

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

No. SJC-2021-0129

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

v.

**DISTRICT ATTORNEY FOR HAMPDEN COUNTY,
Respondent**

**RESPONDENT'S REPLY TO PETITIONERS'
SUPPLEMENTAL FILING
SEPTEMBER 24, 2021**

Petitioners have supplemented their original status report with a recent Superior Court decision by Associate Justice Douglas H. Wilkins, which they seem to believe is not only somehow relevant to the Department of Justice investigation at the heart of this case but provides evidence of some failure by the Hampden Court District Attorney's Office (HCDAO). Neither proposition has any merit; in fact, the allegations that are the subject of that decision are "old news" throughout the Hampden County bar.

The decision at issue arises from employment litigation brought by former Springfield Police Department (SPD) Officer Steven Vigneault against various co-workers and supervisory members of the department. In essence, Vigneault alleges that he was fired for refusing to conceal misconduct by other officers, including drinking on the job and an incident involving three juveniles that occurred in Palmer, Massachusetts, in February 2016.¹ While the allegations as recounted by Judge Wilkins are, to say the least, unflattering to the SPD, they are, as he appropriately notes, cast in the light most favorable to the non-moving party, the plaintiff. Indeed, as Judge Wilkins notes at the outset, “While the court recognizes that these statements are not proven, *and may well turn out not to be true*, it must assume their truth for purposes of summary judgment” (Wilkins opinion, page 2, emphasis added).

The Wilkins opinion plows no new ground, and the *Brady/Giglio* material related to those allegations has been routinely disclosed by the HCDAO for years. The Palmer incident, in which SPD Gregg Bigda was captured on video threatening to manufacture charges against the juveniles, was in fact first reported

¹ The Palmer incident, in which SPD Gregg Bigda was captured on video threatening to manufacture charges against the juveniles, was in fact first reported by a HCDAO district court prosecutor who viewed the video while preparing for trial. The juveniles had never complained about their treatment, and their lawyers, to whom the HCDAO had provided the video months earlier, had either apparently never viewed it. See Affidavit of Jennifer N. Fitzgerald, included in the original HCDAO Appendix at 9-10, ¶¶16-19.

by a HCDAO district court prosecutor who viewed the video while preparing for trial. The juveniles had never complained about their treatment, and their lawyers, to whom the HCDAO had provided the video months earlier, had apparently never viewed it. See Affidavit of Jennifer N. Fitzgerald, included in the original HCDAO Appendix at 9-10, ¶¶16-17.

The officers who asserted their Fifth Amendment rights in the civil case actually provided detailed testimony before a federal grand jury concerning many of the same allegations. That grand jury testimony has likewise been widely and routinely disclosed since it was first received by the HCDAO in December 2018. See Affidavit of Jennifer N. Fitzgerald, HCDAO Appendix at 11-12, ¶¶20-22; see also HCDAO R.A. at 30-36; Petitioner’s Corrected Record Appendix at 00254. The HCDAO continues to make these disclosures in cases involving these SPD witnesses—although it is inconceivable that any sentient defense attorney remains unaware of the underlying allegations.

Thus, on a purely practical level, the Wilkins opinion creates no need for disclosures beyond those already being made. However, petitioners’ attempted use of a decision *denying* summary judgment in a *civil* case to create a disclosure obligation bears comment. Petitioners seem to suggest that 1) the HCDAO has an

obligation to monitor civil² and probate court dockets in cases where it has no appearance in order to identify any litigation involving one of its officer-witnesses, and 2) that unproven allegations, no matter how far-fetched, must be disclosed.

Further, the petitioners' suggestion that the HCDAO either designated Deputy Chief Kent to search for exculpatory documents or has control over his activities is factually and legally incorrect. The HCDAO has no control over the SPD. Rather it has the obligation to request the SPD to transmit to the HCDAO potentially exculpatory evidence relating to potential witnesses in a given case. It is important to keep in mind the genesis of the current petition, which is the Department of Justice's July 2020 report, describing, but not identifying, a number of incidents that might give rise to *Brady* material. In order to fulfill its obligation to obtain and disclose exculpatory evidence relating to those incidents, the HCDAO must first identify the incidents and the officers involved. The HCDAO has pursued that identification on two fronts: first, the FOIA request and subsequent lawsuit against the United States, and second, a request to the SPD. The HCDAO initially directed its request to SPD Commissioner Cheryl Claprod, and has received various responses from her designee, City Solicitor Edward

² In yet another example of the HCDAO taking an expansive view of *Brady* disclosures even before this Court's decision in *Matter of a Grand Jury Investigation*, it has disclosed *verdicts* in civil cases when it became aware of them. See Petitioners Corrected Record Appendix 00239-00242.

Pikula³ (see Respondent's Status Report, 9/14/2021, Exhibits A and F. As outlined in his letter to the HCDAO dated August 24, 2021, Pikula requested Claprood to assign SPD personnel to review the DOJ report and attempt to identify the specific incidents. The result was Deputy Chief Kent's report—which, it should be noted, the City has refused to provide to the HCDAO.⁴

As much as they might wish it to be so, the petitioners have no right to direct the operations of either the HCDAO or the SPD, to choose which employees perform tasks associated with disclosures, or to control the matter in which those tasks are performed. Nor do they have a right to demand widescale investigations, or to receive reports on the internal operations of the HCDAO. The HCDAO's obligation is to disclose to individual defendants all Brady/Giglio material relevant to their specific cases and the witnesses to be called in those cases.⁵ Any remedy for an alleged violation of that obligation is readily available in the Superior

³ As City Solicitor and a member of the Massachusetts bar, Pikula presumably has both the authority to direct the search activities of city employees and the legal knowledge to understand the scope of *Brady* disclosures.

⁴ See Respondent's Status Report, 9/14/2021, Exhibit F. In the interest of transparency, the HCDAO has disclosed everything it knows about this report and the City's position to individual defendants, so that they may pursue any remedies against the City that they deem appropriate. The difficulties created by the DOJ's vagueness and intransigence are underscored by the fact that there remain several incidents that even Kent has been unable to identify. See Respondent's Status Report, 9/14/2021, Exhibit A.

⁵ In this regard, the petitioners' lack of standing becomes starkly apparent. Only petitioner Lopez has an actual case pending, and the discovery in that case is under the supervision of the Superior Court.

Court.⁶ Petitioners' failure to pursue such remedies and failure to cite any examples of such alleged violations provides strong evidence that the HCDAO is in fact fulfilling its constitutional obligations.

Although not relevant to the existence of a disclosure obligation, the practical effect—or lack thereof—of these disclosures bears brief mention. The thrust of the original petition, as well as the recent attempt to expand the scope based on Judge Wilkins' opinion, is an attempt to obtain material that might provide a basis for impeachment of officers testifying in unrelated cases—so called *Giglio*, rather than *Brady*, material. While defendants are, no doubt, entitled to receive such material, in the vast majority of cases, it will be too remote in time or too peripheral in relevance to be admissible. See, e.g., Mass. G. Evid. Sections 403, 404 and 608. Thus, the specter proffered by the petitioners of legions of defendants being deprived of fair trials is more than a bit exaggerated and unrealistic. The HCDAO is committed to fulfilling its constitutional obligations in all cases, but there is no reason to believe that the time it takes to identify incidents

⁶ Indeed, the CPCS petitioners have demonstrated a disgraceful lack of attention to the plight of individual defendants, with the office refusing to accept new appointments. If petitioners are truly interested in achieving tangible justice for individuals, they would be better served to turn their attention to the unrepresented defendants languishing in Hampden County jails, rather than consuming the resources of this Court and the HCDAO with vague and unsubstantiated allegations of misconduct and requests for investigations that this Court has no authority to order.

and make disclosures, as detailed in its September 14, 2021 status report, is causing actual harm.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 24, 2021, I served the attached:

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