

Law Enforcement Agencies Cannot Provide a Brady List to Prosecutors

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Law enforcement agencies are not permitted to disclose the names of officers who have sustained allegations of misconduct to prosecutors unless a motion showing good cause for release of otherwise confidential information from personnel files has been granted by a court.

In 1963, the United States Supreme Court held in *Brady v. Maryland* that the prosecution has a duty to disclose all evidence within its possession that is exculpatory to a criminal defendant. The Supreme Court held in later decisions that exculpatory evidence includes impeachment evidence and that law enforcement is included in the prosecution team.

To comply with its disclosure requirement, the Los Angeles Sheriff's Department created a so-called "Brady list" of deputies whose personnel files contained sustained allegations of misconduct involving moral turpitude or other bad acts relevant to impeachment. The Department intended to provide the list to prosecutors, however, the superior court issued an injunction that prohibited general disclosure of the Brady list to prosecutors.

In *Association for Los Angeles Deputy Sheriffs v. Superior Court*, the California Court of Appeal considered whether the lower court's injunction went far enough because the injunction allowed the Sheriff's Department to disclose to prosecutors the name of any deputy on the Brady list who is a potential witness in a pending criminal prosecution.

The Court of Appeal found that providing the names of deputies on the Brady list absent a properly granted motion showing good cause for release of otherwise confidential information from personnel files (commonly known as a Pitchess Motion) violates 40 years of well-established state law, even if the deputy is a potential witness in a pending criminal prosecution. Furthermore, requiring full compliance with Pitchess Motion requirements does not violate Brady or constitutional due process. Accordingly, law enforcement agencies may not disclose the names of peace officers who have sustained allegations of misconduct without full compliance with the Pitchess process.

For further information about this decision, please contact **Jennifer Petrusis**.