

*Please note: This is a working draft of Directive 320.00. The PPB has not implemented any portion of this draft. Submit your comments using the “Provide Feedback Here” link located at the end of the directive.

A redline copy of the updated directive is included in this attachment.

320.00, Portland Police Bureau Reporting of Potential Exculpatory or Impeachment Information

2nd Universal Review Period: 11/16/20 – 12/16/20

Refer:

- *Brady v Maryland*, 173 US 83 (1963)
- *Giglio v United States*, 405 US 150 (1972)
- ORS 135.815, Disclosure to defendant
- ORS 181A.830, Disclosure of information about certain public safety employees
- ORS 192.345, Public records conditionally exempt from disclosure
- ORS 192.355, Public records exempt from disclosure
- Human Resources Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation
- DIR 300.00, Statement of Ethical Conduct
- DIR 310.00, Professional Conduct and Courtesy
- DIR 310.50, Truthfulness
- DIR 310.20, Discrimination, Harassment, and Retaliation Prohibited
- DIR 330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees
- DIR 335.00, Discipline Process
- DIR 344.05, Bias-Based Policing/Profiling Prohibited
- DIR 900.00, General Reporting Guidelines
- Multnomah County District Attorney’s Office Policy 3.071: Government Witness Impeachment Index

Definitions:

- Potential *Brady* material:
 - any information or material that tends to:
 - (1) favor the defendant;
 - (2) exculpate the defendant;
 - (3) negate or mitigate the defendant’s guilt or punishment; or to
 - (4) impeach the credibility of any government witness, including but not limited to, police officers.
 - For the purpose of this Directive, potential exculpatory or impeachment information is encompassed in *Brady* material.

Policy:

1. This policy provides Portland Police Bureau members with the information necessary to comply with the requirements of *Brady v Maryland*, 173 US 83 (1963) and subsequent rulings, and establishes the procedures for reporting potential *Brady* material to the prosecutor.

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2. *Brady* and subsequent rulings require the prosecutor to disclose to the defendant any evidence that is both favorable to the defendant, and material to the defendant’s guilt and/or punishment, including evidence that impeaches the credibility of a government witness.
3. The Bureau recognizes that materiality is a legal issue to be decided in court, and therefore the Bureau shall report all potential *Brady* material in the Bureau’s possession to the prosecutor, regardless of materiality.
4. The Bureau further recognizes that it is the prosecutor’s responsibility to determine whether to disclose material provided by the Bureau to the defendant.
5. Both general criminal investigations, and internal investigations regarding member misconduct, can yield potential *Brady* material. This policy establishes the procedures for reporting all potential *Brady* material to the prosecutor, as required by law.

Procedure:

1. General Reporting Requirements.
 - 1.1. The Bureau and its members have a duty to report potential *Brady* material to the prosecutor. That obligation extends from time of arrest through trial and sentencing.
 - 1.2. The Bureau shall exercise due diligence to identify and provide potential *Brady* material in the Bureau’s possession to the prosecutor as soon as practicable.
 - 1.3. Allegations that cannot be substantiated; are not credible; or have resulted in exonerated, not sustained, or unfounded findings are generally not potential *Brady* material and will usually not be reported to the prosecutor.
 - 1.4. Examples of potential *Brady* material may include, but are not limited to, the following:
 - 1.4.1. Prior criminal convictions or pending criminal charges against any government witness.
 - 1.4.2. Failure of any proposed witness to make a positive identification of a defendant.
 - 1.4.3. Any inconsistent statement made orally or in writing by any proposed witness.
 - 1.4.4. Information regarding mental or physical impairment of any government witness that would cast doubt on their ability to testify accurately and truthfully.
 - 1.4.5. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a protected class.
 - 1.4.6. A sustained finding of misconduct regarding a member’s dishonesty, bias, or excessive use of force in conjunction with their service as a member.
 - 1.4.7. Altering, tampering, concealing, or misusing evidence in any investigation.
2. Potential *Brady* Material Regarding General Criminal Investigations.

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2.1. Member Responsibilities.

- 2.1.1. Members shall document in their investigative reports all information they reasonably believe is potential *Brady* material.
- 2.1.2. Members report potential *Brady* material to the prosecutor by submitting their reports in RegJIN through the normal reporting process.

3. Additional Requirements for Potential *Brady* Material Regarding Member Misconduct.

3.1. Member misconduct that will be reported to the prosecutor as potential *Brady* material includes, but is not limited to, the following:

- 3.1.1. Final sustained findings by the Chief of Police regarding a member’s dishonesty, bias, evidence mishandling, or excessive force (force that violates the Constitutional Force Standard).
- 3.1.2. Criminal convictions or unresolved arrests against any member.

3.2. Member Responsibilities.

- 3.2.1. Members shall report alleged member misconduct in accordance with Directive 310.00, Professional Conduct and Courtesy, and Directive 330.00, Internal Affairs, Complaint Intake, and Processing.
- 3.2.2. Members shall report alleged member criminal conduct in accordance with Directive 333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees.
- 3.2.3. When a supervising member becomes aware of potential *Brady* material regarding alleged member misconduct, the supervising member shall immediately forward the information directly to Internal Affairs.

3.3. Professional Standards Division Responsibilities.

- 3.3.1. The Professional Standards Division (PSD) is responsible for monitoring all administrative investigations of members.
- 3.3.2. The PSD Commander or designee shall affirmatively report to the Multnomah County District Attorney’s Office (MCDA) as soon as practicable the following:
 - 3.3.2.1. Final sustained findings by the Chief of Police regarding a member’s dishonesty, bias, evidence mishandling, or excessive force.
 - 3.3.2.2. Criminal convictions or unresolved arrests against any member.
- 3.3.3. The PSD Commander or designee shall notify members in writing, as soon as practicable, when the PSD reports information under section 3.3.2. to the MCDA.

3.4. Prosecutorial Review and Member Notification.

- 3.4.1. The PSD Commander shall allow a mutually agreed upon prosecutor designee from the MCDA to review, on site at the Portland Police Bureau, all pending administrative investigations against members in order to identify potential *Brady* material.

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- 3.4.2. The PSD Commander or designee shall notify members, as soon as practicable, if a prosecutor requests information about their pending administrative investigation(s).
 - 3.4.3. It is the MCDA’s decision how to evaluate potential *Brady* material, including whether or not to include members in their Potential Impeachment Disclosure Index (PID Index). The PID Index is the name for the database used by the MCDA to track impeachment evidence regarding state witnesses (sometimes informally referred to as a “Brady list”).
 - 3.4.4. The MCDA is responsible for managing the PID Index, including procedure for including members and procedure for appeals.
- 3.5. Member Privacy and Rights.
- 3.5.1. This Directive does not change the confidential nature of member personnel files.
 - 3.5.2. This Directive does not change the requirements of public records law exemptions imposed on the City, the Bureau, and the MCDA regarding member personnel files.
 - 3.5.3. A member’s inclusion on the PID Index or any “Brady list” is not independent grounds for member discipline or termination.
 - 3.5.4. The PSD Commander or designee shall provide members with information regarding the MCDA review process and the member’s rights.

Provide feedback [here](#).

320.00, Disclosure Portland Police Bureau Reporting of Potential Exculpatory or Impeachment Information

References

Refer:

- *Brady v Maryland*, 173 US 83 (1963)
- *Giglio v United States*, 405 US 150 (1972)
- ORS 135.815, Disclosure to defendant
- ORS 181A.830, Disclosure of information about certain public safety employees
- ORS 192.345, Public records conditionally exempt from disclosure
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- Human Resources Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation
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- DIR 310.00, Professional Conduct and Courtesy
- DIR 310.50, Truthfulness
- DIR 310.20, Discrimination, Harassment, and Retaliation Prohibited
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- DIR 335.00, Discipline Process
- DIR 344.05, Bias-Based Policing/Profiling Prohibited
- DIR 900.00, General Reporting Guidelines
- Multnomah County District Attorney's Office Policy 3.071: Government Witness Impeachment Index

Definitions:

- Exculpatory Material: Evidence-Potential *Brady* material:
 - any information or material that tends to:
 - (1) favor the defendant;
 - (2) exculpate the defendant;
 - (3) negate or mitigate the defendant's guilt or punishment; or to
 - (4) impeach the credibility of any government witness, including but not limited to, police officers.
 - For the purpose of this Directive, potential exculpatory or impeachment information is encompassed in *Brady* material.

Policy:

1. This policy provides Portland Police Bureau members with the information necessary to comply with the requirements of *Brady v Maryland*, 173 US 83 (1963) and subsequent rulings, and establishes the procedures for reporting potential *Brady* material to the prosecutor.

~~1.2. Brady and subsequent rulings require the prosecutor to disclose to the defendant any evidence that is both favorable to the accused; is defendant, and material to the defendant's guilt, innocence, and/or punishment of the accused; and, including evidence that may impeach the credibility of a government witness, including a police officer.~~

- ~~● Impeachment Material: Evidence that casts substantial doubt upon the accuracy of any evidence, including witness testimony. Examples include evidence that demonstrates that a witness is biased or prejudiced against a party, has some other motive to fabricate testimony, has a poor reputation for truthfulness, or has past specific incidents that are probative of the witness's truthfulness or untruthfulness.~~

Policy:

~~2. The Bureau recognizes the obligation imposed on the State by *Brady v. Maryland*, a subsequent line of court decisions, and state criminal discovery statutory requirements to affirmatively disclose to the defense prior to a criminal trial, material or information in their possession that may be exculpatory or impeaching of a government witness. The Bureau will therefore ensure that it provides potential exculpatory and impeachment material regarding members to the Multnomah County District Attorney's Office (DA), who will evaluate it for materiality and admissibility.~~

~~3. Internal The Bureau recognizes that materiality is a legal issue to be decided in court, and therefore the Bureau shall report all potential *Brady* material in the Bureau's possession to the prosecutor, regardless of materiality.~~

~~4. The Bureau further recognizes that it is the prosecutor's responsibility to determine whether to disclose material provided by the Bureau to the defendant.~~

~~3.5. Both general criminal investigations into, and internal investigations regarding member misconduct, can potentially yield exculpatory or impeachment potential *Brady* material. This policy ~~discusses~~ establishes the procedures for providing information from such internal investigations reporting all potential *Brady* material to the DA prosecutor, as required under the by law.~~

Procedure:

~~1. Findings of Untruthfulness, Bias, or Misconduct, Which Cast Substantial Doubt on the Accuracy of Evidence.~~

~~1. General Reporting Requirements.~~

~~1.1. The Bureau and its members have a duty to report potential *Brady* material to the prosecutor. That obligation extends from time of arrest through trial and sentencing.~~

~~1.2. The Bureau shall exercise due diligence to identify and provide potential *Brady* material in the Bureau's possession to the prosecutor as soon as practicable.~~

1.3. Allegations that cannot be substantiated, report final; are not credible; or have resulted in exonerated, not sustained, or unfounded findings are generally not potential *Brady* material and will usually not be reported to the prosecutor.

1.4. Examples of potential *Brady* material may include, but are not limited to, the following:

1.4.1. Prior criminal convictions or pending criminal charges against any government witness.

1.4.2. Failure of any proposed witness to make a positive identification of a defendant.

1.4.3. Any inconsistent statement made orally or in writing by any proposed witness.

1.4.4. Information regarding mental or physical impairment of any government witness that would cast doubt on their ability to testify accurately and truthfully.

1.4.5. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a protected class.

1.4.6. A sustained finding of misconduct regarding a member's dishonesty, bias, or excessive use of force in conjunction with their service as a member.

1.4.7. Altering, tampering, concealing, or misusing evidence in any investigation.

2. Potential *Brady* Material Regarding General Criminal Investigations.

2.1. Member Responsibilities.

2.1.1. Members shall document in their investigative reports all information they reasonably believe is potential *Brady* material.

2.1.2. Members report potential *Brady* material to the prosecutor by submitting their reports in RegJIN through the normal reporting process.

3. Additional Requirements for Potential *Brady* Material Regarding Member Misconduct.

3.1. Member misconduct that will be reported to the prosecutor as potential *Brady* material includes, but is not limited to, the following:

3.1.1. Final sustained findings by the Chief of Police ("Chief") of untruthfulness, bias, or misconduct, which cast substantial doubt on the accuracy of evidence, to the DA. Examples of such findings include violations of regarding a member's dishonesty, bias, evidence mishandling, or excessive force (force that violates the Constitutional Force Standard).

3.1.2. Criminal convictions or unresolved arrests against any member.

3.2. Member Responsibilities.

3.2.1. Members shall report alleged member misconduct in accordance with Directive 310.50, Truthfulness, or HRAR 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation; or substantial violations concerning proper evidence handling or excluding material information from reports⁰⁰, Professional Conduct and Courtesy, and Directive 330.00, Internal Affairs, Complaint Intake, and Processing.

3.2.2. The Discipline Coordinator shall provide timely notification to the Members shall report alleged member criminal conduct in accordance with Directive

333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees.

3.2.3. When a supervising member becomes aware of potential *Brady* material regarding alleged member misconduct, the supervising member shall immediately forward the information directly to Internal Affairs.

3.3. Professional Standards Division Responsibilities.

3.3.1. The Professional Standards Division (PSD) ~~Commander of finalis~~ is responsible for monitoring all administrative investigations of members.

3.3.2. The PSD Commander or designee shall affirmatively report to the Multnomah County District Attorney's Office (MCDA) as soon as practicable the following:

~~1.1.1.1.3.3.2.1.~~ Final sustained findings by the Chief of Police regarding untruthfulness a member's dishonesty, bias, or misconduct that cast substantial doubt on the accuracy of evidence, mishandling, or excessive force.

~~1.1.2. The PSD Commander or designee is responsible for providing timely notifications of such findings to the DA, as well as notifying the Chief or designee that they (or a designee) have provided the information to the DA.~~

~~1.1.2.1. If there is any question whether certain findings fall under these categories, the PSD Commander shall consult with the Deputy Chief, Assistant Chief (AC) of Services, and City Attorney's Office (CAO) to determine if the finding is potential exculpatory or impeachment material that must be provided to the DA.~~

~~2. Member Criminal Charges.~~

~~2.1. Any member who becomes aware of criminal charges convictions or unresolved arrests against another member shall report those charges to their shift supervisor.~~

~~2.1.1.1.3.3.2.2. The shift supervisor shall notify the PSD Commander as soon as practicable any member.~~

~~3.3.3. The PSD Commander or designee shall then benotify members in writing, as soon as practicable, when the PSD reports information under section 3.3.2. to the MCDA.~~

3.4. Prosecutorial Review and Member Notification.

3.4.1. The PSD Commander shall allow a mutually agreed upon prosecutor designee from the MCDA to review, on site at the Portland Police Bureau, all pending administrative investigations against members in order to identify potential *Brady* material.

3.4.2. The PSD Commander or designee shall notify members, as soon as practicable, if a prosecutor requests information about their pending administrative investigation(s).

3.4.3. It is the MCDA's decision how to evaluate potential *Brady* material, including whether or not to include members in their Potential Impeachment Disclosure Index (PID Index). The PID Index is the name for the database used by the MCDA to track impeachment evidence regarding state witnesses (sometimes informally referred to as a "Brady list").

~~2.1.2.3.4.4. The MCDA is responsible for providing such information to the DA in a timely manner, as well as notifying the Chief or designee that they (or a designee) have provided the information to the DA managing the PID Index, including procedure for including members and procedure for appeals.~~

~~2.2. Once the criminal charges are resolved, whether resulting in a conviction or exoneration, the PSD Commander or designee shall provide timely notification to the DA of the outcome and inform the Chief or designee that they (or a designee) have provided the information to the DA.~~

~~3.5. Substantial and Credible Allegations Against a Member Concerning Untruthfulness, Bias, Misconduct, Which Cast Substantial Doubt Member Privacy and Rights.~~

~~3.5.1. This Directive does not change the confidential nature of member personnel files.~~

~~3.5.2. This Directive does not change the requirements of public records law exemptions imposed on the City, the Bureau, and the MCDA regarding member personnel files.~~

~~3. A member's inclusion on the Accuracy of Evidence, PID Index or Criminal Conduct.~~

~~3.1. When the Internal Affairs (IA) Captain becomes aware of allegation(s) against a member concerning untruthfulness, bias, misconduct which cast a substantial doubt on the accuracy of evidence; or criminal conduct, which may be substantial and credible, the IA Captain shall notify the PSD Commander of such allegation(s) in a timely manner.~~

~~3.2. The PSD Commander and IA Captain shall consult with the Deputy Chief, AC of Services, and CAO to determine if the allegation(s) are substantial and credible enough to be considered potential exculpatory or impeachment material. If aforementioned group is unable to achieve a consensus, the Chief shall make a final determination.~~

~~3.2.1. If the allegation(s) is considered to be potential exculpatory or impeachment material, the PSD Commander or designee shall notify the DA of the allegation(s) and inform the Chief or designee that they (or a designee) have provided the information to the DA.~~

~~3.2.2. If the allegation(s) is not considered to be potential exculpatory or impeachment material, the IA Captain and PSD Commander shall monitor the allegation(s) during the course of the investigation to determine if the substantiality and credibility of the allegation(s) changes as more information any "Brady list" is discovered.~~

~~3.2.2.1. If at any point during the investigation it is determined that the allegation(s) are substantial and credible enough to be considered potential exculpatory or impeachment material, the PSD Commander or designee, in consultation with the AC of Services and Deputy Chief, shall provide timely notification to the DA of the allegation(s). The PSD Commander shall also inform the Chief or designee that they (or a designee) have provided the information to the DA.~~

~~3.3. For allegations reported to the DA under this section, the PSD Commander or designee shall also provide timely notification to the DA of the final findings by the Chief, whether those findings are sustained, not sustained, unsubstantiated, or exonerated. The PSD~~

Commander or designee shall also notify the Chief or designee that they (or a designee) have provided the information to the DA.

~~4. Arrests of a Member.~~

~~4.1. The PSD Commander or designee shall report any arrests against a member for crimes of moral turpitude, of which PPB has knowledge, to the DA.~~

~~4.1.1.3.5.3. Any member who becomes aware of any arrests against a member for crimes of moral turpitude shall report those charges to the PSD Commander, not independent grounds for member discipline or termination.~~

~~4.1.2.3.5.4. The PSD Commander or designee shall then be responsible for providing such provide members with information to regarding the DAMCDA review process and notifying the Chief or designee that they (or a designee) have provided the information the DA member's rights.~~

~~Allegations That Cannot Be Substantiated, Are Not Credible, or Have Resulted in Exonerated, Not Sustained, or Unfounded Findings.~~

~~4.2. Allegations that cannot be substantiated, are not credible, or have resulted in exonerated, not sustained, or unfounded findings generally are not to be considered potential exculpatory or impeachment material and will not be reported to the DA, except as provided under Section 3.2.~~

~~5. Notification to Member.~~

~~5.1. The PSD Commander or designee shall promptly notify a member in writing when the Bureau provides the member's name to the DA, and include in the notification, information about the DA's process of review.~~

~~5.2. If the Bureau discovers that the DA has flagged a member in its potential exculpatory or impeachment material database of whom the Bureau was not aware, the PSD Commander or designee shall notify that member and provide information about the DA's process of review.~~

#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, August 03, 2020 4:44:45 PM
Last Modified: Monday, August 03, 2020 4:45:45 PM
Time Spent: 00:01:00

Page 1

Q1

Please provide feedback for this directive

An officer who has been found to make untruthful or dishonest statements and that cannot be trusted should never again be in a position of having the power to arrest or issue citations.

Q2

Respondent skipped this question

Contact Information (optional)

#4

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, August 03, 2020 7:52:49 PM
Last Modified: Monday, August 03, 2020 8:05:05 PM
Time Spent: 00:12:15

Page 1

Q1

Please provide feedback for this directive

I am opposed to this directive on the following grounds:

That it is a unilateral policy which affects only government witnesses and does also establish the responsibility of the DA in criminal trials where this applies to provide the same elaboration for defense witnesses in the discovery provided to the Portland Police Bureau. For me to support this new directive I would need to see the same policy affect both the prosecution and defense in these cases where government witnesses and members of the Portland Police Bureau may be testifying as witnesses. In other words, if the PPB is to be required to provide this additional aspect of information in their case discovery to the DA then the DA must also do the same for any of their defense witnesses.

I support the PPB. I am grateful for your dedication to serve and protect. You are indeed the 'thin blue line' that preserves freedom and justice in our city and our nation.
I back the Blue.

Q2

Contact Information (optional)

Name **Marc Wolff**
Email Address
Phone Number

#5

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, August 03, 2020 8:52:33 PM
Last Modified: Monday, August 03, 2020 8:55:48 PM
Time Spent: 00:03:14

Page 1

Q1

Please provide feedback for this directive

This document is too obtuse for the public to be able to comment on it meaningfully. A better system for explaining directives and gathering meaningful input that can actually help the police department serve the community is needed. I have a huge appreciation for the work PPB does, and also believe that improvements can and need to be made. It is very difficult as a member of the public who cares about our policing policies to know what kind of feedback would actually be useful on this directive.

Q2

Contact Information (optional)

Name **Jen Mair**
Email Address
Phone Number

#6

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, August 03, 2020 8:39:05 PM
Last Modified: Monday, August 03, 2020 9:40:46 PM
Time Spent: 01:01:41

Page 1

Q1

Please provide feedback for this directive

There is a need for the accused to have due process and an opportunity to confront their accuser and to be made aware what the allegation is . In this case,

(now retired) Judge Gillespie placed a Peace Officer on the Brady List (lowest level). Judge Gillespie would NOT and did NOT have to provide a reason.The officer was not able to confront the Judge nor would anybody do so on his behalf . The officer was denied Due Process -the very thing that our legal system is based on. The presiding judge was said to be powerless over this rouge Judge 's decision (this is hear say but I have it on good authority that this is true)

Secondary , there is a need for a formal system that mandates and clearly states the process for removal of one off the Brady List (lowest levels) .It is my understanding that there is some relief after an officer whom is on the lower level Brady List is allowed to testify in court

however there appears to be no formal requirement for paperwork to be generated for removal from this list . To make the officer whole.

If you doubt this happened , it did in Coos County . (The above did not address the secondary safeguard failure set in motion by the accused employer (county) solely based on this Judge's unsubstantiated opinion. Request public record information from Coos for a great case study.

Thank -you for your time.

Q2

Contact Information (optional)

Name **Erin**

Email Address

#7

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, August 03, 2020 11:44:20 PM
Last Modified: Tuesday, August 04, 2020 12:31:15 AM
Time Spent: 00:46:54

Page 1

Q1

Please provide feedback for this directive

Oyez Oyez Oyez

Do as the Court has said to do, give the information to the lawyer for the accused, when asked.

The Decision in *Brady v. Maryland* states at,

a) Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Pp. 86-88.

[86]

We agree with the Court of Appeals that suppression of this confession was a violation of the Due Process Clause of the Fourteenth Amendment. The Court of Appeals relied, in the main, on two decisions from the Third Circuit Court of Appeals *United States ex rel. Almeida v. Baldi*, 195 F.2d 815, 33 A.L.R.2d 1407, and *United States ex rel. Thompson v. Dye*, 221 F.2d 763 which, we agree, state the correct constitutional rule.

This ruling is an extension of *Mooney v. Holohan*, 294 U. S. 103, 112, where the Court ruled on what nondisclosure by a prosecutor violates due process:

"It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which, in truth, is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."

In *Pyle v. Kansas*, 317 U. S. 213, 215-216, we phrased the rule in broader terms:

"Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. *Mooney v. Holohan*, 294 U. S. 103. "

[87]

The Third Circuit, in the *Baldi* case, construed that statement in *Pyle v. Kansas* to mean that the "suppression of evidence favorable" to the accused was itself sufficient to amount to a denial of due process. 195 F.2d at 820.

In *Napue v. Illinois*, 360 U. S. 264, 269, we extended the test formulated in *Mooney v. Holohan* when we said: "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." And see *Alcorta v. Texas*, 355 U. S. 28; *Wilde v. Wyoming*,. Cf. *Durley v. Mayo*, 351 U. S. 277, 285 (dissenting opinion).

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor, but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted, but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." [Footnote 2] A prosecution that withholds evidence on demand of an accused which, if made avail-

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able, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile," to use the words of the Court of Appeals. 226 Md. at 427, 174 A.2d at 169.

The question remains whether petitioner was denied a constitutional right when the Court of Appeals restricted his new trial to the question of punishment. In justification of that ruling, the Court of Appeals stated:

"There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury. It clearly implicated Brady as being the one who wanted to strangle the victim, Brooks. Boblit, according to this statement, also favored killing him, but he wanted to do it by shooting. We cannot put ourselves in the place of the jury, and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's hands that twisted the shirt about the victim's neck. . . . [I]t would be 'too dogmatic' for us to say that the jury would not have attached any significance to this evidence in considering the punishment of the defendant Brady."

"Not without some doubt, we conclude that the withholding of this particular confession of Boblit's was prejudicial to the defendant Brady. . . . "

"The appellant's sole claim of prejudice goes to the punishment imposed. If Boblit's withheld confession had been before the jury, nothing in it could have reduced the appellant Brady's offense below murder in the first degree. We therefore see no occasion to retry that issue." 226 Md. at 429 430, 174 A.2d at 171. (Italics added.)

- - -

There are pieces of due process which in their absence can, in and of themselves, represent violations of an individual's Constitutional Rights. The 14th Amendment to the United States Constitution is a very large idea. Disclosure in all of Oregon's Counties should be uniform and not left to an ad-hoc evaluation by some Municipal Corporation.

Oyez Oyez Oyez

Do as the Court has said to do, give the information to the lawyer for the accused, when asked.

-matt klug

Q2

Contact Information (optional)

Name

Matthew Klug

Email Address

Phone Number

#8

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, August 04, 2020 8:31:33 AM
Last Modified: Tuesday, August 04, 2020 8:40:28 AM
Time Spent: 00:08:54

Page 1

Q1

Please provide feedback for this directive

Section 2.1 says any member who becomes aware of criminal charges against another member. Does this mean criminal allegations, a criminal investigation, a criminal arrest or a criminal indictment?

Section 2.1.1 says a shift supervisor shall notify the PSD Commander as soon as practical. Shouldn't the shift supervisor notify the shift Lt or the RU manager prior to notifying the PSD Commander? The officer's RU Manager should know about the allegations too.

Q2

Contact Information (optional)

Name **John Holbrook**
Email Address
Phone Number

#9

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, August 04, 2020 9:53:58 AM
Last Modified: Tuesday, August 04, 2020 9:56:13 AM
Time Spent: 00:02:15

Page 1

Q1

Please provide feedback for this directive

This should have been implemented a long time ago. It seems to be missing the termination of Qualified Immunity.

Q2

Contact Information (optional)

Name **Nichole**
Email Address
Phone Number

#10

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, August 04, 2020 10:11:51 AM
Last Modified: Tuesday, August 04, 2020 10:18:27 AM
Time Spent: 00:06:36

Page 1

Q1

Please provide feedback for this directive

After the Chief makes a finding, I believe the officer still has a possible option through the PPA to take the matter to arbitration. If the officer is cleared in arbitration, there should be a process in place for clearing their name off this list through the DA's office.

This also doesn't take into account that the officer has the right to sue civilly if they are wrongly accused and the Chief sustains the finding.

"Timely" is used too much. Many of these should be specified. Sections 2.2 and 3.1 should have a definite timeline.

The whole IA process should have a timeline set from start to finish from when the officer is first notified that they are accused to when there is a finding by the Chief delivered to the officer.

Q2**Respondent skipped this question**

Contact Information (optional)

#11

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, August 04, 2020 10:15:37 AM
Last Modified: Tuesday, August 04, 2020 11:14:17 AM
Time Spent: 00:58:40

Page 1

Q1

Please provide feedback for this directive

This directive seems to address all the ways in which a member can be found innocent of an accusation either by exculpatory evidence or by inadmissibility of incriminating evidence.

Point 3.2. The decision on whether the allegations are credible or not, should be made by an external, neutral party (DA).

3.3. PSD should provide not only their findings, but also all the materials that let do that decision.

5. All information should be provided to the DA, and they should be the ones who evaluate whether they are substantiated or not.

Q2

Contact Information (optional)

Name **Carolina Castaneda**

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Phone Number

#12

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, August 04, 2020 1:52:11 PM
Last Modified: Tuesday, August 04, 2020 1:57:07 PM
Time Spent: 00:04:55

Page 1

Q1

Please provide feedback for this directive

When officers use their gun, they should be treated and judged, just like any civilian that uses a gun is judged. For example, if an officer kills someone, he should be tried in a court of law as murder, and he needs to prove that it was in self defense, in front of a jury.

Q2

Respondent skipped this question

Contact Information (optional)

#13

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, August 04, 2020 6:59:56 PM
Last Modified: Tuesday, August 04, 2020 7:01:20 PM
Time Spent: 00:01:23

Page 1

Q1

Please provide feedback for this directive

I am a citizen with no legal training, so this directive is fairly impossible for me to understand!

Q2

Contact Information (optional)

Name **Helena Wald**

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Phone Number

#14

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Thursday, August 06, 2020 9:19:07 AM
Last Modified: Thursday, August 06, 2020 9:25:38 AM
Time Spent: 00:06:31

Page 1

Q1

Please provide feedback for this directive

Transparency regarding police officers' incidences of "use of force" should be made public. If an officer is involved with numerous use of force incidences, they should be investigated and put on probation, and fired if necessary. Creating an environment that is safe for officers to report abuse, excessive force or criminal behavior of other officers should be the rule and reporting officers should be protected from retaliation. This should apply regardless of the rank of the reporting or offending officer. A lower ranking officer should have a safe avenue to report offenses of higher ranking officers.

Q2**Respondent skipped this question**

Contact Information (optional)

#15

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, August 21, 2020 1:46:35 PM
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Time Spent: 00:01:56

Page 1

Q1

Please provide feedback for this directive

All of the allegations of exculpatory or impeachable conduct should be forwarded to the DA. Having the police make that determination allows an interested party, the police, to judge whether the material is relevant. Rather the DA should receive such information and make that determination.

Q2

Contact Information (optional)

Name **Elliott Young**

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Phone Number

#16

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, August 28, 2020 11:36:55 AM
Last Modified: Friday, August 28, 2020 12:11:53 PM
Time Spent: 00:34:58

Page 1

Q1

Please provide feedback for this directive

I write today to voice my concern about the proposed policy directive. I sat as a grand juror in Multnomah County earlier this year and was disappointed to see instances of lying by omission, misleading narratives, and questionable testimony by some sworn officers. My takeaway was that some officers feel free to obfuscate, mislead, and lie with impunity. That kind of law enforcement culture is exactly what Brady and Giglio target to bring in to the light of day, and to hopefully eradicate.

In the proposed policy, there are too many layers of bureaucracy that would serve to restrict the appropriate flow of information about potential Brady material. Internal investigations are only one of several sources of information subject to Brady disclosure requirements. The duty is broader and includes all information known to the Bureau whether or not it resulted from an official internal investigation. The directive should be clear in identifying the obligations of individual officers to disclose what they learn in the course of their employment. Supervisors' obligations to seek out potential Brady material and to report it to the Chief should also be clearly laid out. The Chief must bear the ultimate responsibility for making these disclosures. This responsibility should not be watered down by allowing so many other people the option to object to disclosure. The Bureau should err on the side of more disclosures, not less, and allow the DA's office to make the final decision. And since this policy is overdue, there should be Initial Brady Reports created by each supervisor, supported by an affidavit as to their due diligence in seeking and reporting the information to the Chief. Those reports can serve as the baseline from which the Bureau moves forward in compliance with the legal requirements of Brady. I have edited the two page policy to include these and other suggested provisions, and would like to attach my edits to these public comments. Unable to attach the document, I have submit it here as text. I will happily provide a redlined version upon request.

Policy:

1. The Bureau recognizes the obligation imposed on the State by Brady v. Maryland, a subsequent line of court decisions, and state criminal discovery statutory requirements to affirmatively disclose to the defense prior to a criminal trial, material or information in their possession that may be exculpatory or impeaching of a government witness. The Bureau will therefore ensure that it provides potential exculpatory and impeachment material regarding members to the Multnomah County District Attorney's Office (DA), and any other prosecutorial body that relies upon evidence or testimony from the Bureau, who will evaluate it for materiality and admissibility.
2. Honesty, integrity, and lack of bias are essential to effective policing and are required under the rules and policies of the Bureau. Officer adherence to these policies is imperative. Breaches to such policies specifically related to veracity and lack of bias have a direct bearing on an officer's ability to continue serving. Internal investigations into member misconduct can potentially yield exculpatory or impeachment material. The specific duties of Members of the Bureau regarding disclosures to the DA of information that potentially affects an officer's veracity or ability to testify without bias has a direct bearing on the officer's ability to continue serving. The specific duties of members of the Bureau regarding disclosures to the DA of information that potentially affects an officer's veracity or ability to testify without bias, as required under the law, are outlined in this directive.

Procedure:

1. Untruthfulness, Bias, or Misconduct, Which Casts Doubt on the Accuracy of Evidence or Testimony.
 - 1.1. The Bureau shall report untruthfulness, bias, or misconduct, which casts doubt on the accuracy of evidence or testimony, to the DA. Examples include reports on officers whose history regarding honesty, integrity, or abuse of force have a negative bearing on their professional reputation, violations of Directive 310.50, Truthfulness, or HRAR 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation; or any violations concerning proper evidence handling or excluding material information from reports.
 - 1.2. The Chief, or the Chief's designee, shall provide timely notification to the District Attorney's Office regarding all questions of untruthfulness, bias, or misconduct that cast doubt on the accuracy of evidence or testimony.

2. Obligation of All Officers

- 2.1. It is the obligation of any individual officer to report to their supervisor any elements of their employment as a police officer, any information in an investigative report, or evidence related to an indictment or trial that they may reasonably believe to be subject to disclosure under Brady. This includes instances of dishonesty, abuse of force, criminal arrest of an officer, or acts of racial bias.

320.00 Directive Feedback

2.1.1. The shift supervisor shall notify the PSD Commander as soon as practicable.

2.1.2. The PSD Commander or designee shall report the information to the Chief and to the DA in a timely manner, and specifically prior to the provision of any testimony or evidence by the involved officer.

3. Obligations of Supervisors to Report Credible Allegations Against a Member Concerning Untruthfulness, Bias, Misconduct, or Abuse of Force

3.1. 3.1 Supervisors are equally obligated to ensure that they act with due diligence in finding and reporting potential Brady material related to any matter, proceeding, or trial in which they have related oversight responsibilities. When a supervisor becomes aware of allegation(s) against a member concerning untruthfulness, bias, misconduct, or abuse of force, from any credible source, the supervisor is required to provide the information to the Chief, or the Chief's designee, as soon as practicable, and specifically prior to the provision of evidence or testimony by the involved officer.

3.2. Because this policy has been long delayed, all supervisory personnel shall provide an Initial Brady Report to the Chief, or the Chief's designee. Each supervisor shall review the personnel files of those whom they supervise, conduct relevant in-person inquiries, and otherwise seek out available information to provide a report of any information which brings into question the honesty, integrity, bias, or abuse of force affecting the professional reputation of officers whom they supervise. Supervisors must execute a sworn affidavit attesting that they have exercised due diligence in gathering information for the Initial Brady Report. All supervisory Initial Brady Reports shall be submitted to the Chief, or the Chief's designee, along with a sworn affidavit as to due diligence.

3.3. The Chief, or the Chief's designee, shall review the information and determine whether a disclosure to the DA's office is in order, erring on the side of disclosure, so that the DA's office may make the final determination.

4. Arrests of a Member.

4.1. The PSD Commander or designee shall report any arrests against a member for crimes of moral turpitude, of which PPB has knowledge, to the DA.

4.2. Any member who becomes aware of any arrests against a member for crimes of moral turpitude shall report those charges to the PSD Commander.

4.1.1. The PSD Commander or designee shall then be responsible for providing such information to the DA and notifying the Chief or designee that they (or a designee) have provided the information the DA.

5. Allegations That Are Not Credible.

Allegations that are not credible are not to be considered potential exculpatory or impeachment material and will not be reported to the DA. All allegations that are credible, despite findings in favor of the officer, shall be reported to the Chief, or the Chief's designee, for referral to the DA. This would include those findings by various reviewing bodies which are in favor of the officer based upon procedural matters only rather than substantive ones, or allegations which reasonably retain credibility despite the finding. An independent determination must be reasonably made by the supervisor, and reported as potential Brady material, if the allegations retain credibly despite the finding.

6. Notification to Member.

6.1. The PSD Commander or designee shall promptly notify a member in writing when the Bureau provides the member's name to the DA, and include in the notification, information about the DA's process of review.

6.2. If the Bureau discovers that the DA has flagged a member in its potential exculpatory or impeachment material database of whom the Bureau was not aware, the PSD Commander or designee shall notify that member and provide information about the DA's process of review.

7. Bureau Response to Impeachment of Testimony of an Officer

7.1. Officers who are intentionally dishonest, knowingly biased, or use excessive force, are subject to impeachment at trial, and are also subject to disciplinary action up to and including termination.

8. Training in Brady Disclosure Requirements

8.1. All sworn officers of the Portland Police Bureau shall receive training in their disclosure and reporting obligations under Brady.

Q2

Contact Information (optional)

Name

Janice Hebert

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#17

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Saturday, August 29, 2020 7:25:42 AM
Last Modified: Saturday, August 29, 2020 7:29:21 AM
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Page 1

Q1

Please provide feedback for this directive

So this is the PPB response to the April 2017 Independent Police Review (IPR) report stating the need to have a response to Brady Vs. Maryland. All these years later? So over 3years is your response time to Independent Police Review (IPR) requests?

Q2

Contact Information (optional)

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Phone Number

#18

COMPLETE

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Started: Monday, August 31, 2020 3:56:05 PM
Last Modified: Monday, August 31, 2020 3:59:01 PM
Time Spent: 00:02:56

Page 1

Q1

Please provide feedback for this directive

Thoughts and Comments about Draft Brady Disclosure for Portland Police Bureau

- (1) The rule behind the policy should be stated clearly. There is no need for reference to specific Supreme Court cases.
- (2) The section on definitions should be expanded to include the meaning of “material” and to include more concrete examples.
- (3) The policy statement needs to be simple and clear. The current version is weak, wordy and confusing – e.g., the word “material” is used with two entirely different meanings.
- (4) There should be equal emphasis on the PPB member’s obligation to “gather” exculpatory and impeaching evidence as well as to “disclose” such evidence.
- (5) It should be explained that the policy does not include a good faith exception to a failure to comply.
- (6) The use of the word “substantial” in modifying “allegations” and “doubt” requires a member to exercise independent judgment that may not be uniform and leaves too much room for a member to decide not to “disclose.”

(7) Consequences for a member’s failure to comply with the policy should be spelled out. What follows is a set of proposed changes corresponding to the numbered comments above:

- (1) A new section entitled “The Legal Standard” should be inserted between “References” and “Definitions.” The section should include the following statement:

“The purpose of this section is to set forth practices ensuring that the Portland Police Bureau is in compliance with legal requirements for the gathering and disclosure of certain evidence to criminal defendants. Members have an affirmative duty to inform prosecutors of any evidence that may affect the determination of a defendant’s guilt or innocence or sentence.”

- (2) The section on definitions should be simplified and expanded and should include concrete examples.

Exculpatory Evidence: Evidence that is favorable to the accused, could make a difference in determining guilt or innocence, could influence the sentence or could reflect on the credibility of a government witness, including a police officer. Examples include:

- (a) Information that would directly negate the defendant’s guilt;
- (b) Information that would cast doubt on the admissibility of evidence that the government plans to offer;
- (c) Failure of a proposed witness to make a positive identification of a defendant;
- (d) An inconsistent statement made orally or in writing by any proposed witness;
- (e) Evidence linking a prosecution witness to the crime for which the defendant is being charged;
- (f) Statements made by any person that are inconsistent with statements made by any prosecution witness regarding the alleged criminal conduct;

320.00 Directive Feedback

- (g) evidence related to the defendant's theory of third-party guilt; and
- (h) Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under sentencing guidelines.

Impeachment Evidence: Evidence that casts doubt upon the accuracy of any evidence, including witness testimony. Examples include:

- (a) Evidence suggesting that a witness is biased or prejudiced against a party;
 - (b) Evidence showing that a witness has some other motive to fabricate testimony;
 - (c) Evidence showing that a witness has a poor reputation for truthfulness;
 - (d) Evidence of past specific incidents that are probative of the witness's truthfulness or untruthfulness.
 - (e) With respect to evidence relating to members involved in the case, the following information must be turned over to the defense before trial:
 - o Crimes committed by the officer;
 - o Incidents involving untruthfulness by the officer;
 - o Incidents involving dishonesty by the officer;
 - o Evidence indicating bias of the officer; and
 - o Evidence of an officer's excessive use of force or other misconduct.
- Material: Exculpatory evidence is "material" if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding.

(3) The policy statement should be strengthened and simplified:

"It is the policy of the Portland Police Bureau that members have an affirmative duty to gather and disclose evidence that is exculpatory and information that impeaches the credibility of government witnesses – including the potential testimony of members -- prior to a criminal trial. Such evidence and information will be provided to members of the Multnomah County District Attorney's Office who will evaluate it before disclosing to the defense.

"One source of such evidence is the record of internal investigations into allegations of member misconduct. This policy governs the procedures for providing such information and evidence to the DA."

(4) There should be equal emphasis on the member's obligation to gather evidence as well as to disclose it. The current draft does not say anything about the Bureau's affirmative obligation to "gather" exculpatory evidence. That specific obligation should be included in the statement of policy.

(5) This policy should include a statement that there is no exception recognized for a good faith mistake.

(6) The word "substantial" should not be used to modify "doubt" or "allegation." In the current draft, "impeachment Material" is defined as "Evidence that casts substantial doubt upon the accuracy of any evidence." In the current draft, the Bureau is only required to report "final sustained findings by the Chief of Police of untruthfulness, bias or misconduct which cast substantial doubt on the accuracy of evidence."

Section 1.1.

Similarly, the Discipline Coordinator "should provide timely notification to the Professional Standards Division Commander of final sustained findings of untruthfulness, bias or misconduct which cast substantial doubt on the accuracy of evidence."

Section 1.2.

320.00 Directive Feedback

Most courts have concluded that impeachment material consists of any evidence that casts any doubt on the accuracy of a witness' testimony. Allowing non-disclosure on the ground the impeachment material did not "substantially" challenge the credibility of a witness is a loophole that most courts would find unacceptable.

Similarly, to require notification or reporting of impeachment evidence only when that evidence casts "substantial" doubt on the accuracy of other evidence invites an exercise of discretion that would undermine the purpose of this directive, i.e., to ensure that the prosecution and investigative authorities will disclose the exculpatory evidence of any kind.

(7) The directive should include a provision that makes clear that non-compliance with the policy will result in adverse consequences to the member.

Q2

Respondent skipped this question

Contact Information (optional)
