

# Close Up

The Quarterly Newsletter  
of the Texas Commission  
on Law Enforcement Officer  
Standards and Education



## Fee Changes for the Fall Electronic Form Submission and Hard Copies of Certificates

September will bring many changes to the Commission, including compliance with electronic processing requirements and the use of fees in the issuance of certificates.

Commission staff have been working dutifully towards meeting the statutory requirements of Texas Occupations Code 1701.1523 (Electronic Submission of forms, data, and documents) made by House Bill 3389 in the 81<sup>st</sup> Legislature. This process began with Reports of Training, and we are now in a position to require all agencies to submit forms electronically. Paper forms will no longer be accepted.

Agencies that have not purchased a subscription to TCLEDDS will be required to electronically submit forms L1 (Appointment of Licensee), F5R (Pre Employment Separation Request), F5 (Separation of Licensee), and reports of training through the Commission website's "Departmental Reporting System." Electronic submissions will cost \$35 per document.

The budget was reduced for almost all state agencies. Riders to the Commission budget now require the collection of fees for all peace officer, jailer, and telecommunicator certificates. The fee for each certificate is \$35.

TCLEDDS will continue to automatically award intermediate, advanced, and master certificates as requirements are met, and these achievements will be displayed on each licensee's personal status report (PSR); but individuals who want to receive a physical copy of one of their certificates in the mail will need to submit an electronic application and pay the \$35 fee. Payments can be made by credit card or bank draft, and must be transmitted by licensees who are logged in to their online training accounts.

## New Self-Service Phone System

The Commission now has an improved telephone menu! By calling **(512) 936-7700**, licensees can use the Commission's new self-service system to get their PID, identify training mandates for the current training cycle, and locate their agency's field service agent. There are also options on the menu for assistance with exam scheduling, open records requests, and the submission of flag requests for deceased peace officers.

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### Upcoming Events:

- This Year's Quarterly Commission Meetings  
*September 8*  
*December 1*
- Training Coordinators' Conference in Addison  
*Oct. 31 - Nov. 3*
- Next Year's Quarterly Commission Meetings  
*March 1, 2012*  
*June 7, 2012*  
*September 13, 2012*  
*December 13, 2012*

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*N.B.: Disciplinary Items  
can be found in the  
meeting minutes.*

# The Other Brady

## From the Executive Director

Most peace officers and law enforcement administrators recognize the name “Brady,” and associate that name with a gun bill and the Brady checks that were initiated in the mid-nineties. Another Brady is *Brady v. Maryland* 373 U.S. 83 (1963). Although this decision is nearly 50 years old, many peace officers and law enforcement administrators are not intimately aware of the magnitude of this decision, nor are they familiar with the implications to their profession and the criminal justice system. The last few pages of this issue of Close Up are devoted to this decision.

In a nutshell, Brady refers to integrity, to fairness, and to the professional character of the criminal justice prosecution and defense of defendants. The Brady decision requires peace officers, administrators, and prosecutorial personnel to reveal to the defense any exculpatory information, including information about the personal integrity of the arresting officers. I have heard people in a community say that a fellow citizen is a pretty good person, but that they remember back when he didn’t exactly tell the truth. I also had officers, and even some supervisors, appeal to me to not terminate a fellow officer who hedged on the truth about an off-duty job or about the facts of a minor report. This hedge of the truth or breach of integrity is probably “Brady material,” and must be revealed in every future prosecution where this person is involved. This lapse in integrity is what is defined as exculpatory information.

You don’t lose a little integrity. You either have integrity, or you don’t. You either are a truth teller, or you didn’t tell the truth. Imagine your loved one being accused of a crime by a fellow officer from a neighboring jurisdiction. And imagine that you knew this officer, and also knew that he had been previously disciplined, but not terminated for not being truthful. Would you make sure that your loved one’s defense attorney was made aware of the lack of integrity of the accusing officer? The shoe fits a little differently when it is on your foot. You and I both know the answer. We would tell the defense counsel, and we would seek justice for our loved one.

There is not any place in our profession for people who are untruthful. Our system of justice is based upon integrity, and law enforcement officers must maintain absolute integrity. There is no other way to be professional.

*(Note: Make sure you read Richard Lisko’s article at the end of this newsletter.)*



# Summary of the Work Session Minutes (Draft)

## Commission Work Session of June 2, 2011

The work session of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) was held on Thursday, June 2, 2011, at 8:30 a.m. The meeting was held at the J.J. Pickle Research Campus, The Commons Learning Center, 10100 Burnet Road, Bldg 137, Austin, Texas.

Commissioners attending were: Constable Charles Hall, Presiding Officer; Mr. Steve Griffith, Assistant Presiding Officer; Dr. Johnny E. Lovejoy, II, Secretary; Mr. James Oakley; Senior Police Officer Joe Pennington; Sheriff Joel Richardson; Ms. Patt Scheckel-Hollingsworth; Chief Ruben Villescas; and Mr. Randy Watson.

Also attending were Assistant Attorneys General Raymond Winter and Daniel Wiseman. Commission staff members attending included Executive Director Timothy A. Braaten, Director Kim Vickers, Director Brian Roth, Director Chris Davis, Laurie Abernathy, Claire Allman, Jason Ball, Lynn Beard, Darla Dixon, Thurman Felder, Dennis Graffious, Richard Guterrez, Nicole Hendrickson, Sharon Melton, Kenneth Merchant, Ivan Messer, Ken Mobley, Carnecia Penson, Kaye Wilson, and Mary Kay Wright.

### Agenda item #1, Call to order

The flags were presented by the Cedar Park Police Department Honor Guard. Commissioner Watson led the pledge of allegiance to the American flag and Commissioner Lovejoy led the pledge to the Texas flag. The roll call of board members confirmed that all Commissioners were present.

### Agenda item #2, Presiding Officer's Report

The presiding officer reminded all in attendance that the legislature has been called into special session by the governor.

### Agenda item #3, Executive Director's Report

The Commissioners were provided the full report in the notebooks they received prior to the meeting. Executive Director Braaten expounded further on several items. If the budget, as currently written, is passed, the Commission will have 37.6 full time employee (FTE) positions, down from the present level of 46. Executive Director Braaten reminded all in attendance that tomorrow, June 3, will be the Achievement Award presentation at the Senate auditorium. The first annual Friends of the Peace Officers' Memorial golf tournament will net approximately \$31,000, which will be forwarded to the Texas Preservation Board. The memorial needs approximately \$300,000 in repairs.

At the March 2011 meeting, Commissioner Villescas requested quarterly updates on the statistics of the number of officers arrested in the previous quarter, and a report on cases where the Commission has previously taken action or granted a waiver and the individual has again been involved in misconduct. This information was provided to the Commissioners and Executive Director Braaten assured them that this will continue to be included in future executive director reports.



Agenda item #4, Reports, items to discuss, follow-up items from previous meeting

Psychological exam committee update

Executive Director Braaten noted that the committee reviewed two specific areas; fitness for duty and minimum standards for a psychological exam. He explained that the psychological exams performed by a psychologist will include 2 areas of inventory, a personality profile and a psychopathology exam with a face-to-face interview. The applicant must have a background investigation form with them at the time of the exam. Fitness for duty will be defined, and if an agency includes the fitness for duty, there will be parameters. Executive Director Braaten stated that staff will bring a proposed rule to the next meeting. Dr. Lovejoy noted that at this time there are too many standards of exams in the state. Executive Director Braaten further added that in order for a law enforcement agency to be created, they must have written policies. Staff is recommending a fitness for duty policy be included in these mandated policies. Presiding Officer Hall offered the Commission's thanks to the members of the study committee.

Definition of minimum background investigation and mitigating circumstances

Executive Director Braaten stated that, if approved, these will be brought to the next meeting as a proposed rule.

Chapter 53 requirements for jailers

Director Davis stated that HB 1402 exempts all licensees from Chapter 53, including jailers.

Quo warranto

Director Davis indicated there are 3 pending quo warranto actions.

Agenda item #5, Items of Interest

Last Chance Agreement

Executive Director Braaten explained that this agreement would only be used in non-violent Class B misdemeanors and Class B misdemeanors where there is no family violence. With a Last Chance Agreement, an individual decides to not take their case to the State Office of Administrative Hearings (SOAH), and instead can agree to a mandatory hard suspension of 120 days. The remainder of the suspension is probated and if any violation occurs during that time, the remainder of the time is actual suspension plus one year. The agreement requires annual reporting to the Commission and notification to any prospective employer that they are on a suspended status, and there has to be departmental action taken against the individual. The agreement also allows for the time of the suspension to be backdated to the date of conviction. The agreement would be written such that staff could sign the agreements. There was lengthy discussion on this item.

Administrative penalty schedule

The intent is when the Commission is not receiving cooperation from a governmental entity, a fine can be assessed after due process, which includes a SOAH hearing. There was additional discussion.

Begin discussion of Commission meeting dates, meeting location, hotel for December 2011

December 2012 – Commissioners were asked to consider when they want to schedule the 2012 meetings and the location of these meetings.



Agenda item #6, Consider and receive public comment on the application of the Missouri City Police Department to be a contractual training provider

Director Vickers noted that he has reviewed the application and there are no items of concern. Mike Berezin and Keith Jemison appeared before the Commission and were available to answer questions.

Agenda item #7, Consider and receive public comment on the application of the Pearland Police Department to be a contractual training provider

Director Vickers informed the Commission that he has reviewed the application and has no items of concern. Chief J.C. Doyle appeared before the Commission and was available for questions.

Agenda item #8, Consider and receive public comment on the application of the San Juan Police Department to be a contractual training provider

Director Vickers noted that he has reviewed the application and has no items of concern. Chief Juan Gonzales addressed the Commissioners.

Agenda item #9, Consider and receive public comment on the application of the DSI Training Center to be a contractual training provider

Director Vickers confirmed that he has reviewed the application from the DSI (Dean Security & Investigations) Training Center and itemized the concerns he has about their needs assessment. Mr. Ray Bentley, representing DSI Training Center, addressed the Commission. The Commissioners had a number of questions.

Agenda item #10, Discuss Request for Waiver of Commission Rules 215.15 Enrollment Standards and 217.1 Minimum Standards for Initial Licensure for Barclay Vose and the Hunt County Sheriff's Office

Sheriff Randy Meeks and Barclay Vose addressed the Commission reference the waiver request.

Agenda item #11, Discuss Request for Waiver of Commission Rules 215.15 Enrollment Standards and 217.1 Minimum Standards for Initial Licensure for Justin Bulls and the Coryell County Sheriff's Office

Sheriff Johnny Burks and Justin Bulls addressed the Commission.

Agenda item #12, Peace Officers' Memorial report

Commissioner Hollingsworth noted that the Commission is still seeking contributions for the repair to the memorial. She encouraged individuals and agencies to look for creative ways to obtain additional funding.

Agenda item #13, Discuss the final orders of amendments to existing Commission rules

- 11-10-§217.7 Reporting the Appointment and Termination of a License
- 11-11-211.28 Responsibility of a Law Enforcement Agency to Report an Arrest
- 11-12-§211.27 Reporting Responsibilities of Individuals
- 11-13-§215.7 Training Provider Advisory Board
- 11-14-§217.1 Minimum Standards for Initial Licensure
- 11-15-§217.19 Reactivation of a License
- 11-16-§221.28 Advanced Instructor Proficiency
- 11-17-§223.19 Revocation of License
- 11-18-§211.26 Law Enforcement Agency Audits
- 11-20-§223.15 Suspension of License



Agenda item #13, Discuss the final orders of amendments to existing Commission rules (continued)

- 11-21-§215.13 Risk Assessment
- 11-22-§215.5 Contractual Training
- 11-23-§211.1 Definitions
- 11-24-§221.9 Standardized Field Sobriety Testing (SFST) Proficiency
- 11-25-§223.20 Revocation of License for Constitutionally Elected Officials
- 11-26-§221.1 Proficiency Certificate Requirements

Dr. Messer addressed the Commission, noting that no comments had been received on any of the final orders and, if approved, will become effective on July 14, 2011.

Agenda item #14, Discuss fee schedule to become effective 9-1-2011

Dr. Messer noted that the following items will no longer be on the fee schedule:

- SFST Practioner Proficiency – Final Order repealing, June 2011 Quarterly Meeting
- SFST Practioner Proficiency (Renewal) – Final Order repealing, June 2011 Quarterly Meeting
- Field Assistance Manual – incorporated into the Law Enforcement Administrator’s Desk Reference
- SFST Train the Trainer disc set – we no longer have this disc set, it can be requested from the NHTSA

Dr. Messer also noted that the following will be added:

- Probation/Parole Agency Number \$100.00 – consistency with agency number fee – lower than law enforcement agency due to the limited amount of information required for us to maintain
- Licensee Certification Level Documentation \$35.00 – Due to Rider 8 of the budget bill, we are to collect fees from peace officer and jailers who wish to have a paper certificate for Intermediate, Advanced, and Master. All fees in excess of \$286,212 will be transferred to the General Fund.
- Proficiency Certificates \$35.00 – Due to Rider 3 of the budget bill, we are to collect fees for Basic Peace Officer, Basic Jailer, and all Telecommunicator certificates.
- Cybercrime Investigator Proficiency \$35.00 – new proficiency certificate
- Proficiency Eligibility Research \$75.00 – fee will offset research required to verify date certificate was earned
- Open Records fee to allow charges for bulk requestors, to include subscription to TCLEDDS fees for certified copies and affidavits
- Racial Profiling data \$35.00 – consistency with the common cost of other CDs we offer
- Processing of electronic documents through Departmental Reporting System fee consistent with paper processing fee for: Appointment of Licensee (L1); Pre Employment Separation Request (F5R); Separation of Licensee (F5); and Reports of training

The personal status report will note that the officer/jailer has been awarded a proficiency certificate, but the actual paper certificate will not be sent until the application and fee has been received. The Basic proficiency certificate is not a part of Rider 8, but there will be a fee to issue the paper certificate.

Agenda item #15, Adjourn

The work session adjourned at 10:55 a.m.



## **Summary of the Quarterly Meeting Minutes (Draft)**

### **Commission Quarterly Meeting of June 2, 2011**

The quarterly meeting of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) was held on Thursday, March 3, 2011, at 10:45 a.m. The meeting was held at the J.J. Pickle Research Campus, The Commons Learning Center, 10100 Burnet Road, Bldg 137, Austin, Texas.

Commissioners attending were: Constable Charles Hall, Presiding Officer; Mr. Steve Griffith, Assistant Presiding Officer; Dr. Johnny E. Lovejoy, II, Secretary; Mr. James Oakley; Senior Police Officer Joe Pennington; Sheriff Joel Richardson; Ms. Patt Scheckel-Hollingsworth; Chief Ruben Villescas; Mr. Randy Watson.

Also attending were Assistant Attorneys General Raymond Winter and Daniel Wiseman, and TCLEOSE staff members Executive Director Timothy A. Braaten, Director Kim Vickers, Director Brian Roth, Director Chris Davis, Laurie Abernathy, Lynn Beard, Darla Dixon, Thurman Felder, Dennis Graffious, Richard Gutierrez, John Helenberg, Nicole Hendrickson, John Hunt, Ivan Messer, Kaye Wilson, and Mary Kay Wright.

#### Agenda item #1 Call to order

Presiding Officer Hall called the meeting to order and asked for the roll call. All commissioners were present.

#### Agenda item #2 Approval of the minutes of the January 13, 2011, Commission meeting at Austin Texas

Commissioner Griffith made a motion to accept the minutes of the January 13, 2011, work session. Commissioner Lovejoy seconded the motion. The motion passed unanimously. Commissioner Griffith made a motion to approve the minutes of the January 13, 2011, quarterly meeting. Commissioner Lovejoy seconded the motion. The motion passed unanimously.

#### Agenda item #3 Presiding Officer's Report

There were no items to report.

#### Agenda item #4 Executive Director's Report, if not read at the Work Session

This agenda item was covered during the Work Session.

#### Agenda item #5 Take action to approve the recommendations for the Law Enforcement Achievement Awards

Commissioner Lovejoy made a motion to approve the awards recipients. Commissioner Hollingsworth seconded the motion. The motion passed unanimously.



Agenda item #6 Take action on Items of Interest

Definition of minimum background investigation requiring hiring agency / academy to meet or exceed a minimum background / personal history questionnaire established by TCLEOSE and background investigation form to be maintained in officer's file.

Commissioner Lovejoy made a motion that this item be brought forward as a proposed rule. Commissioner Villescascas seconded the motion. The motion passed unanimously.

Notice that fee schedule will be presented at June meeting to be implemented September 1, 2011

No action necessary.

Legislative tracking issues

No action necessary.

Mitigating circumstances, Rule 223.15(h)

Commissioner Lovejoy made a motion that this item be brought forward as a proposed rule. Commissioner Hollingsworth seconded the motion. The motion passed unanimously.

Legal issues – Quo warranto No action necessary.

Current status of new jail courses No action necessary.

Other No action necessary.

Agenda item #7 Take action on the application of the Guadalupe County Sheriff's Office to be a contractual training provider

Commissioner Oakley made a motion to accept the application of the Guadalupe County Sheriff's Office to be a contractual training provider. Commissioner Griffith seconded the motion. The motion passed unanimously.

Agenda item #8 Take action on the Peace Officers' Memorial report, if necessary.

No action necessary.

Agenda item #9 Take action on the proposed orders of amendments to existing Commission rules

11-24-§221.9 Standardized Field Sobriety Testing (SFST) Proficiency

11-25-§223.20 Revocation of License for Constitutionally Elected Officials

11-26-§221.1 Proficiency Certificate Requirements

Commissioner Lovejoy made a motion to accept the proposed rules. Commissioner Hollingsworth seconded the motion. The motion passed unanimously.

Agenda item #10 Discussion of and take actions on proceedings for revocation, suspension, and other disciplinary actions





FINAL ORDER SUSPENSIONS

<u>NAME OF LICENSEE</u>	<u>DOCKET#</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Corey E. Covin	08-05-1536LS	I-Harris County Sherriff's Office

Commissioner Griffith made a motion that the Commission adopt a final order for a 6 month hard suspension from today's date and a 9 year, 6 month probated suspension. Commissioner Lovejoy seconded the motion. The motion passed with Commissioners Pennington, Villescas, and Hollingsworth voting against the motion.

<u>NAME OF LICENSEE</u>	<u>DOCKET#</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Willie J. Sam	09-01-0229LS	Houston Police Department

Commissioner Griffith made a motion that the commission accept and adopt the Proposal for Decision to enter a final order for a ten year, fully probated suspension. Commissioner Lovejoy seconded the motion. The motion passed with Commissioners Villescas, Hollingsworth, and Richardson voting against the motion.

AGREED FINAL ORDER SUSPENSION

<u>NAME OF LICENSEE</u>	<u>DOCKET#</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Gary Marek	09-07-0705LS	Williamson County Sheriff's Office

This item was postponed until the June 2011 meeting.

FOR YOUR INFORMATION

CANCELLATIONS

<u>NAME OF LICENSEE</u>	<u>DOCKET#</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Troy L. Bennett Jr.	11-11-0164CAN	Fayette County Sheriff's Office
Randy Betancourt	10-05-0550CAN	Maverick County Sheriff's Office
Holli J. Bullock	11-12-0227CAN	Williamson County Sheriff's Office
Brian L. Espinoza	11-11-0186CAN	Crystal City Correctional Center
Celestino J. Martinez	11-01-0284CAN	Crystal City Correctional Center
Mallory D. Melendez	11-11-0161CAN	Fort Bend County Sheriff's Office
Jose D. Vallejo	11-01-0276CAN	Cameron County Sheriff's Office
Cheryl L. Wilson	11-10-0099CAN	Ector County Sheriff's Office

PERMANENT VOLUNTARY SURRENDERS

<u>NAME OF LICENSEE</u>	<u>DOCKET#</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Richard K. Butler	09-01-0232PVS	Houston Police Department
Robert L. Carson, Jr.	10-06-0582PVS	Cleveland ISD Police Department
Jeremy Fountain	10-10-0093PVS	Texas Department of Public Safety
Charles C. Harris	10-03-0410PVS	Midland County Constable Pct. 2
Ryan B. Kelly	08-02-1369PVS	Brazos County Constable Pct. 1
Terry H. Lindsey III	10-01-0263PVS	Smith County Sheriff's Office
Clifford I. Morgan	08-02-1378PVS	San Antonio Police Department
Craig W. Nash	10-03-0369PVS	San Antonio Police Department



PERMANENT VOLUNTARY SURRENDERS (Continued)

<u>NAME OF LICENSEE</u>	<u>DOCKET#</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Stefanos P. Pothos, Jr.	10-11-0134PVS	Galveston County Sheriff's Office
Ricardo J. Rodriguez	06-03-1675PVS	San Antonio Park Rangers
Anthony A. Sterling	09-05-0517PVS	San Antonio Police Department
Thomas B. Toomey	09-08-0719PVS	Polk County Sheriff's Office
Andrew C. Wishard	11-01-0277PVS	Fannin County Sheriff's Office

REPRIMANDS

<u>NAME OF LICENSEE</u>	<u>DOCKET#</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Raymond J. Bonner	11-12-0254	
Douglas H. Dotson	10-09-0019	
Vyncent J. Gray	10-10-0081	
Scott A. Hamberger	10-07-0697	
Michael L. Hattaway	10-06-0609	
Brian E. Henry	10-09-0004	
Charles R. Hicks, Jr.	10-07-0705	
Francisco Huerta, Jr.	09-03-0382	Crystal City Correctional Center
John L. Hurley	10-04-0467	
Mark R. Hutchins	10-08-0743	Houston Police Department
Jose A. Infante	10-04-0461	
Wilmer R. Ivie	10-03-0384	
Frederick T. Jepsen	11-01-0303	Blue Mount Police Department
Jeffrey M. Jerman	10-09-0034	
Deanna L. Jopling	08-08-1622	
Oralia K. Kimble	10-09-0005	
Ruben V. Leal	10-05-0535	
Frank Lopez	11-11-0140	
Bronc J. McCoy	11-01-0281	Dallas Police Department
Leopoldo Menchaca	11-01-0302	Brownsville I.S.D. Police Department
Omar E. Salazar	10-12-0176	

REPRIMANDS FOR VIOLATION OF RULE §217.11 LEGISLATIVELY REQUIRED CONTINUING EDUCATION FOR JAILER LICENSEES TRAINING CYCLE 05-09

<u>NAME OF LICENSEE</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Michael J. Anthony	Bowie County Correctional Center
Juan M. Anzaldua	Hidalgo County Sheriff's Office
Christopher R. Ayala	Crystal City Correctional Center
Roberta K. Bacon	Dickens County Sheriff's Office
Matthew E. Bailey	Rusk County Sheriff's Office
Joshua D. Banks	Travis County Sheriff's Office



*REPRIMANDS FOR VIOLATION OF RULE §217.11 LEGISLATIVELY REQUIRED CONTINUING EDUCATION FOR JAILER LICENSEES TRAINING CYCLE 05-09 (Continued)*

<u>NAME OF LICENSEE</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Michael A. Barrera	Brooks County Sheriff's Office
David M. Bradberry	Travis County Sheriff's Office
Nathan G. Bradshaw	Travis County Sheriff's Office
Tana K. Breiten	Loving County Sheriff's Office
Laqreshia N. Brooks	Dallas County Sheriff's Office
Francisco A Campero	Brooks County Sheriff's Office
John P. Cardenas	Bexar County Sheriff's Office
Tambra L. Caro	Travis County Sheriff's Office
Michael A. Cates	Brooks County Sheriff's Office
Lisa A. Cavazos	Brooks County Sheriff's Office
Crystal M. Chavera	Brooks County Sheriff's Office
Brenda D. Cook	Falls County Detention Center
Carol R. Cottle	Edwards County Sheriff's Office
Danny Davila	Brooks County Sheriff's Office
Melissa O. Davila	Brooks County Sheriff's Office
Jessica A. Ebisch	Travis County Sheriff's Office
Paul D. Eck	Travis County Sheriff's Office
Daniel E. Ervin	Dallas County Sheriff's Office
David Fernandez	CCA Webb County Detention Center
Mickey L. Fezell	Dallas County Sheriff's Office
William A. Frosch	Falls County Detention Center
Suki A. Gallegos	Winkler County Sheriff's Office
Sherry L. Garrett	Newton County Sheriff's Office
Gina Garza	Brooks County Sheriff's Office
Ramon B. Garza Jr.	Nueces County Sheriff's Office
Anthony D. Glover	Winkler County Sheriff's Office
Fernando Gomez	El Paso County Sheriff's Office
Hector J. Gonzalez	Cameron County Sheriff's Office
John T. Grantham	Franklin County Sheriff's Office
Trina Y. Hall	Dallas County Sheriff's Office
Keith D. Harris	Travis County Sheriff's Office
John Hayden	Gregg County Sheriff's Office
George W. Head II	Webb County Sheriff's Office
Cynthia Hearn	Hale County Sheriff's Office
Yvonne Hernandez	Brooks County Sheriff's Office
Ricardo D. Herrera	Reeves County Sheriff's Office
Cheryl L. Johnson	Winkler County Sheriff's Office
Victor M. Johnson	Travis County Sheriff's Office
Luvia L. Kautz	Dickens County Sheriff's Office
Linda L. Keese	Travis County Sheriff's Office



REPRIMANDS FOR VIOLATION OF RULE §217.11 LEGISLATIVELY REQUIRED CONTINUING EDUCATION FOR JAILER LICENSEES TRAINING CYCLE 05-09 (Continued)

<u>NAME OF LICENSEE</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Andrew C. Kerstens	Brazoria County Sheriff's Office
Irma Lopez	Brooks County Sheriff's Office
Richie E. Manny	Dallas County Sheriff's Office
Wesley D. Mason	Dallas County Sheriff's Office
James A. McClain	Hale County Sheriff's Office
Ruben G. Mejia	Brooks County Sheriff's Office
Todd A. Messiner	Parker County Sheriff's Office
Ricky Morales	Winkler County Sheriff's Office
Socorro M. Nunez	Presidio County Sheriff's Office
Darrell R. Oliver	Refugio County Sheriff's Office
Randy E. Owen	Travis County Sheriff's Office
Jorge E. Paninski	Newton County Sheriff's Office
David A. Parish	Angelina County Sheriff's Office
Juan D. Perez	Brooks County Sheriff's Office
Donald D. Pressnell	Dallas County Sheriff's Office
Alfred A. Pustejovsky	Fort Bend County Sheriff's Office
Mario L. Ramirez	Brooks County Sheriff's Office
Kimberly L. Ratcliff	Shelby County Sheriff's Office
Martha A. Razo	Presidio County Sheriff's Office
Bonnie M. Richardson	Winkler County Sheriff's Office
Fernando Ruiz	Dallas County Sheriff's Office
Ruben Salinas	Burnet County Sheriff's Office
Latoya D. Sanders	Dallas County Sheriff's Office
Jason B. Speir	Grayson County Sheriff's Office
Esperanza Suarez	Bexar County Sheriff's Office
Amy L. Swanson	Winkler County Sheriff's Office
Wesley A. Tate	Travis County Sheriff's Office
Michael J. Tobias	Travis County Sheriff's Office
Tommy D. Tobias	Montgomery County Sheriff's Office
Gregory G. Truitt	Travis County Sheriff's Office
Robert L. Vela	Brooks County Sheriff's Office
Veronica L. Vela	Brooks County Sheriff's Office
Drew A. Williams	Travis County Sheriff's Office
Richard S. Young	Parker County Sheriff's Office



APPEAL OF F-5 REPORT OF SEPARATION OF LICENSEE

<u>NAME OF LICENSEE</u>	<u>DOCKET#</u>	<u>LAST DEPARTMENT TO HOLD COMMISSION</u>
Kathryn M. Danner		Harris County Const. Pct. 4
Jose O. Garcia		San Benito Fire Department
Justen C. Isom		Carthage Police Department
Tiffany N. Lavergne		Sealy Police Department
William L. Martin		Harris County Const. Pct 4
Christopher Rich		Hopkins County Sheriff's Office
Roberto Ramos		Webb County Sheriff's Office
Jonathan F. Williams		Port Arthur Police Department

Assistant Attorney General Wiseman reviewed the "For Your Information" items with the commissioners. He noted that under Cancellations, the names of Robert R. McDowell, Stephen A. Rivera, and Octavius D. Rawls needed to be removed.

Agenda item #11 Receive public comment on any topic, without discussion

There were no public comments.

Agenda item #12 Executive Session to discuss pending litigation and personnel issues, including evaluation of executive director's job performance, pursuant to sections 551.074 and .071 of the Texas Government Code, Open Meetings Act

The commissioners went into executive session at 11:45 a.m.

Agenda item #13 Return from Executive Session to report and/or discuss further actions to be taken as a result of the Executive Session

The commissioners returned from Executive Session at 12:45 p.m. There was no action taken.

Agenda item #14 Adjourn

Commissioner Griffith made a motion to adjourn. Commissioner Hollingsworth seconded the motion. The motion passed unanimously.



## **Agency Policies Imperative to Disclose *Brady v. Maryland* Material to Prosecutors**

**By Richard Lisko, Lieutenant and Asst. Precinct Commander, Baltimore Co., Maryland, P.D.**

Does your law enforcement agency have a policy regarding the disclosure of *Brady v. Maryland*<sup>1</sup> information to prosecutors? That question was recently posed to the commander of a major metropolitan police department's internal affairs unit. The answer was surprising. "What's that?" he asked, "You mean the gun law?" After some explanation and discussion of *Brady* material, his answer was, "No."

Unfortunately, that conversation could likely be repeated dozens, perhaps hundreds, of times if posed to every law enforcement agency in the country. Even though the *Brady* decision is nearly 50 years old, law enforcement agencies across the country are reluctant, if not defiant, to disclose potentially damaging information about police officers within their ranks. As a follow-up to the conversation above, the legal director of that police department was asked the same question. "We don't have one" was the answer. The next question was, "How do you respond to requests for *Brady* information by the prosecutor's office? The response was just as surprising: "We require a subpoena, and then we challenge it in court." Obviously, that police department does not disclose much *Brady* information to the prosecutor's office. This is but one example of the failure of law enforcement agencies nationwide to disclose potentially damaging information about police officers to prosecutors. Unfortunately, the problem has reached a critical junction in the successful prosecution of criminal cases.

As a result of the 1963 U.S. Supreme Court decision regarding *Brady*, prosecutors are required to provide all exculpatory information about their witnesses to defense attorneys prior to trial. Subsequent U.S. Supreme Court decisions in *Giglio v. U.S.*<sup>2</sup> and *U.S. v. Agurs*<sup>3</sup> further expanded the duty of prosecutors to provide this information to defense attorneys prior to trial, even if no prior request was made. However, the court's decision in *Kyles v. Whitley*<sup>4</sup> has had the most significant impact on law enforcement agencies. It requires prosecutors to learn about any favorable information to the defendant that is known to others who are acting on behalf of the government, including information about police officers. This duty also extends to information about police officers contained in internal affairs files. But if prosecutors are unaware of that information or evidence, subsequent disclosures to defense attorneys can never occur. The result can be devastating for prosecutors, victims of crime, and law enforcement agencies.

Take for example, the recent revelation by the San Francisco, California, Police Department in May 2010, in which the names of more than 135 police officers with potential *Brady* problems were disclosed to the prosecutor's office. The problem was discovered after the chief of police asked a staff member to evaluate a disciplinary case for potential *Brady* policy problems. As the staff member stared blankly back at the chief, the only response was, "We don't have one of those."<sup>5</sup> Recognizing the potential of the problem that he discovered, the chief immediately contacted the prosecutor's office. To his surprise, he learned that the prosecutor's office did not have a policy to track or disclose *Brady* information to attorneys representing criminal defendants. Does this sound familiar?

As a result of its disclosure, the San Francisco Police Department jeopardized hundreds of felony and misdemeanor cases, both waiting trial and those in which defendants have been convicted. "This is huge," said San Francisco public defender Jeff Adachi, in describing the potential impact of the discovery. "It will make the problems at the crime lab look like small potatoes."<sup>6</sup> Adachi was referring to the recent scandal in the San Francisco Police Department crime lab where a technician admitted to stealing drugs from the laboratory. The



technician also had a prior criminal conviction for domestic violence that was never disclosed during numerous court appearances—information that is clearly required to be disclosed under Brady. As a result, more than 600 criminal cases in which the technician was involved were dismissed.

Regrettably, the San Francisco Police Department is not alone in this problem. Law enforcement agencies across the United States have faced similar problems.

The Tulsa, Oklahoma, Police Department announced in July 2010 a “no-tolerance-for-lying policy” after seven police officers were charged in federal court with perjury and corruption. As a result of those charges, 11 criminal suspects were either released from jail or had their cases dismissed.

In 2009, Dallas, Texas, prosecutors were faced with the possibility that dozens of criminal convictions dating back 15 years might be reversed after the discovery of a 1994 conviction for lying by the arresting officer. The officer had been fired for lying to internal investigators and causing false information to be placed in an arrest report. He was later reinstated by an administrative law judge but the police department failed to notify the prosecutor’s office.

Prosecutors in Seattle, Washington, were forced to establish their own list of officers with Brady problems because the local police departments failed to do so. The problem came to light after a 2007 memo from a senior prosecutor directed attorneys to track officers that had credibility problems. The names of 11 officers were immediately added to the list.

By 2007, Maricopa County, Arizona, prosecutors had compiled a list of 328 names of police officers that were placed on their Brady list, indicating that they may not be eligible to testify in court. The problem was highlighted during the internal investigation of a Gilbert, Arizona, police officer who was accused of lying about conducting a records check of an arrestee.

In Boston, Massachusetts, an investigation by the local newspaper in 2005 uncovered 19 cases in which officers were convicted of lying in official investigations, under oath, or in police reports. However, only two officers were fired for their actions. That investigation was sparked by the death of a 21-year-old college student killed by the Boston Police Department while she was celebrating the Boston Red Sox’s victory over the New York Yankees in the 2004 American League Championship Series.

Like the problems in San Francisco, most of these problems were discovered after a single critical incident or court case in which an officer’s past conduct was questioned. Unfortunately, all of them could have been prevented if the law enforcement agency had a policy to routinely disclose Brady information to prosecutors.

One of the most notable incidents of a police department’s failure to disclose Brady material to prosecutors occurred in Los Angeles, California, in the late 1990s. More than 70 officers from the agency’s Rampart Division were investigated for misconduct as part of a widespread corruption scandal. Several officers were arrested for crimes that included bank robbery, theft of drugs from police custody, and brutality. In the wake of that scandal, the Los Angeles Times newspaper conducted its own investigation into the credibility of Los Angeles Police Department officers. Their investigation discovered numerous cases where both the police and prosecutors failed to provide pertinent information about officers’ backgrounds to defense attorneys. As a result of the Rampart investigation, more than 100 criminal cases were overturned due to police corruption. The Times article also suggested that the Rampart scandal had “sparked a legal debate that promises to alter the landscape of the criminal justice system in Los Angeles County for years to come.”<sup>7</sup> Ten years later, that debate is still being played out in police departments and prosecutors’ offices across the country.



**State Actions**

In addition to the constitutional requirements of Brady and its related U.S. Supreme Court decisions, state courts have taken their own actions to require the disclosure of exculpatory information about witnesses, including police officers. For example, the 1974 California Superior Court decision in *Pitchess v. Superior Court*<sup>8</sup> determined that a defendant was entitled to review personnel records of police officers where a claim of misconduct on the part of the officer was made.

More recently, the Maryland Court of Appeals extended the requirement to disclose exculpatory information about all witnesses in a criminal case. Since July 1, 2008, the state’s attorney’s office has been required to disclose, without the necessity of a formal request, all information, admissible or not, that tends to impeach a state’s witness. The requirement also includes evidence of prior conduct that demonstrates the character of the witness for untruthfulness.<sup>9</sup>

**Federal Actions**

While state and local law enforcement agencies have been slow to implement policies to ensure full disclosure of Brady material, the federal prosecutor’s office has been much more aggressive. Beginning in 1996, the U.S. Attorney’s office established a policy to ensure that all impeachable information about a witness is properly disclosed to defense attorneys. The policy was established by then–Attorney General Janet Reno and aptly referred to as “the Giglio policy.” It places the burden of ensuring that prosecutors are notified of any potential impeachment information on both the officer testifying in court and the law enforcement agency in which the officer is employed. The policy also requires the disclosure of allegations of misconduct even if they were not sustained, were not credible, or resulted in exoneration.

**Civil Actions**

The failure to disclose Brady information to prosecutors may also create civil liability problems for law enforcement agencies. There are numerous cases in which defendants have been released from jail after the discovery of exculpatory evidence in the possession of police investigators. While the investigators were aware of the evidence, it was never disclosed to prosecutors. In several of those cases, the defendants have filed civil suits against the law enforcement agency and the officers for violation of due process by failing to comply with Brady requirements.

**Best Practices**

Law enforcement executives must recognize that an officer’s past conduct can have a significant impact on a criminal prosecution. Not only does a defendant have the right to review personnel files about an officer’s past conduct that may discredit the officer’s credibility, but the prosecutor has a constitutional duty to disclose it. To that end, law enforcement executives must be diligent in gathering that information and communicating it to prosecutors. These actions should be clearly described in a written policy and/or procedural manuals to ensure compliance.





The policy or procedure should

- clearly identify what actions by the officer constitute Brady material;
- require immediate notification to a supervisor and/or prosecutor by any officer who becomes aware of potential Brady information or evidence that jeopardizes testimony in court;
- describe the circumstances under which disclosure will be made to prosecutors to include
- unsubstantiated complaints regarding potential Brady violations,
- current investigations regarding potential Brady violations, and
- past investigations involving sustained Brady violations;
- establish procedures for disseminating Brady material to prosecutors;
- establish procedures for notifying officer(s) involved in any Brady disclosure to prosecutors; and
- establish procedures to respond to third-party requests for Brady material related to any department member by
  - members of the media,
  - defense attorneys,
  - private investigators, or
  - Freedom of Information Act requests.

A strong policy that requires disclosure of Brady information may actually reduce the number of requests from defense attorneys in search of that information. For example, the commander of a major metropolitan police department's internal affairs unit recently reported that several subpoenas obtained by defense attorneys seeking Brady material on specific officers were withdrawn after learning of that agency's policy to disclose it to prosecutors on a regular basis. Fortunately, the agency recognized the potential impact of withholding such information and took affirmative action to prevent it.

### Summary

The failure to disclose Brady information about all witnesses in a criminal case to defense attorneys can be used as a basis to overturn a conviction, release a defendant from prison, or establish the basis for a civil lawsuit. At a minimum, the discovery of Brady information after a criminal trial has concluded will result in the review of all other criminal cases, pending or closed, in which the officer was involved. This can be a time-consuming and tedious process, especially if the incident occurred early in an officer's career.

Last, but certainly not least, all law enforcement agencies should consider the establishment of strict policies to terminate the employment of any officer determined to be untruthful in any official report, testimony, or investigative interview. The success of any law enforcement agency relies upon the integrity of the officers that compose its ranks. This element is necessary to maintain the confidence of the public and the employees of the agency. A dishonest police officer discredits the hard work of all law enforcement officers and jeopardizes the effectiveness of the criminal justice system.



**Notes:**

1. Brady v. Maryland, 373 U.S. 83 (1963).
2. Giglio v. United States, 405 U.S. 150 (1972).
3. United States v. Agurs, 427 U.S. 97 (1976).
4. Kyles v. Whitley, 514 U.S. 419 (1995).
5. Jaxon Van Derbeken, "Police with Problems Are a Problem for the D.A.," San Francisco Chronicle, May 16, 2010, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/05/15/MNKC1DB57E.DTL> (accessed December 29, 2010).
6. Jaxon Van Derbeken, "S.F. Cops' Pasts Could Jeopardize Convictions," San Francisco Chronicle, May 4, 2010, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/05/04/MNJ71CTL6A.DTL> (accessed December 29, 2010).
7. Matt Lait and Scott Glover, "Police Credibility Debate Could Alter Legal System," Los Angeles Times, October 6, 2000, <http://articles.latimes.com/2000/oct/06/news/mn-32481> (accessed December 29, 2010).
8. Pitchess v. Superior Court, 11 Cal. 3d 531 (1974).
9. Steven D. Silverman, "Changes to the Maryland Criminal Discovery Rules (Rules 4-262, 4-263, and 4-301), Effective 7/1/2008," Maryland Criminal Attorney Blog, June 24, 2008, [http://www.marylandcriminalattorneyblog.com/2008/06/changes\\_to\\_the\\_maryland\\_crimin.html](http://www.marylandcriminalattorneyblog.com/2008/06/changes_to_the_maryland_crimin.html) (accessed December 29, 2010).

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