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DAVID MORSE

ENDORSED
FILED
ALAMEDA COUNTY

APR 16 2010

CLERK OF THE SUPERIOR COURT

By A. SALTA Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

IN RE SEARCH WARRANT ISSUED
DECEMBER 12, 2009

**DECLARATION OF DAVID MORSE IN
SUPPORT OF MOTION TO QUASH
SEARCH WARRANT AND RETURN
PROPERTY**

DECLARATION OF DAVID MORSE

I, DAVID MORSE, declare under penalty of perjury that, unless otherwise indicated, the following is true and correct of my own personal knowledge, and would testify hereto if called at trial:

1. I am a 42-year old photojournalist and media professional. I began my journalism career with a monthly column in a music magazine in 1991. Since late 2002, I have focused my work on the documentation of social and political movements, which has led me to photograph, video record, audio record, and otherwise report on hundreds of demonstrations, rallies, conferences, public meetings and court hearings, encompassing a wide variety of causes. My work often requires me to attend contentious protests that feature large police presences.

2. Prior to December 11, 2009, I had been detained only twice while covering a story. In each instance, both of which occurred at large demonstrations, police moved in en masse and detained—or “kettled”—hundreds of demonstrators, bystanders and members of the media. The first incident occurred while I was covering a demonstration against the Iraq War in San Francisco in 2003. The police moved in and detained everyone present on an entire city block. I was detained, cited and released. The ticket was later dismissed, and no charges were ever filed against me. In the second incident, which occurred while I was covering a demonstration during the Republican National Convention in Saint Paul, Minnesota in 2008, I was detained in a similar sweep for about thirty minutes, as were hundreds of others. I was then released without arrest or citation.

3. I have been a contributor to The San Francisco Bay Area Independent Media Center (“*Indybay*”), where I often go by the pen name “Dave Id,” since March of 2004. I have been one of approximately a dozen core members of the *Indybay* collective, which involves editorial, operational and other responsibilities, since about May 2004. I have attended many of the orientations *Indybay* conducts to recruit potential new members and reporters. I am familiar with and will soon be updating *Indybay*’s online media-making tutorials and links to media resources, which are designed to build members’ and reporters’ skills and professional connections. Between June 2004 and February 2006, I was involved in the publication of *Indybay*’s print periodical, *Fault Lines*, which

1 was published monthly. *Fault Lines*' first issue was published in June 2004, and it ran until
2 approximately June 2007. I variously report and edit for *Indybay* anywhere from 20-40 hours a week.

3 4. I have held an *Indybay* press pass since January of 2007. To obtain my press pass, I first had
4 to post 2-3 stories, show a commitment to *Indybay* by attending an orientation, and agree to the
5 following statement via email: "I am currently providing media to *Indybay*. I agree that while using
6 the *Indybay* credential, I will not put *Indybay* at legal risk. If I do so, I understand my card may be
7 revoked." A true and correct copy of that email is attached hereto as Exhibit A.

8 5. I have licensed my work for profit in the past. For example, I licensed footage of the 2003
9 demonstration at which I was "kettled" by San Francisco police to ABC/Disney. However, I no
10 longer choose to license my work for profit because I believe in the public interest, not-for-profit
11 model that *Indybay* helped pioneer. By posting to *Indybay*, I can at once communicate facts directly
12 to the public, provide content to other independent and community-based news outlets, and license
13 to corporate media outlets if ever I so choose.

14 6. I was reluctant to cover the recent student protests at UC Berkeley when I first heard about
15 them in September 2009, but by late November I had come to the conclusion that the movement was
16 too important to ignore. I began covering student protests at UC Berkeley at a demonstration on
17 November 20, 2009, and I covered further demonstrations at UC Berkeley on December 7 and
18 December 9. I also covered events at San Francisco State University on the night of December 9 and
19 into the early morning hours of December 10. I published stories about each of these demonstrations
20 to *Indybay*.

21 7. I had hoped to cover an off-campus concert near UC Berkeley on December 11, 2009, but
22 arrived too late to do so. As I pulled my car up to the concert venue at 11:00 p.m., approximately 100
23 or more people were leaving the venue in what appeared to be a political march. I parked my car,
24 grabbed my camera and backpack, exited the car and headed toward the demonstrators. They chanted
25 as they marched, and at first the protest appeared to be like many I have covered previously. 8.

26 As I caught up with the march from behind, I noticed a large percentage of the demonstrators
27 were wearing masks over their faces. As the march proceeded, I saw some people overturning
28 newspaper stands and garbage cans or pulling them into the street. As the march turned on to what

1 appeared to be the UC Berkeley campus, I witnessed that perhaps a dozen people in the crowd were
2 holding torches. The crowd I was following soon arrived at a building. I saw one masked
3 demonstrator run up some narrow stairs through a line of bushes with a large plastic trash can. I
4 followed that person up the stairs and took a picture as he or she threw the trash can at the front door
5 of the building. It appeared to leave no damage.

6 9. One of the demonstrators informed me that the building was the office of the UC Berkeley
7 Chancellor. I did not find out that it was the Chancellor's residence until the following evening.

8 10. Within minutes, sirens drew close, and I used my camera's built-in flash to take a picture of
9 a single police car as it approached the scene. I was standing apart from the mass of demonstrators
10 when my flash went off. After taking the picture, I began walking down the stairs toward the path
11 near the bottom of the stairs, on which the police car was approaching. I was walking calmly and at
12 a normal pace. I intended to document any arrests that might occur as a result of the property
13 damage. As the police car approached, the demonstrators took off running. Given the circumstances,
14 I had no expectation that I would be targeted by the police.

15 11. At this point, I was standing still near the path, camera in hand. I was therefore surprised
16 when the police car pulled up directly in front of me instead of chasing after the fleeing, mostly
17 masked, demonstrators. A female officer, Officer Henderson, got out of the passenger side of the
18 police car and began walking briskly toward me. She was followed by a male officer, Officer
19 Wyckoff, who exited the driver's side and ran toward me, overtaking Officer Henderson. As he ran
20 up to me, Officer Wyckoff pointed at me and shouted, "I saw you take a picture of us. We want your
21 camera. We believe your camera contains evidence of a crime."

22 12. I replied that I am a journalist, that I could show the officers my press pass, and that they
23 should not take my camera. Officer Wyckoff refused to look at my press pass and told me I was
24 being detained and to stand face-forward against the police car, which I did. Officer Wyckoff pushed
25 me fully against the car, and Officer Henderson took my camera and backpack. Officer Wyckoff
26 patted me down and then pulled my arms behind me. As he did so, he told me to stop resisting, even
27 though I was complying fully. Officer Wyckoff then placed me in the back of the police car.

28 13. About thirty minutes later, my thumbs began to go numb from the tightness of the handcuffs.

1 I called out to the officers, who took me out of the car and loosened the handcuffs somewhat. At this
2 point, I reiterated my status as a journalist to Officer Wyckoff, who ignored me and placed me back
3 in the police car. As I was sitting down in the car again, before the door was closed on me, I told
4 Officer Wyckoff that he and officer Henderson would not have detained me and taken my camera
5 if it had a KTVU logo on it, to which Officer Wyckoff replied, "We've done it to them, too," and
6 closed the door.

7 14. Some time later, Officer Wyckoff removed me from the car, made me stand against it again,
8 and searched me more thoroughly. He pulled the contents from the back pocket of my pants, which
9 included my driver's license, credit cards, and press pass. I urged Officer Wyckoff to look at the
10 press pass, and told him again that I am a journalist. Officer Wyckoff looked at my press pass, as did
11 several other officers, including a Sergeant Harris who was now on the scene. I was relieved that a
12 commanding officer was now present and had viewed my press pass. I told Officer Wyckoff that I
13 did not think it was legal for the police to detain me and seize my camera. Officer Wyckoff
14 responded by saying, "You're not a lawyer, so shut the fuck up," and put me back in the police car.

15 15. When the officers returned my press pass I asked them if they had retained anything that
16 they had removed from my pockets as they searched me and Officer Wyckoff clearly said, "No."
17 However, an hour or more later, as I was about to be driven to Santa Rita, Officer Wyckoff notified
18 me that the police had my cell phone and would give it to the Berkeley Police Department police
19 transport driver to take to Santa Rita with me. I do not know whether the police searched my cell
20 phone.

21 16. About two hours after I had initially arrived at the UC Berkeley campus, Officer Wyckoff
22 opened the police car door and told me that I was being arrested for "riot" and vandalism. At no
23 point had I participated in the demonstration; I had only been present to gather news. I responded by
24 telling Officer Wyckoff for a fourth time that I was present at the demonstration in order to cover
25 it as a journalist. Again, Officer Wyckoff ignored me. Officer Wyckoff told me that UC Berkeley
26 police would be holding on to my backpack because it was too big for Santa Rita to take and that my
27 camera was being seized by UCPD as evidence. I was given a receipt for my backpack and a 7-day
28

1 stay-away order for the UC Berkeley campus. I was searched one more time before being driven to
2 Santa Rita Jail and booked in on the riot and vandalism charges.

3 17. As I was being processed into Santa Rita Jail by Officer Wyckoff, I told him for a fifth time
4 that I am a journalist and that that was the reason I was at the scene. He said it did not matter.

5 18. Officer Wyckoff removed the handcuffs for the first time since I was arrested more than
6 three hours prior so that I could hand him the personal possessions I had on me. During the time that
7 I was laying out possessions such as my belt, credit cards and driver's license, Officer Wyckoff asked
8 me questions about what I knew about the demonstration. I told him the facts as I have attested thus
9 far here, and that what I knew was nothing other than what I had seen. He told me that I was not
10 being cooperative by not telling him more. He seemed to be writing much of our conversation down,
11 which I assumed was for his police report, but he then put the paper before me and asked me to sign
12 it. I asked him what it was and he said it was my statement and that it included that I was refusing
13 to be cooperative. I asked him if I had to sign it, because I thought I had been talking to him for his
14 police report. He said that I did not have to, so I said I was not going to sign it because it was wrong
15 for him to be arresting a journalist. Officer Wyckoff became angry, crumpled the paper, and threw
16 it into the trash can.

17 19. I was then processed into general population over several hours, finally reaching my cell just
18 before 9:00 a.m. on December 12.

19 20. At approximately noon on December 12, I was told that I had made bail. I turned in my
20 bedding to jail guards and was taken to a small, unlocked waiting room to be processed out of jail,
21 where I waited for approximately forty-five minutes. A voice then came over the intercom and told
22 me that the bond posted was no longer sufficient because my charges and bail had been increased,
23 and that I was not being released. I was told to return to my cell. I did not know what the additional
24 charges were.

25 21. I was released from jail around 7:30 p.m. on December 12 after my mother paid \$13,250 to
26 a bail bondsman to secure my \$132,500 bail. It was at this point that I learned I was being charged
27 with six separate offenses, including attempted arson of an inhabited structure, vandalism,
28 participation in a riot, attempted burglary, and two counts of assault with a deadly weapon on an

1 officer. The District Attorney's office declined to file any charges against me at my initial court
2 appearance on Tuesday, December 15, 2009.

3 22. After waiting a week due to the stay-away order I was given before I was taken to Santa
4 Rita, I went to the UCPD office at UC Berkeley on December 18 and asked that my backpack and
5 camera be returned. I was directed to a Detective Miller, who told me I had to come with her to a
6 back room to get my backpack. I followed her to a small room and then she proceeded to ask me
7 numerous questions about what I knew about the demonstration, who organized it, and what the
8 plans for it were. I told her that I did not know the answers to any of her questions, and told her about
9 how I tried to report on the concert, ending up covering the march, and that I was in handcuffs within
10 15 minutes of parking my car.

11 23. Detective Miller continued to press me for information. She gave me her business card and
12 told me I could call her if I had anything else to add about the events of that night. I told her that I
13 did not have any additional information. She then gave me my backpack and a copy of a search
14 warrant, which she said covered my camera and the mini-CD disc within it. The contents of my
15 backpack were in different pockets than I had left them, indicating that it had been searched. I asked
16 Detective Miller about this and she told me that UCPD had to check it for contraband. However, the
17 UCPD had actually removed several blank mini-CDs for my camera that were in the backpack, as
18 well.

19 24. I told Detective Miller that I had been working with *Indybay* for years and that it was wrong
20 that the police had seized my camera. Detective Miller told me that my camera was in the possession
21 of Judge Carl Morris at the Wiley Manuel Courthouse on Washington Street in Oakland and that I
22 would have to request it back from him. She provided me with a piece of paper with which to write
23 down the judge's name and courthouse information. I went to the courthouse that afternoon and was
24 told by a court clerk that I needed the police report in order to request return of a camera. I called
25 Detective Miller from the court house and asked for a copy of the report. She told me I could not
26 have the report because the investigation was still ongoing. I asked her why she was giving me the
27 run-around and she said she would speak to her superiors about what could be done to retrieve my
28 camera. She called me back later in the afternoon and told me she was still looking into the matter.

1 25. After not having heard from Detective Miller the following Monday, I called her back
2 on Tuesday, December 22 to ask how I could get my camera back. She did not have an answer for
3 me when I called, but she called me back and told me that my camera was at the UCPD office and
4 that I could come pick it up there. I then went to UC Berkeley to get the camera and it was returned
5 to me at the front desk, along with several of the camera's blank mini-CDs that the police had taken
6 from my backpack. I looked inside the camera and saw a mini-CD disc, on which I assumed
7 photographs I had taken on December 10 and 11 were stored.

8 26. I then left the UCPD offices. Just as I stepped out of the building, I noticed a man hurrying
9 out of the door behind me. He had a camera with a long lens on it in his hands. I stopped to take a
10 picture of a UCPD sign and he walked past me and seemed to be taking pictures of the Bancroft
11 Way. I walked to my car, got in, and turned on my camera to see if the UCPD had taken my
12 photographs and discovered that they had indeed taken the mini-CD with the December 10 and 11
13 photographs. The disc that was in my camera when it camera was seized had been replaced with a
14 blank disc. I reviewed all of the mini-CDs the UCPD returned to me. All of the discs in my
15 possession were blank, which led me to believe that the police kept the one disc with photographs
16 on it.

17 27. After I finished looking through the discs and I was preparing to drive off, I noticed the man
18 with the camera who had been hurrying after me standing at the top of some stairs nearby and
19 pointing his camera in my direction. I believe he was a plainclothes officer taking photographs of
20 me and of my car.

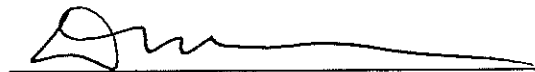
21 28. I drove home and called Detective Miller to ask what had happened to the mini-CD disc
22 from my camera with my photographs on it and to demand that my photographs be returned. She told
23 me that the UCPD had removed the disc, "finalized" the CD so it would be readable by a computer,
24 and that she could not return the photographs because they were evidence in an ongoing
25 investigation. I reiterated that what the UCPD had done was wrong and that they had no right to hold
26 on to a journalist's photographs. Detective Miller told me she would try to get my photographs back
27 to me, but that most supervisors now were on holiday vacation, and that I probably would not be able
28 to get my discs back until after the new year. I told her that I would call again for my photographs

1 photographs after the new year if the people responsible for getting my photographs back were not
2 there. That was the last time I spoke with Detective Miller.

3 29. About two-thirds of the photographs on the disc Detective Miller refused to return to me are
4 from my coverage of the demonstration at San Francisco State on the morning of December 10,
5 2009. The last 15 or so were from the short time I was covering the demonstration at and around UC
6 Berkeley on the night of December 11. I had already downloaded the December 9-10 images to my
7 computer and had posted some of them to *Indybay* just after midnight on December 11. I was able
8 to post more photographs, along with a related report, on December 17 and 20. I had similarly
9 intended to publish a selection of the December 11 photographs, along with a written report, to
10 *Indybay*.

11 I declare under penalty of perjury of the laws of the State of California that the foregoing is
12 true and correct and executed this 14th day of April, 2010 in San Francisco, California.

13
14
15 By:



16 David Morse
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Exhibit A

Subject: Re: [Sfbay] Press Credential Announcement
From: dave id <daveid@anomie.info>
Date: Fri, 24 Nov 2006 23:37:03 -0800
To: Peter Maiden <pmaiden@pacbell.net>
CC: daveid@anomie.info

hey Peter

as you know, I have never had one, but I think I'd like one now if it's okay with you.

my info is as follows:

David Bryan Morse
674 23rd Street, Unit 4
Oakland, CA 94612

I agree to the following statement:

I am currently providing media to Indybay. I agree that while using the Indybay credential, I will not put Indybay at legal risk. If I do so, I understand my card may be revoked.

if you need anything else, just let me know.

thank you.

peace,
david

Hello Reporters and Photographers,

As some of you have noticed, the Indybay press credentials that are now being used expire on December 31. They are official-looking (and official in fact) credentials with the Indybay logo and the address of the space, and a photo of the correspondent. I write in the name of the correspondent, and I sign the card.

If you already hold a credential, please send me an email with your full legal name and a postal address where I can mail the card. There is no charge.

If you want one and haven't gotten one yet, the

general rule is that you attend an orientation meeting and post 2-3 stories and then you become eligible. If you are applying for the first time, you need to state agreement to the following statement:

"I am currently providing media to Indybay. I agree that while using the Indybay credential, I will not put Indybay at legal risk. If I do so, I understand

my card may be revoked."

We did, in fact, revoke someone's card for a few months once because of an incident.

When you get your new card, please attach a 1 x 1 inch photo in the space provided and laminate the card. Then you are good to go for two years—this one will expire December 31, 2008.

Please if possible apply within the next 15 days, as that would make it much easier for me. However, these will be available on an ongoing basis.

Thank You

Peter Maiden
SF Bay Photo
& Credential Guy
pmaiden@pacbell.net

Sfbay mailing list
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<http://lists.indymedia.org/mailman/listinfo/sfbay>