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DAVID MORSE

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10 IN RE SEARCH WARRANT ISSUED
11 DECEMBER 12, 2009

Warrant No.: 2009-2775

12 **DECLARATION OF DAVID MORSE IN**
13 **SUPPORT OF REPLY MEMORANDUM**
14 **TO QUASH SEARCH WARRANT AND**
15 **RETURN PROPERTY**

16 DATE: June 18, 2010
17 TIME: 2:00 PM
DEPT: 115
Hon. Yolanda Northridge

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DECLARATION OF DAVID MORSE IN SUPPORT OF REPLY MEMORANDUM TO QUASH SEARCH WARRANT AND
RETURN PROPERTY

1 **DECLARATION OF DAVID MORSE**

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

5 1. I generally do not carry my most current Indybay press pass—which I keep in a clear
6 plastic covering attached to a lanyard—on my person in the course of my daily activities. Rather,
7 I bring it with me when I anticipate reporting on public demonstrations or protests, especially those
8 that have the potential to be contentious and involve police action, in which case I wear it
9 prominently hanging around from my neck and in clear view. I do, however, almost always carry
10 my older press pass in my back pocket along with my California driver’s license, business cards, and
11 so forth. My other press pass is laminated, but it takes up less space because I do not keep it in a
12 plastic badge holder with a lanyard. Thus, I carry my older press pass as a less cumbersome back-up
13 that I can use to denote my journalist status in case I encounter a newsworthy event at a time that I
14 do not have my bulky, current press pass on me. A true and correct copy of the press pass I
15 possessed on December 11, 2009 is attached hereto as Exhibit A. A true and correct copy of my
16 current press pass is attached hereto as Exhibit B.

17 2. I had an obligation unrelated to this matter in San Francisco on the evening of December 11.
18 I wanted to report on an off-campus concert in Berkeley that night, but I knew it would start
19 before I could leave San Francisco. Therefore I left San Francisco for the East Bay as soon as I could
20 that night, stopping at home only to change clothes and grab my camera. I was in and out of my
21 house in under five minutes and accidentally forgot to grab my current press pass on the lanyard.
22 In addition to hurrying so as not to miss the entire event, bringing my current press pass may have
23 slipped my mind because I did not anticipate any police contact that night, as I understood the event
24 to be a peaceful student-organized concert with political overtones.

25 3. I informed University of California Police (“UCPD”) officers Wyckoff and/or Manchester
26 that I was a journalist at least six times from the time they first contacted me until I was processed
27 into general population at Santa Rita. I also requested that the officers review my press pass several
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1 times. I could not access and present my press pass myself, as I was detained and in handcuffs
2 immediately after they approached me. I was in the police car shortly thereafter.

3 4. The officers on scene either ignored or dismissed all of my statements about being a
4 journalist. They showed no interest in verifying or refuting my claim. They declined to look at my
5 press pass entirely until Officer Wyckoff inadvertently ran across it after taking me out of the police
6 car to search me for a second time approximately an hour after I was first detained. I implored him
7 to view the press pass at this point, and he finally did. The officers on scene passed my press pass
8 around before returning it to my back pocket without discussion. I was then placed back into the
9 police car and the door was closed. At no time during the three hours I was in UCPD custody did
10 any officer inquire about the press pass or my repeated claims that I was a journalist and that I was
11 only present in a newsgathering capacity.

12 5. While at Santa Rita, I waived my Miranda rights and once again tried to explain to Officer
13 Wyckoff that I was a journalist, that I had not participated in the demonstration or the vandalism, and
14 that I was only present at the scene as a newsgatherer. Officer Wyckoff did not pursue this line of
15 discussion, and instead attempted to get me to sign a statement that indicated that I was not
16 cooperating with the investigation.

17 6. To date, UC has not returned the mini-CD disc that was present in my camera on the night
18 of December 11. UC seized at least five discs in total, of which four—all blank—have been
19 returned. Only at the June 4, 2010 hearing to discuss my motion to quash the search warrant and
20 return property did a UC representative for the first time provide me with copies of my photographs,
21 which were burned onto a full-sized CD-ROM disc and not a mini-CD like the ones my camera
22 utilizes.

23 7. Upon viewing the photographs on the CD-ROM disc UC provided at the hearing, I realized
24 that UC had not given me copies of the majority of the photographs that were on my original mini-
25 CD. I expected to see photographs from a separate student demonstration I had covered in San
26 Francisco State on December 9-10, 2009. I also expected to see the final photograph(s) I had made
27 at UC Berkeley on December 11, just before I was detained. I strongly recall making a photograph
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1 of the approaching UCPD police car that is not on the CD-ROM disc provided to my counsel by UC
2 on June 4, 2010.

3 8. When my legal counsel pointed out to counsel for UC that UC had not provided copies
4 of all of the photographs seized from me on December 11, 2009, UC produced a second CD to my
5 counsel containing the San Francisco State demonstration photographs I had made prior to the events
6 at UC Berkeley. According to my counsel, the final photograph(s) I made of the approaching UCPD
7 car on December 11 were still not present. My counsel sent a second letter to UC requesting the
8 still-missing photograph(s), but I have not received any other copies of my photographs or my
9 original mini-CD disc.

10 9. Beginning in December 2009 and until the Court issued its order temporarily barring use of
11 the photographs by UC, I periodically visited the UCPD website and viewed a publicly-accessible
12 webpage entitled "Help Us Identify These Individuals." This webpage featured photographs that I
13 believed at the time to be ones I made on December 11. I confirmed that at least some of the
14 photographs were my unpublished news photographs using the copies of images given to my counsel
15 on June 4, 2010.

16 10. At no time on December 11, 2009 did I hear anyone state that the building the demonstrators
17 vandalized was the Chancellor's residence. As I have declared previously, I only learned of this fact
18 the following evening.

19 11. If UC had sought a subpoena for my unpublished news photographs, or if it does, I would
20 have/will claim the protections of the California journalist shield law.

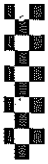
21 12. UC maintains in its papers that I intend to publish my photographs—impliedly all of them.
22 This is not true. I have not yet had an opportunity to exercise my editorial judgment as to which
23 photographs to publish, if any, because until June 4 UC has been the sole possessor of all copies of
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2 my unpublished photographs. Indeed, I may publish none of the photographs. But in any event, I
3 have yet to make that decision.

4 I declare under penalty of perjury of the laws of the State of California that the foregoing is
5 true and correct and executed this 15th day of June, 2010 in San Francisco, California.

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By: 

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David Morse

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EXHIBIT A



SF Bay Independent
Media Center
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DAVID MORSE

correspondent

DAVID MORSE
co-ordinator

Expires December 31, 2008

The bearer of this card is on assignment
for the SF Bay Independent Media Center.
Please extend to her or him all privileges
given to the Press.

EXHIBIT B



SF Bay Independent
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DAVID MORSE

correspondent
PRESS
coordinator

Expires December 31, 2010

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