

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	2013 JUL -2 PM 10
<b>THE PEOPLE OF THE STATE OF COLORADO,</b> Plaintiff  v.  <b>JAMES HOLMES,</b> Defendant	σ COURT USE ONLY σ
<b>MICHAEL C. THEIS,</b> <b>CHRISTOPHER O. MURRAY</b> Hogan Lovells US LLP One Tabor Center, Suite 1500 1200 Seventeenth Street Denver, CO 80202 Phone (303) 899-7300 Fax (303) 899-7333 michael.theis@hoganlovells.com chris.murray@hoganlovells.com	Case No. 12 CR1522   Division 22
<b>AFFIDAVIT OF JANA WINTER</b>	

STATE OF NEW YORK     )  
   ) ss.:  
 COUNTY OF NEW YORK    )

**JANA WINTER**, being duly sworn, deposes and says:

1. I am an Investigative Reporter for FoxNews.com and a New York resident. I submit this affidavit in connection with the statement the Court asked my attorneys to file by July 2, 2013.

2. I submitted an affidavit in this case in March 2013. In that affidavit, I detailed the severe hardship that defendant James Holmes' subpoena to me has caused in my personal and professional lives. Since March, that hardship has compounded. This affidavit describes what I have experienced in the last few months as a result of the pendency of Holmes' subpoena.

3. Around the time I was originally served with the subpoena in March, I was working on a report about a high profile national security investigation. I received information

that law enforcement were ordered at the last minute to stand down on taking a target of the investigation into custody. After news of my subpoena broke, several sources around the world who had indicated they would provide me with additional information about this case were chilled and refused to speak to me, citing the news of my subpoena. As a result, this important news has not come to light either by my reporting or anyone else's.

4. Also around that time, I was working on a report about a national security investigation into potential breaches of a major national defense program. When I was subpoenaed, my sources stopped talking to me, and I was not able to report on this very significant story. It also has not been publicly reported by any other news outlet.

5. Before I was subpoenaed I received tips on other aspects of the Holmes case, including steps he allegedly took before the massacre and his conversations regarding strained familial relationships. Because I am now under subpoena in this matter, I have not been able to pursue these leads.

6. I recently contributed substantial investigative reporting to what became a Fox News story, but was forced to prematurely end my involvement with the project before it was published. I was compelled to hand over my reporting because of concerns that publishing the report using my byline might cause additional legal complications.

7. Most recently, I got a tip in late June from someone about a high-level investigation of a national security-focused department within the federal government. The investigation involves allegations of serious misconduct by senior officials. My source arranged for another person, who had knowledge of the investigation, to talk to me. Very recently, my source told me that the other person had changed his or her mind and decided not to talk to me after hearing about Holmes' subpoena. That source specifically cited the "Colorado"

proceedings as the reason for this change of heart. The following is a screen grab from my cell phone, with redactions of the date, time, and a four-letter word from my source that might be perceived as offensive, confirming the refusal to speak and the reasons for the refusal:



Jun ■, 2013, ■ PM

Did those people ever write you....one seemed hesitant after the ,edia and sources thung;

Jun ■, 2013, ■ PM

No they did not. What source did you use?

Colorado ■

 Text Message 

8. In addition to these specific examples of the subpoena impairing my reporting, there have been countless times over the last several months since the subpoena was served that I have reached out to law enforcement sources in the middle of breaking news who have historically, for many years, been willing to speak to me, and they have told me not to contact them until my subpoena is resolved; some have literally written back "subpoena" or "no. sorry. Colorado." Much of my career to date has been devoted to developing a robust roster of contacts

in law enforcement and local, city, state, and federal government. As a result of this subpoena, about 80 percent of these individuals now refuse to speak with me at all. The others speak to me less or only in person, which substantially hinders my ability to gather news and my ability to receive and then share accurate and timely information with colleagues throughout my news organization during breaking news situations.

9. Not being able to do my job, simply because I did my job, is extremely distracting and emotionally draining. I am not as productive in my work, and I am concerned that I will never be able to overcome the stain of being subpoenaed to disclose my confidential sources. This is so even though I have steadfastly and consistently stated that I will not violate the bedrock tenets of my chosen profession and I will not burn my sources.

10. The subpoena has also caused me extreme emotional anxiety. In my career, I have had a gun pointed to my head, been caught in the middle of gunfire, and been chased with an electric chainsaw. I do not scare easily, and this is first time in my life that I have been paralyzed with fear. I have had nightmares and panic attacks. For a period of months, I received harassing phone calls at all hours. Because my home address was publicly filed by defense counsel and remains posted online by Holmes' supporters on numerous different blogs and social media accounts, I did and still do not feel safe in my own home. But it was difficult for me to arrange for long-term accommodations elsewhere when there is a possibility that I could be jailed just for honoring the principles of my profession.

11. The subpoena and its potential consequences have also caused upheaval in my personal life and in my relationships. Essentially, my social life is on hold because I don't know what the future will bring. I may not be able to attend the wedding of my closest childhood friend, even though I am the maid of honor and thus responsible for organizing many of the

wedding events. I am limited in my ability to care for an ill family member. My brother has expended money that he can barely afford on nonrefundable airline tickets to Colorado just so that someone from my family is there to support me should I be called to the witness stand and then found in contempt of court for upholding my obligations to my sources. My peace of mind, my home life, my closest friends, and my family have all been turned upside down by this subpoena.

12. When my motion to quash was not decided in April, and my subpoena was continued until August 19, even though I was grateful for the opportunity to have my motion be fully and fairly considered by the Court, I am sure the Court can understand that I felt a degree of distress that my future – and my career – would be in flux for four more months. I understand that a ruling on my motion to quash still will not be ripe by August 19, and possibly not even by September 30. I respectfully ask the Court to grant my motion now, on the grounds that it is simply not just or right for my liberty to hang in the balance while Holmes takes the time to try to satisfy his burdens under the Colorado Shield Law. I am suffering greatly. My career is being diminished beyond recognition, and freedom of speech is dying a slow death for every day that the heavy weight of this subpoena presses down on me.

13. For all of these reasons, I respectfully request that the Court quash the subpoena in full. I thank the Court for its consideration.

  
JANA WINTER

Sworn to before me this  
15<sup>th</sup> day of July, 2013

  
Notary Public

**THERESA M. HOUSE**  
Notary Public, State of New York  
No. 02HO6190809  
Qualified in New York County  
Commission Expires September 24, 2016