

1 F. MARIO TRUJILLO (SBN 352020)
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6 *Attorneys for Movant San Francisco Bay*
7 *Area Independent Media Center (IndyBay)*

ENDORSED
FILED
San Francisco County Superior Court
FEB 22 2024
CLERK OF THE COURT
BY: STEPHEN SPENGLER
Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 **IN RE SEARCH OF SF BAY AREA IMC**
13 **(INDYBAY) WWW.INDYBAY.ORG**

Case No.: 24500108

DECLARATION OF F. MARIO TRUJILLO IN SUPPORT OF MOTION TO QUASH SEARCH WARRANT & NONDISCLOSURE ORDER

Hearing: March 6, 2024
Time: 9:00 a.m.
Dept.: 23
Judge: Hon. Linda Colfax

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19 I, F. MARIO TRUJILLO, declare as follows:

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21 1. I am an attorney licensed to practice in the State of California and am counsel of
22 record for San Francisco Bay Area Independent Media Center ("Indybay") in the above-captioned
23 action. I have personal knowledge of the facts stated here, and if called upon to do so, could and
24 would testify competently as follows:

25 2. On January 24, 2024, San Francisco Police Department Sergeant Michael Canning
26 served a warrant and non-disclosure order by email on Indybay. It included pages 1, 2, and 10 of the
27 warrant packet. A true and correct copy of that document is attached as Exhibit A.
28

1 3. From January 29, 2024, to January 31, 2024, Indybay's counsel exchanged emails
2 with San Francisco Police Department Sergeant Michael Canning regarding the warrant. On
3 January 31, 2024, Sergeant Canning through email told Indybay's counsel that "At this time, we are
4 taking no further action on the search warrant dated January 24, 2024." A true and correct copy of
5 the email exchange between counsel and Sergeant Canning is attached as Exhibit B.

6 4. On February 12, 2024, I downloaded a copy of the article at issue in the above
7 referenced search warrant from Indybay's website. A true and correct copy is attached as Exhibit C.
8 It can also be found here, <https://www.indybay.org/newsitems/2024/01/18/18862190.php>.

9 5. On February 12, 2024, I downloaded a copy of the "Indybay Editorial Policy" from
10 Indybay's website. A true and correct copy of that editorial policy is attached as Exhibit D. It can
11 also be found here, <https://www.indybay.org/newsitems/2002/08/04/1395001.php>.

12 6. On February 12, 2024, I downloaded a copy of the webform that allows the public to
13 publish articles on Indybay's website. A true and correct copy is attached as Exhibit E. It can also
14 be found here, <https://www.indybay.org/publish.php>.

15 7. On February 12, 2024, I downloaded a document titled "Order to Quash Search
16 warrant and Return Property" issued in 2010 by the Superior Court of the state of California, in
17 Alameda, related to the search of then-photographer for Indybay. A true and correct copy is attached
18 as Exhibit F. It can also be found here,
19 <https://www.indybay.org/newsitems/2010/06/25/18651867.php>.

20 8. The associated motion papers related to the 2010 Order to Quash can be found here,
21 <https://www.indybay.org/newsitems/2010/04/20/18645226.php>.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 statements are true and correct to the best of my knowledge, information, and belief.

24 Executed this 21st day of February, 2024, at San Francisco, California.

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F. MARIO TRUJILLO

Exhibit A

SUPERIOR COURT OF CALIFORNIA
City and County of San Francisco



SEARCH WARRANT

(AFFIDAVIT)

I, **Sergeant Michael Canning #2269**, swear under oath and penalty of perjury that the facts expressed by him/her in the attached and incorporated **Statement of Probable Cause**, are true and that based thereon he/she has probable cause to believe and does believe that the articles, property, and persons described below are lawfully seizable pursuant to Penal Code Section 1524 et seq., as indicated below, and are now located at the locations set forth below. Wherefore, Affiant requests that this Search Warrant be issued.


(Signature of Affiant)

Non-Disclosure Requested: YES NO
Hobbs Sealing Requested: YES NO
Night Service Requested: YES NO

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICE OFFICER, OR PEACE OFFICER IN THE COUNTY OF SAN FRANCISCO: proof by affidavit, under penalty of perjury, having been made before me by **Sergeant Michael Canning #2269** that there is probable cause to believe that the property or person described herein may be found at the location(s) set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 et seq., as indicated below by ""(s), in that:

- It tends to show that a felony has been committed or that a particular person has committed a felony – [1524(a)(4) PC].
- A provider of "electronic communication service" or "remote computing service", as defined in Penal Code Section 1524.2(a) (including "California corporations" defined as any corporation or other entity that is subject to Section 102 of the Corporations Code and "Foreign corporations" defined as any corporation that is qualified to do business in this state pursuant to Section 2105 of the Corporations Code), has records or evidence regarding a subscriber or customer which (1) is of a type specified in Penal Code Section 1524.3 (i.e. the subscriber/customer's name, address, telephone number or other subscriber number or identity; the types of services the subscriber/customer utilized; the length of time the person has been a subscriber/customer of that service; and the local and long distance telephone toll billing records); and (2) which records or evidence shows that property was stolen or embezzled constituting a misdemeanor, or that property or things are in possession of any person with intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery – [1524(a)(7) PC].

You are therefore COMMANDED to SEARCH:

www.indybay.org, c/o San Francisco Bay Area Independent Media Center, Also Known As "SF Bay Area IMC," Also Known As, "Indybay"
115 ½ Bartlett St.
San Francisco, CA 94110

For the FOLLOWING EVIDENCE:

1. Published Website Article URL: <https://www.indybay.org/newsite/2024/01/18/18862190.php>
2. IP Addresses associated with the above-mentioned published Website Article URL
3. Personal identifying information of authors of the above-mentioned published Website Article URL
4. User name and user login information of the above-mentioned published Website Article URL

5. Email address(es) associated with the above-mentioned published Website Article URL (the sender's reported name and e-mail address, either private and/or public)
6. Phone Number and Address Display of the User of the above-mentioned published Website Article URL
7. E-mail addresses, hosted by lists.riseup.net, as it relates to the above-mentioned published Website Article URL
8. Text messages sent to the e-mail lists, hosted by lists.risup.net, as it relates to the above-mentioned published Website Article URL

Field Entries of "Enter Article Info," including:

9. Article Title
10. Author
11. E-mail
12. Topic
13. Region
14. Summary
15. Website URL
16. Article Text
17. Uploaded Attachments

Additionally, it is the ORDER of this court that:

Compliance can be fulfilled by email to Michael.canning@sfgov.org by **January 31, 2024**

Ninety (90) Day Delayed Notice Notification: pursuant to the preclusion of notice provisions of California Penal Code 1546.2 **SF Bay Area IMC (Indybay) SHALL NOT** disclose to the subscriber, customer or owner of the electronic communication or device information to which materials relate the existence or content of this search warrant for a period of ninety (90) days.

It is ordered that all information obtained through the execution of the warrant that is unrelated to the objective of the warrant shall be sealed and not subject to further review, use, or disclosure without a court order.

This **Search Warrant** and **Affidavit** and attached and incorporated **Statement of Probable Cause** were sworn to as true on this 24 day of JANUARY, 2024, at 11:25 A.M. P.M. wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.



(Signature of Magistrate)

Non-Disclosure Authorized: YES NO
 Hobbs Sealing Authorized: YES NO
 Night Service Authorized: YES NO

Judge of the Superior Court of California, County of San Francisco, Dept.# 23

SUPERIOR COURT OF CALIFORNIA
City and County of San Francisco

IN RE SEARCH OF

SF Bay Area IMC (Indybay)
www.indybay.org

ORDER TO DELAY
NOTIFICATION OF SEARCH WARRANT

ORDER

Your Affiant, **Sergeant Michael Canning #2269** requests:

This matter having come before the Court pursuant to an application under Penal Code Section 1524 et seq, which affiants requests that notification of this warrant be delayed. Based upon the reading of the Search Warrant, and Affidavit in Support thereof;

IT APPEARING that there is reason to believe that the notification of the existence of the warrant to any person will result in endanger the life or physical safety of an individual; lead to flight from prosecution; lead to destruction of or tampering with evidence; lead to intimidation of potential witnesses; or otherwise seriously jeopardize an investigation or unduly delay a trial or otherwise lead to an adverse result.

IT IS ORDERED that **SF Bay Area IMC (Indybay)** shall delay notification of the existence of the application or this Order of the Court, or the existence of the investigation, to the listed subscriber or to any other person, for a period of ninety (90) days unless otherwise directed by the Court.

IT IS FURTHER ORDERED that the notification by the government otherwise required under Penal Code Section 1546.2 (a) be delayed for a period of ninety (90) days.

Sworn to as true and subscribed to me on 29 day of Jan, 2024, at 1:25 ~~A.M.~~ P.M.


(Signature of Magistrate)

Judge of the Superior Court of California, City and County of San Francisco, Dept.# 23

Exhibit B

Subject: Re: Search warrant to San Francisco Bay Area Independent Media Center
Date: Wednesday, January 31, 2024 at 5:03:46 PM Pacific Standard Time
From: Canning, Michael (POL) <Michael.Canning@sfgov.org>
To: Aaron Mackey <amackey@eff.org>, David Greene <davidg@eff.org>
Priority: High
Attachments: Outlook-s2zz3g2a.png, Outlook-33yuo3up.png, Outlook-vqywt1ds.png

Good evening,

After reviewing your communications, we understand your position is that Bay Area Independent Media Center is granted protections under California's Shield Law and Evidence Code section 1070. At this time, we are taking no further action on the search warrant dated January 24, 2024.

Thank you for your patience during this matter.

Respectfully,



Sergeant Michael Canning #2269

San Francisco Police Department
Investigations Bureau - General Work Detail
850 Bryant Street, Room 140
San Francisco, CA 94103

Direct: 415-553-9513
Main Office: 415-553-9192
Fax: 415-553-7935

From: Aaron Mackey <amackey@eff.org>
Sent: Wednesday, January 31, 2024 16:41
To: David Greene <davidg@eff.org>; Canning, Michael (POL) <Michael.Canning@sfgov.org>
Subject: Re: Search warrant to San Francisco Bay Area Independent Media Center

Sergeant Canning,

Given the lack of response to our most recent communications and the late hour, Indybay is assuming that SFPD has decided not to withdraw the warrant or to extend the search warrant's return date. If that assumption is incorrect, please let us know by 9 p.m. tonight.

Best,
Aaron

From: Aaron Mackey <amackey@eff.org>
Date: Wednesday, January 31, 2024 at 11:38 AM
To: David Greene <davidg@eff.org>, Canning, Michael (POL) <Michael.Canning@sfgov.org>
Subject: Re: Search warrant to San Francisco Bay Area Independent Media Center

Sergeant Canning,

I wanted to check in again on Indybay's request for SFPD to withdraw the warrant or at least extend the search warrant's return date by a week. Please let us know whether SFPD will take either step today.

In addition to all the authorities we've previously presented in support of Indybay's request for SFPD to withdraw the warrant, it does not appear that the warrant complies with [SFPD General Order 5.16.06\(C\)](#). That order "forbids the issuance of search warrants seeking (1) unpublished information obtained or prepared in gathering, receiving, or processing of information for communication to the public and/or (2) the identity or information that might lead to the identity of a source of any information procured for publication in a newspaper, magazine, or other periodical publication or radio or television news program."

Further, the order requires that when a search warrant "may" contain the material described above, "members shall provide the search warrant and consult with the San Francisco District Attorney's Office or the prosecuting agency, and the City Attorney's Office prior to judicial review. Additionally, approval from an Assistant Chief or Chief of Police is required." The order requires the same internal approval process when SFPD believes a journalist committed a crime. Finally, the order requires that "Members shall ensure all warrant applications fully disclose any information that could indicate an individual falls within the Reporters' Shield Law protections."

The Indybay search warrant seeks such unpublished information and identifying information regarding sources used for publication of the article in question. Thus General Order 5.16.06(C) prohibits SFPD from seeking the search warrant in the first place. Further, it does not appear that SFPD complied with the internal approval process and disclosure requirements of the order prior to seeking judicial review of the search warrant. It is unclear whether SFPD consulted with the District Attorney's or City Attorney's offices prior to obtaining the warrant. And on the face of the warrant, it does not appear that SFPD fully disclosed Indybay's status as a journalistic organization as defined by General Order 5.16.06(C), Penal Code § 1524(g), and Evidence Code § 1070.

Best,
Aaron

From: David Greene <davidg@eff.org>
Date: Tuesday, January 30, 2024 at 4:50 PM
To: Canning, Michael (POL) <Michael.Canning@sfgov.org>
Cc: Aaron Mackey <amackey@eff.org>
Subject: Re: Search warrant to San Francisco Bay Area Independent Media Center

Sergeant Canning:

I am checking in to see whether SFPD has made any decision about withdrawing the search warrant against Indybay.

As you know, tomorrow is the listed return date on the search warrant. Should the department need more

time to consider its course of action, we request that you formally extend the return date by at least one week. Our clear preference remains, however, that the search warrant be withdrawn before the close of business tomorrow. If you have decided to maintain the search warrant as is, we would appreciate the courtesy of an acknowledgement of such.

I am going to be difficult to reach tomorrow and through the end of the week. So for the rest of this week, please communicate with my colleague Aaron Mackey (amackey@eff.org) who is copied on this email.

Thank you for your continued consideration of this matter.

David Greene
Civil Liberties Director/Senior Staff Attorney
Electronic Frontier Foundation
815 Eddy Street, San Francisco, CA 94109
+1 415-436-9333 x. 143
davidg@eff.org

From: Canning, Michael (POL) <Michael.Canning@sfgov.org>
Date: Monday, January 29, 2024 at 5:31 PM
To: David Greene <davidg@eff.org>
Subject: Re: Search warrant to San Francisco Bay Area Independent Media Center

Good evening,

I appreciate the follow up information, and the references you provided. I understand your position and your request—and I appreciate your consideration.

I have already advised my superiors within the Department, consulted with the SFPD Legal Division, and I anticipate on discussing the matter with the City Attorney's office. I will notify you of any updates.

Thank you again.

Respectfully,



Sergeant Michael Canning #2269

San Francisco Police Department
Investigations Bureau - General Work Detail
850 Bryant Street, Room 140
San Francisco, CA 94103

Direct: 415-553-9513
Main Office: 415-553-9192
Fax: 415-553-7935

From: David Greene <davidg@eff.org>
Sent: Monday, January 29, 2024 16:36
To: Canning, Michael (POL) <Michael.Canning@sfgov.org>
Cc: Aaron Mackey <amackey@eff.org>
Subject: Re: Search warrant to San Francisco Bay Area Independent Media Center

Sgt Canning:

As one further consideration, I draw your attention to the Settlement Agreement the SFPD entered into the Bryan Carmody v. City and County of San Francisco, a copy of which is attached.

In that legally binding agreement, the SFPD and the city agreed *"to make every reasonable effort to ensure that the City and the SFPD uphold legal protections for journalists, including under California's Shield Law"* and further represented and agreed that *"the SFPD is in the process of sending a Department Bulletin (the "Bulletin") to all of its law enforcement employees concerning the policies and procedures surrounding "special circumstances warrants," which include warrants related to information about or in the possession of journalists; that this new Bulletin shall specify the requirements for such "special circumstances warrants," including the California Shield Law; that the SFPD shall require all of its law enforcement employees to review this Bulletin; and that the SFPD shall put in place procedures to ensure and confirm that all of its law enforcement employees do indeed review this Bulletin."*

Attached also is the order of Judge East retroactively quashing the search warrant issued against Mr. Carmody; the quashing of that search warrant then led to the quashing of four subsequent search warrants that had been issued based on the fruits of that initial search.

I trust that you understand the gravity of the current situation and have appropriately advised your superiors at the department and the department's legal division. As requested earlier, we expect that you will promptly formally withdraw the search warrant and notify the court of the withdrawal.

I remain available should you have any questions.

David Greene
Civil Liberties Director/Senior Staff Attorney
Electronic Frontier Foundation
815 Eddy Street, San Francisco, CA 94109
+1 415-436-9333 x. 143
davidg@eff.org

From: David Greene <davidg@eff.org>
Date: Monday, January 29, 2024 at 1:33 PM
To: Canning, Michael (POL) <Michael.Canning@sfgov.org>
Cc: Aaron Mackey <amackey@eff.org>
Subject: Re: Search warrant to San Francisco Bay Area Independent Media Center

Thank you, Sergeant Canning. I am sorry I was away from my phone this morning. I am available to speak now if you would like.

Regarding your responses to the concerns we raised, I want to emphasize that Penal Code § 1524(g), by its plain and clear language, is a bar to the issuance of a search warrant against a news entity. It is not merely an immunity from

contempt. While Section 1524(g) incorporates the definition of covered information from Evidence Code § 1070, its protection is not limited to immunity from contempt.

In addition to Section 1524(g), federal law also prohibits *the issuance of* the search warrant. The Privacy Protection Act, 42 U.S.C. section 2000aa *et seq.*, states that “it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product materials, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce,” subject only to exceptions that are not applicable here.

I refer you to a previous matter regarding an Indybay reporter, *Morse v. Regents of the University of California*, <https://casetext.com/case/morse-v-regents-of-university-of-california>, in which the court permitted a claim to be maintained against a law enforcement agency based on the issuance of a search warrant in violation of the PPA.

Both Section 1524(g) and the PPA make the issuance of the search warrant illegal. I once again request that the search warrant be formally withdrawn. Additionally, notice of such withdrawal must be filed with the court promptly.

Please let me know if you have any questions.

David Greene
Civil Liberties Director/Senior Staff Attorney
Electronic Frontier Foundation
815 Eddy Street, San Francisco, CA 94109
+1 415-436-9333 x. 143
davidg@eff.org

From: Canning, Michael (POL) <Michael.Canning@sfgov.org>
Date: Monday, January 29, 2024 at 11:54 AM
To: David Greene <davidg@eff.org>
Subject: Re: Search warrant to San Francisco Bay Area Independent Media Center

Good morning,

I attempted to contact you via landline listed below (415-436-9333) but yielded negative results with a busy dial tone.

In response to your inquiry:

1. The search warrant is improper. Cal. Penal Code § 1524(g) provides that “No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.” Indybay is a news entity as defined by Cal. Evidence Code § 1070, and the items sought by the search warrant are thus “items described in Section 1070 of the Evidence Code.”

- Cal Evidence Code § 1070 (Immunity of Newsmen From Citation for Contempt) is not a privilege, it applies to immunity for those held in contempt.
 - The section provides immunity for a newsperson from being found in contempt of court for failing to disclose sources of information, but it does not create a **privilege** within the usual meaning of that term.
 - The newsperson may obtain immunity from contempt, but **compliance with the Court Order is still required.**

2. All information sought by the Search Warrant that was collected and

retained by Indybay is displayed on the published website article URL in question (<https://www.indybay.org/newsitems/2024/01/18/18862190.php>). Note that Indybay does not typically collect or retain some information sought by the Search Warrant, such as IP addresses, user names and user logins. Indeed, those who post to the site do not login into it first, not with user names nor otherwise.

- The verbiage of the Search Warrant is, in part: "#2 - IP Addresses associated with the above-mentioned published Website Article URL."
- As per the Indybay website, "The SF Bay Area IMC web server does not *normally* track the domains or IP addresses from which people visit and/or post to the SF Bay Area Indymedia web site. Usage of other services, however, *may be* logged. [emphasis added]"
 - Should there be any retention of IP Address information, or any other item(s) being sought in the Search Warrant, then please comply with the Search Warrant and respond accordingly.
- As a reminder, Honorable Judge Linda Colfax, Judge of the Superior Court of California, County of San Francisco, Department 23, **COMMANDED** the search of **seventeen (17)** items as enumerated and described in the Search Warrant. Please comply with said Court Order and respond accordingly.

3. The Search Warrant includes an unconstitutional prior restraint that would have the effect of preventing Indybay from publicly reporting on the fact that it received the Search Warrant.

- Title 18 United States Code § 2705 allows for a delayed notice if the government is proceeding under section 2703(b). **The Court** granted a delayed notification, not to exceed 90 days, as there was reason to believe that notification of the existence of the court order may have an adverse result, as per Ca Pen Code § 1246.2(b)(1).

If you wish to file a motion to quash the Search Warrant after compliance of the Court Order, you may do so; however, **compliance is still required** as per the attached Court Order.

As a reminder, electronic service was executed on **01/24/2015 at 1215 hours**.

Please let me know if you have any questions.

Regards,



Sergeant Michael Canning #2269

San Francisco Police Department
Investigations Bureau - General Work Detail
850 Bryant Street, Room 140

San Francisco, CA 94103

Direct: 415-553-9513

Main Office: 415-553-9192

Fax: 415-553-7935

From: David Greene <davidg@eff.org>
Sent: Monday, January 29, 2024 07:48
To: Canning, Michael (POL) <Michael.Canning@sfgov.org>
Cc: Aaron Mackey <amackey@eff.org>
Subject: Search warrant to San Francisco Bay Area Independent Media Center

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Sgt. Canning:

We represent the San Francisco Bay Area Independent Media Center (“Indybay”) with respect to the Search Warrant issued pursuant to your affidavit on January 24, 2024. Please address future correspondence regarding the search warrant to us.

We request that you formally withdraw the search warrant, and notify us of such withdrawal, on the following grounds:

1. The search warrant is improper. Cal. Penal Code § 1524(g) provides that “No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.” Indybay is a news entity as defined by Cal. Evidence Code § 1070, and the items sought by the search warrant are thus “items described in Section 1070 of the Evidence Code.”
2. All information sought by the Search Warrant that was collected and retained by Indybay is displayed on the published website article URL in question (<https://www.indybay.org/newsitems/2024/01/18/18862190.php>). Note that Indybay does not typically collect or retain some information sought by the Search Warrant, such as IP addresses, user names and user logins. Indeed, those who post to the site do not login into it first, not with user names nor otherwise.
3. The Search Warrant includes an unconstitutional prior restraint that would have the effect of preventing Indybay from publicly reporting on the fact that it received the Search Warrant.

Since the search warrant indicates a compliance deadline of January 31, 2024, we ask that you withdraw the Search Warrant and inform us of its withdrawal promptly.

Please let me know if you have any questions.

David Greene

Civil Liberties Director/Senior Staff Attorney
Electronic Frontier Foundation
815 Eddy Street, San Francisco, CA 94109
+1 415-436-9333 x. 143
davidg@eff.org

Exhibit C



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From the Open-Publishing Newswire

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SF Police Credit Union Attacked for Tortuguita

by some anarchists

Thu, Jan 18, 2024 1:41AM

In the early hours of January 18, one year after the police murder of Tortuguita, we smashed 18 windows at the San Francisco Police Credit Union as an act of vengeance for it.

We also honor the memories of Klee Benally, Sekou Odinga, and Banko Brown. Fight for the dead, fight for the living!

[Add Your Comments](#)

Support Independent Media

We are 100% volunteer and depend on your participation to sustain our efforts!

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\$60.00 donated
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If you'd like to help with maintaining or developing the website, [contact us](#).

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Publish *your stories* and upcoming events on Indybay.

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▶ **IMC Network**

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Exhibit D



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From the Open-Publishing Newswire

Media Activism & Independent Media

Indybay Editorial Policy

by Indybay Collective ([indybay \[at\] lists.riseup.net](mailto:indybay@lists.riseup.net))

Sun, Aug 4, 2002 2:22AM

Please contact us to share your comments and suggestions. Updated: December 2017.

Fundamentals

The Indybay newswire operates on the principle of open publishing, an element essential to the global Indymedia network. Simply put, open publishing is to news and information what open source code is to software. In practice, the open publishing newswire allows anyone to instantaneously self-publish their work on <https://www.indybay.org>.

People are encouraged to "become the media," to use their own skills and abilities of observation, writing, and creativity in posting text, video, audio, photos, and artwork directly to the website. The post is then viewable at the top of the breaking newswire.

The use of, and belief in, open publishing rests on two central assumptions:

- People who post to the newswire will present their information in a thorough, honest, and accurate manner.
- Readers are intelligent and aware, skeptical and inquisitive of the posts they read and videos they watch, and are able to distinguish for themselves what is content of value and what is not.

Our Philosophy and Your Responsibility

We classify and hide content in a way that we feel helps promote the usefulness of the site. If you have any suggestions on how we could make the site more useful, we are open to hear your suggestions.

Please be civil in your posts; if an editor sees a flamewar starting that seems to be overly personal or to just contain insults, the comments may be hidden. We want to keep this site a friendly place for people to post news and discuss issues, and our goal is to facilitate that. Feel free to email us any suggestions. This site is here to serve your needs and we would love to hear from you.

Administration Overview

The editorial collective is responsible for creating and updating feature articles, as well as moderating the open-publishing newswire. While the features are compiled and updated by the editorial collective, the open-publishing newswire is designated as a space for publication of news, media, and commentary by Indybay contributors like you!

Classifying

The newswire is divided into three separate sections:

- **Local Newswire:** This section contains posts that are substantially local in nature, and that the editorial collective reasonably believes to be accurate and newsworthy stories fitted for syndication.
- **Global Newswire:** This section contains posts that are not necessarily locally focused, and that the editorial collective reasonably believes to be accurate and newsworthy stories fitted for syndication.
- **Other/Breaking Newswire:** This section is where all posts appear immediately after being published. Not all articles published to Indybay are highlighted to the local or global newswire. Many articles submitted through the open-publishing newswire remain in this section, including repostings from corporate media outlets.

The process for the classification of a posting is, roughly: A member of the editorial collective will classify an article based upon their understanding of the Indybay Principles of Unity, this editorial policy, and their personal judgement. Editors will not promote (syndicate) articles which could undermine the newswire service, e.g., articles containing (not reporting) hate speech, etc. The classification of a post is contestable and subject to review by members of the editorial collective.

Editing

Editors may combine related posts together in order to occupy less space on the newswire, or when a new article seems more appropriate as a comment on an existing article. Editors may also make typographical, spelling, grammar, and formatting improvements. Articles containing false, libelous, abusive, etc. material or hate speech should be hidden when seen by an editor.

Hiding

Indybay is founded on the principle of open-publishing. Reality dictates that the editorial collective will at times decide to hide posts and comments. This is not a decision that is taken lightly, and the editorial collective does its best refrain from hiding. Our vision for the function of the newswire, and the general framework in which all decisions to hide will be made, are as follows:

- The newswire is intended to be a community media resource, a space free from spam and abuse in general; and
- That space will not contribute to the oppression of traditionally oppressed and marginalized groups.

Members of the editorial collective will hide articles and comments based on at least one of the following points:

- The article or comment constitutes abuse of the newswire (see note below);
- The article or comment is deemed too difficult for people to read; e.g. bad formatting, too hard to understand, etc.;
- The article or comment undermines Indybay's Principles of Unity; e.g., right-wing propaganda or hate speech; or
- The article or comment constitutes a spam attack (see below) on the newswire.

The editorial collective may remove copyrighted material on request of the copyright owner.

Please see [Indybay's Copyright Policy](#) for more information.

Comments

Commenting on posts is an essential aspect of Indybay. It allows, more information to be added, points to be refuted, ideas to be expounded upon, arguments to be had, and discussions to be hashed out. If you disagree with the content of a particular post that someone has contributed or can provide further relevant information, you can say so by commenting via the

"Add Your Comments" link at the bottom of each post.

The process for hiding and editing comments is the same as that for articles. Special care will be taken to not stifle rational debate and dialogue. To be clear, flamewars are not generally considered debate and/or dialogue, while cogent arguments and analyses are.

Spam Attacks

A spam attack is defined as a pattern of abuse of the newswire by a particular poster or posters. If there is a spam attack on the Indybay newswire, the spammer's posts will be hidden.

Contact

Comments, questions, and feedback regarding this policy, and Indybay in general, are highly encouraged. Please write to us at indybay@lists.riseup.net.

Notes

Indybay's Principles of Unity can be found here:

<https://www.indybay.org/newsitems/2003/12/08/16643971.php>

The phrase "abuse of the newswire" is necessarily vague. Editorial collective participants each have different conceptions of what this means, so each proposal to hide/edit posts or comments will be taken on a case-by-case basis.

The term "post" refers to anything that is self-published by a reader/participant and which appears on the newswire.

This document, and all Indybay policies, is constantly up for review and debate. The editorial collective invites suggestions, comments, criticisms and ideas to improve this editorial policy.

[Add Your Comments](#)

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Exhibit E

[Home](#)[About](#)[Contact](#)[Subscribe](#)[Calendar](#)[Publish](#)[Donate](#)

Publish to the Newswire

Use the [Add an Event](#) form to publish announcements to the [calendar](#). This is for newswire posts.

Want to show off your photos of an event? Got audio or video that people just have to see? This is the place to put it. We want to hear your story. Use any format you want, from journalistic, to academic, to personal account.

WHAT TO PUBLISH: Please use this form to contribute new stories and ideas. We think comments belong with the story being discussed. So to have your say in response to a story on the site, please use the "add your comments" link at the bottom of each story. Instead of reposting corporate media articles to the site, try posting your own critique or summary, short quotes, and links.

MULTIMEDIA: If your image exceeds 800 pixels in width or 500 pixels in height, it will be resized to these maximums. We suggest that you crop and resize your images yourself to obtain the results you're looking for; a variety of free (libre) open-source software is available for this purpose. For playability of media files on browsers and mobile devices, videos will be automatically converted to MP4 with H.264 encoding. For audio, upload MP3s.

EDITORIAL POLICY: After stories have been published, they may be edited or hidden by the collective running this site. We generally only fix obvious mistakes, such as typos, or try to improve the formatting. Please read our full [editorial policy](#).

LEGALESE: Unless otherwise stated, all content contributed to this site is free for non-commercial reuse, reprint or rebroadcast. If you want to specify different conditions, please do so in the summary, including any © copyright (or copyleft) statement. Please read our [privacy](#), [copyright policy](#), and [disclaimer](#) statements before continuing.

Enter Article Info

Article Title
(required)

Author
(required)

Email

Display contact info?

If you choose to display *Contact Info*, all readers of the site will be able to see it. If you don't want it displayed, you can still enter it, not select the "display contact info" checkbox, and only editors will see it.

Topic

Region

Summary
(required)

The summary should be no longer than 6 lines. Please, include duration of audio/video pieces.

Website URL

Enter Article Text

TEXT/HTML

Tip: [use spaces between paragraphs.](#)

Is Text HTML?

For plain text, URLs will be converted to clickable links. You may also use `visible linked text` in plain text articles (other tags will be ignored unless you select "HTML"). When selecting "HTML", you **must** provide `<p></p>` and `
` tags for paragraphs and line breaks.

Upload Attachments

How many files to upload?

Select files to upload after completing the CAPTCHA question and clicking Preview below.

[Please note the allowed file types and file sizes!](#)

CAPTCHA

Anti-spam question

Is the sun a star or planet?

You must preview your post before publishing.

Preview

Publish

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Exhibit F

1 James R. Wheaton, State Bar No. 115230
2 David A. Greene, State Bar No. 160107
3 Geoffrey W. King State Bar No. 267438
4 **FIRST AMENDMENT PROJECT**
5 1736 Franklin Street, 9th Floor
6 Oakland, CA 94612
7 Telephone: (510) 208-7744
8 Facsimile: (510) 208-4562

9 Attorneys for Movant
10 DAVID MORSE

FILED
ALAMEDA COUNTY

JUN 18 2010

CLERK OF THE SUPERIOR COURT

By _____ Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA

13 IN RE SEARCH WARRANT ISSUED
14 DECEMBER 12, 2009

Case No.:

2009-2775
[PROPOSED] ORDER TO QUASH
SEARCH WARRANT AND RETURN
PROPERTY

DATE:

TIME:

DEPT:

Hon.

06/18/10
2:00 PM
115
Yolonda Northridge
Judge

15 [PROPOSED] ORDER

16 **Good cause appearing,**

17 The Court grants the Motion to Quash Search Warrant and Return Property as to Movant
18 DAVID MORSE. The Court ORDERS that the search warrant issued on December 12, 2009 be
19 quashed as it pertains to the Sony Digital Camera, Model MVC-CD500, serial number 36459; two
20 Memorex CD-R discs, 210 MB each; and all unpublished photographs; all belonging to DAVID
21 MORSE. The Court further ORDERS the return of the aforementioned items and all copies of
22 unpublished photographs by DAVID MORSE seized pursuant to the warrant. U.C. is to provide
23 a declaration to court on or before 6-22-10 listing persons or entities to whom
24 IT IS SO ORDERED. *it provided copies of the photographs.*

25 *April 18*, 2010

26 *Yolonda Northridge*
27 Judge of the Superior Court
28