

BOCHETTO & LENTZ, P.C.
By: George Bochetto, Esquire
Attorney I.D. 27783
1524 Locust Street
Philadelphia, PA 19102
(215) 735-3900 (phone)
(215) 735-2455 (fax)
gbochetto@bochettoandlentz.com

Attorney for Friends of Marconi Plaza

IN RE: REQUEST FOR PERMIT	:	
TO REMOVE COLUMBUS	:	Phila. Historical Commission
STATUE FROM MARCONI PLAZA	:	
	:	
	:	

**MEMORANDUM OF LAW CONCERNING
RECUSAL OF HISTORICAL COMMISSION**

Friends of Marconi Plaza, by and through undersigned counsel, George Bochetto, Esquire, hereby submits the following Memorandum of Law Concerning Recusal of Historical Commission ("Commission"):

MATTER BEFORE THE COMMISSION

Currently pending before the Commission is an application to remove the statute of Christopher Columbus from Marconi Plaza. This request for recusal of the entire Commission arises from the Commission's counsel – members of the City Solicitor's Office -- simultaneously representing the Commission and the Mayor's Office, which is the applicant seeking the Statue's removal.

QUESTION PRESENTED FOR REVIEW

Whether the City Solicitor, by simultaneously representing the Historical Commission while also representing the Mayor's Office in the same matter, caused a due process violation requiring the Commission to be recused?

ARGUMENT

I. The City Solicitor's Dual Adjudicatory and Prosecutorial Roles Was *Per Se* Unconstitutional and Requires Recusal.

“An impartial and unbiased adjudicator is a fundamental part of due process.” *Furey v. Temple University*, 884 F.Supp.2d 223, 255 (E.D.Pa. 2012)(citations omitted). The federal courts in this Circuit, when deciding issues involving disciplinary proceedings at state universities, have made it clear “due process requires a ‘neutral and detached judge in the first instance.’” *Doe v. Pennsylvania State Univ.*, --- F.Supp.3d ---, No. 17-CV-01315, 2017 WL 3581672, at *8 (M.D. Pa. Aug. 18, 2017.)

In this regard, it is well settled that where one person takes on comingled functions involving the adjudication and prosecution, there is a *per se* due process violation. *See, e.g., Horn v. Township of Hilltown*, 337 A.2d 858, 860 (Pa. 1975); *Newtown Township Board of Supervisors v. Greater Media Radio Co.*, 587 A.2d 841 (Pa. Cmwlth. 1991).

In *Horn*, the Pennsylvania Supreme Court held that it was improper for the same individual to serve as a zoning board's solicitor and to appear before that same zoning board as the municipality's solicitor to oppose an application for a variance. The Supreme Court found such a procedure to constitute a denial of due process, even though there had been no showing of actual prejudice to the applicant resulting from the solicitor's dual role. The Court explained “a governmental body charged with certain decision-making functions ... must avoid the appearance of possible prejudice, be it from its members or from those who advise it or represent parties before it.” *Id.* at 860. In this regard, the Supreme Court directly held that:

In the instant case, the *same solicitor represented both the zoning hearing board and the township*, which was opposing appellants' application for a zoning variance. While no prejudice has been shown by this conflict of interest, *it is our opinion that such a*

procedure is susceptible to prejudice and, therefore, must be prohibited.

Id. (Emphasis added.)

Similarly, in *Newtown Township Board of Supervisors v. Greater Media Radio Co.*, 587 A.2d 841 (Pa. Cmwlth. 1991), the Commonwealth Court held that the board of supervisors failed to keep its role as an unbiased tribunal where the township's solicitor served as a legal adviser to the board while also representing the township at the hearing in opposition to a conditional use application. It “create[d] an appearance of impropriety for the township's solicitor to serve as legal advisor to the Board in ruling on Appellee's conditional use application, and to also act in an adversarial capacity in opposition to the conditional use application.” *Newtown*, 587 A.2d at 843. In *Newton*, the Commonwealth Court found the “appropriate” relief was to “remand the matter to the Board, with an order to conduct new public hearings in a manner which is in accordance with its role as an impartial decision-making tribunal.” *Id.* at 844.

Here, just like the solicitor in *Horn* and the attorney for the board of supervisors in *Newton*, the City Solicitor is acting in a dual role which is constitutionally forbidden. On one hand, the City Solicitor’s Office clearly represents the Mayor – the prosecuting entity requesting the permit to remove the Columbus Statue -- while on the other Solicitor’s Office represents the Historic Commission and the Art Commission, which are the adjudicatory entities determining whether a permit to remove the Statue will be issued. This dual representation is a *per se* due process violation.

It cannot be argued that it was permissible for the Solicitor’s Office to advise the Commissions because others within the Solicitor’s Office took on the role of advising the Mayor’s Office in the pursuit of the permit to remove the Statue. This is not permissible because there were not strict walls of division as mandated by *Horn* and the Constitution. For example,

the same City Solicitor responded to Subpoenas served on the Historic Commission, the Art Commission and the City Department of Parks and Recreation, demonstrating that the same member of the Solicitor's Office represent both the Commissions and the City, thereby engaging in impermissible, commingled representation.¹

Moreover, when undersigned counsel sent a letter to the different members of the City Solicitor's Office who purport to represent the Art Commission, the Historic Commission, and the Mayor, inquiring about what type of "walls of division" were erected, only one member of the Solicitor's Office responded on behalf of all of them, claiming it was permissible for the Solicitor's Office to represent all of these entities and to do so without a wall of separation.²

The Solicitor's Office, apparently, have failed to maintain any walls of division between representing the Commissions and the Mayor's Office, thereby engaging in the exact type of "commingling" which the Supreme Court in *Horn* prohibited. For example, in *Stone and Edwards Ins. Agency, Inc. v. Dept. of Insurance*, 636 A.2d 293 (Pa. Cmwlth. 1994), the Commonwealth Court dealt with a similar argument about "separation" of functions within the same administrative agency. In *Stone*, the court noted that that "[i]mpermissible commingling exists when the prosecutorial and administrative functions are ***not adequately separated***. Due process rights not only can be violated when there is actual commingling, but even when an appearance that commingling of functions ***may*** have taken place within the agency exists." *Stone*. 636 A.2d at 297 (emphasis added).

¹ See Bochetto C1 (serving subpoena on Art Commission); Bochetto C2 (serving subpoena on Historic Commission), and Bochetto C4 (Solicitor letter responding to all subpoenas).

² Counsel's July 15, 2020 letter is attached as Exhibit A, while the Solicitor's July 17, 2020 response letter is attached as Exhibit B.

While the court in *Stone* noted that a single administrative agency may exercise the prosecutorial and adjudicative functions if “walls of division” are constructed, without such separation there would be a due process violation. *Id.* (Sub-entities of administrative agencies can perform prosecutorial and adjudicative functions without commingling the two, as long as walls of division are constructed to eliminate the threat or appearance of bias.)

Here, there clearly was not “adequate separation” between the Solicitor’s role in advising the Commissions and the prosecution role the Mayor is playing here because the Solicitor is admittedly serving in both capacities. Any “walls of division” were eviscerated when the Solicitor’s Office decided to directly engage in representations of the Commissions while also providing representation for the Mayor’s Office which is seeking the sought after permit to remove the Statue. As such, the Solicitor’s dual, conflict ridden role here has infected the entire process, rendering it *per se* unconstitutional.

CONCLUSION

Based on the foregoing, the Friends of Marconi Plaza requests the Historical Commission recuse itself from any decision making in this proceeding.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

/s/ George Bochetto

Dated: July 21, 2020

By:

George Bochetto, Esquire



George Bochetto
Attorney at Law
gbochetto@bochettoandlentz.com

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PRACTICE DEDICATED
TO LITIGATION AND
NEGOTIATION MATTERS

July 15, 2020

Via Email: leonard.reuter@phila.gov
Andrew.richman@phila.gov

Leonard Reuter, Esq.
Andrew Richman, Esq.

Via Email: Claudia.becker@phila.gov
Claudia M. Becker, Esq.

Via Email: marcel.pratt@phila.gov
Danielle.Walsh@phila.gov
Marcel Pratt, City Solicitor
Danielle Walsh, Esq.

Re: Joseph Mirarchi and Friends of Marconi Plaza v. City of Philadelphia, et al.
Docket No.: June Term, 2020; No. 000741

Dear Counsel:

I am writing concerning the above-referenced matter inquiring about each of your respective roles as Counsel. I understand that Messrs. Reuter and Richman represent the Historical Commission, Ms. Becker represents the Art Commission, and Mr. Pratt and Ms. Walsh represent the City and the Mayor, even though all counsel are employed by the City and work for the Office of City Solicitor.

So that my clients – and the public at large – can more fully understand your respective roles in this process, I ask that each of you immediately make disclosures to me as follows:

1. The extent each of you have communicated, in writing or verbally, with one another concerning the Columbus Statue in any way whatsoever;

2. The extent each of you – or the Art Commission or Historical Commission board members or their respective staffs -- have communicated directly with the Mayor, the Managing Director, or any individual in the Mayor's Administration concerning the Columbus Statue in any way whatsoever.

BOCHETTO & LENTZ, P.C.

Honorable Mayor James Kenney

Marcel S. Pratt, Esquire

July 15, 2020

Page 2 of 2

3. Provide a log of all such communications, which includes the names of the individuals involved in all communications, the nature of each communication (whether it was in writing or verbal), the date and time of each communication, a description of the subject matter, and whether there is a claim of attorney-client privilege or some other privilege concerning the communication.

4. Produce all written communications identified.

5. State whether each of your case files are located on the City's network sever(s), and if so, the extent to which each of you are able to access eachother's case files on the City's server, and whether any of you or other members of the Mayor's Administration has accessed eachother's electronic case files.

5. State whether each of you are able to access eachother's paper files, and the extent to which each of you have accessed eachother's paper files or whether any members of the Mayor's Administration has accessed such paper files.

Depending on the answers and documents provided in response to these questions, there maybe follow-up questions and I am hereby reserving the right to do so. I urge you to comply with this request, not only to increase transparency, but also because I believe due process demands compliance.

Given the fact that the hearings before the Art Commission and Historical Commission are scheduled next week, I would ask that you provide your respective responses to this letter no later than close of business, Friday, July 17, 2020.

Thank you for your attention to this matter.

Sincerely,

BOCHETTO & LENTZ, P.C.

By: *George Bochetto*
George Bochetto, Esquire



CITY OF PHILADELPHIA
LAW DEPARTMENT

Marcel S. Pratt

City Solicitor

Lewis Rosman

Chief Deputy City Solicitor

(215) 683-5009

Lewis.Rosman@phila.gov

July 17, 2020

George Bochetto, Esq.
Bochetto and Lentz
1524 Locust St.
Philadelphia PA 19102
gbochetto@bochettoandlentz.com

Via Email

Dear Mr. Bochetto:

I am the Chief Deputy City Solicitor for the Legislation and Legal Counsel Unit of the Law Department. As part of my duties for the City, I have developed expertise in the City's Home Rule Charter and the role of the Law Department in City government. I have been asked to respond to your letter to various members of the Law Department of July 15, 2020, in which you make a host of demands for information concerning communications within the Law Department and regarding Law Department communications with various constituent parts of the City.

The attorneys to whom you sent your letter all represent the same client: The City of Philadelphia. Your attempt to characterize the structure of local government is based on a fundamental misunderstanding of the Home Rule Charter and nearly *seven decades* of well-settled law.

The City's Art Commission and Historical Commission are among the City "Departmental Boards and Commissions" established under the City's Home Rule Charter, *see* Home Rule Charter §§ 3-910, 3-918, and are fully constituent parts of the government of the City of Philadelphia. As such, they, like all other parts of the City, are represented in all legal matters solely by the Philadelphia Law Department, which has been the case since the Charter's inception in 1951. *See* Home Rule Charter §§ 4-400(a) (Law Department advises all City officers, departments, boards and commissions and supervises, directs and controls all City legal work); 8-410 (directing all City officers, departments, boards and commissions to refer all legal questions to the Law Department and prohibiting engagement of any other attorney in connection with their legal business); *see also* *Lennox v. Clark*, 93 A.2d 834, 849 (Pa. 1953) (holding that all constituent parts of the City are subject to the Charter's requirements regarding Law Department representation and stressing the importance of "a unified, consistent

interpretation of legal problems arising under the administration of the city government, which might not be the case if there were individual solicitors for the different departments.”).

For decades, the Law Department, which currently consists of 15 distinct units, has provided objective legal advice to the City’s various boards and commission in the performance of their functions and duties, while appropriately advising all other areas of government in a manner consistent with the Home Rule Charter and applicable rules and caselaw of the Pennsylvania Supreme Court. With respect to the matter you are presently litigating, the Law Department has conducted its affairs no differently and continues to adhere strictly to the law.

Accordingly, you have no basis on which to engage in the fishing expedition you propose. Moreover, basic principles of client confidentiality, attorney-client privilege, work product protections and litigation prohibitions on pointless and harassment-based discovery requests would prohibit your access to the information you seek even if it were sought through legitimate use of legal process. Your letter obviously does not constitute use of such process.

The City therefore declines to provide any of the information you are seeking. We trust this fully resolves your concerns in this regard.

Sincerely,

Lewis Rosman /s/

LAW OFFICES
VANGROSSI & RECCHUITI
319 SWEDD STREET
NORRISTOWN, PENNSYLVANIA 19401-4801
TELEPHONE RNC 278-4800
FAX RNC 278-4308

July 2, 2020

Via Email and First Class Mail

The Honorable James Francis Kenney
Mayor of City of Philadelphia
City Hall, Office 215
Philadelphia, PA 19107

Re: Christopher Columbus Monument

Dear Mayor Kenney:

Please be advised that I am legal counsel to the Grand Lodge of Pennsylvania, Sons and Daughters of Italy and I have been directed by its Grand Council to contact you and explain the importance of Columbus Day and the Christopher Columbus Monument in Philadelphia to Americans of Italian descent and to propose a solution to what should not be a problem to the Columbus Statue in Marconi Plaza in South Philadelphia.

Our Organization is the oldest and largest statewide membership group of men and women and their spouses of Italian heritage in the Commonwealth of Pennsylvania numbering 61 Lodges statewide. We have been part of Columbus Day celebrations from the beginning of our history as immigrants in Pennsylvania, and especially Philadelphia where there has been a Proclamation Ceremony at City Hall on the Friday before Columbus Day followed by the parade on Sunday on South Broad Street since 1993.

The year prior, the City of Philadelphia celebrated the Quincentennial with the parade taking place on the Benjamin Franklin Parkway with Luciano Pavarotti serving as the Grand Marshall. Before that, the parade took place on Chestnut Street with the reviewing stand being directly across the street from Independence Hall. Prior to that, it was on South Broad Street. Since its return in 1993, the parade has concluded at Marconi Plaza and the important political figures in Philadelphia and Pennsylvania have been present. Among those important attendees at the City Hall Proclamation Ceremony and parade was you.

As I am sure you have heard before, in World War II, the largest ethnic group sustaining casualties, including deaths, was the Italian American, even while some relatives were being interned and their property seized similar to the Japanese

Americans. No matter what, "American" has always been the guiding word of our ethnic group. As you are also aware, Italians along with Jews, African Americans, Asian Americans and Native Americans have also been the victims of lynchings and other disgusting indignities in this Country.

We as a group have risen above these injustices and have worked to take our place in this great Country and are part of the land of the free and home of the brave. We are mothers and fathers; butchers, bartenders and bricklayers; police, politicians and plasterers; transit workers, technical support and teachers; merchants and doctors, etc.

The Columbus Day Celebration and the activities surrounding it are part of our rallying cry to continue as worthwhile and proud Americans. You have recently been advised again of the history of the Columbus Monument and its ultimate unobtrusive placement in South Philadelphia in Marconi Plaza surrounded by a high iron railing fence. On Columbus Day, until I was 75 years old, I was part of a group that laid a wreath at its base with accompanying remarks; and present were the Italian Consul, Lodge members, the public, local Government officials, and television and newspaper reporters.

By now, you should realize how important this monument is to our Italian American culture which is older than what occurred there a few weeks ago. While I believe you were sincere in covering it to protect Columbus, without realizing it, you have humiliated the Italian American population of this great Commonwealth. This action was taken in response to a mob with no ties to Philadelphia protesting about what we don't know. Philadelphia which has had four consecutive African American Police Commissioners; people of color School Board Superintendents; and before you, two prominent Mayors; makes no sense of this mob action, especially since they are now including a shot at our heritage, Americans of Italian descent, and the Columbus Statue.

When we assembled for the parade, our peaceful assembly, The Columbus Parade Committee paid a fee to the City to help cover cleanup and police assistance. We follow the rules and try to conduct ourselves as law abiding members of the community. We are not outside paid agitators who attract looters, arsonists and attack the police. We didn't ask for a confrontation with these misguided miscreants.

After deliberation, our Grand Council recognized the possibility of putting a police guard on the statue might inflame these "protesters". Our solution to this problem which we now present is quite simple and face saving. A couple of years ago, the Historical Commission designated this Christopher Columbus Statue as an Historical Monument in its present location. The Grand Lodge of Pennsylvania will pay for the installation and perpetual maintenance of a security system properly designed and engineered with alarms, cameras and connections to the nearest two police precincts.

Page 3
July 2, 2020

This would include warning signs and video equipment so that the identity, apprehension and conviction of trespassers, destroyers and pillagers could be guaranteed with police intervention after being alerted.

The Art Commission has no place in considering this matter. It should not be involved for reasons that have been set forth by others. Bullies should not be appeased. These rioters have built nothing. We are the residents and taxpayers. The Christopher Columbus Statue is more important to the Italian American community than the Statues of Rocky and Rizzo combined. Our community needs to keep this Columbus Statue visible and in place. It is very important to us and we're willing to pay for its protection.

Please be good enough to respond to the Grand Lodge Office at 1518 Walnut Street, Suite 1415, Philadelphia, PA 19102, Phone - 215-592-1713 or to the undersigned at 810-279-4200 - my office being at 319 Swede Street, Norristown, PA 19401 so this can be implemented.

Columbus Day is three months away. God willing and pandemic diminished, we can continue this tradition of proudly parading. Thank you for recognizing that we make this proposal in good faith with no media grandstanding. We deserve the respect that we have given you.

Very sincerely,

GRAND COUNCIL OF
THE GRAND LODGE OF PENNSYLVANIA

BY: Francis Recchuiti
FRANCIS RECCHUITI, Legal Counsel

FR:bp

LAW OFFICES
VANGROSSI & RECCHUITI
319 SWEDD STREET
NORRISTOWN, PENNSYLVANIA 19401-4801
—
TELEPHONE (610) 278-4200
FAX (610) 278-4300

July 13, 2020

Via Email and First Class Mail

The Honorable James Francis Kenney
Mayor of City of Philadelphia
City Hall, Office 215
Philadelphia, PA 19107

Re: Christopher Columbus Monument

Dear Mayor Kenney:

You should recall that I previously wrote to you by letter dated July 2, 2020 on behalf of the Grand Lodge of Pennsylvania, Sons and Daughters of Italy, another copy of that letter is attached. By this time, a response to either the Grand Lodge Office or the undersigned should have been made.

While we recognize that you have had to deal with a number of "unforeseen incidents involving protests and pandemic", it would have been appreciated if you had responded.

You could tell us that (a) the City is not considering the proposal that we made; or (b) that the City will have a functionary contact us in order to explore this matter further; or (c) the City would have the appropriate person contact us in order to implement the suggestion, thus resolving the entire issue.

As previously indicated, we have not sought publicity nor have we threatened damage or injury to City property in order to get your attention. Since members of our Grand Council are residents and taxpayers of the City, and I have to report to them as to your response, would you or some member of your administration be good enough to favor us with a reply.

Very sincerely,

GRAND COUNCIL OF
THE GRAND LODGE OF PENNSYLVANIA

BY: 
FRANCIS RECCHUITI, Legal Counsel

FR:bp
Enc.
Copy: Marcel S. Pratt, Esquire

From: James.Kenney@phila.gov,
To: judy.zona@verizon.net,
Subject: Automatic reply: Christopher Columbus Monument
Date: Mon, Jul 13, 2020 4:45 pm

Greetings,

Thank you for contacting Mayor Kenney. While we will make every effort to respond to every message as quickly as possible, we may be unable to do so during the City's COVID-19 response.

- * If your e-mail is regarding COVID-19, please visit [phila.gov/covid-19](http://www.phila.gov/covid-19)<<http://www.phila.gov/covid-19>> for updates and resources.
- * For assistance, please contact 311 by dialing 311 or (215) 686-8686 which has extended hours and can respond to questions in over 100 languages.
- * If you're a member of the media, please contact press@phila.gov<<mailto:press@phila.gov>>.

We also invite you to visit phila.gov<<http://phila.gov>> or sign up<<https://www.phila.gov/departments/mayor/#action-modal>> to receive periodic e-mail updates from Mayor Kenney.

Sincerely,

Mayor Kenney's Office

LAW OFFICES
VANGROSSI & RECCHUITI
319 SWEDD STREET
NORRISTOWN, PENNSYLVANIA 19401-4801
—
TELEPHONE (610) 279-4200
FAX (610) 279-4300

July 20, 2020

Via Email and First Class Mail

The Honorable James Francis Kenney
Mayor of City of Philadelphia
City Hall, Office 215
Philadelphia, PA 19107

Re: Christopher Columbus Monument

Dear Mayor Kenney:

Thank you very much for your letter which was dated July 14, 2020, a Tuesday, which was emailed to my office on Friday night, July 17 2020 at 7:15 p.m. The instructions on submitting comments to the Art Commission were helpful, and also to the Historical Commission. We are already a part of both agendas.

Your comment that "Our plan for the Columbus statue takes nothing away from the countless Italian Americans who have contributed to Philadelphia's success- Christopher Columbus has no such connection to our city.", is once again a continuing slur and insult to the vision of past and future Americans of Italian extraction.

The detractors have no legitimate claim to a Philadelphia heritage by being destructive and negative. What occurred to the Columbus statues in Boston and Baltimore were disgraceful acts which the defenders of the statue of Columbus in Philadelphia prevented. It is those defenders who should be celebrated and not minimized by no nothing historical miscreants who don't recognize that Christopher Columbus was important enough for Philadelphia to even rename a portion of Delaware Avenue, Columbus Boulevard.

Perhaps you should rethink this matter and explain to your advisors and then to us, the actual physical location as to where we should conclude the Columbus Day Parade. It was hoped that you would support the suggestion that was made by the Grand Lodge of Pennsylvania, Sons and Daughters of Italy, about implementing and paying for the security system in its present location.

Page 2
July 20, 2020

Columbus brought Christianity to the New World. It was the same freedom to practice Christianity which was the reason William Penn had creating Pennsylvania. The citizens of Italy who presented this statue to Philadelphia also recognized that connection. Do you or do you not want to support the Italian American community? We didn't start this fight and should not be victimized by the removal of the statue of Christopher Columbus.

Very sincerely,

**GRAND COUNCIL OF
THE GRAND LODGE OF PENNSYLVANIA**

FR:jcz
Copy: Marcel S. Pratt, Esquire

BY: Francis Recchuiti
FRANCIS RECCHUITI, Legal Counsel



CITY OF PHILADELPHIA

JAMES F. KENNEY
Mayor

Office of the Mayor
215 City Hall
Philadelphia, PA 19107
(215) 686-2181
FAX (215) 686-2180

July 14, 2020

VIA E-MAIL

Mr. Francis Recchuiti, Legal Counsel
Grand Council of the Grand Lodge of Pennsylvania

Dear Mr. Recchuiti,

The Philadelphia Art Commission will hold a public meeting on the Administration's proposal to remove the Christopher Columbus Statue from Marconi Plaza on July 22, 2020 at 9:30 a.m.. Two days later, the City's Historical Commission will hold its hearing on July 24, 2020 at 9:00 a.m.

Members of your organization will be able to submit comments on the proposal and any other comments you may have regarding the future of the statue to each Commission before the scheduled meetings. Members may also sign up to testify at the public hearings should they want to.

Instructions on how to submit comment to the Art Commission, view the Administration's proposal, and how to take part in the public meeting are posted on the website of the Art Commission, at phila.gov/media/20200715134930/Art-Commission-agenda-20200722.pdf.

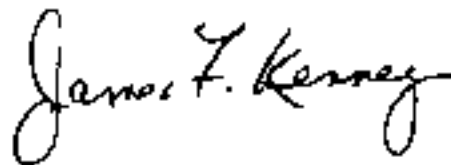
Instructions on how to submit comment to the Historical Commission, view the Administration's proposal, and how to take part in the public meeting are posted on the website of the Historical Commission, at phila.gov/departments/philadelphia-historical-commission/public-meetings/.

Our plan to remove the Columbus statue is done to protect both public safety and the historic statue itself. The statue is a source of controversy in Philadelphia, as has been the case with similar installations across our country. Christopher Columbus, like many historical figures, has

supporters and detractors. In Marconi Plaza these tensions have resulted in violent confrontations and clashes.

Philadelphia prides itself on being a Welcoming City and strives to be a place where all people—regardless of their background or where they were born—can build a life for themselves. Philadelphia not only welcomes individuals of varying backgrounds, but recognizes and celebrates their contributions to the fabric of our city. As you rightfully noted in your message, Italian Americans have been and continue to be an essential part of our city's history and future. Our plan for the Columbus statue takes nothing away from the countless Italian Americans who have contributed to Philadelphia's success—Christopher Columbus has no such connection to our city. I look forward to continued celebrations of Philadelphia's Italian American residents and their accomplishments.

Sincerely,

A handwritten signature in cursive script that reads "James F. Kenney". The signature is fluid and stylized, with the first and last names being more prominent than the middle initial.

James F. Kenney
Mayor

7/21/2020

Re: Christopher Columbus Monument

From: Chelsea.Reed@Phila.gov,

To: James.Kenney@phila.gov, judy.zona@verizon.net,

Cc: Marcel.Pratt@Phila.gov, Lauren.Cox@phila.gov,

Subject: Re: Christopher Columbus Monument

Date: Mon, Jul 20, 2020 1:02 pm

Attachments: MayorKenneyletter7-20-2020.pdf (63K)

Thanks, Zona. Coping my colleague Lauren Cox.

From: Judith Zona <judy.zona@verizon.net>

Sent: Monday, July 20, 2020 12:15 PM

To: James Kenney <James.Kenney@phila.gov>

Cc: Marcel Pratt <Marcel.Pratt@Phila.gov>; Chelsea Reed <Chelsea.Reed@Phila.gov>

Subject: Christopher Columbus Monument

External Email Notice. This email comes from outside of City government. Do not click on links or open attachments unless you recognize the sender.

See attached letter dated July 20, 2020.

Judy Zona
Administrative Assistant
Vangrossi and Recchuiti
319 Swede Street
Norristown, PA 19401
610-279-4200
610-279-4306 - fax

DELANEY TESTIMONY ON THE RECORD

KEY POINTS

THEME

The current “fashionable” view of Columbus as a Villain, a rapist, torturer, marauder is far from the truth and contrary to what the writings reflect. If you would read his diary, memos and letters – [Professor Delaney] did, you would see that he speaks very highly of the natives he encountered and remained friends with them. Columbus never personally killed any natives and continually admonished his men not to maraud, rape or plunder.

“Judging Columbus from a contemporary perspective rather than from the values and practices of his own time misjudges his motivations and his accomplishments.” p. 236

A. Purpose of Research & Perspective

- a. “not to exonerate Columbus, but to situate him in his cultural context and to shift some of our attention from the man to the religious ideas that motivated him and were widely shared by his contemporaries” p. xiii**
- b. “[W]e must consider his world and how the cultural and religious beliefs of his time colored the way he thought and acted.”**
 - i. He lived in a Catholic World where his faith was not just a moral guide but a worldwide view p. xiii**
- c. One cannot judge Columbus with today’s standards as they [500 years ago] did not have the same knowledge, moral experience we do today. No different than we are much more advance than we were in 1960 [only 50 years ago] and from our decision making as adults from when we were children or teens, etc..**

THE MISSION

- d. “Columbus set forth on his voyage with the intention to deliver letters to the Grand Khan from Queen Isabella and King Ferdinand and to set up a trading post to trade for the gold and spices he had read about in Marco Polo’s book. The stated purpose of that trade was to obtain enough gold to finance a crusade to retake Jerusalem from the then Muslim occupiers as a prerequisite to rebuilding the temple for Christ’s return before the end of the world (which he believed was imminent (emphasis added).” p. 237 This is in his writings and agreement with Queen Isabella. Also, it is why he kept asking her [Queen Isabella] to send priests to teach and baptize the people. Baptized people could not be enslaved.”**

“Columbus did not intend to supplant the native peoples with Europeans or steal their land; later, faced with rebellion, he capitulated to the settlers’ demands” p. 237

The 4 Voyages detailed

e. 1st Voyage

- i. They began trading with them (the natives) - immediately
 1. **P. 92 – “in order that they would be friendly to us – because I recognized that they were a people would be better freed and converted to our Holy Faith by love than by force”**
Diario p. 65
- ii. “The quest for gold ... was relentless. No wonder people reading Columbus’s diary conclude that greed was the primary motive behind his quest.” He was an agent of the crown and had to repay them to finance future voyages and knew that without this – his plan to Jerusalem would come to an end.
- iii. He realized that he needed to learn the language to convert the natives.
- iv. Caribs were the enemies of those he befriended
 1. **They killed or enslaved natives before Columbus arrived [Columbus DID NOT introduce the institution of Slavery to the Americas!!!**
 2. **They dismembered and castrated their enemies**
 3. **Thought to be cannibals**
- v. The Santa Maria was wrecked and unable to return with all crew members – Columbus was forced to leave 39 men behind with Guacanagari, chief of the natives whom he had befriended over a 90 day stay
- vi. He ordered his men to do no harm to the Indians, “rather ... strive ... to gain their good-will, keeping their friendship and love, so that he should find them as friendly and favourable and more so when he returned.” P. 109 Casas quoting Columbus
- vii. 1/16/1493, left for Spain with 6 to 10 Indians
Purpose:
 1. To learn each others languages
 2. To instruct them in Christianity
 3. Evidence that he found a route across the ocean
 4. **They were baptized – NOT ENSLAVED**
 5. **One became his adopted Godson**

f. 2nd Voyage

- i. Discovered many more islands on his way back to his men, Puerto Rico, the Virgin Islands (**Note, American territories today**)
- ii. Arrived at where he left his 39 men and learned that they were all killed
 - 1. His crew wanted revenge p. 132
 - 2. **Columbus refused to exact revenge until he could find out the truth**
 - 3. Learned that his men had **defied his orders** and fought amongst themselves, raided villages, raped, kidnapped women, hoarded unreported gold found
 - 4. Rival Chief Caonabo retaliated and killed Columbus' men
 - 5. Columbus' friendship with Guacanagari grew but that relationship along with his settlers began to deteriorate
- iii. Columbus was a sailor and navigator; he was not cut out for the job of administrator; even less as governor, and he had had no training for this role. P. 135
 - 1. he sent back 26 Caribs - permitted to be done by papal policy because:
 - a. Those from a just war
 - b. Those who resisted Christianization
 - c. Those who violated the law of nature [Cannibalism]
 - d. Caribs fit all of the above
- iv. Columbus wrote that he wanted to pay the natives
 - 1. **"I believe that if they started to receive something in payment they would work, being exceedingly eager, and so set themselves to do anything if it should profit them." P. 142 citing Columbus letter #2**
 - a. **Columbus's primary intention was that the natives should be employees of the Crown, not slaves"**
 - 2.
- v. **Margarit [BAD ACTOR WHOSE ACTIONS HAVE BEEN ATTRIBUTE FALSELY TO COLUMBUS]** who was one of the more wicked "leaders" avoided punishment by Columbus by returning to Spain with the intent to deflect his actions and deflecting them toward Columbus
- vi. Columbus returned to Spain **and became a Monk** on June 11, 1496 leaving his brother as "governor" and bringing 30 more natives with him – not slaves

g. 3rd Voyage

- i. **The sovereigns NOT COLUMBUS shifted the goal from developing a shipping post to that of colonization on the 3rd Voyage**
- ii. Columbus gave the ship captains "Directions to Hispaniola and strict instructions that when they needed supplies, they must *trade* with the Indians, not just take what they wanted; **the use of force, he said was unnecessary and only served to create hostility"** p. 163

- iii. One of the 3 ships was forced off course and landed where **Roldan** **[BAD ACTOR WHOSE ACTIONS ARE FALSELY ATTRIBUTED TO COLUMBUS]** was the local leader of that settlement. Roldan and his rebels overtook this group and shortly thereafter started plundering native villages and raping their women.
- iv. Columbus wrote to the Queen about this and she sent **Bobadilla** **[[BAD ACTOR WHOSE ACTIONS ARE FALSELY ATTRIBUTED TO COLUMBUS]** to investigate the complaints of Columbus of the rebels and their complaints of mismanagement. Instead of investigating, Bobadilla imprisoned Columbus and charged him with being the rebellious and sent them back to Spain. Bobadilla seized all of Columbus and his people's property.
- v. The monarchs were astonished by the arrival of Columbus as a prisoner. They saw that Bobadilla had abused the trust placed in him. The people also saw the injustice, and everything was done to relieve Columbus from his humiliating condition and assure him of the royal favor, except to reinstating him as Governor of the Indies.
- vi. **In sum, he was not found to have performed the atrocities attributed to him and was awarded a fourth voyage.**

h. 4th Voyage

- i. Returned to relieve Bobadilla
- ii. This was a trip filled with hurricanes which he was able to shelter his own ships but a treasure fleet including Bobadillo Roldan and the rebels with the gold leaving Santo Domingo did not make it.
- iii. They sailed to Jamaica, Guantanamo Bay, Honduras, Nicaragua, Costa Rica and Panama (**Central America**)
- iv. He was attacked in Panama by natives and fled with 3 ships and eventually marooned in Jamaica but Captain Diego Mendez sailed a canoe to Hispaniola where he was imprisoned by governor Ovando for 7 months
- v. Columbus's men were hungry and desperate and ½ **mutinied**. Eventually Mendez was released and despite not being given a ship by Ovando, he chartered one to rescue Columbus and the men.
- vi. Ovando **[BAD ACTOR WHOSE ACTIONS HAVE BEEN FALSELY ATTRIBUTED TO COLUMBUS]** refused entry because if Columbus learned of how he treated the Indians, he would be recalled also
- vii. **They returned to Spain on 11/7/1504 unsuccessful in the goal of obtaining sufficient gold to commence the quest to Jerusalem.**

B. Present Unfounded Allegations against Columbus

a. Enslaver

- i. Columbus **personally DID NOT HAVE ANY SLAVES** nor did he approve of it but did allow it to occur based upon the rules/morals/thinking of the 1400's which was that it was accepted in certain circumstances, including a Papal edict
- ii. Those who were baptized as Christian could not be enslaved
- iii. He wanted to convert all to Christianity. He continually petitioned the Queen to send priests

1. **"Ordered that they should be treated courteously because they are the best and most gentle people in the world, and especially, because I have much hope in Our Lord that Your Highness will make all of them Christians and that they will all be your subjects " P. 105 citing Diario p. 231**

2. "Columbus envisioned the Spanish sovereigns as both the lords and protectors of these people who felt threatened by those of the Grand Khan." He also thought they could be put to work. P. 105

- iv. It was never Columbus' idea to enslave or send natives back as slaves. Unfortunately, they were but not by his order. Those people were rounded up by the rebels and put on the ships...
- v. Claims that Columbus took 1600 slaves by his order on voyage 2 is false
 1. Multiple settlement posts were established with multiple leaders
 2. DeCuneo took 550 Caribs and other Indians who attacked them.
 - a. the Sovereigns sent back an order to enslave any of the Indians who attacked the Christians
- vi. On Voyage 3 Columbus sent a letter to his brother Bartholomew "to pay a group of these men to go work in the mines. Other were to help build a new settlement and plant wheat and other foodstuffs." p. 164
- vii. **Writers have attributed the attacks on the Arawaks on Haiti to Columbus when he wasn't even there. Some attacks on them began after the second voyage and Columbus' involvement and authority was challenged and eliminated. The true attack began the decade AFTER the fourth voyage.**

b. Rapist

- i. Eg. On the 3rd voyage, One of the 3 ships set to go to Hispaniola was forced off course and landed where Roldan was the local leader of that settlement. **Roldan** and his rebels overtook this group and shortly thereafter started plundering native villages and raping their women.

c. Torturer

- i. **COLUMBUS NEVER KILLED ANY NATIVES AND CONTINUALLY ADMONISHED HIS MEN NOT TO MARAUD, RAPE OR PLUNDER.**
- ii. Allegations of Columbus cutting off hands
 1. It did occur but against all orders of Columbus for all 4 voyages

- iii. False allegation were made about Columbus cutting his own men's tongues on Voyage 2. Rather that **Fernand Perez de Luna**, on his own authority, threatened to do this. See De Cueno's Letter.
- iv. He removed Margarit and instated Hojeda
 - 1. Believed Spaniards molested the Indians because Columbus didn't
 - 2. Columbus wanted his men to be of a higher standard than the Indians
 - 3. **Hojeda** in the second voyage disobeyed Columbus and cut off the ears of one and captured some who Columbus then released after distracting the Spaniards p. 146

C. Leadership

- a. Captain of a Ship
- b. Poor Leader of a Trading Post / Colony
- c. Columbus was a sailor and navigator; he was not cut out for the job of administrator; even less as contractor, and he had had no training for this role. P. 135
- d. Evidenced by the "mutinies" on land not while he was commanding his fleet

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KOLINS SECURITY GROUP

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July 21, 2020

Bochetto & Lentz
Attn: George Bochetto, Esquire
1524 Locust Street
Philadelphia, PA 19102

Fritz & Bianculli
Attn: Brian Fritz, Esquire
1515 Market Street, Suite 1801
Philadelphia, PA 19102

RE: SECURITY FOR CHRISTOPHER COLUMBUS STATUE AT MARCONI PLAZA

Dear Messrs. Bochetto and Fritz:

Pursuant to your request, I reviewed materials regarding the City of Philadelphia's proposal to remove the above captioned statue; conducted research as well as a site inspection and security evaluation of the subject location.

I was asked to review the City's submission to the Art Commission and supporting documentation and offer my professional expert opinion regarding the security of the subject statue whether or not it is deemed a public nuisance. I have been a security practitioner/consultant and business owner in the security industry in the City of Philadelphia for more than fifty years and have been asked to provide consulting services regarding security issues by the city which I have done as my public duty.

In my review of the submission, it appears that there are two schools of thought being advanced by the City to support its position as to why the Columbus statue should be removed. This fact alone should be noted, in that there does not appear to be a unified theme for the removal, even amongst the proponents for removal.. I will address each of these two "arguments" and , demonstrate why each fails and the statue can and should remain in place. I will also address ways to increase security and safety at this location.

The first school of thought, or argument, for removal that I will address are those based strictly on the City's interpretation of the historical merit of Columbus himself. Mayor Kenney's letter to Ms. Berg on June 15, 2020 is representative of this reasoning as the letter fails to make any reference to the gatherings of neighborhood supporters and outside protestors.. The July 14, 2020 letter of Niki Saval to the Arts Commission is

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indicative of this reasoning as well, as this writing too fails to mention any of the in person disagreements between supporters and protestors.

My purpose is not to debate the historical significance of Columbus, but rather to caution against this type of reasoning being used as a basis for such a removal. The essence of this argument is that Columbus represents what the protestors and, now the Mayor, as well as others have deemed negative history. However, nearly every event in the course of history can be viewed from both the negative and positive. As an example, for many the Vietnam War represents a black eye on United States History. A war that “we” should never have been in. The country’s treatment of returning soldiers and Marines like myself was demonstrative of this sentiment. Upon discharge at Camp Pendleton, CA, I was warned not to wear my Marine Corps uniform when traveling back to Philadelphia. It didn’t matter because Marines stood out in crowds especially carrying a duffle bag. I and many returning vets were spit on, punched, victims of thrown objects and many vulgar comments. I was forced to physically defend myself, even after returning home.

The Vietnam Memorial located at Front and Spruce Streets which is within walking distance from Marconi Plaza, is a reminder of those brave men and women who fought for our country. However, what is to stop the ‘negative history’ argument from being extended to the Vietnam War next? Will the Vietnam Memorial be the next symbol that must be removed or destroyed due to its connection to ‘negative history’? Or, will any and all memorials be ripe for removal based on ever changing public opinion?

The City’s submission is rife with references to all voices being heard; however, it appears their proposal is taking extreme measures to silence those who oppose the removal. Which brings me to the second school of thought or argument of the City, which is essentially that the statue has become a public nuisance.

A public nuisance is an activity that threatens the public health, safety or welfare, or does damage to community resources, Restatement of Torts 821B states that:

- A public nuisance is an unreasonable interference with a right common to the general public
- Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following
 - Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience; or

- Whether the conduct is proscribed by a statute, ordinance, or administrative regulation
- Whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the person knows or has reason to know, has a significant effect upon the public right

As per the Memorandum of June 22, 2020 from Brian Abernathy, City of Philadelphia Managing Director, to Mrs. Lee and Berg, there are two separate policies on the books regarding the removal of public art. However, as the memo states, the City is seeking to deviate from those policies “in the best interests of the City.” Once those policies are reviewed, it becomes clear why the City is seeking to essentially ignore them.

The current policy for removal gives certain criteria as to why public art can be removed. This policy was instituted in 2012 and revised in January 2015, so they are not ancient relics of a less understanding time in history. Based on my review of this policy, there are three criteria which could be used to justify the statue’s removal, but all three fail. The three criteria the City appear to be using, despite claiming to deviate from the policy, are as follows:

- 4. The artwork endangers public safety
- 5. The condition or security of an artwork cannot be reasonably guaranteed
- 6. If public protest of the artwork has occurred throughout a significant portion of a period of five years

Obviously, the City wants to deviate from #6 as a handful of protests certainly would not satisfy the five-year requirement. As to the other two, the City’s submission is rife with reference to the clashes at the site. However, by their own admission, after approximately five days of protests spanning over the course of weeks there were a total of 36 incident reports, 5 reports of simple assault, and a few arrests. Most arrests have subsequently been dismissed as well as apologies issued by the Mayor and Police Commissioner for the arrests having occurred in the first place. Despite this, the City and those who support the removal are seemingly trying to argue that these numbers warrant removal of the statue because it proves a danger to the welfare or safety of the surrounding areas.

However, that number of incidents over a period of five days is *minimal* when compared to other public outings the City and most of its residents have no problem openly supporting. One prime example is that a study from 2013 found that there is an

average of *sixty-four* (64) arrests made in the city following an Eagles' loss. Are the Eagles and/or Eagles games in danger of being declared a public nuisance for this reason?

It should also be noted that the protests that were allowed to take place within the City and away from Marconi plaza from May 29 to June 25, led to 756 arrests that included violent assaults on police officers, vandalism, arson, looting and other forms of destruction. These acts and confrontations caused by the "peaceful protestors" clearly did not occur at Marconi plaza at any point of time in 2020 or throughout the City's history. As the neighborhood residents watched what these "peaceful protestors" were allowed to do to other City neighborhoods, it could be reasonably concluded that they gathered to protect their homes. This alternative explanation is clearly unaccounted for in the City's submission. Instead, the City summarily concludes that the issue was solely about the Columbus statue, as compared to citizens feeling they only could rely upon themselves to secure their neighborhoods. Despite such violations in other parts of the city, it was disconcerting to listen to City Solicitor Marcel Pratt report *"As city officials and employees focus on reform and reconciliation, the city must use its administrative resources consistent with those efforts. We believe that moving forward with these [code violations] would have served no useful purpose, and we are glad that the mayor approved our recommendation that they be waived."*

Further, the City claims that the only reason there has been relative peace at the site now is due to the wooden box obstructing the statue from view. However, there was a clash one week after it's installation on June 23, 2020. This also happened to be the last clash. Therefore, the City's argument that obstructing the statue from view is what stopped the clashes fails because one occurred after it had been installed. Is it possible that there have not been additional clashes because the controversy over the statue is simply subsiding in light of the other, much larger, issues the country and City is facing? I would like to reiterate the policy the City established, which it now seeks to deviate from, requires **five years of protests to qualify for removal**. The Columbus statue is on the proverbial chopping block after five days.

In fact, the City fails to point to any other such incidents occurring at or near the statue since the statue's placement in Marconi plaza in the 1970's. However, the City's abbreviated qualifications for removal on safety grounds (i.e. confrontations) would have to be applied to many other items within the City, as well.

For example, the severity of incidents that occurred in, at and around City Hall and the City Municipal Building clearly transcend anything that occurred at Marconi Plaza. Additionally, businesses were ransacked, looted and burned in sheer acts of violence.

Using the City's rationale for removal, would we not now have to apply this interpretation and standard to those places, as well? City Hall has always been the epicenter of protests of varying degree of confrontation. Since this is unsafe, according to the City, what will be the future fate of City Hall? Or, will the City only advance this argument in a capricious and mercurial manner so as to fit its agenda regarding certain objects versus others?

The City's selective position not only discards policy requirements, but also discards any notion of credibility. The biased and inconsistent nature of the City's arguments, coupled with the failure to follow the rules announces that the City feels its very own policies are meaningless. The danger in this position is more detrimental to public safety than anything that has happened at Marconi plaza. Meaning, public safety can only be achieved if the policies in place to protect the public are followed. Once the entity charged with enforcing the rules contemptuously disregards them, no one will view the City policies, rules or laws as being mandatory or having any force or credibility.

Another example is seen in the City's position seeking to deviate from Directive 67, which is a 2015 policy giving further instructions regarding removal of public art. The Directive echoes the Policy in many ways but there are slight deviations. Instead of requiring five years of protests, the Directive states that removal can be based "*[u]pon receiving significant and continuing protests against a public work of art, the then acting Mayor, acting as the Chief Executive Officer of the City, determines that it is in the best interest of the City to implement the procedures set forth in this policy for the removal of the public art under protest.*" However, the Directive is more stringent in its requirement that in the event removal is proposed "a period of no less than (90) days shall be provided for public input on the matter." The City has allowed for public comment from June 24th through July 21st, 2020, far less than the 90-day requirement under the directive.

Although the City is proclaiming it wishes that all voices be heard, it appears that City policy, as well as general principles regarding nuisance, crime levels, etc. are being ignored in order to expedite the removal process as quickly as possible.

If, however, concern for the welfare of the surrounding areas is the genuine concern of the City, there are ways to enhance the security of the area without removing the statue.

"The process of designing security into architecture is known as *Crime Prevention Through Environmental Design* (CPTED). It involves designing the built environment to reduce the opportunity for, and fear of, crime and disorder...CPTED takes advantage of

opportunities for natural access control, natural surveillance, and territorial reinforcement.”¹

Under these three principles (natural access control, natural surveillance, and territorial reinforcement), the statue is already CPTED compliant which I base on my history of participating in past activities there and my recent site inspection and security evaluation. There has been and currently remains foot patrol officers assigned to Marconi Plaza. Further, there is a six-foot high iron security fence with pointed topper surrounding the statue itself. There are also two (2) high-powered security lights that flood and illuminate the entire statue area at night. Any cost associated with this would be minimal, and if a private entity or group elects to absorb the cost, then the City would not be out of pocket.

However, in addition to the statue being located in South Philadelphia, the Delaware Valley Intelligence Center (DVIC) is also there.

The DVIC is home to the Real Time Crime Center (RTCC), which allows for round-the-clock observation of nearly 800 city owned cameras around the city. The Police Officers who are assigned to the RTCC have access to mass notification systems that can warn residents of particular areas of nearby crime and communicate directly with officers to give real time updates as to where crime is occurring and what the current situation is.

The installation of surveillance camera(s) at this location would likely deter most problems strictly based on their placement. However, if issues were to arise at the site, officers could be dispatched within minutes with the assistance of the RTCC. Further, in order to send a message that criminal behavior would not be tolerated, anyone arrested would have to be prosecuted and punished rather than to allow someone to commit a crime and then the city apologize to them for the crime they committed. One arrest and prosecution will show ownership of the neighborhood, city and Rule of Law which would effectuate a long term deterrent.

For the reasons stated above, the City’s proposal, if approved, will set a dangerous precedent going forward. Policies can be ignored and circumvented at will and ever-changing public opinion can be used to justify removing long standing artwork in mere days. The Columbus Statue can safely remain in place by implementing the security suggestions I have made at very little capital outlay and maintenance cost.

¹ Atlas, R. (2013). *21st Century Security and CPTED*. Boca Raton: Taylor & Francis Group, LLC. PP. 1-2.; Russell Kolins Faculty Training Program as faculty member of University of Louisville, Southern Police Institute.

My professional opinions are based on a reasonable degree of professional security certainty which are based my experience as a Licensed Private Detective, Board Certified Criminal Defense Investigator, Crime Prevention Through Environmental Design Instructor, and Security Consultant and Practitioner, Certification in Homeland Security, certified in Security by the states of New Jersey and Connecticut, NIMS training and continuous education, including a Bachelor of Science degree in Security Management and extensive education and training in the fields of security and investigation for over 50 years in the private sector and 4 years in the Intelligence and Security service in the United States Marine Corps, including service in Vietnam.

I am also a Certified SORA Instructor in the State of New Jersey and a member of the faculty at the University of Louisville, Southern Police Institute where I teach subjects of Theory and Practice of Crime Prevention and Crime Prevention Through Environmental Design (CPTED) to ranking law enforcement and security management personnel.


I serve as a member of ILEETA, International Law Enforcement Educators and Trainers Association.

My experience includes Risk Assessments, Vulnerability Assessments, Security Surveys and prior civil cases involving hotels, entertainment and hospitality venues, parking lots, multi-unit residential and commercial properties. Through this experience I have taught and trained business and property owners, managers and employees of the need and how to conduct various types of assessments. I have also addressed organizations such as Bar Association CLE's, Professional Security Organizations, Lions Clubs, tenants' associations, property management and conducted security and safety seminars. I have taught and mentored my peers in the Security industry; Legal Aspects and Principles of Security and Security Management.

All my opinions are stated to a reasonable degree of professional certainty in my profession as an expert in Crowd Control, Crowd Management, Crime Prevention and Physical Security. My Curriculum Vitae is attached with this report.

All education, training, experience and expertise have been used in rendering this opinion. I reserve the right to modify my opinions based on newly provided information. My CV is attached.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Kolins', with a horizontal line extending to the right.

Russell Kolins, CCDI, BSSM, ICACP
RDK/wh

February, 2020

Curriculum Vitae

Russell Kolins, BSSM, CCDI, ICACP, BAI

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PROFESSIONAL EXPERIENCE

2020 – Present University of Louisville (Southern Police Institute Faculty)

2015 – Present Kolins Security Group (Division of Russell Kolins Associates)

2012 – Present C.L.A.S.S. (Co-founder) Certified Legal Alcohol Security System

1982 – 1992 Owner/operator of tavern/night club in New Jersey

Russell Kolins Associates, Philadelphia, Pennsylvania (1969 – Present)

- Crime/Loss Prevention Consultant*
- Security Consultant, including: *
 - Risk Assessment;
 - Vulnerability Assessment;
 - Threat Assessment
- Certified in Crime Prevention Through Environmental Design*
- Facility Security Design
- Risk Management Consultant*
- Liquor (Dram Shop) Liability Consultant*
- Premises Liability Consultant*
- Certified Trained Crowd Control Manager*
- Expert Witness and Forensic Investigator in Liquor; Premises and Negligent Security Liability Cases*
- Bar/Nightclub Operations Consultant*
- Hospitality Industry Consultant*
- Board Certified Criminal Defense Investigator (CCDI)*
- Board Accredited Investigator (BAI)*

- * Available as Subject Matter Speaker and Instructor.

February, 2020

EDUCATION

2008 Southwestern College, Winfield, KS B.S., Security Management

2019	Israeli Defense Force Executive Model Training (Israel)
2019	New Jersey State Police/Homeland Security: Certified SORA Instructor
2019	ASIS International, Washington, DC: Security Leadership Conference
2018	ASIS International, Washington, DC: Security Leadership Conference
2017	ASIS International, Washington, DC: Security Leadership Conference
2017	University of Louisville Southern Police Institute, Updated Training Crime Prevention Through Environmental Design
2017	Cincinnati (Public/Safety/Law Enforcement Academy) Liberty Township: Advanced De-escalation Training "Read-React-Respond"
2014	Indiana University, Borkenstein Institute for Alcohol Testing and Analysis for Litigation, Bloomington, Indiana
2014	Board Accredited Investigator (BAI)
2013	Connecticut State Security Officer Certification
2011	New Jersey State Police Security Officer (SORA) (Recertification every two years)
2011	IAVM Certified Crowd Control Manager
2010	Calibre Press/Police One (Street Survival Training Certificate)
2008	Southwestern College (BS Degree in Security Management)
2008	Certification Homeland Security
2007	Board Certified Criminal Defense Investigator
2006	High Rise Security Management and Fire Safety and Business Continuity (ASIS)
2005	Certification in National Emergency Incident Management (GOV-SEC; Wash., D.C.)
2004	Certification Commercial TIPS Trainer2000 Certification at University of Pennsylvania (College) TIPS Trainer (Recertification annually)
1985	Certification as Trainer Techniques in Alcohol Management (TAM)
1969-1980	Temple University, Philadelphia, PA Coursework in Criminal Justice and Psychology
1964-1966	Temple University, Philadelphia, PA Coursework in Criminal Justice and Psychology
1973	Decktor Counter-Intelligence and Security, Alexandria, VA
1966-1967	Various US Gov't Intelligence and Security Schools

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TEACHING

University of Louisville (SPI)	Crime Prevention (CPTED)
ASIS International	Subject Matter Lecturer
City of Philadelphia, ongoing	Certified Trainer Bar/Nightclub Security
Temple University, ongoing	Guest Lecturer Criminal Justice; Video and Surveillance
Beasley School of Law (Temple U.), ongoing	Third year Law Class Innocence Project
TIPS Program, ongoing	(Certified Trainer: Alcohol Management)
TAM Program	(Certified Trainer: Alcohol Management)
Franklin Institute, 1977-1980	Forensic Science

LICENSES

Private Detective: Pennsylvania, 1969 – present

MULTI-STATE COURT QUALIFIED EXPERT

Nightclub/Bar/Restaurant Security
Liquor (Dram Shop) Liability Hospitality
Bar Operations
Hotel Security
Premises Liability (Premises & Parking Lot)
Shopping Center/Mall Security

February, 2020

Negligent Security (Premises & Parking Lot)

Use of Force; Excessive Force

Crowd Control

Negligent Hiring and Negligent Retention

Protocols for Video Surveillance Operations

Criminal Defense Forensic Investigation

Crime Prevention (CPTED)

PROFESSIONAL MEMBERSHIPS

- Crime and Loss Prevention Council (ASIS) Elected 2014
- Hospitality, Entertainment and Tourism Security Council (ASIS: HEaT) Elected 2012
- International Association of Professional Security Consultants (IAPSC),
- ASIS International (Council Chairman),
- The Society of Industrial Security Professionals,
- National Foundation for Protection Officers,
- International CPTED Association (Crime Prevention Through Environmental Design),
- American Society of Safety Professionals
- American Hotel and Lodging Association,
- International Association for Healthcare Security and Safety (IAHSS),
- International Association of Venue Managers (IAVM),
- Loss Prevention Foundation,
- National Association of Convenience Stores (NACS),
- Illuminating Engineering Society (IES),
- Intellenet International,
- NCS4 The National Center for Spectator Sports Safety and Security (University of Southern Mississippi),
- National Fire Protection Association (NFPA),
- National Crime Prevention Council,
- National Council of Investigators and Security Specialists (NCISS),
- International Association of Homicide Investigators,
- South Jersey Chapter of ASIS,
- Greater Philadelphia Chapter of ASIS,
- Association of Former Intelligence Officers,
- Association of Certified Fraud Examiners,
- The Society of Human Resource Management (SHRM),
- National Crime Victims Bar Association,
- Pennsylvania Defense Institute (Charter),

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- Philadelphia/Bucks County Claims Association (former President elected to 3 terms),
- United States Association of Professional Investigators (USAPI) (Charter Member),
- Certified Defense Investigators Training Academy,
- National Association of Sport's Officials,
- NCAA Sports Officials,
- Law Enforcement Square Club,
- International Association Chiefs of Police (1984)

BOARD MEMBERSHIPS

- Board Accredited Investigator,
- Society for Professional Development (SPD),
- Crime and Loss Prevention Council (ASIS:CPLP) Board of Directors and Membership-Chairman (2015, 2016, 2017, 2018, 2019)
- Hospitality Entertainment and Tourism Council (ASIS:HEaT):
 - Chairman Emeritus, 2020
 - Chairman (2017, 2018, 2019)
 - Vice-Chairman (2014, 2015, 2016)
 - Secretary (2013)
- Pennsylvania Special Olympics (Board Member 1995-2007)
- Pennsylvania Boxing Scholarship Foundation (Board Member, 1994-1998)
- Board of Directors, Camden County Tavern Owners' Association (1985-1990)
- Philadelphia/Bucks County Claims Association (Past President elected to 3 terms) 1970-1980

SPECIAL APPOINTMENTS

2014 – 2020	ASIS Standards & Guidelines Commission Liaison
2013 - 2019	ASIS International Conference Moderator
2012 - 2020	ASIS International, Appointed to Review and Selection Committee for Educational Sessions at Annual International Conference
2011 – Present	Responsible Hospitality Institute (RHI) Special Advisor to City of Pittsburgh's Entertainment Districts for a Safer Environment through Security/Community Policing Partnership and Responsible Alcohol Management

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2011 – Present	Security Consultant to Philadelphia City Council and City Managing Director's Office
2010 – 2013	Special Security Consultant to Philadelphia Police - Commanding Officer of the South Street Business and Entertainment District

MISCELLANEOUS

Character in the following books or made-for-TV films

Clowns to the Left of Me, Jokers to the Right
American Life in Columns
Engaged to Murder
Blind Faith
Echoes in the Darkness
Best Investigated Cases
Not Guilty (Student Film Documentary 1st place winner at Cannes)
Bykofsky's Little Black Book of Best in Business
Joseph Wambaugh: The Jay Smith Case
Busted

TELEVISION and RADIO

CNN: Michael Smerconish Show
(Resident Expert Investigator/Security Consultant)
WPHT 1210-Talk Radio Michael Smerconish Show
Appear as Security Consultant to ESPN 950 Radio
Investigator/Security Consultant to local NBC affiliate
Phil Donahue Show
The Tonight Show
Sally Jesse Raphael Show
Numerous Local and Regional Television News and Talk Shows

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PRESENTATIONS

<u>Association/Location/Year</u>	<u>TOPIC</u>
Caribbean Safety & Security Conference Curacao (2019)	Crime Prevention (CPTED)
Caribbean Safety and Security Conference Aruba (2019)	Crime Prevention (CPTED)
ASIS International GSX Annual Conference Chicago (2019)	Securing Commercial Properties
Intellenet International Annual Conference Charlotte, NC (2019)	Hospitality Security; Handling Impaired Individuals
ASIS International GSX Annual Conference Las Vegas, NV (2018)	Policies and Procedures for Proprietary and Contract Security Personnel
ASIS International Philadelphia Chapter (2018)	Policies and Procedures for Proprietary and Contract Security Personnel
Intellenet International Annual Conference (Aruba, 2018)	Crime/Terror Attack: Prevention Through Environmental Design
Curacao Safety and Security Conference (Willemstad, Curacao, 2018)	Keynote Speaker: Crime Prevention Techniques
ASIS International Annual Conference Chapter 79 Central, PA (2017)	Session 1: CCTV; Body Worn Cameras Proper Policies and Procedures Video Surveillance and Monitoring Session 2: Panel Discussion – Legal Aspects of Audio and Video Recording
Responsible Hospitality Institute (RHI) International Conference Austin, TX (2017)	Use of Video Surveillance and Body Cams
ASIS International Annual Conference Orlando, Florida (2016)	Video Surveillance including Use of Body Cams in the Private Sector

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ASIS International Annual Conference
Anaheim, CA (2015)

Security Management

Intellenet International Annual
Conference Las Vegas (April 2015)

Safety and Security in Hotels, Casinos and
Street Crime

Associations One National Annual
Conference; Indianapolis, IN (March, 2015)

Preparing Negligent Security Cases for
Litigation

Florida FAPI Annual Conference
Orlando, FL (2014)

Preparing for Plaintiff and Defense Security
Litigation (CEU & CLE)

Nightclub Bar & Restaurant Nat'l Conference
(Las Vegas 2014)

Closing Time! Managing Social Behavior
Best Practices at Closing Time

ASIS International Annual Conference
Atlanta, GA (2014)

Security Management in Hospitality
Industry

Intellenet International Annual
Conference; San Juan, PR (2014)

Elements You Need to Know in
Cases Involving Inadequate Security
Including Alcohol Component

Florida FAPI Annual Conference
Orlando, FL (2013)

Legal Aspects of Security for Investigators,
Security Consultants and Lawyers
(CEU & CLE)

New Jersey Bar Association ICLE
New Brunswick, NJ (2013)

Negligent Security

Intellenet International Annual
Conference; Philadelphia, PA (2013)

Keynote Dinner Speaker

ASIS (Greater Philadelphia)
Conshohocken, PA (2013)

Trends in Security and Responsible Alcohol
Management in Hospitality Venues

ASIS (South Jersey)
Pine Hill Country Club, NJ (2013)

Trends in Security and Responsible Alcohol
Management in Hospitality Venues

ASIS (North Jersey/New York)

Trends in Security and Responsible Alcohol
Management in Hospitality Venues

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City of Pittsburgh (Mayor; City Council; Chief of Police; Community Leaders; Venues and Districts)	Establishing Safer Entertainment Venues
Pennsylvania Association of Licensed Investigators	Liquor Liability, Bar Security, Premises Liability
Philadelphia Pennsylvania City Council	Special Security Expert Advisor
Nightclub Bar & Restaurant Nat'l Conference; Las Vegas, NV (2011)	Security/Alcohol Service (Standards & Duty of Care)
Numerous Tavern Owners Associations	Alcohol Management/Security Issues
Lions and Rotary Clubs	Safety and Security in the Workplace
Delaware Valley Association of Chiefs of Police	The World of the Investigator and Security Consultant Transition from Police Department to Private Industry
Camden County College	Criminal Defense Investigation
Temple University Law School	Lawyer/Client Relationship
Pennsylvania State University	Preparation and Trial of a Fraud Arson Case
Georgetown University Law School	Investigation of a RICO case
Pennsylvania Ethical Society	Security in High Rise Buildings
Private Industry and Various Schools	Various Investigative and Security topics
Responsible Hospitality Institute	Providing a Safe Environment Through Security in the Hospitality Industry.
Security and Private Investigators (Associations One) Indiana, Ohio, Michigan, Kentucky, Illinois and Wisconsin Indianapolis, IN (2013)	Liquor Liability and Security Investigations
Alcohol Responsibility Conference Orlando, FL (2012)	Panel on Liquor Liability and Tavern Security
National Assn Parents of Murdered Children	Security for Children (Duty and Standard of Care)

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MILITARY

- 1967 – 1969 Viet Nam: 3rd Force Recon, attached to 3rd Counter-Intelligence Team.
USMC 2nd Force Recon (US)/Counter-Intelligence
- 1966 – 1969 United States Marine Corps
- 1966 – 1967 Honor graduate from Intelligence Schools and Security Training
Fort Holibird, MD; Little Creek, VA; Augusta, GA
U.S.M.C. Service Club Management, Camp LeJeune, NC

AWARDS

- Navy Achievement Medal: For outstanding achievement and superior performance while serving as an Intelligence Agent/Recon Marine in RVN, 1969
- Navy Commendation Medal: For heroic achievement during Intelligence Operations in RVN (20 March 1969)
- Recognition for Contribution as Keynote Speaker at Annual International Intellenet Conference (2013)
- Meritorious Achievement Award: Dept. of Veterans Affairs, State of New Jersey, 1995
- Pennsylvania Claims Association: Man of the Year, 1977 & 1980
- Philadelphia/Bucks County Claims Association: Man of the Year, 1978
- Recognition by The Academy of Criminology, 2002
- Delaware Valley Association of Chiefs of Police: Outstanding Service in field of Investigation, 1995
- Chapel of the Four Chaplains: Honor Award, 1975
- Philadelphia Boxing Scholarship Foundation: Distinguished Leadership Award, 1998
- Philadelphia American: Man of the Year for recognition of unselfish dedication and heroism, 1998
- Philadelphia Boxing Scholarship Foundation Award: Outstanding leadership, 2000
- Susan Komen Breast Cancer Foundation: Recognition for providing security at black-tie fundraising events, 2005

REFERENCES AVAILABLE UPON REQUEST