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**IN RE:** : **CITY OF PHILADELPHIA**  
**MARIA MULERO**  
**MICHAEL FELICIANO** : **POLICE ADVISORY COMMISSION**  
: **COMPLAINT NO. 940054**  
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**Before Commission Members Charles Harris, Carmen Marrero, and Eddie Graham; Michael Twersky, Counsel**

## **OPINION**

### **I. INTRODUCTION**

The complaints in this matter were filed with the Commission on November 21, 1994. The complaints arose out of a series of incidents that took place on July 28, 1994. The original complainant was Maria Mulero, the mother of Michael Feliciano, who is also a complainant. Both Ms. Mulero and Mr. Feliciano submitted their complaints as victims.

The complaints allege physical abuse, abuse of authority, and verbal abuse, the latter being comments in denigration of either the complainant's ethnicity or gender. The complainants identified one target police officer: former Philadelphia Police Officer Christopher DiPasquale. Three other police officers, Police Officers Roger Sinick, Donna Young and George Orth were initially identified as peripheral officers (witnesses).

The police officers from the start have denied the complainants' allegations, as well as any other wrongdoing. The police officers have maintained that the actions taken were necessary to effectuate firstly, the detention and arrest of Michael Feliciano on a complaint by a neighbor alleging property damage and threats of physical violence; and secondly, the detention and arrest of Maria Mulero for interfering with her son's arrest.

As part of the investigation, the Commission (as well as the Internal Affairs Division of the Police Department [IAD]) interviewed the target police officer and the three witness police officers. In addition, one other police official was interviewed as part of the investigation. All relevant police department documentation and records were obtained together with any other relevant documentation. The medical records of the complainants were also obtained. All civilian witnesses that were available and cooperative were interviewed by either the Commission or IAD, and, if available, subpoenaed for the hearing as part of the Commission's investigation.

On February 2 & 16, 1999 and March 2 & 18, 1999, a hearing was held at the Police Advisory Commission's Hearing Room before a Hearing Panel consisting of Commission Members Charles Harris, who served as the Presiding Officer, Carmen Marrero and Eddie Graham. Mr. Michael Twersky, Esq. of Montgomery, McCracken, Walker & Rhoads, LLP served as counsel to the Hearing Panel. During the hearing, the two complainants and four additional civilian witnesses appeared in response to Commission subpoenas and testified. Police Officers Sinick, Young, and Orth also appeared before the Hearing Panel pursuant to Commission subpoenas and previously established Commission-Police Department protocols.

Christopher DiPasquale, the original target officer, on the date of the hearing (March 2, 2000) was no longer a Philadelphia police officer and facing criminal charges. He therefore could not be compelled to testify as a City employee pursuant to Garrity. However, he was subpoenaed as a civilian, but he did not appear. Mr. DiPasquale's attorney, Mr. Jack McMahon, in response to the subpoena served on his client, advised the Commission by letter that if forced to appear his client would invoke his Fifth Amendment privilege against self-incrimination and not testify. As such, after consultation with Commission counsel, the Hearing Panel excused Mr. DiPasquale's appearance. The Hearing Panel did however take administrative notice of former officer DiPasquale's prior interviews with Commission and IAD investigators, which were already part of the investigatory file,

## **II. PROCEDURAL HISTORY**

The Commission recognizes that the investigation and conclusion of the Mulero investigation has taken an inordinate amount of time, approximately six years. This is clearly not the norm for a Commission investigation. The Commission regrets that the process in this matter has been so long and arduous. However, in all fairness, some of the delays impacting on the investigation were beyond the Commission's control. The following procedural history is offered primarily as background information; it is not in any way offered as an excuse or justification for the delays encountered.

The date of the alleged incident was July 28, 1994. The complaint was filed with the Commission on November 21, 1994. It should be noted that the Internal Affairs Division of the police department received a complaint from Ms. Mulero on July 29, 1994, and that an IAD investigator was assigned on August 2, 1994. The District Attorney's office declined criminal prosecution on November 11, 1994. Clearance from the District Attorney's office is necessary before an administrative investigation can go forward. Shortly thereafter, IAD's investigation was

concluded; the determination was the allegations were “not sustained” (that original report was not dated).

Meanwhile, at the time that the complaint was filed with the Commission, the Commission was under a court injunction, as a result of a lawsuit filed by the Fraternal Order of Police (FOP), that enjoined the Commission from interviewing police officers, and generally prevented the Commission from moving forward on its investigations. The injunction against the Commission remained in effect until April 13, 1995. The progress of the Mulero complaint was further hampered by a second FOP lawsuit that challenged the Commission’s ability to conduct interviews of police officers at the Commission’s offices subsequent to the closing of an IAD investigation.

The Mulero investigation was 1 of 22 investigations for which police officer interviews could not be conducted pending disposition of the lawsuits. The final ruling in that lawsuit was not until May 7, 1997 after which scheduling of the police officer interviews in Mulero (and the other 21 pending investigations) had to be arranged.

The original Commission interviews of the police officers took place on February 5, 1998. Subsequent to the police officers interviews, an analysis of the testimony and other evidence was conducted by Commission staff, and then submitted to the Commission’s Investigatory Review Committee (IRC) for evaluation. The Committee then directed that the discrepancies and issues uncovered by the staff field investigation be submitted to IAD with a request that IAD review the Commission’s findings. After several discussions, IAD agreed to reopen its Mulero investigation based on the Commission’s findings, and conduct a supplementary investigation. An IAD investigator was re-assigned on May 6, 1998. IAD’s supplementary investigation was completed and officially signed as closed by an IAD Inspector on June 23, 1998. In its second report, IAD concluded that there was no additional information that would dispute its original finding of “Not Sustained”. IAD, responding to inquiries by then Commission Chief Investigator William Smith, informed the Commission of the results of the its supplementary investigation before the official sign-off date.

On June 2, 1998, after the Commission’s IRC learned of IAD’s “supplemental” decision, the Mulero case was again reviewed, and thereafter zoned for a hearing by the Committee. The original hearing date in Mulero was set for September 1998, the first available dates. However, Michael Feliciano, a complainant, was not available for the entire month of September, and after consultation with Maria Mulero, Michael’s mother, an October 6, 1998 date was subsequently agreed upon and scheduled by the Commission.

Four days prior to the scheduled hearing, October 2, 1998, the Commission learned of Police Officer Christopher DiPasquale's involvement in the Donta Dawson shooting. The police department then formally requested a delay in any Commission proceeding involving Police Officer DiPasquale until after the Dawson matter was resolved. A similar request was received from the District Attorney's office, which at the time was considering a criminal prosecution in the Dawson matter. Given these circumstances and following its standard procedure, the Commission agreed to adjourn the Mulero hearing to a date uncertain pending clearance of Officer DiPasquale by the District Attorney's office.

On November 19, 1998, Officer DiPasquale was arrested and charged with Voluntary and Involuntary Manslaughter in connection with the Donta Dawson shooting. As a result of that arrest, on the following day, November 20th, Officer DiPasquale was terminated as a member of the Philadelphia Police Department. On or about that same date, Officer DiPasquale filed a union grievance contesting his termination and seeking reinstatement as a police officer.

A preliminary hearing on former officer DiPasquale's criminal charges was held on January 5 & 6, 1999 before Judge Felice Stack. She dismissed the charges at the end of the hearing. Mr. DiPasquale was subsequently rearrested and faced a second preliminary hearing on April 5, 1999 before Judge William Mazzola. At the conclusion of that hearing, Judge Mazzola also dismissed the charges.

On or about January 13, 1999, the Commission received clearance from the District Attorney's office on Mulero notwithstanding that former officer DiPasquale was still under investigation and facing charges regarding the Dante Dawson incident. Civilian witnesses in Mulero were immediately called and scheduled for a hearing during February 1999. Police officer witnesses could not be scheduled earlier than March 2, 1999. A fourth and final civilian witness hearing date had to be scheduled for March 18, 1999 on which date the Mulero hearing was officially closed. In deference to the Police Department's concerns and to minimize any adverse publicity that could impact on any subsequent criminal prosecution of former officer DiPasquale, the Commission arranged and conducted the Mulero hearing without the usual public and media notifications.

Subsequent to the second dismissal of the criminal charges against former officer DiPasquale on April 5, 1999, a private criminal complaint that had been filed against him by four Philadelphia elected officials was sustained by Judge M. Teresa Sarmina. The Philadelphia District Attorney soon thereafter announced that her office would appeal the judge's decision to

sustain the complaint thus keeping open the possibility of a criminal prosecution of former officer DiPasquale. For the Commission, the District Attorney's decision again raised the specter of possible adverse publicity if the Commission were to complete and release the Mulero opinion before the appellate decision was rendered.

On May 4, 2000, the US Attorney's office, which had been conducting a preliminary inquiry into the Donta Dawson shooting, announced that it would not go forward with a civil rights prosecution of former officer DiPasquale. On November 2, 2000, the Arbitration Opinion and Award on the grievance filed by former officer DiPasquale concerning his termination was issued. The grievance was denied upholding the Police Department's termination, and foreclosing former officer DiPasquale's demand for reinstatement.

Although there continues to exist the possibility of a criminal prosecution of Christopher DiPasquale by the District Attorney's office (the appeal on the private criminal complaint remained pending as of November 30, 2000), the Commission, upon further review and consideration of the prevailing circumstances including in particular the public statements of the Police Commissioner and the FOP concerning former officer DiPasquale's arbitration decision and his actions during the Donta Dawson incident, decided during its November 9, 2000 meeting to finalize and release the Mulero Opinion.

The Commission understands that releasing the decision in Mulero as a result of possible adverse publicity may impact on any subsequent criminal prosecution of former officer DiPasquale, but believes any such impact would now be de minimis. The Commission also notes that the Opinion in Mulero not only affects the rights and privileges of Christopher DiPasquale, but also the rights and privileges of the complainants, of the family of the complainants, of the three other police officers identified in the investigation, and just as importantly, of the public whom the Commission was created to serve. Further delay into the year 2001 would serve no legitimate interest.

### **III. EVIDENCE**

#### **A. TESTIMONY OF MARIA MULERO**

Maria Mulero is a Puerto Rican woman who on the date of incident, July 28, 1994, was 41 years of age. On the date of incident and for the nine years preceding, Ms. Mulero had resided at 4648 Tampa Street in the Feltonville section of Philadelphia. Also residing at 4648 Tampa Street on July 28, 1994 was her son, Michael Feliciano, and her daughter, Stephanie Feliciano with her one-year-old daughter.

Ms. Mulero testified that on July 28, 1994 between 6 and 6:30PM, she was on the porch of her home facing Tampa Street when Gabriel Guzman, a 16 year old friend of her son, Michael Feliciano, came running to the front of her home yelling that there were police officers in the alleyway in the back of the house, and that Michael was being arrested.

Ms. Mulero testified that she rushed through her house to the elevated deck located at the rear of her home. The deck overhangs the garage entrance and overlooks the alleyway between the homes facing the opposite sides of the block. From the deck, she observed an empty police wagon parked in the alleyway facing Courtland Street. She then ran back into her house, went downstairs through the basement and into the garage. She could not see into the garage from the deck.

Upon entering the garage, Ms. Mulero testified that she observed two police officers, later identified as Police Officers Christopher DiPasquale and Roger Sinick, searching her garage, she did not see her son. She noticed that the garage door was open and that there were bicycle parts on the garage floor. Other than the two police officers, Ms. Mulero stated that she did not see anybody else in the garage or in the alleyway in front of the garage.

She asked the police officers about the whereabouts of her son, and was told by Officer DiPasquale that he had been arrested on the complaint of a neighbor alleging that he had threatened her with a knife. Ms. Mulero asked the officer if she could see her son, as he was only 15 years old. Officer DiPasquale allegedly then angrily told her that she could not. He did tell her that her son was going to be taken to the 25th District.

Ms. Mulero, who admitted to being "mad" by this time, then asked why the police officers were searching her garage. Officer DiPasquale then allegedly screamed at her to shut up, that it was none of her business and that he had the right to search the garage. Ms. Mulero objected verbally to the continuing search, and informed the officers that she was going into her home to call her brother, inform him of what was occurring, and then have him take her to the 25<sup>th</sup> district.

As she was about to leave the garage, Ms. Mulero testified that she was grabbed by her ponytail by Officer DiPasquale, who then dragged her outside the garage; that Officer DiPasquale then banged her face against the left rear side of the car that was parked in the driveway of her garage. The car belonged to her older son who lived elsewhere. Ms. Mulero further testified that when she tried to get away from Officer DiPasquale, that he grabbed and twisted her arm behind her back and threatened to break it if she did not hold still.

Ms. Mulero observed that Police Officer Sinick was present and that he saw what Officer DiPasquale was doing, but that Officer Sinick said and did nothing. At that time she also saw her daughter, Stephanie Feliciano, and neighbor, Jose, who were yelling at Officer DiPasquale to release her. According to Ms. Mulero, neither her neighbors nor her daughter got involved. Also present were Pat and Ron Arana, the immediate next-door neighbors who were standing near their garage. When Pat Arana moved toward the Mulero's garage, closer to where Officer DiPasquale was holding Maria, he allegedly told her to get away or that she would be arrested as well.

Ms. Mulero alleged that Officer DiPasquale handcuffed her in the back after twisting her arm. She further alleged that he grabbed her by the handcuffs, led her to the back of the police van, opened the doors and forcefully pushed her in causing her to fall and hit her face on the bench inside the wagon.

It was only when the police van doors were opened that Ms. Mulero finally saw her son, Michael. He was sitting handcuffed by one hand to something on the left hand side of the van. She did not see anything on Michael's hands or fingers except grease. When Michael saw her being thrown into the van, he got up and started screaming at Officer DiPasquale. Officer DiPasquale responded by punching Michael in the face close to his right eye. Ms. Mulero responded by screaming and yelling at the police officer. After Ms. Mulero was placed in the police wagon and the doors closed, the van left the alleyway. A short time later, the van stopped near a gas station that Ms. Mulero believed was located near Whittaker Avenue and Huntingdon Park.

Police Officer DiPasquale and his partner opened the wagon doors and told Ms. Mulero to get out. Her son thought that he had also been ordered to get out, but he was then told to "sit the hell back down". As Ms. Mulero, who was still rear-cuffed, tried to get out of the police wagon, she fell onto the street, and while on the ground, she was allegedly kicked in the back by Officer DiPasquale. He then picked her up by the handcuffs, took and pushed her toward a police car that was parked in front of the van, and threw her into the back seat. Ms. Mulero remembered two other police officers being present, later identified as Police Officers Donna Young and George Orth. Both officers allegedly observed the actions of Police Officer DiPasquale, but said and did nothing.

Ms. Mulero further testified that Michael was left in the police van. She did not know what happened to the van after the patrol car left the location. In the patrol car were Police Officers

Donna Young and George Orth. About 10 to 15 minutes after leaving the gas station location, the patrol car arrived at the 25th district. Officers Young and Orth walked Ms. Mulero into the District. Ms. Mulero then stood handcuffed for approximately 25 minutes in an entrance/hallway. She did not see her son although she did ask Officer Orth about him, but he did not respond to her questions.

After about 25 minutes, Michael was brought in by Officer DiPasquale followed by Officer Sinick. She yelled to her son, but he did not respond. Officer Sinick then took Michael somewhere inside the district building. She only saw him for about 10 seconds.

Officer DiPasquale then came back to Ms. Mulero and took her to a holding cell area inside the District. However, the cells were full so he brought her to a "courtroom" type room where she was handcuffed to a table. Officer DiPasquale sat at the table with Ms. Mulero at which time she proceeded to confront him angrily. Ms. Mulero testified that at the table Officer DiPasquale told her to shut up and called her a "spic" and a "bitch."

After about 15 minutes at the table, an unidentified male officer approached and took Ms. Mulero to a cell where she was put inside together with a male prisoner. Ms. Mulero recounted that she remained in the cell for approximately a half hour after which an unidentified female officer came into the cell to ask Ms. Mulero some questions.

Ms. Mulero testified that the only time she spoke to her son at the District was when he and she were being released. That is also the last time she saw Officer DiPasquale. Ms. Mulero was charged with disorderly conduct.

Ms. Mulero and her son were picked up at the District by her neighbors, Pat and Ron Arana. She believes it was dark when she left the District. Ms. Mulero and her son went directly to the Parkview Hospital Emergency Room where she reported her injuries as resulting from her interaction with the police. Ms. Mulero's hospital record is dated July 28, 1994 at 10:27 PM. Her injuries were identified as redness and swelling of the wrists. Ms. Mulero further testified that the disorderly conduct charges filed against her were dismissed.

## **B. TESTIMONY OF MICHAEL FELICIANO**

Michael Feliciano is a Puerto Rican male who at the time of the incident was 15 years old. At that time, he was living with his mother, Maria Mulero, and his sister, Stephanie Feliciano, at 4648 Tampa Street, Philadelphia. On July 28, 1994, the day of the alleged incident, he had



been working at the 9<sup>th</sup> District of the Philadelphia Police Department as part of the “Work to Ride” program. He had been working there since the start of the summer cleaning the stables and working with the horses. In the morning his mother would drive him, and sometimes his friend Gabriel Guzman, who also worked there, to Love Park from where he was picked-up and taken to the 9<sup>th</sup> District. At the end of the day, he would be brought to Love Park and picked-up there by his mother who would then drive him home.

On July 28, 1994, he finished working a little earlier than the usual 3 PM ending time. However, he was picked up by his mother, together with Gabriel Guzman, at Love Park at their usual time. On the way home, they stopped at Gabriel’s house for him to get a backpack. From there they went directly to his (Michael’s) house arriving around 3:45-4:00 PM.

Michael testified that when they arrived at his house, he went to the bathroom to clean up and change his clothes. Then, together with Gabriel, he went downstairs to the garage to work on a bicycle. Michael did a lot of work on the bicycles in the garage. While in the garage, Gabriel allegedly pulled out from his backpack a “Rambo” type knife that he showed to Michael. The knife was then placed on top of a desk in the garage.

At about 5:15 PM, a white male in his 20’s, who Michael recognized as a neighbor that lived in a house on the opposite side of the alleyway (a house facing Whittaker Avenue) came to the driveway area in front of the garage; the garage door was open. The person allegedly began yelling at him accusing him of scratching his car. Michael responded that he did not know anything, or see anything concerning the scratching of the man’s car. According to Michael, the car in question was a 1960’s Camaro, or similar car, that was parked in the driveway of the garage next to Michael’s house. Michael testified that a shouting match then ensued between himself and the neighbor, but that no threats were made by either one of them; nor according to Michael, did he or anyone else show the knife, or any bullets, to the neighbor.

Michael further stated that he was in his garage and not in the driveway of his garage during the argument, and that the garage doors were open during the shouting match. During the argument the neighbor advanced and entered Michael’s garage scaring Michael and causing him to leave through the door in the garage that led into his basement. Gabriel remained in the garage during the entire incident. Michael believes he returned to the garage about five minutes after the man had left. Michael denied scratching or going near the neighbor’s car; he testified that he never left the garage.

Approximately 5-10 minutes (between 5:30-5:45) later, after returning to the garage to continue his work on the bicycle, a police wagon pulled up and stopped parallel to the garage door. The van was perpendicular to and in front of the two cars parked in the driveway. Two white male police officers, later identified as Officers Christopher DiPasquale and Roger Sinick, were inside. The police van was facing Courtland Street.

From the driver's seat inside the van, Officer DiPasquale yelled for Michael to approach the van. Michael responded "what for?." Officer DiPasquale then allegedly responded, "come here or I'm going to get you." Michael then walked out of the garage, and approached the van. Both police officers then exited the vehicle.

Officer DiPasquale allegedly then asked Michael Feliciano if he had a knife. Michael testified that he said "no", thereupon Officer DiPasquale put Michael against his mother's car (which was parked in garage driveway) and conducted a pat down search. Gabriel Guzman, who also had to come out of the garage, was searched by Officer Sinick. No weapons, or anything else were found on, or removed from the boys. Officer DiPasquale then entered into the garage. He came out of the garage with the knife that was on top of the desk.

Officer DiPasquale then approached Michael and asked him his name, and if he thought he was "bad." Michael told Officer DiPasquale his name, but he did not seem to understand or hear it. Officer DiPasquale asked him his name again. Michael Feliciano said "hello", and loudly repeated his name. Officer DiPasquale then seemed to get very angry. He asked Michael again if he thought he was "bad" and called him a "spic". He then banged Michael's head against his mother's car a number of times. Officer DiPasquale then handcuffed Michael in the rear. Michael felt that his face was bruised and swelling. Michael stated that he was then dragged to the van, picked up and tossed in by Officer DiPasquale. Officer Sinick was present, observed what was occurring, but did and said nothing.

Michael saw the neighbor with whom he had the argument standing with three other people on their property while he was being handcuffed and led away. He heard someone yelling racial slurs. After being put in the wagon, he saw four people talking to the two police officers. He also saw in the alleyway his neighbor Joe/Jose and some neighborhood kids whom he knew because of his bicycle work.

After being tossed into the van, Michael found himself on the floor on his knees. Officer DiPasquale told Michael to get up and sit on the bench. After the wagon doors were shut, Michael moved from the floor to the bench. As the van doors were being shut, Michael saw his

mother on the deck that overhangs the garage. He heard her yell: "why are you taking my son?" He last saw her turning around on the deck.

Soon afterwards he heard his mother (but could not see her) saying loudly "what's going on", and that she was going to call a lawyer. Michael heard screaming and commotion outside of the van. He heard his mother scream: "why are you doing things like this?" He also heard Officer DiPasquale say something like "I'm going to take you too!" Michael heard his sister, Stephanie, saying: "get off of her, get off of her."

The doors of the wagon were soon thereafter opened again, and Michael saw his mother being held by Officer DiPasquale. He stood up inside the wagon, and said angrily to Officer DiPasquale "why are you doing this to my mom?" Officer DiPasquale then punched him in the face under his right eye. His mother was then thrown into the wagon. She landed hard on the floor. Michael saw that she was hurt: her face and arm were red and swollen. His mother got up and sat on the bench on the right side of the van opposite Michael. The police wagon then drove off.

After about five minutes the van stopped and the doors were opened. Michael saw Officer DiPasquale together with a white female police officer, later identified as Officer Donna Young. Officer DiPasquale told Ms. Mulero to get out of van. As she got up and was trying to get out, Officer DiPasquale grabbed her by arm and pulled her out causing her to fall to the street. Michael was still sitting on the bench when his mother got out. He did not stand up. The doors were again closed and Michael did not see or hear anything further at that location. From what Michael saw while the doors were open, he thought he was at Whitaker and Erie Streets, or Whitaker and Luzerne Street. He remembered a lot with city owned vehicles.

The police van with Officers DiPasquale and Sinick then drove off. The next time it stopped, Officer DiPasquale opened the doors. He again said to Michael Feliciano "so you think you're bad", and called him a "spic" and other profanities. Michael was then ordered out of the van onto a lot. When he was out of the van, Officer DiPasquale punched him in the ribs and face various times. Michael was still handcuffed. Michael did not see Officer Sinick during this time. He believed the location of the lot was near Stetson Middle School.

Officer DiPasquale then put Michael back into the van, closed the doors and the van drove off. The ride lasted about two minutes before arriving at the 25<sup>th</sup> District. Michael remembered it was still light out when the van arrived at the District.

Officer DiPasquale then took Michael Feliciano out of the van. He took him up a ramp leading to the District entrance. While taking him up the ramp, Michael alleged that Officer DiPasquale slammed his head against a blue wall on the side of the ramp. This was in plain view of two unidentified police officers. Once inside, Officer DiPasquale took Michael into a small room where he handcuffed him by one hand to a cabinet. An unidentified police officer asked Michael some questions. Michael asked about his mother and was told “not to worry about it”.

After about an hour in the small room, Michael was taken by an unidentified African-American police officer to another room that Michael referred to as “a sweatbox”. It was a small, windowless room with a locked door. Other unidentified persons were also in the room. Michael believes he was in this room for a fairly long time. He believes he slept there for about a half-hour.

An unidentified police officer eventually came for Michael, told him that his mother was waiting outside and brought him out of the room to his mother. His mother was waiting with their next-door neighbor, Ronald (Ron) Arana. Michael did not sign any papers at the District. He was charged with possession of a sharp instrument. He testified that the charge was later dismissed. It was dark outside when Michael left the District.

Upon leaving the District, Michael and his mother were driven by Ron Arana directly to Parkview Hospital. They went to the ER where a doctor examined Michael after about a 20-minute wait. Michael’s hospital record shows the admission time as 10:22 PM on July 28, 1994. He was assessed and treated for injury and swelling to his left “orbit” area and his ribs.

### **C. TESTIMONY OF STEPHANIE FELICIANO**

Ms. Stephanie Feliciano is a Puerto Rican female who on the date of the alleged incident, July 28, 1994, was 20 years of age. At that time she resided at 4648 Tampa Street along with her mother, Maria Mulero, her brother, Michael Feliciano, and her one year old daughter.

Ms. Feliciano testified that on July 28, 1994, she was outside her girlfriend’s house located down the street from her residence when a boy from the neighborhood, whom she knew by sight, but not by name, ran up to her and told her that her brother was being arrested at her house.

She then ran to the back of her house where she observed her brother, Michael, already handcuffed and being put into the police van. The van was parked in the alleyway between the houses in front of the two cars parked in the driveway of their garage. The van was facing Courtland Street.

Ms. Feliciano saw two police officers, later identified as Officers Christopher DiPasquale and Roger Sinick. One of the police officers, DiPasquale, was pushing her brother into the van. The other officer, Sinick, was in the garage. Ms. Feliciano asked the police officers “why was her brother being arrested?” She received no response.

She then observed her mother on the deck above the driveway. She heard her mother ask the officers “what was going on?” Ms. Feliciano yelled to her mother that Michael was being arrested. The police did not respond. Her mother said: “Hold on.” She then watched as her mother came down from the deck, through the garage and into the alleyway. Her mother tried to speak to the police officers who at the time were both near the police van. Ms. Feliciano remembered that it was daylight when these events took place, but she could not specify the time.

After her mother arrived downstairs, Ms. Feliciano observed her mother trying to talk to the officers concerning what was occurring, but the officers were not responsive merely telling her to “go to the District.” She then heard her mother say that she was going to call to see if she could get help. She saw her mother turn around and head in the direction of the garage. It was then that Officer DiPasquale, caught up to her mother while she was between the two cars parked in the driveway, and grabbed and twisted her arm. The officer then pushed her mother onto the side of one of the cars, pulling her hair while trying to put handcuffs on her. Her mother was screaming that the officer was hurting her arm. She was yelling at him to let go. Ms. Feliciano remembers Officer Sinick standing by the van, and then heading towards where Officer DiPasquale and her mother were located, but doing nothing else.

Ms. Feliciano first yelled at Officer DiPasquale to leave her mother alone, and then tried to physically intercede by attempting to pull the officer away from her mother. Police Officer DiPasquale responded by telling Ms. Feliciano to get “her spic ass away” or that she also would be locked up. Officer Sinick then also told her to move away.

Ms. Feliciano then observed Officer DiPasquale take and push her mother into the van causing her to fall to the floor inside. Originally, upon arriving in the alleyway, Ms. Feliciano had

observed one door of the van open, one closed. However, she believed both doors had to be opened when her mother was being put into the van.

When the van doors were opened to put in her mother, Stephanie saw her brother who was standing inside for the first time. As her mother was being pushed into the van, Michael Feliciano yelled at Officer DiPasquale not to treat his mother like that. Ms. Feliciano testified that she saw Police Officer DiPasquale then punch her brother in the face, and that he fell back into the van. She also saw that her brother was still handcuffed in the rear.

After her mother was inside the police wagon, Stephanie was told to get away and the van drove off. Ms. Feliciano then closed the garage doors that had been open during the entire time that she had been present. At that time she saw her neighbors, Pat and Ron Arana, whom she believes also observed everything that had occurred.

Approximately ten minutes later, Ms. Feliciano testified that she left the house to go the District. Her neighbors, the Aranas, who had their daughter with them, took her to the District. Before going to the District, Ms. Feliciano went to find her older brother who lived with her grandmother at Hancock and Dauphin Streets. The drive there took about 10 minutes. She did not find her older brother. They then drove directly to the District.

At the District, Ms. Feliciano saw when her brother and mother were brought in. According to Ms. Feliciano, each arrived separately. About five minutes after her arrival at the District, her mother arrived in police car and then five to ten minutes later her brother arrived in a police wagon. She saw both of them exit their respective vehicles and be taken into the District. She did not see either Police Officer Sinick or DiPasquale physically harm either one of them as they were taken from their vehicles and brought into the District.

Ms. Feliciano only stayed at the District for 15-20 minutes before she left with the children. Pat and Ron did most of the talking while at the District. Ms. Feliciano testified that when she left the District, it was still fairly light outside. However, she did not see her brother and mother until a couple of hours later that evening.

#### **E. TESTIMONY OF GABRIEL GUZMAN**

Mr. Gabriel Guzman was 16 years old at the time of the incident. He was interviewed via telephone at 8:45PM on October 6, 1994 by Sergeant Sam Simon #8649, Internal Affairs Division.

Mr. Guzman could not be interviewed by Commission investigators, nor could he be found at the time of the hearing, and therefore did not testify.

Mr. Guzman stated that on the date of this incident he was in Michael Feliciano's garage at 4648 Tampa Street when a police wagon pulled up and one of the officers told Michael to come out of the garage. Michael had an attitude and the officers got angry and told him he was under arrest and started handcuffing him. One of the officers came into the garage and picked up a long knife that was alongside a couch in the garage. Mr. Guzman stated that he had no knowledge of the knife. He also stated that he did not see nails taped to Michael Feliciano's fingers.

Mr. Guzman went around to the front of the house and told Michael's mother that the police were arresting her son. Mr. Guzman then went back around to the end of the driveway and heard Ms. Mulero, Michael's mother, arguing with the officers. It was then that Mr. Guzman left the area.

Mr. Guzman stated that he did not observe anyone being hit by the officers during this incident. He added that he saw Michael Feliciano two days after the incident, and that Michael told him that the officers had taken him to another location and beat him up. Mr. Guzman stated that he did not observe any injuries to Feliciano during that meeting.

#### **F. TESTIMONY OF PATRICIA AND RONALD ARANA**

Ms. Patricia Arana, 34 year old, white female of 4646 Tampa Street was interviewed via telephone at 4:30PM on October 17,1994 by Sergeant Sam Simon #8649, Internal Affairs Division.

Ms. Arana was listed as a witness on the 75-561 prepared by Ms. Mulero. Ms. Arana stated on the date of this incident she was in her kitchen when she heard Michael Feliciano yelling in the rear alleyway. She looked out and saw a big white male who lives across the alleyway holding Michael by his arm. Michael was yelling, "Get off me. Get off me". Within a few minutes a police van arrived and the two officers from the wagon grabbed Michael and pushed him against the van. The witness stated that she heard Michael fall into the van as if he lost his footing. She could not see inside the van, but she heard the noise of his fall.

Ms. Maria Mulero then came out of her house and started yelling at the officers. She yelled; "get off my son; why are arresting my son?" One of the officers responded with, "Shut up

or you'll get locked up too." Ms. Mulero continued to yell at the officers and one of the officers said, "That's it, you're locked up." He then grabbed Ms. Mulero and pushed her against a car, handcuffed her, and placed her in the wagon. The witness did not hear Ms. Mulero fall into the wagon as she had heard when Michael Feliciano was placed in the van earlier. The police then left the area with the prisoners.

Later Ms. Arana and her husband, Ronald, drove to the 25<sup>th</sup> District to pick up Michael and his mother upon their release. She also took Michael and Ms. Mulero to Parkview Hospital. Ms. Arana observed that Ms. Mulero had swelling and discoloration on her face and on one forearm. Michael Feliciano had bruises on his back.

The witness stated that the officers did not strike the complainants during the time she observed them. She also did not see Maria Mulero's face pushed into the car by the officer. The witness also did not observe the officer pull Ms. Mulero's hair. Ms. Arana stated that the officers treated Michael Feliciano more roughly than Ms. Mulero.

Ronald Arana was also listed as a witness on Ms. Mulero's civilian complaint (75-561), but he refused to give a statement when contacted on October 17, 1994. The Arana family had move to Florida by the time of the hearing, and although contacted and subpoenaed by the Commission did not appear for the hearing.

#### **G. TESTIMONY OF MARTINA PASCO**

Martina Pasco, a white female, testified that on July 28, 1994, she was at 4653 Whitaker Avenue; she was either living there or visiting her parents. Sometime in the afternoon, she was called to the back bedroom by her son, Robert. Her son told her that a boy from across the alleyway named Michael (Feliciano) had something on his hands and was scratching the paint from a car. She did not witness any of the scratching herself. The car belonged to her next-door neighbors: the Wooley's.

By the time she got to the window, the boy had gone back into his garage. She told her son to contact the neighbors, the Wooley's, and tell them what had occurred, which he did. She testified that her son had not mentioned a knife in connection with the boy doing the scratching either to her, or Ms. Wooley, during their subsequent telephone conversation. Mrs. Wooley returned the call to let Ms. Pasco know that the police had been called because the boy across the driveway had threatened her. Ms. Pasco did not see or hear the threats.



According to Ms Pasco, the police arrived 15-20 minutes after her son's (Robert's) call to the Wooley's. Ms. Pasco testified that she was with her son and mother at the back bedroom window when the police arrived. The windows were open. She testified that she saw no one in the alleyway when the police arrived. She could see into the Mulero garage across the alleyway because one of the garage doors was open.

Upon arrival, the police officers got out of their wagon and approached the garage. Mrs. Pasco was not sure when the boy, Michael, went back into the garage. She testified that the police spoke to the boy and told him to come out of the garage, but that Michael refused. The police, she could not recall if one or both, then went into the garage, and then exited with the boy. Michael had his arms behind him when he was brought out by the police officer, but he was not handcuffed. He was alone, according to Ms Pasco.

Ms. Pasco further testified that she heard the officers ask Michael to put his hands on the trunk or hood of a car. He resisted and the police had to bring his arms around. That is when Ms. Pasco saw some kind of metal taped to the tips of his fingers. She could see his fingers from her vantage point at the window across the driveway.

The police officers then rear-cuffed the boy. She did not see him get patted down or searched. She then saw both officers take him to the back of the wagon where the officers lifted him by his arms and put him inside. The doors were then closed. Ms. Pasco did not see Mr. Feliciano with a knife, nor did she see the police with a knife.

Ms. Pasco then saw a woman, later identified as Ms. Maria Mulero, come out of the garage. The woman was yelling in English and Spanish about why the police had gone into her garage; that was her property; why was her son being arrested. The police asked her to calm down and go back inside the house. The woman's screaming then got louder. The police asked her two or three times to go back inside or that she would be arrested. She refused and the police officers moved to arrest her.

Ms. Mulero was screaming while flailing her arms and legs. She would not put her arms up as the police officers asked. Ms Pasco testified that she observed Ms. Mulero kicking the police officers. The officers had her facing the side of a car that was in the driveway. Ms. Pasco further testified that the police officers used force to get Ms. Mulero's arms behind her so she could be handcuffed. She did not recall whether or not Ms. Mulero was restrained by the neck or forced down onto a car, but she did remember seeing Ms. Mulero with her head against the car. She did not see Ms. Mulero attempt to go back into her house. The officers did not pull her hair.

Ms. Mulero was then taken, one officer on each arm, and led to the police wagon. When the wagon doors were opened, Michael Feliciano came out of the van at the officers. She saw his feet and head come out of the van. She could not tell if he was still handcuffed. Mr. Feliciano did not actually get out of the van because one of the officers stopped him. Ms. Pasco did not remember which officer stopped Michael, or what he did to stop him and/or put him back in the van. From her vantage point when the van door was opened, she could only see Mr. Feliciano's head or feet coming out.

The two officers then placed Ms. Mulero in the van. Each officer grabbed an arm, put her on the back step of the van and put her into the wagon. She was not pushed into the van. She did not land on her face or hit her head on the bench inside the van. After Ms. Mulero was placed in the wagon, Ms. Mulero's daughter came out of the house screaming at the officers. She was not arrested nor did she strike either of the officers. Ms. Pasco saw no else in the driveway during the time that the events she witnessed took place.

Ms. Pasco described the two officers involved as a 30-year-old Spanish man, and the other a white male of approximately the same age.

#### **H. TESTIMONY OF ROBERT PASCO**

Robert Pasco, a white male, testified that on July 28, 1994, he was living with his mother, his brother and sisters and grandparents at 4653 Whitaker Ave. Between 2 and 3 PM he was looking out of his grandfather's window in the back of the house. He was alone at the window when he saw Michael Feliciano and a couple of his friends. He further observed that Mr. Feliciano had something down the front of his pants that turned out to be a machete. Robert Pasco testified that he saw Michael pull the machete out of his pants and show it to his friends. A couple of minutes later, Mr. Feliciano walked over to a car parked in the next driveway owned by a neighbor, Wyatt Wooley, and started running the knife up and down the side of the car.

Mr. Pasco then telephoned and spoke to Ms. Adelaide Wooley, Wyatt's mother, who lived next door at 4651 Whitaker Avenue. He told her about what he had observed. He told her that Wyatt should go check on his car because Michael was scratching the car with a knife. He then called his mother to the window. The Wooley's took about five minutes to get outside

Mr. Pasco, joined by his mother, then went back to the window from which he observed Ms. Wooley and her son, Wyatt, speak to Mr. Feliciano who was then alone in his garage fixing a

bike. Mr. Pasco observed bike parts on the floor of the garage as the garage door opened and closed. Mr. Pasco's window vantage point was about 60 feet away from the Mulero garage, and he acknowledged that at the time of his observations there was one car parked in the driveway of the garage.

Mr. Pasco could not hear what was being said because the windows were shut. However, the conversation lasted less than ten minutes. The interaction between the Wooley's and Mr. Feliciano did not involve any touching or exchange of items. During this time Mr. Feliciano had the machete tucked in his pants. When Ms. Wooley started back to her house, Mr. Pasco left his house to talk to her.

She told him that she was calling the police because she did not like what was said to her. Mr. Pasco could not remember what Ms. Wooley had told him that Michael had said. Mr. Pasco stayed with Ms. Wooley until the police arrived almost 30 minutes later. During the time he was waiting, he did not see Mr. Feliciano with anyone.

Mr. Pasco testified that he then left and returned to the first floor kitchen window of his house from where he continued to watch the events in the alleyway. The police arrived in a wagon and stopped directly behind the Mulero house facing Thelma St. The police officers got out of the wagon and went over to talk to Mr. Feliciano. He does not recall whether either or both of the officers went into the garage. As the officers approached, Mr. Pasco believes the police officers saw the knife, removed it from Michael Feliciano's pants and put it on the hood of the car in the driveway. They then put him against the garage door that was closed (the other door was open). Michael Feliciano was then frisked and handcuffed; Mr. Pasco could not recall whether in front or back. Mr. Feliciano then started to scream for his mother.

Mr. Pasco remembers that during the time that the police were arresting Mr. Feliciano, neither Ms. Wooley nor anyone else was in the alleyway. Mr. Feliciano was by himself. Mr. Pasco testified, that there was no tape, or anything else on Mr. Feliciano's fingers.

One of the police officers then put Mr. Feliciano into the wagon and closed the doors. It was then that Ms. Maria Mulero came out. She first came out through the back door and then came downstairs, went outside and started yelling and cursing at the officers. She went straight to the van that was holding her son. The officers told her to shut up and go back into the house.

Mr. Pasco further testified that the police opened both wagon doors to allow Ms. Mulero to talk to her son. That's when Mr. Feliciano, who was still handcuffed, started to come out of the

wagon. One officer pushed, punched or shoved him back into the wagon. Mr. Pasco thought he saw Mr. Feliciano's head. Mr. Pasco further testified that was when Ms. Mulero "went at" one of the cops. The police officer then pushed Ms. Mulero onto Wyatt's car. A police officer then grabbed her by her arms and put her on the hood of the car. He did not see the police grab Ms. Mulero by the neck or bang her head against the car.

Mr. Pasco testified that he remembered nothing else about what occurred other than there was nobody else present in the alleyway except Ms. Maria Mulero, Mr. Michael Feliciano and the two police officers through the time that the police wagon left the location.

#### **G. TESTIMONY OF ADELAIDE WOOLEY**

Ms. Adelaide Wooley is a white female who resides at 4651 Whitaker Avenue. The rear of her house is across the alleyway and one house down from the Mulero-Feliciano home. She had lived at that residence for 14 years prior to the day of the incident. She testified that on July 28, 1994, she was home when received a telephone call from her neighbor, Bobby (Robert) Pasco. The time was about 4:30 or 5:30PM. She was told that there was someone, later identified as Michael Feliciano, in the alleyway in the back scraping the paint off of her son's car: a red 1969 GTO parked in the driveway of the house next to the Mulero-Feliciano house. The car was kept there with the permission of the homeowner, a friend of the Wooley's.

Ms. Wooley further testified that upon hearing the message she went to her kitchen window that faces to the back, and observed Michael Feliciano, who she did not personally recognize or know, scraping and scratching the paint from her son's car with a "Bowie" knife. He was also using nails that he had taped to the tips his fingers a la "Freddy Kruger". Since her son, Wyatt, was not home, she went downstairs from her kitchen, through her garage and out to the alleyway to confront the boy.

As she started out onto the alleyway, her son Wyatt arrived. She told him what she was doing, and he joined her as she approached Michael. Ms. Wooley stated that her son confronted Michael concerning what he was doing to his car. Michael then became irate and loud, and threatened Ms. Wooley with the knife. Wyatt jumped to the defense of his mother, but Ms. Wooley stopped Wyatt out of fear that he would get in trouble if he did anything because Michael was a young teenager, and her son was 23. She announced that she was going to call the police to report what had happened.

Ms. Wooley testified that she made only one call to the police and that a police van with two officers arrived very quickly: within 15 minutes. Between the time that she and her son left the alleyway and the police arrived, Michael Feliciano came to her house and handed Ms. Wooley a bullet and said to her: "This will be next".

When the police arrived, Ms. Wooley met them in front of her house on Whitaker Avenue. She did not know the officers, and described one as "Spanish" and the other as "white". She told them about the car and the threats. She also gave them the bullet with which Mr. Feliciano had threatened her. The police van then proceeded to go to the alleyway in the back of the house. Ms. Wooley then went back to her kitchen window to observe.

Ms. Wooley further testified that she observed the police officers stop the van in the alleyway facing south between her house and the Mulero-Feliciano house. The police officers then exited the vehicle and approached the open Mulero garage. From outside, she heard them yell for Mr. Feliciano to come out. She then heard him reply that he was not coming out. Ms. Wooley did not know if there was anyone else in the garage with Michael at the time. She could only see about 3 feet into the garage. Later, while Michael was being handcuffed, she remembered seeing two "kids" present, but she was not sure if they had come out of the garage with him or not.

The police officers then approached the threshold of the garage. The officers did not have their guns drawn. It was this time that Michael Feliciano exited the garage. He still had the nails taped to his fingers. The tape was masking tape and the screws were "dry wall screws". She could see this from her vantage point approximately 40 feet away. The police officers asked Michael what was going on and he responded by cursing at the police officers. She remembered hearing the police officers ask him what was on his fingers, but she did not remember if or when the nails were removed.

Michael was asked to put his hands on the car parked in his driveway. He refused and the officers (both) had to use force to get him rear cuffed. And while he was indeed placed against the side of the car in his driveway, Ms. Wooley stated that at no time was he banged against it. Michael did not have the knife on him when he came out of the garage. Ms. Wooley testified that one of the officers came out of the garage with the knife.

Ms. Wooley testified that by the time Mr. Feliciano was handcuffed, he was cursing loudly and crying. He was also crying, cursing and physically resisting when he was put into the van by the police officers. From beginning to end, Ms. Wooley stated that only one other neighbor,

besides Robert Pasco, was present outside. She testified that no crowd gathered in the alleyway during the incident.

Michael Feliciano was placed in the van headfirst. Both doors of the van were open when he was put in the wagon, but only one door open prior to that. Both doors opened outward. Both officers participated in getting Michael into the van. They moved his feet and had to lower Michael's elbows and head because he was struggling. However, Ms. Wooley did not see Michael get "bumped" going into the van. She could see three feet into the van. After Michael was inside, she claims to have heard him still crying "like a sissy", and then later with his mother in the van both of them were screaming and kicking.

Ms. Wooley testified further that Ms. Maria Mulero came out of her garage just about the time that her son was being placed in the police wagon. Ms. Mulero came out yelling and cursing, and she confronted the police officers. She spoke in Spanish to the Spanish officer. Ms. Mulero kicked, pushed, scratched, pulled the hair, and also hit and bit the police officers. The officers did everything they could to avoid hurting Ms. Mulero, but in the end, they had "to treat her like a man". She did not see Ms. Mulero try to go back inside her house.

When the police officers moved to arrest Ms. Mulero they had to grab and restrain her arms, and place her over the passenger side of the car in her driveway in order to handcuff her. The struggle lasted eight to ten minutes. She was rear cuffed. When the van doors were opened to place Ms. Mulero inside, her son tried to strike the taller police officer who had opened the van door. The officer responded by shoving Michael back inside with an open hand and yelling at him to get inside. Ms. Wooley testified that when Michael tried to hit the officer his cuffed hands were in front. He was left like that in the van. She then heard hollering, kicking and crying from inside the wagon.

Ms. Wooley observed Michael's sister arrive on the scene just as their mother was being placed in the van. She stated that the police officers tried to talk to her and did not arrest her. Ms. Wooley believed that Ms. Mulero might have said something to her daughter while the van door was still open.

Ms. Wooley's vantage point for all of her observations was her open kitchen window 40 feet away, 10 feet up and at an angle to most of the events. She further testified that the Mulero-Feliciano family had moved into their house approximately two years before the incident, and that she had not had any prior involvement with them. She did state on the record however that she believed Michael Feliciano to be a thief and troublemaker who did whatever he felt like doing.

Ms. Wooley testified that the entire incident from arrival of police to their departure lasted about 20 minutes.

The testimony of Mr. Robert Wooley, Ms. Wooley's husband, is of limited evidentiary value because he witnessed only a limited portion of the events that transpired. Furthermore, there were major inconsistencies between his account and the account offered by his wife, as well as contradictions with the Pasco witnesses' testimony.

#### **J. STATEMENT OF POLICE OFFICER CHRISTOPHER DIPASQUALE**

Former police officer Christopher DiPasquale, a four-year veteran of the Department on the day of the alleged incident, was subpoenaed to testify at the hearing as a civilian witness. At the time of the hearing, he was no longer a Philadelphia police officer; he had been dismissed from the Department and charged criminally as a result of his involvement in the Donta Dawson shooting. As such, he could not be legally compelled to testify as a city employee pursuant to Garrity. However, in response to his subpoena, Mr. DiPasquale's attorney, Mr. Jack McMahon, wrote the Commission a letter stating that if compelled to appear, Mr. DiPasquale would exercise his Fifth Amendment privilege against self-incrimination. Under those circumstances and after consultation with Commission counsel, the Hearing Panel excused Mr. DiPasquale from appearing at the hearing.

Notwithstanding the absence of hearing testimony from former officer DiPasquale, the Hearing Panel took notice of his prior interviews with Internal Affairs Division and Commission investigators. The most recent statement had been taken on February 5, 1998. On that date then Officer DiPasquale, was compelled to provide statements to the Commission and IAD under threat of disciplinary action up to and including dismissal from the Police Department under the Police Department Regulations, Sections 1.11 and 1.12. During that interview, Police Officer DiPasquale had legal representation. He also signed each page of the statement as well as the end of the statement as an acknowledgement. The interview was already part of the investigatory file.

During the interrogation on that date, Officer DiPasquale stated that when he arrived at 4648 Tampa Street on July 24, 1994, he observed Michael Feliciano holding a machete type knife in his hand by the handle with the tip pointed down. Officer DiPasquale further stated that he saw Michael attempt to conceal the knife under the seat cushion of a sofa that was in the garage. Officer DiPasquale first observed Michael outside the garage; he stated that the garage doors were wide open and everything was in plain view as he exited the patrol wagon.

Officer DiPasquale stated that Michael was alone in the garage when he observed him concealing the knife. Upon being accosted, Michael allegedly told Officer DiPasquale that he had a “long-term problem with an old white lady and that he had threatened her with the knife.”

Officer DiPasquale remembered first seeing Ms. Maria Mulero on the deck over the garage driveway at the time that Michael was being placed in the police wagon. She then came down to the garage. Ms. Mulero was hollering, cursing and screaming racial remarks at him and his partner, Officer Roger Sinick. Officer DiPasquale stated that he warned Ms. Mulero various times to calm down and that she was interfering with the arrest of her son. As a result, Ms. Mulero was finally placed under arrest and placed in the wagon together with her son.

During the effort to arrest Ms. Mulero, there was a brief struggle consisting of Officer DiPasquale pushing Ms. Mulero away while he put her son in the wagon. Officer DiPasquale and his partner had to grab Ms. Mulero’s arms and place them behind her back in order to handcuff her.

Officer DiPasquale denied grabbing Ms. Mulero by the hair, or banging her head against the patrol wagon. He denied using ethnic or gender slurs against Ms. Mulero, or of threatening to beat her. He also denied throwing Ms. Mulero into the back of the patrol wagon.

Officer DiPasquale stated that when he was placing Ms. Mulero into the patrol wagon, that Michael who was already inside, attempted to kick him and his partner in order to escape from the wagon. To push Michael back into the wagon, Officer DiPasquale “smacked”, not punched, him across his face. He denied threatening to beat Michael.

According to Officer DiPasquale, it was neither his intention nor his partner’s, to transport both arrestees to the District. That was done because the situation was “getting out of hand and a large crowd was forming.” However, a radio call was made requesting a patrol car for transport of Ms. Mulero because male and female prisoners were not supposed to be transported together. In addition, Officer DiPasquale stated that both prisoners were kicking inside the patrol wagon that could have caused the doors to open. Officer DiPasquale denied kicking Ms. Mulero in the back during her transfer to the patrol car.

Officer DiPasquale stated that to reach the location arranged for the transfer of Ms. Mulero from the patrol wagon, he and his partner only had to travel two or three blocks: to Courtland and Whitaker. From that location to the District, it was probably a 5-minute ride.



Officer DiPasquale stated that after the transfer, the patrol wagon, followed by the patrol car, proceeded directly to the District. Officer DiPasquale stated that both vehicles arrived at the District at the same time.

Officer DiPasquale could not remember the route taken to the District the day of the incident. Nor could Officer DiPasquale address questions related to the CAD printout of his patrol wagon and the incident. More specifically, he could not explain the notation “time 1936’ with the words “new location” and the initials “ARR”.

## **I. TESTIMONY OF POLICE OFFICER ROGER SINICK**

Police Officer Roger Sinick was the first officer to testify at the hearing. Officer Sinick at the time of the alleged incident was a four-year veteran of the Department. Asked at the start of his testimony what was his assignment the evening of the alleged incident, Officer Sinick responded: “It was...I have no recollection. It was four years ago. I have no recollection where I was working”. Officer Sinick also could not remember if his partner on the day of the alleged incident was Officer Christopher DiPasquale. Overall, during his hearing testimony Officer Sinick invoked failed memory at least 40 times, even though he was provided with documents, or had documents available to him that he examined and/or read for purposes of refreshing his recollection.

His hearing testimony was also replete with inconsistencies and contradictions. For example, his response to the question whether or not he recalled if Officer DiPasquale struck Michael Feliciano at the time that Ms. Mulero was being put in the van?

- A. *“No, I don’t recall that.”*
- Q. *“If I told you that Officer DiPasquale testified that he did that?”*
- A. *“I don’t recall that. But if that happened I would recall that.”*
- Q. *“Does that refresh your recollection if I were to tell you that Officer DiPasquale testified that he did smack his face.?”*
- A. *“He smacked whose face?”*
- Q. *“Mr. Feliciano’s face. Would that refresh your recollection as to whether it occurred?”*
- A. *“It wouldn’t refresh it, no. I’m just saying if I seen it happen, I would remember that. But I did not see that happen.”*
- Q. *“You did not see it happen?”*
- A. *“Yes; correct.”*

Q. *"I just want to make sure. Are you saying you don't remember, or are saying you did not see it happen?"*

A. *"I have no recollection." (Sinick Testimony, pp. 41-42)*

Officer Sinick's lack of memory during the hearing, even as to the most salient aspects, coupled with his contradictory statements, strained credibility. However during the hearing, by his testimony and through his FOP attorney, Officer Sinick did recognize, and adopt as his own, prior statements made to Internal Affairs Division (IAD) and the Police Advisory Commission investigators concerning the events of July 28, 1994. These statements were deemed as truthful at the time they were given on May 19, 1998 and March 24, 1998 respectively. The statements are by incorporation part of the hearing record; they were already part of the investigatory file.

Officer Sinick's testimony and statements were consistent in that for the most it part they support the statements of former Officer DiPasquale. Officer Sinick has denied any physical abuse or racial slurs against either Ms. Mulero or Mr. Feliciano. He also denies, or did not remember seeing any other police officer physically abuse either one of them or using racial slurs against either of them.

Officer Sinick, also supports the statements of Officers DiPasquale, Young and Orth that Ms. Mulero was transferred from his patrol wagon #2504 to patrol car #258, at Courtland St. and Whitaker Ave. at approximately 6:54 PM. He, like the other officers, stated that both vehicles then proceeded directly to the 25<sup>th</sup> District, arriving at the same time in approximately 5-10 minutes.

However, Officer Sinick's statements, as well as those of the other officers, concerning the arrival time at the District are inconsistent with the CAD report, a computer printout produced by the Police Department radio room that logs the activity of units operating in the field.

The CAD report of July 28, 1994 for patrol car #258 shows the car out with a prisoner at 18:53 (6:53 PM) hours, presumably Maria Mulero. At 19:31 (7:31PM) hours, the CAD report shows patrol car #258 as back in service (the patrol log of patrol car #258, as recorded by Officer Donna Young, shows patrol car #258 handling another job at 7:05 PM). The CAD report for patrol wagon #2504 shows the wagon being dispatched to handle the call from 4651 Whitaker Ave. at 18:33 hours (6:33 PM). The transcript of the police radio transmittal log for patrol wagon #2504 shows a transmission from the wagon at 6:50 PM indicating that two prisoners, one male and one female, were in custody and were being transported together from the scene. At 6:53 PM, the same radio transmittal log shows patrol car #258 acknowledging that it is going to

transport a female prisoner, again presumably Ms. Mulero. The CAD report for the DC number assigned to the original job shows the wagon clear at 19:18 hours (6:18 PM) RTF (report to follow).

The CAD report for the DC number also shows the following entry at 19:36 hours (7:36 PM): New Location ARR. When asked during the hearing regarding the meaning of ARR, Officer Sinick stated as follows:

- Q. *“Below it says, 19:36, two entries below, 19:36 new location ARR. Do you have an understanding of what it means?”*
- A. *For this document, no.*
- Q. *Does ARR mean anything in your line of work?*
- A. *In police work, arrest.*
- Q. *Arrest, it means?*
- A. *Yes.*
- Q. *Would it mean arrival? Could it mean arrival?*
- A. *Could be an abbreviation for arrival. We used it for arrest. We used it for arrival.”*

The Hearing Panel noted that although a DC Number CAD report would not normally be seen or used by a police officer, Officer Sinick had been questioned regarding the DC Number CAD report on at least two previous occasions, once by a Commission investigator on March 24, 1998, and again by an IAD investigator on May 19, 1998, both during official interrogations.

During those interviews in response to initial questions concerning the CAD report, Officer Sinick was unequivocal about the meaning of ARR. It meant arrival, and patrol wagon 2504's arrival time at the district was 19:36hours (7:35 PM).

*“The time of 1936 would be the time of our arrival at the district with the prisoner. When we transport juveniles we must give mileage to radio dispatch and they give us the time”. (Sinick, Commission Interview, 3/98)*

It was only after being confronted with Police Directive #6 by an IAD investigator who also provided Officer Sinick with the “official” explanation of ARR, that Officer Sinick changed his opinion and stated that ARR means arrest. He then also changed his recollection and stated that he (and presumably Officer DiPasquale) must have been at the District at 19:18 hours (7:18 PM), the first entry on the CAD report. He then also stated that as the recorder, he must have been

the one to call via administrative lines from inside the District (as opposed to via radio) to get the DC number necessary to process Maria Mulero's arrest.

The Panel noted that the DC number given Officer Sinick is subsequent to the DC number obtained by Officer Young. It also notes that the Radio Transmittal log at 6:52 PM reflects a request by patrol wagon #2504 for two DC numbers: seemingly one for the Mulero arrest and one for the Feliciano arrest. Finally, the Hearing Panel noted that Officer Sinick was the arresting officer for Michael Feliciano, and that Officer DiPasquale was the arresting officer for Maria Mulero.

#### **K. TESTIMONY OF POLICE OFFICER DONNA YOUNG**

Police Officer Donna Young, Badge No. 5241, was a three-year veteran of the Department at the time of the alleged events. Officer Young's testimony at the hearing, like that of Officer Sinick, was replete with memory gaps and suffered from her inability to refresh her recollection. At the beginning of her testimony, Officer Young did acknowledge as truthful the statements of her February 5, 1998 interview with Commission investigators, and agreed to their incorporation into the record.

Officer Young did testify during the hearing as to her understanding of police procedures concerning the transportation and processing of the arrest of a juvenile. She also testified as to her understanding of police procedures concerning the transportation of male and female prisoners.

With regard to the former, she testified that male police officers have a requirement when transporting juveniles to radio their mileage, but that no such regulations exist for female police officers. As regards the latter, she testified that pursuant to Police Department procedure, male and female prisoners should not be transported together.

Officer Young further testified regarding the procedure for obtaining a DC number when an arrest has been made. She testified that police officers would not now (on the date of her testimony, March 2, 1999) obtain a DC number via radio from radio dispatch because patrol cars had since been equipped with computer terminals through which DC numbers were obtained. She could not recall whether or not on July 28, 1994 a DC number could be obtained via the radio of a patrol car. Officer Young did testify at the hearing that a DC number for an arrest could be obtained by going to the Operations Room at a district and calling police radio for the number.

Because during the hearing Officer Young could not “remember anything from 1994” (Young testimony, p. 84), even after being presented with her prior interview statements, her patrol log and her IAD interview summary, her hearing testimony provided minimal information concerning her participation in, and observations of what occurred on July 28, 1994.

However, in her statement to the Commission of February 5, 1998, Officer Young was presented with her prior IAD interview statement, which she acknowledged and declared to be “accurate to the best of her knowledge.” She agreed to incorporate the IAD summary as part of her Commission interview. During the Commission’s interview, Officer Young stated that on July 28, 1994 she was working patrol car #258 with her partner, Officer George Orth. Car #258 was the patrol car to which Marie Mulero was transferred from patrol wagon #2504 at the transfer point of Courtland and Whitaker Streets. Ms. Mulero had been placed in the same patrol wagon as her son, Michael Feliciano, and both had been transported together from site of the initial contact. Officer Young denied any physical abuse of Ms. Mulero or her son. She denied seeing any other police officer physically abuse Ms. Mulero or her son. Officer Young also denied using any racial slurs against Ms. Mulero or her son, and she also denied hearing any other police officers use any racial slurs against Ms. Mulero or her son.

Officer Young further stated that after Ms. Mulero was removed from the police wagon and placed in the patrol car, her patrol car followed the patrol wagon directly to the District. Officer Young stated that both the wagon and the patrol car arrived at the same time. She further testified that both Ms. Mulero and her son were removed from the respective patrol car and wagon within minutes of each other, and then taken inside the District for processing. When asked to describe the route taken from the transfer point to the District, Officer Young stated that, “I believe we went south on Whitaker to MacAlester, right on Hunting Park, Hunting Park to Front, left on Front going south to Tioga Street, right to Hope, then followed Hope Street into the District.”

Officer Young was shown a copy of the CAD printout of the events of 7-28-94 as well as the relevant Telephone and Radio Transmittal Report. Officer Young was asked to translate the time of 6:53:26 p.m. as it related to a transmission from her patrol car (#258) to police radio. Officer Young stated that she believed her partner, Officer Orth, had made that transmission to police radio to let radio know that Ms. Mulero was in their patrol car, and in route to the District. Officer Young was asked if that time was accurate and what would be their estimated time of arrival at the District. She responded that the time was accurate, and that would take approximately five to ten minutes from the transfer point to the District depending on traffic volume.

## **L. TESTIMONY OF OFFICER GEORGE ORTH**

Police Officer George Orth, Badge #6862, was a seven-year veteran of the Police Department at the time of the alleged incident. At the hearing, Officer Orth's testimony, like that of his colleagues, was lacking in information and detail. Officer Orth also often claimed lack of memory as well as an inability to refresh recollection. The primary exception to his lack of recall was his recollection of Ms. Maria Mulero's cursing and racial epithets. Officer Orth did acknowledge and adopt for the hearing record the statements he made during an interview with Commission investigators on February 5, 1999.

During the Commission interview, Officer Orth acknowledged and adopted the summary of the interview he had with IAD investigators. However, Officer Orth when presented with the same IAD summary during the hearing could not recognize it and would not adopt it. Neither the Commission interview statement nor the IAD interview summary could help Officer Orth refresh his recollection as to the relevant events of July 28, 1994.

During his February 1999 Commission interview, Officer Orth supported Officer Young's statements. Officer Orth denied physically abusing Ms. Mulero or her son, Michael Feliciano. He also denied seeing any other police officer physically abuse either of them. Officer Orth denied making any racial slurs to Ms. Mulero or her son, and denied hearing any other officers make those types of remarks.

When asked what route his patrol car took after the transfer of Ms. Mulero to his patrol car, Officer Orth replied, "We could have gone straight (southbound) down Whitaker to Erie, westbound to Front Street southbound to Hope Street, and down Hope Street to the District. The other route could have been straight down Whitaker which turns into "B" street, south on "B" to Westmoreland and then west on Westmoreland to Front Street, 50 feet north on Front Street which would be the entrance to the District."

Police Officer Orth was shown the same IAD printout as was shown his partner, Officer Young. Officer Orth stated that he believed he made the statement to police radio that, "we're gonna be transporting the female in." The time of that transmission was 6:53:26. Officer Orth was asked to estimate his time of arrival at the District from the transfer point. Officer Orth's answer was, "I don't recall, it could be anytime between 5 and 10 minutes, depending on traffic." Officer Orth also stated that his patrol car followed the patrol wagon into the District and arrived at the same time.

## **V. ANALYSIS AND RECOMMENDATIONS**

The Hearing Panel for the most part credits the testimony and/or statements of complainants Maria Mulero and Michael Feliciano. The Panel also credits the testimony and/or statements of Stephanie Feliciano, and to a lesser extent of Patricia Arana. The testimony of Robert and Martina Pasco were found not credible because of numerous contradictions and inconsistencies between their respective testimonies as well as numerous internal inconsistencies and contradictions. Their testimony also contradicted the statements of Police Officer DiPasquale and Sinick on significant issues such as the presence of taped nails on Michael Feliciano's fingertips and the location of the knife. The testimony of the Wooley's was not credible for similar reasons.

Moreover, a preponderance of the credible evidence produced during the investigation including, but not limited to the testimony and demeanor observed during the hearing, the relevant medical records, the police documents, and the prior statements of witnesses and police officers, including those of former officer DiPasquale, tips in favor of the complainants and against the target officer(s).

The Commission finds that then Police Officer DiPasquale used unreasonable force during the apprehension of Ms. Mulero in that he forcefully pushed Ms. Mulero into the patrol wagon causing her to fall onto the floor of the vehicle and in the process hit her face on a part of the interior and the floor. As regards to Michael Feliciano, the Commission finds that Officer DiPasquale used unreasonable force in that he punched a handcuffed Michael Feliciano in the face at the time that his mother, Ms. Mulero, was being thrown into the police wagon. The Commission also finds that Officer DiPasquale used unreasonable force and violated police procedures in that during the transport of Maria Mulero and Michael Feliciano from the site of the incident to the 25<sup>th</sup> District, he took the handcuffed Michael Feliciano to a unknown location where he punched him at least twice seemingly without cause, excuse or legal justification.

The Commission also finds that all four police officers lied concerning the arrival times of the patrol car transporting Ms. Mulero and the patrol wagon transporting Michael Feliciano. The Commission finds that the two vehicles did not arrive at the 25<sup>th</sup> District at the same time. Police Officer Sinick's original statements, his subsequent contradictory statements as well as his general lack of creditability bolster this finding. It is also supported by the police officers' general lack of credibility, the credibility of the complainants and Stephanie Feliciano and, last but not least, the Police Department's own documentation.

The Commission further finds that Police Officer Sinick who was present and observed the use of unreasonable force by his partner, Officer DiPasquale, failed through his acts of omission to protect the welfare, well being and rights of Maria Mulero and Michael Feliciano in dereliction of his responsibilities and duty as a police officer. Through his knowledge and acts of omission, Police Officer Sinick became an accomplice to former Police Officer DiPasquale's acts of physical abuse.

The Commission makes no findings with regard to the allegations that Officer DiPasquale grabbed Maria Mulero by her hair during the effort to handcuff and arrest her, or that he pushed the face into the side of the car in the driveway. Neither does the Commission make any finding against any police officer with regard to the various allegations that the police officers used ethnic slurs, or other offensive language in derogation of Ms. Mulero's ethnicity (Puerto Rican) or her gender; and/or in derogation of Mr. Feliciano's ethnicity (also Puerto Rican). Furthermore, the Commission makes no finding with regard to the allegation that Officer DiPasquale kicked Ms. Mulero in her back at the point of transfer from the police wagon to the patrol car, nor does it find that Mr. Feliciano's head was slammed against the wall at the District. Finally, the Commission exonerates Officer DiPasquale with regard to the allegation that he unlawfully entered, searched, and seized personal property from the Ms. Mulero's garage (the knife).

Finally, the Commission finds that Police Officers Sinick, Young and Orth by their testimony (or lack thereof) and demeanor during the hearing were dishonest, uncooperative and obstructionist in violation of the oaths taken by each officer that evening, in violation of the Commission's Executive Order, Police Commissioner Timoney's Departmental Directive No. 7595, former Police Commissioner Neal's Department Directive No. 1253, and Police Department Regulations, Sections 1.11 and 1.12.

The Commission's finding in this regard is bolstered by the non-evidentiary, opening statement of counsel for the police officers, Jeffrey Kolansky, who requested and was given permission by the Hearing Panel to make the following "objection" on the record prior to the start of the hearing:

*Mr. Kolansky: Mr. Harris, before we proceed to the next level, I just need to insert an objection at this time, if I can, to the hearing going forward and just state it for the record.*

*I spoke on Wednesday and Friday, I believe , with Mr. Soto and made a request at that time to which he then responded that the*



*hearings be postponed until the date after Christopher DiPasquale, who is the apparent target of this investigation, has his court hearings. This Panel, I'm sure is aware. And if not, the issue of Officer DiPasquale, former Officer DiPasquale, is that he's allegedly involved in the shooting incident with regard to one Dante Dawson. He has been arrested. He's had a preliminary hearing that was discharged. He's been rearrested, and he's pending preliminary hearing and/or trial on that matter.*

*The concern of these officers, my clients, and Mr. DiPasquale is not my client, the concern of these officers here tonight is that anything that comes out of this hearing that leads to anything other than an internal bit of information, an internal decision, held until after Mr. DiPasquale's matter is resolved in the court system will be unduly prejudicial to him and will deny him the right to a fair and impartial jury trial, and may enforce things like change of venue and so forth.*

*I'm not speaking on behalf of Officer DiPasquale. I'm speaking on behalf of these officers and their fellow officers in the Police Department who do not wish to participate in anything at this time that would be detrimental to his, Mr. DiPasquale's, rights. And I would ask that this matter be continued to another night.*

It was with this objection and the following clarification by Commission counsel as preface that the testimony of the police officers at the hearing was taken.

*Mr. Twersky:*

*Let me respond and clarify that just a little bit.*

*We have been in touch with both Mr. DiPasquale's attorney as well as the District Attorney's office, neither of whom have posed any objection to this tribunal continuing. Accordingly, we will continue. We will make a decision based on the record that we have before us.*

*In regard to Mr. DiPasquale, he has been subpoenaed and we have learned through his counsel that he is exercising his right under the Fifth Amendment not to testify. The tribunal will*

*continue and we will take the testimony of the officers present, as well as the civilians who have already been subpoenaed and who will present further testimony.*

Notwithstanding the clarification and additional information provided, the testimony of the police officers that followed was replete with “I cannot recall” “I do not remember” and “I don’t know”. Officer Sinick invoked failure of memory at least 40 times even after being shown, and reading his prior interviews and statements for purposes of refreshing his recollection. Officers Young and Orth, who were not present for the entire sequence of events that were the subject of the allegations, had similar, if not as numerous, recollection problems.

That police officers can forget is not questioned, especially when as in this matter the hearing is held five years after the fact. However, the dearth and lack of detail in the testimony of the police officers pales in comparison to the testimony of the civilian witnesses. Both civilians and police officers had to endure the same five-year memory gap, and both groups had immediate access to documents with which to refresh their individual recollections. Moreover, the police officers had been questioned or testified regarding the Mulero incident and allegations on at least three prior occasions, the most recent being in February 1998, something the civilian witnesses had not done as frequently. Yet all the civilian witnesses, their inconsistencies notwithstanding, had more vivid recollections than the police officers. The civilian witnesses also did not seem to have a problem refreshing their recollections as was necessary and/or appropriate.

The Commission further notes that police officers are also professionals who know that testifying under oath regarding past official acts is part of the job. Police officers are trained in making and keeping records, formal and otherwise, for purposes of providing truthful and useful testimony especially in official proceedings. The almost complete inability of these four officers to remember what happened on July 28, 1994 cannot be ascribed simply to memory loss.

The Commission believes that the testimony of the police officers provided to the Police Advisory Commission on March 2, 1999 is an example of the “blue wall of silence” in operation. , As stated by their attorney, these three police officers were not going “to participate in anything at this time that would be detrimental to his, DiPasquale’s, rights.” Neither the clearance provided by the District Attorney’s office nor the assurances of Commission counsel, nor the rights of the complainants were part of the justice equation as far as these officers were concerned. These police officers were intent on the “protection” of their fellow officer even as former Officer

DiPasquale's choice to exercise his Fifth Amendment privilege not to testify at the hearing was being honored by the Commission.

The Commission recommends that if Christopher DiPasquale is ordered reinstated to the Police Department through arbitration that he be again immediately suspended without pay pending termination for his acts and omission regarding the complainants. The Commission also recommends that Police Officer Roger Sinick be suspended without pay for a period of 10 days for his acts, and acts of omission in collaboration with then Officer DiPasquale also in violation of the rights of Maria Mulero and Michael Feliciano. The Commission further recommends that Police Officers Young and Orth be suspended for 10 days each for their individual failure to provide the truthful testimony during the hearing. Finally, it is further recommended that Officer Young, having been found to have violated her oath of truthfulness during at least one other official hearing, Commission Matter of Moises DeJesus (1996), be suspended for an additional 10 days for her lack of honesty during the Mulero hearing.

The Commission recognizes that the findings and recommendations concerning former officer Christopher DiPasquale are moot as a result of the Arbitration Opinion and Award rendered on November 2, 2000. These findings and recommendations are included for purposes of analysis and clarification, and to avoid any further delay that additional extensive rewriting of this Opinion might require.