PITCHES MOTIONS AND BRADY DISCLOSURES
HOW HARD CAN YOU/SHOULD YOU PUSH BACK?

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1. Introduction
If you’re looking for the most extensive, exhaustive resource ever on motions for the discovery of peace officer personnel records, keep looking! This paper presents an overview of the current “state” of the case law which has grown around the Supreme Court’s original Pitchess decision, the variations and variables which have developed over the course of the past thirty years, and at least one agency’s perspective on how best to handle these motions. While this paper will focus primarily on the application of the law in the criminal context, the conference discussion will include practical tips and applications, including those for civil and federal jurisdictions.

In many ways, the challenge presented to the California Supreme Court in 1974 in the original Pitchess case is essentially the same challenge we face today in responding to these discovery motions (albeit with a greatly expanded scope). The criminal defendant in Pitchess was trying to divert the culpability burden to the officers who arrested him. The Court was struggling to balance the defendant’s right to a fair trial with the privacy rights of the peace officers under then-existing Evidence Code provisions. While the appellate courts today still recognize this balancing burden, the trial courts at times seem to lose sight of the truly confidential character of the peace officer’s personnel files and the strong policy considerations behind them, as they struggle with accommodating the defendant’s constitutional right to a “fair” trial. A city attorney’s ultimate goal in these matters should be to use the many resources that the legislature and the courts have given us to ensure that the trial courts engage in a fair, balanced, and thorough review of the issues raised by these Pitchess motions.

For many years Pitchess motions were allowed only in cases where the defendant alleged excessive force by the officers. The courts ultimately began to expand the scope of the “materiality” and “good cause” threshold to include allegations by a defendant that the officers had a bias against certain ethnic, racial, and sexually-oriented groups, coerced confessions, filed false police reports, and fabricated evidence. The most common Pitchess motion we see today alleges simply that the defendant disagrees with what the officer says happened (i.e., that he committed the crime, that he made inculpatory or any statements, that the officer found contraband or other evidence of a crime, etc.) and thus, the officer lied, fabricated evidence and prepared a false police report. Defendants today seek
complaints against any officer who was involved in, present at or investigated his arrest, or prepared a report relating to the arrest/investigation. They ask for complaints against the officer for unlawful arrest, false testimony, fabrication of evidence, planting evidence, false police reports and that popular catch-all provision, “moral turpitude”. The defendants today are also seeking to have the courts expand the types of materials released from personnel files, to include the actual investigation reports themselves, statements of witnesses, compelled statements of the officers provided to investigators, photographs, audio and videotapes, psychological testing results, etc.

Many agencies respond differently to Pitchess motions. Some police agencies in Los Angeles County don’t choose to oppose the motion itself, but rather simply have a custodian or “representative” show up in court with all the officer’s personnel records for an in camera hearing. Others, like the Burbank City Attorney’s office, contest every motion including those in which there are no complaints in the officers’ files.

**Practice Note:** In a smaller jurisdiction where you face the same judges and the same defense attorneys on a daily basis, if you only oppose those motions where an officer has complaints in his file, even the public defenders will pretty quickly figure out which officers to file motions on.

It has been our collective experience in my office that even those trial judges who are not used to vigorous opposition at the initial motion stage, are willing (and sometimes even eager) to be educated on the law and to follow it in the spirit in which it was enacted and judicially interpreted. The legislature and the courts have established procedural and substantive standards designed to require the trial courts to look closely at each individual case and to carefully assess materiality, good cause, and relevance on the basis of each unique set of facts and circumstances. Every Pitchess movant should be required to meet these well articulated legal standards. Just as there are constitutional protections designed to ensure a criminal defendant’s right to a fair trial, there are equally strong public policy considerations protecting the confidentiality of peace officer personnel records in every type of litigation.

2. **Pitchess v. Superior Court** (1974) 11 Cal.3d 531 - The Unintended Legacy of L.A. County Sheriff Peter Pitchess

The original Pitchess case which started it all was decided in 1974, before the enactment of the current statutory provisions of the Penal and Evidence Codes relating to discovery of police personnel files. Mr. Caesar Echeveria was charged with battery against four deputy sheriffs. He claimed to have acted in self-defense to the use of overly excessive force by the
deputies. He sought discovery of evidence of the deputies’ propensity for violence which he believed was contained in internal investigations conducted by the sheriff’s department as the result of citizens’ complaints. After the Sheriff’s department refused the prosecutor’s request for the information, the defendant subpoenaed it.

In the opinion written by Justice Mosk, we see the footprint for the body of law which has followed. The case established/reaffirmed the following principles, many of which are as applicable today as they were in 1974:

1. A lesser standard of relevance applies to discovery in a criminal proceeding - the accused need only provide general allegations which demonstrate that the requested information would “facilitate the ascertainment of the facts and a fair trial”;
2. Discovery of unavailable witnesses’ prior statements is necessary for effective cross-examination of the deputies at trial;
3. Discovery of statements of available witnesses who cannot recall their statements is necessary to refresh their recollection;
4. Evidence was relevant and admissible to establish the character or trait of character of the victim (deputy sheriff) per Ev. Code § 1103 to prove conduct of the victim in conformity with such character;
5. Defendant couldn’t “readily obtain” the information through his own efforts;
6. The defendant’s need and good cause for the requested evidence was to be balanced against the need to maintain its secrecy in the best interests of the public per the “official information” privilege of Evidence Code § 1040. (The Supreme Court didn’t actually make that call, but remanded it to the trial court to balance these two competing interests.)

3. The Legislature’s Response to the Pitchess Decision

“In enacting [Evidence Code] sections 1043 and 1045, the Legislature clearly intended to place specific limitations and procedural safeguards on the disclosure of peace officer personnel files which had not previously been found in judicial decisions.” California Highway Patrol v. Superior Court (2000) 84 Cal. App. 4th 1022.

In 1974, the same year as the Pitchess decision, the Legislature enacted Penal Code §832.5 which required every sheriff’s department and every city police department to establish a procedure for investigating citizen’s complaints against its personnel, and to make a written description of the procedure available to the public. (At the time this bill was enacted, the threshold question was whether to adopt uniform statewide procedures for investigating citizen complaints. (Legis. Counsel's Dig., Assem. Bill No. 1305, Stats.1974 (Reg.Sess).)
**Practice Note:** Section 832.5 now applies to each department or agency in the state that employs peace officers.

Penal Code §832.5 was amended in 1978 to include a requirement that the complaints be maintained for a period of five years. This five year requirement was added due to concerns about widespread record shredding (by the cops) and discovery abuses (by the defense bar) in the wake of the *Pitchess* decision. The analysis of Senate Bill No. 1436 prepared for the Assembly Committee on Criminal Justice explained that the purpose of the bill was to:

“... protect personnel records from random discovery by defendants asserting self-defense to charges of criminal assault upon a police officer. Thus, the Legislature evidenced its purpose to provide retention of relevant records while imposing limitations upon their discovery and dissemination.” *San Francisco Police Officers' Assn. v. Superior Court* (1988) 202 Cal.App.3d 183, 189-190.

The statutory scheme established in 1978 starts with the declaration in Penal Code § 832.7 that peace officer personnel records and records of citizen complaints "... or information obtained from these records ..." are confidential and "shall not" be disclosed in any criminal or civil proceeding except by discovery pursuant to Evidence Code §§ 1043 and 1046. Penal Code §832.8 defines "personnel records" to include personal data, medical history, appraisals and discipline, complaints and investigations relating to an event an officer perceived and/or relating to the manner in which his or her duties were performed, and any other information the disclosure of which would constitute an unwarranted invasion of privacy.

4. **Discovery of Peace Officer Personnel Records is by Statute a TWO-Step Process**

The courts have made it very clear that the discovery of a peace officer’s personnel records is a two-step process. Step one requires a threshold showing of materiality and good cause (*People v. Mooc* (2001) 26 Cal.4th 1216) which must be made in the form of a motion that follows the criteria set forth in Evidence Code § 1043. This includes making a written motion, noticed according to the requirements of CCP §1005.

**Practice note:** Most criminal defense counsel are completely unaware of these notice requirements. CCP § 1005 now requires 16 court days notice for a motion, plus an additional 5 days if served by mail. *Pitchess* motions must be served on the police department as the agency having custody and control of the records.
The notice requirements are mandatory. “No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section, except upon a showing by the moving party of good cause for non-compliance, or upon a waiver of the hearing by the government agency identified as having the records.” Ev. Code §1043(c).

The motion must include a description of the records and information sought and most importantly, "(3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation . . ." The declaration must also include a statement that the agency has the records or information sought. Contrary to all other provisions of law, the declaration does not have to be made by the defendant, but may be and almost always is made by the defense attorney based on information and belief, hearsay, supposition, and speculation. [City of Santa Cruz, infra.)

| Practice Note: If there are allegations of the use of excessive force by the officers, the motion must also include a copy of the police report per Ev. Code §1046. |

5. The Courts Interpret the Legislation: Declaration Must Include Specific Factual Scenario Establishing Plausible Factual Foundation. Discovery is Limited to Complaints/Investigations of Misconduct Similar to that Alleged in the Motion

This "good cause/materiality" requirement has been solidly clarified by the California Supreme Court in City of Santa Cruz v. Municipal Court (1989) 49 Cal. 3d 74, in which the Court held that the declaration must demonstrate the relevance of the requested information by providing a "'specific factual scenario' establishing a 'plausible factual foundation' for the alleged misconduct in order to establish the requisite 'materiality' of the disclosure to the pending litigation.” While the Santa Cruz court described this burden as a "relatively relaxed standard," it is still difficult for many defense attorneys to meet – especially when they employ the same boilerplate motions they have all been using for years.

Another very helpful case in this area is City of San Jose v. Superior Court (1998) 67 Cal. App. 4th 1135, in which the Court described what kind of declaration does not meet the Santa Cruz standard. The defense in City of San Jose, supra, sought discovery of complaints against the arresting officers involving illegal search and seizure, dishonesty or deceit, fabrication of evidence or charges, and untruthfulness in the preparation of reports. In support of these requests, defense counsel provided a declaration in which he stated that:
(1) knowing consent to enter and search was not given by the defendant, contrary to the statements of the officers in the police reports;
(2) material misrepresentations in the police report were made in order to conceal that fact that consent was not obtained; and,
(3) evidence was mishandled by the officers so as to deny the defendant a fair trial.

While these are very familiar allegations in many if not all supporting declarations we see in our area, the Court in City of San Jose held that none of these statements were sufficient to provide the requisite “‘specific factual scenario’ establishing a ‘plausible factual foundation’ for [the] allegation[s].” Without such a foundation, the Court said, “... the trial court could not properly determine whether the ‘discovery or disclosure sought’ was material to ‘the subject matter involved in the pending litigation.’ [citing City of Santa Cruz, supra, at 85-86.]” The Court specifically criticized defense counsel’s use of general conclusory language instead of specifying “which particular statement or statements in the police report or in the officers’ testimony contained material misrepresentations, nor did he explain in what respect the statements were incorrect.” City of San Jose, supra, 67 Cal. App. 4th at 1147.

**Practice Note:** I have found that giving the Court this specific case language is very effective in the opposition to a Pitchess motion. So many of the motions we see contain this very same boilerplate conclusory language (or worse) that was rejected by the court in the City of San Jose case.

My choice for runner up for “most helpful case” in defending Pitchess motions is California Highway Patrol v. Superior Court (2000) 84 Cal.App.4th 1010, in which the Court held that “... only documentation of past officer misconduct which is similar to the misconduct alleged by defendant in the pending litigation is relevant and therefore subject to discovery.” The Court went back to the original premise behind the Pitchess decision which was to allow a defendant to discover evidence of habit or custom to show that a person acted in conformity with it on a given occasion. (See also People v. Gill (1997) 60 Cal.App.4th 743, 749, 70 Cal.Rptr.2d 369; People v. Hustead (1999) 74 Cal.App.4th 410, 417, 87 Cal.Rptr.2d 875; People v. Memro, 38 Cal.3d 658, 681, where the Court concluded that "evidence that the interrogating officers had a custom or habit of obtaining confessions by violence, force, threat, or unlawful aggressive behavior would have been admissible on the issue of whether the confession had been coerced."
Practice Note: If you can’t defeat the motion entirely at the initial hearing, you should still use the opportunity to ask the court to limit, on the record, the scope of what you are to bring to the in camera –i.e., only files as to those officers who were actually involved and only as to the types of complaints and investigations similar to the misconduct alleged in the motion, e.g., excessive force during handcuffing, false police reports re grounds for investigative detention, coerced confessions, etc. Defense attorneys would of course like a general fishing expedition. Limit the Catch!

6. The In Camera Proceeding

If the trial court concludes that the defendant has fulfilled the “good cause and materiality” prerequisites, the custodian of records should bring to court all documents potentially relevant to the defendant’s motion.” The trial court is instructed to then examine the information in chambers “out of the presence of all persons except the person authorized to possess the records and such other person the custodian is willing to have present” (e.g., the city attorney). (People v. Mooc, supra at 1226).

Practice Note: Mooc is a great case for several reasons, including of course its primary holding that the entire personnel file need not be brought to the in camera proceedings. It also reaffirms that neither the defense attorney nor the district attorney are allowed in the in camera proceedings.

Evidence Code § 1045(b) requires the Court to make another relevance determination during the in camera hearing when looking at whether to disclose and what to disclose to the defendant from the officers’ files. “In determining relevance, the court shall examine the information in chambers in conformity with section 915 and shall exclude from disclosure”:

1. complaints concerning conduct occurring more than five (5) years before the event which is the subject of the litigation,
2. In criminal cases, the conclusions of the officers investigating such citizen complaints, and,
3. facts sought to be disclosed that are “so remote as to make disclosure of little or no practical benefit.”

Ev. Code § 1047 also specifically exempts from disclosure the records of peace officers including supervisorial officers who either were not present during the arrest, had no contact with the party from time of arrest until time of booking or who were not present at the time the conduct is alleged to have occurred within the jail facility.

Integral to the relevance determination being made during the in camera proceeding is the court’s obligation to consider and balance the competing interests of the peace officer and the defendant. "The statutory
scheme carefully balances two directly conflicting interests: the peace officer's just claim to confidentiality, and the criminal defendant's equally compelling interest in all information pertinent to the defense.” 

People v. Mooc, supra, 26 Cal.4th at 1227.

It is for this reason that the statutes codifying the Pitchess motion procedures require the intervention of a trial judge to examine the personnel records privately. "The relatively relaxed standards for a showing of good cause under section 1043, subdivision (b) -- 'materiality' to the subject matter of the pending litigation ... insure the production for inspection of all potentially relevant documents. The in camera review procedure and disclosure guidelines set forth in section 1045 guarantee, in turn, a balancing of the officer's privacy interests against the defendant's need for disclosure. [citing City of Santa Cruz, at 49 Cal.3d at pp. 81-84]." Alford v. Superior Court (2003) 29 Cal.4th 1033.

7. What to Bring to the In Camera Proceeding?

Assuming that you have gotten the Court to focus the in camera inquiry (for example, to bring only complaints of specific type of misconduct similar to that alleged in motion per California Highway Patrol case; to look at files only for those officers who were directly involved in the arrest or had actual conversations with the defendant; to look for complaints and investigations going back only 5 years before incident; etc.), what are you obligated to bring to the in camera proceeding?

"When a trial court concludes a defendant's Pitchess motion shows good cause for discovery of relevant evidence contained in a law enforcement officer's personnel files, the custodian of the records is obligated to bring to the trial court all 'potentially relevant' documents to permit the trial court to examine them for itself. (Santa Cruz, supra, 49 Cal.3d at p. 84 [260 Cal.Rptr. 520, 776 P.2d 222].) ... Documents clearly irrelevant to a defendant's Pitchess request need not be presented to the trial court for in camera review. But if the custodian has any doubt whether a particular document is relevant, he or she should present it to the trial court. Such practice is consistent with the premise of ... sections 1043 and 1045 that the locus of decisionmaking is to be the trial court, not the prosecution or the custodian of records. ... The trial court should then make a record of what documents it examined before ruling on the Pitchess motion. Such a record will permit future appellate review. (Mooc, supra, 26 Cal.4th at pp. 1228-1229, italics

The Supreme Court in Mooc flatly rejected the Appellate Court’s insistence that the entire personnel file of the officer be produced for the in camera proceeding. “A law enforcement officer’s personnel record will commonly contain many documents that would, in the normal case, be irrelevant to a Pitchess motion, including those describing marital status and identifying family members, employment applications, letters of recommendation, promotion records, and health records. (See Pen.Code, § 832.8.) Documents clearly irrelevant to a defendant's Pitchess request need not be presented to the trial court for in camera review.” People v. Mooc 26 Cal.4th at 1228.

**Practice Note:** As a practical matter, most police departments maintain the investigation files separately from the general personnel file, and if they don't you should be advising that they do so. Penal Code § 832.5(d)(1) defines “general personnel file” as that file maintained by the agency containing the primary records specific to each peace officer’s employment including evaluations, assignments, status changes and imposed discipline. §832.5(c) mandates that complaints determined to be frivolous, unfounded or exonerated shall not be maintained in the officer’s general personnel files. They must by statute be maintained in other separate files.

The Supreme Court has also recognized the questionable relevance of complaints more than five years old. " Section 1045(b)(1)'s five-year cutoff for discovery of police officer personnel records mirrors the five-year cutoff for retention of citizen complaints under Penal Code section 832.5. (Assem. Com. on Criminal Justice, Analysis of Proposed Draft of Sen. Bill No. 1436 (1977-1978 Reg. Sess.) Aug. 28, 1978, p. 6 [five-year retention period intended to "conform" to the five-year "period of discovery").) The parallel five-year periods may well reflect legislative recognition that after five years a citizen's complaint of officer misconduct has lost considerable relevance.” City of Los Angeles v. Superior Court (2002) 29 Cal.4th 1, 11.

**Practice Note:** See note above. Avoid confusion about what to bring by clarifying on the record at the hearing on the motion exactly what the court is expecting you to bring. You should still be prepared to argue the relevance of the materials you do bring at the in camera.

8. **What Should The Court Release From the File?**

After you’ve argued with the judge over the defendant’s materiality and good cause burden, and then during the in camera review, you again argue the relevance of certain complaints and investigation materials
contained in the officer’s file, there is still one more challenge to be made by you, and that is to the scope and extent of materials and/or information which can/should be released to the defendant. For many years, courts have been persuaded to release only the names and addresses of complaining witnesses -- this despite the boilerplate defense requests every time for investigation reports, verbatim witness statements, records of statements, reputation, opinions, and reports made by fellow and superior officers, psychiatrists, and psychologists pertaining to dishonesty and moral turpitude and findings, reports, opinions and transcripts of disciplinary actions relating to the officer’s dishonesty and acts of moral turpitude, etc., etc. Typically, the provisions of the statute are enough to restrict the information which is given to a defendant, specifically Ev.Code § 1045(b)(3) which excludes from discovery facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

Likewise, the Court in Santa Cruz recognized that: “The in camera review procedure and disclosure guidelines set forth in section 1045 guarantee, in turn, a balancing of the officer's privacy interests against the defendant's need for disclosure. As a further safeguard, moreover, the courts have generally refused to disclose verbatim reports or records of any kind from peace officer personnel files, ordering instead ... that the agency reveal only the name, address and phone number of any prior complainants and witnesses and the dates of the incidents in question. ...” Alford v. Superior Court (2003) 29 Cal.4th 1033,1039.

**Practice Note:** You may also want to cite an oldie but goodie, Arcelona v. Superior Court (1980) 11 Cal.App.3d 832, in which the Court held that disclosure of verbatim reports of internal investigations "is now circumscribed under the statutory scheme." (Don’t exactly know where the court found that in the statute, but it is still a good case.)

Until very recently, you would have been told that statements of witnesses contained in an investigation cannot be disclosed in response to a Pitchess motion. They would be inadmissible hearsay and would not lead to any more evidence than that which would be discovered by obtaining the names and addresses of the complaining witnesses and defense counsel obtaining his own witness statements and thus would fall within Ev. Code sec 1045(b) as facts so remote as to make disclosure of little or no practical benefit. The recent decision of the court in Briley v. Appellate Div. of Superior Court (2004) 124 Cal.App.4th 1223 opened that door just a crack to allow discovery of witness statements from an investigation based on a complaint the defendant himself made to the arresting agency. “Here it is only because these statements were obtained as a result of the complaint filed by petitioners, and investigated by the department, that they would not
have been produced, without the necessity of a motion, in the ordinary course of discovery as witness statements.” *Briley, supra*, 1231.

Fortunately, on March 23, 2005, the case was ordered de-published. While anecdotal tales have been circulating amongst city attorneys in the past few years of judges ordering the release of materials well beyond the scope of just names and addresses of complaining witnesses, *Briley* seems to be the only reported decision on this issue so far.

9. **Ask for a Protective Order**

The Supreme Court in *Alford, supra*, has reinforced the importance of the protective order provisions of Ev. Code § 1045(e), which were added in 1981 and are frequently overlooked. The Court agreed with the lower court that section 1045(e) is part of an “overall statutory scheme” that carefully balances peace officers' privacy interests in their personnel records against defendants' rights of access to information relevant to their defense, and “because disclosure of information contained in such records is permitted only on a showing of materiality to a particular case, to interpret the statute as allowing a defendant to share such information with other defendants would defeat the purpose of the balancing process.” *Alford v. Superior Court* (2003) 29 Cal.4th 1033,1042.

**Practice Note:** This same argument would be applicable to co-defendants’ attempts to “join” another defendant’s motion in the case. Each defendant must make an individual showing to the court. Your protective order should of course prohibit the dissemination of the information to anyone but the defense counsel, including office mates, in certain cases, the defendant himself, any employees of counsel except those absolutely necessary for the case, prohibit the copying of any documents produced, require the destruction of any copies and return of originals upon conclusion of the case, etc.

10. **What Does *Brady v. Maryland* Have to Do With All This?**

Criminal defense attorneys have recently “re-discovered” the *Brady v. Maryland* decision which was decided by the United States Supreme Court in 1963 (373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215). They commonly cite *Brady* as their catch-all bogeyman provision entitling them to whatever discovery they are seeking including peace officer personnel records, regardless of whether or not they can meet their burden under the *Pitchess* statutory and case guidelines. They argue that *Brady* essentially trumps *Pitchess* because it is a constitutional due process right. The California courts have rejected that argument. In *City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, the Supreme Court recognized that while under *Brady* the court will look at whether the evidence is material to
the fairness of the trial, under *Pitchess*, a defendant need only show that the information sought is material "to the subject matter involved in the pending litigation." (§ 1043, subd. (b)(3).)" *City of Los Angeles* 29 Cal.4th at 10.

This concept was further reinforced in *People v. Gutierrez* (2004) 112 Cal.App.4th 1463:

"Contrary to Gutierrez’s assertion, the *Pitchess* scheme does not unconstitutionally trump a defendant’s right to exculpatory evidence as delineated in *Brady*. Instead the two schemes operate in tandem. ...Because *Brady*’s constitutional materiality standard is narrower than the *Pitchess* requirements, any citizen complaint that meets *Brady*’s test of materiality necessarily meets the relevance standard for disclosure under *Pitchess*. Thus, if a defendant meets the good cause requirement for *Pitchess* discovery, any *Brady* material in an officer’s file will necessarily be included. Stated conversely, if a defendant cannot meet the less stringent *Pitchess* materiality standard he or she cannot meet the more taxing *Brady* materiality requirement.” *People v. Gutierrez*, supra, 112 Cal.App.4th at 1474.

**Practice Note:** The *Brady* standard is imposed on the prosecutor and not the city attorney. The prosecutor is entitled to review a complaint investigation file only when his agency is investigating or prosecuting the officer whose conduct was complained about and only that file relating to the incident for which the officer is being investigated or prosecuted (Pen. Code sec 832.7(a)). Otherwise, the prosecutor must make a *Pitchess* motion if he or she wishes to see complaints or investigation files relating to the involved officers. The prosecutor must make the same showing of materiality and good cause as any defense attorney would. See Alford v. Superior Court, supra.

**11. Conclusion**

While there are hundreds of unreported decisions by the appellate courts on *Pitchess* issues, the more recent cases that make their way to publication seem (mostly) to reinforce the spirit and intent of the Legislature when it enacted the relevant provisions in 1978. The concept of *balancing* the needs of the criminal defendant against the officers’ privacy interests is still very healthy. It is the city attorney’s role in these proceedings to protect the officers’ privacy interests by making sure that the trial courts are well educated about the law in this area.