

October 2019



# THE LOCAL GOVERNMENT LIABILITY BEAT

Presented by [Local Government Risk Management Services Inc.](#) A Service Organization of The Association County Commissioners of Georgia and the Georgia Municipal Association Risk Management Programs

## Cops' Credibility is Being Successfully Challenged

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**F**or years law enforcement officers have believed that their word would be believed. That day is gone! Four events have eroded what once was a quality we took for granted. It is the actions of the few that is affecting the rest of us. First, officers' misconduct and falsehoods are displayed almost daily in the media. Secondly, social media posts by the public as well as officers paint an unflattering image of a few stupid cops. Thirdly, juries want support in video or forensic evidence to corroborate an officer's testimony. And lastly, more law enforcement officers are being placed on 'Brady Bad Boy' lists that challenge their testimonial credibility.

Let's focus in on events in the developing Brady/Giglio issue of testimonial credibility. If a law enforcement officer can't testify in a criminal, civil or administrative trial, can s/he be of any value to an agency? I recall in 1999 at the first NIAIA conference I attended, Chief Duffy of the Rochester PD welcomed us to his city. He challenged those attending to address the issue of officer credibility. He told the audience that when he became Chief of Police, he told all his employees that 'if you lie, you die!' He said most anything could be resolved, but not if the employee lied. He acknowledged that he was challenged with some of the events that surfaced, but he was able to meet the challenge if the employee hadn't lied.

How long will the taint of lying last? In 2018 a judge in Nassau County NY granted a new trial to a defendant after it was learned that the officer who was the center

of the defendant's conduct had received a 5-day suspension in 1997 for 'conspiring...fabricating...to conceal another officer's auto accident.' The prosecutor acknowledged that this material was not produced and this was simply an error by the office. This issue in this case is the failure to disclose the information. Most prosecutors could reasonably rehabilitate a testimonial officer under these circumstances.

The beleaguered Baltimore City PD this month faced another issue. State Attorney Mosby has identified 25 officers who her office believes their testimony cannot be trusted. Eight of these were officers in the indicted Gun Trace Task Force. Her office has recommended nearly 800 criminal convictions involving these 25 officers be dismissed. On October 1 a new bill passed by the Maryland General Assembly makes these prosecutor recommendations easier to file with the courts.

Earlier this year a group of attorneys worked with some IT resources to scour social media posts for 'racist' posts and affiliation with white nationalist groups. They had rosters of eight large police and sheriff department sworn officers. They matched these together and found several hundred-law enforcement officers who were active on these social media sites.

One prosecutor (Circuit Attorney) in the St. Louis area evaluated the identified officers and notified the Metro Police Chief that 22 officers on the list would be precluded from testifying. "Police integrity is at the core of the community's confidence in the criminal justice system," she said. "When a police officer's integrity is compromised in this manner, it compromises the entire criminal justice system and our overall ability to pursue justice. After careful examination of the underlying bias contained in those social media posts, we have concluded that this bias would likely influence an officer's ability to perform his or her duties in an unbiased manner." Seven of the officers were permanently banned and any warrants they presented would be refused. The remainder of the officers would be banned, but could be reinstated at a later time.



Earlier this year the California Supreme Court ruled against the Association of Los Angeles Deputies (the union for the LASO deputies) in it's lawsuit to prohibit the former Sheriff from giving a list of 300 deputies to the County District Attorney as potential Brady officers. The Court essentially cited the U.S. Supreme Court decision of 1963 in Brady v Maryland.

In 2014 six Philadelphia narcotic officers were federally tried for stealing from local bodega operators. They were acquitted, but the Department then terminated them. Those terminations were overturned in arbitration. Five of the six had to be absorbed back into the Department.

It is the affirmative duty of the prosecutor to provide Brady/Giglio materials to the criminal defense. Reasonable, progressive prosecutors have created a protocol for this process, including the mission of establishing systems for the identification of law enforcement officers who may have credibility issues. Some of these systems for Brady lists have provisions for the officer and agency to appeal placement on the list to the prosecutor's office. But, absent some ulterior motive, there isn't much you can do to get removed once you're placed on the list.

So what does this all mean to you and your agency?

- Prosecutors are no longer going to look the other way and not take affirmation action when officers with credibility potential are identified. Your agency should inquire whether your local prosecutor has formulated a protocol for placing officers on a Brady list and what appeal provisions might be included.
- Your agency must take steps to ensure that all personnel are aware of what can and, most likely like, be used against them if they make false statements during administrative investigations, hide or fabricate evidence, make misstatements on arrest reports or search warrant

probable cause affidavits, or lie during any form of testimony.

- Your agency must adopt a reasonable written policy of disclosure of Brady/Giglio materials and ensure that your production to the prosecutor is acknowledged in writing.
- Your agency should adopt a written policy delineating that any form of false statements, lying or manipulation of evidence will result in termination. Should that discipline be overturned by an external review process the agency does not have to keep you in a law enforcement capacity

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***This Month:***

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