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S243855

**IN THE
SUPREME COURT OF CALIFORNIA**

Deputy

CRC
8.25(b)

ASSOCIATION FOR LOS ANGELES DEPUTY SHERIFFS,
Petitioner,

vs.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR
THE COUNTY OF LOS ANGELES,**
Respondent.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT et al.,
Real Parties in Interest.

*On Review from the Court of Appeal
For the Second Appellate District, Division 8, Case No. B280676*

*After a Writ Proceeding from the Superior Court of Los Angeles County
Hon. James C. Chalfant, Case No. BS166063*

**PETITIONER'S REPLY TO BRIEFS
REGARDING SB 1421**

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**PETITIONER'S REPLY TO BRIEFS
REGARDING SB 1421**

INTRODUCTION

In its brief regarding SB 1421, petitioner Association for Los Angeles Deputy Sheriffs (ALADS) demonstrated that SB 1421, as it amended Penal Code section 832.7 (section 832.7), has

no impact on this case. That is because SB 1421 relates only to public inspection of information under the Public Records Act for narrow categories of peace officer personnel records related to serious misconduct. None of those narrow categories encompasses the disclosure at issue in this case by law enforcement to the prosecution of a peace officer's identifying information in connection with discipline under the guise of compliance with *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*). Indeed, SB 1421 specifically retains the statutory scheme enacted after *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) for disclosure of information from peace officer personnel records in criminal cases. The legislative history of SB 1421 confirms that its purpose is to give the general public, not a criminal defendant, access to otherwise confidential peace officer personnel records for certain serious misconduct.

The brief on SB 1421 filed by real parties in interest the Los Angeles Sheriff's Department et al. (Department) recognizes that SB 1421 does not address a criminal defendant's due process right to *Brady* material, but rather relates to improvement of law enforcement transparency to the public. Certain amici curiae

have this same appreciation of SB 1421's limited application to public disclosure.

After recognizing that SB 1421, both in language and purpose, has nothing to do with disclosure pursuant to *Brady*, however, the Department, and certain amici curiae, suggest that SB 1421 might allow law enforcement to give the prosecution peace officer identifying information in connection with discipline for the narrow categories of serious misconduct now defined in section 832.7, subdivision (b). They also suggest that, based on SB 1421, prosecutors or criminal defendants perhaps can make a Public Records Act request for a peace officer personnel record related to the defined serious misconduct. But, in offering these suggestions, the Department, and amici curiae, forget about SB 1421's explicit instruction that it does not apply in a criminal case. As a result, the suggestions are not authorized acts under SB 1421. Rather, following SB 1421's language and purpose shows that SB 1421 does not change the analysis of this Court's question presented for review.

The bottom line is that law enforcement cannot disclose to the prosecution peace officer identifying information in

connection with discipline absent a court order following compliance with the *Pitchess* statutory scheme. SB 1421 does not change the *Pitchess* statutory scheme as it applies to the disclosure at issue in this case. Its changes relate only to public disclosure. SB 1421 says that multiple times, both in its express language and legislative history, in fact confirming application of the *Pitchess* statutory scheme to the disclosure law enforcement seeks to make here under the guise of *Brady* compliance. Thus, as established in ALADS's briefing, this Court should affirm the decision of the Court of Appeal.

LEGAL DISCUSSION

I.

SB 1421 APPLIES ONLY TO PUBLIC DISCLOSURE, NOT TO THE DISCLOSURE BY LAW ENFORCEMENT TO THE PROSECUTION OF PEACE OFFICER IDENTIFYING INFORMATION IN CONNECTION WITH DISCIPLINE.

As ALADS has explained, SB 1421 creates narrow exceptions to the confidentiality of peace officer personnel records established by the *Pitchess* statutory scheme. Under SB 1421, peace officer personnel records retain their confidentiality, except for requests for information by a member of the public pursuant to the Public Records Act regarding narrow categories of serious misconduct. (§ 832.7, subs. (a) & (b).) SB 1421 then provides exceptions to its exceptions, which limit disclosure in certain instances, such as that related to a pending criminal or administrative investigation. (E.g., *id.* at subd. (b)(7).)

After opening up these limited exceptions to confidentiality for public disclosure, SB 1421 expressly states that it retains the *Pitchess* procedure for disclosure of information of peace officer personnel records in criminal cases. Section 832.7, subdivision

(g), as amended by SB 1421, states, “This section does not affect the discovery or disclosure of information in a peace . . . officer’s personnel file pursuant to Section 1043 of the Evidence Code.”

Section 832.7, subdivision (h), as amended by SB 1421, provides, “This section does not supersede or affect . . . the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.”

The legislative history confirms: “This bill specifically states that its provisions do not affect or supersede the criminal discovery process, or the admissibility of peace officer personnel records.

The purpose of the bill is to give the general public, *not a criminal defendant*, access to otherwise confidential police personnel records relating to serious police misconduct in an effort to increase transparency.” (Assem. Com. on Public Safety, Rep. on Sen. Bill No. 1421 for June 26, 2018 Hearing (2017-2018 Reg. Sess.) as amended June 19, 2018, p. 8, italics added.)

The Department recognizes SB 1421’s limited application to public disclosure and thus inapplicability to the issue before the Court in this case, namely, the disclosure by law enforcement to the prosecution of peace officer identifying information in

connection with discipline. The Department states, “SB 1421, on its face, makes it clear it was not intended to address a criminal defendant’s due process right to *Brady* material, but was instead focused on improving government transparency in order to enhance the public’s faith in law enforcement.” (Dept. Supp. Brief, p. 13.) The Department also acknowledges that “it is clear that SB 1421 was not intended to address a criminal defendant’s constitutional due process right to access *Brady* material.” (Dept. Supp. Brief, p. 15.) Certain amici curiae have this same recognition. (E.g., Supp. Brief of California District Attorneys Association, p. 10 [“Taken at face value, the language in subdivision (h), that the statute does not affect the criminal discovery process, would suggest the answer that SB 1421 has no bearing on the question presented for review” (fn. omitted)]; Supp. Brief of Attorney General, p. 5 [“The new law does not directly address the question presented in this case, which involves the disclosure of officer names to prosecutors to facilitate compliance with *Brady*”].)

This should be the end of the story on SB 1421. It specifically maintains confidentiality of peace officer personnel

records in section 832.7, subdivision (a), except for public disclosure under the Public Records Act for narrow categories of records relating to specified serious misconduct. It says that it does not change the discovery or disclosure of information contained in a peace officer's personnel file pursuant to the *Pitchess* discovery process in the Evidence Code. It says that it does not impact the admissibility of peace officer personnel records under the *Pitchess* statutory scheme. And its legislative history confirms that it was meant for the general public, not for a criminal defendant. SB 1421, therefore, does not impact the question presented for review in this case.

II.

SB 1421 DOES NOT CREATE A WAY UNDER THE PUBLIC RECORDS ACT TO AVOID *PITCHESS* COMPLIANCE FOR DISCOVERY OR USE OF A PEACE OFFICER PERSONNEL RECORD IN A CRIMINAL CASE.

As explained, SB 1421's express language and legislative history indicate its application is limited to public disclosure, and the Department and certain amici curiae recognize that limitation. Nevertheless, some of the briefs on SB 1421, including that of the Department, attempt to craft ways to use SB 1421 as support for the disclosure by law enforcement to the prosecution of peace officer identifying information in connection with discipline. These attempts are unsuccessful.

For example, the Department suggests that, "[b]ecause of the non-confidential nature of records relating to those four categories of incidents [of serious misconduct in section 832.7, subdivision (b)], it appears it would be permissible to provide a *Brady* alert advising a prosecutor that an officer has such non-confidential records in his or her personnel file without a *Pitchess* motion." (Dept. Supp. Brief, p. 6; see also *id.*, p. 9.) The Department offers this suggestion, even though it recognizes that

SB 1421 is limited to public disclosure. Certain amici curiae offer the same suggestion. (E.g., Supp. Brief of Attorney General, p. 5 [“SB 1421 also makes clear that, as to at least those officers whose personnel files contain records covered by the new enactment, state law does not prohibit law enforcement agencies from communicating those officers’ names to prosecutors to enable compliance with *Brady*”]; Supp. Brief of League of California Cities, pp. 3-5 [disclosure from law enforcement to the prosecution permissible for conduct both inside and outside the scope of SB 1421].)

This suggestion, that SB 1421 sanctions law enforcement’s disclosure to the prosecution of peace officer identifying information in connection with discipline is directly contrary to SB 1421’s express language and legislative history. SB 1421 is transparency legislation written to allow the public to request access to certain peace officer personnel records for specific instances of serious misconduct. It has nothing to do with law enforcement’s communication to the prosecution or a criminal defendant’s right to information under *Brady*. Indeed, it maintains confidentiality of peace officer personnel records in all

circumstances except the limited instances of public disclosure under the Public Records Act. SB 1421, therefore, cannot support law enforcement's disclosure of peace officer identifying information in connection with discipline under the guise of *Brady* absent *Pitchess* compliance.

The Department also suggests that SB 1421 gives leeway for the prosecutor or a criminal defendant to seek information from peace officer personnel records under the Public Records Act for the serious misconduct identified in the legislation. (Dept. Supp. Brief, p. 13.) Certain amici curiae make the same suggestion. (E.g., Supp. Brief of California District Attorneys Association, p. 6 ["it appears that either the prosecutor or the defense could simply make a [Public Records Act] request to the employing agency and obtain at least some records relevant to officers' credibility (if such records exist) without the necessity of anyone making a *Pitchess* motion" (fn. omitted)]; Supp. Brief of San Francisco Public Defender's Office, p. 6 [SB 1421 "tangential" effect on this case is that "defendants may now obtain a limited amount of information through a public process"]; Supp. Brief of City and County of San Francisco, p. 4 ["defense counsel and/or

prosecutors could use the [Public Records Act] to request records that fall within the categories specified in subdivision (b) of Section 832.7, potentially obviating the need to resort to the *Pitchess* process in order to obtain them” (fn. omitted)].)

This suggestion, that prosecutors or criminal defendants can ignore the *Pitchess* process for incidents of serious misconduct based on SB 1421, also is directly contrary to SB 1421’s express language and legislative history. As noted, SB 1421 maintains the confidentiality of peace officer personnel records, but for the limited exceptions related to public disclosure. And it specifically provides that it does not change the discovery, disclosure, or admissibility of information from peace officer personnel records in a criminal case and that the *Pitchess* procedure remains in place under those circumstances. In addition, the legislative history says SB 1421 is not for criminal defendants.

SB 1421 thus opens certain narrow categories of records regarding serious officer misconduct for public disclosure, even though the prosecution and the defense in a criminal case still must use the *Pitchess* procedure to obtain information from a

peace officer personnel record. SB 1421, by its terms, is about public disclosure, not criminal defendants, and it has nothing to do with *Brady* obligations. Thus, prosecutors and criminal defendants cannot use SB 1421 to avoid *Pitchess* compliance.¹ (See Gov. Code, § 6252, subd. (b) [member of the public under Public Records Act does not include an employee of a state or local agency acting in that capacity].)

Certain amici curiae turn to Public Records Act law to attempt to justify the release of confidential information outside the construct of SB 1421. (E.g., Supp. Brief of California District Attorneys Association, p. 12 [“While the legislative purpose may not have been to give access to criminal defendants, general

¹ In fact, if, contrary to the express terms of SB 1421, prosecutors and criminal defendants can avoid *Pitchess* compliance and seek records regarding serious officer misconduct under the Public Records Act, then the Department does not need to maintain its own version of a Brady list and disclose information on it to the prosecution. Surely, the Department’s Brady list and disclosure of information on it cannot be justified for misconduct not identified as serious by SB 1421. Moreover, a record of non-serious misconduct often would not be material to a criminal prosecution and thus not subject to *Brady*, a determination that, of course, is made by the prosecutor, not by a law enforcement agency. (*United States v. Lucas* (9th Cir. 2016) 841 F.3d 796, 809 [“fundamental construct of *Brady* . . . makes the prosecutor the initial arbiter of materiality and disclosure”].)

[Public Records Act] principles would allow such access”]; Supp. Brief of Attorney General, pp. 9-10 [release of information to the public under Public Records Act should mean that law enforcement can disclose information to the prosecution].) This attempt, too, does not work.

First, the amici curiae cannot ignore the plain language and legislative history of SB 1421 expressly maintaining peace officer personnel record confidentiality and barring the application of its exceptions in the criminal context. Because section 832.7, subdivision (a), still holds the general confidentiality of peace officer personnel records and SB 1421 does not apply in criminal cases, Public Records Act law cannot allow the Department to avoid *Pitchess* compliance. Second, *Pitchess* procedure protects the confidentiality of peace officer personnel records, even if such information is available elsewhere. (*Hackett v. Superior Court* (1993) 13 Cal.App.4th 96, 99, 101.) As a result, the attempt to use the Public Records Act generally to circumvent *Pitchess* procedure fails.²

² The Department faults ALADS for its reliance on *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, a case involving the Public Records Act. (Dept. Supp. Brief, p. 16.)

The Department and certain amici curiae argue that, because SB 1421 is about transparency, public policy must favor the disclosure from law enforcement to the prosecution of peace officer identifying information in connection with discipline.

That is not the case.

The Legislature in enacting SB 1421 was concerned with public disclosure. Although the Court of Appeal's decision in this case had long been published, and this Court already had granted review, the Legislature chose not to modify the *Pitchess* statutory scheme to accommodate the disclosure by law enforcement to the prosecution of peace officer identifying information in connection with discipline. Instead, the Legislature maintained the confidentiality of peace officer personnel records and expressly exempted criminal cases from its new public disclosure exception, thereby confirming *Pitchess* procedure as it applies to the Department's proposed release of

ALADS, however, relied on that case for the proposition that section 832.7, subdivision (a), protects as confidential a peace officer's identifying information in connection with discipline. (See ALADS Answer Brief, p. 34.) That proposition is unchanged by SB 1421, but for the limited public disclosure permitted to further law enforcement transparency with the public.

protected information to the prosecution. Consequently, public policy does not favor the Department's attempt to release information to the prosecution under the guise of *Brady* compliance. On the contrary, the Legislature's pronouncements in enacting SB 1421 support affirmance of the Court of Appeal's decision keeping the *Pitchess* statutes intact in the context of criminal cases.³

³ Certain of the amici curiae briefs focus whether SB 1421 is retroactive, i.e., requires public disclosure under the Public Records Act of information in peace officer personnel records within the narrow categories of serious misconduct that occurred before the January 1, 2019 effective date of the legislation. (E.g., Supp. Brief of ACLU entities et al., pp. 25-28; Brief of Peace Officers Research Association of California et al, pp. 14-32.) Although retroactivity was at issue in the original proceeding filed in this Court by the San Bernardino County Sheriff's Employees' Benefit Association (S253115) and currently is at issue in other matters pending in trial and intermediate appellate courts, it is not at issue in this case.

CONCLUSION

SB 1421 does not impact the issue presented for review in this case. The Department, and certain amici curiae, recognize that SB 1421 does not address a criminal defendant's due process right to *Brady* material, but rather applies only to public disclosure. Attempts to use SB 1421 to craft support for portions of the Department's disclosure in this case are not successful. This Court should affirm the decision of the Court of Appeal.

Dated: March 8, 2019

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.520(c)(1) & (e), I certify that the total word count of this Petitioner's Reply to Briefs Regarding SB 1421, excluding covers, table of contents, table of authorities, and certificate of compliance is 2,427.

Dated: March 8, 2019

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PROOF OF SERVICE
(C.C.P. § 1013a)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen (18) years and not a party to the within action. I am a resident of or employed in the county where the mailing took place. My business address is 22708 Mariano Street, Woodland Hills, California 91367-6128.

On March 8, 2019, I served the **PETITIONER'S REPLY TO BRIEFS REGARDING SB 1421**, by enclosing a true and correct copy thereof in a sealed envelope as follows:

BY FIRST-CLASS U.S. MAIL: I enclosed the document in a sealed envelope/package addressed to each addressee listed below and placed it for mailing, following our ordinary business practices. I am readily familiar with the mailing practice of my place of employment in respect to the collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business with first-class postage fully prepaid.

The envelope(s) was/were addressed and mailed to all interested parties as follows:

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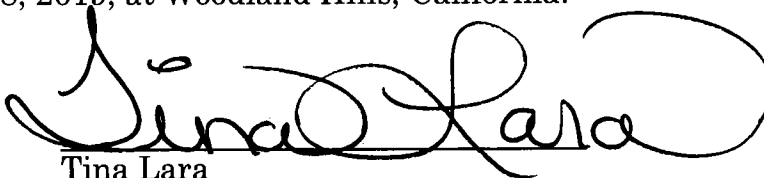
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(State) I declare under penalty of perjury under
the laws of the State of California that
the foregoing is true and correct.

Executed on March 8, 2019, at Woodland Hills, California.



Tina Lara