

SPECIAL DIRECTIVE 13-02

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JACKIE LACEY 
District Attorney

SUBJECT: IDENTIFYING AND ACCESSING POTENTIALLY EXCULPATORY
IMPEACHMENT INFORMATION KNOWN WITHIN THE OFFICE OF
THE DISTRICT ATTORNEY

DATE: JUNE 4, 2013

On September 20, 2010, this office issued Special Directive 10-06, which superseded Special Directive 02-08. This Special Directive supersedes Special Directive 10-06, and sets forth office policy for identifying and accessing potentially exculpatory impeachment information known within the Office of the District Attorney. Specifically, this Special Directive sets forth the office policy for maintaining and ensuring disclosure of evidence favorable to the defense that relates to the credibility of peace officers and governmentally-employed expert witnesses. This Special Directive was drafted to assist deputy district attorneys in fulfilling their constitutional and statutory discovery obligations, while simultaneously being sensitive to, and mindful of, the statutory protections and privacy rights of peace officers.

In order to ensure uniformity and consistency in meeting the required constitutional and statutory discovery obligations, the "Brady Compliance Unit" coordinates and makes available to deputy district attorneys certain potentially exculpatory impeachment information on peace officers and governmentally-employed expert witnesses who are part of the "prosecution team."¹ The Brady Compliance Unit is the central repository of certain potentially exculpatory information about such members of the prosecution team from 1997 to the present. In addition, the Unit is available to consult with deputy district attorneys in the discharge of their personal, individual disclosure responsibilities.

I. INDIVIDUAL RESPONSIBILITY

It is the responsibility of each individual deputy district attorney to comply with the mandates of the *Brady* case, its progeny, and Penal Code section 1054.1. The decision whether to use a witness whose name appears in the Brady Alert System will be left to the discretion of the individual trial deputy after consultation with his or her Head Deputy or Deputy-in-Charge and

¹ The policy regarding potentially exculpatory information in the possession of law enforcement is set forth in Special Directive 10-05.

the Brady Compliance Unit. Nothing in this Special Directive is intended or should be interpreted to alter the statutory and constitutional disclosure obligations of individual deputy district attorneys.

II. PROCEDURES FOR NOTIFYING THE BRADY COMPLIANCE UNIT OF POTENTIALLY EXCULPATORY IMPEACHMENT INFORMATION REGARDING MEMBERS OF THE PROSECUTION TEAM

If a deputy district attorney is aware or becomes aware of potentially exculpatory impeachment information regarding a peace officer or governmentally-employed expert witness, the deputy shall inform his or her Head Deputy or Deputy-in-Charge. The Head Deputy or Deputy-in-Charge should affirmatively state whether they concur with the deputy that the information constitutes potentially exculpatory impeachment information in a memorandum summarizing the information and setting forth why the supervisor and the deputy believe the information may or may not be subject to disclosure. The information shall be sent to the Brady Compliance Unit

If it is believed that the conduct under scrutiny amounts to a crime, the memorandum and copies of all supporting evidence and relevant documentation (such as transcripts, disposition reports, police reports or expert reports) shall be forwarded to the Justice System Integrity Division (JSID). (See Special Directive 01-10, "Referral of Allegations of Criminal Misconduct to the Justice System Integrity Division.") In addition, copies of the memorandum and supporting evidence and documentation shall also be sent to the Brady Compliance Unit. JSID will either conduct an independent investigation or refer the matter to the employee's agency for investigation. JSID shall be responsible for monitoring the status of such investigation and encouraging a timely response from the agency.

If it is believed that the conduct under scrutiny is other than a potential crime, the memorandum and copies of all supporting evidence and relevant documentation shall be forwarded to the Brady Compliance Unit. The Brady Compliance Unit will refer the matter to the employee's agency for investigation and encourage a timely response from the agency.

III. THE BRADY ALERT SYSTEM

The Brady Compliance Unit maintains the "Brady Alert System," a secure computerized database which includes certain potentially exculpatory impeachment information about peace officers and governmentally-employed expert witnesses from 1997 to the present. This system does not create secondary personnel files on police officers or governmentally-employed experts.

A. Access to the Brady Alert System

Every deputy district attorney can access the Brady Alert System to determine whether potentially exculpatory impeachment information on a particular peace officer or governmentally-employed expert witness exists. The system will confirm whether information regarding the witness has been added to the Brady Alert System, provide a brief summary of that information, and, if appropriate, alert the deputy to contact the Brady Compliance Unit for further details.

As part of every deputy district attorney's duty to investigate whether potentially exculpatory impeachment information exists that must be disclosed to a defendant in a particular prosecution, deputy district attorneys shall access the Brady Alert System at least 30 days before trial to determine whether information has been added to the Brady Alert System for any law enforcement or governmentally-employed expert witness. Any information learned from accessing the Brady Alert System shall be noted in the District Attorney file. The deputy district attorney appearing in court on a case shall have the responsibility of notifying the defense of any information learned from the Brady Alert System. A notation shall be made in the District Attorney file indicating the date, a description of the information disclosed, and the manner by which notification was made (i.e., in writing or on the record). Any information learned from the Brady Alert System shall be conveyed to the defense only on the particular case being litigated before the court. Misuse of the Brady Alert System will subject a District Attorney employee to disciplinary action up to, and including, discharge.

Because the Brady Alert System may not contain all potentially exculpatory impeachment information for a law enforcement or governmentally-employed expert witness, the deputy district attorney should not rely exclusively on the Brady Alert System to satisfy his or her disclosure obligations. The Brady Alert System is intended merely to assist the deputy district attorney in carrying out his or her broader disclosure obligations.

B. Security Log

A security log, which is maintained by the District Attorney's Systems Division and which tracks every Brady Alert System inquiry made by a deputy district attorney, has been built into the Brady Alert System.

IV. STANDARD OF REVIEW BY THE BRADY COMPLIANCE UNIT

The Brady Compliance Unit will decide whether to include information concerning a peace officer or governmentally-employed expert witness in the Brady Alert System. Such a decision will typically be made after an investigation of the allegations by the employee's agency, another law enforcement agency, or by JISD has been completed. However, in some cases, sufficient evidence may justify inclusion of information in the Brady Alert System while a matter is pending formal investigation.

The decision to include information in the Brady Alert System will be made using the standard of clear and convincing evidence; a degree of proof that is higher than preponderance of the evidence but lower than beyond a reasonable doubt. Without evidence that the potentially exculpatory impeachment information is reliable and credible, it will not be included in the Brady Alert System.

If the Brady Compliance Unit determines that there is clear and convincing evidence that potentially exculpatory impeachment information exists, it shall enter the employee's name and appropriate accompanying information into the Brady Alert System and inform Head Deputies and/or Deputies-in-Charge who supervise cases which are affected by the determination, of the manner in which the defense is to be notified. (Refer to Section VI, "Notification of Defense

Attorneys/Pro Per Defendants," below.) The Brady Compliance Unit shall also inform the head of the employee's agency in writing of the placement of the employee's name and accompanying information into the Brady Alert System and of the attendant discovery consequences.

If the Brady Compliance Unit, after inputting information into the Brady Alert System, subsequently determines that that information does not meet the standard for inclusion in the Brady Alert System, that information shall be removed. Only Brady Compliance Unit deputy district attorneys shall input or delete information into or from the Brady Alert System.

V. JSID AND OFFICEWIDE FILINGS AND DECLINATIONS

A. JSID and Officewide Filings

Whenever any criminal complaint is filed against a law enforcement officer or governmentally-employed expert witness, a copy of the charging document, along with all supporting documentation, shall be forwarded to the Brady Compliance Unit, which shall apply the above standard.

B. JSID and Officewide Declinations

A copy of every JISD declination involving a member of the prosecution team shall be sent to the Brady Compliance Unit. The latter will review the declination and make a preliminary determination if potentially exculpatory impeachment information exists. If there has not been an investigation concerning the potentially exculpatory impeachment information, or the investigation has not been completed, the Brady Compliance Unit shall follow the procedures set forth in Section IV, "Standard of Review by the Brady Compliance Unit," above.)

In all other instances, if a case is rejected, but a deputy district attorney believes that potentially exculpatory impeachment information concerning a peace officer or governmentally-employed expert witness is involved, it shall be brought to the attention of the Head Deputy or Deputy-in-Charge. The Head Deputy or Deputy-in-Charge shall affirmatively state whether or not they concur that potentially exculpatory impeachment information exists. The Head Deputy or Deputy-in-Charge shall send a copy of the charge evaluation worksheet, along with a cover memorandum summarizing and analyzing the information, to the Brady Compliance Unit, which shall follow the procedures set forth in Section IV, "Standard of Review by the Brady Compliance Unit," above.)

VI. NOTIFICATION OF DEFENSE ATTORNEYS/PRO PER DEFENDANTS

Because obligations under *Brady* continue even after a case has concluded (*People v. Gonzalez* (1990) 51 Ca1.3d 1179, 1260-1261), when the Brady Compliance Unit is notified that potentially exculpatory impeachment information exists for a particular law enforcement officer or governmentally-employed expert witness, it shall obtain a computer run of all cases in which that officer or expert is listed as a witness. Head Deputies and Deputies-in-Charge of the offices where open cases are being litigated, or where closed cases in which the witness testified at trial on or after the initial date of his or her alleged misconduct are located, will be notified to send

letters to affected defense attorneys of record or, if appropriate, to affected pro per defendants, alerting them to the existence of the potentially exculpatory impeachment information. Head Deputies and Deputies-in-Charge shall not send notification letters in closed cases where the defendant pled guilty or no contest. (*See U.S. v. Ruiz*, (2002) 536 U.S. 622.)

VII. PRIMARY RESPONSIBILITIES OF THE BRADY COMPLIANCE UNIT

1. Maintain the Brady Alert System;
2. Collect and maintain potentially exculpatory impeachment information;
3. Consult with deputy district attorneys to determine whether potentially exculpatory information exists in a particular case or against a particular witness;
4. Consult with deputy district attorneys to determine when it is appropriate to disclose potentially exculpatory impeachment information to the defense;
5. Consult with deputy district attorneys to determine when it is appropriate to seek *ex parte, in camera* review by the court of potentially exculpatory impeachment information, as well as to develop and maintain pleadings for this purpose; and
6. Advise deputy district attorneys on issues relating to the Brady Protocol and on relevant case law.

Compliance with this Special Directive will assist in fulfilling our primary mission of fairly prosecuting those who violate criminal laws in the County of Los Angeles.

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