

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>FREDERICK MARTIN,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>CITY OF PHILADELPHIA,</b>	:	
	:	
<b>JOHN F. TIMONEY, Individually and</b>	:	
<b>in his official capacity as Philadelphia</b>	:	
<b>Police Commissioner,</b>	:	
	:	
<b>THOMAS M. DORSEY, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police officer,</b>	:	
	:	
<b>DONALD SUCHINSKY, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police officer,</b>	:	
	:	
<b>DANIEL COCCIA, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>MICHAEL WHALEN, Individually and</b>	:	
<b>in his official capacity as a Philadelphia</b>	:	
<b>police Captain,</b>	:	
	:	
<b>NICHOLAS MANGINI, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police Lieutenant,</b>	:	
	:	
<b>JAMES KIMREY, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police Sergeant,</b>	:	
	:	
<b>YUSEF COOPER, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>JOSEPH GOODWIN, Individually and</b>	:	

<b>in his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>JOSEPH SACRO, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>GEORGE SCOTT, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>WILLIAM SELLERS, Individually and</b>	:	
<b>in his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>CHARLENE WALTON, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police officer,</b>	:	
	:	
<b>ANDREW YALETSKO, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police officer,</b>	:	
	:	
<b>Defendants.</b>	:	<b>NO. 99-543</b>

**MEMORANDUM**

**DUBOIS, J.**

**JULY 24, 2000**

In this civil rights action, plaintiff Frederick Martin (“plaintiff”) seeks redress for alleged police misconduct at the annual Greek Picnic in Philadelphia on July 11, 1998. Presently before the Court are three separate defense motions for summary judgment--one filed by the City of Philadelphia (“City”), one filed by John Timoney, the Philadelphia Police Commissioner (“Commissioner Timoney”), and one filed by Captain Michael Whelan, Lieutenant Nicholas Mangini, Sergeant James Kimrey, and Officers Andrew Yaletsko, Charlene Walton, William Sellers, Joseph Sacro, Joseph Goodwin, Yusef Cooper, George Scott, James Kimrey, Nicholas

Mangini, Michael Whelan, Daniel Coccia, Donald Suchinsky and Thomas Dorsey of the Philadelphia police (the “individual officer defendants” and, together with the City and Commissioner Timoney, “defendants”).

## **I. BACKGROUND**

The evidence may be summarized as follows:

The Greek Picnic has been an annual event in Philadelphia, attracting a large number of African-American college students, many of whom are members of fraternities and sororities. In 1998, it was held on July 11th. All of the individual officer defendants are alleged to have participated in the beating of plaintiff at this picnic, directly or indirectly, or in events related to the beating.

The incident in question appears to have been triggered when Lieutenant Nicholas Mangini of the Philadelphia police SWAT team was struck with a bottle.<sup>1</sup> A number of witnesses, including defendants Goodwin, Yaletsko and Scott and Officer John Feenan--all of the Philadelphia police--and Emmanuel Hurst and Daniel Hurst--two civilians--identified plaintiff as the individual who threw the bottle that struck Lieutenant Mangini. However, these witnesses differ as to where the bottle struck Lieutenant Mangini--in the head, neck, chest or back.

After observing plaintiff throw the bottle, Officer Goodwin grabbed the back of plaintiff's shirt. Plaintiff subsequently broke free of Officer Goodwin's grasp and Officer Goodwin struck plaintiff with his baton. A number of other officers came to Officer Goodwin's aid. The parties

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<sup>1</sup>The bottle was thrown from a crowd which was apparently gathered to observe a struggle between Philadelphia police officers and an individual later identified as Yuri Spangler. Spangler also alleges that he was beaten by Philadelphia police officers, but his claim is not before this Court.

disagree as to whether plaintiff resisted these officers' attempts to subdue him. According to the officers nearby, plaintiff continued to flail his arms and legs in an attempt to get away. Plaintiff, however, contends that he was in a fetal position in an attempt to protect himself. In the ensuing moments, a number of Philadelphia police officers--between five and ten--struck plaintiff with blackjacks and/or batons. In addition, at least one officer--Officer Dorsey--kicked plaintiff while he was on the ground. Much of this incident was captured on videotape.

After this incident, plaintiff was handcuffed and transported to the 18th District police station by Officers Walton and Suchinsky. Upon arriving at the 18th District, Officers Walton and Suchinsky took plaintiff to a holding area and informed the officer on duty that plaintiff was under arrest for aggravated assault. Ten minutes later, Officer Suchinsky returned to the holding area and informed the officer on duty that plaintiff was being cited for disorderly conduct and could be released.

On July 13, 1998, Sergeant Kimrey contacted the Southwest Detective Division of the Philadelphia police, asking that plaintiff be re-arrested for assaulting a police officer. However, no further charges were filed against plaintiff.

Plaintiff was treated at Frankford Hospital in Philadelphia on July 14, 1998, for swelling of the right thigh, an abrasion on the left upper back and swelling of the right ankle. While at the hospital, plaintiff stated he was punched and kicked and he complained of pain in the right occipital area and in his arms. Plaintiff returned to Frankford Hospital on July 19, 1998, complaining of headaches, dizziness, confusion, problems sleeping, nightmares and pain in his right arm and wrist. The record before the Court does not include evidence of any treatment provided on July 19, 1998, or thereafter.

## **II. PROCEDURAL HISTORY**

Plaintiff filed a Complaint in this Court on February 2, 1999. On February 25, 1999, plaintiff filed an Amended Complaint. On June 1, 1999, plaintiff filed a six count Second Amended Complaint, asserting causes of action under 42 U.S.C. § 1981 (“§ 1981”), 42 U.S.C. § 1983 (“§ 1983”), 42 U.S.C. § 1985 (“§ 1985”), 42 U.S.C. § 1986 (“§ 1986”) and 42 U.S.C. § 1988 (“§ 1988”) against all defendants (Counts I, II and III)<sup>2</sup>; under Pennsylvania law for assault and battery against Officer Dorsey, Officer Suchinsky, Officer Coccia, Officer Cooper, Officer Goodwin, Officer Sacro, Officer Scott, Officer Sellers, Officer Walton and Officer Yaletsko(Count IV); under Pennsylvania law for intentional infliction of emotional distress against Commissioner Timoney and the individual officer defendants (Count V); and under Pennsylvania law for false arrest and false imprisonment against the individual officer defendants (Count VI).

On December 30, 1999, Commissioner Timoney filed a motion for summary judgment. Plaintiff filed a response to this motion on January 26, 2000.

On December 30, 1999, the City filed a motion for summary judgment. Plaintiff filed a response to this motion on February 4, 2000.

On January 3, 2000, the individual officer defendants filed a motion for summary judgment. Plaintiff filed a response to this motion on January 26, 2000.

## **III. STANDARD OF REVIEW**

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<sup>2</sup>Count III of the Second Amended Complaint does not assert a cause of action under § 1985.

“If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law [,]” summary judgment shall be granted. Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986). “[A] motion for summary judgment must be granted unless the party opposing the motion can adduce evidence which, when considered in light of that party’s burden of proof at trial, could be the basis for a jury finding in that party’s favor.” J.E. Mamiye & Sons, Inc. v. Fidelity Bank, 813 F.2d 610, 618 (3d Cir. 1987).

In considering a motion for summary judgment, the evidence must be considered in the light most favorable to the non-moving party. Adickes v. S.H. Kress and Co., 398 U.S. 144, 159 (1970). However, the party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Therefore, “[i]f the evidence [offered by the non-moving party] is merely colorable or is not significantly probative, summary judgment may be granted.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986). On the other hand, if reasonable minds can differ as to the import of the proffered evidence that speaks to an issue of material fact, summary judgment should not be granted.

#### **IV. DISCUSSION**

##### **A. Section 1981 claims**

Section 1981 provides, inter alia, a cause of action for anyone who is denied the “full and equal protection of all laws and proceedings” on the basis of race. 42 U.S.C.A. § 1981 (West Supp. 1999). In order to prevail on a claim under § 1981, a plaintiff must prove that the

defendants intentionally discriminated against him on the basis of his race. See General Building Contractors Association, Inc. v. Pennsylvania, 458 U.S. 375, 390-91 (1982). To this end, plaintiff argues that it is a “well known fact that [police] officers, particularly white officers, hate to work the Greek Picnic, as the event draws thousands of African American participants to the picnic each year.” Plaintiff, Frederick Martin’s Response in Opposition to Individual Officer Defendants’ Motion for Summary Judgment, p. 7. Plaintiff also points to the fact that the Greek Picnic is a “well known black affair and a yearly event of long standing” to buttress his claim that defendants discriminated against him on the basis of race. Id. Plaintiff presented no other evidence on this issue.

The Court concludes that plaintiff has not raised a genuine issue of material fact as to whether any defendant acted with racial animus. Plaintiff has not supported his racial discrimination arguments with deposition testimony or other evidence, nor has he presented any evidence that police officers at predominantly white or racially-mixed events deal with crowds differently than they did at the Greek Picnic on the date in question. Thus, the Court will grant defendants’ motions for summary judgment as to plaintiff’s § 1981 claims.

**B. Section 1985(3) and 1986 claims**

Section 1985(3) creates a cause of action against any two persons who “conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws ....” 42 U.S.C.A. § 1985(3) (West Supp. 1999). To prevail on his claim under § 1985(3), plaintiff must prove that defendants’ actions were motivated by a “racial or ... otherwise class-based invidiously

discriminatory animus....” Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); see Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997).

Plaintiff argues that defendants’ actions were motivated by animus towards him both because he is black and because he is mentally retarded. As discussed above, plaintiff failed to present evidence that any defendant was motivated by a racially discriminatory animus. With respect to mental retardation, plaintiff presented evidence--a report from a clinical psychologist--that he has the mental ability of a student in fifth or sixth grade. Although the Third Circuit has concluded that “the mentally retarded, as a class, are entitled to the protection afforded by section 1985(3),” Lake, 112 F.3d at 686, plaintiff presented no evidence that any defendant was motivated by discriminatory animus based on mental retardation towards plaintiff.

Plaintiff has failed to produce evidence sufficient to raise a genuine issue of material fact as to whether defendants’ actions were motivated by a “racial or ... otherwise class-based invidiously discriminatory animus.” Griffin, 403 U.S. at 102. Accordingly, the Court will grant defendants’ motions for summary judgment on plaintiff’s § 1985 claims.

Section 1986 provides a cause of action against anyone who has the power to prevent a conspiracy under §1985 and fails to do so. See 42 U.S.C.A. § 1986 (West Supp. 1999). Unless a plaintiff can maintain a claim under § 1985, he cannot pursue a claim under § 1986. See Rourke v. United States, 744 F. Supp. 100, 105 (E.D.Pa. 1988), aff’d, 909 F. 2d 1477 (3d Cir. 1990). In this case, plaintiff has no cause of action under §1985. Accordingly, the Court concludes that he cannot pursue a claim under § 1986 and will grant defendants’ motions for summary judgment on the § 1986 claims.

### **C. Section 1983 claims**

Section 1983 creates a cause of action against anyone who, acting under color of state law, deprives an individual of rights secured by the Constitution or by federal statute. See 42 U.S.C.A. § 1983 (West Supp. 1999). To state a cause of action under § 1983, a plaintiff must show that “(1) the defendants acted under color of [state] law; and (2) their actions deprived [the plaintiff] of rights secured by the Constitution or federal statutes.” Anderson v. Davila, 125 F.3d 148, 159 (3d Cir. 1997).

The first step to any § 1983 claim “is to identify the specific constitutional right allegedly infringed.” Albright v. Oliver, 510 U.S. 266, 271 (1994). In the Second Amended Complaint, plaintiff alleges violations of his rights under the 4th, 5th, 6th, 8th, 13th and 14th amendments to the Constitution; plaintiff states in his responses to the various motions presently before the Court that he is withdrawing his claims under the 8th and 13th amendments.

The Supreme Court has held that “all claims that law enforcement officers have used excessive force--deadly or not--in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard...” Graham v. Connor, 490 U.S. 386, 395 (1989). A “false imprisonment claim under [§ 1983] is based on the Fourteenth Amendment protection against deprivations of liberty without due process of law.” Groman v. Twp. of Manalapan, 47 F. 3d 628, 636 (3d Cir. 1995). The Court concludes that plaintiff asserts valid claims under the 4th and 14th amendments.

Plaintiff argues that he was deprived of his liberty interests under the 5th amendment and that such actions amounted to a substantive due process violation. In Graham, the Supreme Court held that because “the Fourth Amendment provides an explicit textual source of

constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of ‘substantive due process,’ must be the guide for analyzing [false arrest and excessive force] claims.” 490 U.S. at 395. Thus, to the extent plaintiff asserts claims under § 1983 for violations of his substantive due process rights under the 5th amendment, the Court will grant the motions for summary judgment.

Plaintiff argues that his rights under the 6th amendment were violated because he was “never informed by any officer what charges were being brought against him.” It is well established that “a person’s Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him.” Kirby v. Illinois, 406 U.S. 682, 688 (1972). There is no evidence that adversarial judicial proceedings were ever initiated against plaintiff based on the events at the Greek Picnic. The Court concludes, therefore, that plaintiff’s 6th amendment right to counsel never attached. Accordingly, defendants’ motions for summary judgment as to plaintiff’s § 1983 claims based on the 6th amendment will be granted.

Having determined the specific constitutional rights at issue in the case, the Court will now turn to issues regarding the liability of specific defendants.

### **1. City of Philadelphia**

A municipality can only be liable under § 1983 when the municipality itself causes the complained-of violation. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Baker v. Monroe Twp., 50 F.3d 1186, 1191 (3d Cir. 1995). Where a plaintiff seeks “to establish municipal liability on the theory that a facially lawful municipal action has led an employee to violate a plaintiff’s rights [he] must demonstrate that the municipal action was taken with

‘deliberate indifference’ to its known or obvious consequences.” Bryan County v. Brown, 520 U.S. 397, 407 (1997).

To establish municipal liability under Monell, a plaintiff must “‘identify the challenged policy, [practice or custom], attribute it to the city itself, and show a causal link between the execution of the policy, [practice or custom] and the injury suffered.’” Fullman v. Philadelphia Int’l Airport, 49 F. Supp.2d 434, 445 (E.D.Pa. 1999) (quoting Losch v. Borough of Parkesburg, 736 F.2d 903, 910 (3d Cir. 1984)). In order to attribute such a policy, practice or custom to the City, plaintiff must “show that a policymaker for the City authorized policies that led to the violations or permitted practices that were so permanent and well settled as to establish acquiescence.” Baker v. Monroe Twp., 50 F.3d 1186, 1191 (3d Cir. 1995).

Plaintiff identifies three policies, practices or customs which allegedly caused his injuries: (1) use of excessive force by police officers; (2) inadequate investigation and/or disciplining of police officers for alleged incidents of excessive use of force; and, (3) failure to train police officers in the proper use of force. The second and third of these policies, practices or customs--inadequate investigation and/or discipline and failure to train--are complaints about facially valid municipal actions which require the plaintiff to prove deliberate indifference.

Plaintiff relies primarily on four pieces of evidence to establish municipal liability for such policies, practices and customs: (1) a monitoring report filed in September, 1997, in NAACP v. City of Philadelphia, Civil Action No. 96-CV-6045 (the “September 1997 monitoring report”);<sup>3</sup> (2) a monitoring report filed in July, 1998, in the NAACP litigation (the “July 1998

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<sup>3</sup>NAACP v. City of Philadelphia, Civil Action No. 96-CV-6045 (the “NAACP litigation”) was a 1996 case before Judge Dalzell of this Court involving alleged police misconduct by officers in Philadelphia’s 39th police district from the late 1980s to 1991. This misconduct

monitoring report”), (3) a partial transcript of a report from the television show “60 Minutes” titled “The Blue Wall of Silence” concerning police officers’ refusal to report other officers’ misconduct (the “60 Minutes’ report”); and, (4) Philadelphia Police Directive 22, which requires an officer to notify his immediate on-duty supervisor of every use of a baton or blackjack and to submit an incident report detailing the circumstances of such use.<sup>4</sup>

For the reasons that follow, the Court concludes that such evidence fails to raise a genuine issue of material fact as to municipal liability.

**a. Use of excessive force by police officers**

Plaintiff argues that the City had a policy, practice or custom of using excessive force. In order to attribute such a policy, practice or custom to the City, plaintiff must show either that a policymaker authorized such a policy or permitted such a practice or custom to become so permanent and well-settled as to establish acquiescence. See Baker, 50 F.3d at 1191.

Plaintiff relies on the two monitoring reports in an effort to establish the existence of a policy, practice or custom of excessive use of force. The September 1997 monitoring report

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included the use of excessive force against citizens at large and during interrogation of criminal suspects. The reports on which plaintiff relies were filed by plaintiffs’ counsel in the NAACP litigation monitoring the City’s performance on a variety of matters.

<sup>4</sup>Plaintiff argues in his responses to the three pending motions that IAD concluded many of the officers involved in the complained-of incident violated Directive 22 and that IAD’s conclusion requires this Court to find a genuine issue of material fact as to the inadequacy of the City’s investigations. However, such evidence, without more, is insufficient to raise a genuine issue of material fact as to whether the City had a policy, practice or custom of allowing violations of Directive 22 at the time of the Greek picnic. On this issue, plaintiff presented no evidence as to the City’s policies, practices or customs with regard to enforcement of Directive 22 before July 11, 1998. Generally, one incident of improper behavior is insufficient to give create an inference of a municipal policy, practice or custom, see City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-24 (1985), and the Court so rules in this case.

notes that the City received 221 civilian complaints about physical abuse by police officers in 1996 and 43 complaints regarding false arrest or illegal detention; IAD sustained approximately 38% of these complaints. The July 1998 monitoring report notes the City initiated 50 investigations without civilian prompting regarding officers' use of force and physical abuse in 1997. The July 1998 monitoring report did not include statistics on civilian complaints of excessive use of force.

The statistics presented by plaintiff provide some evidence of excessive use of force in 1996 and 1997. However, the Court need not reach the question of whether such evidence raises a genuine issue of material fact as to the existence of a policy, practice or custom of excessive use of force because, as stated more fully below, plaintiff has not attributed any such policy, practice or custom to the City.

In order to attribute a policy, practice or custom of excessive use of force to the City, plaintiff must show either that a policymaker authorized such a policy or permitted such a practice or custom to become so permanent and well-settled as to establish acquiescence. See Baker, 50 F.3d at 1191. Plaintiff presented no evidence of the existence of a policy (as distinguished from a practice or custom)<sup>5</sup> of excessive use of force, so the Court need not reach the question of authorization. Although plaintiff presented some evidence of excessive use force that might be considered a practice or custom he presented no evidence that Commissioner Timoney or any other policymaker for the City acquiesced in any such practice or custom.

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<sup>5</sup>In Bonenberger v. Plymouth Twp, 132 F.3d 20 (3d Cir. 1997), the Court explained the distinction between a policy--a "statement, ordinance, regulation, or decision officially adopted and promulgated by a local governing body's officers"--and a practice or custom--"practices of state officials so permanent and well settled as to constitute a custom...with the force of law." Id. at 25.

The July 1998 monitoring report details the steps that the City was taking to correct any problems it had with officers using excessive force. Specifically, the July 1998 monitoring report notes that “Commissioner Timoney has announced that the Department is phasing out blackjacks in favor of ‘Pepper Mace.’ This elimination of blackjacks...is a welcome reversal of former Commissioner Neal’s [policies].” Plaintiff’s Response to City’s Motion for Summary Judgment, Exhibit D, p. 10. The July 1998 monitoring report also notes that the City has adopted a policy of investigating all incidents of “head strikes”--baton blows to the head--in an effort to curb such strikes.

The “60 Minutes” report further refutes the notion that City officials failed to take precautions against future violations. In the one page of the transcript of the “60 Minutes” report plaintiff submitted, Commissioner Timoney discusses the steps that he has taken to deal with police misconduct in Philadelphia, stating that he has implemented a policy that requires officers to “intervene if they witness incidents where a fellow officer is using excessive force.”<sup>6</sup> Commissioner Timoney states that this policy is designed to “stop corrupt behavior...stop brutal behavior.” The “60 Minutes” report concludes that this policy is working, noting that civilian complaints about police brutality dropped 30% in Commissioner Timoney’s first year on the job.

The Court concludes that such evidence fails to raise a genuine issue of material fact as to whether a policymaker for the City permitted a practice or custom of using excessive force to become so permanent and well-settled as to establish acquiescence. In short, there is no evidence of acquiescence in the record before the Court. To the contrary, the July 1998 monitoring report

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<sup>6</sup>The “60 Minutes” report aired on October 3, 1999. It is unclear from the portion of the transcript provided to the Court when Commissioner Timoney adopted this policy.

and the “60 Minutes” report demonstrate that the City has identified a problem--excessive use of force by a relatively small number of police officers--and has taken reasonable steps to correct the situation. Accordingly, the Court will grant the City’s motion for summary judgment as to plaintiff’s § 1983 claims against the City to the extent those claims are based on a policy, practice or custom of using excessive force.

**b. Inadequate investigation and/or discipline and failure to train**

Plaintiff asserts claims against the City for inadequate investigation and/or disciplining of its officers for excessive use of force and for failure to train its officers in the proper use of force. In order to be liable for the failure to train or supervise its employees, a plaintiff must show not only that a municipality had such a policy, practice or custom, but also that the municipality established it with deliberate indifference to the rights of citizens with whom those employees came into contact. See Bryan County, 520 U.S. at 407; City of Canton v. Harris, 489 U.S. 378, 388.

**(1) Failure to train**

Plaintiff asserts § 1983 liability against the City on the basis of a failure to adequately train officers in the proper use of force. In order to establish such a policy, practice or custom, plaintiff relies on statements made to IAD by Sergeant Charles Ebner and Lieutenant Martin O’Donnell--two instructors at the Philadelphia police academy--as part of the investigation of this incident. Each officer told IAD that all police officers could benefit from on-going training in the proper use of the baton. Neither officer stated that the City’s training was in any way inadequate in this or any other respect. In City of Canton, the Supreme Court stated, “Neither will it suffice to prove that an injury or accident could have been avoided if an officer had had

better or more training....” 489 U.S. at 391. Thus, the Court concludes the statements of Sergeant Ebner and Lieutenant O’Donnell are insufficient to create a genuine issue of material fact as to whether the City’s training of officers in the proper use of force is inadequate.

Plaintiff also relies on the case of Diaz v. Salazar, 924 F. Supp. 1088 (D.N.M. 1996). Diaz was a case involving four officers who shot a suspect. The Court concluded that the fact that “at least four officers ...allegedly violated... widely recognized methodologies in this case creates a logical inference that Defendant City’s training in this area was inadequate, thereby permitting Plaintiff to take this issue to the jury.” Id. at 1098. Plaintiff argues that this Court should adopt the same logic in this case, because between five and ten officers were involved in the complained-of incident. This Court rejects that argument.

First, this Court disagrees with the Diaz rationale that a single incident of misconduct by several police officers, even one involving “widely recognized methodologies,” creates an inference of inadequate training. See Tuttle, 471 U.S. at 823-24 (holding that where a challenged policy is not unconstitutional, “considerably more proof than the single incident will be necessary in every case to establish” the requisite fault and the causal connection). Moreover, in Diaz, the plaintiff presented expert testimony to establish the “widely recognized methodologies” that the officers allegedly violated in the shooting at issue. In this case, plaintiff has presented no expert testimony establishing a standard police methodology or deviation from standard police methodology related to the use of force including the use of batons. The only evidence resembling expert testimony--the statements of Lieutenant O’Donnell and Sergeant Ebner--does not support plaintiff on this point. Lieutenant O’Donnell and Sergeant Ebner stated that the officers involved in the incident at the Greek picnic did not deviate from accepted uses of the

baton-- that the videos of the complained-of incident reveal the officers using their batons in a defensive fashion in accordance with their training.

The Court concludes that plaintiff has not adduced evidence sufficient to raise a genuine issue of material fact as to the existence of a municipal policy, practice or custom of failing to train officers in the proper use of force. Accordingly, the City's motion for summary judgment on that claim will be granted.

**(2) Inadequate investigation and/or discipline**

Plaintiff presented some evidence of claimed inadequate investigation and/or disciplining of officers for excessive use of force. For instance, the September 1997 monitoring report discusses the historical inadequacies of IAD investigations in Philadelphia and details more than 15 IAD investigations in response to civilian complaints in 1996 and 1997 in which the investigation was deemed inadequate by plaintiffs' counsel in the NAACP litigation. The September 1997 monitoring report also concludes that the Philadelphia police department has a number of officers who practice a "Code of Silence"--that "cops don't tell on cops"--and details four cases from 1996 in which the officers practiced such behavior. Plaintiff's Response to City's Motion for Summary Judgment, Exhibit C, p. 44.

The July 1998 monitoring report reveals six IAD investigations conducted in 1996 and 1997 deemed inadequate by plaintiffs' counsel in the NAACP litigation or in which Philadelphia police officers refused to report other officers' misconduct. The July 1998 monitoring report also discusses two cases from the third quarter of 1997 which the authors deemed to be examples of the "Code of Silence" at work. In addition, the "60 Minutes" report notes that, under

Commissioner Timoney, the Philadelphia police department does not require officers to report to a supervisor incidents where a fellow officer uses excessive force.<sup>7</sup>

The Court concludes that such evidence fails to raise a genuine issue of material fact as to whether the City had a policy, practice or custom of inadequate investigation and/or discipline officers for excessive use of force. The evidence in the monitoring reports reveals a small number of investigations which plaintiffs' counsel in the NAACP litigation deemed to be inadequate. While the Court stops short of ruling that plaintiff must submit expert testimony to support the argument that the investigations and resulting discipline were inadequate, the Court concludes that the opinions of plaintiffs' counsel in the NAACP litigation fall short of raising a genuine issue of material fact on this point. Moreover, the "60 Minutes" report only deals with the reporting requirements for officers who witness incidents of excessive use of force; it does not address the City's investigation or disciplining of officers for using excessive force.

### **(3) Deliberate indifference**

In order to prevail on his claims against the City for failure to train and inadequate investigation and/or discipline, plaintiff must demonstrate by specific scienter-like evidence that the City established or maintained this policy, practice or custom with deliberate indifference to the rights of citizens with whom the police would come in contact. See Bryan County, 520 U.S. at 407; Simmons, 947 F.2d at 1060-61. Notwithstanding the fact that the Court has concluded that plaintiff failed to raise a genuine issue of material fact as to the existence of any such policies, practices or customs, the Court will turn to the question of deliberate indifference.

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<sup>7</sup>The Court notes that the "60 Minutes" report on which plaintiff relies aired on October 3, 1999--more than 14 months after the incident in question took place.

With respect to the deliberate indifference requirement, the Third Circuit has held that a “failure to train, discipline or control can only form the basis for section 1983 municipal liability if the plaintiff can show both contemporaneous knowledge of the offending incident or a prior pattern of similar incidents and circumstances under which the supervisor’s actions or inaction could be found to have communicated a message of approval to the offending subordinate.” Montgomery v. DeSimone, 159 F.3d 120, 127 (3d Cir. 1998). In order to meet this burden in this case, plaintiff presented evidence of a number of incidents involving excessive use of force. For instance, the September 1997 monitoring report notes that the City received 221 civilian complaints about physical abuse by police officers in 1996 and 43 complaints regarding false arrest or illegal detention. The July 1998 monitoring report notes that the City initiated 50 investigations regarding officers’ use of force and physical abuse without civilian prompting in 1997. The Court concludes that such evidence raises a genuine issue of material fact as to the first prong of the deliberate indifference test set forth in Montgomery--knowledge of a prior pattern of incidents similar to the one at issue. The Court will therefore turn to the second prong of the deliberate indifference test--whether action or inaction of a supervisor could be found to have communicated a message of approval to the offending subordinate.

Both monitoring reports detail the steps that the City was taking to correct any problems that it had in its investigations of officers. For instance, the September 1997 monitoring report notes that the “quality of the investigations conducted by IAD reflect improvement over the comparatively weak investigations reviewed in previous years.” Id. at Exhibit C, p. 14. The September 1997 monitoring report also notes that the City, as part of its settlement agreement in the NAACP litigation, was instituting a field associate program--a program in which officers in

the field are associated with, and report to, IAD--and was undertaking a policy of proactive investigations. See id. at Exhibit C, 59.

The July 1998 monitoring report notes that the “quality of the investigations conducted by IAD reflect improvement.” Id. at Exhibit D, p. 5. Moreover, the report details four IAD investigations, at least one of which involved an allegation of physical abuse, in which IAD conducted “thorough and creative investigations.” Id. at Exhibit D, p. 6. The July 1998 monitoring report also notes the increased investigation by the City of the use of batons and blackjacks. Specifically, the report noted that the Department “has made the improper use of batons a priority, requiring that IAD investigate all instances of ‘head strikes.’” (emphasis in original).

In the “60 Minutes” report, Commissioner Timoney explains his policy of not requiring officers to report instances of police misconduct. He states that he explains to officers, “‘If you really want to help your fellow officer, then help before the conduct gets out of hand. Don’t think you’re helping after it happens, that somehow you’re going to concoct a story to help your fellow officer. Forget that nonsense. If you see conduct that’s bordering on excessive brutality, get in. Step in....Intervene, stop the conduct. The reporting? You know, we’ll deal with the reporting. But what are we looking to accomplish? We’re looking to stop corrupt behavior. We’re looking to stop brutal behavior.’” Plaintiff’s Response to Commissioner Timoney’s Motion for Summary Judgment, Exhibit 15.

Plaintiff has presented no evidence that the City’s training of officers in the proper use of force was in any way inadequate. Likewise, there is no evidence of record that any aspect of the

City's training program would have communicated a message of approval to the offending officers with respect to excessive use of force.

The Court concludes that the foregoing evidence does not raise a genuine issue of material fact as to whether there were any circumstances under which a supervisor's actions or inaction could be found to have communicated a message of approval to the offending officers. The evidence presented by plaintiff demonstrates that the City was attempting to correct any problems that it had with excessive use of force by police officers, not that its supervisors were communicating, either through action or inaction, a message of approval.

## **2. Police Commissioner John Timoney**

In his motion for summary judgment, Commissioner Timoney argues that there is no evidence to support plaintiff's § 1983 claims against him because supervisory liability under § 1983 cannot be predicated on respondeat superior, but must be based on some personal involvement after he was appointed Police Commissioner on March 8, 1998.

The imposition of supervisory liability under § 1983 requires some affirmative conduct by the supervisor who played a role in the complained-of violation. See Andrews v. City of Philadelphia, 895 F.2d 1469, 1478 (3d Cir. 1990) (citing Rizzo v. Goode, 423 U.S. 362, 277 (1976)). "The necessary involvement can be shown in two ways, either through allegations of personal direction or of actual knowledge and acquiescence or through proof of direct [involvement] by the supervisor." Id. Moreover, a supervisor may be liable for his "own actions in adopting and maintaining a practice, custom or policy of [deliberate] indifference to instances of known" violations. Stoneking v. Bradford Area School Dist., 882 F.2d 720, 724-25 (3d Cir. 1989).

As discussed above, plaintiff has introduced no evidence that the City, or Commissioner Timoney in particular, adopted or maintained any policy, practice or custom with deliberate indifference to violations of Constitutional rights. Moreover, plaintiff has introduced no evidence that Commissioner Timoney participated in, personally directed or knew of and acquiesced in the complained-of violations on July 11, 1998. Thus, the Court will grant Commissioner Timoney's motion for summary judgment as to plaintiff's § 1983 claims against him.

**3. Captain Michael Whalen, Lieutenant Nicholas Mangini and Sergeant James Kimrey**

Captain Whalen, Lieutenant Mangini and Sergeant Kimrey were supervisors at the Greek Picnic on July 11, 1998. The individual officer defendants argue that there is no evidence that any of these defendants participated in, directed or knew of and acquiesced in a violation of plaintiff's rights.

In Baker, the Third Circuit held that actual knowledge of an incident can be inferred from circumstances other than actual sight. See 50 F.3d at 1194. In Baker, the offending supervisory police officer was in an apartment--in a different room without a clear line of sight--where the plaintiff was allegedly improperly handcuffed. See id. The court held that such proximity, coupled with the fact that the officer "hollered" instructions to the officers who handcuffed the plaintiff, was enough to withstand summary judgment on the issue of supervisory liability. See id.

In this case, plaintiff has presented no evidence that Captain Whalen, Lieutenant Mangini or Sergeant Kimrey saw, or could see, the complained-of incident. However, there is no dispute

that all three supervisors were near the scene of the incident, working in supervisory capacities. Moreover, plaintiff presented evidence that the bottle plaintiff threw hit Lieutenant Mangini. Finally, plaintiff presented evidence that IAD concluded that all three officers violated the Department's disciplinary code and that there was a lack of effective supervision at the Greek Picnic. The Court concludes that, taken together, this evidence raises a genuine issue of material fact as to whether Captain Whalen, Lieutenant Mangini and/or Sergeant Kimrey knew of and acquiesced in the complained-of conduct. Thus, the Court will deny the individual officer defendants' motion for summary judgment as to plaintiff's § 1983 claims against the three of them.

#### **4. Officers Charlene Walton and Donald Suchinsky**

Officers Walton and Suchinsky transported plaintiff from the Greek Picnic to the 18th District police station and ordered him held on an aggravated assault charge; Officer Suchinsky subsequently ordered plaintiff released. The individual officer defendants argue that plaintiff "cannot produce any evidence" that Officers Walton and Suchinsky violated plaintiff's rights under the 4th and 14th amendments.

The Third Circuit addressed the question of liability for transporting officers in Groman. In Groman, the court reversed a district court's grant of summary judgment and remanded a § 1983 claim alleging excessive use of force. See 47 F.3d at 631-32. Two of the defendants in Groman were the officers who transported the plaintiff from the site of his arrest to the police station. There was a dispute in Groman as to whether the transporting officers used excessive force to move the plaintiff from a police car into the police station. The Court held that "plaintiffs will have to prove the [transporting officers] violated Groman's Fourth Amendment

rights by using excessive force during his transport to the police station.” Groman, 47 F.3d at 634 n.6.

In the instant case, plaintiff presented evidence that Officers Walton and Suchinsky were told by Lieutenant Jesse Vassor of the Philadelphia police to transport plaintiff to the Southwest Detectives Division for “assaulting a cop,” but that they took plaintiff to the 18th District instead. Plaintiff also submitted evidence that Officers Walton and Suchinsky made a number of procedural errors upon arriving at the 18th District including improperly completing paperwork regarding plaintiff’s arrest and releasing plaintiff before Officer Yaletsko--the arresting officer--arrived at the 18th District.

The Court concludes that none of the alleged procedural errors raise a genuine issue of material fact as to whether Officers Walton and Suchinsky violated plaintiff’s rights under the 4th and 14th amendments. Thus, the Court will grant the individual officer defendants’ motion for summary judgment as to plaintiff’s § 1983 claims against Officers Walton and Suchinsky.

#### **5. Officer Joseph Sacro**

Officer Sacro is one of the officers who was in the vicinity of plaintiff when he was struck with batons and blackjacks. Officer Sacro claims that he never struck plaintiff, but that during the struggle, his sunglasses fell out of his breast pocket and he used his baton to “tap” his sunglasses out of the way. Video footage of the confrontation shows Officer Sacro with his baton in his hand, swinging in a sidearm motion. However, the video does not show him making contact with plaintiff. The video also shows another officer subsequently pick up a pair of sunglasses from the ground. The IAD report concluded that the video is “inconclusive in that it does not show if any contact was made.” The Court concludes that such evidence raises a

genuine issue of material fact as to whether Officer Sacro struck plaintiff. The individual officer defendants' motion will therefore be denied to the extent it seeks summary judgment on plaintiff's § 1983 claims against Officer Sacro.

**6. Officer William Sellers**

Officer Sellers collided with plaintiff as plaintiff broke free from Officer Goodwin's initial grasp. He testified at his deposition that he had his baton out when he confronted plaintiff, and that he "may have tapped him when I grabbed him [and the baton] may have hit him."

The Court concludes that this testimony raises a genuine issue of material fact as to whether Officer Sellers struck plaintiff in violation of plaintiff's rights under the 4th and 14th amendments. The individual officer defendants' motion will be denied to the extent it seeks summary judgment as to plaintiff's § 1983 claims against Officer Sellers.

**D. State law claims**

The City and Commissioner Timoney move for summary judgment on the counts under state law (Counts IV-VI); the individual officer defendants make no argument as to these claims.

**1. Municipal liability for state law claims**

The City argues that it is immune from liability on these claims under the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541 et seq. The City is not named as a defendant in any of the state law claims; however, plaintiff, in asserting those claims, did not distinguish between suits against the officials in their individual and official capacities. As discussed above, a suit against an official in his official capacity is a suit against the governmental entity for which he works. See Melo, 502 U.S. at 25. Thus, to the extent they are asserted against the officers in

their official capacities, the Court will consider the state law claims as being asserted against the City.

42 Pa.C.S.A. § 8541 provides, “Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.” 42 Pa.C.S.A. § 8541 (West 2000). 42 Pa.C.S.A. § 8542 provides eight exceptions to this immunity, none of which are applicable to this case. See 42 Pa.C.S.A. § 8542 (West 2000). Thus, the Court will grant the City’s motion for summary judgment as to the state law claims to the extent they are asserted against the officers in their official capacities.

## **2. Commissioner Timoney’s liability**

There is only one state law claim asserted against Commissioner Timoney in his individual capacity--the intentional infliction of emotional distress claim. Commissioner Timoney, in his motion for summary judgment, argues that he cannot be liable on this claim because plaintiff has no evidence that he has acted with actual malice or committed willful misconduct.

In order to prevail on a claim of intentional infliction of emotional distress, plaintiff must prove conduct that: (1) is extreme and outrageous; (2) is intentional or reckless; and, (3) causes severe emotional distress. See Hoy v. Angelone, 456 Pa. Super. 596, 610 (1997). Liability for intentional infliction of emotional distress “has been found only where ...the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous.’” Hunger v. Grand Central Sanitation, 447 Pa. Super. 575, 584 (1996).

The Pennsylvania Code provides that, with respect to individual capacity claims, employees of a local agency are entitled to the same immunity as their employer. See 42 Pa. C.S.A. § 8545 (West 2000). However, the Code creates an exception to this immunity for “damages on account of an injury caused by the act of the employee in which it is judicially determined that the act of employee in which it is judicially determined that the act of the employee caused the injury and that such act constituted a crime, actual fraud, actual malice, or willful misconduct ....” 42 Pa.C.S.A. § 8550 (West 2000).

Plaintiff argues that the Commissioner’s knowledge of and acquiescence in the City’s policy of failing to train officers in the proper use of force and the City’s inadequate investigation and/or disciplining of officers for the excessive use of force constitutes willful misconduct within the meaning of § 8550. “Willful misconduct, for the purposes of tort law, has been defined by our Supreme Court to mean conduct whereby the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow, so that such desire can be implied.” King v. Breach, 115 Pa.Cmwlth. 355, , 365 (1988) (citing Evans v. Philadelphia Transportation Co., 418 Pa. 567 (1965)).

As discussed above, plaintiff presented no evidence that the City, or Commissioner Timoney in particular, adopted or maintained any policy, practice or custom with deliberate indifference to violations of Constitutional rights. Moreover, plaintiff has presented no evidence that Commissioner Timoney took any action indicating either that he desired to bring about the conduct at issue in this case or that he was aware that such conduct was substantially certain to follow. In short, there is no evidence of any willful conduct on his part. Moreover, there is no evidence of any conduct on the part of Commissioner Timoney that is sufficiently extreme or

outrageous to give rise to a claim of intentional infliction of emotional distress. The Court will therefore grant Commissioner Timoney's motion for summary judgment as to plaintiff's intentional infliction of emotional distress claim asserted against him in his individual capacity.

### **3. Individual officer defendants**

In Count IV of the Complaint, plaintiff asserts claims against Officers Dorsey, Suchinsky, Coccia, Cooper, Goodwin, Sacro, Scott, Sellers, Walton and Yaletsko for assault and battery; in Count V of the Complaint, plaintiff asserts claims against all of the individual officer defendants for intentional infliction of emotional distress; and in Count VI of the Complaint, plaintiff asserts claims against all of the individual officer defendants for false arrest and false imprisonment.

To prove a claim of assault, plaintiff must establish that a defendant: (1) acted intending to cause a harmful or offensive contact with plaintiff or an imminent apprehension of such a contact; and (2) plaintiff was put in such imminent apprehension. See Sides v. Cleland, 648 A.2d 793, 796 (Pa. Super. 1994) (citing Restatement (Second) of Torts, § 21 (1965)). The battery claim requires proof that a defendant: (1) acted intending to cause a harmful or offensive contact with plaintiff or an imminent apprehension of such a contact; and, (2) an offensive contact with plaintiff directly or indirectly resulted. See Montgomery v. Bazaz-Sehgal, 742 A.2d 1125, 1130 (Pa. Super. 1999) (citing Restatement (Second) of Torts § 18(1)(a)-(b) (1965)).

To prove a claim of intentional infliction of emotional distress, plaintiff must establish conduct that: (1) is extreme and outrageous; (2) is intentional or reckless; and, (3) causes severe emotional distress. See Hoy, 456 Pa. Super. at 610.

To prevail on the false arrest claim, plaintiff must establish that the process used for the arrest was void on its face or that the issuing tribunal was without jurisdiction; it is not sufficient

that the charges were unjustified. See Strickland v. University of Scranton, 700 A.2d 979, 984-85 (Pa. Super. 1997). The false imprisonment claim requires proof: (1) that plaintiff was detained; and, (2) that such detention was unlawful. See Renk v. City of Pittsburgh, 641 A.2d 289, 293 (Pa. 1994).

In their motion, the individual officer defendants ask the Court to “dismiss defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James Kimrey, Police Officer Donald Suchinsky and Police Officer Charlene Walton, entirely from this matter with prejudice.” However, in the memorandum of law accompanying their motion, the individual officer defendants make no argument as to the liability of those defendants for plaintiff’s state law claims.

As discussed above, the Court has determined that plaintiff has presented sufficient evidence to allow him to proceed to trial with respect to his § 1983 claims against Captain Whalen, Lieutenant Mangini, and Sergeant Kimrey. In the absence of any argument by the individual officer defendants, and because the record before the Court is unclear as to the role Captain Whalen, Lieutenant Mangini and Sergeant Kimrey played in the complained-of incident, the Court will deny the individual officer defendants’ motion for summary judgment to the extent it applies to plaintiff’s state law claims against the three of them--claims for intentional infliction of emotional distress and false arrest and false imprisonment.

Plaintiff has presented no evidence that Officer Walton or Suchinsky assaulted or struck plaintiff or that their conduct was outrageous. Thus, there is absolutely no basis for allowing plaintiff to proceed against them with respect to his claims for assault and battery and intentional infliction of emotional distress. The Court has also concluded that the procedural errors made by

Officers Walton and Suchinsky in connection with plaintiff's arrest and his release were not violative of the 4th or 14th amendments. Accordingly, the Court will grant the individual officer defendants' motion for summary judgment insofar as it covers the state law claims against Officers Suchinsky and Walton for false arrest and false imprisonment.

## **V. CONCLUSION**

The Court will grant the motions for summary judgment as to plaintiff's § 1981, § 1985(3), and § 1986 claims, as plaintiff has failed to adduce evidence of racial or otherwise class-based discriminatory animus on the part of any defendant.

The Court will grant the motions for summary judgment as to plaintiff's § 1983 claims to the extent they are based on the 5th and 6th amendments. The Court will also grant the motions for summary judgment as to plaintiff's § 1983 claims against the City of Philadelphia, Commissioner Timoney and Officers Walton and Suchinsky. The Court will deny the motions for summary judgment as to plaintiff's § 1983 claims in all other respects.

The Court will grant the City's motion for summary judgment as to the state law claims against the officers in their official capacities; the Court will also grant Commissioner Timoney's motion for summary judgment as to the intentional infliction of emotional distress claim against him in his individual capacity. The Court will grant the individual officer defendants' motion for summary judgment as to the state law claims against Officers Walton and Suchinsky and will deny the motion in all other respects.

These rulings leave for trial the following: (1) plaintiff's § 1983 claims based on violations of his rights under the 4th and 14th amendments against Captain Whalen, Lieutenant Mangini, Sergeant Kimrey, Officer Dorsey, Officer Coccia, Officer Cooper, Officer Goodwin,

Officer Sacro, Officer Scott, Officer Sellers and Officer Yaletsko; (2) plaintiff's state law claims for assault and battery against Officer Coccia, Officer Cooper, Officer Dorsey, Officer Goodwin, Officer Sacro, Officer Scott, Officer Sellers and Officer Yaletsko in their individual capacities; (3) plaintiff's state law claims for intentional infliction of emotional distress against the individual officer defendants in their individual capacities other than Officers Walton and Suchinsky; and, (4) plaintiff's state law claims for false arrest and false imprisonment against the individual officer defendants in their individual capacities other than Officers Walton and Suchinsky .

An appropriate order follows:

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>FREDERICK MARTIN,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>vs.</b>	:	
	:	
<b>CITY OF PHILADELPHIA,</b>	:	
	:	
<b>JOHN F. TIMONEY, Individually and</b>	:	
<b>in his official capacity as Philadelphia</b>	:	
<b>Police Commissioner,</b>	:	
	:	
<b>THOMAS M. DORSEY, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police officer,</b>	:	
	:	
<b>DONALD SUCHINSKY, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police officer,</b>	:	
	:	
<b>DANIEL COCCIA, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>MICHAEL WHALEN, Individually and</b>	:	
<b>in his official capacity as a Philadelphia</b>	:	
<b>police Captain,</b>	:	
	:	
<b>NICHOLAS MANGINI, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police Lieutenant,</b>	:	
	:	
<b>JAMES KIMREY, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police Sergeant,</b>	:	
	:	
<b>YUSEF COOPER, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>JOSEPH GOODWIN, Individually and</b>	:	

<b>in his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>JOSEPH SACRO, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>GEORGE SCOTT, Individually and in</b>	:	
<b>his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>WILLIAM SELLERS, Individually and</b>	:	
<b>in his official capacity as a Philadelphia</b>	:	
<b>police officer,</b>	:	
	:	
<b>CHARLENE WALTON, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police officer,</b>	:	
	:	
<b>ANDREW YALETSKO, Individually</b>	:	
<b>and in his official capacity as a</b>	:	
<b>Philadelphia police officer,</b>	:	
	:	
<b>Defendants.</b>	:	<b>NO. 99-543</b>

**ORDER**

AND NOW, to wit, this 24th day of July, 2000, upon consideration of Defendant, Police Commissioner John Timoney’s Motion for Summary Judgment (Document No. 32, filed December 30, 1999); Plaintiff, Frederick Martin’s Response in Opposition to Defendant, Police Commissioner John Timoney’s Motion for Summary Judgment (Document No. 36, filed January 26, 2000); Defendant, City of Philadelphia’s Motion for Summary Judgment (Document No. 33, filed December 30, 1999); Plaintiff, Frederick Martin’s Response in Opposition to Defendant, City of Philadelphia’s Motion for Summary Judgment (Document No. 38, filed February 4, 2000); Defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James

Kimrey, and Police Officers Thomas M. Dorsey, Donald Suchinsky, Daniel Coccia, Yusef Cooper, Joseph Goodwin, Joseph Sacro, George Scott, William Sellers, Charlene Walton and Andrew Yaletsko's Motion for Summary Judgment (Document No. 34, filed January 3, 2000); and Plaintiff, Frederick Martin's Response in Opposition to Defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James Kimrey, and Police Officers Thomas M. Dorsey, Donald Suchinsky, Daniel Coccia, Yusef Cooper, Joseph Goodwin, Joseph Sacro, George Scott, William Sellers, Charlene Walton and Andrew Yaletsko's Motion for Summary Judgment, for the reasons stated in the preceding Memorandum, it is **ORDERED** that Defendant, Police Commissioner John Timoney's Motion for Summary Judgment; Defendant, City of Philadelphia's Motion for Summary Judgment; and Defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James Kimrey, and Police Officers Thomas M. Dorsey, Donald Suchinsky, Daniel Coccia, Yusef Cooper, Joseph Goodwin, Joseph Sacro, George Scott, William Sellers, Charlene Walton and Andrew Yaletsko's Motion for Summary Judgment are **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. Defendant, Police Commissioner John Timoney's Motion for Summary Judgment; Defendant, City of Philadelphia's Motion for Summary Judgment; and Defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James Kimrey, and Police Officers Thomas M. Dorsey, Donald Suchinsky, Daniel Coccia, Yusef Cooper, Joseph Goodwin, Joseph Sacro, George Scott, William Sellers, Charlene Walton and Andrew Yaletsko's Motion for Summary Judgment are **GRANTED** as to plaintiff's claims under 42 U.S.C. § 1981, 42 U.S.C. § 1985 and 42 U.S.C. § 1986;

2. Defendant, Police Commissioner John Timoney's Motion for Summary Judgment and Defendant, City of Philadelphia's Motion for Summary Judgment are **GRANTED** as to plaintiff's claims under 42 U.S.C. § 1983;

3. Defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James Kimrey, and Police Officers Thomas M. Dorsey, Donald Suchinsky, Daniel Coccia, Yusef Cooper, Joseph Goodwin, Joseph Sacro, George Scott, William Sellers, Charlene Walton and Andrew Yaletsko's Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**, as follows:

a. Defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James Kimrey, and Police Officers Thomas M. Dorsey, Donald Suchinsky, Daniel Coccia, Yusef Cooper, Joseph Goodwin, Joseph Sacro, George Scott, William Sellers, Charlene Walton and Andrew Yaletsko's Motion for Summary Judgment is **GRANTED** as to plaintiff's § 1983 claims based on the 5th and 6th Amendments to the Constitution;

b. Defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James Kimrey, and Police Officers Thomas M. Dorsey, Donald Suchinsky, Daniel Coccia, Yusef Cooper, Joseph Goodwin, Joseph Sacro, George Scott, William Sellers, Charlene Walton and Andrew Yaletsko's Motion for Summary Judgment is **GRANTED** as to plaintiff's § 1983 claims against Officers Charlene Walton and Donald Suchinsky, and is **DENIED** in all other respects;

c. Defendants, Captain Michael Whalen, Lieutenant Nicholas Mangini, Sergeant James Kimrey, and Police Officers Thomas M. Dorsey, Donald Suchinsky, Daniel Coccia, Yusef Cooper, Joseph Goodwin, Joseph Sacro, George Scott, William Sellers, Charlene

Walton and Andrew Yaletsko's Motion for Summary Judgment is **GRANTED** as to plaintiff's claims under state law for assault and battery, intentional infliction of emotional distress and false arrest and false imprisonment asserted against Officer Donald Suchinsky and Officer Charlene Walton, and is **DENIED** in all other respects; and,

3. Defendant, Police Commissioner John Timoney's Motion for Summary Judgment and Defendant, City of Philadelphia's Motion for Summary Judgment are **GRANTED** as to plaintiff's claims under state law.

It is **FURTHER ORDERED** that plaintiff's claims under 42 U.S.C. § 1983 based on violations of his rights under the 8th and 13th Amendments to the Constitution, voluntarily withdrawn by plaintiff, are **DISMISSED WITH PREJUDICE**.<sup>1</sup>

**BY THE COURT:**

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**JAN E. DUBOIS, J.**

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<sup>1</sup>The claims that remain in this case are: (1) plaintiff's § 1983 claims based on violations of his rights under the 4th and 14th amendments against Captain Whalen, Lieutenant Mangini, Sergeant Kimrey, Officer Dorsey, Officer Coccia, Officer Cooper, Officer Goodwin, Officer Sacro, Officer Scott, Officer Sellers and Officer Yaletsko; (2) plaintiff's state law claims of assault and battery against Officer Coccia, Officer Cooper, Officer Dorsey, Officer Goodwin, Officer Sacro, Officer Scott, Officer Sellers and Officer Yaletsko in their individual capacities; (3) plaintiff's state law claims of intentional infliction of emotional distress against Captain Whalen, Lieutenant Mangini, Sergeant Kimrey, Officer Dorsey, Officer Coccia, Officer Cooper, Officer Goodwin, Officer Sacro, Officer Scott, Officer Sellers and Officer Yaletsko; and, (4) plaintiff's state law claims of false arrest and false imprisonment against Captain Whalen, Lieutenant Mangini, Sergeant Kimrey, Officer Dorsey, Officer Coccia, Officer Cooper, Officer Goodwin, Officer Sacro, Officer Scott, Officer Sellers and Officer Yaletsko .