

Proposed Rule 5-110(D) Special Responsibilities of a Prosecutor (May 2017)  
Alternative B – Synopsis of Public Comments

TOTAL = 160    A = X  
D = X  
M = X  
NI = X

No.	Commenter/Signatory	Comment on Behalf of Group?	A / M / NI <sup>1</sup>	Comment	RRC Response
B-2017-22	Alonzo, Gregory (6-28-17)	N	M	Although Alt. B is superior to Alt. A, it would continue to have the unfortunate effect of diluting the rule and creating ambiguity because it continues to include the qualifications “significant doubt” and “evidence on which the prosecution intends to rely....” The Discussion Comment should be changed to state:  “These obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution.”	
B-2017-19	Alpers, Steven (06-28-17)	N	A	No comment included.	No response required.
B-2017-117	Alternate Public Defender, Los Angeles County (Goodman) (06-28-17)	Y	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-62	Anderson, Caley (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-53	Antrim, Whitney (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.

<sup>1</sup> A = AGREE with proposed Rule    M = AGREE with proposed Rule ONLY IF MODIFIED

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<b>No.</b>	<b>Commenter/Signatory</b>	<b>Comment on Behalf of Group?</b>	<b>A / M / NI<sup>1</sup></b>	<b>Comment</b>	<b>RRC Response</b>
B-2017-78	Applegate, Charles W. (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-18	Aye, Michael J. (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-94	Belisle, Katie (6-28-17)	N	M	I prefer Alt. B [but] it seems that it still creates ambiguity by including the qualifications “significant doubt” and “evidence on which the prosecution intends to rely.”	
B-2017-111	Bennett, Terrence J. (6-28-17)	N	M	Delete the language suggesting that the prosecution can do less than fully comply with its Brady disclosure obligations as to both guilt/innocence issue as well as evidence tending to mitigate at sentencing. Prosecution has an affirmative obligation to positively disclose not just evidence the prosecution intends to use in its case in chief, but rather all information of potential value to the accused at trial and at sentencing.	
B-2017-10	Berkowitz, Barney (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-76	Bermant, Alison (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.

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B-2017-82	Black, William (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-63	Boxeth, Heather (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-137	Brandt, Nancy (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-108	Bright, Aric M. (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-39	Brogna, Sheila (6-28-17)	N	A	No comment included.	No response required.
B-2017-52	Burke, Adam (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-150	California Attorneys for Criminal Justice (Edgar) (6-29-17)	Y	M	Alternative B is the only reasonable choice, Alternative A is very unreasonable and eliminate the meaning of the rule and its purpose. Justice requires evidence to be shared and avoid any injustices due to lack of proper disclosure.	
B-2017-52	California Attorneys for Criminal Justice (Hernandez) (6-29-17)	Y	M	The Discussion Comment should be changed to state:  “These obligations include, but are not	

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				limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution.”	
B-2017-1	California Public Defenders Association (Ogul) (6-22-17)	Y	M	<p>We respectfully submit that Alternative A should be rejected, and Alternative B should be modified. We are concerned with both the word “significant” and the phrase “on which the prosecution intends to rely.” The word and phrase are problematic because they invite prosecutors to intentionally refuse to disclose exculpatory evidence and information unless they subjectively believe that it will cast <i>significant</i> doubt on their evidence and that they have subjectively concluded that they will present the impacted evidence regardless. Both conditions are inconsistent with existing law and invite mischief.</p> <p>The Comment should be modified to read: “These obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution.” This language would leave no ambiguity and discourage prosecutors from</p>	

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				suppressing exculpatory evidence based on their subjective beliefs.	
B-2017-89	Cavalluzzi, Maria (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-142	Chaney, Michael (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-86	Chestnut, William (6-28-17)	N	A	No comment included.	No response required.
B-2017-55	Chu, Courtney (6-28-17)	N	A	No comment included.	No response required.
B-2017-105	Chu, Jimmy (6-28-17)	N	A	Personal observation and numerous incidents depicted in the media show innocent people convicted much too often and culpable prosecutors never held accountable. Alt. B will be a giant step in the right direction.	
B-2017-36	Clarke, Joseph (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-38	Coghlan, Michael R. (6-28-17)	N	NI	In our court, we have what is called Early Disposition Project (“EDP”). It is a special arraignment court where we do arraignments and also attempt to settle felony cases before they progress upwards to preliminary hearings and beyond.	

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				<p>Many times, a case will turn on a surveillance video. The defendant claims he never had a knife, the police report says he had a knife in his hand. There is a surveillance video mentioned in the police report.</p> <p>No competent attorney is going to plead out a client who claims he never had a knife when there is a video that will tell one way or the other, so we simply send the case on up, and out of the EDP court, for preliminary hearing. Our DA's office says, "don't worry – the video will be provided at least 30 days prior to trial."</p> <p>Seems to me this is <u>precisely</u> the type of situation that should be remedied by the proposed rule.</p>	
B-2017-65	Colombo Jr., Anthony (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-93	Cratch, Celia (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-157	Dabiri, Mani (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.

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B-2017-153	Dadmun, Stewart (6-29-17)	N	M	By placing the word "significant" in front of doubt it gives a prosecutor a loop hole.	
B-2017-134	Davina, Zachary (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-33	Defilippis, Stephen M. (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-4	Ditlof, Daniel A. (6-27-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-14	Dobbyn, Gerard (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-66	Dombois, Markus (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-8	Dunger, Julie (6-27-17)	N	M	The court, not the prosecution, should decide whether exculpatory evidence is "significant." Alt. A transfers that authority to the individual prosecutor. The threshold for disclosure of exculpatory evidence should be as broad as possible and as early as possible in the trial process so that the court and the defense are not cut out of the discussion of whether that evidence is material to a contested issue or to the credibility of a	

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				witness.	
B-2017-95	Durovic, Milly (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-	Edger, Deedrea (6-29-17)	N	M	Alt. B is the only reasonable choice, Alt. A is very unreasonable and eliminate the meaning of the rule and its purpose. Justice requires evidence to be shared and avoid any injustices due to lack of proper disclosure.	
B-2017-42	Elias, Youseef (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-5	Epps, David (6-27-17)	N	A	Please register my support of Alt. B and opposition to Alt. A.	No response required.
B-2017-128	Fenske, Karl (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-21	Fitzgerald, Kimberly (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-67	Foster, Craig (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.



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B-2017-125	Foster, Jodea (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-97	Freidenreich, Stephanie (6-28-17)	N	A	Alt. B is a correct and clear statement of the law.	No response required.
B-2017-98	Garrick, Sarah (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-77	Gold, Jeffrey (6-28-17)	N	A	No comment included.	No response required.
B-2017-104	Gross, Dana (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-58	Gutierrez, Andy (6-28-17)	N	A	<p>I have concerns with Alt. A's use of the term "significant" doubt. The rule should be as clear as possible and contain the least amount of subjectivity.</p> <p>I also believe that adding the language "on which the prosecution intends to rely" will create more problems and litigation. That phrase will swallow the rule and allow prosecutors an escape hatch for exculpatory evidence. It also does not conform to the independent statutory obligation under PC 1054.1(e) which requires disclosure whether or not the prosecution intends to rely on that evidence.</p>	

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B-2017-140	Haberman, Christopher (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-126	Hagood, Sandra Payne (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-96	Hall, Carrie (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-113	Hamasaki, John (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-50	Henneman, Krista (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-71	Hermansen, Kurt David (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-54	Hingle, Michael (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-154	Horowitz, Rick (6-29-17)	N	M	The language “Make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt of the accused, mitigate the offense, or	

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				mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal” is enough. Adding wiggle words like “significant doubt” or limiting the rule to evidence that the prosecution says it intends to rely is just a way of gutting the rule.	
B-2017-132	Humphries, Gregory (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-75	Independent Defense Counsel Office (MacDonald) (6-28-17)	Y	M	Alt. B addresses the issues best by avoiding ambiguity and not diluting a prosecutor’s responsibility. Alt. A would dilute the duties of counsel by adding ambiguity with language such as “significant doubt” and “evidence on which the prosecutor intends to rely.” These words give prosecutors justification not to comply. It is critical that prosecutors receive clear guidance therefore the language should be that: “disclosure obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution.”	
B-2017-109	Jansen, Aaron (6-28-17)	N	A	Alt. B is the stronger and broader of the two and therefore more likely to deter prosecutors from withholding exculpatory evidence and thereby circumventing the	

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				administration of justice.	
B-2017-107	Jo, Grace (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-159	Jones, Rebecca (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-56	Katano, Akio (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-32	Katz, Joseph (6-28-17)	N	M	Adopt Alt. B with Mr. Ogul's improved and far more effective and meaningful language. This improved modification would read: "These obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution." The last thing we should want is an endless debate regarding the interpretation of the word, "significant."	
B-2017-80	Kazarian, Bryan R. (6-28-17)	N	M	The duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility or witness testimony or other evidence disclosed by the prosecution.	

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B-2017-17	Kelly, Patrick (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-15	Kimpel, Amy (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-122	Klein, Keri (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-130	Kroger, Christine (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-145	Krueger, Angela (6-29-17)				
B-2017-74	Kumaus, Michele (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-133	Lake, Jeffrey (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-34	Leff, Susan (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-20	Linowitz, Zachary (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.

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B-2017-120	Lopez, Gabriela (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-57	Madeleine (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-41	Major, Dale (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-37	Maloney, Marie (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-127	Marasco, Robert (6-29-17)	N	A	No comment included.	No response required.
B-2017-83	Marinho, Sarah (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-147	Marmalefsky, Dan (6-29-17)	N	M	<p>I prefer a blend of Alt. A and Alt. B which removes use of the word “significant” but includes the example that information casting doubt on a witness’ credibility should be disclosed:</p> <p>“(D) Make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt of the</p>	

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				<p>accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. This obligation includes the duty to disclose information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution.”</p> <p>The integrity of the fact-finding process should be governed by clear rules – rather than importing amorphous standards such as what is considered “significant” or whether a prosecutor “intends to rely.”</p>	
B-2017-60	Matthews, Brian (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-68	May, Emery (6-28-17)	N	A	No comment included.	No response required.
B-2017-61	Mayfield, Daniel Miller (6-28-17)	N	A	Any change here is positive, but let's remember the public trust that goes with being able to charge and convict individuals. These obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution.	

**Proposed Rule 5-110(D) Special Responsibilities of a Prosecutor (May 2017)**  
**Alternative B – Synopsis of Public Comments**

<b>TOTAL = X</b>	<b>A = X</b>
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<b>No.</b>	<b>Commenter/Signatory</b>	<b>Comment on Behalf of Group?</b>	<b>A / M / NI<sup>1</sup></b>	<b>Comment</b>	<b>RRC Response</b>
B-2017-79	McCarthy, Paul (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-6	McCarthy, Sarah B. (6-27-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-88	McKneely, Michael (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-26	McLandrich, Cheryl (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-101	McMillan, Leslie Edward (6-28-17)	N	A	Neither version fully binds prosecutors to their duty under Brady to reveal all exculpatory evidence or evidence reflecting adversely on the credibility of their witnesses. However, there is no current State Bar ethics rule explicitly addressing prosecutors Brady obligations, and Alt. B is better than continuing that blatant omission from our ethics rules.	
B-2017-59	Mehan, Arsh (6-28-17)	N	M	Prosecutors should err on the side of disclosure. Alt. B is better because it is not watered down. What is the purpose of a new rule of conduct if it has no clear directive?  While Alt. B is better for this reason, it still falls short. It should include a	



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				statement that does not limit it to the listed behavior.	
B-2017-106	Meraz, Robert (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-155	Miller, Marion (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-136	Moller, Richard (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-35	Moore, Christina (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-141	Morga, Maria (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-43	Moshier, Dominique (6-28-17)	N	A	I am opposed to Alt. A as it creates a loophole within the text of the rule which would directly contradict the purpose behind the rule. There are still problems with Alt. B, which should change the Discussion to read: "These obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution."	

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B-2017-30	Multiple Attorneys (Levenson) (6-28-17)	Y	M	<p>This comment includes former prosecutors, former judges, academics and other “concerned members of the criminal justice community” listing their support for the comment.</p> <p>While we strongly endorse the addition of Rule 5-110(d) as an important step toward promoting compliance with prosecutors’ existing duties to disclose evidence, we are concerned with the proposed language of both Alt. A and Alt. B.</p> <p>Specifically, we are concerned with the phrase “<i>significant</i> doubt” and “<i>on which the prosecution intends to rely.</i>”</p> <p>Although Commission members indicated the added language is intended to give just one example of how the rule would be implemented, we are concerned that prosecutors may rely on it to intentionally refuse to disclose exculpatory evidence and information unless they <b>both</b> subjectively believe that it will cast <i>significant</i> doubt on their evidence <b>and</b> that they have <i>subjectively concluded</i> that they <i>will present</i> the impacted evidence regardless. Both conditions are inconsistent with existing law and invite mischief.</p> <p>We strongly urge that Alt. A be rejected</p>	

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				and that the portion of the discussion comment discussed above for Alt. B be deleted in order to avoid ambiguity and discourage prosecutors from suppressing exculpatory evidence based on their subjective beliefs.	
B-2017-139	Nalls, Christopher (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-13	Nims, David (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-2	Office of the State Public Defender (McComb) (6-27-17)	Y	M	<p>We agree that reference to “evidence or information that a prosecutor knows or reasonably should know casts significant doubt on the accuracy or admissibility of witness testimony or other evidence on which the prosecution intends to rely” is properly moved to the discussion section to avoid diluting the central text of Rule 5-110(D). Since this language was intended to be an example of impeachment evidence subject to disclosure and not to define or modify the entire category of exculpatory evidence, we also agree with the additional language “These obligations include, but are not limited to ...” to make that clear.</p> <p>We are concerned that using the adjective “significant” to modify “doubt”</p>	

**Proposed Rule 5-110(D) Special Responsibilities of a Prosecutor (May 2017)**  
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				<p>introduces an unnecessary and counterproductive element of subjectivity to defining the prosecutor's duty of disclosure. The word "significant" should be deleted.</p> <p>In addition, by describing the duty of disclosure as information that casts doubt on "witness testimony or other evidence <b>on which the prosecution intends to rely</b>," the added language (in bold), even when relegated to the discussion section, introduces another ambiguity that could undermine the overall purpose of the rule. We believe the discussion comment would be better phrased by stating, "These obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts the doubt on the accuracy or admissibility of witness testimony or other evidence <b>disclosed by the prosecution</b>."</p> <p>This would make clear that information that casts doubt on other investigatory evidence or information that has been disclosed to the defense in discovery must likewise be disclosed.</p> <p>Alternatively, the second sentence should be deleted altogether from the discussion comment to avoid introducing</p>	

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				ambiguity that could lead prosecutors to withhold exculpatory evidence based on their subject belief's about its significance or because they decide not to "rely on" the testimony or evidence that has been called into doubt.	
B-2017-100	Oien, Kara (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-49	Olen, Jared W. (6-28-17)	N	A	<p>While Alt. A includes initially strong, pro-disclosure language, the last clause waters down the disclosure obligation and would create significant doubt about a prosecutor's ethical duties to disclose exculpatory evidence. What does "significant doubt" mean? Why should ethical disclosure obligations be limited to only evidence upon which the prosecution "intends to rely?" This clause departs from the well-defined Brady standard and provides an almost complete defense to any Brady violation.</p> <p>Prosecutors as ministers of justice must ensure that a criminal defendant receives all exculpatory evidence - not just the evidence that they determine is "significant."</p> <p>Please reject Alternative A.</p>	
B-2017-28	Orloff, Rebecca (6-28-17)	N	A	Alt. B is far superior to Alt. A.	No response required.

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B-2017-29	Osborne, Karen (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-112	Panwala, Asit (6-28-17)	N	M	Alt. B is superior to Alt A. However, both versions suggest that the prosecutor must only disclose evidence that casts a “significant” doubt upon the People’s evidence. The qualifier “significant” waters down this rule and allows prosecutors an “out” by claiming that the undisclosed evidence did not create a “significant” doubt.	
B-2017-72	Pena, Katarina (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-70	Penalosa, Miguel (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-7	Piano, Meghan (6-27-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-73	Picone, Christian E. (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-19	Polverino, Sam (6-28-17)	N	A	Alt. B is clearly the best alternative. Lawyers are trained to look for the answer that is the most general and least specific to advance their case. The best rule is one which leaves the least doubt	

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				as to its meaning. The objective of any rule should be to guide with the least room for doubt. Alt. B is therefore the best alternative.	
B-2017-110	Post, Alexander (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-160	Public Defender Association of San Diego County (Britt)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-124	Public Defender, Monterey County (Chapman) (6-29-17)	Y	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-69	Quirk, Suzanne (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-148	Reagan, David (6-29-17)	N	M	Alt. B with modifications to increase the scope of the information required to be disclosed beyond the somewhat constrained “significant doubt” and “evidence on which the prosecution intends to rely.”	
B-2017-40	Rita (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-11	Roderigues, Madelyn (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.

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B-2017-143	Romo, Lisa (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-16	Ross, Kathryn (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-46	Sage, John (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-115	Salera, Andrew (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-135	Saltzman, Michael (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-116	Sandoval, Melissa (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-129	Santana, Jesse I. (6-29-17)	N	M	I oppose Alt. A. I support Alt. B with the modifications suggested by the CACJ.	
B-2017-118	Sasnett Jr., William B. (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-131	Schmidt, Brian (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.



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B-2017-81	Schwartz, Ivan (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-92	Scofield, Robert G. (6-28-17)	N	M	I prefer Alt. B to Alt. A. But I would delete the language in B that refers to “evidence on which the prosecution intends to rely.” Like the additional language in Alt. A, this invites people to interpret an example as the essence of the rule. In this way, the additional language in both A and B tends to dilute the rule.	
B-2017-123	Self, Jessica (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-84	Sevilla, Charles M. (6-28-17)	N	M	While I support Alt. B [over] Alt. A, I agree with others who have stated, that Alt. B can also be improved by rephrasing the Discussion to state:  “These obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence disclosed by the prosecution.”	
B-2017-149	Shannon, Michael T. (6-29-17)	N	M	Alt. B is preferable. However, it should change the qualifying phrase “significant doubt” to “reasonable doubt,” or simply “doubt,” without qualification. Alt. B should also leave out the phrase	

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				“evidence on which the prosecution intends to rely.” That phrase greatly weakens the discovery obligation.	
B-2017-158	Shea, George (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-64	Sheppard, Laura (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-102	Silldorf, David (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-12	Silver, Damon (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-24	Singh, Aminder (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-48	Slentz, Matthew (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-85	Speiser, Arlene (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-25	Stadlin, Dmitry (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.

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B-2017-144	Stangle, Angela (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-99	State Bar of California, Committee on Professional Responsibility and Conduct (Spencer) (6-28-17)	Y	A	<p>The Committee supports adoption of Alt. B. The Committee agrees that the language suggested by the Supreme Court for addition at the end of paragraph (D) (as revised by the Commission) should be moved to the Discussion section of the rule. It is the Committee's understanding, based on the materials it reviewed, that the suggested language is intended simply as an example of impeachment information that would trigger a disclosure obligation. As such, it is appropriately included in the Discussion rather than the text of the rule itself. Placement of the suggested language in the Discussion will also help to avoid any confusion or suggestion that the language somehow qualifies the "tends to negate" standard articulated in the substantive text of paragraph (D). We understand that the example is not intended to qualify that standard.</p> <p>We further note the Supreme Court's suggested inclusion, in Discussion subparagraph [3], of the statement "Nothing in this rule is intended to be applied in a manner inconsistent with statutory and constitutional provisions</p>	

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				governing discovery in California courts," which statement is incorporated into Alternative B proposed by the RRC. We do not read this statement, or the materials prepared by the RRC, to suggest that this statement is a qualification of the "tends to negate" standard set forth in the text of paragraph (D) of the rule. Nor do we understand the statement to be a substantive move back to "Alternative 2" of the proposed rule that was issued for public comment by the RRC in May 2016. Based on that understanding, we do not object to inclusion of this statement in the Discussion.	
B-2017-23	Stein, Edward (6-28-17)	N	A	I would oppose Alt. A.	No response required.
B-2017-138	Stewart-Oaten, Nick (6-29-17)	N	M	Alt. B is better than Alt. A, but is still a problem because it includes caveats regarding "significant doubt" and evidence "on which the prosecution intends to rely." It would be far better to clarify that the obligation includes turning over evidence that the prosecution "knows or reasonably should know" casts doubt on the admissibility or accuracy of evidence against a defendant.	
B-2017-114	Sugarman, Scott A. (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.

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B-2017-91	Taylor, Annie (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-87	Theiss, Sara (6-28-17)	N	A	I oppose Alt. A and support Alt. B.  Language added by the Court is problematic, i.e., “significant doubt” and “evidence on which the prosecution intends to rely...” The rule should be clear cut regarding prosecutor’s duty to make timely disclosure to the defense of exculpatory evidence and information. This language should be deleted from the rule and at most, added to the Comment as just one example of when a prosecutor is obliged to disclose evidence to the defense.	
B-2017-121	Thiagarajah, N. Fred (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-156	Thickstun, Kathryn (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-103	Tobler, Kelton (6-28-17)	N	M	The terms “significant” and “on which the prosecution intends to rely” in Alt. A creates holes in the proposed rule big enough for the steamroller of dubious and overzealous prosecution to proceed unhindered. Therefore, those terms should be removed from Alt. B as well.	

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No.	Commenter/Signatory	Comment on Behalf of Group?	A / M / NI <sup>1</sup>	Comment	RRC Response
B-2017-90	Todus, Michelle (6-28-17)	N	A	No comment included.	No response required.
B-2017-151	Tyler, Ronald (6-29-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-3	U.S. Department of Justice (Goldsmith) (6-27-17)	Y	M	<p>Because both Alt. A and Alt. B impose ethical disclosure obligations on federal prosecutors that are inconsistent with their obligations under substantive law, we oppose both alternatives. We also oppose Alternative A because we agree with the Commission that the second sentence of paragraph (D) is better placed in Discussion paragraph [3]. In addition, we strongly believe that, instead of omitting any reference to cumulative disclosure of information in the Discussion, the proposed Rule should define the phrase.</p> <p>If the Commission is inclined to adopt Alt. B, we ask that it be modified, based on the Supreme Court of California's proposed revisions and the Commission's earlier alternate version of the proposed Rule, as follows:</p> <p>“(D) Comply with all constitutional and statutory obligations, as interpreted by relevant case law, to make timely disclosure to the defense of all evidence or information known to the prosecutor</p>	

**Proposed Rule 5-110(D) Special Responsibilities of a Prosecutor (May 2017)**  
**Alternative B – Synopsis of Public Comments**

<b>TOTAL = X</b>	<b>A = X</b>
	<b>D = X</b>
	<b>M = X</b>
	<b>NI = X</b>

No.	Commenter/Signatory	Comment on Behalf of Group?	A / M / NI <sup>1</sup>	Comment	RRC Response
				<p>that the prosecutor knows or reasonably should know tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;"</p> <p>***</p> <p>“[3] Nothing in this rule is intended to be applied in a manner inconsistent with constitutional and statutory provisions governing discovery in California and federal courts. Under California law, the disclosure obligations in paragraph (D) are not limited to evidence or information that is material as defined by Brady v. Maryland (1963) 373 U.S. 83 [83 S. Ct. 1194] and its progeny, and include the duty to disclose information that the prosecutor knows or reasonably should know casts significant doubt on the accuracy or admissibility of witness testimony or other evidence on which the prosecution intends to rely. Paragraph (D) does not require disclosure of information protected from disclosure by California or federal laws and rules, as interpreted by case law or court orders. Paragraph (D) also does not require disclosure of information that the prosecutor knows is already in the possession of or previously has been disclosed to the defense, including</p>	

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	<b>D = X</b>
	<b>M = X</b>
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				<p>where a prosecutor previously has disclosed the information in a different form. A disclosure's timeliness will vary with the circumstances, and paragraph (D) is not intended to impose timing requirements different from those established by statutes, procedural rules, court orders, and case law interpreting those authorities and the California and federal constitutions.</p> <p>[4] The exception in paragraph (D) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest."</p>	
B-2017-47	Valeros, Gilda (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-44	Van Meir, Christopher (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-27	Vinyard, Stacy (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.



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B-2017-51	Wasley, Kendall (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-31	Weese, Marsanne (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-9	Weigel, William (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-45	Weintre, Jim (6-28-17)	N	M	The substance of this comment is identical or substantially similar to Alonzo, Gregory B-2017-22. See above.	See response to Alonzo, Gregory B-2017-22.
B-2017-	Wellenkamp, Paul (6-29-17)	N	M	I am concerned with that qualifying the disclosure by the term “significant” will render the rule ineffective. Prosecutors rarely decide to withhold information they know to be exonerating. Instead, they withhold information which they assess as unimportant. Prosecutors often are not in a position to make that call, because they lack other information and because of the natural bias litigators have. For these reasons, I support CACJ’s proposed change to the Discussion: “These obligations include, but are not limited to, the duty to disclose evidence or information that a prosecutor knows or reasonably should know casts doubt on the accuracy or admissibility of witness testimony or other evidence	

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	<b>M = X</b>
	<b>NI = X</b>

No.	Commenter/Signatory	Comment on Behalf of Group?	A / M / NI <sup>1</sup>	Comment	RRC Response
				disclosed by the prosecutor.”	