WAYNE MACKESON, PC
ATTORNEYS AT LAW

30 June 2021

Linn D. Davis
Assistant General Counsel
Oregon State Bar
PO Box 231935
Tigard, OR 97281-1935

Via Email Only

Re: **Leslie C. Wolf** (LDD 2100422)
Brian D. Aaron (Letter dated March 16, 2021)
Sarah E. Carpenter (Complaint filed April 4, 2021)
Kara K. Davis (Joint Letter dated April 13, 2021)
Matthew E. Ellis (Joint Letter dated April 13, 2021)
William Howell (Letter dated May 18, 2021)

Dear Mr. Davis,

Please consider this letter to be Ms. Wolf's response to the emails you sent to Ms. Wolf and Lawrence Matasar, Esq., dated April 13 and 26, 2021, in which you requested her account of the matter raised in the materials submitted by the above-referenced complainants.

I. Background: The Trial of the *Garcia-Gonzalez* Case in 2010

In **July 2010**, the case of *State v. Gerardo Garcia-Gonzalez* came on for trial in Wasco County Circuit Court. The trial judge was the Honorable John Kelly. Mr. Garcia-Gonzalez was represented by Brian Aaron. The State was represented by Eric Nisley, then the District Attorney for Wasco County, and Leslie Wolf, then the Chief Deputy District Attorney for Wasco County.

There was a rumor around town that Ms. Wolf was having an extra-marital affair with Sgt. Jeff Kienlen, then a detective employed by The Dalles Police Department. Sgt. Kienlen had interviewed the victim and other witnesses, and had attempted to interview the defendant in the *Garcia-Gonzalez* case. Accordingly, he was potentially a witness at trial.

Mr. Nisley got word that Mr. Aaron intended to make an issue of the rumored affair at the trial in the *Garcia-Gonzalez* case. (In his complaint, at page 1, Mr. Aaron claims that he was "deeply concerned" that the relationship "could cause a conflict of interest for the prosecution team and impact [his] client's right to due process.") On the State's behalf, Mr. Nisley filed a motion to exclude evidence of the nature and extent of the relationship between Sgt. Kienlen and Ms. Wolf. The motion was supported by Sgt. Kienlen's affidavit that established that there was nothing more than a close, personal friendship between Sgt. Kienlen and Ms. Wolf.

wayne@waynemackeson.com
(503) 329-3418

714 Main St., Suite 201
Oregon City, OR 97045

kelly@waynemackeson.com
(503) 799-9101

(503) 656-8300

In any event, I do not understand any of the complainants to be arguing that a rumored extra-marital affair between a police officer and a prosecutor somehow constitutes impeachment evidence that was material[1] to guilt or to punishment under *Brady v. Maryland*, 373 US 83, 87-88, 83 SCt 1194, 10 L Ed2d 215 (1963), such that the State was obligated to disclose the rumor to the defense in discovery prior to trial in the *Garcia-Gonzalez* case.

And let's at least be honest about Mr. Aaron's desire to interject a rumored extra-marital affair into the trial of a child sexual abuse case. The only reason for attempting to introduce such gossip into the trial was to divert the jury's attention away from the substantive issues in the case.

Judge Kelly held a hearing on the State's motion and ultimately issued an order in which he ruled, essentially, that Mr. Aaron could present evidence at trial in the *Garcia-Gonzalez* case that Sgt. Kienlen and Ms. Wolf had a close, personal friendship, but nothing further.

In this regard, I would argue, for the reasons stated below, that the evidence of a close, personal friendship between Sgt. Kienlen and Ms. Wolf was not relevant to any substantive issue that was "of consequence to the determination of the action." *State v. Guzek*, 322 Or 245, 251, 906 P2d 272 (1996). Regardless, I would emphasize that Judge Kelly's ruling did no more than limit the scope of cross-examination pursuant to OEC 611(2); it was neither a discovery ruling nor a ruling that the friendship between Sgt. Kienlen and Ms. Wolf was *Brady* material.

"OEC 401 requires a 'rational relationship' between the evidence offered 'and substantive issues properly provable in the case.'" *State v. Kesselring*, 308 Or App 12, 18, 479 3d P3d 1063 (2020) (*quoting State v. Turnridge*, 359 Or 364, 450, 374 P3d 853 (2016)).

"Whether particular circumstantial evidence is sufficient to support a particular inference ... is a question of law for a court to decide." *State v. Bivens*, 191 Or App 460, 467, 83 P3d 379 (2004) (*citing Delgado v. Souders*, 334 Or 122, 135, 46 P3d 729 (2002)). *Accord State v. Rogers*, 301 Or App 393, 398, 457 P3d 363 (2019). To infer that a male police officer has a "motive or bias" to "shade" or "twist" the truth in some unspecified way on the basis of a close, personal friendship with a female prosecutor is nothing more than false innuendo and gender-based speculation. *See State v. Sanchez-Anderson*, 300 Or App 767, 781, 455 P3d 531 (2019).

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[1] The Supreme Court's decision in *Brady* did not create a discovery right as such; rather, it created an obligation that deals "with a defendant's right to a fair trial mandated by the Due Process Clause." *United States v. Agurs*, 427 US 97, 107, 96 SCt 2392, 49 LEd2d 342 (1976). The term "material" does *not* equate to "relevant." "[T]he prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial." *United States v. Agurs*, 427 US at 108. The phrase "of sufficient significance" means that "the omitted evidence creates a reasonable doubt that did not otherwise exist." *Id.* at 112. "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different." *United States v. Bagley*, 473 US 667, 682, 105 SCt 3375, 87 LEd2d 481 (1985); *cf. Kyles v. Whitley*, 514 US 419, 435, 115 SCt 1555, 131 LEd2d 490 (1995).

"Generally speaking, an impermissible inference is one that 'requires too great an inferential leap,' *State v. Lopez-Medina*, 143 Or App 195, 201, 923 P2d 1240 (1996), and one that requires a 'stacking of inferences' that is 'too speculative.' *State v. Piazza*, 170 Or App 628, 632, 13 P3d 567 (2000)." *State v. Macnab*, 222 Or App 332, 336, 194 P3d 164 (2008). *Accord State v. Kesselring*, 308 Or App at 21; *State v. Odneal*, 305 Or App 635, 642, 469 P3d 857 (2020); *State v. Rogers*, 301 Or App at 398-99.

The line between a permissible inference and impermissible speculation "is drawn by the laws of logic. If there is an experience of logical probability that an ultimate fact will follow a stated narrative or historical fact, then the jury is given the opportunity to draw a conclusion because there is a reasonable probability that the conclusion flows from the proven facts." *State v. Stewart*, 259 Or App 588, 597, 314 P3d 966 (2013) (*quoting State v. Bivens*, 191 Or App at 467 (*quoting Tose v. First Presbyterian Bank, N.A.*, 648 F2d 879, 895 (3rd Cir 1981), *cert den* 454 US 893 (1981)).

"Like any other type of evidence, evidence of a witness's bias or interest is relevant if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' OEC 401 (defining relevant evidence)." *State v. Crum*, 287 Or App 541, 553, 403 P3d 405 (2017).

"Evidence of bias or interest includes evidence that a witness has a personal motive for stating that he or she *took a certain action*, such as remaining in good standing with an employer." *State v. Crum*, 287 Or App at 553 (emphasis added). "[A] 'party may impeach a witness for bias through evidence of the witness's relationship with another where the bias resulting from the relationship[2] is a matter of reasonable inference rather than mere speculation.'"*State v. Shepherd*, 305 Or App 312, 320, 468 P3d 487 (2020) (*quoting State v. Noudain*, 300 Or App 222, 230, 452 P3d 970 (2019), *rev allowed* 366 Or 257 (2020). *Accord State v. Hernandez*, 269 Or App 327, 332, 344 P3d 538 (2015) ("[I]t is error for a trial court to exclude evidence from which the jury could reasonably infer that a witness has a motive to testify *in a certain manner*." (Emphasis added)).

Of course, "a criminal defendant has great latitude in cross-examining a prosecution witness, particularly in cases where the prosecution witness and the defendant give sharply conflicting accounts of the facts, and the outcome of the case rests heavily upon the credibility of the witnesses." *State v. Hubbard*, 297 Or 789, 794, 688 P2d 1311 (1984).

In the *Garcia-Gonzalez* case, the defense was attempting to infer that the friendship was

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[2] The express terms of OEC 609-1 notwithstanding, "friendship, family relationship, etc., and interest in the form of amount of expert witness fees, etc., continue to be viable forms of impeachment even though no conduct or statement is involved." *State v. Brown*, 299 Or 143, 150, 699 P2d 1122 (1985); *Harper v. Washburn*, 308 Or App 244, 251 n.2, 479 P3d 1101 (2020).

more than what it actually was, and then infer that the friendship gave Sgt. Kienlen a bias or motive to "shade" or "twist" the truth – all without specifying what portion of his testimony the defense was challenging as untruthful. All of that was illogical and impermissible speculation.

As Mr. Aaron himself observes, police officers and prosecutors view themselves as being members of the same "team." And I suppose that if a police officer forms the opinion that a particular defendant is a child molester, then there is arguably a motive to "shade" or "twist" the facts in favor of the State. However, the fact that there might be a close, personal friendship between the officer and the prosecutor adds nothing to that equation. The counterbalance is an officer's sense of pride, honor, and professionalism, mixed with the fear that DPSST might decertify him or her if the officer were to be dishonest. *See* section IV at pages 14-16, *infra*.

There can be any number of personal relationships that might exist between a prosecutor and a police officer who happens to be called as a witness in a case. A police officer could be the prosecutor's brother or sister, or the prosecutor's son or daughter, or they could be best friends from grade school, or engage in a range of activities that cause them to be close, personal friends. The nature and extent of any given relationship is necessarily a matter of degree. They are not made admissible by the off chance that the officer might be a little more inclined to "shade" or "twist" the truth in some unspecified way than he or she might otherwise be inclined to be.

In the *Garcia-Gonzalez* case, the friendship between Sgt. Kienlen and Ms. Wolf was not relevant to any substantive issue of consequence to the outcome of the case; it was not relevant to bias or interest. OEC 609-1. It was not a case in which Sgt. Kienlen and the defendant, or any other witness for that matter, gave sharply conflicting accounts of the facts. Indeed, to my knowledge, the defense never specified in what way Sgt. Kienlen's trial testimony was untruthful. Even had it done so, one cannot reasonably infer that Sgt. Kienlen had a motive to lie from the fact that there was a close, personal friendship between him and Ms. Wolf.

In any event, the Court permitted Mr. Aaron to establish, through cross-examination of Sgt. Kienlen, that there was a close, personal friendship between Sgt. Kienlen and Ms. Wolf, a fact that was never in dispute. Again, I would emphasize that the court did *not* rule that the friendship was something that the State was obligated to disclose in discovery prior to trial or that it was exculpatory evidence of sufficient significance to constitute *Brady* material.

II. Background: The "Pen Gun" Incident in 2010 & Hotel Accommodations in 2011

In **October 2010**, Sgt. Kienlen became involved in a controversy over his possession of a "pen gun" that had been seized a number of years earlier by the Mid-Columbia Interagency Narcotics Team [hereinafter "MINT"]. Apparently, Sgt. Kienlen had displayed and fired the pen gun on a camping trip in eastern Oregon that was attended by a number of other police officers.

An investigation ensued, headed by Lt. Patrick Ashmore of the Oregon State Police.

On **December 3, 2010**, Jay Waterbury, then the Chief of Police for the City of The Dalles, issued a "Written Letter of Reprimand" to Sgt. Kienlen regarding his possession of the pen gun.

On **January 16, 2011**, Lt. Ashmore issued a report relating to Sgt. Kienlen's possible mishandling or theft of the pen gun.

Mr. Nisley asked the Department of Justice [hereinafter "DOJ"] to review the report.

On **February 2, 2011**, Darin E. Tweedt, Deputy Chief Counsel at DOJ, sent a letter to Chief Waterbury and Lt. Ashmore stating that he did not find sufficient evidence to prove that Sgt. Kienlen had committed a crime. However, he forwarded a copy of the report to the Oregon Department of Public Safety Standards & Training [hereinafter "DPSST"] for its review.

On **February 4, 2011**, Theresa M. King at DPSST sent Chief Waterbury an email stating that DPSST referred such complaints on currently certified officers to the hiring authority and that DPSST was closing its case.

During **the week of February 7, 2011**, Sgt. Kienlen and Det. Eric Macnab, also of The Dalles Police Department, attended a training seminar held at the Valley River Inn in Eugene. During that same week, Ms. Wolf attended a different seminar, one held in Salem, and while there in attendance, she stayed at the Comfort Suites Hotel in Salem.

Prior to the training seminar, Sgt. Kienlen asked Chief Waterbury if he could stay in a different room at the hotel because he did not want to stay with Det. Macnab. (Apparently, there was some sort of personal animosity between the two officers.) Chief Waterbury denied the request. Sgt. Kienlen then asked Chief Waterbury if he could take his city vehicle to the training seminar so that he could see his cousin in Eugene. The latter request was approved. At some point in time, Sgt. Kienlen told Det. Macnab that he was going to stay with a cousin near Salem.

In fact, Sgt. Kienlen's cousin lived in Hubbard which is approximately 85 miles away from Eugene and 21 miles away from Salem.

On **February 7, 2011,** Sgt. Kienlen stayed in his own room at the Valley River Inn in Eugene where the training seminar was being held.

On **February 8, 2011, and February 9, 2011,** Officer Kienlen stayed in Ms. Wolf's room at the Comfort Suites Hotel in Salem.

On **February 10, 2011**, Officer Kienlen stayed once again in his own room at the Valley River Inn in Eugene.

On **February 16, 2011**, Chief Waterbury and Sgt. Steve Baska conducted a recorded interview with Sgt. Kienlen about additional information received on the pen gun issue as well as the hotel accommodations made in connection with the above-referenced training seminar.[3]

There is no claim that Sgt. Kienlen lied during the interview about where he had stayed during the training seminar; on the contrary, he told the truth. In sum, he told Chief Waterbury and Sgt. Baska that he had stayed two nights in his room at the Valley River Inn in Eugene and two nights in Ms. Wolf's room at the Comfort Suites Hotel in Salem. *See* Appendix "A" *infra*.

The interview establishes the following baseline for what was taken to be the truth:[4]

1. Prior to the training seminar, Sgt. Kienlen asked Chief Waterbury if he could stay in a separate hotel room because he did not want to stay with Det. Eric Macnab who was attending the same seminar at the Valley River Inn in Eugene.

2. Chief Waterbury denied Sgt. Kienlen's request.

3. Sgt. Kienlen then asked Chief Waterbury if he could take his city vehicle to the training seminar because he wanted to see[5] his cousin who lives in Eugene.

4. Chief Waterbury approved the latter request.

5. Prior to the training seminar, Sgt. Kienlen told Det. Macnab that he was going to stay with a cousin near Salem.[6]

6. In fact, Sgt. Kienlen's cousin lived in Hubbard, which is 85 miles away from Eugene and 21 miles away from Salem.

7. On February 7, 2011, and February 10, 2011, Sgt. Kienlen stayed in own room at the Valley River Inn in Eugene.

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[3] Apparently, another officer took a picture of Sgt. Kienlen's vehicle that was parked in the lot at the Comfort Suites Hotel and then shared that information with Chief Waterbury.

[4] Chief Waterbury found "no violations for truthfulness" regarding the "Pen Gun" issue. (Letter, at page 1).

[5] According to the transcript of the interview, Chief Waterbury said, "So, you – you left me with the impression you wanted to see your cousin in Eugene. See or stay – I – that doesn't matter to me."

[6] According to the transcript of the interview, Chief Waterbury said, "You told Macnab you were gonna stay with a cousin near Salem." However, it is not clear exactly when Sgt. Kienlen said that to Det. Macnab.

8. On February 8, 2011, and February 9, 2011, Sgt. Kienlen stayed in Ms. Wolf's room at the Comfort Suites Hotel in Salem.

Accordingly, the purported untruthfulness consisted of the following:

1. Sgt. Kienlen told Chief Waterbury that he wanted to take his city vehicle because he wanted to see or stay with his cousin in Eugene, when in fact Sgt. Kienlen's cousin lived in Hubbard;

2. Sgt. Kienlen told Chief Waterbury that he wanted[7] to see or stay with his cousin in Eugene, when in fact he intended to stay with Ms. Wolf in Salem.[8]

3. Sgt. Kienlen told Det. Macnab and that he was going to stay with a cousin near Salem, when in fact he intended to stay in Salem with Ms. Wolf in Salem; and

On **February 17, 2011**, Chief Waterbury issued a "Notice of Discipline" pursuant to which Sgt. Kienlen was "demoted from Sergeant to Patrol Officer" on the ground that he had violated The Dalles Police Department Policy and Procedure W1.100.040 on Truthfulness.

On **February 23, 2011**, Mr. Aaron submitted to The City of The Dalles [hereinafter "The City"] a public records request seeking "documents involving disciplinary action and or a demotion in rank concerning Officer Jeffrey Kienlen during the time period from June 1, 2010 through the present date February 23, 2011."[9]

On **March 17, 2011**, the City denied Mr. Aaron's request, reasoning that the records were exempt from public disclosure under the Oregon Public Records Laws because they related to, or contained evidence of, a personnel discipline action, ORS 192.501(12), and because it was information of a personal nature. ORS 192.502(2).

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[7] No one seems to have considered or inquired about the possibility that Sgt. Kienlen's statements could have been true at the time that they were made. For example, one might state, "I'm going to the beach this weekend." If, in fact, one had no intention of going to the beach at the time the statement was made, then the statement would be false. On the other hand, if one truly intended to go to the beach at the time the statement was made, but if one later changed one's mind for whatever reason, then the statement would still have been true at the time it was made.

[8] Sgt. Kienlen had the Chief's permission to use his city vehicle for personal reasons, i.e., to either see or stay with his cousin. Hubbard is "near Salem." The point was, he didn't want to stay with Det. Macnab. It is immaterial whether he ended up staying in his own room, or at his cousin's place, or in Ms. Wolf room, or sleeping in his car.

[9] Apparently, word traveled fast. It seems to me that nothing would prohibit a defense lawyer from asking Officer Kienlen, "Why did you get demoted?" A trial court would then have to decide the possible relevance of the demotion to a substantive issue properly provable in the case. *State v. Guzek*, 322 Or at 251.

On **March 31, 2011**, pursuant to ORS 192.411 *et seq.*, Mr. Aaron petitioned the Office of the Wasco County District Attorney for review of the requested records and for a determination as to whether they could be withheld from public inspection.

On **April 12, 2011**, Mr. Nisley issued a 6-page Order and Opinion [hereinafter "the Order"] that encompassed his analysis of the records and information in question, in terms of both the Oregon Public Records Law and the due process requirements under *Brady v. Maryland*, 373 US 83, 83 S Ct 1194, 10 L Ed 2d 215 (1963).

In the Order, at page 3, Mr. Nisley framed the issues as follows:

> "Broadly stated, [the requests] related to two general concepts: the issue relating to a 'pen gun' and a question about where Officer Kienlen stayed during training. More specifically:
>
> 1. Allegations from fellow officers that Jeffrey Kienlen lied about or attempted to conceal evidence of evidence seized, specifically a pen gun.[10]
>
> 2. Records or photographs and any evidence that Officer Kienlen was untruthful about where and with whom he stayed with while attending a law enforcement training in the Salem/Albany area earlier this year.
>
> 3. Records concerning Jeffrey Kienlen's demotion in rank." (Order, at page 3).

Mr. Nisley assumed, for the purpose of argument, that Officer Kienlen had lied about where he had stayed during the law enforcement conference.[11] (Order, at page 5).

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[10] Mr. Nisley ordered the City to disclose Lt. Ashmore's report dated January 16, 2011, and the other records that related to the pen gun incident. As I understand it, this Bar complaint essentially relates to the latter question, *i.e.*, the question about where Officer Kienlen stayed during the week of February 7, 2011.

[11] Mr. Nisley's assumption was not quite correct. The allegation was *not* that Sgt. Kienlen lied after the fact about where he had stayed; rather, the allegation was that he lied before the fact about where he was intending to stay. For the reasons stated in footnote 7, *supra*, it is an important distinction.

It is also worth noting that the question about where Officer Kienlen intended to stay during the training seminar was never adjudicated in a fair and neutral forum. Sgt. Kienlen was ambushed in a recorded interview, ostensibly about the pen gun incident. There were a number of reasonable questions that easily could and should have been asked.

For example: "Did you tell me that you wanted to see your cousin in Eugene or did I misunderstand you?" "Did you later change your mind about where you were going to stay?"

Of course, impeachment evidence can fall within the ambit of exculpatory evidence that a prosecutor has a duty to disclose to the defense. *Giglio v. United States*, 405 US 150, 92 S Ct 763, 31 L Ed 2d 104 (1972); *cf* ORS 135.815(1)(g)(C). However, Mr. Nisley concluded that the records relating to the Notice of Discipline did not constitute admissible impeachment evidence; therefore, the records were not *Brady* material. *Wood v. Bartholomew*, 516 US 1, 5, 116 S Ct 7, 9, 133 L Ed 2d 1 (1995); *see also Fuller v. Department of Public Safety Standards and Training*, 299 Or App 403, 415, 452 P3d 450 (2019); *State v. Deloretto*, 221 Or App 309, 321-26, 189 P3d 1243 (2008), *rev den* 346 Or 66 (2009); OEC 608(2). Accordingly, he ruled that neither the Oregon Public Records Law nor *Brady* required disclosure of the requested records.

Nonetheless, on **September 9, 2011**, Mr. Nisley followed up by asking the DOJ to investigate allegations of false swearing or perjury involving Officer Kienlen. The matter was investigated by Criminal Justice Division Special Agents Todd Gray and Dennis Carson. The two special agents conducted a number of interviews and examined a number of documents obtained by way of subpoena, including Sgt. Kienlen's affidavit and a transcript of the hearing held before Judge Kelly.

On **February 6, 2012**, Senior Assistant Attorney General Shannon Kmetic sent a letter to District Attorney Nisley, Chief Waterbury, and Capt. Patrick Ashmore concluding that their investigation "did not reveal any evidence of criminal misconduct by Jeff Kienlen."

III. Summary of the Bar Complaints

A. Complaint by Brian Aaron

Mr. Aaron states that, in 2010, he represented Mr. Garcia-Gonzalez in the case of *State v. Gerardo Garcia-Gonzalez*, Wasco County Circuit Court Case No. 0900280CR, in which his client was charged with Rape in the First Degree and Sexual Abuse in the Second Degree.

The trial in the *Garcia-Gonzalez* case was held in July 2010. Mr. Aaron states that in preparing for trial, he "received information" that Sgt. Jeff Kienlen was having what Mr. Aaron describes as "a romantic extra-marital affair" and "romantic intimate relationship" with Deputy District Attorney Leslie Wolf who, along with District Attorney Eric J. Nisley, was prosecuting the *Garcia-Gonzalez* case. Mr. Aaron states that he called Sgt. Kienlen and asked him about "the information received" and that Sgt. Kienlen denied that he was having an affair with Ms. Wolf.[12]

On July 6, 2010, Mr. Nisley filed a "Motion In Limine To Exclude Evidence" seeking to exclude evidence of the nature and extent of the relationship between Sgt. Kienlen and Ms. Wolf.

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[12] Mr. Aaron states that he was "deeply concerned" that the relationship "could cause a conflict of interest for the prosecution team and impact [his] client's right to due process." (Letter, at page 1).

Attached to the motion was an "Affidavit of Jeff Kienlen" that established, essentially, that there was close, personal friendship between Sgt. Kienlen and Ms. Wolf.

On July 9, 2010, an evidentiary hearing was held before the Honorable John Kelly.

On July 13, 2010, Judge Kelly issued an "Order After Motion In Limine Hearing" in which the Court ruled as follows:

> 1. Defense Counsel can show through the testimony of Sgt. Detective Kienlen that he has a close personal friendship with Chief Deputy Leslie Wolf.
>
> 2. Defense Counsel can further show through the testimony of Sgt. Detective Kienlen that Chief Deputy Leslie Wolf, her husband John Wolf, and Sgt. Kienlen's wife, Jill Kienlen are best friends.
>
> 3. Nothing further about the relationship between Sgt. Detective Jeffrey Kienlen and Chief Deputy Leslie Wolf will be permitted. (Pages 1-2).

At this juncture, please permit me to digress a moment:

There is not a defense lawyer on the planet who does not believe that prosecutors and police officers view themselves as being on the same "team" at trial. Mr. Aaron says as much on page 1 of his letter to the Bar. *See* footnote 12 *supra*. As such, police officers are quite naturally favorably inclined, shall we say, towards the prosecution.

There are apt to be all sorts of personal and professional relationships formed between prosecutors and police officers. The fact that prosecutors and cops might go camping, shoot pool, or smoke cigars together when they are not on the clock is simply not relevant to the existence of any fact that is "of consequence to the determination of the action." OEC 401. This is particularly so in cases where the defense never even bothers to identify the portion of the police officer's testimony that it is attacking as being untruthful.

In any event, the *Garcia-Gonzalez* case proceeded to trial.

On July 22, 2010, Mr. Garcia-Gonzalez was found guilty of both charges.

On August 9, 2010, the court issued a Judgment by which Mr. Garcia-Gonzalez was sentenced to the custody of the Oregon Department of Corrections for a period of 300 months.

On August 19, 2010, Mr. Garcia-Gonzalez filed a Notice of Appeal.

On April 5, 2013, the Judgment was affirmed without opinion.

Mr. Aaron states that, in January 2021, he was contacted by Mr. Ellis, the newly elected District Attorney for Wasco County, who told him that he had located the "Notice of Discipline" dated February 17, 2011, issued by Jay Waterbury, the Chief of Police for the City of The Dalles, pursuant to which Sgt. Kienlen had been "demoted from Sergeant to Patrol Officer."

Mr. Aaron states that on February 26, 2021, Mr. Ellis "conducted a *Brady* hearing" with Officer Kienlen. It is unclear to me what legal authority, if any, there might be to hold such a "hearing." I am assuming that it was not a hearing before a judge in a particular criminal case. It is unclear to me whether the "hearing" was recorded, whether there was an opportunity to present sworn testimony or other evidence, or whether there is an opportunity to appeal the "decision."

I would point out that there is an established legal process by which the certification of a police officer can be denied, suspended, or revoked for untruthfulness. *See* Section IV, *infra*.

In any event, Mr. Aaron states that "Mr. Ellis made the final decision to add Officer Kienlen's name to the Tier 1 *Brady* list [whatever that is] which effectively disqualified[13] him as a witness in a formal court setting." (Letter, at page 2.)

Mr. Aaron further claims that "Mr. Ellis specifically noted" that the above-referenced Affidavit of Jeff Kienlen dated July 6, 2010, "lacked candor regarding the extent of the relationship between Ms. Wolf and Officer Kienlen ... ." (Letter, at pages 2-3).

Assuming for the purpose of argument that authority exists to conduct a so-called *Brady* hearing, it is unknown what evidence or information Mr. Ellis considered in arriving at his decision – *i.e.*, did he rely on anything other than the above-referenced Notice of Discipline? Did he issue a "final decision" in writing? Is it subject to review? Where are such "final decisions" maintained and are they accessible to the public? My point is this: The assertion that Mr. Ellis "specifically noted" that Officer's Kienlen's affidavit "lacked candor" does not make it an established fact, particularly since Mr. Ellis never availed himself of the established legal process by which the matter could have been fully and fairly adjudicated. *See* section IV, *infra*.

Mr. Aaron then returns to the issue of the Notice of Discipline issued by Chief Waterbury on February 17, 2011 – which he describes as a "finding of untruthfulness" – and proceeds to accuse Mr. Nisley and Ms. Wolf of concealing it while continuing to call Officer Kienlen as a witness until it was "discovered" by Mr. Ellis after he took office in 2021.

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[13] Every lawyer has a duty not to offer evidence or testimony that the lawyer knows to be false. RPC 3.3(a)(3). And a prosecutor has the special responsibilities imposed by RPC 3.8. Subject to such ethical limitations, every lawyer must decide for himself or herself whom to call as witnesses at trial. Presumably, the duly elected District Attorney for any given county has the right to make that decision on behalf of his or her entire office. Beyond that, there is no legal authority for a District Attorney to "disqualify" an officer, or anyone else for that matter, as a witness at trial.

Mr. Aaron argues that the Notice of Discipline was evidence of Officer Kienlen's motive or bias – *i.e.*, that it was impeachment evidence – and that, as such, it was "discoverable *Brady* material" that should have been disclosed to the defense in cases in which Officer Kienlen was a witness brought after February 17, 2011.

Mr. Aaron further argues that Notice of Discipline issued on February 17, 2011, also establishes that the Affidavit of Jeff Kienlen filed on July 6, 2010, in the *Garcia-Gonzalez* case "lacked candor," *i.e.*, that it was a false affidavit. Mr. Aaron argues that the Notice of Discipline establishes that the relationship between Officer Kienlen and Ms. Wolf "went beyond mere friendship" and that, in fact, it was an "intimate relationship." (Letter, at pp. 4, 5).

Mr. Aaron does not articulate what portion of Officer Kienlen's testimony during the trial of the *Garcia-Gonzalez* case he sought to challenge as being untruthful.

He does not articulate how the relationship, however one might describe it, was relevant to any fact that was of consequence to the determination of the *Garcia-Gonzalez* case.

Mr. Aaron does not articulate how the Notice of Discipline issued in February 2011 establishes that "the extent of the relationship" was more than close, personal friendship back in July 2010. (Letter, at pages. 3, 4, and 5.)

Finally, he does not articulate how, given the limitations imposed by OEC 608(2), the Notice of Discipline would have been admissible evidence at the trial of cases in which Officer Kienlen testified after February 2011.

In sum, the issue is this: What are the permissible inferences that one can draw from the fact that Sgt. Kienlen stayed a couple of nights in Ms. Wolf's hotel room in February 2011 and/or from the issuance of the Notice of Discipline by Chief Waterbury in February 2011?

B. Complaint by Sarah Carpenter

In her complaint, Ms. Carpenter simply refers to an article published on January 21, 2021, on the Oregon Public Broadcasting website regarding the discovery of the Notice of Discipline.

C. Joint Complaint by Matthew Ellis and Kara Davis

Regarding the friendship between Sgt. Kienlen and Ms. Wolf, Mr. Ellis and Ms. Davis claim that the alleged "affair gave Officer Kienlen motive or bias to shade his testimony or twist what he was saying to assist Ms. Wolf in securing convictions in her cases." (Letter, at page 1). They do not claim that any particular portion of Sgt. Kienlen's testimony in the *Garcia-Gonzalez* case was "shaded" or "twisted." Unlike Mr. Aaron, they appear to be claiming that, in cases filed *after* February 2011, he had a motive or bias to shade or twist his testimony to assist Ms. Wolf.

Assuming that Judge Kelly correctly ruled in the *Garcia-Gonzalez* case that evidence of the friendship between Ms. Wolf and Sgt. Kienlen was admissible to prove motive or bias, the issue is whether the added characterization of the relationship as being "romantic" or "intimate," as opposed to being "close" and "personal," transforms it into *Brady* material.

In sum, the issue is this: Assuming for the purpose of argument that the close, personal friendship between Sgt. Kienlen and Ms. Wolf was even relevant to a substantive issue properly provable in the case, OEC 401, what are the permissible inferences that one can draw from the fact that Sgt. Kienlen stayed a couple of nights in Ms. Wolf's room?[14]

Regarding the Notice of Discipline, Mr. Ellis and Ms. Davis contend that it was a carefully guarded secret for the past ten years when in fact it has been common knowledge the entire time. Within a week, Mr. Aaron knew enough about it to make his public records request.

Like Mr. Aaron, they focus on the Notice of Discipline and make reference to the so-called "*Brady* hearing" with Officer Kienlen held in January 2021. (Letter, at pages 1-3).

Mr. Ellis and Ms. Davis argue that "[i]nformation that a person is a liar or has a reputation for dishonesty is clearly impeachment evidence" and, therefore, must be produced to the defense under *Brady*. (Letter, a page 3).

Mr. Ellis and Ms. Davis make essentially two arguments:

First, they assert that "the letter [*i.e.*, the Notice of Discipline] demoting Officer Kienlen from Detective Sergeant to patrol officer for lying is unambiguously *Brady* material" and thus, "even if he was not placed on the Wasco Co DA *Brady* list, [whatever that is] they had a duty to disclose the letter in any case where he could appear as a witness." (Letter, at pages 4, 5).

In sum, the issue is this: Is their assertion is correct? Is the Notice of Discipline (which is neither reputation nor opinion evidence), in and of itself, "*Brady* material" such that it had to be disclosed in all *subsequent* cases in which Officer Kienlen was a witness?

Second, Mr. Ellis and Ms. Davis claim that "there had been a substantial development in the nature of [the] relationship [between Officer Kienlen and Ms. Wolf] since the affidavit had

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[14] Given that both Ms. Wolf and Officer Kienlen have denied the existence of a sexual relationship, one might ask exactly what evidence is there of a "romantic" or "intimate" relationship? I would argue that there is nothing necessarily romantic or intimate about staying a couple of nights at the Comfort Suites in Salem when you're out of town at a conference and need a place to stay, particularly when the room in question is that of a close family friend.

If Sgt. Kienlen had stayed in a male prosecutor's hotel room for a couple of nights while attending the seminar, would Mr. Ellis and Ms. Davis still be claiming that it had to have been some sort of illicit sexual relationship? Their complaint is premised on a speculative, gender-based assumption, *not* logic.

been signed or the hearing had occurred [in July 2010 in the *Garcia-Gonzalez* case]" based on the fact that Officer Kienlen had stayed two nights in Ms. Wolf's hotel room while attending a seminar in early February 2011. (Letter, at page 5). They argue that "[t]heir relationship was clearly of an intimate nature that transcends the average person's reasonable understanding of the definition of close friends." (Letter, at page 5, footnote 1).

Unlike Mr. Aaron, they do not appear to argue that Officer Kienlen's affidavit and testimony in July 2010 describing the relationship as being a close, personal friendship was false. Instead, they argue that Ms. Wolf "made no attempt to correct this evidence in future cases." (Letter, at page 3).

In sum, their complaint presents several related issues: Can one reasonably infer that the relationship between Sgt. Kienlen and Ms. Wolf, from February 2011 forward, was something more than a close, personal friendship (e.g., "romantic," "intimate," etc.), notwithstanding their denial that it was such, solely from the fact that Sgt. Kienlen stayed two nights in her hotel room? Or is that just a speculative, gender-based assumption? And assuming for the purpose of argument that one could reasonably draw that inference, so what? How is that of consequence to the determination of future actions prosecuted by Ms. Wolf in which Sgt. Kienlen testified? And even were a trial judge to allow a wider cross-examination than that permitted by Judge Kelly in the *Garcia-Gonzalez* case, was the relationship, however described, *Brady* material? In other words, was the relationship, however described, of such magnitude that the failure to disclose it would create a reasonable doubt that would not otherwise exist? *See* footnote 1, *supra*.

D. Complaint by William Howell

In his letter, Mr. Howell makes reference to a case that was handled by Mr. Nisley; he does not make any reference to Ms. Wolf. In any event, his complaint essentially tracks those made by the other complainants.

IV. De-Certification of a Public Safety Officer for Untruthfulness

Before addressing the issues raised by the complainants, may I point out that Mr. Ellis completely ignored the process by which claims that a public safety officer was dishonest or untruthful can be fully and fairly adjudicated:

The Oregon Department of Public Safety Standards & Training [hereinafter "DPSST] is authorized to "establish by rule reasonable minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors." ORS 181A.410(1)(a).

DPSST is authorized to "deny, suspend or revoke the certification, of any public safety officer ... based upon a finding that: ... [t]he public safety officer ... does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181A.410(1) to (d)." ORS 181A.662(1)(c).

"All law enforcement officers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to: ... Discretionary disqualifying misconduct as described in OAR 259-008-0070(4)." OAR 259-008-0010(6)(b). *See Cuff v. Department of Public Safety Standards and Training*, 345 Or 462, 465-66, 198 P3d 931 (2008).

DPSST is authorized to "revoke the certification of any public safety professional after written notice, and a hearing, if requested, based upon a finding that: ... [t]he public safety professional has engaged in conduct that fails to meet the applicable minimum standards described in [OAR 259-008-0070(4)(b)], minimum training or the terms and conditions established under ORS 181.640." OAR 259-008-0070(4)(a)(B).

For purposes of OAR 259-008-0070, "discretionary disqualifying misconduct" includes misconduct falling within the following category:

> Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification. OAR 259-008-0070(4)(b)(A)

In sum, the overarching issue of whether or not a public safety officer possesses the requisite "good moral fitness" is essentially a character evaluation. *Cuff v. Department of Public Safety Standards and Training*, 345 Or at 471 (*citing In re Beers*, 339 Or 215, 224, 118 P3d 784 (2005), and *In re Fine*, 303 Or 314, 322, 736 P2d 183 (1987)). Before DPSST is authorized to exercise its discretion in revoking the certifications of a public safety officer on the ground that he or she lacks the requisite "moral fitness," it must first be established that the public safety officer engaged "disqualifying misconduct" falling within the ambit of a number of categories, one of which is "Dishonesty."

The term "Dishonesty" is not defined. However, in context, the term "Dishonesty" includes five sub-categories of conduct: untruthfulness, dishonesty (by act[15] or omission), deception, misrepresentation, and falsification, all of which are related to character.[16] And the misconduct committed by a public safety officer must be of a kind that one can logically conclude that he or she lacks the "moral fitness" required of a public safety officer. In other words, the predicate Dishonesty must be of a sort that one can rationally conclude that the public safety officer being scrutinized lacks the requisite "moral fitness."

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[15] The rule states "dishonesty by admission or omission," but presumably it was intended to cover dishonesty by affirmative act or omission.

[16] The principle of *ejusdem generis* "serves to confine the interpretation of [a] general term according to one or more common characteristics of the listed examples." *Sather v. SAIF*, 357 Or 122, 133, 347 P3d 326 (2015) (*quoting State v. Kurtz*, 350 Or 65, 74, 249 P3d 1271 (2011)). Pursuant to this principle, a court examines the "basic characteristics" of the enumerated items when construing the more general terms. *Id.* at 133.

The terms dishonesty, untruthfulness, deception, misrepresentation, and falsification should be given their plain, natural, and ordinary meaning and, insofar as they constitute legal terms, they should be given their well-defined legal meanings. There is no principled reason why "Dishonesty" and the related terms would be defined as differently than they are in the body of case law arising out of Bar disciplinary cases.[17]

For example, to establish a violation of Oregon Rule of Professional Conduct 8.4(a)3), the Bar must prove that a lawyer's statements were false, that the lawyer knew them to be false, and that the statements were material. *In re Marandas*, 351 Or 521, 530, 270 P3d 231 (2012).

"Dishonesty, fraud, deceit, and misrepresentation are related but separate concepts." *In re Worth*, 337 Or 167, 174, 92 P3d 721 (2004) (construing former DR 1-102(A)(3)). *Accord In re Obert*, 336 Or 640, 648-49, 89 P3d 1173 (2004). "Although proving that a lawyer acted dishonestly does not require evidence that the lawyer *intended* to deceive, it does require a mental state of knowledge – that is, that the accused lawyer *knew* that his conduct was culpable in some respect." *In re Cobb*, 345 Or 106, 120, 190 P3d 1217 (2008) (*quoting In re Skagen*, 342 Or 183, 203, 149 P3d 1171 (2006), and again construing former DR 1-102(A)(3)).

"The term 'dishonesty' ... is broader than its companion terms 'fraud' and 'deceit.' It connotes lack of trustworthiness and integrity." *In re Leonard*, 308 Or 560, 569, 784 P2d 95 (1989). "Under DR 1-102(A)(3), conduct involving '[d]ishonesty is conduct that indicates a disposition to lie, cheat, or defraud; untrustworthiness; or a lack of integrity." *In re Carpenter*, 337 Or 226, 234, 95 P3d 203 (2004) (*quoting In re Dugger*, 334 Or 602, 609, 54 P3d 595 (2002)). *Accord In re Harman*, 357 Or 273, 286, 348 P3d 1125 (2015).

V. Summary of the Issues

A. Regarding the Relationship Between Officer Kienlen and Ms. Wolf:

1. Was the "Affidavit of Jeff Kienlen" dated July 6, 2010, true?

2. Subsequent to July 6, 2010, did the relationship between Ms. Wolf and Officer Kienlen ever develop into anything more than a close, personal friendship? In other words, did it subsequently develop into "a romantic intimate relationship" or "a romantic extra-marital affair" or a relationship "of an intimate nature," etc.?

3. Did the relationship between Ms. Wolf and Officer Kienlen, however described, constitute *Brady* material – i.e., did it constitute exculpatory evidence – such that it had to be disclosed in all cases in which Ms. Wolf was the prosecutor and Officer Kienlen was a witness?

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[17] Indeed, in *Cuff v. DPSST*, 345 Or at 471, the court made reference to two Bar disciplinary cases in discussing a public safety officer's present "moral fitness."

B. Regarding the Notice of Discipline:

4. Did the Notice of Discipline[18] constitute *Brady* material – i.e., did it constitute exculpatory impeachment evidence – such that it had to be disclosed in all future cases in which Officer Kienlen was called to testify as a witness?

VI. Responses

A. Regarding the Relationship Between Officer Kienlen and Ms. Wolf:

1. The Facts Stated in Officer Kienlen's Affidavit were True.

Ms. Wolf has reviewed the Affidavit of Jeff Kienlen dated July 6, 2010, and she reports that its contents are true and accurate. She recalls Officer Kienlen testifying, out of the presence of the jury, at an evidentiary hearing pursuant to OEC Rule 104 in the *Garcia-Gonzalez* case, and she recalls Judge Kelly making a ruling on the matter raised by the defense.

We do not have the benefit of a transcript. However, Ms. Wolf has no reason to doubt that Officer Kienlen "reiterated the information in his affidavit," as Mr. Ellis and Ms. Davis put it, and that if Officer Kienlen had testified in a way that was untrue or inaccurate, then Ms. Wolf would have corrected the record.

Mr. Garcia-Gonzalez took an appeal from the judgment of conviction in his case and it was affirmed without opinion. However, we do not know if Mr. Garcia-Gonzalez assigned Judge Kelly's ruling as error on appeal. In any event, it is hard to imagine that an appellate court would have ruled that Judge Kelly abused his discretion excluding "rumors of an affair" from the trial in the *Garcia-Gonzalez* case.[19]

2. At No Time Subsequent to July 6, 2010, Did the Relationship Between Officer Kienlen and Ms. Wolf Develop Into Anything More than A Close Personal Relationship.

Ms. Wolf reports that at no time subsequent to July 6, 2010 did her relationship with Officer Kienlen ever develop into anything more than a close, personal friendship. The Wolf and Kienlen families have remained close, personal friends. Rumors that she and Officer Kienlen

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[18] The public records request that Mr. Aaron filed on February 23, 2011, establishes that he knew at least as of that date that Officer Kienlen had been demoted for being "untruthful about where and with whom he stayed while attending a law enforcement training in the Salem/Albany area earlier [in 2011]" (Order, dated April 12, 2011, at p. 3).

[19] According to his affidavit, Officer Kienlen's role in the *Garcia-Gonzalez* case "consisted of interviewing witnesses including the victim and attempting to interview the defendant." (Page 1). In their complaint, Mr. Ellis and Ms. Davis do not identify what part of Sgt. Kienlen's trial testimony was being challenged.

were having "a romantic extra-martial affair" or that they were involved in "a romantic intimate relationship," etc., are false.

3. The Relationship Between Officer Kienlen and Ms. Wolf, However Described, Did Not Constitute *Brady* Material

There is no authority of which I am aware that suggests that evidence of the relationship between a police officer and a prosecutor – be it "close," "personal," or otherwise – constitutes impeachment evidence under *Brady* and its progeny.

There is a myriad of possible relationships: Prosecutor A and Officer B go hunting, fishing, or camping together, or their families do; Prosecutor C and Officer D serve together on the board of a local charity; Prosecutor E and Officer F drink beer and shoot pool together on Friday nights; Prosecutor G and Officer H have been friends since grade school, etc. Such evidence is neither "favorable" nor "material" to guilt or punishment, *i.e.*, it is not exculpatory. It is not evidence that would make a difference in the outcome of the case.

If one follows the complainants' argument to its logical conclusion, then, in *every* case, the District Attorney would be obligated to produce information on the nature of the relationship between the prosecutor and *every* officer who testifies in the case on the off chance that the officer might be tempted to "shade" or "twist" his or her testimony more so than he would be tempted to do by virtue of simply being a member of the "prosecution team."

I would reiterate that there is a difference between the scope of what might be inquired into on cross-examination of a witness and what a prosecutor is obligated to produce in discovery prior to trial.

The fact that a trial judge might let a defense lawyer get away with asking the following questions does not mean that any of it must be produced in discovery prior to trial:

> "Officer Blue, isn't true that you and Mr. Prosecutor over here have been best friends since grade school?"
>
> "Yes, that's true."
>
> "And you go camping together every weekend, don't you?"
>
> "Well, I wouldn't say every weekend."
>
> "And you sit out on Mr. Prosecutor's deck every Friday night and drink bourbon and smoke cigars, right?"
>
> "Okay, you got me there."

"And you and Mr. Prosecutor are part of a team, right?"

"I'd say we're colleagues. We spend a lot of hours working on cases together."

"Officer Blue, just answer the question. You're a team, right?"

"Yes."

"And you'd shade or twist the truth just to help your pal chalk up another win, wouldn't you?"

"No. We're both professionals just doing our jobs."

"Nothing further."

In the instant case, the complainants' argument is even more farfetched. It is premised on the claim that relationships that are "romantic," or "intimate," or "extra-marital" are somehow fundamentally different than other kinds of relationships. And even if one were to buy that claim, their argument then has to bootstrap to the claim that a jury could logically infer that the relationship between Sgt. Kienlen and Ms. Wolf was "romantic" or "intimate" based solely on the fact that Officer Kienlen stayed in Ms. Wolf's room on a couple of nights while they were attending their respective seminars in February 2011.

As noted in footnote 14, *supra*, none of this is based on logic. It is nothing more than innuendo and speculative, gender-based assumptions about the nature of relationships.

The claim that the relationship between Sgt. Kienlen and Ms. Wolf (however described) constitutes *Brady* material has no basis in either fact or logic. How is it favorable? How is it material? How is it exculpatory? How would it motivate Officer Kienlen to "shade" or "twist" his testimony in some unspecified way during the *Garcia-Gonzalez* case, or in any subsequent case in which he happened to testify and Mr. Wolf happened to prosecute? The short answer is that it is not exculpatory; it was not *Brady* material that had to be produced in discovery.

B. <u>Regarding the Notice of Discipline</u>:

4. <u>The Notice of Discipline was not *Brady* Material</u>

As the District Attorney for Wasco County, Mr. Nisley made a reasoned decision on behalf of the office in 2011 that the Notice of Discipline did not constitute *Brady* material.

We defer to the analysis provided to the Bar by Mr. Nisley and his counsel.

Mr. Nisley asked DOJ to review the matter.

DOJ concluded there was insufficient evidence of criminal misconduct.

I would add that there is a statutory process in place by which the question of whether Sgt. Kienlen was untruthful about where he intended to stay during the seminar could have been fully and fairly adjudicated. *Ad hoc* determinations of untruthfulness by a police chief or a District Attorney do not substitute for an administrative process designed for that very purpose.

Assuming for the purpose of argument that Sgt. Kienlen did in fact lie about a personal matter, *i.e.*, where he was intending to stay during the seminar, I would add that it is well settled that specific instances of misconduct typically are not admissible to attack a witness's credibility. *Fuller v. Department of Public Safety Standards and Training*, 299 Or App at 415; OEC 608(2).

At all times, Ms. Wolf was candid with the Court. She made no misrepresentations regarding the nature of her friendship with Officer Kienlen. On behalf of the Wasco County District Attorney's office, Mr. Nisley made a thoughtful, reasoned, and, I would say, correct decision as to why the Notice of Discipline did not constitute *Brady* material. There was not a significant risk that Ms. Wolf's representation of the State in the *Garcia-Gonzalez* case, or in any subsequent case, was materially limited by her friendship with Sgt. Kienlen. Taken together, the complaints are premised on a mishmash of rumor, innuendo, and gossip and, at their core, they are blatantly sexist and utterly without merit.

Respectfully submitted,

Wayne Mackeson

cc: client

APPENDIX "A"

EXCERPT OF INTERVIEW CONDUCTED ON FEBRUARY 11, 2011 OF SGT. KIENLEN BY CHIEF WATERBURY & SGT. BASKA

During the interview on February 16, 2011, Chief Waterbury asked Sgt. Kienlen the following questions and Sgt. Kienlen gave the following answers:

WATERBURY:	There's something else. The training class in Eugene last week.
KIENLEN:	Yes.
WATERBURY:	***You told me you wanted your car so you could see your cousin in Eugene.***
KIENLEN:	***Yes.***
WATERBURY:	Where did you stay?
Kienlen:	Well, I stayed at the motel down there, uh, Thursday night. And –
WATERBURY:	In Eugene?
Kienlen:	Yes, sir. And I was there Monday night.
WATERBURY:	And which hotel was it?
KIENLEN:	That was, uh, the Riverview Inn – or whatever one you booked for us.
WATERBURY:	Okay.
KIENLEN:	Can I – can I just ask some questions about this?
WATERBURY:	Uh-huh.
KIENLEN:	Why is this a concern?
WATERBURY:	You told Macnab you were gonna stay with a cousin near Salem.
KIENLEN:	Okay.
WATERBURY:	Okay. It is a concern to me, Jeff.

KIENLEN: All right. I guess – can I ask what the purpose is, Chief?

WATERBURY: ***You led me to believe that you wanted to take your car so you [could] see your cousin in Eugene.***

KIENLEN: ***Yes.***

WATERBURY: Okay. You weren't being entirely truthful with me, I don't think.

KIENLEN: I didn't wanna stay with Macnab.

WATERBURY: Okay.

KIENLEN I made that clear from the get go.

WATERBURY: Yes, you did. ***So, you – you left me with the impression you wanted to see your cousin in Eugene. See or stay – I – that doesn't matter to me.***

KIENLEN: ***Okay.***

WATERBURY: You weren't being honest with me, were you?

KIENLEN: No. I didn't want to stay with Eric. That's the truth.

WATERBURY: So, where'd you stay those two nights?

KIENLEN: I stayed at a different motel.

WATERBURY: Where at?

KIENLEN: In Salem.

WATERBURY: Both nights?

KIENLEN: Yes.

WATERBURY: I obviously know more than I'm saying or I wouldn't be asking. You want to tell me what's going on?

KIENLEN: As far as what?

WATERBURY: As far as where you [were] staying – start with that.

KIENLEN: I didn't want to stay with Eric. I wanted to go to that training and I didn't want to to stay with him.

WATERBURY: Okay.

KIENLEN: And I didn't see – I mean, I I didn't see any options as to – I mean you weren't gonna let me stay anyplace else and – especially after everything that had happened a couple days before at the Super Auction and all that fiasco. I – I didn't wanna be around him and I had – I didn't know where to go. I wanted to go to the class. I didn't really have the money to go and spend the night someplace there all by myself and so I went and stayed at a motel in Salem.

WATERBURY: At the Comfort Suites.

KIENLEN: Yes.

WATERBURY: With Leslie?

KIENLEN: Yes, She told me she was gonna be there is the area and that if I needed a place to stay, I would stay there. (Emphasis added.)