



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

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TODD SPITZER

November 21, 2019

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

RE: Criminal Cases with Evidence Collected but not Booked at OCSD

Dear Sheriff Barnes,

On Monday, November 18, 2019, at the briefing held at your headquarters, I first became aware that your office conducted a wide-scale internal audit of 98,676 Departmental Records (DRs) or sheriff reports to review evidence collection and booking by OCSD deputies over a two year period. At the briefing, I also learned Mary Izadi, OCSD's Constitutional Policing Advisor, wrote a report regarding the audit's findings. My office requested a copy of her report which was promptly provided the same day. Ms. Izadi's report dated February 2019 not only discussed the "Initial Audit's" process and findings for the 98,676 reports, but also detailed the process and findings of a "Secondary Audit" of 450 cases. This second audit found that in 47% of the 121 reports where deputies stated they had collected and booked evidence, there was no evidence booked. This means in 57 of the reports reviewed, a deputy failed to book a piece of evidence that the deputy stated he or she collected.

As a result, I have concerns that my office may have filed and prosecuted criminal charges against individuals based on OCSD reports that inaccurately stated evidence had been booked. As members of the same prosecution team, we must work together to protect the integrity of all criminal prosecutions and convictions in this county. My goal is to identify any and all cases handled by OCDA where a defendant's due process rights may have been negatively impacted by having evidence collected but not booked. A prosecutor is not only required to protect the due process rights of the accused before conviction, but "[e]ven 'after a conviction the prosecutor ... is bound by the ethics of his office to inform the appropriate authority of ... information that casts doubt upon the correctness of the conviction.'" (*Curl v. Superior Court* (2006) 140 Cal.App.4th 310, 318, citing *Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25.)

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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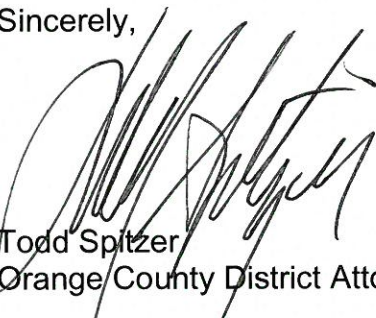
In order to fulfill my legal and ethical obligations as District Attorney, I need to know which cases, if any, were filed by my office where OCSD failed to book evidence after collecting it. Therefore, your agency now has the responsibility to provide the following information on these cases, from databases that are either under your possession and control, or are public (i.e. Vision):

1. The name and DOB of the defendant;
2. The OCSD report DR number;
3. The Orange County Superior Court case number;
4. The date criminal charges were filed;
5. The specific item or items listed in the report that were not booked;
6. Whether the criminal case is pending or has resolved;
7. If the case has resolved, the date of the disposition, and
8. How the case was resolved (i.e. plea, verdict, dismissal, etc.);
9. The attorney(s) of record for the defendant noted in Vision.

I know you and your department take evidentiary issues seriously and have begun initiating a series of corrective measures to address some of the deficiencies discovered in your audits. I believe we share the responsibility of restoring the rights of any person who may have been prosecuted in a case where recovered evidence was not booked. I understand it may take considerable time to compile this information. Therefore, in the event the universe of cases meeting this description is voluminous, I would appreciate you advising on a methodology on how to deliver this information in segments rather than waiting for your entire review to be completed. This will allow my office to commence notification to defense counsel as soon as possible.

Thank you in advance for your attention to this matter. I appreciate your understanding that the conduct that you brought forward through your own investigative efforts, which I commend, has now created significant legal and constitutional obligations on my Department.

Sincerely,



Todd Spitzer  
Orange County District Attorney