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IN AND FOR THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. ROSS MIRKARIMI, Defendant	**Case No.: 12001311** **MS. L.'S OPPOSITION TO THIRD PARTY MOVANT CITY AND COUNTY OF SAN FRANCISCO'S MOTION FOR RELEASE OF COURT RECORD** **Date: May 15, 2012** **Time: 1:30 p.m.** **Dept.: 15** **Hon. Garrett Wong**

INTRODUCTION

This pleading is submitted by Ms. L. in opposition to the City Attorney of San Francisco's Motion for Release of Court Record.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

California Appellate Court Cases

Other Sources

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF CASE OF MOTION

On April 23, 2012, the City Attorney of San Francisco (hereafter City) filed a Motion in this case asking this Court to provide the City with a copy of a videotape of Ms. L. The City noticed the Plaintiff, the People of the State of California, through Elizabeth Aguilar Tarchi, Assistant District Attorney of the San Francisco District Attorney's Office, Defendant Ross Mirkarimi, through his attorneys of record, Lidia Stiglich and David Waggoner, and the subject of the video and named Crime Victim, Ms. L., through her attorney, Paula Canny.

On May 7, 2012, Ms. L.'s attorney filed a Motion to Continue the City's Motion with a supporting Declaration. The Motion and Declaration was served on all of the above parties. On May 7, 2012, the City filed Points and Authorities and a Declaration in Opposition to Ms. L.'s Motion to Continue.

On May 8, 2012, the matter was heard by the Honorable Garrett Wong. Judge Wong found that he could properly consider the matter. Judge Wong granted Ms. L.'s Motion to Continue, ordering Ms. L.'s brief to be filed by May 10, 2012. Judge Wong ordered the City to file their response by May 14, 2012. Hearing on the City's Motion was set for May 15, 2012 at 1:30 p.m.

The Plaintiff, the People of the State of California, through their attorney, the San Francisco District Attorney's Office, have not filed anything in this Motion. The San Francisco Police Department appeared by counsel and have not filed anything either.

SUMMARY OF ARGUMENT

The City's argument that their Motion is "a routine motion for return of property" is without foundation in fact or law. The City is a stranger to this case, a third party who claims some special third party status because they are the City. There is nothing routine about the City's Motion. The City's argument that they have an important claim for why they want to receive the videotape is not dispositive. Regardless of the "why" the focus should be that the City is a stranger to this case with no special standing to bring their Motion. In fact, the City's Motion provides no legal authority for their standing to bring the Motion.

The Court Record no longer includes the videotape. Under the rule of *Franklin v. Municipal Court (San Francisco)* (1972) 26 Cal.App.3d 884, a trial court may not make an order regarding an exhibit unless the court has actual custody of the exhibit. The Court no longer has custody of the videotape. Consequently, the Court does not have jurisdiction to entertain the City's Motion regarding a returned exhibit videotape.

The City asks the Court to authorize the District Attorney's Office to release the videotape to the City. In other words, the City is asking the Court to make an advisory opinion about an item not under its control. To do so would be improper because courts are barred from giving advisory opinions.

Finally, Ms. L.'s privacy interests as set forth in Cal. Const. art I, § 28 (Marsy's Law) offers protection against public dissemination of the video. The California Constitution's Right to Privacy also offers such protection. Ms. L. seeks to limit the public dissemination of the video not just for her interests but more importantly for the interests of her son. If the Court has jurisdiction to compel the San Francisco District Attorney's Office to provide the City with the videotape, the Court also has jurisdiction to fashion a protective order such that the City not be permitted to publish, play, or publicly disseminate the video unless and until the Ethics Commission has ruled on the admissibility of the videotape in the Commission's proceedings, and makes its findings thereon.

ARGUMENT

I. THE *LOAR* CASE AND THE *OZIEL* CASE DO NOT PROVIDE AUTHORITY FOR THE CITY'S REQUEST FOR THE VIDEOTAPE

The City claims *People v. Superior Court (Loar)* (1972) 28 Cal.App.3d 600, and *Oziel v. Superior Court (Los Angeles)* (1990) 223 Cal.App.3d 1284, provide this Court with authority to order release of property to a nonparty to this case. Neither *Loar* or *Oziel* stand for any such thing. Further, the City's argument that Penal Code § 1536 empowers a court in constructive possession of seized items to entertain nonstatutory motions for return or release of seized items whether or not those items were introduced into evidence is misleading. The City neglects to advise this Court that neither *Loar* nor *Oziel* involve a third party's request for release of an item.

Rather, both *Loar* and *Oziel* involved a question of the propriety of the return of property to the owner of the property or the protection of privacy interests of the owner of the property. Neither case holds that a third party can compel a court to order another agency to release property to that third party.

In *People v. Superior Court (Loar)* (1972) 28 Cal.App.3d 600, the defendants were found not guilty by a jury of one count of conspiracy to prepare, publish, distribute, and exhibit obscene matter in violation of Penal Code § 311.2 and a misdemeanor charge of possession of obscene material. The defendants immediately moved for return of all of the many materials that had been seized by law enforcement pursuant to search warrants. The trial court ordered law enforcement to return the seized materials to the defendants. The District Attorney's Office and the Chief of Police refused to obey the orders of the court because the materials had not been introduced into evidence (they were not *in custodio legis*).

The Court of Appeal found that during the pendency of a criminal action, Section 1536 may provide the jurisdictional basis for a nonstatutory motion for release of property seized under a search warrant made by the owner of the property. (*Id.* at 609). The Court of Appeal found that only an owner of property has the right to ask the court to order the return of property pursuant to Penal Code § 1536. Again, *Loar* does not state that a third party may bring an action to the trial court to obtain property seized pursuant to a warrant.

In *Loar*, the police and the District Attorney wanted the trial court to find that the materials the defendants sought returned to them were obscene. The trial court declined. The trial court found the defendants were the rightful owners of the property and the property should be returned to them. *Loar* stands for the proposition that property seized from a defendant pursuant to a search warrant may be returned to the defendant after an acquittal concluding the case, even when the materials were not received in evidence.

Oziel v. Superior Court (Los Angeles) (1990) 223 Cal.App.3d 1284 deals with execution of a search warrant memorialized by videotaping at the home of the Menendez brothers' therapist. The therapist challenged the dissemination of the videotape tour of his home.

The Court of Appeal began by holding that a trial court may not order disclosure of the videotapes as public records subject to disclosure under Government Code § 6250 et seq. The unambiguous language of the statute "speaks clearly to this point and it expressly exempts the state courts from the provisions of the act. *Estate of Hearst* (1977) 67 Cal.App.3d 777, 782 correctly ruled that the Act does not apply to the judiciary." *Id.* at 1292. Without deciding whether or not the videotapes are judicial records, the Court of Appeal held that judicial records are exempt from the California Public Records Act. (*People v. Rhodes* (1989) 212 Cal.App.3d 541, 552).

CBS, Inc. argued that they were entitled to the videotape of the interior of the home pursuant to the Public Records Act. As stated above, the Court of Appeal rejected that argument. The principal issue was whether the public, including the media, had a right to see the video. The video had not yet been received as evidence. The Court of Appeal stated:

> Assuming arguendo that such property constitutes a judicial record, "the right of access [to judicial records] is not absolute. Nondisclosure may be appropriate 'for compelling countervailing reasons." *Oziel*, *supra*, 223 Cal.App.3d at 1295, citing *People v. Rhodes*, *supra*, 212 Cal.App.3d at 550.

A court has inherent power to control its own records. A court must consider that individual security not be undermined, that personal liberty and privacy not be invaded, and that the rights of victims as set forth in Marsy's Law be respected. Ultimately, the Court of Appeal found that it would be error to disseminate the video to the media, and that the trial court abused its discretion in finding that the videotapes were public records under the California Public Records Act. The Court of Appeal held that the trial court should not permit disclosure of the videotape. (*Oziel*, *supra*, at 208).

Again, neither of these cases support the City's arguments. The City provides no competent authority for its request, not just as it relates to standing but also in their failure to set forth a burden of proof in their Motion. This is because in this instance, in this procedural time in this case, their Motion is not well founded.

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II. BY AGREEMENT OF THE PARTIES AND WITH THE CONSENT OF THE COURT, EXHIBITS WERE RETURNED TO THE PARTIES

Penal Code § 1417 (Disposition of Exhibits in Criminal Cases – In General) provides:

> All exhibits which have been introduced or filed in any criminal action or proceeding shall be retained by the clerk of the court who shall establish a procedure to account for the exhibits properly, subject to Sections 1417.2 and 1417.3 until final determination of the action or proceedings and the exhibits shall thereafter be distributed or disposed of as provided in this chapter. (Cal. Penal Code § 1417).

Penal Code § 1417.1 (Order for Destruction of Exhibits) provides in relevant part that:

> No order shall be made for the destruction of an exhibit prior to the final determination of the action or proceeding. For the purposes of this chapter, the date when a criminal action or proceeding becomes final is as follows:
> (a) When no notice of appeal is filed, 30 days after the last day for filing that notice…
> (Cal. Penal Code § 1417.1(a)).

Penal Code § 1417.2 (Return of Exhibit Prior to Final Determination of Action; Requirements) provides:

> Notwithstanding Section 1417.5, the court may, on application of the party entitled thereto or an agent designated in writing by the owner, order an exhibit delivered to that party at any time prior to the final determination of the action or proceeding, upon stipulation of the parties or upon notice and motion if both of the following requirements are met:
> (a) No prejudice will be suffered by either party.
> (b) A full and complete photographic record is made of the exhibits so released.
> The party to whom the exhibit is being returned shall provide the photographic record. This section shall not apply to any material, the release of which is prohibited by Section 1417.6.
> (Cal. Penal Code § 1417.2).

The Uniform Local Rules of Court for the Superior Court of California for the County of San Francisco provide:

> **Custody of Papers; Removal of Exhibits.** No papers, documents or exhibits on file in the office of the clerk of this Court may be taken from the custody of the clerk except as set forth here. A judicial officer may order any exhibit be returned to the witness or party by whom it was produced, after the substitution of a photostat copy therefore. The order may dispense with such substitution (1) in the case of an original record, paper or object taken from the custody of a public officer which is being returned to that officer, or (2) in the case of an exhibit used only against a party whose default has been entered, or (3) when a photostat copy is impracticable, in which case a receipt must be given, or (4) by

> stipulation. The application for such an order must be supported by a declaration stating all the pertinent facts, except where it is made on stipulation.
> (Uniform Local Rules, San Francisco Superior Court, Rule 10.2).

Exhibit 4 to the City's Motion is the Transcript of the sentencing proceedings in this case. On March 19, 2012, Judge Collins stated on the record that as part of the negotiated disposition, Defendant Mirkarimi had agreed to waive his rights to appeal. Judge Collins accepted Defendant Mirkarimi's waiver of his appellate rights. (See Exhibit 4 to City's Motion, p. 3, ll. 1-8). Thereafter Judge Collins stated the judgment and sentence to Defendant Mirkarimi based upon his guilty plea to the charge of Penal Code § 236.

Judge Collins then said:

> Lastly, I have here, and I want to give back to the respective parties all of the exhibits and the matters, evidentiary matters that were either entered into evidence, entered for identification, or were lodged with the Court.
> I have here, if you would approach, please, both sides.
> Ms. Stiglich, this is the information or the exhibits for the Defense.
> Ms. Aguilar-Tarchi, these are the People's exhibits.
> The Court now has none of them.
> (Exhibit 4 to City's Motion, p. 5, ll. 13-21).

Upon that last act by Judge Collins, the Court divested itself of any exhibits in compliance with the above-cited Penal Code Sections as well as Local Court Rule 10.2. In *Franklin v. Municipal Court*, *supra*, 26 Cal.App.3d 884, the Court of Appeal interpreted Penal Code § 1418's rules regarding the return of evidence. *Franklin*'s interpretation of Penal Code § 1418, the predecessor statute to Section 1417 et seq., makes clear that Section 1417 contemplates that the party who is entitled to an exhibit will come forward to claim it. Further, Penal Code § 1418 was not discretionary but mandatory and provided a simple and expedient procedure for the court to return property to its owner. A judge is not entitled to keep or retain an exhibit or to exercise dominion over it other than in his official capacity as a judge and representative of the court over which he presides. (*Id.* at 902). "In his official capacity he is obligated to return the exhibit to the person entitled thereto unless it is unlawful property…under no circumstances is he entitled to appropriate the exhibit for his own use." *Id.* at 902.

Franklin found much of its basis in *Wenzler v. Municipal Court (Los Angeles)* (1965) 235 Cal.App.2d 128. In *Wenzler*, the appellate court commented that "The municipal court has no duty to make an order releasing exhibits to petitioner unless (1) the exhibits are still in the custody of the court and (2) petitioner is the owner or otherwise entitled to possession of the exhibits." *Id.* at 131.

In this case, the City is not the owner of the videotape. In this case, the Court is no longer in possession of the videotape, having returned it to the District Attorney's Office. Consequently, under the rules of *Franklin* and *Wenzler*, and Penal Code § 1417, this Court may not properly consider the City's Motion.

To hold otherwise would allow third parties to seek courts to make orders about property and matters no longer under their control. The parties and the Court on March 19, 2012 made a decision to divest control of exhibits lodged with the Court from the Court. Such decisions are necessary for the orderly maintenance and housekeeping of court files otherwise the Superior Court Clerk's Office will become a giant storage locker of unreturned exhibits.

The Administrative Office of the Courts promulgated the Trial Court Records Manual (hereafter TCRM) to advise courts throughout the State how to deal with court records. The Judicial Counsel of California began "developing and maintaining an overall records management framework for California Courts to satisfy the needs of the courts for case processing and of historians and research purposes served by court records as well as the expectations of the public and litigants to provide reasonable confidentiality of court records." (TCRM, p. 1). The TCRM references the California Government Code and the California Rules of Court as well as the Penal Code. The TCRM advises trial courts to obey the commands of Penal Code § 1417 et seq. and further allows and recommends return of the exhibits to the parties. The TCRM makes no provision for release of exhibits to third parties. The Penal Code makes no provision for release of exhibits to third parties.

There is simply no authority for the release of an exhibit lodged with the court but not admitted into evidence to be released to a third party after the exhibits themselves have been returned to the parties. Further, the Penal Code, the Rules of Court and the TCRM provide in

certain instances, even when evidence was received in court, that evidence may not be made public. For example, Penal Code § 1417.8(a) prohibits distribution of photographs of any minor found to be harmful as defined in Penal Code § 313.

Because the Trial Court is no longer in possession of the exhibit there is nothing for the Court to order itself to do.

As stated, *infra*, the City's request that the Court authorize the District Attorney to provide the videotape to them is not proper. Really the City is asking the Court to issue an advisory opinion to the District Attorney's Office. Advisory opinions are not within the purview of this Court or any court.

III. A REQUEST FOR THIS COURT TO AUTHORIZE THE DISTRICT ATTORNEY'S OFFICE TO RELEASE THE VIDEO TO THE CITY IS IMPROPER

To the District Attorney's Office's credit, they have advised the City they will not release the video to the City without a court order. Rather than file a Motion to Compel Compliance with their Subpoena on the District Attorney's Office before Law and Motion Judge Kahn, the City Attorney's Office seeks to try an end run with this Court to circumvent Judge Kahn.

The City claims subpoena power under the Charter. This issue has not been resolved by the Ethics Commission, nor by this Superior Court.

Without doubt the Ethics Commission has authority under the City Charter and the Government Code to issue subpoenas. But there is a question as to City and the Mayor's power to unilaterally issue a subpoena. The Mayor is the Chief Executive Officer of the City. But an executive officer does not have subpoena power. The President of the United States does not have the unilateral authority to issue subpoenas. If the President of the United States cannot issue subpoenas, how can the Mayor of San Francisco? He cannot.

The Court does not need to rule on this issue. But the Court should understand that the City is forum shopping and that the City's motive is nefariously political.

If the Ethics Commission determines that the videotape is relevant and admissible, the Ethics Commission has subpoena power to serve upon the District Attorney's Office and/or the Police Department to obtain the video.

For this Court to authorize the District Attorney to release the videotape is to render an advisory opinion. Advisory opinions are improper.

The " 'Judicial Power' is one to render dispositive judgments, not advisory opinions." *Plaut v. Spendthrift Farm, Inc.*, (1995) 514 U.S. 211, 219. As stated by Justice Werdegar in *People v. McKay* (2002) 27 Cal.4th 601:

> The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 860.) We need not reiterate here the problems associated with providing gratuitous constitutional decisions. The ban on advisory opinions has existed from almost the beginning of our Republic (*Hayburn's Case* (1792) 2 U.S. (2 Dall.) 409) to the present day (see, e.g., *United States v. Fruehauf* (1961) 365 U.S. 146, 157; *Coleman v. Department of Personnel Administration* (1991) 52 Cal. 3d 1102, 1126). Nor does it matter whom the advisory opinion would benefit. (*Salazar v. Eastin*, supra, at p. 860 [declining to provide advisory opinion to assist the California State Board of Education]; *Younger v. Superior Court* (1978) 21 Cal.3d 102, 119 [declining to provide advisory opinion to assist court clerks]; *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912 [declining to provide advisory opinion to assist law enforcement]; *Denny's, Inc. v. City of Agoura Hills* (1997) 56 Cal.App.4th 1312, 1329, fn. 10 [declining to provide advisory opinion to assist a city in drafting a permissible ordinance].) Thus, that such constitutional guidance would be potentially useful to legislative, governmental or law enforcement entities in discharging their duties is an insufficient reason to disregard the prohibition on advisory opinions.
> *Id.* at 627-628 (internal quotations omitted).

Trial courts are not in the business of "authorizing." Trial courts make rulings on justiciable controversies. In this context there is not a justiciable controversy before this Court.

IV. IF THE COURT DECIDES TO ORDER RELEASE OF THE VIDEO TO THE CITY, THE COURT SHOULD ISSUE A PROTECTIVE ORDER PROHIBITING PUBLIC DISSEMINATION OF THE VIDEO

Perhaps when this case began the parties should have brought motions seeking protective orders and limited gag orders. Perhaps when the District Attorney's Office made their Friday afternoon filing which appended still photographs of Ms. L. obtained from a video it was a mistake, an error in judgment. Perhaps no one realized the photographs would go viral. These photographs and the content of the video were made public before this Court had ruled on the admissibility. Although the Court ruled that the tape would be admissible, by the time the Court made the ruling virtually the entire world had seen the nine photographs and read what was said.

The widespread dissemination of evidence before trial only complicated the process of attempting to select an unbiased jury. The combination of sensitive information involving the minor Theo, with the notoriety of the Sheriff Defendant and the "Venezuelan soap opera star" allowed for circumstances where the privacy interests of the minor as well as his mother and the public interest on all sides of the issue for a fair trial were imminently threatened with substantial prejudice.

Pretrial the concern about publicity is largely for a fair trial. Pretrial the concern is protecting the integrity of the jury pool. Had a sealing order been sought by either party, or the Court on its own motion, Ms. L.'s photographs would not be spread worldwide over the internet – for perpetuity.

Article I, § 28 of the California Constitution provides in relevant part:

> (a) The People of the State of California find and declare all of the following:
> (1) Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.
> (2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.
> (3) The rights of victims pervade the criminal justice system. These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).
> ...
> (6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.
> ...
> (b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

(1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
(2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.
(3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
(4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
(5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue.
(9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
(10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
(11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
(12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
(13) To restitution.
...
(14) To the prompt return of property when no longer needed as evidence.
(15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.

(16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
(17) To be informed of the rights enumerated in paragraphs (1) through (16).
(c)
(1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.
...
(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.
(Cal. Const., art. I, § 28).

Marsy's Law affords rights to crime victims. Ms. L. is a crime victim. Her son Theo is a victim of a dismissed count. These rights apply to Ms. L. not just pretrial but for perpetuity.

The San Francisco Superior Court is vigilant in its protection of children. Rule 19.0 of the San Francisco Superior Court Local Rules provides a statement of principles and goals. The Rule states:

A. This protocol is adopted to reflect the joint goals of protecting all victims of domestic violence and promoting the best interests of children. Exposure to violence within the home and between parents can result in long term emotional and behavioral damage to minor children. Severing all contact between an offending parent and the children may exacerbate the harm and not be in the best interests of the children or family unit. The Unified Family Court has programs and services, such as supervised visitation and parenting education programs, that enable children to have visitation with an offending parent in a safe and constructive setting. At the discretion of the Judge presiding over a domestic violence criminal case, a referral can be made to the Unified Family Court giving the latter Court the authority to modify a criminal protective order as to minor children.
B. This protocol recognizes the statutory preference given to criminal protective orders. Such orders will not be modified by the Unified Family Court unless specifically authorized by the Judge in the criminal proceeding.
C. A plea or conviction of domestic violence in the Criminal Division triggers the presumption regarding physical and legal custody set forth in Family Code §3044.

> D. Services and programs are available through the Unified Family Court to provide and facilitate safe parent-child contact and assist people in providing violence free parenting to their children.
> E. Courts hearing cases involving child custody and visitation will take every action practicable to ensure that they are aware of the existence of any protective orders involving the parties to the action currently before them.
> (Uniform Local Rules, Superior Court of San Francisco, Rule 19.0).

This rule makes clear the policy determination by the Court, in conjunction with the law as set forth in the State Penal Code, Government Code, and Family Code, to act in the best interests of a child.

Ms. L. respectfully requests that this Court issue a protective order prohibiting the City Attorney from publicly disseminating the video.

A Declaration hopefully to be filed under seal demonstrates that public dissemination of the video over the internet will further injure Ms. L. and Theo.[1] Theo is a little boy. He should not have to see his mother in a video over the internet when he is 10, or 20, or 30, or for his children and great-grandchildren to see by those who may feel sympathy for her, may tease Theo, may hate them, mock them, and who knows what else.

Protective orders limiting dissemination of evidence is not novel. In *People v. Scott Peterson*, autopsy photographs admitted into evidence and shown to the jury were not made public. In *People v. Michael Jackson*, documents and photographs were sealed and kept from public dissemination. In each case, while there were concerns regarding pretrial publicity the protective orders remain in place to protect the victims, not the defendant's rights.

Recalcitrant victims are expected in domestic violence cases. The Legislature enacted a law prohibiting punishing alleged victims of domestic violence for refusing to testify. (See. Cal. Code of Civ. Proc. § 1219). Dr. Nancy Lemon presented testimony before this Court about Battered Women's Syndrome. Had the case gone forward, Dr. Lemon was prepared to address the Prosecution's hypothetical questions regarding Ms. L. to opine that Ms. L. suffered from Battered Women's Syndrome. This Court had ruled such testimony would be admissible.

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[1] I am awaiting a Declaration.

Public dissemination of the video after conviction opens Ms. L. to experience even more trauma, both for her and her son. It also opens up the door for future harassment and trauma for other crime victims. If the Court is considering any orders regarding giving the video to the City Attorney, Ms. L., on behalf of herself and her son, as crime victims in particular, as well as on behalf of crime victims in general, respectfully asks this Court to issue a Protective Order that the City Attorney be prohibited from disseminating or publicizing the video.

CONCLUSION

For all the reasons stated herein, as well as those not stated, the City's Motion for Release of Court Records should be denied.

Dated: May 10, 2012

Respectfully Submitted,

PAULA CANNY
Law Offices of Paula Canny
Attorneys for Crime Victim,
Ms. L.

PROOF OF SERVICE - Case No.: **12001311**

I, Robert Freeman, declare:

I am employed in the County of San Mateo, California, in the offices of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years, and not a party to the matter. My business address is 840 Hinckley Road, Suite 101, Burlingame, California, 94010.

On May 10, 2012, I served the following documents on interested parties through their attorneys of record by placing a true and correct copy thereof, addressed as follows:

Documents Served:

1. MS. L.'S OPPOSITION TO THIRD PARTY MOVANT CITY AND COUNTY OF SAN FRANCISCO'S MOTION FOR RELEASE OF COURT RECORD;
2. PROOF OF SERVICE.

Parties Served:

1. Elizabeth Aguilar Tarchi
   Assistant District Attorney
   San Francisco District Attorney's Office
   850 Bryant Street, Room 322
   San Francisco, CA 94103

2. Peter J. Keith
   Deputy City Attorney
   San Francisco City Attorney's Office
   1390 Market Street, Seventh Floor
   San Francisco, CA 94102

3. Lidia Stiglich
   803 Hearst Avenue
   Berkeley, CA 94710

Courtesy Copies:

1. Ronnie Wagner
   850 Bryant Street, 5th Floor
   San Francisco, CA 94103

2. Hon. Garrett Wong, Judge of the Superior Court
   850 Bryant Street, Dept. 15
   San Francisco, CA 94103

as designated below:

XX ____ **BY PERSONAL SERVICE (C.C.P. SEC. 1011):** I cause such envelope to be hand delivered to the above address.

I declare under penalty of perjury under the laws of state of California that the foregoing is true and correct, and was executed on May 10, 2012, at Burlingame, California.

For R. Freeman
Robert Freeman