

ARGUED DECEMBER 14, 2018

NO. 18-3071

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

IN RE GRAND JURY SUBPOENA

Appeal from the United States District Court for the District of Columbia
No. 1:18-mj-0041

REPLY IN FURTHER SUPPORT OF MOTION TO UNSEAL

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REPLY IN FURTHER SUPPORT OF MOTION TO UNSEAL

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) appreciates the government’s agreement that filings in this matter may be unsealed. The parties should indeed file public versions of their briefs, and a version of the oral argument transcript in this Court should be released to the public. Response of the United States to Motion to Unseal at 2 (“Government’s Response”) (Feb. 5, 2019). The Reporters Committee also has no objection to referring the request for record redactions to the district court, provided that the redactions can be implemented in a timely manner. That said, particularly given the government’s view that the public has no right of access to the filings in this matter, Government’s Response at 5-6, the Reporters Committee respectfully reserves the right to challenge redactions the parties propose in this Court or in the district court.

The government errs in suggesting that Federal Rule of Criminal Procedure 6(e) requires the redaction of the name of the witness at issue in this case: “Country A” or the “Corporation.” Response at 3 n.1. Nothing in Rule 6(e), nor this Court’s decision in *In re Motions of Dow Jones & Co.*, 142 F.3d 496 (D.C. Cir. 1998), prohibits a witness from revealing its own participation in a grand jury proceeding. To the contrary, Rule 6(e)(2)(B) lists the only people who are prohibited from disclosing a matter occurring before the grand jury. That list does

not include witnesses.¹ And Rule 6(e) expressly states that “[n]o obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).”

Appellant, the witness here, appears to have no interest in seeking to preserve the secrecy of its identity or its penalty. Country A’s Response to the Reporters Committee for Freedom of the Press’s Mot. to Unseal (“Response”) at 1 (Jan. 16, 2019). Because the witness does not object to the public release of its identity and the Federal Rules not only do not prohibit the release of this information, but also expressly exempt witnesses from the obligation of secrecy, the Reporters Committee respectfully requests that the government and the witness refrain from redacting this information in its unsealed filings. Such a redaction would not be consistent with the First Amendment or the public’s common law right of access. Where, as here, a grand jury witness subjected to contempt proceedings does not object to the disclosure of its identity to the public, that information should not be sealed.

Finally, the Reporters Committee has noted that filings it has made in this Court have been filed under seal on the Court’s docket. The Reporters Committee

¹ Particularly when a witness is subject to contempt proceedings, prohibiting it from sharing publicly its identity or its punishment would present serious First Amendment and due process concerns.

has been advised by the Clerk's Office that only the Court itself can unlock these filings to allow the public to view them. None of these filings contain any information that should be sealed, and the Reporters Committee respectfully requests that the Court direct that all documents filed by the Reporters Committee be made publicly available via the Public Access to Court Electronic Records (PACER) system. The Reporters Committee further joins the government in requesting that the government's filings relating to the Motion to Unseal—as well as those submitted by Appellant—be made accessible via PACER as well. *See* Mot. of the United States to Unseal the Response of the United States to Mot. to Unseal (Feb. 6, 2019).

February 6, 2019

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CERTIFICATE OF COMPLIANCE

1. This Reply Brief in Further Support of the Motion to Unseal complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d) because it contains 590 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f); and

2. This Reply Brief in Further Support of the Motion to Unseal complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

February 6, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2019, I caused the foregoing Reply Brief in Further Support of the Motion to Unseal to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the Court's CM/ECF system. I further certify that four copies of this Statement were filed with the clerk, pursuant to Circuit Rule 27(b), by hand delivery to the clerk, pursuant to Circuit Rule 25(d).

February 6, 2019

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, the Reporters Committee for Freedom of the Press certifies that it is an unincorporated association of reporters and editors with no parent corporation and no stock.

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CERTIFICATE OF PARTIES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), the Reporters Committee for Freedom of the Press hereby certifies that the United States has appeared before the district court and this Court. Because the identity of the Appellant is not public, the Reporters Committee is not able to furnish a certificate of all parties, intervenors, and amici who have appeared before the district court and are in this Court.

Date February 6, 2019

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