

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

**NOTICE OF FILING**

To: Joseph H. McMahon  
Kane County State's Attorney, Court-Appointed  
Special Prosecutor  
Kane County State's Attorney's Office  
37W777 Route 38, Suite 300  
St. Charles, IL 60175  
[jm@co.kane.il.us](mailto:jm@co.kane.il.us)

Daniel Q. Herbert  
Herbert Law Firm  
206 S. Jefferson, Suite 100  
Chicago, IL 60661  
[dan.herbert@danherbertlaw.com](mailto:dan.herbert@danherbertlaw.com)

PLEASE TAKE NOTICE that on **Friday, April 13, 2018**, Counsel filed the attached **Intervenors' Third Request for Access to Court File Documents and Other Access-Related Relief** for Intervenors Chicago Public Media, Inc., The Associated Press, WLS Television, Inc., WGN Continental Broadcasting Co., LLC, WFLD Fox 32 Chicago, Reporters Committee for Freedom of the Press, Chicago Tribune Company, LLC, and Sun-Times Media, LLC, copies of which are hereby served upon you.

Dated: April 13, 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



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.*

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.*

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*

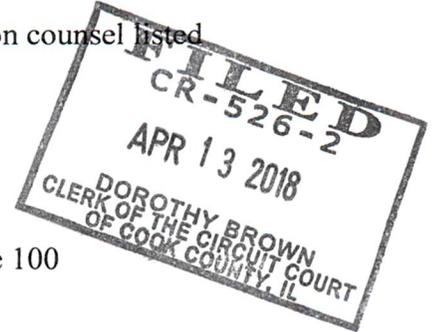
Damon E. Dunn  
Funkhouser Vegosen Liebman & Dunn, Ltd.  
55 West Monroe Street  
Suite 2410  
Chicago, IL 60603  
(312) 701-6800  
[ddunn@fvldlaw.com](mailto:ddunn@fvldlaw.com)  
*Counsel for Sun-Times Media, LLC*

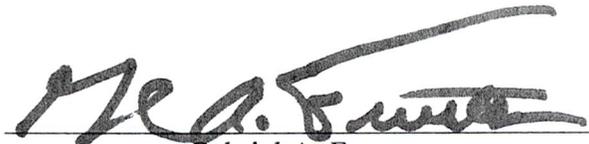
**CERTIFICATE OF SERVICE**

Gabriel A. Fuentes, an attorney, hereby certifies that on **Friday, April 13, 2018**, he caused the foregoing **Notice of Filing** and attached **Intervenors' Third Request for Access to Court File Documents and Other Access-Related Relief** to be served upon counsel listed below via email:

Joseph H. McMahon  
Kane County State's Attorney, Court-Appointed  
Special Prosecutor  
Kane County State's Attorney's Office  
37W777 Route 38, Suite 300  
St. Charles, IL 60175  
(630) 232-3500  
[jm@co.kane.il.us](mailto:jm@co.kane.il.us)  
*Counsel for the State of Illinois*

Daniel Q. Herbert  
Herbert Law Firm  
206 S. Jefferson, Suite 100  
Chicago, IL 60661  
(312) 655-7660  
[dan.herbert@danherbertlaw.com](mailto:dan.herbert@danherbertlaw.com)  
*Counsel for Defendant*



  
\_\_\_\_\_  
Gabriel A. Fuentes

IN THE CIRCUIT COURT OF COOK COUNTY  
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PEOPLE OF THE STATE OF ILLINOIS, )  
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Hon. Vincent M. Gaughan

**INTERVENORS' THIRD REQUEST FOR ACCESS  
TO COURT FILE DOCUMENTS AND OTHER ACCESS-RELATED RELIEF**

For more than five weeks now, Intervenors<sup>1</sup> have requested that Your Honor make rulings (1) requiring the creation of a publicly available docket sheet, (2) permitting the parties and Intervenors to file their motions and briefs openly and in the public record, (3) requiring that all court proceedings in this matter be conducted in open court in the absence of explicit findings consistent with the constitutional standard that they be held in chambers and that, if any proceedings are held in chambers, a court reporter be present, and (4) releasing to Intervenors and the public—again, absent specific on-the-record findings—the previously filed motions, briefs, orders, and other public filings. The Court has established a procedure for evaluating the Intervenors' fourth request, but the other three requests have been entered and continued without rulings.

Every passing day without a ruling constitutes a violation of the constitutional rights of the Intervenors and the public. *See Nebraska Press Ass'n v. Stuart*, 423 U.S. 1327, 1329 (1975). Once again, therefore, we ask that the Court grant the following relief: (1) order the creation—and public

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<sup>1</sup> 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.

dissemination—of a publicly available docket sheet; (2) permit the parties and Intervenors to file their motions and briefs openly and in the public record; (3) conduct all hearings in open court or, if closed to the public based on specific findings that doing so is necessary to protect a higher interest, conduct the proceedings with a court reporter present; and (4) release to the public all filings for which Your Honor does not make specific findings that nondisclosure is necessary to preserve a higher interest.<sup>2</sup> In support of this requested relief, Intervenors state as follows:

1. Intervenors filed their Motion to Intervene and for Access to Court File Documents (“the Motion”) on March 6, 2018. Intervenors’ Mem. at 5. In their supporting Memorandum of Law, they sought access to the complete court file, which was inaccessible—and remains inaccessible—to the public. *Id.* at 5. In doing so, Intervenors demonstrated that there are documents in the court file that are presumed accessible to the public and that, while the presumption may be overcome, the Court has not made any findings that would, in fact, overcome the presumption. *Id.* at 8-13. Furthermore, Intervenors pointed out that there is no publicly available docket sheet memorializing the date and subject of filings and orders in this matter. Intervenors’ Mem. at 5. Intervenors also asserted that court hearings in this matter should not be closed to the public absent findings that closure is necessary to preserve a higher interest. *Id.* at 14 n.6. Finally, Intervenors showed that the Court’s orders entered January 20, 2016 and February 3, 2017 (collectively known as “the Decorum Order”) have been applied in a manner that has resulted in the impoundment of the contents of the court file. *Id.* at 4-6.

2. On March 8, 2018, the Court convened a closed-door hearing at which the Court discussed the Intervenors’ Motion. 3/8/18 Tr. at 4. The Court made no findings to support closure

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<sup>2</sup> Intervenors also renew their request that the Court rule that Intervenors are not prohibited by the February 3, 2017 Decorum Order from publicly releasing correspondence between counsel for the Intervenors and the Parties.

of the March 8 hearing and no court reporter was present. *Id.* Following the closed hearing, the Court granted Intervenors' motion to intervene to seek access to the court file and to "comment upon any other issues implicating the rights of the public and the media to open access to these proceedings." 3/8/18 Order. The Court also granted Intervenors' request to publicly release their Motion and Memorandum of Law, but not to release the already public exhibits attached to their Motion. *Id.* The Court directed Intervenors and the Parties to confer regarding what items within the inaccessible court file should be accessible to the public. *Id.*

3. On March 26, 2018, Intervenors filed a Status Report and Requests for Relief ("Status Report"). The Status Report summarized and attached the written communications between the Parties and Intervenors concerning the Parties' objections to the release of court file documents. It also included Intervenors' second request for relief. Specifically, Intervenors requested the following:

- (a) immediate release of the court file documents as to which the Parties did not object to disclosure;
- (b) release of all other court file documents within seven days absent required specific findings justifying continued impoundment of any court file documents;
- (c) permission to file the Status Report in the Clerk's Office for public release;
- (d) modification of the February 3, 2017 Decorum Order to allow the Parties, Intervenors, or other parties to publicly file documents in the Clerk's Office rather than courtroom 500;
- (e) an order that the Clerk of the Court maintain a proper docket sheet, listing all filings in this case by name and date;
- (f) an order that correspondence between counsel in this case is not barred from public release under the Decorum Order; and
- (g) that hearings in this matter be held in open court unless specific findings are made justifying closure, and use of a court reporter at any hearings that are closed.

4. At the hearing on March 28, over Intervenors' objection, the Court convened another closed hearing. 3/28/18 Tr. at 29-30. The Court stated that if Intervenors' counsel declined to attend the closed hearing, the Court would discuss intervention matters with the Parties outside the presence of Intervenors' counsel, and that any refusal to attend the closed hearing would mean that Intervenors would waive their right to "fully represent" their clients. *Id.* The closed hearing proceeded with Intervenors' counsel present. No court reporter was present.

5. After the closed hearing, the Court ordered the Parties to provide further briefing by April 6 on the issue of whether public access to particular court file documents should be denied, and if so, why. 3/28/18 Order. The Court directed Intervenors to respond to those submissions by April 13. *Id.* The Court also declined to grant any of the requests set forth in the Status Report as recited above in Paragraph 3(a)-(g), instead entering and continuing each request. 3/28/18 Order; 3/28/18 Tr. at 33-34, 36-38.

6. The Court also declined Intervenors' requests for an order compelling the State to provide a complete list of all court file documents and for permission to allow one of Intervenors' attorneys to review the complete file in chambers for the purposes of making a complete inventory of it. 3/28/18 Order; 3/28/18 Tr. at 38-41. Accordingly, the Court ordered Intervenors to file a brief by April 13 without permitting the Intervenors to even see a complete docket sheet or a complete list of court filed materials.

7. The Parties made their filings on April 6. For the reasons stated in Intervenors' separately filed Consolidated Response to Parties' Objections to Public Disclosure of Court File Documents, the Parties failed to establish that any of the court file documents in this matter are not subject to the First Amendment presumption of access, or that any of their specific objections to disclosure justify denial of access.

8. No proper basis has been asserted by the Parties or the Court to deny public access to documents filed by Intervenors in this matter in an effort to obtain public access to the court file and proceedings. *See A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 993 (1st Dist. 2004) (holding that trial court abused its discretion by requiring media intervenor to file under seal its briefs challenging the sealing of court files).

9. No basis whatsoever has been asserted by the Parties or the Court to deny the public access to a comprehensive docket sheet, required by law to be kept in all court cases in Illinois. 705 ILCS 105/16(6).

### **REQUESTS FOR RELIEF**

Accordingly, in an effort to avoid appellate review, Intervenors request that the Court grant the following relief:

- (a) Order all documents in the court file to be released to the public immediately absent judicial findings as to any file documents or portions thereof that should be withheld on the ground that nondisclosure is essential to preserve a higher interest, based on findings narrowly tailored to preserve that interest, and where that interest is Defendant's fair trial right, findings that public disclosure would create a substantial probability of prejudicing that right, and that reasonable alternatives to denial of public access will not adequately protect the right.
- (b) Order that Intervenors' Status Report and Requests for Relief, including exhibits, be unsealed and filed in the Clerk's Office.
- (c) Replace the Court's order entered February 3, 2017 that requires the Parties and "any other party" to file documents or pleadings in room 500 of the George N. Leighton Criminal Courthouse, with a procedure in which the Parties, Intervenors and others filing documents in this matter file them in the Clerk's Office, and,

where appropriate, such filings take place under seal only upon appropriate motions to seal that are properly considered by the Court and granted only if appropriate findings requiring nondisclosure are made.

- (d) Order that the Clerk of the Court or Your Honor's Clerk prepare and maintain a publicly available docket sheet that lists and identifies, by document title and date, each document filed in this matter and each Order entered by the Court.
- (e) Order that correspondence between Intervenors and counsel for the Parties is not covered by the Decorum Order and not subject to any judicial restriction on public disclosure.
- (f) Order that all hearings held by the Court will be held in open court with a court reporter present, unless the Court enters specific findings (stated on the record in open court) that closure of a particular hearing is essential to protect a higher interest, based on findings narrowly tailored to preserve that interest, and where that interest is Defendant's fair trial right, findings that a public hearing would create a substantial probability of prejudicing that right, and that reasonable alternatives to closure will not adequately protect the right.
- (g) Order that closed proceedings, if any, take place in the presence of a court reporter.

Dated: April 13, 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



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*