IMPORTANT SUPREME COURT RULING
Confidentiality of Peace Officers Is Upheld

On Aug. 31, 2006, the California Supreme Court handed down a decision that says peace officers have the absolute right to keep their personnel records private.

This ruling will protect the privacy rights of law enforcement officers throughout the state (Copley Press v. Superior Court). The case will ensure that records from agencies such as civil service commissions and law enforcement review boards throughout the state will remain private.

The San Diego Police Officers’ Association (SDPOA) joined the Deputy Sheriffs’ Association of San Diego County in the litigation that resulted in this important and far-reaching ruling.

As a result of a previous ruling in the Court of Appeal (SDPOA v. City of San Diego Civil Service Com.), the San Diego County Civil Service Commission opted to close civil service hearings involving law enforcement officers. The Citizens Law Enforcement Review Board (CLERB) had previously closed hearings and were not releasing findings as a result of another Court of Appeal ruling (Davis v. City of San Diego). In the Davis decision, the Court of Appeal ruled that the city of San Diego Citizen’s Review Board violated Penal Code section 832.7 by releasing Citizen Review Board records. Both cases were litigated by the law firm of Bobbitt, Pinckard & Fields, APC.

In January, 2003, the San Diego Union Tribune (Copley Press) learned that a deputy sheriff had scheduled an appeal hearing before the county Civil Service Commission contesting his termination. They objected to the closing of the hearing and filed a lawsuit in Superior Court.
With permission of the Superior Court Judge Wayne Peterson, the DSA and SDPOA joined the litigation as interveners on behalf of their members.

Judge Peterson agreed with the POA and DSA. The Superior Court ruled that the hearings were lawfully closed to the public and refused to release any of the records requested by the Union Tribune under the California Public Records Act.

Of course, the Union Tribune immediately went to the Court of Appeal for relief. The Court of Appeal, in a unanimous decision, (Copley Press v. Superior Court) overturned the Superior Court and ordered the release of the deputy’s name and other records related to the case. The San Diego DSA and SDPOA authorized their attorneys to request a hearing at the California Supreme Court.

This request was a long shot since very few requests are granted at that level. The Supreme Court, however, voted unanimously to hear the case.

The SDPOA and San Diego DSA requested assistance from PORAC Legal Defense Fund in fighting this important legal battle. PORAC LDF filed an amicus (friend of the court) brief supporting the legal arguments of DSA and SDPOA.

The PORAC LDF was represented by appellate lawyer Jean-Claude Andre, with the Los Angeles firm of Ivey, Smith & Ramirez, and LDF panel attorney Gary M. Messing, a partner in the Sacramento office of Carroll, Burdick & McDonough, LLP. Copley Press argued that the California Public Records Act required the release of information held by non-employer public agencies. Additionally, Copley argued that Penal Code section 832.7, which states that police personnel records are confidential, was unconstitutional.

PORAC, SDPOA and DSA attorneys argued that the Public Records Act exempted from release all records protected by Penal Code section 832.7. Additionally, the DSA argued that a county civil service commission is a subdivision of the employer, in this case, the county of San Diego and, therefore, not a third party.
In a 6-1 decision written by Justice Chin, the California Supreme Court agreed with the DSA, SDPOA and PORAC. The court held that peace officer records may not be released without the law enforcement officers waiving their right of privacy.

The court also shot down the constitutional arguments of Copley Press by ruling the Public Records Act and Penal Code section 832.7 were both constitutional.

This case reaches farther than the privacy rights of individual law enforcement officers. The San Diego and Los Angeles County Public Defender’s offices have been collecting databases on individual law enforcement officers. The information in these databases was being used to cross-examine law enforcement officers in criminal trials. This practice allowed defense attorneys to obtain files that would have never been released by a Pitchess motion.

PORAC President Ron Cottingham, was pleased that the courts have ruled on behalf of all California peace officers. “In the area of officer privacy rights and the protection of their personnel files and records, PORAC has written, lobbied, or protected in court nearly every code section in this area of California law,” Cottingham said. “We will always hold this protection as a constitutionally given right.”

In the real world this case means that if a peace officer is disciplined by their employing agency and they appeal the decision to the administration level, by virtue of appealing that decision doesn’t make their name, conduct or employment record public information. The press retains their ability to speak with witnesses or complainants and is allowed their other avenues of investigation.

It is likely, that a few legislators will try to overturn the California Supreme Court’s decision by modifying Penal Code section 832.7. PORAC is already aware of this fact and will vigorously fight any attempts to dilute the privacy rights of peace officers.