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March 7, 2011

Dan Satterberg, Esq.
King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, WA 98104

Re: Ian Birk/The Late John T. Williams

Dear Mr. Satterberg:

We write you again on behalf of the Estate and family of the Late John T. Williams, regarding your decision to file no criminal charges against Officer Ian Birk.

We received and read a copy of your letter of March 2, 2011 to Jim Lobsenz, in which you disagree with his contention that your decision not to prosecute Officer Ian Birk based on RCW 9A.16.040(3) is contrary to the Special Privileges and Immunities Clause of Article I, Section 12 of the Washington State Constitution. We are disappointed to see that, again, you have reserved to yourself the sole power to decide why Officer Birk killed the late Mr. Williams and whether his actions violated the criminal law.

In rereading your original statement regarding your decision not to charge Officer Birk, which was enclosed with the letter to Mr. Lobsenz, we were struck once again by a central flaw in your reasoning and statements about what the law is. Your statement says, accurately, that "Officer Birk has unequivocally testified that he believed [the late John T.] Williams *was going to ... assault him with a knife.*" (Italics added.) As discussed when we met in your office, we believe that amounts to a confession that Officer Birk was *not* entitled to the statute's protection. Your analysis reaches the opposite conclusion by inserting a parenthetical implying that a belief that the late Mr. Williams "was going to assault" the officer is the same as a belief he was "attempting to" assault him. That is simply not the law, as you must know. Our courts have said this clearly, many times: "In order to be found guilty of an attempt to commit a crime, the defendant must take a substantial step toward commission of that crime.... *Mere preparation to commit a crime is not a substantial step.*" *State v. Townsend*, 147 Wn. 2d 666, 679, 57 P.3d 255

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(2002). (Italics added.) “The question of what constitutes a “substantial step” under the particular facts of the case is clearly *for the trier of fact*. ... [M]ere preparation would not be sufficient, something more must be present in order to constitute a substantial step.” *State v. Workman*, 90 Wn. 2d 443, 449-50, 584 P.2d 382, 386 (1978). (Italics added.)

We believe this is a serious error in your analysis. It is a crucially important error. Under the law, the very testimony by Officer Birk you cite—the statement that he believed the Late Mr. Williams “was going to” assault him, though he had not done so—is an admission of guilt. The failure of your analysis to recognize that not only makes it legally incorrect, as shown above, but also makes terrible public and police policy for King County. Allowing police officers to shoot and kill anyone who they think “is going to” commit a violent felony gives officers virtually unlimited authority to use homicidal force. Our Legislature has never given police officers the power to kill any person they believe “is going to” commit a felony, and neither has any court, to my knowledge. If you truly believe the statute goes that far, your statement to Mr. Lobsenz that the law gives police officers the “privilege” as “professionals” to use such preemptive deadly force, is truly chilling. No free society allows police to exact capital punishment on anyone they suspect is “going to” commit a serious crime.

We don’t expect that this or anything we could say on behalf of the Williams family would persuade you to change your mind (especially since you decided to announce your decision without discussing it with them directly). However, we would ask that you consider that it is at least possible that these points, or some of the many other arguments that have been raised against your non-charging decision, are valid enough to deserve consideration by others authorized by our law.

As you know, our law allows a criminal grand jury to be convened at any time by a vote of a majority of the King County Superior Court judges. As you know, unlike an inquest jury, a grand jury would receive instructions on the law governing the use of deadly force, and the probable cause standard that governs the filing of criminal charges. RCW 10.27.030 requires the judges to convene a grand jury upon the request of any “public attorney, corporation counsel or city attorney,” which of course includes you. Although you may remain convinced that your decision was correct, we hope you at least have the humility to recognize that on a matter of this moment and a subject of this level of public interest and controversy, other persons and groups authorized by law to review it should be consulted as well.

We are therefore asking, on behalf of the family and Estate of the late John T. Williams, that you call upon the Judges of the Superior Court to convene a grand jury of citizens to determine whether criminal charges should be brought against Officer Ian Birk for the killing of the Late John T. Williams. Because the law does not put this authority solely in your hands, but extends it to any municipal or city attorney, we are simultaneously making the same request to Peter Holmes, City Attorney of the City of Seattle.

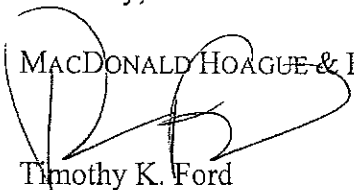
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We hope you or he will honor that request and will submit this matter to this broader judicial and citizen review provided for in our law.

Thank you for your consideration of this request.

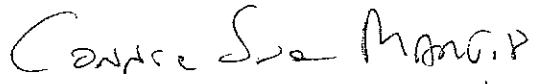
Sincerely,

MACDONALD HOAGUE & BAYLESS

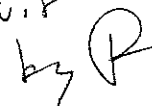


Timothy K. Ford
Andrea Brenneke

BULLIVANT HOUSER BAILEY PC



Connie Sue Martin



TKF:lt

cc: The Honorable Richard F. McDermott
Peter S. Holmes, Seattle City Attorney
Rick Williams/Williams family