

**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**

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**RESPONDENT'S STATUS REPORT  
SEPTEMBER 14, 2021**

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Pursuant to the Interim Order of the Single Justice dated July 16, 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 Report**

As noted at the July 14, 2021 hearing, the HCDAO had just received a letter from Springfield City Solicitor Edward M. Pikula dated July 2, 2021 in response to its requests that the Springfield Police Department (SPD) identify potentially

exculpatory information relating to incidents described in the July 2020 report issued by the United States Department of Justice (DOJ). The letter, attached as Exhibit “A”, was accompanied by an appendix of documents containing sixteen exhibits, totaling approximately 800 pages. As of the time of the hearing, the HCDAO was beginning the process of reviewing those documents. The letter also notified that HCDAO that the City was unable to identify four of the twenty-three incidents described in the DOJ report.

Since the hearing, the HCDAO has taken the following actions with respect to the identification and disclosure of potentially exculpatory information in the possession of members of the prosecution team:

- 1) The HCDAO has completed its review of the documents produced with Pikula’s July 2, 2021 letter. The purpose of the review was to determine whether the documents constituted new material, whether they were potentially exculpatory, and whether they had previously been disclosed as Brady material. The review determined that most of the documents were police reports and related documents that would have been disclosed to defendants in the normal course of the original cases arising from those reports. The documents also included a small number of Internal Investigation Unit (IIU) reports that were not previously in the custody or control of the prosecution team. See Commonwealth v. Wanis, 426 Mass. 639, 643-644 (1998); Commonwealth v. Rodriguez, 426 Mass. 647 (1998).

2) After completing its review, the HCDAO decided that disclosure of all documents would be appropriate in accordance with this Court's Matter of a Grand Jury Subpoena guidance that prosecutors should err on the side of disclosure, and not because of any independent determination by the HCDAO that particular documents were either exculpatory or admissible. Rather, the HCDAO took the broad view that any SPD documents relating to any identifiable incident in the DOJ report would be disclosed.

3) The HCDAO manually redacted personal information from all of the 800 pages so that they could be disclosed to defendants not involved in the cases that were the subject of the documents.

4) The HCDAO created a list of all SPD officers mentioned in the documents who were potential witnesses and who could possibly be subject to Brady disclosures. Cases of doubt were resolved in favor of including officers on the list. This resulted in a list of thirty officers, some of whom are no longer active in the SPD.

5) In accordance with its practice already developed in prior matters, the HCDAO sent a complete copy of the redacted attachments and Pikula's letter to the supervising attorneys of the Committee for Public Counsel Services and the Hamden County Lawyers for Justice. The transmittal letters are attached as Exhibits "B" and "C". The vast majority of attorneys representing criminal

defendants in Hampden County have some connection to one or both of these organizations, and so the HCDAO has found that this is the most effective way to disseminate potentially exculpatory information as broadly and quickly as possible, while it is engaged in the far more time-consuming process of identifying individual cases where disclosure is warranted.

6) The HCDAO also sent the individual case attachments to the attorneys of record for defendants in the sixteen cases identified in the Pikula letter. An exemplar cover letter is attached as Exhibit “D”.

7) The HCDAO then developed a query and conducted a search of a legacy case management system to identify cases meeting the following criteria:

- a) Involving one or more of the thirty officers referenced in the attachments; and
- b) Arising on or after the date of the incident referenced in the attachments.

This resulted in a list of approximately 8000 disclosures of officer/defendant combinations. The HCDAO has begun the process of notifying the attorney of record for each defendant in those cases and disclosing the documents related to the officer(s) involved in those cases. This is a massive, time consuming and laborious process which involves two full-time employees with other daily responsibilities, and is expected to take several weeks. The process began with a



computer generated report that was created in the HCDAO case management system to identify every case in which one of the thirty officers was listed as a witness. The list generated by the report took approximately 20 minutes to run for each officer's name. Once finished the lists were exported into an excel format and sorted by docket number and reviewed for duplicates. This required line by line review and a manual search of our database for co-defendants, as each case entry identifies only the lead defendant. Remaining to be done is the removal of duplicates, identifying counsel of record for all 8000 defendant/officer combinations, separating and then collating the exhibits for dissemination to relevant parties, burning copies of the appropriate exhibits on to individual CDs, and addressing and mailing the material to counsel or pro se defendants.

8) The Pikula letter of July 2 referred to a report written by SPD Deputy Chief Steven Kent, who headed the SPD's efforts to identify the incidents described in the DOJ report. Pikula declined to produce that report to the HCDAO, claiming that it was prepared in anticipate of litigation. The HCDAO made a second request for that report by letter dated August 13, 2021, a copy of which is attached as Exhibit "E".

9) By letter dated August 24, 2021, a copy of which is attached as Exhibit "F", Pikula again refused to produce the Kent report.

10) The HCDAO informed Pikula of its ongoing process of disclosing the attachments, as well as its intention to alert defendants to the existence of the Kent report so that they could pursue appropriate remedies under Rule 17, Mass. R. Crim. P. The HCDAO also requested an update on the status of the SPD's efforts to identify the remaining incidents described in the DOJ report, as well as assurances that all documents pertaining to the identified incidents had been produced to the HCDAO. A copy of that letter dated September 1, 2021 is attached as Exhibit "G".

#### B. Federal Civil Litigation

1) As discussed at the initial hearing on this Petition, the HCDAO has filed suit against the United States Attorney for the District of Massachusetts in an attempt to obtain potentially exculpatory documents relevant to the DOJ investigation.<sup>1</sup>

2) The defendant filed an answer on August 16, 2021. The case was originally assigned to United States District Court Judge Mark Mastroianni, a former Hampden County district attorney, who recused himself, and the case was reassigned to United States District Court Judge Nathaniel Gorton. Before the

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<sup>1</sup> As previously noted, the SPD gave the DOJ direct access to its computer system, and has no way to identify the documents reviewed by the DOJ. The DOJ is the only entity who knows which documents form the basis for its July 2020 report.

reassignment, the court had scheduled the initial Rule 16 conference for September 24, 2021, but the validity of that date is now uncertain.

3) In anticipation of a possible Rule 16 conference on September 24, the parties have conferred as required by Local Rule 16.1. During the conference, the United States indicated that it has not changed its position and that it will continue to refuse to disclose any documents related to the DOJ investigation.

4) The HCDAO asked the United States to consider as a partial settlement proposal whether DOJ would identify the specific incidents described in its report. The United States refused to do so.

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### C. Future Action Items

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

2) The HCDAO will pursue release of the DOJ documents. It is anticipated that the federal civil action will be resolved by way of a summary judgment motion, and that a briefing schedule will be set at the Rule 16 conference.

Respectfully submitted,

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# EXHIBIT A

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**THE CITY OF SPRINGFIELD, MASSACHUSETTS**

July 2, 2021

Jennifer N. Fitzgerald

First Assistant

Hampden District Attorney's Office

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Springfield, MA 01103

This correspondence is in follow up to a request from the District Attorney to Commissioner Clapprood for records, dated December 2, 2020, my response (on behalf of Commissioner Clapprood) to the District Attorney dated December 10, 2020, a follow up letter from the District Attorney dated March 11, 2021, as well as email communications between us March 16, 2021 and April 26, 2021.

The District Attorney's letter to the Commissioner, referring to the DOJ Report and the voluminous records reviewed, states:

investigators reviewed 5,500 arrest reports and 10 use-of-force reports from the Springfield Police Department's Narcotics Bureau from 2013-2018. Found by investigators, Report at 2, were "examples where Narcotics Bureau officers falsified reports to disguise or hide their use of force[;]" and Report at 16, "... a pattern or practice ... [where] officers made false reports that were inconsistent with other available evidence, including video and photographs... "

A footnote in the letter from the DA states:

the reported findings of unconstitutional law enforcement conduct, as described in the twenty-eight-page Report, suggest the documents supporting these findings may contain potentially exculpatory material as that term is legally understood, and is subject to my mandatory review to effectively meet the constitutional, statutory, and ethical obligations of my office

As stated in my response to the District Attorney:

The City of Springfield has not been provided any information from the Department of Justice specifying any identifying information as to the case numbers, names of officers, or names of individual criminal defendants described in the Report. Shortly after receipt of the report, the Police Commissioner assigned personnel to review the incidents described in the Report in an effort to identify the specific dates of incidents, police officers, and individuals referenced in the Report. While some appear obvious and involve case information already fully disclosed to your office,

such as references to an incident relating to juveniles arrested in Palmer or an incident occurring near the Nathan Bills Restaurant; and others have been identified with a reasonable degree of certainty, some of the examples could not be identified with certainty and the effort to do so is ongoing.

Moreover, the review revealed a number of statements contained in the report which the Police Commissioner believes are not accurate. However, while the Police Commissioner disagrees or disputes statements contained in the report, she has repeatedly stated that she acknowledges the need for reforms in the Department and, with the full support of Mayor Sarno, she has initiated efforts to make changes based on the recommendations set forth in the report and is committed to implement reforms within the entire Springfield Police Department. I am informed that, since receipt of the Report and the implementation of changes so far, the Police Department has not received any citizen complaints alleging excessive force by the Narcotics Unit.

The DOJ report makes numerous references to instances with little identifying information other than to describe the multiyear time period and type of report (injury, arrest, IIU, etc.) and a description of statistics to summarize the review. The report states that 114,000 pages of SPD's incident reports, investigative reports, policies, training materials, and other internal documents were reviewed. As noted in previous correspondence, any and all records which can be made available to you that can be identified as reviewed by DOJ will be provided to you at your request. However, as I indicated to you in our conversation, to work efficiently with the DOJ they were provided access to the department's record management system and I am not sure whether or not our IT professionals are able to accurately track what information they accessed. In addition, a report was prepared by Deputy Chief Kent but I believe it is confidential as protected by the work-product doctrine as an internal memorandum prepared for the purpose of discussing potential litigation strategy. The documents provided with this letter in the appendix were utilized in preparing that work product.

However, in order to provide an exhaustive and accurate accounting of all records requested by your office will require a cooperative effort between DOJ, the Police Department, and the District Attorney's Office. As previously indicated, this office stands ready to assist you in identifying any *Brady* material.

As a first step towards accomplishing this, in follow up to my letter and our subsequent communications, set forth below is a summary of each incident as described in the DOJ report, identified in the order each is discussed in the report that could be reasonably identified. Submitted with this letter is an appendix containing documents relative to each of the incidents which the police department has been able to reasonably gather in its efforts to identify each incident described in the DOJ report. In most cases this includes the arrest report identifying number and the date of arrest. In other cases, only an Internal Investigating Unit identifying number was available. These documents in the appendix contain information that is confidential and protected under CORI. I would request that no documents be released unless properly redacted of confidential or privileged data.

The records provided in the appendix are not exhaustive as to each incident but are provided with the intent to identify the incidents described as best as we are able. These records were



collected as a result of the Police Commissioner assigning personnel to review the incidents described in the Report in an effort to identify the specific dates of incidents, police officers, and individuals referenced in the Report with legal counsel. They are being shared to make you aware of our efforts to identify potential *Brady* material with your office.

The documents should be carefully reviewed as these records reflect the best efforts to identify the incidents summarized in the report, but the records cannot always substantiate the description set forth in the DOJ report. As previously indicated, many items in the DOJ report are disputed as inconsistent with the reports that SPD was able to identify.

Once your office has had a chance to review the records provided and the information in this letter, I would anticipate a need to verify whether the incident in the DOJ report matches the records produced in the appendix and to determine potentially exculpatory material as that term is legally understood and is subject to your mandatory review to effectively meet the constitutional, statutory, and ethical obligations of your office. The incidents as described in the DOJ report, together with a reference to the corresponding documents listed as exhibits in the appendix outlining the facts alleged in the DOJ report for each incident and the page number, are set forth below. A copy of the DOJ Investigation Report is also included in the appendix:

1. "October 2018, the United States indicted a veteran Narcotics Bureau sergeant for color of law violations related to his 2016 arrest of two juveniles. The indictment alleges that the sergeant kicked one of the youths in the head, spat on him, and said, "welcome to the white man's world." Further, the sergeant allegedly threatened to, among other things, crush one of the youth's skulls and "fucking get away with it," "fucking bring the dog back [and] let him fucking go after" a youth, "fucking kill [one of the youth] in the parking lot," charge a youth with a murder and "fucking make it stick," and that he would "stick a fucking kilo of coke in [one of the youth's] pocket and put [him] away for fucking fifteen years." The indictment also alleges that during interrogation, the sergeant "pointed to blood on his boot" and told one of the youths that if he lied, the youth's "blood would be on [the sergeant's] boot next." The case is pending." (DOJ p.2).

"In addition to the federal criminal charges filed against this officer, one of the youths filed a civil lawsuit alleging that the officer used excessive force against him. The lawsuit alleges officers beat the youth so severely that he received a fractured nose, two black eyes, and numerous head contusions and abrasions. The sergeant who threatened the youths initially received a 60-day suspension for the incident, but SPD suspended him without pay after he was criminally indicted by a federal grand jury in 2018. The civil lawsuit against the City and the criminal charges against the sergeant are both still pending. As a result of this controversy, local prosecutors have had trouble successfully prosecuting drug crimes in Springfield, in large part due to the fact that they have not been able to rely on testimony from discredited Narcotics Bureau officers." (DOJ p.3).

See Exhibit 1 in Appendix.

2. "In one incident, six off-duty SPD officers not assigned to the Narcotics Bureau fought with four men in a parking lot outside a bar in April 2015. The officers reportedly caused significant injuries to the men, including knocking one unconscious and fracturing his leg and skull, kicking and punching another while he lay on the ground covering his bleeding face, and kicking a third man in the head repeatedly. The Massachusetts Attorney General's Office has criminal charges pending against several then off-duty and then on-duty SPD officers; charges include both assault and battery and that some officers covered up the incident by providing false reporting.

The alleged beating of civilians outside a bar and alleged willingness of officers to cover up fellow officers' misconduct demonstrate accountability lapses within the Department." (DOJ p. 5).

See Exhibit 2 in Appendix.

3. "A former Narcotics Bureau evidence officer was indicted in January 2016 for stealing cash from the narcotics evidence room. The stolen cash allegedly was obtained from more than 170 drug cases and totaled almost \$400,000. The officer was a 43-year-veteran of SPD, and at the time of his retirement in July 2014, was the longest-serving officer in SPD. The officer died before this matter could be resolved legally or administratively." (DOJ p.6).

As noted in the DOJ report, "the City and SPD have taken some steps to address matters within the Department in response to this incident" including "a City-led audit of SPD's record-keeping practices" as well as "the hiring of a consultant to review SPD's accountability systems, as well as all SPD policies and protocols. In early 2019, the consultant issued its first report, which addressed accountability, finding that although SPD has some practices in place regarding complaint intake, classification, and investigation, the practices are not comprehensive or codified appropriately in policy. The report recommended that IIU create a detailed internal affairs manual outlining the process for receiving, investigating, and resolving complaints. It also recommended that IIU create an updated electronic case management system to document and track complaints. The report further recommended improvements to the CPHB by expanding the Board from seven members to at least nine, staffing the Board with individuals who have relevant police and trial experience, and appointing an oversight coordinator that would be responsible for the daily administration of the Board. The City and SPD have publicly committed to implementing these reforms. To date, SPD has revised its IIU policies and added a captain to oversee IIU. In addition, the City added an additional CPHB member, bringing the total to eight members, and allocated additional resources to the CPHB." (DOJ p.6).

See Exhibit 3 in Appendix.



4. "[I]n one incident, Narcotics Bureau officers punched V.A., a 25-year-old man, following a foot pursuit.<sup>20</sup> When the four Narcotics Bureau officers approached V.A. and motioned to him to remove his earphones, officer reports state that V.A. pushed one of the officers and began running away. After they caught up to V.A., a Narcotics Bureau supervisor delivered multiple punches to V.A.'s face, allegedly because V.A. looked prepared to fight by holding his closed fist in a "punching position." V.A. sustained a broken nose and lip laceration requiring three stitches. The incident then allegedly continued on the ground with an officer and V.A. exchanging blows, though there is no evidence indicating that the officer sustained any injuries. Instead, it appears that officers chased V.A. and initiated the use of force by striking V.A., a non-assaultive subject, with multiple punches, immediately using a means of force that was disproportionate to the subject's resistance without attempting other less dangerous uses of force. Given that four officers were present, other methods of control could have been used instead of immediately punching him in the head." (DOJ p.12)

See Exhibit 4 in Appendix.

5. "In another incident, a Narcotics Bureau officer punched T.S., a 17-year-old youth, as he rode a motorbike past a group of Narcotics Bureau officers. At the time of the punch, the officers were making unrelated arrests; when the youth rode his motorbike past the officers, reportedly at a high rate of speed, an officer struck the youth. In the involved officer's arrest report, he does not characterize the strike as a punch, but rather states that he "extended his left arm" to prevent the youth from colliding with him on the motorbike. The 17-year-old then "swerved" his motorbike and the officer ended up "mak[ing] contact" with the youth's head and shoulder area. Administering a fist strike in this circumstance was particularly dangerous as the youth could have easily lost control of the motorbike, severely injuring himself, the officer, or others. The subject's brother, L.S., was also punched in the face, but by a different Narcotics Bureau officer. The officer who punched L.S. reported that he did so because L.S. ran towards the officer "with his fist clenched and arm cocked back." None of the other officers at the scene corroborated the punching officer's account." (DOJ p.12).

See Exhibit 5 in Appendix.

6. "In a third incident, a Narcotics Bureau officer pushed J.B., a 22-year-old man, in the face following a foot pursuit where J.B. exhibited no assaultive behavior. After four Narcotics Bureau officers observed J.B. to be engaged in a narcotics transaction, an officer engaged in a foot pursuit and shoved J.B. from behind so that he fell to the ground. As reported by the officer in the prisoner injury report narrative, J.B. rolled over and began to push at the officer in an attempt to escape, as opposed to in an assaultive manner. The Narcotics Bureau officer then struck J.B. in the face with a closed fist, resulting in a laceration to his lower lip. Nothing in the officer's narrative indicated that J.B. was engaging in the kind of active physical threat that would condone the use of a knuckle punch to the face. The fact that four Narcotics Bureau officers were involved in this arrest made it even less necessary to

strike the subject in the head to gain compliance.” (DOJ p. 13).

See Exhibit 6 in Appendix.

7. “In the course of one drug arrest, for example, a Narcotics Bureau officer punched R.F., a slight, middle-aged man, while attempting to retrieve contraband. Officer reports state that R.F. resisted opening his fist and instead attempted to free his wrist from the Narcotics Bureau officer’s grasp; officers then immediately punched him in the face. The Narcotics Bureau officer who punched R.F. escalated the situation without attempting other means of gaining compliance, unnecessarily resulting in a serious use of force. R.F. is not a large individual – 5’9” and 140 pounds – and there was no evidence that he had access to a weapon or otherwise posed a threat. The arrest report also shows that at least four Narcotics Bureau officers were on the scene.” (DOJ p.13).

See Exhibit 7 in Appendix.

8. “In one incident, *see infra* Section III.C.3., video footage shows that officers rushed into a store and immediately hit S.L. in the face. The encounter happened so quickly that it appears the plainclothes officers failed to identify themselves. The video lacks audio, but at a minimum, the video makes clear that if officers did announce themselves or issue a command, they failed to provide S.L. with any time to react to the officers and surrender before he was hit.” (DOJ p. 14).

See Exhibit 8 in Appendix.

9. “In the case of P.J., he claimed that he fled in his vehicle because he was being chased by an unmarked vehicle and did not know law enforcement officers were in that vehicle. In one report, an officer describes “extracting [P.J.] through the passenger side door and proned [him] face down onto the pavement.” Photos show he sustained significant injuries—severe contusions and dark bruising on the right side of his face, a large black eye, a gash on the bridge of his nose, and additional abrasions on the left side of his face and the left side of his nose. These injuries are inconsistent with the officers’ reports that P.J. had “small cuts to the face,” and are instead consistent with repeated strikes of his head.” (DOJ p.14).

“In the case of P.J., described above, a Narcotics Bureau officer stated that he made an effort “to extract[ ] [P.J.] through the passenger side door and prone[ ] [him] face down onto the pavement.” According to another officer’s narrative, this resulted in “minor abrasions to the right side of his face,” and according to the booking sergeant in charge of filling out the SPD-276 form, P.J. had “small cuts to the face.” These descriptions of P.J.’s injuries are plainly contradicted by the photographs in his prisoner injury file. These photographs clearly show severe contusions and dark bruising on the right side of his face, a large black eye, a gash on the bridge of his nose, and additional abrasions on the left side of his face and the left side of his nose. The injuries present in the photographs are inconsistent with the officers’ reports, and are instead consistent with repeated strikes to P.J.’s head. Further,



when interviewed by IIU after P.J. filed a complaint, a civilian witness stated that she saw officers kick P.J. in the head and body. During his IIU interview, P.J. stated that one officer struck him in the head with the butt of a handgun, and that once on the ground, several officers began kicking and punching him in the head and the body. P.J. further alleged that, once back at the station and in a holding room, a Narcotics Bureau officer walked in and beat him severely in the face with a book, causing him to bleed profusely. To be clear, there is no other corroboration of P.J.'s version of events besides the photographs we reviewed and the statement of the civilian witness. But these pieces of evidence are more consistent with some of P.J.'s reporting of the takedown than the officers' reports. Although IIU investigated P.J.'s complaint, IIU failed to sustain P.J.'s allegations and the officers received no discipline." (DOJ p. 14).

See Exhibit 9 in Appendix.

10. "In the case of F.D., two Narcotics Bureau officers, including one supervisor, stated that after a brief pursuit of F.D.'s vehicle, they pulled F.D. from the car onto the ground. One officer's report says F.D. was "placed" on the ground and another officer's report states that F.D. was "escorted" to the ground. But photos of the abrasions to F.D.'s face demonstrate the use of serious force and multiple points of impact including: the left side of his forehead, the right side of his forehead, and his cheek. F.D. reported in an interview that he was kicked in the face and upper body area 10-12 times, with multiple officers taking turns kicking him. Regardless of whether these injuries were caused by an aggressive takedown or direct kicks to the head, the prisoner injury report narratives do not indicate that any such force was necessary. None of the officer reports state that F.D. resisted arrest or was combative, and this is further supported by the fact that he was not arrested for resisting arrest or assault and battery of a police officer. According to documents, 12 officers were listed as involved with the arrest and four officers completed prisoner injury report narratives, all arising from an incident that began when F.D. failed to stop because he did not know he was being chased by officers." (DOJ p. 14).

See Exhibit 10 in Appendix.

11. "[I]n the course of a recent arrest, roughly a dozen officers, most of them Narcotics Bureau officers, executed a narcotics warrant for A.E. After a vehicle pursuit, A.E. eventually stopped but refused to get out of the car, and officers physically pulled him out. At some point during his extraction from the car, A.E.'s head struck the pavement directly, and the booking photos show significant swelling in his right forehead area in two points of impact, indicating that officers likely used additional force once A.E. was on the ground. The officers' own reports indicate that Narcotics Bureau officers had A.E. under control at all times, and nothing indicates that his head needed to be slammed to the pavement. Despite the serious head injuries depicted in the booking photos, one officer's report described A.E. as having only a "minor injury" above his eye. Notably, the Narcotics Bureau officers' accounts of

what happened in the course of the arrest are also inconsistent with each other. One Narcotics Bureau officer reported that A.E. and other officers fell to the ground together, and that A.E. then continued to struggle and resist handcuffing. Another officer did not mention that any officers fell to the ground, and instead reported that A.E. tried to pull away when officers handcuffed him and “stumbled falling to the ground.” Viewed in isolation, each officer’s report fails to describe circumstances that would justify the level of force used in this encounter. Viewed together, the inconsistencies between these reports demonstrate that the officers did not accurately report how A.E. sustained the significant and multiple injuries to his head.” (DOJ p. 15).

See Exhibit 11 in Appendix.

12. “[D]uring the execution of an arrest warrant in 2017, a Narcotics Bureau officer used force against a subject who refused to exit his home, but the officer did not report the use of force in a prisoner injury file. Citing an “aggressive barking dog,” the officer executing the warrant deployed one burst of oleoresin capsicum (OC) spray to the subject’s face through a window, and then pulled the subject through the door. Once the subject was out of the house, the officer used a leg sweep, causing the subject to land on the floor of the porch. The officer then struck the subject with his fist in the upper arm/shoulder area. The force employed during this incident was not reported in a prisoner injury file.” (DOJ p. 16).

See Exhibit 12 in Appendix.

13. “According to another Narcotics Bureau arrest report from 2018, while executing an arrest warrant related to the sale of narcotics, officers took a subject from the front seat of a car and placed him face down on the street in order to be handcuffed. The arrest report notes that he “sustained minor abrasions to his forehead.” There is no accompanying prisoner injury file for this incident.” (DOJ p. 16).

See Exhibit 13 in Appendix.

14. “Officers regularly use rote and pat language to justify their uses of force without providing individualized descriptions. Reports often contain conclusory language calling a particular use of force reasonable without describing in detail the circumstances surrounding the use of force. One report, for example, said that as the officer attempted to stop the subject from fleeing, they “both violently fell to the ground. Once on the ground [the subject] continued to struggle[,] at which point [another officer] arrived and began assisting and controlling and placing [the subject] under arrest.” The report concludes by stating, “[o]nly reasonable and necessary force was used to apprehend the subject.”. (DOJ p. 17).

Not able to determine incident.



15. "Other reports acknowledge some sort of a struggle, but fail to document the specific resistance encountered or the specific type of force used by the officers involved. One such prisoner injury narrative simply stated about a female subject that, "[d]ue to her resisting [arrest] and in order for us to safely handcuff her, we had to bring her down, in a prone position, face first, onto the sidewalk. During this struggle she sustained scrapes to her face area." (DOJ p. 17).

Not able to determine incident.

16. "In the case of P.J., described above, a Narcotics Bureau officer stated that he made an effort "to extract[ ] [P.J.] through the passenger side door and prone[] [him] face down onto the pavement." According to another officer's narrative, this resulted in "minor abrasions to the right side of his face," and according to the booking sergeant in charge of filling out the SPD-276 form, P.J. had "small cuts to the face." These descriptions of P.J.'s injuries are plainly contradicted by the photographs in his prisoner injury file. These photographs clearly show severe contusions and dark bruising on the right side of his face, a large black eye, a gash on the bridge of his nose, and additional abrasions on the left side of his face and the left side of his nose. The injuries present in the photographs are inconsistent with the officers' reports, and are instead consistent with repeated strikes to P.J.'s head. Further, when interviewed by IIU after P.J. filed a complaint, a civilian witness stated that she saw officers kick P.J. in the head and body. During his IIU interview, P.J. stated that one officer struck him in the head with the butt of a handgun, and that once on the ground, several officers began kicking and punching him in the head and the body. P.J. further alleged that, once back at the station and in a holding room, a Narcotics Bureau officer walked in and beat him severely in the face with a book, causing him to bleed profusely. To be clear, there is no other corroboration of P.J.'s version of events besides the photographs we reviewed and the statement of the civilian witness. But these pieces of evidence are more consistent with some of P.J.'s reporting of the takedown than the officers' reports. Although IIU investigated P.J.'s complaint, IIU failed to sustain P.J.'s allegations and the officers received no discipline".(DOJ p. 18)

See Exhibit 9 in Appendix.

17. "In another prisoner injury file, Narcotics Bureau officers report that M.K., a 5'3" man, had a "small cut over and under his left eye," whereas the photographs show not only the small cuts but that his eye was almost swollen shut." (DOJ p. 18).

See Exhibit 14 in Appendix.

18. "In a 2016 incident, security camera footage directly contradicted aspects of the reports of Narcotics Bureau officers. In reports documenting a Narcotics Bureau arrest of S.L., a Narcotics Bureau officer stated that as he reached out to secure S.L., S.L. "backed away and struck [him] in the face with a closed fist." The officer reported that he then struck S.L. in the face and upper body in an attempt to stop S.L.



from striking him again. As reported by the officer, the circumstances of this interaction would justify the force used. But the officer's account is belied by video evidence, which shows S.L. standing, looking down at a piece of paper in his hand, when two plainclothes officers rush towards S.L., grab his wrist and tackle him to the ground. But for the video evidence of what happened in this use of force, the use of force described in the misleading reports provided by the officers would have appeared reasonable." (DOJ p. 18).

See Exhibit 8 in Appendix.

19. "In many cases, we were only able to identify untruthful reporting—and deficiencies in the way force was actually used—because photographic and/or video evidence happened to be available. However, these inaccurate reports indicate that it is not uncommon for Narcotics Bureau officers to write false or incomplete narratives that justify their uses of force. Because many prisoner injury files lack photographs of subjects' injuries (in contravention of SPD policy) or video evidence of the arrest, the inaccurate narratives raise substantial concern that there are other uses of unreasonable force that are falsely reported." (DOJ p.18).

Not able to determine incident(s).

20. In one of them, the complainant alleged that a Narcotics Bureau officer reached in the car while she was driving, pushed her against the seat, and grabbed her hand and slammed it into the dashboard so hard that she was bruised. In her IIU complaint, she submitted photos showing bruises. Because she was not arrested, no arrest report or Prisoner Injury file exists for this incident. (DOJ p. 20).

Not able to determine incident.

21. "In another incident, the complainant alleged that a Narcotics Bureau officer pulled him out of a car and handcuffed him roughly, only to release him because they had attempted to arrest the wrong person. Following IIU investigations, neither of these complaints were sustained". (DOJ p. 20).

See Exhibit 15 in appendix.

22. "For example, a prisoner complained that the "police beat me up," sprayed OC, and struck him three times on the back of the head with a flashlight. The prisoner injury report narrative states that the prisoner had a laceration on the left side of his head and was transported to the emergency room of a local hospital for treatment. SPD's Commissioner classified this excessive force complaint as a complaint that needed to be reviewed only by the officer's chain of command. The investigative file consisted of the officers' statements and the arrest report; there was no statement from the complainant or witnesses. The supervisor's discipline was to recommend retraining to "clearly articulat[e] use of force in reporting to accurately depict necessity." The *prima facie* evidence in the reports indicated that that the officer's force was potentially excessive; in response to the subject's resisting arrest, the office struck the subject with a flashlight three times in the head—force

that could potentially cause death or serious bodily injury. Had SPD referred this case to IIU for a full investigation, the Department could have reasonably sustained an excessive force complaint, rather than finding only that the officer erred by improperly failing to justify his use of force." (DOJ p. 23).

See Exhibit 16 in appendix.

23. "In one IIU investigation regarding allegations of excessive force conducted in the spring of 2016, IIU failed to interview several key witnesses who observed the incident. The incident so disturbed the witnesses that they recounted it in social media postings the same day. The IIU investigator knew who the witnesses were, where they lived, and had taken a statement from another witness confirming their identities, yet never interviewed them, noting instead in the report that "all efforts to contact [them] were unsuccessful," without any detail as to what "efforts" he made. Other IIU files document similar failings in following up with key witnesses, including law enforcement officers from other agencies, to conduct interviews and obtain essential information." (DOJ p. 24).

See Exhibit 1 in appendix.

Once you have had a chance to review the appendix of records submitted with this letter, containing information collected in an effort to identify the incidents in the DOJ report and outlined above, please contact me to discuss next steps in this process of compliance with your request.

Very truly yours,



Edward M. Pikula

Enc. Appendix.

cc: Police Commissioner

# EXHIBIT B





ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

August 26, 2021

sent via email and first class mail

Attorney Lawrence Madden  
Committee for Public Counsel Services  
101 State Street, Suite 304  
Springfield, MA 01103

RE: Potentially exculpatory Information

Dear Counsel:

As you are aware, the Hampden County District Attorney's Office (HCD AO) has been trying for more than a year to identify incidents involving the Springfield Police Department (SPD) cited in the United States Department of Justice (DOJ) report that was issued last summer. These efforts have included multiple communications and written requests to the DOJ, the filing of a lawsuit against the federal government, and inquiries to the SPD. The purpose of the HCD AO's efforts has been to fulfill the office's constitutional obligation to locate and disclose exculpatory evidence in the possession of the prosecution team. These efforts have been substantially impeded by the lack of identifying details in the DOJ report, and the DOJ's consistent refusal to provide any additional information.

During the two-and-a-half-year investigation, the City of Springfield provided the DOJ open access to its computer files, and is therefore not able to identify which documents were reviewed or cited by the DOJ. However, the City has attempted to match the cited incidents to information in its possession. The City believes that it has identified certain of the incidents, while remains unable to identify several others. With respect to the sixteen incidents it believes it has identified, the City has provided the HCD AO with relevant documents in its possession, totaling approximately 800 pages.

The HCD AO has begun the process of identifying and notifying all defense counsel who previously represented or now represent a defendant charged with a crime by a member of the Springfield Police Department identified in these exhibits after the date of incident described in the exhibit. The ongoing process is cumbersome and time consuming but nonetheless we are making it a priority in order to fulfill our ethical and legal obligations. However, as we have done with similar information in the past, while this notification process is ongoing, we are producing this information to the Hampden County Lawyers for Justice and the Committee for Public Counsel Services, so that it can be disseminated as widely and quickly as possible.

I am enclosing the letter dated July 2, 2021 which was sent to me by Springfield City Solicitor Edward Pikula as the City's response to the HCD AO's inquiry. As mentioned above, this letter was accompanied by several voluminous exhibits, which we have reviewed and are sending separately via first class mail. The exhibits have been redacted to protect possible criminal histories and personal information, but as

always, should the defense bar disagree that redactions are necessary, we are prepared to respond promptly to any motions or litigation seeking the redacted information.

You will note that, according to Attorney Pikula, despite the City's "best efforts" at identifying the incidents described in the DOJ report, the description of events in the report could not always be substantiated and in some instances, the described incidents remain unidentifiable. Nevertheless, we are providing all of the information the HCDAO received from the City in order to make disclosure of anything in its possession that could possibly be exculpatory. By making this disclosure, the HCDAO does not take any position on whether particular documents are actually exculpatory; rather, the office is intending to comply with the Supreme Judicial Court's directive that prosecutors err on the side of disclosure. In further compliance with the SJC's directions, this disclosure is made without regard to the potential admissibility of any of this information, and the HCDAO reserves the right to contest admissibility in individual cases.

You will also note that Attorney Pikula mentions a report written by Deputy Chief Steven Kent, which the City has declined to provide to the HCDAO. I am also enclosing the most recent correspondence from Attorney Pikula dated August 24, 2021, again denying my request that the City produce Deputy Chief Kent's report. I am providing this information so that any defense lawyer who wants access to this report can take the appropriate steps under Rule 17, Mass. R. Crim. P.

Please do not hesitate to contact me if you have any questions or concerns.

Jennifer Fitzgerald  
First Assistant  
Hampden District attorney's Office

# EXHIBIT C





ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

August 26, 2021

sent via email and first class mail

Attorney David Hoose  
Hampden County Lawyers for Justice  
50 State Street  
Springfield, MA 01103

RE: Potentially exculpatory Information

Dear Counsel:

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The HCD AO has begun the process of identifying and notifying all defense counsel who previously represented or now represent a defendant charged with a crime by a member of the Springfield Police Department identified in these exhibits after the date of incident described in the exhibit. The ongoing process is cumbersome and time consuming but nonetheless we are making it a priority in order to fulfill our ethical and legal obligations. However, as we have done with similar information in the past, while this notification process is ongoing, we are producing this information to the Hampden County Lawyers for Justice and the Committee for Public Counsel Services, so that it can be disseminated as widely and quickly as possible.

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always, should the defense bar disagree that redactions are necessary, we are prepared to respond promptly to any motions or litigation seeking the redacted information.

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You will also note that Attorney Pikula mentions a report written by Deputy Chief Steven Kent, which the City has declined to provide to the HCDAO. I am also enclosing the most recent correspondence from Attorney Pikula dated August 24, 2021, again denying my request that the City produce Deputy Chief Kent's report. I am providing this information so that any defense lawyer who wants access to this report can take the appropriate steps under Rule 17, Mass. R. Crim. P.

Please do not hesitate to contact me if you have any questions or concerns.

Jennifer Fitzgerald  
First Assistant  
Hampden District attorney's Office

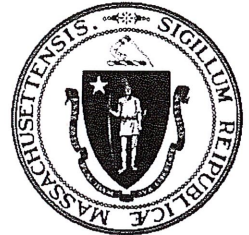
# EXHIBIT D





COMMONWEALTH OF MASSACHUSETTS  
Office of the  
HAMPDEN DISTRICT ATTORNEY

ANTHONY D. GULLUNI  
DISTRICT ATTORNEY



September 13, 2021

RE: Notice of Potentially Exculpatory Information

Dear Counsel,

Attached please find copies of materials recently sent to this office by Springfield City Solicitor Edward Pikula. The attached documents were provided in response to the Hampden District Attorney's request that the Springfield Police Department provide our office with any documents in their possession that might contain potentially exculpatory, *Brady*, material including any reports from incidents described in the DOJ report dated July 8, 2020. These materials have been redacted to protect possible criminal histories and personal information.

Pursuant to *In the Matter of a Grand Jury Investigation*, 485 Mass 641 (2020) the Hampden District Attorney's Office is now forwarding this information to counsel of record in the identifiable cases. You may find that this material was previously provided to you during the course of your representation but we are forwarding what was recently received by this office in an abundance of caution and without taking a position as to whether the information or the officer's described conduct is actually exculpatory. You also might receive additional material as we continue to identify incidents and defendants impacted.

Please feel free to contact me at (413) 505-5627 should you have any questions or concerns.

Sincerely,

Jennifer N. Fitzgerald  
First Assistant District Attorney  
Hampden District Attorney's Office

SUPERIOR COURT  
1500 MAIN STREET  
PO BOX 15327  
SPRINGFIELD, MA  
01115  
413-747-1000

CHICOPEE  
DISTRICT COURT  
30 CHURCH STREET  
CHICOPEE, MA  
01020  
413-594-7657

HOLYOKE  
DISTRICT COURT  
20 COURT PLAZA  
HOLYOKE, MA  
01040  
413-538-7152

HOLYOKE  
JUVENILE COURT  
121 ELM STREET  
HOLYOKE, MA  
01040  
413-535-1747

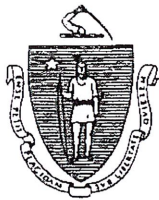
PALMER  
DISTRICT COURT  
235 SYKES STREET  
PALMER, MA  
01069  
413-283-2388

SPRINGFIELD  
DISTRICT COURT  
50 STATE STREET  
SPRINGFIELD, MA  
01103  
413-747-1001

SPRINGFIELD  
JUVENILE COURT  
80 STATE STREET  
SPRINGFIELD, MA  
01103  
413-747-1097

WESTFIELD  
DISTRICT COURT  
224 ELM STREET  
WESTFIELD, MA  
01085  
413-572-1454

# EXHIBIT E



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01102

SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

August 13, 2021

William Fennell, Esq  
84 Park Street  
West Springfield, MA 01089

RE: DOJ Report

Dear Attorney Fennell:

Thank you for taking the time to speak with me recently regarding City Solicitor Pikula's letter of July 2, 2021. I appreciate the time and effort that was taken to produce both the cover letter and the exhibits. I have reviewed the documents and will be providing them to the appropriate parties in the very near future but would respectfully ask that you and Solicitor Pikula reconsider your position regarding Deputy Chief Kent's report. I believe the Deputy Chief's report, referred to in the Solicitor's cover letter, should be included in our response to the Single Justice for a complete record. I would ask that you provide the report in its entirety 7 days from the date of this letter.

Thank you in advance for your consideration and cooperation in this matter and please feel free to contact me if you have any questions.

Jennifer Fitzgerald  
First Assistant  
Hampden District Attorney's Office



# EXHIBIT F

**Edward M. Pikula**  
**City Solicitor**  
Law Department  
36 Court Street, Room 210  
Springfield, MA 01103  
Office: (413) 787-6085  
Direct Dial: (413) 787-6098  
Fax: (413) 787-6173  
Email: [epikula@springfieldcityhall.com](mailto:epikula@springfieldcityhall.com)



THE CITY OF SPRINGFIELD, MASSACHUSETTS

August 24, 2021

VIA EMAIL ONLY

Jennifer Fitzgerald  
Assistant District Attorney  
Hampden District  
50 Court Street  
Springfield, MA 01102

[jennifer.fitzgerald@state.ma.us](mailto:jennifer.fitzgerald@state.ma.us)

**RE:** Response to Letter to Atty. William Fennell.

Dear Attorney Fitzgerald,

I am writing in follow up to your letter to Atty. William Fennell who provides outside legal services to the Commissioner and her Command Staff. As per our discussion by phone yesterday, I write to clarify the City's legal position with regard to the report prepared by Deputy Chief Steven Kent referenced in your letter.

As referenced in my letter to District Attorney Gulluni dated December 10, 2020, Deputy Kent's work product that you reference is related to a meeting that took place shortly after the issuance of the Department of Justice Report in July 2020. At that time, I met with the Police Commissioner and members of her staff to review the DOJ report for purposes of the potential litigation presented by the results of the DOJ investigation pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601. Given the DOJ conclusion that reasonable cause existed to believe that Narcotics Bureau officers engage in a pattern or practice of excessive force in violation of the Fourth Amendment of the United States Constitution, we needed to be prepared to meet any litigation that may be forthcoming.

During that meeting I requested that the Police Commissioner assign personnel to review the incidents described in the Report in an effort to identify the specific dates of incidents, police officers that could be identified, as well as individuals who are referenced in the Report. As noted in my response to your office dated July 2, 2021, that task was carried out and a report was provided to my office by Deputy Chief Steven Kent.

My past experience with DOJ's Civil Rights Division includes a lawsuit brought under the Voting Rights Act in which DOJ filed suit against the City and sought an injunction prior to the City being able to negotiate a settlement agreement. As such, it was my opinion at the time of my meeting in July 2020 that the City faced the prospect of litigating the details of each of the incidents described. To date, we have been successful in avoiding litigation and we continue to negotiate.

Under the circumstances, it is my opinion that the report by Deputy Kent is protected by the work-product doctrine as described in Mass. R. Civ. P. 26(b)(3) as "the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation" as it is opinion work-product that was prepared in anticipation of litigation or for trial by or for a party or party representative. As such, Deputy Kent's report is protected from discovery to the extent provided under Mass. R. Civ. P. 26(b)(3), even where the opinion work product has been made or received by a State or local government employee. *See DaRosa v. City of New Bedford*, 471 Mass. 446, 462 (2015)(protecting opinion work product that would be protected from discovery by rule 26(b)(3) through exemption (d) of a public records request pursuant to G.L. c. 4, § 7, Twenty-sixth (d)).

The City and DOJ have been actively participating in settlement negotiations since the issuance of the report and it is my hope and expectation that the ongoing negotiations will result in a settlement agreement between the parties in the near future. I do not wish to jeopardize those discussions or compromise our bargaining position by release of the report. As such, I have provided you with the underlying factual information that the report is based on in the appendix to my letter of July 2, 2021, but not the report itself which provides analysis, impressions, or opinions.

As referenced in my past letters, I believe next steps towards addressing *Brady* obligations should be a meeting between the Springfield Police Department and the District Attorneys' office to review each incident, as well as an effort to coordinate with DOJ to confirm the accuracy of our efforts to identify the incidents described, and to obtain additional information where, either no determination could be made, or the determination is not accurate.

In furtherance of this, I would ask Commissioner Clapprood to arrange for Deputy Kent to participate in those discussions in order to provide information as to his methodology of searching for records provided and efforts to attempt to match them up to the incidents described in the report. As indicated, the records are by no means exhaustive, but simply used as a reference to attempt to identify the cases, officers, and individuals involved as described in the DOJ Report. Additional records that can be obtained after matching them to criminal case files and records in the District Attorneys' office to supplement as necessary and to the extent records are available.

As for including the report of Deputy Kent in your response to the SJC, I would make the report available for *in camera* inspection if so ordered, but I believe it should be protected from production to your office or any other party to avoid any potential claim of voluntary waiver and to maintain the ongoing negotiations with the DOJ.

In addition, as per our discussion, the appendix includes records and information that is exempt from public disclosure. Prior to any production of the appendix, redaction or other safeguards must be undertaken to protect the confidentiality of those records as applicable.

I hope this provides clarification as to the situation. I look forward to arranging a meeting between representatives of your office and the Police Department to discuss and identify the most efficient means of reviewing and producing any other document required in order to assure compliance with *Brady* obligations. In the mean-time please feel free to contact me at 413-787-6085 to discuss in more detail.



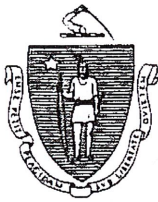
Very truly yours,

A handwritten signature in black ink, appearing to read 'Edm Pikula', with a stylized flourish at the end.

Edward M. Pikula, City Solicitor.

EMP

# EXHIBIT G



ANTHONY D. GULLUNI  
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE DISTRICT ATTORNEY  
HAMPDEN DISTRICT

HALL OF JUSTICE  
50 STATE STREET  
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SUPERIOR COURT  
TEL: 413-747-1000  
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT  
TEL: 413-747-1001  
FAX: 413-747-5628

September 1, 2021

Attorney Edward Pikula  
City Solicitor  
Law Department  
36 Court Street, Suite 210  
Springfield, MA 01103

RE: Your letter of August 24, 2021

Dear Attorney Pikula,

I am following up on our recent conversation and your letter of August 24<sup>th</sup>. I appreciate your offer to meet, but as you are aware, the release of the U.S. Department of Justice report regarding the Springfield Police Department described a number of incidents that are potentially exculpatory under the recent Supreme Judicial Court holding in *Matter of a Grand Jury Subpoena*, 485 Mass. 641 (2020). Therefore, my first priority is to complete the process of receiving and reviewing all potentially exculpatory documents in the possession, custody or control of the Springfield Police Department so that our office can make the appropriate disclosures to defendants in past, present and future cases.

To that end, I need to be certain that the SPD has made every possible effort to identify both the specific incidents described in the DOJ report and the individual officers involved in each incident – as well as all potential Brady material related to each individual officer in the SPD's possession. Your letter of July 2<sup>nd</sup> indicated that Deputy Chief Kent believes that he has successfully identified 16 of the 23 incidents, and you enclosed 16 exhibits relating to those incidents. I have carefully reviewed the exhibits, and it appears that there are 30 officers, listed below, involved in those 16 identified incidents.

Bigda	Vigneault	Casillas
Robles	Kalish	Fay
Reif	Kent	Williams (J)
Cournoyer	Templeman	Moynahan
Burnham	Aguirre	Robillard
Billingsley	Goggin	Mazza (J)
Huard	Silva	Carter R
Bohl	Beliveau	Hernandez M
Rodriguez (Juan)	Goffe	Wajdula
Hitas	Collins	Gayle R



Given the importance of this issue and our office's constitutional obligations, I would ask that you carefully check the SPD files to assure me that you have produced all potentially exculpatory information regarding these 30 officers. If you determine that any information in your possession should be withheld, please provide me with a description of the information and the legal basis upon which you are withholding it.

As to the seven incidents that Deputy Chief Kent had been unable to identify, please inform me whether he has made any further progress on identifying these incidents, whether he continues to work on this process, or whether he believes that he has exhausted all means available to him. As you know, the HCDAO has instituted litigation against the DOJ to obtain identifying information, and an update on the SPD process may assist us in narrowing the issues in that case.

I also wanted to let you know that we disseminated to CPCS and Hampden County Lawyers for Justice your letter of July 2, 2021 with redacted attachments and your letter of August 24, 2021. By making these disclosures, the HCDAO does not take any position on whether any officer's conduct occurred as alleged or whether particular documents are actually exculpatory; rather, the office is intending to comply with the Supreme Judicial Court's directive that prosecutors err on the side of disclosure.

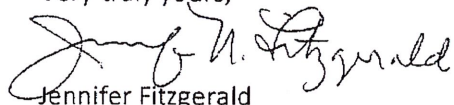
We anticipate the following process in the next several weeks:

- 1) We will soon be providing, on a case-specific basis, the materials relating to each of the individual incidents identified by Deputy Chief Kent, to the defense counsel involved in each of those 16 cases.
- 2) We have begun the process of identifying all cases in which the officers involved in the 16 incidents were potential witnesses, going back to the date of the incident in question. We will be making the appropriate disclosures to the defense attorneys in each of those cases. As you can imagine, this will be a tremendously labor intensive and time consuming process, as there are thousands of potentially affected cases.
- 3) We will be making the appropriate disclosures to the defense attorneys in pending cases where one or more of the officers involved in the 16 incidents is a potential witness. We will also make these disclosures in future cases where one or more of those officers is a potential witness.
- 4) I disagree with your claim that the Kent report is privileged, and believe that any privilege should yield to the defendants' constitutional rights to receive Brady information. Since you have declined to provide the HCDAO with a copy of that report, all of our disclosures will inform defense counsel that the report exists and that it is not within the control of our office so that any defendant who seeks the report can file the appropriate motions under Rule 17.

Once all potentially exculpatory information regarding the above named officers is provided and disseminated a meeting to explore a mutually acceptable and prompt process for handling Brady issues going forward might well be beneficial. I believe the law in this area will continue to evolve, and I would like to do everything possible to make sure that we have an effective and efficient system for identifying potentially exculpatory information so that we can make the appropriate disclosures.

As always, I thank you for your anticipated cooperation and I look forward to your response.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jennifer Fitzgerald". The signature is written in dark ink and is positioned above the printed name.

Jennifer Fitzgerald

First Assistant

Hampden District Attorney's office

**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**

**CERTIFICATE OF SERVICE**

**I certify that on September 14, 2021, I served the attached Respondent's Status Report via email to:**

**Matthew P. Horvitz**  
[mhorvitz@goulstonstorrs.com](mailto:mhorvitz@goulstonstorrs.com)

**Somil Trivedi\***  
[strivedi@aclu.org](mailto:strivedi@aclu.org)

**Ezekiel Edwards\***  
[eedwards@aclu.org](mailto:eedwards@aclu.org)

**Matthew R. Segal**  
[msegal@aclum.org](mailto:msegal@aclum.org)

**Rebecca Jacobstein**  
[rjacobstein@publiccounsel.net](mailto:rjacobstein@publiccounsel.net)

**\*Pro Hac Vice (application pending)**

**/s/ Elizabeth N. Mulvey, Esquire**  
**Elizabeth N. Mulvey (BBO# 542091)**