

CONFIRMED LEO BRADY ISSUE?

Questions for the Commonwealth's Attorney and Chief or Sheriff to consider:

- Does this issue compromise the officer's integrity and/or the public trust?
- Does this issue involve one case or all cases in which the officer is involved?
- Is this an isolated instance or a pattern of behavior?
- Can the officer testify truthfully?
- Can the officer be trusted to report accurately?
- Are evidence trails compromised by the officer's participation?
- Will the officer's continued employment damage the impartial image and status of the department or prosecution?
- Will continued employment require a separate disclosure in each of the officer's cases? Will credibility be an issue in every case?
- Is termination the best option when an officer has confirmed integrity issues?

WHY IS IT IMPORTANT?

Officer integrity underlies every criminal investigation and prosecution. It is a critical component to every case.

If there is an issue with an officer's integrity, it must be addressed and possibly disclosed under *Brady v. Maryland* and related cases.

Failure to disclose material issues can have serious consequences, such as wrongful convictions, the reversal of otherwise valid convictions, the exclusion of evidence, court sanctions, civil liability, and the accompanying embarrassment and distrust for all involved.

Prosecutors and law enforcement officers must work together to avoid even the appearance of wrongdoing by identifying and addressing integrity issues.

Our goal is to bring consistency across the Commonwealth and to keep Virginia law enforcement officers and prosecutors among the best in the nation.

OFFICER INTEGRITY ISSUES

and

Brady v. Maryland



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This Guide focuses on the issue of officer integrity and recommended practices to comply with *Brady* requirements.

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BRADY BASICS

Brady and *Giglio* require prosecutors to disclose to defendants any evidence that is favorable to the accused on the questions of either guilt or punishment, or that may be used to impeach the credibility of a prosecution witness.

Pursuant to *Kyles v. Whitney*, a prosecutor has a “duty to learn of any favorable evidence known to others acting on the government’s behalf, including the police.”

Courts impute knowledge and hold a prosecutor accountable for all facts known to law enforcement officers and their superiors whether or not the prosecutor has actual knowledge. Prosecutors therefore must know about any issues that involve officer integrity and therefore might affect the officer’s credibility as a witness or the manner in which the investigation was conducted.

The prosecutor must disclose *Brady* information whether or not the defendant requests it.

Internal Investigations:

Internal Investigation/Internal Affairs files deal with confidential personnel (and personal) information and are subject to privacy rules established by statutes and case law. They are not open to review by anyone unless permitted by departmental policies, procedures, rules, regulations, and established practices accepted by the courts.

Notifying the Prosecutor:

Prosecutors are aware that false accusations against officers occur and complaints alone will not affect an officer’s credibility or necessitate any *Brady* disclosure. Upon a determination that an investigation has occurred which results in a sustained complaint, that compromises the subject officer’s integrity, appropriate notifications shall be made to the prosecuting attorney or the Court.

It is recommended that the notice be in writing and it may be marked as FOIA-exempt material. The amount of detail will depend on the circumstances. The prosecutor can then make an informed judgment as to what impact, if any, the shared information will have on pending cases.

If there is a question as to whether information should be disclosed, the prosecutor can seek an *in camera* review by the court or a protective order to prevent unnecessary dissemination.

***Brady* obligations DO NOT automatically offer courts or Prosecutors free access to II/IA files.**

POTENTIAL BRADY ISSUES

This is presented to offer guidance on many agreed upon circumstances requiring a discussion about Brady with your prosecutor.

- Inconsistent statements by an officer, which are related to the criminal investigation.
- Intentional false or materially inaccurate statements or reports.
- Other evidence contradicting the prosecution’s evidence, statements, or reports.
- Conviction of a felony or a misdemeanor involving lying, cheating, or stealing.
- Sustained findings of misconduct after an internal investigation related to untruthfulness or dishonesty.
- Falsification of internal documents such as expense reports, or misuse of departmental funds or property.
- Untruthfulness or willful omissions in testimony or while under oath in any criminal or civil proceeding.
- Sustained findings of misconduct, on or off-duty, related to dishonesty.
- Discriminatory conduct or statements.
- A propensity toward violence where violence is involved in the case.
- Other sustained accusations that discredit the officer or his/her testimony.