

**REPORT OF THE INVESTIGATION AND REVIEW
OF ALLEGATIONS IN THE COMPLAINT FILED BY THE
MASSACHUSETTS STATE POLICE ASSOCIATION**

**APPOINTED BY COLONEL KERRY GILPIN
MASSACHUSETTS STATE POLICE**

Submitted by:

**Kevin P. Burke
Nancy McGillivray**

April 4, 2018

ACKNOWLEDGEMENT

The arrest of Alli Bibaud by Trooper Ryan Sceviour and subsequent related events have caused questions to be raised about the policies, procedures, and practices of the Massachusetts State Police and whether changes should be made to certain aspects thereto.

Colonel Kerry Gilpin has asked me to provide an independent investigation and review of all material facts and circumstances and/or relevant conduct and actions of former and/or current Department personnel, and make written findings and recommendations concerning the appropriate resolution(s), and/or response(s) to the allegations made in the Complaint to the Colonel by the State Police Association of Massachusetts (SPAM).

I would like to thank Nancy McGillivray, a former United States Marshal for the District of Massachusetts and law enforcement colleague who joined me in this investigation and review; and Elin Graydon, former Essex County Assistant District Attorney for her superb contributions as the editor of this report.

Thank you, Colonel Gilpin for your willingness to undertake such an independent review and to everyone in the Massachusetts State Police for their cooperation and support. I hope that our commitment, findings, and recommendations in this report will provide valuable feedback.

Kevin P. Burke
April 4, 2018

Table of Contents

Page

I.	INTRODUCTION	1
II.	SECTION I: THE INVESTIGATION	2
	A. Summary of Conclusions	2
	B. Factual Findings	4
	C. Alli Bibaud's Arrest and Criminal Charges.....	4
	D. Report Writing	4
	E. Bibaud Report	4
	F. Resulting Special Observations Reports (SORs).....	4
	G. Colonel McKeon's Orders.....	5
	H. Events Leading to Orders.....	6
	I. DRE Evaluation Trooper Ali Rei.....	10
III.	CONCLUSIONS	13
	A. As to Colonel's Order.....	13
	B. As to Trooper Ryan Sceviour's Report	15
	C. As to Trooper Ali Rei's Entry in the Daily Administrative Journal and Drug Recognition Expert Report	16
IV.	RECOMMENDATIONS	16
	A. Leadership	16
	B. Drug Recognition Expert Performance & Supervision	18
	C. Employee Evaluation System (EES) and Supervisory Observation Reports (SORs)	19
V.	SECTION 2: RESPONSE TO SPAM COMPLAINT	20
VI.	ADDENDUM A: SOURCES OF INFORMATION	26
	A. Interviews	26
	B. Documents reviewed.....	27
VII.	ADDENDUM B: DOCUMENTS ATTACHED	29
	A. Arrest Report of Alli Bibaud	
	B. Daily Administrative Journal (Log Notes), Trooper Rei	
	C. Special Observation Report (SOR), Trooper Sceviour	
	D. Special Observation Report (SOR), Sgt. Conant	
	E. Employee Evaluation System (EES) Sec. 5 & 7	
	F. Training Academy Power Point Slides	

REPORT OF THE INVESTIGATION AND REVIEW OF ALLEGATIONS MADE IN THE COMPLAINT FILED BY THE STATE POLICE ASSOCIATION OF MASSACHUSETTS

In accordance with the December 1, 2017 Agreement between the undersigned, Kevin M. Burke and Nancy McGillivray, and the Department of the State Police,¹ this is the report of the investigation and review of the allegations made in the Complaint filed by the State Police Association of Massachusetts (SPAM) with the Department on or about November 14, 2017.²

This report has two sections. Section 1 contains written findings, conclusions, and recommendations concerning the appropriate resolutions to the allegations contained in the SPAM complaint. The section begins with a summary of findings and conclusions, followed by a more detailed analysis, including a chronology of events. As requested by the Department, Section 2 responds specifically to the allegations in the SPAM complaint, with the exception of paragraphs 20 and 21, which are beyond the scope of the Agreement. Addendum A lists the sources of information for the report and Addendum B contains the arrest report, the Daily Administrative Journal entry by Trooper Ali Rei, Drug Recognition Expert (DRE), the Supervisory Observation Reports (SORs) that were issued to Trooper Ryan Sceviour and Sergeant Scott Conant, relevant sections of the manual for the Employee Evaluation System that pertain to SORs, and Training Academy materials.

Burke and McGillivray requested interviews with and interviewed thirteen individuals (Addendum A); and reviewed the following:

- transcripts of interviews conducted by the Attorney General (AGO);
- the MSP reports that are at issue and related text messages and emails;
- MSP policies, procedures, practices, rules, regulations, orders, directives, press releases, the manual for the Employee Evaluation

¹ Referred to in this report as the Department or MSP.

² This report is not intended to be used to make any conclusions concerning violations of the criminal law or as a substitute for an internal affairs or personnel investigation.

System, and Academy training materials, including PowerPoint slides of the Report Writing course;

- annual EES evaluations of Tpr. Sceviour, Tpr. Rei, and Sgt. Jason Conant;
- the SPAM complaint;
- the federal complaints and related documents;
- blog posts; and
- news accounts and other media coverage.

Burke and McGillivray did not have access to MSP electronic devices that were seized by the Attorney General in connection with her investigation.

SECTION 1: The Investigation

SUMMARY OF CONCLUSIONS

1) Colonel Richard McKeon had the authority under M.G.L. c. 22C, § 3 and Regulation 3.1 of the Rules and Regulations of the Department to *review* the arrest report in the Alli Bibaud case and to order the issuance of negative Supervisory Observation Reports³ (SORs) to Trooper Ryan Sceviour and Sergeant Jason Conant as prescribed in the Employee Evaluation System (EES) relating to the arrest report in the Bibaud case.

2) Colonel McKeon's orders to *revise* the arrest report and to issue negative SORs to Tpr. Sceviour and Sgt. Conant were the result of flawed judgment and the lack of a professional analysis of the MSP requirements for report writing, the requirements of probable cause, the requirements of

³ A Supervisory Observation Report is "used to note either commendable performance\behavior, or performance\behavior which requires improvement," "as part of an evaluation system" whose "principal purpose ... is to measure the performance of each employee and evaluate the competence of employees in the ranks of Troopers through Captain, based upon predetermined standards" (EES manual (rev. Jan. 1, 2003), Introduction and §§ 5, 7) (punctuation in original).

the government's discovery obligations, and the conflicting advice from Worcester County District Attorney Joseph Early concerning the revision of reports that have been submitted in support of an application for a criminal complaint. When Col. McKeon issued the order to revise the report, he knew that the report had been filed in court and that a complaint had been issued against Bibaud based on the report.

3) The strict adherence to authoritative leadership practices by the MSP Command Staff and the failure by individual members of the Command Staff to request or provide a thoughtful review of the order concerning revision of the arrest report contributed to both flawed outcomes (the order to revise the arrest report and the order to issue the negative SORs) and reveals a lack of leadership and the organizational training necessary to effectively carryout command responsibilities.

4) Colonel McKeon's order to issue the negative SORs was not supported by the State Police training on police report writing and was not based on any existing rule, policy, or guideline of the State Police concerning report writing.

5) Secretary of Public Safety and Security Daniel Bennett did not direct Colonel McKeon to issue either order. By the time Bennett spoke with McKeon, McKeon had already issued the orders and they were implemented. Bennett first heard of Bibaud's arrest from DA Early on October 18. They spoke two or three times about the Bibaud case between October 18 and 20. Sometime after the Motion to Redact was filed by DA Early's office (on October 20), Early called Bennett who later called McKeon. Further, Bennett told the Attorney General that he did not issue any order in this matter to anyone in the MSP, and that he only urged Colonel McKeon to remove the negative SORs but Colonel McKeon refused.

6) Trooper Sceviour's report was consistent with his training and experience and reflected reasonable professional judgment.

7) Sergeant Conant's approval of Tpr. Sceviour's report was an appropriate exercise of his supervisory responsibilities.

FACTUAL FINDINGS

Alli Bibaud's Arrest and Criminal Charges

1) Alli Bibaud was arrested by Tpr. Sceviour on October 16, 2017,⁴ at approximately 7:35 p.m.; he completed his arrest report in the early morning hours of October 17. Sergeant Conant reviewed and approved the report sometime before his shift ended at 7:00 a.m.

2) The same day, October 17, the MSP applied for a criminal complaint, supported by the approved arrest report,⁵ and a complaint charging Bibaud with operating under the influence of alcohol, operating under the influence of drugs, and negligent operation, and two civil motor vehicle infractions was issued by Worcester District Court.

3) Bibaud did not appear for arraignment on October 17, but that day an attorney filed a handwritten Motion to Impound the arrest report on Bibaud's behalf; it was allowed the same day; the District Attorney's Office did not object. On October 20, the District Attorney's Office brought the case forward and filed an oral Motion to Redact information from the arrest report, which was allowed. Bibaud was arraigned on October 26 in Framingham District Court after the case was transferred from Worcester County.

Report Writing, the Bibaud Report, and the Resulting SORs

4) Trooper Sceviour received police report writing training at the State Police Academy as a member of the 82nd Recruit Training Troop. The only report writing standards for the State Police are those presented in the recruit report writing class. No other State Police rules, regulations, policies, or guidelines address report writing.

5) According to the materials of the report training class that Sceviour completed, the purpose of a police report is to produce a clear, accurate, and complete written record that may be used to establish probable cause and the elements of the crime charged (Slides #31; see also #14, 15, 16, 22, 27).

⁴ All events occurred in 2017.

⁵ The arrest report was attached to the application for the criminal complaint in accordance with MSP practice.

Trainees are taught that the “first concern” in report writing is “completeness” and that a report should record “anything a suspect said, ‘word for word’” whenever possible (Slides # 32, 40, 51, 58), even if the exact words consist of objectionable language or obscenities. Trainees are also instructed to include “behavioral characteristics that may be useful in court later (such as . . . crying)” (Slide #40). In addition, the training materials refer to Massachusetts Rules of Criminal Procedure which mandate, in part, that the following information be provided to the defense: “any written or recorded statement, and the substance of any oral statements made by the defendant...” Mass. R. Crim. P. 14(a)(1)(A)(i).

6) Trooper Sceviour’s report (see attached arrest report) included direct quotes from Bibaud: “my Dad’s a fucking Judge, he’s going to kill me” and “she stated [to her boyfriend/passenger because he] had tried to use all of their heroin supply, ‘you have no idea how many dicks I sucked to get this for us.’” The report also characterized other statements, without quoting them: “BIBAUD made multiple inappropriate comments implying trading sexual favors for leniency” and made “lewd comments throughout booking.”

Colonel McKeon’s Orders

7) On October 18, Col. McKeon ordered, through the chain of command of the MSP, that the arrest report be revised to remove certain statements of Bibaud and that Tpr. Sceviour and Sgt. Conant receive negative SORs pursuant to Section 5 of the EES “due to the negative and derogatory statements [attributed to Bibaud] . . . within the gist of [the] report” and because Sgt. Conant approved the report (see attached SORs). When he issued these orders, Col. McKeon was the “executive and administrative head of the State Police” (M.G.L. c. 22C, § 3).

8) As head of the State Police, McKeon was authorized to “make all necessary rules and regulations for the government of the department, for reports to be made by the employees of the department and for the performance of the duties of said employees.” Also, as stated in Article 3.1 of the Rules and Regulations of the State Police, he was authorized to “promulgate all Rules, Regulations, Policies, Procedures, Orders and Directives governing the Massachusetts State Police.”

Events Leading to the Orders

9) Late in the afternoon of October 17, 2017, District Attorney Joseph Early called Col. McKeon and asked if he, McKeon, had heard about the arrest of Alli Bibaud and had seen the arrest report. McKeon responded that he had neither heard about the arrest nor seen the report. Early told McKeon he was concerned with language in the report that Bibaud said she had “sucked dicks to get heroin.” McKeon asked Early where the accident happened and who wrote the report. Early provided the location and the name of the Trooper, Ryan Sceviour. McKeon was concerned that a supervisor would approve that type of language and told Early that he been dealing with unspecified supervision issues within the department and would look into it.

10) Early also told McKeon that a Motion to Redact would be filed by the District Attorney’s office because the language at issue would not be admitted at trial.⁶ Early had not previously contacted McKeon about his (McKeon’s) role in any arrest report.

11) McKeon then asked Deputy Superintendent Francis (Frank) Hughes if he had heard about Bibaud’s arrest. Hughes had not but said he would inquire about it. Hughes asked Lieutenant Colonel Daniel Risteen to research the arrest report and to have Major Susan Anderson, the Troop C commander, forward the report to Risteen, together with the name of the supervisor and what action the Major planned to take to address the situation. Risteen told Hughes that Anderson was away and asked that the matter be dealt with the next day. Risteen then contacted Captain Robert Johnson, the Troop C Executive Officer, for information on Bibaud’s arrest.

12) In response, Johnson faxed and then emailed a copy of the arrest report and the related Daily Administrative Journal entry (log note) by Trooper Ali Rei, a DRE,⁷ to Risteen, who received them some time after 3:00 p.m., with Hughes being present.

⁶ McKeon could not recall whether Early had said anything about a Motion to Impound, that is, that a Motion to Impound had been or would be filed by Bibaud.

⁷ Trooper Ali Rei responded to the scene, was present at the booking, and evaluated Bibaud. Rei made an entry in the Daily Administrative Journal that included Bibaud’s comment about oral sex, which was among the language that Tpr. Sceviour was ordered

13) The next day, October 18, during the Command Staff meeting, Col. McKeon received a call from DA Early, which McKeon returned later in the day. By this point, the complaint had been issued against Bibaud, supported by Sceviour's arrest report, as DA Early and Col. McKeon knew. Early asked McKeon, "what are you going to do" about the Bibaud report. McKeon said he could not do anything because he "thought that ship had sailed, meaning that [he] believed that this had already been with the court" (2/1/18 McKeon interview by AGO, transcript p. 23, lines 4-7).

14) Early told McKeon that changes could be made to the report to remove the offensive language, that revision of the report was "proper and . . . within the accepted procedure," and that Early was "filing a motion to redact" the report (2/1/18 McKeon interview by AGO, transcript p. 23, lines 4-12; p. 83, lines 19-20). McKeon "had no doubt in [his] mind that the District Attorney was correct," "that there would be no problem in making changes to the . . . report" (2/1/18 McKeon interview by AGO, transcript p. 84, lines 7-14), so he said he would try to remove the language that he and Early found offensive.

15) McKeon later stated that because Early's office was prosecuting the underlying criminal case and because Early had been his boss previously, he was "lead to believe that [the orders he had already decided to issue for removal of the language and the issuance of SORs] was not only the right thing to do, it was the appropriate thing to do" (2/1/18 McKeon interview by AGO, transcript p. 26, lines 8-13). At this point, McKeon had not read the report.

16) Later the same day, October 18, McKeon spoke with Hughes and Risteen about language in the report about oral sex and his concerns about the lack of proper supervision regarding the report. McKeon then ordered Hughes and Risteen to have Tpr. Sceviour revise the report and to cause negative SORs to be issued to Sceviour and Conant.

By this point, McKeon stated to the AOG that he believed he was given the report but didn't recall if he read it or "was just off the language [he] mentioned earlier". McKeon further stated that he didn't believe he was "even aware what type of report it was" (2/1/18 McKeon interview by AGO,

to remove from his report. Rei's entry was removed from the DAJ by Major Susan Anderson on October 19, as described below at p. 24. See also pp. 25-26, below.

transcript p. 23, lines 15-19). Hughes had not read the arrest report. McKeon left it up to Hughes and Risteen to determine the revisions to the report and to develop the language for the negative SORs. Ultimately Risteen provided the language, namely, that the SORs were issued because the arrest report contained “negative and derogatory statements,” amounting to “inappropriate commentary” (see attached SORs).

17) The next day, October 19, after reading the arrest report, McKeon called Hughes and instructed him to get going on the changes to the report and the issuance of the negative SORs. Hughes called Risteen and repeated the Colonel’s order “verbatim,” namely that the references to oral sex and Bibaud’s statement that her father was a judge were to be redacted, according to Hughes⁸ (1/11/18 Hughes interview by AGO). Hughes also told Risteen that “vulgar statements” “have nothing to do with” proving the elements of the crime (1/11/18 Hughes interview by AGO).⁹ Hughes ordered Risteen to have a Captain complete the revisions immediately, and told the AGO that he explained that the report was to be marked revised¹⁰ and that a copy of the revised report was to be given to the District Attorney’s office, the defense counsel, and the court. Risteen was also ordered to have the negative SORs issued.

18) Risteen called Major Anderson, who had received a copy of the arrest report on October 18 and ordered her to contact Tpr. Sceviour and Sgt. Conant to report to Troop C Headquarters and to issue them negative SORs. Risteen also instructed Anderson that the “negative and derogatory”

⁸ Colonel McKeon referenced deletion of only Bibaud’s statement about oral sex (2/1/18 McKeon interview by AGO, transcript p. 83, lines 2-9), but the colonel’s order was understood by Hughes to also include Bibaud’s statement that her father is a judge, and the order was conveyed through the chain of command and implemented to include the oral sex/judge/sex for leniency references.

⁹ This assessment had been expressed earlier by DA Early to Col. McKeon, and it was repeated through the chain of command as the order was implemented. For example, Risteen told Anderson (see ¶ 18) and it was referenced in her handwritten notes about the language that was to be removed from the report. Secretary Bennett, Col. McKeon, and Lt. Col. Hughes also repeated it during their interviews with the AGO. Major Anderson told Burke and McGillivray that the statements did not belong in the report, without referencing probable cause/elements as a rationale.

¹⁰ Lieutenant Hughes told the AGO that the addition of the word “revised” was his “idea” (1/11/18 Hughes interview by AGO); Col. McKeon has denied repeatedly that he told anyone the report was to be marked “revised.”

language was to be removed from the arrest report, explaining that the report should contain only facts that contribute to “probable cause and elements of the crime,” and that the top of the report was to be marked “revised” (1/26/18 interview by Burke and McGillivray).

19) Anderson told Burke and McGillivray that by this point she had received a copy of the Motion to Impound and believed that compliance with the impoundment order provided a basis for revising Sceviour’s report, but she did not contact MSP Legal Division for guidance on the issue.¹¹

20) After the call from Risteen, Anderson consulted Major Matthew Roy.¹² She told him the report would have to be “kicked backed,” meaning “denied” in the MPS management information system (1/29/18 Roy interview by AGO) and that Tpr. Sceviour and Sgt. Conant would receive negative SORs for language in the report that was deemed inflammatory and unnecessary for probable cause. Anderson directed Roy in marking up the report for revision.¹³ He took it back to his office, showed his secretary what to revise, and marked the original report “Denied” in the management information system.

21) Anderson also told Lieutenant James Fogarty to order Sceviour and Conant to report immediately to Troop C-6 Holden and to complete the negative SORs. Before they arrived, Anderson told Fogarty that she had read Tpr. Rei’s entry in the Daily Administrative Journal (DAJ),¹⁴ that the

¹¹ On the other hand, on October 17, after the Motion to Impound had been filed by Bibaud and allowed, Lieutenant Dean Ricciardi, MSP’s court liaison, called Lieutenant James Fogarty for guidance; Fogarty directed Ricciardi to contact the MSP Legal Division about the motion, and was advised by Legal that the motion was a matter for the court and not for the State Police.

¹² He was then a captain.

¹³ Roy told Burke and McGillivray that he inserted parentheses in red around language that was to be deleted and that he did not know who wrote the notes or crossed out sentences on the report.

¹⁴ The Daily Administrative Journal is a “permanent record of activity taking place at State Police installations” (Training Bulletin 2014-2015). It “is a public document and can be requested by the public” (*Id.*) MSP protocol calls for the DAJ to be maintained pursuant to M.G.L. c. 41, § 98F, which requires that the police log entries to be “written in a form that can be easily understood, recording in chronological order, all responses to valid complaints received, crimes reported, the names and addresses of persons arrested and the charges against such persons.” (Division Commander’s Order, 12-DFS-103).

“comments” were “inappropriate and” that she was going to remove them from the DAJ (11/14/17 Fogarty interview by AGO).

22) Conant was in Essex County, Salem Superior Court Grand Jury when he received the order to report immediately to Troop CHQ (Holden). Sceviour received the order, a Code 7, to immediately return to the barracks, while he was on a day off at home, ninety miles from Holden. The order was delivered by another trooper who was also off-duty.

23) When Sceviour and Conant arrived with their SPAM representative, Trooper Jeffrey Gilbert, Anderson told them she had been ordered by the “Colonel” to issue the negative SORs¹⁵ but “agreed that it was unfair” (11/14/17 Fogarty interview by AGO). According to Sceviour and Gilbert, Anderson said that the order came from Col. McKeon and Bennett although Anderson stated to Burke and McGillivray that she neither told Sceviour that the order came from “Bennett” or “McKeon”, nor did she mention their names. She said that the order came from the “Colonel”, and that she was referring to Lt. Colonel Risteen (11/26/18 Anderson interview by Burke and McGillivray).

The DRE Evaluation by Trooper Rei

24) Trooper Ali Rei became a Drug Recognition Expert (DRE) in July, 2017. She was trained at the Franklin, Massachusetts Fire Department Headquarters (two weeks) and then received hands-on training at the Maricopa County jail (one week) in Arizona. She did not receive any particularized training, as later confirmed by her DRE supervisor, Lieutenant Daniel Griffin,¹⁶ as to the proper content of a DAJ entry for a DRE evaluation.

25) On October 16, Rei responded to a call requested by Tpr. Sceviour to evaluate Bibaud, who had been involved in a motor vehicle accident.

¹⁵ According to Anderson, that by “Colonel,” she meant Lt. Col. Risteen and that it is common practice in MSP to refer to Lt. Colonels informally as “Colonel” because “Lt. Colonel” is wordy. By contrast, Lt. Fogarty told the AGO that Maj. Anderson said the order came from the Colonel, which he “took it to mean Colonel McKeon,” and that it is *not* commonplace for members of MSP Holden to refer to Lt. Colonel Risteen as “Colonel.”

¹⁶ Lieutenant Griffin is the Agency Coordinator for the DRE program.

Bibaud told Rei at the scene that she had used heroin and alcohol before the accident. Rei conducted a comprehensive DRE evaluation at the Holden barracks after Bibaud was transported there for booking. The evaluation consisted of alcohol and drug testing and included obtaining a urine sample from Bibaud. During booking, Tpr. Rei heard Bibaud offer sexual favors to Tpr. Sceviour in exchange for leniency.¹⁷ Rei's DAJ entry noted that Bibaud said during the evaluation that she performed oral sex on multiple males daily in order to support her heroin habit and to buy drugs for her boyfriend.

26) When Rei finished the evaluation, there was insufficient time before her shift ended to complete the DRE report.¹⁸ According to Rei, when she submitted Bibaud's urine sample and said she would complete her report later, Lieutenant Raymond Jones directed her to enter a statement of facts into the DAJ and to tell Sceviour to deliver a copy of his report to Jones.

27) Lt. Jones told Burke that he was following the protocol that was posted in a note attached to a clipboard requiring a report to be attached to any evidence submission. He said he understood the note to mean an arrest report. The note did not mention "DRE."

28) Rei's DAJ entry amounted to a nearly complete report of the evaluation, including all the testing that Rei performed, her observations, her evaluation, and Bibaud's statement about oral sex. After the DAJ entry was completed, the desk officer printed a copy, placed it in a binder at the Holden barracks, and submitted a copy to go in the evidence bag with Bibaud's urine sample.

29) DRE reports are entered into a national database and retained by the DRE until they are requested by the District Attorney's Office that is prosecuting the underlying criminal case, but they are not entered into the MSP management information system.¹⁹ Rei told Burke and McGillivray that she completed the DRE report on October 17 and provided a copy of it

¹⁷ At Tpr. Sceviour's request, Rei remained in the booking area during booking.

¹⁸ Lieutenant Griffin has advised Burke that a protocol has since been established that would allow overtime to complete a DRE report.

¹⁹ According to Lt. Griffin, the storage of DRE reports is under evaluation.

to the Middlesex District Attorney's Office after the underlying criminal prosecution of Bibaud had been transferred.²⁰

30) On or after October 18, Anderson reviewed Rei's DAJ entry. The next day, Anderson called Griffin and without citing the Bibaud case, or any case, asked about the appropriate content of a DAJ entry for a DRE evaluation. Griffin told her that personal identifying information should not be included. On the morning of October 19, Griffin sent an email to all DREs, advising that the DAJ entry for a DRE evaluation "is simply a log note, NOT a place to do a report [,]" and instructing, "Keep it generic . . . avoid at all costs any identifying data" (capitalization in original).

31) Trooper Rei told Burke and McGillivray that she received a call on October 19 from Sergeant Paul Weinschenk who said that Rei's major, Maj. Anderson, wanted to speak with her.²¹ Following instructions, Rei called Maj. Anderson who, according to Rei, told her that pursuant to orders from Col. McKeon and Secretary Bennett, she (Anderson) had deleted Rei's entry from the DAJ and had removed and shredded the printed copy of the entry from the binder in the Holden barracks, but had retained a copy so that Rei could use it to revise her DAJ entry. According to Rei, Anderson ordered her not to include any of Bibaud's statements regarding sexual acts because it is "too inflammatory" for the DAJ or report.

32) Although Rei had completed the DRE report on October 17, according to her statement to Burke and McGillivray, she did not tell Maj. Anderson that it had been completed. Rei also did not raise any question with Anderson about the removal of the entry from the DAJ. Rei never submitted a revised DAJ entry and did not amend her DRE report to exclude the statements by Bibaud. She did not receive a SOR for not submitting a revised DAJ or a revised DRE report that excluded language that Trp. Sceviour had been ordered to remove.

33) Major Anderson's version of her interaction with Trp. Rei is broadly consistent with Rei's account but differs in some significant details. According to Maj. Anderson, she contacted Rei and told her, in a brief conversation, that she (Anderson) took it upon herself to remove the DAJ entry from the binder, but that she left a copy of the DAJ entry in Rei's mailbox to complete Rei's DRE or just

²⁰ Burke and McGillivray were not provided with a copy by the MSP.

²¹ Rei also told the AGO that she received an email from Anderson with Anderson's contact information.

“in case.” Anderson stated she did not tell Rei to revise the DAJ entry. Also according to Anderson, Rei’s entry was inappropriate because it contained HIPPA and personal identifying information that should not be part of the DAJ.²² Anderson did not mention to Burke and McGillivray any discussion with Rei about the DRE report or any instructions that she might have given to Rei about the report. Anderson told Burke and McGillivray that she did not issue a SOR or any discipline to Rei because she did not order Rei to remove the language that Tpr. Sceviour had been ordered to remove.

CONCLUSIONS

CONCLUSIONS AS TO THE COLONEL’S ORDERS:

After DA Early contacted him and before he read Tpr. Sceviour’s report, Colonel McKeon ordered, through the chain of command, the removal of certain statements by Bibaud from the report. The report had already been reviewed and approved by Sgt. Conant and submitted to the court in support of the application for a criminal complaint, as Early and McKeon knew.

Colonel McKeon also ordered that negative SORs be issued to Tpr. Sceviour and Sgt. Conant “due to the negative and derogatory statements included in [Sceviour’s] report,” which, according to the SORs, “were not elements of the crime nor did they contribute to probable cause.”

When he issued these orders, Col. McKeon was the “executive and administrative head of the State Police” (M.G.L. c. 22C, § 3). As head of the State Police, he was authorized to “make all necessary rules and regulations for the government of the department, for reports to be made by the employees of the department and for the performance of the duties of said employees.” Also, as stated in Article 3.1 of the Rules and Regulations of the State Police, he was authorized to “promulgate all Rules,

²² Anderson explained to Burke and McGillivray that HIPPA and certain personal identifying information should not be included in the DAJ because it is public record. She did not mention HIPPA or personal identifying information to Johnson, Roy, Fogarty, Conant, Rei, or Sceviour, or include it in her notes about the SORs, or assert it in her Answer to the federal complaint (¶ 81 of Answer to Sceviour’s amended complaint). Also, neither rationale is included in the SORs.

Regulations, Policies, Procedures, Orders and Directives governing the Massachusetts State Police.”

Given his authority under statute and Rule, Col. McKeon had the right to *review* Tpr. Sceviour’s report and to determine whether the report and its approval by Sgt. Conant met the performance standards of the State Police, and to order that negative SORs be issued to the trooper and the sergeant.

The order to *revise* the report is different though: by the time revision was ordered, the report had been submitted to the court and used to support the issuance of a criminal complaint. At that point, it could be supplemented with additional, i.e., supplemental reports, but could not be revised.²³

Both orders (to revise the report and to issue SORs) were unprecedented, and did not follow MSP policy, procedure, practice, rule, or regulation. They were the result of flawed judgment and a lack of professional analysis as to the requirements of report writing consistent with the training of the MSP, the requirements of probable cause, the requirements of the government’s discovery obligations, and the conflicting advice from DA Early concerning the revision of reports that have been submitted in support of an application for a criminal complaint. McKeon’s concerns about Bibaud’s statements, and his response thereto, arose as a result of discussions he had with DA Early. In the initial discussion with DA Early, and without having read the report, Col. McKeon was extremely concerned with the language in the report and what he believed to be poor supervision in approving the report.

In a subsequent discussion between Early and McKeon, there was confusion about whether the report could be revised; by this point, the report had been filed with the application for the complaint, as both McKeon and Early knew. Colonel McKeon should have had a clear understanding of the MSP practice of attaching the arrest report to the application for a complaint. Instead, McKeon relied on DA Early’s apparent belief that the arrest report could be revised after the complaint was issued. McKeon did not seek advice of MSP legal counsel to resolve his initial concerns about revising the report. Further, even after he issued the orders to revise the report and to

²³ In his interview by Burke and McGillivray, Risteen discussed supplemental, as opposed to revised, reports.

issue the negative SORs, and after he read the report, he disregarded the relevant nature of the defendant's statements in the report.

Although Col. McKeon repeatedly expressed his general concern about problems of Trooper supervision to his immediate staff and to DA Early, he did not issue any guideline, policy, or directive concerning supervision in general or report writing in particular; and he did not instruct his staff on the language that was to be used in the negative SORs issued to Tpr. Sceviour or Sgt. Conant. Instead, Colonel McKeon stated to the AGO that he was of the view that the issuance of the two SORs would be adequate action for instructing troopers as to the requirements of report writing. As he explained to the AGO, "they [troopers] talk, ...amongst themselves...word spreads. So the message was delivered" (2/1/18 McKeon interview by AGO, p. 116, lines 15-17).

Deputy Colonel Hughes, Lt. Col. Risteen, and Maj. Anderson each stated that he/she was following orders given by the Colonel. It is important to note that none of the State Police personnel who were interviewed by Burke and McGillivray could recall an instance where a Colonel directly ordered a negative SOR to be issued to a trooper for report-writing or for any other reason. Hughes, Risteen, and Anderson failed to meet his/her professional responsibilities by strictly adhering to the authoritative doctrine of "following orders."

McKeon also overlooked the impact of the orders on the MSP and the public trust. It was the responsibility of Hughes, Risteen, and Anderson, in addition to McKeon, to maintain the standards required of a professional police organization. The fact that McKeon's orders were unprecedented should have caused Hughes, Risteen, and Anderson to carefully analyze the orders and request a review by Col. McKeon. In that regard, it is noteworthy that other supervisors who were interviewed in connection with this case and who read the Bibaud arrest report commented that Tpr. Sceviour and Sgt. Conant had done nothing wrong, a position Sceviour and Conant obviously strongly share.

AS TO TROOPER SCEVIOUR'S REPORT:

Trooper Sceviour appropriately took into consideration both his training and his experience in writing the report. He followed the instructions provided at the Academy.

In approving the report, Sgt. Conant properly exercised his supervisory authority based on his experience and training.

There is no basis to conclude that either Tpr. Sceviour or Sgt. Conant violated any standard of report writing or for approving a report.

The SORs issued to Sceviour and Conant did not refer to any “predetermined standards” for report writing, as required by the Section 7 of the EES and no such standards are reflected on the SOR forms. Instead, the SORs cited only “negative and derogatory statements,” which the SORs asserted “were not elements of the crime nor did they contribute to probable cause.” Both Fogarty and Anderson told Sceviour that he had done nothing wrong and neither provided any explanation to Sceviour or Conant for the basis of the SROs.

AS TO TROOPER REI’S ENTRY IN THE DAILY ADMINISTRATIVE LOG AND DRE REPORT:

Lieutenant Jones understood that a report was required with the submission of physical evidence so, according to Rei, he directed her to submit a statement of facts with the urine sample. Because Rei’s DRE report was not finished, she submitted her “in-depth” log entry, as she described it to Burke, McGillivray, and the AGO. Thereafter, Lt. Griffin disseminated guidelines for entering DRE activities in the DAJ, clarifying that the entry should be “simply a log note” and should not include “any identifying data.” At the time of Bibaud’s arrest, the procedures for DRE evaluations had not yet been effectively merged with State Police policy and procedures.

RECOMMENDATIONS

LEADERSHIP

The Massachusetts State Police Superintendent/ Colonel is chosen by the Governor upon the recommendation of the Secretary of Public Safety; the Colonel’s service is co-terminus with the Governor (M.G.L. c. 22, § 3). State Police Command Staff is subsequently chosen by the Colonel from members above the rank of Lieutenant.

Over the last twenty years, the average time of service of a Superintendent/Colonel is less than three years, with the concomitant turnover among Command Staff with little or no transition time or preparation for the new leadership team.

Overall, the State Police are well-trained and highly skilled to respond to various tactical and strategic missions. However, effective police leadership requires clear communication, a collective knowledge and understanding of the mission, and shared values within the organization in order to maintain morale, performance standards, and public trust.

The response of MSP Command Staff to the Bibaud report has eroded confidence in the management abilities of the MSP, both within the organization and among the public. The Colonel failed to align his personal interests with the best interests of the organization and he acted accordingly, to the detriment of the MSP.

The Rules, Regulations, and General Orders of the MSP refer repeatedly to leadership responsibilities; but are largely related to addressing strategic and tactical assignments. Given the manner in which the State Police Superintendent and Command Staff are chosen, it is essential that all potential leaders are adequately trained in the best leadership practices of effective police organizations.

The culture of the Massachusetts State Police must be transformed starting with management. We strongly urge the Colonel to engage professional police management consultants to conduct a management review and assist in the development and implementation of new leadership standards that are aligned with the mission and values of the organization.

Specifically:

- Leadership Training for Commissioned and Non-commissioned Officers, including on-going academic, legal, and scenario-based training in a variety of environments. The curriculum should be demanding. It should examine management concepts, best practices used in business, government, and law enforcement, and include discussions surrounding the challenges facing law enforcement executives.

- Accountability:
 - Establish a new evaluation and analysis group consisting of commissioned and non-commissioned officers, Legal Division, and Public Relations to advise the Colonel on management and supervision issues and concerns regarding the effectiveness of the MSP.
 - Conduct periodic management reviews by an external law enforcement management consultant to ensure oversight, explicit goals, and benchmarks within a defined timeline. Include an audit of leadership training, policies, procedures, practices, and their relevancy in today's executive management environment.

DRE PERFORMANCE AND SUPERVISION

The MSP must be responsible for the performance of DRE Troopers, their evaluations and written reports, and the integration of the DRE program within MSP. To that end, the DRE program should be revised to provide:

- clear standards for the entry of DAJ information in DRE cases, including review and clarification of the 5-day editing period as reflected on the DAJ extract;
- an approval process for DRE reports;
- resources for training for all members of the State Police on the importance and effectiveness of the DRE program, particularly given the current opioid crisis; and
- resources to significantly upgrade and integrate DRE records within MSP management information systems so that data can be used to evaluate the effectiveness of the program.

EMPLOYEE EVALUATION SYSTEM (EES) AND SUPERVISORY OBSERVATION REPORTS (SORs)

- Review the EES and create measures of effectiveness in order to determine whether the system is meeting its purpose of contributing to individual and organizational improvement.
- Specific Performance Factors should be rewritten so that all levels of rank are particularly evaluated on their leadership skills. Members should understand how their shared values, attitudes, and behaviors contribute to the mission of the MSP as a highly effective police organization.

SECTION 2: Response to SPAM complaint

The claims in the complaint are restated below (punctuation as in original), followed by either a response that is based on the factual findings/conclusions of the investigation, or a discussion of the points that are in dispute.

1. Trooper Ryan Sceviour prepared an arrest report in the early morning hours of October 17, 2017 regarding the arrest of Ali (sic) Bibaud on October 16, 2017.

RESPONSE: Agree

2. The report was approved by Sergeant Jason Conant.

RESPONSE: Agree

3. On October 19, 2017 Trooper Sceviour was ordered to code 7 (“return to your barracks immediately”) to the Holden Barracks by Major Susan Anderson.

RESPONSE: Agree

4. Major Anderson informed Sceviour that she had caused the status of his report to be changed from “approved” to “rejected”.

RESPONSE: Agree, however, the report was “Denied,” after approval, not “rejected”; the denial was entered into the management information system by Captain Matthew Roy.

5. Anderson ordered Sceviour to amend his report and remove statements that were relevant evidence of the crimes of which the suspect was charged.

RESPONSE: Agree; the statements that were ordered to be removed were relevant evidence of the crimes of which the suspect was charged, but not necessary to prove the crimes that were charged.

6. Anderson told Sceviour that the order came from “Bennett” and the Colonel.

RESPONSE: In Dispute: Agree that Sceviour told Burke and McGillivray that Anderson told him and his SPAM representative, Tpr. Jeffrey Gilbert, that the order came from Col. McKeon and Bennett.²⁴

- Major Anderson told Burke and McGillivray that she told Tpr. Sceviour the orders came from the “Colonel,” by which she said that she meant Lt. Colonel Daniel Risteen.²⁵ She denied telling Sceviour the order came from “Bennett,” or mentioning the names Bennett or McKeon.
 - Major Roy told Burke and McGillivray that Maj. Anderson said the order came from “Risteen,” but he assumed it “came from McKeon” (2/20/18 Roy interview).
 - Trooper Gilbert said that Maj. Anderson told him and Tpr. Sceviour that the order came from “Bennett to McKeon, McKeon to Risteen, Risteen to her” (12/8/17 Gilbert interview by AGO).
 - Trooper Rei told Burke, McGillivray, and the AGO that Maj. Anderson told her the order came from Colonel McKeon and Secretary Bennett.
7. Anderson showed Sceviour handwritten notes regarding the amendments. She told him that some of the notes were written by Lt. Colonel Risteen.

RESPONSE: Agree that Sceviour stated to Burke and McGillivray that some of the notes were written by Lt. Colonel Risteen and that Anderson showed Sceviour handwritten notes. The red-inked notes were made by then-Captain Roy pursuant to his interview with Burke

²⁴ Sceviour told Burke and McGillivray that he did not know who Bennett was at that time.

²⁵ According to Maj. Anderson, it is common practice in MSP to refer to Lt. Colonels informally as “Colonel” because “Lt. Colonel” is wordy. By contrast, Lt. Fogarty told the AGO that Maj. Anderson said the order came from the Colonel, which he “took it to mean Colonel McKeon,” and that it is *not* commonplace for members of MSP Holden to refer to Lt. Colonel Risteen as “Colonel.”

and McGillivray (2/20/18 Roy interview). Anderson told Sceviour that she had just spoken with Risteen and she identified the black-inked notes as hers. Neither Roy nor Anderson during their interviews with Burke and McGillivray credited Risteen with handwritten notes on Sceviour's report. Risteen stated he passed down the order verbally to Anderson from Hughes regarding the information to be removed from the report.

8. Sceviour indicated that he did not believe that the amendments were appropriate or legal.

RESPONSE: Agree

9. Anderson told Sceviour that he was being given a direct order to amend his report.

RESPONSE: Agree

10. Sceviour complied but insisted on indicating on the document that it was amended.

RESPONSE: **In Dispute:** Agree that Sceviour complied and insisted that the report be marked amended or "revised." NOTE: there are conflicting accounts about who insisted on adding the word "revised."

- Trooper Sceviour told Burke, McGillivray and the AGO that he insisted that the word "revised" be added.
- Hughes said it was his "idea" to include the word "revised."
- Risteen said it was McKeon (via Hughes).
- Roy said Anderson told him that the word "revised" should be on the report.
- Anderson said to Burke and McGillivray that Sceviour insisted but she informed Sceviour that the Colonel wanted the word "revised" added at the top of the report, "just before 'the gist'". Anderson provided Burke and McGillivray with a copy of her notes from the

call from Risteen. The words "revised report" are written at the bottom. The notes do not explain who said to include the word "revised". Additional written entries in a different, thicker ink on the top left side state "on top of report revised" with a double line under the word "revised".

- McKeon has said repeatedly that he never said the word "revised" should be written on the report.

11. On the early morning hours of October 17, 2017 Trooper Ali Rei conducted a Drug Recognition evaluation of prisoner Alli Bibaud.

RESPONSE: Agree

12. Trooper Rei noted her observations of Bibaud in the Daily Administrative Log.

RESPONSE: Agree

13. On October 19, 2017 Major Anderson contacted Trooper Rei by telephone.

RESPONSE: **In Dispute:**

- Rei told Burke and McGillivray that she called Maj. Anderson as instructed by Sgt. Weinschenk. Rei also told the AGO that she called the major after receiving the major's email with contact information.
- Anderson told Burke and McGillivray that she contacted Rei through Sgt. Weinschenk.

14. Anderson told Trooper Rei that she had erased Rei's observations contained in the Log from the computer files.

RESPONSE: **In Dispute:** Trooper Rei told Burke, McGillivray, and the AGO that Anderson had erased her log note. Anderson told Burke and McGillivray that she "removed" the entire log note.

15. Anderson told Rei that she had removed the pages of the Log containing Rei's observations of Bibaud and had shredded them.

RESPONSE: In Dispute: Rei told Burke, McGillivray, and the AGO that Anderson had "erased" the log entry and shred it. Anderson stated that she "removed" the log entry only.

16. Anderson told Rei that she had saved one copy of the pages and was providing them to Rei so that Rei could complete her DRE report.

RESPONSE: Agree. Rei told Burke and McGillivray that she was provided with a copy of the DAJ entry to complete her DRE report. Anderson stated to Burke and McGillivray that she put the copy of the removed DAJ entry in Rei's mail box to complete the DRE report and just "in case."

17. Anderson ordered Rei to shred her copy of the log once she had completed her DRE report.

RESPONSE: In Dispute: According to Rei's interviews with Burke, McGillivray, and the AGO Anderson ordered Rei to shred her copy of the log once she had completed her DRE report. Anderson stated to McGillivray and Burke that she only told Rei that she put a copy of the removed log note in Rei's mailbox to complete her DRE report and just "in case".

18. Anderson ordered Rei to amend her DRE report to omit certain observations of Bibaud.

RESPONSE: In Dispute:

- According to Rei's interviews with Burke, McGillivray, and the AGO, Anderson ordered her to complete the DRE report, omitting Bibaud's statement about oral sex, and to resubmit the report.
- Anderson told Burke and McGillivray that she did not ask Rei to amend her DRE but merely wanted the log note removed from the DAJ. She took it upon herself to remove the log note from the DAJ because it contained HIPPA and numerical identifiers that

Anderson said were inappropriate for public access and did not belong in the DAJ.

19. Anderson told Rei that Anderson did not agree with what was going on but that she had been ordered to do it from the top, "Bennett to Risteen to her, politics are what they are".

RESPONSE: In Dispute:

According to Rei in her interview with Burke and McGillivray, Anderson stated that she (Anderson) did not agree with what was going on but had been ordered to do it from the top, "DA Early, Bennett, Risteen".

Anderson told Burke and McGillivray that she took it upon herself to review and remove Rei's log note from the DAJ. She did not state that she was ordered from the top *with respect to the removal of Rei's DAJ entry or DRE report*. Anderson stated she had a brief conversation with Rei advising her that Rei's log entry had been removed from the DAJ because it contained HIPPA violations and other information that did not belong in public log.

Lt. Fogarty stated to the AGO that Anderson told him (prior to issuing the SORs) that she had read Tpr. Rei's entry in the DAJ and that the "comments" were "inappropriate" and she was going to remove them.

20. Beyond the scope of the Agreement between Burke and McGillivray and the Department
21. Beyond the scope of the Agreement between Burke and McGillivray and the Department

ADDENDUM A: SOURCES OF INFORMATION

INTERVIEWS

Colonel Kerry Gilpin
District Attorney Joseph Early
Lt. Colonel Daniel Risteen
Major Susan Anderson
Major Brian Watson
Major Matthew Roy
Captain Robert Johnson
Lt. Daniel Griffin
Lt. Raymond Jones
Trooper Ryan Sceviour
Trooper Ali Rei
Trooper Jamie Magarian
Kristin Ryan (Program Coordinator II)

REVIEW OF TAPED INTERVIEWS CONDUCTED BY THE ATTORNEY GENERAL'S OFFICE

Colonel Richard McKeon
Lt. Colonel Francis Hughes
Lt. James Fogarty
Sergeant Jason Conant
Trooper Ryan Sceviour
Trooper Ali Rei
Trooper James Gilbert
Trooper Dean Ricciardi

DOCUMENTS REVIEWED

- 1 . Arrest Report and Accident Report filed by Trooper Ryan Sceviour regarding the arrest of Allie Bibaud
- 2 . Daily Administrative Journal (DAJ) entry (Log Note) filed by Trooper Ali Rei regarding the DRE evaluation of Allie Bibaud
- 3 . Some court records in the case of Commonwealth v. Allie Bibaud, including complaint, motion to impound, Order of Transfer to Middlesex County and Special Assignment
- 4 . Pertinent statutes of the Commonwealth in relation to the authority and organization of the State Police criminal law, and the public record law
- 5 . Text messages between Lt. Col Francis Hughes and Lt. Col. Daniel Risteen, texts between Risteen and Major Susan Anderson, and a text between Risteen and Captain Robert Johnson
- 6 . Texts messages among members of the Worcester County District Attorney's Office
- 7 . State Police Rules and Regulations, General Orders, policies, procedures, and bulletins
- 8 . State Police manual for the Employee Evaluation System, annual evaluations of Troopers Sceviour and Rei and Sergeant Conant, and the Supervisory Observation Reports issued to Trooper Sceviour and Sergeant Conant
- 9 . Complaint, Amended Complaint and related pleadings and requests for preservation of documents and responses in the matters of Trooper Ryan Sceviour v. Colonel Richard McKeon, et al. and Trooper Ali Rei v. Colonel Richard McKeon, et al. filed in the U.S. District Court

10. The SPAM complaint
11. MSP Training Materials relating to the Police Report Writing class of the 82nd Recruit Training Troop
12. State Police Association of Massachusetts Collective Bargaining Agreement
13. Correspondence and emails of Col. McKeon including retirement message to the members of the State Police and letter of retirement to Secretary Bennett
14. Press releases of the State Police
15. News accounts and other media coverage
16. Blog posts

ADDENDUM B

Arrest report of Alli Bibaud

Daily Administrative Journal entry (Log Notes), Trooper Ali Rei

Supervisory Observation Report, Trooper Ryan Sceviour

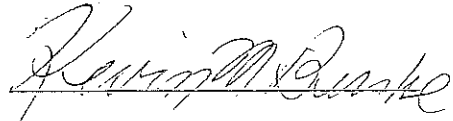
Supervisory Observation Report, Sergeant Scott Conant

Employee Evaluation Systems (EES) Manual (Cover, Introduction, §§ 5, 7)

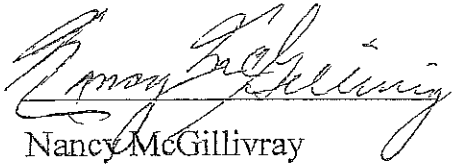
Training Academy Power Point Slides for 82nd RTT

(#s 14, 15, 16, 22, 27, 31, 32, 40, 51, 58)

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kevin M. Burke".

Kevin Burke

A handwritten signature in cursive script, appearing to read "Nancy McGillivray".

Nancy McGillivray

April 4, 2018