



March 11, 2011

Timothy K. Ford
Andrea Brenneke
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500
Seattle, WA 98104

Connie Sue Martin
Bullivant Houser Bailey PC
1601 Fifth Avenue, Suite 2300
Seattle, WA 98101

Dear Mr. Ford, Ms. Brenneke, and Ms. Martin:

Thank you for your March 7, 2011 letter asking me to request that the King County Superior Court summon a grand jury to consider criminal charges against former Seattle Police Officer Ian Birk for the August 30, 2010 shooting death of John T. Williams. I must respectfully decline your request.

The death of Mr. Williams is a tragedy that will scar our community for years. Although Mr. Birk has resigned from the force, many community members believe that he should also face criminal prosecution. The King County Prosecuting Attorney has determined that there will be no criminal prosecution in Mr. Williams's death.

I respect Dan Satterberg's role as our elected felony prosecutor, and the charging decision was his to make. Even if a grand jury was impaneled pursuant to RCW 10.27.030—a decision that would ultimately be up to a majority of the Superior Court Judges—it is unlikely that the grand jury would indict after being instructed to apply present Washington law to the facts already developed before the inquest jury in January 2011.

I am concerned, however, about the breadth and vagueness of the lawful use of deadly force statute, particularly RCW 9A.16.040(3). I invite further public debate before the next legislative session regarding the wisdom of a statute that forces prosecutors into an "all or nothing" situation where as a practical matter manslaughter charges are impossible for law enforcement homicides that do not rise to the level of murder. I believe that the statute should be amended, for example, to add a "reasonable belief"

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requirement or perhaps to remove the "malice" element altogether—keeping in mind that a prosecutor would still have to prove the objective unreasonableness of a police officer's actions beyond a reasonable doubt in any manslaughter case.

I thank you again for your letter and welcome your further suggestions for how I might help facilitate the healing process.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter S. Holmes", written in a cursive style.

Peter S. Holmes
Seattle City Attorney

cc: The Honorable Richard F. McDermott, Presiding Judge, King County Superior Court
The Honorable Daniel T. Satterberg, King County Prosecuting Attorney