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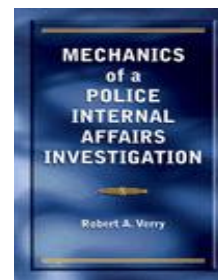
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Robert is **not** a lawyer. If you need legal advice, please contact a lawyer. (^-Retired SBB-NJ)

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## **Brady|Giglio: “False Memory”**

The following collectively addresses the legal precedents of Brady v. Maryland (1963) and Giglio v. United States (1972), which establish a prosecutor's constitutional obligation to disclose exculpatory and impeachment evidence to the defense. Brady mandates the disclosure of evidence material to either guilt or punishment, while Giglio extends this to include evidence affecting the credibility of a witness.

An example of the application of the legal principles of both Brady and Giglio were applied in a contemporary context through a letter to the Boston Police Department by attorney Alan Jackson (Jackson) regarding Boston (former Canton) Police Officer Kelly Dever (“Officer Dever”), who, during a high-profile murder trial involving Commonwealth<sup>1</sup> v. Karen Read,<sup>2</sup> allegedly<sup>3</sup> retracted earlier statements to federal agents, claiming a “false memory.”

Attorney Jackson’s letter argues that Officer Dever’s retraction, whether a lie or a genuine false memory, compromises her credibility and constitutes Brady/Giglio material that must be disclosed in all cases where she is a witness. Finally, that Officer Dever's actual trial testimony shows her recanting her earlier statements, asserting she was pressured by the defense to maintain the initial “false memory,” and emphasizing her commitment to truthfulness due to her professional oath and career implications.

Officer Kelly Dever's changed testimony, claiming a “false memory” regarding critical observations in this high-profile murder case, has significant implications for her credibility as a law enforcement officer and for legal proceedings, particularly concerning the disclosure obligations under Brady and Giglio.

Here's a breakdown of the implications:

### • Officer Dever's Changed Testimony

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<sup>1</sup> Massachusetts

<sup>2</sup> In her June 2025 retrial, Karen Read was acquitted of second-degree murder and manslaughter charges stemming from the 2022 death of her boyfriend, Boston Police Officer John O’Keefe. This retrial followed a mistrial in 2024. However, Read was convicted on a lesser charge—operating under the influence—and was sentenced to one year of probation. The defense maintained that Read was the target of a law enforcement cover-up, asserting that another individual was responsible for O’Keefe’s death.

<sup>3</sup> I have no personal connection to any of the individuals involved and cannot confirm or deny the allegations. Accordingly, this article is based solely on the information contained in the cited source materials.

◦ Initially, on August 9, 2023, Officer Dever provided federal agents with a detailed account of seeing former Canton Police Chief Kenneth Berkowitz and Special Agent Brian Higgins (Higgins) in the Canton Police Department's sally port garage with an SUV on January 29, 2022.

Attorney Jackson: What you told those law enforcement agents on August 9th, 2023, was quote, “You recalled seeing Higgins at the station later that day on Saturday.” Dever thought it was also weird that Higgins and Chief Kenny Burkowitz were by themselves in the sallyport of the police department. by themselves while Karen Reed's car was parked inside. Higgins was a witness and present at the gathering where O'Keefe was found dead outside and then he was in the presence of important evidence. You were sitting at dispatch by yourself and saw on the camera outside of the Sallyport when they walked in” (Testimony: 50:35).

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Attorney Jackson: Officer Dever, did you go on to say in that interview, quote, “You never saw them leave, them being Brian Higgins and Chief Ken Burkowitz, you never saw them leave, but you recalled thinking to yourself that they were in the Sallyport for a wildly long time together in there.” End quote. Did you say that?

Officer Dever: That was my recollection of the time (Testimony: 55:04).

She described them staying for a “wildly long time” and thought it “weird” that a witness (Higgins) had access to a seminal piece of evidence. At this time, she claimed no issues with her memory.

However, while testifying under oath Officer Dever testified that her earlier statements were the result of a “false memory” and asserted that the events she had previously described to federal agents never occurred.<sup>4</sup> She attributed this change in recollection to a timeline disclosed by the defense prior to the first trial, which showed that the vehicle in question did not arrive at the sally port until approximately 90 minutes after her shift had ended. According to Officer Dever, this new information revealed a timeline discrepancy that led her to conclude her memory had been distorted.

#### • Impact on Officer Dever's Credibility

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<sup>4</sup> Making false statements to the FBI constitutes a felony under the federal False Statements Statute (18 U.S.C. § 1001) and carries serious consequences, including up to five years of imprisonment in federal prison, substantial fines, and a permanent felony record.

- Attorney Jackson submitted a letter to the Commissioner of the Boston Police Department asserting that Officer Dever’s credibility and reliability as a law enforcement officer are “irreparably compromised.”
- The basis for this claim rests on two possible conclusions: either Officer Dever knowingly “lied about having a false memory”—which would constitute perjury—or she genuinely suffers from a cognitive condition that renders her susceptible to false memories. In either scenario, her investigative reports, sworn statements, and courtroom testimony can no longer be presumed accurate.
- As such, any current or prior case in which she played a role may warrant review. Notably, Officer Dever herself testified under oath that her “entire job revolves around what I say on the stand right now,” and acknowledged, “I cannot lie while sitting on this stand” because doing so would result in her termination: “I would lose my job.”

What also undermined Officer Dever’s credibility and likely served as the catalyst for Attorney Jackson’s Brady letter, was her combative demeanor while testifying—for example, correcting Attorney Jackson on the pronunciation of her name in a confrontational manner, and later revisiting the issue in a way that appeared deliberately provocative.

Attorney Jackson: A year ago when you talked to us, the defense, did you tell the defense that when you were called up to the commissioner's office, we told you two things? Mr. Cox told you number one, Boston Police Department supports you and Officer Deever do the right thing.

Officer Dever: So, he said my name correctly. He said Dever and um...  
(Testimony: 34:16).

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Officer Dever: Like you can't remember my name. I don't remember  
(Testimony: 56:13).

- Legal Obligations Under Brady and Giglio
  - Due Process Violation: The U.S. Supreme Court in Brady, held that a defendant’s constitutional right to due process is violated when the government withholds evidence that is material to the determination of guilt or punishment. Importantly, this obligation applies regardless of whether the prosecution acted in good faith or bad faith.
  - Evidence Affecting Credibility: In Giglio, the Supreme Court extended the Brady doctrine to include evidence that impacts a witness’s credibility. The Court emphasized that when the reliability of a witness could be decisive to the question of guilt or innocence, the failure to disclose evidence that affects that credibility constitutes a due

process violation. In Giglio, the government's failure to disclose a promise of leniency to a key witness warranted a new trial because the witness's credibility was central to the case.

- Prosecution's Responsibility: Under the Due Process Clause of the Fourteenth Amendment, prosecutors and law enforcement agencies bear an affirmative constitutional obligation to disclose both exculpatory and impeachment evidence to the defense. This duty extends to the prosecutorial office as an institutional entity. As such, information known to one prosecutor is imputed to the entire office, meaning the government is bound even if other prosecutors are unaware of the exculpatory material.
- Implications for Legal Proceedings and Future Cases
  - Mandatory Brady Database Inclusion: Given Officer Dever's changed testimony, the letter formally requests her immediate inclusion in a "Brady database." This would mandate that all information surrounding her claimed "false memories" be disclosed to the defense in every case in which she is a witness or potential witness.
  - Potential Sanctions: Failure to disclose this type of impeachment evidence constitutes a constitutional violation, which could lead to "severe sanctions," including the dismissal of every case she touches. The letter emphasizes that the Boston Police Department is now formally "on notice" of this obligation.

The situation highlights the critical importance of police officer credibility in criminal trials. If an officer's reliability is compromised due to a demonstrated "false memory" or a perceived lie under oath, it directly impacts the fairness of trials where that officer provides testimony, aligning with the principle that "our system of the administration of justice suffers when any accused is treated unfairly." The credibility of police testimony is of critical importance for any law enforcement officer, as a single instance of false testimony or inaccurate police reports can irreparably damage their professional reputation and effectively end their career.

Having been involved in dozens of investigations and legal matters involving allegations that police officers submitted false reports or made false statements, I welcome you to reach out with any questions. If you are (1) an attorney representing an officer, or (2) an officer facing a pending civil, criminal, or internal departmental investigation, <sup>5,6</sup> feel free to contact me at DrVerry@Verry-Shea.com for a free consultation.

### Resources

Testimony -> <https://www.youtube.com/watch?v=U6XJSiZhd74>

Letter -> <https://tinyurl.com/22gxzfjy> [within the article].

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

Brady v. Maryland, 373 U.S. 83 (1963)

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<sup>5</sup> Plaintiff or Defendant

<sup>6</sup> Please note that I am not an attorney. To help preserve any applicable privileges, it is recommended that your attorney contact me directly.