IN RE: MATTER OF KAREN H. O'SULLIVAN
BBO NO. 637984

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,	)	**BBO File Nos.**
Petitioner	)	**C1-20-00266380**
	)	**C1-20-00266381**
v.	)	
JOHN E. BRADLEY, JR., ESQ. and	)	
KAREN H. O'SULLIVAN, ESQ.,	)	
Respondents	)	

HEARING COMMITTEE REPORT

On June 6, 2023, bar counsel filed a Petition for Discipline ("PD") against the respondents, John E. Bradley, Jr. ("Bradley") and Karen H. O'Sullivan ("O'Sullivan"). On July 26, 2023, O'Sullivan, represented by counsel, filed her Answer ("O'Sullivan Ans."). On July 26, 2023, Bradley, appearing pro se, filed his Answer. Subsequently, Bradley filed an assented-to motion for an extension of time to file an amended answer, which was allowed by the Board. On August 11, 2023, Bradley filed his Amended Answer, pro se ("Bradley Ans.").

On March 11, 2024, the parties filed a Joint Motion to Impound, seeking a protective order for an exhibit comprised of a Board subpoena to, and documents produced by, the Plymouth County District Attorney's Office ("PCDAO"). The grounds for impoundment were that the exhibit contained personal and confidential information concerning third parties as well as privileged and confidential information concerning criminal investigations and prosecutions conducted by the PCDAO. That motion was allowed by the Board Chair and Exhibit 12 was impounded.

Bar counsel also filed three motions in limine which were opposed or responded to by the respondents: 1) Bar Counsel's Motion in Limine To Exclude Bradley's Witnesses[1] and an Exhibit Proposed by O'Sullivan; 2) To Allow Evidence of Bradley's Prior Bad Acts to Prove Absence of Mistake; and 3) To Exclude O'Sullivan's Witnesses and Exhibits. O'Sullivan filed one Motion in Limine to Preclude Testimony of Bar Counsel's Expert and/or Lay Witness, Chris Kwok. Bar counsel opposed this motion. On March 21, 2024, the chair of the hearing committee issued her written order on the motions which is part of the record.

With respect to bar counsel's third motion in limine, bar counsel sought to exclude various witnesses and exhibits identified by O'Sullivan in prehearing filings. Among other things, bar counsel indicated that O'Sullivan sought to call witnesses and introduce exhibits concerning unrelated criminal cases that occurred after the Choy prosecution: Commonwealth v. Goncalves, Commonwealth v. Frank Evangelista, Commonwealth v. Brian Price, and Commonwealth v. Webb. See Bar Counsel's Motion to Exclude O'Sullivan's Witnesses and Exhibits, pp. 8-12. The proffered witnesses were Bristol County District Attorney Thomas Quinn and Attorneys Michael Bergeron, Stephen Nadeau, Timothy Shyne, and Rosemary Scapicchio. Of the four cases mentioned, O'Sullivan did not prosecute any of them. She was listed or called as a witness in Goncalves and Evangelista and had no involvement in Price or Webb. Bar counsel argued that these witnesses and evidence were irrelevant. O'Sullivan opposed bar counsel's motion and, among other things, argued that certain witness testimony and evidence from unrelated criminal cases were relevant to the PCDAO's animosity towards O'Sullivan and its motive to discredit her. See O'Sullivan's Opposition to Bar Counsel's Motion in Limine to Exclude [O'Sullivan's] Witnesses and Exhibits, pp. 5-7.

[1] Bradley responded to this motion, in part, that he did not intend to call one of his witnesses, the Honorable Linda Giles. This portion of the motion was denied as moot.

The hearing committee chair's order excluded O'Sullivan's character witnesses (Attorneys Camera, Caramanica, and Reddington) as well as Attorneys Bergeron and Shyne, who were identified by O'Sullivan as only having information related to her character and reputation as well as her past practices in dealing with exculpatory evidence in unrelated cases. See Opposition, pp. 6-7. The order also excluded evidence of the Price and Webb cases. Finally, the order stated that bar counsel's motion was:

> ALLOWED WITHOUT PREJUDICE as to excluding District Attorney Quinn and Attorneys Scapicchio and Nadeau as witnesses as well as excluding evidence concerning the Commonwealth v. Goncalves and Commonwealth v. Evangelista cases. At the hearing, Respondent O'Sullivan may make an offer of proof as to these witnesses and evidence, referencing in her offer why each witness has knowledge of facts or other information relevant to the matters at issue.

During the hearing, O'Sullivan again sought to call Attorney Scapicchio and that request was denied on the basis of relevance. Tr. XI:170-174. During the hearing, O'Sullivan sought to introduce evidence about the Goncalves and Evangelista cases and, finding that the proffered evidence was cumulative and irrelevant, the chair allowed only brief testimony about the Goncalves[2] case. See Tr. X:79-87 (O'Sullivan).

An in-person hearing[3] was held on the following thirteen dates: March 26, 27, 28, 29, April 8, 23, 25, May 1, 6, 8, 13, 20, and 31, 2024. Nineteen witnesses testified at the hearing: the

[2] We further note that Exhibit 7, an agreed exhibit, contains a letter from O'Sullivan to bar counsel. The letter attaches a document written by O'Sullivan and titled "Summary" which provides further background on the Goncalves matter. See Ex. 7, at BBO400 n.2 (explaining the "Summary"), BBO416-419 (relevant pages of the "Summary"). In addition, Exhibit 6, another agreed exhibit, contains Bradley's pro se response to bar counsel in which he describes the background of the Goncalves case. See Ex. 6, at BBO182-183.

[3] Shortly before the hearing began, on March 18, 2024, Bradley sent a letter to the Board's Office of General Counsel seeking to remove the Assistant General Counsel ("AGC") assigned to this matter based on posts that she had "liked" on LinkedIn. The General Counsel responded that same day, explaining the circumstances and informing Bradley that the AGC had provided assurances that she could and would remain neutral, impartial, and objective in the matter. See Matter of Barach, 22 Mass. Att'y Disc. R. 43 (2006) (recusal is left to the discretion of the hearing committee member and it is not an abuse of discretion for the member to determine he could perform his functions impartially). Further, the General Counsel noted that the role of the AGC was to provide legal advice to the hearing committee and the committee was the sole finder of fact. These letters are in the record.

respondents; Joseph Krowski, Sr., Esq.; John Barter, Esq.; Sharon Beckman, Esq.; Jessica Elumba, Esq.; Tara Cappola Meredith, Esq.; Dennis Collins, Esq.; Joseph Janezic, Esq.; Susan Bouchard; Joao DaCosta-Roque; Mark Spencer; Steven Verronneau; Gail McKenna, Esq.; John Zanini, Esq.; Brian Patrick Nevins, Esq.; Eric Clark; Plymouth County District Attorney Timothy Cruz, Esq., and; Christopher Kwok, Esq. Twenty-six exhibits were admitted into evidence, Exhibits 1 through 11 were agreed upon. Exhibit 12 was impounded as discussed supra. Exhibit 13 was admitted for the limited purpose of establishing that the overturning of Frances Choy's convictions (discussed infra) received widespread notoriety. See Tr. I:107-111. Many documents were labeled for identification purposes only during the hearing (documents A through EEE). We have only considered those documents which were admitted into evidence.

After the hearing began, on April 22, 2024, the PCDAO filed two motions: 1) To Quash Subpoena Issued to District Attorney Timothy Cruz, and 2) To Quash or Preclude Testimony Protected by the Work Product Privilege. The PCDAO sought to preclude testimony by current and former employees on subject matters which were protected by the work product and attorney-client privileges. Bar counsel joined this motion in a separate response filed on April 29, 2024. Bradley filed oppositions that same day. Thereafter, bar counsel filed a reply and the PCDAO filed a sur-reply. On May 1, 2024, the chair of the hearing committee issued a ruling, denying the motion to quash the subpoena issued to District Attorney Cruz ("DA Cruz") and allowing, in part, the PCDAO's motion to quash or preclude testimony protected by the work product privilege. By the order, the parties were precluded from questioning DA Cruz and any current or former PCDAO employees about "the PCDAO's decision-making processes with respect to responding to Frances Choy's Motion for New Trial as well as the subsequent

determination to *nolle prosequi*[4] Frances Choy. These areas of inquiry are irrelevant to the instant disciplinary proceeding as well as protected as opinion work product by the attorney work product doctrine."

After one request for extension, the parties submitted their posthearing briefs ("PFCs") on September 17, 2024.

FINDINGS OF FACT[5]

1. The respondent, John E. Bradley, Jr., Esq. ("Respondent Bradley" or "Bradley"), is an attorney duly admitted to the Bar of the Commonwealth on June 18, 1992. Bradley Ans. ¶ 2.

2. The respondent, Karen H. O'Sullivan, Esq. ("Respondent O'Sullivan" or "O'Sullivan") (together with Respondent Bradley, "Respondents"), is an attorney duly admitted to the Bar of the Commonwealth on December 17, 1997. O'Sullivan Ans. ¶ 3.

3. Bradley was first hired by the PCDAO as a legal assistant in 1991. Tr. II:168 (Bradley). After he was admitted to the bar in June 1992, he was hired as an assistant district attorney. Bradley Ans. ¶ 13; Tr. II:167-168 (Bradley).

4. O'Sullivan was hired by the PCDAO as an assistant district attorney in or about September 1997. O'Sullivan Ans. ¶ 17.

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[4] A *nolle prosequi* is a decision by the prosecutor to dismiss the pending charges. See Mass. R. Crim. P. 16.

[5] The transcript is referred to as "Tr. [vol.]:[page]"; the matters admitted in both of the respondents' answers to the petition for discipline are referred to as "Ans. ¶ _"; and the hearing exhibits are referred to as "Ex. _." The matters admitted by the respondents' answers include those deemed admitted as a result of the respondents' failure to deny them in accordance with B.B.O. Rules, § 3.15(d). See Matter of Moran, 479 Mass. 1016, 1018, 34 Mass. Att'y Disc. R. 376, 379 (2018).

We have considered all of the evidence, but we have not attempted to identify all evidence supporting our findings where the evidence is cumulative. We credit the testimony cited in support of our findings to the extent of the findings, and we do not credit contradictory testimony. In some instances, we have specifically indicated testimony that we do not credit.

5. Assistant district attorneys ("ADAs") are representatives of the Commonwealth of Massachusetts. They serve the public. Tr. II:216 (Bradley).

6. In or about October 2001, Bradley left the PCDAO and served as a prosecutor in the Major Crimes Unit of the United States Attorney's Office for the District of Massachusetts. Bradley Ans. ¶ 14.

7. Bradley returned to the PCDAO in or about April 2003. Bradley Ans. ¶ 15. From 2003 to 2012, Bradley served as the Deputy First Assistant District Attorney for the PCDAO. He also supervised the ADAs in the District Courts. Bradley Ans. ¶ 16.

8. O'Sullivan was promoted to a Superior Court ADA position in or about November 2003. O'Sullivan Ans. ¶ 17.

A. <u>The Fire on April 17, 2003</u>

9. On April 17, 2003, there was a fire at a home located at 102 Belair Street in Brockton ("the Choy residence"). Yiu "Jimmy" Choy ("Jimmy Choy") and Nu Trinh "Anne" Choy ("Anne Choy"), a married couple, died as a result of the fire and smoke. Ans. ¶ 4.

10. The fire department was able to rescue both Sung Ching Choy ("Kenneth" or "Kenny") and Frances Choy ("Frances") from the home. Ans. ¶¶ 5-6.

11. Frances was the seventeen-year-old daughter of Jimmy and Anne Choy. Ans. ¶ 6. She was a senior at Brockton High School at the time of the fire. Tr. I:69 (Beckman).

12. Kenneth was Jimmy Choy's grandson from a prior relationship. Kenneth's mother had sent him from Hong Kong, China to live with Jimmy Choy in 2000 because she could no longer support Kenneth financially. Ans. ¶ 5. Kenneth was sixteen-and-a-half-years old at the time of the fire. Ex. 4.

13. Although they were almost the same age, Frances was Kenneth's aunt. See Tr. XII:75-77 (Bradley); Tr. VI:173 (Janezic); Tr. X:59-60 (O'Sullivan).

14. Investigators concluded that the fire at the Choy home had been intentionally set. Inside Kenneth's bedroom, investigators recovered evidence that implicated Kenneth. See Ans. ¶ 18.

15. When the police interrogated Kenneth on the evening of the fire, he denied having any knowledge of the origin of the fire. When the police confronted Kenneth with the evidence from his bedroom, he first lied to the police, telling them that a fellow student instructed him to write the handwritten notes the police had found to prevent bad luck, and then implicated Frances as the mastermind of the plan to set the house on fire.[6] Ans. ¶ 19.

B. <u>The Choy Criminal Trials</u>

16. On June 13, 2003, Frances was indicted on two counts of murder (for the deaths of her parents) and one count of arson of a dwelling house. Kenneth was separately indicted on two counts of murder.[7] Ans. ¶ 20.

17. The respondents were the trial prosecutors who prosecuted the criminal cases against Frances and Kenneth. Bradley Ans. ¶ 21; Tr. II:180 (Bradley); see O'Sullivan Ans. ¶ 21 (admits she was a "second seat" prosecutor but denies she was a "co-prosecutor"). Bradley was assigned the case at the end of April 2003, shortly after he returned to the PCDAO from the U.S. Attorney's Office. See Tr. II:172-173, Tr. III:144 (Bradley).

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[6] As the respondents point out in their respective Answers, there was other evidence that allegedly tied Frances to the crimes. See Ans. ¶¶ 18-19, 26-27. We make no findings about the circumstances surrounding the underlying fire but note that a fuller recitation of the underlying facts is set forth in Exhibit 1.

[7] Kenneth was not indicted for arson because he was a juvenile and, therefore, the Superior Court had no jurisdiction over that offense; he could only be prosecuted in the Juvenile Court for arson. See O'Sullivan Ans. ¶ 20; Bradley Ans. ¶ 7.

18. In January 2005, Bradley asked O'Sullivan to assist him in the Choy prosecutions as a second seat. Tr. X:39 (O'Sullivan); see Tr. III:144-145 (Bradley). Although she had been involved in hundreds of trials, O'Sullivan had not yet prosecuted a homicide case as of January 2005. Tr. X:94 (O'Sullivan).[8] O'Sullivan did not begin working on the Choy cases until late 2007 when preparations began for the trials. Tr. X:44 (O'Sullivan).

19. Frances and Kenneth were the first Asian-American defendants that the respondents had prosecuted for murder. Tr. II:181 (Bradley); Tr. IV:28-29 (O'Sullivan).

20. Frances's criminal case was tried separately from Kenneth's criminal case. Ans. ¶ 22. On January 14, 2008, the first criminal trial against Frances commenced. Ans. ¶ 23. Attorney Joseph Krowski, Sr. ("Krowski") was Frances's defense counsel. Ans. ¶ 32. He had been appointed by the court shortly after her arrest. See Tr. I:73-74 (Beckman); Tr. II:16 (Krowski). On January 24, 2008, Frances's first trial ended in a mistrial when the jury was unable to reach a verdict. [9] Ans. ¶ 23.

21. On January 28, 2008, the first criminal trial against Kenneth began. Attorney Robert Galibois ("Galibois") was Kenneth's defense counsel. Ans. ¶ 24. On February 1, 2008, the jury acquitted Kenneth. Id.

22. A few months later, on April 8, 2008, Kenneth was granted immunity to testify against Frances. Ans. ¶ 25. Kenneth testified pursuant to a grant of immunity because the prosecutors' theory was that Kenneth and Frances acted together in carrying out the crimes. See Tr. III:164 (Bradley).

[8] O'Sullivan ultimately prosecuted two other homicide cases before the Choy cases went to trial. Tr. IV:120 (O'Sullivan).

[9] Kenneth did not testify against Frances at her first trial. Tr. II:36 (Krowski).

23. Almost three years later, on January 25, 2011, the second criminal trial against Frances commenced. Kenneth appeared at the trial and testified against Frances. On February 11, 2011, Frances's second trial ended in a mistrial when the jury was again unable to reach a verdict. Ans. ¶ 28.

24. On Friday, April 29, 2011, shortly before the start of Frances's third criminal trial, Kenneth fled the United States and traveled to Hong Kong, China. Ans. ¶ 29; see Ans. ¶ 30.

25. On Monday, May 2, 2011, the third criminal trial against Frances commenced. The Honorable Linda Giles presided over the trial. Ans. ¶ 30. During the trial, Kenneth did not appear as a witness but his testimony from Frances's second trial was read into the record by an ADA (not the respondents). See Tr. II:36-38 (Krowski) (describing the attorney who read Kenneth's testimony as having "a necktie on, hair combed and looked very presentable, unlike the way Kenny appeared in the second trial.").

26. On May 16, 2011, Frances was found guilty of two counts of murder and one count of arson. She was sentenced to life in prison without the possibility of parole. Ans. ¶ 31.

27. On May 17, 2011, Frances filed her Notice of Appeal from all three convictions. Ex. 26, at OBC-2309.

C. Bradley and O'Sullivan Leave the PCDAO

28. Over a year after Frances Choy's conviction, in September 2012, the PCDAO terminated Bradley's employment. Ex. 6, at BBO177. He was subsequently hired as an ADA in the Worcester County District Attorney's Office and worked there from 2014 to 2018. Id., at BBO217 (Bradley's Resume).

29. In October 2012, shortly after Bradley's termination, O'Sullivan also left the PCDAO. Tr. X:19 (O'Sullivan). She testified that she left the PCDAO because "it was traumatic

working there. It was a truly toxic environment." Tr. X:30 (O'Sullivan). The next month, November 2012, she joined the Bristol County District Attorney's Office ("BCDAO"). Id. She was promoted to Co-First Assistant District Attorney of Bristol County in 2015 and remained in that position as of the time of this hearing. Tr. IV:18-19 (O'Sullivan).

30. The respondents testified about what they perceived as dysfunction and poor management of the PCDAO during some of the time that they worked there. Tr. X:30-39, 66-68, 136 (O'Sullivan); Tr. XII:61-62 (Bradley). They characterized the office as being split into two "teams;" Team Bradley and Team Middleton. Team Middleton refers to people aligned with Frank Middleton, the First Assistant ADA in the PCDAO at the time, as well as his wife, Bridget Middleton, who was an ADA in the office.[10] Tr. X:33-36 (O'Sullivan); Tr. XII:62 (Bradley); see Tr. X:30, 136 (O'Sullivan); Tr. IX:60 (Zanini). Another witness who formerly worked at the PCDAO agreed that the atmosphere in the office was "toxic" and "parties were pitted against each other." Tr. V:89-94 (Cappola) (testifying that she decided to leave in the fall of 2014 due to the toxic environment). We credit the respondents' testimony that there was animosity between these two "teams" in the office. We further credit O'Sullivan's testimony that this bitterness caused her to leave the PCDAO in 2012. We discuss infra when this animosity first began.

31. In 2013,[11] Bradley sued District Attorney Timothy Cruz ("DA Cruz") in Federal Court in Massachusetts for wrongful termination. See Ex. 6, at BBO178; Tr. III:159 (Bradley); Ex. 8 (Deposition Transcript from Bradley v. Cruz, et al., 1:13-CV-12927). The case ultimately settled. Ex. 6, at BBO178. O'Sullivan submitted a supporting affidavit that Bradley attached to

[10] Both respondents also provided further detail about the animosity between these two teams in their initial written responses to bar counsel's investigation and during their statements under oath. See Exhibit 6 generally (Bradley's SUO testimony) and at BBO177-183 (Bradley's Pro Se Response to bar counsel); Exhibit 7 generally (O'Sullivan's SUO testimony) and at BBO399-425 (O'Sullivan's Response to bar counsel).

[11] Although there are references in the exhibits to Bradley filing the lawsuit in 2012, we take administrative notice that the case docket shows the complaint was filed in 2013. Bradley v. Cruz, et al., 1:13-CV-12927.

his complaint in that lawsuit. Tr. III:159 (Bradley); Ex. 7, at BBO416 (O'Sullivan "Summary" submitted to bar counsel**).** In September 2015, O'Sullivan was deposed in the lawsuit.[12] Ex. 7, at BBO272 (O'Sullivan's Statement Under Oath ("SUO") to bar counsel on March 30, 2022).

32. In 2018, Bradley resigned from his ADA position in Worcester and ran against DA Cruz for the office of Plymouth County District Attorney. Ex. 6, at BBO178 (Bradley's pro se response to bar counsel's investigation, dated March 10, 2021). Bradley described the campaign as "bitterly contested." Id. at BBO179. Bradley lost the election. Id.

33. Bradley was not employed as of the time of this hearing. See Tr. II:168 (Bradley).

D. Frances Choy's Post-Conviction Proceedings[13]

34. In October 2011, a few months after Frances's conviction, Attorney John Barter was appointed as Frances's defense counsel for her post-conviction proceedings. Tr. VIII:11-12 (Barter). Shortly after he was assigned the case, Attorney Barter received Frances's trial file from Attorney Krowski, Frances's defense counsel throughout her three trials. Tr. VIII:42 (Barter).

35. In approximately 2015, while the post-conviction proceedings were ongoing, Attorney Barter received an email from ADA Gail McKenna, in the PCDAO's appellate division, who was handling the Choy post-conviction proceedings at that time. Tr. VIII:19-20 (Barter); Tr. VIII:119, 121-122 (McKenna). In her email, ADA McKenna produced to Attorney Barter several emails exchanged by the respondents, which she characterized as "the racist emails." See Tr. VIII:120-125 (McKenna) ("…there were emails about Choy and they were obviously about Choy. They were mocking Kenny Choy, they were mocking Frances Choy. And so they were – to me it looked clearly racist and they needed to be turned over to Jay Barter, who

[12] We were not provided a copy of that deposition transcript.

[13] We take administrative notice that the post-conviction proceedings were lengthy. We describe only the relevant parts.

was defense counsel."); Tr. VIII:20-21 (Barter). Attorney Barter described the production as consisting of 34 pages of emails "some of which were of a racially charged nature. Some of which were about Frances Choy and/or members of her family." Id. at 21.

36. ADA McKenna testified that the emails she produced to Attorney Barter were first shown to her by ADA Bridget Middleton in late 2014 or early 2015. Tr. VIII:123, 130, 176 (McKenna). According to ADA McKenna, ADA Bridget Middleton told her that the respondents' emails first came to light because Bradley had requested his PCDAO emails during his federal lawsuit against the PCDAO and others. See Tr. VIII:122-125, 177 (McKenna). ADA McKenna testified that, at the time that ADA Bridget Middleton showed her the emails, she was giving legal advice to the PCDAO prosecutors in the Commonwealth v. Goncalves murder trial and that ADA Bridget Middleton considered the emails to be potentially relevant to that matter.[14] Tr. VIII:122-126, 130, 186-187 (McKenna).

37. After receiving the emails, Attorney Barter requested by letter and eventually by motion that any emails relevant to Frances's case be produced to him. Tr. VIII:22-25 (Barter). Ultimately, Attorney Barter was able to obtain the emails produced in the Goncalves case.[15] Tr. VIII:25-26 (Barter). He also received additional productions of emails from ADA Joseph Janezic after a hearing in the post-conviction proceedings. ADA Janezic was assigned to handle the

[14] O'Sullivan, who had left the PCDAO and was working in Bristol County, was initially listed as a prosecution witness in the Goncalves case. Tr. X:86-87 (O'Sullivan). The prosecution ultimately chose not to call her as a witness but, when defense counsel learned of that decision, the defense listed O'Sullivan as a witness. Tr. VIII:123 (McKenna); see Tr. X:87 (O'Sullivan). At that point, the prosecution gave a set of emails to the judge, *in camera*, to be reviewed for potential impeachment of O'Sullivan. Tr. VIII:185-186 (McKenna) The emails included two of the Kenneth emails described infra as well as a few emails not at issue here. See Ex. 7, at BBO403-406. Eventually, as a result of these proceedings, the emails were publicized in the media. Ex. 7, at BBO406; Ex. 6, at BBO183.

[15] Only two of the emails that were produced in the Goncalves case are at issue here. See Ex. 7, at BBO401-406. Both of those are emails related to Kenneth Choy.

post-conviction proceedings in the PCDAO[16] in March 2019, following ADA McKenna. Tr. VI:82 (Janezic). The production from ADA Janezic included emails exchanged by the respondents in which they compared Kenneth to Long Duk Dong, a character from the movie *Sixteen Candles*. Tr. VIII:31-34 (Barter).

38. In the meantime, in 2017, Attorney Barter asked Professor Sharon Beckman if she and the program she directed, the Boston College Innocence Program ("the Innocence Program"), would be interested in working with him on Frances Choy's case. Tr. VIII:48-49 (Barter); Tr. I:68-69 (Beckman). In addition to being the Director of the Innocence Program, Professor Beckman is an attorney and a law school professor. Tr. I:43-45 (Beckman). Professor Beckman testified that the Innocence Program, inter alia, provides representation to "innocent people who are wrongly convicted of crimes they didn't commit…" Tr. I:53 (Beckman). Professor Beckman and the Innocence Program became part of Frances's post-conviction defense team. See Tr. I:73 (Beckman).

39. In the summer of 2019, as part of the post-conviction proceedings, Attorney Barter and Professor Beckman met with ADA Janezic at the PCDAO and reviewed the prosecution's trial files. Tr. I:77-79, 132-133, 171-172 (Beckman); Tr. VIII:47-54 (Barter); Tr. VI:85, 128-130 (Janezic).

40. At some point afterwards, defense counsel requested the file of Eric Clark, the lead Brockton Police Detective who investigated the Choy homicides. See Tr. I:135-137; 203-204 (Beckman); Tr. VIII:59-60 (Barter); Tr. VI:88-89, Tr. IX:82-86, 91-93 (Janezic). There are some discrepancies in their testimony surrounding who made the initial request (Barter vs. Beckman) and when the request occurred (immediately after they reviewed the trial files in the

[16] At the time of this hearing, Attorney Janezic was an ADA in the Suffolk County District Attorney's Office. He was the chief of the Crime Strategies Bureau. Tr. VI:74 (Janezic).

summer of 2019 or some later date). We find those details to be irrelevant to our findings and generally credit the testimonies of Attorney Barter, Professor Beckman, and ADA Janezic as sincere. We find the discrepancies to be an ordinary result of the passage of time and not evidence, as Bradley suggested, of a conspiracy between Frances's post-conviction counsel and the PCDAO to discredit himself and/or O'Sullivan. See Bradley PFCs, ¶ 11.

41. In January 2020, Attorney Barter and Professor Beckman, on behalf of Frances, filed a Motion for Post-Conviction Relief and a Superseding Motion for Post-Conviction Relief with the Plymouth County Superior Court.[17] Ans. ¶ 74. Attorney Barter testified that they filed at this time because they were trying to meet a filing deadline that had been set by the judge. Tr. VIII:56 (Barter). We credit his testimony.

42. On March 16, 2020, ADA Janezic produced Detective Clark's file to Attorney Barter and Professor Beckman. Tr. IX:90-91 (Janezic); see Tr. I:124-125 (Beckman); Tr. VIII:61-63 (Barter). When they reviewed it, they discovered two reports in Detective Clark's file that they had not seen before, a Missing Person Report and a CAD Report (discussed in more detail infra). They recognized the reports as exculpatory evidence. Tr. VIII:65-68 (Barter). We credit their testimony. ADA Janezic testified that he believes Attorney Barter alerted him to the existence of the reports.[18] Tr. VI:90, 184-185, IX:82-84, 94-99 (Janezic). We credit his testimony.

[17] This Motion was not before us.

[18] The timeline and exact steps taken by the parties following the production of Detective Clark's file is unclear. Bradley spent significant time at both the hearing and in his posthearing brief analyzing the timing and circumstances surrounding the filing of Frances Choy's Motion for a New Trial, the PCDAO's response, and the Court's Memo and Order. He contends that it evinces a "coverup," and states that there was "something untoward in the way the *Choy* agreement transpired." Bradley PFCs, ¶ 244. We do not agree and reject this argument. We believe and credit the testimony of Attorney Barter, Professor Beckman, and ADA Janezic and again find any discrepancies as not unusual given the passage of time.

43. Attorney Barter worked with Frances's trial counsel, Attorney Krowski, to draft an affidavit addressing the prosecution's failure to disclose the exculpatory reports to be submitted in support of Frances's Motion for New Trial. Tr. II:72-75 (Krowski). Attorney Krowski signed the affidavit on August 29, 2020 and it was filed with the court on September 16, 2020. Tr. II:72-73 (Krowski).

44. On September 11, 2020, the PCDAO assented to Frances's Motion for New Trial and indicated that an evidentiary hearing was not necessary.[19] Ex. 26, at OBC-2301. The PCDAO did not join in every ground for relief asserted by Frances in her motion but stated that,

> Even if no one of the issues raised by her new attorneys, standing alone, may suffice to require a new trial, the cumulative effect of her trial attorney's errors, the trial prosecutors' misconduct, the newly disclosed confession of her relative, Kenneth Choy, and racially inappropriate emails of the trial prosecutors, together raise an unavoidable specter of injustice and cast such a pall over the trial that a new trial must be ordered.

Ex. 26, at OBC2295-2296. The response raised the respondents' failure to disclose two exculpatory reports to defense counsel. In addition, the PCDAO's response indicated that, if the Court allowed Frances's Motion, the PCDAO might enter a *nolle prosequi* of all charges. Ex. 26, at OBC-2301. The response was signed by ADAs John ("Jack") Zanini, Joseph Janezic, and B. Patrick Nevins.

45. On September 17, 2020, the Honorable Linda Giles of the Plymouth Superior Court entered an Order vacating Frances's criminal convictions after concluding that "justice may not have been done." Ans. ¶ 9; Ex. 1 (Memorandum of Decision and Order on Defendant

[19] Bradley describes this as an "extraordinary position" and contends that DA Cruz had an obligation to have an independent and unbiased special prosecutor handle the Choy post-conviction proceedings. He claims that DA Cruz's choice not to do so "evinces a clear and obvious effort – which has thus far been successful – to weaponize the *Choy* case against [Bradley] to tarnish his reputation and potentially ruin [Bradley's] professional career." Bradley PFCs, p. 3. Whether or not DA Cruz had a duty or obligation to enlist a special prosecutor to handle the Choy post-conviction proceedings is not a question for this committee.

Frances Choy's Motion for Postconviction Relief). The court's decision to vacate the convictions was based, in part,[20] on the respondents' alleged prosecutorial misconduct, including the respondents' emails[21] which the court characterized as "racially and sexually offensive," and "demonstrating [the respondents'] anti-Asian bias against [Frances]."

46. The court also noted the respondents' failure to disclose potentially exculpatory evidence,[22] finding:

> These documents [*i.e.*, the Missing Person Report and the CAD Report] indicating that Kenneth Choy ran away from home over a dispute with his grandfather over Kenneth's drug dealing and that Jimmy Choy reported Kenneth's drug dealing to the Brockton Police are exculpatory evidence that could have been used to show Kenneth Choy had a motive to commit the crimes and to impeach a key Commonwealth witness.

Ex. 1, at BBO037. The court found that "[n]either of the prosecuting attorneys provided this discovery to defense counsel." Ex. 1, at BBO038. The court reasoned that the "failure to disclose exculpatory evidence further supports the Court's conclusion that justice may not have been done." Id. at BBO038-039.

47. Finally, the court found that Bradley misstated the evidence during his closing argument when he argued that "the jury should credit Kenneth's immunized testimony because he still had charges pending against him for possessing a Class A substance in a school zone, a factual assertion that ADA Bradley knew or should have known to be false." Id. at BBO040. The court held that Bradley's misstatement of evidence was a contributing factor that convinced the court that justice may not have been done in Frances's criminal case. Id. at BBO044-045.

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[20] The court also found multiple instances where Attorney Krowski provided ineffective assistance of counsel to Frances as another ground for vacating Frances's convictions. See Ex. 1.

[21] It is clear from the court's order that there is not a perfect match between the emails Judge Giles reviewed and the emails at issue here; some of the relevant emails are described in the order as well as additional emails not directly at issue. See Ex. 1, at BBO013-014.

[22] Exculpatory evidence is any evidence that tends to negate the guilt of the accused (Frances) or that could serve as a mitigating factor in sentencing. Tr. II:207 (Bradley).

48. On September 29, 2020, the PCDAO entered a *nolle prosequi* effectively ending the prosecution of Frances. Ans. ¶ 11; Ex. 7, at BBO439. The document states, "The failure of the defendant's trial counsel [Attorney Krowski] to properly investigate and present witnesses at the Defendant's trial calls into question whether the Defendant received a fair trial." Ex. 7, at BBO439. It goes on to highlight a number of examples of where Attorney Krowski provided ineffective assistance of counsel and briefly mentions an inconsistent argument made by an unnamed prosecutor. The *nolle prosequi* does not reference the emails, the exculpatory reports, or Bradley's closing statement, all of which are at issue here.

49. At the time of her release from prison in 2020, Frances Choy was thirty-four years old. Ans. ¶ 12.

CHARGE ONE[23]
FINDINGS OF FACT

Missing Person Report and CAD Report

50. Bar counsel alleges that the respondents failed to disclose exculpatory evidence in their prosecution of Frances. More specifically, bar counsel alleges that the respondents were in possession of two exculpatory reports, a Missing Person Report and a CAD Report, that they were obligated, but failed, to disclose to Frances's defense counsel, Attorney Krowski. See PD ¶¶ 37-40.

[23] The Petition for Discipline was not separated into different counts but it contained three charges: (1) the respondents failed to disclose exculpatory evidence to the defense in their prosecution of Frances Choy; (2) the respondents, while serving the Commonwealth as assistant district attorneys prosecuting Frances Choy, used state property to exchange racially offensive, derogatory, and unprofessional emails directed at Frances and Kenneth Choy; and (3) Respondent Bradley, at the conclusion of Frances Choy's third jury trial, misstated evidence in his closing argument. See Petition for Discipline. For clarity, we will discuss the findings of fact and conclusions of law by each charge.

A. Were the reports exculpatory evidence that the respondents were required to disclose?

51. On or about January 11, 2003, three months before the fire, Jimmy Choy contacted the Brockton Police Department and informed them that his grandson, Kenneth, was selling drugs and had run away from home. Ans. ¶ 34; Exs. 3-4.

52. The Brockton Police Department created a Missing Person Report dated January 11, 2003 ("the Missing Person Report" or "MPR"), which detailed that Jimmy Choy had informed the police that Kenneth "refuses to come back home" and that his reason for leaving was "selling drugs." The report also contains the notation "(Brockton High School (Blue) building)." Ex. 3. Kenneth was a student at Brockton High School. See id.; Tr. XI:43-44 (Clark).

53. A computer aided dispatch or "CAD" system report was also created on January 11, 2003 ("the CAD Report") Ex. 4; Tr. III:18-19 (Bradley). The CAD Report reflects the same information: Jimmy Choy had reported to the police that Kenneth "ran…away / selling drugs" and "can be found at the B.H.S. in the blue build." Ex. 4.

54. Eric Clark, the lead Brockton Police Department Detective[24] assigned to the Choy case on the morning of the fire, explained that a CAD Report is a log of a call within the police department's computer system. Tr. XI:10-12, 47 (Clark). The report contained the information from the call and a case number. As he explained, "So back in that time period, we would look this up in the dispatch system, find the call, get the case number and that would reference us to be able to pull the [handwritten] report from the records department." Tr. XI:12-13 (Clark).

[24] At the time of this hearing, Eric Clark was a patrolman but, for ease of reference, we will refer to him as Detective Clark in this report. Tr. XI:9 (Clark).

55. Following Jimmy Choy's report to the police, a Brockton police officer, Officer Perez, canceled the Missing Person Report on January 13, 2003. Ex. 3 (bottom section of report). According to Detective Clark, Officer Perez went to Brockton High School, determined that Kenneth was at school, and canceled the Missing Person Report. Tr. XI:43-44 (Clark).

56. We find that the two reports, the Missing Person Report and the CAD Report, contained the same relevant information: in January 2003, Jimmy Choy had informed the police that Kenneth was selling drugs, had run away from home, and could be found at Brockton High School.

57. Both respondents agreed that the Missing Person Report and the CAD Report constituted potentially exculpatory evidence in Frances's criminal case. Ans. ¶ 37; Tr. II:207-208 (Bradley); Tr. IV:86 (O'Sullivan). We so find.

58. O'Sullivan testified that the exculpatory nature of the Missing Person Report was immediately apparent to her once she saw it. Tr. X:94-95 (O'Sullivan). As Professor Beckman explained, these reports could have been used to show that Kenneth had a motive to commit the crimes. Tr. I:151 (Beckman).

59. Both respondents agreed that the prosecution had an obligation to disclose the Missing Person Report and the CAD Report to Attorney Krowski, Frances's defense counsel. See Bradley Ans. ¶ 39 (admitting that "the respondents" had an obligation to disclose the reports to Attorney Krowski); O'Sullivan Ans. ¶ 39 (admitting that "the Commonwealth" had an obligation to disclose the reports to Attorney Krowski but denying that she, personally, had such an obligation). We find that the prosecution did have this obligation. We discuss whether or not this obligation applied equally to Bradley and O'Sullivan infra.

B. Did the respondents have one or both reports in their possession?

60. The CAD Report, dated January 11, 2003, shows that it was printed on May 28, 2003. Ex. 4. This was after the April 17th fire and during the timeframe that the grand jury was convened on Frances's case. Tr. XII:69-70 (Bradley) (grand jury convened on May 23, May 29, and June 13, 2003).

61. Detective Clark, who was a member of the "prosecution team"[25] along with the respondents, testified that part of his routine investigation was to do a history search to look up all the police calls for a relevant address in the computer system. He would view each call and, if there were corresponding handwritten reports, he would pull the reports from the records department. Tr. XI:12-14 (Clark). Before pulling the reports, he would print the CAD Report (which was the computer log of the call). Tr. XI:12, 14 (Clark). When asked who printed the CAD Report at issue here (Ex. 4), he responded, "I'm sure it was me." Tr. XI:13 (Clark). We credit this testimony.

62. Detective Clark testified that he may have done this history search at Bradley or O'Sullivan's request,[26] and that the timing of when he printed it (May 28, 2003, not directly after the fire) indicated to him that he likely performed the search at someone's request. Tr. XI:20 (Clark). He explained that after conducting the history search, he likely would have given the

[25] The prosecution team includes the prosecutors, the investigators in the office, and the police. Tr. VI:83-84 (Janezic); see also Tr. XI:47 (Clark); Tr. VIII:112 (Barter).

[26] It is undisputed that O'Sullivan was not involved in the prosecution of the Choy cases until late 2007.

reports[27] he found to either the state trooper[28] involved in the case or the ADAs handling the case, but he had no specific memory of doing so. Tr. XI:20-21, 25 (Clark). Bradley testified that he asked Detective Clark to do a history search on the Choy's address. Tr. XII:63 (Bradley). We credit Bradley's testimony.

63. Detective Clark testified that both the CAD Report and the Missing Person Report were in his file since May 2003. Tr. XI:53 (Clark). We credit his testimony and so find. Detective Clark further testified that his case file was a single, accordion-style file that contained somewhere between one hundred and forty and one hundred and fifty pages. Tr. XI:48 (Clark); Tr. VI:89-90 (Janezic); see also Tr. X:45 (O'Sullivan) (Clark's file fit into one accordion file folder).

64. Bradley's statement under oath ("SUO") was taken by bar counsel on March 3, 2022. Ex. 6. At that time, Bradley was shown an exhibit (Ex. 17 to the SUO), which consisted of both the CAD Report (BBO250) and the Missing Person Report (BBO251). He testified that he recognized "it" and that he produced "it." Ex. 6, at BBO160, BBO250-251. He stated:

> Q: Okay. And you said that you did disclose it. What evidence…
> A: That's correct.
> Q: …do you have that you disclosed it?
> A: None.
> Q: Okay. So how ARE you so certain that you disclosed this?
> A: Because I disclosed everything that was in my possession, and I know that was in my possession.
> Q: Okay. Do you recall disclosing this particular piece of evidence?
> A: No.

[27] Three additional CAD reports referencing the Choy's address (where the fire occurred) were in Detective Clark's file. Tr. XI:25 (Clark). They all related to damage done to the Choy's motor vehicles and were dated February 26, 2002, March 17, 2002, and January 26, 2003. Tr. XI:14-19 (Clark); see Exhibit 22. Those three other CAD reports were all printed on May 28, 2003 – the same date the CAD report marked as Exhibit 4 was printed. Compare Exs. 4 and 22; Tr. XI:19-20 (Clark).

[28] Scott Warmington was the lead State Police Trooper investigating the Choy homicides. Tr. III:27-28 (Bradley). Because the State Police have jurisdiction on murder investigations, the trooper runs the investigation. Tr. XI:21-24 (Clark). Trooper Warmington did not testify before us.

Ex. 6, at BBO161. Because the SUO exhibit contained both reports, it is impossible for us to parse whether Bradley meant he recognized one or both of the reports. Critically, what is clear, is that Bradley recognized at least one report and, as we found supra, the reports contained the same relevant information.

65. Later, in his Answer to the PD, Bradley admitted that, prior to Frances's first trial, he was in possession of a single report that he "believed to be the missing person report, which he received from the Brockton Detective Eric Clark, and subsequently provided to Attorney Krowski." Bradley Ans. ¶ 38; Tr. II:192-193 (Bradley); see Ex. 3.

66. Before us, Bradley's testimony on this issue was contradictory and confusing. On his first day of testimony, he testified that he was mistaken in his Answer, he "got the reports mixed up" and that the report he remembered and had in his file was the CAD Report and not the Missing Person Report. Tr. II:191-193 (Bradley). He claimed to have "zero" memory of whether the Missing Person Report was in his trial file at the PCDAO. Tr. II:201 (Bradley). Consequently, he had no memory of producing the Missing Person Report to Attorney Krowski. Tr. II:202 (Bradley).

67. Instead, he claimed to have a specific memory of first seeing the CAD Report when he sat down with Detective Clark to go through the contents of Clark's file sometime prior to Frances's first trial. Tr. II:202 (Bradley). He testified with particularity that he copied the report and gave the copy back to Detective Clark. Tr. II:204 (Bradley) (emphasis added). However, while testifying before us the next day, he said he did not recall who made the copy:

> Q: So you saw a printout of the CAD report from Detective Clark?
> A: Yes.
> Q: Then did you make a copy or did he make the copy?
> A: I don't recall.
> Q: But in any event, you had a copy of did he just show you and then take it away?

A: No, a copy would have been made, at least one copy.

Tr. III:19-20 (Bradley). There is no way to square this amnesia with his very specific testimony the day before. While the committee recognizes that the passage of time can cause memories to fade, Bradley's attempt to cover all his bases at the hearing appeared insincere and made it impossible to credit his testimony on this point.

68. Moreover, despite the fact that Bradley claims he instructed Detective Clark to conduct the history search on the Choy address, and the CAD Report was printed on May 28, 2003 (while the grand jury proceedings were ongoing), Bradley testified that he was absolutely certain he did not have it during the grand jury proceedings. Tr. III:22-23 (Bradley). Yet, at the same time, he claims he cannot remember exactly when he first saw the CAD Report. Tr. III:19-20 (Bradley) ("It could have been anywhere from 2004 to weeks before the first trial [in 2008]."). We question how he could recall that he definitely did not have the reports in 2003 if he cannot remember when he first saw them. While we credit that Bradley saw the CAD Report at some point prior to Frances's first trial, we do not credit Bradley's testimony that he remembers when he first saw it.

69. On his final day of testimony before us, Bradley testified that he did not recall the date but Detective Clark brought his file to Bradley's office and Bradley copied everything that he did not already have, including the CAD Report. Tr. XII:63 (Bradley). At this point, he again claimed to specifically remember copying the report himself. He further testified that having seen the additional CAD reports (Ex. 22) he "now remember[s]" that he had them in his possession as well and all of those reports were turned over to Attorney Krowski. Tr. XII:64 (Bradley). We do not credit his testimony that he specifically remembers copying and producing the CAD Report to Attorney Krowski.

70. When asked to explain during the hearing what a CAD report is, Bradley testified, "You know, this might have been the first CAD report I've ever seen. It's just a very short report. That's about all I can tell you." Tr. II:203 (Bradley). When asked, "…you never saw a CAD report before?" He answered, "Not that I can recall." Id. Despite it allegedly being the first CAD report he had ever seen, he testified that he did not ask Detective Clark what it was or what the CAD system was because he "wasn't that curious. I was more focused on the contents." Tr. II:203 (Bradley).

71. By contrast, ADA Janezic testified that CAD reports are "ubiquitous" in criminal cases, "Anytime there is a call, either dispatch or 911 call, they are there. Every call." Tr. VI:88 (Janezic). He further testified that they are a routine part of discovery in criminal cases. Id. This comports with Detective Clark's testimony that doing a history search and printing CAD reports was a routine part of his investigations. See Tr. XI:10-14 (Clark). We credit ADA Janezic's and Detective Clark's testimony. We were surprised at Bradley's testimony that he never saw a CAD report before, and could not explain to us what it was, despite his long career as a prosecutor.

72. O'Sullivan testified that she had no memory of seeing the MPR or CAD reports during the prosecution of Frances. Tr. IV:111-112 (O'Sullivan). However, she also testified that she believed that at least one of those reports was in her file during the prosecution (see Tr. IV: 112-113; X:171-172) and that she had no reason to dispute that those reports were in Detective Clark's file. Tr. X:71 (O'Sullivan). We credit only her testimony that she does not dispute that the reports were in Detective Clark's file and do not believe her other testimony on this point.

73. As established supra, Bradley has admitted seeing at least one of the reports. O'Sullivan testified that she "absolutely would have [seen]" at least one of the reports during the

prosecution of Frances. Tr. IV:111-112 (O'Sullivan). Therefore, we find that the respondents were in possession of at least one of the reports during the prosecution of Frances. As noted, the reports contained essentially the same information, information that was potentially exculpatory for Frances and that the respondents were required to disclose to Attorney Krowski, Frances's defense counsel. In addition, based on the evidence and testimony, we find that both reports were in Detective Clark's file on or about the date the CAD report was printed, May 28, 2003. Because Detective Clark was part of the prosecution team, we find that the respondents were in constructive possession of both reports prior to Frances's first criminal trial in January 2008.

C. Did the respondents disclose one or both of the reports?

74. Neither respondent has a memory of producing the Missing Person Report to Attorney Krowski. In fact, neither respondent has a memory of ever seeing it. Tr. X:70-71 (O'Sullivan); Tr. XII:142-143 (Bradley). We find that neither respondent produced the Missing Person Report to Attorney Krowski.

75. Bradley claims, however, that he did produce the CAD Report to Attorney Krowski. Tr. II:203-204 (Bradley). As we found supra, we do not credit Bradley's testimony that he has a specific memory of producing the CAD Report. In addition, as described infra, there are numerous pieces of evidence, including testimony and documents, that support our finding that neither report was disclosed to Frances's defense counsel.

76. First, Attorney Krowski testified that neither the CAD Report nor the Missing Person Report was disclosed to him. He asserted that he never saw either report until 2020 during the post-conviction proceedings. Tr. II:44, 46, 49, 96-97 ("And I know I had never seen [the Missing Person Report] or the CAD up until [2020]. And there was no record that I have of

ever having received it."). We credit Attorney Krowski's testimony on this point and find it supported by other evidence and testimony as described infra.

77. Second, both Attorney Barter and Professor Beckman, who handled the post-conviction proceedings on Frances's behalf, confirmed that they reviewed Attorney Krowski's trial file and neither report was in the file. Tr. I:74, 88, 136, 213 (Beckman); Tr. VIII:111-112 (Barter). We credit their testimony and find them to be sincere.[29] Importantly, Attorney Krowski's file was turned over to Attorney Barter soon after the notice of appeal was filed in 2011—many years before the failure to disclose these reports came into controversy in 2020. See Tr. II:51, 97-98 (Krowski) (Krowski's files turned over to Attorney Barter "probably a week after [Barter] was appointed"); Tr. VIII:42 (Barter). In other words, the timing virtually eliminates the possibility that the reports could have been removed from the file purposely by Attorney Krowski.

78. Third, Attorney Joseph Janezic,[30] the ADA in the PCDAO assigned to handle the post-conviction proceedings in March 2019, testified that neither report was in the trial file maintained by the PCDAO. Tr. VI:82, 90 (Janezic). We credit his testimony which we found to be forthcoming and genuine. Attorney Janezic's testimony on this point is corroborated by the testimony of Attorney Barter and Professor Beckman who also reviewed the PCDAO's trial file during the post-conviction proceedings.[31] Tr. I:77-79, 132-133, 205-206, 212-213 (Beckman);

[29] We do note, however, that they did not directly compare the discovery in the prosecution's trial file and Attorney Krowski's trial file to confirm that all other discovery sent by the prosecution was in Attorney Krowski's file. Given the preponderance of the evidence standard in this proceeding, even absent this confirmatory analysis, we still find it more likely than not that the reports were never produced by the prosecution to Attorney Krowski.

[30] Neither respondent knew Attorney Janezic. Tr. III:63 (Bradley); Tr. IV:118 (O'Sullivan); see also Tr. VI:81-82 (Janezic).

[31] ADA Janezic testified, and we credit, that someone from the PCDAO supervised Attorney Barter and Professor Beckman's review of the PCDAO trial file. Tr. IX:80 (Janezic) ("Q: Did you stay there the whole time? A: Yes. Someone was – no one is ever left unattended with those boxes.").

see Tr. VIII:47-48, 61-65 (Barter). In fact, Frances's trial counsel and post-conviction counsel, Attorneys Barter and Krowski, and Professor Beckman, all testified, and we credit, that the first time they saw either report was in March 2020 when Detective Clark's file was produced by ADA Janezic in connection with the postconviction proceedings.[32] Tr. I:82, 88-89, 135-137, 212-213 (Beckman); Tr. VIII:61-66 (Barter); Tr. II:95-97 (Krowski); Tr. IX:90-92 (Janezic). ADA Janezic testified that after the file was produced, he believes it was Attorney Barter who flagged the reports as being undisclosed and potentially exculpatory. Tr. VI:90, 184-185; Tr. IX:95, 98 (Janezic); see also Tr. VIII:66 (Barter). At that point, ADA Janezic went back through the PCDAO trial file and confirmed that the reports were not in it. Tr. VI:184-185; Tr. IX:98-101 (Janezic). We credit his testimony.

79. Fourth, Bradley testified that it was his practice, when producing discovery to defense counsel, to draft disclosure letters identifying with particularity the materials that were being disclosed. See Tr. III:59; Tr. XII:64-66 (Bradley); Exhibit 5 (disclosure letters). He further testified that it was his practice to retain in the PCDAO trial file copies of all disclosure letters that were sent to defense counsel. Tr. III:59; Tr. XII:64-66 (Bradley). Similarly, Attorney Krowski testified that he retained in his trial file all the disclosure letters that were sent to him in Frances's case. Tr. II:50-51 (Krowski). Significantly, neither report is listed in the disclosure letters that are contained in either the PCDAO trial file or Attorney Krowski's trial file. Ex. 5; Tr. I:89-90 (Beckman); Tr. VI:90-91 (Janezic). We infer from the absence of any disclosure letter

[32] We did not find it significant that Beckman, Barter, and Janezic had slightly different memories of who first requested Detective Clark's file (Barter or Beckman) or when the request was made. We find the discrepancies between their testimony to be attributable to the passage of time and not, as suggested by Bradley, the result of collusion or conspiracy between Attorney Barter, Professor Beckman, and the PCDAO. As stated above, we found them to be credible witnesses.

identifying these reports as being disclosed to defense counsel that the reports were not disclosed.

80. Fifth and finally, Kenneth was not cross-examined about the reports when he testified at Frances's second trial.[33] Attorney Krowski cross-examined Kenneth about multiple potential motives he may have had to commit the crimes. For example, he asked Kenneth about physical abuse by Jimmy Choy, whether the Choys treated Frances more favorably than Kenneth, whether Kenneth had been accused of stealing jewelry from Anne Choy, and whether Kenneth was angry because Jimmy Choy did not permit him to drink soda. Tr. I:113-115 (Beckman); Tr. II:32-36 (Krowski). However, Attorney Krowski never asked Kenneth about whether Jimmy Choy had reported to the police that Kenneth had run away from home and was selling drugs. See Tr. I:113-114 (Beckman). Attorney Krowski testified credibly before us that while he knew from his client, Frances, that Kenny had run away, he did not know about the alleged drug involvement or that Jimmy Choy had reported it to the police. Tr. I:98-100 (Krowski). As Professor Beckman explained, "…his grandfather reporting him to the police for dealing drugs, not permitting that to be happening, to me that was an extremely powerful motive for vengeance against his grandfather." Tr. I:115-116 (Beckman). Attorney Krowski testified that he was not in possession of the Missing Person Report or the CAD Report or he would have used the potentially exculpatory evidence they contained to cross-examine Kenneth at trial. Tr. II:47-50, 52-53 (Kroswki) ("I didn't know that there was any kind of drug allegation against him at the time. I'm pretty sure of that."). We credit this testimony.[34]

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[33] As noted supra, Kenneth's testimony at Frances's second trial was then read into the record at Frances's third trial after Kenneth fled the country.

[34] We concede that Attorney Krowski's memory is not without controversy. He was effectively cross-examined by the respondents before us on at least unrelated issues where his memory was, at best, faulty. See Tr. II:78-95 (Krowski). If the lack of use of the reports in Attorney Krowski's cross-examination of Kenneth Choy was the only evidence before us, it would not be enough to prove beyond a preponderance of the evidence that the

81. O'Sullivan admits that she did not disclose either report to Attorney Krowski. See O'Sullivan Ans. ¶¶ 38-40. However, she argues in her defense that she was not responsible for disclosing either report, which we discuss in more detail infra.

82. Based on the evidence and testimony set forth supra, we find that the respondents never disclosed the Missing Person Report or the CAD Report to Attorney Krowski, Frances's defense counsel.

D. Was O'Sullivan equally responsible for disclosing one or both of the reports?

83. Bar counsel argues that the respondents were jointly responsible for ensuring that the Missing Person Report and the CAD Report were disclosed to Attorney Krowski by virtue of the fact that they each entered an Appearance for the prosecution in Frances's case. See Bar Counsel's PFCs, ¶ 135; see also Mass. R. Crim. P. 7(c).

84. Bradley testified that he was "in charge of the case" and solely responsible for providing discovery to Attorney Krowski during the Choy prosecutions. Tr. III:145-146 (Bradley). We credit that Bradley believed this to be his responsibility. We also credit Bradley's testimony that he and O'Sullivan were not co-equals in terms of their responsibility for the case, that he was the lead counsel, and that O'Sullivan was working in a subordinate capacity to him. Tr. III:151-152 (Bradley). We further note that Bradley signed all the disclosure letters. Ex. 5; Tr. I:174 (Assistant Bar Counsel Makalusky stipulates to this).

85. O'Sullivan testified that she had no significant involvement in the case until late 2007 when she and Bradley started to prepare for Frances's first trial in January 2008. Tr. X:44 (O'Sullivan). We credit this testimony. We further credit her testimony, corroborated by Bradley,

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respondents failed to disclose the reports. However, taken together with the other evidence and testimony we describe above, it is one piece of evidence that we consider in supporting our finding that the reports were not disclosed.

that Bradley never asked her to go back through the file to make sure that everything had been turned over to the defense. Tr. X:66-67 (O'Sullivan); Tr. III:148 (Bradley).

86. However, we do not agree that O'Sullivan was simply a second chair prosecutor with no disclosure obligations of her own. While she was junior to Bradley, she was not a new or inexperienced prosecutor.[35] See Tr. I:28 (Attorney Mone). In fact, both respondents conceded that they had an ongoing duty to disclose exculpatory material throughout the prosecution of Frances. See Tr. III:169-170 (Bradley); Tr. IV:93-94, 97-98 (O'Sullivan).

87. O'Sullivan testified that Bradley assigned her the examinations of five to seven witnesses at each of Frances's three trials, including Detective Eric Clark.[36] Tr. IV:113, 120-121; Tr. X:44 (O'Sullivan). It was O'Sullivan's responsibility to meet with these witnesses to prepare them for their trial testimony and to take their testimony at trial. Tr. X:44 (O'Sullivan).

88. Before each of Frances's three trials, O'Sullivan met with Detective Clark "several times" to prepare him for testifying. Tr. X:69-70 (O'Sullivan); compare Tr. XI:35-36 (Clark) (he believes he met with O'Sullivan to prepare for his testimony just once per trial). O'Sullivan testified that each time he brought his file[37] and she went through it. Tr. IV:113-114; Tr. X:70, 100 (O'Sullivan).

89. At her statement under oath taken by bar counsel on March 30, 2022, O'Sullivan testified, "I met with Eric Clark multiple times before each of the trials and during those meetings he would've brought his binder and he would've put everything on the table and we

[35] We again note that by the time of Frances's first murder trial in January 2008, O'Sullivan had already prosecuted two murder trials on her own. Tr. IV:120 (O'Sullivan).

[36] O'Sullivan was also responsible for the same witnesses – including Detective Clark – at Kenneth's trial. Tr. X:49-50 (O'Sullivan).

[37] As we found supra, Detective Clark's file was not large; it was a single, accordion-style file that contained somewhere between one hundred and forty (140) and one hundred and fifty (150) pages. See supra at ¶ 63.

would've gone through everything. Absolutely." Ex. 7, at BBO317. However, before us, O'Sullivan backtracked, testifying that she "wouldn't say he put everything on the table" and that she was referring only to the police reports he wrote. Tr. X:99-101 (O'Sullivan). Although she admitted that it was her duty and responsibility to go through his file, she testified, "I didn't go through everything in his file every single time he came to the office." Id.

90. When O'Sullivan first testified during her disciplinary hearing, on March 29, 2024, she stated that Bradley "absolutely assured me that he had turned over all evidence." Tr. IV:109 (O'Sullivan). Bar counsel clarified, "Well, when you say 'assured,' he never said that to you, did he?" She responded, "I don't have a specific memory. But I'm not saying he didn't." Id.

91. O'Sullivan then described a discussion with Bradley sometime in 2005 about "the way in which discovery should be provided to defense counsel." She claims he told her that "…when dealing with difficult defense attorneys, such as Krowski, you have to be absolutely certain that you turn over all discovery, which means meeting with investigators prior to the start of a trial, making sure you have absolutely everything in your file that is in the police officer's file." Tr. IV:109-110 (O'Sullivan). She claims this was Bradley's assurance to her that he had taken these steps in Frances's case. However, we note that this conversation is claimed to have occurred in 2005, years before the Choy cases went to trial in early 2008.

92. Upon resuming the witness stand on May 8, 2024, O'Sullivan's story evolved into a more specific memory. She claimed that Bradley "told [her] that he had provided all discovery in the case to Attorney Krowski." Tr. X:109 (O'Sullivan). She further asserted that Bradley "had already indicated he had turned over all reports to defense counsel." Tr. X:47 (O'Sullivan). However, she could not recall when this conversation occurred. See Tr. X:109 (O'Sullivan).

Bradley, for his part, could not recall this conversation ever happening. See Tr. III:172 (Bradley) ("Q: You never told Respondent O'Sullivan that you had produced the CAD report to defense counsel, did you? A: I don't recall whether I did or not."); Tr. III:173 (Bradley) ("Q: Do you recall ever telling her that, I've already produced all the exculpatory evidence? A: I don't recall that, no."). We do not credit O'Sullivan's testimony and generally found her testimony before us to be evasive and disingenuous. We find that Bradley never specifically assured O'Sullivan that he had produced all reports to Attorney Krowski and O'Sullivan's testimony on this point was deliberately false.

93. O'Sullivan was the prosecutor directly responsible for preparing the lead Brockton Police Department investigator, Detective Clark, for all four Choy trials (Frances's three trials and Kenneth's only trial). We find that, under these circumstances, there was an onus on her to review Detective Clark's file and compare it with the PCDAO trial file to make sure everything required to be disclosed had been produced. Bradley agreed. See Tr. III:172 (Bradley) ("Q: So if Respondent O'Sullivan met with Detective Clark in part of witness prep, trial prep, and she stumbled upon the CAD report, she would have a duty to ensure that that was disclosed to defense counsel, wouldn't she? A: Yes. Q: And if she didn't do that, she would fail in her responsibility as one of the prosecutors in the case? A: That's true.").

94. O'Sullivan admitted that she never compared Bradley's trial file with Detective Clark's file to confirm that Bradley's file contained everything in Detective Clark's file. Tr. X:113-114 (O'Sullivan). We find that it was her responsibility to do so. As O'Sullivan testified, if she had seen the reports, she would have immediately recognized their exculpatory value. Tr. IV:95-97 (O'Sullivan). At that point, O'Sullivan would have been responsible for verifying that the exculpatory evidence had been turned over. Even if we believed O'Sullivan about her

conversation with Bradley in 2005, which we do not, under these circumstances that assurance would still fail to absolve O'Sullivan of her independent disclosure obligations.

95. O'Sullivan argued that Detective Clark's testimony "was solely the statements that Frances Choy had made during their interview." Tr. IV:164 (O'Sullivan). She testified that her "focus" in preparing Detective Clark for his trial testimony was centered on Frances Choy's statements and not any reports which Detective Clark did not author, such as the Missing Person Report and the CAD Report. See Tr. X:46-47 (O'Sullivan). But we note that, in addition to fulfilling disclosure obligations, a prosecutor should review a witness's file when preparing the witness for trial testimony because the witness needs to be ready for questions that arise in both direct and cross-examination testimony. O'Sullivan could not have adequately prepared Detective Clark for his full trial testimony without doing a complete review of his file.

96. Bar counsel contends that Bradley intentionally withheld the reports and proffers various reasons why. Bar counsel PFCs, ¶¶ 120, 123-127. We reject this argument and do not find that the reports were "withheld." Bar counsel has not proven to us by a preponderance of the evidence that the respondents' failure to disclose either or both of the reports was intentional. Rather, we find that the respondents' failure to disclose the reports was negligent, in dereliction of their prosecutorial duties, and calls into question their competence and thoroughness in their handling and disclosure of exculpatory evidence.

97. In his posthearing brief, Bradley claimed that the PCDAO "fabricated" the claim that the respondents failed to disclose potentially exculpatory evidence to defense counsel and "agreed to Choy's Motion for a New Trial, as part of retaliatory, vindictive plan to tarnish [Bradley's] reputation and ruin [Bradley's] legal career." Bradley PFCs, ¶ 8. Similarly, Bradley testified before us that DA Cruz "saw an opportunity to use the Choy case as a weapon against

Miss O'Sullivan and myself. He saw an opportunity to make himself look very good and to make us look very bad." Tr. I:24 (Bradley). We make no findings on the PCDAO's methods or motivations for assenting to Frances's motion for new trial or its subsequent determination to *nolle prosequi* the case. We find the PCDAO's reasons for these decisions to be irrelevant to our mission, which is to determine if the respondents violated the Rules of Professional Conduct. Nevertheless, we considered Bradley's fabrication claims and found not only that they were unsupported by any evidence, they were directly contradicted by the ample evidence described supra. That evidence is sufficient to establish that the prosecution team had the reports and failed to disclose them to the defense.

CHARGE ONE
CONCLUSIONS OF LAW

98. Bar counsel charged that by failing to disclose to Frances Choy's defense counsel potentially exculpatory evidence known to them, the respondents violated Mass. R. Prof. C. 1.1 (provide competent representation to a client), 1.3 (act with diligence in representing a client), 3.4(a) (do not obstruct another party's access to evidence), 3.4(c) (do not knowingly disobey an obligation under the rules of a tribunal), 3.8(d) (prosecutor to timely disclose to defense all evidence or information known to prosecutor that tends to negate guilt of the accused or mitigates the offense), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), 8.4(d) (conduct prejudicial to the administration of justice) and 8.4(h) (do not engage in any other conduct that adversely reflects on fitness to practice law).[38]

99. We begin with Mass. R. Prof. C. 3.8(d) because it presents the central issue. The Rule requires prosecutors to "make timely disclosure to the defense of all evidence or

[38] This case concerns misconduct that occurred in 2008 and 2009, therefore, we refer to the rules of professional conduct as they existed at that time. See Matter of Brauer, 452 Mass. 56, 64 n.11 (2008).

information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense." As the SJC recently held, "this duty to disclose derives from the core responsibility of a prosecutor 'to administer justice fairly.'" Graham v. District Att'y for Hampden Dist., 493 Mass. 348, 361 (2024) (internal citations omitted).

100. We found that the respondents were in actual and constructive possession of the reports before Frances's first trial, that the reports were exculpatory, and that "the prosecution" was obligated to disclose the reports to the defense. Bradley asserts that he did not violate Rule 3.8(d) because he claims that he did disclose one of the reports to Attorney Krowski. We found that he did not. Bar counsel has proved that Bradley violated Rule 3.8(d).

101. O'Sullivan likewise claims that she did not violate Rule 3.8(d) but for different reasons. She believes that she had no duty or obligation to disclose the reports because (a) Bradley was the lead prosecutor on the case, (b) Bradley assured her that he had disclosed all the reports to the defense, and (c) she was unaware the reports had not been disclosed.

102. While we agreed and found that Bradley was the lead prosecutor, we did not credit O'Sullivan's testimony that Bradley specifically assured her that he had turned over all reports. Moreover, even if he had, that would not have absolved O'Sullivan. O'Sullivan was an experienced prosecutor at the time of Frances's Choy's three trials. She was tasked by Bradley with preparing the lead Brockton Police Department investigator, Detective Clark, for his trial testimony and conducting his direct examination at trial; he was not a peripheral witness. It is undisputed that Detective Clark was a member of the prosecution team and the reports at issue were in his file on or about May 28, 2003—many years before the start of Frances's first trial. "A prosecutor's duty to disclose extends to all facts within the 'possession, custody, or control' of a member of the prosecution team. The prosecution team generally is understood to include

prosecutors and relevant law enforcement personnel." Graham, supra, at 361 (internal citations omitted). This broad duty to disclose includes "information that may not even be known to the prosecutor or housed within his or her files, so long as the information is related directly to the crimes at issue and is in the possession of some prosecution team member." Id. at 362 (internal citations omitted); see also Commonwealth v. Francis, 474 Mass. 816, 826 (2016).

103. Given O'Sullivan's trial assignment, she had a duty to review Detective Clark's file for at least two reasons: (1) to fulfill her ongoing discovery obligations as a prosecutor to disclose exculpatory evidence within the possession of a prosecution team member, and (2) to adequately prepare Detective Clark for trial. As she admitted, if she had seen the reports, which she does not dispute were in the file, their exculpatory nature would have been immediately apparent to her. Her ongoing obligation was to ensure that any exculpatory evidence in her witness's file had been turned over to the defense. She argues that she did not know that the reports had not been turned over to Attorney Krowski. See O'Sullivan's PFCs, ¶¶ 30-31. Ignorance is not a defense. We find it was her duty to know; and if she did not know, she had an obligation to find out.

104. O'Sullivan argues that bar counsel did not prove she violated Rule 3.8(d) because he did not prove that she "consciously failed" to disclose the reports. See O'Sullivan PFCs, ¶¶ 31-32. Essentially, O'Sullivan seems to claim that Rule 3.8(d) requires a showing of intentional conduct. Matter of Foster et al., the only disciplinary case in Massachusetts finding a violation of Rule 3.8(d), involved such "intentional and egregious" misconduct. Matter of Foster et al., 492 Mass. 724 (2023). There, an assistant attorney general withheld exculpatory evidence during the prosecution of a drug lab chemist resulting in the dismissal of thousands of pending drug charges and convictions. Id. at 725. Kaczmarek, the trial prosecutor, knowingly failed to produce

exculpatory evidence and made materially false and intentionally misleading statements to her colleagues that everything in a specific state police investigator's file had been turned over. Id. at 738. Ultimately, Kaczmarek was disbarred because her intentional misconduct affected the due process rights of thousands of criminal defendants. She was found to have violated Mass. R. Prof. C. 1.1, 1.3, 3.4(a), 3.4(c), 3.8(d), 8.4(d).

105. Here, significantly, the respondents' failure to disclose was not intentional like Kaczmarek's misconduct. However, in our view, the withholding of exculpatory evidence does not have to be knowing or intentional to violate the rule. In a matter of first impression, under our plain reading of Rule 3.8(d), we conclude that intent is not required; the failure to disclose may be negligent. See In re Disciplinary Action Against Feland, 820 N.W.2d 672 (2012) (in a matter of first impression, the Supreme Court of North Dakota held that a plain reading of Rule 3.8(d) did not limit the application only to intentional violations and, therefore, found that the prosecutor's negligent failure to disclose was a violation); see also In re Jordan, 913 So.2d 775 (La. 2005) (holding that in Louisiana, Rule 3.8(d) does not incorporate a mental element and could be violated by conduct that was not intentional); cf. In re Attorney C, 47 P. 3d 1167 (Colo. 2002) (the Colorado Supreme Court held that, because it did not wish to interfere with the trial courts' routine handling of discovery violations, it read Rule 3.8(d) to apply only to those circumstances where a prosecutor intentionally withholds exculpatory evidence). We conclude that bar counsel has proven that O'Sullivan violated Rule 3.8(d).

106. O'Sullivan also argues that her reliance on Bradley is a complete defense under Mass. R. Prof. C. 5.2(b). The Rule provides that: "A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty." She asserts that she was a

subordinate lawyer working at the direction of Bradley and he was in charge of discovery. Further, she claims that she did not know that the reports were not turned over and that Bradley specifically assured her that he had "turned over all reports." Although Bradley was the lead prosecutor and was in charge of discovery, we did not credit O'Sullivan's evolving testimony about his specific assurance that he had disclosed all reports, which was not corroborated by Bradley. We reject that this defense applies to O'Sullivan's conduct for all the same reasons we found that she violated Rule 3.8(d). In the alternative, O'Sullivan argues that her reasonable and good faith reliance on Bradley is a special mitigating factor under Foster. See Matter of Foster et al., supra, at 726. We discuss this infra in the section on Mitigation.

107. If O'Sullivan had not been in charge of preparing Detective Clark for his trial testimony, and questioning him at trial, our decision may have been different. If O'Sullivan had specifically asked Bradley if he had produced the Missing Person Report and the CAD Report to the defense and Bradley told her that he had, our decision may have been different. As it was, O'Sullivan performed her duties in an incompetent manner. She did not review Detective Clark's file with him to ensure that the trial file included everything he had in his file. She did not recall seeing the reports which were available to her if she had diligently reviewed his file.

108. The respondents were prosecutors with the Commonwealth as their client. For the same reasons we set forth supra, we conclude that the respondents were neither competent nor diligent when they failed to disclose potentially exculpatory information in their possession to the defense. Bar counsel has proved violations of Rules 1.1 and 1.3. See Matter of Foster et al., supra, at 759, 765.

109. The respondents, as prosecutors, had ongoing obligations to disclose the reports to the defense and they failed to do so. This failure interfered with the defense's access to

information or evidence. Bar counsel has proved the respondents violated Rule 3.4(a). See Matter of Foster et al., supra, at 765 (violation of Rule 3.4(a) in failing to disclose potentially exculpatory evidence known to Kaczmarek).

110. By contrast, Rule 3.4(c) prohibits a lawyer from "knowingly" disobeying an obligation under the rules of a tribunal. We do not find that the respondents intentionally failed to disclose the reports; they negligently did so. See Matter of Veysey, 26 Mass. Att'y Disc. R. 701 (2010) (violation of Rule 3.4(c) for lawyer's intentional failure to respond to bar counsel's investigation and intentional violation of court's order of administrative suspension). Therefore, we conclude that bar counsel has failed to prove a violation of Rule 3.4(c) by either respondent.

111. Similarly, we conclude that bar counsel did not prove a violation of Rule 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). See Matter of Foster, 492 Mass. at 757-759 (finding that there was no Rule 8.4(c) violation by subordinate attorney with a limited role who was told by three superiors that "everything had been disclosed" where there was insufficient evidence that the attorney knew the AGO had exculpatory evidence that had yet to be turned over).

112. Rules 8.4(d) (conduct prejudicial to the administration of justice) and 8.4(h) (conduct that adversely reflects on fitness to practice), unlike Rule 8.4(c), do not require proof of intentionality. Matter of Faro, 35 Mass. Att'y Disc. R. 122, 123 (2019) (unintentionally false statement of material fact to bankruptcy court violated Rule 8.4(d)); Matter of Serpa, 30 Mass. Att'y Disc. R. 358, 367 (2014) (violation of Rules 8.4(d) and (h) for filing unknowingly false affidavit and giving unknowingly false testimony in court); Matter of Acharya, 26 Mass. Att'y Disc. R. 4, 6 (2010) (violation of Rules 8.4(d) and (h) for making unintentionally false representations to the court about the trial proceedings). The respondents failed to adequately

prepare for Frances's trials because they did not fulfill their ongoing obligation to disclose all potentially exculpatory information. If the respondents had properly reviewed Detective Clark's file in preparing him for his testimony, they would have discovered the reports and, presumably, disclosed them to Attorney Krowski. Instead, this evidence was never brought to light and it affected the rights of the defendant, Frances Choy. It was one of the factors the court considered in overturning Frances's convictions.[39] See Ex. 1; see Matter of Foster et al., supra at 765 (the SJC held that Kaczamarek violated Rule 8.4(d) by failing to disclose the potentially exculpatory evidence known to her); see also Matter of Kurtzrock, 192 A.D.3d 197, 219 (2020) (finding violations of Rules 3.8(d), 8.4(d) and (h) where a prosecutor failed to disclose exculpatory evidence and holding, "The defendant was deprived of a fair trial and the victim's family was deprived of a full measure of justice. Public trust and confidence in the criminal justice system was also undermined."). Cf. Matter of Smith, 35 Mass. Att'y Disc. R. 554 (2019) (concluding that the lawyer did not violate Rule 8.4(d) because "there is nothing in the record to indicate that [the misconduct] interfered with the ability of the court to conduct its business or that [the misconduct] affected the rights of any of the parties to the proceeding."). We conclude that the respondents' conduct prejudiced the administration of justice and adversely reflected on their fitness to practice. Bar counsel has proved that both respondents violated Rules 8.4(d) and (h).

[39] We reviewed Judge Giles's Memo and Order (Ex. 1) but we are not bound by it and it has no preclusive effect in this proceeding. See Matter of Fleming, 27 Mass. Att'y Disc. R. 334, 339 (2011) ("…while we have considered the successor receiver's report for substantive purposes, we have made only those findings that we deem reliable, relevant, and reasonably necessary to our disposition of the matter before us."). Given that no evidentiary hearing occurred before Judge Giles, and the respondents had no voice in the post-conviction proceedings, we ascribe Judge Giles's decision weight only where we have independently found sufficient evidence to support and agree with her findings.

CHARGE TWO
FINDINGS OF FACT

The Emails Exchanged by the Respondents

113. Bar counsel alleges that, while they were prosecuting Frances, the respondents exchanged several emails that were racially offensive, derogatory and unprofessional. See PD, ¶¶ 41-64. For ease of reference, the emails are attached to this report and bear the same exhibit numbers as the Petition for Discipline. See Exhibits 1-7 to the PD, attached hereto; see also Ex. 7, at BBO441-447, 455-459.

114. As discussed supra, the emails at issue first came to light in 2015—six to seven years after they were exchanged by the respondents in 2008 and 2009. They were uncovered in connection with Bradley's federal lawsuit against the PCDAO. The emails were then produced to a court in connection with an unrelated case that was then being prosecuted by the PCDAO, Commonwealth v. Goncalves. Subsequently, they came to the attention of Attorney Barter, Frances's post-conviction counsel.

A. The Kenneth Emails

115. Four of the seven emails exchanged between the respondents concerned Kenneth Choy. See Exhibits 1-4 to the PD ("the Kenneth Emails"). Those emails, as described infra, were exchanged by the respondents in the summer of 2008.

116. As noted supra, the respondents prosecuted Kenneth for the murders of Jimmy and Anne Choy in January 2008. On February 1, 2008, he was acquitted. Ans. ¶ 24. On April 8, 2008, Kenneth was granted immunity to testify against Frances. Ans. ¶ 25. After Kenneth was granted immunity to testify, the respondents met with the then twenty-one-year-old Kenneth. Tr.

III:165 (Bradley). Bradley could not remember how many times they met[40] but O'Sullivan testified that they met approximately three times. Tr. X:51-52 (O'Sullivan).

117. The respondents admitted that they compared Kenneth to the Asian male character "Long Duk Dong" from the 1980s movie *Sixteen Candles*. Ans. ¶ 42; Tr. III:97 (Bradley); see Tr. IV:26-27 (O'Sullivan). In the movie, the Long Duk Dong character is a Chinese foreign exchange student who comes to stay in the U.S. The character is an object of ridicule in the film and embodies negative stereotypes about Asian men, including that they are effeminate. Tr. I:247-248, 253-254 (Kwok). When he enters a scene in the film, he is accompanied by a gong sound. Id.

118. Bradley admitted that, during the prosecution of Frances Choy, he and O'Sullivan joked about the comparison between Kenneth Choy and Long Duk Dong, in-person, while they were at work. Tr. III:143 (Bradley). By contrast, O'Sullivan denied this. Tr. IV:57 (O'Sullivan). We credit Bradley's testimony on this point and not O'Sullivan's, especially since the respondents have admitted to making the comparison and ultimately admitted to exchanging the Kenneth Emails described infra. We find that O'Sullivan testified falsely about this before us.

i. Exhibit 1 to the Petition for Discipline: Long Duk Dong Image

119. At approximately 12:28 p.m., on Wednesday, June 25, 2008, O'Sullivan forwarded an email to Bradley in which she stated, "This is the image I am getting…" Attached to O'Sullivan's email was an image of the Long Duk Dong character with his head lying on the chest of a tall woman. Ex. 1 to the PD; see also Ex. 7, at BBO441-442. The respondents admit

[40] During his statement under oath taken by bar counsel on March 3, 2022, Bradley could not recall whether he met with Kenneth before the date of, at least, the first three emails (Exs. 1-3 to the PD). Ex. 6, at BBO130-131, BBO134.

that O'Sullivan sent this email to Bradley and that he received it. Tr. X:116-121 (O'Sullivan); Tr. XII:89-91 (Bradley).

120. O'Sullivan thought there was an "anomaly" in this email thread because it appears that she first emailed the image to her then young daughter before forwarding it to Bradley. Tr. IV:32, 35-37, Tr. X:116-121 (O'Sullivan). As is explained infra in our discussion of the experts' testimony, although the display name said "Ryan O'Sullivan," the email address was O'Sullivan's work email address. Infra, ¶ 170.

ii. Exhibit 2 to Petition for Discipline: Long Duk Dong T-shirt Image

121. At approximately 4:30 p.m. on Tuesday, July 8, 2008, O'Sullivan sent an email to Bradley writing, "clothing Kenny left in lockup…" Attached to O'Sullivan's email was the image of a T-shirt with a picture of the Long Duk Dong character and the words "No more yankie my wankie!" Ex. 2 to the PD; see also Ex. 7, at BBO443-444. The respondents admit that O'Sullivan sent this email to Bradley and that he received it. Tr. IV:32, 38-39, Tr. X:121 (O'Sullivan); Tr. XII:91-92 (Bradley).

iii. Exhibit 3 to Petition for Discipline: Johnny Cash Image

122. At approximately 3:36 p.m. on Monday, July 14, 2008, Bradley sent an email to O'Sullivan with the subject line, "Don't know if you caught this……." The text of Bradley's email stated, "but Galibois[41] was in the office earlier dressed like Johnny Cash." Ex. 3 to the PD; see also Ex. 7, at BBO445. The respondents admit that Bradley sent this email to O'Sullivan and that she received it. Tr. XII:92 (Bradley); Tr. IV:32-33, Tr. X:121-123 (O'Sullivan).

123. At approximately 3:52 p.m. that same day, O'Sullivan responded to Bradley's email by writing, "This will never get old to me…" Attached to O'Sullivan's email were two

[41] As noted supra, Attorney Galibois was Kenneth's lawyer during his criminal trial.

images: a picture of Johnny Cash and a picture of the Long Duk Dong character hanging upside down. Ex. 3 to the PD; see also Ex. 7, at BBO445-446. The respondents admit that O'Sullivan sent this email to Bradley and that he received it. Tr. XII:92 (Bradley); Tr. IV:32-33, Tr. X:121-123 (O'Sullivan).

iv. Exhibit 4 to Petition for Discipline: Role Model Email

124. At approximately 11:13 a.m. on Monday, August 4, 2008, Bradley sent an email to O'Sullivan with the subject line, "Latest on Kenny." The text of Bradley's August 4, 2008 email stated the following:

> Galibois informs me today that Kenny's latest idea is to defend democracy by joining the army.While [sic] I don't see how this is possible because: 1) he is not a citizen;and [sic] 2) he was charged with murder x2, Galibois insists that Kenny has cleared a hurdle or two in the application process.As [sic] coincidence would have it,I [sic] stumbled upon "16 Candles" on cable last night.After [sic] seeing it again,I [sic] came to two conclusions: 1) Long Duc [sic] Dong should be a role model for Kenny;and [sic] 2) Jake Ryan looked about 35 years old while supposedly in high school.

Ex. 4 to the PD; see also Ex. 7, at BBO447. The respondents admit that Bradley sent this email to O'Sullivan and that she received it. Tr. XII:92 (Bradley); see Tr. IV:33-34, 41, Tr. X:123-124 (O'Sullivan)

125. At approximately 4:53 p.m. that same day, O'Sullivan responded to Bradley's email by stating:

> Too funny! Well if there is ever a sequel to 16 candles, Kenny should try out for the role of Long Duc [sic] Dong! You are clearly just jealous of how hunky Jake Ryan was in that film which is why you feel the need to disparage him…And admit it, you probably watched the whole movie!"

Ex. 4 to the PD; see also Ex. 7, at BBO447. The respondents admit that O'Sullivan sent this email to Bradley and that he received it. Tr. IV:33-34, 41, Tr. X:123-124 (O'Sullivan); Tr. XII:92 (Bradley).

B. The Frances Emails

126. Three of the seven emails allegedly exchanged between the respondents concerned Frances and were exchanged in June and September of 2009 while the respondents were prosecuting Frances. See Exhibits 5-7 to the PD ("the Frances Emails"). As discussed infra, we find that the respondents exchanged the Frances Emails as well.

i. Exhibit 5 to Petition for Discipline: "More babies" Email

127. At approximately 11:53 a.m. on Thursday, June 25, 2009, O'Sullivan sent an email to Bradley with the subject line, "More babies." The text of the email stated the following:

> You will be happy to know that Kenny Choy is having a baby! No details yet, Galibois didn't know anything about it. Kenny told Eric Clark the other day when he was in court. Unfortunately there won't be anymore [sic] Kenny sightings this week, apparently someone in his new family is ill.

Ex. 5 to PD; see also Ex. 7, at BBO458.

128. At approximately 2:13 p.m. that same day, Bradley responded to O'Sullivan's email by asking her, "Any word on who the lucky mom is?" Id.

129. At approximately 3:00 p.m. that same day, O'Sullivan responded to Bradley's email by stating, "Frances."[42] Id.

130. The respondents deny sending or receiving any of the emails in this email thread. Tr. X:59-60, 125 (O'Sullivan); Tr. XII:92-93 (Bradley). O'Sullivan insists she never knew that Kenneth was having a baby.[43] Tr. X:60-61 (O'Sullivan). Detective Clark likewise testified that he had no memory of ever learning that Kenneth was becoming a father and had no memory of sharing that information with O'Sullivan. Tr. XI:37, 67 (Clark).

[42] As noted supra, Frances is Kenneth's aunt.

[43] We were not presented with any evidence to either confirm or deny that Kenneth had a child at any point.

131. Bradley claimed that his son was born around this time and, therefore, he was out of the office on the date of this email. He claimed that he did not return to the office until the day after the email thread, Friday, June 26, 2009. See Bradley Ans. ¶ 51. However, just a few days later, in an unrelated email dated Monday, June 29, 2009, Bradley referenced being at the grand jury "last week." Ex. 12 (impounded), at BBO840 ("Galibois represented a witness I had at Gjury last week."); Tr. III:121-123 (Bradley) (admits that the email appears authentic and "Gjury" means the grand jury). Moreover, we note the subject line of the email "More babies" comports with the email being sent close in time to the birth of Bradley's son.

132. Finally, we note that O'Sullivan sent other emails from her work email address very close in time to the disputed emails from which we can infer that she was at work and logged into her email account. For example, she sent another email on June 25, 2009 at 11:48 AM (approximately five minutes before the first email supra) to someone about running a 5k race. See Ex. 12, at BBO496 (impounded). At 3:12 pm, about 12 minutes after her last email supra, she sent an email asking someone at the PCDAO to file a document. Ex. 12, at BBO500. O'Sullivan did not dispute that she sent these unrelated emails on the dates and times reflected on their face; we find that O'Sullivan sent them.[44]

ii. Exhibit 6 to Petition for Discipline: Cheongsam Email

133. At approximately 12:31 p.m. on Wednesday, September 9, 2009, Bradley sent an email to O'Sullivan with the subject line, "Choy." The text of the email stated, "just got a call from Jane Lewis at SJC…my first thought was that she was going to say that we were off the list,but [sic] instead she told me that we have been bumped up to #1…we'll see if Krowski is on

[44] Exhibit 12 was an agreed upon exhibit and we are entitled to rely on it. Prehearing Order, § III(D)(12) ("The parties shall be precluded from contesting the authenticity or admissibility of any listed exhibit absent timely objection thereto in accordance with this order.").

time.Can [sic] you text Galibois and let him know?" Ex. 6 to PD; Ex. 7, at BBO459. The respondents admit that Bradley sent this email to O'Sullivan and that O'Sullivan received it.[45] Tr. XII:93 (Bradley); Tr. X:125-126 (O'Sullivan).

134. At approximately 4:47 p.m. that same day, O'Sullivan responded to Bradley's email by stating the following:

> You will be happy to know that me and Galibois are back on! We talked today for the first time in weeks (he is still a very creepy dude). We had a case on today, and of course the ice breaker was Kenny Choy. I think he is feeling nervous that you won't use Kenny after all and he will be out of the lime light. I haven't looked to see what # my case is on in the Appeals court, I hope they are not at the same time. I will show up tomorrow wearing a cheongsam and will be the one doing origami in the back of the court room. My guess is that there is no way Krowski will make it there for case #1.

Ex. 6 to PD. The respondents admit that O'Sullivan sent this email to Bradley and that Bradley received it except for the penultimate sentence which reads, "I will show up tomorrow wearing a cheongsam[46] and will be the one doing origami in the back of the court room." They deny only that one sentence. Tr. XII:93-94 (Bradley); Tr. IV:52-56, Tr. X:125-128 (O'Sullivan). They contend that someone else inserted that sentence into the email. Tr. IV:56-57 (O'Sullivan); Tr. III:126-127 (Bradley).

135. O'Sullivan claimed that she did not write that sentence because she "had absolutely no idea what a cheongsam was" and that she had to Google it. Tr. X:62 (O'Sullivan). In addition, she insists she would not have written that sentence because she was always intending to sit with Bradley during the argument and not at the back of the courtroom. Id.

[45] It is undisputed that there was an oral argument at the SJC in Frances's case on September 10, 2009 – the day after the above-described email was sent. See Tr. II:20-21, 24-25 (Krowski); Tr. III:130-131 (Bradley).

[46] A cheongsam is a dress of southern Chinese origin with a slit skirt and a mandarin collar. Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/cheongsam.

136. However, we note again that O'Sullivan sent another unrelated email from her work email address very close in time to the disputed email from which we can infer that she was at work and logged into her email account. We note that at 4:48 PM, one minute after her above response to Bradley, O'Sullivan replied to an email from someone else at the PCDAO regarding the date of a different trial. Ex. 12, at BBO515 (impounded). This unrelated email was not disputed and we find that O'Sullivan sent it.[47]

iii. Exhibit 7 to Petition for Discipline: Girl Scouts Picture

137. At approximately 11:58 a.m. on Wednesday, September 30, 2009, O'Sullivan sent an email to Bradley with no text but which attached an image. The image was a photograph of a burning house with a picture of Frances superimposed on it and the following text: "GIRL SCOUTS Maybe next time you'll buy the fucking cookies."[48] Ex. 7 to the PD; Ex. 7, at BBO456-457.

138. A few minutes later, at approximately 12:03 p.m. on Wednesday, September 30, 2009, Bradley responded to O'Sullivan's email by stating, "Wow….that could be Frances, looks just like her." Ex. 7 to the PD; Ex. 7, at BBO455-457.

139. At approximately 12:04 p.m. on Wednesday, September 30, 2009, O'Sullivan responded to Bradley's reply email by stating, "are you joking? That is frances… a little cut and paste." Id. Both respondents deny sending or receiving any of the emails in this email thread. Tr. XII:94-95 (Bradley); Tr. IV:58-60, Tr. X:128 (O'Sullivan).

[47] Exhibit 12 was an agreed upon exhibit and we are entitled to rely on it.

[48] Attorney Barter testified that the background picture of the burning house and the text are from an internet meme. Tr. VIII:39-40 (Barter). Merriam-Webster defines a "meme" as an amusing or interesting item (such as a captioned picture or video) or genre of items that is spread widely online especially through social media. We take administrative notice that the meme is commonly referred to as "Disaster Girl."

140. We find it significant that there was a second fire at the Choy residence on September 24, 2009 –six days before this email—and Bradley was notified of that fire the next day, the 25th. Tr. III:131 (Bradley); see Ex. 12 (impounded), at BBO893. The respondents joked about the fire at the Choy residence in unrelated email conversations dated September 25, 2009. Exs. 14 and 15. The respondents admit sending and receiving those emails. Id.; Tr. III:133-139 (Bradley); Tr. IV:60-62 (O'Sullivan). On September 26, 2009, four days before this email, there was third fire at the Choy residence. Tr. III:139 (Bradley). Frances remained incarcerated at the time of both fires.

141. O'Sullivan was adamant that she did not send this email because she "would never send an email that had a swear word in it. I have never done it, I never would do it. I didn't do it." Tr. X:65 (O'Sullivan). Bar counsel then questioned her about other emails she sent in 2007, 2008, and 2009 where she did indeed use swear words such as "bitch," "pussy," "fuc%," (spelled precisely that way) as well as another email that contains a laundry list of vulgarities that were cut and pasted from the internet. See Tr. X:141-145 (O'Sullivan). Although O'Sullivan claimed she had not seen these emails before and denied that she would ever use the word "pussy," she stated that she does not consider the word "bitch" to be a swear and she "probably" used it often in the office. We do not credit her testimony that she does not remember sending these emails containing swear words and find that she did send them. See id.

142. We further note that O'Sullivan sent another email from her work email address very close in time to the disputed emails (Exhibit 7 to the PD) from which we can infer that she was at work and logged into her email account. On September 30, 2009, O'Sullivan sent an unrelated email about running from her work email address to her co-workers at 12:02 pm—a time that falls in between the emails exchanged supra. See Ex. 12 (impounded), at BBO527.

O'Sullivan did not deny sending that unrelated email. See Tr. IV:66-70 (O'Sullivan). We find that O'Sullivan sent it.

C. Were the Emails Exchanged by the Respondents?

i. Respondents Admit to Exchanging the Kenneth Emails

143. The respondents ultimately conceded in their testimony before us that they sent or received the emails identified as Exhibits 1-4 to the PD; the emails concerning Kenneth Choy. Exs. 1-4 to the PD; Tr. X:55-56 (O'Sullivan); Tr. XII:89-92 (Bradley). We find that the respondents exchanged the Kenneth Emails during work hours, using their state-issued work email accounts[49] and state-issued computers.

144. The respondents wavered in taking accountability for sending the Kenneth Emails. Initially, during bar counsel's investigation, they were upfront in admitting to "joking" about Kenneth and exchanging the emails comparing him to Long Duk Dong. See Exhibits 6 and 7. Then they expressed uncertainty about the authenticity of the emails based on "anomalies" in the email formatting. See Bradley Ans. ¶¶ 43-50; O'Sullivan Ans. ¶¶ 43-50. This uncertainty continued in their initial testimony before us until they eventually conceded exchanging the Kenneth Emails. See Tr. III:97-105, 114-119 (Bradley); Tr. IV:31-41 (O'Sullivan). While they are entitled to mount a defense, their failure to simply admit that they exchanged the emails appeared to us to be ill-considered at best and evasive at worst. We find that they knew that they had exchanged the Kenneth Emails and were not immediately forthcoming with the committee. In the end, they failed to take accountability for their actions until faced with the overwhelming evidence of the expert testimony, described infra.

[49] Bradley's work email address was john.bradley@state.ma.us. O'Sullivan's work email address was karen.osullivan@state.ma.us. Tr. III:111-112 (Bradley).

145. The respondents admitted they compared Kenneth and Long Duk Dong but insisted before us that the comparison was a joke based on Kenneth's humorous personality and not his looks or his race. Tr. IV:42; Tr. X:53-55, 145-146 (O'Sullivan); Tr. XII:86 (Bradley). They claim they got to know Kenneth after he became an immunized witness in April 2008 and they thought he was "funny" and a "character." Tr. III:165 (Bradley) ("…he was a character. He had personality. He could be funny and at other times he could be a little bit awkward once we got to know him. That's probably the best way I can describe him."); Tr. X:52-54 (O'Sullivan) (also describing Kenneth as "funny" and a "character"). When O'Sullivan was asked what about Kenneth reminded her of Long Duk Dong, she testified, "…he didn't have great English. He – again, he was wearing a suit that I thought was quite unusual for such a meeting. You know, he was clearly a young Asian American trying to assimilate to American culture and he was just truly a character." Tr. X:53 (O'Sullivan).

146. By contrast, both respondents clearly and unequivocally admitted in the past that the comparison stemmed from Kenneth looking like the character of Long Duk Dong. Ex. 7, at BBO404 (O'Sullivan Answer Letter to Bar Counsel, dated March 12, 2021) ("I fully admit that I would refer to Kenneth Choy as 'Long Duc [sic] Dong[,]'…because he looked EXACTLY like the character Long Duc [sic] Dong in 'Sixteen Candles'.").[50] Similarly, at Bradley's deposition in his lawsuit against the PCDAO, on July 23, 2015, he testified under oath that the comparison was "because we believed he looked like this character from 16 candles." Ex. 8 at BBO469.

147. We find the respondents' attempts to distance themselves from the reason for the comparison to be disingenuous. We do not credit their testimony before us that the comparison

[50] By the time of her statement under oath the following year, O'Sullivan was trying to avoid her Answer Letter to bar counsel by claiming that the comparison, "had more to do with his personality, I mean, certainly a similar resemblance but also personality so it was physical and his personality." Ex. 7, at BBO359.

was based solely, or even mostly, on Kenneth's "funny" personality. Rather, we find that the respondents compared the two because, as they previously admitted, the respondents thought Kenneth and Long Duk Dong looked alike. In addition, we found the respondents' testimony about Kenneth's personality to be jarring. At the time of the Kenneth Emails, the respondents had very recently prosecuted Kenneth for the double homicide of his grandfather and step-grandmother (a crime they continued to believe he was involved in despite his acquittal). See Bradley PFCs, p.1 ("…it was proven that Choy, and Kenny as her accomplice, hatched a plan to burn the family house down because she was angry with her parents, and so that she would collect insurance proceeds.").

148. We further draw the inference from their testimony that the respondents thought Kenneth and Long Duk Dong looked alike because they were both Asian. Compare Ex. 13, at BBO1005 (picture of Kenneth Choy) and Ex. 7, at BBO442 and 446 (pictures of Long Duk Dong). Even to our untrained eyes, and without having met Kenneth in-person, there are very obvious differences in the facial features between the two men.

149. The respondents denied at the hearing that they were mocking or disparaging Kenneth. Bradley Ans. ¶ 42; O'Sullivan Ans. ¶ 42; Tr. IV:42-44 (O'Sullivan). However, O'Sullivan previously admitted under oath that they were mocking Kenneth. Ex. 7, at BBO354 (O'Sullivan Statement Under Oath) ("Q: Okay. But you do acknowledge that you and Mr. Bradley were mocking Kenneth Choy? A: After he be-…after he was acquitted and became a witness. Yes. I fully acknowledge that."); Ex. 7, at BBO348 ("I certainly had no intent to be insensitive because of his race, I was making fun of him as a person."). We find that the respondents were clearly mocking Kenneth, an immunized witness in a criminal prosecution, based on his race. Exs. 1-4 to the PD. Significantly, Frances, who was actively being prosecuted

by the respondents at the time of the Kenneth Emails, was Asian-American, as were her parents, the murder victims, Jimmy and Anne Choy.

150. We further find from the testimony provided by bar counsel's expert witness that the Long Duk Dong character is steeped in Asian stereotypes. In the movie, he is a foreign exchange student from China who "is portrayed as a bumbling boy with no masculine features and fumbling English to highlight his stereotype." Tan Pham, Unseen Yellow, 7 How. Scroll Soc. Just. L. Rev. 1, 18 (2004). Bradley initially conceded in his Pro Se Response to bar counsel that he recognized that Long Duk Dong, "was an Asian caricature and by making an analogy to Kenneth, we may have unintentionally perpetuated the stereotype." Ex. 6, at BBO184. We agree with Professor Kwok's description of Long Duk Dong as "the character to ridicule." Tr. I:247-248 (Kwok).

151. Before us, the respondents would only admit that the emails were inappropriate, immature, or unprofessional. Tr. IV:154-155; Tr. X:56-57 (O'Sullivan); Tr. III:100, 143-144 (Bradley). Although they conceded that they understood how the emails could be perceived as racially offensive or insensitive, they denied that they personally viewed them that way. Tr. IV:16-18 (O'Sullivan); Tr. III:101-102, 105-106, 142-143 (Bradley). O'Sullivan continued to characterize the emails as "a poor attempt at humor" and denied that she had any racial animus when she sent them. Id. We find that the four Kenneth Emails exchanged by the respondents were racially offensive, derogatory, and unprofessional.

152. While both respondents participated in the exchange of the Kenneth Emails, they were not equally participatory. It is significant to us that of those four emails, three were initiated by O'Sullivan and only one was initiated by Bradley. Ex. 6. However, although Bradley received the other three Kenneth Emails from O'Sullivan, he did not tell her that the emails were

inappropriate nor did he ask her to stop sending the emails to him. His silence, especially in light of his leading role in the prosecution, was acquiescence.

ii. The Frances Emails Were Exchanged By the Respondents' Work Email Accounts

153. The respondents dispute that they exchanged the Frances Emails; more specifically, the two emails identified as Exhibits 5 and 7 to the PD and the penultimate sentence in the email identified as Exhibit 6 to the PD. Exs. 5-7 to the PD; see Tr. X:59-64 (O'Sullivan); Tr. XII:92-95 (Bradley).

154. Bradley disputes the authenticity of the Frances Emails because he claims he did not receive them in discovery in his federal lawsuit.[51] Tr. III:159-161 (Bradley). However, Bradley failed to introduce any evidence, beyond his own testimony, of what was or was not requested or was or was not produced to him in his federal lawsuit. Tr. XII:95-97 (Bradley). He claimed that as a result of the settlement in that lawsuit, he was ordered to destroy all of the documents. Tr. XII:137-138 (Bradley). We have no evidence of that order. We make no findings about what was or was not requested or produced during Bradley's federal lawsuit and, therefore, draw no inferences from them.[52]

155. Bar counsel and O'Sullivan presented testimony from competing digital forensics experts at the hearing concerning the authenticity of the disputed emails. Digital forensics involves identifying where electronic data exists and then preserving, analyzing, and reporting on that data. Tr. VII:99 (Spencer).

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[51] He also made this argument about two of the Kenneth Emails before he ultimately admitted to them. Tr. III:160-161 (Bradley).

[52] Similarly, the respondents allege it is suspicious that some or all the emails at issue did not surface during other email searches or investigations at the PCDAO. See O'Sullivan PFCs, ¶¶ 87-90; Bradley PFCs, ¶¶ 144-145. Again, there are many possible reasons for these alleged discrepancies and we do not find them relevant to the allegations of the respondents' misconduct here.

(a) Bar Counsel's Expert: Mark Spencer

156. Bar counsel's expert, Mark Spencer, is the President of Arsenal Consulting. Tr. VII:99 (Spencer). He has had significant training in digital forensics as well as twenty-one years of experience in digital forensics analysis. Tr. VII:100-107 (Spencer). He testified that over the course of his career, he has performed over five hundred digital forensic analyses of electronic evidence, with the majority of those involving email in some way. Tr. VII:107 (Spencer).

157. Mr. Spencer testified that he was retained by bar counsel to "identify whether there was any evidence which would suggest that emails attached to the complaint[53] had been tampered with." Tr. VII:110 (Spencer). His written report was admitted as Exhibit 21.

158. On January 29, 2024, Mr. Spencer, accompanied by assistant bar counsel, went to the PCDAO's office and met with the then-IT director, Joao DaCosta-Roque.[54] Tr. VII:111 (Spencer). During their conversation, Mr. Spencer learned that the original workstations,[55] or desktop computers, used by the respondents in 2008 and 2009 no longer existed. Tr. VII:114 (Spencer). However, he also learned that, in mid-2012 (prior to the respondents leaving the PCDAO), the PCDAO's IT department had "backed up" the individual workstations to the server due to a synchronization issue. Tr. VII:111-112 (Spencer); see Ex. 21, at BBO1057.

159. Mr. Spencer's testimony was corroborated by the testimony of the PCDAO's IT director, Joao DaCosta-Roque, and another IT department employee, Susan Bouchard. Tr. VII:15-17 (DaCosta-Roque); Tr. VI:217-221 (Bouchard). Ms. Bouchard testified that employees were complaining in 2012 that they could not access their documents as they moved between

[53] Although he said "complaint" during his testimony before us, in his written report Mr. Spencer cited the Petition for Discipline and the emails that were attached to it as Exhibits 1-7. We find that it was the Petition for Discipline that Mr. Spencer was referring to in his testimony.

[54] Mr. DaCosta-Roque has since retired. Tr. VII:7 (DaCosta-Roque).

[55] A "workstation" refers to the desktop computer, separate monitor, keyboard, and mouse. Tr. VII:13 (DaCosta-Roque).

different computers. Tr. VI:217-218 (Bouchard). Mr. DaCosta-Roque testified that he determined in late June 2012 that it was a synchronization issue with the local server. Tr. VII:15-17 (DaCosta-Roque). To make sure that everyone had all of their documents, the IT department spent a few weeks that summer going to each employee's computer and manually copying each user's local drive from their computer to the network server. Tr. VII:17-20 (DaCosta-Roque); Tr. VI:219-221 (Bouchard). This included Outlook email data files or .psts ("PSTs"). Tr. VII:111-112 (Spencer). If the user had archived their emails at any point before the summer of 2012, that archived email folder was copied to the server as well.[56] See Tr. VI:220-223 (Bouchard).

160. Mr. Spencer explained that as a digital forensic practitioner, he wants to get as close to the original electronic data as he can. Ideally, that is the first-generation copy. He testified, "[b]ased on those conversations with the IT director, I determined that that file server, which was still available and off, would have the first-generation copy of the Outlook email data files." Tr. VII:114-115 (Spencer). As a result, he decided to remove the decommissioned[57] file server that the emails had been backed up to in 2012, and took it to his office for forensic imaging.[58] Tr. VII:111, 113-115 (Spencer).

161. Mr. Spencer testified that he found the Outlook data files on the server, the PSTs, and then he set about determining what the best versions of those PSTs were. He explained again that "best versions" means "first-generation copy…what we wanted is not copies of copies of copies. We wanted the earliest, closest Outlook data file related to this backup or recovery that

[56] Mr. DaCosta-Roque testified that "most of the time" users archived their emails because their mailboxes would get full and they would no longer be able to receive email. Tr. VII:14 (DaCosta-Roque).

[57] The file server was no longer in use, it had been shut down, but remained on the server rack at the PCDAO. Tr. VII:30-31 (DaCosta-Roque); Tr. VII:113 (Spencer). The server in question was referred to during testimony as the "decommissioned server".

[58] The purpose of forensic imaging is to preserve the data on the server by making complete copies of the hard drives on the server; it is a "one-way process" so nothing is written back onto the hard drives. Tr. VII:114-115 (Spencer).

happened in mid-2012." Tr. VII:116-117 (Spencer). To determine the best possible PST files, Mr. Spencer relied on the file system metadata.[59] Tr. VII:118 (Spencer). He was able to find two email data files, one PST for each respondent, which were created on July 17, 2012. Tr. VII:118-119 (Spencer); see Ex. 21, at BBO1058.

162. As Mr. Spencer described it, "The PSTs in this case are essentially snapshots of what was there at that time in the mailboxes. So for each respondent, one PST contains many emails, thousands of emails, in different – many different folders. It's what was available on that day when the PST was being – created an archive." Tr. VII:119 (Spencer). Here, the PSTs are snapshots of what was available in Outlook on the respondents' local workstations on July 17, 2012 – approximately three years after the three disputed Frances Emails were exchanged in the summer and fall of 2009. Exs. 5-7 to the PD.

163. The PST files contained many different types of metadata. Tr. VII:121 (Spencer). Mr. Spencer testified that the PCDAO utilized Microsoft Outlook and an email exchange system that was hosted in-house by a state agency. Tr. VII:113, 117-118 (Spencer). "The primary source of metadata in an Outlook and Exchange environment is called MAPI properties…" Tr. VII:121 (Spencer). Each of the emails at issue "had between 80 and nearly 150 MAPI properties embedded within itself, not readily accessible to an end user or even an IT person. So a very significant volume of diagnostic [sic] information was embedded in what's known as the MAPI properties of each of these emails." Tr. VII:121-122 (Spencer). MAPI properties include the typical visible email information (e.g. to, from, sent time, subject, attachments, etc.) but also much more information that is embedded, or below the surface, in the encoded information of

[59] Metadata is "data 'that describes other data, as in describing the origin, structure or characteristics of computer files, webpages, databases, or other digital resources.' Commonwealth v. Phillips, 495 Mass. 491, 495 (2025), citing American Heritage Dictionary of the English Language 1105 [5th ed. 2018].

the emails. See Tr. VII:120-123, 127 (Spencer). Particularly relevant here is that many date and time stamps are included within these MAPI properties. See Tr. VII:126 (Spencer).

164. Attached to Spencer's report are two spreadsheets, one for each respondent, that "summarize embedded MAPI properties that [Spencer] found important and potentially useful to laymen." Tr. VII:129-130 (Spencer); Ex. 21, at BBO1062-1063. The spreadsheets do not contain all of the metadata for each of the emails because the volume is too high. Tr. VII:132-133 (Spencer).

165. As the spreadsheets show, of the seven exhibits attached to the PD, Mr. Spencer found two of the emails in Bradley's PST file in the inbox. Tr. VII:124-125 (Spencer); see Ex. 21, at BBO1062. Those two emails were two of the Kenneth Emails (Exs. 2 and 3 to the PD) and the respondents have admitted exchanging them.[60]

166. Mr. Spencer found ten[61] relevant emails in O'Sullivan's PST file in the sent folder; the ten emails account for all seven of the Exhibits to the PD. Tr. VII:125 (Spencer); see Ex. 21, at BBO1063. As noted supra, the respondents have admitted sending and receiving the Kenneth Emails and only the Frances Emails are disputed. Ex. 21, at BBO1063.

167. The spreadsheets created by Mr. Spencer contain multiple rows and columns. Ex. 21, at BBO1062-1063; see Tr. VII:133-137 (Spencer) (explaining each column). The columns that involve date and time stamps include the acronym "UTC." Spencer explained that UTC stands for "Universal Time" which is not adjusted for Daylight Saving Time or time zones. This makes comparing time stamps much easier for digital forensic analyses. Tr. VII:135-136 (Spencer). To convert UTC to Eastern Time, you would subtract five hours from UTC if

[60] Mr. Spencer explained that only finding two of the relevant emails was not unexpected because back in the 2008 /2009 timeframe, employees at the PCDAO were responsible for cleaning up their own email mailboxes and choosing which emails to delete. See Tr. VII:125-126 (Spencer). We credit this testimony.

[61] Some of the exhibits are email conversations containing multiple emails. See Tr. VII:125 (Spencer).

Daylight Saving Time was not in effect. If Daylight Saving Time was in effect, you would subtract four hours from UTC.[62] See Tr. VII:135-136 (Spencer).

168. Mr. Spencer's spreadsheet shows that, with respect to Exhibit 1 to the Petition for Discipline (an email exchange that the respondents have admitted), the email was not found in Bradley's PST file. Ex. 21, at BBO1062. It was found in O'Sullivan's PST file as shown at rows 3 and 4. Ex. 21, at BBO1063 (Column A indicates the Email Exhibit number); Tr. VII:139-141 (Spencer). Row 3 is the initial email from O'Sullivan to the display name "Ryan O'Sullivan." Row 4 is the email from O'Sullivan to Bradley. Ex. 21, at BBO1063.

169. As can be seen on the spreadsheet, all of the date and time values for the initial email (Row 3) are in close proximity. Ex. 21, at BBO1063; Tr. VII:139-144 (Spencer). The "MAPI Creation Date"[63] (Column F) is 06/25/2008 at 16:22:12 UTC (or 12:22:12 ET). The "Sent Date" (Column D), when the email was sent by Outlook to the Exchange server,[64] indicates it was sent on 06/25/2008 at 16:22:30 UTC (or 12:22:30 ET). Ex. 21, at BBO1063; compare Ex. 1 to the PD (initial email sent at 12:23 PM). The "Received Date" (Column E) shows when "the server is acknowledging it received a message." It shows it received the email in row 3 on 06/25/2008 at 16:22:00 UTC.[65] The "Last Modification Date"[66] (Column G) is 06/25/2008 at 16:22:31 UTC. The "Last Modifier Name" (Column H) is Karen O'Sullivan. Tr.

[62] We take administrative notice that Daylight Saving Time was in effect for the dates of all of the emails at issue. (Exs. 1-7 to the PD).

[63] The MAPI Creation Date is when the email was created in Outlook. See Tr. VII:145 (Spencer).

[64] Tr. VII:133-134 (Spencer).

[65] As Spencer explained, in Column E all of the seconds are 00, which he states is "consistent with, in some cases, the Exchange server and Outlook and Exchange…just simply not storing seconds and milliseconds in some scenarios." Tr. VII:140 (Spencer). We credit this testimony.

[66] The Last Modification Date is the last date and time when the message or its metadata was last modified. See Tr. VII:145 (Spencer).

VII:140-141 (Spencer). There is an attachment to the email (Column C) which is titled "gedde%20watanabe.jpg."[67]

170. Mr. Spencer explained that the only potential anomaly with the email in row 3 is that the display name shows as "Ryan O'Sullivan." Tr. VII:140-141 (Spencer); Ex. 21, at BBO1063 (Column J). That is the name of O'Sullivan's daughter who was a young child at the time of this email. However, the full email address in the "To" column (Column J) indicates that the email address the email was sent to was actually O'Sullivan's work email address (karen.osullivan@state.ma.us) even though the display name was her daughter's name. Tr. VII:141-143 (Spencer); see also Ex. 21, at BBO1060, 1063.

171. With respect to row 4, this shows the email in Exhibit 1 to the PD being sent from O'Sullivan to Bradley. Ex. 21, at BBO1063. The "To" Column (Column J) shows that Bradley is the recipient. Column I shows that O'Sullivan is the sender. Again, all the date and time values are in close proximity, including the "Last Modification Date." See Ex. 21, at BBO1063.

172. After reviewing all the information in rows 3 and 4, Spencer opined that he did not "see anything suspicious or that would suggest these two emails[68] have been tampered with." Tr. VII:141, 144 (Spencer); see Ex. 21, at BBO1063. This is consistent with the respondents' own testimony supra that they admit to exchanging Exhibit 1 to the PD.[69]

173. Mr. Spencer testified that, as illustrated by the spreadsheets, the MAPI Properties establish that all of the emails attached to the PD were exchanged by the respondents' work

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[67] Gedde Watanabe is the name of the actor who played the character Long Duk Dong. Tr. III:108 (Bradley).

[67]As discussed, Exhibit 1 to the PD was an email conversation consisting of two emails.

[69] We note that the respondents had not yet conceded to sending and receiving all of the Kenneth emails at the time of Spencer's testimony before us.

email accounts. Tr. VII:162-163 (Spencer); see Ex. 21, at BBO1062-1063. We credit this testimony and so find.

174. Similarly to the Kenneth Emails (which the respondents have admitted exchanging), Mr. Spencer's spreadsheets illustrate that the MAPI properties of the Frances Emails (Exhibits 5, 6 and 7 to the PD) show that those emails were created, sent, received, and last modified on the same dates in 2009 and in close temporal proximity.[70] See Ex. 21, at BBO1063. We so find.

175. Mr. Spencer testified that the MAPI properties establish that all the emails at issue were created and exchanged at the dates and times shown on the emails; they were not modified or altered after they were created in 2008 and 2009. See Tr. VII:139-141, 144-153, 156-157, 159-160, 166 (Spencer). According to tampering tests done by Spencer, any modification or alteration of the emails would have left a "digital remnant," i.e. some trace, that could be seen in the metadata embedded in the emails and in the code used to create the emails. Tr. VII:157-159 (Spencer). For example, Spencer and his team tampered with PST files using multiple versions of Outlook, by opening emails and modifying the content, and discovered that their tampering would show updates to time stamps, sometimes updates to multiple time stamps, as well as other changes. See Tr. VII:158-159 (Spencer). He stated in his report that no such remnants were found in any of the emails at issue. He found no anomalies that indicated suspicious activity or tampering in any of the emails—either the ones the respondents admitted to sending (Exs. 1-4 to the PD) or the ones they disputed (Exs. 5-7 to the PD). Tr. VII:139-153, 156-157 (Spencer). We credit this testimony and so find.

[70] Exhibit 6, the cheongsam / origami email, is the only email that was created but not sent for over an hour: its creation time was 19:01:17 UTC but its sent time was 20:47:27 UTC. O'Sullivan's expert, Mr. Verronneau, explained that this could happen where an email was created, saved as a draft, and then sent later. See Tr. XI:166 (Verronneau). We credit this explanation and do not find it to indicate an "anomaly."

176. In addition to the review of the emails and their embedded MAPI properties, Mr. Spencer analyzed the respondents' unrelated emails which were close in time. He found, "no evidence which would suggest the relevant emails were subject to tampering." Ex. 21, at BBO1057. We found his report and testimony persuasive and credit his findings.

(b) O'Sullivan's Expert: Steven Verronneau

177. Steven Verronneau is a digital forensic analyst and the president of MWV Multi-media Forensic Investigative Service. He began working there in 2011. Tr. XI:70-71 (Verronneau); Ex. 24 (O'Sullivan's Expert Witness Disclosure).[71] His company conducts forensic analyses on different types of electronic devices such as cell phones, computers, cloud-based storage applications, social media investigations, cell site analyses, etc. Tr. XI:71 (Verronneau). He has attended numerous trainings and conferences in the field. Tr. XI:71-72 (Verronneau). However, nearly all the cases on which he has previously testified were about cellular data; none of them were about digital forensics analysis of Microsoft Outlook emails that were allegedly tampered with. See Tr. XI:110-111 (Verronneau). In fact, he admitted that he has only handled a few such cases and this is the first one involving an Exchange server. Tr. XI:111-112 (Verronneau). He testified that "[i]t's very rare that we are looking into fraudulent emails…" Id. at 111.

178. Mr. Verronneau testified that he was able to confirm that everything in Mr. Spencer's Report (Ex. 21) was accurate in terms of the MAPI properties. Tr. XI:126-127 (Verronneau). Mr. Verronneau agreed that the MAPI properties show the emails were created and sent around the same date and time. Tr. XI:148 (Verronneau). In other words, the emails were all exchanged in 2008 and 2009 as per the date and time information shown on the emails.

[71] Mr. Verronneau did not produce a written report. Tr. XI:130 (Verronneau).

179. Mr. Verronneau testified that he agreed with Mr. Spencer's finding that there is no way to modify an email within a PST, at a later date, without leaving a remnant in the MAPI properties. Tr. XI:141 (Verronneau). He agreed that later editing an email to insert a sentence would also leave remnants. Id. at 141-142.

180. Despite all the information from the MAPI properties, Mr. Verronneau claimed that he could not determine or opine on the origin of the emails because he was not permitted to look at the "entire environment or the actual forensics data in this case." Tr. XI:105-106, 126-128 (Verronneau). Mr. Verronneau testified that Mr. Spencer's investigation was "very limited," and that Mr. Spencer should have looked at the entirety of the server. Tr. XI:87-89 (Verronneau). Mr. Verronneau testified that he requested a copy of the full forensic image from O'Sullivan / O'Sullivan's counsel. See Tr. XI: 167 (Verronneau). Bar Counsel was not in receipt of the request. Tr. XI: 167-168 (Assistant Bar Counsel).

181. As Mr. Spencer explained, there was an "enormous" number of PST files on the server – hundreds if not thousands – and he expended a "reasonable amount of effort to answer the questions that [were] posed to us." Tr. VII:175-176 (Spencer). Moreover, he clarified, "If I thought it was important to search that entire server for something, I would do it." Tr. VII:176 (Spencer). We infer from Mr. Spencer's testimony that he did not find it necessary to search the entire server to determine whether or not the emails at issue had been tampered with or altered—in his opinion, he had enough information from the respondents' PSTs to make his determination that they had not been tampered with or altered after the fact. We credit his testimony.

182. Mr. Verronneau testified that access to the images from the server would "assist in providing information" such as "whether the emails reside somewhere else on that server." Tr. XI:167 (Verronneau). Essentially, Mr. Verronneau was arguing that, without searching the entire

system, he could not "completely rule out" that some third party could have logged into the respondents' email accounts and sent or forwarded the disputed emails. See Tr. XI:102-105 (Verronneau). While a search of the entire system might have helped Mr. Verronneau rule out nefarious behavior by a third party to a higher degree of certainty, we again note that O'Sullivan apparently did not seek access to the full image for him (her expert). As we are operating under a preponderance of the evidence standard, we credit Mr. Spencer's testimony supra and find that it is more likely than not that the respondents' PSTs were not tampered with or altered after the fact.

183. Bar counsel's expert, Mr. Spencer, agreed that, while he could confirm that the emails were being exchanged between the respondents' work email accounts, he could not say that it was actually the respondents who sat at the computers and exchanged the emails. See Tr. VII:168-169, 170 (Spencer). When asked to speculate, Mr. Spencer explained that the only way the emails at issue could have been "tampered with" is if, back in 2008 and 2009, a team of two people had simultaneously logged into the respondents' email accounts on their workstations (which required the respondents' usernames and passwords) and sent the emails without the respondents' knowledge. See Tr. VII:187-188 (Spencer).

184. Mr. Verronneau did not provide any persuasive testimony supporting an inference that the emails were altered or modified after they were sent or that they were sent by a third party. In contrast to bar counsel's expert, we find it significant that Mr. Verronneau had no prior experience conducting a digital forensics analysis involving Microsoft Outlook emails sent through an Exchange server. He also had no prior experience with analysis of emails related to allegations of tampering. Further, and critically, he was never informed that O'Sullivan had admitted to exchanging some of the emails. Tr. XI:168. Mr. Verronneau testified that if

O'Sullivan admitted to sending some of the emails that would "obviously take a part into the investigation." Tr. XI:168 (Verronneau). However, when asked if he was told that, he testified, "I don't believe I was told if any particular emails were authored. I don't recall." Tr. XI:168 (Verronneau).

iii. The Frances Emails Were Exchanged By the Respondents

185. As we found supra, the emails at issue were all exchanged by the respondents' work email addresses at the dates and times indicated. However, the respondents have raised the specter that a third party, or a team of unknown people, sent the two disputed emails (Exhibits 5 and 7 to the PD) as well as the single disputed sentence in Exhibit 6 to the PD.

186. Because the PCDAO's IT department kept all operating systems fully updated and patched, and never detected an internal or external threat to the PCDAO's email accounts during the relevant period, we find that any alleged tampering would have had to have occurred within the PCDAO. See Tr. VI:232 (Bouchard); Tr. VII:34-35 (DaCosta-Roque). According to Mr. Spencer, whom we credit, in order to do this a team of at least two people would have needed to (1) have known both of the respondents' email account usernames and passwords, and (2) have accessed both of the respondents' email accounts at the same time during work hours back in 2009 when the disputed emails were sent. See Exs. 5-7 to the PD; Tr. VII:169, 187-188 (Spencer).

187. The respondents have proffered that someone at the PCDAO may have been motivated to do this because of the animosity that existed between the "teams" at the PCDAO during this time. While we do not discredit the respondents' testimony about the PCDAO's environment, the respondents' have presented shifting timelines on when the hostilities began. For example, when Bradley sued DA Cruz and others in 2013, he drafted and filed the complaint

himself.[72] He asserted that, "[u]ntil in or about the Fall [sic] of 2010, [he] had positive relationships with [DA] Cruz and his Senior Leadership."[73] Federal Complaint, ¶ 13; see Tr. XII:84-85 (Bradley). His complaint details that the relationships soured when Bradley chose not to contribute to or otherwise support Cruz's 2010 re-election campaign. Federal Complaint, ¶¶ 17-23. However, before us (many years later) he testified that the date in his complaint was not accurate and the animosity in the office began "in late 2007, maybe 2008." Tr. XII:61, 85-86. We do not credit Bradley's testimony that the animosity began in 2007 or 2008 as he very clearly and specifically tied the beginning of tensions in the office to events that took place in the fall of 2010 around the time of the Cruz re-election campaign when he filed his Complaint in federal court. We find that the hostility in the office did not begin in earnest until after the disputed emails were sent in 2009.

188. For her part, O'Sullivan testified that "around 2009, 2010, the management of the office was so bad." Tr. X:30 (O'Sullivan). She explains that this was due to the Team Bradley vs. Team Middleton dynamic but, as we just described, Bradley himself, back in 2013, asserted in a court filing that he had a positive relationship with leadership in the office until the fall of 2010. See id. at 30-32. We do not credit O'Sullivan's testimony on this point.

189. Finally, and most importantly, we find the scenario put forth by the respondents, wherein they attribute the emails exchanged by their email accounts to some anonymous third parties, to be unsupported by evidence and simply not credible. They have not presented any evidence that third parties concocted this scheme other than their own speculation and the experts' testimony that it was possible. But possible does not equal probable nor does it rise to a

[72] We take administrative notice of the complaint filed in the United States District Court for the District of Massachusetts and captioned Bradley v. Cruz, et al., 1:13-cv-12927-IT ("the federal Complaint").

[73] "Senior Leadership" is defined in the Complaint as including Frank Middleton. Federal Complaint, ¶¶ 4, 9.

preponderance of the evidence standard. We find that it defies reason that third parties would go through the trouble of simultaneously signing into the respondents' email accounts in 2009, pose as them to exchange these emails, and then wait six years to disclose their existence. As a reminder, the emails only came to light in 2015 as a result of discovery requests by Bradley in his lawsuit against the PCDAO. It is not reasonable to us that third parties would or could have plotted this out.

190. Given the testimony from Mr. Spencer about the MAPI properties (which applied to both the admitted and the disputed emails), the unrelated emails sent by O'Sullivan in close temporal proximity to the disputed emails, and the content of the disputed emails themselves, we find that bar counsel has proven by a preponderance of the evidence that it was the respondents who exchanged all of the emails attached to the PD. They exchanged those emails during work hours, using their state-issued work email accounts and state-issued computers.

191. With respect to the content of the Frances Emails, Exhibit 6 is the only one that refers to race. In the penultimate sentence, O'Sullivan writes that she will appear at a hearing in Frances's case, "wearing a cheongsam" and "doing origami." We find that this email was based on racial stereotypes and, therefore, racially offensive and derogatory. While clearly offensive and unprofessional, Exhibits 5 and 7 to the PD do not refer to or contain any racial element. For example, the email conversation in Exhibit 5 suggests an incestuous relationship between Frances and Kenneth, her nephew. This is obviously inappropriate and unprofessional. In Exhibit 7, O'Sullivan emailed Bradley an image of a burning house with Frances's face super-imposed on it with text about buying cookies. Given that two people, Frances's mother and father, died in a house fire and she was being prosecuted for their murders, this email is egregiously unprofessional and inappropriate. However, it is not racially offensive.

192. Finally, we note that although O'Sullivan was the primary sender of these problematic emails, Bradley also sent one inappropriate email and, more importantly, did not object to O'Sullivan's clearly inappropriate and unprofessional communications.[74]

CHARGE TWO
CONCLUSIONS OF LAW

193. Bar counsel charged that by using their state-issued work computers and state-issued work email addresses as assistant district attorneys to exchange racially offensive, derogatory and unprofessional emails during work hours in the course of prosecuting an Asian-American defendant, the respondents violated Mass. R. Prof. C. 8.4(d) and 8.4(h).

194. Based on the respondents' own admissions, we found that they exchanged the Kenneth Emails using their state-issued work computers and state-issued email addresses. Exs. 1-4 to the PD.

195. Based largely on Mr. Spencer's expert testimony, which we found credible and persuasive, we found that the evidence presented was sufficient to establish that the Frances Emails were also exchanged by the respondents using their state-issued work computers and state-issued email addresses. See Commonwealth v. Purdy, 459 Mass. 442 (2011) (holding that there must be "some 'confirming circumstances' sufficient for a reasonable jury to find by a preponderance of the evidence that the defendant authored the e-mails;" defendant's uncorroborated testimony that others used his computer and he did not author the e-mails was "relevant to the weight, not the admissibility, of these messages.").

196. We further found that, taken as a whole, the emails the respondents exchanged during the prosecution of Frances Choy were racially offensive, derogatory, and unprofessional.

[74] At a minimum, after receiving the first inappropriate email from O'Sullivan, Bradley could have exercised good judgment by simply telling her to stop. If the emails continued, he could have reported this issue up the chain of command.

Exs. 1-7 to the PD. To be clear, although we found that the respondents exchanged all of the emails attached to the Petition for Discipline, we would reach the same conclusions here on the Kenneth Emails alone (which the respondents admit exchanging). Exs. 1-4 to the PD.

197. "A violation of Rule 8.4(d) occurs when a lawyer's misconduct is so 'flagrantly violative of accepted professional norms' that it 'undermines the legitimacy of the judicial process.'" Matter of Gomez, 38 Mass. Att'y Disc. R. 161 (2022), quoting Matter of the Discipline of an Attorney, 442 Mass. 660, 668 (2004). There is no question here that the conduct of the trial prosecutors in mocking and disparaging an immunized witness on the basis of his race—a race he shared with his relative, Frances, the criminal defendant—was "flagrantly violative of accepted professional norms" and "undermine[d] the legitimacy of the judicial process." Such misconduct caused harm to the administration of justice because it contributed to the judge's decision to overturn Frances's convictions, by calling into question the trial prosecutors' neutrality and freedom from bias, and reflected poorly on the legal profession as a whole. See Att'y Grievance Comm'n of Maryland v. Maiden, 480 Md. 1, 17 (2022) ("When conduct is related to the practice of law, a lawyer's conduct is prejudicial to the administration of justice if it "'would negatively impact [the] perception of the legal profession' of 'a reasonable member of the public[.]'"). While no evidence was presented to demonstrate that the actual conduct of the trials, or the positions taken by the respondents at the trials, was driven by racial bias, the appearance of such bias was sufficient to violate Rule 8.4(d). We conclude that bar counsel has proved this charge.

198. Bar counsel alleges that mocking or disparaging people based on their race also reflects poorly on a prosecutor's fitness to practice law. We agree and conclude that bar counsel has proved a violation of Rule 8.4(h). In Commonwealth v. Dew, defense counsel was appointed

for a black Muslim man; it was later discovered that the attorney (by then deceased) had openly posted on social media his "vitriolic hatred and bigotry against persons of the Muslim faith." Commonwealth v. Dew, 492 Mass. 254, 255 (2023) The SJC concluded that there was a conflict of interest inherent in counsel's bigotry against persons of the defendant's faith and race, which deprived defendant of his right to effective assistance of counsel. The court vacated the defendant's convictions and remanded for a new trial. In her concurrence, Justice Cypher eloquently noted:

> Public confidence in the integrity of the criminal justice system is essential to its ability to function. We must be aware of and concerned with the confidence of not just this defendant, and not just all Black and Muslim clients represented by Attorney Doyle, but rather all Black persons and members of the Muslim faith in our community, not simply those who have come into contact with the criminal justice system. In fact, all of the people of the Commonwealth can be affected by a loss of confidence in the justice system in circumstances such as these when they come to light. The court's decision today serves to encourage us all that the court system is able to respond in a manner that strengthens that confidence.

Id. at 269–70. When prosecutors, through their words or actions, publicly or behind closed doors,[75] reveal biases or personal animus against certain groups of people, particularly those in protected classes, the legitimacy of the judicial system is undermined. To engage in such behavior certainly reflects adversely on an attorney's fitness to practice. See also Matter of Cerulli, 295 Mass. 1002, 1005-1006, 40 Mass. Att'y Disc. R. __ (2024) (the lawyer was publicly reprimanded for a violation of Rule 8.4(h) alone when he "'introduced [a] sexually suggestive image[] into a courthouse lock-up to potential clients' while in the presence of a probation officer, the respondent then 'openly belittled' the officer 'with a mock apology and obscene hand gesture' when she objected."); Admonition No. 17-11, 33 Mass. Att'y Discipline Rep. 566

[75] O'Sullivan's counsel argued in closing that the emails were a brief and private exchange between the respondents. Tr. XIII:23 (Attorney Mone). That is not a legitimate defense. Biases are not often expressed publicly but, rather, are more usually communicated privately to protect one's reputation.

(2017) (attorney referred to pro se adversary's Egyptian nationality in derogatory manner during mediation session when he said, "this isn't [expletive] Egypt.").

CHARGE THREE (BRADLEY ONLY)
FINDINGS OF FACT

Bradley's Misstatement of Evidence in Closing Argument

199. On July 30, 2009, after he had been granted immunity to testify against Frances and before Frances's second criminal trial, Kenneth was arrested and charged with the distribution of heroin in a school zone. Bradley Ans. ¶ 65.

200. Bradley was the supervisor of the ADA who was prosecuting the drug and school zone case against Kenneth. Bradley Ans. ¶ 66.

201. On April 30, 2010, Bradley emailed his subordinate and asked about the status of the drug and school zone case against Kenneth. Bradley Ans. ¶ 67. On May 3, 2010, Bradley's subordinate responded and informed him that, inter alia, defense counsel would be filing a motion to dismiss the school zone charge. Bradley Ans. ¶ 68.

202. On or about November 24, 2010, the Brockton District Court dismissed the school zone charge against Kenneth. Bradley Ans. ¶ 69.

203. Prior to Frances's second criminal trial in 2011, Bradley knew that the court had dismissed the school zone charge against Kenneth[76]. Bradley Ans. ¶ 70.

204. On May 12, 2011, during his closing argument to the jury in Frances's third criminal trial, Bradley stated:

> Now, you heard, ladies and gentlemen, that Kenny Choy testified pursuant to a grant of immunity. You heard that he has a pending criminal charge of distribution of heroin in a school zone. Those are things you are absolutely entitled to consider in evaluating his credibility. And by all means, you should put his testimony under a microscope. But also consider this.

[76] Only the school zone charge was dismissed but the remaining charges were still pending. See Tr. II:123 (Krowski); Tr. XII:66-67 (Bradley).

> Kenny Choy wasn't given a free pass in exchange for his testimony in this case.

Bradley Ans. ¶ 71.

205. Bradley admits that he misstated evidence to the jury. Tr. III:42-43, 82-83 (Bradley). We so find. However, Bradley also testified that his misstatement was an unintentional mistake. Tr. XII:66-68 (Bradley). We credit his testimony and so find.

CHARGE THREE
CONCLUSIONS OF LAW

Bradley's Closing Argument

206. Bar counsel charged that by misstating the evidence in his closing argument to the jury, Bradley violated Mass. R. Prof. C. 3.4(e)[77] and 8.4(d). Bradley admitted that he misstated evidence to the jury but he claims it was a mistake. We so found.

207. We conclude that bar counsel has not proved this charge. It is not clear to us that an inadvertent misstatement of facts or evidence (especially where the evidence or testimony has not been specifically excluded) automatically requires a finding that the rule has been violated. See AD 19-18 (criminal defense counsel intentionally asked a question that the judge had ordered him to avoid; mistrial declared, violation of Rules 3.4(c) and 8.4(d)); AD 18-12, 34 Mass. Att'y Disc. R. __ (2018) (during the closing argument, the prosecutor inadvertently referenced excluded testimony and made speculative and improper claim; the defendant's conviction was overturned based on the prosecutor's improper closing argument; violation of Rules 3.4(e) and 8.4(d)); AD 05-04, 21 Mass. Att'y Disc. R. 671 (2005) (prosecutor commented on defendant's failure to call a witness, and referenced excluded matters; conviction overturned

[77] "A lawyer shall not…(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused…"

based on improper argument and judge's failure to give curative instructions to the jury, violations of Rules 3.4(e) and 8.4(d); in mitigation, the prosecutor was inexperienced).

MITIGATION

208. The respondents both assert as mitigating their years of experience as prosecutors. This is not a recognized factor in mitigation; in fact, it is an aggravating factor which is explained infra.

209. The respondents both argue that they have no prior discipline. This is not a recognized factor in mitigation. Matter of Zankowski, 487 Mass. 140, 153, 37 Mass. Att'y Disc. R. 554, 570 (2021) ("The absence of prior discipline is to be expected."), citing Matter of Alter, 389 Mass. 153, 157 (1983).

210. Bradley asserts that he had a "stellar reputation among the bar and the judiciary." Our longstanding precedent is that character evidence is not recognized as mitigation. Matter of Saab, 406 Mass. 315, 327, 6 Mass. Att'y Disc. R. 278, 290-91 (1989) ("The fact that the respondent appears to have an excellent reputation in his community and among certain judges and attorneys is not the sort of 'special' mitigating factor to which we have accorded weight…").

211. O'Sullivan claims that her reliance on Bradley is a special mitigating factor under Mass. R. Prof. C. 5.2(b) and Matter of Foster et al., supra. She asserts that she was a subordinate lawyer working at the direction of her supervisor and this is mitigating. In Matter of Foster et al., the SJC held that, "in certain circumstances, reasonable and good faith reliance on another attorney's representations may be a special mitigating factor." Matter of Foster et al., supra, at 726. However, "[e]ven where there is reliance, it will not always be reasonable and in good faith." Id. at 749. There, two separate lawyers were found to have reasonably relied on others. First, the supervising lawyer, Verner, was found not to have violated Rule 3.8(d) because he

reasonably relied in good faith on the false representations of a subordinate lawyer, Kaczmarek, an experienced prosecutor, that she had turned over specific exculpatory information. Id. at 747-748. Verner received a public reprimand for neglecting his supervisory duties because his misconduct was "limited to failing to follow up with [Kaczmarek] as to whether she had disclosed all such information…" Id. The SJC found that Verner's misconduct was mitigated by his reliance. The special hearing officer noted in his report that Verner "was entitled to rely on Kaczmarek to discharge competently and fully the duty to disclose exculpatory evidence. While Verner was deeply engaged at the beginning, his involvement waned as the case progressed. The case was largely Kaczmarek's to manage and prosecute, albeit with regular oversight by Verner." Matter of Foster et al., Special Hearing Officer Report, dated July 9, 2021, ¶ 146.

212. Second, a subordinate lawyer, Foster, was found to have reasonably relied on more senior attorneys, including her direct supervisor, when they specifically told her that everything in a particular investigator's file had been turned over. Id. at 760-762. Foster, the most junior assistant attorney general, who was only involved with the Attorney General's Office ("AGO") response to subpoenas and discovery motions, was suspended for one year and one day for recklessly representing to a judge what the AGO had disclosed (without verifying for herself) and otherwise exhibiting incompetence in her lawyering. Id. at 726. She was found to have violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 8.4(d) and 8.4(h). The special hearing officer found (and Foster did not appeal the finding) that Foster had "performed her role in an incompetent manner by failing to adequately prepare to respond to the motions, by failing to ensure that the AGO reviewed [the state police investigator's] file, and by failing to prepare [the state police investigator] for the hearings before [the judge]." Id. at 759. She was not charged with failure to disclose exculpatory evidence (Rule 3.8(d)). The SJC found that Foster reasonably relied in good

faith on her supervisor and other superiors, including Kaczmarek, when they represented to her that everything in a specific file had been turned over. Id. at 762. Again, these representations about the state police investigator's file were specific and close in time to when the alleged disclosures were made. The SJC did, however, assign less weight to Foster's reliance on Kaczmarek than it did Verner's reliance on Kaczmarek for two reasons: (1) Foster made affirmative representations in court filings, on which she signed her name, without verifying their truth; and (2) she added her own "gloss" to the information given to her by Kaczmarek and her supervisor that was reckless and misleading. Id. at 761-762.

213. Unlike the specific representations in Foster that were close in time, here, we found that Bradley only made general assurances at the beginning of O'Sullivan's involvement in the case—in 2005—that he was in charge of discovery. This occurred three years before Frances's first trial and six years before her second and third trials. We found that Bradley did not specifically assure O'Sullivan that he had "turned over all reports" and we did not credit O'Sullivan's evolving testimony on that point, which was not corroborated by Bradley. As a prosecutor, O'Sullivan had an ongoing independent discovery obligation throughout the three trials, equal to Bradley's. Further, unlike the supervising and subordinate lawyers in Matter of Foster et al., O'Sullivan was deeply and fully engaged in the prosecution of Frances Choy, and particularly in the trial preparation and testimony of the lead Brockton police investigator whose file contained the exculpatory reports. Under these circumstances, it was unreasonable for O'Sullivan to rely, several years later, on an imprecise assurance from 2005.

AGGRAVATION

Bradley and O'Sullivan

214. The respondents were experienced prosecutors. Our caselaw treats experience as an aggravating factor. Matter of Zankowski, supra, at 153; Matter of Moran, supra at 1022; Matter of Luongo, 416 Mass. 308, 312, 9 Mass. Att'y Disc. R. 199, 203 (1993) (substantial experience at the time of misconduct is a matter in aggravation). We agree that this is a factor in aggravation.

215. The respondents' prosecutorial misconduct became the subject of widespread and intense notoriety. News of the respondents' prosecutorial misconduct was reported locally, nationally and internationally. Ex. 13 (News Articles admitted for limited purpose of showing publicity on the case); see Tr. I:110-111 (Bradley stipulates to widespread notoriety). Negative publicity about a case may affect the public perception of the bar and the principal purpose of bar discipline is "protection for the public and preservation of the integrity of the bar and public confidence in it." Matter of Holzberg, 12 Mass. Att'y Disc. R. 200, 204-205 (1996). Our caselaw treats this negative exposure as an aggravating factor. See Matter of Nissenbaum, 34 Mass. Att'y Disc. R. 410, 444-445 (2018) ("[R]elying on decisions in a number of other disciplinary matters, the committee 'recommend[ed] that the notoriety of this case should result in greater -- not lesser -- bar discipline.'") (internal citations omitted).

216. Bar counsel alleges that the respondents caused significant harm to a vulnerable criminal defendant who remained incarcerated for seventeen years. We do not find that bar counsel proved this aggravating factor. Although each respondent may have played a role, along with others (e.g. Attorney Krowski's ineffectiveness of counsel on a number of different fronts), in contributing to the harm to Frances, we do not find either of them, separately or collectively,

to bear the greatest responsibility. See Matter of Foster et al., supra, at 769. Given the way the post-conviction proceedings proceeded, without an evidentiary hearing or opportunity for the respondents to be heard, we make no findings on who bears the greatest responsibility for the harm to Frances.

217. Bar counsel urges us to also find harm upon the court system for the many hundreds of hours of court time expended on Frances's case. See Tr. II:42-43. We do not find this factor in aggravation. We agree that the respondents' conduct caused harm to the administration of justice and, therefore, we already found violations of Rule 8.4(d). To find this factor in aggravation strikes us as duplicative. See generally Matter of Foley, 439 Mass. 324, 337, 19 Mass. Att'y Disc. R. 141, 156 (2003) (finding harm from effect of lawyer's conduct "on the profession and the public's confidence in its integrity"); Matter of Goodman, 22 Mass. Att'y Disc. R. 352, 366 (2006) ("misconduct constitutes harm to the profession in the dishonor it brings to all of us in the eyes of the public.").

O'Sullivan Only

218. We find as an additional factor in aggravation O'Sullivan's continuous lack of awareness and understanding of the wrongful nature of her conduct. She was the main initiator of the emails and she still fails to acknowledge the severity of her misconduct. Matter of Bailey, 439 Mass. 134, 152, 19 Mass. Att'y Disc. R. 12 (2003) (failure to recognize or appreciate wrongful nature of misconduct is a factor in aggravation); Matter of Clooney, 403 Mass. 654, 657, 5 Mass. Att'y Disc. R. 59 (1988) (attorney's "persistent assertions that he did nothing wrong . . . demonstrated that he 'continue[d] to be unmindful of certain basic ethical precepts of the legal profession'"). While she did express remorse and regret about the Kenneth Emails, her words rang hollow to us. Everything she said was tinged with animosity and anger towards

"Team Middleton" and the dysfunction in the PCDAO. Despite the ample evidence, she continued to maintain that she did not send the Frances Emails and sought to blame others for sending them. Tr. X:59-65 (O'Sullivan). In general, we found her testimony not credible.

219. O'Sullivan also lacked candor before us at the disciplinary hearing. She testified falsely or evasively before us on multiple occasions as described supra. She refused to acknowledge that the emails were authentic (see Tr. X:124). We find that she intended to deceive us with her testimony. Lack of candor before the hearing committee is an aggravating factor and O'Sullivan engaged in this behavior repeatedly. Matter of Zankowski, supra; Matter of Hoicka, 442 Mass. 1004, 1006, 20 Mass. Att'y Disc. R. 239 (2004); Matter of Eisenhauer, 426 Mass. 448, 457, 14 Mass. Att'y Disc. R. 251, 262, cert. denied, 524 U.S. 919 (1998); Matter of Friedman, 7 Mass. Att'y Disc. R. 100 (1991).

Uncharged Misconduct

220. Bar counsel alleges that further acts of professional misconduct were committed by the respondents after disciplinary proceedings began. We take those in turn infra.

A. O'Sullivan's Post-Petition Conduct

1. O'Sullivan's Communications with ADA Cappola[78]

221. After the hearing in this disciplinary matter began, bar counsel received an anonymous letter containing allegations about O'Sullivan's actions during these disciplinary proceedings. Bar counsel sought to admit the letter into evidence. Because the letter was anonymous, the chair of the hearing committee declined to admit it due to its unreliability. See Tr. VI:43-48. It was labeled for identification purposes. We have not considered the letter in

[78] We note for the record that ADA Cappola's full name is Tara Cappola Meredith. Tr. V:59-61 (Cappola). We refer to her as ADA Cappola here because O'Sullivan did so throughout her testimony on day four of the hearing and we do not want the record to be confusing.

making our findings. However, as a result of the letter, additional witnesses were called to testify to O'Sullivan's actions during the course of this disciplinary proceeding and we summarize their testimony as follows:

222. On February 16, 2024, O'Sullivan identified Robert Galibois as a potential witness on her preliminary witness list in these disciplinary proceedings. Tr. IV:137-138 (O'Sullivan). Robert Galibois is the District Attorney of the Cape and Islands ("DA Galibois"). Tr. V:13 (Elumba). As discussed supra, he formerly represented Kenneth Choy during the relevant time period.

223. A few days after the witness list was served, on February 20, 2025, O'Sullivan texted ADA Cappola asking if she had a minute to talk. Ex. 18; Tr. IV:144-145 (O'Sullivan); Tr. V:65 (Cappola). ADA Cappola is currently the second assistant district attorney in the Cape and Islands County District Attorney's Office. Tr. V:63 (Cappola). She was formerly an ADA with the PCDAO when O'Sullivan and Bradley worked there. Tr. V:61 (Cappola). ADA Cappola and O'Sullivan remain friends although they go long periods of time without talking. Tr. V:71-72, 75, 86-87, 127 (Cappola). Prior to these communications in February, ADA Cappola had not spoken to O'Sullivan since the previous summer. Tr. V:102 (Cappola).

224. ADA Cappola called O'Sullivan shortly after receiving O'Sullivan's text and they spoke for twenty-six minutes. Ex. 19; Tr. V:66-67 (Cappola). Initially, O'Sullivan testified that she called Attorney Cappola because she was "concerned that my reference to [DA Galibois] as creepy in some of these emails that have been made public would affect his ability to be a fair witness for me." Tr. IV:149 (O'Sullivan). She denied that she was attempting to influence Galibois's testimony. Tr. IV:152-153, Tr. X:71 (O'Sullivan).

225. ADA Cappola testified that during the call O'Sullivan first informed her that "the lawsuit" had been settled. Tr. V:74 (Cappola). In brief, the lawsuit O'Sullivan was referencing was a federal lawsuit by a former Bristol County ADA against the BCDAO (where O'Sullivan now works) and others. The ADA filed the lawsuit shortly after being hired by the Cape and Islands District Attorney's Office (where Galibois is the DA and Cappola is an ADA). Because of this lawsuit, Bristol County was unwilling to act as a special prosecutor[79] for the Cape and Islands District Attorney's Office. Tr. IV:143-144 (O'Sullivan).

226. ADA Cappola testified that during the call O'Sullivan also inquired if DA Galibois had received a summons for this disciplinary hearing and that she was "concerned that he was upset about the emails calling him creepy." Tr. V:74 (Cappola).

227. Despite her initial testimony before us (on day four of this hearing), and although present for ADA Cappola's testimony, O'Sullivan later denied (on day ten of this hearing) that she had told Cappola about the "creepy emails," stating:

> Q: What was it that you wanted to find out from Attorney Cappola?
>
> A: Well, my state of mind was, you know, some of these emails that had been out in the public where I referred to him as a creep, I didn't know whether he was even aware of those emails. So I simply asked Tara Cappola whether or not he had been contacted and whether he had been summonsed. I specifically, even though it was my mindset and why I reached out to her, I didn't tell her about the creepy emails because as far as I knew, he wasn't aware of them. So I wasn't going to advise him of something he maybe wasn't already aware of.

Tr. X:72 (O'Sullivan). We do not credit this changing testimony.

[79] There are times when a county has a conflict of interest and cannot be the prosecutor in a case. The county then needs another county to step in as special prosecutor to prosecute that case. Tr. IV: 137 (O'Sullivan). For example, DA Galibois had been a criminal defense attorney before he became the DA. If there was a case with a criminal defendant that DA Galibois had previously represented, the Cape and Island District Attorney's Office was conflicted out of prosecuting that case. See Tr. V:18 (Elumba).

228. ADA Cappola testified that, immediately after hanging up with O'Sullivan, she called Jessica Elumba, the first assistant DA in the Cape and Islands. Tr. V:9, 22-24 (Elumba); Tr. V:68-69 (Cappola). ADA Elumba testified that ADA Cappola said O'Sullivan informed her about the settlement of the lawsuit, inquired if the DA had received a summons for the disciplinary hearing, and asked whether or not he would be a "friendly witness." Tr. V:19-20 (Elumba). ADA Elumba's impression was that, by talking about these topics in the same conversation, O'Sullivan was presenting a "quid pro quo"—the Bristol County DA's office would agree to be special prosecutors again if DA Galibois was a friendly witness. See Tr. V:23-24 (Elumba).

229. About an hour after her phone call with ADA Elumba, ADA Cappola texted her, "The more I think about it the more annoyed I get." Elumba replied, "Yeah, it's icky." Cappola responded, "Yeah. I hope [DA Galibois] sees it as icky, but prob not". Elumba wrote back, "Well tell him!" Ex. 17; Tr. V:69-70 (Cappola).

230. Before us, ADA Cappola testified reluctantly and evasively about these events. She claimed that she did not recall her telephone conversation with ADA Elumba. Tr. V:70-72 (Cappola). She further testified that she did not perceive the conversation with O'Sullivan as presenting a quid pro quo because O'Sullivan did not ask her for anything; the topic of special prosecutors did not come up directly in their conversation, only the fact that the lawsuit had settled. Tr. V:105-106 (Cappola). It was not until she heard ADA Elumba's impression of the call that ADA Cappola felt "icky." Tr. V:109 (Cappola). When asked if she agreed with ADA Elumba's interpretation, ADA Cappola waffled, answering, "I mean yes and no." Tr. V:71 (Cappola).

231. The next day, February 21, 2025, ADAs Elumba and Cappola met with DA Galibois and discussed ADA Cappola's conversation with O'Sullivan. Tr. V:25-26 (Elumba). They decided that ADA Cappola would simply relay to O'Sullivan that DA Galibois had not received a summons and he was not upset with O'Sullivan. Tr. V:27-28 (Elumba). Later that day, she did so. Tr. V:76-77 (Cappola).

232. On February 23, 2025, ADA Cappola texted O'Sullivan, "Hi. Can we chat specials now???" Ex. 18. ADA Cappola testified that she sent this text because another issue had come up where her office needed a special prosecutor and ADA Cappola thought maybe Bristol County would help now that the lawsuit was over. Tr. V:78-79 (Cappola). O'Sullivan texted back, "I will have to talk to [the DA]. The [lawsuit] left a bad taste! How many/ what type of cases are we talking?" Ex. 18. ADA Cappola testified that she was annoyed after receiving this response and she did not respond to O'Sullivan. Tr. V:79, 118-119 (Cappola).

233. On March 19, 2024, O'Sullivan filed her final witness list and DA Galibois was not on it. Tr. IV:138 (O'Sullivan). To the date of the disciplinary hearing, Bristol County DA's Office was still unwilling to take special prosecutor assignments from the Cape and the Islands DA's Office. Tr. V:57 (Elumba).

234. Although we sympathize with ADA Cappola's difficult position—being called in to testify "against" her friend, O'Sullivan—we found ADA Cappola's testimony before us to be purposefully vague. We are not convinced we have the full story of these phone calls.

235. The SJC has indicated that it would not consider as an aggravating factor misconduct that bar counsel failed to charge in the petition for discipline. Matter of Foster et al., supra, at n.18. As these events transpired only after the petition for discipline was filed, and, indeed, during the weeks leading up to the disciplinary hearing, bar counsel did not have the

opportunity to charge this misconduct. Therefore, it is appropriate for us to consider whether O'Sullivan's conduct here is an aggravating factor.

236. We find that O'Sullivan exhibited incredibly poor judgment in contacting ADA Cappola for information about DA Galibois—a potential witness on O'Sullivan's witness list for this disciplinary hearing. A unanimous committee concludes that O'Sullivan's conduct here would constitute additional violations of Mass. R. Prof. C. 8.4 (d) and (h) and therefore consider it as a factor in aggravation. However, a majority of the committee concludes that her actions would not rise to the level of a violation of Mass. R. Prof. C. 3.4(b) ("A lawyer shall not falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law). The public member of the Hearing Committee, by contrast, infers that O'Sullivan's communications with ADA Cappola were a thinly veiled attempt at achieving a "quid pro pro" – an utterly unacceptable action by a prosecuting (or any other) attorney and a violation of Rule 3.4(b) (as discussed in his Dissent infra).

2. Dennis Collins's Communications with ADA Janezic

237. Dennis Collins has been the chief of the homicide unit at the Bristol County DA's Office since 2015. Tr. V:143 (Collins). O'Sullivan is technically his boss and he describes her as "a close friend." Tr. V:153-156 (Collins).

238. On March 4, 2024, a few weeks before this disciplinary hearing began, ADA Collins was in Boston for work. Tr. VI:24 (Collins). He called ADA Janezic, who currently works in Boston at the Suffolk County DA's Office, and asked to meet with him. Tr. VI:30-31 (Collins); Tr. VI:94-95 (Janezic). At the time he contacted ADA Janezic, ADA Collins knew that ADA Janezic was on O'Sullivan's preliminary witness list. Tr. VI:28 (Collins). However, ADA

Janezic was not aware of the disciplinary matter at the time of their conversation. Tr. VI:97 (Janezic).

239. ADA Collins testified that he informed O'Sullivan beforehand that he was going to contact ADA Janezic. Tr. VI:28, 30 (Collins). Collins testified, "I told [O'Sullivan] I'm going to be in Boston. I run into Joe. I'm friendly with him. I'll talk to him about the Ramos issue[80] because I think it's important that he knows the consequences of his actions in Plymouth County." Tr. VI:28 (Collins). When asked how O'Sullivan responded to that information, Collins testified, "She said, Okay." Tr. VI:30 (Collins).

240. ADA Collins testified that he had two purposes in having this conversation with ADA Janezic: first, to get ADA Janezic's best memory of what he did with respect to the Choy case to help O'Sullivan prepare for the disciplinary hearing, and secondly, he testified:

> I've known Attorney Janezic for 20 years or so. I worked with him for a period in Suffolk. I recall seeing him again while he was working in Plymouth. He was always very friendly. He seemed very earnest. Seemed to be a guy who took his job seriously as a prosecutor.
>
> He's substantially younger than me. I got the impression he looked up to me. And I knew that I was going to be seeing him in Suffolk, while I was working on this case in Suffolk, and rather than keep quiet about this potential issue, namely what had happed on the Choy case and whether or not – to what degree, rather, Mr. Janezic was responsible for the consequences of how that was handled by the Plymouth County District Attorney's office, I felt like I owed it to him as a friend and colleague to tell him what I thought about his work.

Tr. VI:54-55 (Collins).

241. ADA Janezic testified that the general topic of their meeting was his handling of Frances's postconviction case and what ADA Collins's thought he could and should have done differently, including holding an evidentiary hearing. Tr. VI:31-32 (Collins); Tr. VI:95 (Janezic). ADA Collins admitted that he told ADA Janezic during this meeting that he was screwing up or

[80] The "Ramos issue" refers to a case where Bristol County had to oppose a defendant's discovery motion for emails, including those of O'Sullivan, because of the emails that came to light in Frances's post-conviction proceedings. See Tr. VI:48-49, 51-52 (Collins).

ruining people's careers. Tr. VI:35 (Collins). ADA Collins also admitted that he told ADA Janezic that the emails involved in this disciplinary hearing were not authentic even though he knew that O'Sullivan had admitted sending some of them. Tr. VI:35-36 (Collins).

242. ADA Collins initially, and repeatedly, testified that he did not discuss O'Sullivan with ADA Janezic. Tr. VI:32 (Collins). He later admitted that her name did come up in the conversation but only because ADA Janezic brought it up. Tr. VI:32-33 (Collins).

243. After the meeting, ADA Collins told O'Sullivan about had transpired. Tr. VI:40 (Collins).

244. We draw the reasonable inference that ADA Collins met with ADA Janezic in an attempt to influence ADA Janezic's testimony at this disciplinary hearing. ADA Collins essentially admits it. We also find that O'Sullivan knew that ADA Collins was going to meet with ADA Janezic and for what purpose. She literally and figuratively gave her "Okay." While she did not ask or instruct ADA Collins to take this step, she knew when and why he was doing it and she did not instruct him to stop.[81]

245. We find that O'Sullivan and ADA Collins worked together as a team to attempt to influence ADA Janezic's testimony and, in so doing, attempted to affect the integrity of this disciplinary hearing. A majority of the hearing committee concludes that this conduct does not appear to violate Mass. R. Prof. C. 3.4(b) ("A lawyer shall not falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law) because Collins was essentially attempting to shame ADA Janezic about his probable testimony and not assisting him in testifying falsely or offering an inducement. However, we unanimously conclude

[81] We note that O'Sullivan did not refute, or even address, ADA Collins's testimony about her knowledge of his meeting with ADA Janezic during her subsequent testimony on day 10 of this proceeding. See Tr. X (O'Sullivan).

that it would violate Rules 8.4 (d) and (h) and therefore we consider it in aggravation. Cf. Matter of Gomez, 38 Mass. Att'y Disc. R. 161 (2022) (attorney violated Rules 3.4(b), 8.4(d), and 8.4(h), among others, when he communicated, through counsel, to his client's wife that his client would forego a claim to the marital home in their divorce if the wife did not testify against the husband in a domestic violence criminal proceeding). The public member would find that ADA Collins, on O'Sullivan's behalf, was attempting to influence ADA Janezic's testimony by essentially counseling him to testify falsely in violation of Rule 3.4(b) (as discussed in his Dissent infra).

B. Bradley's Post-Petition Conduct

246. Bar counsel alleges that Bradley made "several knowing or reckless misrepresentations to the Hearing Committee" in his opposition to a motion filed by the PCDAO in this disciplinary matter. Bar Counsel PFCs, ¶ 191. In sum, as described supra, the PCDAO filed a motion to "quash or preclude" any testimony from its current and former employees that would infringe upon the work product doctrine and/or the attorney-client privilege. The motion was filed between the fifth and sixth days of the hearing in this matter.

247. Bradley, representing himself pro se, filed his opposition to the motion which included the representation that: "What is clear is that the [work product] doctrine has historically been interpreted and applied as a civil discovery safeguard, with little, if any, application in criminal law and procedure. This is evidenced – at least in part – by the fact that there is no corresponding rule of criminal procedure that addresses the doctrine." Bradley Opp., pg. 2. This is incorrect, as Rule 14 of the Rules of Criminal Procedure specially addressed the work product doctrine. See Mass. R. Crim. P. 14(a)(5); BC PFCs, ¶ 193.

248. We find that this was an unfortunate mistake on Bradley's part, likely attributable to the timing of the motion (during the heart of the hearing), his pro se status, and the fact that he

has not practiced law in approximately six years. It does not reflect well on his legal competence, but not every mistake rises to the level of a rule violation. See Matter of Fitzgerald, 35 Mass. Att'y Disc. R. 137 (2019).

RECOMMENDED DISPOSITION

Bar counsel recommended that the respondents be suspended for a term of no less than three years if aggravating factors were found. Bradley recommended that all three charges against him be dismissed. O'Sullivan recommended dismissal for the charge of failure to disclose exculpatory evidence and a public reprimand for the remaining charge concerning the emails.

We have found that the respondents committed varied and serious misconduct in the course of prosecuting an Asian-American defendant, Frances Choy, for the double homicide of her parents. Including her two mistrials, Frances was prosecuted three times between 2008 and 2011; she was ultimately convicted in her third trial and spent seventeen years in prison. In each of those three trials, the respondents negligently failed to disclose exculpatory evidence to Frances's defense counsel. They also exchanged racially offensive, derogatory, and unprofessional emails about both the defendant and her relative, Kenneth, an immunized witness, during the prosecution. The respondents' misconduct was a factor, among others, in the overturning of Frances's convictions.

We begin with the first charge: the respondents' failure to disclose exculpatory evidence in violation of Mass. R. Prof. C. 3.8(d). As detailed supra, the respondents were equally responsible, though for differing reasons, for turning over the exculpatory reports to defense counsel. They both failed to do so. In support of their sanction recommendations, both bar counsel and O'Sullivan turn to Matter of Foster et al., the only disciplinary case in Massachusetts

finding a violation of Rule 3.8(d). While understandable, there are important distinctions between that case and the instant proceeding.

In Matter of Foster et al., Kaczmarek, the trial prosecutor, was disbarred because she intentionally withheld exculpatory evidence and then misrepresented to colleagues and her supervisor that she had produced it. Matter of Foster et al., supra. Her deliberate misconduct affected the due process rights of thousands of criminal defendants. Here, the respondents' failure to disclose was not intentional like Kaczmarek's misconduct; they negligently failed to produce the exculpatory reports to Frances's counsel. This is a critical difference in assessing our sanction recommendation because the respondents' failure to disclose exculpatory evidence was not as egregious as Kaczmarek's.

Nor do we find the respondents' misconduct to be as modest as Kaczmarek's supervisor, Verner. Unlike the respondents here, Verner was not found to have violated Rule 3.8(d). Rather, he received a public reprimand for violating Mass. R. Prof. C. 1.3 (diligence) and 5.1(b) (duties of a supervisory lawyer). He neglected his supervisory duties by failing to follow up with Kaczmarek, the experienced lead prosecutor, about the contents of an investigator's file and failing to verify whether all potentially exculpatory evidence in that file had been disclosed. Id. at 747. The SJC found Verner's misconduct was mitigated by his reasonable and good faith reliance on Kaczmarek's misrepresentations that she had turned over specific exculpatory information. The respondents here, by contrast, were each equally and deeply involved in the prosecutions of Frances and Kenneth, each knew about the exculpatory reports, the reports were in Detective Clark's file, and they were each obligated to disclose them. In addition, unlike the specific and close in time misrepresentations that were definitively made by Kaczmarek to Verner and Foster in Matter of Foster et al., we did not credit O'Sullivan's allegation that Bradley

specifically assured her that he had produced all reports. Because we do not believe that Bradley made that statement, we also do not credit O'Sullivan's argument that she could have reasonably and in good faith relied on it.

That bring us to Foster, the most junior lawyer, who recklessly represented to a judge what the AGO had disclosed (without verifying for herself) and otherwise exhibited "gross incompetence" in her lawyering. Id. at 764, n.19. Foster was not charged with violating Rule 3.8(d) but, instead, was found to have violated Rules 1.1 (competence), 1.2(a) (seek lawful objectives of client), 1.3 (diligence), 8.4(d) (conduct prejudicial to the administration of justice), and 8.4(h) (conduct reflecting adversely on fitness to practice). We find the respondents' conduct here to be most similar to that of Foster (although their conduct implicated different rules and, most significantly, the respondents did not make reckless representations to a judge in open court), for which she received a one-year-and-one-day suspension. We note that, as with Verner, the SJC found that Foster's misconduct was mitigated, in part, by her reasonable and good faith reliance on the misrepresentations made by Kaczmarek, her colleague, that everything in a state police investigator's file had been turned over.[82] We did not find that O'Sullivan proved reasonable reliance on Bradley that would entitle her to mitigation.

Although not controlling precedent, other jurisdictions have sanctioned lawyers for negligent failure to disclose exculpatory evidence with widely varying results. For example, in Matter of Kurtzrock, a New York prosecutor in charge of a murder prosecution failed to turn over exculpatory evidence and was suspended for two years. Matter of Kurtzrock, 138 N.Y.S. 3d 649

[82] Although, as discussed supra, the SJC assigned less weight to Foster's reliance on Kaczmarek for two reasons: (1) Foster made affirmative representations in court filings, on which she signed her name, without verifying their truth; and (2) she added her own "gloss" to the information given to her by Kaczmarek and her supervisor that was reckless and misleading. Matter of Foster et. al, supra at 761-762.

(N.Y. App. Div. 2020). After receiving a Brady request,[83] the prosecutor "did not review the documents contained in the homicide squad's investigative file. [The prosecutor] followed his 'ordinary[ ]' practice of relying on the police detectives to alert him to 'exculpatory material or something that would be important for [him] to know,' including Brady material." Id. at 655. One month before trial, the prosecutor scanned the detective's entire file into his computer but "didn't read every page" and made no effort to discern or discover whether [exculpatory] material existed." Id. He admitted that he had violated his Brady obligations but the court found that there was no showing of "intentionally malicious or venal conduct." Id. at 659, 666. The two-year suspension did include other misconduct not at issue here, as well as calculation of aggravating and mitigating factors that are not recognized in Massachusetts (such as considering in substantial aggravation that the misconduct occurred in the lawyer's capacity as a prosecutor).

As another example, in a matter of first impression, the Supreme Court of North Dakota found that a prosecutor negligently failed to disclose an exculpatory memorandum to the defense in a criminal trial. In re Disciplinary Action Against Feland, 820 N.W.2d 672 (2012). There, the court found there was no harm (unlike here) because the criminal defendant's motion for a new trial was denied on the basis that the defendant was not prejudiced by the failure to disclose. The court ordered the prosecutor to be admonished.

The respondents' failure to disclose the exculpatory reports also implicated their competence and diligence under Mass. R. Prof. C. 1.1 and 1.3. Pursuant to the standards set forth in Matter of Kane, a "suspension is generally appropriate for misconduct involving repeated failures to act with reasonable diligence, or when a lawyer has engaged in a pattern of neglect,

[83] This refers to the Brady v. Maryland case which established the legal obligation for prosecutors to disclose evidence "favorable to the accused" to the defense in criminal cases, including exculpatory evidence. 373 U.S. 83 (1963).

and the lawyer's conduct causes serious injury or potentially serious injury to a client." Matter of Kane, 13 Mass. Att'y Disc. R. 321, 328 (1997). Generally, "either several instances of misconduct or a protracted period of neglect are necessary before a 'pattern of neglect' finding is appropriate." Matter of Foster et al., supra, at 753.

The respondents engaged in a protracted period and pattern of neglect here. They had an ongoing duty of disclosure and failed to disclose the reports before any of Frances's three trials; a time period that extended from May 29, 2003 (when the CAD Report was printed) through 2011 (Frances's last trial). See Matter of Lagana, 26 Mass. Att'y Discipline Rep. 295, 298 (2010) (three-month suspension stayed for one year for repeated neglect of client's temporary protected status application and, in a separate matter, violating rules 5.1 [a] and 5.1 [b]; misconduct aggravated by substantial experience, previous admonition for similar misconduct, lack of candor, and harm to clients). Although there are no cases with fact patterns similar to this in Massachusetts, a pattern of neglect over three separate cases can warrant a suspension of at least six months. See e.g., Matter of Quinlan, 34 Mass. Att'y Disc. R. 488 (2018) (six-month suspension with a reinstatement requirement for neglecting three unrelated client matters, failing to respond to the clients' inquiries, and failing to return files and unearned fees; the lawyer was administratively suspended and failed to participate in the disciplinary proceedings); Matter of Andrade, 32 Mass. Att'y Disc. R. 10 (2016) (six-month suspension with reinstatement for abandoning a single client matter; administrative suspension for lack of cooperation and failure to participate in the disciplinary proceedings). For the respondents' cumulative misconduct in negligently failing to disclose exculpatory evidence to the defense, we would recommend a term suspension of between three and six months for each respondent.

Finally, we turn to the truly unprecedented portion of this proceeding, this is the first time

that Massachusetts prosecutors have faced discipline for exchanging racially offensive, derogatory, and unprofessional emails directed at the criminal defendant and an immunized witness in a case they are prosecuting in violation of Rules 8.4(d) and (h). As we described, the emails exchanged by the respondents during Frances's prosecution were inherently racist against Asian people and shockingly inappropriate. In particular, the respondents' emails comparing Kenneth to Long Duk Dong were mocking, disparaging, and based on harmful racial stereotypes. As Bradley himself admitted (at least at the beginning of bar counsel's investigation):

> I have come to understand that jokes involving Black, Indigenous, People of Color (BIPOC) or any marginalized group, even if unintended can remind one of being "other," reinforce stereotypes, and minimize achievements. I recognize the emails from over a decade ago that were forwarded to me, and the one that I initiated, fall victim to this, even if that was not our intention. Long Duk Dong, as I have come to recognize, was an Asian caricature and by making an analogy to Kenneth, we may have unintentionally perpetuated the stereotype.

Ex. 6, at BBO183-184 (Bradley's Pro Se Response to Bar Counsel). It should have gone without saying that prosecutors cannot mock people involved in their prosecutions on the basis of race. Further, and significantly, prosecutors mocking an Asian witness, during the prosecution of an Asian-American defendant, fundamentally infects the entire proceeding with, at a minimum, the appearance of racial bias and animus.

The respondents were homicide prosecutors. We acknowledge the stress and difficulty of such a position. We understand from our own experience that many people in the same or similar roles use dark humor to alleviate or manage the heaviness of the horrific things they confront each day. But there is, and needs to be, a firm line between humor and racism, particularly with respect to criminal defendants and immunized witnesses. These prosecutors crossed it; they mocked and disparaged Kenneth and Frances based on their race and perpetuated racial stereotypes. Although they argue that bar counsel is evaluating the Kenneth Emails (which

they admit exchanging) with the benefit of hindsight, essentially applying current day sensibilities and evolved thinking on racial issues to their past actions, we disagree. See O'Sullivan PFCs, ¶ 113. Based on our own knowledge and experience, in 2008 and 2009, the respondents should have known better than to exchange these emails or to make these "jokes" in the workplace; they were not humorous, and they were not harmless. While the racism might not have been as overt as the conduct at issue in Commonwealth v. Dew, we are left with no doubt that it is fruit from the same tree. Commonwealth v. Dew, supra.

As the United States Supreme Court has held, "Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice." Rose v. Mitchell, 443 U.S. 545, 555 (1979). The respondents had a heightened duty as prosecutors—they were "minister[s] of justice." See Mass. R. Prof. C. 3.8, Comment [1]. In her own words, O'Sullivan testified that it is important for criminal prosecutors to avoid any appearance of racial prejudice because: "Prosecutors have a tremendous responsibility. It's incumbent upon prosecutors to make sure that defendants receive a fair trial; that they are treated with dignity and respect; that their constitutional rights are not violated." Tr. IV:13 (O'Sullivan). The respondents completely disregarded their solemn responsibility in this case, failed to treat Frances or Kenneth with dignity and respect, and made serious errors of judgment.

While each case needs to be decided "'on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances,'" Matter of Foley, 439 Mass. 324, 333, 19 Mass. Att'y Disc. R. 141, 152 (2003) (citation omitted), we "need not endeavor to find perfectly analogous cases, nor . . . concern ourselves with anything less than marked disparity in the sanctions imposed." Matter of Hurley, 418 Mass. 649, 655 (1994), cert. denied, 514 U.S. 1036 (1995). As the SJC noted in Matter of Foster et al.,

> when there are no comparable cases, "[w]e…must establish independently a sanction adequate to address the seriousness of the misconduct, to reassure the bar and the public that such conduct is completely contrary to the oath of office taken by every lawyer, and to underscore that, when it is uncovered, such conduct will be treated with the utmost severity."

Matter of Foster et al., supra, at 770, quoting Matter of Foley, supra, at 339. In determining the appropriate sanction to recommend, we are mindful that "[t]he primary purpose of the disciplinary rules and accompanying proceedings is to protect the public and maintain its confidence in the integrity of the bar and the fairness and impartiality of our legal systems." Matter of Foster et al., supra, at 746. The respondents' actions received widespread notoriety and likely contaminated the public's perception of prosecutors generally and the specific prosecution of Frances Choy. We must consider "what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior." Matter of Zankowski, supra, 487 Mass. at 149 (citations omitted).

Bar counsel urges us to look at a Maryland case, Attorney Grievance Commission of Maryland v. Markey and Hancock, 469 Md. 485 (2020), where an attorney and an administrative judge at the United States Department of Veterans Affairs were indefinitely suspended for their offensive emails. There, over the course of seven years, the respondents exchanged emails from their work email addresses and during work hours, containing offensive statements about members of the Hispanic, Asian, and African American races, as well as derogatory statements about women and gay men, many of which were directed at their colleagues. Id. at 488-489. Those emails were egregious in terms of volume, vitriol, and violent imagery. The respondents were found to have violated their state code of professional conduct rules 8.4(d) and 8.4(e) (bias or prejudice), among others, and were indefinitely suspended from the practice of law. Again, as we found with Dew, while the respondents' misconduct here was egregious, it does not rise to the

same level of severity as the above-cited case.

While a suspension is in order, a majority of the committee thinks the totality of the circumstances here mandate something less than an indefinite suspension for both respondents. Further, a majority of the committee admits that it feels constrained by the handful of cases involving Rule 8.4(h) violations that are slightly comparable. In the majority's opinion, those cases feature relatively light sanctions (for singular instances of outrageous misconduct). See Matter of Cerulli, 495 Mass. 1002, 1005-1006 (2024) (public reprimand for 8.4(h) violation where lawyer showed detainee sexually suggestive picture and crudely mocked female probation officer who objected); Admonition No. 17-11, 33 Mass. Att'y Disc. R. 566 (admonition for violation of Rule 8.4(h) where lawyer made racial slur towards opposing party during mediation session); Admonition No. 99-26, 15 Mass. Att'y Discipline Rep. 699 (1999) (attorney, acting as mock trial advisor, made sexually suggestive and inappropriate remarks to middle school student). Absent these cases, the sanction recommendations for both respondents would have been higher. We urge the Board and the Court to consider higher sanctions, if possible.

In addition to the charged misconduct, we must also consider the several aggravating factors we found here. The respondents were experienced prosecutors and their misconduct was reported locally, nationally, and internationally. In evaluating these factors, however, we are mindful that although they both participated in exchanging the emails, they were not equally participatory: O'Sullivan sent all but two of the emails and, of those, one of Bradley's emails referred only to Johnny Cash. To be sure, Bradley engaged with O'Sullivan's inappropriate emails, but we acknowledge that she was the main initiator.

Further, there were numerous additional aggravating factors that we found against O'Sullivan only. We do not credit or believe O'Sullivan's testimony that she appreciated her

wrongdoing. We believe she said the words she thought we wanted to hear yet, at the same time, continued to describe the emails as attempts at humor or "jokes." Along the same lines, we found that O'Sullivan repeatedly and deliberately lacked candor in her testimony before us, which we consider a substantial factor in aggravation.

Finally, and most significantly, O'Sullivan engaged in multiple incidents of uncharged misconduct related to the instant disciplinary proceedings which occurred after the filing of the Petition for Discipline. See Matter of Kerlinsky, 428 Mass. 656, 665 (1999) ("That the respondent continued to engage in the unethical behavior at issue in this case during the pendency of and subsequent to his earlier disciplinary proceedings warrants more severe discipline."). Twice during this disciplinary proceeding, O'Sullivan made serious errors in judgment when she indirectly contacted two separate witnesses in these proceedings: once when she reached out to ADA Cappola concerning DA Galibois's potential testimony and a second time when she "okay-ed" ADA Collins's meeting with ADA Janezic. We have found no cases where a respondent has similarly and foolishly attempted to influence or interfere with testimony at his/her disciplinary hearing. The closest we came is a line of caselaw discussing instances where persons have attempted to influence judicial proceedings. They are not directly analogous but provide direction.

In Matter of Markey, Markey, a judge, engaged in an improper ex parte communication with another judge, concerning an acquaintance of his. Matter of Markey, 427 Mass. 797, 806–07 (1998). That communication caused the second judge to dismiss an abuse prevention order she had issued against Judge Markey's acquaintance. The Commission on Judicial Conduct concluded that Judge Markey intended to influence the outcome of the hearing on the abuse prevention order through his ex parte communication with the other judge. The SJC found that,

"'One would have to be wearing blinders not to draw the strong and reasonable inference' that the ex parte communication was intended to influence the outcome of a judicial proceeding." Id. at 804, quoting Matter of Orfanello, 411 Mass. 551, 556 (1992). The SJC determined that attempting to influence the merits of the case required "at least some term of suspension…" Id. at 806 (internal citations omitted). We acknowledge that we are dealing with different circumstances and proceedings here but think it is still instructive that the judge in the case received a three-month suspension. See also Matter of Orfanello, supra (three-month suspension from practice of law for lawyer's ex parte contact with a judge in an attempt to influence disposition of a case); Matter of Cook, 20 Mass. Att'y Disc. R. 100 (2004) (three-year suspension for a judicial officer for the Commission on Judicial Conduct who revealed confidential information and materials to the target of an investigation with intent to influence the outcome of the proceeding).

In considering this matter as a whole, we are mainly struck by how seriously the respondents' misconduct undermined the integrity and reputation of prosecutors in this Commonwealth. We cannot minimize the harm to the integrity of our legal system and the administration of justice when the motivations and biases of prosecutors become news. When the prosecutors' actions give even the impression of bias, when defendants are not treated with dignity or respect, when prosecutors do not ensure they are playing by the rules and disclosing exculpatory evidence as required, the public is left to question whether the promise of a fair trial has been fulfilled. The respondents' conduct was unacceptable. They illustrated terrible judgment and a complete disregard for the high standards a prosecutor should meet. Their respective sanctions must make clear to the bar and to the public the serious and repugnant nature of their misconduct.

Conclusion

For the foregoing reasons, we unanimously recommend that the respondent, John E. Bradley, Jr., be suspended for one-year-and-one-day. A majority of the committee recommends that the respondent, Karen O'Sullivan, be suspended for two years.

For each respondent, in the event that his or her suspension is reduced to a suspension of less than one-year-and-one-day, we strongly recommended that each respondent be ordered to undergo a reinstatement hearing before being readmitted to practice.

Dated: September 3, 2025

Respectfully submitted,
By the Hearing Committee,

Payal Salsburg
Payal Salsburg, Esq., Chair

Melina McTigue Garland
Melina McTigue Garland, Esq., Member

DISSENT

Except where indicated below, I join my colleagues in their findings of fact and conclusions of law. However, I respectfully dissent from the majority recommendation on the appropriate sanction for Respondent Karen O'Sullivan. My colleagues have recommended a term suspension of two years. Under the circumstances, I find that recommendation to be far too lenient for O'Sullivan's demonstrated misconduct and I would recommend an indefinite suspension.

With respect to O'Sullivan's uncharged misconduct, I would find that she attempted to influence two actual or potential witnesses in this proceeding (DA Galibois and ADA Janezic) in

violation of Mass. R. Prof. C. 3.4(b) ("A lawyer shall not falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law). I believe her communications with ADA Cappola evinced a classic "quid pro quo" where O'Sullivan was offering something of value, i.e. the BCDAO taking on special prosecutor assignments, indirectly to a potential witness, DA Galibois, in exchange for his disregarding disparaging remarks O'Sullivan made about him in emails and providing testimony favorable to O'Sullivan in this disciplinary hearing. See Matter of Gomez, 38 Mass. Att'y Disc. R. 161 (2022) (thirty-day suspension for attorney who violated Rules 3.4(b), 8.4(d), and 8.4(h), among others, when he communicated, through counsel, to his client's wife (the victim of domestic violence) that his client (the alleged perpetrator) would forego a claim to the marital home in their separate divorce proceeding if the wife did not testify against the husband in his domestic violence criminal proceeding; aggravating and mitigating factors), citing M.G.L. c. 268, § 13B(b).[84]

Through her intermediary, ADA Collins, I also find that O'Sullivan attempted to persuade ADA Janezic to testify falsely during these proceedings by making it clear to him how his actions in the post-conviction proceedings had allegedly "screwed up" or ruined people's careers. In my view, this rises to the level of counseling a witness to testify falsely and is a violation of the plain language of the rule. At the very least, this behavior with two separate witnesses reveals a marked worsening of the terrible judgment O'Sullivan exhibited when she initiated most of the emails at issue here, circa 2008-2009. She clearly attempted to affect the outcome of this hearing using intermediaries and demonstrated that she has no respect for the integrity of the legal or

[84] "Whoever willfully, either directly or indirectly…(ii) conveys a gift, offer, or promise of anything of value to; or (iii) misleads, intimidates or harasses another person who is a: (A) witness or potential witness,…with the intent to or reckless disregard for the fact that it may: (1) impede, obstruct, delay, prevent or otherwise interfere with:…a trial or other criminal proceeding of any type…or an administrative hearing…or any other civil proceeding of any type…" is subject to punishment of imprisonment or fine.

disciplinary system despite her long career as a prosecutor. This behavior, coupled with her deliberately false testimony before this committee, cause me to have serious concerns for the safety and security of the public with such a prosecutor representing the Commonwealth.

Finally, with respect to the dispute over the authenticity of the Frances Emails, I find it incredibly telling that O'Sullivan did not seek access to the full forensic image of the decommissioned server for her expert witness's review. Bar counsel's expert, Mr. Spencer, had the full server in his possession but apparently did not find it necessary to search it completely to form his opinion that the emails had been exchanged by the respondents' work email addresses, at the dates and times shown, and had not been tampered with or altered after the fact. By contrast, O'Sullivan's expert, Mr. Verroneau, claimed that he could not determine or opine on the origin of the emails because he did not have access to the full server image. O'Sullivan could have requested such access but she did not. Instead, she relied on Mr. Verronneau's opinion that he did not have enough information in order to cast doubt on or poke holes in the authenticity of the emails. In my mind, she created a circular argument that deprived this hearing committee of information that may have been important.

Although I understand that bar counsel had the burden of proof to show that the emails were exchanged by the respondents, and indeed met this burden, this point weighed heavily on me. If I were in a situation analogous to O'Sullivan's, where my expert witness's examination of a full server image would unequivocally demonstrate that my emails had been altered, I would certainly have taken the appropriate steps to get him access to the full image. Not requesting the full image for her expert to review enabled her to rely on the argument that Mr. Spencer's analysis was incomplete and deficient. It also allowed her counsel to argue in closing that O'Sullivan "doesn't believe in her heart of hearts that she wrote or sent or exchanged those

emails." Tr. XIII:25 (Attorney Mone). In addition, I note that O'Sullivan's expert testified that he was not informed that O'Sullivan admitted to sending the Kenneth Emails; a crucial piece of information for the expert's analysis. This omission was egregious and, to me, again evidenced complete disregard for candor in the disciplinary process. All of this leads me to conclude that O'Sullivan's entire testimony with respect to the Frances Emails was disingenuous.

Given all of the above, and weighing the numerous and substantial aggravating factors against O'Sullivan, I recommend that the respondent, Karen O'Sullivan, be indefinitely suspended.

Charles E. Bobbish
Charles E. Bobbish, Member

EXHIBIT 1

From: OSullivan, Karen (PLY)
Sent: Wednesday, June 25, 2008 12:28 PM
To: Bradley, John (PLY)
Subject: FW: Emailing: gedde%20watanabe.jpg
Attachments: gedde%20watanabe.jpg

This is the image I am getting...

From: OSullivan, Karen (PLY) [mailto:Karen.Osullivan@state.ma.us]
Sent: Wednesday, June 25, 2008 12:23 PM
To: Ryan O'Sullivan
Subject: Emailing: gedde%20watanabe.jpg

<<gedde%20watanabe.jpg>>

R.A. 1301

EXHIBIT 2

From: OSullivan, Karen (PLY)
Sent: Tuesday, July 8, 2008 4:30 PM
To: Bradley, John (PLY)
Subject: Emailing: DSCF2758.jpg
Attachments: DSCF2758.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

clothing Kenny left in lockup...

Bates Stamp 01543

R.A. 1299 01543

C-1552

EXHIBIT 3

From: OSullivan, Karen (PLY)
Sent: Monday, July 14, 2008 3:52 PM
To: Bradley, John (PLY)
Subject: RE: Don't know if you caught this.....
Attachments: jcash.doc

Follow Up Flag: Follow up
Flag Status: Flagged

This will never get old to me...

From: Bradley, John (PLY)
Sent: Monday, July 14, 2008 3:36 PM
To: OSullivan, Karen (PLY)
Subject: Don't know if you caught this.....

but Galibois was in the office earlier dressed like Johnny Cash.


NO
LEFT
TURN

EXHIBIT 4

From: OSullivan, Karen (PLY)
Sent: Monday, August 4, 2008 4:53 PM
To: Bradley, John (PLY)
Subject: RE: Latest on Kenny

Too funny! Well if there is ever a sequel to 16 candles, Kenny should try out for the role of Long Duc Dong! You are clearly just jealous of how hunky Jake Ryan was in that film which is why you feel the need to disparage him...And admit it, you probably watched the whole movie!

From: Bradley, John (PLY)
Sent: Monday, August 04, 2008 11:13 AM
To: OSullivan, Karen (PLY)
Subject: Latest on Kenny

Galibois informs me today that Kenny's latest idea is to defend democracy by joining the army.While I don't see how this is possible because : 1) he is not a citizen;and 2) he was charged with murder x2, Galibois insists that Kenny has cleared a hurdle or two in the application process.As coincidence would have it,I stumbled upon "16 Candles" on cable last night.After seeing it again,I came to two conclusions: 1) Long Duc Dong should be a role model for Kenny;and 2) Jake Ryan looked about 35 years old while supposedly in high school.

EXHIBIT 5

From: OSullivan, Karen (PLY)
Sent: Thursday, June 25, 2009 3:00 PM
To: Bradley, John (PLY)
Subject: RE: More babies

Frances

From: Bradley, John (PLY)
Sent: Thursday, June 25, 2009 2:13 PM
To: OSullivan, Karen (PLY)
Subject: Re: More babies

Any word on who the lucky mom is?

From: OSullivan, Karen (PLY)
To: Bradley, John (PLY)
Sent: Thu Jun 25 11:53:47 2009
Subject: More babies
You will be happy to know that Kenny Choy is having a baby! No details yet, Galibois didn't know anything about it. Kenny told Eric Clark the other day when he was in court. Unfortunately there won't be anymore Kenny sightings this week, apparently someone in his new family is ill.

EXHIBIT 6

From: OSullivan, Karen (PLY)
Sent: Wednesday, September 09, 2009 4:47 PM
To: Bradley, John (PLY)
Subject: RE: Choy

You will be happy to know that me and Galibois are back on! We talked today for the first time in weeks (he is still a very creepy dude). We had a case on today, and of course the ice breaker was Kenny Choy. I think he is feeling nervous that you won't use Kenny after all and he will be out of the lime light. I haven't looked to see what # my case is on in the Appeals court, I hope they are not at the same time. I will show up tomorrow wearing a cheongsam and will be the one doing origami in the back of the court room. My guess is that there is no way Krowski will make it there for case #1.

From: Bradley, John (PLY)
Sent: Wednesday, September 09, 2009 12:31 PM
To: OSullivan, Karen (PLY)
Subject: Choy

just got a call from Jane Lewis at SJC...my first thought was that she was going to say that we were off the list,but instead she told me that we have been bumped up to #1...we'll see if Krowski is on time.Can you text Galibois and let him know?

EXHIBIT 7

From: OSullivan, Karen (PLY)
Sent: Wednesday, September 30, 2009 12:04 PM
To: Bradley, John (PLY)
Subject: RE:

are you joking? That is frances... a little cut and paste.

From: Bradley, John (PLY)
Sent: Wednesday, September 30, 2009 12:03 PM
To: OSullivan, Karen (PLY)
Subject: RE:

Wow....that could be Frances,looks just like her.

From: OSullivan, Karen (PLY)
Sent: Wednesday, September 30, 2009 11:58 AM
To: Bradley, John (PLY)
Subject:

From: OSullivan, Karen (PLY)
Sent: Wednesday, September 30, 2009 11:58 AM
To: Bradley, John (PLY)
Attachments: image001.JPG

GIRL SCOUTS

Maybe next time you'll buy the fucking cookies