Case No. S243855

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

LOS ANGELES SHERIFF'S DEPARTMENT, SHERIFF JIM MCDONNELL and COUNTY OF LOS ANGELES,

Real Parties in Interest

On Review from the Court of Appeal for the Second Appellate District, Division 8, Civil No.: B280676

After an Appeal from Order of the Superior Court of California, County of Los Angeles, Hon. James C. Chalfant, Case No.: BS166063

BRIEF OF *AMICI CURIAE* ACLU OF SOUTHERN CALIFORNIA, ACLU OF NORTHERN CALIFORNIA, ACLU OF SAN DIEGO AND IMPERIAL COUNTIES, AND DIGNITY AND POWER NOW IN SUPPORT OF REAL PARTIES IN INTEREST

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I. INTRODUCTION

Imagine that a few years ago, Deputy John Doe was caught planting evidence in a jail assault case. After accidentally losing a bloody shirt from the evidence locker, he decided to douse a white T-shirt with taco sauce, snap a photo of it, and book it into evidence. A fellow deputy reported this transgression, and Deputy Doe was suspended for 30 days. The details surrounding his fabrication of the evidence and its impact on the assault case were documented in his personnel file. Over the years, Deputy Doe has served and continues to serve as the central witness in hundreds of criminal cases.

This is not a hypothetical. This misconduct—and the consequent disciplinary action—actually occurred and was reported by the *Los Angeles Times* in recent articles summarizing prior acts of misconduct by approximately 300 Los Angeles County Sheriff Deputies who were placed on a 2014 version of the Department's *Brady* list. See **Exhibit A**, (Lau, *Inside a secret 2014 list of hundreds of L.A. deputies with histories of misconduct*, L.A. TIMES (Dec. 8, 2017))[1]; **Exhibit B**, (Lau, *Sex. Lies. Abuse. How these L.A. deputies landed on a secret 2014 list of problem officers*, L.A. TIMES (Dec. 10, 2017)).[2]

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[1] Available at http://www.latimes.com/local/la-me-sheriff-brady-list-20171208-htmlstory.html.

[2] Available at http://www.latimes.com/local/california/la-me-2014-brady-list-deputies-20171208-htmlstory.html. Copies of the court documents and

These articles provide important context because they show exactly what is at stake in this case. They reveal real transgressions that seriously place a testifying officer's credibility in question, ranging from pepper-spraying an elderly veteran in the face without justification and then lying about it on a police report, to receiving oral sex from a motorist during a traffic stop, to doctoring a search warrant after it was signed by a judge, and lying under oath to make suspects seem more culpable. These articles also give a glimpse into the size of the problem – the mere 24 deputies discussed in these articles – reportedly testified in more than 4400 cases since the year 2000. See **Exhibit C**, (Lau, *D.A. examining past criminal cases involving L.A. sheriff's deputies on a secret list of problem officers*, L.A. TIMES (Jan. 12, 2018)).[3]

On a daily basis, prosecutors bring criminal cases against defendants based on the word of Department sheriff deputies. There is no way to know how many of these cases rely on the credibility of one of the 300 officers on the *Brady* list. That is because, according to the majority opinion of the Court of Appeal, the identities of the officers on the *Brady* list must be hidden from the prosecution itself, even if one of the officers is

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law enforcement records referenced in the article can be found here: http://documents.latimes.com/documents-detail-misconduct-l-county-sheriffs-deputies/.

[3] Available at http://www.latimes.com/local/lanow/la-me-district-attorney-review-brady-list-20180112-story.html.

a part of the prosecution team involved in a pending criminal case. The Court of Appeal held that the Department is forbidden by the *Pitchess* statutes from alerting prosecutors about the identities of officers on the *Brady* list without a court order. (*Association for Los Angeles Deputy Sheriffs v. Superior Court* (2017) 13 Cal.App.5th 413, 433) ("*ALADS*"). In fact, under the Court of Appeal's holding, the Department is apparently prohibited, with or without a *Brady* list, from alerting prosecutors at all to the fact that *Brady* information pertaining to an officer actually exists in the officer's personnel file (i.e., providing a "*Brady* alert"). (*Id.* at p. 439.)

The result of the *ALADS* decision on this particular case is that the Department—an arm of the government—currently has actual knowledge of *Brady* information about at least 300 of its deputies and must, practically speaking, suppress it. The broader result of the *ALADS* decision throughout the State has been to create disarray and confusion about whether law enforcement agencies and prosecutors will now be able to comply with their federal *Brady* obligations. Are the similar *Brady* list procedures currently being implemented by 22 other counties in the State[4] now considered unlawful under State law? According to *ALADS*, the answer is yes. Putting *Brady* list procedures aside, if a prosecutor asks a law

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[4] (See Opening Brief at p. 10, citing "Letter of *Amici Curiae* California District Attorneys Association Supporting Petition for Review," filed September 1, 2017, p. 3, 5.)

enforcement agency to review the personnel file of an officer scheduled to testify in a criminal case, and the personnel file reveals that the officer has been found to have lied under oath in the past, may that law enforcement agency tell the prosecution there is *Brady* material in the officer's personnel file? According to *ALADS*, the answer is no.

The outcome created by *ALADS* is totally unacceptable. The United States Constitution, as a matter of due process, requires the government to comply with its self-executing *Brady* obligations. (*Kyles v. Whitley* (1995) 514 U.S. 419, 437.) *("Kyles")* This due process obligation requires the government to look for—and ultimately disclose to criminal defendants—material exculpatory evidence, including impeachment evidence, pertaining to government witnesses. (*Giglio v. United States* (1972) 405 U.S. 150, 154.) *("Giglio")* If such evidence is regularly documented in officer personnel files, some arm of the government—be it a law enforcement agency, the prosecution, or the court—must review those files; the prosecution must be permitted to learn of any potential *Brady* material that is in those files; and the prosecution must have a means of disclosing it to the defense.

The alternatives that remain in light of the Court of Appeal opinion are insufficient to ensure that the government can satisfy its disclosure obligations under *Brady*. The state statutory barrier erected between law enforcement personnel records and the prosecution does not absolve

prosecutors from their federal constitutional duty to produce material exculpatory information in the possession of the government—and material bearing on officers' credibility indisputably falls within this category. If prosecutors fail to produce material known only to law enforcement, they still violate the United States Constitution, and a criminal conviction obtained in an unfair trial where these mandatory disclosures were not made remains subject to reversal. With or without *Brady* alerts, prosecutors retain the duty to identify officers with potential *Brady* material in their file, but—without receiving *Brady* alerts—will be ill-equipped to obtain this material through filing their own *Pitchess* motions as a matter of course in every case—as would be a practical necessity. Nor can this burden to make routine and time intensive inquiries through *Pitchess* motions that may not have any factual basis be shifted to the defense. In either case the inevitable result will be that the government will regularly suppress material exculpatory information due to the movant's inability to satisfy the standard for a successful *Pitchess* motion without a factual basis to believe that there is a specific record of misconduct—a basis that the *Brady* alerts provide.

The issue before this Court is whether the government can comply with its constitutionally-mandated *Brady* obligations—which require prosecutors to *affirmatively* disclose material exculpatory and impeachment evidence—within the confines of the *Pitchess* statutory scheme—which

limits the disclosure of information derived from officer personnel files. The majority in the Court of Appeal erroneously elevated a state statutory scheme above the federal constitutional rights delineated in *Brady*. In holding that the *Pitchess* statutes prohibit law enforcement agencies from revealing to prosecutors the names of officers whose personnel files are known to contain impeachment material without a court order, the Court of Appeal has made it impossible for California prosecutors and law enforcement agencies to comply with their affirmative obligation to disclose exculpatory evidence and impeachment material. To harmonize state law with the United States Constitution, this Court must either overrule the Court of Appeal's interpretation of the *Pitchess* statutes and hold that the prosecution cannot satisfy its due process obligations unless a system of Brady alerts is mandatory, or strike down the *Pitchess* statutes as unconstitutional.

As Real Parties in Interest have set forth in their Opening and Reply Briefs, the Court of Appeal's decision must be reversed. By holding that the *Pitchess* statutes do not permit the Department—whose officers are regularly members of the prosecution team—to provide *Brady* alerts even when an officer is involved in a pending case, the Court of Appeal essentially held that the Department must violate its constitutional *Brady* obligations to remain in compliance with state law. Such a result is inconsistent with the Supremacy Clause, and the clear precedent from this

Court holding that the *Pitchess* statutes cannot limit a defendant's constitutional right to *Brady* material. (See, *e.g.*, *People v. Superior Court* (2015) 61 Cal 4th 696, 720) ("*Johnson*") ("all information that the trial court finds to be exculpatory and material under *Brady* must be disclosed, notwithstanding [the *Pitchess* statutory] limitations"); (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 14) ("the *Pitchess* process operates in parallel with *Brady* and does not prohibit the disclosure of *Brady* information") (internal quotation omitted) (emphasis added); (*People v. Mooc* (2001) 26 Cal.4th 1216, 1225) (*Pitchess* scheme "must be viewed against the larger background of the prosecution's constitutional obligation to disclose to a defendant material exculpatory evidence so as not to infringe the defendant's right to a fair trial").

Amici submit this brief to highlight the guiding constitutional principles that this Court cannot ignore – primarily that, (i) because the government's obligations under *Brady* are self-executing, the defense cannot be required to request *Brady* material in order to receive it and that, (ii) because *Kyles* clearly holds that the government must discover material exculpatory information the police possess and will be held responsible for failing to turn it over to the defense, this Court cannot fall back on the fiction that the prosecution and defense's "equal access" to the *Pitchess* procedures somehow achieves constitutional compliance. *Amici* also highlight how, in the real world, the *ALADS* decision will eviscerate the

government's ability to comply with its affirmative duty to produce exculpatory evidence pertaining to law enforcement members of the prosecution team, increase the suppression of *Brady* material, and place at risk the finality of criminal convictions due to the increased possibility of reversal for *Brady* violations. In practice, the Court of Appeal's decision does more than invalidate *Brady* list policies—it permits and even requires law enforcement agencies, and ultimately prosecutors, to suppress impeachment evidence relating to potential government witnesses. It cannot be that the *Pitchess* statutes can cabin a defendant's federal *Brady* rights to such a degree so as to eradicate them almost entirely when it comes to officer personnel files. State law must either require law enforcement agencies to provide *Brady* alerts to the prosecution or permit the prosecution to directly review the personnel files of officers who are part of the prosecution team. If the *Pitchess* procedures do not allow for one or the other, the entire statutory scheme must be held to be unconstitutional.

II. BACKGROUND: *JOHNSON* AND *ALADS*

In 2016, the Department joined other law enforcement agencies across the State in creating a *Brady* list—a list of officers who had sustained findings of misconduct involving moral turpitude in their personnel files—so that the Department could more efficiently alert prosecuting agencies about the existence of *Brady* material. Similar

procedures had already been in place for several years at the California Highway Patrol, the San Francisco Police Department, and other law enforcement agencies across the state. These *Brady* list procedures were designed to formalize and simplify the means by which law enforcement agencies provided *Brady* alerts to the prosecution.

The Department implemented its *Brady* list procedures in part due to this Court's opinion in (*People v. Superior Court* , *supra*, 61 Cal.4th at p, 721) , in which the Court described similar *Brady* list procedures implemented by the San Francisco Police Department ("SFPD") as "laudabl[e]" efforts to "streamline the *Pitchess/Brady* process."[5] *Johnson* implicitly sanctioned the legal validity of the SFPD's *Brady* list procedures, (*Id.* at p. 707), which were similar to those the Court of Appeal enjoined in this case. In *Johnson*, the Court addressed two questions that were triggered by SFPD's decision to disclose to the prosecution the names of two testifying officers on its *Brady* list: (1) Did the *Pitchess* statutory scheme permit the prosecution to directly review those officers' confidential personnel records without a court order? (2) If not, did *Brady* require the prosecution to file a *Pitchess* motion to obtain those records and produce them to the defense? (*Id.* at p. 705.) The Court held (1) the

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[5] (See *ALADS v. Superior Court*, Case No. BS166063, Real Parties in Interest Prel. Opp. to Petitioner's Pet. for Writ of Mandate, at p. 8.)

Pitchess scheme did not permit prosecutors direct access to officer personnel files, and (2) *Brady* did not require the prosecution to personally obtain the records because, so long as the prosecutor informed the defense that an officer was on the *Brady* list, *Pitchess* procedures were equally available to the defense. (*Ibid.*) An integral part of the Court's holding was its conclusion that

> the prosecution fulfills its *Brady* duty as regards the police department's tip if it informs the defense of what the police department informed it, namely, that the specified records might contain exculpatory information. That way, defendants may decide for themselves whether to bring a *Pitchess* motion. The information the police department has provided, together with some explanation of how the officers' credibility might be relevant to the case, would satisfy the threshold showing a defendant must make in order to trigger judicial review of the records under the *Pitchess* procedures.

(*People v. Superior Court, supra,* 61 Cal.4th at p. 705–06 (emphasis added).)

This Court's holding in *Johnson* necessarily relied on the premise that *Brady* alerts are lawful. It was only because *Johnson* assumed that SFPD was allowed to disclose the potential existence of exculpatory information to the prosecution that this Court was able to conclude that the prosecution was absolved of the obligation to review or obtain the personnel records directly. The Court reasoned that the law enforcement agency, SFPD, would provide *Brady* alerts to the prosecution; the prosecution would pass on the *Brady* alerts to the defense; and the prosecution was then neither required to review the personnel file nor to file

a *Pitchess* motion because, armed with the *Brady* alert, the defense could file a successful *Pitchess* motion for itself. Thus, in a world where *Brady* alerts were assumed to be legal, the Court found in *Johnson* that "the prosecution and the defense [would] have equal access to confidential personnel records," conditioned on the ability of a prosecutor to simply pass on a *Brady* alert to the defense. (*Id.* at p. 716.)

On July 11, 2017, the Court of Appeal in this case completely undermined the practical import of *Johnson* by striking down the Department's *Brady* list procedures. The Court of Appeal held that the Department was not allowed to disclose the identities of officers on the *Brady* list to the prosecution, even if an officer was involved in a pending criminal case, because doing so would impermissibly violate the *Pitchess* statutes. (See *Association for Los Angeles Deputy Sheriffs v. Superior Court* , supra, 13 Cal.App.5th at p. 433.) According to the Court of Appeal, the *Pitchess* statutes prohibit the disclosure of *all* "information obtained from [personnel] records," including the identities of those officers; therefore the Department is prohibited from even providing the *names* of officers with known histories of job-related dishonesty absent a *Pitchess* motion. (*Ibid.*); see *also* Penal Code §§ 832.7 and 832.8 and Evidence Code §§ 1043-1045 (collectively "*Pitchess* statutes").

Having removed *Brady* alerts from the equation, the Court of Appeal's decision in *ALADS* has turned this Court's opinion in *Johnson* on

its head. It was only because this Court assumed *Brady* alerts were lawful that it was able to hold in *Johnson* that *Brady* did not require prosecutor to review officer personnel files; that prosecutors were also not required to file *Pitchess* motions; that defendants had equal access as prosecutors to *Brady* information in personnel files; and that the *Pitchess* procedures, which were held to prohibit prosecutors from directly reviewing personnel files, could co-exist with *Brady*. If the Court of Appeal is correct that *Brady* alerts and *Brady* lists violate the *Pitchess* statutes, this Court must revisit its conclusions in *Johnson* and the validity of the entire *Pitchess* scheme itself.

III. ARGUMENT

Amici ask that the Court reject the arguments set forth by ALADS and overturn the Court of Appeal's decision. First, ALADS is simply wrong in claiming that information in personnel files are exempt from *Brady* requirements. There is no reasonable dispute that information in an officer's personnel file relating to professional misconduct bearing on credibility constitutes *Brady* and *Giglio* information that must be disclosed to the defense where that officer is a member of the prosecution team, regardless of whether the files are created for an administrative purpose.

Second, without *Brady* alerts, the *Pitchess* scheme violates the United States Constitution. The government has a duty to turn over material exculpatory information the police possess, and the government is responsible for failing to do so, even if the prosecutor did not actually know

about the information. The government's obligations under *Brady* are self-executing and do not require a request by the defense to take effect. Because the defense need not request *Brady* material, the prosecution must take some affirmative action to learn about potential *Brady* material from law enforcement and notify the defense. Without *Brady* alerts, the only possible way the prosecutor could possibly satisfy its affirmative *Brady* obligation is to file a *Pitchess* motion against practically every single officer in every single case. But beyond the obvious inefficiencies that would plague such a system, the blanket filing of *Pitchess* motions by prosecutors would do little to solve the constitutional dilemma created by the *Pitchess* statutes because the *Pitchess* motions will regularly be denied for failure to establish good cause, and material impeachment information in officer personnel files would regularly remain suppressed. Nor may the Court fall back on the fiction that the availability of *Pitchess* procedures to defendants is sufficient to satisfy *Brady*. As a practical matter, the *Brady* material will routinely be suppressed under *Pitchess* because, like the prosecution, the defense cannot always establish good cause to obtain findings of misconduct in a personnel file that are material and exculpatory.

Third, and for these reasons, the Court must conclude not just that *Brady* alerts are permissible under *Pitchess*, but also that they are required. With *Brady* alerts, the *Pitchess* scheme comes closer in line with *Brady*'s demands. As this Court noted in *Johnson*, the prosecution must notify

defense counsel that an officer is on the Brady list (thus, taking at least *some* affirmative action); defense counsel could then file a *Pitchess* motion; and the *Brady* alert, combined with some explanation of how the officers' credibility might be relevant to the case, would enable the defendant to meet the good cause standard under *Pitchess* in most cases.

Fourth, *amici* note that, although *Brady* alerts go a long way in bringing the *Pitchess* scheme closer to constitutional compliance, other aspects of *Pitchess* remain that unconstitutionally limit a defendant's access to *Brady* material in other ways. Although the Court will unlikely address these issues today, it should seek out the opportunity to do so in future cases.

A. Information in Personnel Files Relating to an Officer's Credibility Is *Brady/Giglio* and Must Be Disclosed to the Defense

ALADS makes the astounding argument that sustained findings of misconduct involving moral turpitude are not *Brady/Giglio* material because personnel files are prepared in the Department's administrative, not investigative, capacity. (ALADS's Answer Brief, p. 32.) The Court should reject this argument. As Real Parties in Interest correctly argue, the duty to disclose under *Brady* belongs to the government, not just the prosecution—thus, law enforcement agencies have their own independent *Brady*

obligations.[6] (See *Serrano v. Superior Court* (2017) 16 Cal App. 5th 759, 767 (*Brady* obligations are the "obligation of the government, not merely the obligation of the prosecutor").) It is beyond dispute that exculpatory evidence found in an officer's personnel file constitutes *Brady* material that must be disclosed to the defense. (See *People v. Superior Court, supra*, 61 Cal.4th at p. 715 ("When the police department informed the district attorney that the officers' personnel records might contain *Brady* material, the prosecution had a duty under *Brady* . . . to provide this information to the defense. No one disputes that").) As discussed below, the prosecution is charged with constructive knowledge of any *Brady* material contained in the personnel files of members of the prosecution team. Moreover, numerous courts have held that information in officer personnel files must be disclosed under *Brady* regardless of whether they were maintained in an administrative capacity.

1. The Prosecutor Has Constructive Knowledge of Impeachment Material Located in the Personnel Files of Any Law Enforcement Member of the Prosecution Team

ALADS essentially argues that the prosecution may turn a blind eye to a finding of officer misconduct in his personnel file unless the finding of misconduct is connected to the investigation or prosecution of a specific criminal case. Answering Brief p. 30. This argument has been rejected by

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[6] (See Reply Brief, at p. 9-12.)

the United States Supreme Court and this Court. (See, *e.g*, *Kyles v. Whitley, supra,* 514 U.S. at 437-48; *In re Brown* (1998) 17 Cal 4th 873.) When an officer is a member of the prosecution team, information bearing on his credibility within a personnel file is both exculpatory and considered to be within the constructive knowledge of the prosecution. Failure to produce this information is grounds for a *Brady* violation, regardless of whether or not the prosecutor had actual knowledge of the information. (See, *e.g., Strickler v. Greene*, (1999) 527 U.S. 263, 275 n.12 ; *Kyles, supra,* 514 U.S. at p. 437-38.) Information bearing on the credibility of a police officer who is relevant to a defendant's case—including, but not limited to, information that that they have been found guilty of past acts of job-related dishonesty that were not committed during the investigation of defendant's case—undeniably falls within the ambit of *Brady*. It is well-established that exculpatory evidence is not limited to that which directly exonerates a defendant—it also includes evidence tending to impeach a government witness. (See, *e.g.*, *Giglio v. United States*, *supra,* 405 U.S. at p. 154-55 (overturning conviction for government's failure to disclose impeachment evidence); (*United States v. Bagley*, (1985) 473 U.S. 667, 676 ("Impeachment evidence, however, as well as exculpatory evidence, falls within the *Brady* rule").); (*People v. Salazar*, (2005) 35 Cal.4th 1031, 1048 ("It is well settled that the prosecution's *Brady* obligation to disclose material evidence favorable to the defense encompasses impeachment

evidence.").) ; (*United States v. Pelisamen*, (9th Cir. 2011) 641 F.3d 399, 408 ("The *Brady* rule applies to evidence impeaching a government witness, as well as to evidence that is directly exculpatory").) Impeachment evidence necessarily includes evidence of dishonesty or misconduct found in the personnel files of police officers—persons who are almost always integral members of any prosecution team. Even if the prosecutor is not actually aware of these disciplinary records, knowledge that is within the possession of a law enforcement agency about a member of the prosecution team is undeniably imputed to be within the constructive knowledge of the prosecutor, and thus must be disclosed. (See *Kyles v. Whitley, supra,* 514 U.S. at p. 437.)

In *Kyles*, the United States Supreme Court was very explicit in recognizing that a prosecutor has a duty under *Brady* to disclose material information known to law enforcement:

> [T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable.

(*Id.* at p. 437-38 (emphasis added) (internal citation omitted).); *accord, Strickler*, 527 U.S., at 275 n.12.)

The Court went on to reject the state's argument that a prosecutor is not responsible for disclosing *Brady* information that was known only to the police. Instead, the Court recognized that *Brady* requires the government to establish a process to ensure that the prosecution obtains any exculpatory information about officers who act "on the government's behalf in the case" *(Id. at p. 281)*, so that it may discharge its *Brady* obligation:

> To accommodate the State in this manner would, however, amount to a serious change of course from the *Brady* line of cases. . . . [T]here is no serious doubt that 'procedures and regulations can be established to carry [the prosecutor's] burden and to insure communication of all relevant information on each case to every lawyer who deals with it.'"

(*Kyles v. Whitley, supra, 514 U.S.* at p. 438 (alteration in original) (internal citation omitted).)

The Court concluded that failing to hold the prosecution accountable for all material information possessed by the police—and not merely the information the police decided to share—would severely undermine *Brady* and improperly allow police to serve as the ultimate arbiters of a defendant's constitutional rights:

> Since, then, the prosecutor has the means to discharge the government's *Brady* responsibility if he will, any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials.

(*Kyles v. Whitley, supra, 514 U.U. at p. 438*) It is therefore clear under *Kyles* that *Brady* information—which includes impeachment information—possessed by the police is within the constructive knowledge of the prosecutor, with a concomitant duty to produce. The fact that exculpatory evidence in the form of a sustained finding of dishonesty concerns conduct the officer engaged in while investigating a *prior* case does not take it out of ambit of *Brady*.

In *Brown*, this Court endorsed the entirety of the Supreme Court's rationale in *Kyles*. Recognizing that the "prosecution team" includes members of law enforcement, the Court unambiguously concluded that "any favorable evidence known to the others acting on the government's behalf is imputed to the prosecution." (*Brown,* (1998) 17 Cal.4th 873,879 (emphasis added).) Thus, ALADS's contention that *Brady* applies only to information directly obtained as part of the criminal investigation is unsupported by the law. In *Brown*, this Court did not endorse ALAD's cramped interpretation of the state's *Brady* obligation. In fact, the Court quoted approvingly from the Fifth Circuit's decision in (*United States v. Auten*, (5th Cir. 1980) 632 F.2d 478 , which held that the state's failure to disclose the criminal record of a prosecution's witness—evidence that pre-dated the criminal investigation—constituted a *Brady* violation. (*Brown* at p. 879-91.) *Brown* cannot be squared with ALADS' assertion that