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December 11, 2014

Michael Lawlor, Chairman
Criminal Justice Policy Advisory Commission
Office of Policy and Management
450 Capitol Avenue
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Email: mike.lawlor@ct.gov

Re: Duty to Disclose Private Funding for Connecticut Gun Seizure Research Project
(1) Full Disclosure of Funding for Research Project
(2) Release of Personal Information About Connecticut Gun Owners to Project Researchers
(3) Equal Access to the Commission for a Diversity of Views on Gun Seizure Issues

Dear Chairman Lawlor and Commission Members:¹

This letter regards a presentation of a "Research Study of Connecticut's 'Dangerous Persons' Gun Seizure Law" at the October 30, 2014, meeting of the Commission. For years as a practicing attorney in the criminal trial courts of Connecticut I have had concerns about state and federal constitutional violations arising from the implementation of the Firearm Safety Act enacted in 1999 and in particular the seizure of firearms. Please place my name on the Agenda for Public Comment at your December 18, 2014, meeting.

At the Commission's October 30, 2014, meeting chaired by Office of Policy and Management Under Secretary Michael Lawlor a group of researchers from Yale, Duke, and UCONN offered a 16-page Power Point presentation titled "Research Study of Connecticut's 'Dangerous Persons' Gun Seizure Law." The researchers have advanced degrees in the fields of social work, psychiatry, behavioral studies, or medicine. Their plans include creating a database to track the personal characteristics of Connecticut gun owners along with gun owners' patterns of arrest, incarceration, and psychiatric hospitalization before and after gun seizures.

While advanced degrees and associations with Yale, Duke, and UCONN are admirable, the results of a project are only as valid as the facts made available to the researchers and the receptiveness of the researchers to objective interpretations of the facts provided them. So far,

¹ See Appendix A for List of Commission Members.

the Waterbury Republican American, The New Haven Register, and The Connecticut Law Tribune have reported on the project as if the research is sponsored by esteemed institutions such as Yale, Duke, and UCONN. Not one of these media outlets disclosed that the research project is in fact sponsored by the New Venture Fund and the Elizabeth K. Dollard Trust. Not one of these media outlets disclosed the association between the New Venture Fund and The Joyce Foundation. The media relied on Under Secretary Lawlor and the Commission who, similar to economics professor Jonathan Gruber, simply think the media and the public are stupid.²

The New Venture Fund received grants from The Joyce Foundation in excess of \$650,000 during 2013 for gun related projects. According to *Inside Philanthropy*:

There's no mistaking where Joyce stands in this debate. It's among the leading anti-gun funders in the foundation world, with a Gun Violence Prevention program that funds research, policy, and public education.³

Omitting reference to an association between The Joyce Foundation and the New Venture Fund as a sponsor of a "Research Study of Connecticut's 'Dangerous Persons' Gun Seizure Law" is similar to conveniently failing to disclose sponsorship of a gun related research project by a pro-Second Amendment organization. Of course, the latter would never happen. In full disclosure I am a Yale Law School graduate, I have received funding from the NRA Civil Rights Defense Fund, I represent firearm owners in Connecticut gun seizure cases, and I have not yet been contacted by the Yale, Duke, and UCONN researchers associated with the project.⁴

A brief background and summary of my concerns specific to firearm seizures:

Prior to a vote on the Firearm Safety Act in 1999,⁵ State Representative Michael Lawlor assured others in the State House, including Representatives Tulisano, Stripp, Hamm, Caron, Esposito, Diamantis, Garvey, Prelli, and O'Neill, that police officers conducting investigations under the new firearm seizure law would be responsible for signing the seizure warrants and held accountable for the information sworn to under oath in the warrants.⁶ The purpose was to ensure

² See Ashley Killough, *Jonathan Gruber: I am embarrassed and I am sorry*, CNN.com, December 9, 2014 ("MIT economics professor Jonathan Gruber apologized Tuesday for his 'glib, thoughtless and sometimes downright insulting comments' about Obamacare and the intelligence of American voters.").

³ See Kristina Strain, *The Joyce Foundation's Long Fight to Curb Gun Violence*, InsidePhilanthropy.com, June 6, 2014.

⁴ For a year end special edition of The Connecticut Law Tribune I wrote an editorial opinion forecasting the future of gun seizures in Connecticut, *Gun Owners Worry About Enforcement of Laws: Advocates See Continued Problems With Illegal Seizures of Weapons*. The editorial exposed a Connecticut State Police (CSP) illegal practice that had occurred for years. Specifically, the CSP extorted firearm owners to surrender their firearms by threatening felony arrest when in fact the firearm owners were not in violation of any criminal law. The CSP stopped this practice in 2013 when I brought it to their attention. There were absolutely no other consequences for the CSP's longstanding involvement in illegal conduct. This is because the victims of the CSP's government-sanctioned criminal conduct were firearm owners. See article at Appendix B.

⁵ Public Acts 1999, No. 99-212, § 18, *codified* at General Statutes (Rev. to 2013) § 29-38c.

⁶ See Representative Lawlor's remarks at House Transcript for June 7, 1999, 53 of 280:

"This would require police to put in writing and sign their names to an affidavit which indicates they've done the investigation, they've ruled out other options, etc. And then it would require a judge to sign it and you know, for all of the allegations we hear about police misconduct, let's say, you hear very few stories of abuse in the warrant process, whether it's an arrest warrant or a search warrant. I mean, there are stories, but there are few and far between. I think the reason for that is requiring people to go through a very formal process of completing an

that the officers would be responsible and accountable for misleading or false information contained in a firearm seizure warrant.⁷ In 2013 a prosecutor in New Britain argued to the court that a warrant signed by two Berlin Police Department officers who had no involvement in the investigation was not only acceptable but routine.⁸ Courts routinely sign warrants for the seizure

investigation, putting the totality of it into an affidavit, signing their name on the bottom under the penalties of false statement I think is making it clear to the law enforcement officials involved and to the judge that they'll be held responsible if they are, in any way, lying or misleading or not including relevant information."

⁷ See footnote 6.

⁸ Berlin Police Department Officer Robert L. Canto and Detective Brian McMahon testified that they had no involvement in an investigation underlying a firearm seizure warrant that they signed.

According to testimony offered by Berlin Police Department Officer Canto during cross-examination by Supervisory Assistant State's Attorney Palmese:

Q: Now, when you review these search warrants before you sign off as an affiant, you actually -- you read it. Correct?

A: Correct, I read it.

Q: And were you aware at the time that it was based on police reports submitted by Officer Bartlett?

A: Yes, ma'am.

Q: Okay. And as a brother officer would -- Officer Bartlett, you rely on information in their reports to be truthful and accurate?

A: Absolutely.

Q: And is that the reason that you are allowed to be an affiant on the document that's submitted to the Court?

A: I believe so.

Q: Okay. And is it typical that, as police officers, you rely on information from brother and sister officers?

A: All the time.

Q: All the time. Okay.

(12/24/2013 H'rg Tr., 64:25-65:14) Officer Canto was an affiant to a Search and Seizure Warrant for firearms based on a police response to a home on December 2, 2013. Officer Canto had no knowledge of the December 2, 2013, police response until December 9, 2013, when he signed the warrant. (12/24/2013 H'rg Tr., 60:7-11) He was not one of the four officers at the scene. (*Id.* at 60:12-15) Prior to signing the warrant he never spoke to any officer who was at the scene, including the single officer, Officer William Bartlett, who wrote a report. (*Id.* at 60:2-11) Officer Canto never read the report prepared by Officer Bartlett prior to signing the warrant. (*Id.* at 61:4-11) Officer Canto spoke to one officer, Detective Sean McMahon, who was not one of the four officers at the scene. (*Id.* at 60:16-20) (See Detective McMahon's report) The warrant was already drafted when Officer Canto received it. (*Id.* at 62:4-17) The only action taken by Officer Canto with regard to the investigation underlying the warrant was to read it after it was written. (*Id.* at 62:13-63:2) The other affiant to the search warrant, Officer David A. Cruickshank, became involved in the December 2, 2013, matter when Detective McMahon entered the office he shared with Officer Canto on December 9, 2013, and Detective McMahon asked Officer Canto and Officer Cruickshank to be co-affiants.

(12/27/2013 H'rg Tr., 9:8-12) Officer Cruickshank did not review any documents prior to signing the warrant. (*Id.* at 9:26-10:8) Detective McMahon has been employed by the Berlin Police Department for 24 years. (*Id.* at 56:17-21)

According to testimony offered by Detective McMahon during cross-examination by Supervisory Assistant State's Attorney Palmese:

Q: So is it common practice in the Berlin Police Department to draft a warrant from another investigation?

A: Yes, it's happened.

Q: Okay. You're kind of the writer at the department, aren't you?

A: Unfortunately.

Q: You're the best writer, yes, okay. And is it common to rely on information from brother and sister officers when preparing an arrest warrant or a search warrant?

A: It is.

Q: Okay. Because you can rely on truthfulness of your brother and sister officers, correct?

A: That's correct.

Q: All right. And is it common to have two individuals who may not have been involved in the investigation as co-affiants?

A: It is.

Q: And in this case it happened because Canto and Cruickshank happened to be coming to the courthouse that particular morning?

A: That's correct.

of firearms that are signed and sworn to by officers who had no involvement in the investigation.⁹

The Firearm Safety Act of 1999 was co-sponsored by Representative Lawlor and Representative Ron San Angelo. In persuading his fellow legislators to vote in favor of the Act, Representative San Angelo said that firearms would only be seized when the danger was imminent, when an individual was brandishing a firearm, and when the firearms were in the home.¹⁰ Many of the firearm seizures that occur in Connecticut under the authority of General Statutes § 29-38c are in fact executed at the evidence rooms of police stations rather than at individuals' homes. This is because the firearms are seized before a warrant has issued. The State of Connecticut is the first state in the nation to use a warrant to condone a seizure of property that has occurred already.

To address the overwhelming appearance that the findings and recommendations of the pending gun seizure research study are pre-determined by its choice of researchers the Commission is obligated to explain: (1) How Under Secretary Lawlor is fit to chair a Commission tasked with examining firearm seizure issues given his documented record of providing inaccurate information to his fellow legislators in 1999 and his failure to ensure in his current position as Under Secretary for Criminal Justice Policy and Planning since January 2011 that the 1999 firearm seizure law was implemented as passed;¹¹ (2) How the privacy rights of firearm owners will be protected when the Commission has condoned a study by private researchers that will require the disclosure of private, personal information to individuals paid by the New Venture Fund and the Elizabeth K. Dollard Trust; and (3) How the Commission will incorporate a diversity of perspectives on firearm seizure issues so that the findings and recommendations of the researchers sponsored by the New Venture Group and the Elizabeth K. Dollard Trust are part of a search for the truth in the context of healthy opposition and constructive debate.

While organizations such as The Joyce Foundation, the New Venture Fund, and the Elizabeth K. Dollard Trust have a right to their opinions, their sponsorship of a gun related research project in Connecticut should not be misrepresented as a study by Yale, Duke, and UCONN. The Yale, Duke, and UCONN researchers are being sponsored by organizations that

⁹ I expressed this concern about lack of accountability to Commission member Chief State's Attorney Kevin T. Kane in letters dated January 27, 2014, and September 8, 2014, when addressing a separate concern about the State of Connecticut's flagrant violations of state and federal constitutional rights in failing to follow the law set forth in the seminal United States Supreme Court case of *Brady v. Maryland* (1963) which requires prosecutors to provide exculpatory information about the credibility of police officers to defense attorneys. This letter provides notice to each Commission member that the State of Connecticut does not maintain a *Brady* list in violation of state and federal constitutional guarantees. I look forward to addressing this issue at a Commission meeting in the upcoming year. For your reference the correspondence between me and the Office of the Chief State's Attorney is attached at Appendix C.

¹⁰ See Representative San Angelo's remarks at House Transcript for June 7, 1999, 18 of 280:

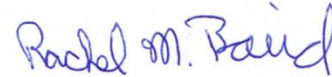
"And the standard is set extremely high. Imminent danger to himself or to others which means that he has to be getting ready to either kill himself or kill somebody else. . . . And we've set some of the things that the judge has to look at. Again, they're very high. You have to have firearms in your house. You have to be brandishing them. . . . I believe that any reasonable judge in the State of Connecticut will be extremely cautious in putting this provision forward, will look at it very closely for absolute purposes of legislative intent, it makes absolutely clear that this is not to be used very often, but only in very rare extreme situations. That is recognized by everybody that's a proponent of this amendment. It's not something that we want to see used loosely. . . ."

¹¹ See also footnote 4.

spend billions in foundation assets to affect government change through government officials all in support of increased restrictions on gun owners.

I look forward to the Commission's meeting on December 18, 2014.

Sincerely,



Rachel M. Baird, Attorney

The Honorable Dannel P. Malloy
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210 Capitol Avenue
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George Jepsen, Attorney General
Office of the Attorney General - State of Connecticut
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APPENDIX A

Appendix A

State of Connecticut
Criminal Justice Policy Advisory Commission
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Commissioner Scott Semple
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Chairman Carleton J. Giles
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Commissioner Dora Schriro
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Commissioner Patricia A. Rehmer
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Commissioner Roderick L. Bremby
Department of Social Services
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Commissioner Joette Katz
Department of Children & Families
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Commissioner Stefan Pryor
Department of Education
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Government Official 1
VACANT

Government Official 2
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Government Official 3
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Government Official 4
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Government Official 5
Mayor Scott Kaupin, Town of Enfield
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Government Official 6
Chief of Police James L. Kenny
Town of Vernon
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Government Official 7
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Government Official 8
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CJIS Governing Board
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Government Official 9
Chief Executive Officer Karen M. Jarmoc, CCADV
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State of Connecticut
Criminal Justice Policy Advisory Commission (CJPAC)
Board Members
September 2014

Office of Policy and Management

Mike Lawlor, (Chair) Under Secretary

Office of Chief Court Administrator

Patrick L. Carroll, III, Judge, Deputy Chief Court Administrator, Designee

Department of Correction (with Parole Functions)

Scott Semple, Commissioner

Board of Pardons and Paroles

Carleton J. Giles, Chairman

Department of Emergency Services and Public Protection

Dora Schriro, Commissioner

Office of the Chief State's Attorney

Kevin Kane, Esq., Chief State's Attorney

Office of Chief Public Defender Services

Susan O. Storey, Esq., Chief Public Defender

Department of Mental Health and Addiction Services

Patricia A. Rehmer, Commissioner

Judicial Branch - Court Support Services Division (CSSD)

Stephen Grant, Executive Director

Department of Labor

Sharon Palmer, Commissioner

Department of Social Services

Roderick L. Bremby, Commissioner

Department of Children and Families

Joette Katz, Commissioner

Department of Education

Stefan Pryor, Commissioner

Governor's Appointments:

Government Official 1

VACANT

Government Official 2

Rep. of Offender Services in the Private Community

Reverend Shelly Copeland

Government Official 3

Public Member

Laurie Deneen, Esq., Town of Windsor

Government Official 4

Public Member

Richard Healey, City of New Britain

Government Official 5

Scott Kaupin, Mayor, Town of Enfield

Government Official 6

James L. Kenny, Chief of Police, Town of South Windsor

Government Official 7

Rep. of Offender and Victim Services in the Private Community

Laura Cordes, Executive Director, CONNSACS

Government Official 8

CJIS Governing Board

Sean Thakkar, Executive Director

Government Official 9

Rep. of Offender and Victim Services in the Private Community

Karen M. Jarmoc, Chief Executive Officer, CCADV

APPENDIX B



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Forecast 2014: Gun Owners Worry About Enforcement Of Laws

RACHEL BAIRD

The Connecticut Law Tribune

2013-12-27 20:24:43.0

Although debate over the sale, possession and use of firearms came to the forefront in the wake of the Sandy Hook Elementary shootings, attorneys involved with firearms law know that there were troubling issues even before December 2012. And the rights of gun owners will likely face further attacks in 2014.

Here's one such problem: For years, State Police officers in the Special Licensing and Firearms Unit have issued notices threatening people who are the subject of ex parte restraining orders with arrest for felony criminal possession of firearms — unless they immediately surrendered or transferred their firearms. (Such restraining orders are imposed by the courts in cases where one person may pose a danger to another — often in divorce and domestic violence situations.)

The threat of arrest was baseless as a matter of law. State and federal laws, in accord with the due process clause of the Fourteenth Amendment, require notice and opportunity to be heard on restraining orders before criminal liability attaches to the continued possession of firearms. Until the Connecticut legislature enacted Public Act 13-3 on April 4, 2013, no one took notice of this abuse of authority because it was easy enough for owners to retrieve their firearms from federal firearms licensees when the ex parte order was dissolved and no restraining order was entered.

But the expansion of the types of firearms defined as assault weapons under PA 13-3, and the prohibition of their transfer after April 4, has left more than one owner unable to reclaim his or her firearms. An assault weapon, once transferred to a federal firearms licensee, cannot be transferred back in Connecticut. So when owners who received the threatening notice could not retrieve their firearms after April 4, the long-standing State Police practice of unjustly threatening certain firearms owners with criminal liability for continued firearms possession was exposed.

The chaos in the Firearms Unit will become even more apparent after Jan. 1, 2014, and doubtless be attributed by apologists to the burdens placed upon State Police in implementing complex new laws. But the new statutes have simply exposed what any attorney with a firearms practice in Connecticut has known for years: the Firearms Unit does not know the law, and holds local police departments, the legislature, courts, and ultimately firearms owners at its mercy because few have the courage and confidence in their own knowledge of the law to question State Police about firearms matters.

Put simply, a transfer of property executed under threat of unlawful arrest and prosecution by a sworn law enforcement officer is not a lawful transfer. If the property were anything other than firearms, the dispossession of private property by state-sponsored extortion simply would not be tolerated.

For now, the Firearms Unit has grudgingly modified its unlawful, misleading notice. The document now includes, as a basis for the threat of arrest, a check mark placed by the court on the ex parte order requiring the surrender or transfer of firearms.

But the Department of Emergency Services and Public Protection, which oversees the State Police, is still wrong. Under the law there is no such criminal liability for failure to surrender or transfer firearms under an ex parte order. The matter is civil. And so any threat of arrest constitutes an abuse of authority. The courts participate in this abuse by using an ex parte order judicial form that allows judges to deprive firearms owners of property, sometimes permanently, with no notice or opportunity for hearing.

Assault Weapons Ban

One day a firearm is not an assault weapon, the next day it is. This past spring, firearms became assault weapons because they were specifically and arbitrarily named as such in state law or because they have certain characteristics. Whether by name or characteristics, if a firearm is defined as an assault weapon, it is subject to prohibitions on transfer and possession and must be registered before Jan. 1, 2014.

However, one portion of chapter 943 of the Connecticut General Statutes exempts a firearm that is not banned by name, but still has the characteristics of an assault weapon, from the prohibitions and registration requirements, as long as the firearm was manufactured prior to Sept. 13, 1994.

In an Oct. 11, 2013 letter to attorney David Clough, Reuben Bradford, who was commissioner of the Department of Emergency Services and Public Protection until he retired in late December, opined that every firearm which would otherwise qualify as an assault weapon is exempt from the prohibitions and registration requirements if the firearm was manufactured prior to Sept. 13, 1994.

But that's not correct. If the firearm is banned by name, then its manufacture date is immaterial. The Sept. 13, 1994 date applies only to exempt assault weapons banned *solely* because of their characteristics.

Firearms owners who have relied on Bradford and the Firearms Unit for direction in complying with the new gun laws risk mandatory jail time. On Dec. 22, a detective in the unit issued a partial retraction of the commissioner's opinion, and so the State Police may finally be on the right track.

Still, what the last two months have shown is that firearms owners cannot trust what the Department of Public Safety says and that courts will not care where private citizens got their information and why they didn't follow the law.

If the property were any other than firearms, the ambiguity in the law would inure to the benefit of the law-abiding individual. But because the property is firearms, the only sure thing is that if firearms owners are arrested it will mean a high bond and front-page news.

Criminal attorneys will need to familiarize themselves thoroughly with this issue.

Targets And Scapegoats

The stock market crash of 2008 was not the cause of the chaos in the financial sector. The chaos existed long before the crash. Bernie Madoff might have gone on profiting for years. But the market crashed. The quicksand on which his success was built became apparent, and Madoff was exposed.

Likewise, the Newtown shootings and the heavy-handed gun control legislation that followed did not cause the current chaos and confusion among the state's firearms owners. Rather, those developments have only served to expose enforcement problems that have been lingering for years.

The Firearms Unit has operated with impunity for years, acting as the expert in gun matters, ostensibly educating local police departments, elected officials, prosecutors, and the courts. Now the failure to interpret or follow the laws as written has been exposed. And as we proceed into 2014, the light cast on the Firearms Unit will burn brighter.

Here's one prediction for the coming year: law-abiding firearms owners will ultimately pay the price and serve as targets and scapegoats for a reactionary government caught in a quagmire of its own making.

When the registration records of assault weapons are tallied after Jan. 1, 2014, there will inevitably be differences between the list of assault weapons registered and the list that already exists in the state database of long-gun purchases voluntarily reported by retail gun stores prior to April 4, 2013.

When that happens, state and local police will come knocking on the doors of law-abiding citizens to interrogate, inspect, and threaten arrest if registration records do not match the purchase records. The problem is that reporting private sales of long guns prior to April 4, 2013, was not required. And so, for many firearms there is a record of purchase but no record of subsequent sale.

Just as the public safety commissioner and the Firearms Unit have got it wrong on other issues, state and local police will get it wrong when they presume that records of pre-April 4, 2013 purchases and post-Dec. 31, 2013 assault

weapon ownership registrations will match. The next step on this slippery slope will be to require law-abiding citizens to prove a negative: that they do not own a particular firearm linked to them through a pre-April 4 sale reported voluntarily to the Firearms Unit.

That sort of conduct hacks away at the Fourth Amendment. Whenever a piece of the Fourth Amendment withers on an extremity fed by fear, the entire body suffers. Infringement of constitutional protections will not end with the search for unregistered assault weapons. Soon enough, the path cut through such protections will be trod for other reasons, unforeseeable but certain, and that should concern everyone, not just firearms owners. •

Rachel Baird is a Torrington attorney whose practice includes representing owners of firearms.

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APPENDIX C

Rachel M. Baird & Associate

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September 8, 2014

Kevin T. Kane, Chief State's Attorney
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Rocky Hill, CT 06067
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Re: State v. Morgan, Docket No. CR11-0316060-S (Jud. Dist. of New London)

**Inquiry into Scope of Exculpatory Information in Pending and Closed Cases
Involving Former State Trooper J. Severin Bergeron**

Connecticut Brady List

Dear Mr. Kane:

This letter follows my initial request for records and inquiry dated January 27, 2014.¹ In response I received a February 11, 2014, letter from Attorney Brian Austin.² In his letter Attorney Austin represents that the Division of Criminal Justice does not have policies and procedures to track documented issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence “although the Division is currently contemplating the establishment of such policy.”³

My office submitted FOIA requests to the Department of Emergency Services and Public Protection (DESPP) and just received in response a log of incidents listing Trooper J. Severin Bergeron as the primary officer.⁴ One of these incidents, specifically the arrest of my client Elbert J. Morgan on December 26, 2011, and perhaps many more tickets and arrests were prosecuted after Trooper Bergeron's suspension date of February 13, 2013, without disclosure of the exculpatory information to defense counsel. As stated in my January 27, 2014, request and inquiry, I learned on or about January 22, 2014, that an email was distributed by the DESPP to its employees notifying them on or about February 14, 2013, that Bergeron was suspended. I received a copy of this email today from the DESPP in response to my FOIA requests.⁵ The

¹ See enclosed Letter from Rachel M. Baird to Kevin T. Kane, dated January 27, 2014.

² See enclosed Letter from Brian Austin, Jr. to Rachel M. Baird, dated February 11, 2014.

³ See footnote 2, above.

⁴ See enclosed Letter from Janet K. Ainsworth to Edward A. Peruta, dated September 2, 2014.

⁵ See enclosed Email from Bette Condon to DESPP Personnel, dated February 14, 2013.

email from the office of Division of State Police Commander Danny R. Stebbins suspended Trooper Bergeron's police powers until further notice and denied Trooper Bergeron the authority to "hold himself out as a member of the Department of Emergency Services & Public Protection ... or "to access or utilize any COLLECT/NCIC or CAD/RMS or any other law enforcement computer database(s)." ⁶ Regardless, the Division continued prosecutions based on statements signed by an individual whose police powers had been suspended without disclosing that suspension to defense counsel.

The February 14, 2014, email from the state police commander's office notifies more than 30 individuals of Trooper Bergeron's suspension and is subject to disclosure under the FOIA. There is no reason for the omission of the Division of Criminal Justice from the list of email recipients. In fact, General Statutes § 54-86c(c), titled "Disclosure of exculpatory information or material," mandates the following:

Each peace officer, as defined in subdivision (9) of section 53a-3, shall disclose in writing any exculpatory information or material which he may have with respect to any criminal investigation to the prosecutorial official in charge of such case.

The state police failed to follow this mandate in the *Morgan* case. The absence of Division policies or procedures to enforce and track compliance with this statutory mandate signals that the Division is not concerned about such disclosure. Police departments and peace officers are encouraged to ignore the law as the DESPP did in the *Morgan* case.

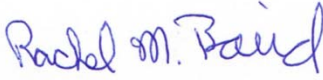
Request for Records

In conclusion, this letter is a renewed FOIA request for:

(1) Records concerning any and all policies and procedures followed by the Division of Criminal Justice to track and document issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence.

(2) Records concerning any and all policies and procedures followed by the Division of Criminal Justice to ensure that police departments and peace officers comply with General Statutes § 54-86c(c).

Sincerely,


Rachel M. Baird, Attorney

Enclosures

⁶ See footnote 5, above.

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January 27, 2014

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Re: State v. Morgan, Docket No. CR11-0316060-S (Jud. Dist. of New London)

Request for Records and Inquiry into Scope of Exculpatory Information in Pending and Closed Cases Involving Former State Trooper J. Severin Bergeron

Dear Mr. Kane:

This letter regards information disclosed to me on January 16, 2014, by Senior Deputy Assistant State's Attorney Mary Jean Kanabis with regard to a trial scheduled to begin jury selection on January 17, 2014, at the Superior Court in New London.

The State informed me on January 16, 2014, that investigating and arresting officer J. Severin Bergeron ("Bergeron") resigned as a sworn officer from the Department of Emergency Services and Public Protection (DESPP) while at least one Internal Affairs investigation was pending and anticipated that were Bergeron to testify at trial he would assert his Fifth Amendment right to remain silent rather than submit to cross-examination.

I learned on or about January 22, 2014, that an email was distributed by the DESPP to its employees notifying them on or about February 14, 2013, that Bergeron was suspended. Apparently the DESPP has a procedure for disseminating information by email to its employees about agency suspensions. The records I then received from the DESPP subsequent to January 22, 2014, indicate that Bergeron resigned in "good standing" effective November 16, 2013.¹

As regards the pending case in New London against my client, I have filed a motion to compel disclosure of exculpatory information. As regards both my client and my role as a Commissioner of the Superior Court, I submit the eight questions below. I am aware that under

¹ There appears to be a discrepancy between the State's representation that Bergeron would assert his Fifth Amendment right not to testify and the records received from the DESPP that he resigned in good standing.

the Freedom of Information Act a state agency is under no obligation to answer questions. Therefore, although I would prefer answers to clarify the position taken by the Division of Criminal Justice with regard to disclosing documented information impacting the credibility of sworn officers involved in the investigation and arrest of criminal defendants, if no answers are forthcoming please consider the following questions as requests for responsive records:


- (1) What policies and procedures does the Division of Criminal Justice follow to track documented issues impacting the credibility of sworn officers on whom criminal prosecutions rely for testimonial and/or tangible evidence?
- (2) When did the Division of Criminal Justice learn the date of Bergeron's suspension and resignation?
- (3) What steps has the Division of Criminal Justice taken to review all *Arraignment/Probable Cause Affidavits* submitted by Bergeron to the courts, used by the courts to find probable cause to incarcerate individuals pending trial, and placed in court clerk's files for public access?
- (4) What steps has the Division of Criminal Justice taken to review all pending cases based on investigations conducted by or assisted by Bergeron, incident reports sworn to by Bergeron, and statements taken by Bergeron?
- (5) What steps has the Division of Criminal Justice taken to review all cases ending with convictions based on investigations conducted by or assisted by Bergeron, incident reports sworn to by Bergeron, and statements taken by Bergeron?
- (6) Does the Division of Criminal Justice request and/or maintain warrants submitted for the arrest of sworn officers, Internal Affairs investigation reports pertaining to the conduct of sworn officers, and/or any other documentation pertaining to the conduct of officers on whom criminal prosecutions rely for testimonial and/or tangible evidence?
- (7) What records does the Division of Criminal Justice have pertaining to Bergeron's credibility and when were they received?
- (8) What steps has the Division of Criminal Justice taken to review all affidavits in support of arrest and search warrants which relied on information provided by Bergeron?²

² This question arises from recent comments made by Supervisory Assistant State's Attorney Mary Rose Palmese in a matter pending at the Superior Court in New Britain. According to testimony offered by Berlin Police Department Officer Robert L. Canto during cross-examination by Attorney Palmese:

- Q: Now, when you review these search warrants before you sign off as an affiant, you actually -- you read it. Correct?
- A: Correct, I read it.
- Q: And were you aware at the time that it was based on police reports submitted by Officer Bartlett?
- A: Yes, ma'am.
- Q: Okay. And as a brother officer would -- Officer Bartlett, you rely on information in their reports to be truthful and accurate?
- A: Absolutely.
- Q: And is that the reason that you are allowed to be an affiant on the document that's submitted to the Court?

Please do not hesitate to contact me as my office stands by with additional information and materials, ready to assist.

Sincerely,


Rachel M. Baird, Attorney

Enclosures

-
- A: I believe so.
Q: Okay. And is it typical that, as police officers, you rely on information from brother and sister officers?
A: All the time.
Q: All the time. Okay.

(12/24/2013 H'rg Tr., 64:25-65:14) Officer Canto was an affiant to a Search and Seizure Warrant for firearms (Conn. Gen. Stat. § 29-38c) based on a police response to a home on December 2, 2013. Officer Canto had no knowledge of the December 2, 2013, police response until December 9, 2013, when he signed the warrant. (12/24/2013 H'rg Tr., 60:7-11) He was not one of the four officers at the scene. (Id. at 60:12-15) Prior to signing the warrant he never spoke to any officer who was at the scene, including the single officer, Officer William Bartlett, who wrote a report. (Id. at 60:2-11) Officer Canto never read the report prepared by Officer Bartlett prior to signing the warrant. (Id. at 61:4-11) Officer Canto spoke to one officer, Detective Sean McMahon, who was not one of the four officers at the scene. (Id. at 60:16-20) (See Detective McMahon's report) The warrant was already drafted when Officer Canto received it. (Id. at 62:4-17) The only action taken by Officer Canto with regard to the investigation underlying the warrant was to read it after it was written. (Id. at 62:13-63:2) The other affiant to the search warrant, Officer David A. Cruickshank, became involved in the December 2, 2013, matter when Detective McMahon entered the office he shared with Officer Canto on December 9, 2013, and Detective McMahon asked Officer Canto and Officer Cruickshank to be co-affiants. (12/27/2013 H'rg Tr., 9:8-12) Officer Cruickshank did not review any documents prior to signing the warrant. (Id. at 9:26-10:8) Detective McMahon has been employed by the Berlin Police Department for 24 years. (Id. at 56:17-21) According to testimony offered by Detective McMahon during cross-examination by Attorney Palmese:

- Q: So is it common practice in the Berlin Police Department to draft a warrant from another investigation?
A: Yes, it's happened.
Q: Okay. You're kind of the writer at the department, aren't you?
A: Unfortunately.
Q: You're the best writer, yes, okay. And is it common to rely on information from brother and sister officers when preparing an arrest warrant or a search warrant?
A: It is.
Q: Okay. Because you can rely on truthfulness of your brother and sister officers, correct?
A: That's correct.
Q: All right. And is it common to have two individuals who may not have been involved in the investigation as co-affiants?
A: It is.
Q: And in this case it happened because Canto and Cruickshank happened to be coming to the courthouse that particular morning?
A: That's correct.



KEVIN T. KANE
CHIEF STATE'S ATTORNEY

State of Connecticut
Division of Criminal Justice

OFFICE OF
THE CHIEF STATE'S ATTORNEY

300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
PHONE (860) 258-5800 FAX (860) 258-5858

February 11, 2014

Rachel M. Baird, Attorney
Rachel M. Baird & Associate
Old Post Office Square
8 Church Street, Suite 3B
Torrington, CT 06790-5247

Dear Attorney Baird,

I write to respond to your recent request for documents made pursuant to the Connecticut Freedom of Information Act (FOIA).

As previously noted, for the purposes of FOIA, the Division of Criminal Justice is a public agency in its administrative function only. See Connecticut General Statutes Sec. 1-201. Any documents created or obtained in the exercise of this agency's investigative and/or prosecutorial function are not subject to FOIA disclosure.

The Division of Criminal Justice responds to your numbered requests as follows:

1. The Division does not have any administrative policies or procedures responsive to this request although the Division is currently contemplating the establishment of such policy.
- 2 - 8. These numbered requests pertain to the Division's investigative and/or prosecutorial function and, for the aforementioned reason, the requests are denied.

Please contact me directly if you have any questions regarding this response or any further requests.

Sincerely,

Brian Austin, Jr.
Executive Assistant State's Attorney

BA/jc

cc: Michael Regan, State's Attorney, Judicial District of New London



STATE OF CONNECTICUT
DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION
OFFICE OF THE COMMISSIONER

September 2, 2014

Mr. Edward Peruta
American News and Information Services Inc.
c/o Attorney Rachel M. Baird
8 Church Street
Torrington, CT 06790

RE: Your Freedom of Information Act Request

Dear Mr. Peruta:

Enclosed is a CD containing the records you requested on June 27, 2014. Please be advised that it does not appear that Trooper Bergeron was assigned to Troop B, so we have received no records regarding him from that troop. This compilation includes infraction tickets from Troops F and K (2), a name search of all cases in which Trooper Bergeron was involved (1, 3), notice regarding the suspension of Trooper Bergeron's police powers (4) and such ticket inventory information as has been provided to the Legal Affairs Unit by the two troops (5). Redactions: CGS § 1-210(b)(2) (DOB, OLN); CGS § 14-10 (DOB, OLN)

Very truly yours,

A handwritten signature in cursive that reads "Janet K. Ainsworth".

Janet K. Ainsworth, Esq.
Legal Affairs Unit

File No.: 14-526; FIC 2014-419

Piaseczynski, Richard

From: Condon, Bette
Sent: Thursday, February 14, 2013 4:30 PM
To: Meraviglia, Brian; Norton, Brian D; Lemieux, Carol; DPS.Collect.Unit; Zaepfel-Melanson, Gail; Janik, Joseph; Rosa, Jason; Pace, Jayme; McGinley, Jim; Hilliard, Joan; Jones, Versie; Natrass, Julia; Henry, Kathleen; LeRoy, Eileen; Droz, Lourdes; Corona, Robert; DPS, MessageCenter; SpecDuty.Clerk, DPS; Nettis, Philip; Bistany, Chick; Piaseczynski, Richard; Leonard, Scott; Samataro, Jack; Lundquist, Warren; Zaprzalka, Brenda; Zeoli, Greg; Canon, James; DPS, LRU; Henion, Ed; Puska, Charlene; Schlitter, Elizabeth
Cc: Darcy, Michael; Grega, Robert; Kewer, William; Fox, Alaric
Subject: Bergeron Suspension

Effective immediately, February 14, 2013, Trooper Severin Bergeron #1221, employee number [REDACTED], police powers have been suspended until further notice.

While Trooper Bergeron's police powers are suspended, he is not authorized to hold himself out as a member of the Department of Emergency Services & Public Protection, and is not authorized to access or utilize any COLLECT/NCIC or CAD/RMS or any other law enforcement computer database(s).

MESSAGE CENTER: Upon receipt of this e-mail, please send out the attached teletype.

COLLECT UNIT: Please refer to the above teletype information and suspend COLLECT privileges.

CAD/RMS & MDT : Please refer to the above teletype information and suspend CAD/RMS & MDT privileges.

Overtime Unit: Please treat the above referenced teletype as a For Your Information.

Computer Services: Please refer to the above teletype information and suspend computer privileges.

HR – Gail: Please treat the above referenced teletype as a For Your Information.

Should you have any questions or concerns, please call extension 8233.

Bette J. Condon
Executive Secretary to:
Colonel Danny R. Stebbins
Department of Emergency Services & Public Protection
1111 Country Club Road
Middletown, CT 06457-2389
(860) 685-8233 Fax (860) 685-8354

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