



UNION COUNTY PROSECUTOR'S OFFICE			
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**RETROSPECTIVE APPLICATION OF ATTORNEY GENERAL LAW ENFORCEMENT
DIRECTIVE No. 2020-5 TO UCPO INVESTIGATIVE STAFF**

**Public Disclosure of the Identities of Investigative Staff Who
Committed Serious Disciplinary Violations in the Past**

Preamble

New York University Professor Zadie Smith wrote in her essay *On Optimism and Despair*, “Progress is never permanent, will always be threatened, must be redoubled, restated and reimaged if it is to survive.” The Union County Prosecutor’s Office has long been committed to progress. As an agency we endeavor daily to serve justice, and hold true to simple rules of conduct that require us to: (1) seek the truth; (2) speak the truth; and (3) do the right thing.

We as a nation, as a county, as an Office, find ourselves in an unprecedented historical moment that calls upon us to question the long-held rules of the system we serve. Ever-vigilant of our duty to serve justice and the community, doing so now, requires us to confront and own the imperfections of the criminal justice system, and even the atrocities that have been committed by fellow officers of the law and of the court who have held titles similar to those we hold now. We may finally see systemic societal changes we thought would never occur during the course of our careers. Each public leader and each public servant must decide whether they intend to hold true to old conventions that, as our Attorney General accurately put it, “protect[] the few to the detriment of the many.” Or whether they will take active steps to contribute to progress.

While the people of the Union County Prosecutor's Office, and our colleagues in Union County law enforcement, reflect some of the truest values one could hope for in their public servants, the reality is that we cannot do our job in service to the community if the community does not trust us. All of us who have spent our nights and weekends working the countless peaceful demonstration that occurred in Union County this past month to ensure that our residents could exercise their rights freely and safely know full well that community trust in law enforcement has been shaken. And while the vast majority of us have spent our careers never doing anything to endanger that sacred public trust, we can no longer ignore the fact that people in our profession in other times and in other places have chipped away at the trust we work so hard to build. Trust is not given. Trust is earned.

The Union County Prosecutor's Office and the Union County law enforcement community must appreciate and examine the many historical events and systemic issues that have brought us to this moment. It is time to redouble, restate, and reimagine what progress in law enforcement means.

The issuance of the instant Standard Operating Procedure is one of many steps we as an Office will be taking to promote progress in accountability and transparency in law enforcement, and to bolster our commitment to strengthening the public's trust in our Agency.

About Standard Operating Procedure 2020-001

On June 15, 2020, our Attorney General issued Law Enforcement Directive 2020-5 ("A.G. Directive 2020-5"), which altered the *Internal Affairs Policy & Procedures ("IAPP")* to require the prospective disclosure of the identities of officers who commit serious violations. A.G. Directive 2020-5 is hereby incorporated by reference.

While A.G. Directive 2020-5 was one of prospective application, it included permissive language for individual law enforcement executives and county prosecutors to mandate the disclosure of the identities of officers found to have committed historical incidents of misconduct. One such agency, as announced in the Directive, is the New Jersey State Police which intends to disclose the identities of law enforcement officers who meet the parameters set forth in A.G. Directive 2020-5 going back twenty years. The retrospective period of twenty years is tied to the fact that the New Jersey State Police has been publishing an annual report summarizing all incidents of major discipline since 2000. The Union County Prosecutor's Office, and many (if not all) Union County law enforcement agencies, have not prepared such reports for that length of time, but we do have access to some such historical records for our Agency's personnel.

The retrospective disclosure of the identities of UCPO investigative staff members who have committed past transgressions that have resulted in demotion, suspension in excess of five days, or termination, requires careful consideration and a balancing of important interests of all involved. Paramount to our ability to do our jobs is the public's trust in our integrity, as well as trust in our strict adherence to the rules and regulations that govern the processes by which we investigate and prosecute criminal activity. This fact heavily weighs in favor of retrospective disclosure.

That said, while every current and future investigative employee now has notice of prospective disclosure, the same is not true for officers impacted by retrospective disclosure. Every impacted officer resolved the disciplinary matters or employment suits that arose as a result of their past transgressions with the expectation that such records would remain undisclosed barring exceptional circumstances. Additionally, one of the key reasons for prospective release – deterrence of bad behavior – is not met by historical disclosures. Impacted officers who have left public service may no longer have the support of their agency and unions and thus could be susceptible to dangerous feelings of isolation if their names were suddenly and unexpectedly released. As they no longer hold public employment, the public’s trust is not so directly served by the disclosure of their names such that it necessarily outweighs the individual interests at stake. Retrospective disclosure has officer safety implications as well. For example, the proposed disclosure timeframes must allow for notice to be given to potentially impacted personnel who may presently be serving in an undercover capacity, without jeopardizing the time and state resources already expended on such investigations. There are many other issues, not listed here, that were considered with respect to retrospective disclosure.

In weighing these varied, and at times competing, interests, the Union County Prosecutor’s Office has endeavored to craft a retrospective disclosure policy that takes into account the need to promote public trust in law enforcement, but remains cognizant of issues of officer safety and fundamental fairness based on past practices of this Agency under different Administrations.

Retrospective Disclosure of the Identities of UCPO Investigative Employees Who Have Committed Serious Past Disciplinary Violations

The Union County Prosecutor’s Office will disclose on its website the names and ranks of UCPO investigative employees who have committed a transgression that resulted in a final disciplinary sanction of termination, reduction of rank or grade, and/or suspension of more than five days, in instances where the underlying misconduct:

- Involved an act(s) of deception, theft, and/or dishonesty;
- Demonstrated a bias towards a particular race, ethnicity, religion, gender identity, sexual preference, or other group;
- Pertained to excessive use of force and/or criminal act(s) of violence;
- Touched upon an investigation and/or the prosecution of a crime (this would include, but is not limited to, mishandling of evidence, mishandling or falsification of official reports/records, improper conduct relevant to a confidential source/informant, or conduct negatively impacting truthful testimony);

and/or

- Reflected an abuse of his/her/their position as a public employee and/or sworn member of law enforcement (this would include, but is not limited to, abuses of power, and misuses of public property and/or paid-time).

Where underlying misconduct falls outside the scope of the aforementioned categories, retroactive disclosure will not be made barring extenuating circumstances wherein the present Administration determines that the public interest in disclosure far outweighs the individual interests of the impacted employee.

Exceptions

The following exceptions to retrospective disclosure apply:

- Retirement Status: The names and ranks of retired employees who would otherwise meet the criteria for retrospective disclosure will not be made public so long as they no longer serve in positions of public trust. If this Agency learns that a former employee presently or prospectively holds a position of public trust, this exception will not be met and retrospective disclosure will apply. Positions of public trust include, but are not limited to, the following: employment in a law enforcement agency (in this state or any other), public employment, elected office, and/or active membership in a state bar.
- Substance Use / Abuse: The Union County Prosecutor's Office and the Union County law enforcement community at large remain deeply committed to supporting those in recovery as evidenced by our recent expansion of the Operation Helping Hand initiative and our long-standing participation in the Drug Court program. We should extend to our colleagues and past colleagues, the same courtesies and support we show the suspects and defendants we encounter through these programs. As such, UCPO will not make retrospective disclosure of the names and ranks of past or present employees who, before 2020, were demoted or suspended for more than five days, for substance use and/or abuse issues, unless attendant conduct falls within one of the categories triggering disclosure. This exception will not apply if the impacted individual was terminated from their employment with UCPO as result of their substance use and/or abuse, and this Agency learns that said individual is presently or prospectively employed in law enforcement (whether in this state or any other).

Present UCPO Investigative Employees with Past Service at Another Law Enforcement Agency

For present UCPO investigative employees who worked in another law enforcement agency (or agencies) prior to joining this Office, a member of the Professional Standards Unit and/or the Command Staff will conduct a records check. If necessary, they will make contact with such Agencies to obtain

relevant records and depending on the reliability of same, retrospective disclosure will be made if appropriate under this policy.

Timeframes

The Union County Prosecutor's Office's retrospective disclosures will be made for at least the past ten years (to **January 1, 2010**), and up to the past twenty years (to **January 1, 2000**), to the extent reliable and available records exist.

The Union County Prosecutor's Office will provide written notice to all current employees, and will endeavor to provide written notice to all past employees, impacted by the historical disclosures to be made no later than **August 17, 2020**.

The Union County Prosecutor's Office will endeavor to publish on its website no later than **September 1, 2020**, the following historical information: the names and current rank of all investigative employees who have received major discipline as defined herein; as well as a brief summary of the underlying transgression(s), a statement of the sanction imposed, and the year in which such discipline was imposed. If an investigative employee impacted by retrospective disclosure is presently serving in an undercover capacity, the retrospective disclosure will be tolled until such time as they can be safely extracted from the ongoing investigation and/or the ongoing investigation has concluded.

The Union County Prosecutor's Office will publish on our website our first prospective report in compliance with the Revised Section 9.11.2 of the *IAPP* as described in A.G. Directive 2020-5, along with the prospective reports of every Union County law enforcement agency, no later than **December 31, 2020**.

Conclusion

The instant policy is applicable to the Union County Prosecutor's Office. While it will be shared with all law enforcement executives in Union County, it is not being issued as a Directive to all law enforcement agencies in Union County.

Just as the Attorney General made retrospective application voluntary, I do as well. The Union County community should not mistake this for a sign that I do not believe retrospective disclosures are unwarranted or unnecessary. A change in policy has never been more warranted or necessary. But just as General Grewal recognized that every agency is unique, I do as well.

I trust that every law enforcement executive in Union County will recognize the importance of crafting a retrospective disclosure policy that meets the specific needs of their community and their agency. Policies and timeframes proposed in each policy will differ from agency to agency based on the past practices and policies of each department. Record keeping, reliability of available records, disparity

between disciplinary measures taken by one Chief versus those taken by an earlier Chief in that same agency for similar conduct, and many other considerations unique to a particular agency, will factor in to the different policies to be adopted in Union County. Some law enforcement executives may find that they cannot reliably or fairly impose a retrospective disclosure policy in their agency. The decision of whether or how to implement a retrospective disclosure policy will be up to each law enforcement executive in Union County. Law enforcement executives in other Union County agencies will however be directed to provide the Union County Prosecutor's Office with copies of any such policies implemented, and all are welcome and strongly encouraged to adopt the instant policy if it meets the needs of the agency they lead.