



Leighton Criminal Courthouse only. *All documents and pleadings shall be filed in the circuit clerk's office. The parties may move to file any document under seal.*

Supplemental Motion, Ex. A (“Supervisory Order”) (emphasis added). Intervenor sought the Supervisory Order only after attempting over the past three months, with little success, to convince this Court that the First Amendment, the State Constitution, Illinois law, and the common law all require public access to filings in this case. In moving for the Supervisory Order, Intervenor demonstrated to the Illinois Supreme Court that this Court applied erroneous standards to seal numerous filings and withhold them from the public. Motion for Supervisory Order (Ex. B), at 6-13, 19-23. Intervenor explained that all of the judicial documents in the file, including those then held in chambers, were all public documents, notwithstanding this Court’s theory that no First Amendment presumption of public access applied to them because this Court’s February 2017 Order completely eliminated the presumption by never allowing the documents to be filed publicly in the first place. *Id.* Intervenor further demonstrated that the February 2017 Order, facially and as applied, destroyed the First Amendment presumption of access and had to be vacated. *Id.* at 4-5, 13-14, 15-19, 22-23. That is what the Supreme Court ordered on May 23 when it entered the Supervisory Order stating that (1) “all documents and pleadings shall be filed in the circuit clerk’s office” and (2) “[t]he parties may move to file any document under seal.”

The next day, with no notice to Intervenor, this Court entered its order of May 24, 2018, a copy of which is attached as Exhibit C. That order states as follows:

This Court’s order dated February 3, 2017 is terminated instantaneously pursuant to the Illinois Supreme Court’s order of May 23, 2018. All motions or filings shall be filed with the Clerk of the Court on the fifth floor of the Administration Building, 2650 S. California. Courtesy copies shall be submitted to the Court in Room 500 on the same date. Prior to submission to the Clerk, the filing party shall first notify the opposing party of its intention to do so and the nature of the document to afford the other party fair opportunity to request the document be sealed. No party shall file any document with the Clerk until receiving a reply from the other party indicating receipt of notice. The Court expects the parties to act promptly and in good faith. So ordered.

Respectfully, Your Honor's May 24 Order fails to correct the constitutional problems identified by Intervenor and addressed by the Supervisory Order, and imposes but another process – unprecedented as far as Intervenor are aware – that violates the public's right of access and subverts the Supreme Court's intent. The Supervisory Order directs that all documents and pleadings be filed in the Clerk's Office, but the May 24 Order restrains the Parties from doing so for an indefinite period of time, *as to every court filing*, while the filing party awaits motions to seal that are not required to be filed publicly and not required to be served on Intervenor, who are not provided with an opportunity to challenge these motions to seal.

After Intervenor received this Court's May 24 Order on May 31, *see* 5/31/18 Tr. (Ex. D) at 11, Intervenor provided the Parties with additional information on June 6, 2018, by letter, to inform them more fully of Intervenor's concerns with respect to the May 24 Order. June 6, 2018 Letter, Ex. E. The Parties then filed their responses on June 7, 2018. On June 7 and 8, the Parties agreed to serve Intervenor with any motions to seal at the time such motions are filed. (Ex. F, G.)

With respect to Intervenor's request to transfer the court file to the Clerk's Office, Intervenor reported to the Court on May 31 that various documents believed to be publicly available could not be found in the publicly available file in the Clerk's Office. 5/31/18 Tr. (Ex. D) at 64. The Court stated that it was undertaking to correct that situation and, in the meantime, requested that Jenner & Block, counsel for one of the Intervenor, submit a letter to a Clerk's Office official on June 1, identifying all documents Intervenor believe to be publicly available. Jenner & Block submitted this letter. 6/1/18 Letter, Ex. H. Intervenor continue to work with the Clerk's Office to try to effect the complete transfer of the court file to the Clerk's Office before the Court's June 14 hearing on the Supplemental Motion. Intervenor will make further reports and motions to the Court as may be necessary.

## ARGUMENT

The Supervisory Order directed that the Court vacate its February 2017 Order and that “all documents and pleadings” in the case be filed in the Clerk’s Office. At the same time, any Party may move to seal any of those documents. This Court’s earlier rulings sealing documents based on the now-vacated February 2017 Order failed to apply the First Amendment presumption of public access and thus should be revisited and reversed. Additionally, the sealing mechanism in this Court’s May 24 Order should be modified to (a) eliminate the burdensome and unnecessary requirement that the Parties submit every court filing to each other before they file in the Clerk’s Office, and (b) require that Intervenors receive notice and a reasonable opportunity to object to any motions to seal.

### **I. The Supervisory Order Applies to “All Documents And Pleadings” In This Case.**

The plain language of the Supreme Court’s order directed that “all pleadings and documents” be filed in the Clerk’s Office. The order said “all.” It did not say only those documents and pleadings filed after May 23 or “all” documents and pleadings except those filed before May 23. The question is not, as the State has suggested, whether the Supervisory Order is “retroactive.” *See* State Resp. at 2.<sup>2</sup> The Court should interpret and apply the Supervisory Order as it would a statute and give words their “plain and ordinary meaning.” *See People v. Ellis*, 296 Ill. App. 3d 862, 864-65 (1st Dist. 1998) (“words should be given their plain and ordinary meaning . . . . The dictionary can be used as a resource to ascertain the ordinary and popular meaning of words”). The dictionary definition of “all” is “being or representing the entire number, amount, or quantity.” *The American Heritage College Dictionary* at 35 4<sup>th</sup> ed. (2002). Accordingly, the whole file,

---

<sup>2</sup> The Court made comments on May 31 indicating that it may appreciate that the Supervisory Order does apply to previously sealed documents when it refers to the requirement that “all documents and pleadings” be filed in the Clerk’s Office subject to any party’s ability to file a motion to seal. *See* 5/31/18 Tr. (Ex. D) at 20 (“at this time we’re not disputing that”).

including *every* document filed in this case, must be filed in the Clerk's Office, where each of these documents is presumptively public *unless a party moves to seal*, no matter how this Court ruled on these documents before the Supervisory Order.

**II. By Ordering This Court To Vacate Its February 2017 Order, The Supreme Court Effectively Reversed Every Ruling Grounded In That Order.**

This Court repeatedly justified sealing court documents – over Intervenors' objections – by stating that by operation of the February 2017 Order, no presumption of public access applied to the documents because this Court had not allowed them to be filed publicly in the first place, at times even stating that it would not entertain Intervenors' argument to the contrary. *See* 4/18/18 Tr. (Ex. I) at 11-13, 15-16, 27; 4/28/18 Tr. (Ex. J) at 17-20. In directing that this Court vacate its February 2017 Order, the Supreme Court unmistakably accepted Intervenors' fundamental position that this Order improperly subverted the First Amendment presumption of public access. In doing so, the Supreme Court eliminated the rationale for this Court's previous sealing orders. The State, therefore, is incorrect in stating that the Supervisory Order "did nothing" to vacate this Court's prior sealing orders based on an order that the Supreme Court clearly did vacate. *See* State's Response to Intervenors' Motion for Access to Court Documents at 2. The Supervisory Order therefore cannot be as "narrow" as the State and Defendant assert in claiming that the Supervisory Order was not "retroactive" so that the earlier orders sealing documents in this matter would be completely unaffected. *See id.*; Defendant's Response to Intervenors' Supplemental Motion for Access to Court Filings at 3-4.

Each and every ruling based on the February 2017 Order should therefore be reviewed anew by Your Honor, applying the proper constitutional framework as required by *Press-Enterprise Co. v. Superior Ct.*, 464 U.S. 501 (1984), and its progeny. To allow each of these prior rulings to stand, as if the Supervisory Order had never happened and the February 2017 Order had

never been vacated, would violate the letter and spirit of the Supervisory Order as well as the First Amendment and common law presumptions of access. Accordingly, Intervenor ask the Court to make *all* of the pleadings and documents, not currently subject to a pending motion to seal, publicly available upon a date certain – Intervenor suggest June 19 – to allow the Parties time to move to seal any of those documents before that date. The Court should then decide those motions under the proper presumption and legal standards.

In the meantime, Intervenor identified 12 specific court documents that should be released immediately because, after multiple opportunities, no party has advanced any basis for sealing them under constitutional standards. These documents consisted of filings related to Defendant’s motion to dismiss the indictment for prosecutorial misconduct and the defense motion to change venue.

As to the documents related to Defendant’s motions to dismiss, the State’s arguments included claims that the documents’ allegations were “unfounded” or attacked the character and credibility of a party to the case. *See* State’s Response to Intervenor’s Motion for Access to Court Documents at 11. But “[t]he mere fact that a person may suffer embarrassment or damage to his reputation as a result of allegations in a pleading does not justify sealing the court file.” *Skolnick v. Altheimer & Gray*, 192 Ill. 2d 214, 234 (2000).

Nor has any party argued a constitutional basis for sealing the defense motion for change of venue, as to which Intervenor’s request for immediate release has been effectively denied by the Court’s having entered and continued it. 4/28/18 Tr. (Ex. J) at 104. The fact that this motion is incomplete or will be supplemented with additional data, *id.*, is insufficient to deny public access to the document. Given yet another opportunity by Intervenor’s Supplemental Motion, which specifically asked for the 12 documents’ immediate release, neither Party attempted to argue a

constitutional basis, instead relying only on the specious argument that documents should remain under seal because this Court previously sealed them under the now-vacated February 2017 Order.

Once the Supreme Court commanded that all documents and pleadings in this case be filed in the Clerk's Office with the Parties retaining the ability to file motions to seal, the Parties could have filed their motions to seal. They did not file any motion to seal any document filed before May 23 in the wake of the Supervisory Order, as the only two motions to seal on file in this case (according to representations of the Parties) relate to documents filed after the May 23 Supervisory Order. There is no legal basis for continuing to keep the 12 documents secret.

Intervenors renew their request for the immediate release of these 12 documents. Alternatively, this Court may construe the Supplemental Motion as a motion to reconsider the Court's prior rulings sealing these 12 documents. In the absence of any basis for a conclusion that the First Amendment presumption of public access is overcome, and with no motion to seal on file concerning pre-May 23 documents in the two-plus weeks since the Supervisory Order was entered, the Court ought to grant the reconsideration motion and unseal each of the documents.

### **III. This Court's May 24 Order Should Be Vacated Or Modified.**

The Court's May 24 Order creates a burdensome and unnecessary procedure that undermines the Supreme Court's Supervisory Order. Importantly, it does not provide for Intervenors to have notice and an opportunity to object to any motions to seal that are filed. Both of those issues are easily remedied.

First, while the Supervisory Order directs that all documents and filings be filed in the Clerk's Office, the Court's May 24 Order restricts the parties from doing so until *after* they have (1) notified the other Party of the filing, in advance, and (2) received a reply from the other party that notice was received. As far as Intervenors are aware, there is no precedent for this sort of restriction, which adds a layer of secrecy and delayed access to the ordinary procedure of filing

documents in public subject to any motions to seal. It is that kind of ordinary procedure that the Supreme Court sought to restore. This Court's requirement of advance notice to the non-filing party, and its prohibition on filing in the Clerk's Office until the advance notice is acknowledged, impose an indefinite amount of delay on the public filing of documents in the Clerk's Office as directed by the Supervisory Order. The ability of the press to obtain timely, accurate, and complete information is critical to its ability to promote public understanding of this case. See *Grove Fresh Distributors v. Everfresh Juice Co.*, 24 F.3d 893, 897-98 (7th Cir. 1994) ("each passing day [of denial of access] may constitute a separate and cognizable infringement of the First Amendment"); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 127 (2d Cir. 2006) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The public's interest in a story about a particular day's events can be "fleeting," so that delayed disclosure "undermines the benefits of public scrutiny and may have the same result as complete suppression." *Grove Fresh*, 24 F.3d at 897. Contrary to the aim of the Supervisory Order, the May 24 Order's pre-filing notice and reply requirement burdens Intervenors' First Amendment rights by subjecting public court filings to delays of indefinite duration. Moreover, the requirement is unnecessary. Each Party is capable of determining what content of its pleadings and documents it contends should be under seal. Defendant in particular, as holder of the free trial right, is in the best position to seek to seal documents and pleadings where disclosure might threaten his fair trial right. Any conceivable benefit from giving the non-filing party a veto over the filing party's public filing of judicial documents in the Clerk's Office is outweighed by the burden this procedure imposes on First Amendment rights. The Court should vacate or modify the sealing procedure to eliminate this requirement.

Second, the sealing mechanism in the May 24 Order makes no allowance for Intervenor to receive service copies of motions to seal, let alone to be heard in opposition to them. The Parties and Intervenor already have agreed that Intervenor will receive service copies of motions to seal contemporaneous with such motions being filed. Exs. F, G. But the Court should make clear in an order that (1) Intervenor will receive copies of motions to seal at the time of filing and have a reasonable opportunity to be heard, to the extent they may oppose any motion to seal, and (2) the Parties, when filing a motion to seal, should file their motions and the underlying documents in public and in the Clerk's Office, with redactions of the substantive information sought to be sealed, with unredacted versions of the motion and document filed under seal pending the Court's ruling on the motion. All documents filed with the Court are subject to the presumption of public access. *A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 997 (1st Dist. 2004) (citing *Skolnick*, 191 Ill. 2d at 236). As such, they may not be sealed without on-the-record, narrowly tailored judicial findings that sealing is essential to preserve a higher interest, and that where the interest is Defendant's fair trial right, (1) disclosure would create a "substantial probability" of prejudicing that right, and (2) reasonable alternative measures would be inadequate to protect that right. *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 13-15 (1986). Filing motions to seal in public, with the substantive information (sought to be sealed) redacted, is consistent with Illinois law. *See A.P.*, 354 Ill. App. 3d at 998 ("[I]t is possible as a practical matter to disclose information such as judicial determinations, the nature of the allegations and defenses contained in the pleadings, the identity of adult parties, matters of scheduling and appearances, and motions, briefs and argument concerning legal issues like subject matter jurisdiction and public access to court files, without disclosing information that may legitimately be kept confidential.") This procedure has been followed in the most high-profile of cases. *See Michael D. Cohen v. United States*, No. 18-mj-03161-KMW, Dkt. Entry No. 78 (S.D.N.Y. June 8, 2018) (ruling that certain objections in matter involving President's personal

lawyer “should be filed publicly, except for those portions that divulge ‘the substance of the contested documents,’ which should be filed under seal and *ex parte*”). As for witness identities, their privacy and security interests also may be protected through redaction. *See A.P.*, 354 Ill. App. 3d at 1003 (“In any event, redacting the names of the adult and minor beneficiaries could serve to protect the minors’ privacy interests without resorting to the overly broad measure of sealing entire documents or concealing the identities of other adult parties.”).

The foregoing modifications of the May 24 Order will help ensure that Intervenor and the public will receive timely public access to court documents that are presumed to be public in this case and that are not subject to motions to seal. These modifications will further ensure that Intervenor and the public receive notice of motions to seal and an adequate opportunity to object to them.

### CONCLUSION

WHEREFORE, for the foregoing reasons, Intervenor respectfully request that their Supplemental Motion be GRANTED, and that the Court enter an order granting the following relief:

- (1) complete the transfer of the entire court file to the Clerk’s Office;
- (2) unseal all previously sealed filings by the close of business on June 19, 2018, except for those as to which a motion to seal is on file; and release immediately the 12 documents identified in the Supplemental Motion as to which no basis for sealing has been asserted;
- (3) vacate the burdensome pre-filing process restrictions imposed by the Court’s May 24 Order, which improperly permits the Parties to continue to file documents under seal pursuant to secret motions to seal, without notice to the public or Intervenor;
- (4) enter an order ensuring that Intervenor receive notice of, and an opportunity to oppose, any motions to seal; and

(5) instruct the parties in such instances to instead file redacted documents accompanied by a motion to file the unredacted version under seal.

Dated: June 11, 2018

Respectfully submitted,

CHICAGO PUBLIC MEDIA, INC.

By:   
One of Its Attorneys


THE ASSOCIATED PRESS  
WLS TELEVISION, INC.  
WGN CONTINENTAL BROADCASTING CO.,  
LLC  
WFLD FOX 32 CHICAGO  
REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS

By:   
One of Their Attorneys

CHICAGO TRIBUNE COMPANY, LLC

By:   
One of Its Attorneys

SUN-TIMES MEDIA, LLC

By:   
One of Its Attorneys

Jeffrey D. Colman  
Gabriel A. Fuentes  
Patrick E. Cordova  
Jenner & Block LLP  
353 N. Clark St.  
Chicago, IL 60654  
(312) 222-9350  
[jcolman@jenner.com](mailto:jcolman@jenner.com)  
[gfuentes@jenner.com](mailto:gfuentes@jenner.com)  
[pcordova@jenner.com](mailto:pcordova@jenner.com)  
*Counsel for Chicago Public Media, Inc.*

Natalie J. Spears  
Dentons US, LLP  
233 S. Wacker Drive  
Chicago, IL 60606  
312-876-2556  
[natalie.spears@dentons.com](mailto:natalie.spears@dentons.com)  
*Counsel for Chicago Tribune Company, LLC*

Brendan J. Healey  
Mandell Menkes LLC  
1 N. Franklin St, Ste. 3600  
Chicago, IL 60606  
(312) 251-1000  
[bhealey@mandellmenkes.com](mailto:bhealey@mandellmenkes.com)  
*Counsel for Reporters Committee for Freedom of  
the Press, WGN Continental Broadcasting Co.,  
LLC, WFLD Fox 32 Chicago, The Associated  
Press, and WLS Television, Inc.*

Damon E. Dunn  
Funkhouser Vegosen Liebman & Dunn, Ltd.  
55 West Monroe Street  
Suite 2410  
Chicago, IL 60603  
(312) 701-6800  
[ddunn@fvldlaw.com](mailto:ddunn@fvldlaw.com)  
*Counsel for Sun-Times Media, LLC*

# **EXHIBIT A**

# State of Illinois Supreme Court

*I, Carolyn Taft Grosboll, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered May 23, 2018, in a certain cause entitled:*

123569

Chicago Public Media, Inc., Reporters  
Committee for Freedom of the Press,  
WGN Continental Broadcasting Co.,  
LLC, WFLD Fox 32 Chicago, The  
Associated Press, WLS Television, Inc.,  
Chicago Tribune Company, LLC, and  
Sun-Times Media, LLC,

Movant

v.

Hon. Vincent M. Gaughan, Judge of the  
Circuit Court of Cook County,

Respondent

People State of Illinois

Jason Van Dyke

Motion for Supervisory Order  
Cook County Circuit Court  
15CR20622  
17CR4286

*Filed in this office on the 11th day of May A.D. 2018.*



*IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 23rd day of May, 2018.*

*Carolyn Taft Grosboll* Clerk,  
Supreme Court of the State of Illinois

123569

IN THE

## SUPREME COURT OF ILLINOIS

---

Chicago Public Media, Inc., Reporters	)	
Committee for Freedom of the Press,	)	
WGN Continental Broadcasting Co., LLC,	)	
WFLD Fox 32 Chicago, The Associated	)	Motion for Supervisory Order
Press, WLS Television, Inc., Chicago	)	Cook County Circuit Court
Tribune Company, LLC, and Sun-Times	)	15CR20622
Media, LLC,	)	17CR4286
	)	
Movant	)	
	)	
v.	)	
	)	
Hon. Vincent M. Gaughan, Judge of the	)	
Circuit Court of Cook County,	)	
	)	
Respondent	)	
	)	
People State of Illinois	)	
	)	
Jason Van Dyke	)	

---

CORRECTED ORDER

This cause coming to be heard on the motion of movants, Chicago Public Media, Inc., et al., due notice having been given to respondent, and the Court being fully advised in the premises:

IT IS ORDERED: Motion by Movants for a supervisory order. Allowed. The Circuit Court of Cook County is directed to vacate its February 3, 2017, order, directing that all documents and pleadings shall be filed in Room 500 of the George N. Leighton Criminal Courthouse only. All documents and pleadings shall be filed in the circuit clerk's office. The parties may move to file any document under seal.

Order entered by the Court.

Thomas and Theis, JJ., took no part.

**FILED**  
May 23, 2018  
SUPREME COURT  
CLERK

## **EXHIBIT B**

E-FILED  
5/11/2018 4:58 PM  
Carolyn Taft Grosboll  
SUPREME COURT CLERK

No. \_\_\_\_\_

---

IN THE  
SUPREME COURT OF ILLINOIS

---

Chicago Public Media, Inc., Reporters Committee	)	Appeal from the Circuit
For Freedom Of The Press, WGN Continental	)	Court of Cook County,
Broadcasting Co., LLC, WFLD Fox 32 Chicago,	)	Illinois, County Department,
The Associated Press, WLS Television, Inc.,	)	Criminal Division
Chicago Tribune Co., LLC, Sun-Times Media, LLC,	)	
	)	Circuit Court No.
Movants,	)	17 CR 0428601
	)	
v.	)	
	)	
The Hon. Vincent M. Gaughan,	)	The Honorable
	)	Vincent M. Gaughan,
Respondent.	)	Judge Presiding.

---

MOTION FOR SUPERVISORY ORDER AND MOVANTS' EXPLANATORY  
SUGGESTIONS IN SUPPORT OF THEIR MOTION FOR SUPERVISORY  
ORDER

---

Jeffrey D. Colman  
Gabriel A. Fuentes  
Clifford W. Berlow  
Patrick E. Cordova  
Jenner & Block LLP  
353 N. Clark St.  
Chicago, IL 60654  
(312) 222-9350  
jcolman@jenner.com  
gfuentes@jenner.com  
cberlow@jenner.com  
*Counsel for Chicago Public Media, Inc.*

Brendan J. Healey  
Mandell Menkes LLC  
1 N. Franklin St, Ste. 3600  
Chicago, IL 60606  
(312) 251-1000  
bhealey@mandellmenkes.com  
*Counsel for Reporters Committee for  
Freedom of the Press, WGN Continental  
Broadcasting Co., LLC, WFLD Fox 32  
Chicago, The Associated Press, and WLS  
Television, Inc.*

*(additional counsel listed on following page)*

Natalie J. Spears  
Dentons US, LLP  
233 S. Wacker Drive  
Chicago, IL 60606  
312-876-2556

natalie.spears@dentons.com  
*Counsel for Chicago Tribune Company, LLC*

Damon E. Dunn  
Funkhouser Vegosen Liebman & Dunn,  
Ltd.  
55 West Monroe Street  
Suite 2410  
Chicago, IL 60603  
(312) 701-6800  
ddunn@fvldlaw.com  
*Counsel for Sun-Times Media, LLC*

**MOTION FOR SUPERVISORY ORDER**

Pursuant to Supreme Court Rule 383, Movants<sup>1</sup> request this Court for a Supervisory Order compelling the Honorable Vincent M. Gaughan (“Respondent”) to vacate Respondent’s order requiring all who file motions, briefs, pleadings, and other documents in this matter to do so under seal and in chambers in contravention of the First Amendment. As grounds for this Motion, Movants state as follows:

1. On February 3, 2017, the Circuit Court entered an order, labeled “the Decorum Order” requiring “any documents or pleadings . . . to be filed in room 500 [the courtroom of the Circuit Court presiding judge in this matter] of the George N. Leighton Criminal Courthouse only.” (SR4.)

2. The February 2017 Decorum Order “applies to the defense, special prosecutor, and any other party that may occasionally become involved in [the] proceedings.” *Id.*

3. According to Respondent, any motion, pleading, or other document filed in chambers, including all documents filed pursuant to the February 2017 Decorum Order, is not subject to a presumption of public access. (SR296-300.)

4. The February 2017 Decorum Order, coupled with Respondent’s refusal to recognize motions, briefs, and other pleadings filed in chambers as public documents, has eliminated the well-established First Amendment presumption of access to documents

---

<sup>1</sup> Movants, and intervenors in the Circuit Court, are The Associated Press; Chicago Public Media, Inc.; the Chicago Tribune Company, LLC; Reporters Committee for Freedom of the Press; Sun-Times Media, LLC; WLS Television, Inc.; WGN Continental Broadcasting Co., LLC; and WFLD Fox 32 Chicago. The Reporters Committee is a non-profit organization dedicated to the promotion of press freedoms, and the remaining intervenors own newspaper, digital, and/or broadcast media operations that have provided news coverage of the *People v. Van Dyke* matter.

filed with the court. *See Press-Enter. Co. v. Superior Cr. Of Cal. For Riverside Cty.*, 478 U.S. 1, 8-9 (1986); *Skolnick v. Alzheimer & Gray*, 191 Ill. 2d 214, 232 (2000).

5. Respondent has denied Movants' repeated requests to modify the February 2017 Decorum Order to bring it into compliance with the First Amendment. (SR181-83.)

6. This Court may issue a supervisory order "when the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice." Ill. Sup. Ct. R. 383; *Burnette v. Terrell*, 232 Ill. 2d 522, 545 (2009) (citations omitted).

7. The Court's intervention under Rule 383 is needed because the standard appellate process is unlikely to afford Movants meaningful relief because Respondent has expressed an intention to commence trial as early as July 2018. (SR79; SR159.)

8. The appellate court will not be able to complete briefing, hold argument, and issue a decision before trial in this matter thereby depriving Movants' of any meaningful opportunity to report on Respondent's administration of justice in this important matter.

WHEREFORE, Movants respectfully request that this Honorable Court grant their Motion for Supervisory Order and the following relief:

- (1) the February 2017 Decorum Order is vacated;
- (2) going forward, all motions, briefs, pleadings, and other judicial documents in this case shall be filed publicly in the Circuit Court Clerk's Office, subject to any properly supported motion to seal; and
- (3) in ruling on any such future motion to seal judicial records, or any motion to reconsider Respondent's earlier sealing of any previously filed judicial records,

Respondent shall adhere to the governing First Amendment standards and enter specific, on-the-record judicial findings supporting suppression under those standards, or release such records in whole or in part, consistent with consideration of the least restrictive alternatives to complete suppression.

**MOVANTS' EXPLANATORY SUGGESTIONS IN SUPPORT OF  
THEIR MOTION FOR SUPERVISORY ORDER**

This case presents a fundamental First Amendment issue of critical importance to the citizens of this State and its free press. Respondent, the Hon. Vincent M. Gaughan, through an order he labels a "Decorum Order," unconstitutionally has barred the press and the public from court filings in one of the more significant Illinois criminal cases in recent memory: the prosecution of Chicago police officer Jason Van Dyke on a charge of murder in the shooting death of Laquan McDonald. Movants, which are seven news organizations and a non-profit group dedicated to advocating for press freedoms, ask this Court to exercise its supervisory authority under Supreme Court Rule 383 to remove the Respondent's unconstitutional requirement that all judicial documents be filed in secret in the judge's chambers; and to restore the settled First Amendment presumption of public access to judicial documents filed in a criminal case.

Under state and federal constitutional and common law principles, enunciated by this Court and the U.S. Supreme Court, judicial documents and records filed in civil and criminal proceedings are presumed to be open and available to the public. *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 230-33 (2000); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (citing *Press-Enterprise Co. v. Superior Court*,

464 U.S. 501 (1984) (“*Press-Enterprise I*”); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978).

Subverting that presumption, Respondent’s February 2017 Decorum Order has forced all who file documents in the Van Dyke case, including Movants as media intervenors, to file the documents under seal and in the judge’s chambers (SR4), whereas ordinarily, the parties and Movants would file motions, pleadings, and other judicial documents in public with the Clerk of the Court, where the Illinois Clerks of Court Act requires them to be available for public inspection. *See* 705 ILCS 105/16(6). But in this case, the judge has concluded that the First Amendment presumption of public access has no application to *any* document filed directly with him, in chambers, under what he has termed a “presumption of protection” (SR183), i.e., a denial of access, applicable to every document in this case.

Accordingly, Respondent has attempted to establish a special criminal proceeding, in which the well-established First Amendment and common-law presumptions of public access to documents filed in courts do not exist. Indeed, if permitted to stand, the February 2017 Decorum Order could be used by judges throughout the State to circumvent the First Amendment; Article I, Section 4 of the Illinois Constitution; and the common law right of access to court records. This Court should not countenance such subversion of constitutional guarantees and should promptly issue a supervisory order.

The February 2017 Decorum Order, on its face and certainly as applied, bars the public and press not only from access to previously filed judicial documents, but also to every judicial document that *will be* filed through the remainder of the case, absent the

judge's consent. By refusing Movants' request to modify or vacate the February 2017 Decorum Order to allow the parties to file their documents in public, Respondent has effectively required the media to make a new request for access every time a new document is filed. That is the inverse of how litigation is conducted in this State (or anywhere else) and the opposite of what the First Amendment and common law access presumptions require.

It is therefore critical that this Court invoke its supervisory authority to overturn the Circuit Court's attempt to destroy the First Amendment presumption of public access. The February 2017 Decorum Order is in irreconcilable conflict with this Court's decision in *Skolnick*, as well as foundational precedent from the U.S. Supreme Court and other federal appeals courts. Moreover, direct appeal to the Illinois Appellate Court will not afford Movants adequate relief, as Respondent has expressed an intent to conduct the trial as early as July 2018, (SR79; SR159), making it likely that the standard course of appellate review will not be complete before this critically important case is concluded. If the media lack any meaningful access to the court file in the weeks and months leading up to and including the trial, their ability to inform the public about this case will be irreparably stymied.

Accordingly, this Court should exercise its supervisory authority under Rule 383 to: (1) vacate Respondent's February 2017 Decorum Order; (2) require that, going forward, all motions, briefs, pleadings, and other judicial documents in this case be filed publicly in the Circuit Court Clerk's Office ("the Clerk's Office"), subject to any properly supported motion to seal; and (3) provide guidance and instruction to Respondent that in

ruling on any such future motion to seal judicial records, or any motion to reconsider Respondent's earlier sealing of any previously filed judicial records, that Respondent adhere to the governing First Amendment standards and enter specific, on-the-record judicial findings supporting suppression under those standards, or release such records in whole or in part, consistent with consideration of the least restrictive alternatives to complete suppression.

### FACTUAL BACKGROUND

1. The criminal prosecution giving rise to this Motion involves allegations that a Chicago police officer, Jason Van Dyke, murdered a teenager named Laquan McDonald by shooting him 16 times in an incident recorded by a police video camera in October 2014. Mr. Van Dyke initially was charged in November 2015 and is being prosecuted by a court-appointed special prosecutor under a superseding murder indictment returned in or about March 2017.

2. The Van Dyke prosecution has drawn national interest at a time of significant public debate about urban policing.

3. On February 3, 2017, Respondent entered the Decorum Order, which provided that:

[A]ny documents or pleadings filed in this matter are to be filed in room 500 [the courtroom of the Circuit Court presiding judge in this matter] of the George N. Leighton Criminal Courthouse only. This order applies to the defense, special prosecutor, and any other party that may occasionally become involved in these proceedings. This procedure will remain in effect unless and until otherwise ordered by the court.

(SR4.) Respondent described the foregoing order as intended "[t]o be in compliance with" an earlier order that, among other things, prohibited the prosecution and defense

lawyers and their agents from releasing publicly, or publicly referring to the existence or possible existence of, “any documents, exhibits, photographs, or any evidence, the admissibility of which may have to be determined by the Court.” (SR1-3.)

4. Movants filed their Motion for Intervention and Access to Court Documents (“Access Motion”) for the purpose of gaining access to judicial documents and proceedings, including seeking relief from the February 2017 Decorum Order. Intervention was granted on March 8, 2018, (SR76-77), but the access issues have been litigated in the Circuit Court for almost two months. In their motion, Movants explained that because Room 500 was Respondent’s chambers, the February 2017 Decorum Order meant that the court file in this matter and any documents included in it would not be available for public review at the Clerk’s Office. (SR56-57.)

5. The Circuit Court acknowledged as much during oral argument on the Access Motion:

THE COURT: Have you seen the file? . . . Of course you have not. So, nobody in the public has seen the file. So, it is not open to the public. So, your premise that it’s open to the public, because it’s in the file, now, is false, all right, because if it’s now open, otherwise, you wouldn’t be here. Do you understand that? . . . [T]he file has not been opened to the public. This has not been disseminated to the public.

(SR152, 153.)

6. When filed, Movants’ Access Motion sought access to the then-unknown number of court file documents that had been treated as non-public by the Circuit Court as a result of the February 2017 Decorum Order. Movants, in their briefs and submissions in the Circuit Court, demonstrated that under well-established state and federal law, all court pleadings are subject to the First Amendment presumption of public access, and

that no individualized findings had been made to justify withholding any filings from the public. (SR67-73); (SR118-40.) Movants also asked that the February 2017 Decorum Order be modified to allow all parties – including Movants, whose access-related pleadings were required by Respondent to be filed per the February 2017 Decorum Order – to file court documents publicly in the Clerk’s Office. (SR57-58); (SR144); (SR137-38); (SR296-300.)

7. In response to Movants’ efforts, the Circuit Court released a public docket sheet, (SR163), and the State identified a list of 111 previously filed documents in the case; the State agreed there was no basis to withhold any portion of 52 of them. (SR166-68, 169-75.) On April 28, 2018, the Court heard argument on the 49 documents as to which the State objected to disclosure on multiple grounds including the claimed inapplicability of the presumption of public access. (SR166-68; SR176-273.)

8. At oral argument, Respondent rebuffed Movants’ repeated attempts to explain that the First Amendment presumption of public access applies to *any* document filed for the judge’s consideration in this proceeding, whether in chambers or in the Clerk’s Office. Respondent circularly concluded that judicial documents filed under his secret filing procedure were never made public and thus could never be subject to the right of public access to them:

MR. FUENTES: You can’t withhold a document that’s within the Court file, from the public. If it’s presumed to be –

THE COURT: Stop right there.

MR. FUENTES: Yes.

THE COURT: All right. Now, the Court file you're talking about is one that has – not has – had unlimited access to my lawyers and the public, is that correct?

MR. FUENTES: No, I wouldn't say that the Court file –

THE COURT: Well, your theory is –

MR. FUENTES: -- is –

THE COURT: Excuse me, right now, you know, give me a chance, all right? Your theory is that if it's in the Court file, then the gate is opened, and the cat has ran out of the bag, but I'm telling you, you interrupt me again, you're not talking no more. You got that?

MR. FUENTES: Yes, sir.

THE COURT: All right, but the thing is, nothing has been opened up as of now; and I understand your point; and you're making some good points; but just to have this blanket thing, if it's in the file, then, there is no secrets or there is no – a way that you can preserve [reserve] anything, that you can't do damage control, or anything else like that. I'm not accepting that principle, all right, because otherwise, you wouldn't be here if the file was open, all right? Everybody would have access to it. So, your first premises or a hypothesis that it is open already, is not correct, okay?

(SA150-51.)

9. The Circuit Court then indicated that it would not hear arguments that court file documents filed in chambers per the February 2017 Decorum Order were or even could be subject to the presumption of public access:

MR. FUENTES: Once they are contained in a document filed with the – in the public –

THE COURT: You keep missing the point. You know, you're fixed on this –

MR. FUENTES: We disagree on that.

THE COURT: -- one point which undermines your logic, is that the file has not been opened to the public. This has not been disseminated to the public. That's the under -- you have to move on. Otherwise, you wouldn't be here.

(SR153.)

10. Finally, when this Court's decision in *Skolnick*, 191 Ill. 2d at 232, was brought to Respondent's attention, Respondent again refused to entertain an argument that the presumption could apply once the February 2017 Decorum Order blocked the public from access to filed documents in the first instance:

MR. FUENTES: So, we're asking the Court to follow Scholnick [*Skolnick*]; and Scholnick says once it is filed publicly with the Court, whether it's in this room or some other room, it's public.

THE COURT: Will you get off -- this has not been filed publicly, otherwise, you wouldn't be here. Do you understand how illogical your presentation is, when you say, once it's been filed publicly? It has not been filed publicly, all right? Thank you.

(SR158.)

11. At a subsequent oral argument on the Access Motion, Respondent reiterated his bright-line determination that all documents submitted directly to a court's legal chambers are not public documents and thus not subject to the First Amendment presumption of public access, given that under the February 2017 Decorum Order, Respondent had "held" them from the public:

THE COURT: I mean, they are not disclosed. They have been held. So you can't argue that. That is illogical to say that they are in the file, otherwise you wouldn't be here. You wouldn't be wasting your time and your talent --

MR. FUENTES: This was the discussion --

THE COURT: No, move on from that. No, I'm not going to listen to an irrational discussion. That's the purpose of this whole hearing today, to see

if they are going to be disclosed. I need some consensus now. Do you agree that these are not disclosed at this time –

MR. FUENTES: No, Judge, this is an official document subject to the presumption –

THE COURT: -- whether this is disclosed or isn't?

MR. FUENTES: It's subject to the presumption –

THE COURT: Excuse me, I'm asking a yes or no question . . . . You are saying that these, everything in these motions are already disclosed?

MR. FUENTES: I'm not saying they are disclosed . . . . I am saying they should. They are not disclosed and they should be.

THE COURT: I understand should be. So if we're going to go on bickering back and forth, I'm going to limit your presentation. All right. So can you give me some – come on, let's keep this thing intellectually honest. Are these subject to the inspection of our wonderful journalists here today?

MR. FUENTES: At this time, no.

THE COURT: Okay. That's all I wanted – so they are not disclosed. That's the illogical point that you keep presenting, that they are already in the file so therefore *there is no presumption of protection. That's not true.* And I don't want to hear that argument any more or I'll sit you down, concerning that they are already disclosed. All right. Move on.

(SR181-83) (emphasis added); (SR252-53, 265).

12. Ultimately, Respondent refused to allow public release of 36 of the 49 documents<sup>2</sup> asserted by the State to be outside the First Amendment presumption of public access. (SR296-300; SR177-273.)

---

<sup>2</sup> The Court's May 4, 2018 Order denying access to these documents lists 35 of these documents as to which relief was denied, with a 36th document, the Defendant's Motion for Change of Venue, listed as "ENTERED AND CONTINUED." (SR296-300.) On April 28 and on May 4, on the record, Movants requested the immediate release of this document, which is of high interest to the press and public, and the Court did not provide immediate release and refused to state anything further than that the request was being

13. Movants also asked Respondent to modify the February 2017 Decorum Order to allow public filing of all documents in the Clerk's Office (subject to motions to seal where appropriate), but Respondent refused. (SR296-300; SR276-78.) Given Respondent's position that judicial documents filed in his chambers are not presumptively open to the public, this ruling effectively (and impermissibly) provided that no documents filed in the Van Dyke prosecution going forward will be subject to the First Amendment presumption of access.

14. Applying a standard free of the First Amendment presumption of access, Respondent offered rationales for refusing to release certain documents. For example, Respondent indicated he would not release Defendant's motions to dismiss the indictment for alleged prosecutorial misconduct because Respondent believed the allegations in the dismissal motions were unfounded or unsupported by evidence, and were harmful or "slanderous" to the reputations of one or more public officials, and "[t]here's no way to get anybody's reputation back once these allegations would become public." (SR296-300; SR199, 203, 241-42.) Respondent also expressed discomfort with the public disclosure of these motion documents because Movants, as media organizations, refused to provide a wholesale waiver of their fair report privilege, which, among other things, protects media organizations from defamation lawsuits when they report on court proceedings; Respondent later cited this refusal as a ground for denying access. (SR241-42, 253-54.) Respondent's findings in support of his refusal to release these dismissal

---

"entered and continued." (SR273-74; SR281-83.) At this writing, the Motion for Change of Venue remains under seal, and thus Movants have included it in the number of documents as to which access has been denied.

motions were among several examples of erroneous findings Respondent made to deny access, having erroneously found in the first instance that the presumption of public access did not apply to these documents.

15. Respondent thus concluded that the First Amendment presumption of access does not apply to any documents in the Van Dyke criminal case and that he was “not going to unseal anything before I see it.” (SR275.) Respondent memorialized this erroneous view of the First Amendment in a written order issued on May 4, 2018, refusing Movant’s request to modify the February 2017 Decorum Order to allow public filing of judicial documents.<sup>3</sup> (SR296-300.)

### ARGUMENT

On its face and as applied, the February 2017 Decorum Order seeks to eviscerate the First Amendment. The public and press have effectively been stripped of their right to access and inspect the judicial documents filed in a criminal prosecution of high public interest. Respondent has flipped the First Amendment and common law presumptions of public access into a “presumption of protection” (SR183), suppressing every court filing

---

<sup>3</sup> Nor is Respondent’s disregard for the First Amendment’s mandate limited to the wholesale sealing of judicial records under the February 2017 Decorum Order; on May 4, 2018, Respondent closed completely a public hearing over the admissibility of evidence under *People v. Lynch*, 104 Ill. 2d 194 (1984), including all legal argument and the Court’s rulings (SR301-10; SR284-89) and impounded the transcript of the hearing, vowing not to release it until trial and not even considering releasing a redacted version. (SR293-94). Respondent also ordered closed a second hearing, later held on May 10, concerning the State’s motion to exclude proffered testimony by a defense expert. (*Id.*) Movants, as intervenors in the case, will continue to monitor Respondent’s closure of pre-trial hearings concerning the admissibility of evidence and other issues without giving sufficient weight to the First Amendment presumption of access and the need for any court closures to be narrowly tailored to a compelling interest, and Movants may – in the coming weeks or months – need to seek additional relief in this Court.

in this case as a matter of course. This goes far beyond what is necessary to protect the important interest of Defendant's fair trial rights, or any other potentially compelling interests here. What Respondent has done is extraordinary, and the need for this Court's intervention is clear. The importance of this case to the community cannot be overstated. The public must know that justice is being done, no matter what the outcome of the trial. It is therefore essential that the press and public have access to the process at *every stage* of the proceedings – including critical pre-trial proceedings – to monitor and ensure that the system is working, and promote respect for the judicial process itself. Sealed dockets, closed proceedings, and secret rulings do not serve that end. "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they have been prohibited from observing." *Richmond Newspapers*, 448 U.S. at 572.

**I. The Court Should Exercise Its Supervisory Authority To Vacate The Decorum Order And Bring Respondent Into Compliance With The First Amendment And Common Law Access Rights.**

Illinois Supreme Court Rule 383 allows the filing of motions asking this Court to exercise its supervisory authority over a lower court. Ill. Sup. Ct. R. 383. The Court may enter a supervisory order where the ruling of a lower tribunal was "entered in excess of its authority or as an abuse of its discretionary authority." *People ex rel. Daley v. Suria*, 112 Ill. 2d 26, 38 (1986) (citations omitted). This Court's supervisory authority is reserved for "exceptional circumstances," *Statland v. Freeman*, 112 Ill. 2d 494, 497 (1986), such as when the issue or issues presented are "of considerable importance to the administration of justice," *Owen v. Mann*, 105 Ill. 2d 525, 531 (1985). Motions under Rule 383 are most

appropriate where “the normal appellate process” is not likely to afford the movant complete or adequate relief. *Burnette v. Terrell*, 232 Ill. 2d 522, 545 (2009) (citations omitted).

This case presents a textbook example for when the Court should grant a supervisory order. Respondent has entered an order that effectively eliminates the public’s presumptive right of access to judicial documents in one of the more significant criminal trials to be held in this State in decades. Respondent also stated his intention to begin the trial as early as July 2018, creating the very real risk that no meaningful appellate review of his patently unconstitutional conduct will be possible. And the specific First Amendment issues in this case implicate core constitutional values, which lie at the very heart of our free society. The Court should therefore expeditiously grant this Motion and require Respondent to comply with his constitutional obligations.

**A. The First Amendment Creates A Presumption Of Public Access To Certain Motions, Briefs, and Pleadings Submitted In A Criminal Case.**

The First Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, provides that no law shall “abridg[e] the ... freedom of the press.” U.S. Const. amend I. The U.S. Supreme Court has held that implicit in that guarantee is a qualified right of access by the press to criminal proceedings and court documents. *Press-Enterprise Co. v. Superior Court of California for Riverside Cty.*, 478 U.S. 1, 8-9 (1986) (“*Press-Enterprise II*”). As this Court has held, the public’s right of access to court proceedings and documents, enshrined in the First Amendment and common law, is “essential to the public’s right to ‘monitor the functioning of our courts . . . .’” *Skolnick*, 191 Ill. 2d at 230 (quoting *In re Continental Illinois Secs.*

*Litig.*, 732 F.2d 1302, 1308 (7th Cir. 1984)). “Openness . . . enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.” *Press-Enterprise I*, 464 U.S. at 508.

The black letter precedent of this Court holds that the constitutional and common law right of access includes a presumption of public access to court records that “historically have been open to the public.” *Skolnick*, 191 Ill. 2d at 232 (citing *United States v. Corbitt*, 879 F.2d 224, 228 (7th Cir. 1989)). The First Amendment presumption of public access applies to such pleadings, motions, and other papers once they are filed with the court, because “[l]itigation is a public exercise; it consumes public resources.” *Skolnick*, 191 Ill. 2d at 236-37 (quoting *Levenstein v. Salafsky*, 164 F.3d 345, 348 (7th Cir. 1998)); see also *Union Oil Co. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000) (“What happens in the halls of government is presumptively public business”); *Pepsico, Inc. v. Redmond*, 46 F.3d 29, 31 (7th Cir. 1995) (“Opinions are not the litigants’ property. They belong to the public, which underwrites the judicial system that produces them.”) An important rationale for the presumption of public access to materials filed with a court, even discovery materials, is that documents “that influence or underpin the judicial decision” no longer are subject to secrecy that ordinarily might shield those documents from public inspection at the discovery stage. *Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 545 (7th Cir. 2002).

That basic notion – that documents meeting the “experience and logic” test and filed with a court are presumptively accessible – has been recognized by state and federal courts for decades. See, e.g., *United States v. Peters*, 754 F.2d 753, 763 (7th Cir. 1985);

*A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 997 (1st Dist. 2004); *In re Marriage of Johnson*, 232 Ill. App. 3d 1068, 1074 (4th Dist. 1992). And it has been recognized to apply first and foremost to criminal cases. *Smith v. U.S. Dist. Court*, 956 F.2d 647, 650 (7th Cir. 1992). Indeed, “[m]ost of the cases recognizing the presumption of access relate to the right of the public (and press) to attend *criminal* proceedings and to obtain documents used in *criminal* cases.” *In re Continental Illinois*, 732 F.2d at 1308 (collecting cases) (emphasis in original). Moreover, the “original inception [of the right of access] was in the realm of criminal proceedings” and only later was “extended to civil proceedings.” *Grove Fresh*, 24 F.3d at 897 (citing *Smith*, 956 F.2d at 650). The U.S. Supreme Court has stated that openness is most critical in cases (like the one here) involving allegations against public officials. See *Waller v. Georgia*, 467 U.S. 39, 47 (1984).

Overcoming the presumption of access is “a formidable task.” *In re Associated Press*, 162 F.3d at 506. The presumption is rebuttable only by a showing that denial of access is essential to preserve a higher value and is narrowly tailored to serve that interest. *Skolnick*, 191 Ill. 2d at 232 (citing *Grove Fresh*, 24 F.3d at 897). Where the higher value at issue is a criminal defendant’s right to a fair trial, the court may deny access only if it finds that: (1) publicity resulting from disclosure would create a “substantial probability” of prejudicing the fair trial right, and (2) reasonable alternatives to denial of access will not adequately protect the right. *Press-Enterprise II*, 478 U.S. at 13-14.

**B. By Its Own Terms, The Decorum Order Is In Irreconcilable Conflict With The First Amendment.**

The records Respondent is keeping secret under the February 2017 Decorum Order have not only “historically . . . been open to the public,” *Skolnick*, 191 Ill. 2d at 232, but Illinois law also requires that the Clerk of the Court keep such records available for public inspection. *See* 705 ILCS 105/16(6). By commanding instead that all documents filed in this matter be filed in room 500 of the George N. Leighton Criminal Courthouse, rather than the Clerk’s Office, the February 2017 Decorum Order is a blatant subversion of the law, effectively replacing the First Amendment and common law presumptions of access with Respondent’s “presumption of protection” (SR183), which means a presumption of no access, and thus of secrecy.<sup>4</sup> The February 2017 Decorum Order therefore is unconstitutional on its face.

To vindicate the First Amendment, *see Skolnick*, 191 Ill. 2d at 232; *A.P.*, 354 Ill. App. 3d at 993-95, 997, the common law right of access to judicial documents, *see Nixon*, 435 U.S. at 597, and the right of access grounded in the Illinois Constitution’s parallel free speech guarantee, *see* Ill. Const. art. I, § 4 (1970), as well as the Illinois statutory right to inspect court records under the Clerks of Court Act, 705 ILCS 105/16(6), this Court

---

<sup>4</sup> *People v. Kelly*, 397 Ill. App. 3d 232 (1st Dist. 2009), does not justify creating such a presumption of no access to judicial documents. In *Kelly*, a unique case involving allegations of unlawful sexual activity with a child, the court held that the presumption of public access did not apply to a few pretrial documents in a court file (specifically a single motion in limine, a witness list, and two discovery responses), *id.* at 257, 259-60, but it did not uphold or even involve an order such as the February 2017 Decorum Order here, which removes from public access every document from the moment it is filed. This Court is currently reviewing certain aspects of *Kelly* in *People v. Zimmerman*, 2017 IL App (4th) 170055, *appeal allowed*, No. 122261, 2017 WL 4359033 (Ill. Sept. 27, 2017).

should order that the February 2017 Decorum Order be vacated. The Court also should order it replaced with a constitutionally sound procedure in which the parties file their documents in public in the Clerk's Office while allowing the parties to move to file a document under seal, whereupon Respondent could seal the document only by making findings that sealing is necessary to protect a compelling interest and is narrowly tailored to serve that interest. *See Press-Enterprise II*, 478 U.S. at 13-14; *People v. LaGrone*, 361 Ill. App. 3d 532, 535-36 (4th Dist. 2005).

**C. Respondent Has Applied The Decorum Order To Seal Permanently Numerous Judicial Documents, Undermining The First Amendment.**

Aside from how Respondent's wholesale abrogation of the First Amendment presumption of access violates well established constitutional law, Respondent has further defied the First Amendment through his application of the February 2017 Decorum Order to specific documents. Instead of presuming that court file documents are accessible to the public and placing the burden of justifying closure on the party seeking such closure, as required under *Press-Enterprise II*, the Court has put the onus on Movants to establish why individual documents should be released. Then, in denying release of numerous documents, the Respondent developed and applied standards far below the high bar constitutionally required for denying public access.

By way of example, but without conceding that any of the 36 previously withheld documents may be lawfully withheld from public scrutiny, Respondent developed at least four standards to justify suppressing of 13 of those documents, where such suppression cannot be squared with clear First Amendment doctrine. Accordingly, at a minimum, the Court should exercise its supervisory authority to reject these indefensible standards.

*First*, Respondent denied access to eight motions, briefs, or other filings relating to two of the defense motions to dismiss the indictment for alleged prosecutorial misconduct by former State's Attorney Anita Alvarez, on the grounds that the motion papers – which Defendant did not object to releasing – contained allegations that had the potential to defame Ms. Alvarez or other public officials, or that the allegations were untrue, unfounded or irrelevant. (SR199, 203, 206, 209, 240-41, 253-54, 264, 268.) But this Court has stated specifically that concerns about an individual's reputation are *not* a proper ground for denying public access to such documents. *Skolnick*, 191 Ill. 2d at 234. Nor is there any basis for suppressing a motion, brief, or other pleading because Respondent believes it to be irrelevant or unsupported by evidence. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 123 (2d Cir. 2006) (holding that determination of presumptive accessibility of documents submitted to the court turns only on whether the assertions were brought to the court's attention, and not on the extent to which the court relied on them). Worse, Respondent then included among his reasons for denying access to these documents the idea that Movants, as media organizations, would not waive their privileges against defamation lawsuits. (SR199, 241-42, 254.) This amounts to an unconstitutional condition. In essence, Respondent held that Movants may access at least these motion documents only if they agree to waive the fair report privileges or other defamation privileges, some of which are constitutionally grounded. *See New York Times v. Sullivan*, 376 U.S. 254 (1964).

*Second*, Respondent also refused to release three motions or briefs relating to the admissibility of certain evidence regarding the decedent Laquan McDonald's alleged

propensity for violence under *Lynch*, but without finding that withholding these materials was essential to protect higher interests. (SR255-58.) The mere incantation of *Lynch*, however, cannot suffice to justify withholding of a document from the public, particularly when the substance of the witness accounts considered for admission under *Lynch* already was summarized publicly in a hearing on January 18, 2018. (SR7-54.) See *In re Continental Illinois*, 732 F.2d at 1313 (“Once the evidence has become known to the members of the public, including representatives of the press, through their attendance at a public session of court, it would take the most extraordinary circumstance to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence.”). Further, Respondent refused even to release these pleadings with the witness names redacted. (SR255-58.)<sup>5</sup> But it is well-established that courts should “limit sealing orders to particular documents *or portions thereof* which are directly relevant to the legitimate interest in confidentiality.” *A.P.*, 354 Ill. App. 3d at 1001 (emphasis added).

*Third*, Respondent withheld the defense’s Motion for Change of Venue, which seeks to move the trial of this matter outside Cook County, on the ground that Defendant is still gathering additional data he plans to submit in support of that motion, and that because Respondent prompted Defendant to file the motion without all the data, release of the motion would be “premature.” (SR273-74.) But surely the need to gather data to render a decision falls far short of any viable justification for denying public access to the

---

<sup>5</sup> In the same vein, Respondent has refused to release a redacted transcript of the May 4, 2018 *Lynch* hearing that he improperly closed to the public in its entirety. (SR293-94).

motion itself. *See In re New York Times Co.*, 828 F.3d 110, 116 (2d Cir. 1987) (noting that sealing must be based on specific, on-the-record findings demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest, and not “[b]road and general findings by the trial court”).

*Fourth*, Respondent applied the February 2017 Decorum Order to force Movants to file, in Respondent’s chambers, their own pleadings seeking access to documents and proceedings. One of these filings, a status report, remains in chambers, and Respondent forced Movants to file a second document in chambers before allowing its disclosure. (SR296-300; SR80; SR268-70, 275.) Requiring intervening media organizations to file their documents under seal in public access litigation is a clear abuse of judicial discretion, *A.P.*, 354 Ill. App. 3d at 993, and here no compelling justification was advanced. As to the filing that Respondent has kept under seal, he said he was concerned about the “confidentiality” of communications among the attorneys on the matter, and as to another document he ordered Movants to file under seal, a brief opposing closure of public hearings held May 4 and 10, Respondent stated that he would not “unseal” *any* document until he reviewed the document first. (SR270, 275.) These rationales are plainly insufficient. Going forward, the record establishes that under Respondent’s application of the February 2017 Decorum Order, Movants will need to make ongoing, renewed requests for newly filed documents upon learning of them, as they already have been forced to do. (SR290-92.)

It is clear that Respondent prefers to conduct proceedings in his court without a presumption of public access to judicial documents. But that is not the law. The First

Amendment and common law presumptions of access apply in Respondent's courtroom. Respondent's refusal to apply these presumptions is particularly harmful in a case with such importance to the public. Respondent should *not* be allowed to continue to avoid them and the specific findings they require in order to bar the press and public from access to judicial documents in the court file. Based on Respondent's continued and rampant abuses of the First Amendment in sealing the court file, Movants respectfully request that this Court exercise its supervisory authority to vacate the February 2017 Decorum Order in its entirety and instruct Respondent that in ruling on any future motion to seal or motion to reconsider a previous sealing order, sealing, if it is to occur at all, may be permitted only to the extent appropriate after giving proper weight to the First Amendment presumption of access and after applying the rigorous *Press-Enterprise II* test as set forth above.

## **II. The Harm To Movants Cannot Be Remedied Through The Normal Appellate Process.**

It is especially appropriate for this Court to issue a supervisory order “when the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice.” *Burnette*, 232 Ill. 2d at 545 (citation omitted). Here, adequate relief cannot be granted through the ordinary channels because the time required to complete appellate review likely will deprive Movants of their rights even if they prevail. *See e.g. Delgado v. Bd. of Election Comm’rs of City of Chicago*, 224 Ill. 2d 481, 481, 488-89 (2007) (finding that “direct and immediate action [was] necessary” to remove a candidate from a ballot where there was an impending election).

The inadequacy of traditional appellate review is rooted in Respondent's professed intention to commence trial as early as July 2018. (SR79; SR159.) That makes it all but certain that the appellate court will not be able to complete briefing, hold argument, and issue a decision before trial in this matter. To inform the public of what is happening in this important case, Movants seek to vindicate their First Amendment and common law rights of immediate and ongoing access to the filings and proceedings in this case. "The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression." *Grove Fresh*, 24 F.3d at 897. Only through the immediate intervention of this Court, through the exercise of its unique supervisory powers, can Movants receive a proper remedy before trial.

### CONCLUSION

For the foregoing reasons, Movants respectfully request that their Motion for Supervisory Order be granted and that this Court order Respondent to vacate the February 2017 Decorum Order, to require public filing of all judicial documents in the Clerk's Office subject to consideration of motions to seal under proper constitutional and common law standards, and to instruct that in ruling on any such future motion to seal judicial records, or any motion to reconsider Respondent's earlier sealing of any previously filed judicial records, Respondent shall adhere to the governing First Amendment standards and enter specific, on-the-record judicial findings supporting suppression under those standards, or release such records in whole or in part, consistent with consideration of the least restrictive alternatives to complete suppression.

Dated: May 11, 2018

Respectfully submitted,

CHICAGO PUBLIC MEDIA, INC.

By: /s/ Gabriel A. Fuentes  
One of Its Attorneys

THE ASSOCIATED PRESS  
WLS TELEVISION, INC.  
WGN CONTINENTAL BROADCASTING  
CO., LLC  
WFLD FOX 32 CHICAGO  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS

By: /s/ Brendan J. Healey w/ consent  
One of Their Attorneys

CHICAGO TRIBUNE COMPANY, LLC

By: /s/ Natalie J. Spears w/ consent  
One of Its Attorneys

SUN-TIMES MEDIA, LLC

By: /s/ Damon E. Dunn w/ consent  
One of Its Attorneys

Jeffrey D. Colman  
 Gabriel A. Fuentes  
 Clifford W. Berlow  
 Patrick E. Cordova  
 Jenner & Block LLP  
 353 N. Clark St.  
 Chicago, IL 60654  
 (312) 222-9350

[jcolman@jenner.com](mailto:jcolman@jenner.com)  
[gffuentes@jenner.com](mailto:gffuentes@jenner.com)  
[cberlow@jenner.com](mailto:cberlow@jenner.com)

*Counsel for Chicago Public Media, Inc.*

Natalie J. Spears  
 Dentons US, LLP  
 233 S. Wacker Drive  
 Chicago, IL 60606  
 312-876-2556

[natalie.spears@dentons.com](mailto:natalie.spears@dentons.com)

*Counsel for Chicago Tribune Company,  
 LLC*

Brendan J. Healey  
 Mandell Menkes LLC  
 1 N. Franklin St, Ste. 3600  
 Chicago, IL 60606  
 (312) 251-1000

[bhealey@mandellmenkes.com](mailto:bhealey@mandellmenkes.com)

*Counsel for Reporters Committee for  
 Freedom of the Press, WGN Continental  
 Broadcasting Co., LLC, WFLD Fox 32  
 Chicago, The Associated Press, and WLS  
 Television, Inc.*

Damon E. Dunn  
 Funkhouser Vegosen Liebman & Dunn, Ltd.  
 55 West Monroe Street  
 Suite 2410  
 Chicago, IL 60603  
 (312) 701-6800

[ddunn@fvldlaw.com](mailto:ddunn@fvldlaw.com)

*Counsel for Sun-Times Media, LLC*

# **EXHIBIT C**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	17 CR 04286-01
Plaintiff,	)	
	)	
v.	)	Order
	)	
JASON VAN DYKE,	)	
	)	Hon. Vincent M. Gaughan
Defendant.	)	Judge Presiding

This Court's order dated February 3, 2017 is terminated instanter pursuant to the Illinois Supreme Court's order of May 23, 2018.

All motions or other filings shall be filed with the Clerk of Court on the fifth floor of the administrative building, 2650 S. California. Courtesy copies shall be submitted to the Court in Room 500 on the same date.

Prior to submission to the Clerk, the filing party shall first notify the opposing party of its intention to do so and the nature of the document, to afford the other party fair opportunity to request the document be sealed. No party shall file any document with the Clerk until receiving a reply from the other party indicating receipt of notice. The Court expects the parties to act promptly and in good faith.

So ordered.



Date: May 24, 2018

*Vincent M. Gaughan*  
Judge Vincent M. Gaughan  
Cook County Circuit Court  
Criminal Division  
1553

## **EXHIBIT D**

STATE OF ILLINOIS     }  
COUNTY OF C O O K    } SS:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE  
OF ILLINOIS,

Plaintiff,

vs.

JASON VAN DYKE,

Defendant.

No. 17 CR 04286-01

REPORT OF PROCEEDINGS had in the  
hearing of the above-entitled cause, before the Honorable  
VINCENT M. GAUGHAN, Judge of said Court, on Thursday, the  
31st day of May, A.D., 2018.

APPEARANCES:

HON. JOSEPH McMAHON,  
State's Attorney of Kane County,  
Court-Appointed Special Prosecutor, and  
MR. JOSEPH CULLEN,  
MR. DANIEL WEILER,  
MS. MARILYN HITE ROSS,  
Assistant Special Prosecutors,  
appeared on behalf of the People;

MR. DANIEL HERBERT,  
MS. TAMMY WENDT, and  
MR. RANDY RUECKERT,  
Attorneys at Law,  
appeared on behalf of the Defendant;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

MR. GABRIEL A. FUENTES,  
MR. JEFFREY COLMAN,  
MR. PATRICK CORDOVA,  
MS. NATALIE SPEARS, and  
MR. BRENDAN J. HEALEY,  
appeared on behalf of the  
Intervenors.

Siobhra Redmond  
Official Court Reporter  
2650 South California, Room 4-C02  
Chicago, Illinois 60608  
CSR #084-004552

1 THE COURT: Keep talking. Keep talking. All right.  
2 You want to say something else when I'm saying we're in  
3 recess and I'm trying to walk out the door.

4 (Brief interruption.)

5 THE COURT: Is he with you, Gabriel?

6 MR. FUENTES: No, sir.

7 THE COURT: All right. There will be a short  
8 recess. Thank you.

9 (Brief interruption.)

10 THE COURT: All right. I'm finding him in direct  
11 contempt. He ain't getting let go.

12 (Whereupon the above-entitled cause  
13 was passed and later recalled.)

14 THE CLERK: Sheet 6, recalling Jason Van Dyke.

15 THE COURT: All right. Gabriel, since you're the  
16 spokesman for the intervenors at this time, what is your  
17 position about the wrong nomenclature of this decorum  
18 order?

19 MR. FUENTES: Judge, we're fine with taking the word  
20 decorum out of the motion. That's fine.

21 THE COURT: Thank you very much. And the only  
22 reason again, it's going to cause confusion because we  
23 have exact decorum orders that we have been using. So  
24 thank you. I appreciate that. That's very

1 professional.

2 All right. Does the defense and prosecution want  
3 to respond to this?

4 MR. HERBERT: Yes, Judge.

5 MR. McMAHON: Yes, Judge.

6 THE COURT: All right. Let me get a briefing  
7 schedule so everybody can make it.

8 How does everybody look for June 14th? Is that  
9 good?

10 MR. FUENTES: It's a good day for me, your Honor,  
11 June 14th.

12 THE COURT: Natalie, it's good for you?

13 MS. SPEARS: I may not be able to be here, but  
14 that's fine, Mr. Fuentes will. Thank you.

15 THE COURT: Brendan?

16 MR. HEALEY: Works for me, your Honor.

17 THE COURT: Okay. Good. Everybody good with that  
18 then?

19 All right. That's for the defense and  
20 prosecution to file their response to your motion.

21 All right. And then if you want time to file a  
22 reply to that, certainly we will give you that.

23 Okay. Great.

24 MR. FUENTES: Thank you, your Honor. In addition

1 briefly we may want to file a supplement to our  
2 supplemental motion to acknowledge the Court's filing of  
3 an order in the case, just to make sure we're all  
4 dealing precisely with what we're asking --

5 THE COURT: Filing of what order now?

6 MR. FUENTES: With regard to our supplemental motion  
7 for access in which we ask for a number of things. We  
8 didn't know until this morning that the Court had  
9 actually entered an order on May 24th and we're  
10 evaluating --

11 THE COURT: You didn't check with the clerk's  
12 office?

13 MR. FUENTES: We actually did, Judge.

14 THE COURT: On what date?

15 MR. FUENTES: Before we filed. We checked on  
16 Friday, Judge, which is the day after it was in the  
17 clerk's office.

18 THE COURT: But that isn't May 24th.

19 MR. FUENTES: I'm sorry, Judge?

20 THE COURT: Was it -- Let me see. Let me check.

21 MR. FUENTES: Your order is dated May 24th.

22 THE COURT: The 24th. That's when it was signed.  
23 It should have been available to you at that time.

24 MR. FUENTES: And we're not faulting anyone, Judge.

1 But I'm just saying that we want to add --

2 THE COURT: Gabriel, this isn't the first time

3 people have not paid attention, so --

4 MR. FUENTES: Okay. Thank you, Judge.

5 THE COURT: Do you have a copy of that?

6 MR. FUENTES: A copy of the ...

7 THE COURT: The May 24th order.

8 MR. FUENTES: I do.

9 THE COURT: Okay.

10 MR. FUENTES: It's right here, Judge, if you'd like

11 to see it.

12 THE COURT: No, I have some up here. I just want to

13 make sure you have copies of that.

14 MR. FUENTES: Yes, sir.

15 THE COURT: All right. Sure. That's good. Then

16 we're through then. Then we're going to go on to --

17 We're going to litigate in open court the motion --

18 general motion in limine; is that correct?

19 MR. McMAHON: That's correct. Mr. Weiler is

20 prepared to proceed.

21 THE COURT: All right then. Mr. Rueckert has

22 another scheduling problem today, so we're not going to

23 be able to go into the sealing motion on Dr. Miller

24 today, so we will have to enter and continue that.

1       MR. FUENTES: Yes. We want to file something to  
2 make all that clear.

3       THE COURT: And it says all documents and pleadings  
4 shall be filed in the circuit clerk office. Okay. But,  
5 you know, it's a question of whether it's, you know,  
6 retroactive or not, but I'm not -- at this time we're  
7 not disputing that. But they will be up there, but they  
8 will be -- You have the list of documents? We gave you  
9 that.

10       MR. FUENTES: We do, Judge. So I just want to be  
11 sure I understood what the current status was so we can  
12 address it and the parties can respond to what we  
13 averred.

14       THE COURT: Legally spoken. Everything is open to  
15 public -- excuse me -- Everything is open to inspection  
16 except those that are not.

17       MR. FUENTES: Thank you, Judge. And we'll determine  
18 that through our clerk's office visit.

19       THE COURT: Sure. Well, again we have three sets of  
20 very outstanding lawyers.

21       MR. FUENTES: Thank you, Judge.

22       THE COURT: Okay. Good. All right. Thank you all.

23       MR. COLMAN: Could I ask a question.

24       THE COURT: Yes, Jeff.

1 14th. Thank you all.

2 MR. McMAHON: Thank you.

3 THE COURT: Yes.

4 (Whereupon the above-entitled cause  
5 was passed and later recalled.)

6 THE COURT: Mr. Van Dyke.

7 THE CLERK: Jason Van Dyke.

8 THE COURT: All right. Mr. Van Dyke is not present.  
9 The special prosecutor is not present.

10 Jeff, come on up. Yeah. All right.

11 Jeff, state your name for the record.

12 Angie, come out in front, please.

13 MR. COLMAN: Jeff Colman, Patrick --

14 THE COURT: Let Patrick state his name too.

15 Go ahead, Patrick.

16 MR. CORDOVA: Patrick Cordova on behalf of Chicago  
17 Public Media.

18 THE COURT: State your name too.

19 MS. SCOTT: Liza Scott, law student.

20 THE COURT: Thank you.

21 Jeff, Angie is an outstanding person. Could you  
22 let her know the problem that you encountered when you  
23 went up to the fifth floor of her office.

24 MR. COLMAN: I met with Angie there, and I agree

1 with you, she's an outstanding person.

2           The problem we've encountered was that Angie  
3 showed us a hard copy of the file in this case. And I  
4 took a photograph of it. There was only one document in  
5 2018 in the hard copy file and it was a March 8  
6 document. Everything else was designated as restricted  
7 in the hard copy file.

8           I'm not going to ask -- I'm not going to  
9 interrogate her. It's up to the judge. So that was the  
10 problem.

11           We were told that you were hearing the motion  
12 today. That was a motion in limine filed by the  
13 prosecution dated April 21, that the prosecution  
14 conceded was not intended to be under seal, and that  
15 there was a May 11 response filed by the defense.  
16 Neither of those documents were in the court file.

17       THE COURT: Okay. Here's the thing, you know, they  
18 were filing these things according to my order of  
19 February 3rd, 2017. All right. And then we had a  
20 hearing to see whether documents were presumed to have  
21 public access by the people and by the media, all right?  
22 We laid out a whole series of these documents and it was  
23 recorded. And I don't know why and what happened to  
24 those. And those were open to the public, all right?

1 And I made those orders, all right?

2 So when a document has this designation on it and  
3 then you have the other list where these things were  
4 presumed to have public access, and this was also  
5 discussed in open court, then there is no decorum order  
6 pertaining to those. They were overruled by the other  
7 circumstances.

8 So do you have the list up there?

9 MADAM CLERK MISTER: Yes.

10 THE COURT: You have the list?

11 MADAM CLERK ROBINSON: No, I do not.

12 THE COURT: Well, what happened to that?

13 MADAM CLERK MISTER: I have the list, but I will  
14 give it to her.

15 THE COURT: This was supposed to be done weeks ago.

16 MADAM CLERK MISTER: Right, but I was going off of  
17 the --

18 THE COURT: No, you have to go off the list because  
19 the list, we had a hearing on this, all right, and these  
20 were presumed to have access and we made the list out.

21 MADAM CLERK MISTER: Okay. I got it.

22 THE COURT: Well, let's get the list given to Angie  
23 right now.

24 MADAM CLERK MISTER: There it is, but it doesn't go

1 up to May.

2 THE COURT: This is dated April 26th anyway.

3 MADAM CLERK MISTER: This is the list. And the last  
4 one on here is March 6th.

5 THE COURT: Give us copies of the list but there was  
6 another printed one, all right, which said --

7 MADAM CLERK MISTER: Right, the one that I took my  
8 notes on. This is what I went off of.

9 THE COURT: Okay. Yeah, but was it clear?

10 How come -- You didn't get that?

11 MADAM CLERK MISTER: No, I don't have it.

12 THE COURT: Toni, come on.

13 All right. We prepared a whole list of documents  
14 that were presumed to be -- to have public access and  
15 those were in my court order, all right, and those  
16 were -- the court order was made that those were  
17 available to the public and also to the media.

18 MR. COLMAN: And, your Honor --

19 THE COURT: Yeah, go ahead.

20 MR. COLMAN: -- I'm happy to work with Angie and the  
21 clerk's office.

22 THE COURT: Let me say something off the bat, Jeff,  
23 you're a perfect gentleman, so -- and I appreciate that,  
24 so that's good. I mean, these things should have taken

1 care of. I ordered them, you know. Unless somebody  
2 comes in and says your order is not working, which you  
3 did today, and I thought, you know, that these things  
4 should have been disclosed, it's a little frustrating.

5 MR. COLMAN: And, your Honor --

6 THE COURT: Yes, go ahead.

7 MR. COLMAN: -- I think you are doing whatever you  
8 can to do your job right. We obviously respectfully  
9 disagree and that's what the system is about.

10 THE COURT: Oh, yeah, I have no problem --

11 MR. COLMAN: All I want to say is these people over  
12 here who we're representing, they're trying to do their  
13 job too. And if you go to the clerk's office right now  
14 and you ask to see the hard file, you wouldn't even see  
15 our motion to intervene. It's not there in the hard  
16 file. I don't know if it's been scanned. I'm too old  
17 to understand how the scanning part of it works.

18 THE COURT: Jeff, you're as sharp as a tac.

19 MR. COLMAN: But the hard file doesn't have anything  
20 from 2018 except for one darn motion.

21 THE COURT: We are correcting that right now. The  
22 other thing is, you've got to look at Gabriel's -- We  
23 prepared an order which said that the intervening --  
24 intervenors' petition was not under the decorum order.



# **EXHIBIT E**

Jeffrey D. Colman  
Tel 312 923-2940  
Fax 312 840-7340  
JColman@jenner.com

June 6, 2018

Via Email

Joseph H. McMahon, Esq.  
Jody P. Gleason, Esq.  
Joseph M. Cullen, Esq.  
Marilyn J. Hite-Ross, Esq.  
Daniel H. Weiler, Esq.  
Kane County State's Attorney, Court-Appointed Special Prosecutor  
Kane County State's Attorney's Office  
37W777 Route 38, Suite 300  
St. Charles, Illinois 60175  
jm@co.kane.il.us

Daniel Q. Herbert, Esq.  
Tammy L. Wendt, Esq.  
Herbert Law Firm  
206 S. Jefferson, Suite 100  
Chicago, Illinois 60661  
dan.herbert@danherbertlaw.com

Re: *People v. Jason Van Dyke*, No. 17 CR 0428601 (formerly 15 CR 2062201)

Dear Joe, Dan, and Colleagues:

Gabe has been in a hearing this week, so I am writing to follow up on a few matters.

By way of background, as you know, your response to our May 29 Supplemental Motion is due on June 7, our reply is due on June 11, and the matter is set for a further hearing on June 14. We considered the possibility of filing an amended motion this week, but we thought it would be more efficient to apprise you of our position by letter.

Thus, we write this letter to clearly set forth our position on two matters: (1) the state of the record in the Clerk's Office, and (2) the sealing mechanism set forth in Judge Gaughan's Order of May 24. We intend to address both of these issues in our June 11 reply and/or other filings next week, and if we do not obtain appropriate relief from Judge Gaughan, we may need to seek additional appellate relief. So you understand our position, we set it forth here:

1. The Current Status of the Court File

After you left court on May 31, we continued to meet in the Clerk's Office and then with Judge Gaughan and his courtroom clerk. I think it is fair to say that everyone understood – at least as of May 31 – that the court file (hard copy and electronic) in the Clerk's Office was truly in disarray. From the perspective of our clients, who are representatives of the news media, this makes it extremely difficult to properly report on any filings. From the perspective of the special prosecutor, we think a disorganized and/or incomplete court file also should be viewed as a disservice to the community. From the perspective of the defense, we assume you want a clear record of what is in the court file, and that you would therefore join us in attempting to have a file that contains an accurate reflection of the records in this case.

Recognizing that there were serious problems with the status of the court file in the Clerk's Office at least as of May 31, Judge Gaughan asked me to write a letter to the Clerk setting forth our understanding of what is supposed to now be part of the public file. Pursuant to the judge's instructions, I did so on June 1. A copy of my letter is attached.

We ask that this week you join us in a dedicated effort to make sure that two things are done in the Clerk's Office. First, the Clerk's Office should have in place an accurate and complete docket sheet that reflects every single filing and order entered in this case. We assume that you agree with us that that should be done. If you do, please help us and the Clerk's Office ensure that a fair and complete docket sheet is available to everyone.

Second, we ask that you follow up on my letter of June 1, and that you help Angela Robinson ensure that the Clerk's Office has a complete listing of everything that has been filed in the *Van Dyke* cases that should be part of the public record. We will appreciate your agreement to assist the Clerk's Office in this regard.

2. The Sealing Mechanism

In our Supplemental Motion, we set forth our proposal for how motions to seal should be addressed. See Supp. Mot. at 2-3.

As I think you know, when we filed our Supplemental Motion on May 29, we were unaware of the judge's order of May 24 which sets forth the Court's sealing mechanism.

We respectfully disagree with the judge's sealing mechanism and have significant concerns about its impact on Intervenor's continuing efforts to vindicate the First Amendment and common law access presumptions as well as the letter and spirit of the Illinois Supreme Court's Order of May 23. The pre-filing requirement is – in our review of the law – unprecedented, overly broad and a burden on the right of access. We will address this issue more fully when we file our reply on June 11, but we wanted you to know in advance (so you can address it in your filing) the following:

Joseph H. McMahon, Esq.  
Daniel Q. Herbert, Esq.  
June 6, 2018  
Page 3

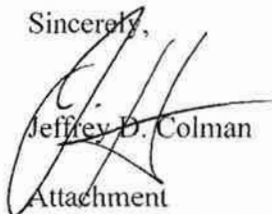
a. The Supreme Court's Order of May 23 states that "[a]ll documents and pleadings shall be filed in the [C]ircuit [C]lerk's [O]ffice" and that "the parties may move to file any document under seal."

b. But the May 24 Order restricts the parties from filing documents and pleadings in the Clerk's Office until the other party or parties receive notice of the impending filing and reply to the filing party. The May 24 Order in essence re-imposes the "secret" process that existed before the Supreme Court acted. Under the May 24 Order, the media and the public apparently receive (1) no notice of a filing (if one or both of the parties want the pleading to be under seal), (2) no copy of any sealing motion, and (3) no copy of the underlying document in either a full or a redacted manner. We received Joe's email to Gabe of today and are continuing to evaluate it, but we appreciate Joe's confirming the fact that the State already has filed at least one motion to seal in this case (and has at least one additional motion planned), and that the State has not served this document upon Intervenor and apparently believes it is under no obligation to do so. We will seek clarity on the procedure but are concerned that it violates the First Amendment and the Supreme Court's Order of May 23.

c. We ask that you agree – in your June 7 filings – to a sealing mechanism that comports with the First Amendment and the Supreme Court's supervisory writ. In addition to what we set forth at pages 2 to 3 of our Supplemental Motion: With respect to any future motions to seal, the parties should employ the commonly used protocol for motions to seal in Illinois courts (*i.e.*, publicly file in the Clerk's Office a motion to seal along with a redacted version of the applicable document and file under seal with the Clerk's Office an unredacted version that will be unsealed only if the Court denies the motion to seal). Thus, any motions to seal all or any portion of a court filing must be made publicly and with notice to Intervenor's counsel. Intervenor is properly concerned that otherwise, the parties might file motions to seal or take steps to cause documents or portions of them to be redacted or withheld from the public, all without the public knowing or having an opportunity to object. We ask that you agree to that process or propose other alternatives that are in accordance with the Constitution.

We will be happy to discuss any of these issues with you. Please feel free to let us know convenient times to do that.

Sincerely,



Jeffrey D. Colman

Attachment

cc: Natalie J. Spears, Esq.  
Damon E. Dunn, Esq.  
Brendan J. Healey, Esq.  
Gabriel A. Fuentes, Esq.  
Patrick E. Cordova, Esq.

## **EXHIBIT F**

Gabriel A. Fuentes  
Tel 312 923-2808  
Fax 312 923-2809  
GFuentes@jenner.com

June 8, 2018

Via Email

Joseph H. McMahon, Esq.  
Kane County State's Attorney, Court-Appointed Special Prosecutor  
Kane County State's Attorney's Office  
37W777 Route 38, Suite 300  
St. Charles, Illinois 60175  
jm@co.kane.il.us

Re: *People v. Jason Van Dyke*, No. 17 CR 0428601 (formerly 15 CR 2062201)

Dear Mr. McMahon:

Thank you for providing Intervenor's with service copies yesterday, by email, of the People's Request to Seal Brief Regarding Expert Witness and People's Request to Seal Defendant's Motion to Reconsider Lynch Witness Testimony. These documents were file-stamped by the Clerk's Office, respectively, on May 31 and June 7, 2018.

Further, thank you for confirming during our telephone conversation yesterday that the State agrees to provide Intervenor's with service copies, at the time of filing and service on the defense, of any motions to seal the State files in this matter. Although you did not agree that the State would provide Intervenor's with copies (redacted or unredacted) of any underlying documents sought to be sealed, we appreciate your having stated that you will consider doing so on a case-by-case basis.

Very truly yours,



Gabriel A. Fuentes

cc: Daniel Q. Herbert, Esq.  
Tammy L. Wendt, Esq.  
Natalie J. Spears, Esq.  
Damon E. Dunn, Esq.  
Brendan J. Healey, Esq.  
Jeffrey D. Colman, Esq.  
Patrick E. Cordova, Esq.

# **EXHIBIT G**

Gabriel A. Fuentes  
Tel 312 923-2808  
Fax 312 923-2809  
GFuentes@jenner.com

June 8, 2018

Via Email

Tammy L. Wendt, Esq.  
Herbert Law Firm  
206 S. Jefferson, Suite 100  
Chicago, Illinois 60661

Re: *People v. Jason Van Dyke*, No. 17 CR 0428601 (formerly 15 CR 2062201)

Dear Ms. Wendt:

Thank you for confirming during our telephone conversation today that the defense in the above-referenced matter agrees to provide Intervenor with service copies, at the time of filing and service on the State, of any motions to seal which the defense files in this matter.

Very truly yours,



Gabriel A. Fuentes

cc: Joseph H. McMahon, Esq.  
Daniel Q. Herbert, Esq.  
Natalie J. Spears, Esq.  
Damon E. Dunn, Esq.  
Brendan J. Healey, Esq.  
Jeffrey D. Colman, Esq.  
Patrick E. Cordova, Esq.

# **EXHIBIT H**

June 1, 2018

Jeffrey D. Colman  
312.923.2940  
JColman@jenner.com

VIA EMAIL

Angela Robinson  
Chief Deputy Clerk  
Leighton Criminal Court  
2650 S. California Ave., Rm. 526  
Chicago, Illinois 60608

Re: *People v. Jason Van Dyke*, No. 17 CR 0428601 (formerly 15 CR 2062201)

Dear Ms. Robinson:

As you know, on May 31, 2018 the Honorable Vincent M. Gaughan requested that we provide you a list of documents in the above referenced matter that the Court ordered be available to the public via the Office of the Clerk of the Circuit Court of Cook County (the "Clerk's Office"). As we explain below, because we do not have access to a complete list of documents filed in this matter, we cannot with confidence submit a complete list, but attached as Exhibit A is a list of documents that we believe have been ordered released (or otherwise are to be released) to the public as of May 31, 2018 and should be available to the public via the Clerk's Office. Please note the following five things:

First, and most important, Exhibit A is not based on a comprehensive list of documents that have been filed in this matter. We believe there are other documents that should be released to the public through your Office. Exhibit A is limited to those documents that have been released to the public in the following ways: (a) by the Court's Order entered April 26, 2018 (attached as Exhibit B); (b) by the Court's Order entered May 4, 2018 (attached as Exhibit C); (c) by identification in open court on May 31, 2018 as available to the public (these documents include the State's Motion in Limine filed April 26, 2018 and the Defendant's Combined Response to State's Motion in Limine filed May 11, 2018); and (d) by public filing in the Clerk's Office on May 31, 2018 (Defendant's Motion to Reconsider Defendant's Prosecutorial Misconduct Motions).

Second, we (the Intervenor in this matter) cannot, at this time, identify any other documents that may have been filed that should be accessible to the public because the current docket sheet available in the Clerk's Office is not comprehensive as of the date of this letter, and we have not been granted access to the entirety of the court file. Furthermore, and of considerable importance, we do not have a complete list of documents that have been filed or entered, and are currently being withheld from the public.

Angela Robinson  
June 1, 2018  
Page Two

Third, we are copying the Special Prosecutor and counsel for Mr. Van Dyke. We trust they will promptly confirm for you the accuracy of Exhibit A and that they will supplement it to add additional documents that should be made available to the public.

Fourth, we appreciate that you provided us with the name of counsel to the Clerk of the Court and we are copying her (Kelly Smeltzer) on this letter with the hope that she, you, and others in your Office will get the court file in proper order for public review by sometime early next week.

Fifth, while it was not mentioned by Judge Gaughan, as noted above, the docket sheet in this matter is far from complete. We would be happy to work with your Office, and the parties, in the effort to make sure the docket sheet contains a complete listing of all items filed and entered in this matter.

Thank you again for your courtesies.

Very truly yours,

  
Jeffrey D. Colman

Enclosures

cc: The Honorable Vincent M. Gaughan (via hand delivery)  
Kelly Smeltzer (via email)  
Gabriel A. Fuentes (via email)  
Joseph H. McMahon (via email)  
Daniel Q. Herbert (via email)  
Natalie J. Spears (via email)  
Damon E. Dunn (via email)  
Brendan J. Healey (via email)

## Exhibit A

**Known Documents That Should be Available in the  
Clerk's Office of the Circuit Court of Cook County**

<b>Filing Number*</b>	<b>Case Number</b>	<b>Name of Item</b>	<b>Date Filed</b>	<b>Redactions/Portions Not To Be Released</b>
1	15CR2062201	People's Factual Proffer in Support of Setting Bond	7/24/2015	
2	15CR2062201	Motion for Pre-Trial Discovery	12/29/2015	
3	15CR2062201	Agreed memorandum Summarizing 1/29/2016		
5	15CR2062201	Agreed Memorandum Summarizing 3/23/2016		
6	15CR2062201	Defendant's Motion to Waive Appearance	3/23/2016	
7	15CR2062201	People's Response to Defendant's Motion to Waive Appearance	4/13/2016	
8	15CR2062201	Defendant's Reply to Motion to Waive Appearance	4/27/2016	
9	15CR2062201	Agreed Memorandum Summarizing 5/5/2016		
10	15CR2062201	People's Response in Opposition to Petitions to Appt. Special Pros.	6/1/2016	
11	15CR2062201	Agreed Memorandum Summarizing 6/30/2016		
12	15CR2062201	Agreed Memorandum Summarizing 8/18/2016		
13	15CR2062201	Motion for Bill of Particulars	8/18/2016	
14	15CR2062201	Motion to Clarify Decorum Order (Oppenheimer)	8/30/2016	
15	15CR2062201	Reply to Petitioner Holmes Motion to Clarify Decorum Order	9/23/2016	
16	15CR2062201	AG Motion to Quash Subpoena to DCFS	9/27/2016	
18	15CR2062201	Agreed Memorandum Summarizing 11/2/2016		
20	15CR2062201	Agreed Memorandum Summarizing 12/8/2016		
21	15CR2062201	Motion by City for Protective Order & Clawback	12/8/2016	
23	15CR2062201	MTD Garrity	1/10/2017	
24	15CR2062201	State Response for Motion for Bill of Particulars	1/10/2017	
25	15CR2062201	Memo in Support MTS	1/10/2017	
27	15CR2062201	Response to MTD Pursuant to Garrity	2/3/2017	
30	15CR2062201	CCSAO MTQ Subpoena	2/3/2017	
31	15CR2062201	People's Response to MTD (Garrity)	2/7/2017	
32	15CR2062201	Memo of law in Support MTD Indictment	2/7/2017	
33	17CR0428601	People Response to City Clawback Motion	2/23/2017	
34	17CR0428601	People's Response to MTD Misconduct GJ	3/23/2017	
38	17CR0428601	2nd Motion for Bill of Particulars	4/20/2017	
39	17CR0428601	Defendant's Supplemental Motion to Waive Appear.	4/20/2017	The police reports attached as exhibits.
40	17CR0428601	MIL Limit Scope of Kastigar Hearing	4/20/2017	
41	17CR0428601	MIL Bar Claim of Prejudice Failure to Stay PB Proceedings	4/20/2017	
42	17CR0428601	Reply M to Waive Appearance	4/27/2017	
43	17CR0428601	Def. Resp. to MIL Bar Claim of Prejudice PB	5/11/2017	
45	17CR0428601	Response to 2nd Bill of Particulars	5/11/2017	
46	17CR0428601	Response to Supplemental Motion to Waive Appearance	5/11/2017	
48	17CR0428601	Reply Motion to Limit Scope of Kastigar Hearing	5/25/2017	
49	17CR0428601	Reply MIL Bar Claim of Prejudice Failure to Stay PB Proceeding	5/25/2017	
50	17CR0428601	Motion to Grant Immunity McNaughton	6/28/2017	

## Exhibit A

**Known Documents That Should be Available in the  
Clerk's Office of the Circuit Court of Cook County**

51	17CR0428601	Motion to Grant Immunity March	6/28/2017	
52	17CR0428601	Response in Opposition to Admission of Statements to FOP	7/18/2017	
53	17CR0428601	Agreed Memorandum Summarizing 8/11/2017		
54	17CR0428601	Motion to Grant Immunity Kato	8/11/2017	
55	17CR0428601	Motion to Grant Immunity Harvey	8/11/2017	
56	17CR0428601	Motion to Grant Immunity Camden	8/11/2017	
57	17CR0428601	Motion to Reconsider (Statements to FOP)	9/7/2017	
59	17CR0428601	Response to Motion to Determine Actual Conflict	12/7/2017	
60	17CR0428601	Agreed Memorandum Summarizing 9/28/2017		
61	17CR0428601	Motion to Determine Actual Conflict	9/7/2017	The three Grand Jury Transcripts attached as exhibits
62	17CR0428601	Motion to Quash SDT to KCSAO	9/28/2017	
63	17CR0428601	Motion to Dismiss (Speedy Trial)	9/28/2017	
64	17CR0428601	Motion for GJ Minutes	9/28/2017	
65	17CR0428601	Reply Motion to Determine Actual Conflict	9/28/2017	The entire document and exhibits, except for Exhibit A and any case law attached to the document.
67	17CR0428601	People's Joint MTQ & Motion for More Definite Offer of Proof	10/11/2017	
68	17CR0428601	Defendant Reply to MTD	10/16/2017	
69	17CR0428601	Agreed Memorandum Summarizing 10/25/2017		
70	17CR0428601	Response to Motion for GJ Minutes	10/25/2017	
71	17CR0428601	Motion to Quash SDT to CCSAO	10/25/2017	
72	17CR0428601	Motion to Quash SDT to KCSAO 2nd	10/25/2017	
73	17CR0428601	Response to MTD (Speedy Trial)	10/25/2017	
74	17CR0428601	Jamie Kalven MTQ Subpoena	11/3/2017	
75	17CR0428601	Agreed Memorandum Summarizing 11/6/2017		
78	17CR0428601	People's MTQ Subpoena to Jamie Kalven	11/6/2017	
80	17CR0428601	Defendant Response in Opp. To MTQ Subpoena of Kalven	11/20/2017	Exhibit 9.
81	17CR0428601	J. Kalven Reply in Support of his MTQ	12/4/2017	
82	17CR0428601	Motion Reporter's Committee for Freedom of Press for Leave to File Amicus	12/5/2017	
88	17CR0428601	Supplemental Motion for Discovery	12/11/2017	
98	17CR0428601	Agreed Memorandum Summarizing 1/18/2018		
99	17CR0428601	Agreed Memorandum Summarizing 2/1/2018		
100	17CR0428601	Motion for Intervention and Access to Court	3/6/2018	
101	17CR0428601	Memorandum in Support of M for Intervention and Access	3/6/2018	
102	17CR0428601	Defendant's Memo Animation & Simulation	3/8/2018	
103	17CR0428601	People's MIL Concerning Dr. Miller	3/8/2018	
104	17CR0428601	Motions to Adopt CCSAO Subpoenas	3/8/2018	

**Exhibit A****Known Documents That Should be Available in the  
Clerk's Office of the Circuit Court of Cook County**

<b>105</b>	17CR0428601	Incident Narrative Report (brief narrative)		
<b>112</b>	17CR0428601	State's Response to Intervenor's Motion for Access to Court Documents	4/6/2018	
<b>113</b>	17CR0428601	Defendant Jason Van Dyke's Response in Opposition to Media Intervenor's Motion for access	4/6/2018	Paragraph 98 on page 18
<b>114</b>	17CR0428601	Intervenor's Third Request for Access to Court File Documents and Other Access-Related Relief	4/13/2018	
<b>115</b>	17CR0428601	Intervenor's Consolidated Response to Parties' Objections to Public Disclosure of Court File Documents	4/13/2018	
<b>116</b>	17CR0428601	State's Supplemental Response to Intervenor's motion for Access	4/26/2018	
<b>117</b>	17CR0428601	State's Motion to Close the Public Hearings Scheduled to be Litigated on May 4, 2018	4/28/2018	
<b>118</b>	17CR0428601	State's Motions In Limine	4/26/2018	
<b>119</b>	17CR0428601	Defendant's Combined Response to State's Motions In Limine	5/11/2018	
<b>120</b>	17CR0428601	Defendant's Motion to Reconsider Defendant's Prosecutorial Misconduct Motions	5/31/2018	
<b>X</b>		Court Orders for all dates		

\* Documents 1-105 correspond to documents that appear on Exhibit B of the Court's Order entered April 26, 2018, and Exhibit A of the Court's Order entered May 4, 2018. Documents 112-120 were added to the list included on Exhibit A of the Court's May 4, 2018 Order for the purposes of this list attached to the correspondence to Angela Robinson dated June 1, 2018.

**IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 CR 0428601
	)	
JASON VAN DYKE,	)	Hon. Vincent M. Gaughan
	)	
Defendant.	)	

**ORDER**

This cause coming to be heard on Intervenors' Motion for Access to Court Documents, filed on March 6, 2018, proper notice having been given, and the Court being fully advised in the premises, IT IS HEREBY ORDERED:

1. The documents listed in the attached Exhibit B of the State's Supplemental Response to Intervenor's Motion for Access filed (April 26, 2018), except for item 4 on Exhibit B, shall be released to the Clerk of the Court and to the public immediately, subject to the redaction of witness names, for the reasons stated in open court on April 26, 2018.
2. The Court will consider the remaining requests by Intervenors, to the extent they were not ruled upon in this Order, at hearing at 9 a.m. April 28, 2018.

DATED: April 26, 2018.

ENTERED:   
The Hon. Vincent M. Gaughan

1553

Order prepared by:  
Gabriel A. Fuentes  
Patrick E. Cordova  
Jenner & Block LLP  
353 N. Clark St.  
Chicago, IL 60654  
(312) 222-9350  
*Counsel for Chicago Public Media, Inc.*

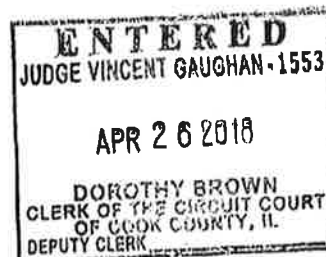


Exhibit B: List of filings to which the State does not object to a finding that the presumption of public access exists.

1	People's Factual Proffer in Support of Settling Bond	7/24/2015	Presumption
2	Motion for Pre-Trial Discovery	12/29/2015	Presumption
3	Agreed memorandum Summarizing 1/29/2016		Presumption
4	*Motion to Consolidate	3/15/2016	Presumption
5	Agreed Memorandum Summarizing 3/23/2016		Presumption
7	People's Response to Defendant's Motion to Waive Appearance	4/13/2016	Presumption
9	Agreed Memorandum Summarizing 5/5/2016		Presumption
10	People's Response In Opposition to Petitions to Appt. Special Pros.	6/1/2016	Presumption

Exhibit B: List of filings to which the State does not object to a finding that the presumption of public access exists.

11	Agreed Memorandum Summarizing 6/30/2016		Presumption
12	Agreed Memorandum Summarizing 8/18/2016		Presumption
13	Motion for Bill of Particulars	8/18/2016	Presumption
14	Motion to Clarify Decorum Order (Oppenheimer)	8/30/2016	Presumption
15	Reply to Petitioner Holmes Motion to Clarify Decorum Order	9/23/2016	Presumption
16	AG Motion to Quash Subpoena to DCFS	9/27/2016	Presumption
18	Agreed Memorandum Summarizing 11/2/2016		Presumption
20	Agreed Memorandum Summarizing 12/8/2016		Presumption
21	*Motion by City for Protective Order & Clawback	12/8/2016	Presumption

Exhibit B: List of filings to which the State does not object to a finding that the presumption of public access exists.

23	MTD Garrity	1/10/2017	Presumption
24	State Response for Motion for Bill of Particulars	1/10/2017	Presumption
25	Memo In Support MTS	1/10/2017	Presumption
27	Response to MTD Pursuant to Garrity	2/3/2017	Presumption
30	CCSAO MTQ Subpoena	2/3/2017	Presumption
31	*People's Response to MTD (Garrity)	2/7/2017	Presumption
32	*Memo of law In Support MTD Indictment	2/7/2017	Presumption
33	People Response to City Clawback Motion	2/23/2017	Presumption
34	People's Response to MTD Misconduct GJ	3/23/2017	Presumption
41	MIL Bar Claim of Prejudice Failure to Stay PB Proceedings	4/20/2017	Presumption
42	Reply M to Waive Appearance	4/27/2017	Presumption
45	Response to 2nd Bill of Particulars	5/11/2017	Presumption

Exhibit B: List of filings to which the State does not object to a finding that the presumption of public access exists.

46	Response to Supplemental Motion to Waive Appearance	5/11/2017	Presumption
48	Reply Motion to Limit Scope of Kastigar Hearing	5/25/2017	Presumption
49	Reply MIL Bar Claim of Prejudice Failure to Stay PB Proceeding	5/25/2017	Presumption
50	Motion to Grant Immunity McNaughton	6/28/2017	Presumption
51	Motion to Grant Immunity March	6/28/2017	Presumption
52	Response In Opposition to Admission of Statements to FOP	7/18/2017	Presumption
53	Agreed Memorandum Summarizing 8/11/2017		Presumption
54	Motion to Grant Immunity Kato	8/11/2017	Presumption
55	Motion to Grant Immunity Harvey	8/11/2017	Presumption

Exhibit B: List of filings to which the State does not object to a finding that the presumption of public access exists.

56	Motion to Grant Immunity Camden	8/11/2017	Presumption
57	Motion to Reconsider (Statements to FOP)	9/7/2017	Presumption
60	Agreed Memorandum Summarizing 9/28/2017		Presumption
62	Motion to Quash SDT to KCSAO	9/28/2017	Presumption
63	Motion to Dismiss (Speedy Trial)	9/28/2017	Presumption
64	**Motion for GJ Minutes	9/28/2017	Presumption
67	People's Joint MTQ & Motion for More Definite Offer of Proof	10/11/2017	Presumption
68	*Defendant Reply to MTD	10/16/2017	Presumption
69	Agreed Memorandum Summarizing 10/25/2017		Presumption
70	Response to Motion for GJ Minutes	10/25/2017	Presumption
71	Motion to Quash SDT to CCSAO	10/25/2017	Presumption

Exhibit B: List of filings to which the State does not object to a finding that the presumption of public access exists.

72	Motion to Quash SDT to KCSAO 2nd	10/25/2017	Presumption
73	Response to MTD (Speedy Trial)	10/25/2017	Presumption
75	Agreed Memorandum Summarizing 11/6/2017		Presumption
82	Motion Reporter's Committee for Freedom of Press for Leave to File Amicus	12/5/2017	Presumption
88	Supplemental Motion for Discovery	12/11/2017	Presumption
98	Agreed Memorandum Summarizing 1/18/2018		Presumption
99	Agreed Memorandum Summarizing 2/1/2018		Presumption
100	Motion for Intervention and Access to Court	3/6/2018	Presumption

Exhibit B: List of filings to which the State does not object to a finding that the presumption of public access exists.

101	Memorandum in Support of M for Intervention and Access	3/6/2018	Presumption
102	Defendant's Memo Animation & Simulation	3/8/2018	Presumption
103	People's MIL Concerning Dr. Miller	3/8/2018	Presumption
104	Motions to Adopt CCSAO Subpoenas	3/8/2018	Presumption
105	Incident Narrative Report (brief narrative)		Presumption
X	Court Orders for all dates		Presumption

**IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 CR 0428601
	)	
JASON VAN DYKE,	)	Hon. Vincent M. Gaughan
	)	
Defendant.	)	

**ORDER**

This cause coming to be heard on the Intervenor's<sup>1</sup> Motion for Intervention and Access to Court Documents (the "Motion"), filed on March 6, 2018, requesting relief as set forth specifically in Intervenor's Third Request for Access to Court File Documents and Other Access-Related Relief, filed on April 13, 2018 ("Third Request"), the Court having reviewed all filings concerning the Motion, listened to the arguments of counsel, and being fully advised in the premises, IT IS HEREBY ORDERED:

1. For the reasons stated on the record, Intervenor's request for public release of the documents listed on Exhibit A attached hereto is GRANTED as to Document Nos. 6, 8, 38, 39, 40, 43, 59, 61, 65, 74, 78, 80, and 81, with the following redactions:
  - a. From Document No. 39, the police reports attached as exhibits.
  - b. From Document No. 61, the three grand jury transcripts attached as exhibits.
  - c. From Document No. 65, the entire document and exhibits, except for Exhibit A and any case law attached to the document.
  - d. From Document No. 80, Exhibit No. 9.
2. For the reasons stated on the record, Intervenor's request for public release of the documents listed on Exhibit A attached hereto is DENIED as to Document Nos. 17, 19, 22, 26, 28, 29, 35, 36, 37, 44, 47, 58, 66, 76, 77, 79, 83-87, 89-97, 106, and 108-111.
3. For the reasons stated on the record, Intervenor's request for public release of Document No. 107 (from Exhibit A) is ENTERED AND CONTINUED.

---

<sup>1</sup> The Intervenor's are the Chicago Tribune Company, LLC; Sun-Times Media, LLC; the Associated Press; WLS Television, Inc.; WGN Continental Broadcasting Company, LLC; WFLD Fox 32 Chicago; Chicago Public Media, Inc.; and the Reporters Committee for Freedom of the Press. This Court granted the request for intervention on March 8.

4. Intervenor's request for public release of the following additional documents, not listed on Exhibit A, is GRANTED:

- a. State's Response to Intervenor's Motion for Access to Court Documents, filed on April 6, 2018;
- b. Defendant Jason Van Dyke's Response in Opposition to Media Intervenor's Motion for Access, filed on April 6, 2018, with the redaction of Paragraph 98 on page 18 of this document;
- c. Intervenor's Third Request for Access to Court File Documents and Other Access-Related Relief ("Third Request"), filed on April 13, 2018; and
- d. Intervenor's Consolidated Response to Parties' Objections to Public Disclosure of Court File Documents, filed on April 13, 2018.

5. By agreement of the Parties and Intervenor, the State's Supplemental Response to Intervenor's Motion for Access (filed April 26, 2018) and the State's Motion to Close [] the Public Hearings Scheduled to be Litigated on May 4, 2018 ("State's Motion to Close Hearing," filed April 28, 2018) are released to the public.

6. Intervenor's request to modify or vacate the Court's February 3, 2017 Decorum Order to require the public filing of all documents in this matter in the clerk's office is DENIED for the reasons stated on the record.

7. Intervenor's request to file publicly in the clerk's office their response to the State's Motion to Close Hearing is DENIED. Intervenor shall file their response to this motion before noon on May 2, 2018, and Intervenor's requests concerning other closed proceedings in this matter (subparagraphs (f) and (g) of Intervenor's Third Request) are ENTERED AND CONTINUED to May 4, 2018. This matter is set for further hearing on May 4, 2018, at 9 a.m. concerning the matters discussed in this paragraph.

DATED: May 4, 2018

ENTERED:

*Vincent M. Gaughan*  
The Hon. Vincent M. Gaughan

Order prepared by:  
Jeffrey D. Colman  
Gabriel A. Fuentes  
Patrick E. Cordova  
Jenner & Block LLP  
353 N. Clark St.  
Chicago, IL 60654  
(312) 222-9350  
*Counsel for Chicago Public Media, Inc.*

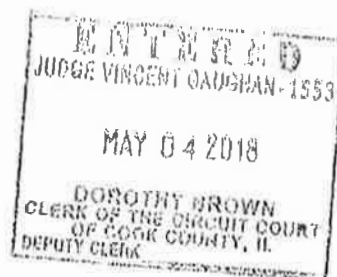


Exhibit A: Filings to which the State objects to their release in part because the presumption of access does not apply

6	Defendant's Motion to Waive Appearance	3/23/2016	No presumption
8	Defendant's Reply to Motion to Waive Appearance	4/27/2016	No presumption
17	People's Initial Garrity Team Disclosure to Defendant	9/29/2016	No presumption
19	People's 1st Supplemental Garrity Team Disclosure	11/2/2016	No presumption
22	People's 2nd Supplemental Garrity Team Disclosure	1/10/2017	No presumption
26	Memo in Support MTS (Exposure to Compelled Statement)	1/18/2017	No presumption
28	MTD Misconduct at GJ	2/3/2017	No presumption
29	Memo of Law In Support MTD GJ	2/3/2017	No presumption
35	Memo of Law MTD Misconduct GJ	4/20/2017	No presumption
36	MTD Indictment & Other Relief GJ	4/20/2017	No presumption
37	MTD Misconduct at GJ	4/20/2017	No presumption
38	2nd Motion for Bill of Particulars	4/20/2017	No presumption
39	Defendant's Supplemental Motion to Waive Appear	4/20/2017	No presumption
40	MIL Limit Scope of Kastigar Hearing	4/20/2017	No presumption
43	Def. Resp. to MIL Bar Claim of Prejudice PB	5/11/2017	No presumption
44	Response to Motion to Limit Scope of Kastigar	5/11/2017	No presumption
47	Combined Response to MTD & MTD & other relief	5/11/2017	No presumption
58	Brief In Support of People's Garrity/Kastigar Hearing Position	9/7/2017	No presumption
59	Response to Motion to Determine Actual Conflict	9/27/2017	No presumption
61	Motion to Determine Actual Conflict	9/28/2017	No presumption
65	**Reply Motion to Determine Actual Conflict	9/28/2017	No presumption

**Exhibit A: Filings to which the State objects to their release in part because the presumption of access does not apply**

66	Defendant's Offer of Proof Kastigar Witnesses	10/4/2017	No presumption
74	Jamie Kalven MTQ Subpoena	11/3/2017	No presumption
76	MTD (Prosecutorial Misconduct)	11/6/2017	No presumption
77	MIL to Admit Lynch Material	11/6/2017	No presumption
78	People's MTQ Subpoena to Jamie Kalven	11/6/2017	No presumption
79	Answer to Discovery	11/6/2017	No presumption
80	Defendant Response in Opp. to MTQ Subpoena of Kalven	11/20/2017	No presumption
81	J. Kalven Reply in Support of his MTQ	12/4/2017	No presumption
83	People's Supplemental Discovery Response 6	12/6/2017	No presumption
84	Reply MTD (Prosecutorial Misconduct)	12/6/2017	No presumption
85	Defense Offer of Proof Lynch	12/6/2017	No presumption
86	Reply MIL Lynch	12/6/2017	No presumption
87	Response MIL to Admit Lynch Material	12/6/2017	No presumption
89	Amended Offer of Proof Lynch	12/13/2017	No presumption
90	Supplemental MTD Prosecutorial Misconduct	12/15/2017	No presumption
91	People's Supplemental Discovery Response 7	12/20/2017	No presumption
92	2nd Amended Offer of Proof Lynch	12/20/2017	No presumption
93	Response to MTD (Prosecutorial Misconduct)	12/20/2017?	No presumption
94	3rd Amended Offer of Proof Lynch	1/5/2018	No presumption
95	Defendant's Initial Expert Witness Disclosure	1/5/2018	No presumption
96	Reply to 3rd Amended Offer of Proof In Support of Lynch	1/12/2018	No presumption
97	*Memorandum in Support of Motion to Suppress Evidence (Def Compelled Statement )	1/17/2018	No presumption

Exhibit A: Filings to which the State objects to their release in part because the presumption of access does not apply

106	Defendant's Reply to the People's Response to Defendant's Motion to Dismiss the Indictment	12/6/2017	no presumption
107	Defendant's Motion to Change Place of Trial	3/28/2018	No presumption
108	Intervenor's Status Report	3/28/2018	no presumption
109	Defendant's Supplemental list of Expert Witnesses	1/5/2018	No presumption
110	Report of a Defense Expert	2/1/2018	No presumption
111	Report of a Second Defense Expert	2/1/2018	No presumption

# **EXHIBIT I**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

APPEARANCES: (Continued)

MR. BRENDAN J. HEALEY,  
on behalf of the Reporters Committee for  
Freedom of the Press;

MR. GABRIEL A. FUENTES,  
MR. JEFFREY D. COLMAN,  
MR. PATRICK E. CORDOVA,  
on behalf of Chicago Media;

MS. NATALIE J. SPEARS,  
on behalf of the Chicago Tribune;

1           The press has not had access to a very large  
2 number of documents in that file.

3           THE COURT:   When was the Decorum Order entered?

4           MR. FUENTES:   February 3, 2017.

5           THE COURT:   Okay.   So, it's more than a year?

6           MR. FUENTES:   Yes.

7           THE COURT:   All right.

8           MR. FUENTES:   And, Judge, what has happened is, we  
9 as intervenors, have come before the Court and said  
10 that that has to stop.   We said that the Court has not  
11 made any findings that are required by Press-Enterprise  
12 or referenced in Kelly, that would justify the  
13 withholding of those documents.

14                    You can't withhold a document that's within  
15 the Court file, from the public.   If it's presumed to  
16 be --

17           THE COURT:   Stop right there.

18           MR. FUENTES:   Yes.

19           THE COURT:   All right.   Now, the Court file you're  
20 talking about is one that has -- not has -- had  
21 unlimited access to my lawyers and the public, is that  
22 correct?

23           MR. FUENTES:   No, I wouldn't say that the Court  
24 file --

1           THE COURT: Well, your theory is --

2           MR. FUENTES: -- is --

3           THE COURT: Excuse me, right now, you know, give  
4 me a chance, all right?

5                     Your theory is that if it's in the Court  
6 file, then the gate is opened; and the cat has ran out  
7 of the bag; but I'm telling you, you interrupt me  
8 again, you're not talking no more. You got that?

9           MR. FUENTES: Yes, sir.

10          THE COURT: All right. But the thing is, nothing  
11 has been opened up as of now; and I understand your  
12 point; and you're making some good points; but just to  
13 have this blanket thing, if it's in the file, then,  
14 there is no secrets or there is no -- a way that you  
15 can preserve anything, that you can't do damage  
16 control, or anything else like that.

17                     I'm not accepting that principle, all right,  
18 because otherwise, you wouldn't be here if the file was  
19 open, all right?

20                     Everybody would have access to it. So, your  
21 first premises or a hypothesis that it is open already,  
22 is not correct, okay?

23                     So, I agree with, you know, some of the  
24 things that you're saying.

1                   Go ahead.

2           MR. FUENTES: And respectfully, Judge, I think the  
3 Scholnick case says that when a document --

4           THE COURT: Is that the civil case?

5           MR. FUENTES: It was a civil case, Judge.

6           THE COURT: But you know, I'm not going to belabor  
7 this point, all right?

8                   You know my position right now.

9                   Have you seen the file?

10          MR. FUENTES: I have not seen the file.

11          THE COURT: Of course you have not. So, nobody in  
12 the public has seen the file. So, it is not open to  
13 the public.

14                   So, your premise that it's open to the  
15 public, because it's in the file, now, is false, all  
16 right, because if it's now open, otherwise, you  
17 wouldn't be here.

18                   Do you understand that?

19          MR. FUENTES: I do, Judge. I think --

20          THE COURT: Okay. Fine.

21                   All right. All right. Proceed on different  
22 matters then.

23                   Go on with your presentation.

24          MR. FUENTES: So, your Honor, what we have said is

1 that in order to not allow the public to view a  
2 document in the Court file, the Court must make the  
3 necessary findings.

4 THE COURT: I agree with that. Move on.

5 MR. FUENTES: We don't believe any of those  
6 findings have been made.

7 THE COURT: And I agree with that. Move on.

8 MR. FUENTES: Without those findings having been  
9 made, we're here today to ask the Court for a number of  
10 things, including the keeping of a public docket that  
11 lists all of the documents filed in this case by the  
12 parties.

13 We are asking for the Court to deny the  
14 defense request to block public access to all of the  
15 documents that have been filed.

16 We're asking the Court to release everything  
17 in the file, to which there has been no specific  
18 objection.

19 We're asking the Court to overrule the  
20 parties' specific objections, because we read them.  
21 I'm referring to the ones filed on April 6th. We don't  
22 think of any of them asserts the proper basis for the  
23 Court to --

24 THE COURT: Even the ones that contain Grand Jury

1 transcripts?

2 MR. FUENTES: Yes, Judge.

3 THE COURT: You --

4 MR. FUENTES: I can discuss that further, if you  
5 would like.

6 THE COURT: I want you to do it immediately, right  
7 now.

8 So, you actually think that Grand Jury  
9 transcripts prior to Trial, are open to public  
10 scrutiny?

11 MR. FUENTES: Once they are contained in a  
12 document filed with the -- in the public --

13 THE COURT: You keep missing the point. You know,  
14 you're fixed on this --

15 MR. FUENTES: We disagree on that.

16 THE COURT: -- one point which undermines your  
17 logic, is that the file has not been opened to the  
18 public. This has not been disseminated to the public.  
19 That's the under -- you have to move on. Otherwise,  
20 you wouldn't be here.

21 Do you understand that you're --

22 MR. FUENTES: I do.

23 THE COURT: -- it's, like, you're a little iceberg  
24 that's starting to melt real quick. Otherwise, you

1 would not be here, Mr. Fuentes.

2 All right. Move on, all right?

3 MR. FUENTES: Well, I will tell you that if the  
4 Court believed that Grand Jury secrecy, under the  
5 statute, required the withholding of a document from  
6 the public, it would need to make the appropriate  
7 findings.

8 THE COURT: How about the statutes?

9 Have you looked at the statute?

10 MR. FUENTES: I have, your Honor.

11 THE COURT: Have you looked at Federal case law,  
12 where even after the Trial, they have not released  
13 Grand Jury testimony?

14 MR. FUENTES: I have, your Honor.

15 THE COURT: All right. Move on. All right.  
16 That's -- that's not a good argument.

17 MR. FUENTES: Well, I think if you made the  
18 findings, Judge --

19 THE COURT: All right. Move on.

20 MR. FUENTES: All right. So, Judge --

21 THE COURT: You want me to make the findings, and  
22 I don't think that's inappropriate. You have to pay  
23 attention to what I'm saying, too.

24 When you said that I should make the

1 All right. So, let's move on.

2 MR. FUENTES: All right. So, we're asking the  
3 Court to follow Scholnick; and Scholnick says once it  
4 is filed publicly with the Court, whether it's in this  
5 room or some other room, it's public.

6 THE COURT: Will you get off -- this has not been  
7 filed publicly, otherwise, you wouldn't be here.

8 Do you understand how illogical your  
9 presentation is, when you say, once it's been filed  
10 publicly?

11 It has not been filed publicly, all right?

12 Thank you.

13 All right. Now, concerning your memorandum,  
14 intervenors consolidated response to parties'  
15 objections, page 6, and look at the last paragraph, and  
16 then, if you go up to -- two lines, and you have your  
17 little three dots there?

18 MR. FUENTES: Yes, Judge.

19 THE COURT: The full quote is up one more line, in  
20 the parentheses.

21 While it is certainly true that the opinion  
22 of one District Court or Panel of the Appellate Court  
23 is not blinding on the other Districts or Panels.

24 And then, there's a -- a break. This Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

STATE OF ILLINOIS )  
 )  
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

I, GLORIA M. SCHUELKE, CSR, RPR, Official  
Court Reporter of the Circuit Court of Cook County,  
County Department, Criminal Division, do hereby  
certify that I reported in shorthand the proceedings  
had at the hearing in the aforementioned cause; that  
I thereafter caused the foregoing to be transcribed  
into typewriting, which I hereby certify to be a  
true and accurate transcript taken to the best of my  
ability of the Report of Proceedings had before the  
HONORABLE VINCENT M. GAUGHAN, Judge of said court.

  
Official Court Reporter  
Illinois CSR License No. 084-001886

Dated this 20th of April, 2018.

# **EXHIBIT J**



1           MR. HERBERT: I'll start by saying too, if the State  
2 doesn't want this document to come in, I'm fine with that.  
3 And we can move on.

4           THE COURT: That's good enough for me. All right,  
5 Mr. Fuentes?

6           MR. FUENTES: Your Honor, it's not --

7           THE COURT: Mr. Healey, are you going to adopt  
8 Mr. Fuentes' arguments?

9           MR. FUENTES: I'm sorry, Judge, I couldn't hear you.

10          THE COURT: This is only important if Mr. Healey  
11 knows.

12          MR. FUENTES: Absolutely.

13          MR. HEALEY: Yes, your Honor.

14          THE COURT: Okay. Thank you. He's adopting your  
15 presentation.

16          MR. FUENTES: Thank you, Judge.

17                 It's not discovery once it's filed with the  
18 Court. It's discovery material when it is unfiled, and  
19 that's the treatment of these cases.

20          THE COURT: Are these on file?

21          MR. FUENTES: These are unfiled documents, Judge --

22          THE COURT: Listen to me. If these are unfiled, you  
23 have no purpose here today. I mean, they are not  
24 disclosed. They have been held. So you can't argue that.

1 That is illogical to say that they are in the file,  
2 otherwise you wouldn't be here. You wouldn't be wasting  
3 your time and your talent --

4 MR. FUENTES: This was the discussion --

5 THE COURT: No, move on from that. No, I'm not going  
6 to listen to an irrational discussion. That's the purpose  
7 of this whole hearing today, to see if they are going to be  
8 disclosed. I need some consensus now. Do you agree that  
9 these are not disclosed at this time --

10 MR. FUENTES: No, Judge, this is an official document  
11 subject to the presumption --

12 THE COURT: -- whether this is disclosed or isn't?

13 MR. FUENTES: It's subject to presumption --

14 THE COURT: Excuse me. I'm asking a yes or no  
15 question. You are not getting paid by the hour right now.  
16 All right. You are saying that these, everything in these  
17 motions are already disclosed?

18 MR. FUENTES: I'm not saying they are disclosed.

19 THE COURT: Well, you have to say something. Are they  
20 disclosed or not disclosed?

21 MR. FUENTES: I am saying they should. They are not  
22 disclosed and they should be.

23 THE COURT: I understand should be. So if we're going  
24 to go on bickering back and forth, I'm going to limit your

1 presentation. All right. So can you give me some -- come  
2 on, let's keep this thing intellectually honest. Are these  
3 subject to the inspection of our wonderful journalists here  
4 today?

5 MR. FUENTES: At this time, no.

6 THE COURT: Okay. That's all I wanted -- so they are  
7 not disclosed. That's the illogical point that you keep  
8 presenting, that they are already in the file so therefore  
9 there is no presumption of protection. That's not true.  
10 And I don't want to hear that argument any more or I'll sit  
11 you down, concerning that they are already disclosed. All  
12 right. Move on. Any other presentation?

13 MR. FUENTES: Your Honor, they most certainly do  
14 further the Court's interest. Disclosure does further the  
15 Court's interest. We are not talking about furthering the  
16 interesting in a document in a Garrity motion. We are  
17 talking about the press and the public's right to examine,  
18 understand and evaluate the Court's resolution of any  
19 disputes that are put before it, of arguments that attempt  
20 to influence the Court's handling of a very important case.

21 THE COURT: Almost like Justice Black, the First  
22 Amendment is absolute. So what you are basically saying is  
23 that you are going to say that everything should be  
24 disclosed?

1           MR. FUENTES: I haven't said that, Judge. I have  
2       said --

3           THE COURT: Well, you have come close to it.

4           MR. FUENTES: -- because it meets these theories of  
5       logic tests, it's subject to presumption. If it's subject  
6       to presumption, the Court may not withhold unless it makes  
7       findings that release of the documents is somehow harmful.

8           THE COURT: So we are on common ground. What is the  
9       purpose of a Garrity hearing?

10          MR. FUENTES: As I understand it, it is to determine  
11       what evidence the jury would or could hear from statements  
12       made to law enforcement under compelled circumstances which  
13       Garrity provided shouldn't be admitted.

14          THE COURT: That is some of the reason. It's an end  
15       to see if the statement is involuntarily. If it's an  
16       involuntarily statement in criminal law -- I know you  
17       don't practice that much -- but any involuntary statement  
18       has no credibility. Therefore, my concern is if these  
19       statements are protected by Garrity, they have no  
20       credibility, they should not, they will never come into a  
21       trial, so the public should not be exposed to them. Thank  
22       you.

23                 All right. As far as the Garrity material, those  
24       motions -- which are those -- the first one we are looking

1 about the State's Attorney's office handing it to the  
2 Tribune, so all of this is public, Judge. All of it should  
3 come in.

4 THE COURT: My reasoning again is there's allegations  
5 in there concerning misconduct that is not supported by  
6 evidence. So I'm not going to allow access to 106.

7 107?

8 MR. WEILER: 107 is Defendant's Motion to Change the  
9 Place of Trial. That was filed on December 6, 2017 -- I'm  
10 sorry, Judge, March 26, 2018 --

11 THE COURT: Is it March 28th or 26th?

12 MR. WEILER: 28th.

13 THE COURT: Okay. All right, concerning -- right now,  
14 maybe Mr. Herbert can enlighten us, you are still in the  
15 process of getting supportive data for your motion; is that  
16 correct?

17 MR. HERBERT: That's correct.

18 THE COURT: Okay. So that would be entered and  
19 continued.

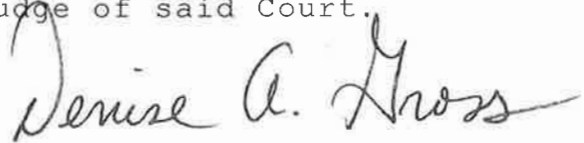
20 All right, number 8 -- I'm sorry, 108.

21 MR. WEILER: Your Honor, 108 is the Intervenor's  
22 Status Report filed March 28, 2018. In that, Judge,  
23 there's communications that the lawyers made in this case  
24 trying to resolve these issues. And, Judge, part of the

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
5 COUNTY DEPARTMENT - CRIMINAL DIVISION  
6

7 I, Denise A. Gross, Official Court Reporter  
8 of the Circuit Court of Cook County, County  
9 Department - Criminal Division, do hereby certify  
10 that I reported in shorthand the proceedings had on  
11 the hearing in the aforementioned cause; that I  
12 thereafter caused to be transcribed into  
13 typewriting the foregoing transcript, which I  
14 hereby certify is a true and accurate transcript of  
15 the Report of Proceedings had before the Honorable  
16 VINCENT M. GAUGHAN, Judge of said Court.

17   
18

19 Denise A. Gross, C.S.R.  
20 Official Court Reporter  
21 CSR License No. 084-003437  
22

23 Dated this 30th day of April, 2018.  
24