

14-30 - Brady Issues and the Pitchess Process

Los Angeles County Sheriff's Department NEWSLETTER

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BRADY ISSUES AND THE PITCHESS PROCESS

Fifty-two years ago, the United States Supreme Court decided the case of *Brady v. Maryland* (1963) 373 U.S. 83, establishing the rule that a prosecutor has a "due process" affirmative duty to disclose to a charged criminal defendant all "material evidence" favorable to the defense whether or not the prosecutor is aware of the evidence. This means that, if a law enforcement officer who is part of the prosecution team is aware of impeaching or exonerating information, he or she has the obligation to turn over the information to the prosecutor under *Brady* even absent a request (*Kyles v. Whitely* (1995) 514 U.S. 419). Failing to comply with the rules under *Brady* results in what is commonly known as a "*Brady violation*." A "*Brady violation*" could lead to the reversal of a conviction on appeal and/or a new trial for the accused.

Prosecutors from the Los Angeles County District Attorney's Office are obligated to provide defense counsel, including pro per defendants, with the names of law enforcement officers who they believe have potential impeachment issues related to truthfulness or bias that would be beneficial to the defendant in a particular case. The District Attorney's Office keeps a list of such law enforcement officers, commonly referred to as the "*Brady List*." Inclusion on this current list is generally limited to cases wherein a sworn employee has been investigated or charged with a criminal offense which involves moral turpitude (e.g., obstructing an investigation, false information in a police report, sexual misconduct, domestic violence, or assaults under the color of authority).

Additionally, prosecutors may request that law enforcement agencies examine the personnel records of individual employees for potential *Brady* issues such as founded administrative investigations related to honesty, integrity, and bias (e.g., false information in records, false statements, immoral conduct, tampering with evidence, misappropriation of property, theft, bribes/rewards, domestic or family violence, unreasonable force, obstructing an investigation, or discrimination). If the examination reveals that a potential *Brady* issue exists or if the prosecutor is made aware of a potential *Brady* issue by a law enforcement officer who is part of the prosecution team, the District Attorney's Office will file a *Brady* motion to discover the relevant information or may decide not to call the witness because he or she is not material to their case. If a *Brady* motion is filed,

all founded administrative investigations, irrespective of age, will be evaluated by the court, and any information deemed relevant to a material witness's credibility will be provided to defense counsel as part of the discovery process.

In addition to *Brady*, there is a second avenue available to defense counsel to obtain potential impeachment material related to law enforcement officers. It is a judicial process known as a *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 CAL.3rd 531). California Penal Code section 832.7 protects the confidentiality of peace officers' personnel records. A *Pitchess* motion allows a judicial review of the records, most commonly related to administrative investigations and complaints within the past five years. The Los Angeles County Sheriff's Department maintains a team of attorneys who represent and protect the rights of Department employees at every *Pitchess* motion.

Over the last few years, there has been an increase in the number of *Pitchess* motions received by the Discovery Unit. In particular, there has been a dramatic increase in the number of motions filed by the District Attorney's Office as they do their due diligence to supply defense counsel with all discovery, including exculpatory information.

Personnel with impeachment issues can severely limit their ability to testify in a criminal matter, essentially making them ineffective as investigators or witnesses. The Department has an obligation to protect the integrity of each and every criminal investigation we conduct. To maintain the public trust and minimize adverse consequences in criminal and civil litigation, we must meet our Constitutional and statutory obligations by following Department policy and adhering to the Department's Core Values.

Individual deputies who have founded administrative investigations which may qualify for disclosure under *Brady* or *Pitchess* may also take steps to protect their reputation by audio or videotaping their interactions with the public and/or securing a written confirmation of a consent to search, statement made, or identification.

For questions or additional information regarding *Brady* issues or the *Pitchess* motion process, please contact the Discovery Unit at (310) 890-5000.

Information regarding the content of this newsletter may be directed to [Field Operations Support Services](#).

