

BRADY POLICY IMPLEMENTATION CHECKLIST:

Upon Receiving a Case for the First Time Check the Brady List on the "J" Drive

Before Subpoenaing a Witness for ANY Hearing:

1. Check Brady List on "J" Drive ("Bradydisc")
2. If INTERNAL (INT), get Brady Packet from Brady Comm.
 - a) Discover Brady Packet to defense
 - b) Note discovery given in blue sheet in file
 - c) Collect, retain in file signed Acknowledgement of Brady Discovery Form, and give copy to Brady Comm.
 - d) Complete Brady Disclosure Form and give to Brady Comm. for insertion in the Administrative File
3. If EXTERNAL (EXT), file Brady/1043 Motion
4. At hearing, prepare to argue against admissibility of Brady material (e.g., PX motion opposing defense 1050 [*Galindo*]; trial in limine motion)
5. If defense counsel ever files *Pitchess* motion, and witness(es) are *not* on Brady List, file an *Alford/Pitchess* Motion in same court to get a copy of whatever court gives defense (or get officer(s) to sign *Pitchess* waiver and give to Police Legal, in reference to def. motion)

Before Reviewing a Search or Arrest Warrant:

1. Check Brady List
2. If affiant is on it, reject the warrant and have police provide new affiant not on Brady List
3. If a material officer noted in the warrant is on the Brady List, talk to your supervisor (be prepared to disclose Brady material to court, under seal)

Before Going to the Grand Jury:

1. Check Brady List against your witnesses
2. If witness on list, find an alternative witness
3. If cannot find an alternative, do NOT go to Grand Jury with a witness on the Brady List)
 - a) If cannot find an alternative, and must go to Grand Jury (e.g., statute of limit. about to run), see supervisor and Grand Jury Legal Advisor to seek a waiver from Chief ADA
 - b) If granted waiver, you MUST present Brady evidence to Grand Jury
4. Even if no witness on Brady List, your Request for Grand Jury Hearing to Chief ADA MUST note you checked Brady List

Anytime:

1. If you become aware of police witness credibility issue, tell the Brady Committee (e.g., officer strongly impeached on def. cross; Ct. grants MTS, disbelieving ofcr)
2. If any questions or problems arise, see your supervisor or Chief of Division

PARTIAL LIST OF BRADY MOTIONS & FORMS
(all on S Drive)

Brady/1043 Motion (SFPD)

Brady/1043 Motion (Non-SFPD)

Brady/EC1040, 915(b) (Unsworn Personnel)

Alford/Pitchess Motion

PC 1050 Opposition Motion (*Galindo*)

Acknowledgement of *Brady* Discovery Form

***Brady* Disclosure Form**

BRADY FAQ's:

1. What's the difference between "Internal" Brady & "External" Brady?

Internal is the misconduct we know or have developed ourselves about law enforcement witnesses (which may be detailed); external is the limited information law enforcement gives us (their own Brady List) from their personnel files.

2. Who do I go to for a Brady question?

- a) Always, your supervisor, or
- b) The Chief of your Division (Criminal or Special Operations), the Brady Committee Chair, or the Trial Integrity Unit

3. When do I check the Brady List on the J Drive?

When you are first assigned a case, and before you subpoena a witness for ANY hearing, or before you approve a search warrant or arrest warrant.

4. When do I give a "Brady Packet" on a case?

Although Brady discovery is legally only a trial right in terms of due process under the federal constitution, it is the office position to give discovery as soon as you are aware of the issue, before any substantive hearing at which that witness is to appear (e.g.: PX, MTS, MTR, JT). Also, California has its own discovery statutes (Penal Code section 1054 et seq.) which impose obligations, ignorance of which can lead to sanctions.

5. What's the difference between and Alford/Pitchess Motion and a Brady/1043 Motion?

We file an *Alford/Pitchess* Motion to piggyback upon a defense *Pitchess* Motion, as soon as we get notice of it, so as to get a copy of whatever the court gives the defense. We file a *Brady/1043* Motion whenever we note a People's witness is on our EXTERNAL Brady List, to get the Court to disclose to us the Brady material in police personnel files, which we can discover to the defense. In both

motions, we cannot share the results beyond that case. And note that we must return the material given by the court when the case is over.

6. If I give Brady discovery, or defense files a Pitchess, before PX, can they stall the PX for weeks till they research the discovery or get the court-provided material?

Maybe, but we can object; ultimately it is the Magistrate's call. (*Galindo*, Cal.Sup.Ct., July, 2010). On the "S" share drive, in the Brady subdirectory, is a motion opposing the continuance of a PX. You can quickly and easily tailor it to your case.

7. Can my case be dismissed if I fail to look for or give Brady discovery before trial?

Probably not (*Verdugo*, Cal.Sup. Ct. August, 2010), unless it involves a matter of factual innocence. But such conduct violates office policy.

8. What is the difference between Brady and Pitchess, & which trumps?

No state or federal court has definitively ruled on that; the two run somewhat parallel, but Brady material reaches back further in an officer's career than Pitchess. (E.g., an officer's 10 yr. old DV misd. conviction is both; but his 5 yr. old unsustained complaint of excessive force is only Pitchess.) Bottom line: DA's are legally responsible to be aware of & produce all Brady material.