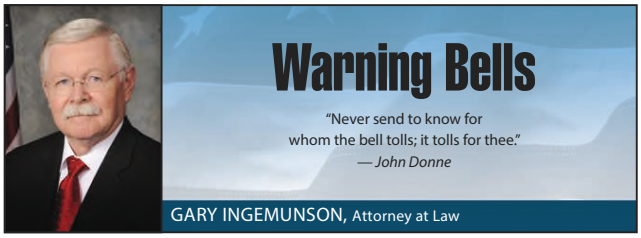

Beware the ORWITS!

It starts with a letter sent to you and the Chief of Police. *"Dear Officer X: The Discovery Compliance Unit (DCU) of the Los Angeles County District Attorney's Office (LADA) has been provided information regarding an alleged discrepancy between your report and the Digital In-Car Video (DICV) regarding the arrest of a suspect for possession of a firearm while being a felon."*

How did Officer X get in this predicament? It came from a memo written by the Deputy District Attorney assigned to prosecute Officer X's arrest of an ex-con with a handgun. In short, Officer X observed a traffic violation, made a traffic stop, smelled and saw marijuana in plain sight, recognized the driver from previous contacts as being an admitted gang member who said he was on federal probation, asked him to exit the vehicle and observed and recovered a Beretta 96 .40-caliber semi-auto handgun fully loaded with one in the chamber. Great police work and one more armed gang banger off the street. But what does that have to do with it?

Officer X on the day of the arrest completed an arrest report. Four months later, Officer X testified at the defendant's preliminary hearing. His testimony was consistent with the arrest report. Then, a little less than four months after that (almost eight months after the arrest), he was questioned by another Deputy District Attorney in preparation for trial. It turned out that the Digital In-Car Video had not been obtained by the DDA until several months after the defendant's arraignment. The DICV turned out to be inconsistent with some statements in the arrest report and Officer X's preliminary hearing testimony. The DDA wrote a memo to his chain of command about the inconsistencies, and the result was the letter to Officer X and the Chief of Police. No surprise here, the Department initiated a 1.28.

Big mistake No. 1, Officer X, like all the other officers in his division, was pressed by management to limit overtime, so Officer X did not take the time to review his DICV before writing the arrest report. Big mistake No. 2, Officer X, four months later, did not review his DICV before appearing to testify at the preliminary hearing. He relied on the accuracy of his report and his memory of the stop. Neither the DDA nor the defense attorney had a copy of the DICV at that time, although Officer X did have access through Department computers if he so wished. Big mistake No. 3, the Los Angeles District Attorney implemented ORWITS. LAPD officers have enough Big Brothers watching over them. This system just drives another stake into the heart of law enforcement's ability to deal with crime and puts a wedge, widening the gap, between the police and the prosecutor.

The LADA has long had a Brady system. *Brady v. Maryland* is a 1963 U.S. Supreme Court case, which along with *Giglio v. U.S.* and PC 1054.1, mandates prosecutors to provide exculpatory and impeachment information to the defendant in a case being prosecuted. When an officer was placed in that system, a letter was sent to the Department and the officer. The officer could appeal being placed in the system, and the appeal required the LADA to have "clear and convincing" evidence that the officer fit placement in the system under *Brady*. In early 2017, the LADA dropped that standard, and on March 14, 2018, the new Brady/ORWITS system was implemented. It consists of two data banks, one for Brady, one for ORWITS. The Brady data bank contains information that *must* be disclosed to the defense. The ORWITS database contains information that *may* be disclosed to the defense. Both databases come under the umbrella of the Discovery Compliance System (DCS).

Information from what source, you may ask? LADA documents put it this way: *"Potentially disclosable information or materials come from many sources, including Pitchess motions, observed courtroom conduct, or testimony, trial or hearing transcripts, police reports and recordings, official records (CII, NCIC, DMV, etc.), newspaper articles, internet searches and others."*

Translated, that means your text messages, Facebook posts, comments made to or heard by a DDA, *L.A. Times* articles, CYA DA rejects obtained by IA on personnel complaints, or, as in one recent case, YouTube videos, that come to the attention of the LADA, in whatever way, are entered into ORWITS. Once placed in ORWITS, the only appeal is that a mistake as to identity has been made, since the LADA isn't saying the entry is true (and will not investigate to see if it is), only that the information exists. By the way, when the letter arrives at the Department, an investigation of the personnel complaint that will undoubtedly be opened, will take place.

You need to be aware that when you are talking to a Deputy District Attorney, that attorney has the following mandate from his/her boss: "*Deputies who learn of potentially impeaching information about a recurrent witness shall promptly inform their Deputy-in-Charge or Head Deputy.*" DDAs are *not* your attorney. There is no attorney/client privilege. As you can see by the quote, there is a duty to report you if you say or do anything that could be interpreted as affecting your credibility.

Why is the LADA implementing this policy? For your own good, the LADA says. Although this might sound like trying to put lipstick on a pig, the reasoning goes like this. The defendant's attorneys may do research on your name in Google, Facebook or any of the hundred other sources of information to find out negative things about you so they can make you look bad in front of the jury. The prosecutor needs to know this information in advance to protect you. If the information is known by the DDA, he or she may be able to bring a 402 motion to the judge prior to the testimony in front of the jury, restricting the defense from asking questions on that subject.

All well and good, I guess, but why the letter to the Department? How often does this scenario of being surprised occur? Enough to gather information on 10,000 officers into a database that never forgets? Is the LADA killing an ant with a wrecking ball? Why gather information for the defense that the defense may not have discovered?

Well, maybe it won't be shared with the defense. After all, it is the DDA's option to disclose ORWITS material, unlike the mandatory duty to disclose Brady material. However, Rule 5-220 of the State Bar Rules of Professional Conduct and Penal Code section 1054.1 (e) can trigger a report to the State Bar for the failure to provide exculpatory and impeaching information. If you are the DDA, would you risk your Bar Card (and therefore your job) by not disclosing ORWITS information, or would you play it safe?

So, here's how it works. When a case is filed, a witness list is entered into the LADA computer system for the generation of subpoenas. The subpoena system automatically checks the witness information with the Brady/ORWITS data. If there is a hit, the computer advises the DDA, who then is directed to enter the Brady/ORWITS system and view the data.

The DDA is also required to run you through the Brady/ORWITS system before the preliminary hearing and again 30 days before trial, in case you're a newbie in the system. Also, the filing DDA is supposed to run you before filing a case. A DDA who contemplates presenting your testimony before a grand jury must run you first. DDAs are also required to run you through the system if you are the affiant on a search warrant or signing a declaration in support of an arrest warrant. If there is a hit, they are told to recommend using another peace officer as a declarant or to include a summary of the Brady/ORWITS potential impeachment material in the affidavit for review by the signing judge.

What to do? Since once you are in ORWITS it is impossible to get out, the strategy must be "don't get in." Unfortunately, that may not be possible, but you can reduce your chances. First, don't post anything on Facebook, or text anything that you would not want on page one of the *L.A. Times*. Second, be wary of your interactions with prosecutors. Third, and most important, be accurate in your reports and testimony.

Accuracy is your most important product (and best defense)! PREPARE-PREPARE-PREPARE! WATCH YOUR VIDEOS *before* you write a report to make sure it is accurate. WATCH YOUR VIDEOS *prior* to going to court or talking to the DDA. NEVER GUESS when asked a question. "I don't know" and "I don't remember" are perfectly appropriate answers when you are not sure of something.

Being wrong can taint you as a witness for the rest of your career, or even end up with you being prosecuted, or sent to a Board of Rights.

The DDA has the responsibility to properly prepare you before you testify. The Department has a responsibility to ensure that you provide accurate information in your reports and testimony. Caseloads and concerns about overtime respectively will bury those responsibilities. Most of the time, you will not be properly prepared by the DDA and you will not be relieved of the pressure to reduce overtime by the Department. You are on your own. Beware of ORWITS and insist on the preparation time to be accurate!

Be legally careful out there.

Links to various things in this article are at **www.warningbells.com**. ❖