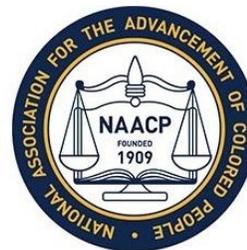


The Disciplinary Board of the Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
601 Commonwealth Ave, Suite 5600  
P.O. Box 62625  
Harrisburg, PA 17106-2625



February 1, 2022

To the Disciplinary Board:

I write on behalf of the Lebanon County Branch 26AA of the National Association for the Advancement of Colored People (NAACP) to file a complaint against Lebanon County District Attorney Pier Hess Graf for violating the Pennsylvania Rules of Professional Conduct and the canons of ethics that apply to her as a county district attorney.<sup>1</sup>

We hold that the evidence clearly shows that District Attorney Graf has failed to fulfill her duty to serve as an impartial and independent enforcer of the law when it comes to holding the police force accountable. Specifically, we allege that District Attorney Pier Hess Graf has violated all three ethical canons she is bound to follow, including rules 1.1, 1.2, 2.2, 2.4, 2.11, 3.1, and 3.7 as detailed below.

Though her office is tasked with investigating police misconduct, District Attorney Graf serves more as a fox guarding the henhouse. While her professional obligations require her to enforce the law fairly and impartially, her actions clearly demonstrate that her thumb is on the scale in favor of the police, not the citizens whose constitutional rights she is bound to protect and uphold. She has shown that the police officers acting under her jurisdiction have a friend in the D.A.'s office, and will not be rigorously investigated for misconduct, let alone prosecuted—even officers who kill suspects late at night in a dark field under highly questionable circumstances.

District Attorney Graf was responsible for investigating State Trooper Jay Splain for his involvement in the 2020 fatal shooting of an unarmed Lebanon county resident, Charity Thome. Graf's office failed to investigate the Thome case in anything approaching a thorough or rigorous way, and failed to consider the inconsistencies in the testimonies of the officers involved and the dash-camera footage from the scene. By all appearances, her office's so-called "investigation" was hurried and perfunctory and its outcome predetermined.

More recently, in November 2021, Trooper Splain shot and killed another unarmed Lebanon county resident, 40-year-old father Andy Dzwonchyk. District Attorney Graf's office is once again in charge of the inquiry, with Trooper Splain on desk duty until the ongoing investigation is completed. Given D.A. Graf's record, we frankly have little faith that there will be a thorough investigation without independent, outside oversight. Trooper Splain has now fatally shot four civilians during his time as a state trooper,<sup>2</sup> and we strongly believe that all Lebanon county residents are at risk while he is allowed to patrol our roads.

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<sup>1</sup> Judicial Conduct Board of Pennsylvania, Code of Judicial Conduct, Effective July 1, 2014.  
<http://judicialconductboardofpa.org/code-of-judicial-conduct/>

The Charity Thome case is a tragedy that might have been avoided if Trooper Splain had made any attempt to deescalate the situation and to follow agency protocols. Thome was killed in the early hours of March 16, 2020. She had recently been evicted from her home, and fled officers after she was caught trying to break back in. She was initially pursued via vehicle by local Lebanon police officer, Ryan Haase. Officer Haase contacted the Pennsylvania State Police for assistance, but soon told dispatchers he was ending the chase because Thome was not endangering the public with few cars on the road at that hour.<sup>3</sup> However, State Troopers Jay Splain and Matthew Haber soon joined in pursuing Ms. Thome on an unlit rural road, with Trooper Splain performing a risky and dangerous maneuver known as a “precise immobilization technique” (PIT maneuver) to force Ms. Thome’s car off the road and into a field. Given that Ms. Thome was a local resident who was not a flight risk and could be readily tracked down in the next day or two by local or State Police, this PIT maneuver was entirely unwarranted.<sup>4</sup> Shortly after, Trooper Splain and Mr. Haber shot Ms. Thome seven times. She was killed almost instantly.<sup>5</sup>

District Attorney Graf’s office completed its investigation of the Thome’s death in just over one month, a “relatively fast conclusion compared to similar inquiries reviewed” by *Times* reporters.<sup>6</sup> The investigation drew on the state police inquiry led by an investigator based out of Trooper Splain’s own troop, the *Times* found, a clear conflict of interest.

According to the *Times* investigation, as well as a lawsuit being brought forward by Ms. Thome’s estate, there are major inconsistencies between what the officers told investigators happened—and what District Attorney Graf’s investigation accepted as fact—and what the dash-camera footage from the police vehicles actually show:

- While Haber reported that he and Splain gave verbal commands to Thome such as “stop the vehicle” and “get out of the vehicle,” no police commands can be heard on the video (though the sounds of sirens, police radio communications, a vehicle collision, and gunshots are clearly audible); and
- Trooper Splain told investigating police that 30 seconds had elapsed between leaving his vehicle and the shooting, while the video shows it took only a few seconds.<sup>7</sup> According to state agency policy, troopers should not shoot at moving vehicles “unless the driver

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<sup>2</sup> Trooper Splain’s record has recently drawn national attention as the subject of a lengthy investigation by the *New York Times*. According to the *Times*, troopers rarely kill anyone in the largely rural areas that Splain patrols. However, out of the nine fatal shootings by troopers in the time that Splain has patrolled the area, he was responsible for four of them. Barker, Kim, Steve Eder and David D. Kirkpatrick, “After 4 Killings, ‘Officer of the Year’ Is Still on the Job,” *New York Times*, Dec. 30, 2022, online at <https://www.nytimes.com/2021/12/30/us/pennsylvania-trooper-jay-splain-investigation.html>

<sup>3</sup> Barker, Kim, Steve Eder and David D. Kirkpatrick, “After 4 Killings, ‘Officer of the Year’ Is Still on the Job,” *New York Times*, Dec. 30, 2022, online at <https://www.nytimes.com/2021/12/30/us/pennsylvania-trooper-jay-splain-investigation.html>

<sup>4</sup> According to the *New York Times*, many police departments now ban high-speed pursuits of nonviolent offenders, particularly if officers know who they are and can find them later (as was the case with Ms. Thome); see the *Times* article cited above.

<sup>5</sup> <https://casetext.com/case/thome-v-pennsylvania-state-police-officers-splain>

<sup>6</sup> *Ibid.*

“poses an imminent danger of death or serious bodily injury, or if shooting is “the last resort to prevent a suspect in a violent felony from escaping.” The evidence shows that Trooper Splain made almost no effort to deescalate the situation.<sup>8</sup>

District Attorney Graf also stated via press release that the Thome’s vehicle had “accelerated forward” before Trooper Splain shot her, but there is no evidence supporting this claim. The press release additionally reported that Troopers Splain and Haber said they “feared multiple outcomes, including Ms. Thome reversing and running over officers or continuing ‘to ram’ the S.U.V.”<sup>9</sup> According to interviews with police, however, Officer Haase estimated Ms. Thome’s speed at approximately five miles an hour, adding that he was “more worried about damage to his vehicle than about his safety. Furthermore, according to the lawsuit, neither vehicle’s airbags deployed, and a photograph “showed that the S.U.V. sustained minimal damage”<sup>10</sup>

When asked about the lawsuit, District Attorney Graf stated that, “I haven’t read any of the pleadings and, frankly, I don’t intend to.”<sup>11</sup> This disregard for legal filings is emblematic of her disregard of the canons of professional ethics more generally. Her office has also declined to release the dash-cam footage. We believe that the investigation her office conducted was rushed, superficial, perfunctory, and incomplete, and that her office has consistently failed to provide any degree of professional or public transparency or accountability.

Furthermore, District Attorney Graf is married to Christopher Graf, a police corporal who was based in the same Pennsylvania State Police barracks in Jonestown as Troopers Splain and Huber. District Attorney Graf’s husband’s relationship with these officers created a clear conflict of interest and appearance of impropriety and violation of rule 2.11 (“disqualification”). She could have, and should have, recused herself and turned the investigation over to the State Attorney General’s office, but she refused to do so. Her refusal is part of a larger pattern of disregard for and violation of the canons of professional ethics she is bound by law to uphold.

In addition, District Attorney Graf has repeatedly violated rules 3.1 and 3.7 governing extrajudicial activities and participation in civic and charitable activities, given her leadership and fundraising for causes that are explicitly pro-police.

For example, District Attorney Graf founded the annual “Back the Blue” fundraiser in 2016 to benefit PACOPS, a police nonprofit.<sup>12</sup> Graf continues to host the event annually in her capacity as District Attorney, not only “participating,” but organizing and hosting the event that to any reasonable observer undermines her independence and impartiality regarding investigations of the PA State Police.

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<sup>7</sup> Mentzer, James. “Civil lawsuit filed against troopers in 2020 Jackson Township fatal shooting.” Jan. 5, 2022.

<https://lebtown.com/2022/01/05/civil-lawsuit-filed-against-troopers-in-2020-jackson-township-fatal-shooting/>

<sup>8</sup> <https://www.nytimes.com/2021/12/30/us/pennsylvania-trooper-jay-splain-investigation.html>

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> <https://lebtown.com/2022/01/05/civil-lawsuit-filed-against-troopers-in-2020-jackson-township-fatal-shooting/>

<sup>12</sup> <https://www.cpbj.com/pier-hess-graf/>

In sum, we hold deep and abiding concerns about our local District Attorney's blatant and systemic violations of the canons of professional ethics that she is legally bound to uphold. We are ordinary citizens, not attorneys, but it seems clear to us that District Attorney Pier Hess Graf has crossed the line too many times in too many ways, that she systematically puts her thumb on the scales of justice in ways that favor the police and disfavor ordinary citizens.

We therefore urge you to take a very close look at this case.

On behalf of our Branch, I thank you for receiving this complaint and for taking these facts into consideration,

Respectfully,

Pastor Tony Fields  
President, Lebanon County Branch 26AA  
National Association for the Advancement of Colored People (NAACP)  
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## **After 4 Killings, 'Officer of the Year' Is Still on the Job**

By Kim Barker, *The New York Times*, December 30, 2021<sup>13</sup>

In November 2008, Pennsylvania Trooper Jay Splain was honored at a county law enforcement banquet as a hero, the police officer of the year. The reason: He had shot and killed a suicidal man who allegedly pointed an Uzi submachine gun at him.

That was the first killing. Splain went on to fatally shoot three more people in separate incidents, an extraordinary tally for an officer responsible for patrolling largely rural areas with low rates of violent crime. All four who died were troubled, struggling with drugs, mental illness or both. In two cases, including that of the man with the Uzi, family members had called police for help because their relatives had threatened to kill themselves.

The most recent death was last month, when Splain shot an unarmed man in his Volkswagen Beetle. After learning that the officer had previously killed three other people over nearly 15 years, the man's sister, Autumn Krouse, asked, "Why would that person still be employed?"

Splain is an outlier. Most officers never fire their weapons. Until now, his full record of killings has not been disclosed; the Pennsylvania State Police successfully fought a lawsuit seeking to identify him and provide other details in one shooting. In the agency's more than a century of policing, no officer has ever been prosecuted for fatally shooting someone, according to a spokesperson. That history aligns with a long-standing pattern across the country of little accountability for police officers' use of deadly force.

Prosecutors and a grand jury concluded that Splain's first three lethal shootings were justified, and an inquiry into the most recent one is ongoing. Rather than have independent outsiders look into the killings, the police agency has conducted its own investigations — which were led by officers from his unit — raising questions about the rigor of the inquiries.

"When a police officer has shot at and potentially killed a civilian, the public will never trust the police agency to investigate itself and be unbiased," said Tom Hogan, former district attorney of Chester County, Pennsylvania. A Republican, he helped write recommendations by the state

<sup>13</sup> Online at <https://www.nytimes.com/2021/12/30/us/pennsylvania-trooper-jay-splain-investigation.html>

prosecutors association for independent investigations — a reform that many departments resist but one sought by the national prosecutors association and major policing groups.

In its review of Splain’s killings, The New York Times found inconsistencies between the evidence of what occurred and what state police said had happened. The officer appeared to have departed from police protocols in several of the fatal confrontations, according to interviews and an examination of investigative and court records.

In three of the encounters, the people killed were in vehicles. The trooper shot two unarmed drivers because they were allegedly using their vehicles as weapons, a frequent rationale, the Times found in an earlier investigation that uncovered hundreds of seemingly avoidable killings by police — often with impunity. Many large police departments ban shooting at moving vehicles because it is often dangerous, ineffective and unnecessary.

Splain, who is on desk duty until the pending inquiry is completed, did not return calls or reply to a letter seeking comment. The other troopers who were involved in the shootings or who led the investigations declined to comment or did not respond to messages. David Kennedy, president of the state troopers union, responded on Splain’s behalf to written questions, saying he had acted with courage and “was forced to make split-second decisions no one hopes they ever have to make.”

Cpl. Brent Miller, a spokesperson for the Pennsylvania State Police, said, “We are confident we have the resources to investigate such incidents thoroughly and objectively.” He referred questions on the killings to district attorneys. Asked whether Splain had ever faced disciplinary action, Miller said that any such records were confidential.

All troopers involved in shootings must attend specialized training to assess their physical and mental fitness before returning to active duty, he said, adding that in some cases, troopers may also be required to undergo use-of-force training at the police academy.

Darrel W. Stephens, a former longtime police chief who now helps run a policing research institute at Florida State University, called the four shootings a “red flag.”

“Four is incredibly unusual,” he said. “That is out there on the edge.” Even if the shootings can be legally justified, he said, the pattern needs to be “examined very closely” to determine why

the same officer repeatedly resorted to deadly force. “Because they can, it doesn’t mean they should,” he said.

It’s not clear how common it is for police officers to fatally shoot multiple people during their careers. No database keeps track. In 2012, an officer in Scottsdale, Arizona, retired after his sixth fatal shooting. In 2015, a sheriff’s deputy in Broward County, Florida, was involved in his fourth fatal shooting. Both officers belonged to SWAT teams, called into dangerous situations where gunfire is most common.

Splain, 41, is a patrol officer who works in largely rural swaths of Pennsylvania, where state police rarely kill anyone. During his time on the force, he has been responsible for four of the nine fatal shootings by troopers in the three counties where they occurred, according to a Times analysis of cases identified by research group Fatal Encounters. The killings by Splain were reported by local news outlets, although he was mentioned by name only in one case.

From a young age, Splain seemed inspired by the military. The son of a radiologist and a nurse, he grew up in Allentown, Pennsylvania, and attended the elite Hill prep school outside Philadelphia. He belonged to the school’s gun club. His senior yearbook page pictured him holding a rifle, cited the motto of the U.S. Marine Corps and quoted Stonewall Jackson, the Confederate general, twice.

He went on to the Virginia Military Institute, where Jackson had once been an artillery instructor. Splain enrolled in a military officer training program, joined the school’s competitive rifle team and the Semper Fi Society, and referred to his “warrior image” in his college yearbook bio.

But in 2004 Splain became a state trooper, with duties like making DUI arrests, tracking down thieves and, on one occasion, catching a suspect in “a paintball incident,” state police newsletters show. His former college roommate, Army Lt. Col. Nicholas Shallcross, said that Splain’s ambitions had shifted during college from the military to law enforcement.

Splain, the lieutenant colonel said, saw himself as “a protector.”

## **A Call For Help**

In July 2007, Joseph Rotkewicz, 37, who had bipolar disorder, took two of his brother's guns into a room of his family's home and repeatedly threatened to kill himself, pointing a gun at his head. His father had recently died, and his girlfriend had had an affair with his best friend.

For an hour, his sister, Linda Hunsicker, and a friend, Hans Frendt, tried to talk him down, Hunsicker recalled. Then Rotkewicz fired at least two shots at the ceiling. Hunsicker said her brother never threatened her or Frendt.

"He just kept begging me not to call the cops," she said. "I wish I would have listened."

Emergency operators told her to go outside; the two men stayed indoors. Rotkewicz used electrical tape to strap an Uzi to his neck and chest, so the barrel pointed up at his chin, Frendt later said.

About 5 p.m., at least a dozen state troopers showed up, Hunsicker recalled; a specially trained SWAT-style negotiating team typically responds to such situations. Police tried once to call the house, but Hunsicker had brought the cordless phone out with her.

With a person threatening to harm only himself, "the overarching principle is, slow things down and don't force a confrontation," said Ashley Heiberger, a consultant to police departments and a former captain in Bethlehem, Pennsylvania.

Entering a house to challenge someone threatening suicide "is not consistent with generally accepted law enforcement practices," he added, "and good officers and good agencies have been emphasizing these concepts and principles for decades."

Pennsylvania State Police regulations call for troopers dealing with someone who is mentally ill to "take steps to calm/de-escalate the situation, when feasible," and to "assume a quiet, nonthreatening manner."

Hunsicker said no one had used a bullhorn or tried other ways to resolve her brother's crisis peacefully. Instead, Splain and another trooper eventually entered the house. Frendt, still inside, later told the deputy coroner that the troopers ordered him to leave, the coroner's report said.

On his way out, he heard one of them demand that Rotkewicz drop his weapon, followed by two gunshots, the report said.

Splain shot Rotkewicz twice in the chest, records show. Pennsylvania State Police later said that Rotkewicz had pointed the Uzi at Splain.

For this, his unit named him trooper of the year. In a letter later nominating Splain for the Lehigh County officer of the year, his commanding officer wrote that Rotkewicz had a “history of mental disease” and was “threatening his life and the lives of others.”

Splain had seen Rotkewicz holding the Uzi beneath his chin, the letter said, but it did not mention any electrical tape. The letter then said Rotkewicz “ignored repeated orders from Trooper Splain to stop and drop the firearm” and “lowered the gun forward” toward the trooper.

In a court filing years later, a lawyer for state police acknowledged that Rotkewicz had affixed the Uzi “to his chest and neck by means of the black-colored electrical tape.” Although it’s possible Rotkewicz broke the tape, the forensic pathologist who performed the autopsy wrote, “The tape has been wrapped several times about the neck and is kinked in several areas.”

The Pennsylvania State Police typically assign a lead investigator from the same troop’s major case team to lead the criminal inquiry. At the time, Splain worked out of the headquarters of Troop M — the same barracks as the lead investigator.

Joseph Kuhns, a criminologist at the University of North Carolina in Charlotte who did a study for the Major Cities Chiefs Association on investigations of police shootings, called it “highly unusual” to assign officers from the same unit to examine a shooting.

For almost 10 years, state police resisted Hunsicker’s efforts to obtain the police investigative report so she could find out what happened to her brother. In a court filing, her lawyer said the police’s refusal to provide the report was an effort to “cover up wrongful conduct.” She didn’t know the name of the officer who killed her brother until a Times reporter told her.

James B. Martin, a Republican who is the longtime district attorney of Lehigh County, said that, after meeting with the lead investigator, he had ruled the shooting justified — a decision he called a “no-brainer.” He said he did not recall any claims that the gun had been taped to Rotkewicz.

Martin saw nothing wrong with allowing police to investigate themselves.

“The Pennsylvania State Police is a troop of 4,500 very well-qualified police officers who do an excellent job, and their integrity, as far as I’m concerned, is beyond reproach,” he said.

## **A Different Choice**

On a Saturday in May 2017, Anthony Ardo threatened to kill himself by blowing his head off with an explosive. Addicted to drugs for years, the 47-year-old was reeling after a breakup and being evicted by his mother, Jean Monaghan. After she called 911 seeking help for him, Splain and a junior trooper, Eddie Pagan, came to her family farm and persuaded her to lure him back.

Ardo pulled up but then appeared to reverse his Buick Reatta, according to the officers' accounts. Rather than let him go, the troopers ran out the back door and got in their two patrol cars, hidden from view. They trapped the Buick between their cruisers, hopped out and drew their firearms, the troopers told police investigators.

Within seconds, the troopers began shooting, according to Monaghan. Lawyers for Monaghan said they believe that Splain, who fired nine times, killed Ardo with the last three bullets. The troopers later said they feared for their lives, according to court filings, as Ardo, sitting in the driver's seat, appeared to be lighting something around his neck. That turned out to be a common aerial firework.

In an interview, the dead man's mother wondered why the officers hadn't tried to de-escalate the situation by stepping away. "They rushed him and didn't even give him a chance," said Monaghan, who said she watched the confrontation from her window and later filed a wrongful death lawsuit. She added, "They were in no way in harm's way if they would have just backed up and left him alone."

The review by the Times of hundreds of killings of unarmed motorists by police found that mental health crises were a recurring theme. In at least 10 cases, callers asked police to check on the welfare of people threatening suicide or struggling with mental illness. Instead, the responding officers shot the drivers and later said they feared that they or someone else would be run over.

Miller said troopers use "their discretion to assess the current situation and resources available to them for every incident." He said the agency couldn't comment on pending litigation.

Within an hour of Ardo's shooting, a state police lieutenant called John Morganelli, the district attorney in Northampton County and a Democrat, to ask how the prosecutor wanted to handle the

investigation, according to a grand jury report later made public. Morganelli decided his office would take the lead and assigned a county detective.

But the lieutenant soon told Morganelli that his bosses “would not yield the criminal investigation,” the report said.

Apparently because of that dispute, no one interviewed either trooper for about a month. During that time, the two men talked to each other and watched dashcam videos of the shooting, they acknowledged later. Law enforcement experts warn that allowing officers to share information before interviews can lead them to align their stories.

Splain disclosed his earlier fatal shooting to Pagan, both men said in depositions. “Most of the conversations revolved around him giving me advice as to how to handle the stress,” Pagan said.

State police assigned an investigator from Troop M’s major case team to lead the inquiry. Superior officers later told the grand jury that they rely on investigating troopers to report any potential conflicts of interest.

Trooper Michael Everk, the lead investigator, declined to comment for this article. He had worked with Splain on a marijuana bust, state police newsletters show. While interviewing the troopers, Everk referred to Pagan as “Eddie” several times instead of speaking more formally, as he did in other interviews.

Morganelli brought the case to a grand jury, which concluded that the shooting was justified. But the jurors also issued a second, public report accusing state police leaders of a “somewhat arrogant view of superiority” over other law enforcement agencies. The panel also found investigators gave troopers “special treatment” that is “not generally afforded to others who are the subject of a criminal investigation.”

The next year, Splain was moved to Troop L in Lebanon County.

### **‘The Gravest of Situations’**

Pier Hess Graf, the Lebanon County district attorney, hosts an annual fundraiser, “Back the Blue,” for a Pennsylvania nonprofit that helps the families of slain officers. Her husband is a state police corporal.

Advocates of reform say such apparent conflicts of interest highlight the need for independent, arm's-length criminal investigations into killings by police. Some police departments now call in district attorneys from neighboring counties; others have independent units to investigate fatalities. In recent years, states including California, New Jersey and New York shifted many of these investigations to the state attorney general's office.

But last year, Graf oversaw an investigation into another fatal shooting involving Splain. At the time, her husband was based in the same barracks.

Early on March 16, 2020, Charity Thome, 42, who had mental illness and drug addiction, fled officers after she was caught trying to break into her former home, records show.

Officer Ryan Haase of the North Lebanon Police Department started pursuing her Honda Accord; he soon told dispatchers he was ending the chase because, with few cars on the road at that hour, the woman was not endangering the public.

But then Splain and a rookie, Trooper Matthew Haber, joined him. Thome led police on a "lengthy high-speed chase," Graf said later, with "no regard for traffic lights, signs, police sirens, other vehicles on the roadway or the safety of the general public."

Many police departments ban high-speed pursuits of nonviolent offenders, especially if officers know who they are and can find them later. Instead, records show, Splain performed a risky maneuver to force Thome to stop.

The Accord spun out into a field. Thome then drove into Haase's SUV. The two troopers jumped out of their vehicle, guns drawn. "Stop, stop, get out of the car, show me your hands," Splain recalled shouting, according to a police interview quoted in a lawsuit filed by Thome's family.

He fired first, followed by the rookie. Thome, hit seven times, died almost instantly, according to the lawsuit.

In an April 2020 news release describing the killing, Graf said Thome "accelerated forward and drove into" the officer's vehicle. The release also described Splain and Haber as saying they feared multiple outcomes, including Thome reversing and running over officers or continuing "to ram" the SUV.

But Haase estimated her speed to be 5 mph, adding that he was more worried about damage to his vehicle than about his safety, according to his interviews with police included in the lawsuit.

Neither vehicle's air bags deployed, the lawsuit said; a photograph showed that the SUV suffered minimal damage.

No police commands could be heard in a dashcam video. Splain told police 30 seconds had elapsed between his leaving the car and shooting. The video, included in the lawsuit, shows it took only a few seconds.

"Their job was to talk her out of the vehicle and into safety," said Thomas Kline, a lawyer for Thome's family. "And instead, they did just the opposite, which was to fire multiple rounds of bullets into her pinned-down vehicle, leaving her defenseless and tragically dead."

Agency policy says Pennsylvania state troopers should not shoot at moving vehicles unless the driver "poses an imminent danger of death or serious bodily injury," or if shooting is the last resort to prevent a suspect in a violent felony from escaping.

In the release, Graf said she had assigned her detective bureau to oversee the investigation, which involved several agencies. It drew on the state police inquiry, which was led by an investigator based out of the same troop as Splain, the Times found.

Graf had determined that the shooting was justified after about a month — a relatively fast conclusion compared with similar inquiries reviewed by reporters. In response to questions from the Times, Graf didn't address any potential conflict of interest and said she stood by her decisions.

"Law enforcement involved in this case committed the most serious human act — they took a life," Graf said in the news release announcing her ruling. She added, "They did so knowing the use of deadly force is necessary in only the gravest of situations."

### **The 4th Killing**

Andy Dzwonchyk, a 40-year-old metal worker who had once been named "loudest laugh" and voted president of his high school class, was unraveling by November.

Amy Hastings, his girlfriend of 20 years, had left, weary of his drug use. She obtained a protection order after he badgered her to come back and talked of killing himself in front of their two sons if she did not return. "Andy never threatened me or the kids," Hastings said.

About 10:40 p.m. Nov. 7, Hastings called 911 because Dzwonchyk kept texting, in violation of the order. Two troopers showed up, including Splain.

While Hastings talked to them, Dzwonchyk, who was caring for their sons, texted again, saying he needed a thermometer for one boy, who was sick, Hastings recalled. She went inside because it was cold. Then Dzwonchyk, who lived down the road from where she was staying, drove up.

The troopers tried to arrest Dzwonchyk in his car, but a struggle ensued, according to a police spokesperson at a news conference the next morning. Trooper David Beohm said one officer had gotten caught inside the vehicle, which advanced and reversed, dragging him, although he was not injured.

“It wasn’t like a real fast back-and-forth,” Beohm said.

Dzwonchyk’s 1999 Beetle was a stick shift, making it difficult to go forward and backward quickly. Attempts to subdue Dzwonchyk with a Taser didn’t work, according to the spokesperson. Only then, he said, did the other officer fire his weapon.

That was Splain.

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## Civil lawsuit filed against troopers in 2020 Jackson Township fatal shooting

by [James Mentzer](#) January 5, 2022

LebTown<sup>14</sup>

A Philadelphia law firm via a civil lawsuit filed against two Jonestown-based state police troopers has claimed that a video obtained by the law firm shows that a 2020 fatal shooting in Jackson Township involving those troopers was not justified.

In its [second amended complaint \(PDF\)](#) filed in federal court in Harrisburg last August, the law firm of Kline and Specter alleges, on behalf of [Charity Thome's](#) estate, that the account of the events as described by state troopers Jay Splain and Matthew Haber on March 16, 2020, does not match the content on the video of the shooting the firm has obtained via a subpoena.

LebTown has not been able to procure a copy of the video or independently verify these claims. However, in a footnote to the complaint, Thome's attorneys tell the court that "a CD containing a copy of this video is being hand-delivered to the Clerk of Court, where it will remain on file in this matter." LebTown has requested a copy of the video, but a representative of the Clerk was unable to say on Jan. 4 how it could be obtained.

Generally, exhibits to court filings are public record.

Last Thursday, the New York Times [published an investigative article](#) claiming that trooper Splain has been involved in four fatal shootings during his 15-year career, including the Thome incident and another one that killed 40-year-old Andy Dzwonchyk of Jonestown, in November 2021.

The Times noted that "prosecutors and a grand jury concluded that Trooper Splain's first three lethal shootings were justified, and an inquiry into the most recent one is ongoing."

A spokesperson for attorney Thomas Kline said the firm declines to make any public comments concerning the lawsuit they filed on behalf of Derek Thome, who is the administrator of his aunt's estate.

Lebanon County District Attorney Pier Hess Graf said that she has no comment about the Times article because the investigation in the Dzwonchyk incident is still ongoing and added that there is "never a timeframe regarding any investigation" conducted by her office.

### The incident

In the early morning hours of March 16, 2020, police reported that Thome drove away from the scene of her former home in the 1700 block of Heilmandale Road, North Lebanon Township,

<sup>14</sup> Source: <https://lebtown.com/2022/01/05/civil-lawsuit-filed-against-troopers-in-2020-jackson-township-fatal-shooting/>

after she attempted illegal entry, and was pursued, first by North Lebanon Township police and then by state police who joined the 10-mile chase.

It ended in the 500 block of King Street after Splain used a Precision Immobilization Maneuver (P.I.T.) to force Thome's car off the road and into a field. A P.I.T. Maneuver is a pursuit tactic by which a pursuing car can force a fleeing car to turn sideways abruptly, causing the driver to lose control and stop.

What happens next is the basis for the Thome family's civil lawsuit, which claims that "this was not a justified shooting and ... constituted excessive, unnecessary force, in violation of Ms. Thome's constitutional rights."

In its suit, Thome's estate claims inconsistencies between what officers Splain and Haber, who is the other defendant in the Thome lawsuit, said happened and what the audio and video footage actually shows.

The lawsuit alleges timeline discrepancies between what the troopers' statements said happened and what is shown on the video and heard on the audio.

The Thome lawsuit indicates that Splain and Haber were interviewed by "police" and then later state in the complaint that, "Troopers Splain and Haber were also interviewed by the Pennsylvania State Police in the fallout of the shooting for administrative purposes and possible criminal charges."

The lawsuit says, "According to Defendants, as stated in their interviews, they issued multiple verbal commands to Ms. Thome before fatally shooting her."

The lawsuit says that Trooper Haber had reported in his interview that both he and Splain had given verbal commands such as "stop the vehicle" and "get out of the vehicle." The lawsuit says that Splain also related in his interview that he was "yelling commands."

The suit further claims, "When he was asked what commands he gave, Trooper Splain stated that he commanded Ms. Thome, 'Stop, Stop, get out of the car, show me your hands.'"

According to the suit, an audio track on the video includes sirens, police radio communications, a vehicle collision, and a rapid succession of gunshots. The suit alleges that, "No verbal commands by Troopers Haber or Splain, or any officer for that matter, can be heard on the video (or audio). Moreover, the video thoroughly discredits Trooper Splain's claims regarding the timeline and series of events that took place."

The suit then says the audio and video evidence does not support Haber and Splain issuing any verbal commands, adding that "Trooper Splain stated during his interview that thirty seconds elapsed from when he got out of his vehicle to when he and Trooper Haber started shooting, which is not true, as shown on the video."

Instead, the lawsuit says mere seconds elapsed from the time both Splain and Haber exited their vehicle and when Splain fired the first shot.

“As shown on the video, at most, nine seconds elapsed between when Trooper Splain performed the P.I.T. maneuver (i.e., before he and Trooper Haber got out of the car) and when he and Trooper Haber started shooting.

The suit further claims, based on timestamps imprinted on the video, that “only five seconds elapsed between when Trooper Splain got out of the car and when he and Trooper Haber started shooting” and adds that “only three seconds elapsed between when Trooper Haber got out of the car and when he and Trooper Splain started shooting.”

“Once again, no verbal commands can be heard on the video,” the suit alleges.

The lawsuit goes on to say, “Trooper Splain ... fired his weapon first, by his estimate, four or five times, and then again one or two times. Moreover, Trooper Haber ... on his first official day on the job outside of his training, fired his weapon second, exactly twice. Ms. Thome died instantly (or almost instantly) from her gunshot wounds.”

Finally, the lawsuit claims that “an autopsy revealed that Ms. Thome was shot seven times,” that “during this incident, no police officers were injured in any way” and “by all accounts, Ms. Thome was unarmed when defendants decided to shoot her seven times and kill her.”

Haber and Splain have filed an answer to Thome’s second amended complaint, stating in part: “Ms. Thome ignored Troopers Splain and Haber’s verbal commands and looked right at Trooper Splain as she grabbed the gear shift and slammed down on the gas slamming into Officer Haase’s police cruiser. She did not take her foot off the gas and continued to accelerate upon ramming into Officer Haase’s police cruiser.”

The troopers’ answer generally maintains that Thome’s shooting was justified and that they did nothing wrong.

Allegations in Thome’s complaint are not considered evidence, and again, LebTown has not independently reviewed the video or otherwise been able to determine the veracity of these claims. Thome’s estate, just as every plaintiff in every civil lawsuit, must prove its allegations with sufficient evidence in order to recover monetary damages. Generally, defendants in civil lawsuits are not required to prove they acted properly.

Concerning the video that is part of the exhibits submitted for the Thome lawsuit, LebTown asked the district attorney if she watched the video. She was also asked if there is the possibility of reopening an investigation of the Thome matter given this latest event that the Times reported involved Splain.

“I can’t tell you with regard to their pleading what they are referring to,” said Hess Graf. “I haven’t read any of the pleadings and, frankly, I don’t intend to. Every video that was taken by law enforcement with regard to that incident, we have reviewed, yes. We are not looking to

reopen what happened in that prior matter, I am fully confident in the findings that we rendered, in the press release that we issued, and the statements that I made.”

A day after announcing in late April 2020 that her investigation into the March 16 fatal shooting of Thome had cleared the four officers involved, Hess Graf spoke to LebTown about the investigation and the process that led to her finding.

Hess Graf said that during the pursuit Thome not only ran through stop signs and traffic controls at high speed, but “in the final minutes of the pursuit, there were moments when she was rolling her window down and throwing metal objects at the first pursuing car, which at that point was the State Police.” Hess Graf described some of those objects as “auto parts.”

Hess Graf told LebTown police attempts to disable Thome’s car with the P.I.T. maneuver was unsuccessful. The chase ended only when Thome lost control and skidded into a field along the unlit roadway.

Hess Graf then said that, “She then accelerated and rammed a North Lebanon Township police car with an officer inside. After she ignored commands to stop, state troopers fired into her car, fatally wounding her.”

When asked by LebTown if the Pennsylvania State Police would reopen an investigation into the Splain-involved shootings in Lebanon County given the discrepancies reported by the New York Times, PSP communications director Cpl. Brent Miller said in an email statement submitted on Tuesday that:

“In each case, both criminal and internal investigations were conducted. The Pennsylvania State Police (PSP) does not intend to reopen any of these investigations.”

When told that various media reports indicate that Splain was on administrative leave following the Dzwonchyk incident last November while others state he is on desk assignment, Miller responded:

“Both “administrative leave” and “desk assignment” are inaccurate. Trooper Jay Splain is currently on administrative duty. Administrative duty is a modified duty assignment where a member performs work which may be outside of their normally assigned duties, functions, and responsibilities. It is standard policy to assign a member who is involved in an officer-involved shooting/serious police incident to administrative duties while the incident is under investigation.”

On Monday, following a request last week for comment on the Times article that says Splain has been involved in four shootings, Miller also said in an email statement:

“Every officer involved shooting involving a Pennsylvania State Police Trooper is thoroughly investigated criminally and administratively, and the decision as to whether criminal charges will be brought is solely within the discretion of the independent elected District Attorney of the relevant jurisdiction. Other than the incident on November 7, for which the investigation is still

open, with respect to each of the shootings identified an investigation was completed and the decision that Trooper Splain's actions were legally justified under Pennsylvania Law was made by the District Attorney and or grand jury."

Spotlight PA has [reported](#) an unIntroduced bill by state Sen. Art Haywood (D-Montgomery) that would require that the state Attorney General be given new powers to investigate all police killings, which would remove that authority out of the hands of district attorneys.

American Civil Liberties Union legal director Witold "Vic" J. Walczak said that, while the legislator's bill would be a good start to bring about reform, more needs to be done.

He cited the need for greater transparency and to help ensure independent review of incidents outside of the "buddy investigating a buddy" system that currently prevails in law enforcement agencies across Pennsylvania.

"There's a reason that it is important for police departments to publish information about complaints about the use of force by various officers, about complaints about officers," said Walczak. "One incident may not trigger any kind of alert but if you have an officer who has eight complaints, or three or four deadly shootings, then you need to look at that employee in a different light.

"As the Times story points out, most officers go their entire careers without having a deadly force incident and here you have a single officer with four of them, all of which raise alarms," said Walczak. "Every single one of those four shootings (involving Splain) raises serious concerns."

Hess Graf said that while she understands why attorneys provide legal representation to defendants in criminal matters and in civil suits like the one filed in the Thome lawsuit, she added she's never worked as one nor will she ever.

"While I have not done the work of that Philadelphia law firm that represents the family, I understand why all these people exist," said Hess Graf. "It's their job to take facts and to take evidence and try to twist it and present it in a certain fashion. That's their job. We see it in criminal court all the time. There's nothing more infuriating than a defense attorney's closing argument in just about every single trial I've ever done — and that's all this (Thome civil lawsuit) is. But we did a solid, thorough investigation in the last shooting and I stand behind my team and the findings we rendered — not the state police, what we rendered."