The Psychology of Policing

How Flawed Reforms are Prolonging a Crisis

A Forensic Fridays Seminar

Friday, SEPTEMBER 15

Background material

Presenter: Chuck Bosetti

Included for review are file copies (some with handwritten notes/corrections) of documents, memos, court records, news reports and commentaries. They reflect the actions, anger, distrust and hope of communities and their cops, from 1996-present.

The material is divided into collections:

Section 1: Commentary Collection

Section 2: News Reports Collection

Section 3: Documents Collection
Section 3: Document Collection

- CPRB letter to Chief Harper, 6/29/07
- Coalition announcement: declination of AG, 6/30/05
- Letter to Legal Defense Fund (LDF), 7/5/05
- ACLU letter to McNeilly, 4/26/05
- Bosetti Memo to Public Safety Chair, Hertzberg, 6/24/03
- OMI letter to Swartzwelder with verdict slip, 2/14/03
- Law Enforcement LDF letter to Judge Cindrich, 9/11/02
- Decree auditor letter to Swartzwelder Atty/reporting loss of 1998 Use of Force report, 5/10/01
- Bosetti letter to Dep US AG Holder, 9/22/00
- ACLU Press Announcement: officer’s free speech, 04/00
- OMI Complaint & response: Charmo/Jackson, 12/7/99
- PC Affidavit dated 2/2/99: Charmo arrest for 4/6/95 incident, 2/2/99
- City Controller’s Findings: Performance Audit of the Bureau of Police, 08/96
Citizen Police Review Board  
816 Fifth Avenue, Suite 400  
Pittsburgh PA 15219  

June 29, 2007

Nathan E. Harper  
Chief of the Pittsburgh Bureau of Police  
1203 Western Avenue  
Pittsburgh PA 15233

Dear Chief Harper,

The undersigned are asking you to support and to join us in asking District Attorney Stephen A. Zappala, Jr. to commence an independent investigation into affirmative and culpable acts which we, and many prominent members of the legal and law enforcement community, believe obstructed the Jackson/Charmo homicide case.

We ask that you emphasize the following to the District Attorney:

1. to insure that all aspects of this case are investigated within permissible time limits, this investigation must be opened by April 5, 2008.

2. the investigation should be conducted by a demonstrably impartial and objective party with no personal or political affiliations likely to create, or raise the perception of, any conflict of interest such as those described in the attached. The Society of Former Special Agents of the FBI might be a source of such a person.

We look to you to do the right thing.

Sincerely,

Elizabeth C. Pittenger  
Executive Director

Attachment

- Black Political Empowerment Project, Tim Stevens, President
- Urban League of Pittsburgh, Esther Bush, President and CEO
- Chuck Bosetti, Pittsburgh Police Officer (former V.P., FOP #1)
- Black & White Reunion, Celeste Taylor and Bob Maddock
- Robert Swartzwelder, Pittsburgh Police Officer (Use of Force Expert)
- Pittsburgh Commission on Human Relations

Implementing the Will of the People...
FOR IMMEDIATE RELEASE: 6/30/06

Contact: Elizabeth C. Pittenger, 412-765-8023 (O) 412-600-6110 (Cell)
Beth.Pittenger@city.pittsburgh.pa.us

COALITION ANNOUNCES PA AG CORBETT DECLINES INVESTIGATION OF OBSTRUCTED HOMICIDE CASE

A community coalition has learned that Pennsylvania Attorney General Tom Corbett has declined jurisdiction to conduct an investigation into allegations of misconduct by police officials involved with investigation and prosecution in the shooting death of Jerry Jackson in 1995. District Attorney Stephen Zappala referred the matter to Corbett citing a potential conflict of interest. Several investigators for the DA are former Pittsburgh police detectives, some of whom were associated with the investigation of the original incident. The AG states that there is no conflict. One of them is wrong. The matter now returns to limbo, where previous sophistry has kept it for eleven years.

This is appalling when you consider that Judge Robert Colville, the District Attorney at the time of the incident, described the investigation and its aftermath as being “a straight out cover-up - or stupidity”, that Richard A. Sprague, a special investigator in the Jackson case for D.A. Zappala characterized the shooting as “an assassination”, that deliberate obstruction was affirmed by former Coroner Cyril Wecht, “The absence and the unavailability of information and evidence would not have allowed... a full and complete appreciation of the events as they occurred on the night in question”, that criminal and civil court records documented missing evidence, that two inquests and a mistrial led to a lenient plea-bargain for the defendant. Despite all of this, a presumably objective Attorney General declines to investigate a transparent breach of official duty that effectively obstructed the criminal justice system.

The coalition of community representatives and police officers that initiated this request for an investigation finds the AG’s official rationale tellingly knee-jerk and politically expedient - and as legally and morally flawed as those before it. However, the coalition will continue its pursuit of full, public disclosure in the obviously compromised investigation and prosecution of Mr. Jackson’s homicide.

The coalition plans to meet in July and will release a formal statement shortly thereafter.

###
July 5, 2005

David Martin, Chairman
Law Enforcement Legal Defense Fund
1611 North Kent, Suite 901
Arlington, VA 22209

Dear Dave:

This letter is to request the support of LEADF in initiating an investigation into continuing corrupt actions by local officials in Pittsburgh, Pennsylvania that obstruct the administration of law and retaliate against honest police officers who oppose such actions.

Background

Pittsburgh has been a one-party town, ruled by democrats, for decades. There is not now, nor has there been, one member of an opposition party in any elected city office since 1936. This is why, in the name of “reform,” the Clintonians were able to force-feed a federal consent decree to Pittsburgh officials in 1997. This particular consent decree marked the first time in U.S. history that the federal government dictated daily operational procedure to a local police department; this was not merely “oversight.”

The decree’s 79-step, programmatic methodology was originally outlined approximately 40 years ago in a research paper by Hillary Rodham when she was a law student at Yale with Bill Lann Lee. Of course, such dogmatism, when imposed on the wide range of human events that urban police deal with, is an absurd means of evaluating officers and their actions in the field. Decree proponents see legal discretion as an “abuse excuse” and sought to eliminate it with a robotic process that profiles the police with stereotypes, thus serving as a political placebo.

Though advertised as a remedy for corrupt management, the decree became a tool for Pittsburgh’s politically appointed police management to end-run labor law with oppressive “controls” that arbitration would not allow. Various labor-management issues resulted. Some only affect officers, but many affect public safety. For instance, race/gender pie charts regarding discretionary stops have led to a significant reduction in “Terry stops.” In 2001 the homicide rate nearly doubled and 71 percent of the 48 percent increase was among inner city minorities—those the decree was to help most. All cops whose pie charts were lopsided had to be monitored. All their activity was allegedly recorded by supervisors. Apparently, these “monitor logs” often were filled in months later, in time for quarterly evaluations. Many are false. Citizens now had less to fear from police intervention and more to fear from each other.
President Clinton had pre-emptively checkmated police efforts to "cure the remedy" by appointing Al Gore's brother-in-law, Frank Hunger, and the unconfirmed Bill Lunn Lee to key posts at the Department of Justice. So our warnings, that the decree's dogmatism only provided variations on the same demagogic theme of corrupt management that was cited to justify the decree in the first place, were ignored and ridiculed. Any honest cop who spoke out was branded as being "against reform."

By 2002 millions of Pittsburgh tax dollars had been spent on legal fees and damages incurred because the Chief and other city officials were found liable in multiple federal cases for their tawdry actions against straight-arrow officers who would not yield to the party line. In a July 2002 case, the U.S. 3rd Circuit Court described the Chief's actions (condoned by the solicitor and mayor) as "troubling" and "disturbing" and noted that, "It is possible that the Chief's discretion is entirely unbounded."

Nonetheless, with decree auditor James Ginger's blessing, all was declared well in September 2002 and a federal judge lifted DOJ's intervention. Chief Robert McNelis testified that he would faithfully enforce each of the decree's standards. Two months later, he would be found liable for constitutional violations against his own men in the same courthouse.

From 2002 to the present, various federal officials and members of Pittsburgh City Council and the media have been given court records and other documentation of systemic corruption. And while specific cases have been reported in limited fashion by local media, there has been no effort to connect the dots by local or federal officials.

In February of 2004, various civic leaders, attorneys, and I met with the local U.S. Attorney and FBI Chief and some of their staff to discuss the more egregious incidents. Afterward, our side of the table felt that the local feds wished to maintain a strong relationship with Chief McNelis, limit the scope of our issues, and not fully utilize statutes addressing timeliness.

When we told the U.S. Attorney that various officers claim that documentation of compliance with the decree had been falsified, she did ask me to ask them to come forward. Absent any formal legal structure, I was reluctant to do so, but I did ask officers what they thought about meeting with the U.S. Attorney regarding any internal issues. Right or wrong, their belief is based on past performance and close ties between the law firm of the U.S. Attorney's husband (Buchanan Ingersoll PC) and the mayor of Pittsburgh. In that context, the vast majority have no faith in the local DA, the FBI, or the U.S. Attorney. They believe the local DA and feds will stretch the law to prosecute dissident officers and ignore the law to protect "team players." I never went further. And, though the February 2004 meeting itself provided enough cause to initiate an investigation, the feds, to our knowledge, never went forward either. None of us was ever contacted about the documentation we presented at that meeting.

Despite the illusion of reform that the party projects, Pittsburgh's political oligarchy is under fire. A federal grand jury is now investigating the mayor, sheriff, and coroner. That probe needs to be expanded to include (at least) the following:
Allegations

1) Flawed though it is, the decree is still a federal court order. If compliance data was deliberately falsified there is a failure to comply. Also, the 1998 use of force report, which became relevant in a homicide trial, had key pages missing from the Pittsburgh copy and the decree auditor’s copy was allegedly lost in a flood (with no backup disk) despite 1998 being the first full year of compliance. Officers were told of the “flood” only after the auditor’s copy had been subpoenaed. The same altered report was given in discovery to the defense for a civil trial.

2) In the homicide trial of a Pittsburgh Housing Authority officer there was no reconstruction as per order. In fact the lead reconstructionist was turned away twice. Then the case file disappeared. There was clear evidence of perjury at the first inquest. Three members of the police command staff were at the death scene, but none came forward, nor were they asked to, at the coroner’s “open inquest.” It took three years to find out the deceased’s car did not turn around, as alleged, in the narrow tunnel where the shooting occurred. The criminal justice system became useless in this case. One man died, another pleaded guilty to a reduced charge. Was it murder or justifiable? Only the survivor knows what really happened, because the investigation was deliberately corrupted. On July 31, 1999 the Pittsburgh Post-Gazette reported that D.A. Stephen Zappala planned to give Harry Litman, then U.S. Attorney for Western Pennsylvania, a “voluminous” amount of documents pertaining to this case. On November 28, 1999 I gave voluminous documentation, accumulated as legal chair of the Pittsburgh POP, to the FBI regarding this case. Since Zappala hired retired Pittsburgh police detectives as DA’s detectives, his 1998 re-investigation of this 1995 case did not address key issues. And I’m sure his “voluminous” documentation was very different from mine, in that protecting appointees traditionally trumps justice in this county. But no meaningful federal action was ever taken in any event.

3) There is a failure to make required use of grant funds. Twenty-six officers’ positions have been cut based on computers in cars compensating for their man-hours. The positions are empty and so are the cars. Additionally, the DOJ website questions millions more regarding COPMORE funds.

4) Multiple issues exist regarding obstruction and due process. Examples: Internal Affairs finds no fault with political appointees’ conduct even after federal courts find them liable (Administrative and Judicial collateral estoppel apply). A commander testifies he had no knowledge of a 4th Amendment violation but an assistant city solicitor testifies the commander called and asked her advice on the same issue prior to trial. The Chief states his overturned, unconstitutional actions were approved by the city Law Department, which denies that. Each claims plausible deniability by blaming the other. That works with the media but it won’t stand up in a formal investigation.
There is ample documentation providing names, dates, and specific case data (much of it already on file with LELDF) to justify requesting an investigation regarding obstruction of the administration of law, due process, criminal/civil RICO, etc. The attorneys who represented wronged officers would make excellent witnesses and provide compelling evidence. Dr. Charles Ogletree of Harvard Law School has agreed to assist officers in this request. But if a handful of cops (the majority being too cynical to hope after so many years) are to expose official corruption, I believe it will require support from credible and diverse sources. The warning given to the KNAPP Commission by legendary NYPD cop Frank Serpico thirty years ago still applies: Corruption will exist as long as honest cops are subjected to ridicule and reprisal.

Thank you for your consideration.

Sincerely,

Officer Charles J. Bosetti
Pittsburgh Bureau of Police

CJB/tbo
April 26, 2005

Chuck Bosetti

Dear Chuck:

At long last I have all the updated regulations. Let's talk early next week about whether there are any remaining problems. Thanks for your patience.

Respectfully,

[Signature]

enc.

ACLX reviewed, unrest reqs approved/researched by E. McNeil, city legal dept.
FOP + written by Bob McNeil.
August 20, 2004

Chief Robert W. McNeill, Jr.
POLICE BUREAU, CITY OF PITTSBURGH
1203 Western Avenue
Pittsburgh PA 15233

by facsimile to 412-323-7820
and by United States mail

Re: Request for immediate rescission or suspension
of certain Pittsburgh Police Bureau Standards of Conduct
and other provisions that unlawfully restrict expression

Dear Chief McNeill:

The American Civil Liberties Union’s Greater Pittsburgh Chapter, working
with the undersigned lawyers, continues to represent Pittsburgh police officers
governed by the Standards of Conduct (and other supervisory and disciplinary
provisions) promulgated by the City of Pittsburgh and its Police Bureau.

We currently represent several officers, including Charles J. Bosetti, who
object to certain Standards of Conduct and other provisions that restrain important
freedoms of expression with respect to matters of public concern. Our review of
current Police Bureau regulations indicates that many of these provisions are facially
unconstitutional, violating the legal rights of police officers and those who would
communicate with them.

It is disappointing that the Police Bureau, after being forced to withdraw or
change a number of unlawful rules and actions, continues to engage in official,
improper restraint of protected expression. Courts have ruled repeatedly and plainly
that “it is essential that public employees be able to speak out freely on questions of
public concern without fear of [retaliation].” Pro v. Donatucci, 81 F.3d 1283, 1287
is not surprising, because “free and uninhibited debate on matters of public
importance . . . [is] the core value of the Free Speech Clause of the First
Amendment.” Id. at 573.
Other, more recent court decisions (and settlements resolving objections from the ACLU and others) have (1) invalidated or revised a number of Police Bureau regulations; (2) granted and confirmed injunctive relief; (3) imposed compensatory and punitive damages against members of the Police Bureau command; and (4) held the City of Pittsburgh accountable for legal fees and costs for infringement of speech rights.

Against that background, we are perplexed by your recent issuance of yet another order (Chief's Order 04-002, dated March 24, 2004) that we view as an unconstitutional restriction on speech rights regarding matters of public concern.

These Standards should be rescinded immediately for violation of federal and state law:

(1) "All members in the chain of command, whether or not they are involved in any disciplinary action, shall not comment, discuss, or grant any interviews with any form of the news media. All comments regarding such actions in which the facts have been determined shall emanate from the Chief of Police or the Director of Public Safety." (Order 17-1 ("Disciplinary Action Report"), subsection 8.1.)

Although its poor writing clouds interpretation, this provision appears to bar all communications regarding disciplinary actions by persons other than the chief or director, and consequently discriminates against statements that differ from those favored by the then-current police command. This provision, which constrains truthful statements concerning matters of public concern, is overbroad and constitutes viewpoint discrimination. See Watters v. City of Philadelphia, 55 F.3d 866, 899 (3d Cir. 1995) (police department employee's comments to press constituted speech on matter of public concern protected by First Amendment); Harmen v. City of New York, 945 F.Supp. 750, 766 (S.D.N.Y. 1996) (prior restraint of city employees' speech to press ruled unconstitutional).

(2) "No member or employee shall publicly criticize instructions, orders or actions issued by a superior officer or supervisor or publicly criticize other members or employees by talking, writing, or through any other expressive manner where such talking, writing or expression
  • Involves confidential information
  • Is defamatory, obscene or unlawful; or
  • When the member or employee knows that the basis of such criticism is false, involves a fraudulent misrepresentation, or is made with reckless disregard for truth or falsity."

(Order 16-1 ("Standards of Conduct"), subsection 3.8.2)
This provision inappropriately discourages criticism by creating the perception of a standard admitting no room for error, promoting self-censorship. See Gasparinetti v. Kerr, 568 F.2d 311, 314, 315 (3d Cir. 1977) (regulation prohibiting criticism of police department orders or instructions ruled unconstitutional for vagueness and overbreadth; provisions governed "derogatory references" and statements that "publicly disparage or comment unfavorably" or "censure other Department members"); Uhl v. County of Allegheny, 1998 WL 204540 (W.D. Pa. 1998) (provision prohibiting criticism of police department ruled unconstitutionally vague). The viewpoint discrimination enforced by this regulation, which expressly limits the prior restraint to criticism, is improper. This provision is susceptible to abuse, a point made especially troubling by the Police Bureau's established record of chilling criticism and retaliating against those whose opinions differ from those of the current police command. See, e.g., Swartzwelder v. McNeilly, No. 00-1793 (W.D. Pa. 2001).

(3) "No member or employee shall use language or engage in acts that demean, harass or intimidate another member or employee of the Bureau of Police." (Order 16-1 ("Standards of Conduct"), subsection 3.8.4)

Among the acts a reasonable officer could perceive to be prohibited by this provision are many constitutionally protected communications (including without limitation communications with third parties involving matters of public concern). This provision is unconstitutional for overbreadth and vagueness. See Saxe v. State College Area School District, 240 F.3d 200, 210-11 (3d Cir. 2001) (anti-harassment policy held unconstitutional for overbreadth and vagueness); Killion v. Franklin Regional School District, 136 F. Supp. 2d 446, 456 (W.D. Pa. 2001) (absent well-founded expectation of disruption, constitution does not permit prohibition of rude, abusive or demeaning speech).

(4) "A member or employee shall not divulge to any unauthorized person information of a confidential or privileged nature (including, but not limited to, pending orders, transfers, progress reports or results of investigations, pending arrests, raids, searches, etc.) or any other information that may be detrimental to the operations of the Bureau of Police, except when authorized by the Chief of Police." (Order 16-1 ("Standards of Conduct"), subsection 3.40.2)
This provision, expressly designed to prohibit speech with respect to "any . . . information that may be detrimental . . . except when authorized by the Chief of Police," is overbroad, vague and discriminatory with respect to viewpoint. See Swartzwelder v. McNelis, 297 F.3d 228, 239 (3d. Cir. 2002) (Pittsburgh Bureau of Police regulation was not narrowly tailored to prevent disclosure of legitimately confidential information and consequently was ruled unconstitutional); Shoemaker v. Allender, 520 F. Supp. 266, 269-270 (E.D. Pa. 1981) (police officer’s disclosure of confidential information regarding matter of public concern to federal Bureau of Investigation ruled constitutionally protected); Harman v. City of New York, 945 F.Supp. 750, 766-67 (S.D.N.Y. 1996) (speculative concerns about disclosure of confidential information did not justify prior restraint on speech regarding matters of public concern; regulation that imposed restraint ruled constitutional). The testimony of former Deputy Chief Charles Moffatt before United States Magistrate Judge Robert Mitchell, during the hearing that led to issuance of a preliminary injunction in the Swartzwelder civil action, vividly illustrated the experiential background against which the Police Bureau has promulgated prior restraints.

(5) "Public criticism of Bureau operations or personnel can undermine the public’s confidence in law enforcement and adversely affect morale. Accordingly, members or employees are required to express, whenever possible, any work-related criticism or suggestions prior to expressing that criticism in any public forum . . . If the supervisor is unable to resolve or address the concerns of the officer, he/she will immediately forward the complaint through the chain of command in an attempt to reach resolution." (Order 16-1 ("Standards of Conduct"), subsections 3.42.1, 3.42.1.1)

This provision is viewpoint-discriminatory (requiring pre-clearance and delay solely with respect to criticism) and impermissibly chills speech on matters of public concern. See Czurlanis v. Alhanese, 721 F.2d 98, 105 (3d. Cir. 1983) ("chain of command" policy would impermissibly chill speech on matters of public concern); Brockell v. Norton, 732 F. 2d 664, 669-70 (8th Cir. 1984) (police department’s requirement that officer follow chain of command in reporting misconduct ruled unconstitutional); Postava v. Robinson Township, No. 94-1951 (W.D. Pa. 1994) (Bloch, D.J.) (preliminary injunction issued to invalidate provisions that required submission of "information of a critical nature" before public dissemination and proscribed critical or derogatory comments; ruling based on vagueness and overbreadth).
(6) "Effective immediately, any officer or supervisor who releases any information to the media must email PIO Tammy Ewin and include the CCR number of the incident, what details of the incident were released, and to which specific member(s) of the media. This applies regardless of the interview format in which the details were released (on-camera, in-person, via email or phone)." (Chief's Order 04-002, March 24, 2004)

It is remarkable that the Bureau's response to recent experiences with respect to suppression of speech - from (1) the city's abandonment of speech-inhibiting regulations under pressure from the ACLU in March 2000 to (2) the preliminary injunction issued by Judges Mitchell and Ambrose in the Swartzwelder litigation (a ruling emphatically upheld by the United States Court of Appeal for the Third Circuit), and from (3) the payment associated with settlement of the Lisiecki litigation to (4) the imposition and payment of punitive damages for constitutional violations in the Swartzwelder civil action - has been to promulgate another vague, overbroad, expression-chilling order. This order, which requires every officer to self-report the provision of "any information to the media," discourages protected speech before it occurs and facilitates retaliation if a speaker is undeterred by the warning. This provision establishes an effective method of stifling disfavored speech, and whistle-blowing in particular, but does so in violation of the United States constitution.

The First Amendment rights of police officers, newsgatherers and all other citizens infringed by these provisions are invaluable, a point forcefully expressed by Chief Judge Ziegler when issuing a preliminary injunction against speech-inhibiting regulations similar to some of those described in this letter. "The loss of First Amendment rights, even for a minimal period of time, constitutes irreparable injury." Uhl v. County of Allegheny, No. CA 98-533 (tr. at 3, March 25, 1998).

The importance of these constitutional values, coupled with the Police Bureau command's established record of hostility and retaliation against those who express disfavored opinions on matters of public concern, makes the prompt correction of these problems imperative. The Bureau has engaged in adverse employment actions against persons exercising constitutionally protected rights; placed memoranda concerning disfavored but protected statements in officers' personnel files; displayed such memoranda on bulletin boards at duty stations; and ordered officers to produce lengthy written responses to a series of belittling questions with respect to publicly expressed opinions on matters of public concern. These incidents constitute a longstanding, unacceptable pattern of violation of officers' speech rights.
Even without reference to the extensive pattern of abuse of Police Bureau authority with respect to constitutionally protected speech, ample legal authority supports the invalidation by facial challenge of each specific provision identified in this letter.

For these reasons, we request that you confirm, in a writing received no later than the close of business on Monday, August 30, 2004, that the provisions identified by this letter have been rescinded (or, at least, suspended pending promulgation of lawful regulations).

If we do not receive the City's written assurance by the appointed time, we will conclude that the City has denied this request for amicable resolution and will notify you of the day and hour at which we propose to seek injunctive relief in the United States District Court for the Western District of Pennsylvania.

We are mindful of the City's grave financial position, and of the hardships associated with city taxpayers' payment of millions of dollars in judgments, settlements, legal fees and other costs in connection with recent disputes of this type. The clarity of relevant legal authority causes us to hope that we will be able to vindicate our clients' rights without litigation. If we are able to resolve this matter by August 30, we will not request any payment for legal fees.

You (or the Police Bureau's lawyer) may contact Cris Hoel at 724-940-9165 (office and facsimile) or 412-585-5215 (mobile) or Greg Angell at 412-394-1103 (office) or 412-394-1331 (facsimile) to respond to this letter. More detailed contact information accompanies this letter.

Thank you for your attention to this important issue. We hope to work with you and other representatives of the City of Pittsburgh to resolve the problems described by this letter soon.

Sincerely,

BIANCHERIA, ERICKSEN, MALIVER & ANGELL, P.C.
Gregory P. Angell

AMERICAN CIVIL LIBERTIES UNION,
GREATER PITTSBURGH CHAPTER
Witold J. Walczak
Litigation Director

HOEL LAW OFFICE
Christopher C. Hoel
Chief Robert W. McNeilly, Jr.
Police Bureau, City of Pittsburgh
August 20, 2004
Page 7

c: Hon. Leonard Bodack
   Hon. Twanda Carlisle
   Hon. Alan Hertzberg
   Hon. James Motznik
   Hon. William Peduto
   Hon. Luke Ravenstahl
   Hon. Eugene Ricciardi
   Hon. Douglas Shields
   Hon. Sala Udin
   James Roberts, Esquire
CONTACT INFORMATION

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gaell@bemalaw.com
As per your request RE: legal expenses this will supplement my memo of 6/17/03. The most egregious cases are listed in the attached table:

In spite of management's repeated claims defending the attached legal actions as their "right to manage", I respectfully submit to this council that the courts have repeatedly found this administration's practices to be official oppression.

In July 2002 the U.S. Third Circuit Court granted a preliminary injunction in the Swartzwelder case. It described the city's position as "troubling" and "disturbing," yet the law department still went on with a crippled case at taxpayer expense. Even though Swartzwelder (and other officers) had offered to settle for no money merely for the wrong to be righted — and even though a U.S. Supreme Court decision exempts municipalities from legal fees if they "correct the offending behavior" upon being advised of it, the law department went forward with tax dollars in an attempt to outlast the plaintiff officers' ability to fund their respective cases. The price of this arrogance has been high.

In November 2002 Chief McNally stated that the verdict against himself, Deputy Chief McElhaney and the city in the Swartzwelder case, left him "confused and perplexed." The price of this redundant mystification has been equally high.

At June 11, 2003 council finance committee meeting, while discussing other police cases, Solicitor Morrow stated that Judge Lancaster engaged in "arm twisting" and that Judge Schweib was "overly aggressive" toward the city. However, it is not the courts that are the problem. And publicly insulting the judiciary is probably not our best move.

Dissident cops like myself have fought for innocent officers but have never defended the bad ones. But council has ignored outrageous, even illegal, acts by almost always defending and protecting the administration, regardless of right or wrong. The attached cases cost Pittsburghers over $2.8 million and constitute an assault on the constitution that is rationalized by the law department as a right of management and protected by the white collar "code of silence" often practiced by council and the mayor.

Continued silence on these issues, coupled with rejecting or watering down the recent proposal regarding evaluation of SWAT procedure, unites citizens and officers in questioning council's concern "for the people".
<table>
<thead>
<tr>
<th>Officer/Attorney</th>
<th>Punitive Award</th>
<th>Legal Fees/ Other Comments</th>
<th>Approximate Total</th>
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<td>Robinson: Cordes</td>
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<td>settlement undisclosed but punitive award, benefits and legal fees for all parties at least $300,000</td>
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<td>Cooperstein: Reich &amp; Reisinger</td>
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<td>Granger: O'Brian &amp; Carroll</td>
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<td>Swartzwelder $513,000 + $47,000 from earlier prelim injunction. Lisiecki $95,000 (combined punitive and fees)</td>
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Review board OKs critic’s plea for look at police policies

By Johnna A. Pro
Post-Gazette Staff Writer

When city residents undertook a campaign to form a Pittsburgh Citizen Police Review Board to investigate complaints of misconduct by officers, one of the staunchest proponents was Community Oriented Police Officer Chuck Bosetti, who then was a leader in the Fraternal Order of Police.

"Now he's asking for the review board's help and he's getting it.

The board, which he worked unsuccessfully to defeat, has taken up his request that it review various policies and procedures in the Pittsburgh Bureau of Police.

In a 4-0 vote last night, review board members decided to look generally at the bureau's actions with regard to evidence handling, crime scene management and accident reconstruction, among other things, to see if they are adequate and being consistently applied in all cases.

Bosetti last month complained to the review board about the bureau's procedures, particularly in the homicide investigations into the actions of former Pittsburgh police Officer Jeffrey Cooperstein and former city Housing Authority police officer John Charmo, both of whom were accused of shooting suspects. Cooperstein eventually was found not guilty. Charmo recently pleaded guilty to a lesser charge.

"This is going to be an uneasy marriage for us," Bosetti told the review board last night after members took their vote.

"You're not trying to assign blame and find misconduct," she said. "But there has been a lot of questions in the public arena about some of the cases cited."

Pittenger said she would collect as much information as possible about the bureau's policies and procedures, then compile it into a report for the board. The members then can hold a public hearing to gather more information and issue a report of their findings.

The review board, formed in August 1997, investigates complaints of police misconduct and can recommend that the police chief take disciplinary action against officers. The board also has as part of its mission an obligation to foster good police and community relations and to review Police Bureau policies on matters of public concern.

PG implies my request is a favor to me vs. injuring re: obstruction CRB never followed up

EGB - 8/2017
Police policy in killing questioned

By Meredith Raina and David R. Eltz

Pittsburgh City Councilman Michael DiVincenzo Thursday called for a review of accident investigation procedures to determine if city police failed to follow guidelines in the 1983 slaying of a Hazelwood man in the Armstrong Tunnels.

DiVincenzo said that, based on a department policy dated April 8, 1981, then Cdr. Robert W. McNelly Jr., now the police chief, should have called the department's accident investigation team April 9, 1983, the morning Jerry Jackson died in the tunnels in a stolen car collided with police bulletts.

When you read the general order, it kind of spells out that the homicide squad will be the commanding unit and will have accident investigations assist in a technical investigation," DiVincenzo said, though adding, "I'm not an attorney and I'm not an expert police officer.

Jackson, 44, was shot 14 times at the entrance of a high-speed pursuit through the Hill District and South Side. The chase ended in the tunnels, where scene marks, gouges and auto parts marked the path of the stolen 1990 Mazda sedan.

A second coroner's inquest into Jackson's death ended Wednesday. Allegheny County Coroner Cyril Wecht is expected to present his findings Feb. 1.

McNelly, commander at the department's Zone 2 station the day Jackson died, was called to the scene shortly after the shooting. He and city police Cdr. Ronald Freeman were the two highest-ranking officers there.

The accident investigation policy states that the zone supervisor in charge of securing the scene will summon the accident investigation team to assist in all accidents involving fatal or potentially fatal injuries, including those with criminal intent.

"Though accident investigators are trained to interpret accident-related clues, their services were not requested that morning," DiVincenzo said.

DiVincenzo said he has not spoken with McNelly, who was on vacation last week, or Chief Charles McNiff, who returned calls last night seeking comment.

"I think we need to have a clarification as to whether the procedure was followed," DiVincenzo said, calling Wecht and Allegheny County District Attorney Stephen A. Zappala Jr. to investigate.

"If the policy wasn't followed, that is something the mayor and the chief obviously are going to have to look at. If common practice is to do it the way they did it that (morning), the police procedure should reflect that," he said.

DiVincenzo said McNelly has been a stickler for making sure his officers follow proper procedure — even penalizing them for not wearing their police caps.

"In something as big as this, you would hope he would be just as firm in enforcing the policy," DiVincenzo said.

Joe Dominick, senior deputy coroner, said the coroner's office does not comment on whether a police investigation was handled properly.

He said, "Our concern is to the cause and manner of death," adding that the coroner's office can only make recommendations about police policy.

"They don't have to be enforced," he said.

Zappala was unavailable for comment last night.

Craig J. Kwiecinski, spokesman for Mayor Tom Murphy, said yesterday the investigation was "complete and thorough."

Kwiecinski said, "The fatality at the scene was the result of a shooting, not a vehicular accident, thus the homicide division was the appropriate investigating division."

Wecht — who wanted to know if it was possible that a car similar to the one Jackson was driving could turn around in the tunnel, as former Pittsburgh Housing Authority Officer John Charmo said it did — had accident investigators run tests at the crash site last Thursday to prepare for the second inquest.

During the first inquest, in July 1991, a jury voted 4-2 against recommending criminal charges against Charmo, Housing Authority police Sgt. James Jennings and Pittsburgh Police Officers Robert Zollars and John Giedlewski.

Two weeks ago, Zappala reopened the case after learning that "important evidence was not presented" to the six-member jury.

New evidence this week included testimony by Freeman, 93, the investigation, and a video of markings on the road inside the tunnel.

Charmo told police heojj because Jackson's vehicle could turn around in the tunnel and was facing toward him. However, Fr. testified that, in his opinion, son's car "never" turned degrees inside the tunnel.

City police Lt. Steve Starzl, expert in accident reconstructions, said Jackson's car never tracked in the tunnel and Charmo could not have reeled up inside, tapping it with his police car as the Housing Authority had testified in 1991.
Tunnel shooting, accident re-created

New, old evidence gathered for inquest

By Meredith Haine

On a cold, winter night nearly four years after Jerry Jackson died in a car accident with police bullets, investigators gathered in the Armstrong Tunnel to re-create the event that led to his death.

Allegheny County Coroner Cyril Wecht wanted to know if it was possible that a car similar to the one Jackson drove on April 6, 1985, could turn around in the tunnel, as a police officer said it did.

So, on Thursday — five days before a scheduled second inquest into Jackson’s death — accident investigators ran tests at the crash site and looked at old evidence for the first time.

“We wanted to learn more about it in a forensic, scientific manner,” Wecht said.

The circumstances surrounding Jackson’s death and a newly recovered video tape of the scene have raised questions as to why a formal accident reconstruction wasn’t done during the initial investigation.

“It would seem to me that you would want the expertise of an accident investigator to get a complete picture of the scene,” said Ed Hanson, an accident reconstruction expert and retired Washington state trooper.

Clearly, since there was a shooting, the homicide unit should have been involved, Hanson said. “But accident investigation can help memorialize the events that happened. The bullets, the blood marks, it’s all relevant.”

Jackson, 44, of Hazelwood, was hit by 14 of more than 40 bullets fired at his car during a high-speed pursuit through the Hill District and South Side.

The chase ended in the Armstrong Tunnel, where scrap metal, police and auto parts marked the path the stolen 1980 Mazda bedzi traveled.

Accident investigators are trained to interpret those types of clues, but their services were not requested on the clear, cool morning Jackson died from gunshot wounds in his head.

“An accident occurred and a shooting occurred, we were told an accident investigation was not required, said John Stump, who was in charge at the scene.

Reconstruction may be key part of 2nd inquest

RECONSTRUCT FROM A1

Fire because Jackson’s vehicle spun around in the tunnel and was coming toward him. However, evidence may suggest otherwise was not presented during the first inquest in June 1985.

District Attorney Stephen A. Zappala Jr. said city homicide detectives did a thorough investigation of the police shooting. In their initial report, they noted the measurements of each marking on the tunnel walls and roadway.

Police videotaped the scene. Later, Pittsburgh Police Cdr. Ronald Freeman gave a deposition in a civil case in which he said markings in the tunnel indicated Jackson’s car had turned 180 degrees as Charmo said.

But Freeman wasn’t called to testify at the inquest, and a six-member jury wasn’t shown the videotape.

In a 42 vote, the jury recommended that no criminal charges be filed against Charmo, Lt. James Jennings of the Housing Authority police, and police officers Robert Zollars and John J. Costello.

“There is something wrong with the way this case was put in, and I’m going to remedy that,” Zappala said.

A second inquest is scheduled for 9:30 a.m. Tuesday at the Allegheny County Coroner’s Office. Evidence from the accident reconstruction is expected to be a key part.

Zappala said Freeman will testify, and if necessary, accident investigators also will be called to the stand.

Staruch said authorities with the coroner’s office asked him last week to evaluate evidence in the case, and he likely will present his findings during the inquest.

Senior Deputy Coroner Joe Dominick said tests results gathered Thursday night at the tunnel will be presented.

“At the time of Jackson’s death and the initial investigation, the homicide division handled this,” Dominick said. “They did not have an accident reconstruction unit there.

We did the tests because we felt it was important to cover all the bases.”

Pittsburgh Police Chief Robert W. Mcnelly Jr. said that even though Jackson’s car crashed, he didn’t believe an accident investigation was necessary. “It was more of a use-of-force issue.”

Mcnelly said the same is true in the case of Deron Stephen Grimmett, 23, of the Hill District, who died when a car flipped over him in the head Dec. 21 on a Downtown street.

Pittsburgh Patrolman Jeffrey Cooperstein, 43, fired four times at Grimmett’s car as it hit him down Second Avenue toward Bank Street.

Cooperstein, 43, has said his shot Grimmett because he feared Grimmett would strike him with the car.

After Grimmett was shot, his car crashed into a concrete barrier and came to rest on a sidewalk on Court Place.

“I don’t assume that there would have been an accident investigation because there wasn’t an accident,” Mcnelly said. “Usually an accident investigation is done because of the accident and who is responsible.”

The only thing that accident investigation could have possibly done was view where the car came to rest and what it struck. If that would have been of any benefit, I think Cmrd. Freeman would have asked for their assistance.

Cmrd. Don Costa, who oversees the accident investigation unit, said two of his officers did take reports at the scene of the shooting and car crash.

“They did take measurements and stuff like that,” Costa said. “Basically, we started a preliminary investigation and assisted homicide. These reports should have been referred to (city) homicide and passed on to the county.”

Allegheny County police are investigating the Grimmett shooting.

Source: Chief Robert W. Mcnelly Jr.
February 14, 2003

Officer Robert Swartzwelder
1435 Evansdale Road
Pittsburgh, PA 15212

Final Letter
Case #POMI-165-99

Incident of 3-1-99

Dear Officer Swartzwelder:

Please be advised that the Office of Municipal Investigations has completed its investigation into your 1999 complaint against Deputy Chief Charles Moffatt and Commander William Valenta concerning the "seizure" of your personal documents.

Your complaint alleged a violation of the Bureau's Warrantless Search and Seizure policy. Upon reviewing the incident, this office concluded that the Warrantless Search and Seizure policy has no application to interactions between supervisors and subordinates. However, this office did review the actions of the accused to determine whether they violated the Bureau's Standards of Conduct policy "Obedience to Orders and/or Laws" (4th Amendment).

This OMI case is unique in that rendering an investigative conclusion requires the review and application of complex legal precedent. Practically, a layperson (non-lawyer) may not be best suited to make these conclusions. Therefore, this office has relied exclusively on the legal conclusions made by the judge and jury in your federal lawsuit. In order to prevail in a 4th amendment claim, a complainant has to meet a two-pronged standard. First, the plaintiff must establish that he or she had property seized without due process. Secondly, the plaintiff must demonstrate that he or she sustained a loss as the direct result of the seizure.

The jury's finding on your 4th amendment claim were carefully reviewed. In paragraph 6 of the instructions, the jury was asked: "Did the Defendant's unconstitutionally seize Plaintiff's personal materials?" The jury answered "yes" to this question. In response to paragraph 7, the jury concluded that the defendants (McNeilly and Moffatt) were not the "proximate or legal cause of damages sustained by Plaintiff in connection with the seizure." Although the jury concluded that your property was improperly seized, it also opined that you did not experience a loss. Therefore, your 4th amendment claim was not sustained. This is further supported by Judge Ambrose's order regarding your counsel's motion of December 11, 2002. This motion requested an order requiring OMI to close this case as sustained based on the jury verdict. The judge wrote,
"As is clear from the jury's verdict, the jury found no causation with respect to the Fourth Amendment claim." Therefore, this case has been closed as exonerated. This case was also reviewed by Dr. James Ginger, the consent decree auditor. 

If you require further details regarding this decision, you may call Director of Operations Robert Kennedy.

Truly yours,

[Signature]

Robert Kennedy
Director of Operations
Office of the Mayor

KK/klf
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT C. SWARTZWELDER,

Plaintiff,

VS.

ROBERT W. MCNEILLY, JR., CHARLES MOFFAT,
REGINA MCDONALD, and THE CITY OF
PITTSBURGH,

Defendants.

Civil Action No. 00-1793

AMBROSE, Chief District Judge.

VERDICT SLIP

1. Has Plaintiff proven by a preponderance of the evidence that he engaged in constitutionally protected speech by either speaking or refusing to speak with respect to a matter of public concern?

YES    NO

(If you answered "YES," to Question 1, you must answer Question 2. If you answered "NO," to Question 1, proceed to Question 6.

2. Was Plaintiff's constitutionally protected speech activity a substantial motivating factor in relation to any of the following employment actions taken by Defendants?

(a) transfer from the training academy

(b) assignment of Robert Harrison as acting sergeant in charge of firearms section of training academy

YES    NO

___    ___

___    ___
3. Were any or all of the following actions of Defendants' acts the proximate or legal cause of damages sustained by Plaintiff?

<table>
<thead>
<tr>
<th>Action</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Transfer from the training academy</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>(b) Assignment of Robert Harrison as acting sergeant in charge of firearms section of training academy</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>(c) Denial of Plaintiff's request to instruct at the training academy or as a field training officer</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

(If you answered "YES," as to any part of Question 3, you must answer Question 4. If you answered "NO," to all parts of Question 3, proceed to Question 6.)

4. Have Defendants proven by a preponderance of the evidence that the employment actions taken against Plaintiff from November 6, 1998 to the present would have occurred in the absence of any protected First Amendment activity?

<table>
<thead>
<tr>
<th>Action</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Transfer from the training academy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Assignment of Robert Harrison as acting sergeant in charge of firearms section of training academy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Denial of Plaintiff's request to instruct at the training academy or as a field training officer</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>
(If you answered "NO," to any part to Question 4, you must proceed to Question 5. If you answered "YES," to all parts of Question 4, proceed to Question 6.)

5. Determine the amount of Plaintiff's damages incurred as a result of the adverse employment actions taken against him and then proceed to Question 6.

(a) transfer from the training academy $ 
(b) assignment of Robert Harrison as acting sergeant in charge of firearms section of training academy $ 
(c) denial of Plaintiff's request to instruct at the training academy or as a field training officer $ $1,000

6. Did Defendants unconstitutionally seize Plaintiff's personal materials?
   
   YES ✓ NO 

   (If you answered "YES," to Question 6, you must answer Question 7. If you answered "NO" to Question 7, proceed to Question 9.)

7. Were the Defendants' acts the proximate or legal cause of damages sustained by Plaintiff in connection with the seizure?
   
   YES NO ✓

   (If you answered "YES" to Question 7, you must answer Question 8. If you answered "NO" to Question 7 proceed to Question 9.)

8. Determine the amount of Plaintiff's damages in connection with the seizure and then proceed to Question 9.

   $
9. Did the conduct of any of the individual Defendants' with regard to Plaintiff's First and Fourth Amendment claims involve reckless or callous indifference to Plaintiff's Constitutional rights?

<table>
<thead>
<tr>
<th>Name</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert W. McNeilly, Jr.</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Charles Moffatt</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Regina McDonald</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

(if you answered "YES," to any part of Question 9, proceed to Question 10. If you answered "NO," to all parts, proceed to Question 11.)

10. What amount of punitive damages, if any, should Plaintiff be awarded against:

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert W. McNeilly, Jr.</td>
<td>$66,000</td>
</tr>
<tr>
<td>Charles Moffatt</td>
<td>$47,000</td>
</tr>
<tr>
<td>Regina McDonald</td>
<td>$0</td>
</tr>
</tbody>
</table>

(Proceed to Question 11.)

11. Did Defendants fill the position of Firearms Instructor?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

(If you answered "YES," to Question 11, proceed to Question 12. If you answered "NO," do not answer any further questions.)

12. Was Defendants' failure to test Plaintiff for the position of Firearms Instructor done with reckless or callous indifference to Plaintiff's Constitutional rights?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

(If you answered "YES," to Question 12, proceed to
Question 13. If you answered "NO," to Question 12, do not answer any further questions.

13. State the amount of punitive damages, if any, Plaintiff is awarded as a result of Defendants' failure to test him for the Firearms Instructor position.

(S) Bob S. lost no salary (position as instructor could 'exist')

Susan Kutzner

Dave Kelly

Samarakahan

Donna Nickeling

DATE: November 6, 2002
The Honorable Robert Cindrich  
United States District Court Judge  
Western District of Pennsylvania  
U. S. Courthouse  
Pittsburgh, Pennsylvania  

Re: Consent Decree, City of Pittsburgh Police Bureau

Dear Judge Cindrich:

The Law Enforcement Legal Defense Fund (LELDF) is a non-profit, tax exempt organization founded in 1994 to provide financial assistance to law enforcement officers who are unfairly charged, either civilly or criminally for actions taken in the line of duty.

LELDF provides assistance without regard to race, color creed, religion or ethnic background. The only conditions for assistance is that the officer must have been enforcing the law in the line of duty and performing those duties according to recognized law enforcement rules and regulations in force at the time of a complaint.

We thank the Court for this opportunity to provide information regarding the City of Pittsburgh Consent Decree. Federal intervention into local police enforcement, absent truly exigent circumstances violates the core principal of federalism contained in the United States Constitution. The very law upon which the Consent Decree is based is problematic from that regard. Federal intervention into local policing represents an unfunded mandate upon local governments, which in itself is questionable from a constitutional standpoint. The mandates contained in the current Consent Decree cannot be merely passed off as "oversight".

While consent decrees have been common tools used by governments to address public wrongs, the Pittsburgh Consent Decree marks the first time in our history that daily on-going law enforcement functions, rather than the hiring and promotion policies, were a target of the federal government.
Moreover, we understand that it was the specific and stated goal of the previous administration to make the Pittsburgh Consent Decree the template for such actions in many other American cities.

The specific socio-political issues that exist in a particular city are not the concerns of LEI.DF. But the defense of local law enforcement against unprecedented federal invasive action is a sincere and precise concern for us. We promote good, fair, legal and proper law enforcement.

We have reviewed documentation provided by Officer Chuck Bosetti, who is a past president of the Pittsburgh Fraternal Order of Police. It includes a chronology of news accounts, the auditing process of the Consent Decree, the PARS system and the public statement of the Pittsburgh ACLU which commenced the action that resulted in the Consent Decree. Based on our review we believe that the Consent Decree is a constitutionally flawed and inordinately expensive means to address and to remedy an admittedly local management problem.

We therefore strongly recommend that the current Consent Decree pertaining to the Pittsburgh Police Bureau be terminated.

Thanks you for your consideration of our views on this very important issue.

Sincerely

[Signature]
David H. Martin
Chairman
To: Honorable Judge Robert J. Cindrich

From: Officer C.J. Bosetti, representing the Law Enforcement Legal Defense Fund, Washington, DC

Subject: Lifting the Consent Decree

Remarks: A letter of confirmation from LELDF board members Edwin Meese and David Martin will follow. That letter is for his Honor's information, we are not requesting that it be read in court. The attached remarks can easily be read in less than 5 minutes. Thank you for your consideration.

C.J. Bosetti
FOREWORD

Much of what is written here, as well as my intent in writing it, will be dismissed with traditional bombast by those in power whose public credibility is tied to the Pittsburgh Consent Decree. But I have faith that time, and upcoming court decisions, will tell the tale. I suspect that Abe Lincoln's observation about politics will also be confirmed: "If you really want to gauge a man's character give him a little power".
My position is that the Pittsburgh consent decree should be lifted for the following reasons.

Management reform was the publicly announced goal of the decree. But in private negotiations the Clinton administration's Department of Justice, ACLU, NAACP and the Pittsburgh mayor's appointed solicitor and police chief (the police union was not allowed at the table) ignored four critical areas that required focus on management. Instead they focused on rigid control of labor. The court's order of interpretation even had to clarify that discipline could not result from anonymous, uncorroborated complaints. If they wanted to protect and serve the public instead of their collective agenda here's what really needed to change:

- Internal evaluations of reported misconduct still go directly to the city solicitor whose job it is to save the city from expensive lawsuits. The age old incentive to hide misconduct still operates.
- This is exacerbated by maintaining a politically appointed command staff who must close ranks and serve the mayor on all matters. Ideally, financial contributions to the local democratic party by command level contenders should be investigated, not rewarded. To become chief one must "campaign" for years with party insiders to gain their support and then hope that your "godfather" becomes mayor. Occasional nepotism and chronic cronyism are the rule, not the exception. By not addressing how one rises to management level the decree preserves rather than remedies bad management. It is not that all political appointees are ineffective. The practice of politically appointed management is. Except for a few who are intellectually shallow and vindictive by nature, this debate is all about the politics of policing, not individual personalities. The problem is that political appointment demands political allegiance. It does not demand merit or allow freedom for constructive dissent. It is critical to any real reform effort that command personnel be chosen by a more objective process, as other cities do.
- The decree does not address key areas in the management of the hiring process; levels of education, quality of psychological testing, depth of background check and loosely structured oral interviews. Starting with a better recruit would significantly reduce the behavioral traits that are at the root of most complaints in the ACLU action.
- As in many urban areas, when Pittsburgh detectives retire the most politically connected often then work for the county District Attorney or the State Attorney General. These are not necessarily the best and brightest. So when controversial city cases require "outside" investigation it is really done by "insiders". This allows for preordained conclusions that are politically advantageous to elected officials. It can make a mockery of due process as happened in the Cooperstein and Charmo cases. The former never should have gone to trial at all and the latter case went to trial years after it should have. I filed a complaint in November of 1999 with OMI and the FBI regarding the disappearance of files in the Charmo case. I'm still waiting for OMI to call and the FBI claims it "lost" the documentation that was sent. Though aware of this evidence tampering, the DA and state AG have made no comment since it occurred in 1995.
So the same old bad management has really continued. It just costs more. An October 2001 letter from the city solicitor to city council states, "it is the chief's view that the cost of the decree is limited to the cost of its auditor ($440,253 over five years)". However, council's budget director projected the 1998 costs alone to be approximately $3.2 million.

And as always, it is inner city minorities who pay the highest price for convoluted government. Re: the Pittsburgh homicide rate of 2001 v. 2000 the overall increase was 48%, but the increase for black citizens was 71%.

Thirty years ago the New York Times ran the story of Officer Frank Serpico and the corrupt management of NYPD. New York's appointed police commissioner stupidly called the Times exposé "McCarthyism" which prompted Serpico to testify before the Knapp Commission that all cops who broke ranks and said the truth out loud are subjected to ridicule and reprisal.

This is currently the case in Pittsburgh and the decree includes no provision to protect officers or command personnel from political retaliation. That the civil rights of officers have been violated is not merely my opinion. It is the judgment of the U.S. Third Circuit Court. I believe your Honor is familiar with the issues to which I refer.

To address the aforementioned issues that the decree deliberately does not, I respectfully suggest that it be lifted now and replaced by a court monitored collaborative agreement.

Let this court mark the lines between activism, political sophistry and meaningful reform.
Adrian Roe
Watkins Dulac & Roe
150 Gateway Towers
320 Ft. Duquesne Blvd.
Pittsburgh, PA 15222-1102

Dear Mr. Roe,

My staff and have searched our records for the past several days in an attempt to locate the “1998 Annual Subject Resistance and Use of Force Report” prepared by Officer Swartzwelder. My staff have searched more than a dozen storage boxes on two separate occasions; and, today, I spent three hours going through the same records myself. We cannot locate the 1998 report. I know this document is important to you, and have committed a substantial amount of time to locating it.

Unfortunately, it does not appear to be in our stored records, and we have transferred all non-active records for the Pittsburgh project to storage. I apologize for our inability to locate the document you requested. I am enclosing the $40 check for the witness fee. If you have any questions, please feel free to contact me at any time.

Sincerely,

[Signature]

James D. Ginger, Ph.D.
CEO

The 1998 report had 5 pages deleted by command staff. They described cops doing the same thing as copstone: going on an evening out at night...
September 22, 2000

The Honorable Eric Holder
Deputy Attorney General
U.S. Department of Justice
Suite 4141
950 Pennsylvania Avenue
Washington, DC 20530

Honorable Deputy Attorney General Holder;

On behalf of the Pittsburgh FOP and the one thousand officers of Pittsburgh, Pennsylvania we thank you for the time and consideration shown our delegation on September 14, 2000. Re: the Pittsburgh Consent Decree, which was the subject of our meeting, we propose either of the following:

- Vacate the decree. The "investigation" that led to its signing rationalized rather then justified its existence. In fact, there is no existing written report on such an investigation, though it has been cited ad nauseam by decree proponents. The Pittsburgh Police averaged one documented complaint for every 2,342 actions from 1986 to 1996. Use of force and arrest related injuries remain infrequent and well below the national average. There is no need to burden Pittsburgh taxpayers, who already face a 26 million dollar deficit, with additional millions in debt for an unfounded federal mandate they never got to vote on. Recent attempts to get the city to detail the costs of decree implementation were arrogantly dismissed by the inadequate argument that most changes would have been made anyway. Translation: there is no real accountability. Further, the Pittsburgh Decree was negotiated in secret. The public, the press, our elected judges, district attorney and the police had no input. Clandestine policy is not American policy.

- If you choose not to vacate, allow the Pittsburgh Police "intervening party status". The ripple effect of this unprecedented intervention into urban police operations has also impacted the social, psychological and legal structure of policing. Since the Decree's implementation Part I Crime has risen 14 percent, and arrests for Part II Crimes have dropped 26 percent. While there are clearly other factors involved, we believe the decree to be the single most significant one. But from the inception of this process, the Pittsburgh Police have been barred from active court room participation in decree related matters. The judge hears only the voice of our self-appointed critics. Meanwhile in other courtrooms the Pittsburgh Police have consistently prevailed when permitted to defend themselves (49 consecutive complaints against Pittsburgh officers have not met the test of due process). The people deserve to hear the voice of their police as clearly as all others.

There are multiple issues arising from the Pittsburgh Decree that cry out for the court's attention. Here are five of the most important:

- PA Act 111 defines collective bargaining in our state. It assures that the "terms and conditions" of employment shall be outlined by the arbitral parties and set down by binding and neutral arbitrators. Act 111 has served Pennsylvanians well and without amendment since 1968. But now the federal government, by decree, has usurped this state's role in the management/labor relationship. This strikes a blow to the very heart of American labor and to the Tenth Amendment. As departmental
morale plummets from anger to indifference increasing numbers of young Pittsburgh officers have sought work elsewhere—twenty so far this year.

- The complaint evaluation process is absurdly rigid, easily abused by defendants and cost prohibitive (see page 14 paragraph 21).
- The officer evaluation system (which we discussed) is described by the Chief as “state of the art” but is overwhelmingly seen as unrealistic; abstract rather than practical; subjective rather than objective and disproportionately focused on officers as compared to the politically appointed command staff (see page 16 paragraph 21).
- The decree’s brief and vaguely worded demand to rotate personnel has been used to justify mass involuntary transfers. Now, 20 percent of patrol officers and 25 percent of patrol supervisors are transferred yearly. Contrary to official statements this has resulted in confusion and slower response time. It further complicates the personnel evaluations because few supervisors now have any personal knowledge of their officers and thus can not compensate for the inordinate number of errors in the multi-million dollar computerized personnel files (see page 19 paragraph 30).
- Regardless of all other issues, the most recent report by the federal auditor states that the Pittsburgh Police are in 100 percent compliance with all task requirements.

We have ample documentation of the above. But we can not help the public or ourselves if we have no real input into our own daily operations. Federal consent decrees effecting police operations constitute a social experiment. As such, it will require ongoing adjustment by all parties to honestly establish whether this experiment is a success or a failure—and ultimately whether it is even constitutional.

Sincerely,

Eugene G. Gratton, Jr.  
President

Charles J. Bosetti  
Vice President and Legislative Chair

csv/ejb
January 29, 2001

Mr. Charles J. Bosetti
Vice President and Legislative Chair
Fraternal Order of Police
Fort Pitt Lodge No. 1
433 Fort Pitt Boulevard, 2nd Floor
Pittsburgh, PA 15219

Dear Mr. Bosetti:

I enjoyed meeting you and members of the Pittsburgh Fraternal Order of Police on September 14, 2000. Thank you for your letter of September 22, 2000, which outlined your organization's ideas and concerns regarding the consent decree between the Department of Justice and the City of Pittsburgh and the Pittsburgh Bureau of Police. I apologize for the delay in responding.

As you know, the Department of Justice entered into a consent decree with the City in February 1997, and the Federal Court entered the decree in April 1997 to resolve the case of United States v. City of Pittsburgh (W.D. Pa.). Since that time, the Department has worked closely with the City, the Pittsburgh Bureau of Police, and the Federal Court Auditor to ensure that the decree is implemented in a manner that protects the rights of members of the public while providing police officers with the latitude necessary to do their difficult job of enforcing the law.

We continue to work with city officials and the Auditor to resolve this matter in as timely a manner as possible, within the framework of the existing consent decree. We appreciate and will consider your suggestions in this regard. Thank you again for meeting with me and for your letter. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Eric H. Holder, Jr.
Acting Attorney General
Pittsburgh Police Officer Successfully Challenges Police Bureau Regulations That Inhibited Speech

For immediate release

Contact: Adrián Roe (412-577-5228)
Cris Hoel (412-577-5215)
Vic Walczak (412-681-7864)

PITTSBURGH, PA, April 7, 2000 – Responding to a Pittsburgh police officer’s legal challenge, the City of Pittsburgh’s Bureau of Police has rescinded regulations that prohibited rank-and-file police officers from publicly expressing opinions on matters of public concern.

The rescinded portions of the police bureau’s Standards of Conduct had

1. required bureau employees to obtain a supervisor’s approval before expressing opinions on matters of public concern; and

2. sweepingly forbidden employees to “criticize or speak degradingly regarding instructions, orders or actions issued by a superior officer or supervisor.”

This matter arose after Pittsburgh Police Officer Charles J. Bosetti received a six-page memorandum from Police Chief Robert J. McNeilly, Jr. criticizing Bosetti and threatening disciplinary action for publishing an article in the Pittsburgh Post-Gazette regarding the consent decree between the United States Department of Justice and the Pittsburgh Bureau of Police. Officer Bosetti contacted the American Civil Liberties Union, which arranged for Adrian Roe and Cris Hoel of Schnader Harrison Segal & Lewis LLP to serve as volunteer lawyers on behalf of Officer Bosetti.
"I am pleased to have played a role in vindicating First Amendment rights," said Bosetti, a veteran police officer. "A politically appointed command staff should not be the people's only source of information on issues on public safety. Free speech is, after all, a right of citizenship—not a privilege of rank."

Bosetti’s lawyers argued that certain Police Bureau Standards of Conduct, including the particular Standard implemented by Chief McNeilly in response to Bosetti’s article, violated the First Amendment to the United States Constitution. Roe and Hoel informed the City that they were prepared to seek a federal court injunction enforcing the rights of those who wished to speak and those who wished to be informed. The City’s decision to rescind the regulations avoided litigation.

"Officer Bosetti and the ACLU deserve credit for working together on this matter," Mr. Roe commented. This is yet another example of how people of diverse viewpoints have a common interest in free speech."

Mr. Hoel emphasized that Officer Bosetti’s challenge did not involve disclosure of confidential information, statements made on behalf of the police bureau, or statements that would compromise an investigation or prosecution. "The bureau can control those types of speech," Mr. Hoel said. "But if the bureau wishes to use its regulations to limit public comment to opinions favored by the current police bureau administration, that's over the constitutional line."

Officer Bosetti, former chair of the legal committee of his Fraternal Order of Police lodge, was recently elected second vice president of the Pittsburgh F.O.P. The local F.O.P., however, was not a client of Schnader Harrison or of the ACLU and did not participate in the legal challenge.
Witold "Vic" Walczak, Executive Director of the Pittsburgh chapter of the ACLU, welcomed the removal of restrictions on officers' speech, noting that the removal of these restrictions would protect "whistle-blowers." "We don't always agree with Pittsburgh police officers; but in this instance there was little question of their right to speak and, just as important, of others' right to hear those opinions."

In recent years, the Pittsburgh chapter of the ACLU has obtained court orders overturning similar regulations on behalf of officers with the Robinson Township and Allegheny County police departments.

The City has agreed to announce the changes throughout the department and to reprint relevant pages of the book of regulations issued to officers. The City has also pledged to modify other Standards to address additional free speech concerns.

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*Page 3 of 3*
Dear Mr. Bosetti:

This letter is to acknowledge receipt of the complaint filed with the Office of Municipal Investigations. Please be advised that your case has been assigned to the OMI Manager.

Any future inquiries should include the above referral number for quick identification. Thank you for your assistance in this matter.

Yours truly,

Roy E. Dean
Manager

RED
November 28, 1999

Mr. Dean,

I hereby file a complaint with the Office of Municipal Investigations. I believe several members of the command staff have committed acts of misconduct which have been condoned by Chief McNeilly. Further, evidence has surfaced indicating that files in the controversial Charmo homicide case have been deliberately destroyed in order to cover up the misconduct.

The enclosed FOP Legal Committee Report and related documentation details a series of suspect actions by command personnel. Their identities will be readily apparent to you as you read each incident the report describes. Discretion indicates no name other than Chief McNeilly's be mentioned here. I request that these actions be investigated to determine if violations of federal or state law and/or departmental policy have in fact occurred. The above has also been sent to the PA Attorney General. Usually cases of police corruption would be investigated by the county District Attorney. In this instance much of the alleged misconduct is related to the Charmo and Cooperstein homicide cases soon to be tried by our local DA. Since there is a likelihood of corruption in both cases and prosecutorial misconduct in the Cooperstein case a conflict exists, thus requiring the AG's attention. The FOP report and its documentation have also been sent to the FBI and the Pittsburgh Civilian Review Board.

A further complication is that, until now, a close relationship has always existed between the Pittsburgh Police and the Allegheny County DA. As you know, politically active retired detectives often are hired as investigators by the DA (and the State AG). In fact, at the October 21st FOP meeting a heated debate occurred regarding whether or not to release the legal committee report to the public. The report criticizes the current DA (if you were at the meeting you would never guess the FOP was supporting his opponent), FOP members with political ties to the DA and local democratic party opposed release while active duty non-partisan officers supported the strong stand on an officer's right to due process outlined in the report. After an obviously rigged vote count the police/ politicians won but created everlasting animosities by proving they were loyal to politicians rather than to their fellow officers. A retired Pittsburgh homicide detective who is the current DA's chief of detectives showed up at the meeting (his first in years) to observe the vote. This was the same detective who assisted Special Investigator Sprague in deciding that only former Deputy DA Chris Conrad was at fault for not presenting inculpating evidence at the 1995 Charmo inquest. Sprague's report led the detective's former colleagues off the hook for not reconstructing a death scene properly. Even though the order requiring police to do vehicular reconstruction was ignored by command personnel Sprague concluded that the Deputy DA should have done the police detectives' job for them. I believe this politically incestuous relationship constitutes further reason for OM to investigate and to request the FBI and state AG's intervention.

The FOP report was completed on September 13, 1999. Some weeks later additional facts were made public in a FOX 53 news report indicating that misconduct by some members of the politically appointed command staff may be a more systemic threat to due process than originally thought.
On October 20, 1999 FOX 53 reported that a motion was filed before Judge Cercone by Attorney Sally Frick. Frick represents former Pittsburgh Housing Authority Officer John Charmo who is charged with homicide. The motion addressed the fact that supplemental reports and written interviews of the various officers present on the night of occurrence have vanished. The initial report of the Charmo incident plus a few interviews are all that remains. This becomes even more extraordinary considering it is policy for the Pittsburgh homicide squad to maintain a file of all original reports and interviews, plus a copy file, plus a third file for the DA’s office in each and every case. Except for their presence in court, these files are never to leave the homicide squad office.

On July 29, 1999 Sprague released his report which was, in effect, the political assassination of Chris Conrad. Sprague was appointed on February 23, 1999 by current DA Zappala (the political opponent of Conrad in the 1999 election for the position of DA). The event triggering Sprague’s investigation was the public release of a videotape taken by homicide detectives on the night of occurrence which contradicts Charmo’s initial statements. The tape was discovered months later during depositions taken by Attorney William Goodrich who represents the deceased’s family. And the reason Goodrich was taking these depositions is precisely because copies of supplemental reports and interviews had been missing since shortly after the incident in question occurred in 1995.

So, clearly Sprague knew of, but did not mention in his report, the missing reports and interviews. The last page of his report claims that files had been taken by Conrad when he left the DA’s office. The report does not say the files were part of the Charmo case nor does it identify any other case. But even if these files indeed contained the missing Charmo case reports the issue of missing documents and breach of official duty remains. Remember, Goodrich was told documents were missing in 1995 and Conrad left the DA’s office years later. But the primary question is this: what happened to the original documents and copy files that should never have left the homicide office at any time or in any event?

Logical deduction indicates their disappearance was illegal not accidental, and was most likely accomplished by someone with unquestioned access and strong motive. Chief McNelly has never initiated an official investigation or even an in-house critical incident review board, regarding the missing documents in this high profile case. He was in the Armstrong Tunnel as Zone 2 Commander on the night of occurrence but did not insist on full reconstruction when the homicide squad failed to utilize the department’s only reconstructionist, Lt Steven Starlich, as per order 91-4. After becoming Chief in 1995 he knew, or should have known, that Attorney Goodrich deposed various Pittsburgh officers because the bulk of the Charmo file was missing since 1995. By April of 1997 the consent decree was signed. All personnel evaluations requiring all misconduct by any officer. But there are still no evaluations being done on command staff personnel, so that avenue of explanation for the missing files remains politically desirable.

Experienced investigators realize that if a major investigation begins with a corrupt act additional corrupt acts will follow in a chain. Each new act is designed to justify the one preceding it. But like any chain of events the longer it becomes the more obvious it becomes. In a nutshell, the Charmo investigation “chain” links up like this: In an auto-related police shooting a man is shot over a dozen times and dies. Then an order requiring vehicular reconstruction is ignored by police command personnel. Then most of the case file disappears. Then the DA appoints a political ally (whose chief investigator is a former Pittsburgh homicide detective) to issue a report that does not even mention the missing files but does blame an election year rival while white-washing police brass. And almost five years after the fact there is still no official inquiry.

As knowledge of this command level hypocrisy inevitably seeps through the ranks the anger and contempt created by Pittsburgh’s consent decree grows worse. The chief in charge of a micro-management reform effort is seen by his officers as being corrupt himself. Yet the decree process which overreacts to rude language by a street cop is, by design, useless regarding a cover-up in a racially charged homicide case.
Obviously this situation cries out for investigation. But it will not be easy. As a recognized critic of the consent decree I am likely to be accused of ulterior motives. But as the person in charge of OMI you know my record is unblemished. The only letters from citizens that are in my file are letters of gratitude. And the single letter of complaint is from Chief McNeil who illegally attempted to subject me to disciplinary action for writing an editorial in the Post-Gazette. Ironically, McNeil’s contempt for the first amendment highlights the decree’s fatal flaw -- the document does not address command staff accountability.

And accurate reporting from a local media that thinks in-depth courage means analyzing “the world in a minute” is not likely. Even worse, many local reporters are objective just as many others have naively bought the “party line” describing rank and file cops as under educated union types possessing a knee-jerk reflex to buck authority (a belief publicly expressed by Post-Gazette editor John Craig on a September 1998 talk show). Their reporting is often based on this mind-set, thus precluding objective analysis of political corruption within the police bureau’s command staff. In addition to this “politically correct censorship” full disclosure is also inhibited by the symbiotic relationship that exists between the media and politicians in any city. I have often thought that if Woodward and Bernstein worked for the Post-Gazette, John Craig would have fired them.

But in the final analysis policing is the relentless pursuit of truth regardless of consequence. Therefore, as a police officer and a citizen I am submitting this complaint of misconduct. I wish to make clear my complaint to you is my own and is not being made at the request of the FOP President. FOP President Hynes has made it clear that he does not want the FOP Legal Committee Report released to the public. His stated reasons for this only make sense to officers and retirees with obvious political motivation. The rest of us believe command staff misconduct will inevitably be made apparent in the upcoming Chermak and Cooperstein trials as well as in multiple civil actions and possible criminal actions at the federal level. The legal committee report has been given to the United States Attorney General.

The public will eventually realize that those command personnel who participated in misconduct could not do so without a number of rank and file officers knowing about it. Citizens will ask: why didn’t the street cops speak up?

So on behalf of every good cop in this city I am filing this complaint and requesting a full investigation. We are speaking up. Although in a one-party town controlled by “machine politics”, I am not sure that our warning will reach the people.

Sincerely,

[Signature]

Officer C.J. Bosetti
City of Pittsburgh

September 30, 2002
CERTIFIED MAIL
7001 0360 0001 1796 1109

Mr. Charles Bosetti
421 Mapleview Drive, Apt. 1-C
Pittsburgh, PA 15220

Dear Officer Bosetti:

This letter is to acknowledge receipt of the complaint you filed with our office concerning allegations made against Pittsburgh Police Chief Robert McNeilly. Please be advised that your case has been assigned to Detective Kevin Frank, Office of Municipal Investigations.

Kevin Frank will be contacting you to discuss the case. You may contact this investigator to arrange for a formal taped statement and to go over your allegations more completely. If this office does not hear from you first, we will be contacting you to schedule an appointment. This investigator can come to your home or duty location for the interview. You can contact Kevin Frank directly at 412-255-0725.

Any future inquiries should include the above referral number for quick identification.

Thank you for your assistance in this matter.

Yours truly,

[Signature]
Commander William T. Valenta
Manager

WTV/klf
December 18, 2002

Officer Charles Bosetti
421 Mapleview Drive
Pittsburgh, PA 15220

Incident of 4-6-95 and 12-21-98 (and others).

Dear Officer Bosetti:

Please be advised that the Office of Municipal Investigations has completed its investigation into your complaint. After a thorough investigation, it was determined by this office that Chief Robert McNeil acted within the scope of his authority regarding his oversight and inquiries into John Charmo and Jeffrey Cooperstein shooting investigations and court proceedings. As a result, the officers' conduct was exonerated.

You should be informed that this office investigated two counts each of Neglect of Duty, Conduct Unbecoming and Obedience to Orders and Laws as they relate to your complaint. This office confirmed that Critical Incident Reviews were done for both of the above said incidents. This office contacted the local FBI-Civil Rights Division and found that concerning the John Charmo/Jerry Jackson incident, Chief McNeil and his staff and officers cooperated in the FBI investigation. This office examined the Special Report written by Richard Sprague regarding the Charmo/Jackson incident and confirmed that the points he brought up in his investigation were covered in the Critical Incident Review.

As far as both incidents go, the Accident Investigation policy that was in effect at the times was analyzed and it was found that there was no mandate that the Accident Investigation Team be called out for these particular incidents.

As you know, since the dates of these incidents and prosecutions of the officers involved, there have been policy changes to better define some of the rules and regulations that would cover like future incidents if they should arise. As mentioned by Investigator Kevin Frank, any future complaint that you may have regarding 1st Amendment issues which you have eluded to will be handled separate from this complaint. Finally, as you know the Robert Swartzwelder v. City of Pittsburgh issues that you suggested in this complaint have been settled in Federal Court and allegations regarding this matter are being addressed in a separate OMI complaint.
If you require further details regarding this decision, you may call Kevin Frank. You may also request a meeting with the OMI Manager to review your case.

Truly yours,

[Signature]
Commander William T. Valenta
Manager

WTVjr/klf
PROBABLE CAUSE FOR AN ARREST WARRANT

FILE #: P-4-95
DAY : TUESDAY
DATE : 2/2/99

On Thursday, April 6, 1995 the Pittsburgh Police attempted to stop a vehicle for a traffic violation which occurred in the Hill District Area of the city. The driver of the vehicle, a 1990 Mazda 626, refused to stop and a chase ensued. John Charmo, who was an on duty police officer for The Housing Authority of the City of Pittsburgh, engaged in the chase in a marked police vehicle. The chase traveled through the Hill District, across the Birmingham Bridge, left onto Carson Street to 27th Street where the Mazda reversed direction and traveled inbound on Carson Street. At 10th Street the Mazda made a right turn, crossed the 10th Street Bridge and into the Armstrong Tunnels. Officer Charmo was the lead chase vehicle pursuing the Mazda. At 1076 feet into the tunnel, the Mazda crashed into the left or west wall of the Armstrong Tunnel with Charmo’s vehicle pinning the Mazda against the wall.

The driver of the Mazda, who was later identified as Jerry Jackson, 5129 Ladora Street, DOB. 6/20/50, was pronounced dead at the scene. An autopsy conducted at the office of the Coroner of Allegheny County showed that Jerry Jackson died of multiple gunshot wounds of the body and head.

John Charmo gave two statements to Pittsburgh Police, stating that during the chase through the Armstrong Tunnel, the Mazda did a complete 180-degree turn and came at him. Charmo further stated that he feared for his safety and his life, so he fired at the oncoming Mazda. Charmo continued by saying his vehicle came into contact with the Mazda, which again made a 180-degree turn and continued north bound until both vehicles came to rest. Charmo estimated that he fired thirteen or fourteen rounds at the Mazda.

Charmo’s service weapon was test fired at the Allegheny County Crime Lab and was matched with the fatal bullets taken from the body of Jerry Jackson.

Prior to entering the Armstrong Tunnels, the Mazda’s right front tire blew-out and the tire was completely dislodged from the rim, which made an identifiable rim mark on the road surface. The rim mark was clearly visible from the time the Mazda entered the tunnel until it stopped. The rim mark shows no interruptions or breaks in the path, which clearly shows that the Mazda did not turn around in the tunnel.

There were five bullet holes in the windshield of the Mazda, which Charmo said were the result of him firing at the vehicle as it was coming towards him. Examination of the windshield reveals that the direction of the bullets through the Mazda’s windshield is the opposite of what John Charmo related to the Pittsburgh Police in two interviews. The direction of the bullets through the Mazda windshield is from back to front, not front to back as John Charmo reported.

The physical evidence refutes and contradicts John Charmo’s version of the events, which lead to the death of Jerry Jackson. Based on this information, I ask that you issue a warrant for criminal homicide for:

John Charmo, w/m, DOB. 1/10/54
1114 Indiana Ave.
Glassport, Pa. 15045

in the shooting death of Jerry Jackson.

[Signature]
7:30 p.m. 2/2/99

Commander Ronald B. Freeman
Pittsburgh Police, Major Crimes
CRIMINAL COMPLAINT

DISTRICT JUSTICE
MAGISTERIAL DISTRICT NO. 05 - CORONER

0170625 C

DOCKET NO. MEAS.

MEAS.

COMPLAINT NO. 1995

Complaint Numbers if Other Participants

INCIDENT NUMBER: UCN NO.

03 13 12420922-0

COMMUNE OF PENNSYLVANIA

DEFENDANT: LAST NAME: FREEMAN, COMMANDER RONALD

AND

ADDRESS:

R.S.A.

AKA:

Pittsburgh

(Place-Political Subdivision)

(City-Political Subdivision)

in ALLEGHENY County on or about APRIL 6, 1995

Participants were (if there were participants, place their names here, repeating the name of above defendant):

(2) The acts committed by the accused were:

PCC 2501 CRIMINAL HOMICIDE

THE ACTOR DID INTENTIONALLY, KNOWINGLY, RECKLESSLY OR NEGLECTILY CAUSE THE DEATH OF JERRY JACKSON, ANOTHER HUMAN BEING, TO WIT DID SHOOT JERRY JACKSON, THUS CAUSING HIS DEATH.

all of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of the PENAL CODES and ORDOINANCES of the Act of 1977, §§1771-38 and §1771-39 (Section)

or the PENAL CODES and ORDOINANCES of the Act of 1977, §§1771-38 and §1771-39 (Sub-section)

Ordinance of (Political Sub-division)

(3) I ask that a warrant of arrest or a summons be issued and that the accused be required to answer the charges I have made.

(4) I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C. S. § 4904) relating to unwarned falsification to authorities.

FEBRUARY 2nd, 1999

(Signature of Complainant)

AND NOW, on this date FEBRUARY 2nd, 1999, I certify the complaint has been properly completed and verified, and that there is probable cause for the issuance of process.

05 - CORONER (Magisterial District)

(Seal)

Mag Authority

ADPC 41-405
PERFORMANCE AUDIT

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF PROFESSIONAL STANDARDS

Report by the
Office of the City Controller

TOM FLAHERTY
CITY CONTROLLER

Anthony Pokora, Deputy Controller

Kevin Forsythe, Esq., Management Auditor

Anabel Kinney, Esq., Assistant Management Auditor

Performance Auditors:

Gloria Novak
Joseph Chigier
Jeff Khadem
Woody Mudd

August, 1996
If we start with our hypothetical 800 police officers in 1986 and make a further assumption of a 10% yearly turnover rate (through retirements, terminations and new hires) we arrive at an eligible pool of 1,600 individual police officers who, during the 10 year audit period, could have had a citizen complaint filed against them. In fact, 678 did; or 42%. That leaves 922 “eligible” police officers (58%) without a single citizen complaint against them.

Furthermore, of the 678 officers who did have citizen complaints filed against them, over half (359, or 53%) had only one in the entire 10 years. 140 officers had only two citizen complaints for the entire 10 years. 90 had three; 30 had four; 49 had between five and 10; and 10 police officers had more than 10 citizen complaints filed against them in the 10 year audit period. Three officers had 21, 28, and 34 citizen complaints filed against them respectively. This is a total of 83 or 5% of the working total of 1,522 citizen complaints; filed against just three police officers out of 1,600 possible candidates. The 10 officers with more than 10 complaints each, accounted for 171 out of 1,522 complaints, or 11%. 59 officers garnered five or more complaints in ten years adding up to 493 out of 1,522 citizen complaints or 32%.

Thus, roughly one-third (493 out of 1,522, or 32%) of the citizen complaints for which we can identify an officer’s name, are attributable to 59 police officers, or a mere 3.6% of the eligible pool of 1,600 officers over the ten year audit period.

{The following recommendations should not be interpreted as judgments, by the auditors, of any individual police officer’s culpability in a particular case, nor as comments on any individual police officer’s fitness to serve.}

RECOMMENDATION NO. 7:

OMI, Public Safety Management and the Law Department should conduct a detailed review of the three police officers with 21, 28, and 34 citizen complaints, as a way of highlighting the police disciplinary system at its most questionable level of performance. The review (like this audit for the bureau as a whole) should focus on the types of misconduct alleged, the dispositions of the complaints by OPS, the chain of command’s recommended discipline, the implemented discipline, whether anything in the officers’ deployment schedules could partially explain the high incidence of complaints, whether any counseling or re-training was recommended and/or received, whether any arbitration proceedings were held, and their results. This review should seek to answer the question: “How, after 33 citizen complaints, could a police officer possibly be in a position to attract a 34th?”