

SAN FRANCISCO

Daily Journal

www.dailyjournal.com

VOL. 124 NO. 123

TUESDAY, JUNE 26, 2018

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Daily Journal photo

John C. Hueston of Hueston Hennigan LLP persuaded the U.S. Supreme Court to consider whether a 9th U.S. Circuit Court of Appeals got it wrong when it allowed an appeal to be filed past a two-week deadline.

Supreme Court to consider 9th Circuit ruling on deadline

By Justin Kloczko
Daily Journal Staff Writer

The U.S. Supreme Court will hear arguments over whether the 9th U.S. Circuit Court of Appeals breached federal procedure law by allowing counsel in a class action to file an appeal past a two-

F.3d 1170, 1177 (9th Cir. 2017).

The plaintiff appealed to the 9th Circuit, which broadly ruled that the deadline was tolled because plaintiff's counsel told the court orally of his intention to seek reconsideration of the decertification and was found to have "otherwise

dockets," according to the petition.

The law was meant as a hard and fast rule in order to minimize a disruption in litigation, the petition states,

Ronald Marron of San Diego, who filed the lawsuit on behalf of plaintiff Troy Lambert, said in an email that

High court declines tweet case

Judge 'following' ruled not to be ex parte communication

By Joshua Sebold
Daily Journal Staff Writer

The U.S. Supreme Court declined to hear an unusual procedural case involving a judge allegedly following prosecutors' tweets while hearing their case.

The underlying litigation involves a timber company settling a forest fire liability case from 2007 for \$122.5 million. Attorneys representing the timber company, Sierra Pacific Industries Inc., claimed they unearthed wrongdoing by federal prosecutors that should invalidate the settlement and later contended that an Eastern District of California judge displayed bias.

Senior U.S. District Judge William B. Shubb ruled against the timber company's motion to invalidate the settlement, and hours later tweeted a news story about the case. Attorneys for the timber company say they later discovered that Shubb had been following the prosecutors on Twitter while he was reviewing the case. The Twitter account in question did not identify itself as being directly associated with Shubb.

Sierra Pacific contended that the judge received tweets from the prosecutors as a follower, which could be construed as ex parte communication.

A 9th U.S. Circuit Court of Appeals panel found

GUEST COLUMN

Bills aim to change key police practices

By Susan Leff

Three California bills before the Legislature address important police policies and practices: (1) a bill intended to limit the use of deadly force by police, (2) a bill requiring online access to local police regulations, and (3) a bill requiring transparency of police personnel records in the most serious cases. The Legislature should approve each of these common-sense bills and they should be signed into law by Gov. Jerry Brown.

Assembly Bill 931

California Penal Code Section 196 is the single oldest un-amended police use of force statute in the country.

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Bills address concerns with police practices

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It is blatantly unconstitutional and needs updating. AB 931 would provide clear rules about whether, when and how police officer may use deadly force, will result in fewer needless killings and help restore our community's faith in law enforcement's ability to protect and serve.

A recent study of 91 of the largest American police departments found only 34 police departments require officers to use means to de-escalate situations before force is used. Another recent study showed a significant and influential relationship between the number of restrictive use policies police departments implemented and the number of people of officers from those departments killed. AB 931 seeks to address the use of deadly force by law enforcement and reduce the number of police shootings and other deadly use of force incidents by amending California Penal Code Section 196, the section that defines justifiable homicide by a police officer.

Existing law prohibits the use of deadly force by a peace officer unless, among other criteria, there is



LEFF

a reasonable fear of death or serious bodily harm to the officer or another person. However, officers are still allowed to use deadly force even if other alternatives are available to them at the time. This bill would limit the use of deadly force by a police officer to situations where it is necessary to prevent imminent and serious bodily injury to the officer or to a third party and would prohibit an officer from using deadly force where alternatives are available based on the facts known to the officer at the time.

This bill would make a homicide by a police officer justifiable only in situations where the use of force by a police officer is necessary given the totality of the circumstances, but would exclude situations where the officer's own gross negligence contributes to creating the necessity.

Senate Bill 978

The California Public Records Act requires that government records — including police regulations — be disclosed to the public upon request, unless there is a specific reason not to do so. In over 20 communities across California, and at least 20 more across the country, law enforcement agencies have chosen to provide online public access to their regulations, allowing better access to information, more meaningful engagement and deeper trust between those communities and their law enforcement officers. SB 978 seeks to create more consistency and uniformity by requiring local law enforcement agencies to post online their police regulations in every California community.

In communities that do not yet have online police regulations, CPRA presents significant challenges.

There are over 600 law enforcement agencies in California and their regulations are not standardized in content, description or designation. While these artificial labels and designations may seem trivial, in reality, they create obstacles to accessibility by the public. Individuals who seek these regulations have no way to identify the document they seek and thus, no way to ensure their CPRA requests will be satisfied. This bill covers all law enforcement regulations, trainings, policies and procedures that are subject to CPRA disclosure, regardless of the designations or labels used by each agency.

This bill would save agencies costs associated with responding to individual information requests, create better accessibility, assist in educating the public, help police agencies promote best policies and provide greater accountability, transparency and accessibility — all while enhancing police-community relations consistent with President Obama's Task Force on 21st Century Policing.

Senate Bill 1421

For many years, California has prohibited the release of almost all information regarding police officers, eroding public trust, allowing officers with histories of misconduct to take jobs with other agencies without reporting their own misconduct and preventing prosecutors from complying with their legal obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). ("The Supreme Court's *Brady* doctrine requires prosecutors to disclose favorable, material evidence to the defense, but in [California], even well-meaning prosecutors cannot carry out this basic obligation when it comes to one critical area

of evidence: police personnel files." *"Brady's Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team,"* J. Abel 67 Stan. L. Rev. 743 (2015).)

Efforts to open up these records have been thwarted by powerful police lobbyists who use litigation, legislation and political pressure to prevent disclosure of police disciplinary files. By way of example, Los Angeles County Sheriff Jim McDonnell attempted to provide Los Angeles County prosecutors the names of approximately 300 deputies who have confirmed cases of misconduct so that the prosecutors would be able to evaluate the misconduct and determine whether they were legally obligated to disclose it. However, the police union then sued the sheriff in an effort to keep the records secret. The California Supreme Court will decide whether he may do so in *Association for Los Angeles Deputy Sheriffs v. Superior Court*, S243855.

This bill would require law enforcement to provide prosecutors and the public access to police disciplinary records related to the most serious categories of misconduct, including a discharge of a firearm or use of force resulting in death or serious bodily injury, and on-the-job sexual assault, and dishonesty in reporting, investigating or prosecuting a crime.

Each of these important bills would address key problems with police practices in California and bring our communities closer to true police accountability.

Susan Leff is a board member of the California Public Defenders Association, sponsor of SB978 and supporter of SB1421 and AB931.

SUBMIT A COLUMN

The Daily Journal accepts opinion pieces, practice pieces, book reviews and excerpts and personal essays. These articles typically should run about 1,000 words but can run longer if the content warrants it. For guidelines, email legal editor Ben Armistead at ben_armistead@dailyjournal.com.

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The Daily Journal welcomes your feedback on news articles, commentaries and other issues. Please submit letters to the editor by email to ben_armistead@dailyjournal.com. Letters should be no more than 500 words and, if referencing a particular article, should include the date of the article and its headline. Letters may not reference a previous letter to the editor.

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