

A Simple Solution to a Complicated Problem: *Giglio* Disclosures in Iowa Criminal Cases

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ABSTRACT: “What mama doesn’t know won’t hurt her” does not apply in the criminal justice system. To the contrary, the U.S. Supreme Court’s holdings in Maryland v. Brady and Giglio v. United States make clear that what criminal defendants do not know may very well hurt them. The Supreme Court has held that criminal defendants are constitutionally entitled under the Sixth Amendment to favorable, material information about government witnesses that may be used to impeach those witnesses. This includes information that may impeach a police officer’s credibility. This criminal due process right is crucial because law enforcement officers are routine witnesses at trial; they are often the first on the scene of a crime, have direct access to victims and witnesses, and are usually—if not always—the actors gathering the evidence that will form the foundation of the prosecutor’s case. The police’s control over criminal investigations gives them great control over the facts of a defendant’s case, and therefore great control over what the prosecutor tells or does not tell the defendant. Thanks in part to social media, instances of police misconduct in America have taken on a life of their own and reignited conversations about what kinds of credibility information about police officers criminal defendants may be entitled to under the Sixth Amendment and Supreme Court case law. Iowa is not immune to police misconduct nor criminal behavior, yet Iowa does not have a consistent, statewide procedure for disclosing this information to criminal defendants. Prosecutors in large counties have formed lists of historically dishonest officers—“Giglio lists”—to keep afoot of their constitutional obligations, while it is doubtful that small counties ever disclose police misconduct information. And as it currently stands, the Iowa legislation directed at police misconduct disclosures—otherwise known as “Giglio disclosures”—appears to render this disclosure procedure optional.

To remedy these disparities, this Note proposes an amendment to Iowa’s existing Brady–Giglio statute that clarifies the prosecutor’s constitutional obligation

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to disclose police officer credibility material, regardless of how they chose to collect their information. Finally, this Note proposes that in the counties which opt not to create a formal list, defense attorneys should be required to participate in the camera review process with the judge who evaluates a police officer's disciplinary record to inform the judge of the types of information sought.

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INTRODUCTION

You invite your friend to a party. She says she cannot attend, that she will be out of town. Later, your friend tells you her grandmother's birthday conflicts with the party and she cannot attend. Yet later, she tells you that her fish died, and therefore, she is grieving and unable to attend. Your friend made similar excuses when you asked her to babysit three weeks ago; her boyfriend was going through a tough time, but later, her father's birthday became the justification. You note these repeated inconsistencies over time but say nothing of it. Two months down the line, there is an emergency, and you are in need

of a babysitter. Only your friend is available to watch your child. You weigh the costs and benefits of asking someone to babysit who has repeatedly displayed an inability to be honest. The emergency is bad, but is it bad enough to draw an unreliable third party into the mix? On the other hand, maybe there is something going on with her, and that explains her past indiscretions. That does not mean she would be a neglectful babysitter, right? How deep does this inability to be honest run?

In a similar scenario, consider if the friend was instead a coworker who repeatedly showed up late to work, lied on their timesheet, once dated another coworker despite management's rules against such relationships, or promised customers a discount that your coworker could not possibly deliver. If you are swamped and need help with an important, potentially career-altering project, do you enlist your coworker's help, or go it alone, knowing your physical or mental health could suffer? To make matters worse, assume you are the middle manager, and it is your duty to report such misconduct to your higher-up. You live in a small town, your children go to school with your coworker's children, your parents rely on your coworker's husband's hardware business, and there are very few other employment options for your coworker in your small town. Do you report the coworker's indiscretion?

This is *Giglio*. In *Giglio v. United States*, the U.S. Supreme Court held that impeachment evidence is a subset of *Brady* material.¹ In other words, *Giglio* stated that prosecutors have a Sixth Amendment constitutional obligation to turn over evidence that tends to diminish a government witness's credibility, including police officers.² *Giglio* was crucial because police officers are "career witnesses"; testifying on the state's behalf is a fundamental aspect of a police officer's employment responsibilities.³ The Supreme Court's ruling in *Giglio* asked prosecutors to make daily decisions about whether the police officers who are called to testify against criminal defendants have the capacity to tell the truth. Although "[o]ur legal system treats the police as if they are impartial fact gatherers, trained and motivated to gather facts both for and against guilt" and not "biased advocates attempting to disprove innocence,"⁴ *Giglio* and subsequent case law tells an entirely different story.⁵ As jurisdictions across the country grapple with separating the "bad apples" from the quality bunch, each

1. See *Giglio v. United States*, 405 U.S. 150, 152–54 (1972).

2. See *id.* (extending the obligation announced in *Brady* to include information suggesting a witness may not be credible—including police officers).

3. Melanie D. Wilson, *An Exclusionary Rule for Police Lies*, 47 AM. CRIM. L. REV. 1, 2 (2010) (explaining that police officers are a "key investigative component" of the United States's criminal justice system).

4. *Id.* at 3.

5. *Giglio*, its progeny, and related commentary paint a picture that police officers are often seekers of guilt, not seekers of justice. See *Kyles v. Whitley*, 514 U.S. 419, 433 (1995) (describing landmark cases addressing suppression of evidence related to police misconduct); see also Myriam Gilles, *Keeping Quiet, Covering Up and Never, Ever Ratting: The Effects of the Code of Silence on Reforming Police Culture*, GEO. U.L. CTR. CONTINUING L. EDUC., Apr. 30, 2003, at *1–3, 2003 WL 23924310 (explaining how the police "code of silence" leads to police officers refusing to rat on their colleagues).

state, including Iowa, has attempted to answer a crucial human question: When does a person lie, and when is a person *a liar*?

Without a proper “*Giglio* solution,” Iowa courts cannot guarantee the legitimacy of the judicial process. Creating a bright-line rule would serve players at almost every level of the criminal legal system, including criminal defendants, the courts, law enforcement personnel,⁶ prosecutors,⁷ scholars,⁸ activists,⁹ and the public at large. However, the very nature of *Giglio* disclosures make them less amenable to bright-line rules.¹⁰ As this Note will reveal, attempts to define “bed-rock rules” for law enforcement *Giglio* disclosures usually end up at one extreme or the other.¹¹ In light of the murders of George Floyd and Breonna Taylor in 2020 and consistent video footage of racial profiling and police misconduct, the police officer’s role in society has become frighteningly polarized: “[O]fficers are either honorable . . . or . . . horrible.”¹² Iowa is also not immune from findings of police misconduct. However, Iowa’s mixed rural–urban, demographic complexities—in combination with its current inconsistent, patchwork approach to *Giglio* disclosures—have complicated the state’s ability to find a clear-cut solution to identifying and disclosing police misconduct and ensuring due process for criminal defendants.

Overall, this Note argues that the issue with Iowa’s proposed *Giglio* “fixes” have been, until now, honorable yet futile attempts to condense, streamline, and giftwrap *Giglio* solutions. This Note argues that the Iowa Legislature should codify prosecutors’ constitutional duty to turn over information regarding police misconduct while leaving the choice of whether to compile a formal list of noncredible officers to the discretion of county attorneys’ offices in each individual county. This Note proceeds in three parts. Part I explores the origins of *Giglio* and highlights the complexities inherent in alleged *Giglio* material—for example, what exactly constitutes “police impeachment material.” Part II tracks the steps taken by prosecutors, defense attorneys, and the Iowa Legislature to resolve lingering *Giglio* disclosure issues thus far. Part II also highlights the complicated inferential questions prosecutors face when deciding

6. Rick Tullis, *Understanding Giglio - The “Death Letter” for a Law Enforcement Officer’s Career*, S. STATES POLICE BENEVOLENT ASS’N, INC. (Sept. 2, 2021), https://www.sspba.org/gen/articles/Understanding_Giglio_The_Death_Letter_For_A_Law_Enforcement_Officer_s_Career_894.jsp [https://perma.cc/8Z67-RY89].

7. See *Minutes: Brady-Giglio List Study Committee*, Gen. Assemb., 89th Sess. 2 (Iowa 2021).

8. See Thomas P. Hogan, *An Unfinished Symphony: Giglio v. United States and Disclosing Impeachment Material About Law Enforcement Officers*, 30 CORNELL J.L. & PUB. POL’Y 715, 718, 768 (2021).

9. See Luke Nozicka & Jason Clayworth, *A Look at One Officer’s Record: A Decorated Cop Who Also Has Credibility Issues*, DES MOINES REG. (May 15, 2019, 2:23 PM), <https://www.desmoinesregister.com/story/news/2019/05/15/look-one-officers-record-decorated-iowa-city-cop-who-also-has-credibility-issues/3675792002> [https://perma.cc/PQ4M-J2JU].

10. See Hogan, *supra* note 8, at 766–68 (discussing a hypothetical scenario where three dramatically different fact patterns all involve claims of use of force, and how *Giglio* material cannot be defined without reference to the underlying crime at issue).

11. See *id.* at 748–53 (comparing New York’s open-file policy to California’s policy, which does not even allow prosecutors to access police disciplinary records without a court order).

12. See Jonathan M. Warren, *Hidden in Plain View: Juries and the Implicit Credibility Given to Police Testimony*, 11 DEPAUL J. SOC. JUST. 1, 2 (2018).

what information to disclose to the defense and explains why Iowa specifically is not amenable to a statewide, umbrella solution to *Giglio* disclosures. Part II establishes that, even as a rural state, Iowa is not immune from police misconduct. Finally, Part III sets forth an affirmative amendment that the Iowa legislature should pass to ensure that the state’s prosecutors are abiding by their constitutional duty to disclose favorable, material evidence to the defense. This solution also provides a fairer path forward for smaller counties who often decide not to adopt formal *Giglio* lists.

The terms “*Giglio* material” and “impeachment evidence” will be used interchangeably throughout this Note. The term “*Brady* material” will be used to refer to the prosecution’s broad, procedural duty to overturn favorable, material evidence pursuant to the Sixth Amendment of the U.S. Constitution.¹³ *Giglio* material, on the other hand, is a smaller subset of *Brady* material, and here, “*Giglio* material” will refer solely to evidence that may be used to impeach a government’s witness,¹⁴ specifically information about police officers who testify on the prosecution’s behalf in criminal trials.¹⁵

I. DISCOVERY OF A NEW RIGHT: *BRADY*, *GIGLIO*, AND THEIR COMPLICATED OBLIGATIONS

The due process right embedded in the Sixth and Fourteenth Amendments—the right to a fair, impartial, and speedy trial—affords criminal defendants the right to attack the credibility of the opposing party’s witnesses.¹⁶ A criminal defendant’s need to impeach the government’s witnesses is especially strong in the United States’s adversarial system, which presupposes “that the truth will emerge through a contest in court between parties who present the best evidence for their respective positions.”¹⁷ Given the fact that prosecutors “are the most powerful actors in the U.S. legal system,”¹⁸ the ability to use *Giglio* evidence to undermine the credibility of government witnesses is especially necessary to restore the balance between the parties. In the United States, prosecutors have virtually unbridled authority to charge or not charge individuals with crimes, to offer plea deals or to not offer pleas, and to advocate for jail and prison sentences amidst America’s incarceration crisis.

This Part will set forth the origins and intricacies of the Supreme Court’s *Giglio* jurisprudence, shining a light on the importance of holding powerful prosecutors to their constitutional obligations. This Part then looks at the

13. *Brady v. Maryland*, 373 U.S. 83, 84, 86 (1963).

14. See Bruce A. Green, *Federal Criminal Discovery Reform: A Legislative Approach*, 64 *MERCER L. REV.* 639, 645 n.30 (2013).

15. See *Giglio v. United States*, 405 U.S. 150, 154 (1972); see also *United States v. Bagley*, 473 U.S. 667, 676–77 (1985) (applying *Giglio* where the government’s principal witnesses were police officers).

16. U.S. CONST. amends. VI, XIV; see also *FED. R. EVID.* 607 (“Any party . . . may attack the witness’s credibility.”).

17. Green, *supra* note 14, at 643.

18. BRYAN FURST, BRENNAN CTR. FOR JUST., *A FAIR FIGHT: ACHIEVING INDIGENT DEFENSE RESOURCE PARITY 1* (2019), https://www.brennancenter.org/sites/default/files/2019-09/Repo_rL_A%20Fair%20Fight.pdf [<https://perma.cc/6L6S-A5BV>].

complicated relationship between police and prosecutors that complicate *Giglio* disclosures in practice. Last, this Part poses the question, “What *is Giglio* material?” and explores some complexities that plague the disclosure issue.

A. GIGLIO’S “SHORT, BRUTISH” EVOLUTION THROUGH THE SUPREME COURT

In 1963, *Brady v. Maryland*¹⁹ went further than ever before in securing a criminal defendant’s right to fair discovery. There, the prosecution did not disclose evidence that Mr. Brady’s co-conspirator, Boblit, admitted to committing the homicide at issue; without this information, Brady was sentenced to death for committing the homicide.²⁰ After Boblit’s confession came to light during the appeal process, Brady’s counsel argued that criminal defendants, including Brady, have a Sixth Amendment right to information which mitigates guilt or punishment. The Supreme Court agreed,²¹ holding “that the suppression by the prosecution of evidence favorable to the 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.”²² Under this standard, the defendant must prove that the evidence: (1) is “suppressed,” meaning that the defense would not have been able to uncover the evidence through its own due diligence; (2) favorable to the defendant; and (3) “material” to guilt or punishment.²³

Nine years after *Brady* held that prosecutors must turn over evidence favorable to the accused and material to either guilt or punishment, *Giglio* presented the question of whether impeachment evidence was “exculpatory evidence” that must be disclosed pursuant to the *Brady* mandate.²⁴ Impeachment evidence is evidence used by an opposing party to (usually) attack the credibility of the other party’s witnesses.²⁵ Impeachment evidence can be crucial to both parties because the jury often bases their verdict on who they believe to be both truthful and reliable.²⁶ For a criminal defendant, the ability to impeach

19. See generally *Brady v. Maryland*, 373 U.S. 83 (1963).

20. *Id.* at 84.

21. *Id.* at 87.

22. *Id.* at 84; see also Janet Moore, *Democracy and Criminal Discovery Reform After Connick and Garcetti*, 77 BROOK. L. REV. 1329, 1335 (2012) (noting that “there is no [prosecutorial] mens rea element in a *Brady* claim”).

23. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999) (articulating the three critical elements of a *Brady* violation).

24. See *Giglio v. United States*, 405 U.S. 150, 151–54 (1972).

25. See Hogan, *supra* note 8, at 722.

26. See *United States v. Bagley*, 473 U.S. 667, 676 (1985) (“The jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant’s life or liberty may depend.” (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959))).

the government's witnesses may mean the difference between freedom and imprisonment,²⁷ especially if the jury is skeptical of police power.²⁸

In *Giglio*, the Supreme Court made clear that there is no difference between exculpatory evidence and impeachment evidence under *Brady* because both pieces of information may exculpate the defendant or lessen his punishment²⁹: “When the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of evidence affecting credibility falls within [the *Brady*] rule.”³⁰ The Court clarified that regardless of “whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor” to disclose such information to the defendant under the Sixth Amendment’s Due Process Clause.³¹

Many scholars consider *Bagley*—decided in 1985, the next case in the string of *Brady–Giglio* decisions—as responsible for the doctrinal wrench that has confused the disclosure doctrine and its workability to this day. In *Bagley*, the Court again confronted the prosecution’s failure to turn over “deals, promises or inducements . . . made to” the government’s testifying witnesses.³² Here, the Court revised its definition of “material evidence”: “[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.”³³ In other words, evidence is not “material” and a defendant is not entitled to a new trial under *Giglio* unless the suppressed evidence would have resulted in a fundamentally different verdict or sentence, such as an acquittal, or life-without-parole as opposed to the death penalty.³⁴ According to the Court, a “reasonable probability” that the verdict would have been different with the suppressed evidence is a “probability sufficient to undermine confidence in the outcome [of the trial].”³⁵ The Supreme Court bluntly held that the Constitution is not violated every time the government fails or chooses not to disclose evidence that might prove “helpful” to the defense.³⁶ If the evidence is not “material” under this definition, a criminal defendant’s conviction is

27. See Rachel Moran, *Contesting Police Credibility*, 93 WASH. L. REV. 1339, 1340 (2018) (“Criminal trials often amount to credibility contests between two primary actors: [the government’s witness] and the defendant.”); see, e.g., *State v. Beckwith*, No. 05-1812, 2006 WL 3313798, at *2 (Iowa Ct. App. Nov. 16, 2006) (weighing the credibility of defendant’s witness against the government’s officer-witnesses to decide the case, despite the fact that one officer in question—Officer Paul Batcheller—had previously been found to have conducted illegal Fourth Amendment searches). For further discussion of Officer Batcheller’s credibility, see *infra* Section II.B.2.

28. See generally Warren, *supra* note 12, at 1 (exploring the complex relationship between jurors, police officer testimony, criminal defendants, and wrongful convictions).

29. See *Kyles v. Whitley*, 514 U.S. 419, 433–34 (1995) (citing *Bagley*, 473 U.S. at 682).

30. *Giglio v. United States*, 405 U.S. 150, 154 (1972).

31. *Id.* at 153–54.

32. *Bagley*, 473 U.S. at 670.

33. *Id.* at 682.

34. See *id.* at 678.

35. See *id.* at 682.

36. See *id.* at 678.

not automatically reversed just because the prosecutor failed to turn over impeachment evidence under *Giglio*.³⁷

The *Bagley* Court also notably did not state that *Giglio* demands prosecutors operate with what is known as an “open file policy,”³⁸ wherein the prosecutor turns over *all* of their evidence to the defense and allows the defense, not the government, to determine which information is important to the defendant’s case.³⁹ Rather, the prosecutor is to use their discretion to determine what may be material to the defendant’s case—without knowing the defendant’s theory of the case.⁴⁰ The majority—amidst strong admonitions from a dissent penned by Justice Thurgood Marshall⁴¹—assumed that reviewing courts were capable of adequately assessing the effects of the nondisclosed evidence “on the preparation or presentation of the defendant’s case.”⁴² Since the *Bagley* decision, prosecutorial discretion still operates as the predominate test for when and what kinds of police officer impeachment information is shared with a criminal defendant before trial.⁴³

Finally, in *Kyles v. Whitley*, decided in 1995, the Court confronted the issue of what to do when the police—without the prosecutor’s knowledge—withhold exculpatory information that points to someone other than the defendant as

37. *Id.* at 680.

38. *Id.*; see also *id.* at 699 (Marshall, J., dissenting) (“Nor does disclosure of favorable evidence inevitably lead to disclosure of inculpatory evidence, as might an open file policy, or to the anticipated wrongdoings of defendants and their lawyers, if indeed such fears are warranted.”); EMILY BAZELON, BRENNAN CENT. FOR JUST., THE JUSTICE COLLABORATIVE & FAIR AND JUST PROSECUTION, 21 PRINCIPLES FOR THE 21ST CENTURY PROSECUTOR 18 (2018), https://www.brennancenter.org/sites/default/files/publications/FJP_21Principles_FINAL.pdf [<https://perma.cc/SV35-YVV2>] (noting that individual prosecutor’s offices in Lowndes County, Mississippi and Kansas City, Missouri have opted to create open-file policies where “[p]rosecutors are instructed to give all information they receive from law enforcement to the defense” as compulsory process or upon request from the defense).

39. For more on open-file policies and the complex questions posed by those policies, see Hilary Oran, Note, *Does Brady Have Byte? Adapting Constitutional Disclosure for the Digital Age*, 50 COLUM. J.L. & SOC. PROBS. 97, 112–15 (2016).

40. See *Bagley*, 473 U.S. at 682–83; see also Green, *supra* note 14, at 647 (stating that the Supreme Court has recognized that this guessing game means “the prosecutor’s *ex ante* determination is inherently imprecise”).

41. *Bagley*, 473 U.S. at 701 (Marshall, J., dissenting).

42. See *id.* at 683 (majority opinion); see also *id.* at 701 (Marshall, J., dissenting) (emphasizing that under the majority’s material standard, “[the prosecutor] must evaluate his case and the case of the defendant—of which he presumably knows very little—and perform the impossible task of deciding whether a certain piece of information will have a significant impact on the trial, bearing in mind that a defendant will later shoulder the heavy burden of proving how it would have affected the outcome.”). In 1995, in *Kyles v. Whitley*—the next case in the string of *Giglio* cases—the defense orally argued for “rais[ing] the threshold of materiality because the *Bagley* standard ‘makes it difficult to . . . know’ from the ‘perspective [of the prosecutor at] trial . . . exactly what might become important later on.” See *Kyles v. Whitley*, 514 U.S. 419, 438 (1995) (alterations in original). The Court, although given an opportunity to clarify or reform the *Bagley* standard, declined to heed the defendant’s request. *Id.* at 421.

43. See *Kyles*, 514 U.S. at 437 (stating that “the prosecution . . . alone can know what is undisclosed” and “must be assigned the consequent responsibility” to decide when to make disclosures).

the guilty party.⁴⁴ The Court again turned to the prosecutor as the one with both the power and the responsibility, holding that “the . . . prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.”⁴⁵

Kyles added to the *Giglio* puzzle in two ways. First, after *Kyles*, even exculpatory evidence solely within the police’s possession and unknown to the prosecutor is attributable to the prosecution if such evidence is eventually uncovered.⁴⁶ Second, even though the Court retained the *Bagley* standard for “material evidence”—evidence that, if disclosed, creates “a ‘reasonable probability’ of a different result”—the Court added the “net effect” component.⁴⁷ The “net effect” component was intended to help prosecutors determine when to disclose material evidence. Under *Kyles*, rather than determining whether a single piece of evidence alone appeared material, prosecutors are now asked to consider the “net effect” of the evidence on the trial as a whole “and make disclosure[s] when the point of ‘reasonable probability’ is reached.”⁴⁸ The “net effect” standard called for an even greater degree of prosecutorial discretion⁴⁹ because under such a standard, the prosecutor must expand their scope of inquiry. In order to know the effect of one piece of evidence on the entirety of the evidence and thus the effect that one piece may have on the trial’s overall outcome, the prosecutor must have a better understanding of the entire scope of all available evidence.⁵⁰

The aforementioned cases are the U.S. Supreme Court’s only word on the issue of *Giglio* disclosures, a fact which has left scholars, prosecutors, defense attorneys, judges, and criminal defendants grappling with major doctrinal issues. These doctrinal issues are further complicated by the complex relationships between police and prosecutors that shape much of the criminal pre-trial and trial process.

B. PROSECUTORS AND POLICE

The issue of *Giglio* disclosures bring the relationship between police and prosecutors to the forefront. After all, it is the prosecutor’s duty to disclose information potentially uncovered by officers in the course of their investigation, including any information which impacts the credibility of those officers. The

44. See *id.* at 428–29 (explaining that the prosecution withheld eyewitness testimony that would have identified another man as the suspect, information that revealed inconsistencies in stories the overlooked suspect had given the police, evidence linking the overlooked suspect to another unsolved, unrelated murder, and evidence directly linking the overlooked suspect to the crime scene at the time the murder occurred).

45. *Id.* at 437; see also Stanley Z. Fisher, “Just the Facts, Ma’am”: Lying and the Omission of Exculpatory Evidence in Police Reports, 28 NEW ENG. L. REV. 1, 10–12 (1993) (discussing how and why police may not disclose a full account of the facts to prosecutors).

46. See, e.g., *Harrington v. State*, 659 N.W.2d 509, 522 (Iowa 2003) (citing *Kyles* for the proposition that the prosecutor has a duty to disclose information known to the police).

47. See *Kyles*, 514 U.S. at 434.

48. See *id.* at 437.

49. See *id.* at 437–38.

50. See *id.*

weighty implications of this duty have left *Giglio* disclosures rife with skepticism and power struggles.⁵¹

Prosecutors rely heavily on police officers, a major complicating factor with ramifications that extend beyond the police officer's potential role as a testifying witness in a criminal trial. Police officers aid in building a prosecutor's case against the accused by collecting evidence, interviewing witnesses, and victims, and apprehending suspected criminals, which includes taking statements from them.⁵² Because "[p]rosecutors depend on the police to bring cases," they "have a powerful disincentive to" either prosecute or impeach police officers.⁵³ In addition, "a resentful police force may work to undermine the prosecutor's office,"⁵⁴ making both stakeholders' roles difficult to carry out. The police, in turn, benefit from the prosecution: "[T]here are professional rewards for officers who make not only arrests, but arrests that result in convictions."⁵⁵ Despite these interests, courts, aided by jury "instructions[,] communicate to jurors that police officers are neutral witnesses with nothing to lose and no interest in the outcome of [a] case."⁵⁶

Rifts in the police-prosecutor relationship, like those liable to be caused by exposing dishonest police officers via *Giglio* disclosures, have the potential to upend the criminal justice system. Unlike normal coworker relations, the police-prosecutor relationship "can ultimately launch the criminal justice system into a mire of appeals, civil lawsuits, and worst of all, wrongful executions."⁵⁷ For example,⁵⁸ the notorious "blue wall of silence"—officers' unwillingness to expose wrongdoing in the precinct in favor of loyalty—may stand in the way of an efficient police officer-prosecutor relationship.⁵⁹

51. See, e.g., Tullis, *supra* note 6 (examining allegations that prosecutors have "Brady listed" police officers for "[c]riticizing the district attorney in the newspaper," "[s]upporting the wrong candidate in the district attorney's race," and "[i]nvestigating corruption within the prosecutor's staff," among other prosecutor-law enforcement disputes).

52. See John Buchanan, *Police-Prosecutor Teams: Innovations in Several Jurisdictions*, 214 NAT'L INST. JUST., May/June 1989, at 1 (detailing how certain advancements have allowed "investigators and prosecutors to work closely together every step of the way, focusing on the same goal—conviction").

53. See Vida B. Johnson, *Bias in Blue: Instructing Jurors to Consider the Testimony of Police Officer Witnesses with Caution*, 44 PEPP. L. REV. 245, 254 (2017).

54. Madison McWithey, Essay, *Taking a Deeper Dive into Progressive Prosecution: Evaluating the Trend Through the Lens of Geography: Part Two: External Constraints*, 61 B.C. L. REV. E. SUPP. I-49, I-56 (2020).

55. Johnson, *supra* note 53, at 252.

56. *Id.* at 256.

57. Felice F. Guerrieri, *Law & Order: Redefining the Relationship Between Prosecutors and Police*, 25 S. ILL. U. L.J. 353, 377-78 (2001).

58. See, e.g., Johnson, *supra* note 53, at 267 (explaining how, within police forces, an implicit "loyalty ethic" and "blue wall of silence" allow—or force—police officers to protect other officers' misbehavior).

59. See Johnson, *supra* note 53, at 267 (explaining that behind the blue wall of silence, "[e]ven honest officers fail to report misconduct by corrupt officers" because "[t]hose who fail to keep the secrets of other officers face ostracism by their colleagues or even risk being placed in harm's way in dangerous situations"); see also Gabriel J. Chin & Scott C. Wells, *The "Blue Wall of Silence" as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 241 (1998) (noting that "even honest officers have a strong disincentive to violate the blue wall of silence by testifying truthfully or disclosing that another officer has testified falsely").

Given the professional interdependence of police and prosecutors, *Brady* and *Giglio* placed prosecutors in an uncomfortable position: They must turn over evidence that may impeach key witnesses, including their investigators, the police. Amidst the already-complicated relationships that color *Giglio* disclosures, the doctrine has another major snag: since the *Giglio* decision acknowledged a criminal defendant's right to impeach governmental witnesses, the Supreme Court has never articulated the metes and bounds of this right, leaving practitioners responsible for flushing out the practicalities.

C. *THE MOST OBVIOUS QUESTION, IGNORED: WHAT IS GIGLIO MATERIAL?*

Scholars, legislatures, practitioners, criminal defendants, and judges alike have been left to ponder questions such as what kinds of information can be used to impeach a police officer; how deep must the prosecutor dig to uncover information that may impeach police officers; and how are prosecutors to determine whether or not the accused is entitled to certain private information about officers?⁶⁰ For example, must the prosecutor disclose the fact that a police officer suffers from a mental illness that may taint the officer's ability to recall information correctly?⁶¹ Should the prosecutor disclose an unfounded accusation that a police officer searched a person without the necessary probable cause under the Fourth Amendment? Or in a case where a defendant allegedly resisted arrest, is it relevant that the officer who was on the scene and plans to testify for the prosecution once searched a person's car without probable cause? What if the illegal search happened two, five, or ten years ago? Is the prosecutor required to look at a police officer's internal misconduct records, and if so, what if the officer lied about the reason he called out of work or why his body camera allegedly faltered? Is the defendant *entitled* to the contents of the officer's misconduct record under the Sixth Amendment's guarantee of the right to a fair trial?

Nuanced factual scenarios and conundrums like unsubstantiated complaints—complaints that cannot be corroborated and did not result in formal charges—plague *Giglio* scholars and on-the-ground prosecutorial decision-making.⁶² For the most part, "*Giglio* material" is a moving target that evades categorization and relies heavily on the facts of particular cases.⁶³ Consider an instance in which Officer Y—the sole witness against Defendant D—testifies against Defendant D, stating that Defendant's car was red, but it later turns out the car was blue.⁶⁴ Facially, mistaking the color of a car may not

60. See Hogan, *supra* note 8, at 748–49.

61. See *id.* at 760–63.

62. See *id.*; see also Jason Clayworth & Luke Nozicka, *Police Credibility: Confusion About 'Liars List' May Be Depriving Suspects of Fair Trials*, DES MOINES REG. (May 16, 2019, 10:48 AM), <https://www.desmoinesregister.com/story/news/investigations/2019/05/15/iowa-police-credibility-liars-depriving-suspects-of-fair-trials-investigation-corruption-report/2864105002> [<https://perma.cc/RL9K-LG2P>] (describing Iowa lawmakers' confusion about Iowa's *Giglio* policy).

63. However, the Author of this Note argues that excessive use of force should be disclosed under all circumstances.

64. See Benjamin E. Rosenberg, *A Statutory Solution to the Problem of Police Giglio*, 53 CRIM. L. BULL., Spring 2017, at Hypothetical 1 (posing "Hypothetical 1" relating to the color of a car).

seem like a big deal. But what about in a subsequent, unrelated trial against a different defendant, Defendant H, where the case hinges on Officer Y's testimony versus Defendant F's testimony, but the two disagree about the color of the car? Suddenly, the officer's ability to accurately identify the color of a car could mean the difference between a guilty verdict and an acquittal.

In a final example that arose in Iowa, one stakeholder presented the situation of an officer who had allegedly been placed on a *Giglio* list. In order to keep track of untruthful officer conduct across a state or county, many jurisdictions have adopted "*Giglio* lists." As defined by the Iowa legislature, a *Giglio* list is "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."⁶⁵ In the example posed by the Iowa stakeholder, an officer was placed on a *Giglio* list because of a conviction for stealing firewood during a college fraternity prank.⁶⁶ The difference in such a circumstance is that the officer received a formal conviction. But what about unsubstantiated accusations lodged by lay persons?⁶⁷ Some police departments may add those complaints to an officer's file, and other departments may not. If unsubstantiated complaints are added to an officer's file, should the officer's name be added to a *Giglio* list? What if the officer successfully appeals the incident that resulted in addition to the *Giglio* list?⁶⁸

The preceding questions reveal how *Giglio* creates a host of *inferential* problems for prosecutors.⁶⁹ Prosecutors are forced to speculate and draw conclusions about an officer's credibility from a limited number of facts, and between fact patterns that may or may not relate. What's more, after calculating whether they believe an incident affects an officer's credibility, the prosecutor must examine the "net effect" that the evidence will have on a trial that has not yet taken place.⁷⁰

It is easy to understand the confusion that has plagued lawmakers and attorneys nationwide, including the Iowa Legislature and criminal justice stakeholders. The following Section examines steps taken to streamline and clarify *Giglio* disclosures in Iowa, along with complications plaguing that state's efforts to settle on a solution.

II. AMBIGUOUS INFERENCES AND COMPLEX RURAL REALITIES

This Section explores *Giglio* issues in Iowa, including how and why the *Giglio* issue was initially brought to the attention of the state legislature and

65. See IOWA CODE § 80F.1 (1) (a) (2024) (defining *Brady-Giglio* list); see also Nozicka & Clayworth, *supra* note 9 (detailing credibility issues concerning one "decorated" Iowa officer in particular).

66. See *Minutes: Brady-Giglio List Study Committee*, *supra* note 7, at 5.

67. See Kate Levine, *Discipline and Policing*, 68 DUKE L.J. 839, 860–61 (2019).

68. See *id.* (explaining that in some jurisdictions, officers have the right to appeal complaints recorded in their disciplinary file).

69. See Rosenberg, *supra* note 64, at Section II.C (discussing problems associated with *Giglio* in camera review processes).

70. See *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

proposed means of “fixing” the disclosure system. Then, this Section looks closely at police misconduct issues, stressing the need for a *Giglio* disclosure system that operates fairly to both officers while upholding the due process rights of criminal defendants.

A. GIGLIO IS AN IOWA ISSUE: CURRENT LEGISLATIVE STEPS

The creation of *Giglio* lists nationwide has sparked partisan tension.⁷¹ *Giglio* lists highlight the sharp divide between those who value law enforcement generally and police privacy specifically, on the one hand, and those fighting for criminal justice reform and police accountability on the other.⁷² Although much of the scholarly literature has focused on the debate as it arises in larger, impersonal metropolitan areas where tensions between police and civilians are exceedingly high,⁷³ rural states, including Iowa, have their own police credibility issues. In rural states, the complex relationship between police and prosecutors is intensified and carries extra weight in small, rural communities, such as the disincentive to impeach police officers.⁷⁴ In addition, Iowa prosecutors have had their own fair share of “widespread confusion about how and when [police credibility matters] must be disclosed.”⁷⁵ Even after legislative intervention, Iowa does not statutorily mandate the creation of *Giglio* lists, nor does it set standards for how and what prosecutors must disclose.

As of 2019, only nine of Iowa’s ninety-nine counties maintained a *Giglio* list, with Polk County’s being the most comprehensive.⁷⁶ Those counties that do maintain a *Giglio* list “reported a total of at least [twenty-two] officers with information in their past that might discredit them as witnesses.”⁷⁷ Prosecutors in large counties, like Assistant Polk County Attorney Dan Voogt, have tried to share “best practices” information with other counties’ prosecutors to inform those prosecutors of the constitutional obligations under *Giglio*.⁷⁸ However, Attorney Voogt found that many of those prosecutors “indicated [a] rudimentary understanding about what should be disclosed and infrequent instances of doing so.”⁷⁹ In other words, some prosecutors in Iowa do not even understand their duty to disclose officer misconduct information to the defendant, let alone

71. See Chin & Wells, *supra* note 59, at 278–80; Jeffrey Steven & McConnell Warren, *The Scarlet Letter: North Carolina, Giglio, and the Injury in Search of a Remedy*, 12 WAKE FOREST L. REV. ONLINE 24, 30 (2022).

72. See Cynthia H. Conti-Cook, *A New Balance: Weighing Harms of Hiding Police Misconduct Information from the Public*, 22 CUNY L. REV. 148, 177–79 (2019).

73. See Hogan, *supra* note 8, at 733–56 (analyzing *Giglio* policies in New York, California, Baltimore, and Cincinnati, among others).

74. McWithey, *supra* note 54, at 41.

75. Clayworth & Nozicka, *supra* note 62 (noting specific cases where “authorities did not inform defendants of the officers’ professional credibility gaps before they served as key witnesses in cases that led to the defendants’ convictions”).

76. *Id.* (noting that as of 2019, the Iowa counties that maintained *Giglio* lists were Polk, Tama, Dubuque, Johnson, Cerro Gordo, Buchanan, Marshall, Mills, and Clinton).

77. *Id.*

78. See *id.*

79. *Id.*

maintain a procedure for compiling information that assures their constitutional obligation to disclose such information is met.

The following Section will explore the basis for the Iowa Legislature's recent interest in *Giglio* material. Then, this Section will assess findings from Iowa's "Brady-Giglio List Study Committee." This Section will also analyze the statutory changes prompted by the Committee's 2021 meeting. Finally, this Section will address other factors that contribute to Iowa's difficulty forming a comprehensive, statewide *Giglio* disclosure system.

1. Motivation for Change: *Giglio* & Police Due Process Concerns

In 2018, Iowa police officer Travis Hamilton was asked to resign from the Johnston Police Department in Polk County, Iowa after being placed on the county's *Brady-Giglio* list, a list that he "was unaware . . . even existed."⁸⁰ When a reporter notified Hamilton that he was on a list, he did not know what he had done to impact his credibility,⁸¹ nor would the County Attorney shed any light on his alleged transgressions.⁸² In addition, the County Attorney's office told Hamilton that "there was no protocol for being placed on the list and no means to appeal."⁸³ Hamilton subsequently made a public records request, and saw his name along with the name of eleven other officers, "but [without] explanation for why he was on the list."⁸⁴ In retrospect, Hamilton believed there may have been an allegation that he "ordered [a] young male to empty his pockets" without probable cause, but Hamilton claimed there was another side to the story and he was not given an opportunity to explain himself prior to being placed on the list which eventually led to his termination.⁸⁵

Hamilton's case—and others like it⁸⁶—spurred the Iowa Legislature to act.⁸⁷ Iowa Representative Stephen Holt championed a *Giglio* fix and referred

80. See Val Van Brocklin, *Officer Scores a Victory for Brady List Due Process – Other States and Prosecutors Should Follow Suit*, POLICE1 (Aug. 23, 2022, 9:55 AM), <https://www.police1.com/patro1-issues/articles/officer-scores-a-victory-for-brady-list-due-process-other-states-and-prosecutors-should-follow-suit-h6oPMXL26aZVsfsj> [<https://perma.cc/3DDF-XHH2>].

81. See Clayworth & Nozicka, *supra* note 63. Officer Hamilton acknowledged that he was fired from the Boone Police Department in 2003 for "allegedly fil[ing] inaccurate reports, conduct[ing] an illegal search and mak[ing] unprofessional statements about an arrested person" and wondered if these allegations are what qualified him for placement on Polk County's *Giglio* list. *See id.*

82. See Mary Sugden, *Brady-Giglio Reform Bill Headed to Governor's Desk for Signature*, WE ARE IOWA (May 24, 2022, 6:26 PM), <https://www.weareiowa.com/article/news/local/local-politics/brady-giglio-bill-governor-kim-reynolds-police-reform/524-5ea3ec00-b631-44d1-8703-bda240617767> [<https://perma.cc/82ES-K8R2>].

83. See Van Brocklin, *supra* note 80.

84. *See id.*

85. See Sugden, *supra* note 78.

86. See Clayworth & Nozicka, *supra* note 58.

87. See Sugden, *supra* note 82 (stating that Representative Stephen Holt couched the problem as "no due process for officers"); *see also* Robin Opsahl, *Lawmakers Approve Keeping 2022 'Brady-Giglio List' Law*, IOWA CAP. DISPATCH (Apr. 24, 2023, 6:03 PM), <https://iowacapitaldispatch.com/briefs/lawmakers-approve-keeping-2022-brady-giglio-list-law> [<https://perma.cc/5L3S-FNTM>] (stating that the Iowa legislature removed sunset provision on 2022 *Giglio* list bill and made the provisions permanent).

to Iowa's then-*Giglio* list policy as the "Wild Wild West."⁸⁸ Representative Holt's reference to a lawless, everything-goes frontier arose out of the absence of rules defining "what would place [an officer] on the list."⁸⁹ Holt stated that in Iowa, "[s]ome lists were being kept in county attorney's hands, some lists were being kept on computers."⁹⁰ Overall, Iowa's *Giglio* policy varied by county and "was just all over the board."⁹¹

For criminal defendants, the lack of a clear *Giglio* list policy means that defendants in counties that maintain a list, like Polk County,⁹² may get a fairer trial via the ability to impeach the credibility of officers who participated in their arrest. For defendants in counties without a *Giglio* list, like Ringgold County,⁹³ there is likely no information about a police officer's history available to the defendant for a similar purpose.

For law enforcement, lack of a clear state *Giglio* policy meant due process concerns: Officers had no way to determine whether there was a list in their county, and if there was, no way of challenging their placement on the list, including challenging the allegedly dishonest incident that gave rise to list placement.⁹⁴ Lack of notice and an ability to challenge a prosecutor's determination are problematic because testifying is a key component of an officer's job duties; an officer who is rendered too unreliable to testify may be terminated from the force for failure to perform this critical function.⁹⁵ From police advocates' perspectives, the lack of "an opportunity to be heard and an impartial decision-maker" which are "fundamental to due process" is also troublesome because police departments and prosecutors' offices can "weaponize[]" *Giglio* lists to "terminate [officers] for political, personal-grudge or whistleblower retaliation reasons" without formal protection.⁹⁶ Some advocates have gone so far as to suggest a "patently unfair disparity in rights afforded criminal suspects *but not police officers*," such as legislation withholding from

88. See Sugden, *supra* note 82.

89. See *id.*

90. See *id.*

91. *Id.*

92. See Nozicka & Clayworth, *supra* note 9 (indicating Polk County maintains a *Giglio* list).

93. *Minutes: Brady-Giglio List Study Committee, supra* note 7, at 3.

94. See Val Van Brocklin, *Do Brady and Giglio Trump Officers' Due Process Rights?*, POLICE1 (Jan. 3, 2022, 10:30 AM), <https://www.police1.com/patrol-issues/articles/do-brady-and-giglio-t-rump-officers-due-process-rights-g585QOS4UeSOSF5u> [<https://perma.cc/SWKM-HHA8>].

95. See Val Van Brocklin, *Are Prosecutors and Departments Weaponizing Brady Lists Against Targeted Officers?*, POLICE1 (Dec. 12, 2021, 7:15 PM), <https://www.police1.com/patrol-issues/articles/are-prosecutors-and-departments-weaponizing-brady-lists-against-targeted-officers-I24zYAcYXaSbwDq> [<https://perma.cc/DU8S-AFR3>].

96. Van Brocklin, *supra* note 94; cf. Nick Place, *Double Due Process: How Police Unions and Law Enforcement "Bills of Rights" Enable Police Violence and Prevent Accountability*, 52 U.S.F. L. REV. 275, 275 (2018) (arguing that "[l]aw enforcement bills of rights" are unwarranted and "create 'double due process' by taking the sacred constitutional rights of people suspected of criminal wrongdoing and transplanting those rights onto the internal disciplinary process").

police special legislative due process protections.⁹⁷ Given the nature of their occupation, officers are also highly concerned with questions of privacy, such as whether police disciplinary records are open to the public.⁹⁸ Largely in response to this concern over lack of due process for wary officers, the Iowa Legislature convened a “*Brady-Giglio* List Study Committee” to explore a statutory cure for Iowa’s *Giglio* inconsistencies.⁹⁹

2. Iowa’s *Brady-Giglio* List Study Committee

The Iowa Legislature convened the Committee—comprised of prosecutors, public safety officials, politicians, law enforcement personnel, and defense attorneys—“to study the disclosure of information in officer personnel files as it relates to *Brady-Giglio* lists and the efficiency of implementing a statewide system for a *Brady-Giglio* list.”¹⁰⁰ The Committee met once, in 2021, and did not reach any firm conclusions about what categories of information qualified as police impeachment material under *Giglio*, nor did the Committee adopt a consistent, statewide system for handling *Giglio* disclosures.¹⁰¹ A number of potential solutions were posed: a questionnaire to be filled out by an officer prior to testifying in which the officer has an opportunity to highlight indiscretions in their Police Disciplinary Record (“PDR”);¹⁰² “establishment of an independent statewide panel to determine the scope of inquiry and decision-making by prosecuting attorneys”;¹⁰³ and establishment of a confidential database for instances of officer misconduct solely for prosecutorial use.¹⁰⁴

97. See Fraternal Order of Police, Grand Lodge, *Due Process Rights for Law Enforcement Officers*, <https://www.fop.net/CmsPage.aspx?id=97> [<https://web.archive.org/web/20180324180848/https://www.fop.net/CmsPage.aspx?id=97>].

98. See Levine, *supra* note 67, at 869–70.

99. See Sugden, *supra* note 82.

100. See *Minutes: Brady-Giglio List Study Committee*, *supra* note 7, at 2; see also SHANNON ARCHER, FORMER POLK CNTY. ATT’Y, PRESENTATION ON *BRADY-GIGLIO* (2021), <https://www.legis.iowa.gov/docs/publications/SD/1231763.pdf> [<https://perma.cc/9NEK-MKGG>] (noting that Arizona is one state who, by law, has created a private, statewide *Giglio* list, granting access only to prosecutors across Arizona but easing fear of inconsistencies).

101. See Katarina Sostaric, *Iowa Lawmakers Are Considering Statewide Rules for Flagging Police Officers Who Have Lied*, IOWA PUB. RADIO (Dec. 6, 2021), <https://www.iowapublicradio.org/state-government-news/2021-12-06/iowa-lawmakers-are-considering-statewide-rules-for-flagging-police-officers-who-have-lied> [<https://perma.cc/77A4-BUQ2>].

102. See *Minutes: Brady-Giglio List Study Committee*, *supra* note 7, at 3–5 (describing the approach endorsed by prosecutors and law enforcement committee members); see also INST. FOR INNOVATION IN PROSECUTION, TRACKING POLICE MISCONDUCT 4–5 (2021), <https://static1.square-space.com/static/63865b7996058b7822aa193d/t/63912e998cc8d64e70896c65/1670459034481/FINAL%2BTracking%2BPolice%2BMisconduct%2BGuide.pdf> [<https://perma.cc/XL4Z-HMHW>] (explaining questionnaire model adopted in Bernalillo County, New Mexico).

103. See INST. FOR INNOVATION IN PROSECUTION, *supra* note 102, at 10 (describing the panel model adopted in Snohomish County, Washington).

104. See *Minutes: Brady-Giglio List Study Committee*, *supra* note 7, at 3. See generally INST. FOR INNOVATION IN PROSECUTION, *supra* note 102 (describing confidential databases established by various government entities).

The basis for these suggestions derived from solutions that have been adopted throughout jurisdictions across the United States.¹⁰⁵

A wide array of opinions resulted in a fractured, half-baked result. Some members of the Committee viewed a comprehensive *Brady–Giglio* list as interfering with an officer’s vigilant, conscientious performance of his duty to protect the public.¹⁰⁶ Others, like prosecutors in small counties, voiced the concern that instituting a *Giglio* system would further hinder their ability to attract quality law enforcement officers to rural counties.¹⁰⁷ Defense attorneys, on the other hand, argued that “when balancing the interests of a law enforcement officer being included on a list against the due process rights of a defendant, the greater weight should be afforded to disclosure.”¹⁰⁸ Both prosecutors and law enforcement expressed concern for private information contained in police personnel files, “including medical history, that is unrelated to a law enforcement officer’s relevant conduct.”¹⁰⁹ Despite *Giglio*’s constitutional purpose, one committee member “expressed a concern that a case not shift from the defendant’s alleged culpability to a law enforcement officer’s [private] personnel record”;¹¹⁰ in other words, a concern that *Giglio* will redirect trials’ focus away from the defendant’s actions and on to an officer’s credibility. Ultimately, “[m]embers discussed options for continuing the discussion,” but the number and complexity of the issues and the number and complexity of stakeholder positions left the Committee without a workable path forward.¹¹¹

3. A Quasi-Solution: Implementation of Iowa Code Section 80F.1

Although the Committee did not reach any conclusions about how to implement a statewide *Giglio* list or what kind of material constitutes

105. See generally INST. FOR INNOVATION IN PROSECUTION, *supra* note 102 (discussing *Giglio* solutions adopted in eleven counties in varying states across the United States).

106. See *Minutes: Brady-Giglio List Study Committee*, *supra* note 7, at 3–4; see c.f., Rachel Moran & Jessica Hodge, *Law Enforcement Perspectives on Public Access to Misconduct Records*, 42 CARDOZO L. REV. 1237, 1241 (2021) (conducting the first empirical study of law enforcement perspectives on disclosure of police disciplinary records and finding that “a significant percentage of [police] administrators expressed support for public access to misconduct records”).

107. See *Minutes: Brady-Giglio List Study Committee*, *supra* note 7, at 4.

108. *Id.*

109. See *id.* at 3.

110. See *id.*

111. See *id.* at 5. Overall, the Committee discussed and tabled the following issues:

[T]he use of a questionnaire to be completed by a law enforcement officer in lieu of using a list prepared by a prosecuting attorney, the conflict arising between a law enforcement officer’s reputation and the tendency of insurance companies to settle claims, the difference between practices by large versus small counties, the need to include law enforcement officers in the process, the need to make decisions regarding disclosure according to uniform standards, whether an event should be excluded from consideration based on when the event occurred, the process of notifying an officer that their past conduct will be reported to a court, the best practice to disclose information contained in personnel records, and the concern that officers will become tentative when enforcing the law.

“impeachment” material, in 2021, the Iowa Legislature responded to the committee’s findings by passing Iowa Code section 80F.1.¹¹² Under section 80F.1, the prosecuting agency, in determining whether to place an officer on a *Brady–Giglio* list, must: provide the officer notice that they “may be placed on a *Brady–Giglio* list”; turn over “documents, records, and any other evidence” that serve as the basis for the credibility claim against the officer; allow the officer to give input prior to placement on a list; inform the officer via written notice if they are placed on a list; allow the officer the “right to make a request to reconsider the allegations and the placement of the officer’s name on a *Brady–Giglio* list”; and remove the officer’s name from a list if, on the merits, the request for reconsideration is granted.¹¹³ Most importantly for law enforcement rights advocates, section 80F.1 prohibits state, county, and municipal law enforcement agencies from “discharg[ing], disciplin[ing] or threaten[ing] with discharge or discipline” an officer who a prosecutorial agency has deemed potentially not credible.¹¹⁴ In other words, an officer cannot be fired, threatened with termination, or disciplined for a prosecutor’s determination that the officer should be placed on a *Giglio* list.

It is important to note that this statute does not make county or statewide *Giglio* lists mandatory.¹¹⁵ The *Giglio* list provisions mandated in section 80F.1 simply provide policy minimums for prosecuting agencies who opt to maintain a *Giglio* list. Those jurisdictions who choose to maintain a list must create “criteria used by the . . . agency to place an officer’s name on a . . . list.”¹¹⁶ The remainder of the statute sets forth procedures that the prosecuting agency must follow prior to and after making the determination to place an officer on a list.¹¹⁷ The statute’s final provision states that the *Giglio* list “subsection does not limit the duty of a prosecuting agency to produce *Brady–Giglio* discovery evidence in all cases” under the U.S. Constitution, Iowa Constitution, or rules of evidence.¹¹⁸

112. See Van Brocklin, *supra* note 80. Rather than create an independent, freestanding statute, the new *Brady–Giglio* provision was placed within Iowa’s “Peace Officer, Public Safety, and Emergency Personnel Bill of Rights.” See IOWA CODE § 80F.1. Iowa is one of twenty-four states who have these additional “Bill of Rights” for protecting police officers. See *Law Enforcement Officer Bill of Rights*, NAT’L CONF. OF STATE LEGISLATURES (June 6, 2022), <https://www.ncsl.org/civil-and-criminal-justice/law-enforcement-officer-bill-of-rights> [https://perma.cc/8CTG-SQLL].

113. See IOWA CODE § 80F.1(24).

114. See *id.* § 80F.1(23)(a).

115. *Id.* § 80F.1(24)(a) (“A prosecuting agency that maintains a *Brady–Giglio* list shall adopt a policy that, at a minimum, includes all of the following.”).

116. *Id.* § 80F.1(24)(a)(1).

117. See *id.* § 80F.1(24)(a)–(d). For example, an officer must receive written notice prior to potential placement on a list, and the officer in question must then be provided with an opportunity “to provide input” before the prosecutor determines whether to place that officer on a list. *Id.* § 80F.1(24)(a)(2). Additionally, officers have the “right to make a request for reconsideration” after a prosecutor’s determination that the officer should be placed on a list. See *id.* § 80F.1(24)(a)(4).

118. See *id.* § 80F.1(24)(f).

4. Other *Giglio* Complications: Iowa Open Records Act Section 22.7 and Police Disciplinary Records

In Iowa, police disciplinary records, unlike many government records opened for public review under the Iowa Open Records Act, are exempt from public disclosure.¹¹⁹ Open records laws are “a series of laws designed to guarantee that the public has access to public records of government bodies at all levels. . . . except where the documents have been deemed confidential,”¹²⁰ in recognition that “[a] central principle of our government is that its actual and perceived functionality is improved by its openness to the public; an open society ‘sets free the critical powers of man.’”¹²¹ Under Iowa Code section 80G.2:

A law enforcement officer shall not be examined or be required to give evidence in any criminal proceeding that requires the disclosure of any records or information relating to [p]ersonal identifying information about the law enforcement officer . . . or other information that could reasonably be construed to constitute an unwarranted invasion of privacy of the law enforcement officer¹²²

Incidents in an officer’s disciplinary record may fall under the umbrella of “information that could reasonably be construed to constitute an unwarranted invasion of privacy.”¹²³ In addition, under Iowa section 80G.2—a provision within the Iowa Open Records Act—a prosecutor cannot disclose a police’s disciplinary file to the defense unless—and until—a judge has “determin[ed] whether nondisclosure of confidential or privileged information about a law enforcement officer may affect a defendant’s right to present a defense.”¹²⁴ To make the determination of whether the prosecutor must disclose evidence from an officer’s disciplinary record, the court must weigh the defendant’s constitutional right to present a defense against the risk that disclosure may

119. See *id.* § 22.7(5) (making certain documents pertaining to law enforcement confidential and cross-referencing to section 80G.2); *id.* § 80G.2 (rendering confidential “[p]ersonal identifying information about the law enforcement officer . . . that could reasonably be construed to constitute an unwarranted invasion of privacy of the law enforcement officer”); see also Conti-Cook, *supra* note 72, at 177 (drawing a critical distinction “between rights to privacy that are grounded in the Constitution and the rights crafted by police through lobbying for state statutes”); Jonathan Abel, Brady’s *Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, 67 STAN. L. REV. 743, 747 (2015) (“[C]ritical impeachment evidence is routinely and systematically suppressed as a result of state laws and local policies that limit access to the [police] personnel files.”).

120. Iowa FOIA Laws, NAT’L FREEDOM INFO. COAL., <https://www.nfoic.org/iowa-foia-laws> [https://perma.cc/DF85-Y6A2]; see also Susan P. Elgin, Note, *What Happens in Iowa Stays in Iowa: A Framework for Implementing Changes to State Open Records Laws*, 98 IOWA L. REV. 1677, 1681–82 (2013) (examining Iowa’s open records policy).

121. Conti-Cook, *supra* note 72, at 161.

122. IOWA CODE § 80G.2(1)(a)(2).

123. *Id.*; see State v. Smith, No. 16-0533, 2017 WL 6033880, at *6 (Iowa Ct. App. Dec. 6, 2017) (presuming that police personnel records are confidential and agreeing with district court that defendant “point[ed] to no evidence suggesting anything in the file would be relevant to this case”).

124. IOWA CODE. § 80G.2(2).

have on the safety of the officer.¹²⁵ The court must also consider the evidence’s “materiality” to the facts of the defendant’s case.¹²⁶ In other words, in order to receive police impeachment information in accordance with their Sixth Amendment right, the defendant must first trust that the prosecutor will seek out information from a police officer’s disciplinary file *or* have access to a list of historically untrustworthy officers. If the prosecutor finds impeachment information and discloses it to the court, the defendant must then hope that the judge will believe the information is “material” to the defendant’s case and does not negatively impact the officer in question.¹²⁷

B. COMPLICATING FACTORS IN IOWA: GIGLIO DISCLOSURES AND RURAL NEEDS

According to a national, public-facing *Brady–Giglio* list,¹²⁸ Iowa’s *Giglio* policies are not in compliance with the Supreme Court of the United States’s *Brady* doctrine, the Iowa Open Records Act, or the Federal Open Records Act of 2007, among others.¹²⁹ The database does not specify how Iowa’s *Giglio* policy fails to meet those standards. However, one thing is readily apparent: Iowa’s laissez faire “choose your own adventure” *Giglio* disclosure model means inconsistent access to information, information that may ultimately aid a defendant’s ability to adequately present a defense.

Giglio disclosures go immediately to the heart of constitutional due process: Only by providing defense attorneys access to the full gamut of discoverable information is a criminal defendant afforded a full, fair trial. This is because *Giglio* disclosures animate and give substance to a defendant’s constitutional right to counsel; without access to the State’s information, a defendant’s right to counsel is nothing more than hollow lip service. Iowa must focus on *Giglio* policies as a “robust conception of [rural] justice” that go beyond mere representation by counsel and move toward “identifying and addressing structural injustices that impact entire communities.”¹³⁰

125. *See id.*

126. *See id.* § 80G.2(b)(2) (stating that, on the record, the judge must weigh: (1) the impact of disclosure on the officer’s personal safety or that of the officer’s immediate family; (2) the probative value of the sought-after confidential information; (3) “the impact of disclosure on public safety”; (4) whether certain parts of the privileged information can be redacted to meet the disclosure needs; and (5) “the defendant’s constitutional right to present a defense”).

127. *See Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222, 231 n.8 (Iowa 2019) (“Section 80G.2 provides for a balancing of interests *if* a criminal defendant argues nondisclosure of [police impeachment] information would hinder his or her ability to present a defense.” (emphasis added)).

128. “The Brady List” is a free, nationwide website that allows organizations to comply with *Brady* and *Giglio*’s mandates without subjection to restrictive state open records laws by submitting information about officer misconduct. Users can then search by state. *See About, BRADY LIST*, <https://giglio-bradylist.com/about> [<https://perma.cc/5NWX-FHCU>]. “The Brady List” accepts information pertaining to police misconduct generally, general public complaints, use-of-force instances, officer decertification, do-not-call, and citizen reports. *See Home, BRADY LIST*, <https://giglio-bradylist.com> [<https://perma.cc/XG5E-7AFX>].

129. *Iowa, BRADY LIST*, <https://giglio-bradylist.com/united-states/iowa> [<https://perma.cc/6SSK-VGNT>].

130. Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 496 (2014).

The following Section addresses issues that stand in the way of Iowa's compliance with the *Giglio* doctrine, including the reluctance of rural prosecutors to threaten already-waning resources shortages. Then, this Section will confront police misconduct issues in Iowa, which intensifies the reality that Iowa must move beyond constitutional complacency and into constitutional compliance.

1. Rural Concerns

Rather than adopting even the genesis of a solution—such as a bare-minimum mandate that prosecutors must maintain a physical *Giglio* list—the Iowa Legislature, like the U.S. Supreme Court, has passed the buck to local government to take a stab at a *Giglio* solution. But these communities may be ill-equipped—even openly opposed—to anything beyond the status quo. As Iowa's Emmett County Attorney, Doug Hansen, noted, “[a]pplying large policies used by large agencies like the FBI to small-town departments and prosecuting attorneys ‘does not fit very well.’”¹³¹ During the Iowa *Brady–Giglio* List Committee meeting, Taylor and Ringgold County Attorney Clint Spurrier said he does not keep a list¹³² and even suggested that there were some circumstances in which he would not turn over information that impeaches a police officer to a prosecutor in another county.¹³³

Attorney Spurrier also noted the difficulty rural counties face when it comes to attracting quality police officers even *without* a list.¹³⁴ As of July 2022, some Iowa police forces were attempting to make do with only three full-time officers, and the past three potential new-hires failed their initial exams.¹³⁵ These attorney's offices are concerned with implementing policies which seek to undermine police credibility in a community already battling for adequate officers, and as many see it, adequate protection. As Black Hawk County Sheriff Tony Thompson said, “[i]f people [have a] call [and need help] . . . [t]hey're not going to want to call and hear ‘we don't have an officer available right now.’”¹³⁶

Social dynamics inherent in rural communities also complicate *Giglio* disclosures. In small communities, “stakeholders [like police and prosecutors]

131. As of 2019, only nine of Iowa's ninety-nine counties maintained a *Giglio* list, with Polk County's being the most comprehensive. Clayworth & Nozicka, *supra* note 62. Assistant Polk County Attorney Dan Voogt shared “best practices” information with other counties' prosecutors, many of whom “indicated a rudimentary understanding about what should be disclosed and infrequent instances of doing so.” *Id.*; see also Morgan Cloud, *Judges, ‘Testifying,’ and the Constitution*, 69 S. CAL. L. REV. 1341, 1347 (1996) (citing examples of police dishonesty to illustrate that it “is a national problem and has been for decades”).

132. See *Minutes: Brady-Giglio List Study Committee*, *supra* note 7, at 3.

133. See *id.* at 4.

134. See *id.* at 3.

135. Daniel Perreault, *Amid Shortage of Candidates, Local Police Departments Re-Think How to Attract New Officers*, KWWL (Aug. 3, 2022), https://www.kwwl.com/news/top-stories/amid-shortage-of-candidates-local-police-departments-re-think-how-to-attract-new-officers/article_7e8def5c-0ed2-11ed-88e3-431a8adeec91.html [https://perma.cc/NS8A-ABZR].

136. *Id.* (internal quotation marks omitted).

all know each other and interact with each other on a regular basis.”¹³⁷ Rural communities are bound by “mutual trust and shared commitments.”¹³⁸ Prosecutors without formal *Giglio* procedures in these smaller communities are less likely to share anything that may jeopardize this mutual trust, even if it is their constitutional obligation to do so. Scholars have long noted that “[t]he nature of rural spatiality . . . and [the] associated lack of anonymity . . . have profound consequences”¹³⁹ that color justice systems in rural areas, creating noticeable differences in how those systems function.

People in small towns are more likely to personally know the police in their jurisdiction, the prosecutors, or the criminal perpetrators, and have faith that those connections provide an added layer of protection.¹⁴⁰ Ironically, because of this connection, the folks that oppose *Giglio* disclosures may never be the criminal defendants whose rights are on the line; any wrongdoing is likely to be diverted out of the system as a result of favorable community connections. Rural citizens may increasingly feel unheard, as if “state and national politics are simply too remote and inaccessible to be a meaningful forum for democratic participation.”¹⁴¹ Police represent power, so the ability to protect local police may similarly reflect a need for local strength and control.

Despite all of these concerns, the Supreme Court made clear that *Giglio* disclosures are a constitutional mandate, not a prophylactic suggestion. The following Subsection places police misconduct and thus the need for a workable *Giglio* disclosure system in Iowa’s own backyard.

2. Police Misconduct in Iowa

To date, a large majority of police misconduct studies and *Giglio* policy analyses have focused on urban areas with dense populations, but rural states like Iowa are no stranger to unconstitutional law enforcement conduct. Police in Iowa have been accused of soliciting sexual favors while on duty, burglary, witness tampering, excessive use of force, making false traffic stops, and so on.¹⁴² A 2021 report found that “[o]fficers, who include members of the Iowa State Patrol, responded by drawing their handguns, shotguns and rifles 269

137. Elizabeth R. Gebert, *Challenges Facing Rural Prosecutors*, 51 PROSECUTOR 11, 13 (2018).

138. See Rick Su, *Democracy in Rural America*, 98 N.C. L. REV. 837, 848 (2020).

139. Pruitt & Showman, *supra* note 130, at 481.

140. See Michael Ginsburg, *Rural Criminal Justice: An Overview*, 3 AM. J. CRIM. L. 35, 38 (1974) (“The rural law officers’ relationships with the town’s residents are fundamental to successful crime detection. Because [a] smaller population [means] the victim [may be] more likely to recognize the perpetrator, and the criminal finds it more difficult to dispose of the illegal bounty of a crime inconspicuously.”); Nirej Sekhon, *Redistributive Policing*, 101 J. CRIM. L. & CRIMINOLOGY 1171, 1175 (2011) (explaining that since the 1950s, scholars and lawyers have rejected the idea “of ‘complete [law] enforcement’ . . . [or] the notion that police attempt to apprehend each and every violator of the criminal code”).

141. Su, *supra* note 138, at 849–50 (“Even when rural issues are being addressed, rural residents repeatedly complain that their voices are not being heard—on agricultural practices, rural land use, [and] even the opioid epidemic.”).

142. *Police Misconduct*, IOWA CAP. DISPATCH, <https://iowacapitaldispatch.com/tag/police-misconduct> [<https://perma.cc/6CWR-HHX7>] (use the “pages” navigation feature at the bottom of the webpage to view all stories of police misconduct).

times in 2020, an 83% percent [sic] increase from the prior year.”¹⁴³ Officers claimed that the 2020 increased use of force was due to increased “subject resistance,” but “[t]he 22-page report” which collected the data “did not seek to explain what was causing more suspects to resist officers and did not mention either the pandemic or the nationwide protests against racial injustice and police brutality.”¹⁴⁴ But while one judge may believe use of force speaks to an officer’s credibility—and likely judges in metropolitan areas—other judges may see use-of-force or incidences of sexual assault as irrelevant to an officer’s ability to tell the truth on the stand, thus shielding such reports from discovery.

In 2019, the Des Moines Register profiled the negative effects of Iowa’s inconsistent *Giglio* policy, even before the strengthening of police privacy protections contained in Iowa Code section 80F.1.¹⁴⁵ One citizen described how her life was “[thrown] into chaos” by a small-town Carroll, Iowa police officer who repeatedly profiled her vehicle and stopped her, resulting in three separate offenses.¹⁴⁶ An exposé by the local Carroll newspaper later revealed that Officer Smith’s record was replete with indiscretions, including illegal contact with an underage girl he met while on duty that resulted in a subsequent firing from the Sumner police force.¹⁴⁷ Officer Smith was a key witness in the case against an individual who claimed Officer Smith improperly stopped her vehicle and lied about his justifications for the stops.¹⁴⁸

Carroll County Attorney John Werden became aware of Smith’s issues only after they were detailed in the Carroll newspaper.¹⁴⁹ Attorney Werden claimed he was unaware of Officer Smith’s credibility issues and therefore never turned over documents that significantly impacted Officer Smith’s credibility.¹⁵⁰ After Officer Smith’s credibility issues were revealed, a judge overturned the woman’s convictions and the convictions of other individuals who had been charged by Officer Smith.¹⁵¹

The same journalists from the Des Moines Register ran another exposé on Officer Paul Batcheller in 2019.¹⁵² In 2000, Johnson County District Court Judge Thomas Koehler found, on the record, that Officer Batcheller testified untruthfully on the stand during a hearing.¹⁵³ Judge Koehler wrote that the court was “disturbed by” Officer Batcheller’s false recitation of the events

143. Ryan J. Foley, *Report Finds ‘Significant Increase’ in Force by Iowa Police*, AP NEWS (Apr. 6, 2021, 11:40 AM), <https://apnews.com/article/iowa-iowa-city-56d7bd9eacdb410d595fc383b48d96b> [<https://perma.cc/H5PR-G4Q8>].

144. *Id.*

145. *See* Clayworth & Nozicka, *supra* note 62.

146. *Id.*

147. *Id.*

148. *Id.*

149. Nozicka & Clayworth, *supra* note 9.

150. Clayworth & Nozicka, *supra* note 62 (reporting that Smith allegedly maintained a sexual relationship with a seventeen-year-old girl he met while on active duty).

151. *Id.*

152. *See* Nozicka & Clayworth, *supra* note 9.

153. *See id.*

leading up to an illegal Fourth Amendment search, and concluded that Officer Batcheller's story "was 'certainly not credible.'"¹⁵⁴ In 2005, when a criminal defendant attempted to introduce Judge Koehler's statement to impeach Batcheller's credibility during her criminal trial, the district court determined that "the prior ruling was not relevant to the present case."¹⁵⁵ In subsequent cases, Officer Batcheller was found to have violated the Fourth Amendment's prohibition against unreasonable searches and seizures¹⁵⁶ and to have coerced a defendant into giving consent for a Fourth Amendment search under traumatic circumstances.¹⁵⁷ A local resident has also accused Officer Batcheller of racial profiling, a complaint that was reviewed by the Police Citizen's Review Board in 1998.¹⁵⁸

Despite these formal judicial findings, the Iowa City Chief of Police believes "[t]here are too many variables in each case to label every officer on the [*Brady-Giglio*] list a liar 'That's way too broad.'"¹⁵⁹ Further boosting Officer Batcheller's departmental reputation, he was voted "Officer of the Year" in 2010 for "perform[ing] at an exceptional level" and displaying "'extraordinary' interviewing and interrogation skills that have led to confessions and incriminating statements."¹⁶⁰ Officer Batcheller still testifies at trials and there is no limiting instruction given to juries about his credibility issues.¹⁶¹ As of 2023, Officer Batcheller still served on the Iowa City Police force.

In Officer Smith's case,¹⁶² the deciding judge clearly believed Officer Smith's past transgressions were significant enough to void criminal defendants' convictions. However, other judges may not have believed that Officer Smith's conduct with young girls was "material" in a case relating to a traffic stop. One can easily envision circumstances under which a different judge may have reasoned that Officer Smith's credibility issues as pertained to his interaction with girls below the legal age of consent were not the same types of credibility concerns that plagued illegal stops.

In order to eliminate the inconsistencies across counties and thus guarantee a similar level of due process nationwide, the Iowa Legislature must clarify

154. See *id.* (quoting Johnson County District Court Judge Thomas Koehler).

155. See *State v. Leggett*, No. 04-0444, 2005 WL 1962630, at *1-2 (Iowa Ct. App. Aug. 17, 2005) (upholding the district court's ruling).

156. See *State v. Skola*, No. 00-1643, 2001 WL 1446979, at *2 (Iowa Ct. App. Nov. 16, 2001).

157. See *State v. Dougherty*, No. 09-0812, 2011 WL 441551, at *7-8, *10 (Iowa Ct. App. Feb. 9, 2011).

158. See Rebecca Anderson & Eric Petersen, *Residents, ICPD Confront Race Issues*, DAILY IOWAN, Oct. 7, 1998, at 1A, <http://dailyiowan.lib.uiowa.edu/DI/1998/di1998-10-07.pdf> [<https://perma.cc/T9W3-GNZG>].

159. See Nozicka & Clayworth, *supra* note 9.

160. See Hayley Bruce, *Batcheller Top Officer*, DAILY IOWAN, Jan. 26, 2011, at 2, <http://dailyiowan.lib.uiowa.edu/DI/2011/di2011-01-26.pdf> [<https://perma.cc/M43Z-99YB>]; *c.f.*, *Dougherty*, 2011 WL 441551, at *7 (finding that "the psychological atmosphere in which [the defendant's] consent was obtained [by Officer Batcheller] was coercive").

161. See Johnson, *supra* note 53, at 288 (presenting a case for the need for a jury instruction that presents an officer's bias).

162. See *supra* notes 147-51 and accompanying text.

prosecutors' constitutional obligations and resist the temptation to cave to the status quo.

III. EMBRACING COMPLEXITY

Iowa's sociodemographic rural makeup may not be amenable to a single, uniform *Giglio* policy. Staunch criminal justice reform advocates may argue that all states, including Iowa, should adopt a uniform policy as it is the only way to force change. However, a deeper look at criminal justice reform rejects these broad generalizations. Resolving the *Giglio* issue would make for a more even playing field between powerful prosecutors and criminal defendants, and strong reinforcement of disclosure obligations may result in more lenient pleas, active use of diversion programs, and a real reckoning with police credibility issues. But like the United States as a whole, Iowa's *Giglio*, overcriminalization, and mass incarceration problems are infinitely nuanced. Bright-line rules cannot adequately scale the entire range of possible human experiences and infinite subtle variances.

Some prosecutors and defense attorneys across the state are not aware of, or do not fully understand, their obligations under *Giglio*.¹⁶³ Ambiguity around what qualifies as *Giglio* material is fundamentally different than a complete lack of awareness or misunderstanding of *Giglio*'s constitutional mandate and may be just as damaging to a defendant's ability to present a defense as intentional prosecutorial suppression.¹⁶⁴

This Part advocates that the Iowa Legislature need not mandate an explicit list policy or set criteria, but it must codify the prosecutor's general duty to disclose favorable, material evidence to the accused as handed down by the *Brady–Giglio* line of cases. Additionally, one non-list solution would be to allow criminal defense attorneys to play a more active role in discovering exculpatory information.

A. CODIFYING CONSTITUTIONAL OBLIGATIONS: A GENERAL STATUTORY AMENDMENT

In order to put both prosecutors and defense attorneys on notice of their *Giglio* responsibilities, the Iowa Legislature should amend Iowa Code § 80F.1 (24) (a) by adding one simple phrase. The subsection currently reads: “[a] prosecuting agency that maintains a *Brady–Giglio* list shall adopt a policy that, at a minimum, includes all of the following”¹⁶⁵ As noted above, the word “that” renders a *Giglio* list optional and sends the message that a county who opts not to create a list need not seek out nor share information with the defense. The legislature should amend section 80F.1 (24) (a) to read:

163. See Sostaric, *supra* note 101.

164. See Hogan, *supra* note 8, at 715 (asserting that “[t]he simplest factual scenarios result in directly opposing conclusions about whether certain information about the police must be disclosed, all because the basic definitions of police impeachment material have not been established”).

165. See IOWA CODE § 80F.1 (24) (a).

*A prosecutorial agency has a constitutional duty to share favorable, exculpatory information with the defense, including relevant information that impeaches a government witness or witnesses. A prosecuting agency that opts to maintain such information in the form of a formal Brady–Giglio list shall adopt a policy that, at a minimum, includes all of the following . . .*¹⁶⁶

The additions and amendments make clear that even if a formal list is not created, a prosecutorial agency retains its constitutional duty to disclose *Giglio* information. If Polk County Assistant Attorney Voogt is correct that Iowa prosecutors have only a vague, rudimentary understanding of their *Giglio* disclosure obligations,¹⁶⁷ an unambiguous amendment like the one proposed will (1) create a non-negotiable mandate for Iowa prosecutors, thus prompting statewide prosecutorial education about this important Sixth Amendment right; and (2) send the judiciary a firm message that, when conducting the section 80G.2(2) balancing, the thumb should remain on the scale in favor of disclosure to the defense. To keep pace with current case law and due process obligations, the Iowa Legislature must amend the current statute to unambiguously convey that regardless of formal procedure, *Giglio* disclosures are not merely optional.

B. NON-LIST ALTERNATIVES: ACTIVE DEFENSE

In smaller jurisdictions that do not opt to maintain a *Giglio* list under section 80F.1, Iowa should allow defense attorneys an in camera hearing with the presiding judge after the judge has reviewed an officer's personnel file, which includes their disciplinary record.¹⁶⁸ First, this solution would take the heat off of rural prosecutors who feel constrained by local politics and pressure from outside stakeholders, like the police. Second, the in-camera meeting would act as a procedural safeguard and allow defense attorneys to explain to the judge the basics of their client's defense and the types of potential exculpatory information sought. As one scholar noted, "[o]ne function of criminal defense attorneys, particularly in rural areas, is to educate rural law-enforcement officials concerning the limits of their powers. Sheriffs, prosecutors, and judges often fall into static, self-insulating patterns of misconduct."¹⁶⁹ Defense attorneys should—and should be allowed to—argue the relevance of certain incidences of police misconduct pre-trial, rather than allowing the judge to decide, ad hoc, whether certain misconduct is relevant to the case at issue. Additionally, defense attorneys should take it upon themselves to create office-wide lists as time goes on, and to request potential information when it has been brought to light in past trials.

166. See *id.*

167. See *supra* Part II.

168. See IOWA CODE § 22.7(11)(a).

169. See Ginsburg, *supra* note 140, at 47.

CONCLUSION

Despite its preference to provide heavy protections for law enforcement and its sociodemographic nuances, the state of Iowa cannot abdicate its constitutional obligations, nor should it attempt to. Rather than create a state where one group is protected at the expense of the other, Iowa must reaffirm its position as a just and fair jurisdiction where rights are protected equally. The Iowa Legislature must take account of the fact that as of 2022, Iowa jails and prisons were at sixteen percent overcapacity and suffering a prison guard shortage, therefore endangering the livelihood of prisoners and staff alike. Creating a workable *Giglio* policy will not resolve these issues, but *Giglio* mandates will set Iowa on a path to shake off the financial and psychological burdens laid on taxpayers via mass incarceration and oppressive criminal records. A sound *Giglio* policy should not be seen as a hindrance, but instead, a forward path to freedom.