

Cover

Volume 14, Issue 42
Published February 7th, 2007

Within the Bounds of Law

A Teenager Is Killed, and a By-the-book Investigation Leaves Many Unsatisfied
By Charu Gupta



The knife - Blood spatter indicated that it was held vertically.

Second in a two-part series. If you haven't yet, you should [read part one](#).

Nearly a year after her grandson Brandon McCloud had been shot to death by police in his bedroom, Dorothy Chappell awaited the decision of the woman appointed to investigate the incident. Dorothy had met special prosecutor Ellen Connally once before, and had found her genuinely interested in what Dorothy had to say. But sitting in the city prosecutor's office on June 7, 2006, Dorothy started to get the feeling that this meeting would be different. Connally had scheduled sessions with the families of four other men gunned down by police over 2004 and 2005. Dorothy watched as those who had gone in before her came out sobbing.

When Dorothy, her son Melvin and their attorneys, Terry Gilbert, Gordon Friedman and Kenneth Bossin, were finally called to the conference room, they found Connally waiting for them. Connally seemed uncomfortable and avoided looking at Dorothy. After a few cursory pleasantries, she began reading from a written statement. One line in particular of the four-paragraph statement sticks in Dorothy's mind: "While I believe the course of

conduct undertaken by the officers on the night in question was inappropriate, it was unfortunately within the bounds of law."

When Connally finished, a stunned Dorothy said, "I don't believe you."

Connally put on her sunglasses, got up from the table and left. The meeting was over.

OF THE FIVE SHOOTINGS under Connally's jurisdiction, all of black males by Cleveland police, Brandon McCloud's case stood out. On September 1, 2005, the 15-year-old robbery suspect was shot 10 times in his bedroom by detectives who'd arrived before dawn to carry out a search warrant, barely two months before Cleveland's mayoral election.

Race was already an issue in the campaign, in which white incumbent Jane Campbell faced black challenger Frank Jackson. Brandon's shooting ensured that race, and police-community relations, would be center stage come November 8. Helping to express the outrage of Brandon's family were local black leaders like Art McKoy of Black on Black Crime Inc., George Forbes of the Cleveland NAACP, then-State Rep. Shirley Smith (now a state senator), and civil rights attorney Stanley Tolliver.

Campbell herself reportedly told detectives Philip Habeeb and John Kraynik, the men who shot Brandon, that the investigation into the teen's shooting would be "delayed substantially as a result of political concerns." (Habeeb and Kraynik made this claim in a related employment discrimination case filed in federal court. The city of Cleveland denied the allegation.)

Doubts and anger lingered after Campbell lost and Jackson took office. Jackson's new law director, former municipal court judge Robert Triozzi, fast-tracked the investigations of high-profile police shootings (which in some cases had taken years). When the city's chief prosecutor resigned, Triozzi tapped another former judge, Ellen Connally, as a special prosecutor to oversee five cases, including Brandon McCloud's.

Connally's credentials were solid, her reputation stellar. A municipal court judge for 24 years until retiring in 2004, she had presided over criminal misdemeanor cases like assault, theft, domestic violence and traffic violations. This gave her experience in criminal law and procedure, search and seizure laws, and police practices. Those who knew her praised her intelligence, integrity, gutsiness and fairness.

"She's a highly respected judge who comes without baggage," says Lewis Katz, an expert on criminal law and the Ohio criminal code at Case Western Reserve University's School of Law.

Connally was just as impressive outside the courtroom. In 1997, she earned a master's degree in American history from Cleveland State University. She was a 25-year breast cancer survivor, and the single, adoptive parent of a son who, as of 2004, was serving in the U.S. Marine Corps, and had been deployed to Iraq.

Connally had been outspoken on issues of injustice and racism. In 1995, when Connally learned that a water company was packaging products to look like wine bottles, she wrote a letter to the CEO. She complained about the bottle being sold in primarily minority neighborhoods, and how its design encouraged "kids to mimic the worst element of our society."

In 2000, Connally sided with a Cuyahoga County Common Pleas judge's accusations of bias in the Cleveland Bar Association's judicial rankings. "They're like gods who live in Rocky River and don't know anything about Cleveland," Connally told the Plain Dealer, referring to the bar's judicial screening committee, and added that this was the reason she'd opted not to seek re-election. "We detect a sense of elitism as they look down their noses at us [black lawyers and judges]."

In 2004, more than 450 people attended her retirement party. That same year, she ran for Ohio Supreme Court Chief Justice but lost to a better-funded opponent. Connally was enrolled in a Ph.D. program at the University of Akron when Triozzi called.

AFTER ISSUING HER RULING on June 7, Connally was open with the Plain Dealer's Regina Brett. But she has since stopped talking. She declined to be interviewed for this article, referring questions to the man who picked her, Law Director Triozzi — who also declined requests for an interview.

Public records requests filed with the offices of Triozzi and Mayor Jackson — for phone and interview logs, notes and memoranda, status reports, budgets and those assigned to assist Connally — also were refused, on the highly questionable (though creative) grounds of "attorney-client privilege." City officials did not elaborate, even to explain who the client supposedly is.

As a result, little is known about how Connally conducted her review. What the Free Times was able to glean of the process comes from the few pieces of correspondence between Connally and city officials that were released by the city, interviews with Brandon's family members, the detectives' attorneys and the coroner's office, and reports Connally received from the police department's Use of Deadly Force (UDF) shooting investigation team and the coroner.

Connally began her work on May 1, 2006. At her request, the city's chief criminal trial counsel, Edward T. Buelow, wrote her a memo titled, "Guide for Reviewing Police Shootings." In this document, Buelow first gave a timeline for police investigations and the role of the chief prosecutor.

He then outlined several U.S. Supreme Court cases from the mid-'80s to early '90s as reference points. One citation stated that use of deadly force itself wasn't enough to charge an officer with criminal behavior. One also had to find that, under the circumstances, the officer acted unjustifiably.

A second case discussed "reasonableness" and "on the scene" factors. Without evidence of premeditated intent or motives to kill, the only relevant facts and circumstances were those that confronted the officers at the time of the shooting. A hindsight analysis of "the officers should have" was not legally viable.

Then Buelow moved on to a case in which "the suspect was running toward the officers, gun in hand, and ignored their commands to stop." The detectives who shot Brandon McCloud had said he came at them with a knife.

Connally was supplied with reports on the McCloud shooting by the police UDF team — made up of detectives from the internal affairs, homicide, crime scene and records units — and the Cuyahoga County Coroner's office. Both began investigating the incident the same day, September 1, 2005.

Brandon's grandmother and uncle, who were home at the time of the shooting, were interviewed by UDF investigators hours after the shooting. Detectives Habeeb and Kraynik came with union reps and attorneys to make their statements almost a week later. They were interviewed by investigators from the UDF team and coroner's office. (In accordance with the union contract, police officers don't give statements or any tests immediately after an incident.)

At the request of Terry Gilbert, the attorney for Brandon's family, County Coroner Elizabeth Balraj hired blood spatter expert Toby Wolson, a forensic biologist from Florida.

Wolson completed his analysis on October 1, 2005. He concluded that the blood on the walls and carpet was consistent with where Brandon's body was found (on the floor in the closet); that blood on the mattress meant Brandon was above the bed when he was shot; that no blood patterns pointed to him lying in bed when he was shot; and that blood flow patterns on the knife blade indicated that it was "vertical" or "perpendicular to the floor" when blood fell onto it.

By mid-December, the police and coroner had finished their investigations and submitted their findings to the chief of police.

EARLY IN HER INVESTIGATION, Connally sat down with the families of the five men whose deaths she was reviewing. Her meeting with Brandon's relatives — grandmother Dorothy and uncle Melvin, with whom he'd lived at the time, as well as his father and an aunt — occurred in early May. Connally was accompanied by an assistant city prosecutor.



Reenactment - Officials show where the detectives stood.

Attorney Gilbert was at the meeting and called it a feel-good measure on Connally's part. Connally asked few questions, but seemed to listen closely.

"We pointed out to her what was important to look at in the forensic evidence," recalls Gilbert. "We raised all the questions — [that] there was no announcement, no notice [of the detectives' search]. That Brandon may not have been hiding in the closet with a knife."

Gilbert says Connally stressed that she "had a very limited role."

"She wanted to make sure we understood that her role would be to determine if any state of Ohio criminal law was in violation," Gilbert says. (Former Chief Prosecutor Jose Feliciano confirms that as a special city prosecutor, Connally's job would not have included determining if any civil rights violations had taken place, or if any administrative police procedures had been abused. The city prosecutor also does not subpoena records or witnesses, or consult outside experts. That is done by the UDF team and county coroner.)

Nor was it Connally's responsibility to consider the potential fallout of her ruling in the McCloud case, which remained an open wound for many, particularly in the black community. Unfortunately, no one else seems to have considered that either.

TWO MONTHS AFTER Brandon's shooting, the Cleveland NAACP worked with the county coroner's office to create a replica of his bedroom. In the basement of the coroner's building, the room was exactly to scale, with a mattress in the same position — preventing the door from opening fully — and a life-size mannequin representing Brandon, affixed with cardboard arrows indicating bullet trajectories.

The purpose of the room was to reenact the incident. During November 2005, at least five separate presentations were held, one each for Brandon's family, the Cleveland NAACP and other community leaders, the Cleveland police and UDF team, then-Chief City Prosecutor Anthony Jordan, and local news outlets. City council members and religious leaders also attended some of these stagings, at which a coroner's official read Habeeb and Kraynik's statements about what happened in Brandon's room, while a second acted it out.

Cleveland NAACP Executive Director Stanley Miller attended several of the reenactments, and came away with more questions than answers.

"I am not a forensic expert, I'm not an attorney, I'm not a police officer," Miller says, "but I do understand a little bit of physics and science, and what I understood was that some things are possible, and some things aren't. There appeared to be some huge inconsistencies between what the officers did, and in fact what they were capable of doing based on the layout of the room."

"I saw the coroner's reenactment three times," says civil rights attorney Stanley Tolliver, "and I have suspicions."

Miller and Tolliver weren't the only influential voices raising concerns. Two weeks before the UDF report on the McCloud case was released, Abdul Rashid and Abdul Qawi, brothers and members of the grassroots group Black on Black Crime, had gone over the forensic evidence and come up with their own theory. With the help of Brandon's uncle, the brothers staged reenactments in Brandon's room.

They questioned some of the bullet wounds (including one in Brandon's groin that they thought had traveled upward, and one in his head that appeared to have traveled down), the blood splatter (it seemed to make sense only if Brandon had been kneeling or was already down) and the positions of shoes in the closet (they should have been disturbed if Brandon jumped out).

Rashid and Qawi argued confidently, despite their lack of forensic training (they are painting contractors), that the coroner had confused entry and exit wounds in the face and neck.

The two men tried to get into Connally's May meeting with Brandon's family, but were rebuffed. (Gilbert says he understands why. It was just for the family, he says, and not a public forum.)

Rashid and Qawi were present at another family's meeting with Connally. "I asked her about the gunshot wound [in the right cheek], and she said she knew about that," Rashid says. "But I should have told her that we're contesting that gunshot. The coroner is saying it's an entry wound, and we're saying it's an exit wound. I never was able to expound on any details. She acted very aware, like she knew it all, and seemed very involved. She made me think, don't worry about it. Whatever it is, [she was] going to get to the bottom of it. So I didn't go any further into the details."

ON JUNE 7, Connally announced her rulings: No charges would be brought against any of the police officers involved in the five fatal shootings.

Almost immediately Black on Black organized a public protest outside its East Cleveland office. A group of 30 gathered around a sign that read, "The black community should be

outraged that Cleveland police get away with murder." Shirts and pants were stuffed with newspapers to look like dead bodies.

A week later, Connally told the Plain Dealer's Brett that the five cases, one of them more than two years old, had been thoroughly investigated by multiple parties. Community activists needed to stop playing CSI, and NAACP President George Forbes had to stop demanding that investigations continue.

Connally, and newly elected Mayor Frank Jackson, wanted the city to move on.

Ten days after Connally's rulings were made public, Jackson took the podium at a community meeting at Antioch Baptist Church and tried to allay concerns. "I will not decry a lady who followed my instructions to her," Jackson said. Connally's decisions were legally sound, if not politically correct, and Jackson stood by her.

But for many gathered there that night, this was not enough.

How do you assuage our fears in the police department by putting white men at the top? some asked, referring to Jackson's choices for law director and director of public safety.

"If we want to go by image, then you've got the wrong person," Jackson replied.

Why are police investigating police? one man asked about homicide detectives being on the UDF investigation team.

"Every policeman is not someone who wants to cover something up," Jackson said, prompting snickers from the audience.

What about psychological testing of police officers?

"You're right about that," Jackson conceded, and said it would be brought up during the next union contract negotiations.

What we want to know today is what does it take to charge a policeman with murder? This question was met with approving shouts and applause.

The meeting made it clear that doubts — which went beyond Connally's investigation to police conduct in general — were very real and likely to linger. Had a retired municipal court judge been the right choice? Did the city give her enough resources to conduct her review? What was "inappropriate Š but within the bounds of the law" supposed to mean to those already deeply suspicious of the Cleveland police?



TRAJECTORIES The detectives shot Brandon a total of 10 times.

And this was before everyone learned of the late-night cell phone call.

AFTER NEARLY 150 HOURS of painstaking research, Connally had missed something: the recording of a private call made by a dispatcher to Detective Habeeb's cell phone one hour before he and Kraynik entered Brandon's house.

Early in the four-minute conversation, Habeeb told the dispatcher that he and his partner were preparing to arrest the "little bastard" who had robbed "15 pizza guys," and had previously gotten off with "fuckin' probation." "Hooey," was the dispatcher's response. As the call drew to a close, the dispatcher jokingly advised, "JustŠ shoot to kill."

This recording became public on December 1, five months after Connally's ruling, and raised a new question: What else did she miss?

In an interview with Plain Dealer columnist Regina Brett five days after the revelation, Connally insisted she had never received the recording. But the Cleveland Police Department balked. Though police brass said they hadn't heard the call in question either, all dispatches pertaining to Brandon McCloud, including the final "shots fired" radio broadcast, which Connally certainly heard, were on the same CD.

In a later interview with attorney and radio host Tolliver, Connally said only that she hadn't listened to the controversial recording. She didn't clarify whether she'd received it.

Though police labeled the conversation "banter," it also suddenly opened the possibility of premeditation. Case criminal law professor Lewis Katz, also a Connally fan, said the tidbit is one more piece of the puzzle in trying to figure out the detectives' frame of mind at the time of the shooting. While it may not resolve the question of what happened in the moment they fired their guns, a "JustŠ shoot to kill" comment could help "set up that moment," Katz said.

At a news conference organized by Black on Black, Dorothy Chappell said the tape was purposely hidden.

Art McKoy of Black on Black told the Free Times, "It has become clear that [Connally's] investigation was lacking and not thorough. If she missed that big piece of evidence, it's quite obvious she missed many more important and little pieces."

"Based on what has come out," said the NAACP's Stanley Miller, "and what I saw at the coroner's office, somehow I don't think she was given all the information, or she reviewed all the available information."

The matter will now go to a county grand jury, which will determine if the officers are responsible for any criminal misconduct.

CONNALLY'S LAST OFFICIAL ACT as special prosecutor had been to meet with the families of the men whose deaths she'd investigated, in June 2006. Attorney Gilbert, who accompanied Brandon's grandmother and uncle, witnessed the painfully awkward scene.

"She's a friend of mine," Gilbert says of Connally. "I've known her for years. She was at my wedding. I love her. On a personal level, I have nothing but great feelings for her." Typically, he says, she's "bubbly," "friendly," someone who "interacts with people."

On June 7, however, Connally hardly made eye contact with Brandon's relatives. And she didn't take any questions.

"That's not her," Gilbert says. "I think she was just a bit emotional to have to deal with these people who had lost their loved one. She didn't want to be subject to having to answer questions, and being challenged at that point."

"This was the ruling everyone was looking for. To read a one-page statement that was general and very vague, and not explain how she came to these conclusions? To answer these questions, as tough as they are, somebody has to take the responsibility."

But should Connally have been that person?

Typically, city prosecutors make a ruling and then simply close the case file, according to some with experience in the role. It is not part of the review process to say which evidence was persuasive, or in answer to lay community persons' concerns.

"It would be unusual for prosecutors to issue a detailed report on why they're making their decision," says Subodh Chandra, who served for two years as law director under former Mayor Jane Campbell. "They have to give a thumbs up or thumbs down."

During his tenure, Chandra started a custom that allowed prosecutors to process the final ruling with victims' families, "and answer any questions they had, even if took three or four hours," Chandra says.

This no longer seems to happen. So the job of explaining the final decision to citizens ultimately falls upon the mayor.

On June 10, Connally wrote a memo to Law Director Triozzi and Blain Griffin, the director of the Community Relations Board, which is responsible for police-community relations.

Connally chastised the CRB's handling of the family meetings. The process needed to be "immediately reassessed," Connally wrote. The CRB staff, though well-intentioned, had "labels to identify the caste [sic] of characters" and had developed "interpersonal relationships" between "CRB staff and the various actors" that left Connally "unsettled about the role of the CRB in these cases." The way her final rulings had been handled with family, Connally said, "was counterproductive for relations between the public and the police while also demeaning for the participants."

The Free Times asked the Jackson administration about the CRB's work, Connally's questions, and what has been done to address the concerns raised by Triozzi's handpicked special prosecutor. Jackson's communications staff promised answers, but never provided them.

The only clue to what Connally was referring to comes in Brett's June 14 Plain Dealer column. In it, Connally wondered why CRB staff were attending the funerals of men who threatened city employees. Connally also had misgivings about the CRB going "overboard to reduce tension that doesn't exist, which ends up creating victims where none exist."

And while suspects' families were invited to the Justice Center to receive Connally's rulings in person, the detectives only got a phone call.

DOROTHY CHAPPELL WANTS to leave the house on Jeffries Avenue where Brandon died. But she can't afford to sell, or buy another place.

"There's no place in this house I can go which doesn't remind me of Brandon. No place. This house is just full of Brandon's spirit. There's nowhere I can go. I'm not saying I can free my mind, but if I'm around people, you know, then I won't be talking about Brandon, I be talking about other things. Give my mind a break. But when I be alone, my mind is constantly on, Why did it happen? He doesn't have any business being buried in a cemetery, not at 15."

So she keeps thinking. She doesn't accept Connally's ruling on her grandson's death. And in no way is Connally the last word on how Brandon died. There's the current grand jury investigation. Dorothy has filed a federal civil rights lawsuit against the city alleging improper execution of the search warrant, ineffective training of officers and excessive use of force. The two detectives are also suing the city for banishing them to the police gym for nine months. The FBI is conducting its own investigation. Once these cases are

all settled, Cleveland's Police Review Board will get the same files Connally did. Finally, police brass will determine whether any administrative protocols were flouted.



Glock 9mm - Carried by both Habeeb and Kraynik.

So Dorothy has plenty of opportunity to weave through her head the various scenarios of what might have happened that night.

"I believe [the police] planted that knife," she says. "I wasn't up there, but I have my belief."

SHOW OF FORCE

Police reforms before and after Brandon McCloud's death

2001

Police shootings in Cleveland begin to rise. Between 2002 and 2004, police shoot 19 suspects, killing 10. Several cases remain under investigation for years. The U.S. Department of Justice begins a three-year investigation into excessive force by Cleveland police, the police department's use of deadly force policies, and its accountability systems to address misconduct, like review of civilian complaints.

July 2002

The DOJ finds that Cleveland officers need more firearms training and stricter guidelines for using deadly force, and that the department must more thoroughly investigate shootings.

February 2004

Cleveland makes a deal with DOJ and avoids court. The DOJ monitors the police department for one year while it implements these reforms: prohibiting officers from firing on moving vehicles without threat of imminent danger; enhancing training to include true-to-life street scenarios; establishing a Use of Deadly Force review team drawn from a cross-section of police departments, with specialized training, specific standards and investigative procedures; and investigating all police shootings, whether fatal or not.

May 2004

Apparently in response to questions about her autonomy from police and prosecutors, County Coroner Elizabeth Balraj assigns two investigators to review police-involved deaths, independently of police investigations.

March 2005

Cleveland adopts a new Use of Deadly Force policy, with the DOJ reforms.

April 2005

The SWAT Team gets 18 stun guns.

September 1, 2005

Brandon McCloud is shot and killed by police.

October 9, 2005

Mayor Jane Campbell introduces new search warrant protocols.

Police must get supervisor approval, and prosecutors must review all requests before officers go to a judge. If a juvenile's home is to be searched, police must first consult a parent or guardian. Also, Campbell and Police Chief Michael McGrath bolster police training with more emphasis on crisis intervention, diversity and racial sensitivity, and use of deadly force practices. Another 36 stun guns are to be deployed, and McGrath promises to buy even more, for a total of 160 by 2006. (The CPD has about 1,600 officers.)

December 19, 2005

McGrath adds stun gun protocols to the city's Use of Deadly Force policy. At this point, seven more fatal police shootings have occurred since February 2004.

January 4, 2006

New Mayor Frank Jackson announces a revised Use of Deadly Force policy with two major changes: "Officers will be required to assume and maintain control in the use of force against a subject when it is clearly excessive," and, "Officers shall not unreasonably place themselves in a position where a threat of imminent danger of death or serious physical injury is created when attempting to stop a motor vehicle or apprehend a felony suspect." McGrath develops a new training curriculum that focuses on police tactics and safety "to minimize the times officers have to resort to deadly force."

February 16, 2006

Jackson reiterates the procedure for police shooting investigations. The city prosecutor has 90 days to make a ruling. After all civil and criminal proceedings finish, the Police Review Board has the authority to subpoena witnesses and documents for its investigation. The PRB can then submit recommendations to the chief of police and director of public safety.

cover@freetimes.com

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