



HILLAR C. MOORE, III  
19<sup>TH</sup> JUDICIAL DISTRICT ATTORNEY  
PARISH OF EAST BATON ROUGE

## ***IN RE: ALTON STERLING***

This is a report concerning the decision to recuse the District Attorney from the investigation and determination of criminal responsibility in the officer involved death of Alton Sterling on July 5, 2016.

**ISSUED July 11, 2016**

THIS IS A PUBLIC DOCUMENT ISSUED AND PUBLISHED ON [WWW.EBRDA.ORG](http://WWW.EBRDA.ORG) ONLY AFTER THE DETERMINATION BY THE DISTRICT ATTORNEY THAT HE MUST RECUSE HIMSELF AND HIS OFFICE FROM THIS MATTER

THIS REPORT ONLY IDENTIFIES THE DECEASED AND THOSE OFFICERS WHOSE NAMES HAVE BEEN PREVIOUSLY RELEASED BY THE AGENCY INVOLVED.

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## I. INTRODUCTION

### A. Summary

In the early morning hours of July 5, 2016, Baton Rouge City Police (BRCP) officers were dispatched to a complaint of a man brandishing a weapon and threatening another in public. Officers Blane Salamoni and Howie Lake II responded and encountered Alton Sterling and during this encounter Alton Sterling was shot. The exact circumstances of this encounter await the results of a federal investigation that is currently ongoing. Two graphic civilian videos were released over social media causing great distress for our community.

### B. Role of the District Attorney

Under the Louisiana Constitution, the District Attorney is designated the Chief Prosecuting Officer in charge of every criminal prosecution in his district. He has the power to bring any state criminal charge and the power to dismiss any state criminal charge. He is assisted in his efforts by the Grand Jury which also exercises independent constitutional authority. Louisiana law requires the District Attorney to bring to the Grand Jury all charges whenever the District Attorney determines he needs to seek a life or death sentence. In Louisiana, only the Grand Jury may return an indictment for first or second degree murder in the event of an intentional and unjustified taking of a human life. Before the District Attorney may bring any charge before the Grand Jury, he must legally determine that he has sufficient evidence to warrant a conviction at trial where the standard of proof will be “beyond any reasonable doubt.”

For many years, the District Attorney has worked closely with local law enforcement agencies to address officer involved deaths. Local law enforcement agencies employ protocols that require immediate reporting to the District Attorney of any officer involved death and require the participation of the District Attorney in all stages of an investigation into the criminal responsibility for an officer involved death.

The role of the District Attorney in these investigations and in conducting this review is limited to determining whether a criminal violation of Louisiana law has occurred, whether any living person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law. The District Attorney does not establish law enforcement agency policy, procedures, and training requirements. The District Attorney does not have any responsibility for determining disciplinary action or pursuing civil litigation in these matters.

C. Death of Alton Sterling

At this time, the only facts available for the public to consider are that in the early morning hours of July 5, 2016, Baton Rouge City Police officers were dispatched to a complaint of a man brandishing a weapon and threatening another in public. Officers Blane Salamoni and Howie Lake II responded and encountered Alton Sterling and during this encounter Alton Sterling was shot. The exact circumstances of this encounter await the results of a federal investigation that is currently ongoing. Two graphic civilian videos were released over social media causing great distress for our community.

Following the shooting, East Baton Rouge Parish District Attorney Hillar C. Moore, III, two Assistant District Attorneys, and two District Attorney Investigators responded to the scene and observed every critical step in the investigation, including the subsequent interviews of the BRCP officers and other witnesses. The interviews were also monitored by investigators from the Louisiana State Police. Both officers gave statements of their actions only after being advised of their Miranda rights.

Virtually from the moment of the shooting, local law enforcement leaders were in discussion among themselves and with other officials of the need to have an investigation conducted independent of the Baton Rouge Police department. Consultations were had with the Mayor, the Governor, and the United State Attorney with the ultimate agreement of all parties that a federal investigation should take the lead.

Once the decision was made that the United States Department of Justice would become the lead investigating agency in this case, all local law enforcement agencies advised their federal counterparts that they would standby for any requests for assistance.

The District Attorney informed the United States Attorney and the public that any consideration of state charges would await the results of the federal investigation.

## II. STATEMENT OF LAW

### A. Murder

Under Louisiana law, the intentional killing of another human being is defined as Second Degree Murder and is punishable by a mandatory sentence of life in prison. When this murder occurs during the perpetration of another crime, such as an armed robbery; against special classes of persons, such as children or the elderly; or involves the killing of more than one person; then the murder is defined as a First Degree Murder that can be punished by a sentence of death. If the District Attorney seeks to prosecute either of these crimes, he is required to bring them before a Grand Jury for indictment. [LA CCRP 437](#)

### B. Justification

Louisiana law provides each citizen with the right to defend themselves and to “meet force with force,” including deadly force to meet deadly force. This right to use deadly force, however, is limited only to circumstances in which human life is endangered. Deadly force may not be used to protect things and property. Police officers, just like any other citizen, are entitled to use deadly force when their life or the life of another citizen is threatened. [LA R.S. 14:20](#)

### C. Retreat

The laws of Louisiana do not require any citizen to retreat when faced with deadly force. [LA R.S. 14:20](#)

### D. Grand Jury

Since the founding of the United States, the Grand Jury has been a vital part of the many checks and balances in our criminal justice system. It is comprised of 12 citizens who sit for approximately six month terms evaluating whether certain cases, particularly murder cases, proceed to trial. They examine all evidence in secret primarily for two reasons: to protect those testifying from others who have not yet been arrested, and to protect the reputations of those against whom criminal charges may not be brought. To serve as a check on all, the Grand Jury is an independent constitutional body that is independent from the courts, law enforcement, and the District Attorney. The District Attorney is designated as only a legal advisor to the Grand Jury, is required to be present at all proceedings before the Grand Jury, but is excluded from the Grand Jury’s deliberations as they decide their verdict. The Grand Jury can return any one of three verdicts: A True Bill of Indictment (authorizing criminal charges), A No True Bill of Indictment (declining criminal charges), and A Pretermitted

Matter. [LA CCRP 444](#) A Pretermitted Matter means that the Grand Jury members were unable to reach a sufficient consensus (9 out of 12 votes) to render a verdict.

E. District Attorney

The District Attorney presents murder cases to the Grand Jury. In doing so, he is bound legally and ethically by certain standards. First, he must determine the evidence he has to present “if unexplained and uncontradicted, warrants a conviction.” [LA CCRP 443](#) Second, under the Rules of Professional Conduct required of all prosecutors, he is required to “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.” [Rule 3.8](#)

### III. DISCUSSION

#### A. Issue

Whether the District Attorney, Hillar C. Moore, III, must or should recuse himself and his office from the investigation and determination of criminal responsibility of any person for the death of Alton Sterling?

#### B. Application of Law

A district attorney is required to be recused when he has a personal interest in conflict with the fair and impartial administration of justice, is related to a party to such an extent that it may appreciably influence him, or has been employed or consulted in the case as an attorney for the defendant before election as district attorney. [LA CCRP 680](#)

These rules are grounded in our state constitutional provision that “All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation or other rights. [LA CONST ART 1 SEC 22](#)

#### C. Analysis

Since the beginning of this investigation a week ago, the District Attorney has kept the Department of Justice, the Governor, the Attorney General, and local law enforcement leaders informed of the possibilities of recusation in this matter. He has also been asked about this possibility by the public and the media. His response has remained consistent that this requires serious consideration given his responsibilities as District Attorney and the significance of this case for this community.

During this entire investigation, his primary goals have been to ensure justice for all parties and transparency for our criminal justice system. Any decision he would make would be consistent with those goals. As there is no set timeline for reaching this decision, the District Attorney has used the past week to ensure that others potentially affected by such a decision would have time to prepare a smooth transition for all persons working the investigation.

The only factor for the District Attorney in reaching this decision involves his relationship to the parents of officer Blane Salamoni. As has been covered in the media, his parents are both experienced law enforcement professionals who have achieved senior leadership positions within the

Baton Rouge Police Department. Their careers and their professional responsibilities have often overlapped and interacted directly with the District Attorney. By example, officer Blane Salamoni's mother was the Violent Crime and Crime Scene Commander during most of the District Attorney's term of office and interacted personally and professionally with the District Attorney in establishing the parish-wide Violent Crime Unit in 2010. Since 2009, they have worked together on more than 400 homicides that the District Attorney has personally responded to since taking office. Officer Blane Salamoni's father during this same period has commanded the department's special operations unit and, in this capacity, has personally and alongside others in his unit provided the District Attorney, his family, and individuals on his staff with 24 hour security coverage when needed.

The District Attorney has no direct connection to either officer involved in this shooting and, if the legal test were one solely of direct connections, he could likely continue as the chief prosecutor responsible for making a determination as to any criminal responsibility for the death of Alton Sterling. The law, however, requires the District Attorney to look beyond direct connections. The Louisiana Supreme Court has previously stated: "He represents the State, and the State demands no victims. It seeks justice only, equal and impartial justice, and it is as much the duty of the district attorney to see that no innocent man suffers as it is to see that no guilty man escapes. Therefore he should not be involved or interested in any extrinsic matters which might, consciously or unconsciously, impair or destroy his power to conduct the accused's trial fairly and impartially." [STATE V KING, 06-2383 \(La. 12/15/06\), 944 So.2d 1268](#)

D. Conclusion

In accordance with my oath and duty to uphold the constitution and laws of both the United States and the State of Louisiana, as District Attorney for the 19<sup>th</sup> Judicial District, Parish of East Baton Rouge, I issue this report regarding my decision to recuse myself and my office from the matter of the death of Alton Sterling. It is my determination as District Attorney that given the history of a long and close working relationship with the parents of one of the officers involved in this shooting, there would always be questions of my partiality. I state explicitly that this decision does not change my office's history of continuing to prosecute any local law enforcement officer responsible for violating our criminal laws. As we have always done, however, we will recuse ourselves when I have relationships that prevent me from handling the matter. As of today, I am requesting the court to direct this matter to the Attorney General for appointment by the Attorney General of a member of his staff or another

District Attorney to handle the investigation and determination of criminal responsibility for the death of Alton Sterling.

Signed: HCM III  
Hillar C. Moore, III

Date: July 11, 2016

