

DELIVERY BY COURIER AND EMAIL

**Victim-Centered Methods Vitiates the Presumption of Innocence and Harm the
Entire Criminal Justice Process**

January 28, 2021

Vincent Talucci, Executive Director
International Association of Chiefs of Police
44 Canal Center Plaza, Suite 200
Alexandria, VA 22314

Dear Mr. Talucci:

My name is Edward Bartlett, I am the President of the Center for Prosecutor Integrity. As a 501(c)3 nonpartisan organization, my Center works both to enhance prosecutor ethics and to accomplish reforms of the broader criminal justice system.

Recently, the International Association of Chiefs of Police posted a "Case Study Invitation" that states, "Victim-centered, trauma-informed approaches to crime can support victim recovery and engagement with the criminal justice system." The Invitation invites police agencies to submit applications to receive site-specific recommendations and in-person site visits.¹

However well-meaning this Initiative may be, the effort will compromise the conduct of criminal investigations that are impartial, honest, and fair. A flawed investigative report in turn creates a cascade effect that serves to bias the entire criminal justice process: charging, prosecution, and sentencing.

1. Promotes biased investigations.

The IACP Law Enforcement Code of Ethics calls on law enforcement officers "to protect the innocent against deception."² Indeed, the presumption of innocence is a pillar of our nation's criminal justice system.

¹[https://www.theiacp.org/sites/default/files/Case%20Study%20Invitation%20Flyer%20\(final%20condensed\).pdf?fbclid=IwAROLMB3YEE4rfhmrKmKeEkKlwR68g4sRQOoV5GhP3W0TyGFoZwHRWTOTUag](https://www.theiacp.org/sites/default/files/Case%20Study%20Invitation%20Flyer%20(final%20condensed).pdf?fbclid=IwAROLMB3YEE4rfhmrKmKeEkKlwR68g4sRQOoV5GhP3W0TyGFoZwHRWTOTUag)

² <https://www.theiacp.org/resources/law-enforcement-code-of-ethics>

But “victim-centered” methods vitiate the presumption of innocence by presuming the complainant is a “victim,” and biasing the conduct of criminal investigations in the following ways:³

- “Cherry-pick” the evidence in order to increase the likelihood of a guilty verdict
- Reflexively attribute inconsistencies in the complainant’s statements to life-threatening trauma
- Avoid asking probing or detailed questions in order to not “retraumatize the victim”
- Slant the investigative report in a way to portray the sexual contact as non-consensual

One Department of Justice report went so far as to urge victim-centered investigations to hand “control of the process back to the victim” (p. 9) and even allow the complainant “to request certain investigative steps not be conducted” (p. 13).⁴

Such actions are entirely incompatible with the ethical conduct of professional investigations.

2. Will lead to more wrongful convictions.

The National Registry of Exonerations, which tracks all wrongful convictions in the United States, recently published a report on the causes of wrongful convictions. Titled, “Government Misconduct and Convicting the Innocent,” the document found that one-third of these cases arose from police misconduct, especially police investigations that manipulated the evidence in order to increase the likelihood of a conviction.⁵ According to the NRE, these manipulations involved:

- Concealing Exculpatory Evidence
- Fabricating Evidence
- Witness Tampering
- Misconduct in Interrogations
- Perjury at Trial

Of particular concern, police misconduct had a *disparate impact on Black defendants*. For murder cases, 78% of Black exonerees, compared to 64% of White exonerees, experienced official misconduct. The misconduct disparity was even greater for drug crimes: 47% among Blacks and 22% for Whites.

³ <http://www.prosecutorintegrity.org/sa/victim-centered-investigations/>

⁴ <http://www.prosecutorintegrity.org/wp-content/uploads/2021/01/DOJ-Identifying-and-Preventing-Gender-Bias-2016.pdf>

⁵ https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf

The concealment, fabrication, and other forms of biasing of the evidence are ways that “victim-centered” methods affect police conduct. Criminal detective Michael Conzachi explains:⁶

Based on training models with titles such as “Victim-Centered,” “Start by Believing,” and “Trauma-Informed,” these methods reinforce, in the consciousness of investigators, the notion that their job is to validate the information supplied to them by an alleged victim of sexual assault....These policies handcuff an impartial and unbiased investigative effort.

3. Will result in countless numbers of officers being placed on Brady lists.

In recent years, various groups have issued calls for greater civilian oversight of police conduct.⁷ Following the tragic death of George Floyd in Minneapolis last May, demands for greater police oversight accelerated.⁸

This trend is particularly noticeable in the rapid growth of so-called “Brady Lists” – also known as “Do Not Call Lists” -- which are prepared by prosecutors with the names of officers whose disciplinary histories make them unreliable witnesses at trial. Influential groups such as the ACLU are actively promoting the use of such Brady Lists.⁹ (The IACP has posted a useful Powerpoint on this topic on its website.)¹⁰

A review of the Brady List compiled in Olympia, Washington, for example, reveals a majority of the officers were included for acts of dishonesty.¹¹ These are a few of the findings:

- Sean Gallagher: “Dishonesty during a death investigation”
- Andres Gore: “Found by Court Commissioner to lack credibility in dissolution case”
- Mark Baker: “Fraudulently entered field contacts into Enforcement Electronic Notebook”

⁶ <https://www.saveservices.org/2018/01/believe-the-victim-investigations-reveal-a-callous-disregard-for-the-truth/>

⁷ http://users.soc.umn.edu/~uggen/Harris_Worden_CD_14.pdf

⁸ <http://knowledgecenter.csg.org/kc/content/after-death-george-floyd-push-state-level-change-intensifies-proposals-seek-new-police>

⁹ <https://www.acluct.org/en/news/connecticut-prosecutors-arent-keeping-track-untrustworthy-cops>

¹⁰ <https://www.theiacp.org/sites/default/files/Brady-Giglio.pdf>

¹¹ https://www.muckrock.com/news/archives/2020/nov/03/foia-fyi-what-is-a-brady-list/?fbclid=IwAR2ZmLrkpVJmV0lUzUOnlEageGB_1w4eM9QidCHIKQFXLlbg2ln4ghYLyKE

A review of the Brady Lists in Arizona reveals that placement on such a list often results in the officer's resignation or termination.¹²

In addition to be placed on a Brady List, an officer who conceals, fabricates, or otherwise manipulates evidence may be subject to formal sanctions by the police department, state licensing agency, or even the criminal justice system.

Constitutional Rights

The IACP Code of Ethics calls on law enforcement officials to "respect the constitutional rights of all to liberty, equality, and justice." In particular, the Fourteenth Amendment guarantees citizens the right to due process, which includes the right to an impartial and fair investigation.

The advent of "victim-centered" approaches has resulted in a growing trend of lawyers making discovery requests of police, prosecutors, and even judges, asking if they have received "trauma-informed" training in order to assess the potential for actual bias and/or the need for recusal.

For the reasons enumerated above, dozens of editorials have been written denouncing the use of "victim-centered" methods.¹³ A recent editorial on such guilt-presuming methods concludes, "Turning accusations into convictions only makes prisoners of innocent people."¹⁴

The Center for Prosecutor Integrity therefore calls on the International Association of Chiefs of Police to suspend its victim-centered "Case Study Invitation" until its broader effects can be evaluated. Because the deadline for submission of the "Case Study Invitation" applications is approaching, we request that this decision be made soon.

I look forward to hearing from you.

Sincerely,

Edward Bartlett

Edward E. Bartlett

President

Email: ebartlett@prosecutorintegrity.org

Cc: Members of the IACP Board of Directors and Executive Committee

¹² <https://www.abc15.com/news/local-news/investigations/full-disclosure-arizona-fails-to-properly-track-problematic-brady-list-cops#:~:text=There%20is%20no%20official%20centralized,current%20as%20of%20mid%2D2019>

¹³ <http://www.prosecutorintegrity.org/sa/editorials/>

¹⁴ <https://mises.org/wire/victim-centered-justice-threat-due-process>