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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JEFFREY DOUGLAS,

Petitioner/Plaintiff,

v.

STEVE COOLEY, in his official capacity as Los Angeles County District Attorney; LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE; LEROY BACA, in his official capacity as Los Angeles County Sheriff; and LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Respondents/Defendants.

CASE NO.

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

The following allegations are based on information and belief, unless otherwise specified:

INTRODUCTION

1. A trial is a search for truth, not a game of hide and seek. This principle is never more true than in criminal trials, where "the People of The State of California" are deciding whether to take away a citizen's liberty. To ensure that criminal trials will be reliable, truth-seeking procedures, the statutes governing criminal trials in California include, among others, two provisions requiring the disclosure of evidence to the defense. These laws implement constitutional protections recognized by the United States and California Supreme Courts as indispensible components of Due Process in criminal proceedings.

2. Hard as it may be to believe, in the face of these clear mandates, Los Angeles County District Attorney Steve Cooley, the Los Angeles County District Attorney's Office ("LADA"), Los Angeles County Sheriff Leroy Baca, and the Los Angeles County Sheriff's Department ("LASD") have enacted formal, official policies to evade the mandatory duties imposed by these laws and to violate the constitutional and statutory rights of countless criminal defendants. By doing so, they not only flout both their explicit statutory and constitutional duties and their inherent duties to see that justice is done, but they also undermine the reliability, fairness, and truth-seeking function of criminal trials every day in this county.

3. ***First,*** Respondents Steve Cooley and LADA have adopted a policy regarding disclosure of exculpatory evidence (which in lay terms means evidence that helps the defendant or hurts the prosecution) that violates their duties under Penal Code § 1054.1(e) and *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. Penal Code § 1054.1(e) mandates that prosecutors "shall disclose" to the defense "any exculpatory evidence." The California Supreme Court has held that § 1054.1(e) imposes a duty on prosecutors to disclose, pre-trial, all exculpatory evidence, without qualification. *See Barnett v. Superior Court*, 50 Cal. 4th 890, 901 (2010). Exculpatory evidence is typically referred to as *Brady* material, after the U.S. Supreme Court recognized that a prosecutor violates Due Process by proceeding to trial without disclosing exculpatory evidence to the defendant. *See Brady*, 373 U.S. at 86.

4. Despite § 1054.1(e)'s unequivocal mandate and the clear duty imposed by *Brady* and its progeny, Respondents Cooley and LADA have adopted a formal policy that: (1) prohibits the disclosure

of exculpatory evidence unless the reviewing deputy deems it true by "clear and convincing evidence," (2) mandates suppression of exculpatory evidence if it is relevant to a pending administrative or criminal investigation, and (3) mandates suppression of exculpatory evidence if a deputy district attorney speculates, pre-trial, that it is unlikely to affect the verdict. Not only do these requirements that deputy district attorneys suppress favorable evidence lack any legal basis, but they are also expressly *contrary* to law.[1]

5. ***Second,*** Respondents Leroy Baca and LASD have an official practice of maintaining inmate complaints in a manner that directly violates Penal Code § 832.5. In response to the California Supreme Court's holding in *Pitchess v. Superior Court*, 11 Cal. 3d 531, 535-37 (1974), that limiting discovery into law enforcement personnel records would raise significant Due Process problems, the California Legislature adopted a comprehensive statutory mechanism to implement the *Pitchess* Rule.[2] Penal Code § 832.5(b) provides that all citizens' complaints against officers must be maintained, for five years, "either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law." In turn, Penal Code § 832.7 and Evidence Code § 1043 provide a system for review and disclosure in criminal proceedings when those complaints bear on the defendant's case. Obviously, the Rule's disclosure provisions, which were developed in response to nondisclosure of exculpatory evidence by the very same LASD that is a Respondent here, are moot if an agency violates the Rule's first element and does not properly maintain the records.

6. But that is exactly what Respondents Baca and LASD have done and are doing as a matter of formal policy. In the face of this unequivocal statutory mandate, an LASD representative has testified in open court that Respondents Baca and LASD have decided that, in the case of inmates in the

[1] Notably, LADA is the only office in California that imposes a clear-and-convincing requirement. Indeed, other district attorney's offices, including neighboring Ventura County, have explicitly rejected this aspect of LADA's *Brady* policy.

[2] In *Pitchess*, 11 Cal. 3d at 534, the defendant was charged with battery against four LASD deputies and sought to obtain the personnel records of the deputies to show that they had previously used excessive force. The California Supreme Court recognized that the personnel files of a law enforcement officer can be a critical element in many criminal cases and reversed the order quashing the subpoena. *Id*. at 535, 537.

Los Angeles County Jails, they will simply ignore the requirements of the statute and instead file inmate complaints about deputies in only the *inmates'* files, such that LASD simply cannot search for inmate complaints implicating specific deputies. Respondents Baca and LASD have thus chosen an inmate complaint filing system that not only violates the explicit mandate of the statute but also prevents it from achieving its purpose. Because the *Pitchess* Rule was enacted to protect criminal defendants' Due Process rights, it is no surprise that LASD's flagrant disregard of the Rule results in countless *Brady* violations, because LASD cannot find relevant complaints—and therefore does not disclose them—*even though it unquestionably has them.*

7. Together, the violations of these clear constitutional and statutory duties undermine the truth-seeking function of criminal trials and contribute enormously to the current crisis in the Los Angeles County Jails. Over many years, the Los Angeles County Jails have been the setting for countless instances of deputy-on-inmate physical abuse, which have not only been documented by advocacy organizations, monitors, and media outlets, *see, e.g.*, Los Angeles County Office of Independent Review, *Violence in the Los Angeles County Jails: A Report on Investigations and Outcomes* 8 (Oct. 2011), *available at* http://laoir.com/reports/OIR-Report-on-Violence-in-the-Jails-(Oct.2011).pdf; Chris Vogel, *Men's County Jail Visitor Viciously Beaten by Guards*, L.A. WEEKLY, May 19, 2011, *available at* http://www.laweekly.com/2011-05-26/news/men-s-county-jail-visitor-viciously-beaten-by-guards/; Merrick Bobb, 4th Semiannual Report 15 (June 1995), *available at* http://www.parc.info/client_files/LASD/4th%20Semiannual%20Report.pdf; Sarah Liebowitz et al., *Annual Report on Conditions Inside Los Angeles County Jail* (ACLU Nat'l Prison Proj. & ACLU of S. Cal. Sept. 28, 2011) (filed in *Rutherford v. Baca*, 75-cv-04111-DDP (C.D. Cal. filed Dec. 9, 1975) (No. 294)), but have also been, and continue to be, the subject of state and federal court litigation, *see, e.g.*, *Rosas v. Baca*, No. 12-cv-00428 DDP-SH (C.D. Cal. filed Jan. 18, 2012); *Rutherford v. Baca*, 75-cv-04111-DDP (C.D. Cal. Oct. 10, 2008) (No. 228) (motion for protective order to enjoin retaliation, including retaliation in the form of physical abuse, against prisoners); *Coley v. Baca*, CV09-08595 CAS-AJW, 2012 WL 1340373 (C.D. Cal. Mar. 8, 2012), as well as an ongoing criminal investigation by the Federal Bureau of Investigation, *see* Robert Faturechi, *FBI Probing Reports of Beatings in L.A. County Jails*, L.A. TIMES, Sept. 25, 2011, *available at* http://articles.latimes.com/2011/sep/25/local/la-me-fbi-

jails-20110925.

8. A number of these reports and court cases have confirmed that, in instances where deputies physically abuse inmates, LASD personnel often falsely report that the inmate who was beaten acted aggressively, and LADA frequently files criminal charges against the abused inmate for assault on a deputy or deputies, battery on a deputy or deputies, and obstructing a peace officer in the discharge of the deputy's duty. *See* Sarah Liebowitz, et al., *Annual Report on Conditions Inside Los Angeles County Jail*. The filing of these charges often serves to cover up the excessive force employed by the deputy or deputies because threat of serious jail time for these felonies often results in plea bargains, which not only insulate the County and the individual deputies from potential civil liability but also serve to protect the deputies from disciplinary or criminal proceedings for their abuse. Unsurprisingly, it is crucial to the defense in these criminal proceedings to determine whether any other inmates have filed complaints stating that the deputy or deputies involved have engaged in excessive force or complaints calling into doubt the credibility of the deputies involved.

9. Failing to disclose exculpatory material has drastic effects on the integrity of the criminal judicial system. The policies and practices challenged in this Petition prevent disclosure of evidence of complaints and other evidence pointing to a pattern of excessive violence by a particular deputy, so criminally charged inmates have little hope of acquittal despite their innocence, leading to wrongful convictions. These miscarriages of justice are the inevitable effect of Respondents' failure to follow the statutory and constitutional disclosure obligations that govern criminal trials. This fact is confirmed by several instances, known to Petitioner and described in detail below, where, because of the policies and practices challenged in this Petition, Respondents did, in fact, suppress *Brady* and *Pitchess* material. The suppression of the favorable evidence in these cases was uncovered only because defense counsel fortuitously learned of the suppressed evidence from some sources other than Respondents, and the discovery of these violations through mere happenstance underscores how many other instances of suppression have gone undetected.

10. Through this Petition, Petitioner Jeffrey Douglas seeks a writ of mandate under Code of Civil Procedure § 1085 and declaratory and injunctive relief compelling Respondents to stop their systematic evasion of and disdain for clear constitutional and statutory duties through illegal policies and

practices on the handling and disclosure of exculpatory evidence in certain criminal proceedings. The relief that Petitioner seeks does not involve review of or interference with any individual pending criminal case or post-conviction proceeding. Rather, as contemplated by Code of Civil Procedure §1085, Petitioner simply asks this Court to compel Respondents to stop enforcing illegal policies or practices of uniform application where those policies or practices are certain to result in widespread and wholesale violations by Respondents of their mandatory duties, not to mention a fundamental breach of their public trust and the perversion of the truth-seeking role of the court system.

PARTIES

11. Petitioner Jeffrey Douglas ("Petitioner") seeks a writ of mandate pursuant to Code of Civil Procedure § 1085, as well as declaratory and injunctive relief, to compel Respondents Steve Cooley and LADA to comply with their clear, present duties under the United States and California Constitutions and Penal Code § 1054.1.

12. Petitioner also seeks a writ of mandate pursuant to Code of Civil Procedure § 1085, as well as declaratory and injunctive relief, to compel Respondents Leroy Baca and LASD to comply with their clear, present duties under the United States and California Constitutions and Penal Code §§ 832.5, *et seq*.

13. Petitioner is a taxpayer in Los Angeles County and has paid taxes to the Los Angeles County Tax Assessor every year since 1991, up to and including 2011. Petitioner is also a criminal defense lawyer and has represented individuals in Los Angeles County for more than twenty-five years. Many of his clients have been incarcerated in the Los Angeles County Jails.

14. As a criminal defense lawyer practicing in Los Angeles County, Petitioner has a clear, present, and beneficial interest in Respondents' performance of their statutory and constitutional duties, as set forth above. Petitioner's interest is distinct from the interest of the public at large, because Respondents' continuing and systemic failure to comply with their statutory and constitutional obligations deprives Petitioner of information relevant to the defense of his clients and undermines Petitioner's ability to represent his clients effectively. Additionally, as an officer of the court, Petitioner has an interest in maintaining the integrity of the criminal courts in which he regularly practices and ending policies and practices that corrupt the truth-seeking role of those courts. Petitioner is therefore

adversely affected by Respondents' actions and omissions.

15. In addition to his beneficial interest stemming from his work as a criminal defense attorney, Petitioner is interested as a California and United States citizen in having Respondents' statutory and constitutional duties enforced. There is a substantial public interest in the enforcement of Respondents' duties to make required disclosures of information to criminal defendants, because the disclosure of such information is critical to the effective administration of justice. In contrast, Respondents' current unlawful practices have undoubtedly caused wrongful criminal convictions, protected abusive deputies and custodial assistants from being held accountable, and undermined the fairness of criminal trials. Respondents are public officials who are engaged in purposeful and systematic violations of their public duties, so this Court's intervention is the only adequate remedy available to Petitioner.

16. Petitioner also challenges Respondents' illegal government actions in his capacity as a Los Angeles County taxpayer, to restrain and prevent the illegal expenditure of county funds. Respondents Cooley and LADA are expending county funds on the administration and implementation of an illegal policy and system concerning the disclosure of exculpatory and impeachment evidence to criminal defendants. Similarly, Respondents Baca and LASD are expending county funds on the administration and implementation of an illegal recordkeeping policy with respect to complaints against peace officers at the Los Angeles County Jails. Respondents' expenditure of county funds and time on their paid employees' administration and implementation of these illegal policies is an unlawful use of funds and should be enjoined.

17. Respondent Steve Cooley is the District Attorney for Los Angeles County and is responsible for setting policies regarding recordkeeping and disclosure of evidence to the defense in a criminal prosecution. Respondent Cooley set forth policies relating to LADA's disclosure obligations in Special Directive 10-06.

18. Respondent LADA prosecutes felony crimes throughout Los Angeles County and also prosecutes some misdemeanor crimes that occur in Los Angeles County. The LADA's work is directed by Respondent Cooley.

19. Respondent Leroy Baca is the Sheriff of Los Angeles County and is responsible for the

management and control of all Los Angeles County Jails. Sheriff Baca is charged as the final policymaker for policies applicable at the Los Angeles County Jails, including policies regarding recordkeeping.

20. Respondent LASD is a law enforcement agency that employs peace officers. Among LASD's responsibilities is the operation of all Los Angeles County Jails. LASD's work is directed by Respondent Baca.

JURISDICTION AND VENUE

21. This Court has jurisdiction under Code of Civil Procedure §§ 525-526, 526a, 1060 & 1085.

22. Venue is proper in the Superior Court of Los Angeles under Code of Civil Procedure §§ 393, 394 & 395, because Respondents in this action are public officers and public agencies situated in Los Angeles County and because all of the acts and omissions complained of in this Petition took place in Los Angeles County.

FACTUAL ALLEGATIONS

Prosecutors' Constitutional and Statutory Duties to Disclose Exculpatory Evidence in Criminal Cases

23. Penal Code § 1054.1 mandates that the prosecution "*shall* disclose to the defendant or his or her attorney *all* of the following materials and information . . . : (e) *any* exculpatory evidence." (Emphasis added.) The California Supreme Court has held that this statute means what it says and imposes an unqualified duty on prosecutors to disclose *all* exculpatory evidence before trial. *See Barnett*, 50 Cal. 4th at 901.

24. This statutory obligation echoes the Due Process requirement that a criminal trial be fundamentally fair by imposing a broad duty on the prosecuting body of the State to disclose favorable evidence to criminal defendants. *See Strickler v. Greene*, 527 U.S. 263, 281-82 (1999); *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995); *Brady*, 373 U.S. at 86. "Evidence is 'favorable' to the accused 'if it helps the defense or hurts the prosecution.'" *People v. Mena*, 54 Cal.4th 146, 170 (2012) (*quoting People v. Zambrano*, 41 Cal. 4th 1082, 1132 (2007)). Because the credibility of the prosecution's witnesses is invariably critical, evidence that impeaches them by showing bias, motive to lie, or dishonesty must be

disclosed. *See In re Miranda*, 43 Cal. 4th 541, 575 (2008); *In re Sassounian*, 9 Cal. 4th 535, 544 (1995). When the prosecutor is not sure whether evidence may or may not be "favorable," he or she must err on the side of disclosure. *See United States v. Price*, 566 F.3d 900, 912 (9th Cir. 2009); *see also United States v. Van Brandy*, 726 F.2d 548, 552 (9th Cir. 1984) ("[W]here doubt exists as to the usefulness of evidence, [the prosecutor] should resolve such doubts in favor of full disclosure.").

25. Additionally, Penal Code § 1054.1 expressly provides that the prosecuting attorney's duty of disclosure is not limited to material in his or her direct possession: "The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, *if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies*." (Emphasis added).

26. This requirement tracks the constitutional standard, from *Brady* and its progeny, that "'any favorable evidence known to the others acting on the government's behalf is imputed to the prosecution. The individual prosecutor is presumed to have knowledge of all information gathered in connection with the government's investigation.'" *People v. Uribe*, 162 Cal. App. 4th 1457, 1475-76 (2008) (*quoting In re Brown*, 17 Cal. 4th 873, 879 (1998)) (alterations omitted). Thus, any exculpatory evidence in possession of individuals that are part of the "prosecution team," including the prosecutor, the law enforcement investigators working with the prosecutor, and law enforcement officers who will serve as witnesses, must be disclosed. *See, e.g.*, *Kyles*, 514 U.S. at 437; *United States v. Blanco*, 392 F.3d 382, 388 (9th Cir. 2001). Because this evidence is so important to the integrity of the proceedings, a prosecutor has an affirmative duty to investigate whether such evidence exists and must maintain such evidence in a manner in which it can be produced as required. *See, e.g.*, *People v. Goliday*, 8 Cal. 3d 771, 778-79 (1973) (holding that Due Process requires both prosecution and law enforcement to take reasonable efforts to locate eye witnesses who may provide exculpatory evidence).

The District Attorney's Office Has Formally Adopted A *Brady* Policy that Requires Deputy District Attorneys to Violate Their Duties Under *Brady* and Penal Code § 1054.1(e)

27. In 2001, several serious felony cases were dismissed because LADA failed to comply with its *Brady* obligations. In response, LADA established a "*Brady* Compliance Unit" that would supposedly ensure that these violations would not recur. *See* Liu, *Judge Dismisses Charges, Cites*

Evidence Error, L.A. TIMES, Aug. 29, 2001 ("To deal with the problems, the district attorney's office has established a *Brady* compliance division, which will begin evaluating evidence next month, said spokeswoman Jane Robinson.").

28. Since the *Brady* Compliance Unit's creation, LADA has repeatedly pointed to the Unit and touted it to show the office's purported compliance with its obligations. For example, in 2007, LADA sent a letter to the California Commission on the Fair Administration of Justice arguing that the Commission should not recommend enhanced *Brady* policies because the *Brady* Compliance Unit supposedly already ensured full compliance. *See* Office of the District Attorney, Los Angeles County, *Response to California Commission on the Fair Administration of Justice Focus Questions for Hearing on Professional Responsibility Issues*, July 11, 2007, at 13.

29. LADA's operative policy regarding the provision of material exculpatory and impeachment evidence is set forth in Special Directive 10-06, established on September 20, 2010. Special Directive 10-06 mandates that the *Brady* Compliance Unit determine what information in LADA's possession about peace officers and other individuals who may be part of a prosecution team or may be government witnesses should be included in the "*Brady* Alert System" and considered for disclosure to the defense in prosecutions involving those individuals. Under the policy, deputy district attorneys rely on the *Brady* Alert System by checking the names of potential witnesses and members of the prosecution against it, *i.e.*, they evaluate their disclosure obligations under *Brady* based on a database that was created without any knowledge of the specific facts of the case about which the deputy district attorney is inquiring. The *Brady* Compliance Unit also consults with deputy district attorneys about their responsibilities in turning over exculpatory and impeachment evidence, but only the *Brady* Compliance Unit can determine whether evidence will be included in the *Brady* Alert System. Moreover, deputy district attorneys may not disclose any evidence that they independently uncover to the defense without first consulting with the *Brady* Compliance Unit.

30. Although the *Brady* Compliance Unit was created in response to serious *Brady* violations, the policies governing that unit are presently responsible for the systematic, illegal suppression of *Brady* material. Specifically, the official policies promulgated by Respondents Cooley and LADA compel deputy district attorneys to violate clear duties under Penal Code § 1054.1 and *Brady*

in three distinct ways.

The District Attorney's Office Illegally Suppresses Exculpatory Evidence by Requiring Deputy District Attorneys to Suppress Favorable Evidence Unless Attorneys in the *Brady* Compliance Unit Are Personally Persuaded of Its Truth Under a Clear-and-Convincing Evidence Standard

31. Special Directive 10-06 provides that evidence that satisfies all the elements of *Brady* and § 1054.1(e) must *still* be suppressed *unless* the reviewing deputy is personally convinced of its truth:

> The decision to include information in the Brady Alert System will be made using the standard of ***clear and convincing evidence***, a degree of proof which is higher than preponderance of the evidence but lower than beyond a reasonable doubt. In other words, without clear and convincing evidence that the potential Brady impeachment evidence is reliable and credible, it will not be included in the Brady Alert System.

Special Directive 10-06, at 5 (emphasis in original).

32. Put simply, this additional hurdle has no foundation in either statute or case law. As the California Supreme Court has recognized:

> "It is not the role of the prosecutor to decide that facially exculpatory evidence need not be turned over because the prosecutor thinks the information is false. It is 'the criminal trial, as distinct from the prosecutor's private deliberations' that is the 'chosen forum for ascertaining the truth about criminal accusations.'"

In re Miranda, 43 Cal. 4th at 577 (quoting *United States v. Alvarez*, 86 F.3d 901, 905 (9th Cir.1996) (quoting *Kyles*, 514 U.S. at 440). Moreover, because the standard of proof to secure a conviction at a criminal trial is beyond a reasonable doubt and juries may consider any admissible evidence in assessing guilt or innocence, juries are fully entitled to acquit a defendant based on evidence that they believe fails even a preponderance standard. In other words, exculpatory evidence that may not be true can still create reasonable doubt, which in turn means that it is obviously *Brady* material that must be produced. Thus, it is improper for a prosecutor to suppress that evidence merely because he or she is not personally convinced of its truth by a clear-and-convincing standard.

33. Unsurprisingly, Special Directive 10-06 fails to cite § 1054.1(e), which compels the disclosure of "[a]ny exculpatory evidence" whether or not a prosecutor concludes the exculpatory material is true by "clear and convincing evidence." In fact, § 1054.1(e) recognizes no exceptions to the categorical mandate to disclose exculpatory material. Thus, applying a clear and convincing standard to the prosecutor's decision to disclose evidence inevitably results in the suppression of discoverable exculpatory evidence in violation of § 1054.1(e).

34. Put in the framework of *Brady* jurisprudence, the disclosure obligation exists "'to ensure that a miscarriage of justice does not occur.'" *In re Sodersten*, 146 Cal. App. 4th 1163, 1225 (2007) (*quoting United States v. Bagley*, 473 U.S. 667, 675 (1985)). Thus, in *Bagley*, 473 U.S. at 682, the Supreme Court held that the appropriate standard for evaluating whether to overturn a conviction for failure to disclose *Brady* evidence is whether "there is a *reasonable probability* that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." In *Kyles*, 514 U.S. at 434, the Court held that this showing of "materiality" under *Brady* does "not require demonstration by [even] a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." Certainly jurors could decide that the prosecution had not proved its case beyond a reasonable doubt based on favorable evidence or testimony that they are not certain is true, yet the LADA policy *compels* suppression of *all* favorable evidence where the reviewing deputy district attorney is not fully persuaded of its accuracy.

35. Because this additional clear-and-convincing element is simply made up out of whole cloth, it is hardly surprising that no case supports its application to the prosecution's disclosure obligations under *Brady* or § 1054.1(e). Two hypotheticals further confirm that this aspect of LADA's *Brady* policy cannot be legal.

36. First: assume a defendant is charged with assault and that the deputy district attorney handling the case is aware of two witnesses who give the defendant an alibi. Could a prosecutor legally decline to provide this information to the defense because he or she personally is not sure the witnesses are telling the truth? Of course not; *Brady* obligations hinge on whether the evidence is exculpatory, not on whether the deputy district attorney personally believes it. So why should the "clear and convincing" standard be used as an additional hurdle to inclusion in the *Brady* Alert System? The simple answer is

that it cannot.

37. Second: Assume that the deputy district attorney handling the case has information showing that a testifying officer was disciplined for falsifying a report. Because such discipline is imposed using a preponderance of the evidence standard,[3] could the deputy district attorney legally suppress it because he or she nevertheless found that it had been proven at a level somewhere between a preponderance and clear and convincing? Could it comport with Due Process to proceed to trial without telling the defense that a testifying officer had previously been disciplined for falsifying official reports? The answer to both questions is obviously no, but the answer to both questions compelled by LADA's policy is yes.

The District Attorney's Office Illegally Suppresses Exculpatory Evidence by Requiring Deputy District Attorneys To Suppress Favorable Evidence If It Implicates the Subject of Any Pending Administrative or Criminal Investigation

38. Special Directive 10-06 contains a section titled "What is not *Brady* Material," which states, "Pending criminal or administrative investigations are considered preliminary in nature and will not be included in the Brady Alert System." Thus, even if a prosecution witness were the subject of an ongoing criminal or administrative investigation, LADA automatically suppresses all information associated with that investigation until the investigation is completed.

39. This requirement cannot be squared with § 1054.1(e)'s plain language, which leaves no room for such a sweeping exception to LADA's pre-trial disclosure obligations. That statute compels disclosure of *any* exculpatory evidence, and "any" evidence unquestionably includes evidence that is subject to a pending investigation.

40. Moreover, this portion of the policy is irreconcilable with LADA's broad disclosure obligation under *Brady* and its progeny, for at least two reasons. First, the information that gives rise to

[3] *See* Final Report on Civil Service Commission Motion, at 3 (June 2009), *available at* http://file.lacounty.gov/bc/q2_2009/cms1_133534.pdf (noting that burden of proof in hearings on disciplinary appeals on agency seeking to impose administrative discipline is "preponderance of the evidence"); Los Angeles City Charter, Section 1060(l), *available at* http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:laac_ca (stating that burden of proof on police department at Board of Rights hearing on discipline of police officer is preponderance of the evidence).

an investigation—perhaps a written allegation from an inmate that an LASD deputy assaulted him—is not "preliminary." Rather, in a criminal prosecution where that deputy will be a witness or part of the prosecution team, such a complaint has all the hallmarks of *Brady* material, in that it is specific, factual, and concrete written evidence that is favorable to the defense and could affect the outcome of the trial. *See, e.g.*, *Brady*, 373 U.S. at 84 (setting aside conviction based on failure to disclose written notes of statements by an accomplice admitting to committing the murder). Yet Respondents Cooley and LADA have chosen to characterize all information that may be part of administrative or criminal investigations as preliminary and not subject to disclosure. Nowhere, however, does *Brady* and its progeny ever impose any requirement that the favorable nature of exculpatory evidence be embodied or buttressed by some ultimate decision to file criminal or administrative charges after a thorough investigation. Thus, the pending nature of an investigation prompted by the exculpatory material does not make it proper to suppress the information.

41. Second, this limitation on the prosecutor's disclosure duties cannot be reconciled with the principles underpinning *Brady* for practical reasons. If LASD receives an inmate complaint or other evidence of wrongdoing by a deputy but does not open an investigation, LADA would disclose it, assuming the material also passes LADA's illegal clear-and-convincing standard. If, however, LASD opens an investigation based on that material, LADA's policy prohibits any disclosure of the material while the investigation remains open. Yet serious, detailed, or credible charges would presumably be more likely to prompt an investigation and delay any disclosure obligation. Thus, this portion of the policy commands suppression of evidence that is serious enough to prompt an administrative investigation or referral for criminal prosecution, that is, evidence that is most likely to affect the outcome of a criminal prosecution involving that officer as a witness or member of the prosecution team. This result stands *Brady* on its head.

42. The effects of this policy are particularly pernicious in light of the recent revelation that LASD has failed to investigate use of force incidents in the jail in a timely fashion. At the July 6, 2012 hearing of the Citizens Commission on Jail Violence, which was appointed by the Los Angeles County Board of Supervisors, Captain Mark Bornman testified that during 2010 he closed approximately 45 cases on LASD use-of-force incidents in the jails, and that the average time between the incident and the

closure of the case was 1,170 days, with the time from incident to closure ranging from a low of 583 days to a high of 1779 days. In all of these cases, the original case file was either lost or incomplete. *Citizens' Commission on Jail Violence*, (July 6, 20012), *available at* http://lacounty.govwebcast.com/Presentation/LACounty/e235773d-9847-4cff-af7f-e95486f0f8bd/CCJV%202012-07-06.mp3. Captain Bornman testified about an additional 28 cases that he closed in 2010 and 2011 for which the average time between the incident and closure of the case was 1,381 days. *Id*.

The District Attorney's Office Illegally Suppresses Exculpatory Evidence by Requiring Deputy District Attorneys to Suppress Favorable Evidence unless the *Brady* Compliance Unit Has Concluded, Before Trial and Often Without Reference to Any Specific Criminal Prosecution, That Disclosing the Evidence Is Reasonably Likely to Result in a "Not Guilty" Verdict

43. Special Directive 10-06 asserts that LADA need only disclose "material" evidence before trial, Special Directive 10-06 at 1, and defines "material" evidence as follows:

> *The definition of "material evidence" is generally provided in the context of an appeal from a conviction*. Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. A reasonable probability of a different outcome is shown where suppression undermines confidence in the outcome. . . . *However, as prosecutors we must determine what Brady evidence there may be before trial. In making this assessment, the deputy district attorney shall utilize the above guidelines.*

Id. at 2 (emphases added).

44. This requirement flatly ignores LADA's statutory disclosure obligations and, indeed, mandates that deputy district attorneys violate § 1054.1(e) in *every* criminal prosecution. In fact, Respondent Cooley promulgated Special Directive 10-06 one month after the California Supreme Court held that § 1054.1(e) establishes an unqualified duty to disclose *all* exculpatory evidence to criminal defendants:

> For example, Penal Code section 1054.1, subdivision (e), requires the

> prosecution to disclose "[a]ny exculpatory evidence," not just material exculpatory evidence. To prevail on a claim the prosecution violated this duty, defendants challenging a conviction would have to show materiality, *but they do not have to make that showing just to be entitled to receive the evidence before trial*. . . . [Section 1054.1] illustrates the difference between being entitled to relief for a *Brady* violation and being entitled merely to receive the evidence.

Barnett, 50 Cal. 4th at 901 (emphasis added). Relying on *Barnett*, the Court of Appeal held in 2011 that any exculpatory evidence, not just exculpatory evidence that is reasonably likely to change the outcome of a trial, must be disclosed under § 1054.1(e):

> As a preliminary matter, the People contend the trial court erred in finding the inconclusive fingerprint result to be "exculpatory evidence" as this term is used in section 1054.1(e). They argue that the definition of exculpatory evidence is the same under the discovery statutes or Brady. Our high court has already rejected this argument, stating that section 1054.1(e) "requires the prosecution to disclose '[a]ny exculpatory evidence,' not just material exculpatory evidence."

People v. Bowles, 198 Cal. App. 4th 318, 326 (2011) (quoting *Barnett*, 50 Cal. 4th at 901). In the face of these holdings, however, Respondents Cooley and LADA have stood by their policy that *requires* that deputy district attorneys violate their statutory disclosure duties.

45. Apart from violating the clear duty imposed by § 1054.1(e) as unequivocally defined by the California Supreme Court, this policy violates the very essence of a prosecutor's mission. Essentially, it mandates that exculpatory evidence be suppressed merely because the reviewing deputy speculates that suppression will not affect the verdict, meaning that the violation does not rise to the level of reversible error and the prosecutor can get away with suppressing the exculpatory evidence. But prosecutors are supposed to do what is right, not just what they can get away with.

46. This principle is nowhere made clearer than by the United States Supreme Court in *Strickler v. Greene*, 527 U.S. 263 (1999). After noting the special status of prosecutors, whose duty it is

not to win cases at any cost, but to ensure "'that justice be done,'" *id*. at 281 (quoting *Berger v. United States*, 295 U.S. 78,88 (1935)), the Court continues:

> This special status explains both the basis for *the prosecution's broad duty of disclosure* and our conclusion that not every violation of that duty necessarily establishes that the outcome was unjust. Thus the term "*Brady* violation" is sometimes used to refer to *any breach of the broad obligation to disclose exculpatory evidence*—that is, to any suppression of so-called "*Brady* material"—although, strictly speaking, there is never a real "*Brady* violation" unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.

Id. at 281-82 (emphases added and footnote omitted).

47. In short, *Strickler* makes abundantly clear that a prosecutor's "special status" creates a "broad duty of disclosure" *beyond* just the duty to ensure that the verdict is not affected. Although *Strickler* recognizes that "not every violation of that duty necessarily" requires reversal, violations that do not trigger reversal are violations nonetheless and a prosecutorial agency cannot make it official policy to commit those violations whenever it thinks it can get away with it.

48. But this is exactly what LADA's policy mandates by instructing deputies to suppress exculpatory evidence so long as the deputy thinks the exculpatory evidence will not affect the outcome. In addition to violating the principles of *Brady* and the plain requirements of § 1054.1, this offends the principles of fairness and truth seeking and is completely contrary to the prosecutor's special duty to ensure that justice is done. The official policy of the LADA *must* be that deputies *must* comply with their duties in all cases, not only when they surmise that a violation would trigger a reversal. Put differently, it is illegal to authorize disclosure only when deputy district attorneys decide that they may not be able to get away with violating their duty to disclose.

49. This aspect of LADA's policy also forces deputy district attorneys to violate their duties under *Brady* in at least two other ways. First, it imposes a standard that is simply impossible to apply in any meaningful way: How can a prosecutor, pre-trial, meaningfully weigh the effect of the favorable

evidence when he or she does not even know what evidence or even what theory the defense will present? Rather than erring on the side of disclosure and "resolv[ing] . . . doubts in favor of full disclosure" as case law commands, *Van Brandy*, 726 F.2d at 552; *see also Price*, 566 F.3d at 912, then, the LADA policy prohibits deputy district attorneys from resolving questions that cut to the core of Due Process in favor of protecting that fundamental interest.

50. Second, within the administrative framework established by Respondents Cooley and LADA, Special Directive 10-06 itself is logically incoherent and prevents any meaningful assessment of whether "the result of the proceeding" would be affected by disclosure of specific evidence. After all, the *Brady* Compliance Unit determines what information about peace officers and other individuals who may be part of a prosecution team should be included in the *Brady* Alert System, and generally only information in that system is subject to disclosure to the defense by LADA. Yet the *Brady* Compliance Unit does not necessarily know anything about the specific case at hand when it makes the determination of whether to add information to the database, rendering the exercise of guessing whether disclosure would affect the outcome in that particular case both futile and impossible.

51. Rather than supporting "ascertainment of truth in trials," Penal Code § 1054(a), as the statutory discovery rules compel and as Due Process requires, Respondents Cooley and LADA have enacted policies that force prosecutors to err on the side of hiding relevant evidence from defendants and violating their statutory and constitutional disclosure obligations. This approach ignores "the special role played by the American prosecutor in the search for truth in criminal trials," *Strickler*, 527 U.S. at 281. Instead, LADA has adopted a formal policy that seeks systematically to minimize disclosure, elevating a win-at-all-costs mentality over criminal defendants' fundamental interest in a fair trial.

The Sheriff Department's Policy Of Misfiling Complaints Violates Penal Code § 832.5 and the *Pitchess* Rule and Causes Systemic *Brady* Violations

52. When anyone makes a complaint about a peace officer, including a custodial officer, that complaint must be maintained in a manner that complies with *Brady* and the *Pitchess* Rule. Penal Code § 832.5(a) provides that all agencies employing peace officers "shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies," and § 832.5(b) requires that the agencies retain such "[c]omplaints and any reports or findings relating to these

complaints" for at least five years. Section 832.5(b) further provides that "[a]ll complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law." The latter clause—"in accordance with all applicable requirements of law"—includes the discovery rules of Evidence Code § 1043. *See Berkeley Police Ass'n v. City of Berkeley*, 167 Cal App. 4th. 385, 391-92 (2008). Specifically, despite the general confidentiality of peace officer personnel files, Evidence Code § 1043 provides a mechanism for discovery related to the citizen complaints addressed in Penal Code § 832.5.

53. In direct violation of these statutory provisions, Respondents Baca and LASD have adopted a policy of maintaining inmate complaints neither in deputies' "general personnel file," nor "in a separate file designated by the department," but only in the *complaining inmate's* file. These inmate files are in a database that is searchable only by inmate name and booking number. *See* Transcript of Jan. 9, 2012, *People v. Macario Garcia*, No. BA390283, at 39. Thus, despite the explicit provisions of § 832.5, which expressly include "custodial officers," an LASD representative has stated, in open court, that LASD somehow has concluded that complaints by jail inmates do not "need to be maintained in the same way as complaints by a citizen who's not in custody." *See id.* at 4, 41. Under LASD's policy, inmate complaints are also not tracked or kept in other databases or files that could be searched through a deputy officer's name. For example, LASD maintains a database called the Personnel Performance Index, which can be searched by deputy officer's name, but inmate complaints are not noted in that system. *See id.* at 38. And, although LASD maintains a database that tracks inmate complaints, it does not include information regarding the deputies involved in inmate complaints. *See id.* at 45. According to LASD, looking up complaints made against a particular deputy "require[s] a hand search of every complaint," *id.* at 40, which means it is essentially impossible.

54. Because of this policy, if an inmate is charged with assaulting a custodial officer, there will be no way to determine whether that custodial officer has been the subject of a previous complaint or a dozen previous complaints about the deputy's use of unjustified or excessive force. The mischief created by this rule is plain: Inmates are frequently charged with violating jail rules, assaulting officers, and other crimes while in custody. The Legislature enacted the *Pitchess* Rule precisely to ensure that

relevant information about the complaining deputy would be available to the defense, as required by Due Process. *See Berkeley Police Ass'n*, 167 Cal App. 4th. at 393 ("[T]he main purposes of the 1978 legislation were to curtail deliberate record-shredding practices by police agencies and to end discovery abuses that were allegedly occurring in the wake of the California Supreme Court's decision in [*Pitchess*]."). But because of LASD's policy of disobeying § 832.5, even if there were a dozen complaints against the complaining deputy, they would be entirely inaccessible because they would be filed not by deputy, as required by statute, but only by inmate.

55. This policy not only violates the express provisions of Penal Code § 832.5, but it also appears designed to frustrate its entire purpose by preventing accountability of custodial deputies. Cynically, due to this illegal filing system, the only use prior complaints could have is to impeach *an inmate* by showing that he had frequently complained in the past. Custodial deputies, however, are not subject to the same accountability. Because the *Pitchess* Rule is intended to protect criminal defendants' Due Process rights to discovery of exculpatory evidence, LASD's policy of deliberately disobeying the Rule inevitably results in the non-disclosure of exculpatory evidence, namely *Brady* violations.

56. Due Process, *Brady*, and the statutory scheme set forth by the California Legislature, "cannot [] tolerate[]" law enforcement agencies "retaining records in clandestine files deliberately concealed from prosecutors and defense counsel." *Jones v. City of Chicago*, 856 F.2d 985, 995 (7th Cir. 1988). Thus, in addition to violating the express provisions of the *Pitchess* statutes, LASD's deliberate choice to implement this policy results in the suppression of *Brady* material that is critical to the defense in these cases. *See id.*; *see also Tennison v. City and County of San Francisco*, 570 F.3d 1078, 1088 (9th Cir. 2009) (holding that law enforcement officers' deliberate decision to withhold exculpatory evidence violates Due Process); *Moldowan v. City of Warren*, 578 F.3d 351, 378 (6th Cir. 2009) ("Because prosecutors rely so heavily on the police and other law enforcement authorities, the obligations imposed under [due process] would be largely ineffective if those other members of the prosecution team had no responsibility to inform the prosecutor about evidence that undermined the state's preferred theory of the crime."). Of course, avoiding such suppression was the entire purpose of § 832.5's filing requirements.

Respondents' Policies of Illegally Suppressing Evidence Cause Actual Harm to Criminal Defendants

57. Because Respondents are violating mandatory statutory provisions, Petitioner has no obligation to show particular incidents of harm stemming from those violations. Nevertheless, the examples below illustrate that the challenged policies and practices create a severe and unacceptable risk that criminal defendants' constitutional and statutory rights will be violated, and, in fact, have been violated. Specifically, these examples confirm that Respondents have suppressed *Pitchess* and *Brady* material in at least three distinct contexts: (1) cases that are brought to trial, but the defendant is acquitted; (2) pending criminal cases; and (3) cases that are filed but subsequently dismissed.

58. **Mr. Jonathan Goodwin:** On December 4, 2010 Deputy Beas and other LASD deputies beat up Jonathan Goodwin in Men's Central Jail. Even though Mr. Goodwin was pepper sprayed and repeatedly punched and kicked and suffered significant injuries, including cuts over his hand and eye, bruises on his body, a large knot on his head, a bloody nose, and two swollen and one cut lip, LADA charged him with violation of Penal Code § 245(c) (Assault with a Deadly Weapon and/or by Force Likely to Produce Significant Bodily Injury on a Peace Officer).

59. Mr. Goodwin's lawyer filed a *Pitchess* motion on his behalf, but was informed on March 2, 2011 that there was no discoverable information for the officers involved. On December 2, 2011, Mr. Goodwin's counsel argued a second Supplemental *Pitchess* motion that was granted, but counsel was informed the same day that there was no discoverable information. In fact, there was at least one responsive inmate complaint that described Deputy Beas and other deputies beating up another inmate, Arturo Fernandez, in Men's Central Jail, and two other inmate complaints—one by Fernandez himself—which did not specifically identify Deputy Beas, but described deputies beating Mr. Fernandez.

60. In addition, LASD had in its possession Mr. Fernandez's sworn statement describing his beating by deputies, but did not provide it to Mr. Goodwin's attorney, nor did it produce any other material pursuant to Penal Code § 1054.1(e) or *Brady* prior to or during Mr. Goodwin's trial.

61. Mr. Goodwin's attorney obtained from the ACLU of Southern California the inmate complaints about the Fernandez beating, as well as a number of statements by inmates describing the beating of Mr. Fernandez. At trial, the defense presented testimony by Mr. Fernandez. On May 8, 2012, the jury acquitted Mr. Goodwin on the Penal Code § 245(c) charge and two lesser included charges.

62. **Mr. Andrew Contreras:** On September 16 2011, Deputies Beas and Rodriguez assaulted Mr. Contreras outside the visiting area in Men's Central Jail, where his girlfriend had been visiting him. The deputies twisted Mr. Contreras' arm, which was in a cast, violently behind his back, pepper sprayed him, and punched and kicked him multiple times. After the incident, he was taken to Los Angeles Medical Center + USC, where he remained for two days. While there, he was diagnosed with a dislocated and broken elbow, and a perforated left ear. In addition, he received stitches over his eye and in his lip, and his body was heavily bruised and his ears swollen and purple.

63. Even though the deputies had assaulted Mr. Contreras, LADA charged him with six counts, including battery against a peace officer (Penal Code § 243(c)(2)), resisting an officer in the performance of his duties (Penal Code § 69), and battery by gassing (Penal Code § 243.9(a)).

64. Mr. Contreras' counsel filed a *Pitchess* motion for information relating to complaints against the involved officers, including Deputy Beas. On March 5, 2012 the motion was granted, but his counsel was informed that there was no discoverable information. In fact, there was at least one responsive inmate complaint that described Deputy Beas and other deputies beating up another inmate, Arturo Fernandez, in Men's Central Jail, and two other complaints—one by Fernandez himself—which did not specifically identify Deputy Beas, but described deputies' beating Mr. Fernandez.

65. The case is scheduled for trial on July 19, 2012, yet LADA has not turned over any exculpatory information under either Penal Code § 1054.1(e) or *Brady*. However, LASD has in its possession two sworn statements describing the beating of Arturo Fernandez, one of which identifies Deputy Beas as one of the deputies who assaulted Mr. Fernandez.

66. **Mr. Arthur Townsend:** On July 20, 2011 Deputy Ramirez pepper sprayed and beat Arthur Townsend on the second floor of Men's Central Jail with a flashlight, while he was stripped to his underwear, handcuffed and lying on the floor. Other deputies joined the beating, including Deputy Ibarra, who beat Mr. Townsend's legs with his flashlight, and Deputy Luviano. On August 29, 2011, Mr. Townsend was held to answer on LADA's complaint charging him with violating Penal Code §§ 69 and 243(c)(1).

67. There are at least two inmate complaints against Deputies Luviano and Ibarra for beating inmates in the jails, yet LASD did not produce the names and contact information of those inmates in

response to Mr. Townsend's *Pitchess* Motion.

68. There is also at least one inmate eyewitness to Mr. Townsend's beating whose sworn statement has been served on counsel for Sheriff Baca and Los Angeles County, neither LASD nor LADA has produced that statement to Mr. Townsend's attorney.

69. There are also at least seven sworn statements by inmates or former inmates that describe beatings that Deputy Ibarra administered to other inmates in Men's Central Jail, none of which LASD or LADA has produced to Mr. Townsend, even though the statements were served on counsel for Sheriff Baca and Los Angeles County.

70. There are also at least six sworn statements by inmates or former inmates describing four different incidents in which Deputy Luviano used excessive and unnecessary force against inmates in Men's Central Jail. In addition, there is at least one additional sworn statement by an inmate stating that Deputy Luviano planted contraband on him. Neither LADA nor LASD has provided those declarations to Mr. Townsend's lawyer, even though all the statements were served on counsel for Sheriff Baca and the County.

71. Mr. Townsend's trial is currently set for this summer.

72. **Mr. Gabriel Carillo.** On February 26, 2011, Mr. Gabriel Carrillo was severely beaten by multiple LASD deputies while attempting to visit his brother at Men's Central Jail after a deputy found that Mr. Carrillo was carrying a cell phone, in violation of the Jail's visitation policy. Specifically, Deputies Sussie Ayala, Pantamitr Zunggeemoge, Fernando Luviano, and Noel Womack all took part in the beating of Mr. Carrillo. At no time during this incident did Mr. Carrillo attack the deputies, resist the deputies, or even fail to follow the deputies' instructions.

73. Nevertheless, the deputies involved in Mr. Carrillo's beating fabricated false reports that characterized Mr. Carrillo as the aggressor. Based on these reports, LADA charged Mr. Carrillo with violating Penal Code § 69 (Resisting an Executive Officer); Penal Code § 243(c)(2) (Battery with Injury on a Peace Officer); and Penal Code § 243.9(a) (Battery by Gassing).

74. Mr. Carrillo's counsel never received any exculpatory evidence from the District Attorney's office under Penal Code § 1054.1(e) or *Brady*.

75. However, Mr. Carrillo's counsel learned from representatives at the ACLU of Southern

California, which monitors the jails and regularly speaks with inmates who report being beaten by deputies, that LASD, through its involvement in other litigation, had evidence in the form of sworn statements that one of the deputies involved had used excessive force against inmates and planted evidence on inmates. Mr. Carrillo's counsel obtained this evidence from the ACLU of Southern California, presented it to LADA, along with other exculpatory evidence that LADA had not produced, and requested that LADA dismiss any criminal charges against Mr. Carrillo. In October 2011, LADA dismissed the charges.

* * *

76. The *Pitchess* Rule, § 1054.1, and *Brady* jurisprudence were all intended to avoid exactly these problems. LADA and LASD were obligated to maintain this material and to make it available to the defense in each of the cases described above. They failed to do so. The outcome of a criminal prosecution should not depend on the defendant's ability to obtain favorable evidence through sheer luck when this very evidence is in the possession of the prosecution and law enforcement agencies but is maintained and handled in a way that prohibits or prevents disclosure.

77. In Mr. Carrillo and Mr. Goodwin's cases, miscarriages of justice were prevented by the fortuity of their counsels' learning of the complaints from the ACLU. But how many inmates are not so lucky? It is precisely to avoid turning a criminal case into such a lottery that courts recognized constitutional disclosure obligations and that the statutory duties in §§ 832.5, 1054.1, and the *Pitchess* Rule were created. These mandates must be followed for justice to be meaningfully served and to prevent governmental actors like LADA and LASD from turning criminal tribunals into instruments of systematic injustice.

78. As pointed out at the outset of this Petition, a trial, especially a criminal trial, is supposed to be a search for truth, not a game. *See, e.g.*, *In re Ferguson*, 5 Cal. 3d 525, 531 (1971) ("The search for truth is not served but hindered by the concealment of relevant and material evidence. Although our system of administering criminal justice is adversary in nature, a trial is not a game. Its ultimate goal is the ascertainment of truth . . . ."). Moreover, our system demands that the prosecution team do more than focus on winning at all costs: Prosecutors are "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its

obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. . . . He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones." *Berger*, 295 U.S. at 88.

79. If nothing else, these principles mean that LADA and LASD, both of which enforce the law, must themselves also obey the law. This Petition seeks nothing more than vindication of this fundamental prerequisite of any fair system of justice, namely that the Respondents cease their formal, illegal policies and obey the law.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of Due Process (U.S. Constitution) against Respondents Cooley and LADA)

80. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-79.

81. Respondents Cooley and LADA have a ministerial duty under the Due Process clause of the United States Constitution to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

82. In violation of their duties to ensure that criminal trials are fundamentally fair, as required by the Due Process clause, Respondents Cooley and LADA's policy requires that the reliability of any evidence in its possession be established by clear and convincing evidence before it is considered potential exculpatory or impeachment evidence.

SECOND CAUSE OF ACTION

(Violation of Due Process (California Constitution) against Respondents Cooley and LADA)

83. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-82.

84. Respondents Cooley and LADA have a ministerial duty under the Due Process clause of the California Constitution to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

85. In violation of their duties to ensure that criminal trials are fundamentally fair, as required

by the Due Process clause, Respondents Cooley and LADA's policy requires that the reliability of any evidence in its possession be established by clear and convincing evidence before it is considered potential exculpatory or impeachment evidence.

THIRD CAUSE OF ACTION

(Violation of Penal Code § 1054.1 against Respondents Cooley and LADA)

86. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-85.

87. Respondents Cooley and LADA have a ministerial duty under Penal Code § 1054.1 to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

88. In violation of their duties to comply with Penal Code § 1054.1, Respondents Cooley and LADA's policy requires that the reliability of any evidence in its possession be established by clear and convincing evidence before it is considered potential exculpatory or impeachment evidence.

FOURTH CAUSE OF ACTION

(Violation of Due Process (U.S. Constitution) against Respondents Cooley and LADA)

89. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-88.

90. Respondents Cooley and LADA have a ministerial duty under the Due Process Clause of the United States Constitution to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

91. In violation of their duties to ensure that criminal trials are fundamentally fair, as required by the Due Process Clause, Respondents Cooley and LADA's policy suppresses favorable evidence if it is the subject of pending investigations.

FIFTH CAUSE OF ACTION

(Violation of Due Process (California Constitution) against Respondents Cooley and LADA)

92. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-91.

93. Respondents Cooley and LADA have a ministerial duty under the Due Process clause of the California Constitution to disclose to the defense in a criminal prosecution material exculpatory and

impeachment evidence.

94. In violation of their duties to ensure that criminal trials are fundamentally fair, as required by the Due Process clause, Respondents Cooley and LADA's policy suppresses favorable evidence if it is the subject of pending investigations.

SIXTH CAUSE OF ACTION

(Violation of Penal Code § 1054.1 against Respondents Cooley and LADA)

95. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-94.

96. Respondents Cooley and LADA have a ministerial duty under Penal Code § 1054.1 to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

97. In violation of their duties to comply with § 1054.1, Respondents Cooley and LADA's policy suppresses favorable evidence if it is the subject of pending investigations.

SEVENTH CAUSE OF ACTION

(Violation of Due Process (U.S. Constitution) against Respondents Cooley and LADA)

98. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-97.

99. Respondents Cooley and LADA have a ministerial duty under the Due Process clause of the United States Constitution to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

100. In violation of their duties to ensure that criminal trials are fundamentally fair, as required by the Due Process clause, Respondents Cooley and LADA's policy suppresses favorable evidence if the deputy speculates that it will not affect the verdict.

EIGHTH CAUSE OF ACTION

(Violation of Due Process (California Constitution) against Respondents Cooley and LADA)

101. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-100.

102. Respondents Cooley and LADA have a ministerial duty under the Due Process clause of the California Constitution to disclose to the defense in a criminal prosecution material exculpatory and

impeachment evidence.

103. In violation of their duties to ensure that criminal trials are fundamentally fair, as required by the Due Process clause, Respondents Cooley and LADA's policy suppresses favorable evidence if the deputy speculates that it will not affect the verdict.

NINTH CAUSE OF ACTION

(Violation of Penal Code § 1054.1 against Respondents Cooley and LADA)

104. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-103.

105. Respondents Cooley and LADA have a ministerial duty under Penal Code § 1054.1 to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

106. In violation of their duties to comply with Penal Code § 1054.1, Respondents Cooley and LADA's policy suppresses favorable evidence if the deputy speculates that it will not affect the verdict.

TENTH CAUSE OF ACTION

(Violation of Due Process (U.S. Constitution) against Respondents Cooley and LADA)

107. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-106.

108. Respondents Cooley and LADA have a ministerial duty under the Due Process clause of the United States Constitution to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

109. In violation of their duties to ensure that criminal trials are fundamentally fair, as required by the Due Process clause, the aspects of Respondents Cooley and LADA's policy challenged herein, taken together, suppress favorable evidence.

ELEVENTH CAUSE OF ACTION

(Violation of Due Process (California Constitution) against Respondents Cooley and LADA)

110. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-109.

111. Respondents Cooley and LADA have a ministerial duty under the Due Process clause of the California Constitution to disclose to the defense in a criminal prosecution material exculpatory and

impeachment evidence.

112. In violation of their duties to ensure that criminal trials are fundamentally fair, as required by the Due Process clause, the aspects of Respondents Cooley and LADA's policy challenged herein, taken together, suppress favorable evidence.

TWELFTH CAUSE OF ACTION

(Violation of Penal Code § 1054.1 against Respondents Cooley and LADA)

113. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-112.

114. Respondents Cooley and LADA have a ministerial duty under Penal Code § 1054.1 to disclose to the defense in a criminal prosecution material exculpatory and impeachment evidence.

115. In violation of their duties to comply with Penal Code § 1054.1, the aspects of Respondents Cooley and LADA's policy challenged herein, taken together, suppress favorable evidence.

THIRTEENTH CAUSE OF ACTION

(Violation of Due Process (U.S. Constitution) against Respondents Baca and LASD)

116. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-115.

117. Respondents Baca and LASD have a ministerial duty under the Due Process clause of the United States Constitution to maintain material exculpatory and impeachment evidence and turn over that evidence to the District Attorney.

118. The practices of Respondents Baca and LASD alleged above, including, deliberately maintaining inmate complaints of excessive force by deputies in files and/or databases searchable only by inmate's name and booking number unlawfully circumvents its constitutional obligations by preventing disclosure in cases where complaints of excessive force by deputies would be material exculpatory or impeachment evidence in a criminal prosecution against an inmate.

FOURTEENTH CAUSE OF ACTION

(Violation of Due Process (California Constitution) against Respondents Baca and LASD)

119. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-118.

120. Respondents Baca and LASD have a ministerial duty under the Due Process clause of the California Constitution to maintain material exculpatory and impeachment evidence and turn over that evidence to the District Attorney.

121. The practices of Respondents Baca and LASD alleged above, including maintaining inmate complaints of excessive force by deputies in files and/or databases searchable only by inmate's name and booking number unlawfully circumvents its constitutional obligations by preventing disclosure in cases where complaints of excessive force by deputies would be material exculpatory or impeachment evidence in a criminal prosecution against an inmate.

FIFTEENTH CAUSE OF ACTION

(Violation of Penal Code §§ 832.5, 832.7 & 832.8 against Respondents Baca and LASD)

122. Petitioner realleges and incorporates by reference each and every allegation of paragraphs 1-121.

123. Respondents Baca and LASD have a ministerial duty to maintain complaints filed by inmates at the Los Angeles County Jails against deputies in either the deputy's personnel file or in another file, but in such a manner that the complaints may be discoverable under Evidence Code § 1043.

124. The practice of Respondents Baca and LASD of maintaining inmate complaints of excessive force by deputies in files and/or databases searchable only by inmate's name and booking number unlawfully circumvents its statutory obligations set forth by California law.

PRAYER FOR RELIEF

Wherefore, Petitioner prays that:

125. This Court issue a writ of mandate directing Respondents Steve Cooley and LADA to perform their duties and obligations under the United States and California Constitutions and the Penal Code and compelling Respondents to establish a lawful policy regarding disclosure of exculpatory and impeachment evidence;

126. This Court issue a writ of mandate directing Respondents Leroy Baca and LASD to perform their duties and obligations under the United States and California Constitutions and the Penal Code and compelling Respondents to keep complaints regarding custodial officers in either personnel records or in such a manner that the complaints can be searched by a deputy's name;

127. This Court issue a writ of mandate directing Respondents Leroy Baca and LASD to perform their duties and obligations under the United States and California Constitutions and the Penal Code and compelling Respondent to search all inmate files for complaints against custodial officers filed in the last five years and place copies of those complaints s in either personnel records or maintain them in such a manner that the complaints can be searched by a deputy's name;

128. This Court issue a declaratory judgment that the policy and practices of Respondents Cooley and LADA challenged herein:

a. Violate Due Process under the United States Constitution;

b. Violate Due Process under the California Constitution;

c. Violate Penal Code § 1054.1(e); and

d. Constitute an illegal expenditure of taxpayer funds;

129. This Court issue a declaratory judgment that the policy and practices of Respondents Baca and LASD challenged herein:

a. Violate Due Process under the United States Constitution;

b. Violate Due Process under the California Constitution;

c. Violate Penal Code §§ 832.5, 832.7 & 832.8; and

d. Constitute an illegal expenditure of taxpayer funds;

130. This Court issue an order prohibiting Respondents, and each of them, their agents, servants and employees, from utilizing the policies and practices challenged herein;

131. This Court award Petitioner his costs of suit;

132. This Court award Petitioner his reasonable attorneys' fees under 42 U.S.C. § 1988, Code of Civil Procedure § 1021.5 and other applicable statutes; and

133. This Court award such other and further relief as it deems proper.

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Respectfully Submitted,

DATED: July 9, 2012

MARK D. ROSENBAUM
PETER ELIASBERG
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VERIFICATION

I, Jeffrey Douglas, being first duly sworn, depose and say:

I am the Petitioner in the above-entitled action. I have read the foregoing verified petition for writ of mandate, and the facts alleged therein are within my knowledge and I know them to be true, except as to matters therein stated on information and belief, and as to those matters, I believe them to be true.

Dated: July 9, 2012

Jeffrey Douglas