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2. Assemb. Comm. Pub. Safety, Complete Bill History on Bill No. 2986 (2003-2004 Reg. Sess.) April 20, 2004, at www.leginfo.ca.gov/pub/bill/asm/ab_2951-3000/ab_2986_bill_20040420_history.html, and attached hereto as exhibit B.

A memorandum of points and authorities in support of this request for judicial notice follows immediately below.

DATED: April 27, 2004.

DIETRICH, GLASRUD, MALLEK & AUNE

BY: Bruce A. Owdom
BRUCE A. OWDOM
Attorneys for The McClatchy Company,
doing business as *The Fresno Bee*

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE

I. PURPOSE OF JUDICIAL NOTICE.

The purpose of judicial notice is to expedite the production and introduction of otherwise admissible evidence. (*Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578 [136 Cal.Rptr. 751].) Judicial notice is permitted when authorized or permitted by law. (Evid. Code, § 450.) In this regard, Evidence Code section 452 states in relevant part that:

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

...

(c) Official acts of the legislative, executive, and judicial departments of the United States and any state of the United States.

///
///

1 **II. JUDICIAL NOTICE OF LEGISLATIVE ACTS IS**
2 **PROPER.**

3 The court may take judicial notice of the official acts of the legislative, executive, and
4 judicial departments of the United States and any state of the United States. (Evid. Code, § 452(c).)
5 Under this provision, California courts have taken judicial notice of a wide variety of administrative
6 and executive acts, such as proceedings and reports of the House Committee on Un-American
7 Activities, records of the State Board of Education, and records of a county planning commission.
8 (See Assembly Committee on Judiciary Comment to Evid. Code, § 452; see also *City of Sacramento*
9 *v. State Water Resources Control Bd.* (1992) 2 Cal.App.4th 960, 967, fn. 5 [3 Cal.Rptr.2d 643]
10 [judicial notice of minutes of meeting of regional water quality control board].) The court may also
11 take judicial notice of matters underlying the formation of California statutory law, including
12 legislative history, objectives and other records. (*Estate of Joseph* (1998) 17 Cal.4th 203, 210, fn.
13 1 [70 Cal.Rptr.2d 619] [records of Law Revision Commission]; *People v. Superior Court* (1991) 233
14 Cal.App.3d 477, 487, fn. 5 [284 Cal.Rptr. 601] [legislative history of statute]; *Post v. Prati* (1979)
15 90 Cal.App.3d 626, 634 [153 Cal.Rptr. 511] [various materials presented to illuminate legislative
16 history and objectives of legislative act].)

17 **III. REQUEST FOR JUDICIAL NOTICE SHOULD BE**
18 **GRANTED.**

19 Here, reports of official acts and proceedings of the California Assembly Committee
20 on Public Safety set forth both the history and objectives of Assembly Bill 2986. Such facts are
21 proper matters to be judicially noticed, and this request should be granted. (*Id.*; Evid. Code, § 452.)

22
23 DATED: April 27, 2004.

24 DIETRICH, GLASRUD, MALLEK & AUNE

25
26 BY: *Bruce A. Owdom*
27 BRUCE A. OWDOM
28 Attorneys for The McClatchy Company,
 doing business as *The Fresno Bee*

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AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2986

Introduced by Assembly Member Benoit

February 20, 2004

An act to amend Section 1534 of, and to add Section 1534.5 to, the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2986, as amended, Benoit. Search warrants: confidentiality.

Existing law provides for the issuance of a search warrant upon a magistrate's satisfaction that grounds exist, or that there is probable cause to believe that they exist, supported by affidavit or other statement under oath. Existing law provides that the documents and records of the court relating to a search warrant, if the warrant has been executed, are open to the public as a judicial record after the execution and return of the warrant or the expiration of a 10-day period after issuance.

This bill would require those records to remain closed to the public until the earliest of any of several specified events or one year if, at the time of application *or any time thereafter*, the affiant submits a supplemental affidavit ~~stating~~ *setting forth facts demonstrating* that opening the documents and records to the public will interfere with or prejudice an ongoing investigation, *and the court so finds*. The bill would permit access to these records to a person from whom property was seized, after a hearing at which a court has balanced competing interests and found in favor of that access, subject to reasonable court conditions that may include a prohibition on further disclosure. It would specify that existing discovery provisions apply to the release of this

EXHIBIT A

information to a defendant in a criminal case, and that the bill does not affect other applicable sources of privilege or confidentiality, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1534 of the Penal Code is amended to
2 read:

3 1534. (a) A search warrant shall be executed and returned
4 within 10 days after date of issuance. A warrant executed within
5 the 10-day period shall be deemed to have been timely executed
6 and no further showing of timeliness need be made. After the
7 expiration of 10 days, the warrant, unless executed, is void. The
8 documents and records of the court relating to the warrant need not
9 be open to the public until the execution and return of the warrant
10 or the expiration of the 10-day period after issuance. Thereafter,
11 except as provided in Section 1534.5, if the warrant has been
12 executed, the documents and records shall be open to the public as
13 a judicial record.

14 (b) If a duplicate original search warrant has been executed, the
15 peace officer who executed the warrant shall enter the exact time
16 of its execution on its face.

17 (c) A search warrant may be made returnable before the issuing
18 magistrate or his *or her* court.

19 SEC. 2. Section 1534.5 is added to the Penal Code, to read:

20 1534.5. (a) If, at the time of applying for issuance of a search
21 warrant *or any time thereafter*, the affiant submits a separate
22 affidavit to the magistrate ~~stating~~ *setting forth facts demonstrating*
23 that opening to the public the documents and records of the court
24 relating to the warrant will interfere with or prejudice an ongoing
25 investigation, *and the magistrate so finds, then* the magistrate shall
26 order that all such documents and records remain closed to
27 inspection by the public until the earliest of the following:

28 (1) The commencement of a preliminary hearing during which
29 any of the seized property will be or is introduced into evidence.

30 (2) ~~The return of~~ *If an indictment based on any of the seized*
31 ~~property has been found following the presentation to the grand~~
32 *jury of evidence seized pursuant to the warrant, 10 days after*

1 *delivery of the grand jury transcript to the defendant or the*
2 *defendant's attorney pursuant to Section 938.1.*

3 (3) The commencement of a trial during which any of the
4 seized property will be or is introduced into evidence.

5 (4) One year from the date of issuance of the warrant.

6 (b) Notwithstanding ~~subparagraph~~ *subdivision* (a), a person
7 from whom property was seized pursuant to the search warrant
8 may apply to the court for an order granting him or her access to
9 the documents and records of the court relating to the warrant at
10 any time. A copy of this motion shall be served upon both the
11 affiant, in care of his or her agency, and the district attorney for the
12 county in which the warrant was executed, in accordance with the
13 Rules of Court. At the hearing on this motion the court shall weigh
14 the interests of the moving party in obtaining access against the
15 interests of the affiant and the prosecution in maintaining
16 confidentiality. If the court grants access to the moving party, the
17 court may condition that access by prohibiting the moving party
18 from making further disclosure of the documents, or by imposing
19 whatever other reasonable conditions the court deems appropriate.

20 (c) Notwithstanding ~~subparagraph~~ *subdivision* (a), any person
21 against whom criminal charges are filed based in whole or in part
22 upon evidence seized pursuant to a search warrant shall be
23 provided access by the prosecution to the documents and records
24 of the court relating to the warrant as part of the process of
25 providing discovery pursuant to Chapter 10 (commencing with
26 Section 1054) of Title 6.

27 (d) Nothing in this section shall limit the ability of the court to
28 order documents and records sealed as privileged or confidential
29 under any other provision of law, including, but not limited to,
30 Sections 1040 to 1042, inclusive, of the Evidence Code, Rule
31 243.1 of the Rules of Court, or the decision of the California
32 Supreme Court in *People v. Hobbs* (1994) 7 Cal.4th 948.



COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 2986
AUTHOR : Benoit
TOPIC : Search warrants: confidentiality.

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY

2004

Apr. 20 In committee: Set, second hearing. Failed passage.
Apr. 13 In committee: Set, first hearing. Hearing canceled at the request
of author.
Apr. 12 Re-referred to Com. on PUB. S.
Apr. 1 From committee chair, with author's amendments: Amend, and re-refer
to Com. on PUB. S. Read second time and amended.
Mar. 15 Referred to Com. on PUB. S.
Feb. 22 From printer. May be heard in committee March 23.
Feb. 20 Read first time. To print.

EXHIBIT B

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF FRESNO

3 I am employed in the County of Fresno, State of California. I am 18 years of age or
4 over and not a party to the within action; my business address is 5250 North Palm Avenue, Suite
402, Fresno, California, 93704.

5 On April 27, 2004, I served the within document described as **NON-PARTY MEDIA**
6 **ENTITY THE FRESNO BEE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF**
7 **MOTION TO UNSEAL SEARCH WARRANT RECORDS AND MEMORANDUM OF**
POINTS AND AUTHORITIES on the interested parties in this action by placing a true copy
thereof enclosed in a sealed envelope at Fresno, California, addressed as follows:

8 **See attached Service List.**

9
10 _____ (BY MAIL) depositing the sealed envelope with the United States Postal Service with
11 the postage fully prepaid.

12 X (BY MAIL) placing the envelope for collection and mailing on the date and at my
13 address shown above following our ordinary business practices. I am completely
14 familiar with Dietrich, Glasrud, Mallek & Aune's practice of collection and processing
15 of correspondence for mailing. I am aware that on motion of the party served, service
is presumed invalid if postal cancellation date or postage meter date is more than one
day after date of deposit for mailing in declaration.

16 _____ (BY OVERNIGHT MAIL SERVICE) by placing the envelope for collection
17 following our ordinary business practices for collection and processing
correspondence for mailing by express or overnight mail to the person(s) by whose
18 name an asterisk is affixed.

19 X (BY FACSIMILE) In addition to service by mail as set forth above, the person(s)
20 by whose name an asterisk is affixed was also forwarded a copy of said documents
by facsimile.

21 _____ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the
22 offices of the addressee(s).

23 I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct. Executed on April 27, 2004, at Fresno, California.

25
26 Lori L. Bailey
27 **LORI L. BAILEY**
28

SERVICE LIST

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