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IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN RE: **PETITION TO AMEND RULE 16.4 OF THE ARIZONA RULES OF CRIMINAL PROCEDURE**	R-15-0038 MARICOPA COUNTY ATTORNEY'S RESPONSE TO PETITION TO AMEND RULE 16.4, ARIZONA RULES OF CRIMINAL PROCEDURE

The Maricopa County Attorney hereby responds to the Petition to Amend Rule 16.4, Arizona Rules of Criminal Procedure and asks this Court to deny the Petition in its entirety.

I. INTRODUCTION

The Maricopa County Office of the Legal Defender has petitioned this Court to add a new rule of criminal procedure. This new rule would require judges to "ensure" that a prosecutor has "searched its files, the investigating police agency's files, and any other appropriate files" for information "which tends to mitigate or negate the defendant's guilt, or which would tend to reduce the defendant's punishment." [Amended Petition R-15-0038 at 3.] Because this new rule is

unnecessary, poorly defined, and impossible to follow, the Maricopa County Attorney's Office (MCAO) asks this Court to deny the Petition in its entirety.

II. ARGUMENT

A. The requested rule is not needed.

1. Petitioner's claim that his rule is needed to address a long history of *Brady* violations is baseless.

Petitioner makes numerous accusations in an effort to demonstrate that this new rule is needed and would have some type of positive impact on the criminal process in Arizona. Petitioner claims that this new rule would help enforce *Brady* requirements, but those requirements are already well established by case law, the existing rules of discovery, and the ethical rules. Petitioner asserts that, despite the existing rules and case law, more must be done to ensure compliance with these rules. First, Petitioner boldly claims that "*Brady* problems have existed for years throughout the country and in Arizona," and he claims "this is [a] longstanding problem that continues to the present." [Petition at 2]. Petitioner then lists, with brief parentheticals, fourteen cases that he claims are representative of the problem he is seeking to fix. *See id.* at 3, fn 3. These cases date back to the 1970s and presumably these fourteen cases, spanning 40 years, are the best samples of the problem Petitioner seeks to correct. A review of these cases, however, proves the opposite of Petitioner's claim – there are no widespread *Brady* problems in Arizona and we do not need the proposed new rule.

In *State v. LaBarre*, 114 Ariz. 440, 561 P.2d, 764 (App. 1977) the court was unhappy with the State's failure to disclose a surveillance video and a statement of a witness because it was a violation of Rule 15, not because it had anything to do with *Brady*. *LaBarre*, 114 Ariz. at 446, 561 P.2d at 770 (App. 1977). Instead the court noted that, "There is no showing in this case of prejudicial suppression of evidence which would aid the defense." *Id.* This case does not reveal any *Brady* problems and Petitioner's requested new rule would not have changed what happened in this case at all.

State v. Lukezic, 143 Ariz. 60, 691 P.2d 1088 (1984) and *State v. Bracy*, 145 Ariz. 520, 703 P.2d 464 (1985) dealt with impeachment material that was not disclosed. However, neither of these cases supports Petitioner's requested rule change because in these cases the undisclosed benefits to witnesses were known to the State so this was not information that would have been discovered by "searching files" as the proposed rule requires. In *Lukezic*, a case tried in the early 1980s, the prosecution did not believe the issues in question were benefits to a witness and they unsuccessfully argued that position on appeal. *See Lukezic*, 143 Ariz. at 64-66, 691 P.2d at 1092-94. Petitioner's rule in no way addresses the problem in that case – correctly identifying what constitutes benefits to a witness. In *Bracy*, another case tried in the early 1980s, the prosecution clearly had a poor attitude toward discovery[1] but Petitioner's rule

[1] *Bracy*, 145 Ariz. at 530, 703 P.2d at 474.

would not have changed the outcome. Interestingly, Petitioner cites no Arizona cases after these in the mid-1980s where the State failed to disclose benefits to witnesses. These cases made clear that benefit was to be broadly defined and Petitioner presents nothing to suggest any continuing problems in this area in the intervening 30 years.

State v. Van Den Berg, 164 Ariz. 192, 791 P.2d 1075 (App. 1990), likewise does not advance Petitioner's views. In that case, the court found that the State should have disclosed that a witness had a juvenile criminal history and may have been on probation out of California. *Id.* at 195, 791 P.2d at 1078. There is absolutely nothing in the case that suggests that the prosecutor knew of this information and intentionally suppressed it or even that the prosecutor could have found it by searching "files." Indeed, the case was remanded for the lower court to figure out *if* the witness was even on probation. *Id.* at 196, 791 P.2d at 1079. Although that court categorized the lack of disclosure as a *Brady* violation, there is no discussion regarding how the prosecutor should have obtained the information about the witness or anything to suggest that the prosecutor or any cooperating law enforcement agency had access to this out-of-state information. Even assuming that the court correctly categorized this as a *Brady* problem, Petitioner's rule would have had no impact on this case because there is no evidence that suggests the prosecution could have discovered this information with a more diligent search of any records or "files" that they had access to. If California chooses not to put juvenile criminal history into a

searchable database, prosecutors in other states have no way to know of or disclose that information whether this Court adds Petitioner's rule or not. This case that is now more than 25 years old does not show malfeasance or neglect by the prosecutor.

State v. Rice, 2007 WL 5187935 (App. 2007) shows no *Brady* violations. That case involved the nondisclosure of jail tapes. The court noted (and the State conceded) that the defendant's jail recordings should have been disclosed as soon as the prosecutor had them. *Id.* at ¶ 11. But the trial court also found that the tapes had no favorable, material evidence subject to *Brady*. *Id.* at 23, 25. Again, Petitioner's rule would have no impact on this case and this case does not show a history of *Brady* violations in Arizona.

State v. Grabinski, 2009 WL 1531020 (App. 2009) and *State v. Crotts*, 2009 WL 1531024 (App. 2009) are co-defendant cases where the prosecution did not disclose a witness' statement that he had previously lied. The statement in question was made during pretrial preparation with the prosecutor.[2] The court also noted that the disclosure had little impact on the case because the substance of the witness' "trial testimony was consistent with the written statement he adopted as part of his plea agreement, which was timely disclosed to defense counsel." *Grabinksi*, 2009 WL

[2] This case cannot support Petitioner's insinuations that prosecutors maliciously hide *Brady* evidence because the fact that this witness previously lied was elicited by the State on direct examination. *Grabinski*, 2009 WL 1531024, ¶ 11. Although the court found that Rule 15 required the prosecutor to disclose the witness' admission that he previously lied, no one could suggest on these facts that the prosecutor was attempting to keep that information from the defense or jury.

1531020, ¶ 14. While this case may show a discovery error, Petitioner's rule would not have had any impact on this case because the prosecutor learned the information after trial began and it had nothing to do with finding anything in any "files."

State v. Powell, 2011 WL 193367 (App. 2011), involved a PCR claim that the State failed to disclose a misdemeanor conviction of a witness for false reporting. There is nothing in the case that notes whether the State had this information or even had access to it, thus it does not provide any support for the idea that Petitioner's rule change might have made a difference. Furthermore, the court specifically found the evidence was not material and thus, there was no constitutional violation. *Id.* at ¶ 13. This case does not support Petitioner's claim of a history of *Brady* problems in Arizona.

State v. Cota, 229 Ariz. 136, 272 P.3d 1027 (2012) likewise provides no support to justify Petitioner's new rule. That case involved the disclosure of electronic DNA records from DPS. While the trial court found DPS improperly withheld an "extraneous DNA log" and certain electronic data, the court found there was no bad faith. *Id.* at 149, ¶ 60, 272 P.3d at 1040. Most importantly, Petitioner offers no explanation as to how his proposed rule would have impacted this case because much of the DNA testing was completed after trial began. Petitioner also does not explain how a prosecutor "searching the files" of DPS would have discovered the information or known what this information was or that it should have been disclosed. One

witness in the case was precluded in part because some data was destroyed. Certainly a prosecutor's "search of files" would not have uncovered destroyed data. In sum, while there was a discovery error, Petitioner's rule change would not have altered anything in this case. While the case sheds light on some of the issues that arise with advancing scientific technology, it does not support Petitioner's claim of a history of *Brady* violations.

State v. Lopez, 2012 WL 3020071 (App. 2012), involved the disclosure of free talks and criminal history of a cooperating codefendant. Both were disclosed prior to trial and, while the court noted the timing of the disclosures "may be considered a violation of Rule 15.1," the court found no *Brady* violations and no willful misconduct on the part of the prosecutor. *Id.* at ¶ 27 - 29. Again, not only does this case fail to support Petitioner's claim of a history of *Brady* problems, but the proposed rule could not have impacted this case because the late disclosure had nothing to do with "searching files" and this codefendant was not even identified as a witness against the defendant until well after the initial Rule 16 conference.

State v. Cloud, 2014 WL 645185 (App. 2014), involved a case where the State disclosed voluminous documents during trial. The trial court granted a thirty day continuance at the State's expense as a sanction for the discovery violation but specifically found no *Brady* issues because the court concluded that the documents were cumulative to what the defense already had. *Id.* at ¶¶ 39 - 42. The defendant's

own investigator "could not identify any specific inconsistencies, significant new information, or exculpatory information in the newly disclosed material." *Id.* at ¶ 45. Yet again, this case does not show a history of *Brady* problems, it does not support Petitioner's claims of malicious prosecutor suppression of exculpatory evidence, and the proposed rule would not have changed anything in this case because the lack of disclosure was due to inadvertence, not a lack of "file" searching.

State v. Miles, 2015 WL 848298 (2015), involved a sanction imposed by the trial court when witnesses were not timely disclosed. The defense raised a *Brady* claim but that was rejected by the trial court and there is no finding of any *Brady* violation in the case. *Id.* at ¶ 5. Again, as with the vast majority of the cases Petitioner cites, this case does not show a history of *Brady* violations nor does it present any problem that would be cured by Petitioner's new rule.

State v. Simmons, 2014 WL 4437673 (App. 2015), says nothing about *Brady* violations or the need for Petitioner's rule. That case simply reversed the trial court's dismissal with prejudice. The State moved to dismiss the case because it was impossible to comply with an order that the trial prosecutor personally review officer personnel files by the trial date. *Id.* at ¶¶ 3-4. Nothing in the case suggests that any *Brady* information had been suppressed nor is it clear that Petitioner's new rule would

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have had any impact on this case.[3]

Carriger v. Stewart, 132 F.3d 463 (9th Cir. 1997), involved impeachment evidence in prison records that was not disclosed. This case was a decision involving a trial conducted in 1978. *Id.* at 466. The court found that the State should have disclosed prison records that impeached a witness' truthfulness.[4] There was nothing in the record that proved the prosecutors ever possessed the undisclosed records. *Id.* at 479. In 1978, it was not settled law that the prosecution had an obligation to know about possible impeachment evidence in the possession of other agencies acting on the prosecution's behalf. The *Carriger* court cited *Kyles v. Whitley*, 514 U.S. 419 (1995) for the rule that a prosecutor's actual awareness of what is known by others working on the prosecutor's behalf does not matter. *Id.* at 479-80. Petitioner's primary basis for his new rule (as explained in the lengthy comment he is also requesting) is also *Kyles*. [Amended Petition at 3]. But *Kyles*, the case that firmly

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[3] To the extent Petitioner's new rule would require each prosecutor to personally review the personnel files of each police witness involved in every case, Petitioner's new rule would arguably have prevented the issues that arose in this case, but, as discussed below, if that is what Petitioner is demanding with his rule, it is an impossible rule to follow and well beyond anything required by *Brady* and its progeny. Additionally, there is nothing in the case to suggest that these police files actually contained discoverable material.

[4] The circuit was divided on this case and not every judge believed a *Brady* violation occurred because the defendant already knew about the information. *See Carriger*, 132 F.3d at 492 (Kozinski, J., dissenting, joined by Judges Farris, Fernandez, Nelson and Kleinfeld) ("A prosecutor has no duty to investigate and turn over impeachment evidence the defense already knows about. Carriger's *Brady* claim fails.").

settled the rule that the prosecution had an obligation to learn of and disclose *Brady* material held by people working on behalf of the State, was decided 17 years *after* Carriger's trial. The fact that a prosecutor in 1978 did not comply with a duty that was not clearly established until 1995 hardly justifies a new rule in 2016.[5]

Milke v. Mroz, 236 Ariz. 276, 339 P.3d 659 (App. 2015) is arguably the one case Petitioner cites that is remotely on point, but even here, there is no explanation as to how his rule would have changed anything in this case. Although the findings and conclusions by the Ninth Circuit in *Milke v. Ryan (Milke II)*, 711 F.3d 998 (9th Cir. 2013) regarding what should have been disclosed in that case are based on a defective record, the Court of Appeals found itself bound by the findings of that court. *See Milke v. Mroz*, 236 Ariz. at 280, fn. 2, 339 P.3d at 663. This comment is not the forum to further debate those findings. But even assuming that *Brady* violations occurred in that case, it does not prove what Petitioner claims. These errors occurred

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[5] The extent to which *Kyles* established new duties for prosecutors and police is not entirely clear. The Ninth Circuit has clearly held that *Kyles* was not a new rule. *Jackson v. Brown*, 513 F.3d 1057, 1074 (9th Cir. 2008); *Carrillo v. City of Los Angeles*, 798 F.3d 1210, 1221-23 (9th Cir. 2015). Other circuits have disagreed as to the extent to which the obligations of police and prosecutors were clear before *Kyles*. *See Gibson v. Superintendent of NJ Dep't of Law and Pub. Safety Division of State Police*, 411 F.3d 427, 443-44 (3rd Cir. 2005) *overruled on other grounds by Heck v. Humphrey* 512 U.S. 477 (1994); *Haley v. City of Boston*, 657 F.3d 39, 49 (1st Cir. 2011). The United States Supreme Court has cited to *Kyles* alone when referring to the rule that prosecutors are responsible for information known only to the police. *See Strickler v. Greene*, 527 U.S. 263, 280-81 (1999). Regardless of the extent to which *Kyles* broke new ground, an error of this nature from a 1978 trial should not be used to justify a new rule of procedure today.

in a 1990 trial. This one case from a trial that was held 25 years ago does not support Petitioner's claim of a widespread or longstanding *Brady* problem in Arizona. Even the Arizona Court acknowledged this fact when it characterized the allegations of nondisclosure in *Milke* as "unique in the history of Arizona...." *Id.* at ¶ 17. Petitioner's "representative" sample of Arizona cases over the last 40 years completely fails to prove that there are any problems that need to be addressed with his proposed rule or through any other means. While bad facts make for bad law, even worse recitations of fictional history makes for poor rules of procedure.

2. Contrary to Petitioner's claim, prosecutors currently have significant incentive to comply with *Brady's* mandates.

In addition to the Arizona cases Petitioner cites, he also turns to other sources to support his position that *Brady* violations are frequent and, even more alarmingly, his belief that prosecutors do not care about *Brady* issues or, worse, his belief that prosecutors intentionally withhold clearly exculpatory evidence. One "authority" Petitioner cites in support of this concept is a New York defense attorney. Petitioner cites to a post by this attorney where he writes, "*Brady* violations almost always defy detection. The cops know it. The prosecutors know it. The defense and the defendant have no idea whether *Brady* material exists." [Petition at 6]. That blogger goes on to explain his opinion that prosecutors have no incentive to disclose *Brady* material because if a prosecutor discloses they might lose the case but if they do not the worst thing that happens is they have to retry the case. He concludes with his

opinion that, ". . . [T]he only incentive for a prosecutor to be honorable is personal integrity. As incentives go, personal integrity has never been a particularly strong one." Scott Greenfield, *The Flood Gates Myth*, Simple Justice: A Criminal Defense Blog, (Feb. 16, 2015), http://blog.simplejustice.us/2015/02/16/the-flood-gates-myth/ (last viewed Apr. 14, 2016).

All this blog proves – as if more proof was needed – is that you can find support somewhere on the internet for just about anything. The idea that prosecutors would intentionally choose to withhold exculpatory information because they might lose a trial, a position apparently adopted by Petitioner, is offensive. While there are no doubt examples of prosecutors who have withheld evidence with malicious intent (none of the "representative" cases cited by Petitioner show that), to paint with so broad a brush to suggest that a rule change is needed to somehow make prosecutors care about their ethical – to say nothing of their moral – obligation to see that justice is done in a case is absurd. The prosecutor who cares as little about integrity as Mr. Greenfield suggests, would have no problem lying to a court or doing anything else that was required to do as they pleased. Thankfully, prosecutors cut from that cloth are few and far between, but is Petitioner's rule change really going to have any kind of impact on that kind of prosecutor?

Contrary to Petitioner's views, there are plenty of disciplinary mechanisms in place to address willful *Brady* violations. *See* ARIZ. R. SUP. CT. 42, ER 3.8.

Furthermore, the underlying idea that the grant of a new trial is of no consequence to a prosecutor ignores the reality that those of us with a burden of proof must accept: Time does not make it easier to try cases. Evidence is lost or destroyed; witnesses are lost or their memories fade; transcripts from prior trials are lost or inadmissible. This reality means that in many circumstances when a case is reversed for any reason, the case cannot be retried and justice is thwarted. The *Milke* case cited by Petitioner further proves that there are sufficient remedies for willful misconduct – the court can bar a retrial. The idea that prosecutors do not care about these results, that they would intentionally flaunt their *Brady* obligations because they "only" have to try the case again, ignores the reality all prosecutors understand: *Brady* errors can permanently deny justice to victims and our community. We do not need additional rules of procedure whose only purpose is to create another disciplinary mechanism. Petitioner's rule seeks to do just that and the Petition should be denied.

B. <u>The requested rule is poorly drafted, poorly defined, and appears to impose impossible requirements on prosecutors.</u>

Promulgating a completely unnecessary rule would be ill-advised, but, if the rule was well-drafted, clear, and easy to follow in the real world, the mischief in adopting such a rule might be minimized. Unfortunately, that is not the case with Petitioner's suggested rule. Petitioner's rule imposes unclear obligations on the courts and prosecutors and, depending on how it is interpreted, it may impose completely impossible duties on individual prosecuting attorneys.

Although the Petition itself claims that the proposed rule "requires the Court to enter into a colloquy with the prosecutor," [Petition at 5], the text of the proposed rule contains no such requirement. The proposed rule actually states, "The Court shall ensure that the prosecutor has . . .". [Amended Petition at Appendix A]. Clearly the Petitioner believes the court will "ensure" by engaging in a colloquy, but the rule itself omits any mention of a colloquy and instead imposes a broad, undefined duty on the court to "ensure" that someone else has done something. What is a defendant's remedy if the defendant believes that the court has not done enough to "ensure" the prosecutor has acted? What is the court's responsibility if it is later determined that *Brady*-type evidence was overlooked and not disclosed? The proposed rule imposes a vague obligation on the court that would likely be resolved in litigation if the rule were adopted.

Even worse than the undefined obligation the rule puts on the court is the undefined obligation the rule puts on "the prosecutor." First, the rule does not explain who "the prosecutor" is in the context of the rule. Does the reference to "the prosecutor" refer to the elected or appointed prosecutor in a jurisdiction or to that person's individual deputy who is acting on their behalf in the handling of that particular case? At first glance, it may appear that the distinction does not matter, but it is actually a critical one. As drafted, the proposed rule appears to suggest that

individual deputies are solely responsible for discovering and disclosing favorable information, but such a requirement would impose an impossible obligation.

Consider, for example, a situation involving discoverable impeachment evidence about a police officer who will be a witness in a case. The Maricopa County Attorney's Office, as is common with many prosecuting agencies throughout the country, regularly receives and reviews internal investigations involving police officers from our partner law enforcement agencies. These completed investigations are reviewed and a determination is made as to whether the investigation reveals any discoverable impeachment evidence. If the conclusion is made that the details of the investigation contain impeachment evidence, that officer's name is included on a list that is accessible by all employees in the office. Individual attorneys handling cases are then required to check the list and, if they have a witness on the list, they disclose the documents relating to that particular investigation and witness to the defense. Thus, contrary to Petitioner's assertions that this office "delegates police officer file review to law enforcement" [Petition at 5], this office receives completed internal investigations from law enforcement and this office then conducts a conscientious review of whether those investigations contain *Brady* material that must be disclosed consistent with our obligations.

The proposed rule, however, is drafted in such a way that it appears to impose on each trial deputy the obligation of personally searching police department records

for impeachment material. To the extent that the proposed rule requires such personal searching of police files it imposes a completely impossible burden on the criminal justice system. Even if it were possible for every individual prosecutor to personally search personnel records for every officer witness in every case they are handling, such a system would be grossly inefficient and completely inconsistent. The fact that the prosecutor's office, as a representative of the government, is responsible for disclosing impeachment evidence that the police have is now well established, but Petitioner cites no authority for the idea that an individual deputy acting on behalf of an elected or appointed official must personally do the investigation and determine whether to disclose a particular fact for impeachment. Indeed, the US Supreme Court has recognized that prosecutor's offices must create the procedures necessary to comply with *Brady* obligations,[6] and, in the vast majority of offices, the system works much like it does today in Maricopa County.

Equally undefined is the proposed rule's requirement that "the prosecutor" has "searched its files, the investigating policy agency's files, and any other appropriate files . . .". The rule reads as if all of the information about a case or a witness is neatly stored in paper "files" tucked away in some file cabinet awaiting review. As

[6] In *Giglio v. United States*, the court noted the difficulties prosecution offices would face in complying with the court's disclosure mandates, and the court stated, "To the extent this places a burden on the large prosecution offices, procedures and regulations can be established to carry that burden and to insure communication of all relevant information on each case to every lawyer who deals with it." 405 U.S. 150, 154 (1972).

Petitioner is well aware, information about cases is stored in a wide variety of places, which is increasingly electronic. In many ways electronic information systems, particularly those within a prosecutor's office, help with the exchange of information throughout an office, but it is almost impossible to imagine the scope and breadth of what the proposed rule means by "searched its files." Prosecution offices often prosecute the same defendant again and again. Does "searched its files" suggest that the prosecutor has personally gone through the paper and electronic versions of every closed file on a particular defendant when that person has a new case? For the vast majority of prosecutions, it is difficult to imagine what possible exculpatory information we would find in the "file" of a five-year-old closed prosecution against someone when they return with a new crime, but this proposed rule appears to require that the prosecutor conduct such a pointless, inefficient "file" review in every single case.

The rule's requirement regarding the "investigating policy agency's files" is even more problematic. Contrary to popular misconception, prosecution offices do not control our law enforcement partners. Certainly prosecutors work with law enforcement agencies and we are frequently held responsible for what they do and do not do, but the fact is prosecutors do not control police agencies. This means that, as a practical matter, prosecutors do not have access to all of a "police agency's files." Information in police agencies, like most other offices, is increasingly electronically

based. It is not possible, nor would it be desirable, for prosecutors to log onto police computer systems to review their "files." This would not be possible if we worked with one law enforcement agency, but in Maricopa County we have over 30 law enforcement agencies who submit cases to our office for prosecution. Ignoring the fact that it would be a logistical impossibility for each individual prosecutor, in any jurisdiction, to personally go to a police department and search through their various systems –systems that vary from agency to agency– looking for undisclosed reports and records about a case, prosecutors do not have the necessary access to or permissions into those systems. For many reasons, including legal prohibitions, law enforcement cannot give blanket access to their information systems to every prosecutor in the state.

Petitioner is no doubt well aware that imposing such a requirement is a logistical and practical impossibility. Prosecutors do not search police agency files. Police agencies investigate crimes. Police officers write reports documenting their activities in those investigations and they send those reports to prosecutors who use them to make decisions about the prosecution of the case. Since *Kyles*, it has been clear that prosecutors are responsible for everything the police know and law enforcement is aware of this requirement and of our need for all information they have. Prosecutors comply with their duty to learn of favorable evidence held by others by working with their law enforcement partners – not by personally searching

their "files." The system only works when we rely on our partners to provide all information they have to us. Certainly there have been cases where information has been discovered late and disclosed untimely under Rule 15. When those things occur, courts take appropriate action under Rule 15, but nothing in the Petition proves that these have been widespread problems, let alone a "practice" as Petitioner claims. Indeed, Petitioner's representative case sample proves precisely the opposite – Arizona prosecutors and law enforcement have an exemplary record in these matters which proves the systems we have in place are working. The law does not require a prosecutor to personally review "police agency's files" in search of information. Petitioner's proposed rule appears to impose this new, impossible to follow, demand.

Finally, the proposed rule's vague and overly broad third category, "other appropriate files," hardly needs further discussion. The amorphous "file" issue discussed above is one problem, the apparent demand by the rule that the prosecutor personally search the "other" files as opposed to requesting the information from other agencies is another. The lack of definition of "appropriate" leaves this portion of the proposed rule completely undefined. A rule this malleable will ensure that no matter what prosecutors do, someone, sometime, with the benefit of hindsight, will be able to punish them for violating the rule.

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III. CONCLUSION

Although Petitioner makes light of it in the Petition, the fact is that Arizona prosecutors are aware of our discovery obligations and we comply with them. That does not mean perfection because human prosecutors and police officers make mistakes just as defense attorneys and courts sometimes do. Although Petitioner asserts that "another solution should be tried" there is no actual support in the Petition for Petitioner's claims of a "history of *Brady* violations." To the contrary, the systems and procedures that have been put into place to ensure discovery of exculpatory and impeachment evidence are working remarkably well. Furthermore, Petitioner has not shown any need to add a rule of criminal procedure to make it easier to punish Arizona prosecutors when unintentional violations occur. Even if Petitioner had identified an actual problem in need of a solution, the requested ill-defined rule change that puts undefined and impossible obligations on courts and prosecutors will cause more problems than it could possibly solve. For these reasons the Maricopa County Attorney asks this Court to deny the Petition.

Respectfully submitted this 20 day of May, 2016.

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By _____
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