

1 CHARLES R. GARRY, ESQ.
2 GARRY, DREYFUS, McTERNAN, BROTSKY,
3 HERNDON & PESONEN, INC.
4 1256 MARKET STREET AT CIVIC CENTER
5 SAN FRANCISCO, CALIFORNIA 94102
6 TEL: 864-3131

7 Attorneys for Defendant

8 IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT
9 COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

10
11 THE PEOPLE OF THE)
12 STATE OF CALIFORNIA,)
13 Plaintiff,)
14 vs.)
15 JAMES WARREN JONES,)
16 Defendant.)

NO. 31464943

POINTS AND AUTHORITIES
IN OPPOSITION TO
MOTION TO VACATE
ORDER SEALING RECORDS

17 I

18 THE COURT ACTED WITHIN ITS AUTHORITY IN ORDERING THE
19 RECORDS IN THIS CASE SEALED AND DESTROYED.

20 "The principle is well established that
21 a court may order the expungment of records,
22 including arrest records, when that remedy
is necessary and appropriate in order to
preserve basic legal rights."

23 Sullivan v. Murphy, 478 F.2d 938 at 968
24 (C.A.D.C., 1973).

25 Plaintiff is simply wrong in his assertion that the order
26 sealing these records is void on its face because it does not
come within the provisions of Penal Code Sections 851.7 and

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1 1203.45 or Welfare & Institutions Code Section 781.

2 The Court never claimed to be sealing the records under the
3 authority of the provisions cited by plaintiff, as becomes immediate-
4 ly apparent upon examination of Exhibit 1 to plaintiff's Points
5 and Authorities in Support of the Motion to Vacate. This document,
6 entitled "Disposition of Arrest and Court Action, has a section at
7 the bottom where action subsequent to the dismissal is recorded.
8 Under the category of "record sealed" there are four boxes, three
9 of which indicate that the record was sealed pursuant to the
10 provisions cited by plaintiff. The fourth box, and the one checked
11 on this document, indicates that the record was sealed for other
12 reasons.

13 There are many cases where records have been sealed for
14 reasons other than the application of a specific legislative pro-
15 vision. The most common situation in which this occurs is when
16 "the continued existence of the records may seriously and unjusti-
17 fiably serve to impair fundamental rights of the persons to whom
18 they relate." Wilson v. Webster, 467 F.2d 1282 at 1283-1284
19 (9th Cir. 1972).

20 In Wilson the Court held that the District Court had been
21 wrong in refusing to hear the plaintiffs' plea to have arrest
22 records sealed, though there was no apparent statutory authority
23 for sealing the records. The Court stated at page 1284.

24 "The plaintiffs' allegations, [of violation
25 of their civil rights by the county sheriff and
26 other county officers] in our opinion, were
sufficient to tender an issue and to require
a full inquiry."

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1 See also Hughes v. Rizzo (E.D. Pa. 1968) 282 F.Supp. 881, 885;
2 Sullivan v. Murphy, supra.

3 Since the records have been sealed by court order, this
4 Court does not have before it all of the facts and circumstances
5 which Judge Stomwell considered when he ordered the records closed.
6 What we do know is that there was no evidence of any violation of
7 the law. (See Exhibit 4 of plaintiff's memo.) We also know that
8 James Jones is, and was at the time of his arrest, a political and
9 religious leader whose activities have gained him various enemies.
10 But at this point, four years later, the Court can only speculate
11 as to why this man was arrested when there was no evidence of any
12 violation of the law.

13 Under these circumstances, this Court certainly cannot rule
14 out the possibility that Judge Stomwell found it necessary to seal
15 these records to protect fundamental rights of James Jones. In
16 fact, all indications point to exactly that conclusion. Thus,
17 neither the order itself nor the limited record we have indicate
18 that the Court acted without authority.

19 The cases cited by plaintiff in support of his argument
20 that the Court is without power to seal records in the absence of
21 statutory authority are inapplicable to this situation. Both cases
22 arose in the context of petitioners seeking a writ of mandate
23 ordering the lower court to seal their records, thus requiring not
24 only authority, but a duty of the lower courts to seal the records.
25 See McMahon v. Municipal Court, 6 Cal.App.3d 194, 85 Cal.Rptr. 782
26 (1970) and Loder v. Municipal Court, 17 Cal.3d 859, 132 Cal.Rptr.464

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1 553 P.2d 624 (1976).

2 Furthermore, in Loder, supra. after stating that there was
3 no legislative authority to seal the records, the Court went on to
4 consider the constitutional arguments made by the plaintiff in
5 support of his plea to have the record sealed. Though plaintiff's
6 arguments are ultimately rejected in that case, the Court's con-
7 sideration thereof makes it clear that the Courts are empowered to
8 seal records for reasons other than specific statutory authority.
9 The Court can only guess as to what these reasons may have been in
10 the case of Mr. Jones's arrest.

11 II

12 TO UNSEAL THE RECORDS IN THIS CASE WOULD BE AN
13 UNCONSTITUTIONAL INVASION OF JAMES JONES'S RIGHT
14 TO PRIVACY.

15 Article 1, Section 1 of the California Constitution
16 guarantees all people the right to privacy. The scope and signifi-
17 cance of this right is described in White v. Davis, 13 C.3d 757 at
18 774, 120 Cal.Rptr. 94, 533 P.2d 222 (1975) as follows:

19 "Fundamental to our privacy is the ability to
20 control circulation of personal information.
21 This is essential to social relationships and
22 personal freedom. The proliferation of govern-
23 ment records over which we have no control limits
24 our ability to control our personal lives."

25 To unseal the records of Mr. Jones's arrest would be a
26 gross infringement of this right.

27 The well established test of whether there has been an
28 invasion of the right to privacy is whether or not a person's
29 personal and objectively by reasonable expectation of privacy has

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1 been infringed by unreasonable governmental intrusion. Armenta v.
2 Superior Court of Santa Barbara County, 61 C.A.3d 584, 132 Cal.Rptr
3 586 (1976); Jacobs v. Superior Court 36 C.A.3d 489 at 493-494,
4 111 Cal.Rptr. 449 (1973).

5 In applying this test the Court must take into account the totality
6 of facts and circumstances involved in the context of each case.
7 Jacobs, supra.

8 In this case, the records were sealed and ordered destroyed
9 by court order on February 1, 1974. It was certainly reasonable for
10 Mr. Jones to assume that the Court acted within its power in making
11 such an order. Thus, his personal and objectively reasonable
12 expectation was that the records would be destroyed or, at the
13 least, would remain sealed.

14 Nearly four years went by during which Mr. Jones believed
15 himself to be safe from any danger that this matter would be
16 reopened. He had been harassed and maligned by the Los Angeles
17 Police Department and the City Attorney, who arrested and filed a
18 complaint against him though there was no evidence of any violation
19 of the law. (See Exhibit 4 of plaintiff's memo.) He could never
20 be made completely whole for the damage caused by this arrest.
21 But to the extent possible within the judicial system he had, he
22 thought, at least been protected from future harm arising from the
23 same incident. Four years later the Attorney General wishes to
24 destroy that protection by reopening these records.

25 Any incursion into individual privacy must be justified by
26 a compelling state interest. White v. Davis, supra. In the

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1 plaintiff's memo, he points to no interest of the government,
2 compelling or otherwise, in reopening these records. Under these
3 circumstances, the State in fact has no legitimate interest,
4 compelling or otherwise, in reopening the records.

5 This case differs from Loder, supra. and the cases on
6 which Loder relies in holding that the government does not violate
7 an arrestee's right to privacy by retaining records of arrest for
8 limited purposes.

9 None of the various governmental uses of arrest records,
10 which in combination amounted to a substantial governmental inter-
11 est in that case, apply to the records of Mr. Jones. These legiti-
12 mate uses of arrest records were to identify a defendant, to
13 facilitate prompt and public reporting of facts, to investigate and
14 solve similar crimes in the future, and to aid various officials in
15 making decisions about exercising discretion with regard to the
16 arrestee in the future. None of these uses would be reasonable or
17 legitimate four years after the arrest where the complaint was
18 dismissed and the records were sealed because there was no evidence
19 of any violation of the law.

20 Further evidence that there is no compelling state interest
21 in this case is that Judge Stomwell, who was aware of all of the
22 circumstances of the case when he ordered the records sealed, was
23 obviously convinced that the government had no legitimate and/or
24 compelling interest in these records. Otherwise, he would not have
25 ordered them sealed in the first place. Since the records have
26 been sealed, it is impossible to recreate the precise set of

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1 circumstances with which Judge Stromwell was faced when he made
2 this decision. We must assume, however, that he was aware of the
3 various purposes to which such records are put. Nevertheless, he
4 ordered that the records be sealed and destroyed.

5 Another distinction between this case and others involving
6 arrest records is that here the arrestee was given governmental
7 assurance, in the form of a court order, that these records would
8 be forever sealed and destroyed. The arrestees in other cases
9 did not have such an order, and thus had no reason to expect that
10 their records would be sealed. In reliance on the court's order
11 Mr. Jones did not pursue the matter further nor try to vindicate
12 himself in any way. He brought no suits charging illegal arrest,
13 false imprisonment, abuse of process, harrassment or malicious
14 prosecution. He made no public charges against any of the city
15 officials involved. He did not insist on a trial which would
16 establish his innocence conclusively. Ironically, had he proceeded
17 to trial, been acquitted and been found factually innocent, he would
18 now be eligible to have his records sealed pursuant to Penal Code
19 Section 851.8. Had he pursued any of these actions, he might now
20 be protected from the damage that could result from the reopening
21 of his record. This failure to further protect himself is an ob-
22 jective manifestation of his personal and objectively reasonable
23 expectation of privacy in this matter.

24 CONCLUSION

25 The order sealing the records relating to Mr. Jones's
26 arrest is not void on its face and thus cannot be vacated now.

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1 There is nothing in the record that indicates that the Judge acted
2 beyond the scope of his authority in ordering the records sealed.
3 Furthermore, to unseal the records at this time would be an
4 unreasonable and unconstitutional invasion of Mr. Jones's right to
5 privacy, protected by Article 1, Section 1 of the California
6 Constitution.

7 Dated: December 5, 1977

8 Respectfully submitted,

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10 GARRY, DREYFUS, McTERNAN, BROTSKY,
11 HERNDON & PESONEN, INC.

12 By Charles R. Garry
13 CHARLES R. GARRY
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PROOF OF SERVICE BY MAIL---1003a, 2015.5 C.C.P.

I am a citizen of the United States; my business address is 1256 Market Street at Civic Center, San Francisco 94102. I am employed in the City and County of San Francisco, where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served the within

Points and Authorities in Opposition to
Motion to Vacate Order Sealing Records

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

Evelle J. Younger, Attorney General
Jack R. Winkler, Chief Assistant
Attorney General-Criminal Division
S. Clark Moore,
Assistant Attorney General
William R. Pounders
Deputy Attorney General
Michael Nash
Deputy Attorney General
800 Tishman Building
3580 Wilshire Boulevard
Los Angeles, CA. 90010

I certify or declare under penalty of perjury that the foregoing is true and correct. Executed on December 5, 1977 at San Francisco, California.


Signature