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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

IN RE APPLICATION OF MEDIA COALITION TO UNSEAL SEARCH WARRANT MATERIALS PERTAINING TO WARRANT NUMBERS SW43684 AND SW43687.	Misc. Case No.: 2516292-(09) 2516293-(10) **NOTICE OF MOTION AND MOTION BY MEDIA COALITION TO UNSEAL ARREST AND SEARCH WARRANT RECORDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF DAVID SNYDER; DECLARATION OF DUFFY CAROLAN, EX. A THERETO** Date: May 21, 2019 Time: 9 a.m. Department: 22 (Hon. Samuel Feng, Asst. PJ)

PLEASE TAKE NOTICE that on May 20, 2019, at 9 a.m., or as soon thereafter as counsel may be heard in Department 22 of the above-entitled Court, located at 850 Bryant Street, San Francisco, CA 94103, The First Amendment Coalition, Reporters Committee for Freedom of the Press, and The Northern California Chapter of the Society of Professional Journalists (hereinafter, the "Media Coalition"),[1] will and hereby do move to intervene and for a court order unsealing court

[1] The First Amendment Coalition ("FAC") is a nonprofit, public interest organization committed to freedom of speech, more open and accountable government, and public participation in civic affairs. Founded in 1988, FAC's activities include free legal consultations on First Amendment issues, educational programs, legislative oversight of bills in California affecting access to government and free speech, and public advocacy, including extensive litigation and appellate work. FAC co-authored and sponsored Proposition 59, the Sunshine Amendment to the California State Constitution, enacted by voters in 2004. FAC's members are news organizations, law firms,

records pertaining to search warrant number SW43684 issued for property located at 459 Fulton Street, #201, San Francisco, CA 94102, on May 10, 2019 (Hon. Victor Hwang), and search warrant number SW43687 issued for property located at 794 45th Avenue, San Francisco, CA., on May 9, 2019 (Hon. Gai Dekreon). Both warrants purportedly relate to San Francisco Police Department ("SFPD") criminal investigation number 190334240, and involve property owned or controlled by freelance journalist Bryan Carmody. On May 10, 2019, Mr. Carmody was handcuffed and detained by SFPD for more than six hours while police searched his home and the office of his news organization, North Bay News, in connection with an SFPD police report about the death of San Francisco Public Defender Jeff Adachi that Mr. Carmody had obtained from a confidential source. On April 11, the SFPD had sought Mr. Carmody's cooperation in identifying his source of the report; Mr. Carmody refused to disclose the identity of his confidential source. The Media Coalition seeks access to all search and arrest warrants, probable cause statements submitted to the Court in support of issuance of those warrants, returns, and lists of inventory seized (hereinafter, the "Warrant Materials").[2]

This Motion is made on the following independent grounds. First, pursuant to the express provisions of California Penal Code § 1534(a), executed and returned search warrant materials "shall be open to the public as a judicial record." Additionally, pursuant to the United States

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libraries, civic organizations, academics, freelance journalists, bloggers, community activists, and ordinary citizens. The Reporters Committee for Freedom of the Press ("Reporters Committee") is an unincorporated nonprofit association of reporters and editors dedicated to defending the First Amendment and newsgathering rights of the news media. Founded by journalists and media lawyers in 1970, when the nation's press faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources, the Reporters Committee today serves as a leading voice for the legal interests of working journalists and news organizations. The Northern California Chapter of the Society of Professional Journalists ("SPJ NorCal") is dedicated to improving and protecting journalism. It is a Chapter of the national Society of Professional Journalists, the nation's most broad-based journalism organization. Founded in 1909 as Sigma Delta Chi, the Society of Professional Journalists promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists, and protects the First Amendment guarantees of freedom of speech and press. SPJ NorCal has a Freedom of Information Committee of journalists and First Amendment lawyers which assists in its free speech and government transparency advocacy. Also, in collaboration with its Freedom of Information Committee, SPJ NorCal hosts the annual James Madison Freedom of Information Awards and offers training to journalists on free press and access issues.

[2] While the Media Coalition has obtained copies of the two above-referenced search warrants, it seeks the Court's official versions of these documents, the supporting probable cause statements, inventory lists, and returns, as well as any other search and/or arrest warrant materials.

Constitution, the California Constitution, Article I, § 2(a) and § 2(b), California Code of Civil Procedure § 1904, California Rule of Court 2.550, and the common law, judicial records are presumptively open, and cannot be sealed absent specific, on-the-record findings that there is an overriding interest that overcomes the right of public access.

To the Media Coalition's knowledge, no publicly docketed motion to seal has been made by the prosecution or police to justify the continued sealing of the Warrant Materials beyond the date that the warrants were executed or 10 days after their issuance. Cal. Pen. Code § 1534(a). Additionally, to the Media Coalition's knowledge, no supporting on-the-record findings have been made by the Court justifying the continued sealing of the Warrant Materials after the warrants were executed and return; nor could such a justification be made. No fair trial rights relating to the search and seizure of Mr. Carmody's journalistic work product or his detention exist that would justify the continued sealing of these court records because after being detained for six hours, Mr. Carmody was released without being charged with any crime.

For these reasons, the Media Coalition respectfully requests that the Court make immediately available to the public all of the Warrant Materials.

This Motion is based upon the attached Memorandum of Points and Authorities, the Declarations of David Snyder and Duffy Carolan appended hereto, on all pleadings, records, and files in this action, on all matters of which judicial notice may be taken, and on argument and evidence presented at the hearing on this Motion.

DATED: May 15, 2019

JASSY VICK CAROLAN LLP

By: _____
DUFFY CAROLAN

Attorneys for The First Amendment Coalition, Reporters Committee for Freedom of the Press, The Northern California Chapter of the Society of Professional Journalists

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

Penal Code Section 1534(a) expressly requires that executed and returned search warrants "*shall* be open to the public as a judicial record." Cal. Pen. Code § 1534(a) (emphasis added). Courts interpreting Section 1534(a) have recognized only narrow exceptions to this presumption of openness, and there is no categorical exemption for information relating to an ongoing investigation. See PSC Geothermmal Svcs v. Superior Court, 25 Cal. App. 4th 1697, 1713 (1994) (recognizing that an ongoing investigation exception would create an impermissibly broad exemption to the Legislature's guarantee that such material will be available to the public after a warrant has been executed). Indeed, even in the unusual circumstances where certain information may properly be redacted from search warrant materials, the California Supreme Court has made clear that a court should "take whatever further action may be necessary to ensure full public disclosure of the remainder" of those records. People v. Hobbs, 7 Cal. 4th 948, 971 (1994).

The public's presumptive First Amendment right of access to court records also requires greater transparency here. In its seminal decision on access to judicial records, the California Supreme Court emphasized that such records may be sealed only "in the rarest of circumstances." NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal. 4th 1178, 1226 (1999). Under the standards announced by the Court in NBC Subsidiary and subsequently codified by the Judicial Council, court records cannot be maintained under seal unless a court specifically finds that: (1) there is an overriding interest that overcomes the public's right of access; (2) there is a substantial probability that sealing will promote that interest; (3) the sealing order is narrowly tailored to serve the overriding interest; and (4) that there are no less restrictive alternatives to sealing. See NBC Subsidiary, 20 Cal. 4th at 1208; Cal. R. Ct. 2.550(d), 2.550(e)(1).

The Media Coalition seeks to vindicate these important statutory and constitutional rights of public access to the judicial records pertaining to the search and detention of freelance journalist Bryan Carmody, including the search and any arrest warrants, any supporting probable cause affidavits, inventories, returns, and any other related records that have been filed with the Court (hereinafter, the "Warrant Materials"). The warrants were executed on or around May 10, 2019, in

connection with a San Francisco Police Department ("SFPD") investigation (case number 190334240) into the alleged leak of an SFPD report about the death of San Francisco Public Defender Jeff Adachi.

The Media Coalition is informed and believes that the Warrant Materials remain under seal despite the warrants having been returned to the Court following their execution.

The public's right of access to court records authorizing police action to arrest an individual or search his personal property is particularly important where, as here, serious questions are raised about the propriety of those actions. Here, the press and the public have a powerful interest in knowing what law enforcement agencies knew, at the time the warrants were issued, about Mr. Carmody's status as a journalist protected under Article I, Section 2(b) of the California Constitution, California Evidence Code Section 1070, and California Penal Code Section 1524(g), what information law enforcement provided to the Court about Mr. Carmody's status as a journalist when it obtained the warrants executed on May 10, and whether law enforcement and the Court followed proper procedures in approving and executing the warrants. Moreover, given that Mr. Carmody has not been charged with any crime, and could not consistent with well-established First Amendment jurisprudence be charged with any crime for his mere receipt or possession of the report at issue,[3] access to the Warrant Materials may be the only means by which the public can

[3] To be clear, the disclosure to Mr. Carmody of the SFPD report, a quintessential public record, was not prohibited under California law. To the contrary, the investigatory records exemption to the mandatory disclosure provisions of the California Public Records Act under Government Code Section 6254 are discretionary by their express terms—"Except as provided in Section 6254.7, nothing in this chapter shall be construed to require the disclosure of records that are any of the following:" Cal. Gov't Code § 6254. In turn, subdivision (f) of Section 6254, governing investigatory records, authorizes, but does not mandate, an agency's withholding of "records of … investigations conducted by … any state or local police agency…." Cal. Gov't Code § 6254(f). In enacting the CPRA, the Legislature made clear that "[e]xcept as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimal standards set forth in this chapter." Cal. Gov't Code § 6253(e). Thus, the entire premise of the police's criminal investigation—that disclosure of a police report to a member of the media or anyone else was a felony—is seriously infirm. While it may have violated internal procedures or department protocol, the Media Coalition disputes the notion that disclosure of the police report, a public record, could constitute a criminal act. Even if disclosure of the report to Mr. Carmody was unlawful well-established law protects Carmody's receipt and publication of the report. See Bartnicki v. Vopper, 532 U.S. 514, 529-35 (2001) (liability for broadcasting recorded conversation lawfully obtained from one known to have illegally intercepted the call where information related to a matter of public concern violated the First Amendment); Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 838, 841 (1978) (conviction against newspaper for publishing confidential complaints against judge in violation of

obtain needed information about the actions taken by law enforcement in this matter.

Because this case implicates no defendant's fair-trial rights, or prosecutorial interests sufficient to outweigh the public's right of access, the Warrant Materials should be unsealed. Under either Penal Code Section 1534(a) or the First Amendment, any party advocating for continued sealing cannot meet its onerous burden to justify continued restrictions on public access to the Warrant Materials. Indeed, there appears to be no publicly docketed sealing motion or any on-the-record findings justifying the continued sealing of these records after the date on which they were statutorily required to be made part of the public court record.

For these reasons, the Media Coalition respectfully requests that the Court immediately unseal the Warrant Materials.[4]

II. STATEMENT OF FACTS

On or about May 10, 2019, SFPD officers searched the home of Mr. Carmody, a freelance journalist, purportedly as "a step in the process of investigating a potential case of obstruction of justice along with the illegal distribution of confidential police material."[5] The purported "confidential police material" at issue was a police report regarding the death of San Francisco Public Defender Jeff Adachi that allegedly was obtained by Mr. Carmody from a confidential source. Mr. Carmody had previously refused to disclose to police the identity of that confidential source. According to news accounts citing Mr. Carmody, 8 to 10 SFPD officers raided Mr. Carmody's home using a sledgehammer to break through his front gate, drew their handguns, and handcuffed and detained Mr. Carmody for more than six hours while seizing a wide scope of materials, including notebooks, phones, computers, tablets, and cameras from his home. See Ex. A

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state law reversed as contrary to First Amendment); Nicholson v. McClatchy Newspapers, 177 Cal. App. 3d 509, 517-18 (1986) (rejecting tort liability against paper for truthful reporting based on confidential state bar disciplinary proceeding against judge).

[4] California courts have recognized that members of the press and public have standing to challenge any limits on access to court records, and that they must be provided an opportunity to be heard before such orders are issued. See NBC Subsidiary, 20 Cal. 4th at 1217-18 ("before substantive courtroom proceedings are closed or transcripts are ordered sealed, a trial court must hold a hearing and expressly find that" closure is appropriate under a stringent test); Estate of Hearst, 67 Cal. App. 3d 777, 782 (1977) (recognizing media's right to seek access to judicial records).

[5] The search warrants obtained by the Media Coalition indicate that the police informed the Court that they were investigating "stolen or embezzled" property and that evidence "tends to show that a felony has been committed or that a particular person committed a felony."

to Carolan Decl. (news accounts of incident). That same day, officers also searched the office of Mr. Carmody's news organization, North Bay News, and seized CD's, a thumb drive, a tablet, hard drives, and a police report, among other items. Id. The seizure of these items is further confirmed by a property receipt form issued by SFPD in connection with each warrant. Carolan Decl., ¶ 4.

After being taken into custody at 8:22 a.m. on May 10, Mr. Carmody was released at 1:55 p.m. that same day without being charged with any crime. Id., ¶ 5.

The search warrant for Mr. Carmody's home was signed by Judge Gail Dekreon on May 9, 2019. The search warrant for the office of North Bay News was signed by Judge Victor Hwang on May 10, 2019. Both warrants indicate that they were supported by a statement of probable cause submitted by Sergeant Joseph Obidi (#2328), the same officer who released Mr. Carmody from custody. Carolan Decl., ¶ 6.

On May 15, 2019, FAC's Executive Director David Snyder inquired with the San Francisco Superior Court Clerk's office about obtaining access to the Warrant Materials pertaining to Mr. Carmody's detention and the search of his home and news organization, including, specifically, the statements of probable cause justifying the searches. Mr. Snyder was informed that all of the Warrant Materials were sealed and that no publicly docketed motion to seal or resulting sealing order justifying the continued sealing of those materials after execution and return of the warrants were part of the public court record. Snyder Decl., ¶ 2. Undersigned counsel for the Media Coalition was informed that in order to obtain access to the Warrant Materials a motion to unseal would be required. Carolan Decl., ¶ 3.

III. LEGAL ANALYSIS

A. Penal Code Section 1534(a) Mandates that All Materials Related to a Returned Search Warrant be Made Public.

California Penal Code § 1534(a) provides that after a search warrant is executed and returned, all "documents and records of the court relating to the [search] warrant . . . . shall be open to the public as a judicial record." Cal. Penal Code § 1534(a) (emphasis added). The California Legislature did not impose any qualifications or limitations upon this right of public access to search warrant materials other than the passage of time. See, e.g., PSC Geothermal, 25 Cal. App.

4th at 1713.

Although the statutory right of access to search warrant materials is not absolute, California courts have recognized only limited exceptions to this presumption of openness. The leading decision is Hobbs, where the California Supreme Court considered a criminal defendant's request to unseal a search warrant affidavit. 7 Cal. 4th at 954-955. As the Court explained, the case involved the "the inherent tension between the public need to protect the identities of confidential informants, and a criminal defendant's right of reasonable access to information upon which to base a challenge to the legality of a search warrant." Id. at 957. After carefully analyzing Evidence Code Section 1041, which gives prosecutors a qualified privilege to withhold a confidential informant's identity, and Evidence Code Section 1042, which sets forth the consequences of a prosecutor's successful invocation of Section 1041, the Court declared that these privileges "together comprise an exception to the statutory requirement that the contents of a search warrant, including any supporting affidavits …, become a public record once the warrant is executed." Id. at 962. Nevertheless, recognizing that redaction—not wholesale sealing—is the appropriate mechanism for shielding the identity of the confidential informant identified in the warrant materials, the Court instructed the trial court to "take whatever further actions may be necessary to ensure full public disclosure of the remainder of the [search warrant] affidavit." Id. (emphasis added).

Soon after Hobbs, the Court of Appeal in PSC Geothermal addressed whether a prosecutor's asserted desire to protect an ongoing investigation would justify an exception to Section 1534(a)'s statutory right of public access to search warrant materials. There the subjects of an investigation moved to unseal search warrant materials in order to challenge the seizure of items from their environmental consultant's office. 25 Cal. App. 4th at 1700-1702. The consultant was hired by the subject's attorney. Id. The trial court had sealed the affidavits ruling that before a criminal complaint is filed, affidavits may be sealed if disclosure would adversely affect a criminal investigation. Id. at 1713. The appellate court rejected this ruling, holding that "[t]here is no exception in [Penal Code § 1534(a)] for instances … where the search [warrant] is used to further an ongoing investigation." Id. at 1714. The court observed, however, that a prosecutor need not

reveal the "identity of an informant" or "official information" as defined under Evidence Code Section 1040(a)[6] and 1043(b), where that information is necessary to prove the search is legal. Id. at 1714. Even under such circumstances, redaction of such information is warranted only if a "court determines, in accordance with precise statutory standards, that disclosure is against the public interest." Sheppard v. Superior Court, 17 Cal. 3d 107, 123 (1976) (emphasis added); overruled on other grounds by People v. Holloway, 33 Cal. 4th 96 (2004); see also PSC Geothermal, 25 Cal. App. 4th at 1714. This is an onerous standard. Sheppard, 17 Cal. 3d at 123; Torres v. Superior Court, 80 Cal. App. 4th 867, 873 (2000) ("[t]he official information privilege, once asserted, shouldn't be sustained unless the court is presented with a showing that the information sought to be protected is covered by the privilege.").

Importantly, the court in PSC Geothermal, like the Court in Hobbs, emphasized the importance of "redacting the [search warrant] affidavit and sealing only that portion which might be found … to be official information." 25 Cal. App. 4th at 1714-1715. Because the trial court failed to conduct the two-stage analysis of confidentiality and public interest and because sealing appeared overbroad, the court issued a writ of mandate directing the trial court to unseal the affidavit subject to a claim of privilege and further in camera review. Id. at 1715.

In People v. Jackson, 128 Cal. App. 4th 1009, 1023 (2005), which involved a media request to unseal a search warrant affidavit, the appellate court unequivocally recognized that the public's constitutional right of access to court records extends to search warrant materials, and that any order sealing such materials must comply with the constitutional tests set forth in NBC Subsidiary and codified in Rules of Court 2.550 and 2.551. Id. at 1022. The unique combination of the celebrity status of the defendant, Michael Jackson, the crimes alleged, and the ongoing nature of the criminal investigation, led the court to uphold the trial court's order sealing the search warrant affidavit "until, at a minimum, the arraignment in the matter." Id at 1023-24, 1015. In doing so the court recognized that in appropriate cases courts can seal warrant material that would be so prejudicial as to endanger a fair trial. Id. at 1021. "Given the 'graphic and detailed descriptions of

[6] "Official information" is defined as "information acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made." Cal. Evid. Code § 1040(a).

Jackson's alleged sexual misconduct with two minors, one in the present case, and one in a prior case settled 10 years ago,' the court found that disclosure "could lead to moral judgments and public outrage, severely prejudicing Jackson's right to a fair trial." Id. at 1023. Unsealing the affidavit at that time, the court found, not only would have prejudiced Mr. Jackson's fair trial rights but also might have jeopardized the then-ongoing criminal investigation of Mr. Jackson, as evidenced by the government's issuance of 65 additional warrants soon after the indictment. Id. at 1024.[7] It was the unique confluence of all these factors that led the court to uphold the trial court's order temporarily sealing the affidavit. Id. at 1016, 1024 ("Here, it is the combination of celebrity status, the crimes alleged and the ongoing criminal investigation that justifies sealing.").

The present situation is a far cry from the Jackson case. Mr. Carmody has not been charged with any crime, and he does not oppose disclosure of the Warrant Materials. Carolan Decl., ¶ 7. Thus, no fair trial rights are implicated here. Nor does this case involve the privacy rights of any minor victims. Further, there appear to be no ongoing investigation concerns; there is no risk of tipping the government's hand to imminent action, with its attendant risk of destruction of evidence. In any event, the proponent of sealing must show that, absent sealing, there exists a "substantial probability" that the specific harms alleged will occur. NBC Subsidiary, 20 Cal. 4th at 1208. Such a showing cannot be made here, where disclosure of the factual basis for searching Mr. Carmody's home and his news organization does nothing but expose police conduct to the light of public scrutiny.

Moreover, there is a substantial public interest in access to the sealed Warrant Materials. Access will shed light on the SFPD's purported basis for targeting a local journalist who, in the course of newsgathering, obtained a police report from a confidential source detailing the final moments in the life of a public official, and sought to report on it. Access is all the more important here given the substantial protections afforded journalists' confidential sources and unpublished information under both California and federal law, which raise serious questions as to the legality of the search and detention of Mr. Carmody.

[7] The court also recognized that the privacy rights of minors is an interest that may overcome the public's qualified First Amendment right of access to court records. Id. at 1023.

Article I, Section 2(b) of the California Constitution provides that a journalist "connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service" may not "be adjudged in contempt for refusing to disclose the source of any information … or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing information for communication to the public." Cal. Const., Art 1, § 2(b); see also Cal. Evid. Code § 1070(b). As the California Supreme Court has made clear, the government has *no* superior constitutional right that outweighs the rights of journalists under Article I, Section 2(b) of the California Constitution and the nearly identical Evidence Code Section 1070. Miller v. Superior Court, 21 Cal. 4th 883, 890-901 (1999). To the contrary, journalists have an "*absolute*" immunity "from contempt for revealing unpublished information obtained in the newsgathering process," and Article I, Section 2(b), together with Section 1070, provide an absolute shield for reporters against prosecutors' subpoenas for all manner of unpublished information and material. *Id.* (emphasis in original).[8] And, based on these protections, California law expressly provides that "[n]o warrant shall issue for any item or items described in Section 1070 of the Evidence Code." Cal. Penal Code § 1524(g).

The warrants at issue here are particularly troubling – and it is therefore particularly important to provide the public with information about how and why they were issued – because

[8] By elevating this protection for journalists' confidential sources and unpublished material from a statute—Evidence Code Section 1070—to the state Constitution, California recognized that journalists must be given the maximum possible protection for information obtained in the course of their newsgathering activities. As the California Court of Appeal, Second Appellate District, noted in Playboy Enterprises, Inc., v. Superior Court, 154 Cal. App. 3d 14 (1984):

> The elevation to constitutional status must be viewed as an intention to favor the interest of the press in confidentiality over [competing interests]….
>
> It has long been acknowledged that our state Constitution is the highest expression of the will of the people acting in their sovereign capacity as to matters of state law. When the Constitution speaks plainly on a particular matter, it must be given effect as the paramount law of the state.

Id. at 27-28 (citations omitted; emphasis added).

the Court of Appeal has held that freelancers are protected by the Shield Law. See People v. Von Villas, 10 Cal. App. 4th 201, 231-32 (1992). That strongly suggests Penal Code section 1524(g) applied here and should have prevented the warrants the media coalition is investigating from ever being issued.

Separately, the Privacy Protection Act of 1980 ("PPA"), 42 U.S.C. Section 2000aa *et seq*., "generally prohibits government officials from searching for and seizing documentary materials possessed by a person in connection with a purpose to disseminate information to the public." Morse v. Regents of University of California, Berkeley, 821 F.Supp.2d 1112, 1120 (N.D. Cal. 2011) (quoting Citicaster v. McCaskill, 89 F.3d 1350, 1353 (8th Cir. 1996)). The law applies to state actors and, with certain exceptions, establishes a "subpoena-first rule," the violation of which is actionable. Id. at 1121. The PPA was enacted "to provide protections previously thought by many to be guaranteed by the constitution before *Zurcher v. Stanford Daily*, 436 U.S. 547, 98 S.Ct. 1970, 5 L.Ed. 2d 525 (1978)," a civil right case involving a police raid on the newsroom of the student paper at Stanford University. Id. at 1121.

These protections are not merely symbolic; compelled disclosure of a journalist's source information impairs their ability to investigate and to disseminate information to the public. As the California Supreme Court has recognized:

> A comprehensive reporter's immunity … has the effect of safeguarding 'the autonomy of the press.' The threat to press autonomy [from subpoenas] is particularly clear in light of the press' unique role in society. As the institution that gathers and disseminates information, journalists often serve as the eyes and ears of the public. Because journalists not only gather a great deal of information, but publicly identify themselves as possessing it, they are especially prone to be called upon by litigants seeking to minimize the costs of obtaining needed information.

Miller, 21 Cal. 4th at 898**Error! Bookmark not defined.**. The Ninth Circuit likewise recognizes the special harm that befalls journalists when they are perceived to be a "research tool of the government." Shoen v. Shoen, 5 F.3d 1289, 1294-1295 (9th Cir. 1993). Compelled disclosure of unpublished material "'convert[s] the press in the public's mind into an investigative arm of prosecutors and the courts,'" and causes reporters to "'be shunned by persons who might otherwise give them information without a promise of confidentiality, barred from meetings which

they would otherwise be free to attend and to describe, or even physically harassed if, for example, taking notes or photographs at a public rally.'" *Id.* at 1295.

Aside from the serious questions raised regarding the legality of the particular searches of Mr. Carmody's home and office, the public generally has a strong interest in overseeing police misconduct. In Waller v. Georgia, 467 U.S. 39, 46-47 (1984), for example, the United States Supreme Court recognized that access to suppression hearings is particularly strong because "[a] challenge to the seizure of evidence frequently attacks the conduct of the police and prosecutors" and "strong pressures are naturally at work on the prosecution's witnesses to justify the propriety of their conduct in obtaining the evidence." Id. at 46 (citations omitted). "The public in general also has a strong interest in exposing substantial allegations of police misconduct to the salutary effects of public scrutiny." Id. The California Supreme Court similarly has recognized that:

> Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain public trust in its police department, the public must be kept fully informed of the activities of its peace officers … It is undisputable that law enforcement is a primary function of local government and that the public has a far greater interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an 'on the street' level than in the qualifications and conduct of other comparably low-ranking government employees performing more proprietary functions. The abuse of a patrolman's office can have great potential for social harm.

Commission on Peace Officer Standards and Training v. Superior Court, 42 Cal. 4th 278, 297 (2007) (citations omitted); see also Estate of Hearst, 67 Cal. App. 3d at 782 (public trials "expose corruptions, incompetence, inefficiency, prejudice and favoritism"). Clearly the salutary benefits of public scrutiny of law enforcement are at play here.

In sum, Section 1534(a) mandates that the Warrant Materials be made public. Because none of the narrow countervailing interests identified in the above cases as grounds for restricting public access to warrant materials are at issue here, and given the particularly strong public interest in access to the sealed Warrant Materials, this Court should unseal the Warrant Materials without further delay.

B. The Strong Presumption Favoring Public Access To Judicial Proceedings and Records Independently Justifies Disclosure of the Search Warrant Materials

The California Supreme Court made clear that the public has a First Amendment right of access to court documents in NBC Subsidiary.[9] Although NBC Subsidiary involved access to civil court proceedings, the Court's sweeping, unanimous decision cited with approval numerous decisions upholding a First Amendment "presumption of access . . . [for any] documents or records of . . . [judicial] proceedings [that] are filed with the court or are used in a judicial proceeding." 20 Cal. 4th at 1208 & n.25 (emphasis added).

In the wake of NBC Subsidiary, the Judicial Council voted to amend then California Rules of Court to reflect that "unless confidentiality is required by law, court records are presumed to be open." Cal. R. Ct. 2.550. Under NBC Subsidiary and California Rule of Court 2.550, a court cannot close a judicial proceeding or seal a court record without first finding that: (1) an overriding interest supports sealing; (2) a substantial probability exists that the interest will be prejudiced absent sealing; (3) the sealing is narrowly tailored to serve the overriding interest; and (4) no less restrictive means exist to achieve the identified overriding interest. 20 Cal. 4th at 1218-19; Cal. Rule of Ct. 2.550.[10]

The strict sealing test enunciated in NBC Subsidiary is consistent with previous decisions from other courts. See, e.g., Associated Press v. District Court, 705 F.2d 1143, 1145 (9th Cir. 1983) (public's right of access to documents filed in conjunction with criminal proceeding can be overcome only by an affirmative showing that the sealing of documents is "strictly and inescapably necessary" to promote competing interest of the highest order) (emphasis added); Estate of Hearst, 67 Cal. App. 3d at 785 (sealing orders can be justified only in "exceptional" circumstances where sealing is necessary to promote a "compelling" interest).

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[9] Under California law, there is no question that arrest and search warrants and related materials are court records subject to the constitutional right of access. In fact, Penal Code Section 1534(a) expressly defines post-execution search warrant documents as "public … judicial record[s]." In addition, both arrest and search warrant materials fall within Rule of Court 2.550(b)'s definition of court records, which include "all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court, by electronic means or otherwise." (Emphasis added.) See also Alarcon v. Murphy, 201 Cal. App. 3d 1, 6 (1988) ("an affidavit supporting the issuance of arrest and search warrants—part of the court file—is a public record").

[10] Though California Rule of Court 2.550 outlines a five-part analysis, while NBC Subsidiary has a four-part analysis, the tests are essentially the same.

Because Penal Code § 1534(a) expressly defines post-execution search warrant documents as "public . . . judicial record[s]" and because the arrest and search warrants and the materials related to them here were filed in San Francisco Superior Court, the materials at issue are subject to the presumptive First Amendment right of access.[11]

1. Any Sealing Request Must Comply with Rules of Court 2.550 and NBC Subsidiary.

Since the adoption of then California Rule of Court 243.2 (now Rule 2.550), any party seeking to seal court records must satisfy the strict procedural and substantive requirements endorsed by the California Supreme Court in NBC Subsidiary. Any party requesting that a court record be sealed "must file a noticed motion for an order sealing the record." Cal. Rule of Ct. 2.550 (emphasis added). The motion "must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify the sealing." Id. A "court must not permit a record to be filed under seal based solely upon the agreement or stipulation of the parties." Cal. Rule of Ct. 2.550. These rules apply to both criminal and civil cases. See Advisory Committee Comment (2000) to Rule 2.550.

The party advocating sealing must provide evidence to support its argument that sealing is necessary. Oregonian Publ. Co. v. District Court, 920 F.2d 1462, 1467 (9th Cir. 1990) (vacating trial court's sealing order because the trial court had "no evidentiary support" for its belief that sealing documents would "serve 'higher values'"). The court must base its sealing order on "specific, on-the-record findings" of fact. Press-Enterprise v. Superior Court, 478 U.S. 1, 13-14 (1986) (Press-Enterprise II) (emphasis added). "[T]he court may not base its decision on conclusory assertions alone, but must make specific factual findings." Washington Post Co. v. Soussoudis, 807 F.2d 383, 392-93 & n.9 (4th Cir. 1986). Accord Oregonian, 920 F.2d at 1467.

Here, the procedural requirements for sealing have not been met. While the Court's initial sealing order at the time of issuance of the warrants was proper, there was never any noticed motion to seal the materials or, to the Media Coalition's knowledge, any on-the-record findings of

[11] With the passage of Proposition 59, effective November 3, 2004, the right of access to public records and the writings of public officials, including court records, has been expressly incorporated into the California Constitution, Article I, Section 3(b).

fact to support continued sealing after the time set out under Penal Code Section 1534(a) in which the materials are to be open to public inspection. Accordingly, the continued sealing of the Warrant Materials violates California Rule of Court 2.5502 and the constitutional requirements embodied in Press-Enterprise II.

2. The Heavy Burden of Showing That Blanket Sealing is Necessary Cannot be Made Here.

No showing has been – or could be – made justifying blanket sealing of the Warrant Materials. As explained in Hobbs and again in PSC Geothermal any legitimate interests in confidentiality must be addressed through redaction—not wholesale sealing—of the Warrant Materials. The United States Supreme Court, the California Supreme Court, and the Judicial Council have similarly mandated that a sealing order must be "narrowly tailored." Press-Enterprise I, 464 U.S. at 509-510; NBC Subsidiary, 20 Cal. 4th at 1208; Cal. R. Ct. 2.550(d)(4). To qualify as "narrowly tailored," a sealing order may shield from public view only the specific information that, if disclosed, would prejudice the overriding interest at issue, not the entire document. See, e.g., In re Marriage of Burkle, 135 Cal. App. 4th 1045, 1066 (2006) (approving limited redactions, not sealing, of court records).

As explained above, there is no exception to the statutory disclosure provisions for ongoing investigatory interests. PSC Geothermal Svc., 25 Cal. App. 4th at 1714. Moreover, the records have already been seized by police, and there is no indication that others may be targets of the government's investigation. The prospect that disclosure would negatively impact anyone's fair trial rights is also absent.

These cases and statutes demonstrate an overwhelming acceptance of the strong presumption that the public has a constitutional right of access to criminal judicial proceedings and related documents, including search and arrest warrant information. Because there is no interest here that can overcome this strong presumption, or that cannot be protected through limited redaction, the Media Coalition respectfully requests that this Court issue an order immediately unsealing the Warrant Materials.

IV. CONCLUSION

By enacting Penal Code § 1534(a), the Legislature has dictated that search warrants "shall be open to the public as a judicial record" after they are executed and returned to the court. Courts have respected this legislative mandate and have recognized only very narrow exceptions to this statutory right of access, none of which are applicable here.

The First Amendment and common law provide an independent basis for unsealing these records. Because the continued sealing of these materials after the time period set out under Section 1534(a) cannot be justified under the standards set forth in Press-Enterprise I, NBC Subsidiary, and the Rule of Court, and because no motion or on-the-record findings were ever made to justify the continued sealing of these materials, the present sealing order should be vacated promptly. For these reasons, the Media Coalition respectfully requests that the Court make the Warrant Materials available to the public without further delay.

DATED: May 15, 2019

JASSY VICK CAROLAN LLP
DUFFY CAROLAN

By: _____
DUFFY CAROLAN
Attorneys for The First Amendment Coalition, Reporters Committee for Freedom of the Press, The Northern California Chapter of the Society of Professional Journalists

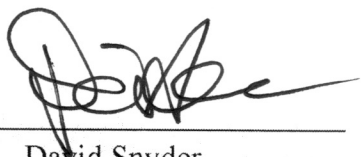
DECLARATION OF DAVID SNYDER

I, David Snyder, declare:

1. I am the Executive Director of the First Amendment Coalition, a nonprofit, public interest organization committed to freedom of speech, more open and accountable government, and public participation in civic affairs. I make this declaration in support of the Media Coalition's motion to unseal search warrant materials in connection with the search and seizure of property owned or controlled by freelance journalist Bryan Carmody. The matters stated in this declaration are true of my own personal knowledge, except those matters stated on information and believe, which matters I believe to be true.

2. On May 15, 2019, I called the San Francisco Superior Court criminal division about obtaining access to the warrant materials pertaining to the search of Mr. Carmody's home and news organization, and in particular the statement of probable cause justifying the search. I received a call back from the supervising clerk of the criminal division Sherise Huseny. She informed me that all of the warrant materials were sealed, and that any publicly docketed motion to seal or resulting sealing order justifying a continued sealing over these materials after execution and return of the warrants were not part of the public court record.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 16th day of May, 2019, at San Rafael, California.



David Snyder

DECLARATION OF DUFFY CAROLAN

I, Duffy Carolan, declare:

1. I am an attorney admitted to practice before this Court and counsel of record for First Amendment Coalition, Reporters Committee for Freedom of the Press, and The Northern California Chapter of the Society of Professional Journalists (collectively, the "Media Coalition") in this matter. The matters stated in this declaration are true of my own personal knowledge, except for those matters stated in information and belief, which matters I believe to be true.

2. Attached hereto as Exhibit A is a true and correct copy of news articles discussing the search and seizure of Bryan Carmody's home and the office of his news organization, North Bay News, portions of which are referenced in the appended motion.

3. On May 15, 2019, I spoke with the supervising clerk of the criminal division of the San Francisco Superior Court, Sherise Huseny. She informed me that the warrant materials related to searches of the home and office of Bryan Carmody, executed on May 10, 2019, were sealed and would remain sealed subject to further order of the respective issuing judges. She further informed me that any motion to unseal should be brought before each judge in their respective departments, though all of the court records relating to the searches were being held by the Assistant Presiding Judge of the Criminal Division (Hon. Samuel Feng) in Department 22. On May 16, 2019, I received a return call from the clerk of Dept. 13, who said she had spoken to the clerk's office and confirmed that the motion to unseal should be filed before Dept. 22 and that it was not going to be heard in the departments of the issuing judges.

4. I have reviewed the property receipt forms issued by the San Francisco Police Department following the detention of Mr. Carmody that were provided to The First Amendment Coalition by Mr. Carmody's counsel. The items listed on the form are consistent with the cited news accounts referenced in this motion.

5. I have also reviewed a certificate of release issued by the San Francisco Police Department provided to the First Amendment Coalition by Mr. Carmody's counsel. The initial detention and release times on the certificate are consistent with the representations in this motion.

6. Two search warrants without the supporting probable cause statement were also provided. Each indicate that they were supported by a probable cause statement signed by a Sergeant Joseph Obidi (#2328).

7. On May 15, 2019, I emailed Mr. Carmody's counsel, Thomas R. Burke, about the Media Coalition's intent to file a motion to unseal search warrant materials, including the probable cause statement purporting to justify the search and detention of Mr. Carmody. Later this same day, Mr. Burke informed me that his client had no objection to the public disclosure of the search warrant materials at issue in this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 16th day of May, 2019, at San Francisco, California.

Duffy Carolan

EXHIBIT A

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L.A. NOW LOCAL

Raid on San Francisco reporter's home condemned as an attack on 1st Amendment

By MATT HAMILTON MAY 13, 2019 | 10:55 AM

Bryan Carmody was handcuffed Friday while San Francisco police searched his home for information about a leaked report. His North Bay News offices were searched as well. (Bryan Carmody)

The San Francisco Police Department appears to have violated state and federal laws when its officers searched the San Francisco home of a journalist in an apparent bid to identify a confidential source, 1st Amendment experts said Sunday.

The officers carted away phones, computers, tablets and notebooks Friday after using a sledgehammer to try to break through Bryan Carmody's front gate. Officers also searched his independent news organization, North Bay News, and seized a thumb drive, CDs and a police report about the death of San Francisco Public Defender Jeff Adachi.

Carmody said he suspects the searches were carried out in a bid to identify the confidential source who provided him with the police report. Two investigators visited his home a few weeks ago and "politely" pressed him to disclose the name of his source, but he said he declined.

California has a shield law that protects journalists from being held in contempt for refusing to identify their sources, said David Snyder, a lawyer and executive director of the First Amendment Coalition.

"It's pretty plainly unlawful," said Snyder, who noted that the statute governing search warrants expressly forbids police from seizing items covered by the shield law.

"They are trying to root out the source, and that's the core of what California's journalist shield law protects," he said. "It's something you'd expect out of an authoritarian regime, not the city of San Francisco."

Carmody is not the only victim of the Police Department's questionable searches, according to the Society of Professional Journalists' branch in Northern California.

"An attack on the rights of one journalist is an attack on the rights of all journalists," the organization's freedom of information committee said in a statement. "San Francisco's wrongful actions against Carmody threaten fundamental journalistic freedoms which are vital to a functioning democracy."

A Police Department spokesman defended the searches as part of "a complete and thorough investigation into this leak" and said the raid

was "a step in the process of investigating a potential case of obstruction of justice along with the illegal distribution of confidential police material."

The spokesman, David Stevenson, added that judges signed off on warrants to conduct both searches.

San Francisco Superior Court Judge Gail Dekreon approved the warrant to search Carmody's home on Thursday, and Judge Victor Hwang approved the warrant to seize materials from the office of North Bay News on Friday, according to records provided to The Times.

It's unclear what police told the judges to secure the warrants. The affidavits outlining probable cause for the warrants were sealed by the court.

A spokesman for the San Francisco district attorney's office said Sunday that their prosecutors were not involved in preparing or signing off on the warrants.

When a reporter would not betray his source, police came to his home with guns and a sledgehammer »

The investigation has made Carmody a cause celebre of 1st Amendment advocates and renewed concern about press freedoms in a time when freelancers, contractors and independent journalists work with multiple news outlets across a variety of platforms.

Carmody was part of a throng of journalists chasing details about the Feb. 22 death of Adachi, 59. He ultimately obtained an incident report that detailed the public defender's final moments.

The document, as reported by KGO-TV in San Francisco, said Adachi had dinner with a woman named Caterina, who was not his wife, then returned to an apartment he was using for the weekend. The woman called 911 for emergency medical help, and Adachi was rushed to the hospital.

Later that night, officers went to the apartment and found "alcohol, cannabis-infused gummies and syringes believed to have been used by the paramedics," the San Francisco Chronicle reported. The city medical examiner would later conclude that Adachi died of an accidental overdose of cocaine and alcohol.

Images of the apartment were circulated online by KTVU, a Fox affiliate in Oakland, as well as KGO-TV. Carmody told the Chronicle that he sold the package, which generally includes documents, video and other reporting material, to three TV stations.

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Adachi's widow and city officials chastised San Francisco police for allowing the details of a confidential report to get into the media's hands.

John Hamasaki, a member of the city's Police Commission and a defense attorney, said an underlying concern was that the report's release "was done by Jeff Adachi's enemies within the Police Department to tarnish his legacy." As public defender, Adachi cast himself as a police watchdog and champion of civil rights.

Hamasaki, who described Adachi as a friend and mentor, said that although he did not appreciate the incident report's sordid content, he did support outlets like the Chronicle that published details it contained.

However, he claimed Carmody's situation was different. Carmody wasn't reporting on the document, "but trying to sell it to other news agencies," Hamasaki argued. "That's not journalism."

Lucy Dalglish, an attorney and the dean of the University of Maryland journalism school, compared Carmody to a small broadcast wire service, feeding local news organizations with original reporting.

She said the Police Department's actions turn on whether its investigators strongly believe Carmody broke into a police station or engaged in other illegal behavior in order to steal the report.

"But if all this guy did was receive a copy of a police report, then sorry, that's a bad search," Dalglish said. "Publishing something because someone handed you a document is not a violation of the law."

Dalglish, who previously served as director of the Reporters Committee for Freedom of the Press, pointed to the federal Privacy Protection Act, which prevents law enforcement from searching a newsroom and seizing journalists' equipment and work product. The statute was passed in 1980 in response to a Supreme Court ruling that dealt a blow to press freedoms. The court ruled that a 1971 search of the Stanford Daily student newspaper's offices by Palo Alto police was constitutional. Following the Supreme Court ruling, California voters enshrined the shield law's provisions in the state Constitution.

"If you want information from a journalist, what you are supposed to do is issue a subpoena," Dalglish said.

Carmody's attorney, Thomas Burke, said police have not told him or his client that he is suspected of a crime or that he could face charges. He added that "there's no dispute" about whether Carmody did anything wrong.

"These packages he does — video and the documents that support the video — it's done every day by freelancers," said Burke, a partner with the firm Davis Wright Tremaine who has previously represented the Los Angeles Times. "It's not anything unusual. It's how the news is done."

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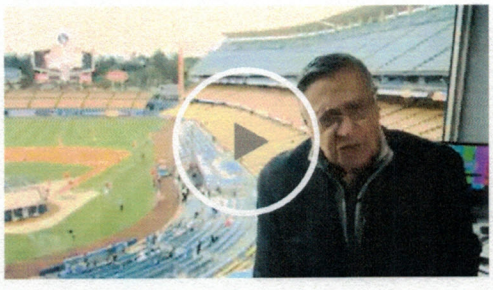
Matt Hamilton

CONTACT

Matt Hamilton is a reporter in the Metro section for the Los Angeles Times. He has covered legal affairs, crime and breaking news across California. He joined The Times in 2013 as an intern reporting on criminal trials in Los Angeles County. Hamilton won the 2019 Pulitzer Prize for investigative reporting with colleagues Harriet Ryan and Paul Pringle and was part of the team of reporters that received a Pulitzer Prize for its coverage of the 2015 terrorist attack in San Bernardino. He grew up in Delaware and studied Catholic theology at Boston College. Before completing a degree in journalism at the University of Southern California, he edited magazines in Amman, Jordan.

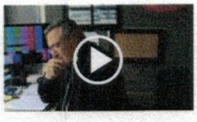
COMMENTS (15)



MAY 11, 2019

Jaime Jarrin reflects on his late wife, Blanca Jarrin

Jaime Jarrin, the Spanish-language radio play-by-play broadcaster for the Dodgers, shares memories of his wife, Blanca, who died Feb. 28.



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SPJ NorCal - Society of Professional Journalists – Northern California

- May 12, 2019
- by SPJNCFOI
- in FOI, News

SPJ NorCal Committee Condemns Search of Freelancer Bryan Carmody as Attack on First Amendment

SAN FRANCISCO — SPJ NorCal's Freedom of Information Committee condemns the recent raid by law enforcement of freelance journalist Bryan Carmody, in an apparent attempt to identify the confidential source who provided Carmody with a copy of a police report detailing the circumstances of former San Francisco Public Defender Jeff Adachi's death. During the search, law enforcement officers seized documents, notes and a slew of digital devices from Carmody's home and office.

California's Shield Law protects journalists from being held in contempt for refusing to disclose their sources' identities and other unpublished/unaired information obtained during the news gathering process *(California Constitution, Article I, § 2(b); California Evidence Code § 1070(a))*. California Penal Code section 1524(g) provides that "no warrant shall issue" for any item protected by the Shield Law.

The Freedom of Information Committee is seeking more information on the raid, including why these laws were not adhered to. That this search was carried out weeks after Carmody declined a request from San Francisco police to divulge his sources shows an alarming disregard for the right to gather and report on information.

Approaches to reporting on Adachi's death varied among local news outlets. The Society of Professional Journalists Code of Ethics directs: "[D]o not pay for access to news" and says reporters should "avoid pandering to lurid curiosity." Journalists should consider the motivations of anonymous sources and news organizations should disclose when content has been provided by outside sources, whether paid or not. While there may be legitimate questions on the circumstances surrounding the

reporting of Adachi's death, the seizure of any journalist's notes or other reporting materials sets a dangerous precedent.

An attack on the rights of one journalist is an attack on the rights of all journalists. San Francisco's wrongful actions against Carmody threaten fundamental journalistic freedoms which are vital to a functioning democracy.

Contact SPJ NorCal Freedom of Information Committee co-chairs Matt Drange and Aaron Field: spjnorcalfoi@gmail.com

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The Washington Post

National

How a police raid turned the death of a beloved police critic into a national scandal

By Eli Rosenberg
May 14 at 7:00 AM

The April hearing came nearly two months after the death of San Francisco's popular public defender, Jeff Adachi, but the emotions were still fresh.

Sandra Lee Fewer, one of the city's 11 supervisors, told those in attendance that she had called for the meeting because she was "outraged" by the leak of a confidential police report that had painted an unsavory picture of Adachi — a vocal critic of the police department — and his last hours.

She also introduced a deputy from the public defender's office, Hadi Razzaq, who spoke about a memo his office had compiled and sent to the police with information about a "stringer" — a freelance reporter — who had been offering to sell Adachi's death report to some news outlets for $2,500.

"If it is true that this report was actually sold, it raises significant ethical concerns, and as you've mentioned and Supervisor Ronen mentioned, a betrayal of the public trust," Razzaq said.

Police officials at the meeting struck a tone of contrition about the leak of the report, which had noted that Adachi had been with a woman who wasn't his wife and that he had been found unresponsive at an apartment with an unmade bed and empty bottles of alcohol.

They apologized to Adachi's family and said that they were in the process of investigating the leak.

But a month later, that investigation has caused an even higher-profile headache that has added another layer of intrigue to the death of the charismatic public defender and made this city, a bastion of liberalism, an unlikely flash point in the national discussion about threats faced by journalists.

The police raid Friday of the home and office of the freelance reporter, Bryan Carmody, who says he acquired the police report as part of his work and sold it to local news outlets so they could publish it, has drawn wide condemnation from First Amendment and press advocates, along with many others concerned about the state of civil liberties in the United States.

The police had showed up with a sledgehammer, and searched Carmody's home with their guns drawn. By the time they were done, they had confiscated tens of thousands of dollars' worth of cameras, hard drives and computers where he had stored his work. He was handcuffed for six hours.

It was, press advocates say, a law enforcement incursion into a sacred space: a reporter's private home and materials, which are protected by norms dating back decades, as well as federal and state laws meant to protect the important work of reporting.

"It is a serious case of overreach by the SFPD," Jim Wheaton, senior counsel of the First Amendment Project, who teaches classes on the law and ethics of journalism at Stanford and the University of California at Berkeley. "All I can imagine is that they failed to tell the judge who gave them the search warrant that this guy was a reporter."

The two Superior Court judges who each signed a search warrant for Carmody's home and office, Victor Hwang and Gail Dekreon, did not respond to questions sent to court spokeswoman Megan Filly. Filly said they were prohibited by state code from commenting on a pending case.

News media associations, among them the Society of Professional Journalists and Radio Television Digital News Association, have condemned the police action.

"It is inherently troubling," Floyd Abrams, the famed First Amendment lawyer, said in a telephone interview. "Why did they get a search warrant instead of doing what I'm confident they would have done had he worked for the local newspaper" — gotten a subpoena.

Journalists face increasing threats as they work in countries with repressive regimes and dangerously unstable political conditions around the world. But according to analysts, the risks have been rising in the United States since the election of President Trump, who has gone to great lengths to try to both discredit and demonize the news media.

A reporter was body slammed by a congressional candidate the day before the election for asking a tough question. Bomb threats have poured into national newsrooms like CNN. And the Trump administration has stepped up the war on leaks to the media in Washington.

Many were surprised that this latest chapter in this saga came in the Bay Area.

"If feels as if this anti-press sentiment has penetrated even liberal San Francisco," Ed Wasserman, the dean of Berkeley's journalism school said in a phone interview. "There's a sense of entitlement and empowerment that law enforcement now feels, thanks to the anti-press contagion that the administration has propagated. I find it very disquieting."

Police defended the raid over the weekend, pointing to the demands they were under from elected officials in San Francisco to investigate the leak. They declined to comment further Monday, citing the pending criminal investigation.

Wheaton said that the action appeared to circumvent California state laws that protect journalists from being served warrants or being held in contempt of courts for not handing over their sources.

"No warrant shall issue for any item or items described in Section 1070 of the Evidence Code," the state's penal code reads, noting the section that describes the protections given to reporters.

In the Supervisors' hearing, the public defender's office had highlighted the payment that the reporter received for the police report, raising questions about whether there was some confusion about the nature of Carmody's work and how it fits in the world of journalism.

Carmody, 49, occupies a small corner of the industry, working every night from about 10 p.m. to 6 a.m. to chase news as it comes across police scanners. He then sells the photos, videos and interview footage to TV stations for their morning broadcasts. He told The Washington Post

that he sold his work on the Adachi death report for far less than the $2,500 that has been batted around.

It is not the journalism lionized by Pulitzer Prize committees or film directors in Hollywood; the only notable recent film portrayal of this type of work was the psychopathic character played by Jake Gyllenhaal in "Nightcrawler."

But that does not mean it is not journalism.

"I think they're trying to say he wasn't acting as a journalist, because he was selling the information," Wheaton said. "Last I checked that's what reporters do."

San Francisco Mayor London Breed did not respond to multiple requests for comment. The city's district attorney office said it had not been involved in the case.

Carmody says that he hasn't been able to work without the equipment the police seized.

"I've missed several large stories, including a homicide yesterday and another transit-related accident the night before," he said. "I'm out thousands of dollars of work and tens of thousands of dollars of equipment."

His lawyer, Thomas R. Burke, sent a letter to the San Francisco Police Department Monday afternoon demanding the immediate return of Carmody's equipment and threatening legal action if it did not comply by Tuesday.

Still, Carmody said he's been touched by the reaction around the world, saying he's seen coverage of his story in media from places like India, Pakistan, Bangladesh and Europe.

"One of the interesting things to me is that it seems like people from all political worlds are kind of agreeing," he said. "No matter who they're blaming it on — 'liberal Nazis' or Trump — it's not a good thing."

Read more:

Delta told workers to spend on video games and beer instead of union dues. It didn't go well.

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'I think it's a cap gun,' the police officer said. He opened fire on an eighth-grader moments later.

Eli Rosenberg
Eli Rosenberg is a reporter on The Washington Post's General Assignment team. He has worked at the New York Times and the New York Daily News. Follow

When a reporter would not betray his source, police came to his home with guns and a sledgehammer

San Francisco police officers conducted a search Friday morning at the home of journalist Bryan Carmody. (Courtesy of Bryan Carmody)

The banging jolted Bryan Carmody awake. Outside his San Francisco home Friday morning, the longtime journalist saw a throng of police officers with a sledgehammer, trying to break down his front gate.

Carmody told the eight to 10 officers he would only let them in with a search warrant. Police confirmed a judge signed off on their barging into his home. Then the officers drew their guns and scoured his residence. When police left, they carted away his notebooks, computers, cameras, phones and even his fiancee's iPod from her college days.

"I knew what they wanted," Carmody told The Times. "They wanted the name."

A few weeks before, he said two San Francisco police officers — a sergeant and a lieutenant — knocked on his door and "cordially" asked him to identify the source who shared a confidential police report into the Feb. 22 death of San Francisco Public Defender Jeff Adachi.

"Of course, I politely declined," Carmody said of the visit from police last month. He had the same response Friday.

After police came into his home, officers handcuffed him for six hours as they collected his equipment. A receipt certifying his release from custody confirms he was handcuffed from 8:22 a.m. to 1:55 p.m. The search warrant for his home said officers were investigating "stolen or embezzled" property.

It was unclear whether he was handcuffed because of the guns he says he legally owns. Carmody said the guns were locked in a safe, and he said that over the hours-long search, it was evident officers didn't view him as a threat. At one point, some police took off their bulletproof vests on account of the heat, he said.

While he was shackled, officers got a second warrant to search his newsroom, where police seized a thumb drive, CDs and, inside a safe, the sought-after police report about Adachi's death.

Carmody, 49, said he has not shared the name of his source with anyone, and no markings on the document could be traced to the person who provided it.

Fellow journalists in the Bay Area and beyond were outraged by the search of Carmody's home and office. And the incident provided a new wrinkle into the evolving aftermath of the unexpected death of Adachi, who left behind a legacy of championing civil rights.

Initial reports said the 59-year-old public defender had been traveling when he suddenly had a heart attack.

Carmody remembers his goal as a reporter on the story was to figure out where exactly Adachi died. But soon, salacious details emerged that were difficult to confirm. "There were leaks happening all over the place," he recalled. He ultimately obtained an incident report that detailed Adachi's final moments.

The San Francisco Chronicle also obtained a copy of the report, but not from Carmody.

The document, as reported by KGO-TV in San Francisco, detailed that shortly before his death, Adachi had dinner with a woman named "Caterina" who was not his wife, then returned to an apartment he arranged to use for the weekend. The woman called 911 for emergency medical help, and Adachi was taken to the hospital, where he died. Later that night, officers went to the apartment and found "alcohol, cannabis-infused gummies and syringes believed to have been used by the paramedics," the San Francisco Chronicle reported. Photos of the apartment circulated online by KTVU and other outlets. The city medical examiner would later conclude Adachi died of an accidental overdose of cocaine and alcohol.

Carmody said he called up his clients and sold the fruits of his news-gathering, which included the police report. He told the Chronicle that he sold the package to three TV stations.

Amid a public mourning, city officials chastised police for allowing the details of a confidential report to end up in the headlines. The police launched an internal investigation into the report's leaking, which led to Friday's raid at Carmody's home.

"The citizens and leaders of the City of San Francisco have demanded a complete and thorough investigation into this leak, and this action represents a step in the process of investigating a potential case of obstruction of justice along with the illegal distribution of confidential police material," police spokesman David Stevenson said in a statement Saturday to The Times.

The city's public defender's office, which Adachi once led, said in a statement that "all of the criminal justice and City Hall leaders agree that the release of police reports in this fashion is wrong and we hope that the truth of who leaked the police report will emerge so that it doesn't happen again."

The FBI was not involved in the search. Katherine Zackel, a spokeswoman for the agency, said two agents were present solely to interview the journalist.

To Carmody and his attorney, the raid smacks of impropriety and an invasion into the work of a professional reporter.

"It's designed to intimidate," said his lawyer, Thomas Burke. "It's essentially the confiscation of a newsroom."

Burke, a partner with Davis Wright Tremaine who has previously represented the Los Angeles Times, said under usual circumstances, journalists would receive a subpoena and retain an attorney to help secure protections. That process also is efficient for detectives, he added, because of the time and resources required to search through phones, hard drives, computers and notebooks.

"So much information has nothing to do with the purpose of their investigation," Burke said. "If you are looking for one piece of information, that's why you issue a subpoena."

The affidavits that police used to search Carmody's home were filed under seal, so it's unclear what investigators told the judge to secure the warrants. Burke said he did not know whether the judges were aware Carmody was even a journalist.

The search has brought Carmody's business, North Bay News, to a halt. As a freelance videographer for nearly three decades, he works through the night to supply the locations, video, images, and on- and off-camera interviews that feed the beast of local TV news. The search warrant documents show police collected check stubs from Fox, Disney and CBS, among others.

He estimates that police hauled off between $30,000 and $40,000 worth of equipment, along with personal photos. Without functional equipment, he cannot work — so his friend Aaron Lee started an online fundraiser to collect donations.

Carmody is insisting on protecting his source's identity. And he swears he never paid the person for the police report. "No," he said, "not even a cup of coffee."

10:35 a.m.: This article was updated with the final cause of Adachi's death as reported by the medical examiner.

This article was originally published at 7:35 p.m. on May 11, 2019.

Proof of Service

I, Duffy Carolan, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a partner of the firm Jassy Vick Carolan LLP, counsel of record for Defendants, located in the City and County of San Francisco, State of California. I am over the age of eighteen (18) years, and not a party to the within-entitled action. My business address is 601 Montgomery Street, Suite 850, San Francisco, California 94111.

I caused to be served the following documents:

NOTICE OF MOTION AND MOTION BY MEDIA COALITION TO UNSEAL ARREST AND SEARCH WARRANT RECORDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; DECLARATION OF DAVID SNYDER; DECLARATION OF DUFFY CAROLAN, EX. A THERETO

I caused the above documents to be served on each person on the attached list by the following means:

☐ I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on following the ordinary business practice.
(Indicated on the attached address list by an [M] *next to the address.)*

☐ I enclosed a true and correct copy of said documents in an envelope, and placed them for collection and mailing via Federal Express on December 28, 2016 for guaranteed delivery on ….., following the ordinary business practice.
(Indicated on the attached address list by an [FD] *next to the address.)*

☐ I consigned a true and correct copy of said document for facsimile transmission on _____, following the ordinary business practice.
(Indicated on the attached address list by an [F] *next to the address.)*

☒ I delivered a true and correct copy of said document to a service and consigned it for hand delivery on May 16, 2019 to the recipients indicated on the attached list……..
(Indicated on the attached address list by an [H] *next to the address.)*

☒ I emailed said document on May 16, 2019, to each of the recipients, as indicated below, following the ordinary business practice.

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

Executed on May 16, 2019, at San Francisco, California.

Duffy Carolan

Service List

Key:	[M]	Delivery by Mail	[FD]	Delivery by Federal Express	**[H]**	Delivery by Hand
	[F]	Delivery by Facsimile	[FM]	Delivery by Facsimile and Mail	**[E]**	Delivery by Email

[H]	**George Gascon** **District Attorney** **City and County of San Francisco** **850 Bryant Street, Rm. 322** **San Francisco, CA 94103**	People
[H]	**Manohar Raju** **Public Defender** **Matt Gonzales** **Chief Attorney** **San Francisco Public Defender's Office** **555 7th Street** **San Francisco, CA 94103**	Public Defender's Office [Interested Party]
[H]	**Ronnie Wagner, Attorney** **San Francisco Police Dept.** **850 Bryant Street, Rm. 511** **San Francisco, CA 94103**	SFPD [Interested Party]
[E]	**Thomas R. Burke** **Davis Wright Tremaine LLP** **600 Montgomery Street, Suite 800** **San Francisco, CA 94111** **thomasburke@dwt.com**	Bryan Carmody