

IN THE

IN THE

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
DIVISION - TRIAL DIVISION - CRIMINAL SECTION

IN RE:

86-007363

COUNTY INVESTIGATING

GRAND JURY OF

MAY 15, 1986

REPORT OF THE GRAND JURY

OFFICE OF  
DISTRICT ATTORNEY  
PHILADELPHIA

RONALD D. CASTILLE  
District Attorney

NO LOAN

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
TRIAL DIVISION -- CRIMINAL SECTION

IN RE: : 86-007363  
: :  
COUNTY INVESTIGATING GRAND : :  
: :  
JURY OF MAY 15, 1986 : :

FINDINGS AND ORDER

AND NOW, this 20<sup>th</sup> day of *April*, 1988,  
after having examined the Report and Record of the County Inves-  
tigating Grand Jury of May 15, 1986, this Court finds that the  
said Report is within the authority of the Investigating Grand  
Jury and is otherwise in accordance with the provisions of the  
Grand Jury Act. In view of this finding, the Court hereby accepts  
the Report and refers it to the Clerk of Court for filing as a  
public record.

*Charles L. Durham*  
Honorable Charles L. Durham

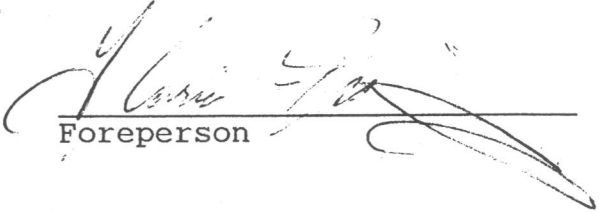
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
TRIAL DIVISION -- CRIMINAL SECTION

IN RE: : 86-007363  
: :  
COUNTY INVESTIGATING GRAND :  
: :  
JURY OF MAY 15, 1986 :

REPORT

TO THE HONORABLE CHARLES L. DURHAM, SUPERVISING JUDGE:

WE, the County Investigating Grand Jury of May 15, 1986, having been charged by the Court to investigate the events of May 13, 1985, and subsequently, arising from and related to the service of warrants at 6221 Osage Avenue, and having obtained knowledge of such matters from witnesses sworn by the Court and testifying before us, upon our respective oaths, not fewer than twelve (12) concurring, do hereby submit this Report to the Court.

  
Foreperson

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
TRIAL DIVISION -- CRIMINAL SECTION

IN RE: : 86-007363  
: :  
COUNTY INVESTIGATING GRAND : :  
: :  
JURY OF MAY 15, 1986 : :

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION . . . . .	1-13
II. HISTORY OF MOVE . . . . .	14-31
III. PLANNING FOR THE SERVICE OF WARRANTS AT 6221 OSAGE AVENUE . . . . .	32-79
IV. LEGAL RAMIFICATIONS OF THE CHILDREN'S PRESENCE . . . . .	80-90
V. SOME TANGENTIAL LEGAL MATTERS . . . . .	91-95
VI. THE MORNING OF MAY 13, 1985 . . . . .	96-121
VII. THE USE OF THE SACHEL CHARGE . . . . .	121-160
VIII. THE DECISION TO LET THE FIRE BURN . . . . .	161-205
IX. EVENING OCCURRENCES IN THE BACK ALLEY . . . . .	206-234
X. THE FIRE DEPARTMENT'S HANDLING OF THE FIRE . . . . .	235-238
XI. EVIDENCE RETRIEVAL AND ANALYSIS . . . . .	239-257
XII. THE C-4 COVER-UP AND RELATED ISSUES . . . . .	258-278
XIII. CONCLUSION . . . . .	279

APPENDIX:

PLAN OF OSAGE AVENUE AREA

PHOTOGRAPH TAKEN FROM BACK OF MODEL DEPICT-  
ING 6221 OSAGE AVENUE

## I. INTRODUCTION

On May 13, 1985, the Philadelphia Police Department, at the direction of Mayor W. Wilson Goode, attempted to serve a search warrant and various arrest warrants at 6221 Osage Avenue, the headquarters of an organization called "MOVE." An urban disaster of scarcely imaginable proportions resulted.

The immediate toll of the May 13th assault was unprecedented: eleven people died, an entire neighborhood lay in ruins, and two hundred and fifty people were left homeless. This debacle's more far-reaching costs and effects will probably never be accurately assessed. The suffering and human misery incurred by the participants and the displaced alike are incalculable. Some officers involved in the confrontation have left the Philadelphia police force because of psychiatric disabilities caused by the incident. Others, including the displaced victims, have been psychologically scarred. Many people will be affected by this incident for the rest of their lives.

The tangible costs to the Philadelphia taxpayers are somewhat more quantifiable and eventually may be tabulated. Undoubtedly, the total cost will be staggering.

A separate grand jury investigation, for example, has already considered the Osage Avenue rebuilding effort and noted in its 1987 report that more than \$9 million had already been spent although the project's total cost should have been about \$6.5 million.

On February 19, 1988, it was reported that, according to City records as of that date, the projected cost of the MOVE confrontation had risen to \$19.2 million. This figure included rebuilding costs, relocation costs, and the City funds expended to provide private legal representation for Mayor W. Wilson Goode and other administration officials involved in the incident, as well as the money spent to finance the investigation ordered by Goode and conducted by the Philadelphia Special Investigating Commission (better known as the MOVE Commission). The \$19.2 million, however, did not include either the expense of the prior grand jury investigation into the Osage Avenue rebuilding efforts or the expense of this grand jury investigation which was convened only after the completion of the MOVE Commission's work. Apparently, it also did not include any estimate as to the ultimate price tag for the many civil suits now pending against the City of Philadelphia and its officials. Their final resolution may well prove extremely costly to the City and its citizenry.

Using the statutory procedures which are available only to investigating grand juries, and which therefore were unavailable to the MOVE Commission, we, the Special Investigating Grand Jury of May 15, 1986, have reviewed all of the events surrounding May 13th. Because of the powers peculiarly available to us, we have been able to conduct an exhaustive and dispositive investigation, and to determine whether any criminal charges are warranted. This has been a huge undertaking. The commitment of resources,

however, was well justified, as this incident demanded as full and complete an investigation as possible. We are satisfied that our investigation accomplished that goal.

More than one hundred and twenty-five witnesses appeared before us during the course of our inquiry. The quality, as well as the quantity, of this testimony warrants reference. One of the significant advantages of secret grand jury testimony is that witnesses are more candid and critical than those being questioned in a public forum such as the MOVE Commission. As a result, Police and Fire Department witnesses spoke more freely and critically before us than they had previously. Further, many others, who had earlier refused to testify, voluntarily appeared before us and testified under oath.

The investigating attorneys and investigators also interviewed a plethora of additional witnesses. For example, all neighbors within two blocks were interviewed. There was extensive interviewing of Fire Department personnel which went beyond interviews with every Fire Department official on the scene. Attorneys and investigators alike went out to fire stations to talk to every fire fighter who was present on May 13, 1985 to determine what they learned or saw. Interviews also were conducted with as many police officers on the scene as was possible. Many of the individuals thus interviewed as part of our investigation were not called to testify before us only because it was determined that they had nothing additional to offer which would be germane to our inquiry.

Nor did investigative efforts stop with these comprehensive interviews. The investigating attorneys reviewed all statements given to either the Police Department or the MOVE Commission by anyone connected with this event, all testimony given before and materials offered to the MOVE Commission, all of the notes of testimony from Ramona Africa's trial, and many other materials which previously were unavailable or which had not been fully utilized. By way of illustration, all known video or audio tapes from May 13, 1985 (including broadcast and unaired footage) were obtained and reviewed. Using these and other materials, what occurred on May 13, 1985 could be more accurately determined than previously, sometimes on a second-by-second basis. All known and existing radio and television tapes (again, both on- and off-the-air material) from all press conferences, news interviews and any other known media appearances relating to May 13, 1985 were also obtained and reviewed. As a result, when individuals such as Goode and Former Managing Director Leo Brooks were questioned before us, the attorneys were able to confront them with these materials, many of which the witnesses had not been able to review in preparing to testify. The entire MOVE Commission transcripts were also made part of the record before us. Frequently, witnesses testifying before us were questioned about the testimony adduced at those proceedings.

We are satisfied that, with one exception, we have heard from all witnesses, and have had access to all individuals and materials, either necessary or helpful to the inquiry. The



inherent nature of a grand jury investigation, and the way in which this investigation was conducted, accounted for the accessibility of many previously unavailable witnesses and sources of information. For example, the previously unaired and unavailable media film enabled us to reach new conclusions with respect to the spread of the fire which devastated the Osage Avenue area and to far more precisely determine the point at which the entire block was irrevocably lost to the inferno.

Similarly, various serious impediments to the MOVE Commission's functioning were of far less moment to our investigation. The Commission's inquiry, for example, was seriously hindered by the wall of silence thrown up by attorneys for some members of the Police Department. In his Forward to the Commission Report, Chairman William H. Brown, III, noted the existence of a "campaign to obstruct our investigation" and discussed at length the legal and other concerns raised by a single law firm's blanket representation of virtually all Fraternal Order of Police members. One of Brown's concerns about this arrangement was that "many of the individual officers clearly had dissimilar interests," with the result that collective representation could have a chilling effect on any potentially cooperative police witness. Our inquiry was not similarly thwarted. Rather, litigation initiated by the investigating attorneys from the District Attorney's Office resulted in court orders eliminating the previous blanket representation. Consequently, many police witnesses who had earlier followed the

advice of counsel and refused to testify were represented by new, separate counsel and voluntarily appeared before us.

Other tools were available to obtain the testimony of those few who still refused to cooperate in our search for the truth. In many instances, the investigating attorneys obtained rulings from the original supervising judge, the Honorable Juanita Kidd Stout, that a witness must testify because no basis existed for claiming a fifth amendment privilege. In those rare instances where a claim of privilege was upheld, we had available to us a unique tool, the use of which was recommended by the MOVE Commission: a limited grant of immunity to compel a witness' testimony. (Witnesses so treated are not immune from prosecution; rather, their immunized testimony cannot be used against them in any way.) We carefully and cautiously used that tool to call witnesses where appropriate. Thus, we were able to resolve open factual questions bearing upon issues which could not be fully explored other than by a Grand Jury.

The one potentially important witness from whom we did not hear was Ramona Johnson Africa. (As all MOVE members use the last name Africa, they will sometimes be referred to by their first names for purposes of clarity.) Testimony presented to us established that various investigators and investigating attorneys met with Ms. Africa for the purpose of securing her testimony. Her response was reported to us as belligerent, arrogant, and consistently uncooperative. She said that any decision as to whether she would testify had to be a "family decision." After

Ms. Africa conferred with her family -- MOVE members -- our investigators were informed that she would not testify.

We are, of course, well aware that a witness must invoke a fifth amendment privilege, and that a court must find that the privilege has been validly invoked, in order to refuse to testify before us. We are also well aware that such did not occur here. It was our judgment, however, that no purpose would be served by forcing Ms. Africa to testify. To do so would not have advanced the truth-determining process with which we have been concerned. This was clear from testimony offered by her in other proceedings which indicated that the "establishment's" judicial system, and the sanctity of the testimonial oath, are without meaning to her and to all other MOVE members. Had we compelled her presence, she would either have stood mute, or, more likely, used her appearance before us as a forum to speak out on behalf of MOVE and its beliefs, rather than to testify to relevant events. Since none of these alternatives was acceptable to us, we chose not to compel her testimony. Indeed, even had we invoked our contempt powers in an effort to do so, there would have been little incentive for her to testify truthfully before us given her beliefs and her present incarceration.

Notwithstanding Ramona Africa's practical unavailability, we believe that the investigation which we conducted was thorough. As a consequence of our work, many matters and issues pertinent to May 13th and its aftermath have been resolved and details with respect thereto can be specified.

Our investigation has revealed considerable incompetence and ineptitude. It has not, however, disclosed any actions which we believe warrant the filing of criminal charges. We sought to determine and reveal the truth, and to resolve the inconsistencies in the testimony heard by us. As is more fully specified in this report, we have conducted a definitive and exhaustive investigation which we believe achieves that goal. We heard more than one hundred and twenty-five witnesses. We have evaluated and considered, among other things, (1) the facts as testified to by those witnesses; (2) the credibility of their testimony; and (3) instructions with respect to the applicable law. Based thereon, it is our collective judgment that no criminal charges should be lodged. The specific reasons for that conclusion are set forth subsequently in this report.

Although we believe that our investigation was all-encompassing and this report is complete, we would be remiss in our obligations to the public if we did not briefly note certain difficulties which faced us by virtue of this incident's unique history. Grand jury investigations are, by their nature, secret investigations. The existence of a particular grand jury investigation frequently is not widely known; rarely are the contents of such investigations made public as they progress. These factors reduce the likelihood that actual or potential grand jury witnesses will compare and/or mold their recollections. Further, as developing testimony ordinarily is not widely aired, there also is no attendant risk that

such reports will inadvertently color or affect another witness' recollection.

Unfortunately, those conditions did not prevail with respect to this grand jury investigation because it was preceded by another, very public probe conducted by the MOVE Commission. Shortly after May 13, 1985, various individuals urged the convening of an investigating grand jury, a call not heeded by the then District Attorney. Instead, he successfully defeated a legal action brought to force a grand jury's empanelment, and chose instead to rely, at least in the first instance, on the MOVE Commission's inquiry. This course of action had some very substantial and rather unfortunate results.

From a practical viewpoint, the first and most obvious result of the decision not to immediately convene a grand jury was that our investigation had to follow the MOVE Commission's publicly aired inquiry. During the Commission hearings, participants and potential witnesses were able to sit before their television sets day after day and hear others' versions of the events of May 13th. These proceedings were also extensively reported by the print media; exact testimony was sometimes reproduced. Many of the witnesses who thereafter testified before us candidly stated that they could not be certain how much their recollections were colored or affected by their exposure to the publicly aired and printed testimony of others.

The MOVE Commission's formation also caused the issuance of an administrative directive that the investigation already in

progress by the Police Department's Homicide Unit should not proceed. The theory behind this order was that it should not appear that the Department was attempting to interfere with or obstruct the Commission's efforts. One unfortunate result of this directive was that detailed, specific statements which could have been promptly taken by detectives having some overall knowledge of the case were not obtained. Instead, Police Department questioning was halted after the generation of less helpful, and often confusing and misleading, "preformat" statements which were the product of interviews conducted by police officers not so familiar with the case. (In these interviews, police witnesses simply answered a standard set of questions which bore no relationship to the role of the individual officer being interviewed.) Inaccuracies and misunderstandings may also have arisen because it subsequently was the consistent policy of the MOVE Commission investigators, when they later took over the investigatory efforts, not to allow the individuals interviewed immediately to review and correct the investigatory summaries of those interviews. The possibility also cannot be discounted -- although we have found no evidence specifically supporting such a theory -- that some witnesses used the hiatus before this investigation was commenced to mold their testimony, after having the benefit of hearing others and seeing what matters were of interest to those investigating under the Mayor's mandate. Moreover, at the very least, the delay in convening this grand jury investigation created the possibility that

the passage of time dimmed the memories of some witnesses on whom we had to rely.

In making these points and raising these possibilities, we do not intend to criticize the work of the MOVE Commission or its members. While we differ with some of their analysis and conclusions, we believe that the Commissioners acted professionally and performed a valuable public service. For that they should be commended. The fact remains, however, that, by preceding this Grand Jury, pursuant to the Mayor's directive, the Commission inadvertently may have shaped or affected the testimony available for us. The possibility also exists that they created legal problems (more fully discussed later) which could have been very significant had criminal charges been brought.

By way of introduction, it remains only for us to briefly outline the format and objectives of our report. Based on the necessarily limited evidence available to them, and absent substantial legal analysis, the MOVE Commission offered in its final report not a narrative of events but numerous factual findings and putative legal conclusions with respect to certain conduct which occurred. For example, absent the duty or authority to issue criminal charges, the Commissioners felt free to label certain conduct as "grossly negligent" and other conduct as "reckless," terms which are statutorily defined for purposes of charging individuals with crimes. In contrast, we have chosen to discuss at length not only the events of May 13th but also all significant

preceding and succeeding events and to include in those discussions our factual findings and legal conclusions. The latter are based on legal analysis which was not undertaken by the Commission. In that way the basis for our disagreement with certain of the Commission's findings and conclusions will be clear. Otherwise stated, we have undertaken in this report to fully summarize, discuss and analyze one of the most massive grand jury investigations in Pennsylvania history.

Additionally, we have determined that we will offer only very limited recommendations. One of the MOVE Commission's accomplishments was to offer numerous suggestions regarding (1) the future operations of City government and City departments, (2) local responses to crisis situations, and (3) the proper enforcement of certain laws and regulations. We believe that such matters, which were particularly addressed to the proper functioning of City government, are best left to and most appropriately discussed by a Commission convened by the City's Chief Executive. Our recommendations, therefore, are far fewer in number and relate primarily, but not exclusively, to the enforcement of the criminal laws, the principal focus of our inquiry.

Lastly, it would be impossible to duplicate in this report the public outrage which surfaced in the wake of this disaster and to even try to do so would be less helpful than the path we have chosen: To lay out in one cohesive and dispassionate document the essential facts as we find them to be, together with our analysis and explanations as to why charges will not be brought.



ons  
d  
n  
is-  
,  
i  
l-

We have conducted a far-reaching and comprehensive investigation. The facts, as we find them to be, can and should speak for themselves.

Our detailed report follows.