



OFFICE OF THE
DISTRICT ATTORNEY
EL DORADO COUNTY, CALIFORNIA

VERN PIERSON, DISTRICT ATTORNEY

June 3, 2022

Ellen Leonida
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

RE: ACLU PRA Request dated July 23, 2021

Dear Ms. Leonida,

We are writing to you as a follow up to your Public Records Act request dated July 23, 2021.

ACLU July 23, 2021 PRA Request (Attachment A)

In your July 23, 2021 letter you requested information from 2015 to the present relating to four separate categories of records:

1. Any and all written policies, memoranda, or guidance documents regarding a variety of topics including: (a) diversion eligibility/programing; (b) custody/bail recommendations; (c) charging recommendations/decision including enhancements, special circumstances and wobblers; (d) *Brady v. Maryland* compliance; (e) jury selection; (f) sentencing recommendations; (g) prosecuting minors; (h) parole recommendations; (i) pardons/commutation recommendation; (j) reports to state bar relating to discipline/misconduct; (k) data collection (including demographics of defendant/victim); and (l) referral of cases for federal prosecution.
2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials: (a) which are mandatory; (b) which are optional; (c) which relate to jury selection; (d) which relate to bias, or implicit/unconscious bias, and or racism; (e) which relate to social media evidence presentation and use.

3. Records concerning the Racial Justice Act, including: Implementation of and compliance with the RJA; Communications concerning the RJA; or Trainings related to the RJA.

4. All investigations into Batson-Wheeler motions, including, but not limited to: Motions filed; Motions granted; internal training and/or discipline; or Reports to the State Bar relating to any Batson-Wheeler motions made and granted.

EDCDA September 27, 2021 Responses to PRA Request (Attachment B)

On September 27, 2021 we provided you a response to your PRA requests citing a variety of objections to category 1 (generally seeking policy/guidance records) and category 2 (generally seeking training materials), and stated that we had no responsive records for both categories 3 (seeking Racial Justice Act Records) and 4 (seeking Investigations into Batson-Wheeler Motions).

ACLU January 18, 2022 Reply to EDCDA (Attachment C)

On January 18, 2022 you responded, requesting that we cite to specific objections for records which we are refusing to turn over. Those citations were appropriately made in our September 27, 2021 responses concerning categories 1 and 2 which concerned excluded records, where we claimed and cited to a variety of objections including attorney work product, deliberative process, protected by copywrite and overly burdensome.

ACLU February 10, 2022 letter to EDCDA (Attachment D)

On February 10, 2022 you sent a follow up letter to your July 23, 2021 letter referencing that you were still seeking Racial Justice Act records, and then you also sought NEW 15 categories of records. We interpreted this February 10, 2022 letter in two ways: first as clarification and follow up to the July 23, 2021 PRA, as well as a brand new PRA for case data.¹

EDCDA February 28, 2022 letter to ALCU (Attachment E)

On February 28, 2022 we sent a follow up letter to your February 10, 2022 letter stating that we do not have any Racial Justice Act records (Which we told you already in our September 27, 2021 response).²

ACLU March 25, 2022 letter to EDCDA (Attachment F)

On March 25, 2022 you sent another letter concerning the July 23, 2021 PRA, referencing ONLY category 3 and category 4 information stating that your “request sought policy documents, training materials, records relating to the Racial Justice Act, and records regarding Batson/Wheeler investigations.”

¹ We are still working on your new February 10, 2022 PRA concerning case data and trying to see what records we have and how we can pull it from our case management system and will be addressed in separate correspondence.

² Our February 28, 2022 response to your new PRA also contained an initial response to the new PRA that we are looking for records, but that will be addressed in separate correspondence.

In your letter, you threatened litigation and still seem to be seeking July 23, 2021 PRA category 3 and 4 records which we had already told you we do not have.

EDCDA April 8, 2022 letter to ACLU (Attachment G)

On April 8, 2022, we sent you a letter responding to your March 25, 2022 letter and once again clarified that in our September 27, 2021 response, we stated we have no category 3 (Racial Justice Act) or category 4 (Investigations of Batson/Wheeler) records.

ACLU April 12, 2022 email to EDCDA (Attachment H)

On April 12, 2022, you sent us an email, which appeared to disregard our prior 5 letters sent back and forth (Attachments C, D, E, F and G) discussing Category 3 and 4 records, and referred once again to our response from September 27, 2021 regarding category 1 (Policy Records) and category 2 (Training Documents) of your July 23, 2021 PRA stating “Please inform us if any documents responsive to those sections of our request are in fact being withheld. If so, please provide the specific exemption used to justify nondisclosure.”

EDCDA Response to April 12, 2022 email

- **Category 1 – Policies**

We continue to stand by our response to your July 2021 PRA category 1 request for “Any and all written policies, memoranda, or guidance documents regarding a variety of topics including: (a) diversion eligibility/programing; (b) custody/bail recommendations; (c) charging recommendations/decision including enhancements, special circumstances and wobblers; (d) Brady v. Maryland compliance; (e) jury selection; (f) sentencing recommendations; (g) prosecuting minors; (h) parole recommendations; (i) pardons/commutation recommendation; (j) reports to state bar relating to discipline/misconduct; (k) data collection (including demographics of defendant/victim); and (l) referral of cases for federal prosecution.”

The only thing we want to clarify, is that we have no documents concerning category 1 (j), (k), or (l). And, we will modify our prior response and provide a copy of our “Legal and Case prosecution Manual.” This document was finalized in 2016 and is our current and only Deputy District Attorney policy manual which covers categories (a) through (i).³ (Attachment I)

- **Category 2 – Trainings**

We continue to stand by our response to your July 2021 PRA category 2 request for “Any and all policies regarding training as well as any training materials, recorded trainings, or related materials: (a) which are mandatory; (b) which are optional; (c) which relate to jury selection; (d) which relate to bias, or implicit/unconscious bias, and or racism; (e) which relate to social media evidence presentation and use.

The only thing we want to clarify, is that we have no documents concerning “policies regarding trainings,” nor do we have any training materials which are considered mandatory or optional. We

³ The EDCDA Legal and Case Prosecution Manual has not been updated to cover all the changes in the laws over the last 6 years, and as always, we expect our Deputy District Attorney’s to be professionals and to follow the current guidelines of statutory and case law.

expect our Deputy District Attorney's to be professionals and to follow the guidelines of statutory and case law and to get their required MCLE training hours for the State Bar.

The external training materials each attorney may have are varied based upon the number of trainings they have attended over the years, and whether such training manuals were physical copies, digital copies, whether they can be accessed via the CDAA portal and are stored online, or whether the DDA even kept the training materials at all. But, in the spirit of the openness that the CPRA hopes to encourage, we printed out a list of the CDAA publications and the CDAA webinars which would cover most of the training materials in our possession. (Attachment J).⁴

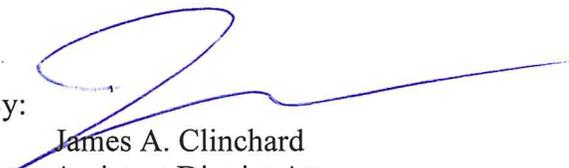
As for internal trainings, we have only started tracking them and keeping the associated training materials like power points and/or handouts, since 2020. A list of these trainings, and the jury selection training materials, are attached. (Attachment K).⁵

If you have anything further you would like to discuss about this request, please do not hesitate to contact us.

Very truly yours,

VERN R. PIERSON
District Attorney

By:



James A. Clinchard
Assistant District Attorney

⁴ If you are seeking a copy of the external training materials (99% of which comes from CDAA) which may be in our possession please let us know and we can see how much it will be to copy. We suspect it would be about 20 Bankers Boxes of materials to copy what each attorney may have since they each may have different years manuals or have gone to different trainings, and these trainings invariably almost all touch on jury selection, or bias, or social media at least in part.

⁵ The internal trainings are on a variety of topics, and other than the 1 training on jury selection, it is unlikely the other trainings even get into the requested PRA topics of "bias, or implicit/unconscious bias, and or racism" or "social media evidence presentation and use." The jury selection training materials (which just occurred on 3/31/22) are attached, as well as a list of all our internal trainings. If you want a copy of any of these other internal training materials, please let us know.

Attachment A

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

July 23, 2021

SENT VIA U.S. MAIL AND EMAIL

Vern Pierson
Office of the District Attorney of El Dorado County
778 Pacific Street
Placerville, CA 95667
(530) 621-6472
vern.pierson@edcgov.us

Re: California Public Records Act Request

To the Office of the District Attorney of El Dorado County:

Pursuant to the California Public Records Act (“CPRA”)¹ and the California Constitution,² I am writing on behalf of the American Civil Liberties Union of Northern California (“ACLU”) to request records relevant to the implementation of California’s Racial Justice Act (“RJA”).³ The RJA was enacted “to eliminate racial bias from California’s criminal justice system” and “to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.”⁴ The ACLU submits this CPRA request in the public’s interest and as a member of a coalition of community groups, non-profit organizations, academic institutions, and other entities. The records that you produce will help us to implement and realize the objectives of the RJA.

On July 29, 2019, the ACLU submitted an initial CPRA request to your office seeking training materials concerning (1) jury selection and/or (2) constitutional requirements under *Batson v. Kentucky*, 476 U.S. 79 (1986) and *People v. Wheeler*, 4 Cal. 4th 284 (1993). (See **Exhibit 1**, attached.) That request also sought training materials related to the handling of *Batson-Wheeler* claims or motions. The ACLU did not receive a response.

This CPRA letter constitutes a renewal of the ACLU’s prior request (as relevant, updated to the present day) and also a request for the additional following records in the possession or control of the Office of the District Attorney of El Dorado County for the time-period 2015 to present:

Records Requested:

1. Any and all written policies, memoranda, or guidance documents regarding:

¹ Gov’t Code §§ 6250 *et seq.*

² Cal. Const., art. I, § 3(b)(2).

³ Pen. Code § 745.

⁴ See AB-2542 *Criminal Procedure: Discrimination*, Stats. 2020, Ch. 317, § 2(i); see also Pen. Code §§ 745, 1473, 1473.7.

- a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendations;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decisions regarding wobblers;
 - d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
 - e. Jury selection;
 - f. Sentencing recommendations;
 - g. Prosecution of minors;
 - h. Parole recommendations;
 - i. Pardon and commutation recommendations;
 - j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;
 - k. Data collection relating to criminal matters, including demographic data of defendants and victims; or
 - l. Referral of cases for federal prosecution.
2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials:
 - a. Which are mandatory for prosecutors;
 - b. Which are optional for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).
3. Records concerning the Racial Justice Act:
 - a. Implementation of and compliance with the RJA;
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA.
4. All investigations into *Batson-Wheeler* motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or
 - d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.

In responding to this request, please note that the CPRA broadly defines the term “record.” Specifically, the term includes “any writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency

regardless of physical form or characteristics.”⁵ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁶ The present request therefore applies to *all* paper documents, as well as to *all* emails, videos, audio recordings, text messages, social media, or other electronic records within the Office of the District Attorney of El Dorado County’s possession or control. Even if a record was created by a member of another government agency, a member of the public, or a private entity, it still must be produced so long as it is (or was) “used” or “retained” by the Office of the District Attorney of El Dorado County.⁷

As permitted by the CPRA, this request sets forth the specific categories of information that we are seeking, rather than asking for documents by name.⁸ It is your obligation to conduct record searches based on the criteria identified herein.⁹ But if you believe the present request is overly broad, you are required to: (1) offer assistance in identifying responsive records and information; (2) describe “the information technology and physical location in which the records exist;” and (3) provide “suggestions for overcoming any practical basis” that you assert as a reason to delay or deny access to the records or information sought.¹⁰

The CPRA requires that you respond to this request in ten (10) days.¹¹ If you contend that an express provision of law exempts a responsive record from disclosure, either in whole or in part, you must make that determination in writing. Such a determination must specify the legal authority on which you rely, as well as identify both the name and title of the person(s) responsible for the determination not to disclose.¹² Additionally, even if you contend that a portion of a record requested is exempt from disclosure, you still must release the non-exempt portion of that record.¹³ Please note that the CPRA “endows” your agency with “discretionary authority to override” any of the Act’s statutory exemptions “when a dominating public interest favors disclosure.”¹⁴

Because the ACLU is a non-profit organization and because these requests pertain to matters of public concern, we request a fee waiver. None of the information obtained will be sold or distributed for profit. We also request that, to the extent possible, documents be provided

⁵ Gov’t Code § 6252(e).

⁶ *Id.* § 6252(g).

⁷ *Id.* § 6252(e); see *California State Univ. v. Superior Ct.*, 90 Cal. App. 4th 810, 824–25 (2001) (concluding that documents which were “unquestionably ‘used’ and/or ‘retained’ by [an agency]” were public records); see also *Cty. of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1334 (2009) (“[W]hile section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.”).

⁸ Gov’t Code § 6253(b).

⁹ See *id.* §§ 6253–6253.1.

¹⁰ *Id.* § 6253.1(a).

¹¹ *Id.* § 6253(c).

¹² *Id.* § 6255; see also *id.* § 6253(d)(3).

¹³ *Id.* § 6253(a), (c).

¹⁴ *CBS, Inc. v. Block*, 42 Cal. 3d 646, 652 (1986); see also *Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570, 579 (2018) (construing the CPRA’s exemptions as “permissive, not mandatory—they allow nondisclosure but do not prohibit disclosure”).

July 23, 2021

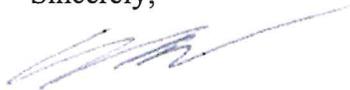
Page 4

in electronic format. Doing so will eliminate the need to copy the materials and provides another basis for the requested fee-waiver.

If, however, you are unwilling to waive costs and anticipate that costs will exceed \$100, and/or that the time needed to copy the records will delay their release, please contact us so that we can arrange to inspect the documents or decide which documents we wish to have copied and produced. Otherwise, please copy and send all responsive records as soon as possible and, if necessary, on a rolling basis, to: preresponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

Thank you in advance for your assistance with this request. We look forward to receiving your response within 10 days. And once again, if you require any clarification on this request, please let us know.

Sincerely,

A handwritten signature in blue ink, appearing to read 'ELLEN LEONIDA', written over a horizontal line.

Ellen Leonida

EXHIBIT 1



Northern
California

July 29, 2019

Transmitted by email

El Dorado County District Attorney's Office
778 Pacific St,
Placerville, CA 95667
Email: vern.pierson@edcgov.us

Re: Request for Records Pursuant to the California Public Records Act

To Whom it May Concern:

I am writing on behalf of the American Civil Liberties Union of Northern California to request records pursuant to the California Public Records Act, California Government Code sections 6250 to 6270 and article 1 section 3(b) of the California Constitution.

I seek copies of the following materials in the agency's possession, regardless of who wrote them, from 1990 onwards:

1. Any training materials related to jury selection
2. Any training materials related to the constitutional requirements under *Batson v. Kentucky* and *People v. Wheeler*, including training materials related to handling *Batson-Wheeler* claims or motions.

Batson v. Kentucky (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258. This request construes "materials" to mean any records¹, publications, memoranda, writings, electronic data, mail, media files, nonstandard documents, or other forms of communication.

In the case that this request is found to be insufficiently focused or effective, California Government Code Section 6253.1(a) requires (1) Assistance in identifying the records and information that are responsive to this request or to the purpose of this request; (2) Description of

¹ The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Gov't Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Gov't Code § 6252, subsection (g).

American Civil Liberties Union Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray
SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707
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the information technology and physical location in which the records exist; and (3) that suggestions be provided for overcoming any practical basis for denying access to the records or information sought.

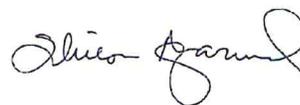
Pursuant to Government Code Section 6253(b), the requested records must be “promptly available,” for inspection and copying, based on payment of “fees covering direct costs of duplication, or statutory fee, if applicable.” No express provisions of law exist that exempt the record(s) from disclosure. As it is determined whether this request seeks copies of disclosable public records, be mindful that Article I, Section 3 (b)(2) of the California Constitution requires that a statute, court rule, or other authority be broadly construed if it furthers the right of access to the information requested and that a statute, court rule, or other authority limiting right of access be narrowly construed.

If a portion of the information requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If it is determined that an express provision of law exists to exempt from disclosure all or a portion of the material requested, Government Code Section 6253(c) requires notification of the reasons for the determination not later than 10 days from receipt of this request. Moreover, Government Code Section 6253(d) prohibits the use of the 10-day period, or any provisions of the Public Records Act “to delay access for purposes of inspecting public records.”

Please send copies of the requested records to me at the address shown above or email them to me at sagarwal@aclunc.org. We request that you waive any fees that would be normally applicable to a Public Records Act request. In addition, if you have the records in electronic form you can simply email them to me without incurring any copying costs. *See Gov’t. Code § 6253.9*. Should you be unable to do so, however, the ACLU will reimburse your agency for the direct costs of copying these records plus postage. *See Gov’t. Code § 6253(b)*. To assist with the prompt release of responsive material, we ask that you make records available to me as you locate them, rather than waiting until all responsive records have been collected and copied.

If you have any questions regarding this request, please feel free to contact me at (415) 621-2493 or at sagarwal@aclunc.org. Thank you in advance for your time and attention to this request.

Sincerely,



Shilpi Agarwal
Senior Staff Attorney

American Civil Liberties Union Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Attachment B



OFFICE OF THE
DISTRICT ATTORNEY
EL DORADO COUNTY, CALIFORNIA

VERN PIERSON, DISTRICT ATTORNEY

September 27, 2021

Ellen Leonida
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

RE: PRA Request

Dear Ms. Leonida,

We are writing to you in response to your Public Records Act request dated July 23, 2021. We have attached a copy of that request as Attachment A to this response. Your request also references and attaches an earlier PRA requests dated July 29, 2019. We could not find a response to that request, so in an abundance of caution we will respond to both PRA requests in separate correspondence.

PRA Request dated July 23, 2021

In your July 23, 2021 letter you request information from 2015 to the present relating to four separate categories of records:

1. Any and all written policies, memoranda, or guidance documents regarding a variety of topics including: (a) diversion eligibility/programing; (b) custody/bail recommendations; (c) charging recommendations/decision including enhancements, special circumstances and wobblers; (d) *Brady v. Maryland* compliance; (e) jury selection; (f) sentencing recommendations; (g) prosecuting minors; (h) parole recommendations; (i) pardons/commutation recommendation; (j) reports to state bar relating to discipline/misconduct; (k) data collection (including demographics of defendant/victim); and (l) referral of cases for federal prosecution.
2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials: (a) which are mandatory; (b) which are optional; (c) which relate to jury selection; (d) which relate to

- bias, or implicit/unconscious bias, and or racism; (e) which relate to social media evidence presentation and use.
3. Records concerning the Racial Justice Act, including: Implementation of and compliance with the RJA; Communications concerning the RJA; or Trainings related to the RJA.
 4. All investigations into Batson-Wheeler motions, including, but not limited to: Motions filed; Motions granted; internal training and/or discipline; or Reports to the State Bar relating to any Batson-Wheeler motions made and granted.

Our response to items 1-4 requested from 2015 to the present (the date of this letter), is as follows:

A. PRA Requests 1 & 2 seek records protected by the attorney work product privilege.¹

PRA request 1 seeks any and all written policies, memoranda, or guidance documents regarding a variety of topics including: (a) diversion eligibility/programing; (b) custody/bail recommendations; (c) charging recommendations/decision including enhancements, special circumstances and wobblers; (d) *Brady v. Maryland* compliance; (e) jury selection; (f) sentencing recommendations; (g) prosecuting minors; (h) parole recommendations; (i) pardons/commutation recommendation; (j) reports to the state bar relating to discipline and or prosecutorial misconduct; and (l) referral of cases for federal prosecution.

PRA request 2 seeks any and all policies regarding training as well as any training materials, recorded trainings, or related materials: (a) which are mandatory; (b) which are optional; (c) which relate to jury selection; (d) which relate to bias, or implicit/unconscious bias, and or racism; (e) which relate to social media evidence presentation and use.

These requested documents are either outside training materials protected by copyright laws², or were policies, memos and guidance documents prepared by and for Deputy District Attorney's relating to these subject areas concerning criminal cases in our office.

Government Code section 6254(k) exempts from disclosure a prosecutor's work product. 71 Ops.Cal.Atty.Gen 5, 7 ["undeniable" that public attorney can rely to "full extent" upon protection of attorney work product.] This allows a prosecutor to bar "under any circumstances" release of materials, which reflect his or her "impressions, conclusions, opinions, or legal research or theories . . ." Code of Civil Procedure section 2018.030(a); Penal Code section 1054.6 [specifically protecting prosecutorial work product]; *Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810, 816 [work

¹ We do not object to PRA Request 1, sub item (k) as protected by attorney client privilege.

² To the extent your request for guidance documents includes copyright protected training materials, such materials are exempt from disclosure pursuant to Government Code Section 6254(k) which states "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

product also includes materials prepared in non-litigation context]. The preparation of written policies, memoranda, or guidance documents relating to the subject matter sought under PRA Request 1 and 2 are based upon a prosecutor's opinions, mental impressions, conclusions, and/or legal theories and are made in anticipation of litigation. The work product privilege states: "[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances." (CCP § 018.030(a). See also, *Garcia v. Superior Court* (2007) 42 Cal.4th 63, 68, fn. 2; *Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 382, fn. 19.; *County of Los Angeles v. Sup. Ct.* (2000) 82 Cal.App.4th 819, 833 ["the protection afforded by the attorney work product doctrine is not limited to writings created by a lawyer in anticipation of a lawsuit. It applies as well to writings prepared by an attorney while acting in a non-litigation capacity."]) In the case of *People v. Superior Court (Laff)*, (2001) 25 Cal. 4th 703, the Supreme Court discussed the work product privilege holding it applied even before a criminal case existed.

If our office did have written policies, memoranda, or guidance documents for our attorneys on the subject matters requested in PRA Requests 1 or 2 they would be legal opinions and theories on the best way to handle various types of criminal cases at various stages in their proceedings. These are the type of materials that would necessarily disclose our trial strategies and would not be in the public's interest to disclose such information because it would put the prosecution of criminal cases at a disadvantage by telling the defense what our strategy would be at various stages of a case. This is clearly the type of material protected by work product rules.

PRA Request 1, sub part (k), seeks written policies, memoranda, or guidance documents concerning data collection (including demographics of defendant/victim). We do not have any such documents. Our office would be guided by statutory, case law, and the California Rules of Professional Conduct on how to proceed concerning data collection.

B. PRA Requests 1 and 2 seek records protected by the deliberative process privilege³

PRA request 1 seeks any and all written policies, memoranda, or guidance documents regarding a variety of topics including: (a) diversion eligibility/programing; (b) custody/bail recommendations; (c) charging recommendations/decision including enhancements, special circumstances and wobblers; (d) *Brady v. Maryland* compliance; (e) jury selection; (f) sentencing recommendations; (g) prosecuting minors; (h) parole recommendations; (i) pardons/commutation recommendation; (j) reports to the state bar relating to discipline and or prosecutorial misconduct; and (l) referral of cases for federal prosecution.

PRA request 2 seeks any and all policies regarding training as well as any training materials, recorded trainings, or related materials: (a) which are mandatory; (b) which are optional; (c) which relate to jury selection; (d) which relate to bias, or implicit/unconscious bias, and or racism; (e) which relate to social media evidence presentation and use.

³ We do not object to PRA Request 1, sub item (k) as protected by deliberative process privilege.

Not only are these documents be protected by the attorney work product privilege, but they would also be protected by the deliberative process privilege. Specifically, records which reflect the mental processes by which a given decision was reached are exempt from disclosure. (Gov. Code, § 6255, subd. (a); see *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170.) This exemption protects the “substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated.” (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 540.)

As the Supreme Court observed in its decision in *Times Mirror* the need for the deliberative process exemption arose because of the fear that: "frank discussion of legal or policy matters" might be inhibited if "subjected to public scrutiny," and that "efficiency of Government would be greatly hampered" if, with respect to such matters, government agencies were "forced to operate in a fishbowl." (*Times Mirror Co. v. Superior Court*, (1991) 53 Cal.3d 1325, 1340)

The deliberative process privilege prohibits others from invading the District Attorney's thought processes. Written policies, memoranda, guidance documents and/or training materials concerning the various topics covered in PRA Requests 1 and 2 may potentially include documents pertaining to a deputy district attorney's thoughts and mental processes on decision made by that attorney or this office, and may also reveal the deliberative process about directives given by management and/or supervisors to attorneys when handling the various stages of criminal proceedings referenced in PRA Requests 1 and 2. Therefore, any such records, if they existed, would be exempt and protected by the deliberative process privilege.

C. PRA Requests 1 and 2 are overly burdensome⁴

Our office does not have a central repository of all written policies, memoranda, guidance documents and/or training regarding the variety of topics referenced in PRA Requests 1 and 2 from 2015 to the present. While we have current written policies that may relate to some of the documents and topic areas requested, attorneys in our office may have various training manuals, different memos or guidance documents they have obtained over the last 6 years concerning the subject matters requested in PRA Requests 1 and 2. Each attorney may go to different trainings, some in-person at a conference, some in-house, some online live, and some via recorded webinar. And, each attorney may have different reference manuals, memos, emails, cases or books in their office that they use as guidance documents, and maybe even some additional materials around the office that may be dated from 2015 to the present. Also, many times, a policy, memo, guidance documents or training material related to the subject matters requested in PRA Requests 1 and 2 are just a sub-part or sub-topic of a larger policy, memo, guidance document or training relating to a totally different topic or subject matter area. As such there is no place to search for these specific memos and guidance documents except each individual DDA computer, office and physical/electronic file, and often digging

⁴ We do not object to PRA Request 1, sub item (k) as overly burdensome.

into a memo, guidance document or training manual on a totally unrelated topic to attempt to find material related to the subject matters requested in PRA Requests 1 and 2.

“A clearly framed request which requires an agency to search an enormous volume of data for a ‘needle in the haystack’ or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome.” *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166 (Cal. First.) As said in the *County of Los Angeles v. Superior Court*, (1993) 18 Cal.App.4th 588, case: “.... we cannot ignore the financial aspect of the requested disclosure.”

By the very nature of such a broad request this office would be required to hand search each and every manual and book, and electronic files of every attorney for the past 6 years to determine if we have any records that might be responsive. This Office concludes that the public interest in nondisclosure clearly outweighs the public interest in disclosure, thus making the material exempt from a CPRA request under Government Code §6255. Because the request is overly burdensome, the public interest in non-disclosure outweighs the interests in disclosure. (Gov. Code, § 6255(a); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.)

For all the aforementioned reasons above, we will not be turning over any documents relating to your July 23, 2021 PRA Request No. 1 or No. 2.

D. PRA Request 3 seek records concerning the Racial Justice Act

Your third request is for "Records concerning the Racial Justice Act," to include (a) implementation of and compliance with the RJA; (b) communications concerning the RJA; or (c) trainings related to the RJA.

While they may be some limited communications concerning implementation and training relating to the RJA, such documents are protected by the attorney work product and deliberative process privileges (which are more fully explained in our responses hereinabove). For the reasons earlier discussed, however, we must decline to provide our communications concerning this matter.

We have no records regarding "implementation of and compliance with the RJA," and do not have a formal office policy. For now, we are guided solely by the law in this matter.

E. PRA Request 4 seek records concerning the Batson-Wheeler motions

Your fourth request is for "All investigations into *Batson-Wheeler* motions" including: (a) motions filed; (b) motions granted; (c) internal training and/or discipline; or (d) reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.

We do not have any list or repository where such motions or investigations to such motions are tracked in our office, or where we would be able to find "filed motions." Typically it seems in practice *Batson-Wheeler* motions are done orally in court during

jury selection. Accordingly, we do not have any documents responsive to sub part (a) of PRA Request 4.

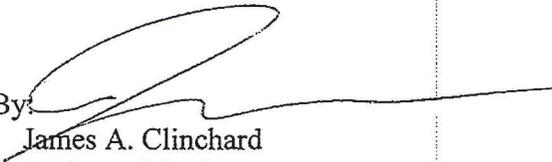
Further, senior management staff was consulted and, to our recollection, there has been no *Batson-Wheeler* motion granted against our office or deputy district attorneys from our office from 2015 to the present (the time frame requested in your PRA). Accordingly, there is repository of "investigations," nor internal discipline, nor State Bar reports, and therefore we have no public records to provide you concerning PRA Request 4, sub parts (b), (c) or (d). To the extent you seek internal training materials related to *Batson-Wheeler* in PRA Request 4 sub part (c), such training material are exempt from disclosure as attorney work product, copyright, and deliberative work process (which are more fully explained in our responses hereinabove). For the reasons earlier discussed, however, we must decline to provide our training materials.

For all the aforementioned reasons above, we will not be turning over any documents relating to your July 23, 2021 PRA request.

If you have anything further you would like to discuss about this request, please do not hesitate to contact us.

Very truly yours,

VERN R. PIERSON
District Attorney

By: 
James A. Clinchard
Assistant District Attorney

Attachment C

January 18, 2022

VIA EMAIL AND MAIL

James A. Clinchard
Office of the District Attorney of El Dorado County
778 Pacific Street
Placerville, CA 95667
Email: james.clinchard@edcgov.us
vern.pierson@edcgov.us
savannah.broddrick@edcgov.us

Re: California Public Records Act Request

Dear Mr. Clinchard:

I write in response to your September 27, 2021 letter regarding our CPRA Request, which we received by email on November 15, 2021. Thank you for your letter.

Your response letter lacks some legally required information. To the extent you intend to deny access to a requested record, you must justify that denial by demonstrating either (1) that the “record in question” —that is, the particular record we have requested—falls under a specific legal exemption, which you must cite, or (2) that the public interest served by your denial for that particular record “clearly outweighs” the public interest that would be served by its disclosure.¹ You must also provide the names and titles or positions of each person responsible for the denial.²

Please also let us know at your earliest convenience if you intend to stand on your exemptions as grounds for withholding certain records, or whether you would consider waiving any, or all of the asserted exemptions. Exemptions, as you know, are permissive, not mandatory, and it is our goal—and yours, we imagine—to avoid unnecessary litigation, which can be costly and time consuming. If you are open to this possibility, please let us know. We would be happy to discuss this matter over the phone if you believe we may be able to find an amenable solution.

However, if you do not believe further discussions would be helpful, please advise us of this position and tell us whether your office has adopted a formal process for an administrative appeal. Should we determine that we are entitled to documents you have refused to produce—

¹ Gov’t Code § 6255(a).

² Gov’t Code § 6253(d)(3).

January 18, 2022

Page 2

whether before an administrative appeal or after—we may litigate to obtain them. In that event, we will seek all attorney's fees and costs for the litigation.³

To the extent you have not yet produced any records for which you do not claim an exemption, please let us know the status of these records and produce them promptly and on a rolling basis.

Thank you again for your response to our earlier letter and, generally, for your assistance with our requests. We look forward to any further discussion and your production of records.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ellen V. Leonida", with a long horizontal flourish extending to the right.

Ellen V. Leonida

³ Cal. Gov. Code § 6259(d). We note that courts have awarded costs and fees if even a single document was improperly withheld. *See, e.g., Los Angeles Times v. Alameda Corridor Transp. Auth.*, 88 Cal. App. 4th 1381, 1391 (2001).

Attachment D

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

February 10, 2022

SENT VIA U.S. MAIL AND EMAIL

Vern Pierson
Office of the District Attorney of El Dorado County
778 Pacific Street
Placerville, CA 95667
Email: vern.pierson@edcgov.us
James.clinchard@edcgov.us
savannah.broddrick@edcgov.us

Re: California Public Records Act Request

To the Office of the District Attorney for El Dorado County:

Pursuant to the California Public Records Act (“CPRA”)¹ and the California Constitution,² I am writing on behalf of the American Civil Liberties Union of Northern California (“ACLU”) to request records relevant to the implementation of California’s Racial Justice Act (“RJA”).³ The RJA was enacted “to eliminate racial bias from California’s criminal justice system” and “to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.”⁴ The ACLU submits this CPRA request in the public’s interest and as a member of a coalition of community groups, non-profit organizations, academic institutions, and other entities. The records that you produce will help us to implement and realize the objectives of the RJA.

On July 23, 2021, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of the El Dorado District Attorney’s Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

- 1. Unique identifier(s) associated with each defendant, each case, and each arrest**
 - a. Name of defendant
 - b. Court case number(s)
 - c. Arresting agency number(s)

¹ Gov’t Code §§ 6250 *et seq.*

² Cal. Const., art. I, § 3(b)(2).

³ Pen. Code § 745.

⁴ See AB-2542 *Criminal Procedure: Discrimination*, Stats. 2020, Ch. 317, § 2(i); see also Pen. Code §§ 745, 1473, 1473.7.

- d. Any other unique identifier(s)
- 2. Demographic and other information concerning each defendant**
 - a. Race
 - b. Ethnicity
 - c. Country of origin or nationality
 - d. Gender/sex
 - e. Age or date of birth
 - f. Prior criminal convictions of a defendant
- 3. Information regarding each arrest**
 - a. Zip code of arrest
 - b. Date of arrest
 - c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)
- 4. ADA assigned to the case**
- 5. Decisions to decline to prosecute**
 - a. Date of decision to decline to prosecute
 - b. Identity of person who made final decision to decline prosecution
 - c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)
 - d. Reasons for the declinations to prosecute, including but not limited to:
 - i. police misconduct involved in case;
 - ii. injuries to persons involved;
 - iii. injuries to suspect;
 - iv. financial loss to persons involved;
 - v. prior criminal record of suspect; and
 - vi. victim's level of cooperation in prosecuting case.
- 6. Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)**
 - a. Date of diversion offer
 - b. Type of diversion offered
 - c. Whether diversion accepted
 - d. Whether diversion completed
- 7. Charges filed**
 - a. Statutes (applicable code section)
 - b. Severity (i.e., infraction, misdemeanor, wobbler, felony)
 - c. Any enhancements⁵
 - d. Maximum sentence
- 8. Factors considered in deciding charges to file, and level of charges, including**
 - a. Injuries to persons
 - b. Financial loss to persons

⁵ Conduct enhancements, including but not limited to PC Section 12022.53 (gun), PC Section 186.22 (gang); Status enhancements including but not limited to PC Section 667.5 (prison prior), PC Section 667(a) (serious felony prior), PC Section 1170.12 and 667(b)-(i) (strike prior), PC Section 11370.2 (drug prior), PC Section 12022.1 (committed while on bail/OR); Special circumstances (PC Section 190.2); Any other modifications or enhancements

- c. Status of victim (i.e., law enforcement, child, spouse, etc.)
- d. Prior criminal history of defendant
- e. Victim's cooperation
- 9. Bail/custody information**
 - a. Bail amount requested
 - b. Detention orders sought
 - c. Whether bail was set or denied
 - d. Whether individuals were released on bail or not
 - e. Pre-plea/pre-trial custody status
- 10. Plea offers**
 - a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements
 - b. Dates of plea offers
 - c. Sentence(s)/disposition(s) offered
 - d. Records of whether any plea offer was accepted, including date of acceptance
- 11. Case outcomes**
 - a. Charges of conviction
 - b. Dismissed charges
 - c. Sentences
- 12. Counsel for defendant, whether public defender or private counsel**
- 13. Demographic and other information concerning victims**
 - a. Race
 - b. Ethnicity
 - c. Gender/sex
- 14. Recommendations regarding parole**
- 15. Recommendations regarding pardon or commutation**

In responding to this request, please note that the CPRA broadly defines the term “record.” Specifically, the term includes “any writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁶ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁷ The present request therefore applies to *all* paper documents, as well as to *all* emails, videos, audio recordings, text messages, social media, or other electronic records within the El Dorado District Attorney’s Office’s possession or control. Even if a record was created by a member of another government agency, a member of the public, or a private entity, it still must be produced so long as it is (or was) “used” or “retained” by the El Dorado District Attorney’s Office.⁸

⁶ Gov’t Code § 6252(e).

⁷ *Id.* § 6252(g).

⁸ *Id.* § 6252(e); see *California State Univ. v. Superior Ct.*, 90 Cal. App. 4th 810, 824–25 (2001) (concluding that documents which were “unquestionably ‘used’ and/or ‘retained’ by [an agency]” were public records); see also *Cty. of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1334 (2009) (“[W]hile section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.”).

February 10, 2022

Page 4

As permitted by the CPRA, this request sets forth the specific categories of information that we are seeking, rather than asking for documents by name.⁹ It is your obligation to conduct record searches based on the criteria identified herein.¹⁰ But if you believe the present request is overly broad, you are required to: (1) offer assistance in identifying responsive records and information; (2) describe “the information technology and physical location in which the records exist;” and (3) provide “suggestions for overcoming any practical basis” that you assert as a reason to delay or deny access to the records or information sought.¹¹

The CPRA requires that you respond to this request in ten (10) days.¹² If you contend that an express provision of law exempts a responsive record from disclosure, either in whole or in part, you must make that determination in writing. Such a determination must specify the legal authority on which you rely, as well as identify both the name and title of the person(s) responsible for the determination not to disclose.¹³ Additionally, even if you contend that a portion of a record requested is exempt from disclosure, you still must release the non-exempt portion of that record.¹⁴ Please note that the CPRA “endows” your agency with “discretionary authority to override” any of the Act’s statutory exemptions “when a dominating public interest favors disclosure.”¹⁵

Because the ACLU is a non-profit organization and because these requests pertain to matters of public concern, we kindly request a fee waiver. None of the information obtained will be sold or distributed for profit. We also request that, to the extent possible, documents be provided in electronic format. Doing so will eliminate the need to copy the materials and provides another basis for the requested fee-waiver.

If, however, you are unwilling to waive costs and anticipate that costs will exceed \$100, and/or that the time needed to copy the records will delay their release, please contact us so that we can arrange to inspect the documents or decide which documents we wish to have copied and produced. Otherwise, please copy and send all responsive records as soon as possible and, if necessary on a rolling basis, to: praesponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

Thank you in advance for your assistance with this request. We look forward to receiving your response within 10 days. And once again, if you require any clarification on this request, please let us know.

⁹ Gov’t Code § 6253(b).

¹⁰ *See id.* §§ 6253–6253.1.

¹¹ *Id.* § 6253.1(a).

¹² *Id.* § 6253(c).

¹³ *Id.* § 6255; *see also id.* § 6253(d)(3).

¹⁴ *Id.* § 6253(a), (c).

¹⁵ *CBS, Inc. v. Block*, 42 Cal. 3d 646, 652 (1986); *see also Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570, 579 (2018) (construing the CPRA’s exemptions as “permissive, not mandatory—they allow nondisclosure but do not prohibit disclosure”).

February 10, 2022
Page 5

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ellen Leonida', with a long horizontal flourish extending to the right.

Ellen Leonida

Attachment E



OFFICE OF THE
DISTRICT ATTORNEY
EL DORADO COUNTY, CALIFORNIA

VERN PIERSON, DISTRICT ATTORNEY

February 28, 2022

Ellen Leonida
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

RE: CALIFORNIA PUBLIC RECORDS ACT REQUEST

Dear *Ms. Leonida*:

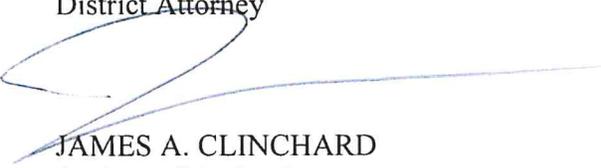
We have reviewed your 2/10/2022 Public Records Act request concerning records relating to all cases considered for prosecution and/or prosecuted during the time-period 2015 to present.

We do have documents responsive to your request. But, we are currently trying to find out how we can pull various categories of records/data out of our case management system. This is also complicated by the fact that it is a large amount of records to review but also due to the fact that we switched case management systems in October 2019. We are hopeful to be able to respond with responsive documents in one month (4/1/22). If we only have some documents by that date, we will do our final review of them and make final determinations if there are any PRA exemptions, and then turn over the non-exempt records we were able to find. If we are not able to fully comply with all records requested by that date, we will also update you on the documents that we are still working on.

If you have any questions in regards to the above referenced matter please don't hesitate to contact our office.

Very truly yours,

VERN PIERSON
District Attorney



JAMES A. CLINCHARD
Assistant District Attorney

PLEASE REPLY TO:

** 515 Main Street
Placerville, CA. 95667
(530) 621-6472
Fax (530) 621-1280

1360 Johnson Blvd. Ste.105
South Lake Tahoe, CA 96151
(530) 573-3100
Fax (530) 544-6413

WEB SITE:
www.cd.gov.us/eldoda

BLOG:
<http://vernpierson.us/blog/>

Attachment F

BRAUNHAGEY & BORDEN LLP

San Francisco & New York

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

March 25, 2022

SENT VIA U.S. MAIL AND EMAIL

Vern Pierson
Office of the District Attorney of El Dorado County
778 Pacific Street
Placerville, CA 95667
Email: vern.pierson@edcgov.us
James.clinchard@edcgov.us
savannah.broddrick@edcgov.us

Re: California Public Records Act Request

Dear Mr. Pierson:

On July 23, 2021 we sent you a Public Records Act request for the purpose of enforcing the Racial Justice Act. The request sought policy documents, training materials, records relating to the Racial Justice Act, and records regarding *Batson/Wheeler* investigations. You responded, asserting exemptions to the production of some of the requested documents. We sent you a letter on January 25, 2022 addressing the exemptions you asserted in response to our request. In that letter, we offered to formally appeal or to speak with you over the phone about your asserted exemptions in order to avoid unnecessary litigation. We remain willing to do so. As we informed you in our letter of January 25, 2022, however, should we be forced to file suit to obtain records to which we are entitled, you will be liable for our fees and costs.

If you wish to discuss this matter further, please contact our office as soon as possible. Please let us know if you are withholding documents on the basis of the exemptions you assert (as opposed to asserting exemptions to avoid waiver, but without withholding any documents). If you do not respond to our CPRA request, we will have no choice but to initiate litigation to obtain the documents to which we are entitled under the law.

Thank you for your immediate attention to this matter.

Sincerely,



Ellen Leonida

Attachment G



OFFICE OF THE
DISTRICT ATTORNEY
EL DORADO COUNTY, CALIFORNIA

VERN PIERSON, DISTRICT ATTORNEY

April 8, 2022

Ellen Leonida
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

RE: Public Records Act Request

Ms. Leonida,

We are writing to you in response to your March 25, 2022 PRA letter, which was a follow up to the original July 23, 2021 PRA and your recent January 18, 2022 follow up letter. You noted in your March 25, 2022 follow up letter that you sought public records "...relating to the Racial Justice Act, and records regarding Batson/Wheeler investigations" and you stated that we objected to the production of these categories of public records.

However, if you see our September 27, 2021 response, page 5, paragraph D we said "we have no record regarding 'implementation of and compliance with RJA' and do not have a formal office policy" and noted in our response that we are guided solely by the law on this matter. This response has not changed as of the date of this correspondence. In short, we have no responsive public records on the RJA other than emails from or between senior attorney DA management staff discussing the pending/new RJA legislation and/or the ACLU public record act requests concerning RJA. There are no communications about our office implementation of RJA.

Additionally, if you see our September 27, 2021 response, page 5, paragraph E we said we made inquiries internally as to the last 15 years if there even were any granted Batson-Wheeler motions, and there were none to our senior management staff's recollection. (Since the date of the last letter, there was a granted Batson-Wheeler Motion, but the juror was reseated and there are no public records or documents relating to this recent court event.) Accordingly, we have no records of Batson-Wheeler motions filed, motions granted, discipline, or reports to the State Bar. In short, we have no responsive documents other than what are likely a few internal trainings on the general topic of jury selection.

Very truly yours,

VERN PIERSON
District Attorney



JAMES A. CLINCHARD
Assistant District Attorney

Attachment H



Savannah Broddrick <savannah.broddrick@edcgov.us>

PRA Correspondence

PRA Response <praresponse@braunhagey.com>

Tue, Apr 12, 2022 at 2:21 PM

To: Savannah Broddrick <savannah.broddrick@edcgov.us>

Cc: James Clinchard <james.clinchard@edcgov.us>, PRA Response <praresponse@braunhagey.com>

Ms. Broddrick and Mr. Clinchard,

Thank you for your response. In your September 27 letter, you cite exemptions pertaining to sections 1 and 2 of our July 23, 2021 request. Please inform us if any documents responsive to those sections of our request are in fact being withheld. If so, please provide the specific exemption used to justify nondisclosure. We would be happy to discuss this matter on the phone if that would be helpful.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor

San Francisco, CA 94104

Tel: (415) 599-0210

New York

7 Times Square

27th Floor

New York, NY 10036-6524

Tel: (646) 829-9403

From: Savannah Broddrick <savannah.broddrick@edcgov.us>

Sent: Friday, April 8, 2022 2:59 PM

To: Ellen Leonida <Leonida@braunhagey.com>

Cc: James Clinchard <james.clinchard@edcgov.us>

Subject: PRA Correspondence

***** EXTERNAL MESSAGE *****

[Quoted text hidden]

WARNING: This email and any attachments may contain private, confidential, and privileged material for the sole use of the intended recipient. Any unauthorized review, copying, or distribution of this email (or any attachments) by other than the intended recipient is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments.

Attachment I

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF EL DORADO
LEGAL AND CASE PROSECUTION POLICY MANUAL

VERN R PIERSON
DISTRICT ATTORNEY

NOTICE: The El Dorado County District Attorney's "Legal & Case Prosecution Policy Manual" is for internal use within the District Attorney's Office. This manual is protected from public disclosure under California law. No portion of this manual is to be reproduced or distributed outside the District Attorney's Office without express approval of the District Attorney.

The policies and procedures of the District Attorney's Office can be changed, modified or deleted at the discretion of the District Attorney. Changes in case law, statutes, and the practices of District Attorney's Office personnel may warrant changes in policy. All changes will be published and distributed.

The current version of the policy manual will be maintained in the P and S Drives labeled as folder DA POLICY MANUAL – Red Book\OFFICE POLICY\Legal and Case Prosecution Manual June 2016

All District Attorney Office personnel will receive one hard copy binder of the complete policy. Thereafter maintaining an updated version of the policy is the responsibility of each person.

All District Attorney Office personnel are responsible for knowing the policies and contents of this policy.

TABLE OF CONTENTS

	<u>PAGE</u>
PREAMBLE	
1. CHARGING - UNIFORM CRIME CHARGING STANDARDS	1
2. CHARGING - OTHER GENERAL CONSIDERATIONS	2
3. CHARGING - TIMELY AND COMPLETE	4
4. CHARGING – VICTIM INPUT	5
5. CHARGING AND DISPOSITION POLICY	6
6. CHILD PORNOGRAPHY & EXPLOITATION CASES	7
7. CIVIL COMPROMISE	12
8. COLLATERAL/EXTRINSIC CONSEQUENCES	13
9. CONVICTION REVIEW POLICY & PROTOCOL	16
10. COUNTY AND DEPARTMENT POLICIES	19
11. COURT APPEARANCES	20
12. DEATH PENALTY	22
13. DEFERRED PLEAS	24
14. DISCOVERY - BRADY POLICY	25
15. DISCOVERY – BRADY POLICY (LAW ENFORCEMENT)	26
16. DISCOVERY – CHILD MOLEST/ABUSE (MDIC EVIDENCE)	30

17. DISCOVERY – REVIEWING DISCOVERY	31
18. DISCOVERY - WITNESS CONSIDERATION	32
19. DISPOSITION and PLEA BARGAINING GUIDELINES	33
20. DIVERSION - MISDEMEANOR	34
21. DOMESTIC VIOLENCE CASES	35
22. DUI GUIDELINES	36
23. EXPERT WITNESSES	38
24. EXTRADITION	39
25. FACTUAL INNOCENCE PETITIONS	40
26. FIREARM ALLEGATIONS AND 12022.53 P.C. ENHANCEMENTS	41
27. GRAND JURY	42
28. GRANT STATISTICS	43
29. IMMUNITY	44
30. INFORMANTS	45
31. LIFER POLICY	46
32. JUVENILE CRIMES FILED AS ADULTS	47
33. NARCOTICS - ASSET FORFEITURE ACTIONS	48
34. NARCOTICS - DRUG COURT (PC 1000) ,PROP 36, AFDC	49

35. NARCOTICS - SALES	50
36. ON CALL POLICY	51
37. PEREMPTORY AND CAUSE CHALLENGES - CCP 170.6 AND 170.1	52
38. PEACE OFFICER VICTIMS - FORCE OR VIOLENCE	53
39. PUBLIC RECORDS ACT AND SDT	54
40. PRISON CASES – REMANDING TO CUSTODY	58
41. PROSECUTORIAL MISCONDUCT	59
42. RDOs (Alternative Work Schedule)	63
43. RELATIONS WITH FEDERAL AUTHORITIES	64
44. RESIDENTIAL BURGLARY	65
45. SERIOUS OR SERIOUS & VIOLENT CRIMES POLICY (STRIKES)	66
46. SEXUAL ASSAULT CASES	67
47. SUBPOENAS	70
48. U VISAS: IMMIGRATION RELIEF FOR VICTIMS CRIMES	71
49. VICTIM CONTACT POLICY - MANDATORY	73

1. CHARGING - UNIFORM CRIME CHARGING STANDARDS

No crime shall be charged by the El Dorado County District Attorney's Office unless it first meets the Uniform Crime Charging Standards established by the California District Attorney's Association, which requires all of the following:

- A complete investigation and thorough review of the evidence which satisfies the prosecutor that the accused is guilty of the crime.
- Legally sufficient, admissible evidence of a corpus delicti.
- Legally sufficient, admissible evidence of identity.
- Legally sufficient evidence to convince a jury of the accused's guilt beyond a reasonable doubt, considering the most plausible and reasonable foreseeable defense.

2. CHARGING - OTHER GENERAL CONSIDERATIONS

Above and beyond the Uniform Crime Charging Standards, attorneys must remember to exercise sound prosecutorial discretion in each and every case presented for filing.

Deputies must thoroughly and critically evaluate reports to ensure that a case has been fully investigated. A full investigation demands that necessary and appropriate witnesses have been interviewed, that statements from those witnesses adequately address the issues, and that any defenses obvious at the outset have been refuted to the extent possible. In every case, the deputy should also consider the danger of a case growing stale by failing to act in a timely manner.

All reports must include a copy of the defendant's criminal history (RAP sheet), if any. DUI reports should also include a copy of the defendant's DMV printout. If applicable to the DUI case, the all audio and video evidence, PAS maintenance log, and EPAS maintenance logs should be requested when case is filed.

If you need documentary evidence in order to prove a case, please complete the appropriate request. Items such as proof of prior convictions, medical records, and related police reports will be ordered by the clerical staff and/or obtained by the Investigative Bureau only upon the written request of an attorney.

For purposes of charging priors, the charging deputy should rely on the RAP sheet when no other information is immediately available.

Cases rarely, if ever, get stronger after filing. Deputies should ask themselves whether they would be comfortable taking the case before a jury based upon the existing state of the investigation. If not, the case should be declined for prosecution and/or returned to the submitting agency for further follow-up investigation. The charging deputy is to fill out the disposition sheet (including at least one checked box under JUS 8715 A-L), and explain the reasons for the charging decision and/or needed follow up. A case sent for follow-up investigation will be considered closed by our office, unless and until the investigating agency conducts the requested follow-up.

If the case involves injury and the extent of injury is unknown or unclear, contact the investigating officer (or the police liaison from his or her agency). If the investigating officer is not available within the time constraints of the court's filing deadline and release of the suspect would pose a threat of public safety, complete an Investigative Request in GABRIEL and forward immediately to the Chief Investigator or the Supervising Investigator.

Deputies must comply with all policies regarding victims' rights at the time of charging.

3. CHARGING - TIMELY AND COMPLETE

Using sound prosecutorial discretion, the charging deputy should, at the earliest stage possible, charge all applicable crimes, allegations and enhancements (including prison priors, probation ineligibility clauses, strikes etc.) that meet the charging standards. Joinder of all relevant defendants and charges in a single complaint is also the preferred approach.

4. CHARGING – VICTIM INPUT

In all appropriate cases, victims should be given an opportunity to be heard on charging decisions prior to our final filing decision. (See policy # 49 - Victim Contact Policy) [Victim Bill of Rights](#)

5. CHARGING AND DISPOSITION POLICY

The District Attorney has the exclusive authority to establish charging and disposition policies. It is expected that all Deputy District Attorneys will abide by all such policies.

6. CHILD PORNOGRAPHY & EXPLOITATION CASES

A. Charging Cases

Once you receive the referral for charging a Child Pornography or Exploitation case from any of the agencies, as the charging Deputy District Attorney you must contact the investigating detective or forensic examiner to discuss the case before a charging decision is made. When possible, do not rush to make a charging decision because it is important to collect and examine all forensic evidence in the case and ensure law enforcement has attempted to obtain a suspect interview.

When consulting with the forensic examiner or detective, it is important to understand from the detective or examiner the number of child pornography images that have been located on a media device. The number of images may determine whether the case is prosecuted locally or federally by the United States Attorney's Office. Before charging the case locally, the Deputy District Attorney shall consider a consultation with the United States Attorney's Office. A general rule of thumb is that the United States Attorney's Office requires at least 50 images before they will file a case, but that is not always the case depending upon the facts of the case or the suspect's criminal background.

When deciding whether the images meet the legal definition of child pornography, consider the law, which is that child pornography is any image or video of a real child under the age of 18 engaged in or simulating sexual conduct. Penal Section 311.3 defines it as material that portrays sexual conduct. Please see the code section for further detail as to what material is considered sexual conduct. [311.3 Penal Code](#)

In considering whether to charge the case, the Deputy District Attorney shall view the images of suspected child pornography. It is necessary for the deputy district attorney, along with assistance from the investigating detective and forensic examiner, to determine whether the images depict a minor under the age of 18 engaged in sexual conduct. (The manner in which the Deputy District Attorney shall view the images will be discussed in sub-section B below). If the Deputy District Attorney, or detective/forensic examiner, is unable to make this determination, the images must be

sent to the National Center for Missing and Exploited Children (NCMEC) before a charging decision can be made. Request the detective or forensic examiner submit the images to NCMEC. It is a good idea to send the images to NCMEC even in cases where the minor appears to be under the age of 18, however, this does not need to be completed pre-charging if it is obvious the minors depicted in the images are under 18.

In determining whether or not an image is child pornography, the Deputy District Attorney should consider the content of the images as well as their context. When doing so, consider the factors below:

1. Whether the focal point is on the child's genitalia or pubic area.
2. Whether the setting is sexually suggestive (i.e., in a place or pose)
3. Whether the child is in an unnatural pose or in inappropriate attire, considering the age of the child
4. Whether the child is fully or partially clothed, or nude. (Associated with sexual activity.)
5. Whether the child's conduct suggests sexual coyness or willingness to engage in sexual activity
6. Whether the conduct is intended or designed to elicit a sexual response in the viewer.

Once it is determined that the images contain child pornography, the Deputy District Attorney must decide what exact charges to file, i.e. possession, distribution, manufacturing. For a full breakdown of all child pornography laws and enhancements, please see the child pornography matrix created by San Diego Deputy District Attorney Jeff Dort and Deputy Attorney General Robert Morgester located in the folder entitled **DA Policy Manual "Redbook"** folder in the S and P Drives.

In the event you charge possession of child pornography, Penal Code section 311.11, where the suspect possesses more than one image of child pornography, under *People v. Hertzog* (2007) 156 Cal.App.4th 398, you may only charge the suspect with one count of possessing child pornography. However, if there is evidence the suspect was also distributing child pornography or manufacturing child pornography, you may charge the suspect with these separate charges as well.

B. Handling of Child Pornography Evidence

When reviewing child pornography evidence, all images shall only be viewed on a forensic laptop computer that is not connected to the network.

Viewing such images on any other computer, including an attorney's assigned laptop computer is prohibited.

Upon receiving the case for charging, if you receive a CD or DVD containing child pornography, immediately bring the CD or DVD to a District Attorney Investigator to book into evidence at our office. Do not keep this CD or DVD in your office and/or with any files associated with the case. Do not store or save any images and/or content from the CD or DVD on any computer.

C. Discovery Issues and Presentation at Trial

We will not disclose anything that constitutes child pornography without a court order and protective order.

Prior to *Westerfield v. Superior Court*, (2002) 99 Cal.App.4th 994, traditional discovery of child pornography images and video was not practiced, and typically, copies were not made available for the defense's use. Rather, the defense would be required to conduct any necessary review of the contraband at a law enforcement facility only.

Before discovering child pornography images to the defense, first invite the defense attorney to view the images at the District Attorney's Office or other law enforcement facility while you, the detective, or forensic examiner are present.

If the defense attorney insists upon obtaining a copy of the child pornography images, the deputy district attorney shall tell defense counsel that we must have a court order that must contain a protective order which must be signed by the judge before the images may be discovered. (See *Westerfield v. Superior Court*).

The protective order should always (1) limit the defense attorney's uses of the material; (2) require that any expert hired by the defense be bound by the order; (3) require that all illegal materials turned over in discovery be returned within 60 days upon the case's completion. A copy of the protective order shall be attached to the CD before it is discovered to the defense attorney. Upon final disposition of the case, the defense attorney must return the CD to the People for destruction. You will find a sample of the protective order located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

Prior to release of child pornography pursuant to court order, the Deputy DA must get approval from the District Attorney, Chief Assistant District Attorney, or the Assistant District Attorney before release of the child pornography to the defense attorney.

D. Presentation of Evidence at Trial

Exhibits can be prepared for the court and the jury in either printed or digital form. It is most convenient to use digital form by way of a PowerPoint presentation to reduce the amount of duplication of the images. If you intend to use a computer to present the evidence in court, you shall use the forensic laptop computer which is not connected to the network.

While the trial is a public hearing, try to argue to the court that the public should not be allowed to view the illegal images. To prevent the victims in the images from further exploitation, request permission from the court to section off half of the courtroom audience area so that observers cannot see the actual images, but can still see the witnesses, parties, the jury, and counsel if possible.

Meet with your forensic examiner or detective in advance to prepare his or her testimony for preliminary hearing or trial.

E. Forfeiture of Computer

At the conclusion of the case, request the court issue a forfeiture order for the computer, or other device, in which the child pornography was stored. Any computer equipment, including all peripherals used in a sex crime against a child, is subject for forfeiture per Penal Code section 502.01. [502.01 Penal Code](#)

7. CIVIL COMPROMISE

Absent approval from the District Attorney, Chief Assistant District Attorney, or the Assistant District Attorney, the People will not agree to a civil compromise pursuant to Penal Code Section 1377, et seq.

8. COLLATERAL/EXTRINSIC CONSEQUENCES

A. Consideration of Extrinsic Consequences at the Time of Plea (e.g. Immigration Consequences)

For purposes of this policy, extrinsic consequences are defined as those consequences that occur because of a defendant's conviction or sentence in a case but which are not part of the terms and conditions of the sentence imposed by the court. They are sometimes colloquially referred to as collateral consequences, and they generally occur because of the actions or decisions of others in response to the conviction or sentence. Such consequences are often cited by defense counsel when arguing for a particular resolution of a case. There are a myriad of examples of extrinsic consequences which are highly fact-specific and often extremely difficult to verify.

Common examples that we deal with continually are requests for consideration by prosecutors to recognize the impact of convictions on military and police careers, scholarship availability for college students, and professional licenses for doctors, nurses, teachers, etc. Another common example was discussed in the Supreme Court case of *Padilla v. Kentucky* (2010) 130 S.Ct. 1473 which urged the consideration of extrinsic consequences of immigration laws during plea negotiations.

Penal Code section 1016.3(b) states that the prosecution shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution. [CA Codes \(pen:1016-1027\)](#)

Padilla does not suggest that prosecutors should resolve cases to thwart federal immigration law. Further, the case does not imply that federal deportation consequences for convicted offenders are unjust. It is the duty of a prosecutor to seek justice. Justice also requires equal protection of the law and mandates treating similarly situated defendants equally. In some cases, the extrinsic consequences may be so disproportionate to the severity of the crime and to the criminal punishment imposed as to be unjust. Considering a proffered extrinsic consequence in such a case may be appropriate in seeking a just resolution.

Any plea agreement taking into consideration an extrinsic consequence to the defendant must still serve the interest of justice. To promote consistency, any plea agreement intended to ameliorate an extrinsic consequence must be approved by the Chief Assistant District Attorney, Assistant District Attorney or Team Lead Attorney.

Prosecutors should adhere to the following guidelines when determining whether an extrinsic consequence merits consideration in reaching a plea agreement:

1. There must be a factual basis for the plea.
2. If the defendant is charged with a violent or serious felony as defined in Penal Code Sections 667.5(c), 1192.7 and 1192.8, or a strike prior pursuant to Section 1170.12, any modification due to an alleged extrinsic consequence is presumptively inappropriate.
3. If the defendant is statutorily ineligible for probation, consideration of an extrinsic consequence is presumptively inappropriate.
4. An extrinsic consequence proffered to reduce a prison sentence to a lesser term is presumptively inappropriate.
5. An extrinsic consequence proffered to obtain a "wet reckless" in a driving under the influence case is presumptively inappropriate.
6. Prosecutors may not agree to restrict a court's authority to punish a probation violation.
7. In general, the less serious the crime the more likely an extrinsic consequence will unjustly impact the resolution of a case.

8. Consideration of extrinsic consequences does not mandate accepting that an extrinsic consequence has merit. Prosecutors have discretion to determine that a proffered extrinsic consequence does not merit alteration and will not result in an unjust sentence. It may be appropriate to request that defense counsel provide evidence to support his or her belief that there will be an extrinsic consequence to his or her client because of a particular conviction or sentence of an extrinsic consequence should be documented in the case management system.

9. A prosecutor's decision AND the supervisor's approval concerning consideration

10. A prosecutor should determine whether discussions with defense counsel about an extrinsic consequence for the defendant ought to be placed on the record.

B. Consideration of Extrinsic Consequences – Post Conviction

Society, victims, and this office all have a strong interest in the finality of criminal proceedings.

Extrinsic consequences, including immigration consequences, may not develop until years after a judgment has become final and the sentence has been completed. The law affords ample opportunities for defendants to challenge the correctness of judgments against them. The lawfulness of the remedy sought will determine the outcome without alteration due to a proffered extrinsic circumstance.

Where a defendant seeks any modification based on an extrinsic circumstance but without any lawful basis for the collateral attack on the conviction (for example, where either Penal Code section 1016.5 does not apply or a habeas corpus writ is not available), judgments will not be altered due to an extrinsic consequence.

A served sentence will not be altered in the Court's records post hoc due to a proffered extrinsic consequence. Further, "nunc pro tunc" orders to change a record of conviction having adverse extrinsic consequences are illegal unless there was, in fact, a clerical error in recording the conviction. *People v. Borja* (2002) 98 Cal.App.4th 481; *People v. Barraza* (1994) 30 Cal.App.4th 114.

9. CONVICTION REVIEW POLICY & PROTOCOL

The Chief Assistant District Attorney and/or his/her designee shall review and investigate claims of innocence raised post-conviction involving non-negligent homicides, sex offenses and violent and serious felonies involving substantial prison commitments. The District Attorney may examine claims of innocence in other types of case if a significant prison commitment or collateral consequence indicates that an examination of the case is warranted.

In addition, the Chief Assistant District Attorney, Assistant District Attorney or their designee shall be responsible for ensuring that any claim of Prosecutorial Misconduct made during the pendency of any criminal matter is thoroughly investigated and litigated prior to the completion of that pending criminal matter. (See Prosecutorial Misconduct section in this Policy Manual)

A. Protocol

All Post-Conviction claims of actual innocence, no matter in what form the claim is raised, shall be forwarded to the assigned Chief Assistant District Attorney and his designee for review. The Chief Assistant District Attorney shall insure that the claim is properly documented in GABRIEL, and that the claim and the file are uploaded into GABRIEL.

The Chief Assistant District Attorney and his/her designee shall review each claim to determine whether any further action or investigation is warranted. If after conducting the initial review a determination is made that the claim does not warrant further investigation, the Chief Assistant District Attorney shall notify the defendant and any known counsel that no further action will be taken on the claim. Claims with strong indicia of actual innocence will be investigated by the District Attorney.

At the conclusion of the investigation, the Chief Assistant District Attorney or designee shall determine whether all avenues of inquiry have been exhausted and whether based on the investigation there is a plausible claim of innocence. The existence of a reasonable doubt does not necessarily result in a conclusion that the

defendant is factually innocent; the conclusion must be that there is clear and convincing evidence that there exists a plausible claim of actual innocence in the case.

B. Case Review

The Chief Assistant Deputy District Attorney, or designee, shall prioritize the examination and review of cases as follows:

Non-Negligent Homicides;

Sexual Assault Cases;

Violent and Serious Felony cases involving substantial state prison commitments;

Other felony cases involving a substantial prison commitment or other significant collateral consequence;

While cases wherein a defendant entered a plea of guilty or nolo contendere will not be excluded from review, as the possibility exists that an innocent defendant may have plead to a crime he/she did not commit to avoid a potential significant sentence, they require greater scrutiny and the claim of innocence initially submitted must be compelling.

Particular scrutiny shall be paid to claims of actual innocence that cite newly discovered evidence that bears on innocence or that raise claims that have been found to be red flag issues such as misidentification, witness recantation, lying by an informant/cooperator, meaningful claims of alibi, or substantial Brady violations that would appear to involve actual innocence.

C. Caveats

As a general policy we will not investigate, in the absence of other compelling justification, claims where a defendant knew or should have known the basis of

his/her current claim at the time of the conviction, or where the defendant now disavows his/her trial testimony and proffers a different theory of innocence. In addition, except where there is a compelling showing that a plea was entered to avoid a more significant sanction, the defendant must have continually maintained his/her innocence from the inception of the case.

Conviction Review Application form is located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

10. COUNTY AND DEPARTMENT POLICIES

Every member of the DA's Office is responsible for knowledge and all internal DA Office Policies and all El Dorado County Policies, which includes the following:

A. Vern Pierson July 15, 2015 memorandum re: timesheets, p-cards, and travel located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

.B. County Policies: Every DDA is responsible for knowing all El Dorado County Policies. Which can be found at: located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

C. Of specific importance to all DDAs is the County Travel Policy D-1 and County Credit Card Policy D-2

1. Travel Policy D1 can be found located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

2. County Credit Card Policy D2 can be found located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

D. DA Office P-Card Policy can be located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

E. DA Office Time Sheet Policy can be found at located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

11. COURT APPEARANCES

A. Punctuality in the Courtroom

DDAs have the responsibility to make scheduled court appearances on all of their assigned cases or ensure that the case will be covered by another deputy. DDAs shall notify the court if they are going to be late.

For example, DDAs who have an 8:30 court appearance and a 9:00 court appearance shall call the 9:00 court as soon as possible and inform the 9:00 court of this fact. DDAs shall also notify the DDA covering general calendar appearances for that court docket. For later court appearances (9:30, 10, etc.), DDAs shall check in with the later court prior to the appearance time and let that court know what other courts the that DDA is going to. Another option is to put notes in the “case notes” section for the appearance in GABRIEL for the calendar DDA to handle – with sufficient notes about how the case should be handled.

B. Court Dress Code

Attorneys and all members of the Office appearing in court shall wear appropriate court attire. Denim jeans, dresses, skirts or jackets are not appropriate courtroom attire.

C. Updating Electronic File (GABRIEL)

Case files and GABRIEL must always be updated, as accurately and completely as possible, during or immediately after each court appearance.

D. Immediate Notification.

If any of the following happen in court, the District Attorney, Chief Assistant District Attorney, Assistant District Attorney or Team Lead should be notified: immediately:

1. Any allegation of prosecutorial misconduct (See policy #41 on prosecutorial misconduct);
2. Any contempt of court against a DDA
3. Any granted 1538.5 motion,
4. Any Order to Show Cause against a law enforcement agency or officer or a DDA or the DA.
5. Any dismissal of a serious or violent felony or enhancement by the Court over our objection
6. Any granting of a *Trombetta/Hitch/Youngblood* motion,
7. Any granting of a *Batson/Wheeler* motion,
8. Any finding of a *Brady* violation on the part of the DDA or DA's Office
9. Any dismissal of any case over our objection.

12. DEATH PENALTY

The District Attorney is solely responsible for determining whether to seek the death penalty in special circumstance homicide cases. This decision will be based on an analysis of all criteria enumerated under California law, including, but not limited to, the factors enumerated in California Penal Code Section 190.2.

DEATH PENALTY REVIEW

Whenever a homicide is filed and the filing deputy believes that a Special Circumstances allegation may be provable, the District Attorney and Chief Assistant shall be notified immediately. In order to preserve our rights, the filing deputy may file the Special Circumstance allegation(s) on the complaint, or send a “Notice” letter to defense counsel informing them that the District Attorney may file Special Circumstances at a later date.

All cases where there is a potential or actual Special Circumstances allegation shall be presented to the Death Penalty Review Committee for their review. The case should be presented to the Committee after the investigation is complete, usually after the Preliminary Hearing. Defense counsel will be advised and offered the opportunity to present, in writing, mitigating evidence or arguments on behalf of the defendant. The Committee will be guided solely by the facts of the case, the statutory aggravating and mitigating factors, and case law interpreting those factors. The Committee will recommend seeking the death penalty only when the known facts and circumstances relating to the case and the defendant create a reasonable probability that an El Dorado County jury would return a death verdict.

The race, religion, ethnicity, gender, or sexual orientation of the defendant or victim shall not be considered by the Committee unless it is relevant to an issue in the case. A decision not to seek the death penalty shall be final, unless, prior to trial or retrial, substantial new evidence is discovered which bears directly on the penalty decision. In such cases, the Committee may reconvene and consider its recommendation.

Any recommendation by the Committee must be personally ratified by the District Attorney. Defense counsel and the Presiding Judge shall be notified in writing of any decision to seek the death penalty. Defense counsel may, at any time, submit additional arguments, in writing, regarding new mitigating evidence and, at the discretion of the Committee, they may meet again to consider it.

The Death Penalty Review Committee should include the following personnel:

- 1) The Chief Assistant District Attorney
- 2) The Assistant District Attorney
- 3) Up to two at-large members assigned by the District Attorney, whose present assignment and experience makes their input important to a particular case decision

13. DEFERRED PLEAS

Deferred pleas are disfavored by this office and should only be offered in extraordinary cases, and with District Attorney, Chief Assistant District Attorney, or Assistant District Attorney approval, when there is a substantial risk that an appropriate disposition of the pending case(s) will not be obtained through traditional negotiation. Every deferred plea which is approved shall contain a provision that the deferred plea shall be entered and sentence imposed if the defendant violates any condition of probation or the deferred entry of judgment.

14. DISCOVERY - BRADY POLICY

Pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, it is the ethical responsibility of each deputy to inform the defense of any potentially exculpatory material known to the prosecution team in any particular case. The prosecution has a duty under the Fourteenth Amendment's due process clause to disclose evidence to a criminal defendant when the evidence is both favorable to the defendant and material on either guilt or punishment. Evidence is "favorable" if it hurts the prosecution or helps the defense.

Prior to the Preliminary Hearing, the deputy shall run the RAP sheet of every material witness whose testimony will be presented (live or through 872(b) P.C, hearsay) at the hearing and shall provide exculpatory information to the defense prior to the hearing e.g., crimes of moral turpitude.

NOTE – It is a misdemeanor to provide actual RAP sheets to defense counsel.. This includes law enforcement Brady checks as defined under Policy #15 (Law Enforcement Professionals) of this policy manual.

15. DISCOVERY – BRADY POLICY (LAW ENFORCEMENT PROFESSIONALS)

This protocol is established pursuant to the District Attorney's responsibility under *Brady v. Maryland* (1963) 373 U.S. 83 to disclose to the defense evidence favorable to a defendant. It is meant to address material with respect to law enforcement professionals which is exculpatory or impeaching and is material to guilt or punishment.

The District Attorney's Brady Committee [BC] will consist of the Chief Assistant District Attorney and/or the Attorney and Deputy District Attorneys IV chosen at large. This committee will serve as evaluator of all potential Brady material as it relates to law enforcement personnel. The committee will collect any potential Brady information, evaluate it, and decide if it requires inclusion in the Index.

All Deputy District Attorneys are expected to have read and be familiar with the Internal Brady Policy which are hereby incorporated by reference. Please refer to this documents located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives. for the detailed procedures.

A. Required Submissions

It is the responsibility of every prosecutor and investigator to immediately alert the Chief Assistant District Attorney or the Assistant District Attorney when they become aware of potential Brady material that relates to any member of the law enforcement community within El Dorado County or any enforcement that potentially has contact with any El Dorado County criminal prosecution. Information of this type includes, but is not limited to, information that would tend to establish that the law enforcement professional:

- has made false reports in the past;
- has pending criminal charges or is the target of a current criminal investigation;

- is being investigated by his or her own department for improper conduct, or has been
- has evidence of character for untruthfulness;
- has a bias in one or more potential criminal cases;
- has an inappropriate relationship with a key witness or a defendant or his or her
- is on probation or parole;
- has had a *Pitchess* motion granted as to said person;
- is suspected of hiding or altering evidence or committing perjury in a criminal investigation or
- any information that tends to establish that the law enforcement witness may not be truthful or totally forthcoming in any criminal investigation .

Such information should be given to the Chief Assistant DA, Assistant DA or Team Lead immediately in writing, and should include the following:

- a) name of person;
- b) agency and badge number;
- c) case or cases they may be involved in with case numbers and police reports; and
- d) a summary of the facts that cause you to believe there may be a Brady issue.

B. Brady Committee Action and Index

The BC will evaluate the evidence submitted and, if appropriate, request additional information from any appropriate source. No source of information will be automatically rejected, but the BC will determine what weight to give the information.

Ultimately, the BC will decide whether the information provided triggers a need for a Brady notification to anyone, and whether or not inclusion in the DA's Brady Index ("Index") is warranted.

Eligibility for the Index will be determined by the BC based on a standard of clear and convincing evidence, keeping in mind the prosecutor's responsibilities under Brady. Every Deputy D.A. will be responsible for ensuring that they check with the Chief Assistant District Attorney of any law enforcement professional who will be a material witness.

C. Confidentiality

The actual information supporting the inclusion of the law enforcement professional in the Index will not be available for access online. The information behind the Index will be maintained by the Chief Assistant District Attorney. The Brady Index application will indicate whether a particular officer should be the subject of further inquiry by the Deputy D.A. When the check of the Index indicates that the Deputy D.A. should make further inquiry as to a particular officer.

The decision whether disclosure is necessary in a particular case will be made by the inquiring deputy in consultation with the BC.

If a decision is made by the BC to include a law enforcement professional in the Brady Index, that person and his or her department will be notified and provided an opportunity to amend the information already collected. Such information is subject to constant review by the BC, and a name may be withdrawn from the Index upon further consideration of current or new information.

The Index may only be examined by the BC or a deputy whose subpoena or inquiry has triggered a response. Index information may not be released unless the BC has determined that notification is consistent with our responsibilities under *Brady v. Maryland* investigation.

The Law Enforcement Brady Index is maintained by the Chief Assistant District Attorney and can be found through the Google Drive labeled **EDCDA Law Enforcement Personnel Brady Index**. Access to the Brady Index is limited to DDAs and its sole purpose is for use in pre-filing and post-filing preparation of a case for prosecution.

The El Dorado County District Attorney Office Internal Brady Policy is located in the folder entitled **DA Policy Manual “Redbook”** in the S and P Drives.

16. DISCOVERY – CHILD MOLEST/ABUSE (MDIC EVIDENCE)

MDIC recordings shall not be discovered until the court signs a protective order prepared by the prosecution authorizing the release of this information under the conditions stated in the protective order. Under no circumstances will be an MDIC recorded interview be discovered or given to anyone including the Court by anyone other than assigned prosecutor, Chief Assistant DA or Assistant DA or sworn peace officer assigned to case. **Legal staff member will not be asked to discover MDIC interview tapes.**

These protective orders shall be in a standard format. Please consult with Chief Assistant DA, Assistant DA or the assigned child sexual assault prosecutor to ensure you are using the standard format.

MDIC protective order samples are located in the folder entitled **DA Policy Manual “Redbook”** in the S and P Drives.

17. DISCOVERY – REVIEWING DISCOVERY

It is good practice to review all “documents” before discovering to the defense. Deputy District Attorneys are strongly encouraged to review all documentary evidence, including but not limited to audio and video recordings, prior to discovering that evidence to the defense. If that review reveals confidential information, the Deputy District Attorney shall appropriately redact or obtain a protective order prior to providing the discovery to the defense.

18. DISCOVERY - WITNESS CONSIDERATION

Each deputy has the obligation of ensuring that information regarding witnesses who have received consideration from the prosecution and/or related law enforcement agencies is discovered to the defense. In order to meet this obligation, the following policy controls in every felony criminal case:

a. Prior to the filing of the Information, the assigned deputy shall initiate an investigative request with our Investigations Bureau asking whether our office has ever provided consideration (e.g. Informant Contract) to any of the civilian witnesses in the case.

b. The Investigations Bureau will search through all relevant records, document the results and notify the requesting DDA.

c. The deputy shall also search the file particularly the confidential archive sections # 14 and 15 for witnesses who have “received a benefit.”

d. When an Information is filed, the Post Preliminary Hearing report must be notated indicating a request had been made by the assigned deputy for investigations to investigate this issue. If this has not been done, the supervisor or the Team Lead reviewing the Information will notify the assigned DDA through the GABRIEL to ensure that that the request is made and completed.

e. Prior to thirty days before trial, the deputy will inform opposing counsel if any material witness has worked for law enforcement pursuant to a contract with our office or has received a benefit.

f. In misdemeanor cases, after a case has been set for trial, the deputy shall submit an investigative request with our Investigations Bureau asking whether our office has ever provided consideration to any of the civilian witnesses. Any such information shall be discovered to the defense as soon as possible before trial.

19. DISPOSITION and PLEA BARGAINING GUIDELINES

Disposition and plea bargaining decisions will be made on the merits of the case, and not upon calendar overcrowding, heavy caseloads, undue pressure from the court, or a perceived need to settle a case short of trial.

20. DIVERSION - MISDEMEANOR

The District Attorney's office utilizes a pre-filing and/or pre-trial diversion program for some misdemeanor offenders (Suspended Driver's License Program, and Delayed Entry of Judgment-Pacific Educational Service) The diversion program is limited to specific crimes delineated by the District Attorney. No deputy shall offer diversion to any defendant charged with any other crime without prior supervisor or Team Lead approval. Only the diversion program approved by the District Attorney shall be utilized. The practice of "DA probation/DA Diversion" (which is continuance of the case without first obtaining a plea of no contest or guilty) is not authorized.

The DEJ/PES Policy and the SDLP Policy are located in the folder entitled **DA Policy Manual "Redbook"** in the S and P Drives.

21. DOMESTIC VIOLENCE CASES

It is the policy of this office that domestic violence cases will be filed with or without the victim's cooperation if the charging deputy reasonably believes that the crime has been committed and it meets our charging standards. Given the potential for continued violence or threat of violence in these cases, failure to make a prompt filing decision is a risk we cannot take.

The filing deputy shall search the following databases at the time of filing charges, California Sex and Arson Registry (SCAR), Supervised Release File, Department of Justice Criminal History, DAMION and Gabriel local databases (compliance with Penal Code section 273.75), and complete a memorandum with the filing confirming 273.75 compliance

This office does not divert or enter delayed entry of judgment dispositions on any domestic violence case.

As part of any conviction/disposition involving a probationary sentence in a domestic violence case, this office will always seek Penal Code 1203.097 terms, which includes the statutorily mandated 52-week program.

22. DUI GUIDELINES

The following sets forth our filing and disposition guidelines in driving under the influence (“DUI”) cases. While, they are provided to promote consistency and uniformity in our prosecutions, each case must turn on the sufficiency of the evidence.

a. Absent serious problems of proof, a DUI charge will be filed if the blood alcohol, at the time of driving, can be established at .08 or above, or if the defendant refused to submit to or complete a chemical test.

b. All valid separate DUI convictions shall be pled and proved and shall not be plea bargained or stricken, except for a failure of proof.

c. A DUI with a blood alcohol level of .08% or .09% at the time of driving MAY be resolved as a “wet reckless” only when the following conditions are met: 1) There exists a proof problem, for example: absence of a bad driving pattern, FST performance that does not show impairment, or PAS test showing clear rising BAC defense; 2) The defendant has no other prior convictions (and/or pending cases) for DUI and/or wet reckless; and 3) The defendant’s driving did not contribute to a collision and/or injury. Supervisor or Team Lead approval is required for a wet reckless disposition in any other situation.

d. Excessive Blood Alcohol allegations must be pled and admitted/proven. Absent a failure of proof, these allegations shall not be stricken or plea bargained.

e. It is the policy of this office that we shall not offer nor concur in any probationary sentence for a felony DUI (3 or more priors) offense. The general policy of this office is to seek a non-probation disposition for these recidivist offenders. Any exception shall be approved by a supervisor or Team Lead..

f. In any case involving a DUI related death, the disposition must be approved by the District Attorney.

g. Delayed Revocation or Suspension of Driving Privileges (VC Section 23665) - In all DUI cases where VC Section 23665 is applicable, DDAs shall request that the court postpone the revocation or suspension of the offender's driving privilege until the term of imprisonment is served, as delineated in 23665 VC.

23. EXPERT WITNESSES

No expert witness may be retained without the prior written approval of the DA, the Chief Assistant D.A, or the Assistant D.A. Please use the expert witness request form for this purpose. Each request must include the total proposed cost for the expert.

Forms for Expert Witness are located in the folder entitled **DA Policy Manual “Redbook”** in the S and P Drives.

24. EXTRADITION

No warrant will be removed from CLETS, NCIC or any Law Enforcement database unless it has been first approved by the District Attorney, Chief Assistant D.A, or an Assistant D.A.,

The decision to extradite will follow the guidelines below:

- A. The District Attorney will extradite any case anywhere in the United States when the case charges:
 1. Serious and Serious and Violent Felony (667.5(c(1-23); 1192.7(c)(1-40) PC
 2. All Felonies charging a prior Serious or Serious and Violent Felony (Strikes)
 3. All Felony DUIs or DUI related manslaughters (22350, 22350.5 VC, 191.5(a), 191.5(b) PC, 192.5(a) or (b) PC)
 4. All Felony Child Abuse (273ab and 273a(a) PC and all Child Abductions (278 and 278.5 PC)
 5. All Felony Elder Abuse (368(b)(1) PC)
 6. All Felony Arson cases (452 PC, 453, 455 PC)
 7. All Felony Violations of Probation/Mandatory Supervision/Post Release Community Supervision (All defendants in this category should have waived extradition as a condition of their release/supervision)
 - a. All Interstate Compact cases- PC 11189 to 11198 [Interstate Compact Penal Code 11189](#)
 8. All other felonies arrested or located in Oregon, Nevada, Arizona, Idaho and Washington
 9. All other felonies found outside Oregon, Nevada, Arizona, Idaho and Washington will be reviewed on a case by case basis with law enforcement agency input, cooperation, age of the crime, and severity of the crime.
 10. All foreign felony extraditions will be reviewed on a case by case basis.
 11. Misdemeanors will not be extradited absent compelling justification weighing law enforcement agency input, cooperation, age of the crime, and severity of the crime.

25. FACTUAL INNOCENCE PETITIONS

DDAs shall not concur with a defendant or suspects petition for a Finding of Factual Innocence, nor shall they submit the issue, without written and oral opposition, absent approval from the District Attorney, Chief Assistant District Attorney, or the Assistant District Attorney. Upon receipt of such a request under Penal Code section 851.8, the DDA shall notify the Office of the California Attorney General.

[Penal Code section 851.8](#)

26. FIREARM ALLEGATIONS AND 12022.53 P.C. ENHANCEMENTS

Absent a failure of proof or extraordinary circumstances, a firearm allegation and/or enhancement should not be dismissed or plea bargained.

An allegation under Penal Code section 12022.53 (10-20-Life) shall not be dismissed without the prior approval of the District Attorney, Chief Assistant DA or the Assistant DA.

27. GRAND JURY

Any request to bring a case before the Grand Jury must be made directly to the Chief Assistant District Attorney, the Assistant District Attorney, or the designated Grand Jury coordinator(s).

28. GRANT STATISTICS

Any District Attorney Office personnel assigned to a grant prosecution position, and any deputy district attorney who works on or appears on a grant case, must promptly, completely and accurately enter all required statistical information into the relevant computer database. Each grant deputy, and/or any attorney who works on or appears on a grant case, is also responsible for completing all required time studies every pay period. GABRIEL has grant classifications and bi-weekly time sheets will track cases that need time studying.

The types of cases which are time studied, include Auto Fraud, Workers Comp Fraud, Real Estate Fraud, Welfare Fraud, Environmental, Consumer Fraud, and AB 109 cases (which are PRCS [Post Release Community Corrections], 3056 or 3000.08 parole violations, 3455 PC mandatory supervision, which should be entered as "revocation proceedings" in the notes section on page 2 of the time study)

Time is to be entered in 15 minute increments, which must include the date, case number, and what you did on the case.

29. IMMUNITY

No person shall be given “use” and/or “transactional” immunity without the prior approval of the District Attorney, Chief Assistant District Attorney, or the Assistant District Attorney.

30. INFORMANTS

No person may receive consideration of any kind from the District Attorney's office without prior approval of the District Attorney, the Chief Assistant, or an Assistant District Attorney.

All request to provide information in consideration of an expected reduction in sentence or consequences and seriousness of the crime shall be documented and archived in in the confidential section of the file (Archive 14 or 15).

All agreements to explore cooperation or actual cooperation shall be done in writing and signed by the District Attorney, Chief Assistant District Attorney, or Assistant District Attorney, the cooperating person receiving consideration and cooperating person's attorney.

31. LIFER POLICY

- A. Every prosecutor who obtains a life imprisonment offense shall do the following: Prosecutor Statement (P.C. section 1203.01) to CDCR per A Complete Lifer Hearing packet for future use, including all Victim Impact Statements, Probation Reports, and Statements in Aggravation or Mitigation.
http://www.cdcr.ca.gov/victim_services/parole_hearing_info.html
[Penal Code section 1203.01](#)
- B. Important Facts especially those that were presented at trial but not necessarily in the investigative reports.
- C. A through Victim contact list especially next of kin (NOK) or close personal friends

The DA Office will attend all scheduled lifer hearings. The preference is to send the originally assigned prosecutor, however, in many cases the original prosecutor is no longer with the office. The assigned prosecutor will be experienced and thoroughly prepared for the hearing.

The DA Office will make reasonable attempts to locate and notify all victims of the underlying lifer offense of the pending lifer hearing. The Victim Contact Policy #49 will be followed.

32. JUVENILE CRIMES FILED AS ADULTS

All cases where the law permits direct filing charges against a minor in adult court under Welfare & Institutions Code Section 602(b) will be reviewed by the Chief Assistant District Attorney, Assistant District Attorney or their designated Team Lead or DDA IV, unless the District Attorney directs otherwise.

33. NARCOTICS - ASSET FORFEITURE ACTIONS

All narcotics cases must be closely analyzed to determine the existence of any asset forfeiture proceedings. Deputies handling narcotics cases should seek resolution of all asset forfeiture proceedings prior to, or in conjunction with, any resolution of the criminal case.

Asset Forfeiture policy and forms are located in the folder entitled **DA Policy Manual “Redbook”** in the S and P Drives.

34. NARCOTICS - DRUG COURT (PC 1000) ,PROP 36, AFDC

At the earliest stage possible, the charging deputy should determine if the defendant is statutorily eligible for Drug Court or Proposition 36 drug treatment under a strict fact analysis. Unless eligible for PC 1000 Drug Court, no deputy should fail to charge a crime or enhancement, dismiss charges, or alter charges to accommodate an otherwise statutorily unqualified candidate.

35. NARCOTICS - SALES

All provable counts of drug sales and possession for sales and priors should be charged as soon as possible. In cases where multiple sales have occurred, a defendant's record, number of sales, amount of narcotics sold, and degree of sophistication will all be taken into consideration to determine if a probation offer should be made. If a defendant is statutorily ineligible for probation, an "Initial Felony Probation" offer should not be tendered absent a significant proof problem or other extraordinary circumstances.

36. ON CALL POLICY

The Chief Assistant District Attorney or the Assistant District Attorney shall establish an on call list of Deputy District Attorney IV who shall be on call for law enforcement on a weekly assignment basis. The on call assignment will run from Monday at 8:00 a.m. to the next Monday at 8:00 a.m. All changes or switches to the on call the schedule have to be made on the office on call calendar and with notification to the EDSO, PPD, SLPD and the CHP. It is the DDA seeking the benefit of the switch duty to make the changes and LEA notifications.

On call DDAs shall be paid the DDA negotiated rate for the week of on call.

On call DDAs shall immediately notify either the Chief Assistant District Attorney, the Assistant District Attorney or the District Attorney of all officer involved shootings investigations and homicides. That notification shall be made as soon as possible but in any event no later than one hour after initial notification of the officer involved critical incident or homicide.

37. PEREMPTORY AND CAUSE CHALLENGES - CCP 170.6 AND 170.1

The approval of the District Attorney, Chief Assistant District Attorney, or Assistant District Attorney is required prior to the exercise of a peremptory or cause challenge against a judge. Any systemic or blanket challenge to a particular judge must be approved in advance by the District Attorney.

38. PEACE OFFICER VICTIMS - FORCE OR VIOLENCE

No charging decision to reduce or reject a charge involving force or violence, or the threat of force or violence against a peace officer, including Penal Code Section 148, shall be final without the charging deputy first speaking with the victim officer(s) or sending the officer a memorandum outlining the reduction of the charge or the rejection of the case. The DA filing rejection form with a narrative explanation will meet this obligation.

No charge reducing or dismissing a charge involving a peace officer shall be made without the approval of the Chief Assistant District Attorney, Assistant District Attorney or the Team Lead..

No filed case involving such charges shall be resolved without first contacting the victim officer to discuss the matter.

This policy is not intended to prevent the filing DDA for the appropriate use of discretion in deciding whether to initially file wobbler offense(s) as misdemeanor(s).

39. PUBLIC RECORDS ACT AND SDT

Whenever we receive a subpoena duces tecum (SDT), a deposition subpoena, or a Public Records Act (PRA) request, a copy that request must be forwarded without delay to your supervisor, the Executive Assistant to the District Attorney, the Assistant District Attorney for review. Before the release of any documents pursuant to an SDT or PRA Request, the District Attorney, the Chief Assistant District Attorney or the Assistant District Attorney approval must be obtained.

A. SDT and Deposition Subpoenas

1. Deposition subpoenas must be in compliance with Code of Civil Procedure 2020.010 et seq. [Code of Civil Procedure 2020.010](#)
2. The service of any subpoena is made by personally delivering a copy to the witness (CCP §1987). A SDT (whether for the production of records in court, or for the purpose of discovery under Evidence Code section 1560(c)(2) [deposition and records] or 1560(e) [copying records only], specifically requires that an affidavit in support of the request and demonstrating good cause for production of the records must accompany the subpoena (CCP §§ 1985(b) and 1987.5; cf *Terry v SLICO* (2009) 175 Cal.App. 4th 352, 356-360.

B. PUBLIC RECORDS ACT REQUEST

Requests for and the release of records to members of the public are governed by the California Public Records Act (PRA). 1 (Gov. Code, § 6250 et seq.) Originally enacted in 1968, to replace "a hodgepodge of statutes and court decisions, relating to public records[,]" it was patterned after the federal Freedom of Information Act (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338; 5 U.S.C. § 552, et seq.). The premise of the PRA is that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) Therefore, the PRA is to be liberally construed in favor of the release of public records; while the assertion of PRA exemptions is narrowly construed. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476, fu. 4-5; see Cal. Const.,

art. I, § 3, subd. (b) (2).) However, "the public's right to disclosure of public records is not absolute," especially when balanced against an individual's right to privacy. (Cal. Const., art. I, § 3, subd. (b) (3); *Black Panther Party v. Keboe* (1974) 42 Cal.App.3d 645, 653 ["The objectives of the Public Records Act thus include preservation of islands of privacy upon the broad seas of enforced disclosure."]; *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1017 [identities of complaints concerning noise at local airport do not need to be disclosed].) [Public Records Act](#)

As a consequence in balancing these policy considerations, the deputy processing a PRA request should be mindful that our office's discretion concerning the disclosure of records is limited and, therefore, any decision not to release records must be based only on exemptions set forth in the PRA. (GC§§ 6254, 6255.)

1. Response Due Within Ten Calendar Days (but can get an extension)

Section 6253 sets forth the time limits for a PRA response, and in subdivision (c) provides that an agency must respond within 10 calendar days after receipt of a PRA request. The deputy processing the response needs to determine when it is due, what records are requested, and where they are stored. If Deputy DA gets a PRA request, give a copy of the request to your supervisor and to the executive secretary to the District Attorney.

2. Often Used Exemptions used by Prosecutors - Sections 6254, 6254.5 and 6255 (not exclusive list)

Sections 6254, 6254.5 and 6255 contain specific classifications of records which are exempt from disclosure under the Act. Additionally, section 6275 et seq., is a listing of all statutes, no matter in what code, that exempt records from disclosure. The deputy preparing the response should carefully review these sections and pertinent case law so as to assert proper exemptions. The exemptions most frequently used by prosecutors and law

enforcement agencies are in sections 6254, subdivisions (a), (b), (c), (f), and (k),

6254.5, subdivision (e) and 6255. (Frequently used exemptions are listed in Appendix C.)

Section 6254, subdivision (f) exempts from release, records of complaints made to law enforcement, law enforcement investigative files, law enforcement intelligence information, or security files, even after the investigation has been completed. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1071; *Williams v. Superior Court*, supra, 5 Cal.4th at p. 355; *Dixon v. Superior Court* (2009) 170 Cal. App. 4th 1271, 1273-1274 [autopsy reports are exempt from disclosure as long as there is "a concrete and definite prospect" of "criminal law enforcement' proceedings"].) Further, disclosure is not required for that portion of an investigative file that reflects the analysis or conclusions of the investigating officer. (§ 6254, subd. (f); *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 176-177.) Subdivision (k) of section 6254, also contains within its ambit an exemption for a prosecutor's work product.

Section 6254.5, subdivision (e) provides that government records need not be disclosed to a member of the public if the records were given by one agency to another "which agrees to treat the disclosed material as confidential." This type of record can only be released to "persons authorized in writing by the person in charge of the agency. . . ." (*Ibid.*) Therefore, if the records are marked confidential or if there is a written agreement that the records be treated as confidential or if the agency has a written policy that such documents are confidential, these records should not be released under the PRA. For example, the Orange County District Attorney's office did not waive the law enforcement investigatory report exemption when it furnished a close out memorandum discussing the results of an investigation into officer misconduct to the local police agency, because it was to remain confidential. (*Rackauckas v. Superior Court*, supra, 104 Cal.App.4th at p.178.)

Section 6255 provides an exemption to bar disclosure if "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (See, *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652.) Often referred to as the "catch-all" exemption, this provision can be asserted when no other specific exemption applies. However, the burden is on the agency to justify nondisclosure of the records. (*Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 612; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585, disapproved on other grounds in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1298.) Consequently, the particular public interest in not disclosing the records should be clearly stated in our response. The most useful portion of the catch-all exemption was the so-called "Deliberative Process Privilege," first recognized by the Supreme Court in *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1339. In that case, the court held that agencies were not required to release documents which revealed the: "decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its function." (Id. at p. 1342, quoting *Dudman Communications v. Dept. of Air Force* (D.C. 1987) 815 F.2d 1565, 1568.)

3. RECOVERING COSTS

Section 6253, subdivision (b), requires government agencies to promptly make available copies of all requested documents upon the payment of the "direct costs of duplication, or a statutory fee, if applicable."

[CPRM Manual prepared by San Diego DDA Peter Cross \(ret.\) is an extensive resource in this area located in the folder entitled DA Policy Manual "Redbook" in the S and P Drives.](#)

40. PRISON CASES – REMANDING TO CUSTODY

For any sentence resulting in prison, including 1170h sentences, the DDA shall request that the defendant be immediately remanded to the custody of the Sheriff for delivery to the institution. The DDA should object to any request that the defendant remain out of custody and allowed to surrender at a later date.

41. PROSECUTORIAL MISCONDUCT

A. Prosecutorial Misconduct Protocol

Claims of Prosecutorial Misconduct, made during the pendency of a case, create a conflict of interest for the assigned prosecutor as it requires him/her to discharge a duty to the People and defend himself or herself against a personal attack. The public deserves a prosecutor held to the highest ethical standards and every prosecutor deserves a neutral evaluation of the claim and a prompt, fair and robust defense. Accordingly, no prosecutor should be left defending himself or herself over a charge of prosecutorial misconduct.

Occasionally, the dynamics of courtroom litigation may make bringing in other prosecutors to handle allegations of prosecutorial misconduct impractical and unnecessary. Therefore, if a prosecutor is verbally charged with prosecutorial misconduct in court, and the charges are trivial, meretricious and/or designed to delay, the trial deputy may ask for an immediate ruling from the judge.

When faced with a verbal accusation of prosecutorial misconduct, in general, the better practice is for the trial prosecutor to:

- Ask the Court to order the defense attorney to reduce the allegation to writing;
- If the Court is unwilling to order the defense to reduce the allegations to writing, then the prosecutor should ask the Court to order the defense to specifically layout the claim of prosecutorial misconduct, the factual basis for such a claim, and the sought remedy;
- Ask for time to adequately prepare and investigate the allegation;
- At the first practical opportunity, discuss the matter with the District Attorney, Chief Assistant District Attorney or Assistant District Attorney;

B. Protocol for Response to Written Allegations of Prosecutorial Misconduct

All written allegations of prosecutorial misconduct should be discussed immediately with the Assistant Chief Assistant District Attorney and Team Lead. The Chief Assistant District Attorney shall evaluate the allegations and discuss the issues with the Supervising DDA to determine whether to assign the matter to the Conviction Integrity Team. Upon assignment, the Conviction Integrity DDA will work collaboratively with the targeted prosecutor.

Once the matter has been assigned to a Conviction Integrity Team member, different than that targeted by the allegation, the following protocol should be followed:

* While time may be limited, a thorough review of the file and all relevant facts is essential to evaluate and defend against the claim. This should always include a discussion with the accused prosecutor and his or her Team Lead in order to understand his or her side of the story.

* In many cases, it is possible to resolve the issue between the prosecutor and defense attorney without an adversarial hearing. For example, many allegations of misconduct arise out of discovery disputes. It is frequently possible to resolve these disputes without a court hearing. If the matter is resolved in this way, then the details of the resolution must be entered in GABRIEL.

In cases that cannot be resolved except through an adversarial hearing, and an evaluation reveals that the allegations of prosecutorial misconduct are false, then a written response clearly refuting the allegations must be filed with court. Under no circumstances may allegations of prosecutorial misconduct go unanswered, and the accused deputy should not write or sign this motion unless specifically authorized by the Chief Assistant Deputy District Attorney.

* Once the defense motion alleging prosecutorial misconduct has been denied by the court, the prosecutor arguing the motion should ask the court to make a finding on the record that the prosecutor's conduct was proper.

* It is essential that we have an accurate record of what happened as allegations of prosecutorial misconduct can arise years after the incident in the media or community, and an accurate, contemporaneous account is vital in providing a defense to these charges or subsequent rumors.

* In addition, a transcript of the Court's finding shall be procured so that we have a clear record of the prosecutor's exoneration. This transcript shall be uploaded into Gabriel under the appropriate entry number (Archive #14).

* If the matter is resolved in this way, then the details of the resolution will be entered in GABRIEL and referred to the Chief Assistant District Attorney and the appropriate Team Lead.

Finally, in those rare cases where the allegation of prosecutorial misconduct is well-founded, then the matter shall be referred back to the Chief Assistant District Attorney and the appropriate Team Lead for consideration of how and if the case can proceed and other appropriate actions that might be necessary.

C. Findings of Prosecutorial Misconduct Resulting in a Reversal

In the event a case is reversed in whole or part based upon prosecutorial misconduct, the trial deputy must self-report to the State Bar within thirty days of learning of the grounds for the reversal. A copy of the prosecutor's letter to the State Bar must also be sent directly to the Chief Assistant District Attorney, the Assistant Chief Deputy District Attorney for Conviction Integrity and to the trial attorney's Team Lead DDA.

Any prosecutor who has a sustained finding of prosecutorial misconduct shall work with the Chief Assistant District Attorney in charge of Conviction Integrity to develop an educational plan to address the error. At the request of the prosecutor, the Assistant Chief Deputy District Attorney in charge of Conviction Integrity may write

a letter to the State Bar on behalf of the prosecutor outlining the remedial steps that have been taken for preventing the error from happening again.

The CDAА Professionalism Sourcebook is a good resource for "The Duties of a Prosecutor"

42. RDOs (Alternative Work Schedule)

Except where separately authorized by individual bargaining unit agreements with the County, RDOs (alternative work schedule) are at the discretion of the District Attorney. If approved, the use of RDOs should never interfere with your assigned cases or caseload.

43. RELATIONS WITH FEDERAL AUTHORITIES

The District Attorney recognizes and gives full faith and credit to all Federal laws.

Occasionally, we receive a request from the U.S. Attorney's Office to relinquish a state prosecution so that the defendant can be charged with a federal crime. All such requests should be immediately forwarded to the District Attorney

44. RESIDENTIAL BURGLARY

Penal Code Section 462, which makes a defendant who commits residential burglary ineligible for probation except in an unusual case, shall be charged in every complaint and information in which the evidence suffices to prove the elements of the crime.

Absent an unusual case, no deputy shall offer or consent to a “no state prison” resolution to a residential burglary charge.

As a matter of office policy, a case is never unusual if: 1) the defendant was on formal probation for any offense; 2) a weapon was used; 3) a firearm was stolen; 4) a victim was present at the time of the burglary; 5) a juvenile accomplice was involved; 6) multiple dwellings were burglarized; 7) the burglary involved vandalism (beyond that occurring on entry), intimidation, or gang activity.

A probation offer shall require approval of the deputy’s team leader, the Chief Assistant District Attorney or the Assistant District Attorney, and be consistent with this policy.

45. SERIOUS OR SERIOUS & VIOLENT CRIMES POLICY (STRIKES)

Preamble:

The purpose of this “Three Strikes” policy is to set forth the principles, standards and practices that will govern this office’s application for charging, negotiating dispositions and prosecuting serious or serious and violent felony prior convictions and current or new serious or serious and violent felonies. ‘

The passage of the “Three-Strikes” law did not affect the moral, legal and ethical obligations of this office to charge only those criminal offenses which we reasonably believe can be proven beyond a reasonable doubt.

Charging

A. Felony Charging (Before Preliminary Hearing)

All serious and serious and violent felonies shall be charged.

All felony non-Proposition 36 (section 1210.1 PC) felony offenses with a strike prior shall be charged.

If the current felony offense is Proposition 36 eligible under 1210.1(b)(1) P.C., the charging deputy district attorney has the discretion to decide not to charge strike priors.

If the offense is a wobbler and the underlying facts of crimes’ commission so warrant, nothing in this policy is designed to prevent the sound use of discretion to charge the offense as a misdemeanor.

B. Felony Charging (Post Preliminary Hearing or Waiver of Preliminary Hearing)

All serious and serious and violent offenses proven at the preliminary hearing shall be charged on the Information.

All strike priors shall be charged on the Information.

Disposition

All plea bargaining involving all cases charging serious or serious and violent felonies or charging a strike prior will be expressly approved by the District Attorney, the Chief Assistant District Attorney, or the Assistant District Attorney. Approval will be obtained before a plea bargain occurs.

46. SEXUAL ASSAULT CASES

Cases involving allegations of sexual misconduct are among the most serious that our office prosecutes. The impact on the victim prior to the initiation of prosecution and after it begins is profound. It is important that all necessary investigation has been completed prior to filing the charging document. It is also very important to critically evaluate sexual abuse cases at each step of the prosecution to ensure that only those cases that can be proven beyond a reasonable doubt proceed to trial. To do otherwise is a disservice to our client, the criminal justice system and the victim.

With the above guidelines in mind, the following procedures should be followed:

A. Prior to Charging

If possible, obtain a statement from the accused if it can be done without undue delay and/or risk to the victim or the public at large.

If there is corroborating evidence independent of the victim's statement that supports the commission of the crime by the accused, the case may be charged.

If there is no corroborating evidence independent of the victim's statement, the charging deputy should either view the videotaped statement of the victim and/or personally meet with the victim to evaluate his/her credibility and claims. If, after such review and/or meeting, the charging deputy is reasonably satisfied that the accused is guilty of the crime and that there is legally sufficient, admissible evidence of a corpus delicti and the accused's identity and that the victim's statement, in combination with all other factors, is legally sufficient to convince a jury of the accused's guilt beyond a reasonable doubt, considering the most plausible and reasonably foreseeable defense, the case should be charged.

B. Prior to Preliminary Hearing

The deputy district attorney assigned to handle the case should meet with the victim prior to the preliminary hearing.

The assigned deputy should discuss the case with his/her team lead or the chief assistant district attorney to evaluate the case prior to an offer being extended to the defendant.

Prior to any offer being made to the defendant for resolution of the case, said offer should be discussed with the victim or the victim's parents if the victim is a child.

If the assigned deputy feels that it is needed to evaluate the strength of the case, the deputy should consider having the victim testify at the preliminary hearing.

However, the deputy should work with the victim/witness advocate to ensure that the victim is receiving any needed counseling prior to testifying.

C. Prior to Trial

The assigned deputy should meet with the victim and go over the facts of the case if the victim did not testify at the preliminary hearing. It is not enough to simply show the victim the police report and ask him/her if everything is correct.

47. SUBPOENAS

Preliminary Hearing subpoena rosters for felony offenses will be prepared when the case is originally filed.

Personal Serve Subpoenas

When completing the witness roster or subpoenaing the witness, unless the witness is totally uncooperative, the deputy shall request both "Mail" and "Personal Serve." The initial effort to serve the witness will be by mail.

If service by mail is unsuccessful, the paralegal/legal secretary shall notify the deputy approximately two weeks before the appearance date. At that point the deputy shall decide whether Personal Service is required and prepare a service request for personal service.

If Personal Service only is requested on a subpoena, the deputy shall state the reason for personal service and any known hazards associated with the personal service on the witness roster for each person to be served. If there is no such indication, the subpoena request will be sent back to the deputy.

48. U VISAS: IMMIGRATION RELIEF FOR VICTIMS OF CRIMES

Created for non-citizens who:

1. Have suffered substantial physical or mental abuse resulting from a wide
2. Have been helpful, are being helpful or are likely to be helpful with the prosecution or investigation. The Homeland Security Resource Guide states that that the law concerning UVisas was enacted with bipartisan support to “strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while offering protection to victims of such crimes without the immediate risk of being removed from the country. Congress also sought to encourage law enforcement officials to serve immigrant crime victims.”
3. An arrest, prosecution, or conviction is not required.
4. It does not matter if case is closed or that many years have passed since the criminal activity. [Victims of Criminal Activity: U Nonimmigrant Status | USCIS](#)

U Nonimmigrant Status Interim Relief

Created for non-citizens who:

1. Have suffered substantial physical or mental abuse as a result of having been a
2. Possess information concerning that criminal activity;
3. Have been helpful, are being helpful, or are likely to be helpful in the investigation and prosecution . Penal Code section 679.10 establishes a rebuttable presumption that an immigrant victim has been, is being , or likely to be helpful if the victim has not refused or failed to provide reasonable request for law enforcement assistance. [679.10 California Penal Code](#)

4. The criminal activity described violated the laws of the United States or range of criminal activity; and criminal investigation or prosecution of the crime victim of certain criminal activity; investigation or prosecution of the criminal activity; and occurred in the United States of the territories and possessions of the United States.

5. U Visas must be processed with 90 days of the request, or 14 days if the person applying is in removal proceedings.

All requests for “U Nonimmigrant Status Certification” shall go to the Chief Assistant or his/her designee. The “U Nonimmigrant Status Certification” request shall be reviewed by the Chief Assistant or his/her designee (often there will be consultation with the Deputy DA who handled the case and the victim advocate assigned to the case) . The Chief Assistant (or his/her designee) is the “Certifying Official” who has authority to sign the request. The request shall be certified only if the office can verify that the victim was cooperative. This cannot occur when the file is destroyed or is not easily attainable (e.g., in storage off site). If the case is under investigation by a law enforcement agency (not yet referred to the DA’s office), the certification form should be referred to that agency. A signed U Nonimmigrant Certification Form should be turned over to the defense in discovery as it may be considered a benefit. Any exception to the above policy shall be approved by the Chief Deputy.

49. VICTIM CONTACT POLICY - MANDATORY

In recognition of victims' rights, the California Constitution and supporting law, it is the policy of the District Attorney that “victims” (as by Marsy’s Law) must be promptly contacted by the assigned deputy and/or his or her designee.

IMPORTANT—Initially, the charging attorney is the “assigned deputy” for purposes of this policy and Marsy’s law requirements. The charging attorney may satisfy his/her requirement of giving a victim notice of the charges filed by referring the case to Victim/Witness Services at the time of charging, even if the case is being rejected. As the case advances, the “assigned deputy” responsibilities transfer to the attorney appearing on or otherwise in control of the case. Detailed notes should be entered by the assigned deputy into Gabriel documenting victim contacts or attempts to contact as the case proceeds.

In all cases involving “victims,” referrals shall be made to Victim/Witness Services at the charging stage.

It is the reviewing deputy's responsibility to insure that Victim letter(s) are sent to every known victim in the case.

After the case is assigned to a deputy for prosecution, that deputy shall check to ensure that the charging deputy referred the case to Victim/Witness Services and that victim letters were sent. If the charging deputy did not make the referral, the assigned deputy shall promptly do so.

If a victim advocate has been assigned to the case, the assigned deputy shall keep that advocate apprised of the status of a case after court hearings or other important events in a timely manner.

Every victim has a right to be involved in the prosecution. Deputy District Attorneys shall be familiar with the rights of victims enumerated in the California Constitution and statutes. The assigned deputy and/or his or her designee shall ensure that the victim(s) have been advised of their statutory and constitutional rights.

Under Marsy's Law, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term victim also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated.

No case(s) involving victim(s) shall be plea bargained, dismissed or otherwise resolved unless and until the assigned deputy has conferred with the victim(s) on the proposed resolution. For purposes of this mandated conference, the assigned deputy may rely upon an assigned victim advocate to conduct such a victim conference only if the assigned deputy ensures that the conference actually occurred before proceeding with a resolution. This process is designed to give victims an opportunity to be heard. This victim contact mandate may only be bypassed by the assigned deputy if he or she has made reasonable good faith efforts to contact and communicate with the victim to no avail and/or there are other special circumstances that exist.

As to this entire process, the assigned deputy shall enter detailed notes in the case file explaining the circumstances above.

All victims must be advised of their right to restitution. The assigned deputy shall obtain restitution owed to the victim(s) in appropriate cases.

On cases where victim restitution is an issue, there will be no plea bargains (no dismissal of any charged counts or reduction in severity to any charged count) on all cases unless and until we have: 1 - a verified amount for restitution or 2 - DDA has documented that either that the victim is not seeking restitution or a diligent effort to locate the victim has failed (one returned undeliverable Victim Letter is not a diligent effort). A diligent effort should be at least three attempts to contact the victim to determine if they are seeking restitution and the amount of restitution they seek

Victim restitution cases should include as part of the plea and sentence that the defendant fill out a Statement of Assets form (Judicial Counsel Form CR115) at or before the plea.

[Victims' Bill of Rights | State of California - Department of Justice ...](#)

Attachment J

Webinars On Demand By Topic

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Animal Abuse

- How and Why to Prosecute Animal Cruelty Cases (2017)

Asset Forfeiture

- Investigating & Prosecuting Illicit Behavior in Massage Parlors: The Capone Method (2015)

Child Abuse (Physical & Sexual)

- Charging & Sentencing Teen-Child Sexual Assaults (2021)
 - (The) Effects of Child Maltreatment (2021)
 - Interpreting the Child Sexual Abuse Evidentiary Exam: What to Do When the Findings are Inconclusive for Abuse (2015)
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Competence

- Attorney Mental Health (2017)
 - Compassion Fatigue Prevention: Putting on Your Emotional Vest (2019)
 - Delusion or Truth? (2017)
 - Mental Health Diversion: PC 1001.36 Overview and Analysis (2019)
 - Murphy Conservatorships and PC 1370: An Update on Mental Competency Laws (2019)
 - PC 1026.5: Commitments and Extensions (NGI) (2019)
 - Resiliency—Learning to Wobble, And Not Fall Down (2019)
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Cyberbullying

- (The) “Anonymous” Perpetrators and Victims of Cyberbullying (2017)
 - (A) Virtual Tour of the Unvirtuous World of Cyberbullying (2017)
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Discovery

- Disclosure of Confidential Juvenile Records (2018)
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Domestic Violence

- Building Strangulation Cases with Law Enforcement Experts (2016)
 - (The) Effects of Interpersonal Violence (2021)
 - Gun Violence Restraining Orders (2019)
 - Recognizing and Developing Stalking and Criminal Threats Cases (2015)
 - Sexual Assault, DV & Human Trafficking Case Best Practices (2020)
 - Strangulation in Sexual Assault Cases Part 1 (2015)
 - Strangulation in Sexual Assault Cases Part 2 (2015)
 - Strangulation in Sexual Assault Cases Part 3 (2015)
 - Using Experts Effectively (2016)
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DUI

- Using Experts Effectively (2016)
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Elder Abuse

- Elder Financial Abuse (2018)
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Elimination of Bias

- A Look at Bias (2019)
 - Answering the Call: Avoiding Bias in Prosecution (2020)
 - (A) Culturally Relevant and Inclusive Response to LGBTQ Survivors of Sexual Violence (2017)
 - Do You Think You Know Me? (2016)
 - Elimination of Bias in Immigration Relief Litigation (2017)
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Ethics

- AB 1909 (2017)
 - Answering the Call: Avoiding Bias in Prosecution (2020)
 - Are Prosecutors Ever Off the Clock? (2020)
 - Avoiding Misconduct Minefields in Closing Argument (2019)
 - Avoiding Questionable Misconduct on Direct and Cross (2021)
 - *Brady*, oh *Brady*, What Have You Done for Me Lately? (2019)
 - Dissecting the New Rules of Professional Conduct (2018)
 - Jury Instructions: Ethical Hotspots (2017)
 - Liability Issues: Inside & Outside the Office (2015)
 - Seeing Your Way Through a CPRA (2020)
 - You've Been Accused of Misconduct—Now What? (2018)
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Evidence

- Medical Evidence and GBI (2019)

- Using Anatomical Models as Demonstrative Evidence (2019)
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Expert Witness

- Medical Evidence and GBI (2019)
 - Using Anatomical Models as Demonstrative Evidence (2019)
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Forensic Evidence

- Strangulation in Sexual Assault Cases Part 1 (2015)
 - Strangulation in Sexual Assault Cases Part 2 (2015)
 - Strangulation in Sexual Assault Cases Part 3 (2015)
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Gang Violence

- Death of the Felony Murder Rule? (2018)
 - It's Not the End of the World as You Know It: AB 333 (2021)
 - The Medical Record as a Forensic Resource (2017)
 - Sanchez and It's Implications (2017)
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Hate Crimes

- Hate Crime Offenders (2015)
 - Hate Crime Victims (2015)
 - Hate Crimes: Past, Present, and Future (2021)
 - Youth Hate Crimes (2015)
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Homicide

- Death of the Felony Murder Rule? (2018)
- Death of the Felony Murder Rule? Update (2020)
- Kill Zone Theory (2020)

Human Trafficking

- Investigating & Prosecuting Illicit Behavior in Massage Parlors: The Capone Method (2015)
- Sexual Assault, DV & Human Trafficking Case Best Practices (2020)

Interrogation

- Is That Confession Admissible? (2021)

Juvenile Justice

- Disclosure of Confidential Juvenile Records (2018)
- Introduction to the Juvenile Justice System Part 1 (2020)
- Introduction to the Juvenile Justice System Part 2 (2020)
- Introduction to the Juvenile Justice System (2018)
- Juvenile Justice Legislative Updates and Trends (2021)
- Juvenile Sealing and Welfare & Institutions Code § 827 (2021)
- Understanding Trauma and Juvenile Justice-Involved Youth (2021)
- Youth Hate Crimes (2015)

Lifer Hearings

- Lifer/Parole Update—Part 1 (2020)
- Lifer/Parole Update—Part 2 (2020)

Mental Defenses/Mental Health

- Amnesia, Dissociation, and Crime (2016)
- Disorders of Cognition (2016)
- Gun Violence Restraining Orders (2019)
- Hypnosis and Eyewitness Testimony (2016)

- Mental Health Diversion: PC 1001.36 Overview and Analysis (2019)
 - Mentally Disordered Offenders (2019)
 - Murphy Conservatorships and PC 1370: An Update on Mental Competency Laws (2019)
 - PC 1026.5: Commitments and Extensions (NGI) (2019)
 - Red Herrings in the Courtroom (2017)
 - Voir Dire in NGI Cases (2018)
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Neuroscience

- Delusion or Truth? (2017)
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Officer-Involved Shooting

- When Police Shoot: The Prosecutor's Role and Responsibilities (2018)
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Prosecutor Resources

- Answering the Call: Avoiding Bias in Prosecution (2020)
 - New Laws for Prosecutors (2017)
 - New Laws for Prosecutors (2018)
 - New Laws for Prosecutors (2020)
 - New Laws for Prosecutors (2021)
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Restitution

- Restitution (2019)
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Search and Seizure

- Warrantless Search & Seizure Part 1 (2017)
 - Warrantless Search & Seizure Part 2 (2017)
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Sexual Assault

- Building Strangulation Cases with Law Enforcement Experts (2016)
- Charging & Sentencing Adult Sexual Assaults (2021)
- Charging & Sentencing in Adult Sexual Assault Cases—Part I (2018)
- Charging & Sentencing in Adult Sexual Assault Cases—Part II (2018)
- Charging & Sentencing Teen-Child Sexual Assaults (2021)
- (A) Culturally Relevant and Inclusive Response to LGBTQ Survivors of Sexual Violence (2017)
- (A) Guide to SB 384 and the New Tiered Sex Offender Registry System (2018)
- Justice for All: Supporting Victims with Special Needs (2020)
- Neurobiology of Sexual Trauma (2015)
- Recognizing and Developing Stalking and Criminal Threats Cases (2015)
- Sexual Assault, DV & Human Trafficking Case Best Practices (2020)
- Sexual Assault Statutes of Limitation (2020)
- Strangulation in Sexual Assault Cases Part 1 (2015)
- Strangulation in Sexual Assault Cases Part 2 (2015)
- Strangulation in Sexual Assault Cases Part 3 (2015)
- Tiered Sex Offender Registration: The Process and the Role of the DA (2021)
- Tiered Sex Offender Registration Update (2019)
- Understanding Sexual Trauma (2021)
- Using Experts Effectively (2016)

Sexually Violent Predators

- (A) Guide to SB 384 and the New Tiered Sex Offender Registry System (2018)
- Sexually Violent Predator: Nuts & Bolts (2017)
- Tiered Sex Offender Registration: The Process and the Role of the DA (2021)

Stalking

- Recognizing and Developing Stalking and Criminal Threats Cases (2015)

Strangulation

- Building Strangulation Cases with Law Enforcement Experts (2016)
- (The) Medical Aspect of Strangulation Cases (2017)
- Strangulation in Sexual Assault Cases Part 1 (2015)
- Strangulation in Sexual Assault Cases Part 2 (2015)
- Strangulation in Sexual Assault Cases Part 3 (2015)

Trial Advocacy

- Appeals, Writs, and Preserving the Record (2018)
- Avoiding Misconduct Minefields in Closing Argument (2019)
- Avoiding Questionable Misconduct on Direct and Cross (2021)
- Closing Argument Preparation & Persuasion (2021)
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- Direct Examination Preparation & Delivery (2021)
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- Redirect: How to Rehabilitate Your Expert Witness (2021)
- Technology in the Courtroom (2016)
- Using Experts Effectively (2016)
- Using Google Earth in Court (2019)
- Voir Dire in NGI Cases (2018)

Victim's Rights/Victim-Witness Advocates

- Addressing the Needs of Homeless Victims of Domestic Violence (2015)
- Addressing the Needs of Transgender Victims (2015)
- Advanced Skill Building for Victim Advocates Working on Homicide Cases (2015)
- Does Marsy's Law Exist Post-Conviction? (2020)
- Providing Services to Financial Crime Victims (2015)
- Restitution (2019)

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To update your online profile with CDAA after logging in, please go to the "Prosecutors Resources" tab at the top of the homepage and select "My CDAA Profile" from the drop-down menu.

Full List of Publications (by Title)

Adult Sexual Assault Reference Guide (2017)

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Attorney General's Child Abduction Reference Manual (2019)

Covering parental kidnapping, topics in this manual include: investigations, charging and pretrial issues, trial issues, extradition, civil remedies, international cases, military issues, and prevention tips. [Download PDF](#)

The California Criminal Indictment Grand Jury (2018)

Written by retired Deputy District Attorney Pat O'Toole, this *new* monograph explains the California criminal *indictment* grand jury, discusses its use and benefits, and serves as a practical guide for felony prosecutors who want to learn about and use this important and beneficial tool. This manual also provides extensive case-law analysis and discusses the legal issues involved. And, the Appendix provides hands-on, practical aides, such as sample orders, memoranda, scripts, etc. Click here to [download the Indictment Grand Jury manual \(PDF\)](#).

The California Criminal Investigative Grand Jury (2018)

Written by retired Deputy District Attorney Pat O'Toole, this updated monograph explains the California criminal investigative grand jury, discusses its use and benefits, and serves as a practical guide for felony prosecutors. [Download PDF](#)

California Drug Matrix 2021

Authored by Ann Marie Council, San Diego Deputy City Attorney and edited by Kristen Fossler, San Diego Deputy City Attorney, this 74-page guide is a detailed summary of the California Health and Safety Code Drug Schedules, including 2020

legislative changes. [Download PDF](#)

California Evidence Pocketbook (9th Edition/2018)

Designed for the criminal prosecutor and contains virtually all sections of the Evidence Code. It is annotated with criminal cases, cross-referenced with other relevant codes, and extensively indexed. *COST: \$25. Purchase from the online store.*

California Laws Involving Firearms (2014)

A handy four-page chart created by the Alameda County District Attorney's Office. [Download PDF](#)

(The) California Prosecutor: Integrity, Independence, Leadership (2012)

Over the last few years, there seems to have been a concerted effort to discredit the prosecutorial profession. A few news organizations, including the *Chicago Tribune* and *USA Today*, have issued results of unscientific surveys that attempt to demonstrate that prosecutorial misconduct is a significant issue in the federal courts as well as in some state courts. None of these surveys has been able to uncover any but the rarest instances of intentional misconduct by prosecutors, state or federal. Most of these reports succumb to their own inaccuracies and die a natural death. One report, however, managed to gain some public traction. The Northern California Innocence Project's Veritas Initiative conducted and published a "study" referred to generally as the "NCIP Report." This initial lengthy document, *Preventable Error: A Report on Prosecutorial Misconduct in California, 1997-2009*, was followed up by an "addendum" of the same data. This is CDAA's response to that report. [Download PDF](#)

California Public Integrity Statutes and Related Law (2014)

Compiled and edited by Peter Estes, Esq. and Gary W. Schons, Senior Advisor for Law and Policy (San Diego County District Attorney's Office), this 128-page manual is a valuable resource for public integrity prosecutors that features a compilation of PI statutes and related law. [Download PDF](#)

California Seizure and Forfeiture Manual (2014, 2020)

Complies with California Health & Safety Code section 11469(d), mandating that law enforcement have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures. [Click here](#) to access the manual by chapter.

Charging and Sentencing in Sexual Assault Cases (2018)

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Child Pornography and Online Charging Matrix (2015)

Compiled by San Diego County Deputy District Attorney Jeff Dort, this matrix presents the elements of each child pornography crime and legal notes, along with jury instructions, punishments, and whether 290 registration is required. [Download PDF](#)

Civil Gang Injunctions (2013)

One proven tool to fight gang activity is the civil gang injunction. Rather than attacking one crime and one criminal at a time, an injunction addresses gangs as groups because it is the group nature of gang activity that causes fear and intimidation in a community. Written by prosecutors who have successfully filed gang injunctions, this manual takes you through the process step by step. [Download PDF](#)

Crimes Against Children Reference Guide (2017)

[Download PDF](#)

Defendant Conduct Enhancements (2015)

A monograph by retired San Diego County Deputy District Attorney Catherine Stephenson that addresses the sentencing enhancements related to the defendant's conduct during the commission of the crime. [Download PDF](#)

Defending an Allegation of Misconduct (2016)

This four-page guide is excerpted from the CDAA publication *Professionalism: A Sourcebook of Ethics and Civil Liability Principles for Prosecutors* (2016). [Download PDF](#)

Did You Know . . .

CDAA's bimonthly training newsletter. Sent electronically to all CDAA members, it features regular columns on search and seizure, trial advocacy, and confessions and admissions, among other topics. [Access Back Issues](#)

Domestic Violence Reference Guide (2017)

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Driving Under the Influence Prosecution (2010/6th Edition)

A trial-practice manual designed to benefit new and experienced prosecutors in their efforts to aggressively combat impaired driving. Download at <https://www.cdaa.org/prosecutor-resources/vehicle-crimes-resource-center/dui-prosecution-manual>

Elder and Dependent Adult Abuse Reference Guide (2017)

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Environmental Crimes Prosecution Manual (2017/Third Edition)

This comprehensive manual totals more than 900 pages. The first of its kind in the nation, chapter topics include: Overview of Environmental Law; Investigative and Planning Techniques; Warrant Preparation; Charging Environmental Violations; Civil Prosecution of Environmental Cases; Criminal Trials: Preparation and Tactics; Voir Dire; Environmental Defense Issues; Settlement of Environmental Cases; Air-Pollution Law; Fish & Game; Forest Practice Act Violations; Hazardous Materials & Hazardous Waste; and Water Pollution. *COST: \$95 for hardcopy: Purchase from the online store. Members can download chapters by clicking here.*

Field Guide for the California Peace Officer Legal Sourcebook (2021)

Published by CDAAs and the California Department of Justice – Office of the Attorney General. It is a smaller, condensed version of the California Peace Officers Legal Sourcebook and provides peace officers with an easy-to-carry, spiral-bound book that directly references the larger Sourcebook. *COST: \$41. Purchase from the online store.*

Firewall

A quarterly publication pertaining to the investigation and prosecution of high technology crimes. *Access Back Issues*

Forensic DNA Case Law Compendium (2010)

Written by the late Judge George W. Clarke — San Diego Superior Court. *Download*

Fourth Amendment and Search & Seizure (February 2021 —21st Edition)

Written by Robert C. Phillips, Retired San Diego County Deputy District Attorney. *Download PDF*

Gang Prosecutors Reference Manual (2000)

With 32 chapters and more than 900 pages, this manual comprehensively covers filing the case, defense and expert witnesses, jury voir dire, and death-penalty cases. *Download PDF*

Guilty Plea Handbook (2011)

Completely revised, this 160-page handbook addresses everything a prosecutor needs to know about guilty pleas, including impact of the *Blakely/Cunningham/Black* decisions on sentencing, and the *Padilla v. Kentucky* decision on immigration issues.

COST: \$25. Purchase from the online store.

Human Trafficking Reference Guide (2017)

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Investigation & Prosecution of Domestic Violence (2020)

This manual represents the collaborative efforts of some of California's most talented domestic-violence prosecutors.

Covering the issues and law pertaining to domestic violence and the support of its victims, this manual includes chapters on elder and dependent-adult abuse, child testimony, *Crawford* considerations, and Marsy's Law. [Download PDF](#)

Investigation & Prosecution of High Tech Crimes (2009)

This 15-chapter comprehensive manual is a procedural and substantive goldmine of practical information for anyone handling cases such as child pornography, identity theft, Internet fraud, and misc/video piracy. [Access the Full Manual](#)

Investigation & Prosecution of Sexual Assault (2012)

This manual pools the expertise of some of California's most experienced prosecutors and allied professionals to provide chapters on investigation, medical examinations, drug-facilitated sexual assaults, false rape complaints, collecting and using DNA evidence, and sex-offender registration. [Download PDF](#)

Investigation & Prosecution of Stalking and Related Crimes (2004)

This manual explores the many facets of stalking and other crimes of obsessive personal pursuits, from intervention to homicide, and from investigation to post-conviction supervision of stalkers. Specialized subjects covered include in stalking criminal activity in various contexts such as court, cyberspace, and with public figures. [Download PDF](#)

Investigation & Prosecution of Strangulation Cases (2020)

Strangulation impacts all professionals working on sexual assault, domestic violence, dating violence, and stalking cases.

Today, it is understood unequivocally that strangulation is one of the most lethal forms of domestic violence. Together with the Training Institute on Strangulation Prevention, CDAA has published the second edition of this manual, which covers investigation, prosecution, and victim advocacy Best Practices, as well as information about medical evidence in fatal and non-fatal strangulations, and tips on using expert witnesses. [Download PDF](#)

Legislative Digest (2021)

Available to all California prosecutors each December. The *Legislative Digest* is an easy-to-understand summary of new and amended statutes. [Download PDF](#)

Lifer Hearings (2016)

Since *Lifer Hearings* was last updated in 2007, the number of lifer hearings in California has exponentially increased, along with the number of inmates who have been paroled each year. And the revisions in the law since the 2007 update have caused a major sea change in how hearings are conducted. Completely updated, this comprehensive manual covers the current state of the lifer hearing procedure, offers tips for parole hearing preparation and the prosecutors' closing statement, discusses recent developments affecting state prisoners, and so much more! [Download PDF](#)

[Click here](#) for San Diego County DDA Richard Sachs's publication "A Quick Guide to Parole Suitability Hearings."

Miranda and the Law (2017)

A monograph designed to enhance prosecutors' understanding of the finer points of the *Miranda* admonishment. [Download PDF](#)

Modernizing Your Trial Presentation: Video, Demonstrations, Computer Animation, and Digital Evidence in Trial (2014)

Authored by experienced San Diego County Deputy District Attorneys Melissa Vasel, Jeffrey Dort, and David Grapilon. You can access their entire presentation: legalities involved, case precedencies, a one-page chart re digital evidence, and visual guides that walk you through creating your own presentations. [Download PDF](#)

News & Social Media: Laws, Ethics, and Best Practices (2014)

News comes not just from traditional media outlets, but also through individuals using social media. Prosecutors must balance the need to inform the public against the rights of defendants and privacy concerns of witnesses and victims. This monograph helps prosecutors strike that balance. [Download PDF](#)

Professionalism: A Sourcebook of Ethics and Civil Liability Principles for Prosecutors (2016, 2019)

A 486-page manual that focuses on ethical and civil-liability issues confronting today's prosecutors. Available to prosecutors only. *COST: \$45. Purchase from the [online store](#).*

Prosecuting Child Abuse (2018)

Chapters include: Law Enforcement Investigation, Working with County Counsel, Charging and Sentencing, Pre-Trial Preparations, Pre-Trial Motions, Jury Selection, Physical and Sexual Abuse Trials, Developmental and Contextual Framework of Child Sexual Abuse, and Child Neglect and Endangerment. [Download PDF.](#)

Prosecution Under California Securities Law (2015)

by Georg Behrens, Deputy District Attorney — Santa Clara County

This manual is written from a prosecutor’s perspective. It explains the prosecution of criminal securities violations under California law, and in particular the prosecution of violations committed by issuers of securities and their agents: The people who invent, create, and define securities and who offer to sell their creations to investors for money. [Download PDF](#)

Prosecutors’ Analysis of the 2011 Criminal Justice Realignment (June 2012)

by Kathryn B. Storton and Lisa R. Rodriguez [Download PDF](#)

Prosecutor’s Brief

CDAA’s quarterly legal journal. Distributed free of charge to all California prosecutors. Qualified non-California prosecutors can purchase a subscription for \$25.00/year. [Access Back Issues](#)

Prosecutor’s Guide to Cross-Examining Mental Health Experts (2005)

Touches on the various facets of preparing for a mental defense case, including pre- and post-filing choices such as discovery and fact collecting, sample voir dire, and cross examination. [Download PDF.](#)

Public Records Act and Civil Subpoena Manual (October 2021)

by San Diego County Deputy District Attorney (retired) Peter Cross. This manual is designed to address records requests received from third parties—whether by way of civil subpoena, informal request from other government agencies, or the California Public Records Act. [Download PDF](#)

Recusal (2015)

Updated for 2015, this manual by San Bernardino County DDA Grover Merritt sheds light on gray areas of potential conflicts of interest and provides comprehensive overview of California recusal law. It assists prosecutors in knowing when they have a right to prosecute a case, when defendants may be “prosecutor shopping,” or when prosecutors have conflicts of interests that are not obvious. [Download PDF](#)

Requesting Civil Restraining Orders (2015)

Restraining orders help protect victims from future violence, whether the abuse is against elders, domestic partners, community members, or schoolmates. Prosecuting violators of these orders is essential to maintaining their value as deterrents. Understanding what statutes support the various restrictions in a restraining order can help prosecutors advise victims of abuse—including stalking victims—in their requests for a restraining order, and inform future charging decisions if violations occur. Maria Palazzolo, Director of CDAA's Victim Services Projects, has developed guides to correspond to the information needed for the five civil restraining order request forms. [Download PDF](#)

Restitution (2021)

This manual is written to equip prosecutors with the tools necessary to obtain, monitor, and enforce restitution orders so that the defendant pays their debt to the victim and society. [Download PDF](#)

Retention and Return of Property (2012)

Includes statutes and commentary related to: property alleged to be stolen or embezzled, exhibits in criminal cases, prisoner's property, property seized pursuant to a search warrant, weapons, controlled substances, explosives, vehicles, lost and abandoned property, and DNA evidence. *COST: \$15. Purchase from the online store.*

Search Warrant Law and Practice (5th Edition) (2019)

Completely revised and updated with relevant case material, this manual is more than 900 pages broken down into 10 chapters, including a new chapter on Search Warrant Challenges, plus a detailed discussion on the Federal and California Electronic Communications Privacy Acts. Also included are 23 sample search warrants and checklists contained on a CD that can be tailored to your specific cases. The manual is also available electronically as a bookmarked PDF with internal links. *COST: \$95 (e-version \$35). Purchase from the online store.*

Sentencing for Felony Prosecution Outline (2021)

Written by Charles E. Nickel, Deputy District Attorney (Retired) and updated by Catherine Stephenson. [Download PDF](#)

Sexual Assault Forensic Medical Glossary: Terms and Definitions (2017)

Developed by the California Clinical Forensic Medical Training Center (CCFMTTC), a training partner with CDAA, this is a comprehensive, validated, and reliable glossary of terms and definitions that apply to the adult and adolescent sexual assault medical examination field. It was designed for sexual assault forensic examiners, forensic clinicians, forensic pathologists, and professionals in areas of forensic medicine and criminal justice. Manuals can be purchased from the online store by clicking

HERE. An interactive PDF can be accessed by clicking [HERE](#) (note: all terms in this glossary are listed in the index on page 53 and are hyperlinked to their definition.)

Sexual Assault Statute of Limitations Guidelines (2018)

[Download PDF](#)

Sexually Violent Predator Proceedings: A Practical Approach for Prosecutors (2014)

After CDCR and DMH identifies an individual as an SVP, the information is forwarded to the district attorney in the jurisdiction from which the SVP was last convicted, and the judicial process of civil commitment begins. This monograph highlights SVP case law and provides practical approaches to issues posed in such cases. Topics include the nature of the proceedings, administrative and judicial procedural protocol, filing considerations, the petition for commitment, the probable cause hearing, trial prep, discovery, in limine motions, voir dire, witnesses, amenability to treatment, jury instructions, and post commitment and recommitment proceedings. [Download PDF](#)

Stalking and Criminal Threats Reference Guide (2017)

[Download PDF](#)

Statutory Rape Vertical Prosecution (2001)

A concise manual featuring chapters relating to the vertical prosecution of unlawful sexual intercourse with a minor. All aspects of handling these sensitive cases are explored. [Download PDF](#)

Theft Under California Law (2019)

This brand-new CDAA manual was written by Georg Behrens, Deputy District Attorney, Santa Clara County. It takes a deep dive into the umbrella crime of theft, with separate chapters covering theft by larceny, theft by embezzlement, theft by false pretenses, and theft by trick and device. Other chapters focus on jury instructions and jury unanimity, plus aggregation and disaggregation of theft charges. [Download PDF](#)

Trial Tactics (1998/3rd Edition)

A manual written to enable California prosecutors to continually improve their trial abilities. Available to prosecutors only. *COST: \$35. Purchase from the [online store](#).*

Truancy in California (2017)

The dropout epidemic in California and the effect truancy has on society is a long-term threat to public safety that prosecutors have a responsibility to address. Prosecutors understand better than most how important an education is to a person's future, and see on a daily basis the effects truancy has on the individual and society as a whole. This manual was written by the CDAA Truancy Committee, and it includes information about local and county school attendance review boards, the truancy process, district attorney truancy programs, and truancy courts, plus a list of supplemental resources for prosecutors. [Download PDF](#)

UCC Manual (2020)

The Los Angeles County District Attorney's Office maintains a database containing information on commonly charged violations of California law. This database is named the Uniform Crime Charging, or "UCC," Templates database. The UCC Templates database can be thought of as a table of values that the case management system references to look up information on criminal offenses. This table of criminal charges is used for a variety of purposes, but the function most familiar to deputies and clerical users is to provide the proper charge and charging language when preparing a complaint, information, or indictment. The chosen charge and charging language is used by the case management system's document-generation program to create the charging document. Through an agreement with CDAA, The Honorable Jackie Lacey and the Los Angeles County District Attorney's Office generously makes this information available for all California counties to use with their own software and systems. [Click here to access.](#)

United States/Mexico Extradition and Foreign Prosecution Manual (2007)

This 300-page manual was prepared for the Los Angeles County District Attorney's Office by Janice L. Maurizi. [Download PDF](#)

Victims Rights' Manual (2021)

Updated in 2021, the e-version of this 300-plus page manual is fully bookmarked with internal links. The manual covers a multitude of victim issues including: constitutional and statutory rights; pretrial rights; rights before the preliminary examination; rights at court hearings; post-conviction or commitment rights; rights at disposition and sentencing; restitution; rights in the absence of criminal charges, court orders and their enforcement; rights to confidentiality, rights of child victims; rights of co-victims and survivors of homicide; additional rights for sexual assault victims; the California Public Records Act; mandated reporting; trauma-informed approach; and mass victimization. [Download PDF](#)

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Attachment K

Name	Status	Date modified	Type
 Admitting and Excluding Documents 10-2-2021		10/6/2021 11:06 AM	Adobe Acrobat Docum...
 Basics of Sentencing 9-25-2020		10/6/2021 11:15 AM	Adobe Acrobat Docum...
 Character and Propensity Evidence Training 11-20-2020		10/6/2021 11:36 AM	Adobe Acrobat Docum...
 Trial Objections and Hearsay 9-18-2020		10/6/2021 11:10 AM	Adobe Acrobat Docum...

Name	Status	Date modified	T
Bail - Arraignments Training 10-13-21		1/7/2022 3:26 PM	A
Basics of Sentencing 10-6-21		10/20/2021 10:44 AM	A
Diversion Training 11-3-2021		1/7/2022 3:05 PM	A
DUI Filing - Prosecution Training 10-20-2021		1/7/2022 3:22 PM	A
Preliminary Hearings 12-8-2021		1/7/2022 3:35 PM	A
Strangulation Training 10-11-21		1/7/2022 3:32 PM	A
Welfare Fraud Training 11-10-2021		1/7/2022 3:15 PM	A

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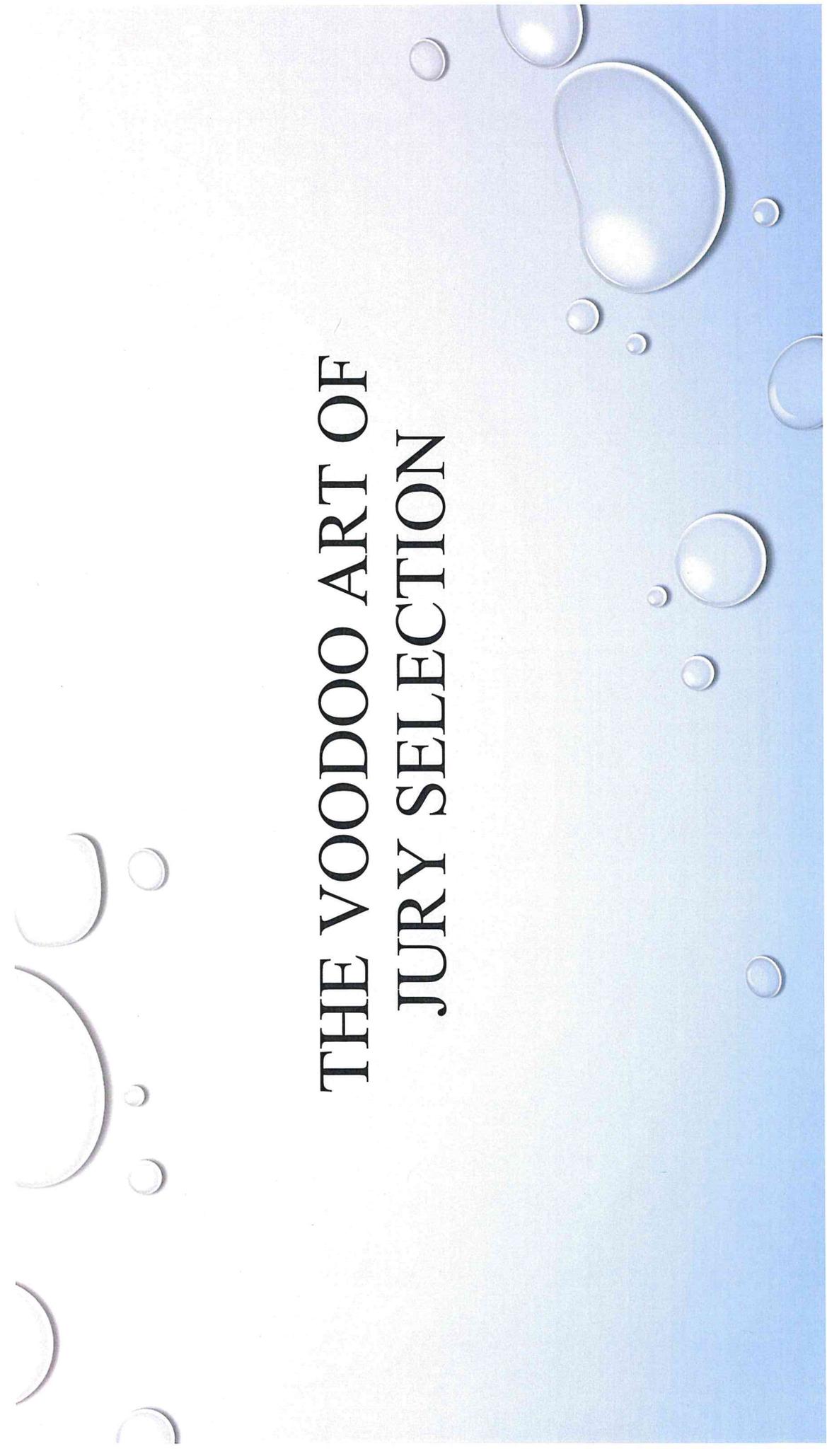
Republicans

g Materials

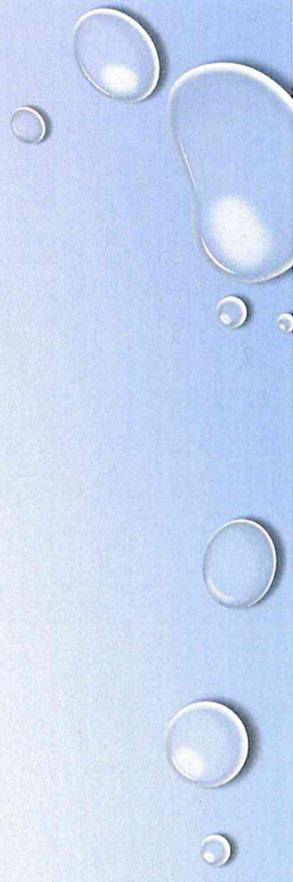
d Meeting

1/5/22	Workers Comp	Jodie Jensen
1/12/22	Marijuana/BHO Cases	Miles Perry
2/11/22	Sentencing	
3/2/22	CPO	
3/31/22	Jury Selection	
6/1/22	10851 & Chop Shop Training	

**THE VOODOO ART OF
JURY SELECTION**

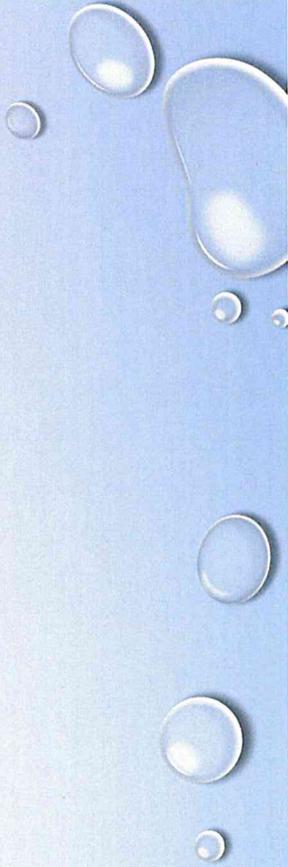


BEFORE TRIAL

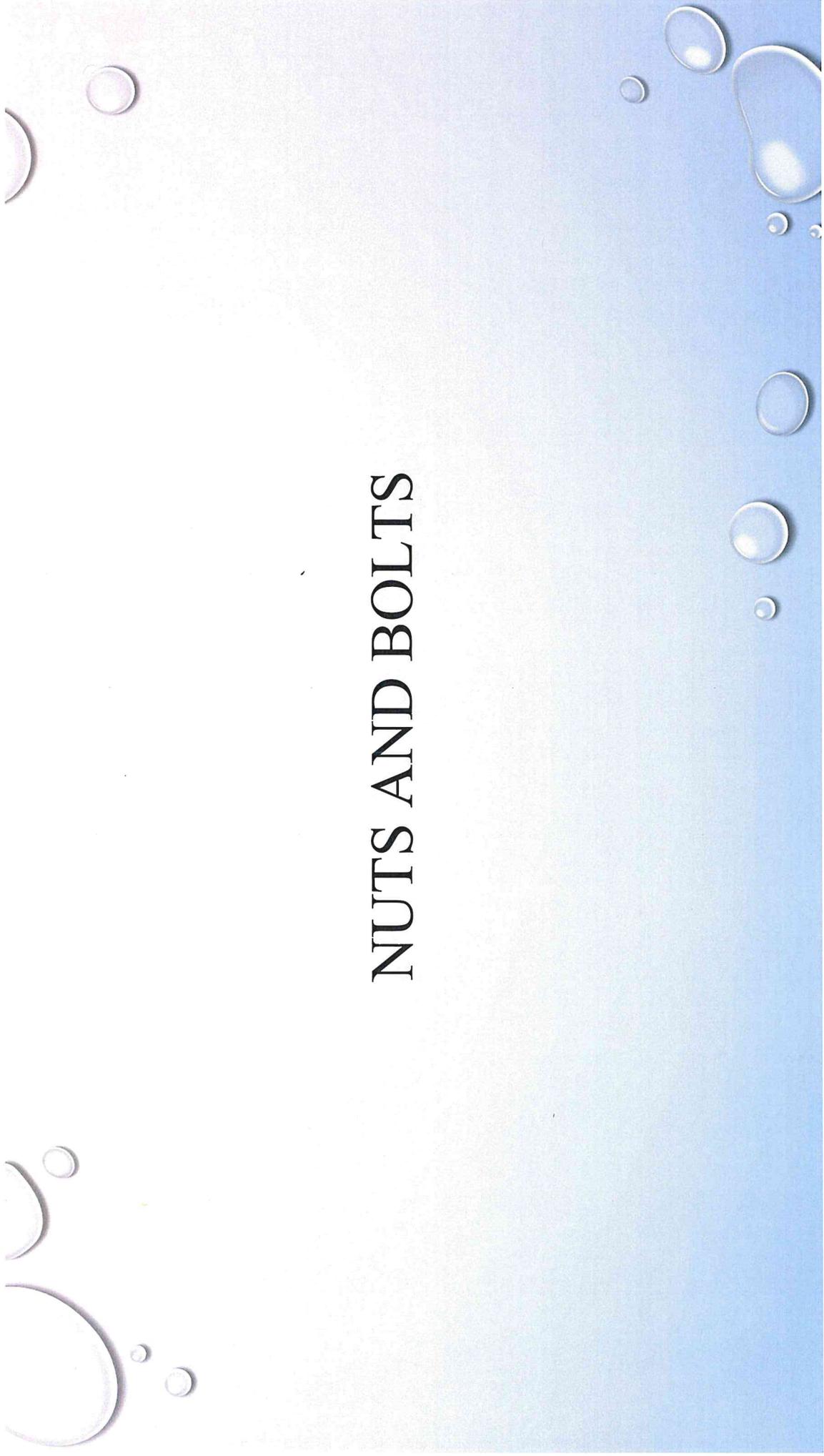




IDENTIFY IDEAL JURY

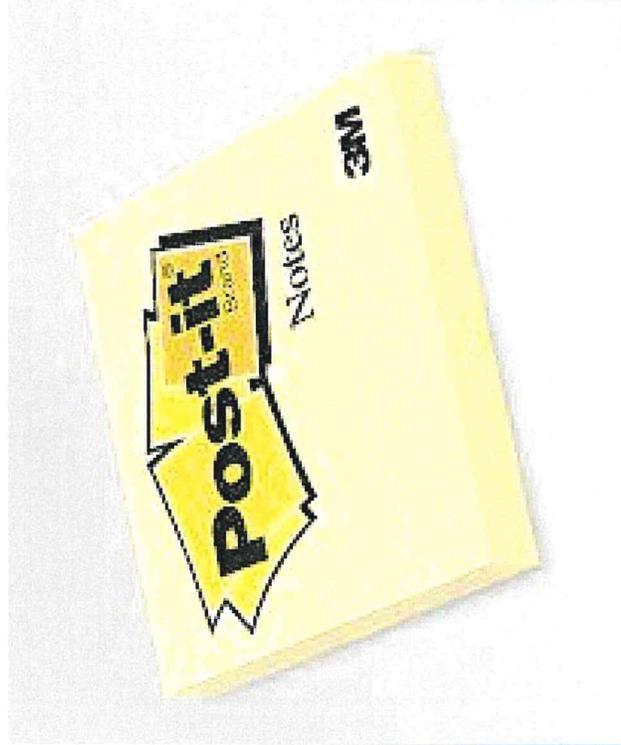
- WHO DO I WANT ON MY JURY?
 - THINKERS V. FEELERS
 - TECHNICAL MINDED V. BIG PICTURE
 - LEADERS AND FOLLOWERS
- 

NUTS AND BOLTS



USING THE CHART

- PUT BLANK POST-IT ON EACH SQUARE. ALLOWS YOU TO MOVE THE NOTE AS JURORS MOVE IN THE BOX
- SPACE IS AT A PREMIUM – CONSIDER WHAT INFO YOU WANT TO PUT ON CHART
- ALSO KEEP A NOTEPAD FOR ADDITIONAL INFO



MECHANICS OF JURY SELECTION

- THE COURT MAY ALLOW EACH SIDE TO MAKE A MINI-OPENING STATEMENT IN ITS DISCRETION
- THE COURT WILL ASK THE JURORS QUESTIONS THE JURORS REGARDING BIOGRAPHIC INFORMATION
- THE DEFENSE ATTORNEY VOIR DIRE'S THE JURY NEXT

MECHANICS OF JURY SELECTION

- THE PROSECUTOR QUESTIONS THE JURY AFTER THE DEFENSE
- CHALLENGES FOR CAUSE ARE CONDUCTED BENCH SIDE OR OUT OF THE PRESENCE OF THE PANEL
- THE PROSECUTION MAKES THE FIRST PEREMPTORY CHALLENGE (UNLESS WE DECIDE NOT TO CHALLENGE ANY OF THE PROSPECTIVE JURORS IN THE BOX)
- TYPICALLY, CHALLENGES ARE MADE TO ANY OF THE TWELVE JURORS IN THE BOX, NOT FROM THE USUAL SIX SITTING IN SEATS 13 THROUGH 18

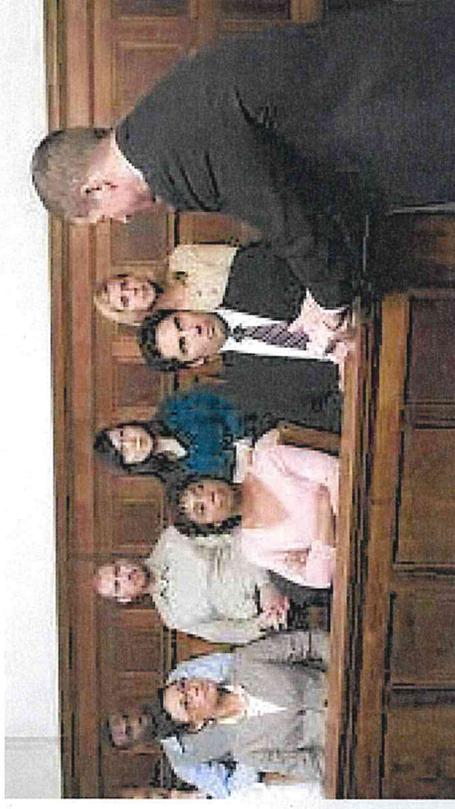
VOIR DIRE

FRENCH TERM MEANING "TO SPEAK THE TRUTH"

VOIR DIRE

OPPORTUNITY TO INTRODUCE
YOURSELF

- TRY TO BE PERSONABLE BUT DON'T
BE A STAND-UP COMEDIAN
- MAKE EYE CONTACT
- TRY TO TALK TO EACH JUROR, USING
THEIR NAME WHEN YOU ADDRESS
THEM



VOIR DIRE



OPPORTUNITY TO ACCLIMATE JURORS TO ISSUES IN THE CASE

- “IS IT EVER APPROPRIATE TO TAKE THE LAW INTO YOUR OWN HANDS?”
- DV - “HOW DO YOU FEEL ABOUT THE GOVERNMENT INTERVENING IN A RELATIONSHIP BETWEEN AN HUSBAND AND WIFE?”
- “CAN YOU THINK OF A REASON WHY A WITNESS MIGHT BE APPREHENSIVE TO TESTIFY IN A MURDER CASE?”

VOIR DIRE

- SUBTLE WAYS TO IDENTIFY PRO-PROSECUTION JURORS
 - PRIOR JURY SERVICE – “WITHOUT SAYING WHAT THE VERDICT WAS, TELL ME WHAT THE CASE WAS ABOUT.”
- GET JURORS TALKING – THE JURORS SHOULD BE TALKING MORE THAN YOU, THE MORE THEY TALK, THE MORE THEY REVEAL
 - “MR. SMITH, WHAT DO YOU THINK ABOUT WHAT MS. JONES JUST SAID?”

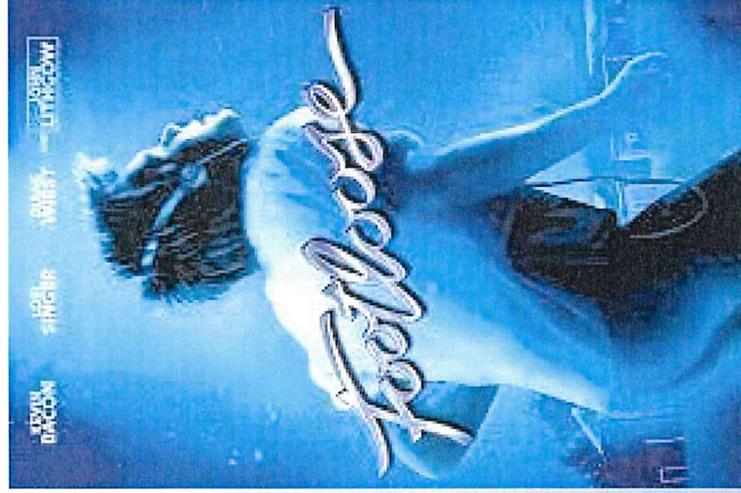
GAUGE JURORS RESPONSES TO QUANTITY OF EVIDENCE PERTAINING TO REASONABLE DOUBT

- MR. WILSON, SUPPOSE I BRING YOU 2 BOXES OF EVIDENCE AND 3 WITNESSES. YOU DON'T BELIEVE ANY OF IT, WHAT'S YOUR VERDICT? - NOT GUILTY
- NOW SUPPOSE I BRING YOU 100 BOXES OF EVIDENCE AND A PARADE OF A THOUSAND WITNESSES. RELAX, I PROMISE THAT WON'T HAPPEN. BUT SUPPOSE YOU LOOK AT IT ALL AND YOU DON'T BELIEVE ANY OF IT. WHAT'S YOUR VERDICT? – NOT GUILTY
- NOW SUPPOSE I BRING ONLY ONE WITNESS. YOU BELIEVE THAT WITNESS BEYOND A REASONABLE DOUBT. COULD YOU CONVICT?
- NOW SUPPOSE THAT THERE WERE OTHER WITNESSES I COULD HAVE CALLED BUT DIDN'T? [MURDER AT THE KINGS GAME HYPO – WOULD YOU EXPECT ME TO CALL

REASONABLE DOUBT IS NOT AUTOMATICALLY CREATED BY THE EXISTENCE OF 2 OR MORE VERSIONS OF THE SAME EVENT

- WEDDING HYPOTHETICAL: “ASSUME YOU GO TO A WEDDING, BUT YOU GET THERE LATE. YOU SIT AT YOUR TABLE AND ASK OTHER GUESTS HOW IT WENT AND THEY ALL TALK ABOUT HOW MANY TIMES THE BRIDE AND GROOM KISSED. ONE SAYS, “I SAW THEM KISS FIVE TIMES,” ANOTHER SAYS, “IT WAS THREE TIMES.” YET ANOTHER SAYS IT WAS TWO TIMES.
- BASED ON THEIR COMMENTS ALONE, COULD YOU DETERMINE HOW MANY TIMES THEY KISSED? OF COURSE NOT, BECAUSE THEY CANNOT AGREE. DOES THAT MAKE THEM ALL LIARS?
- NOW LET’S SAY THE ISSUE IS NOT HOW MANY TIMES THEY KISSED, BUT WHETHER THEY KISSED AT ALL. CAN YOU MAKE A DETERMINATION?

ABILITY TO FOLLOW THE LAW

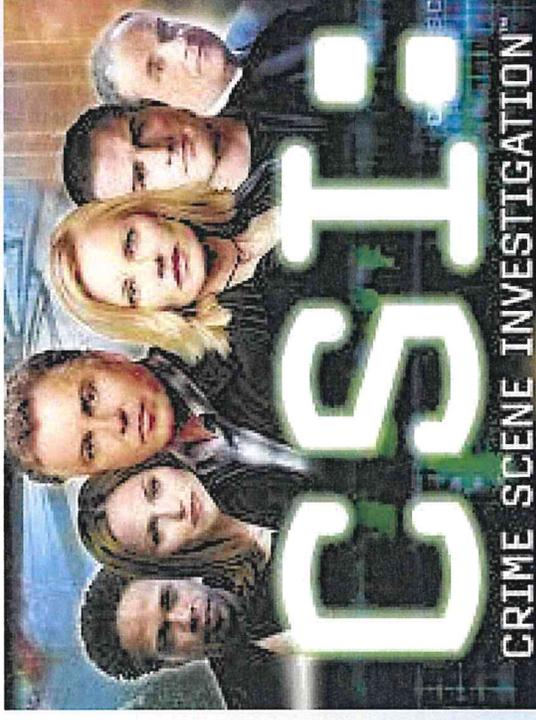


- 66 MPH IN A 65 MPH ZONE HYPO

- KASSIE'S "FOOTLOOSE" HYPO

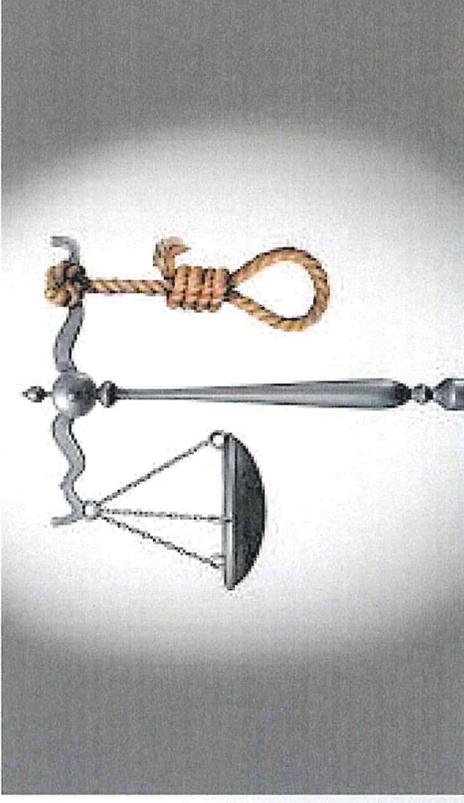
“CSI” EFFECT

- USED TO BE A POPULAR TV SHOW
- MAKE SURE PROSPECTIVE JURORS UNDERSTAND THAT ITS JUST FICTION
- DETERMINE IF A JUROR WILL BE ABLE TO CONVICT A PERSON WITHOUT FINGERPRINTS, DNA OR OTHER FORENSIC EVIDENCE WHICH MAY NOT EXIST IN YOUR CASE



PENALTY OR PUNISHMENT

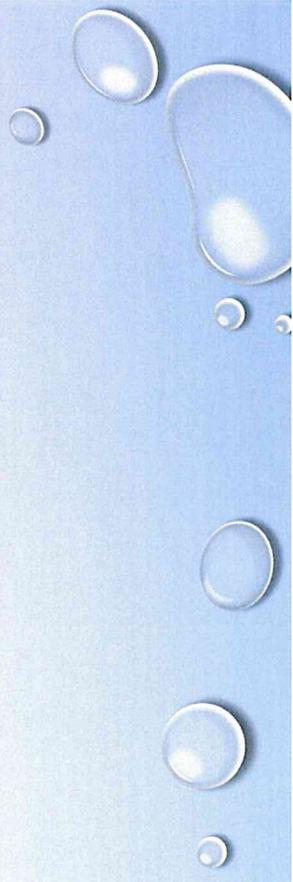
- EVERY ONE HAS A JOB TO DO. THE BAILIFF KEEPS SECURITY, THE COURT REPORTER TAKES DOWN EVERYTHING THAT IS SAID, THE DEFENSE ATTORNEY AND I PRESENT EVIDENCE. YOUR JOB IS ONLY TO DETERMINE WHETHER OR NOT A CRIME WAS COMMITTED BY THE DEFENDANT. SHOULD THERE BE A CONVICTION, IT IS THE JUDGE'S JOB TO DETERMINE WHAT IF ANY PENALTY THERE SHOULD BE. YOU AS THE FINDER OF FACT CANNOT DISCUSS THE ISSUE OF PENALTY OR PUNISHMENT IN YOUR DELIBERATIONS. CAN YOU DO THAT?



FINAL CATCH-ALL

- IS THERE ANYTHING YOU CAN THINK OF THAT NEITHER THE COURT, DEFENSE ATTORNEY, NOR I HAVE ASKED YOU THAT YOU FEEL WE NEED TO KNOW ABOUT YOUR ABILITY TO BE A JUROR?

CAUSE AND PEREMPTORY CHALLENGES



CHALLENGES FOR CAUSE

- CCP §225(B)(1) A CHALLENGE FOR CAUSE, FOR ONE OF THE FOLLOWING REASONS:
 - (A) GENERAL DISQUALIFICATION-THAT THE JUROR IS DISQUALIFIED FROM SERVING IN THE ACTION ON TRIAL.
 - (B) IMPLIED BIAS – AS, WHEN THE EXISTENCE OF THE FACTS AS ASCERTAINED, IN JUDGMENT OF LAW DISQUALIFIES THE JUROR.
 - (C) ACTUAL BIAS – THE EXISTENCE OF A STATE OF MIND ON THE PART OF THE JUROR IN REFERENCE TO THE CASE, OR TO ANY OF THE PARTIES, WHICH WILL PREVENT THE JUROR FROM ACTING WITH ENTIRE IMPARTIALITY, AND WITHOUT PREJUDICE TO THE SUBSTANTIAL RIGHTS OF ANY PARTY.

CHALLENGES FOR CAUSE

- CCP§ 228: CHALLENGES FOR GENERAL DISQUALIFICATION MAY BE TAKEN ON ONE OR BOTH OF THE FOLLOWING GROUNDS, AND FOR NO OTHER:
 - (A) A WANT OF ANY OF THE QUALIFICATIONS PRESCRIBED BY THIS CODE TO RENDER A PERSON COMPETENT AS A JUROR. [CCP 203 – NON-U.S. CITIZEN, MINOR, NON-RESIDENT OF STATE OR COUNTY, CANNOT SPEAK ENGLISH, SUBJECT TO CONSERVATORSHIP, ON PAROLE/PRCS/MCS/PROBATION, 290S]
 - (B) THE EXISTENCE OF ANY INCAPACITY WHICH SATISFIES THE COURT THAT THE CHALLENGED PERSON IS INCAPABLE OF PERFORMING THE DUTIES OF A JUROR IN THE PARTICULAR ACTION WITHOUT PREJUDICE TO THE SUBSTANTIAL RIGHTS OF THE CHALLENGING PARTY

CHALLENGES FOR CAUSE

CCP §229: A CHALLENGE FOR IMPLIED BIAS MAY BE TAKEN FOR ONE OR MORE OF THE FOLLOWING REASONS:

- (A) **CONSANGUINITY** OR AFFINITY W/IN THE 4TH DEGREE OF ANY PARTY/WITNESS/VICTIM/
- (B) **STANDING IN THE RELATION** OF, OR BEING THE PARENT, SPOUSE, OR CHILD OF ONE WHO STANDS IN RELATION OF, GUARDIAN AND WARD, CONSERVATOR AND CONSERVATEE, MASTER AND SERVANT(?), EMPLOYER AND CLERK, LANDLORD AND TENANT, PRINCIPAL AND AGENT, OR DEBTOR AND CREDITOR TO EITHER PARTY.
- (C) HAVING SERVED AS A **TRIAL OR GRAND JUROR... OR BEEN A WITNESS** INVOLVING THE SAME SPECIFIC OFFENSE
- (D) **INTEREST ON THE PART OF THE JUROR** IN THE EVENT OF THE ACTION (OTHER THAN AS A TAXPAYER)
- (E) HAVING AN **UNQUALIFIED OPINION OR BELIEF** AS TO THE MERITS OF THE ACTION FOUNDED ON **KNOWLEDGE OF ITS MATERIAL FACTS**
- (F) THE EXISTENCE OF A STATE OF MIND IN THE JUROR EVINCING **ENMITY AGAINST, OR BIAS TOWARDS EITHER PARTY**

PEREMPTORY CHALLENGES

- CCP §231
 - IN CRIMINAL CASES, IF THE OFFENSE CHARGED IS PUNISHABLE WITH DEATH OR IMPRISONMENT IN STATE PRISON FOR LIFE, EACH SIDE GETS (20) PEREMPTORY CHALLENGES.
 - IN ANY OTHER CASE, UNLESS THE MAXIMUM TERM OF IMPRISONMENT IS 90 DAYS OR LESS, EACH SIDE GETS (10) PEREMPTORY CHALLENGES. IF 90D OR LESS, THEN (6) CHALLENGES EACH.
 - WHEN THERE ARE CO-DEFENDANTS, THE DEFENDANTS' CHALLENGES SHALL BE EXERCISED JOINTLY, BUT EACH DEFENDANT GETS (5) ADDITIONAL INDIVIDUAL CHALLENGES, AND WE GET AND EQUAL NUMBER.

PITFALLS

BATSON/WHEELER AND AB3070 (CCP 231.7)

BATSON / WHEELER

- KNOWN IN CALIFORNIA AS THE *BATSON-WHEELER* RULE, “[B]OTH THE STATE AND FEDERAL CONSTITUTIONS PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO REMOVE PROSPECTIVE JURORS BASED ON GROUP BIAS, SUCH AS RACE OR ETHNICITY. (SEE *BATSON V. KENTUCKY* (1986) 476 U.S. 79, 97; *PEOPLE V. WHEELER* (1978) 22 CAL.3D 258, 276-277.)”

BATSON / WHEELER

- STEP ONE: COURT MUST FIND A PRIMA FACIE CASE OF IMPERMISSIBLE DISCRIMINATION
- STEP TWO: THE ACCUSED PARTY “MUST PROVIDE A “CLEAR AND REASONABLY SPECIFIC” EXPLANATION OF HIS/HER “LEGITIMATE REASONS: FOR EXERCISING THE CHALLENGES.” THE JUSTIFICATION NEED NOT SUPPORT A CHALLENGE FOR CAUSE, AND EVEN A TRIVIAL REASON, IF GENUINE AND NEUTRAL WILL SUFFICE. A PROSPECTIVE JUROR MAY BE EXCUSED BASED UPON FACIAL EXPRESSIONS, GESTURES, HUNCHES, AND EVEN FOR ARBITRARY OR IDIOSYNCRATIC REASONS.” *P. V WINBUSH* (2017) 2 CAL.5TH 402

BATSON / WHEELER

- STEP THREE: WHETHER THE TRIAL JUDGE FINDS THE RACE-NEUTRAL EXPLANATIONS TO BE CREDIBLE.
 - COMPARATIVE JUROR ANALYSIS IS BUT ONE FORM OF CIRCUMSTANTIAL EVIDENCE THAT IS RELEVANT, BUT NOT NECESSARILY DISPOSITIVE, ON THE ISSUE OF INTENTIONAL DISCRIMINATION.
 - WHEN THE PROSECUTOR'S EXPLANATION FOR THE CHALLENGE IS 'BOTH INHERENTLY PLAUSIBLE AND SUPPORTED BY THE RECORD,' THE TRIAL COURT NEED NOT MAKE DETAILED FINDINGS. (*PEOPLE V. SILVA* (2001) 25 CAL.4TH 345, 385-386.)” (*PEOPLE V. ROBERTS* (2021) 65 CAL.APP.5TH 469, 476.)

A PEREMPTORY CHALLENGE FOR ANY OF THE FOLLOWING REASONS IS **PRESUMED TO BE INVALID** UNLESS THE PARTY EXERCISING THE PEREMPTORY CAN SHOW BY **C&C EVIDENCE** THAT AN OBJECTIVELY REASONABLE PERSON WOULD VIEW THE RATIONALE AS UNRELATED TO A PROSPECTIVE JUROR'S **RACE/ETHNICITY, GENDER/GENDER IDENTITY, SEXUAL ORIENTATION, NATIONAL ORIGIN, OR RELIGION, OR PERCEIVED MEMBERSHIP IN THESE GROUPS,** & THE REASONS ARTICULATED BEAR ON THE PROSPECTIVE JUROR'S ABILITY TO BE FAIR AND IMPARTIAL:

- (1) EXPRESSING A DISTRUST OF OR HAVING A NEGATIVE EXPERIENCE WITH LAW ENFORCEMENT OR THE CRIMINAL LEGAL SYSTEM.
- (2) EXPRESSING A BELIEF THAT LEO ENGAGE IN RACIAL PROFILING OR THAT CRIMINAL LAWS HAVE BEEN ENFORCED IN A DISCRIMINATORY MANNER.
- (3) HAVING A CLOSE RELATIONSHIP WITH PEOPLE WHO HAVE BEEN STOPPED, ARRESTED, OR CONVICTED OF A CRIME.
- (4) A PROSPECTIVE JUROR'S NEIGHBORHOOD.
- (5) HAVING A CHILD OUTSIDE OF MARRIAGE.
- (6) RECEIVING STATE BENEFITS.
- (7) NOT BEING A NATIVE ENGLISH SPEAKER.
- (8) THE ABILITY TO SPEAK ANOTHER LANGUAGE.
- (9) DRESS, ATTIRE, OR PERSONAL APPEARANCE.
- (10) EMPLOYMENT IN A FIELD THAT IS DISPROPORTIONATELY OCCUPIED BY MEMBERS LISTED IN SUBDIVISION (A) OR THAT SERVES A POPULATION DISPROPORTIONATELY COMPRISED OF MEMBERS OF A GROUP OR GROUPS LISTED IN SUBDIVISION (A).
- (11) LACK OF EMPLOYMENT OR UNDEREMPLOYMENT OF THE PROSPECTIVE JUROR OR PROSPECTIVE JUROR'S FAMILY MEMBER.
- (12) A PROSPECTIVE JUROR'S APPARENT FRIENDLINESS WITH ANOTHER PROSPECTIVE JUROR OF THE SAME GROUP AS LISTED IN SUBDIVISION (A).
- (13) ANY JUSTIFICATION THAT IS SIMILARLY APPLICABLE TO A QUESTIONED PROSPECTIVE JUROR OR JURORS, WHO ARE NOT MEMBERS OF THE SAME COGNIZABLE GROUP AS THE CHALLENGED PROSPECTIVE JUROR, BUT WERE NOT THE SUBJECT OF A PEREMPTORY CHALLENGE BY THAT PARTY. THE UNCHALLENGED PROSPECTIVE JUROR OR JURORS NEED NOT SHARE ANY OTHER CHARACTERISTICS WITH THE CHALLENGED PROSPECTIVE JUROR FOR PEREMPTORY CHALLENGE RELYING ON THIS JUSTIFICATION TO BE CONSIDERED PRESUMPTIVELY INVALID.

CCP 231.7

- A PARTY OR TRIAL COURT MAY OBJECT TO THE IMPROPER USE OF A PEREMPTORY CHALLENGE
- AFTER THE OBJECTION IS MADE, ANY FURTHER DISCUSSION SHALL BE CONDUCTED OUTSIDE THE PRESENCE OF THE PANEL
- UPON OBJECTION TO THE EXERCISE OF A PEREMPTORY CHALLENGE, THE PARTY EXERCISING THE PEREMPTORY CHALLENGE SHALL STATE THE REASONS THE PEREMPTORY CHALLENGE HAS BEEN EXERCISED

CCP 231.7(D)(1)

THE COURT SHALL EVALUATE THE REASONS GIVEN TO JUSTIFY THE PEREMPTORY CHALLENGE IN LIGHT OF THE TOTALITY OF THE CIRCUMSTANCES. **THE COURT SHALL CONSIDER ONLY THE REASONS ACTUALLY GIVEN** AND SHALL NOT SPECULATE ON, OR ASSUME THE EXISTENCE OF OTHER POSSIBLE JUSTIFICATIONS FOR THE USE OF THE PEREMPTORY CHALLENGE.

CCP 231.7(D)(1)

IF THE COURT DETERMINES THERE IS A ***SUBSTANTIAL LIKELIHOOD*** (MEANING MORE THAN A MERE POSSIBILITY BUT LESS THAN A STANDARD OF MORE LIKELY THAN NOT) ***THAT AN OBJECTIVELY REASONABLE PERSON WOULD (NOT COULD) VIEW*** RACE, ETHNICITY, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, NATIONAL ORIGIN, OR RELIGIOUS AFFILIATION, OR PERCEIVED MEMBERSHIP IN ANY OF THOSE GROUPS, ***AS A FACTOR IN THE USE OF THE PEREMPTORY CHALLENGE***, THEN THE OBJECTION ***SHALL BE SUSTAINED***.

THE COURT ***NEED NOT FIND PURPOSEFUL DISCRIMINATION*** TO SUSTAIN THE OBJECTION.

CCP 231.7(G)

THE FOLLOWING REASONS FOR PEREMPTORY CHALLENGES HAVE HISTORICALLY BEEN ASSOCIATED WITH IMPROPER DISCRIMINATION IN JURY SELECTION:

- (A) THE PROSPECTIVE JUROR WAS INATTENTIVE, OR STARING OR FAILING TO MAKE EYE CONTACT
- (B) THE PROSPECTIVE JUROR EXHIBITED EITHER A LACK OF RAPPORT OR PROBLEMATIC ATTITUDE, BODY LANGUAGE, OR DEMEANOR
- (C) THE PROSPECTIVE JUROR PROVIDED UNINTELLIGENT OR CONFUSED ANSWERS

THE REASONS SET FORTH ABOVE ARE PRESUMPTIVELY INVALID UNLESS THE TRIAL COURT IS ABLE TO CONFIRM THAT THE ASSERTED BEHAVIOR OCCURRED, BASED ON THE COURT'S OWN OBSERVATIONS... EVEN WITH CONFIRMATION, THE COUNSEL OFFERING THE REASON **SHALL EXPLAIN WHY THE ASSERTED DEMEANOR, BEHAVIOR, OR MANNER IN WHICH THE PROSPECTIVE JUROR ANSWERED THE QUESTIONS MATTER TO THE CASE TO BE TRIED.**

CCP 231.7 (H) REMEDIES IF OBJECTION SUSTAINED

- QUASH THE JURY VENIRE AND START JURY SELECTION ANEW. **THIS REMEDY SHALL BE PROVIDED IF REQUESTED BY THE OBJECTING PARTY.**
- IF THE MOTION IS GRANTED AFTER THE JURY HAS BEEN IMPANELED, DECLARE A MISTRIAL AND SELECT A NEW JURY IF REQUESTED BY THE DEFENDANT.
- SEAT THE CHALLENGED JUROR
- PROVIDE THE OBJECTING PARTY ADDITIONAL CHALLENGES

DISCUSS