

Liam Brennan
114 Boston Post Road, Ground Floor
West Haven, CT 06516

Dear Attorney Brennan:

On September 13, 2021, the Criminal Justice Commission informed the public that you are pursuing the opportunity to assume the role of Connecticut's first Inspector General. Thank you for recognizing your role in holding police accountable and criminally responsible when they unjustly harm or kill a member of the public.

As of the date of this letter, and based on public reporting, at least 5 people have been shot at or killed by municipal or state police employees in Connecticut in 2021 alone. Since 2001, the Division of Criminal Justice has investigated 81 cases of uses of deadly force and has found that the police were justified in 79 of those cases. The General Assembly, moved to action by the protests of hundreds of thousands of people across the country and across Connecticut, embarked on an effort to fulfill a promise – that Connecticut values Black life – by beginning to seriously grapple with the need to hold police accountable.



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The creation of the Inspector General role was necessary because the public, including lawmakers, advocates, and impacted families, do not believe that State's Attorneys and the Division of Criminal Justice are willing to hold police accountable when they harm the public. In other words, you are seeking to originate a role specifically created to serve justice for and guarantee redress to people and families harmed by police violence. Your answers to this questionnaire are critical, because the core question at stake is whether you are committed to ending police violence and harms to policed communities.

We request that you complete our *ACLU of Connecticut Questionnaire for Connecticut Inspector General Applicants*. Because of the unique nature of the Inspector General position, the public has a right to know your views. We trust you recognize that transparency is critical and that your responses will provide the most public benefit if they are received before your interview with the Criminal Justice Commission on September 27, 2021. Accordingly, we ask that you provide your answers on or before the close of business on September 20, 2021.

Our questionnaire consists of 16 Yes/No questions, each of which provides the opportunity to make a brief comment. Where neither "Yes" nor "No" is clearly stated, the response will be recorded as "Did Not Respond." Please also submit a one-paragraph biography with your answers. Each candidate's response will be posted on our website and circulated to ACLU supporters and the public. We look forward to receiving your responses.

Claudine Fox
Public Policy and Advocacy Director, ACLU of Connecticut
Phone: 860-461-8473
Email: cfox@acluct.org

The American Civil Liberties Union of Connecticut is a nonpartisan, non-profit membership organization that defends, promotes and preserves individual rights and liberties under the U.S. and Connecticut constitutions in state and federal court, the General Assembly, and the state's 169 towns and cities.

Liam Brennan
9/20/21

Questionnaire for Connecticut Inspector General Applicants

1. Do you believe that (a) the Inspector General must acknowledge racial disparities in policing, prosecution, incarceration, and the criminal justice system overall and (b) the Inspector General has a responsibility to take affirmative steps to end systemic racial disparities? Please give a clear “Yes” or “No” to both subparts and any explanation.

Yes to both

2. Do you believe police officers should be held criminally liable for the unnecessary physical harm of Connecticut residents? Please give a clear “Yes” or “No” to the question and any explanation.

Yes

3. Do you believe police officers should be held criminally liable for the unnecessary killing of Connecticut residents? Please give a clear “Yes” or “No” to the question and any explanation.

Yes

4. Do you believe that the current statutory standard for determining when police are justified in using deadly physical force makes it clear that an officer is justified to use deadly physical force only when it is absolutely necessary? Please give a clear “Yes” or “No” to the question and any explanation.

Yes. Connecticut state law has been clear that to use deadly force a police officer must determine “that the use of deadly force was necessary in the circumstances” and that belief must also be “reasonable.” *State v. Smith*, 73 Conn. App. 173, 198, (2002). Although *Smith* dealt with the narrow issue of self-defense, the principle is consistent across cases dealing with police use of force. See *Martyn v. Donlin*, 151 Conn. 402, 411 (Conn. 1964). (“[T]he use of a means, or of force, likely to cause death ... is privileged only if the force used was reasonably believed to be *necessary to effect that arrest*”)(emphasis added).

6. Do you believe that the standard in Public Act 21-4 for determining when police are justified in using deadly physical force that will be effective January 1, 2022 makes it clear that an officer is justified in using deadly physical force only when it is absolutely necessary? Please give a clear “Yes” or “No” to the question and any explanation.

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Yes. The changes made to § 53a-22 only strengthen the standard that courts will apply to police use of force, statutorily clarifying that to reasonably believe force is necessary police officers must consider their own efforts to deescalate a situation and ensure that they did not act in an unreasonable way that increased the risk of deadly use of force.

7. Do you believe police officers should be protected from criminal liability when their use of physical force was reasonable under all the circumstances, but not absolutely necessary? Please give a clear “Yes” or “No” to the question and any explanation.

I cannot give a yes or no answer to this question, as I cannot accept the premise. Particularly with the heightened standards of § 53a-22 in the new year, I cannot envision a situation in which force could be reasonable but not necessary.



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8. Will you commit to holding police accountable by supporting policy proposals that change Connecticut’s use of force standard to one in which killings by police are justified only if it is clear that police did not, through their actions, create a situation in which deadly force was necessary? Please give a clear “Yes” or “No” to the question and any explanation.

Yes. It should be noted that under the new provisions of § 53a-22, this appears to be case, as police officers’ culpability in causing a situation in which the use of force is used is a factor in determining whether their actions were reasonable.

9. Will you commit to holding police accountable by supporting policy proposals that change Connecticut’s use of force standard to one in which killings by police are justified only if it is clear that the force used by police was the least amount of force needed in the situation? Please give a clear “Yes” or “No” to the question and any explanation?

Yes. Again, this already appears to be the law

10. Will you commit to holding police accountable by supporting policy proposals that change Connecticut’s use of force standard to one in which killings by police are justified only if it is clear that the force used was necessary because all available, effective alternatives had been exhausted? Please give a clear “Yes” or “No” to the question and any explanation.

Yes, to the extent that this is not already the standard, I support it being the standard.

11. Will you commit to holding an open, public meeting in the community where the police use of deadly force occurred, where, within 30 days after publishing

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your report on the deadly force investigation, you present your report and provide the community an opportunity to publicly comment on the report and/or the deadly force? Please give a clear “Yes” or “No” to the question and any explanation.

This depends and a yes or no answer is not possible in this instance. I do support holding a public meeting and engaging the community if there is a use of deadly force. However, the when, where, and how must be determined by the case at hand, the needs of the injured individual (if any), or the family and loved ones of anyone killed. Community engagement will be central to a successful IG. However, when and how cannot necessarily be foreordained.

12. When you investigate a matter, will you commit to investigating the impact of the patterns, practices, and/or policies of the law enforcement unit(s) involved had on the subject matter under your investigation? Please give a clear “Yes” or “No” to the question and any explanation.

Yes. Patterns, practices and policies all relate to the circumstantial evidence that will weigh on the use of force and can provide useful insight into a subject’s mental state.

13. Will you commit to making licensure recommendations, including decertification and suspension recommendations, to the Police Officer Standards and Training Council if you find, after complete investigation, that a police officer has:

- (a) been unjustified in a use of physical force;
- (b) engaged in conduct that undermines public confidence in law enforcement, including, but not limited to, discriminatory conduct, falsification of reports, or violating the Alvin W. Penn Racial Profiling Prohibition Act; or
- (c) violated any policy of the law enforcement unit that employs the officer?

Please give a clear “Yes” or “No” to all question subparts and any explanation.

Yes. These are all clear criteria for decertification in the statute governing the POST and go to the heart of public confidence and trust in law enforcement. Any IG concerned with building the public’s trust must pay clear attention to any such instances of misconduct.

14. If, after a complete investigation, you find that a police officer (a) was unjustified in using physical force and/or (b) engaged in other criminal conduct, will you commit to moving forward with justice and redress for such actions to the greatest extent of your discretion? Please give a clear “Yes” or “No” to the question and any explanation.

Yes.

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15. Will you commit to holding police accountable by (a) supporting the creation of a statewide “Brady List” of police officers excluded from testifying in criminal cases because of a proven history of lying or other professional or criminal misconduct, (b) making the “Brady List” available to the public on request, and (c) moving to ensure police officers that are on the statewide “Brady List” are decertified by the Police Officer Standards and Training Council? Please give a clear “Yes” or “No” to all question subparts and any explanation.

Yes – as to criminal misconduct and lying in the course of their official duties. As to whether a police officer should be excluded from testifying because of professional misconduct would depend on what the “professional misconduct” entailed – some misconduct would clearly rise to the level of exclusion from testimony, other misconduct might be minor in nature and not weigh on an officer’s credibility on the stand. Brady lists should be available to the public and, yes, the IG should move to decertify any officers who are unfit to testify in court.



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16. Will you commit to fairness and transparency by supporting policy proposals that require uniform policies and procedures to be promulgated by the Division of Criminal Justice Advisory Board for all 13 state’s attorney offices? Please give a clear “Yes” or “No” to the question and any explanation.

This would depend on what policies and procedures are in question.

Please direct all responses to Claudine Fox at cfox@acluct.org on or before the close of business on September 20, 2021.