

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) 4Cal.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.)

MEMORANDUM

TO: All Personnel

SUBJECT: *Brady* Disclosure Policy

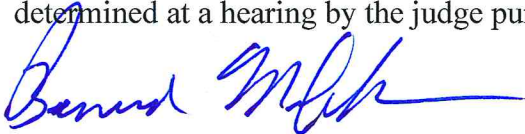
April 1, 2015

Page 2

8. Parole or probation status of a witness. (*Davis v. Alaska* (1974) 415 U.S. 308, 319; *People v. Price* (1991) 1 Cal.4th 324, 486.)
9. Evidence undermining an expert witness' expertise. (*People v. Garcia* (1993) 17 Cal.App.4th 1169.)

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