Memorandum

Date: April 1, 2015
To: All Sworn Personnel
From: Undersheriff Bernard Melekian
Subject: Brady Disclosure Policy
Sheriff's Bulletin: 15-3

The purpose of this memo is to clarify the purposes and uses of the so-called Brady list by the District Attorney. There is some confusion as to what conduct results in an officer being placed on the Brady list. Brady material is information or evidence that: 1) impeaches a prosecution witness; or 2) tends to exonerate a defendant. Unsubstantiated allegations of misconduct do not qualify as Brady material.

The District Attorney is obligated to provide the defense in criminal cases with exculpatory evidence that is material to either guilt or punishment. (Brady v. Maryland (1963) 373 U.S. 83, 87.) "Exculpatory" means favorable to the accused. This obligation includes "substantial material evidence bearing on the credibility of a key prosecution witness." (People v. Ballard (1991) 1 Cal.App.4th 752, 758.) Such impeachment evidence must disclose more than "minor inaccuracies." (People v. Padilla (1995) 11 Cal.4th 891, 929, overruled on other grounds, People v. Hill (1998) 17 Cal.4th 800, 823, fn. 1.)

Examples of evidence that may constitute Brady material are as follows:

1. The character of the witness for honesty or veracity or their opposites. (Evidence Code § 780(e).)
2. A bias, interest, or other motive. (Evidence Code § 780(f).)
3. A statement by the witness that is inconsistent with the witness' testimony. (Evidence Code § 780(h).)
4. Felony convictions involving moral turpitude. (Evidence Code § 788.) Discovery of all felony convictions is required regarding any material witness whose credibility is likely to be critical to the outcome of the trial. (Penal Code § 1054.1(d.).)
5. Facts establishing criminal conduct involving moral turpitude, including misdemeanor convictions. (People v. Wheeler (1992) 4 Cal.4th 284, 295-297.)
6. False reports by a prosecution witness. (People v. Hayes (1992).)
7. Pending criminal charges against a prosecution witness. (People v. Coyer (1983) 142 Cal.App.3d 839, 842.)
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The type of Brady material that could be found in a deputy's personnel file is: evidence of conduct involving dishonesty, improper use of force, or tending to show bias; which occurs in the course of exercising peace officer powers and while interacting with the public, or when engaging in investigatory functions.

The decision as whether or not information in a deputy’s file qualifies as Brady material is determined at a hearing by the judge pursuant to a Pitchess motion.

BERNARD MELEKIAN
Undersheriff