



NEW HAMPSHIRE CIVIL LIBERTIES UNION

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DEVON CHAFFEE
EXECUTIVE DIRECTOR

December 20, 2013

VIA REGULAR MAIL

Patricia M. LaFrance
Hillsborough County Attorney
300 Chestnut Street
Manchester, NH 03101

Re: Case Files In Which John Seusing Was A Testifying Or Potential Witness

Dear Attorney LaFrance:

I write on behalf of the New Hampshire Civil Liberties Union ("NHCLU") and the New Hampshire Association of Criminal Defense Lawyers to seek written confirmation as to whether the Hillsborough County Office will be (i) identifying all cases it handled from approximately 1986 to the present that resulted in a conviction in which current Nashua police chief John Seusing was a testifying or potential witness, and (ii) notifying in such cases either defendants or their counsel of the fact that Mr. Seusing lied to his superiors in approximately 1986 and was subsequently disciplined for 15 days after correcting the lie.

By way of background, it has recently been disclosed that, according to the Attorney General's Office, Mr. Seusing lied to his superiors when a complaint arose from an arrest occurring at a bar in Nashua in the mid-1980s. One of the people Mr. Seusing arrested during this incident filed a lawsuit against him and others alleging excessive force/false arrest, which ultimately settled. When asked about this case by his superiors, Mr. Seusing deliberately lied, telling them that he did not make the arrest in the first place. Mr. Seusing apparently corrected the lie before he was confronted by his superiors. He was then suspended for 15 days. This incident only saw the light of day because a former Nashua police officer filed a complaint with the New Hampshire Attorney General's Office concerning the incident in the spring of 2013.

As disclosed by the Attorney General's Office in an August press release discussing its investigation, this lie was never disclosed—with the exception of one instance in 1995—in later criminal cases in which Mr. Seusing was a potential witness. As the Attorney General's Office specifically noted, "[i]t is likely that this incident was not disclosed in any other criminal case." The Attorney General's Office even acknowledged that it "would have continued to disclose this incident out of an abundance of caution, and will now make such notification in the future should Seusing be a witness in any case."

As you know, this is not how our system works. A trial is a search for the truth, not a game of hide and seek. This is especially true in light of the New Hampshire Supreme Court's decision in *State of New Hampshire v. Laurie*, 139 N.H. 325 (1995), which held that defendants have a right to receive evidence that could cast doubt on a police officer's character and credibility. Of course, this fundamental principle that all evidence material either to guilt or to

punishment must be disclosed cannot only be found in *Brady v. Maryland*, 373 U.S. 83 (1963) and the due process provisions of the Fourteenth Amendment and Part I, Article 15 of the New Hampshire Constitution, but also in Rule 3.8(d) of the New Hampshire Rules of Professional Conduct concerning the special responsibilities of prosecutors. As the New Hampshire Supreme Court made clear in *Laurie*, prosecutors must be responsible for defending a decision to withhold favorable, exculpatory information to a defendant. *Laurie*, 139 N.H. at 329.

As a result of its investigation into Mr. Seusing's conduct, the Attorney General decided in late August to notify three individuals who were convicted of homicide based, at least in part, on Mr. Seusing's testimony: Eduardo Lopez Jr. (incarcerated since 1991), Timothy Brown (incarcerated since 1987), and Ronald Schultz (incarcerated since 1994). Unfortunately, these three individuals were not told of Mr. Seusing's lie when they were tried, and it is unclear why the Attorney General is only notifying these three defendants as opposed to all defendants in cases in which Mr. Seusing was a testifying or potential witness.

Aside from these three individuals, there are likely hundreds of other Nashua defendants who were convicted since the mid-1980s without being informed by your Office of the fact that Mr. Seusing committed a lie and was disciplined. Indeed, as reported in the *Union Leader*, your Office is refusing to go through its files and identify the cases in which Mr. Seusing was a testifying or potential witness during the last 27 years. We respectfully request that your Office immediately reconsider this decision.

While your Office's concern with expense is understandable, we strongly urge your Office to recognize the apparent failure for nearly thirty years to disclose potentially exculpatory evidence and focus your energies on how this injustice can be corrected. Once more, your Office has an obligation to follow RSA 105:13-b(I), which makes clear that "[t]he duty to disclose exculpatory evidence that should have been disclosed prior to trial ... is an ongoing duty that extends beyond a finding of guilt." We, of course, understand that an inquiry into your Office's cases will take considerable time, and we are willing to work with you personally in formulating a reasonable time table for your Office to examine case files and make the necessary disclosures.

The simple truth is that these convicted defendants in Nashua have a right to be informed of this potential violation of their rights. These defendants have a right to ask a judge to determine whether, based on the specific facts and circumstances of their cases, Mr. Seusing's lie and subsequent discipline constitute favorable, exculpatory evidence that was knowingly withheld. Respectfully, your Office does not get to choose, on its own, whether this information is material. That decision rests with the defendants themselves, defense counsel, and ultimately the court.

Thank you for your Office's anticipated cooperation, and we look forward to hearing from you. Given the exigency of this situation in light of the fact that convicted defendants who did not receive this disclosure may very well be in prison, we ask that your Office respond by January 10, 2014. If this timeframe is problematic, please let me know, as we are willing to be reasonable in light of the upcoming holidays. Of course, if you have any questions or concerns, do not hesitate to contact the NHCLU, as it is coordinating the investigation of this issue.

Very truly yours,



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Katherine Cooper, Executive Director
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cc: Jane E. Young, Associate Attorney General (jane.young@doj.nh.gov)
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