

## **California Supreme Court Restores Sanity to Procedures For Prosecution Access to Peace Officer Personnel Records**

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Overturning a decision by the First District Court of Appeal, the California Supreme Court has reiterated that prosecutors, like criminal defendants, must file a *Pitchess* motion to get access to the confidential personnel records of peace officer witnesses. The decision, *People v. Superior Court (Johnson)* (2015) 61 Cal.4<sup>th</sup> 696, also rejected arguments the prosecution's *Brady* obligation allows prosecutors to have unrestricted access to those records at any time.

Penal Code section 832.7(a) declares that peace officer personnel records "are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant" to Section 1043 et seq. of the Evidence Code (the "*Pitchess* process"). The longstanding rule in California has been that Penal Code section 832.7(a) prohibits prosecution access to peace officer personnel files except through a *Pitchess* motion. But last fall, the First District Court of Appeal in San Francisco ruled that prosecutors must be allowed to review those records for *Brady* material without filing a motion. (See "First District Court of Appeal Issues Ruling on *Brady* and Personnel Records".)

### ***Court Reins in Wide-Reaching "Brady Obligation"***

Under *Brady v. Maryland* (1963) 373 U.S. 83, the prosecution has a constitutional obligation to disclose exculpatory evidence to the defense at the time of trial. In cases involving peace officer witnesses, "exculpatory evidence" is any evidence affecting the officer's credibility, such as a disciplinary action for dishonesty, fraud or other moral turpitude conduct, an off-duty arrest, or even an exonerated complaint. This "*Brady* obligation" extends to the "prosecution team", meaning law enforcement agencies are required to notify prosecutors before trial if *Brady* material exists in an officer's personnel file.

In its decision last year, the First District Court of Appeal held that Section 832.7(a) does not prohibit prosecutors from looking through confidential peace officer personnel files. The court said those files are not confidential as to the prosecution team and that any review of those files by a prosecutor is not a "disclosure" subject to a *Pitchess* motion. The court said the exception under the statute for investigations of peace officers – usually interpreted as allowing prosecutors to access personnel files only when an officer is the subject of a criminal investigation – also applies to a prosecutor's review of personnel files for *Brady* purposes. Under the court's decision, which was stayed pending appeal to the Supreme Court, prosecutors were authorized to review peace officer personnel files anytime, anywhere for *Brady* material.

But the Supreme Court pulled the reins in tight on the lower court's notion of unlimited prosecution searches of peace officer personnel files. The *Brady* disclosure rule, as the court noted, exists to guarantee the criminal defendant's right to a fair trial and is not a general right of discovery. A prosecutor violates her duties under *Brady* only if she, or someone on the prosecution team, is aware or should have been aware of *Brady* material and fails to disclose it to the defense. Prosecutors have no duty to seek out such information.

## ***Court Rejects Investigation Exception for Brady Material***

Prosecutors in California often have argued the exception in Penal Code section 832.7(a) allowing grand juries, deputy district attorneys and attorneys general to view otherwise confidential peace officer personnel files during “investigations or proceedings concerning the conduct of peace officers or custodial officers” applies to *Brady* material. The lower court in *Johnson* made the same claim. This view of the statute would make every officer named as a witness in a criminal case the subject of a prosecution investigation involving his or her personnel file, personal information and discipline history.

The Supreme Court rejected this interpretation of the investigation exception. The *Pitchess* process, said the court, strikes an appropriate balance between the privacy rights of public safety officers and the right of the criminal defendant to the disclosure of exculpatory evidence. Prosecutors do not have unfettered access to peace officer personnel records under the guise of conducting an “investigation” of a witness officer, but must file a *Pitchess* motion like everyone else.

## ***Brady Insanity Mirrors Attitudes Toward Law Enforcement***

The confidentiality of peace officer personnel records has been under assault in California for many years. Often aided and abetted by the courts, the criminal defense bar and the California District Attorneys Association both have proposed legislation over the years that would erode the privacy rights peace officers enjoy by allowing broad access to those records. Most recently, prosecutors throughout the state have implemented “*Brady* Protocols” that in some cases attempt by written agreement with local agencies to expand prosecution access to peace officer records.

Like other judicial and legislative trends that reflect the broader culture, attacks on the confidentiality of peace officer personnel files mirror the prevailing antagonism toward law enforcement. The Supreme Court’s emphasis in *People v. Johnson* on traditional *Pitchess* procedures that, in the court’s words, protect peace officer privacy rights “to the fullest extent possible”, may signal a long-awaited restraint on such attacks.

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