

**IN RE:** : **CITY OF PHILADELPHIA**  
**EMART HARLEY** : **POLICE ADVISORY COMMISSION**  
: **# 970355**

Before Uyehara, Graham and Savitt, Commissioners

### **OPINION**

On July 16, 1997, Emart Harley filed a complaint with the Police Advisory Commission regarding an incident which occurred at his home on July 9, 1997 involving a police lieutenant. Following an investigation by PAC staff, the matter was referred for a hearing. Testimony was presented to a hearing panel on May 11 and June 24, 1999. The panel concludes that the complaint is supported by the evidence, that the officer engaged in misconduct and that no formal discipline is required.

#### **1. EVIDENCE**

The panel received testimony from three police officers<sup>1</sup>, the complainant, and another civilian. We also reviewed documentary evidence and prior statements made by the witnesses.

On July 9, 1997, then Lt. Michael Weaver<sup>2</sup> (badge # 415), assigned to the Internal Affairs Division, went to the single family dwelling owned by Emart Harley and his uncle,

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<sup>1</sup> Deputy Commissioner John Norris appeared before the Commission at his own request and made a statement in support of the lieutenant.

Nathaniel Harley, in the 7100 block of Oakland Street in Northeast Philadelphia, ostensibly to serve notice upon Nathaniel to report to IAD for an interview. Lt. Weaver, in civilian attire, knocked on the door to the Harley residence. Emart answered the door and informed Lt. Weaver that his uncle was not home. The officer left a form 75-48 with Emart to deliver to his uncle which had been pre-written with an order for Nathaniel to appear at IAD. Michelle Wilson was in the house at the time and witnessed much of the exchange between the two men. Exactly what happened during the exchange between Emart and Weaver is the subject of the complaint. The facts could not be ascertained without the benefit of a hearing because of the inconsistent statements of the witnesses.

The incident that evening cannot be understood without some background information regarding past events which undoubtedly affected the parties' perceptions and feelings. Nathaniel Harley is a Philadelphia Police Officer, assigned to the 39th District. He had been investigated by IAD before this incident. In addition, he was at the time on extended sick leave status. Because of his leave status and the IAD investigations, the Police Department regularly dispatched officers to the Harley residence simply to deliver or attempt to deliver messages to Officer Harley. The department acknowledged 24 visits during a nine-month period in 1996-97 which were intended to deliver messages and notices and to verify that he was sick at home. The Harleys viewed the repeated visits as harassment.

Captain Weaver testified that he went to the Harley residence to deliver an order, prewritten on a form 75-48, directing Nathaniel to report to IAD for an interview. He stated that he knocked on the door, and that he promptly identified himself as a police officer and

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<sup>2</sup> Weaver has since been promoted to captain.

displayed his badge and identification card when Emart answered the door. According to Weaver, Emart informed him that Nathaniel was not in and that he refused to sign the 75-48 to acknowledge that he had received it. And although Emart divulged his date of birth when asked, he refused to provide his social security number. Weaver described Emart as polite and respectful throughout the encounter, and denied that there were any harsh words or hostility. He said he delivered the form, wished Emart a good day and departed.

The captain further testified that he was carrying a .38 cal. revolver in a holster in his right rear pants pocket, with the grips protruding. He said the gun could not have been seen by Emart during the incident as he would have had to lift his jacket and turned around for it to be visible and he never had done so. He also denied opening the door or storm door at the Harley home.

Emart recalled extremely loud banging on the door when Weaver appeared, although there is a doorbell. He was in the basement at the time, toward the rear of the house, and felt the knocking was unreasonably loud. When he answered the door, Emart testified that Weaver did not identify himself or display his badge, but rather tried to walk into the home past Emart. However, Emart stayed in the doorway and blocked entry to the house. He found Capt. Weaver to be hostile and annoyed from the moment the door opened, noting that both men raised their voices during the encounter.

Emart testified that Weaver was standing in the doorway, with his leg holding the storm door open, and that Weaver handed the 75-48 to him and asked him to sign for it. Emart recalled that he advised Weaver that he would take the form, but would not sign for it. He also refused to provide his social security number in response to Weaver's request. After he

repeatedly refused to sign for the form, Weaver made comments to Emart to the effect that he would be in trouble and reached for his badge in his back pocket.

Emart further testified that Weaver pulled back his sports coat several times so that Emart could see his service weapon on his belt. He felt intimidated by the display.

Michelle Walker, a friend of Nathaniel Harley, also testified. She was in the upstairs front bedroom and could hear the knocking at the door. Since she did not live there, she waited for Emart to answer the door. When some time had passed without Emart coming upstairs, she yelled down to him to answer the door. When Emart answered the door, Ms. Walker knelt at the top of the stairwell, where she could hear most of the conversation and see the lower parts of the legs of the men. According to her, the exchange between the two was hostile from the start. She heard Emart refuse to sign the form several times. She recalled that both men raised their voices. She testified that she could see Weaver's leg holding the storm door open. After Weaver left, she recalled that Emart was upset and that he complained that the officer had sought to intimidate him by displaying his gun and demanding identification information.

## 2. FINDINGS

Based upon the testimony presented, including our observations of the demeanor of the witnesses, the panel concludes that the complainant's testimony was credible. The testimony indicated that both Emart Harley and Captain Weaver were, for different reasons, annoyed with each other even before the door was answered. The complainant's testimony, which was substantiated by the civilian witness, indicated that the exchange was hostile and not as portrayed by Weaver's testimony. We do not believe that the officer carried his gun in a

holster in his back pants pocket. We find on the preponderance of the evidence that Captain Weaver deliberately displayed his holstered service weapon to Emart on more than one occasion without justification and that this conduct unnecessarily raised the level of tension between the two men. (It may be that the captain was annoyed that Emart took some time to answer the door, or that he approached the situation with hostility given the nature of his assignment. As the captain elected to deny the nature of his contact with the complainant, we need not concern ourselves with any such explanations.) Captain Weaver conducted himself in a less than professional manner, especially in light of his rank and experience, and approached Emart Harley in a rude and disrespectful manner without justification. We found the captain's testimony to be less than credible and feel that his lack of candor further supports the finding that the display of his revolver was intentional rather than inadvertent. The deliberate display of a firearm by a non-uniformed police officer without any need or justification constitutes misconduct.

In making these findings, the panel was mindful of the complainant's stated position that he didn't "want anyone fired" because of this incident, and that his complaint related only to the contact with Weaver that day. Thus, while it was relevant that there was a history of police visits to the property, a perception by the Harleys that they were the targets of police harassment, and questions raised about the investigation conducted by the Internal Affairs Division following the complaint, those matters were not decided by the panel. Accordingly, the finding of wrongdoing is limited to the deliberate and unwarranted display of the captain's firearm. The nature of the misconduct, in light of the context of the case, is such that no formal discipline is indicated.

### 3. CONCLUSION

While the panel does not recommend any formal discipline<sup>3</sup>, we do find that misconduct occurred and request that this decision be transmitted to Captain Weaver as well as his supervisor for review.

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<sup>3</sup> The panel notes that complaints of this type are appropriate for disposition through the mediation process. It is unfortunate that police officers have generally refused to participate in mediation to resolve any complaints brought to PAC. Mediation provides a useful method to promote mutually satisfactory resolution to many citizen-police disputes, immunizes the police officer from formal sanctions, and could leave the citizen with a much more positive outlook towards our police force.