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November 9, 2015

Via Federal Express and Electronic Mail

Timothy McGinty
Cuyahoga County Prosecutor's Office
The Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

Re: Improper Public Comments During Convening of the Grand Jury

Dear Mr. McGinty:

As you know, this firm, together with The Chandra Law Firm LLC and FirmEquity, represent Samaria Rice, her daughter, T.R., and the Estate of Tamir Rice. We write to express our profound disappointment and strong objection to your recent public comments while the grand jury is convening to consider charges in a case that is of immense importance not only to our clients, but to the Cleveland community and the nation as a whole. Those comments include assertions that are demonstrably false and that illustrate a disturbing lack of professionalism and impartiality on your part. This conduct provides further evidence that the grand jury process is being seriously compromised and that your office must recuse itself and have an independent prosecutor appointed to ensure the fair administration of justice.

Just last month, on October 14th, we wrote to you to express our strong disappointment and concern over the decision by your office to take the highly irregular step of releasing to the media two supposed "expert reports" that you apparently intend to present to the grand jury. You released these reports to the media at 8:00 p.m. on a Saturday night over a holiday weekend, refusing to tell us who had authored them, what they said, and when exactly you were going to disclose them. Among other things, your decision to proceed in that fashion prevented us from pointing out the many flaws in those reports and reasons why it was totally inappropriate to present them to the grand jury. As we pointed out in our October 14th letter, the presentation at the grand jury stage of expert testimony on the ultimate issue (whether the police acted unreasonably) is highly anomalous, if not unprecedented.¹ Moreover, it took your office

¹ See, e.g., Opinion of Professor Jonathan Witmer-Rich of the Cleveland-Marshall College of Law, *available*

almost a year to find alleged experts who would be willing to assert that the obviously precipitous shooting death of a 12-year-old child under the circumstances of this case was “reasonable” and “constitutionally justified.” Such an interpretation of “reasonableness” distorts the meaning of that concept beyond recognition and mangles any fair construction of constitutional principles.

When the identity of the two alleged experts was exposed, it became clear that their views were utterly biased and meritless. As your office surely knew, one of the experts, Kimberly Crawford, had her views rejected and discredited by the federal government as being excessively biased in favor of the police in another high-profile case. The other expert, S. Lamar Sims, made public comments before you retained him that showed he had already formed an opinion about the killing of a 12-year-old child (Tamir Rice) that was also biased in favor of the police. An examination of the reports themselves demonstrates how illegitimate they are, assuming facts not in evidence (*i.e.*, purely speculative testimony from the officers about hypothetical excuses for the killing of Tamir) while ignoring other critical evidence unfavorable to the police (*e.g.*, that Officer Loehmann shot Tamir immediately and both he and his fellow officer left the boy bleeding and dying on the ground without administering first aid). Under the circumstances, the suggestion that these experts were neutral and independent is meritless.

We are also disturbed by what appears to us to be a selective, confused, and contradictory use of grand jury secrecy and disclosure practices. On the one hand, your office enjoys the protection afforded by the general secrecy of grand jury proceedings. On the other hand, certain activity of the grand jury has been leaked to the press² and you have chosen to selectively release other information, most notably the biased and discredited “expert” reports referenced above. We are concerned that your decision to release those reports—which attempt however unpersuasively to exonerate the police—could have the effect of tainting the grand jury or improperly influencing their deliberations.

Samaria Rice has an obvious, legitimate, and indisputable right to seek accountability and justice for the senseless and unjustified shooting of her 12-year-old child. As her counsel, we have a clear professional obligation to register our objections to what she and we perceive to be questionable practices in your office’s handling of the grand jury process. When asked in public at the November 5 political event about the issues Ms. Rice and we raised, you took the astonishing step of impugning the motives of both Ms. Rice and her representatives. Captured on video, you said, “Well isn’t that interesting. They waited until they didn’t like the reports they received. They’re, they’re very interesting people. Let me just leave it at that. And they have their own economic motives.” (You then cut off and berated a woman in the audience who protested that it was unfair for you to say that.) With your statement, you suggested that Ms. Rice and her counsel waited to see what the experts would say and only then chose to criticize the process, implying we had somehow endorsed your irregular decision to present “expert testimony” of this type to the grand jury. That is false and your office knows it. We

at http://www.cleveland.com/opinion/index.ssf/2015/10/tamir_rice_case_should_go_to_a.html (the question of the officers’ guilt is a jury question, not one that “experts” can decide).

² Curiously, at a November 5th political event, you admitted to knowing the source of leaked information but refused to disclose it, even though disclosure of grand jury information can constitute a criminal act.

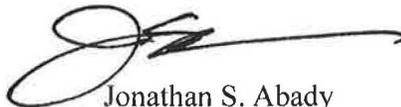
have no control over what evidence you present to the grand jury and certainly did not endorse or influence in any way what your office is doing in this regard.

Your public comments impugning the integrity of Ms. Rice and her representatives have now resulted in a situation where your office has not only made a decision to present biased and discredited “expert” testimony to the grand jury, but you are now taking the remarkable tact of attacking the motives of a grieving crime victim and her attorneys who are attempting to secure justice for her and her family. Your office’s handling of this matter has now raised an unmistakable appearance of bias and impropriety. Regrettably, under these circumstances, we are compelled to renew our request that your office recuse itself and that an independent prosecutor be appointed.

If you continue to refuse recusal, you have now publicly confirmed that it is the normal practice to make a recommendation to the grand jury on whether to indict or not after the evidence has been presented and before a vote is taken, and that you will not deviate from that standard practice in this important case. Although it is difficult to imagine how you could now seek an indictment on criminal charges after presenting and repeatedly personally vouching for discredited and biased “expert” testimony suggesting the shooting of Tamir Rice was reasonable, you are obligated to disclose what your recommendation to the grand jury will be before you make it. We—and an obviously interested public—await your disclosure on that subject should you not recuse.

As of the date of this writing, you have not responded to our October 14 letter. We request that you respond in writing to that letter as well as to this one by November 11 with a point-by-point, substantive reply.

Sincerely,



Jonathan S. Abady
Earl S. Ward
Zoe Salzman

c: Subodh Chandra (*via email*)
William Mills (*via email*)
Matthew Meyer, Assistant Prosecuting Attorney
James Gutierrez, Assistant Prosecuting Attorney