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CLIENT BULLETIN

CALIFORNIA SUPREME COURT RULES DEPARTMENT *BRADY* LISTS MAY GO TO PROSECUTORS

In yet another blow to longstanding protections in California for peace officer personnel records, the California Supreme Court ruled recently that a law enforcement agency may release its *Brady* list to prosecutors. (*Association for Los Angeles Deputy Sheriffs (ALADS) v. Superior Court (2019) 8 Cal.5th 28.*) The court ruled agencies are not required to comply with *Pitchess* procedures before releasing the identity of officers on a *Brady* list when those officers are involved in a pending criminal case.

The *ALADS* case arose after the Los Angeles Sheriff's Department sent letters to about 300 deputies, notifying them they would be included on a *Brady* list and their names provided to the district attorney's office in any case where the deputy could be called as a witness. The Association obtained a partial preliminary injunction to stop the disclosures unless the Department complied with the *Pitchess* requirements for obtaining access to peace officer personnel records. The Sheriff's Department sought Supreme Court review.

Court Holds Pitchess Statutes Do Not Prohibit Sharing Brady Lists

The Court recognized *Brady* lists contain confidential information. A "*Brady* list" is a database or other record maintained by a law enforcement agency that identifies officers with sustained misconduct allegations that may prove exculpatory to a defendant at trial because they involve moral turpitude, dishonesty or bias. The lists are derived from confidential peace officer personnel records and, therefore, as the Court stated, the identities of officers on a *Brady* list are confidential.

Previously, the prosecution's obligation under *Brady v. Maryland* (1963) 373 U.S. 83, to obtain and disclose to the defense impeachment information about peace officer witnesses was limited by the *Pitchess* statutory scheme that protects confidential peace officer personnel records. The Court previously ruled that even prosecutors had to file a *Pitchess* motion to get access to peace officer records for the purpose of satisfying the *Brady* obligation. (*People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696.)

But the provision in Penal Code section 832.7(a) that peace officer personnel records are “confidential and shall not be disclosed in any criminal or civil proceeding except by discovery” pursuant to *Pitchess* did not stop the Court from allowing disclosure in this case. The Court invented a loophole in the statutory scheme protecting the confidentiality of peace officer records by stating all members of the “prosecution team” – law enforcement agencies and prosecutors – may share information from employee personnel files such as whether the employee is on a *Brady* list. This sharing of what the court called “*Brady* alerts” is not subject to the *Pitchess* requirements, the Court said, because that would impair the prosecution’s constitutional obligation to disclose exculpatory information to criminal defendants.

The Court did limit the information-sharing to pending criminal cases; that is, law enforcement agencies are not permitted under *ALADS* to disclose entire *Brady* lists to prosecutors. Disclosure to the prosecution of an officer’s presence on a *Brady* list can occur, according to the Court, only when there is a pending criminal case involving that officer as a witness.

Together with SB 1421, which the Court described in *ALADS* as reducing the amount of information an agency may withhold by making certain peace officer records nonconfidential, this decision further erodes statutory protections for peace officer records.

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