

STATE OF MARYLAND



LAWRENCE J. HOGAN, JR.
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR

OFFICE OF THE PUBLIC DEFENDER
DISTRICT ONE – BALTIMORE CITY
201 SAINT PAUL STREET, 5th FLOOR
BALTIMORE, MARYLAND 21202
Ph. (410) 333-4900
Fax (410) 333-4653
Toll Free: 1 (877) 430-5187

PAUL B. DeWOLFE
PUBLIC DEFENDER

BECKY FELDMAN
DEPUTY PUBLIC DEFENDER

KIRSTEN DOWNS
DISTRICT PUBLIC DEFENDER

Baltimore City District Public Defender Responds to City Solicitor and State’s Attorney’s Announcement to “Streamline” the Obligation to Disclose BPD Officer Internal Affairs Documents to Defense Counsel in Criminal Cases

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Contact: Melissa Rothstein, mrothstein@opd.state.md.us; 410-767-9853

On Friday afternoon, the City Solicitor released a memorandum, developed in conjunction with the State’s Attorney, outlining their planned method of providing summary information regarding Baltimore City Police Internal Affairs files that are constitutionally required to be disclosed. Kirsten Downs, District Public Defender for Baltimore City, responds:

While we appreciate the City Solicitor’s recognition that *Brady* and *Giglio* establish an affirmative obligation by prosecutors, and we agree that there are no proper procedures currently in place regarding the production of records by the Baltimore City Police’s Internal Affairs Department, the remedy outlined in the Solicitor’s memorandum dangerously fails to address the current problems with disclosures or hold the State’s Attorney’s Office to its obligations.

The conclusion that the defense can rely on summaries by the line prosecutor, based on voluntary disclosures by police officers, ignores the reality of our current system in which these entities have repeatedly demonstrated, often on the record, that they lack the understanding, capacity or will to identify and disclose highly relevant exculpatory and/or impeaching materials. Notably, the procedures set forth contemplate no training, oversight or enforcement of these obligations, which are already constitutionally established but nonetheless ignored.

Moreover, even the most diligent prosecutor will not know the full scope of information relevant for the defense. The Court of Appeals has unanimously recognized that the defense is in the best position to determine what materials are relevant for impeachment. A summary of information by prosecutors will never be able to meet this measure, nor should it. While the City Solicitor questions the application of Maryland caselaw, the Court’s determinations remain controlling, regardless of this memorandum, and require the production of documents for compliance.

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