CITY OF PHILADELPHIA
POLICE ADVISORY COMMISSION
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ANNUAL REPORT

THE PHILADELPHIA POLICE ADVISORY COMMISSION

Fiscal Year 1996

Pursuant to the Philadelphia City Charter, the Police Advisory Commission (the "Commission") is herewith submitting its Annual Report for the fiscal year ending June 30, 1996.

I. INTRODUCTION

Established by the Executive Order of Mayor Edward G. Rendell issued on October 29, 1993, the Commission has been given the vital task of monitoring and improving the relationship between the Philadelphia Police Department and the communities and citizens the Department is established to serve. To that end, the Commission has been empowered to investigate and publicly report on both individual allegations of police misconduct and abuse, as well as broader issues of police policy and procedure. Under the Executive Order, the Commission is authorized to conduct public hearings, subpoena witnesses and review police documents. The Commission's findings are then submitted to the City's Managing Director, the Police Commissioner and to the public. If warranted, the Commission is authorized to recommend to the Police Commissioner that disciplinary action be taken or that departmental policy be changed.

II. REPORT OF THE CHAIR

In 1995-96 the Commission demonstrated its commitment to its mission. The Commission successfully rebuffed litigation by the Fraternal Order of Police designed to weaken its powers and authority.

The Commission held its first public hearing in the matter of Moises DeJesus. A five member panel heard testimony on eleven days over a period of more than two months. The Commission made recommendations for discipline in a detailed report. Commissioner Neal after reviewing the report, imposed discipline on all of the officers who testified before the Commission for lack of candor in the interview/investigatory process and in the hearings before the Commission.

In the summer of 1995 the Commission developed its procedures for public hearings. These procedures were published and became effective in August of 1995. As noted above, the Commission began taking testimony in the public hearing on the matter relating to Moises DeJesus in September of 1995. The hearing was conducted by Jane Dalton, Chair, Juan Ramos, Charles Harris, William Cannon and Eddie Graham. During the course of the hearing, the Commission refined its procedures relating to the conduct of the press and spectators at its public hearings. Six of the eight officers involved in the incident initiated litigation against the Commission to prevent their being required to testify in the Commission's public hearings relating to the DeJesus matter. Although the hearings were postponed for some weeks, ultimately, the officers did testify before the Commission.

The Commission members who heard the evidence carefully reviewed all of the evidence and testimony presented. A detailed report and recommendations for discipline were prepared. The report and recommendations were reviewed and approved by the entire Commission. The Commission recommended that six (6) of the eight (8) officers who testified be disciplined for lack of candor.

The Commission's report and recommendations were submitted to Commissioner Neal. After reviewing the report of the Commission, the interviews taken by Internal Affairs and the Commission's staff, and videotapes of the Commission's proceedings, the Philadelphia Police Commissioner disciplined all of the officers who testified for lack of candor in their interviews with Internal Affairs and the Commission and in their testimony during the Commission's public hearing. Commissioner Neal imposed ten (10) day suspensions on all eight of the officers. As far as the Commission has been able to discover, this is the first time Philadelphia police officers have been disciplined for following the "code of silence."

The Commission expected that any recommendation it made for discipline would be denounced by the Fraternal Order of Police. The Commission was disappointed that public officials criticized its procedures and results because the criticisms included inaccuracies which indicated that the complaining officials had not accurately read the Commission's report. Numerous members of the public reached out to Commission members to express approval, encouragement and support, especially during the period from the time the Commission's report and recommendations were issued through the Commissioner's response to the report.

As a result of the experience of the Commission at its first hearing, the procedures of the Commission were revised to reflect certain refinements relating to the conduct of public hearings. The procedures were also expanded to provide for "panel" hearings in matters which are less complex than the DeJesus hearing and where testimony of only a few witnesses is expected. The panel procedures have been published and have become effective. Panel hearings will begin shortly after January 1, 1997.

During the course of this year, the Commission's staff continued to interview civilians and police officers in connection with complaints filed with it. The Commission clarified the requirements for a completed investigative file. The Investigator reviewed the completed files and determined that certain public testimony should be received by a hearing panel of the Commission. (None of the members of the Investigatory Review Committee sit on any of the hearing panels). In other cases, the Committee determined that there was not sufficient evidence to warrant further proceedings. In those cases, the Commission ceased further proceedings and advised Commissioner Neal of its conclusions.

In the meantime, the Commission is undertaking steps to improve public awareness of the Commission and its mission. We expect to continue these efforts to be even more effective in the coming year.

III. REPORT OF COUNSEL

Legal counsel to the Commission continued to be supplied by the law firm of Montgomery, McCracken, Walker & Rhoads on a *pro bono* basis. Richard L. Scheff, formerly an Assistant United States Attorney and Chief of the Public Corruption Section of the United States Attorney's Office, continued to serve as Chief Counsel, assisted by Gerard M. McCabe, also of Montgomery McCracken. James J. Eisenhower, III, re-joined the Commission as Co-Chief Counsel in September, 1996, following a one year leave of absence during which he served as a White House Fellow and was assigned by President Clinton to the National Security Council.

As in prior years, the Commission's legal counsel represented the Commission in various civil actions, played an integral part in the public hearings in the Moises DeJesus matter, served on the Executive Committee of the Commission and drafted various modifications to the Commission's regulations and internal operating procedures including those covering the procedures for Panel Hearings. Counsel also has been available to individual Commission members to discuss and provide advice to various members of the Commission on an as needed basis.

With respect to court proceedings, counsel defended the Commission in two separate lawsuits brought by the Fraternal Order of Police ("FOP") and individual officers who sought to not testify at the Commission's public hearing in the DeJesus matter. These lawsuits were resolved by the officers testifying at the public hearings before the Commission. In seeking not to testify, the officers and the FOP contended that the officers were being compelled to provide testimony which later could be used against them in a criminal proceeding in the event that a federal grand jury returned indictments relating to the incident had been well-publicized in the press. In agreeing to a resolution of these cases, the parties and the court acknowledge that because the testimony of the officers was being compelled -- that is, the officers were required to testify because they faced administrative action or loss of their jobs if they refused to do so -- the testimony could not be used against them in any subsequent criminal proceeding. This principal was first enunciated by the Supreme Court of the United States in *Garrity v. United States* in 1964 and had been the basis of the Commission's position that the officers could not avoid testifying -- in short, the Commission took the position that the testimony could not be used against the officers because of the Supreme Court precedent.

Immediately following the issuance of the Commission's recommendations of discipline in the DeJesus matter, the FOP filed a third lawsuit against the City of Philadelphia, Mayor Edward Rendell and Commissioner Richard Neal -- the Commission was not named as a defendant. In that matter, the FOP again asserted various theories previously aired alleging that the Commission was illegally formed and operated unfairly. The DeJesus hearings were portrayed in the Complaint as unfair and violative of the rights of the offices. Believing that the Commission's interests were central to this litigation, counsel

sought to have the Commission intervene. A petition to intervene was filed alleging that the Commission was a necessary and indispensable defendant.

The Court of Common Pleas summarily denied that petition without a hearing and the Commission subsequently appealed the denial to the Commonwealth Court of Pennsylvania. The Commonwealth Court ruled that the Commission's interest were not central or vital to the litigation and that, while the Commission's interest may indeed exists, the Commission would not suffer irreparable harm if it was not permitted to intervene as a defendant at this time. Rather, the Commonwealth Court ruled that the Commission could appeal the denial of this petition to intervene at the conclusion of the FOP's case. Legal counsel has filed a petition for allowance to appeal from the Commonwealth Court's decision with the Pennsylvania Supreme Court which is currently pending.

To the extent that the Supreme Court denies the Commission's petition for allowance to appeal, legal counsel for the Commission will monitor the litigation in the Court of Common Pleas and will appeal the denial of this petition to intervene at the conclusion of that case. The case is scheduled for trial in January 1997.

Legal counsel served a central function in coordinating and conducting the Commission's public hearing in the DeJesus matter. Counsel met with witnesses, coordinated the service of subpoenas, reviewing and assembling relevant documents, and examining all witnesses before the public hearings. Legal counsel also participated in the Commission's deliberations of the DeJesus matter and reviewed the final report before it was issued.

Following the DeJesus hearing, the Commission elected to institute panel hearings to provide a forum for fact-finding for certain Complaints which involved a limited number of witnesses and do not involve an allegation of death or serious injury to a citizen by a police officer. These hearings will be open to the public and will commence in January 1997. Counsel worked with the Commission and its Committees to draft the regulations relating to panel hearings and, along with the Executive Director, has been coordinating issues concerning notification of witnesses, the complainant and the officer recordation of the hearings, random selection of panels and the issuance of recommendations.

Legal counsel will continue to serve as a liaison between the Commission and City Solicitor's Office and to represent the Commission in any litigation involving the Commission or against its interest. Counsel also will continue to assist the Commission's Executive Director in his responsibilities, to the extent necessary, to interview witnesses and police officers in preparation for future public hearings.

IV. PERSONNEL COMMITTEE

The Personnel Committee consulted with the Executive Director concerning the hiring of a third investigator. On March 11, 1996, Mr. William Smith, a veteran of the Philadelphia Police Department was hired. The Personnel Committee also desired to hire a

consultant to introduce staff enhancement and development. Ms. Joan Riley, who conducted two full-day staff retreats on March 27th and May 29th, 1996, served as a consultant to the personnel committee and staff.

V. OPERATIONS AND INVESTIGATIONS

The operating office of the Commission continues to function from its location on the second floor of the Cigna building at 1600 Arch Street. Staff now consists of six persons following the hiring of a third special investigator in March of this year. The average caseload per investigator numbers over thirty at any given time. This number of assigned investigative matters per PAC investigator is more than double the caseload assigned per investigator at the Internal Affairs Division of the Philadelphia Police Department.

During the fiscal year covered by this report (July 1, 1995 through June 30, 1996) a total of one hundred eighteen (118) new citizen complaints against police were filed, bringing the total received since PAC's inception to two hundred fifty six (256). Seventy eight (78) of these additional complaints were filed in person, while forty (40) were received through the mail. The status of *all* complaints received as of July 30, 1996 is as follows:

Closed.....	147
Under Investigation.....	93
Mediation Process.....	7
Withdrawn by Complainant....	9
Total	**256**

The nature of the complaints received during the period of July 1, 1995 and June 30, 1996 are as follows:

Physical Abuse.....	52
Verbal Abuse.....	7
Verbal Abuse Ethnic.....	4
Custody Abuse.....	4
Abuse of Authority.....	31
Ethnic Intimidation.....	7
Sexual Orientation Abuse.....	3
Lack of Service.....	4
Not Applicable.....	6
Total	**118**

A breakdown by race and gender of the citizens who filed complaints with this Commission during fiscal year 1996 is as follows:

White Males.....	19
White Females.....	5
African American Males.....	36
African American Females.....	28
Hispanic Males.....	21
Hispanic Females.....	6
Jamaican.....	1
American Indian.....	1
African Males.....	1
Total	**118**

Following is a breakdown by Police District of citizen complaints received during this period:

1st... 0	12th... 9	24th... 8
2nd... 2	14th... 3	25th... 14
3rd... 1	15th... 10	26th... 5
4th... 2	16th... 3	35th... 6
5th... 0	17th... 6	39th... 9
6th... 6	18th... 3	90th... 1
7th... 2	19th... 9	92nd... 0
8th... 3	22nd.. 9	
9th... 4	23rd... 3	

During the fall of 1995, over a nine day period, twenty two witnesses were called to testify at a public hearing in the Moises DeJesus investigation. Staff provided support to the five member hearing panel by issuing and serving subpoenas and coordinating witness availability, arrival, and sequestration. Staff provided the necessary investigative documentation and developed and produced visual aids in support of the oral testimony. Several additional public hearings are anticipated this Fall.

VI. POLICE STRESS INITIATIVE

By Resolution of November 17, 1994, City Council requested the Commission to conduct a comprehensive investigation concerning the sources of stress within the Philadelphia Police Department. City Council further requested the Commission to report its findings, along with recommendations [to resolve stress] to Police Commissioner Richard Neal, Mayor Edward G. Rendell, Council President John F. Street, members of City Council, and to the general public. The central concerns motivating City Council's Resolution included and inordinately high suicides rate by police officers, and whether

officers were receiving adequate psychological and counseling services. City Council also requested the Commission to investigate whether pay levels, personnel levels, training levels, as well as the quality and condition of equipment, were also potential contributing factors to police stress.

During this fiscal year, the Ad Hoc Committee on Police Stress functioned primarily to follow up the progress of the Police Department in addressing the recommendations contained in the Commission's Report on Stress in the Philadelphia Police Department. Periodic contact with Department officials and representatives was maintained to pursue topics of mutual concern and to review relevant policies and practices stress issues.

Setting the stage for mutual involvement, Commission members met with the Police Commissioner to review his formal response (Response to the Police Advisory Commission's Report on Stress in the Philadelphia Police Department, October 1995) to the conclusions and recommendations contained in the Commission's Report. While there were few points of complete agreement with respect to the extent or pervasiveness of targeted areas of concern, significant departmental decisions and actions had recently been implemented and which were consistent with the remedies suggested by the Commission.

Specifically, the long-awaited Stress Manager had been identified and appointed; a commanding officer with the rank of captain had been selected to head the Employee Assistance Program (EAP), a post previously filled by a sergeant; and the staff of the EAP unit had been substantially increased, with consideration given regarding stress training for all police officers, as well as supervisors and police commanders, and the on-going, long range plan for upgrading police facilities.

In subsequent discussions with the Stress Manager and the commanding officer of the EAP unit, numerous concerns were raised regarding the adequacy of the unit's resources to meet the stress related needs of police officers. Given the many supervisory and departmental responsibilities that have been subsumed under the Stress Manager's position, it remains to be seen whether his present part-time work scheduled (one to two day per week) will permit satisfactory assistance for rand and file officers.

It should be noted that the Department's cooperative spirit and responsiveness to the Commission's inquiries and requests attest to its deep concern for the mental heal and well being of its officers. Within that context, the Police Advisory Commission is committed to working along with the Department at all levels to alleviate those conditions and factors which contribute to police stress. While progress has been made during this fiscal year, much more in significant areas could and should be accomplished.

VII. THE COMMISSION MEMBERS

W. Bruce Beaton	--	a resident of Northeast Philadelphia and the president of a Philadelphia-based insurance agency.
Irene Benedetti	--	a resident of South Philadelphia and affiliated with Temple University Institute for Survey Research. Ms. Benedetti serves on the Mayor's Commission on Sexual Minorities and on the Board of Directors of the Crime Victims Services of South Philadelphia.
Dorothy F. Cousins	--	a Mt. Airy resident with more than thirty years experience in law enforcement, primarily with the Philadelphia Police Department where she retired with rank of Inspector and supervised investigations while assigned to the Department's Internal Affairs Bureau.
William T. Cannon	--	an attorney and Northeast Philadelphia resident who formerly served in supervisory positions within the Philadelphia District Attorney's Office and presently represents litigants in civil and criminal proceedings.
Jane L. Dalton	--	a Chestnut Hill resident and a litigation partner with the Philadelphia law firm of Duane, Morris & Heckscher.
Eddie T. Graham	--	a Mt. Airy resident and founder and coordinator of his neighborhood Town Watch.
Charles V. Harris	--	a Yorktown resident who served thirty-four years with the Philadelphia Police Department, including with the Civil Affairs Unit.

Bruce W. Kauffman	--	a Center City resident and Chairman of the Philadelphia law firm of Dilworth, Paxson, Kalish & Kauffman. Mr. Kauffman is a former Justice of the Pennsylvania Supreme Court and served on the MOVE Commission.
Carmen M. Marrero	--	A Hunting Park resident and the Community Outreach Coordinator for the Edison Cluster of the School District of Philadelphia. Ms. Marrero is a member of the National Association of Hispanic Journalists and writes a biweekly column in the *Community Focus*.
Juan F. Ramos	--	a West Kensington resident and a superintendent with Cleveland Environmental Services, a member of the Police District Advisory Council and founder and president of the Puerto Rican Alliance.
Vivian Ray	--	a West Mt. Airy resident, a former public school administrator and licensed psychologist.
Judith Savitt	--	a Center City resident and a retired elementary school teacher.
Paul M. Uyehara	--	a West Philadelphia resident and a lawyer with Philadelphia Legal Assistance where he represents low-income clients in bankruptcy and mortgage foreclosure cases. Mr. Uyehara served as an Assistant City Solicitor and on the Mayor's Commission for Asian/Pacific American Affairs.
Novella S. Williams	--	a West Philadelphia resident and organizer of the Black Womens' Crusade Against Vice, Crime and Corruption in West Philadelphia.

William Wood	--	an East Falls resident and an owner of Woody's Bar and Restaurant in Center City.

The Commission's Alternate members during this fiscal year were:

Ronald A. Burton	--	an Overbrook resident and president of the Center for Social Welfare Concerns, a national consulting firm.
Mary Ellen Krober	--	an East Falls resident and senior lawyer with Buchanan Ingersoll who formerly served as an Assistant City Solicitor and Deputy Attorney General.

The Officers of the Commission for the fiscal year were:

Chair	--	Jane Leslie Dalton
Vice Chair	--	Juan F. Ramos
Vice Chair	--	William T. Cannon
Secretary	--	Charles Harris

The Commission established several committees to formulate policy and to advise the Commission on various issues. The Committees and their Chairs were:

Operating Procedures Committee	--	William Cannon, Chair
Investigatory Review Committee	--	Novella S. Williams, Chair
Public Information Committee	--	Eddie T. Graham, Chair
Personnel Committee	--	Carmen M. Marrero, Chair
Annual Report Committee	--	Bruce W. Kauffman, Chair
Budget Committee	--	Jane Leslie Dalton, Chair
Mediation Committee	--	Charles Harris, Chair

Legal Representation Committee	--	Paul M. Uyehara, Chair
911 Committee	--	Juan F. Ramos, Chair
Stress Committee	--	Vivian D. Ray, Ph.D., Chair

VIII. CONCLUSION

During the 1995-1996 fiscal year, the Commission faced many challenges. It successfully overcame those challenges, consistently maintaining positions designed to preserve its independence and effectiveness. The Commission looks forward to expanding its effectiveness and activities in the next year.

Jane Leslie Dalton
Chair