

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
VINCENT J. BOBÓT
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
Assistant City Attorneys

January 5, 2009

To the Honorable Common Council
of the City of Milwaukee
Room 205 - City Hall

Re: Communication from Attorney Jonathan Cermele, Cermele & Associates,
S.C for legal fees for Police Officers Bob Lutze and Jim Jekanwoski
EC: 2598; CA: 1032-2008-2037.006

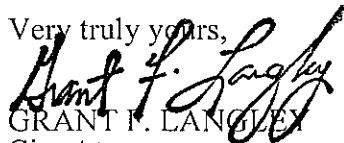
Dear Council Members:

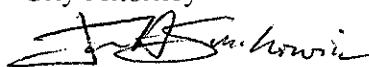
Returned herewith is a document filed by Attorney Jonathan Cermele for attorney's fees for representing Police Officers Bob Lutze and Jim Jekanwoski. The claim is in the amount of \$726.00 including \$11.00 in disbursements for 6.50 hours of service billed at the rate of \$110.00 per hour. We ask that this matter be introduced and referred to the Committee on Judiciary & Legislation.

We have reviewed this claim and advise that in our opinion, the time spent was reasonable. Legal representation was occasioned by a criminal investigation. No criminal charges were brought against the officers on whose behalf this claim was filed.

As we have advised you under similar circumstances in the past, the Common Council has discretion to reject this claim or to pay it in whole or in part. Wis. Stat. § 895.35, *Bablitch and Bablitch v. Lincoln County*, 82 Wis. 2d 574 (1978).

Very truly yours,


GRANT F. LANGLEY
City Attorney


Assistant City Attorney

JAS:amp

Enc.

1032-2008-2037.006:124858v1

OFFICE OF THE CITY ATTORNEY

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

September 3, 2008

TO: P.O. ROBERT LUTZE
DISTRICT: NTF / TAC

RE: Receipt of Legal Services from Law Firm of
Attorney Jonathan Cermele

Attorney Jonathan Cermele has made a claim with the City, indicating the attached was provided with legal services arising out of one of the following situations:

- 1) An incident occurring on: February 26, 2008
- 2) A citizen complaint made by: N/A
- 3) A police shooting incident occurring at: 3330A N 12TH STREET

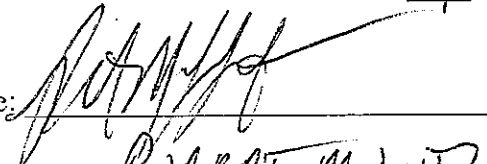
Is this information correct?

YES NO

Did you receive legal representation
in this matter?

YES NO

Your signature: _____



Print your name: _____

ROBERT M LUTZE

Upon completion, please return this memorandum to the Professional Performance Division at the Police Academy (Room 325) as soon as possible.

KURT R. LEIBOLD
Acting Captain of Police
Professional Performance Division

KRL: kjs

MILWAUKEE POLICE DEPARTMENT

MEMORANDUM

September 3, 2008

TO: P.O. JAMES JEKANOSKI
DISTRICT: NTF / TAC

RE: Receipt of Legal Services from Law Firm of
Attorney Jonathan Cermele

Attorney Jonathan Cermele has made a claim with the City, indicating the attached was provided with legal services arising out of one of the following situations:

- 1) An incident occurring on: February 26, 2008
- 2) A citizen complaint made by: N/A
- 3) A police shooting incident occurring at: 3330A N 12TH STREET

Is this information correct?

YES NO

Did you receive legal representation
in this matter?

YES NO

Your signature:



Print your name:

JAMES JEKANOSKI

Upon completion, please return this memorandum to the Professional Performance Division at the Police Academy (Room 325) as soon as possible.

KURT R. LEIBOLD
Acting Captain of Police
Professional Performance Division

KRL: kjs

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BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
Assistant City Attorneys

June 25, 2008

Acting Captain Kurt Leibold
Milwaukee Police Department
Professional Performance Division
6680 North Teutonia Avenue, Rm. 325
Milwaukee, WI 53209

Re: Communication from Cermele & Associates, S.C.
EC: 2598; Our File No. 1032-2008-2037.006

Dear Captain Leibold:

Enclosed please find a claim filed by attorney Jonathan Cermele for Attorney's fees incurred during his representation of Police Officers Bob Lutze and Jim Jekanowski.

Please determine whether this officer was in fact involved in the matter described in Mr. Cermele's claim, and have this officer verify Mr. Cermele's representation. Please return the claims and verification forms to our office at your earliest convenience to Angelique M. Pettigrew, Paralegal.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "JAS" followed by a stylized surname.

JAN A. SMOKOWICZ
Assistant City Attorney

JAS:amp
Enclosure

1032-2008-2037.006:12978

OFFICE OF THE CITY ATTORNEY

CERMELE & ASSOCIATES, S.C.

- ATTORNEYS AT LAW -
WWW.CERMELELAW.COM

JONATHAN CERMELE
MATTHEW L. GRANITZ
CHELSIE ALLAN

6310 WEST BLUEMOUND ROAD
SUITE 200
MILWAUKEE, WISCONSIN 53213
(414) 276-8750
FAX (414) 276-8906

LAURIE A. EGGERT
- OF COUNSEL -

June 12, 2008

Mr. Ronald D. Leonhardt
Milwaukee City Clerk
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

**RE: MPD Criminal Investigation of PO's Bob Lutze and Jim Jekanowski
Allegations Regarding Officer-Involved Shooting
Date of Incident: February 26, 2008
Location of Incident: 3330-A North 12th Street**

Dear Mr. Leonhardt:

Pursuant to Article 58 of the 2007-2009 Collective Bargaining Agreement between the City and the Milwaukee Police Association, the City should request that this claim be placed on the Common Council Committee agenda within 180 days of its receipt.

This claim is being submitted under §895.35(2), STATS., which provides that:

Notwithstanding sub (1), the City . . . shall reimburse a protective services officer for reasonable attorney fees incurred by the officer in connection with a criminal proceeding arising from the officer's conduct in the performance of official duties, unless, in relation to that conduct, any of the following applies:

- a. The officer is convicted of a crime;
- b. The officer's employment is terminated for cause;
- c. The officer resigned for reasons other than retirement before the attorneys fees are incurred;
- d. The officer is demoted or reduced in rank
- e. The officer is suspended without pay for 10 or more working days. §895.35(2), STATS.

Officer's Lutze and Jekanowski are considered a "protective services officer" under the statute. They have incurred the fees compiled in this claim as a direct result of their being investigated for actions taken within their official capacity, and in the performance of their duties, in connection with the use of deadly force. None of the "exceptions" apply.¹

The incident resulted in the District Attorney's Office conducting a criminal investigation into the shooting of Mr. Grant Morrow, under Chapter 979, STATS. That investigation qualifies as a "proceeding" which mandates payment under §895.35(2), STATS.

Thank you.

Sincerely,

CERMELE & ASSOCIATES, S.C.

Jon Cermele

/kjs
Attachment
LUTZE and JEKANOWSKI

¹ Neither officer was convicted of a crime, terminated for cause, resigned prior to incurring the fees associated with this claim, demoted, or suspended without pay for more than 10 days. See §895.35(2)(b), STATS.

CERMELE & ASSOCIATES, S.C.

- ATTORNEYS AT LAW -
WWW.CERMELELAW.COM

JONATHAN CERMELE
MATTHEW L. GRANITZ
CHELSIE ALLAN

LAURIE A. EGGERT
- OF COUNSEL -

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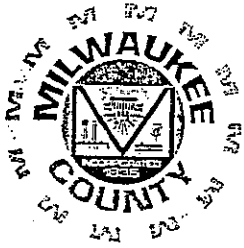
June 12, 2008

Mr. Ronald Leonhardt
Milwaukee City Clerk
City Hall, Room 205
200 East Wells Street
Milwaukee WI 53202

RE: MPD Criminal Investigation of Officer-Involved Shooting
Allegations Regarding PO's Bob Lutze and Jim Jekanowski
Date of Incident: February 26, 2008
Location of Incident: 3330-A North 12th Street
Professional services

		<u>Hours</u>	<u>Amount</u>
2/26/2008 MG	Several telephone calls to and from MPD regarding officer-involved shooting; intra-office conference with Cermele; open file; travel; meeting with PO Lutze regarding critical incident; meeting with PO Jekanowski regarding same; attend statement of PO Lutze to DA; attend statement of PO Jekanowski to DA; return travel; intra-office conference with Cermele; memo to file.	5.00	550.00
2/29/2008 MG	Correspondence to PO's Lutze and Jekanowski.	0.20	22.00
3/5/2008 MG	Calendar follow-up with DA's office.	0.10	11.00
3/24/2008 MG	Review file.	0.20	22.00
3/28/2008 MG	Fax to DA's office; calendar follow-up.	0.20	22.00
4/1/2008 MG	Telephone call to and from DA's office; memo to file.	0.30	33.00

	<u>Hours</u>	<u>Amount</u>
4/8/2008 MG . Receive and review clearance letter from DA's office; telephone call to PO Lutze regarding same; correspondence to PO Lutze and PO Jekanowski with copy of same; close file.	0.50	55.00
For professional services rendered	6.50	\$715.00
Additional charges:		
2/26/2008 MG Parking		11.00
Total costs		<u>\$11.00</u>
Total amount of this bill		<u>\$726.00</u>
Balance due		<u><u>\$726.00</u></u>



OFFICE OF DISTRICT ATTORNEY
CHILDREN'S COURT CENTER

Milwaukee County

John T. Chisholm • District Attorney

RECEIVED

APR 09 2008

PERMEL ASSOCIATES, PC

March 10, 2008

Chief Edward Flynn
Milwaukee Police Department
Police Administration Building
821 West State Street
Milwaukee, Wisconsin 53233

Re: February 25, 2008 Officer-Involved-in-Shooting incident
involving Officer Robert Lutze

Dear Chief Flynn,

On behalf of the Milwaukee County District Attorney's Office, I conducted a review of the circumstances surrounding the incident in which City of Milwaukee Police Officer Robert Lutze fired a shotgun and wounded citizen Grant Morrow during the execution of a no-knock search warrant at Morrow's residence at 3330-A N. 12th Street in Milwaukee at approximately 7:00 a.m. on February 25, 2008.

I have concluded my review of this incident and found no evidence whatsoever that would support any finding that Officer Lutze's conduct violated any criminal laws. I believe that the evidence clearly supports a finding that Officer Lutze discharged his shotgun in response to what he reasonably perceived as an imminent threat of being attacked by Mr. Morrow's pit bull ("Red") during the course of executing the search warrant at the Morrow residence.

When I interviewed Mr. Morrow, he readily stated that he did not believe that Officer Lutze had any intention of shooting him (Morrow) and that he understood that Officer Lutze was simply protecting himself from a possible attack by Red. Though Mr. Morrow was obviously saddened by the fatal shooting of Red, he went out of his way at the conclusion of my interview with him to state that he did not want to see the officer get in trouble for "just doing his job."

I found Officer Lutze's version of what occurred to be both entirely credible and consistent with physical evidence in the case. Officer Lutze stated that upon entering the Morrow residence (after announcing "Milwaukee Police, search warrant"), that he

encountered Mr. Morrow holding Red about 10 feet or so away at the mouth of a small hallway that entered into the kitchen. Officer Lutze had just entered into the kitchen through the only door leading into Morrow's upper unit apartment. Lutze maintains that he directed Morrow not to let go of the dog or the dog would be shot.

A critical event occurred at this juncture and that was the detonation outside the kitchen window of the flash-bang diversionary device (the "banger"). Because the inner, upper door of the Morrow residence was standing open, Officer Lutze gained entry to the kitchen more quickly than was probably anticipated. Instead of the banger going off while police were trying to force entry to the upper, inner door to the Morrow apartment, the banger went off after Lutze was already in the kitchen and confronting Mr. Morrow as Morrow tried to restrain Red.

Officer Lutze states that he was commanding Morrow not to let go of the dog and that the banger then went off, after which Morrow released his grip on Red. Once Morrow let go of Red, Lutze believed (and I think reasonably) that Red was ready to attack and he fired the shotgun at Red two times to eliminate what he perceived as an immediate threat. Officer Lutze indicated that he obtained "target acquisition" on Red and that Mr. Morrow had moved away down the hall toward the living room after releasing his hold on Red.

Mr. Morrow sustained non-life-threatening wounds to his right calf and to the fingertips of his right hand. Fortunately, he was treated and released from the hospital and appeared to be doing well when I interviewed him two days after he was wounded.

Mr. Morrow believed that he was still holding Red by the collar when Officer Lutze fired the shotgun. I had Morrow demonstrate how he held Red and he showed us by holding out his right hand and curling his fingertips under his clenched palm. With this grip on Red's collar, I saw no way physically that Mr. Morrow could have sustained gunshot wounds to his fingertips (and nowhere else on his hand) if Lutze had fired while Morrow was still holding Red by the collar.


I believe that Mr. Morrow was honestly telling us what he remembers occurring, but that the stress, chaos and speed with which things happened makes it likely that he is mistaken as to some of the sequence of events. Again, I find the physical evidence (the location of Mr. Morrow's gunshot wounds) to be consistent with his having already released his grip on Red (as Lutze states) when Lutze fired. I believe it likely that Mr. Morrow was indeed startled by the detonation of the banger and that this accounts for why he released his grip on Red and why he may not remember doing so.

After considering the statements of the three officers that we interviewed (Officers Lutze, Michael Urbaniak and Officer James Jekanewski) and the interview statements of both Grant Morrow and his wife Margo Morrow, as well as the physical evidence in the case, it is my conclusion that Officer Lutze reasonably perceived himself to be in imminent danger when he fired his shotgun at Mr. Morrow's pit bull and that he did not intend for Mr. Morrow to be shot. I believe that the wounding of Mr. Morrow was an unfortunate

accident that was not intended by Officer Lutze nor was it the result of any criminal act by Officer Lutze.

If you should have any questions or wish to discuss this case further, please do not hesitate to contact me at 257-7108.

Sincerely,


Steven Licata 4/7/08
Assistant District Attorney

cc: District Attorney John Chisholm