

JEFFREY D. SCHWARTZ, ESQ.,

*Attorney at Law*

■ 637 F. Street  
■ Arcata, CA 95521  
■ 707 822-2707  
■ jdsarcata@gmail.com

September 26, 2016

Clerk of the Court  
Supreme Court of California  
350 McAllister St  
San Francisco, CA 94102-4794

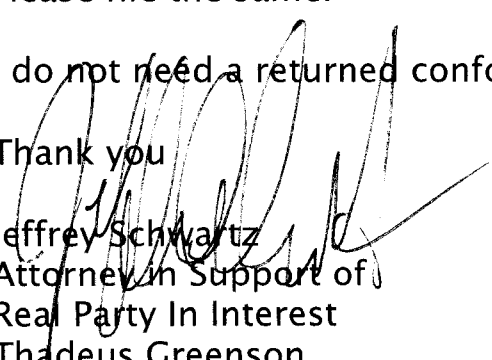
Re: City of Eureka v. Superior Court (Greenson) S237292  
CA# A145701  
Amicus Letter in Opposition to Petitioner's Request to Depublish

Dear Clerk:

Please find enclosed an original letter and eight copies in opposition to the petitioner's depublication request filed on September 19, 2016. Please file the same.

I do not need a returned conformed copy as I will verify the filing online.

Thank you

  
Jeffrey Schwartz  
Attorney in Support of  
Real Party In Interest  
Thadeus Greenson

JEFFREY D. SCHWARTZ, ESQ.,

*Attorney at Law*

■ 637 F Street  
■ Arcata, CA 95521  
■ 707 822-2707  
■ jdsarcata@gmail.com

September 26, 2016

Mr. Frank A. McGuire,  
Clerk Administrator  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

Re: *City of Eureka v. Superior Court of California (Greenon)* #S237292  
First District Court of Appeal No. A145701  
**Opposition to Depublish** (Cal. Rules of Court, rule 8.1125(b)(1)(2))

Dear Mr. McGuire:

I am a licensed attorney in good standing with the State Bar of California. I practice in Humboldt County, California where the Respondent Superior Court is located.

I practice criminal defense. I regularly seek MAV videos and other investigative recordings from law enforcement agencies, including the Eureka Police Department. Further, I often seek *Pitchess*<sup>1</sup> discovery as well.

It is my paramount interest to seek discovery that may exonerate my clients. Often that discovery is with an investigating law enforcement agency. If law enforcement agencies throughout the State of California were to take a position that dash cam videos are automatically protected under the *Pitchess* procedures, it would place an unmanageable, time consuming and cumbersome roadblock to the discovery process. With law enforcement's massive and continuing increase in the use of video and audio recordings, California trial courts would be consumed with litigating *Pitchess* motions to the exclusion of other court duties.

The rendering court's decision is sound: Is a law enforcement encounter recorded on a dash cam video a personnel record protected under the *Pitchess* process? The rendering court decided dash cam videos are not automatically personnel records, and proof of a connection to the elements of a *Pitchess* document as described by statute is required. It's ruling was based on this court's

---

<sup>1</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531

decision in *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59 (LBPOA).

This Court ruled that, "...the information contained in the initial incident reports of an on-duty shooting are typically not 'personnel records' as that term is defined in . . . section 832.8. It may be true that such shootings are routinely investigated by the employing agency, resulting eventually in some sort of officer appraisal or discipline. But only the records generated in connection with that appraisal or discipline would come within the statutory definition of personnel records [citation.]..." (*LBPOA v. City of Long Beach*, supra, 59 Cal.4<sup>th</sup> 59 at p. 71.) The rendering court correctly concluded that the arrest video is akin to *information contained in the initial incident reports of an arrest*.

Moreover, as the executive director of the Humboldt Center for Constitutional Rights, (Humrights.org), my organization has a First Amendment interest in preserving the rendering court's decision to keep this opinion published. This Court well knows the public's sensitivity to the refusal or delay of the release of dash and body cam videos in police shooting cases. As I write this letter I am listening on the radio about still more news reports of the protests in North Carolina as I did last week about the Oklahoma protests over the release of dash cam videos.

In those states, the withholding and/or release of the videos was at the discretion of the law enforcement agencies. Ultimately the videos were released in a somewhat timely manner. Imagine if the decision to release the videos had to be vetted through California's cumbersome *Pitchess* process first? The videos would sit hidden away out of the public's eye. Even if a police chief wanted to release a dash cam video, he or she would have to wait out the time consuming *Pitchess* process.

The City in it's request to depublish asserts "the case may confuse the bench and bar by creating the appearance that Welfare and Institutions Code section 827 sidesteps the protections of the *Pitchess* process." To the contrary, the rendering court's opinion serves to remove the confusion about how the *Pitchess* process operates. Without the rendering court's published opinion, the City of Eureka's misunderstanding will spread, resulting in the time consuming and cumbersome *Pitchess* process, an unnecessary burden on the trial courts, the criminal discovery procedures, and the patience of the public.

Pending this Court's decision, other well established laws to restrict the use of law enforcement-created videos when justified remain in place.

Sincerely yours,



Jeffrey Schwartz

Attorney at law and

Executive Director Humboldt Center for Constitutional Rights

**PROOF OF SERVICE**

I am a citizen of the United States and employed in Humboldt County. I am over the age of eighteen years and not a party to the within action. My business address is 637 F Street, Arcata, CA 95521

On this date I caused to be served:

**THIRD-PARTY LETTER IN OPPOSITION TO REQUEST TO DE-PUBLISH OPINION**

  x   by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Arcata, California addressed as set forth below:


       By faxing or emailing a true copy thereof to the person/offices at the address and fax number(s) set forth below.

       by personally delivering a true copy thereof to the person/offices of, at the address set forth below:

**1st District Court of Appeal**  
350 McAllister Street  
San Francisco, CA 94102  
Fax: 707-445-7416

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

Executed on September 26, 2016 at Arcata, California.

  
\_\_\_\_\_  
Kenia Estrada