

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH**

No. SJC-2021-0129

**CHRIS GRAHAM, JORGE LOPEZ, MEREDITH RYAN, KELLY AUER,
COMMITTEE FOR PUBLIC COUNSEL SERVICES,
and HAMPDEN COUNTY LAWYERS FOR JUSTICE,
Petitioners**

v.

**DISTRICT ATTORNEY FOR HAMPDEN COUNTY,
Respondent**

**RESPONDENT'S SECOND INTERIM STATUS REPORT
NOVEMBER 22, 2021**

Pursuant to the Second Interim Order of the Single Justice dated October 8, 2021, the Respondent, District Attorney of Hampden County, submits the following report on the status of matters related to this Petition:

**A. Identification and Dissemination of Potentially Exculpatory Material
Relating to the Department of Justice (DOJ) Report**

In its first Status Report dated September 14, 2021, the HCDAO described in some four detailed pages the identification and dissemination efforts it had unilaterally undertaken regarding potentially exculpatory material received from

Springfield City Solicitor Pikula relating to the DOJ report at issue – roughly 800 pages of Springfield Police Department reports. Based on its determination to disseminate those materials as broadly as possible, copies had been provided to the Committee for Public Counsel Services and the Hampden County Lawyers for Justice, which handle the vast bulk of cases in the Hampden County and whose lawyers likely provided representation for nearly all the defendants who might arguably be affected by any disclosures. The HCDAO also sent individual disclosures to the attorneys of record for the sixteen cases identified in the Pikula cover letter.

That, in a sense, has been the “easy” part. The next stage involves some 8000 separate disclosures based upon various officer/defendant combinations – a massive, time consuming and laborious process which involves two full-time employees who already have significant daily responsibilities.

Their work at this next stage has been and is: Once the computer database had been searched for all of the various officer/defendant combinations, the resulting list had to be sorted by docket number and highlighted to show duplicates, which then had to be reviewed line-by-line for deletion. Because the state system only “pulls” the “lead” defendant, each duplicate case had to be viewed in DAMION to see if the information matched the docket number – and then type in the correct information for co-defendants. This work has been

performed by two employees who have also been handling their regular workloads while engaged in this process. The principal responsible employee has worked dozens of hours outside of her regularly scheduled hours to complete the list – finally accomplished on November 3, 2021.

The two employees are now looking up each of the 8383 cases thus identified on masscourts.org to identify the attorney of record. The MassCourts system is often off-line and very slow. Although the HCDAO has begun working to find ways to reassign the regular daily work, it is now clear that this phase will take weeks if not months to complete. The anticipated pace is roughly 100 “identifications” per day which would equate to 83 business days to complete the look-up process.

The HCDAO only has access to MassCourts for Superior Court and District Court cases. To then identify juvenile cases, the HCDAO will have to look through its own data management system to try to identify defense counsel, and go online to the BBO website to locate each current address. Finally, when this portion is complete, the HCDAO will have to identify every pro se defendant and try to locate their current address – by BOP or by other means. Finally (for that stage) all the addresses will have to be typed into the Master List.

Presently it appears that the HCDAO will have to “burn” some 8,383 individual discs, each containing the material pertinent to a particular defendant. It

is trying to find alternatives, including a secure website where access to specific documents could be granted.

When all the addresses have been located and “inputted,” a mail merge can be created to send cover letters and materials to all those identified. Because each officer has different exhibits, this process will also take time to organize. It is important that every counsel or defendant is getting the *correct* information. Then labels will be printed and the HCDAO can begin the again time-consuming process of stuffing envelopes and mailing the final “products” to each of the 8000 plus counsel/defendants.

B. The “Kent Report”

Springfield City Solicitor Pikula has continued to decline to produce the so-called Kent Report –previously described in Respondent’s first status submission to this Court as the cover “report “for the 800 pages of Springfield Police documents – ostensibly related to the DOJ report. As noted in the HCDAO’s response to the petition, counsel for petitioner Jorge Lopez has sought additional information, and his claims are being litigated in the Superior Court under the supervision of Associate Justice Edward McDonough. The HCDAO is aware of no other defendants who have sought access to this report through the procedures available under Mass.R.Crim.P. Rule 17.

C. Federal Civil Litigation

1) The HCDAO's suit against the United States Attorney for the District of Massachusetts seeking potentially exculpatory documents relevant to the DOJ investigation, including identification of the officers involved in the incidents described in the report, has been reassigned from Judge Mastroianni to Judge Gorton.

2) The court has scheduled the initial Rule 16 conference for November 30, 2021. The HCDAO expects to file a summary judgment motion on a briefing schedule to be established by the court.

D. Effect on Current and Past Defendants

Despite the widespread dissemination of the DOJ report and the underlying 800 pages of documents, as described above, no defendants in closed cases have moved for relief on that basis. Similarly, except for petitioner Lopez, no defendants in pending cases have sought additional information, nor have the disseminated documents been admitted or used in recent trials. Thus, there is no indication that any defendant's constitutional rights have been adversely affected.

E. Future Action Items

1) The HCDAO will continue to work to complete the disclosure of the SPD documents to defendants in unrelated cases.

2) The HCDAO will continue to pursue release of the DOJ documents in the federal court action.

F. Conclusion and Request for Dismissal

The Petitioners initiated this matter with an array of scathing allegations of complicity and misconduct by the Respondent and members of his office. These many supposed transgressions ranged from those totally unsupported by facts to those barely tethered to reality by way of meandering and outright false affidavits. Petitioners did not confine their allegations to the mere pages of their petition to this Court; in fact, they also sought widespread publicity for these accusations. They distributed a formal press release replete with many of the same unfounded allegations of misconduct and malfeasance. They gave television interviews in an effort to self-promote and heighten the impact of their press release. In so doing, the Petitioners leveraged a statutory mechanism to seek the superintendency of the highest court in the Commonwealth into a publicity tool for their respective organizations with no regard for the detrimental impact on the public perception of the criminal justice system. The Petitioners' conduct in this regard shows a disrespect for the Rules of Professional Conduct, the proceedings of this Court, and for the decency and professionalism that should exist between parties in the legal system who presumably share an interest in seeing that justice is done.

This Court, in its First Interim Ruling, rightly ignored the bombast of the Petitioners' unfounded pleadings regarding supposed misconduct and transgressions of the Respondent. Instead, the Court focused on the newly received (by the HCDAO) "Pikula letter," which referenced the "Kent Report" and the 800 pages of documents allegedly related to the DOJ report. Despite the Petitioners' claims in the media after this Court's initial order that their advocacy prompted this disclosure, the record clearly reflects that letter and the accompanying documents were provided in response to the HCDAO's many requests that long pre-dated this petition. More importantly, the record demonstrates that the HCDAO has arduously and in good faith carried out its ethical responsibilities through the varied issues with the Springfield Police Department, including the release of the DOJ report, and continues to do so. The HCDAO was seeking any potentially exculpatory documents long before this litigation and it will continue to do so regardless of any litigation.

The Court is left with a record that establishes unequivocally that the HCDAO has met its responsibilities thus far, and is positioned and committed to doing so going forward. Any controversies about the manner in which it is doing so are properly resolved in the Superior Court. The expressed concern that defendants' constitutional rights are being adversely affected while the disclosure process occurs have proven completely unfounded, as demonstrated by the absence

of activity based on the documents. In light of these facts, and given the limitations imposed by the separation of powers, there is neither need nor authority for the Court to remain involved. The HCDAO respectfully requests that this status report be the last and that this petition be dismissed.

Respectfully submitted,

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