

ONCE UPON A TIME IN WEST CHESTER  
(September 9, 2020 draft)

by Jim Jones

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## Chapter 1. Murder at the Evergreen Inn

If you drive east of West Chester on PA Route 3, it's easy to miss Spring Lane in the jumble of post-war strip malls and apartment complexes. Just east of the Shoprite, it's a barely noticeable side street that leads back to West Goshen Township's Coopersmith Park. In the 19<sup>th</sup> century it was an unpaved farm lane, although by the mid-1920s, a few houses had been built along either side near the main road. As early as 1940, a small tavern operated on the ground floor of one of them, and in the late 1960s it was called the Evergreen Inn. Locals described it as more of a "speakeasy" and called it "Newt's Place" after one of the former bartenders, but it was a pretty quiet and isolated place to escape from the increasing rowdiness of downtown West Chester.

In the fall of 1969, a young family lived in the apartment above the bar, while a quiet, bookish man lived in the efficiency apartment behind it. On a Wednesday night in late November, West Chester's rowdiness spilled out onto their quiet lane and changed their lives forever.

It was well after midnight when the upstairs neighbor, Martha Darlington, woke to the sound of her youngest child crying and the family dog barking. Thinking the child was hungry, she got out of bed, but as she went into the kitchen to prepare a bottle, she heard someone run out of the building and start a car parked out front on the street. Then she heard what sounded like a large firecracker, followed by yelling and two doors slamming. She looked out and saw a large man run across the front yard and get into the waiting car. She went back to the kitchen and noticed that it was 3:35 a.m. For a few minutes, she heard sounds downstairs - moaning or crying - but she went back to bed because she couldn't do anything else - neither apartment had a telephone. The next she knew, it was just before 5 a.m. and two police officers were standing at the bottom of the stairs to their apartment. They were investigating a murder.<sup>1</sup>

The victim was Jonathan Henry, a 19-year old factory worker from Malvern. He had been shot "at least two times" according to West Goshen police chief Louis Close, and his body lay just inside the door to the first floor apartment. A small pistol lay on the floor near his body; the pistol's cylinder, fully loaded, lay

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<sup>1</sup> Pat Murdoch & Eric Worth, "Police testimony heard by Mervin murder trial jury" in *Daily Local News* (Wed. June 3, 1970), 1. Henceforth *Daily Local News* is abbreviated *DLN*.

next to the pistol.<sup>2</sup> Eugene Moran, the apartment's tenant, was on his bed, asleep.

Moran, who was to become the pivotal figure in this story, was a marginal figure in West Chester society. Aged thirty-five, an admitted alcoholic<sup>3</sup> and the product of a broken family, Moran grew up in West Chester and graduated from Ursinus College in the late 1950s with a degree in psychology.<sup>4</sup> He had no regular job, but was able to get by thanks to a small inheritance. A newspaper reporter once described him as "a shy, introspective man. Moran frequented the taverns and restaurants of West Chester, often sitting by himself reading."<sup>5</sup>

Although the police took Moran in for questioning, they knew he wasn't the murderer, because the shooter had already turned himself in. He was John Mervin, a 21-year old student at West Chester State College who was fairly well-known around town as a member of the Warlocks motorcycle gang. He was accompanied by 20-year old Ben Saltzman, also a student at West Chester State and the nephew of a West Chester police officer. Later, it was revealed that Saltzman's father was the mayor of Marcus Hook and a member of the West Chester State College board of trustees.

The two men turned themselves in, not at the West Goshen police station, but at a private apartment on S. Walnut Street where West Chester police sergeant Haskell Robinson lived with his wife. Whatever they said prompted Robinson to call the Chester County emergency radio dispatcher three times in the next half hour to ask if there was any other report from the Evergreen, then to report a disturbance, and finally at 4:16 a.m. to report that a shooting had taken place. Four minutes later, a pair of West Goshen police officers took off for the Evergreen where they found Henry's body and Moran passed out on his bed.

The thing that made this even more remarkable was that less than two months earlier, Mervin had done the same thing - gone to

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<sup>2</sup> "Malvern Youth Found Slain In West Goshen" in *DLN* (Wed. November 19, 1969).

<sup>3</sup> This was part of Moran's testimony in the Mervin-Saltzman trial for perjury and sodomy in 1974.

<sup>4</sup> Barry Kushner, "Judge's ruling is due on Moran's testimony in trial" in *DLN* (Fri. April 26, 1974), 1.

<sup>5</sup> Greg Walter, "Drug Prober Killed Unarmed Man, Eyewitness to Shooting Tells Bulletin" in *Sunday Bulletin* (Philadelphia, Pennsylvania, February 27, 1972), 1.

Robinson's apartment to turn himself in after shooting someone - that time at a bar in the center of West Chester. On the night that he shot Henry, Mervin was already out on \$7,500 bail and awaiting trial for the first shooting.

There was more to come. When Mervin was arraigned two days later, he was charged with second degree murder and sent to Chester County Prison. Following the weekend, a second hearing took place before a Common Pleas Court judge which resulted in Mervin's release on \$12,000 bail. Two days later (a week after the murder) West Chester's police chief, Thomas Frame, called a press conference to announce that Mervin was an undercover police officer whose work had led to seven drug arrests during the past weekend. Henry's murder, the chief declared, was actually committed in order to prevent Henry from shooting Saltzman.<sup>6</sup>

Although the most common reaction was astonishment, for the editor of West Chester's *Daily Local News*, this was all good news. The next day he wrote "Up to the moment that Chief of Police Thomas G. Frame 'unmasked' West Chester State College senior, John A. Mervin, the drug problem in West Chester was hardly more than a labyrinth of tangled and contradictory rumors. Today -- thanks to the undercover work of this 24-year-old student -- fact has replaced rumor with the result that the drug picture as it involves West Chester is beginning to take shape and authorities, for the first time, are in a position to begin to cope with the problem." Referring to Mervin's statement at the press conference, the editor continued: "One of the welcome revelations of this investigation concerns the campus where Mervin is studying. ... Student Patrolman Mervin came to a different conclusion. Only a 'small minority' of students uses drugs is the way he expressed it. Furthermore, he is confident that he succeeded in cutting off the supply on which the few students affected depended."<sup>7</sup>

Over the next three years, residents of West Chester came to learn that a large part of what has appeared so far in this book was not actually true.

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<sup>6</sup> "Mervin revealed as undercover officer for West Chester police" in *DLN* (Wed. November 26, 1969), 1.

<sup>7</sup> Editorial "Patrolman Mervin: rumor versus fact" in *DLN* (Thu. November 27, 1969), 4.

## Chapter 2. A Town on Edge

People who visit West Chester nowadays are usually impressed by how quaint it appears. Well-preserved buildings from the last 150 years, interspersed with well-designed modern buildings line streets accented with trees, "historic" lampposts and benches. The businesses tend to offer mostly jewelry, art and decorative objects, or else high-end meals with entrees that start around twenty dollars. There are law offices, of course, since West Chester is a county seat, and additional white-collar offerings in the form of banks, insurance agents and real estate title searchers. Despite uneven sidewalks and a light dusting of litter, West Chester looks prosperous and feels very safe.

It was not always that way. During its first 160 years, when Chester County was predominantly rural, West Chester was the center for government and trade. In the 19<sup>th</sup> century it possessed two railroads, a half dozen hotels and several large factories, but the demise of the Sharpless Separator Works (makers of dairy processing equipment) during the Depression started the decline of the industrial sector, whose survivors fled to more spacious locations in the neighboring townships. The decline of the commercial sector began in the 1960s when automobile-oriented shopping malls began to sprout on farm land in King of Prussia, Exton and northern Delaware. By 1969 West Chester's largest department store was fighting a losing battle for survival, and its grocery stores faced competition from newer, larger supermarkets located in the surrounding townships. As one resident described it, by the late 1960s "the word was that West Chester was done, business was finished, everything was lousy, etc. etc. The parks were under used, the country was kind of growing elsewhere ... The major industries which supported us were moving away ... malls sprung up, what was interesting was out of town, we were drawn away to Concord Mall, King of Prussia."<sup>1</sup>

The loss of jobs tore a hole in the town's social fabric. While wealthier neighborhoods on the north end and west side still attracted home buyers, blue collar neighborhoods went into decline as homeowners died and their children moved to the suburbs. Increasingly, West Chester became a town of run-down houses rented by unskilled workers. The increased availability of low-cost rental housing coincided with an influx of college students who wanted alternatives to living in dormitories. Their impact was especially noticeable in the "Southeast" near the

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<sup>1</sup> [name withheld by request], personal communication (March 23, 2001).

college, and it further eroded the sense of community in that part of town.

West Chester State Teachers College was nearly a century old by 1969, and for most of that period, it was a source of community pride. For the first seventy-five years enrollment hovered around 1,000 students, but doubled after World War II thanks to the G.I. Bill. During the Sixties enrollment soared to more than 9,000 as maturing Baby Boomers came to seek teaching certificates. To accommodate the increase, the college embarked on a building program that included five high-rise dormitories, but neighbors blocked a sixth dormitory and the college wound up desperately short of beds. Attempts to make up the difference by leasing apartment complexes and assigning college advisors to supervise men in live off-campus houses ultimately failed by the early 1970s because of the cost of repairing each year's damage and the increasing desire of students to live on their own.<sup>2</sup>

The college's rules against alcohol were a big reason for the expansion of off-campus housing. An article on the subject that appeared in the college newspaper began with "Freedom! That's what it is" and went on to describe a "growing pile of beer bottles in the kitchen."<sup>3</sup> Another student described his S. High Street house as "in no danger of being seen in *Better Homes & Gardens*. Eight bedrooms. Two bathrooms. No kitchen. Capacity: twenty. Most of them football players. There was stuff growing in that house that they wouldn't have been able to identify in the chem lab. The basement turned into a beer-soaked party room every single weekend."<sup>4</sup> Opinions differed on how pervasive the party phenomena was, but for those living in the neighborhoods closest to the college, the result was an irreversible transformation. As West Chester State Teachers College expanded and more students sought places to party, houses in the "Southeast" increasingly morphed into college rentals.

For the rest of the town, the state college was increasingly regarded as a source of social upheaval. Although other places experienced more violence - nearby Cheyney University was the

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<sup>2</sup> "Off-campus housing to be discontinued for men next fall" in *West Chester State College Quad* (Tue. March 10, 1970), 3.

<sup>3</sup> John Mervin, "Freedom! That's what it is" in *The Quad Angles* (Tue. October 8, 1968), 5.

<sup>4</sup> Pat Croce with Bill Lyon, *I Feel Great and You Will Too!: An Inspiring Journey of Success with Practical Tips on How to Score Big in Life* (Philadelphia, PA: Running Press Book Publishers, 2000), 9.

site of firebombings and student strikes<sup>5</sup> - a West Chester State student set herself on fire to protest the Vietnam War and dozens of students occupied the main administration building to protest the board's attempt to fire "leftist" professors.<sup>6</sup> The Black community offered another source of unrest with demonstrations against the employment and lending practices at the town's banks, a march on the County Court House to decry segregation in local schools<sup>7</sup> and a mass sit-in on E. Market Street to protest official indifference to speeding in Black neighborhoods.<sup>8</sup> Although not as well organized, the growing Latino population sparked more fear of racial unrest which appeared to be justified in late 1970 when a bar fight on W. Gay Street triggered three nights of vandalism and looting.<sup>9</sup>

All of this had a dramatic impact on West Chester's nightlife. In 1966, the Borough business directory listed 19 restaurants and 17 taverns within the town's limits.<sup>10</sup> A few were upscale places like the Country Lawyer and the Mansion House which served lunch to the town's legal establishment and provided a place for drinks after a day in court. But most were small neighborhood bars that served burgers and beer, with a shot of bourbon on the side and a jukebox for entertainment. As the town declined, residents seeking refined entertainment headed elsewhere while West Chester's bars shifted their offerings to those seeking cheaper thrills. The first to offer live rock & roll music was probably Joe's Sportsmen's Lounge on W. Gay Street where, since the owner and his relatives owned most of the surrounding apartments, there

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<sup>5</sup> For example, see "Cheyney reopened; students demand changes" in *The Quad Angles* (Tue. April 2, 1968), 1. Additional details can be found in Russell Sturzebecker, Centennial History of West Chester State College (West Chester, PA: Tinicum Press, 1971), 231.

<sup>6</sup> Sturzebecker, Centennial History of West Chester State College, 224 & 246.

<sup>7</sup> "Obituary: Charles A. Melton, 73, an Activist in Civil Rights in West Chester" in *Philadelphia Inquirer* (Fri. September 4, 1987), C10. Henceforth *Philadelphia Inquirer* is abbreviated *PI*.

<sup>8</sup> Borough Council of West Chester (henceforth "Borough Council") meeting minutes (September 11, 1968).

<sup>9</sup> Bill Dean, "Puerto Rican unrest rocks West Chester" in *DLN* (Mon. July 27, 1970), 1 and Hannah Aizupitis, "Sporadic violence mobilizes police in West Chester" in *DLN* (Tue. July 28, 1970), 1.

<sup>10</sup> *West Chester Directory, 1966* (Chillicothe, OH & West Chester, PA: Mullin-Kille of Pennsylvania & Daily Local News, 1966), 79.

were no worries about noise complaints.<sup>11</sup> Others simply added rock & roll to their juke boxes, or hired bouncers and added drink specials aimed at attracting a young blue-collar crowd. When they weren't partying in their dorm rooms or at off-campus "house parties," adventuresome college students ventured uptown to see if they could get into bars without being "carded" or even staged unauthorized "rock festivals" in Everhart Park.<sup>12</sup>

With all of this action, other young people came to West Chester "to party" and some of them brought along drugs. Specific information about the origin of the Borough's drug scene is difficult to acquire because the participants naturally tried to keep it hidden, but references to drug use started to appear in newspapers as early as 1967<sup>13</sup>, and they became more frequent in 1968. The subject of student drug use came up during a meeting of the college board of trustees in 1969,<sup>14</sup> and that summer the *Daily Local News* published a pair of front-page articles that, according to the editor, contained "enough evidence to demonstrate that the drug situation is bad, and getting worse."<sup>15</sup>

Among those who were attracted by the bars, the drugs, and prospect of meeting inebriated young people were members of local motorcycle clubs, or "gangs" as they were called by the press. Motorcycle gangs were mostly a phenomena of the 1960s, fueled by the return of increasing numbers of military veterans who found the rules of civilian life distasteful. The association of motorcycles with rebellion was driven by Hollywood films like "The Wild One" (1953), "The Wild Angels" (1966), "Angels from Hell" (1968) and "Easy Rider" (1969) to name a few. In the Philadelphia area the Pagans and the Warlocks were the largest, and their battles for turf made them notorious in the early

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<sup>11</sup> Susan Weidener, "Obituaries: Antonio T. Arabia; owned rock mecca" in *PI* (date not recorded; probably November 14, 1993). According to deeds recorded in Chester County, members of the Arabia family owned two houses on Wayne Street, seven on Gay Street and one on Market Street. All but four were adjacent to Joe's Sportsmen's Lounge.

<sup>12</sup> Borough Council meeting minutes (May 13, 1970).

<sup>13</sup> Sandy McCalmont, "Campus Collage" in *Quad Angles* (Tue. December 12, 1967), 4.

<sup>14</sup> Dr. Alfred D. Roberts, Dr. Jack A. Owens, Mr. Lawrence D'Antonio & Mr. David Goudy, West Chester State: College or Political Arena? (September, 1969), 73.

<sup>15</sup> Ken Lockerby, "Drug use is a fact of life right here in Chester County" (Mon. June 23, 1969) and "Obtaining pot regarded as no big thing" (Tue. June 24, 1969).

1970s.<sup>16</sup> West Chester, with its bars and nightlife, was sufficiently distant from the main battlegrounds to offer a safe place to seek amusement.

The bikers brought a unique kind of "excitement" to the Borough. As one life-long resident remembered, "When we were young, a group of us cheered one day when we saw a line of bikers pass through town along High Street."<sup>17</sup> One former Warlock described the tension they provoked:

"See, we have a reputation for being hard guys, so everybody's got to try us. If a Warlock enters a bar alone, you can be sure that some guy's gonna go into the bathroom, rip some pipes off the wall, and come after him. If we go in the front door together, all the guys go out the back. The girls stay, they want to see what'll happen."<sup>18</sup>

The consequences often fell on the police department, which was struggling by the late 1960s. In March 1966 the local newspaper described the state of the West Chester police department as "a story of comparatively low pay, below average benefits, diminishing prestige and almost nonexistent community support" which led to high turnover and chronic understaffing.<sup>19</sup> Although they reached full strength with 24 officers in the spring of 1968, they continued to face accusations of racism and favoritism, especially from leaders in the Black community.<sup>20</sup> On August 12, 1968, their frustration boiled over when fifteen of the Borough's two dozen police officers went to a Borough Council meeting and declared that they were "tired of being the patsies all the time."<sup>21</sup>

Looking back after more than fifty years, it is easy to feel some

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<sup>16</sup> James F. Bynes 3<sup>rd</sup>, "War too costly, Pagans, Warlocks agree to truce" in *Delaware County Daily Times* (Tue. October 9, 1973), 1. Henceforth *Delaware County Daily Times* is abbreviated *DCDT*.

<sup>17</sup> Tom Paxson, personal communication (March 1, 2015).

<sup>18</sup> Marie Grogan, "The anti-heroic knights still ride with colors" in *Quad Angles* (Tue. September 24, 1968).

<sup>19</sup> "The Forgotten Men - Part 1. W. Chester Police Pay, Benefits Among Lowest" in *DLN* (Thu. March 24, 1966), 1.

<sup>20</sup> "Grievances Aired: Council Unit Promises Action" in *DLN* (Wed. July 31, 1968), 1.

<sup>21</sup> Taylor Buckley, "West Chester Police List Nine Demands in Session with Council" in *DLN* (Mon. August 12, 1968), 1.

sympathy for the police. As society changed the "old folks" felt like things were going out of control and nothing they tried could stop what they considered "bad behavior." Out of desperation, they called on the police to fix things, but police forces that were organized for 1950s problems were under-equipped and untrained for the problems of the late 1960s. Some people recognized this and called for more money for the police, but the taxpayer backlash was often bitter. In neighboring West Goshen Township, three supervisors resigned and the township manager was "allowed to resign" in just three months as a result of anger at the suggestion that the police department needed expensive upgrades.<sup>22</sup> So many police officers felt overworked, underpaid and underappreciated that many simply quit - West Chester had eight men resign, return and resign again at the end of the 1960s - while others looked for the easiest way to produce "results" that would mollify their critics.

And so, a year after Americans watched the assassinations of Martin Luther King and Bobby Kennedy on television, saw American military forces stunned by the month-long Tet Offensive in South Vietnam, and witnessed a violent struggle between police and demonstrators at the Democratic National Convention in Chicago, things in West Chester seemed to be slipping out of control. By the end of 1969, everyone was on edge.

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<sup>22</sup> See West Goshen Board of Supervisors meeting minutes for December 1969 through February 1970, on file at the Township Administration Building, 1025 Paoli Pike, West Chester 19380.

### Chapter 3. The Main Characters

As late as 2005, West Chester was the kind of place where a mayor could campaign on the fact that he was born, raised and spent his entire life working in the Borough.<sup>1</sup> That attitude meant newcomers had to wait a long time for acceptance, and the people who ran things all knew each other from childhood. Understanding how things got done in West Chester required more than knowing the rules and job titles - it also involved friendships and hatreds that went back for generations, as well as attitudes about who were "the right kind of people."

When it was founded in the 18<sup>th</sup> century, West Chester was inhabited by a fairly conservative group of Quaker farm families plus a few former slaves. Over time, the Quaker majority declined as other groups moved in, gradually won acceptance and respect, and eventually entered marriages and business partnerships with the town's leaders. By the time this story took place, influence was measured - not just by religion or ethnicity - but also by marriage, investments and political party affiliation.

Tracing the linkages between the established families in West Chester is complicated and laborious; explaining them coherently is even more difficult, but as one newcomer used to say, "never badmouth anyone in West Chester because everyone is related to everyone else."<sup>2</sup> To give one example, West Chester's police chief from 1956 to 1968 was George R. Guss. One of his ancestors was part of the original Quaker emigration to the region, and his great-grandfather Henry R. Guss became well-known for leading a group of local boys to the Civil War and hosting "Buffalo Bill" Cody at his house on S. Church Street after the war. George was related through his direct ancestors to the Cloud, Laycock, Taylor, and Riley families, and through more distant relatives to just about everyone who was descended from or married into one of the original Quaker families. In 1932, while George managed his father's billiard hall on E. Gay Street, his father (formerly a member of Borough Council) served as a Justice of the Peace, his mother was a teacher and his brother was the County District Attorney.<sup>3</sup> Six years later, George joined the police force and

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<sup>1</sup> Dick Yoder, "Re-election Essay for Philadelphia Inquirer" at [www.dickyoder.com](http://www.dickyoder.com) (accessed October 17, 2005).

<sup>2</sup> Name withheld by request.

<sup>3</sup> Polk's West Chester Directory, 1932-1933 (Philadelphia: R. L. Polk & Co., Publishers, 1931), 96.

worked there for thirty-one years.<sup>4</sup> Everyone in West Chester knew the Guss family.

In the twentieth century, influence was concentrated at the First National Bank of West Chester, which occupied a prominent location on High Street across from the County Court House. Directors of the bank were almost always men who had grown up in West Chester, been successful in business, and appeared on lists of donors to the Republican party. By 1965, the board included J. Dewees Mosteller, a member of Borough Council since 1946 and its president since 1960.<sup>5</sup> Other members included P. E. Jefferis, the son of a former Chief Burgess (i.e. mayor); Planning Commission member Devere Kaufmann; former member of Borough Council member and school board president N. Harlan Slack; and Chester County Commissioner Russell B. Jones. Charles Swope, the son of a West Chester State College president, was only a bank vice president in 1965, but he joined the board within a few years. D. T. Marrone, a future District Attorney and Common Pleas Court judge, was invited to join in 1966.<sup>6</sup> Joseph F. Harvey, a partner in Marrone's law firm, was brought in a few years later.<sup>7</sup>

The other nexus of power was concentrated across High Street in the offices of County government. Controlled entirely by the Republican Party since the Civil War, Chester County offices were filled by candidates whose only test was the ability to get the party's endorsement, since election outcomes were foregone conclusions. By 1969 the endorsement that mattered the most came from County Commissioner Theodore "Ted" Rubino, the chair of both the County Republican party and the County Board of Commissioners.<sup>8</sup> Until his 1977 conviction for extortion, Rubino

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<sup>4</sup> "Obituary: George R. Guss" in *DLN* (Mon. December 22, 1969).

<sup>5</sup> "West Chester Bank Re-Elects 11 Directors" in the *DLN* (Wed. February 17, 1965), 2.

<sup>6</sup> "West Chester Attorney Named Bank Director" in *DLN* (Sat. May 14, 1966), 1.

<sup>7</sup> "Statement of Condition, December 31, 1970" in *DLN* (Fri. February 12, 1971). A clipping is located in CCHS "West Chester Business Houses, First National Bank."

<sup>8</sup> Lawrence E. Wood, The Independent Years: Politics in Chester County in the 1970's (Denver, CO: Outskirts Press, Inc., 2008), iii & 3-4. Authors of the party's official history described Rubino as "a strong partisan and an avowed practitioner of the spoils system." Craig Lincoln Tucker & Bruce Edward Mowday, The Republican Committee of Chester County: 150 Years of Public Service (Uwchlan, PA: Squire Cheyney Books, 2005), 71.

was nearly unchallenged as the ruler of Chester County politics, with the deciding vote in selecting judges and district attorneys.<sup>9</sup>

At the news conference where Mervin's identity as a police officer was revealed, there were four participants. Chief Frame, who called the conference, was joined by Mervin and two West Chester police sergeants, Haskell Robinson and Dyer Henley. In the story that follows, Chief Frame ended up resigning, Sgt. Robinson was fired and Mervin went to jail. Only Henley survived with his reputation and career intact, although he had to spend a lot of time testifying in court during the following two years.

At the time of the press conference Frame had been the chief of West Chester's police force for less than a year. He was the product of an old and well-connected West Chester family whose ancestors were farmers in neighboring East Bradford Township. Frame's grandfather ran a grocery store on E. Gay Street and his grandmother's sister married Josiah Hoopes, a founder of a nursery which was once the largest company in West Chester with nearly a thousand acres of orchards, gardens and greenhouses.<sup>10</sup> Frame's father, Charles W. Sr. held a series of positions with county government which culminated with his appointment as the warden of the Chester County Prison in 1952.<sup>11</sup>

The future police chief was born in 1930 and grew up within sight of the railroad that served his relatives' nursery. He was the youngest of five children that included three sisters and his brother, Charles Jr. After he graduated from West Chester High School in 1949, Frame served in the Navy during the Korean War and married another West Chester High graduate.<sup>12</sup> Following his discharge, he joined the West Chester police force in 1955, but resigned the following year when he failed to win promotion to

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<sup>9</sup> "Rubino pleads no contest" in *The Pottstown Mercury* (Fri. October 14, 1977), 3.

<sup>10</sup> Hoopes Brothers & Thomas, "The West Chester Nurseries" (West Chester, PA: 1913), 1.

<sup>11</sup> See entries for Charles Weightman Frame and Helen Agnes Morgan in US Census records for 1910-1940. On great-aunt Helen's marriage to Josiah Hoopes, see Gerald R. Fuller, June Markus Hoopes & Lillian Fredsall Webster, compilers and editors, The Hoopes Family Record, Vol. I, The First Six Generations (Houston, Texas: The Hoopes Family organization, Inc., 1979), 573.

<sup>12</sup> "Frame-Wilson" in *DLN* (Sat. September 12, 1953).

sergeant.<sup>13</sup> He was hired by the West Goshen police<sup>14</sup> and then moved to the Chester County District Attorney's office where he worked on projects to integrate police forces across the county. In 1964 he was named head of the Chester County Detectives.<sup>15</sup>

Frame's appointment as the chief of the West Chester police came near the end of a year of great turmoil. Borough Council minutes show that the police faced a steady stream of public criticism in 1968, as well as a continual shortage of officers.<sup>16</sup> At one point there was a call for a citizens board to investigate complaints against the police<sup>17</sup> and officers showed up *en masse* in August to present their own a list of demands.<sup>18</sup> Council eventually approved pay raises for 1969 and other measures intended to strengthen recruiting<sup>19</sup> but officers remained dissatisfied. Then, a few months later and without any warning, Council announced late on a Friday afternoon in November that it had accepted Chief Guss' resignation after 31 years of service, and selected Frame to take his place starting January 1. A newspaper reporter observed "The suddenness of the resignation in combination with the absence of specific reasons for the move lent credence to speculation that the chief was under pressure to leave the post he has held since Jan. 24, 1956." The five Council members who attended the special meeting admitted that Frame had been certified by the civil service commission "after a non-competitive examination" and declined to say whether there were any other candidates for the job. But they did announce

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<sup>13</sup> Borough Council meeting minutes (June 15, 1955, August 8, 1956, and October 3, 1956).

<sup>14</sup> West Chester Directory, 1964 (Chillicothe, OH & West Chester, PA: Mullin-Kille of Pennsylvania & Daily Local News, 1964), 598.

<sup>15</sup> "Thomas G. Frame is selected as West Chester police chief" in *DLN* (Sat. November 16, 1968), 1. For the dates of Frame's first service with West Chester, see Borough Council meeting minutes (February 9, 1955 and August 8 & October 3, 1956). On Frame's childhood, see the 1930 and 1940 US Federal Census for West Chester.

<sup>16</sup> For examples, see Borough Council meeting minutes (April 10 and October 28, 1968). Leaders of groups such as the NAACP, the West Chester Human Relations Council, the Black Action Committee and the "Concerned Citizens for West Chester Committee" offered a mixture of criticism and suggestions for improvement.

<sup>17</sup> Borough Council meeting minutes (September 11 and October 9, 1968).

<sup>18</sup> Taylor Buckley, "West Chester Police List Nine Demands in Session with Council" in *DLN* (Mon. August 12, 1968), 1.

<sup>19</sup> Borough Council meeting minutes (July 25, 1968).

that Frame would earn \$14,000 per year, or \$6,000 more than Guss was scheduled to receive in the coming year.<sup>20</sup>

When Frame took over, he inherited a department that included a lieutenant, four sergeants, three desk sergeants and eighteen patrol officers.<sup>21</sup> One of the sergeants was Haskell Robinson, the man to whom Mervin surrendered the night Jonathan Henry was killed. Unlike Frame, Robinson was a complete outsider - born in South Carolina in 1941 and raised in Kentucky. After high school he joined the army and then came to West Chester where he found work as a state college security patrol officer in 1964.<sup>22</sup> In May 1966 he was hired by the Borough of West Chester, and promoted to sergeant in September 1969.<sup>23</sup> By that time, according to court testimony, he had gotten to know John Mervin.<sup>24</sup>

John Mervin was more local than Robinson, but still an outsider when it came to West Chester. Born in 1948, he grew up in a blue collar family in Delaware County. His father died in 1955<sup>25</sup> and his mother remarried, so Mervin grew up in a household that included eleven children - five of hers and six of his.<sup>26</sup> He graduated from Cardinal O'Hara High School in 1966 and attended Cheyney State College before transferring to West Chester State

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<sup>20</sup> Taylor Buckley, "Thomas G. Frame is elected as West Chester police chief. Robert Shaw will fill manager post" in *DLN* (Sat. November 16, 1968), 1.

<sup>21</sup> Borough Council meeting minutes (July 25, 1968).

<sup>22</sup> Robinson's biography is not entirely clear because an article published in 1969 contains information that is contradicted by other public records. Details for this paragraph were culled from that article and various bits of testimony provided by Robinson during court hearings. See "West Chester Police is at full capacity" in *DLN* (Tue. September 30, 1969), 1.

<sup>23</sup> Borough Council meeting minutes (May 2, 1966 and Sept. 29, 1969).

<sup>24</sup> Barry Kushner, "Mervin claims 4 prosecution witnesses are lying" in *DLN* (Thu. December 14, 1972), 1.

<sup>25</sup> "James A. Mervin" in Pennsylvania, Death Certificates, 1906-1964 [database on-line]. Provo, UT, USA: Ancestry.com Operations, Inc., 2014.

<sup>26</sup> Information about Mervin's family was assembled from a variety of sources including the 1940 US Census, an assortment of obituaries and wedding announcements for Mervin and Dawson family members, and occasional references in newspaper articles like "Faraday Park: Two Girls Win Award" in *DCDT* (Tue. January 12, 1960), 5 and "Accident Suit Filed in Bucks" in *Doylestown Intelligencer* (Fri. January 11, 1963), 1.

to major in journalism.<sup>27</sup> Some time during 1967 he joined a motorcycle gang and started hanging around with "unsavory elements" in the Borough.<sup>28</sup> Nevertheless, the wife of then-Patrolman Haskell Robinson claimed that she met Mervin in April 1968.<sup>29</sup> About a year later, after Mervin was a witness to a bar fight, Robinson approached him to see if he would be willing to go undercover. When Mervin agreed, Robinson introduced him to Frame.<sup>30</sup>

Plenty of other people knew John Mervin while he was a student at West Chester State College. In September 1968, he was featured in an article in the student newspaper about motorcycle gangs.<sup>31</sup> A few weeks later he wrote an article about off-campus student life that was published in the same newspaper,<sup>32</sup> and other student journalists quoted him in their own articles.<sup>33</sup> In an article about the results of the first round of trials, a writer for *The New Yorker* wrote that "the college crowd" knew Mervin as "a motorcycle tough who bragged about his violence."<sup>34</sup> In the next few years, Mervin's name wound up in many more newspapers.

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<sup>27</sup> John F. Clancy, "'Hippie Policeman' Lived In Degradation and Fear. Family Thought He Was a Criminal" in *PI* (Mon. December 1, 1969), 31.

<sup>28</sup> Greg Walter, "Police Chief Backed Drug Prober After He Was Involved in Shootings" in *Evening Bulletin*, (Philadelphia, Pennsylvania, Monday, February 28, 1972), 1.

<sup>29</sup> Mrs. Susan Robinson testimony in *Commonwealth of Pennsylvania v. John Mervin*, Common Pleas Court of Chester County, No. 186 (March 1972 session).

<sup>30</sup> John A. Mervin testimony in *Commonwealth of Pennsylvania v. John Mervin*, Common Pleas Court of Chester County, No. 186 (March 1972 session). See also John F. Clancy, "'Hippie Policeman' Lived In Degradation and Fear. Family Thought He Was a Criminal" in *PI* (Mon. December 1, 1969), 31.

<sup>31</sup> Marie Grogan, "The anti-heroic knights still ride with colors" in *The Quad Angles* Vol. 37 No. 2 (Tue. September 24, 1968).

<sup>32</sup> John Mervin, "Freedom! That's what it is" in *The Quad Angles*, Vol. 37, No. 4 (Tue. October 8, 1968), 5.

<sup>33</sup> Dennis Haslam, "Thoughts and Comments on the Fool on the Hill" in *The Quad Angles*, Vol. 36, No. 23 (Tue. May 7, 1968), 6, and Leith Anne Foltz, "Tis the season to be jolly ... or is it?" in *The Quad Angles*, Vol. 37, No. 12 (Tue. December 10, 1968), 8.

<sup>34</sup> Calvin Trillin, "U.S. Journal: West Chester, Pa. I've Always Been Clean," in *The New Yorker* (June 27, 1970), 45. Trillin's article was reprinted in Alice Chambers, *His Honor, the Mayor* (Kennett Square: KNA Press, 1982), 37-46, and in Calvin Trillin, *Killings* (New York: Random House, 1984), 14-24 as "I've Always Been Clean. West Chester, Pennsylvania, June 1970."

Although they were not mentioned at Frame's press conference, two other men played major roles in what followed. They were J. Herbert Chambers, who was due to be sworn in as mayor in a few weeks, and his son Tom, who was about to take office for the first time as a member of Borough Council.<sup>35</sup> If power in West Chester was concentrated in the county government and the First National Bank, then the Chambers were outsiders, even though both were from West Chester.

"Bertie" Chambers' father was a Quaker from around Norristown, but Bertie was raised by an aunt in West Chester from the time he was five years old.<sup>36</sup> He became an electrician and in 1929, married Alice Corcoran, the daughter of a successful developer whose only liability was his allegiance to the Democratic party. Bertie got involved with the County Democratic party and eventually ran for state senator in 1944. He lost, but was undeterred, and from 1949 to 1965 he ran for mayor in West Chester five times in an effort to do what the Democrats called "offering the voters a choice" because their chances were so bad in Republican-controlled West Chester.<sup>37</sup> He had to be convinced by his son Tom to run a sixth time, and only agreed when Tom agreed to run for West Chester borough council.<sup>38</sup>

The Chambers were well-known through their involvement with the First West Chester Fire Company, but Tom became even better known because of his efforts in mobilizing opposition to a proposal to place a parking garage on the site of the Chestnut Street Quaker meetinghouse.<sup>39</sup> By framing the issue as a plan to use taxpayer money to subsidize the town's largest department store, which was owned by Borough Council president J. Dewees Mosteller, Chambers

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<sup>35</sup> Tom Chambers served two four-year terms on Borough Council while his father was mayor, and then succeeded him as mayor for three terms.

<sup>36</sup> According to the 1920 US Census for West Chester, Pennsylvania (enumerated January 2, 1920), Bertie Chambers' aunt Mary Cavanaugh lived at 388 E. Niels Street in West Chester's "Riggstown" neighborhood. Growing up there gave Bert Chambers a set of connections that were completely separate from those that emanated from the First National Bank.

<sup>37</sup> Alice Chambers, His Honor, the Mayor (Kennett Square: KNA Press, 1982), 2-3 & 8-13.

<sup>38</sup> Alice Chambers, *Ibid.*, 27; Tom Chambers, interview by Jim Jones (West Chester, PA: December 6, 2016). Another son, Daniel Chambers, ran for West Goshen supervisor that year, and was the only one who lost.

<sup>39</sup> Alice Chambers, *Ibid.*, 23-25.

and his supporters turned the proposal into a political issue.<sup>40</sup> When the Republican Party refused to endorse Mayor Andress for reelection, instead backing realtor Anthony Stancato,<sup>41</sup> the Republican vote divided and Bertie Chambers pulled off a win, making him the first Democrat ever elected to the top post in West Chester. His son Tom also won and the two were sworn in on December 31, 1969, placing two Democrats plus six Republicans in charge of Borough government.<sup>42</sup>

According to the Borough Code, the mayor supervised the police while Borough Council directed the other departments, but Council also exerted influence over the police through the hiring and budget processes. For that reason, Council also had a "Police Committee" to handle questions that could not be handled within the police hierarchy, and which advised Council when police appointments and promotions came up for a vote. Practically speaking, elected officials came and went while police chiefs remained in the position, so neither mayor nor council really controlled the police department. But a year's worth of public criticism of the police department followed by the sudden appointment of Chief Frame shifted the balance, and the Mervin affair stirred up a firestorm. With Bertie as mayor and Tom as a member of Council's police committee, the Chambers wound up in the thick of it, and with Republicans seeking to undo the damage of their electoral defeat, policy debates turned into polarizing political battles. The town that was already "on edge" in 1969 became deeply divided over what to do about John Mervin.

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<sup>40</sup> This view was articulated most clearly in a letter to the editor signed by 233 pupils and approved by eight faculty members from the N. Church Street Junior High School in the February 19, 1968 *DLN*. For other references to a conflict of interest, see the letters to the editor of the *DLN* by Eric C. Wilson, "Calls It 'Sacrilege'" (Wed. October 5, 1966) and Edith Perkins, "Mortgaging Future" (Fri. February 9, 1968).

<sup>41</sup> "West Chester GOP backs Stancato bid" in *DLN* (Tue. February 25, 1969), 1.

<sup>42</sup> Alice Chambers, *Ibid.*, 32-33.

## Chapter 4. Prelude to Murder (1969)

The year 1969 started off poorly for John Mervin. On January 8 his driver's license was suspended for an old speeding violation in Philadelphia<sup>1</sup> and on February 16 he was arrested in Upper Darby for beating up a 19-year old girl. Three months later he was caught speeding and trying to elude police in Pleasantville, NJ, and the following month he was arrested in Ocean City for a minor weapons offense.<sup>2</sup> Then, sometime in June he started selling LSD and amphetamines in West Chester, although he managed to avoid getting arrested for that.<sup>3</sup>

Meanwhile, the pressure to "do something" about drugs in West Chester grew. At the end of June, a *Daily Local News* reporter convinced a college student to tell him about West Chester's "drug scene" and wrote a pair of articles about how easy it was to buy drugs near the County court house and how the college was a hotbed of drug use.<sup>4</sup> That led to an editorial that warned about "questionable characters [who] lurk in the shadows" and repeated a federal official's opinion that "one of the solutions to the growing problem is the arrest and conviction of the drug peddler."<sup>5</sup> It gave Tom Chambers - a candidate for Borough Council - an opening to present his "Proposal to Combat Drug Abuse" at the Borough meeting Council on August 13. Chambers called for a coordinated effort involving Council, police, the School Board, parents and citizens.<sup>6</sup>

No one could object to that - at least not those who attended Council meetings, and as the newspaper reported the next day, Chief Frame expressed support for the proposal but added that the police "can only do so much." Evidently someone asked the chief to explain what the police were already doing, but Frame was

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<sup>1</sup> Mervin Appeal, misc. nos. 13335 and 13337, Chester County Court of Common Pleas (decided April 16, 1971), published in Chester County Reports, vol. 21 (1971), 156-160.

<sup>2</sup> Greg Walter, "Police Chief Backed Drug Prober After He Was Involved in Shootings" in *Evening Bulletin*, (Mon. February 28, 1972), 1.

<sup>3</sup> Ibid.

<sup>4</sup> Ken Lockerby, "Drug use is a fact of life right here in Chester County" (Mon. June 23, 1969) and "Obtaining pot regarded as no big thing" (Tue. June 24, 1969).

<sup>5</sup> Editorial, "Illicit drug use in Chester county" in *DLN* (Tue. June 24, 1969), 4.

<sup>6</sup> Borough Council meeting minutes (August 13, 1969).

evasive. The reporter interpreted Frame's refusal to provide detail on current efforts as evidence "that an undercover investigation of drugs is now in the works."<sup>7</sup>

That may have been true, but it was more likely that Frame was still looking for a way to get inside "the drug culture." What is certain was that eleven days later, Mervin filled out an application to work for the police on August 24,<sup>8</sup> although in the days following the Henry murder, officials gave vague and conflicting statements about how Mervin came to be a policeman. Eventually Mayor Andress and Mervin both stated that he was sworn in as a "special police officer" on September 18<sup>9</sup> while Frame later told a jury that it took place on September 17, but added that the ceremony was performed at Judge D. T. Marrone's home and that he gave Mervin a pistol about a week later.<sup>10</sup>

By that time, classes had resumed at West Chester State and Mervin had begun the semester living in a shared apartment at 212 W. Gay Street, his residence for the past year. He also had a steady girlfriend (who occasionally posed as his wife<sup>11</sup>), and owned both an orange Harley Davidson motorcycle and a used white Corvette. Nearly a month into the semester, he acquired a new object - a 32 caliber pistol from Chief Frame - and started his undercover work the following week.<sup>12</sup>

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<sup>7</sup> Borough Council meeting minutes (August 13, 1969) and "W. Chester Council to name committee to study drug abuse" in *DLN* (Thu. August 14, 1969), 1.

<sup>8</sup> Mervin Appeal, misc. nos. 13335 and 13337, Chester County Court of Common Pleas (decided April 16, 1971), published in Chester County Reports, vol. 21 (1971), 156-160.

<sup>9</sup> "Mayor won't suspend undercover police officer" in *DLN* (Thu. December 11, 1969), 1, and Shirley Macauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1. There was nothing about Mervin in the Borough Council meeting minutes for either September 16 or 29, although the minutes from the 29<sup>th</sup> mention that another patrolman was hired and Haskell Robinson was promoted to sergeant.

<sup>10</sup> Shirley Macauley, "Mervin defense begins its case; police chief testifies" in *DLN* (Tue. October 20, 1970), 1.

<sup>11</sup> Barry Kushner, "Mervin trial witness says scalpel made 'stab' wound" in *DLN* (Thu. December 7, 1972), 1.

<sup>12</sup> "Man admitted to hospital after shooting" in *DLN* (Sat. October 4, 1969), 1; Greg Walter, "Police Chief Backed Drug Prober After He Was Involved in Shootings" in *Evening Bulletin*, (Mon. February 28, 1972), 1; and Barry Kushner, "Mervin claims 4 prosecution witnesses are lying" in *DLN* (Thu. December 14, 1972), 1.

Accounts differ as to how Mervin prepared for his new responsibilities. At one point, Mervin told a jury that his training began in June and lasted until early September, and involved two or three sessions per week at Frame's house for as long as three hours at a time.<sup>13</sup> Given his dates of application and swearing-in dates, that seems improbable, and it is possible that Mervin had no training at all. In any case, in 1972 Mervin told another jury that he went to Frame's house on October 2, where he received a list of suspected drug dealers with some photos and instructions to look for them at the Horse & Hound on N. Walnut Street. He received no money that night, but Frame told him to try and set up some drug purchases for later. The following night, Mervin did as he was ordered.<sup>14</sup>

It is difficult to know exactly what happened at the Horse & Hound. Over the next three years the story was told and retold by Mervin and other eyewitnesses, four of whom eventually pled guilty to perjury. Other participants claimed they were unable to remember exactly what they had done, and several pieces of evidence disappeared without explanation. But there were a few things that everybody agreed upon.

Robert Miller was a young house painter from Downingtown.<sup>15</sup> On October 3, he and his wife had driven to West Chester and gone to the Horse & Hound, a bar on N. Walnut Street near the post office. They were already inside when Mervin arrived around 10:30 p.m., wearing his Warlocks "colors" - a sleeveless jacket worn outside his clothing that had the motorcycle club's logo on the back.<sup>16</sup> Mervin only stayed for a few minutes and then left to visit someone from the college, but returned to the bar a little after 12:30 a.m.<sup>17</sup> Miller and his wife were still there, as were about a half dozen other patrons.

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<sup>13</sup> Shirley Macauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1.

<sup>14</sup> Barry Kushner, "Mervin claims 4 prosecution witnesses are lying" in *DLN* (Thu. December 14, 1972), 1, and Barry Kushner, "Ex-chief Frame testifies at Mervin trial" in *DLN* (Wed. December 13, 1972), 1.

<sup>15</sup> Clark DeLeon & Greg Walter, "JOHN MERVIN: A Bizarre Case of Death, Perjury and Mistaken Loyalty" in *PI* (Sun. Dec. 17, 1972), 16b.

<sup>16</sup> Shirley Macauley, "Mervin hearing decision is due tomorrow; shooting victim arrested" in *DLN* (Thu. February 5, 1970), 1.

<sup>17</sup> Shirley Macauley, "Mervin testifies in assault trial; defense rests its case" in *DLN* (Thu. October 22, 1970), 1.

Within a few minutes, Miller and Mervin got into an argument - witnesses disagreed as to who started it - and the bartender told them to "take it outside." He escorted Miller through the front door and then tried to get him to stop shouting for Mervin to come out. Mervin waited about five minutes and then came out, shot Miller several times and then ran east down Middle Alley towards Matlack Street.<sup>18</sup> By a circuitous route, he made his way to S. Walnut Street where he was spotted by residents of a student housing complex in the 400-block. Mervin continued to the next block and reached the back porch of Haskell Robinson's apartment. Robinson's wife found him<sup>19</sup> and called the West Chester police, who sent Sergeant Dyer Henley to take Mervin into custody.<sup>20</sup>

The next morning, the *Daily Local News* ran a brief article about the "shooting incident" that left Miller in the hospital in "fair condition" with multiple gunshot wounds. It identified the shooter as "John A. Mervin, 24, of 212 W. Gay Street" (although he was actually 21) and said that he was arrested within fifteen minutes by three West Chester officers in the 400-block of S. Walnut Street, but made no mention of his status as either a student or Warlock member.<sup>21</sup>

As bar fights went, this wasn't completely out of the ordinary for Chester County in 1969. Earlier that year a motorcycle gang had taken over the New Garden Inn,<sup>22</sup> police fired their guns while subduing a "disturbed individual" at the "Lock Stock and Barrel" tavern in Paoli in June<sup>23</sup> and a patron was stabbed

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<sup>18</sup> Shirley Macauley, "Mervin hearing decision is due tomorrow; shooting victim arrested" in *DLN* (Thu. February 5, 1970), 1.

<sup>19</sup> Shirley Macauley, "Tavern owner tells court of shooting" in *DLN* (Fri. October 16, 1970), 1.

<sup>20</sup> Shirley Macauley, "Mervin testifies in assault trial; defense rests its case" in *DLN* (Thu. October 22, 1970), 1.

<sup>21</sup> "Man admitted to hospital after shooting" in *DLN* (Sat. October 4, 1969), 1.

<sup>22</sup> "Cyclists cause disturbance at New Garden Inn" in *DLN* (Mon. February 17, 1969), 1.

<sup>23</sup> "Police respond to disturbance at tavern" in *DLN* (Thu. June 19, 1969), 2.

outside another bar in West Chester in July.<sup>24</sup> Only three weeks after Mervin shot Miller, the Horse & Hound was the scene of another unrelated shooting that took the life of one of the witnesses of the Miller shooting.<sup>25</sup> Barroom gunfire was the exception in 1969, but it was certainly not unthinkable. But when Mervin was arrested for a second shooting at the Evergreen Inn - this time fatal - barely six weeks later, and then identified as an undercover police officer the following week, Miller's shooting became anything but "ordinary."

# DRAFT

## September 2020

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<sup>24</sup> The stabbing took place at the Side Track Lounge at Barnard and Matlack Streets. See "Two injured in separate stabbings" in *DLN* (Sat. July 12, 1969), 1.

<sup>25</sup> Shirley Macauley, "Murder defendant describes gunfight" in *DLN* (Tue. June 11, 1970), 1.

## Chapter 5. Special Officer Mervin

Frame's announcement that Mervin was a police officer landed like a bombshell in the middle of a town that was already stressed out about race, crime and drugs. The *Daily Local News* editor praised them both for uncovering facts that replaced "a labyrinth of tangled and contradictory rumors" about West Chester's drug scene,<sup>1</sup> but other opinions were more combative.<sup>2</sup> Letters to the editor started appearing about two months later and divided roughly into two categories. Typical of those that supported Mervin were this letter which asked "Isn't there anyone in West Chester grateful to Officer John Mervin for the sacrifice he has made and is continuing to make for all of us?"<sup>3</sup> or praised Frame because "In the face of great pressure he has stood by Officer Mervin, an extremely intelligent young man who, having seen the consequences of drug abuse, had guts enough to get involved to help others."<sup>4</sup>

The first evidence of public dissent was a letter to the editor that appeared after a grand jury indicted Mervin for the Horse & Hound shooting. The writer opened with a disclaimer: "Yes, I feel John Mervin did help this community quite a bit; and I do not doubt the fact that he was endangering his life at the time. It was a great risk, and one, which I'm sure, not many people would want to take." But then the writer wrote "I do feel that dismissing Mervin from his duties was the proper step to take ... [and he] should have been relieved of these duties when it was first learned of the shooting." The writer concluded "he has been accused of breaking the law. ... Just because he is a

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<sup>1</sup> Editorial "Patrolman Mervin: rumor versus fact" in *DLN* (Thu. November 27, 1969), 4.

<sup>2</sup> Articles published just after Mervin's arrest exaggerated his scholarship and achievements. For example, instance, a *Philadelphia Inquirer* article described Mervin as a "star halfback on the 1964 and 1965 football teams at Cardinal O'Hara High School." Although one article mentions "a 53-yard pass play from John Mervin to Austin Quinn," a website dedicated to the history of Cardinal O'Hara football since 1964 does not mention Mervin at all. See John F. Clancy, "'Hippie Policeman' Lived In Degradation and Fear. Family Thought He Was a Criminal" in *PI* (Mon. December 1, 1969), 31; "O'Hara Whips Lansdale, 19-6" in *DGDT* (Mon. September 21, 1964), 19; and "Philadelphia High School Football: History of Cardinal O'Hara in Springfield, PA" (<http://tedsilary.com/oharaFBhistory.htm>), accessed March 7, 2018.]

<sup>3</sup> Betty M. Lawton, letter to the editor "Backs police officer" in *DLN* (Fri. January 30, 1970), 4.

<sup>4</sup> Josephine C. Oas, letter to the editor, "Asks support of police officers" in *DLN* (Sat. January 31, 1970), 4.

`police officer' I see no reason why he should be treated differently than anyone else."<sup>5</sup>

Dissent was not confined to the editorial page. In early December the *Daily Local News* reported that a sniper fired at Mervin as he left for work in his police uniform. By then, he had moved out of West Chester and shared a house in neighboring West Goshen Township with another West Chester police officer, John Coslett. Although Mervin fired back six times with his service revolver, nobody was hit and the reporter noted that "West Goshen police are reluctant to comment on the incident." He added that this was the second attack on Mervin because "Last Thursday evening, Mervin's car was damaged while parked in the A & P parking lot in West Chester."<sup>6</sup>

It was in such a polarized environment that public officials made decisions about how to handle Mervin. On the surface, the situation was clear. Although shooting people was prohibited, American law recognized many exceptions. For example, soldiers are exempt from prosecution in most cases, even if they produce "collateral damage."<sup>7</sup> The same was true for police officers as long as they were acting in the line of duty.<sup>8</sup> Fewer exceptions were available to ordinary civilians, of which self-defense is the best known.

There was nothing to suggest that Justice of the Peace Earl Heald knew of Mervin's police status when he appeared for arraignment on the morning after the first shooting. Heald's ruling - that there was enough evidence for the case to go to trial, and Mervin could go free on \$7,500 bail - seemed reasonable given the fact that Miller was in the hospital with two serious bullet wounds, and Mervin was a college senior from Delaware County whose ties

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<sup>5</sup> Brenda Brooks, letter to the editor, "Proper move in Mervin case" in *DLN* (Tue. February 10, 1970), 4.

<sup>6</sup> "Sniper misses police officer" in *DLN* (Tue. December 9, 1969), 1.

<sup>7</sup> "Collateral damage" is "the incidental or unintended injury or damage caused to persons or objects that may not be lawful military targets." See <https://definitions.uslegal.com/c/collateral-damage-military-law/>; accessed March 18, 2018.

<sup>8</sup> See the discussion in Frank G. Zarb, Jr., "Police Liability for Creating the Need to Use Deadly Force in Self-Defense" in *Michigan Law Review*, Vol. 86, No. 8 (August 1988), 1982-2009. Pages 1984-1991 address the question of when police use of deadly force is justified.

were all based in the region.<sup>9</sup> Certainly no one ever questioned Heald's decision in public.

After the Evergreen Inn shooting, Mervin appeared before Heald again for the second time in six weeks. This time there was a dead man, and at least four people knew Mervin was a police officer - Chief Frame, Sgt. Robinson, Detective Sgt. Dyer Henley and Judge D. T. Marrone,<sup>10</sup> although Frame later testified that Lt. James Sobers, second in command of the West Chester Police Department, also knew.<sup>11</sup> In any case, Heald did not, and he ordered Mervin held for trial without bail at the Chester County Prison Farm.<sup>12</sup>

The following Monday, West Chester lawyer Lawrence M. Aglow represented Mervin at a bail hearing before Judge Thomas G. Gawthrop. Describing him as a 24-year old "senior honor student at West Chester State College, where he is studying journalism and law" (Mervin was actually 21 and WCSC offered neither law nor pre-law programs), Aglow got the Assistant District Attorney to concede that first degree murder would be difficult to prove, making Mervin eligible for bail.<sup>13</sup> Judge Gawthrop then set bail at \$12,000.<sup>14</sup> Later that same day, Frame held the press conference at which he revealed Mervin's status as a police officer.

The next step belonged to West Chester's mayor who was, by law, the head of the police department. But Mayor Charles Andress had been kept in the dark by Chief Frame about the Mervin hire. Andress was also a Republican who had been passed over by his own party for reelection and then watched Democrat Bertie Chambers score an upset win. He had plenty of reasons to be resentful,

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<sup>9</sup> "Man admitted to hospital after shooting" in *DLN* (Sat. October 4, 1969), 1.

<sup>10</sup> Hannah Aizupitis, "West Chester Council reinstates Chief Thomas Frame by 6-1 vote: Action is taken after long hearing" in *DLN* (Thu. November 12, 1970), 1.

<sup>11</sup> Barry Kushner, "Ex-chief Frame testifies at Mervin trial" in *DLN* (Wed. December 13, 1972), 1.

<sup>12</sup> "Collegian Held in Pa. Slaying" in *Wilmington Evening Journal* (Thu. November 20, 1969), 23.

<sup>13</sup> "Murder suspect awaits ruling" in *DLN* (Tue. November 25, 1969), 1. The hearing was in response to Aglow's petition for a writ of habeas corpus.

<sup>14</sup> "By borough police: More drug arrests made" in *DLN* (Thu. November 27, 1969), 2.

but he also had only one more month left in office.

Andress' last Borough Council meeting on December 10 started off with mundane matters - the approval of a rock salt contract, presentation of awards to police officers and approval of the November minutes. Then things got heated. First, the leader of the "Black Action Committee," Devere Ponzo, wanted to know how Mervin got hired and why he wasn't suspended until his court case was settled. The Borough solicitor explained that because Mervin was a "special officer" rather than a "regular officer," the rules were different. When Ponzo persisted, Councilman-elect Tom Chambers spoke up and said that he knew of a number of people who thought that it was normal policy to suspend a police officer pending a trial.

After more discussion Fred Beckett, the lone Black member of Council, moved to suspend Mervin without pay until his trial was finished, but could not get anyone to second his motion. Instead, Council member Robert Spaziani suggested that Mervin continue working as a non-patrol officer performing, for example, public relations duties, so he would remain eligible to receive police protection. John Voge, a frequent speaker at Council meetings, protested that Spaziani's idea was impractical and too costly because the court case could drag on for more than a year. Tony Polito, the president of the local ambulance service, disagreed and said he supported Frame's decision to keep Mervin on duty. Eventually Mayor Andress suggested that Council move on with the agenda, and promised to stay after the meeting to hear more public comments.<sup>15</sup>

The next day the local newspaper reported that during the after-meeting meeting, "The consensus of council, with the exception of William Underwood, who didn't stay, was that Mervin should not be suspended exactly, but that he should be put on limited duty until his two entanglements with the law are cleared." Later that morning, the mayor announced that since Mervin was appointed a special police officer to help deal with the drug emergency, and Frame assured him that the emergency still existed, Mervin would remain on duty at full pay.<sup>16</sup>

The issue did not die there, however. Leaders of the Black Action Group joined with those of the NAACP and the Human Relations Council to compose a letter to Borough Council

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<sup>15</sup> Borough Council meeting minutes (Wed. December 10, 1969).

<sup>16</sup> "Mayor won't suspend undercover police officer" in *DLN* (Thu. December 11, 1969), 1.

expressing their concern about allowing Mervin to continue to act as a police officer while his innocence was still in question. Council received the letter in time for its January 14, 1970 meeting and referred it to their solicitor for review and comment.<sup>17</sup> As a result Council held a special meeting on January 29 to "take official action concerning the status of Special Officer John A. Mervin."<sup>18</sup>

The meeting came during a tumultuous week. On Monday, a grand jury indicted Mervin for the murder of Jonathan Henry at the Evergreen Inn and Mayor Chambers suspended him.<sup>19</sup> On Tuesday, sixteen West Chester police officers protested by handing their guns over to Chief Frame (who promptly returned them and told them to get back to work).<sup>20</sup> On Wednesday, Mervin joined Frame at an East Bradford PTA meeting and "spoke on what drugs can do to you, how much drug action there is locally and what it was like to be part of it."<sup>21</sup>

That set the stage for Council's Thursday night meeting, which opened with a statement from Edward Cotter who said that the members of Council's Police Committee (Cotter, Spaziani and Chambers) and Chief Frame all agreed "completely" with the Mayor's suspension of Mervin. Cotter said that the only question left to decide was how Mervin would be paid. Then he made a motion that Council should keep Mervin's salary in escrow as long as he was suspended, and then give it to him if he was found innocent, but not if he was found guilty. Councilman Tom Chambers tried to amend the motion to pay Mervin only the difference between his police salary and anything that Mervin earned while he was suspended, but Cotter refused. The Council President quickly called for a vote and the motion passed with the five holdover Council members voting for it and the two

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<sup>17</sup> Borough Council meeting minutes (Wed. January 14, 1970).

<sup>18</sup> Borough Council meeting minutes (Thu. January 29, 1970).

<sup>19</sup> "Mervin suspended after he's indicted" in *DLN* (Tue. January 27, 1970), 1.

<sup>20</sup> "W. Chester police protest handling of Mervin's case" in *DLN* (Wed. January 28, 1970), 1.

<sup>21</sup> Josephine C. Oas, letter to the editor, "Asks support of police officers" in *DLN* (Sat. January 31, 1970), 4.

newcomers - Chambers and J. Paul Mosteller - voting against it.<sup>22</sup>

Before they could move on, Tom Chambers asked the solicitor to clarify Mervin's work status and to give his opinion on whether the vote they had just taken was legal. The solicitor said that Mervin was a "special police officer" and not a "regular police officer," but he could be suspended. If he had been fired, however, then Council's vote was illegal. At this point the Mayor said that he had "terminated" Mervin's "services." Spaziani replied testily that Council should not "hide behind technicalities, because this man was hired to do a job and he did it." After that, President Thomas quickly asked if there was any other business. Following a few short items, the meeting ended after only a half hour.<sup>23</sup>

The question of whether the Mayor had suspended or "terminated" Mervin lingered on for another month. In the meantime, a letter-writing campaign in support of Mervin gathered momentum, and the grand jury considered whether to indict him for the Horse & Hound shooting. So the atmosphere was tense when Council met on February 11, 1970. That became evident when Council attempted to approve the minutes from the January 29 special meeting. First Councilman Tom Chambers and then Mayor Herbert Chambers questioned what the solicitor had said about Mervin's status. After the solicitor was directed to research the question further, the rest of the minutes were approved without difficulty, but then the public began to comment.

Most had questions about Mervin. Burton Lund, the spokesman for the protesting West Chester police officers, asked about the policy on removing special police officers like Mervin, and was told by the solicitor that the mayor had complete authority in such matters and was not required to provide advance notice. Two Mervin supporters from neighboring townships wanted to know if Mervin was still armed, and accused the Mayor of punishing Mervin

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<sup>22</sup> The five members of Council who remained from the previous year were W. Earl Thomas, Edward Cotter, Robert Baldwin, William Underwood and Robert Spaziani. The newcomers were Thomas Chambers and J. Paul Mosteller (plus Mayor Herbert Chambers). Cotter was the chair of the Police Committee, which included Spaziani and Chambers. Of the eight, all were Republicans except the two Chambers. J. Paul Mosteller was the brother of former Council President J. Dewees Mosteller, who had died suddenly the previous year.

<sup>23</sup> Borough Council meeting minutes (January 29, 1970). The minutes do not reveal Mervin's salary, but the *Daily Local News* reporter speculated that it was \$6,600 per year, the same as a regular patrolman. Taylor Buckley, "Councilmen rule Mervin will receive full pay if cleared" in *DLN* (Fri. January 30, 1970), 1.

by suspending him before he was proven guilty.<sup>24</sup> Borough resident Tony Polito wanted to know why the Borough wasn't obligated to pay Mervin's legal fees, since the crimes with which he was charged occurred in the line of duty, and former Council member C. Harry Barber, Jr. asked if the Borough could pay any of Mervin's legal fees stemming from the prosecution of the people he had helped to arrest.<sup>25</sup>

The following day, the *Daily Local* coverage focused on "confusion" concerning whether the Mayor had suspended or terminated Mervin, and reported that "Councilman Edward J. Cotter, chairman of the police committee, said he made the motion for full pay on the basis of his belief that the mayor had 'suspended' Mervin. And Councilman Robert C. Spaziani and council President W. Earl Thomas said that's how they had understood it all along, too."<sup>26</sup>

That evening, February 12, Mervin called the West Goshen police to report that he had been shot while watching television. Mervin claimed that he heard a voice from outside that implied there was more than one shooter, and West Goshen officers found three small caliber bullets inside the house, but no trace of the assailants. Mervin was hit twice in the thigh - enough to put him on crutches but not enough to require a hospital stay - but the real impact was to inflame the debate that was already underway. The *Daily Local* reporter recounted the two earlier incidents -- both reported by Mervin but unsupported by other evidence - of damage to his car in a West Chester parking lot and an exchange of gunfire with a "sniper" right after Frame announced that Mervin was a police officer. The article also observed the shooting "occurred about 24 hours after it was revealed at a meeting of West Chester Borough Council that the

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<sup>24</sup> In letters published in the *Daily Local News*, David MacQueen of East Goshen called police brutality a "communist slogan" and Sherwood Angelson of Thornbury Township encouraged readers to write letters calling for Mervin's reinstatement. See David MacQueen, "Finds John Mervin a dedicated man" (Sat. February 7, 1970), 4, and Sherwood Angelson, "Questions justice of Mervin's indictment" (Wed. February 11, 1970), 4. For their comments at the Council meeting, see Borough Council meeting minutes (February 11, 1970).

<sup>25</sup> According to their solicitor, the Borough was not obliged to defend employees against criminal charges. He promised to look into whether the Borough had to pay for legal expenses associated with prosecuting other people. Borough Council meeting minutes (Wed. February 11, 1970).

<sup>26</sup> Taylor Buckley, "Confusion reigns as council discusses Mervin's pay status" in *DLN* (Thu. February 12, 1970), 1.

former narcotics investigator was no longer carrying a gun."<sup>27</sup> A day later, the *Daily Local* editor waxed hysterical in a piece that dismissed the "futile debate" about Mervin's pay status because of the threat to "a man who risked everything in order to smash a flourishing drug ring in West Chester," and called it Council's "moral obligation ... to see to it that his life is not in constant danger and that he is afforded the protection which a man in his position requires."<sup>28</sup>

Before the week ended, West Chester officers were assigned to guard Mervin around the clock, and Mervin gave an interview on local television. Even though all of the *Daily Local* articles, as well as Council's meeting minutes, made it clear that Borough Council's police committee was responsible for the order to get rid of his gun,<sup>29</sup> Mervin blamed Mayor Chambers during his interview. When asked to comment, Chambers said "It wasn't me" and the reporter summarized the rest of his response as "there was general agreement among him, council and the police chief that Mervin should quit carrying a concealed weapon for which he had no permit" and "there wouldn't be anything illegal in Mervin's keeping a gun around his house for protection. For that matter he could carry a gun in open view. It is only the gun carried out of sight that requires a permit."

The article also reported that the mayor, the police chief and borough council had held a closed session to discuss Mervin's status. Although neither Mayor Chambers nor his son were willing to say what was discussed, several of the Republican council members offered clues. Cotter said that Council had agreed to hold a special public meeting on the subject. Other unnamed Council members reported that the mayor refused to back down on his contention that he had fired Mervin, and "the mayor was adamant despite our efforts to appeal to his sense of fair play." Yet others reportedly said that "everyone at the meeting was agreed that Mervin was entitled to some kind of compensation while awaiting court action on charges presumably encountered

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<sup>27</sup> Shirley Maccauley, "Mervin shot twice in leg at home; gunman escapes" in *DLN* (Fri. February 13, 1970), 1.

<sup>28</sup> "A moral obligation in the Mervin case" (editorial) in *DLN* (Fri. February 13, 1970), 4.

<sup>29</sup> Shirley Maccauley, "Mervin shot twice in leg at home; gunman escapes" in *DLN* (Fri. February 13, 1970), 1; "Mervin shooting probe continues" in *DLN* (Sat. February 14, 1970), 1; and Borough Council meeting minutes (February 11, 1970).

while in the line of duty."<sup>30</sup>

The climax came at a rather bizarre special meeting which took place on the following Monday, February 16. President Thomas opened the meeting by announcing that its purpose was "to consider appointment of a patrolman with the West Chester Police Department." The first step was to review the minutes of January 29 and have Mayor Chambers state for the record what his intention was when he "terminated" Mervin. Chambers answered "that Mervin's services were terminated as of 7:35 P.M., January 26, 1970." Since the solicitor had advised Council that they could not hold money in escrow for an employee who no longer worked for the Borough, Edward Cotter moved to rescind the motion which Council approved on January 29. Tom Chambers seconded and everyone was in favor, so that was accomplished without turmoil. They also approved the minutes of January 29 without dissent or discussion.<sup>31</sup>

Then it happened. Cotter made another motion, this time to hire Mervin as a regular police officer subject to Civil Service requirements. Robert Spaziani, also a member of the Police Committee, seconded the motion but before Council could vote, Tom Chambers, the committee's third member, said he was opposed and read a lengthy statement in which he called Cotter's motion an attempt to override the mayor. Chambers admitted that the solicitor had said such a maneuver was legal, but argued that there were other candidates for the job who were not under indictment for murder. The motion passed anyway, with both Chambers and J. Paul Mosteller voting no.

Normally the next step was for the mayor to swear in a new police officer, but Mayor Chambers refused. So President Thomas called Justice Heald, who just happened to be available, and he did the deed. The final step was another motion by Cotter, also seconded by Spaziani, to suspend Mervin immediately and withhold his back pay until his court cases were settled. Suspecting that the outcome was already a "done deal," the mayor said nothing and his son merely observed that hiring and suspending an officer within ten minutes was "highly irregular." This time, he and Mosteller abstained while the others voted to approve it.<sup>32</sup>

Before the meeting ended, Mayor Chambers asked for the

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<sup>30</sup> "Mervin shooting probe continues" in *DLN* (Sat. February 14, 1970), 1.

<sup>31</sup> Borough Council meeting minutes (February 16, 1970).

<sup>32</sup> *Ibid.*

opportunity to clear up "some misconceptions regarding recent decisions made by the Mayor, Police Committee and Chief of Police." Then, reading from a prepared statement, he noted that the police chief and Borough Council all agreed with the decision to take away Mervin's pistol. He also attributed the delay in providing Mervin with police protection to the police chief, whom he had instructed to confer with the Borough solicitor before the most recent shooting incident. Finally, he added that the chief and Borough Council had participated in and agreed with his decision to bar Mervin from entering non-public areas in the police station while he was suspended. After that, the meeting was adjourned.<sup>33</sup>

The following day, the newspaper described the meeting on its front page under the headline, "West Chester councilmen hire, then suspend Mervin." The writer published sizable quotations from the statements by the two Chambers, but stopped short of drawing any conclusions about Council's action.<sup>34</sup> Clearly, the battle over Mervin's role was not finished, but the full impact of Cotter's motion was not yet apparent. By making Mervin a regular police officer, he became subject to the Civil Service Code, an elaborate set of rules about who could be hired as a police officer and how that person was required to behave. Before the year ended, those rules were used to tip the balance against Mervin.

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<sup>33</sup> Ibid.

<sup>34</sup> Taylor Buckley, "West Chester councilmen hire, then suspend Mervin" in *DLN* (Tue. February 17, 1970), 1.

## Chapter 6. Indictments and Outrage

At the same time that Borough Council was wrestling with the question of Mervin's employment status, the district attorney's charges were moving forward. On January 26, a county grand jury indicted Mervin for the murder of Jonathan Henry at the Evergreen Inn.<sup>1</sup> Ten days later after a lengthy hearing, Justice Heald ordered Mervin to stand trial for shooting Robert Miller at the Horse & Hound. In what seemed like retaliation, West Chester police arrested Miller as he left the courtroom after testifying and charged him with assaulting Mervin with intent to kill.<sup>2</sup> That set up a series of trials that consumed the people of West Chester for the rest of 1970.

The attempt to suspend Mervin and the news that he was going to trial inspired activism from people who had stayed away from the decade's protests over civil rights, the Vietnam War and the environment. Folks who had barely reacted to the death of civil rights workers in the South were forced to pay attention after the assassination of Martin Luther King triggered riots, but they framed the problem in terms of lawlessness rather than racism. For more than a year afterwards, their fears had grown thanks to the drug menace that was said to threaten their children and the apparent inability of existing institutions - family, church, police, schools - to stop it. The announcement that Mervin was a new kind of police officer made him seem like part of the hoped-for solution instead of a symptom of the problem. That inspired support from people who had never protested before.

Support for Mervin took many forms, although the evidence that survives is mostly in the form of statements recorded in public meeting minutes and letters published in newspapers. Reading them in the 21<sup>st</sup> century makes them seem rather quaint, like artifacts from a time when citizens were learning how to protest. Actually Black people had known about this for some years already, and other marginalized groups - the poor, women, homosexuals, and draft-age youth - were in the process of appreciating the usefulness and learning the techniques of public protest. But for the relatively privileged white society that dominated Chester County - the kind of people that then-President

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<sup>1</sup> "Mervin suspended after he's indicted" in *DLN* (Tue. January 27, 1970), 1.

<sup>2</sup> "Mervin to face court as result of shooting" in *DLN* (Fri. February 6, 1970), 1.

Nixon called "the Silent Majority"<sup>3</sup> - the Mervin issue provided them with a *cause célèbre*.

The first letter appeared in the *Daily Local News* on January 29 when a Downingtown man criticized West Chester's police officers for stopping work to protest Mervin's indictment for murder.<sup>4</sup> That same day, a letter from an West Goshen woman praised Mervin's "sacrifice" and urged everyone to back the police because parents need "the law" to help them raise their children.<sup>5</sup> Other letters followed in quick succession from an East Bradford woman who praised Mervin and Frame for telling the truth about drugs at a PTA meeting,<sup>6</sup> a West Goshen man who praised Mervin's bravery and expressed regret that he had to pay his own legal fees<sup>7</sup> and another West Goshen man who called Mervin a victim of prejudice by "such ethnic groups as the [Black Action Committee] and the Human Relations Commission who supposedly are opposed to prejudice. The whole business was " a slap in the face to every dedicated police officer in the United States."<sup>8</sup> Another writer ended his letter with the reminder that "police brutality is a communist slogan."<sup>9</sup>

As time went on, the rhetoric grew more heated, and much of it was directly personally against Mayor Chambers.<sup>10</sup> A woman from

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<sup>3</sup> Although the phrase "silent majority" had been used for different purposes, it received national attention as a result of President Richard Nixon's "Address to the Nation on the War in Vietnam" delivered via television on November 3, 1969. The full text appears at <http://www.presidency.ucsb.edu/ws/?pid=2303>.

<sup>4</sup> Norman Jenkins Jr., letter to the editor "If he is innocent ..." in *DLN* (Fri. January 30, 1970), 5.

<sup>5</sup> Betty M. Lawton, letter to the editor "Backs police officer" in *DLN* (Fri. January 30, 1970), 4.

<sup>6</sup> Josephine C. Oas, letter to the editor, "Asks support of police officers" in *DLN* (Sat. January 31, 1970), 4.

<sup>7</sup> R. Ronald Hoopes, letter to the editor, "Why suspend officer?" in *DLN* (Sat. January 31, 1970), 4.

<sup>8</sup> Gary L. Wickersham, letter to the editor, "Defends officer" in *DLN* (Thu. February 5, 1970), 4.

<sup>9</sup> David MacQueen, letter to the editor, "Finds John Mervin a dedicated man" in *DLN* (Sat. February 7, 1970), 4.

<sup>10</sup> Russell E. Gotberg, letter to the editor in *DLN* (Wed. February 18, 1970), 4; Mr. William Van Wijk, "No interference" (letter to the editor), in *DLN* (Fri. February 27, 1970), 4.

the north end of West Chester wrote a long letter which claimed that numerous students and even her own teenage children told her they could get drugs any time they wanted by calling "a certain telephone number." She declared that parents were helpless against "[d]rug pushers, an unspeakably evil group of subhuman beings" and she was "sick and tired and disgusted at the empty, childish discussion" about Mervin's back pay and right to carry a gun. She claimed that the American legal system protected criminals while it left "the innocent almost totally unprotected," and blamed it on "petty minds" and "the inability of our elected officials to act intelligently and directly."<sup>11</sup>

But there were also some dissenting voices. A young woman from West Chester agreed with the decision to suspend Mervin because "he did an outstanding job; but on the other hand, he has been accused of breaking the law." If found guilty, Mervin "should pay for his wrong doing just as anyone else would have to pay. ... Just because he is a 'police officer' I see no reason why he should be treated differently than anyone else."<sup>12</sup> In another letter, the chairman of the West Chester Human Relations Council praised Mervin's suspension on behalf of his organization, noting "As important as it is to protect Mr. Mervin's civil rights, it is even more important that the citizens of West Chester have full confidence in the police force and its administration."<sup>13</sup> A woman from Downingtown was more blunt. In her letter, entitled "Sounds Phony" by the newspaper's editor, she expressed support for "honest and dedicated" police officers, but called Mervin "trigger happy" and asked "what line of duty Mervin was performing on both October 4 and November 19, or who has something on whom?"<sup>14</sup>

Nevertheless, as Mervin's supporters continued to dominate the editorial page, some people began to suspect that there was an organization behind the letter-writing campaign. They cited a letter from an East Goshen resident that urged others to send "a landslide of letters to Chief Frame and this paper in support of

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<sup>11</sup> Bernadine A. Abbott, letter to the editor, "A concerned mother and the Mervin case" in *DLN* (Tue. February 17, 1970), 4.

<sup>12</sup> Brenda Brooks, letter to the editor, "Proper move in Mervin case" in *DLN* (Tue. February 10, 1970), 4.

<sup>13</sup> William T. Bode, letter to the editor, "Supports Mayor in suspending officer" in *DLN* (Wed. February 11, 1970), 4.

<sup>14</sup> Jo Ann Willenbrock, letter to the editor, "Mailbag: Sounds 'phony'" in *DLN* (Sat. February 14, 1970), 4.

Officer Mervin and the West Chester police force."<sup>15</sup> Others pointed to a letter from a Thornbury resident that reminded readers "One does not have to be a literary giant to write a few simple words. Just saying, 'Reinstate Mervin' should be enough. This should be addressed to Police Chief Thomas G. Frame, West Chester."<sup>16</sup>

Near the end of February, the *Daily Local* confirmed the existence of an organization called the "Association of Alert Citizens." The article named only one member - Maurice J. Dana, a Westtown resident who owned a dress shop at Church & Market Streets<sup>17</sup> - but said that the group, which formed in September, "functions as a steering committee aimed at financial aid" for Mervin.<sup>18</sup> Actually, the group formed to challenge an attempt to introduce sex education in local high schools - Mervin's identity as a police officer was unknown in September - and only joined the Mervin fracas out of a desire to show support for the local police.<sup>19</sup> Their effectiveness was uncertain, although they inspired several letter writers to add their voices to the effort to raise money for Mervin. One East Goshen man wrote "Also remember that Mervin has to pay his own legal fees, and that he is now unemployed. Let's all start digging down and put enough money in the John Mervin legal fund for the best legal mind available."<sup>20</sup> Another man from Exton wrote "I believe all citizens should show their appreciation by contributing to the John Mervin Legal Aid Fund, at the West Chester Police

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<sup>15</sup> David MacQueen, letter to the editor, "Finds John Mervin a dedicated man" in *DLN* (Sat. February 7, 1970), 4.

<sup>16</sup> Sherwood Angelson, letter to the editor, "Questions justice of Mervin's indictment" in *DLN* (Wed. February 11, 1970), 4.

<sup>17</sup> West Chester Directory, 1964 (Chillicothe, OH & West Chester, PA: Mullin-Kille of Pennsylvania & *Daily Local News*, 1964), 565.

<sup>18</sup> "Mervin fund raisers meet" in *DLN* (Sat. February 28, 1970), 1.

<sup>19</sup> Calvin Trillin, "U.S. Journal: West Chester, Pa. I've Always Been Clean," in *The New Yorker* (June 27, 1970), 46. The "Alert Citizens" moved on to other issues after Mervin's first trial, and in August 1970 Maurice Dana and two other members protested the appointment of Dupont chemist Alston B. Meade to fill a vacancy on the school board. See John Addyman, "West Chester board meeting closed by Meade opponents" in *DLN* (Tue. August 25, 1970), 1.

<sup>20</sup> David MacQueen, letter to the editor, "Finds John Mervin a dedicated man" in *DLN* (Sat. February 7, 1970), 4.

Station."<sup>21</sup>

In the midst of all this, two letters stand out. One was written by Fred T. Cadmus III, the West Chester attorney who was representing Robert Miller and the family of Jonathan Henry. In response to a *Daily Local News* editorial that proclaimed the Borough's "moral obligation" to Mervin, Cadmus warned everyone against pre-judging Mervin's guilt or innocence, but also questioned "the efforts constantly made in some of the public media to create an impression of Mervin's heroism ..."<sup>22</sup> Not surprisingly, his letter drew a response from a West Grove man who admitted he knew nothing about Mervin, but criticized Cadmus for trying to win his case in the newspaper.<sup>23</sup>

The other was from a West Chester man named Tony Polito. As an active member of the local ambulance company and a family that included lawyers and police officers, he was a strong defender of Frame and the police in general. But he challenged those who criticized the mayor and Borough Council, and while he was concerned about the effect that all of the pre-trial publicity might have Mervin's trial, he noted that "the publicity seems to be coming from those individuals who continue to write pro and con without knowing all the facts, basing conclusions on assumptions and rumor, rather than proven facts." Polito concluded "What is needed are answers to the many questions that remain unanswered concerning this whole affair. But let the proper authorities provide the answers based on their findings of fact."<sup>24</sup>

After that, the letter-writing subsided. From March until the beginning of June, Mervin's name did not appear in either local newspapers or Borough Council minutes. But supporters continued to talk around town about the brave honor student, football star and defender of law and order who was still facing trial, while skeptics waited to see what would come out in court.

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<sup>21</sup> Russell E. Gotberg, letter to the editor in *DLN* (Wed. February 18, 1970), 4.

<sup>22</sup> Fred T. Cadmus III, "'Moral obligation' called premature" (letter to the editor) in *DLN* (Tue. February 17, 1970), 4.

<sup>23</sup> Donald E. Mitten, letter to the editor, "Attorney's letter 'a big surprise'" in *DLN* (Sat. February 21, 1970), 4.

<sup>24</sup> Anthony J. Polito, "Wants authorities to give answers" (letter to the editor) in *DLN* (Wed. March 4, 1970), 4.

## Chapter 7. On Trial for Murder (Summer 1970)

Mervin's first trial, for the murder at the Evergreen Inn, began on Monday, June 1, 1970. Chester County Common Pleas Judge John M. Kurtz Jr. was in charge, and the two sides were represented by Assistant District Attorney A. Thomas Parke III for the prosecution and Coatesville attorney John E. Stively Jr. for the defense. After devoting a day to selecting the jury and delivering opening statements, the trial got underway on Tuesday.<sup>1</sup> During the next two days the prosecution called eighteen witnesses including six police officers, five experts who testified about the physical evidence, three people who saw Mervin and Henry on the night of the shooting, an upstairs neighbor who heard the shooting, and three others who knew one of the people present at the shooting.<sup>2</sup> On the third day of testimony the defense called its witnesses - Mervin and Saltzman - and the attorneys delivered closing arguments on Friday.

According to the witnesses, the events of the night that Jonathan Henry died unfolded in three stages - the meet-up, the shooting and the aftermath. Both sides agreed that the evening started out when four men - Mervin, Jeffrey Saltzman, Eugene Moran and Jonathan Henry - met at a bar on W. Gay Street around 11:30pm. Francis Polito, a West Goshen police sergeant (and brother of letter-writer Tony Polito) testified that he went into Joe's Sportsmen's Lounge that evening and saw John Mervin with Jonathan Henry. He sat down and drank beer with them for about an hour, during which they were joined by Jeffrey Saltzman who arrived with Eugene Moran. According to Polito, Henry remembered him from an arrest for a curfew violation, but Polito didn't remember Henry.<sup>3</sup> When it came time for Mervin to testify, he confirmed Polito's recollection and added that prior to Polito's arrival, Henry sold him some LSD tablets and swallowed one himself. Then, after Saltzman and Moran arrived and Polito left, they stayed until about 1:50am when the four left to go to The Taproom on E. Gay Street.<sup>4</sup>

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<sup>1</sup> "Jury being picked for Mervin trial" in *DLN* (Tue. June 2, 1970), 1, and Pat Murdoch & Eric Worth, "Police testimony heard by Mervin murder trial jury" in *DLN* (Wed. June 3, 1970), 1.

<sup>2</sup> Pat Murdoch & Eric Worth, *Ibid.*, and Shirley Macauley, "Surprises emerge in Mervin trial; witness changes story" in *DLN* (Thu. June 4, 1970), 1.

<sup>3</sup> Pat Murdoch & Eric Worth, *Ibid.*

<sup>4</sup> Shirley Macauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1.

Henry wasn't able to testify since he was dead and Saltzman, who went last, added little that was new, but Moran offered many additional details. He described how the night began at the "Pig" - a student hangout at the corner of Linden and S. High Streets<sup>5</sup> - where he encountered Saltzman and accepted a ride home because his car was not working. But Saltzman wanted to find Mervin first - to deliver a pair of pheasants, according to Moran - so they drove over to Joe's Sportsmen's Lounge and found him there with Jonathan Henry. Henry was openly distrustful of the newcomers but Mervin convinced him that they were all right, and while the other three drank beers, Moran had "seven or eight" drinks of Southern Comfort and water. When they left to go to The Tavern, Henry rode with Mervin and Moran rode with Saltzman for the short ride across town. Moran claimed he wasn't "totally intoxicated" at that point (around 2am), but after serving him another Southern Comfort, the bartender flagged him, so Moran invited the others to go back to his apartment for more beers. He claimed that he made it to Saltzman's car on his own, but needed help from Mervin and Saltzman to reach his apartment after they arrived at the Evergreen.<sup>6</sup>

Several other witnesses confirmed portions of the time line leading up to the shooting. One of the bartenders at Joe's testified that he saw Polito leave before the others and added that Mervin left about 1 AM. The bartender at The Tavern remembered that Mervin and Moran came in some time after midnight and that Moran was already very drunk, but before they left, "Mervin or someone" promised to make sure that Moran got home safely. Jeffrey Saltzman's uncle Harry, a West Chester police sergeant, said that he saw his nephew driving a "very drunk" Moran home and spoke to him briefly.<sup>7</sup>

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<sup>5</sup> The real name was the "Purple & Gold Restaurant" but people from the college nicknamed it "the Pig." Russell Sturzebecker, Centennial History of West Chester State College (West Chester, PA: Tincum Press, 1971), 141. It was located on the southeast corner of Linden and S. High Streets, and in later years it was known as "the Rat" (for "Rathskeller"), Papa John's Pizza and most recently, Saxby's coffee shop.

<sup>6</sup> Shirley Macauley, "Surprises emerge in Mervin trial; witness changes story" in *DLN* (Thu. June 4, 1970), 1. Although Moran implied that Saltzman drove him to the Evergreen, the next day Saltzman testified that Henry threatened him in his car on the way to the Evergreen. Without access to the original court transcripts, it is hard to be certain that this was a contradiction, but newspaper reports did not mention it. For Saltzman's testimony, see Shirley MacCauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1.

<sup>7</sup> Pat Murdoch & Eric Worth, "Police testimony heard by Mervin murder trial jury" in *DLN* (Wed. June 3, 1970), 1.

Accounts of what occurred at the Evergreen Inn diverged substantially. Moran told the court that after Mervin and Saltzman helped him from the car into his small apartment, he lay down on his bed behind the set of bookcases that separated his "bedroom" from his "living room." After a short time he got up and joined the others in the living room, drinking beer until he heard Mervin tell Saltzman "Let's teach this punk a lesson." Mervin and Saltzman both drew guns and pointed them at Henry, and when Moran asked them to put the guns away, Mervin told him "Don't worry. Go back to bed." Moran did, but while he lay on his bed, he could tell that Mervin and Saltzman were "harassing, agitating Henry" until Henry finally said "You damn guys are nuts. I'm getting out of here." According to Moran, Mervin replied "Try it, you punk, and see what happens," and then Moran heard two gunshots followed by a "thump" although he testified that he did not see the actual shooting. The next thing Moran heard was Mervin saying "My God, what have I done? Let's get out of here." Saltzman asked "What about him (Moran)?" and Mervin said "Ah, the hell with him, he's bombed." But according to Moran, before they left, Saltzman told him "If you open your mouth about what happened, you're a dead man."<sup>8</sup>

Mervin told a very different story. After he and Saltzman took Moran into his apartment, they turned to leave immediately, but then realized that Henry had gotten out of the car and gone inside. When they went to get him, Henry threatened both of them with a gun and claimed that Saltzman was a police officer. What followed was an escalating series of threats accompanied by the brandishing of pistols until Henry cocked his gun and pointed it at Saltzman's head. That's when Mervin called out Henry's name and fired as Henry turned to face him. Mervin then shot a second time, although he wasn't sure where Henry was facing at that point. Henry fell to the floor and Saltzman shouted that they had to call the police. Mervin told Saltzman to start one of the cars while he checked Henry for vital signs, and saw Henry rise up from the floor and try again to shoot Saltzman. Mervin disarmed Henry by stepping on his hand, and then fired a third shot "to attract Saltzman's attention" and shouted for Saltzman to come back and help carry Henry outside. But then Mervin decided it would be better not to move Henry, so he ran outside to find Saltzman, revealed that he was a police officer, and told Saltzman to drive him to Sgt. Robinson's house. At no point was Moran aware of the events surrounding the shooting, according to

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<sup>8</sup> Shirley Macauley, "Surprises emerge in Mervin trial; witness changes story" in *DLN* (Thu. June 4, 1970), 1.

Mervin.<sup>9</sup>

Saltzman's testimony "corroborated" Mervin's but he added details that emphasized Henry's bad reputation, skittishness, and tendency to wave his gun around, and showed how scared he (Saltzman) was. He described the shooting just as Mervin had done, but said that he thought Mervin took the third shot after Henry tried to shoot Mervin. Under questioning, he admitted that they were both stressed and thought that he might have misunderstood what Mervin had said about the third shot.<sup>10</sup>

Both lawyers knew that Moran's account was the most damaging, but they also knew there was a problem. Earlier Moran had testified - once in a written statement to the West Goshen police and again before the grand jury - that he had been "too drunk to remember what happened the night Mervin shot Henry."<sup>11</sup> To bolster Moran's credibility, and to undermine Mervin's, the prosecution called a number of other witnesses.

One was Martha Darlington, the upstairs neighbor mentioned in the first chapter, who testified to hearing a man running across the front porch - presumably Saltzman - then a loud sound like a firecracker - Mervin's third shot - followed by shouting and moans. Two West Goshen police officers testified that they found Henry's body partially blocking the apartment door and lying in a pool of blood, with two wounds in the back and an exit wound in front near his left shoulder. A loaded 22-caliber pistol lay near the body, and there were three LSD tablets in Henry's wallet. They also found two bullets - one that appeared to have traveled through the apartment wall to hit the wall on the other side of the hallway, and a second extracted from Henry's chest cavity during the autopsy.<sup>12</sup>

The doctor who performed the autopsy concluded that Henry was shot once in the chest by a bullet that passed completely through him, and once in the back by a bullet that caused massive internal bleeding which killed him. His conclusion, which was supported by the testimony of a second medical expert, was that

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<sup>9</sup> Shirley Macauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1.

<sup>10</sup> *Ibid.*

<sup>11</sup> Barry Kushner, "Judge's ruling is due on Moran's testimony in trial" in *DLN* (Fri. April 26, 1974), 1.

<sup>12</sup> Pat Murdoch & Eric Worth, "Police testimony heard by Mervin murder trial jury" in *DLN* (Wed. June 3, 1970), 1.

the second bullet incapacitated Henry in less than a minute and killed him within a few minutes. They also concluded that the shots were fired from at least two feet away, but admitted that they could not tell whether Henry was high on LSD when he was shot. On that topic, however, another witness testified that he and Henry had sold LSD on three occasions and a chemist employed by the Philadelphia Police Department confirmed that the tablets in Henry's pocket contained LSD.<sup>13</sup>

There was less argument about what happened afterwards, in large part because Moran had nothing to offer since he fell asleep shortly after the shooting and woke up in the West Goshen police station.<sup>14</sup> The first person to testify about the shooting's aftermath was Haskell Robinson, who said that he found a very nervous Saltzman pounding on his door some time between 3:45 and 4 a.m. First he called the county police radio dispatcher for an ambulance, and then went outside with Saltzman where he found Mervin lying on the ground "very upset. He was kind of crying, 'I didn't want to shoot the guy, but I had to. The guy had a gun and was going to shoot Jeff Saltzman.'" Robinson described Saltzman as also "very upset, very loud, very loud talking" and "howling 'The guy was going to blow my head off. My God. the guy was going to blow my head off.'" Robinson tried to calm Saltzman down but it took a punch from Mervin to get Saltzman to stop shouting.<sup>15</sup>

During Mervin's testimony two days later, he told a very similar story. After he and Saltzman left the Evergreen, they went to Robinson's apartment on S. Walnut Street where Mervin "was having difficulty breathing, I was terrified, I was scared. Jeff was very upset also." Mervin explained that he went to Robinson, rather than the West Goshen police, because he wanted to tell "the chief what's happened first." When they arrived, Mervin collapsed on the lawn, so Saltzman went inside to get Robinson, and when he came out, Mervin handed over his gun and told him "I just shot somebody who was going to kill Jeff. Get somebody out there, if he isn't already dead." Mervin also testified that he said "the guy was on LSD" and "he was going to kill Jeff." Then, when Saltzman became hysterical and screamed "like a maniac,"

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<sup>13</sup> Shirley Macauley, "Surprises emerge in Mervin trial; witness changes story" in *DLN* (Thu. June 4, 1970), 1.

<sup>14</sup> *Ibid.*

<sup>15</sup> Pat Murdoch & Eric Worth, "Police testimony heard by Mervin murder trial jury" in *DLN* (Wed. June 3, 1970), 1.

Mervin hit him in the face and knocked him down.<sup>16</sup>

West Goshen police sergeant Thomas Flick and corporal James Warrington described what happened after they arrived to pick up Mervin and Saltzman at Robinson's apartment.<sup>17</sup> Flick remembered that Saltzman had a black eye and Mervin "looked pretty rough" with his beard and long hair. Once they were in his police car, Saltzman told Mervin "you've ruined my life" and Mervin told him to shut up."<sup>18</sup> Warrington repeated that Saltzman said "you've ruined my life, while Mervin claimed that Saltzman's words were "My God, my life's ruined." All three witnesses said that Mervin told Saltzman "shut up" after that.<sup>19</sup>

As the public learned two years later, Robinson and Mervin omitted some important events between the time when Mervin and Saltzman reached Robinson's house and the time that they were transported to West Goshen police station. The prosecution must have been aware because they had the Chester County police radio dispatcher testify that Robinson called not once, but three times between 3:45am and 4:16pm, but it was not until the third call that he mentioned that someone had been shot. As a result, West Goshen officers did not reach the Evergreen until about 4:26am, leaving more than a half hour that the crime scene was unattended, except for Moran, who was asleep.<sup>20</sup>

Other witnesses testified to the location of bullet holes, the authenticity of seized drugs, the character of Henry and the names of those who were privy to the knowledge that Mervin was a police officer, but none of their testimony affected the time line. That left it up to the opposing attorneys to persuade the jury that their version of the story made the most sense.

For Assistant D.A. Parke, the goal was to have the jury focus on the physical evidence which showed that "the defendant's story is

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<sup>16</sup> Shirley Macauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1.

<sup>17</sup> "Charge student with murder in shooting" in *DLN* (Thu. November 20, 1969), 1.

<sup>18</sup> Shirley Macauley, "Surprises emerge in Mervin trial; witness changes story" in *DLN* (Thu. June 4, 1970), 1.

<sup>19</sup> Shirley Macauley, *Ibid.*, and Shirley Macauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1.

<sup>20</sup> Shirley Macauley, "Jury takes 26 minutes to acquit Mervin" in *DLN* (Sat. June 6, 1970), 1.

absolutely impossible." He explained why, if Henry and Mervin were positioned as the defense claimed, it was impossible for a bullet to pass through Henry and the apartment wall to wind up struck in the wall on the other side of the hallway. He also questioned why Mervin would try to get Saltzman's attention by shooting his gun a third time, and listed other discrepancies. Then he asked the jury to put aside the question of showing support for the police, and said that whether Mervin was a police officer or not, "If he has the right to shoot and kill, so do you and I."<sup>21</sup>

Defense attorney Stiveley used his closing argument to attack Moran and praise Mervin. He denounced Moran for changing his story, and then stressed Mervin's heroism in taking action to save Saltzman from Henry, whose "violent disposition" was made even more dangerous by his abuse of alcohol and LSD. According to Stiveley, "Mervin used good judgment, clear thinking, good logical argument to stop this thing," and when none of them worked, he resorted to shooting Henry to save Saltzman's life. He concluded that Mervin had already been punished and his life was "to some extent ruined." Mervin had done "his duty as a human being" and Stiveley urged the jury to do the same and find him not guilty.<sup>22</sup>

After a full morning of testimony and nearly three hours of closing arguments that ended a week full of emotion and drama, most of the spectators had gone by the time the jury filed out to begin its deliberations. For the handful that remained, they didn't have long to wait. In just twenty-six minutes, the jury came back and announced that they had found Mervin not guilty.<sup>23</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

## Chapter 8. Still on the Hook

Despite all the noise in the months leading up to the trial, the Mervin verdict was not the biggest story in West Chester on June 6, 1970. That distinction went to the news that the North Koreans had seized a US Navy spy vessel called the *Pueblo*. But the jury's verdict appeared to confirm what Mervin's supporters had been saying all along - that he was a police officer who acted professionally and heroically to save someone's life. In their view, the victim was a low-life drug-dealing scum who, if he did not deserve to die, should certainly not be mourned. And as far as they were concerned, the Mervin "scandal" was now over.

Not everyone agreed. There were some who still doubted that the jury had made the correct decision, although most kept their opinion to themselves. Still others recalled that Mervin was still under indictment for a second shooting - one that occurred before many more eyewitnesses - and wanted to see how that one came out before passing final judgement on Mervin.

The District Attorney was the first to declare his intentions. At the end of the trial, D. A. Norman J. Pine reminded a reporter that Mervin was still scheduled for a second trial in October. In the same interview, he said that his office had no plans to prosecute Eugene Moran for perjury, even though his testimony changed drastically between the grand jury hearing and the court trial. At the same time, Mayor Herbert Chambers and Borough Council president W. Earl Thomas asserted that Mervin remained suspended from the police force and his pay would continue to go into an escrow account until the results of the second trial were known. But Council member Edward Cotter, the chair of the Police Committee and one of Mervin's supporters, told a reporter that Council would discuss Mervin's status with their solicitor the following week.<sup>1</sup>

That provided Chief Frame with an opening to request that Council reinstate Mervin. At the end of their next meeting on June 10, right after a discussion about arresting people who bathed in the courthouse fountain. Frame asked Council to reinstate Mervin. Normally, Borough Council minutes provided detail about who spoke and what they said, but in this case the minutes merely state:

Chief Frame then discussed Mr. John Mervin's present status and recommended that he be reinstated as a policeman immediately. Several residents in attendance commented on

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<sup>1</sup> "Mervin to face charge in shooting" in *DLN* (Sat. June 6, 1970), 1.

the matter, but Mr. Cotter stated that the motion, which suspended Mr. Mervin until clear of all charges should stand, and Council concurred with Mr. Cotter in this statement.<sup>2</sup>

But the next day, the *Daily Local News* ran a story that added plenty of details. For one, Frame argued that Council should reinstate Mervin by claiming that "Last year you hired a man as a policeman who was arrested and convicted of aggravated assault and battery, I think you should apply one standard to all personnel." When Council member Tom Chambers replied that hiring a convicted felon would have been a mistake, Frame retorted "A fellow can make a mistake when young and be more than suitable for the police department. But, I feel Mr. Mervin is being punished for something he hasn't done. He is innocent until proven guilty." Chambers responded that the discussion was moot, since the February motion to suspend until both trials ended was still in effect. Council member Cotter agreed, but spoke directly to Frame, "You know how I feel, I think he's going to come out on top. But, until then he is vulnerable."

The minutes made no mention of the another question raised at the meeting - why hadn't the mayor signed the paperwork that authorized Mervin's hire in September 1969? Based on the newspaper article, no one was eager to answer, although Mayor Chambers pointed out that it was Mayor Andress' signature which was missing, and Frame "indicated he was responsible" without offering any further clarification.<sup>3</sup>

For two more weeks, arguments about Mervin and Frame circulated within the Borough, but then just before the end of the month, the story went national. Calvin Trillin of *The New Yorker* magazine used West Chester as a case study in an article about national fears regarding youth and drugs. In the process, Trillin gave voice to opinions that never made it into local newspapers.

Trillin interviewed the kinds of people who preferred not to give their names - the "students or ex-students or drifters occupying the ledges around the steps of the county courthouse, flaunting mustaches and long hair and dirty T-shirts, staring arrogantly at

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<sup>2</sup> Borough Council meeting minutes (June 10, 1970).

<sup>3</sup> "Council debates Mervin's status" in *DLN* (Thu. June 11, 1970), 2.

the respectable citizens who walk by."<sup>4</sup> For instance, Trillin wrote that "The college crowd began to tell anyone who would listen that Mervin, far from being an honor student, had for a couple of years been a motorcycle tough who bragged about his violence -- a bully who had merely redirected his bullying toward coercing people into selling him drugs."<sup>5</sup> "The kids around the courthouse steps began to put on mock drug-buying scenes for the benefit of the passing citizens: 'Hey, you got any grass to sell?' 'No, but I hear there's a guy down at the police station . . .'"<sup>6</sup> He quoted an unnamed newspaper reporter who said "There are only two opinions in West Chester about Mervin. . . . Either he's a trigger-happy thug who conned the cops or he's a dedicated police officer."<sup>7</sup>

Trillin also mentioned the possibility of official corruption, quoting the letter to the editor (previously mentioned) that asked "who has something on whom?"<sup>8</sup> He also described fears that the police were using motorcycle gang members as "auxiliaries in the rougher dealings with peace demonstrators and black people and students." As evidence, he pointed out that "No Warlocks had been named by Mervin as drug dealers" and witnesses complained of intimidation "by threats of arrest from the West Chester police" and "the presence of six attentive Warlocks in the courtroom."<sup>9</sup>

Trillin examined other touchy subjects, harshly criticizing "almost universally laudatory press notices" like one news story that described Mervin as an honor student and a football star,<sup>10</sup> questioning the motivation of Mervin supporters like the "Association of Alert Citizens," whose spokesman declared "we support the police - period," and hinting that elements within Chester County's Republican party had an interest in defending

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<sup>4</sup> Calvin Trillin, "U.S. Journal: West Chester, Pa. I've Always Been Clean," in *The New Yorker* (June 27, 1970), 42.

<sup>5</sup> *Ibid.*, 43.

<sup>6</sup> *Ibid.*, 44.

<sup>7</sup> *Ibid.*, 46.

<sup>8</sup> *Ibid.*, 43. The original letter was by Jo Ann Willenbrock and appeared in "Mailbag: Sounds 'phony'" in *DLN* (Sat. February 14, 1970), 4.

<sup>9</sup> *Ibid.*, 43.

<sup>10</sup> John F. Clancy, "'Hippie Policeman' Lived In Degradation and Fear. Family Thought He Was a Criminal" in *PI* (Mon. December 1, 1969), 31, criticized by Trillin, *Ibid.*, 42. The quotation about "laudatory press notices" appeared on page 46.

Mervin. The most perceptive comment reported by Trillin came from Devere Ponzo of the Black Action Committee, who said "Drugs have become such a fearful thing people want to stop the problem and they don't care how ... "If a couple of people get killed -- tough."<sup>11</sup>

Although it is not clear how much of an impact Trillin's article had on conversations in West Chester, there was other evidence that the Mervin debate continued. In early July, a local columnist mentioned that Sgt. Robinson had begun selling bumper stickers that read "Pigs is beautiful"<sup>12</sup> and three days later, in a private meeting that included Council President Thomas and Police Committee chair Cotter, Mayor Chambers confronted Chief Frame about his behavior towards Mervin.<sup>13</sup>

Then, seemingly out of nowhere, an event occurred that took everyone's mind off of Mervin, at least for a weekend. On the evening of Friday, July 24, 1970, a bartender's effort to remove a customer sparked three days of rioting and looting in West Chester. The incident began at the Corners Bar on N. New Street across from the St. Agnes Rectory, and involved a white bartender from Downingtown and a Hispanic man who lived a block away. The Hispanic man wound up in a coma from which he never awoke - he died three months later in a nursing home.<sup>14</sup> For three days, separate incidents involving groups of young Hispanic and Black men resulted in broken store windows, an attempt to burn down the Corners bar, and dozens of arrests. The police chief called for reinforcements from surrounding boroughs and the state police while Mayor Chambers ordered a curfew.<sup>15</sup> No one else was killed and only the original bar customer was seriously injured, but the people of West Chester were shaken.

Mervin's supporters joined local business owners to put pressure on Borough Council. At their next meeting, sixteen people

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<sup>11</sup> Ibid., 46.

<sup>12</sup> Chester West, "Ham 'N Wry" in *DLN* (Fri. July 10, 1970), 18.

<sup>13</sup> "West Chester mayor suspends chief of police. Action comes after session with council" in *DLN* (Tue. October 27, 1970), 1.

<sup>14</sup> "Victim of barroom incident in borough succumbs" in *DLN* (Thu. October 22, 1970), 1.

<sup>15</sup> Bill Dean, "Puerto Rican violence rocks West Chester" in *DLN* (Mon. July 27, 1970), 1, and Hannah Aizupitis, "Sporadic violence mobilizes police in West Chester" in *DLN* (Tue. July 28, 1970), 1. The newspaper published more articles and photos during the days following the violence.

"commented on the recent disturbances in the Borough and urged that steps be taken to provide police protection for residents." Business owners demanded to know if they were expected to protect their stores themselves, criticized the local newspaper for including quotations from Black leaders, and complained about council members - other than Tom Chambers, who one owner said had been there "day and night" - for failing to visit the area after the disturbance. Members of the "Association of Alert Citizens" presented a petition with nearly 300 signatures calling for "a get tough policy" for Borough "lawbreakers," criticized Tom Chambers for writing a letter to the editor which praised the police for exercising restraint, and blamed the disorders on "liberal professors." Several people urged citizens to use guns to protect themselves, prompting a rebuke from the owner of a grocery store two blocks north of the Corners Bar<sup>16</sup> who said "Get this violence out of your head. Protect yourselves and your property by any means possible, but don't take to the streets." But other members of the audience responded "we didn't get any answers here," "there aren't enough police on the force" and "council owes it to the citizens of West Chester to do something."<sup>17</sup>

In response to the crowd, Mayor Chambers reread his August 2 proclamation concerning law enforcement and his son delivered a prepared statement about Council's responsibility to solve problems in a systematic way, meeting more often if necessary. In reference to the current controversy, Tom Chambers called on Borough officials to "enforce all of its laws and ordinances to the fullest extent ... fairly and equitably." No other Council members were quoted in the press or minutes except J. Paul Mosteller, who praised the petition and stated his belief in the need for law and order to keep West Chester from turning into a "ghost town."<sup>18</sup>

Although the Alert Citizens redirected their energies towards protesting a school board appointment two weeks later,<sup>19</sup> Mervin's

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<sup>16</sup> "Tommy's Market" in West Chester Directory, 1964 (Chillicothe, OH & West Chester, PA: Mullin-Kille of Pennsylvania & *Daily Local News*, 1964), 795.

<sup>17</sup> Except where indicated, information in this paragraph came from Hannah Aizupitis, "Petition asks crackdown on borough lawbreakers" in *DLN* (Thu. August 13, 1970), 1, and Borough Council meeting minutes (August 12, 1970).

<sup>18</sup> Borough Council meeting minutes (August 12, 1970).

<sup>19</sup> John Addyman, "West Chester board meeting closed by Meade opponents" in *DLN* (Tue. August 25, 1970), 1.

treatment continued to generate activity behind the scenes in West Chester. A few days after the Council meeting, Mayor Chambers met with Council president Thomas and Police Committee chair Cotter for a second time to discuss his concerns about Chief Frame's performance.<sup>20</sup> Then less than three weeks before Mervin was due to go on trial for shooting Robert Miller, a new question arose about Mervin's eligibility to be a police officer at the time he was hired and suspended by Borough Council in February. At Council's September 23 meeting, Tom Chambers revealed that Mervin's driver's license had been suspended for a year in October 1969, shortly before he shot Jonathan Henry and was revealed to be an undercover "special police officer." During the ensuing conflict about Mervin's status, Borough Council resolved the issue by hiring Mervin in February 1970 as a "regular police officer" subject to the Borough's Civil Service regulations which required, among other things, that he have a valid driver's license. Chambers asked whether his license suspension made his hire illegal. Nobody knew, so Council agreed to have their solicitor investigate.<sup>21</sup>

A week later, the *Daily Local News* published a letter from John Mervin's mother. Ostensibly addressed to "the people of West Chester," she excoriated the two Chambers for attempting to "smear" her son's name before his trial got started and demanded to know why "the Chambers want to destroy my son and/or Chief Frame." Although she called herself "only a housewife and not a politician," it was clear that she was privy to some specialized information. Her letter revealed that Chief Frame had given Mervin a police radio to keep at home in case his telephone line was cut, police officers gave Mervin lifts in their patrol cars, and Sgt. Robinson lost a day's pay for allowing Mervin inside the police station while he was suspended.<sup>22</sup>

Other than that, there was no obvious attempt to mobilize public opinion in the way Mervin's supporters had done before the first trial. As it turned out, his supporters were hard at work behind the scenes to influence the outcome of the trial, but that did not become public knowledge for two more years.

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<sup>20</sup> "West Chester mayor suspends chief of police. Action comes after session with council" in *DLN* (Tue. October 27, 1970), 1.

<sup>21</sup> Borough Council meeting minutes (September 23, 1970) and "Mervin hired as policeman after license was suspended" in *DLN* (Fri. September 25, 1970), 1.

<sup>22</sup> Anna Dawson, letter to the editor, *DLN* (Thu. October 1, 1970), 4.

## Chapter 9. The Horse and Hound Trial (Fall 1970)

As District Attorney Norman Pine and his team got set to prosecute Mervin for a second time, the outcome of his first trial - for the murder of Jonathan Henry - must have had a big impact on their thinking. At that trial, they had tried to use physical evidence to show that Mervin lied about what transpired that night, but lost to a defensive strategy that mostly ignored the physical evidence while presenting Mervin as a hero and the victim as a threat, both to Mervin and to society as a whole.

The second trial was different in one important respect - there were nearly a dozen witnesses to the shooting and Mervin's subsequent actions. But there was also a danger. Mervin's support within the West Chester police department, and especially from Chief Frame, seemed to be absolute. The first verdict had confirmed his status as a "hero," making any attempt to discredit him susceptible to the charge of "attacking the police." Coming so soon after West Chester had been hit by rioting, the prosecution had to present its case with a great deal of finesse.

The trial began on Wednesday, October 14, 1970. Both Judge Kurtz, who presided over the first trial, and Assistant District Attorney A. Thomas Parke III, who led the prosecution, were back in the courtroom. This time Mervin's defense was directed by a pair of new lawyers, Lawrence Aglow of West Chester and Malcolm Berkowitz of Philadelphia.<sup>1</sup>

The prosecution began with testimony from Robert Miller, Mervin's victim. Miller described how he and his wife spent several hours in the Horse & Hound on a Friday night. After he went to the bar to get another beer, he "exchanged comments" with another customer, Edwin "Coopie" Gallagher, and Gallagher grabbed his arms. At that moment Mervin, who was dressed in full Warlocks regalia and seated next to Gallagher, hit Miller in the face. Miller added that he had never met Mervin before the night of the shooting, making the attack unprovoked, but the bartender stopped the fight before it could escalate. He took Miller outside and told him to go home, but Miller yelled that he "wasn't going home" and called for Mervin to come outside so they could settle it. Miller also testified that he gave his wallet to the bartender because "I knew I was going to fight, and I didn't want

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<sup>1</sup> A few years later, Berkowitz became well-known in the region for defending several other members of the Warlocks motorcycle gang. "Jury Declares Warlock Guilty" in *Reading Eagle* (Thu. August 12, 1976), 8.

to lose my money."<sup>2</sup>

The court transcript may have been lost<sup>3</sup> but according to the newspaper account, no one asked what Miller's wife was doing during the fight, or why he gave his wallet to the bartender instead of her. At any rate, Miller said that about five minutes later the front door swung open and he heard two shots. The second one "hit me in the leg. I went down" and then a third shot struck him in the back. He admitted that he hadn't seen who fired the shots, and the next thing he remembered was waking up in a room at the Chester County Hospital. Another bar customer confirmed Miller's story from the time he started arguing with Gallagher to the moment when he was shot.<sup>4</sup>

Mervin told his side of the story a week later on the final day of testimony, Wednesday, October 21. After describing himself as a West Chester State College student who worked nights to pay for school, he told how he spent months in discussion with Chief Frame and Sgt. Robinson about how to combat illegal drug and alcohol use and "college problems arising from radical student activities."<sup>5</sup> On the night before he shot Miller, Mervin claimed that Frame and Robinson gave him the names and photographs of suspected drug dealers and gamblers, and told him to try and make contact with them. The next night he went to the Horse & Hound, arriving around 10:20pm. He spoke to a couple of people about "grass and acid" and then left to check out a tip and visit some friends, returning shortly after 12:30am. He soon got into an argument with three of the customers, including Miller and one with "light hair, or brown hair" when they began "addressing obscene remarks to me," according to Mervin. They wanted to fight, so he placed his motorcycle chain on the bar (where it was accessible as a weapon), but before he could do anything else, Miller threatened him with a knife. The bartender grabbed Miller's arm and took him outside, but Miller kept yelling for

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<sup>2</sup> Shirley Macauley, "Testimony begins in Mervin case" in *DLN* (Thu. October 15, 1970), 1.

<sup>3</sup> When I inquired at the office of the Chester County Clerk of Courts, Mervin's files had been sent to Harrisburg for one of his appeals. On another occasion, I was able to see portions of the testimony from the 1972 perjury trial. Mervin's appeals are described in chapter 14 of this book. But I was unable to view transcripts from either of Mervin's 1970 trials.

<sup>4</sup> Shirley Macauley, "Testimony begins in Mervin case" in *DLN* (Thu. October 15, 1970), 1.

<sup>5</sup> Shirley Macauley, "Mervin testifies in assault trial; defense rests its case" in *DLN* (Thu. October 22, 1970), 1.

Mervin to come out and fight. Meanwhile, Mervin's motorcycle chain disappeared.<sup>6</sup>

Mervin said that he waited inside to give Miller time to leave. When he finally started towards the door, someone pushed ahead of him, enabling him to see Miller, the bartender and others waiting outside. But then someone grabbed him from behind and pushed him out the door. He felt a pain in his back, then someone "came at him with a knife" and he saw that Miller also had a knife. As he fell to the ground, "Someone hit me with a club. I was cut on the arm, getting punched, kicked. I started to black out." So he pulled out his gun and fired "four or five shots," scattering his attackers. When he got up to escape he saw Miller was still down on the sidewalk.

Mervin ran away down Middle Alley. As he ran, he removed his Warlock vest and the leather jacket under it, then dropped the jacket and kept running. When he realized there was someone standing at the next cross street (Matlack), he turned right between two buildings to reach Market Street, then turned left and ran east to Matlack where he turned right (south) to Miner Street. At that point he turned right again and headed west towards High Street (where the police station was located), but turned into an alley "behind Walnut Street" (i.e. Sharon Alley) where he dropped his Warlocks vest. The next thing that he remembered was lying on Robinson's back porch at 525 S. Walnut Street.<sup>7</sup>

Mervin's memory lapse provided the prosecution with an opening, because they had witnesses who had seen Mervin during his flight and were willing to testify that he was up to no good. On the trial's third day (Fri. October 16), the prosecution called four witnesses who said they saw Mervin fire his gun in an apartment complex at 419-425 S. Walnut Street. Three were West Chester State College students who lived in the complex and the fourth was Boyd Davis, the owner of the complex who lived next door. One recognized Mervin "from around the campus" and said he was wearing a black leather jacket at the time. Two said they saw other students assist a pair of West Chester police officers in their search for shell casings, but thought the search was not really serious. One testified that the police "didn't seem too interested. ... looked around about a minute." The search turned

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

up nothing.<sup>8</sup>

Defense counsel Berkowitz tried to have their testimony stricken from the record by arguing that it described an incident that had nothing to do with the shooting. But Assistant D. A. Parke successfully claimed that it revealed something about Mervin's state of mind after the shooting - that he didn't turn himself in as soon as possible - and the witness' description of Mervin in a leather jacket contradicted Sgt. Robinson's testimony that he found Mervin's jacket in the alley next to the Horse & Hound.<sup>9</sup> So the following Monday, Berkowitz had Chief Frame testify that he couldn't remember any reports about gunfire on S. Walnut Street,<sup>10</sup> and later that week the police desk sergeant who was on duty that night confirmed that he had not received any reports of the shooting.<sup>11</sup> The existence or identity of the police officers observed by the students was never established.

All of this raised questions about West Chester police procedures. The witnesses all agreed that Mervin was wearing his "Warlocks colors" - a vest supporting an embroidered patch with the club's name and other symbols - over a long-sleeved black leather jacket when he entered the Horse & Hound the second time and got into an argument with Miller. Mervin said that he pulled off his "colors" and jacket as he ran down the alley after the shooting, then dropped the jacket but carried the "colors" as far as Sharon Alley where he dropped them. Some time later, Mervin got his "colors" back and turned them over to Frame, but when the District Attorney asked Frame to turn over all physical evidence collected during the investigation, Frame admitted during testimony that he "forgot" about the "colors" until after the trial had already started.<sup>12</sup>

There were also questions about the clip to Mervin's gun, which he said he dropped as he reached Market Street but was never found, and his black jacket which Mervin said he'd dropped in the

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<sup>8</sup> Shirley Macauley, "College students testify in trial of John Mervin" in *DLN* (Sat. October 17, 1970), 1.

<sup>9</sup> *Ibid.*

<sup>10</sup> Shirley Macauley, "Mervin defense begins its case; police chief testifies" in *DLN* (Tue. October 20, 1970), 1.

<sup>11</sup> Shirley Macauley, "Mervin testifies in assault trial; defense rests its case" in *DLN* (Thu. October 22, 1970), 1.

<sup>12</sup> Shirley Macauley, "Mervin defense begins its case; police chief testifies" in *DLN* (Tue. October 20, 1970), 1.

alley near the Horse & Hound. Sgt. Robinson found his jacket in the alley after taking Mervin to the police station, even though two West Goshen officers had failed to find it a half hour earlier.<sup>13</sup> The Assistant District Attorney also asked Frame why he had not provided prosecutors with a copy of Mervin's report about the night of the shooting. Frame replied that he would provide it if the court ordered him to, but claimed that he had withheld it because it was "a police officer's special report" and not a "confession."<sup>14</sup>

Throughout his testimony - he was the first witness called by Berkowitz - Frame defended his department's actions. Frame said he hired Mervin to stop drug dealers, illegal gambling, underage drinking and college campus "disorder," so he needed to keep Mervin's existence a secret. Besides Frame, the only people who knew Mervin's identity were sergeants Robinson and Henley, and the judge who swore him in, D. T. Marrone. Frame justified his choice of a motorcycle gang member by claiming that Mervin's membership in the Warlocks helped him to gain the trust of criminals. Frame also admitted that he gave Mervin a gun, but said that he instructed Mervin to use it only to save a life or in self-defense.<sup>15</sup> As for how the investigation was carried out after the shooting, Frame said that Sergeant Henley was in charge of that.<sup>16</sup>

Henley testified at length on the second day of the trial. He described how, after Mervin reached the Robinson apartment, Henley got a call to transport Mervin to the police station where he saw Mervin struggle with other officers while being led to a cell. But Henley couldn't remember why he took along one of the bar patrons - "Coopie" Gallagher - to pick up Mervin, or whether he or someone else had driven Gallagher to the hospital after Mervin slugged him. Nor could he remember if Mervin had a stab wound, or explain why, after noticing blood on the seat of his car, no one photographed it before Robinson cleaned it up. No one took fingerprints from a knife found at the scene, and although Henley said that he had delivered Mervin's motorcycle chain to the police station, he didn't know what became of it or

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<sup>13</sup> Shirley Macauley, "Tavern owner tells court of shooting" in *DLN* (Fri. October 16, 1970), 1.

<sup>14</sup> Shirley Macauley, "Mervin defense begins its case; police chief testifies" in *DLN* (Tue. October 20, 1970), 1.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

why no one had seen it since.<sup>17</sup>

Sergeant Robinson and his wife also testified, although the local newspapers gave few details about their testimony. Robinson said that he found Mervin's leather jacket in the alley near the Horse & Hound and it had a gash on the left sleeve that corresponded to a shallow gash on Mervin's arm. But his wife testified that she saw a wound on Mervin's back and he looked "tired out ... hurt, exhausted. I believe there was blood on his mouth."<sup>18</sup>

Although it would become very important in about a week, for the moment the issue of police competence was irrelevant to the question of Mervin's guilt or innocence. That depended on whose account was more believable - did Miller and his friends attack Mervin as he left the bar, leaving him no option but to shoot in self-defense, or did Mervin come out of the bar to shoot an unarmed man?

Both the bartender and another customer from the Horse & Hound confirmed Miller's story about his argument with Mervin. The bartender testified that he saw Mervin go outside after Miller, fire one shot that went across the street and a second shot that hit him in the leg. After the bartender ran back inside the bar to call the police, he heard a third shot but did not know where it went. The customer, who was outside standing near Miller at the time of the shooting, said that he saw Mervin shoot Miller, first in the leg and then in the back.<sup>19</sup> Two doctors from Chester County Hospital described what they saw while treating Miller's wounds, and one said that the back wound appeared to have been caused by a bullet fired from above; i.e. while Mervin was standing and Miller was laying on the ground.<sup>20</sup>

The defense produced four witnesses who confirmed all or parts of Mervin's account. William Canning and Fred Ruckman said that they were inside the Horse & Hound when they saw Miller and Mervin argue at the bar until a "bouncer" escorted Miller outside. When Mervin followed a few minutes later, someone stabbed him in the back. Neither could identify the person who

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<sup>17</sup> Shirley Macauley, "Testimony begins in Mervin case" in *DLN* (Thu. October 15, 1970), 1.

<sup>18</sup> Shirley Macauley, "Tavern owner tells court of shooting" in *DLN* (Fri. October 16, 1970), 1.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

stabbed Mervin or claimed that they actually saw a knife, but both described the assailant as a medium-sized man with blond hair. Canning added that he saw a news report that described Mervin as an undercover cop after the Evergreen Inn shooting, and that's when he contacted the West Chester police.<sup>21</sup> Another witness said he saw Miller shouting obscenities at Mervin as he left the bar, while the fourth said that when he stopped at the Horse & Hound to buy take-out beer, he came face-to-face with a knife-wielding man and, as he drove away, he saw a group of men attack Mervin.<sup>22</sup>

The final witness in Mervin's defense was the doctor who examined Mervin's wounds after his arrest. Dr. Lenwood Wert of Lansdowne testified that Mervin came to him a day after his arrest with scratches, cuts and brush burns on his arms and legs plus "a very deep obvious knife wound of the back" which required three stitches. Wert also testified that "[Mervin] told me he had been hit on the head," and he diagnosed Mervin with a cerebral concussion which might result in behavior that was "irrational or defensive."<sup>23</sup>

The rest of the testimony dealt with side issues, of which the most interesting was why the West Chester police arrested Robert Miller, the victim of the shooting, on the day that he testified against Mervin at the grand jury hearing the previous February. Miller told the court that he had been warned not to testify against Mervin or else face arrest.<sup>24</sup> Frame said he had asked Mervin to sign complaints against Miller and two other men alleged to have attacked Mervin, but didn't explain why he waited until the day before Mervin's grand jury hearing. When asked why only Miller was arrested, Frame claimed that the others were easy to find while Miller was not, and then argued that it was the district attorney's responsibility to arrest the other two.<sup>25</sup>

But in any case, the jury - reduced to eleven members by illness

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<sup>21</sup> Shirley Macauley, "Defense witnesses begin testimony" in *DLN* (Wed. October 21, 1970), 1.

<sup>22</sup> *Ibid.*

<sup>23</sup> Shirley Macauley, "Mervin defense begins its case; police chief testifies" in *DLN* (Tue. October 20, 1970), 1.

<sup>24</sup> Shirley Macauley, "Testimony begins in Mervin case" in *DLN* (Thu. Oct. 15, 1970), 1.

<sup>25</sup> Shirley Macauley, "Mervin defense begins its case; police chief testifies" in *DLN* (Tue. October 20, 1970), 1.

- began its deliberations on Thursday, October 22, after six days of testimony by more than two dozen witnesses. Unlike the jury in the Henry trial, which needed only 26 minutes to acquit Mervin, this jury deliberated for two and a half hours to reach the same verdict - not guilty.<sup>26</sup>

Mervin's second acquittal cleared the way for Borough Council to end his suspension and deliver his back pay which had been held in escrow since February. As Council prepared to rescind his suspension at its next regular meeting on November 16, Mayor Chambers sparked a new controversy by announcing that he had suspended Chief Frame.<sup>27</sup>

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<sup>26</sup> Shirley Macauley, "Mervin acquitted on assault charge" in *DLN* (Fri. October 23, 1970), 1.

<sup>27</sup> "West Chester mayor suspends chief of police. Action comes after session with council" in *DLN* (Tue. October 27, 1970), 1.

## Chapter 10. Chambers v. Frame

In a newspaper article that appeared on Friday, the day after Mervin's acquittal, Mayor Chambers said that it was up to Borough Council to decide if Mervin should be reinstated, and added "My only concern at the moment is the testimony that was given by members of our police force, which was, in my opinion, a reflection of the operation and procedures of the police department." Interviewed separately, his son Tom agreed that Mervin's reinstatement was up to Council, but added that "the testimony has raised many questions that could put the West Chester Police Department on trial." He also mentioned a legal opinion from the Borough solicitor that might affect any decision concerning Mervin's back pay.<sup>1</sup>

During the weekend, presumably everybody relaxed and thought about something else. But on the following Monday, after a Council "work session," Mayor Chambers announced that he was suspending Chief Frame, and informed Frame by letter at 8:30pm. In his announcement, Chambers described meeting in July with Chief Frame, Council President Thomas and Police Committee chair Cotter to express his "displeasure" with the chief's performance, and meeting again in August with Thomas and the entire Police Committee to suggest Frame be replaced because there was no improvement. In August, the mayor had agreed to their request to give Frame more time, but citing "recent unprofessional conduct on the chief's part, as well as recent testimony by some of our police officers that clearly indicates a breakdown in the investigative and operational procedures of the department," Chambers suspended him effective 8am on Tuesday morning.

Naturally this stoked the animosities already present in the population. The *Daily Local News* ran articles every day describing the mayor's announcement and charges, responses from Frame and his lawyer, comments from other officials, and opinions from just about anybody who was willing to comment. Frame claimed that "the mayor has seen fit to try me in the news media" and dismissed the charges as "somewhat rambling" although he admitted that some were "completely true, others are half truths and still others are totally false."<sup>2</sup> His lawyer called them "ridiculous" and said this was "one more step in the campaign of

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<sup>1</sup> "Mervin's future role is unclear" in *DLN* (Fri. October 23, 1970), 1.

<sup>2</sup> "Chief Frame responds to charges" in *DLN* (Wed. October 28, 1970), 1.

the Chambers family to 'get' Chief Frame."<sup>3</sup> Council Police committee members Ed Cotter and Robert Spaziani expressed total confidence in Frame, but the other five all declined to state an opinion until, as J. Paul Mosteller put it, "the evidence comes in."<sup>4</sup>

After criticizing the mayor for not presenting Frame with the charges against him at the same time he notified him of the suspension (the delay was less than 14 hours), the *Daily Local* published Chambers' announcement on Tuesday<sup>5</sup> and an "elaboration of reasons for suspension of Chief Frame" the following day. Chambers called the chief's conduct "unbecoming" and cited specifics: failing to cooperate with the district attorney's office, publicly insulting an attorney in court, criticizing one of his own officers at a Borough Council meeting, arresting Robert Miller in retaliation for his testimony against Mervin, arming Mervin without making sure he had a valid gun permit, and other offenses. The clincher, according to Chambers, occurred when Frame and a witness in the Mervin trial got into an "altercation" at the Horse & Hound while the trial was still underway, and the trial testimony that showed the West Chester police mishandled the investigation.<sup>6</sup>

The *Daily Local News* sent out a reporter to ask what people thought and presented the results in an article entitled "Opinions vary on Chief Frame's suspension." Courthouse employees and West Chester police officers all refused to comment, but most of those who answered said that they didn't know enough to back either Frame or Chambers.<sup>7</sup> Another reporter, Hannah Aizupitis, clarified things with an opinion piece that divided the mayor's thirteen charges into two groups - the majority dealing with Frame's treatment of Mervin and a smaller group that concerned relations between Chambers and Frame. After

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<sup>3</sup> "West Chester mayor suspends chief of police. Action comes after session with council" in *DLN* (Tue. October 27, 1970), 1.

<sup>4</sup> "Chief's suspension: most solons are undecided on issue" in *DLN* (Thu. October 29, 1970), 1. Note: *Local* headlines frequently used the word "solon" when referring to Council members.

<sup>5</sup> "West Chester mayor suspends chief of police. Action comes after session with council" in *DLN* (Tue. October 27, 1970), 1.

<sup>6</sup> "Reasons for chief's suspension listed" in *DLN* (Wed. October 28, 1970), 1.

<sup>7</sup> Glenn Proctor, "Opinions vary on Chief Frame's suspension" in *DLN* (Wed. October 28, 1970), 1.

observing that no decision by Council was likely to be satisfactory - they could either ruin Frame's career or force the two men to coexist - she concluded that it was critical that Council debate the charges and reach their decision in an open public meeting.<sup>8</sup>

According to the Borough solicitor, Council was required to review the suspension at its next meeting, and if they upheld the suspension, the chief had the right to appeal to the Civil Service Commission.<sup>9</sup> The next Council meeting was scheduled for Wednesday, November 11, providing more than three weeks for the populace to stew and the two sides to prepare their case. Once again the public responded with letters and by the end of October, the *Daily Local* had published four letters supporting Frame (including one purporting to represent the views of the Chester County Board of Realtors)<sup>10</sup> and two that supported the suspension because of problems with the performance of the police.<sup>11</sup> The *Daily Local* editorialized that "the most serious charges which the mayor had lodged against the chief lie in the area of conduct and judgment" and "Mayor Chambers' first duty will be to back them up with evidence sufficient to convince Borough Council."<sup>12</sup>

With the Borough Council meeting just over a week away, West Chester's police officers decided to get involved by presenting a petition signed by twenty-nine of them - one was away at the Pennsylvania State Police Academy - that declared their "100 per cent" support for Chief Frame.<sup>13</sup> Evidently a few of them decided

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<sup>8</sup> Hannah Aizupitis, "Ad Lib" in *DLN* (Thu. October 29, 1970), 4.

<sup>9</sup> "West Chester mayor suspends chief of police. Action comes after session with council" in *DLN* (Tue. October 27, 1970), 1.

<sup>10</sup> Frank S. Mealing, letter to the editor, "Realtors shocked by mayor's action" in *DLN* (Sat. October 31, 1970), 4. The other letters supporting Frame were from Selina B. Miller ("Supports head of the police force" on October 29), Grace Redmond Watson ("Protests suspension of head of police" on October 30), and Harriet E. Huggler ("Paolian's opinion of mayor's charges" on October 31).

<sup>11</sup> Dr. Robert F. Cosgriff, "Commends mayor on his action" in *DLN* (Fri. October 30, 1970), 4, and Virginia G. Bliss, "Protection for all the people a must" (letter to the editor) in *DLN* (Fri. October 30, 1970), 4.

<sup>12</sup> Editorial: "The Mayor's move against Chief Frame" in *DLN* (Wed. October 28, 1970), 4.

<sup>13</sup> "West Chester police petition backs the chief" in *DLN* (Tue. November 3, 1970), 1.

to take things even further because a few days later, the *Daily Local* quoted Mayor Chambers regarding his displeasure that an officer had taken another petition to the town's merchants, while Republicans passed a third petition around their headquarters on election night. He did not condemn the police petition, but he told the reporter, "I consider our predicament a serious matter and not one to be brushed off lightly as a popularity contest between the mayor and the chief of police."<sup>14</sup>

Council met for its regular voting session at 7:30pm on Wednesday, November 11. Although they were not legally required to hold a public hearing, they decided that handling Frame's suspension as a "personnel matter" in a private executive session would have raised public concerns about "influence" and made any outcome more difficult to defend. So after dealing with a few routine issues - a rock salt contract, approving the October minutes and agreeing to pay for part of a parking and traffic study, President Thomas announced that the "next order of business was to conduct a hearing into the suspension of Chief Frame by the Mayor" and turned the meeting over to Lawrence E. MacElree, the Borough solicitor.<sup>15</sup>

The room in the old Borough Hall on S. High Street was packed. All fifty chairs in council chambers had been filled an hour before the meeting started, and by the time the hearing got underway, more than two hundred spectators - including John Mervin and his attorney - filled the room, the hallway, the stairway, and the landing at the bottom of the stairs. MacElree informed the crowd that they could observe, but would have no chance to ask questions or make comments. Instead MacElree instructed each of the attorneys - Joseph Harvey for Borough Council and C. Richard Morton for Chief Frame - to question and cross-examine the witnesses while a stenographer made a transcript.

A total of nine witnesses answered questions derived from the charges listed by Chambers in two memos to Borough Council. They focused on how Mervin was hired, how the investigation into his two shootings was carried out, and whether Frame had deliberately tried to hinder the prosecution in the two trials. The article described Frame's responses, which included unapologetic criticism of the district attorney, slightly more restrained criticism of the mayor, defense of his policy with respect to the

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<sup>14</sup> "In Frame Case: Mayor upset by some petitions" in *DLN* (Fri. November 6, 1970), 1.

<sup>15</sup> Borough Council meeting minutes (November 11, 1970).

Warlocks motorcycle gang, and praise for the work of John Mervin.

All of this took time - lots of time - and as the hours went by, the audience dwindled until finally, at 1:10am, Council ended the hearing and went into executive session to discuss their decision. When they returned after ten minutes, Cotter made the motion seconded by Spaziani to reinstate the chief, and it passed 6-1 with only Tom Chambers opposed. Frame paused long enough to offer a handshake to Chambers, who accepted, and they made soothing comments about working together for the good of West Chester's people, while the audience applauded and a few people booed. Then the meeting adjourned at 1:25am.<sup>16</sup>

Despite the show of collegiality at the end of the meeting, people seemed to be at a loss regarding the future. There was one item of business that faced no opposition - the reinstatement of Mervin, with back pay, as approved by Council the prior February. Whether people agreed with the juries or not, Mervin had been found innocent in both shooting cases, leaving Council with a promise to fulfill. They waited until the following Monday night to attempt that at a continuation of their Wednesday night marathon.

In the meanwhile, the *Daily Local* published a pair of editorials praising Frame and Chambers for their promise to bury the hatchet, and warning readers that Frame would need everyone's unqualified support to deal with the "drug menace" that he had declared "almost out of hand." Repeated along with that warning was Frame's praise for Mervin's courage and intelligence, but the writer reminded everyone that Mervin had only been able to put a dent in West Chester's drug traffic. The writer concluded "Based on what the chief said Wednesday night, his police will need all the support they can get."<sup>17</sup> The *Local* also found three letters to the editor to publish in the days immediately following the hearing. For a change, the majority (two to one) were critical of Frame and the police, while the third repeated the argument that Frame was a bulwark against the destruction wrought by drug

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<sup>16</sup> Hannah Aizupitis, "West Chester Council reinstates Chief Thomas Frame by 6-1 vote: Action is taken after long hearing" in *DLN* (Thu. November 12, 1970), 1.

<sup>17</sup> "Vote of confidence for Chief Frame" (editorial) in *DLN* (Thu. November 12, 1970), 4, and "Illegal drug traffic 'almost out of hand'" in *DLN* (Fri. November 13, 1970), 4.

pushers.<sup>18</sup>

Then the next act began.

On Monday, November 16, Council resumed the meeting that had been adjourned in the wee hours of the previous Thursday morning. Council's minutes reveal a full house - all seven Council members plus the mayor and police chief attended - for the meeting which lasted less than 90 minutes. After a half dozen items dealing with speed limits, fire trucks and the like, Councilmen Cotter and Spaziani suddenly presented a motion to reinstate Mervin and give him his back pay. Before Council could take a vote, the solicitor recommended that they ask the Civil Service Commission to verify that Mervin's hire back in February was in order.<sup>19</sup>

The issue was Mervin's driver's license. As Tom Chambers told Council back in September, Mervin's driver's license was suspended for a year on October 28, 1969, so at the time he was hired as a regular officer on February 16, 1970, he was ineligible to serve. Mervin's attorney Malcolm Berkowitz tried to convince Council that it didn't matter because Mervin had appealed the suspension and expected to have his license back by the end of the week. Members of the public asked questions and Council member Tom Chambers reminded everyone that he had asked for an investigation back in September and cited case law to argue that Mervin's suspension was done improperly. He concluded by threatening legal action against any member of Council who voted to ignore his concerns.<sup>20</sup>

Cotter was undeterred and repeated his motion. Before anyone could offer to second, the solicitor repeated his advice that Council wait until the Civil Service Commission reviewed Mervin's qualifications. So Cotter changed his motion to a request that the Civil Service Commission look into the matter. That passed without dissent, but before Council could move on, Tom Chambers tried to put Cotter on the spot. He asked what Cotter had meant when he said "there needed to be an investigation of the Police Department" at the end of the previous Wednesday's hearing.

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<sup>18</sup> Brenda Brooks ("Supports mayor; assails council" on November 14), Theodore Kramer, ("Reader concerned by one question" on November 16) and Linda L. Widner ("Parent grateful for police work" on November 16), all in *Daily Local News* on page 4 of their respective issues.

<sup>19</sup> Borough Council meeting minutes (November 16, 1970).

<sup>20</sup> "Mervin hired as policeman after license was suspended" in *DLN* (Fri. September 25, 1970), 1. See also "Mervin status rests with commission" in *DLN* (Tue. November 17, 1970), 1.

Cotter denied using the word "investigation" and claimed he had said something about "administrative improvements," so Chambers let it drop and Council moved on.<sup>21</sup>

It took two weeks for the Civil Service Commission to review their work and the Borough solicitor to compose an opinion based on the results. In the interim, Henry's mother filed a lawsuit on the 18<sup>th</sup> - the anniversary of her son's death - naming Mervin, Frame and the Borough as defendants,<sup>22</sup> and Council member Tom Chambers wrote a letter to the *Local* to correct "false impression[s]" about what part of Mervin's "back pay" was in question.<sup>23</sup> Then in the afternoon of Monday November 30, Council held a special meeting to deal with two issues - the Philadelphia Electric Company's plan to stop supplying steam for heating the town center, and "the status of Mr. John A. Mervin with the West Chester Police Department."<sup>24</sup> The steam heat question was dispatched easily,<sup>25</sup> but then the unthinkable happened.

As the *Daily Local* reporter described it, "West Chester Borough Council yesterday rewrote history and denied John A. Mervin both reinstatement to the police force and back pay." They were persuaded by a letter from their solicitor. MacElree had reviewed Mervin's application from January 1970 and concluded that because the Civil Service Commission was unaware that Mervin's driver's license was suspended, it could not certify him as eligible for employment. That made Mervin's hire "a nullity" and led the solicitor to recommend that Council "rescind the

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<sup>21</sup> "Mervin hired as policeman after license was suspended" in *DLN* (Fri. September 25, 1970), 1.

<sup>22</sup> "Mervin, Frame sued by mother of slain youth" in *DLN* (Wed. November 18, 1970), 1.

<sup>23</sup> Thomas A. Chambers, letter to the editor of the *DLN* (Tue. October 20, 1970), 4.

<sup>24</sup> Borough Council meeting minutes (November 30, 1970).

<sup>25</sup> After the Philadelphia Electric Company (PECO) acquired the old Edison Electric generating plant in the center of town, they gradually replaced its power output with other sources, but continued to sell steam to nearby customers which they used to heat their buildings. By the late 1960s, PECO argued that the pipes were decayed and leaky, and the business was no longer profitable. Steam heat customers were concerned about the cost of new heating systems for their buildings, and as a result, tried to persuade the regulating agency, the Pennsylvania Public Utilities Commission, to deny PECO's application. On November 30, 1970, Council voted not to oppose the application. See Jim Jones, Made in West Chester (West Chester, PA: self-published, 2003), 76.

motion of February 16, 1970."<sup>26</sup>

To their credit, Cotter and Spaziani did not resist. Instead they presented the rest of Council with a motion to rescind Mervin's hire. It passed without discussion - Chief Frame later admitted that he was "too confused to know what questions to ask" - and with only one negative vote from Council President Thomas, who said he "just didn't feel it was right."<sup>27</sup> Tom Chambers quickly changed the subject to PECO's application to raise electric rates, and after a short discussion, they adjourned. The entire meeting lasted only fifteen minutes.<sup>28</sup>

The next day, the *Daily Local* editor tore into Council, writing "Indifferent to what this undercover agent accomplished, Council turned its back on him in the final showdown," and lamenting that "The law and its interpretation are cold things at best. When they stand alone, untouched by so much as a strain of mercy, they are colder yet."<sup>29</sup> The Downingtown Junior Chamber of Commerce went even further, calling Borough Council "less than gentlemanly" and presenting a check to Mervin for \$250 "to let him know that his work has been appreciated."<sup>30</sup> John Coslett Jr., a West Chester police officer and Mervin's one-time roommate, resigned over the matter, "due to the way things are being handled within the borough."<sup>31</sup> Mervin appealed Council's decision to the Civil Service Commission, but a few days after Christmas, the Commission ruled that Mervin was entitled to back pay from February to November, but they had no authority to do anything about the vote to rescind his hiring.<sup>32</sup>

As 1970 came to an end, people reflected on all that had happened in the fourteen months since Mervin shot Robert Miller outside

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<sup>26</sup> Lawrence E. MacElree, Esq., letter to Borough Council, reprinted in Borough Council meeting minutes (November 30, 1970).

<sup>27</sup> Hannah Aizupitis, "W. Chester council denies reinstatement to Mervin" in *DLN* (Tue. December 1, 1970), 1.

<sup>28</sup> Borough Council meeting minutes (November 30, 1970).

<sup>29</sup> Editorial: "Not even 'thanks' to John A. Mervin" in *DLN* (Wed. December 2, 1970), 4.

<sup>30</sup> "No strings attached: Downingtown Jaycees give check to Mervin" in *DLN* (Sat. December 5, 1970), 2.

<sup>31</sup> "West Chester officer quits" in *DLN* (Fri. December 11, 1970), 1.

<sup>32</sup> Hannah Aizupitis, "Mervin gets back pay, but not job back" in *DLN* (Tue. December 29, 1970), 1.

the Horse & Hound. Besides shooting Henry, Mervin was arraigned twice, indicted twice by the grand jury and was found innocent by two different juries by reason of self defense. In the meantime, he had moved out of West Chester, been shot at twice and wounded once, graduated from college and put on a regular police officer's uniform. He had gained recognition as an expert on the local drug culture and invited to speak at public events. In its year-end review, the *Daily Local* led off with this description of John Mervin:

No name is better known in Chester County than that of the former Warlock hired as an undercover narcotics investigator for the West Chester police force, whose undercover status was revealed when he was charged with murder in the shooting death of a Malvern youth, who stood trial and was acquitted of that charge, who was acquitted after trial on an assault charge in another shooting, who was suspended, reinstated, resuspended, unpaid, paid – possibly – and sued, and whose present status and future prospects remain intricately complicated and uncertain.<sup>33</sup>

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<sup>33</sup> Shirley Macauley, "Mervin is top newsmaker in Chester County" in *DLN* (Mon. January 4, 1971), 3.

## Chapter 11: A Lull in the Action

After such a tumultuous year, it was reasonable to expect that things would be quieter in 1971, although it would be more accurate to say that people focused their attention elsewhere. The national news was full of distractions like a deadly prison riot at New York's Attica State Penitentiary, the opening of Disney World in Orlando, the publication of the Vietnam War's "Pentagon Papers," the Supreme Court decision on school busing and the lowering of the voting age to 18.<sup>1</sup> In West Chester, the year's headlines included plans to build the borough's first parking garage on E. Chestnut Street, the construction of the Treadway Motor Inn at the bypass south of town, a debate over whether police officers would be allowed to wear American flag patches on their uniforms, the demolition of the State College's "Old Main Hall" and the celebration of the college's centennial and PSAC football title.<sup>2</sup> By the end of the year, Mervin had dropped to tenth on the list of most significant news stories in the *Daily Local News*, falling behind the Coatesville teachers' strike, battles over development throughout the eastern part of the county, the demise of a local bus service, massive flooding in September, and in West Chester, the failure to preserve the state college's oldest building.<sup>3</sup>

The Civil Service Commission's response to Mervin's appeal at the end of 1970 pleased neither side, and both Borough Council and Mervin appealed it to the Common Pleas Court. Mervin hoped to win reinstatement as a regular police officer<sup>4</sup> while Borough Council challenged the ruling that they were required to pay roughly \$5,775 in back pay.<sup>5</sup> Both sides presented their arguments to Judge John K. Kurtz on February 10<sup>6</sup> and Kurtz

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<sup>1</sup> "What Happened in 1971: Important News and Events, Key Technology and Popular Culture" from "The People History" website ([www.thepeoplehistory.com](http://www.thepeoplehistory.com)), accessed September 11, 2017.

<sup>2</sup> References to major local news stories were culled from Borough Council meeting minutes and the 1972 *Serpentine* (West Chester State College yearbook).

<sup>3</sup> "News staffers pick top stories" in *DLN* (Fri. December 31, 1971), 2.

<sup>4</sup> "Mervin files appeal in county court" in *DLN* (Fri. January 22, 1971), 16.

<sup>5</sup> Borough Council meeting minutes (Fri. January 8, 1971).

<sup>6</sup> "Court hears argument on Mervin pay" in *DLN* (Thu. February 11, 1971), 1.

finally issued his decision on April 16, dismissing both appeals.<sup>7</sup> That left the Civil Service Commission decision intact, and led to a special meeting of Borough Council on May 18, at which Council voted 5-2 to pay Mervin his back pay from February to November in exchange for a release from all further claims. The next day the *Daily Local* proclaimed "The case of John A. Mervin versus the borough of West Chester is closed."<sup>8</sup>

That was not entirely true. For one thing, someone sent out letters made to look as if they came from Mayor Chambers, resulting in a hate mail sent to him. Two more police officers resigned in the first half of the year.<sup>9</sup> Nearly a dozen people were still awaiting trial for charges based on evidence provided by Mervin. One of those was Robert Miller, who was finally indicted in September 1971 for attacking Mervin.<sup>10</sup>

The most dramatic reminder that feelings were still strong came in November. Mervin was staying at his parents' house in Delaware County when two men forced their way inside. Unlike the first three attacks, this one put Mervin in the hospital with a severe injury, but once again, no one was arrested. Mervin claimed he didn't recognize his attackers and local police said they were "unable to confirm" any connection between the attack and recent drug arrests in Chester County.<sup>11</sup> But seven weeks later, Mervin reported that the intruders also stole a briefcase containing the only copies of his reports on West Chester drug activities.<sup>12</sup>

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<sup>7</sup> Common Pleas Court of Chester County, Pennsylvania, "Mervin Appeal misc. nos. 13335 and 13337" in *Chester County Reports*, vol. 21 (1971), pp156-160. Also published as LEXIS 171; 54 Pa. D. & C.2d 482

<sup>8</sup> "Mervin gets his pay in election night meeting" in *DLN* (Wed. May 19, 1971), 1.

<sup>9</sup> Borough Council meeting minutes (Wed. June 9, 1971).

<sup>10</sup> Barry Kushner, "Mervin's legal history spans three years" in *DLN* (Tue. December 5, 1972), 8.

<sup>11</sup> After forcing Mervin upstairs, the intruders assaulted him with the shotgun barrel and tore a three-inch hole in his intestine. Mervin managed to drive himself to the hospital where he underwent surgery, and remained there for three days with a police guard outside his room. Mervin described his attackers as a "hippie-type" armed with "a shotgun or shotgun barrel" and a man with a 45-caliber pistol. See "Former undercover agent is assaulted by two men" in *DLN* (Mon. November 29, 1971), 1, and "Mervin remains under police guard at hospital" in *DLN* (Tue. November 30, 1971), 2.

<sup>12</sup> Greg Walter, "Police Chief Backed Drug Prober After He Was Involved in Shootings" in *Evening Bulletin*, (Mon. February 28, 1972), 1.

If the Mervin story was on its way to being forgotten by the end of 1971, a front page news story from January 8, 1972 provided a reminder. The County Commissioners announced that Chief Frame had agreed to take over as the warden of the Chester County Prison, the position his father had held from 1952 to 1968.<sup>13</sup> Borough Council accepted his resignation at its January 12 meeting without dissent, but the minutes mention neither discussion nor praise for his service.<sup>14</sup> The *Daily Local* article briefly mentioned his four years as West Chester's police chief, noting only that "he established a community relations officer position and designed new police uniforms, enlarged the detective staff and the number of police vehicles." Frame was quoted as saying "There's nowhere in the world where I could have been privileged to learn the ins and outs of administration proceedings. ... The experience [as West Chester's police chief] will serve me well."<sup>15</sup> None of them mentioned Mervin.

After leaving the hospital following the November assault, Mervin resumed looking for work. If Mervin's testimony during his appeal of the Civil Service Commission's decision is to be believed, he told Judge Kurtz that he had been only sporadically employed since he was suspended in February 1970 and he owed hundreds of dollars to Frame, Haskell Robinson and Joe Gallagher (a former West Chester police officer) among others. On February 4, 1972, Mervin took the civil service examination to become a police officer in the city of Chester, Pennsylvania,<sup>16</sup> but three weeks later he was arrested by Haskell Robinson for causing a disturbance in a West Chester bar.<sup>17</sup> Two days after that, the *Philadelphia Bulletin* published the news on the front page of its Sunday edition that one of the key witnesses against Mervin had changed his story.<sup>18</sup>

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<sup>13</sup> "County police jobs sent Frame to jail" in *DLN* (Sat. January 8, 1972), 1.

<sup>14</sup> Borough Council meeting minutes (January 12, 1972).

<sup>15</sup> "County police jobs sent Frame to jail" in *DLN* (Sat. January 8, 1972), 1. See also "Frame stays until Jan. 22" on the same page.

<sup>16</sup> "Mervin Seeks Post With Chester Police" in *Evening Bulletin*, (Mon. February 28, 1972), 28.

<sup>17</sup> "Mervin Is Arrested In West Chester Bar" in *Sunday Bulletin* (Sun. February 27, 1972), 7.

<sup>18</sup> Greg Walter, "Drug Prober Killed Unarmed Man, Eyewitness to Shooting Tells Bulletin" in *Sunday Bulletin* (February 27, 1972), 1.

And John Mervin was back in the news once more.

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## Chapter 12: The Investigation Reopened

The events that led to the reopening of the Mervin case started in late December 1971 when a person who was later identified only as a "resident of West Chester, uninvolved personally in the case" contacted a reporter for the *Philadelphia Bulletin*.<sup>1</sup> The reporter, Greg Walter, had a reputation as an investigative reporter because of articles he had written about Philadelphia's mayor and police.<sup>2</sup> Walter began interviewing people connected with Mervin's first two trials, and as the word of his activities spread, others began to contact him.<sup>3</sup> At some point, Walter learned that Eugene Moran, the fourth person in the room where Jonathan Henry was killed, wanted to talk.

Moran had spoken about what happened in the past, but each time, he told a different story. In 1970, he first told West Goshen police that he had passed out during the shooting and didn't know what had happened. He repeated that at the grand jury hearing, but when he testified at the murder trial in June, he claimed that he heard Mervin and Saltzman "harass" Henry before Mervin shot him.<sup>4</sup> Shortly after the trial ended, Moran moved to Florida, but he remained in touch with Lt. Thomas Flick, the West Goshen police officer who had arrested Mervin. In January 1972, Flick took Walter to Florida to meet Moran, and brought along Fred Cadmus, the lawyer for Jonathan Henry's family, and a movie producer named Ostroff. All four told Moran that a hypnotist might be able to help him remember, and after two sessions, Moran found that his memory of that night included more details.<sup>5</sup> On February 1, Moran went to the Ft. Lauderdale police station with Flick, Walter and Cadmus and they prepared an affidavit containing the new testimony for him to sign. Then the three men returned to West Chester, where Flick turned one copy over to the

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<sup>1</sup> Ibid.

<sup>2</sup> Jim Riggio, "The Year of the Bull" in *Philadelphia Magazine* (Wed. April 2, 2008), accessed on December 7, 2016 at <http://www.phillymag.com/articles/the-year-of-the-bull/>.

<sup>3</sup> For instance, Mervin's stepbrother Ken Dawson told a jury that he contacted Walter after he learned Walter was doing an investigative article. See "3 Mervin witnesses change their stories" in *DLN* (Wed. December 6, 1972), 1.

<sup>4</sup> Shirley Macauley, "Surprises emerge in Mervin trial; witness changes story" in *DLN* (Thu. June 4, 1970), 1.

<sup>5</sup> Barry Kushner, "Judges ruling is due on Moran's testimony in trial" in *DLN* (Fri. April 26, 1974), 1. The identity of the movie producer Ostroff remains a mystery.

new Chester County District Attorney, William Lamb. Walter kept a copy and used it as the basis for his first article, which appeared at the end of February. During the following week, the *Philadelphia Bulletin* published three more articles by Walter about Chief Frame's support for Mervin, the Miller shooting at the Horse and Hound, and the mystery of the drugs that Mervin was credited with taking off the streets.<sup>6</sup>

The drug mystery arose after Frame's departure removed an impediment to cooperation between the District Attorney and Borough police. On January 31 D. A. Lamb asked the interim police chief, Lt. James Sobers, for permission to open a safe deposit box said to hold drugs confiscated by Mervin. Frame and Robinson were the keyholders, so they were also present to watch while Sobers, Mayor Chambers, Assistant District Attorney Joseph Melody and Chief County Detective William Jennings opened it up. Instead of the \$48,000 worth of drugs which Frame had credited Mervin with taking off the streets, they found drugs that Sobers and Jennings - both narcotics experts - valued at less than \$2,000.<sup>7</sup>

On February 27, Greg Walter's first article appeared under the headline "Drug Prober Killed Unarmed Man, Eyewitness to Shooting Tells Bulletin." Using the contents of Moran's affidavit, Walter reported that Mervin and Henry were both armed when they arrived at Moran's apartment. After Mervin and Jeffrey Saltzman started arguing with Henry, Mervin held him at gunpoint while Saltzman disarmed Henry. Then they made Henry "lick dust from the apartment floor, then slapped and kicked" him. Both Moran and Henry "were subjected to further abuse at gunpoint" and when Henry tried to run, Mervin shot him. Afterwards, a "West Chester police sergeant" helped Mervin clean up the crime scene before West Goshen police arrived, and they threatened Moran to keep him quiet about what he had seen. Walter added that Moran passed a

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<sup>6</sup> Greg Walter wrote four articles in spring 1972, all of which appeared on the front page of their respective issues of the *Bulletin*: "Drug Prober Killed Unarmed Man, Eyewitness to Shooting Tells Bulletin" (Sun. February 27), "Police Chief Backed Drug Prober After He Was Involved in Shootings" (Mon. February 28), "Drug Agent Shot Man Outside Bar But Was Cleared at Chester Co. Trial" (Tue. February 29) and "Mervin Probers Hunt \$46,000 Drugs Missing from Bank Deposit Box" (Wed. March 1). A fifth article, cowritten with Philip Evans, described announcements by the district attorney and state police that they would open a new investigation. See Greg Walter & Philip Evans, "County DA, Urella Probe Mervin Case" in *Evening Bulletin*, (Mon. February 28, 1972), 1.

<sup>7</sup> Charles A. Garrett, "West Chester Asks Troopers To Probe Police" in *Evening Bulletin* (Fri. March 3, 1972), 1. See also "In Mervin case. Mayor talks of drug find" in *DLN* (Fri. March 3, 1972), 1.

lie detector test after giving his statement to the *Philadelphia Bulletin*.

Neither Mervin nor Saltzman responded to requests for a statement. Robinson denied that he entered the apartment before notifying the West Goshen authorities, but Walter gave a long list of discrepancies between Mervin and Saltzman's trial testimony and information that he had obtained during his investigation. He also included several unanswered questions: Why was Mervin hired even though he was a Warlocks member who had been charged three times and convicted once of weapons violations, and who bragged to his friends of having committed violent acts? Why was he kept on duty after both of the shootings? And why did Chief Frame repeatedly proclaim Mervin's innocence in public before the trial for Jonathan Henry's murder?<sup>8</sup>

Walter's article produced immediate results. The next morning, Chester County District Attorney William Lamb announced that his office had opened a new investigation into the Henry shooting. Although he did not mention Moran's affidavit, Lamb said they had received new information from the *Philadelphia Bulletin*, the West Goshen Police Department and the Pennsylvania State Police. Lamb added that the State Police had pledged its cooperation and named an officer to supervise their part of the investigation.<sup>9</sup>

Walter was not finished, however. His second article began by describing how Frame's November 26, 1969 press conference turned Mervin from a murderer into a "hero" by crediting Mervin with taking \$48,000 worth of drugs out of circulation and providing information that led to a dozen arrests. But then he contrasted Frame's claim that he couldn't talk about the Henry shooting "in order not to prejudice the outcome of murder charges against Mervin" with Frame's pre-trial actions: his request that the District Attorney dismiss the case and his frequent public statements about Mervin's innocence. Walter quoted from a memo written by former D.A. Norman Pine that Mervin was acquitted thanks to "a program of publicity and planned deception" by Frame and other West Chester police officers. Walter also revealed that Frame had used his own house to secure Mervin's \$12,000 bail after the Henry shooting, and claimed that Frame promised the Warlocks that none of their members would be arrested as long as

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<sup>8</sup> Greg Walter, "Drug Prober Killed Unarmed Man, Eyewitness to Shooting Tells Bulletin" in *Sunday Bulletin* (February 27, 1972), 1.

<sup>9</sup> Greg Walter & Philip Evans, "County DA, Urella Probe Mervin Case" in *Evening Bulletin*, (Mon. February 28, 1972), 1.

they didn't retaliate against Mervin.

Walter also expressed skepticism about the physical attacks on Mervin. He described how a "mysterious gunman," who was never found or identified, missed Mervin completely in the first attack. Then another gunman, who was never found, managed to shoot Mervin in the thigh, creating what one of Walter's police sources called "a very slight wound in the fleshy part of his upper thigh made by a .22 caliber 'plunker,' the kind of bullet used in basement target practice ranges." While acknowledging that Mervin was seriously wounded in the third attack, once again Mervin's attackers remained unidentified and Mervin waited almost two months before reporting that they had stolen all of his files from his undercover drug investigations.<sup>10</sup>

In his third article Walter tackled the Robert Miller shooting, describing police misconduct and presenting evidence that at least two witnesses had committed perjury on Mervin's behalf. Most damning was a note from then-District Attorney Norman J. Pine to West Chester Councilman Thomas Chambers, where he wrote "In this case the West Chester police admittedly did not attempt to investigate," but instead acted "to conceal evidence and to protect the defendant."<sup>11</sup> Walter's last article contrasted Frame's claim that Mervin had purchased more than \$48,000 worth of drugs with the fact that Borough officials found less than \$2,000 worth of drugs in the safe deposit box rented by Frame and Robinson. He noted that in addition to "the missing drugs," Mervin's personnel file and arrest records had also disappeared.<sup>12</sup>

Both the *Philadelphia Inquirer* and the *Daily Local News* picked up the story on the second day, reporting at first on the *Bulletin* stories,<sup>13</sup> but then launching their own investigative efforts. As the story continued to grow and the accusations against the police department mounted, Mayor Chambers called on the State

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<sup>10</sup> Greg Walter, "Police Chief Backed Drug Prober After He Was Involved in Shootings" in *Evening Bulletin*, (Mon. February 28, 1972), 1.

<sup>11</sup> Greg Walter, "Drug Agent Shot Man Outside Bar But Was Cleared at Chester Co. Trial" in *Evening Bulletin* (Tue. February 29, 1972), 1.

<sup>12</sup> Greg Walter, "Mervin Probers Hunt \$46,000 Drugs Missing from Bank Deposit Box" in *Evening Bulletin* (Wed. March 1, 1972), 1.

<sup>13</sup> "New D.A. to Answer Charges" in *PI* (Mon. February 28, 1972) and "1969 Murder Case Reopened by DA" in *DLN* (Mon. February 28, 1972).

Police to investigate the West Chester police department.<sup>14</sup> Borough Council considered starting its own investigation before finally agreeing to offer the state police all possible assistance.<sup>15</sup> A week later, Tom Chambers told a special council meeting about the "many comments and calls received since the meeting last week" and proposed that the Police Committee "conduct a hearing or investigation into the possibility of missing records, missing evidence, and other Borough property, and questionable Councilmanic procedures related to the handling of the Mervin affair and inefficiencies in the Police Department." After lengthy discussion, the rest of Council agreed and passed Chambers' motion by a vote of 5-0.<sup>16</sup>

At the same meeting, Council hired Frame's replacement, John Connolly, the police chief of Milford, Delaware. Although an "outsider" in Chester County, the 28-year-old had previously worked for the Pennsylvania State Police and had experience dealing with hostile municipal officials. He must have known what kind of situation he was getting himself into, but the salary increase - West Chester offered \$16,000 per year compared to Milford's \$10,000 - may have helped to persuade him.<sup>17</sup>

Meanwhile, the D.A.'s investigation moved forward. On April 13, Lamb called a press conference to announce arrest warrants for John Mervin, Haskell Robinson, Lenwood Wert (the doctor who treated Mervin after the Miller shooting) and five others who testified during the Miller trial. All turned themselves in and the five lesser defendants were released on \$500 bail, while Robinson and Wert each had to post \$10,000. Mervin's bail was set at \$25,000, and when he couldn't arrange to pay it, he spent a night in Lancaster County prison before being returned to West Chester.<sup>18</sup> Mayor Chambers suspended Robinson the next day, and Council held a hearing at their next meeting. Despite the

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<sup>14</sup> Charles A. Garrett, "West Chester Asks Troopers To Probe Police" in *Evening Bulletin* (Fri. March 3, 1972), 1.

<sup>15</sup> Borough Council meeting minutes (March 8, 1972).

<sup>16</sup> "Unknown nominated as chief" in *DLN* (Tue. March 14, 1972), 1.

<sup>17</sup> James Moore, "Milford Chief quits to take higher-paying W Chester job" in *The Morning News* (Wilmington, Delaware, Thursday, March 16, 1972), 69. See also "John Connolly resigns Milford Police post" in *DLN* (Sat. March 18, 1972), 1, and "West Chester council okays new chief " in *DLN* (Thu. March 23, 1972), 1.

<sup>18</sup> Shirley Macauley, "Mervin and police sergeant arrested on perjury charges" in *DLN* (Fri. April 14, 1972), 1.

presence of Robinson and his attorney, Council deliberated for only ten minutes before voting unanimously to fire him.<sup>19</sup>

At his April 13 press conference, the D. A. also revealed the answer to the mystery of the missing drugs. In November 1969, the West Chester police had included items from an educational "drug display kit" to make Mervin's work look more valuable. The oft-quoted value of \$48,000 was based on "1969 street prices" whereas the D. A.'s office estimated the true value of the seized drugs at around \$2,000. Lamb decided to drop the charges against the fifteen people arrested on Mervin's information because "I cannot prosecute in good conscience" if the main witness (Mervin) was under arrest for perjury.<sup>20</sup>

The *Daily Local News* editor, who had generally taken a pro-police, pro-Mervin stance up to this point, wrote:

The protracted case involving John A. Mervin which has been smoldering for months finally broke into flame yesterday with eight arrests and the suspension of a member of the West Chester police force. There is good reason to think that other arrests are pending ... Mervin was charged with perjury, conspiracy and five counts of subornation of perjury which means he is charged with trying to influence others to commit perjury. The one police officer under arrest and now suspended under orders of Mayor J. Herbert Chambers, Sgt. Haskell Robinson, is charged with conspiracy and three counts of subornation of perjury. These are serious charges and there is reason to believe that they can be supported when a formal hearing is held.<sup>21</sup>

The possibility that "other arrests are pending" kept the population speculating, and on August 1, they got their answer. D. A. Lamb ordered the arrest of County prison warden Thomas Frame for "misfeasance and nonfeasance in office, all related to the hiring and activities of John A. Mervin as an undercover narcotics agent for the borough police." The story was covered by a number of newspapers, and at least two printed the complete

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<sup>19</sup> Borough Council meeting minutes (May 10, 1972).

<sup>20</sup> Shirley Macauley & Pat Murdoch, "John Mervin one of 8 sought in police probe" in *DLN* (Thu. April 13, 1972), 1.

<sup>21</sup> Editorial, "The move to clean up the Mervin case" in *DLN* (Fri. April 14, 1972), 4

list of eight charges:<sup>22</sup>

1. Hiring Mervin without the approval of West Chester Mayor J. Herbert Chambers.<sup>23</sup>
2. Hiring Mervin without checking into his background and experience.
3. Making a deal with the Warlocks motorcycle gang (of which Mervin was a member), promising them immunity and freedom from police molestation in the borough and fostering an improper relationship between the police and the Warlocks
4. Refusing to cooperate with the district attorney in the investigation and trial of Mervin for the shooting of Robert Miller of Downingtown in 1969
5. Threatening Miller with arrest if he testified, then threatening him after he testified against Mervin at the preliminary hearing in that case
6. Failing to follow normal and adequate police procedures in investigation, preservation of evidence, maintenance of records and interchange of information with other law enforcement agencies in the Miller shooting
7. Rearming Mervin and failing to suspend him after he had been charged with assault with intent to kill Miller
8. Misleading officials and citizens of West Chester in connection with a pending official investigation on the hiring and performance of Mervin by falsely misrepresenting the quantity of drugs purchased by Mervin.

It was hard to imagine what could be more astonishing than the arrest of a former police chief turned county prison warden, but on August 9 Lamb showed how to do it. He announced that warrants had been issued for the arrest of Mervin and Jeffrey Saltzman for perjury and sodomy in connection with the killing of Jonathan Henry. Besides putting Mervin's name back in the headlines once more, the word "sodomy" hit the public right where it felt most squeamish.<sup>24</sup> The story was made more scandalous by the fact that

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<sup>22</sup> Barry Kushner, "Ex-police chief arrested in Mervin probe" in *DLN* (Tue. August 1, 1972), 1 and "Chester County Prison Warden is arrested" in *The Mercury* (Pottstown, Pennsylvania, Wednesday, August 2, 1972), 23. Less detailed accounts also appeared in "Chief who hired narc is charged" in *The Morning News* (Wilmington, Delaware, Wednesday, August 2, 1972), 16, and "Ex-chief arrested in probe of Mervin" in *DCDT* (Wed. August 2, 1972), 4.

<sup>23</sup> Charles Andress was mayor at the time Frame hired Mervin in September 1969; Chambers did not take office until January 1970.

<sup>24</sup> In August 1972, Pennsylvania law used sodomy as a legal term to apply to both anal and oral sexual acts. In this case, the alleged act was oral. Barry Kushner, "Judge to rule: Saltzman wants out of trial" in *DLN* (Fri. May

in 1972 Saltzman's father was not only the mayor of Marcus Hook, but also the newly elected president of the board of trustees of West Chester State College.<sup>25</sup>

That's where the list of new arrests ended. In the roughly seven months following the day when Moran gave his statement to Walter and Flick, the Mervin investigation was reopened and ten people were charged including Mervin, one current and one former West Chester police officer, a local doctor, the son of the state college board of trustees, two members of the Warlocks and three others. The charges ranged from the arcane (subornation of perjury) to the unthinkable (sodomy) with plenty of conspiracy and perjury for good measure. A District Attorney in his first year in office was leading an investigation that combined the resources of the County Detectives, the State Police, and the West Goshen Police Department. By mid-August 1972, all of the ingredients were in place for a trio of sensational trials.

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10, 1974), 2.

<sup>25</sup> Shirley Macauley, "Mervin sought on new counts" in *DLN* (Thu. August 10, 1972), 1.

## Chapter 13: The New Trials Begin (1972)

The 1972 trials presented a different set of problems for the lawyers on both sides. First, the criminal charges were different, since no one could be placed in "double jeopardy" - prosecuted a second time on charges for which one had already been acquitted. Second, all of the evidence was two years older, as were the memories of eyewitnesses, making it harder to ascertain exactly what had transpired in late 1969. Finally, the sworn testimony from the first round of trials became evidence in the second round, and since it was full of contradictions, both internal and with respect to the new evidence, juries would face the difficult task of trying to decide what and who to believe.

The second round of trials also presented new problems for the public that wanted to understand what was happening. Each set of charges triggered a new series of hearings which ran more-or-less concurrently, so it required great care to understand what each decision meant. In chronological order, the trial involving Mervin, Robinson, Wert and five other defendants for charges related to perjury during the Miller trial got underway first. Then came the trial of Mervin and Saltzman for perjury and sodomy related to the Henry killing. Finally, the misfeasance/nonfeasance case against Frame came last. The Frame process was the shortest and it ended first, and it also had the fewest long-term consequences, so this chapter will examine that one first.

Frame was charged with "misfeasance and nonfeasance in office" which meant that he acted lawfully but improperly on some occasions and failed on other occasions to do things that he was required to do.<sup>1</sup> The specifics had to do with how he employed Mervin and how he and his officers behaved during the investigation into the two shootings. For more than two years, the "support your local police sentiment" had deterred Frame's critics, but following the revelations and arrests of the past six months, Frame no longer enjoyed the benefit of any doubts. The turnabout in thinking at the *Daily Local News* was demonstrated on the day after Frame was arrested, when the editor wrote that it came as no surprise that "the man who employed Mervin" had been arrested, since "earlier arrests ... served only to arouse the public's curiosity as to why the man responsible

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<sup>1</sup> Paraphrase of the definitions of "misfeasance" and "nonfeasance" in Gilbert Law Summaries, Pocket Size Law Dictionary (Orlando, FL: Harcourt Brace Legal and Professional Publications, Inc., 1997), 194 & 203.

for Mervin's job on the force had not been questioned."<sup>2</sup>

Putting Frame on trial in West Chester was risky because Frame's connections to the community ran wide and deep. For instance, his arraignment took place before District Justice Earl M. Heald, a man with whom he had worked many times in the past. Lamb compensated with a mountain of evidence and testimony, so that an arraignment which usually took no more than an hour required two days of testimony on September 1 and 5. The D. A. called more than fifteen witnesses including Mayor Chambers, former Mayor Andress, two state police officers, a county detective, two police officers and a *Daily Local News* reporter; plus Robert Miller, his wife and his mother. Frame's attorney, John E. Stively, called no witnesses.<sup>3</sup>

After one postponement, closing arguments took place on October 27. The two lawyers argued about each of the eight charges, but because Frame was charged with "misfeasance and nonfeasance in office," the key issues became whether Frame was a "public official" or an "employee" of the Borough, and whether his motives were "willful, corrupt and improper." Frame's lawyer Stively argued that Frame, as the chief of police, was an employee answerable only to the mayor, and that the prosecution had not proven that Frame's motives were corrupt. Lamb contended that Frame was indeed a public official and that his corrupt motive was to "deliberately mislead the public that John Mervin performed a tremendous service to the borough of West Chester."<sup>4</sup>

After another delay of nearly two weeks, Heald announced his decision. The D. A. had failed to make a *prima facie* case that Frame had acted with "corrupt motives," so the charges were dismissed<sup>5</sup> Heald's ruling was not completely unfounded, since

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<sup>2</sup> Editorial "Arrest of former chief no surprise" in *DLN* (Wed. August 2, 1972), 4.

<sup>3</sup> "Ex-chiefs actions probed" (Sat. September 2, 1972) and "Frame hearing. Parke raps police aid in Mervin case" (Wed. September 6, 1972). Both articles, written by Barry Kushner, appeared on page 1 of the *Daily Local News*.

<sup>4</sup> Barry Kushner, "Justice hears final arguments in hearing for ex-police chief" in *DLN* (Sat. October 28, 1972), 1.

<sup>5</sup> Barry Kushner, "All charges against Frame are dismissed" in *DLN* (Fri. November 10, 1972), 1. Shorter accounts appeared as "Misconduct case ends" in *DCDT* (Fri. November 10, 1972), 2 and "Judge Clears Ex-Police Chief" in *Philadelphia Daily News*, Philadelphia, Pennsylvania (Fri. November 10, 1972), 58.

Pennsylvania case law had established the principle as early as 1936 that certain public officials are immune from criminal prosecution as long as they act "in good faith" without any "corrupt motive."<sup>6</sup> But Heald's ruling raised eyebrows, especially after Greg Walter (by then with the *Philadelphia Inquirer*) wrote that Heald had cosigned a note that financed a towing company that included Frame, Mervin and Mervin's old roommate, former West Chester police officer John Coslett Jr.<sup>7</sup> But for reasons that were never made clear in the press, Lamb opted not to file an appeal, and the case against Frame ended there.

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The first case to reach a jury was the perjury-conspiracy case that developed out of the Miller trial.<sup>8</sup> After D. A. Lamb announced the charges on Thursday, April 13, the defendants all surrendered within a few days. The five minor defendants waived their right to a preliminary hearing, but Mervin, Robinson and Wert hired lawyers. Once again Justice Heald was the presiding judge, and anticipating a large crowd, he scheduled their preliminary hearing in Henderson High School's auditorium. That turned out to have been a prudent move because approximately 200 people showed up to watch the proceedings.<sup>9</sup>

The hearing lasted for more than four hours, thanks to outbursts from the lawyers representing Mervin and Robinson, applause from the crowd, motions by the defense and a lengthy debate about bail. According to news accounts, D. A. Lamb called at least eight witnesses, although neither Mervin, Robinson nor Wert testified. The first to speak were the five minor defendants who

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<sup>6</sup> McNair's Petition, 324 Pa. 48, 55, 187 A. 498 (1936). For a discussion of how Pennsylvania law treats the concept of qualified immunity, see Richard E. Widin, "Public Officials and Employees - Absent Allegations of Bad Faith or Corruption, Quasi-Judicial Officials Are Immune from Criminal Prosecution in Pennsylvania" in *Villanova Law Review*, vol. 25, issue. 3, art. 10 (1980).

<sup>7</sup> Greg Walter, "Here's How Police Captured West Chester Towing Plum" in *PI* (Sun. December 24, 1972), 1.

<sup>8</sup> Besides Mervin, Robinson and Wert, the other five were John Sexton of Ardmore; Fletcher Ruckman of Media; William Canning of Philadelphia; Eladio Hernandez of West Chester and Mark Wilson of Springfield, Delaware County. See "Perjury Charges Filed. Former agent in West Chester turns self in" in *DCDT* (Fri. April 14, 1972), 1.

<sup>9</sup> Shirley Maccauley, "Mervin, 2 others to face grand jury" in *DLN* (Thu. April 20, 1972), 1.

had already waived their preliminary hearings. Four admitted that they had not been at the Horse and Hound on the night of the shooting and they lied when they said that they saw Miller attack Mervin. Three of them testified that Mervin had asked them to make up their stories, two said they met with Mervin and Robinson shortly before the 1970 trial to concoct their stories, and another said he helped Mervin out of fear that Mervin would have him arrested for selling stolen coats to college students. The fifth defendant said that he had lied about seeing Mervin run past his house, but did so at the request of Sgt. Robinson, whom he knew from his work as a police translator.<sup>10</sup>

Mervin's ex-girlfriend testified that she was in his apartment on the day after the shooting when she heard him call Dr. Wert and say "he wanted a favor." Then they drove to Wert's office and she waited while the two men met in another room for about half an hour. On the way there, Mervin drove, but he told her that if it ever came up, she was to say that she drove because he was "injured, semi-conscious." On the way home, she asked what had happened in Wert's office and Mervin replied that "Lenny (Dr. Wert) cut him and stitched him" and added "It kinda made me sick." Other witnesses backed her up by testifying that Mervin was not hurt as badly as he and Wert had claimed at the 1970 trial.<sup>11</sup>

The lawyers for Mervin and Wert tried to claim that the prosecution's witnesses were all liars and that the acquittal in 1970 had already shown that their clients told the truth, but Heald was not persuaded and ordered all three cases to go to a grand jury. Before leaving, Mervin's lawyer Malcolm Berkowitz asked to have Mervin's bail reduced from \$25,000 to \$500. Lamb protested and Heald decided to lower Mervin's bail, but only to \$10,000, the same as Robinson and Wert.<sup>12</sup>

Of the five minor defendants, four pled guilty immediately and the fifth waived his right to a grand jury hearing. So did Robinson, but he submitted a plea of "not guilty" to the charge of subornation of perjury and entered no plea to the conspiracy charge. That left only two, and on May 17<sup>th</sup> the grand jury indicted Wert for conspiracy and perjury, and Mervin for

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

conspiracy, perjury, and five counts of suborning perjury.<sup>13</sup> The penalty for Mervin, if convicted on all counts, was as much as 44 years in jail and an \$18,500 fine.<sup>14</sup>

During the next six months, Mervin's lawyer filed various motions intended to avoid a trial.<sup>15</sup> Meanwhile Lamb charged Frame and saw Justice Heald dismiss the charges, as described earlier in this chapter. Frame also charged Saltzman and Mervin with perjury and sodomy in connection with the Henry shooting, as described in the next chapter. But Berkowitz' motions all failed and on December 4, the second trial of John Mervin for offenses related to the Miller shooting got underway in West Chester.<sup>16</sup>

Compared to 1970, this time there was no attempt to rally public support for Mervin. Instead, attorney Berkowitz opened with a claim that his client was a victim of "unfavorable" pretrial publicity and asked for the trial to be moved out of West Chester. Common Pleas Judge John J. Wajert rejected the request, although he ordered that the jury be sequestered during the trial, and then allowed the district attorney to go ahead with his case.<sup>17</sup>

For the prosecution, the task was fairly simple. Under Pennsylvania case law, proof of perjury required two or more witnesses to testify that perjury had occurred, or else the testimony of one witness was enough if it was corroborated by other physical evidence. In this case, five witnesses had admitted that they had committed perjury and several had testified to planning it with Mervin. That was enough to prove both conspiracy and Mervin's role in getting the others to lie -

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<sup>13</sup> "Mervin indicted by grand jury" in *DLN* (Thu. May 18, 1972), 2.

<sup>14</sup> The penalties for each charge were seven years and/or \$3,000 for perjury and subornation of perjury, and two years and/or \$500 for conspiracy. See "Mervin hearings set next week" in *DLN* (Sat. April 15, 1972), 1.

<sup>15</sup> See *Commonwealth of Pennsylvania v. John Mervin*, Court of Common Pleas, Chester County, Nos. 185 & 186 March Term, 1972; published as 20 Ches. Co. Rep. 319 (1972). Mervin's lawyer also filed suit in Federal Court (PA Eastern District) and an appeal to the US Third Court of Appeals; both verdicts went against Mervin, allowing the trial to proceed. On the suit in federal court, see "Prosecution rests case. Judge denies Mervin defense motion" in *DLN* (Fri. December 8, 1972), 1.

<sup>16</sup> Barry Kushner, "Mervin trial starts today; has complex legal history" in *DLN* (Mon. December 4, 1972), 1.

<sup>17</sup> Barry Kushner, "Witness says he lied for friend Mervin" in *DLN* (Tue. December 5, 1972), 1.

in order words, suborning perjury. The only tricky issue was the constitutional prohibition against double jeopardy. While the admission of perjury cast doubt on Mervin's 1970 acquittal, the prosecution could not use evidence that had to do with the shooting itself.

The defense countered by portraying the prosecution's witnesses as liars and the district attorney's investigation as a conspiracy by frustrated law enforcement officials. Using frequent legal motions to dismiss or disallow portions of the prosecution's evidence, the defense turned the trial into a bitter confrontation that lasted eleven days and included almost forty witnesses. Highlights of the trial included:

- Warlocks member Fletcher Ruckman, who had already pled guilty to perjury, told the court that he wasn't in West Chester on the night that Mervin shot Miller, but he knew Mervin from the Warlocks and agreed to lie at the request of a third Warlock, William Canning. The two of them worked out the details of their testimony in a meeting with Mervin and Sgt. Robinson shortly before the 1970 trial.<sup>18</sup>

- Three other witnesses from the 1970 trial admitted that they made up their stories about seeing Miller attack Mervin.<sup>19</sup>

- Two police officers and a bail bondsman testified that they saw no sign of blood or a knife wound on Mervin the night of the shooting.<sup>20</sup>

- Mervin's ex-girlfriend, with whom he had been living in fall 1969, testified that she saw no sign that Mervin had been stabbed, but drove him at his request so Dr. Wert could cut Mervin and stitch him up again. She also said that Mervin told her "to say I drove him to the doctor's because he was conscious and unconscious off and on and needed a doctor."<sup>21</sup>

- Two of Mervin's step-brothers recognized the knife that

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<sup>18</sup> Ibid.

<sup>19</sup> Barry Kushner, "Mervin trial witness says scalpel made 'stab' wound" in *DLN* (Thu. December 7, 1972), 1.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

Miller supposedly used to stab Mervin as one that they had seen in their parent's home three years earlier.<sup>22</sup>

... and so on. By the time the prosecution had finished calling witnesses near the end of the first week, Mervin's story of self-defense lay in shreds. So his attorney Berkowitz resorted to what the D. A. called a "novel argument" that Mervin could not have committed perjury because he was not sworn in properly back in 1970. The district attorney pointed out that Mervin was sworn in while the jury was out of the room, and commented that "There can be no doubt that John Mervin testified in a trial requested by John Mervin." The judge agreed and told the defense to proceed with its case.<sup>23</sup> But instead, Berkowitz tried to get the judge to dismiss the charges against all of the defendants by claiming that perjury could not be proven using testimony from perjurers. Again, the judge was not persuaded, and Lamb chose the moment to announce another defeat for Mervin - the refusal of the U.S. Third Circuit Court of Appeals to issue an injunction to stop the trial on the grounds that Mervin was the victim of a law enforcement conspiracy.<sup>24</sup>

When Berkowitz finally began his case, he called witnesses to prove that the prosecution's witnesses were all liars. Various people testified that Mervin and Robinson never met with anyone to plan perjury, those who said Mervin showed no evidence of serious injury had faulty memories, and anyone who suggested Mervin and Robinson manipulated physical evidence were outright liars. His last witness on the first day, Lenwood Wert, repeated his 1970 testimony about Mervin's injuries and accused the state police of making threats, telling him to lie, and saying "We really don't want you. We want Chief Frame and John Mervin. John Mervin is a vicious killer and he shouldn't be loose."<sup>25</sup>

The bitterness spread to Mervin's own family during the following week. On Monday, Mervin's mother and step-father took the stand

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<sup>22</sup> Ibid.

<sup>23</sup> Barry Kushner, "Prosecution rests case. Judge denies Mervin defense motion" in *DLN* (Fri. December 8, 1972), 1; and Harold D. Ellis, "State ends case against John Mervin" in *DCDT* (Chester, Pennsylvania, Friday, December 8, 1972), 8.

<sup>24</sup> Barry Kushner, *Ibid.*

<sup>25</sup> Barry Kushner, "Doctor says he treated Mervin for knife wound" in *DLN* (Sat. December 9, 1972), 1.

to denounce his stepbrothers' testimony about the knife.<sup>26</sup> During the first week, the two stepbrothers told the court that the knife identified as Miller's weapon in 1970 had actually been purchased in Italy and brought home when one of them was on leave from the Navy in 1968.<sup>27</sup> On cross-examination, he was forced to admit that he had once attempted suicide and had received probation for an attempted rape when he was in high school. The other stepbrother claimed to have seen the knife in Mervin's West Chester apartment before the shooting, and to have heard Mervin admit that a doctor had cut him to simulate a knife wound after the shooting, but Berkowitz responded by calling Mervin's mother and step-father to testify. They showed the court a second knife that was nearly identical to the first and said that both stepbrothers had lied to the jury.<sup>28</sup>

Former police chief Frame testified on Tuesday, barely a month after Heald dismissed the charges against him. Although he proclaimed Mervin's heroism and innocence, Frame also admitted that he hired Mervin without a background check, provided the gun used to shoot Miller, and kept Mervin's identity secret from all but four other people -- Sgt. Haskell Robinson, Sgt. Dyer Henley, Lt. James Sobers and D. T. Marrone, the judge who swore him in. Frame also credited Robinson with introducing him to Mervin, and said that Mervin's membership in the Warlock gave him the credibility he needed to move in the drug scene, which enabled him to make 22 arrests involving 17 different people. But under cross-examination, Frame admitted that he took out a personal loan, cosigned by District Justice Heald, to provide Mervin with the \$2,000 he used to buy drugs. Although he stopped short of making an accusation, the *Daily Local News* reporter pointed out that Heald lowered Mervin's bail in the Miller shooting from \$7,500 to \$1 (nominal) at Frame's request.<sup>29</sup>

The next day Robinson and Mervin testified. Robinson invoked his

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<sup>26</sup> According to various newspaper articles, military records and other genealogical sources, John Mervin was the son of James and Anna Mervin, who had at least four other children. After James died in 1955, Anna married Philip Dawson who had at least four children of his own, and they also adopted at least one more.

<sup>27</sup> Barry Kushner, "Mervin trial witness says scalpel made 'stab' wound" in *DLN* (Thu. December 7, 1972), 1.

<sup>28</sup> Barry Kushner, "Attorney: Mervin was not badly hurt" in *DLN* (Tue. December 12, 1972), 1.

<sup>29</sup> Barry Kushner, "Ex-chief Frame testifies at Mervin trial" in *DLN* (Wed. December 13, 1972), 1.

Fifth Amendment rights to avoid answering questions<sup>30</sup> so most of the rest of the day was taken up with Mervin's testimony and Lamb's cross-examination. Under cross-examination, Mervin admitted that he had lied in 1970 about "extraneous things" like whether he knew the witnesses who had testified on his behalf, but he insisted that he had told the truth about how he was attacked and what happened afterwards. He claimed his ex-girlfriend's story about the trip to Dr. Wert's office was "an absolute lie" and attributed the other witnesses' changed stories to "fear and intimidation by the state police." He told the court that the state police had tried to get him to change his own story by saying they were really after "Tom Frame, Ted Rubino and the higher-ups." To get him to change his story, they offered him \$10,000 and the chance to have a movie made about him, and promised to make sure "that if I had to go to jail, I'd go to a good jail, not Graterford," but they also threatened to kill him on two occasions. According to Mervin, the lead investigator for the State Police said "John, we're being nice to you. If you tell people we weren't nice to you, you'll see what we'll do to you the next time we get you back in."<sup>31</sup>

When Lamb asked him why so many people had changed their stories or come forward for the first time to testify against him, Mervin said they were all motivated by fear of the state police. "[State police investigator] Zagorskie was sure I had all the knowledge in my head to blow the top off Chester County ... They were just obsessed with the fact they thought I knew so much about Chester County." Mervin also hinted that there were some who expected to profit from a movie about the case. As for his stepbrothers, they simply hated him.<sup>32</sup>

The jury began its deliberations after lunch on Friday, December 15.<sup>33</sup> It took them nearly seven hours to find Mervin innocent of perjury, but guilty of conspiracy and four of the five subornation counts. The jury foreman said that they decided that Mervin had not lied about how the shooting occurred in 1970, and the District Attorney had not proven that Mervin persuaded Dr.

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<sup>30</sup> "Sgt. Haskell Robinson, cross examination in chambers" (Mon. December 11, 1972) in "Commonwealth of Pennsylvania v. John A. Mervin" Common Pleas Court of Chester County, March 1972 session, number 186, 1379 .

<sup>31</sup> Barry Kushner, "Mervin claims 4 prosecution witnesses are lying" in *DLN* (Thu. December 14, 1972), 1.

<sup>32</sup> *Ibid.*

<sup>33</sup> Barry Kushner, "Mervin trial jury will begin deliberations today" in *DLN* (Fri. December 15, 1972), 1.

Wert to lie about the knife wound.<sup>34</sup>

The aftermath was predictable. Mervin was "disappointed," Lamb expressed pleasure and Berkowitz promised to appeal.<sup>35</sup> It fell to *Inquirer* writers Clark DeLeon and Greg Walters to sum it up in a lengthy article that ran on the Sunday after the verdict.

"Whether spectators, including the five law enforcement officers who had spent 10 months gathering evidence in the Mervin trial, agreed with the jury's decision or not seemed less important than the fact that there had been a decision at all. And the case of former West Chester police undercover agent John Mervin seemed to personify to many all that was wrong with the system. Because only a year ago there appeared to be an abiding feeling in West Chester, the county seat, that justice was a hard commodity to come by in Chester County."<sup>36</sup>

The verdict produced aftershocks, but they were relatively mild. On the day after Christmas Greg Walter's article about the towing business operated by Mervin and Coslett appeared in the *Inquirer*, but other than confirming the suspicions of those who already thought that the West Chester police were corrupt, it produced no tangible effects.<sup>37</sup> Two days later Borough Council renewed its request for the district attorney to investigate the missing Mervin police records,<sup>38</sup> but that produced nothing that registered in the local press. Berkowitz filed a motion for a new trial in January, which was dismissed by Judge Wajert the following May.<sup>39</sup> Finally, ten months later, Judge Wajert pronounced Mervin's sentence on October 25, 1973. He was to

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<sup>34</sup> Clark DeLeon, "Mervin Found Guilty of Inducing Four to Lie: Acquitted On Charge Of Perjury" in *The PI* (Sat. December 16, 1972), 1, and Barry Kushner, "Mervin found guilty of soliciting lies" in *DLN* (Sat. December 16, 1972), 1.

<sup>35</sup> Clark DeLeon, *Ibid.*, and John Roman, "Mervin found guilty; faces 30-year term" in *DCDT*, Chester, Pennsylvania (Sat. December 16, 1972), 1.

<sup>36</sup> Clark DeLeon & Greg Walter, "JOHN MERVIN: A Bizarre Case of Death, Perjury and Mistaken Loyalty" in *PI* (Sun. Dec. 17, 1972), p16b.

<sup>37</sup> Greg Walter, "Here's How Police Captured West Chester Towing Plum" in *PI* (Sun. December 24, 1972), 1.

<sup>38</sup> Borough Council meeting minutes (December 28, 1972).

<sup>39</sup> Common Pleas Court of Chester County, Pennsylvania, 1973 Pa. Dist. & Cnty. Dec. LEXIS 290; 63 Pa. D. & C.2d 62; also published in *Chester County Reports*, vol. 23 (1973), 285-291.

spend three to seven years in Pennsylvania's Dallas Correctional Center near Wilkes-Barre and pay the costs of prosecution.<sup>40</sup>

As sentences went, this was far from the worst thing that could have happened, since Graterford was considered the harshest prison in the system<sup>41</sup> and the judge could have sentenced him to as much as thirty years - seven for each charge of perjury and two more for conspiracy.<sup>42</sup> Still, Berkowitz appealed and it took almost a full year until the Pennsylvania Superior Court upheld Wajert's decision,<sup>43</sup> and six more years until the last of Mervin's appeals was denied.<sup>44</sup>

Meanwhile, there was still one more trial to endure concerning the charges of sodomy and perjury lodged against Mervin and Jeffrey Saltzman.

# DRAFT

## September 2020

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<sup>40</sup> "State court upholds Mervin perjury suborning charges in *DLN* (Tue. September 24, 1974), 1.

<sup>41</sup> Barry Kushner, "Mervin claims 4 prosecution witnesses are lying" in *DLN* (Thu. December 14, 1972), 1.

<sup>42</sup> "Mervin hearings set next week" in *DLN* (Sat. April 15, 1972), 1.

<sup>43</sup> "State court upholds Mervin perjury suborning charges" in *DLN* (Tue. September 24, 1974), 1.

<sup>44</sup> *Commonwealth of Pennsylvania v. John A. Mervin*, 398 A.2d 687; 263 Pa. Super. 498, 398 A.2d 687 of Pa.

## Chapter 14: The Last Trial (1974)

After Frame's charges were dismissed, skeptics accused the district attorney of over-reaching. But Mervin's conviction and the four other guilty pleas did a lot to restore the D.A.'s credibility and excite those who wanted to see if Lamb could go two-for-three. The audience had grown since 1970, in part because of new stories linking motorcycle gangs to an increasing number of gun battles and violent crimes.<sup>1</sup> So thanks to the Warlocks connection, by the time the sodomy-perjury trial got underway, interest in the proceedings extended well beyond Chester County. The *Daily Local* and the *Delaware County Daily Times* sent their own reporters to cover the trial and published daily reports, but the *Philadelphia Inquirer* and the *Wilmington Morning News* also gave it regular coverage and newspapers across the state picked up the story.<sup>2</sup> This time, the question that interested many people was not whether Mervin was a hero or villain, but whether his 1970 acquittals had been won with the help of official corruption.

After the charges were announced on August 9, 1972, both men were arrested and released on bail. The preliminary hearing was originally scheduled for Friday, August 18 in West Chester, even though Justice Heald was away on vacation and a substitute justice of the peace would have to sit in.<sup>3</sup> But Berkowitz filed several motions that delayed the hearing until after the weekend<sup>4</sup> and the preliminary hearing finally took place in Malvern on Monday, August 21 with Justice of the Peace John R. Blackburn in the judge's chair.

The highlight of the hearing was new and disturbing testimony from Eugene Moran, who traveled from Florida to West Chester for the occasion. Moran described how, after a night of drinking

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<sup>1</sup> For examples, see "4 Cyclists Injured in Fight" in *New York Times* (Fri. April 16, 1971), 21; "Ex-gang member dies. 3 held, 2 sought in Pa. shootings" in *The Morning News* (Wilmington, Delaware, Monday, July 5, 1971), 9; and James F. Bynes 3<sup>rd</sup>, "War too costly, Pagans, Warlocks agree to truce" in *DCDT* (Tue. October 9, 1973), 1.

<sup>2</sup> A quick search of the Internet found articles in the *Indiana (PA) Gazette*, *Clearfield Progress*, and *Hazleton Standard-Speaker*.

<sup>3</sup> "Freed on bail: Hearing set next week for Mervin" in *DLN* (Fri. August 11, 1972), 1.

<sup>4</sup> "Sodomy charge dismissed for insufficient evidence" in *DLN* (Sat. August 19, 1972), 1 and "Judge denies Saltzman plea on perjury" in *DLN* (Mon. August 21, 1972), 1.

that progressed from Joe's Sportsman's Lounge to The Tavern and ended up at his apartment, Henry and Saltzman started arguing. When Henry called Saltzman "a punk," Saltzman pulled out a gun and yelled "I'll show you who the punk is," and Mervin pulled out his own gun and forced Henry to lie on the floor and lick it. Henry complied, but continued to call Saltzman "a rotten s.o.b." so Saltzman kicked him in the ribs.

Moran said that he intervened and told Mervin he didn't want any guns or violence in his apartment, but "John Mervin told me to shut up, I wasn't involved." When Moran persisted, Mervin told him "You're as big a punk as he is" and then pointed his gun at Moran and said "'We're going to make a faggot-punk out of you too." Then he and Saltzman forced Moran to perform "oral intercourse" on Henry. Next they made Henry do the same to Saltzman, but when Mervin proposed making Moran do it again with Saltzman, "Henry jumped up and said 'You guys are nuts.' He started to leave. ... He got the door part-way opened when Mervin pulled his .38 and shot him in the back. Twice."

According to Moran, for a moment the two gunmen seemed surprised at what they had done, but they quickly regained their focus. Saltzman asked Mervin, "What about him (Moran)?" and when Mervin answered "He's bombed," Saltzman pointed his gun at Moran and told him "If you repeat one word of what happened tonight, you're a dead blank-blank." Then they left. Later that night Mervin and Haskell Robinson came back to rearrange things and put Moran in bed. Moran concluded "The last thing I remember is passing out on the bed before waking up in the West Goshen police department."

When asked why he didn't say any of this at the trial in June 1970, Moran said "I didn't remember those details because I was terrified" and explained that it took him more than four months just to remember that he had witnessed a shooting. But two sessions of hypnotherapy in January 1972 enabled him to remember some of the details from that night - enough to swear to the "Florida Affidavit" which triggered Greg Walter's articles and D. A. Lamb's investigation. Later that year, he recovered more details after two sessions using a "truth serum" administered by a West Chester psychiatrist.

To corroborate Moran's testimony, the prosecution called Halbert Fillinger, an assistant medical examiner from Philadelphia. He testified that the doctor who did the autopsy at Chester County Hospital in 1969 had erred, and that Henry was actually struck twice in the back by bullets, not once in the back and once in the front. That agreed with Moran's statement - that Mervin shot

him twice in the back - but it also triggered an objection from the defense. Berkowitz said that the nature of Henry's wounds had been already settled two years earlier and Fillinger's knowledge of the wounds was only "second-hand." But Lamb argued back and the judge accepted the testimony with a promise to strike it if, after further research, it turned out to be unlawful. By the time the hearing ended, nine hours later, Justice Blackburn had denied several other motions by Berkowitz and set bail at \$15,000 for each of the accused.<sup>5</sup>

After that there was no news for a long while. First the Frame misfeasance hearings grabbed the attention of the press, and then big perjury trial dominated the headlines. Blackburn waited five weeks before hearing closing arguments in the sodomy-perjury case, and then waited two more weeks before announcing his decision to send the case to the grand jury.<sup>6</sup> The grand jury required another month to indict Mervin and Saltzman on November 29.<sup>7</sup> Meanwhile the perjury trial got underway and ended with a guilty verdict in mid-December, so Berkowitz kept busy through the spring of 1973 working on an appeal. He found the time to file a number of motions hoping to have the sodomy-perjury charges dismissed, but on May 11, 1973, Common Pleas Court Judge Wajert denied Berkowitz's last motion.<sup>8</sup> But Berkowitz didn't give up. In June he convinced Wajert to issue an order barring anyone connected with the trial - prosecutors, court personnel, defense lawyers and police - from talking to the media, so as not to prejudice potential jurors.<sup>9</sup> While that prevented Lamb from issuing statements, it also limited efforts to mobilize public opinion on Mervin's behalf.

The trial finally got underway on Tuesday, October 9, but then ground to a halt almost immediately. Both sides filed motions intended to affect the process, but in one of the defense motions, Berkowitz claimed that a recent *Philadelphia Inquirer* article would prejudice prospective jurors because it presented

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<sup>5</sup> Barry Kushner, "Witness remembers" in *DLN* (Tue. August 22, 1972), 1.

<sup>6</sup> "Saltzman, Mervin held for court" in *DCDT* (Mon. October 9, 1972), 1

<sup>7</sup> Barry Kushner, "John Mervin indicted" in *DLN* (Thu. November 30, 1972), 1.

<sup>8</sup> Common Pleas Court of Chester County, Pennsylvania, 1973 Pa. Dist. & Cnty. Dec. LEXIS 290; 63 Pa. D. & C.2d 62; also published in *Chester County Reports*, vol. 23 (1973), 285-291.

<sup>9</sup> "Silence ordered in Mervin case" in *The Morning News* (Wilmington, Delaware, Friday, June 29, 1973), 45.

Moran's testimony without offering "the other side" of the story.<sup>10</sup> Although Wajert rejected Berkowitz's request to dismiss the charges, he agreed that some prospective jurors might have read the article and ordered the trial continued to the next court session in the spring of 1974. He did not, however, remove the "gag order" that prevented Berkowitz and Mervin from speaking to the press,<sup>11</sup> so the defense remained unable to drum up support for their clients.

Six more months went by until April 1974 when the Common Pleas Court began a new session. This time Judge Leonard Sugerman got the assignment to preside, and the trial got underway on the 15th. After a week of jury selection, the two sides laid out their opening arguments before the court on Tuesday, April 23. For the prosecution, A. Thomas Parke III (who prosecuted Mervin in 1970) and James Proctor announced that they would present Moran's new testimony along with physical evidence to corroborate it. Berkowitz's strategy was the same as in December 1972 - arguing that Mervin and Saltzman were victims of a conspiracy of overzealous prosecutors. Instead of the district attorney and the state police, this time Berkowitz claimed that conspiracy included West Goshen Police Lt. Thomas Flick, who investigated the Henry shooting in 1970, and newspaper reporter Greg Walter who convinced Moran to change his story.<sup>12</sup>

The prosecutors faced a much tougher task for the Henry shooting than they had during the Miller trial, because of the "two witness rule" in Pennsylvania case law.<sup>13</sup> To prove perjury, they needed at least two credible witnesses to testify that Mervin and Saltzman had lied, but all they had was Eugene Moran, since Henry

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<sup>10</sup> Robert W. Fowler and Gerlad McKelvey, "Motions Studied In Mervin Trial" in *PI* (Thu. October 11, 1973), 2B.

<sup>11</sup> Robert Fowler, "Judge Orders Mervin Trial Delayed" in *PI* (Fri. October 12, 1973), 1B.

<sup>12</sup> Barry Kushner, "Mervin trial questions motives" in *DLN* (Wed. April 24, 1974), 1.

<sup>13</sup> The "two witness rule" has been a factor in many cases in Pennsylvania. In "Commonwealth v. Field, appellant," 223 Pa. Superior Ct. 258, 298 A. 2d 908 (1972), Superior Court Judge J. Colvin Wright explained the two-witness rule and cited the following: "Commonwealth v. Russo," 388 Pa. 462, 131 A.2d 83 (1957); "Williams v. Commonwealth," 91 Pa. 493 (1880); "Commonwealth v. Gore," 171 Pa. Super. 8, 90 A.2d 405, allocatur refused, 180 Pa. Super. xxxviii (1952); "Commonwealth v. Antico," 146 Pa. Super. 293, 22 A.2d 204, allocatur refused, 150 Pa. Super. xxvii (1941); "Commonwealth v. Haines," 130 Pa. Super. 196, 196 A. 621 (1938); and 3 Laub, Pennsylvania Trial Guide § 462 (1959).

was dead and co-defendants Saltzman and Mervin would not testify against themselves. Compounding the problem was that fact that Moran had changed his story several times over the years and claimed that his memory of the shooting had improved - not gotten worse - over time. Their only option was to present physical evidence that supported Moran's new testimony, but that required witnesses who could point out inconsistencies between the physical evidence collected in 1969 and the statements made by the defendants in 1970. The prohibition against putting Mervin in double jeopardy for charges on which he had been acquitted meant that the prosecutors had to show that the defendants had lied about the shooting without suggesting that the defendants had committed murder.

In order to show that they had lied, the prosecution wanted the jury to hear what Mervin and Saltzman had said in 1970, so they tried to begin by having someone read the transcripts of both men's testimony. Both defense lawyers -- Malcolm Berkowitz for Mervin and John Rogers Carroll for Saltzman - immediately objected. The judge ordered the jury out of the room while the two sides spent the rest of the day arguing about whether such testimony could be presented to the jury. Although it was not essential to understanding the case, the *Daily Local News* reporter made a valiant attempt to explain the legal problem the next day.<sup>14</sup>

The defense argued that Saltzman's 1970 testimony could not be used to incriminate his co-defendant Mervin at the 1974 trial for two reasons. First, since they were co-defendants, Saltzman's testimony would also incriminate himself, but the Fifth Amendment to the U.S. Constitution said that no one could be forced to testify against himself. Second, the Sixth Amendment gave the accused the right to confront an accuser, but as a co-defendant in 1974, Saltzman could not be forced to take the stand so that Mervin's lawyer could question him about his 1970 testimony. The only way that either man's 1970 testimony could be used was with the voluntary consent of both men, and neither Mervin nor Saltzman were willing to grant that.

In response, the prosecutors tried to use a bit of Pennsylvania case law that provided an exception for co-defendants who were charged with conspiracy. In that case, prior statements by one could be used against the other. But neither Mervin nor Saltzman had been charged with conspiracy because, as the prosecutors explained, the two-year statute of limitations for criminal

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<sup>14</sup> Barry Kushner, "In Mervin trial: Legalities halt testimony" in *DLN* (Thu. April 25, 1974), 1.

conspiracy had expired by the time they filed the sodomy and perjury charges on August 19, 1972. So they asked Judge Sugerman to treat the situation as a conspiracy using a "common law definition" which couldn't be used to convict them for conspiracy, but would allow the prosecution to introduce the 1970 testimony into this trial.

That argument set the tone for the rest of the trial, and not surprisingly, Judge Sugerman took it all under advisement, meaning he'd think about it and decide later.<sup>15</sup> But before the jury could come back to the courtroom, the lawyers spent two more days arguing about another defense motion to declare Moran incompetent to testify. This time the defense attorneys asserted that Moran's "improved memory" was actually suggested to him by prosecutors or even fabricated while he was under the influence of hypnosis or truth serum.<sup>16</sup> At the end of the day the judge announced that he make his decision after the weekend,<sup>17</sup> but by the end of the second week, the jury had spent most of its time waiting outside the courtroom.

When the trial resumed for its third week on Monday (April 29), Judge Sugerman had decided that Moran was competent to testify.<sup>18</sup> So Moran repeated his testimony from the preliminary hearing including details about forced sodomy, the shooting, and the effort to sanitize the crime scene before the West Goshen police arrived.<sup>19</sup> That set the scene for the next two days, during which Berkowitz and Carroll tried to convince the jury that Moran was not believable. On Monday Berkowitz told the jury: "Moran is basically not a liar. He's a confused human being. He doesn't understand the difference between telling the truth and telling a

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<sup>15</sup> Ibid.

<sup>16</sup> The substance given to Moran by West Chester psychiatrist Burton Mark was sodium amytal, a member of the barbituate family, which was used to encourage confessions in the 1950s and 1960s. For details, see CIA, "Truth Drugs in Interrogation" (September 22, 1993), at [https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol5no2/html/v05i2a09p\\_0001.htm](https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol5no2/html/v05i2a09p_0001.htm) (accessed October 13, 2017).

<sup>17</sup> Barry Kushner, "Judge's ruling is due on Moran's testimony in trial" (Fri. April 26, 1974) and "Judge to rule on key Mervin witness" (Sat. April 27, 1974), both published on the front page of the *Daily Local News*.

<sup>18</sup> "Witness in Mervin trial Okd" in *The Morning News* (Wilmington, Delaware, Tuesday, April 30, 1974), 12.

<sup>19</sup> Barry Kushner, "Jury hears eyewitness in sodomy trial" in *DLN* (Tue. April 30, 1974), 1.

lie."<sup>20</sup> Then he and Carroll spent two days rereading earlier versions of Moran's testimony - his statement to police on the day after the 1969 shooting (which he repeated to the grand jury in January 1970), his March 1970 statement which first accused Mervin of murdering Henry in cold blood, his more detailed testimony from the June 1970 murder trial (which did not mention Mervin and the others returning to clean up the apartment), his February 1972 affidavit to Miami police, and his testimony at the August 1972 preliminary hearing. When questioned, Moran struggled to explain why his memory had improved over time since the judge had warned all parties that any mention of hypnosis or drug therapy would be prejudicial and grounds for a mistrial.<sup>21</sup>

The prosecution prepared to open the fourth week of the trial with the rereading of Saltzman's and Mervin's testimony from 1970, but the defense objected again and the jury was sent out while the lawyers argued. Judge Sugerman eventually allowed the prosecution to proceed, but his hesitation was clear when he said that in his entire career he'd never seen the Commonwealth attempt to prove perjury "not by calling witnesses to testify [that] the defendants were seen conspiring to commit the perjury, but by retrying the original case."<sup>22</sup> On Wednesday, the jury had to wait outside again while the judge heard testimony from Dr. Burton Marks, the psychiatrist who administered truth serum to Moran. He said that Moran was not psychotic and that he "was able to piece more things together" following three sessions in the summer of 1972. After that, the jury returned and heard the rest of the 1970 testimony, but then the judge sent them away once more. This time he told the attorneys that he was concerned that by reading the entire 1970 transcript instead of just those parts that indicated perjury, the prosecution had tainted the proceedings. Before they adjourned, he asked both sides to present their arguments for and against declaring a mistrial.<sup>23</sup>

The next morning began with another motion by Saltzman's lawyer - this time to dismiss the charges against his client due to a

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<sup>20</sup> Ibid.

<sup>21</sup> "Witness against Mervin recalls prior statements" in *DLN* (Wed. May 1, 1974), 2, "Mervin's lawyer attacks witness' inconsistency" (Thu. May 2, 1974), 1, and "In Saltman-Mervin trial: Moran faces cross-examination" (Fri. May 3, 1974), 2; all articles by Barry Kushner of the *Daily Local News*.

<sup>22</sup> Barry Kushner, "Saltzman's '70 testimony read to Mervin trial jury" in *DLN* (Tue. May 8, 1974), 2.

<sup>23</sup> "Barry Kushner, "Judge will weigh mistrial for Mervin" in *DLN* (Thu. May 9, 1974), 1.

technicality. The judge said no and the jury came back into the courtroom to hear West Goshen police sergeant John O. Green (the future West Chester police chief) tell how he found Moran nearly incoherent when he arrived at the Evergreen Inn and transported him to the police station for booking.<sup>24</sup> Finally, with the week shortened so the lawyers could attend the annual meeting of the Chester County Bar Association, the jury foreman formally asked the judge how much longer it would take. After conferring in private with the attorneys, Sugerman returned to tell the jury "All parties agree the trial will take four weeks or less."<sup>25</sup>

The trial entered its fifth week on Monday, May 13. The morning was devoted to testimony intended to establish the reliability of Moran's new evidence. The psychiatrist who treated Moran during the summer of 1972 explained that Moran's early amnesia with respect to the events of that night might have been a "dissociative reaction" caused by "fear of reprisal by Mervin and Saltzman." He also rejected the defense attorney's conjecture that Moran was too drunk to remember anything.

Then the prosecution went on the attack, calling witnesses whose testimony was designed to undermine the credibility of the defense's witnesses. One target was Haskell Robinson, the first to alert West Goshen police that there was trouble at the Evergreen. In 1970 Mervin and Saltzman said they drove directly to Robinson's apartment after the shooting,<sup>26</sup> and Robinson testified that within the first half hour after the shooting, he made two calls to the Chester County emergency radio dispatcher, who then notified West Goshen police.<sup>27</sup> But prosecution presented Francis Harvey, an attendant on the ambulance that picked up Henry's body, and he told the jury that the first call for an ambulance was cancelled and more than an hour elapsed before a second call resulted in his ambulance being dispatched to the Moran's apartment.<sup>28</sup> Harvey's testimony was supported the following day by Laird Miller, the Chester County emergency radio

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<sup>24</sup> Barry Kushner, "Judge to rule: Saltzman wants out of trial" in *DLN* (Fri. May 10, 1974), 2.

<sup>25</sup> *Ibid.*

<sup>26</sup> Shirley Macauley, "Jury takes 26 minutes to acquit Mervin" in *DLN* (Sat. June 6, 1970), 1.

<sup>27</sup> Pat Murdoch & Eric Worth, "Police testimony heard by Mervin murder trial jury" in *DLN* (Wed. June 3, 1970), 1.

<sup>28</sup> Barry Kushner, "Arresting officer testifies in Mervin trial" in *DLN* (Tue. May 14, 1974), 1.

dispatcher who handled the calls that night. Miller repeated his 1970 testimony that Robinson called him three times in thirty minutes to ask if he had "heard anything going on at the Evergreen Inn,"<sup>29</sup> and waited until the third call to ask for a patrol car to investigate. By then more than an hour had passed since the shooting took place, and a few minutes after that, the second call for an ambulance came in.<sup>30</sup>

The most damning prosecution evidence came from the West Goshen police officers who took Mervin into custody after the shooting. In 1970 Corporal James Warrington and Sergeant Thomas Flick testified that as they transported them to the West Chester lockup, Saltzman shouted several times "you [Mervin] ruined my life" and Mervin told Saltzman to "shut up" each time. (Mervin claimed he said "My life is ruined."<sup>31</sup>) But this time, the defense tried to prevent Warrington from repeating his testimony, saying that Saltzman's statement was coerced by Flick and therefore could not be used in court. The judge agreed to let Warrington testify, but only with the jury absent so he could decide later whether to admit the testimony.<sup>32</sup>

Warrington repeated his 1970 testimony with one change - the statements were uttered on Robinson's front lawn as Flick read Mervin his rights, rather than in the car on the way to the lockup. At the insistence of the defense attorneys, Judge Sugerman ordered that Thomas Flick be brought in to testify the next morning.<sup>33</sup> On Tuesday, Flick confirmed Warrington's account, and also provided details about how he and Greg Walter went to Florida to interview Moran.<sup>34</sup> The defense spent the next day trying to get Flick to say that he had been out to get Mervin

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<sup>29</sup> Shirley Macauley, "Jury takes 26 minutes to acquit Mervin" in *DLN* (Sat. June 6, 1970), 1.

<sup>30</sup> Barry Kushner, "Officer retells Saltzman plea to Mervin" in *DLN* (Wed. May 15, 1974), 1.

<sup>31</sup> Shirley Macauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1.

<sup>32</sup> Barry Kushner, "Arresting officer testifies in Mervin trial" in *Daily Local News* (Tue. May 14, 1974), 1.

<sup>33</sup> *Ibid.*

<sup>34</sup> Barry Kushner, "Officer retells Saltzman plea to Mervin" in *DLN* (Wed. May 15, 1974), 1.

from the start, and that he had conspired with Greg Walter.<sup>35</sup> Flick's cross-examination continued on Thursday with Carroll trying to get Flick to state his opinion about Moran's memory. Although Flick answered, he emphasized that his opinion was irrelevant and he acted on Moran's information in the same way that he would have handled any other tip or lead.<sup>36</sup>

The fifth week closed with testimony from Moran's upstairs neighbor, who repeated her 1970 testimony about the sounds of fighting and gunshots in the wee hours of the morning. The last witness was a West Goshen police officer who explained why no fingerprints were obtained from the gun found near Henry's body - it was handled by other officers before it could be checked for fingerprints.<sup>37</sup>

When trial resumed on Monday, it had become "the longest criminal trial in the known history of Chester County Court" thanks largely to the extraordinary number of defense objections. For many of them, the judge had cautiously allowed both sides to present legal arguments before making his ruling, forcing the jury to wait outside while they debated. But his impatience with the prosecution was evident as the judge asked how much more time they would need. Assistant D.A. Parke said they had about twenty more witnesses and expected to finish their side of the case no later than the beginning of the following week.<sup>38</sup>

Most of the sixth week was devoted to the conflicting versions of how Henry was shot. In 1970 Mervin said he shot Henry once in the front and then again in the back as Henry spun to the ground.<sup>39</sup> Now the prosecution called medical experts to show that Henry was shot twice in the back, just like Moran had testified a few weeks earlier.<sup>40</sup> For the jury, it must have been

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<sup>35</sup> Barry Kushner, "Mervin's arresting officer cross-examined" in *DLN* (Thu. May 16, 1974), 1.

<sup>36</sup> Barry Kushner, "When someone is killed, we arrest" in *DLN* (Fri. May 17, 1974), 3.

<sup>37</sup> *Ibid.*

<sup>38</sup> Barry Kushner, "Mervin prosecution may end this week" in *DLN* (Tue. May 21, 1974), 2.

<sup>39</sup> Barry Kushner, "Testimony supports theory Henry was shot in back" in *DLN* (Sat. May 25, 1974), 1.

<sup>40</sup> The prosecution's expert witness, Herbert L. MacDonell, had testified a few weeks earlier in the trial that followed Sen. Robert F. Kennedy's assassination, and testified during the O. J. Simpson murder trial in 1995.

excruciating, as this excerpt from an article about Thursday's testimony suggests:

Dr. Russell Weller, who did the autopsy on Henry's body, and the late Dr. Joseph Spelman of Philadelphia told the murder trial one bullet went in the chest and one in the back. But even their opinions differed from Dr. Hofman's as far as which back wound was an entrance and which was an exit. Dr. Hofman claimed that Dr. Weller of Chester County Hospital was wrong in his tracking of the bullets through the body, partly because blood in Henry's chest cavities got in the way. Dr. Weller and Dr. Spelman felt the bullet that entered his chest exited Henry's left back, a position that neither Dr. Hofman nor Dr. Fillinger has taken.

In the midst of Thursday's proceedings, the defense sought a mistrial and were refused.<sup>41</sup> Everyone must have been grateful that there was no court session on Friday. But as the trial entered its eighth week at the beginning of June, Monday's session began with more medical testimony - this time about semen stains on Henry's clothing.<sup>42</sup> More bullet wound testimony followed on Tuesday<sup>43</sup> followed by cross-examination on Wednesday. None of this produced more clarity, although it angered the judge when prosecutors tried to discredit a defense witness who had testified for the prosecution in 1970. Another witness described a conversation with Mervin around the time of the shooting, and a state police investigator testified on the chain of custody for some of the evidence. Then, on the fourth day of the eighth week, the prosecution announced that it had no more witnesses and rested its case.<sup>44</sup>

The defense wasted no time in asking the judge to dismiss the

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David Margolick, "Judge Stymies Simpson Lawyers' Effort to Build Case for a Conspiracy" in *New York Times* (Fri. July 21, 1995), A10.

<sup>41</sup> Barry Kushner of the *Daily Local News* provided detail in a series of articles entitled "Mervin jury is denied testimony," "Mervin jury hears contradictory testimony" and "In Mervin case: Mistrial motion is denied" that ran from Wednesday, May 29 through Friday, May 31 on pages 2, 1 and 2, respectively.

<sup>42</sup> Barry Kushner, "Expert testifies in Mervin trial" in *DLN* (Tue. June 4, 1974), 2.

<sup>43</sup> Barry Kushner, "Mervin jury has three versions of shooting" in *DLN* (Wed. June 5, 1974), 1.

<sup>44</sup> Barry Kushner, "Perjury trial testimony points to disagreement" in *DLN* (Thu. June 6, 1974), 2.

case on the grounds that the evidence was insufficient, Moran was incompetent to testify, and/or the prosecution erred in presenting the 1970 court testimony. Judge Sugerman and the lawyers went back into his chambers to hash it out in private, so the newspaper coverage consisted of listing the charges and recapping earlier defense arguments about Moran's competency and double jeopardy. But they were able to report that the judge planned to announce his decision after the weekend.<sup>45</sup>

On Monday, the judge dismissed the charges because, in his opinion, there was not enough evidence to prove perjury. With the jury out of the room, he explained that the prosecution built its case on Moran's testimony and physical evidence that was intended to show that the shootings did not occur as Mervin and Saltzman testified in 1970. But because of the disputes between the medical experts about entry and exit wounds, the judge concluded that the prosecution had not proved that part of the case "beyond a reasonable doubt." Without that, Moran's testimony was unsupported, and by itself could not be used to prove perjury. Although the judge thought that there was sufficient evidence to continue the trial on the sodomy charges, he offered the defense an escape by writing "For six long weeks the commonwealth endeavored to prove that John Mervin murdered Jonathan Henry in cold blood. Such evidence, unnecessary to prove the charge of sodomy, has clearly prejudiced both defendants and the court will entertain motions for a mistrial." Berkowitz and Carroll took the hint and immediately filed for a mistrial on the sodomy charges, which Sugerman granted.<sup>46</sup> As a consequence, the trial ended without the defense having to call any witnesses.

According to the *Daily Local News*, the decision generated widespread disappointment. The defendants and their families "showed little jubilation at the outcome, expressing concern they may be retried on the sodomy charges." Some jurors "said they were glad they did not have to decide the facts" and one said he was "relieved" that his duties were over, but another "expressed anger with the prosecution for 'wasting everyone's time.'" In his closing remarks, Judge Sugerman assured the jury that "you served eight long and heroic weeks here" and repeatedly thanked them for their patience. Even prosecutor Parke said he preferred to have

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<sup>45</sup> Barry Kushner, "After six weeks: Mervin prosecution rests" in *Daily Local News* (Fri. June 7, 1974), 1 and "Mervin prosecution rests case" in *DCDT* (Chester, Pennsylvania, Friday, June 7, 1974), 2.

<sup>46</sup> Barry Kushner, "Mervin case ends abruptly; charges thrown out" in *Daily Local News* (Tue. June 11, 1974), 1.

the case thrown out now than later, after a conviction.<sup>47</sup> But Mervin told a reporter from Wilmington, "I'm elated. Elated and broke."<sup>48</sup>

The judge's decision left the prosecution with a couple of options. On the one hand, they had a month to appeal the judge's ruling on the perjury trial. As for the sodomy charges, they could refile the charges and start over again.<sup>49</sup> Eventually Lamb appealed the perjury decision, but lost in the Pennsylvania Commonwealth Court in June 1975. A week later Lamb announced that his office had dropped the sodomy charges against Mervin and Salzman.<sup>50</sup>

By then, Mervin was already in jail. After the mistrial, he was released on bail while awaiting the results of his appeal of the December 1972 conviction for conspiracy and subornation of perjury. In late September 1974 the Pennsylvania Superior Court upheld his conviction<sup>51</sup> and at the end of October, the Assistant District Attorney filed the paperwork to revoke Mervin's bail and send him to prison. But the judge (Wajert) delayed his decision long enough for Mervin to appeal once more to the Pennsylvania Supreme Court, which refused to take the case. Following that announcement on April 3, 1975, District Attorney Lamb issued a warrant for Mervin's arrest. Mervin was in Canada at the time - in violation of his bail agreement -- and failed to appear, so Lamb had him declared a fugitive and alerted police in thirteen states. Before he could be arrested, Mervin drove back to Pennsylvania and surrendered to the Chester police in Delaware County. The following day - April 11, 1975 - he was transported to Dallas State Correctional Center to begin serving his sentence.<sup>52</sup>

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<sup>47</sup> Ibid.

<sup>48</sup> Ken Lockerby, "Double jeopardy quashes perjury-sodomy trial" in *The Morning News* (Wilmington, Delaware, Wednesday, June 12, 1974), 16.

<sup>49</sup> Ibid.

<sup>50</sup> "Sodomy charges dropped" in *DCTD* (Wed. July 2, 1975), 1.

<sup>51</sup> "State court upholds Mervin perjury suborning charges" in *Daily Local News* (Tue. September 24, 1974), 1.

<sup>52</sup> Most of the details of Mervin's surrender are found in Harry Mattland, "Mervin surrenders to Chester police" in *DCTD* (Chester, Pennsylvania, Saturday, April 12, 1975), 3. See also Bruce Mowday, "Mervin turns himself in; starts term" in *DLN* (Fri. April 11, 1975), 1.

There were still a few legal details to work out. On August 6, 1975, the remaining perjury charges against the five minor eyewitnesses to the Miller shooting were dropped.<sup>53</sup> Lamb also dropped the perjury charge against Lenwood Wert after Mervin was acquitted of suborning Wert's perjury. On October 24, 1975 Wert sued to have the arrest for perjury expunged, and after appealing as far as the Pennsylvania Supreme Court, he was successful.<sup>54</sup> The D. A.'s office moved forward with its prosecution of Haskell Robinson, but made a deal that kept Robinson out of jail. In fact, Robinson even worked briefly with the Chester County Sheriff's Department,<sup>55</sup> but eventually went to prison for bank robbery and conspiracy in the early 1980s.<sup>56</sup>

Mervin continued to fight his conviction with motions and appeals that lasted more than two decades. Finally on March 5, 2007, the Pennsylvania Superior Court denied his last appeal and the December 1972 verdict remained in place.<sup>57</sup>

# DRAFT

## September 2020

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<sup>53</sup> Bruce Mowday, "Charges dropped in Mervin case" in *DLN* (Wed. August 6, 1975), 1.

<sup>54</sup> *Dr. Lenwood B. Wert, Appellant, v. William J. Jennings, Chief County Detective, Chester County Detective's Office, Superior Court of Pennsylvania*, 249 Pa. Super. 467; 378 A.2d 390; 1977 Pa. Super. LEXIS 2585. The Supreme Court affirmed the decision in *Wert v. Jennings, Supreme Court of Pennsylvania*, 488 Pa. 124; 411 A.2d 218; 1980 Pa. LEXIS 507.

<sup>55</sup> Chester County Miscellaneous Deed Book 312 (January 12, 1976), 299-300.

<sup>56</sup> "Ex-policeman pleads guilty" in *Asbury Park Press* (Asbury Park, New Jersey, Sunday, November 15, 1981), 120.

<sup>57</sup> *Commonwealth v. John A. Mervin Sr., appellant*, in the Superior Court of Pennsylvania Eastern District. Docket 1754 EDA 2006 (Affirmed March 5, 2007).

## Chapter 15. The Meaning of Mervin

While conducting research on other aspects of West Chester history, I learned that many people recognized the name "Mervin" and associated it with motorcycle gangs and drugs, but nearly nobody could explain how or why he got into the news. So I set out to answer those questions - what did he do and why did anyone care - and came up with this book.

Although my research was careful and thorough, it was limited by the sources that are available. A look at the reference notes shows that newspaper accounts were readily available, especially those from West Chester's local newspaper and the Philadelphia *Evening Bulletin* series that triggered the second round of trials. Minutes of all relevant meetings of West Chester's Borough Council were also available, although their quality depended on the diligence of the secretary, and they contained no details from executive sessions where legal matters and personnel decisions were discussed.

Efforts to locate court transcripts were only partially successful. County employees reported that transcripts sent to appellate courts years ago had not always made it back to the Chester County files, or if they had, the passage of time made it impossible to locate them any more. Some details were available from court decisions, most of which were published on-line, but I had to rely on newspaper accounts for most of the what happened in the courtroom.

One kind of source was extremely hard to procure - testimony from eyewitnesses to the events described in this book. Although I was able to identify nearly two hundred people associated with this story, roughly half had already passed away by the time I started my research. Of those who remained, the majority refused to talk to me and many wouldn't even return my call. As a result, I gave up on trying to interview participants and resigned myself to relying on documentary sources.

But this creates a large problem. As described at the beginning of chapter 3, West Chester's courts, local government, law enforcement and business leaders were interconnected in complex, opaque ways. Editors of the local newspaper were aware of that, so rather than investigate claims made by leaders, they tended to repeat the "official line" about whatever appeared as news. So this account reproduces the story the way that most authority figures in the early 1970s wanted it told. I encountered plenty of clues along the way that there was more to the story, but it would be presumptuous of me - writing fifty years after the fact

- to challenge the conclusions of experts who had direct access to evidence collected at the time. It might also become expensive to defend any new conclusions against a lawsuit brought by someone who felt aggrieved, so to play it safe, I have not tried to extend the story any further than it went in the 1970s. But despite that, the official public record contained both questions and charges that were not answered back then, and it seems reasonable to list them before drawing any conclusions.

### **Why did Frame support Mervin?**

Many people wondered about this one, but no one had anything concrete to offer. The most charitable explanation - the one which Frame offered repeatedly - was that he wanted to get drugs out of West Chester and he thought that Mervin could help him do it. But that required 1) a belief that all drugs were brought into West Chester by a small number of "pushers" who could be rounded up, and 2) a willingness to pretend that the amount of drugs in West Chester dropped following Mervin's employment as an undercover police officer. People with direct knowledge of the "drug scene" were understandably reluctant to set the chief straight, but they spoke to one reporter who wrote "Some people familiar with the drug scene in West Chester scoffed at the notion that arresting some college kids for offenses such as selling Mervin a Chiclets box full of LSD tablets had had any effect on the drug traffic."<sup>58</sup>

A letter writer to the *Daily Local News* hinted at a different explanation when she wrote "I would like to know what line of duty Mervin was performing on both October 4 and November 19 ... Or who has something on whom?"<sup>59</sup> That fit in with the closed nature of Chester County's political system whereby the district attorney's office was nearly always a stepping stone to a judgeship. Although Mervin played no role in any of that, he had good access to "the word on the street" and was smart enough to put two and two together. So did Haskell Robinson, the officer who recruited Mervin and whose performance after Frame came on board in January 1969 was good enough to earn him a promotion to sergeant within nine months. Perhaps one of them knew enough to extract some sort of consideration from "the system."

### **Was Mervin really a police officer?**

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<sup>58</sup> Calvin Trillin, "U.S. Journal: West Chester, Pa. I've Always Been Clean," in *The New Yorker* (June 27, 1970), 43.

<sup>59</sup> Jo Ann Willenbrock, letter to the editor, "Mailbag: Sounds 'phony'" in *Daily Local News* (February 14, 1970), 4.

Mervin's appointment as a regular police officer after the shootings was well-documented in the minutes of Borough Council and contemporary newspaper coverage. But the details of his original hire as a "special police officer" were fuzzy at best. For instance, Mayor Andress and Mervin both stated that Mervin was sworn in as a "special police officer" on September 18,<sup>60</sup> but Frame testified that it took place on the evening of September 17.<sup>61</sup> Frame also testified on several occasions that Mervin's oath was administered in Judge D. T. Marrone's living room, with Sergeants Haskell Robinson and Dyer Henley as witnesses.<sup>62</sup> Although none of the witnesses ever challenged Frame's account, the two who worked for Frame may have felt intimidated. The late Judge Marrone would have been immune to pressure from Frame, but as a product of the Republican party "farm system" which elevated him from lawyer to District Attorney and eventually to the Court of Common Pleas, and which arranged a promotion to County Prison warden for Frame after West Chester became too hot, he may have decided it was wiser to say nothing. In any case, if Marrone ever challenged Frame's account, he did so in private and it never appeared in the newspapers or court transcripts.

One other question about Mervin's hire remains. Even though he was undercover, the Borough code required that Borough mayor, Charles Andress sign the paperwork that authorized his hiring. That never happened. So either Frame acted on his own without Andress - who was not present at Mervin's swearing-in - or else Mervin was never sworn in and the story of his appointment as a "special police officer" was concocted after the shootings to protect Mervin from charges of murder.

### **What role did public opinion play in the 1970 and 1972 court decisions?**

This question was raised by Calvin Trillin in his *New Yorker* article because in 1970, when Mervin had the support of the "Alert Citizens," East Bradford PTA, downtown business owners and

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<sup>60</sup> "Mayor won't suspend undercover police officer" in *DLN* (Thu. December 11, 1969), 1, and Shirley Macauley, "Mervin testimony recounts night of shooting for jury" in *DLN* (Fri. June 5, 1970), 1. There was nothing about Mervin in the Borough Council meeting minutes for either September 16 or 29, although the minutes from the 29<sup>th</sup> mention that another patrolman was hired and Haskell Robinson was promoted to sergeant.

<sup>61</sup> Shirley Macauley, "Mervin defense begins its case; police chief testifies" in *DLN* (Tue. October 20, 1970), 1.

<sup>62</sup> Barry Kushner, "Ex-chief Frame testifies at Mervin trial" in *DLN* (Wed. December 13, 1972), 1.

the Downingtown Chamber of Commerce, juries acquitted Mervin twice.<sup>63</sup> Two years later, without any significant effort to rally public support, Mervin was convicted of perjury and escaped a second conviction on a legal technicality. Everyone knows that courts are supposed to be impervious to public pressure, but their decisions are rendered by humans. None ever admitted to feeling pressure from the public, nor would we expect that. But it is easy to understand why others, watching the process from outside, might ask the question.

### **What role did party politics play?**

Several sources who spoke "off the record" wondered how the Mervin affair was connected to county politics. Mervin himself made the same charge when he claimed that the state police were using him to get to Frame and Rubino. Since almost everyone involved in the trials was, at least publicly, a Republican, the only way that politics could have played a role was inside the County's dominant party. The County Republicans placed a premium on the loyalty of its members, so disagreements were kept behind closed doors, and once a decision became public, dissenters kept their mouths shut rather than risk their status within the party.

The Mervin case provided evidence of disagreements within the party, but revealed nothing about what happened behind the scenes. For instance, Chief Frame came from a family of Republican stalwarts. His father held a series of courthouse jobs before being named the warden of Chester County's only prison,<sup>64</sup> and Frame found jobs, first in the West Goshen police department and then in the Chester County Detectives office, when his search for promotion went unfulfilled during his first employment in West Chester.<sup>65</sup> The 1970 trials pitted Frame against District Attorney Norman Pine, another Republican, and Mervin's acquittal was a victory for Frame. But two years later, Frame "lost" when another Republican district attorney, Bill Lamb, got a jury to convict Mervin for perjury, and had to undergo the indignity of arrest on Lamb's order.

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<sup>63</sup> Calvin Trillin, "U.S. Journal: West Chester, Pa. I've Always Been Clean," in *The New Yorker* (June 27, 1970), 46.

<sup>64</sup> The 1920 US Census for West Chester lists Charles W. Frame as "deputy register of wills." The 1930 census gave his job as "Penna. Tax Appraiser" and the 1932 West Chester Borough Directory listed him as "state appraiser" working at the County Court House. By 1940, the census listed him as a "state inheritance appraiser." In 1955, the County commissioners appointed him as prison warden.

<sup>65</sup> Borough Council Meeting Minutes (August 8, 1956).

Party politics were clearly a factor within the Borough, where Democrats Herbert and Tom Chambers scored upset victories that gained them entry into the Republican-controlled local government. With the Chambers leading the efforts to hold Mervin accountable for his actions, the Mervin affair was recast as a partisan contest between those who supported the police and those who "tolerated drug pushers."

### **Did anything change as a result?**

Within the Borough, the Mervin affair changed a number of things. The largest impact was on the police department, which was badly discredited by the revelation of details about how their investigation was handled, Sgt. Robinson's guilty plea to perjury, and the questions about Frame's conduct. One immediate consequence was the hiring of an outsider - Chief John Connolly of Milford, Delaware - to replace Frame as chief. The process of rebuilding confidence in the police force, as well as restoring law and order to the Borough's streets, took years. But by the 1980s, the chances of getting hit by an errant bullet in the Town Center had dropped to nil, although the odds of getting awakened in the wee hours of the morning by an off-campus student party had skyrocketed.

Although two more decades had to elapse before the Republican hold on Borough politics was broken, the Mervin affair helped the Chambers family break through the Republican hammerlock on Borough offices. Herbert Chambers finished his term as mayor and won reelection easily. Tom Chambers won a second term on Borough Council and then won three terms as mayor, finishing in time to see the first Democratic majority on Council in West Chester history.

Finally, the Mervin affair traumatized a large number of people. Of the people who were directly involved, most have passed away, and of the survivors who I was able to track down, nearly all refused to talk about it. For them, the Mervin affair must have been West Chester's brush with the breakdown of the social order that afflicted the nation in the late 1960s. Once it ended, there was a sense of relief and years later, no interest in revisiting it.

I can't say that I blame them.