

LAW ENFORCEMENT AND GOVERNMENT AGENCY RESPONSIBILITIES

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Prosecutors have a due process,
affirmative duty to disclose,
all material evidence, that is favorable to the defense
and is possessed by the prosecution team.

Brady v. Maryland, 373 U. S. 83, 87 (1963)

Who is on the “Prosecution Team”?

- Prosecutors are deemed to have constructive knowledge of potential impeachment material held by the law enforcement agencies with which they work.

Kyles v. Whitley, 514 U. S. 419 (1995)

Duty to Disclose – No Request Necessary

- Government's duty under *Brady* arises regardless of whether the defendant makes a specific request.

United States v. Bagley, 473 U.S. 667, 682 (1985)

DUTY OF DISCLOSURE

Law enforcement and government agencies shall provide written notice to the PID Committee of the following:

- **Sustained Findings and Pending Investigations related to:**
 - Dishonesty or false statement, either written or oral
 - Conduct that suggests bias against a class of people
 - Criminal convictions

Experts: Same Three Disclosure Triggers, plus:

- Information related to confirmed performance errors, in the course of their employment, that resulted in corrective action that could be used to impeach the witness's conclusions, opinions or other testimony.
- Also, for a laboratory or forensic agency, if there have been systemic errors resulting from a flawed forensic process or procedure.

Ongoing Obligations of Law Enforcement

- Disclose any new evidence related to a sustained finding (i.e. was the finding overturned or modified in some way?)
- Notify the PID Committee of the results of any pending investigations regarding dishonesty, bias or criminal convictions
- If another prosecutor's office has added an officer to their PID list

Relationship between Law Enforcement and PID:

- Note that Law Enforcement determinations are not binding on prosecutors no matter how they may be worded
- Negotiated disciplinary sanctions do not alter the PAO's responsibilities of disclosure
 - Collective bargaining agreements will not alter these duties
 - Negotiated settlements, termination does not alter these duties
- If there are questions by Law Enforcement, they should consult with the PID Committee

What to Disclose

- Disclosure should include only a brief substantive summary, not the whole file
- If unsure what to disclose, talk to the PID Committee
- Example:
On 6/1/2022, Officer Smith, Badge 321, was found to have engaged in dishonest behavior when he lied on his overtime slip on 1/2/22. Officer Smith admitted fault in the IIU process (#4321) and was suspended for two weeks without pay. This finding was sustained.

Disclosure does not necessarily mean it is admissible in trial

- Admissibility is a separate analysis. There may be times where we disclose information to defense as mandated but also will argue to the court against its admissibility in trial.
- Similarly, the PAO placement of an officer on a list does not necessarily mean anything beyond the fact that State believes it has an obligation to disclose. It is not a comment by the PAO about the officer or their fitness to serve or testify.

PAO is not an investigative agency

- It is important for an agency to finish its investigation and outline its conclusions even if the officer resigns or has been terminated.
- If the PAO observes conduct that raises questions (in person, in discovery, in court, etc.), it may identify such to the police agency to conduct an investigation.