

SPECIAL PROSECUTOR DAN K. WEBB OF WINSTON & STRAWN CONCLUDES
INVESTIGATION INTO THE COOK COUNTY STATE'S ATTORNEY'S OFFICE AND
CHICAGO POLICE DEPARTMENT'S HANDLING OF THE JUSSIE SMOLLETT CASE

CHICAGO - August 17, 2020

Information Release

I. Introduction

Dan K. Webb, Special Prosecutor for Cook County, announced today that the Office of the Special Prosecutor ("OSP") has completed its investigative assignment under Cook County Circuit Court Judge Michael P. Toomin's "Second Directive" to the OSP, to determine whether any person or office involved in *People of the State of Illinois v. Jussie Smollett* (No. 19 CR 0310401) ("the Initial Smollett Case") engaged in wrongdoing. In connection with this Second Directive from Judge Toomin, the OSP has investigated the conduct of the Cook County State's Attorney's Office ("CCSAO") and the Chicago Police Department ("CPD"), as well as individuals working in those offices. This Information Release will set forth the OSP's major conclusions and findings from its investigation pursuant to Judge Toomin's Second Directive.

The OSP's investigation, which was conducted in conjunction with a Special Grand Jury, began on August 23, 2019, when Judge Toomin appointed Mr. Webb as Special Prosecutor. Judge Toomin directed Mr. Webb to conduct an all-encompassing independent investigation to determine the following: (1) whether Jussie Smollett should be further prosecuted for the alleged false reports he made to CPD officers ("First Directive"), and (2) whether any person or office involved in the Initial Smollett Case engaged in any wrongdoing ("Second Directive"). Mr. Webb's appointment as Special Prosecutor followed a decision by Judge Toomin on June 21, 2019 that a Special Prosecutor should be appointed in connection with the Initial Smollett Case in order to "restore the public's confidence in the integrity of our criminal justice system."

In connection with Judge Toomin's First Directive to determine whether Jussie Smollett should be further prosecuted, the OSP ultimately requested, on February 11, 2020, that the Special Grand Jury indict Mr. Smollett, and the grand jury returned a true bill. The OSP then filed a six-count indictment charging Mr. Smollett with making four separate false reports to CPD officers related to his false claims that he was the victim of a hate crime, knowing that he was not the victim of a hate crime. The further prosecution of Mr. Smollett is ongoing, and will not be concluded until a final disposition of the indictment charges is reached as the result of a jury trial. As of the date of this Information Release, Mr. Smollett's trial date has not yet been set by the court. Accordingly, the "First Directive" will not be completed until Mr. Smollett's criminal trial has occurred.

In his August 23, 2019 order, Judge Toomin directed the OSP to submit a final written report to him, and for the benefit of the Cook County Board of Commissioners, that details the ultimate results of both his Directives. Because Mr. Smollett's criminal trial will not likely take place for several months because of the pandemic, it will be a substantial period of time from now

until the OSP's final written report on both Directives will be submitted to the Court and for the benefit of the Cook County Board of Commissioners.

The OSP has just completed a thorough and exhaustive investigation into Judge Toomin's Second Directive, which included conducting 53 interviews, issuing more than 50 subpoenas and/or document requests, and collecting more than 120,000 pages of documents (or, more than 26,000 documents), as well as text message data and audio recordings. The OSP has prepared a detailed and comprehensive report that sets forth the evidence that relates to each of the major conclusions and supporting findings from its investigation into the Second Directive. This approximately 60-page evidence Report is entitled *The Office of the Special Prosecutor's Summary of its Final Conclusions, Supporting Findings and Evidence Relating to the Cook County State's Attorney's Office's and the Chicago Police Department's Involvement in the Initial Smollett Case* ("Summary Report").

It is the position of the OSP that this Summary Report should be made public because the OSP has just completed its investigative assignment in connection with Judge Toomin's Second Directive, and because one of the major purposes of Mr. Webb's appointment as Special Prosecutor was, according to Judge Toomin's June 21, 2019 order, that a Special Prosecutor should be appointed in connection with the Initial Smollett Case in order to "restore the public's confidence in the integrity of our criminal justice system." However, because the OSP's Summary Report contains a substantial amount of grand jury evidentiary material, under Illinois grand jury secrecy law, the Summary Report cannot be made public by the OSP without an appropriate court order authorizing the OSP to make this Summary Report public "in the interests of justice."

Accordingly, today the OSP will file a motion before Judge Toomin requesting that he enter an order authorizing the public release of the OSP's Summary Report, and the grand jury materials contained therein, "in the interests of justice." Absent such an order, under Illinois law the OSP cannot release the evidentiary information in the Summary Report that is protected by grand jury secrecy, and if the OSP did so, Illinois law provides that the OSP may be held in contempt of court for the improper release of grand jury information. The OSP will seek to present its motion to Judge Toomin as quickly as possible.

In the meantime, the OSP has determined that it has the authority to legally issue this Information Release that will provide the public a detailed overview of the final conclusions and findings reached by the OSP after completing its investigation of Judge Toomin's Second Directive. While the OSP's Summary Report provides the evidentiary basis for its findings and conclusions, the OSP believes this Information Release will provide the public with a detailed understanding of the actual final conclusions and findings reached by the OSP.

II. Discussion of the OSP's Five Final Conclusions and Supporting Findings Related to the Conduct of the CCSAO in the Initial Smollett Case

After the CCSAO dismissed the Initial Smollett Case on terms that many believed were very favorable to Mr. Smollett, there was speculation in the media regarding whether something illegal or improper had gone on behind the scenes at the CCSAO to allow Mr. Smollett to achieve

the particular resolution he received. Among other things, there was public speculation that Cook County State's Attorney Kimberly M. Foxx may have been influenced in an improper manner by prominent people who reached out to her to discuss the Initial Smollett Case. Thus, as part of its investigation, the OSP thoroughly investigated and evaluated whether State's Attorney Foxx or anyone working at the CCSAO committed any crime relating to the prosecution or resolution of the Initial Smollett Case. As a result of this investigation, the OSP has concluded that it did not develop evidence that would support any criminal charges against State's Attorney Foxx or any individual working at the CCSAO.

However, as a result of this investigation, the OSP did develop evidence that establishes substantial abuses of discretion and operational failures by the CCSAO in prosecuting and resolving the Initial Smollett Case.

The OSP has reached five major final conclusions relating to the conduct of the CCSAO. Below is a summary of those conclusions and supporting findings, but without a discussion of the actual evidence that supports each of these conclusions and findings. The evidence supporting each is detailed in the OSP's 60-page Summary Report as discussed above.

Conclusion #1: The OSP *did* develop evidence that establishes substantial abuses of discretion and operational failures by the CCSAO in prosecuting and resolving the Initial Smollett Case.

The OSP developed evidence that establishes three substantial abuses of discretion and failures by the CCSAO in prosecuting and resolving the Initial Smollett Case.

- First Finding of Abuse of Discretion: The CCSAO's process and decision-making for resolving the Initial Smollett Case were a substantial abuse of discretion and represented a major failure of the operations of the CCSAO, including in the following ways:
 - On March 26, 2019, 19 days after filing the indictment against Mr. Smollett, the CCSAO dismissed the entire indictment against Mr. Smollett on the following terms: (1) complete dismissal of the 16-count felony indictment against Mr. Smollett; (2) no requirement that Mr. Smollett plead guilty to any criminal offense under Illinois law; (3) no requirement that Mr. Smollett admit any guilt of his wrongdoing (in fact, following the court proceedings on March 26, 2019, Mr. Smollett publicly stated he was completely innocent); (4) the only punishment for Mr. Smollett was to perform 15 hours of community service that had no relationship to the charged conduct; (5) only requiring Mr. Smollett to forfeit his \$10,000 bond as restitution to the City of Chicago (a figure amounting to less than 10% of the \$130,106.15 in police overtime pay that the City alleges it paid solely due to Mr. Smollett's false statements to police); and (6) no requirement that Mr. Smollett participate in the CCSAO's Deferred Prosecution Program (Branch 9) ("DPP"), which would have required a one-year period of court oversight over Mr. Smollett.

- Almost across the board, lawyers who currently work in or previously worked in the CCSAO’s criminal division who were interviewed by the OSP—including State’s Attorney Foxx—were “surprised” or “shocked” by at least some facet of the dismissal terms.
- The CCSAO decision-makers on the Initial Smollett Case (Acting State’s Attorney Joseph Magats and Lead Prosecutor Risa Lanier) did not learn of any new evidence between when the CCSAO filed a 16-count indictment against Mr. Smollett on March 7, 2019, when the CCSAO believed it had a strong case against Mr. Smollett, and March 26, 2019, when the entire indictment was dismissed, as described above.
- The CCSAO decision-makers on the Initial Smollett Case have significantly and meaningfully divergent explanations for how the resolution was reached, including who negotiated the terms, whether Mr. Smollett was offered the opportunity to participate in the DPP, and whether the terms of the resolution were modeled after the requirements of the DPP.
- The terms of Mr. Smollett’s resolution do not track the requirements of the DPP.
- The CCSAO did not screen Mr. Smollett’s case to determine if he was eligible for referral to the DPP.
- The CCSAO did not rely upon any specific similar CCSAO cases when resolving the Initial Smollett Case.
- The CCSAO’s decision to advance the Initial Smollett Case from April 17, 2019 to March 26, 2019 to dismiss it minutes before conducting the dismissal hearing did not provide notice to the media or public, despite knowing there was significant interest in the case, including that the media had filed a petition to have cameras in the courtroom.
- Ms. Lanier read a statement during the dismissal hearing that she drafted in conjunction with Mr. Smollett’s counsel, which was atypical.
- The CCSAO did not consult with the CPD about the terms of the resolution and intentionally chose not to alert the CPD that the case would be dismissed until minutes before the hearing, despite all of the diligent and hard work the CPD put into investigating the case and the fact that many CCSAO interviewees would have considered the CPD a victim of Mr. Smollett’s alleged crimes and/or for purposes of restitution.
- Second Finding of Abuse of Discretion: The CCSAO engaged in a substantial abuse of discretion and breached its obligations of honesty and transparency by making false and/or misleading statements to the public regarding the nature and reasons for the dismissal of the Initial Smollett Case. Specifically:

- The CCSAO issued a press statement on March 26, 2019 (the day of the dismissal) that stated: “In the last two years, the Cook County State’s Attorney’s Office has referred more than 5,700 cases for alternative prosecution. This is not a new or unusual practice. An alternative disposition does not mean that there were any problems or infirmities with the case or the evidence...This outcome was met under the same criteria that would occur for and is available to any defendant with similar circumstances.” State’s Attorney Foxx and Mr. Magats made similar statements during interviews with reporters on March 26 and 27, 2019 respectively. However, the evidence the OSP developed makes it clear that there are fundamental facts that are inconsistent with the CCSAO, Mr. Magats, and State’s Attorney Foxx’s messaging in at least two ways:
 - ☞ The Initial Smollett Case did not fit the criteria the CCSAO’s Chief Data Officer used to identify the cited 5,700 figure because all of those cases were referred to a diversion program, unlike Mr. Smollett’s case; therefore, the resolution of the Initial Smollett Case was meaningfully different from how those 5,700 cases were resolved.
 - ☞ There were not thousands of (or, arguably any) similar cases that the CCSAO resolved in a similar way to the Initial Smollett Case. The CCSAO could not identify any specific similar CCSAO cases it relied upon when resolving the Initial Smollett Case.
- The CCSAO and State’s Attorney Foxx made false public statements representing that \$10,000 was the most Mr. Smollett could have been ordered to pay in restitution under the law when there is no such cap under the provision of the disorderly conduct statute under which Mr. Smollett was charged, 720 ILCS 5/26-1(a)(4).
- The CCSAO and State’s Attorney Foxx made false public statements representing that Mr. Smollett had no criminal background, though the CCSAO specifically stated at Mr. Smollett’s bond hearing that Mr. Smollett has a prior misdemeanor conviction out of California from September 22, 2007 for DUI, driving without a license, and giving false information to the police, for which he was placed on 24 months of probation.
- After telling reporters on March 27, 2019 that the CCSAO had a strong case and would have prevailed at trial, State’s Attorney Foxx published an op-ed in the *Chicago Tribune* on March 29, 2019 where she falsely represented that the “office believed the likelihood of securing a conviction was not certain.”
- Third Finding of Abuse of Discretion: The CCSAO engaged in a substantial abuse of discretion and breached its obligations of honesty and transparency by making false and/or misleading statements to the public regarding State’s Attorney Foxx’s recusal.

After State’s Attorney Foxx made the decision to recuse herself from Initial Smollett Case, she and the CCSAO came to realize that her recusal was legally defective in a major way—namely, that she could not simply appoint Mr. Magats to be “Acting State’s Attorney” on the case, but instead needed to recuse the entire CCSAO and petition the court to appoint a special prosecutor. Instead of implementing the proper legal course to carry out the recusal once this defect was brought to their attention, the CCSAO and State’s Attorney Foxx made the decision to ignore this major legal defect seemingly because they did not want to admit that they had made such a major mistake of judgment regarding State’s Attorney Foxx’s recusal. The CCSAO and State’s Attorney Foxx then compounded the problem by making false statements to the media on April 17, 2019 about State’s Attorney Foxx’s lack of knowledge about this major legal defect in carrying out the recusal.

- Fourth Finding of Abuse of Discretion: The CCSAO engaged in a substantial abuse of discretion and breached its obligations of honesty and transparency when State’s Attorney Foxx made false and/or misleading statements to the public that she stopped communicating with Jurnee Smollett, Mr. Smollett’s sister, after State’s Attorney Foxx had become aware that Mr. Smollett had become a subject of the investigation.

State’s Attorney Foxx had communications with Mr. Smollett’s sister, Jurnee Smollett, including text messages and phone calls, between February 1, 2019 and February 13, 2019. The initial thrust of these conversations was Ms. Smollett expressing to State’s Attorney Foxx concerns her family had about information being released publicly about CPD’s investigation of her brother’s reported attack. State’s Attorney Foxx learned by **February 8, 2019** that Mr. Smollett had become a suspect in CPD’s investigation, yet she continued communicating with Ms. Smollett through **February 13, 2019**, including via five text messages and three phone calls. State’s Attorney Foxx then made false statements to the media claiming she ceased all communications with Ms. Smollett as soon as she learned that Mr. Smollett was a suspect in CPD’s investigation and no longer merely a victim.

Conclusion #2: The OSP *did* develop evidence that may rise to the level of a violation of legal ethics by State’s Attorney Foxx and CCSAO lawyers relating to false and/or misleading public statements made about the prosecution and resolution of the Initial Smollett Case.

As summarized above in Conclusion #1, the OSP developed evidence that the CCSAO, State’s Attorney Foxx, and/or Mr. Magats made at least six false and/or misleading public statements relating to the nature and reason for the dismissal of the Initial Smollett Case and State’s Attorney Foxx’s recusal. Some of these public statements were made on more than one occasion. The Illinois Supreme Court has stated that the language in Rule 8.4(c), which prohibits lawyers from engaging in “conduct involving dishonesty, fraud, deceit, or misrepresentation,” is “broadly construed to include *anything* calculated to deceive, including the suppression of truth and the suggestion of falsity.” *In re Edmonds*, 2014 IL 117696, ¶ 53 (2014) (emphasis added). Furthermore, of particular relevance given State’s Attorney Foxx’s role as an elected official, the comments to Rule 8.4 state: “Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill

the professional role of lawyers.” As a result, the OSP has concluded that the six false and/or misleading public statements discussed above in Conclusion #1 could potentially be deemed violations of Rule 8.4(c).

It is important to note that under Illinois law, the OSP has no authority to find that lawyers have violated the Illinois Rules of Professional Conduct or to conduct disciplinary proceedings based on those rules. Under Illinois Supreme Court Rule 751, that determination rests with the Illinois Attorney Registration & Disciplinary Commission (the “ARDC”). The Illinois Rules of Professional Conduct impose a reporting obligation on lawyers under Rule 8.3(a), stating: “A lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) shall inform the appropriate professional authority.” Therefore, while the OSP has no authority to make findings determining ethical violations by lawyers, the OSP will comply with applicable reporting obligations as required by the Illinois Rules of Professional Conduct, and once able under Illinois law, will submit its 60-page Summary Report to the ARDC so that the ARDC can conduct the appropriate ethical review to determine if any ethical violations occurred.

However, beyond the false and/or misleading statements discussed above in Conclusion #1, the OSP did not develop evidence that might rise to the level of a violation of the Illinois Rules of Professional Conduct by any CCSAO lawyer relating to the prosecution or resolution of the Initial Smollett Case.

Conclusion #3: While the OSP *did not* develop evidence showing State’s Attorney Foxx was involved in decision-making on the Initial Smollett Case after she was recused, the OSP did develop evidence that she was provided with frequent updates about the Initial Smollett Case after her recusal.

According to Judge Toomin’s June 21, 2019 ruling, State’s Attorney Foxx needed to have petitioned the court to appoint a special prosecutor when she recused herself from the Initial Smollett Case, rather than appointing Mr. Magats to serve as “Acting State’s Attorney” for the matter herself. There is not a clear legal standard for what she could and could not do after she improperly recused herself from the Initial Smollett Case without seeking the appointment of a special prosecutor. While the OSP has not identified evidence showing State’s Attorney Foxx had any involvement in any decision-making on the Initial Smollett Case, she was provided with updates and had discussions about events in the case after her recusal on February 9, 2019.

Conclusion #4: The OSP *did not* develop evidence that would support any criminal charges against State’s Attorney Foxx or any individual working at the CCSAO.

While the OSP evaluated any and all potentially applicable criminal statutes, the OSP focused its investigation on criminal statutes that might be implicated if anyone involved in the handling or resolution of the Initial Smollett Case had received an improper personal benefit or obstructed how the case was handled. For example, the OSP considered bribery (720 ILCS 5/33-1), failure to report a bribe (720 ILCS 5/33-2), official misconduct (720 ILCS 5/33-3), obstruction of justice (720 ILCS 5/31-4), and perjury (720 ILCS 5/32-2). Based on the voluminous documentary evidence gathered and witness interviews conducted, the OSP did not develop

evidence that would support any criminal charges based on bribery, failure to report a bribe, official misconduct, obstruction of justice, perjury, or any other criminal statute.

It is important to note that, under the law, a person can only be convicted of a crime if the prosecution proves all the elements of the charged offense beyond a reasonable doubt, including, where applicable, proof of any criminal intent. Further, under applicable ethical standards, the OSP, as a prosecutor, must act in good faith and should never pursue a prosecution for criminal charges that the prosecutor cannot reasonably expect to prove beyond a reasonable doubt by legally sufficient evidence at trial. Thus, under these standards, the OSP cannot seek criminal charges against State's Attorney Foxx or any CCSAO employee without developing substantial evidence of a crime. Based on these legal and ethical standards, the OSP did not develop evidence to support any criminal charges against State's Attorney Foxx or any CCSAO employee.

Conclusion #5: The OSP *did not* develop evidence of improper influence by any outside third parties in the decision-making by the CCSAO in the Initial Smollett Case.

State's Attorney Foxx is an elected public official who heads an office tasked with protecting individuals and society, and empowered with the authority to change people's lives through the prosecutions it pursues. Therefore, State's Attorney Foxx—and the CCSAO—must be accountable to the public. Being accountable to the public means State's Attorney Foxx and the CCSAO must also be accessible to the public, including to answer questions and provide information when appropriate to people impacted by the criminal justice system, including victims and victims' families. State's Attorney Foxx and the CCSAO also must be receptive to criticism or concerns raised by constituents or people impacted by the criminal justice system regarding criminal cases in Cook County. Accordingly, it is wholly proper under certain circumstances for the State's Attorney or others at the CCSAO to speak with individuals concerned about how a particular case is being handled or how the CCSAO approaches or resolves cases generally.

Following the dismissal of the Initial Smollett Case, including the CCSAO's public release of emails and text messages in response to Freedom of Information Act requests, there was speculation in the media that conversations State's Attorney Foxx had in the weeks following Mr. Smollett's reported attack improperly influenced or impacted how the CCSAO prosecuted or resolved the Initial Smollett Case. As a result, the OSP investigated whether any such communications resulted in any criminal conduct by State's Attorney Foxx or any other individual working for the CCSAO relating to the Initial Smollett Case, including bribery or official misconduct, and whether State's Attorney Foxx had any communications that could be construed as influencing how the CCSAO decided to prosecute or resolve the Initial Smollett Case.

Based on public allegations against State's Attorney Foxx and evidence the OSP developed relating to communications she had about the Initial Smollett Case, the OSP specifically focused its investigation on communications State's Attorney Foxx had with three people:

- Sherrilyn Ifill, President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc.

- Christina M. “Tina” Tchen, CEO of TIME’S UP Now (formerly Michelle Obama’s Chief of Staff)
- Jurnee Smollett, Mr. Smollett’s sister

The OSP did not identify evidence indicating that State’s Attorney Foxx’s communications with these people influenced or impacted how the Initial Smollett Case was prosecuted or resolved—including the CCSAO’s decision to dismiss the case or the terms of the dismissal. In fact, based on the evidence developed by the OSP, State’s Attorney Foxx did not have any substantive communications about the Initial Smollett Case with any of these people after Mr. Smollett was charged. However, conversations with these three people did deepen concerns State’s Attorney Foxx had regarding information being released to the public, seemingly by the CPD, about the ongoing investigation. Thus, communications with these three people spurred her to reach out to CPD Superintendent Eddie Johnson to recommend the case be referred to the FBI—an action that was not improper and did not have any impact on how the case was investigated or ultimately prosecuted.

Furthermore, while the OSP focused on State’s Attorney Foxx’s communications with the three individuals noted above, the OSP did not identify any other people that had any improper influence over the prosecution or resolution of the Initial Smollett Case.

III. Discussion of the OSP’s Three Final Conclusions and Supporting Findings Related to the Conduct of the CPD in the Initial Smollett Case

In the course of its investigation, the OSP learned of allegations that anonymous CPD employees improperly disseminated law enforcement sensitive information concerning the original Smollett investigation to media sources while the investigation was ongoing (“leaks”). Therefore, the OSP undertook an investigation to determine whether wrongdoing occurred relating to any alleged CPD “leaks,” and has reached the following three (3) major final conclusions as to the CPD:

- (1) The OSP did conclude that the majority of CPD media communications during CPD’s Smollett investigation were authorized communications in accordance with CPD’s written policies;
- (2) The OSP did conclude that there were media reports that contained unauthorized “leaks” of police investigative information by CPD personnel that were in violation of CPD’s written policies. However, for reasons set forth below, the OSP was unable to identify the anonymous alleged CPD source(s) of such “leaks”; and
- (3) The OSP did not develop evidence that would support any criminal charges against any individual working at the CPD.

Conclusion #1: The OSP *did* conclude that the majority of CPD media communications during CPD’s Smollett investigation were authorized communications in accordance with CPD’s written policies.

Under CPD General Order G09-02, “it is the policy of the Chicago Police Department to cooperate impartially with the news media in providing information on crime and police-related matters while simultaneously conforming to the protections guaranteed to individuals under the US Constitution.” Under the same Order, certain authorized individuals are permitted to respond to news media inquiries, provided individuals’ Constitutional rights are safeguarded.

Pursuant to this policy, between January 29, 2019, and June 21, 2019, CPD issued a number of official public statements (press releases) regarding the status and progress of the Smollett investigation and the case’s disposition. Only authorized CPD spokespersons under the policy are permitted to issue these official public police statements. Additionally, authorized personnel frequently responded to specific media inquiries, which was also proper under CPD policy. The OSP determined that no wrongdoing was committed in issuing these official public statements because each was made pursuant to published CPD policies by authorized CPD personnel.

Conclusion #2: The OSP *did* conclude that there were media reports that contained unauthorized “leaks” of police investigative information by CPD personnel that were in violation of CPD’s written policies. However, for reasons set forth below, the OSP was unable to identify the anonymous alleged CPD source(s) of such “leaks.”

During its investigation, the OSP relied on three sources of information to identify alleged “leaks” that should be investigated: (1) alleged “leaks” identified by witnesses the OSP interviewed, other than Mr. Smollett; (2) media “leaks” alleged by Mr. Smollett in various forums; and (3) media reports referencing law enforcement investigative information attributed to an anonymous CPD source or other law enforcement source. The OSP focused its research on reports from established media outlets.

Using this methodology, the OSP identified some examples of improper media “leaks” by CPD personnel. Thus, the OSP gathered sufficient evidence to conclude that one or more anonymous CPD sources “leaked” investigative information to the media about the Smollett investigation without authorization, in violation of CPD policy. However, after a thorough investigation, the OSP was unable to identify the source or sources of these media “leaks.”

Several factors rendered the OSP’s task in determining the source of anonymous CPD “leaks” particularly difficult.

First, in order to conclusively determine the identity of the source of a “leak” to develop evidence that could be used to prove potential charges beyond a reasonable doubt, the OSP would almost certainly have to prove the identity of the police source by obtaining sworn testimony from news reporters who wrote the articles where the “leaked” information was published. However, reporters are protected from disclosing their sources under the Illinois Reporter’s Privilege Statute. 735 ILCS 5/8-901 to 8-909.

Second, some of the “leaks” the OSP identified were included in CPD reports, widely disseminated across CPD divisions under standard CPD procedure, including the Original Incident Report, that hundreds of CPD personnel had access to.

Third, many of the “leaks” the OSP identified in media reports were not necessarily attributed to CPD sources, but to “law enforcement sources,” which could encompass sources from other law enforcement offices, such as the CCSAO or the FBI.

Fourth, a large core investigative team of more than 20 CPD personnel assisted with the Smollett investigation and had access to the confidential investigative files.

Fifth, information about the investigation was necessarily shared with individuals and organizations beyond the core investigative team, including State’s Attorney Foxx and other members of the CCSAO, the FBI, U.S. Customs and Border Patrol, Mr. Smollett and his representatives, and various witnesses connected to the investigation.

The OSP notes that, pursuant to Judge Toomin’s all-encompassing directive to determine whether any office engaged wrongdoing, the OSP also investigated whether CPD took proper steps *in response* to learning of “leaks” of law enforcement investigative information concerning the Smollett investigation to the media. The OSP developed evidence that showed CPD took several responsible and substantive actions in response to alleged “leaks” and attempted to identify the sources of any potential “leaks.” Therefore, the OSP determined that no wrongdoing was committed by the CPD, or any CPD employee, in the Department’s *response* to “leaks” of law enforcement sensitive information about the Smollett investigation.

Conclusion #3: The OSP did not develop evidence that would support any criminal charges against any individual working at the CPD.

As far as the OSP developing evidence to support any criminal charges against any CPD employee for improperly “leaking” information to a media source, the OSP through its investigation identified a single instance where an Illinois police officer was charged with a felony under Illinois criminal statutes for disseminating law enforcement information to an individual or organization not legally authorized to have access to the information. Indeed, absent exceptional circumstances, it is questionable if the criminal statutes the OSP considered could be applied to a police officer who merely “leaks” law enforcement investigative information to a media source.

The OSP again notes that, under the law, a person can only be convicted of a crime if the prosecution proves all the elements of the charged offense beyond a reasonable doubt, including, where applicable, proof of any criminal intent. Further, under applicable ethical standards, the OSP, as a prosecutor, must act in good faith and should never pursue a prosecution for criminal charges that the prosecutor cannot reasonably expect to prove beyond a reasonable doubt by legally sufficient evidence at trial. Thus, under these standards, the OSP cannot seek criminal charges against any CPD employee without developing substantial evidence of a crime. Based on these legal and ethical standards, the OSP did not develop evidence to support any criminal charges regarding alleged “leaks” to the media by CPD personnel.

IV. Conclusion

The OSP worked diligently to complete its investigation pursuant to Judge Toomin's Second Directive in as short an amount of time as possible. However, as often happens with investigations, there were delays in the production of documents that did slow down the ability of the OSP to conduct witness interviews. Eventually, the OSP was able to obtain all relevant documents and was able to successfully interview all relevant witnesses in connection with Judge Toomin's Second Directive. In addition, it should be noted that, because of the COVID-19 pandemic, there were logistical issues in scheduling some witness interviews through no fault of anyone. These events did delay the OSP's ability to complete the investigative work that was required as part of the Second Directive.

It is important to note that all potential witnesses who had any relevant information about the issues being investigated by the OSP regarding the CCSAO and the CPD agreed to cooperate with the OSP and be interviewed in detail about all relevant information. No witness took the Fifth Amendment or refused to provide information.

With public issuance of this Information Release, Judge Toomin's Second Directive to the Special Prosecutor is now closed unless new material evidence is developed in the future.

Mr. Webb wants to thank Patrick Blanchard, Independent Inspector General for Cook County, and his team for serving as an investigative resource to help the OSP carry out Judge Toomin's Second Directive. Mr. Webb also commends Winston & Strawn LLP for allowing the OSP to conduct its thorough investigation on a *pro bono* basis, as a service to the public for no compensation. Mr. Webb also thanks the lawyers at Winston who dedicated significant time, and an enormous effort, to this investigation: Michael Claus, Matthew Durkin, DaWanna McCray, Sam Mendenhall, Shannon Murphy, and Sean Wieber.

In consideration of Mr. Smollett's right to a fair trial, Mr. Webb and the OSP will not be making any additional public statements about the substance of the OSP's investigation until Mr. Smollett's criminal case has concluded.