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April 27, 2018

Monica Brookman, Chief  
Enforcement Division  
State Ethics Commission  
One Ashburton Place, Room 619  
Boston, MA 02108

**Re: Changes to Alli Bibaud Arrest Report**

Dear Ms. Brookman:

The Attorney General's Office (AGO) has conducted an extensive review related to the arrest by the Massachusetts State Police (MSP) of Alli Bibaud, the daughter of District Court Judge Timothy M. Bibaud, in Worcester, MA on October 16, 2017, and subsequent revisions made to the MSP arrest report. We have concluded that criminal charges are not warranted in this case, but we are referring the matter to the State Ethics Commission for your review of potential violations of the Commonwealth's civil ethics laws.

Set forth below is a description of the scope of the review we conducted, a summary of the facts we have found related to the arrest and the changes made to the arrest report, and an analysis as to why we have concluded that it is appropriate to refer this matter to your office.

**I. The Attorney General's Review**

The AGO's review of this matter was conducted by an experienced team of attorneys – a prosecutor from the White Collar & Public Integrity Division of the Criminal Bureau, and a civil trial attorney from our Government Bureau – as well as a senior civilian investigator. The review team was supported by the Director and Deputy Director of the AGO's Digital Evidence Laboratory. None of the MSP employees assigned to the AGO were involved in the review. The review team was directly supervised by the First Assistant Attorney General and the Deputy Attorney General. No one outside of the review team and the Attorney General had knowledge of or access to the review team's investigative materials or findings.



The review was conducted without the use of compulsory process. The review team interviewed 36 individuals, including Judge Timothy M. Bibaud, MSP Superintendent Colonel Richard D. McKeon, Jr. (ret.), Worcester District Attorney (DA) Joseph D. Early, Jr. and Secretary of the Executive Office of Public Safety and Security (EOPSS) Daniel J. Bennett. The team also interviewed: 24 members of the MSP, including the arresting Trooper and the Drug Recognition Expert (DRE) who provided back-up during Ms. Bibaud's arrest and booking; six members of the Worcester County District Attorney's Office; and five court officials. Only two individuals declined our request for an interview, and we were able to obtain the notes of a separate interview with one of those individuals.<sup>1</sup>

We gathered an extensive volume of electronic and documentary evidence related to this review. From the MSP, we obtained all versions of the Alli Bibaud arrest report, which was created in the MSP's Records Access Management System (RAMS) database. We also obtained the RAMS audit data, showing each time the Bibaud arrest report was accessed, by whom and what actions were taken. We also gathered the desktop and laptop computers, tablets and mobile phones of Col. McKeon and Deputy Superintendent Lieutenant Colonel Francis P. Hughes and extractions of the mobile phones of Lieutenant Colonel Daniel Risteen and Major Susan Anderson. The MSP received numerous public records requests relating to the Bibaud matter and conducted comprehensive searches for responsive emails and text messages. We obtained copies of all of the documents produced by the MSP in response to those requests, as well as other documents we requested.

From the Executive Office of the Trial Court, we obtained a copy of Alli Bibaud's court file as it existed in the Worcester District Court, as well as the audio recordings of the hearings in this case on October 17 and 20, 2017. We also interviewed District Court Department Chief Judge Paul C. Dawley and obtained documents relating to the transfer of the Bibaud case from Worcester to Framingham District Court. In addition, we obtained the court file from Westborough District Court of a May 2017 prosecution of Alli Bibaud.

From the Worcester County District Attorney's Office, we gathered telephone toll records and text messages for the phones assigned to DA Early and eight other senior officials in the office, as well as certain toll records and text messages from the District Attorney's personal mobile phone. In addition, we obtained emails and text messages related to this matter that had been collected and produced by the District Attorney's Office in response to our requests and various public records requests.

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<sup>1</sup> The two individuals who declined to be interviewed were defense counsel Kara Colby and MSP Major Susan Anderson. Major Anderson declined through counsel. Former Essex County District Attorney Kevin Burke and former U.S. Marshall Nancy McGillivray – who were retained by the MSP to do an independent internal review of the actions of former and current MSP personnel in this matter – interviewed Major Anderson. We obtained from Mr. Burke the notes of that interview.

We also reached out to Leonard H. Kesten, attorney for the two MSP Troopers who filed suit in federal court as a result of the Bibaud matter.<sup>2</sup> We obtained various documents from Mr. Kesten, including copies of the Troopers' complaints, the observation reports that had been issued, and various affidavits the Troopers and others had executed related to this matter.

## **II. Summary of the Facts Related to Arrest and Revisions to Arrest Report**

As a result of the interviews we conducted and the documentary and electronic evidence we reviewed, we found the following relevant facts:

On October 16, 2017, at 7:35 p.m., MSP Trooper Ryan Sceviour was dispatched to a motor vehicle crash on Interstate 190 South in Worcester. Upon arrival, he observed a Toyota Corolla blocking the right hand travel lane, with extensive front end damage. Two people were present: Alli Bibaud, age 30, who identified herself as being the driver; and a male passenger. Sceviour observed Bibaud to be lethargic and groggy. Her eyes were glassy and blood shot, and she emanated a strong odor of alcohol. A query of her criminal history revealed an open case in Westborough District Court for possession of heroin. When asked, Bibaud admitted using heroin that day and consuming alcohol. Bibaud consented to a field sobriety test, which she failed. During the test, Bibaud was crying hysterically and screaming that she was sick and a heroin addict. Sceviour recovered from the Corolla a yellow hand bag, which appeared to be a heroin kit, containing hypodermic syringes, a metal spoon and corner-cut plastic baggies. Sceviour placed Bibaud under arrest and transported her to the MSP barracks in Holden, MA.

After being advised of her Miranda rights at the Holden barracks, Bibaud consented to a breathalyzer test. She provided two valid samples that tested 0.224 and 0.222, well over the legal limit. Bibaud also consented to a drug recognition evaluation with Trooper Ali Rei, a trained MSP Drug Recognition Expert (DRE). After completing the evaluation, Rei concluded that Bibaud was under the influence of alcohol and narcotic drugs and unable to operate a motor vehicle safely. Bibaud was charged with operating under the influence of narcotic drugs, operating under the influence of alcohol, negligent operation of a motor vehicle, marked lanes violation, and failure to have her vehicle inspected. She was released by a Bail Commissioner on personal recognizance at 10:17 p.m. and ordered to appear in Worcester District Court at 8:30 a.m. on October 17, 2017. She was picked up at the barracks by her father, Dudley District Court Judge Timothy M. Bibaud.

Trooper Sceviour completed his arrest report, application for a criminal complaint and other paperwork on the evening of October 16. In the arrest report, he stated that, while

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<sup>2</sup> The two lawsuits filed in U.S. District Court in Boston are *Ryan N. Sceviour v. Colonel Richard M. McKeon, et al.*, C.A. No. 17-12191 and *Ali Rei v. Colonel Richard D. McKeon, et al.*, C.A. No. 17-12232.

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transporting Bibaud to the barracks, she was hysterically screaming and crying and that she had stated: "My dad's a [expletive] judge, he's going to kill me." Sceviour also reported that, during the breath test, Bibaud made multiple inappropriate comments, implying trading sexual favors for leniency. He also noted that, during the DRE evaluation, Bibaud had explained that she obtained the heroin for herself and her boyfriend by performing certain sexual acts, and Sceviour included an explicit quote to that effect from Bibaud in the report. Sceviour's arrest report was approved by Sergeant Jason Conant of the Leominster barracks at 11:39 p.m. on October 16, 2017.

Trooper Dean Ricciardi is the court liaison for the MSP Holden barracks. Sceviour left two packets of papers relating to the Bibaud arrest for Ricciardi. One package was for the Clerk's Office, and included an application for a criminal complaint. The other packet was for the Worcester County District Attorney's Office, and included Sceviour's arrest report. Ricciardi took both packets of documents to Worcester District Court on the morning of October 17. He left the District Attorney's packet at the DA's mail slot. He took the Clerk's package to Assistant Clerk Paul Johnson, who found probable cause, based on Sceviour's arrest report, to support each of the requested charges.

Early on the morning of October 17, 2017, Judge Bibaud sent a text message to Worcester County First Assistant District Attorney Edward Karcasinas, telling him that: his daughter, Alli, had been arrested for operating under the influence; he was trying to get her a bed for detox; she would not be appearing in court as scheduled; the DA's office should default her; and he would bring her in after she completed detox. Karcasinas passed this information on to Senior First Assistant District Attorney Jeffrey Travers and later texted with Assistant District Attorney (ADA) Roberta O'Brien, who handles the arraignment session in Worcester District Court.

Early that same morning, Judge Bibaud also texted Worcester District Court Chief Judge David Despotopulos to tell him that his daughter had been arrested and that he needed coverage in the Dudley District Court as he dealt with the situation. Later in the morning, Judge Despotopulos obtained a copy of the Alli Bibaud arrest report. He spoke with Judge Michael Allard-Madaus about the matter and showed him the report. Judge Allard-Madaus is a close personal friend of Judge Bibaud and his family. Judge Allard-Madaus reached out to Judge Bibaud by phone to offer his assistance. During their conversation, Judge Bibaud said that he planned to reach out to Worcester criminal defense attorney Michael Wilcox about representing his daughter. Judge Allard-Madaus volunteered to make that call on Judge Bibaud's behalf. Judge Allard-Madaus reached Wilcox, who was willing to take the case, but was unable to appear in the matter that morning. Wilcox suggested that Judge Allard-Madaus see if a duty attorney was available. Judge Allard-Madaus went to the arraignment session, saw attorney Kara Colby, a Bar Advocate, and explained the situation. Colby agreed to enter an appearance for arraignment, only.

ADA O'Brien, who handles the arraignment session, did not receive the Alli Bibaud arrest report until after the session had begun. Prior to receiving the report, she had exchanged text messages about Bibaud with both Jeff Travers and Ed Karcasinas. While in court, O'Brien spoke with Colby, who said she would be representing Bibaud and that she would be seeking a continuance of the arraignment. Judge Allard-Madaus also spoke with ADA O'Brien and told her that the defense would be seeking to continue the arraignment of Bibaud and that Judge David Locke, who was presiding in the arraignment session, was aware of the request. When the case was called, Colby did seek a continuance, which was granted until October 30, 2017. Colby also filed a handwritten motion to impound the MSP arrest report and Statement of Facts in Support of the Criminal Complaint, on the ground that the defendant's right to a fair trial would be at risk from prejudicial pretrial publicity. ADA O'Brien took no position on the motion, and it was allowed.

On October 17, 2017, Judge Bibaud was able to get his daughter admitted to AdCare Hospital of Worcester, in a drug detox program. AdCare faxed the Clerk Magistrate of the Worcester District Court a brief letter notifying the Court that Alli Bibaud was a patient there as of October 17.

Also on October 17, 2017, Senior First ADA Jeffrey Travers advised DA Early of the arrest of Alli Bibaud and later provided him with a copy of the arrest report. Travers and Early discussed the report and focused on the statements about Alli Bibaud performing sex acts for drugs. Early said he was going to reach out to Col. McKeon regarding the report.<sup>3</sup> DA Early and ADA Travers also discussed whether to assign a special prosecutor to the case or transfer it out of the county.

DA Early called Col. McKeon<sup>4</sup> that afternoon and asked "How about that report?" When Col. McKeon responded "What report?" Early explained that the MSP had arrested Alli Bibaud

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<sup>3</sup> DA Early told us that he was concerned the statements about sex acts needlessly stigmatized a person struggling with addiction, were likely to generate prejudicial pretrial publicity, and did not contribute to establishing probable cause for the offenses charged. When asked, DA Early could not recall another instance in which he had contacted a police department or otherwise personally intervened in a matter because of such concerns. He did, however, produce notes from a 2014 training session, which his office gave to Central Massachusetts police chiefs, advocating against using arrest reports to establish probable cause when applying for a criminal complaint, and expressing concern about adverse pretrial publicity.

<sup>4</sup> Col. McKeon served in the Worcester County District Attorney's Office's State Police Detectives Unit (SPDU) for many years, beginning in 1986. In 2006, when Early was elected District Attorney, he selected McKeon to be Chief of the Worcester SPDU. Both DA Early and Col. McKeon told us they were good friends and spoke often. Timothy Bibaud joined the Worcester DA's Office in 1982, prior to attending law school. He became an ADA in 1989 and served a total of 28 years in the DA's Office, the last four under DA Early. Bibaud was appointed a District Court Judge in 2010. Alli Bibaud was employed as a Victim Witness Advocate in the Worcester DA's Office from 2009 to 2011.

on OUI charges and that the report had explicit statements about her performing sex acts for drugs. McKeon said he knew nothing about this, he would look into it, but he was concerned that a supervisor would approve such content in a report.

McKeon thereafter spoke with Deputy Superintendent Hughes, who was unfamiliar with the matter. Hughes contacted Lt. Col. Risteen, Commander of the Field Services Division, who was also unfamiliar with the matter. Risteen reached out to C Troop Headquarters, which supervises the Holden barracks. Major Anderson, Commander of C Troop, was on vacation. Risteen obtained from the C Troop Executive Officer, Captain Robert Johnson, a copy of the arrest report, which he provided to Lt. Col. Hughes and Col. McKeon.

DA Early and Col. McKeon had several telephone conversations regarding the Alli Bibaud arrest report on October 18, 2017. In those conversations, Early asked McKeon what the Colonel was going to do about the report. Col. McKeon said that he thought “that ship had sailed.” Early responded that the DA’s Office would be moving to redact the report. When interviewed by the AGO review team, Col. McKeon said that, in his discussions with DA Early regarding the arrest report, DA Early conveyed to him that he was permitted to have a new report created and that it was the right thing to do: “Well, it was after that I had the conversation with Joe Early, and all indications were that this was the appropriate thing to do. I must say that he was previously my boss. He’s the prosecuting District Attorney in that county, and he was in charge of the prosecution of this case. And I was led to believe that everything that I was about to do was not only the right thing, but it was the appropriate thing to do.”

On October 19, 2017, Col. McKeon told Lt. Col. Hughes that he wanted Trooper Sceviour and Sergeant Conant called in and given negative observation reports,<sup>5</sup> and that he wanted the Alli Bibaud arrest report revised. Hughes passed that order to Lt. Col. Risteen, who passed it to Major Anderson, who, in turn, passed it to Lieutenant James Fogarty, Barracks Commander for the MSP Holden barracks. Fogarty summoned Sceviour and Conant to Holden and issued negative observation reports to each, stating that Sceviour had included inappropriate, negative and derogatory statements in his report, which were not elements of the crimes charged and did not contribute to a finding of probable cause, and that Conant had improperly approved a report with such deficiencies. Sceviour and his union representative thereafter met with Major Anderson, who ordered Sceviour, over his protests, to revise the report by deleting references to Alli Bibaud’s father being a judge and her alleged sex acts.<sup>6</sup> Thereafter, Sceviour made the

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<sup>5</sup> The MSP Employee Evaluation System allows supervisors to make periodic reports of their observations, either positive or negative, regarding an employee’s performance. These observation reports are used in preparing annual employee performance evaluations.

<sup>6</sup> Sceviour and Anderson disagree as to a number of facts related to this meeting, including whether Anderson directed that the report be labeled “revised,” or Sceviour had to insist upon inclusion of that label; and whether

changes he had been ordered to make, marked the report as “revised,” and delivered a copy of the revised report to Travers at the District Attorney’s Office.

On October 19, 2017, Major Anderson also spoke with Trooper Ali Rei regarding the log note she had entered in the Holden barracks’ Daily Administrative Journal (DAJ) regarding her DRE evaluation of Alli Bibaud.<sup>7</sup> The note was two pages long, contained medical information about Alli Bibaud, her performance on various tests as part of the evaluation, and her statements about performing sex acts to acquire drugs. Anderson told Rei she had removed the log note from the DAJ and had left a copy of the note for Rei to use in preparing her DRE report. Anderson directed Rei not to include the reference to sex acts in her DRE report, to shred the original log note when the report was completed, and to insert a new, abbreviated log note in the DAJ. Rei completed her report without complying with Anderson’s directive, did not shred the original log note, and did not prepare a new DAJ log note.

On October 19, 2017, Travers told DA Early that a revised MSP arrest report had been received and that the statements about sex acts and “my father is a judge” were gone. The next day, October 20, 2017, in the afternoon, Travers appeared before Chief Judge Despotopulos, on behalf of the Commonwealth, and moved, *ex parte*, in open court, to redact the original MSP arrest report. The motion was allowed. We have gathered differing accounts as to how this motion came to be presented in open court.<sup>8</sup> After the allowance of that motion, the Statement of Facts in support of the application for the criminal complaint was redacted to remove the

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Anderson said that the order to make the changes had originated with EOPSS Secretary Bennett. Sceviour and his union representative, Trooper Jeffrey Gilbert, say Anderson did mention “Bennett.” Anderson denies that statement in her answer to Sceviour’s federal court lawsuit, and both McKeon and Bennett denied during interviews that Bennett played any role in McKeon’s order to revise the report.

<sup>7</sup> The MSP DAJ is maintained pursuant to G.L. c. 41, § 98F, which requires all police departments to maintain a daily log, written in an easily understood form, which records, in chronological order, among other things, complaints received, crimes reported, the names and addresses of persons arrested and the charges against such persons. All entries in the log are, by statute, public records and are available to the public without charge during regular business hours. The MSP DAJ has a footer on each page indicating that it is open for editing for five days after each entry.

<sup>8</sup> We have accounts from four different witnesses – Worcester District Court Clerk Magistrate Brendan Keenan, Judge Despotopulos, ADA Travers, and DA Early – related to the motion. The witnesses agree that Travers, at DA Early’s direction, approached Keenan at the Clerk’s Office with the revised report in hand. According to Keenan, Travers asked “that the paper report that he had replace this one, the original one, and I said I can’t do that.” According to Travers, DA Early told him to go talk to the Clerk, but he had no specific instructions from Early as to what was to be done with the revised report. Travers says he went to see Keenan for guidance, based on Keenan’s experience, as to what he could do with the revised report. There is consensus that Keenan and Travers later met with Judge Despotopulos in the judges’ lobby area behind the courtroom to discuss a motion to redact. There is also consensus that DA Early met with Judge Despotopulos in the same area, at or about this same time. The motion to redact was presented in open court on the record before Judge Despotopulos, and he allowed it.

statements about sex acts and the defendant's father being a judge. The original Statement of Facts was retained in the file in a sealed envelope as an impounded document.

On October 23, 2017, Paul Dawley, Chief Justice of the District Court Department, issued a Transfer and Special Assignment Order, transferring the Alli Bibaud case from Worcester District Court to Framingham District Court and assigning Judge James Sullivan of Plymouth District Court to hear the case. On October 17, 2017, Chief Judge Despotopulos of Worcester District Court had contacted the Deputy Court Administrator of the District Court Department, to alert her to the appearance of a conflict of interest for Worcester District Court staff to handle the Alli Bibaud case. DA Early also spoke with Chief Judge Dawley about the transfer.

On October 26, 2017, a Worcester blog, Turtleboy Sports, posted a story regarding Alli Bibaud's arrest, which alleged that her father had called DA Early requesting deletion from the arrest report of the statement about sex acts for drugs and that DA Early had passed the request on to Col. McKeon. On November 7, 2017, Trooper Sceviour filed a civil case in U.S. District Court in Boston against Col. McKeon, alleging a civil conspiracy. The same day, the *Boston Globe* published a front page story about the Sceviour lawsuit and the revisions to the Alli Bibaud arrest report. Numerous other media outlets picked up on the *Globe* story. On November 9, 2017, Col. McKeon attended an MSP Awards Ceremony at the State House and was questioned by reporters about the Alli Bibaud matter. On Friday, November 10, 2017, Col. McKeon announced his retirement in an email message to all members of the MSP and a letter to Secretary Bennett. Col. McKeon said the increasing media and public controversy had been difficult for the MSP and for him personally and that putting the greater good of the MSP first necessitated his retirement. He also defended his actions with regard to the Alli Bibaud arrest report. His retirement was effective Tuesday, November 14, 2017.

While he served as Colonel, McKeon had MSP-issued desktop and laptop computers, a tablet, and a smart phone. He used the desktop computer on a daily basis for emails and to access files. He did not regularly use the laptop or the tablet. Occasionally, he would take the laptop home with him if he wanted to work on a document at home at night. He used his phone on a regular basis, including to send and receive text messages. Col. McKeon left his desktop and laptop computers and his tablet in his office on Saturday, November 11, 2017, after he cleaned out his personal effects. He turned his phone in to the MSP on November 16, 2017, after he had purchased a new personal mobile phone.

On November 13, 2017, Col. McKeon's laptop and tablet were picked up from his office by a Management Information Section (MIS) Analyst,<sup>9</sup> who updated their status in the MIS

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<sup>9</sup> The MIS section staff are technically employees of the Office of Technology and Information Services, which is part of EOPSS. They are embedded at MSP General Headquarters in Framingham, and they provide technical support to users of MSP computers and phones.

database from “issued” to “in inventory” and processed them for reissuance, which included removing any existing files that were on the devices. The Analyst told us that, based on his conversation with Col. McKeon’s Administrative Assistant, he understood that the laptop and tablet had to be prepared as soon as possible for reissuance to the new Colonel. We have interviewed Col. McKeon’s Administrative Assistant and seven MIS employees regarding the processing of Col. McKeon’s laptop and tablet, and we have reviewed the Service Request tickets that were opened and memoranda the various employees were asked to write when the processing of the laptop and tablet were brought to the attention of the MIS Director on November 14, 2017. It appears that the wiping of the devices departed from typical MIS practice, which is for laptop computers to sit on the shelf for at least 30 days before processing, in case someone needs to recover files from the computer.

The AGO Digital Evidence Lab forensically examined Col. McKeon’s smart phone.<sup>10</sup> The examination showed that a majority of the SMS, MMS, and iMessages on the phone – and related attachments – had been deleted. Col. McKeon told us it was his regular practice to delete calls and text messages from his phone and that he probably went through the phone to delete personal items before turning it in. The Digital Evidence Lab was able to recover many of these deleted messages, including messages between Col. McKeon and DA Early between October 20, 2017 and November 12, 2017. These messages show DA Early being supportive of Col. McKeon regarding the revisions to the Alli Bibaud arrest report and his retirement.

### **III. Why Criminal Prosecution Is Not Appropriate**

The AGO has carefully considered whether criminal prosecution is warranted in this case and has concluded that it is not. The most applicable criminal statutes are the witness intimidation statute, G.L. c. 268, § 13B, and the evidence tampering statute, G.L. c. 268, § 13E. Violation of the witness intimidation statute requires proof, beyond a reasonable doubt, that a defendant, directly or indirectly, acted willfully and with the specific intent to impede, obstruct, delay, harm, or otherwise interfere with a criminal proceeding, or did so with reckless disregard. To act willfully means to act deliberately and intentionally. A person’s intent is the person’s purpose or objective. Specific intent is the state of the person’s mind. To act with specific intent is to act consciously and with the determination of the mind to accomplish a specific objective.

Here, the relevant “criminal proceeding” is the criminal prosecution of Alli Bibaud, and there is no evidence that, in making revisions to the Alli Bibaud arrest report, any of the MSP or District Attorney’s Office officials acted with the specific intent to impede, impair, obstruct, delay, harm or otherwise interfere with that prosecution. There is no evidence that anyone suggested that the case be dropped, or that certain charges be dismissed, or that revisions be

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<sup>10</sup> Col. McKeon voluntarily provided us with the passcode to his phone, which allowed this examination to take place.

made to the arrest report *with the purpose of making it more difficult for the prosecution to successfully prove the case.*

Similarly, the Massachusetts evidence tampering statute, G.L. c. 268, § 13E, requires proof, beyond a reasonable doubt, that a person altered, destroyed, mutilated or concealed a document (as relevant here), or attempted to do so, with the specific intent to impair that document's integrity or availability *for use in an official proceeding*. There is no evidence that any of the revisions to the Bibaud arrest report were made with the intent to impair the prosecution of Alli Bibaud. There certainly is evidence that the purpose of the revisions may have been to avoid or reduce embarrassment or stigmatization for Alli Bibaud or her family, but that is not the intent required to show a violation of this criminal statute.

Nor did we uncover evidence that the intent with regard to the processing of Col. McKeon's laptop computer and tablet, or the deletions of messages from his phone, was to impair the prosecution of Alli Bibaud or to make those records unavailable for an investigation into the revisions in the arrest report.<sup>11</sup> The processing of the laptop computer and tablet appears to be a misunderstanding by the MIS Analyst. Col. McKeon seldom used the laptop or tablet, and our review gave us no reason to believe that those devices contained any information related to the Alli Bibaud matter. The mobile phone text messages recovered in the forensic examination are unrelated to the question of why revisions were made to the arrest report.

We have also looked at the Massachusetts employee standards of conduct statute, G.L. c. 268A, § 23(b)(2)(ii), which makes it unlawful for a current state or county employee to use, or attempt to use, his or her official position to secure for another person unwarranted privileges or exemptions, which are of substantial value and not properly available to similarly situated individuals. A companion statute, G.L. c. 268A, § 26, makes it a crime to violate the "unwarranted privileges" statute, if the person is acting with fraudulent intent. A fraudulent intent requires evidence that an individual made a false or misleading statement with the intent that another would rely on the statement, to their economic detriment. We found no evidence that any individual involved in the revisions to the Alli Bibaud arrest report knowingly made false statements or that such statements were made to induce reliance to another person's economic detriment. Thus, we believe there is no basis for a *criminal* prosecution by the AGO under G. L. c. 268A, §§ 23(b)(2)(ii) and 26.

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<sup>11</sup> Removing existing files on Col. McKeon's laptop, tablet, and phone raised a prospect that data regarding the Alli Bibaud matter, which was the subject of litigation and a litigation hold request, had been lost. But there is insufficient evidence to conclude that the mishandling of Col. McKeon's devices or Col. McKeon's deletion of data from his phone warrant a criminal investigation.

#### IV. Conclusion

There are, however, civil ethics statutes that we believe may be implicated by the conduct at issue here, including the unwarranted privileges statute, G.L. c. 268A, § 23(b)(2)(ii), and the appearance of partiality statute, G.L. c. 268A, § 23(b)(3). The State Ethics Commission is the primary enforcement agency for violations of those laws. *See* G. L. c. 268B, § 3(i). We believe there is sufficient evidence to warrant further investigation by the Ethics Commission as to whether there have been any violations of the Commonwealth's civil ethics laws by public employees involved in this matter. This Office stands ready to support the Ethics Commission in any investigation it decides to undertake. Please contact me to coordinate any assistance we can provide.

Sincerely yours,

Maura Healey  
Attorney General

By   
Mary B. Strother  
First Assistant Attorney General