

August 6, 2020

**Via Email and First Class Mail**

District Attorney Anthony D. Gulluni  
Hampden County District Attorney's Office  
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Re: HCDAO's policies and practices in light of reports revealing evidence of systemic misconduct in the Springfield Police Department

Dear District Attorney Gulluni:

We send this letter to inquire regarding your office's knowledge of, investigation of, and response to the apparently routine misconduct within the Springfield Police Department ("SPD"), including without limitation its Narcotics Bureau's use of excessive force and falsification of official records as detailed in U.S. Department of Justice's Investigation Report dated July 8, 2020.

Due to longstanding concerns about, and reports of, pervasive misconduct among SPD officers, the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") sent your office separate public records requests on September 11, October 25, and December 20, 2019. These three requests sought, among other things, records related to how your office fulfills its obligations to disclose exculpatory or impeachment information about SPD officers to criminal defendants. In response to the September and October requests, your office revealed that you maintain no list of officers known or suspected to have committed an offense whose disclosure may be required under *Brady v. Maryland*, 373 U.S. 83 (1963) or Mass. R. Crim. P. 14; your office has no formal policies, procedures, or analyses concerning its attorneys' obligations under *Brady*, Rule 14, S.J.C. Rule 3:07, or Mass. R. Prof. Conduct 3.8(d); and your office has no written systems in place to track whether *Brady* disclosures are made in the appropriate cases.<sup>1</sup>

In addition to these responses, your office produced records showing that, between 2014 and 2019, your office investigated six complaints involving alleged misconduct by an SPD officer, and in each case, your office found no probable cause to bring charges. Notably, one of those investigations involved the alleged assault of private citizens at Nathan Bill's Bar which later resulted

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<sup>1</sup> We acknowledge that your office sent ACLUM a letter on July 31 summarizing a training program for new ADAs that was started in the summer and fall of last year and that ACLUM sent a follow-up on August 4 requesting the actual records of the trainings and related materials. Your office responded that it does not have records of the trainings. Notably, the summary did not mention any training related to your prosecutors' obligations in light of police misconduct (especially as such misconduct was well-known at the time the program began).

in 14 indictments against SPD officers secured by the Massachusetts Attorney General and in the City paying \$885,000 to the victims. Outside of these six investigations, your office revealed that no other credibility assessments of SPD officers has been conducted by your office since 2014 and your office is not otherwise in possession of any such assessments.<sup>2</sup>

And following the December 2019 request—which among other things requested records pertaining to post-conviction review of cases, prosecutorial or police misconduct, police-involved shootings, and allegations of excessive force—your office disclosed on July 31 that it neither tracks nor maintain documents in the categories requested, including the following:

- officers or prosecutors accused of misconduct;
- cases in which evidence was suppressed due to police and/or prosecutorial misconduct;
- cases in which verdicts were overturned due to police and/or prosecutorial misconduct;
- written complaints made to HCDAO regarding police or prosecutorial misconduct;
- indictments or criminal investigations related to allegations of police or prosecutorial misconduct; and
- any protocol, list, or document relating to police officers (and their departments) that have been or must be the subject of discovery notices as required to comply with your office’s constitutional duties.

Recently, on July 8, 2020, after a two-year investigation, the U.S. Department of Justice released conclusions concerning civil rights violations by SPD officers in the Narcotics Bureau and various related deficiencies. The DOJ reported that “there is reasonable cause to believe that Narcotics Bureau officers engage in a pattern and practice of excessive force in violation of the Fourth Amendment of the United States Constitution.” U.S. DOJ, Investigation of the Springfield, Massachusetts Police Department’s Narcotics Bureau (Jul. 8, 2020), 2. It noted that the pattern and practice “is directly attributable to systemic deficiencies in policies, accountability systems, and training.”<sup>3</sup> *Id.* at 24. It found that officers routinely submit vague, misleading, and false police reports. *Id.* at 2, 16, 17. Specifically, the report states that the DOJ “identified *substantial* evidence that, over the last six years . . . officers made false reports that were inconsistent with other available evidence, including video and photographs.” *Id.* at 16. (emphasis added).

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<sup>2</sup> We are aware that HCDAO brought assault charges against SPD Officer Jefferson Petrie after videos surfaced showing him grabbing a private citizen by his throat and forcing him to leave SPD headquarters. Stephanie Barry, *Springfield police officer admits to assault charge; federal lawsuit filed by man he grabbed by the throat during parking ticket dispute*, MassLive.com (July 23, 2020). However, although HCDAO dropped the resisting arrest and assault and battery on a police officer charges filed against Mr. Petrie’s victim after the videos contradicted Mr. Petrie’s account of what occurred, it is unclear what additional steps, if any, HCDAO took in light of the falsified report. *See id.* In addition, we acknowledge that, on July 31, you wrote to ACLUM that HCDAO is currently investigating a police-involved shooting.

<sup>3</sup> Similarly, the Police Executive Research Forum, with whom Springfield contracted in 2018 to conduct a review of SPD’s internal investigations processes and related matters, concluded that “officers have no clear rules governing their conduct.” Police Executive Research Forum, *Assessment of the Springfield, Massachusetts Police Department: Executive Summary* (April 2019), at 8.

Misconduct at the SPD does not appear to be limited to the Narcotics Bureau, but instead appears to be systemic. Numerous current or former SPD officers have faced allegations of serious misconduct, ranging from civil rights complaints filed against them by residents to criminal charges filed against them by state and federal prosecutors.<sup>4</sup>

The remarkable responses we have received from your office in connection with ACLUM's public records requests raise serious questions about whether your office's response to this situation is adequate as a matter of law. For example, particularly given that your office presumably has ready access to the same information made available to the DOJ, we are concerned about whether your office or the Commonwealth has ever itself investigated or is investigating the misconduct within SPD's Narcotics Bureau and within SPD more broadly. And we are concerned about whether the Commonwealth, and your office in particular, is taking other steps to ensure that it is meeting its obligations with respect to misconduct within the SPD.

To begin with, the Commonwealth has obligations to the people of this state. As every prosecutor is duty-bound to know, prosecutors have a constitutional and ethical duty to automatically disclose impeachment and exculpatory evidence known to members of the "prosecution team," including investigating or testifying police officers' knowledge of their own misconduct. *Kyles v. Whitley*, 514 U.S. 419, 421 (1995); *Giglio v. U.S.*, 405 U.S. 150, 154 (1972).

And your office's practices with respect to this constitutionally-mandated obligation, as reflected in its responses to ACLUM's public records requests, appear to be atypical. *Accord. U.S. v. Osorio*, 929 F.2d 753, 761 (1st Cir. 1991) ("No properly prepared trial lawyer should permit himself to be surprised by the vulnerability of his witness, particularly when that vulnerability is well known by his colleagues. . . . [I]t is not merely sloppy personal practice; it implicates the procedures of the entire office for responding to discovery ordered by the court."). In recognition of their obligations, district attorneys' offices commonly maintain *Brady* lists (*i.e.*, a list of police officers who are under investigation or have engaged in misconduct) and routinely make broad disclosures to criminal defendants.<sup>5</sup> *C.f. Commonwealth v. St. Germain*, 381 Mass. 256, 262 n.10 (1980) ("prosecuting attorneys (should) become accustomed to disclosing all material which is even possibly exculpatory").<sup>6</sup>

Further, beyond your office's duty to disclose exculpatory evidence already in its possession, the Commonwealth also has a duty under Massachusetts law to *investigate* misconduct and *gather* additional exculpatory evidence that should then be disclosed to defendants. The Supreme Judicial Court has recognized "a prosecutor's duty to *learn of and disclose* to a defendant any exculpatory

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<sup>4</sup> See, e.g., *14 Officers Indicted on Assault or Cover-Up Charges in Beating of Black Men*, The New York Times (Mar. 28, 2019); Dan Glaun, *Springfield officer in video of controversial High School of Commerce arrest said he did not mean to file false report*, MassLive.com (March 15, 2019); Springfield Community Police Hearing Board (CPHB), Report for 2018, Appendix 2 (Apr. 3, 2019); Laura Crimaldi and Shelley Murphy, *I could crush your [expletive] skull and [expletive] get away with it. A deep look at the Springfield police*, Boston Globe (Sept. 1, 2018).

<sup>5</sup> ACLUM has received reports that your office does not routinely make *Brady* disclosures about officers suspected of misconduct.

<sup>6</sup> Several DAs' offices here in the Commonwealth, in fact, provided to ACLUM their offices' *Brady* list and policies in response to ACLUM's December public records request.

evidence that is held by agents of the prosecution team.” *Commonwealth v. Cotto*, 471 Mass. 97, 112 (2015) (internal quotation marks omitted; emphasis added); *see also Committee for Pub. Counsel Servs. v. Attorney Gen.*, 480 Mass. 700 (2018) (vacating and dismissing the drug convictions of all “Farak defendants” and discussing the Commonwealth’s duty to investigate Farak’s misconduct).

Here, officers of the Springfield Police Department, including its Narcotics Bureau, are members of the prosecution team in numerous cases brought by your office. Particularly given that your office and others are presumably aware of the DOJ Report and other allegations of misconduct involving SPD officers, the Commonwealth is duty-bound to investigate that misconduct, including the extent of the misconduct, and disclose it to defendants in both pending and closed cases. “[W]here 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. District Attorney for the Suffolk Dist.*, 476 Mass. 298, 315 (2017). This principle is not, in our view, limited to egregious government misconduct that is committed by a chemist.

The public is entitled to know what actions, if any, the Commonwealth, and particularly HCDAO, has taken in light of SPD’s pervasive misconduct, especially after the release of the July 8 DOJ report. We ask that you provide answers to the following questions:

1. Is any entity in the Commonwealth, your office included, investigating the allegations of misconduct in SPD?
2. What actions has your office taken in response to the DOJ report?
3. Has your office determined, by inquiring with DOJ or otherwise, which specific cases were implicated by the DOJ report as having involved misconduct by SPD officers? If so, which are they?
4. Has your office determined, by inquiring with DOJ or otherwise, which specific officers are implicated by the DOJ report in committing or condoning misconduct? If so, who are they?
5. For any officers implicated, has your office engaged in a review to identify the cases in which any of those officers participated or is participating as an investigator, witness, or other member of the prosecution team? If so, which are they?
6. For cases identified in Questions 3 and 5, above, what remedial actions, if any, has your office taken? For example, has your office sent disclosures in any cases, filed motions to dismiss, or consented to motions to set aside a judgment and/or for a new trial? Is your office preparing to send disclosures in any impacted case whether open or closed?
7. How are you ensuring that prosecutors automatically disclose to the defense information about police witnesses who have engaged in misconduct, whether charged or not? And in what cases has your office made such disclosures in the past two years?

We look forward to hearing from you and ask that you please respond by August 20. We would be happy to speak with you about any questions. Please feel free to reach out to Sam Dinning, [sdinning@andersonkreiger.com](mailto:sdinning@andersonkreiger.com), or Jessica Lewis, [jlewis@aclum.org](mailto:jlewis@aclum.org).

Sincerely,

/s/ Rebecca Jacobstein

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