



OFFICE OF THE  
**DISTRICT ATTORNEY**  
ORANGE COUNTY, CALIFORNIA  

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TODD SPITZER

December 4, 2019

***Hand Delivered***

Sheriff Barnes  
Orange County Sheriff's Department  
550 N. Flower Street  
Santa Ana, CA 92703

Dear Sheriff Barnes,

I am in receipt of your November 27, 2019 letter regarding the evidence audits conducted by your department.

In light of your request, I am assigning two supervising prosecutors to coordinate with your department and to review the information contained in these audits in order to determine what, if any, additional steps need to be taken in order to fulfill my office's legal and ethical obligations. As I previously indicated, this is necessary because my office may have filed criminal cases without knowing that your department failed to book certain items of evidence contrary to what was listed in the police reports.

Instead of bringing the extent of this very important systemic issue to my office's attention, your department sporadically submitted over a two-year period a series of seemingly unrelated 17 criminal investigations into OCSD deputies for their apparent failures to either book evidence in a timely manner or failure to book evidence at all. These cases were submitted to the District Attorney's Office beginning in August 2017 and continued through July 2019.

I feel the need to reiterate two important points: 1) I knew nothing of this matter until November 15, 2019 when I was informed about it from a local newspaper reporter and 2) my subsequent review of your submissions revealed that your department did not in any way properly disclose that the Sheriff's Department was engaged in a systematic department-wide review of evidence related booking issues.

Given these facts, it is entirely inappropriate for your staff to publicly assert that my office had knowledge of the existence of a department-wide audit when we clearly did not.

To insert a single line in your submissions to the effect "as a result of an audit" did not in any way address the department-wide review in which your Department was actually engaged. There was no effort by your Department to put these cases in context or highlight that these were anything other than an audit of individual deputy records. As a former County Supervisor, I am very familiar with standards associated with a comprehensive audit in terms of investigation, reporting and recommendations and findings, none of which existed here.

Having nearly completed my first year in office, I can unequivocally state that such a failure to disclose

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to my prosecutors the true extent of your investigation and analysis does not sit well with me.

As you know, I am in Washington, D.C. this week to meet with the Department of Justice regarding its ongoing investigation into our offices as a result of your department's failure to properly disclose information to my office. I will have no part in further failures to disclose information to my prosecutors by any law enforcement agency which brings a criminal case to my office for a filing consideration.

As you are fully aware, it is our legal and ethical obligation to file criminal charges only if we have sufficient evidence to prove criminal conduct beyond a reasonable doubt in a court of law. A decision by my office not to file criminal charges does not equate to my office condoning the behavior in question. It would, however, be unethical and a clear misuse of the criminal justice system to file charges as a result of public pressure or to right a wrong that otherwise would go unpunished.

Although charges were not filed against the 17 deputies due to insufficient evidence that a crime was committed, my office immediately instituted a series of steps to ensure that our legal obligations were met, including immediately notifying defense attorneys of potential evidence issues as well as reviewing those 17 deputies for potential *Brady* issues.

It was not until November 18, 2019 that I was briefed by members of your command staff on the existence of two major audits, and that briefing only took place after I was contacted by a member of the media regarding an audit I knew nothing about.

The Sheriff's Department had other remedies available in which to address failures to follow departmental policy and it is my understanding that administrative process is ongoing.

While I am agreeing to allow my prosecutors to meet with your staff, the requests for information contained in my November 21, 2019 letter still stands.

I look forward to receiving that information so that my office can quickly fulfill our legal and ethical obligations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Todd Spitzer', is written in a cursive style.

Todd Spitzer  
District Attorney