

# SUPREME COURT COPY

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SUPREME COURT  
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CLERK SUPREME COURT

Chief Justice Cantil-Sakauye  
and Associate Justices  
Supreme Court of California  
350 McAllister Street  
Room 1295  
San Francisco, CA 94102-4797

Re: *Facebook, Inc., et al. v. Superior Court of the City and County of San Francisco*,  
Case No. S230051 (First District Court of Appeal Case No. A144315)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to this Court's order of January 26, 2018, Petitioners Facebook, Inc., Instagram, LLC, and Twitter, Inc. (the "Providers") submit this letter brief to address the following two issues: (1) The propriety of this Court's contemplated judicial notice of (a) the underlying grand jury transcripts, and (b) the public superior court docket in each case; and (2) the tenor of the matters to be noticed, should this Court exercise its authority to take judicial notice.

**I. This Court Has Discretion to Properly Take Judicial Notice of Grand Jury Transcripts and Public Superior Court Dockets.**

California Evidence Code section 452, subdivision (d) grants this Court discretionary authority to take judicial notice of "[r]ecords of . . . any court of this state." (Evid. Code, § 452, subd. (d).) The superior court's grand jury transcripts and public dockets are "[r]ecords of [a] court of this state," and therefore fall within the scope of § 452. (E.g., *Cal. Ass'n of Retail Tobacconists v. California* (2003) 109 Cal.App.4th 792, 828, fn. 21 [taking judicial notice of grand jury proceedings]; *People v. Mendoza* (2015) 241 Cal.App.4th 764, 773, fn. 1 [taking judicial notice of publicly available superior court docket information].)

**II. The Grand Jury Transcripts and Public Superior Court Dockets May Provide Helpful Context Regarding Defendants' Requested Relief.**

The Providers do not have access to the grand jury transcripts at issue, and thus are unable to offer a fully informed view of the appropriate tenor of the matters to be noticed. However, the matters to be noticed may provide this Court with helpful context regarding

February 8, 2018

Page 2

Real Parties in Interest Derrick Hunter's and Lee Sullivan's ("Defendants") requested relief, further supporting the Providers' argument that compelling Providers to produce the requested content in response to Defendants' subpoena is both unlawful and unnecessary.

Defendants seek to compel the Providers to produce the social-media account histories of a prosecution witness, Renasha Lee, and the murder victim, Joaquin Rice. But Providers' disclosure of those records in response to Defendants' subpoena would violate the federal Stored Communications Act ("SCA"), 18 U.S.C. § 2701 et seq. Defendants have asked this Court to declare the SCA unconstitutional, but such a sweeping and drastic remedy is unnecessary. (See *People v. Navarro* (2007) 40 Cal.4th 668, 675 ["A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them."].)

First, as Providers have argued, Defendants have numerous other ways to obtain the materials they seek, without requiring the Providers to violate federal law. (See Providers' Answer Brief at pp. 22-28.) The grand jury transcripts will likely corroborate that argument, demonstrating that Defendants can obtain the information through a court order directed at the prosecution, compelled disclosure by the account holder, court-ordered consent, or some other means. For example:

- The grand jury transcripts will likely show that Lee is central to the prosecution's case and is likely to be called as a witness by the prosecution. (See Defendants' Opening Brief at p. 4 [describing Lee as the "sole witness who implicates Mr. Sullivan" in the murder].) Thus, the superior court will have the opportunity to compel disclosure from Lee directly, by ordering her to comply with a subpoena directing her to produce her social-media records. (See *O'Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1447 ["[D]iscovery must be directed to the owner of the data, not the bailee to whom it was entrusted."]; *Negro v. Superior Court* (2014) 230 Cal.App.4th 879, 889.)
- Alternatively, the superior court could order Lee to consent to the Providers' voluntary disclosure of her social-media records, with appropriate protections for any disclosure. (See 18 U.S.C. § 2702(b)(3) [allowing service providers to disclose communications with the consent of their originator or recipient]; *Juror No. One v. Superior Court* (2012) 206 Cal.App.4th 854, 864.)
- Or the court could instruct the prosecution to assist Defendants in obtaining the information they seek as a condition of allowing Lee to testify. (See 18 U.S.C. § 2703(b)(1)(A) [requiring disclosure by service providers in the event of a valid search warrant]; *Facebook, Inc. v. Superior Court (Touchstone)* (2017) 15

February 8, 2018

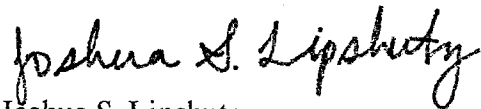
Page 3

Cal.App.5th 729, 748, fn. 8 (S245203, rev. granted Jan. 17, 2018) [“Defense counsel can also work with the People to obtain a search warrant for the records.”].)

- With respect to Rice, Defendants already have access to his publicly available social-media records and all records under the prosecution’s control, pursuant to *Brady v. Maryland* (1963) 373 U.S. 83. And, if necessary and appropriate, the superior court could instruct the prosecution to assist Defendants in obtaining any additional information they seek, either from the Providers or from Rice’s “friends” or “followers.” (See 18 U.S.C. § 2702(b)(3) [allowing Providers to disclose content “with the lawful consent of . . . an addressee or intended recipient”].)

*Second*, the grand jury transcripts will likely corroborate the Providers’ argument that the social-media records being sought by Defendants are cumulative and immaterial. (See Providers’ Answer Brief at pp. 22-23.) For example, Defendants seek Rice’s social-media records to show that “Rice repeatedly threatened and bullied” Hunter’s younger brother. (Defendants’ Opening Brief at p. 3.) But the Court of Appeal noted that the grand jury testimony of Leonard Broberg, the prosecution’s gang expert, relied in part on *publicly available* social-media records portraying Rice’s violence. (See Defendants’ Petition for Review, Exh. A at p. 5.) Likewise, Defendants contend that Lee’s social-media records may be useful for impeachment purposes if they show that Lee is “violen[t],” “bias[ed],” and “jealous.” (Defendants’ Opening Br. at p. 4.) But again, the record reflects that Defendants already have ample information that would serve that purpose. (Providers’ Answer Br. at p. 22.)

Very truly yours,



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Instagram, LLC, and Twitter, Inc.

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Counsel for Petitioner Twitter, Inc.

Case Name: Facebook, Inc., et al. v. Superior Court of San Francisco  
Case No: S230051

**PROOF OF SERVICE**

I, Lucy Ragnelli, declare as follows:

I am a citizen of the United States and employed in San Francisco County, California; I am over the age of eighteen years, and not a party to the within action; my business address is 555 Mission Street, San Francisco, CA 94105-0921. On February 8, 2018, I served the within documents:

**LETTER BRIEF REGARDING JUDICIAL NOTICE OF GRAND JURY  
TRANSCRIPTS AND PUBLIC SUPERIOR COURT DOCKETS**

On the parties stated below, by the following means of service:

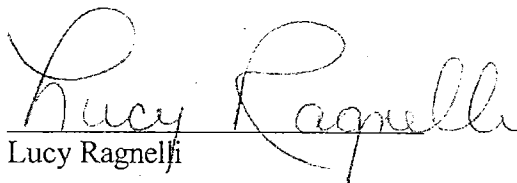
**SEE ATTACHED SERVICE LIST**

- BY UNITED STATES MAIL:** I placed a true copy in a sealed envelope or package addressed to the persons as indicated above, on the above-mentioned date, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of 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 set forth in this declaration.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

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

Executed on February 8, 2018, at San Francisco, California.

  
Lucy Ragnelli

**SERVICE LIST FOR *Facebook, Inc., et al. v. Superior Court of San Francisco***

**CALIFORNIA SUPREME COURT CASE NO. S230051**

Superior Court of the City and County  
of San Francisco: Respondent

Superior Court of the City and County of  
San Francisco  
850 Bryant Street  
San Francisco, CA 94103

Court of Appeal, First District, Div. 5

Clerk of the Court  
Court of Appeal, First District, Div. 5  
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