Case No. S243855

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

LOS ANGELES SHERIFF'S DEPARTMENT, SHERIFF JIM MCDONNELL and COUNTY OF LOS ANGELES,

Real Parties in Interest

On Review from the Court of Appeal for the Second Appellate District, Division 8, Civil No.: B280676

After an Appeal from Order of the Superior Court of California, County of Los Angeles, Hon. James C. Chalfant, Case No.: BS166063

BRIEF OF *AMICI CURIAE* ACLU OF SOUTHERN CALIFORNIA, ACLU OF NORTHERN CALIFORNIA, ACLU OF SAN DIEGO AND IMPERIAL COUNTIES, AND DIGNITY AND POWER NOW IN SUPPORT OF REAL PARTIES IN INTEREST

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I. INTRODUCTION

Imagine that a few years ago, Deputy John Doe was caught planting evidence in a jail assault case. After accidentally losing a bloody shirt from the evidence locker, he decided to douse a white T-shirt with taco sauce, snap a photo of it, and book it into evidence. A fellow deputy reported this transgression, and Deputy Doe was suspended for 30 days. The details surrounding his fabrication of the evidence and its impact on the assault case were documented in his personnel file. Over the years, Deputy Doe has served and continues to serve as the central witness in hundreds of criminal cases.

This is not a hypothetical. This misconduct—and the consequent disciplinary action—actually occurred and was reported by the *Los Angeles Times* in recent articles summarizing prior acts of misconduct by approximately 300 Los Angeles County Sheriff Deputies who were placed on a 2014 version of the Department's *Brady* list. See **Exhibit A**, (Lau, *Inside a secret 2014 list of hundreds of L.A. deputies with histories of misconduct*, L.A. TIMES (Dec. 8, 2017))[1]; **Exhibit B**, (Lau, *Sex. Lies. Abuse. How these L.A. deputies landed on a secret 2014 list of problem officers*, L.A. TIMES (Dec. 10, 2017)).[2]

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[1] Available at http://www.latimes.com/local/la-me-sheriff-brady-list-20171208-htmlstory.html.

[2] Available at http://www.latimes.com/local/california/la-me-2014-brady-list-deputies-20171208-htmlstory.html. Copies of the court documents and

These articles provide important context because they show exactly what is at stake in this case. They reveal real transgressions that seriously place a testifying officer's credibility in question, ranging from pepper-spraying an elderly veteran in the face without justification and then lying about it on a police report, to receiving oral sex from a motorist during a traffic stop, to doctoring a search warrant after it was signed by a judge, and lying under oath to make suspects seem more culpable. These articles also give a glimpse into the size of the problem – the mere 24 deputies discussed in these articles – reportedly testified in more than 4400 cases since the year 2000. See **Exhibit C**, (Lau, *D.A. examining past criminal cases involving L.A. sheriff's deputies on a secret list of problem officers*, L.A. TIMES (Jan. 12, 2018)).[3]

On a daily basis, prosecutors bring criminal cases against defendants based on the word of Department sheriff deputies. There is no way to know how many of these cases rely on the credibility of one of the 300 officers on the *Brady* list. That is because, according to the majority opinion of the Court of Appeal, the identities of the officers on the *Brady* list must be hidden from the prosecution itself, even if one of the officers is

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law enforcement records referenced in the article can be found here: http://documents.latimes.com/documents-detail-misconduct-l-county-sheriffs-deputies/.

[3] Available at http://www.latimes.com/local/lanow/la-me-district-attorney-review-brady-list-20180112-story.html.

a part of the prosecution team involved in a pending criminal case. The Court of Appeal held that the Department is forbidden by the *Pitchess* statutes from alerting prosecutors about the identities of officers on the *Brady* list without a court order. (*Association for Los Angeles Deputy Sheriffs v. Superior Court* (2017) 13 Cal.App.5th 413, 433) ("*ALADS*"). In fact, under the Court of Appeal's holding, the Department is apparently prohibited, with or without a *Brady* list, from alerting prosecutors at all to the fact that *Brady* information pertaining to an officer actually exists in the officer's personnel file (i.e., providing a "*Brady* alert"). (*Id.* at p. 439.)

The result of the *ALADS* decision on this particular case is that the Department—an arm of the government—currently has actual knowledge of *Brady* information about at least 300 of its deputies and must, practically speaking, suppress it. The broader result of the *ALADS* decision throughout the State has been to create disarray and confusion about whether law enforcement agencies and prosecutors will now be able to comply with their federal *Brady* obligations. Are the similar *Brady* list procedures currently being implemented by 22 other counties in the State[4] now considered unlawful under State law? According to *ALADS*, the answer is yes. Putting *Brady* list procedures aside, if a prosecutor asks a law

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[4] (See Opening Brief at p. 10, citing "Letter of *Amici Curiae* California District Attorneys Association Supporting Petition for Review," filed September 1, 2017, p. 3, 5.)

enforcement agency to review the personnel file of an officer scheduled to testify in a criminal case, and the personnel file reveals that the officer has been found to have lied under oath in the past, may that law enforcement agency tell the prosecution there is *Brady* material in the officer's personnel file? According to *ALADS*, the answer is no.

The outcome created by *ALADS* is totally unacceptable. The United States Constitution, as a matter of due process, requires the government to comply with its self-executing *Brady* obligations. (*Kyles v. Whitley* (1995) 514 U.S. 419, 437.) *("Kyles")* This due process obligation requires the government to look for—and ultimately disclose to criminal defendants—material exculpatory evidence, including impeachment evidence, pertaining to government witnesses. (*Giglio v. United States* (1972) 405 U.S. 150, 154.) *("Giglio")* If such evidence is regularly documented in officer personnel files, some arm of the government—be it a law enforcement agency, the prosecution, or the court—must review those files; the prosecution must be permitted to learn of any potential *Brady* material that is in those files; and the prosecution must have a means of disclosing it to the defense.

The alternatives that remain in light of the Court of Appeal opinion are insufficient to ensure that the government can satisfy its disclosure obligations under *Brady*. The state statutory barrier erected between law enforcement personnel records and the prosecution does not absolve

prosecutors from their federal constitutional duty to produce material exculpatory information in the possession of the government—and material bearing on officers' credibility indisputably falls within this category. If prosecutors fail to produce material known only to law enforcement, they still violate the United States Constitution, and a criminal conviction obtained in an unfair trial where these mandatory disclosures were not made remains subject to reversal. With or without *Brady* alerts, prosecutors retain the duty to identify officers with potential *Brady* material in their file, but—without receiving *Brady* alerts—will be ill-equipped to obtain this material through filing their own *Pitchess* motions as a matter of course in every case—as would be a practical necessity. Nor can this burden to make routine and time intensive inquiries through *Pitchess* motions that may not have any factual basis be shifted to the defense. In either case the inevitable result will be that the government will regularly suppress material exculpatory information due to the movant's inability to satisfy the standard for a successful *Pitchess* motion without a factual basis to believe that there is a specific record of misconduct—a basis that the *Brady* alerts provide.

The issue before this Court is whether the government can comply with its constitutionally-mandated *Brady* obligations—which require prosecutors to *affirmatively* disclose material exculpatory and impeachment evidence—within the confines of the *Pitchess* statutory scheme—which

limits the disclosure of information derived from officer personnel files. The majority in the Court of Appeal erroneously elevated a state statutory scheme above the federal constitutional rights delineated in *Brady*. In holding that the *Pitchess* statutes prohibit law enforcement agencies from revealing to prosecutors the names of officers whose personnel files are known to contain impeachment material without a court order, the Court of Appeal has made it impossible for California prosecutors and law enforcement agencies to comply with their affirmative obligation to disclose exculpatory evidence and impeachment material. To harmonize state law with the United States Constitution, this Court must either overrule the Court of Appeal's interpretation of the *Pitchess* statutes and hold that the prosecution cannot satisfy its due process obligations unless a system of Brady alerts is mandatory, or strike down the *Pitchess* statutes as unconstitutional.

As Real Parties in Interest have set forth in their Opening and Reply Briefs, the Court of Appeal's decision must be reversed. By holding that the *Pitchess* statutes do not permit the Department—whose officers are regularly members of the prosecution team—to provide *Brady* alerts even when an officer is involved in a pending case, the Court of Appeal essentially held that the Department must violate its constitutional *Brady* obligations to remain in compliance with state law. Such a result is inconsistent with the Supremacy Clause, and the clear precedent from this

Court holding that the *Pitchess* statutes cannot limit a defendant's constitutional right to *Brady* material. (See, *e.g.*, *People v. Superior Court* (2015) 61 Cal 4th 696, 720) ("*Johnson*") ("all information that the trial court finds to be exculpatory and material under *Brady* must be disclosed, notwithstanding [the *Pitchess* statutory] limitations"); (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 14) ("the *Pitchess* process operates in parallel with *Brady* and does not prohibit the disclosure of *Brady* information") (internal quotation omitted) (emphasis added); (*People v. Mooc* (2001) 26 Cal.4th 1216, 1225) (*Pitchess* scheme "must be viewed against the larger background of the prosecution's constitutional obligation to disclose to a defendant material exculpatory evidence so as not to infringe the defendant's right to a fair trial").

Amici submit this brief to highlight the guiding constitutional principles that this Court cannot ignore – primarily that, (i) because the government's obligations under *Brady* are self-executing, the defense cannot be required to request *Brady* material in order to receive it and that, (ii) because *Kyles* clearly holds that the government must discover material exculpatory information the police possess and will be held responsible for failing to turn it over to the defense, this Court cannot fall back on the fiction that the prosecution and defense's "equal access" to the *Pitchess* procedures somehow achieves constitutional compliance. *Amici* also highlight how, in the real world, the *ALADS* decision will eviscerate the

government's ability to comply with its affirmative duty to produce exculpatory evidence pertaining to law enforcement members of the prosecution team, increase the suppression of *Brady* material, and place at risk the finality of criminal convictions due to the increased possibility of reversal for *Brady* violations. In practice, the Court of Appeal's decision does more than invalidate *Brady* list policies—it permits and even requires law enforcement agencies, and ultimately prosecutors, to suppress impeachment evidence relating to potential government witnesses. It cannot be that the *Pitchess* statutes can cabin a defendant's federal *Brady* rights to such a degree so as to eradicate them almost entirely when it comes to officer personnel files. State law must either require law enforcement agencies to provide *Brady* alerts to the prosecution or permit the prosecution to directly review the personnel files of officers who are part of the prosecution team. If the *Pitchess* procedures do not allow for one or the other, the entire statutory scheme must be held to be unconstitutional.

II. BACKGROUND: *JOHNSON* AND *ALADS*

In 2016, the Department joined other law enforcement agencies across the State in creating a *Brady* list—a list of officers who had sustained findings of misconduct involving moral turpitude in their personnel files—so that the Department could more efficiently alert prosecuting agencies about the existence of *Brady* material. Similar

procedures had already been in place for several years at the California Highway Patrol, the San Francisco Police Department, and other law enforcement agencies across the state. These *Brady* list procedures were designed to formalize and simplify the means by which law enforcement agencies provided *Brady* alerts to the prosecution.

The Department implemented its *Brady* list procedures in part due to this Court's opinion in (*People v. Superior Court* , *supra*, 61 Cal.4th at p, 721) , in which the Court described similar *Brady* list procedures implemented by the San Francisco Police Department ("SFPD") as "laudabl[e]" efforts to "streamline the *Pitchess/Brady* process."[5] *Johnson* implicitly sanctioned the legal validity of the SFPD's *Brady* list procedures, (*Id.* at p. 707), which were similar to those the Court of Appeal enjoined in this case. In *Johnson*, the Court addressed two questions that were triggered by SFPD's decision to disclose to the prosecution the names of two testifying officers on its *Brady* list: (1) Did the *Pitchess* statutory scheme permit the prosecution to directly review those officers' confidential personnel records without a court order? (2) If not, did *Brady* require the prosecution to file a *Pitchess* motion to obtain those records and produce them to the defense? (*Id.* at p. 705.) The Court held (1) the

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[5] (See *ALADS v. Superior Court*, Case No. BS166063, Real Parties in Interest Prel. Opp. to Petitioner's Pet. for Writ of Mandate, at p. 8.)

Pitchess scheme did not permit prosecutors direct access to officer personnel files, and (2) *Brady* did not require the prosecution to personally obtain the records because, so long as the prosecutor informed the defense that an officer was on the *Brady* list, *Pitchess* procedures were equally available to the defense. (*Ibid.*) An integral part of the Court's holding was its conclusion that

> the prosecution fulfills its *Brady* duty as regards the police department's tip if it informs the defense of what the police department informed it, namely, that the specified records might contain exculpatory information. That way, defendants may decide for themselves whether to bring a *Pitchess* motion. The information the police department has provided, together with some explanation of how the officers' credibility might be relevant to the case, would satisfy the threshold showing a defendant must make in order to trigger judicial review of the records under the *Pitchess* procedures.

(*People v. Superior Court, supra,* 61 Cal.4th at p. 705–06 (emphasis added).)

This Court's holding in *Johnson* necessarily relied on the premise that *Brady* alerts are lawful. It was only because *Johnson* assumed that SFPD was allowed to disclose the potential existence of exculpatory information to the prosecution that this Court was able to conclude that the prosecution was absolved of the obligation to review or obtain the personnel records directly. The Court reasoned that the law enforcement agency, SFPD, would provide *Brady* alerts to the prosecution; the prosecution would pass on the *Brady* alerts to the defense; and the prosecution was then neither required to review the personnel file nor to file

a *Pitchess* motion because, armed with the *Brady* alert, the defense could file a successful *Pitchess* motion for itself. Thus, in a world where *Brady* alerts were assumed to be legal, the Court found in *Johnson* that "the prosecution and the defense [would] have equal access to confidential personnel records," conditioned on the ability of a prosecutor to simply pass on a *Brady* alert to the defense. (*Id.* at p. 716.)

On July 11, 2017, the Court of Appeal in this case completely undermined the practical import of *Johnson* by striking down the Department's *Brady* list procedures. The Court of Appeal held that the Department was not allowed to disclose the identities of officers on the *Brady* list to the prosecution, even if an officer was involved in a pending criminal case, because doing so would impermissibly violate the *Pitchess* statutes. (See *Association for Los Angeles Deputy Sheriffs v. Superior Court* , supra, 13 Cal.App.5th at p. 433.) According to the Court of Appeal, the *Pitchess* statutes prohibit the disclosure of *all* "information obtained from [personnel] records," including the identities of those officers; therefore the Department is prohibited from even providing the *names* of officers with known histories of job-related dishonesty absent a *Pitchess* motion. (*Ibid.*); see *also* Penal Code §§ 832.7 and 832.8 and Evidence Code §§ 1043-1045 (collectively "*Pitchess* statutes").

Having removed *Brady* alerts from the equation, the Court of Appeal's decision in *ALADS* has turned this Court's opinion in *Johnson* on

its head. It was only because this Court assumed *Brady* alerts were lawful that it was able to hold in *Johnson* that *Brady* did not require prosecutor to review officer personnel files; that prosecutors were also not required to file *Pitchess* motions; that defendants had equal access as prosecutors to *Brady* information in personnel files; and that the *Pitchess* procedures, which were held to prohibit prosecutors from directly reviewing personnel files, could co-exist with *Brady*. If the Court of Appeal is correct that *Brady* alerts and *Brady* lists violate the *Pitchess* statutes, this Court must revisit its conclusions in *Johnson* and the validity of the entire *Pitchess* scheme itself.

III. ARGUMENT

Amici ask that the Court reject the arguments set forth by ALADS and overturn the Court of Appeal's decision. First, ALADS is simply wrong in claiming that information in personnel files are exempt from *Brady* requirements. There is no reasonable dispute that information in an officer's personnel file relating to professional misconduct bearing on credibility constitutes *Brady* and *Giglio* information that must be disclosed to the defense where that officer is a member of the prosecution team, regardless of whether the files are created for an administrative purpose.

Second, without *Brady* alerts, the *Pitchess* scheme violates the United States Constitution. The government has a duty to turn over material exculpatory information the police possess, and the government is responsible for failing to do so, even if the prosecutor did not actually know

about the information. The government's obligations under *Brady* are self-executing and do not require a request by the defense to take effect. Because the defense need not request *Brady* material, the prosecution must take some affirmative action to learn about potential *Brady* material from law enforcement and notify the defense. Without *Brady* alerts, the only possible way the prosecutor could possibly satisfy its affirmative *Brady* obligation is to file a *Pitchess* motion against practically every single officer in every single case. But beyond the obvious inefficiencies that would plague such a system, the blanket filing of *Pitchess* motions by prosecutors would do little to solve the constitutional dilemma created by the *Pitchess* statutes because the *Pitchess* motions will regularly be denied for failure to establish good cause, and material impeachment information in officer personnel files would regularly remain suppressed. Nor may the Court fall back on the fiction that the availability of *Pitchess* procedures to defendants is sufficient to satisfy *Brady*. As a practical matter, the *Brady* material will routinely be suppressed under *Pitchess* because, like the prosecution, the defense cannot always establish good cause to obtain findings of misconduct in a personnel file that are material and exculpatory.

Third, and for these reasons, the Court must conclude not just that *Brady* alerts are permissible under *Pitchess*, but also that they are required. With *Brady* alerts, the *Pitchess* scheme comes closer in line with *Brady*'s demands. As this Court noted in *Johnson*, the prosecution must notify

defense counsel that an officer is on the Brady list (thus, taking at least *some* affirmative action); defense counsel could then file a *Pitchess* motion; and the *Brady* alert, combined with some explanation of how the officers' credibility might be relevant to the case, would enable the defendant to meet the good cause standard under *Pitchess* in most cases.

Fourth, *amici* note that, although *Brady* alerts go a long way in bringing the *Pitchess* scheme closer to constitutional compliance, other aspects of *Pitchess* remain that unconstitutionally limit a defendant's access to *Brady* material in other ways. Although the Court will unlikely address these issues today, it should seek out the opportunity to do so in future cases.

A. Information in Personnel Files Relating to an Officer's Credibility Is *Brady/Giglio* and Must Be Disclosed to the Defense

ALADS makes the astounding argument that sustained findings of misconduct involving moral turpitude are not *Brady/Giglio* material because personnel files are prepared in the Department's administrative, not investigative, capacity. (ALADS's Answer Brief, p. 32.) The Court should reject this argument. As Real Parties in Interest correctly argue, the duty to disclose under *Brady* belongs to the government, not just the prosecution—thus, law enforcement agencies have their own independent *Brady*

obligations.[6] (See *Serrano v. Superior Court* (2017) 16 Cal App. 5th 759, 767 (*Brady* obligations are the "obligation of the government, not merely the obligation of the prosecutor").) It is beyond dispute that exculpatory evidence found in an officer's personnel file constitutes *Brady* material that must be disclosed to the defense. (See *People v. Superior Court, supra*, 61 Cal.4th at p. 715 ("When the police department informed the district attorney that the officers' personnel records might contain *Brady* material, the prosecution had a duty under *Brady* . . . to provide this information to the defense. No one disputes that").) As discussed below, the prosecution is charged with constructive knowledge of any *Brady* material contained in the personnel files of members of the prosecution team. Moreover, numerous courts have held that information in officer personnel files must be disclosed under *Brady* regardless of whether they were maintained in an administrative capacity.

1. The Prosecutor Has Constructive Knowledge of Impeachment Material Located in the Personnel Files of Any Law Enforcement Member of the Prosecution Team

ALADS essentially argues that the prosecution may turn a blind eye to a finding of officer misconduct in his personnel file unless the finding of misconduct is connected to the investigation or prosecution of a specific criminal case. Answering Brief p. 30. This argument has been rejected by

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[6] (See Reply Brief, at p. 9-12.)

the United States Supreme Court and this Court. (See, *e.g*, *Kyles v. Whitley, supra,* 514 U.S. at 437-48; *In re Brown* (1998) 17 Cal 4th 873.) When an officer is a member of the prosecution team, information bearing on his credibility within a personnel file is both exculpatory and considered to be within the constructive knowledge of the prosecution. Failure to produce this information is grounds for a *Brady* violation, regardless of whether or not the prosecutor had actual knowledge of the information. (See, *e.g., Strickler v. Greene*, (1999) 527 U.S. 263, 275 n.12 ; *Kyles, supra,* 514 U.S. at p. 437-38.) Information bearing on the credibility of a police officer who is relevant to a defendant's case—including, but not limited to, information that that they have been found guilty of past acts of job-related dishonesty that were not committed during the investigation of defendant's case—undeniably falls within the ambit of *Brady*. It is well-established that exculpatory evidence is not limited to that which directly exonerates a defendant—it also includes evidence tending to impeach a government witness. (See, *e.g.*, *Giglio v. United States*, *supra,* 405 U.S. at p. 154-55 (overturning conviction for government's failure to disclose impeachment evidence); (*United States v. Bagley*, (1985) 473 U.S. 667, 676 ("Impeachment evidence, however, as well as exculpatory evidence, falls within the *Brady* rule").); (*People v. Salazar*, (2005) 35 Cal.4th 1031, 1048 ("It is well settled that the prosecution's *Brady* obligation to disclose material evidence favorable to the defense encompasses impeachment

evidence.").) ; (*United States v. Pelisamen*, (9th Cir. 2011) 641 F.3d 399, 408 ("The *Brady* rule applies to evidence impeaching a government witness, as well as to evidence that is directly exculpatory").) Impeachment evidence necessarily includes evidence of dishonesty or misconduct found in the personnel files of police officers—persons who are almost always integral members of any prosecution team. Even if the prosecutor is not actually aware of these disciplinary records, knowledge that is within the possession of a law enforcement agency about a member of the prosecution team is undeniably imputed to be within the constructive knowledge of the prosecutor, and thus must be disclosed. (See *Kyles v. Whitley, supra,* 514 U.S. at p. 437.)

In *Kyles*, the United States Supreme Court was very explicit in recognizing that a prosecutor has a duty under *Brady* to disclose material information known to law enforcement:

> [T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable.

(*Id.* at p. 437-38 (emphasis added) (internal citation omitted).); *accord, Strickler*, 527 U.S., at 275 n.12.)

The Court went on to reject the state's argument that a prosecutor is not responsible for disclosing *Brady* information that was known only to the police. Instead, the Court recognized that *Brady* requires the government to establish a process to ensure that the prosecution obtains any exculpatory information about officers who act "on the government's behalf in the case" *(Id. at p. 281)*, so that it may discharge its *Brady* obligation:

> To accommodate the State in this manner would, however, amount to a serious change of course from the *Brady* line of cases. . . . [T]here is no serious doubt that 'procedures and regulations can be established to carry [the prosecutor's] burden and to insure communication of all relevant information on each case to every lawyer who deals with it.'"

(*Kyles v. Whitley, supra, 514 U.S.* at p. 438 (alteration in original) (internal citation omitted).)

The Court concluded that failing to hold the prosecution accountable for all material information possessed by the police—and not merely the information the police decided to share—would severely undermine *Brady* and improperly allow police to serve as the ultimate arbiters of a defendant's constitutional rights:

> Since, then, the prosecutor has the means to discharge the government's *Brady* responsibility if he will, any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials.

(*Kyles v. Whitley, supra, 514 U.U. at p. 438*) It is therefore clear under *Kyles* that *Brady* information—which includes impeachment information—possessed by the police is within the constructive knowledge of the prosecutor, with a concomitant duty to produce. The fact that exculpatory evidence in the form of a sustained finding of dishonesty concerns conduct the officer engaged in while investigating a *prior* case does not take it out of ambit of *Brady*.

In *Brown*, this Court endorsed the entirety of the Supreme Court's rationale in *Kyles*. Recognizing that the "prosecution team" includes members of law enforcement, the Court unambiguously concluded that "any favorable evidence known to the others acting on the government's behalf is imputed to the prosecution." (*Brown,* (1998) 17 Cal.4th 873,879 (emphasis added).) Thus, ALADS's contention that *Brady* applies only to information directly obtained as part of the criminal investigation is unsupported by the law. In *Brown*, this Court did not endorse ALAD's cramped interpretation of the state's *Brady* obligation. In fact, the Court quoted approvingly from the Fifth Circuit's decision in (*United States v. Auten*, (5th Cir. 1980) 632 F.2d 478 , which held that the state's failure to disclose the criminal record of a prosecution's witness—evidence that pre-dated the criminal investigation—constituted a *Brady* violation. (*Brown* at p. 879-91.) *Brown* cannot be squared with ALADS' assertion that

information pre-dating a criminal investigation is necessarily outside of the scope of *Brady*.

2. Countless Courts Have Found that Officer Personnel Files Contain Information that Must Be Disclosed under *Brady*

When impeachment evidence in officer personnel files is discussed in the abstract, it may be difficult to fully grasp the substantial impact such evidence can have on the outcome of a defendant's case. However as many cases have made clear, a finding of dishonesty by an officer could call into question his or her testimony and undermine the validity of a criminal case relying on that testimony. No exception is created by the fact that officer personnel files—which are the very place where evidence of officer misconduct is likely to be found—are maintained for an administrative purpose.

The facts in *Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998 help illustrate the significant exculpatory impact that impeachment material found in an officer's personnel file may have on the outcome of a case. In *Milke*, a woman named Debra Milke was convicted of murder in 1990. The state's entire case was premised on the testimony of one officer, Armando Saldate, Jr., who testified that Milke had made a full confession to him. The confession was not recorded, and there were no other witnesses present. Prior to trial, the trial court quashed Milke's subpoena asking for Saldate's personnel file and declined to review the file *in camera*. The

prosecutor did not voluntarily disclose to the defense any information from the personnel file. (*Id.* at p. 1004.) At trial, Milke denied confessing to Saldate. She testified that Saldate had ignored her requests for a lawyer, put his hands on her knees while interrogating her, and misrepresented her statements to the jury. (*Id.* at p. 1002.) Milke was sentenced to death in 1991. (*Id.* at p. 1015.)

It was only in post-conviction proceedings that both parts of Saldate's personnel file[7] and filings from other court proceedings came to light, revealing a trove of undisclosed impeachment evidence. Among other things, Saldate:

- received sexual favors from a female driver during a traffic stop;
- was found by the agency to have lied about having received the above sexual favors and was suspended for 5 days;
- caused at least three indictments to be thrown out in three separate cases after the trial courts determined that Saldate had lied to the grand jury under oath to make the defendants seem more culpable;
- admitted to interrogating a suspect who was strapped to a hospital bed due to a skull fracture, was incoherent and disoriented, and did not know his own name; and
- admitted to interrogating a suspect in intensive care who was in and out of consciousness, intubated, connected to an IV, and was, by Saldate's own admission, obviously in pain.

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[7] During post-conviction *habeas* proceedings, the federal district court ordered the disclosure of part of Saldate's personnel file. (*Id.* at p. 1007.)

(*Id.* at p. 1013-15 and 1020, appen.)

Contrary to the argument set forth by ALADS, the Ninth Circuit held that information in Saldate's personnel file constituted exculpatory impeachment material that the state should have produced by the state, even though it was patently obvious that it was created for an administrative purpose unrelated to the criminal investigation into Milke. See *(Id.* at p. 1016.) The court noted that the state's suppression of the personnel file had also contributed to the suppression of numerous court documents showing adverse credibility findings against Saldate. (*Id.* at p. 1018). The personnel files included lists identifying specific cases Saldate had worked on; without the benefit of those lists, Milke's post-conviction team had to spend nearly 7000 hours sifting through every criminal case filed within an eight-year time frame to find cases involving Saldate. (*Ibid.*) The court observed that "no reasonably diligent lawyer" could possibly have found those court records before trial without the benefit of Saldate's personnel file. (*Ibid.*) More than twenty years after Milke was convicted and sentenced to die, her conviction was reversed.

Milke reveals the preposterousness of ALADS's claim that personnel files are automatically excluded from *Brady* disclosure because they are not created as part of the criminal investigation. There can be no dispute that impeachment material of the kind found in Saldate's personnel file—characterized by the Ninth Circuit as "*Brady* and *Giglio* evidence of the

most egregious kind," (see *Id.* at p. 1007)—must be disclosed to the defense when the officer is a member of the prosecution team.

Accordingly, numerous cases have held that material in officer personnel files should have been disclosed under *Brady* without regard for whether the personnel files are maintained in an "administrative" capacity. (See, *e.g.*, *Carriger v. Stewart*, (9th Cir. 1997) (en banc) 132 F.3d 463, 479-80 (holding that evidence from a witness's corrections file revealing "a long history of lying to police and blaming his crimes on others" was impeachment evidence under *Brady*);*Vaughn v. United States*, (D.C. 2014) 93 A.3d 1237, 1243 (requiring the disclosure of an internal affair's report determining a testifying officer previously made a false allegation of an inmate assault);*Blumberg v. Garcia*, (C.D. Cal. 2010) 687 F.Supp.2d 1074, 1134-36 (holding that "internal and investigatory records created and maintained by the prosecution or law enforcement" revealing that an officer had lied, falsified evidence and filed false reports in prior cases was impeachment evidence under *Brady*); *United States v. McClellon*, (E.D. Mich. 2017) 260 F.Supp 3d 880, 885-87 (requiring the disclosure of evidence contained in a officer's personnel file showing the officer fabricated charges against others); *State v. Laurie*, (N.H. 1995) 653 A.2d 549, 553 (requiring the disclosure of evidence of bad investigation tactics and techniques contained in officer's personnel file).) Still others courts have found that officer personnel files contained favorable impeachment

evidence that should have been disclosed, even though the suppression was ultimately found not to be material. (See, *e.g.*, *United States v. Olsen*, (9th Cir. 2013) 704 F.3d 1172, 1181 (holding that internal investigative files calling into question a forensic lab technician's diligence and care in the laboratory was exculpatory evidence); *Gentry v. Sinclair*, (9th Cir. 2013) 705 F.3d 884, 905 (holding that evidence showing a detective was fired from a previous job for misconduct was favorable impeachment evidence); *United States v. Veras*, (7th Cir. 1995) 51 F.3d 1365, 1372-73 (holding that evidence an officer was under investigation for providing false information to obtain a search warrant and failing to inventory seized property was impeachment evidence that should have been disclosed, although it was ultimately not material).)

B. Without *Brady* Alerts, the *Pitchess* Scheme Violates the United States Constitution

1. The Government's Obligations Under *Brady* are Self-Executing and Do Not Require a Request by the Defense to Take Effect

The government's duty to disclose material exculpatory and impeachment evidence is not just mandatory—it is also *self-executing*. See, *e.g.*, *Kyles v. Whitley, supra,* 514 U.S. at p. 437; *Strickler v. Greene* (1999) 527 U.S. 263, 280; *United States v. Agurs* (1976) 427 U.S. 97, 107 ("*Agurs*"); *In re Steele* (2004) 32 Cal.4th 682, 697 ("*Steele*"). The affirmative nature of *Brady* means that the government must disclose

material, exculpatory evidence "even though there has been no request by the accused." *Strickler v. Greene*, *supra,* at p. 280; see *also United States v. Agurs*, *supra,* at p. 107 (stating that the government has an equal duty to disclose *Brady* material "even if no request is made"). As a result, any system that requires the defense to make a request for *Brady* material, through a *Pitchess* motion or otherwise, squarely violates due process.

2. Because *Brady* is Self-Executing, the Prosecution Must Take Some Affirmative Action to Learn About Potential *Brady* Material from Law Enforcement and Notify the Defense

The self-executing requirement of *Brady* also means that prosecutors have a duty to learn of any evidence favorable to the defense—including evidence that would otherwise be known only to law enforcement officers on the prosecution team—and make an appropriate disclosure to the defense. (*Kyles v. Whitley, supra*, at p. 437; see *also Serrano v. Superior Court , supra,* at p.767 (*Brady* obligations are the "obligation of the government, not merely the obligation of the prosecutor"); *U.S. v. Blanco* (9th Cir. 2004) 392 F.3d 382, 393 (same).)

To comply with this duty, the prosecution must take *some* affirmative action to learn about potential *Brady* material from law enforcement agencies and convey that information to the defense.

However, if California's statutory scheme indeed prohibits *Brady* alerts from law enforcement to the prosecutor and the prosecutor thereby

cannot provide that notice to the defense, as the Court of Appeal held, the prosecution must find some other affirmative way to learn about potential *Brady* material and—at a minimum—notify the defense that there is likely *Brady* material in the officer's personnel file. The only way for the prosecution to do this, without *Brady* alerts and within the confines of the *Pitchess* system, is to file *Pitchess* motion against practically every single officer involved in every single case. Not only is such a system totally unworkable and inefficient, it also will not satisfy the prosecution's due process obligations with respect to sustained findings of moral turpitude in an officer's personnel file for the reasons explained in the following subsection.

3. A System That Requires the Prosecutor to File *Pitchess* Motions in Every Case is Unconstitutional Because *Pitchess* Motions Will Not Always Succeed in Revealing *Brady* Material in Officers' Personnel Files

Even if the prosecution filed a *Pitchess* motion in every criminal case, that would still be insufficient under *Brady* because prosecutors will have little hope of consistently succeeding on a *Pitchess* motion without the benefit of a *Brady* alert. Thus, aside from creating enormous burdens on the courts, the blanket filing of *Pitchess* motions by prosecutors would do little to solve the constitutional dilemma created by the *Pitchess* statutes because the *Pitches* motions will regularly be denied, and material

impeachment information in officer personnel files would regularly remain suppressed.

When confronted with the conflict between *Brady* and *Pitchess*, a court may be inclined to strain to reconcile the two, and adopt a view of the *Pitchess* procedures that allows for this reconciliation, rather than one that reflects reality. In practice the *Pitchess* "good cause" standard imposes a high burden, and the restrictive nature of the *Pitchess* statutes make California one of the most difficult states in the country in which to obtain *Brady* material from officer personnel files. (See "Brief of *Amici Curiae* Law School Professors," filed April 1, 2018; J Abel, *Brady's Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, (2015) 67 STAN. L. REV. 743 ("Brady*'s Blind Spot*").) *Pitchess* motions do not guarantee that a movant will have access to all exculpatory *Brady* material because the *Pitchess* "good cause" standard is more restrictive than required by *Brady*. In *Johnson*, this Court noted that, while *Pitchess* requires defendants to show good cause, "the burden is not high." (*People v. Superior Court, supra*, 61 Cal.4th at p. 720.) But in a world without *Brady* alerts, the bar *is* high enough that in many cases it will bar prosecutors from meeting their affirmative obligation to notify the defense about sustained findings of moral turpitude in an officer's personnel file.

To have a court review an officer's personnel file, *Pitchess* requires that an movant establish good cause. As this Court has said, this "requires a showing of 'good cause' for discovery in two general categories: (1) the 'materiality' of the information or records sought to the 'subject matter involved in the pending litigation,' and (2) a 'reasonable belief' that the governmental agency has the 'type' of information or records sought to be disclosed." (*City of Santa Cruz v. Mun. Court*, (1989)49 Cal.3d 74, 83 ("*City of Santa Cruz*").) To satisfy the materiality prong, the movant must set forth a "specific factual scenario" that establishes a "plausible factual foundation" for alleged officer misconduct. (*Warrick v. Superior Court*, (2005) 35 Cal.4th 1011, 1021 .) The movant must also attach a declaration in support of the *Pitchess* motion laying out "a defense or defenses to the pending charges." (*Id.* at p. 1024.) The declaration "must articulate how the discovery sought may lead to relevant evidence or may itself be admissible direct or impeachment evidence that would support those proposed defenses." (*Ibid.*) In other words, the movant must "establish not only a logical link between the defense proposed and the pending charge," but also must "articulate how the discovery being sought would support such a defense or how it would impeach the officer's version of events." (*Id.* at p. 1021.)

Without a *Brady* alert, this good cause standard will be insurmountable to even the most dutiful prosecutors in many cases for at

least two reasons. First, how can the prosecution possibly anticipate all of the ways that all of the officers involved in a case may have engaged in misconduct bearing on their credibility, such that the prosecution could set forth a "specific factual scenario" of alleged officer misconduct for each of them? Consider again the example of Deputy Doe, whose personnel file contained a sustained finding that he fabricated evidence in the past by using taco sauce as fake blood on a T-shirt. Without a *Brady* alert, how would the prosecution have any way of knowing, or even suspecting, that the officer in charge of booking evidence had a history of tampering? Imagine too that an arresting officer had information in his personnel file revealing that racial animus motivated his decisions in the past. As the history of Mark Fuhrman and the OJ Simpson case make clear, if there were a sustained finding of racial animus in an officer's personnel file that finding could be enormously powerful impeachment evidence. But, if neither the prosecution nor the defendant had any reason to believe that finding was in the file, would the prosecutor have any reason to file a *Pitchess* motion seeking that evidence? And, if he did file it, would the court conclude that he had sufficiently satisfied good cause to obtain it? Without a *Brady* alert, why would the prosecution have any reason to anticipate this? As these examples show, many officers who touch a case, and many types of misconduct, are simply not obvious targets for *Pitchess* motions.

Importantly, lower California courts have hewed closely to *Warrick*'s requirement that the alleged officer misconduct be set forth with specificity. For instance, a statement in a declaration supporting a *Pitchess* motion attesting that "knowing and voluntary consent to enter was in fact not obtained by officers" has been found not to be specific enough to justify in-camera review because it did not specify whether consent was coerced or simply not obtained. (*City of San Jose, supra*, 67 Cal.App.4th at p. 1147.) In contrast, in federal court, the Ninth Circuit has held that prosecutors must review the personnel file of any officer who may testify, and the burden is not on the defendant to make any showing of materiality. (*U.S. v. Henthorn* (9th Cir. 1991) 931 F.2d 29, 30–31.).

Second, and similarly, how can the prosecutor possibly articulate in a sworn affidavit the theory of the defense? Although the defense may have knowledge of some of its defenses, including, for example, an alibi, the prosecution has no right of access to this critical source. Further, even the defense is unable to anticipate all possible theories without knowing what is hidden within a relevant officer's personnel file. Returning again to the case of Deputy Doe, neither the prosecution nor the defense would have any basis for setting forth a theory of defense involving evidence tampering without knowing that the officer in charge of booking had a history of this type of behavior.

One might assume, based on the many cases praising the "relaxed standard" of *Pitchess* procedures, that defendants would easily be able to meet the good cause in any case where the credibility of an officer is at issue. In practice, however, courts have held that the *Pitchess* good cause standard is not satisfied merely by alleging that the credibility of an officer will be a material issue at trial. (See, *e.g.*, *California Highway Patrol v. Superior Court* (2000) 84 Cal. App. 4th 1010, 1015 (denying *Pitchess* motion for certain personnel records where defense counsel alleged only that "the credibility of all five CHP officer would be a material issue at trial"); *People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1470 (trial court denied *Pitchess* motion in rape case where an officer's testimony was the only evidence of the alleged victim's statements).)

The *Pitchess* good cause standard creates a no-win situation for the prosecution, the government, and ultimately the public. The prosecutor lacks access to the personnel files to make timely disclosures to ensure a fair trial, but is held responsible for failing to disclose that which he was unable to obtain. Regardless of the good intentions of the prosecution, it will not be absolved of its *Brady* obligations just because it tried to file *Pitchess* motions and failed. If material, exculpatory information in an officer's personnel file ends up being withheld, the defendant is denied his right to a fair trial and his conviction may be subject to reversal; the verdict is not immunized by a well-meaning prosecutor. That is because the

Supreme Court has long rejected the notion that the prosecution is not accountable for favorable evidence that is known only to police investigators and not to prosecutors. (See *Kyles, supra*, 514 U.S. at p. 438.) A prosecutor cannot be absolved of *Brady* obligations simply by claiming ignorance of what the investigating officers on the prosecution team know. Instead, the prosecutor remains responsible "*regardless* of any failure by the police to bring favorable evidence to the prosecutor's attention." (*Id.* at 421 (emphasis added).) Otherwise, the government would be allowed to "substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials." (*Id at p. 438).* Accordingly, the suppression of material exculpatory evidence constitutes a *Brady* violation "*irrespective* of the good faith or bad faith of the prosecution." (*Id.* at p. 432; *Brady, supra*, 373 U.S. at p. 87.) California courts have similarly adopted the Supreme Court's interpretation of the non-delegable nature of a prosecutor's *Brady* obligations. (See, *e.g.*, *Serrano, supra*, 16 Cal. App. 5th at p. 767 (holding that exculpatory evidence "cannot be kept out of the hands of the defense just because the prosecutor does not have it, where an investigating agency does") (quotations and citation omitted).) No matter how well-intentioned, a prosecutor who fails to affirmatively turn over material impeachment evidence—or even notify the defense that there is likely *Brady* material in an officer's personnel file—violates a defendant's right to a fair trial.

This result is just what Justice Grimes foreshadowed—by prohibiting *Brady* alerts, the majority's decision in *ALADS* will "require the prosecutor to risk the consequences of possible failure to disclose exculpatory *Brady* material to the defendant." (See *ALADS, supra*, 13 Cal App.5th at p. 454 (Grimes, J, concurring and dissenting).) Justice Grimes correctly observed that such a scenarios "unacceptable." (*Ibid.*)

4. State Law Created "Equality of Access" to an Officer's Personnel File under *Pitchess* Cannot Trump Brady's Requirement that the Prosecution Is Responsible for Disclosing to the Defense Exculpatory Material in that File

In some instances, courts have held that information that is equally available to both the prosecution and defense has not been suppressed.[8] But general availability of *Pitchess* procedures for both prosecution and defense does not bring police officers' personnel files under the ambit of that rule.

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[8] For example, in (*Fullwood v. Lee*, (4th Cir. 2002) 290 F.3d 663, 671-73) , the Court held that the defendant's emergency room records had not been suppressed in violation of *Brady* because the defendant knew about his emergency room records and could easily obtain them. While this holding may have some intuitive appeal, a recent article from the U.C.L.A. Law Review compellingly argued that this "defendant due diligence rule" is directly contrary to the due process and truth-seeking principles fundamental to *Brady* and ignores the basic realities of adversarial criminal practice. (Weisburd, *Proesecutors Hide, Defendants Seek: The Erosion of Brady Through the Defendant Due Diligence Rule*, (2012) 60 UCLA L. Rev. 138.) According to the Article, the Supreme Court has consistently reiterated the same three factors to establish a Brady violation – the evidence is favorable to the defense, suppressed by the state, and material to guilt or sentencing. (*Id.* at p. 143.) In other words, the Supreme Court has never added a requirement that defense counsel exercise due diligence. (*Ibid.)*

Kyles sets the constitutional rule for exculpatory information in the possession of the police agency: the government must discover material exculpatory information the police possess and will be held responsible for failing to turn it over to the defense, whether the prosecutor knew about it or not. Any interpretation of *Johnson* that provides that under a *Pitchess* scheme, both prosecution and defense have equal access to any relevant police personnel records, and that "equal access" is sufficient to satisfy *Brady*, even without a system of *Brady* alerts, cannot stand for two reasons.

First, in *Johnson*, the Court was not confronted with the question whether the prosecution and defense have "equal" access to the material in an officers' personnel file in a universe where *Brady* alerts were prohibited. Rather, the Court applied the concept of equal access to reason that "if the prosecution provides the defense with, or if the defense otherwise has, sufficient information [i.e. a *Brady* alert] to obtain the evidence itself, there is no *Brady* violation." 61 Cal. 4th at 716. A necessary corollary of that conclusion was that a *Brady* alert would almost guarantee that a defendant could win a *Pitchess* motion. Where the movant is able to both identify potential relevance to the case and can point to a Brady alert, this necessarily satisfies the *Pitchess* standard and triggers an in camera search for relevant Brady material. (*People v. Superior Court*, *supra*, 61 Cal. 4th at p. 705-06; (see *also Serrano*, *supra*, 16 Cal. App. 5th at p. 778 (holding that a *Brady* alert from prosecutor, together with counsel's declaration

explaining that officer is a critical witness, is sufficient to trigger in camera review of officer's personnel file).) Moreover, under this Court's precedent, the movant would be provided the actual finding of misconduct and the discipline imposed, not just the name and last contact information of the person who made the complaint that ultimately led to the finding of misconduct. *Compare City of City of San Jose v. Superior Court*, (1993) 5 Cal. 4th 47, 49 (holding a *Pitchess* movant is entitled to discover the finding of misconduct and the amount of discipline imposed), *with Alvarez v. Superior Court* (2004) 117 Cal. App. 4th 1107, 1112 (explaining that, in practice, courts disclose only the name and contact information, if known, of the complainant and witnesses for a complaint that did not lead to a sustained finding of misconduct).

Second, the fact that state law places the same obstacles in front of prosecutors and defendants alike when it comes to personnel files does not mean the prosecution is absolved of the duty to affirmatively look for and disclose to the defense impeachment material as required by federal constitutional law. As explained above, the prosecutor has a self-executing duty to learn about what is in the personnel file of police agencies acting on behalf of the government and turn it over to the defense if it is exculpatory and material. See *supra* Section II.B.3; *Kyles*, *supra*, 514 U.S. at p.433-34. This federal constitutional duty for prosecutors to learn about and disclose *Brady* and *Giglio* material in the possession of police agencies cannot be

erased by a state law that allegedly gives the prosecution and defense "equal access," or rather equal "lack of acces," to the personnel file because neither can learn what is in it without filing a successful *Pitchess* motion. (See *Davis v. Alaska*, (1974) 415 U.S. 308, 320 (holding right of accused to confront witnesses against him guaranteed by the Sixth Amendment must prevail over state rule of procedure barring use of juvenile criminal record in adult criminal court and stating "The State's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding of [] vital [] constitutional right[s] . . . ."); U.S. Const. Art. IV, Cl.2 (Supremacy Clause).) The fact that *Pitchess* purports to erect similar hurdles for both prosecution and defense does not absolve the prosecutor of his duty, nor does it render a similar lack of access imposed by state law constitutionally sufficient.

Indeed, *Kyles* specifically rejected the argument that prosecutors should not be held responsible for exculpatory material the police did not provide to prosecution in part because "procedures and regulations can be established to carry [the prosecutor's] burden and to insure communication of all relevant information on each case to every lawyer who deals with it." *(Kyles v. Whitley, supra,* at p. 438 (quoting *Giglio v. United States*, *supra*, 405 U.S. at p.154).) This is precisely the role that *Brady* alerts attempt to fill. Prosecutors who fail to disclose exculpatory material that a police agency possesses are still in violation of their federal constitutional duty,

whether the failure to disclose resulted from negligence by the police agency, or a state law restricting a prosecutor's access to the material in the file and allegedly making its access "equal" to that of the defense. To hold otherwise would elevate a state statutory scheme over federal constitutional rights and violate the Supremacy Clause.

In *Johnson*, this Court concluded that the prosecution has no constitutional obligation to file a *Pitchess* motion because, by passing along the SFPD's *Brady* alert to the defense, the prosecution all but guaranteed that the defendant would be able to obtain any *Brady* information contained in those officer's personnel file because the *Brady* alert, coupled with some representation that an officer's credibility was at issue, was sufficient to show good cause under *Pitchess*. (See *People v. Superior Court*, *supra*, 61 Cal.4th at p. 715-16.) But if state law is interpreted to prohibit *Brady* alerts, as the Court of Appeal held in *ALADS*, the Court's conclusion in *Johnson* falls apart. And, more importantly, that state law violates the federal due process mandates of *Brady*. Because the prosecutor must affirmatively find a way to learn about potential *Brady* material and – at minimum – notify the defense that there is likely *Brady* material in the officer's personnel file, the Court must reverse the Court of Appeal and hold that *Brady* alerts are mandatory.

5. As a Practical Matter, Even if Due Process Did Require that the Defendant Make a Request to Receive *Brady* Material—Which It Does Not—*Brady* Material Would Frequently Be Suppressed under *Pitchess* Because the Defendant Cannot Always Establish Good Cause to Obtain Findings of Misconduct in a Personnel File that are Material and Exculpatory.

The Court must also resist the temptation to fall back on the fiction that the availability of *Pitchess* procedures to defendants is sufficient to satisfy *Brady*. As discussed above, as a matter of law, the self-executing nature of the government's *Brady* obligations means that the defense cannot be required to make a request to receive *Brady* material. Put another way, the defense is constitutionally entitled to receive *Brady* material whether it asks for it or not.

But even setting this constitutional requirement aside, it is overwhelmingly clear that, as a practical matter, *Pitchess* procedures without *Brady* alerts are woefully inadequate to ensure that the defense is uniformly provided with sustained findings of moral turpitude that are exculpatory and material for *Brady* purposes. For many of the same reasons that the prosecution cannot always satisfy good cause, see *supra* Section II.B.3, so too will the defendant often be unable to uncover *Brady* material. How can the prosecution or the defense possibly anticipate all of the possibly ways that all of the officers involved in a case may have engaged in misconduct, either in the pending case or in the past? Because

of the good cause standard's "logical link" requirement, *Warrick v. Superior Court, supra*, 35 Cal. 4th at p. 1021, the defense's *Pitchess* motion can only reach evidence that the defense can plausibly relate to a specific defense theory. Thus, the *Pitchess* motion will necessarily be limited to officer misconduct the defense directly observed or somehow already knows about. Under the *Pitchess* laws, the defense cannot make a nonspecific *Pitchess* motion to enforce the prosecution's broad *Brady* duty with regard to unsuspected exculpatory information – like Deputy Doe's evidence tampering – and courts have refused to allow defendants to use other means of enforcing *Brady* that bypass *Pitchess* requirements.

The defense's ability to get material exculpatory information through a *Pitchess* motion is further limited because the defense must identify each officer from whose records information is sought. *Pitchess* would not entitle a defendant to exculpatory evidence, even if extremely material, if the defendant failed to make a *Pitchess* motion about the correct officer. This would include, for example, non-arresting law-enforcement employees who did not directly interface with the defense but whose misconduct might affect the integrity of evidence against it. Although the prosecution may sometimes face a similar problem, because the prosecution and law enforcement officers work together and are part of the same prosecution team, the prosecution can more easily find out what officers were involved in a case and in what capacity.

While a system of providing the defense with *Brady* alerts might have assisted prosecutors in fulfilling their constitutional obligations and increased the likelihood that a defendant will be able to obtain the material to which they are entitled, the *ALADS* decision took away from defendants even this tiny kernel of insight into an officer's personnel file made available through San Francisco's *Brady* alert system described as "laudable" in *Johnson*. Worse, *ALADS* placed defendants at an even greater disadvantage—the Court of Appeal concluded not only that *Brady* list procedures were impermissible, but also that *Brady* alerts were prohibited in their entirety. Thus, to whatever extent certain defendants might have been receiving *Brady* alerts on a case-by-case basis by a particularly conscientious prosecution team, *ALADS* has now held that police agencies are prohibited from making those disclosures. The Court's response to the dilemma created by *ALADS* must be either to find that *Brady* alerts are not prohibited by *Pitchess*—indeed, that they are required—or to strike down the *Pitchess* statutes. It cannot conclude that the defendant's ability to make a *Pitchess* motion is enough. Without *Brady* alerts, the *Pitchess* scheme utterly fails to meet the constitutional requirements that the prosecution put the defense on notice of likely *Brady* material in an officer's personnel and ensure that the defense obtains those sustained findings of misconduct that constitute *Brady* material.

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The constitutional insufficiency of the *Pitchess* procedures highlight how necessary *Brady* alerts are and how damaging the Court of Appeal's decision in *ALADS* is. Even if a law enforcement agency knows that an officer's personnel file contains droves of impeachment material—of the kind that was found in the file of Deputy Doe—*ALADS* says state law *prohibits the agency* from providing this information to prosecutors. Indeed, even though the case arises in the context of Sheriff McDonnell's wanting to provide the DA with a list of officers with sustained findings of moral turpitude, the majority opinion clearly suggests that it would be equally illegal for the Sheriff to respond to an inquiry from the DA asking whether there was *Brady* material in the file of an officer whom the prosecution intended to rely heavily on to prosecute a case. In sum, the Department is not permitted to alert the prosecution; the prosecution is in turn not be able to notify the defense; and neither the prosecution nor the defense may be able to meet the *Pitchess* "good cause" standard without the benefit of a *Brady* alert. The ultimate result is that known *Brady* material pertaining to the 300 deputies on the *Brady* list is currently being suppressed. This violates the law. This Court has previously resolved the constitutional shortcomings of *Pitchess* by holding that, where *Pitchess* conflicts with *Brady*, *Pitchess* must give way. (See *City of Los Angeles v. Superior Court, supra*, 29 Cal.4th at p. 14, (citizen complaints older than five years are subject to disclosure under *Brady*, notwithstanding five-year

limitation of *Pitchess* scheme).) In this case, it must do so again. Either *ALADS* was wrong to conclude that *Brady* alerts violate the *Pitchess* statutes, or it was right and the *Pitchess* statutes are unconstitutional unless this Court interprets them to make a system of Brady alerts mandatory in every jurisdiction.

C. With *Brady* alerts, the *Pitchess* Scheme Comes Closer in Line with *Brady*'s Demands

With respect to findings of misconduct for moral turpitude offenses, having a mandatory *Brady* alert system in place brings the *Pitchess* scheme closer in line[9] with the U.S. Constitution by reducing the way the *Pitchess* statutes can be used to impede the California prosecutors' duty to fulfill the affirmative nature of their Brady obligations.

With *Brady* alerts, as this Court noted in *Johnson*, the prosecution could notify defense counsel (thus, taking at least *some* affirmative action); defense counsel could then file a *Pitchess* motion; and the *Brady* alert, combined with "some explanation of how the officers' credibility might be relevant to the case," would enable the defendant to meet the "good cause"

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[9] Still, *Brady* alerts may not go far enough. Although they make it easier for the defense to file a successful *Pitchess* motion, there remains a clear tension between the self-executing nature of the prosecution's *Brady* obligation to turn over material exculpatory information, and any system that requires the defense to make a motion before receiving material it is constitutionally entitled to have. Thus, even with *Brady* alerts, the defense will not receive *Brady* material contained in an officer's personnel file <u>if it does not first request it in a motion</u>.

standard under *Pitchess* in most cases. *(People v. Superior Court, supra,* 61 Cal. 4th at p. 705-06); see *also Serrano, supra,* 16 Cal. App. 5th at p. 778. And, because the defense would satisfy the good cause standard, it would be entitled to learn the nature of the misconduct finding and the discipline imposed on the officer by the police agency. (*City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 55-56.)

D. Even with *Brady* alerts, The *Pitchess* Procedures Unconstitutionally Limit a Defendant's Access to *Brady* Material in Myriad Other Way Other Ways

While permitting law enforcement agencies to provide *Brady* alerts to prosecutors would bring the *Pitchess* statutes closer in line with *Brady* with respect to sustained findings of moral turpitude in an officer's personnel file, many other aspects of the *Pitchess* statutory scheme fail to meet constitutional muster.

- *Brady* Is Not Limited to Moral Turpitude: Officer personnel files may contain a wide range of *Brady* material that must be disclosed in addition to sustained findings of moral turpitude. In *Milke*, for example, the Ninth Circuit observed that a list of court cases contained in the officer's personnel file should have been disclosed under *Brady* because it would have helped defense counsel quickly find the numerous cases in which the officer was found to have lied under oath. (*Milke v. Ryan, supra,* 711 F.3d. at p.1018.) Such a list is obviously not a finding of moral turpitude, and it might not

obviously be considered *Brady* material to a law enforcement review panel looking for misconduct involving moral turpitude. Moreover, in the absence of any guidance from the court as to what conduct must be disclosed, an agency may limit the list of violations that result in a *Brady* alert to exclude even some offenses that directly reflect an officers' past dishonesty.

- Even If Successful, Defendants Do Not Get Copies of Unsustained Complaints: Even unsustained allegations should be produced to the extent that they have the potential to call the officer's credibility into question. (*C.f. Zanders v. U.S.* (D.C. 2010) 999 A.2d 149, 164 ("It is not for the prosecutor to decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder").) Under precedent interpreting *Pitchess*, however, even if the defense establishes good cause to get information about an unsustained complaint that may be *Brady* material, courts do not provide to the defense the complaint. Instead, the defense is provided only the name and contact information, if known, of the complainant and witnesses. (See *Alvarez v. Superior Court* (2004) 117 Cal.App.4th 1107, 1112.) Only when the defense can show that it could not find the

complainant, the complainant does not remember the complaint, or refuses to talk to the defense will the court order the disclosure of the complaint itself. (*Id.* at p. 1117.) Under *Brady*, the prosecution team must disclose material exculpatory information, which may include the written complaint itself. (*United States v. Agurs*, (1976) 427 U.S. 97, 107 .) The prosecution does not satisfy *Brady* by giving the defense some information that relates to a complaint against an officer, *i.e.*, the name and contact information of the complainant, and then putting the burden on the defense to find her, interview her, do the same for the witnesses, and then try to construct the nature of the complaint itself. *Brady* requires that the defense be provided the exculpatory material, not a trail of breadcrumbs that might lead it to the exculpatory material with diligent and time-consuming investigation.

- Moreover, Even if the Defense Ultimately Gets the Actual Complaint, It Cannot Do So Without Filing at Least Two *Pitchess* Motions. That process can easily take ten to 12 weeks, given the rules governing the timing of *Pitchess* motions, and the need to do investigation and lay the ground work to demonstrate the unavailability of the complainant prior to the second *Pitchess* motion. This delayed disclosure may violate *Brady* because

"[d]isclosure by the government must be made at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case . . . ." (*United States v. Pollack*, (D.C. Cir. 1976) 534 F.2d 964, 973 (citing *United States v. Elmore*, (4th Cir. 1970) 423 F.2d 775, 779 ; *United States v. Deutsch*, (S.D.N.Y.1974) 373 F.Supp. 289, 290-91 .) Furthermore, as the *amicus* brief by California Attorneys for Criminal Justice (CACJ) persuasively explains, the lengthy delays before defense counsel can obtain, for example, a copy of an actual complaint improperly forces defendants to choose between getting exculpatory material through *Pitchess* and foregoing their speedy trial rights. CACJ Amicus Brief at p. 11-19.

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IV. CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court reverse the decision of the Court of Appeal below and remand this case to the trial court with appropriate instructions.

DATED: May 4, 2018

Benjamin N. Gluck
Naeun Rim
Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C.

Peter J. Eliasberg
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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief conforms to California Rules of Court, rules 8.200 and 8.204, and that it contains 10987 words in 13-point Times New Roman font, as calculated by Microsoft Word.

DATED: May 4, 2018

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EXHIBIT A

LOCAL

Inside a secret 2014 list of hundreds of L.A. deputies with histories of misconduct

By MAYA LAU, BEN POSTON and CORINA KNOLL
DEC 08, 2017 | 5:00 AM

It was a critical piece of evidence: an inmate's shirt, bloodied from a jailhouse brawl.

When it went missing, Deputy Jose Ovalle had an idea.

He picked out a similar shirt, doused it with taco sauce and snapped a photograph, which was booked into evidence with the Los Angeles County Sheriff's Department, law enforcement records show.

When confronted later, the deputy admitted to faking the blood.
Ovalle kept his job, but his name was placed on a secret Sheriff's Department list that now includes about 300 deputies with histories of dishonesty and similar misconduct, a Los Angeles Times investigation has found. The list is so tightly controlled that it can be seen by only a handful of high-ranking sheriff's officials. Not even prosecutors can access it.

Amid growing public scrutiny over police misconduct, Sheriff Jim McDonnell wants to give the names on the list to prosecutors, who are required by law to tell criminal defendants about evidence that would damage the credibility of an officer called as a witness. But McDonnell's efforts have ignited a fierce legal battle with the union that represents rank-and-file deputies.

The dispute, which the California Supreme Court is expected to decide next year,

The Sheriff's Department's roster of deputies, known as a "Brady list," was compiled in 2014 under McDonnell's predecessor, interim Sheriff John Scott, to keep track of officers with histories of misconduct that might affect their credibility in court. The list has evolved over time, and last fall the department notified several hundred deputies that their names were on the list and offered them the chance to object if they believed there had been a mistake.

Times reporters reviewed a version of the roster, dated 2014, and scoured court and law enforcement records for details of how deputies landed on it.

The documents reviewed by The Times offer the first public glimpse of officers whose misconduct the Sheriff's Department has decided should be reported to the courts.

The deputies have been identified as potential witnesses in more than 62,000 felony cases since 2000, according to a Times analysis of district attorney records. In many of those cases, the deputies' misconduct would probably have been relevant in assessing their credibility.

RELATED | Sex. Lies. Abuse. How these L.A. deputies landed on a secret 2014 list of problem officers »

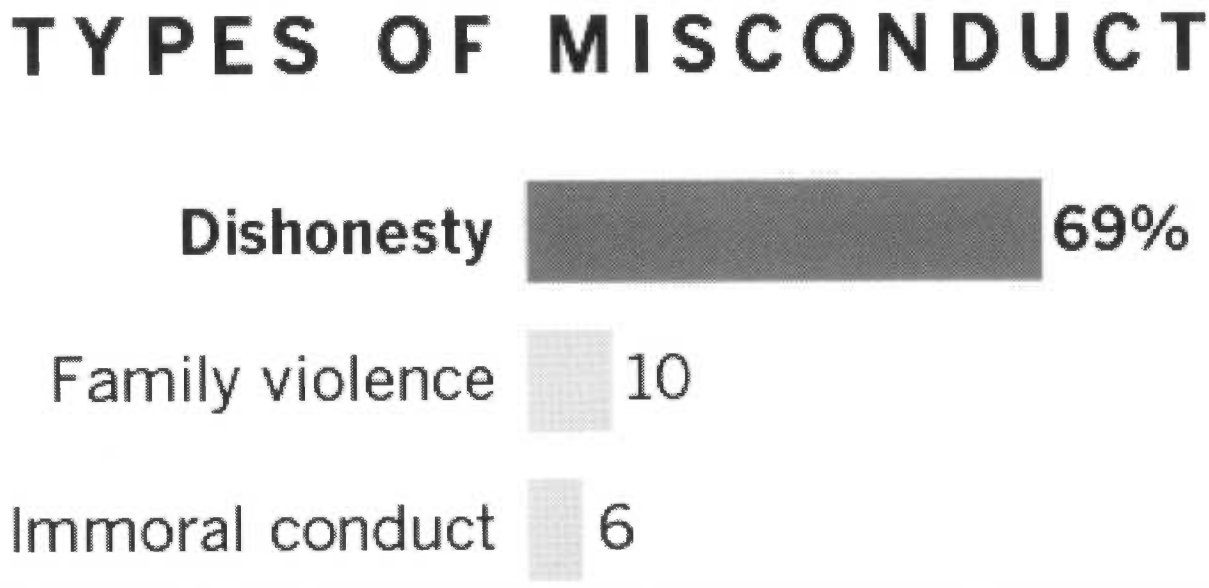
Law enforcement and court records show:

One deputy on the list endangered the lives of fellow officers and an undercover informant when he warned a suspected drug dealer's girlfriend that the dealer was being watched by police.

Another pepper-sprayed an elderly man in the face and then wrote a false report to justify arresting him.

A third pulled over a stranger and received oral sex from her in his patrol car.

The list also includes several deputies still with the department who were convicted of crimes — one for filing a false arrest report and another who was charged with domestic battery but pleaded no contest to a lesser offense. In other



Sex 2

Information based on a 2014 version of the Brady list.

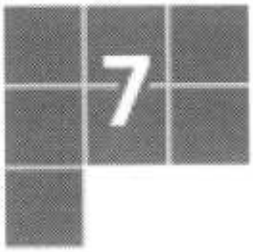
@latimesgraphics

Source: Los Angeles County Sheriff's Department (Ally J. Levine / Los Angeles Times)

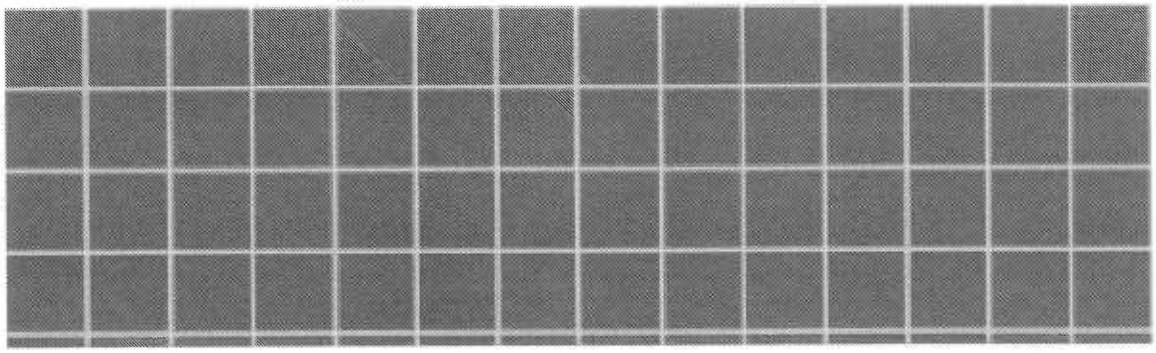
OFFICERS ON THE LIST

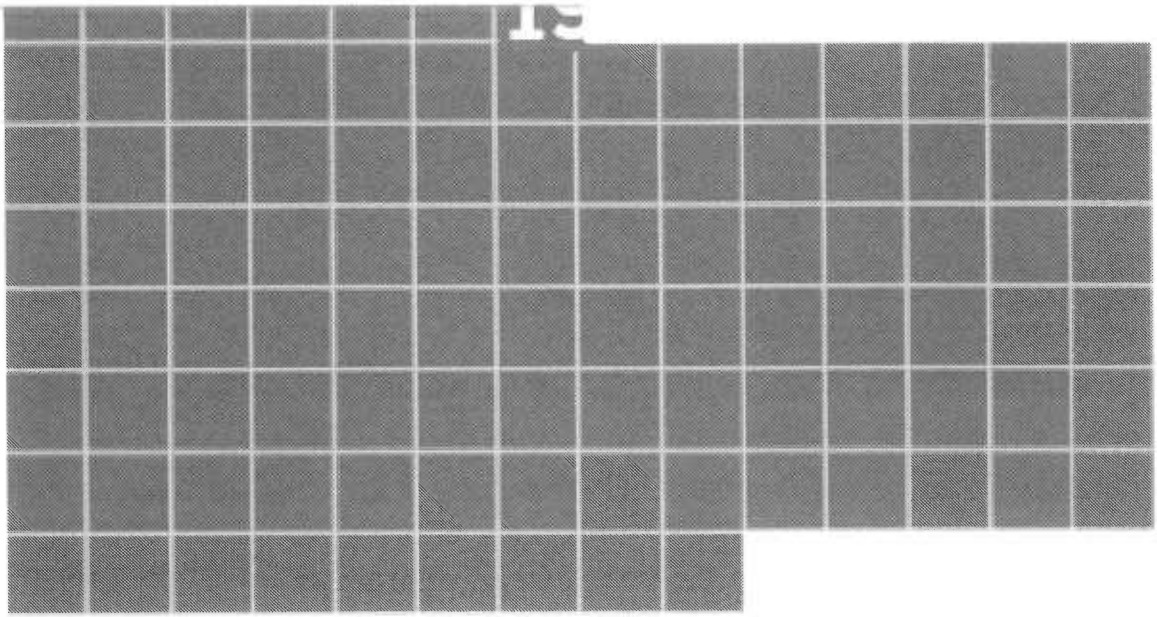
Jail liaison

Reserve deputy

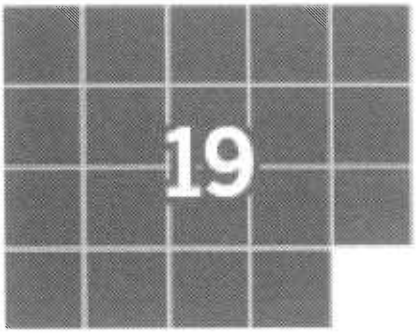


Deputy

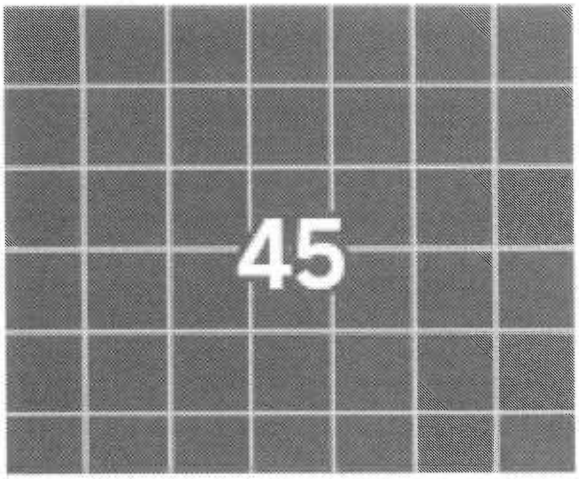




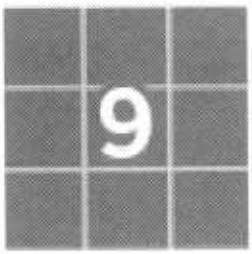
Detective



Sergeant



Lieutenant



Captain

Information based on a 2014 version of the Brady list.

@latimesgraphics

Source: Los Angeles County Sheriff's Department (Ally J. Levine / Los Angeles Times)

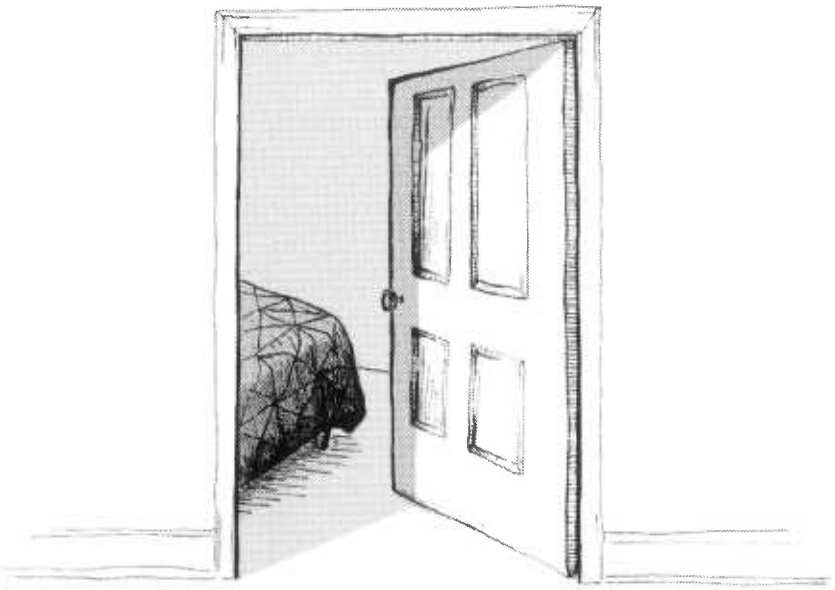
The legal dispute over the list underscores a larger nationwide clash over police accountability. Authorities are facing growing pressure from the public to reveal more about police misconduct and the way officers do their jobs. But law enforcement unions in California have used their political power to push back against efforts to increase disclosure.

The union representing sheriff's deputies argues that giving prosecutors the names on the list would needlessly harm the careers of deputies and could jeopardize numerous criminal prosecutions in which they played a role.

"Do we go back and overturn every conviction now?" asked Elizabeth Gibbons, a lawyer who has represented the Assn. for Los Angeles Deputy Sheriffs. "That's a can of worms that gets opened if the court adopts the department's argument in

allegations of dishonesty and a third wh[illegible] had written a false report. It's unclear how many names have since been removed or added or whether deputies on the 2014 list are included in the current version.

All the deputies named in this article, though, have been convicted of crimes, found by sheriff's investigators to have committed misconduct or been flagged by prosecutors for behavior that raised serious concerns about their conduct.



Accused of molesting a teen, now a sergeant

Casey Dowling was a 28-year-old deputy more than two decades ago when a 14-year-old girl informed him that she had been the victim of a knife attack. The girl said Dowling told her to sit in his patrol car and then reached under her blouse and bra and touched her breast, according to a district attorney's memo written at the time.

The girl said Dowling drove her home and followed her into her bedroom. There, she said, he asked if she was wearing panties and touched her again under her bra, according to the memo. Her mother said she saw Dowling in the bedroom, but walked away when the deputy moved toward the door as if he were leaving.

Casey Dowling (Los Angeles County Sheriff's Department)

When confronted later by the teen about what happened, he contacted his union, according to the 1996 memo written by Deputy Dist. Atty. Bryant Bushling.

Bushling determined that there were "several circumstances which support the conclusion that Deputy Dowling has committed the violation alleged." The deputy's failure to take a crime report about the knife attack, his entering the girl's bedroom and his failure to report the molestation allegations before contacting his union "vitiate his credibility," the prosecutor wrote.

But Bushling declined to file criminal charges, concluding there was not enough evidence to corroborate the girl's claims "beyond a reasonable doubt."

Civil service records show that the Sheriff's Department discharged Dowling in 1997 for "immoral conduct" and that he filed an appeal.

What happened is confidential, but Dowling got his job back.

Documents detail misconduct by L.A. sheriff's deputies »

Reached by The Times, Dowling said he would speak about the incident only after verifying with the department what he was allowed to disclose.

"Nothing I say to you is going to help my situation anyway," he said. "The whole thing sucks and I was reinstated."

In a follow-up conversation, Dowling said he had proof he is not on the current

him.

"I can tell you through a moral certainty I remember he was relieved of duty for two months because of allegations against him," Bradley C. Gage said. "That was investigated and found not to be true, he got his job back, end of story."

Two days after this article was published, Gage sent The Times a Sheriff's Department letter saying that Dowling had recently been removed from the Brady list.

According to the letter, Dowling had previously been accused of making false statements but had reached a settlement with the department in which the charge was changed to "unfounded." The letter, sent to Dowling in March, gave no other details about the case.

Dowling, who was later promoted to sergeant, was assigned to the department's parks bureau as of August. His pay last year, including overtime and other earnings, was $189,000.

CASEY DOWLING

Accused of molesting a 14-year-old girl after she told him she had been the victim of a knife attack.

He earned $189,000 last year.

How these Sheriff's deputies landed on the Brady List ↗

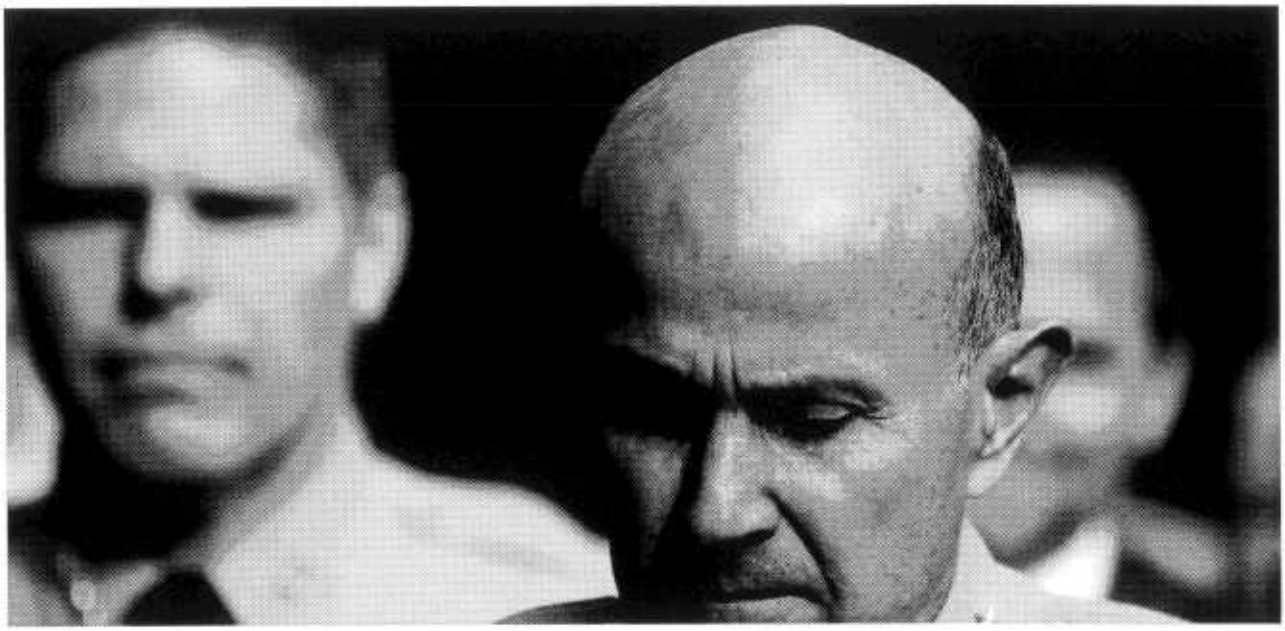
For the teenage girl, the incident took a traumatic toll, she said in an interview with The Times. Now 36, she said she considered suicide, was overly self-conscious about her body and had anxiety about being touched.

She tried therapy and for a time used methamphetamine. Halfway through her

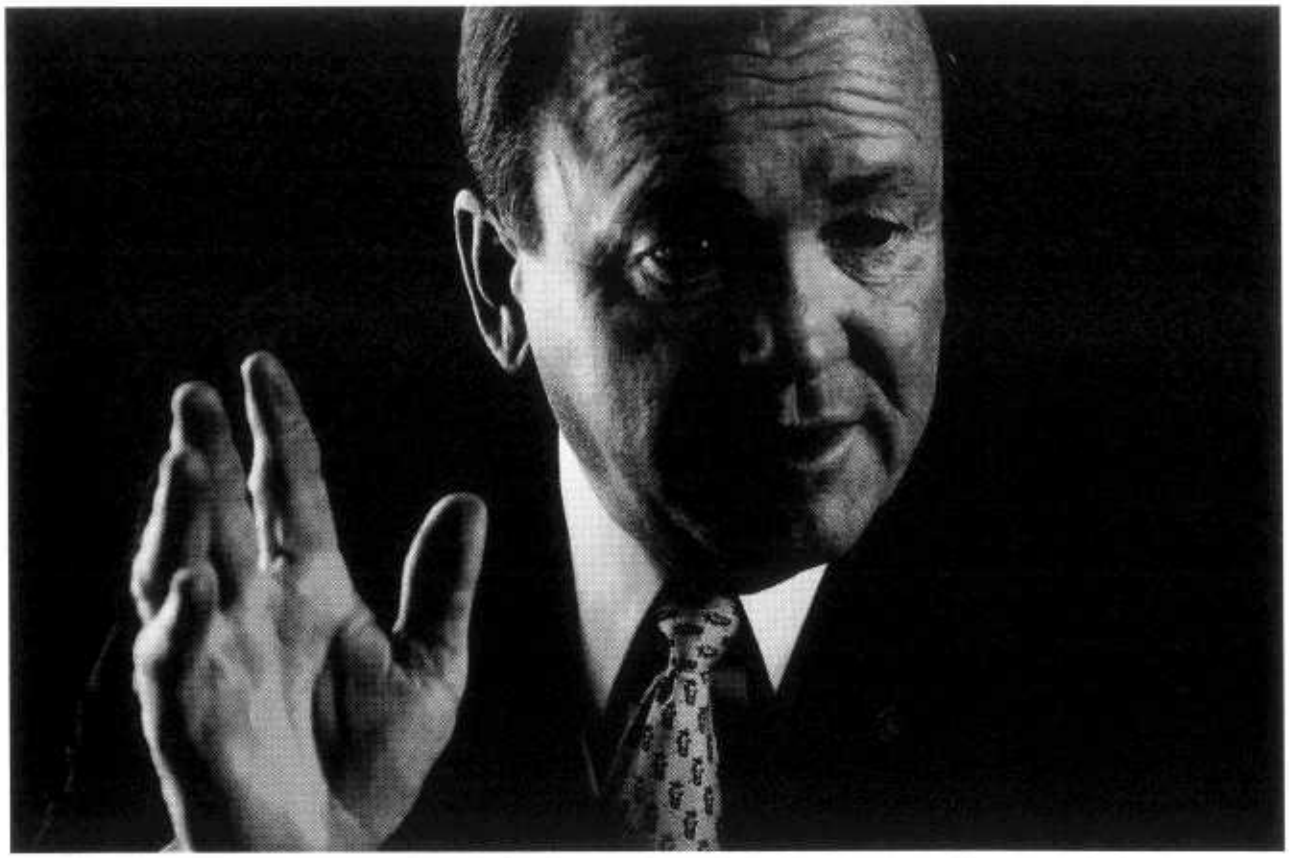
The Times generally does not identify people who report being victims of sexual assault.

She said she had been too terrified to stop Dowling. When no charges were filed, she said, it felt as if she wasn't believed.

"I just let it go because I was scared of him and his gun and his uniform," she said. "I was scared of what he could get away with."



Sheriff Lee Baca announces he will step down at the end of his term in January 2014. (Mark Boster / Los Angeles Times)



Sheriff Jim McDonnell speaks to a reporter after his election in November 2014. (Mark Boster / Los Angeles Times)

Born of scandal

The Brady list — named for a landmark 1963 Supreme Court decision that requires prosecutors to alert defendants to favorable evidence, including information that could undermine the credibility of government witnesses — was established more than three years ago when the Sheriff's Department was mired in scandal.

An FBI investigation of inmate abuse by deputies found years of excessive force and coverups. More than 20 officials, including former Sheriff Lee Baca, were convicted of crimes in the wake of that investigation.

In 2014, after Baca stepped down, officials combed through officers' histories for

of harassment, accepted bribes or other

or been violent with a family member.

McDonnell, who took over as sheriff that December, ramped up the effort to develop the Brady list. A Sheriff's Department spokeswoman declined to comment, citing officer privacy laws and the pending case before the Supreme Court.

Tell us your story ↗

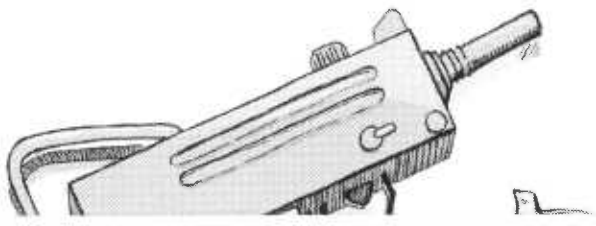
We're investigating L.A. deputies with histories of misconduct. Submit a tip.

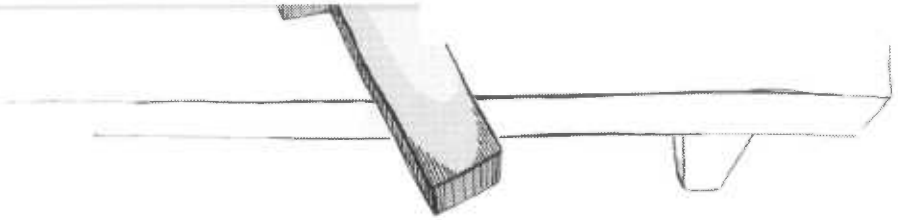
The list reviewed by The Times includes some deputies who, despite previous misconduct, were given jobs in patrol or as detectives — assignments in which testimony can be crucial. The department fired some deputies whose names are on the list, but at least 13 appealed and got their jobs back.

The 2014 version of the Brady list reviewed by The Times identifies 277 officers. The group represents about 3% of the department's roughly 9,400 sworn

personnel. About two-thirds of those named on the list are still with the department.

They include Sgt. Timothy Jimenez, who was working as a bailiff at the Norwalk courthouse in 1995 when he learned that Cypress police detectives were planning to use a confidential informant to bust a dealer suspected of having a stash of methamphetamine and a machine gun.





Jimenez had attended high school with both the informant and the dealer, according to a district attorney's memo.

When detectives searched an auto body shop where the drug dealer was doing business, they did not find the weapon or large amount of drugs they had expected. The dealer's girlfriend later told investigators Jimenez had warned her about the informant and suggested the dealer be careful, according to the memo. She in turn tipped off her boyfriend.

Timothy Jimenez (Los Angeles County Sheriff's Department)

Despite the prosecutor's finding that Jin declined to file charges.

Jimenez, approached recently at his residence, said he did not want to talk to reporters.

"It happened 22 years ago and I don't even remember what happened," he said, adding that the allegations were "false." He would not answer further questions.

Jimenez, who was promoted to sergeant in 2012, was assigned to the Walnut station as of August. His pay last year, including overtime and other earnings, was $140,000.

New Los Angeles County sheriff's deputies raise their right hands during the swearing-in portion of a graduation ceremony. (Mel Melcon / Los Angeles Times)

Fighting to keep misconduct private

Law enforcement agencies in at least 22 California counties, including San Francisco and Sacramento, already send prosecutors the names of problem officers. Local agencies, such as the Los Angeles Police Department, do not.

In some counties, police unions have threatened lawsuits to stop the practice. In Ventura, for example, that threat led to a deal with prosecutors that allows the unions to ask that officers be removed if the union believes they are erroneously or unfairly on the list.

When Sheriff McDonnell tried to give the names of "Brady" officers to prosecutors, the deputies' union sued, arguing the move would violate California's officer confidentiality laws.

In July, a state appeals court ruled that the names cannot be revealed even in pending criminal cases in which the officers could testify. The court concluded

that defendants are already able to gather the information they need by asking a judge to review the officer's file for relevant information that could affect the case.

State law, however, bars judges from handing over information about complaints more than five years old. And many defense attorneys say that even if they can persuade a judge to review the records, they are rarely given enough to assess the credibility of police witnesses.

If the California Supreme Court upholds the decision, it would prevent agencies across the state from sharing the names of problem officers. But a high court ruling that allows disclosure could compel prosecutors to examine prior cases where those deputies testified, potentially jeopardizing countless convictions.

In a recent interview, she said she is "in
investigators who work for her office are members of the deputy union that is suing the sheriff. Still, she said she supports McDonnell's efforts.

"I think the sheriff is trying to do the right thing," she said.

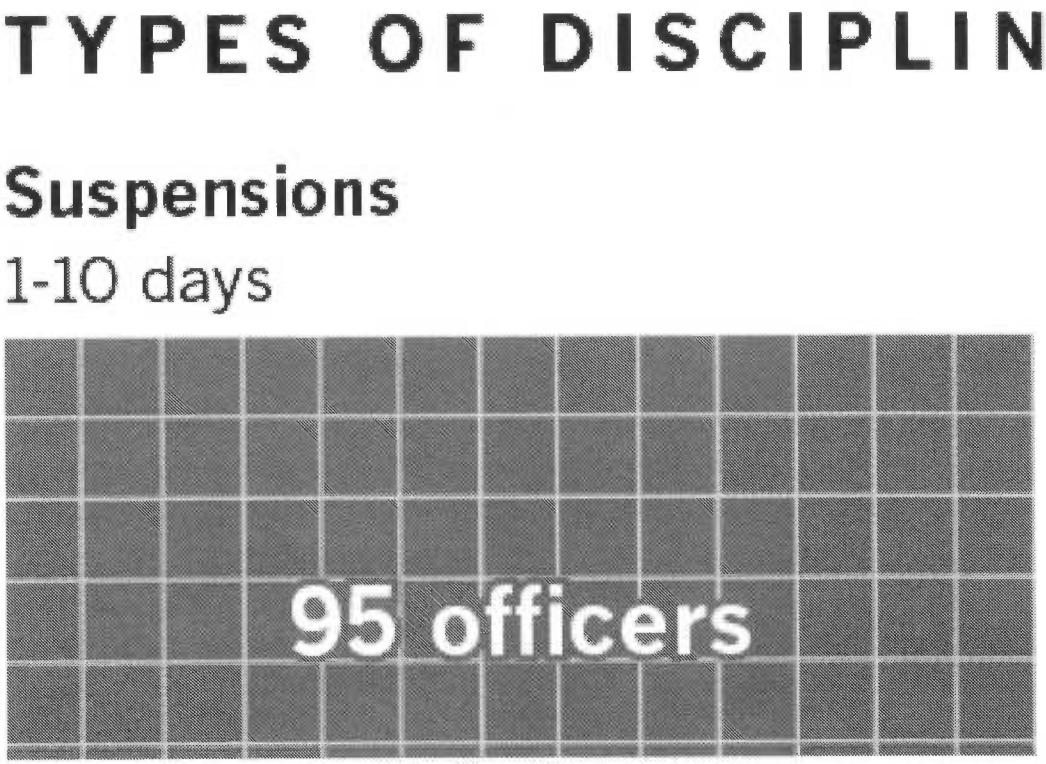
A pedestrian walks past the Hall of Justice on Spring Street in

Tarnishing a career

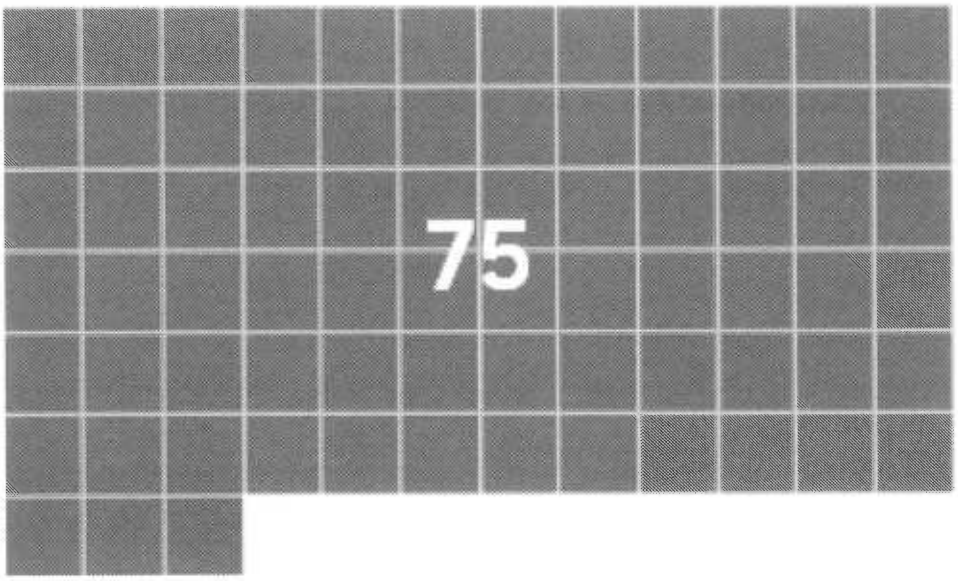
The deputies' union has argued that the list is the product of a deeply flawed disciplinary system "infested with personal animosity" and unfairly singles out what many would consider to be minor infractions. One mistake shouldn't tarnish a deputy's career, union lawyers argue.

A review of the list shows that more than 60 deputies were given light punishments — ranging from a written reprimand to a five-day suspension — some for offenses such as lying about an illness or an absence from work.

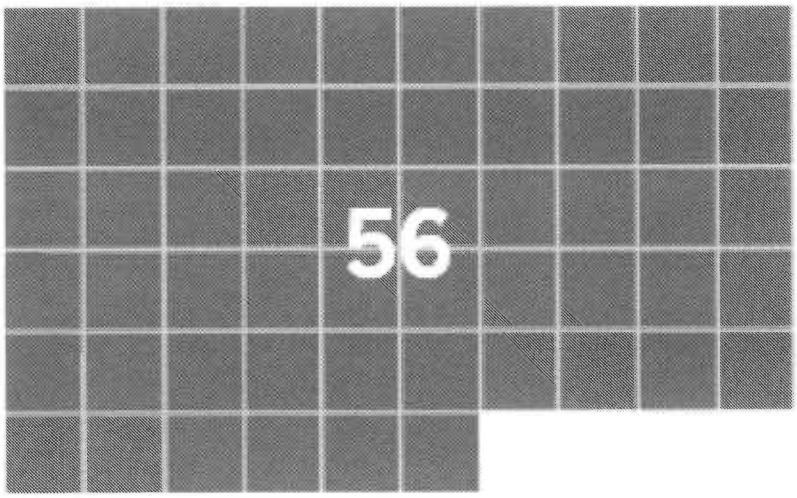
But more than 40 deputies were given lengthy suspensions for writing false reports, immoral conduct or family violence. As a result, even serious cases of misconduct could remain off-limits to the court if the deputies were called to testify in criminal cases.



11-20 days

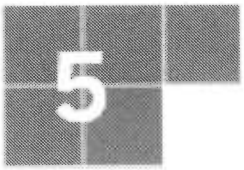


21-30 days

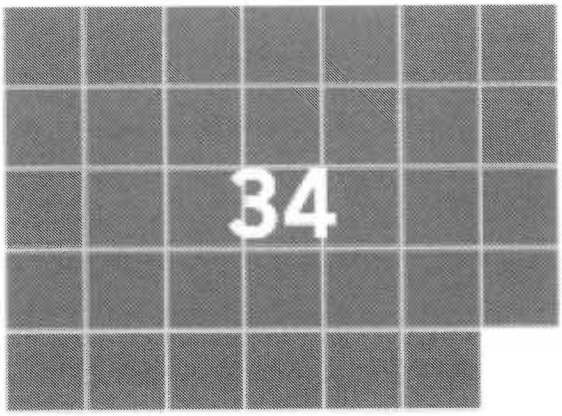


Written reprimands

Demotions



Other*



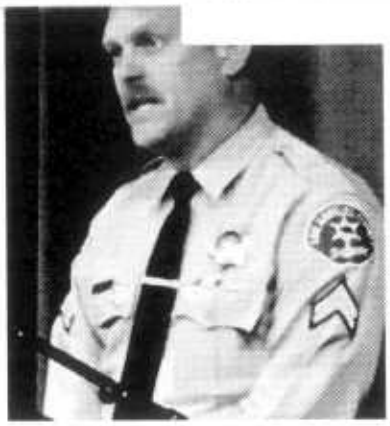
*In some cases, sheriff's records did not make clear either the severity or nature of the discipline.

Information based on a 2014 version of the Brady list.

@latimesgraphics

Source: Los Angeles Sheriff's Department (Ally J. Levine / Los Angeles Times)

In 2007, Christian Chamness was honored as "deputy of the year" for his work policing gang members for the sheriff's Lancaster station. "He is a man of honor and integrity," the station captain told a news outlet at the time.



Christian Chamness (LASD County Services Bureau)

He and other officers had accused several men at a local barbershop of disobeying orders to stay inside the building while deputies handled an unrelated call nearby about a man with a gun.

Chamness claimed that as deputies began making arrests in the barbershop, Raymond Davison, 73, cursed at them for arresting his adult son and blocked their path out of the building.

"He began to advance on me," Chamness wrote of Davison, who was arrested and charged with resisting or delaying a peace officer. "I ... ordered him once more to step aside. He refused so I sprayed him with a 3- to 4-second burst."

But a security recording from outside the barbershop contradicted Chamness.

The video, obtained by The Times, shows Davison engaging in a tense conversation with the deputies, who had already walked outside. Suddenly, Chamness pulls out his pepper spray, points it at Davison — whose arm is held back by another deputy — and sprays the man's face three times.

Charges against Davison and three other men arrested at the barbershop were dismissed after the video was shown to sheriff's officials. The county paid the men $195,000 to settle a lawsuit alleging false arrest and battery.

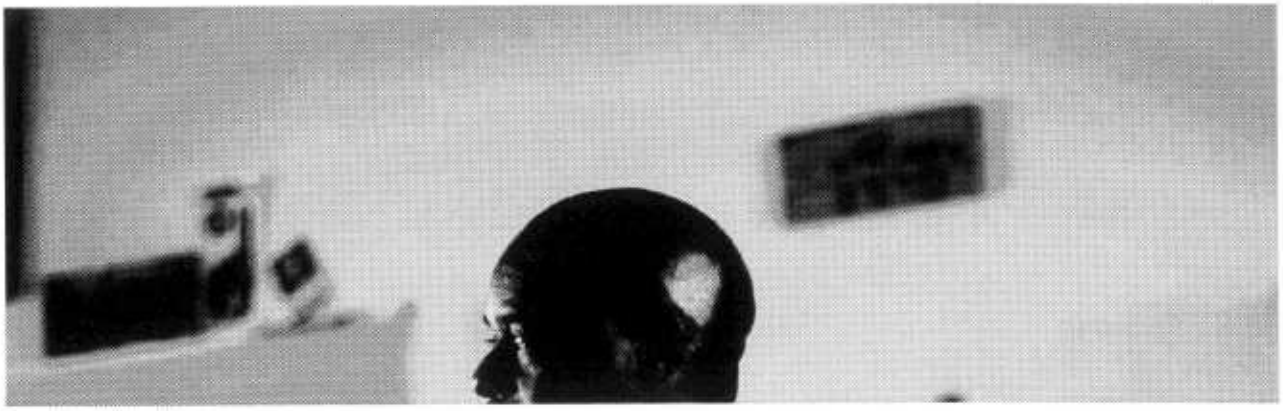
A report by the Sheriff's Department's watchdog said the case "caused a firestorm of issues" and that four deputies were disciplined. Chamness was suspended for 25 days for making a false report and unreasonable force, county records show.

"We dispute any accusation that Deputy Chamness intentionally misrepresented any of the events that day," Adam Marangell, an attorney for the deputy, said in a recent interview with The Times. He declined to comment further.

After the arrest, Davison became withdrawn, said his son. He had been suffering from congestive heart failure, and his health deteriorated rapidly, Keith Davison

said. His father died in 2013.

"He always told us not to go to jail, and we went to jail together that day," he said. "That bothered him a lot. ... It took his spirit away."



Keith Davison, owner of a barbershop in Lancaster, watched as his father was pepper-sprayed in the face by Deputy Christian Chamness, who was later accused of lying about the incident. (Brian van der Brug / Los Angeles Times)

In June, Chamness was awarded the sheriff's "Legendary Lawman Pin" for serving 15 years in patrol. His pay last year, including overtime and other earnings, was $135,000.

"I felt threatened"

In 2000, Deputy Scott Maus was on patrol in Industry when he began flirting with a woman in another car. What happened next is detailed in a district attorney's memo obtained by The Times:

Maus turned on his red light and pulled the woman over on the side of a freeway. He persuaded her to follow him to the parking lot of the Puente Hills Mall, where she got into his patrol car.

Maus groped the woman and didn't stop when she told him he was hurting her, she told authorities. The woman gave the deputy oral sex and said he penetrated her with his fingers, according to the memo.

Scott Maus (Los Angeles County Sheriff's Department)

The next day, the woman reported the encounter to authorities, saying that while Maus hadn't used force or threatened her, she didn't consent and she felt intimidated by an armed deputy in uniform, according to county records.

"I felt threatened. I felt that I was in no way able to leave the situation until whatever he wanted was done. And I felt that ... I was at harm if I tried to," she said in a deposition taken as part of a lawsuit she filed against the county.

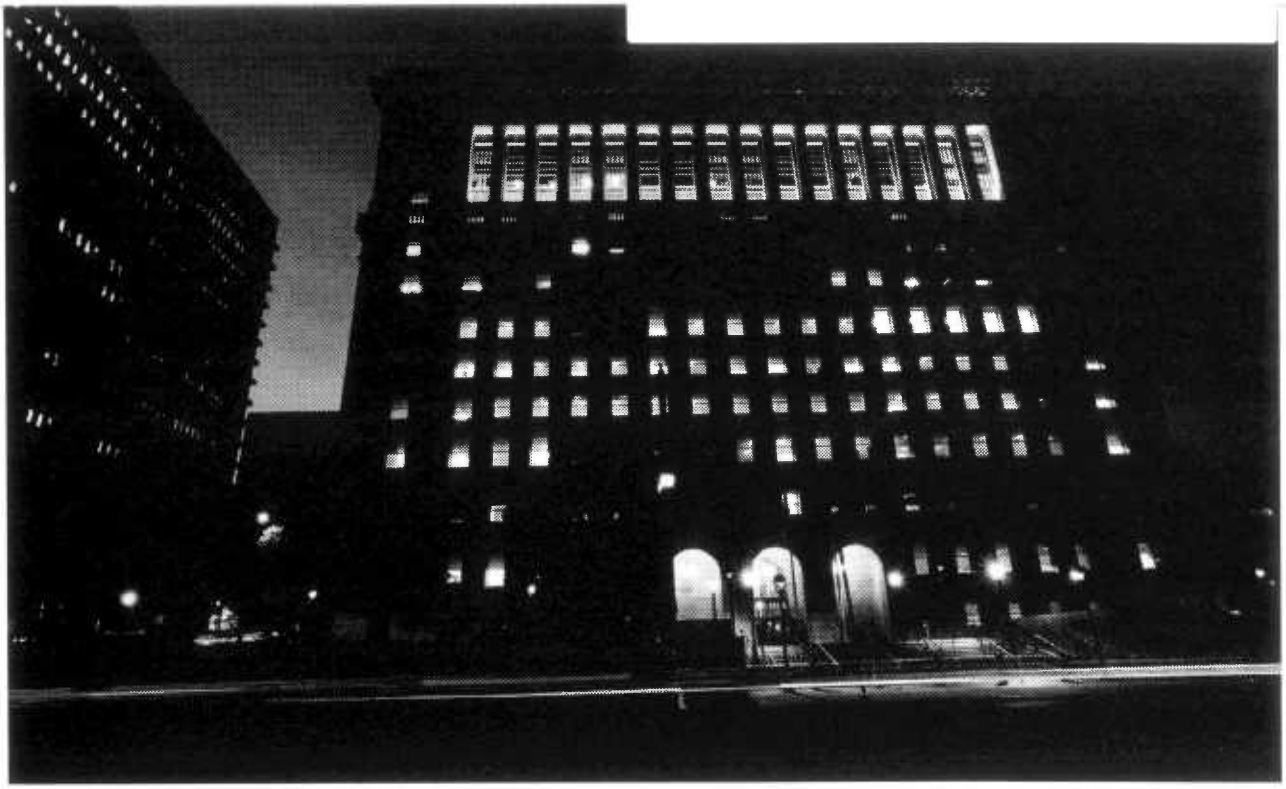
Investigators found semen in Maus' patrol car, on his trousers and on the woman's pants. The deputy admitted what had happened, but said it was consensual.

The county paid $150,000 to settle the case and acknowledged that the woman's medical records showed she suffered from post-traumatic stress disorder after the incident.

The district attorney's office considered filing sexual assault charges against the deputy but concluded there was insufficient evidence to prove the sex acts were against the woman's will.

The same year, Maus was disciplined for immoral conduct, according to a county memo regarding the settlement.

Approached at his house, Maus declined to answer questions and threatened to call the police.



The Los Angeles County Sheriff's Department headquarters in the Hall of Justice in downtown Los Angeles. (Mel Melcon / Los Angeles Times)

Providing the Brady list to prosecutors is just one of several moves by the Sheriff's Department toward reform in the wake of the jail scandal that brought down Baca

and other officials.

Sheriff McDonnell has recently increased penalties for lying and falsifying reports. New discipline guidelines recommend firing instead of suspending deputies for many types of dishonesty.

But McDonnell has also noted that misconduct must be placed in context. He argues that some deputies should be considered for "redemption" if they've improved in the years since their wrongdoing.

In April, he promoted Roosevelt Johnson from captain to commander.

Nearly two decades ago, Johnson was suspended for 30 days for making a false statement and putting false information in records when he was a deputy

for "exemplary conduct," according to the personnel document.

Ovalle, the deputy who was disciplined for creating false evidence by using taco sauce to resemble blood, has also moved up in the department despite that 2003 incident. The following year, he saved a woman from a burning car, according to a department publication. He was awarded a gold medal for meritorious conduct.

His discipline would remain in the shadows until 2008, when Ovalle arrested a suspected gang member and testified that he recovered a gun he saw the man throw to the ground, according to court records.

A defense attorney disputed the deputy's
records in his personnel file about possible dishonesty. When Ovalle's previous wrongdoing came to light, a deal was struck and the suspected gang member was allowed to plead to a lesser charge.

Afterward, the prosecutor in the case notified his office that Ovalle's actions needed to be included in the agency's own database of problem officers, and the notification triggered an investigation into whether the deputy should be criminally charged.

That inquiry found Ovalle had previously admitted his misconduct as part of a settlement in which the Sheriff's Department agreed not to fire him, according to a 2011 district attorney's memo. The office declined to charge the deputy because the three-year legal deadline had long passed, the memo said.

Ovalle told The Times he would rather not speak about the discipline. "It was a long time ago," he said.

But while testifying in a 2010 drug case, Ovalle described his actions as a "huge mistake that I regret to this day."

"I was a naive deputy — a brand-new deputy only two years on," he said, according to a court transcript of his testimony. "It damaged my career forever."

Weeks after it was determined that Ovalle would not face charges, he was promoted to sergeant. He was assigned to the department's Century station in Lynwood as of August. His pay last year, including overtime and other earnings, was $235,000.

He has been listed as a potential witness in hundreds of cases.

We're investigating L.A. deputies with histories of serious misconduct. Send us a

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Additional credits: Illustrations and graphics by Ally J. Levine. Produced by Sean Greene.

UPDATES:

9:55 p.m. Dec. 10: This article was updated to add that the Sheriff's Department sent Dowling a letter in March notifying him that he had been removed from the Brady list.

This article was originally published at 5 a.m. on Dec. 8.

Maya Lau

Maya Lau is a reporter on the Metro desk covering the Los Angeles County Sheriff's Department. She came from the Advocate, based in Baton Rouge, La., where she wrote about criminal justice and corruption in the state's prison system. She was the lead writer on a team that won an Investigative Reporters and Editors award for stories revealing the financial dealings of the long-serving warden of the notorious Angola Prison, who resigned following the reports. She started in journalism as a New York Times news assistant but truly learned how to be a reporter by moving to the small newsroom of the Shreveport Times and writing about crime. She served in the Peace Corps in Senegal after graduating from Vassar College.

Ben Poston is the assistant data editor at the Los

"Behind the Badge," a series that detailed the flawed hiring practices by the Los Angeles County Sheriff's Department. He also worked on an investigation that found the Los Angeles Police Department routinely misclassified violent crime data. A three-time Livingston Award finalist, Poston has won several national awards, including a George Polk Award, a Gerald Loeb Award, a National Headliner Award and Sigma Delta Chi's award for First Amendment reporting. Prior to working at The Times, he was the data editor at the Milwaukee Journal Sentinel.

Corina Knoll

Corina Knoll writes for the Metro section of the Los Angeles Times. She was on the team that investigated corruption in Bell — which led to the paper's 2011 Pulitzer Prize for public service — and went on to cover the trials of the city's former officials. She later contributed to the paper's coverage of the San Bernardino terror attack that won the 2016 Pulitzer Prize for breaking news. As a regional reporter, she wrote features about the San Gabriel Valley and the Westside. During her courts beat, she covered high-profile criminal cases and civil disputes, including the Jackson family vs AEG and Bryan Stow vs LA Dodgers. In her current gig she is called upon to rewrite breaking news stories and also writes long-form narratives. Recently, she and two colleagues investigated sheriff's deputies whose histories of misconduct landed them on the department's top-secret Brady list. Raised in the Midwest, she is a graduate of Macalester College.

4m

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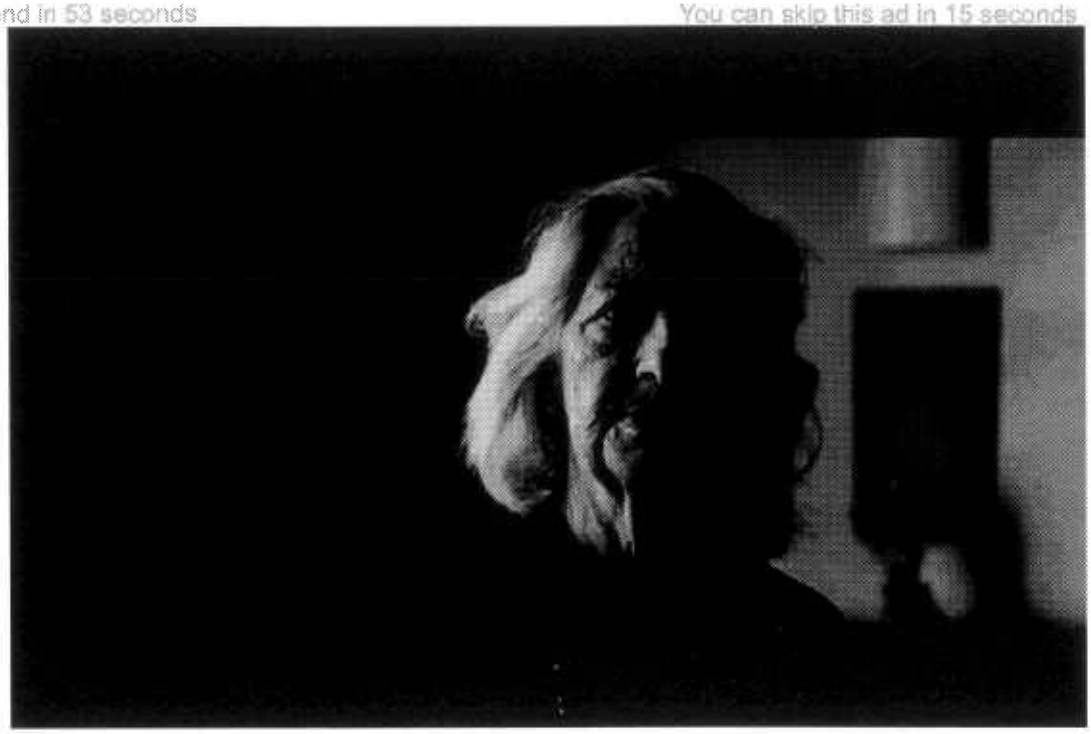
EXHIBIT B

CALIFORNIA LOCAL LA TIMES

Sex. Lies. Abuse. How these L.A. deputies landed on a secret 2014 list of problem officers

By MAYA LAU, BEN POSTON and CORINA KNOLL
DEC 10, 2017 | 9:55 PM



About 300 L.A. deputies are on the Brady list, a secret record of problem officers.

undermine their credibility when testifying in court. Even prosecutors and many high-ranking sheriff's officials can't see this so-called Brady list.

When Sheriff Jim McDonnell attempted to give the list to the Los Angeles County district attorney's office, the deputies' union sued him. Lower courts ruled that the list is confidential, and the California Supreme Court has announced it will decide the issue.

The Times reviewed a version of the list from 2014 and obtained government and court documents that detail the accusations against the deputies.

READ: Inside a secret list of hundreds of L.A. deputies with histories of misconduct »

Andrea Cecere

False statements and false report

Deputy Andrea Cecere was serving lunch at a courthouse lockup area when an inmate began cursing at her. She commanded Andrew Norwood to put his hands behind his back, then handcuffed him, according to several deputies who saw what happened.

"Suddenly, I saw Deputy [Gerald] Jackson strike Norwood several times behind the head with a right hammer fist," wrote Deputy Armando Vasquez in a sheriff's internal affairs document filed in court. "Deputy Jackson then took inmate Norwood down to the floor where he continued to strike ... Norwood several times in the head with his right fist."

Two other deputies corroborated the account. Norwood suffered swelling around his eyes, a cut inside his mouth and a cut on his wrist.

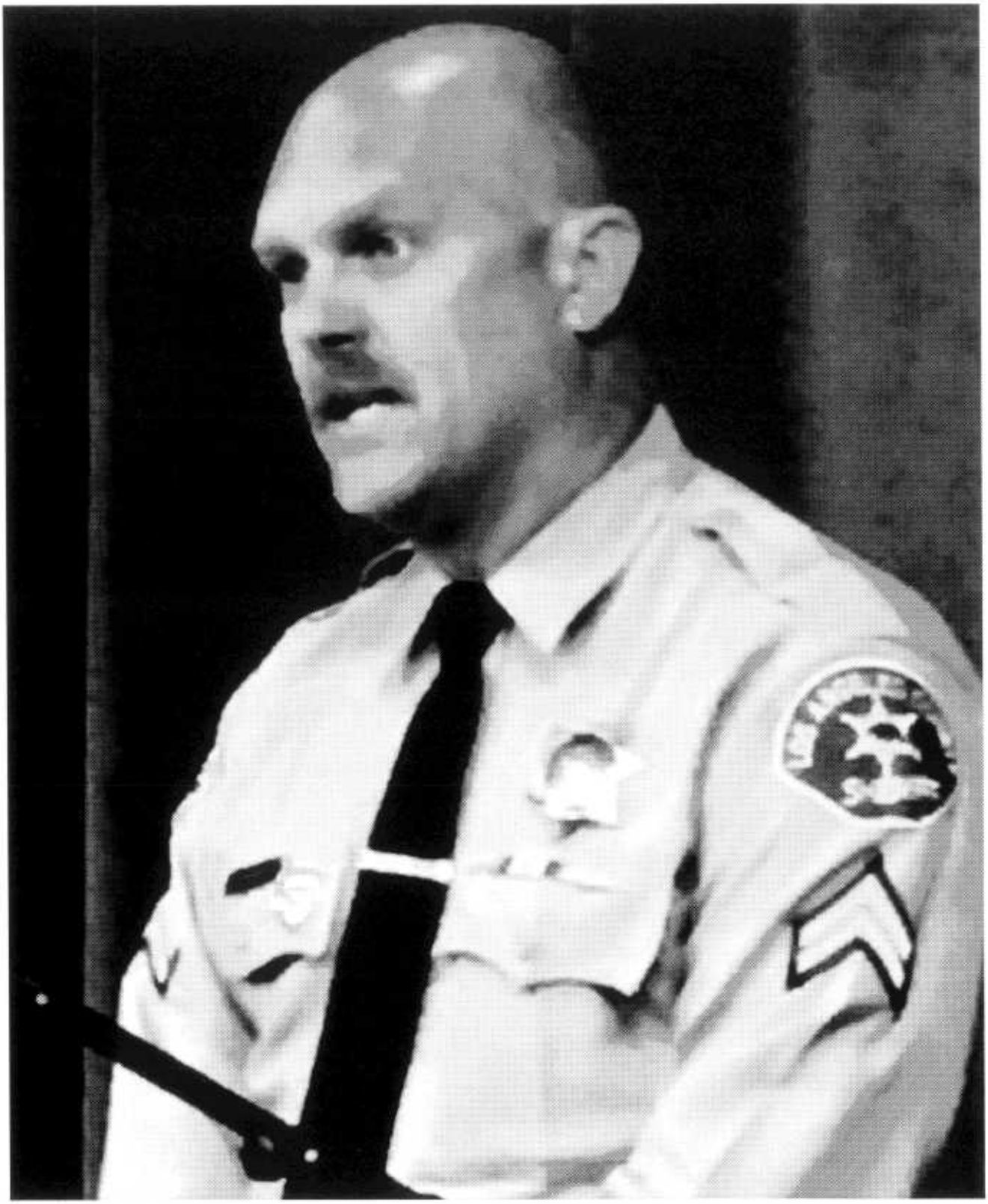
But when Cecere wrote up a report about the August 2009 incident, she claimed Norwood refused her orders and she was unable to get him into handcuffs. Cecere said the inmate swung his right arm at her and threatened to spit in her face, prompting Jackson to come to her aid.

After an internal investigation, the Sheriff's Department suspended Cecere for 20 days in 2011 for false statements and false reporting, according to court records.

A judge later rescinded the suspension because the department waited too long to discipline her, but did not weigh in on the underlying facts of the incident.

Cecere did not respond to requests for comment.

As of August, she was assigned to Metropolitan Transportation Authority headquarters. Last year, her pay, including overtime and other earnings, was



Christian Chamness

False report and unreasonable force

Christian Chamness had recently been named "deputy of the year" at the sheriff's station in Lancaster when he pepper-sprayed a 73-year-old man in the face.

In his arrest report, Chamness claimed Raymond Davison blocked deputies as they tried to leave a barbershop where they had arrested Davison's son and another man.

"He began to advance on me," Chamness wrote of Davison, who was arrested and charged with resisting or delaying a peace officer. "I ... ordered him once more to step aside. He refused so I sprayed him with a 3- to 4-second burst."

But a security recording from outside the barbershop contradicted the deputy's account.

The video, obtained by The Times, shows Davison outside the barbershop speaking to deputies, one of whom is holding down the elderly man's left arm. Davison and Chamness exchange words and the deputy sprays him in the face three times. Davison is never seen blocking or advancing on the deputies.

Once the video emerged, the charges against Davison and the other men were dropped.

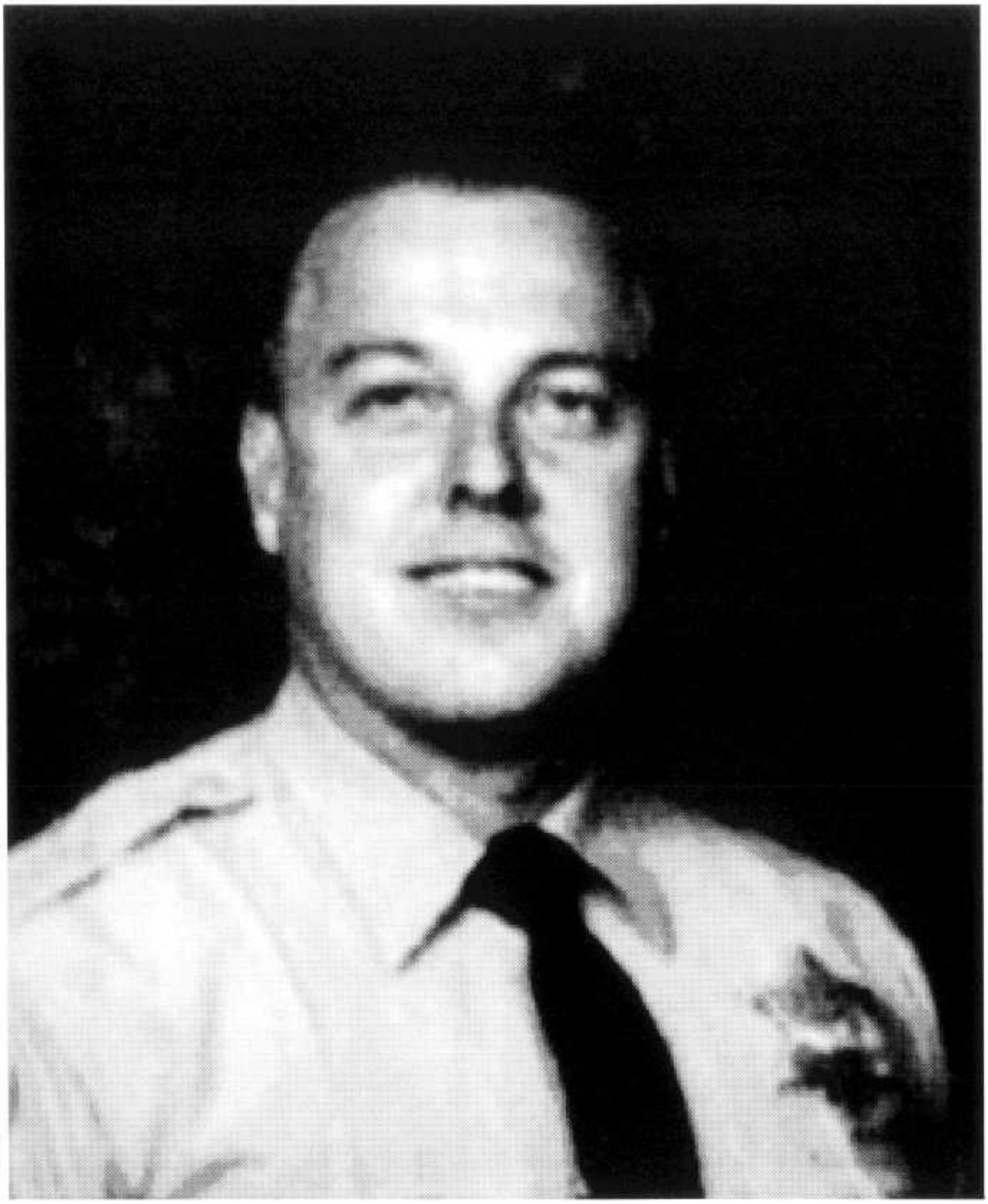
The men filed a lawsuit alleging that there was no basis for the arrests or force and that deputies concocted a false justification for their actions. The county, which paid $195,000 to settle the suit, issued a report saying misconduct had been committed by sheriff's personnel and that "appropriate administrative action was taken."

A report by the Sheriff's Department's watchdog said the case "caused a firestorm of issues" and that four deputies were disciplined over the July 2007 arrest.

Chamness was suspended 25 days for a false report and unreasonable force, sheriff's records show.

"We dispute any accusation that Deputy Chamness intentionally misrepresented any of the events that day," said Adam Marangell, an attorney for the deputy. He declined to comment further.

As of August, Chamness was assigned to the Hall of Records. Last year, his pay, including overtime and other earnings, was $135,000.



William Cordero

False report

While assigned to Catalina Island in 2011, William Cordero wrote a false report that failed to mention a civilian who was riding in his patrol vehicle and witnessed a crime, according to a disciplinary letter the Sheriff's Department sent him. The letter said he also was involved in an unauthorized foot pursuit and failed to alert the sheriff's radio channel.

He was suspended 15 days.

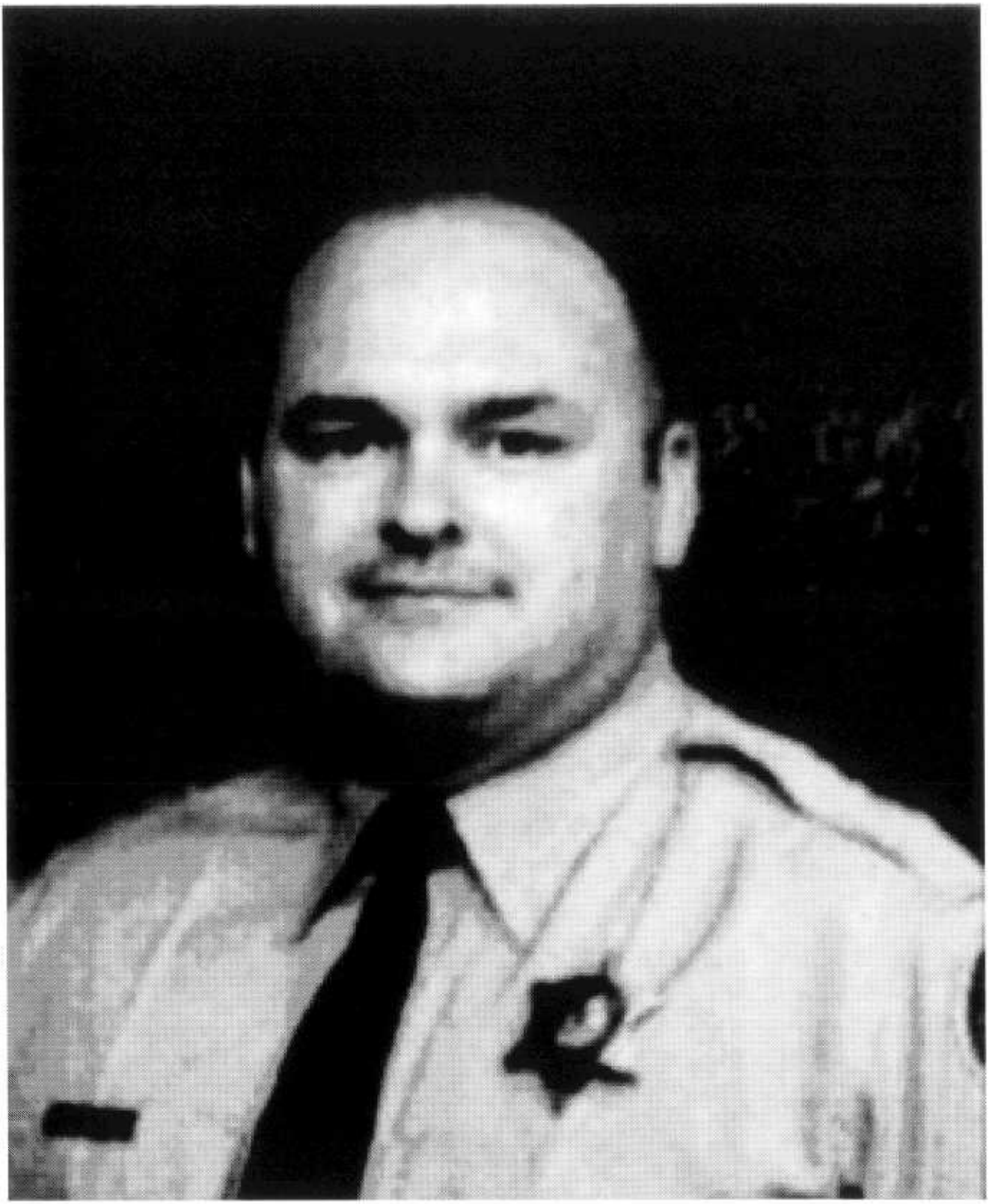
Cordero claimed in a lawsuit against the county that the investigation was in retaliation for making complaints about a captain who escorted a county inmate to a golf course. The inmate was a former pro golfer, and he gave the captain golfing tips, the lawsuit said.

Cordero alleged in the lawsuit that he ended up being harassed by other deputies and transferred off the island against his wishes. His lawsuit is pending, and he is challenging his suspension.

The department began its investigation of Cordero a year after the 2011 conduct that resulted in his suspension and months after he complained about the captain's actions, said his attorney, Matthew McNicholas.

"We strongly believe that the only reason the discipline was initiated was to retaliate against him," said McNicholas, who added that his client did not write a false report.

Cordero is back working at the Avalon station. Last year, his pay, including overtime and other earnings, was $203,000.



Casey Dowling

Immoral conduct

Casey Dowling was a deputy when a 14-year-old girl accused him of molesting her. She told authorities Dowling, then 28, had given her his phone number and told her to call if she needed police assistance, according to a district attorney's memo that detailed her allegations.

On Dec. 6, 1995, she informed Dowling she'd suffered a knife attack. She said the deputy told her to sit in his patrol car, where he touched her breast, according to the memo.

The girl told investigators Dowling later drove her home and followed her into her bedroom. There, she said, he touched her again under her bra, according to the memo, which said Dowling failed to issue a crime report about the alleged knife attack.

When the teen confronted Dowling about his behavior, he contacted his union, according to the 1996 memo.

The district attorney's office determined that there were "several circumstances which support the conclusion that Deputy Dowling has committed the violation alleged" but found insufficient evidence to charge him with a crime.

County records show that Dowling was discharged for "immoral conduct" in 1997 and filed an appeal with the county's Civil Service Commission, the details of which are confidential. State law enforcement records show he got his job back a few months later.

The teenage girl, now 36, told The Times that her encounter with Dowling was traumatizing. She considered suicide and had anxiety about being touched. "If I didn't have the run-in with him, I know my life would be different," she said.

Reached for comment, Dowling said he did not believe he was on the Brady list but declined to elaborate or talk about the incident.

An attorney who represented Dowling in an unrelated civil case a few years ago said the department placed the deputy on leave, but never discharged him.

"I can tell you through a moral certainty I remember he was relieved of duty for two months because of allegations against him," Bradley C. Gage said. "That was investigated and found not to be true, he got his job back, end of story."

Two days after this article was published, Gage sent The Times a Sheriff's Department letter saying that Dowling had recently been removed from the Brady list.

According to the letter, Dowling had previously been accused of making false

As of August, Dowling was a sergeant assigned to the department's Parks Services bureau. His pay last year, including overtime and other earnings, was $189,000.

Document

"While conversing in the car, Deputy Dowling began to talk about her clothing resembling gang attire. He then reached under her blouse and bra and touched her breast. He then drove back to her house."

SEE THE DOCUMENT ↗

Jose E. Gonzalez

False report

It was a routine drug arrest that landed Jose Gonzalez in trouble.

He and his training officer were working in Bellflower in December 2006 when they arrested a woman in a motel parking lot on suspicion of possessing methamphetamine. According to Gonzalez's report, he found six baggies of meth in her purse.

Two weeks later, just before he was about to testify in the case, Gonzalez told a prosecutor that only two baggies were found in the woman's purse and the remaining four were discovered in her motel room, according to a district attorney's memo.

The deputy said his training officer told him to write the report as if all the baggies were found in the purse so that the drugs could be booked together into evidence, the memo said.

Gonzalez later told a different prosecutor yet another story: He had forgotten that four of the baggies were found in the motel room when he wrote the false report, and it had been his training officer who found the drugs.

Based on Gonzalez's conflicting accounts, the district attorney's office dropped the case against the woman. Prosecutors considered filing criminal charges against Gonzalez, but determined they had no corroborating evidence to prove he intentionally falsified a report.

Gonzalez did not respond to requests for comment.

As of August, he was a sergeant assigned to Twin Towers Correctional Facility. His pay last year, including overtime and other earnings, was $150,000

David Anthony Hernandez

False report

David Hernandez's testimony didn't line up with the facts. The deputy had been called as a witness in a drug case, but it soon became clear to the judge that Hernandez's statements were "at complete odds" with the evidence and "absolutely fatal" to the prosecution.

Hernandez claimed that in 2007, he ran the license plate of Frisco Cervantez and discovered arrest warrants associated with the vehicle's registered address. The deputy testified he approached Cervantez and detained him. Hernandez said he found a baggie of cocaine in his wallet.

But Cervantez's attorney obtained sheriff's records that proved the deputy had run the license plate after the arrest, not before. When confronted, Hernandez said he may have made a mistake, according to a court transcript.

The case was dismissed, and Hernandez was eventually charged with perjury and filing a false report. Then-Sheriff Lee Baca told The Times that the deputy had manufactured events to justify his decision to detain Cervantez.

Hernandez pleaded no contest to a misdemeanor charge of filing a false report. He was ordered to perform 250 hours of community service and placed on probation for two years.

The Sheriff's Department handed down a 15-day suspension, sheriff's records show.

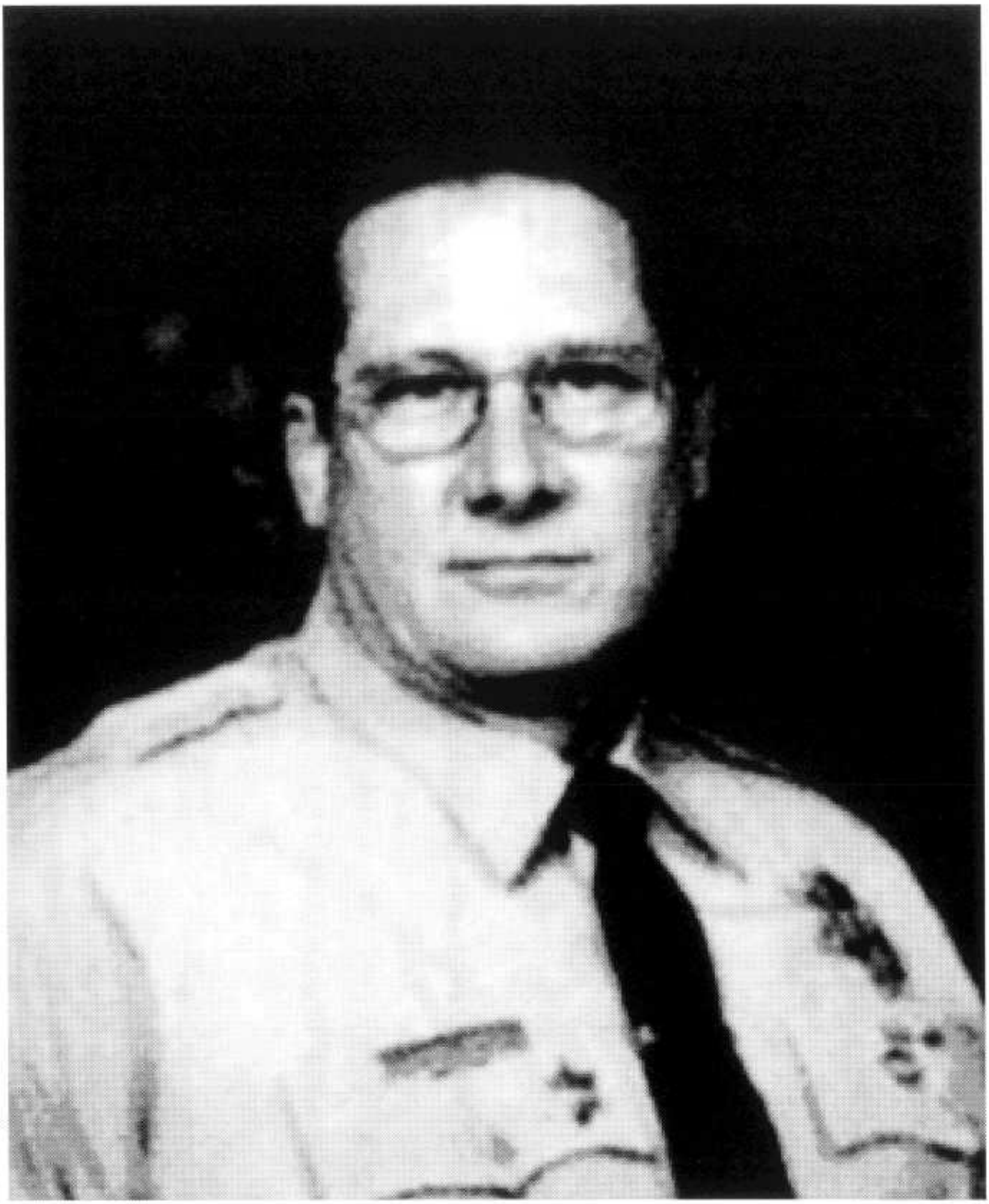
Reached by phone, Hernandez said he did not want to comment.

As of August, Hernandez was assigned to the sheriff's Industry station. Last year, his pay, including overtime and other earnings, was $182,000.

Document

"The officer's admitted on the stand that he has made a mistake, and the mistake is, as far as I can see, absolutely fatal."

SEE THE DOCUMENT ↗



Thomas Jensen

False statements

Thomas Jensen brought his pastor along when he met with a sheriff's internal investigator in February 2000. The distraught deputy was accused of fondling a woman he had been assigned to protect from an ex-boyfriend who was a gang member.

Jensen had previously denied that he had any physical contact with the woman. But with his minister in tow that day, the deputy admitted that he had kissed the woman and that he had always wanted to see what her breasts looked like, according to a district attorney's memo.

He said he never touched the woman's breasts, but a subsequent polygraph indicated Jensen was not being truthful, the memo said. After the test, Jensen told investigators that he recalled asking the woman twice if he could see her breasts and that she refused.

The encounters surfaced after the woman complained to a Crescenta Valley Station supervisor that she had reluctantly unbuttoned her blouse at a deputy's request. She declined several times to give the deputy's name and chose not to make a formal complaint. Based on the woman's statements, a lieutenant confirmed Jensen's identity, according to the district attorney's memo.

A prosecutor concluded that the deputy's behavior was "inappropriate." The prosecutor declined to file a charge of sexual battery because of contradictory statements made by the woman, who had been convicted of perjury, and the difficulty in proving the interaction was not consensual, the memo shows.

In a recent phone interview, Jensen said he never did anything improper with the woman. He admitted to lying to investigators, telling them at first that he didn't get out of his patrol car when he spoke to her. But he said he was racked with guilt over the lie.

"That was the closest I ever came to physically dying from stress," Jensen said.

He finally revealed to investigators that he did exit his vehicle, hugged the woman and gave her a friendly peck on the cheek, he said.

"That's why I'm on the Brady list. It's the most horrible thing in my life, yet it's the best thing, because God knocked me on my butt," he said.

Jensen said he was suspended 30 days for lying and demoted from a patrol sergeant to a deputy in the jails.

He retired in 2013 and earned $97,000 in county pension last year.

Obstructing an investigation

The drug bust went down at an auto body shop in Paramount, the result of intelligence gathered from a reliable informant who had gone undercover.

But Cypress Police detectives came up short when they searched for the expected large stash of methamphetamine and fully automatic machine gun.

Days earlier, Timothy Jimenez had learned of the drug investigation while working as a bailiff at the Norwalk courthouse, according to a district attorney's memo. The deputy had attended high school with both the dealer and the informant.

The dealer's girlfriend later told investigators Jimenez had warned her about the informant and advised caution, the memo said. She in turn tipped off her boyfriend.

Jimenez's actions in July 1995 were "potentially dangerous and life-threatening" as well as "a blatant betrayal of his fellow law enforcement personnel," a prosecutor wrote in the memo.

Despite the conclusion that Jimenez intended to obstruct justice, the prosecutor declined to file charges, saying she could not prove the deputy engaged in a conspiracy.

The informant told investigators he was afraid of Jimenez and what could happen if he were to help prove a case against him.

Jimenez, reached at his house, said he did not want to speak about the case.

"It happened 22 years ago and I don't even remember what happened," he said, adding that the allegations were "false."

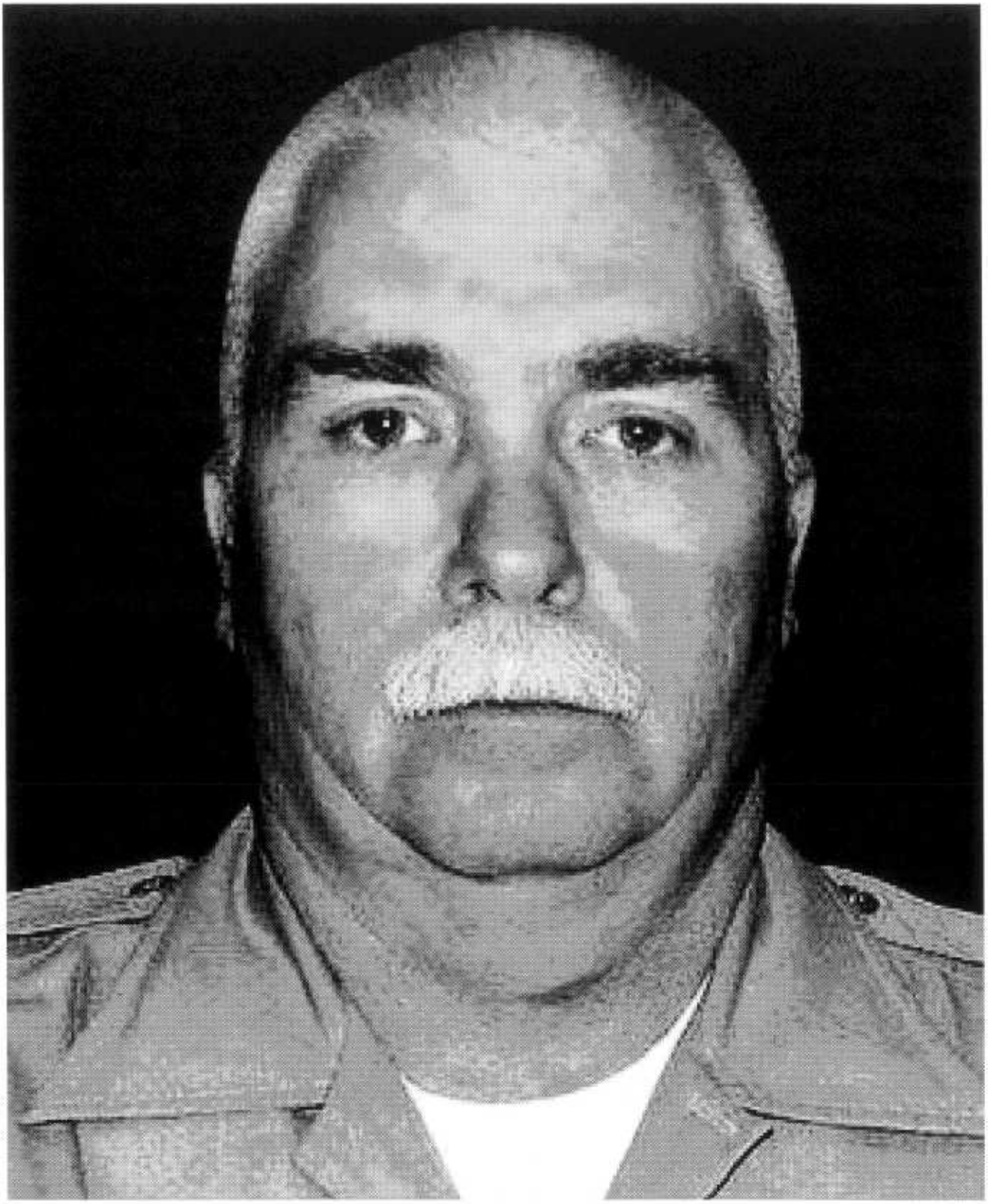
Jimenez would not elaborate and declined to comment further.

As of August, Jimenez worked as a sergeant at the department's Walnut station. Last year, his pay, including overtime and other earnings, was $140,000.

Document

"Jimenez' actions were highly improper and inappropriate as well as potentially dangerous and life threatening. He put every person involved in the narcotics investigation ... in peril."

SEE THE DOCUMENT ↗



David William Johnson

Failure to safeguard a confidential document

When the Sheriff's Department was looking into hiring David Johnson, an investigator discovered the following comment written in his file:

"I would be afraid to hire; very nervous; very uneasy; attitude problem; requires direct supervision; has problems dealing with minorities; would not rehire; ... needs to be checked deeply before hiring."

The quote was added to internal sheriff's records reviewed by The Times that also detail how Johnson mishandled a confidential report that ended up being passed around to other officers.

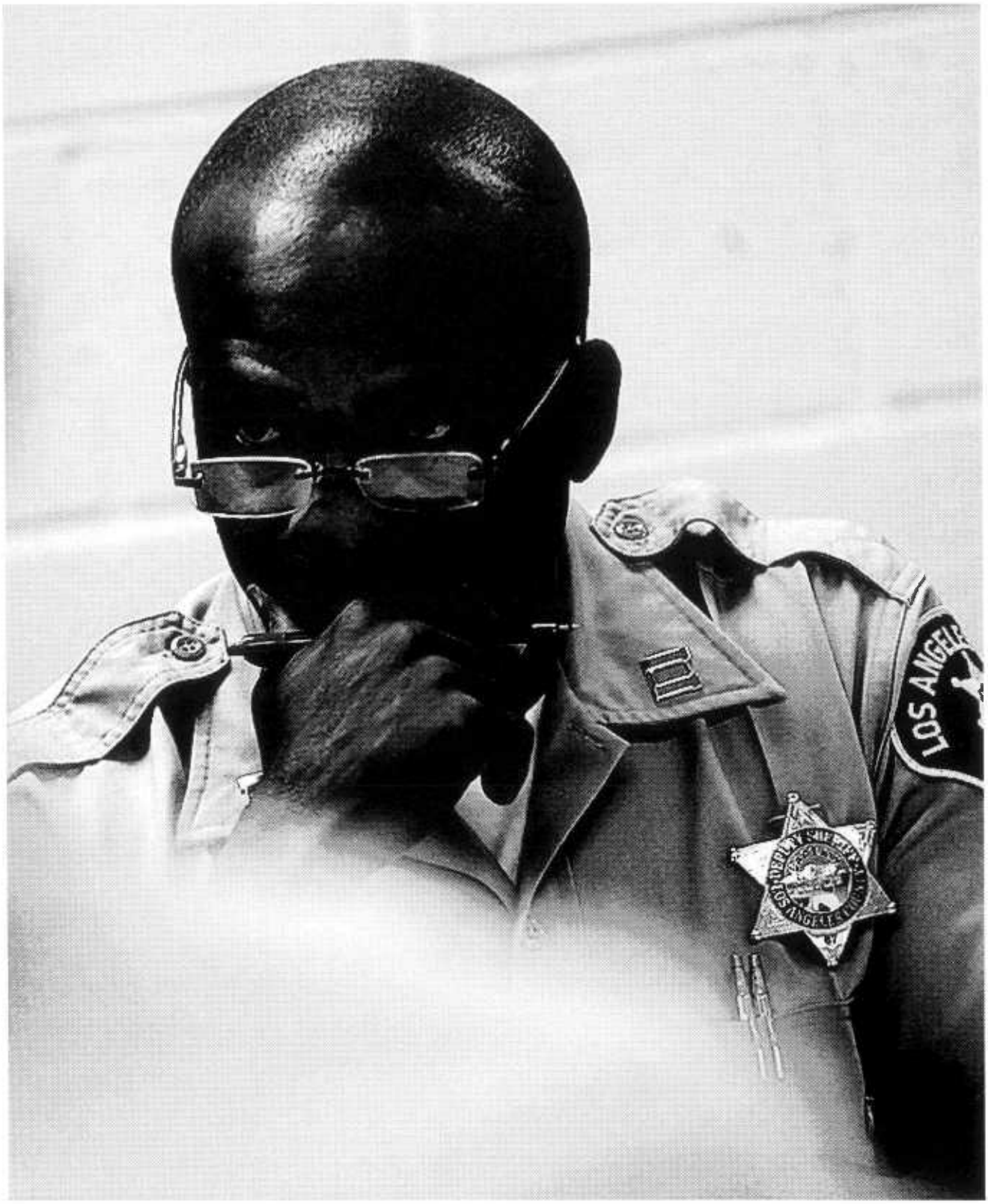
Johnson had been working at the now-defunct county Office of Public Safety when he retrieved a fax of a Sheriff's Department incident report that detailed the arrest of a fellow officer. Johnson in turn failed to protect the confidential document and it was copied without authorization and shared with others, the sheriff's records say.

It is unclear whether it was Johnson who duplicated the report, but he was suspended for 10 days in 1999 for failing to safeguard a confidential document, the records show. The suspension was reduced to four days as part of a settlement.

Johnson was one of dozens of officers with histories of misconduct who were absorbed by the Sheriff's Department in 2010 after the Office of Public Safety was disbanded.

A woman at his home said Johnson would not comment for this story and told a reporter to leave the property.

His pay last year, including overtime and other earnings, was $130,000.



False statements and false report

Roosevelt Johnson was suspended in April 1999 for 30 days for making false statements, putting false information in records and failing to perform to standards, according to a confidential Sheriff's Department employment summary reviewed by The Times. The summary does not give details about the misconduct.

The document also says Johnson has received at least 14 commendations in his career, including three for "exemplary conduct."

Johnson, who did not respond to requests for comment, was a commander assigned to Men's Central Jail as of August. Last year, his pay, including overtime and other earnings, was $210,000.

David Jouzi

False statements

No one disputes that drugs and cash were found in the car.

But prosecutors came to harbor serious doubts about the rest of Deputy David Jouzi's account of the February 2012 arrest he made in Rosemead.

Jouzi wrote a police report saying he pulled over a vehicle on a minor traffic violation and found a large quantity of methamphetamine inside. At a court hearing in the drug case, Jouzi said the same thing under oath.

But he never mentioned that he'd been working with an informant to identify the suspect's vehicle and that the traffic stop wasn't random but part of a setup he helped orchestrate, according to a memo from the district attorney's office.

When prosecutors questioned him privately, Jouzi insisted it had been a regular traffic stop, the memo says. It was only when Jouzi was about to testify again that he came clean.

Prosecutors concluded that Jouzi "deliberately misrepresented a material fact" to them and dismissed the drug case.

The memo said there was insufficient evidence to file criminal charges against Jouzi for perjury or writing a false report but said his "false statements to members of the district attorney's office ... warrant attention on an administrative level."

descent, claimed in the lawsuit that he was the victim of racial bias and denied lying to prosecutors about the arrest. He demanded that the district attorney's office withdraw his designation as a "Brady" officer. The lawsuit is pending.

He said in a phone call that his actions in the arrest of the drug suspect were approved by his supervisors and that he was punished for his documentation of the use of an informant — a procedure in which he said he was never trained. He said he was the victim of a biased investigation and that he believes the Brady list does not reflect a fair and accurate roster of deputies who've committed misconduct.

Jouzi was fired in March but is appealing his discharge, he said. Last year, his pay, including overtime and other earnings, was $118,000.

Immoral conduct

The ad on Backpage.com promised "FREAKY fun" and was accompanied by a photo of a woman's cleavage and an assurance to would-be customers: "Fetishes welcome."

Orlando Macias was off duty that day and called the listed number to talk to "Krystal," the woman named in the ad.

"It's not my first time," Macias told her, according to a transcript of the phone call filed in court. At one point, Macias grew suspicious about her cheap prices.

"Are you a cop?" he asked.

"Oh my God! Don't even say that. Are you?" said the woman on the other end — an undercover Ontario police officer hoping to lure johns in a prostitution sting.

On the call, Macias said he wanted to spend a half-hour with her, which they agreed would cost $90. About an hour after they spoke on July 29, 2010, Macias entered a room at the Motel 6 near the Ontario Airport and was arrested.

He was charged with soliciting a prostitute and disturbing the peace, court records show. Macias pleaded no contest to disturbing the peace in 2011 and was ordered to pay a $654 fine. Macias was suspended 15 days for immoral conduct, sheriff's records show.

In 2016, he entered a burning house and carried a woman out of the building — actions that won him a medal of valor, according to a sheriff's awards program.

In a recent interview with The Times, Macias confirmed his suspension and said he was placed on the Brady list.

"I had heard the term Brady list, but I didn't know exactly what that entailed," he said. "I guess it just depends on who you talk to — for me it wasn't a big deal."

He retired from the department in March and earns an annual pension of $115,000.

Scott Maus

Immoral conduct

It was shortly after midday in the City of Industry, but the patrol deputy wasn't where he was supposed to be.

Scott Maus' cruiser was instead parked in a secluded spot of the Puente Hills Mall, and the on-duty deputy was inside with a woman he had pulled over.

He had seen her driving moments earlier and they exchanged smiles before he flashed the red lights of his squad car behind her on the 60 Freeway, according to a district attorney's memo. He asked her about her tattoos and told her she looked familiar, though the two had never met.

At Maus' invitation, they drove to the mall, which was outside his patrol area.

The deputy groped the woman and didn't stop when she told him he was hurting her, she later told investigators, according to the memo. She reported that he put his hand behind her head and "guided her" to perform oral sex on him before penetrating her with his fingers, the memo said.

The next day, the woman told sheriff's investigators that Maus didn't use force or threats but that she felt intimidated and did not consent. Investigators found semen in the patrol car and on Maus' uniform. The deputy admitted to the encounter but said it was consensual, the memo said.

Prosecutors declined to charge Maus with sexual assault, concluding that jurors would probably find that the woman's actions were voluntary.

The county agreed to pay her $150,000 to settle a lawsuit in which she alleged she was sexually assaulted. A county counsel memo cited medical records showing she suffered from post-traumatic stress disorder and would need intensive psychiatric treatment for years. Maus, the memo said, was disciplined for immoral conduct.

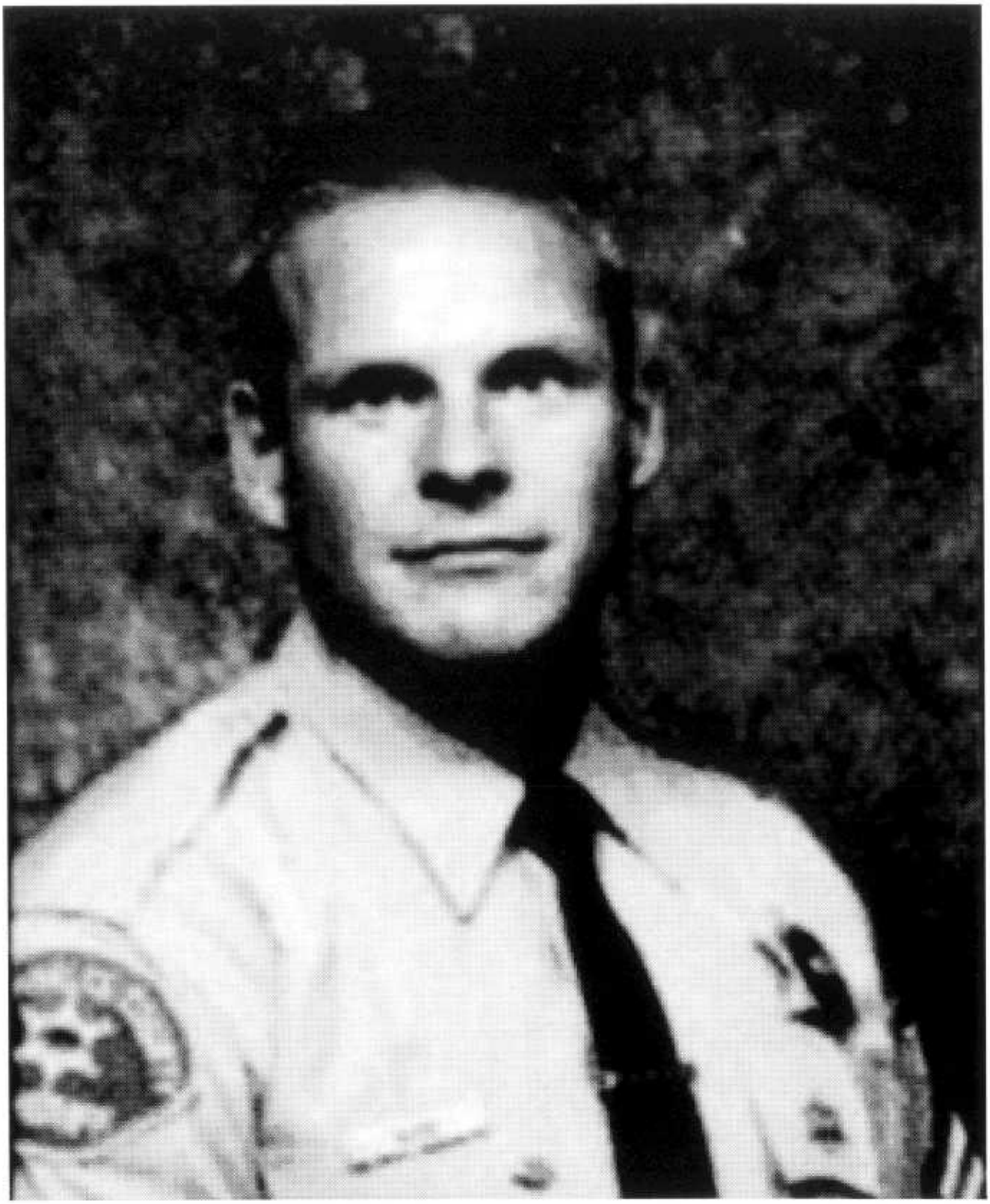
In approving the payout, the Board of Supervisors urged the Sheriff's Department to fire those who commit "wrongful acts in the course and scope of their employment."

Approached recently at his house by The Times, Maus said he would call the police if the reporter returned before slamming his door.

As of August, he was assigned to MTA headquarters. Last year, his pay, including overtime and other earnings, was $210,000.

Document

"Deputy Maus told [her] to park her car and get into



Family violence

The allegations were disturbing.

Jeffrey Moore's wife told authorities that he put a gun in her mouth and threatened her, according to court records. A few months later, his wife alleged, Moore grew enraged when she invited a realtor over to sell their Corona home, cut up some of her clothes and then held a steak knife to her.

Moore, who disputed his wife's account and argued she had been the aggressor, was charged with several felonies that included assault, kidnapping and making criminal threats. He was tried twice, and a judge dismissed the case after jurors deadlocked in the second trial.

During an internal affairs investigation by the Sheriff's Department, Moore admitted to cutting up his wife's blouse, wrestling with her over her cellphone and threatening her with a steak knife, according to a Sheriff's Department disciplinary letter filed in court. The department handed down a 15-day suspension in 2009 for family violence, the letter shows.

Moore and the department agreed he could serve his punishment by completing several education courses, including one on anger management. Moore lost a lawsuit against the county in which he sought back pay for the time he had been on unpaid leave during his criminal case.

He did not return a message seeking comment.

As of August, he was a sergeant at the department's emergency operations bureau. His pay last year, including overtime and other earnings, was $181,000.

Fabricating evidence

It was August 2003 and Deputy Jose Ovalle realized there was a problem with the evidence. An inmate's shirt bloodied from a jailhouse brawl had been lost.

Ovalle had a solution. He grabbed a shirt out of the jail laundry, doused it with taco sauce and snapped a photo of the faked blood before booking it into evidence, according to law enforcement and court records.

A week later, another deputy reported Ovalle's actions.

The Sheriff's Department decided at first to fire Ovalle but later agreed to a settlement in which he kept his job while admitting his misconduct. The department handed down a 30-day suspension.

Years passed without the district attorney's office being notified. The deputy would be presented with a gold medal for meritorious conduct for saving a woman from a burning car.

But in 2009, a prosecutor learned of the taco sauce incident and reported it to his office, according to a district attorney's memo.

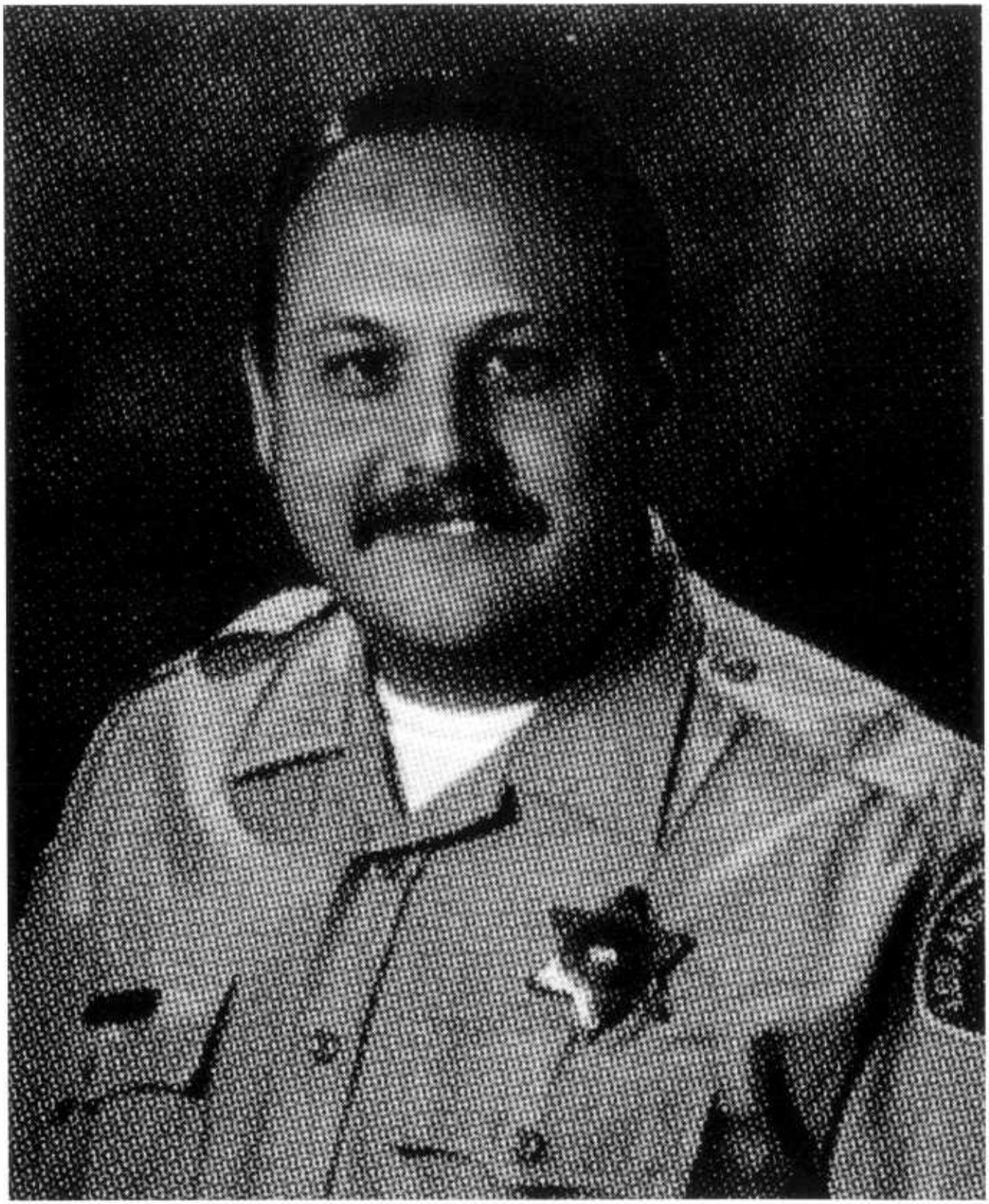
The office declined to prosecute Ovalle because the legal deadline for charging someone with manufacturing evidence had passed, the 2011 memo said.

Contacted by The Times about the incident, Ovalle said, "It was a long time ago," but declined to comment further.

But while testifying in a 2010 drug case, Ovalle described his actions as a "huge mistake that I regret to this day."

"I was a naive deputy — a brand new deputy only two years on," he said, according to a court transcript. "It damaged my career forever."

As of August, Ovalle was a sergeant with the department. Last year, his pay, including overtime and other earnings, was $235,000.



Jimmie Pate

False report

Jimmie Pate got a radio call late one night in May 2001. A sheriff's sergeant ordered him to help with a couple he had caught smoking marijuana near a vista in La Cañada Flintridge.

Pate arrived, searched the couple's vehicle and found a baggie of marijuana. While the sergeant had conducted the initial part of the call, he told Pate to "write him out" of the police report so that his name wouldn't appear, according to a district attorney's memo. The sergeant said he lived far away and didn't want to be "inconvenienced" by having to testify in court, according to the memo.

Pate, who had recently completed his probationary period in patrol, felt pressured by the supervisor and did as he was asked, falsely writing the report as if he alone conducted the investigation, the memo said.

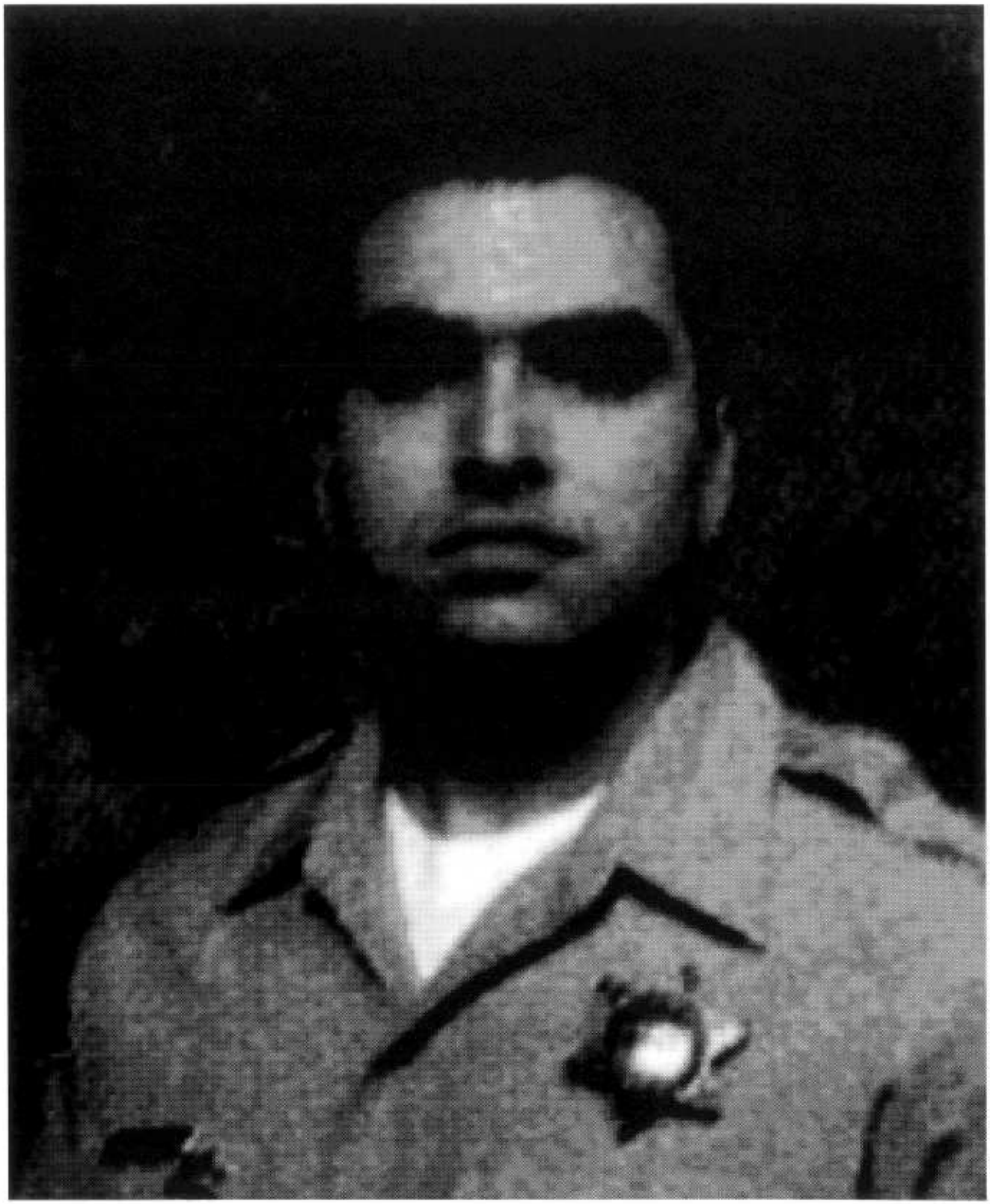
Prosecutors determined Pate's misconduct didn't warrant criminal charges but explained the misconduct as "a lazy sergeant's attempt to avoid his obligations as a member of a law enforcement agency and an unseasoned deputy's failure to stand up to the improper demands of his supervisor."

Pate was suspended 10 days in 2002 for false reporting, internal disciplinary records show.

In 2002, Pate and another deputy were awarded a medal of valor for chasing down an armed man with a history of violence who was suspected of stealing a car.

Pate did not respond to requests for comment.

He is now assigned to the Burbank courthouse. Last year, his pay, including overtime and other earnings, was $113,000.



Antonio Ramirez

Family violence

The woman said the deputy had been violent for a decade when she began fighting him in court.

A civil lawsuit against Deputy Antonio Ramirez, filed by the mother of his two daughters, claims he pushed the woman to the ground, hit her in the face with a book, kicked her, twisted her wrist and threatened to kill her during various incidents in 2012.

The woman claimed Ramirez pressured the couple's 11-year-old girl not to report the abuse to anyone, warning her he could lose his job, which would mean they would no longer have a house or any money.

Ramirez denied the claims.

Prosecutors declined to charge him with domestic abuse or witness intimidation, citing a lack of physical evidence. A sheriff's sergeant determined there was "mutual combat" between the woman and Ramirez, according to a district attorney's office memo summarizing the criminal investigation.

Still, a prosecutor concluded that interviews with the daughters corroborated their mother's claims and that one of the girl's statements in particular were believable, according to the memo.

In 2013, the Sheriff's Department notified Ramirez he would be suspended 15 days for family violence against the woman who filed the lawsuit, according to documents filed in the case.

Last year, a jury concluded Ramirez had engaged in domestic violence against the woman and awarded her $185,000.

Ramirez did not respond to requests for comment.

As of August, he was assigned to the sheriff's Pico Rivera station. The county listed his pay last year, including overtime and other earnings, as $45,000.

His attorney in the civil lawsuit, Richard Fannan, declined to comment on behalf of his client, who he said was on disability leave last year. The county did not answer repeated queries over several months about Ramirez's total compensation.

Brian J. Richards

The assailants were Brian Richards and Joshua Titel, two off-duty custody deputies.

They had been drinking at a party when they headed to the San Dimas home of Titel's girlfriend. There they encountered Stephen Paige, the girlfriend's ex and father of her daughter.

Richards and Titel ran at the La Verne firefighter and slammed his head against a truck, Paige later told a sheriff's investigator, according to county disciplinary records. The deputies claimed they had been provoked, but a third off-duty deputy who witnessed the fight corroborated Paige's report.

Paige was repeatedly struck and kicked while lying motionless until he lost consciousness, according to a Civil Service Commission document reviewed by The Times. He would end up missing six weeks of work.

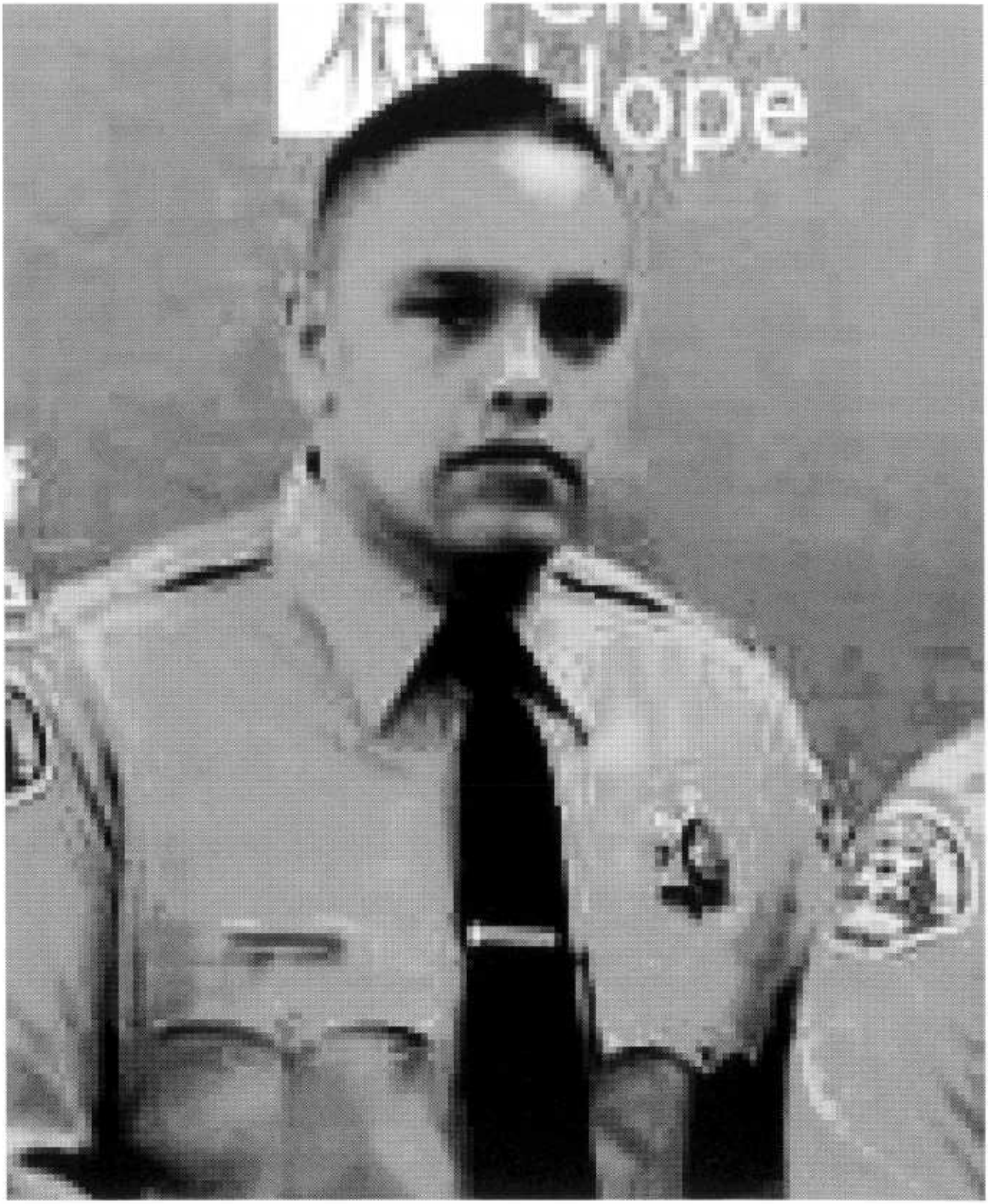
In 2008, a grand jury indicted Richards and Titel on a felony charge of assault. Richards pleaded guilty to misdemeanor battery and Titel to misdemeanor assault. Titel was demoted to custody assistant.

The Sheriff's Department initially decided to fire Richards but agreed to a settlement in which he kept his job and was suspended 30 days, according to sheriff's records.

The deputy told The Times he served the suspension in 2010 and that the incident had no impact on his career afterward.

"I had no knowledge I was on the Brady list and it never affected me through my years of service," Richards said.

Last year his total earnings, including overtime, was $166,000. He left the department in February.



False statements

It was the deputy's word against that of an inmate.

The man being held on vehicular manslaughter said Deputy Abran Rodriguez asked a woman visiting the jail with her two young children to show him her breasts.

Rodriguez denied the claim, saying it was the inmate who offered to have his girlfriend expose her breasts in exchange for a longer visit that day at the North County Correctional Facility.

But the visitor soon filed a complaint. Another inmate also said he heard Rodriguez's lewd comment, which "blew him away."

Sheriff's investigators concluded Rodriguez had made false statements, according to court records.

They cited multiple witnesses and an audio recording that they said corroborated claims by the inmates and the woman, according to court documents that outline the disciplinary proceedings. The records say internal investigators found that Rodriguez fabricated an explanation to cover up for his inappropriate comment and made false statements during the investigation.

"It was pretty awful that he thought he could get away with something like that," the woman recently told The Times. "I stood up and testified and spoke against him, because he wasn't going to talk to me that way. ... He probably shouldn't be working in that kind of environment and shouldn't have that power over people."

The department notified the deputy he would be suspended for 15 days in 2011, but he contested his discipline in court.

A Superior Court judge concluded the evidence showed that Rodriguez made false statements to investigators. But the judge also found that the Sheriff's Department failed to prove an additional allegation, that Rodriguez mouthed the words "call me" to the woman. The judge directed an appeals board to reconsider the deputy's discipline in light of his findings.

In a phone interview, Rodriguez again denied making false statements and said the appeals board has yet to reach a final decision.

As of August, he was still assigned to that facility. His pay last year, including overtime and other earnings, was $104,000.

John Sanchez

False statements and false report

It was 5:30 a.m. and John Sanchez was finishing up his shift at the Lennox station.

A lieutenant had ordered him to get a judge's approval to obtain a search warrant at night.

Sanchez had already obtained the judge's signature, but had used an outdated form.

The deputy didn't want to wait several hours for the judge to become available, so he decided to doctor the document, according to a district attorney's memo.

He typed two sentences about night service onto his computer and printed it onto the already signed warrant, the memo said. He then marked the night search box himself with an X.

The lieutenant realized what Sanchez had done and confronted him.

"According to Deputy Sanchez, night service, in his opinion, had been approved by the judge because he had included the request in the narrative of the warrant and affidavit," the memo said.

Prosecutors declined to file charges against Sanchez, noting that the warrant had not been filed with the court. Superior Court Judge Eudon Ferrell, who had originally approved the warrant, told investigators he would have endorsed the new form if Sanchez had brought it to him.

In an interview with The Times, Ferrell, who said he could not recall details about the case, said that legal procedures need to be followed.

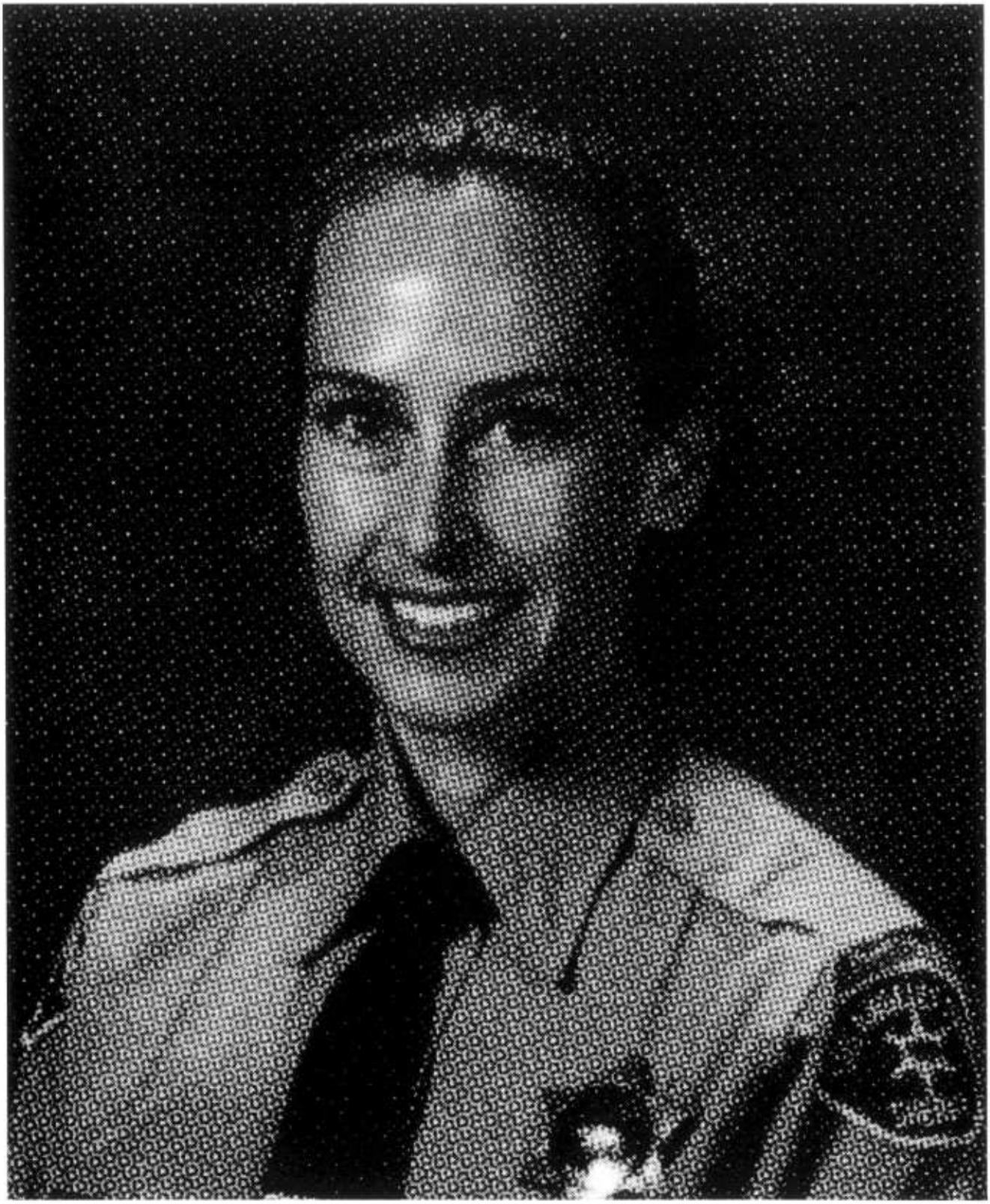
"To circumvent that and basically make it appear that some judge approved it, that's pretty egregious," he said.

Sanchez was suspended for false statements and putting false information in records, according to county records. He did not respond to requests for comment.

As of August, Sanchez was still with the Lennox station. His pay last year, including overtime and other earnings, was $133,000.

Document

"Deputy Sanchez made the decision ... that he did not want to wait ... to request the judge to sign the new face page. Instead, he typed the two new sentences into



Deanna Santino

Family violence

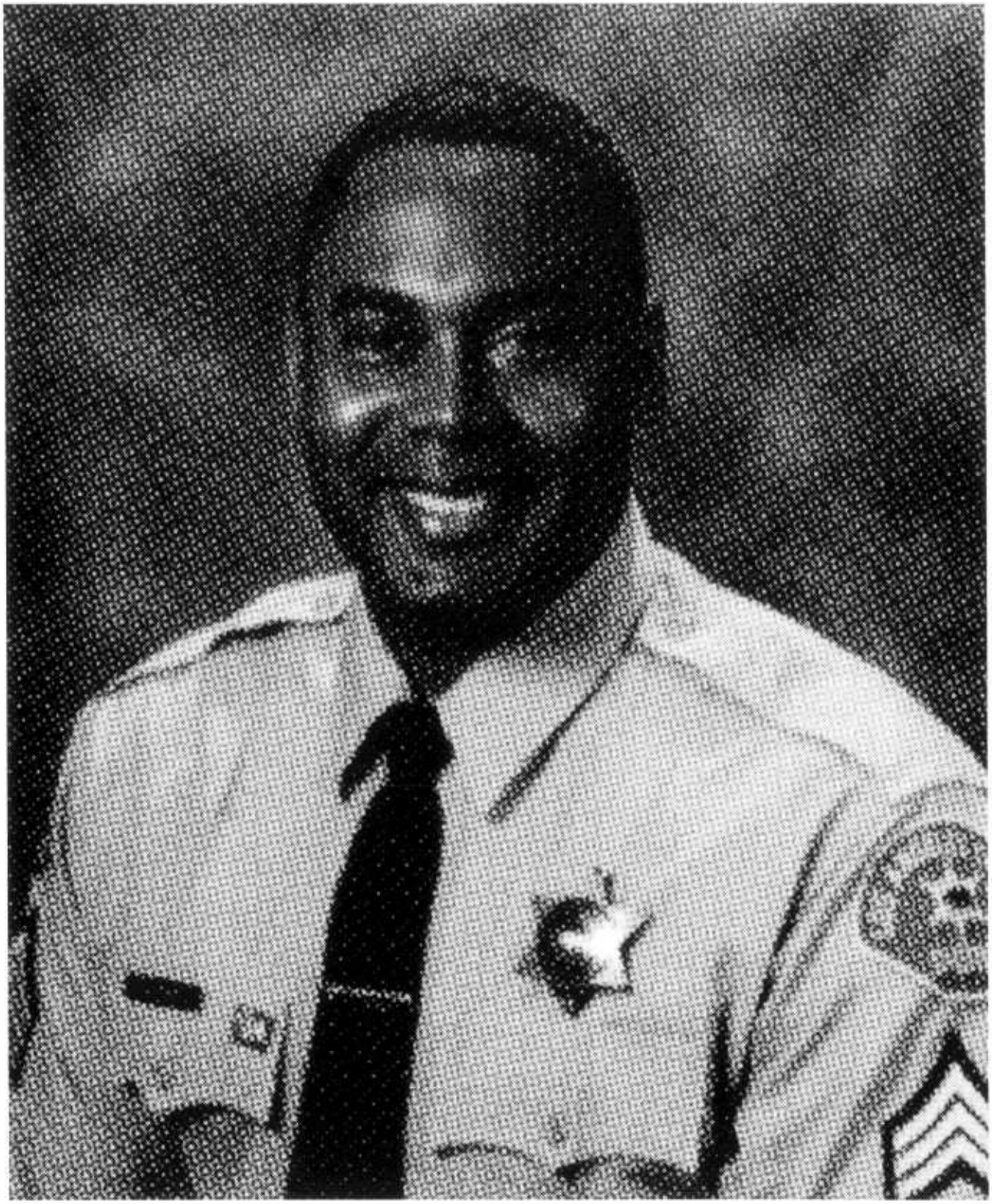
Deanna Santino was charged in 2007 with felony assault, child abuse and false imprisonment of an 8-year-old boy, a family member who was living with her at the time, according to the district attorney's office.

Santino pleaded no contest to misdemeanor corporal injury to a child and false imprisonment. She was sentenced to three years' probation and 90 days of community service, and was ordered to complete a year-long anger management training and a year in a parenting program. She was also ordered to have no contact with the victim unless arranged through the Department of Children and Family Services.

In 2011, Santino was lauded for rescuing a 1-year-old boy who had been accidentally locked in a car in 95-degree heat.

Santino did not respond to requests for comment.

As a sergeant at Pitchess Detention Center, Santino made $124,000 last year, including overtime and other earnings. She no longer works for the department.



Joseph Stephen

Immoral conduct

The accusation caused a furor within the Sheriff's Department. A deputy alleged she was the victim of sexual coercion by several high-ranking officials.

Joseph Stephen, then captain of the Malibu/Lost Hills station, acknowledged at the time that he was one of the targets of an internal investigation into her claims.

In an interview with The Times, he accused the woman of trying to deflect attention from her own legal troubles. "She's trying to save her own skin," he said in 2013, when the inquiry was underway. "She's trying to lash out and see what sticks."

The female deputy had made the accusations after facing her own allegations of misconduct, several sources told The Times while the investigation was underway. She was convicted of resisting arrest, spousal battery and vandalism in 2014, court records show.

Stephen said he never directly supervised the deputy.

At the time, Stephen called the deputy's allegations "absolutely, unequivocally" false but declined to say if they had had a sexual relationship.

"I don't want to get into that," he said.

Stephen was demoted to lieutenant later that year, but nine months later was elevated back to captain.

He did not respond to requests for comment.

As of August, he was the captain at the Marina del Rey sheriff's station. His pay last year, including overtime and other earnings, was $234,000.

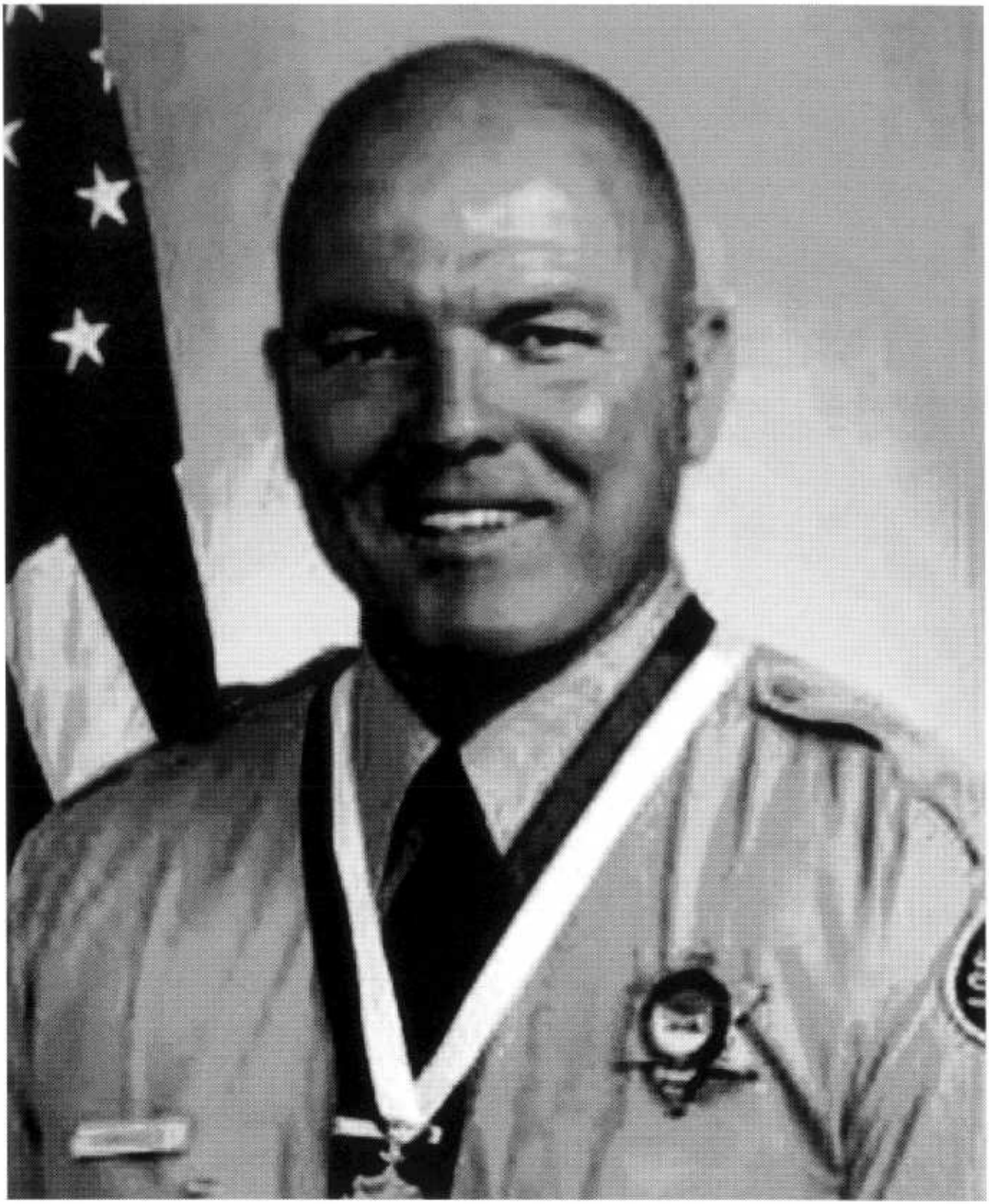
Family violence

Jesus Valenzuela Jr. was charged in 2013 with misdemeanor battery on a woman he was dating. Valenzuela pleaded no contest to a lesser charge of vandalism, according to Los Angeles County court records.

He was sentenced to two years of probation and ordered to complete a 10-week anger management program.

Valenzuela, reached at his house, acknowledged his criminal case but declined to discuss whether he was disciplined.

As of August, he was assigned to the sheriff's Walnut station. Last year, his pay, including overtime and other earnings, was $136,000.



David D. Vasquez

Illegal gambling and false report

David Vasquez was charged with 39 counts of illegal gambling in 1999, court records show. The deputy pleaded guilty to six misdemeanor counts while the rest were dismissed. He was sentenced to four years' probation, court records show.

In a deposition, Vasquez said the Sheriff's Department fired him in 2000 for the illegal gambling case and a separate 1998 incident in which the agency found he had submitted a false police report about a traffic stop. He filed an appeal and got his job back as part of a settlement with the agency that resulted in a 30-day suspension, according to a transcript of the deposition filed in court.

He did not respond to requests for comment.

Vasquez received a meritorious conduct medal in 2010 for rescuing people from a house moments after the dwelling was burglarized by a man suspected of carrying a gun.

He was assigned to the Special Enforcement Bureau as of August. Last year, his pay, including overtime and other earnings, was $207,000.

Tell us your story ↗

We're investigating L.A. deputies with histories of misconduct. Submit a tip.

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UPDATES:

9:55 p.m. Dec. 10: This article was updated to add that the Sheriff's Department sent Dowling a letter in March notifying him that he had been removed from the Brady list.

5:05 p.m. Dec. 9: This article was updated to say Abran Rodriguez denied making false statements and that he said an appeals board has yet to make a final decision on his discipline.

Maya Lau

Maya Lau is a reporter on the Metro desk covering the Los Angeles County Sheriff's Department. She came from the Advocate, based in Baton Rouge, La., where she wrote about criminal justice and corruption in the state's prison system. She was the lead writer on a team that won an Investigative Reporters and Editors award for stories revealing the financial dealings of the long-serving warden of the notorious Angola Prison, who resigned following the reports. She started in journalism as a New York Times news assistant but truly learned how to be a reporter by moving to the small newsroom of the Shreveport Times and writing about crime. She served in the Peace Corps in Senegal after graduating from Vassar College.

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Corina Knoll

Corina Knoll writes for the Metro section of the Los Angeles Times. She was on the team that investigated corruption in Bell — which led to the paper's 2011 Pulitzer Prize for public service — and went on to cover the trials of the city's former officials. She later contributed to the paper's coverage of the San Bernardino terror attack that won the 2016 Pulitzer Prize for breaking news. As a regional reporter, she wrote features about the San Gabriel Valley and the Westside. During her courts beat, she covered high-profile criminal cases and civil disputes, including the Jackson family vs AEG and Bryan Stow vs LA Dodgers. In her current gig she is called upon to rewrite breaking news stories and also writes long-form narratives. Recently, she and two colleagues investigated sheriff's deputies whose histories of misconduct landed them on the department's top-secret Brady list. Raised in the Midwest, she is a graduate of Macalester College.

Did Trump's new lawyer Giuliani make things worse for the president? Here's why some think so
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EXHIBIT C

D.A. examining past criminal cases involving L.A. sheriff's deputies on a secret list of problem officers

By MAYA LAU, BEN POSTON and CORINA KNOLL
JAN 12, 2018 | 3:40 PM

Los Angeles County Dist. Atty. Jackie Lacey has launched a comprehensive review of past criminal cases featuring deputies placed on a secret Sheriff's Department list of officers whose histories of misconduct could undermine their credibility in court. (Mel Melcon / Los Angeles Times)

featuring deputies placed on a secret Sheriff's Department list of officers whose histories of misconduct could undermine their credibility in court.

Dist. Atty. Jackie Lacey said she ordered the examination in response to a Times investigation last month that identified 24 deputies on an older version of the confidential list, including many who were disciplined or convicted of crimes.

Prosecutors, she said, are combing through cases in which those deputies might have testified and are trying to determine whether defendants should have been notified about the misconduct.

The deputies have been identified as potential witnesses in more than 4,400 felony criminal cases since 2000, according to a Times analysis of district attorney records, though it is unclear how often they testified or how significant a role they played in those cases.

Lacey said she could not recall a similarly large undertaking by her office since the Rampart scandal of the late 1990s, when accusations of perjury, evidence-tampering and other serious misconduct against dozens of LAPD officers led prosecutors to undo the convictions of more than 100 defendants.

SEXUAL ASSAULT

Inside a secret 2014 list of hundreds of L.A. deputies with histories of misconduct

DEC 08, 2017 | 5:00 AM

"These are things prosecutors need to know to make sure that justice is done," she said of the deputy misconduct detailed by The Times. "As far as I'm concerned, it's part of our ... obligation to look into those cases in which the officers testified in the past and review those cases."

placed on the Sheriff's Department list.

The union that represents rank-and-file deputies went to court to block Sheriff Jim McDonnell from giving the deputies' names to prosecutors, who are required by law to tell criminal defendants about evidence that would damage the credibility of an officer called as a witness. Last year, an appellate court ruled that the list of about 300 deputies must remain secret, citing California's strict laws protecting the confidentiality of police discipline.

MENTAL HEALTH RESEARCH

Sex. Lies. Abuse. How these L.A. deputies landed on a secret 2014 list of problem officers

DEC 10, 2017 | 9:55 PM

But Times reporters reviewed a 2014 version of the roster that included 277 deputies, and scoured court and law enforcement records for details of how deputies landed on it. A Times analysis showed that the deputies were potential witnesses in more than 62,000 felony cases since 2000. It's unclear how many names have since been removed or added or whether deputies on the 2014 list are included in the current version.

The newspaper published the names of deputies who had been convicted of crimes, found by sheriff's investigators to have committed misconduct or been flagged by prosecutors for behavior that raised serious concerns about their conduct.

Law enforcement and court records show:

One deputy poured taco sauce on an inmate's shirt to fabricate blood from a jail brawl. Another pepper-sprayed an elderly man in the face and then wrote a false report to justify arresting him. A third tipped off a suspected drug dealer's girlfriend that the dealer was being watched by police.

Lacey said while "all of it was bad," she was particularly alarmed by a case from 2000 in which a deputy pulled over a woman and received oral sex from her in his patrol car.

County and law enforcement documents reviewed by The Times show that the woman later told authorities that Deputy Scott Maus didn't use force or threaten her but that she didn't consent and felt intimidated by an armed deputy in uniform, according to county records. Prosecutors at the time concluded there was insufficient evidence to prove Maus acted against the woman's will.

Most of the deputies are still on the force.

California is among 22 states that keep officer discipline from the public, but it is the only one that blocks prosecutors from seeing entire police personnel files.

The review by prosecutors could result in convictions being overturned, said Laurie Levenson, a former federal prosecutor who now is a professor at Loyola Law School in Los Angeles.

"If you envision a case in which the key witness was the officer, and it comes out that he lied in past instances, that could undo all sorts of convictions," she said.

Lacey, whose office is supposed to keep track of officers with credibility problems in case they testify, said she and her prosecutors learned for the first time about some of the deputies by reading the Times report.

"I was surprised but also appreciative of the journalism because we do need to know all of the issues relating to the officers featured in the article," Lacey said.

A district attorney's spokeswoman said the agency is reviewing cases in which deputies testified after committing misconduct.

The office is adding the deputies' names to an internal watchlist of officers with potential credibility issues so that prosecutors can notify defendants in future cases if the deputies are called to testify. The agency is also sending letters to defendants from prior cases in which some of the deputies testified, Lacey said.

Still, a defendant who has already been convicted could have a hard time proving that new revelations of an officer's misconduct would have changed the outcome of his or her case, said Suzanne Luban, a lecturer in law at Stanford Law School.

Luban said that convicted defendants have a high legal burden in proving that any new evidence of misconduct by a police witness would have made a difference in the outcome of their original case.

Leaders of the Assn. for Los Angeles Deputy Sheriffs, the union that sued the sheriff, declined to comment, citing a pending Supreme Court case. But the president of another guild representing deputies highlighted the confidential nature of the information and cautioned against using it as the sole metric of an officer's career.

"Many of these misconduct cases are from many years ago and these employees were punished at that time," said Lt. Brian Moriguchi, president of the Professional Peace Officers Assn. "What about their conduct since then? What about their records for saving lives?"

The so-called Brady list is named for Brady vs. Maryland, a landmark 1963 Supreme Court decision that requires prosecutors to alert defendants to favorable evidence, including information that could undermine the credibility of government witnesses

McDonnell said his effort to give the deputy names to prosecutors is part of his attempt to reform the Sheriff's Department, which was upended by a jail abuse scandal that resulted in the criminal conviction of more than 20 agency officials, including former Sheriff Lee Baca.

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For more news about the sheriff's Brady list, follow us on Twitter: @mayalau, @bposton **and** @corinaknoll**.**

UPDATES:

3:30 p.m.: This article was updated to add a statement released by the president of the Professional Peace Officers Assn.

This article was originally published at 6:30 a.m.

Maya Lau

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1875 Century Park East, 23rd Floor, Los Angeles, California 90067-2561.

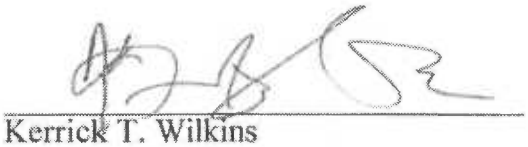
On May 4, 2018, I served the following document(s) described as on the interested parties in this action as follows:

BRIEF OF *AMICI CURIAE* ACLU OF SOUTHERN CALIFORNIA, ACLU OF NORTHERN CALIFORNIA, ACLU OF SAN DIEGO AND IMPERIAL COUNTIES, AND DIGNITY AND POWER NOW IN SUPPORT OF REAL PARTIES IN INTEREST

BY MAIL: By placing a true copy thereof in sealed envelopes addressed to the parties listed on the attached Service List and causing them to be deposited in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with our firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 4, 2018, at Los Angeles, California.



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