

IX. EVENING OCCURRENCES IN THE BACK ALLEY

Very substantial investigative resources were expended by us in an attempt to determine precisely what occurred behind the MOVE compound in the early evening of May 13, 1985. Specifically, we wanted to determine (1) the veracity of the May 16, 1985 Daily News article which categorically stated that a gun battle took place in the area which has become commonly known as the "back alley," and (2) the validity of the MOVE Commission's finding (made over Commissioner Bruce Kauffman's dissent) that police gunfire prevented the escape, into the alley, of at least some of the occupants of the burning MOVE residence. We also considered the suggestion previously offered by some individuals that, after allegedly shooting and/or killing some MOVE members, police threw the bodies of those members back into the house, thereby accounting for the fact that all of the bodies recovered after the fire were found within the perimeter of the house (see Part XI).

As previously noted, because of the special powers of the Grand Jury and the cooperation secured from many previously uncooperative witnesses (including Police Officers William Klein, Frank Powell, Charles Mellor, Michael Tursi, James Berghaier and John Reiber), we had access to substantial testimony and evidence about the evening occurrences in the back alley which previously was unavailable to either the media or the MOVE Commission. We also largely were able to avoid relying on some of the hearsay evidence upon which the MOVE Commission had to rely. These factors, among

others, now allow us to state unequivocally (1) that the back alley gun battle reported by the media did not occur, (2) that police gunfire did not prevent occupants of the MOVE house from escaping or cause injury or death to them, and (3) that no criminal charges should be brought in connection with what transpired in the back alley on the evening of May 13, 1985.

The evidence supporting these conclusions was provided by no fewer than forty-eight different witnesses. Many others were interviewed but not called because it was determined that they had nothing to add or were merely cumulative. With the exception of Ramona Johnson Africa, whose non-appearance has already been discussed by us, we were not deprived of the testimony of any witness who had information germane to the back alley events under investigation. Virtually all of the forty-eight people who testified under oath with respect to this matter were either in or near the back alley during the pertinent time period. Thirty-two of these individuals were attached to the Police Department at the time of the occurrence; thirteen were firemen; and two were associated with the media. The other witness who gave testimony with respect to these events was Michael Moses Ward, previously known as Birdie Africa.

The testimony from these witnesses was diverse and, in many regards, conflicting. The pertinent issues which we had to consider and resolve based on this sometimes conflicting testimony were as follows: (1) whether and to what extent gunfire occurred in the back alley; (2) whether it can be definitively established

that shots, if any, were fired by either a MOVE member or a police officer; (3) how many MOVE members and children actually left their burning residence; (4) what happened to those individuals; and (5) whether any credence should be given to one detective's assertion that he heard a fellow police officer say that he had "dropped" a MOVE member in a specific back alley location. Our summaries and conclusions with respect to the testimony of various witnesses bearing upon those matters follow. In reaching these conclusions, and determining what testimony to credit, we have been particularly cognizant of the demands which the events of May 13th and the early evening placed on the senses and mental capacities of the witnesses. In particular, the conflagration obscured vision with smoke and confused hearing with the noise of crackling electrical wires, exploding aerosol cans, a roaring inferno and operating fire equipment. This, coupled with the stress, fear and fatigue arising from the day and the circumstances, undoubtedly affected the perceptions of those who sought to shed light on the events under investigation.

The witnesses who gave evidence about the back alley events fell in two categories: those who had some view of the alley and/or the movement of people therein, and those who did not. The latter group, made up of more than thirty people, was the larger group and their testimony varied substantially. For ease of reference, the evidence which they offered is reviewed by us based primarily on their locations at the pertinent times.

Discrepancies in testimony cannot be resolved based on mere location, however. Individuals within a few feet of each other often perceived events and sounds entirely differently; witnesses further removed from the back alley sometimes heard things not heard by those closer.

The testimony given by witnesses near 62nd Street and Osage Avenue, at or about the time when Sergeant Donald Griffiths announced on police radio that MOVE was coming out, was, for example, quite varied. Pete Kane, the WCAU cameraman secreted in that area, told us that he was aware of much movement by Stake Out officers, but that he did not recall any gunshots and certainly would have reported gunshots had he heard them. Four other nearby witnesses testified consistently with Kane, although with some qualifications. Lieutenant Dominic Marandola stated that he was not aware of any shots being fired, and said that the sounds of the fire could either have masked the sounds of gunshots or have been mistaken for gunshots. He noted that embers and surplus ammunition were popping "all over the place," and said that he personally knew of one thousand rounds of live ammunition which had been abandoned to the fire. Sergeant Edward Connor and Corporal George Minner stated that they heard noises before Griffiths' radio announcement but could not say with any certainty that what they heard were gunshots. Connor said that, while he did not hear shots, he believed that some shots had been fired based on the fact that people took cover. Detective Nathan Benner testified to hearing no shots. Had there been rapid gunfire, he was

confident that it would have been noticed by him. He was not certain, however, that he would have heard single shots. Officer James Muldowney, in contrast, was certain that he heard perhaps half a dozen shots, which he described as rapid, semi-automatic, small caliber fire. Officer Daniel Angelucci said that he heard three or four gunshots at the point when Post Four said that they were taking shots and that people were coming out, but that he heard no shots subsequently. Captain Edward McLaughlin heard five or six popping sounds. A fireman suggested to him that those sounds were caused by aerosol cans or electric wires; McLaughlin told us, however, that, in his view, they were consistent with semi-automatic gunfire, but definitely not automatic fire. Fire Fighter Farrell testified to his observations from in and near 6226 Osage Avenue. First, while in the property's rear yard he heard what he believed were shots, although a policeman told him that these sounds were probably exploding unfired ammunition. Upon entering the premises and proceeding to the second floor front bedroom, he heard popping sounds. Although he still believed that this was exploding ammunition, he was told to get down. Thereafter, he heard gunfire, which he described as single shots, and then thought that he heard someone returning fire.

Testimony from witnesses further down 62nd Street, closer to Addison Street, was equally inconclusive. Officer James Haworth categorically denied hearing any gunshots. Officer Michael Ryan, however, stated that he heard three to five rounds fired which sounded to him like .22 caliber, semi-automatic fire, although

they could also have been single shots. He also told us that he did not see or hear any police weapon(s) being fired.

Numerous police officers and firemen were also concentrated in the area between Pine Street and Osage Avenue, in the half block immediately to the west of 62nd Street, during the pertinent time period. Their testimony was similarly divergent. Lieutenant Fred Endricat of the Fire Department testified to hearing one shot, followed by three or more shots. Fire Fighter John Sawyer heard two or three gunfire bursts close in time, the last being a rapid burst. Fire Fighter Bernard Boyd heard six single shots less than a minute after someone ordered people out with their hands up and stated that "they would not shoot." Officer Marone said he heard four or five shots at the pertinent time; Officers Thaddeus Cymerman and Marshall Freer, however, stated that they heard no such shots. Freer further stated that he heard no shots at all throughout the evening and was unaware of any police officer discharging his weapon. Cymerman qualified his testimony by saying that it was possible that he might not have heard the discharge of a .22 caliber firearm which makes less noise. He also said that no police weapon was fired from the area where he was located and that no one with whom he spoke acknowledged discharging a weapon. Officer Stephen Rementer told us that he heard what he believed at the time were ten to forty single, very slow, small arms gunfire shots. He also stated that snapping electric wires would have made almost exactly the same sound and that, what he had then thought was gunfire, might well not have been.

Witnesses in the Pine Street area gave similarly diverse evidence. Fire Fighter Bernard Dyer testified to hearing random gunshots -- more than one, but "not a lot more" -- while Fire Fighter Daniel Littley, who was close by, said he heard no shots, although there were sounds which he imagined that some could construe as gunshots. Sergeant Revel testified to hearing four or five .22 caliber shots coming from the back alley. Officer William Stewart, who followed Sambor to an alley on Pine Street, stated that he heard three or four muffled shots. (Stewart also gave credible testimony that he had never previously told a MOVE Commission investigator that he had fired a machine gun to clear this alley for Sambor.)

Sambor, who was also in the Pine Street alley, testified that he heard no gunshots at the time. Given this aspect of Sambor's testimony, as well as Captain Eugene Dooley's further testimony that he (Dooley) was relatively sure that he told Sambor that evening (based on the statements that he then took) that no police weapons had been discharged in the rear alley, we asked Sambor why he reported a back alley gun battle at a subsequent press conference. Sambor attempted to justify his action as follows:

... because one of the rumors, if you will, reports or whatever had come to my attention was that the police were shot at, and they had responded. And that is why I said that I made that comment at the press conference. But then when it was brought to my attention that there was no shooting, to avoid any further misapprehensions or misunderstandings of what did occur back there, I made a call

to either Inspector Tiers or Captain Kirchner, one of the commanders at the scene, to find out if there, in fact, had been shooting in that alley. And they came back into the press conference and told me no, there was absolutely no shooting in that back alley. And I then at that time relayed that to the press conference.

We cannot discern from this the reason for his thoughtless and ill-based statement to the media. It is unfortunate that the then Police Commissioner chose to so carelessly and cavalierly suggest to the media that a gun battle occurred when he had never verified this.

Most of the remaining witnesses within "earshot" of the back alley were in the vicinity of Cobbs Creek Parkway (63rd Street), between Delancey Street and Addison Street. Their testimony also varied greatly. The television technician in the area of Cobbs Creek Parkway and Delancey Street testified that he did not hear any sounds which he could identify as gunfire; Fire Fighter Joseph Jackson, however, who was close by at Pine Street and Cobbs Creek Parkway, testified to hearing a lot of rapid fire -- "rolling fire" -- lasting ten to twelve minutes. Fire Fighter Ralph Epper-son, who was at Cobbs Creek and Osage Avenue, testified to first hearing intermittent sounds and then automatic rapid sounds which sounded like they were coming from the MOVE house. Officer Louis Saxon said that he heard fewer than twenty shots, which appeared to come from weapons of two different calibers; Officer Forbes testified to hearing five to eight shots and stated that it was his impression that there was a gunfight in the rear of the MOVE house. Officer Matynka, however, said that, while he heard popping

sounds, he was not sure whether they were gunshots. Finally, Fire Fighter Thomas Shaw, who was on Cobbs Creek Parkway between Osage Avenue and Addison Street, said that he heard a single-spaced series of shots which was followed, after a pause, by a rapid fire response.

As the foregoing summary makes clear, there was absolutely no consensus with respect to the number (if any) of gunshots which were heard at the pertinent time by those individuals within ear-shot of the rear alley. The discrepancies among and between the testimony of those individuals, however, was partially resolved by the evidence offered by individuals who were closer to the back alley and, thus, better able to determine what happened.

Michael Moses Ward, previously known as Birdie Africa, was obviously one of the most significant and important witnesses in our inquiry into what occurred in the back alley. Throughout the events of May 13, 1985, Michael -- together with the other children and women residing in 6221 Osage Avenue -- remained in the house's dark attached garage. This lower rear portion of the compound had been modified so that it was accessible to the outdoors only through a small "door" or hatch which led to the back alley and could be opened only by an adult using a wrench or similar tool. It was not a true door, but, rather, a small opening which allowed a person to exit the compound by crawling.

According to Michael, at a point in the early evening, while the fire was in progress and all of the house's residents had gathered in the garage, Conrad Africa ("Rad") opened the small

rear door which gave access, by crawling, to the back alley. Michael said that he assumed Conrad used a wrench because that was what was normally used, but that he did not actually see the wrench. He also told us that he did not know whether Conrad then exited the house or merely placed his body in an exposed position by the opening.

Michael's perception of the events following was that, when the door was opened, he heard what he believed was rapid gunfire which he thought was coming from the police. At that point, Conrad closed the door but did not re-bolt it. Neither Conrad, nor anyone else, however, then said anything about gunfire.

Shortly after the door was closed, the adults started yelling: "We're coming out.... The kids are coming out." The door was then re-opened and, as Michael described it, "... we all started crawling over each other to get out." He described the interior of the garage as "hot and smokey." He told us the smoke was hurting his eyes and he felt "dizzy."

Once outside, Michael said he saw Ramona, "Tree," and Phil. He described Phil as about his size, and "Tree" as being taller. He testified that he last saw "Tree" up on the walkway which abutted the rear of the driveway behind the MOVE compound. Michael's final recollection of Phil was Ramona attempting to help him up onto that raised walkway in the driveway area. He also described for us how he walked down the driveway and was found by the police.

Significantly, Michael told us that no one had attempted to leave the compound before he heard what he thought was gunfire. He also stated that he heard nothing which he believed was gunfire either during or after the time when he and the others left the burning building by crawling through the door into the back alley.

The testimony given by the police and firemen who were in a position to see what happened in the back alley confirmed some aspects of Michael Ward's testimony but not others. Most importantly, these people corroborated Michael's assertions that no MOVE members were shot at after leaving their burning house and that individuals other than Michael and Ramona at least initially escaped into the alley. In no respect, however, did they corroborate Michael's assumption that there was police gunfire when the crawlway door was first opened by Conrad. Neither was there any agreement among any of these witnesses, including Michael, as to how many MOVE residents actually appeared in the alley.

The nearby back alley witnesses were primarily concentrated in three areas: (1) properties at the alley's east end abutting Pine and 62nd Streets; (2) the house at 6218 Pine Street, also known as Post Four; and (3) alley property to the west of the MOVE compound in the general area of 6246 Pine Street.

With respect to the first group of witnesses, Fire Fighter Stabinski was positioned so that he could see up the alley all the way to the MOVE house. At one point he heard several shots and fled. He had no idea where the shots came from and saw no one in the alley before leaving. He was absolutely certain,

however, that the shots were not fired by police officers in the area where he was located. Fire Fighter Murray also testified to hearing shots while in this general area. He heard a burst of four to five small automatic or erratic semi-automatic shots from the rear alley. This occurred at about 7:20 p.m. before he entered 412 South 62nd Street. After hearing the apparent gunshot burst, he entered 412 South 62nd Street and proceeded to the property's rear. While there, he heard a woman yelling "We're coming out. Don't shoot at us." At about this time he saw Stake Out officers in the alley and heard them say words to the effect "Come on out. We're not going to shoot at you." A few minutes later, he saw a woman and a child in the alley; he lost sight of them, however, when they made a dash to the wall. Later he saw the woman, without the child, three houses down the alley moving towards Cobbs Creek Parkway. Murray was absolutely sure that he heard no shots either when he saw the woman and/or child, or while the officers were shouting. Further, he was adamant that he would have heard shots had they occurred. He also told us that Stake Out officers later told him that they had seen three MOVE members in the yards, possibly with weapons.

In contrast, Fire Fighter Hamilton, who was inside 408 South 62nd Street from 7:10 p.m. on, was adamant that he heard no gunshots at the time when Murray said that they occurred. From his vantage point at the rear of 408, Hamilton saw four or five police officers and one confused child in the alley. He was uncertain of the child's sex, estimated the child's age as between eight

and fourteen years, and said he did not know if the child was Michael. He further testified that he did not hear any yelling.

Police officers in Post Four, overlooking the alley, also provided valuable evidence. They included Officers Marcus Barianna and William Trudel, and Sergeant Donald Griffiths, all of whom were located in the second floor rear bedroom of 6218 Pine Street. Barianna was positioned in the room's rear window which afforded him a view of the alley and the MOVE house. He heard a female voice yell three to four times "We're coming out ... don't shoot." He then saw a boy about twelve years old in the rear driveway adjoining the MOVE property. His next observations were of (1) a younger boy about seven years old; (2) a woman, whom he later identified as Ramona; and (3) an adult male. He saw Ramona running towards the middle of the yard, while the first boy, who appeared confused and scared, fell back off the wall and ran around the yard. The younger child was then within four feet of Ramona and was grabbed by her. At this same time Barianna saw the male standing, pointing a rifle in his direction. The officer reacted by ducking inside, at which point he heard a "crack" followed by three or four more cracks. He did not return the male's apparent gunfire, nor did any other officer in the room. When Barianna returned to the window he saw no one.

Trudel's description of what occurred was similar, but not identical. He was positioned in a window to the right of Barianna. He also heard the female's voice stating words to the effect that people were going to exit the MOVE compound with children. To

that point he had not heard any gunshots. Thirty seconds to a minute afterwards, he heard banging sounds, like an ax or a hammer, which caused him to conclude that someone was trying to open the 6221 garage door from inside. He then saw a young male, about ten to fourteen years old, who came out, climbed the back wall, and fell back. An adult female then came out and motioned to a young child about three to five years old. Next, Trudel saw a ten to twelve year old boy, followed by an adult male with a rifle. The adult male pointed the rifle at Barianna's position and fired four to five times. Trudel also told us that neither he nor anyone else returned fire. This was because the gunman had shielded himself with the young child. The gunman then disappeared in the smoke, as did the child with him, while the smaller child broke away from the female and appeared to run back into the MOVE compound. At that point, the adult female went towards the walkway and out of his view.

Trudel believed that the adult female he saw was Ramona and the child who fell back was Michael. He also told us that, after losing sight of the woman, he heard nothing which sounded like gunshots or which suggested that any MOVE members were driven back by gunfire. He said that he did not see the adult male with an infant in his arms. Neither did he see the male firing his rifle in a westerly direction down the alley as did Officer Tursi at the west end of the alley.

Griffiths, who was in the rear bedroom with Barianna and Trudel, did not have a view of the alley because those officers

were positioned by the room's windows. When the fire was so intense that he was about to order an evacuation, he heard a female voice shout "We're coming out ... don't shoot." Being in possession of a police radio, he started to broadcast what was occurring; while he was on the radio Barianna and Trudel reported to him that they were being fired upon and he heard four or five shots; these were followed by a slight hesitation and three or four additional shots. Griffiths said that Barianna and Trudel thereafter told him that they had "lost him." He also informed us that there was no return gunfire by the police, and said that attempts were made to give the people in the alley safe passage from the fire by opening the back door of 6218 Pine Street and yelling for the persons to come into the house to escape the fire.

Officer Thomas Fitzpatrick was on the first floor of Post Four when Griffiths began broadcasting on police radio from upstairs. Fitzpatrick categorically stated that, although he heard cracking sounds before the broadcast, he could not say that they were gunshots. He testified that, after the broadcast, he ran upstairs briefly, at which time he saw Griffiths, Barianna and -- he believed -- Trudel. He also said that no gunfire emanated from anywhere in Post Four at or about this time.

Officers Mellor, Tursi, Berghaier, D'Ulisse, Reiber and Mulvihill, who were in the western area of the alley, also testified to what occurred. Mellor recalled hearing four to six small caliber gunshots at almost the same time that Griffiths began

broadcasting on the radio. He could not see where the shots were coming from because of the debris behind the MOVE house which obscured his vision. He did see Ramona scaling the fence, and then observed an adult male with dreadlocks who looked towards their position and then disappeared behind the debris. Mellor next saw a disoriented young boy, whom he later identified as Michael Ward, attempting to make his way down the alley. Michael fell several times and was ultimately picked up out of a pool of water by Berghaier who dashed into the alley and carried him to safety. Mellor was positive that he heard only the four or five shots simultaneous with Griffiths' broadcast, and that there was no return fire from police.

Tursi testified that, from his point of observation at the west end of the alley, he witnessed MOVE members exiting 6221. He first saw Ramona scaling the fence, and then saw a light-skinned male with a rifle and a child scaling the debris behind the compound. Tursi saw the male fire several shots at the rear of the Pine Street homes, and then turn and fire several shots towards the western end of the alley. The male, who was firing with one hand and did not appear to be really aiming, then disappeared into the debris with the child. Tursi believed that the male was firing a .22 caliber bolt action rifle and said that he did not hear any other gunfire. He also frankly acknowledged that he could not explain how a bolt action rifle could be fired with such rapidity with one hand.

Tursi next saw Michael attempting to make his way down the alley and witnessed his rescue by Officer Berghaier. Both Mellor and Tursi told us that an electric transformer located on a utility pole above their position was crackling rapidly when Ramona and Michael were found by police. According to Mellor, the sound of the electrical transformer was so ominous that the officers evacuated their position to get away from nearby pools of water.

Berghaier also testified to hearing small caliber gunshots (probably .22 caliber fire), but stated that he heard only three single spaced shots. He first saw Ramona coming over the fence of the MOVE yard and then saw Michael emerge from the fire as he walked down the alley. From this point his attention was directed almost exclusively to Michael. Berghaier repeatedly waved and hollered for the child to keep coming towards him and saw him fall while Ramona was attempting to pull him up the walkway. Michael got up, but fell into a pool of water. Berghaier then ran into the driveway and took Michael to safety.

D'Ulisse, Mulvihill and Reiber offered less detailed testimony about people's movements in the alley. Besides seeing Ramona and Michael, D'Ulisse saw three figures, five or six houses down, but could not see if these people had any firearms. He said he heard no gunshots and did not see anyone -- MOVE member or police officer -- fire a weapon.

Besides seeing Ramona and Michael, Reiber saw a third person. He was unable to say whether that person had a weapon; the record suggests that this individual was an Osage Avenue neighbor, not a

MOVE member. Reiber also told us that, while it was noisy in the back alley, he did not hear anything which he distinguished as gunshots. He also stated that he did not see any children besides Michael.

Mulvihill apparently did not see any MOVE members besides Ramona and Michael. He also said that he did not see anyone fire a weapon and that he did not hear any gunshots. Had a .22 been fired, however, he said that it was possible he might not have heard it.

We have herewith set forth in extensive detail the testimony of the vast majority of the witnesses who gave evidence pertaining to the back alley. Our purpose was to make clear not only the diversity of the recollections of the individuals who saw and heard the events in question, but also the traumatic circumstances in which those recollections were formed. We want to make it very clear that we do not question the integrity of any of the witnesses to these events whose testimony we have referenced or any of the other witnesses who provided evidence about these matters. Indeed, it is significant, and we wish to note, that many police officers who had previously refused to testify spoke to the investigating attorneys and testified before us without even requesting immunity. We also believe that Michael Moses Ward testified honestly as to his impressions of what occurred.

The fact that we have concluded that the witnesses testified to the truth as they believed it to be, however, is not dispositive

with respect to the accuracy of their recollections. Since their evidence was quite frequently conflicting, of necessity some of their testimony had to be discounted or rejected by us. For example, of those witnesses who testified that they heard gunfire, some said that it was automatic fire, while others described it as semi-automatic fire, and still others limited the shooting to a few single shots. The accounts of those who heard automatic fire ranged from six shots in succession to ten or twelve minutes of rolling gunfire. Others, of course, said there was no gunfire at all, while many witnesses said that there were lots of noises which could have been confused with gunfire.

Having heard and considered all of this testimony, we reject any contention or conclusion that a pitched gun battle, of any sort, between the police and MOVE members occurred in the back alley. Such a finding is absolutely inconsistent with the vast weight of the extensive evidence presented to us. Moreover, against all of this testimony regarding sounds consistent with gunfire, not one witness testified that he saw any police officer fire a weapon in the alley on the evening of May 13, 1985. Nor did any officer admit such action even though some officers testified with immunity and, thus, could freely have admitted to firing at MOVE. It is our conclusion that the extent of the gunfire in the back alley was limited to between four to ten rifle shots fired by an unidentified male MOVE member.

The only direct evidence offered by witnesses present on May 13, 1985, which even remotely suggests that police earlier fired

on persons in the MOVE compound when they attempted to leave, was Michael Ward's impression that he heard gunfire when "Rad" first opened the crawl space. When put in the context of the sounds barraging Michael and the others on the scene, however, the accuracy of his perception simply is not at all clear and we decline to find that what he heard was gunfire. Michael was exposed simultaneously to the roar of the fire and to the crackling of electrical wires and transformers. These facts, coupled with the ordeal which Michael underwent for nearly fourteen hours prior to leaving the compound, explain his erroneous impression. Indeed, that misperception is in many respects confirmed by Michael's own testimony (1) that no one discussed the police firing on the compound when the crawl space was first opened, and (2) that neither Michael nor any other MOVE member was fired on by police when they subsequently exited the compound.

The only additional evidence even remotely implicating any police officer in questionable conduct in the back alley was offered to us by Detective William Stephenson. According to Stephenson, Griffiths stated after the incident that the digging should be concentrated at a particular place at the rear of the MOVE property because Griffiths "dropped a male who fired upon him as a woman and child came out, or words to that effect." Stephenson told us that he overheard this remark at the scene, while he was thirty-five to fifty feet away from Sergeant Griffiths and while a crane was operating.

We do not question Stephenson's integrity; we are, however, compelled to reject his testimony. In part, we do so because Stephenson himself told us that he may have "misunderstood" or missed a word that would put Griffiths' statement out of context. He also admitted to us that he had previously told a MOVE Commission investigator only that "it's possible he (Griffiths) said dropped him or he was dropped." More importantly, however, Stephenson's testimony on this point is at variance with considerable other evidence. Stephenson said, for example, that eight or so other persons were nearby when Griffiths' remark was made, but no one else verifies Stephenson's recollection of the event. In this regard it is particularly noteworthy that Battalion Chief Skarbek, who testified before the MOVE Commission about his impression of a similar statement by a police sergeant to the crane operator in the back alley after the incident, was certain that Griffiths was not the person who made that statement. When Skarbek then testified he also substantially qualified his degree of certainty about what he thought he heard.

We have concluded that the testimony of Griffiths and others with respect to the post-incident back alley conversation is the more credible explanation of what occurred.

Griffiths testified that, on May 16, 1985, while at the scene, someone asked him to point to where the MOVE member with the rifle had been in the alley. He replied that he could not, but that he could get someone who would. He then summoned Trudel, who showed them the area and said "he dropped out of sight about

here." At that point Griffiths turned to the authorities and repeated Trudel's remark. Trudel confirms Griffiths in his testimony. He said that, during his May 16, 1985 conversation with Griffiths and others, he (Trudel) pointed to an area in the alley and said, "That is where I last saw the [male]; that is where he dropped out of sight," and that Griffiths then repeated this statement to the police. Moreover, no human body was recovered from the area in question, but only an animal carcass. Finally, and equally significantly, there is overwhelming evidence that no one in Post Four, including Griffiths, fired a weapon during the evening of May 13, 1985. Indeed, it would have been physically impossible for Griffiths to have done so because he was on the floor of Post Four talking on the radio when the shooting occurred, not at the window, and never even saw anyone in the alley.

We are aware that our determination of the events in the back alley conflicts with the conclusion reached by the MOVE Commission. The Commission, for example, found that a man and a boy tried to exit but returned to the house as a result of police gunfire (Finding No. 28, p.353). Absolutely no evidence presented to this grand jury supports such a finding, however. Michael testified that "Rad" opened the garage door, heard the gunfire, and then closed the door. The adults then started to yell that they were coming out, opened the door again, and began coming out. Michael specifically testified that he did not hear any gunfire after they opened the door for the second time and began to come out. This is consistent with the testimony of the many

witnesses who had some view of the back alley, none of whom -- including Michael -- saw any officer fire his weapon.

Moreover, we heard credible evidence that several officers at the scene demonstrated a great desire to save the lives of MOVE members and children: When the male MOVE member fired at police, Tursi did not return fire for fear of hitting a child. Berghaier watched Michael attempt unsuccessfully to scale the fence, fall (hitting his head on the concrete), then wander in a daze away from the officers, and finally fall face-down in a pool of water. Despite the risk that he might be shot by MOVE members, burned in the fire or electrocuted by live wires falling into the water, Berghaier went deeper into the alley to rescue Michael. (Berghaier subsequently left the Police Department because of emotional stress from the events of May 13, 1985.) Marandola, Griffiths, and Griffiths' men remained in Post Four even as it became engulfed in flames, yelling for MOVE members to come into the post and escape through the front door onto Pine Street with them. (The metal-framed eyeglasses of Griffiths' subordinate officer actually buckled in the intense heat as they waited.)

Our disagreement with the Commission's finding is based on the evidence presented to us. However, because the issue is critically important, we have also reviewed the evidence upon which the Commission based its conclusion. It is our opinion that the evidence cited by the Commission -- the presence of a few metal fragments in three decedents and its interpretation of Michael Ward's testimony -- does not support its own conclusion.

The Commission reproduced in its Report a portion of its interview with Michael, which it believed "so clearly supports [the Commission's finding] that it is difficult to imagine how any individual who saw this child testify or who has had the opportunity to read the transcript of his testimony could possibly reach any other conclusion" (Foreword to the Report of the Special Investigation Commission, p.278). We note initially that Commissioner Kauffman, whom we assume saw Michael testify and read his transcript, did reach another conclusion. We further note that nowhere in the transcript does Michael explicitly say that MOVE members actually exited and then returned. Instead, Michael indicated in his testimony before the Commission that Conrad "was taking Tomaso out" and that he "tried" to take Tomaso out. When asked whether Conrad had anything in his hands when he went outside, Michael answered "He didn't go outside," and when asked "Did he get all of you all the way out of the garage door with Tomaso?" (an ambiguous question), Michael replied negatively. Although Michael's testimony is unclear, apparently no MOVE person actually got out of the garage before the police gunfire allegedly heard by Michael was supposed to have occurred.

Moreover, the Commission's finding relied heavily on Michael's putative ability to identify gunfire. As Commissioner Kauffman noted, however, Michael testified that he had never heard gunfire in his life. Commissioner Brown completely discounted that by noting Michael had heard 10,000 rounds fired that day. However, veteran Stake Out officers on the scene -- who have heard many

more than 10,000 rounds fired in their careers -- testified that they could not determine whether the noises they heard that evening were gunfire, live wires crackling, abandoned live ammunition detonating, aerosol cans or gas pipes exploding, or any other number of possible concussions. We thus find Michael's identification of gunfire dubious.

Furthermore, even had Michael normally been able to distinguish among noises, his perceptive abilities that night may have been quite limited. As previously noted, Michael spent the entire day in the garage (at times wrapped in wet blankets), surrounded by many people and dogs, with no light, during a violent confrontation between his "family" and police. He was given nothing to eat or drink the entire day. By the evening of May 13, 1985, he said, he felt dizzy as he sat in the smoke-filled garage. Such a state of physical, emotional and mental exhaustion is not conducive to keen or even accurate perception. Indeed, Michael apparently was unable to distinguish MOVE members by their voices that night, let alone distinguish gunfire from other noises: He testified that "Ball" (John Africa) was in the garage during the fire and gave the order to let the children out, yet all of the evidence suggests that John Africa died long before the fire and was in fact the body seen by Angelucci in the crawl space during the morning confrontation. This inaccuracy in Michael's testimony, together with his fatigued state and the inability of experienced officers to distinguish gunfire from the other noises heard that evening, casts considerable doubt on the Commission's conclusion.

(Moreover, even if Michael's testimony is deemed reliable, then his testimony before both this grand jury and the MOVE Commission that he heard no gunfire after MOVE yelled that they were coming out establishes that police gunfire did not drive MOVE members back inside.)

Finally, in support of the Commission's finding, Commissioner Brown noted (as discussed in Part XI below) that metal "fragments" consistent with double-ought buckshot were found in one child's body. Dr. Robert Segal of the Medical Examiner's Office testified, however, that although a single fragment found in one child's arm was consistent with buckshot, the absence of any other pellets in her body made it inconceivable that she had been shot. Moreover, no one has ever testified to hearing shotgun blasts in the back alley. Thus, the evidence does not support the Commission's finding.

Another version of the events in the back alley, which has been publicly asserted by some individuals, is that police killed the MOVE members and children as they fled the burning compound in front of dozens of witnesses and then jammed their bodies back into the house. To accept this explanation, however, one must not only believe that police murdered the children in cold blood, but also that they then risked being shot by MOVE members as they went into the intense heat of the burning block and shoved wounded/dead adults and children one by one through the house's tiny door. The theoretical improbability of this explanation, the lack of any evidence to even remotely support it, and contrary

physical and medical evidence, including, inter alia, the placement of the bodies at particular levels and under debris (discussed more fully in Part XI below), compel us to give it no further consideration.

The most reasonable explanation of what happened in the back alley is that the one adult besides Ramona Africa and the one or two other children besides Michael Ward who came out chose to return to the compound out of fear, confusion, a mistaken belief that the police were firing at them or that the garage was safe, or simply based on irrational decision-making. The area into which those who escaped the garage emerged was hellish: Many of the houses along the back alley were engulfed in flames, and at least some portions of the fence surrounding the compound were on fire. To get out of the yard, MOVE people had to climb up a pile of debris, grab onto a fence along the walkway and hoist themselves over it -- a task which not all of those who tried were able to do. Burning tree branches were falling in the yard; one of the children apparently was burned by a falling limb. Unfired ammunition was exploding, wires were crackling, and numerous other concussions were causing loud, explosive sounds not unlike gunfire. Into this terrifying scene came children who were frightened, hungry, tired and confused. One ran in circles, one stood still crying or screaming. Michael did not always follow Ramona and at one point even wandered in the opposite direction. It is not implausible to suggest that these children -- physically weak,

emotionally distraught and mentally confused -- may have gone back into the compound to be with the adults.

The one adult seen in the yard may have been similarly confused or, hearing the numerous popping noises, may have thought he was being fired on by police and so returned to the compound. Additionally, the adult may have returned to the compound to "cycle" himself, as the MOVE doctrine termed dying, for his cause. Finally, it is possible that some irrational motive prompted his return. (It is worth bearing in mind that MOVE chose an armed confrontation with the Philadelphia Police Department rather than surrendering when they had but five weapons, and then chose to remain in a burning building, keeping their children inside, for nearly two hours before anyone even suggested leaving. Such decision-making is not, by most standards, rational.)

In summary, we have concluded that, although the evidence does not conclusively establish the reason why MOVE members and children -- if they did indeed leave the garage -- nonetheless returned, the evidence does not support the MOVE Commission's finding that police drove MOVE people back inside. The evidence also refutes the irresponsible allegation that police killed MOVE members and stuffed their bodies in the house. With respect to these points, there is no doubt whatsoever.

We have conducted a lengthy and thorough investigation, fully cognizant of the MOVE Commission's view that there was police impropriety committed in the back alley during the evening of May 13, 1985, as well as the desire of some to find that police

criminality occurred. Our endeavors, however, have disclosed no credible evidence even suggesting, much less tending to prove, that the police in the back alley either engaged in a gun battle or discharged their weapons during the evening of May 13, 1985. There was no discernible police misconduct in the back alley and we so find.