

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

PEOPLE OF THE STATE OF ILLINOIS,)
)
) Plaintiff,)
)
 vs.)
)
 JASON VAN DYKE,)
)
) Defendant.)

No. 17 CR 0428601

Hon. Vincent M. Gaughan

**INTERVENORS' SUPPLEMENTAL MOTION
FOR ACCESS TO COURT FILINGS**

FILED
2018 MAY 29 AM 11:07
CLERK OF THE
CIRCUIT COURT AT
CRIMINAL DIVISION
DOROTHY BRONKHORST
CLERK

Intervenors,¹ by their undersigned counsel, file this Motion, respectfully requesting that, consistent with the Order entered by the Illinois Supreme Court on May 23, 2018, the Court (1) vacate the February 3, 2017 Decorum Order, (2) transfer all court file documents in this matter to the Office of the Clerk of the Circuit Court of Cook County (“the Clerk’s Office”), (3) create a protocol for receiving and ruling upon motions to seal, and (4) cause the immediate public release of the specific court file documents identified herein. In support of this Motion, Intervenors state as follows:

1. On May 23, 2017, the Illinois Supreme Court granted a Supervisory Order (“Sup. Order,” attached hereto as Exhibit A). As this Court is aware, the Supervisory Order requires that this Court vacate its February 3, 2017 Decorum Order, which had required the parties and other interested persons to file court documents in this matter in Room 500 of the George N. Leighton Criminal Courthouse only. Sup. Order. The Illinois Supreme Court further directed that “[a]ll

¹ Intervenors 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.

documents and pleadings shall be filed in the circuit clerk's office" in this matter, and that "[t]he parties may move to file any document under seal." *Id.*

2. Intervenor file this Motion to suggest an orderly process for compliance with the Supreme Court's order. To begin that process, and consistent with what this Court may already be contemplating, Intervenor request that this Court immediately enter an order, in the form attached as Exhibit B, vacating the February 3, 2017 Decorum Order and providing additional relief consistent with the Supreme Court's order.

3. Intervenor request that to comply with the Supreme Court order's requirement that "[a]ll documents and pleadings shall be filed in the circuit clerk's office," this Court enter an order formalizing a process for the filing of all judicial documents in the Clerk's Office. Intervenor request an order calling for the entire court file – which includes all of the "documents and pleadings" filed in this case – to be transferred immediately from Room 500 to the Clerk's Office, subject to Paragraph 4 below.

4. Intervenor further propose that to allow for all future filings to be made in the Clerk's Office, and to allow the parties to "move to file any document under seal" as the Supreme Court's Order provides, this Court proceed as follows:

- (a) All documents and pleadings filed in this matter going forward shall be filed in the Clerk's Office.
- (b) As to previously filed court file documents (those dated from before vacatur of the February 3, 2017 Decorum Order), if a party wishes the Court to seal any document in whole or in part, such party shall identify that document for Intervenor by the close of business on June 1, 2018, and shall then file a properly supported motion to seal such material on or before June 5, 2018.
- (c) Any previously filed court file document subject to a motion to seal shall be maintained in the Clerk's Office and not be released to the public pending the Court's decision on the applicable motion to seal, with the Court hearing any such motion expeditiously.

- (d) The Clerk's Office, upon receiving the previously filed court file documents immediately from the Court, shall release publicly all previously filed court documents, and as to which no motion to seal has been filed, by the close of business on June 7, 2018.
- (e) Any order sealing a previously filed court file document—or any document filed in the future—shall be made pursuant to specific, on-the-record judicial findings consistent with *Press-Enter. Co. v. Superior Ct. Of Cal. For Riverside Cty.*, 478 U.S. 1, 8-9 (1986) (“*Press-Enterprise II*”) and *Skolnick v. Alzheimer & Gray*, 191 Ill. 2d 214, 232 (2000), and any such findings shall be in writing, with Intervenors afforded a reasonable opportunity to object to any such findings.

5. In addition, Intervenors respectfully submit that certain previously filed court file documents in this matter should be released immediately to the public, as these documents are subject to the First Amendment presumption of public access, per *Press-Enterprise II*, *Skolnick* and their progeny, and no constitutionally adequate justification has been identified or could be identified for the continued withholding from the public of those court file documents. That is clear from filings by the State on April 6 and 26, 2018, by the defense on April 6, and in open court on April 28. Those filings afforded the parties adequate opportunity to articulate a constitutionally sufficient basis for suppression of these documents. They failed to do so.² Indeed, with the Illinois Supreme Court now having established that the First Amendment and common law presumptions of access are fully applicable to all the court file documents, neither the parties nor the Court has articulated a constitutionally adequate basis sufficient to overcome the compelling First Amendment interests as is required to justify suppression of the documents identified below. More specifically, the Court has not found, nor can it, that suppression of the documents identified below is essential to preserve a higher value, that disclosure of the documents will give rise to a “substantial probability” of prejudice to Defendant’s fair trial right, or that

² With the Illinois Supreme Court having ordered the Decorum Order vacated, the procedure through which the Court previously suppressed these documents by its order of May 4, 2018 (attached as Exhibit C) – a procedure heavily dependent on the to-be-vacated Decorum Order – has been effectively set aside.

reasonable alternative measures including *voir dire* will be inadequate to protect Defendant's fair trial right. *See Skolnick*, 191 Ill. 2d at 232; *Press-Enterprise II*, 478 U.S. at 13-15. Accordingly by this Motion, Intervenors respectfully request public release of the following documents by the close of business on May 31, 2018:

- (a) Defendant's Motion to Dismiss for Misconduct at the Grand Jury filed February 3, 2017 (Document No. 28 from Exhibit A to the Court's May 4, 2018 Order);
- (b) Defendant's Memorandum of Law in Support of Motion to Dismiss for Misconduct at the Grand Jury filed February 3, 2017 (Document No. 29);
- (c) Defendant's Second Memorandum of Law in Support of Motion to Dismiss for Misconduct at the Grand Jury filed April 20, 2017 (Document No. 35);
- (d) Defendant's Motion to Dismiss the Indictment and for Other Relief filed April 20, 2017 (Document No. 36);
- (e) Defendant's Motion to Dismiss the Indictment for Misconduct at the Grand Jury filed April 20, 2017 (Document No. 37);
- (f) The State's Combined Response to the Defendant's Motion to Dismiss for Other Relief and Motion to Dismiss for Misconduct at the Grand Jury filed May 11, 2017 (Document No. 47);
- (g) Defendant's Motion to Dismiss for Prosecutorial Misconduct filed on November 6, 2017 (Document No. 76);
- (h) The State's Response to the Defendant's Motion to Dismiss for Prosecutorial Misconduct filed on December 6, 2017 (Document No. 84);
- (i) Defendant's Supplemental Motion to Dismiss for Prosecutorial Misconduct filed December 15, 2017 (Document No. 90);
- (j) The State's Response to the Defendant's Supplemental Motion to Dismiss for Prosecutorial Misconduct filed on or about December 20, 2017 (Document No. 93);
- (k) Defendant's Reply to the State's Response to Defendant's Motion to Dismiss the Indictment for Prosecutorial Misconduct filed December 6, 2017 (Document No. 106); and
- (l) Defendant's Motion for Change of Venue filed March 28, 2018 (Document No. 107), as to which the Court entered and continued Intervenors' request for release, now renewed herein by Intervenors.

WHEREFORE, for the foregoing reasons, Intervenor respectfully request that their Supplemental Motion for Access to Court Filings be GRANTED, and that the Court enter an order in the form attached as Exhibit B, and:

- (1) Vacate the February 3 Decorum Order forthwith;
- (2) Transfer all documents and pleadings in this matter to the Clerk's Office by the close of business on June 7, 2018, subject to any party's motion to seal filed no later than June 5, 2018;
- (3) Order that the parties and the Clerk's Office follow the procedure set forth above in Paragraph 4 for the filing of previously filed court documents and documents filed in the future, and for the filing of any motions to seal; and
- (4) Release immediately by the close of business on May 31, 2018, the specific documents identified in Paragraph 5 above.

Dated: May 29, 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

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LLC, WFLD Fox 32 Chicago, The Associated
Press, and WLS Television, Inc.*

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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,)

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

Respondent

People State of Illinois

Jason Van Dyke

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

**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.)	

[PROPOSED] ORDER

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

1. The Decorum Order entered February 3, 2017 is hereby vacated.
2. Intervenors' request that all documents and pleadings in this matter be transferred to the Office of the Clerk of the Circuit Court of Cook County ("the Clerk's Office") by the close of business on June 7, 2018, subject to any party's motion to seal filed no later than June 5, 2018, is GRANTED/DENIED.
3. Intervenors' requests below that the parties be ordered to adhere to the following procedures are ruled upon as indicated below:
 - (a) All documents and pleadings filed in this matter going forward shall be filed in the Clerk's Office. (GRANTED/DENIED.)
 - (b) As to previously filed court file documents dated from before vacatur of the February 3, 2017 Decorum Order, if a party wishes the Court to seal any document in whole or in part, such party shall identify that document for Intervenors by the close of business on June 1, 2018, and shall then file a properly supported motion to seal such material on or before June 5, 2018. (GRANTED/DENIED.)
 - (c) Any previously filed court file document subject to a motion to seal shall be maintained in the Clerk's Office and not be released to the public pending the Court's decision on the applicable motion to seal, with the Court hearing any such motion expeditiously. (GRANTED/DENIED.)
 - (d) The Clerk's Office, upon receiving the previously filed court file documents immediately from the Court, shall release publicly all

previously filed court documents, and as to which no motion to seal has been filed, by the close of business on June 7, 2018. (GRANTED/DENIED.)

- (e) Any order sealing a previously filed court file document—or any document filed in the future—shall be made pursuant to specific, on-the-record judicial findings consistent with *Press-Enter. Co. v. Superior Ct. Of Cal. For Riverside Cty.*, 478 U.S. 1, 8-9 (1986) (“*Press-Enterprise II*”) and *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 232 (2000), and any such findings shall be in writing, with Intervenor’s afforded a reasonable opportunity to object to any such findings. (GRANTED/DENIED.)
4. Intervenor’s request for immediate public release of Document Nos. 28, 29, 35, 36, 37, 47, 76, 84, 90, 93, 106, and 107 listed on Exhibit A attached hereto is GRANTED/DENIED, and such released documents are ordered to be made publicly available in the Clerk’s Office by the close of business on May 31, 2018.

DATED: May 31, 2018

ENTERED: _____
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 C

**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 Intervenor¹'s Motion for Intervention and Access to Court Documents (the "Motion"), filed on March 6, 2018, requesting relief as set forth specifically in Intervenor¹'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, Intervenor¹'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, Intervenor¹'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, Intervenor¹'s request for public release of Document No. 107 (from Exhibit A) is ENTERED AND CONTINUED.

¹ The Intervenor¹s 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

1553

Order prepared by:
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Counsel for Chicago Public Media, Inc.

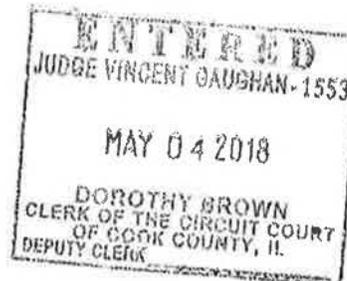


Exhibit A: Filings to which the State objects to their release in part because the presumption of access does not apply

6	Defendant's Motion to Waive Appearance	3/23/2016	No presumption
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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

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109	Defendant's Supplemental list of Expert Witnesses	1/5/2018	No presumption
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