



John S. Foote, District Attorney for Clackamas County

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Chief Terry Kruger
West Linn Police Department
1800 8th Avenue
West Linn OR 97068

Chief Krueger:

In light of the information developed in *Fesser v. West Linn Police Department*, the Clackamas and Multnomah County District Attorney's Offices will be undertaking a thorough review of this investigation, which would include any possible criminal activity along with an evaluation of any conduct by Sgt. Reeves that could implicate our obligations under *Brady v Maryland*. Enclosed is a copy of our office's *Brady Review* policy for your consideration.

Sincerely,

John Foote
Clackamas County District Attorney

cc: John Williams

Clackamas County District Attorney's Office Procedure for Disclosure of Brady/Impeachment Evidence Regarding Law Enforcement/Government Witnesses

It is the policy of the Clackamas County District Attorney's Office to comply with all statutory, constitutional and ethical obligations to provide timely disclosure of *Brady/Impeachment* evidence related to Law Enforcement/Government witnesses. Such witnesses include law enforcement, personnel employed by the Oregon State Police Forensic Laboratory, DHS caseworkers and members of the Oregon State Medical Examiner's Office who are likely to testify in a Clackamas County grand jury, hearing or trial. To comply with this obligation the District Attorney's Office has established the following procedures.

When the District Attorney's Office learns of potential *Brady/Impeachment* material from any source, that material will be referred to a *Brady Review* Committee (Committee) for review.

Brady Review Committee

The Committee will consist of the Chief Deputy, and at least two Sr. DDAs. If the Chief Deputy is unavailable, at least three Sr. DDAs will conduct the review. The purpose of the Committee is to screen relevant information received from all sources for legitimate *Brady*/impeachment material. Committee members may consider oral, written or other relevant evidence in reaching their decisions.

The following procedures will be followed by the Committee in each case:

Notice

1. State witnesses will receive written notice that they are the subject of a pending review;
2. The witness's Agency Liaison will receive written notice that the employee is the subject of a pending review;

Evidence Considered

3. State witnesses will have the opportunity to provide relevant materials for consideration to the Committee and to appear before the Committee;
4. The employing agency of the State's witness may provide any relevant information to the Committee.

Outcome

The Committee will determine what obligations, if any, the District Attorney's Office has in light of the evidence reviewed. The obligation will usually fall into the following three options, although other recommendations may be made on a case by case basis:

1. No obligation to provide any information
2. Information must be provided as part of discovery obligation.
 - Request for an *in camera* review by the court
 - Provide to the defense as part of discovery
3. In addition to options included in "2," determine if the information requires the State to disqualify this witness from testifying in the pending case and/or future cases.

Appeals Process

Notice of the Committee's decision will be provided in writing to the employing agency's Agency Liaison and to the potential witness.

State witnesses may file a written appeal within 30 days of the Committee's decision. In support of their appeal, witnesses may submit additional or new information to the Committee.

State witnesses identified as having use restrictions and/or their employing agency always have the opportunity to submit additional materials at any time if they choose to seek reconsideration by the Committee. The District Attorney will review all appeals and will accept or reject the Committee's decision on appeal.

Notice to DDAs

If the review Committee determines there is a *Brady/Impeachment* obligation, that decision will be documented internally in the District Attorney's Office case management system. A restriction on the use of that witness in pending or future cases will cause an automatic notice to be sent to case prosecutors.

When a DDA determines that a state witness is flagged in the case management system as subject to a *Brady/impeachment* restriction, they are required to meet with the Chief Deputy to discuss the necessity of the witness in the DDA's case, and the manner in which the information will be disclosed, if at all. Release of *Brady/impeachment* information to defense counsel is not a stipulation as to its admissibility.

It is anticipated that this procedure will apply to most cases. However, there may be situations that require modification of this process.