

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA 17120

JM CORBETT
ATTORNEY GENERAL

16TH FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA 17120
(717) 787-3391

June 21, 2006

The Honorable Stephen A. Zappala, Jr.
District Attorney of Allegheny County
Office of the District Attorney
303 Allegheny County Courthouse
Pittsburgh, PA 15219-2489

**Re: Investigation into alleged police misconduct involving
Mr. Jerry Jackson, deceased, and Officer John Charmo**

Dear District Attorney Zappala:

We are in receipt of your correspondence dated June 7, 2006, concerning the above-captioned matter. We have also reviewed the accompanying materials, including the correspondence of Attorney Robert McClenahan.

You have requested that the Office of Attorney General assume jurisdiction over the above-captioned matter based upon your belief that a conflict of interest exists. Specifically, you have expressed concern that names of former and current members of the District Attorney's staff have been referenced in complaints about the manner in which the investigation into the death of Mr. Jackson has been handled in the past. Your correspondence also notes that there has been no specific allegation of illegality against any member of your office.

This Office has carefully reviewed the circumstances and history of this matter and it is our opinion that this situation does not cause a conflict under the law. The allegations made in the correspondence of Attorney McClenahan, presumably made on behalf of groups and individuals he represents, do not allege the involvement of any previously unknown individuals or entities in this approximately eleven year old matter. All of those involved in the historical investigation and prosecution of the Jackson homicide remain the same now as throughout your office's handling of this matter since 1998. Your office has previously conducted an investigation and first degree murder prosecution of former Pittsburgh Housing Authority Officer John Charmo employing these same individuals and entities without the presence of a conflict of interest. Additionally, your office authorized and retained Richard A. Sprague, Esquire to conduct an independent investigation into the handling of the Jackson homicide investigation by the Allegheny County District Attorney's Office and the Pittsburgh Police Department. Again, this investigation was conducted without the assistance of the Office of Attorney

Honorable Stephen A. Zappala, Jr.

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June 21, 2006

General or the assertion of a conflict of interest. This Office is unable to discern the presence of any new facts, that were not readily apparent or ascertainable in the past, that now create a conflict of interest preventing your office from continuing to handle the aforementioned matter. Accordingly, we must decline to accept jurisdiction of this matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard A. Sheetz, Jr.", written in dark ink.

Richard A. Sheetz, Jr.
Executive Deputy Attorney General
Director, Criminal Law Division

RASjr/p
CLD060409

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

303 COURTHOUSE ♦ PITTSBURGH, PENNSYLVANIA 15219-2489
PHONE (412) 350-4400 ♦ FAX (412) 392-0369

June 7, 2006

The Honorable Thomas Corbett
Attorney General of Pennsylvania
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Re: Investigation into Alleged Police Misconduct regarding Mr. Jerry Jackson, Deceased,
and Officer John Charmo

Dear Attorney General Corbett:

Attached to this correspondence please find a copy of a letter dated December 6, 2005, which was sent by Robert Curran McClenahan, Esquire, to Allegheny County President Judge Joseph James. It appears that copies of this letter were also sent to the Attorney General's Office. This correspondence contains a number of allegations of alleged improprieties by individuals who were then-employed by the City of Pittsburgh Police Department at the time Mr. Jerry Jackson was shot to death following an automobile pursuit by Pittsburgh Housing Authority Officer John Charmo.

As District Attorney of Allegheny County I was approached by City of Pittsburgh Police Officer Charles Bosetti who expressed both his interest, and that of Attorney McClenahan and others, in having a law enforcement agency further investigate the matters that are addressed in the correspondence dated December 6, 2005. When he visited the District Attorney's Office, Officer Bosetti was not purporting to act in an official capacity as a City of Pittsburgh police officer, but instead he reportedly was acting as a concerned citizen who was expressing his belief that the facts underlying the Charmo investigation require review by a criminal justice agency.


As the public record will indicate, this Office previously conducted an inquiry into the circumstances of the Jackson/Charmo case, and that investigation ultimately led to the conviction of John Charmo for the crime of involuntary manslaughter. Contemporaneously with that earlier Charmo investigation, other matters were reviewed by this Office that touched upon the original conduct of the investigation into the death of Mr Jackson. However, the substance of the matters which underlie the most recent correspondence dated December 6, 2005, were not among those issues which were reviewed during that investigative effort.

In the most recent correspondence which was presented to this Office, allegations are made which suggest that certain conduct purportedly undertaken by members of the then-administration of the City of Pittsburgh Police Department during the investigation into the death of Mr. Jerry Jackson may arise to actionable criminality.

While there has been no specific allegation of any illegality touching upon any personnel from this Office, it does appear that the names of both former and current members of the District Attorney's staff appear in Attorney McClanahan's letter of request. In light of that circumstance, and in order to avoid the potential for the appearance of a conflict of interest on the part of this Office if such an inquiry was commenced, I am hereby referring this matter to your office for review pursuant to the applicable provisions of the Commonwealth Attorney's Act, [71 P.S. 732-205 (a)(3)].

Thank you for your anticipated attention to this matter. If you have any questions regarding this, please feel free to contact me.

Very truly yours,



Stephen A. Zappala, Jr.
District Attorney

Cc: Chief Dom Costa (With Enclosures)
Charles Bosetti
Robert Curran McClenahan, Esquire

COURT OF COMMON PLEAS



ALLEGHENY COUNTY
PITTSBURGH, PENNSYLVANIA
15219

JOSEPH M. JAMES
PRESIDENT JUDGE

JUDGE'S CHAMBERS
412-350-5598

December 12, 2005

Robert Curran McClenahan, Esquire
2nd Floor
900 Fifth Avenue
Pittsburgh, PA 15219

Dear Mr. McClenahan:

I have reviewed your letter of December 6, 2005. The issues raised cannot be addressed by this Court.

My first concern is that you have requested this Court to take action where no proceeding is pending. Additionally, you have not filed a pleading but sent a letter that is not verified and certainly cannot be a substitute for a proper legal pleading.

Your reliance on 71 P.S. §732-205(a)(5) of the Pennsylvania Commonwealth Attorney's Act is misplaced. The Act provides that:

(5) When the president judge in the district having jurisdiction of any criminal proceeding has reason to believe that the case is a proper one for the intervention of the Commonwealth, he shall request the Attorney General to represent the Commonwealth to investigate charges and prosecute the defendant.

I note that there is no criminal proceeding pending in this matter. Case law states that:

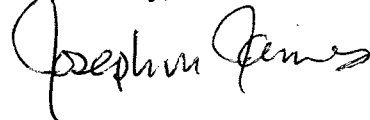
Thus, the correct course of action for a request for intervention by the Commonwealth is for the trial judge, through the president judge, to request the

Mr. McClenahan
December 8, 2005
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Attorney General's intervention. Ruiz v. Attorney General of Pennsylvania 789 A.2d 372, 375 (Pa. Cmwlth. 2001) citing Commonwealth v. Mulholland, 702 A.2d 1027, 1037 (Pa. 1997).

Since there is no criminal proceeding pending, Section 205(a)(5) is inapplicable to these facts.

Sincerely,



Joseph M. James
President Judge

JMJ/kmg

cc: The Honorable Thomas W. Corbett, Jr.
Attorney General
Commonwealth of Pennsylvania
Strawberry Square
16th Floor
Harrisburg, PA 17120

Robert Curran McClenahan

Attorney at Law

2nd Floor
900 Fifth Avenue
Pittsburgh, PA 15219

Business (412) 261-1555
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RCMcClenahan@yahoo.com

December 6, 2005

The Honorable Joseph M. James
President Judge
Court of Common Pleas of Allegheny County
300 Frick Building
437 Grant Street
Pittsburgh, PA 15219

*RE: Commonwealth of Pennsylvania vs. John Paul Charmo
Court of Common Pleas of Allegheny County, Criminal Division, CC 9902859*

Dear Judge James:

I represent a group of individuals and organizations concerned about a miscarriage of justice that began on April 6, 1995 with the death of Mr. Jerry Jackson. That concern, still unaddressed and unabated after ten years, was made clear at a public hearing in Pittsburgh City Council Chambers on October 4th of this year by a broad base of community groups, local attorneys, council members, police officers, the Citizen Police Review Board and the Coroner's office. Ample documentation and credible witnesses are available and an ongoing series of events extends the time line from 1995 to the present.

A brief synopsis:

In the early morning hours of April 6th 1995, a Pittsburgh Bureau of Police (PBP) officer observed a black 4-door Mazda traveling the wrong way on a one-way street. The officer attempted a vehicle stop but the driver fled, attempting to elude police. The officer broadcast the pursuit and was joined by other city officers and units of the Pittsburgh Housing Authority (PHA) Police.

After a winding, high-speed chase the suspect vehicle entered the south end of Pittsburgh's Armstrong Tunnel and came to rest at an angle, but facing north, near the opposite end. The unarmed African American driver was dead, struck down by unauthorized Black Talon bullets fired by the PHA officer. The officer justified his use of deadly force by claiming the suspect vehicle had spun completely around and created the threat of a head-on collision.

After much controversy, this convoluted case led to a plea of involuntary manslaughter by PHA officer Charmo on October 11, 2001. Yet it is still a case that cries out for resolution. Jeopardy has clearly attached to Charmo. However, malfeasance by some members of the PBP command staff, beginning on the night of occurrence and continuing at a public hearing on October 4th of this year, has been officially ignored for a decade.

We believe that the Pennsylvania Crimes Code may have been violated as described in the following:

- **§ 5101 Obstructing the administration of law /§ 4910 Tampering or fabricating physical evidence/ § 4911 Tampering with public records or information/§ 5105 Hindering apprehension or prosecution:** Court records confirm the disappearance of interviews with Charmo and crucial eyewitnesses to the events, missing photographs, illegible laboratory documentation, and missing crime lab reports submitted by Dr. Robert Levine. This evidence was apparently removed from the case file in 1995 prior to the first inquest. In 1999 when the case was reopened a belated “critical incident analysis” was ordered by PBP Chief Robert McNeilly and assigned to three members of the command staff. However, we believe it was deliberately limited to rationalizing violations of policy and excluded any reference to crimes code violations. Like the 1999 Allegheny County District Attorney’s report compiled by Special Investigator Richard Sprague, Esq. and District Attorney Stephen Zappala’s Chief of Detectives (former Pittsburgh homicide detective Terrance O’Leary) the McNeilly analysis was a “red herring” diverting attention away from obstruction by police command and placing sole responsibility on Assistant District Attorney Christopher Conrad, who was DA Zappala’s election year opponent in 1999.
- **§ 5101 Obstructing the administration of law /Breach of official duty:** In violation of PBP Order 91-4, there was no complete vehicular reconstruction. McNeilly stated in a January 1999 news report that “it was more a use-of-force issue” than an accident. But that is precisely why 91-4 states that if there is an “implication of criminal intent” (like 13 bullets in an unarmed dead man) a reconstructionist “will provide” homicide detectives with the “results of technical examinations” to document use-of-force in collisions. Once the trial focused attention on 91-4, the unambiguous order was amended twice to better serve questionable administrative needs. Why didn’t then Commander McNeilly, Assistant Chief Edwards, or Investigations Commander Freeman speak up, as they were obliged to, at the first open-inquest in 1995 instead of falsely claiming that because the ADA did not ask they were not obliged to tell hearing officer Arthur Gilkes of crucial evidence they observed while present at the death scene? Documented by reconstruction, the use-of-force issue would have been resolved in a timely and lawful manner had they told Gilkes of the existence of a crime scene video tape showing directional gouge marks on the tunnel floor and/or simply cited the initial homicide report, both of which confirm that, contrary to claims by Charmo and one PBP Officer, the suspect vehicle did not turn around to confront police. Because these individuals did not come forward, the case was obstructed and the criminal justice system was corrupted (*reference attached letter from Dr. Cyril Wecht, Coroner*). My clients are aware of, and wish to stress, that the failure of command staff to reconstruct would also hide any exculpatory evidence regarding the actions of responding patrol officers.

- **§ 5301 Official oppression:** A variety of unconstitutional orders, designed to suppress criticism of official administrative positions, have been posted by Chief McNeilly. He claims they were authored by previous chiefs but they are clearly dated and signed by him. The order most directly affecting the Charmo case was PBP Order 53-7, posted in July of 1999 and stating that the validity of expert opinion testimony by PBP officers would be determined by the chief and/or City Law Department (not the court) *before* a trial. The investigation had been reopened and Charmo was arrested in February 1999. His trial date was set for November 8, 1999 (though it was postponed). In 2000 an injunction was issued in federal court to counter Order 53-7. The chief chose to challenge the injunction which led to a pointed Third Circuit affirmation that describes PBP 53-7 as “troubling, disturbing” and observes, “it is possible that the chief’s discretion is entirely unbounded” (2002 US APP. LEXIS 14556). The use-of-force expert whose opinion the chief wished to silence prior to the Charmo trial was PBP Officer Swartzwelder whose entire stock of training materials, including many personal documents, were seized by command personnel with point blank notice on September 3, 1999. Swartzwelder advised his commander, William Valenta, that this seizure was a 4th Amendment violation which compounded the 1st amendment violation of PBP Order 53-7. He filed suit and won in 2002. The total cost of Chief McNeilly’s “unbounded discretion” in this instance was over \$800,000 tax dollars.
- **§ 4902 Perjury/§ 5101 Obstructing the administration of law /Breach of official duty:** The PBP officer who testified falsely at the 1995 inquest that the suspect vehicle had in fact completely turned around in the 20 ft. wide tunnel was never investigated or prosecuted for perjury. Since multiple command staff were present at the death scene what, or who, compelled him to give deliberately false testimony on the most material aspect of the case? Also, at the 2002 Swartzwelder trial re: McNeilly’s 1st & 4th amendment violations, Commander William Valenta testified that Swartzwelder never lodged any complaints regarding constitutionality, although Swartzwelder testified that he had. He had also informed his fellow officers and filed a grievance with the police union. Swartzwelder’s testimony was confirmed by the deposition of Assistant City Solicitor Susan Malie who testified that Valenta had informed her of Swartzwelder’s complaints shortly after he made them. The “two-witness” rule would apply. Swartzwelder’s internal complaint regarding multiple constitutional issues was not upheld despite a federal court’s ruling to the contrary.
- **§ 903 Criminal Conspiracy/Continuing course of conduct:** The series of continuing overt acts in furtherance of the obstruction was demonstrated and extended by Chief McNeilly in City Council Chambers on October 4th, 2005. In a televised public hearing, reported by all local news outlets,

the sole subject of which was the Charmo case, McNeilly told elected officials, the media, and the citizenry that nothing was missing from the Charmo case file and that he had "no role" in the case. He further stated that former FOP V.P., PBP Officer Bosetti, who testified at the hearing, had not come forward in the past ten years and questioned why he would now. But it was Bosetti in 1999 who filed the only formal internal complaint regarding McNeilly's role, once he became Chief, in maintaining the official cover story. Like Swartzwelder's complaint, Bosetti's was dismissed in defiance of law and logic. Thus, the last act by the last individual in furtherance of the cover-up was committed by Chief Robert McNeilly on October 4, 2005. Also, the fact that many DA (and some AG) investigators are retired PBP Detectives, some of whom were involved directly or indirectly in the Charmo case, represents a conflict for the DA and maybe an integral part of a continuing conspiracy to obstruct.


We believe that any statute of limitations issue is remedied by 42 Pa CSA §5552 and conspiracy statutes. Also, recent history provides examples of regularly constituted and legal organizations, including police departments, becoming corrupt as defined in §911, Racketeering and Corrupt Organizations.

Indeed, in a recent documentary film, Judge Robert Colville (the Allegheny County DA in 1995) refers to the Charmo case as a "straight out cover-up...or stupidity." My clients do not believe the command staff to be stupid.

My clients fully expect that those officials whose actions are suspect in this case will respond to this request with the obligatory deprecating dismissal and the continued legal sophistry that has characterized and maintained the ongoing official cover story. At a minimum, my clients are committed to full public disclosure regarding this case. For years, political influence has shielded obvious obstruction from formal legal action.

So, pursuant to 71 P.S. § 732-205 (a)(5) of the PA Commonwealth Attorney's Act, our coalition of individuals and organized groups (attached) respectfully request that your office review this case and refer it to the Pennsylvania Attorney General's office to investigate and prosecute, as law may require, the actions of the Pittsburgh Bureau of Police command staff as related to the death of Jerry Jackson and the investigation and prosecution of former Pittsburgh Housing Authority Officer John Charmo.

Respectfully submitted,


Robert C. McClenahan, Esq.
On behalf of those listed on attachment

Attachments (2)

cc: Honorable Tom Corbett, Esq.
Attorney General, Commonwealth of Pennsylvania

Black Political Empowerment Project, Tim Stevens, President
Chuck Bosetti, Pittsburgh Police Officer (former Vice President, FOP #1)
Pittsburgh Commission on Human Relations, B.J. Samson, Chair
Urban League of Pittsburgh, Esther Bush, President and CEO
Pittsburghers for Open Government, Celeste Taylor, Project Director
Robert Swartzwelder, Pittsburgh Police Officer (Use-of-Force expert)
Citizen Police Review Board, Elizabeth C. Pittinger, Executive Director

OFFICE OF THE CORONER



County of Allegheny

CYRIL H. WECHT, M.D., J.D., CORONER

542 FOURTH AVENUE

PITTSBURGH, PENNSYLVANIA 15219

PHONE (412) 350-4800 FAX (412) 350-4899

October 11, 2005

JOSEPH T. DOMINICK, R.N., L.F.D.
CHIEF DEPUTY CORONER

FREDERICK W. FOCHTMAN, Ph.D.
CHIEF TOXICOLOGIST
DIRECTOR OF DIVISION OF LABORATORIES

TIMOTHY G. UHRICH, ESQ.
SOLICITOR

LEON ROZIN, M.D.
CHIEF FORENSIC PATHOLOGIST

A.M. SHAKIR, M.D.
FORENSIC PATHOLOGIST
DIRECTOR OF FELLOWSHIP
AND RESIDENCY TRAINING

SHAUN LADHAM, M.D.
FORENSIC PATHOLOGIST

BENNET I. OMALU, M.D.
FORENSIC PATHOLOGIST/
NEUROPATHOLOGIST

Mr. Tim Stevens
B-PEP
c/o The Hill House Association
1835 Centre Avenue
Pittsburgh, Pennsylvania 15219

Dear Mr. Stevens:

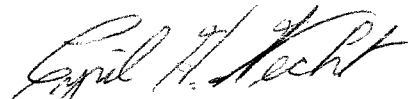
The Allegheny County Coroner's Office conducted a second inquest into the death of Jerry Jackson on January 19 and 20, 1999 after evidence not introduced at a 1995 inquest was brought to the attention of the Coroner's Office as a result of civil litigation commenced by the family of Mr. Jackson. The second inquest was designed to obtain and bring forth this evidence to determine whether any reasonable conclusion would differ from the findings of the first inquest, and to receive the new evidence in the most objective fashion as possible.

In reviewing the first proceeding, which was conducted during the administration of the prior Coroner, Dr. Joshua Perper, and in comparing it to the second inquest, there were two glaring omissions that impacted greatly upon our determination. First, and most important, our office undertook, with the cooperation of the Pittsburgh Police Department, an accident reconstruction of the incident within the confines of the Armstrong Tunnels. This reconstruction was conducted by Lt. Stephen Starsich and his accident reconstruction team. It is noted that the accident reconstruction team was turned away from the Armstrong Tunnels on the night of the April 6, 1995 incident. Second, our office was provided with a videotape depicting the tunnel scene on the night of the incident. This tape was not introduced into evidence nor made a part of the record at the first inquest.

Mr. Tim Stevens
October 11, 2005
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The absence and the unavailability of this information and evidence would not have allowed the hearing officer at the first inquest to have a full and complete appreciation of the events as they occurred on the evening in question. Therefore the original inquest did not achieve the ultimate objective that we were able to accomplish through our second proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cyril H. Wecht". The signature is written in a cursive, somewhat stylized font.

Cyril H. Wecht, M.D., J.D.

CHW/km