



CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION
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September 27, 2016

Chief Justice Tani G. Cantil-Sakauye and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

**Re: Opposition to City of Eureka’s Request for Depublication
City of Eureka v. Superior Court of Humboldt County
Case No. A145701 (filed July 19, 2016)
Trial Court No. JV140252
Supreme Court Case No. S237292**

To The Chief Justice and Associate Justices:

We are writing on behalf of the California Newspaper Publishers Association (“CNPA”) in opposition to the City of Eureka’s request that this court depublish the decision in *City of Eureka v. Superior Court of Humboldt County*, No. A145701, filed July 19, 2016. For reasons which follow, the primary issue raised in this case—whether video footage depicting an arrest is automatically *Pitchess* protected—is an important one of statewide significance. This case should remain a published decision to assist agencies and courts across California in properly defining the extent and scope of what information the *Pitchess* motion cloaks.

The First District in this case properly interpreted the *Pitchess* statutes and applicable case law to hold that video footage depicting an arrest is not automatically a confidential personnel record simply because it relates to a police officer. The trial court found that the footage was not generated in connection with officer appraisal or discipline, and therefore was not a personnel record. The appellate court properly affirmed, relying on the standard recently set forth by this court in *Long Beach Police Officers Assn. v. City of Long Beach* to hold that the arrest footage was not a police personnel record. The appellate court’s decision is also consistent with the requirement in Article I, Sec. 3 (b)(2) of the California Constitution that laws limiting access to government records be applied narrowly. For these reasons, CNPA urges this court to deny the city’s request for depublication.

I. INTEREST OF AMICUS (RULE 8.500(g))

The California Newspaper Publishers Association (“CNPA”) is a nonprofit trade association representing the interests of nearly 1,400 daily, weekly and student newspapers throughout California. For over 130 years, CNPA has worked to protect and enhance the freedom of speech guaranteed to all citizens and to the press by the First Amendment of the

United States Constitution and Article 1, Section 2 of the California Constitution. CNPA has dedicated its efforts to protect the free flow of information concerning government institutions in order for newspapers to fulfill their constitutional role in our democratic society and to advance the interest of all Californians in the transparency of government operations.

II. THE *LONG BEACH* CASE SUPPORTS THE CONCLUSION THAT ARREST FOOTAGE IS NOT AUTOMATICALLY A PERSONNEL RECORD.

Far from creating confusion in the law, *City of Eureka* provides an instructive analysis on the application of the *Pitchess* statute to commonly created government records—video footage depicting interactions between citizens and police.

Increasingly, there are few incidents between police and the public that are not captured by at least one recording device, including body cameras, dashboard cameras, and citizen cellphones. In light of an ongoing national conversation about the relationship between police and the public, footage of these encounters has been influential in driving the discourse. *City of Eureka* recognizes that this footage is not automatically exempt from disclosure and recognizes that there is an identifiable public interest in the footage that may warrant public access.

In *Long Beach Police Officers Assn. v. City of Long Beach*, this Court refused to read the *Pitchess* statutes “so broadly as to include every record that might be *considered* for purposes of an officer’s appraisal or discipline, for such a broad reading of the statute would sweep virtually all law enforcement records into the protected category of ‘personnel records.’” Yet, a broad reading is exactly the standard that the City of Eureka applied when it refused to provide for the public release of the footage in response to a request for release, and in appealing the trial court’s determination that the video was not a personnel record.

Maintaining *City of Eureka* as a published case would ensure that government agencies and trial courts properly interpret the limits of the *Pitchess* statutes consistent with this court’s ruling in *Long Beach Police Officers Assn. v. City of Long Beach* and strongly discourage the classification of every record created by law enforcement personnel as a “personnel record.”

III. THE DECISION IS CONSISTENT WITH THE CONSTITUTIONAL MANDATE TO NARROWLY CONSTRUE LIMITATIONS ON THE PUBLIC’S RIGHT OF ACCESS.

The court’s decision in *City of Eureka* is consistent with the constitutional right of access in finding that the partially redacted video footage of an interaction between police and a minor is disclosable. Calif. Const. Art. 1, Sec. 3(b)(2) requires that any law or court rule that furthers the people’s right of access shall be broadly construed, and narrowly construed if it limits the right of access.

This case strikes the proper balance between the people's right to access and the privacy rights of a minor. In ordering production of the footage to the public, the judge required the blurring the depicted minor's identity. This ultimate release of the arrest video with narrow redactions is consistent with Art. 1, Sec. 3(b)(2) and Welfare and Institutions Code Sec. 827.

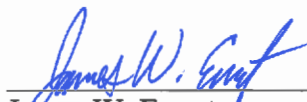
Furthermore, the First District's opinion properly construes the *Pitchess* statute and the *Long Beach* case to limit the cloak of confidentiality cast on police personnel records. By seeking depublication, the city seeks to prevent the public from citing *City of Eureka* as authority to access video footage of interactions between the police and public captured by devices like dashboard and body cameras. Depublication of this case would be inconsistent with the constitutional mandate that the people's right of access be broadly defined, and would encourage agencies across the state to broadly interpret the limiting language of the *Pitchess* statute. The result would be to encourage agencies to deny requests to access arrest video and similar footage on specious or improper grounds, and would encourage additional litigation to reinforce settled law, just as this case illustrates.

CONCLUSION

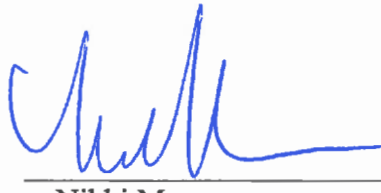
The First District properly upheld the determination that the arrest video falls outside the *Pitchess* protections. The decision is consistent with the substance and spirit of the laws governing public access to government records. Furthermore, the city's justifications for depublication are too general and speculative to support the city's extraordinary request.

For these reasons, CNPA respectfully requests that this court deny the City's request for depublication of the decision in *City of Eureka v. Superior Court of Humboldt County*.

Sincerely,



James W. Ewert
General Counsel, CNPA



Nikki Moore
Legal Counsel, CNPA

Attached:
Proof of Service

PROOF OF SERVICE

I, Paul Nicholas Boylan, declare:

I am over 18 years of age. My place of business address is POB 719 Davis California, 95617. On December 22, 2015, I mailed a copy of the following document:

OPPOSITION TO CITY OF EUREKA'S REQUEST FOR DEPUBLICATION

to each of the following persons below:

- BY UNITED STATES MAIL: I placed the envelope for collection and mailing, following my ordinary business practices. I am readily familiar with the business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

Cyndy Day-Wilson
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Honorable Judge Barbara J. R. Jones
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Davis, California.

Dated: September 27, 2016

A handwritten signature in black ink, appearing to read "Paul N. Boylan". The signature is written in a cursive style with a large initial "P" and a stylized "N".

Paul Nicholas Boylan