



# ROLL CALL REPORTER

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## **The Discoverability of IAD Files in Criminal Cases and the Use of IAD Findings in Cross-Examination**

**QUESTION:** If an internal affairs investigator finds “facts sustained” against an officer, can the defendant in a criminal case in which the officer is to testify inspect internal affairs files concerning the alleged misconduct and cross-examine the officer about the misconduct at trial?

**ANSWER:** Yes, but only if the required showing is made by the defendant and the court has an opportunity to review the records to determine which (if any) are discoverable, and what may be asked of the officer during cross-examination.

**CASE:** *Darnell Fields v. State & Clayton Colkley v. State*  
Court of Appeals of Maryland, Decided July 9, 2013

These cases involved a drug related “revenge type shooting spree” in Baltimore on May 28, 2003, that left one man dead and two other individuals injured. Darnell “Pooh” Fields was one of two men involved in the shooting and Clayton “Coco” Colkley was the other. In 2005, they were tried jointly and convicted of numerous crimes arising from the shootings. After a reversal on appeal, both men were re-tried in 2010 and were again convicted. Maryland’s intermediate appellate court, the Court of Special Appeals, affirmed the most serious of the convictions, and Fields and Colkley asked Maryland’s highest court, the Court of Appeals, to review their case.

The investigation into the shootings had been led by Detective Sergeant Darryl Massey, the supervisor of a homicide unit team of the Baltimore City Police Department, and Detective Kerry Snead, the primary investigator of the shootings. They testified at both criminal trials. Prior to the retrial in 2010, the attorneys for Fields and Colkley requested issuance of a subpoena ordering the production of certain records, including Internal Investigations Division (“IID”) files related to a complaint made in 2005 against Detective Sergeant Massey and Detective Snead. The internal investigation of the officers resulted in a finding of “sustained” allegations that the detectives had submitted falsified time sheets and the case had been “administratively closed.” Counsel for the Police Department moved to “quash” (reject as invalid) the subpoena and the circuit court set the matter in for a hearing.

At the hearing, the defense proffered evidence that specifically showed that both officers had been accused by other officers of “committing and conspiring to commit theft by deception by submitting fraudulent, daily and court overtime slips” between January 2006 and January 2007. The IID investigator found the facts underlying the complaint against the officers to be true and entered a finding of “sustained.” Based on the evidence gathered by and the finding by the IID, the attorneys for Fields and Colkley argued that the information concerning the alleged misconduct would be relevant to the credibility of the detectives, which in turn would be relevant to the integrity of the photo arrays and witness interviews conducted in connection with the investigation of the shootings. In other words, the information contained in the IID files would enable the defense attorneys to “impeach” the credibility of the detectives at trial.

Counsel for the Police Department argued that “sustained” allegations were not dispositive of an officer’s guilt, and, as a result, were of no value. “Guilt” of the officers could only be determined by a trial board convened under the Law Enforcement Officers’ Bill of Rights (“LEOBR”). The circuit court decided to continue the hearing and review “summaries” of the IID files *in camera* (privately), with no lawyers present. After reviewing the summaries, the court resumed the hearing two days later. At that time, counsel for the Police Department confirmed that the IID cases were “administratively closed,” but could give no reason why. Defense counsel urged that the evidence in support of disclosing the files was “clear and convincing.” The court disagreed and denied discovery of the IID files. The court’s ruling was based largely on the absence of a finding of guilt and the absence of any penalty imposed against the officers.

When defense counsel tried to impeach the detectives based on the “sustained” IID findings, at trial, the State objected and the trial judge sustained the objection. In fact, the court allowed no mention of the IID investigation.

When the case finally reached the Court of Appeals, a different result was reached. The Court of Appeals disagreed with the two critical decisions made by the circuit court concerning the IID files issue. First, the court disagreed with the decision to deny inspection of the IID files. Second, the court disagreed with the decision not to allow defense counsel to impeach the detectives’ credibility during cross-examination by questioning them about the IID investigation. In making its rulings, the court recognized that internal affairs records are “personnel records” under Maryland law and, as such, are deemed “confidential.” “Confidential,” however, does not rise to the level of “privileged.” As such, even “confidential” public records may be subject to disclosure under certain circumstances. Such circumstances may arise in criminal prosecutions, where the confidentiality interest must be balanced against the confrontation and due process rights of the defendant.

The applicable “test” requires the defendant in a criminal case who seeks discovery of confidential information to demonstrate “a need to inspect,” that is, “a reasonable probability that review of the records would result in discovery of usable evidence.” The particular need to inspect must be shown through a number of factors, including: the nature of the charges against the defendant, the issue before the court (how the information might be used at trial), and the relationship between the charges, the information sought, and the likelihood that relevant information will be obtained as a result of reviewing the records. If the court finds that a need to inspect has been shown, the court may review the records alone, conduct the review in the presence of counsel, or allow counsel alone, as officers of the court, to review the records subject to confidentiality restrictions. A number of factors weigh in the decision as to the manner of inspection, but the rule of thumb is as follows: the stronger the showing of a particularized need to inspect, the more likely counsel will be allowed to participate in the records review. On the other hand, if the records sought are not even arguably relevant and therefore unusable at trial, the subpoena requesting them should be quashed.

In this case, the Court of Appeals concluded that the defendants had made a particularized showing of their need for the IID records. Consequently, the circuit court should have conducted some form of *in camera* review of the actual files, and not just simply “summaries” of them. Because no inspection either by the court and/or by the attorneys had been allowed, and because cross-examination of the detectives based on the information in the files had not been allowed, the convictions were reversed and a new trial was ordered.

**NOTE:** This case is important because it allows for the discovery and potential use at trial of a “sustained” IID (IAD) finding where there has been no adjudication of guilt. No finding of guilt or disciplinary sanction is needed because a “sustained” finding establishes a reasonable factual basis for the inquiry as to the officer’s credibility. One curiosity here is how defense counsel gained their specific knowledge of the IID investigation that led to their request for the subpoena. Their detailed showing on the record seemingly did not include the source of their information. One possibility is that, since the IID investigation had been prompted by information provided by other officers, the information came from inside the Police Department.

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