

1 John E. Carne (State Bar No. 053270)
2 Duffy Carolan (State Bar No. 154988)
3 CROSBY, HEAFEY, ROACH & MAY
4 Professional Corporation
5 1999 Harrison Street
6 Oakland, CA 94612-3572

Mailing Address:

5 P.O. Box 2084
6 Oakland, CA 94604-2084

7 Telephone: (510) 763-2000
8 Facsimile: (510) 273-8832

9 Attorneys for Petitioner McClatchy Newspapers, Inc.,

10 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SACRAMENTO

11 McClatchy Newspapers, Inc.,

12 Petitioner,

13 vs.

14 The Regents Of The University Of
15 California

16 Respondent.

No.

**DECLARATION OF REPORTER TERRI
HARDY IN SUPPORT OF MCCLATCHY
NEWSPAPERS, INC.'S, PETITION FOR
WRIT OF MANDATE**

Date:

Time:

Dept:

Complaint Filed:

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I, Terri Hardy, declare:

1. I am the Higher Education Reporter for the Sacramento Bee, published by McClatchy Newspapers, Inc. I have held this position since February, 2000. I have personal knowledge of the matters stated herein, and could and would competently testify to them if called as a witness.

2. On October 31, 2000, as part of my investigative efforts on behalf of the public, I wrote the University of California at Davis' Campus Counsel, Steven A. Drown, requesting access to the following police reports believed to be in the possession of the University's police department: 9906-3739; 9707-0250; 9611-0699; 9610-1379; 9608-2300; 0001-2656; 9711-1803. A true and correct copy of my October 31, 2000 letter to Campus Counsel Steven A. Drown is attached hereto as Exhibit A.

3. Most all of the police reports requested are believed to pertain to sex crimes occurring at the University's Medical Center between 1996 and 2000. The most recent report is believed to have occurred in or about January of 2000.

4. Based on what the University's Campus Counsel has said, I believe that: report number 0001-2656 pertains to a lewd act at the University's Medical Center occurring in January of 2000, report number 9906-3739 pertains to a 1999 suicide at the University's Medical Center; report number 9707-0250 pertains to a 1997 sexual assault at the University's Medical Center; report number 9611-0699 pertains to a 1996 sexual battery at the University's Medical Center; report number 9610-1379 [sic 9608-1379] pertains to a 1996 sexual battery at the University's Medical Center; report number 9608-2300 pertains to a 1996 sexual battery at the

1 University's Medical Center; report number 9711-1803 pertains to a 1997 rape in the
2 Davis area.

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4 5. In my October 31, 2000 letter I also requested that all nonexempt
5 records be made "promptly" available, as statutorily required. Additionally, in the
6 letter I explained that if the University believes that an express provision of law exists
7 exempting from disclosure all or any portion of the information requested, that the
8 University notify me of the reasons for its determination within 10 days as required
9 under California Government Code Section 6256. Id.

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11 6. Nine days later, on November 9, 2000, the University wrote back
12 neither granting access to the specific police reports requested nor denying access.
13 Instead, the University said, "We are in the process of retrieving and reviewing this
14 information to determine if any or all of the records are exempt from disclosure."
15 While the University explained that it would take some time to complete all aspects of
16 the request, "since the records are coming from various sources/units on campus and
17 the search involves examining volumes of records for the years involved," it did not
18 request an extension of time to respond, nor did it set forth a date on which a
19 determination could be expected. A true and correct copy of the November 9, 2000
20 letter from the University's Information Practices Coordinator, Lynette Temple, to me
21 is attached hereto as Exhibit B.

22
23 7. On December 5, 2000, well over a month after the Bee's original
24 written request, the University wrote again setting forth the progress on various
25 aspects of the Bee's original request. Like the November 9, 2000 letter, the University
26 neither granted access to the specific police reports requested nor denied access to
27 them. Instead, the University said, "Campus counsel is in the process of reviewing."
28 Again, the University did not request an extension and did not provide an expected

1 date upon which a determination would be made. A true and correct copy of the
2 December 5, 2000 letter from the University's Information Practices Coordinator,
3 Lynette Temple, to me is attached hereto as Exhibit C.

4
5 8. On December 8, 2000, via facsimile to the University's police
6 department, I requested, among other records, the following additional police reports:
7 9701-3602; 9709-1993; 9711-2682, 9803-2696, 9805-0589; 9810-1536; 9912-1264.

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9 9. Similar to the nature of the reports request on October 31, 2000,
10 the reports requested on December 8 are believed to all pertain to sexual assaults or
11 rapes occurring at the University's Medical Center in 1997, 1998 and 1999.

12
13 10. On December 11, 2000, I went to the University's police
14 department and spoke with the Manager of Communications and Records, Rita Miller,
15 and requested the same police reports as in my December 8, 2000 fax request. Ms.
16 Miller told me that I had to submit my request in writing **on the department's official**
17 **request form**, which I did. Additionally, during our conversation, I asked Ms. Miller
18 for case information since 1996 regarding various penal code violations. Later that
19 day, I followed up this conversation with a letter requesting the same case information
20 by penal code.

21
22 11. During our December 11, 2000 conversation, Ms. Miller told me it
23 would take seven to ten business days to process this latest request for police
24 reports. In response, I provided Ms. Miller with a copy of Section 67380 of the
25 California Education Code, which requires that police reports be provided to the
26 media within two business days of the request. Ms. Miller did not agree to provide the
27 police reports, or any information from those reports, within this time period.

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1 12. Finally, on December 15, 2000, over a month and a half after my
2 original request for records, the University denied the Bee access to the police reports
3 requested in my October 31, 2000 request and denied access to any information of
4 the type required to be extracted from those reports under Government Code Section
5 6254(f)(1), (f)(2) and (f)(3). The sole basis for the University's denial of access was its
6 contention that since the information sought was no longer current information about
7 contemporaneous police activity pertaining to individuals presently in the criminal
8 justice system, it was exempt from the disclosure requirements of Section 6254(f)(1),
9 (f)(2) and (f)(3). See Exhibit [] to the Declaration of Stephen J. Burns In Support of
10 McClatchy's Writ of Mandate.

11
12 13. The University has not responded to the Bee's December 8 and
13 December 11 request for additional police records, other than to state in its December
14 15, 2000 denial letter that "[t]he University plans to follow the standards described
15 above in evaluating other Public Records Act requests for police records." Id. at 7

16
17 14. Attached hereto as Exhibit D is a true and correct copy of a page
18 from the University's police department's official web site regarding requests for
19 copies of police reports. From the information provided in this web site, it is clear that
20 the University's police department **requires** requests for police reports to be made in
21 writing and that the police department requires seven to ten business days to process
22 any request. **Additionally, the University's police department charges \$7.00 for**
23 **the first 5 pages and \$1.50 for each additional page thereafter, even though**
24 **under the California Public Records Act they are only allowed to charge the**
25 **exact cost of duplicating.**

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1 15. Moreover, the University's police departments' official web site
2 shows that the University has a stated, written policy denying public access to police
3 reports, other than those of a non-criminal nature. Id.

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5 16. On January 8, 2001, I was informed that a University student,
6 Andrew V. Wieman, who belonged to a campus fraternity, had apparently committed
7 suicide in his room at the fraternity. I went to the University's police department and
8 requested the police report regarding this incident. I spoke directly with Police
9 Captain Rita Spaur. Captain Spaur told me that because the cause of death was still
10 under investigation and being called by the coroner's office as suspicious, the police
11 report would not be disclosed. Additionally, Captain Spaur told me that the University
12 does not release **any** police reports pertaining to ongoing investigations of any kind
13 and that she was not aware of any police department that did. Lastly, Captain Spaur
14 said that if I still wanted to fill out a request for the report, I could. I did. A true and
15 correct copy of that January 8, 2001 request form is attached hereto as Exhibit E.

16
17 17. On January 11, 2001, I asked Ms. Miller for the 911 tapes relating
18 to this same incident. She denied my request, saying the investigation was ongoing.

19
20 18. Neither Captain Spaur or Ms. Miller ever said how disclosure of
21 either the police report or the 911 tape would harm the investigation.

22
23 19. On January 12, 2001, in my attempt to cover this recent story, I
24 spoke with the University's Program Coordinator for Student Programming and
25 Activity Center, Theresa Montemayor, to obtain the name of a campus fraternity and a
26 contact person at that fraternity. I wanted this information because I was informed
27 that there was tension between Mr. Wieman's fraternity and another fraternity on
28 campus. I wanted to talk to someone at this other fraternity. Ms. Montemayor

1 refused to provide me with any information, saying she knew about the story I was
2 working on and did not feel comfortable releasing this information.

3
4 20. I believe that the University's failure to provide police reports, or
5 even information from those reports, when those reports pertain to either ongoing
6 investigations or closed investigations, is indicative of a larger practice of denying
7 public access to basic information from which the public can assess how the
8 University is conducting its business. This practice is illustrated not only by my most
9 recent requests for public access to information about the death of Mr. Wieman, but
10 also by the University's response to other records requested in my original request of
11 October 31, 2000, records which are clearly "public" within the meaning of the Public
12 Records Act:

13
14 • I requested documents which reflect the annual salary for each
15 year of Police Chief Calvin Hardy's employment with the University. I
16 was provided only with current salary information and was informed, in
17 writing, that it was the University's policy to provide only current salary
18 information. See Exhibit B, page 1.

19
20 • I requested bonus and benefit information for each year of Chief
21 Hardy's employment with the University. I was provided with only
22 information pertaining to his car, yet the University claims it has been
23 responsive to the request.

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25 • I requested documents reflecting the amount of settlement of any
26 claims involving Richard W. Katzberg, David A. Amabisco, Hugo A.
27 Collins and Sandy A. Forester. I was advised no records responsive to
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this request were identified, even though I am aware that the University reached a monetary settlement in at least one of these cases.

21. While I remain hopeful that the Bee and the University's relationship regarding access to public records will improve in the future, it is clear that due to the University's present practice of denying access to either closed or ongoing investigations, reporters will not be able to obtain information about which the public has a right to be informed without pursuing this litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ____ day of January, 2001, at Sacramento, California.

Terri J. Hardy