

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

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

5 THE PEOPLE OF THE STATE)
6 OF ILLINOIS,)
)
7 Plaintiff,)
8 vs.) No. 17 CR 4286
)
9 JASON VAN DYKE,)
)
10 Defendant.)

11 REPORT OF PROCEEDINGS had at the
12 hearing of the above-entitled cause before the HONORABLE
13 VINCENT M. GAUGHAN, Judge of said court, on the 28th day of
14 April, 2018.

15 PRESENT:
16 HONORABLE JOSEPH MCMAHON,
17 State's Attorney of Kane County.
18 Court-Appointed Special Prosecutor, by:
19 MR. DAN WEILER,
20 MS. JODY GLEASON
21 MS. MARILYN HITE ROSS,
22 Assistant Special Prosecutors,
23 Appeared on behalf of the People;

24 MR. DANIEL HERBERT,
MS. TAMMY WENDT,
MR. RANDY RUECKERT,
Appeared on behalf of the Defendant.

MR. GABRIEL A. FUENTES and MR. BRENDAN HEALEY
Appeared on behalf of the Intervenors.

Denise A. Gross, CSR# 084-003437
Official Court Reporter
2650 S. California Drive, Room 4C02
Chicago, Illinois 60608

1 THE COURT: First off, can I have the defense and
2 prosecution approach? All right, everybody else sit down.

3 Randy, take your hands out of your pocket. You
4 are on TV.

5 All right. On May 4th we're going to have the
6 hearing on the Lynch material and also the expert witness,
7 and I initially said that those, pursuant to the motion,
8 with both the defense and prosecution, that will be a
9 sealed hearing. We will have the court reporter there.
10 Would either side or both sides want to articulate why that
11 should be sealed?

12 MR. MCMAHON: Judge, we did actually file a written
13 motion this morning. I just handed it to your clerk in the
14 courtroom a few moments ago. I have not provided it to
15 either defense counsel -- actually, I sent a courtesy copy
16 out last night.

17 THE COURT: Do you have that motion?

18 MR. MCMAHON: I do.

19 Judge, what we have set forth in the motion is
20 that the proceedings should be closed because what we are
21 going to address is evidence that -- we're going to take
22 the position that you're going to hear summaries of
23 statements that are not admissible. Now, I recognize that
24 the defense may not agree with that. We'll argue about

1 what is admissible and what is not admissible. But given
2 the anticipated closeness of a trial date, putting what is
3 potentially inadmissible evidence or alleged prior bad acts
4 of a witness into the public media, into the public
5 discourse through the media, could have the potential, and
6 would likely have the potential, to interfere with the
7 defendant's right to a fair trial. And as we approach a
8 trial date, that has to be the paramount concern that all
9 of us are trying to respect and preserve.

10 THE COURT: Mr. Herbert?

11 MR. HERBERT: I agree that the defendant's right to a
12 fair trial is paramount. I think that there are much
13 easier alternatives to securing his rights to a fair trial.

14 THE COURT: We're talking about this hearing on
15 May 4th?

16 MR. HERBERT: Right, I'm talking about that too.

17 THE COURT: You want it open?

18 MR. HERBERT: Judge, I'm fine with it being closed.

19 THE COURT: Okay. All right. I don't know if you are
20 through. Let me know if you are done.

21 All right. First off, there's a list of
22 witnesses of people who -- let me just start out about the
23 purpose of the hearing. It's to see whether -- there's an
24 Illinois case by the Supreme Court, People versus Lynch,

1 that came down in 1984 -- can you hear me no longer while
2 you were sitting over there, Mr. Fuentes?

3 MR. FUENTES: I could, Judge, just --

4 THE COURT: If you are hearing impaired, we can get
5 the sheriff to get you some assistive devices. Have a seat
6 right now. Thank you.

7 MR. FUENTES: Thank you. May I make a record
8 concerning the intervenors at this point?

9 THE COURT: You may have a seat. Go ahead and sit
10 down, and I'll ask you later. All right? I want them to
11 get -- we're are going to do this orderly, Mr. Fuentes --
12 never mind. And when I'm talking, you are a distraction
13 right now. You are actually interfering with the
14 administration of justice. That does have consequences so
15 be careful. All right. When I asked you to be seated,
16 there was a purpose to that. I want this out there first.
17 Maybe I'll give you a chance to respond, but don't be
18 pushing yourself up in the front of the line when you are
19 not supposed to. All right. This is a courtroom.

20 All right. This is People versus Lynch, which
21 came down from the Illinois Supreme Court. They decided
22 that acts of aggression or violence by a victim, once the
23 defendant has pled not guilty and also waived the
24 affirmative defense of self-defense, that these acts would

1 be admissible. And there's two prongs to that. One, they
2 are self-authenticating acts, such as convictions for
3 battery, et cetera, and violence; and then there's the
4 other one is live testimony. I'm not concerned with the
5 conviction statements, if any, on Friday May 4th. But I am
6 concerned about what type of testimony and what the
7 testimony actually will be.

8 Now, our Illinois Supreme Court decided this
9 theory of law so that the trier of facts would have more
10 adequate facts to help them make their conclusions in
11 reaching their judgment or verdict. So there's a twofold
12 thing about the Lynch witnesses.

13 First of all, some of these people might be in
14 the community, and as expressed by Mr. Herbert, even his
15 client, who does not live in the community, has been the
16 subject of certain types of incidents. The People that
17 live in the community, if they were told or it was exposed
18 that they might be witnesses for Mr. Van Dyke, might be
19 subject to many things, besides harassment. Also, there
20 may be public safety issues. As we have seen throughout
21 the court proceedings here, there have been multiple
22 protestors, things of that nature, some incidents outside
23 this courthouse and things of that nature. So that is a
24 primary concern that I have about the witnesses. That's

1 why the listed witnesses, their names, have not been and
2 will not be disclosed. Once -- and we certainly are going
3 to have court reporters.

4 Once things are put at trial, any evidence
5 presented at trial, is not covered by any decorum. All
6 right. And that was pointed out by outstanding Justice
7 Robert Gordon in the R. Kelly case. There was a little
8 misnomer in there where it said that even evidence that was
9 presented at trial would be covered by the Decorum Order.
10 That's not correct. So with his guidance, we have
11 corrected the new Decorum Order.

12 All right. So the next thing is, concerning the
13 presentation, my understanding is that the witnesses might
14 be here. I thought they were going to be here.

15 MR. HERBERT: Well, we served -- I don't know if we
16 served all of them.

17 THE COURT: Well, that's all I need --

18 MR. HERBERT: We have attempted to serve, yes.

19 THE COURT: All right. Right. So I told you I'd work
20 with that. So instead of looking at a proffer -- proffers,
21 you know, are initially to say whether the person is under
22 Lynch material or not. But the other thing is, I want to
23 find out basically what they are going to be testifying to
24 so that there's no inadmissible testimony that might be

1 harmful to the defense or prosecution. All right. And
2 that's the reasons -- and then certainly we're going to
3 follow this up with a written order.

4 Briefly, Mr. Fuentes, do you have any comments?
5 You can stay there.

6 MR. FUENTES: Yes, sir.

7 The intervenors object to the closure of the
8 hearing. We request permission to file a response to the
9 motion filed this morning by the State. We'd like to do
10 that by the close of business either by or by noon either
11 Thursday or Wednesday, whatever the Court prefers --

12 THE COURT: No, I would like --

13 MR. FUENTES: -- and we'd like the Court to reserve a
14 ruling before then.

15 THE COURT: Well, my ruling is -- you know, here is
16 the thing. I initially stated the oral reasons why
17 pursuant to R. Kelly, which is a First District case, and
18 not Zimmerman, which is a Fourth District case, and that
19 will be followed up by a written order later on. But
20 certainly, you know the gist, so you can file your
21 appropriate actions by Wednesday, no later than 12:00 p.m.

22 MR. FUENTES: Thank you, your Honor.

23 Would the Court be willing to hear a very brief
24 oral summary of what those positions likely would be in

1 preventing decorum?

2 THE COURT: Mr. Fuentes, I have seen the documents
3 that you have presented and put them in writing, and they
4 are more interesting than any novel even on the New York
5 Times best seller list. So I prefer to see your ability
6 and professionalism and skills in writing, and I would have
7 much more ability to go over it time and time again, rather
8 than have you repeat your oral summation.

9 MR. FUENTES: Thank you, Judge.

10 THE COURT: All right. So that's the reason why we
11 are going to seal.

12 And, again, it's not whether this information
13 will be held from the press. Certainly it's going to be
14 given to the press. It's when. That is the issue.

15 The other thing is, as brought up by Mr. McMahon,
16 we are getting closer to a trial date, which hasn't been
17 reported except by ABC broadcast media, there is 8,100
18 articles written by major newspapers and there's 1,120,000
19 hits in Google. So there's an immense amount of coverage
20 here. The expert witness, Dr. Edelman, came in and he's
21 testified that he's worked in these cases, 20 major cases
22 across the country, and this is right now is probably one
23 of the third or fourth most publicized cases that he's been
24 on. So there actually is this exposure that we have to

1 take into account as part of the marring the order which
2 would be issued by sealing the hearing.

3 And, again, for personal safety, you know, these
4 people are not soldiers. They didn't volunteer for this.
5 So we should have that in mind.

6 All right. And let me say something else too.
7 About the, you know, the mindset here, I don't think
8 there's anybody, Mr. Fuentes, you know -- we all agree with
9 your opinion about the First Amendment. The First
10 Amendment is not just about watching something on TV or
11 reading something in print media. The First Amendment, if
12 you look at it, that enables all the other articles and
13 amendments in our Constitution to be strong. You know, the
14 exposure, the sunlight by the press, the investigative
15 reporting, that enables the public, and as they would say
16 in the Constitution, we, the People have faith in the
17 government. So I mean, you just don't look at it as the
18 right to assemble and the right to this, but it's
19 incorporated in the Sixth Amendment, a public trial. A
20 public trial -- there's a dichotomy in juvenile, the public
21 is not allowed in, but the press has a right to come in.
22 And that's because it helps the integrity of the system and
23 also the faith in the judiciary when these things are
24 reported. So I know everybody else who is here is very

1 supportive of the First Amendment. So it has, again like I
2 say, it's absolutely necessary. But we also have to look
3 at the other parts of the constitution, and you are a
4 lawyer that's sworn to uphold that. You can't violate
5 Mr. Van Dyke's right to a fair trial and still be ethical.
6 And I am not saying you are unethical. But those are -- I
7 wish it was easy. But on one side I'm pulling for the
8 First Amendment, and the other side I'm demanded to make
9 sure that Mr. Van Dyke have a fair trial. So it's not easy
10 and it shouldn't be. So those are just the mindsets that
11 are out there.

12 So then about the expert witness, that's also to
13 be sealed, is that right?

14 MR. MCMAHON: Yes, Judge, that's in the motion that we
15 filed this morning?

16 THE COURT: So, Mr. Fuentes, don't have another motion
17 that it's secret. All right. Can you articulate what that
18 motion is?

19 MR. MCMAHON: Judge, that's our motion to close to the
20 public hearing scheduled to be litigated on May 4, 2018.
21 We filed a single motion addressing both motions that are
22 scheduled before you on May 4th?

23 THE COURT: Right. And another reason is, this may or
24 may not be evidence; is that correct?

1 MR. MCMAHON: Exactly. And as you pointed out, the
2 Court in the People versus Kelly decision held that the
3 presumption of public access does not attach to the
4 hearings concerning potential evidence, and that's the
5 emphasis on potential evidence here. You are going to hear
6 what potential evidence is. I suspect that Mr. Herbert and
7 I will agree on some of those things, but we'll disagree on
8 a significant amount of it, and to put all of that into the
9 public eye and conversation, could interfere with the
10 defendant's right to a fair trial.

11 THE COURT: Could effect the jury pool because they
12 might hear some things that have been reported that would
13 not be admissible and that might be a basis for them not to
14 be able to give a fair trial or bias towards one side or
15 the other.

16 Okay. Those are the primarily findings why we
17 would have a sealed hearing on Friday, and again, this
18 would be followed up. These are the only methods that I
19 could see, and they have to narrowly construed so that they
20 don't impinge on the First Amendment. Again, it's a matter
21 of timing when the evidence will be or the hearing will be
22 presented, not if they are going to be presented. And
23 anything again that's said at trial is -- certainly it will
24 be a public trial, so there's no protection at that time on

1 that type of thing.

2 So all right, let's get to the motions then. One
3 of the attorneys have a seat at their table.

4 Mr. Fuentes, I would want you to participate in
5 this, all right, these motions.

6 MR. FUENTES: Your Honor, you are referring to motions
7 involving the intervention or some other motions?

8 THE COURT: The motions that -- if you read the
9 transcripts from Thursday, this stack of motions. The ones
10 that we're going to hear today. Please don't bring up the
11 change of venue motion. All right.

12 MR. FUENTES: Thank you, Judge. I think it's on the
13 list. Okay.

14 THE COURT: All right. Do you have a list of Mr.
15 McMahan's -- the motions?

16 MR. FUENTES: I do have a copy of that, your Honor.
17 Thank you.

18 THE COURT: All right. That's what we're going to be
19 working on.

20 MR. FUENTES: Thank you.

21 THE COURT: All right. You got it.

22 All right. There will be some changes in
23 Mr. McMahan's list, which I do appreciate. It's been very
24 helpful. This is Exhibit A -- I'm sorry. I have the wrong

1 list here.

2 All right. The first one on the list that we're
3 going to be using is, it's nomenclature -- excuse me --
4 it's numeric number six, Defendant's Motion to Waive
5 Appearance. All right. And that was filed -- so we'll get
6 the dates in here too -- on May 23, 2016. Is that correct?

7 MR. WEILER: March 23rd.

8 THE COURT: March 23rd. Thank you. All right. Any
9 objections to this?

10 MR. WEILER: Yes, Judge. The State would object to
11 the release of this document. As your Honor knows, Judge,
12 there is this presumption that we've discussed, but this
13 presumption only applies if two things are met; that it is
14 a document that's been historically open to the public, and
15 it's function is actually furthered by disclosure.

16 This, both 6 and 8, Judge, have to do with the
17 defendant attempting to waive his appearance here. And
18 when you look at whether these have been -- these types of
19 documents have been historically open to the public, Judge,
20 I think you do have to look at the context of this case.
21 These are both documents, 6 and 8, that both sides in this
22 case, at least at some point, have marked as objecting to
23 their release because they -- the parties feel they could
24 interfere with the parties right to a fair trial. You've

1 made the findings about the publicity surrounding this
2 case. So it certainly is an extraordinary case. So that
3 does need to be taken into account in looking at prong
4 number 1.

5 But when you look at prong number 2, as well,
6 Judge, whether the purpose of these documents would be
7 furthered by disclosure, it's clear that they wouldn't,
8 Judge. Because the purpose of these documents is to ensure
9 that the defendant gets to court fairly and safely and
10 there are -- there is material in there that could --
11 there's accusations that could inflame the passions of the
12 protestors, that could effect his ability to get to court
13 fairly. There's also the potential that there's
14 inadmissible evidence in there that could sway potential
15 triers of fact in this case. And so based on that, Judge,
16 we would ask that it not be released.

17 THE COURT: All right. Mr. Herbert?

18 MR. HERBERT: Judge, this document, quite frankly, has
19 to come in. The Court the other day allowed for People's
20 response to this document to come in. So therefore, in the
21 interest of justice, there is no reason to exclude it. The
22 State just proffered some reasons -- and as the Court
23 notes, in its motion they didn't argue it -- in its motion
24 the reason was because this motion that was filed by the

1 defendant might have the effect of creating sympathy toward
2 the defendant. God forbid we create a little sympathy for
3 this defendant who has been threatened for three years.
4 Regardless of creating sympathy, it's not a valid basis,
5 Judge. There's no valid basis whatsoever to not allow this
6 document in.

7 THE COURT: All right. I will allow this to be made
8 public.

9 All right. Number eight, Defendant's Reply To
10 Motion to Waive Appearance.

11 MR. HERBERT: Your Honor, it would be the same
12 argument.

13 MR. WEILER: Your Honor, we'd object for the same
14 reasons.

15 In addition, to defense counsel's accusation that
16 we are picking and choosing here, Judge. It's based on the
17 content of what's in the filing. It's not who filed. You
18 went through our list. In Exhibit B, there were defense
19 motions on there. There were State motions on there. It's
20 our position still, Judge, this could potentially effect
21 the parties' rights to a fair trial, and the purpose is not
22 furthered by disclosure.

23 THE COURT: Thank you. Again, this motion was filed
24 on April 27, 2016. I will allow public access to that.

1 That will be allowed.

2 Next one number 17, People's Initial Garrity Team
3 Disclosure to Defendant. And that was filed on
4 December 29, 2016.

5 MR. WEILER: Yes, your Honor, we would object to this.
6 Judge, these next several documents have sort of a special
7 place in that this trial team here in front of your Honor
8 has not had access to these documents at all because of
9 special protections that relate to compelled statements
10 under Garrity. And, additionally, Judge, this would be
11 discovery essentially, a discovery document that would not
12 traditionally or ordinarily be subject to disclosure. Its
13 purpose would certainly not be furthered by disclosure, and
14 as with all the Garrity filings, Judge, your Honor has
15 taken, and this trial team has taken, extraordinary steps
16 to ensure that the defendant's rights under the Garrity
17 case are respected. And the release of any of these
18 Garrity-type materials could effect the parties' rights to
19 a fair trial, and could potentially taint a trier of fact.
20 And for those reasons, Judge, we would ask that this and
21 the Garrity-related documents, again, that have the content
22 that could effect the parties' rights to a fair trial, be
23 withheld.

24 THE COURT: Thank you. Mr. Herbert?

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 at is the one that was filed on November 2, 2016. Then the
2 State filed one on January 10 -- but then we're going back
3 and forth. It should be, and I know you didn't get a
4 chance to take a look at the filings so -- 17 should have
5 been the one on September 29, 200- -- this is 2016, right?

6 MR. WEILER: Correct, Judge, 2016.

7 THE COURT: Okay. Yeah. And then there's the first
8 supplemental is November 10, 2016, and your second
9 supplemental, meaning the Garrity team's supplemental, is
10 January 10, 2017.

11 All right. Then The Defendant's Memorandum of
12 Law in Support of Motion to Suppress Evidence Tainted By
13 Exposure to the Defendant's Compelled Statement and/or
14 Motion to Dismiss. And that's --

15 MR. WEILER: Your Honor --

16 THE COURT: Go ahead, Mr. Weiler.

17 MR. WEILER: That was filed on January 18th of 2017.

18 THE COURT: I'm sorry, what?

19 MR. WEILER: That relates directly again to Garrity.

20 It is --

21 THE COURT: That would be -- so you are adopting
22 your --

23 MR. WEILER: I'm adopting my previous argument.

24 THE COURT: All right. And, Mr. Herbert, you are

1 adopting yours?

2 MR. HERBERT: No, Judge.

3 THE COURT: Specifically, let's go on then.

4 All right. Which one are you going to further
5 present argument on, which motion?

6 MR. HERBERT: You mean throughout Exhibit A?

7 THE COURT: Well, if you don't have them, look it
8 up --

9 MR. HERBERT: Exhibit A? I don't know what I can
10 present argument on --

11 THE COURT: If you don't have any --

12 MR. HERBERT: -- I don't know what they are going to
13 object to.

14 THE COURT: I certainly just asked. Sometimes, I'll
15 try to explain myself. You have some papers in your hand.
16 What are they?

17 MR. HERBERT: This is what we are talking about,
18 Exhibit 26.

19 THE COURT: Well, just read them then, so we all know
20 what we are talking about.

21 MR. HERBERT: Just so we're clear, we are talking
22 about No. Exhibit 26; is that what the Court is on at this
23 point?

24 THE COURT: No. I mentioned the ones -- one would be

1 number 17. The other one 19. And number 22. Because
2 those are three filed by the Garrity team.

3 MR. HERBERT: Right. If the State does not want to
4 put them in. I'm fine with the State not having those
5 accessible. But I thought we were on the next one,
6 Defendant's one.

7 THE COURT: All right. Have a seat.

8 MR. HERBERT: Okay.

9 THE COURT: Mr. Fuentes, you expressed -- this is
10 pertaining to Garrity material. And this is -- again, this
11 is articulated as some of the statements that may or may
12 not be used. So it's evidence that may or may not be used.
13 So this will not, and there's no other way of getting
14 around this, by redacting or using pseudonyms, et cetera,
15 so this will not given to the public or the press.

16 MR. FUENTES: Request of the Court, Judge?

17 THE COURT: We did already. So we are moving on to --
18 and then I'll allow you on the next one.

19 All right, Mr. Weiler, number --

20 MR. WEILER: Judge, do you want to me to address 26 or
21 28?

22 THE COURT: 26 first.

23 MR. WEILER: It's the State's position that that also
24 relates to Garrity statements, and because of that has the

1 same danger as the previously agreed to 17 through 22, that
2 the factual findings are there for your Honor to make that
3 they could effect the parties' rights to a fair trial, it
4 has the substantial probability of doing that, so we would
5 ask that that not be disclosed.

6 THE COURT: Mr. Herbert?

7 MR. HERBERT: Unfortunately in this case, as a lot of
8 the things the State argues, it's already been disclosed.
9 We know that. First of all, this motion was litigated --

10 THE COURT: So then why are you objecting to anything
11 else being held and not given access to the public or
12 press, if that's your argument?

13 MR. HERBERT: I'm objecting to things that are harmful
14 to my client's due process rights. But if you are inclined
15 to put this document in, I'll sit down and we can move on
16 to the next document.

17 THE COURT: All right. The first, you know, one of
18 the -- have a seat.

19 One of the reasons why the press is entitled to
20 exposure, and also the People are entitled to evidence
21 presented at some types of constitutional motions, is to
22 show where there might be police misconduct. What we have
23 to do is look at this charge and this Indictment. It
24 alleges police misconduct. So the motion, if you compare

1 why the motion would be important, you have to say that
2 that is miniscule as compared to the trial itself. So the
3 whole purpose of the trial would be consistent with that at
4 a motion. Again, this is evidence that would not or may
5 not be allowed in. It goes to involuntary statements. So
6 this will not be allowed to be seen.

7 MR. HERBERT: Judge, if I could address that, please?

8 THE COURT: Go ahead, and don't -- cut down on some of
9 the arguments pertaining to, you know the general
10 arguments, and pertain it to the motion itself,
11 Mr. Herbert.

12 MR. HERBERT: Judge, this document -- first of all, as
13 I said earlier, all of these documents have been --

14 THE COURT: Just pertain it to this motion, please.

15 MR. HERBERT: That's what I'm talking about.

16 THE COURT: You just said all of the documents. You
17 want me to have the court reporter read it back?

18 MR. HERBERT: All the documents contained within this
19 motion --

20 THE COURT: All right. Good.

21 MR. HERBERT: -- have been aired publicly. The Garrity
22 statements at issue that we are so concerned, the
23 prosecutors are so concerned about revealing, those have
24 been revealed by the prosecution, by the City --

1 MR. WEILER: Objection.

2 MR. HERBERT: -- in this case.

3 THE COURT: It has not been by the special prosecutor.

4 MR. HERBERT: That's a difference without a
5 distinction.

6 THE COURT: You are going to tell me the Garrity team,
7 it doesn't have a distinction from the special prosecution
8 unit here?

9 MR. HERBERT: They do. The release of Garrity
10 statements, and your Honor talked about how these
11 motions --

12 THE COURT: All right. Show me in the transcript
13 where there is a statement pertaining to Garrity that's
14 been released? All right.

15 MR. HERBERT: It's in this memorandum.

16 THE COURT: No, show me in the transcript.

17 MR. HERBERT: I'll show it to you right now. Do you
18 have the document there?

19 THE COURT: Read it --

20 MR. HERBERT: I'm sorry?

21 THE COURT: Read it from -- wait a minute. You are
22 saying it's already been -- how has it been exposed? You
23 said in the hearing?

24 MR. HERBERT: The hearing exposed --

1 THE COURT: Do you have an excerpt of the hearing
2 attached to that?

3 MR. HERBERT: Attached to the motion, no, because the
4 motion was done prior to the hearing.

5 THE COURT: All right. Then I said show me in the
6 transcript of the hearing where a statement was presented?

7 MR. HERBERT: I can do that if you give me a time.

8 THE COURT: Well, go ahead and do it.

9 MR. HERBERT: If the Court could give me the
10 transcript, I'll be --

11 THE COURT: You didn't order the transcript and this
12 is --

13 MR. HERBERT: We have the transcript, Judge. You are
14 telling me to do it right now --

15 THE COURT: I'm telling you to do it right now. You
16 are the one saying it. Support your allegation with facts.

17 MR. HERBERT: Well, then we need to take a break.

18 THE COURT: No, I need to watch what's going on. Go
19 ahead. You've got two other people. We can go on with the
20 other motions. Show me in the transcript.

21 MR. HERBERT: Judge, I'm arguing this motion, which
22 there was not a transcript associated with this motion.

23 THE COURT: Then it wasn't exposed in court. It
24 wasn't exposed in court. All right, if that's your

1 motion --

2 MR. HERBERT: No, it's just part of it, Judge.

3 THE COURT: All right. Fine. Sit down. All right.
4 Go ahead.

5 MR. HERBERT: Judge, I'm not finished with my
6 argument.

7 THE COURT: I said sit down. All right. John, why
8 don't you get over there.

9 MR. HERBERT: The Court is not allowing me to finish
10 my argument.

11 THE COURT: All right. Go ahead.

12 MR. FUENTES: Do I understand the Court's ruling to
13 be, that the motion at issue, No. 26, is not subject to the
14 presumption of public access or that it is, but the Court
15 is making findings that there is a substantial probability
16 of harming the defendant's fair trial right, as the State
17 argued, and that reasonable alternatives to closure may
18 not -- will not protect that right. Because, Judge,
19 there's no basis in the record for those findings, and the
20 State has presented only a conclusionary argument to your
21 Honor. If in fact Garrity materials have been discussed
22 publicly, in fact the press --

23 THE COURT: Did you order the transcripts,
24 Mr. Fuentes? We are not in a vacuum here. You are an

1 outstanding attorney. Why would you even come into a
2 courtroom when you know there have been proceedings and
3 they have been transcribed and they have been opened to the
4 public, without having the documentation to support your
5 wonderful argument?

6 MR. FUENTES: Well, I will move on from that then,
7 Judge --

8 THE COURT: The next person that says it's been
9 exposed in a public hearing better have the transcript and
10 the page. Otherwise, really that's like ineffective
11 assistance of counsel, no matter what side you represent.

12 MR. FUENTES: Thank you, Judge.

13 Our position then is this document in fact is
14 covered by the presumption, as are 17, 19 and 22, and it
15 can't be withheld absent the specific Garrity tailored
16 findings that the courts have required, and we have not
17 heard any basis for any of those findings, Judge.

18 THE COURT: Thank you. And that was well articulated.
19 I appreciate that.

20 At this time concerning No. 26, again, this is
21 allegations concerning Garrity, which could lead on to
22 other factors that Garrity protects. It's not evidence.
23 The Garrity findings, again, were made public, but not this
24 document. And this is the most precise way that we can

1 narrowly construe this exposure. All right. So that will
2 not be allowed.

3 All right. Moving on to No. 28.

4 MR. WEILER: Your Honor, that's the Motion to Dismiss
5 For Misconduct at the Grand Jury, filed February 3, 2017.
6 Quite fairly, Judge, that relates to Grand Jury testimony
7 that's referenced and cited to in these motions. Again,
8 Judge, you have crafted a system where the press was
9 allowed to be in and hear arguments on this. However, I
10 don't believe that any transcript was admitted into
11 evidence at the hearing or any specific statements made at
12 the Grand Jury were made. And so that is essentially a
13 redacted version of this document, so it is narrowly
14 tailored. Grand Jury testimony does have special
15 protections. And so this is not the type of document that
16 is historically open to the public. It has not been
17 publicly filed at this point. Additionally, its purpose
18 would not be furthered by disclosure, and as such, we would
19 ask that the protection remain.

20 THE COURT: All right. Mr. Herbert?

21 MR. HERBERT: Judge, we would agree to a certain
22 extent. We would agree that the transcripts from the Grand
23 Jury absolutely should not be released. We would agree
24 that the names of the witnesses that testified at the Grand

1 Jury should not be released. We would agree that the
2 subject matter contained within the motion and the
3 memorandum, which relates specifically to the testimony,
4 should not be released. However, the remainder of the
5 document must be released because, as the Court mentioned,
6 the Court -- the defendant is entitled to present evidence
7 of misconduct during the charging phase, the prosecution
8 phase, and as with the last memorandum that we talked about
9 with Garrity, which I know we reserved, this document in
10 particular speaks to misconduct done by the prosecuting
11 agency and their agents, and that information is necessary
12 for the defendant to be able to have his due process rights
13 guaranteed.

14 THE COURT: Mr. Fuentes, I've got to ask you a
15 question now. Documents that are allowed and presumed to
16 have access to have a qualified privilege concerning
17 liable, trade disparagement and slander; is that correct?

18 MR. FUENTES: It is a qualified right, Judge, and it
19 may be overcome with the entry of specific findings, as
20 I've described.

21 THE COURT: No. Qualified right to -- qualified right
22 -- qualified privilege concerning liable and slander and
23 trade disparagement, if documents are filed in open court
24 and the media and the press quote them; is that correct?

1 MR. FUENTES: I'm not sure I agree with the Court's
2 characterization there.

3 THE COURT: I'm asking you a question. You don't
4 agree with me asking you a question? Shame on you.

5 MR. FUENTES: I thought your Honor was
6 characterizing --

7 THE COURT: Read it back to him, please. He seems to
8 be having trouble understanding me or hearing me. One of
9 them. All right. Could you read back what I was asking
10 him?

11 THE COURT REPORTER: (Reading as requested) --

12 THE COURT: All right. Listen, pay attention. You
13 didn't listen when I was talking. Brendan, don't be doing
14 that when she's reading things back. That distracts from
15 Mr. Fuentes understanding what's going on. And shame on
16 you. All right. Read it so Mr. Fuentes gets a chance to
17 understand what I said.

18 THE REPORTER: (Reading as requested) --

19 THE COURT: All right. Freeze frame right there. You
20 understand that I asked you, "I have to ask you a question
21 right now" do you understand that was the beginning of that
22 colloquy?

23 MR. FUENTES: Yes, sir.

24 THE COURT: All right. Go ahead, read the rest of the

1 sentence.

2 THE COURT REPORTER: (Reading as requested) --

3 THE COURT: -- all right. Freeze frame right there.
4 That's my question. You are representing the media. Come
5 on, you should know this.

6 MR. FUENTES: There is a qualified privilege with
7 respect to some documents. As to, if you file a document
8 in court, you have an absolute privilege against being sued
9 for liable, if that's what the Court --

10 THE COURT: No, you don't have an absolute -- there
11 are very few things in life that are absolute. I'm asking
12 is the qualified privilege against, for the press or the
13 media, if they grant a motion or a filing that has already
14 been filed and access to the public and printed in the
15 paper?

16 MR FUENTES: I don't think there's any qualifications
17 to --

18 THE COURT: Brendan, do you have personal knowledge on
19 that?

20 MR. FUENTES: -- I would say no.

21 MR. HEALEY: I think what your Honor is asking about
22 is The Fair Report Privilege, which is the privilege in
23 Illinois and many other states to report on items of public
24 record that were spoken by a public official or in a

1 document filed in a court filing, for example.

2 THE COURT: Thank you. Are either one of you in a
3 position to waive that privilege in case the information
4 contained in the proceedings are false, slanderous or
5 liable?

6 MR. FUENTES: Our clients would waive no privileges
7 here today.

8 THE COURT: Okay. All right.

9 Proceed then, Mr. Fuentes, concerning your
10 argument.

11 MR. FUENTES: Your Honor, Document 28 is a motion by
12 the defense. It's a request of the Court to exercise the
13 Court's power to throw out the charges --

14 THE COURT: I understand that. Let's get down to the
15 gist of the materials, why you want this allowed to be
16 given to the public and to the press.

17 MR. FUENTES: It is subject to the presumption of
18 public access, because it's asking the Court to do
19 something. Something very influential. Something
20 effecting the charges in this case. And it is relying on
21 matters that occurred before the Grand Jury as a basis to
22 influence the Court's decision on that critical question.
23 So by putting it in front of the Court, by asking the Court
24 to act based on what occurred before the Grand Jury, and

1 the Government's brief here characterizes the Grand Jury's
2 reference in the motion as a characterization of Grand Jury
3 testimony, it's subject to presumption, Judge, whether it's
4 Grand Jury material or not --

5 THE COURT: Wait, wait. You are going far afield.
6 You are actually saying now that Grand Jury testimony can
7 be given to the public prior to a trial?

8 MR. FUENTES: Yes, sir.

9 THE COURT: All right. That's nonsense.

10 MR. FUENTES: I'm happy to explain it to the Court.

11 THE COURT: No, thank you. The federal courts don't
12 allow it even after trial. And certainly that does not --
13 in this jurisdiction as long as I've been practicing. I
14 don't want to hear that Grand Jury testimony -- all right.
15 But the other thing is, I'm going to deny access to this.

16 Mr. Fuentes, and also I assume Mr. Healey, would
17 not waive that qualified privilege against slander, libel
18 and trade disparagement if some of these statements are
19 false by some of the allegations in here. And I understand
20 them protecting their client's rights without consulting
21 with them. But there has been no proof that I have found
22 that supported these allegations, and they would be
23 harmful. There's no way to get anybody's reputation back
24 once these allegations would become public. So I'm denying

1 access.

2 MR. HERBERT: Judge, if I could add just briefly on
3 that.

4 THE COURT: You can on the memorandum. How is that?

5 MR. HERBERT: Judge, I understand concern about
6 reputations of people, however, at this trial, there is no
7 more --

8 THE COURT: This is not a trial. Okay. Move on.
9 Let's move on to --

10 MR. HERBERT: The defendant's reputation --

11 THE COURT: Excuse me, right now. Pay attention. All
12 right --

13 MR. HERBERT: -- is paramount --

14 THE COURT: We are going on to No. 29, The Defendant's
15 Motion to Dismiss the Grand Jury.

16 MR. WEILER: Yes, your Honor. That was filed also on
17 February 3, 2017. For the same reasons, we would object to
18 the release, as the last document.

19 THE COURT: All right. Mr. Herbert, please.

20 MR. HERBERT: Judge, this document alleges misconduct
21 on the part --

22 THE COURT: I'm sorry, Mr. Weiler, you don't want to
23 deal with -- this document contains Grand Jury document, is
24 that correct?

1 MR. WEILER: Yes.

2 THE COURT: You don't want to answer some of
3 Mr. Fuentes statements that this Grand Jury testimony can
4 be given to the public prior to a trial?

5 MR. WEILER: Judge, it's the State's position that by
6 statute it cannot be and that it shouldn't be specifically
7 because of that, as well as because of the ability for it
8 to effect the parties' rights to a fair trial. So we would
9 ask this not be released.

10 THE COURT: And the purpose of the Grand jury too.

11 MR. WEILER: And the secrecy of the Grand Jury,
12 correct.

13 MR. HERBERT: We'll rest on the same arguments that we
14 made.

15 THE COURT: Go ahead, Mr. Fuentes.

16 MR. FUENTES: Your Honor, once a document is subject
17 to presumption, it can only be withheld if withholding is
18 essential to protecting a higher interest. If that higher
19 interest, as should adhere --

20 THE COURT: Mr. Fuentes, God love you, and I do
21 appreciate your legal expertise, give me a case where it
22 says that Grand Jury testimony can be distributed before a
23 trial.

24 MR. FUENTES: I do not have such a case at my

1 fingertips, Judge. Other than to rely on the very, very
2 critical principles that you can only withhold if it's
3 essential to protect the higher interest. If the higher
4 interest is Grand Jury secrecy, I would cite to you the
5 case in our brief, In Re the of Appointment Special
6 Prosecutor, in which that Court said that interest in Grand
7 Jury secrecy is reduced, not eliminated, but reduced if the
8 investigation is over as the Grand jury proceedings were
9 long ago, as is the case here. So I don't think there is a
10 case you can find --

11 THE COURT: I'm sorry to interrupt again. So I can
12 just get a clarification. How long after -- in that
13 decision, was the trial over?

14 MR. FUENTES: I don't remember how long after that
15 decision it was opened. My understanding is --

16 THE COURT: No, was the trial was over after they
17 let -- you said they let the Grand Jury testimony open to
18 the public?

19 MR. FUENTES: No, I didn't say that, Judge. I said
20 that the Court stated -- in fact, I think in that Court --
21 in that decision, they didn't release the Grand Jury
22 testimony, but they stated that the interest in secrecy is
23 reduced. So when we're dealing with the federal
24 constitutional --

1 THE COURT: So that would be sort of dicta.

2 MR. FUENTES: It's informative as to whether or not
3 this is essential to protect that right. And it's not
4 essential if this Grand Jury testimony was long ago, and if
5 it's sent to a Court in support of a --

6 THE COURT: I got the gist. Thank you very much.
7 Okay. All right.

8 This contains Grand Jury testimony. It's prior
9 to trial. It's evidence that may or may not be heard at
10 trial, and the other thing is, the secrecy of the Grand
11 Jury. So this will not be allowed public access.

12 MR. FUENTES: Brief request, your Honor?

13 THE COURT: No. You are very eloquent. Honest to
14 God, I'm learning what you are saying. And put your hand
15 down. Someone is going to think you are a protestor. I
16 don't want Jessica securing you.

17 MR. FUENTES: Redaction, Judge, an option?

18 THE COURT: No, you are going to say the same thing,
19 again. All right. So moving on to number 35.

20 MR. WEILER: Judge, again this is a filing that
21 relates to the same issue of Grand Jury testimony --

22 THE COURT: And, again, when I say this, could you
23 help me out a little bit, if I don't mention a date -- this
24 was filed on April 20, 2017.

1 MR. WEILER: That's correct, Judge. It's entitled
2 Memo of Law, Motion to Dismiss For Misconduct in Front of
3 the Grand Jury. For the same reasons as articulated for
4 the two prior ones, we would ask that this not be released
5 and be subject to the protections.

6 THE COURT: Mr. Herbert?

7 MR. HERBERT: We'll rest on our previous arguments.

8 THE COURT: Thank you very much.

9 This has reference to Grand Jury testimony,
10 again. If it was redacted or pseudonyms, it wouldn't make
11 sense, and for the privacy of and secrecy of the Grand
12 jury. And, Gabriel, we will follow this up with a written
13 order, and I'm going to incorporate maybe some of your
14 arguments and presentations too. Thank you.

15 Moving on to 36, Motion to Dismiss Indictment and
16 Other Relief, which was again filed on April 20, 2017.

17 MR. WEILER: Yes, Judge. Again, the same arguments,
18 as it again relates to Grand Jury testimony, and for those
19 same reasons would we would ask for protections.

20 THE COURT: Mr. Herbert?

21 MR. HERBERT: We would ask that -- barring the entire
22 document is much too drastic of a measure. We would ask
23 that this document be available because it again alleges
24 misconduct of the government in this case, and it was

1 litigated in open court. And we could redact this simply
2 by redacting the names and the -- and if there is an FBI
3 302, that should be redacted as well. But other than
4 that --

5 THE COURT: Well, I don't know what the agreement was
6 over in federal court. But they issued some protections
7 also, haven't they, of what you shouldn't disclose,
8 Mr. Herbert?

9 MR. HERBERT: Was there a question, Judge?

10 THE COURT: Read it back to him.

11 THE COURT REPORTER: (Record read as requested.)

12 MR. HERBERT: Yes.

13 THE COURT: All right. Mr. Fuentes?

14 MR. FUENTES: Thanks, Judge. We adopt those
15 arguments, Judge. And we think that withholding the
16 document would mean that the public would not hear why the
17 defense believes that the top prosecutor in this county has
18 misconduct in the Grand Jury so grand that the case should
19 be dismissed. We think it's very much under the
20 presumption, those types of allegations.

21 Secondly, the State in the briefings have been
22 very concerned about the characterizations of parties to
23 the case, damaging statements about people's reputations,
24 statements by the defendant about his opinion, of his guilt

1 or innocence. Those are all the kind of things we find in
2 criminal court filings very commonly, Judge. And the cases
3 very clearly say they are not a reason to withhold
4 allegations from the public, because somebody's reputation
5 might be hurt. That's just unlawful.

6 THE COURT: All right. I don't know how much criminal
7 law you practice in the State of Illinois, but very seldom
8 do you find defendant's opinions in filings. All right.
9 Even confessions are not allowed to be filed.

10 Okay. So -- but thank you.

11 All right. I will not allow public access on
12 that.

13 What's the difference between the next motion to
14 dismiss on the same date?

15 MR. HERBERT: It's a memorandum of it.

16 THE COURT: Not if it says "Motion to Dismiss the
17 Indictment." This is your document, Mr. Herbert.

18 MR. HERBERT: We are talking about what the State
19 prepared.

20 THE COURT: Do you have them both? There's two
21 filings here, two motions to dismiss.

22 MR. HERBERT: I'm not sure what your Honor is looking
23 at. I'm looking at what the State prepared.

24 THE COURT: I am looking at the documents filed on

1 April 20, 2017. There's two of them. They are different
2 first paragraphs. They are different. One is signed by
3 Mr. Rueckert and the other signed by you.

4 MR. HERBERT: Well, they are two separate motions.

5 THE COURT: That's what I said. Now I'm asking what
6 the difference is.

7 MR. HERBERT: You are right. We will have the same
8 argument.

9 THE COURT: All right. So you stand on your argument?

10 MR. HERBERT: Yes.

11 THE COURT: State?

12 MR. WEILER: Judge, I would only like to add in
13 response to Mr. Fuentes, in their brief, I believe it was
14 their Reply, they said that your treatment of the Lynch
15 motion was a potential model of how it should be handled.
16 This is how every hearing has been handled, that the
17 parties have been allowed to file what's to be in front of
18 your Honor, and essentially a redacted version is presented
19 in open court. So the reason why the top prosecutor did
20 not, and your findings were that they did not engage in
21 misconduct, are all of record. We'd just like to point
22 that out and stand on our previous argument.

23 THE COURT: Mr. Fuentes?

24 MR. FUENTES: Yes, sir. It's not the same thing at

1 all. For a reporter to cover a Lynch motion or a Grand
2 Jury motion, not a motion in front of her --

3 THE COURT: Come on. Please. You guys are wondering
4 all over the place. You are very articulate, and you are
5 nice to listen to, but we do have a time restriction on
6 this. We should get this done before Sunday morning. So
7 let's not talk about things that are not germane to the
8 topic of this hearing. Okay?

9 MR. FUENTES: Briefly, responding to the State.

10 THE COURT: They did not mention -- I sorry, you are
11 entitled to mention Lynch. Go ahead.

12 MR. FUENTES: Thank you.

13 THE COURT: My fault.

14 MR. FUENTES: It's okay.

15 It's not the same. Actual presence,
16 contemporaneous presence at the proceeding, at the hearing,
17 is not a substitute for access to a sealed document where
18 reporters don't even know what motions many times are being
19 argued. They are trying to figure out what's being said in
20 Court. It effects the ability to help the public
21 understand what those motions are.

22 THE COURT: And God love you. And I agree with you as
23 a general principle of law and also trial tactics, but have
24 you compared the transcripts for the hearing on this with

1 the document itself. And I know they titled the
2 document --

3 MR. FUENTES: I've been barred from seeing the
4 document, Judge.

5 THE COURT: You have not been barred from the
6 transcripts. If they have paragraph 1, paragraph 2,
7 paragraph 3, that were argued orally, the one and one
8 correspondence between one and one is not that difficult.

9 MR. FUENTES: It's all been argued orally and set
10 forth in open court. All the more reason for the public to
11 see the document. All the more reason, Judge. It's
12 already public then.

13 THE COURT: All right. Fine.

14 The access is not allowed. And, again, there's
15 materials in there that are not to be considered as
16 evidence and some of those are not supported by evidence.
17 So that's not allowed.

18 Moving on to No. 38, which is a second motion for
19 a Bill of Particulars.

20 MR. WEILER: That was filed April 20th.

21 THE COURT: Thanks. I appreciate that. I'm sorry.
22 Go ahead.

23 MR. WEILER: April 20th of 2017 that was filed.
24 Judge, these again largely relate to discovery issues.

1 They also present a potential defense that the defendant
2 will raise. As such, Judge, at this critical juncture in
3 the case, we would ask that they not be released as they
4 would have a probability of effecting the parties' rights
5 to a fair trial, and so we would ask that they not be
6 released.

7 THE COURT: All right. Mr. Herbert?

8 MR. HERBERT: Judge, first and foremost, it's
9 important to note that the People's response to our Bill of
10 Particulars was not objected to by the State, ironically,
11 in light of that argument, and this Court allowed that
12 access. So that fact alone absolutely warrants the release
13 of this document.

14 And, second of all, I'm not sure how the
15 prosecutor knows the defendant's defense. But certainly
16 asserting our defense as a reason not to include this
17 document is certainly of no merit.

18 And thirdly, this is a document that contains
19 nothing but legal argument and it has to come in, in light
20 of the earlier rulings. Thank you.

21 THE COURT: All right. Mr. Fuentes?

22 MR. FUENTES: I adopt the defendant's argument. And
23 I'd add that in the State's brief it said the reason to
24 withhold this information was set forth in the defendant's

1 legal argument and defenses that were being claimed that
2 will be based on testimony. Judge, that's an insufficient
3 basis to say it's outside the presumption or to make any
4 findings in this case, and they already released
5 Document 13. It's fundamentally inconsistent to say this
6 is not within the presumption of 38 while 13 was. I'd say
7 it's been waived.

8 THE COURT: I got a mix up in the stack here. Let's
9 go on while Tony grabs that document.

10 I'm looking at 39, Defendant's Supplemental
11 Motion to Waive Appearance.

12 MR. WEILER: Judge, that was filed April 20, 2017.
13 It's similar to Document 6 and 8, which you have allowed
14 in, but we would stand on our argument on those motions.

15 THE COURT: Mr. Herbert?

16 MR. HERBERT: We will stand on the argument we made,
17 which you allowed the documents in.

18 MR. FUENTES: No reason not to allow in 39, if you
19 allowed in 6 and 8.

20 THE COURT: Why don't you agree with them and say,
21 Judge, you made a wonderful motion and decision?

22 All right. Here -- I'm sorry you can't video
23 this -- but these are -- well, with the exception of the
24 police report -- they are mostly attachments from the

1 media. So the media actually has absolute control over
2 what they have produced. So, I mean, this is out in the
3 public already. So certainly, as far as The Supplemental
4 Motion to Waive the Defendant's Appearance, as far as the
5 police reports -- and then I'd like the attorneys -- and
6 you all are professionals -- to dedact the police reports,
7 and any information -- the press papers go in already,
8 because they are published by the press. And that's just
9 about it. I just wanted the police reports out of there.
10 So that is allowed with the dedactions, as I said. So
11 we'll put that over here. I'll put that in a special pile.

12 All right. Getting back to The Bill of
13 Particulars. Let me take a look at this. All right. The
14 Defendant's Motion For Second Bill of Particulars is
15 allowed public access to that, and then 39 is allowed with
16 the dedacted portion.

17 Mr. Weiler, No. 40?

18 MR. WEILER: Yes, your Honor. That's a motion in
19 limine to limit the scope of the Kastigar hearing filed
20 April 20, 2017.

21 Again, Judge, this relates to the careful
22 litigation of these compelled statements under Garrity.
23 The document does list potential trial witnesses, as well
24 as potential evidence that has not been ruled as

1 admissible. Any redaction would leave an unintelligible
2 document. These matters were litigated in a public
3 hearing. The reasons for your findings are of record. We
4 would ask that the protections remain.

5 THE COURT: Mr. Herbert?

6 MR. HERBERT: I am fine if the State doesn't want to
7 release this. If the Court wants to -- chooses to
8 release --

9 THE COURT: Let's hear legal argument about this.
10 That's what you are representing your client.

11 MR. HERBERT: We're fine with that. However, the
12 State's reasoning, I don't think, with all due respect --

13 THE COURT: Well, then give me some legal arguments
14 why you think that isn't pertinent.

15 MR. HERBERT: Because first and foremost, the
16 prosecutor indicated that these matters were litigated in
17 open court. So what would be the basis of barring this
18 document if it was litigated in open court?

19 Second of all, limiting an entire document under
20 the umbrella of Garrity is certainly not what the courts
21 have reasoned an appropriate restriction. There are
22 certainly many ways there can be redactions. But like I
23 said, if the State doesn't want this to go back, I don't
24 care whether it goes back or not.

1 THE COURT: Mr. Fuentes?

2 MR. FUENTES: No legal basis has been asserted for
3 withholding this document stating that the presumption
4 doesn't apply or that appropriate findings could not be
5 made or if they were made, that appropriate redactions
6 couldn't be done. I think if names were redacted out of
7 that document, our reporters for our clients would do their
8 best to figure out what that document says and they can be
9 the judges of what's intelligible and what's not.

10 THE COURT: Mr. Fuentes, again, if you or your
11 wonderful journalists were provided the transcripts, they
12 would see that the names are in the transcripts.

13 This is primarily a legal document, which is
14 well-written and well-presented. The names of the
15 witnesses are in the public domain. So you can't close the
16 barn door. So this would be allowed.

17 All right, Mr. Weiler?

18 MR. WEILER: Your Honor, 43 is Defendant's Response to
19 Motion in Limine to Bar Things Prejudiced in Front of the
20 Police Board. That was filed on May 11, 2017. Again,
21 Judge, that deals with Garrity-protected statements. There
22 are allegations that are unsupported. The intervenors have
23 been critical of our use of The Rules of Professional
24 Responsibility as a guide, and we understand that those

1 apply to the extrajudicial statements. However, your
2 Honor, they are a guide to what types of materials could be
3 harmful to the parties' rights to a fair trial. So we did
4 utilize those as a guide. And we would ask that you deny
5 access to that document.

6 THE COURT: Mr. Herbert?

7 MR. HERBERT: Judge, when we're talking about harm to
8 a party because one party is being critical, that is the
9 most -- with all due respect --

10 THE COURT: Be civil, Mr. Herbert.

11 MR. HERBERT: I'm going to. But that is not an
12 appropriate argument when we are talking about a criminal
13 case in which a criminal defendant is authorized or is
14 entitled to a Sixth Amendment right --

15 THE COURT: Not a criminal defendant. A defendant
16 charged with a criminal offense. All right. Go ahead.

17 MR. HERBERT: Judge, we have to be looking at the
18 rights of the criminal defendant here, and if we're
19 concerned about -- the prosecutor is concerned about us
20 making allegations against them. Yes, we did. Those
21 should be public. We did that because the prosecutors made
22 allegations and filed charges against our defendant. But
23 with respect to this document, Judge, you allowed the
24 prosecutor's document to go in that related to this

1 document, so I don't see why we need to argue at this
2 point.

3 THE COURT: All right. That logic is sometimes good,
4 sometimes bad. Certainly if a prior document provides a
5 segue in which rebuttal should be handled or a counter
6 point should be handled, just because somebody files a
7 document, that doesn't mean that someone can go off on a
8 tangent on something that's not germane.

9 All right. I will allow this in. No. 47 is
10 allowed --

11 MR. HERBERT: 43, right, Judge?

12 THE COURT: I'm sorry, my mistake. Yes, 43, correct.

13 All right. Number 44?

14 MR. WEILER: Your Honor, that is a response to a
15 motion to limit scope of Kastigar hearing filed May 11,
16 2017. Again, we would object to the release of this
17 document as it relates to the sensitive issues surrounding
18 Garrity and the statements. It lists potential witnesses
19 and potential evidence that has not been ruled as
20 admissible. There are discovery documents that are
21 attached that have not been released to the public.

22 THE COURT: Well, Mr. Weiler, can you be more specific
23 when you say that?

24 MR. WEILER: I believe that there's --

1 THE COURT: What exhibits?

2 MR. WEILER: Judge, there's General Orders from the
3 Chicago Police Department.

4 THE COURT: There's what, I'm sorry?

5 MR. WEILER: General Orders from the Chicago Police
6 Department.

7 THE COURT: Yes, but those are online. Why don't we
8 do this, let's pass this and we'll come back to it later.
9 Okay?

10 All right. Moving on to -- we're moving on to the
11 next one, Dan. We'll come back on this one.

12 My understanding, this would be the one filed on
13 May 11th, People's Combined Response to Defendant's Motion
14 to Dismiss the Indictment and Motion to Dismiss the
15 Indictment and/Or Other Relief.

16 MR. WEILER: Judge, again, the State would object to
17 the release of this document. There are -- you did have to
18 address factual allegations made by the defendant that
19 could be potential evidence but has not been ruled as
20 admissible at this point. There is a quote from the Grand
21 Jury transcript, as well as comments on the Grand Jury
22 testimony. Based on your earlier rulings about Grand Jury
23 testimony, we would ask that these be subject to
24 protections as they cannot be actually -- they can't be

1 redacted in a way that would leave an intelligible
2 document. As such, we would ask for the protections to
3 remain.

4 THE COURT: All right. Mr. Herbert?

5 MR. HERBERT: Judge, again, there was no legal basis
6 whatsoever presented in that argument that would allow this
7 document to be withheld from the press. Certainly the fact
8 that our motion was withheld, that implied the same
9 argument applies. Judge, this document, it's -- this is
10 not potential evidence like the State said. What we have
11 here, Judge, and I'm seeing a trend, and I'm seeing --

12 THE COURT: How about paragraph 10? Without
13 articulating it, take a look at it.

14 MR. HERBERT: Do you want me to --

15 THE COURT: No, I told you don't articulate it. This
16 pertains to misconduct by a federal agent. All right. And
17 you've got the name in there.

18 MR. HERBERT: Right. And that's more of a reason
19 why -- our motion absolutely should be allowed to be
20 presented. It seems like the Court is denying the
21 introduction of our motions challenging the sufficiency of
22 Indictments and evidence and misconduct of the parties, the
23 Court's denying it because it may prejudice the
24 prosecutors.

1 THE COURT: Maybe the Court's denied it because I've
2 heard the motions and I've heard the arguments on it, and
3 there are allegations in here not supported by evidence.
4 And you had a right to call witnesses and you didn't.

5 MR. HERBERT: Judge, we were prevented, first of all,
6 from putting in our arguments on this, Judge. And you
7 could look at the record on that.

8 THE COURT: I could. Tell me what page on that one
9 because that's another one you have mentioned.

10 MR. HERBERT: Judge, I have them all highlighted so --

11 THE COURT: Who is going to do this? Delegate this
12 while you are talking. When you say these things, you have
13 to be able to present facts that support these conclusions.
14 All right. So who is going to look up that page?

15 MR. HERBERT: I don't know, Judge. I'll have somebody
16 do it.

17 THE COURT: Go ahead. If it's not supported by fact,
18 it's not a fact.

19 MR. HERBERT: Judge, the point is, that the defendant
20 was not given a full opportunity to argue his motions. The
21 Court denied the motions with very little analysis, and it
22 seems now that the Court and the prosecutors want to bar
23 that information from being seen by the press for any
24 number of reasons, but one of which may be that they

1 actually -- they presented facts that certainly would cause
2 conduct into question. And, Judge, with all due respect, I
3 don't think it's enough for the Court to say, well, I
4 didn't find any evidence. Well, we did, and we attached
5 it.

6 THE COURT: Well, it better be appropriate for me to
7 find out when I make rulings or what will I make my rulings
8 on?

9 MR. HERBERT: It's all in there, Judge. But we
10 haven't been allowed to present it all. That's our point.

11 THE COURT: Well, this was submitted under seal and I
12 did get a chance to look at it.

13 MR. HERBERT: I would hope you got a chance to look at
14 it.

15 THE COURT: Well, then you saying I didn't, you know,
16 there wasn't a chance to present it, you filed it. It was
17 presented.

18 MR. HERBERT: Presented, but we didn't get a chance to
19 argue it.

20 THE COURT: Excuse me. I'm listening to what you are
21 saying, and maybe I'm reading too much into it. It has
22 been presented to the Court. That's why it's been filed.

23 All right. Mr. Fuentes?

24 MR. FUENTES: To the extent we heard an argument, and

1 on page 13 of the State's brief, that the defendant's
2 allegations in that document were baseless, that they were
3 irrelevant, or at least characterized as such, that there
4 was an analysis of statutes and caselaw, all of that is
5 lawyers' arguments, Judge. All of that is subject to
6 presumption and can't be withheld absence of finding. And
7 if there is specific Grand Jury material, I think the Judge
8 was maybe referring to paragraph 10 of that document, I
9 respectfully request permission to review it because I have
10 not seen it.

11 THE COURT: All right. Just so long as -- it was a
12 Motion to Dismiss the Indictment and/Or Other Relief Under
13 Section B, Paragraph 10.

14 All right. With the deduction of -- redaction --
15 excuse me -- of the names of the witnesses and of
16 statements supposed to be made by those witnesses, I will
17 allow that to be access given, but it has to be redacted.
18 The defense and prosecution will do that.

19 MR. HERBERT: Judge, if I may?

20 THE COURT: About what?

21 MR. HERBERT: About your ruling. We're not
22 questioning that ruling. But in light of what the Court
23 just said, we would renew our motion to have our Motions to
24 Dismiss the Indictment released subject to the same

1 redactions that the Court just mentioned. It's completely
2 prejudicial --

3 THE COURT: And you are right, I should be consistent.
4 All right, I'm not allowing it. Thank you.

5 MR. HERBERT: Thank you.

6 MR. FUENTES: Your Honor --

7 THE COURT: No, we are moving on. Thank you,
8 Mr. Fuentes. Thank you Mr. Herbert for throwing it out --

9 MR. FUENTES: I was wondering if my request was
10 denied? For the record the request to review paragraph 10.

11 THE COURT: Oh, yes, denied.

12 MR. HERBERT: Judge, just so the record is clear, our
13 motions to dismiss the Indictment based upon memorandum --

14 THE COURT: I'm not repeating this. If you have
15 problems retaining information over a period of time, even
16 over a short period of time, let me know, I'll give you
17 some assistance. Otherwise, talk to your colleagues. What
18 do you think they are there for.

19 All right. There will be a short recess.

20 (Whereupon a recess was taken, after which
21 the following proceedings were had:)

22 THE CLERK: Recalling Jason Van Dyke.

23 THE COURT: All right. Are we all set? All right.

24 Proceed.

1 MR. WEILER: Judge, I believe we are on document
2 No. 58, a brief in support of People's Garrity/Kastigar
3 hearing position, filed December 7, 2017. Your Honor, this
4 is a document the State's trial team has not had access to
5 so we haven't been able to review it. Based on the title
6 of it, Judge, it again relates to the compelled statements
7 under Garrity, which do need to be carefully litigated and
8 carefully protected. Based on that, we would ask that the
9 protections remain in place.

10 THE COURT: Mr. Herbert?

11 MR. HERBERT: Judge, we'll rest on our previous
12 arguments on the Garrity motions.

13 THE COURT: Mr. Fuentes, I know you are in a little
14 bit of the black, not being able to see what these things
15 are, but go ahead and present your input.

16 MR. FUENTES: Judge, yes, with regard to Document 58,
17 Judge, according to my outline here, we do adopt the
18 position we set forth earlier as to Garrity materials. We
19 think all of those motions are subject to presumption and
20 that no basis exists to find that any of them should be
21 withheld.

22 THE COURT: Thank you very much.

23 I just want to enlighten everybody. This is what
24 the brief looks like (indicating). It's approximately a

1 half-inch thick, but if we delve down into it, then it
2 becomes maybe about 3/16th of an inch or an 8th of an inch
3 thick. Most of this is caselaw concerning this. The other
4 thing is a timeline concerning IPRA and their statements.
5 This could be very influential because it could or could
6 not be evidence. I'm not going to allow public access to
7 that.

8 All right. No. 59, please?

9 MR. WEILER: Yes, your Honor. This is the Response to
10 the Motion to Determine Actual Conflict. There is a
11 mistake on our exhibit, your Honor. That should have
12 been -- the real filing date on that is December 7, 2017.

13 THE COURT: Hold on a minute. Do you have that,
14 Mr. Fuentes?

15 MR. FUENTES: Yes, Judge.

16 THE COURT: I mean, the change of the date?

17 MR. FUENTES: Yes, Judge.

18 THE COURT: You got a copy of this, as far as the
19 list?

20 MR. FUENTES: I do, Judge.

21 THE COURT: Okay, good. All right. I just wanted to
22 make sure.

23 Proceed, Mr. Weiler.

24 MR. WEILER: This does list potential witnesses and

1 relates to potential conflict with defense attorney. It
2 also discusses potential IPRA interviews. Based on that,
3 we would ask that the protections remain in place.

4 THE COURT: Mr. Herbert?

5 MR. HERBERT: Judge, I'll adopt my previous arguments
6 and just add additionally for consistency sake, this motion
7 was litigated in open court and the Court obviously used
8 that as a basis to allow many of the State's documents in
9 over our objection.

10 THE COURT: All right. Mr. Fuentes, please?

11 MR. FUENTES: Your Honor, just to drive this point
12 home, as to this document and several others, the defense
13 counsel representing the defendant and the tip of the spear
14 as to the defendant's right to a fair trial, doesn't object
15 to the release of any of these documents. And I think the
16 Court should consider that in terms of whether or not the
17 Fair Trial Right is at risk here. Because the finding the
18 Court has to make, you have the presumption applying as it
19 does here, is that there is a substantial probability that
20 the defendant's rights will be prejudiced and that
21 reasonable alternative, including voir dire, wouldn't cure
22 it. And, again, there's just no basis even been
23 articulated for the Court to make those kinds of findings.
24 The document should be released.

1 THE COURT: All right. Mr. Herbert, Exhibit A, why
2 don't you give us a little insight as to what that is --
3 I'm sorry, Exhibit B.

4 MR. HERBERT: It would be Exhibit B?

5 THE COURT: Exhibit B, please.

6 MR. HERBERT: Exhibit B looks like, appears to be the
7 Collective Bargaining Agreement between the City of Chicago
8 and the Fraternal Order of Police that was in effect during
9 the time frame.

10 THE COURT: All right, you have no objection to that
11 being released, right? You pled it.

12 MR. HERBERT: The entire document?

13 THE COURT: You are talking B.

14 MR. HERBERT: B, no, it's a public record.

15 THE COURT: Okay. That part I have no problems with
16 being given access to.

17 These are all concerning -- not most -- all of
18 this in Exhibit B is the Bargaining Agreement and some of
19 the negotiations that went on there, is that correct?

20 MR. HERBERT: Yes.

21 THE COURT: Okay. That is about an inch thick.
22 Certainly that will be an enthusiastic reading. That will
23 be released.

24 State, again, reiterate, are there any specific

1 parts of this document that you really object to?

2 MR. WEILER: Judge, Exhibit A is a communication
3 between Mr. Herbert and his client. I would assume that he
4 wouldn't want that to be released, and we do have a duty to
5 protect the accused's rights as well, as well as the
6 parties' right to a fair trial. I don't have specific
7 spots where there are witnesses's names.

8 MR. HERBERT: We would object to Exhibit A coming in
9 obviously.

10 THE COURT: What is the basis?

11 MR. HERBERT: It's attorney-client.

12 THE COURT: All right. I will allow access to
13 everything except Exhibit A.

14 MR. FUENTES: Your Honor, may I be heard briefly?

15 THE COURT: Yes.

16 MR. FUENTES: As to Exhibit A, any attorney-client
17 privilege is limited to a confidential communication
18 between an attorney and client. Once that communication is
19 disclosed to the Court, outside the privilege, it's waived
20 and no longer applies. It should be released.

21 THE COURT: Mr. Herbert?

22 MR. HERBERT: I make my same argument, Judge. I still
23 believe it's attorney-client.

24 THE COURT: All right. It is pled. But in this

1 specific case, it will be, for the whole document.

2 THE COURT REPORTER: I'm sorry, your Honor. I
3 couldn't hear you.

4 THE COURT: All right. Both documents will be
5 released with no exceptions.

6 MR. HERBERT: Over defendant's objection to Exhibit A?

7 THE COURT: You shouldn't have pled it then.

8 MR. HERBERT: If that's the case then, why aren't my
9 other pleadings coming in?

10 THE COURT: Oh, come on. We are dealing with one
11 thing at a time. I don't want to get you too confused. I
12 have a feeling we're going to go back on a motion to change
13 of venue.

14 All right, Mr. Weiler?

15 MR. WEILER: Your Honor, we are now on to document
16 No. 61, Motion to Determine Actual Conflict. Again, the
17 date is wrong on that document, Judge. It should be
18 September 7, 2017. That document does list witnesses'
19 names --

20 THE COURT: I'm sorry, read this again, 61. November
21 is it?

22 MR. WEILER: No, I'm sorry, Judge, September 7th.

23 THE COURT: Okay, September 7th instead of September
24 21?

1 MR. WEILER: Right.

2 THE COURT: Okay. Go ahead, proceed, please. Thank
3 you.

4 MR. WEILER: Yes, Judge. It includes witness names
5 and statements, witness testimony before the Federal Grand
6 Jury and the specific dates where transcripts from those
7 proceedings were attached as documents, as exhibits, I
8 should say. Based on that, Judge, we would argue under the
9 Grand Jury protection, the Federal Grand Jury protection,
10 we would ask that this document be protected.

11 THE COURT: Mr. Herbert?

12 MR. HERBERT: We'll rest on our previous argument.

13 THE COURT: State, you can't argue about the
14 Indictment, can you, because that's certainly been released
15 already, right?

16 MR. WEILER: No, Judge. They already have that.
17 That's been released.

18 MR. FUENTES: If the objection is, and if I'm
19 understanding --

20 THE COURT: No, no. I'm just inquiring right now.
21 That is certainly going to be released as part of that. So
22 I want to examine the rest.

23 Go ahead, Mr. Fuentes.

24 MR. FUENTES: We believe this document, like 59,

1 should be released. As to the prosecution's statement that
2 there are three Grand Jury transcripts, June 24th, June 25
3 and July 1 of 2015, our position is the same, and we think
4 those get put in the public realm. They become subject to
5 public disclosure. I know the Court disagrees with that.
6 So our plea to the Court is, if the Court releases the
7 document and is inclined to withhold anything, that they
8 could redact those three transcripts from release without
9 withholding the rest of the material. The AT case supports
10 that, Judge.

11 THE COURT: Anything else? All right.

12 I agree with Mr. Fuentes, those specific
13 references will be dedacted. The rest of the documents
14 will be allowed access.

15 Mr. Weiler?

16 MR. WEILER: Your Honor, 65 is Reply to a Motion to
17 Determine Actual Conflict, filed September 28, 2017.
18 Again, Judge, this lists potential witnesses. It
19 associates defense counsel with these potential witnesses.
20 It could effect the parties' rights to a fair trial the
21 more information about those associations that are out
22 there. So we ask that it be protected.

23 THE COURT: Mr. Herbert?

24 MR. HERBERT: I'll rest on my previous argument.

1 THE COURT: All right. Mr. Fuentes?

2 MR. FUENTES: It should be released as were 59 and 61,
3 Judge.

4 THE COURT: Exhibit A is, again, Grand Jury.

5 All right. Concerning the Reply to the Motion to
6 Determine Actual -- the State's Reply to the Motion to
7 Determine Actual Conflict, again, Exhibit A, the Grand Jury
8 Indictment and the charging document and also the list of
9 charges, that certainly -- that's already out there. But
10 that would be capable of public access. As to the other
11 exhibits, there's testimony which may or may not be used
12 there. Then going on, there's also caselaw which certainly
13 anybody can have access to that, because these are
14 published opinions and they cite different cases.

15 All right. The pleadings themselves, too,
16 mention names of potential witnesses and references. So I
17 am not going to allow the rest of the document to be
18 accessed by the public or the press. The reason being,
19 list of witnesses, potential testimony, which may or may
20 not be evidence at the trial. So 65 is allowed in part,
21 access denied in part.

22 All right. Going to the next page.

23 MR. WEILER: Your Honor, there's one more, 66.

24 THE COURT: That's the next page.

1 MR. WEILER: Oh, I'm sorry.

2 THE COURT: All right. Articulate what that is.

3 MR. WEILER: 66 is defendant's offer of proof of
4 Kastigar witnesses, that was filed on October 4, 2017.
5 Again, Judge, this is a Garrity document, so the trial team
6 has not had access to this document so it's hard for me to
7 speak to the contents. But it certainly sounds like an
8 offer of proof to witnesses who could testify at trial.
9 Additionally, it's the sensitive subject of Garrity, which
10 has been carefully litigated for the defendant's
11 protection.

12 THE COURT: Mr. Herbert?

13 MR. HERBERT: Judge, I'm not sure I need to argue much
14 on this. The Court has already argued the People's motions
15 related to Kastigar into evidence. So based on that,
16 there's no justification why this document should not be
17 given the same access, otherwise it would prejudice the
18 defense additionally.

19 THE COURT: I'm sorry, Mr. Fuentes, go ahead.

20 MR. FUENTES: We also adopt our earlier arguments,
21 Judge. At least as I understand Kastigar, the issue is
22 whether certain persons may have been tainted with Garrity
23 information. I haven't seen the motion documents so I
24 don't know, but those are issues that are legal issues.

1 Yes, they contain some factual discussion, but those are
2 fully within the presumption. There's no showing that the
3 release of those, that information is going to create a
4 substantial probability, that's the high standard, of
5 effecting the defendant's trial rights or there's something
6 like voir dire or other tools at the Court's disposal would
7 have addressed that, and those findings are necessary
8 before this stuff can be withheld. So we object.

9 THE COURT: Thank you.

10 All right. There's conclusions and opinions in
11 here concerning evidence. I'm not going to allow access to
12 the public and press.

13 MR. HERBERT: If I could briefly be heard?

14 THE COURT: You just said something. Sit down.

15 MR. HERBERT: I would like to make a record, Judge.
16 Based on the ruling, Judge.

17 THE COURT: Well, do that in writing, please.

18 MR. HERBERT: Will that be open to the public as well,
19 the writing?

20 THE COURT: You want to violate the Decorum Order
21 again, go ahead. I will go back to the January 18th day
22 where we still have a Rule to Show Cause. Go ahead.

23 MR. HERB: Judge, my concern here is --

24 THE COURT: All right. Come on. Sit down. I told

1 you to respond in writing. Of course it's under the
2 Decorum Order. This is under the Decorum Order.

3 Moving on, please.

4 MR. WEILER: Your Honor, filing 74 is a motion to
5 quash subpoena to a witness. That was filed on
6 November 3rd of 2017. Again, Judge, this was handled by
7 our Garrity team. We don't have access to this particular
8 document. We are going to take, as we have, we are taking
9 a very careful approach to Garrity-related statements.
10 They do have a substantial probability of effecting the
11 defendant's rights.

12 THE COURT: Mr. Weiler, at this time you have all your
13 independent evidence of Garrity preserved and documented,
14 is that correct? Meaning there is no possibility of
15 contaminations of your case in chief by any Garrity
16 material, right?

17 MR. WEILER: Yes, Judge.

18 THE COURT: Go ahead, Mr. Herbert.

19 MR. HERBERT: We -- first of all, we would agree or we
20 would disagree with that statement.

21 THE COURT: Could you just clarify what you said.

22 MR. HERBERT: Sure. We disagree with what the
23 prosecutor said when they said there's no evidence that
24 there was a tainted investigation. As we've laid out in

1 our Garrity motion, which is not being allowed in, we've
2 laid out several factors which indicate that there clearly
3 was prejudice.

4 THE COURT: You made all of your objections concerning
5 your Garrity motions, and they will be duly noted. Go
6 ahead.

7 MR. HERBERT: I guess I have nothing else to argue.

8 THE COURT: Come on, about this. Pay attention.
9 What's your position on this?

10 MR. HERBERT: We take no position -- Judge, you denied
11 our subpoena, so I -- we don't take a position on it.

12 THE COURT: Thank you. Mr. Fuentes?

13 MR. FUENTES: Judge, I believe 74 was a motion that
14 journalist Jamie Kalven filed. There's no basis to say
15 that that's outside the presumption or to withhold it.
16 Trying to quash a subpoena upon a journalist to appear in a
17 criminal case --

18 THE COURT: Actually we should have Brendan argue this
19 one. He was there.

20 MR. FUENTES: He certainly was.

21 MR. HEALEY: Thank you, your Honor. I would agree
22 with Mr. Fuentes, this is Mr. Kalven's motion, so I don't
23 see how it could contain material that would be subject to
24 the presumption in any way. Obviously the defense hasn't

1 objected. So on that basis, I believe there should be
2 access. It should come in.

3 THE COURT: All right. Access is allowed.

4 THE COURT REPORTER: I'm sorry, your Honor?

5 THE COURT: Access is allowed.

6 Okay, moving on to 76.

7 MR. WEILER: Yes, your Honor. 76 is a Motion to
8 Dismiss For Prosecutorial Misconduct. It was filed on
9 November 6, 2017. We would be objecting to the release of
10 this document as there are unsupported factual claims that
11 have not been ruled as admissible evidence interspersed
12 throughout this document, as well as the type of material
13 that has been identified by the Rules of Professional
14 Responsibility of having a substantial likelihood of
15 effecting the parties' right to a fair trial. As such, we
16 would ask that this document be protected.

17 THE COURT: Mr. Herbert?

18 MR. HERBERT: Judge, this document -- first of all,
19 the basis that the State gave does not even come close to
20 supporting a reason why it should be withheld. This
21 document --

22 THE COURT: Mr. Herbert, so we can cut to the chase.
23 A tremendous amount of this stuff is what's been in the
24 press, isn't it?

1 MR. HERBERT: Some is. Some isn't.

2 THE COURT: Then you tell me -- I characterize it as a
3 tremendous amount. You tell me how much is and how much
4 isn't.

5 MR. HERBERT: I'll go through every exhibit.

6 Exhibit 1 was in the press. Exhibit 2 --

7 THE COURT: If there's 1 through 5, you don't have to
8 articulate each number.

9 MR. HERBERT: Exhibit 2 was not in the press.

10 Exhibit 3 was on a public website, but not in the press, as
11 far as I know.

12 THE COURT: Well, public websites are considered, if
13 they are proper persons, to be journalists also.

14 MR. HERBERT: Exhibit 4 was not in the press.

15 Exhibit 5 was not in the press. Exhibit 6, 7, 8, 9, 10,
16 were not in the press. Exhibit 11, I don't know if this
17 was in the press or not, Judge. It's the newest release.
18 Exhibit 12 was not in the press. Exhibit 13 not in the
19 press. 14, not in the press. 15, not in the press. 16,
20 not in the press. 17, not in the press. 18, not in the
21 press, but it is a campaign propaganda article sent out by
22 Anita Alvarez to various voters. I don't know if that was
23 in the press. 19 was not in the press. 20, not in the
24 press. 21, not in the press. 22, not in the press. 23,

1 not in the press. 24, not in the press. 25, not in the
2 press. 26, not in the press. 27, not in the press. 28,
3 not in the press. 29, not in the press.

4 So based on that, Judge, we would say that this
5 document certainly has not been reported on, because the
6 press has been precluded from seeing these documents.
7 Moreover, this motion was litigated in open court. So
8 based on the Court's previous rulings with respect to the
9 People's motions that were allowed in over the defendant's
10 objections, this document has to come in based on that
11 analysis. But more to the point, Judge, this is the type
12 of document that is absolutely required to come in to
13 protect the defendant's Sixth Amendment rights. In this
14 case, the prosecutor said that there was unsupported
15 factual claims made in here. That's the opinion of the
16 prosecutor. We are allowed to get out our supported claims
17 for our arguments. The State also stated that the Court
18 ruled that some evidence was inadmissible. That was not
19 the ruling of the Court. The Court simply denied our
20 motion and said there wasn't a scintilla of evidence that
21 this prosecutor engaged in misconduct. We would say that
22 it's irrelevant whether or not this prosecutor engaged in
23 misconduct. But more to the point, Judge, this document
24 pertains to the State's Attorney's analysis in how it did

1 not warrant first degree charges. Certainly that is
2 information that the defendant is allowed to have public
3 access to. It contains opinions and misstatements by the
4 prosecutor in this case with respect --

5 THE COURT: Now, here, this is a 2017-case, this is
6 17-4286. So you are saying the prosecutor -- you are
7 alleging -- you did allege -- which I found there wasn't a
8 scintilla of evidence of prosecutorial misconduct. When
9 you say this prosecutor, are you talking about Mr. McMahon?

10 MR. HERBERT: No, I'm talking about Anita Alvarez.

11 THE COURT: Well, that's not that clear because I had
12 to clarify it.

13 MR. HERBERT: It's clear in the motion though, Judge.

14 THE COURT: Pardon?

15 MR. HERBERT: It's certainly clear in the motion who
16 we're referring to. I mean, I understand --

17 THE COURT: You are up there talking right now, and
18 the press doesn't have the motion. Come on.

19 MR. HERBERT: So then, Judge, can I continue briefly?

20 THE COURT: Go ahead. Please.

21 MR. HERBERT: My point is that this document shows
22 that THE PROSECUTOR continually aired publicly her opinions
23 and, quite frankly, misstatements of the evidence with
24 respect to my client's actions in this case, Judge. We had

1 not --

2 THE COURT: Not this case. You are talking about --
3 Ms. Alvarez did not bring this Indictment.

4 MR. HERBERT: Judge, it doesn't matter. That's a
5 difference without a distinction. It's a distinction
6 without a difference.

7 THE COURT: Sure, it is.

8 MR. HERBERT: Judge, Mr. Van Dyke has been precluded
9 from responding to any of the negative opinions,
10 misstatements of the evidence, and how this document shows
11 that THE PROSECUTOR committed unethical acts in finding --

12 THE COURT: You better start naming the people when
13 you say "the prosecutor" or I am going to sit you down.
14 All right. Because there could be a misinterpretation, and
15 you shouldn't slander someone's reputation. Are you saying
16 that Mr. McMahon made any statements after the Decorum
17 Order was issued?

18 MR. HERBERT: No.

19 THE COURT: All right. Then start saying who you
20 alleged made these statements.

21 MR. HERBERT: The first prosecutor in this --

22 THE COURT: They don't have a name?

23 MR. HERBERT: Yes, Anita Alvarez, which is clearly
24 laid out in the motion, Judge. We presented substantial

1 evidence that the prosecutor committed unethical acts by
2 bringing out information, reporting it in the press, some
3 of it false, many of it opinions and misstatements, and
4 that is the basis for our motion, Judge.

5 THE COURT: Thank you. Have a seat. We're talking
6 about whether it should be disclosed or not.

7 Mr. McMahon, all right, did you credit now --
8 you've heard this, and we're relitigating this -- this
9 would be the fourth motion to dismiss the Indictment -- you
10 brought a separate Grand Jury; is that correct?

11 MR. MCMAHON: I did, Judge, yes.

12 THE COURT: You have nothing to do with that, the
13 State's Attorney, Ms. Alvarez, who was the State's Attorney
14 prior to this; is that correct?

15 MR. MCMAHON: That's absolutely correct, Judge.

16 THE COURT: So this motion to dismiss the Indictment
17 of something that's not before the Grand Jury is really
18 baseless. Not allowed.

19 I'm sorry, Mr. Fuentes. We are moving on.

20 MR. FUENTES: So your Honor --

21 THE COURT: I said we are moving on. All right.

22 There was not one scintilla of evidence of
23 prosecutorial misconduct. That has been reported by your
24 outstanding clients/journalists that are here today.

1 There's things that can be slanderous and you don't want to
2 waive rebuttal or privilege. All right. Move on to 71 --
3 77.

4 MR. HERBERT: Judge, if I could --

5 THE COURT: 77, please. 77, Mr. Weiler --

6 MR. HERBERT: Judge, if I could respond --

7 THE COURT: 77, Mr. Weiler.

8 MR. HERBERT: Judge, if I could respond --

9 THE COURT: You can sit down right now. You are not
10 on the Appellate Court. You are not responding to me. Sit
11 down -- John -- you want to sit down?

12 MR. HERBERT: I am going to make a record. I'm being
13 precluded from arguing.

14 THE COURT: Sit down right now. What's the matter
15 with you? Show some respect. I'm serious. You are on the
16 edge right now.

17 MR. WEILER: Your Honor, Motion 77 --

18 THE COURT: John, get over there. All right.

19 MR. WEILER: -- is a motion in limine to admit Lynch
20 material. It was filed on November 6th, 2017. All of
21 these motions related to Lynch, I did file multiple
22 proffers on it, Judge. It is an example of when they have
23 filed stuff that they know is not admissible, so they
24 narrowed it down as they got closer to the actual motion,

1 but, again, your Honor --

2 THE COURT: Again, Mr. Weiler, you are still saying
3 this is potential testimony that may or may not be evidence
4 and also there's names -- the names of the witnesses were
5 presented on the motion, is that correct?

6 MR. WEILER: That's correct, your Honor. And as the
7 intervenors have indicated, the way that you handled this,
8 is the way that you have handled every motion, is that the
9 protected material was not released in the public, but
10 the --

11 THE COURT: Mr. Weiler, if they agree with me once,
12 don't hold it against them.

13 MR. WEILER: All right. Yes, Judge.

14 THE COURT: I'll bar that from now on.

15 All right. Mr. Herbert?

16 MR. HERBERT: Judge, with respect to your previous
17 rulings you indicated that --

18 THE COURT: Mr. Herbert, please on 77, either pay
19 attention or I'm going to have one of your colleagues start
20 arguing this stuff. All right.

21 MR. HERBERT: Judge, with respect to 77, in light of
22 your previous rulings where you've allowed the State's
23 motions --

24 THE COURT: You want the Lynch witnesses to be

1 published, the names of them?

2 MR. HERBERT: Judge, I'm going to explain all that.
3 No, the Lynch witness' names absolutely should not be
4 published, but the testimony was aired in the proffered
5 testimony --

6 THE COURT: There was no testimony. There was
7 proffers.

8 MR. HERBERT: Proffers --

9 THE COURT: Are not testimony.

10 MR. HERBERT: -- they were aired in open court. So
11 I'm just saying if the Court is going to be consistent on
12 its rulings with respect to the State's positions that have
13 already been litigated, it should certainly be consistent
14 with the defendant's positions on issues that have already
15 been litigated.

16 THE COURT: Mr. Fuentes?

17 MR. FUENTES: Your Honor, as far as the Lynch material
18 is concerned, we had a court hearing in which the public
19 heard about all of the substance of those allegations the
20 People made against Laquan McDonald.

21 THE COURT: Not on this motion, though.

22 MR. FUENTES: Well, Judge, I haven't seen the motion,
23 so it's difficult to argue about it.

24 THE COURT: It's still in the record, and there's

1 thousands of pages, more than a thousand pages of
2 transcript. So that's there. If you haven't seen it or
3 not is because you haven't looked. You do have the
4 transcript?

5 MR. FUENTES: I have a transcript of a hearing, Judge.

6 THE COURT: You have all -- you have all -- more than
7 a thousand pages of transcript?

8 MR. FUENTES: I think particular hearing was only
9 maybe a hundred or so.

10 THE COURT: What date was that?

11 MR. FUENTES: It was January 18th of 2018, Judge. It
12 begins "Lynch Motion."

13 THE COURT: And then number 77 was filed on
14 November 6, 2017. All right. Was this the last subsequent
15 amended Lynch motion -- no.

16 MR. WEILER: No, Judge. There's many more.

17 THE COURT: Right. So we didn't have a hearing on
18 that because they had the list of witnesses out in the
19 open. It wasn't followed, the Decorum Order, and these
20 people could have gotten in major trouble if I didn't catch
21 that, or they could have even been physically harmed. All
22 right. So that has not been litigated. My understanding
23 there could be a misdirection on this.

24 MR. FUENTES: All right. If I'm understanding the

1 Court correctly, my understanding is that there were
2 48-some witnesses in the beginning. Then there were 25 --

3 THE COURT: We can get to the substantive arguments
4 when we get down to where you are talking about, and you
5 have documentation, which I do appreciate. This was --
6 listen. You didn't file it under the Decorum Order.
7 There's names of witnesses. There's proffers. And if you
8 looked at the proffers, which you didn't get a chance, it
9 was somebody else told somebody this. There was no direct
10 contact. That's why that was not allowed. All right. It
11 was completely almost hearsay on hearsay. So that's one of
12 the other reasons.

13 We'll move on, and I'll give you extra time on
14 the real one when we have the presentations.

15 MR. FUENTES: Thank you, Judge.

16 Our point briefly on this as well?

17 THE COURT: Yeah.

18 MR. FUENTES: Is that the remedy is not to deny news
19 coverage. It's to make the appropriate narrowly tailored
20 findings.

21 THE COURT: Nobody is denying news coverage. It's
22 kind of frustrating when it looks like there's different
23 languages here, and there's over a thousand pages. And
24 Megan has reported on this, outstanding article, and so has

1 Andy before he hurt his back and the broadcast media. So
2 nobody has been holding anything back.

3 Again, now, let's go back to 8,100 articles by
4 major newspapers written on this. 1,120,000 Google hits.
5 So your interpretation of stifling the press is a lot
6 different than mine. So that's not allowed. Because we
7 didn't even get to that point.

8 All right. Moving on.

9 MR. WEILER: Your Honor, filing 78 is the People's
10 Motion to Quash Subpoena of Jamie Kalven. Again, that was
11 filed by the Garrity team. We have not had access to that
12 document. You've ruled on documents relating to it.

13 THE COURT: Go ahead.

14 MR. WEILER: And so to be consistent with our
15 position, Judge, we would be objecting, but we don't know
16 the exact contents of that document.

17 THE COURT: All right. Mr. Herbert?

18 MR. HERBERT: Judge, just briefly. The Court denied
19 our response to this and our subpoena and I don't know how
20 this can come in.

21 THE COURT: All right. Mr. Fuentes?

22 MR. FUENTES: I'm deferring this to Mr. Healey.

23 THE COURT: Thank you. Good, Brendan, you were there.

24 MR. HEALEY: Your Honor, you did allow access on 74.

1 This is also part of the subpoena. So the tangential
2 relation to Garrity is not a basis for denying this. This
3 was argued extensively in open court on December 7th.

4 THE COURT: Thank you, Brendan. That's what I was
5 trying to get across to everybody. Stay here. I like what
6 you are saying.

7 MR. HEALEY: I was going to quit while I was ahead.
8 It was argued extensively in court. Your Honor also
9 granted the motion to quash. Consistent with what you
10 decided on 74, 78 should come in as well.

11 THE COURT: All right. I would allow access to this.
12 Mr. Kalven wrote his own story being the individual
13 witness. There's caselaw involved in this. It has been
14 litigated in open court. So that's allowed.

15 79?

16 MR. WEILER: Your Honor, 79 is our answer to
17 discovery. It's essentially a list of potential witnesses
18 and potential physical evidence by the State. The Court in
19 Kelly made it very clear that a witness list and discovery
20 is not subject to presumption, and so we would ask for
21 protections of that.

22 THE COURT: Mr. Herbert?

23 MR. HERBERT: We do not object to this document
24 remaining under seal.

1 THE COURT: Thank you. Mr. Fuentes?

2 MR. FUENTES: Our position is again, it's not
3 discovery once it has been filed publicly with the Court as
4 it has been done here.

5 THE COURT: Okay. Thank you.

6 All right. It is not filed publicly. Access is
7 denied. This is discovery. And this is on all four points
8 of People versus Kelly.

9 Moving on.

10 MR. WEILER: Your Honor, would it be all right to take
11 80 and 81 together?

12 THE COURT: Any objections?

13 MR. FUENTES: Not on behalf of the intervenors.

14 THE COURT: Okay, catch up on it. Go ahead.

15 Dan, what about you, can we take those together?

16 MR. HERBERT: No objection.

17 THE COURT: And then Gabriel, let me know when you are
18 ready.

19 MR. FUENTES: We don't have any objection to
20 discussing 80 and 81 together. I'd like to defer to
21 Mr. Healey.

22 THE COURT: Thank you. Proceed.

23 MR. WEILER: Your Honor, those again relate to the
24 motion to quash subpoena to Jamie Kalven. 80 was filed

1 November 7, 2017. 81 was filed on December 4, 2017.

2 Again, Judge, we don't know the content of these filings as
3 they were handled by our Garrity team, so we listed them in
4 abundance of caution.

5 THE COURT: Thank you. Mr. Herbert?

6 MR. HERBERT: Judge, I don't know if I need to argue
7 it based on the Court's previous rulings where the Court
8 has allowed all the motions by the People and the
9 journalists to come in. I don't know how this document
10 could not come in. But I would state that Exhibit No. 9
11 should be redacted as it contains an FBI report. But other
12 than that, this document should come in.

13 THE COURT: It's marked unclassified.

14 MR. HERBERT: It is, Judge. But I believe there's a
15 protective order from the Government in that case.

16 THE COURT: Mr. McMahon, do you think this would be
17 covered by that?

18 MR. MCMAHON: It would be -- yes, Judge, it would be
19 protected by that protective order.

20 THE COURT: Okay. We'll abide by that. The Federal
21 Government has been helpful after the initial thing.

22 All right. So with the exception of index No. 9,
23 that would be allowed. And then, Mr. Kalven -- I'm sorry,
24 Brendan, come on. You are on a roll. Go ahead.

1 MR. HEALEY: Your Honor, if I may, just one question
2 with regard to Exhibit No. 9, was that one of the ones that
3 was shown on the screen by Mr. Herbert in the December 7th
4 hearing?

5 MR. HERBERT: I can't answer that question. I don't
6 know.

7 THE COURT: Well, here is the whole thing, if he was
8 under that agreement with the Federal Government not to
9 disclose that and it was under the Decorum Order, I don't
10 think -- I don't know if you were able to use this at that
11 time. I am not in recollection of that. I don't want to
12 compound, then he might get charged twice, all right,
13 Brendan, with a violation of the federal law, the
14 protection order.

15 MR. HEALEY: We are not looking to get Mr. Herbert in
16 trouble, your Honor, but if it were shown, then we would
17 just preserve our rights that that should come in as well
18 because it was displayed in open court.

19 THE COURT: Well, the only thing I can say is, if it
20 was displayed in open court, which I don't actually recall,
21 you can use it at your own risk, and the Federal Government
22 is in charge. But I am not going to allow it. Okay. But
23 everything else will.

24 Brendan, you really had a roll going here.

1 81, we argued both of those together then; is
2 that correct?

3 MR. WEILER: Yes, Judge.

4 THE COURT: Then with only the exception of No. 9,
5 80 -- both of them are allowed.

6 All right, moving on, Mr. Weiler.

7 MR. WEILER: Judge, the next document is filing 83,
8 People's Supplemental Discovery Response 6, filed on
9 December 6, 2017.

10 Your Honor, that outlines discovery that was
11 tendered. It does list several witnesses by name, and so
12 we would ask for the protection of those witnesses.

13 THE COURT: All right. Mr. Herbert?

14 MR. HERBERT: We would not object, and we would
15 actually agree with the prosecutor that this document
16 should be properly sealed or at the very least heavily
17 redacted.

18 THE COURT: All right. Mr. Fuentes?

19 MR. FUENTES: Same position, Judge. It became public
20 once it hit the Court file no matter where in the building
21 that file happens to be maintained.

22 THE COURT: I've got to stop you. If it was public,
23 come on, these wonderful people wouldn't have taken away
24 their weekend -- professional journalists, outstanding

1 attorneys such as yourself, Brendan and his associates,
2 these wonderful people here. It's not public. Otherwise
3 if we're here, we're crazy. And if we ain't crazy,
4 somebody would think that you are. I would never say that.
5 This is under discovery, not allowed. Proceed.

6 MR. WEILER: Your Honor, filing 84 is the Reply to a
7 Motion to Dismiss For Prosecutorial Misconduct. Again,
8 Judge, this deals with the same allegations as the filings
9 that you did not allow. So for those same reasons, we
10 would ask that this be given the same protection.

11 THE COURT: Mr. Herbert?

12 MR. HERBERT: Judge, we would ask that this document
13 be released. There's no legal basis for it not to be
14 published. And for all the reasons expressed earlier with
15 respect to document No. 76, we'll adopt the argument for
16 that.

17 THE COURT: Mr. Fuentes?

18 MR. FUENTES: You Honor, again, the intervenors don't
19 understand what higher interest is being protected when the
20 defense itself says that his fair trial rights are not at
21 play as to some documents. These should be released.
22 Judge, I read the objection the State put in for 84 and
23 relatedly to 76, Judge, and what they said was the document
24 contained allegations against people attacking their

1 character, statements about the defendant's guilt or
2 innocence, unsupported or false or biased statements, and,
3 Judge, I don't know of a court anywhere in this country
4 that has said that material like that can be withheld from
5 the public on that basis.

6 THE COURT: Thank you.

7 All right. Again, these were -- my
8 determinations are these allegations were either not
9 material or relevant and unfounded, so I'm not going to
10 allow it. And they would hurt People's reputations.
11 Again, where do you go to get your reputation back? And,
12 again, you are not waiving your clients' qualified
13 privilege against slander, trade disparagement and liable.
14 Not allowed.

15 Number 87?

16 MR. WEILER: Judge, I show 85 was the next one.

17 THE COURT: 85, I'm sorry.

18 MR. WEILER: That's Defense's Offer of Proof related
19 to Lynch filed on December 6, 2017. This is a list of
20 witnesses, as well as a proffer. Some of those were not
21 ruled to be admissible, and they do list witnesses. And so
22 for the same reasons as the other Lynch motions, we would
23 ask that the protections remain in place.

24 THE COURT: Mr. Herbert?

1 MR. HERBERT: I'll adopt the previous arguments. I
2 would say this was litigated in open court. We had
3 exhibits. We had power point that the Court prevented us
4 from --

5 THE COURT: What about 89 then?

6 MR. HERBERT: Document 89?

7 THE COURT: Yeah. Now that was litigated, right?

8 MR. HERBERT: Judge, they --

9 THE COURT: Not this one.

10 MR. HERBERT: They are the same documents essentially.

11 THE COURT: They are not the same because you keep
12 putting witness's names on these in open court.

13 MR. HERBERT: No, I didn't put anyone's names in open
14 court, Judge.

15 THE COURT: All right. Thank you. I'm sorry,
16 Mr. Fuentes, go ahead.

17 MR. FUENTES: We adopt the same arguments we did with
18 regard to 77, and with respect to the Lynch material.
19 Again, we think you can redact the witness's names and
20 protect the witness's identities, but the substance of
21 their story should come in and legal argument should come
22 in.

23 THE COURT: Again, thank you. We don't know whether
24 this is going to be evidence or not evidence, something can

1 effect what the State and Defense's right to a fair trial.
2 Again, the list of witnesses are there. So with due
3 respect, that's not allowed.

4 All right. Moving on. Which one, Mr. Weiler?

5 MR. WEILER: Your Honor, 86 is the next filing, Reply
6 To Motion in Limine For Lynch. This argument is based on
7 the list of witnesses. Again it's the same list of
8 witnesses. It has the same proffered evidence, and so we'd
9 make the same arguments.

10 THE COURT: Mr. Herbert?

11 MR. HERBERT: Judge, consistent with your previous
12 rulings, this document was litigated in open court, and
13 again it alleges misconduct by Ms. Alvarez, the prosecutor,
14 and it also alleges an important public interest that there
15 was no investigation of -

16 THE COURT: What is this number?

17 MR. HERBERT: 90.

18 MR. WEILER: I was on 86.

19 MR. HERBERT: Then we'll rest on the same argument for
20 Lynch.

21 THE COURT: Mr. Fuentes?

22 MR. FUENTES: Your Honor, there would be great public
23 interest in the legal arguments surrounding Lynch. Many
24 people in the Illinois don't know, but the law is, if the

1 victim performed some earlier act of violence or bad act
2 that the defendant asserting a self-defense defense didn't
3 even know about at the time, that it, under some
4 circumstances, can still comes in. And the circumstances
5 under which it comes in and why it comes in and why the
6 Court thinks it should come in are all things the public
7 may have a great interest in. There's no reason to
8 withhold any of it without the appropriate findings. How
9 is it that material that gets discussed here in the well of
10 this courtroom on January 18th is going to now through
11 republication of the motion papers create a substantial
12 probability that the fair trial record will be effected.
13 The question has not been answered, Judge. There is no
14 basis for a finding.

15 THE COURT: Mr. Fuentes, thank you for two things.
16 First of all, a lot of people that are in the business of
17 litigation and the practice of law start these entitled,
18 which really have great legal concepts, and thank you for
19 defining the Lynch material.

20 Now, the other thing is, thank you too for
21 agreeing with what I've been saying for quite a while since
22 you filed your petition for an intervention, the press has
23 not been deprived of anything as you keep reiterating.
24 This litigation has over a thousand pages of transcript.

1 That won't be allowed. Move on.

2 MR. WEILER: 87, Judge, is just a response to that.

3 THE COURT: Same argument?

4 MR. WEILER: Same Lynch motion. Same argument. Thank
5 you.

6 THE COURT: Mr. Herbert?

7 MR. HERBERT: Same argument.

8 THE COURT: Mr. Fuentes?

9 MR. FUENTES: Except that the public is deprived in
10 the motion --

11 THE COURT: Well, didn't you say that on the last one?

12 MR. FUENTES: Slightly different, Judge.

13 THE COURT: My apologies. Thank you. That won't be
14 allowed.

15 All right. Moving on to 89.

16 MR. WEILER: 89 is proof on Lynch. Same argument as
17 the other Lynch filings.

18 THE COURT: Mr. Herbert?

19 MR. HERBERT: Same arguments.

20 THE COURT: Mr. Fuentes?

21 MR. FUENTES: Same arguments, your Honor.

22 THE COURT: You can't leave me without an addendum.
23 You have to say something.

24 MR. FUENTES: Okay.

1 THE COURT: I'm sorry. That was a rhetorical
2 statement. I apologize. Thank you.

3 All right. Then No. 90?

4 MR. WEILER: Your Honor, this is a Supplemental Motion
5 to Dismiss Prosecutorial Misconduct. It's another filing
6 by the defense doing the same thing as, I think it was 76.
7 For the same reasons argued there, we would ask that the
8 protections stay in place.

9 THE COURT: Mr. Herbert?

10 MR. HERBERT: Judge, we would ask that this document
11 be released obviously for the primary reason that it
12 applies to our defendant's Sixth Amendment right, which is
13 the overriding constitutional right that should be looked
14 at when we're discussing all these motions. This was
15 litigated in open court. So consistent with the Court's
16 rulings on the People's documents that were allowed in,
17 based on that reason, we would ask that the defendant's
18 filings be allowed accessible for the same reasons. But,
19 here, Judge, this is additional allegations and proof of
20 misconduct by the prosecutor in bringing this charge, Anita
21 Alvarez, and it also talks about an important public
22 interest in how there was a criminal act committed by a
23 governmental agency that was compounded with the problem
24 that it was never investigated. And all those facts

1 were --

2 THE COURT: Now, who should you say should
3 investigate -- you are talking about a leak; is that
4 correct?

5 MR. HERBERT: Yes.

6 THE COURT: Who would be the proper persons to
7 investigate that?

8 MR. HERBERT: Judge, I would defer to any one of our
9 fine prosecuting agencies to take that up.

10 THE COURT: Well, Mr. McMahon was appointed for a
11 specific purpose. This isn't like the federal special
12 counsel. We have a limited purpose here. I mean, all
13 right. So you are saying somebody else, some other
14 prosecutorial agency should have investigated this leak?

15 MR. HERBERT: Well, some law enforcement agency
16 absolutely should have.

17 THE COURT: Okay. Then I agree. It could be law
18 enforcement too at the basic level of patrol or state
19 police, et cetera?

20 MR. HERBERT: Right. And you know, as the Courts say,
21 when there's allegations of misconduct by law enforcement
22 with respect to evidence or towards an Indictment or
23 towards a charging decision that that is paramount
24 information that the public is entitled to know about. And

1 it's certainly -- it's certainly relevant to the
2 defendant's Sixth Amendment right to speak to all of the
3 opinions and mischaracterizations that have been presented
4 by the first prosecutor Ms. Anita Alvarez in this case. In
5 which the defendant had no opportunity to respond to,
6 Judge.

7 THE COURT: I couldn't even find your client not
8 guilty on the first Indictment because it don't exist any
9 more. There's no charges against your client, you
10 understand that, right? He is not being held on the first
11 Indictment. That's been nolle-prossed by the State.
12 That's not here any more. All right.

13 MR. HERBERT: I am aware of that. I don't see any
14 distinction between that.

15 THE COURT: Okay. Thank you.

16 All right now, Mr. Fuentes?

17 MR. FUENTES: Your Honor, this is another document.
18 The State's objection to its release on page 19 of their
19 brief refers to -- 18 and 19 -- I'm sorry, Judge, one
20 moment.

21 THE COURT: Take your time. Take your time.

22 MR. FUENTES: It's these double-sided copies. I
23 apologize. It actually is on page 19 of the brief, and the
24 objection is that the document articulates an opinion

1 challenging the integrity of the investigation by attacking
2 actions and motives of members of the media and
3 investigators. I understand that the Court found that
4 those allegations didn't have any merit, but that doesn't
5 mean the public doesn't get access to them, Judge. I was
6 asked earlier to cite a case to the Court. I would like
7 the same case cited to me.

8 THE COURT: Thank you for pointing out what they said.
9 Now, does it challenge the integrity of investigation by
10 attacking the actions and motives and members of the media
11 to the investigations? Now, are you saying that -- you are
12 admitting that there was violations of integrity by the
13 media?

14 MR. FUENTES: No, absolutely not. I'm saying the
15 public is entitled to see what those allegations are. It's
16 entitled to get access to that kind of document. I will
17 cite a case to the Court. The Skollman (phonetic) case.
18 It specifically says that material that may embarrass
19 someone is not --

20 THE COURT: Was that a criminal or civil case?

21 MR. FUENTES: It was a civil case by the Illinois
22 Supreme Court, and it is most certainly applicable to
23 criminal matters, if not more so, where the public's
24 interest and access is even greater.

1 THE COURT: All right. I'm not going to allow that to
2 be given access to the press or the public. Again, there's
3 damaging allegations concerning the press and other people.
4 And, again, where can they get their reputation back? So
5 that's not going to be allowed.

6 All right, Mr. Weiler.

7 MR. WEILER: Your Honor, No. 91 is People's
8 Supplemental Discovery Response 7 filed on December 20,
9 2017. Again, Judge, this is a discovery document that
10 lists evidence, and it also lists witness names. As was
11 pointed out by the Appellate Court in Kelly, that this is
12 not covered by the --

13 THE COURT: All right. It's discovery. Thank you.
14 All right, Mr. Herbert?

15 MR. HERBERT: We don't object to the Court sealing
16 this document.

17 THE COURT: Thank you. All right, Mr. Fuentes?

18 MR. FUENTES: Still not hearing any case in which
19 that's not allowed. I cite to the Court Skollman, 192 IL
20 2d --

21 THE COURT: Skollman didn't have criminal discovery.
22 All right. Not allowed, but thank you.

23 Number 92.

24 MR. WEILER: 92 is a Second Amended Offer on Lynch

1 December 20, 2017. Again, the same Lynch arguments.

2 THE COURT: Thank you. Mr. Herbert?

3 MR. HERBERT: Rest on the previous arguments.

4 THE COURT: Mr. Fuentes?

5 MR. FUENTES: We will rest on our previous arguments,
6 Judge.

7 THE COURT: Thank you very much. And I'll rest on my
8 previous decision, not allowed.

9 Again, Mr. Weiler?

10 MR. WEILER: 93 is a response to motion to dismiss for
11 the prosecutorial misconduct filed on December 6, 2017.
12 Judge, this is our response to that. For the same reasons,
13 we would ask that that be protected as well.

14 THE COURT: Mr. Herbert?

15 MR. HERBERT: Judge, if our documents are not allowed
16 to be released, then I don't see any need to argue this
17 point. I would assume the Court is not going to release
18 these.

19 THE COURT: Mr. Fuentes?

20 MR. FUENTES: We object to not gaining access to Lynch
21 material documents, Judge, for the same reason.

22 THE COURT: Thank you.

23 All right, that will not be allowed. My same
24 reasons. All right.

1 Next, Mr. Weiler.

2 MR. WEILER: 94 is Third Amended Offer of Proof For
3 Lynch. Same argument related to Lynch that was filed on
4 January 5, 2018.

5 THE COURT: Mr. Herbert?

6 MR. HERBERT: Same argument.

7 THE COURT: Mr. Fuentes?

8 MR. FUENTES: Same argument. Just to put a fine point
9 on it. I'm not using the word "public." These materials
10 were filed in the Court file, and they are therefore
11 accessible to the public no matter where in the building
12 they are maintained.

13 THE COURT: Thank you. All right. For the same
14 reasoning, they will not be allowed to have access to the
15 press or public. Thank you.

16 95?

17 MR. WEILER: No. 95 is Defendant's Initial Expert
18 Witness Disclosure, filed January 5, 2018. This is a list
19 of witnesses and has discovery, and so not -- the
20 presumption does not apply.

21 THE COURT: Mr. Herbert?

22 MR. HERBERT: We would not object to the sealing of
23 this document.

24 THE COURT: And, Mr. Fuentes?

1 MR. FUENTES: Documents were filed with the Court,
2 Judge.

3 THE COURT: Thank you. These are, again, potential
4 witnesses and potential evidence. So at this time People
5 versus Kelly covers this. They will not -- the public will
6 not be allowed to have access.

7 All right, Mr. Weiler?

8 MR. WEILER: No. 96 is Reply to Third Amended Offer of
9 Proof in Support of Lynch, filed January 12, 2018. We
10 adopt our Lynch arguments.

11 THE COURT: All right, Mr. Herbert?

12 MR. HERBERT: Rest on our previous argument.

13 THE COURT: Mr. Fuentes?

14 MR. FUENTES: We stand on ours as well, Judge.

15 THE COURT: Thank you very much. That won't be
16 allowed. Same reasoning.

17 Number 97?

18 MR. WEILER: Judge, number 97 is actually the same as
19 No. 26. So that's been addressed.

20 THE COURT: All right. So same ruling as 26.

21 All right, going to the last page. Proceed then.

22 MR. WEILER: 106 is the next document, People's Reply
23 to the Defendant's Motion to Dismiss The Indictment, that
24 was filed on December 6, 2017. That again relates to the

1 same motions to dismiss that you have not allowed. We
2 would adopt our argument to those motions.

3 THE COURT: Mr. Herbert?

4 MR. HERBERT: Judge, we'll adopt our arguments, and
5 just add that in our reply we talk about how certain
6 information was concealed from the Grand Jurors, and we
7 believe that's an important basis for our motion and
8 certainly something that should be made available for the
9 defendant to exercise his ability to respond to false and
10 misleading characterizations that have been presented by
11 the prosecution and its agents throughout this case.

12 THE COURT: Thank you. Mr. Fuentes?

13 MR. FUENTES: Judge, again, if the defense doesn't
14 want it withheld, the defense's fair trial right is not an
15 issue. If the Grand Jury secrecy is an issue, now we are
16 talking about things that were not put in the Grand Jury.
17 Grand Jury secrecy doesn't apply. And, finally, with
18 regard to the document associated with the motion, again,
19 my colleague with Mr. Healey recalled that there was a TV
20 screen put up here in court and documents were put up on
21 that TV screen. I remember it being very difficult to read
22 them, but I remember being able to read them well enough to
23 find out at least Defense Exhibit 21, which the defense
24 mentioned has not been in the press, there's a news story

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 issue with the intervenor's argument is that, you know,
2 once something hits the file, it becomes public, then
3 anything could be filed and there could be circumvented
4 rules of professional responsibility and things of that
5 nature. So we would ask that protections apply to that
6 filing as well.

7 THE COURT: Mr. Herbert?

8 MR. HERBERT: Judge, I don't see any legal basis to
9 challenge the intervenor's status report.

10 THE COURT: So none of your e-mails are on there?

11 MR. HERBERT: I'm sorry?

12 THE COURT: None of your e-mails are on there?

13 MR. HERBERT: I don't see a legal basis to challenge
14 it.

15 THE COURT: Mr. Fuentes?

16 MR. FUENTES: Judge, these were very polite,
17 professional e-mails in which the parties discussed their
18 positions as to which documents could and could not be
19 released. So, yes, when you put something in the public
20 file, there is a chance the world might see it. We put
21 this in our document to tell the Court what was going on.
22 There's no basis to withhold it. The only basis I could
23 think of is the State just doesn't want its e-mails in
24 public. There's nothing embarrassing about them. The

1 Court has the document. This document should have been
2 released the day it was filed.

3 THE COURT: It's just the communications between
4 lawyers that are not in court to me have -- you know, maybe
5 I could be wrong -- have a certain degree of
6 confidentiality and respect for privacy. So on those bases
7 there might not be any help, and I am looking for guidance,
8 from the Court's review, I'll not allow that.

9 MR. FUENTES: May the document itself be released
10 without the exhibits?

11 THE COURT: No.

12 All right. We've concluded -- let me express my
13 appreciation today. If you look around this whole
14 courtroom -- I mean -- and it's really -- I'd like to thank
15 everyone for letting me participate in this. We have
16 journalists that are here that I know aren't getting paid.
17 We have outstanding attorneys that have taken time out of
18 their weekend. We have outstanding prosecutors and
19 outstanding defense attorneys. And I really want to thank,
20 you know, Sheriff Dart for the additional expense that he
21 has put forth for this hearing here today. So it's just a
22 pleasure. I want to thank my people. And, Mr. Sullivan,
23 we have to thank him too. Otherwise, I'll hear about it
24 later. So God love you all. Go ahead --

1 MR. WEILER: Judge, I am sorry we still have 109, 110
2 and 111 and we skipped over 44.

3 THE COURT: I'm sorry, lost my last sheet. Okay. Go
4 ahead.

5 MR. WEILER: Judge, 109 is a Defendant's Supplemental
6 List of Expert Witnesses filed on January 5th of 2018.
7 Again, this is a list of witnesses, not subject to
8 presumption based on Kelly.

9 THE COURT: All right. Thank you.

10 MR. HERBERT: We do not object to the sealing of this
11 document.

12 THE COURT: Okay. Mr. Fuentes?

13 MR. FUENTES: With no objection from the defense, no
14 fair trial right at issue, these were filed with the Court
15 no matter where in the building.

16 THE COURT: All right. This is still a list of expert
17 witnesses. So, again, that comes under the discovery
18 exception in People versus Kelly. So access denied.

19 110 is the next one?

20 MR. WEILER: 110 and 11 are both reports of experts
21 filed by the defense in court file. These are discovery
22 documents. There's no reason for them to be filed in the
23 court file. We would ask that the presumption is not
24 applied.

1 THE COURT: Mr. Herbert?

2 MR. HERBERT: We would not object to the sealing of
3 these documents.

4 THE COURT: Thank you. Mr. Fuentes?

5 MR FUENTES: Judge, if we are on 44, I thought the
6 Court the release of 40.

7 MR. HERBERT: We are not on 44.

8 MR. FUENTES: Then I misheard. I'm sorry.

9 110, our objection is it is filed with the Court,
10 and is therefore accessible. Thank you.

11 THE COURT: Thank you. Again it comes under
12 discovery. So these are potential witnesses, and there's
13 reports of potential witnesses, so access is denied.
14 Anything else?

15 MR. WEILER: 44 we addressed and then passed.

16 THE COURT: Okay. Let's go back to 44. Go ahead.

17 MR. WEILER: You had asked us to look at the exhibits
18 on those. There is a disciplinary proceeding as Exhibit B,
19 and then Exhibit C, D and E are FBI 302's, so we would
20 argue that those should not be released.

21 THE COURT: Mr. Herbert, do you have familiarity with
22 the federal government and what they release? Are the
23 302's part of their protective order?

24 MR. HERBERT: Yes. We would agree with the prosecutor

1 on that point.

2 MR. FUENTES: Your Honor, we haven't seen the
3 document. We have take the position that given it was
4 filed with the Court, it should be released. No basis for
5 not doing so has been asserted.

6 THE COURT: No, there is a Federal Court order.
7 Besides that, there's still, similar to police reports and
8 state jurisdiction, access is denied.

9 Again, what I said earlier, I am not going to
10 reiterate it, but I am thinking in my mind, I really
11 appreciate everybody being very professional here today.
12 Anything else?

13 MR. FUENTES: Judge, we do have a few questions for
14 you. The first is, on Document 107, which is the change of
15 venue motion, the intervenors object to its release being
16 entered and continued on the grounds that there's
17 additional data the defense is collecting. If they are
18 collecting more data, they can file their document with
19 more data, but they filed a motion asking the Court to move
20 this very significant matter out of the county --

21 THE COURT: They filed a motion -- let them tell on
22 me, Mr. Fuentes. They filed a motion because I ordered
23 them to do it. They were saying they were not ready to.
24 So it's still premature. They might want to do additional

1 work on it. Because they accommodated me and filed my
2 court order, I am not going to release it. Because again,
3 the whole premise of the change of venue, besides the
4 newspaper articles, et cetera, and the conclusions, is the
5 expert witness who flew in from California and we had an
6 evidentiary hearing on that. That's still a work in
7 progress.

8 MR. FUENTES: Thank you, Judge.

9 Additionally, and I don't have a number for it,
10 it's not on Exhibit A, but there was a motion for
11 continuance, which occurred here on April 18th. My
12 colleague Mr. Coleman made a specific request of the Court
13 that because it had been aired here in court, that the
14 motion itself should be released. We'd like that to be
15 released.

16 MR. MCMAHON: Judge, I am not sure what motion --

17 THE COURT: This was your motion for continuance or
18 whose motion?

19 MR. FUENTES: It's not an intervention motion for a
20 continuance, Judge. And I don't have the details because I
21 don't have the motion, and I could only try to absorb from
22 the discussion in court what it was. And I found that
23 discussion to be very inadequate to my understanding of who
24 was asking for what and when.

1 THE COURT: I have not heard too many motions that
2 have been appealed on motions for continuances butt go
3 ahead.

4 MS. GLEASON: Judge, my understanding is there was
5 never a motion for a continuance actually filed. You asked
6 the defense to bring in their expert as to why they weren't
7 ready at this point, and I think during the --

8 THE COURT: Oh, I entitled it as a motion for
9 continuance --

10 MS. GLEASON: -- but there was nothing filed.

11 THE COURT: -- but it hasn't been filed by either
12 side. Okay, then Mr. Fuentes is entitled to inquire about
13 that.

14 MR. FUENTES: Thank you, Judge.

15 Finally, there's been briefing as to the
16 intervention issues. The Defense and the State separately
17 filed briefs on April 6th. The defense filed -- the
18 intervenors filed a brief on April 18th. There is no
19 reason at all for any of that to be withheld from the
20 public. And we want clarity from the Court that all of it
21 may be released to the press and there's no consequences to
22 the lawyers for discussing or disclosing those documents
23 publicly? Mr. McMahon?

24 All right. Let's take a short recess. You want

1 to look at it?

2 MR. MCMAHON: I do want to look at it, Judge.

3 THE COURT: All right.

4 (Brief recess taken, after which the
5 following proceedings were had:)

6 THE COURT: All right, court is back in session.

7 Please recall the case.

8 THE CLERK: Recalling Jason Van Dyke.

9 THE COURT: All right. Everybody in. All right,
10 Mr. McMahan, have you had a chance to look at the
11 intervenor's petition?

12 MR. MCMAHON: I have, Judge.

13 THE COURT: And, Mr. Herbert, have you had a chance?

14 MR. HERBERT: Yes.

15 THE COURT: Go ahead.

16 MR. MCMAHON: I have no objection to releasing the
17 intervenor's third request for access to Court filed
18 documents and other access related relief that we filed on
19 April 13, 2018. I believe that can be released in its
20 entirety, Judge.

21 THE COURT: All right.

22 MR. HERBERT: Judge, we objected to one portion, and
23 it's paragraph 98.

24 MR. MCMAHON: That's a different document, Judge.

1 MR. HERBERT: Oh, I'm sorry. With respect to that
2 then, no objection.

3 THE COURT: Mr. Fuentes?

4 MR. FUENTES: Obviously we want that released. We are
5 glad the parties have taken the position they have.

6 THE COURT: Sure. We can do that.

7 MR. MCMAHON: I have no objection releasing the
8 response that I filed to the intervenor's motion for access
9 to court documents. We filed that on April 6, 2018. I
10 believe that can be released in its entirety.

11 THE COURT: Mr. Herbert?

12 MR. HERBERT: We don't object to that.

13 THE COURT: All right. Then that can be released in
14 its entirety.

15 MR. MCMAHON: The next document is the Defendant's
16 Reply in Opposition. I had no objection to releasing that.
17 There's one portion that needs to be redacted, and I think
18 that's what Mr. Herbert is going to address.

19 THE COURT: Mr. Herbert?

20 MR. HERBERT: Thank you. Just one portion where it
21 pertains to our expert witness and proposed testimony.
22 It's paragraph 98, we discussed it with all the parties,
23 and I'll let Mr. Fuentes argue his.

24 THE COURT: Mr. Fuentes, maintaining your objection,

1 you are seeking that it should be disclosed?

2 MR. FUENTES: Judge, we'd like to reserve our right on
3 that paragraph. We are agreeing for today's purposes to
4 have that document made public with redaction of that
5 paragraph. We think it's bound up with the motion the
6 State filed today.

7 THE COURT: What motion was filed today?

8 MR. FUENTES: Motion to seal concerning this expert
9 whose name should not be spoken.

10 MR. MCMAHON: On paragraph 98 of the Defendant's
11 objection, they identified by name one of their experts.
12 That's what we're talking about redacting from this third
13 document.

14 THE COURT: And you want me to reserve my ruling on
15 that?

16 MR. FUENTES: As to the redaction, yes, please, Judge.
17 But we'd like to make that document public with the
18 redaction today so people don't have to wait --

19 THE COURT: All right. We are in a criminal court
20 system. So we do things in a timely manner. That
21 paragraph will be redacted. The others will be allowed
22 to be -- access will be allowed with that redaction.

23 MR. FUENTES: Thank you, your Honor.

24 The really only two remaining issues, one is

1 housekeeping. Today the special prosecutor filed a motion
2 to seal the hearing on May 4th, and we have discussed that
3 with the special prosecutor. We agreed that that document
4 is not a secret document. That it may be provided to the
5 news department --

6 THE COURT: We don't use the word secret. We use
7 sealed. In Washington DC where they leak everything, they
8 can use "seal".

9 MR. FUENTES: Judge, we just want absolute clarity
10 that there's not issue with providing that to our client's
11 news departments.

12 MR. MCMAHON: No objection, Judge. It's a legal
13 argument.

14 THE COURT: That's a good thing. I am glad you
15 brought it up. Good. Then maybe you can present, you
16 know, something that might persuade me to open that hearing
17 up. That's fine. By Wednesday before 12:00.

18 MR. FUENTES: Thank you. We presume also that filing
19 will also be a publicly available filing --

20 THE COURT: No, no. You are very artful and creative.
21 I am not going to unseal anything before I see it. That's
22 a compliment.

23 MR. FUENTES: Fair enough, Judge. We disagree on
24 that, but fair enough, we will abide by that.

1 THE COURT: You disagree that you are artful and
2 creative?

3 MR. FUENTES: No, no, I'm very artful and creative.

4 THE COURT: You failed that one.

5 MR. FUENTES: The news media in attempting to unseal
6 things and attempting to gain access should never be
7 required to file those documents under subpoena. There's a
8 case that says so.

9 THE COURT: You know what, these are wonderful people,
10 they want to go home. No filibusters here.

11 MR. FUENTES: We made our record.

12 The final question we wanted to present to the
13 Court today, Judge, is the Court has been wonderfully
14 attentive, listening to our arguments, and there's been a
15 lot of effort from the part of the staff and the attorneys,
16 and we, the intervenors, are wondering where do we go from
17 here? Shouldn't the Decorum Order be vacated?

18 THE COURT: Absolutely. I can answer that real quick.
19 You and Brendan and Brendan's co-counsel are under the
20 Decorum Order. It's not going to be vacated. That's it.
21 Thank you.

22 MR. FUENTES: Your Honor, may I present a proposed
23 order to the Court?

24 THE COURT: No. First of all, Rodney -- I forget his

1 name -- but he was an outstanding judge. He was the judge
2 in the Michael Jackson trial. All right. They appealed
3 his Decorum Order. He was gracious enough to let us use
4 this Decorum Order. Our Decorum Order has been appealed
5 and been laid out and also incorporates the conduct of
6 professional responsibility. It's not going to be
7 modified.

8 MR. FUENTES: Thank you, Judge.

9 We are only referring to February 3, 2017, order
10 which requires all documents to be filed here in chambers.
11 We'd like the order to be that everything is filed in the
12 Clerk's office, and if somebody wants to seal something,
13 they can file a motion to seal. And we can all understand
14 that there's a request to seal. The Court can rule on that
15 motion. A little different procedure, but the first
16 Decorum Order we are --

17 THE COURT: I appreciate what you are saying, and I
18 like your nomenclature of sealing rather than secret, but
19 that order will still stand. That way we don't lose
20 anything in transition. The number of documents that have
21 to be filed in this building is tremendous. So this way we
22 can keep and make sure that we get these in a timely
23 manner. That's one of the other things. It's just to make
24 sure we get those. I want to compliment the intervenors.

1 You are doing an outstanding job. God love you. Keep up
2 the good work in another courtroom.

3 MR. FUENTES: May I be heard further briefly on the
4 Decorum Order issue?

5 THE COURT: No, they have got to go home. I've got to
6 go home. Listen, can we make the courtroom available for
7 Mr. Fuentes if he wants to continue on while we all leave?
8 Okay. No, that's great. Thank you.

9 MR. FUENTES: Thank you, your Honor.

10 (The above-entitled cause was continued to
11 May 4, 2018, at 9:000 a.m.)

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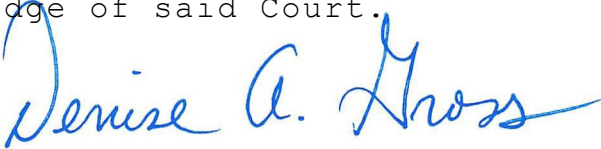
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STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

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

I, Denise A. Gross, 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 on
the hearing in the aforementioned cause; that I
thereafter caused to be transcribed into
typewriting the foregoing transcript, which I
hereby certify is a true and accurate transcript of
the Report of Proceedings had before the Honorable
VINCENT M. GAUGHAN, Judge of said Court.



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

Dated this 30th day of April, 2018.