



U.S. Department of Justice

United States Attorney  
Eastern District of New York

JJD:LTG/JLG  
F. #2018R00279

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Central Islip, New York 11722

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★ **APR 17 2019** ★

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Re: United States v. Christopher McPartland and Thomas J. Spota  
Criminal Docket No. 17-587 (JMA)

Dear Counsel:

Pursuant to the government's continuing obligation to produce exculpatory material as defined by Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, the government hereby notifies you of the following, which is being provided pursuant to the parties' stipulated Protective Order of March 29, 2019:<sup>1</sup>

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<sup>1</sup> The information being provided herein does not, in many instances, constitute *Brady* material *per se*, but is being disclosed regardless, as it may prove helpful to the defense.

I. False Exculpatory Statements of Former Suffolk County Police Chief of Department James Burke

James Burke made certain statements concerning the December 14, 2012 assault of an in-custody defendant, Christopher Loeb (the “Loeb Matter”), and the related federal civil rights and obstruction investigation, including, in sum and substance, denying his own involvement in the assault, and asserting that the federal investigation into the assault was unfounded, and was merely retaliation for Burke, among other things, removing Suffolk County Police Department (“SCPD”) personnel from a federal task force,<sup>2</sup> to the following individuals:<sup>3</sup>

1. Steven Bellone
2. Alexandra Beyrer
3. Tracy Lynne Broxmeyer
4. James Burke
5. John Cahill
6. Brian Carty
7. Dennis Cohen
8. Emily Constant
9. Barbara Craft
10. Robert Donohue
11. Anthony D’Orazio
12. Frank Guidice
13. James Hickey
14. Clifford Lent
15. Kevin Law
16. William Madigan
17. Russell McCormick
18. John Meehan

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<sup>2</sup> Although the government intends to introduce certain statements made by Burke during and in furtherance of the charged conspiracy, *see* Federal Rule of Evidence 801(d)(2)(E), the government intends to move *in limine* to preclude the introduction of false exculpatory statements made by Burke to other witnesses, *see* Fed. R. Evid. 403 (danger of confusing the issues and misleading the jury), 801 and 802 (hearsay). Subsequent to making these false exculpatory statements to the witnesses listed herein, Burke pled guilty on February 26, 2016 to a civil rights violation in connection with his assault of Loeb and to conspiring to obstruct justice with respect to the federal investigation into the assault, *see* 15 Cr. 627 (LDW).

<sup>3</sup> Most, if not all, of the individuals listed herein are presently represented by legal counsel, who have advised the government that communications with their clients must be made through them. Should you wish to speak to any of these individuals, please refer to the enclosed list of counsel contacts.

19. John Rodriguez
20. Richard Schaffer
21. Dennis Sullivan
22. John Sumwalt
23. John Toal
24. Edward Webber

## II. The Propriety of the Investigation into SCPD Detective John Oliva

As noted in our letter of March 11, 2019, the government intends to offer evidence at trial concerning certain improprieties surrounding the investigation of SCPD Detective John Oliva and the related court-ordered wire interception of Oliva's cellular telephone from in or about March 2014 through in or about June 2014. The following individuals have provided information supportive of certain aspects of the Oliva investigation and/or the wiretap of Oliva's cellular telephone:<sup>4</sup>

1. Alexandra Beyrer
2. John Cahill
3. Paul Caroleo
4. Emily Constant
5. Lucy Graziano
6. Thomas Iacopelli
7. Kenneth Kearns
8. William Madigan
9. John Meehan
10. Spiros Moustakas

## III. Other Statements Concerning the Loeb Matter and the Subsequent Federal Investigation

The government hereby discloses that the following individuals have opined that Burke did not assault Loeb:

1. Frank Catalina
2. Brian Mitchell

The government further discloses that the following individuals have questioned the motivation for, and/or the validity of, the federal investigation and prosecution of Burke, and/or the instant matter, or reported that others have done so:

1. Joseph Conway

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<sup>4</sup> To be clear, the government does not take the position that the Oliva investigation and wiretap was wholly inappropriate or that a crime had not been committed by Oliva.

2. Emily Constant
3. William Madigan
4. Russell McCormick
5. Kenneth Regensburg
6. Joseph Sawicki

IV. Statements Concerning the Defendants' Knowledge of the Loeb Matter

The government hereby discloses that the following individuals have provided information concerning the defendant(s) lack of knowledge that Burke assaulted Loeb:

1. George Burke
2. Emily Constant
3. Barbara Craft
4. Anthony D'Orazio
5. Frank Guidice
6. Thomas Iacopelli
7. William Madigan
8. John Rodriguez

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Because of the nature and contents of this letter, which discloses the names of numerous individuals who have been interviewed during the course of the investigation, the government, with the consent of both defendants, respectfully requests that it be filed under seal. See United States v. Amodeo, 71 F.3d 1044, 1050-51 (2d Cir. 1995) (privacy interests of third parties may be compelling reason justifying sealing). Moreover, public disclosure of the information contained in this letter could potentially impact the right of the defendants or others to a fair trial. See United States v. Graham, 257 F.3d 143, 154 (2d Cir. 2001) (protecting a defendant's right to fair trial may be compelling reason justifying sealing). Under these circumstances, the government respectfully submits that the countervailing interests set forth above outweigh the public's qualified right to access. As the facts set forth



## Counsel Contacts

1. Steven Bellone – represented by: David Kelley, Esq.
2. Alexandra Beyrer – represented by: John “Sean” Coffey, Esq.
3. Tracy Lynne Broxmeyer – represented by: Brian DeSesa, Esq.
4. George Burke – represented by: N/A
5. James Burke – represented by: Joseph Conway, Esq., John Meringolo, Esq. and/or Clara Kalhous, Esq.
6. John Cahill – represented by: Paul Linzer, Esq.
7. Paul Caroleo – represented by: William Wexler, Esq.
8. Brian Carty – represented by: Christopher Clayton, Esq.
9. Frank Catalina – represented by: Paul Linzer, Esq.
10. Dennis Cohen – represented by: N/A
11. Emily Constant – represented by: Alexander Bateman, Esq.
12. Joseph Conway – represented by: Robert LaRusso, Esq.
13. Barbara Craft – represented by: Randi Chavis, Esq.
14. Robert Donohue – represented by: Paul Linzer, Esq.
15. Anthony D’Orazio – represented by: Edward Jenks, Esq.
16. Lucy Graziano – represented by: N/A
17. Frank Guidice – represented by: Charles Russo, Esq.
18. James Hickey – represented by: Edward Sappone, Esq.
19. Thomas Iacopelli – represented by: Anthony La Pinta, Esq. and Edward Jenks, Esq.
20. Kenneth Kearns – represented by: David Besso, Esq.
21. Clifford Lent – represented by: Gerald McClusky, Esq.
22. Kevin Law – represented by: N/A
23. William Madigan – represented by: Gordon Mehler, Esq.
24. Russell McCormick – represented by: Joel Weiss, Esq.
25. John Meehan – represented by: N/A
26. Brian Mitchell – represented by: Susan Flynn, Esq. (County Attorney’s Office)
27. Spiros Moustakas – represented by: Richard Haley, Esq.
28. Kenneth Regensburg – represented by: John Kase, Esq. and Elizabeth Kase, Esq.
29. John Rodriguez – represented by: James Pascarella, Esq.
30. Joseph Sawicki – represented by: N/A
31. Richard Schaffer – represented by: Anthony La Pinta, Esq. and Kevin Snover, Esq.
32. Dennis Sullivan – represented by: Paul Linzer, Esq.
33. John Sumwalt – represented by: Paul Linzer, Esq.
34. John Toal – represented by: Brian Griffin, Esq.
35. Edward Webber – represented by: Paul Linzer, Esq.

Suffolk County District Attorney Timothy D. Sini has announced the dismissal of the criminal case against Suffolk County Police Detective John Oliva following an investigation by the Office's Conviction Integrity Bureau ("CIB"), which resulted in the Office's filing of an affirmation in support of vacating his conviction and dismissing the charges against him. Oliva pleaded guilty in 2014 to Official Misconduct in connection with a wiretap investigation conducted by former Suffolk County District Attorney Thomas Spota and his aide, Christopher McPartland, whom the investigation determined unconstitutionally targeted, investigated, and prosecuted Oliva to retaliate against him and further a conspiracy to obstruct justice that resulted in their recent federal convictions and sentences.

During the federal trial, it was revealed that Spota, McPartland, Burke, and other members of the obstruction of justice conspiracy decided to target Oliva for investigation and prosecution because he had become an enemy of theirs and was suspected of revealing embarrassing information about them to the press.

Following a four-month wiretap investigation, Oliva was charged by way of a Superior Court Information with Grand Larceny in the Fourth Degree, a class E felony; Computer Trespass, a class E felony; and Official Misconduct, a class A misdemeanor. He pleaded guilty on Sept. 9, 2014 to Official Misconduct and was sentenced to a conditional discharge.

In August 2021, Oliva, through counsel, submitted an application to the CIB for a review of his case. As detailed in the affirmation filed with the Court today, the investigation found that Oliva's claims were substantiated. Specifically, the investigation found that:

Oliva was subject to a vindictive and retaliatory investigation and prosecution as a result of his provision of information to the media and federal law enforcement concerning the misdeeds of Burke and others with ties to Spota and McPartland;

Spota and McPartland misled the Court in order to obtain a wiretap of Oliva's phone

The allegation that the wiretap was necessary to protect officer safety was at least partially false;

Oliva's claim that he was induced to plead guilty in part by the existence of the wiretap and by threats made by McPartland to harm him and his family was credible;

Spota and McPartland used their prosecution of Oliva to further the unlawful obstruction of justice conspiracy by spying on the federal investigation via the wiretap and by holding Oliva's prosecution up as an example of what could happen to those who went against the members of the conspiracy. This deterred cooperation with the federal investigation and led SCPD officers to coin the idiom to be "Oliva-ed" to mean that they would be targeted for wrongful prosecution if they crossed the members of the conspiracy. The misuse of Oliva's prosecution in furtherance of the obstruction of justice scheme was found by a federal court to constitute an "abuse [of] prosecutorial power in [] shocking fashion" and supported the CIB's conclusion that Oliva's prosecution violated the constitutional prohibition on outrageous government conduct.

Launched by District Attorney Sini immediately upon his taking office in 2018, the CIB aims to achieve and ensure justice by investigating claims of innocence, remedying identified wrongful convictions, and providing proactive support and recommendations to the Office to prevent wrongful convictions.