

EXHIBIT A



TOWN OF CLARKSTOWN

GEORGE HOEHMANN
SUPERVISOR

August 24, 2016

By Hand and UPS Next Day Air

United States Attorney
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Attn.: Benjamin R. Allee, Esq.
Assistant United States Attorney

Re: Town of Clarkstown, New York
In Re Town of Clarkstown Police Department

Dear Mr. Allee:

With the unanimous support of the Town Board, I write in my capacity as the Supervisor of the Town of Clarkstown to report evidence of what appears to be illegal profiling by the Clarkstown Police Department of Rockland County citizens based solely upon their race, political or social affiliations and concomitant exercise of rights protected by the United States Constitution in violation of 28 CFR 23, *et. seq.* and applicable Federal law.

A. Procedural Background

In my capacity as Town Supervisor, I preferred administrative charges against Police Chief Michael Sullivan on July 20, 2016. The charges, a copy of which are enclosed herein as Exhibit "1," were spawned from (i) the Town Board's concern that Sgt. Stephen Cole-Hatchard, the head of the Department's Special Investigative Unit ("SIU"), was engaged in unauthorized and inappropriate public dialogue with members of the media regarding confidential information concerning pending litigation and/or administrative proceedings involving Police Department personnel and (ii) Chief Sullivan's refusal to comply with the Town Board's directive to thereafter transfer Sgt. Cole-Hatchard out of the SIU to Police Department Headquarters. Chief Sullivan filed an answer denying the charges (Ex. "2").

On August 9, 2016, the Town Board appointed a special prosecutor (William P. Harrington, Esq.) to investigate and prosecute the administrative charges and former New York State Attorney General, Dennis Vacco, to act as the administrative judge to adjudicate same. On

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August 19, 2016, the Town filed amended administrative charges against Chief Sullivan, a copy of which is annexed hereto as Exhibit "3."¹

B. Evidence of Racial Profiling

Following his appointment, Special Prosecutor Harrington commenced an investigation which included the review of electronic communications readily available on the official Town website by and between Sgt. Cole-Hatchard, Chief Sullivan, the SIU and others. Although the available information has been limited, to date the investigation has uncovered the following evidence of illegal profiling of African Americans and others through the use of the SIU's electronic surveillance assets:

(i) Surveillance of "We The People" Community Group

Beginning on or about July 24, 2015, Sgt. Cole-Hatchard advised Haverstraw, New York Police Chief Miller that the SIU had learned that "We The People," an African American community group located in Rockland County, planned to sponsor a play entitled "A CLEAN SHOOT?":

I came across an on line ad for an event scheduled to take place in your jurisdiction and thought you might want to be aware.

A group called "We The People" is presenting a play entitled "A CLEAN SHOOT?" on Thursday, September 3, 2015, at 2000 hours at the SHADES REPERTORY THEATER at 64 Main Street, Haverstraw. The advertisement shows a photo of a police car with a white subject pointing a handgun out of the vehicle window. I have attached a copy of the ad for your reference. We do not have any intelligence developed relating to this matter at this point, as this is for informational purposes only. *However, if you would like a tactical intelligence workup on the hosting group or any of the people mentioned in the ad feel free to let me know and we will be happy to do so right away.*

(Ex. "5," - the entire email trail between Sgt. Cole-Hatchard and the Haverstraw Police Department which was copied to Chief Sullivan is attached as Exhibit "5") (emphasis added.)

On August 4, 2015, George Lutz of the Haverstraw Police Department acknowledged receipt of the play flyer and requested that the Clarks town SIU "[p]lease provide me anything you can obtain on this group and its participants." (*Id.*). By email of the same day, Sgt. Cole-

¹ Rather than answer the amended charges, Chief Sullivan filed a state lawsuit in Rockland County Supreme Court seeking to enjoin the administrative investigation and hearing. A copy of the Petition/Complaint is annexed hereto as Exhibit "4."

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Hatchard advised “. . . I will have one of he (sic) analysts do a workup on the group, location and players. Give us a couple of days and i (sic) will get whatever we find to you.” (*Id.*)

The SIU thereafter generated an August 7, 2015 “Intelligence Report” on the “We The People” community group and the 14 individuals involved with the planned production of the play. (Ex. “6.”) Although there was absolutely no evidence that any of these individuals were engaged in criminal activity or otherwise posed a public security threat, the Report reflects that the SIU used electronic surveillance assets to search each individual’s social media profiles and postings. In addition, each individual was “run through” the Clarkstown RMS criminal database. As reflected in the Report, the vast majority of the profiled individuals had no criminal record whatsoever; and none posed any public security threat. The Report’s “Summary” concludes that: “Haverstraw Police Department should be aware of the next scheduled event on September 3, 2015. Although individuals involved in the organization have strong opinions, there is no cause to believe this event is going to become violent.” (*Id.*, p. 20.)

(ii) **Profiling of Members of the Black Lives Matter Movement**

The SIU issues monthly “SNUG” reports in conjunction with the Rockland County District Attorney’s Office. In the November 2015 “SNUG” Report, under the heading “Summary of Report,” the SIU describes the purpose of the Report as follows:

Through the use of a social media monitoring platform and other investigatory tactics, the ILPPC is able to search, monitor and analyze real time social media content from any chosen location around the country. With the aim to interrupt violence, the ILPPC’s mission is to:

- Prevent individuals from causing harm to themselves and others;
- Set up geofences to monitor social media in high risk areas of Rockland; and
- Monitor social media accounts of individuals who may be associated with acts of violence.

Findings will all be supported by both tactical and strategic intelligence, with assistance from and constant communication with the Youth Bureau and Community Advocates (Interrupters).

(Ex. “7.”)

Among other things, the November 2015 Report reflects the number of electronic “Geofences” established, the groups targeted for electronic surveillance and the number of “interruption alerts received and reviewed.” (*Id.*, pgs. 5-8.) The November 2015 SNUG Report,

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dated December 11, 2015, indicates that the "Black Lives Matter Movement" was one of the groups subject of electronic surveillance, along with such categories as "Gangs," "Violence," "Terrorism," "Heroin Initiative," and "Police Riots." (*Id.*, p. 7.) The November 2015 Report reflects the SIU conducted electronic surveillance on two (2) Black Lives Matter Movement members. (*Id.*) No misconduct or threat was found with respect to these two unidentified individuals.

The December 2015 SNUG Report, dated January 4, 2016, repeats the surveillance methodology referenced in the November Report (Ex. "8"). The December Report reflects that the SIU Unit conducted electronic surveillance on what it deemed to be six (6) members of the Black Lives Matter Movement. (*Id.*, p. 7.) Again, no misconduct was found, nor was there any legitimate legal basis for surveillance.

The December SNUG Report also indicates that various "Geofences" which utilize electronic monitoring are in place in various high density areas that are home to large numbers of economically disadvantaged, minorities and persons of color. It is unclear what if any criteria has been utilized to determine the necessity for this electronic monitoring or if race was the determining factor. If race was the determining factor this would specifically be in violation of federal law. The December SNUG report indicates that 390 "Geofences" are in place under the SIU with no reference to the specific criteria for determining the reason why these were authorized and put in place. This number is astounding and causes us great concern.

By email dated January 14, 2016, Sgt. Cole-Hatchard forwarded the December SNUG Report to various individuals within both the Clarkstown Police Department (including Chief Sullivan), as well as the Rockland County District Attorney's Office (Ex. "9").

Within 45 minutes of receipt of the December SNUG Report, Peter A. Modafferi, Chief of Detectives of the Rockland County District Attorney's Office, responded to Cole-Hatchard's email, noting in pertinent part the obvious illegality of the surveillance of Black Lives Matter members: "I mentioned before, you really should not have Black Lives Matter listed as a target for surveillance." (Emphasis added) (*Id.*, p. 2.)

The foregoing evidence, developed only weeks into the Special Prosecutor's investigation and without Police Department cooperation, reflects that despite being admonished to the contrary, Sgt. Cole-Hatchard and the Clarkstown SIU were conducting illegal electronic surveillance on members of the Black Lives Matter Movement without any justifiable legal basis in violation of Federal law. In addition, it is clear that in July and August, 2015, the SIU conducted racial profiling via electronic surveillance on members of the African American community group, "We The People," without any justifiable legal basis simply because the African American community group exercised its First Amendment right to sponsor a play

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concerning police violence. Such conduct clearly violates 28 CFR 23.20(a) and (b) which concededly governs the conduct of the SIU.²

On August 18, 2016, Special Prosecutor Harrington requested that the Rockland County Police Department produce electronic communications by and between Sgt. Cole-Hatchard, Chief Sullivan and others for the period June 1, 2015 to the present. (Ex. "10.") To date, the Police Department has not responded, thereby precluding any further investigation into suspected illegal racial profiling activity by the SIU and/or Police Department. To the extent necessary, the Special Prosecutor will subpoena the information. We expect the Police Department will resist.

(iii) **Use of SIU Surveillance and Assets to Develop Political Attacks of Perceived Potential Enemies in Law Enforcement, the Judiciary and Public**

(a) **Surveillance of Town Residents That Support Police Department Reform**

I ran for Supervisor on a platform that included the fiscal review and appropriate reform of all aspects of Town government, including the Police Department's \$50 million annual budget. I won the election by approximately 12 points. I mention this only because after the November 2015 election, commencing on or about December 1, 2015, the SIU apparently began using electronic surveillance to identify individuals with social media posts supporting fiscal reform of the Police Department.

By email dated December 11, 2015, SIU analyst, K. Donohue gathered and forwarded to Sgt. Cole-Hatchard the social media posts of approximately 10 Clarkstown residents who favor fiscal reform of the Police Department. (Ex. "11.") Once again, none of these individuals are suspected of any criminal activity. Their only "crime" is that their political views are adverse to fiscal interests of Chief Sullivan, Sgt. Cole-Hatchard and the Clarkstown Police Department.

² 28 CFR 23.20 states in pertinent part:

23.20 Operating principles.

(a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.

(b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associates, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

(Emphasis added.)

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(b) County Sheriff Lou Falco

In November 2015, Rockland County Sheriff Lou Falco ran for re-election. Clarkstown Police Chief Sullivan and SIU Sgt. Cole-Hatchard apparently vehemently opposed his re-election, perceiving him as a rival and threat for available public police funding.

By email dated September 9, 2015, Sgt. Cole-Hatchard forwarded to Chief Sullivan a four-page political attack "REFRESHER" strategy against County Sheriff Falco entitled "LOU FALCO IS THE WORST THING TO HAPPEN TO PUBLIC SAFETY AND LAW ENFORCEMENT IN ROCKLAND COUNTY IN DECADES." The document is an obvious outline of a political attack campaign based upon Falco's perceived rivalry with and threat to the Clarkstown Police Department. It was prepared by Sgt. Cole-Hatchard while on duty at the SIU and transmitted via the official Clarkstown.org email. The covering email "Notice" again reiterates that the SIU is a "28 CFR Part 23 compliant agency" (Ex. "12"). The political attack against Falco, a political rival who won re-election in November 2015, appears to be a flagrant violation of federal law and represents an abuse of police power and waste of precious public resources.

(c) Clarkstown Town Judge Howard Gerber

Judge Gerber was also apparently perceived by Chief Sullivan and Sgt. Cole-Hatchard as a political enemy of the Police Department. Chief Sullivan had unsuccessfully filed a complaint earlier in 2015 with the New York State Commission on Judicial Conduct. Gerber was exonerated.

Judge Gerber also ran for re-election in November 2015. In anticipation of his judicial election, Chief Sullivan and Sgt. Cole-Hatchard, while on SIU duty, prepared a potential election strategy to defeat Judge Gerber.

By email dated October 29, 2015, Chief Sullivan outlined his plan to Sgt. Cole-Hatchard, indicating that the Rockland County District Attorney's Office had approved of same:

I have been monitoring the news and so far there has been no stories regarding this. I don't think we should bring attention to it unless the Judge does. If he does I think we should release the case file, including the interview to the press. Although we don't normally do this I think we can in the interest of public disclosure regarding an elected official that directly impacts upon his conduct and duty of that elected official. I also spoke with the District Attorney who stated that he would have no problem with releasing it. I am also including a draft of a letter I will be sending to the Commission on

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Judicial Misconduct. Please review and let me know what you think.

Ex. "13."

The same day Sgt. Cole-Hatchard, while on duty with the SIU, responded: "If [the District Attorney] is going to release it [Gerber's disciplinary case file], I would think it [the District Attorney] will wait until a point just before Election Day leaving [Gerber] no time for a response." (*Id.*)

Judge Gerber had been cleared of any wrongdoing. He did not engage in criminal conduct. He did not represent a public security threat. Yet, while on duty, Chief Sullivan and SIU Sgt. Cole-Hatchard engaged in a scheme to politically attack and defeat Judge Gerber for political purposes using Police Department and SIU resources. We believe this conduct violates applicable Federal law, as well as representing a flagrant abuse of police power and SIU resources.

(d) **Illegal Surveillance of my Social Media Postings**

Last year, during the contested election, individuals within and close to the Police Department indicated to myself and others a belief that members of the Police Department were engaging in potential illegal monitoring of myself and other candidates running for office. During the time period in question I scoffed at the notion but unfortunately since becoming Supervisor the investigation to date has proved otherwise. The investigation as previously disclosed has uncovered the documented illegal monitoring of Judge Gerber and Sheriff Falco and others for purely political purposes. Moreover, the Special Prosecutor's investigation to date has revealed that at least one member of the Police Department, a member of the specialized CIRT team, has had an apparent purging of emails for the period from October 28 through November 11th that is consistent with purging that is currently under investigation by the FBI and your office of the prior Town administration. These dates coincide with the monitoring of Judge Gerber for political purposes that was previously identified. Oddly, this member of the Department and perhaps others has had all emails purged for this period, including all regular Department emails just prior to the election until a week after the election other than a cryptic "OK" in response to a deleted email from Chief Sullivan to this employee. As you are well aware, my administration has cooperated fully with your office and the FBI since my very first day in office regarding the three federal subpoenas issued to the Town to date. As you are also aware, I have been informed by investigators that the prior administration had purged emails and other documents in various departments and our efforts to secure our network and recover documents have been commended by the FBI investigators as recently as last week.

Nonetheless, the type of activity that we believed only had occurred within Town Hall appears to potentially have occurred within the Police Department based upon the instance of purging that our preliminary investigation has uncovered. Given the lack of cooperation to date

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from the Police Department administration, our efforts to further investigate in this area are hampered and the potential destruction of evidence has potentially occurred or is now occurring. Finally, in this regard I can regrettably report that monitoring of my Facebook page also occurred shortly after the election and reports produced without any basis whatsoever to justify this use of public resources by the members of the SIU and reported to Chief Sullivan. Evidence has been uncovered that Sgt. Cole-Hatchard was monitoring my Facebook posts and prepared a written report to Chief Sullivan less than two weeks after my election in November and prior to me taking office. There was no legal reason to track and report on my Facebook posts other than the illegal political monitoring of the nature undertaken against Judge Gerber, Sheriff Falco, and residents seeking reform and others in violation of federal law. This action occurred by Sgt. Cole-Hatchard who prepared written reports to the chief on my comments while on Town time using the Town emails on the Town server, all in violation of federal laws further abusing police powers. These activities are indeed chilling and fly in the face of all that we expect in law enforcement and public service.

C. Conclusion

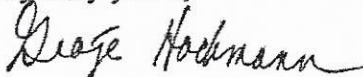
The investigatory activities of the Clarkstown SIU are subject to federal regulations set forth in 28 CFR Chapter 23. Indeed, the SIU Surveillance Report on the "We The People" community group repeatedly acknowledges that the SIU is "... a 28 CFR Part 23 compliant agency." (Ex. "6," pgs. 1 and 6-19.)

Based upon the foregoing and the Police Department's clear reluctance to cooperate with the Special Prosecutor's investigation, the Town Board is very concerned that members of the Town Police Department, including without limitation Chief Sullivan, Sgt. Cole-Hatchard and other members of the SIU, have and are continuing to use Police Department assets in violation of 28 CFR Chapter 23 by (i) racially profiling members of an African American community exclusively based upon their race and affiliation with advocacy groups and the exercise of their First Amendment Rights and (ii) illegal surveillance of citizens based upon their political and social views which Police Department officials perceive to be a threat to the Clarkstown Police Department.

Accordingly, the Town Board feels compelled to bring these matters to your attention and will cooperate with your office with respect to any action it may deem appropriate.

Please contact me if you have any questions.

Very truly yours,



George Hoehmann
Town Supervisor

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