

ORIGINAL

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FILED

OCT - 4 2016

CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS

BY Cynthia C. Pope DEPUTY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF STANISLAUS

12 PEOPLE OF THE STATE OF )  
13 CALIFORNIA, )  
14 Plaintiff, )  
15 vs. )  
16 FRANK C. CARSON, et. al., )  
17 Defendants. )

CASE NO.: 1490969

NOTICE OF MOTION AND MOTION  
TO DISMISS FOR MISCONDUCT IN  
VIOLATING A COURT ORDER AND  
SEEKING TO DENY DEFENDANTS  
DUE PROCESS

DATE: TBA  
TIME: 9:30 a.m.  
DEPT: 26

18 This motion addresses violation of an order by the Honorable Mitchell C. Rigby on  
19 August 17, 2015 for non-disclosure of the lengthy *Ramey* arrest warrant executed on August 14,  
20 2015 to effect defendant's arrest. The only disclosures, if any, were to be made for discovery  
21 purposes to the defendants and to a court of superceding jurisdiction (see attached order exhibit).  
22 Instead, the People and the Stanislaus County Sheriff posted that warrant without court  
23 authorization and invited its inspection at a joint news conference staged by them on August 14,  
24 2015. They did so, denying defendants' due process rights.

25 **I.**  
26 **OVERVIEW**

27 The officers of the court above kept secret search warrants and other documents until July  
28 7, 2016, but invited world-wide attention via a dedicated website of prejudicial allegations in a  
325 page novella of innuendo, falsehoods, and "beliefs" by biased investigators with an agenda

1 to destroy the defendants. The District Attorney and Sheriff did this to poison the public and  
2 prospective jurors against the defendants.

3  
4 **II.**  
5 **THE WEB-POSTING OF THE *RAMEY* WARRANT WAS WRONG**

6 To its credit, the Court has recognized the inappropriateness of the *Ramey* warrant's  
7 posting on a government website.

8 "Mr. Garcia: I think that's correct, Your Honor. It's on the Stanislaus County Court  
9 Web site.

10 The Court: Well, when I was first assigned to the case, I have to say, I was –  
11 'surprised' would be an understatement, that the *Ramey* warrant had been  
12 posted by the Court. And I tried to find out, then, who in the world  
13 authorized that and found out it was no one at the court. It was the  
14 Sheriff's Department that did it. I know that's an argument that's been  
15 made to this Court several times, that the Court had it posted to the Web  
16 and (negative headshake).

17 Mr. Rien: I think that comports to my memory as well, because I think that may have  
18 occurred before this Court –this Court even assumed the case.

19 The Court: It did.

20 Mr. Rien: I don't think that the first Court was reviewing pre-posting of material up  
21 until this Court came along and started doing it. So I think that's right.

22 The Court: I don't think it's on the Court's Web site. It's on the – because I was  
23 going to order it taken down because it doesn't belong there, but – it's not  
24 a Court-run Web site."

25 PXT P. 13174; 21-28, 13175; 1-14.

26 The Court did not know when it made those comments that another judge had not  
27 authorized such Web posting. The Court lacked access to the August 17, 2015 disclosure and  
28 limiting order of Judge Rigby.

1 **III.**  
2 **THERE IS NO PREVIOUS RECORD OF A RAMEY WARRANT**  
3 **HAVING BEEN POSTED BY THE SHERIFF**

4 Out of the thousands of cases investigated and parties arrested, including hundreds of  
5 homicides, this is the only case in which a *Ramey* arrest warrant was posted on a dedicated  
6 website by either of these agencies.

7 **IV.**  
8 **JUDGE RIGBY DID NOT AUTHORIZE THE POSTING OF THE**  
9 **RAMEY WARRANT ON A WEBSITE**

10 Judge Rigby's August 13, 2015 endorsed *Ramey* warrant did not authorize its posting on  
11 the internet. It was to be kept sealed until further Court order. Judge Rigby's August 17, 2015  
12 discovery disclosure order likewise did not authorize Web posting. To date no court has  
13 authorized its posting by any institution of government or lawyer.

14 **V.**  
15 **THE DISTRICT ATTORNEY AND SHERIFF HAVE TOGETHER**  
16 **SOUGHT TO NEGATIVELY INFLUENCE PUBLIC OPINION AGAINST**  
17 **THE DEFENDANTS AND DENY THEM A FAIR TRIAL**

18 By posting the *Ramey* warrant online and inviting its dissemination, these officers of the  
19 Court have prejudicially tainted the presumption of innocence owed the defendants.

20 In this case the Stanislaus County District Attorney and Sheriff raced to Web-post the  
21 *Ramey* Warrant bypassing judicial intervention, redactions, or restraint to unilaterally influence  
22 as many people and parties as possible. These agents of government sought to publicize to the  
23 world in an uncontradicted or edited way a lurid set of allegations of supposed skullduggery by  
24 the defendants.

25 **VI.**  
26 **THE RAMEY WARRANT POSTING HAS COMPROMISED THE INTEGRITY**  
27 **OF STATEMENTS AND TESTIMONY BEING GIVEN BY WITNESSES**

28 The lengthy arrest warrant has served as and continues to serve as a blueprint to shape  
testimony and statements being proofread against the defendants.

1 In an age of online and cyber-knowledge the People's posting threatens to poison the  
2 mind of the public but the even greater danger was contaminating the recollection of witnesses.

3 Early in the preliminary hearing one of the governments principal witnesses Eula Keyes  
4 testified in October 2015, that she had read as much as one hundred pages of the Ramey arrest  
5 warrant (PXT P. 1991; 1-7).

6 In fact Ms. Keyes in her testimony admitted she could have, in a televised interview with  
7 the Turlock Journal newspaper, corrected Mike Cooley about where some "information" came  
8 from indicating the source was the Ramey warrant (PXT P. 1991; 1-6).

9 If Eula Keyes was reading, absorbing, and rehearsing the litany of theories advanced by  
10 the People online like she acknowledged then it should be presumed at the very least she has  
11 discussed with and influenced her common law husband Michael Cooley, her son Kieth Hobbs,  
12 her sister-in-law Linda Burns, her brother-in-law Rickie Cooley, her friends Kim Stout, Sabrina  
13 Romero, Justin Reedy, Ronald Cooper, Richard Jaquish, and others.

14 Beverly Woody, mother of Robert Woody, in her lengthy testimony acknowledged  
15 hearing about the details of this case's allegations via posting on the internet. The court in the  
16 course of her testimony had to admonish Mrs. Woody at length not to view internet postings and  
17 quit discussing them with Mrs. Woody's daughter and others (PXT P. 8123; 3-18).

18 Getting a fair preliminary hearing or a fair trial is impossible under these circumstances.

19  
20 **VII.**  
21 **THERE ARE LIMITS ON LAWYER'S AND LAW**  
22 **ENFORCEMENT'S SPEECH**

23 Lawyers and investigators must be mindful of what they say that can effect judicial  
24 interests. They do not get to wage an unrestrained war on the opposing legal side currently or  
25 expected to be before a court of law. The basis for restricting lawyers' ability to speak out on  
26 issues involved in their cases is the State's interest in assuring fair trials: "Few, if any, interests  
27 under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors, and  
28 an outcome affected by extrajudicial statements would violate that fundamental right." *Gentile v.*  
*State Bar of Nevada*, (1991) 501 US 1030, 1076, 111 S.Ct. 2720, 2745.

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**VIII.**  
**THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT (CRPC)**  
**SET LIMITS OF PUBLIC COMMENT TO THE MEDIA**

In response to the *Gentile* decision, above, California adopted restrictions on lawyers' speech about pending cases: A lawyer participating (or who has participated) in investigation or litigation of a matter is prohibited from making out of court statements about the matter if a reasonable person would expect the statement to be disseminated by means of public communication; and the lawyer knows (or reasonably should know) that the statement will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. (CRPC 5-120(A); see also ABA Model Rule 3.6.)

Whether a particular extrajudicial statement would have "a substantial likelihood of materially prejudicing" a case depends upon many factors, including whether the statement contains clearly inadmissible evidence for the purpose of proving or disproving a material fact in issue in the matter.

The *Ramey* Warrant posted is replete with a score of theories about what investigators "believe" to be, but no such proof exists. It is riddled with assertions that are factually false and based on inadmissible hearsay and speculation based on rumors.

A judicial document posted on a government website carries an added veneer of authority and importance rather than a media statement or reportage. The prejudice is therefore all the greater against the powerless defendants.

The criminal case involving singer Michael Jackson is instructive as to the dangerous influence of allegations in published warrants. In a situation exactly inverse to this, restraint on sworn warrant statements was properly restricted from widespread dissemination.

Interests in protecting a celebrity defendant's right to a fair trial in a child molestation prosecution and in protecting the identity of the minor complaining witness and his family, the Court found, overrode the public's First Amendment right of access to search warrant affidavits, where search warrant affidavits contained the graphic and detailed description of the defendant's alleged sexual misconduct with two minors, disclosure of such allegations could lead to moral judgements and public outrage, severely prejudicing defendant's right to a fair trial, and the


1 government had compelling interest in protection of its continuing investigation. *People v.*  
2 *Jackson* (App. 2 Dist. 2005) 27 Cal Rptr.3d 596, 128 Cal.App.4th 1009.

3 There is no exemption from Rule 5-120 by the District Attorney's Office characterizing  
4 what they did as disclosing information in a public record. The *Ramey* warrant was sealed to the  
5 public until July 7, 2016, when Judge Zuniga gained possession of it and ordered its filing and  
6 finally being made a part of the Court's file. Then and only then did the document become a  
7 public record.

8 Any doubt as to the underlying agenda or purpose of the 325 page *Ramey* warrant posted  
9 for the defendant August 14, 2015 is belied by the comparison to the 9 page *Ramey* warrant  
10 sought and signed by Judge Rigby on April 18, 2014, which the court is invited to take judicial  
11 notice of.

12 Dated: 10-4-16

13 Respectfully submitted,

14   
15 Preciliano Martinez,  
16 Attorney for Frank Carson

1 **PROOF OF SERVICE**

2 I declare under penalty of perjury that:

3 I am a citizen of the United States and am employed in the County of Stanislaus. I am  
4 over the age of eighteen years and not a party to the within action. My business address is as  
5 follows: 1120 14<sup>th</sup> Street, Modesto, CA 95354.

6 On the date set forth below, I caused the attached **NOTICE OF MOTION AND**  
7 **MOTION TO DISMISS FOR MISCONDUCT IN VIOLATING A COURT ORDER AND**  
8 **SEEKING TO DENY DEFENDANTS DUE PROCESS** to be served on the parties to this  
9 action as follows:

10  BY MAIL-

11 I placed a true copy thereof, enclosed in a sealed envelope with postage thereon fully  
12 prepaid, in the United States mail at Modesto, California, addressed to the parties as set  
13 forth on the attached service list. C.C.P. §§1013 (a), 2015.5.

14  BY FEDERAL EXPRESS-

15 I retained Federal Express to personally serve a true copy thereof on \_\_\_\_\_ on the parties  
16 as set forth on the attached service list. C.C.P. §§1013 (c), 2015.5.

17  BY FACSIMILE TRANSMISSION-EMAIL

18 I am readily familiar with this law firm's business practices for collection and processing  
19 of documents by way of facsimile and email. I telefaxed/scanned a true copy thereof at  
20 said facsimile number (s)/email addresses as set forth on the attached service list. C.C.P.  
21 §§1013 (e), 2015.5 and C.R.C. §2008.

22  BY PERSONAL SERVICE-

23 I personally served a true copy thereof on the parties as set forth on the attached service  
24 list. C.C.P. §§1011, 2015.5.

25 Executed on Oct. 4, 2016 at Modesto, California.

26 

1 Re: **People of the State of California v. Frank Carson, et al.**, STANISLAUS County Superior  
2 Court Case No.: 1490969

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