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Case No.: S243855

**In the Supreme Court
of the State of California**

Deputy

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES,

Respondent.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, *et al.*,

Real Parties in Interest

*On Review from the Court of Appeal for the Second Appellate District,
Division 8*

Civil No.: B280676

*After a Writ Proceeding from the Superior Court of Los Angeles County
Judge James C. Chalfant
Case Number BS166063*

**REAL PARTIES IN INTEREST'S
REPLY BRIEF ON THE MERITS**

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I. INTRODUCTION

In its Answer Brief on the Merits (“Answer Brief”), Petitioner Association for Los Angeles Deputy Sheriffs (“ALADS”) asserts a number of arguments in support of the Court of Appeal’s holding that “*Brady* alerts” are now illegal.¹ (See, *Association for Los Angeles Deputy Sheriffs v. Superior Court* (2017) 13 Cal.App.5th 413, 423, review granted Oct. 11, 2017, S243855.) The Court of Appeal’s decision was, simply put, wrongly decided, and this Court must overturn it to preserve important constitutional due process rights.

Contrary to ALADS’ assertions, law enforcement agencies like Real Party in Interest Los Angeles County Sheriff’s Department (“LASD” or “Department”) have their own *Brady* disclosure obligations under applicable law. Given this, and given the importance of *Brady* disclosures to a criminal defendant’s due process right to a fair trial, law enforcement agencies must be permitted to share the names and employees numbers (only) of employees who may be material witnesses in a criminal prosecution with the other half of the “prosecution team,” i.e., a prosecutor’s office, so the prosecutor can fulfill its obligations under *Brady*

¹ The term “*Brady*” as used throughout this brief refers to the disclosure obligations discussed in the United States Supreme Court’s seminal decision in *Brady v. Maryland* (1963) 373 U.S. 83, 83 S.Ct. 1194, and subsequent decision in *Giglio v. United States* (1972) 405 U.S. 150, 92 S.Ct. 763. As used throughout this brief, the “*Brady* alert” refers to the practice of a law enforcement agency advising a prosecutor (either on its own or upon request) that an employee who is a material witness in the prosecutor’s case may have exculpatory or impeachment information in his or her background. (See, e.g., *People v. Superior Court* (2015) 61 Cal.4th 696 (“*Johnson*”); see also, *Serrano v. Superior Court* (2017) 16 Cal.App.5th 759.)

and its progeny. To interpret the *Pitchess* statutes² as absolutely prohibiting even a limited disclosure like this, as the Court of Appeal did, is inconsistent with *Brady* and creates a serious risk that the whole *Pitchess* statutory scheme will be deemed unconstitutional.

ALADS tries a number of creative arguments in its Answer Brief to justify the Court of Appeal's decision, but none of them have any merit. For example, ALADS argues that because information in a peace officer's personnel file is "not information gathered in the government's investigation of a criminal case, but rather created by the Department as an administrator," the prosecution is under no obligation to disclose that information – even if it constitutes impeachment evidence. (Answer Brief, p. 32.) The cases that ALADS cites in support of this argument are readily distinguishable, however, and the argument itself is contrary to decades of applicable law.

Similarly, ALADS argues that Government Code section 3305.5, a provision of the Public Safety Officers Procedural Bill of Rights Act ("POBRA"), somehow prohibits a law enforcement agency from maintaining a *Brady* list because the recently enacted statute refers to *Brady* lists that are maintained by prosecutors. Simply put, ALADS incorrectly assumes that there can be only one kind of "*Brady* list," and its erroneous assumption is contradicted by both judicially noticeable facts and the law.

ALADS' argument that the Court of Appeal's holding will result in fewer *Pitchess* motions rather than more likewise lacks merit. ALADS'

² The *Pitchess* statutes, as referred to herein, refer to California Penal Code sections 832.5, 832.7 and Evidence Code sections 1043, *et seq.*

argument defies common sense, and more importantly it ignores the impediment to a fair trial that the Court of Appeal's holding invites. Prohibiting one member of the "prosecution team" from disclosing to the other that a particular employee of the law enforcement agency who is or will be a material witness for the prosecution may have "*Brady* material" in his or her background unduly restricts a criminal defendant's and/or a prosecutor's ability to *prevail* (i.e., to simply have the trial court review the employee's personnel records *in camera*) on a *Pitchess* motion. Without a *Brady* alert, there is a serious risk that neither the prosecutor nor the defense attorney will be able to put together sufficient facts to have a *Pitchess* motion granted. This is particularly true in situations where only the law enforcement agency is privy to a particular employee witness's misconduct due to the confidential nature of internal administrative investigations. The risk of having a *Pitchess* motion denied when a law enforcement agency knows one of its employees, for instance, was discharged for submitting a false police report or planting evidence, but the Civil Service Commission deemed the punishment too severe, is too great for this Court to sanction, particularly given the fact that a *Brady* alert implicates minimal privacy rights, if any at all.

For all of these reasons, and for the reasons set forth in Real Parties in Interests' Opening Brief on the Merits, Real Parties respectfully request that the Court overturn the Court of Appeal and hold that a *Brady* alert practice wherein prosecutors are provided the names and employee numbers of individuals who have founded investigations for policy violations involving moral turpitude is permissible under the *Pitchess* statutes and/or because constitutional due process considerations warrant an extremely narrow exception to the *Pitchess* motion process.

II. THE LAW IS WELL-SETTLED THAT INVESTIGATIVE AGENCIES, NOT JUST PROSECUTORS, HAVE A DUTY TO DISCLOSE UNDER *BRADY*

In its Answer Brief, ALADS acknowledges case law that holds law enforcement agencies are part of the “prosecution team.” (Answer Brief, pp. 27-29.) Nevertheless, ALADS argues the Department has no independent obligation to disclose exculpatory or impeachment evidence under *Brady, supra*, 373 U.S. 83. In order to make this argument, however, ALADS completely ignores the numerous published decisions which hold both prosecutors *and* investigating agencies have a constitutional obligation to disclose exculpatory and impeachment evidence. (See, e.g., *Tennison v. City and County of San Francisco* (9th Cir. 2009) 570 F.3d 1078, 1087, quoting *United States v. Blanco* (9th Cir. 2004) 392 F.3d 382; *Carrillo v. County of Los Angeles* (9th Cir. 2015) 798 F.3d 1210.)

In *Tennison*, former prisoners brought a civil rights action under 42 U.S.C. section 1983 against the City and County of San Francisco and homicide inspectors, alleging that the inspectors had withheld exculpatory evidence. There, the Ninth Circuit Court of Appeals plainly held that both prosecutors and police officers owed a duty under *Brady* to disclose exculpatory evidence:

The Inspectors argue, first, that Brady imposes a duty on prosecutors, but not on police officers, to disclose exculpatory evidence. We reject the Inspectors' argument. We have held that exculpatory evidence cannot be kept out of the hands of the defense just because the prosecutor does not have it, where an investigating agency does. That would undermine *Brady* by allowing the investigating agency to prevent production by keeping a report out of the prosecutor's hands until the agency decided the prosecutor ought to have it, and by allowing the prosecutor to tell the

investigators not to give him certain materials unless he asked for them.

United States v. Blanco, 392 F.3d 382, 388 (9th Cir.2004).

The Inspectors' position also is untenable in light of the Supreme Court's admonition that "Brady suppression occurs when the government fails to turn over even evidence that is 'known only to police investigators and not to the prosecutor.'" *Youngblood v. West Virginia*, 547 U.S. 867, 869-70, 126 S.Ct. 2188, 165 L.Ed.2d 269 (2006) (per curiam) (quoting *Kyles v. Whitley*, 514 U.S. 419, 438, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)); *see also, e.g., Newsome v. McCabe*, 256 F.3d 747, 752-53 (7th Cir.2001) (stating that it was clearly established in 1979 and 1980 that police could not withhold exculpatory information about fingerprints and the conduct of a lineup from prosecutors). ***We accordingly reject this argument.***

(*Tennison, supra*, 570 F.3d at p. 1087 [Emphasis added].)

More recently, in *Carrillo v. County of Los Angeles*, the Ninth Circuit Court of Appeals reaffirmed the decades-old proposition that investigating agencies, and not just prosecutors, owe a duty of disclosure under *Brady*. Relying upon a number of cases, including a Fourth Circuit Court of Appeals case decided only one year after *Brady*, the court held as follows:

Requiring police officers as well as prosecutors to disclose material and exculpatory evidence follows logically from *Brady's* rationale. "As far as the Constitution is concerned, a criminal defendant is equally deprived of his or her due process rights when the police rather than the prosecutor suppresses exculpatory evidence because, in either case, the impact on the fundamental fairness of the defendant's trial is the same." *Moldowan v. City of Warren*, 578 F.3d 351, 379 (6th Cir.2009). ***Because police officers play an essential role in forming the prosecution's case, limiting disclosure obligations to the prosecutor would "undermine Brady by allowing the***

investigating agency to prevent production by keeping a report out of the prosecutor's hands. *United States v. Blanco*, 392 F.3d 382, 388 (9th Cir.2004) (quoting *United States v. Zuno-Arce*, 44 F.3d 1420, 1427 (9th Cir.1995)).

(*Carrillo*, *supra*, 798 F.3d at pp. 1219-1220 [Emphasis added]; see also *United States v. Zuno-Arce* (9th Cir. 1995) 44 F.3d 1420, 1427 [“It is the **government’s**, not just the prosecutor’s, conduct which may give rise to a *Brady* violation.” [Emphasis added].)

As the *Carrillo* court went on to explain, under Ninth Circuit authority, it is “unmistakably clear that police officers and prosecutors alike share an obligation to disclose ‘pertinent material evidence favorable to the defense.’” (*Carrillo*, *supra*, 798 F.3d at p. 1220, quoting *United States v. Butler*, 567 F.2d 885, 888 (9th Cir.1978).)

While ALADS cites to *In re Brown* (1998) 17 Cal.4th 873, in which this Court observed that “the Supreme Court has unambiguously assigned the duty to disclose solely and exclusively to the prosecution; those assisting the government's case are no more than its agents,” the case does not stand for the proposition that other members of the prosecution team owe no duty of disclosure whatsoever, as ALADS suggests. Rather, *In re Brown* merely holds that the prosecution will ultimately be held responsible for any failure to make a required disclosure to the defense, even where a member of the prosecution team, such as the investigating agency, fails to make a disclosure to the prosecutor, because the primary concern is for the fairness of trials and not prosecutorial misconduct:

Despite any seeming unfairness to the prosecution, no other result would satisfy due process in this context. “The principle ... is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused.”

(*Id.* at 881-882, quoting *Brady, supra*, 373 U.S. at p. 87; citing *Kyles, supra*, 514 U.S. at pp. 437-438 [115 S.Ct. at pp. 1567-1568], *Smith v. Phillips* (1982) 455 U.S. 209, 219, 102 S.Ct. 940, 947.)

Thus, contrary to ALADS' assertion, it is well settled that law enforcement agencies have their own disclosure obligations under *Brady*. An investigating agency's required disclosures may need to be made to the prosecutor, rather than to the defense, but they are disclosure obligations nonetheless. ALADS' arguments are built upon this weak and unsupported foundation, and for this reason, and the reasons set forth below, ALADS arguments must be rejected.

III. THE DUTY OF DISCLOSURE UNDER *BRADY* INCLUDES IMPEACHMENT INFORMATION CONTAINED IN PEACE OFFICERS' PERSONNEL FILES

In addition to refusing to recognize a law enforcement agency's well-established disclosure obligations under *Brady*, ALADS also takes too narrow a view of what constitutes *Brady* material that must be disclosed to the defense in a criminal case. Specifically, ALADS suggests that because information in a peace officer's personnel file is "not information gathered in the government's investigation of a criminal case, but rather created by the Department as an administrator," the prosecution is under no obligation to disclose that information – even if it constitutes impeachment evidence. (Answer Brief, p. 32) ALADS' position is simply wrong and, again, contrary to *decades* of United States Supreme Court and Ninth Circuit Court of Appeals precedent. As the Ninth Circuit recently explained in *Carrillo v. County of Los Angeles*:

For decades prior, the Supreme Court had explained the presentation of false testimony violated due process. In its 1972 opinion in

Giglio, the Court reasoned ***Brady encompassed evidence implicating the credibility of a government witness:***

As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112 [55 S.Ct. 340, 79 L.Ed. 791] (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with “rudimentary demands of justice.”.... In *Napue v. Illinois*, 360 U.S. 264 [79 S.Ct. 1173, 3 L.Ed.2d 1217] (1959), we said, “[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Id.*, at 269 [79 S.Ct. 1173]. Thereafter *Brady v. Maryland*, 373 U.S. at 87 [83 S.Ct. 1194], held that suppression of material evidence justifies a new trial “irrespective of the good faith or bad faith of the prosecution.” *When the “reliability of a given witness may well be determinative of guilt or innocence,” nondisclosure of evidence affecting credibility falls within this general rule.*

405 U.S. at 153-54, 92 S.Ct. 763 (emphasis added) (some citations omitted). In *United States v. Bagley*, 473 U.S. 667, 676-77, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), the Court reaffirmed this principle, citing *Giglio* for the proposition that “[i]mpeachment evidence ... as well as exculpatory evidence, falls within the *Brady* rule.” *Id.* at 676, 105 S.Ct. 3375.

(*Carrillo, supra*, 798 F.3d at p. 1225-26.)

In addition, the *Pitchess* procedures themselves, i.e., Penal Code sections 832.5, 832.7 and Evidence Code sections 1043, *et seq.*, specifically allow a criminal defendant to compel the discovery of evidence in a law enforcement officer’s personnel file, such as information about past complaints by third parties of excessive force, violence, dishonesty or the filing of false police reports. The *Pitchess* procedures “are based on the premise that evidence contained in a law enforcement officer’s personnel file may be relevant to an accused’s criminal defense and that to withhold such relevant evidence from the defendant would violate the accused’s due

process right to a fair trial.” (*Johnson, supra*, 61 Cal.4th 696, quoting *People v. Mooc* (2001) 26 Cal.4th 1216, 1219-1220, 1227 and *Rezek v. Superior Court* (2012) 206 Cal.App.4th 633, 640.)

Contrary to ALADS’ assertion, it is irrelevant that the information contained in a peace officer’s personnel records is “maintained by agencies in their administrative, as opposed to investigative, capacities.” (Answer Brief, p. 32.) The case that ALADS relies upon for their erroneous assertion, *People v. Superior Court (“Barrett”)* (2000) 80 Cal.App.4th 1305, did *not* involve impeachment information contained in the personnel files of peace officers who would be testifying as material witnesses at a criminal trial. Rather, the information sought by the criminal defendant, who stood accused of murdering his cellmate, consisted of 17 categories of records maintained by the Department of Corrections, including statistical information, policy manuals, incident logs and the like. (*Id.* at 1309-1310.)

The *Barrett* court ultimately held that the defendant was entitled to discovery under Penal Code section 1054.5 of the department’s records relating to its murder investigation, but that a subpoena duces tecum was required in order to compel production of other records the department maintained in its capacity as administrator of the state prison system. (*Id.* at 1318.) Thus, the *Barrett* court’s distinction between the department’s administrative and investigative functions, vis-à-vis the right to discovery under Penal Code section 1054.5, is inapplicable here.

Moreover, in discussing the *Brady* obligations of members of the prosecution team, the *Barrett* court itself noted that “information possessed by an agency that has no connection to the investigation or prosecution of the criminal charge against the defendant is not possessed by the prosecution team.” (*Id.* at 1315.) Unlike the Department of Corrections’

statistical information, manuals, etc., sought in *Barrett*, impeachment evidence regarding a peace officer witness who will be testifying at trial is *directly connected* with the “prosecution of the criminal charge against the defendant.” Most importantly, law enforcement agencies do not merely keep personnel files and records of internal investigations for “administrative” purposes. Rather, they also keep personnel files because they are legally mandated to do so under Evidence Code section 1043 and Penal Code section 832.5.

Accordingly, where a peace officer’s personnel file contains impeachment information, the prosecution is constitutionally obligated to disclose that information to the defense. Moreover, a *Brady* violation occurs even when the government fails to turn over evidence that is known only to police investigators and not the prosecutors. (*Tennison, supra*, citing *Youngblood v. West Virginia* (2006) 547 U.S. 867, 869-70, 126 S.Ct. 2188, and *Kyles v. Whitley* (1995) 514 U.S. 419, 438, 115 S.Ct. 1555). Hence, when an investigating agency is aware of potential impeachment evidence contained in an officer’s personnel records, the agency is obligated to disclose it, or when the impeaching information is part of a confidential personnel record, facilitate such disclosure.

IV. PERMITTING BRADY ALERTS DOES NOT VIOLATE THE PITCHESS STATUTES, BUT EVEN IF THIS COURT CONCLUDES THAT IT DOES, THE CONSTITUTION NEVERTHELESS REQUIRES DISCLOSURE

Brady alerts do not violate the *Pitchess* statutes because the disclosure of an officer’s name to a prosecutor does *not* necessarily mean that the officer is on his/her department’s *Brady* list because of information contained in his/her personnel records. Officer names can be added to an

agency's *Brady* list from sources independent from an officer's personnel records, e.g., officer names can be added to a law enforcement agency's internal *Brady* list because of felony charges and/or convictions involving moral turpitude (Evid. Code § 788; Penal Code § 1054.1 (d); *People v. Santos* (1994) 30 Cal.App.4th 169, 177) or because of facts showing criminal conduct involving moral turpitude, whether or not the conduct resulted in the filing of criminal charges or a conviction. (*People v. Wheeler* (1992) 4 Cal.4th 284, 295-297). As such, ALADS reliance on *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272 ("*Copley Press*") and *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 298 ("*Commission*") is misplaced.

ALADS reliance on *Copley Press* and *Commission* is also misguided because those cases are readily distinguishable. The *Copley Press* line of cases dealt with disclosures pursuant to the California Public Records Act, where information was sought by the press precisely so that it may be disseminated to the public. In that scenario, where the balancing of interests does not involve a criminal defendant's fundamental right to a fair trial, it makes sense that the Court would conclude a peace officer's statutorily created privacy interests in his or her employment records outweigh the public's need to know. But in a criminal case, where the contemplated disclosure is from one member of the prosecution team to another and a defendant's liberty (and in death penalty cases the

defendant's life) is at stake, the balance must tip in favor of disclosure.³

Nevertheless, ALADS argues in hyperbolic fashion that permitting *Brady* alerts between two members of the prosecution team would “render the *Pitchess* statutes, in existence for nearly 40 years, unconstitutional.” (Answer Brief, p. 49.) Such a drastic outcome is completely unwarranted. Even if this Court were to conclude that a *Brady* alert from one member of the prosecution team to another would technically violate the *Pitchess* statutes, there is no need to throw out the *Pitchess* statutes and decades of jurisprudence with them. Rather, the Court can (and should) simply hold that while the *Pitchess* statutes generally remain constitutional, they must yield in this narrow circumstance to allow for *Brady* alerts between one member of the prosecution team to another. Such an outcome would be no different than the way this Court previously held that the five year statutory limitation on *Pitchess* discovery under Evidence Code section 1045, subdivision (b)(1), cannot be used to prevent disclosure of information concerning conduct more than five years old when the information is deemed material under *Brady*. (See *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1.) Such a holding would also be consistent with this Court's prior pronouncement that “no statutory discovery scheme can limit

³ *Copley Press, Commission* and similar cases cited by ALADS were decided prior to several relatively recent changes in the law and rules of professional conduct which authorized significant professional and criminal penalties against prosecutors who intentionally and in bad faith withhold exculpatory evidence. (See, e.g., Penal Code § 141, enacted by Stats. 2016, c. 879 (Assem. Bill No. 1909), Penal Code § 1424.5 and Bus. & Prof. Code § 6086.7, subd. (a)(5), enacted by Stats. 2015, c. 467 (Assem. Bill No. 1328), amended by Stats. 2016, c. 59 (Sen. Bill No. 1474), and Rule of Professional Conduct 5-110, effective November 2, 2017.) Clearly, there is a recognition that preserving a criminal defendant's due process right to a fair trial is of paramount importance.

a defendant's due process right of discovery; such rights operate outside of any statutory scheme.” (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 378.)

Allowing *Brady* alerts properly balances a criminal defendant’s constitutional due process rights to a fair trial with the state-created privacy interests a peace officer has in his or her personnel records. Given that a criminal defendant’s freedom/personal liberty is at stake, the potential risk of harm due to non-disclosure of names of officers with potential *Brady* material in their personnel files far outweighs any theoretical “harm”⁴ that results to a peace officer from the disclosure of his or her name and employee number *to a prosecuting agency*. This is particularly true since, contrary to ALADS’ assertion, nothing about the *Brady* alert practice usurps the trial court’s function as the gatekeeper. (See, Answer Brief, p. 66.) In making their argument, ALADS misconstrues what a *Brady* alert entails. With a *Brady* alert the only “information” disclosed to the prosecution is a name and employee identification number. Personnel records themselves are not disclosed to the prosecution. At most, a *Brady* alert may prompt the filing of a *Pitchess* motion in a criminal case if the prosecutor determines the employee is a material witness. But the judge hearing such a motion remains the gatekeeper under the statutorily

⁴ An October 2015 study/survey conducted by New York Public Radio found that police officer disciplinary records are confidential in 23 states, including California. In 15 states, police officer disciplinary records are available to the public in some situations. Finally, in 12 states, police officer disciplinary records are generally available to the public. (See <https://www.wnyc.org/story/police-misconduct-records>.) Real Parties are unaware of any evidence or studies indicating officers have suffered any harm in the 12 states that make police officer disciplinary records publicly available.

prescribed *Pitchess* process. The judge, upon granting a *Pitchess* motion, is responsible for performing the *in camera* review of the actual personnel files. This procedure minimizes the potential for abuse or “harm” to a peace officer that could result from a *Brady* alert.

For all these reasons, the Court must hold that either the *Pitchess* statutes are not violated in the context of a *Brady* alert and/or that *Brady* and its progeny trump the *Pitchess* statutes in this very narrow situation. To hold that statutory privacy rights for peace officers are more important than a criminal defendant’s right to a fair trial, particularly when the disclosure is limited to the providing of names and employee numbers from one member of the “prosecution team” to another, would be a miscarriage of justice.

V. **BRADY ALERTS AND BRADY LISTS ARE USED BY BOTH PROSECUTORS AND LAW ENFORCEMENT AGENCIES ALIKE**

ALADS asserts that *Brady* lists are “contemplated by POBRA as a tool for prosecutorial agencies, not law enforcement.” (Answer Brief, p. 41.) While the Department does not dispute that *Brady* lists, as specifically discussed in Government Code section 3305.5, refers to lists maintained by prosecutorial agencies, there is not one single definition for a “*Brady* list.” Like many terms, however, the term “*Brady* list” varies depending on context.

ALADS cannot dispute that numerous law enforcement agencies throughout the state maintain their own *Brady* lists and proactively provide *Brady* alerts to the prosecution in order to fulfill their *Brady* obligations. This is not a new phenomenon. *Brady* lists have existed independently of POBRA for years. Indeed, Government Code section 3305.5 was only first

enacted in 2013, with an effective date of January 1, 2014, whereas *Brady* lists can pinpoint their genesis to the 1963 *Brady* and 1972 *Giglio* cases. Furthermore, *Brady* alerts by law enforcement agencies have also co-existed with *Pitchess* for many years,⁵ and such alerts have never been seen as a problem before, as evident from the lack of published case law.

ALADS cites to a single (and now-superseded) policy of the Los Angeles District Attorney's office ("LADA") regarding the handling and maintenance of impeachment information on police officers in an effort to show that the LADA previously did not utilize information from police personnel files in preparing its *Brady* list (known as the Officer and Recurrent Witness Information Tracking System ("ORWITS")), and because of this a prohibition on *Brady* alerts will not result in a "sea change" in the law. (Answer Brief, p. 44.) First, the LADA is but one prosecutorial agency within the County of Los Angeles and state, whereas other prosecutorial agencies regularly receive *Brady* alerts from the law enforcement agencies with whom those agencies work. Second, the policy to which ALADS refers has since been superseded.⁶ The current policy, which was updated on January 19, 2018, clearly reflects the District Attorney's recognition that it will receive *Brady* alerts from law enforcement agencies.

⁵ For example, in *Johnson*, 61 Cal.4th at p. 696, this Court decided a case involving *Brady* alert procedures that the San Francisco Police Department "laudably established" to streamline the *Pitchess/Brady* process were enacted in 2010. (*Johnson*, 61 Cal.4th at p. 723.) Other departments relied on an Attorney General's opinion in developing similar *Brady* alert policies as well. (See, e.g., 98 Ops.Cal.Atty.Gen. 54, at *7.)

⁶ Regardless of what the policy says, it is clear that *Brady* alerts have been provided to the LADA for some time now. (See, *Serrano, supra*, 16 Cal.App.5th at p. 774.)

For example, the policy expressly recognizes “[a] finding of misconduct by a Board of Rights or Civil Service Commission that reflects on a prosecution witness’s truthfulness, bias or moral turpitude” as a type of impeachment evidence that generally must be disclosed to the defense. (See LADA Legal Policy Manual, Chapter 14, attached as Exhibit “A” to Real Parties’ Request for Judicial Notice (“RJN”), p. 264.) Such evidence is information that would generally be contained in a personnel file.

With respect to criminal conviction information on witnesses, the current policy further provides that, “[t]o ensure compliance with the *Brady* rule and Penal Code section 1054.1(d) and to avoid the respective burdens placed on the law enforcement agencies’ custodians of records, the courts, and the LADA by repetitive *Pitchess* motions,” all law enforcement agencies in Los Angeles County have agreed to provide certain information to the LADA’s office whenever a police officer, who has testified for the prosecution in the past or is reasonably believed will testify in the future, is arrested or convicted. The information that is to be provided to the LADA’s office from law enforcement agencies includes the employee name, employee number, arrest date, arresting agency, charges, etc. (See RJN Exhibit “A,” p. 264.)

The policy also specifically discusses the procedure to be followed when LADA receives a *Brady* alert from a law enforcement agency:

DDAs are occasionally put on notice that a peace officer witness’s personnel file may contain potential impeachment information when, for example, they learn that the peace officer has been placed on leave pending an administrative investigation, or, pursuant to a legally valid written policy, a law enforcement agency notifies the LADA that a peace officer employee’s personnel file contains potential impeachment information. [footnote citing to the October 13, 2015, Attorney General