Supreme Court No. S243855

IN THE

SUPREME COURT OF CALIFORNIA

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
Respondent,

LOS ANGELES SHERIFF'S DEPARTMENT,
SHERIFF JIM MCDONNELL and COUNTY OF LOS ANGELES
Real Parties In Interest

PETITION FOR WRIT OF MANDATE
TO THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
THE HONORABLE JAMES C. CHALFANT, PRESIDING
SUPERIOR COURT CASE NO.: BS166063
COURT OF APPEAL, 2nd APPELLATE DISTRICT: NO. B280676

AMICI CURIAE BRIEF OF RIVERSIDE SHERIFFS' ASSOCIATION, LOS ANGELES POLICE PROTECTIVE LEAGUE, SOUTHERN CALIFORNIA ALLIANCE OF LAW ENFORCEMENT AND LOS ANGELES SCHOOL POLICE ASSOCIATION IN SUPPORT OF ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS

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I. INTRODUCTION

A. The Question Presented

When this Court granted the Department's petition for review, it asked the parties to brief the following issue: "When a law enforcement agency creates an internal *Brady* list (see *Government Code*, § 3305.5), and a peace officer on that list is a potential witness in a pending criminal prosecution, may[1] the agency disclose to the prosecution (a) the name and identifying number of the officer and (b) that the officer may have relevant exonerating or impeaching material in his or her confidential personnel file, or can such disclosure be made only by court order on a properly filed *Pitchess* motion? (See *Brady v. Maryland* (1963) 373 U.S. 83; *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531; *Penal Code*, §§ 832.7-832.8; *Evidence Code*, §§ 1043-1045.)"

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[1] Modal verbs are a small class of **auxiliary verbs used mostly to** express modality - a speaker's **attitude** and the strength of that attitude. The word 'must' indicates the meaning of 'definite'. The word 'may' indicates a lesser possibility. A sense of 'compulsion' is meant in the usage of the word 'must,' whereas the sense of 'possibility' is meant in the usage of the word 'may'.

B. If the *Pitchess* Statutes Violate the Constitution, Every Agency Must Disclose Material from the Officer's Confidential Personnel File

If this Court determines that a law enforcement agency has discretion on whether or not to disclose such confidential information to the prosecution, then the answer to this Court's question is "No" - the agency must not disclose material from the officer's confidential personnel file, unless the disclosure is being made pursuant to a court order issued following a properly-filed *Pitchess* motion. On the other hand, if this Court determines that a law enforcement agency has no discretion, and is obliged under *Brady* and the Fourteenth Amendment to disclose such information, then the answer must be "Yes" - even without a court order. If the answer is "Yes," disclosure of such information must be made by an agency even if it has not created an internal *Brady* list.

There is no statute or case decision that compels a law enforcement agency to compile a so-called *Brady* list - it is entirely within an agency's discretion whether or not to create an internal *Brady* list. There are no statutory directions concerning which officers should be placed on an internal *Brady* list. Since there is no "best practice" guidance from any governmental

agency or organization on how a law enforcement agency should go about creating an internal *Brady* list, the actual creation of one is an *ad hoc* exercise by the agency itself. Finally, there is a lack of uniformity between agencies that do have such lists, concerning what criteria was used when the list was created.

Should this Court rule that whenever there is a pending criminal prosecution, a law enforcement agency has a constitutional obligation, under *Brady* and the Fourteenth Amendment, to disclose to the prosecution the name of any potential peace officer witness who may have in his or her personnel file a record of discipline or some other information that might be considered to be possible *Brady* material, it will make no difference whether the agency does or does not have an internal *Brady* list. Having such a list would only facilitate compliance with the *Brady* obligation, it would not meet the obligation itself.[2]

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[2]Taking such a ruling to its logical conclusion would require every law enforcement agency in the State of California, in every matter that is criminally prosecuted, to insure that potential *Brady* material found in the file of any peace officer who could be a witness in the case, (or is subpoenaed by the defense to be a witness), is provided to the prosecution for disclosure to the defendant - all without any of the confidentially protections currently afforded under the *Pitchess* statutes.

C. The California *Pitchess* Statutes are Constitutional

In *Brady*, the Supreme Court held that suppression by the prosecution of evidence favorable to an accused violates due process, where the evidence that was suppressed is material to either guilt or punishment. The *Brady* decision did not establish specific procedures that the states were constitutionally required to follow to ensure an accused obtained the necessary "favorable" evidence - neither have any of the subsequent Supreme Court cases in the 55 years since the *Brady* case was decided.[3] The Supreme Court has also never discussed whether and how the *Brady* rule might apply to police disciplinary and internal investigatory files - this question remains unsettled at the Supreme Court level. So the effect of *Brady* on officer personnel files that are solely in the hands of a law-enforcement agency remains unresolved.[4]

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[3] In *Pennsylvania v. Ritchie*, 480 U.S. 39, 58 (1987), however, the Supreme Court did effectively write an *in camera* review procedure into state law, requiring Pennsylvania judges to examine confidential information for the presence of *Brady* material without regard to state-law restrictions, and despite the absence of a state law authorizing such reviews in criminal cases.

[4] One California case *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39, has suggested *Brady* does not apply to officer personnel files. This is because "information possessed by an agency that has no connection to the investigation or prosecution of the criminal charge against the defendant is not possessed by the prosecution team, and the prosecutor [generally] does not

The Supreme Court has, for a very long time, allowed states to experiment with different procedures to answer complicated problems. (See *Smith v. Robbins*, 528 U.S. 259, 272 (2000).) A state has the authority to experiment with its criminal procedure, so long as it remains within the limitations of the Fourteenth Amendment. When the Supreme Court reviews a state criminal procedure, the Court does so by determining whether the procedure exceeds the limits imposed by the Constitution. In the present case, this Court must decide whether the Fourteenth Amendment permits California to require a defendant to make his or her showing of materiality, for both *Pitchess* and *Brady* purposes, at a pre-trial stage.

A defendant who seeks a new trial claiming *Brady* error must demonstrate to the court that the suppressed evidence was "material" to issues that were raised in the case. In California, under the *Pitchess* statutes, the procedure for obtaining access to police disciplinary files requires the requesting party, usually the defendant, to demonstrate the sought-after information would be "material" to issues that may be raised in the case.

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have the duty to search for or to disclose such material." (Quoting *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1315, emphasis added.)

Amici will argue in this brief that the pre-trial procedures under the *Pitchess* statutes - which will necessarily **prevent** "*Brady*" error from occurring - are as constitutionally permissible as the post-trial procedures that require a similar showing of materiality in order to demonstrate "*Brady*" error has actually occurred.

II. ARGUMENT

A. Introduction and Background

The Supreme Court has never decided a case involving *Brady*'s application to police personnel files. *Brady*, and its progeny - *Giglio v. United States*, 405 U.S. 150 (1972), *United States v. Bagley*, 473 U.S. 667 (1985), and *Kyles v. Whitley*, 514 U.S. 419 (1995) - all reference material obtained in the course of investigating the case, i.e., the information in the prosecutor's and police department's case files. In the cases that expanded *Brady*, the Justices frequently referred to *Brady* information as being contained in "the file" - by which they meant the case file.[5]

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[5]See, e.g., *Cone v. Bell*, 556 U.S. 449, 459 (2009) (discussing in the *Brady* context, a criminal defendant's right to review "the prosecutor's file in his case"; *Bagley, supra*, 473 U.S. at 702, (Marshall, J., dissenting) (arguing that

Usually, when the Supreme Court has not considered an issue, it will be dealt with by the lower federal courts, but in the case of *Brady*'s application to law enforcement personnel files, such clarification has not occurred. The federal courts were not required to settle this question because the Justice Department adopted a policy that requires federal agents' files to be searched upon request by the defense.[6] Due to this policy, and the effect of the Antiterrorism and Effective Death Penalty Act (AEDPA) on the federal review of state convictions, the federal courts of appeals were left largely without the opportunity - or the need - to settle how *Brady* applies to police personnel files.[7] In the absence of federal case law, a variety of *Brady* approaches emerged in the states.

Brady requires the prosecutor to disclose "all evidence in his files that might reasonably be considered favorable to the defendant's case"; *Giglio*, *supra*, 405 U.S. at 154, (discussing, in the *Brady* context, "a combing of the prosecutors' files".

[6]Memorandum from Robert S. Mueller, Assistant Attorney General, Criminal Division, (August 12, 1991), advised prosecutors to work with the agencies to facilitate timely responses to requests to review files.

[7]See Article: Brady's Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team (Article), 67 Stan.L.Rev. 743, 757 (2015).

B. Preliminary Showing Necessary to Obtain Evidence from Police Personnel Records

A criminal defendant's *Pitchess* motion will reach evidence that a defendant can plausibly relate to a specific defense contention or theory. Defense *Pitchess* motions are denied when a defendant cannot make the requisite showing. (See, e.g., *People v. Sanderson* (2010) 181 Cal.App.4th 1334, (denying *Pitchess* motion because defendant merely denied statements attributed to him by officer and did not present a specific factual scenario that was plausible).) Hence, *Pitchess* motions by defendants are necessarily limited to officer conduct the defendant knows or suspects to exist, and which will support an articulable defense theory.

California is not the only state that requires, (or has required), a defendant to establish a basis to obtain information from a police personnel record before a court will order an *in camera* inspection. In Delaware, "the State is not required to examine the records of State employee witnesses unless the defendant provides some factual basis that *Brady* material may be found in those records." (*State v. Anderson*, 1999 Del. Super. LEXIS 450.) A mere allegation that a search of an official's personnel files "is needed in order to

prepare a defense and cross examination is insufficient" to establish a factual predicate to require the State to examine the files for *Brady* material. (*State v. D.F.*, 2012 Del.Fam.Ct. LEXIS 39.)

In *Snowden v. State*, 672 A.2d 1017 (Del. 1996), the Supreme Court of Delaware had to determine "what threshold showing is required by a defendant to compel the production of personnel files through a subpoena *duces tecum*" and what "procedural safeguards should be implemented to insure that the confidentiality of such files is not compromised improperly." (*Id.*, at 1023.) The court noted that the "answers to those questions in other jurisdictions can be found in two lines of decision. The first line of precedent addresses whether a defendant has made a sufficient showing to compel a review of police personnel records *by the prosecution.* The second line of cases addresses whether a defendant has made a sufficient showing to warrant an *in camera inspection by the court.*" The Court remarked that there were "relatively few cases involving the right of a defendant to have the prosecution review personnel files of law enforcement officers. Nevertheless, those decisions are almost unanimous in holding that in response to a specific motion, or upon subpoena *duces tecum*, the prosecution is required to review the identified personnel files for *Brady* material." (*Id.*) The Court then explained that the "majority view requires a determination that the defendant has established a factual basis for the requested files before ordering an *in*

camera inspection. See *State v. Kaszubinski*, N.J. Super., 177 N.J. Super. 136, 425 A.2d 711, 714 (1980).[8] "'Generally, it is not necessary for a defendant to establish that the personnel file actually contains relevant information, but he should at least advance' some factual predicate which makes it reasonably likely that the file will bear such fruit and that the quest for its contents is not merely a desperate grasping at a straw." *Id.* (quoting *People v. Gissendanner*, N.Y.Ct.App., 48 N.Y.2d 543, 399 N.E.2d 924, 928, 423 N.Y.S.2d 893 (1979))." The Court concluded the defendant had established the requisite predicate for an *in camera* inspection and held the Superior Court should have conducted an *in camera* review of the officer's "personnel files to determine whether they contained any information which should have been disclosed to Snowden." (*Snowden v. State*, *supra*, 672 A.2d at 1024.)

Both the New Jersey and Delaware courts cited *People v. Gissendanner*. In that case, the Court of Appeals of New York, citing several cases from different states, noted that access to police personnel records "has been denied in cases in which the defendant failed to demonstrate any theory of relevancy and materiality, but, instead, merely desired the opportunity for

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[8] In *Kaszubinski*, after reviewing a number of cases from different states where the disclosure of police personnel records had been denied for a variety of reasons, the Court concluded that "[a]lthough these courts have not applied a uniform standard, they generally require some preliminary showing before permitting even an *in camera* inspection."

an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information would enable him to impeach the witness." (*Supra*, at 549.)[9]

C. Federal Appellate Decisions That Required A Showing of Materiality

Before the Justice Department adopted a policy that required federal agents' files to be searched upon request by the defense[10], the courts in several Circuits denied defendants' motions for review of government personnel files

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9 See also *People v. Cook*, 2015 N.Y.Misc. LEXIS 4689, where the Court found "that the defense [did] not [make] a sufficient predicate factual showing that the information sought is material and relevant to defendant's case as would warrant this court to request the records for its *in camera* review for potential release to the defense [citation]. On the contrary, the defendant's application here is more akin to a 'fishing expedition' into confidential records, as has been condemned by the courts [citations]. The hope of discovering some discrediting information does not justify review of confidential police files [citations].

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Albeit, following the decision in *United States v. Henthorn*, 931 F.2d 29, 31 (9th Cir. 1991), where the Court held the defense need not make any prior showing that impeachment material will be found in the agent's personnel file. Rather, the government's duty to look through a file is triggered by the defendant's request alone; Cf., *United States v. Rivaz-Felix*, 2013 U.S. Dist. LEXIS 55895, *17 (E.D. Cal. 2013) where the Court ruled federal defendant seeking state officer's personnel records should compel discovery of such records "by filing a *Pitchess* motion supported by affidavits showing good cause, materiality, and a reasonable belief that the agency has the information at issue."

unless the defendants could make a prior showing of materiality.[11] (See *United States v. Andrus*, 775 F.2d 825, 843 (7th Cir. 1985) ("Mere speculation that a government file may contain *Brady* material is not sufficient to require a remand for *in camera* inspection, much less reversal for a new trial. A due process standard which is satisfied by mere speculation would convert *Brady* into a discovery device and impose an undue burden upon the district court."); *United States v. Phillips*, 854 F.2d 273, 278 (7th Cir. 1988) ("We reiterate that a *Brady* request does not entitle a criminal defendant to embark upon an unwarranted fishing expedition through government files, not does it mandate that a trial judge conduct an *in camera* inspection of the government's files in every case."); *United States v. Driscoll*, 970 F.2d 1472 (6th Cir. 1992), defendant claimed district court's denial of motion for disclosure of officers' personnel files violated *Brady* - Court held mere speculation is not enough to trigger the government's obligation to inspect, or the court's obligation to review personnel files of testifying officers); *United States v. Lafayette*, 983 F.2d 1102, 1106 (D.C. Cir. 1993) (Court held defendant must make some prior showing in order to trigger the government's obligation to review law enforcement personnel files); *United States v. Quinn*, 123 F.3d 1415, 1421,

[11] Only the Third Circuit joined the Ninth Circuit in ruling defendants do not need to make a prior showing of materiality to obtain impeachment material from an agent's personnel file.

(11th Cir. 1997) (Court declined to order prosecutors to examine officers' personnel files upon request of defendant); *United States v. Meros*, 866 F.2d 1304, 1310 (11th Cir. 1989) (without defense showing, prosecutor not required to search files of local police agencies).

D. *Pitchess* Statutes Are Within the Bounds of the Fourteenth Amendment

The United States Supreme Court does not have the power to promulgate state criminal law. The Court has recognized that the states have the "primary authority for defining and enforcing the criminal law." (*Brecht v. Abrahamson*, 507 U.S. 619, 635 (1992), where the Court further noted that "[i]n criminal trials [the states] also hold the initial responsibility for vindicating constitutional rights. Federal intrusions into state criminal trials frustrate both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights.") The states have the authority to establish their own criminal laws and procedures. The Supreme court has the power to review these laws for constitutionality, but cannot dictate state criminal procedures. (*Dickerson v. United States*, 530 U.S. 428, 438 (2000) (Court's authority over state courts is limited to enforcing the Constitution.)) The Supreme Court may evaluate a state's criminal procedure for any violations of the Constitution. If the Court finds that a state's law is

unconstitutional, it has the authority to overrule the state. Absent a finding of unconstitutionality, however, the Court does not have the power to overturn a state's laws. (*Id.*)

One of the principle goals of federalism is to allow states the flexibility to address issues involving public policy with a variety of solutions. (See, e.g., *Smith v. Robbins*, 528 U.S. 259, 273 (2000) (*Robbins*) (Court's established practice is to allow states "wide discretion" under the Fourteenth Amendment to experiment with answers to problems in policy). The Court's holding in *Robbins* relied on a long-established principle that the Court provides the states wide discretion to develop procedures that answer difficult legal problems. (See, e.g., *Spencer v. Texas*, 385 U.S. 554, 563-564 (1967) (stating the Constitution does not provide the Court with authority to promulgate state rules of criminal procedure); *Griffin v. Illinois*, 351 U.S. 12, 24 (1956) (states have wide discretion under the Constitution to choose means of effecting policy).) In *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987), the Court held that states may adopt different procedures, provided those procedures sufficiently protect the constitutional right in question. In *Robbins*, the Court explained that state procedures are to be evaluated one at a time, rather than the Court imposing a single solution for all of the states to employ. (*Robbins*, *supra*, 528 U.S. at 275.)

In *Brady*, and its progeny, the Supreme Court did not establish any specific procedure that the states were constitutionally required to follow. Rather, the Court implicitly left it to the states to determine how best to ensure material evidence, favorable to the accused, is not suppressed by the government. This lack of a "constitutional rule"[12] allows the states flexibility in responding to defense requests for *Brady* evidence that may be contained in an officer's personnel file. The real issue in this case is whether the Fourteenth Amendment permits California to require a defendant to make his or her showing of materiality, for both *Pitchess* and *Brady* purposes, at a pre-trial stage.[13]

In *People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1475-1476, the appellant argued that the statutory *Pitchess* scheme offends constitutional due process by requiring a defendant to establish good cause for disclosure of evidence the prosecution is already under an obligation to provide. The Court held that *Brady* was not violated by requiring disclosure only after an *in*

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[12] The clearest example of where the Supreme Court has established a constitutional rule is in *Miranda v. Arizona*, 384 U.S. 436 (1966).

[13] "Although *Brady* disclosure issues may arise 'in advance of,' 'during,' or 'after trial [citation], the test is always the same. [Citation.] *Brady* materiality is a 'constitutional standard' required to ensure that nondisclosure will not 'result in the denial of defendant's [due process] right to a fair trial.' [Citation.]" (*City of Los Angeles v. Superior Court* (*Brandon*) (2002) 29 Cal.4th 1, 8.)

camera review, conditioned upon a showing of materiality. (Citing *City of Los Angeles v. Superior Court* (*Brandon*) (2002) 29 Cal.4th 1, 15.)

The Ninth Circuit has also found the *Pitchess* preliminary requirement of good cause complies with Supreme Court precedent under *Brady,* and has held that California's procedure is not contrary to Supreme Court precedent. (*Harrison v. Lockyer*, 316 F.3d 1063, 1066 (9th Cir. 2003) (holding the denial of *Pitchess* discovery does not violate due process if the defendant makes "no showing that [a police personnel] file contained complaints material to his defense"); see also *Gomez v. Alameida*, 2007 U.S. Dist. LEXIS 26550, *15-16 (N.D. Cal. 2007) (citing *Harrison*); *Gutierrez v. Yates*, 2008 U.S. Dist. LEXIS 104218, *19-20 (C.D. Cal. 2008) (citing *Harrison*); *Shannon v. Alameida*, 2010 U.S. Dist. LEXIS 128558, *60 (C.D. Cal. 2010) (absence of proof exculpatory evidence in police personnel records fatal to due process claim).)

In *De La Cruz v. Jacquez*, 2013 U.S. Dist. LEXIS 94331, *18-24 (C.D. Cal. 2013), the petitioner alleged that the trial court deprived him of his rights to due process and a fair trial when it denied his motion for police officer personnel records pursuant to *Pitchess*. The Court reasoned, citing *Brady*, "to the extent that petitioner's claim is that he was denied his due process right to receive exculpatory and impeachment evidence, his claim does present a cognizable federal question." The Court stated, "[d]isclosure of a requested file is not warranted unless the defendant first 'establish[es] a basis for his

claim that it contains material evidence.' [Citations] This requirement of a threshold showing of materiality also applies to *Pitchess* requests. *Harrison*, 316 F.3d at 1066 (explaining that the *Pitchess* process operates in parallel to the procedure described in *Brady* and *Ritchie*, but noting that the state standard is 'both a broader and lower threshold for disclosure' than the *Brady* standard)." The Court cited numerous additional cases and concluded petitioner's claim "lacks merit."

This Court must not overrule the legislature's chosen procedure unless it concludes the *Pitchess* statutes are beyond the bounds of the Fourteenth Amendment. The Department has not cited a single case that holds the *Pitchess* scheme in California, or any *Pitchess* like scheme in any other state that requires a particular showing before disclosure of personnel records, violates *Brady*. Included within this brief are a plethora of cases, both state and federal, that have concluded requiring such a showing is permissible under *Brady*.

E. Legislation

As noted above, a variety of *Brady* approaches have emerged in the states in regard to police personnel files. These could be described as "public record regimes, "access and disclosure" regimes, and "no access" regimes. The different regimes are loosely based on the emphasis the legislature in each

jurisdiction has placed on the confidentiality of police personnel records.

In public record regimes, records of police misconduct are publicly accessible. This actually eliminates any need for the prosecutor to discover and disclose such information because, under the reasonably diligent defendant doctrine, a defendant could access them on his own. (See *United States v. Aichele*, 941 F.2d 761, 764 (9th Cir. 1991) ("When, as here, a defendant has enough information to be able to ascertain the supposed *Brady* material on his own, there is no suppression by the government.").) The public record group includes Florida, Texas, Minnesota, Arizona, Tennessee, Kentucky, Louisiana, and South Carolina.[14]

In access and disclosure regimes, prosecutors have access to police personnel files while defendants do not. In these jurisdictions, prosecutors usually use their access to put in place systems to comply with *Brady*. The access and disclosure group includes Washington State, North Carolina and the District of Columbia.[15]

In no access regimes, such as California, prosecutors are barred by state laws from viewing police personnel files. In these jurisdictions, as in California, in order to comply with *Brady*, there is usually a procedure set up

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[14](See Article, 67 Stan.L.Rev. 743, 770.)

[15](See Article, 67 Stan.L.Rev. 743, 773-775.)

for defense access. The no access group includes, in addition to California, New Hampshire, Colorado, Vermont, Maine and New York.[16]

It must be noted, that recently, there has been some movement in the no access regimes toward less restrictive legislation. For example, in 2012, the New Hampshire legislature amended its personnel file statute to say that "exculpatory evidence in a police personnel file ... shall be disclosed to the defendant" and that *in camera* review was required only "if a determination cannot be made as to whether evidence is exculpatory." (N.H. Rev. Stat. Ann. § 105: 13-b (2014).) In Maine, the legislature amended its personnel file statute in 2013 to create a *Brady* exception. The law making the files confidential, now reads, "does not preclude the disclosure of confidential personnel records" to prosecutors for purposes "related to the determination of and compliance with the constitutional obligations ... to provide discovery to a defendant in a criminal matter." (Me. Rev. Stat. Title 30-A, § 503 (2014).)

There is currently a bill pending in the California legislature which would amend *Penal Code* section 832.7, and require some peace officer personnel records and records relating to certain types of complaints made against peace officers to be available for public inspection pursuant to the California Records Act. The bill provides that the information to be made

[16](See Article, 67 Stan.L.Rev. 743, 767-771.)

available will include, the framing allegation or complaint, the agency's full investigation file, any evidence gathered, and any findings or recommended findings, discipline, or corrective action taken. See Sen. Bill 1421, 2017-2018 Reg. Sess. (Cal. 2018). Such records would no longer be confidential.

It must be stressed, that all these are legislative solutions, not judicial resolutions of important public policy concerns. This Court should not decide this case on public policy grounds - the elected legislature must be free to decide such public policy issues on its own.

III. CONCLUSION

The *Pitchess* statutory scheme has been criticized because it is not designed to allow a defendant to conduct a "fishing expedition" for all unknown exculpatory evidence. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, (*Pitchess* does not authorize defendants to embark on "fishing expeditions" into the confidential personnel files of law enforcement agencies).) But, *Brady* itself would not countenance such an unfocused approach to such evidence either.

In *Brady*, the suppression of evidence favorable to an accused only violates due process when the evidence that was suppressed is "material". Under *Brady*, such exculpatory information is material only if there is a "reasonable probability" that it would have changed the outcome of the verdict