



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 14, 2017

SENT VIA US MAIL

Michael M. Bell
3317 13th Place
Kenosha, WI 53144

Re: Your Correspondence

Dear Mr. Bell:

Thank you for taking the time to meet with me earlier this year. As I shared with you at that time, you have my sincerest condolences on the loss of your son. I cannot imagine how difficult this loss must remain for you.

As I conveyed to you during our meeting, it is **not possible** for any prosecutor to bring charges against any of the officers at this time. First, the statute of limitations for any charges relating to your son's death expired in 2010. I was surprised that you were never told this before, but it is a legal reality and a complete bar to any homicide charge that might apply under the circumstances of the case. You had your civil attorney with you. He has been practicing law for over 40 years. He did not disagree that the statute of limitations expired long before I took office as Attorney General in 2015.

Second, as you are well aware, one of the officers most directly involved in the death of your son committed suicide years ago. Thus, he could no longer be charged nor could he be called as a witness in any trial or provide any information in an investigation. Moreover, even if it were possible under the law to charge a crime, the absence of that officer in the investigation and at trial would make it impossible to discern the truth. You assert that his prior statements are not credible. Those prior statements, however, are all we will ever have from that officer.

You also believe that perjury charges against the officers are appropriate based on statements that they made during sworn depositions in the case. You and your

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attorney have identified statements made by the officers which you believe conflict with certain physical evidence. A perjury charge would require proof that the officers knowingly lied about a material fact. **Perhaps** they lied, but it is equally possible that they were mistaken in their perceptions as to the event in which your son was killed. In a civil case, such as the one you previously brought and settled against the City of Kenosha, the plaintiff need only prove their case by a preponderance of the evidence, which is essentially just “more likely than not.”

A criminal case has a much higher standard of proof. Your attorney conducted a comprehensive investigation as part of your civil case, but there are some facts that remain unknown, and no investigation will provide the missing answers to a degree sufficient to sustain the burden of proof in a criminal case. The officer who is deceased is arguably the most critical fact witness in this entire matter. At the very least, his absence would likely give any jury in a criminal case reasonable doubt.

Efforts to gain more information from any other witnesses will likewise be futile, since all of these years later, some evidence is not available, recollections are not fresh, some witnesses will not be available, and the officers involved would certainly decline to participate in any investigation against them.

Furthermore, in a civil case, a mistake can result in liability for a defendant. That is not true in a criminal case, where the prosecutor must prove intentional or criminally reckless acts.

Last, relative to a potential perjury charge, it is also not possible to charge any officer, since it has been far more than six years since the depositions. Thus, the statute of limitations has expired.

As I told the citizens to whom I responded in separate correspondence, there is one positive legacy to all of this. You successfully led an effort to create a first-in-our-nation law governing the investigations of officer use of force. The law you helped create has greatly improved transparency and reliability of such investigations. As a citizen and a law enforcement official, I am grateful to you for your work to change our law.

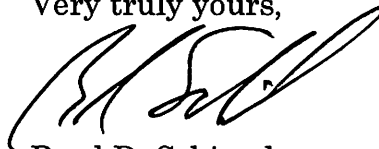
Your son’s death is tragic, but 13 years later, I cannot undo the way it was investigated. The most I can do is commit to ensuring our investigations of similar events are unbiased and thorough.

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When we met, we discussed the potential to work together on further improvements to addressing law enforcement use of force incidents. I am no longer sure that this is possible. You habitually begin your written communications to me with the phrase, "as a courtesy," and then go on to tell me what actions you are about to take. In your most recent communication you said "as a courtesy" you were letting me know you were going to take snippets of my statements in letters to citizens and publish those in the media. I do not know what would be **less courteous** than to take my statements out of context and completely twist my ultimate conclusions into something that I most certainly did not convey.

I wish you well in your future endeavors but I must insist that if you are going to quote me that you include the full and complete context of my words in each and every instance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brad D. Schimel". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Brad D. Schimel
Wisconsin Attorney General

BDS:jpk:alm

C: Kenosha County District Attorney Michael Gravely
Kenosha County Sheriff David Beth