
Commonwealth of Massachusetts
Supreme Judicial Court

No. SJC-13386

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

Petitioners-Appellants,

—v.—

DISTRICT ATTORNEY OF HAMPDEN COUNTY,

Respondent-Appellee.

BRIEF FOR *AMICUS CURIAE* EXONERATION PROJECT

ON RESERVATION AND REPORT FROM
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

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INTRODUCTION

In July 2020 the U.S. Department of Justice (“DOJ”) issued a report (hereinafter, the “DOJ Report”)¹ finding reasonable cause to believe the Springfield Police Department (“SPD”) engaged in a pattern or practice of excessive force. The DOJ Report attributed this finding, in part, to systemic deficiencies in the SPD’s policies and practices — specifically, SPD officers were found to have written false or misleading police reports for the purpose of concealing their misconduct and withholding critical evidentiary disclosures without recourse. *See* DOJ Report, 16 (“[O]fficers made false reports that were inconsistent with other available evidence . . . suggesting that there are additional instances of unreasonable force, that we were not able accurately to assess in cases where no photographic or video evidence exists”). Even when SPD’s meager investigatory efforts revealed patent misconduct by its officers, the Hampden County District Attorney’s Office (“HCDAO” or “Respondent”) failed to sufficiently conduct follow-up investigations or to disclose exculpatory evidence to criminal defendants and their counsel. Dozens, if not hundreds, of innocent individuals have likely been unjustly incarcerated as a direct result of the SPD’s misconduct. Given the failures of SPD and HCDAO to address

¹ U.S. Dep’t of Justice, Civ. Rights Div. & U.S. Attorney’s Office for the District of Massachusetts, Investigation of the Springfield, Massachusetts Police Department’s Narcotics Bureau (2020), <https://www.justice.gov/opa/pressrelease/file/1292901/download>

the blatant violation of criminal defendants' rights, Massachusetts and federal law require that the Commonwealth of Massachusetts fully investigate the SPD to determine the extent of its wrongdoing and to disclose all evidence of misconduct to those impacted. Without this Court's action, the full extent of the constitutional and statutory violations will remain unknown, and potentially innocent victims of police misconduct will not be properly exonerated.

As set forth in this amicus brief, the SPD's pervasive and systemic misconduct, as revealed by the DOJ Report, does not impose just a moral obligation on the Commonwealth to do what is right for every wrongfully convicted individual; rather, it triggers a legal duty owed by the Commonwealth to thoroughly investigate and disclose potentially exculpatory evidence. The HCDAO's failure to fully investigate and disclose police and prosecutorial misconduct, as required under Massachusetts law, is violative of criminal defendants' due process rights. Despite Respondents' claims to the contrary, a duty-bound, thorough investigation and disclosure by the Commonwealth is uniquely capable of bringing to light exculpatory evidence that has the potential to exonerate wrongfully convicted individuals. Petitioners in this case — two individuals who have been prosecuted in Hampden County, two criminal defense lawyers who practice in Hampden County, Committee for Public Counsel Services, and the bar advocate organization Hampden County Lawyers for Justice — have experienced firsthand the misconduct

committed by the SPD and inadequate disclosure by HCDAO. Their voices deserve to be taken seriously.

INTEREST OF *AMICUS CURIAE*²

The Exoneration Project provides pro bono representation to innocent people who have been wrongfully convicted. By investigating and petitioning courts to consider exculpatory evidence and investigate wrongful convictions, the Exoneration Project is dedicated to restoring justice. To date, over 218 Exoneration Project clients have been exonerated nationwide. Beyond assisting clients with their claims of actual innocence in court, the Exoneration Project also strives to shed light on the problems in the criminal legal system that allow innocent people to be convicted of crimes they did not commit by advocating for greater accountability in the justice system. Through its work in the fields of criminal and post-conviction law, the Exoneration Project has firsthand knowledge of common causes of wrongful conviction and the ways in which police misconduct and suppression of evidence can hinder the truth-seeking objective of the criminal justice system.

² This brief has not been authored, in whole or in part, by counsel to any party in this action. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than the *amicus*, their members, or their counsel, contributed money that was intended to fund preparation or submission of this brief. The *amicus*, their members, and their counsel have not represented any of the parties to the present appeal in another proceeding involving similar issues, nor have they been parties in a proceeding or legal transaction that is at issue in the present appeal.

SUMMARY OF ARGUMENT

I. Both state and federal law impose a duty on the Commonwealth to investigate the misconduct outlined in the DOJ Report. Pp. 11–13. The DOJ Report described a systemic pattern of misconduct and failed oversight. *Id.* at 13–17. Given the findings of the DOJ Report, Respondent cannot reasonably deny the materiality of the exculpatory impeachment evidence in its possession. *Id.* Where, as here, the Commonwealth is aware of evidence of misconduct by a member of the prosecution team, a duty triggers to conduct a thorough investigation to determine the nature and extent of misconduct, and ultimately disclose findings to affected criminal defendants in pending and closed cases. *Id.* at 13.

II. Police and prosecutorial misconduct, specifically failure to investigate and disclose exculpatory evidence, has resulted in countless wrongful convictions throughout the country. *Id.* at 17–19. Here, HCDAO and SPD have not sufficiently investigated or disclosed the potentially exculpatory evidence outlined in the DOJ Report. *Id.* Despite Respondents' contentions, criminal defendants and their counsel have made several unsuccessful attempts at obtaining the evidentiary information underpinning the DOJ Report. *Id.* at 17–18. Case studies demonstrate the human suffering

resulting from concealed exculpatory evidence and wrongful conviction. *Id.* at 19–33.

III. This Court should find that the facts supporting the DOJ Report’s conclusions triggered the Commonwealth’s duty to investigate. *Id.* at 33. Courts in the Commonwealth have previously found this duty triggered by reports of systemic police and prosecutorial misconduct. *Id.* at 33–34. As in those cases, here, a complete failure of SPD and HCDAO to investigate and disclose exculpatory evidence necessitates the Court’s intervention. *Id.* at 34–35. The remedy that Petitioners seek is rather limited — Petitioners ask the Court to hold that DOJ Report triggered the Commonwealth’s investigative and disclosure duties, and for the Court to retain supervision to adjust the scope of the remedial process moving forward. *Id.* at 35–36.

ARGUMENT

I. The United States and Massachusetts Constitutions Compel the Commonwealth to Further Investigate the Pervasive and Systemic Misconduct by the SPD

The Commonwealth has a legal duty under both the United States and state constitutions to investigate and disclose exculpatory evidence to criminal defendants. Under the due process clause of the Fourteenth Amendment to the United States Constitution and article 12 of the Massachusetts Declaration of Rights, a prosecutor must disclose exculpatory information to a defendant that is material

either to guilt or punishment. *Matter of Grand Jury Investigation*, 485 Mass. 641, 646 (2020) (citing *Brady v. Maryland*, 373 U.S. 83, 87–88 (1963)). See also Mass. R. Crim. P. 14(a)(1)(A)(iii); Mass. R. Prof. C. 3.4(a), 3.8(d), 3.8(g), 3.8(i). Evidence is “material” and warrants disclosure when “there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” *Cone v. Bell*, 556 U.S. 449, 469-470 (2009).

Evidence that the defendant could use to impeach the prosecution’s witnesses is material and thus also must be disclosed under state and federal law. *Giglio v. United States*, 405 U.S. 150, 153–54 (1972); *Commonwealth v. Collins*, 470 Mass. 255, 267 (2014) (“The Commonwealth is required to disclose exculpatory evidence to the defendant, including, as is relevant here, evidence that would tend to impeach the credibility of a key prosecution witness.”). This court has repeatedly emphasized that this duty to disclose is markedly broad and applies to “any facts that would tend to exculpate the defendant or tend to diminish his or her culpability.” *Commonwealth v. Pope*, 489 Mass. 790, 798 (2022) (quoting *Matter of a Grand Jury Investigation*, 485 Mass. 641, 649 (2020)).

The duty to disclose under the due process clause of the United States Constitution and Massachusetts law is not confined to those facts that are within the knowledge of the prosecutor. Rather, “the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in

the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *Commonwealth v. Ware*, 471 Mass. 85, 95 (2015) (“It is well established that the Commonwealth has a duty to learn of and disclose to a defendant any exculpatory evidence that is ‘held by agents of the prosecution team’”) (citing *Commonwealth v. Beal*, 429 Mass. 530, 532 (1999)). This Court has determined that, when the Commonwealth has evidence of egregious misconduct by a member of the prosecution team, it must conduct “a thorough investigation to determine the nature and extent of [the] misconduct,” including its “effect both on pending cases and on cases in which defendants already had been convicted.” *Ware*, 471 Mass. at 95. Thus, a prosecutor has an affirmative duty to learn and ultimately disclose evidence favorable to the defense that is held by other members of the prosecution team, including police officers.

The DOJ Report described a picture of the SPD, particularly the Narcotics Bureau, as an institution plagued by a pervasive and ingrained history of violent misconduct coupled with complete impunity with respect to violations of criminal defendants’ due process rights. The DOJ Report described failures of accountability at every level within the SPD. DOJ Report, 19-26. The SPD’s Narcotics Bureau has been described by knowledgeable insiders as a “rogue unit, whose officers were known for routinely cutting corners.” *Id.* at 18 (internal quotations marks omitted). The SPD’s officers proudly asserted that “if you mess with the SPD . . . you ‘get a

beat down.” *Id.* at 13. SPD officers routinely used disproportionate force on the civilian population in flagrant violation of the Fourth Amendment, “routinely resorting to punching subjects’ head areas with closed fists as an immediate response to resistance.” *Id.* at 12. This conduct, as elucidated in the DOJ Report, constitutes exculpatory evidence for countless criminal defendants in the Commonwealth.

The DOJ Report’s description of the systemic pattern of violent misconduct was revelatory. But a culture of impunity within the SPD has undoubtedly shielded much of the misconduct from public scrutiny or accountability. Indeed, the DOJ Report indicated that officers who committed or witnessed acts of violence in violation of defendants’ basic constitutional rights routinely filed false and misleading reports to cover their tracks. *Id.* at 16. Filing false reports of this kind is perhaps unsurprising within a department whose officers habitually provided false testimony under oath. *See, e.g., Douglas v. City of Springfield*, 2016 BL 441547, at *4 (D. Mass. Oct. 14, 2016). In fact, the DOJ uncovered instances of SPD officers using excessive force only by looking at contemporaneous video and photographic videos — evidence that directly contradicted the officers’ false reports. DOJ Report, 17-19. The DOJ also made clear that “there are additional instances of unreasonable force that [the DOJ] were not able accurately to assess in cases where no photographic or video evidence exists.” *Id.* at 16.

To make matters worse, SPD exhibited a systemic lack of oversight on issues relating to use-of-force reporting. No adequate procedures existed to ensure that delinquent officers would be held accountable; and those procedures that did exist did not result in any meaningful supervision. SPD supervisors deliberately avoided any type of supervision for flagrantly illegal or unconstitutional behavior. Even where it was evident that SPD officers were providing false accounts of the events involving the use-of-force, SPD supervisors repeatedly ignored evidence that contradicted the officers' reports and "signed off on every single prisoner injury file without once referring an incident of force to the Commissioner for IIU [Internal Investigations Unit] investigation." *Id.* at 21. This established culture of non-investigation that has pervaded SPD warrants the Court's immediate action here – the Commonwealth simply cannot shirk its duty to investigate.

On those rare occasions that complaints of excessive force were referred to the IIU, IIU investigators failed to employ "basic investigative techniques" to determine if the allegations of excessive force were sustained or not. *Id.* at 24. IIU investigators refused to interview key witnesses and proceeded only based on the accounts provided by the officers being accused of misconduct. *Id.* IIU investigators also relied on the same officers whom they were investigating to draft portions of their investigative reports, effectively leaving the proverbial fox to guard the henhouse. The SPD utilized systematic hurdles to impede civilian complaints about

police misconduct, *id.* at 22, and there existed no adequate civilian oversight body to investigate SPD's misconduct. *Id.* at 25.

Despite the findings laid out in the DOJ Report, both the SPD and the HCDAO have doubled down. Following the publication of the DOJ Report, the SPD appointed Deputy Chief Steven Kent to respond. Deputy Chief Kent was a former supervisor for SPD's Narcotics Division, and simultaneously the subject of numerous civil lawsuits involving past admissions of false testimony having been provided to IIU investigators and a grand jury. Br. of Petitioners-Appellants, 24-25. Deputy Chief Kent was not only directly implicated by the findings of the DOJ Report, but also was involved in the troubling pattern of supervisory misconduct that the DOJ Report identified. Unsurprisingly, Deputy Chief Kent self-servingly downplayed the DOJ's findings in a document revealingly titled "Rebuttal to the Department of Justice Investigation of the Springfield, Massachusetts Narcotics Bureau." *Id.* at 24.

The HCDAO's zeal to shield egregious police misconduct is equally problematic. The HCDAO characterized the contents of the DOJ Report as "not gold, but fool's gold," Br. of Respondent-Appellee, 21, and speciously attacked the entire substance of the DOJ Report. Br. of Respondent-Appellee, 22-23 (questioning whether the DOJ's description of an officer using his arm to make physical contact with a teenager on a moving motorbike constitutes a "punch," or "fist strike," and

justifying the SPD's excessive use of force on unarmed teenagers on the officer's "fear for his own safety"). The HCDAO also displayed a profound lack of curiosity about the allegations of egregious police misconduct by cavalierly asserting that it "*will not* be 'investigating' the SPD." Br. of Respondent-Appellee, 31 (emphasis added).

SPD's ubiquitous practice of misconduct and HCDAO's pattern of concealing such misconduct from criminal defendants are not unique to the instant matter. The same problems have occurred in other police departments throughout the country. As shown below, police misconduct has resulted in countless wrongful convictions, often with devastating consequences for both individuals and communities.

II. Previous Investigations and Disclosures of Police and Prosecutorial Misconduct Have Resulted in Exoneration of the Wrongfully Convicted

As history has shown, police and prosecutorial misconduct has resulted in numerous individuals having been wrongfully convicted, spending years incarcerated before a legitimate investigation finally provided access to exculpatory evidence. Respondent's attempts to misdirect the culpability for failure to uncover exculpatory evidence onto defense attorneys are meritless. Brief for Respondent-Appellee, 5-6, 19-20, 35, 38-39. Respondent would have the Court believe that defense attorneys' purported failure to obtain or use evidence of SPD misconduct

demonstrates that such misconduct is unworthy of further investigation and disclosure.³ This is false.

Initially, as a matter of Massachusetts law, action or inaction by defense attorneys in the face of systemic misconduct cannot relieve prosecutors of their own duty to learn of and disclose potentially exculpatory evidence. *See Commonwealth v. Ware*, 471 Mass. 85, 95 (2015) (citing *Commonwealth v. Beal*, 429 Mass. 530, 532 (1999)). Moreover, if SPD and HCDAO were to comply with their duties of investigation and disclosure of SPD misconduct, the Massachusetts defense bar can utilize any newly disclosed exculpatory evidence to try to exonerate wrongfully convicted individuals. In fact, in cases around the country, investigation of police and prosecutorial misconduct and disclosure of the investigative results to criminal defendants and their counsel have allowed scores of defendants and their counsel to remedy wrongful convictions. These exonerations were only possible because of thorough investigation and disclosure of the type of exculpatory material sought by Petitioners' requested relief in this action.

The following case studies from around the country provide a glimpse into the pain and suffering endured by the wrongfully convicted. But these stories also crucially demonstrate *how* investigation and disclosure of potential misconduct has

³ Despite Respondents' assertions, Petitioners make clear that criminal defendants have made several unsuccessful attempts at obtaining potentially exculpatory files underpinning the DOJ Report. *See Reply Brief for Petitioners-Appellants*, 6–8.

the power to exonerate unjustly imprisoned people. These stories were not selected because they are exceptional; rather, they are simply instances of misconduct not unlike those identified in the DOJ Report. In short, the tragic human cost of wrongful conviction can only be remedied by thorough investigation and disclosure of misconduct. The real-world impact of exonerating wrongfully convicted individuals comes into focus in the following stories.

A. Jeffrey Santos

A jury in New York State Supreme Court convicted Jeffrey Santos of second-degree assault of an officer and sentenced him to six years in prison. The assault never occurred.⁴ Mr. Santos' conviction was premised on blatant police misconduct only uncovered by a unit-wide investigation years later.

While in the receiving area of Manhattan Detention Center, officers accused Mr. Santos of rifling the bag of an intake worker and removed him to a holding cell.⁵ When Mr. Santos objected, officers physically beat him — he was kicked and punched more than 60 times. The officers reported that Mr. Santos instigated the violence, and he was convicted of second-degree assault.⁶ More than two years after

⁴ Maurice Possley, *Jeffrey Santos*, THE NATIONAL REGISTRY OF EXONERATIONS (Dec. 17, 2013), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4328>.

⁵ *Id.*

⁶ *Id.*

being wrongfully incarcerated, counsel for Mr. Santos discovered indisputable *Brady* material. The officer “victim” had been investigated for using excessive force on inmates as a member of Rikers Island’s Central Punitive Segregation Unit.⁷ The investigation showed that the officer had engaged in extensive physical assaults of inmates and routinely filed false reports to conceal his actions — exactly what happened to Mr. Santos. In fact, six months after Mr. Santos’ conviction, the officer entered an “administrative plea” under which he agreed to be retrained on the proper use of force. Neither the officers nor any other member of the prosecution team disclosed this impeachment evidence to Mr. Santos or any other criminal defendants purportedly victimized by the officer in question.

In Mr. Santos’ case, as is typical in many instances of wrongful conviction, the first step for criminal defendants is identifying a patent falsehood put forth by the arresting officer and using said falsehood as impeachment evidence. The officer’s assertion that Mr. Santos instigated the violence was belied by a post-conviction investigation and thus, Mr. Santos impeached the officer’s credibility for truth in relaying the actual facts of the incident. This initial piece of impeachment evidence warranted further investigation, which ultimately revealed the officer’s pattern of excessive violence. In vacating Mr. Santos’ conviction, Judge Cropper encapsulated the necessity for investigation in the face of patterns of misconduct, in

⁷ *Id.*

holding that “what is disturbing about the new evidence is that the prior instances of misconduct are so similar to the circumstances of the present case.”⁸ The systemic misconduct responsible for Mr. Santos’ wrongful conviction exemplifies the need for investigation and disclosure to defense attorneys. Proper investigation and timely disclosure of salient evidence, there merely impeachment evidence of the arresting officer’s prior misconduct, would have saved Mr. Santos years of his life spent wrongfully imprisoned. Upon investigation and discovery, Mr. Santos moved for a new trial and was acquitted by a jury six years after his unjust imprisonment.⁹

B. John Thompson

In 1984, John Thompson, a 22-year-old father of two, was wrongfully convicted of armed robbery and murder, and sentenced to death.¹⁰ Mr. Thompson spent 18 years in prison, 14 of them on death row in solitary confinement in Angola prison in Louisiana.¹¹ One month before his execution, an investigator discovered evidence of Mr. Thompson’s innocence that had been actively concealed for 15

⁸ *Id.*

⁹ *Id.*

¹⁰ Innocence Project, *Prosecutorial Oversight: A National Dialogue in the Wake of Connick v. Thompson* (Mar. 2016),

https://www.prisonpolicy.org/scans/innocenceproject/prosecutorial_oversight.pdf.

¹¹ *John Thompson, Death-Row Exoneree and Social Justice Activist, Has Died*, DEATH PENALTY INFORMATION CENTER (Oct. 5, 2017),

<https://deathpenaltyinfo.org/news/john-thompson-death-row-exoneree-and-social-justice-activist-has-died>.

years by the Orleans Parish District Attorney’s Office.¹² The investigation revealed that prior to Mr. Thompson’s conviction, prosecutors ordered blood testing of crime-scene evidence. But when the blood test results did not produce a match for Mr. Thompson, prosecutors destroyed the exculpatory evidence.¹³ It was never disclosed to the defendant or his attorneys and that was exactly the prosecutors’ intention. Upon retrial, Mr. Thompson was acquitted by a jury that deliberated for merely 35 minutes.¹⁴ Without this thorough investigation, egregious misconduct by the prosecution team would have condemned Mr. Thompson to an unjust execution. Even so, Mr. Thompson spent nearly two decades in prison away from his young children and loved ones. Should the Court grant Petitioners’ relief in the instant action, wrongful convictions of innocent criminal defendants like Mr. Thompson may be avoided. Mr. Thompson tragically passed away in 2017 at the age of 55.¹⁵ Until his passing, Mr. Thompson remained vocal about the long-term psychological damage he endured while wrongfully incarcerated and the constant struggle he faced in overcoming such hardship.

¹² Innocence Project, *supra* note 10.

¹³ *Id.*

¹⁴ Alexandra Gross, *John Thompson*, THE NATIONAL REGISTRY OF EXONERATIONS (Oct. 4, 2017),

<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3684>.

¹⁵ Death Penalty Information Center, *supra* note 11.

C. Lamonte McIntyre

Lamonte McIntyre served 23 years of a life sentence conviction in prison as a direct consequence of unchecked police and prosecutorial misconduct. In 1994, Kansas City Police Detective Roger Golubski framed the then 17-year-old high-school student for a crime he did not commit. Detective Golubski intimidated witnesses and fabricated eye-witness identifications to make up for the lack of physical evidence or motive connecting Mr. McIntyre to the crime.¹⁶ The assigned Assistant United States Attorney Morehead withheld favorable evidence and threatened witnesses to secure a conviction despite Mr. McIntyre's innocence. Years later, a similar incident occurred.¹⁷ In 1994, Mr. McIntyre, a minor at the time of the alleged crime, fell victim to police and prosecutorial misconduct.

Mr. McIntyre's exoneration was the product of more than two decades of re-investigation, first initiated by a non-profit organization with the mission of investigating wrongful convictions.¹⁸ Over the years, the private investigation

¹⁶ Peggy Lowe, *Niko Quinn Spent 30 Years Trying to Tell the Truth About a Double Murder in Kansas City, Kansas*, KCUR (Oct. 4, 2022), <https://www.kcur.org/news/2022-10-04/niko-quinn-spent-30-years-trying-to-tell-the-truth-about-a-double-murder-in-kansas-city-kansas>.

¹⁷ Rick Tulskey, *Prosecutor of Lamonte McIntyre Threatened Witness in Another Case*, INJUSTICEWATCH (Dec. 17, 2017), <https://www.injusticewatch.org/news/2017/prosecutor-of-lamonte-mcintyre-threatened-witness-in-another-case/>.

¹⁸ Maurice Possley, *Lamonte McIntyre*, THE NATIONAL REGISTRY OF EXONERATIONS (Sept. 16, 2022),

uncovered significant evidence undermining Mr. McIntyre’s guilt — prosecutors failed to disclose to defense counsel that key witnesses recanted their identifications; prosecutors elicited false testimony through intimidation and sexual proposition; and Detective Golubski had a pattern of inappropriate relationships with informants and buried their accounts of the crime at issue.¹⁹ In fact, “Golubski’s misconduct and his exploitation of black women was well known through the [police] department,” as was his habit of extracting information from the people he exploited.²⁰ One detective noted that “[w]e never knew whether the information they provided was true or not.”²¹ Documents filed in McIntyre’s exoneration case revealed that Golubski “terrified and preyed upon the Black community . . . for decades.”²²

After his release, Mr. McIntyre contemplated — “[w]hat I do understand and know is without accountability, that kind of stuff will continue to happen It’s important that people hear and understand just how flawed our system is and just how much [] accountability is absent without holding people in those positions

<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5216>.

¹⁹ *Id.* In September 2022, a federal grand jury indicted Detective Golubski on kidnapping and rape charges from shortly after McIntyre’s incarceration began.

²⁰ Rick Tulsy, *Convicted 23 Years Ago, Kansas Prisoner’s Case Exposes Deeply Flawed Justice*, INJUSTICEWATCH (Oct. 9, 2017), <https://www.injusticewatch.org/news/2017/convicted-23-years-ago-kansas-prisoners-case-exposes-deeply-flawed-justice/>.

²¹ *Id.*

²² Lowe, *supra* note 16.

accountable, they can just take a person's life from them, snatching people's and ruin it, with a license. And that's what's been going on."²³

D. India Spellman

In February 2013, a Philadelphia court found India Spellman guilty of crimes she did not commit. At the time of her arrest, Ms. Spellman was a 17-year-old high-school athlete with no prior criminal history.²⁴ Ms. Spellman only became a suspect following the improper police interrogation of a 14-year-old child who supposedly identified Ms. Spellman as the assailant. Officers disregarded Ms. Spellman's requests to have her parents present during questioning and ignored Ms. Spellman's statement that she had a learning disability that made it impossible for her to comply with some of the written material officers demanded she sign, including a *Miranda* waiver.²⁵ During Ms. Spellman's interrogation, Philadelphia Police Detective James Pitts physically and emotionally assaulted and manipulated her — she was “confused, injured, and terrified. She signed the statement while having no understanding of what it was that she was signing.”²⁶ Detective Pitts' egregious

²³ Peggy Lowe, *An Innocent Kansas Man Spent 23 Years in Prison. His Release Exposed Decades of Police Corruption*, KCUR (Oct. 19, 2022), <https://www.kcur.org/news/2022-10-19/an-innocent-kansas-man-spent-23-years-in-prison-his-release-exposed-decades-of-police-corruption>.

²⁴ *India Spellman*, PHILADELPHIA JUSTICE PROJECT, <https://www.phillyjusticeproject.org/india-spellman/> (last visited Aug. 15, 2023).

²⁵ *Id.*

²⁶ *Id.*

actions here in securing a false confession are undeniably impeachable not only by Ms. Spellman, but also by other criminal defendants who had been investigated and/or arrested by Detective Pitts. Yet, Detective Pitts' misconduct went unchecked and undisclosed for far too long, resulting in wrongful conviction for many innocent individuals.

Years later, thorough investigation revealed that Detective Pitts serially abused his position of power through assault, misconduct, and abuse.²⁷ Detective Pitts had a track record that was neither investigated by the prosecutors or the Commonwealth of Pennsylvania, nor disclosed to Ms. Spellman or contemporaneous criminal defendants in compliance with their Constitutional protections – 11 citizen complaints, five internal investigations, two accusations of intimate partner violence, and six individual lawsuits.²⁸ In fact, during Ms. Spellman's incarceration, Philadelphia's Conviction Integrity Unit helped exonerate two wrongfully convicted individuals on grounds of Detective Pitts' egregious misconduct and the ensuing *Brady* violations.²⁹

²⁷ *Id.*

²⁸ Anna Dalcortivo and Alyssa Oursler, *India Spellman was Wrongfully Convicted When She Was Just 17*, THE NATION (Nov. 8, 2022),

<https://www.thenation.com/article/society/india-spellman-wrongful-conviction/>.

²⁹ *Id.*; see also Elina Sadeghian, *Judge Finally Agrees to Release First Woman Exonerated by Philly Conviction Integrity Unit*, DAVIS VANGUARD (Feb. 12, 2023),

<https://www.davisvanguard.org/2023/02/judges-finally-agrees-to-release-first-woman-exonerated-from-philly-conviction-integrity-unit/>.

E. Leon Benson

Leon Benson was convicted of a murder he did not commit and sentenced to 61 years in prison due to suppression of exculpatory evidence by the lead detective.³⁰ Mr. Benson's case is emblematic of the need for more thorough investigation and disclosure. Roughly 23 years after his wrongful conviction, counsel for Mr. Benson and the newly formed Marion County Prosecutor's Office Conviction Integrity Unit conducted an investigation that revealed egregious police misconduct underpinning Mr. Benson's arrest.³¹ In providing Mr. Benson's case file to the prosecutor's office, Detective Alan Jones expressly removed notes he had gathered that pointed to another man as the murderer.³² This, in fact, was common practice for Mr. Jones, who admitted in 2022 that he routinely failed to hand over his own notes to the prosecutor's office.³³ Mr. Benson spent more than half of his life — 23 years — in

³⁰ Rich Nye, 'The Truth Never Dies. It's Only Rediscovered.' *Indy Man Exonerated After 25 Years in Prison*, WTHR (Mar. 13, 2023), <https://www.wthr.com/article/news/local/indianapolis-man-leon-benson-exonerated-of-murder-after-nearly-25-years-in-prison/531-9cdf8f90-d347-48a1-bc84-a58b34a459cf>.

³¹ Mary Mcinerney, *Wrongfully Convicted Man Now Free, Thanks to Law Professors and Students*, UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW (Mar. 15, 2023), <https://www.usfca.edu/news/Leon-Benson-exoneration>.

³² *After More Than 20 Years in Prison, Indianapolis Man Exonerated in Murder and Set Free*, INDYSTAR (Mar. 9, 2023), <https://www.indystar.com/story/news/crime/2023/03/09/leon-benson-exonerated-after-imprisonment-for-indianapolis-murder/69990448007/>.

³³ *Id.*

prison, and 11 in solitary confinement, before Mr. Jones' misconduct came to light and Mr. Benson's innocence revealed.

Mr. Benson was the first exoneration secured under the Marion County Prosecutor's Office Conviction Integrity Unit.³⁴ The exoneration could not have occurred if not for the doggedness of Mr. Benson's appellate counsel in investigating and prompting an inquiry by the Conviction Integrity Unit. If Respondents have their way, innocent individuals will be deprived of the investigatory resources required to pursue disclosure of police misconduct.

F. Herman Williams

Herman Williams, a then-decorated member of the U.S. Navy, was wrongfully convicted in 1994 for purportedly murdering the mother of his children. Mr. Williams' conviction, and countless others, was based on a pattern of misconduct by Detective Lou Tessman, which was only identified decades later, but involved a lengthy record of false confessions from and manipulation of vulnerable criminal defendants.³⁵ Members of Detective Tessman's team "engaged in a pattern of known coercive methods that resulted in witnesses changing statements to fit the

³⁴ *Id.*

³⁵ Tara Molina, *Herman Williams Exonerated, Released From Prison After Serving Nearly 30 Years for a Murder he Didn't Commit*, CBS NEWS (Sept. 6, 2022), <https://www.cbsnews.com/chicago/news/herman-williams-exonerated-released-from-prison-after-serving-nearly-30-years-for-a-murder-he-didnt-commit/>.

State’s theory.”³⁶ Eventually, after identifying Detective Tessman’s misconduct, investigators’ disclosure of the behavior led to exonerations in three cases including Mr. Williams’.³⁷

As Mr. Williams’ attorney at the Illinois Innocence Project lamented, “[t]his horrific crime not only robbed two children of their mother, but because of a flawed investigation, lies from police and prosecutors, and withheld evidence, they also had their father taken from them.”³⁸ Moreover, “Mr. Williams lost nearly three decades of his life, and his children had to grow up thinking their own father killed their mother — because of the misconduct and faulty forensics that plagued this case.”³⁹ Here, like the Illinois Innocence Project argued for Mr. Williams, “[w]e have to push for more accountability and transparency among law enforcement and prosecutors to prevent more families being torn apart by wrongful conviction.”⁴⁰

³⁶ Maurice Possley, *Herman Williams*, THE NATIONAL REGISTRY OF EXONERATIONS (Sept. 26, 2022), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6406>.

³⁷ Molina, *supra* note 35.

³⁸ Innocence Project, *Herman Williams is Exonerated After Nearly Three Decades of Wrongful Conviction* (Sept. 6, 2022), <https://innocenceproject.org/news/herman-williams-is-exonerated-after-nearly-three-decades-of-wrongful-conviction/>.

³⁹ *Id.*

⁴⁰ *Id.*

G. The ‘Watts’ Exonerations

Nearly 200 people in Chicago have been cleared of charges tied to systemic continuous misconduct by Sergeant Ronald Watts and the Chicago Police Department.⁴¹ For nearly a decade, Watts and his team made false arrests, extorted money, and planted drugs and guns on Black and low-income individuals. Local and federal law enforcement began investigating Sergeant Watts’ corruption as early as 2004 and brought charges against him in 2012.⁴² Despite this, state and local officials did not undertake a thorough investigation of the hundreds of convictions secured by Sergeant Watts’ misconduct until 2016.⁴³ Sergeant Watts’ actions constituted prototypical impeachment evidence but were not revealed or disclosed to criminal defendants and their counsel for more than a decade. Often, the first signs of wrongful conviction take the form of impeachment evidence, which may

⁴¹ Grace Hauck, *A Corrupt Chicago Cop Destroyed Hundreds of Lives. Now Victims Want Justice*, USA TODAY (Feb. 8, 2023), <https://www.usatoday.com/in-depth/news/nation/2023/02/05/chicago-police-ronald-watts-exoneration-cases/10470598002/>.

⁴² *Id.*; see also Jennifer Gonnerman, *How One Woman’s Fight to Save Her Family Helped Lead to a Mass Exoneration*, THE NEW YORKER (May 21, 2018), <https://www.newyorker.com/magazine/2018/05/28/how-one-womans-fight-to-save-her-family-helped-lead-to-a-mass-exoneration> (In one case in which Watts served as the arresting officer and key prosecution witness, the presiding judge acknowledged that he knew the state’s attorney’s office had investigated Watts, but noted that “nothing happened” as a result).

⁴³ *Id.*

warrant further investigation and can ultimately reveal that an entire prosecution is based on falsehoods offered by arresting officers.

There, after Sergeant Watts' victims' stories came to light, attorneys for Sergeant Watts' victims engaged in a cooperative review with the Cook County Attorney's Office of Watts' related convictions.⁴⁴ Since then, at least 226 convictions and juvenile adjudications connected to Sergeant Watts and those working under his supervision have been dismissed.⁴⁵ Collectively, the wrongful prosecutions cost 183 people sentences of 459 years in prison (not including pretrial detention), plus 57 probation and 10 boot camp sentences.⁴⁶ Their stories are elucidated below:

- JaJuan Nile was charged with possession of cocaine in 2007 and sentenced to three years in prison. Mr. Nile was innocent of this crime but nonetheless convicted as part of Sergeant Watts' pattern and practice of framing individuals for drug crimes. Upon his release, with a felony on his record, Mr. Nile, like many others, struggled to find employment and housing. In 2021, shortly after earning his certificate of innocence and finally landing work, Mr. Nile was fatally shot, leaving behind three young children.⁴⁷

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

- Larry Lomax was attempting to deliver money his family had raised to a cancer-stricken relative in a housing project when Sergeant Watts stole the money and planted heroin on Mr. Lomax. He spent two years in jail and was sentenced to two years' probation. Mr. Lomax lost his job, lost his car, lost his home, and lost custody of his daughter on account of a crime he did not commit. In no uncertain terms, Mr. Lomax grieved – “[t]his ruined my life.” Mr. Lomax received his certificate of innocence 15 years after his wrongful arrest.⁴⁸
- Derrick Mapp was the victim of excessive physical force used by Sergeant Watts and another officer while they planted drugs on him. Mr. Mapp suffered a collapsed lung at the hands of Watts and his team but was forced to take a plea deal admitting to a crime he did not commit. Although Mr. Mapp had his conviction vacated in 2020, he still has not physically recovered.⁴⁹

Sergeant Watts' misconduct warranting investigation and subsequent disclosure is just the tip of the iceberg. Cities throughout the country have conducted investigations into police misconduct and judges have begun to overturn large groups of convictions. In 2014, officers in Philadelphia were found to have

⁴⁸ *Id.*

⁴⁹ *Id.*

committed system misconduct, leading prosecutors to seek the dismissal of more than 1,000 convictions.⁵⁰ Similarly, after Baltimore police officers were indicted for racketeering, judges threw out 300 convictions.⁵¹ These stories from throughout the country make clear: Petitioners’ request for thorough investigation and disclosure is not only warranted, but necessary to correct systemic police misconduct at the heart of Petitioners’ claims.

III. Faced with the DOJ Report’s Clear Findings of Systemic Police and Prosecutorial Misconduct, the Court Should Declare that the Commonwealth is Duty-Bound to Investigate

This Court should hold that the systemic and egregious police misconduct committed by SPD and outlined in the DOJ Report triggered the Commonwealth’s duty to investigate. *See* Br. of Petitioners-Appellants at 36–37. This Court has already recognized that “where there is egregious misconduct attributable to the government in the investigation or prosecution of a criminal case, the government bears the burden of taking reasonable steps to remedy that misconduct.” *Bridgeman v. Dist. Attorney for Suffolk Dist.*, 476 Mass. 298, 315 (2017) (“*Bridgeman II*”). This burden is “premised on a prosecutor’s ‘duty to learn of and disclose to a defendant any exculpatory evidence that is held by agents of the prosecution team.’” *Commonwealth v. Cotto*, 471 Mass. 97, 112 (2015) (citation omitted). Crucially,

⁵⁰ *Id.*

⁵¹ *Id.*

“where large numbers of persons have been wronged, the wrong must be remedied in a manner that is not only fair as a matter of justice, but also timely and practical.” *Bridgeman II*, 476 Mass. at 317; *see also Comm. For Pub. Counsel Servs. v. Att’y Gen.*, 480 Mass. 700, 723 (2018) (employing these three principles in authorizing thousands of exonerations from criminal convictions due to unconstitutional misconduct involving the prosecution team). Here, the DOJ Report outlined egregious misconduct attributable to SPD and, by extension, HCDAO in the investigation and prosecution of criminal cases. The DOJ Report highlighted the systematic falsity of the police reports concerning the excessive use of force, since this pattern or practice, at least, violated criminal defendants’ constitutional right to due process.

Not for the first time, a credible investigation, here by way of the DOJ Report, has revealed systemic issues involving egregious prosecutorial and police misconduct in the Commonwealth’s criminal justice system. *See, e.g., Ware*, 471 Mass. at 95; *Cotto*, 471 Mass. at 111–12; *Comm. For Pub. Counsel Servs.*, 480 Mass. at 23 (collectively, “Drug Lab Cases”). And, not for the first time, an instrumentality of the Commonwealth has deflected, obfuscated, and minimized these systemic problems. Instead, the HCDAO insists that the Petitioners are not entitled to any relief along the lines fashioned in the aforementioned Drug Lab Cases because, the “remedies ultimately imposed in the drug lab cases came only after multiple,

increasingly broad, efforts had failed.” Br. of Respondent-Appellee, 32. HCDAO’s distinction is inapposite because here, like in the Drug Lab Cases, the systems in place within SPD and HCDDAO to ensure and abide by criminal defendants’ constitutional rights have already failed. Here, as in the Drug Lab Cases, a complete collapse of investigatory and disclosure duties by the SPD (including its IIU) and HCDAO necessitates the Court’s intervention. It is well worth remembering that in the Drug Lab Cases, after an extensive evidentiary hearing, Judge Carey concluded that the Massachusetts Attorney General’s office “exhibited ‘reprehensible’ misconduct . . . in a manner that constituted a fraud upon the court.” *Comm. for Pub. Counsel Servs.*, 480 Mass. at 719-20. It is based on these findings that the Committee for Public Counsel Services (“CPCS”) were able to move to have 8,000 wrongful convictions vacated. Petitioners in the instant action seek the same finding and ask the Court to order Petitioners’ requested relief should the Commonwealth refuse or fail to properly investigate.

The remedy that Petitioners are seeking here is limited in scope. Petitioners are not seeking to vacate all convictions. Rather, Petitioners are asking that the Commonwealth conduct a thorough investigation into the serious allegations of egregious misconduct outlined in the DOJ Report, including the falsification of police reports, and provide all exculpatory evidence of such misconduct to impacted individuals or their counsel. This Court retains the power not only to remedy

“entrenched constitutional violations” but also retain supervision to adjust the scope of this remedial process. *Brown v. Plata*, 563 U.S. 493, 516 (2011). There are sufficient safeguards to ensure that the court can issue the remedial order to vindicate the fundamental right of criminal defendants while also ensuring that such orders are appropriately effectual. *Id.*

CONCLUSION

For the aforementioned reasons, this Court should grant Petitioners’ relief and hold that the Commonwealth is duty-bound to investigate the SPD’s misconduct and require the HCDAO to say whether anyone on the Commonwealth’s behalf will discharge that duty.

Dated: August 23, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, I hereby certify that the foregoing brief complies with the rules of Court that pertain to the filings of briefs, including Mass. Rs. A. P. 17 and 20. I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it was prepared using Microsoft Word for Microsoft Office 365 MSO in Times New Roman 12-point font, a proportionally spaced typeface, with 1-inch margins, and contains 6,985 non-excluded words as determined by the word count feature of Microsoft Word.

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CERTIFICATE OF SERVICE

Pursuant to Massachusetts Rule of Appellate Procedure 13(e), I the undersigned, certify under the penalties of perjury, that a copy of the foregoing Brief of *Amicus Curiae* The Exoneration Project has been served electronically on all parties or their representatives in this action as listed below on this 23rd day of August, 2023.

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