

**IN THE IOWA DISTRICT COURT, IN AND FOR JEFFERSON COUNTY**

**BART RICHMOND**

**Petitioner**

**v.**

**JEFFERSON COUNTY ATTORNEY,**

**Respondent**

**NO. CVEQ004708**

**RESPONDENT'S FINAL BRIEF ON  
AUTHORITIES**

COMES NOW Jefferson County Attorney Chauncey T. Moulding, as Respondent, and provides this final brief on authorities related to the above captioned matter.

On January 23, 2025, this matter came before the Court on Petitioner's request for judicial review of his placement on a Brady-Giglio list maintained by the Jefferson County Attorney's office.

The hearing established that Petitioner, the Jefferson County Sheriff and a certified law enforcement officer in the State of Iowa, was placed on the Jefferson County Attorney's office Brady-Giglio list based on the prosecutor's judgment that the Petitioner's actions relating to a use of force investigation had generated concerns over the Sheriff's candor, credibility, and truthfulness. Petitioner seeks a ruling from this Court removing him from such list.

The Respondent contends it has shown that placement on said list was proper and well founded, and that Petitioner has not met his burden of a preponderance of the evidence that such placement was improper. Furthermore, Respondent contends that an order removing Petitioner from such a list would be unworkable from a practical perspective, and unconstitutional from a legal perspective. As such, Petitioner's desired remedy should be denied.

It should be further noted that such an order denying Petitioner relief does not leave Petitioner without recourse. As the evidence in the record shows, Respondent has provided Petitioner with numerous

opportunities to address his deficiencies in candor, credibility and truthfulness. *See Ex. 1, Ex 6, Ex 8.* It is Petitioner who has declined these opportunities, instead seeking judicial review of the Respondent's actions. A denial of Petitioner's requested relief leaves avenues of redress open to him.

As this matter is certainly one of first impression in the State of Iowa, the Court has directed the parties to provide briefing on legal authorities which may provide guidance on this novel legal issue. Prior to doing so, Respondent will underline certain relevant facts established during the January 23, 2025 hearing, without fully briefing that issue, as ordered.

**Facts As Established Jan 23, 2025**

This matter presents complicated legal obligations to the undersigned Jefferson County Attorney, who is simultaneously obligated to uphold the following:

1. The interests of justice, which simultaneously obligate
  - a. Protection of the community from criminal offenses as the principal law enforcement official of the jurisdiction;
  - b. Protection of the constitutional rights of criminal defendants as a minister of justice with a duty to uphold procedural and substantive rights of the accused;
2. The legal and pecuniary interests of Jefferson County itself;
3. The legal interests of the Petitioner as an officer of Jefferson County;
  - a. This includes the interests of employees of the Petitioner, who are employed by Jefferson County.

As both the County's and the Sherriff's attorney simultaneously, this entire process has felt like attempting to provide legal representation while caught between the devil and the deep blue sea, while also trying to preserve the constitutional rights of the accused. It would not be an overstatement to say that at each step of this process, I have caught myself asking, either quietly or out loud, "Bart, why are you making me do this?" His actions and decisions have been, and remain inscrutable, particularly when it seemed as though he was placing his own interest ahead of the public's, the County's, and those of his elected office.

The case before the Court presents a circumstance where the above obligations find themselves in some conflict. To protect enumerated legal interests 2 and 3, following a use of force by a County employee against a handcuffed Defendant in the custody of another agency, Petitioner was sent an email, Ex. 11, bringing it to his attention and asking if the actions were in keeping with County policy. No response was given to that email or a follow-up, Ex. 12.

Petitioner testified that he reviewed the incident, and that it did not conflict with the County's use of force policies, and no violation occurred. This testimony was surprising, as the incident speaks for itself, and upon independent review of the County use of force policies and the incident, the outside agency reviewing the incident found a violation. See Ex. 20. Petitioner also testified that he met with the employee in question and documented the incident in his personnel file, and when questioned as to why counseling and documenting the incident with the employee was necessary when no violation of policy occurred, Petitioner stated he "wanted to make sure there were no further incidents." This begs the question: No further incidents of what if there was no violation of policy? More significantly, the employee himself was called to testify by the Petitioner, under caution and advisement from the undersigned that such testimony may be against his and the County's interests 1, that he was in fact counseled for violating policy and did in fact violate policy. This certainly calls into question the candor of Petitioner's testimony regarding the use of force incident, if not his outright truthfulness. If an independent review of the incident

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1 This calls to light another unfortunate and unique complexity in this case, where the Petitioner has been cautioned numerous times that his actions in this matter may be in direct conflict and acting to the detriment of Jefferson County, the Sheriff's office itself, and employees thereof. Nevertheless, Petitioner disregarded this advice and proceeded to call an employee to provide sworn testimony about a matter which presents certain legal exposure to himself, his office and the County (see enumerated legal duties 2, 3, and 3a *supra*). Furthermore, and inexplicably, Petitioner's counsel went on to detail the explicit facts of the incident in question in open court, including naming the deputy, which until Jan 23, 2025 had not been publicly stated, all in direct contravention of the advice of the County Attorney. This does not bear directly on the issue at bar, but highlights the complex legal obligations of the County Attorney, particularly when the Sheriff is disregarding the advice of the undersigned and the interests of County employees in order to further his personal legal interests.

as well as the understanding of the deputy following counseling indicate there was a violation of policy, the Petitioner's assertion otherwise at least calls into question his candor, if not his truthfulness outright, and creates significant question regarding his credibility.

The next issue of note is the Petitioner's refusal to provide use of force documents upon request. The request came May 24, 2024 in the form of a phone call from the County Attorney's office. There appears in the record at least a partial recording of that call, in Ex. 26A. There is also testimony in the record that the call does not appear to be complete, which is supported by a review of that audio, which appears to cut off at times and is generally a one-sided conversation. The undersigned is not alleging that there was intentional tampering with this audio, however there is also testimony in the record that the recording system records in pieces, and it is safe to conclude that the audio might not be a complete records of the call. In any event, there was no provision of the requested documents until after an admittedly frustrated email from the undersigned, Ex. 13, an unanswered call from the undersigned to the Petitioner, a conversation between the undersigned and the Chief Deputy, and a phone call between the Petitioner and the requesting agency.

Finally, while Defendant was aware of the date of the Brady-Giglio interview set in Ex 1, and aware that not appearing at the same to consider evidence and discuss these incidents would be factored in list placement consideration, he proceeded to hire counsel who was unavailable on the date of the interview and unavailable at the proposed alternative date.

Moving on from the facts established January 23, the Petitioner forwards two arguments to support his removal from the Jefferson County Brady-Giglio list:

1. That his placement on the list violated procedural provisions provided in Iowa Code 80F.1
2. That there was insufficient substantial cause to place him on the same.

Neither of the arguments have been established by Petitioner via a preponderance of evidence, and should

be overruled.

### **Procedural issues**

Petitioner argues that this matter should be resolved in his favor based on alleged procedural shortcomings when interpreting the provisions of Iowa Code 80F.1. These arguments do not withstand close scrutiny of the statute itself.

First and foremost, the arguments by Petitioner's counsel are understandable, as the provisions relied upon in 80F.1 to assert a procedural insufficiency are due to the legislature's convoluted drafting of the statute itself. 80F was envisioned, and is titled a Peace Officer's Bill of Rights. 80F.1 is a statute originally intended to offer procedural protections for officers who are the subject of a formal complaint, inquiry or investigation relating to their status as employees. The statute as originally drafted provides rules and safeguards for officers who may be subject to internal investigative processes following receipt of a complaint. The statute as it existed in 2022 had no reference to prosecuting agency, Brady-Giglio lists, or any of the provisions of 80F.1(24) which were all added in 2023. The legislature essentially "shoe-horned" into an existing statute the provisions relating to Brady-Giglio issues, creating essentially a twin-pronged statute, which simultaneously, but independently provides procedures for internal employment-related issues for officers, and Brady-Giglio issues with prosecuting agencies, with separate provisions applying to each.

The only provisions of 80F.1 which apply to the procedures of placing an officer on a Brady-Giglio list are contained in the following sections: 80F.1(1)(a) – the definition of Brady-Giglio list, 80F.1(1)(f) – the definition of Officer, 80F.1(1)(g) – the definition of Prosecuting Agency, 80F.1(24) – provisions for prosecuting agency Brady-Giglio policies, and 80F.1(25) – an officer's appeal rights (added in 2024). Each of the other provisions of the statute relate only to internal investigations and safeguards in an employment context.

Petitioner was never the subject of a “Complaint” as defined in 80F.1(1)(b), but was instead subject to concerns of a prosecuting agency as to issues with his truthfulness, candor, and credibility. There was no “informal inquiry” or “formal administrative investigation,” as the prosecuting attorney is not the Sheriff’s “commanding officer” in this context. The Brady-Giglio interview was not an “interview” in the context of 80F.1(1)(e), as it was not conducted pursuant to a formal administrative investigation, as defined by the statute. There is no procedural shortfall in this matter to speak of. The officer has the right to request documents and records, and provide input to the prosecuting agency prior to list placement. However, there is no reason these documents cannot be provided at the interview where the officer can provide input, which was scheduled in the letter provided to Petitioner in Ex. 1.

Furthermore, in the event the Court finds a procedural fault in the proceedings leading up to its review, the remedy would be to commence these proceedings over again, with notice to Petitioner of possible list placement, and the case essentially commencing again from scratch, as there remains concern over the Petitioner’s candor, truthfulness, and credibility even after all these proceedings. I do not believe any party wishes this to drag on further.

### **Substantive issues**

The Petitioner has not established, via a preponderance of the evidence, that his placement on the Jefferson County Brady-Giglio list was without cause. In fact, evidence developed at the January 23 hearing showed the Petitioner’s actions relating to the inquiries into the April 20, 2024 use of force incident generated good cause for concern over the Petitioner’s truthfulness, candor and credibility, which are specified reasons for placing an officer on a list pursuant to statute. A Brady-Giglio list “means a list compiled by a prosecuting agency containing the names and details of officers who have sustained incidents of untruthfulness, criminal convictions, candor issues, or some other type of issue which places

the officer's credibility into question." Iowa Code 80F.1(1)(a)(emphasis added).

The Court has solicited authorities which provide guidance on this issue of first impression. In providing the same, it is helpful to establish definitions of the operative clauses. Untruthfulness is self explanatory, however, candor and credibility as applied to a prosecutor's evaluation of an officer as a witness are worthy of explanation.

In defining a lack of candor, it is useful to look to other jurisdictions, as Iowa does not have a well developed body of law on this issue.

"Candor" means much more than the absence of untruth. Merriam-Webster defines "candor" as "unreserved, honest, or sincere expression: forthrightness." Merriam-Webster's Collegiate Dictionary (11th Ed. 2003). "Forthrightness" is the quality of being "honest and direct," of "providing answers or information in a very clear and direct way," and of being "free from ambiguity or evasiveness; going straight to the point." Id.

*Victor v. Powell*, 2016 Conn. Super. LEXIS 944, \*32, 2016 WL 2935466. Candor is more than simply the lack of truth or the utterance of a falsehood, but also includes failure to tell a whole and complete truth.

Falsification involves an affirmative misrepresentation, and requires intent to deceive. *Naekel v. Dep't of Transp.*, 782 F.2d 975, 977 (Fed. Cir. 1986). Lack of candor, however, is a broader and more flexible concept whose contours and elements depend upon the particular context and conduct involved. It may involve a failure to disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete. It would be comparable to the distinction in the Federal securities laws governing securities registration statements between 'an untrue statement of a material fact' and the failure 'to state a material fact . . . necessary to make the statements therein not misleading.' 15 U.S.C. § 77k(a) (2000).

...

The Bureau's regulations and instructions governing the conduct of its employees do not use the words "lack of candor." The words, however, apparently are well understood within the Bureau as a shorthand phrase for the myriad of situations that the concept covers. The standard is implicit in the statement in the Bureau's Manual of Administrative Operations and Procedures which, in Part I, Section 13, 13-4, states: "The employee must be entirely frank and cooperative in answering inquiries of an administrative nature."

*Ludlum v. DOJ*, 278 F.3d 1280, 1284 (2002). Candor requires the disclosure of facts material to the question at hand, the difference between a statement which is technically not a mistruth, and the whole

and complete truth. "The duty of candor is defined in 37 C.F.R. 1.56: Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section." *Highway Equip. Co. v. FECO, Ltd.*, 2005 U.S. Dist. LEXIS 17332, \*24. While an officer's duty of candor to a prosecutor when he may be a witness is different than an attorney's duty of candor to the tribunal, that duty is illustrative of the concept of candor:

Candor is required by all rules of ethics that could possibly apply here. One definition of "candor" describes it as being "[t]he quality of being open, honest and sincere." Candor, Black's Law Dictionary (10th ed. 2014). The "duty of candor" under which lawyers operate is a bit broader. It is a "duty to disclose material facts; esp[ecially], a lawyer's duty not to allow a tribunal to be misled by false statements, either of law or of fact, that a lawyer knows to be false." Duty, Black's Law Dictionary [\*34] (10th ed. 2014). Most authors would also include that it is a lawyer's duty not only to be honest but also not to mislead or allow a court to be misled by half-truths or statements which, while technically honest, are calculated to mislead. Model Rules of Prof'l Conduct r. 3.3 cmts. 2 & 3 (Am. Bar Ass'n 2013).

*Texas v. United States*, 2016 U.S. Dist. LEXIS 79546, \*33-34

Beyond the definition of candor, it is helpful to review procedures for other agencies treatment of impeachment information. The Department of Justice's U.S. Attorney's manual contains the following guidance for Federal prosecutors when addressing impeachment information/Giglio issues:

**(c) Potential Impeachment Information.** Agency witnesses and Agency Officials should make broad disclosures of potential impeachment information to the prosecutor so that the prosecutor can assess the information in light of the role of the agency witness, the facts of the case, and known or anticipated defenses, among other variables. Potential impeachment information is defined in the Federal Rules of Evidence, case law, unpublished court rulings, and Department of Justice policy and guidance. Unless advised by a *Giglio* Requesting Official or prosecutor that case law or court rulings in the district require broader disclosures, potential impeachment information relating to agency employees may include, but is not limited to, the categories listed below:

- i) any finding of misconduct that reflects upon the truthfulness or possible bias of the employee, including a finding of lack of candor during a criminal, civil, or administrative inquiry or proceeding;

- ii) any past or pending criminal charge brought against the employee;
- iii) any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;
- iv) prior findings by a judge that an agency employee has testified untruthfully, made a knowing false statement in writing, engaged in an unlawful search or seizure, illegally obtained a confession, or engaged in other misconduct;
- v) any misconduct finding or pending misconduct allegation that either casts a substantial doubt upon the accuracy of any evidence—including witness testimony—that the prosecutor intends to rely on to prove an element of any crime charged, or that might have a significant bearing on the admissibility of prosecution evidence. Accordingly, agencies and employees should disclose findings or allegations that relate to substantive violations concerning:
  - (1) failure to follow legal or agency requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications;
  - (2) failure to comply with agency procedures for supervising the activities of a cooperating person (C.I., C.S., CHS, etc.);
  - (3) failure to follow mandatory protocols with regard to the forensic analysis of evidence;
- vi) information that may be used to suggest that the agency employee is biased for or against a defendant (*See United States v. Abel*, 469 U.S. 45, 52 (1984). The Supreme Court has stated, "[b]ias is a term used in the 'common law of evidence' to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest."); and
- vii) information that reflects that the agency employee's ability to perceive and recall truth is impaired.

Justice Manual 9-5.100 Policy Regarding the Disclosure to Prosecutors of Potential Impeachment Information Concerning Law Enforcement Agency Witnesses ("Giglio Policy"). Available at: <https://www.justice.gov/jm/jm-9-5000-issues-related-trials-and-other-court-proceedings#9-5.100>

The issue of an officer suing to be removed from a Brady-Giglio list was addressed at length in *Savage v. Maryland*, 896 F.3d 260 (2018). Although that case addresses the issue of prosecutorial immunity more than the issue of list placement, it does speak to the core issue at bar, which is that determination of witness credibility as a prosecuting attorney. "Decisions regarding witness testimony -

which witnesses to call, whether potential witnesses are credible, and how to proceed in the face of credibility questions - are a core prosecutorial function, directly tied to the conduct of a criminal trial.”

*Savage v. Maryland*, 896 F.3d 260, 270.

That is especially so when, as here, assessments of witness credibility are tightly intertwined with determinations about which cases to charge. The alleged decision to which Savage objects is not only that Savage would not be called as a witness; it is also that Oglesby would dismiss instead of prosecuting cases in which Savage's account could not be corroborated. See J.A. 187 ("If we are unable to independently corroborate [Savage's] testimony and therefore must rely solely on his word, the likely outcome will be a dismissal of the case."). And whether to "initiat[e] a prosecution," of course, is in the heartland of the prosecutorial discretion covered by absolute immunity.

*Id* at 270. While lengthy, the entirety of the *Savage v. Maryland* opinion is illustrative on this matter.

Finally, the relief sought by the Petitioner here is contrary to the prosecutor's ethical and constitutional duties to provide criminal defendants with exculpatory evidence in criminal matters. It is a core duty of a prosecutor to provide criminal defendants with possible exculpatory evidence. This issue is addressed in a South Dakota Federal District Court case *Lacoe v. City of Sisseton*.

In addition to her claim for damages, LaCoe also seeks injunctive relief requiring the defendants to remove her from the Brady/Giglio list and contact past background inspectors to notify them of the change. Of course, the Eleventh Amendment does not bar suits for prospective injunctive relief against state actors that violate federal law. See *Ex parte Young*, 209 U.S. 123, 159-60, 28 S. Ct. 441, 52 L. Ed. 714 (1908). LaCoe provides no legal support for the applicability of the *Ex parte Young* doctrine, and the defendants seemingly ignore that LaCoe requested injunctive relief at all. But the request for injunctive relief, in essence, asks this Court to require a State's Attorney to violate the constitution rather than prevent any ongoing transgression. As already noted, the Brady/Giglio list exists to satisfy the State Attorney's obligation to provide criminal defendants with exculpatory evidence. There is no basis for injunctive relief requiring the opposite. Accordingly, LaCoe has failed to state a claim for injunctive relief against either Kirchmeier or Croymans.

*Lacoe v. City of Sisseton*, 2022 U.S. Dist. LEXIS 222239, 2022 WL 17485843.

The Court record developed at the January 23<sup>rd</sup> hearing and in the exhibits provided therein showed the Petitioner ignored concerns over the use of force incident, failed to cooperate with an investigation into the same, and ordered employees to not discuss the matter, classifying the use of force and his

response thereto as a “confidential personnel matter.” When taken as a whole, the testimony provided and all the exhibits in the record show the concerns of his candor, credibility and truthfulness were genuinely raised, and have not been addressed. Petitioner has not met his burden in this case.

### **Conclusion**

After concerns over Petitioner’s candor, credibility and truthfulness were raised following his actions relating to a Deputy’s use of force, he was noticed of the same and provided with the opportunity to review evidence and provide input, pursuant to Iowa Code 80F.1(24). He declined this opportunity and was placed on the County’s Brady-Giglio list, as is constitutionally and ethically required of a prosecutor under these circumstances. As such, this individual was determined to not be a credible law enforcement witness in the District Courts of Jefferson County, Iowa. This Court is now being asked by Petitioner to take an action unprecedented in the State of Iowa, and very likely, unprecedented in these United States: To review an individual prosecutor’s credibility determination and overrule the same.

The practical effect of the relief being sought by the Petitioner in this matter is unclear. As established clearly in the evidence before the Court, the Petitioner acted in a manner which gave cause for this prosecutor to develop bona fide concerns over his credibility, candor and truthfulness relating to an investigation of a use of force incident involving one of his employees. As further established in the evidence, the Petitioner was given numerous opportunities to remedy these concerns, and at each opportunity, chose to either ignore, further obfuscate, and accelerate these concerns. Instead of responding to numerous concerns over the incident, he ignored emails from the County’s attorney seeking to insulate his office and the county at large from legal exposure. Instead of cooperating with requests for information from Jefferson and Keokuk County attorneys, he declined to provide requested information. Instead of meeting with the prosecutor at either the Brady-Giglio interview or the reconsideration interview, he either disregarded the interview or appeared remotely without cause and against instructions. Instead of

addressing these genuine concerns in person and as a responsible elected official, he decided to sue Jefferson County and expose all these matters publicly, including the details of the use of force incident which the original information requests were supposed to address. In short, the Sheriff's actions leading up to this case created great concern over his ability to be a credible witness, and his actions since filing this petition have done nothing to change that fact.

Assuming arguendo the Court finds the Sheriff should be removed from the County's Brady-Giglio list in direct contravention of the opinion of the prosecutor who placed him there, that does not change the prosecutor's determination that the Petitioner's credibility remains in question. What then? Such an order would place the prosecutor between a constitutional "rack and a hard place." The Respondent cannot be ordered to violate his ethical and constitutional duties to provide exculpatory information to Defendants. *See Laco v. City of Sisseton*. The Respondent cannot be ordered to call a particular witness to the stand who that prosecutor finds not credible<sup>2</sup>. At the same time, the undersigned would never disregard a District Court's order. Such a ruling granting petitioner's relief would be constitutionally uncertain, and create a grave fracture in the world of criminal law in the State of Iowa and beyond. It should not be seriously entertained.

The Petitioner has failed to meet his burden herein. His petition should be denied, and he should seek to redress the County Attorney's concerns over his actions directly.



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<sup>2</sup> It is a bedrock legal principal that an independent prosecutor shall present his case and his evidence in the manner he sees fit and appropriate, and he cannot be compelled or forced to call a particular witness to present such evidence.