



August 30, 2016

Hon. LaDoris H. Cordell
Hon. Cruz Reynoso
Hon. Dickran M. Tevrizian
The Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law
Enforcement

Your Honors of the Blue Ribbon Panel,

The Blue Ribbon Panel (“the Panel”) has made seven (7) recommendations that directly implicate the *Brady* policies of the San Francisco District Attorney (“SFDA”).

RECOMMENDATION #1: The DA should update its formal policies to incorporate firm, mandatory *Brady* disclosure deadlines. (Report, p. 134.)

SFDA RESPONSE: Agree.

TIMELINE: To be formally incorporated into the SFDA INT *Brady* Policy by September 30, 2016.

The Panel suggests that the DA impose “a specific deadline of 14 days for prosecutors or other DA employees to disclose potential *Brady* information to the Trial Integrity Unit to avoid unnecessary delays in identification and proper disclosure of internal *Brady* information.”

We agree timeliness is critical and a shorter timeline is achievable. Therefore, the SFDA has issued a policy directive, effective immediately, that all prosecutors or other DA employees provide potential *Brady* information to the Trial Integrity Unit (“TIU”) within two (2) business days, so that the material may then be distributed to and reviewed by our *Brady* Committee in a timely manner. The SFDA INT *Brady* Policy will then be formally modified to include this mandatory deadline as well.

The SFDA INT *Brady* Policy will also be amended to include other mandatory timelines. It has been the practice of the SFDA *Brady* Committee to provide officers fifteen (15) days to submit a written response, but that timeline had not been formally incorporated into the SFDA INT *Brady* Policy. Our policy will be amended to so reflect. The SFDA INT *Brady* Policy will also be amended



GEORGE GASCÓN
District Attorney

to adopt the Panel’s recommendation to the San Francisco Police Department (“SFPD”) that, absent extraordinary circumstances, our *Brady* Committee should complete its review and issue a recommendation within forty-five (45) days of receiving the case.



RECOMMENDATION #2: The DA and SFPD should track and review *Brady* data and prepare an annual report to the public on *Brady* findings – sustained and unfounded – in order to understand the magnitude of any problem, identify potential problem stations, and better inform training. (Report, p. 135.)

SFDA RESPONSE: Agree. As to SFPD, pending approval.

TIMELINE: 2016 Annual Report.

Beginning with its 2016 Annual Report, SFDA will incorporate statistical information regarding the work of its *Brady* Committee. The information will include: the number of allegations made; the types of allegations; the law enforcement employee’s¹ gender; the law enforcement employee’s race, if known; the station(s) involved, if applicable; the number of sustained findings of internal *Brady* conduct; the number of cases that the *Brady* Committee determined to be unfounded; the number of findings of otherwise discoverable information; and the time it took for the *Brady* Committee to complete its review.



RECOMMENDATION #3: The DA should provide annual interagency *Brady* training tailored to both DA attorneys and SFPD police officers and employees. (Report, p. 135.)

SFDA RESPONSE: Agree. As to SFPD, pending approval.

TIMELINE: As soon as possible.

¹ The SFDA INT *Brady* policy covers both sworn and civilian employees of law enforcement agencies and other agencies working on behalf of the prosecution team.



GEORGE GASCÓN
District Attorney

The Report recommends that SFDA “provide quality, annual *Brady* trainings for its attorneys *and* the law enforcement agency with which it works.” (Report, p. 135.) Currently, all new hires are required to complete a “boot camp,” which includes trainings on a prosecutor’s *Brady* obligations and the policies implemented to meet these obligations. (Report, p. 127.) The TIU also provides recurrent, mandatory *Brady* trainings for all attorneys. (*Id.*) All new hires also view the Innocence Project documentary.

Implementing interagency *Brady* trainings requires approval from the SFPD. I have sought approval from SFPD and I await their response. (Attachment 1.) I hope to initiate these trainings as soon as possible, starting with the Academy.



RECOMMENDATION #4: The SFPD and DA should coordinate and adopt uniform *Brady* policy and protocol to assure joint, timely, and seamless interagency communication and compliance. (Report, p. 136.)

SFDA RESPONSE: Agree. As to SFPD, pending approval.

TIMELINE: To be completed by year end.

Although the SFDA External *Brady* Policy and the SFPD Bureau Order 2010-01 were designed to work in conjunction with each other, the Report recommends that a “uniform” policy be adopted. (Report, p. 136.) Both policies are outdated and in need of several modifications. These modifications should occur uniformly to ensure cooperation and the flow of information.

Both SFDA and SFPD must work together to satisfy this Recommendation. We will therefore seek timelines from SFPD that improve our timely discovery to defendants. I have reached out to Acting Chief Toney Chaplin to begin this process. (Attachment 1.)



RECOMMENDATION #5: The DA should require prosecutors to make a record of written requests to testifying police officers to report any *Brady* information and retain police officer responses. (Report, p. 136.)

**SFDA RESPONSE:** Modified.

TIMELINE: The Panel suggests that all prosecutors “affirmatively, and in writing, ask police officers who will testify in cases to state whether there is known *Brady* material attributable to them or to another police officer in the case.” (Report, p. 136.)

Currently, SFPD provides SFDA with written notice of sustained *Brady* investigations and verbally notifies us of pending *Brady* findings. TIU also writes letters to SFPD to verify that testifying officers have no *Brady* material in their personnel files. SFPD provides written response to our inquiries. We are currently working with SFPD to streamline this process further while also maintaining its integrity through a quarterly verification procedure.

Though a prosecutor may certainly ask a peace officer whether there is known *Brady* material attributable to him or her or another police officer in the case, current law does not require that a peace officer provide a response. Indeed, Penal Code section 832.7 mandates that a peace officer’s personnel file is confidential as a matter of law and that prosecutors do not have unfettered access to the contents of that file. It follows that a peace officer is not required to respond to the prosecutor’s verbal inquiry.

Furthermore, an officer may not know whether his or her conduct falls within the constructs of *Brady*, may not be aware of any pending Internal Affairs investigation that might implicate *Brady*, or may minimize his or her conduct, thereby creating further problems. Under these conditions, a prosecutor’s verbal inquiry is unlikely to have any meaningful effect beyond our current written procedures.

Since our current written notification procedures provide a better source of information, shortened timelines within the SFPD *Brady* protocol may be the better approach. With shorter timelines, we can be assured that the information we have is current and accurate.



RECOMMENDATION #6: The San Francisco City Attorney should report civil cases against peace officers to the DA’s Trial Integrity Unit. (Report, p. 136.)

SFDA RESPONSE: Agree. As to the City Attorney, pending approval.



GEORGE GASCÓN
District Attorney

TIMELINE: Pending mayoral and board approval of a supplemental budget.

Although civil suits may contain unsubstantiated allegations and are reasonably accessible by the defense, the body of information could be helpful in assessing an officer's credibility and / or assist in evaluating a pattern of conduct.

I have sent a letter to City Attorney Dennis Herrera to assist us in identifying these cases. (Attachment 2.) The collection of this information, which may be substantial, would require additional personnel and resources. SFDA will submit a supplemental budget request to achieve this goal.



RECOMMENDATION #7: The DA should consider adopting an open file discovery policy.

SFDA RESPONSE: Agree.

TIMELINE: Pending mayoral and board approval of a supplemental budget.

Open file policies increase the efficiency and the fairness of the criminal process. In order to be more transparent in the discovery process, we will formally adopt an "open file" policy, wherein defense counsel may review the prosecution's file. Additional paralegals will be required to implement this policy. SFDA will request the appropriate funding.



On behalf of the SFDA's Office, I sincerely thank you for your hard work and thoughtful recommendations. I, like you, and other members of the law enforcement community hope that these changes will ensure the fair administration of justice for all.

Very truly yours,


George Gascón
District Attorney

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors; BOS Legislation, \(BOS\)](#)
Subject: File 160806 FW: Blue Ribbon Panel on Transparency, Fairness and Accountability in Law Enforcement
Date: Tuesday, October 04, 2016 9:23:45 AM
Attachments: [letter to A Subramanian.pdf](#)

From: Kilshaw, Rachael (POL)
Sent: Monday, October 03, 2016 5:52 PM
To: Anand Subramanian <anand@policylink.org>
Cc: Lee, Mayor (MYR) <mayoredwinlee@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Chaplin, Toney (POL) <toney.chaplin@sfgov.org>; Kawa, Steve (MYR) <steve.kawa@sfgov.org>; Henderson, Paul (MYR) <paul.henderson@sfgov.org>; Oliva-Aroche, Diana (MYR) <diana.oliva-aroch@sfgov.org>; Carr, Rowena (POL) <Rowena.Carr@sfgov.org>; Fountain, Christine (POL) <Christine.Fountain@sfgov.org>; Suzy Loftus <suzyloftus@hotmail.com>; SFPD, Commission (POL) <SFPD.Commission@sfgov.org>; Rania Adwan <raniaadwan@gmail.com>
Subject: Blue Ribbon Panel on Transparency, Fairness and Accountability in Law Enforcement

Mr. Subramanian:

On behalf of Commission President Suzy Loftus, please see the attached letter regarding the Blue Ribbon Panel on Transparency, Fairness and Accountability in Law Enforcement.

Regards,

Sergeant Rachael Kilshaw
San Francisco Police Department
Police Commission Office
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San Francisco, California 94158
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The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

October 3, 2016

Mr. Anand Subramanian
Executive Director
Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement
Transmitted via email: anand@policylink.org

Dear Mr. Subramanian:

Thank you for including me in the distribution of your September 26, 2016 letter to Mayor Lee regarding the Blue Ribbon Panel on Transparency, Fairness and Accountability in Law Enforcement. I appreciated the opportunity to sit down with you, the team of lawyers who worked on the report, Interim Chief Chaplin and members of the Mayor's staff to discuss next steps. As we discussed at our meeting, the Police Commission invited a representative from the Blue Ribbon Panel to work on our Use of Force Stakeholder Group in the spring and have continued to work closely with members of that sub-committee on advancing the Use of Force policy approved by the Police Commission on June 22, 2016. This was an incredibly collaborative and successful joint effort. We are grateful for the time and attention provided by the lawyers who have graciously volunteered their time. We continue to welcome the engagement of that team on finalizing that policy and ensuring its full adoption.

With regard to the remaining areas of focus and recommendations, representatives of the Blue Ribbon Panel shared copies of the entire report with members of the Police Commission. As promised, the Commission advanced the Blue Ribbon report, along with the two Civil Grand Jury Reports that were issued recently, to the Department of Justice Collaborative Reform team. The Department has reported to the Police Commission that SFPD is currently building a consolidated matrix of recommendations that will include the following reports:

- President's Task Force on 21st Century Policing
- Civil Grand Jury
- Blue Ribbon Panel
- DOJ/COPS Report
- OCC Recommendation Report

The implementation schedule and strategic plan is in progress and will be presented to the Police Commission following issuance of the DOJ/COPS report.

As we discussed at our meeting, we are very fortunate to have the assistance of the United States Department of Justice at this critical juncture for reform of the San Francisco Police Department. They will be issuing a comprehensive report with their findings and recommendations regarding the following objectives:

1. Assessing the SFPD's use of force policies and practices as they relate to training, implementation, reporting, supervision, and oversight and accountability to ensure adherence to policy and fair and impartial use of force decisions;
2. Assessing the SFPD's policies and operational practices to determine if there is biased policing with a specific focus on people of color, people with mental illness, the LGBTQ community and the homeless;
3. Assessing the community policing, procedural justice, and community engagement protocols and practices across the SFPD in light of national and best practices;

SUZY LOFTUS
President

L. JULIUS TURMAN
Vice President

DR. JOE MARSHALL
Commissioner

THOMAS MAZZUCCO
Commissioner

PETRA DeJESUS
Commissioner

VICTOR HWANG
Commissioner

SONIA MELARA
Commissioner

Sergeant Rachael Kilshaw
Secretary

4. Assessing whether the accountability, oversight policies, and practices related to community complaints and their investigation comport with national standards and best practices;
5. Analyzing recruitment, hiring and personnel practices to evaluate diversity efforts in the SFPD to determine adherence with national standards and best practices.

In the meantime, reform does not wait for the final DOJ report to issue – to the contrary, I invite you to follow our progress in a number of key areas through the Police Commission at <http://sanfranciscopolice.org/police-commission>. For example, I would highlight the implementation of Body Camera technology and the addition of a Policy Analyst to the Police Commission staff to advance our growing policy efforts. As these critical reform efforts progress, we will update the Blue Ribbon Panel on Transparency, Fairness and Accountability in Law Enforcement and continue to include you in ongoing stakeholder engagement.

Best,



Suzy Loftus
President, San Francisco Police Commission

cc:

Mayor Edwin M. Lee
Members of the Board of Supervisors
Police Commissioners
Interim Chief of Police Toney Chaplin
Chief of Staff Steve Kawa
Deputy Chief of Staff Paul Henderson
Senior Advisor Diana Oliva-Aroche

From: [Board of Supervisors. \(BOS\)](#)
To: [BOS Legislation. \(BOS\)](#)
Subject: FW: Blue Ribbon Panel Report and October 4, 2016 Board Hearing (Agenda Item 160806)
Date: Tuesday, October 04, 2016 9:26:05 AM
Attachments: [Letter from Alan Schlosser to Board of Supervisors re Blue Ribbon Panelpdf](#)

From: Danielle J.P. Flores [mailto:dflores@aclunc.org]
Sent: Monday, October 03, 2016 5:58 PM
To: Avalos, John (BOS) <john.avalos@sfgov.org>; Campos, David (BOS) <david.campos@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Breed, London (BOS) <london.breed@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Farrell, Mark (BOS) <mark.farrell@sfgov.org>; Mar, Eric (BOS) <eric.mar@sfgov.org>; Wiener, Scott <scott.wiener@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Alan Schlosser <aschlosser@aclunc.org>; Lee, Mayor (MYR) <mayoredwinlee@sfgov.org>; Chaplin, Toney (POL) <toney.chaplin@sfgov.org>; SFPD, Commission (POL) <SFPD.Commission@sfgov.org>
Subject: Blue Ribbon Panel Report and October 4, 2016 Board Hearing (Agenda Item 160806)

Dear Members of the Board of Supervisors:

I am attaching a letter from Alan L. Schlosser, Senior Counsel of the American Civil Liberties Union of Northern California, with respect to the upcoming hearing about the Final Report of the Blue Ribbon Panel on October 4, 2016.

Best,

Danielle J.P. Flores

Litigation File Clerk

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October 3, 2016

Via Email

Board of Supervisors
City Hall
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San Francisco, CA 94102-4689
Board.of.Supervisors@sfgov.org

Re: Blue Ribbon Panel Report
October 4, 2016 Board Hearing (Agenda Item 160806)

Dear Members of the Board of Supervisors:

I am writing to you on behalf of the American Civil Liberties Union of Northern California (“ACLU”) with respect to the hearing of the Board concerning the Final Report of the Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement (“Blue Ribbon Panel Report”), scheduled for Tuesday, October 4, 2016.

Over the past ten months, San Francisco – both the government and the community – has been engaged in a significant and much-needed examination of the San Francisco Police Department - its policies, its practices, its governance and its relationship with the communities that it serves and impacts. This process was launched in large part because of the tragic officer-involved shootings of Mario Woods, Luis Gongora and Jessica Williams, and the widespread community outrage that resulted from their deaths. And, because similar tragedies have occurred in other communities around the country, this call for police reform has become national in scope.

As a result of these developments, it has been widely recognized that San Francisco is in the midst of an unparalleled opportunity with respect to significant police reform. This call for reform does not just come from the communities, but from the Mayor, the President of the Police Commission, the Acting Chief of Police and this Board.

To date, the most comprehensive and insightful analysis of the problems that need to be addressed has been the Blue Ribbon Panel Report. It provides a historical perspective, a detailed discussion and findings about the most significant problem areas, and a number of specific recommendations to address these problems. Therefore, the ACLU commends the Board for holding this hearing to bring much-needed attention to this important document.

The Report was issued in July 2016. It is disturbing that there has been so little substantive response to this Report from the official bodies that share SFPD governance. Aside from this hearing, we are aware of no efforts being made by SFPD, the Police Commission or the Mayor to respond to the detailed findings of the Report or plans to consider its many recommendations. We are aware that SFPD has been engaged in efforts to improve its system of data collection and that the Police Commission has been very involved in substantially revising SFPD's Use of Force policy. However, some of the most important areas of concern – such as the Early Intervention System, and racial disparities in police stops, searches and arrests – are long-standing problems that do not appear to be current priorities of the Police Commission or SFPD. In addition to making specific recommendations in those critical areas, the Blue Ribbon Panel Report has placed great emphasis on the need for regular audits of the operations and practices of SFPD, and the need for an independent Office of Inspector General to carry out that function. The Report's explanation of why such an office is needed to supplement the oversight work of the Commission, the OCC and this Board are cogent and certainly worthy of careful consideration by official decision-makers.

The fact that San Francisco has a Police Commission that is independent of the Department and that is primarily responsible for its governance was a significant reform measure when it was adopted, and continues to be emulated by reform-minded cities around the country. However, one result of our system is that there are a number of decision makers who must coordinate and work together in effecting significant changes in SFPD – the Mayor, the Police Commission, the Department and this Board. It is the view of the ACLU that the findings and recommendations of the Blue Ribbon Panel Report must be a central element to any broad reform effort to make lasting changes in the policies and practices of the SFPD. Therefore, it was gratifying to see that you have specifically asked the Police Department and the Police Commission to report and participate in tomorrow's hearing about the Blue Ribbon Panel Report. It would be a significant development if those agencies came prepared to talk about some of the specific findings and recommendations in this Report, and about their plans to take steps in the future to implement some of these important recommendations.

Over these past 10 months, this Board has been in the forefront of calls for significant police reform in San Francisco. By calling for this hearing, and shining some light on the Blue Ribbon Panel Report, you are once again taking a leadership role. The leadership by this Board, and its power to legislate in some of the areas covered by the Report, will be much-needed in the coming months to see if this opportunity for historic change can become a reality.

Respectfully submitted,

/s/ Alan L. Schlosser

Alan L. Schlosser

Senior Counsel

ACLU of Northern California

Cc:

Mayor Edwin Lee

Members of the Police Commission

Acting Chief Toney Chaplin