names of every policeman who was fired or, indeed, disciplined. I don't believe that Mr. Tayoun did that.

We think that the only way, indeed, of getting at the truth of any statement that the police department emits on the subject of handling of police redress, the only way of getting at the truth is to demand from the police the names and particulars of the officers on whom the statistics that they offer are based. As I say, so far as we can tell without, of course, having access to that information, nothing that the police department says about the police board of inquiry has any truth to it whatsoever.

MS. GEREBENICS. Mr. Coxe, did you bring these discrepancies in the PBI statistics to the attention of the public safety committee at any time?

MR. COXE. Yes, we did.

MS. GEREBENICS. Did you get a response from them?

MR. COXE. No, we did not.

MS. GEREBENICS. Thank you.

MR. LENNOX, would you comment briefly on the state of police-community relations in Philadelphia as you perceive it, and then feel free to comment on anything that the other two gentlemen talked about.

MR. LENNOX. The Citizens Crime Commission of Philadelphia is a nonprofit private organization that has been in existence for 24 years. During that time we had worked rather closely in this area of civilian complaints against police and, more specifically, in the area of public relations or public involvement with the police-community relations programs.

I would say that during the past few years, especially starting from the riots of the mid-sixties, we have seen a growing suspicion and deterioration of police-community relations here in Philadelphia. I will not say these are based or that this attitude is actually based on anything the Philadelphia Police Department has done or has failed to do. But we have noticed that there is this growing gap between public attitude support for police and vice versa, the public response to the police.

So I don't think there is any question that we have a serious situation here in Philadelphia, vis-a-vis the police and the community. The only problem that we have here, and we've had over the years, is the proper way to deal with this.

I think I might say here that, in this area of civilian complaints against police, as early as 1963 we were collecting statistics from the police department and making these statistics public. We've constantly had a running complaint with several commissioners—and this is not the current administration of Commissioner O'Neill. It goes back into the time of Commissioner Leary, former Police Commissioner Leary—that there should be a greater dispensing of the actions of the police board of inquiry, handling of civilian complaints, how these things are done.

There traditionally has been here in Philadelphia reluctance to release this kind of information, to use it to build public confidence

in police. You have—the committee has our 1974 study of police internal discipline, which we had complete access to police files. We always have had complete access to police files.

The focus of that study, however, was primarily in the area of police corruption. We came out at that time with some 38 recommendations—the way the department could improve its dealing with the problem of police corruption. Some of these did relate to the operations of police board of inquiry and would have some impact on how civilian complaints were handled.

When this most recent controversy developed here a year or so ago, we took our recommendations from 1974, looked at them again, looked at what present police procedure was. And, in working with the chamber of commerce and the police department, we were able to come up with about 10 or 12 recommendations that we felt the police department should put into practice in strengthening or handling of civilian complaints. We worked on this for about a year. I must say the department was rather reluctant; there wasn't an openness to do this, but there was a willingness to at least consider this, to negotiate. I think to negotiate this problem is the best way to do it.

I would be very frank to say it was probably the action of other groups, like Spencer's, Reverend Cornelson, and other groups' common cause, putting the pressure to the city council, going the route of an ordinance, that perhaps did encourage the police department to bring about these changes. I don't know that.

But, in any case, in January of this year, Mr. Longstreth, myself, several others met with Police Commissioner O'Neill and Managing Director Mr. Levinson and discussed our proposal. Shortly thereafter directives 127 and 127-A were made part of police policy.

Our concern here is that anything that might be done to bring the public and the police closer together should not be done at the expense of effective law enforcement in Philadelphia. I, for one, would not be satisfied to live in Philadelphia, to have a business in Philadelphia if we had a totally passive police department—no civilian complaints, no problems, no nothing; they just did not care.

I think one of the things that the Commission should be looking into in these 2 days of hearings is a reaction from community groups, how crime is dealt with in the neighborhoods—are there communities in Philadelphia where the police do not go, where they do not care, or they never apprehend offenders? Are there areas, in other words, in Philadelphia where the police do not operate?

I think you will find that by and large we have an aggressive police department. I don't think anybody would dispute that. There is an aggressive department; there is aggression against the criminal element. It's a very effective department in that area.

But, whenever you have an aggressive department, whenever you have the willingness of officers to get out and get involved in some rather dangerous situations, you're going to have a greater opportunity



for confrontation with the public. And, when you couple that with this apprehension, with this concern, with this—as one person testified this morning—a fear in the community about the police, you're bound to have greater problems. So I would encourage the Commission in their deliberation to come up with ways to bring the police and the community together and, at the same time, not do it at the expense of effective law enforcement.

Ms. GERE BENICS. Mr. Lennox, I have just one final question. What do you attribute the department—people perceive that it is not an open department, and you've mentioned the inaccessibility—that your group has access, but many do not. To what do you attribute their standpoint?

Mr. LENNOX. I attribute this to a basic philosophy of how you run the department. The Police Department of the City of Philadelphia bears the stamp of Mayor Rizzo. You go back to how many years when he was deputy commissioner; he was then commissioner. He then comes over as mayor, with a direct mandated responsibility to control the police department. You've had one man's philosophy, rightly or wrongly, it is a philosophy; it is an accepted philosophy in police circles.

Now you will find in other departments entirely different philosophies as to how to administer the police department. New York, for example, has an open philosophy. They will welcome complaints. They open the department.

There are various ways to run a police department, but what you have here is not a deliberate attempt to stonewall, to antagonize the community. I believe it's a basic philosophy that Mayor Rizzo and formerly Police Commissioner Rizzo had as to how you run a department.

I think that it's a perfectly acceptable philosophy. But there are also different philosophies that other police commanders use in other cities. I think you have in Los Angeles, for example, a very paramilitary operation. You have in other smaller departments, like San Diego, Kansas City, a different innovative approach to police work.

But here in Philadelphia you have a traditional closed type of operation that has existed for a number of years, and it is based on nothing more than one man's understanding of how a police department should operate effectively. I must say that in those years the police—that we in Philadelphia have enjoyed very good crime control. We may have paid a price in some other areas, but we have enjoyed that, and that's a basic thrust of that kind of philosophy. You keep control on crime. You have an aggressive police department. You have high morale. You're working to do this, and you don't pay too much attention to the police-community relations aspect of it.

Ms. GERE BENICS. Thank you.

Mr. Chairman, I have no further questions. At this time I would like to ask that directive 127 and 127-A be admitted into the record. Several witnesses have already made reference to it. It forms the heart of the department's complaint process.

CHAIRMAN FLEMMING. Without objection that will be done.  
Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Lennox, would free access to information and proceedings relative to complaints hamper, in your opinion, the effectiveness of the police department?

MR. LENNOX. No. One of the recommendations that we made that has not been followed through, although there has been repeated indications that, yes, statistics would be provided—we maintained all along there should be a routine and regular distribution of statistics so the public would have some way to monitor what is being and is not being done. Then, on the basis of those statistics that are put out—we do not support the idea of the individual's name being mentioned—but these statistics can then serve as a basis for any change that the community wants.

COMMISSIONER SALTZMAN. Thank you.

Mr. Coxe, is there any public record of the proceedings of the police board of inquiry?

MR. COXE. I don't think so. Curiously enough, however, the public can go to meetings of the PBI and our observers have never had any difficulty getting in. However, they are not permitted—nobody is permitted to be there at the time that the adjudication is made. Outsiders can go and listen to the testimony, but an outsider may not stay and hear what the board decides. So we have no access to the disposition of cases; we have access only to how they are heard.

COMMISSIONER SALTZMAN. Do you have any feelings as to why your organization could not get access to police information and records while Mr. Lennox's organization can?

MR. COXE. Yes, because I think the police department rightly perceives the Philadelphia crime commission as extremely supportive of the Philadelphia police, and it apologizes for the Philadelphia Police Department. I think they see the American Civil Liberties Union as antagonistic towards the police. It's as simple as that.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Mr. Lennox, you've had a rather long career with the Citizens Crime Commission, and you mentioned that the police in Philadelphia do a good job in controlling crime. What is the extent of organized crime in Philadelphia?

MR. LENNOX. The extent of organized crime in Philadelphia, we have existence of one major crime family [deletion by order of the Chairman]. Traditionally in Philadelphia, the family has lived here, but it contains its operations in the New Jersey area or in areas outside of Philadelphia.

MR. DORSEY. Excuse me, if I may, Mr. Chairman. I'm not sure that I missed the reference, but I believe that Mr. Lennox was referring to organized crime and has suggested a particular family name as being related to that particular activity. Consistent with our mandate, I

would ask that the testimony of the witness in that regard be excluded from the record and that the comments of the witness be related solely to the general statements with respect to that activity.

CHAIRMAN FLEMMING. That will be done. Counsel correctly states the law under which we operate in that matter.

VICE CHAIRMAN HORN. What I'm pursuing—In essence, you're saying that there is one major organized crime family in Philadelphia, but the operations essentially occur outside of Philadelphia. I take it you would credit that fact to the effectiveness of Philadelphia police?

MR. LENNOX. No, I wouldn't give any more credit to the Philadelphia police than I would the FBI, the U.S. attorney's office, other Federal agencies. I don't think you can single out one law enforcement group as either being overly aggressive and, therefore, responsible for this. Certainly, the Philadelphia Police Department has an organized crime unit, but it's primarily for intelligence-gathering activities. So I would say that it would be a combination of all of these things.

VICE CHAIRMAN HORN. Well, let's talk about other types of crime, unorganized, individual crime—major crimes such as murder, rape, robbery, etc. In your studies across the country, and you obviously have made some studies because you give generalizations of types of police departments across the country, do you find Philadelphia is more effective in their control—apprehension of murderers, rapists, robbers, major criminals that are individuals, but not organized-crime related—than most other cities?

MR. LENNOX. The only basis we would have to attribute that is the fact that Philadelphia has continuously enjoyed a very low crime rating according to the statistics revealed to the FBI. Periodically, when these statistics have been called into question, as they have been in several other cities, the FBI has investigated. They've never made any allegations of the Philadelphia Police Department is somehow fudging its data. So, based upon the FBI statistics, I would have to say that Philadelphia does do an excellent job.

VICE CHAIRMAN HORN. Has your commission reviewed the treatment of those in the gay community by the Philadelphia Police Department?

MR. LENNOX. No complaint has been brought to us. Mr. Segal's comments today have never been brought to our attention. Our support has never been asked for in working with the morals squad or anything like this. I would certainly be happy to talk with Mr. Segal.

VICE CHAIRMAN HORN. Where this is all leading, Is it your judgment as to the effective allocation of police manpower, given different types of either criminally related or illegal problems in the city of Philadelphia, would you say—as one who has observed police practices in this city, has some knowledge of practices in other cities—that there's an effective internal allocation of police manpower, given the dimension of the various illegal types of activities that go on in the city of Philadelphia?

MR. LENNOX. Yes, I would say that there is a greater abundance of police efforts here towards dealing with crime problems than some of the other problems that others feel are important for a police department to address, namely, police-community relations. I think there's no question about the abundance of the manpower that's given to crime-stopping activity and crime-prevention activities, rather than police-community relations.

VICE CHAIRMAN HORN. Would you agree with that statement, Mr. Coxe?

MR. COXE. I don't think so. I think back at the time several years ago when Mayor Rizzo had the police department deploy 33 members of the police department—Councilman Schwartz and city Democratic Chairman Camille [phonetic], with whom he was feuding in order to try to get the grips on them for a political campaign.

I think also on the fact that the former civil disobedience squad and Mayor Rizzo bragged that they had the names of 18,000 activists in their intelligence files. A tremendous amount of police manpower and womanpower is absorbed in what I consider political activity or activity directed against the element of police department. I suppose that it's not a major portion of the total police force of 8,000. But I can't agree that if it puts heavy emphasis on political spying that the police department has its priorities straight.

I would agree with Mr. Lennox that the answer to this is not more police-community relations. I think police-community relations programs in general have turned out to be simply public relations programs. The way to improve police-community relations is for the police to behave better, not to put on public relations programs.

VICE CHAIRMAN HORN. Let me ask you, Mr. Lennox, since you've been in Philadelphia observing police practices for such a long period, could you review for the Commission the history of police review boards as you've seen it? When did they start; what's happened to them over the years from the time you've observed?

MR. LENNOX. First, the actual dates—I think maybe Spencer could help us out with the exact dates that the police review board started. But, basically, it was an external board created by the mayor, Mayor Delwood [phonetic], and with civilians controlling it.

Unfortunately, its investigative staff and financial resources came from the police department that investigated the staff. So, in a sense you had a civilian board responsible to police investigators in order to deal with specific problems.

Now, to get around that, at times during its later years I know the police review board did use civilians, volunteers. I myself remember going into a case at the request of the chairman at the time, going out, talking with civilians, trying to get the particulars of their complaint against the police department. So I think one of the failures initially was the fact that, while it had an impartial, independent, and, I think, a group with great integrity directing it, it was not given the resources to do the job in the area of investigation.

Then as things progressed, it had a rather, I think, lackluster record. I think 10 years in its existence, only 9 or 10 officers were ever dismissed from the police department because of its recommendations. And, again, its recommendations again were required to be turned over to the police advisory board, so that its recommendations were advisory to the police commissioner. But it had the support of the mayor, so presumably the then police commissioner would pay some attention to what they were saying.

VICE CHAIRMAN HORN. Do you know how many recommendations they made for dismissal in that period versus how many were dismissed?

MR. LENNOX. All of that, I believe, is contained in our 1974 report.

VICE CHAIRMAN HORN. I'd like those portions that are relative to this question to be entered and placed in the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

VICE CHAIRMAN HORN. Proceed.

MR. LENNOX. Then, as we moved into rather turbulent times here in the early part of the sixties, here in Philadelphia, the advisory board began to be discredited in the eyes of the community it ostensibly was serving. So you had opposition that always existed with the Fraternal Order of Police, the police union representation. There was support for it by the police brass at that time, support for it by the mayor. But then, you had the opposition also from the community. So they weren't bringing their complaints in.

And then the opposition—then Mayor Tate was the mayor, and the opposition of the administration began to grow. Then it ran into some constitutional problems, and the whole thing sort of ended on a very, very sad note. In retrospect, I would say that the way—

VICE CHAIRMAN HORN. Excuse me, on the "sad note," did that end under Mayor Tate?

MR. LENNOX. Yes.

VICE CHAIRMAN HORN. It ended under Mayor Tate?

MR. LENNOX. Yes.

VICE CHAIRMAN HORN. So, when Mayor Rizzo took office, that board was out of existence?

MR. LENNOX. That's correct.

I would say it was a rather sad note because nobody mourned its passing, neither those in the community for which it was to serve or those in the city that felt it was doing a good job in controlling police abuse.

I think the reason it failed, perhaps, was because it was never given the real support, investigative staff. So I think the experiment—even though I personally philosophically do not accept the idea of external review of police as being effective for a variety of reasons—I still feel that the old police review board was never given a fair chance.

VICE CHAIRMAN HORN. Well, let me ask you, When Mayor Tate was mayor, who was the police commissioner during the period of this assembly of this board?

MR. LENNOX. Well, I think it probably—Spencer, would have been two—well, three perhaps. It would have been Howard Leary [phonetic] for a while, then Edward Bell, and then Commissioner Rizzo.

VICE CHAIRMAN HORN. Did it end under Commissioner Rizzo as such?

MR. LENNOX. I would say Bell, just before Commissioner Rizzo took over. He was the deputy commissioner at the time. But I believe it was—

VICE CHAIRMAN HORN. Mayor Rizzo was the deputy commissioner?

MR. LENNOX. Yes.

VICE CHAIRMAN HORN. Would you say that the top executives of the police department were increasingly hostile to the board of inquiry?

MR. LENNOX. I would say they paid very little attention to it in the latter years.

VICE CHAIRMAN HORN. In other words, they let it make recommendations and, in essence, nobody followed them?

MR. LENNOX. Well, there just weren't the recommendations coming. I think the board was so weak at that time—the police investigative staff, the mayor was against it. I think the latter years of it had no one's support. Now, if there had been a strong public clamor for its retention, for changes, then I think it might have been a different situation. But nobody wanted it; nobody respected it.

VICE CHAIRMAN HORN. Mr. Coxe, do you have anything to add to that history?

MR. COXE. Well, in general, I agree with Mr. Lennox. I think his historical outline of the board is certainly essentially correct. I'm not sure that nobody wanted it during the last years, but it's true it died with a whimper and not a bang.

VICE CHAIRMAN HORN. Does the ACLU have a proposal for what they believe will solve these problems in terms of a particular type of organizational structure, either within or external to the police department?

MR. COXE. We are avid supporters of bill 1063. We have not given up as an ultimate objective—although I personally have qualms about it—we have not given up as an ultimate objective an outside review mechanism such as the police advisory board. But we believe that bill 1063, which imposes a measure of accountability upon the police department, is a practical and important, immediate objective. And it has the advantage over the police review board of not going outside the traditional frame of government under which the police commissioner is responsible for what goes on in the department or where civilian authority is accountable for observing citizens' rights. So we are very much in support of bill 1063. We find the present internal mechanisms that are outlined in this directive 127 totally inadequate and indeed fraudulent.

VICE CHAIRMAN HORN. Summarize for the Commission, since I don't have bill 1063 in front of us, summarize for the Commission on the record how bill 1063 would handle the problems of the membership, who pays for the investigation, to whom are those individuals responsible, etc., in light of the weaknesses we've heard about in the structure of the former board of inquiry.

MR. COXE. Well, bill 1063 does not establish a new body outside of the police department. Under bill 1063 the police department itself is responsible for investigation of police abuse. The difference between bill 1063 and the present situation is that the ordinance lays down very rigid requirements for how the investigation is to be conducted and how it is to be recorded.

The bill—let me just get it out to refresh my memory. I think I have it here. Under the bill—if you'd just bear with me—

VICE CHAIRMAN HORN. While you're searching, has that been placed in the record yet?

MS. GEREBENICS. No, sir, it hasn't.

VICE CHAIRMAN HORN. It has not been. I'd like it placed in the record.

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. COXE. Under the bill the police department itself will set up a mechanism for handling police complaints. Complaint forms must be made available under this ordinance at a number of locations in the city, not just police stations, which is the only place where the present forms can be obtained.

And then there are rigid requirements for the time during which the investigation, by whatever body police commissioner establishes to do this, must be finished. And there are also rigid requirements for how the investigation is to be conducted. Witnesses must be interviewed, for example. The complainant himself must be interviewed. And, then, there is a requirement that the report of the investigation be made within a certain period after the complaint is filed, after the investigation is over. And, finally, the bill provides that the results of the investigation in most cases are available for public inspection, and that way the public would be able to monitor how the system is working.

That, in essence, is the—it's a long and complicated bill and it contains many procedures for safeguarding the rights of policemen who may at the same time be under criminal investigation. The internal investigation proposed in the bill is stayed if there is a criminal investigation. So there is no danger of self-incrimination.

VICE CHAIRMAN HORN. Do you know the position of the Fraternal Order of Police on this bill?

MR. COXE. Yes. They testified in opposition to the bill when there were hearings in the city council.

COMMISSIONER SALTZMAN. How about Mr. Lennox, Are you in favor of the bill?

MR. LENNOX. I'm in favor of many of its features. The one thing I do have some concern about is, one, the basic question of whether you bring about best—whether it's best to bring about changes through legislation or through the mayor or police commissioner bring about internal control within the department on their own motivation. How do you enforce—that is the basic question I have—which could be most effective, because these things that are legislatively imposed, there are always loopholes, always ways of getting around it. So I question whether really the ultimate objective can best be achieved that way. Secondly, I am concerned about the public disclosure. Our organization has no question at all that the individual who had brought the complaint should have complete access to the dispositions, should be notified in writing. He should have a place where he can go and learn how things are proceeding, if the investigation goes along; also that he should be completely aware of any appeal procedure.

One of the things that we had recommended, which the police department has never put into practice, was the publication of a booklet, brochure, distributed citywide, which would explain the total procedures, all the phone numbers, the appeal procedures—all of it is available to the citizen wanting to make a complaint. The police department has never been willing to do that.

So those two features, I have some real questions. But the basic thrust of it, and many of the things that you will see in the ordinance are in 127. I think one of the reasons they're in there—Coxe may differ with me—but some of the things are in 127 is the fact that they were—[inaudible].

VICE CHAIRMAN HORN. That's all I have.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Just one question. Mr. Lennox, would you characterize the Philadelphia Police Department as one that is aggressive? And I believe you said that they have a high morale. We've heard different versions of that, that some people claim that the police department at the present time feels rather persecuted. Do you feel that that whole attitude that they have has been changing?

MR. LENNOX. Morale, as far as a feeling of support from police brass. As far as feeling persecuted by the community, the outside groups, they can't help but feel persecuted. You'd have to live in Philadelphia the past 18 months to realize that the pressure that's been put upon the police department, police brass, but also it falls over on the individual police officer. When I talked about morale, it was: proud to be a member of the Philadelphia Police Department, and the support that the administration gives the individual officers, yes.

CHAIRMAN FLEMMING. Dr. Cornelson, does your council support this pending legislation?

DR. CORNELSON. Yes. We took action as soon as the bill came up, was presented, was introduced in city council. The Metropolitan Christian Council board of directors unanimously passed support for



bill 1063. And several of the member denominations in the council have also, on their own, voted in support of it. And we have brought testimony before the city council supporting 1063 and have repeatedly urged Mr. Tayoun to make it possible for the council to act on it.

CHAIRMAN FLEMMING. What kind of information was brought to your attention relative to the relationship between the police and the people in the neighborhoods that are served by the local churches and the denominations and members of your council?

DR. CORNELSON. The strong expression of concern has come to us particularly from Puerto Rican and black communities. As far as the city of Philadelphia is concerned, the majority of our constituency is black; and that's where, in the black and the Puerto Rican communities, that's where the greatest number of allegations of police brutality or misconduct have come. And, consequently, that's the source of the concerns that have come to us through our constituency. Other expressions, of course, we have seen repeatedly through the major daily papers.

CHAIRMAN FLEMMING. Were there concerns expressed relative to the handling of specific cases on the part of the churches and on the part of the denominations that are part of your council? Do you have any procedure for calling those concerns to the attention of either public or private bodies here in the city?

DR. CORNELSON. We do not have any established procedures. Ours has been simply through consultation with the mayor, with the police commissioner, and the city manager, Mr. Levinson. We have discussed these with them through personal interviews.

CHAIRMAN FLEMMING. Mr. Coxe, in connection with the 99 cases that you've observed and people have observed during this period of time, how did you finally evaluate the way in which the cases were actually handled, or did you attempt to do that?

MR. COXE. Yes, I think, so far as the run of the mill cases which PBI hears, the hearings are fairly conducted. That is, the accused policeman gets a fair shake. He can present witnesses on his own behalf. The board listens to him, and there is the requisite due process with respect to the typical complaint, which is, say, the policeman was asleep in the car or sickly or he arrived late at roll call.

We did discover, however, that where there was a case—one of the rare cases where there was a bona fide civilian complaint, either the board was not interested in that aspect of the case—and I think this is rather revealing, although whether statistically significant, I can't say.

An officer—whose name I will not mention, although I have it—was accused of having forced, while in plainclothes, having forced a car over to the side, got the driver out, got the driver down on the pavement, and pulled a gun and pointed at his head, all without identifying himself. A few minutes later some other policemen drove by and saw a man they didn't recognize as a policeman standing on the sidewalk

holding a gun at somebody else's head. And the police jumped out to stop what they conceived to be a crime in progress and, indeed, it was a crime.

The policeman who was in plainclothes refused to identify himself, even to the other policemen. At the police board of inquiry here, the civilian was listened to rather summarily and then shunted aside, and the police board of inquiry was much more interested in the fact that the offending policeman had refused to identify himself to the other policemen.

And we did find out what happened in this case. This man, this policeman was disciplined for having refused to identify himself to other police officers. He was not disciplined on the ground that he had committed an assault upon a civilian, although there was testimony to that effect. I think this is typical of how the board operates, probably.

CHAIRMAN FLEMMING. Thank you very much.

Mr. Lennox, in your opening comment you indicated that there wasn't any doubt in your mind that the problem exists, the kind of problem that has been presented to us thus far. I assume that you and those you represent feel that it is possible to solve this problem and, at the same time, deal effectively with the area of crime control. The two are not irreconcilable.

MR. LENNOX. I have no question that it can be reconciled. I do have a question whether it can be reconciled under the present philosophy that the department operates under, and I'm talking about philosophy, the total approach to crime. I don't know whether that can be reconciled.

CHAIRMAN FLEMMING. Do you think that, in order to resolve the kind of problems that have been presented to us, there may have to be a change in the basic philosophy governing the administration of the department?

MR. LENNOX. Yes.

CHAIRMAN FLEMMING. Thank you.

Mr. Dorsey has a question.

MR. DORSEY. I'm sorry, it's just one issue that I wanted to attempt to resolve. It has to do with data, so I guess the most effective person to deal with that is Mr. Lennox. Apparently, from what we've heard, you have one of the better data bases with respect to access to files.

There are two aspects of the question. First, you had indicated earlier with respect to the crime control, the rate of crime control with respect to Philadelphia as compared to the rest of the United States. I was wondering if you had, in looking at that, made any reference to the rate of unreported crime in Philadelphia as a major city in the country as compared to other major cities in the country?

MR. LENNOX. Yes. The LEAA studies of victimization show that we had about a 5-to-1 ratio. Some other cities—I believe it was New York—was only 2 to 1. The interesting thing there—that started, I think, in 1974, and then there are subsequent studies in 1976, 1977,

stated that a ratio of unreported to reported crimes remains about the same.

VICE CHAIRMAN HORN. In other words, 20 percent of those crimes that occur are reported, 5 to 1. Is that what you're saying?

MR. LENNOX. That's what LEAA alleged, yes.

VICE CHAIRMAN HORN. I wonder, counsel, at this point in the record, we can get the crime statistics, the major types of crimes which I mentioned earlier—murder, rape, burglary, and so forth—for cities over one million and any figures as to the degree of reported or unreported crimes that have come to the LEAA studies, put those in the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. DORSEY. The other element of that has to do with one other thing. There is the ongoing confusion with respect to the rate of complaints within the department, and that confusion is particularly acute because of the availability of information. You have an information source that's available to you that is unavailable generally. I want to clarify for the record with respect to the rate of complaints between 1971 and 1978 because, as I understand it, there is some debate, particularly with respect to information which you have made available publicly, as to what the rate was during that period of time, and I wanted to make that clear on the record.

MR. LENNOX. I'm not too sure what you're saying. We'll give you our statistics, make them available and given whatever interpretation you wish.

CHAIRMAN FLEMMING. I would suggest that we receive that from Mr. Lennox and get that information for insertion in the record at this particular time.

MR. DORSEY. That is, complaints to the police department involving physical or verbal abuse from 1971 to 1978 as they are available to you.

CHAIRMAN FLEMMING. Commissioner Saltzman has a—

COMMISSIONER SALTZMAN. One quick question on statistics also. Mr. Lennox, does your organization have any information about the awards? As was mentioned earlier, there is an approximate figure of \$2 million awarded in cases of police misconduct. Do you have any—

MR. LENNOX. No, sir. Other than what has been publicly stated, we have not conducted a study of that.

CHAIRMAN FLEMMING. May I express to the members of the panel our very deep appreciation for your coming here and providing us with this information. If anything else occurs to you that you think will be helpful to us, we would certainly appreciate your communicating that to us, and we'll make it part of the record.

Counsel will call the next witnesses.

MS. GEREBENICS. Edwin Greenwald, John Penrose.

[Edwin Greenwald and John Penrose were sworn.]

**TESTIMONY OF EDWIN GREENWALD, SUPERVISOR OF SPECIAL AGENTS,  
FEDERAL BUREAU OF INVESTIGATION, AND JOHN PENROSE, FIRST  
ASSISTANT U.S. ATTORNEY**

Ms. GERE BENICS. Beginning with you, Mr. Greenwald, would you please state your full name, your title, and the number of years in your position?

Mr. GREENWALD. Yes. I'm Edwin Greenwald. I'm a Supervisor of Special Agents, Federal Bureau of Investigation. I have been a Federal agent for approximately 16 years; my present position, about 3 years.

Ms. GERE BENICS. Mr. Penrose?

Mr. PENROSE. I'm an assistant U.S. attorney since 1970. I'm presently the first assistant U.S. attorney, for 2 months now.

Ms. GERE BENICS. Thank you. Mr. Penrose, in mid-August of 1978, Attorney General Griffin Bell ordered the formation of a Federal task force to assess the nature and extent of illegal actions by the police in Philadelphia. Has this task force, been formed at this point, to your knowledge?

Mr. PENROSE. The task force, I believe, has taken the title of the Vaira Commission, and it was basically Mr. Vaira and myself working with—we were the stable, constant membership of the body. We work with the FBI and interviewed, I would say, about 20 different people—people from the police department, people from the minority community, people from the ACLU, and various groups around the city. After we completed those interviews, we formulated recommendations and reported personally to Attorney General Bell.

Ms. GERE BENICS. And those were made public?

Mr. PENROSE. They have not been made public to date. I believe they will be. We made two recommendations; they are both in the process of being carried out.

Ms. GERE BENICS. Thank you. I'd like to discuss with you for a little bit the current Federal criminal statutes, those being sections 241 and 242, Title 18 of the United States Code. I was wondering how those statutes affect your ability to prosecute police cases specifically?

Mr. PENROSE. Section 241 works very well. I believe historically that statute arose out of Ku Klux Klan types of activities, but it's broadly enough read that it encompasses greater law enforcement potential. It provides a penalty of 10 years and \$10,000 fine, maximum, for anyone who conspires to deprive a citizen of a constitutional right. Section 242 is confined in its scope to members of the law enforcement establishment, in that it says anyone acting under color of law.

The problem that I have with that statute is that it is a misdemeanor and, unless death results, the maximum possible penalty is 1 year in prison. Therefore, if two policemen conspire to beat someone within an inch of their life, they can get 10 years. If one policeman does exactly the same thing by himself, he can only get 1 year, which seems to be an inconsistency.

Ms. GERE BENICS. How does the intent requirement affect your ability to prosecute?

MR. PENROSE. They are both specific intent statutes. The intent instruction does cause juries, I believe, some difficulty at least, as they predictably would. The jury is required to conclude that the officer's intent was to deprive the victim of a specific constitutional right. Sometimes we can convince the judges to go on and instruct the jury that the officer does not have to be a scholar of constitutional law, and that is the fact. But it does generate confusion.

I don't know, frankly, of a constitutional way to remove that specific intent requirement from the statute and still retain Federal jurisdiction. But, if there was a way to make it a general intent statute, I think it would make it far less difficult to get convictions.

MS. GEREBENICS. What is the formal relationship between your office and the Civil Rights Division of Justice? Specifically, do they have oversight authority, do they approve your prosecutions, do they review them, and this sort of thing?

MR. PENROSE. Yes, they do have an extensive oversight function. With respect to most of our civil rights investigations, we are required to get prior approval from the Civil Rights Division before even going through the grand jury phase of investigations.

We are required to notify the Attorney General if we intend to seek indictments, when we get to that point. Theoretically, the Attorney General can override the United States attorney's decision. I say "theoretically" only because I've never heard of it being done. But I suppose the internal regulation is there which empowers the Assistant Attorney General to prevent a U.S. attorney from prosecuting where the Attorney General feels it's appropriate.

MS. GEREBENICS. I just have one final question, relating to the relationship between your office and the Philadelphia district attorney's office. Are there any specific policies on dual prosecutions, or do you wait to see if they prosecute, or do they wait to see if you do, or do you ever prosecute after a State court acquittal?

MR. PENROSE. I'll try to answer—

MS. GEREBENICS. That was three questions.

MR. PENROSE. We don't have any formally drafted policy about dual prosecution with the district attorney's office. The district attorney operates under State laws, which makes dual prosecutions from their end far more difficult. There are double jeopardy provisions that are far tighter than ours on the Federal side. There is only one exception to the general statement that I'm aware of: any cases where the district attorney and the U.S. Attorney have extensively investigated the same case.

There was a case this past summer that both of us felt was so serious that neither of us wanted to step aside. There were some, I would say, minor difficulties in the investigation of that case that was caused by both of us being there, but it wasn't anything substantial. I think the district attorney's office and the U.S. attorney's office can work very well together under the present administration.

MS. GEREBENICS. Thank you.

Mr. Greenwald, could you briefly describe your duties as they pertain to FBI investigations of incidents of police use of force?

MR. GREENWALD. Yes. The FBI is empowered to investigate all allegations of police brutality involving civil rights. The allegations can be brought by any source not known to be unreliable, which means that it can be from a witness, a brutality victim himself, or from a reputable local news media.

From there, we go from the allegations and, depending on the seriousness of it, we either contact the United States attorney, if we feel it's necessary, or we can open up a preliminary or what we call a preliminary, which means a pretty extensive investigation, or active consultation with the Department, possibly, depending on what the circumstances are.

MS. GEREENICIS. And who makes those decisions?

MR. GREENWALD. Well, the initial decision is usually made by myself. You take something out of the newspapers, we usually open up a very limited investigation to start, to see what the facts actually were. If the facts develop into something more substantial, then we open up—go a little farther—a full preliminary investigation. We contact the United States attorney's office and the Department headquarters in Washington, D.C.

MS. GEREENICIS. Did your involvement in the case in which the six homicide detectives were convicted arise out of the *Inquirer* series, by any chance?

MR. GREENWALD. No, the six homicide detectives—that has been a case of long standing—that developed prior to the *Inquirer* series. That was pretty much—well, most of the decisions had already been made at the time that the series came up.

MS. GEREENICIS. Did you investigate the incidents in the *Inquirer* series?

MR. GREENWALD. Yes, I did.

MS. GEREENICIS. About how many complaints of police abuse a year does your office investigate, do you have any idea?

MR. GREENWALD. Well, I brought some very basic figures with me. It changes from year to year. I talked with Mr. Bell the other day; he gave me some insight as to what you would like. He said you would like some figures back from 1975 through the present time.

Back in 1975, the figures—we had 183 incidents in the eastern and middle districts of Pennsylvania, with approximately 130 of them involving the Philadelphia Police Department. The following year the number dropped to almost half that number. In 1976 we only had 61 involving the police department, and only 84 total in the whole area. 1977 and 1978 showed a pretty good jump. That's when that *Inquirer* series started—I believe it started April or May of 1977 and continued through to about June of the following year, 1978. We had 145 Philadelphia P.D. incidents for 1977, 143 for 1978.

Then in 1979 we've only got 3 months. But I can already see a tremendous drop. We've only had 19 cases involving the Philadelphia police this year.

Ms. GEREBENICS. Thank you.

Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Mr. Penrose, you have how many attorneys on the staff in your office?

MR. PENROSE. We have 45 authorized attorneys at the present; that's recently up from 41.

VICE CHAIRMAN HORN. When you have a series of police abuse cases, how many attorneys might be assigned to review that case?

MR. PENROSE. To review a single case?

VICE CHAIRMAN HORN. A single or a total number you might have had in any year's period. What efforts are applied to cases dealing with police abuse? Would you say the U.S. attorney has put one, two, five, how many attorneys on that area within its jurisdiction?

MR. PENROSE. I'm giving you an off-the-top answer. If you want it in terms of units for attorney years, I would say two, maybe three.

If I may give you some broad data, perhaps you could draw a more accurate comparative conclusion. I was assigned to prosecute one particular case which went to trial and conviction. I'm one of the senior attorneys in the office, and I have a newer attorney assigned with me. Although the average assistant U.S. attorney's caseload is probably 50 or 60 cases, for 6 to 7 months prior to that trial that was the absolute priority, that one case for both of us. We put in countless hours on that case.

That's just two attorneys on one case. There were, during that time period, I would say, six or seven other assistant U.S. attorneys receiving police brutality case assignments. Many of those cases, frankly, are nothing more than administrative exercise. If a case comes in, it must be investigated to a point where a determination could be made on whether or not it's prosecutable, and a large portion of these cases are not prosecutable. Either they're unprovable or they're unfounded. But, of those six or seven attorneys, I would say all of them had some serious police brutality cases that they had to evaluate and prepare extensively.

VICE CHAIRMAN HORN. In these cases, do members of the U.S. attorney staff do their own field investigation, or do you call on the FBI to aid you in that investigation?

MR. PENROSE. It's a combination. We do more of our own interviewing in police brutality cases, I think, than in the general run of cases. But we do utilize the FBI for interviews, to obtain records, many different uses.

VICE CHAIRMAN HORN. In describing the effectiveness of the FBI investigation to aid the U.S. attorney, do you characterize their efforts as, say, superficial, adequate, very good, thorough—what?

MR. PENROSE. I would have to characterize them as very good and thorough. They do labor under some administrative regulations which I find onerous, and I unsuccessfully attempted to get them changed.

Stemming from a time, if I understand the history correctly, when the Bureau was accused of being insensitive to civil rights matters, a procedure was initiated whereby upon receipt of virtually any civil rights—any complaint of a civil rights nature, the Bureau was required to do a half-dozen things and was to conduct a preliminary investigation. This involved interviewing the victim, all known witnesses up to the number 12, making a chart of the scene of the dispute, the incident, and three or four other things, taking pictures and things of that nature.

The problem that I had with that procedure was that it rigidly called for a completion of that preliminary investigation within 21 days. Sometimes you just can't do a thorough job without that artificial 21-day deadline pressuring you to do things that you would otherwise be better prepared for.

The Philadelphia Police Department is generally uncooperative with any informal requests for records or any statement or anything like that. So you have to issue a grand jury subpoena. It takes 2 to 3 weeks to issue a grand jury subpoena and get the necessary time schedule, allow the customary notice to the police department, and these records make the basis for many important interviews. So some interviews have to be either delayed beyond the 21-day limit or conducted in a way that was not as well prepared as possible. I have a lot of trouble with that particular aspect.

VICE CHAIRMAN HORN. You say the FBI investigations are very good and thorough. How much U.S. attorney additional staff time is needed to round out the investigation in terms of fieldwork that the FBI might have conducted—any, some, a lot?

MR. PENROSE. I'd say "a lot," by choice. These are unusual types of violations as compared with typical cases that a U.S. attorney works on. In a typical case you're trying to prove a crime. You don't have any knowing, willing, cooperative victim to interview and work with. In a police brutality case, you do have a witness to work with and you have to work very closely with the victim. And it's hard to do that through the intermediary, the FBI. We spend a lot of personal time with the victim, more proportionately than we do in the usual type of cases.

VICE CHAIRMAN HORN. The reason I'm pursuing the question is because, as you're well aware, the charges of two decades have been largely in the South, but the North has not been immune. The charge is that it was very difficult to get the FBI to pursue full field investigations on civil rights cases because of the friendly Federal, State, and county relationships they wish to maintain with local police departments. Now, are you saying that there is no evidence that the FBI is sort of pulling its punches in its investigation of Philadelphia police cases because of the desire to maintain a friendly relationship?



MR. PENROSE. I am saying definitely that is not happening.

VICE CHAIRMAN HORN. Very good.

Now, you mentioned the grand jury. Should the district attorney, a State officer, be pursuing a comparable case, are the grand jury records available to the State official? What are the ground rules?

MR. PENROSE. The State district attorneys have just very recently received enabling legislation to convene grand juries. My information is that they are just now starting, and there really isn't a track record to tell us what the powers of the State grand jury is going to be compared with Federal grand juries. All I can say is that in our experience it is the single most important tool for investigating this sort of crime.

VICE CHAIRMAN HORN. Well, how about the Federal grand jury records—can any of those be made available to the State for investigation?

MR. PENROSE. If a Federal judge will sign a court order to that effect, yes; that's what the criminal procedure laws require.

VICE CHAIRMAN HORN. Has the State district attorney asked Federal judges to do that, or do they go through you to do that?

MR. PENROSE. They go through us because we're cooperative and we support them. In any case, when they come to us and say, "We have an open investigation in this matter. We understand you have records and we need them for the investigation"—

VICE CHAIRMAN HORN. So that has been asked for by the district attorney. Your office has supported the district attorney—

MR. PENROSE. Yes.

VICE CHAIRMAN HORN. Has that always been granted by the judge?

MR. PENROSE. I believe it has. I believe it has—I may be overlooking an exceptional instance, but the judges will turn over records on that basis.

VICE CHAIRMAN HORN. Let me ask you, in terms of your own observations of the Philadelphia Police Department—you were in charge of the criminal office of the U.S. attorney for approximately 8 years, I believe.

MR. PENROSE. No, for about 1 year.

VICE CHAIRMAN HORN. Criminal—

MR. PENROSE. I was criminal chief for 1 year.

VICE CHAIRMAN HORN. Criminal chief for 1 year; what were you doing before that?

MR. PENROSE. I was on the staff, assistant U.S. attorney.

VICE CHAIRMAN HORN. I see—not assigned to the Criminal Division?

MR. PENROSE. I was working in the Criminal Division, but I was not in a supervisory capacity.

VICE CHAIRMAN HORN. Have you had any personal experience in dealing with the Philadelphia police and their practices in the field, any incidents that involved you?

MR. PENROSE. That involved me personally as a citizen?

VICE CHAIRMAN HORN. As a citizen or in your role as a representative of the attorney's office.

MR. PENROSE. I've had 8 years of contact with the police department as a prosecutor; even as a Federal prosecutor you still come directly in contact. I've had 3 years of teaching policemen courses in constitutional law.

There are 8,500 policemen on the force, and my impression, in the main, they are dedicated, law-abiding, reasonable police officers.

The leadership of the police department is another matter. I observed part of the testimony from the prior panel and the matters that you were discussing, disciplinary procedures, the refusal to entertain ideas or modify disciplinary procedures, and so forth. The one case that I prosecuted leads me to the conclusion that the command level of the police department are not interested in rigorous discipline of brutality violations. I can give you some specifics based on a closed case that I prosecuted.

VICE CHAIRMAN HORN. Why don't you.

MR. PENROSE. There were six defendants in that case. They were all homicide detectives. The essence of the charges against them were that they beat confessions out of—I think they successfully beat confessions out of three or four of seven people that they were intimidating and physically abusing down at the roundhouse.

One of the detectives who was convicted had, some years prior to the confession beating incident, fractured a woman's skull and knocked her teeth out with an ice pick. She brought a lawsuit, filed a lawsuit; while the lawsuit was pending, he was promoted to detective.

Just before our trial started, the woman secured a quarter of a million dollar damage suit against the defendant, and then the detective was indicted and then went to trial. He was convicted. He appealed with his other codefendants and the appeal was upheld.

To this day there has been no disciplinary proceeding undertaken by the Philadelphia Police Department with any of those defendants, including the one that had a history of a brutality allegation.

The district attorney's office, during the time of the confession beating incident, was headed by another district attorney, not the incumbent. The assistant district attorney in that case destroyed evidence, misrepresented matters of record before the trial judge in local court, and, about 2 days after the incumbent district attorney was sworn in, he either asked for or in some way obtained the resignation of that assistant DA who had destroyed evidence and so forth.

That assistant DA is now on the staff of the city solicitor's office reviewing cases of brutality from the city. I draw inferences from these things. But I'm no better equipped to draw them than you are; you have the facts as much as I do now.

VICE CHAIRMAN HORN. There is no statute under which the individual who destroyed such evidence such as that can be brought to justice?

MR. PENROSE. The same statutes that were used against the police officer would apply. However, the intent requirement becomes very

slippery. I really can't comment beyond that because you'd be asking me to comment on a pending matter.

VICE CHAIRMAN HORN. Have you ever observed any situations where individuals who saw an alleged violation occur and volunteered to be a witness were arrested by the Philadelphia Police Department? What do you think the practices of the police department are in pursuing that type of policy?

MR. PENROSE. The practices are obviously—I've heard such instances. I haven't personally dealt with any, and I have no idea whether they, in fact, occur.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. May I pursue for a moment the comments made with respect to the command level of the police department? We're trying to establish what models may be effective on a national basis. In this instance of the Philadelphia Police Department, are you suggesting that, really, until the command level is dealt with, there is no real remedy to the situation that can be achieved? Specifically, I'm thinking of the bill before city council, 1063; are you acquainted with that?

MR. PENROSE. I'm not acquainted with it by number.

COMMISSIONER SALTZMAN. It's a proposed ordinance that was discussed earlier by Mr. Coxe, if you were here.

MR. PENROSE. I was here, and I'm familiar with something which I know colloquially as the Ethel Allen bill, which would mandate certain changes in the internal police procedures.

MR. DORSEY. Well, there are two, and I don't know them that way; I'm used to referring to—

MR. PENROSE. I think I have a copy of it here.

MR. DORSEY. I'm advised by staff that 1063 and the Ethel Allen bill are the same.

MR. PENROSE. The significant parts of that bill, as I understand it, are the parts that provide for public access to the disciplinary files after the conclusion of the disciplinary matter; and, I believe, as I recall—yes, a summary of the disciplinary board's findings to be provided to at least the victim, if not publicized. I think that they are certainly needed. I don't know that they will make a night-and-day difference, but certainly it's a step in the right direction.

COMMISSIONER SALTZMAN. Moving to address this problem, do you think, where it exists here in Philadelphia or elsewhere, that the command level is the crucial factor in the problem of police misconduct and legislation may or may not be effective in remedying the crucial place where the problem stems from?

MR. PENROSE. Commissioner, I certainly think the legislation ought to be enacted. I know that the command level of the police department, insofar as I have had contact with it, is well satisfied with the present procedures. I find them defective and inadequate.

COMMISSIONER SALTZMAN. Mr. Greenwald, how, if you would express an opinion, how would you characterize the adequacy of the police department's investigation of complaints of police abuse?

MR. GREENWALD. Well, sir, it's hard for me to comment on the adequacy, the reason for that being that we obtain what we need to do through the necessary procedures, whether it be by ourselves or through the grand jury procedures. Unfortunately, we do not make any judgments as to facts. We merely collect what we need and turn it over to whomever needs it, whether it be the Department or the United States attorney's office.

COMMISSIONER SALTZMAN. You indicated that your department investigates charges of brutality that are brought to you.

MR. GREENWALD. Yes, sir.

COMMISSIONER SALTZMAN. And that you have the responsibility of determining the adequacy of those charges for further action. Could you define the nature of the charges upon which you determine whether you will proceed further?

MR. GREENWALD. Well, I use a very, very, broad basis in making my decision. Normally, if someone doesn't come in—let's say it's a walk-in into our office or the United States attorney's office had referred them over to us—unless the person has obviously a history of continual complaining, like almost a daily visit or something like that, I can't think of a single instance where they are not critically and immediately attended to and the incident, almost in all respects, is investigated.

COMMISSIONER SALTZMAN. What constitutes police brutality?

MR. GREENWALD. Well, it could be anything from handcuffs being too tight if they're arrested to, say, a man riding his bicycle in the wrong area and making him move on because something is happening. That's the minor, of course; it goes all the way to a police death.

COMMISSIONER SALTZMAN. Have you had experience in other cities relative to these instances of police brutality?

MR. GREENWALD. No, sir, I haven't. I've been in Philadelphia since 1965.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Mr. Penrose, you described, in response to an earlier question, your relationship with the Civil Rights Division of the Department and you indicated the procedure that is followed as far as the Constitution is concerned. Have you received from the Assistant Attorney General for Civil Rights any general instructions, information in this particular area?—you as U.S. attorneys. In other words, what I'm trying to get at is, What is the special nature of the leadership exercised by the office of civil rights in the Department of Justice?

MR. PENROSE. The Civil Rights Division is a very vigorous one with respect to Philadelphia. I've met with Assistant Attorney General Days several times over the past few years. They are very interested in the Philadelphia situation. They are very supportive. I'd like to think that they haven't given us detailed instructions on how to proceed because they're satisfied we're doing all right.

CHAIRMAN FLEMMING. There isn't any doubt at all in your mind or in the minds of your associates as to the interest and concern for this particular kind of issue?

MR. PENROSE. There is no doubt.

CHAIRMAN FLEMMING. Either Mr. Greenwald or Mr. Penrose, Have either one of you been involved in any way with the relationship with the Law Enforcement Assistance Administration and the Philadelphia Police Department? There have been grants that have come from the Law Enforcement Assistance Administration to the department. Some reference was made in earlier testimony to the fact that there has been a reluctance to exercise the sanctions that they could exercise. And I just wondered whether or not either of your offices has been involved in any investigations on behalf of LEAA as they have looked into any matters that have been before them.

MR. PENROSE. I'm not aware of any requests from LEAA to us to investigate. I don't think there's—I may be totally incorrect here—but I've never heard of any mechanisms or coordinating bodies that would allow us or move us to investigate on behalf of LEAA.

CHAIRMAN FLEMMING. I assumed that was the case. The law is very clear that if there is a violation of civil rights in the use of the funds that are granted to them they do have a sanction of withholding those funds. To your knowledge, have they used the FBI at all to help them look at any violation of civil rights in this particular area?

MR. GREENWALD. No, sir. I recall no case whatsoever where LEAA has asked us to do anything. I don't think they would have any statutory basis on which they could request anything from us.

CHAIRMAN FLEMMING. Our recollection is that we do not have any witness appearing before us from the Law Enforcement Assistance Administration. I would appreciate the staff making contact with the Law Enforcement Assistance Administration to determine whether or not any proceeding at any time has been initiated to withhold LEAA funds because of the violation of civil rights. And then, if so, what happened to that particular procedure or what happened to those proceedings?

MR. DORSEY. That is part of our activity in the fieldwork.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. No questions.

MR. DORSEY. Just one. I would like to try to clarify one point for the record. Mr. Greenwald, there has been some indication that FBI investigations of police abuse cases—that is, allegations of misconduct of any kind against police—are not investigations of original variety—that is, that the FBI relies on the investigation reports or reports of investigation by the police department, and I'd like for you to comment on that, the accuracy.

MR. GREENWALD. Most of it is not accurate at all. The only thing we would use a police investigation for is the names of witnesses, to know who they have talked to; we do everything on our own independently. We start from basically scratch and bring it to a chronological conclusion.

MR. DORSEY. Thank you.

CHAIRMAN FLEMMING. Mr. Penrose, Mr. Greenwald, we appreciate very much your being here and your providing us with this testimony and giving responses to our questions. It has been very helpful to us.

The hearing is in recess until 1:15.

**Afternoon Session, April 16, 1979**

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CHAIRMAN FLEMMING. The hearing will come to order. Counsel will call the next witness.

[Barry Kohn and L. George Parry were sworn.]

**TESTIMONY OF BARRY KOHN, FORMER DEPUTY ATTORNEY GENERAL OF  
PENNSYLVANIA ; AND L. GEORGE PARRY,  
ASSISTANT DISTRICT ATTORNEY, POLICE BRUTALITY UNIT,  
OFFICE OF THE PHILADELPHIA DISTRICT ATTORNEY**

MR. KRANSON. Would you both state your name and position for the record, please?

MR. PARRY. My name is George Parry. I'm an assistant district attorney in charge of the police brutality unit at the Philadelphia District Attorney's Office.

MR. KOHN. My name is Barry Kohn. I was formerly Deputy Attorney General for the State of Pennsylvania.

MR. KRANSON. Mr. Parry, what is the function of the police brutality unit in the district attorney's office in Philadelphia?

MR. PARRY. The police brutality unit was established by the incumbent district attorney, Mr. Edward Rendell, in January of 1978. The specific function is investigating and prosecuting, where appropriate, allegations of police brutality, abuse, or misconduct.

MR. KRANSON. Who decides which cases are prosecuted within that unit and are there written standards for those decisions?

MR. PARRY. The decision as to which cases are prosecuted is a joint decision made jointly by me and Mr. Rendell. As for the ultimate decision on prosecution, that, of course, lies with Mr. Rendell. He has to date, however, followed the recommendations of the police brutality unit in each and every instance where we have recommended prosecution.

As for written standards, there are no written standards outside of the standards found in the criminal code of Pennsylvania. The additional standards that are utilized by the police brutality unit are not written anywhere. They would consist, however, of the prosecutorial judgments of the assistant district attorneys, myself, and Mr. Rendell in evaluating the, let's say, prosecutability of any given case.

MR. KRANSON. In your opinion, are the Philadelphia Police Department's written standards governing the justifiable use of force adequate?

MR. PARRY. Well, in regard to the use of deadly force, they are nonexistent, as I understand it. The police manual, which I have a copy of, does have a section dealing with the use of deadly force. However, there is no written directive specifically dealing with the justifiable use of deadly force. There used to be such a directive. There are other directives in dealing with almost every phase of police work done by the Philadelphia Police Department. For example, they have directives on the proper use, care, and storage of handcuffs.

However, there is no policy directive issued by the Philadelphia police force in dealing with the justifiable use of deadly force. Now, at one time in the past they did have such a directive. It's my understanding that some years back it was sent to the district attorney's office for review at a time prior to Mr. Rendell's incumbency, that the policy was reviewed and returned to the police department with a recommendation that it be continued in use.

That's the position taken by the people in the DA's office. The position taken by the members of the police department whom I've spoken to is that they never received the policy directive back. But I would imagine that they must have retained a copy of it at some point.

MR. KRANSON. I've been requested to ask the witnesses to speak directly into the microphone so that the audience can hear.

Mr. Parry, how much cooperation does your office receive from the police department in your investigations of police misconduct with reference to such items as reviewing homicide books, police files, shooters' statements?

MR. PARRY. With regard to reviewing homicide books, the cooperation has been somewhat surprising. In some cases we are permitted to see the homicide books; in other cases we're not. We've been unable to determine what the deciding criteria is in the minds of the police administration as to why we get to see some books and, other books, we don't get to see.

I think you can safely say, though, that they have a uniform policy of not permitting us to view any statements taken from police officers who are the subject of any investigation. The reasons for that are somewhat complex. I'll state them as briefly as I can.

Under the Philadelphia City Charter, so-called charter warning statements can be taken from a city employee. In other words, a superior of a city employee can go to that employee and say, "Unless you give me a statement about this official action that you've taken, you can lose your job or be subject to other forms of discipline." Now, once that charter warning is given, the employee will then make the statement or else lose his job.

Now, the argument that has been advanced to us by the police commissioner is that any police officer who is being investigated by the police department routinely makes such charter warning statements when questioned about his activities. For example, the police officer who shoots someone will be asked to make what is known as a shooter statement by the police department.

Now, routinely these statements are not taken after charter warnings are given by the police department. However, the commissioner feels that it's understood by one and all that, if the statement is not made, the police officer can lose his job. Accordingly, the commissioner has taken the position that it would be unfair to compel the officer to make that statement and then give it to us for purposes of prosecution.

Now, my response to that—which has been unavailing, I might add—is that, first of all, if in fact the police officer's constitutional rights have been violated by the police department in the taking of this statement, it should be a determination made by a court of law and not the commissioner's employees. Secondly, I think there is adequate case law in Pennsylvania and elsewhere which would indicate that in fact, if the charter warnings are not given, there is no violation of constitutional rights. So that these statements are not tainted, and we should be permitted to have access to them and use them.

MR. KRANSON. Do you have access to technical reports prepared by the police department in the internal police files?

MR. PARRY. On occasion. Each case is judged on its own merits by the police department. Determination is made on a case-by-case basis whether or not we will be given access to those reports.

I'm talking right now about the voluntary cooperation of the police department in connection with our investigations. Everything that I'm saying now is, of course, subject to the proviso that we now have grand jury subpoena powers, which we anticipate will greatly alter what I'm telling you right now.

MR. KRANSON. Are you permitted to interview the police officer and officers who have witnessed the subject of your investigation?

MR. PARRY. No, we're not.

MR. KRANSON. Are you aware of why you're not allowed to interview these officers?

MR. PARRY. Well, the general response has been—FOP [Fraternal Order of Police] counsel has advised the officers not to speak with us. We also have reason to believe, however, that that is an official police department position.

In one case that we investigated, we attempted to interview some police officers who were merely fact witnesses in a case involving a police officer, who on one New Year's Eve crashed one of our local hotels singlehandedly. We attempted to interview these police officers who were fact witnesses, and the interview was to take place in the office of the chief counsel to the police department, who is, by the way, an assistant city solicitor.

The interview did not take place because the chief counsel of the police department advised the officers that they did not have to speak with us or speak with our investigators. Now, while that is technically correct and no doubt is sound legal advice, the fact of the matter is that, when the chief counsel to the police department advises a line officer that that line officer does not have to speak with investigators,



that, to my way of thinking, is tantamount to a command. An officer who knows what's good for him will keep his mouth shut. In fact, that's what the officers did in this case. So I feel that it's an influence from a convergence of FOP policy and the official police department policy that prevents us from interviewing the officers involved.

MR. KRANSON. Would you describe the nature of your relationship with the police commissioner?

MR. PARRY. I would say that the nature of my relationship with the police commissioner is an adversary relationship. I would say the police commissioner is a very frank, very straightforward man. I intend to be frank and straightforward, and, since we're coming from opposite sides of the issue, I think that we necessarily have gotten down to an adversary relationship.

MR. KRANSON. To your knowledge, have prosecutions or investigations of police officers affected conviction rates of other crimes?

MR. PARRY. In the sense that it has undermined credibility of the police?

MR. KRANSON. Yes.

MR. PARRY. Well, I would say as far as maintaining the level of cooperation with other units of the police department—that is, within the DA's office, we have, for example, a homicide unit, we have a rape unit. Those units have continued to receive good cooperation from the other units of the police department, and the adverse publicity that has resulted from our prosecutions has not affected the conviction rate of those units and, apparently, does not undermine the credibility of the police officers who appear as witnesses to those units.

I think it has been a particularly good thing that the DA's office has been able to isolate all of the bad feeling that naturally builds up around this kind of investigative work—they've isolated all of that bad feeling in the police brutality unit.

MR. KRANSON. Do you know of any occasions since coming to Philadelphia where officers have violated the department policy or State law and were not disciplined by the department?

MR. PARRY. Yes. Every case that we've arrested in, with the exception of one, there has been no disciplinary action taken. These cases involve everything from murder on down to aggravated assault, simple assault, reckless endangerment.

In the one case where there was disciplinary action, it appears that the disciplinary action came about as a result of a mistake on the part of the police commissioner, who misunderstood what our intentions were with regard to prosecution. He was of the opinion that, if he would take disciplinary action in this one particular case, that there would be no prosecution; and he, in a sense, expressed great outrage that, once the officer was disciplined, we went ahead and arrested him.

I might add parenthetically that the case I'm talking about is the case of the police officer who crashed the local hotel and throttled the assistant manager and assaulted several other people. And the punish-

ment that was given in that case was a 30-day suspension with pay. The officer elected not to take his pay, however.

MR. KRANSON. Do you believe the department is currently competent to investigate and discipline its officers?

MR. PARRY. I think the investigative apparatus in the police department, the internal affairs bureau, is competent to do the investigations. Where it all falls apart is when the results of those investigations are turned over to the hierarchy of the police department. I don't think the administration of the police department makes proper use of the investigative results.

MR. KRANSON. Could you describe generally what factors in your opinion have produced police misconduct in Philadelphia?

MR. PARRY. We're almost getting into a catalog of all the social ills that afflict urban America. But I think that, if you accept the fact that in police work force is going to have to be used from time to time, the question becomes how do you maintain an aggressive police department willing to use force without having that police department step over their line. I think that's where Philadelphia has failed. I think it has failed in that the present administration has not seen fit to, first of all, clearly indicate to the police officers how far they can go, what the acceptable limits are. For example, there is no policy directive on the justifiable use of deadly force.

I think the training has been inadequate. In the course of investigating a case which resulted in the officer being convicted for manslaughter, we had occasion to study the training given to the Philadelphia police in justifiable use of deadly force. We found that the training is totally deficient. The training on the justifiable use of deadly force consisted of one 30- to 40-minute lecture given at the police academy during the recruit stage, and that was it for the next 20 years that that officer might be on the force.

Now, the justifiable use of deadly force statute is a pretty complex piece of legislation. It is in many respects completely ambiguous, especially in the area of defining what a forcible felony is and when force can be used to stop a fleeing forcible felon. However, the police department apparently feels satisfied to deal with that complex legislation with that one 30- to 40-minute lecture on the law.

I think—if you want other factors contributing to the problem—I think you have to recognize the extremely difficult nature of the police work, the corrosive effect that police work can have on a person's disposition, emotional makeup, personality—whatever you want to call it. I think that many police departments have recognized that problem and have attempted to deal with it by offering some kind of psychological support, some kind of periodic review of an officer's performance, how the officer is holding up on the job, that kind of thing.

You don't have that in Philadelphia. The police are put out on their own, and there is no followup of that kind, even though it is generally recognized that in police work the first 5 years on the job are probably

the most difficult years that you're going to put in, when the greatest personality changes take place and greatest stress comes about.

So I think all of these factors contribute to the breakdown of proper discipline and proper limitation on the use of force. Then, if you add to that, in addition to the sins of omission of the leadership, the attitude of the leadership that police brutality will be tolerated, is not necessarily a bad thing, then I think you have a complete range of reasons for the problems we have here in Philadelphia.

MR. KRANSON. What impact do you believe the office of the district attorney can have in preventing this type of police misconduct?

MR. PARRY. I think we have a very limited effect on preventing police misconduct. I believe that prosecutions have to be brought because the criminal justice system, to the extent that it can be made to apply evenly to everyone, should be applied evenly to everyone.

However, I don't believe that criminal prosecution is the answer. I don't believe that it is the way that you prevent police brutality. The men who are predisposed to do this kind of thing are police officers; they know how well the criminal justice system works or doesn't work. They know that their chances of being caught are remote. They know that their chances of being successfully prosecuted are even more remote. Their chances of being sentenced to jail are almost miniscule.

I think the overall effect of that, the deterring effect of criminal prosecution of these cases is minimal. I think the real answer lies in other areas; it lies in an enlightened police administration.

MR. KRANSON. Mr. Kohn, could you briefly explain the role and functions of the community advocate unit?

MR. KOHN. Yes. The community advocate unit is a civil rights and civil tensions unit in the attorney general's office which deals with many problems with denials of civil rights of minorities, and police brutality was one of our major areas in Philadelphia from its inception in 1969 until about 1976. I was the director of that unit for a 5-year period and spent about a third of my time in the area of police brutality.

MR. KRANSON. How did this unit tend to resolve problems of police misconduct?

MR. KOHN. Well, we worked with it in a number of different ways. One way was we were a party to the *Goode v. Rizzo* class action case against the police department and the city, and we were a major litigant in that case.

We also worked with a number of community groups, about 28 community groups in Philadelphia, and helped establish a group called the Coalition Against Police Abuse, which basically was put together to put pressure on all the different agencies that were responsible for handling police complaints—the district attorney's office, the police department—and also attempted to find avenues of redress for victims of police brutality, trying to find lawyers.

Eventually, we were the ones that put together the funding for the Public Interest Law Center to have lawyers represent individuals who were victims of police brutality.

MR. KRANSON. What impact did your unit have on resolving allegations of police misconduct?

MR. KOHN. Well, I would say we didn't have much of an impact on individual cases. We weren't very successful; we came against the same barriers that all the other agencies had come up against.

For example, in dealing with the district attorney's office—this was starting with Arlen Specter—they were supposedly taking complaints against police officers. And yet when we got involved we found out that, really, citizens, when they went to the district attorney's office, were pretty much getting a runaround, and almost no complaints were being completed by the district attorney's office to prosecute police officers.

We started working with them and worked out a complaint procedure and then continued with Mr. Fitzpatrick when he became district attorney. And actually it was under Fitzpatrick that they set up a special unit to deal with police cases. Still, I think with the district attorney's office the commitment to prosecute police was very limited, and it was always a question of us putting more and more pressure on the district attorney's office.

In the area of civil cases, as I said, I think we were probably the most successful there because we were able to get a \$150,000 grant from LEAA to set up a police program within the Public Interest Law Center. That actually, for the first time, gave victims of police brutality legal representation, and I think that that's one of the major problems for the citizen who is a victim of police brutality, is that there was almost no legal representation. And every step along the way really required legal representation. Even if it was to file a complaint with the district attorney's office, the following through of that complaint needed an attorney to work with the district attorney's office.

If a civil suit was going to be filed, that needed legal representation, and one of the major problems that a victim usually faced was that immediately they had charges—in about two-thirds of the cases—they had charges of disorderly conduct, resisting arrest, or assault and battery on a police officer. They had to be confronted before they even got into their own problem of police brutality.

MR. KRANSON. What kind of working relationship did you establish with the U.S. attorney in these types of cases?

MR. KOHN. We attempted to have a relationship with the United States attorney, but the United States attorney at that time was not interested in police brutality cases. This was under Heron [phonetic], and there was almost no interest at all for the United States attorney's office to get involved in these cases.

We did contact them a number of times, but with very little response. We also—sometimes the cases were turned over to the FBI

for investigation. And a number of times I met with an agent from the FBI, Mr. Sherman, and his attitude was one of—the way they did their investigations was to start with the police investigation. Again, it didn't seem like they were very interested in doing their own investigation and interviews, things like that. It was much more of an attitude of, "The police are doing their job and we shouldn't interfere."

MR. KRANSON. Did the police department cooperate with your own investigations?

MR. KOHN. No, they didn't. We were not able to talk with police officers; in almost all the cases, the police would not make the police officers available for interviews. We were told that, if the police officers did grant us an interview, that they would not be able to be represented by the FOP at the time the charges were brought against them. So we had very little cooperation with the police department. In fact, the *Goode* case was an attempt to have the police set up a complaint procedure so that citizens could have redress through the police department.

MR. KRANSON. Do you recall what role the Attorney General of Pennsylvania played in prosecuting police officers during your tenure at the community advocate unit?

MR. KOHN. I have worked under three different attorney generals.

MR. KRANSON. Excuse me. I would just request that in answering a question you do not give individual names and speak generally of the office.

MR. KOHN. Okay. The attorney generals that I worked under were all very reluctant to get into any question of prosecution of the police officers. First of all, they would have to supersede the district attorney's office, and the law in that area was very unclear, and it would probably lead to a test case as to whether the attorney general even had the power to supersede the district attorney's office in this area.

And, secondly, we were in litigation trying to set up a complaint procedure already, and that litigation had been going on for a year or so. We never did prosecute a case when I was there. I think after I left the attorney general did prosecute and did supersede actually the district attorney's office in police brutality case.

MR. KRANSON. Did you at any time recommend that the attorney general prosecute any officer of the Philadelphia Police Department?

MR. KOHN. Yes. We did recommend in about five cases that we supersede the district attorney's office and prosecute cases, and these were the most egregious. But the attorney general always turned us down in prosecuting, going ahead and prosecuting those cases.

MR. KRANSON. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Parry, do you have any idea of the magnitude of police violence in Philadelphia?

MR. PARRY. The magnitude would be very hard to estimate. I could tell you that since January of 1978 our unit has investigated approxi-

mately 300 cases of alleged police brutality. We have also received an additional 150 to 175 complaints of harassment or verbal abuse, which we have not opened investigations on, since we felt that right from the beginning there would be no viable prosecution.

Now, having started all of those investigations, I should point out that we have approximately 91 open cases. We have concluded all of the other cases, with the result that in five of those cases, we felt we had prosecutable cases and we made arrests of eight police officers. That's the only definite index I can give you. How that computes out in terms of an 8,500-man police force for a city of over a million, I couldn't really begin to say. That's the one limited index that I can give you.

COMMISSIONER SALTZMAN. Have you any knowledge of suits that have been brought and awards made to citizens?

MR. PARRY. Only what I read in the papers and, on occasion, what I hear through the district attorney's office. There are two suits that were of particular interest to our office which involved a police officer against whom we brought charges.

This police officer is presently under two indictments by the district attorney's office, one brought by the previous administration and one brought by this administration. That officer also had several civil suits outstanding against him. My understanding is that the city has settled those civil suits in favor of the complainant and paid substantial sums to the plaintiffs in those cases.

I might point out that, in spite of the criminal charges which have been brought against this officer and the settlement of the civil suits, the officer not only was not disciplined; in fact, he was promoted to sergeant by this police administration.

COMMISSIONER SALTZMAN. The United States attorney made a comment similar to yours, focusing in on what you named the hierarchy of the police administration, which you call command personnel, I believe. He seemed to feel as you do that significantly the problem rests on the command level or hierarchy. What response might be achieved to remedy that situation, what process?

MR. PARRY. I think the real answer is a political answer. I think there has to be a change in the mayor's office. Once there is a change in the mayor's office, there will be new leadership in the police department. I think that's the real answer.

As to what we can do now, as I've indicated, there are limits to what the district attorney's office can do or any prosecutor can do; and unless the reform comes from within the department, I think that there is very little practically that can be accomplished.

Fortunately, in January there will be a new mayor, and I note that all four of the Democrat candidates have indicated that they would replace the present police commissioner. The Republican has not taken a position on that as yet, as I understand it.

The four Democrat candidates have indicated, however, that they would look within the police department for a new commissioner. I'm sure there are many well-qualified people in the Philadelphia Police Department who could fill that post and do it well.

I would think, however, my own professional feeling is that the police department would be better served by going outside of the police department for leadership. The Philadelphia Police Department in many respects is a dinosaur that needs to be brought up to date, not only in the area of relations with citizenry in the police abuse area; it needs to be brought up to date in many other ways professionally. I think the best step would be for the new mayor to go outside of the department and find a competent police administrator.

COMMISSIONER SALTZMAN. If you were to give relative weight to what is the most important remedial step to be taken, you've indicated a political response, then you spoke about training, and then the followup when a man or woman is in a position for the first 5 years, and, then, there is another alternative that has been suggested to us, the new law 1063. Is it a combination of all of these processes in response—what kind of mix of remedies would you say can be adequate to meet the need?

MR. PARRY. I would say that the mix that you've just outlined would be an adequate response. There are a few other things that I would do if I were commissioner.

I think that it would not be a bad idea, since this whole police abuse issue has become such a hot issue in Philadelphia and it has assumed gigantic proportions locally, it would not be a bad idea to take specific measures to defuse that issue in terms of once again gaining the trust of the public.

Now, if you take the form of locating Internal Affairs offices in local neighborhoods, going into shopping centers—many people are afraid to deal with Internal Affairs because they have to go down to the police station where there are other police officers around, and they're afraid to approach the office. I would say make Internal Affairs more accessible. I would say open up the disciplinary procedures of the police department to public scrutiny, so the public can have some confidence that it is being done fairly and impartially.

You can do that in any number of ways, not the least of which would be to have, say, somebody like Mr. Spencer Coxe be an integral part of the disciplinary procedure. Certainly, there are any number of steps like that that could be taken to—

COMMISSIONER SALTZMAN. May I focus on the internal affairs bureau? He pointed to that and said that's not the adequate agency to deal with these problems; it's more a personnel management instrument. You did say that you felt it is adequate to carry it out?

MR. PARRY. I think in terms of getting the facts, I think the internal affairs bureau can get the facts. What is done with those facts right now, I think, is where we really have the problem.

I think Mr. Coxe's specific reference was to the PBI, the police board of inquiry, and they are more or less internal disciplinary proceedings. I would say that the PBI proceedings should be reformed in that I think the issues should be raised as to what could be done at the PBI, or what was routinely done at the PBI.

I think that, instead of having police prosecutors and FOP lawyers facing off against one another, I think they should get some experienced prosecutors in to represent the administration side of the issue. I think that there should be a strict adherence to rules of evidentiary procedure and rules of criminal procedure.

If in fact the officer is found guilty, I think there should be very substantial disciplinary steps taken. Frequently, these substantial steps are not taken by the PBI. Most of the PBI hearings that I've seen in the information I've received about the PBI is that it exists primarily to enforce infractions of the rules with things such as conduct unbecoming an officer, when a man talks back to his superior or threatens his superior—that kind of thing. Certainly, that's important—you have to maintain discipline in the ranks.

But I think there are a whole range of issues or infractions that are not addressed by the PBI. I think if the PBI was reformed procedurally, it would be equipped to deal with those issues, and it should deal with those issues.

The important thing to note here is that the disciplinary sanctions that are available to the police administrator are much swifter and much surer than anything we can do through the district attorney's office or the regular criminal court system. And I think that because they are swifter and surer they will have much more effect on the police rank and file than anything we can do.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Mr. Parry, you've had experience in Rochester looking at police abuse, I believe. Is that correct?

MR. PARRY. Yes, sir.

VICE CHAIRMAN HORN. And I take it your feeling is that the training that the Philadelphia Police Department offers on the use of deadly force is totally inadequate, and you cited the lecture they give and said the ambiguities are in the law. In your review of the Rochester Police Department, did you find they had an adequate process for educating officers on the use of deadly force?

MR. PARRY. The investigation that I did in Rochester had to do with police corruption. I was with the U.S. Department of Justice organized crime strike force, and we were investigating allegations that members of the vice squad in Rochester were involved in dealing heroin.

So, I did not have occasion to look at the Rochester Police Department specifically on the issue of problems of deadly force. I have, however, through my 6 years with the Department of Justice, had occasion to discuss the matter with representatives of several other major



police departments and also several police departments that are considerably smaller than the Philadelphia Police Department.

I would say that uniformly they have all had better training and better preparation in this area than that which is available to the average Philadelphia police officer. I think if you go, say, to the Police Foundation or the International Association of Chiefs of Police, they will all tell you how important it is for departments to have a clear policy directive on when deadly force can be used, not only from the standpoint of protecting the citizenry, but just letting the officers know what they can do and what they can't do. It's just out of fundamental fairness to the police involved. You should have such a policy, especially where you have a criminal law like we have in Pennsylvania, which is so ambiguous.

So, I would say that, excepting Rochester, I can say from my survey of other police departments that we're far behind the, I would say, average enlightened or well-run police department in that regard.

VICE CHAIRMAN HORN. Let me ask our counsel the extent to which we have knowledge of the training and practices of the major city police departments on this issue, and is it available to be inserted into the record at this point?

MS. GEREENICS. We have several studies; they're fairly lengthy. We have an eight-volume study on training. We don't have any small synopsis, no.

VICE CHAIRMAN HORN. What I'm after is the summary of what are the practices of New York, Chicago, Los Angeles, etc., police departments in terms of how they train their officers on the use of deadly force—do they have a specific statement of how much time is spent on that in the police academy, how much time is spent every year or so at the police station in discussion, whatever.

MS. GEREENICS. We could pull that probably from the materials that we have.

VICE CHAIRMAN HORN. Let's do that at this point in the record.

CHAIRMAN FLEMMING. Without objection, that will be entered in the record at this point.

VICE CHAIRMAN HORN. Now, Mr. Parry, I take it that, in police abuse cases which involve death or other types of injuries in the use of firearms, your office works closely with the medical examiner.

MR. PARRY. We've had occasion to receive information from the medical examiner; however, we have not developed a close working relationship with the medical examiner's office.

VICE CHAIRMAN HORN. Could you indicate why your office has not developed a close working relationship with the medical examiner's office?

MR. PARRY. I don't know what the reason is. I don't want to impute any motives to the chief medical examiner, Dr. Aronson. However, I can give you an example of our first and only conference with the medical examiner's office, and you might be able to reach your own conclusions.

Routinely a representative of the district attorney's office is sent over to the medical examiner's office to review homicides that have occurred in Philadelphia over a 2-week or 1-month period. It's a roundtable conference where the medical examiner will have beforehand a stack of death certificates waiting to put in the cause of death—or manner of death, I should say. The representative of the district attorney's office is present. A representative of the homicide squad of the Philadelphia Police Department is present.

The homicide squad representative will give a brief synopsis of the facts leading up to the particular death. The representative from the district attorney's office will say, "Well, that sounds justifiable to me," or "It is not justifiable," and the medical examiner will fill in the manner of death.

Now, when I assumed the office of chief of the police brutality unit, it was decided that the cases resulting—the deaths resulting from police use of deadly force would be treated in a different conference, separate from those conferences that deal with all the other killings that go on in Philadelphia and are routinely handled by the chief of our homicide unit.

Dr. Aronson's initial reaction to that was negative. He said that he did not see the need for having a separate conference and objected to the district attorney. The district attorney, however, said, "Well, this is how I'm going to have it done. I want the police brutality unit to handle this conference."

I went to the first conference. There were roughly 15, maybe 20 cases that had backlogged during this period. They were presented to me.

VICE CHAIRMAN HORN. Let's get that clear now. There were 15 or perhaps 20 cases backlogged over what period?

MR. PARRY. Over the period between the time that Mr. Fitzpatrick left office in December of 1978 until roughly February or March of—I'm sorry, not December of 1978—December of 1977 until February or March of 1978.

VICE CHAIRMAN HORN. Okay, roughly a period of 4 months. You got 15 to 20 cases that involved police use of force that resulted allegedly in the killing of these individuals.

MR. PARRY. Right. Now, these cases did not all occur in that 3-month period. Some of them, maybe four or five of them, occurred prior to that time, but what I'm talking about is the bulk of them did occur—

VICE CHAIRMAN HORN. Well, that sounds like one a week to me; it sounds a little high.

MR. PARRY. It does but I would say in 1978 there were over 70 police shootings and over—I'm guessing right now, an educated guess—over 40, 35 or 40, resulted in death. Now, not all of these cases came up in that 3-month period, as I've indicated, but there was quite a number that did come up.

Now, during the course of this conference the procedure that they wanted to use was they would hand out what is known as the police shooting folder, the shooting book they call it. Now, the shooting folder consists of the investigator reports, scientific reports, report of the medical examiner, photographs, diagrams of the scene, whatever else, and they compile it all in one book, and they are usually quite lengthy documents, consisting of maybe 200-250 pages.

Now, at this particular hearing the first case came up, the representative from the homicide squad handed out the shooting books, gave a brief synopsis of the facts. Dr. Aronson said, "Well, is it a justifiable number?" I said, "Well, I have no idea because I haven't been able to go through this shooting book. I haven't been able to do my own investigation." Dr. Aronson said, "Well, I need to get the answers from you." And I said, "Well, you'll have to wait until I do my own investigation."

So the way that was handled at that meeting was the medical examiner indicated that the shootings were justifiable, and I concurred in the finding with the proviso that, assuming what the representative of the homicide squad had to say was true, they would indeed be justifiable, but that I had to do my own investigation. But the homicide books were taken back by the representative of the homicide squad, and that was the end of the medical examiner's conference.

VICE CHAIRMAN HORN. In other words, you were not allowed to keep the homicide book?

MR. PARRY. That's correct.

VICE CHAIRMAN HORN. You would have the authority to subpoena them, I assume.

MR. PARRY. At that time, no. It wasn't until just recently that we have had subpoena power through the grand jury act, which was passed in late 1978 by the Pennsylvania Legislature. So the net result was that that was our first and last medical examiner's conference.

We've indicated on several other occasions that we thought it would be desirable to have a medical examiner's conference for some of the other 35 homicides that occurred in 1978 involving police.

VICE CHAIRMAN HORN. In other words, the medical examiner, after he found that you were not going to issue a rapid-fire opinion without looking at the evidence, decided to cease having the DA at the conference, or you decided not to participate in that type of conference.

MR. PARRY. The former, not the latter; that is, he decided—

VICE CHAIRMAN HORN. It was no longer—

MR. PARRY. —that's the end of that approach. Right, we're no longer having conferences with the medical examiner.

VICE CHAIRMAN HORN. Well, how do they handle this problem now? You've still got certificates to fill out. I take it he's not only listening to the homicide—

MR. PARRY. He is filling out the certificates, and, as a matter of fact, as a legal matter he can do that without the participation of the district

attorney's office. The participation from our office in the past came about as a matter of custom. Under the law the medical examiner may draw his own conclusions. Of course, the finding that he makes on the death certificate is not binding on the DA's office as to whether or not we go ahead and prosecute.

VICE CHAIRMAN HORN. One of the findings, I take it, is justifiable homicide.

MR. PARRY. Right.

VICE CHAIRMAN HORN. And from the process you've described to me, there's no way the medical examiner could read the shooting book, when it is distributed only at the time a decision is made, or is it given in advance of the meeting?

MR. PARRY. Whether he has access to that information or not prior to the meeting, I don't know. I know that the district attorney's office does not have access to that material. Now, we attempted, during the summer of 1978, to work out an accommodation in this area through the office of the—the managing director's office, Mr. Levinson. A conference was held in Mr. Levinson's office in late spring or early summer of 1978, which was attended by me; two other representatives of the district attorney's office; Mr. Levinson, the managing director; Commissioner O'Neill; the chief counsel to the police department, Ms. Sylvester.

I mentioned at that meeting—we were there to discuss many problems that we were having in our investigation of the police department. One of the problems that came up was the lack of access that we had to these homicide books.

It was decided then that we would be given access to the homicide book 2 to 3 weeks prior to the next medical examiner's conference, or any medical examiner's conference, so that we would have an adequate chance to review the homicide book and, if we felt there was any additional investigation needed, we could do it so that an informed decision could be made.

Once they agreed to that, however, there were no more medical examiner's conferences; and, therefore, there was no need to turn over the homicide books. I should point out that we did, on occasion, receive some homicide books, but not in connection with the medical examiner's conference.

VICE CHAIRMAN HORN. In other words, the decision to stop the medical examiner's conferences in which the office of the district attorney participated came after the decision was made that you could have access to shooting books 2 or 3 weeks in advance of that conference.

MR. PARRY. It would appear that way. No one has ever articulated to me that that was the reason why we were not having these conferences anymore. But certainly, if I had to make an informed prosecutorial judgment based on my 7 years in law enforcement, I would say, yes, that's—

VICE CHAIRMAN HORN. It's a strange circumstance at any rate.

MR. PARRY. Yes, and being a good law enforcement officer I know there's no such thing as a strange circumstance.

VICE CHAIRMAN HORN. To whom does the medical examiner report?

MR. PARRY. The medical examiner reports to the commissioner of public health. It's my understanding, however, that the mayor has a great deal to say about who serves as the medical examiner. There is an examination that's given to determine who will be medical examiner. But, as it has been explained to me, there was a very close result on the examination when Dr. Aronson took the exam. There was another qualified applicant, and the mayor cast the tie-breaking vote.

VICE CHAIRMAN HORN. So, I'm trying to determine here, Is this a political appointment, or is it a nationwide search leading to a civil service appointment; does this individual serve at the pleasure of the mayor or the director of the commission of public health or what?

MR. PARRY. Well, I think on paper the way it works out is that they have a competitive exam among people who are members of the medical examiner's office. Whoever qualifies on that exam is then eligible to be appointed as chief medical examiner. As I understand it, at the time that Dr. Aronson took the exam, there was a very close result. So there were two qualified candidates. The nod went to Dr. Aronson. So on paper, no doubt, it comes out like a straight honor system.

CHAIRMAN FLEMMING. May I interrupt here? I gather from one response you've made that the appointing authority is—when you talked about breaking a tied vote—

MR. PARRY. As I understand it—and I'm really out of my area of competence here—as I understand it, the appointing authority is the commissioner of public health.

CHAIRMAN FLEMMING. Commissioner of public health?

MR. PARRY. Yes, sir.

VICE CHAIRMAN HORN. Who is, in turn, appointed by the mayor?

MR. PARRY. Yes.

VICE CHAIRMAN HORN. And can be dismissed by the mayor?

MR. PARRY. That's correct.

VICE CHAIRMAN HORN. So, presumably, would listen to the mayor?

MR. PARRY. I would imagine so.

VICE CHAIRMAN HORN. Let me ask the Acting General Counsel, Is there a plan to have the medical examiner?

MR. DORSEY. No, there is not at this time.

VICE CHAIRMAN HORN. It seems to me at this point in the record what I would like is a description of that office, how the appointment process is made, whether the individual serves at the pleasure of the commissioner of public health, or what is the history of the last few medical examiners—did they all come from within the unit, etc.

Anything else you wish to add on that?

MR. PARRY. No, sir.

VICE CHAIRMAN HORN. One last question. You've mentioned and other witnesses have—really it best comes from within the police de-

partment because you can act in a more rapid manner, various methods of discipline—you have the line officers and the leadership undertake to signal the message rapidly, and presumably conduct might improve.

Now, if that doesn't happen and the police internal affairs unit have to conduct the investigation, I wonder what is your feeling as a professional as to the makeup of such an internal affairs unit, whether an individual can be assigned there on almost a permanent basis, such as separate inspector general different from the line, or are there problems with individuals who are assigned there having to investigate their colleagues and then after 1 or 2 or 3 years return to the force as fellow line officers with all of the peer group pressure that is then placed upon them because they've conducted investigations on their colleagues. Do you know different practices, the way this is done in major police departments around the country?

MR. PARRY. I think the best way to administer an internal affairs bureau is to have the officers assigned there on a more or less permanent basis. Unless an officer indicates that he has no stomach for that line of work and cannot be effective, I would say that, once in, that's where an officer should stay.

The reason for that is the same reason that we have a separate police brutality unit. It's difficult to investigate people that you work with, but, if the job has to be done, then it should be done by people who are used to bearing the bad feelings of their fellow officers.

In fact, that is the case in Philadelphia. Even though many people think that Internal Affairs does not do the job here, the Internal Affairs officers are not well thought of by the other members of the Philadelphia Police Department. They are treated with a great deal of distrust and dislike. But I think it has to be that they remain separate from the men that they investigate. I might point out, just on the side, that that raises a very interesting fact that we come up with in our cases wherever we have brought charges against a police officer.

There are two cases that come to mind where police officers were involved in killing people. Those police officers, instead of being suspended for discipline, were put on indoor duty answering the telephone in the homicide squad, which was the unit investigating their shooting of civilians.

Now, whatever natural sympathy might have existed in the homicide squad for that police officer just has to be magnified by the officers who are investigating them and coming into day-to-day contact. You can look in his wallet, see that he's got a wife and three kids and a dog and a house, and you know he's not a bad guy. It just makes an objective investigation all the more difficult. And that, apparently, is a standing policy within the police department. It certainly has happened many times in the cases where we've brought charges.

Now, to get back to your original point, though, it's my understanding that in other police departments, as well as in Federal agencies,

the inspector general—the Internal Affairs people are assigned on more or less permanent basis for all the reasons that I have set forth.

VICE CHAIRMAN HORN. Let me ask if you could furnish for the record the precise number of deaths caused by the Philadelphia police in 1977 and 1978. Do you have that material available?

MR. PARRY. No, I don't and the reason is the way we learn of deaths and woundings by the Philadelphia police is by way of the news media. The police department will not provide us with notice.

Now that I have grand jury subpoena power, I could subpoena that for you and provide you with the information. However, it has only been within the last few months that we've had subpoena power. So the figures that I give you are based on the investigations that we've conducted where, through happenstance, through talking with a police officer or watching the 11 o'clock news or picking up the morning paper that we have learned of the police shooting and we've initiated the investigation. Our policy is whenever deadly force is used we initiate an investigation, so that whatever figures I could give you would be estimates built around those sources of information.

VICE CHAIRMAN HORN. Well, I suggest, then, that General Counsel would ask the police commissioner the question of how many individuals were wounded and/or killed by the Philadelphia police in 1977 and 1978.

CHAIRMAN FLEMMING. We'll evaluate the evidence, develop a report, and make findings and recommendations. Growing out of the experience that you've had over the 7-year period of time with this kind of issue, what is your feeling as to the present legal position of the Federal Government, and what is your feeling as to whether or not that position could or should be instructed in any way?

In other words, we make recommendations to the President and particularly to the Congress. Should we be thinking in terms of recommendations that strengthen the role of the Federal Government in an appropriate manner in dealing with kinds of situations that you and other witnesses have described? I'd also like to address that same question to Mr. Kohn.

MR. PARRY. I think that you should be thinking along those lines. I think, rather than considering other forms of legislation or changes in civil rights legislation, I think the area that you should be looking at is what, if any, steps can be taken by the Law Enforcement Assistance Administration to bring departments like Philadelphia police into compliance with the Constitution of the United States. For example, an awful lot of LEAA money comes into Philadelphia, and I think if LEAA were to say to the department, "We're not going to give you any more Federal money until you clean house," that would have a tremendous effect.

As I've indicated, as far as Philadelphia is concerned, I fully anticipate that the problem will come almost to a complete end—at least to the extent that the police administration didn't do anything about

the problem—will end in January. And I would hate to see all of the LEAA money be cut off just as the new mayor takes office. But, as a policy to be pursued on a nationwide basis, I think that that would be a very effective way of eliminating this kind of problem in isolated areas—Houston, Philadelphia, wherever else you come across it.

CHAIRMAN FLEMMING. Are you aware of any recommendation having been made to LEAA relevant to the Philadelphia situation, and do you know of any response that you've received from those recommendations?

MR. PARRY. No, I've heard of no such recommendation.

CHAIRMAN FLEMMING. Mr. Kohn?

MR. KOHN. Well, I would agree that the problem is a political problem and that hopefully that would change. Our office has worked statewide, and in other cities, like Pittsburgh, there is almost no police brutality problem compared to Philadelphia. And there the mayor, right through the 5 years that I was in the attorney general's office, took a very strong stand that he would not tolerate that kind of a situation, where our mayor was giving the opposite kind of information here in Philadelphia.

The other area I think LEAA money could be used for is to increase legal representation for citizens who are abused. As I said before, right now the Public Interest Law Center receives some money, but it's not enough, and legal services' money is not able to—the public defender's office does not have enough funds to properly represent these people and investigate the cases. So that, really, a citizen who doesn't have money for an attorney doesn't have anyone to represent them and to really push their case aggressively. And they get lost in the system, no matter which agency they're dealing with. So I would say that would be one issue.

CHAIRMAN FLEMMING. I was interested in your account of your experience in the State attorney general office. Do you feel that the position of the State attorney general needs to be strengthened in any way by legislation, or do you feel that there is simply a question of the attitude of the attorney general, so far as the involvement of the State government in a situation of this kind?

MR. KOHN. I really think this should be handled, but by local communities, and I think it can be. Except, you know, if a district attorney fails to prosecute and if the police department is not active, I think that the attorney general should be given more authority to supersede in those cases than they have right now. But I don't think it really would work to have the attorney general be the major person involved in this kind of matter.

CHAIRMAN FLEMMING. You do feel that the attorney general could be given more authority than he has now to supersede?

MR. KOHN. Yes.

CHAIRMAN FLEMMING. The district attorney?

MR. KOHN. Yes.



VICE CHAIRMAN HORN. What is the authority in Pennsylvania for the State attorney general to supersede either the district attorney or the local law enforcement agency?

MR. KOHN. There is a law. There is a statutory law, and the attorney general has to go to the presiding judge in a city, and I think—I'm not real clear on this right now—but they have to show some indication that the district attorney's office has not acted.

VICE CHAIRMAN HORN. Let's get that on the record at this point.

MS. GEREBENICS. Sir, it's in the staff report if we could get that into the record at some point.

VICE CHAIRMAN HORN. Fine; in the staff report, are the instances shown at what time that that law has been asserted?

MS. GEREBENICS. No, it is not.

VICE CHAIRMAN HORN. You might find that out.

CHAIRMAN FLEMMING. But you feel that law could be strengthened?

MR. KOHN. Yes, I do.

CHAIRMAN FLEMMING. Mr. Parry, do you have anything to add?

MR. PARRY. I think the law as it is written requires that the attorney general show an abuse of discretion by the local district attorney, which is a very difficult standard to meet. I would think that you could change the law to lessen the standards that have to be met by the attorney general, but I'm not sure that that's the real answer.

We did have a situation in Philadelphia here for 4 years prior to Mr. Rendell taking office when the district attorney was apparently reluctant to do anything in the area of police abuse. The attorney general did attempt to proceed in one case that I'm aware of and was unable to meet the burden.

I'm not so sure, however, that, given the composition of the attorney general's office where the limitation that it has manpower-wise, that even if you change the law, that they would have the capability to follow through on it.

It gets to be a bit complex, but I would say that the law is drafted, to my way of thinking, to perfectly adequately deal with the problem.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Just one followup question on these shooter files. If you have a case to investigate, do you have access to that report aside from those—can you pull that file to review those allegations of improper or excessive use of deadly force?

MR. PARRY. We request the file of each and every case. In some cases we get it and in some cases we don't. I have spoken to the police commissioner about that, not only in the area of shooters books or homicide books, but in every investigation that we do. The commissioner has said that they will review these matters on a case-by-case basis and decide in which cases we would receive the information and in which cases we will not receive the information. In reviewing the cases where we have received the information, we've been unable to determine what the deciding factors were as to why we got the books on one case and not in other cases.

Many times this works to the detriment of the police officer involved, who has the jeopardy of an open district attorney's investigation hanging over his head, which we cannot close because the police department is sitting on some key piece of evidence that we needed access to. Frequently, when we finally do get the evidence, we wind up clearing the officer. But the commissioner is guided by his own—

VICE CHAIRMAN HORN. Do you know of any other city in America where the chief of police or the police commissioner refuses investigative reports to the principal prosecutor?

MR. PARRY. I'm not aware of this situation being in any other city.

CHAIRMAN FLEMMING. I'd like to thank both of you for coming and testifying and responding to our questions. Thank you very much.

Counsel will call the next witness.

MS. GERE BENICS. John Bunting, Thacher Longstreth.

[John Bunting and Thacher Longstreth were sworn.]

**TESTIMONY OF JOHN BUNTING, CHAIRMAN OF THE BOARD, FIRST PENNSYLVANIA CORPORATION, AND THACHER LONGSTRETH, PRESIDENT, GREATER PHILADELPHIA CHAMBER OF COMMERCE**

MS. GERE BENICS. Would you each please give your full name for the record and your position?

MR. LONGSTRETH. Is it all right if we establish an order in which he goes first and I go second?

MR. BUNTING. My name is John Bunting, chairman of the board of the First Pennsylvania Corporation.

MR. LONGSTRETH. Thacher Longstreth, president of the Greater Philadelphia Chamber of Commerce.

MS. GERE BENICS. Thank you. Mr. Bunting, in your opinion, has the issue of police brutality in Philadelphia had any impact or any effect on the business community, on the ability to attract funds, or the ability to bring in businesses?

MR. BUNTING. I think that the image that has gone out from this city has been—in terms of police brutality, this issue has been harmful in efforts to bring business here. I do not think within the community that the perception of the business community is such that it has caused us to lose any firms. But I do think it has been harmful, because the image that goes out is one of Philadelphia being run by an old-fashioned southern sheriff.

Don't take offense if any of you are southern. I don't [think] that's perceived as being the case, but that is certainly the perception when I travel around the country. And that cannot help but hurt in attracting businesses here.

MS. GERE BENICS. Has the private business community ever approached any of the political leaders or the police commissioner about these issues, any formal meetings?

MR. LONGSTRETH. Yes, we have. I've had meetings with the mayor and police commissioner and with the Philadelphia Crime Commission, which is a business-oriented organization, specifically for the purpose of essentially trying to limit, control crime in the area.

We've had those meetings on a number of occasions on just this subject. And is frequently the case—in some instances I think we've found that the police commissioner and the managing director, the mayor felt we were overly sensitive to the subject.

I think they felt that we were reasonable to the point where some of the changes for which we asked I think had been made a part of the police procedure in Philadelphia in the last 7 years.

If I might, I would like to take just a little bit of a somewhat different position than John on that first subject. I think there is no question that there are a number of people in other cities who would consider coming here to open up businesses of one sort or another who would be adversely affected by the issue of police brutality as it relates to Philadelphia. In fact, we are considered by some to be overly positioned in this area. However, I think you have also to admit that Philadelphia's record as a safe city, which is pretty well established, is also a very important factor that people are aware of and that works to our advantage.

There isn't necessarily a relationship between safety and police brutality; I don't want you to think that the two cannot be separated. It would be wrong if we were to let you feel that there was a total loss in the national vision of Philadelphia as a city where things are not as they ought to be in terms of police protection.

MS. GEREBENICS. You and I discussed this earlier, and Mr. Lennox alluded to it this morning. There seems to be a perception—he didn't limit it to business and I wouldn't either—but, in effect, that there is a trade-off, that, in fact, you have to have a certain amount of brutality in exchange for safe streets. Would both of you like to comment on that?

MR. BUNTING. I feel that within the city, and I'll limit myself to the business community, I think that most of the members of the business community that I know and speak to me candidly on this subject feel that there is a kind of trade-off. Whether that's right or wrong, that's the perception.

I think outside the city—I certainly don't want to make an argument with Thacher. He's much bigger than I am—I do think that outside the city the image that is projected does us harm, that there might be some feeling that this a safe city, even though I think that is an internal matter. I think we believe that here.

I think outside the city we have an unfortunate image as a result of this issue of police brutality. That is what I'm saying. There might be some slight trade-off outside; within the city there is complete trade-off, I would say, pretty much. Most business leaders within the city would make that trade-off. I did not discuss it with you earlier.

MS. GEREBENICS. No, Mr. Longstreth did.

MR. BUNTING. But I do recognize it, and I think most business leaders would recognize it and think that it's accurate. That is their perception.

MR. LONGSTRETH. I agree with that.

MS. GEREHENICS. A lot of people think that much of the problem here is the image that is projected in the city. Have any of the business associations or the chamber of commerce or private business people approached any of the media and discussed with them a balancing and any—

MR. BUNTING. We run for our lives as far as the media is concerned.

MR. LONGSTRETH. John and I have sort of a magic that we exercise with the media: no matter what we say, they don't like it. And I guess in this particular instance we've had—I know I've had—numerous confrontations, I guess you'd almost call it, with the media.

I've had periods lasting several hours with several of the reporters who have been reporting, the local press, their feelings on the matter of police brutality. In many instances, I disagreed with them. I felt the particular cases being used to support their point of view were being overstated and that obviously high-quality performance of the police department was being, in many instances, understated because of this.

Now, I have to say that I come at this from a slightly less than objective point of view, and I'd like to lay this before the Commission. We have a process at the chamber of commerce where every time a police officer is killed in the line of duty we give his family \$1,000, which is raised from the local business community. And we do this within 24 hours at the time of the death of the officer. So the presentation is always made by myself personally and is usually done in the home that has been visited by tragedy recently and where things obviously are not normal.

I might add that the impact upon me is devastating. If you go in like I have and make 75 presentations to the family whose father or brother or husband has just been killed, it's an extremely emotional thing.

So, when I see the price that is paid—and that's 75 police officers who were killed in the last 10-year period in the line of duty—and recognize what has gone on in the police force relating to their deaths, their families, the ripples that go on for some time afterward.

I do think there is a considerable amount of police brutality, which has a very substantial relationship to some of the things that happened in wartime, when you've seen a buddy killed and when your treatment of the other side, so to speak, was not everything that it probably should have been. I think there's some relationship here between some of the things that have happened and that have happened in pretty much close relationship to a violent death that has occurred within the department in the immediately preceding time.

MS. GEREHENICS. We heard testimony earlier today, and I'd just like to share it with you. Do you share—I believe it was Mr. Lennox and

Mr. Coxe both said that the police department here operates as a rather closed institution. Would you agree with that?

MR. LONGSTRETH. I certainly would, yes. I think since the police review board went by the board 10 or 12 years ago that it has been pretty much a closed corporation. I think when you have a mayor who has been the police commissioner and who has been succeeded by a person with whom he enjoys a very close relationship, I think that's something that you might very well expect. And I think that's certainly true.

MS. GEREBENICS. Do you think the concept of an outside oversight agency is a good one?

MR. LONGSTRETH. I always thought it was. I support the police advisory board and felt it was a mistake to do away with it.

MS. GEREBENICS. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. I share your concern, Mr. Longstreth, with how moving it is when police officers are killed in the line of duty. I've been to a few ceremonies; I haven't had the burden or the opportunity you've had in being in the home within 24 hours. But I think personally there's no tougher job in the United States than the law enforcement officer in the urban city.

As far as I'm concerned, the ones who are really doing their work in an honorable way, which are most officers, we don't pay the families enough. But I think, as you've suggested, that there is a difference between the hazards of that work, for which there is no monetary recompense should you be killed in the line of duty, and the few in any human organization, but sometimes in police departments, that are attracted—who abuse their authority. And we have to distinguish between the two of them.

I guess what I'm wondering, as I'm sure you'll agree with that differentiation, what the business community within the city is doing to make clear to the mayor that it is not simply a trade-off of if you have a safe city you must tolerate abuses and discretion of power and you must tolerate an innocent citizen being killed. But the fact is you can have a safe city with a strong, disciplined police force. But it is disciplined to the extent that it doesn't abuse the privileges of citizens that have rights also. Has that message gotten over by the business community, or are people sort of keeping their fingers crossed and saying, "Well, it isn't my problem; go hunter, go bear"?

MR. LONGSTRETH. I think that generally speaking, again, it's hard to speak for thousands of people who are involved in business in the city, but, generally speaking, I think the point that John made applies, that most businessmen feel that the protection which business receives in this city is so outstanding that they are willing to put up with instances which have occurred to somebody in their own family or in their own employment they would consider unbearable.

It's very difficult to differentiate between something that happens to either you or somebody with whom you're very close where police brutality is involved, and where you have righteous indignation and you want instant action, and something that happens to somebody else, where you shrug your shoulders and say, "Well, I'm afraid that's something we just have to accept in return for adequate police protection."

I think that's where an awful lot of business people come from. If they have not had a personal experience with it, I think they're inclined to be probably more receptive to what takes place in this city, to what they feel takes place, than might otherwise be the case.

I must hasten to say that I think there is a difference between what actually happens and what is perceived to happen. There is a separation between the two. And I think sometimes when you ask a question of me, I'm really replying in terms of what I believe has actually happened, rather than the common perception thereof.

VICE CHAIRMAN HORN. As you know, this Commission deals with matters of discrimination primarily. As chief executive of a firm of about 3,500, in this case the university, I'm also involved where people make a lot of wild charges. They do that in every organization. A lot of it might be nonsense.

The problem is what is the process that you're suggesting here to ferret out the difference between the perception and actuality—do something about it. And I wondered to what degree the business community has felt that a sound and internal review procedure, however structured, ought to exist in the city of Philadelphia so that, should these cases come to the fore, before we have thousands marching the streets, there is some way that they should be dealt with, and people know that all the cards are on top of the table, that there aren't a few under the table that are going to be played, depending on how X or Y wants to play them. Is there a study committee within this chamber of commerce that has looked at the administration of justice? I mean, this is an organizational problem, but it seems to me that you should have something to say about it.

MR. LONGSTRETH. Again, you're caught between individuals, many of whom would feel just as you and I would, and between the overall, common attitude of businessmen that, if our police force is such that it's giving us good protection, and it is, we ought to let them handle those things as they see fit.

I do not agree that that is appropriate. I think that the one glaring fault that exists in this police force in this city at the present time is that we lack an appropriate process by which to follow up, outside the department, certain allegations and charges that are made.

Now, lest you think that we at the chamber are derelict in our duty on this, I must tell you that the Crime Commission was formed specifically for the purpose of providing business input. We for the most part—and I'm not copping a plea on this—we, for the most part, by

prearrangement many years ago, unless invited in, so to speak, by the Crime Commission, try to refer these things to them since it's their specialized field, and they operate outside the aegis of the chamber, although supported almost totally by business contributions.

VICE CHAIRMAN HORN. Have the leaders of the business community, when they're making political decisions as to who is backed or not backed in either party or more than two parties, ever made the issue of police conduct a condition upon which they contributed funds?

MR. LONGSTRETH. Not to my knowledge. John is part of that leadership.

MR. BUNTING. No, I would say again—go back into perceptions, if you don't mind—I would say the majority of the businessmen in Philadelphia think that the issue is overblown. The media has spent quite a few years building Frank Rizzo up and now has spent quite a few years trying to tear him down, and there is a feeling that the issue is overblown. And I think that gives people comfort, perhaps. That's why they believe; it's a comfortable thing to believe. In any event, that is what is believed.

I think in terms of the Urban Coalition, where I'm one of the cochairmen, we have had an interesting issue, but, again, as Thacher said, to some extent have delegated responsibility, I suppose, to the Crime Commission. We had Mr. Rendell in for a very, I think, effective morning interview and discussed with him the various points of view.

But I do think in all honesty that the issue hasn't received some of the attention that you're implying it should out of the feeling that the issue has been overblown by the media.

MR. LONGSTRETH. Plus the fact that if you're a businessman and you depend upon effective police protection for your business, whether you're a retailer or a manufacturer or small businessman or what have you, you really don't like to get yourself into any kind of a confrontation position with the police. It's not regarded anywhere as a very healthy thing to do. You want to be friends. You don't want to be adversaries.

CHAIRMAN FLEMMING. I've been very much interested in this testimony. I think I'd like to focus for a moment on the comment that where there is a feeling on the part of business people within the community that the issue is overblown. Mr. Bunting, I assume, from your testimony, that you do not feel that the issue is overblown. Mr. Longstreth does, but you do not feel that the issue is overblown?

MR. LONGSTRETH. Not in total, Mr. Secretary.

CHAIRMAN FLEMMING. I gather that both of you feel that there the basic fundamental issue confronts the community at the present time. Am I correct in that assumption?

MR. LONGSTRETH. Yes, sir, that's right. I would only add this, perhaps correction of my attitude, that there have been repeated instances of the press which I think have been blown out of all proportion to

what actually happened. On the other hand, there has been repeated instances which have never made the press that have gone in exactly the opposite direction.

So that, while I might take exception to some of the stories that appear and some of the so-called facts that are presented, I think there is no question from my own personal knowledge that there are repeated instances in Philadelphia of police brutality, as I think there are in any other big city. And I'm not sure that the apparatus that we have established here is appropriate to root them out and see that they do not happen again.

CHAIRMAN FLEMMING. Mr. Bunting?

MR. BUNTING. I have more difficulty making a comparative statement than Mr. Longstreth does on this issue, I think because I consider myself—and I hope I remain this way—very inexperienced in this area. I'm not inexperienced at talking to businessmen outside the area and knowing how they feel. I have no difficulty in answering your questions there.

Within the area, I've never been at a police station in my life. I hope I continue to hold that record the next time we meet. I have never even come within 150 yards, as far as I know, of police brutality in any form that I've been aware of; and, therefore, I don't feel as comfortable in making that statement as Thacher does.

I think another thing, and that is when I think things—I don't mean to walk away from an issue by saying that things go—the pendulum moves both ways. But I think when we had the mayors, particularly Dilworth and Clark, that preceded this mayor, we had review boards, etc., crime was mounting. Frank Rizzo was elected, I'd say, nine-tenths because of that. Ninety percent of the reason why Frank Rizzo was elected mayor of this city was because crime was mounting. He responded to what was his mandate.

I think that most of the businessmen in this community feel that the issue is overblown. I do not mean to depart from it. I would be one of those who feel that the issue is overblown. I may be just taking comfort from that. I don't know because I have not been up close. But I do feel the issue is overblown.

CHAIRMAN FLEMMING. We're here first because our basic statute was amended a few years ago to include administration of justice, discrimination, and violation of civil rights in connection with justice. We have had a report from our State Advisory Committee, which made very clear to us that there is an issue here and a very serious issue. We've already received some additional testimony to that effect. A field investigation has been conducted here over a period of a couple of months, and we've had the opportunity of becoming [familiar] with that.

MR. BUNTING. Well, you are changing my perception then. I'm quite willing to learn. What I'm saying to you is I don't have the experience at this point to make that judgment.



CHAIRMAN FLEMMING. What I'm getting at is, it seems to me, whether you use the term "overblown" or not, come to the point where you can in effect say that, on balance, there is a basic fundamental issue that State people, dealing with the constitutional rights of people who live in this particular city, the rights of people who live in this city under the Constitution.

Then, I'm concerned about whether or not the business community says, "It's a part of our responsibility, our obligation as citizens to try to come to grips with this issue and to pursue all the remedies that are available to us," including, it would seem to me, going to the Federal Government and asking for help and assistance there.

Some have gone to the Department of Justice, and the Department of Justice has been responsive to some extent. I'm not evaluating that; all of the evidence isn't in on that. But there has been some response to it.

I'm interested in the fact that you are the cochairperson of the Urban Coalition. I've had the privilege of serving on the founding board of the National Urban Coalition.

MR. BUNTING. I'm chairman of the National Urban Coalition now.

CHAIRMAN FLEMMING. That's right, I know you are, and I talk with your president from time to time to be brought up to date on that. Of course, we both know that that came into existence because of the fact that situations like this were festering all over the country. And it was doing a little bit more than festering; they were blowing up all over the country.

I was very much interested, Mr. Longstreth, in your reference to the Crime Commission. A witness, a person who for over 25 years has represented the ACLU, on the same panel with the person representing the ACLU, said that there was a feeling that the Crime Commission was an apologist for the police department at times. Do you pick that feeling up and would you like to comment on that?

MR. LONGSTRETH. Well, yes, sir. I think that any organization that attempts to find a middle ground is usually regarded as an apologist from both extremes, and I suspect that that's true of the Crime Commission.

I think also the attitude of the police department towards the business community is determined to a very substantial degree by who is mayor and who is police commissioner, and we really have two police commissioners in a position of great power here in this city at the present time. And I think, obviously, you probably have a movement toward extremes in police coverage, if you will, that did not exist in the sixties and probably will not exist in the eighties. We will have a change in administration at the end of this year.

But I think I have to come back to a point that John made, and I would be wrong if I led you to believe otherwise. I think that with the exception of some businessmen who through personal experience have had an involvement with an instance of police brutality for themselves,

their families, their employees—with the exception of those, the average businessman does feel that he is willing to put up with “a little brutality” in return for what he considers adequate protection. Now, you get to the point of, What is “a little brutality”? And there, it depends on who you’re talking to, his sort of identification of what “a little” is. And that’s why I want to make this last point.

I want to come back to my feeling that it’s impossible, when you’re speaking for thousands of different people, to be able to specify that a group feels one way or the other. I think it changes very much, and I think that the only thing that is pretty much a common feeling on the part of a lot of us is that the process by which we presently measure these things is inadequate and ought to be improved.

CHAIRMAN FLEMMING. I want to ask, Are there any efforts made to come to grips within the organization of the chamber of commerce or within any other business groups within the community with that feeling, as you put it, that maybe if we’re going to get adequate crime protection, we’re going to have to put up with a little police brutality? Is there any effort made to deal with that issue head on because that, we all recognize, saying that that may be used at times, justified by the end that is achieved. It’s our feeling that any means that violates the constitutional rights of persons is not justified by any means or any end that may be achieved.

MR. LONGSTRETH. Well, again, Mr. Secretary, I think we end up here in a businessman’s viewpoint—that, if you look at the preceding decade, let’s say, the sixties, the pendulum had swung so far in the other direction that it was necessary to have it swing probably over far in a different direction in order to have it end up somewhere in the middle. I suspect that’s where a good share of businessmen sit at the present time. As you know, how you stand depends on where you sit, and the stands that businessmen take on this subject, I think, changed radically as the impact of crime on our city or a particular industry or one particular section of the city may become obvious to people who do business there.

CHAIRMAN FLEMMING. Are there any forums held, any discussion groups held, and so on that come to grips with the issue that you and I have been talking about here?

MR. LONGSTRETH. Yes, sir. I’ve attended several that have been held by the Crime Commission on just that subject. As I’ve mentioned earlier, I sat in on half a dozen meetings with the mayor, the managing director, and the police commissioner over various periods of time on this particular subject, sometimes generally and sometimes on a specific instance that’s been brought up in the press.

But I think we have to recognize the fact that if you are to evaluate to a businessman which is the most important, adequate protection or satisfaction with the purity of the system, I think they’d go for the adequate protection.

CHAIRMAN FLEMMING. The Crime Commission is not setting up sessions where people were asked to confront this issue and think through what the implications of it are?

MR. LONGSTRETH. No, sir.

CHAIRMAN FLEMMING. I go back to, I guess, the first comment that you made in response to your question about the external perception. If there is that external perception, I suspect that there are some of the leaders within the community who are very concerned about that external perception because I assume that the city is still in a position where it does want to attract new business, new industry into the area.

MR. BUNTING. We vitally need it. We vitally need new business and new industry. So, yes, there is great concern.

CHAIRMAN FLEMMING. From that point of view, it's very important to come to grips—

MR. LONGSTRETH. Mr. Secretary, let me hasten to say that I've sat in on, I guess, hundreds of meetings over the years with prospective businesses that would be moving into this area, sometimes manufacturing, sometimes service industries; sometimes large, sometimes small. And through those meetings you get a pretty good feel of what people are particularly interested in. We obviously know that we're interested in taxes and productivity of the labor force and the effectiveness of the education system, things of that sort.

About the only question they ask about matters relating to the police and the actions of the police really is, Is this city relatively free from crime? And the fact that by all the statistical evidence that we can muster, we come out about the best of the 10 largest cities in the country, this is quite satisfactory to most businessmen.

Now, as John has mentioned, in the last year or so, with a great deal of unfavorable press relating to police brutality and in some effect relating to a highly controversial and nationally recognized mayor, I think this question of police brutality probably will be more important in the immediate future than it has been in the past, unless something is done to convince people that it doesn't exist.

VICE CHAIRMAN HORN. Earlier, if I might ask, we had in the record the material comparing certain types of crimes and the rate in major cities. I would like at this point in the record, if there is evidence as to the relative degree of safeness or however one figures it is appropriate, along the lines of your comments, to have that inserted for the 10 major cities.

MR. KRANSON. Mr. Chairman, we do not have that information at this time.

VICE CHAIRMAN HORN. Well, you can secure it, though.

MR. LONGSTRETH. It's easily available. The FBI has those statistics.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. I've been listening to your exchange here. It called to mind another business personality from the city of Philadelphia, I believe, who is also a patriot. His name was Benjamin Franklin.

And there's a statement, I can only paraphrase it, but I remember seeing it on the Statue of Liberty in New York harbor: "Those who would surrender a little bit of liberty for safety deserve neither liberty nor safety."

MR. LONGSTRETH. I used that in my campaign against Mr. Rizzo in 1971 without success.

[General laughter.]

COMMISSIONER SALTZMAN. We heard testimony this morning from a United States attorney, from an assistant State district attorney that there are serious problems in the city of Philadelphia with respect to police misconduct. We also heard that the overwhelming majority of line police officers are fine, law-abiding human beings, but the problem really rests with the command level, the hierarchy of the police department. And there were some strong statements identifying the source of the problem in that area.

Is this something, Mr. Bunting, that you are familiar with—that the United States attorney, the State's assistant district attorney, the individuals here representing the Crime Commission, all of them, there was pretty much of a common agreement that there is a problem in Philadelphia of significant proportions relative to police misconduct, and that part of the remedy lies in the command level, in changing of command level?

MR. BUNTING. I felt that these hearings and whatever happens subsequent to these hearings is going to determine that. And I have felt, quite honestly, that the evidence that has been presented to me to date would suggest that there is a great deal of overblowing of the issue; that, on the other hand, there are, as you indicated, certain evidences.

I think that with anything of this sort that this top person gets blamed or credited with a safe city or blamed for this. So that I have no difficulty at all in accepting the notion that the people at the top set the tone. And the tone, I think, especially in a situation such as this, governs. If the tone is such that no instance of police brutality will be tolerated, I think you'll have a police force that is perhaps not quite as effective as this one, but in which there are indeed very, very, very few instances of police brutality.

COMMISSIONER SALTZMAN. So you do see a connection?

MR. BUNTING. I definitely do.

COMMISSIONER SALTZMAN. Between a good, effective police force and allowing some brutality.

MR. BUNTING. I didn't say that.

COMMISSIONER SALTZMAN. I'm sorry—

MR. BUNTING. I'm saying effective. I'm not saying whether that's good or bad. I'm saying they might be somewhat less effective.

COMMISSIONER SALTZMAN. Because they are harsh?

MR. BUNTING. Because the police officer feels that he is not going to be protected from above and, therefore, he does not as assiduously go about his duties. I think there could be that connection. I think,

on the other hand, if the tone is set that "we'll defend anything you do," or at least that's the suggestion that the officer assumes, then I think that they may be more effective. I don't know; again, measuring effectiveness, they may be more effective. But there will be more instances of excess, no question about it.

COMMISSIONER SALTZMAN. So you do see a little bit of an interrelationship?

MR. BUNTING. Yes, I do. I didn't back away from that before.

COMMISSIONER SALTZMAN. Well, we've had testimony suggesting that perhaps that interrelationship need not exist, that, with effective training, with officers who understand the law and the requirement and the practice surrounding the use of deadly weapons, with followup during the first 5 years of the officer's work on the police force, which sometimes brings important changes in attitudes, etc., etc., there were a number of recommendations that you could have a very effective police force, yet not have an atmosphere in which one tolerates the expression—or the safety of the community with police brutality.

MR. BUNTING. I certainly hope that that's true.

MR. LONGSTRETH. I think that's the goal we strive for. I don't know whether there's any police force in a major American city that has yet found that happy state.

COMMISSIONER SALTZMAN. Do you think there might be some connection with the attitude of the business community that "We have to tolerate a little bit of brutality in order to have safety"—wouldn't that also have an influence on the political climate?

MR. BUNTING. I don't think people say we have to do that. I think Thacher and I have been saying that to some extent. I think the business community has perhaps not done as much as you would like; out of the feeling of taking comfort from the fact that, while we went in the other direction before, we might be going somewhat in this direction now. I don't think it has been a conscious decision that people made that, "We'll accept brutality." I think nearly all businessmen would be as repelled by that notion as you are.

MR. LONGSTRETH. When we were losing businesses on an almost daily basis in the sixties, for example, where we were bleeding to death, and it's still a problem—but at that time it was going primarily to the suburban communities. Now it goes to other parts of the country as well. But then, most of the business losses of Philadelphia, I think—mostly for the northeastern cities—was to the suburban community.

One of the highest reasons for departure of business was crime fear, some of it justified and some of it not. It's not what is true that counts; it's what people believe to be true. And very frequently a mugging in a parking lot became overblown tremendously in terms of the businessman's attitude towards his location, and he starts looking for someplace else.

And, frankly, there's no question about it from the business standpoint that we welcomed, for a while certainly, and I think pretty consistently have felt that way, the very effective work done by the police force in Philadelphia in containing crime to substantially lower levels [than] in most other big cities. If you, for example, attended the Police Athletic League dinner here a week or so ago, there were over a thousand people at that affair, and almost all of them were businessmen. And to a very substantial degree, I think, it was a reflection of their gratitude to what the department has done for them.

And it would be wrong to present it as otherwise. There is a very strong feeling of warmth and appreciation on the part of most businessmen towards the police department. And I think you can't evaluate the attitude towards whether or not police brutality is being sufficiently or appropriately followed up in terms of that overall feeling of gratitude that we're safer here than we would be elsewhere.

CHAIRMAN FLEMMING. One point that Commissioner Saltzman made—for example, earlier today we had testimony from Mr. Parry, the chief of the police brutality unit in the district attorney's office, that at the present time there are no police department written standards dealing with the use of deadly force. The police department will be before us, and we will have the opportunity to ask them the same question. But that comes from the district attorney's office at the present time. They said there were at one time some standards, but they apparently faded out. It's pretty hard to carry on a supervisory or training program if that's true.

COMMISSIONER SALTZMAN. One final question. Does the business community or the chamber of commerce in particular—I'm sure you can't generalize with the business community—but the chamber of commerce, does it support the city ordinance 1063, the opening up of the police department in effect to public scrutiny?

MR. LONGSTRETH. We have not taken a general stand on this, frankly, for the reason that we would find, I think, a pretty good size split down our middle. I happened to personally and have appeared in a number of meetings—not necessarily the specific language of that ordinance, but certainly something along those lines; and have been assured by the administration that the changes which have both taken place and are in the works, outside the limitations of the specific ordinance itself, were going to bring about the end result of what we would hope to achieve through the ordinance itself.

Now, again, this becomes somewhat academic because I think you're going to find that, with the new administration coming in 9 months from now, there will be a rather substantial change in the management of the police department and, I presume, in the overall atmosphere in which it operates.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. No questions.

CHAIRMAN FLEMMING. We appreciate very, very much your coming here and sharing with us frankly your candid views on this coordination.

MR. LONGSTRETH. It's an issue that can get everybody very mad at you.

CHAIRMAN FLEMMING. It has been very, very helpful. Thank you very, very much.

Counsel will call the next witnesses.

MR. BELL. Dr. Ethel Allen, Mrs. Béatrice Chernock, George Schwartz, James J. Tayoun.

[George Schwartz, Beatrice Chernock, James J. Tayoun, and Ethel Allen were sworn.]

**TESTIMONY OF GEORGE SCHWARTZ, PRESIDENT; BEATRICE CHERNOCK AND JAMES J. TAYOUN, MEMBERS; AND ETHEL ALLEN, FORMER MEMBER; PHILADELPHIA CITY COUNCIL**

MR. DORSEY. Before questioning begins, Mr. Chairman, I would ask that, since the council members are accompanied by counsel, counsel would please identify themselves for the record?

MR. ALBERT. Sheldon Albert, city solicitor, counsel for Councilman Tayoun, Councilwoman Chernock, Council President Schwartz.

MR. DORSEY. Thank you.

MR. BELL. Would you state your full name, title, former title or city official, number of years on the job, starting with Mr. Tayoun?

MR. TAYOUN. Question again? I was busy pouring the water.

MR. BELL. Your full name, sir, your title, and the number of years in your present position.

MR. TAYOUN. James J. Tayoun, first district councilman, chairman of the committee on public safety. I am now completing my first term, a 4-year term.

DR. ALLEN. Dr. Ethel Allen, currently secretary of the Commonwealth, formerly city councilwoman at large, serving a second 4-year term of which I served 3 years and 1 month.

MRS. CHERNOCK. Councilwoman Beatrice K. Chernock, councilwoman at large. I am now completing a second term in office, each term being 4 years.

MR. BELL. Thank you. Mr. Schwartz?

MR. SCHWARTZ. George Schwartz, member of the council since 1960, presently the president of the city council, having held that position since 1972.

MR. BELL. Mr. Schwartz, as president of the city council, could you explain your duties and responsibilities?

MR. SCHWARTZ. Well, as president of the city council I'm a member of all standing committees. I preside over the stated meetings of the city council. I also serve as chairman of the rules committee of the city council. I serve as chairman of the committee of the whole of the city council.

I have the prerogative of hiring and firing the employees of the city council, the only exception being the chief clerk of the city council, who was elected by the members. I am elected, by the way, by the membership of the city council.

MR. BELL. Who selects the committee assignments?

MR. SCHWARTZ. I make all committee assignments and appoint the chairman and the vice chairman of each committee.

MR. BELL. You also have the authority to remove chairpersons of the committees or members of the committees?

MR. SCHWARTZ. I don't believe so. There's nothing in the rules, that I can remember, of the city council that would give me that prerogative. I can fill vacancies, however, on any committee.

MR. BELL. Is there any fixed term for those assignments?

MR. SCHWARTZ. They last for the 4-year term of the council.

MR. BELL. What factors do you consider in selecting a council member for a committee or as the chairperson of a committee?

MR. SCHWARTZ. I try to look at the background of the particular person, his capability to serve on that particular standing committee or act as chairman of that particular standing committee, and, of course, it's not too difficult when you have 14 standing committees. So, automatically, each member of the majority party is a chairman of one of our committees.

MR. BELL. Who selects what committee bills introduced into the council are referred to?

MR. SCHWARTZ. It's normally done by the chief clerk. In other words, when a bill is introduced, I announce publicly that the bill will be referred to the appropriate committee. Now, it's very rare that the chief clerk will come to me and ask me to what committee that bill should be assigned. He's been there for many, many years. He was the assistant chief clerk for many years, and he automatically pretty much knows what committee it belongs in.

MR. BELL. Is it the subject matter of the bill which determines what committee it is referred to?

MR. SCHWARTZ. Normally, or the location if it's a piece of property, if it falls within a particular district.

MR. BELL. And to what committee are all bills referred to dealing with the operation or policies of the Philadelphia Police Department?

MR. SCHWARTZ. They normally would go to the committee on public safety.

MR. BELL. Under what circumstances would they go to another committee?

MR. SCHWARTZ. If it had to do with money, it might go to the finance committee. If it had to do with pensions, it might go to the labor and civil service committee.

MR. BELL. So the committee on public safety, then, does not review annual budget submissions for the police department?



MR. SCHWARTZ. No, they do not. I can read to you, if you would like me to, the jurisdiction of the public safety committee, if it would be helpful.

MR. BELL. Okay, thank you.

MR. SCHWARTZ. The committee, consisting of not less than five members, "all matters relating to the police and fire departments, civilian defense and its coordination with Federal and State governments, fire codes and fire prevention programs."

MR. BELL. Thank you very much.

MR. TAYOUN, could you explain briefly the duties and responsibilities you have as chairperson of the committee on public safety?

MR. TAYOUN. To review legislation referred to our committee and to determine which and in what priority it should be scheduled for hearing in order to determine whether or not as a result of these hearings the legislation should become law or not.

MR. BELL. Who has the authority to call meetings of the committee and to schedule public hearings?

MR. TAYOUN. Which committee?

MR. BELL. The public safety committee.

MR. TAYOUN. The chairman.

MR. BELL. Is that the sole prerogative of the chairman, or can the committee schedule a meeting or a hearing by vote?

MR. TAYOUN. I'll refer that question to President Schwartz.

MR. SCHWARTZ. There is a method by which a meeting can be called by a different group than the chairman calling the meeting. It's very unusual, and I don't recall it being done since I've been in council since 1960.

MR. BELL. Could you explain a little what the method is, sir?

MR. SCHWARTZ. I think it's by vote of a majority of the members of the committee. The council also can do it. In certain instances where the committee has had the bill for too long a period of time, the council could then by a majority vote bring the bill out on the floor of the council. This is under the rules of the council.

MR. BELL. Does that same procedure apply to scheduling public hearings of a committee, in general, and the committee on public safety, in particular?

MR. SCHWARTZ. It would apply to all committees. The same procedure would apply.

MR. BELL. Now, this question I'd like to address—

VICE CHAIRMAN HORN. Is counsel going to put the rules in the record at this point, the matter that you discussed?

MR. BELL. With the permission of the Chair, we would ask that the rules be entered into the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. BELL. To what extent does the city council, in general, and the committee on public safety, in particular, have authority to exercise oversight over the police department? To what extent has it exercised

authority, and to what extent should it? And I will address that to all of you, beginning with Mr. Tayoun.

MR. TAYOUN. I would defer, if you don't mind, not begging the question, to President Schwartz. I think he's in a better position to answer it.

MR. BELL. Mr. Schwartz?

MR. SCHWARTZ. I don't believe that the committee by its structure has the power of oversight. I don't think any other committee has. We operate in the city of Philadelphia under what is known as a strong mayoral form of government and a weak city council form of government. This was changed by the 1952 home rule charter; prior to that it was just the reverse.

The only way that we can do what you suggested is either by investigation, which we have a right to conduct with the right of subpoena power, or by exercising the purse strings because we do still have control of the budget. But we do not have what is normally known as oversight power, and the committee would not have oversight power.

The structure of the city is such that you have a managing director who is superimposed over the 10 service departments of the city, the police department being one of those 10 service departments. And he is directly responsible, the managing director, to the mayor.

The city council does not approve the appointments by the mayor, with one exception, and that is the city solicitor. All other department heads, we do not confirm under our home rule charter or members of his cabinet, the reason for the city solicitor being that he represents the city council as well as the mayor.

MR. BELL. The city council does, of course, have the authority to pass legislation setting forth specific policies and procedures in regards to those service departments, including the police department; is that correct?

MR. SCHWARTZ. Subject to the imprimatur of the home rule charter. There are certain do's and don'ts in that charter. In other words, we can't create a new department. There are many things that we can and many things that we can't do under the home rule charter, subject, of course, to State law.

MR. BELL. Mrs. Chernock, Dr. Allen, do you have any comments on that?

DR. ALLEN. No, sir, I think he's given a fair assessment of what was my realization of my limitations as a member of the city council.

MR. BELL. Mrs. Chernock?

MRS. CHERNOCK. I agree.

MR. BELL. Mr. Tayoun, you testified on August 4, 1978, before the subcommittee on crime and corrections of the Pennsylvania House and stated that you had obtained from the police department findings and records of incidents of alleged police misconduct which the subcommittee was at that time investigating. I was wondering whether you had any success in doing that and what you obtained or discovered, and what conclusions you can draw?

MR. TAYOUN. What specifically did I ask for or did I say I would get?

MR. BELL. You stated you'd get a total report of the police department's findings and records concerning incidents of alleged police misconduct which the subcommittee was studying at the time.

MR. TAYOUN. We have received subsequent to that much evidence from the police department, as well as from interest groups clamoring for the passage of legislation that is now undergoing hearing—or in between hearings in my committee. What it is exactly I received, I cannot remember at this time because they have been in my hands for over several months and, of course, time fogs exactly what it is that is now in my files.

MR. BELL. You also testified that you obtained a point-by-point rebuttal from the police commissioner as to the allegations that were put before the subcommittee. I'm wondering whether the police commissioner has responded and what that response was.

MR. TAYOUN. Well, the allegations we received from the subcommittee were pointedly general and copies were disseminated. Once we did get copies from the subcommittee to the police department, and I believe the commissioner did address himself to that in testimony before us, regardless of how little it was. He did give us a rebuttal to that; he did mention it. They did not give us a point-by-point allegation, basically, when they gave us their report.

MR. BELL. Has the committee made any followup request from the police department following the hearings you are referring to?

MR. TAYOUN. We are now at the stage in our deliberations where we have just finished assessing testimony pro and testimony against the proposed legislation before us with great difficulty, and, of course, we don't have the staff necessary to do the job that we would like to see done. We have managed, finally, to prepare packages for the rest of the members of the committee for their deliberation. And in short term, we will have the public meeting which will discuss the merits of the legislation and the testimony that came before the committee from all sides of the spectrum. At that time the committee will decide whether or not, in public meeting, the legislation has merit enough to be recommended to counsel for placement on the calendar and for possible passage.

MR. BELL. The legislation to which you refer are bills 590 and 1036?

MR. TAYOUN. 1063.

MR. BELL. 1063; I'm sorry.

MR. TAYOUN. Yes, sir.

MR. BELL. Has the committee sought and obtained any of the 179 civilian complaints against the police that are referred to by the police commissioner in his testimony on December 18?

MR. TAYOUN. Yes, we have.

MR. BELL. And has the committee analyzed the department's investigation?

MR. TAYOUN. It's part of the package that has been prepared.

MR. BELL. Can you state now what conclusions you may have drawn from that—

MR. TAYOUN. No, I can't. I can't speak for the members of the committee, and at this particular time I don't intend to speak for myself.

MR. DORSEY. Excuse me for a moment. I would ask, if I may interject, whether the package which has been prepared by the committee would be available to the Commission for its consideration and whether that could be submitted for the record?

MR. TAYOUN. I don't think it's my position as chairman to make that available to you because you're not an elected councilman in this city, and it's not your position to view the legislation in matter, because what you say or don't say isn't going to affect my decision as a councilman.

MR. DORSEY. I should make it clear that we didn't want it for the purpose of interfering in any way or injecting ourselves into the process, but rather that it seems as though the information to which you referred has significant data in it with respect to complaints and complaint analysis of the process by which complaints to the police department about police misconduct were contained, and not for the purpose of having any influence with respect to—

MR. TAYOUN. After the council—yes, sir?

MR. ALBERT. I have not seen or reviewed this package that Councilman Tayoun is referring to. I shall review it, and then I will be in a position to advise him as to what his legal rights are, what his obligations are.

MR. DORSEY. I would then ask, if you would, having had the opportunity to review it, formally refer your decision with respect to its availability to the Commission at that time.

MR. ALBERT. It would be my pleasure.

VICE CHAIRMAN HORN. I take it, just so I'm clear, counsel, that Mr. Tayoun is here under subpoena; are those records also under subpoena?

MR. DORSEY. Not at this time.

VICE CHAIRMAN HORN. But they can be at a future time?

MR. DORSEY. If you so direct.

MR. BELL. There has been much dispute over the cost to the cities of judgments and settlements in civil rights police lawsuits. Has the committee on public safety obtained from the law department a specific breakdown of the obligations that the city has paid in the recent years?

MR. TAYOUN. No, it hasn't. The—

MR. SCHWARTZ. May I suggest, sir, that it wouldn't normally come to the public safety committee, nor would they be interested in it. That would happen and occur by way of a transfer ordinance that would come from the administration to the council in order to provide the funds that would be needed over and above what is budgeted to pay any claims. And normally that legislation would go to the appropriations committee of the council, which would conduct a public hearing on such a transfer ordinance.

MR. BELL. I was really thinking of it more in the capacity of the city council committee on public safety to investigate the need for possible legislation and, as part of that, to determine how serious the outflow of money is from the city treasury for the payment of settlement for judgments of these court cases.

MR. SCHWARTZ. We'll probably be getting into that area because we are beginning our budget hearings starting tomorrow morning. And normally at some time during those budget hearings, when we are concerned with the law department and the requests, there usually is a question about the need. We not only find it, however, in police cases that you referred to, but more so in what I would call negligence cases. And it's been my experience in the last 6 or 7 years that there has been requests each and every year for additional funds required to pay either a verdict obtained in court or an out-of-court settlement.

MR. BELL. These are specific requests for specific cases?

MR. SCHWARTZ. No.

MR. BELL. Or is this for payment of the annual—

MR. SCHWARTZ. It's a lump sum that is asked for to cover a number of matters. Now, we have on occasion questioned the city solicitor's office publicly as to the need for the funds. And then we do get down to an explanation of what cases, what type of cases, what the amount of the verdict was, what the verdict could have been if they had settled it out of court, etc.

MR. BELL. Well, part of that request for a transfer of funds, if you know, does the appropriations committee receive a specific breakdown from the law department on judgments and settlements for police cases, or does it tell which are police cases?

MR. SCHWARTZ. The answer, I think, would be no. It could only be determined by the questioning at the public hearing by the appropriations committee or, as I said, in the original allotment which is set forth in the budget, which is supposed to be sufficient for the full year.

MR. BELL. I would like each of you to comment on your perception, as elected officials of the city or former elected officials, of whether or not there is a problem in the city of Philadelphia of a police misuse of force. If there is a problem, what institutional or departmental factors it can be traced to, and, if you don't feel that there is any serious problem, I would like an explanation of what you think the cause is of the tension and polarization in some segments of the city and the police department. Let's start with Mr. Tayoun.

MR. TAYOUN. As chairman, I find myself in the situation where I have had to deliberately bury my feelings and thoughts on the matter so that I do not in any way influence legislation that is now under my jurisdiction and for which I have the responsibility of seeing that it runs its course without any influence from me.

However, there are some points that I would like to make that touch on the entire picture, which you're finding out covers every segment of the community. For instance, we look at the police from the con-

stituent's viewpoint. We have people in many cases cry police brutality and are simply crying wolf. Then we have segments of the community where there are obvious cases of police brutality taking place to the point where it is fairly documented, the police themselves are prosecuted and punished, and the city as a result is forced to make some sort of payment and redress.

It is obvious to us, looking at it from a policeman's viewpoint, they have a continuing deterioration of morale. On a visit to some of the police districts, we have gotten the feeling from questioning many policemen that they feel they are being pushed into a solitary role, not through their choosing as public servants, but through creation of their role in society by the media.

There are many policemen today who at one time—quoting one policeman—would stop his automobile, walk into a grocery store because he saw through the window somebody he did not recognize just to do a check on whether or not that person was in there, from his own good instinct, planning something nefarious. Today he says, "I will not go into that grocery store unless there is a holdup ensuing. I'm not going to stop unless I see it."

The preventive measure is being taken away because the average policeman says today, "I have to spend half of my time as a policeman justifying why I frisked someone or handcuffed him or pushed him or told him to shut up and sit down."

Police directives today which are now in force, which are being assiduously followed, directives 127 and 127-A, create a great deal of paperwork for a policeman. The average policeman, once he's involved in making an arrest has to constantly say to himself, "What am I doing now that's going to cause me to be brought up front?"

We have questioned the heavy-handedness of police enforcement, of police abuse, and we found to our surprise that in the life span of a policeman it is seldom you will find he has fired his revolver in the course of his duty more than once or twice. Yet there are some policemen who in a short space of 2 years have fired it four or five times. The makeup is different. I've questioned some policemen—20 years, 30 years, 10 years, 5 years—who haven't fired a gun.

The average police abuse report—the records will probably be made available to you; it should be no secret—the police abuse report, verbal or physical runs about one and a half police reports per month per police district. We have checked these out in the course of going through the district.

If we make these available, as the legislation indicates, and the ability to file more reports and the ability to file reports made through the library, through ACLU offices, the forms will then increase the number of reports filed against the police. We're not sure yet; we don't know yet. That's part of the legislation before us, whether or not we should expand the ability to file reports other than through police stations themselves where a police inspector or a police captain or lieutenant comes to you and helps you fill out the form.

Some people say the police discourage people from filing such complaints. We have not found this out to be. We are not sure yet. So you can go on and on and you can pass the buck to 10 different people on both sides of the spectrum. What remains to be seen is whether or not the problem can be addressed through legislation, or whether or not the time for such legislation has already run its course.

It's obvious to us that the legislation introduced was weak. Many things had to be introduced and the two authors of the legislation did not in any way sit down and draft it from birth; they followed it through at the request of the civic group.

MR. BELL. Thank you, Mr. Tayoun. Mr. Chairman, I pass it over to you.

CHAIRMAN FLEMMING. You want to give the other members of the council the opportunity to respond?

MR. BELL. Dr. Allen?

DR. ALLEN. Thank you, Mr. Counsel. I'll tackle the last thing first before it slips my mind. I just reminded Councilman Tayoun that he is under oath, and when he says that the legislation was never drafted by the people who introduced it, Councilman Blackwell and myself, he may not be conversant with the fact that I worked very carefully and very assiduously with the individuals who drafted that ordinance and that there were many, many meetings in my office to which he was not privy, because I had no knowledge of what committee the bill would be assigned to. I would not want the Commission to have a partial misrepresentation by Mr. Tayoun as to what part Councilman Blackwell and I did play in this entire matter. You can answer when they ask you a question, just shut up.

MR. TAYOUN. Am I allowed one aside?

DR. ALLEN. The question posed is whether or not I as an elected official and then councilperson view the situation as one of a severe nature, which in my opinion justified the introduction of legislation to correct the measure.

I call upon those of us who are citizens here in Philadelphia to recall, as far back as 1969, the situations that began to develop and became a matter of course in the ensuing years that I believe were reported to the Commission on Civil Rights as matters of great concern to the citizens in Philadelphia, which we interpreted to be injudicious use of police force in certain situations, which is commonly referred to now in the parlance of police brutality.

There's the incident of the schoolchildren and the police department at the board of education at 21st and the Parkway. There was the incident of the Black Panthers, which received nationwide publicity by virtue of the fact that the then-Commissioner of Police Frank Rizzo undressed all of the Panthers and had them photographed for the edification of certain individuals, and that picture appeared in every newspaper across the Nation. Abuse of an individual personal right is police brutality in my interpretation.

There's the Wilkenson case which some people probably would not even consider police brutality. Yet in the reversal of the verdict handed down against Mr. Wilkenson, it was shown that injudicious force, again by the police department, especially homicide detectives, created an atmosphere whereupon an individual was falsely found—was accused of a crime, then erroneously found guilty of said crime, and that the decision was later reversed once judicious pursuit of activities was provided by the Department of Justice on the Federal level.

There is the *Cradle* case, which went to court, where many citizens witnessed what they assumed to be alleged police brutality and testified the same. But it was a Federal case tried in the U.S. Attorney's jurisdiction, where the jury is drawn from people from all across certain regions of this Commonwealth of Pennsylvania, and not necessarily Philadelphia citizens.

The police in that case were adjudicated innocent, and I have no argument with a jury of their peers finding a verdict that is consonant with the amount of material that they were able to digest at those hearings. Yet and still on the face of the matter, there was again the appearance of alleged police brutality.

Since that time we've had a number of cases in the city of Philadelphia whereupon individuals with their hands cuffed, most times behind their back, were shot in attempting to escape.

I am, besides being a former member of city council and a current secretary of the Commonwealth, a very astute physician, and I know that physiologically it is nearly impossible for any individual to run any long distance while hands are cuffed behind their back because of the lack of balance that is provided by that type of maneuver. Therefore, it's one of the reasons why the police put your hands behind your back and cuff them there.

Besides that we have seen on national television when the police department executed its maneuver against the organization called MOVE in the city of Philadelphia—we saw the injudicious use of police restraint by police officers for the edification of all people who were sitting there watching the news. And it was replayed, and it was put in every magazine and every newspaper across the country.

There does exist a definitive problem. And this problem has led to tremendous community tensions, regardless and irrespective of what our astute business leaders, some of our citizens may feel, some of the elected officials may feel. The problem is one of serious magnitude. Mr. Tayoun refers to 127-A and 128—are they the two numbers, James?

MR. TAYOUN. 127 and 127-A.

DR. ALLEN. 127 and 127-A, which I hope you will have in your possession, gentlemen, because you will find that 127 and 127-A are virtual word-by-word extrapolations from bill 1063.



Apparently the police department in its wisdom, while not infinite and only at times present, saw fit to extrapolate from the bill those measures that they found definitively acceptable to them. However, the council in its wisdom, for whatever reason the chairman of public safety may have had, did not see fit to have public hearings on the bill as expeditiously as I and many other folks deemed necessary, and to the degree and the extent that findings would have been germane at that point, and that the matter could have been settled and people could at this point in time feel that there was some recourse open to an ordinary citizen where a matter, an allegation of police brutality may occur.

I feel, gentlemen, that it's a wise circumstance for you to come to the city of Philadelphia and to look into this matter. At the time of the MOVE incident, we took the matter up with the Attorney General of the United States, Griffin Bell, and we explained to him that we saw a pattern developing in the city of Philadelphia that we thought very clearly infringed on the civil rights of individuals, particularly minority individuals.

Speaking as a member of a minority race, we are just about tired of it. It's bad enough to have to exist in a situation where the environment and the economic situation is detrimental to your well-being, but to have the additional mental harassment of knowing that your blackness or your brownness or your language barrier becomes an additional threat to you in the right circumstance—because in my opinion, and solely in my opinion, there has been a dereliction of duty on the part of those individuals who head up the police department.

I speak of the cases—Mayor Rizzo's allegations whatever a policeman does, you know, he'll defend him to the zenith, and Police Commissioner O'Neill's repeated statements that there is no brutality in the police department. Notwithstanding the fact that in my investigation we've found evidence to the fact, and I think it was testified to here earlier that the city of Philadelphia may have awarded over a million dollars in court awards in the last 2-1/2 years, there's still the statement to the effect that there does not exist any police brutality or that policemen per se are not capable of brutality.

I'm not indicting an entire police force; for the most part I would say 85 to 90 percent of the policemen in the police department in Philadelphia are exemplary officers, and they do an absolutely marvelous job. But if 10 percent or 5 percent or 1 percent or 0.1 percent infringes upon the rights of any individual, in the process of that infringement takes that individual's life or disables them in any degree, then they strike a chord of improper conduct that resounds through the entire department.

So in closing, gentlemen, I would like to say that it is a serious situation. The business leaders that I listen to here apparently do not agree. Most business leaders in this community don't live here, and when 5 o'clock comes, they adjourn to the safer bastions of their own environ-

ment. I would submit to you that, if you really want to know what the concerns are, the people of the city of Philadelphia will be happy to tell them to you. Thank you very much.

MR. BELL. Mrs. Chernock, would you like to comment?

MS. CHERNOCK. Thank you. I, too, concur that the mood of the city of Philadelphia is a very ugly one and a very dangerous one because the dichotomy between the uniformed men and women in service and the civilians seems to be deepening or worsening. Now, I suspect as a result of many influences in a large city where unemployment is escalating, where there certainly is a need for a greater kind of input from a community, that the accountability to which, of course, this legislation will address itself is of great importance.

Unfortunately, frequently the stories which appear in the communications media may not be incidents to which many of us who are in city council—or should I say, fortunately?—are aware, and so we must, then, reserve an opinion based on what we read and what we view in the media.

However, because of many communications that I know my colleagues and I have received about the need for monitoring the kind of service that men and women in uniform have displayed, have given, I think legislation of this kind is absolutely essential to the city of Philadelphia.

In fact, I would like even to continue before we have the public meeting to make the determination that we have continued meetings with our constituents in public hearing so that additional testimony could be revealed from the men or women who were probably in a situation where there may have been police brutality. I think it's essential that we continue to open the lines of communication and that we certainly make the citizens and the residents of the city of Philadelphia aware of not only our concern, but certainly a determination to improve the service.

And I think that in that way the uniformed officers will have an opportunity, those who really do not need this kind of legislation, to be viewed from the vantage point that they should be viewed because at this point I think most people view anyone in uniform as almost being a threat. Now, I would like to have that eliminated because I think it's so essential, especially that children view the role from a different viewpoint. I think that the attitudinal change which will result when legislation is finalized will not only improve the climate in the city of Philadelphia, but make all of us aware of the fine service that many of the people who serve in the capacity that they do have certainly extended to the city.

MR. BELL. Thank you. Mr. Schwartz, would you like to comment?

MR. SCHWARTZ. Yes, I would.

You're hearing a difference in philosophy because of the difference of political persuasion and because there is an election imminent to some extent.

My problem—first of all, I'd like to say that this is not the only problem with which the city is faced, this question of unnecessary or undue force or the use of the word "brutality." We have housing problems. We have educational problems. We have financial problems. We have landlord and tenant problems. And there are many groups that are just as much interested in those problems as they are in this particular matter that is before this Commission, and we hear just as much from those groups and we get just as much demonstration and request for legislation in those areas as we do in this particular area. So, I want to make that very clear.

I don't know how I would vote on this legislation if it comes before the entire council. My reason for saying that, and this has been brought out before, I cannot put myself in the position of a policeman very well.

Is there undue and unnecessary force? Yes. Does it exist in Philadelphia? Yes. Does it exist in other large police forces? Yes. The question is to what degree.

I don't care what legislation you pass, you're always going to have some bad apples. You're always going to have a few more or less that will not obey the law or that will not obey the rules and regulations laid down by their superiors. You'll always get some policemen who are gun happy, but they are very few and far between. The thing that disturbs me is, What effect will this have on the morale of the police department?

As I say, it's been alluded to before, will that policeman—he has to make a split-second judgment—will he say to himself, "Why should I do something that I may be sorry for later on?"

Now, you're talking about a police force of about 8,000 or 9,000 men in the city of Philadelphia, roughly. Their lives are on the line every day and there is plenty of crime in the city of Philadelphia, as there is in other big cities. There are many people out there with guns, knives, all kinds of weapons. These policemen work 24 hours around the clock and have to go into what I would call some pretty vicious, dangerous neighborhoods.

What is he going to do if he faces that split-instant decision? Is he going to walk away? If we have the type of legislation we're talking about, what would happen to his morale?

I know a little something about it because I'm president of the Heroes Scholarship Fund of the city of Philadelphia that provides scholarships to children of policemen and firemen who were killed in the line of duty. It also provides scholarships for those who were disabled in the line of duty. And, gentlemen, there are many, many that fall into that category. There are some 4,000 children in the pipeline waiting for scholarships. So, that's not an easy answer.

I think that, and I advocated this, that there is more training needed. I don't think they get enough training at the police academy at the present time, especially in the do's and don'ts, and I think that each

year there ought to be additional training given to these policemen in just what they can do and what they can't do. I believe I so testified at the hearing that was held by Mr. Tayoun's committee.

So I would also take the position that this has been blown completely out of proportion by the media, and I want to say that it is not the people that make the rules; it is the media that makes the rules.

What headline does the media use? What page do they put the particular story on? How many columns do they give to that particular story? How many days do they continue and continue and continue to publish that story? How does television and radio play the particular story? What part of it do they show you? Do they show you the officer that was shot at the MOVE headquarters, or do they just show you one of the persons who is being removed from the building and who is being beaten? As far as I know, the person who was being removed was beaten, but this occurred after a policeman was shot to death at that same location. You've got to understand the circumstances. You've got to understand each individual case.

It's unfortunate that we have to have police departments. I believe the budget of our police department is about \$150 million in the city of Philadelphia, and, for a budget that is a little over a billion dollars, that's awfully high. That's the biggest allocation of any department in the city of Philadelphia, goes to the police department. I think that pretty much answers itself, and the police department would love to have more money and request more money.

Crime is there; crime is in every big city. What do you do about it? Do you dismember the police force? I really don't know the answer. So, those are my comments.

MR. BELL. Thank you. Mr. Chairman, I have no further questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. No questions.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Let me pursue with you, Mr. Schwartz, if I might, some of your later comments before I get back to some of your earlier testimony. You expressed a worry that police will say that, "Why should I do something which I will be sorry for later on?" if different types of tightened regulations on the process for reviewing alleged violations of misconduct occur.

You talk of the split second that we all know, during which we all know an officer must make a decision, sometimes between life and death. I wonder—I'm certain you aren't talking about a person being handcuffed with his hands behind him and any split second there when an officer draws his gun and shoots at him. That's what we're talking about. We're not talking about—or at least I'm not talking about, as I said earlier, I've got the deepest feeling for the toughest job that society, that policemen have. But when you've got a tough job and you bear another human's life in your hands at the end of your gun and that gun presumably operates under law, and you might or might not

have a gun—and I'm not worrying right now about the people that have a gun, very frankly—I'm worrying about the people that don't have a gun and that are shot in the process.

And I'm saying, What would you suggest as a process that ought to exist so that the bad apple, or whatever you want to call it, can be weeded out of the police department and not tarnish 99 percent or 95 percent or any other figure you want to talk about?

Those are the cases that I think in good administrative practice a legislative body ought to be concerned about in your various roles. You control the budget. You can hold hearings. The fact that you don't is your decision.

I mean, Congress didn't hold hearings on a lot of things until they got used to asking questions of the President. They let a lot of Presidents run wild; they let a lot of Federal agencies run wild. But now they started holding hearings, finally realizing that they hadn't done everything about oversight for 25 years in this country. I guess I'm just asking you, What do you see? You were elected; you've got a responsibility. What are you going to do about it?

MR. SCHWARTZ. Well, first of all, we would have to change the charter of the city of Philadelphia to do what you are suggesting. I tried to explain earlier just what our charter, what powers the charter gives the city council.

VICE CHAIRMAN HORN. I heard that, but let me be sure I heard it accurately. You said, and I'm well aware, that this form of government is a strong mayor, weak council. But I also heard that you do act on the budget. You can decide whether the police department gets anything or how much or to what degree. You can cut out an office in that budget. And I assume you can add funding.

MR. SCHWARTZ. That's correct. You cannot cut out an office, but you can cut the lump-sum appropriation.

VICE CHAIRMAN HORN. Can't you write in an appropriation prohibition that said none of the funds will go to pay the salary of the police commissioner or anybody else unless this happens?

MR. SCHWARTZ. No.

VICE CHAIRMAN HORN. You are about the only legislative body in the country that cannot write in that prohibition.

MR. SCHWARTZ. We cannot do that. We can reduce the lump sum is what we can do. We do not have a line-by-line budget. We had that before this new charter.

VICE CHAIRMAN HORN. Now, is it a lump sum for the police department or the whole executive?

MR. SCHWARTZ. For every department of the city.

VICE CHAIRMAN HORN. I want to get it clear, though. Could you cut just the police department?

MR. SCHWARTZ. Yes.

VICE CHAIRMAN HORN. But you couldn't cut functions within the police department?

MR. SCHWARTZ. No. We have nothing to do with the actual operation of the police department. That comes under the managing director. First, there is the police commissioner himself who runs his department. He is subject to the managing director, who is superimposed over the 10 service departments, and finally to the mayor himself.

VICE CHAIRMAN HORN. As an executive that has to go to a legislature to get money, I find executives paying lots of attention to legislative bodies that want to cut their lump-sum appropriation. I listen to those kinds of people who have the power to do that.

MR. SCHWARTZ. Two of my colleagues sitting here—they voted against the budget completely, completely. If we follow that tactic, we'd have no budget in the city of Philadelphia, and I don't call that responsible.

VICE CHAIRMAN HORN. No, but you can knock 5 percent unless people come to an agreement with people that are politically elected.

MR. SCHWARTZ. Come to some sort of an agreement of what?

VICE CHAIRMAN HORN. And you can hold hearings on problems. You can hold hearings on this bill. You can hold hearings on any sort of thing.

MR. SCHWARTZ. The committee did hold a hearing on this bill.

VICE CHAIRMAN HORN. After how many years?

MR. SCHWARTZ. I don't know.

VICE CHAIRMAN HORN. We will pursue that in a minute, but I'm just saying that there are tools available even to a weak council structure that can be used. I guess I'm just asking you, what would you do to solve this problem?

MR. SCHWARTZ. If I was that policeman and I was handling a prisoner with handcuffs behind him who ran away, I don't think I would use a gun. I don't condone that kind of conduct. I don't know why it was done. I wasn't there. I wasn't privy to it. It certainly doesn't sound right. Of course, the prisoner did run a block or a block and a half away, secreted himself behind an institution, but you can't condone that. So he was an escapee, but what was he escaping from?

There's no question that there's undue and unnecessary force. And you're citing one particular incident. I can cite scores of instances, on the other hand, where a policeman was killed in the line of duty. It works both ways. There are two sides to this coin.

VICE CHAIRMAN HORN. But I don't know that that's equivalent. I'm sad and sorry.

MR. SCHWARTZ. I can tell you, sir, that I attend police workshops in my area, the council district that I live in of roughly 200,000 people—40 percent are black—and I go to police workshops. The audience is black, 95 percent black, and they want more police enforcement, not less. They want the laws enforced.

VICE CHAIRMAN HORN. But, you see, to have the laws enforced and to have the law enforcement and more enforcement is not synonymous

with conducting and condoning abuse of power by those that take an oath to carry out the law. That's what I'm trying to differentiate here. As I said, I probably am as hard line as anybody. I have a police department of 19 officers on my campus, but I'll tell you one thing. I won't tolerate one instance of abuse of someone in the arrest process, and that officer knows he's going to be gone the next day.

MR. SCHWARTZ. And I've been the subject of police abuse myself personally.

VICE CHAIRMAN HORN. The question is, What are we going to do as a process to at least let people have an outlet? That if something is wrong they can file a paper, file a postcard, or have some process of following up on allegations, some of which we all agree will be nonsense.

MR. SCHWARTZ. I agree with Dr. Allen. We have that now. The police commissioner—it's been over a year now, I think—has recognized the problem and has put into effect these regulations, this 127 and 127-A. I believe that she is correct when she said that most of that came out of the bill as drafted. And as far as I know they have implemented this procedure at the present time. So they have opened up the method by which complaints can be made and can be followed through.

One serious problem that came up that I remember at the public hearing was the question of—the problem of disclosure and publicity as to the person against whom a complaint was made and the way that that could be used. That, I think, was the one big bugaboo that was not resolved at the public hearing. There were many persons that came in on the side of the policemen on that issue.

VICE CHAIRMAN HORN. Well, and I can understand that. You don't want to have somebody's name tarred. That's a problem; that's why we have to go into executive session. There's a problem of defamation. I'm just fishing for ideas on a process that has some credibility, where some sort of justice can be done both to persons accused as well as to the individual making the accusation.

Now, let me move to another point. The next panel after this, the police associations, and one of the group is the Philadelphia Fraternal Order of Police, and I can put the question also to the gentlemen who will respond to them, but I would also like to know, since all of you have been or are elected members of a political body, the extent to which the Fraternal Order of Police affects the conduct of political campaigns in this city in terms of campaign contributions, etc.

MR. SCHWARTZ. I've never received a contribution from the Fraternal Order of Police. They've never been active, as far as I can recall, in any campaign that I've been in, and I've been in many of them. I've never sought their support; as far as I know, I've never received it.

VICE CHAIRMAN HORN. I wonder if each member of the council could respond?

MS. CHERNOCK. As a member of the minority party that whole organization probably has least contact with us, and we have never received any; I have never received any monetary remuneration or even any consideration from any member.

DR. ALLEN. My answer would be in the like.

VICE CHAIRMAN HORN. Mr. Tayoun?

MR. TAYOUN. I have probably received more recrimination from the Fraternal Order of Police than any member of the council. I have never been financially supported by them at all.

VICE CHAIRMAN HORN. Could not the council committees hold a hearing on the conduct of the police academy training, bring in outside experts, etc.?

MR. SCHWARTZ. You have a civil service commission. You have a personnel director. You have a very strict written examination. You have a very strict oral examination. You have a psychological examination. The civil service system is pretty carefully monitored in the city of Philadelphia. It's pretty tough to become a police officer today in the city of Philadelphia. There are many more applicants than there are jobs. I would say that this system is used before a policeman is appointed in the city of Philadelphia and probably would compare with any large city in the entire country.

VICE CHAIRMAN HORN. But after appointed—you were the one that made the comment that you thought training could be improved. Could the city council hold a hearing on examining the training of Philadelphia police, bringing in experts from other parts of the country and make comparisons as to how police ought to be trained on a modern force? Do you have that within your jurisdiction?

MR. SCHWARTZ. I would assume that we could do it. But basically, when we conduct an investigation, the purpose of an investigation is to lead to future legislation. We cannot use the tool of investigation just to investigate and to bring out and elicit facts. Basically, the purpose of an investigation is to lead to legislation that is required.

VICE CHAIRMAN HORN. Well, I understand that, but I can think of very little in government that can't lead to legislation if one holds a hearing, if you see a problem, and the problem isn't being solved by the administration. I would think that there are opportunities for legislators to legislate.

MR. SCHWARTZ. Well, I don't see the problem as intense as people would lead this Commission or the media would lead people to believe, that this problem is really as intense as it would appear. I think if you take the number of complaints based upon the number of police actions—I don't know exactly what they are; I have heard them before—but I think this is being blown completely out of proportion.

VICE CHAIRMAN HORN. One last question. Mr. Tayoun, is the committee on public safety the only one which you chair, or do you chair another committee?

MR. TAYOUN. No, sir.



VICE CHAIRMAN HORN. How many meetings has the committee on public safety held since you've become chairman?

MR. TAYOUN. About three.

VICE CHAIRMAN HORN. Over what time period are you talking about?

MR. TAYOUN. Four years.

VICE CHAIRMAN HORN. When did the first meeting occur?

MR. TAYOUN. Well, it has not to do with this legislation. We've only had one meeting, a series of hearings that ran 2 days, on this particular legislation.

VICE CHAIRMAN HORN. I'm trying to get the chronology.

MR. TAYOUN. Are you talking about this bill?

VICE CHAIRMAN HORN. I'm just trying to figure out the degree of activity of the city council with reference to holding hearings in the public safety area, and you've been on the city council, what, 4 years?

MR. TAYOUN. The number of bills before us in the last 4 years—last 3-1/2 years—come to about seven or eight. We've held hearings on maybe two or three having to do with fire codes, updating the provisions in that field, and the police legislation. We held a hearing on that. I think there might be one or two pieces of legislation in my committee over which we have not held hearings. I believe we have one scheduled shortly, but it ran into budget hearings and we're holding that.

VICE CHAIRMAN HORN. So, in other words, you had an opportunity to hold hearings but not many have been held?

MR. TAYOUN. No, sir, that's not what I said.

MR. SCHWARTZ. Certain committees get many more bills than other committees. For instance, the streets committee gets 10 times the amount of bills than any other single committee has. The finance committee is another one. The appropriations committee is another one.

VICE CHAIRMAN HORN. Is most of your work funneled through committees, or is the council also considered a committee of the whole?

MR. SCHWARTZ. A committee of the whole is used basically for very, very important matters, basically the budget, tax legislation. I've been prone to use the committee of the whole more often than it has been in the past. We did have an investigation, not this term of the council but the last term of the council, on criminal justice, and this question was part of that investigation. It's a very widespread investigation triggered by gang killings more than anything else. I'm very happy to say that that is a thing of the past. We had a great deal of difficulty in the city of Philadelphia; that's in the last 7 years or so.

VICE CHAIRMAN HORN. I wonder if Dr. Allen or Mrs. Chernock have any comment on the series of questions I've been asking of their own experience that they'd like to add.

DR. ALLEN. The only comment I would make, Mr. Horn, would be that I often regretted the fact that city council did not see fit to act as expeditiously on some bills as it did on others. The street bill could

be introduced one week and have a hearing the next week, but bill 1063, which had to do with civil rights and the infringement of those rights and safety of people, was introduced since December 1 of 1977 and did not get a hearing until well late into 1978.

MR. SCHWARTZ. My answer to that would be, if you check the records, you would find that there are some street bills that carry numbers like 335, 340, or 500 that are just being heard now.

DR. ALLEN. They were probably introduced by Republicans.

MR. SCHWARTZ. But that's not unusual.

MS. CHERNOCK. In addition to what my former colleague has said, no member of the minority party serves as a chairman or vice chairman of any committee in city council.

MR. SCHWARTZ. That's correct. The reason for that should be perfectly obvious. But you serve on many more committees than any other member of city council does except myself.

DR. ALLEN. With distinction.

CHAIRMAN FLEMMING. Time allotted for this particular panel has just about elapsed. Mr. Nunez—

MR. TAYOUN. May I make one comment?

CHAIRMAN FLEMMING. A brief one.

MR. TAYOUN. I think if you interrogate the police commissioners and their very effective police board of inquiry, you'll find that the greatest watchers over the police cases that can be called involving brutality in the community is the department itself. They are very, very assiduous in pursuing to the nth degree determinations as to who's right or who's wrong. I think that in one way will serve to allay your feelings that the police department might be running unchecked at this time.

CHAIRMAN FLEMMING. May I express our appreciation to the members of the panel for staying here and providing us with this testimony. Thank you very, very much.

Counsel will call the next witnesses.

MR. WILSON. Mr. Alphonso Deal, Mr. Charles Gallagher, Mr. Thomas Garvey, Mr. Harold James.

CHAIRMAN FLEMMING. Is Mr. Alphonso Deal in the room?

[No response.]

[Charles F. Gallagher, Thomas Garvey, and Harold James were sworn.]

**TESTIMONY OF CHARLES F. GALLAGHER, PRESIDENT, AND THOMAS GARVEY, PAST PRESIDENT, FRATERNAL ORDER OF POLICE; AND HAROLD JAMES, PRESIDENT, GUARDIAN CIVIC LEAGUE**

MR. WILSON. Gentlemen, would you please state your name, address, occupation, and organizational affiliation, starting with Mr. Gallagher?

MR. GALLAGHER. My name is Charles F. Gallagher. I came on the Philadelphia police force in 1942. I became president of the Fraternal

Order of Police in 1949. I left as president of the FOP after serving two terms, spent 2 years in retirement, and then came back and got reelected again to the post of president of the Fraternal Order of Police, a position which I now hold.

MR. GARVEY. Tom Garvey, 10022 West Point Place in Philadelphia. I was former head of the 30,000-member Fraternal Order of Police in Philadelphia. I'm now chairman of the legislation in the city of Philadelphia, FOP.

MR. JAMES. Harold James, president of the Guardian Civic League, an organization comprised of approximately over 800 of the majority of the black police officers—Philadelphia police officers in active duty. I am not here representing the police department. I'm representing the organization. I've been a police officer for a little over 14 years.

MR. WILSON. Mr. James, can you tell us what the role of the Guardian Civic League is?

MR. JAMES. Is it possible—I have a couple of my associates here; is it possible to have one who has some papers sit in the back?

MS. GEREENICS. Yes, that's possible.

MR. GALLAGHER. Could I ask a question to the brother here? If he is a member of James' organization, all well and good, but if he is not, I object to it personally because I think he is an outside attorney and he doesn't represent this outfit. He is just an attorney earning a fee in my opinion.

MR. WILSON. We'll defer to the Chairman.

CHAIRMAN FLEMMING. It is possible for any witness to have an attorney with him. It's under the rules of the Commission. Those rules were explained at the opening of the hearing. We recognize that right as far as any witness is concerned.

MR. JAMES. Mr. Chairman, I think Mr. Gallagher has made a mistake. The person that came up is a Philadelphia police officer.

MR. GALLAGHER. I'm sorry. I looked at him closely and found out I did make a mistake.

CHAIRMAN FLEMMING. I just want to establish the point that any witness is entitled to have an attorney with him.

MR. GALLAGHER. I got notified in my office by one of the constables or one of the men who work out of here, marshals, and I wish he had explained that to me because personally we would have had counsel here. But we weren't explained that. In fact, we got told to be here and, as you can see, we're here in plenty of time. And one of the men, I might say, who was also subpoenaed here is not present.

VICE CHAIRMAN HORN. Well, I thought—excuse me a minute. I thought all witnesses were furnished copies of the Commission's rules.

MS. GEREENICS. Yes, they were attached to the subpoena.

VICE CHAIRMAN HORN. Well, apparently one witness here says he did not get those rules.

MS. GEREENICS. They are attached to the subpoena you were served by the U.S. marshal. It's the third attachment on the subpoena, right be-

hind the *Federal Register* notice, the Privacy Act, and then a copy of the rules.

MR. GALLAGHER. I'll be perfectly honest with you. I didn't attach much importance to them, so I didn't bother reading them. It's my fault.

VICE CHAIRMAN HORN. So, you were served.

CHAIRMAN FLEMMING. The rules were available to you.

MR. WILSON. Mr. Gallagher, what is the role of the Fraternal Order of Police with regard to its members?

MR. GALLAGHER. The Fraternal Order of Police, we represent the men of which there is 8,300, roughly. We represent them in negotiations, and if we fail negotiations, we then go into arbitration where we represent them for all fringe benefits, raises, whatever we're after.

We also meet up with the commissioner once a week to take any—to take up any problems that might confront a policeman during that period of time since we saw the commissioner last. Well, then we will take it up with him, try to find out what's going on, and we try to settle to our satisfaction. That's our job. We don't always do so because, as I say, we have a tough commissioner.

MR. WILSON. Mr. James, what is the role of the Guardian Civic League?

MR. JAMES. The role of the Guardian Civic League is to, number one, improve the relationship between the Philadelphia Police Department and the minority community; two, to evaluate the effects of the policies and programs within the criminal justice system as it relates to the minority community; three, to establish a free and rapid flow of pertinent information and educational opportunities that are available to the members of the Guardians and the minority community; four, to increase and enhance minority police performance, to share the experience and education; to encourage the highest degree of skill, efficiency, and discipline and fidelity among the members of the Guardians and the members of the minority community; to act as a mechanism to recruit minority officers in Philadelphia; to work towards police reform in order to eliminate police corruption, brutality, and racial discrimination; to enrich the morale, intellectual, and social areas of our membership; and to provide a fraternal bond between the membership of the Guardian Civic League.

MR. WILSON. There's been a number of comments on the seriousness of police brutality in the city of Philadelphia. Mr. Gallagher, do you view police misconduct as a major problem in the Philadelphia Police Department?

MR. GALLAGHER. Do I view it as a major problem?

MR. WILSON. Yes.

MR. GALLAGHER. Positively not.

MR. WILSON. Mr. Garvey?

MR. GARVEY. My statement will reflect my feeling as to what your question posed states to me. I think basically what you're saying is, Is

there excessive force used in the police department that exceeds or is more than any other department or any other section of the country? My answer is no.

I think that if you took other professions, such as the medical or even the legal profession, as to what would constitute an excessive abridgment of their profession, you'll find they are much higher than we are.

So I think if you're going to say, Is brutality in the city of Philadelphia a number one, immediate issue; is it a political issue in the society, in a city especially that's issue oriented? Yes, it is. But in reality and in a factual sense, if you carry it into prosecutions, into arrests, into statistical data that we have to deal with, in fact, you find that it is not a problem in Philadelphia. In fact, in comparison to other large cities in the conclusive evidence, such as prosecutions successful, you'll find it's much less. It's lower than almost the other 10 cities that's of our size.

MR. WILSON. Mr. James, could you comment on the notion of misconduct as a major problem in the city of Philadelphia?

MR. JAMES. Yes. We believe that police misconduct is a major problem in the city of Philadelphia, and, if I'm at liberty to read a brief statement, I would tell that.

MR. WILSON. Could you limit the reading of that statement to 1 or 2 minutes, please?

MR. JAMES. It's basically the statement that we presented to the city council in reference to hearings on the fair complaint procedures. So, in order to save time:

One of the outstanding problems that hinder professional police work and militates against effective crime control is police abuse. We categorically state that police abuse exists. It is not merely occasional, but too frequent in occurrence in police practices. It includes verbal abuse and discriminatory treatment of citizens.

The most obvious form of abuse is unjustified use of force, either deadly force or firearms, or lesser force of night sticks, tight handcuffs, or physical mishandling.

It is widely recognized that abuse is perpetrated most frequently by white officers against black citizens; however, we are fully aware that black police officers also engage in such abusive power. We condemn these acts by black officers just as we condemn abuse on any part of any officer.

We hope that the bill before city council would help act as a mechanism against police abuse.

MR. WILSON. Thank you.

To your knowledge, Mr. Gallagher, how are complaints of brutality against members of the Philadelphia Police Department handled?

MR. GALLAGHER. As I tell you, I've been out of the police department for maybe the last 12 years, but what I know of it I will tell you. If any person in this city has a complaint, he is or she is to go to the district wherever the complaint originated and file a complaint to the commanding officer.

From there on in it will take proper channels, because no matter when a person is given a complaint, no one is going to go under with it, as the saying goes. He sees it is followed all the way through to the conclusion because they don't want to get in no trouble, and they see that it is given proper attention.

I also might say before you go on, I've been associated with the police since 1942 when I came on this job, and I'd like to say I've heard questions passed, What is brutality? Did any one of them ever see these things? I asked member—I saw members of council up there get up and try to explain what brutality is and tried to say that a man might get up out of bed after a fight with his wife and be in a bad mood when he comes in to work and take it out on some given suspect.

I've also heard it said in front of city council by members of council who were just here that the same thing can apply to the individual who winds up either getting hit or hitting a policeman. The same thing applies to everybody, not just the policeman. Policemen, all they want to do is go to work, put in their 8 hours, go home, and join their family again without any troubles at all.

MR. WILSON. Mr. Garvey, any comments?

MR. GARVEY. Yes. I think Charley touched on a point that I think is very important, and we can say with a degree of being independent, at council we have broken up fights between council members. In the house legislature in Harrisburg, there've been members of the house—incidentally, the members that were here were party to one fight in council. The members of the house that testified in front of you before that they thought that this bill in council was good also had to be torn apart in the legislature in Harrisburg. And I question if they were about to use which would have been in our eyes excessive force, and they are the ones that are setting the guidelines by which we are to be judged. I would again use the adage of walk a mile in my shoe.

And the pitfall of this is—and I'm not chastising the Commission per se—of those who seem to want to tell us how to do our job, almost none of them have ever taken a ride in a police car; almost none have ever attended a board of inquiry hearing to see just how we handle those complaints.

And last but not least, if some citizen feels that he has had excessive force used against him, we are the only entity in this city that can be faced with an investigation by the district attorney brutality unit that strictly works on police brutality unit. You heard the Federal attorney was here. The investigating grand jury has been here for 8 months to look at nothing but police brutality cases. He mentioned that he han-

dled over 400 cases. What he didn't mention was that out of the 400 cases only 3 reached the prosecution stage.

The one that they keep blaming and keep bringing up is the homicide. They had a conviction. The other two, one was withdrawn and they were acquitted. So 1 out of 3 were convicted out of those 400 cases the Federal level was given.

But, aside from that, Public Interest Law Center, Justice Department investigating grand jury, U.S. Civil Rights Commission, Philadelphia internal affairs division, the human relations commission, the National Lawyers Guild, the district attorney's office, civil litigation, the minor judicial court you can take a case into against a policeman. They are the only ones that are subject to all those steps if you feel as a citizen you were wronged. Last but not least, there are at least three newspapers that would jump at a good case to put on page one where a policeman exceeded or used excessive force in their estimation.

MR. WILSON. Mr. James, how are complaints, to the best of your knowledge, of brutality against members of the police department in the city of Philadelphia handled?

MR. JAMES. To the best of my knowledge, the police department came up with a new directive approximately last February in dealing with police complaints, complaints against police in reference to brutality. I think the directive was 127 and 127-A. And in that they outlined where the persons that have complaints against police in reference to abuse or such can go to the districts, and they will get a form filled out, and they are supposed to get a copy of it. Also, the person can go to staff inspectors.

But what is common throughout the community is that there is such a fear and distrust of the police that there is such a turn-off at the police stations that the people are afraid to go into the district to make the complaint. They are discouraged. We get feedback from the community rap sessions that we have that, when someone goes into the district to make a complaint, first they're discouraged and frustrated about making that complaint.

MR. WILSON. Mr. Garvey, what is your understanding, sir, of the normal course of internal police discipline that is utilized when an officer is charged actually with misconduct?

MR. GARVEY. Having travelled extensively throughout the United States, I probably know more police departments than anybody in the room. I would say it's on an equal with any other one. I would say that they are handled judiciously. I would say like any system of government and, in relation to the system of government, remember that we answer for any pitfall of government. So our image sometimes is tarnished by serving the very people we serve. So that, in essence, what I'm saying is that I think our procedures within our department are equal to any other department, any other large department in this country.

And while it's in my mind, I want to ask or respond to a question from the Vice Chairman earlier when he asked all the councilmen had we endorsed them. At the Federal level the Hatch Act specifically states that we will be arrested if we work anywhere near a polling place, if we give one dollar to any candidate. It's illegal. So the answer is we can't, by Federal law. I would like that opportunity because there are certain councilmen I'm not too enthralled with and I would love to work against, but we can't.

MR. WILSON. Mr. James, what is your understanding, your organization's understanding of internal discipline for police officers who are charged with misconduct?

MR. JAMES. What bothered me with the last statement I just heard, and I understand that—let me comment on the last statement that was just made, and that according to some act that Mr. Garvey cited that FOP doesn't endorse or doesn't give money to political candidates.

I just noticed something that came out by the FOP newsletter was an endorsement of a candidate for the State house, I think, State senate. There's a special election on March 27, and it said that, "We endorse this candidate." I didn't know if that was part of it, but, anyhow, I just want to comment on that because I didn't understand. I thought they didn't make endorsements, but it's my impression they have always made endorsements, that it's been done—

MR. GARVEY. Quickly, basically, we can inform our membership of those we feel have shown the law enforcement—pro-law enforcement stand. The question he asked is, Have we ever given money to any member of council? which we cannot by law. We cannot go outside our membership and attempt to influence anybody else. We can only tell our membership who has responded to law enforcement.

VICE CHAIRMAN HORN. As long as the subject is open, do you have a political actions committee separate from the Fraternal Order of Police?

MR. GARVEY. No.

VICE CHAIRMAN HORN. Okay, so it isn't like COPE in relation to an AFL-CIO.

MR. GARVEY. We cannot give one dollar to anybody.

MR. WILSON. On the question of internal discipline, Mr. James?

MR. JAMES. You asked me something of internal discipline?

MR. WILSON. What is your understanding of the normal course of discipline with regard to internal discipline for police officers who have been charged with misconduct?

MR. JAMES. First of all, we feel that the internal discipline mechanism in the police department is discriminatory. We feel that minority officers are disciplined at the rate of greater proportion than white officers.

Now, as far as discipline for police brutality, they don't have such a charge. I think what it is is misconduct unbecoming an officer, and these are some of the things that they use. I think that it's a kangaroo court that is just not fair as far as relating to minority officers.



MR. WILSON. What effect does stress have on an officer's performance of his duties?

MR. JAMES. You've addressed that to me?

MR. WILSON. Yes, sir, Mr. James.

MR. JAMES. I think stress plays a major part in the police officer's performance. We have—I think we have the second highest divorce rate, third highest suicide rate, and a lot of other internal problems. As a police officer, we work three shifts. That plays a major part. It keeps us from congregating with our family and with other citizenry. We are allowed 20 minutes for lunch. And all that plays a part. We have to ask for permission to go to school when the department doesn't even recognize it, and then we have to give them transcripts of our records at school. We're using our own time when we go to school, and they sometimes refuse us that.

So I think—and the fact that out there every day the stress plays a major part. The police department seemingly does not have any program that would deal with some type of physical activity that would help reduce some of the stress. They neither have programs that—they should have to go back to take extra training dealing in sensitivity, dealing in meeting the concerns of the people and the community in which they serve.

MR. WILSON. Mr. Gallagher?

MR. GALLAGHER. Mr. Chairman, I know you explained to me that forms were sent out and on page three or four there was an explanation there that we could bring a lawyer if we wanted to. Now, I'd like to ask you a question along those lines. Is this open season? Can anybody walk up from the hall and present paraphernalia to these two men?

CHAIRMAN FLEMMING. No problem.

VICE CHAIRMAN HORN. If you want to bring someone, please do.

MR. GALLAGHER. They can do it. That's all I wanted to know.

MR. WILSON. Mr. Garvey, would you comment on this stress factor as it affects the performance of the police officers, please?

MR. GARVEY. I think the stress of a policeman's job is much more critical than any other profession for a variety of reasons which my fellow officer did mention. I think also you have to look at the entrance-type atmosphere where, on one hand, the studies made by government, especially at the Federal level, which for some reason tend to get shelved after they're released, but most of those studies have related that we should have much more inservice training, the qualifications of entrance should be raised to possibly a college degree, the stress-type psychological testing should be much more attuned to what our job calls for in stress factors; and, on the other hand, the courts tell us that we now must hire smaller, lighter, weaker vision, less education, criminal records they can now have, and they can become policemen.

So you can't have it both ways. Yes, the job is very stressful, and I think it calls for a very unique professional. But when you lower the standards at the entrance level, then you come in later and say, "What's going wrong; why is there excessive force?" or "Why is there a problem with our police department today?" You have to take a two-sided coin. The courts can't tell us one thing on one side and then commissions tell us something on the other. You have to have it one way. If you want professionals, then the standards have to be raised.

MR. WILSON. Mr. Gallagher?

MR. GALLAGHER. Before we go on I'd like to ask one other question of the Chairman. Is this allowable?

[Reaction to being photographed.]

CHAIRMAN FLEMMING. It is.

MR. GALLAGHER. If you don't ask you'll never find out, right?

CHAIRMAN FLEMMING. That's right.

MR. WILSON. On the issue of stress and how it affects the performance of the police officers' duties, could you comment?

MR. GALLAGHER. Let me tell you, everybody is affected differently by any job in the country. Some people, they give into stress at the snap of the finger. Stress never bothered me. I go to work; I do my job. And in, as I say, 36, 37 years on the police department, I again wish to stress—and this is not stress—I wish to stress that there is no such thing as brutality in the police force.

MR. WILSON. Mr. James, that brings me right into my next question. Could you define or at least give us your understanding of the term "justifiable deadly force"?

MR. JAMES. I hate to deviate a little from your question. But, in response to what brother Garvey said as far as lowering standards in the police department because of court orders, the reason the courts have ordered these things is because of discriminatory practices that police departments, not only in Philadelphia but throughout the country, have been using to keep minorities out. So it's not a lowering of standards; it's an equalizing of standards, and all of the problems have been that those standards that they say they have had.

MR. WILSON. Could you respond to my question, please?

MR. JAMES. Reasonable force?

MR. WILSON. "Justifiable deadly force," your understanding of what that means.

MR. JAMES. Well, my understanding of the term, it's been my opinion or our opinion is that justifiable deadly force should only be when your life has been threatened or when your life is threatened, when somebody is about to take your life, or you believe it to save the life of another person. That's the only time I believe the police officer should use force.

MR. GARVEY. Justifiable force is like brutality, a catchall phrase. I'm sure if I were to leave my seat and—supposition-wise—smack each member of the panel in the face, I would get nine different reactions,

and I'm sure some would sit there frozen, some might run out the door, and some might get up and start swinging.

So, the policeman mirrors society just as anybody else. If a policeman is smacked in the mouth, he may grab, he may hold, he may swing his night stick, he may use the tools he was given, or he may stand frozen.

So excessive force is individual. No one can say at the instant that it takes place that he is going to react in a certain given way. And I don't care who writes it or attempts to write it, you're not going to control a man's reactions because you don't take the incident and place it in one single context. You have to look at the entire 8-hour tour of that man, his home life. One heck of a lot of things go into a physical response at any given time, and to try and pinpoint that to say what is excessive force, I'm saying there is no such wording to put on any piece of paper.

MR. WILSON. Mr. Gallagher?

MR. GALLAGHER. I have never in 36, 37 years had to use any excessive force, but if anything happened, as brother Garvey just explained, if anything or anybody would come up and hit me, he'd get hit back. That's all I got to tell you.

MR. WILSON. Have you ever—

MR. DORSEY. Excuse me for one moment. Mr. Chairman, Mr. Deal has arrived. I would ask, if you would, to swear him in at this time.

[Alphonso Deal was sworn.]

#### TESTIMONY OF ALPHONSO DEAL, FIRST VICE PRESIDENT, GUARDIAN CIVIC LEAGUE

MR. DORSEY. Good evening, Mr. Deal. Could you state your full name for the record, please?

MR. DEAL. I'm Alphonso Deal. My last name is spelled D-e-a-l.

MR. WILSON. Mr. Deal, how long were you a member of the Philadelphia Police Department?

MR. DEAL. About 24 years.

MR. WILSON. During that time that you were a member, had you ever had the occasion or either reported or attempted to report an act of brutality committed by another officer?

MR. DEAL. Yes, I have.

MR. WILSON. What were the results?

MR. DEAL. Nothing.

MR. WILSON. When you say—is there an internal discipline policy, to the best of your knowledge, in the Philadelphia Police Department?

MR. DEAL. Regarding the complaints I made, the only results that I got was I was taken to the trial board.

MR. WILSON. Let me ask you this. To the best of your knowledge, who determines whether a police officer should be disciplined, sanctioned, or even fined for a violation of his duty?

MR. DEAL. What was your question again?

MR. WILSON. Who determines, to the best of your knowledge, whether a police officer should be fined, disciplined, or sanctioned for a violation of his duties?

MR. DEAL. The ultimate responsibility, as we believe it to be, would be that responsibility would fall in the hands of the police commissioner.

MR. WILSON. Mr. Garvey, to the best of your knowledge—

MR. GALLAGHER. You skipped me.

MR. WILSON. I'm sorry. Mr. Garvey?

MR. GARVEY. Who has the ultimate responsibility?

MR. WILSON. Right.

MR. GARVEY. I think, like in any system of justice there are levels that it goes through. To say that every case of police brutality that is alleged goes immediately to the commissioner, I wouldn't know. But I think there are steps in any system, and I would assume—and, again, you said in your report—and I don't want to start berating the gentleman who made light of one case that he had. There were other factors in that case, and I think that to cast an assumption that he did, I think should not go unanswered. But I don't think we should get into a debate as to one individual case that he brought out. There was more to it than what he said.

And my friend Al has a tendency sometime—he has three hats, and sometimes he doesn't separate policeman from deacon from politician, and when they jibe all together, sometimes it doesn't come out quite the way that he means it, and I think it should be said.

MR. DEAL. Mr. Chairman? Mr. Chairman?

CHAIRMAN FLEMMING. Yes, sir?

MR. DEAL. May I respond to that because, in the first place, I thought there would be some question as to what hat I was wearing. I would like to cite a couple of incidents which I sent to the police commissioner in writing, registered mail. And I'd just like to cite those because I would not want anyone to assume that I was confused on that day. And I would be happy to read it for the record.

MR. DORSEY. With the Chairman's permission it would probably be better since we have not seen these earlier that they be submitted for the record, and we would be glad to receive them. That would avoid any possibility that might give rise to our defame and degrade procedures.

VICE CHAIRMAN HORN. Does Mr. Deal understand we have a problem there, where names can't go in unless we've heard the testimony in executive session?

MR. DEAL. Well, I would be happy to read what I've written, and I would omit the names while reading. I think one might come to some conclusion regarding the incident.

VICE CHAIRMAN HORN. Mr. Chairman, I feel, number one, we ought to know how many years Mr. Deal has served on the Philadelphia police force and, number two, we ought to hear certain—at least one ex-

ample of the others for the record, omitting the names involved, because we're talking about a process and a degree to which there was a response to a particular complaint.

CHAIRMAN FLEMMING. If you will proceed in that manner, Mr. Deal, it would be satisfactory.

VICE CHAIRMAN HORN. Tell us how many years, first, you were on the Philadelphia police force?

MR. DEAL. For about 24 years.

COMMISSIONER SALTZMAN. What are you doing now, sir? What is your present hat?

MR. DEAL. I am retired from the Philadelphia Police Department, and I, of course, serve as president of the north Philadelphia action branch of the National Association for the Advancement of Colored People.

CHAIRMAN FLEMMING. You're also the executive vice president of the Guardian civic organization?

MR. DEAL. I am first vice president.

COMMISSIONER SALTZMAN. Presently?

MR. DEAL. Presently.

MR. GALLAGHER. Can I ask a question? The brother stated he had 24 years or close to it. Now, recently he brought forth a case that there was supposedly a certain amount of brutality. I would like to ask the brother, in 24 years how many other cases did he bring forth, or is it just because he's running for the job these people who just left before us—

CHAIRMAN FLEMMING. Mr. Gallagher, we have just agreed to let Mr. Deal make a statement; then the members of the Commission will be asking questions. We will be glad to give each member of the panel the opportunity.

MR. GALLAGHER. Mr. Chairman, I personally would like to know why brother Deal showed up here 40 minutes late.

CHAIRMAN FLEMMING. Mr. Deal, proceed.

MR. DEAL. Am I to respond for my tardiness?

CHAIRMAN FLEMMING. You asked to have the opportunity of reading a statement. We've indicated to you that we would appreciate it if you would confine it to one case and that you would eliminate all names from that, because under our statute we cannot take any testimony that would have any possibility to defame and degrade. If we're going to consider receiving such testimony, we have to consider it first in executive session.

MR. DEAL. Yes, sir. However, this letter was sent to the Honorable—and I may state who I sent it to; may I do that?

CHAIRMAN FLEMMING. Sure.

MR. DEAL. This letter was sent to the Honorable Joseph O'Neill, commissioner of police, Philadelphia Administration Building, Eighth and Reid Streets. I sent this letter on November 11, 1976. It states:

I wish to press formal charges against one of my supervisors. [Of course, I named him in the letter.] On Friday, June 6, 1976, I was assigned to the 16th police district, which is located at 39th and Lancaster Avenue, of the Philadelphia Police Department.

I was working the 4 to 12 tour. I was assigned to 1617 radio patrol car. At about 5:15 p.m., I responded to a radio call. I stated 1617, and I have an address that I was supposed to go to because of disturbance.

I was the first officer to arrive. Upon my arrival, I did not observe a disturbance. However, there was a young lady standing in front of her residence leaning on an iron pipe. There were several other persons, a little over seven people, standing in the area. I noticed that the window glass and door glass to the front of one of the buildings were broken out. The window door was boarded up with cardboard.

I asked the young lady what was wrong. The young lady informed me, stating and pointing to another lady, that the crazy lady at an address in the same block broke all of her windows out. I asked her if her mother was home. The lady stated that her mother had gone to city hall to take out a warrant for the lady [which I named in the letter].

I then walked over to that area, at which time another police officer who was also in the 16th district arrived to the scene. That officer parked his car near the location and walked past the young lady near where I was standing, at which time a supervisor came, bucking traffic on the street. He stopped short of where we were standing. And while he was getting out of his car, he appeared to be looking towards a lady and hollered out loud, "Lock that b-i-t-c-h up." Getting out of the car, this same supervisor hollered again, "Lock that b-i-t-c-h up."

Then the officer grabbed the lady by the throat, pushed her from the curb line to the wall of the building on top of a pile of trash which was against the building. The sergeant came over to where—the supervisor came over to where I was standing while this other officer was still holding her by the throat, then I whispered to him, "How about letting me handle this job because we don't want bad publicity."

My supervisor stated, "What do you mean? That's how this job should be handled. It should always be handled this way. It should have been handled this way a long time ago. That b-i-t-c-h is an agitator."

By that time an emergency wagon came and the lady was placed in the wagon and transferred to the police station. I went into the operations room of the 16th police district where I asked the supervisor what the lady was being arrested for, and he told me that

she could be charged with terroristic threats, disorderly conduct—a lot of other things.

So I stated to the supervisor, "She did not do anything; I was there." Then the supervisor stated, "Listen, I have to take my orders."

When the other sergeant supervisor came in from the street into the operations room, I went over and asked him, "I want you to know I object to your actions on the street. It was unprofessional for you to refer to the lady as a b-i-t-c-h."

The supervisor stated, "You object? I'm the supervisor. When I give an order, you will not object." Then I stated, "There is no one big enough to have me obey an illegal order."

Then I said, "I asked you to let me handle the job, and you said I've been handling that problem for about 4 years." The supervisor referred, "You're getting me transferred, but you don't have the force to transfer." Then I said, "If you want to get transferred, you ought to request it, but don't try to force a transfer by abusing people."

Then I referred supervisor, "This is the second time in a row I've observed you do something like this."

While I was in the operations room, the lady was returned from the west detective division. An officer who had first grabbed the lady by the throat was preparing a summary offense notice for her to sign. At that time while she was signing that summary offense, which would have meant that the lady could sign it and then go home, at that time the telephone rang. A corporal then directed the wagon crew to take the lady back to the west detective division, and at this time she was charged with aggravated assault and battery, resisting arrest by and on a policeman, and—

Then on Thursday—the other incident—on Thursday, September 5, 1976—

CHAIRMAN FLEMMING. Just one incident, that's all.

MR. DEAL. Oh, your honor, I'm not going to—I was asked about another incident.

CHAIRMAN FLEMMING. I'm sorry, just the one incident because we are now somewhat over time, and I want to give the other members of the Commission the opportunity of addressing questions to members of the panel. Commissioner Horn?

VICE CHAIRMAN HORN. I'd like to know what happened on this incident. You then filed this letter to Commissioner O'Neill on November 11, 1976? Did you ever hear any response? What was the end result of this?

MR. DEAL. The end result was, of course, I was taken before the trial board and charged with conduct unbecoming an officer and insubordination. Of course, I was eventually exonerated. However, I want you to know that the persons who voted for my exoneration, one was removed and the other one has since retired from the police department, the two that voted.

Nothing has happened to the sergeant other than—and, of course, I was transferred from that district to another district, and the sergeant was transferred to another unit. But, to my knowledge, the only person that had disciplinary action taken against him was me.

VICE CHAIRMAN HORN. Did anybody beyond the police department get involved in your case, or was this strictly handled internally?

MR. DEAL. Well, of course, I had to go out and secure an attorney for my case. But there's been no other outside agency that I know of. Of course, the young lady was arrested, as I stated previously, and she was taken to court, and, of course, she was found not guilty.

VICE CHAIRMAN HORN. Did you testify in that case?

MR. DEAL. Oh, I certainly did.

VICE CHAIRMAN HORN. Who brought charges against you, the supervisor you accused or someone else?

MR. DEAL. Oh, yes, the supervisor I accused.

VICE CHAIRMAN HORN. Is that supervisor still on the force?

MR. DEAL. Oh, yes.

VICE CHAIRMAN HORN. You were exonerated. The lady was freed in court.

MR. DEAL. Yes.

VICE CHAIRMAN HORN. And it's your understanding that the Philadelphia Police Department never took any action against the supervisor involved?

MR. DEAL. That's correct.

VICE CHAIRMAN HORN. Just based on your experience now—you did work for the Philadelphia police for 24 years—how common are instances like that? I realize even one incident is wrong, no matter if it is a fact that there are 8,300 officers, and the fact that 8,299 don't commit grievous assaults and violate personal rights is commendable, but the fact is what are you doing about the one that does, since that tars the other 8,299. I just wondered how many instances such as the one you've described have you seen over the years?

MR. DEAL. Well, there've been—I have received complaints from other officers who have complained that they tried to make complaints regarding police abuse. One officer complained about corruption, and he was terrorized, so that the best solution that he could get would be transferred to another district. To my knowledge, nothing has happened with the information that this officer had.

VICE CHAIRMAN HORN. That's all I have.

CHAIRMAN FLEMMING. Mr. Saltzman?



COMMISSIONER SALTZMAN. Mr. James, several of the witnesses earlier in the day have implied, actually stated—I'm sorry, Mr. Garvey—that with the change in administration that there would be changes in the process of treatment of police misconduct; that the city wanted a strong response to the rising crime rate—we see that in the mayor—and now there is a swing the other way and the concern with some of the charges of police misconduct. Do you think that the political situation has such profound impact on the conduct of the police department in terms of the internal disciplines and process and procedures relative to the whole issue of police abuse? Is it subject as much as has been suggested to the political situation?

MR. GARVEY. I would say that Philadelphia is probably the most politically oriented city that I know of in the country. It's an issue-oriented city. Politicians grab for their—some for their own advancement, some for whatever reasons they may have.

I think if you're going to say, Is the climate going to change if the political structure changes?—I would say that if you read the Philadelphia newspapers in the forties, the fifties, the sixties you would find in certain monthly periods the discussions about police brutality. And I think in 1980, whatever year it would be, you'll see a discussion and there'll be a U.S. Civil Rights Commission here at that time to study the police department, not only in this city, but every other city.

This city has that political orientation. My fear is—and we are very resilient, I think, policemen because we've outwaited a lot of politicians, some negative, some positive, and we still do our job. My fear is, What are the priorities? You people will leave and make a report, and my statement says what I think the report will be, but—and I'll give you a quick analogy.

Anwar Sadat gave the right to shoot those who destroy public property in Egypt. In Philadelphia, you can take a ride on our subway and see the most flagrant vandalism you'll ever see, plus our structures of government are quite deteriorating from a lot of vandalism. And that's a summary offense; we can write a ticket. Anwar Sadat was given the Nobel Peace Prize. But here we stand charged with—and I'm being honest—charged with excessive force in a lot of areas.

My question is, What are the priorities? Okay, if police violence, alleged, is a priority in the city of Philadelphia, what about the people—if you walk north of here after 6 p.m., you won't find a store open, and they won't open it because they're scared to death—

COMMISSIONER SALTZMAN. Let me, if I may, perhaps I didn't phrase the question adequately. Is the police department subject in its handling of police cases of police abuse to the political leadership of the officeholder of mayor? And if that is the case, as suggested, is there some way of insulating, of setting up a process that maintains the integrity of the police department and doesn't place it into the situation of being pulled by political officeholders, but retains the confidence of the citizenry of the city and the integrity and concern of the police department? Do you get what I'm saying?

MR. GARVEY. Yes. I think what you're saying, and I agree with you in this sense, if there were an agency that would honestly and sincerely take a look at it from our viewpoint, take a look at it from the citizens who make the allegations, and try to take the politicians out of it and make some studies and make some honest-to-goodness blunt report—and I said this to the attorney general's office—who, incidentally, have like 40 policemen under subpoena but have never told them how they stand—but one agency just once and for all come out factually—Is it political rhetoric? Is there that type of situation going on?—and then periodically maybe do the same, I would agree with you. But I do not think the climate in Philadelphia because of its politics, because of its issue-oriented population, that may happen.

COMMISSIONER SALTZMAN. There is no way to insulate the process of dealing with the issues surrounding police misconduct, to insulate it from the political influence and pressure? Is that what you're saying? You have no recommendations?

MR. GARVEY. I would have a lot of recommendations, but I think I'm under a system that dictates policies are set by those who hold office.

COMMISSIONER SALTZMAN. Mr. James, would you like to throw some light on your opinion relative to this issue?

MR. JAMES. As far as the politics—

COMMISSIONER SALTZMAN. We were told that there's going to be an election and that the situation is going to change after the election. That leaves me with the impression that the situation is subject to the political officeholder. Is there a way that the police department can be insulated from the political situation and respond to the issues arising out of charges of police abuse, retain the confidence of the citizenry, and do its job?

MR. JAMES. The only way that that is going to be done is that we're going to elect a mayor that is sensitive to the needs of the community and to the citizens of Philadelphia.

COMMISSIONER SALTZMAN. So you're saying that it is subject to political influence; there's no way you can get around that?

MR. JAMES. Because the mayor appoints the police commissioner, and you have the same problem in Atlanta, Georgia. Until the mayor appointed a competent police commissioner who did the job, police brutality did not decrease until that time.

COMMISSIONER SALTZMAN. May I ask you, Mr. Gallagher, how many members do you have in your organization?

MR. GALLAGHER. Roughly 11,000; that's pensioners and active members.

COMMISSIONER SALTZMAN. What are the requirements for membership?

MR. GALLAGHER. The requirement's being a policeman. We look into the background before they join up, and there is a background investigation in the police department before they are appointed to the police department, an extensive background investigation.

I would like to say this. You asked him a question; you asked Mr. James a question. I'd like to answer that.

In Philadelphia there is no politician can get to the present commissioner, and that's O'Neill, and he might be leaving 6 to 8 months. I hope not. I hope to gain nothing by saying this, but if you go to him and there is a politician calls up about you, that is the kiss of death; you're going to get punished.

And also I'd like to point out anybody getting transferred in the Philadelphia Police Department—after you've worked in a district for a certain period of time, you get to know people, and you get to know policemen and you get along with them.

COMMISSIONER SALTZMAN. I'm running out of time.

MR. GALLAGHER. It's only going to be a second.

I state here, now, that a transfer—whether brother Deal says it or not—is punishment; that sergeant or supervisor was punished.

COMMISSIONER SALTZMAN. Is your organization integrated? Does it include minorities?

MR. GALLAGHER. Oh, yes. Brother Deal is in it; brother James is in it.

COMMISSIONER SALTZMAN. Do you have a membership broken down by sex and race?

MR. GALLAGHER. As far as I know, there is roughly one-sixth of the police department black, as far as I—

COMMISSIONER SALTZMAN. I mean in your organization.

MR. GALLAGHER. No, we have to abide by our figures. We don't go into that part of it.

VICE CHAIRMAN HORN. Yours is an exclusive bargaining agent which is the union that deals with management and all members of the police department are in your group?

MR. GALLAGHER. That's right.

CHAIRMAN FLEMMING. Whatever the police department breakdown is, he's got the same breakdown.

VICE CHAIRMAN HORN. It's a union; it's not just a lodge that you might want to go down and join.

MR. GALLAGHER. There are a few who dropped out because of differences with the past presidents.

CHAIRMAN FLEMMING. I'd like to ask a question of all members of the panel. Somebody's going to have to give me help on numbers here. But we've taken testimony relative to some new instructions issued by the police commissioner.

MR. DORSEY. 127 and 127-A.

CHAIRMAN FLEMMING. 127 and 127-A that we have been told is somewhat comparable to some proposed legislation that is now pending before the city council. I would simply like to know what your position is on 127, 127-A and on the proposed legislation before it, the city council, if you can answer briefly without going into detail.

MR. GALLAGHER. They are practically the same as either 1063 or 590, and they call for practically the same punishments and the same kind of stuff. But we have nothing to do as members of the FOP on input into this thing when it's written up. We're not called in and say—they don't say to us, "We are going to put in 127 or 127-A." They put it in and we have to abide by it. We are policemen; we are subordinates, and you don't question your superiors when they're going to do that kind of stuff, although we take an active part, the FOP.

CHAIRMAN FLEMMING. Mr. Garvey, do you want to comment on it?

MR. GARVEY. I think it's covered by the members of council, and I think, echoing now, they are sufficient in their implementation as far as discipline goes, and I think they're head and heel above AMA and the bar association in their procedures.

CHAIRMAN FLEMMING. Mr. James and Mr. Deal?

MR. JAMES. In response to—before responding to your question—

CHAIRMAN FLEMMING. Please respond to my question.

MR. JAMES. In reference to the bill 127 and the bill in the city council, 127 does not have a sunshine aspect to it, so, therefore, the police department maintains and controls the record, and it's up to their discretion.

We say that, if the police department can professionally take care of their own, like they purport to do so, then what's wrong with letting the citizens of Philadelphia, which they are supposed to serve, know what they're doing.

CHAIRMAN FLEMMING. You favor the legislation in order to achieve that objective?

MR. JAMES. That's correct.

MR. DEAL. I support the legislation and much of the 1063 because I believe that an organization like the police department ought to be open so that people may know what's going on, and I support that kind of legislation. And I think, once the police department understands that it is a servant to the community, they may well find that they will get better cooperation from the community.

CHAIRMAN FLEMMING. Mr. Nunez, any question?

MR. NUNEZ. Mr. Gallagher, Mr. Garvey, I've read your statements which I assume will be part of the record.

CHAIRMAN FLEMMING. They will be.

MR. NUNEZ. One question that's raised is the whole issue of the use of excessive force. I think your argument and your statement will imply that it's practically impossible to set fixed standards for determining whether a police officer has used excessive force and that it really is quite a subjective matter. You really feel that a police department does not have a right to set up a standard of police conduct that you can hold every police officer to, even being sympathetic towards the question of his state of mind, the question of his stress, and all of the other issues that you bring up as a professional body of men and

women. Don't you feel there should be a fairly hard and fast standard that you can assess police conduct?

MR. GALLAGHER. Mr. Nunez, I'd like to comment on that. If you people, the committee, could come up and tell us what excessive force is, then we will be willing to abide by it. But your committee, nobody else, can tell us what excessive force is because when you go out on the street you don't know what you're bumping into. You can sit back here safely and say you should have done this, you should have done that. But the same thing applies to you people. You go out, ride around the street, and some occasion arises where you have to take action. Then that's when you know how much excessive force you have to use if you're going to use it.

MR. GARVEY. To echo what Gallagher is saying, it's basically the point I made in the statement, and what I'm trying to say is you cannot put on paper the extreme or the less or whatever. There has to be some leeway in judgment as to what would be termed excessive.

But to write that in verbiage is not possible, no more than you can say in surgery what is the right procedure for every surgeon to use in a certain operation, or in the legal profession where allegedly 75 percent of all criminal lawyers were, by Burger's quote, inept. Who can cite the guidelines as to what's an inept lawyer versus one that is not inept?

So there are phrases that must be left unanswered in certain critical situations. To say that one segment is excessive, sure, I can make that judgment if I saw what happened, but to say, on one hand, let me take that and reduce it to writing, I can't; nobody can. It just must be left that there's an area when excessive force places a judgment that must be recognized and taken in that context.

VICE CHAIRMAN HORN. But you would say the example Mr. Deal gave was the use of excessive force, when the person is accused falsely and somebody goes over and chokes her and pushes her against the building and she hasn't done anything? If you assume what he said is true.

MR. GARVEY. If we deal in assumptions—and that's part of the problem with a lot of these committees; we get a lot of assumptions without response—if the assumptions that he gave were exactly as it transpired, I would assume that that policeman was overly excessive with what he did. However, I think there was a side to that that was not told.

MR. DEAL. Mr. Chairman, may I respond briefly?

I'm disturbed at what I'm hearing and would mention something about a doctor. Certainly, a surgeon would not cut off your left leg if you had a problem with your right leg. And in the police department what we're saying is, even the lady that was being choked, if the police officer had touched her and said, "Madam, you're under arrest." If the lady had resisted and if he had to hold her, if he had to do some other things—but he did not; to me that was excessive and abusive force.

And I'm saying that a police officer should not be allowed to use any more force than is necessary in apprehending a person. Even if he was a killer, it doesn't mean that you shoot him down. If someone killed 40 people and the police went up, and the person said, "Officer, I am surrendering," that policeman has no right to become the judge and jury, and that's what really is the issue.

Policemen, because of what you're hearing now, really feel that they have the right—and that's not all police officers—many of them feel that they have the right to mete out punishment when they are apprehending people, and that's the real issue.

And I'm saying that no police officer has a right to use any more force than necessary. If it's verbal, then that's all he ought to use. If he has to use vigor, and I don't think the general public would object to a policeman using his night stick, using his gun if it's necessary. What they object to is that a person who has his hands up in the air being beaten and kicked and stomped, and then people sit back and say, "Oh, but you cannot tell a person how—what he should have done." I say that is terrible in a civilized society.

CHAIRMAN FLEMMING. You want to add anything to what Mr. Deal said? We're about to recess.

MR. JAMES. I think he called my name.

MR. GALLAGHER. I would say I agree with him entirely if it happened the way he said it.

CHAIRMAN FLEMMING. Very brief.

MR. JAMES. Very briefly, there is another avenue which can stem the tide of police abuse in Philadelphia, and that is other than politics, is that you have no black officers in policymaking positions in the city of Philadelphia, in the Philadelphia Police Department, and we have more black officers working in the communities. If the black population of the police department can reflect the black population in the community, it would stem it, and if we had more in policymaking positions.

CHAIRMAN FLEMMING. May I thank each member of the panel for spending this time with us and providing us with this testimony. Thank you very, very much.

The hearing is at recess until 7:15 this evening.

#### Evening Session, April 16, 1979

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CHAIRMAN FLEMMING. Counsel will call the next two witnesses, please.

MS. GEREBENICS. Frank Scafidi, Joseph Golden.

[Joseph F. Golden and Frank A. Scafidi were sworn.]

**TESTIMONY OF JOSEPH F. GOLDEN, CHIEF INSPECTOR, DETECTIVE BUREAU HEADQUARTERS, AND FRANK A. SCAFIDI, CHIEF INSPECTOR, INTERNAL AFFAIRS BUREAU, PHILADELPHIA POLICE DEPARTMENT**

MR. DORSEY. Starting with Inspector Scafidi, would you please state your full name for the record and your title?

MR. SCAFIDI. Frank A. Scafidi, chief inspector, commanding officer, internal affairs bureau.

MR. DORSEY. Inspector Golden?

MR. GOLDEN. Joseph F. Golden, chief inspector, detective headquarters.

MR. DORSEY. I believe you are accompanied by counsel and if counsel could identify himself for the record, please?

MR. TETI. Ralph A. Teti, T-e-t-i, city solicitor.

MR. DORSEY. Thank you.

Inspector Scafidi, could you indicate how many years you've been with the Philadelphia Police Department and if you could, without giving us a complete litany, indicate some of the major positions that you've held in that regard?

MR. SCAFIDI. Almost 29 years of service. I served in the juvenile division. I served as a detective, as a detective supervisor commander, patrol commander, district commander, division commander, administrative investigative aide to deputy commissioner, met the intelligence unit, and my present position. Oh, I served in the training division as an instructor at various times.

MR. DORSEY. Thank you. Inspector Golden?

MR. GOLDEN. I've been nearly 37 years in the police department. I was a uniform patrolman in the district, then into the detective bureau as a detective, as the commander of the detective division, commander of the homicide division, as inspector of the detective headquarters, and as chief inspector of the detective headquarters.

MR. DORSEY. How long have you occupied your current position as chief of the detective bureau headquarters?

MR. GOLDEN. Since 1971.

MR. DORSEY. Inspector Scafidi, how long have you been in the position as chief inspector of IAD?

MR. SCAFIDI. June 1968.

MR. DORSEY. Thank you. I'd like to start the questioning with Inspector Golden. With respect to one aspect of your responsibility, as I understand it, being the homicide bureau, that is under your command is it not?

MR. GOLDEN. Yes, sir.

MR. DORSEY. With respect to its functioning, I believe our preliminary information is that it performs an investigative role with respect to the incidents of either injury or death by virtue of police intervention. Is that correct?

MR. GOLDEN. That's correct.

MR. DORSEY. Could you explain exactly which department is responsible for those investigations and how they get referred to those investigations—if that's a matter of directive or if it's a matter of policy or procedure? What I'm really getting at is if you could describe for us the manner of your involvement with investigations of shootings.

MR. GOLDEN. Let me clarify one thing first, if I may. We don't investigate all injuries by police, all shooting injuries by police in the homicide division.

The homicide division would investigate it and, as to how the homicide division becomes involved, as soon as such an incident would occur in most instances it's first known to the police radio unit, and the radio unit would immediately notify by telephone the homicide division, and an assignment would be begun immediately.

MR. DORSEY. Is there a specific unit or set of individuals within the homicide bureau that deals specifically and solely, for example, with investigations of shootings, police shootings?

MR. GOLDEN. No, it would be whatever supervisors and whatever detectives are on duty at the time. That will be the personnel assigned.

MR. DORSEY. What is their specific role with respect to that? Do they supersede whatever other police involvement might have occurred? For example, if it's in the process of regular police intervention by a patrol officer, would they then take over whatever investigation would have occurred anyway?

MR. GOLDEN. They would be responsible for the investigation.

MR. DORSEY. The entire investigation?

MR. GOLDEN. The entire investigation, yes.

MR. DORSEY. Are the shooting investigations by that bureau logged in any way? Is there an accountability of the number of investigations which that unit is involved in with respect to shootings?

MR. GOLDEN. Yes, they're numbered.

MR. DORSEY. They are numbered?

MR. GOLDEN. Yes.

MR. DORSEY. And they are logged? Some log is maintained? I mean, you said they are numbered; is that in some kind of journal?

MR. GOLDEN. Yes, yes. There would be a separate page placed in a logbook for each such incident. Yes.

MR. DORSEY. And who maintains the logbook?

MR. GOLDEN. It's kept in the homicide division.

MR. DORSEY. Are investigations other than shootings—that is, if I may, a normal homicide, is that maintained in the same log or is that distinguished from any investigations of shooting injuries?

MR. GOLDEN. There is a separate log for what you might term normal homicides. But for example, if the shooting resulted in a death there would be an entry in each log; a separate page would go in each log.

MR. DORSEY. But there is a separate log that lists all the investigations with respect to shooting injuries?



MR. GOLDEN: Yes. A separate page is entered into the book for each incident, yes.

MR. DORSEY. But there is one book? See, I'm not clear on how you're maintaining the file which lists—

MR. GOLDEN. If Mrs. Jones was killed by her husband, that would be in a separate book. They are loose leaf binders, and there's a form and the form would be filled out and placed in the binder for that particular year. Now, if shooting by a policeman resulted in the death of someone, there would be the same type of page would go into that book. There would be an additional form that's filled out and would go into the other book.

MR. DORSEY. And that other book houses only police shootings?

MR. GOLDEN. Yes.

MR. DORSEY. And that's maintained in the homicide bureau?

MR. GOLDEN. Yes.

MR. DORSEY. Are they maintained in a chronological order?

MR. GOLDEN. Yes. These sheets would be made out just as the incident occurred.

MR. DORSEY. So that there wouldn't be a skip going backwards or forwards?

MR. GOLDEN. No.

MR. DORSEY. With respect to that investigation, if you will, that is conducted as a normal investigation, as any other investigation; is that correct?

MR. GOLDEN. I would say yes.

MR. DORSEY. After the investigation is concluded, does that result in a specific report other than a report that would result from any investigation? In other words, is there a separate procedure for the handling of reports of shooting injuries?

MR. GOLDEN. It would not—the report would not differ in format and content from that of a normal, shall we say, normal homicide. It would differ from a report; we'll say, on a burglary that would be made out by a field detective division. Yes, it would differ from that.

MR. DORSEY. But not from another homicide?

MR. GOLDEN. That's correct.

MR. DORSEY. What happens to such reports when they are completed? Do they get forwarded to any particular office?

MR. GOLDEN. Well, they are made in three copies. The original, the distribution would depend on the circumstances. For example, if there were an arrest, the number two copy would be sent to the district attorney as soon as the report is completed. Sometimes it would be sent piecemeal, even. But, in any event, he would receive—I said number two copy, I should say the first copy—original, first copy, second copy—his would be the first copy.

For example, if there was a civil suit arising, the second copy would be sent to the city solicitor when requested. The original, by and large, we attempt to retain the original. Except for its possible use in court,

we retain it because some of these other agencies have a tendency to lose files and we don't.

MR. DORSEY. I think you indicated that the number three copy, well, the second copy is sent to the solicitor in the event of a civil suit, if requested, not as a matter of course?

MR. GOLDEN. I say "if requested" in that every case does not result in a civil suit.

MR. DORSEY. But if it was a civil suit, it would get automatically referred?

MR. GOLDEN. They would request it because they would learn first of the fact of the civil suit, and so therefore they would request it of us.

MR. DORSEY. Is there any other procedure which is instigated by virtue of a complaint being filed with respect to it, not a civil suit, but a complaint?

MR. GOLDEN. [No response.]

MR. DORSEY. Let me give an example, if I can. Let us assume that there is a shooting incident, and there is a response by Homicide, a person, for investigation, and within 24 hours a complaint is lodged with the department alleging police misconduct with respect to that shooting incident. Does that invoke any different process than the one you've outlined already?

MR. GOLDEN. The homicide division would complete the investigation and, depending perhaps on the type of the complaint, and the complaint—it may be requested by Chief Scafidi, for example.

MR. DORSEY. Would—I guess I should ask this of Chief Scafidi. In the event of a complaint being lodged in connection with a shooting incident of the variety that Inspector Golden is responsible for investigating, would that invoke a separate investigation on the part of Internal Affairs?

MR. SCAFIDI. Normally, no.

MR. DORSEY. So that for the purposes of the complaint, the investigation which is accomplished by the homicide bureau would be the department's investigation for the purposes of that complaint; is that correct?

MR. SCAFIDI. I'd say, normally, no. But I can think of a few instances in the past years that we have done additional investigation, over the last 11 or 12 years.

MR. DORSEY. What kind of rate would you say that that happens at? How often?

MR. SCAFIDI. Very infrequently, very infrequently.

MR. DORSEY. Inspector Golden, does your office maintain any statistics with respect to the number of police shooting investigations by year?

MR. GOLDEN. Yes.

MR. DORSEY. So that, for example, you would know the number of police shootings investigated by your units for 1978?

MR. GOLDEN. I don't have the figure in my head, sir.

MR. DORSEY. I'm really asking if that is something which is available to you.

MR. GOLDEN. We could get it, yes, sir.

MR. DORSEY. I would ask, with the Chairman's permission, that that information with respect to 1978 and 1977 be provided to the Commission and that it be inserted into the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

VICE CHAIRMAN HORN. Let me get it clear what you're asking. You want all times an officer discharged his gun—

MR. DORSEY. Involving an injury.

VICE CHAIRMAN HORN. Involving an injury. So it had to be wounds, killings, etc.?

MR. TETI. Do I understand this is an additional request for information at this point?

MR. DORSEY. Yes, it is.

MR. TETI. Okay, and specifically would you repeat it for the record again, just reiterate what it is you're seeking?

MR. DORSEY. Okay. I asked if it was available to the inspector the number of police shooting incidents that his unit has investigated for the calendar year 1978, and it's my understanding that he said that that information could be obtained; is that correct?

MR. GOLDEN. Yes. But, may I [witness conferred with counsel]. May I clarify your—I mentioned earlier that the police, we prepare a page for the logbook for each incident, right? And just so that we all are talking on the same channel, for example, we call a police shooting, for the record that goes into the logbook, if the policeman on duty will, say, shoot someone in the line of duty and that person is injured or killed, a page will go in the book.

On the other side, for example, if that policeman is off duty and he's in a taproom or wherever, and he fires his gun and injures someone, that would also result in a page in the book. Still another circumstance would be, suppose a policeman's child at home gets the gun, he's examining the gun, playing with the gun, and shoots a playmate, or the playmate shoots this policeman's child with the policeman's gun. If it's his gun used, we would have a page in the book for that also. So what I'm saying is this book does not contain just on-duty injuries by shooting by police.

MR. DORSEY. So what it would really reflect is the number of times a police service revolver was discharged and resulted in injury; is that correct?

MR. GOLDEN. In a sense that would be the contents of the logbook, yes.

MR. DORSEY. Are there any other incidents that might be included in the book other than what I've just outlined?

MR. GOLDEN. I think—

VICE CHAIRMAN HORN. Or are there any incidents not included in the book?

MR. GOLDEN. There would be nothing—

VICE CHAIRMAN HORN. So everything, as counsel says, everytime that revolver is discharged resulting in injury, that gets included in the book.

MR. GOLDEN. Yes, sir. That would be in the book.

MR. DORSEY. And as I understand it, each time a new entry page is inserted into the book it is numbered and numbered sequentially?

MR. GOLDEN. That's exactly—yes, sir.

MR. DORSEY. So that in fact, in terms of statistical data, one need only look at the first date in 1978 and what that number is and the last date in 1978 and see what that number is and determine the numbers in between. Is that correct?

MR. GOLDEN. That's correct.

MR. DORSEY. To know the numbers?

MR. GOLDEN. Yes.

VICE CHAIRMAN HORN. But I assume, counsel, that if we have three categories that were mentioned by you, Mr. Golden, that you would want that information broken down into three categories—when police discharges a revolver on duty, off duty, and if someone else was improperly using that revolver or any other weapon that they're using. I don't think we want to mislead anybody by having one sum number that people draw unreasonable interpretations from if indeed there's activity under each of these three categories. I think it's only fairness that we ought to try to isolate the categories.

MR. TETI. Let me just say for the record that, since this is a beyond an 11th hour request for additional information at this time to which the department is not able to respond. It was our understanding that we had already responded in full to subpoenas issued several months ago by the Commission with respect to these hearings. We will take these requests—I take it as a request—under advisement, and we will determine in short order what information is available and communicate that matter to you, counsel, and trust it will be satisfactory.

MR. DORSEY. That's excellent. I should let you know, so that we've got all the cards on the table, that in the course of a hearing the Commissioners may become aware of additional data which might be available and might be useful, and they then ask that it be provided with—of course, the caveat is always that there may be some objection to be raised. So that you don't think that—

MR. TETI. Fine.

CHAIRMAN FLEMMING. When the information is received, without objection it will be inserted in the record at this point.

MR. DORSEY. Inspector Golden, the Commissioners received testimony earlier today with respect to a document which was referred to as, I believe, a homicide book. Some document, some package, as I understand it, to describe it as best as I can, that had been made available to medical examiners and on occasion the district attorney in determining how to rule on the circumstances surrounding deaths. Are you familiar with such a document?

MR. GOLDEN. I imagine you would be referring to—some people call it book, some people refer to it as a homicide binder. If I may just take a second and describe it, it's a—it goes in a heavy manilla cover and there's an Acco fastener at the top, and contents are divided into sections. One section might be the report typed up by the detective or steno, another section would contain the lab reports, another photographs, and so on.

MR. DORSEY. Just so that I can refer to it correctly in the future, what is the police designation for that document?

MR. GOLDEN. We call it a homicide binder.

MR. DORSEY. Is that document prepared as a matter of course in police investigations?

MR. GOLDEN. Yes, sir. As I said, the original and two copies.

MR. DORSEY. Routinely?

MR. GOLDEN. Automatically in every case, yes.

MR. DORSEY. So for each one of the entries in the log to which we have referred earlier, there would be a homicide binder; is that correct?

MR. GOLDEN. Yes, sir.

MR. DORSEY. Those homicide binders, to whom are they made available and under what circumstances?

MR. GOLDEN. Well, the everyday homicide, if I may use that term, with an arrest, as soon as that binder is completed it would be forwarded to the district attorney's office. The nonarrest, regular homicides would remain in the homicide division. There would normally be no distribution of them. The DA's office would have no prosecution. There is no use for their office.

MR. DORSEY. Is that made available to the medical examiner?

MR. GOLDEN. If he wants it, yes.

MR. DORSEY. Is there usually a request?

MR. GOLDEN. Normally, the medical examiner would get the typewritten part of the report. He normally has no use for the entire binder, so he would get a copy of the typewritten report. Usually, if there was some special interest, he would call us and say, "Can I see the whole thing?" We would send it, the binder.

MR. DORSEY. There was some earlier testimony today that the homicide binder was not routinely made available to the district attorney, even upon request. Do you have any information with respect to that?

MR. GOLDEN. Unless he would be referring to those concerning shooting injuries by police, say, where no death occurred, for example, if there's an arrest—and again, the district attorney will have need for it at the time of court and certainly would get it—if there is no arrest, then it's not routinely sent, no.

MR. DORSEY. If requested, would it be sent in the case of a nonarrest?

MR. GOLDEN. In the case of a nonarrest in a shooting by police and the DA requests it, it would probably be sent minus the statement of the shooting officer.

MR. DORSEY. But the rest of the file—

MR. GOLDEN. This decision, if I may add here, we would normally consult with our counsel upon receiving such a request from the district attorney's office. We would be guided by our counsel's advice. This would not normally be a decision made by the police at any level including myself.

MR. DORSEY. To your knowledge, has there in the past 14 to 16 months been requests of that nature from the district attorney's office which requests were denied?

MR. GOLDEN. I don't recall any case offhand where they would have been denied the whole binder. There are probably cases where on advice of our counsel we did not send the officer's statement, yes, probably.

MR. DORSEY. But the rest of the binder would have been made available?

MR. GOLDEN. As far as I would recall the rest of the binder would have been made available. I believe that's correct, yes.

VICE CHAIRMAN HORN. I just want to make sure I understand this, counsel, at this point. The position of the police department is that if an arrest has been made the binder is furnished to the district attorney. If an arrest has not been made and a police officer is involved, that portion of the binder minus the officer's statement will be furnished to the district attorney.

Are there any other examples of where any types of shootings have occurred, let's say, within police jurisdiction that do not involve police officers and no arrests have been made that, if the district attorney asks for the file, it is not furnished, or is it only police officers when they are involved that their statements are not furnished?

MR. GOLDEN. [No response.]

VICE CHAIRMAN HORN. I just want to make sure I've covered all the angles.

MR. GOLDEN. I'm not sure I fully understand the question. But the reports, basically, would be different. For example, in the type of homicide in a police shooting report that we are talking about, each insert would be, I would say, a separate section.

In the normal report you'll say, if we're speaking maybe of a burglary, where there was an arrest that report will be sent automatically to the district attorney's office, automatically. That would be like a routine flow of reports. And a burglary with a nonarrest if the district attorney asks for a copy, sure it would be sent, but it's a different type of report. In other words the interviews, they're not on separate pages ordinarily. They would just flow like continuation from one page onto the other. I don't know if that's—

VICE CHAIRMAN HORN. I'll pursue the rest in the question and answer period. Go ahead.

MR. DORSEY. There had also been some suggestions earlier, Inspector Golden, that on enough occasions to warrant calling it a practice,

at least on the part of earlier witnesses, officers under investigation allegedly were assigned temporary administrative duties—that is, non-street duties—in the homicide bureau while such investigations either by Internal Affairs or the homicide bureau were pending. Do you know of any such situations?

MR. GOLDEN. That's correct, yes.

MR. DORSEY. Is that the result of a policy? How does that come about?

MR. GOLDEN. You might call it policy; you might call it practice. What it really does, it makes available for additional questioning if something—certainly, the investigation is not closed in 1 day or one tour. And the normal practice would be to leave that man at the homicide division until we're satisfied that we've pretty much completed the investigation. In other words, he's available. If we heard from some witness some new fact, the policeman would be readily available to us to ask him what about so and so, and that's the main reason why it's done. But it is done; yes, it is.

MR. DORSEY. It has been suggested that that could raise certain problems with respect to the closeness and sympathy which might arise and the prejudice that it might create with respect to the investigation. Do you have any sense that that might be a problem?

MR. GOLDEN. I see no problem whatsoever in that regard. I don't see any prejudice at all in these investigations. I see a thoroughly objective investigation, counselor, and I've been associated with them for a long while.

MR. DORSEY. Inspector Scafidi, I wouldn't want you to think I forgot all about you. With respect to Internal Affairs, I believe that you had earlier indicated that one of your responsibilities would be to determine if there were any patterns of police misconduct or allegations of police misconduct patterns which might relate to a police district or certain officers and that sort of things. And I wondered if you or your staff have been involved in any studies or research which might elicit that kind of information?

MR. SCAFIDI. We make no specific studies. We make continuing evaluations and scrutiny of each case with regard to particular officers or particular areas.

MR. DORSEY. In your experience has there ever been a pattern indicated with respect to allegations of police misconduct?

MR. SCAFIDI. Against individual officers?

MR. DORSEY. Or particular districts or units.

MR. SCAFIDI. Has there been a pattern?

MR. DORSEY. Have you ever seen a pattern?

MR. SCAFIDI. Or a perceived pattern? Yes. Yes.

MR. DORSEY. With respect to those kinds of patterns have you had occasion to make recommendations for action to be taken?

MR. SCAFIDI. I believe there has been a few cases like that, yes.

MR. DORSEY. Would that have involved individuals, districts, units, or all of those categories?

MR. SCAFIDI. I could only clearly remember individual cases. I don't have any clear recollection of action against units per se.

MR. DORSEY. As you are aware, you supplied the Commission through its subpoena request certain information with respect to civilian complaints, and the Commission staff has attempted to make some analysis of that data. And I'm not sure you as yet had an opportunity to get a copy of that.

MR. SCAFIDI. I've not seen the report, no sir.

MR. DORSEY. I would like to make it available to you if I can, and I would also like to refer your attention specifically to pages 171 to 175. And I would request—again this is the 11th hour as counsel has noted—but I would from our point of view like to have your response to it or comment or whatever, to what we saw. And if you would submit it, I would ask that the Commissioners receive it into the record so that we—

MR. SCAFIDI. A response in writing? A response in writing?

MR. DORSEY. If you desire. I would like to have your reflection on it, since it will give us—

MR. SCAFIDI. Can you be more specific? What are you alluding to? I—

MR. DORSEY. The information that you gave was broken down—the complaints, the listing of complaints was broken down as best we could by district and by unit and by types of categories as listed in those complaints, such categories as physical abuse, verbal abuse, and you are more familiar with those categories than I am.

MR. SCAFIDI. Yes.

MR. DORSEY. And there did seem to be some patterns from our analysis that emerged from that, and what I'm asking is that if we provide you with a copy of it, if you can take a look at that and see how that comports with your understanding of the data so that we might have that reflection.

MR. SCAFIDI. Pardon me a moment. [Witness conferred with counsel.]

MR. TETI. Let me just say this for the record that, you know, while the report had been made fairly available to the press, it hasn't been made available to the City of Philadelphia or any of its officials thereof. I'm sure, if the Commission is soliciting a response from the chief and the responsible individuals of the police department, we will review the cited pages as well as the report with great interest, and if we feel that a response is appropriate, we will so—we will be happy to inform counsel.

CHAIRMAN FLEMMING. Thank you very much.

MR. DORSEY. With respect to the actual operation of directives 127 and 127-A, are there any distinctions with respect to the manner of investigation?

MR. SCAFIDI. You'd have to give me a more explicit description of "manner." What do you mean, the thoroughness, the comprehensiveness?



MR. DORSEY. Or who is responsible for it or who gets the reports that result from it? What I'm really getting at is the process and the procedure that is—

MR. SCAFIDI. If you could frame specific questions, I'll be glad to answer them. Is there any distinction between what?

MR. DORSEY. How your office responds with respect to 127-type complaints and 127-A complaints?

MR. SCAFIDI. There's a difference in the procedure.

MR. DORSEY. Could you outline it for us?

MR. SCAFIDI. Sure. In 127, which encompasses physical and verbal abuse allegations, the receiving unit or person or policeperson is required to notify the internal affairs bureau immediately by telephone and to follow up with a completed complaint form 561. In others, other than physical and verbal abuse, the receiving policeperson has the option of notifying us immediately or not notifying us immediately, but immediately they have the immediate responsibility of investigation. That's the distinction.

MR. DORSEY. In determining which cases fall within 127 as opposed to 127-A, are there any guidelines or instructions to the individual district commander?

MR. SCAFIDI. Well—

MR. DORSEY. That is to say, one of the things that—one natural question that arises—there's a distinction in categories between physical abuse and verbal abuse, harassment and police action in this kind of category—

MR. SCAFIDI. Yes, yes.

MR. DORSEY. —and being a novice, I mean, one could see the possibility of some of the physical or verbal abuse being classified as harassment or police action.

MR. SCAFIDI. Yes, except for the fact that the internal affairs bureau in the final analysis makes the classification. In the first instance, if there's any doubt in the mind of the receiving policeperson, I assure you that they would call us. I could also assure you that they are on the side of classifying or immediately putting the classification, the preliminary classification of physical or verbal abuse. We have had training sessions to indoctrinate them in the proper use of these classifications.

MR. DORSEY. So all complaints filed with the police department at some point come to the attention of Internal Affairs?

MR. SCAFIDI. That's correct.

MR. DORSEY. And all of them are subject to review and reconsideration, if you will, with respect to the categories in which they were placed?

MR. SCAFIDI. That's correct.

MR. DORSEY. Is there a standard procedure or standard set of guidelines or criteria by which complaints of police misconduct are to be investigated, whether by Internal Affairs or by a district commander

or by a lieutenant or what have you? Must the process be the same no matter who does it?

MR. SCAFIDI. No. The process, the investigative requirements are the same, but the decision or the determination as to whether the field unit or the internal affairs bureau will investigate hinges on certain things.

First, of all, we're limited by our physical capabilities and also by an old standard principle of administration that states that responsibility of command is paramount—command is responsible for most of these things. We don't want to relieve them of that responsibility. But ordinarily the call is made to the internal affairs bureau, and its receiving staff inspector can decide at that point initially that the field should go ahead and make the investigation unilaterally with the internal affairs bureau being in a supervisory role, playing a supervisory role. Or there could be a joint investigation or the internal affairs bureau will take over the investigative function completely.

MR. DORSEY. With respect to your investigations, is it a function of your office also to make recommendations after the completion of the investigation, or is it strictly factfinding with no—

MR. SCAFIDI. It's more factfinding than making recommendations. We will steer a report to the commanding officer for further evaluation, but we don't normally bring the charges if charges are indicated.

MR. DORSEY. Would you recommend, for example, counseling or training? Would that be a function?

MR. SCAFIDI. We do it. We do it, yes, sir.

MR. DORSEY. In the process of evaluating the fact of misconduct or nonmisconduct, we have heard from other officers earlier that one of the elements necessarily to be considered is the necessity for, in the case of physical abuse, the imposition of force. We've also heard that, with respect to police misconduct involving physical force, that some degree of it is essential to aggressive law enforcement. I'm interested in your view with respect to that, particularly since you have the responsibility of laying a foundation as to whether or not there was or was not police misconduct.

MR. SCAFIDI. You're asking me to define physical abuse?

MR. DORSEY. That's an element of the question, clearly, since that's, I assume, a part of your job in terms of—

MR. SCAFIDI. Yes, I'll say obvious, blatant, excessive force, beyond the need to subdue the person.

MR. DORSEY. Is it ever—

MR. SCAFIDI. It's very difficult to measure, very, very difficult.

MR. DORSEY. Is it ever a function of your evaluation to include a consideration of the aggressiveness, the law enforcement aggressiveness of the individual that's involved?

MR. SCAFIDI. Well, I think we need a clarification of the word "aggressiveness"—aggressively abusive or aggressive in the desire to carry out the law enforcement function?

MR. DORSEY. Aggressive in the sense of carrying out law enforcement responsibilities.

MR. SCAFIDI. Well, I'd like to answer this way. We like our officers to go up alleys and check doors and rattle doors and be somewhat suspicious. If that's aggressiveness in the carrying out of the law enforcement functions, that's what we prefer.

MR. DORSEY. Do you see, as earlier witnesses have indicated, a connection between police misconduct, physical abuse, and the characteristic of aggressive law enforcement of the variety that you've just indicated?

MR. SCAFIDI. Well, again, I'll answer the question this way. If you do nothing, you don't get in trouble. If you try to do your job, you're increasing your chance of getting into difficulty. If an officer sees what he considers a suspicious situation, he could ignore it. There'll be no complaints and no problem. Somebody could be held up or mugged shortly thereafter, or somebody may get away with a stolen car or stolen property.

On the other hand, the officer may carry his suspicions out to an action, into an action; then there may be a complaint, there may be difficulty, there may be resistance, etc. So it's very hard to clearly answer your question. Aggressive—I don't think I should say any more.

MR. DORSEY. Just to follow up a little further, do you see a connection between good, solid law enforcement and the increased potential for physical abuse?

MR. SCAFIDI. Well, in the light of the fact that many complaints emanate from police actions and police arrests, I would have to say yes.

MR. DORSEY. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Let me ask you; Mr. Scafidi, should personnel in Internal Affairs be rotated, in your judgment?

MR. SCAFIDI. In Internal Affairs?

VICE CHAIRMAN HORN. Yes.

MR. SCAFIDI. Well, I suppose that there are advantages and disadvantages of each kind of policy. Structurally, the Internal Affairs Bureau is manned by staff inspectors; that's by organizational design. So, we have the same people until they either retire or promoted out of the unit. But they are the people responsible for investigations.

As a consequence of long tenure, they become somewhat skilled in investigation. They become certainly thoroughly fairly familiar with the situation in general—personnel, area of the city, etc. From the standpoint of getting a fresh perspective, I suppose it might be advantageous to change personnel. But through the normal process of promotion, retirement, transfer, there is change.

VICE CHAIRMAN HORN. What is the average length of service of your staff in Internal Affairs?

MR. SCAFIDI. In Internal Affairs?

VICE CHAIRMAN HORN. Yes.

MR. SCAFIDI. I would have to start dividing and multiplying, sir. I had—let me put it this way; maybe you could do the arithmetic. In the 11 years, almost 11 years that I've been there, I have about 17 or 18 staff, not all assigned to me, but 1 or 2. I would say that I have had a total of about 40 staffers, staff inspectors in that period of time.

VICE CHAIRMAN HORN. One could argue that that type of permanency ought help Internal Affairs in the sense, as you said, they can become more skilled in what it is that they're about. And, presumably, that would mean we avoid the problem of having them go back to the line and subject to peer pressure for actions they might have taken in carrying out their responsibilities in Internal Affairs. Do many go back to the line or request transfer out, and what has been the effect on them as a result of their service in Internal Affairs?

MR. SCAFIDI. The ones that have left the Internal Affairs have gone on to higher rank.

VICE CHAIRMAN HORN. So it has not been harmful to serve in Internal Affairs?

MR. SCAFIDI. I think not, sir.

MR. DORSEY. You know, when you think of the army, the attitude used to be, the last place you want to serve is in intelligence; you want to be a line officer if you want to get ahead. Would you say that serving in Internal Affairs is a desirable assignment for members of the Philadelphia police? How does it rank up compared to other things one could apply for?

MR. SCAFIDI. Well, it's not a matter of application, sir. It's a matter of organizational structure, for one thing. Secondly, if I may say so, most of them seem to be contented with me.

VICE CHAIRMAN HORN. So you feel morale is high?

MR. SCAFIDI. I believe so.

VICE CHAIRMAN HORN. Even though one is investigating one's colleagues, which is never a pleasant task in any organization?

MR. SCAFIDI. I believe it is, yes, sir.

VICE CHAIRMAN HORN. Should the head of Internal Affairs, in your judgment, have the authority to bring charges after the conduct of one of these investigations? Explain to me again how that works. Who actually would bring the charges when you decide the preponderance of the evidence should result in bringing charges?

MR. SCAFIDI. The commanding officer in our scheme is the only one that could bring, pardon, is the only one that can bring charges, that is, aside from the police commissioner.

VICE CHAIRMAN HORN. And the commanding officer would be at the precinct level?

MR. SCAFIDI. Whatever level, sir. He may be a unit commander or a district, divisional, whatever.

VICE CHAIRMAN HORN. If that's a unit commander, would that include a sergeant?

MR. SCAFIDI. No. What I meant to convey by a unit is a self-contained unit, somewhat smaller than a district, would have a commanding officer other than a captain.

VICE CHAIRMAN HORN. How many officers would have that type of authority?

MR. SCAFIDI. Well, there are 22 police districts; there are 22 commanding officers. There are seven police detective divisions. There are a number of special units, maybe another 20, off the top of my head.

VICE CHAIRMAN HORN. So it could be a total of about 50—

MR. SCAFIDI. Easily, yes.

VICE CHAIRMAN HORN. —that would have that type of command authority and would have to make the decision?

MR. SCAFIDI. That's right.

VICE CHAIRMAN HORN. When you have referred these matters back to any one of these 50 as the incidents arise, have you found that some are more willing to pursue matters than others?

MR. SCAFIDI. I can't—I don't think that that's the case. I believe that where the evidence indicates or warrants the placing of charges, I believe they carry out that responsibility.

VICE CHAIRMAN HORN. If you felt a command officer had not properly taken your report and brought charges, and felt strongly on the matter, where is your right of appeal, with the commissioner?

MR. SCAFIDI. Yes.

VICE CHAIRMAN HORN. Have you ever felt strong enough to go to the commissioner and say, "I'm not happy with what this commanding officer has done; I'd like you to look at the case"?

MR. SCAFIDI. Yes, but in reality, a natural practice, there is consensus. It's not just unilateral. The commanding officer normally is a captain. He has a divisional commander, an inspector, who has a chief inspector in that particular chain of command, who has a deputy commissioner in most cases. And there is evaluation all through the process, through the chain. And generally; and almost in every case, there is consensus.

VICE CHAIRMAN HORN. Have you had an opportunity in your capacity as head of Internal Affairs to look at how Internal Affairs is structured in other major city police departments?

MR. SCAFIDI. I've been to at least three cities. Yes, sir.

VICE CHAIRMAN HORN. Which were those?

MR. SCAFIDI. Boston, New York, and Baltimore.

VICE CHAIRMAN HORN. How do you feel about how they handle their process, structure it?

MR. SCAFIDI. At the risk of sounding like we are better than they, I believe that we handle it at least as well. It's been many years since I've been there, incidently, Mr. Horn, maybe 8, 7 years ago to those cities.

For instance, just one thing comes to mind immediately. The Philadelphia Police Department assigns this function to very high-rank-

ing officers. Internal Affairs people are one step below full inspectors and one step above captains. I know of no other city that I personally observed or read about or attended seminars with that gives it this kind of command, high-officer attention.

VICE CHAIRMAN HORN. Now, have you had an opportunity to examine the provisions of bill 1063 which is before the city council?

MR. SCAFIDI. Yes.

VICE CHAIRMAN HORN. Do you have any professional feelings as to the provisions outlined in that bill, which ones you would find unacceptable as a way to properly conduct your office?

MR. SCAFIDI. Well, I'm speaking now as a person, not really representing policy or the police commissioner.

VICE CHAIRMAN HORN. Just as a professional who deals with the problem.

MR. SCAFIDI. I wonder about the legislative branch of the government placing sanctions on—in the form that they've taken that particular proposed ordinance, placing time limits. For instance, one of the provisions calls for the completion of investigation within 45 days. I ask you, if it takes us 50 days—and sometimes it does because of the absence or the reluctance of witnesses or complainants to cooperate—what are the sanctions? Is the police officer or is the commander of the Internal Affairs Bureau going to be called before city council and sanctioned in some way?

There are many provisions of the ordinance that we are in conformance with. I have to object to the demand that all investigations be made by the internal affairs bureau because of practical considerations.

I have to object to the indiscriminate throwing open of the files of the police department to anybody who cares to walk in off the street, not because of the need for secrecy or a desire for secrecy, but there is a tremendous amount of confidential information in these investigations—neighbor against neighbor, informants—and yet this ordinance would allow a person who is retired and wants to kill a couple hours in his day to come in and examine the files.

I object to the repetitious requirement for notification in writing when the—at the completion of the investigation to notify and outline your reasons for the findings. I don't know of anybody in the police department who has that kind of writing ability that could clearly state why, in writing, certain conclusions have been reached.

I agree with the notification requirement. Then, again, the commissioner has to notify in writing when there's a police board of inquiry, and again he has to notify in writing after the completion of the police board of inquiry, each time substantiating his conclusion in writing.

It places a 15-day limitation on the internal affairs bureau commander for forwarding a report or a completed investigation to the commissioner to include their recommendation. There the onus is on one man. I feel that these decisions are properly in the domain of

more than one person. I believe that the chain-of-command people should be involved in the decisionmaking process as to misconduct, not just one person, the commander of the internal affairs bureau. Not that it's a matter of shunning responsibility—I don't think that's a particularly good way to do it.

I believe there are two or three other somewhat minor provisions. I believe that they want the complaint form to be in writing—in Spanish. I don't have any personal objections, except to question the real need for it. We have Spanish-speaking policemen. We have—most of our Hispanic society can express themselves reasonably well or they can bring people in who can do that. But that's not really too important.

I believe I've summed it up.

VICE CHAIRMAN HORN. Do you feel that the adoption of this bill would harm morale in the police department?

MR. SCAFIDI. It's very difficult for me to say. Morale is such a nebulous thing. Morale can be good today and bad tomorrow, bounce back on Wednesday. I really don't know.

VICE CHAIRMAN HORN. Thank you, chief inspector.

Now Chief Inspector Golden, I'd like to pursue that point you were discussing a little while earlier when counsel questioned you. I take it police furnish a report when there has been a discharge of a police weapon to the DA if an arrest has been made. They do not furnish a report if it involves a policeman and no arrest has been made.

Now, to the outsider just listening to that exchange, I draw two conclusions; maybe more can be drawn. One would be that the police department could stand accused of covering up misconduct by the police because policemen aren't charged. The other could be that the police department could be praised for protecting the policemen's fifth amendment rights. Which conclusion should I draw and why?

MR. GOLDEN. I think perhaps you should take some of both. Certainly, policemen are entitled to their fifth amendment rights. And as to the other point—I don't know just how to explain it, what's in my mind.

The district attorney does his own investigation, and we do our investigation. If he wants to see our report, we have, as I said, we have channels for that through our counsel to the assistant DA. It's not a case of—there is no—how shall we say—there is no situation here to my knowledge or belief of any such thing as a total shutout of the district attorney from our reports. That's not really happening.

VICE CHAIRMAN HORN. So, well, obviously the problem is, What is the credibility of the process to the community? That's really what we're talking about, in both Internal Affairs and the handling of the internal reports. Do people have faith in the process? And obviously, it seems to me, any police department, as with any human organization, would like to be as well received as it can be and especially police, given the difficulty and the toughness of the job involved, would

like to be well received by your once fellow citizens. And I guess I'm just wondering if there is something that could be done there to alleviate the concerns that, because police are involved, the police department is acting as not simply the investigator, but also the judge and the jury by not furnishing the reports because a policeman was involved and no arrest was made.

MR. GOLDEN. I think we are somewhat—yes, sir?

CHAIRMAN FLEMMING. I would like to ask a question to clarify it. As I understand the question, when no arrest has been made the district attorney requests a report. The report will be furnished minus that portion of the report containing the policeman's statement; is that correct? It's a factual situation.

MR. GOLDEN. Yes. Again, upon his request we'll consult with our counsel. Yes, and again, as far as the word "arrest" goes here, you might say there are two possibilities of arrest here—the person that's been shot and the person that did the shooting. So it's not all a single situation where the policeman did the shooting and the sole question is whether or not he should be arrested. In most cases there's a corresponding question, should or should not the other person be arrested?

VICE CHAIRMAN HORN. I'm just wondering how the district attorney can really make a judgment when that key statement of the officer that did the shooting is not in the file?

MR. GOLDEN. Well, the district attorney, of course, has his own investigators. Surely he wouldn't—perhaps, surely he shouldn't make a decision to arrest on an improperly obtained statement from a suspect.

VICE CHAIRMAN HORN. Does a police officer have to file a report with the department if he has used his weapon to injure someone, or could he take the fifth? And if he did, what would be the internal disciplinary action of the police department to an officer that refused to properly answer that report? Obviously, he could lie; that's one option open to anybody filling out any report. But what's your experience to any of them refusing to ever fill out the report?

MR. GOLDEN. We have some who on advice of counsel are not currently answering, yes.

VICE CHAIRMAN HORN. Is there any internal sanction against one in the police department that on advice of counsel doesn't fill out the report and answer?

MR. GOLDEN. To my belief there's no sanction at the present. This has been an issue in the past, but it's my understanding it's not an issue in the present.

VICE CHAIRMAN HORN. In other words, the right of the individual to take the fifth amendment, so-called, exists within the Philadelphia Police Department?

MR. GOLDEN. Yes.

VICE CHAIRMAN HORN. Some would argue, in the American army, which is obviously a paramilitary organization, that one could sanction



one for refusing to answer. It's one thing to be outside the organization and have certain rights, but one could say for the credibility of the organization that you at least ought to respond internally.

MR. TETI. For the Commissioner's edification, it is the law of the Commonwealth of Pennsylvania that such statements so obtained cannot be obtained—we do not have a right even in the civil service commission context to take these kinds of statements under coercion in any way, shape, or form.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Inspector Scafidi, how would you evaluate the present attitude of the minority community to the police department. Do you think it's positive, apathetic, negative, hostile? How would you categorize it?

MR. SCAFIDI. I sincerely do not believe that I am in a position—I'm not out in the field too frequently. I'd like to think that in the law-abiding community it's acceptable.

COMMISSIONER SALTZMAN. What is your evaluation of the attention the issue of police misconduct has been getting in this city? Is it justifiable, overblown? How would you evaluate it?

MR. SCAFIDI. Sir, let me try to answer you with some factual data. Two years ago this month the United States Attorney for the Eastern District launched a Federal probe of allegations of brutality in the Philadelphia Police Department. We were immediately inundated with subpoenas. The first 6 or 8 months of that probe—they, incidently, empanelled a special grand jury. The first 6 or 8 months of that probe we must have responded to 30, 35, 40 subpoenas and in each case multiple subpoenas for each case, 5, 7, 10 within one case. In the last 6 months I believe we've received maybe one, possibly two, possibly none. It has just petered out. Now, they subpoenaed 61 cases. They ran them, I presume, before the grand jury. They have returned to us 30-some files indicating no further action. They are holding on to maybe a dozen, 20 files. They prosecuted 2 of the 61 cases. One prosecution resulted in acquittal for the police officers; the other prosecution resulted in conviction on some of the charges brought against the homicide detectives.

So there we are with one probe, 2 of 61, which is not any higher and probably lower than our rate of disciplinary actions against police officers. We have to meet a certain standard of proof laid down by the courts about 10 years ago to convict our officers in departmental trials.

I believe the district attorney has been vigorously involved in pursuing allegations of police misconduct. I believe that he has arrested in the last year and a half about seven or eight officers. A couple of the arrests we concurred with; that is, we were in agreement that they should be arrested.

I believe he has prosecuted maybe three cases. I know that for one which occurred prior to his appointment or his election as district at-

torney, there was an acquittal. Another one which the incident occurred prior to his election as the district attorney, there was a mistrial. There are two or three prosecutions pending. I don't know how many complaints the district attorney has received. I think he's publicly stated several hundred.

There are the facts, the statistical facts. But what I'm saying is, I am not wiping away the allegations of abuse, but I am saying that they are very difficult to prove in many cases. They are not prosecutable or even provable by department standards because we have to adhere to the rules of evidence that's laid down by Judge Spaeth in 1970, the right to be confronted by our accuser, the right to counsel, the right to cross examination, and the right to—well, not quite as stringent as the rules of evidence in a criminal prosecution—in compliance with the rules of evidence generally.

So, I could only answer the question in that way.

COMMISSIONER SALTZMAN. That's very helpful, and I think your statement that these are difficult cases often to prosecute is a fair enough, an objective statement. Nonetheless, there seems to be—and we've had testimony, extensive testimony today—an attitude in the community that there is widespread police abuse.

And in relationship to that, is there a process that you could perhaps recommend to us, because we're looking at this on a national scale, that could improve—Because it's not only the Philadelphia Police Department, but around the country, it seems, that there is tension between the police departments and minority communities relative to this issue. Is there a process that could reassure the community, provide a greater sense of credibility with respect to how these situations are handled?

MR. SCAFIDI. I as an independent thinker have my own ideas, but I think it would be usurping the prerogative of the police commissioner, really. I believe that, respectfully, that question should be addressed to the police commissioner.

COMMISSIONER SALTZMAN. I'm not asking necessarily with respect to Philadelphia. I'm speaking in terms of our national purview and our attempt to provide some kind of national direction.

MR. SCAFIDI. Well, sir, police problems—or problem police, I might say—begin with recruitment. And I believe that the best Internal Affairs is a good, effective recruitment process. We have been—maybe we're partly to blame for problem police, but I know that we have been hamstrung by court decisions somewhat contradictory.

We have tried to preclude the appointment of certain—admittedly with some subjectivity—the appointment of certain persons with backgrounds which indicated potential trouble. And we have been, on the one hand, pressured to improve recruitment standards. By the same token, we have been mandated by the courts to a reduced application of standards. I believe it begins there, and that's not absolving our own judgment.

VICE CHAIRMAN HORN. Are you going to pursue this point?

COMMISSIONER SALTZMAN. If you want to.

VICE CHAIRMAN HORN. Yes. We've heard this several times today. We heard from the benevolent order of police representative, and I must say, I'm confused listening. As I hear it, here's what it said. It said, "Well, the courts have forced us to change and lower standards, and ergo, that's why police abuse as it exists has increased."

Now, here's what I draw from that. I listen and I think of the court cases; some of the court cases say, well, look now, there's been discrimination against women because of height, or there's been discrimination based on race. There's been discrimination because certain educational standards were required when they weren't job related, under *Griggs v. Duke Power*, whatever, and I'm hearing that the court has done these things.

Some people say it's lowered standards. Other people would say it's merely provided access because those other standards weren't relevant. And I'm listening that, well, it's meant more minority members can be recruited. And yet I don't see those minority members—although some might be doing it, and I think we had testimony on one in particular—are the ones that are committing the police abuse.

So I don't follow the cause-and-effect action that, because courts have changed the standards and because there is wider access to be a policeman, that that necessarily leads to greater police brutality and abuse. Are you saying that that is a direct result?

MR. SCAFIDI. No, I'm not saying that, not at all.

VICE CHAIRMAN HORN. Well, good. I just wanted to get that clarified.

MR. SCAFIDI. Because the lowering of standards applies to all people, not just minorities.

VICE CHAIRMAN HORN. Okay. So you're saying that maybe a certain type of nonminority officers, since some of the accusations are saying that white police are doing to minority community, have come in under this change in standard. Well, if you had to look at these cases, are these cases by people that have recently come in with the change of standard or are these long-time employees of the police department?

MR. SCAFIDI. They are rarely long-time employees.

VICE CHAIRMAN HORN. These are mostly newcomers?

MR. SCAFIDI. Yes, sir.

VICE CHAIRMAN HORN. And you think it's directly related to the standards, not to some quirk in an authoritarian personality or something?

MR. SCAFIDI. No, I don't mean to imply that. There are other reasons. That's on the assumption that there's widespread abuse, which I do not believe.

VICE CHAIRMAN HORN. No, but even 10 cases, I'm wondering what's the cause? Have we ever analyzed—

MR. SCAFIDI. Oh, well, there are many, many human factors, Commissioner, that go beyond discussion here.

CHAIRMAN FLEMMING. Mr. Scafidi, I'd like to pursue one aspect of your work. I understood from some of your earlier testimony that from time to time when you've completed the investigation of a case you do recommend counseling and training; is that correct?

MR. SCAFIDI. Yes, sir.

CHAIRMAN FLEMMING. What has been your experience with those recommendations to those who are in command positions? Is the batting average pretty good in terms of their taking recommendations of that kind and doing something about them?

MR. SCAFIDI. Yes, sir. But I'm not in a position to know that they always do something about it. We frequently—not frequently, but occasionally, recommend—we know that an officer may be going through a period of stress, domestic difficulties, marital strife, etc.—we recommend psychiatric evaluation, or we recommend a less demanding or less sensitive assignment for a period of time. We know generally those things are done.

Or if there is an allegation of discourtesy or harsh treatment when a car is stopped or the issuance of a traffic violation, we want the officer spoken to, even though it's not proven. We suggest to the commanding officer that he at least be reminded of the need for courtesy, etc.

CHAIRMAN FLEMMING. You engaged in dialogue with Mr. Dorsey on the basic issue that has kept coming up throughout the day. It has been sort of vigorous law enforcement versus police abuse. Has it been your observation that training carried forward vigorously and effectively can make a real contribution to helping to resolve that kind of alleged conflict? In other words, what kept running through my mind as I have listened to this kind of dialogue, the question that runs through my mind, is why does there have to be a choice between vigorous law enforcement and police abuse, or isn't it possible for training programs to produce vigorous law enforcement which will stay away in most instances from police abuse?

MR. SCAFIDI. Well, that is certainly our goal, Mr. Flemming. I'm not a training expert, but I do believe that all of the classroom training in the world is not equal to good, supervisory, on-the-job training.

CHAIRMAN FLEMMING. Mr. Golden, would you like to comment on that issue, growing out of your experience?

MR. GOLDEN. I think there are many factors that go into the whole situation that's under discussion here. We—somewhere down the line someone has coined the phrase police abuse, and I think that this very coining of the phrase has, you might say, set certain forces off into the blue. The other side of the coin is certainly the abuse of police. We hear nothing of the abuse of police, and yet daily throughout the Nation you have policemen injured, killed, and what have you.

Then it becomes a case of someone trying to sit down and say who is right and who is wrong. Maybe some of this begins—and I haven't heard it mentioned here—maybe it begins, some of it, with the motive

of the complainants. Are they really injured? Are they really legitimately abused by the police? Do they have a motive of establishing a criminal defense against the obvious potential for their arrest on the occasion? Are they looking perhaps to feather their nests some day in a civil suit award? What is their motive?

There are two sides to this coin, and constantly, day in and day out all you hear, all the public hears, is police abuse, police abuse. There is another side to the coin, and some day that side should come to the top.

MR. SCAFIDI. Sir, may I?

CHAIRMAN FLEMMING. Yes, go ahead.

MR. SCAFIDI. When I was detailing the—when I was asked about the extent and the validity of the police abuse allegations here in the city, I mentioned the Federal probe and the DA's activities.

I'd also like to mention another significant thing, and that is that this department probably has a minimum of three billion contacts with the people of Philadelphia and the surrounding area a year, documented in most cases through the issuance of traffic summons, incident reports, police action of one kind or another.

We get about 800 complaints a year, give or take 50. The majority of those complaints—incidentally, we accept as complaints against police, bad debts, off-duty neighbor disputes, in some cases marital abuse—many categories some people may say really shouldn't be categorized as a police complaint. And they are probably 800 or so.

There are about somewhere around 200, or short of that figure, physical abuse, which is 200 too much for us because they create a lot of difficulties. But I think it's significant that the police department is making three or three and a half million contacts with the public, taking police action, directing traffic, giving directions, answering complaints, arresting people, etc.

COMMISSIONER SALTZMAN. Can I ask you, is that an extraordinary amount of police contact for this size city?

MR. SCAFIDI. I don't know. I'm not a records expert. But it's a high amount of activity because we do not give ourselves the option of responding or not responding. We respond to all requests for services.

COMMISSIONER SALTZMAN. In general, would you evaluate, as others have evaluated, the crime proportionately, relatively in Philadelphia is lower than in other major cities?

MR. SCAFIDI. The indications are that the crime rate has been somewhat lower in the past 10 to 12 years.

VICE CHAIRMAN HORN. Do we have those contact figures in the record, counsel? I would suggest, Mr. Chairman, that since I know that's going to be a point of discussion tomorrow—it's been mentioned by several individuals—that the reports as prepared by the department—I assume that's based on an annual report—by category, the three and a half million contacts, working our way down to this point you've made, be put at this point in the record.

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. DORSEY. Excuse me.

CHAIRMAN FLEMMING. Pardon?

MR. DORSEY. The only question was, I'm not clear on where we are with that. Are we asking for a new submission, or is this available in some reports?

VICE CHAIRMAN HORN. I assume they have it available. Most agencies report things.

MR. SCAFIDI. I believe it may have been furnished.

VICE CHAIRMAN HORN. However they prepare it. It's whatever they give the city council.

MR. DORSEY. We have that.

CHAIRMAN FLEMMING. I was coming back to this issue. It seems to have run through the hearings all day. Statements were made to us by very responsible witnesses that, conceivably, one of the prices that you must pay for vigorous law enforcement is some police abuse. I agree with you there are two sides to the coin, but the evidence that's been presented and the evidence that both of you have presented tonight does indicate that this is a problem. It's a problem, we know, of other police departments, also, that have been called to our attention.

What I'm getting at is whether or not effective training programs can be carried on so that it is possible to attain the objective or the goal of vigorous law enforcement without police abuse, without a violation of constitutional rights of persons on the part of the police. Both of you have had long experience with the department and have seen these cases come and analyzed and so on. What I'm feeling for here is whether it's possible to put a great deal more emphasis even than has been on the kind of training programs that would produce forceful, vigorous law enforcement, but without the element of police abuse.

MR. GOLDEN. It would be my opinion that the training given to a policeman in Philadelphia is probably second to none in the Nation. I think we have a fine training academy. I am somewhat familiar with it. I couldn't give it to you in hours, the curriculum. When we have training for detectives, new detectives' inservice training, for example, most frequently I have some periods of the time myself. Certainly, training is a factor and should be continued.

I don't think that training is the sole answer. As I say, there are many other factors. One portion of the problem in Philadelphia is, you might say, the integrity of the complainant, the integrity of the witnesses. It's not unusual at all here in Philadelphia to find people who will report to you as fact what is truly their conclusions rather than fact. It's not too terribly unusual to have a person suddenly become a so-called witness who wasn't there at all.

You see, this is the type of thing we're up against. This is the type of thing that makes the investigations difficult. This is the type of thing that makes accusations very easy. But there is a truth somewhere in the middle there, and this is part of the problem.

So, to specifically answer the question, yes, training is a factor. Training will help anything. To comment further on training, in our department—and I don't think this is true anywhere in the Nation except Philadelphia—but in our department every time a policeman fires his gun, whether an injury results or not, he is taken back to the police academy for a 1-day training on the use of firearms. So we do train; we do try to train. We are training very seriously.

CHAIRMAN FLEMMING. Thank you very much. Mr. Nunez, do you have a question?

MR. NUNEZ. Yes. Going back to the procedure you followed in dealing with the district attorney on these homicide binders, you indicated, Inspector Golden, that you at times took certain personal statements out of the binders in submitting them to the district attorney's office. Is that correct?

MR. GOLDEN. Yes.

MR. NUNEZ. I was just wondering, how do you justify that policy? The district attorney, after all, is the legally empowered prosecuting official of the city of Philadelphia, and aren't you conceivably hindering his ability to do his job by doing that? I'm aware of your feeling that you're trying to protect the privacy of the individual involved, but you're dealing with another public official who has the major responsibility in this area.

MR. GOLDEN. We don't do that, sir, on our own. We don't make this decision on our own. As I said, each of these cases where we have such requests, this is reviewed with our counsel; and, in effect, I don't make the decision personally myself whether he'll get this statement or he'll not get that one. I don't make that decision. This is arrived at after discussion of the case with counsel, and then we do get the advice of counsel what to do in particular cases. It's not an overall decision one way or the other. It's a case-by-case discussion, decision on advice of counsel. That's really what it comes down to.

VICE CHAIRMAN HORN. Well, is it clear that counsel is outside the police department; is that correct?

MR. GOLDEN. The city solicitor?

VICE CHAIRMAN HORN. But that's not an agency under the jurisdiction of the police department. The city solicitor, and the city solicitor is appointed by whom? Is he elected or appointed?

MR. TETI. Appointed by the mayor.

VICE CHAIRMAN HORN. Appointed by the mayor. So the actual decision on what information will be transmitted to the district attorney, you're saying, Inspector Golden, is not made by the police department; it's made within the office of the city solicitor, an agency that reports to the mayor, not to the commissioner of police.

CHAIRMAN FLEMMING. I understand that your testimony is that the city solicitor is appointed by the mayor and is the only appointee of the mayor that is confirmed by the city council, and that the city solicitor serves as the chief law officer for both the mayor and the city council; am I correct?

MR. TETI. Yes.

VICE CHAIRMAN HORN. And is the city solicitor an at-pleasure appointment or a term appointment? In other words, can the mayor and/or council dismiss the city solicitor at any time?

MR. TETI. You're testing my memory, but I believe he's subject to dismissal by the mayor.

VICE CHAIRMAN HORN. Well, if there's a change in that, please forward it for the record. I would appreciate having it. He is subject to dismissal by the mayor, so, therefore, he is ultimately responsible to the mayor.

CHAIRMAN FLEMMING. I want to thank you both very, very much for the testimony that you have provided. Thank you. Counsel will call the next witnesses.

MR. DORSEY. Richard Bridgeford and John Fraunces.

[Richard Bridgeford and John Fraunces were sworn.]

**TESTIMONY OF RICHARD F. BRIDGEFORD, CHIEF INSPECTOR, AND JOHN FRAUNCES, PSYCHOLOGIST, TRAINING BUREAU, PHILADELPHIA POLICE DEPARTMENT**

MS. HOOPES. Would you each please state your name and your present position with the police department for the record?

MR. BRIDGEFORD. Yes. Richard F. Bridgeford, chief inspector, Philadelphia Police Department.

MR. FRAUNCES. John Fraunces, educational psychologist, Philadelphia Police Department.

MS. HOOPES. To begin with you, Chief Inspector Bridgeford, can you explain just briefly the different kinds of training the Philadelphia Police Department offers to its officers?

MR. BRIDGEFORD. Yes. We presently give 779 classroom hours of training to each recruit officer. We give promotional training to all persons promoted to a rank above that of police officer. We give specialized training within each individual rank; for example, a juvenile aid officer is merely a police officer assigned to juvenile aid, but, when he goes into that special unit, he'll receive specialized training. Now, this would apply to the narcotics unit, the juvenile aid, stake-out unit, highway patrol—whatever the particular training needs are in that unit. We supply assistance to district commanders, unit commanders, divisional commanders, or bureau chiefs. We design training programs to be given by them in their particular commands on the theory that training is a function of command as well as a specialized function.

We provide inservice training at the police academy in the form of firearms training, off-post or off-board training in the field, in first aid. We have a closed-circuit TV training through our closed-circuit TV system now given at roll call.

We provide training in the form of what we call "assist officers" or training pamphlets. Some departments may call them training bulletins;



we call them assist officers. And just about anything and everything that we feel we should give training in, time, money, and manpower permitting, we try to accomplish this.

Oh, and I also forgot something else. We do arrange for training at outside institutions—for example, Northwestern University, the FBI national academy, Penn. State—and we encourage and process all training requests by members of the department who wish to attend colleges, universities in the Philadelphia area. We have about 800 attending right now.

MS. HOOPES. I meant to ask you at the beginning, how long have you held your present post?

MR. BRIDGEFORD. I've been a member of the department for 30 years, and I've been the chief inspector of training for a little bit over 8 years.

MS. HOOPES. How are your academy instructors chosen? Are they chosen by you?

MR. BRIDGEFORD. Basically, they are chosen by me, and the approval for their assignment is, of course, lies with the police commissioner. But I have a pretty much free hand in selecting personnel that I wish to have assigned to me.

MS. HOOPES. Are they especially trained, or are they police officers that are temporarily taken from their other duties?

MR. BRIDGEFORD. Well, let's say that no assignment in our department is permanent. They are kept there for, in most cases, a reasonably long period of time. When they come to us—and this has been in the past—it has evolved over a period of years since I've had any changes—when they come to us, we feel they had, first of all, police experience, and they exhibit a certain amount of ability in certain areas for which I'm looking at that particular time. The majority of the people I get, in fact more than half of our staff are sergeants or lieutenants. Lately I have been opting for persons with a college degree, and particularly in the area of criminal justice.

And we add to that. For example, 5 years ago, maybe a little longer, the academy staff did not receive formal training in instructional techniques. We invited the FBI to send their instructors up from Washington, which they were very kind to do, and we had all of our people certified by the FBI national academy supervisors as police instructors.

Since that date, anyone who is assigned to the academy supervisor, comes to the academy to act as an instructor, we send him to Northwestern University in Evanston, Illinois.

MS. HOOPES. One of the subjects that has come up repeatedly in testimony today is academy training in the use of deadly force. At what point in the academy course is the subject of justifiable or illegal use of force brought up?

MR. BRIDGEFORD. Technically? Technically, it's a 1-hour block in the criminal law section. However, throughout the entire curriculum

we find mention by individual instructors on the use of force. You don't deal with it as a topic per se, but rather that we talk courtesy, we talk and teach conflict management and the handling of people. And this is always geared to be done with the least amount of force. Not force per se—we want to handle the thing in the easiest possible way, the most effective way, the most practical way. So it's a thread of this throughout the entire curriculum.

In the area of the use of force, we invite the district attorney to the police academy. Mr. Rendell has been there; before him, Mr. Fitzpatrick or Mr. Fitzpatrick's first assistant, John Morris. They have one hour and a half, two classroom hours, with the recruits.

Judge Morattoni [phonetic] from the courts—we invite the courts there. We had the public defender there. And they have the option of using their time in any area they feel is most important.

We have a moot court program where we have the moot court handled by the district attorney's office. They have a 4-hour block. In fact, most recently I suggested to Mr. Compalago that rather than do the type of trials they're doing—and this topic is certainly an important topic—why not use that 4 hours for that particular topic and use a case of the excessive use of force, an old case without identifying it. But we do the role-playing technique in the moot court.

On the firearms range, the key to the tactical firing is that you don't shoot the right person, what right do you have to shoot? So, to say that we have a 1-hour block on the use of force is incorrect.

If you would look at it and take—I don't know how you separate 2 or 3 minutes for a particular directive on barricaded persons, for example. The key to barricaded persons is not that you go in and shoot somebody. Time is not of the essence. It's all keyed and geared to doing it without injuring anyone if it's humanly possible.

MS. HOOPES. This morning we heard the chief of the district attorney's police brutality unit testify that one 30- or 40-minute lecture was devoted to the illegal use of deadly force. Was he referring to the very technical teaching of the statutory standard on deadly force?

MR. BRIDGEFORD. Number one, the gentleman has never contacted me, never extended me the courtesy of asking me what is taught. Where he got his information, I don't know. But from some of the statements he's made, it's rather typical of him. I'm not trying to get into an argument about that, but I feel sure that Mr. Rendell is aware of it, and maybe the other gentleman is not.

MS. HOOPES. We also heard some testimony that there was no directive on the illegal use of deadly force. Is that true?

MR. BRIDGEFORD. There is no directive on it, but it's in the police duty manual.

MS. HOOPES. Do you also—

MR. BRIDGEFORD. In the policeman's manual.

MS. HOOPES. Do you use pamphlet 10, which is a training pamphlet put out by the department entitled "Illegal Use of Deadly Force"? I

think it was included in some of the training materials that you furnished the Commission.

MR. BRIDGEFORD. Pamphlet 10?

MS. HOOPES. Yes.

MR. BRIDGEFORD. If you have it there—if you would—I know I gave you two file boxes of records.

MS. HOOPES. Did there used to be such a directive?

VICE CHAIRMAN HORN. Excuse me, are these two documents going in the record at this point?

MS. HOOPES. I would like to submit this document entitled handbook 10 at this point.

MR. BRIDGEFORD. No, this is outdated. This is an old training pamphlet. When you asked for the records, I think I explained to counsel that with the change of the Pennsylvania Criminal Code that was effective in June 1973, that all of these training pamphlets were outdated and that we were working with the district attorney's office, and they now have, I think, about four or five pamphlets down there for review. Once they are returned, we will get them into the proper printing and they'll go to the print shop and be distributed, about 10,000 copies worth of printing.

CHAIRMAN FLEMMING. I just want to clarify this situation. This pamphlet, you're testifying, is out of date?

MR. BRIDGEFORD. Yes, sir.

CHAIRMAN FLEMMING. At the moment there is no pamphlet, no training document to replace it?

MR. BRIDGEFORD. On that topic, that's correct, sir.

VICE CHAIRMAN HORN. And that's been true since 1973, so it's 6 years there's been a void?

MR. BRIDGEFORD. That's correct, sir. We had—with Mr. Rendell's predecessor, we had some data and information that was compiled. I discussed it with my staff people, and I have discussed it with several members of the district attorney's staff over the years.

One of our big problems is the lack of court decisions in this area. One particular phrase in that is forcible felony. Most recently, Mr. Compalongo, who works for Mr. Parry, I believe—I know he's in the district attorney's office—and we had a discussion one day on the phone about definition of a forcible felony, and you really don't have decent court decisions as of now.

It's a little bit less than 6 years, but it does take time to develop these.

VICE CHAIRMAN HORN. Well, could you furnish for the record when you sent the draft for the new pamphlet to the district attorney?

MR. BRIDGEFORD. This was to—the new district attorney, he does not have one.

VICE CHAIRMAN HORN. Well, would the old district attorney have one?

MR. BRIDGEFORD. That went before he went out of office, and I don't believe we got that back.

VICE CHAIRMAN HORN. Well, why don't we just get the dates for the record; in 1973, when the Pennsylvania Legislature passed a new statute, you had a pamphlet up to that time. That is no longer adequate to cover the demands of the statute. As of, presumably, last year you sent a draft to the district attorney.

MR. BRIDGEFORD. What this draft was, it was a more indepth explanation of various parts of it. The criticism at that time was the lack of legal definition of that particular phrase which I singled out and some others. We did print the law itself, in addition to the officers having a copy of the crimes code. We did print and hand out, from 1973 on, on an inservice basis copies of this particular law outlining step by step. It was more in—rather than narrative form, but it was in subparagraphs, "You must have this," and we spelled it out that way so that the officer would have this information in his hand. That was done starting in 1973. All recruits received the indepth explanation at the academy, and that's—you're talking about 2,500, about one-third of the department right now.

VICE CHAIRMAN HORN. Does the senior staff of the department feel that they understand the dimensions of the 1973 law?

MR. BRIDGEFORD. Yes, sir, I think, yes, sir.

VICE CHAIRMAN HORN. So you feel that what you've done at this point, on an interim basis, you have tried to clarify for all recruits going through the academy?

MR. BRIDGEFORD. Yes, sir.

VICE CHAIRMAN HORN. As well as other officers that were already on duty, because this is a change. You have updated the knowledge of other officers on duty, have you?

MR. BRIDGEFORD. As soon as the law was changed, we ran a very intensive program where we singled out those sections that were new or those sections which had been changed from the old code.

CHAIRMAN FLEMMING. Will you continue.

MS. HOOPES. Just one more question. Is there an effort made to provide a very simple and quick test that an officer could apply when he's in a tight situation and needs to decide whether to shoot or not to shoot? Has it been reduced to something fairly simple that an officer could remember quickly?

MR. BRIDGEFORD. Well, as you would like my explanation that I give them. It is not policy; it is not law. It's a very practical thing, and I try to inculcate this with police recruits the day they're sworn in, the day before they go on field training, and the week before they graduate.

I tell them about the use of a firearm. It is not the law. I can't take away from them rights which the law has given them, but I do say that you use that gun in defense of your life, of the life of another, when you feel that those lives are in immediate danger of grievous bodily harm. That is my personal feeling.

Yet, I don't have the right, nor does anyone have, to take away from the officer the right given him by the law. Again, it is the feeling of the officer as to how much, how imminent that danger is, and how grievous that harm is; and this is something I don't know if I can put into a directive and teach a person, this fear factor.

MS. HOOPES. Chief Inspector Golden testified it was his understanding that any officer who fires his gun, whether or not injury results, was sent back to the academy for a 1-day inservice course. Would you cover the illegal use of deadly force in that course?

MR. BRIDGEFORD. That is done one on one, and we have three new lieutenants in the law department, and they sit in a classroom [with] the officer, and it's rare that we have more than two there at one time. It's usually one on one. And they sit down with the lieutenant, and he spends at least 1 hour with them, in addition to the other tactical training received at the range. In prior years, that was done down at the range, and a couple of years ago I took that away from the firearms personnel and put it with the law department.

MS. HOOPES. Thank you, inspector.

Dr. Fraunces, your job description says that the screening of recruits for unusual psychological profiles and academic deficiencies by administering standard tests is one of the principal duties. Can you tell me what sorts of standard tests are used in that regard?

MR. FRAUNCES. Yes. There is a—the test we are currently using is called the 16-factor personality test and actually has 16 primary factors and 4 secondary factors, and it takes about, oh, between 45 minutes and an hour to administer. It takes another 15 or 20 minutes to mark and maybe another 10 minutes to take a good hard look at it and see what you have.

MS. HOOPES. You administer and mark these tests yourself?

MR. FRAUNCES. I have an assistant who helps me mark the test. But I review that, and I do the analysis on the results of the test myself.

MS. HOOPES. And what are done with the results of the tests?

MR. FRAUNCES. Well, first of all, we take a look at them, and when—we're talking in the case of police applicants now, all right? When they have passed the other aspects of the screening process and they're about to go see the psychiatrist, I would take the documents, the profile itself with a cover letter—at least I try to—and explain in the cover letter what the results of the tests were. And, hopefully, by combining the discipline of psychology with the clinical evaluation of the psychiatrist, is that you can reduce the amount of error that is necessarily a part of either a clinical observation or a psychological test. So you have two disciplines looking at one problem, and, hopefully, you reduce the number of mistakes that you make.

MS. HOOPES. Of what does the psychiatric examination consist?

MR. FRAUNCES. That I don't know. I haven't—I assume it's a standard psychiatric exam that takes a look at the mental functioning of the individual, his background, and they look for symptoms of neurosis.

Ms. HOOPES. Do you also look into an applicant's background in conjunction with your administration of these tests? Do you ever see the background report?

MR. FRAUNCES. No, I don't.

Ms. HOOPES. Another one of your duties as listed in your job description is to recommend detailed psychiatric examination with recruits with unusual psychological profiles. Who performs such examinations?

MR. FRAUNCES. I would send—that recommendation would go to the chief surgeon's office, Dr. Lawler [phonetic] and he would make a determination what psychiatrist would do the evaluation. I send the reports over to him through our personnel office.

Ms. HOOPES. Would it necessarily be one of the same psychiatrists who perform the entrance interview, one of the psychiatrists in the personnel directives?

MR. FRAUNCES. I really don't know. I know there's lots of psychiatrists in Philadelphia. I'm sure Dr. Lawler can pick anyone he wants.

Ms. HOOPES. What kinds of characteristics in a psychological profile would lead you to recommend a psychiatric examination?

MR. FRAUNCES. Well, there's one factor which has to do with emotional stability. If we found that a person was very much affected by feeling—and we're talking about extreme scores now. If a person was affected by feelings, if he was extremely tense, extremely suspicious, if he was undisciplined as opposed to having social control—these are the types of things that we look for.

Ms. HOOPES. Another of your duties is to perform—to design research projects on the effects of sociological and psychological variables on the performance of police duties. Have you designed any such research projects?

MR. FRAUNCES. Yes, we've done—I've done two since I've been there. The first one had to do with the—we wanted to find out the conflict-management styles of veteran police officers, and we wanted to find out, for example, if after a policeman's been on the street for a certain number of years, does he necessarily become hardened and indifferent and all of the other stuff that sometimes you read in the literature.

So what we did, we designed a study which I pretty much do according to the book, stratify random samples and all that; and we tested in groups of 4 or 5 over 200 officers. And the questionnaire basically had to do with how would you like to handle conflict situations.

Now, there's no way that you can think of all the conflicts, possible conflict situations that a person gets into and say what would you do. What you try to do in your questionnaire is to take a cross section, and you say to the person, "Okay, I can't tell you all the details, but how would you like to handle conflict, what do you think is the proper way of doing it, dealing with other people?"

And we found, for example, that basically the conflict-management styles of veteran police officers in Philadelphia revolved around two basic, or actually three basic styles.

The first one is what they call a problem-solving style, and maybe someone might call that a social worker style, where you take a look at the situation, if it's a domestic dispute or whatever, and there's lots of them found in the streets, and they try to solve the problem.

If that doesn't work, then the favorite style is to try to keep things cool, try to keep things from getting out of control. Then, of course, if the officer gets no cooperation, gets no response, then, of course, he has to be the dominant one. And that may mean that he has to take police action.

MS. HOOPES. You are also charged with the responsibility of developing screening techniques and instruments to identify the attitude of recruits toward minorities. Have you developed any such techniques?

MR. FRAUNCES. Not with recruits. With veteran officers in the juvenile aid division, we conducted quite an extensive survey. Actually, this was an experimental design, and we were trying to find out, number one, what the attitudes were of juvenile aid officers toward inner-city children, which are minorities in Philadelphia. And the variable that we used was anxiety. What I had done in this experiment was actually to replicate work done by Dr. Tom Hawks from Temple University. He had conducted a similar experiment with pre- and inservice teachers in Philadelphia.

We wanted to find out, number one, did the officers in the juvenile aid division, did they have a good concept of the degree of anxiety that the inner-city children suffer—because since that's their clientele, it's nice to know, because you treat a person that's highly anxious a lot differently than you do someone that's totally apathetic.

And the results of the study, the form that I use is not exactly the same as Dr. Hawks, but the conclusions are basically that both the police and the schoolteachers have a lot to learn about the anxiety levels of the inner-city children.

And the other thing we found out in that study is that the sensitivity, or the anxiety level of inner-city children did not depend on age of the officer, experience of the officer, sex of the officer—25 percent of the JAD are female officers—nor the race of the officer. It didn't make much difference whether a police officer—or whether a police officer was black in terms of his accuracy or perception of the amount of anxiety that inner-city children have. I found that to be a rather interesting study.

MS. HOOPES. What use has the department made of that information?

MR. FRAUNCES. Well, as far as I know—this goes back 2 years ago—the inspector in charge, Tom Rotelli [phonetic], he was very much interested in the results of the study, and that as part of—he led

me to believe that as part of this process of screening police officers that want to get into the Juvenile Aid, that their responses on this questionnaire would be considered part of it. I haven't checked with him recently to determine that, but that's as much as I know.

Ms. HOOPES. Thank you. Mr. Chairman, I have no further questions at this point.

CHAIRMAN FLEMMING. Commissioner Horn.

VICE CHAIRMAN HORN. Let me ask you, gentlemen, do you remove recruit officers during the training period as a result of the stresses they might reveal in their conduct during academy training?

MR. BRIDGEFORD. I would say yes. As for specific individuals, I could just recall, just off the top, we have had people who've shown, one in particular I can remember on the pistol range, and when firing on the range he could visualize a human being when he looked at that target. This was a person who had been trained in firearms; he was a member of a gun club. And he'd go off sick continually each time he was scheduled for the range. So we got into this and sent him down for psychiatric evaluation, and it developed that he did have this particular anxiety, this fear of this problem, and we did separate him from the department.

We have found other people who by their off-duty actions and their classroom actions indicated that they were not the type of person who should be a police officer. We lose about 4 percent, a little bit more, give or take, of our people at the academy level, despite the fact that we have intensified on an annual basis our selection process trying to weed out these people in the beginning.

I would like to make a comment which I think I've heard someone say about the selection of people, and as one of my duties I'm in charge of the background investigation unit, that comes under me also. That is not part of the detective bureau. And over the years, certainly, we have been in litigation over our selection process, and many, many pressures are exerted to hire a particular person or a group of people. Of course, our goal is to select the best possible person, but in the psychiatric area, prior to 1976, the person took a written examination, then a medical examination, was examined by a psychiatrist with no background data, no background data whatsoever, and then if they passed those tests, they came to us for background investigation.

And having been in charge of this unit for a while, and through the police commissioner and his initiative, we have prevailed upon the personnel department—first of all, I picked up Dr. Fraunces about 1975. I was fortunate enough to get him on the staff. We had never had a staff psychologist. We went into this problem, and he developed or selected a test in consultation with some of his colleagues, and we prevailed upon the personnel department to restructure the steps so that they went from the written to the medical, then the background. And we would investigate in depth these persons, have available to us the results of the doctor's tests; then, if they passed the background, forward that test to the personnel department.



Now, that was done on a pilot basis for the latter part of the 1976-78 eligible list. We have discussed with Mr. Lou Taylor, the personnel director—we are setting up for this particular list that we have now. We just started; in fact, we had the first people in today for background interviews and for polygraph examinations—we throw that in too—and we have prevailed upon Mr. Taylor to set up a liaison between Dr. Fraunces and the psychiatrist and, where we deem appropriate, the medical records or psychiatric records that we've developed as part of our investigation. We feel sure that we can plug just another couple of holes with this system by changing it a little bit more to tighten it up in this particular area.

VICE CHAIRMAN HORN. Well, let me make sure that I understand this now. The current policy of the department is that a recruit—well, let's start it from the beginning. One gets on an eligibility list to be considered for appointment to the police department. How is that done now? Do you take any sort of written examination?

MR. BRIDGEFORD. Yes, that is a job-related test under the supervision of the U.S. District Court for the Eastern District of Pennsylvania and is prepared by the Educational Testing Service over in Princeton, and it's approved by Judge Folk. This is the second test that's been done in this manner. Their ranking on the list is totally dependent upon their score in that examination.

VICE CHAIRMAN HORN. And I take it that decision came about because of accusations of discrimination?

MR. BRIDGEFORD. Yes, that was part of it in that they felt that the examinations given prior to 1975 discriminated against the minority groups. So ETS did a great deal of research and testing of several hundreds of people in our department to establish the job-relatedness of it. They went so far in the booklets and listed over 100 words that would be used—this was in advance of the examination—listing 100-and-some words that will be used in the exam, and suggested to the applicant that they learn the meaning of these words by asking someone or going to a dictionary, but in fairness to them that they be alerted that these words would be used.

VICE CHAIRMAN HORN. Okay. So they take that test—and I take it, counsel, you will have from a later witness how many passed the test and all that, or what? Do we have the civil service—I thought we did.

MR. DORSEY. Yes.

VICE CHAIRMAN HORN. I assume that's the place to ask that question.

MR. DORSEY. Yes, they should be able to, Personnel.

VICE CHAIRMAN HORN. Personnel. All right. So they take that exam. They get on the register. Now, at that point, then, you have them take another test, or is that sufficient?

MR. BRIDGEFORD. That is the first test. That determines their placement on the list. They get, incidentally, 10 points added if they're veterans. That's a one-time thing. That does not carry through as in

other cities, States, or whatever. That's the only time you get veteran's preference.

The next step is the medical examination, which is conducted under the direction of Dr. John Lawler, the chief medical officer of the city. If they pass that—if they flunk at that point, they're out.

The next step is the physical performance test, and if they pass that, they then proceed to the background investigation.

VICE CHAIRMAN HORN. All right. Now, is part of that medical examination the psychiatric aspect?

MR. BRIDGEFORD. No, sir. No, sir.

VICE CHAIRMAN HORN. So, at this point we've got a written test to determine eligibility. Then we've got the medical examination just on general health.

MR. BRIDGEFORD. That's correct.

VICE CHAIRMAN HORN. Then we've got a physical—what—dexterity test, or what?

MR. BRIDGEFORD. Yes, strength, agility, balance.

VICE CHAIRMAN HORN. All right. Then what happens?

MR. BRIDGEFORD. Then if they pass that step, their name is forwarded to my office, and we contact and have them come in and complete a personal data questionnaire. They submit to the test given by Dr. Fraunces, and they're scheduled for polygraph examination, which covers the questions, or the answers given to the questions in the personal data questionnaire and the interview by our sergeant or lieutenant on the academy staff. If they pass that, that particular background—incidentally, Dr. Fraunces does not render an opinion on the applicant as far as their suitability, emotional suitability or whatever, but he does file his report and will forward the report to the personnel department, where they will schedule the individual for a psychiatric interview.

VICE CHAIRMAN HORN. Are all individuals scheduled for psychiatric interviews?

MR. BRIDGEFORD. All who pass that background.

VICE CHAIRMAN HORN. All who pass the background?

MR. BRIDGEFORD. Yes, sir.

VICE CHAIRMAN HORN. And at that point, where does the psychiatric interview go, to personnel or to you?

MR. BRIDGEFORD. No, that is—then we turn the case over to the central personnel office of the city and they handle this for all city departments, not only the police.

VICE CHAIRMAN HORN. Okay, now, if the person—then, presumably, someone in personnel makes the judgment as to the psychiatric problems, if any, and also where they stand on your 16 factors test.

MR. BRIDGEFORD. This would be done by the psychiatrist, I believe, sir.

VICE CHAIRMAN HORN. He has available the results of the 16 factor test?

MR. BRIDGEFORD. That's right. He will have the answers given, if he wishes to go to that point to look at a particular answer, and we are supplying them with the book that explains the entire test. This was done once before, and I don't know if they're going to have different psychiatrists on there or not. We expect a meeting very shortly on this because they'll be going into a psychiatric evaluation sometime in May, about the middle of May, I suspect.

VICE CHAIRMAN HORN. The psychiatrist could then turn down the individual, in essence, give a negative recommendation?

MR. BRIDGEFORD. That is correct, sir.

VICE CHAIRMAN HORN. Do you have available the data, or does civil service, as to how many cases are involving a negative judgment by the psychiatrist of police recruits?

MR. BRIDGEFORD. The central personnel office would have that data.

VICE CHAIRMAN HORN. They'd have it. Well, we'll secure all that.

MR. DORSEY. I think you should understand, Commissioner Horn, that the civil service—well, specifically, the civil service individual scheduled to appear before us is not the person that the officer is referring to with respect to central personnel. That is not the same office; that is not the same function.

VICE CHAIRMAN HORN. Well, where is central personnel located? Is it civil service or the police department?

MR. DORSEY. I'm going to have to defer—

MR. BRIDGEFORD. Commissioner Horn, to explain our governmental structure, the civil service commission promulgates the various rules and regulations under which, also, the employees have to operate, and they hold hearings on appeals by city employees who've been the victims or the subject of disciplinary action or dismissal or whatever. They are more or less the bosses of the personnel director of the entire city of Philadelphia. And he handles position classification, testing, hiring, policies, things like that.

Now, we have a personnel officer in our department, but he's subject to the central personnel.

VICE CHAIRMAN HORN. Who is making the decision as to—who is reviewing the psychiatrist's decision? Your department? Your personnel office?

MR. BRIDGEFORD. No. Once we do—and this was only started in 1968. Prior to that time, the police department participated in the background investigation, but it was—very frankly, it was almost nonexistent prior to 1968-69.

At that point, the then personnel director said to the police department, well, you have the expertise, you have the people, you do it and make recommendations to us on the background. You will handle that particular role; we will handle the testing, the physicals, and the psychiatrics, but that one is yours.

VICE CHAIRMAN HORN. So the personnel department, which is part of the civil service, is a separate department of the city—or is it a separate department of the city government outside the civil service?

MR. BRIDGEFORD. It is a separate department, but they are subject—

VICE CHAIRMAN HORN. To an appeal to—

MR. BRIDGEFORD. That's correct.

VICE CHAIRMAN HORN. It's a civil service commission type arrangement to work equity—

MR. BRIDGEFORD. Right.

VICE CHAIRMAN HORN. Or to set broad policy standards. But the actual functioning department of personnel is under that commission, technically.

MR. BRIDGEFORD. Technically under that commission. Yes.

VICE CHAIRMAN HORN. All right, and they are the ones—within that department is where the decision is made on the psychiatrist's evaluation; is that correct?

MR. BRIDGEFORD. They hire them, and if anyone is going to review it, they would be the ones to review it. Now, a candidate can appeal that psychiatric—

VICE CHAIRMAN HORN. To the commission?

MR. BRIDGEFORD. No. They can appeal, come into personnel and say, "I insist upon another psychiatric evaluation." And I think they are allowed to get one.

VICE CHAIRMAN HORN. But personnel would still choose the psychiatrist, or does the candidate choose his own psychiatrist at that point?

MR. BRIDGEFORD. I think you would have to ask—I think personnel does it.

VICE CHAIRMAN HORN. Do you get reports of the results of this whole process within the police department? Do you know what's happening over there?

MR. BRIDGEFORD. They merely tell us whether or not they approve the candidate or they disapproved, at that level.

VICE CHAIRMAN HORN. How does counsel suggest we're going to get a report as to the effects of this process? Who acts on the psychiatrist's recommendation? How many times is the psychiatrist agreed with? How many times have they been overruled? How many people of all potential recruits have psychiatrists said really should not be functioning as policemen, etc.?

MR. DORSEY. I think I should make clear one thing: part of what is happening here is that counsel, as the Commission, is being educated with respect to this issue. We were not aware specifically how that process functioned, and that's one of the things that we're getting educated on.

The personnel department and its role in this process was not entirely clear before this particular session. So that if that information is desired, we would have to go to what we now understand to be the appropriate sources, namely, the personnel department.

The other thing that I think may be confusing—I may be wrong on this, and I would defer to either Mr. Teti or Mr. Fraunces, and that

is—my understanding is that when we talk about the personnel department being subject to the civil service, it's not a line responsibility; it's that all departments of the government must comport to the rules of the civil service, and that the actual line authority is separate from that; is that correct?

MR. TETI. That's correct. Personnel is one of the operating departments in the city. The civil service commission does promulgate the regulations under which all the operating departments—

MR. DORSEY. So that civil service will not have line jurisdiction of the personnel—

VICE CHAIRMAN HORN. In other words, personnel functions as a mixture of staff and line, just as budget would to the mayor, I take it. But in terms of policy formulation, there is a separate commission that promulgates the basic policies for the city. But in terms of its day-to-day functioning in carrying out its personnel functions, it's simply another city department; is that correct?

MR. TETI. That's correct, looked over and presided by the director of personnel.

VICE CHAIRMAN HORN. And who reports to the managing director?

MR. TETI. Who reports to the managing director.

VICE CHAIRMAN HORN. Well, counsel, I suggest that tomorrow when the representatives of the civil service commission come in you pursue this question. Get the exhibit in the record at this point, in the record. If not, let's write a followup letter to get the information.

Now, what happens to an officer who has passed the academy and then there's some feeling that something's happening here—we mentioned the stress, the psychological exams. We all admit that given the type of job, the toughest job, I think, in the society, this could happen. Are full-time officers referred to a psychiatrist from time-to-time for special analysis and evaluation, and if so, who makes that decision?

MR. BRIDGEFORD. We have a departmental directive, which was prior to the commission, where any supervisory—for that matter, any person—can submit, through the chain of command to the police commissioner, a report concerning erratic behavior or any behavior that they feel would indicate emotional or mental instability on the part of a member. And this would be forwarded to Dr. John Lawler, our chief medical officer, who would arrange for a psychiatric evaluation of the individual. Now, these are in cases where it may be just peculiar behavior observations.

Of course, when you have an incident when a person goes off the deep end, that may be handled very summarily and the individual—Dr. Lawler called in and psychiatric care arranged.

Another way is that we do have a counseling unit which was set up several years back, primarily for persons with problems of alcohol. We have trained these counselors and provided training for them at various colleges and in that particular counseling unit, when they observe things that are not alcohol related but rather—and it may be many

other things; it may be marriage counseling and all that—they have a referral service, yet they are still part of our police departments, our counselors. I have a lieutenant in charge of that and three other officers who act as counselors.

VICE CHAIRMAN HORN. So that group does report to you?

MR. BRIDGEFORD. They report to me, but not for psychiatric problems. But if they—if it comes to their attention, they think there's a psychiatric problem here, we would immediately set in motion to have a psychiatric evaluation done on that particular individual.

VICE CHAIRMAN HORN. Well, in your experience being in charge of the training bureau, have you seen an increase in the need for people to utilize the services of this counseling during your years on the force? Is it the same, or what?

MR. BRIDGEFORD. Well, I've had this I think about—I'm not sure, the time passes—I'd say about 7—6 or 7 years now. And we started this experiment back in 1969-70. We copied a bit from New York at that time because they did have a unit, and we expanded our units. So now we have under control approximately 200 officers who probably would not have been with us under the old system, and who have turned around and are now productive officers.

So we started with nothing, and it's a matter of pointing out to people that it wasn't a disciplinary thing, although we do use it in that manner, when we find there's an alcohol problem that the officer does get two choices—he may get fired, or he had better stick with this counseling.

That has been rather effective. We have gotten people under control, saved many families, and saved many good men and women, by the way.

VICE CHAIRMAN HORN. Excluding the alcohol and nonpsychological diseases, if you will, that would not affect one's decisionmaking process as to excessive use of force. How many officers do you have that come through counseling on a yearly basis where a psychological disorder may affect how they make a judgment on the use of force?

MR. BRIDGEFORD. Well, the psychological part—not—I don't have any control of that. I would be like any other commander in making a referral. So I would only know what referrals our unit had made through the chain of command that came to their attention. Or if I—being in command of the training bureau, I have other units besides training units under my administrative control, I would only be aware of those.

VICE CHAIRMAN HORN. There's no report made to you in training—I'm thinking of the linkage here of where staff agencies or line agencies within police or within the city come into contact with different aspects of conduct of a police officer, the degree to which the information that they discern through that contact would be helpful to you in designing a training program or improving existing programs; do you get any feedback like that?

MR. BRIDGEFORD. We are in close touch with Dr. Lawler, chief medical officer, again, and it's very positive. It's a matter of finances, and one of these days we may have inhouse capability to handle these particular problems.

Dr. Fraunces has been extremely helpful; he's going to many seminars and meetings. He's now working on the possibility of getting a grant because we are dependent upon grants to supplement our training budget, and we are trying to look at the stress problem right now. In fact, he has a meeting scheduled up at Holy Redeemer Hospital, and we are looking into the stress problem that affects police, particularly.

And this has been, again, an evolving thing over the past—from my own personal experience, a little bit over 8 years. Prior to 1967-68, we had none of this in Philadelphia. We trained people in 6 weeks, 8 weeks, in fact, in the mid-1960s, they went out of the police academy in 2 weeks.

VICE CHAIRMAN HORN. Well, that was my question, was on stress. Can you specifically design a program or a segment or a series of segments during academy training that gets at putting officer recruits under stress so that you can see what type of behavior results from that stress and make a judgment as to whether or not they should be approved to be police officers? Some academies, I believe, have such programs.

MR. BRIDGEFORD. Let me say this. I think the particular course that would be most appropriate to make such a decision would be the conflict management course where we rely upon the role-playing technique, and we started this about 7 or 8 years ago down at Temple University; where recruits go for 72 hours of training at Temple, and they started using this technique down at Temple.

Once I picked up Dr. Fraunces on the staff, he started training other staff members in utilizing this technique in conflict management. And I think that in that role-playing situation, it gets extremely realistic, and the doctor is personally present at all those training sessions. It think it's about 8 hours, now, somewhere in that area, and it's about 8 hours in small groups. And he has an opportunity to observe them firsthand. He interviews and does an IQ test on every recruit that comes into the academy. We started IQ testing about 3 years ago. We have added this to the—

VICE CHAIRMAN HORN. Has anybody washed out as a result of how they perform in conflict management?

MR. BRIDGEFORD. Not specifically, sir. No.

Unfortunately, we have to be equitable and fair, like any other school. They look at it as a training place, and we have difficulty in separating people from the department. We have one requirement that a person who is unable to properly use a firearm cannot continue with the training and will be separated. And we allow them five chances to qualify after an intensive training program of about a week.

And we have five cases now pending in the U.S. District Court and another court, because we fired people because they were not qualified to use a firearm. Our contention being that they were unfit to go out in the street with a firearm, so we're caught in court over that. How we will fare, I don't know.

VICE CHAIRMAN HORN. So it's only the firearm segment of the academy training results in someone not being able to successfully complete the course, or are they graded on other portions?

MR. BRIDGEFORD. We used to have—we have a composite score we put together over and above that which amounts to a hundred. The midterm examination is of 100 questions; that counts for 20 points. The final examination is 200 questions; that counts for 40 points. The first aid, which is rather important, we think it's very important, counts 10 points. This is knowledge that they must have at their fingertips, and they get a test on that. Their ability to handle people in the area of human relations is a specific mark of 10 points. So that 40 and 20 in the area of physical training and defensive tactic and those particular subjects there.

Now, a person could conceivably get below a passing grade in one of those areas but make it up in other areas. We kind of stacked it on the academic part. Hopefully, if we would put people out in the street they would be knowledgeable enough.

VICE CHAIRMAN HORN. What's the minimum passing score?

MR. BRIDGEFORD. Seventy.

VICE CHAIRMAN HORN. Out of how many?

MR. BRIDGEFORD. Out of 100.

VICE CHAIRMAN HORN. Seventy out of 100. So, you could drop a couple of the subsections and still make it, or do you have to have at least a minimum score in each of these? Could you have a zero in first aid?

MR. BRIDGEFORD. Well, this one, again, on the advice of counsel—not this counsel—with all our litigations, it was the opinion of counsel when I put this forward, that we would possibly be accused of discrimination in some areas by someone if we tried to come in in a very heavy way and do that. And I was advised to just keep the composite for the time being.

VICE CHAIRMAN HORN. Okay, thank you.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Dr. Fraunces, it would appear to me that most of your psychological testing is concentrated on the recruits. And the question arises, have you ever done any research on the type of police officer that does get into problems in the police abuse cases? It all seems to be done at the beginning, and the police officer has a career of 20 years, it would seem that the total effort is at the beginning of his career. We've had previous testimony indicating that a police officer has a major stressful relationship over the first 5 years. Is there any attempt to do anything further after he passes the police academy?

DR. FRAUNCES. Not at this time, at least in terms of what I do.



MR. NUNEZ. You think it's a good idea to proceed beyond the basic-entry training and evaluation of the police officer?

DR. FRAUNCES. Sure, I'd like to do that if it's feasible.

MR. NUNEZ. Has any research been done to identify the profile, the mental profile of the police officer who would be prone to get into problems with the public? Do you know of any research in that area?

DR. FRAUNCES. No, I don't.

MR. NUNEZ. Do you think that would be a useful way of getting at it, though? I was thinking—listening to both of you gentlemen, that perhaps it would be useful every 5 years to run the department or personnel through a battery of tests to see where they're at, not at the beginning. I notice there's been a lot of work at the beginning, but never—unless the person really gets into trouble—later on there doesn't seem to be a kind of a program to work with the police officer over the length of his career. Do you feel that might be a useful way of working at this?

DR. FRAUNCES. It might be useful in terms of finding out if an individual is going to have a neurosis or a nervous breakdown. It seems that we are pretty basically talking about two things. Psychologist's tests are pretty good in identifying people that are neurotic and psychotic and have behavioral problems. I don't know what success psychological testing would have in terms of identifying officers who subsequently would be accused of abuse. That's an extremely specific thing, and I would say that judging by the statistics involved—and I've just heard them; I haven't read them—the 3 million contacts and 800 complaints, it's awful hard to see in that, on the face of it, the personality profile.

Now, there may be, but I'm not aware of any work or any studies that have identified, okay, factors A, B, and C will lead to an allegation of police abuse. I haven't seen that. It seems to me basically that the effect of the environment and the circumstances may be as much a part of the problem as it is the personality factors. I don't like to claim for psychology things that, perhaps, it's not capable of delivering, I guess that's the bottom line.

MR. NUNEZ. Inspector Bridgeford, on the inservice training you mentioned various facets of the program that you have underway at the moment. That's basically for promotional purposes and for a police officer that moves on to a new assignment, but do you have any kind of a uniformed inservice training program for all officers?

MR. BRIDGEFORD. Here lately, and particularly with our manpower shortage right now, we have about 400-and-some fewer people than we had this time last year. Of course, this does interfere with our operation of efficiency. We've had to rely a great deal on handouts such as assist officers, which are reviewed by the commanding supervisory personnel of the patrol district. We have closed circuit TV program; we run about, oh, I'd say, 200-and-some training tapes to show at our roll calls, incidentally, including the use of force is one of them, and there

are many. I turned that over to the Commission, our list as of that date for particular shows we have available to the personnel. A different show is shown at every roll call every 2 days so that we catch everyone.

We've worked through that medium, taking them actually off the street for a full day, a full tour. Right now we're concentrating on a CPR [cardiac pulmonary resuscitation] training program. And in the past 8 weeks or so we've done 1,500 people. So it's a matter of logistics, trying to get them away from patrol to do this.

I would like to do more, and certainly manpower and money permitting, I feel sure the police commissioner would like to do more, and he's been extremely supportive in trying to get these programs through.

MR. NUNEZ. Thank you.

VICE CHAIRMAN HORN. May I ask why the 400 are lacking? Is it money or you can't recruit or what?

MR. BRIDGEFORD. Well, money, litigation. We deal with many courts, it seems. If the courts would all get together all at the same time, we'd probably have the people, and of course, then it'd be the money matter, if you have the money to hire them.

VICE CHAIRMAN HORN. But there's still an interest of people to serve in the department? I'm wondering if any of the community stresses and strains are reflected in a lower number of applicants for this position?

MR. BRIDGEFORD. Well, I don't think so. This last time we ran the examination, I understand about 11,000 people applied for the job, which is quite a good turnout. The one before was about 16,000-17,000 in 1975.

CHAIRMAN FLEMMING. Mr. Bridgeford, has your total training program proceeded on the assumption that it is possible to achieve the objective of vigorous law enforcement without police abuse?

MR. BRIDGEFORD. Positively, sir. In fact, I researched that myself and went back over statistics, and I represent the police commissioner with the Citizens Crime Commission in Philadelphia. Before meeting with them, I availed myself of the statistics available to us through our staff services bureau, and I was absolutely amazed that we had approximately 100,000 arrests per year for a 5-year period. In that period we had about 2,000 of those cases where it was necessary for the officer to charge a defendant with resisting arrest or assault and battery on the officer. So that said to me that 98 percent of our cases are accomplished without any real force being used by the officers. I think we are slowly but surely getting that message across.

CHAIRMAN FLEMMING. Would it be possible for you to make more of a contribution to the achievement of that objective if the officers were required to go through an inservice training program periodically during their period of service with the department?

MR. BRIDGEFORD. Yes, sir. It would be the most desirable thing in the world.

CHAIRMAN FLEMMING. We appreciate very, very much both of you being with us this evening and providing us with this testimony. Thank you very much.

The hearing is in recess until 9 o'clock tomorrow morning.

**Morning Session, April 17, 1979**

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CHAIRMAN FLEMMING. I ask the hearing to be in order.

The first witness is Commissioner O'Neill, who is here and doesn't need to be called. If you would stand and just raise your right hand to be sworn.

[Joseph F. O'Neill was sworn.]

**TESTIMONY OF JOSEPH F. O'NEILL, POLICE COMMISSIONER, CITY OF  
PHILADELPHIA**

Ms. GERE BENICS. Commissioner O'Neill, could you please state your full name and title and number of years you've been in that position for the record please?

MR. O'NEILL. My name is Joseph F. O'Neill. I'm the police commissioner of the city of Philadelphia and have been since February 3, 1971. I've been in the department 28 years.

Ms. GERE BENICS. Thank you.

And the rest of the gentlemen at the table, would you identify yourselves for the record please?

MR. PARISH. I'm Inspector James J. Parish [phonetic], staff services bureau, Philadelphia Police Department.

MR. ALBERT. Sheldon Albert, city solicitor, counsel for the commissioner.

Ms. GERE BENICS. Thank you.

Commissioner O'Neill, under the city charter you're solely responsible for the discipline of the department. Does that mean that you are ultimately responsible for any decision as to whether an allegation is sustained or not sustained and, also, ultimately responsible for all discipline meted out?

MR. O'NEILL. I would say it does.

Ms. GERE BENICS. When you make your decision as what discipline to impose for what offense, do any of the factors such as civil judgments, pending criminal matters, or criminal convictions affect your decision in any way?

MR. O'NEILL. Yes, you may recall in our discussions some time ago, I believe you brought this up. And when we have a situation in which civil and/or criminal action is a factor, we—our particular departmental investigation is what you might term the holding pattern. And this is based on advice from our counsel.

MS. GEREENICS. I see. This applies to a civil or criminal action—you await the proceedings before making any determination within your department?

MR. O'NEILL. That's pretty much correct.

MS. GEREENICS. Yesterday, we had testimony from business leaders. I was wondering if you would comment on it. Mr. Thacher Longstreth and Mr. John Bunting were here and they spoke at length about the business community accepting what they referred to as a trade-off. They were willing to accept a certain amount of police misconduct in exchange for safe streets. I was just wondering if you would comment on that?

MR. O'NEILL. I didn't hear the comments in their entirety and I don't think it would be appropriate for me to comment on that.

MS. GEREENICS. Do you think that in order to have—that it's impossible to have aggressive law enforcement without a certain amount of brutality occurring?

MR. O'NEILL. I think that question is like, "When did you last beat your wife?" The fact of the matter is that you are referring or assuming that there is brutality. The probability is that among the number of people that we have in our department, over 8,000, that there may be an occasion of alleged brutality; there may be an occasion of brutality. Generally speaking, I don't think you'll find it in our department as an ongoing thing. Now, do you—I think that we can have an aggressive group of individuals trying to enforce the law for the benefit of the community, that there may be complaints, allegations that the action by them is too severe—then the answer is, of course.

MS. GEREENICS. What is your assessment of the extent of police misconduct in the city of Philadelphia?

MR. O'NEILL. I think you've got to look into the total situation. I've testified, as you may recall—in fact, you've cited here in your book—before city council, relative to verbal and physical abuse. I stated at that time that the allegations—a number of allegations are miniscule and while I have the opportunity, I'd like to correct the record. It seems that one of our local newspapers picked this up and inferred that O'Neill did not tell the truth before the council. I don't know if your staff deliberately implied this or not, but the fact of the matter is that we were talking there about verbal abuse and physical abuse and nothing else. And this is what was discussed there.

MS. GEREENICS. Could you explain, in the same statistics which you furnished us in February, there was a category called "violation of rights." Could you explain what is encompassed in that?

CHAIRMAN FLEMMING. Excuse me. The hearing will be in order. There will be no further adjustment of mikes as long as the witness is on the stand.

Pardon me.

MR. O'NEILL. As I understand, this was the category used by our internal affairs bureau for those complaints for which, for example, a mother says her youngster was held for a period of 4 hours and wasn't given the opportunity to make a telephone call, or an allegation where an individual was allegedly held for, say, 7 hours and never had the opportunity to make a call. This type situation.

MS. GERE BENICS. Do you have any written standards that you would give to—well, both Chief Scafidi and Chief Golden spoke last evening and any standards to guide them in their decisions as to whether an allegation would be sustained, unfounded—written standards?

MR. O'NEILL. I don't quite understand your question. But, if I interpret you correctly—do you mean do I tell them that "You will do this, this, this, this, and this"?

MS. GERE BENICS. No, sir. When they—

MR. O'NEILL. Or that if this is present, then we shall do this; or if that's present, we shall do that?

MS. GERE BENICS. That's it, yes.

MR. O'NEILL. You see, Chief Inspectors Golden and Scafidi and the other chief inspectors, some of whom are present here, and myself—the top command to the department—came through the department and perhaps we're presumptuous, but we believe that by the time you get into the upper ranks you have some semblance of how to conduct an investigation and how to put together facts and how to eliminate fiction.

So, with regard to guidelines, the probability is that somewhere in the course of our directives, memoranda, etc., that there may be. There probably are some guidelines but, realistically, these men pretty much have their own heads. And then they recommend to me based on that which the investigators develop as to what their opinion is.

MS. GERE BENICS. Approximately how many of their recommendations for discipline do you personally review?

MR. O'NEILL. Well, we're talking about—we're including there the 7518s for the minor infractions and, including their reports for minor infractions, the probability is that I review most of their reports. I obviously review the serious reports.

MS. GERE BENICS. How often and under what circumstances do you take direct action to discipline an officer?

MR. O'NEILL. How often I couldn't give you without checking my files. If I have an officer, for example, who is involved in an altercation in a nonpolice function, the probability is that I will do something about it on an immediate basis. I'd have to have the salient facts before me before I could respond intelligently to that question.

MS. GEREBENICS. We took testimony yesterday from both the U.S. attorney's office and the district attorney's office suggesting that at times the department is not entirely cooperative with those law enforcement agencies. Could you respond to that?

MR. O'NEILL. I certainly can. I would tell you that they're either giving you a mistruth or they are deliberately—by error—or they're deliberately deceiving you. Mr. Albert is sitting right to my left and I think that he'll probably expand on that when he has the opportunity.

The fact of the matter is that to the degree possible within the law, we give them that material which they are entitled to. Now, I'll expand upon that. The district attorney's office, in their review of police shootings, for example, believe that we should give them the file in its entirety. We are guided by the city solicitor who is our counsel who advises us, and properly so in my opinion, even though some people don't believe it, that our policemen have rights and in that the police shooter very possibly may be the subject of future criminal prosecution, his statement—which statement is given under the guidelines of the city charter and of his own free will without warning—that is not turned over to the DA unless, of course, his counsel sees it otherwise.

MS. GEREBENICS. We also had a suggestion yesterday by a couple of people that the rewards and promotion system in the department seems to be done in a manner oblivious to the person, any criminal record, discipline, or civil judgment against that person. Would you care to respond to that?

MR. O'NEILL. Yes, baloney.

MR. DORSEY. Excuse me, if I could, commissioner.

With respect to that particular issue, yesterday the suggestion was made that there were instances in which an officer may have been accused, if you will, of prior misconduct, and may or may not have even been the subject of some civil litigation which may or may not have been successful from the plaintiff's perspective and that, or those officers not only remained on the force, but in some instances were promoted. And I'm not sure what your response is to that—whether that didn't happen or whether you do not see that as a problem—I'm just not sure.

MR. O'NEILL. You see, we are guided by civil service guidelines. The fact that an individual stands accused does not mean that that individual has been convicted, found guilty, or whatever terminology you wish to use. Just as in your system of civil service, we make a determination. And if you, sir, stood accused of some violation of civil rights and were up for promotion, I'm reasonably sure that your employer would not pass you by. If, indeed, at some future date, you were found guilty of some, say, civil rights violation, then I would imagine that that would be the time to take into consideration the factors involved.

The particular case you're alluding to, and I won't mention names, has been widely publicized here in Philadelphia. I personally reviewed

the summaries in that case and that particular individual, so far as I'm concerned, was an aggressive police officer trying to do his job, trying to serve the people of this community in Philadelphia. He became involved in some off-duty situation which required him to go on duty. You've got the word of some people against the word of other people, and I won't go into in any greater detail because the matter is in litigation.

MR. DORSEY. I understand quite clearly from your testimony that, pending the resolution of an issue, you feel it inappropriate to complete your determination as to the department's position.

The allegation yesterday included the additional statement that even after there was a finding, either in a civil judgment or in a criminal matter, that that finding itself was not considered in any way conclusive by you, and that's the additional part of the question.

MR. O'NEILL. We review the matter when all facts are in and then we may or may not adjust our initial decision. We confer with counsel concerning it. You know, it's kind of comparable to a judge in the lower level who is reversed by an appeals court. And he takes a look at that which he did and he says to himself, "Now, was I really wrong and what are the additional factors, if any, or did they see something else?" The fact that a judge at the lower level is reversed by an appeals court or that the appeals court is reversed by the superior court or the supreme court doesn't in and of itself mean that the initial decision rendered by the subordinate courts was erroneous.

MR. DORSEY. That's true. But generally, using your analogy, whether or not the trial court may or may not have been right in its initial decision, generally speaking, our legal system is such that the superior court, or the supreme court, if you will, their judgment in that issue would be controlling whether or not, by anybody else's objective view, they might have disagreed with it.

That is to say, our system says that the final determination shall be the law of the land; and whether we agree with it or not, then we're going to abide by it. So, I'm not sure how the analogy fits here.

MR. O'NEILL. That's fine. Excepting that the decision was rendered by the supreme court that their particular views are not—let me reverse myself on that—that the particular views expounded by them are not in and of themselves binding on the department.

MR. DORSEY. I appreciate that. I'm only asking—

MR. O'NEILL. I think, if I may, sir, I think when Mr. Sheldon Albert gets the opportunity, I think he'll be able to expand upon that. I think you'll find that there have been decisions rendered, for example, by juries in civil litigation in which the jury felt that the police did no wrong but they felt, well, maybe we'd better give this fellow some money.

MR. DORSEY. Referring to your last comment, the city solicitor's office, as I understand it, is a separate office which is responsible for counsel, not only to your department but other departments within the city government.



It is not, as I understand it, an agency of yours. That is to say, it is not within your control. It simply provides services to you; is that correct?

MR. ALBERT. Excuse me, commissioner. The charter says and the facts are that the city departments must—they have no choice—they must take the law from the city solicitor's office.

MR. DORSEY. I'm sorry. I didn't mean to suggest that. I'm only trying to establish the line relationship, that's all.

MR. ALBERT. It's a lateral relationship. We are counsel for the police department as well as any other department in the city.

MR. DORSEY. And you function independently from the police department?

MR. ALBERT. Except under the charter where we rely on the police department for logistical help. And the charter says the department must so help us.

MR. DORSEY. What I'm getting at, Commissioner O'Neill, is that in establishing a policy with respect to the provision of information to district attorney's offices or U.S. attorney's offices, there is some degree of personal discretion which is vested in you as a law enforcement officer, chief law enforcement officer for this particular jurisdiction, to make that decision.

MR. ALBERT. I think the commissioner already stated that in his opinion, and in fact, he turns over all materials, except what the law department suggests to him that as a matter of law is inappropriate. I think that was your answer.

MR. DORSEY. Let me rephrase the question.

Has it been your experience that as a matter of law you are bound not to take the view of a jury in a civil case or a criminal case as conclusive with respect to the department's findings in the matter?

MR. ALBERT. Absolutely. It is neither conclusive nor binding on the department or the chief executive officer.

MR. DORSEY. The question is not whether or not it is, but whether or not the commissioner is prevented from accepting it as conclusive for his purposes also.

MR. ALBERT. I think the commissioner already answered that, that he takes that into consideration.

MR. DORSEY. Then I'm not sure we agree on the question.

MR. ALBERT. That could be, sir.

MR. DORSEY. Commissioner O'Neill, if in the event an allegation is made against a police officer, and subsequent to that a civil case is filed, which case comes to conclusion unfavorable to the police officer, can you base your decision to take disciplinary action against that individual based on that finding?

MR. O'NEILL. As I said before, we would take into consideration any new factors that are developed, then I would confer with counsel, and then a determination would be made as to whether or not we should take any action.

MR. DORSEY. You could, could you not, decide on the basis of that finding to take action?

MR. O'NEILL. I think the answer stands. I said to you, once again, we would take into consideration any new facts that might have been developed. I would confer with counsel and make a determination. So, the possibility exists.

MR. DORSEY. In the course of your duties as commissioner, have you had occasion to call on Chief Inspector Scafidi to provide you with information regarding possible patterns of misconduct either by individuals or by districts or units under your command?

COMMISSIONER O'NEILL. I don't recall specifically calling upon Chief Scafidi concerning patterns of alleged misconduct. I'm reasonably sure that Chief Scafidi and/or one of the other deputies would bring these to my attention.

MR. DORSEY. Have they done so?

MR. O'NEILL. Not recently.

MR. DORSEY. With respect to allegations of police misconduct, do they ever—have they, in your experience, caused you to refer individual officers back to your training command for additional training with respect to various aspects of their duties, for example, firearms or community relations or that sort of thing?

MR. O'NEILL. Yes, sir.

MR. DORSEY. Do you have any feel for how often that might have happened, say, for example, in a year or so?

MR. O'NEILL. No, sir, I do not.

MR. DORSEY. Are there any specific directives that you promulgated with respect to the use of deadly force?

COMMISSIONER O'NEILL. I believe that Chief Bridgeford testified to this last night. There are directives and there are assist officer pamphlets and I believe memoranda regarding this.

MR. DORSEY. Well, as I understood what he said last night—and please correct me, I'm sure you will—there is a period of time since 1973 or so, as I understood it, in which the department's directives were, by virtue of some new case, sort of in limbo; and there were interim steps being taken to provide directions, but that a directive on that matter was not currently enforced. Is that your recollection?

MR. O'NEILL. It doesn't sound true to me. I can't recall any time we were in limbo. The probability is that some law might have been changed in Harrisburg which might have caused some consternation, and I'm reasonably sure that if that were the case I'd have some vague recollection that we did discuss with counsel the impact that this might have. But I don't recall the specifics.

MR. DORSEY. I'd like to go back for one minute, if I can, to a discussion with regard to the various files which sometimes are or are not given to the district attorney's office with the view towards possible prosecution or at least reviewed in that regard.

As I understood what you've said, there is, in your view, based on the advice of counsel, a problem with providing the district attorney's office with certain statements made by officers. I guess, one of the problems in understanding it is that in a normal police investigation there are, from time to time, situations in which the person being investigated may or may not have had their rights fully discharged. Let me provide a more concrete illustration, if I may. For example, perhaps in the course of arresting an individual suspected of a violation, the police officer might not have complied with current *Miranda* requirements or might have arrested perhaps without probable cause, that sort of thing.

But, in any case, the investigation continues, the arrests continue, the person is incarcerated. They are, depending on the jurisdiction, faced with a preliminary hearing or indictment process. And at some point, the judiciary gets to determine whether or not the actions taken by the police and the information provided by the police and the data on which the individual is being brought before the judiciary on charges is valid, invalid, constitutionally sound, or what have you.

But, in any case, all of the information goes forwards, and then the decision is made by the judiciary that some of it will be allowed and some of it won't be allowed, that kind of thing. And I was curious as to—it seems as though the police officer stands in a somewhat different position. That is to say, if, in the course of investigation, some infraction of rights has occurred, that person is sort of immunized from further process at a level other than the judiciary for the possible protection of their constitutional rights. I'm trying to show what, on its face, appears to be a difference of treatment and to get you to help me understand that.

MR. O'NEILL. It's a rather obvious difference in treatment, one that's certainly understandable. You're forgetting that the policeman is the guardian of the community. The policeman is being paid to arrest people. The policeman is being paid to apprehend criminals. This is his responsibility, his obligation. This is what he took his oath for.

You know, John Doe who shot Sam Brown wasn't paid for it. Therefore, we most certainly have no obligation with regard to John Doe. If the district attorney decides that a particular case is not prosecutable because of certain alleged infractions—I note that you carefully didn't use the word "allege." You know, the inference here is—and I've glanced through this booklet of yours—the inference here is that we've got a department here that can do nothing right. And frankly, I resent it.

VICE CHAIRMAN HORN. If I can interject, counsel, apparently the question and the response—you're saying, commissioner, that the policeman is the guardian of the community. Well, that raises the very point I guess that has been raised for 2,000 years starting with Plato of who watches the guardians, and I think the thrust of the counsel's question is, Should the police make the decision on, in essence,

withholding evidence, if you will, or potential evidence on his own officers, when that decision would not be made on those arrested by its officers?

And the problem obviously arises, which is the question I raised yesterday to an individual, to one observer, it might look like a protection of an individual's fifth amendment rights. In a sense, that's the argument you made earlier. To another observer, it might look like a coverup of the police of police misconduct. And I think that is the thrust of what we're trying to get at here.

MR. O'NEILL. The decision is not in and of itself a police decision. The decision is based on the opinion of counsel to the department. We don't just arbitrarily—

VICE CHAIRMAN HORN. Well, I have counsel as president of the university, and the question comes, Do you have the authority to overrule your counsel? Is he advisory to you or does he make your decisions?

MR. ALBERT. As I've said before, Mr. Horn, as a matter of law, under the city charter, the commissioner and every other employee and officer of this city must take the law from the law department, right or wrong. They must take the law from the law department.

In fact, that was one of the first supreme court issues when we first had our charter in 1952. The other factor that has to be taken into account here is that we are also counsel for the individual officers because at that point they are still employees of the city of Philadelphia. So, we are not just counsel to the commissioner in that situation.

VICE CHAIRMAN HORN. In other words, there has never been a case where you've given legal advice to the commissioner where he has overruled you. He has always taken your advice?

MR. ALBERT. Certainly not since I've been solicitor. I obviously can't discuss—

VICE CHAIRMAN HORN. Commissioner, is there another solicitor that you have worked with over the years as commissioner?

MR. O'NEILL. No, sir.

VICE CHAIRMAN HORN. Let me ask you, Has there been any case in which you've been advised by the city solicitor in which you have overruled that advice?

MR. O'NEILL. We've had some very serious discussions in which I didn't agree with him. But I can't recall any specific instances in which I did not ultimately take his advice. I think a man trying to be his own attorney is a fool.

VICE CHAIRMAN HORN. That's usually applied only if you're an attorney.

[General laughter.]

CHAIRMAN FLEMMING. Counsel?

MR. DORSEY. Thank you.

Getting back to a question that cocounsel asked a little earlier, the business leadership yesterday suggested that whereas they did not be-

lieve that there was a significant problem of police misconduct, or I believe they said that, but they believed that there was a perception or problems with regard to police misconduct. They also believe that there was a direct connection between the provision of safe streets, of security and protection of life and property, with allowing the department the flexibility to condone some level of police abuse.

Now, that was their perception. They phrased it in terms of a trade-off that the business community in this area was more than willing to make to obtain this police protection. Now, in addition to making that suggestion they also compared it, if you will, to a period some number of years previous in which they felt they were not provided adequate protection of property and life. And that—they somehow related that period of time to a police administration which did not foster the kind of aggressive law enforcement which they connected with some level of police abuse.

Now, that suggested, both in the prior time and in the present time, they've somehow created the perception that there is a direct link between the provision of law enforcement service, or lack thereof, and the incidents of police abuse.

As I understood the time frames, you were clearly present at least—not chief commissioner—but present during that period of time. I was wondering if you could comment and clarify that from a police perspective.

MR. O'NEILL. I think we can perceive whatever we want to perceive. For example, if Ms. Gerebenics were here today with a black eye, we could perceive many things. We could assume that her boyfriend clobbered her; he could assume that she fell and hit the tub or perhaps ran into a door; we can perceive whatever we wish to.

Now, during the course of my time in the department, there have been complaints—and I'll use the broad term—of police misconduct. I'm quite certain that 50 years from now there will be complaints of police misconduct.

I'm reasonably sure that there is no one who goes through life that tries to do his job, and particularly, if he tries to do it in an aggressive manner, the way that policemen are trained to do, courteous aggressive manner, that there aren't going to be complaints.

I guarantee you that this very day, when Operation Fine goes into effect, and an automobile is pulled over, a green Chevrolet, which is going to be the wrong car, the criminal has escaped in, the possibility exists that there will be a complaint. So there's no way that you can avoid them, no way that you can avoid them.

In regard to their perception, I can't speak for them. But I'll tell you this, that we've got, in my opinion, the best police department in this nation, and the record shows it. You people have had an opportunity to review the statistics. You've seen the number of arrests that are made. You've seen the percentage of clearance here in the city of Philadelphia. I think that the people feel relatively safe in this city

because of the fact that our policemen try to do the job, and I think it's incumbent upon this body to take that into consideration. I think you also ought to consider what you're doing to the morale of some of these policemen, what some of the laws are doing to them, some of the findings are doing to them.

If you want a bunch of pansies running around out there, just imagine the effect that it's going to have on the people in this community. The response time, for example, in this city of Philadelphia is absolutely astounding. If right now a man-with-a-gun call—a man with a gun in this room, I guarantee you that within 2 seconds there would be policemen up on this stage.

MR. DORSEY. That is exactly the perception that the business community indicated that they had of the present police administration.

What I was attempting to get your response to is that they had an opposite perception some 10 to 12 years ago, and it's my understanding that you were a member of the force at that time, at a fairly high level on the force, as a matter of fact. I wanted to get your perception as a police officer present at that time as to whether or not that view of law enforcement was an accurate one. That is to say, was the response time 2 minutes for a man with a gun 10-15 years ago? That is to say, could you say the same thing that you are saying on the stage today 10-15 years ago? And was that related to a lack of aggressiveness, to a fear of reprisal for aggressive police enforcement, or was it attributable to some other factor?

MR. O'NEILL. I think if you go back 15 years, you have to take into consideration the factors present then. I think you have to consider the numbers of people that were in the department. I think you have to consider the equipment that was available, the radio network, the phone network, and so forth. I don't think that you can really make a true comparison. And frankly, I, of course, as I've said earlier, didn't have the opportunity to review the testimony of those gentlemen.

I'm not so sure that your inference into what they were trying to convey was accurate. That, indeed, 10-15 years ago, we didn't have this type response time. Frankly, 10 years ago perhaps, 15 years ago probably, because of some of the factors that I stated.

MR. DORSEY. You would not attribute it, for example, to any problem with community oversight of police conduct generally?

MR. O'NEILL. Community oversight?

MR. DORSEY. Right. They also referred to that period at a time in which there was a police review board, that there was citizen review of police action, citizen review of police complaints, and the inference, not that they necessarily drew, but which was clear on its face was that that was related to the failure to provide adequate police services.

MR. O'NEILL. Oh, I can't sit still for that one, failure to provide adequate police services. I think you've got to go back into the record, and you'll find that this department over the years has supplied adequate police services. But then it depends upon the view, you

know, what is adequate? What is adequate? Tell the guy who was mugged last night that he's getting adequate police services.

MR. DORSEY. The last question I have, commissioner, was that yesterday testimony also centered around at least the suggestion, if not in some cases the direct statement, that the current administration of the police department is strongly impacted by interaction with the office of the mayor. That is to say, that the mayor has considerable amount to say about the administration of the police department. And I wanted to know if you could clarify that.

MR. O'NEILL. For some reason or another people completely overlook the fact that the mayor of this city is the commander in chief of all departments—commander and chief of all departments. The mayor is very much concerned about crime in this city. As a matter of fact, just yesterday, he called me concerning one of our brutal murders to find out what we're doing about it, whether or not we've solved it.

It's not at all unusual for him to have a deep interest, in violent crimes particularly. The mayor is very much concerned about the victims of crime in this city—very much concerned. I think that the police department most certainly reflects this attitude.

MR. DORSEY. I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Let me ask you, commissioner, I'm going to pick up a few allegations that have been made during the course of our hearings, which I think you ought to have the opportunity to clarify for the record.

Yesterday morning the allegation was made by Sister Fattah, and I have asked for written statements and any copies of press release, testimony, etc., to be filed with the Commission on this, that the charge was that some police had picked up members of some youth gangs, unidentified, and dropped them off in the territory or turf of members of other young gangs. The implication is obvious, presumably to provoke trouble between the youth gangs. Have you heard that charge before? If you have or if you have not, what is your response?

MR. O'NEILL. If I recall correctly, this happened some years ago, and there was a situation in west Philadelphia, but I don't recall the specifics in which a couple of our people did commit this infraction. Some of the—so it would indicate to me that the witness that you had here yesterday is going back, I don't know how many years, a number of years. In fact, I'm not even sure that I was in my present position at that time.

VICE CHAIRMAN HORN. Do you recall what happened to those that committed that infraction?

COMMISSIONER O'NEILL. No, I do not.

VICE CHAIRMAN HORN. Could the Commission be furnished with that at this point in the record? What we're talking about here is a process. If an allegation is true, we're interested in what the administrative command structure of the agency is: to provide a remedy or to provide

appropriate discipline as a learning experience to set an example for those officers and for others within the department.

So, if I might, Mr. Chairman, I'd like the commissioner's response, when it is available, as to what discipline was applied in this particular instance, to be included at this point in the record.

MR. O'NEILL. I would trust that you will give us the specifics from the witness, and then we'll follow up on—

VICE CHAIRMAN HORN. You're apparently aware of the case, and we will have the counsel furnish what we have. We're not interested in names.

MR. O'NEILL. Well, we are because that's the way we trace the record:

VICE CHAIRMAN HORN. All right, but we're not interested in names—

MR. O'NEILL. If you'll have one of your staff people contact Chief Scafidi, perhaps we can determine whether or not that's still in our records.

CHAIRMAN FLEMMING. Without objection, when the information is obtained, it will be included in the record at this point.

MR. DORSEY. Excuse me. To clarify, Commissioner Horn, it is important to note the last comment of the commissioner because it may reflect on the availability of that information. There is a records retention schedule, and as I gather, the last part of your comment reflects that and that the records may no longer exist; is that correct?

MR. O'NEILL. That is correct.

VICE CHAIRMAN HORN. Do you mean to say if an officer is still with the force and discipline is applied to that officer, that at a different point in time—1, 3, 5 years—those records are destroyed?

MR. ALBERT. That would be in his personnel file. They're talking about the actual investigative file.

VICE CHAIRMAN HORN. No. I only am interested, and apparently the commissioner is familiar with the case, in just what sanctions, if any, were applied to those involved in that conduct, if, indeed, the conduct—

MR. ALBERT. As the commissioner offered, if the staff will contact Chief Scafidi—

VICE CHAIRMAN HORN. All right.

Now, we had testimony from Spencer Coxe, executive director of the greater Philadelphia branch, American Civil Liberties Union, where Mr. Coxe noted an example of an off-duty policeman who, apparently in plainclothes, held a gun at a civilian's head. Other officers in uniform thought they saw a crime in progress, stopped, interfered.

The off-duty officer would not identify himself to the uniformed officers. Presumably, the officer in plainclothes was disciplined for refusing to identify himself to the police, but not for his assault on a civilian. Are you familiar with that case at all?

MR. O'NEILL. I am not.



VICE CHAIRMAN HORN. Counsel might pursue with Mr. Coxe, Are there specific names that Mr. Coxe can provide to the Commission? Forward those names to the commissioner. The commissioner, without reference to the individual's name—all we're interested in is what action, if any, and why was not action taken against the officer for an assault on this civilian.

MR. ALBERT. You're also interested, are you not, Commissioner, in whether or not the story is true?

VICE CHAIRMAN HORN: That's right. I've used allegation—just assume allegation on all this. I've tried to use allegation on each one of these, if you people have been listening.

CHAIRMAN FLEMMING. That information will be received if it's available and will be included in the record at this point.

VICE CHAIRMAN HORN. Now, let me just ask a philosophical question.

The functioning of the internal affairs unit, I think everybody would agree that that's one of the toughest jobs in any police department, or in any given organization, be it the inspector general in the army, be it auditors in a corporation, and so forth. There has been some feeling that perhaps there should be greater visibility or known availability to the citizenry of internal affairs opportunities. One suggestion was made that perhaps there should be neighborhood centers on internal affairs or there should be a better way to communicate to the citizenry—you have millions of police contacts a year—that there is an outlet, if they are unhappy, whether that is a legitimate complaint or illegitimate complaint. I just wondered what your reaction is to that.

MR. O'NEILL. I think that the avenue is open to people who have complaints, readily available. We have in the city 22 basic numbered districts, each of which is commanded by a captain. We have nine divisions commanded by inspectors. We have four park districts; we have all kinds of special units, all kinds of commands. We have commands around the clock up to the rank of chief inspector. People don't hesitate to come in, from what I can determine, to register their complaints. It seems to me that they are readily available. I think you lose the effectiveness of the IAD [Internal Affairs Division] when you take it and you begin to spread it all over the city.

Now, I have the responsibility, as the young lady stated initially, and I get, of course, through the office allegations, and said allegations are a part of the—depending on the type of allegation—part of the IAD or either the deputy commissioner responsible for that particular phase of the department.

It seems to me that the public, thanks to some of our papers in this city, is well aware of the existence of the IAD. I think they're well aware of the—at least they should be if they read the papers—the procedures. And I know you've had testimony here, and you've reviewed my testimony before city council regarding the new procedures that went into effect last year.

VICE CHAIRMAN HORN. One suggestion that has been made in other areas has been that, perhaps, if a postcard was made available for an individual when a citation is made available, that they could mark off the type of conduct, etc., send it to the internal affairs unit. Do you have any feeling on that type of approach one way or the other?

MR. O'NEILL. No, I don't think it's incumbent upon us to give people postcards. It's kind of comparable to the Gimbel Brothers giving each and every one of the salespersons a card to give to the customer so that the customer can complain about the salesperson at the time of purchase. It seems somewhat ludicrous to me.

VICE CHAIRMAN HORN. May I say, many progressive organizations in the country do give customers an opportunity to respond on surveys or whatever. Airlines do it regularly. I'm sure you fly a lot just as I do. You occasionally get a survey—How did you like the meal? How did you like the person dealing with you from the time you set foot in the airline's territory, when you ordered your ticket, when you put the baggage, etc. They've done rather well, those organizations.

MR. O'NEILL. Yes, but they're paying for those services. The customers we have generally—

[General laughter.]

MR. O'NEILL. They're not paying to be arrested.

VICE CHAIRMAN HORN. Well, they're paying taxes which support your department.

MR. O'NEILL. A good percentage of them aren't, sir.

VICE CHAIRMAN HORN. Do you mean we've got studies on that to show who pays taxes that are arrested in Philadelphia?

MR. O'NEILL. No, I haven't, but I'm reasonably sure that if one were done, it would be quite interesting.

VICE CHAIRMAN HORN. They're paying taxes in the stores, usually a sales tax, whether or not they're paying income taxes, I would suggest. And even if they weren't, I would suggest there's a broader concept of responsibility to the public.

Now, let's get down to the question that might have been alluded to several times in this hearing, but just so I can hear it precisely. The argument has been made that, Is it good procedure to have officers who have been suspended temporarily while certain investigations are taking place as to the alleged misconduct working in the particular bureau of the police department that is conducting the investigation? The example was given of the homicide division. I think the example came, as I recall, from Mr. Parry, who, I believe, as you know, is the chief of the police brutality unit in the district attorney's office. The allegation was made by Mr. Parry that apparently, at least in one case that he cited, police officers who were suspended for shooting at civilians were put on an answering-the-telephone detail in the homicide squad which was investigating the shooting. Do you think that's wise and sound police procedure?

MR. O'NEILL. First, I think you have to correct the record. If an individual in our department is suspended, that means he was suspended without pay. We're talking about people that are put into nonsensitive assignments, police shooters, if you will, who are assigned to the homicide division for a period of time. I think it makes sense because they are readily available to the homicide investigator. You have here, in my opinion, the top man in this nation, Chief Inspector Joseph Golden, in that particular area. I think Joe Golden explained to you the reason why these individuals are there. And if he didn't, I'll tell you why.

VICE CHAIRMAN HORN. I'd like to hear it.

MR. O'NEILL. So that they are available, so that we might determine just what exactly to the degree possible that they can tell us what happened, and so forth. And, ultimately, most of these people are returned to their duty assignment.

VICE CHAIRMAN HORN. Well, don't you think it's reasonable for people to question that process? When you are investigating any other type of incident that is by a nonpoliceman, you don't invite them into the house and ask them to sit around the office and drink coffee with you and answer the telephone all day. Don't you think people can reasonably infer, and this was the charge Mr. Parry made, that when you have an individual sitting around, answering the phone, trying to be helpful, he's on a duty assignment. That pretty soon you know about Susie and the kids, or you know about all the personal problems. And isn't he really a heck of a good guy? And how tough can the investigation be? You don't do that for a civilian you're investigating. I mean, how do you explain that?

MR. O'NEILL. As I said earlier, there were two distinct differences. The civilian will probably be under arrest.

VICE CHAIRMAN HORN. Well, I think there's a big question as to whether the individual is under arrest.

MR. O'NEILL. And/or the civilian probably wouldn't want to spend his time with us.

VICE CHAIRMAN HORN. Well, don't you think it's a good question that if you had a civilian in similar circumstances, and he would probably be under arrest, a taxpayer, a citizen in Philadelphia could reasonably ask, "Why isn't the policeman under arrest while the investigation is going on?" I mean, have we got a double standard of justice? If you're a member of the force, you get to answer the phones and serve coffee. But if you're not a member of the force, you get thrown in jail while the investigation is going on.

MR. O'NEILL. It's much deeper than that. It's not an either/or situation.

VICE CHAIRMAN HORN. Well then, educate me.

MR. O'NEILL. I sure will. We've got a—each and every case, incidentally, stands on its own merits. If you've got something that's clearly black and white, no problem; here it is. This man shot this man. He's coming out of the tavern. He's in an off-duty situation. He's

not taking police action. That individual will be arrested. If you've got a situation in which the policeman was taking police action, then we put together everything that we possibly can to make a determination on whether or not he should be arrested or the assailant should be arrested. We've got two different situations. As I said earlier, the policeman is doing his duty. I don't know of any taxpayer that pays a private citizen to shoot somebody or apprehend any criminal.

VICE CHAIRMAN HORN. Well, on the first part on shooting somebody, I won't get into mob activities, but I think there's an answer to that.

Now page 18. Mr. Parry also said the police commissioner has told the district attorney he will decide which files will be turned over to the district attorney. I take it from some of your earlier testimony that is only true, the statement of Mr. Parry, because you have acted on the advice of the city solicitor, or are you making decisions beyond specific cases of advice of the city solicitor?

MR. O'NEILL. You know, Mr. Parry has a bad habit of leaving many things out. He tells that which he thinks is appropriate and forgets the remainder of it. We've met with him on a number of occasions. We've met with him in the managing director's office. Counsel has met with him.

VICE CHAIRMAN HORN. And? So, I mean, you're saying that the charge is wrong or—

MR. O'NEILL. So, we are giving him that which he is entitled to, and that which our counsel tells us he's entitled to.

VICE CHAIRMAN HORN. Well, again, you answered earlier, but I just want to make sure that in response I understand your feelings, that you are giving him what counsel advises you can give him, or are you making an independent decision of counsel. That's all I'm trying to figure out.

MR. O'NEILL. Almost without exception I confer with counsel on those items which we've determined he's not legally entitled to because of the rights of the individual whom he is investigating.

VICE CHAIRMAN HORN. Okay. But then, in your answer it's clear that occasionally there might be an exception where you make a decision when you do not confer with counsel?

MR. O'NEILL. It's possible, but improbable.

VICE CHAIRMAN HORN. Now, one of the things, I think, that interested members of the Commission last night is when we learned that in 1973 the Pennsylvania Legislature had passed a statute pertaining to the use of deadly force, and that for 6 years no interpretive guidelines have been issued by the police department. An hour is spent, according to your chief inspector, at the training bureau on the subject when recruits are going to the police academy. Don't you find it strange, as the chief executive of the police department, that no interpretive guidelines have been issued on this subject in 6 years? How is an officer expected to know where he or she draws the line in the conduct in a particular situation if there aren't interpretive examples of what does this statute mean so a person can understand?

MR. O'NEILL. I don't think the legislators themselves have interpreted the particular statute.

VICE CHAIRMAN HORN. Oh, I don't doubt that.

MR. O'NEILL. Well, okay. Therefore, I hardly think that I'm in a position to say to that, "You shall do this in *A*; you shall not do this in *B*." As I said before, each and every case has to stand on its own merits. I haven't seen any case yet that was absolutely identical to some case that preceded it. The counsel for the department, as I said before, is the city solicitor. I think that Mr. Albert will be able to testify that he is not exactly certain just what the legislature means with regard to the law in this area.

VICE CHAIRMAN HORN. Has the police department drafted an interpretation and sent it to the city solicitor for review in this area?

MR. O'NEILL. I don't recall. We may have some time ago.

VICE CHAIRMAN HORN. Does the city solicitor recall?

MR. ALBERT. I have had a deputy who has represented the police department for me, Ms. Sylvester at first, now it's Mr. Stephen Saltz. I know that we have discussed this. When I say "we," not myself personally, but the staff with the high levels—the training levels in the police department.

I think, and I don't know where all this comes from, but I think that in fact there is a police directive at the academy as to precisely when the officer may or may not use his weapon. I forget how the statute has been interpreted, but it's patterned to the statute to save your own life, to save somebody else's life, to apprehend a fleeing felon, not a suspected felon, which is one of the things that will ultimately have to be decided in court. But the way it seems to read is that it has to actually—the suspect has to actually have committed a felony. But it's my understanding that the police are instructed—I have seen that language in either the police manual or police directives, forgive me if I don't recall which, but that language is in there.

VICE CHAIRMAN HORN. Then my question, I suppose, ought to be to Commissioner O'Neill: do you feel that the present policy which is essentially distributing the law as passed by the Pennsylvania Legislature is sufficient instruction for police to know what choices they should make under certain circumstances, or do you feel that anything else should be done—

MR. ALBERT. Not that I want to interrupt the commissioner, but I don't want you to be misled by my answer, that my answer was all and totally inclusive. In fact, there are curricula at the academy of what should you do in this situation, when should you use your weapon, so forth and so on.

I didn't want to interrupt the commissioner, but I wanted to make sure that my answer contained at least that too.

I'm sorry, Joe.

MR. O'NEILL. I don't think that I could sit here and say that the law is sufficiently clear that you can tell a policeman that, "You will, in this case, shoot; you will, in this other case, not shoot."

I'm very much concerned about the lives of these policemen, and I'm very much concerned about the lives of the people who they protect. Therefore, we try to take into consideration all of the facts to a given situation. And as I said, I haven't seen one yet that was identical.

VICE CHAIRMAN HORN. I'm not sure completely what the law is in Pennsylvania. Let me give you an example: suppose a policeman sees an individual running away from a store, and the store owner says, "I've just been robbed." The policeman calls after the individual, "Halt or I'll shoot." The individual does not halt. The individual does not appear to have a gun, does not turn around and fire. Does the police, under Pennsylvania law, have a right to shoot at the fleeing suspect? There is no visible gun and the person has not turned around to fire.

MR. O'NEILL. You've got a situation here in which the officer is apprised that there was a felony. Now, whether or not the individual has a weapon is questionable. Does the officer know whether or not he has one? I don't know. Frankly, I don't like to deal with these suppositions. I like to have actual cases and then get all the facts together. I don't think it would be appropriate for me to say, "Yes, he should; no, he shouldn't." I just don't know.

VICE CHAIRMAN HORN. Why is it in the State of California and the highway patrol and the police department of the city of Long Beach can give instructions to their police and their State highway patrolmen as to do you or don't you shoot under those conditions?

MR. O'NEILL. Perhaps their law is much clearer than ours.

VICE CHAIRMAN HORN. But it seems to me, and I'm an agency head too, and when the law is not clear, it seems to me, it is incumbent on the agency to issue regulations as best they can to interpret the law. If somebody disagrees at that point, they can take us all to court. But it seems to me that we have obligations as administrators to try to interpret the murky laws that we sometimes have to operate under. I'm just curious what the philosophy is in the Philadelphia Police Department.

MR. O'NEILL. No, this is all very interesting, sir. You take the particular case that you were talking about, and let's assume for the moment that the man says he was robbed, but he doesn't say that his wife is laying dead inside there. Now, the policeman decides, no, he's not going to shoot, and he lets the man go. He doesn't make any kind of effort.

VICE CHAIRMAN HORN. I'm not saying he should or he shouldn't. I'm just trying to figure out how the department would—

MR. O'NEILL. I don't know how California gets—I don't know how they get by with it in California, very frankly. California Highway Patrol, as you probably know, is primarily a traffic organization.

VICE CHAIRMAN HORN. That's correct. But they've had occasionally murders that they have had to—

MR. O'NEILL. And they've also been murdered, sir.

VICE CHAIRMAN HORN. I'm well aware.

MR. O'NEILL. Because of hesitation.

VICE CHAIRMAN HORN. And there's nobody that I think has a tougher job in society than police. But I also think there's an obligation to at least find out what is the policy in training an officer and training a raw recruit, if you will, who will go into the streets after so many weeks' training, or months, with as much authority as a 30-year veteran who might well have learned this by the school of hard knocks. My query is very simple; it is, What is the policy of the police department under that type of situation, and if the command doesn't know, how do we expect the recruit on the street to know?

MR. O'NEILL. You're inferring that the command doesn't know. Indeed, the command does know. The policy is as clear as it can possibly be considering the law. I can't make my response any clearer than that, sir.

VICE CHAIRMAN HORN. Well, I just wondered if you'd shoot or not shoot if you were that officer.

MR. O'NEILL. If I were there, I'd have to make a determination at that time. I don't know. But I'll tell you this, that if he did shoot, if he felt that he was doing that which is right, most certainly I'd defend him.

VICE CHAIRMAN HORN. In other words, you will defend your officer's conduct under all circumstances?

MR. O'NEILL. No, sir; I didn't say that.

VICE CHAIRMAN HORN. Well, I'm trying to figure out what the policy is. So you're saying you won't defend your officers under all circumstances?

MR. ALBERT. Excuse me. If you recall, Commissioner, that your original premise was, in fact, under Pennsylvania law, an incident where an officer would have been justified in firing his weapon.

VICE CHAIRMAN HORN. That's right.

MR. ALBERT. Now you're asking the commissioner, Would he have done it? Then your next question was, Would he defend the officer in all circumstances?

VICE CHAIRMAN HORN. I'm only responding to his question.

MR. ALBERT. The commissioner said quite clearly that, predicated on the example that you gave, which under the law the officer would have been justified in shooting, the commissioner would have defended him. Even, in fact, under the law sometimes mistakes are made. I think we'll all agree with that.

VICE CHAIRMAN HORN. Now, there's one other allegation I want you to have an opportunity to respond to. A Dr. Ethel Allen appeared, a former member of the city council. She made the statement that when Mr. Rizzo was the police commissioner—and I'm not sure what position you had in the department at that time—that they had all the Black Panthers pictured in the news and that picture was published throughout the country. Are you familiar with that incident?

MR. O'NEILL. Do you mean the fact that that picture was in the newspaper?

VICE CHAIRMAN HORN. That's right. The individuals were pictured as such—

MR. O'NEILL. I saw the picture, yes, sir.

VICE CHAIRMAN HORN. I did not, so I'm just trying to get in on the record so you'll have a chance to respond. What position were you in at that time?

MR. O'NEILL. I believe I was the chief inspector at that time.

VICE CHAIRMAN HORN. Now, I don't know the circumstances. All I know is Dr. Allen's testimony. Do you have any feeling whether that's good police practice, what happened in that situation, or not good police practice?

MR. O'NEILL. I wouldn't comment on it.

VICE CHAIRMAN HORN. Now, we also—

MR. O'NEILL. I don't know the specific reason why they were stripped. I would assume the individual who was in command would know.

VICE CHAIRMAN HORN. We also had the allegation made that during the strike of the *Philadelphia Inquirer*, a demonstration perhaps it was, where there were off-duty policemen involved, the Philadelphia police force in uniform stood by while off-duty policemen presumably beat up employees of the *Philadelphia Inquirer*. Do you know anything about that situation?

MR. O'NEILL. That sounds like an absolute fabrication to me—absolute.

VICE CHAIRMAN HORN. Now, a Mr. Deal appeared before us and he made the statement that he had written you on November 11, 1976, to complain of the conduct of his supervisor. He responded that—he, Deal, was then a member of the Philadelphia police force, responded to a call in an area with boarded-up houses. There were several people around; another officer also came. When this officer came, the sergeant said to the supervisor—the sergeant said to this officer, "Lock that bitch up. That bitch is an agitator," said the supervisor. Mr. Deal said he was there. This person was doing absolutely nothing.

He protested this at the station house. The desk clerk at the station house said, "Listen, I've got to take my orders." The person was choked by the officer who came to the scene presumably. Then she was charged with aggravated assault and battery and resisting arrest.

Now, when I asked Mr. Deal what happened as a result of his complaint, he responded that he was taken before the trial board, presumably for complaining, and the officer about whom he complained was not affected. Do you recall that incident at all? The letter was sent to you. What happened to the case, so we can round out—

MR. O'NEILL. No, I don't really recall it. But I would say this, that if you're presuming that his presumption is accurate, then you are in error.

VICE CHAIRMAN HORN. I'm not assuming. I want you to have a chance to respond.



MR. O'NEILL. Well, I don't have the specifics, but assuming that he did send me a letter, the probability is that I would forward it to the chief inspector in charge of the internal affairs bureau to follow up on it.

VICE CHAIRMAN HORN. Well, Mr. Chairman, let's, at this point in the record, ask the commissioner for the response, without mentioning names, Mr. Deal's letter to him of November 11, 1976. Mr. Deal testified and we asked that he not mention names. We just want to round out what indeed were the sanctions, if any, on the allegations made by Mr. Deal so we have a complete record.

CHAIRMAN FLEMMING. Without objection, that will be included in the record at this point.

VICE CHAIRMAN HORN. Now, are you familiar with bill 1063, which is before the Philadelphia City Council?

MR. O'NEILL. Somewhat.

VICE CHAIRMAN HORN. Do you have a position on that bill which you've taken?

MR. O'NEILL. Yes, I think I've had an opportunity to review my position.

VICE CHAIRMAN HORN. I don't know if you're familiar with the comments that one of your chief inspectors made last night. Generally, would those be the reasons why—he went into detail in terms of the period in which the agency had an opportunity to respond, the detail required, and so forth.

MR. O'NEILL. No, but I would respectfully suggest that you review my notes of testimony. They're in your pamphlet.

VICE CHAIRMAN HORN. Why don't we, at this point, have that inserted in the record?

CHAIRMAN FLEMMING. Without objection, that will be done.

VICE CHAIRMAN HORN. Now, my last question. We spent a lot of time last evening on training, what training should people in this very difficult occupation have as they go through the police academy. Could one in the police academy sort of determine who are good risks as police officers and who are not? Some academies, I believe, around the country have set up special forces to put police recruits under great stress to see how they react and have made judgments, while they're in police academy, as to whether they conduct themselves with people in very difficult, tough situations in the daily lives of the policemen. Now, do you have any feelings about the adequacy of training in the Philadelphia police academy in terms of dealing with this problem of how officers will conduct themselves under stress? Do you think your program is adequate? Do you think it needs review? Do you see other police academies that are perhaps doing newer, more effective programs? What's your reaction as a professional?

MR. O'NEILL. As you probably know, the men in the academy have the opportunity to go out on patrol with other personnel, primarily supervisors, over a period of time. I believe the time period is something

3 to 6 weeks, and during that time, presumably, they come into contact with many situations, some of which might be described as stressful. It is the obligation of the superior officer that they're with to bring to the attention of the people at the police academy the action or inaction or reaction of the individual. I think that over the years the number of people who have fallen by the wayside is minimal, and I think the fact that this is so unusual leads the headlines—policemen use the expression “flips his cork.”

Who can judge the adequacy or inadequacy really, if you've lost one man—if one man, after he's in the department for a period of time, does something which is somewhat completely contrary to the values we hold, I think it indicates that somewhere along the line we failed. But have we really? Consider that this 1 or this 4 or this 400 or whatever it might be, not only a small segment, over 8,000—I've heard it said many times to the point where it becomes somewhat trite, you take 8,000 anybodies, 8,000 anybodies and you're going to have just about anything among that 8,000 anybodies.

VICE CHAIRMAN HORN. Well, I agree basically with that point. I think the only thing one could ask as administrator is, Have we taken all reasonable care to see if we can devise training programs, either at the recruit stage or later in an individual's career, where behavior that might be counterproductive to an effective police force in a democratic society can be ferreted out and dealt with, either through counseling or through trying to remedy the defects or, if that's impossible, at least identifying the problem cases and giving them other assignments other than carrying a gun and coming in contact with the public and have life and death decisions?

MR. O'NEILL. I'd say to the degree possible we have. We have subordinate commanders and supervisors who are responsible for the on-the-job guidance, counseling of these individuals. They are the people who are responsible to watch them in their day-to-day activity. We hope that they would bring it to the attention of the people hiring them, and they do, as a matter of fact, and we hope that they will bring it to the attention of the people, and they do, as a matter of fact, some of the inadequacies of people who work with them, some of the inadequacies of people who work with them. Unfortunately, we're dealing with human beings, or fortunately, I suppose. And frankly, I don't know if you've ever been at the lowest level of supervision. If you have, I think sometimes you're inclined to let your heart rule your head. People make mistakes. Generally speaking, I would say that our system works reasonably well.

VICE CHAIRMAN HORN. Thank you, commissioner.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Commissioner O'Neill, I think I gather from what you and some other of your officers have indicated to us that by and large your feeling is that the community of Philadelphia is supportive and has positive attitudes towards the police department.

Is that an accurate indication of your feeling about the attitude of the citizenry of the city toward the police department?

MR. O'NEILL. That's a question that's extremely difficult to answer. In order to answer a question like that positively, I would say you'd have to survey the community, and you'd have to get at least a sampling of the people who are considered underage. Then you'd have to get, in my opinion, not only sampling, but you might even get from each adult resident and transient in the city of Philadelphia a personal opinion, and this is just about impossible.

You know, our attitudes are, I think, reflective of what happened to us recently: what happened to me last night; what happened to me yesterday; did I have a good experience today, or was I robbed and the police were there in nothing flat; or was I mugged and the police didn't get there within 2 minutes?

COMMISSIONER SALTZMAN. You're not able to tell me whether or not the police department is held in some esteem or some feeling of confidence in its competency as a police department?

MR. O'NEILL. Well, if we go on the basis of that which is available to us, I think we'll find that a number of complimentary letters that come into the department during the course of a year runs up into the thousands, perhaps 4,000 or 5,000. Now, if this is indicative of the feelings of the people, then I would say listen to them. And I don't want to use the term "most," but I do think that most people believe that this department is doing a good job. I think the stats prove it. I think the fact that we are the lowest of the 10 major cities comparatively speaking in crimes per capita, that's indicative of something. I think the fact that we have the highest clearance rate among others is certainly indicative of something.

COMMISSIONER SALTZMAN. Has there been an unusual amount of attention in this city on the issue of police misconduct in the last 2 years?

MR. O'NEILL. Pardon me for smiling, sir, but, the *Philadelphia Inquirer* more or less spotlighted this "problem" over the past few years.

COMMISSIONER SALTZMAN. Are you suggesting that the focus on the problem is the product of their media attention to it rather than there being any legitimacy to the concern?

MR. O'NEILL. Well, you've got a double barrel question there. Obviously, if a newspaper focuses on the problem, then certainly it's going to be in the minds of the people for that time period, until they put that particular paper either in the garbage or under the bird.

Now, with regard to the problem itself, I dare say that the average citizen here in the city of Philadelphia has relatively little contact with the police but I also would say that during the course of a year—incidentally, we have in our radio room over 3 million calls during the course of a year—so, this would indicate to me that the community certainly has some confidence in our police. We've had, as I

said, a number of letters indicating that they were very much satisfied with the service rendered.

We've even had situations where individuals are told to move on or given tickets or what have you, and are appreciative of it, as ridiculous as it may sound. I think the police in this city do a good job, and I think that the citizens are well aware of it and pleased for it.

Now we have in the city, as you probably know, town watch groups, police community workshops, and these are the people who come to the police district to air their problems, to see what can develop. These are not the people who are politically oriented. These are not the people who are out in the streets because they are political candidates shouting and screaming about this or that.

All you have to do in this city, the same as any other city, is just go back over the years and look at the election year and, invariably, you'll find that the spotlight is on the police because we're the most visible. We're the people that are around 24 hours a day, 7 days a week. We're the people that are there to serve.

COMMISSIONER SALTZMAN. Do you have any record or indication of disciplinary action that you, as police commissioner, have taken against police officers in the cases proven; from your point of view, of misconduct?

COMMISSIONER O'NEILL. Yes, sir.

COMMISSIONER SALTZMAN. Could you indicate the kind of number of such disciplinary action that you've taken in 1977 and 1978?

MR. O'NEILL. Not off the top of my head, but it can be made available to counsel.

COMMISSIONER SALTZMAN. Could that be entered into the record?

CHAIRMAN FLEMMING. I think we had a request for that last night, as I recall.

MS. GEREENICS. We have all of the disciplinary cards, Mr. Chairman. We can tabulate that ourselves.

CHAIRMAN FLEMMING. We will enter the figures into the record at this point.

COMMISSIONER SALTZMAN. Has there been, from your office, any indication of your attitude toward police misconduct, some kind of directive or memoranda in general expressing your own attitude toward police?

MR. O'NEILL. Well, aside from the internal police manual and directives and memoranda, there has been at least a couple of press releases indicating my attitude with regard to people who willfully and deliberately violate the law, violate their oath of office, yes, sir.

COMMISSIONER SALTZMAN. So it has been clear to the department that you stand for, and clearly stand for, effective police administration and, also, courteous and otherwise, the absence of police misconduct.

MR. O'NEILL. That's true.

VICE CHAIRMAN HORN. In fairness to the commissioner, could we get those statements in the record at this point?

COMMISSIONER SALTZMAN. Are those statements available?

MR. O'NEILL. I think your staff may have them, and if not, we'll certainly make them available to them.

CHAIRMAN FLEMMING. When they are made available, they will be inserted in the record at this point.

MR. DORSEY. To clarify, I don't think we have them. So that if you could provide them, then we'd be sure to—

COMMISSIONER SALTZMAN. I have no further questions.

CHAIRMAN FLEMMING. Commissioner O'Neill, I was very much interested in the testimony last night relative to the operation of the internal affairs unit. My understanding is that that unit conducts investigations and brings together the results of the investigations, but does not make any decisions relative to individual cases, that the decisions are made by line officers, including yourself; is that correct?

MR. O'NEILL. Not exactly, sir. They either conduct or they oversee the investigation, ultimately they all pass through them. Now, they do—I say "they," the chief inspector and I confer frequently. And the reports submitted by his subordinates frequently will state something to the effect that they should be turned over to the commanding officer for his action—he's the line officer. If it's an extremely serious situation, the possibility is that I, personally, would direct the deputy commissioner what to do, or the chief inspector by my direction will ask the deputy commissioner to move ahead and prepare 18s or what have you.

CHAIRMAN FLEMMING. So that all the major cases that are investigated by or under his supervision, the results of the investigation would be examined by you and you would issue some instructions as to the—

MR. O'NEILL. Very probably, yes, sir.

CHAIRMAN FLEMMING. Now, on the basis of previous testimony—but I'd like to clarify some previous testimony this morning. There were some questions addressed to you relative to persons who have had civil judgments, police officers who have had civil judgments entered against them and police officers who, in some instances, have criminal convictions. It's my understanding that where a civil judgment has been entered and where there has been a criminal conviction it does not automatically follow that there would be disciplinary action taken by you or by one of your officers; am I correct on that?

MR. O'NEILL. That is correct, sir. As I stated earlier, I would confer with counsel and we'd make a determination on which direction we should go. But I can't think, very frankly, of any criminal cases in which a final decision has been rendered wherein the individual is still in the department.

CHAIRMAN FLEMMING. That was the next question I was going to ask; whether or not there is still anyone in the department who—where there has been any final action taken in a criminal case.

MR. O'NEILL. I don't believe so. Let me say not with my knowledge.

CHAIRMAN FLEMMING. Have you at any time while you've been serving as commissioner passed on a case of a police officer who has been convicted of a criminal charge and whose appeals have been denied? In the years that you have served as commissioner, have you been confronted with any situation where a person—a police officer was convicted of a crime where he had exhausted his appeals?

MR. O'NEILL. I can't think of any.

CHAIRMAN FLEMMING. Now, going to civil judgments. Are there police officers at the present time against whom civil judgments have been entered who are still serving?

MR. O'NEILL. Yes, sir.

CHAIRMAN FLEMMING. Did those cases come before you personally before a decision was made to retain those officers?

MR. O'NEILL. Do you mean prior to or after?

CHAIRMAN FLEMMING. After the civil judgment.

MR. O'NEILL. When you say, "Come to me," do you mean come to my attention?

CHAIRMAN FLEMMING. Yes.

MR. O'NEILL. The answer is yes. I confer with counsel, not necessarily Mr. Albert, either Mr. Saltz and prior to Mr. Saltz, Mr. Sylvester; prior to that, then Mr. Golden; prior to that Mr. Ivans. [phonetic]

CHAIRMAN FLEMMING. When you have a case of this kind in front of you, there are some legal questions and you confer with counsel on those legal questions. Then also, there are some questions of policy, I assume, and you have complete responsibility as far as the policy questions are concerned; am I correct?

MR. O'NEILL. Yes and no. You're correct in that I have the final decision. But obviously I have to confer with counsel to determine whether or not my ultimate decision would violate the basic civil rights of the individual.

CHAIRMAN FLEMMING. That's where a civil judgment has been entered against the officer?

MR. O'NEILL. That's correct.

CHAIRMAN FLEMMING. Do you, as commissioner, have complete responsibility under the city charter for the handling of personnel matters? What I mean by that is, first of all, what is your role as police commissioner in terms of initial recruitment, and then finally, what is your role in terms of promotion from within the department? Now, we did get quite a bit of testimony last night on the initial recruitment, and I think we do have an understanding of the role that the civil service commission plays and so on, but we didn't have too much testimony on the question of internal promotions. What is your responsibility for the internal promotions from one rank to the next?

MR. O'NEILL. Well, all of our examinations are by civil service. The civil service commission sets the standards and so forth. The personnel department of the city of Philadelphia gives the examinations and ultimately scores the exam and so forth.

My responsibility comes at the time of promotion when people are on an eligible list. I, of course, screen the personnel department and also the finance department to make sure that we are able to support the promotion. Then I review the records. I don't personally do it, but I have the records of these individuals reviewed to determine whether or not that particular individual merits a promotion.

Now, there are other factors that are in this, depends on the particular promotion that he's going for. Like the sergeant—would be 90 percent written and I believe it is 10 percent experience. You get so many points and so forth.

CHAIRMAN FLEMMING. You do have the opportunity of making choices from among persons on the eligible list for promotion?

MR. O'NEILL. You mean at the time could I skip someone; is that what you're saying?

CHAIRMAN FLEMMING. In other words, the eligible lists come to you in rank order. Is there a rule three, for example, do you have the opportunity of selecting maybe one of three who may be at the top of the list?

MR. O'NEILL. There is a rule.

CHAIRMAN FLEMMING. There is a rule?

MR. O'NEILL. Yes. If I have adequate supportive data, then I can skip.

CHAIRMAN FLEMMING. But you can select from the top three in effect without citing any reason for skipping over number one?

MR. O'NEILL. Excepting that there's an area there that's somewhat vague, and that is whether or not we can skip a veteran for a non-veteran.

CHAIRMAN FLEMMING. You have a State veteran's law that's binding?

MR. O'NEILL. That's correct.

CHAIRMAN FLEMMING. I understood last night, in terms of initial recruitment, the 10-point preference connection with the initial recruit—

MR. ALBERT. That's for taking the exam, but also in our commercial system under the civil service and under the State statute a veteran who is eligible and passes the exam one or two automatically gets it.

CHAIRMAN FLEMMING. I noticed that in examining the information that your department furnished us relative to breakdown of personnel by grades, that if you take the rank from lieutenant through commissioner, that there are 358 whites serving in those command positions and there are 24 blacks serving in those positions and no Hispanics at the time, at least, that this information was furnished. What I'm wondering is what your plans may be as commissioner for an affirmative action program in dealing with the filling of command position.

MR. O'NEILL. Respectfully, sir, I will not respond to that question because we are in litigation on that matter.

CHAIRMAN FLEMMING. I did not know that, okay.

Let me just ask this: Do you have a formal affirmative action plan in writing?

MR. O'NEILL. I'll defer to counsel.

MR. ALBERT. The city of Philadelphia, through its personnel department, has an affirmative action plan insofar as equal opportunity is concerned and insofar as efforts are being made in various departments.

However, under the civil service system, as a result of our success in the number of lawsuits where examinations have been shown to be nonbiased, nonprejudiced, and nonracial then promotions and all aspects of the city are made from rank order from the list. You will find that, in fact, while the commissioner was describing what could occur, in the police department promotions are by rank order at the lower superior levels up to captain and lieutenants. We were successful in front of Judge Fuller, who found that there was no racial stigma attached to it. I forget the exact words that they used.

So those are the exams that we use. But essentially there is a specific affirmative action program in the city of Philadelphia in areas where civil service or other court orders do not interfere.

MR. DORSEY. Excuse me, Mr. Chairman. Just a followup point.

As part of the LEAA, is there any affirmative action component requirement?

CHAIRMAN FLEMMING. Let me just precede that question by asking this question: Have you been in receipt of funds from the Law Enforcement Assistance Administration?

MR. ALBERT. If I may make just an effort to shorten what you're probably going to go into. Where the city has been challenged in this area, we have either changed the system to the satisfaction of whatever Federal agency was concerned, or we won the case in court.

There are certain areas where the courts have said that notwithstanding this, and notwithstanding this provision, in fact, there is no bias, there is no prejudice. This is just the break of the game, in essence. So, we have been in substantial and sufficient compliance with all of the rules that are required in the grant applications.

CHAIRMAN FLEMMING. If I could go back to my question just on the record, have you been in receipt of funds from the Law Enforcement Assistance Administration?

MR. ALBERT. Oh, I'm sorry. I thought I said yes, sir.

CHAIRMAN FLEMMING. Do you in effect have funds from the Law Enforcement Assistance Administration at the present time?

MR. ALBERT. I would assume so.

CHAIRMAN FLEMMING. Do you have any proceedings pending at the present time with the Law Enforcement Assistance Administration raising any civil rights issues?

MR. ALBERT. We had one with regard to women in the police department a number of years ago. It was finally resolved in court. I am not personally aware that there are any pending at the present time.

CHAIRMAN FLEMMING. Has the Law Enforcement Assistance Administration ever taken up with you any issues growing out of the allegations of police abuse?



MR. ALBERT. Not to my knowledge. Now, that does not mean it did not occur at a lower level.

CHAIRMAN FLEMMING. Just one final question. We did take testimony on your total training program. My understanding is that at the present time, your resources do not permit—your feeling is that the resources do not permit what might be called an inservice training program for current officers in terms of their being brought periodically for additional training. And I understand that you do have some inservice training program where you use TV and so on, but that at the present time, they are not brought in periodically for training on use of arms and matters of that kind; is that a correct understanding?

MR. O'NEILL. No, sir, it isn't. If you're talking about intensive training, then you're correct.

CHAIRMAN FLEMMING. That's what I'm talking about.

MR. O'NEILL. If you're talking about some special training, then you're not correct. But we do have inservice training in the field, as you probably know.

Now, we all know, of course, that training is a function of command, and we do have command. Whether or not the command is adequate in numbers is questionable. There are some cities that have six men to every sergeant. We don't have that luxury here. However, to the degree possible, we expect that the command personnel will see to it that the individuals are trained until they feel corrections, if you will. An individual, for example, speaks harshly to a complainant; you would expect that his supervisor, when he becomes cognizant of this, he will ultimately take corrective measures. We all know how it's done.

Now, the obvious followup question would be: do you think training is adequate? I would say this, I can't think of any department in the Nation that has sufficient number of personnel that they can give their people that which could be considered adequate training. What is adequate? It's that pie in the sky, it's that plane that you never reach: adequate training.

To the degree possible, the number of people that we have here, the availability of the personnel, the shift changes, etc., we do the best that we can. I think that our primary obligation to the citizens in this city, the transients, the people who do business in this city, to give them the best possible police service that we can provide and I think we're doing it, sir.

CHAIRMAN FLEMMING. Commissioner Horn brought a number of questions to you with regard to this training document on the use of deadly force. This did come out in our discussion last night and does go back to the change in law implemented in 1973.

We had here the document that was in existence up until 1973; then, we were told that that was outdated by the 1973 statute. We were also told that your department has developed a substitute for it and had submitted it to the district attorney for clearance, or at least

for advice from the district attorney, and that stalled there. And this was under the previous district attorney, as I understand it. If I understood the testimony correctly, that it has been resubmitted to the current district attorney. Is it your feeling that you could not get out a new training document of that kind unless it was cleared by the district attorney? Is that a matter of law? Is that a matter of policy? Is that a matter of comity between the police department and the district attorney?

MR. ALBERT. If you're asking me, it's not only a matter of comity, but more important, it's a matter of, if we're going to have a written standard under which people will or will not be prosecuted, then it makes sense to have the prosecutor's imprimatur.

CHAIRMAN FLEMMING. Do you know whether efforts are being made to get an expeditious response from the district attorney on that, so that your police officers will have the benefit of this kind of a document?

MR. ALBERT. I would assume that Mr. Saltz is working with the district attorney, but can I say to you specifically, obviously I don't know that.

CHAIRMAN FLEMMING. We were struck by the fact that there seems to be quite a wide gap here in terms of a training document—

MR. ALBERT. As long as the record is clear that what we're talking here is a document. The police are instructed as to when they may or may not use their weapon.

CHAIRMAN FLEMMING. We were told that certain information had been sent out relative to the new law, but that that had gone out immediately, as I understand it, in 1973, but that the new training document would take the place of the old one.

MR. ALBERT. That has not been completed.

CHAIRMAN FLEMMING. That has not?

MR. ALBERT. That is correct.

VICE CHAIRMAN HORN. One question, commissioner, if I might, yesterday we heard from members of the city council that you are a very professional commissioner who does not brook any political interference. The one councilman said that that would be the worst thing any member of the council could do, would be to call you up on a case. I wondered, does that apply within the executive branch, and has the mayor of Philadelphia ever called you on a particular disciplinary case as to what you ought to do to either apply a penalty, not apply a penalty, etc.?

MR. O'NEILL. No, sir, he has not.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. Does counsel have any further questions?

MR. DORSEY. Just one followup. You had indicated earlier that there were instances—and we have records which demonstrate that—that officers have been dismissed by you or fired by you, disciplinary action taken for using excessive force or shooting off duty. I think you had indicated that earlier.

MR. O'NEILL. That's correct.

MR. DORSEY. To your knowledge, have you ever had occasion to dismiss or arrest or otherwise discipline an officer for excessive force on duty?

MR. O'NEILL. We have.

MR. DORSEY. Do you keep any kind of compilation with regard to that kind of thing?

MR. O'NEILL. I'm not sure whether or not we can separate that. The probability is that we have it.

MR. DORSEY. I would ask, if you would, if you would please make it available so we can include it in the record.

CHAIRMAN FLEMMING. Thank you very much. We appreciate your coming here this morning and sharing your views with the Commission. Thank you.

Counsel will call the next witnesses.

MR. DORSEY. John D'Angelo, Sheldon Albert. [John J. D'Angelo and Sheldon Albert were sworn.]

**TESTIMONY OF JOHN J. D'ANGELO, EXECUTIVE ASSISTANT, PHILADELPHIA CIVIL SERVICE COMMISSION; AND SHELDON ALBERT, SOLICITOR, CITY OF PHILADELPHIA**

MR. DORSEY. Starting with Mr. D'Angelo, please state your full name, title for the record please?

MR. D'ANGELO. My name is John J. D'Angelo. I am the executive assistant to the Philadelphia Civil Service Commission.

MR. DORSEY. Mr. Albert?

MR. ALBERT. Sheldon Albert, city solicitor, city of Philadelphia.

MR. DORSEY. Mr. D'Angelo, how long have you held your current position?

MR. D'ANGELO. Sir, in June it will be 5 years.

MR. DORSEY. What are your specific duties with respect to that position?

MR. D'ANGELO. My specific duties are to assist the commission in the preparation and drafting of opinions in disability cases and discipline cases.

MR. DORSEY. In that regard, do you have responsibility to review appeals from the police department of Philadelphia?

MR. D'ANGELO. Yes, sir.

MR. DORSEY. Could you indicate, if you will, if you've had an opportunity based on previous contacts with staff to take a look at the rate of denials or sustaining of police appeals?

MR. D'ANGELO. I did submit to Mr. Bell and Ms. Hoopes the records that I was able personally to compile, going back, I believe, 3 or 4 years that I've been active with the commission, yes, sir. In fact, I also gave them copies of opinions.

MR. DORSEY. Thank you.