

November 30, 2011

Hon. Andrew T. Baxter
U.S. Magistrate Judge
Federal Building and U.S. Courthouse
P.O. Box 7396
Syracuse, NY 13261-7396

Re: Unsealing request 11-mj-492-ATB

Sent via facsimile: 315-234-8501 (per instruction of Judge's Clerk)

Dear Judge Baxter:

I am writing this letter to respectfully request the unsealing of search warrant materials on file in U.S. District Court in Syracuse.

On November 25, 2011, a federal search warrant was executed at the residence of Bernie Fine, 7001 Tiffany Circle, Fayetteville, NY.

Upon information and belief, there was at least one additional search warrant executed in connection with the aforementioned matter. Public records indicate these search warrant materials remain sealed by order of the Court, upon the request of assistant United States Attorney Steven D. Clymer.

I am respectfully requesting intervention in this matter for the limited purpose of filing a request, pro se, to unseal portions of the search warrant materials.

I am making this request under both a common law right of access to search warrant materials (judicial records) as well as a First Amendment right of access. I am seeking the unsealing of the search warrant applications, supporting affidavit(s) of probable cause, sealing order(s), and any returns when they are filed.

As the Court may be aware, the subject of the search warrant, Bernie Fine, was at his residence during the execution of at least one of the search warrants. The search of Mr. Fine's residence was conducted in public view with numerous members of the media present. Portions of the search were recorded and broadcast by various media outlets.

I respectfully submit there is precedent for the unsealing of search warrant materials – at least in part – where the search warrants have been executed.

The position of the U.S. Attorney's office on similar requests has been fluid. In some instances the Justice Department has not opposed the release of search warrant documents, including returns that are filed with the court and often provided to the subjects of the warrants once executed.

In this instance, it's clear that Mr. Fine — the subject of the investigation — is aware that the U.S. Attorney's office, with the U.S. Secret Service and other law enforcement agencies, executed a search warrant at his residence, and at least one other location, and seized materials. Mr. Fine also knows that he is the subject of an ongoing law enforcement investigation. It's therefore unclear how the unsealing of at least portions of these court records would impede any ongoing investigation.

In addition, it has been publicly reported that a person who made allegations of criminal acts against Mr. Fine met with law enforcement officials prior to the execution of the search warrant(s). Based on that publicly disclosed information it's likely that Mr. Fine and his attorney(s) are aware that the person's allegations could have served as the basis of a probable cause affidavit used to obtain the court-authorized search warrant(s).

The issue of unsealing search warrant materials has arisen in other cases, including: *In Re Search Warrant Issued June 5, 2008, 09-MJ-273 (DRH)*.

Indeed, as the court is aware, the Second Circuit has long held that "there is a common law right to inspect" a search warrant where the warrant has been executed.

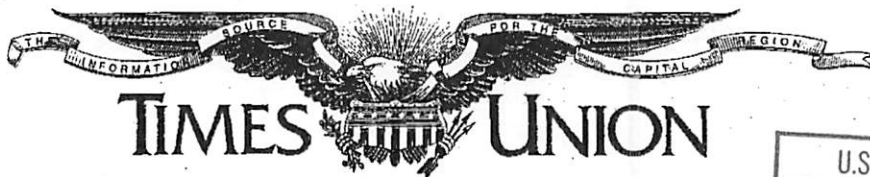
One case of particular relevance is: *In re Application of Newsday, Inc.*, 895 F.2d 74 (2d Cir. 1990). In that case, the Second Circuit held that "there is a common law right to inspect" a search warrant where the warrant has been executed and the defendant has already pled guilty. *Id.* at 78. Similarly, in *In re Application of Buffalo News*, 969 F. Supp. 869 (W.D.N.Y. 1997), the United States District Court for the Western District of New York held that the press is entitled to obtain access to search warrants after their execution and filing – particularly where one of the subjects of the warrant already has been indicted and where the other persons subject to the warrant are not the targets of the investigation. The court explained: "the public's interest in access to a search warrant which has been executed and filed in the Clerk's office of this court has attached to the warrant at issue as a public document." *Id.* at 871.

Thank you in advance for your consideration of this request. I am providing a copy of this letter to Mr. Clymer of the U.S. Attorney's office and also to Mr. Fine's attorney, Karl Sleight of Albany.

Sincerely,

Brendan J. Lyons
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cc: Assistant United States Attorney Steven D. Clymer; Karl Sleight.



U.S. DISTRICT COURT
 LAWRENCE K. BAERMAN, CLERK
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FROM Brendan Lyons TO Hon. Andrew T. Baxter

Times Union newsroom fax number: 518-454-5628

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Re: Unsealing request

Notes: Faxed per instruction Judge Baxter's clerk