

FROM	NAME & TITLE	George A. Nilson, City Solicitor	CITY OF BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Law Suite 101 City Hall		
	SUBJECT	Retention of Outside Counsel for the Office of Mayor & City Council of Baltimore and the Baltimore Police Department in Connection with the DOJ Investigation		

DATE October 2, 2015

TO

Kaliopé Parthemos
Chief of Staff
Mayor's Office

Following on prior discussions, I thought that it would be useful to you and to the Mayor if I summarized the history of our engagement of counsel in this matter, so that you have it all in one place.

As we have discussed, and as I think you have observed first hand, the City has benefited from excellent outside legal advice and support in this matter. We needed counsel with experience with police "pattern and practice" investigations, credibility with the Department of Justice ("DOJ"), and a familiarity with our Police Department. I selected lawyers at the firm of WilmerHale to fill this role. Five months into this matter, it is clear that that decision was a good one.

The predicate for our need for counsel is well-known to you. On April 12, 2015, the Baltimore City Police Department officers arrested Freddie Gray, setting off an historic, rapid and extraordinary chain of events in the city. Gray died within approximately one week of his arrest, apparently as the result of injuries sustained during his post-arrest transport in a police van. Gray's arrest and death sparked protests and civil unrest that culminated in significant and widely publicized rioting and violence and eventually the deployment of thousands of police officers and the Maryland Army National Guard. The State's Attorney's Office brought criminal charges on May 1, 2015 against the officers involved in the arrest and those charges are still pending and now scheduled for six successive trials.

Following these events, on May 6, 2015, the Mayor requested that the Department of Justice conduct a federal civil rights investigation into the activities of the Police Department. On May 8, 2015, U.S. Attorney General Loretta E. Lynch announced that DOJ would in fact commence such an investigation of the Police Department. Various estimates of the overall length of the investigation ranged from approximately twelve to eighteen months. This does not include the period following the DOJ's release of its findings report, during which time a resolution in the form of an agreement or consent decree typically is discussed or negotiated.

Shortly after the investigation was announced, I decided to retain WilmerHale to represent the City and Police Department. First, I determined that outside counsel was necessary because of the *sui generis* nature of the investigation as well as its magnitude and its importance to the City and the Police Department. Second, I concluded that the nature and extraordinary breadth of the matter were beyond the capacity of the Law Department. Third, I determined that WilmerHale was uniquely positioned to represent us in the matter. What we needed was a firm that could help the Police Department and the City handle the extraordinary demands

of this type of investigation while establishing on behalf of the City and the Police Department a relationship with every relevant element of the Department of Justice that would allow the inquiry to move along expeditiously with the least disruption of and the most help to the Police Department.

As you and I and the Mayor discussed back in early May, I felt that WilmerHale was far and away the firm best equipped to help the City (a) address the legality and effectiveness of Baltimore policing practices and (b) navigate this matter to the best conclusion in the circumstances. WilmerHale has deep experience in the relevant areas of law and policy, law enforcement, DOJ investigations and civil rights.

As you know, the WilmerHale team is led by partner Jamie Gorelick. Ms. Gorelick was one of the longest serving Deputy Attorneys General of the United States, the second highest position in the Department of Justice. In that role, she supervised the litigation and law enforcement divisions of the Department, including the Civil Rights Division. Ms. Gorelick has also represented many entities and individuals before the Department of Justice and has relevant experience in representing – with Brent Gurney – one of the largest police departments in the United States in a similar Civil Rights Division “pattern and practice” investigation.

Mr. Gurney is a former Assistant U.S. Attorney from the District of Maryland, with significant investigation and jury trial and experience in the Maryland federal courts, including experience with the Baltimore City Police Department. As noted, he worked with Ms. Gorelick in the representation of another police department in a recent and very complex investigation. He is familiar with every disposition of every such DOJ investigation in the last fifteen years.

The team also includes Debo Adegbile, who has had more than two decades of civil rights litigation experience, including as the former Litigation Director and leader of the NAACP Legal Defense and Educational Fund, Inc., where he argued civil rights cases, including in the U.S. Supreme Court. He has a national reputation as a leading civil rights attorney, and is well-known to and respected by the leadership of the Civil Rights Division.

The other lawyers on the team are diverse and experienced. They also have available to them other lawyers at WilmerHale with broad and deep experience with DOJ and law enforcement, including another former Deputy Attorney General, the former director of the FBI, the former General Counsel of the FBI and numerous former Assistant U.S. Attorneys.

This matter has required a firm with significant experience handling multifaceted DOJ investigations involving multiple and voluminous document requests. As of today, DOJ has made 85 separate requests for documents and information. WilmerHale has handled these matters expertly and has used specialized support staff to assist the Police Department’s information technology staff in responding to e-discovery requests.

That summarizes the basis for my selection of WilmerHale. With the investigation getting underway quickly from the very beginning, I decided that I needed to proceed to a decision on counsel quickly, so that counsel could interact with DOJ. On May 11, 2015, I signed an engagement letter with WilmerHale memorializing the terms of the engagement. As it turned

out, WilmerHale arranged a large and substantive meeting with the leadership and team at DOJ on May 20, 2015, less than two weeks after being retained. WilmerHale initially agreed both to discount its standard rates by 10 percent and lock its rates in and subsequently to cap its total fees for the fiscal year ending in June 2106, subject to review and adjustment as appropriate at the end of 2015.

As the City Solicitor, I have the prerogative under the City Charter to hire lawyers and law firms when I believe it is in the best interests of the City. I have used this authority to engage counsel for other highly specialized assignments such as this one. The Wells Fargo and F&P Pension matters and numerous national class actions come to mind. Because of the significance and importance of the DOJ matter, at the outset (in early May), I briefed and obtained consent to the engagement of WilmerHale from the Mayor, City Council President Jack Young and City Comptroller Joan Pratt.

You and the Mayor and other staff have been briefed by the WilmerHale team on the status of the investigation. As you can tell, they have worked collaboratively with DOJ while protecting the rights of the City and the Police Department. They have maintained good working relationships for us at every level of the Department of Justice. They have helped the Police Department respond to voluminous DOJ requests for documents, information and interviews. And they have served up decisions for the Mayor with great clarity. We wanted an experienced team that was ready for every facet of the investigation and that is what we have.

A handwritten signature in black ink, appearing to be the initials 'JP' or similar, located in the lower right quadrant of the page.

Kenneth L. Thompson

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January 6, 2016

George A. Nilson
City Solicitor
City Hall, 1st Floor
100 N. Holliday Street
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Dear George:

You have requested that I provide you with comments regarding your office's retaining outside private legal counsel in connection with the current DOJ investigation. First, as you know well, the City Solicitor, both during your tenure and that of your predecessors, has hired outside counsel, mostly Baltimore law firms, including Venable LLP, on occasions when the Solicitor thought it was appropriate to do so. The sound, long-established practice has been to accord the City Solicitor substantial deference to determine how best to address the legal needs of the City, necessarily including which specific matters should be handled by internal resources and which should be handled by outside counsel. While the vast majority of matters are handled by the excellent lawyers on your staff, there are certainly occasions when the unique nature of the engagement dictates that you retain outside counsel. Critical to your decision, in my view, is whether your office has the requisite expertise to handle the unique subject matter that requires resolution.

While the office you have assembled over the years is exceptionally well equipped to handle a wide variety of matters, including complex matters that come up in the municipal law arena, there are certainly going to be matters that fall outside of the office's expertise or where the demands of the matter exceed the office's resources. In such instances, it is certainly appropriate that you seek out firms with the requisite experience, expertise, and resources to handle those matters. The April disturbance and the resulting DOJ investigation emanating from same is precisely the type of matter that would dictate serious consideration on your part to hire outside

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counsel. Such an investigation requires specialized knowledge in various substantive areas, including but not limited to civil rights and related constitutional law issues and federal and state criminal law expertise.

Very truly yours,



Kenneth L. Thompson

KLT/bbl
#10445756

January 12, 2016

BY EMAIL AND FAX

The Honorable Bernard C. "Jack" Young
President
Baltimore City Council
100 N. Holiday Street
Room 400 City Hall
Baltimore, Maryland 21202

Re: Baltimore City Legal Representation: Justice Department Civil Rights Police Investigation

Dear Mr. Council President:

I am a law school professor at the University of Maryland Carey School of Law and the Founder and Director of the University of Maryland Center for Health and Homeland Security. As both a professor and a center director, I have studied and advised on urban policing strategy. The views expressed herein are my own and I list my affiliations only for identification purposes.

My relevant background. In the last two years of the Clinton Administration, I served as the Principal Deputy Associate Attorney General in the United States Department of Justice. In that capacity, I aided the then U.S. Attorney General, Janet Reno, in the oversight of the Civil Rights Division's police "pattern and practice" investigations and related consent decrees pertaining to many urban police department's interactions with minority populations. I also worked with Attorney General Reno on the oversight of the Community Oriented Policing Services Office, the so-called "COPS program," within the Department, which provided funds, resources and services to large urban police departments.

On behalf of the Attorney General, I created a plan in 2000 to establish regional federally funded police training academies through which urban police personnel would receive training on the art of "community policing/problem solving," a policing strategy that has been widely heralded as both improving police community relations and reducing crime. The need for "community policing/problem tactics" was so widely held at that time that on December 6, 2000, virtually every major city police chief endorsed these regional training academies and committed their departments to the training therein. Shortly thereafter, President Bush was elected and the concept of federally funded police training academies was dropped by his Justice Department.

The Services of Ms. Gorelick and Wilmer Hale Are Needed by Baltimore. With the preceding as background, I am writing to support the Mayor's requested appropriation for the work of Ms. Jamie Gorelick of Wilmer Hale and the work of that firm in the representation of the City and the Baltimore Police Department in the handling of the present ongoing Justice Department Civil Rights "Pattern and Practice" Investigation into policing practices of the entire Baltimore Police Department.

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The focus of my support is my opposition to the thinking articulated in two December 2015 op-ed pieces published in the *Baltimore Sun* in opposition to this funding. The first is entitled: "Baltimore doesn't need to spend \$ 2 million on lawyers" by a recently retired Towson, Maryland lawyer, Mr. Jay Schwartz. In the absence of the knowledge of the intensity and extensive reach of the Justice Department "pattern and practice" investigations and the role private lawyers play throughout the country in effectively representing large urban police departments in these kinds of investigations, Mr. Schwartz's complaint has surface appeal. He says: "The work involved (e.g., accompanying city employees to depositions) is what most lawyers would call 'scut' work and amounts to note taking and hand holding. . . . Indeed, those most cost effective option may be to hire an assistant city solicitor to do the work." (Emphasis added.)

In a companion *Baltimore Sun* op-ed by Mr. David A. Plymer, a retired Anne Arundel lawyer and former assistant Anne Arundel County states attorney, it is suggested that "[s]ome city officials may be having second thoughts about the DOJ investigation even though it was requested by Mayor Rawlings-Blake[.]" It is further suggested therein that retaining outside counsel for the Justice Department Investigation may have been premature, because these investigations almost always end in consent decrees, where the hard work of reforming the police department is undertaken and where the hard lawyering may take place. There is also a suggestion in Mr. Plymer's op-ed that by hiring Wilmer Hale at the investigation stage, the work of the Department may be "impeded by legal maneuvering" by the private firm. (Emphasis added.)

The record needs to be set straight. First, if Mayor Rawlings-Blake had not asked for the Justice Department pattern and practice investigation, it almost certainly would have been undertaken at the initiative of the Justice Department. The Freddie Gray episode, the resulting riots, and the break down in the city's law enforcement as evidenced by rapidly rising crime rates have become a matter of national attention and discussion. There can be little doubt that a thorough civil rights investigation would have been undertaken ultimately at the Justice Department's initiative even if the City chose not to invite it. And, by inviting it, the City presents itself to the Justice Department in a favorable light by its recognition that assistance is needed, a fact that will no doubt ultimately redound to the city's benefit.

Second, once the Justice Department undertakes an investigation of this kind, the focus is not just on a single episode concerning the death of one citizen and the possible liability of six police officers, as was true in the Freddie Gray scenario. That scenario arguably reveals (as it has been assumed in the case of Baltimore) systemic policing problems across the city. Once the triggering threshold is met, these investigations are required by federal statute to focus on actions of the police department *as a whole* in its relationship over many years to the

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community it polices *as a whole*. The scope of these investigations in large metropolitan areas is therefore enormous.

As a result, the work of the lawyers representing the city is not merely "note taking" or "accompanying" police department "witnesses to depositions." The lawyering requires massive document and email analysis, complicated legal research, extensive fact evaluation and preparation for and meetings with and between the city, the police department, and Justice Department Civil Rights Special Litigation attorneys.

In an investigation of this kind, a large urban police department, the city must locate and turn over tens of thousands of pages of documents and hundreds of thousands of emails in response to hundreds of document and information requests by the Department. Again, this requires much more work than that of even a handful (much less a single assistant city solicitor) of lawyers for the city.

In this regard, because of a lack knowledge of the individual police departments being investigated across the country (as is now the case), the Justice Department understandingly often makes broad universal production requests of each city investigated to ensure the Department gets the documents it needs. Therefore it frequently happens in these investigations that the lawyers for each city negotiate with the Justice Department to refine requests in a manner that both satisfies the Department needs and relieves what might be a crippling production burden on the city.

If the city does not ensure that only the documents needed by the Department are delivered, the city can be so overwhelmed/paralyzed by responding to unneeded and unfocused requests, the police department can be brought to its knees operationally. This would be especially true if all that stands between these requests and the Department is the work, for example, of a single "assistant city solicitor," as suggested by Mr. Schwartz.

Let me also be quick to say that working with the Justice Department to focus only on relevant documentation is not as Mr. Plymmer would have it "legal maneuvering." If private counsel can work with the Department to clarify the scope of the documents to be delivered (as is done in almost all, if not all, of these investigations), it saves the time of the investigators, who otherwise would have to read a mountain of unnecessary documents produced by the city to find things relevant to the investigation, and thereby greatly slow the investigation, which as will be made clear below, will vastly delay and make it more expensive to start the police reform.

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The undisputed benefit of Justice Department consent decrees. As Mr. Plymmer himself makes clear, through the implementation of the inevitable Justice Department consent decree which emanates from the *completion* of the pattern and practice investigation, police departments are dramatically reformed. Community relations are improved while crime plummets; expensive law suits against the city for police misconduct also decline dramatically. And, Baltimore as a regular matter (even outside the Freddie Gray episode) is now paying a fortune in the settlement of these kinds of cases. See, e.g., <http://data.baltimoresun.com/news/police-settlements/> (Baltimore "has paid \$5.7 million since 2011 over lawsuits claiming that police officer brazenly beat up alleged suspects.")

Speeding the investigation. However, the normal department "pattern and practice" police investigation as a rule takes at least 18 months to complete and more like two years. Indeed, the vast number of policing problems occurring throughout the country at present is requiring the Justice Department to undertake with a limited budget far more investigations than has heretofore been the case.

Therefore, if nature takes its course, it would not be surprising that reforms resulting from the present Justice Department investigation would not begin for at least three years. The Wilmer Hale firm believes that the instant investigation can be completed within months.

Baltimore and its citizens will pay a devastating and irreparable price through a slow investigation. What will happen if Baltimore passively waits for the conclusion of the investigation? Community/police relations will not improve; indeed, they will likely worsen. Resulting civil actions against the city (and expensive settlements) will increase. That worsening condition may also lead to more disruptive civil protests which have already weakened Baltimore's fragile economy. Reports of businesses leaving Baltimore or changing plans to move to Baltimore because of civil disruptions are legion. See, e.g., <http://www.economywatch.com/news/Baltimore-Unrest-May-Cause-Lasting-Harm-to-Local-Economy.05-05-15.html>. Student applications to Baltimore's renowned undergraduate and graduate programs and its professional schools have already taken a dramatic hit, because of the Freddie Gray disruptions and threatened further protests. See, e.g., <http://www.aacrao.org/resources/resources-detail-view/months-after-riots-in-baltimore--some-colleges-feel-repercussions>).

And, even worse, serious crime is on a dramatic rise. Homicides have reached levels not seen in many years. When operating under an implemented consent decree, it is widely understood that community relations greatly improve and crime greatly decreases. These the implemented decrees give the police the much needed confidence to engage aggressively (but wisely) in law enforcement.

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Wilmer Hale is greatly expediting the Justice Department investigation. It has been the stated intent of the Wilmer Hale lawyers and Ms. Gorelick to bring the Justice Department investigation to a conclusion within a matter of months; and therefore to begin immediately thereafter to implement the resulting remedial consent decree. They appear to be succeeding. And, a word needs to be said here about Ms. Gorelick. She is a lawyer of the first rank. Besides an impressive record in private practice (in the commercial, pro bono, public service arenas), Ms. Gorelick was a legendary deputy attorney general in the Justice Department from 1994 to 1997. She not only has the respect and admiration of the private bar that interacts with the Justice Department, but, even more important in this context, she is well known by and has the respect of the rank and file Justice Department lawyers. It is her stature that will enable the city to bring the pattern and practice investigation to an expedited conclusion, allowing the city to embark quickly in the reform that all agree will save the city from further chaos.

Conclusion. Allowing the work of Wilmer Hale to continue will undoubtedly redound greatly to that city's benefit. Stopping that work at this juncture will only greatly deepen the hurt Baltimore is now experiencing.

Respectfully submitted,

Michael Greenberger, J.D.
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January 5, 2016

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Jamie S. Gorelick

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Dear Council President Young:

It was good to speak with you yesterday. To follow up, as we discussed, I am happy to provide this description of what we have been asked to do for the City and what we are doing, so that you and your fellow Council Members can best evaluate the funding request before you.

As we discussed, in the first instance, my colleagues and I are helping the City and the Baltimore Police Department (BPD) work collaboratively with the Department of Justice (DOJ) to ensure that DOJ gets the information it needs as quickly as possible in a way that is least burdensome for the Police Department. Even when cities are cooperating, disputes, conflicts, misunderstandings and delays arise. Our approach to these types of investigations is to cut through the process, facilitate cooperation, and above all else ensure that DOJ gets what it needs in a timely manner but in a way that does not turn the Police Department upside down. We have had success with this approach and I believe that our involvement to date has been constructive.

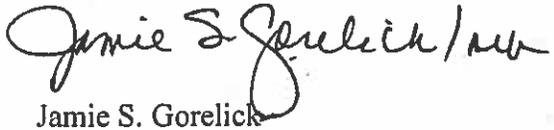
Second, we are helping the BPD to see its policies and practices through the eyes of the Department of Justice, so that the BPD can focus now on changing those that may be troubling to DOJ or to a court and replace them with national best practices. In our experience, even the most highly-motivated police departments need assistance with this process.

In these two efforts, our goals are (a) to assist the City, the BPD and the Department of Justice to move to resolution much more quickly than the two-plus years that such investigations have often taken and (b) to help the BPD put in place -- even before any resolution of the investigation -- the reforms necessary to improve its relationship with the community, to increase its effectiveness and to ground itself in the best practices of constitutional policing.

If we are successful in this approach, not only should the citizens of this City be safer but there should also be less cause for the type of lawsuits against the BPD that strain the City's coffers.

I hope that this brief description of our approach and the work that we have been doing since last spring is helpful. If you or any of your colleagues have any questions, please do not hesitate to call me.

Best,

A handwritten signature in black ink that reads "Jamie S. Gorelick /ms". The signature is written in a cursive style with a large, looping initial "J".

Jamie S. Gorelick

cc: George A. Nilson, City Solicitor

Stephen H. Sachs
5 Roland Mews
Baltimore, Maryland 21210

January 5, 2016

Honorable Bernard C. "Jack" Young
President
Baltimore City Council
100 N. Holliday Street
Room 400 City Hall
Baltimore, Maryland 21202

Dear Mr. Council President:

City Solicitor George Nilson has asked me to present my views to you in anticipation of the scheduled Council Hearing on January 12 relative to the City Law Department's hiring of the WilmerHale law firm. I know that he feels that my service as a former Maryland public lawyer, coupled with my former partnership at WH (then Wilmer, Cutler & Pickering), gives me a unique perspective on the issues now before the Council.

I agree with George. I supervised a highly qualified public law office when I was attorney general, which also gave me a privileged view on the hiring of outside counsel where warranted by special circumstances.

I hope that you find my reflections helpful.

I acknowledge at the outset that I have had a long and friendly association with George, who served as my deputy during most of my term as Maryland's attorney general. However, we have had no formal or official relationship for over thirty years. Likewise, although I was a partner at Wilmer for thirteen years until my retirement in 2000, and now receive a fixed pension, I have no interest whatsoever in the current business of the firm, including, of course, its work for Baltimore.

A central plank in my campaign for attorney general back in 1978 was to avoid the use of expensive private counsel and to bring management of the State's legal affairs in-house. This was a policy I insisted upon, despite occasional suggestions to the contrary by hard-pressed and overworked assistants. I believe that my judgment was correct --- most of the time. But I should have realized that some legal matters created one-time demands beyond the capacity of my regular staff to handle, and, because of their nature and importance, required the involvement and expense of outside lawyers with specialized

experience and skills. Such a matter was our handling of the multitude of claims against the state because of its prolonged failure to remove asbestos from its buildings. My office, despite heroic efforts, was outmanned and outgunned in that asbestos litigation. Our client would have been far better served had we hired outside counsel. Lesson learned. Too late.

To his great credit, my successor, Joe Curran, avoided my mistake. In the litigation against Big Tobacco that engulfed Maryland and many other states in the 1990's, Joe was wise enough to hire private counsel, who helped secure a handsome recovery for the citizens of Maryland.

A word about personnel: From my periodic conversations with George, both immediately before he began his service as Solicitor in 2007 and since, I know he is guided by a single minded desire to provide the City with the very best available and affordable legal representation – especially on matters of transcending importance. In my judgment, which I believe is widely shared by the Baltimore legal community, George is attracting to the service of the City first rate lawyers and is building a first class law firm. But it is stretched to the limit and, understandably, has no familiarity in dealing with the Civil Rights Division of the Department of Justice. Simply put, it needs help. And the Wilmer firm fulfills that need precisely. The Wilmer lawyers leading the legal effort on behalf of the City and the BPD include a distinguished former U.S. Deputy Attorney General, a recent nominee of the President to head the DOJ Civil Rights Division, and a former federal prosecutor for Maryland who recently concluded the multi-year DOJ investigation into police practices in the Commonwealth of Puerto Rico, as well as other highly competent attorneys with experience in handling these investigations and issues. I also understand that these same lawyers are also representing the city of Chicago in its DOJ civil rights investigation. That is a testament to the expertise and skill that they bring to this area. I don't believe there is another law firm that can field a better team.

Wilmer's expertise blends with the nature of the representation that is called for. The task for both City and Wilmer lawyers is NOT to engage in a full throated defense of the historical practices of the BPD. Their primary purpose, as I am sure George and the Wilmer lawyers will confirm, is to ensure that the investigation results in fundamental reform at BPD. This includes facilitating and accelerating DOJ's access to all relevant information it seeks about those practices thus enabling DOJ to complete its important work on an accelerated schedule. In addition, and importantly, a central mission of counsel for the City is to enable the BPD to better understand and appreciate the kinds of improved practices the DOJ is likely to insist upon so that they can be put in place before, rather than after, the completion of the DOJ review. While areas of disagreement are likely to occur, the role of experienced outside

counsel is to minimize the extent of those disagreements and help bring the "pattern and practice" investigation to an early conclusion that results in a better and more effective police department.

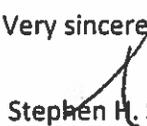
The presence of outside counsel brings another benefit to the City, one of fiscal importance. Wilmer, because of its expertise concerning allegations of police misconduct, will be able to identify areas of potential *civil* liability to persons with whom BPD has interacted before they become costly problems. Such areas may not be of great concern to DOJ; but they should be of unique concern to the City. The early identification of such fault lines would enable the City to foresee and perhaps forestall such civil claims, or at least meet them well prepared in advance with all available legitimate defenses. BPD, it should be remembered, is *by no means* always at fault. In my experience as a litigator such early warnings often result in diminished, if any, financial exposure. In other words, the City would save money, perhaps lots of it.

Only time will tell whether the efforts I have described will be successful in the end. But lawyers in the City Solicitor's position do not have the luxury of waiting until the end to decide how and with whom to staff the City's representation. Getting the best legal team in place has to be done at the very start. I understand that in this instance the Wilmer team was engaged within a week of the City's decision to seek the DOJ investigation, and that a meeting with the leadership team of the Civil Rights Division took place seven days later. How things start in these matters often shapes both the process and often the outcome. He who waits does so at his peril.

This DOJ investigation is as important a legal challenge as any now facing the City. Whether importance is measured by fiscal impact or enduring impact on the social fabric of the community, this one has to rank at the very top. It is precisely matters of this level of importance that should prompt public lawyers to reach outside their own office's ranks.

You have my thanks for your considerations of my views. I hope you will share them with your colleagues on the City Council.

Very sincerely yours,


Stephen H. Sachs

cc: George A. Nilson, City Solicitor