



DOUGLAS COUNTY DISTRICT ATTORNEY

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<https://www.douglascountyks.org/depts/district-attorney>

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***Brady/Giglio* Policy Overview**

The United States Constitution assures every accused person a fair trial. To that end, “there are situations in which evidence is obviously of such substantial value to [an accused’s] defense that elementary fairness requires it to be disclosed.” *United States v. Agurs*, 427 U.S. 97, 110 (1976). In *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), the United States Supreme Court recognized two such types of evidence. *Brady* entitles an accused to all “favorable . . . evidence [that] is material either to guilt or to punishment.” 373 U.S. at 87. *Giglio* entitles an accused to all material “evidence affecting credibility” of any “witness [who] may well be determinative of [an accused’s] guilt or innocence.” 405 U.S. at 154. Withholding this information from an accused risks inviting sanctions, the suppression of evidence, the dismissal of charges, or a conviction’s reversal.

Consistent with these constitutional directives, the Douglas County District Attorney’s Office introduces the following *Brady/Giglio* Policy. This policy addresses only the gathering and disclosing of *Brady/Giglio* information—not the use or admissibility of any disclosed *Brady/Giglio* information at a defendant’s trial. Full cooperation under this policy’s terms is expected of both the District Attorney’s Office and law enforcement in the gathering and disclosing of *Brady/Giglio* information. Generally, the policy operates as follows:

- I. Gathering *Brady/Giglio* Information. Any investigating officer who possesses or knows of *Brady/Giglio* information must promptly provide that information to the District Attorney’s Office through the Law Enforcement Checklist furnished by this office.
 - A. Exculpatory *Brady* information includes any information that tends to show the accused’s innocence or mitigates the accused’s punishment. Examples include:
 - any information
 - linking another to the accused’s charged crime
 - supporting any legal defense available to the accused
 - showing a witness’ failure to positively identify the accused during any identification procedure
 - prior inconsistent or exculpatory statements made by a prosecution witness
 - B. Impeaching *Giglio* information includes any information that tends to discredit a prosecution witness or investigator.
 1. *Giglio* material generally includes any information that shows:
 - poor character or reputation for truthfulness
 - a conviction or juvenile adjudication for either (i) any felony or (ii) any misdemeanor involving dishonesty or false statement
 - specific instances of dishonesty (other than any conviction or juvenile adjudication)



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- a mental or physical defect that would have reduced the witness's or investigator's ability to perceive or remember events correctly
 - a poor opportunity to observe the events about which the witness's or investigator's testimony relates
 - drug or alcohol use at or near the time of the events about which the witness's or investigator's testimony relates
 - a prior statement that contradicts the witness's or investigator's expected testimony
 - any (i) bias for or against a group or individual; (ii) interest or financial stake in the outcome of the accused's prosecution—like actual or potential exposure to criminal penalties, leniency/plea agreement, payments, immigration benefits, etc.; or (iii) other motive to testify falsely
2. Additionally, as to an investigator specifically, *Giglio* material includes any:
- pending criminal charge or conviction
 - pending investigation concerning an allegation of misconduct bearing on an investigator's truthfulness, bias, or integrity
 - information that suggests the investigator is biased for or against the accused
 - any official agency or judicial finding made under a preponderance of the evidence standard that an investigator:
 - lacks his or her purported education or qualifications
 - has filed a false report or submitted a false certification in any professional or personal matter
 - was untruthful or demonstrated a lack of candor
 - intentionally mishandled or destroyed evidence
 - is biased against a particular class of people, for example, based on a person's gender, gender identity, race, or ethnic group
- II. Disclosing *Brady/Giglio* Information. The District Attorney's Office *Brady/Giglio* Committee will then review the provided information and, after notice to the producing agency, take any of the following actions:
- A. No Action. Information provided the District Attorney's Office under this policy may, upon review, prove to be too immaterial to qualify as *Brady/Giglio* material subject to mandatory disclosure. That determination will result in the information's return.
 - B. Decision to Prosecute and Disclosure to Defense. The determination that material *Brady/Giglio* information exists will, depending on the information and the stage of the proceedings, result in the District Attorney's Office either: (1) filing no charges; (2) dismissing filed charges; or, (3) proceeding with filed charges but only on the condition that the prosecution either (i) not use any *Giglio*-impaired investigator or witness and/or (ii) disclose the material *Brady/Giglio* information to defense. *Brady/Giglio* information is material when proceeding to trial without disclosing the information would undermine



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confidence in the trial's outcome. Appropriate redactions and protective orders will accompany any disclosure of *Brady/Giglio* information.

- C. Disclosure to Court. Where the materiality of the provided *Brady/Giglio* information is unclear, the District Attorney's Office may disclose the *Brady/Giglio* information to the trial court for inspection. The trial court's determination will then direct whether the District Attorney's Office takes no action, decides not to prosecute, or prosecutes only on conditions and/or after disclosure to defense, as outlined above.

Ultimately, this policy is comprehensive but not exhaustive. A case-by-case determination will need to occur in every situation involving potential *Brady/Giglio* information. And this policy should be understood to incorporate all subsequently published controlling legal authority. Any questions arising under this policy are therefore encouraged to be directed to Deputy District Attorney Joshua D. Seiden.

Respectfully,

/s/ Suzanne Valdez

Suzanne Valdez

Douglas County District Attorney