No. 11-5987

In The

Supreme Court of the United States

JOHN FLOYD,

Petitioner,

v.

BURL CAIN, WARDEN,

Respondent.

On Petition For A Writ Of Certiorari To The Orleans Parish Criminal District Court Of Louisiana

AMICUS BRIEF OF ORLEANS PARISH PUBLIC DEFENDERS OFFICE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Orleans Public Defenders (OPD) is the largest full-time public defender office in the state of Louisiana representing indigent persons. Its staff attorneys represent nearly eighty-five percent of defendants in the Criminal District Court of Orleans Parish, where more than 13,000 new state cases were accepted for prosecution in 2010.

Much like *Juan Smith v. Burl Cain*, 79 U.S.L.W. 3696 (U.S. June 13, 2011) (No. 10-8145), currently pending before the Court, this case is yet another in a long line of cases in which the Orleans Parish District Attorney's Office has failed to comply with its duties and obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The persistent failure of the Orleans Parish District Attorney's Office to comply with its *Brady* obligations undermines the truth-seeking function of the criminal trial and greatly impedes the ability of OPD to provide meaningful representation to its clients. It also increases the likelihood that innocent individuals – such as the

[1] Pursuant to this Court's Rule 37, *amicus* states that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties were timely notified and have consented to the filing of this brief.

Petitioner – will be wrongfully convicted and sentenced to long terms in prison or even death.

The *amicus* submits that the question presented by this case is one of great importance to OPD and the community of New Orleans, which has an interest in seeing accurate convictions, particularly given the current Orleans Parish District Attorney's Office's challenge to the Orleans Parish Criminal District Court judges to preside over 600 jury trials this calendar year. *See* Brendan McCarthy, *District Attorney Leon Cannizzaro's Challenge to Judges Gets Chilly Reception*, New Orleans Times-Picayune, Feb. 5, 2011.[2] Undue emphasis on efficiency over fairness and justice forces the police and the prosecutors to cut corners and make errors that cause constitutional harm and wrongful convictions. When a district attorney's office with a well-documented history of *Brady* violations is more concerned with trying cases than seeking truth and justice, many red flags are raised. *Amicus* respectfully urges that the Court reinforce the prosecutor's responsibility and obligations to ferret out and provide *Brady* materials by reversing the judgment below.

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[2] In 2010, the twelve judges presiding over Orleans Parish Criminal District Court oversaw 278 jury trials. The District Attorney has challenged the judges "to work harder" and hold at least 600 jury trials in 2011.

SUMMARY OF ARGUMENT

Orleans Parish prosecutors frequently have suppressed key evidence favorable to the accused; repeatedly have responded to pretrial discovery requests by informing defendants that they are "not entitled" to exculpatory or impeachment evidence; and have purposefully hidden evidence that exonerated the defendant. Even after this Court's decision clarifying the scope of a prosecutor's duty under *Brady* in *Kyles v. Whitley*, 514 U.S. 419 (1995) – which itself involved the suppression of *Brady* material by Orleans Parish prosecutors – prosecutors see no reason to change their practice with respect to these issues.

In *Kyles*, this Court firmly placed the responsibility on the prosecutor to seek out exculpatory information in the files of law enforcement. The "individual 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." 514 U.S. at 437. The Orleans Parish District Attorney's Office has repeatedly failed to heed this obligation and has not established "procedures and regulations . . . to carry [the prosecutor's] burden and to insure communication with all relevant information on each case to every lawyer who deals with it." *Id.* at 438, citing *Giglio v. United States*, 405 U.S. 150, 154 (1972).

Amicus recognizes, as this Court did in *Kyles*, that "police investigators sometimes fail to inform a

prosecutor of all they know." *Kyles*, 514 U.S. at 438. Such acknowledgement, however, does not permit prosecutors to be lax in carrying out their obligations under *Brady*. Rather, because of such possibilities, it is incumbent upon the prosecutors to be more vigilant to learn of favorable evidence in the files of the prosecution team by conducting searching inquiries. Because the New Orleans Police Department (NOPD) "has long been a troubled agency" whose officers "show a lack of respect for the civil rights and dignity of the people of New Orleans," CIVIL RIGHTS DIV., DEP'T OF JUSTICE, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 26 (2011), *available at* http://www.justice.gov/crt/about/spl/nopd_report.pdf the Orleans Parish District Attorney's Office, as "the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done," *Berger v. United States*, 295 U.S. 78, 88 (1935), should have developed, implemented and maintained policies, protocols and trainings for effective communication, accountability and partnership with NOPD in carrying out its *Brady* obligations. The Orleans Parish District Attorney's Office, however, has failed to do so. Mr. Floyd's case epitomizes the Orleans Parish prosecutors' chronic disregard of and indifference to their *Brady* obligations. As such, the Court should reverse the judgment below.

ARGUMENT

I. The Orleans Parish District Attorney's Office Has A History Of Failing To Comply With Its Obligations Under *Brady*

The Orleans Parish District Attorney's Office has a long track record of suppressing favorable, material evidence in violation of *Brady*. Whether this history is due to the negligence, ignorance or willful action of individual lawyers or through the systemic failures in Orleans Parish that leave police free to decide what information to give prosecutors, the impact is the same: the Constitutional protections relating to the disclosure of exculpatory evidence that defendants enjoy everywhere else in the country have little effect in Orleans Parish courtrooms.

According to a study conducted by Innocence Project New Orleans, at least a quarter of death sentences in Orleans Parish imposed from 1973 – 2002, nine out of thirty-six, were tainted by *Brady* violations.[3] And in at least twenty-three documented non-capital cases, courts held that Orleans Parish

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[3] *See Innocence Project New Orleans Report*, at 1 ("According to available records, favorable evidence was withheld from 9 of the 36 (25%) men sentenced to death in Orleans Parish from 1973-2002."), *available at* http://www.ip-no.org/sites/default/files/images/Press_Release_Report.pdf (last visited Aug. 18, 2011); *see also, e.g.*, *Kyles v. Whitley*, 514 U.S. 419, 421-422 (1995); *State v. Bright*, 875 So. 2d 37, 42-44 (La. 2004); *State v. Cousin*, 710 So. 2d 1065, 1066 n.2 (La. 1998); *State v. Thompson*, 825 So. 2d 552, 557-558 (La. Ct. App. 2002).

prosecutors failed to disclose favorable, material evidence.[4]

One former assistant district attorney in the Orleans Parish District Attorney's Office attributed this unsettling record to the office's traditionally

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[4] *See Innocence Project New Orleans Report*, at 1 ("An additional 25 non-capital cases were examined in which allegations of evidence suppression were made. In 19 of these cases, courts found favorable evidence that was indeed withheld, and in all others the court deemed the allegations warranted an evidentiary hearing." (footnote omitted)); *see also, e.g.*, *Mahler v. Kaylo*, 537 F.3d 494, 503-504 (5th Cir. 2008); *Clark v. Blackburn*, 632 F.2d 531 (5th Cir. 1980); *Lockett v. Blackburn*, 571 F.2d 309 (5th Cir. 1980); *Monroe v. Blackburn*, 607 F.2d 148 (5th Cir. 1979); *Robinson v. Cain*, 510 F. Supp. 2d 399, 416 (E.D. La. 2007); *Perez v. Cain*, 2008 WL 108661, at *15, 28 (E.D. La. Jan. 8, 2008); *State v. Knapper*, 579 So. 2d 956, 960-961 (La. 1991); *State v. Rosiere*, 488 So. 2d 965, 969-971 (La. 1986); *State v. Perkins*, 423 So. 2d 1103, 1107-1108 (La. 1982); *State v. Curtis*, 384 So. 2d 396, 398 (La. 1980); *State v. Falkins*, 356 So. 2d 415, 417 (La. 1978); *State v. Carney*, 334 So. 2d 415, 418-419 (La. 1976); *State v. Lindsey*, 844 So. 2d 961, 969-970 (La. Ct. App. 2003); *State v. Lee*, 778 So. 2d 656, 667 (La. Ct. App. 2001); *State v. Oliver*, 682 So. 2d 301, 310-312 (La. Ct. App. 1996); *State v. Smith*, 591 So. 2d 1219, 1225-1228 (La. Ct. App. 1991); J. on Appl. for Post-Conviction Relief 4-7; *State v. Bright*, No. 252-514 (Orleans Crim. Dist. Ct. Oct. 1, 2002); *State v. Henderson*, 672 So. 2d 1085, 1087 (La. Ct. App. 1996).

Of course, this figure is likely to be "a gross underestimation of the number of cases in which evidence may have been suppressed" because many *Brady* violations – which by their nature involve hidden or suppressed evidence – never come to light. *See Innocence Project New Orleans Report*, at 1 n.1. This is especially true in non-capital cases, in which inmates "have no right to a lawyer at exactly the point in the appeals process at which they could investigate and prove that favorable evidence was suppressed, or false evidence presented, at their trial." *Id.*

aggressive attitude with respect to disclosing potentially helpful evidence to the defense. He explained in an affidavit that the practice "was to be as restrictive as possible with *Brady* information. . . . The policy was 'when in doubt, don't give it up.'" Aff. of Bill Campbell ¶ 7, *Truvia v. Julien*, No. 04-cv-680, Dkt. No. 100-8 (E.D. La. May 29, 2007).[5] He also noted that assistant district attorneys often would "deny the *Brady* request as 'not entitled' and effectively pass the buck to the judge if indeed the criminal defendant pursued the information." *Id.* The "office stressed winning cases. . . . As a result, many cases were tried notwithstanding the fact that [assistant district attorneys] may have wanted to dismiss certain cases due to serious questions regarding the defendant's guilt." *Id.* ¶ 9.

This pattern of withholding *Brady* material has led a number of "Orleans Parish Criminal Court judges [to] voic[e] their dismay." Coyle, *Lawyers Claim DAs Withhold Evidence: Kyles Case Fits Pattern, They Say*, New Orleans Times-Picayune, Sept. 21, 1997, at A1; *see* Coyle, *Court to DA: Stop Stalling; Office Ordered to Disclose File*, New Orleans Times-Picayune, June 23, 1998, at A1 (Orleans Parish "judges have grown increasingly impatient with what they say are clear violations of discovery laws by prosecutors"). During his tenure on the Orleans Parish Criminal District Court, Judge Calvin Johnson repeatedly sounded the alarm regarding what he

[5] *Truvia v. Julien* was one of the many civil suits arising out of wrongful convictions due to *Brady* violations by Orleans Parish prosecutors.

perceived as a "'pattern . . . not just based on lethargy, but on an active unwillingness to follow the rule of law.'" Coyle, *Court to DA: Stop Stalling*. To encourage compliance with *Brady*, he often "held prosecutors in contempt" or "ordered them to take law classes." Armstrong & Possley, *The Verdict: Dishonor*, Chicago Tribune, Jan. 10, 1999, at C1. And he eventually took the unusual step of writing a letter to the District Attorney Harry Connick "voic[ing] concern over the increase in violations of [*Brady*] by 'some of your assistant district attorneys.'" *In re Jordan*, 913 So. 2d 775, 783 n.14 (La. 2005). According to Judge Johnson, "'[f]rom (District Attorney Connick's) perspective, bad guys are bad guys and whatever we need to do to put them away is OK[.] But the problem is, every now and then, it's not a bad guy. Every now and then, you've got the wrong guy.'" Armstrong & Possley, *The Verdict: Dishonor*.

A number of other local judges have voiced similar concerns. For example, after the prosecution withheld crucial exculpatory laboratory evidence in the John Thompson case, "Criminal District Judge Patrick Quinlan, seemingly miffed that the misdeeds unfolded in his courtroom[,] . . . called for two public hearings on the concealment of evidence." Bell, *Evidence Flap Has DA on Defensive; Connick Insists Case an Aberration*, New Orleans Times-Picayune, May 31, 1999, at A1.

Moreover, Orleans Parish prosecutors' failure to comply with *Brady* has persisted well after this Court's 1995 admonition that "the prosecution's

responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable." *Kyles*, 514 U.S. at 438. *Kyles* itself involved Orleans Parish prosecutors' "blatant and repeated violations of [that] well-settled constitutional obligation" in a capital case, and raised particular concern because it featured "so many instances of the state's failure to disclose exculpatory evidence." *Id.* at 455 (Stevens, J., concurring). After examining those instances in detail, this Court rebuked the Orleans Parish District Attorney's Office for "descend[ing] to a gladiatorial level unmitigated by any prosecutorial obligation for the sake of truth," underscoring that "a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence." *Id.* at 439. Additionally, the Court firmly rejected any suggestion that the District Attorney's Office should not be held accountable for evidence known only to police investigators and not to the prosecutor. *Id.* at 438.

Nonetheless, when questioned about the *Kyles* case years later, Connick indicated that he "saw no need, occasioned by *Kyles*, to make any changes" in his office's practices with respect to *Brady* compliance, *Connick v. Thompson*, 131 S. Ct. 1350, 1382 (2011) (Ginsburg, J., dissenting), because he was "satisfied with what [the] policy was," Trial Tr. 184-185, *Thompson v. Connick*, No. 03-cv-2045, Dkt. No. 178 (E.D. La. Feb. 6, 2007) (Connick testimony) (hereinafter "Connick Tr."). Indeed, Connick displayed a

seemingly willful ignorance of the lessons to be drawn from *Kyles*:

> Q. What is your recollection of what state versus Curtis Kyles involved?
>
> A. I think what sticks out in my mind most is it wasn't a *Brady* case.
>
> Q. That it was not a *Brady* case?
>
> A. That's my recollection of it. But – but I remember that his claim was denied by the United States Court of Appeals.
>
> . . .
>
> Q. Do you . . . recall that his claim was found to be valid by the United States Supreme Court?
>
> A. Not really.

Connick Tr. at 183; *see id.* at 176 ("I stopped reading law books . . . when I became the DA, and looking at opinions."). And at least some of Connick's assistants appeared to share his flagrant disregard for this Court's decision: During closing arguments in the *Kyles* retrial on remand, "prosecutor Glen Woods said the nation's highest court was wrong in the famous *Plessy v. Ferguson* case . . . and it was wrong on *Kyles*." Coyle, *Lawyers Claim DAs Withhold Evidence*.

Indeed, Orleans Parish prosecutors' record of compliance with *Brady* remained dismal even after *Kyles*, as evidenced by several *Brady* violations that

prosecutors committed in trials after April 1995 – including in two capital cases. *See, e.g.*, *State v. Bright*, 875 So. 2d 37, 42-44 (La. 2004) (capital case); *State v. Cousin*, 710 So. 2d 1065, 1066 n.2 (La. 1998) (capital case); *State v. Lee*, 778 So. 2d 656, 667 (La. Ct. App. 2001). Local defense attorneys have registered concern that "Orleans Parish prosecutors still routinely withh[e]ld evidence, especially in high-profile cases." *See* Coyle, *Lawyers Claim DAs Withhold Evidence* ("[I]f the *Kyles* case resonated nationally, the public scolding has had little practical effect closer to home, defense attorneys say."). According to one New Orleans defense attorney, "'[t]his is a pattern and practice, and if anything, it has gotten worse [since *Kyles*]. . . . It is worse than anywhere else in the state.'" *Id.*

More recently, an Orleans Parish Criminal District Court granted a new trial to Michael Anderson, the first defendant sentenced to death in Orleans Parish since 1997, after finding that the prosecution had suppressed a videotaped statement from the sole eyewitness contradicting her in-court testimony. *See* Gwen Filosa, *Death Row Inmate To Get New Trial*, New Orleans Times-Picayune, March 9, 2010. Additionally, six months after Mr. Anderson's conviction was overturned, the prosecutors again withheld a videotaped statement from an eyewitness in another murder case in Orleans Parish. Three days into a murder trial, prosecutors provided the defense with a video taped statement from an eyewitness who contradicted state theory of the murder. *See* Gwen

Filosa, *Judge Suspends Manslaughter Trial in Swimming Pool Horseplay When Prosecutors Fail to Turn Over Evidence,* New Orleans Times-Picayune, Oct. 14, 2010. Clearly, the Orleans Parish prosecutors continue to not heed the Court's directives from *Brady, Kyles* and their progeny.

II. The New Orleans Police Department Has a History of Engaging in Patterns of Misconduct Violating the Constitutional Rights of Individuals

The Department of Justice Civil Rights Division (DOJ) conducted a thorough, independent investigation of the New Orleans Police Department. It published its findings and recommendations in a detailed and comprehensive, 150-page report released on March 16, 2011. *See* CIVIL RIGHTS DIV., DEP'T OF JUSTICE, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 26 (2011), *available at* http://www.justice.gov/crt/about/spl/nopd_report.pdf

This report begins its findings by stating that "NOPD has long been a troubled agency." Its problems did not emerge overnight. For decades, a culture of deliberate indifference to the constitutional rights of the accused was fostered and accepted. The Justice Department explains that NOPD's "longstanding and entrenched practices" of unconstitutional and discriminatory conduct "created an environment that permits and promotes constitutional harm." *Id.* at xii. NOPD's "outdated, inconsistent, and at times, legally inaccurate" policies not only fail to provide sufficient

guidance; but its "general lack of adherence to policy, exacerbated by pervasive tolerance by NOPD supervisors and commanders for officers' routine failure to comply with policy," ensures and promotes continued patterns and practices of unconstitutional conduct. *Id.* at xiii.

The Justice Department's investigation uncovered that "deficiencies that lead to constitutional violations span the operation of the *entire Department*, from how officers are recruited, trained, supervised, and held accountable." *Id.* at v (emphasis added). Because NOPD leadership has turned a blind eye to the widespread systemic violations of civil rights for many years, officers have freely engaged in patterns of misconduct that have direct consequences in trials and trial results. Lapses in training and policy together with near complete lack of accountability "cultivated an atmosphere where officers cut corners and [made] too many errors that result in constitutional harm and compromise effective law enforcement." *Id.* at viii.

NOPD has long been aware of its manifold problems and deficiencies and yet it has failed to act meaningfully to address them. In fact, this is not the first time the Justice Department has conducted an investigation of NOPD. Ten years ago, a DOJ report noted that NOPD officers could not articulate proper legal standards for stops, searches and arrests. The DOJ recommended then that NOPD provide in-service training to officers on this critical topic. The current investigation and report notes that despite

this previous recommendation, NOPD has yet to provide meaningful in-service training to its officers. *Id.* at viii. Such utter failure to train officers and provide guidance, in direct contravention of the Justice Department's recommendations, not only directly contributes to the pattern of unconstitutional conduct on the part of the officers, but further demonstrates NOPD's deliberate indifference to protecting the rights of the accused under state and federal laws.

III. The Orleans Parish District Attorney's Office Has Had Notice of the New Orleans Police Department's Patterns of Misconduct and Yet Failed to Implement Procedures and Regulations to Ensure *Brady* Compliance

Given NOPD's systemic deficiencies in policies, protocols and trainings, and institutionalized indifference to the constitutional rights of the residents of New Orleans, it was critically incumbent upon the Orleans Parish District Attorney's Office to ensure that NOPD officers were providing to the prosecutors all information, materials and evidence from criminal investigations and arrests. After all, the burden of providing a fair trial to the accused rests with the state. Prosecutors are subject to constraints and responsibilities that do not apply to other lawyers. *See Berger v. United States*, 295 U.S. 78, 8 (1935). While lawyers representing private parties may – indeed must – do everything ethically permissible to

advance their clients' interests, lawyers representing the government in criminal cases serve truth and justice first. The prosecutor's job is not just to win but to win fairly, staying within the rules. *United States v. Kojayan*, 8 F.3d 1315, 1323 (9th Cir. 1993).[6]

The Orleans Parish District Attorney's Office has failed to establish procedures and regulations to carry out its legal responsibility to ferret out exculpatory information from police and other law enforcement

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[6] *ABA Standards for Criminal Justice: Prosecution Function and Defense Function* 4 (3d ed. 1993), Standard 3-1.2. The Function of the Prosecutor, states, "The duty of the prosecutor is to seek justice not merely to convict." The Comments to this standard states:

> The prosecutor plays a critical role in the criminal justice system. All serious criminal cases require the participation of three entities: a judge (and jury), counsel for the prosecution, and counsel for the accused. Absent any one of these entities (and barring a valid waiver of counsel), the court is incomplete. In short, a "court" must be viewed as a structure with three legs, requiring the support of all three.
>
> Although the prosecutor operates within the adversary system, it is fundamental that the prosecutor's obligation is to protect the innocent as well as to convict the guilty, to guard the rights of the accused as well as to enforce the rights of the public. Thus, the prosecutor has sometimes been described as a "minister of justice" or occupying a quasi-judicial position.
>
> The prosecutor may also be characterized as an administrator of justice, since the prosecutor acts as a decision maker on a broad policy level and presides over a wide range of cases as director of public prosecutions.

files. The responsibility for learning from law enforcement about exculpatory evidence falls on the individual prosecutor. *Kyles*, 514 U.S. at 437. The prosecutors have no one to blame but themselves when exculpatory evidence sits in a police file "undiscovered".

In June 22, 2007, a seasoned homicide detective testified at a motions hearing in New Orleans that it is her practice to destroy her notes – potential evidence under *Brady* and *Giglio v. United States*, 405 U.S. 150 (1972) – that she takes in the course of her investigation before the conclusion of a criminal case. Motions Hearing Transcript, *State v. Williams*, Orleans Crim. Dist. Ct., Case No. 469-278 (June 22, 2007).[7] A detective's notes, taken in the course of

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[7] While testifying in *State v. Williams*, Case No. 469-278, Homicide Detective Elizabeth Garcia had the following exchange with counsel for the defense and Judge Raymond Bigelow.

> Q. Did you write down the description of Mr. Williams that Mr. Morgain gave you?
>
> A. After interviewing him for the first time on the telephone, I may have. I may have taken notes, but I don't keep notes after a case is done.
>
> THE COURT:
>
> What's your definition of done?
>
> THE WITNESS:
>
> Once I closed out a case with an arrest or an arrest warrant.
>
> THE COURT:
>
> But the case isn't done. And I suggest you keep your notes.

(Continued on following page)

an investigation, can foreseeably, if not necessarily, be expected to contain vital, and possibly exculpatory, evidence. To the extent that notes may contain anything that contradicts the testimony of the officer or any other actor in the case, or that is in any other way favorable to the defense, they are plainly discoverable under *Brady*, *Giglio*, and their progeny. Despite learning of this practice, the District Attorney's Office did not react in any way to counteract the NOPD practice that may be destroying *Brady* evidence. No internal procedures or regulations were established to ensure that line prosecutor request early and often that investigating officers not destroy any notes, nor expectations or guidance relayed to NOPD to curb such practice.

In 2007, by blindly relying on an agency long troubled and known for violating rights and not abiding by procedures and protocol, if they exist, the District Attorney's Office acted with indifference to the constitutional rights of the accused to due process and a fair trial. In 1981, this is what happened in the Petitioner's case. The prosecutors did not ask, did not review, and did not demand production of complete law enforcement files to ensure that all evidence had been preserved and turned over to the prosecutors. This burden falls on the shoulders of

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THE WITNESS:
Yes, sir.

every prosecutor and every prosecuting office. Since the

> prosecutor has the means to discharge the government's *Brady* responsibility if he will, any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials.

Kyles, 514 U.S. at 438.

CONCLUSION

The Orleans Parish District Attorney's Office has a history of disregarding and flouting their disclosure duties under *Brady*. That, coupled with a police department known to systematically violate the civil rights of the city's citizens over a long period of time, undermines confidence in the fairness of Orleans Parish trials and their results. Because it is emblematic of a system-wide and decades-long disregard for the constitutional rights of criminal defendants in New Orleans, the Petitioner's case deserves close inspection from this Court. And upon conclusion of such careful inquiry, this Court should send a clear message about the expectations and obligations of the police and prosecutors in Orleans Parish, whose actions affect thousands and thousands of lives every

year and the judgment of the Orleans Parish Criminal District Court should be reversed.

Respectfully submitted,

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