

Protecting the Integrity of the Justice System:
The Importance of Brady Lists as a Recognized Best Practice

The undersigned current and former elected prosecutors, law enforcement leaders, and Department of Justice officials write to support the efforts by the St. Louis Circuit Attorney's Office (as well as other elected prosecutors around the nation) to create a process for identifying law enforcement officials whose credibility is at issue and who, as a result, should not be relied upon as witnesses or affiants in criminal cases. The creation of this type of process – also known as a *Brady*¹ list (or in some instances an “exclusion” or “do not call” list) – is a well-settled best practice and is common among prosecutors' offices nationwide, including at the local, state and federal level. Efforts to put this process in place in St. Louis City and elsewhere is a commendable step to prevent law enforcement officials who could compromise cases from playing a significant role in the investigation or prosecution of criminal charges unless and until their matter is resolved in a way that will not jeopardize future cases.

While state laws and local policies vary widely, and in some jurisdictions prosecutors' lack of access to police personnel files effectively prevents them from maintaining such a list,² we believe that the creation of a *Brady* list – such as the one maintained confidentially by the St. Louis Circuit Attorney's office – is a necessary and recognized way to meet the prosecutor's important role and ethical obligations as a minister of justice.

When police officers refer cases to a prosecutor's office, their testimony or role in the investigation – including in interviews, chain of evidence collection, or as an eyewitness – may be a significant factor in the prosecutor's exercise of the weighty discretion to file charges and prosecute the case. *Brady* lists allow prosecutors to implement an orderly process for gathering in one place information on officers who may not be able to serve as credible witnesses. Serious allegations of having made false statements, using excessive force, or engaging in other questionable behavior could undermine the credibility of those in law enforcement who are central to the pursuit of criminal charges that trigger loss of liberty and other significant consequences.

It is the obligation of prosecutors to use their discretion and judgement to ensure that charges filed and other actions taken further the interests of justice. Prosecutors are public servants

¹ <https://caselaw.findlaw.com/us-supreme-court/373/83.html>

² https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/07/13/one-constitutional-brady-doctrine-four-different-applications/?utm_term=.36c84c832265

charged with protecting the interests of *all* members of the community – including the rights of defendants charged with crimes. By preserving the integrity of the justice system, community trust is strengthened, and our entire community is safer.

We are aware that there have been objections to the *Brady* list process initiated by the St. Louis Circuit Attorney raised by the St. Louis Police Union, including claims that the process will compromise officer privacy and due process interests (similar claims have been raised in other jurisdictions³). But we understand that the Circuit Attorney’s Office is committed to ensuring that there is a process in place to notify officers who are on the *Brady* list and to implement mechanisms for officers to be removed from the list. These steps are part of recognized best practices that balance the interests of safeguarding the delivery of justice with the importance of protecting law enforcement officials’ privacy and ability to carry out their job of protecting the community.

Based on our collective experience as current and former prosecutors, law enforcement officials, and leaders within the criminal justice system, we urge both local officials and directly impacted law enforcement leaders to constructively work toward the creation of an appropriate and effective system that, in the words of St. Louis Circuit Attorney Kim Gardner, helps “defend the integrity of the criminal justice system.”⁴ That is the essence of how criminal justice leaders fortify community trust in our system and thereby ensure the safety of all members of our community.

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³ <http://www.philly.com/philly/news/breaking/fop-lawsuit-kenney-krasner-ross-police-do-not-call-list-philadelphia-20181113.html>

⁴ St. Louis Circuit Attorney Gardner’s full statement is available at https://www.stltoday.com/news/statement-from-kimberly-m-gardner-circuit-attorney-city-of-st/article_0f39e0d6-b4f1-55dc-8531-c2bf059ae33b.html.

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