

# The President's Task Force on 21<sup>st</sup> Century Policing



Michael Bell, civilian advocate for Wisconsin ACT 348, along with Police Union leaders and families of people killed by police, shakes Governor Walker's hand upon signing April 23 2014.

Written Testimony Submitted for the Record by

Michael M. Bell,

Lt. Colonel USAF, retired

Father of Michael E. Bell, shot and killed by Kenosha WI Police, Nov 9 2004

February 23, 2015

Serving my country in what is ranked as the 3<sup>rd</sup> most dangerous job in the nation,<sup>i</sup> that of a pilot, I flew air operations in Iraq, Bosnia-Kosovo, and Afghanistan. In 2004, my 21-year-old unarmed son, was killed by a Kenosha, WI Police officer after a routine traffic stop. In 2014, following a decade of personal anguish, effort, and expense, I led a team that made Wisconsin the nation's first state to mandate external investigation of all police-related deaths. It is from this unique perspective, that of a military officer/pilot, a father of a man questionably killed by police and that of a successful advocate who worked with law enforcement to change status quo, that I provide this document.

### **The Death of Michael E. Bell**

On Nov 9<sup>th</sup> 2004, my oldest son, returning home from a night out with friends, parked a car in front of his own home and a police officer drove up behind him. The officer made accusations without cause. Squad car dash-cam video shows the officer aggressively grabbing Michael, moving him off-camera and ordering a field sobriety test. Michael refuses, stating, "I know my rights," and two officers commence kicking, punching and tasing to arrest. With four officers now on the scene, and while Michael is held from behind in a bear hug, an officer mistakenly believes Michael has his gun and without confirmation, a 2<sup>nd</sup> officer places his gun directly to Michael's head, firing a deadly shot while Michael's mother and sister watch from 10 feet away. There were nine eye witnesses (5 civilian and 4 police).<sup>ii</sup>

Within two days, the Kenosha Police Department (roughly 200 officers serving a population of 100,000) investigated the shooting internally, held a self-created review board and, without full eyewitness statements, crime lab and medical examiner reports, declared the shooting justified.<sup>iii</sup> The officers and their department coalesced around a single version of the shooting (their account was later proven to be patently false by forensic evidence and crime lab reports) and organically decided they had acted appropriately.

The department then submitted its report to the county District Attorney, who ruled two weeks later, that the shooting was justified. In 2010, the city of Kenosha settled a federal civil rights suit, initiated by our family, for \$1.75 million dollars. The settlement agreement allows all files to remain open.

### **Aftermath of the Shooting and Conflict of Interest**

As a senior command pilot familiar with aviation accident investigations, I expected the investigation into my son's death to parallel that of USAF or NTSB Investigations (namely physiological testing of the crewmembers involved, external investigation of the debris site, and independent review of those findings to determine cause). It soon became evident that the core elements<sup>iv</sup> of aviation mishap investigations were not occurring in the death of a civilian at the hands of a police officer.

The Kenosha County District Attorney, who worked daily with local law enforcement, demonstrated his close ties to the police department via numerous newspaper ads<sup>v</sup> he placed, during his election campaign for circuit court judge. These advertisements ran simultaneously while he was reviewing another fatal shooting of a citizen in March of 2005. This shooting was the fourth police shooting by City of Kenosha police officers in 16 months<sup>vi</sup>; all were ruled justified by the police department and District Attorney.<sup>vii</sup> The District Attorney refused to allow inquests in all four deaths.

The only other mechanism for local review of police incidents was the city of Kenosha Police and Fire Commission. This panel was composed of 5 civilians, previously appointed by the mayor, without any experience in the complexities of investigating fatalities. Any decision rendered, especially in favor of my son and against the officers, would have had a direct impact on civil litigation pending against the same city the commission represents.

In an attempt to seek assistance relating to inappropriate investigation and review, I solicited a number of outside agencies and was ignored at all levels. These agencies / offices included the 2005 Wisconsin Office of Governor, the 2005 Office of the Wisconsin Attorney General, the Kenosha Branch of the Federal Bureau of Investigation and the 2005 U.S. Attorney for the Eastern District of Wisconsin. The Governor's office and the US Attorney even failed to acknowledge our written request for assistance. The WI Attorney General stated in a written response that they had no authority in the matter.

### **History of Shootings Ruled Justified**

In an attempt to understand the complexity of the problem, I hired a qualified researcher to conduct a poll of national citizen review boards<sup>viii</sup> and also identify historical data of police-related deaths in our state and across the US.

In Wisconsin, **our research looked at police-caused deaths dating back to 1885, (the year WI State Statute created civilian review) and were unable to find a single UNJUSTIFIED RULING by an inquest jury, a police department or a police and fire commission.**

This impossible record of perfection parallels trends reported in other states.<sup>ix</sup>

Due to the complexity of gathering data from the beginning of the 20<sup>th</sup> century, (UNJUSTIFIED RULINGS may exist; we simply didn't find any) the limits of our budget were quickly exceeded. Research conducted by Milwaukee Journal Sentinel reporter Gina Barton confirmed that during the last 3 decades, all police shootings in Milwaukee County had been ruled justified by an inquest jury in Milwaukee.<sup>x</sup>

Two police shootings, one in 1986<sup>xi</sup> (officer sent to prison) and one in 2005 (originally ruled justified by the department and an inquest jury, officer committed suicide<sup>xii</sup>) were found unjustified by a District Attorney. An additional shooting, originally ruled justified in 1958, was reversed by the District Attorney, after the partner of the officer involved gathered evidence and turned it over to prosecutors 20 years after the event.<sup>xiii</sup>

It is my belief that the only credible, reliable source of state data relating to the number of deaths belongs to the police unions, as they provide legal advice in each member's shooting.

Privately funded independent tracking sources, such as KilledbyPolice.net and FatalEncounters.org, using a national search matrix of media reports about police-related deaths, have demonstrated that approximately three people per day are killed nationally by police officers.<sup>xiv</sup>

### **Extreme Measures for Advocacy and the Death of an Officer**

After the settlement and still unable to uncover the truth regarding my son's death, our family had to apply methods not within the means or courage of most families. In 2012, our family hired investigative consultants to review Michael's death. Based on testimony, forensics and evidence, these investigators theorized that Officer Erich Strausbaugh, who called out that my son "had his gun" (Michael's DNA or fingerprints were not found on any gun or holster) had hooked his holster on exposed control cables connected to the driver's side mirror. These details were not provided by police investigators.<sup>xv</sup>

In addition, our family had to use TV commercials, radio ads, print ads (both statewide and national) and highway billboards to attract attention to the flawed process. It was our intent to demonstrate that self-investigation and self-review were affecting community/law enforcement relationships. Print ads were run in national newspapers USA TODAY and the New York Times, and TV ads were run regionally on NFL and MLB games. During one period, 43 full-sized billboards were leased along major Milwaukee highways. Investigations and advertising were financed by our family, at costs ranging from \$850,000 to \$1,000,000.

Sadly, on Oct. 31 2010, Officer Strausbaugh, the officer who claimed “he (Michael) has my gun,” committed suicide.<sup>xvi</sup> The officer who shot my son remains on the Kenosha force. No officer has ever been charged in the death, and an 1100-page federal complaint relating to the patterns and practice of the department involved, paid for by our family, remains open with the 2015 US Attorney in Eastern Wisconsin.<sup>xvii</sup>

### **Assembly Bill 409**

In late 2012, two sets of important meetings occurred. First, I met with state legislators Garey Bies (R) and Chris Taylor (D). Second, I met with union leaders of the Wisconsin Professional Police Association and the Badger State Sheriff’s association. We discussed a bi-partisan bill that mirrored core elements of aviation mishap investigations. AB 409 was drafted and its core elements were:

- Test officer physiology immediately following the use of deadly force to insure that decisions to use deadly force were not influenced by alcohol, mood-enhancing drugs or affected by steroids.
- Externally collect evidence and conduct an investigation of a citizen’s death by qualified outside investigators.
- Have results of the investigation independently reviewed by a panel of legal professionals (not just law enforcement).

During the legislative process, the original bill was stripped of the 1<sup>st</sup> and 3<sup>rd</sup> elements, while the portion pertaining to external investigation was modified. Following unanimous votes in both the Assembly and Senate, Governor Walker signed AB 409 into law in April of 2014. At this time, legislation is being drafted to secure passage of these previously stripped elements.

### **Recommendations**

Based on the historical, overwhelming success of the aviation industry in reducing fatal accidents,<sup>xviii</sup> it is my strong belief that officer safety, citizen safety and mutual trust can be improved with federal help and state mandates. I hereby submit the following recommendations to this Task Force for consideration.

#### **1. Mandate Data Collection at the Federal Level.**

In aviation investigations, once the cause of an accident is determined by the safety board, that information is distributed throughout the community to reduce the chances of it happening again. Since 1962, the NTSB aviation accident database has stored data on all civil aviation accidents and selected incidents within its jurisdiction. Similar data relating to police officers’ use of deadly force needs to be collected. Legislative and training solutions can only occur if we are confident in, and aware of, the trends.

#### **2. Federally Support and/or Establish a Discreet Safety and Ethics Reporting System.**

In aviation, there is an established system for responsible professionals to disclose information that s/he reasonably believes is evidence of mismanagement leading to a substantial and specific danger to public health and safety. The Aviation Safety Reporting System is a non-punitive program for anonymously reporting unsafe activities. The ASRS program is operated by NASA, which collects and analyzes reports, then forwards findings to the FAA. This ensures no pilot or mechanic is identified by the FAA and subjected to retribution by employers or colleagues. Police need to develop an equivalent system, thus allowing any officer to report on safety and ethics concerns without fear of retribution.

### **3. Federally Support Recording Devices to Capture Data at the Time of Death.**

The early version of the body camera—the dashboard camera—has proved useful in documenting police interactions and factors at the time of an incident, yet officers weren't initially keen on the idea. Many came to accept "dash cams" as beneficial to police operations, and generations of new recruits have accepted them as a standard feature of the job. Like a jetliner's flight data recorder or "Black Box", "body cams" or "gun cams" will improve the recording of data relating to police-involved fatalities. A systemic change dedicated to saving lives will occur, when all collected data and their subsequent review mirror the methods developed by the aviation industry.

### **4. Promote Best Practice Reforms at Statewide Levels, to include:**

#### **A. Support "Clear Frame of Mind" when deadly force is used.**

We have given law enforcement officers the immense power of life and death. Let's make sure that alcohol, pain killers, mood-enhancing drugs or steroids are not a factor in a decision to use deadly force. Just as commercial pilots and DOT-licensed drivers are tested in a mishap, the public needs to be assured that the above factors did not play a role in the use of deadly force. Employment hiring mandates and/or city insurance policy requirements may be a source for this reform.

#### **B. Conduct External Professional Investigations of Police Related Deaths.**

Internal organizational reviews conducted by law enforcement agencies relating to their own use-of-force introduce the natural bias of camaraderie, which naturally leads to flawed conclusions. Aviation learned decades ago that external professional investigations of an aircraft crash were essential. Mishap teams were formed by the USAF, and Go Teams were established by the NTSB. Commercial air carriers and military flight squadrons are not allowed to investigate themselves. Police officers should be held to a similar standard and not be exempt from external investigation, either.

#### **C. Create Regional Critical Incident Review Boards of legal-system professionals (not just law enforcement)**

There is merit in having members of any profession critically review one another's work. Their work entails difficult discretionary decision-making, and only those similarly schooled and practiced in that decision-making can properly judge its exercise by others. ***This is precisely what is wrong with most citizen review boards.*** Police "professionals" need to review "law enforcement" from a distance. Reviewers must be skilled in and knowledgeable about policing, but they must not have an institutional or personal stake (eg., a lost promotion opportunity) in the process. Recently retired police chiefs or sheriffs, criminal justice or law professors, police/academy trainers, former prosecutors or judges provide the right balance between professional familiarity and independence to review incidents of police-related deaths of a civilian. Just as we won't allow an airline company to pick and choose who will be on the NTSB, we shouldn't allow a police department to select who sits on its review panel. A high-ranking elected official, who does not directly oversee the agency being reviewed, must appoint the members of this independent review panel.

#### **D. Hold Officers Responsible for Deviations from Training or Irresponsible Behavior.**

Imagine the uproar, if passengers were killed by poorly trained, drunk or irresponsible pilots, who simply got a new job, after they'd botched the previous one. If you are trained to avoid thunderstorms and fly into one, you are held accountable. Military pilots go before a Flight Evaluation Board, and the Federal Aviation Administration can and, most importantly, *will* suspend a pilot's license, require additional

training or fine the airline company when a pilot is found responsible for an accident. One at-fault accident and your chances of being hired by another national carrier are close to zero.

Officers need to recognize that when people are in emotional crisis, they must be handled in accordance with policy and special training. If the officer kills someone without cause, that officer will be held accountable. For example, Milwaukee Police Chief Edward Flynn demonstrated such accountability by firing an officer, after the officer did not follow specific protocols—taught by his department in the handling of mentally ill citizens—that resulted in a person being shot to death.

### Conclusion

Worldwide, the commercial and military aviation profession operates in hostile environments. Each mountain, thunderstorm, bird, mechanical malfunction or human (whether a passenger or an enemy on the ground) may present a threat to pilots. When threats appear, they happen quickly and are often deadly. Proper pre-knowledge of these hazards can only be learned through the study of past mistakes and must be taught to those entering the profession. The modern aviation culture was shaped by constant refinement.

It is my belief that, due to law enforcement's failure of the six core elements of investigation and review, **a national crisis exists**. In my own son's case, an officer escalated a routine scenario and, during the course of an ensuing struggle, had simply made a "mistake of fact" observation. In error, he called out that an innocent young man had the officer's weapon, causing another officer to take my son's life. The lack of an objective investigation and an independent review created an atmosphere in which an honest mistake was purposely hidden by a system lacking checks and balances, leading to the suicide of an officer. Now two tragedies exist and all families suffer.

Solid, unbiased investigations, scrutinized by independent review, produce conclusions that, when properly dispersed, will shape culture, training and loss of life for years to come. These time-proven practices point the way forward and must be adopted by law enforcement for both the officer and the community.

---

### End Notes

<sup>i</sup> Bureau of Labor Statistics, National Census of Fatal Occupational Injuries Rates. Retrieved from <http://www.bls.gov/news.release/pdf/cfoi.pdf> on February 14, 2015

<sup>ii</sup> Detailed information about this incident can be found in the file of the following case: United States District Court, Eastern District of Wisconsin, Estate of Michael Edward Bell et. al. vs. Officer Erich Strausbaugh, et. al. Civil Action No. 05-C-1176. Many of the documents in this file can be found at <http://michaelbell.info/>

<sup>iii</sup> Hansen, Jessica. Police Shooting Justified. *Kenosha News*. (2004, November 12)

<sup>iv</sup> Bell, Michael. How we can end 'Cop Hunting'. *Politico* (2014, December 22) Retrieved from <http://www.politico.com/magazine/story/2014/12/how-to-stop-cop-hunting-113742.html#.VJo0FyNMCg>

<sup>v</sup> *Kenosha News* print advertisements authorized and paid for by Friends of Bob Jambois (2005 April 1-4)

See Ad next Page

## Twin Lakes chief endorses Jambois

In my 34 years in law enforcement, I have developed a sincere appreciation and respect for individuals that dedicate their lives to our nation's judicial systems, and who uphold the professionalism those systems require. Robert Jambois is one of those individuals. The Kenosha County's District Attorney's office, under the direction of Mr. Jambois, has held those of us in law enforcement to the highest of standards of professionalism and integrity, and yet has worked diligently to prosecute those who are a threat to the safety and security of all residents of Kenosha County.

Because of these factors, I endorse Robert Jambois for the candidate of Kenosha Circuit Court judge.

**Chief Robert O'Hallen  
Twin Lakes Police  
Department**

April 2<sup>nd</sup> 2005



**Bob Jambois**

# justice system experience matters

### MORE EXPERIENCE:

- Certified by prestigious National Board of Trial Advocacy as Criminal Trial Specialist.
- Administers largest law office in Kenosha County since 1989— District Attorney's Office
- Tried hundreds of jury trials—more than 50 since 1996

### KEEPS KENOSHA SAFE:

- Worked with Sen. Joe Andrea to toughen Wisconsin's laws against repeat drunk drivers—dubbed the "Jambois Law"
- Worked with Senator Bob Wirth on the Truth in Sentencing bill.
- Implemented domestic abuse intervention program into Municipal Court to reduce the incidence of domestic abuse.

### SAVES TAXPAYER'S MONEY:

- Established shared special prosecutions with other District Attorney offices. Kenosha County residents saved \$125,000 1st year—spent \$0 since.
- Designed Transitions Team to bring children placed out of home back home sooner. First full year saved Kenosha County taxpayers \$800,000.

For more accomplishments visit:

[www.bobjambois.com](http://www.bobjambois.com)

*"As Judge I will continue to do the best job I can to serve this community by keeping it safe and conserving taxpayer*

*one appearing b*

*spect and will w... very hearing any their great... fair, attentive, and unbiased hearing." Bob Jambois*

April 1<sup>st</sup> -4<sup>th</sup> 2005

### **BOB JAMBOIS ENDORSED BY:**

- AFL-CIO
- UAW Local 72
- Kenosha Professional Police Association
- Dan Wade, Chief of Police, City of Kenosha
- Daniel Kingsley, Chief of Police, Silver Lake
- Robert O'Hallen, Chief of Police, Twin Lakes
- Allen Kehl, Kenosha County Executive

### Opponent:

Part time Somers Municipal Judge (2 less than 40 hours.

- No jury trials
- Non-lawyers o as municipal j
- No criminal, d traffic cases
- Municipal Cou once a month

One of a dozen i occasionally called as Court Commiss half days in 2004, days in 2003 (sen than 40 hours a y erage)

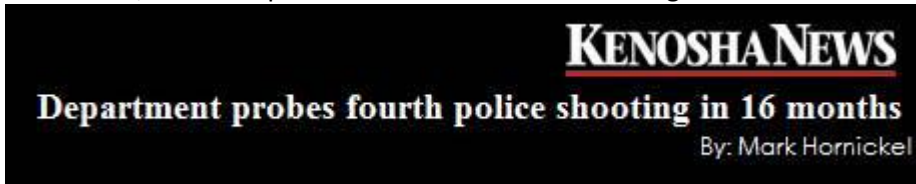
- Part-time Assist ration Counsel
- Tried two jury tr 1996 (criminal de none since then
- Part time solo s

When our is at st experience

**Vote Bob J for Circuit Judge Tuesday**

---

vi Hornickel, Mark. Department Probes 4 Police Shootings in 16 Months. *Kenosha News*. (2005 March 30)



vii Jones, Meg. DA clears Kenosha officer in shooting. *Milwaukee Journal Sentinel*. (2005, April 5)



viii Six cities were selected from a group of 120 cities with civilian review, ombudsman or police monitors. Boise ID, Chandler AZ, Eugene OR, San Diego CA, Cincinnati OH, Las Vegas NV were selected (2013, April) Data can be found at : <https://drive.google.com/folderview?id=0B6SnSBw-2l60SDFWdzllZmRRcE0&usp=sharing>

ix Turkel, Tux. When Police pull the trigger in crisis. *Portland Press Herald* (2012, December 8) Retrieved from: <http://www.pressherald.com/2012/12/08/shoot-maine-misfiring-on-deadly-force/>

Also see

Mower, Lawrence, Maimon Alan & Haynes, Brian. When Las Vegas Police Shoot, and Kill. Part 1 Always Justified. *Las Vegas Review Journal*. (2011, November 27) Retrieved from: <http://www.reviewjournal.com/news/deadly-force>

x Barton, Gina. In 25 years, No Charges recommended in Milwaukee Inquests. *Milwaukee Journal Sentinel*. (2012, October 6) Retrieved from <http://www.jsonline.com/watchdog/watchdogreports/25-years-no-charges-recommended-in-milwaukee-inquests-d0742c8-172994381.html>

xi Rex, Peter. Cop charged in killing of Drug Suspect. *Chicago Tribune* (1986, September 16) [http://articles.chicagotribune.com/1986-09-18/news/8603090860\\_1\\_shanks-revolver-and-shot-police-officer](http://articles.chicagotribune.com/1986-09-18/news/8603090860_1_shanks-revolver-and-shot-police-officer)

xii <http://caselaw.findlaw.com/us-7th-circuit/1595766.html>

xiii Barton, Gina. Daniel Bell police death case resonates 50 years later. *Milwaukee Journal Sentinel* (2013, May 27) Retrieved from <http://www.jsonline.com/news/milwaukee/daniel-bell-police-death-case-still-resonates-50-years-later-b9918714z1-209115771.html>

xiv At least 131 people have been killed by U.S. police since January 1, 2015. At least 1,102 were killed in 2014. <http://killedbypolice.net/>

xv Beckman, Russell. Affidavit of Russell Beckman Regarding the Circumstances Surrounding the Possession of the Hand Gun of Officer Erich Strausbaugh During the Encounter with Michael E. Bell. (2012, November 20) This affidavit was filed with the FBI and the U.S. Attorney for the Eastern District of Wisconsin on November 27, 2012. A copy of this affidavit can be retrieved from <http://michaelbell.info/Evidence.html>

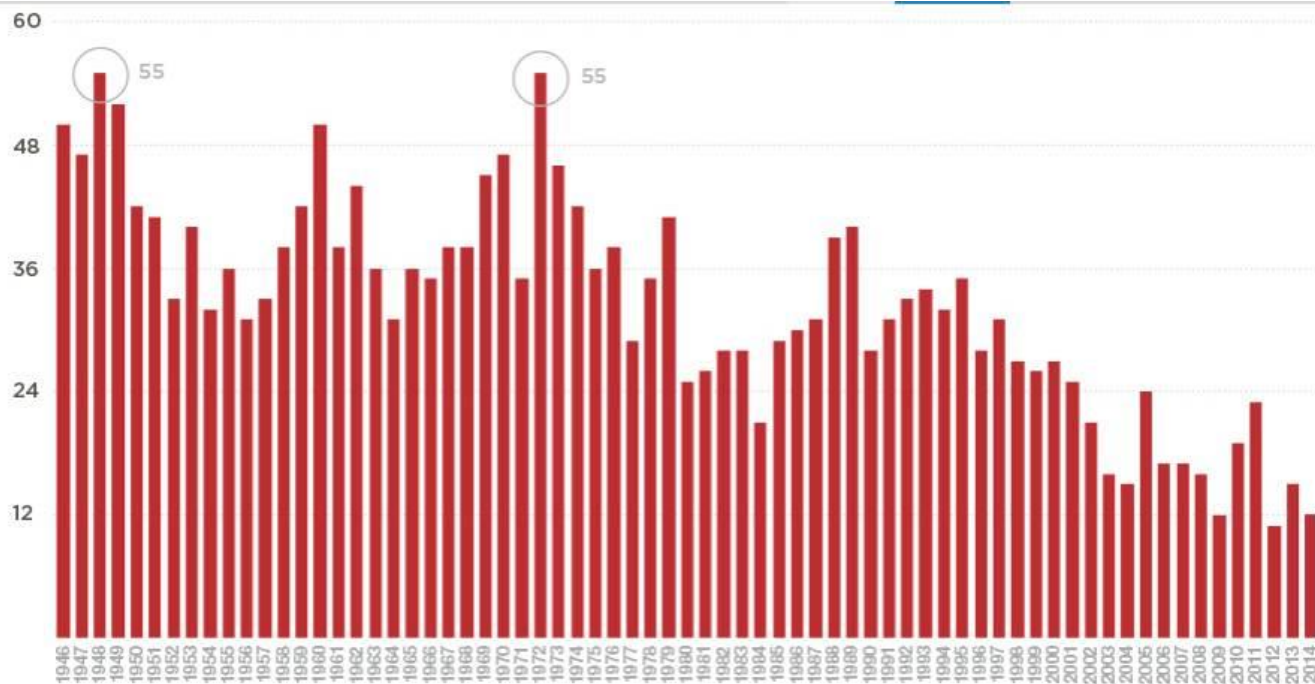


<sup>xvi</sup> Barton, Gina. Officer in shooting commits suicide. *Milwaukee Journal Sentinel*. (2010, November 1) Retrieved from: <http://www.jsonline.com/news/wisconsin/106478678.html>

<sup>xvii</sup> I personally met with the United States Attorney for the Eastern District of Wisconsin, James Santelle on November 4<sup>th</sup> 2014. He confirmed this information.

<sup>xviii</sup> <http://www.cnn.com/interactive/2014/07/travel/aviation-data/>

### Global Commercial Crashes since 1946



SOURCE: Aviation Safety Network

Contact Information:

Michael M. Bell

PO Box 42

Kenosha WI 53141

Office (262) 553- 2194