

REDACTED
FILED IN THE
DISTRICT COURT
ARAPAHOE COUNTY, CO

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	2014 APR -4 PM 2:58
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	σ COURT USE ONLY σ
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	Case No. 12CR1522 Division 201
MOTION FOR CHANGE OF VENUE [D-206]	

CERTIFICATE OF CONFERRAL

The prosecution objects to this motion.

Mr. Holmes, through counsel, hereby moves this Court for a change of venue pursuant to Crim. P. 21 and C.R.S. §16-6-101 *et seq.*, and the state and federal constitutional guarantees to due process, a fair and impartial jury, a fair trial, the presumption of innocence, to have the prosecution prove every element of their case beyond a reasonable doubt, a fair and reliable sentencing hearing, freedom from cruel and unusual punishment, and fundamental fairness. U.S. Const. amends. V, VI, VIII, and XIV; Colo. Const. art. II, secs. 16, 18, 20, & 25. As grounds he states the following:

I. INTRODUCTION

1. Mr. Holmes' case presents a unique combination of facts that overwhelmingly support a change of venue. The "Aurora Theater Shooting," one of the monikers assigned this case by the press, was a tragic event for the entire state of Colorado and the nation. However, relative to the rest of the state and certainly aside from the indescribable trauma forced upon those present at the theater, the consequences and impact of this event have been borne most heavily by the community of Aurora and the people of Arapahoe County. They have participated directly in the response and recovery, been saddled with unprecedented economic damage, and have been impacted by great emotional and psychological consequences, all of which continue to this day and much of which will persist long into the future. As such, the people of Arapahoe County have a unique and tangible connection to this case and its outcome.

The impacts of this case on this community are sufficiently complex and deep-seated that they cannot be cured even by individual voir dire.

2. The pretrial news coverage has been at best consistent and comprehensive. At worst, the media has been incessant and unrelenting. Between local television, newspaper, and internet coverage, there is not a single aspect of this case that has been open to the public that the media has not reported on. As a result, the public is aware of far more than just the charges and the general nature of the allegations.

3. Instead, the media has time and again informed the public of numerous specific details of the events that occurred at the Century 16 Theater and at Mr. Holmes's apartment. The media has repeatedly published articles containing emotional victim impact evidence. The pre-trial coverage has included a mostly one-sided detailed history of Mr. Holmes's life that undermines the burden of proof related to sanity. Reporters have published inadmissible opinion evidence from several victims disparaging Mr. Holmes and his defense. Recent newspaper coverage has included a detailed analysis of the pretrial non-capital as well as some capital motions. In that coverage, news agencies have instructed the public about specific and highly prejudicial evidence, some of which this Court has deemed inadmissible.

4. Given all of these facts, which will be explained in further detail below and in testimony at a hearing, as well as the attached exhibits and affidavit, this case is exactly the unique and extreme case contemplated by the United States Supreme Court in *Sheppard v. Maxwell*, 384 U.S. 333 (1966). There is a reasonable likelihood that influences apart from the admissible evidence presented at trial will prevent Mr. Holmes from receiving his due process right to a fair trial by an impartial jury under Colorado law and the United States and Colorado constitutions.

II. THE LAW REQUIRES THAT THIS COURT MOVE THE VENUE FOR TRIAL OUTSIDE OF ARAPAHOE COUNTY BECAUSE THE MASSIVE, PERVASIVE, AND PREJUDICIAL PRE-TRIAL MEDIA COVERAGE OF THIS CASE ESTABLISHES PRESUMED PREJUDICE TO MR. HOLMES'S CONSTITUTIONAL RIGHTS.

A. Legal Framework

5. Both Crim. P. 21 and C.R.S. § 16-6-101 provide that a change of venue may occur when a fair or expeditious trial cannot be had in the county or district in which the trial is pending.

6. In addition to the statutory basis for a change of venue, Mr. Holmes has a constitutional basis for a change of venue in order to protect his rights to due process, to a fair trial by an impartial jury, to be presumed innocent, and to have the prosecution prove every element of their case beyond a reasonable doubt. Colo. Const. art. 2, §§ 16, 23, 25; U.S. Const. Amends. V, VI, XIV; *Duncan v. Louisiana*, 391 U.S. 145 (1968); *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Irvin v. Dowd*, 366 U.S. 717 (1961); *Rideau v. Louisiana*, 377 U.S. 723 (1963); *Fields v. People*, 732 P.2d 1145, 1151 (Colo. 1987).

7. A change of venue is also necessary to guarantee Mr. Holmes's rights to a fair and reliable sentencing proceeding, to be free from cruel and unusual punishment, and to fundamental fairness under both the Colorado and United States constitutions. Colo. Const. art. 2, § 20; U.S. Const. Amends. V, VIII, XIV. A change of venue would result in a more expeditious and fair trial in this capital proceeding, a proceeding that requires enhanced reliability under the Eighth Amendment and the State's constitutional counterpart. *See, e.g., Beck v. Alabama*, 447 U.S. 625, 637-638 (1980); *People v. Young*, 814 P.2d 834, 843, 847 (Colo. 1991) (the death penalty mandates an enhanced level of certainty and reliability in the jury's decision to impose that penalty); *People v. Tenneson*, 788 P.2d 786, 791-792 (Colo. 1990) ("Death is a punishment qualitatively different from any other. Because of the unique severity and finality of a sentence to death, the United States Supreme Court has emphasized the heightened need for sentencing reliability in capital cases.") (multiple citations omitted); *see also* Colo. Const. art. II, §§ 20 & 25.

8. It is important to remember that "reversals are but palliatives; the cure lies in those remedial measures that would prevent the prejudice at its inception." *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966).

9. One of the most basic requirements of due process is "[a] fair trial by a fair tribunal." *In re Murchison*, 349 U.S. 133, 136 (1955). While fairness indeed "requires an absence of actual bias in the trial of cases," it is also the case that our system of law "has always endeavored to prevent even the probability of unfairness." *Id.*

10. According to the United States Supreme Court, "In the ultimate analysis, only the jury can strip a man of his liberty or his life...[thus] a juror must be 'indifferent as he stands unsworn. His verdict must be based upon the evidence developed at trial.'" *Irvin*, 366 U.S. at 722 (internal citations omitted). "This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies... The theory of law is that a juror who has formed an opinion cannot be impartial." *Id.*

11. A criminal jury trial should never be "like elections, to be won through use of the meeting-hall, the radio, and the newspaper." *Sheppard*, 384 U.S. at 350. No person can "be punished for a crime without a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power." *Id.* (internal quotations and citations omitted).

12. "Due process requires that the accused receive a fair trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measure to ensure that the balance is never weighed against the accused." *Id.* at 364.

13. "[W]here there is a reasonable likelihood that prejudicial news coverage prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity." *Id.* at 363; *Wafai v. People*, 750 P.2d 37, 43 (Colo. 1988).

14. In order to support a change of venue claim, a defendant must either show that the publicity surrounding his case “was so ‘massive, pervasive, and prejudicial’ as to create ‘a presumption that he was denied a fair trial,’ or alternatively, that the publicity created actual prejudice or hostility towards the defendant on the part of the jury panel.” *People v. Bartowsheski*, 661 P.2d 235, 240 (Colo. 1983).

15. Actual prejudice can only be established by establishing a nexus between extensive pretrial publicity and the specific jury panel called in a particular case. *See People v. Botham*, 629 P.2d 589, 596 (Colo. 1981). Arguments regarding actual prejudice are premature before the jury panel has been called, and Mr. Holmes reserves the right to make any appropriate venue-related motions due to actual prejudice at the time of jury selection.

16. Notwithstanding the prematurity of an actual prejudice claim, sufficient evidence exists to establish presumed prejudice to Mr. Holmes’s constitutional rights in this extraordinary case.

17. There are numerous factors a court must evaluate in determining whether presumed prejudice exists. These factors include the proximity of the media coverage to the date of the trial, the revealed sources of news stories, specificity of the accounts of certain facts, the volume and intensity of the media coverage, extent of comment by the news reports on the facts of the case, the manner of presentation of the media coverage, the size and type of the locale, and the publication of highly incriminating facts not admissible at trial. *People v. McCrary*, 549 P.2d 1320, 1325-26 (Colo. 1976).

18. The most central of these factors is the proximity of the prejudicial coverage to the time of the trial, as a sufficient period of media silence between the prejudicial articles and the beginning of trial can ameliorate even highly prejudicial pre-trial publicity. *McCrary*, 549 at 1326 (citing to the fact that a bulk of the media coverage occurred a year and a half prior to the trial as one basis for denying the defendant’s motion for a change of venue); *see also Bartowsheski*, 661 P.2d at 240-41 (citing to the fact that most of the media coverage occurred at the time of the crime which was six months prior to trial as one basis for denying the defendant’s motion for a change of venue).

19. With respect to presumed prejudice, there is no requirement to show “that the jurors [are] actually and directly affected by the publicity.” *Walker v. People*, 169 Colo. 467, 471 (Colo. 1969). Rather, the denial of a fair trial is presumed where the publicity is “massive, pervasive and prejudicial.” *Id.* citing *Estes v. Texas*, 381 U.S. 532 (1965); *Rideau v. Louisiana*, 373 U.S. 723 (1963).

20. The mere assurance that one can set aside one’s opinions and be fair and impartial, no matter how sincerely stated, is neither conclusive nor dispositive. Where, as here, “a defendant demonstrate[s] the existence of a pattern of deep and bitter prejudice throughout the community where he is to be tried, a juror’s assurance that he will be fair and impartial” is unreliable. *Botham*, 629 P.2d at 599 (citing *Irvin v. Dowd*, 366 U.S. 717 (1961)). It is far more probable that such jurors “are part of the community deeply hostile to the accused, and more likely that they may unwittingly have been influenced by it.” *Id.* (citing *Murphy v. Florida*, 421 U.S. 794, 803 (1975)). “The influence that lurks in an opinion once formed is so persistent that it

unconsciously fights detachment from the mental processes of the average man.” *Irvin*, 366 U.S. at 727.

21. Therefore, even where jurors indicate that they “could render an impartial verdict despite exposure to prejudicial newspaper articles” and “despite the absence of any showing of prejudice,” there are cases that involve “such a probability that prejudice will result that it is deemed inherently lacking in due process.” *Sheppard v. Maxwell*, 384 U.S. at 352 (internal quotations and citations omitted). This case is such a case.

B. Arapahoe County Has Been Saturated With Highly Prejudicial and Sensational Media Coverage About this Case.

22. Dr. Bryan Edelman has conducted jury and venue research and analysis for the past 14 years. He received his Ph.D. in Interdisciplinary Social Psychology from the University of Nevada that uniquely focused on the application of social psychological theory to the legal arena. He has worked as an expert on hundreds of civil and criminal cases. Specifically with regard to venue, Dr. Edelman has conducted research, completed case analysis, presented as a panelist, and co-authored publications. Dr. Edelman has testified as an expert witness in both California and Nevada. *See Exhibit A, Affidavit of Bryan Edelman, Ph.D., Appendix A: Curriculum Vitae.*

23. Based on an analysis of the news coverage in the Denver Post, as well as his experience, education, and training, Dr. Edelman “believe[s] there is a reasonable likelihood that this coverage will have an impact on [Mr. Holmes’s] right to a fair and impartial jury in Arapahoe County.” *See Exhibit A, Affidavit of Bryan Edelman, Ph.D.*

24. Dr. Edelman’s initial analysis of the Denver Post coverage through the middle of November of 2013 is set forth extensively in his attached affidavit. His complete report on media analysis will be forthcoming prior to any hearing this Court may grant regarding this motion. However, given the current status of this case, additional media reports will need to be collected and analyzed prior to final litigation on this issue as the Dr. Edelman is unable to provide an ongoing piecemeal analysis.

25. In addition to Dr. Edelman’s analysis, Mr. Holmes sets forth the following in support of his argument that presumed prejudice has been established in this case:

i. *The Size and Nature of Arapahoe County Does Not Ameliorate the Potential for Prejudice in this Case.*

26. In determining if there is a reasonable likelihood that prejudicial news coverage prior to trial will prevent a fair trial, one relevant factor is the size and type of locale where the trial is to be held. *People v. Harlan*, 8 P.3d 448, 469 (2000). A larger county can minimize the effects of prejudicial pre-trial media coverage. The *Harlan* court upheld the trial court’s denial of the defendant’s motion for change of venue noting that the venue, Adams County, was “one of the largest counties in Colorado.” *Id.* However, that fact alone was not dispositive. While the Court did not provide many specific facts surrounding the media coverage, it relied heavily on the fact that most of the coverage occurred “long before the trial.” *Id.* Further, none of the other relevant factors had support in the record.

27. Here, the size and nature of Arapahoe County does not sufficiently mitigate the potential for prejudice in this case.

28. The size and dispersal of the population makes the city of Aurora fairly synonymous with Arapahoe County. According to 2010 Census Data, Arapahoe County has a total over-18 population of 424,679. *See* Exhibit TT, p. 1.

29. The U.S. Census divides Arapahoe County into three County Subdivisions: South Aurora CCD, Southwest Arapahoe CCD and East Arapahoe CCD. *See* Exhibit TT, p. 6 (dark green represents Southwest Arapahoe CCD, light green represents South Aurora CCD, and yellow represents East Arapahoe CCD.)

30. A majority of the Arapahoe County population lives in South Aurora CCD. Exhibit A, p. 8 (Total Population South Aurora = 360,758). Most of the rest live in Southwest Arapahoe CCD. Exhibit TT, p. 13 (Total Population Southwest Arapahoe = 187,768). A small amount of that population lives in East Arapahoe. Exhibit TT, p. 18 (Total Population East Arapahoe = 23,477).

31. The jury pool will be drawn exclusively from Arapahoe County, with the majority of the jurors presumably from the City of Aurora as it is the highest populated subdivision within Arapahoe County. In many instances where a change of venue is sought in a larger county, the “residents of the city or neighborhood most impacted by the sensational crime compose a relatively small portion of the total jury pool.” Exhibit A, *Affidavit of Dr. Bryan Edelman*, p. 27. That is clearly not the case here.

32. While the potential jury pool in Arapahoe County cannot be considered small, it does not compare to, for example, the 4.5 million individuals eligible to serve on the Skilling trial in the Houston area. *Skilling v. U.S.*, 561 U.S. 358, 130 S.Ct. 2896, 2915 (2010). On the scale of size for relevant jury pools, Arapahoe County is far closer the parish of 150,000 people in *Rideau v. Louisiana*, the primary case distinguished by the United States Supreme Court in upholding the denial of venue change in the *Skilling* case. *Id.* (citing *Rideau v. Louisiana*, 373 U.S. 723, 83 S. Ct. 1417 (1963)).

33. Even with extremely large jurisdictions like the one in the *Skilling* case, that fact alone is insufficient to justify the denial of the defense motion for a change of venue. *Id.* Not only did Houston’s size and diversity dilute the impact of the media coverage, but the media coverage was removed in time from the trial and did not contain “blatantly prejudicial” or vivid and memorable information. *Id.* at 2915-16.

34. As noted by Dr. Edelman, the media coverage of this case has followed the pattern of coverage of “sensational or violent crime” in smaller venues. Exhibit A, p. 26. Additionally, “the community’s reaction following the attack mirrored the type of response one would expect to see in a smaller venue.” *Id.*

35. The unique and tangible impact of this case on the community of Aurora and Arapahoe County noted above, as well as in Dr. Edelman’s attached Affidavit, “tends to weaken the effect that a large population can have in attenuating the potential prejudice that pretrial publicity can create.” *Id.*

ii. *The Volume and Intensity of the Media Coverage of the Holmes Case Far Outweighs Any Other State Case in Colorado.*

36. Another factor relevant to presumed prejudice is the volume and intensity of the pre-trial media coverage. *People v. Harlan*, 8 P.3d 448, 469 (2000).

37. The Colorado Supreme Court overturned a murder conviction in *People v. Botham* because the defendant did not receive a fair trial and due process of law due to the pretrial media coverage. 629 P.2d 589 (1981). The *Botham* Court ultimately failed to find presumed prejudice simply on the record of pretrial publicity, but the Court did conclude that the impact of the pretrial publicity on the venire raised a presumption of partiality and denied Mr. Botham due process and a fair trial. Thus *Botham* provides some guidance in evaluating these factors. In that case, “[a]pproximately 100 articles concerning the Botham case were reported in the [local] Sentinel.” The coverage also included radio and television coverage. *Id.* fn. 3. The *Botham* Court noted that the case “attracted extensive publicity” from the time the victim disappeared through the trial. *Id.* at 597.

38. Similarly, in *Harlan*, the Colorado Supreme Court noted that 64 newspaper articles in addition to other forms of publicity rose to the level of “extensive” pretrial publicity. *People v. Harlan*, 8 P.3d 448, 469 (2000). The *Harlan* Court did not reverse the conviction or sentence finding no abuse of discretion by the trial court. However the Court did indicate it would have granted a change of venue had it been sitting as the trial court in the case. *Id.* at 450.

39. In *Walker v. People*, the Colorado Supreme Court also reversed a murder conviction due to the prejudicial impact of the pretrial media coverage. *Walker v. People*, 458 P.2d 238, 241 (Colo. 1969). Overall, the Denver Post alone ran about 236 articles from the time the victim was found missing and the end of the trial. *Id.* at 246.

40. Dr. Edelman found that the Denver Post printed 896 articles between July 20, 2012 and November 9, 2013 that “referenced the Aurora theater shooting, the defendant, the victims, or the community’s response to the tragedy.” Exhibit A, p. 9.

41. The Aurora Sentinel is a weekly local newspaper delivered to homes and businesses every Thursday. Additionally, the Sentinel has an online website where daily articles are posted along with videos, customer contact forum and archives. See <http://www.aurorasentinel.com>.

42. The Sentinel website has a special tab on all of its pages entitled “MASSACRE COVERAGE.” It is a dropdown menu with links to news articles about the shooting under several topic areas including the community, the courts, the victims, opinion, and national coverage. See Attached DVD, Exhibit CCC.

43. Online, the Aurora Sentinel posted about 600 articles about this case between July 20, 2013 and March 31, 2014. See Exhibits M through AA. The print version of the Aurora Sentinel has printed over 215 articles since the incident occurred. See Exhibit BB.

44. As Dr. Edelman notes, “the location and prominence of an article can provide some insight into the perceived importance of a story to the public, and may also have an impact on the probability that it will be read.” Exhibit A, p. 10.

45. This relates to the manner of presentation, a third factor relevant to the determination of whether pretrial media coverage has created a reasonable likelihood that Mr. Holmes will not receive fair trial in Arapahoe County. *Harlan*, 8 P.3d at 469.

46. The Colorado Supreme Court specifically recognized the front page reported of several of the defendant’s pre-trial motions in reversing Mr. Botham’s conviction. *Botham*, 629 P.2d at 597. Conversely, the Colorado Supreme Court highlighted the fact the “very few stories of the [McCrary] case were carried on the front pages of in the lead headlines of the newspapers” in finding no error with the trial court’s denial of the defendant’s motion for a change of venue. *People v. McCrary*, 549 P.2d 1320, 1326 (1976).

47. In the first year of reporting, the printed edition of the Aurora Sentinel had front page coverage of the theater shootings in 23 of its weekly editions. *See* Exhibit BB. The editions from July 26, 2012 and July 18, 2013, each contained at least 10 news articles about the theater shootings. Exhibit BB, pp. 1-18, 178-195. This case continues to get front page coverage in the bylines of the Aurora Sentinel. *See e.g.* Exhibit BB, pp. 178, 208, 211.

48. This coverage is ubiquitous and staggering compared to other cases.

49. Television coverage tends to parallel the print news media. Exhibit A, p. 10. While television broadcast coverage is not covered extensively in this motion, the defense has attached a number of stories that have been broadcast on Channel 9 news KUSA, a sister station to the Denver Post. These are provided on attached DVD 2 as Exhibit DDDDD and incorporated herein to the record. While not all-inclusive, there were this is representative of the local television news coverage.

iii. *Coverage Regarding the Reputation of the Victims Serves to Bolster Their Credibility and Public Compassion Felt Toward Them.*

50. A fourth relevant factor is whether or not the news coverage has included information regarding the reputation of the victims. *Harlan*, 8 P.3d at 469.

51. Dr. Edelman found that “the coverage in the *Denver Post* has focused heavily on the victims, their families, and the terrible impact this tragedy has had on their lives.” Exhibit A, p. 11. He describes a number of examples of this type of coverage. The significance and prejudice is that “[t]hese stories often serve to add credibility to the victims. As such, their comments about Holmes, his mental state, and the legal process likely hold significant weight among the community.” Exhibit A, p. 13. Thus these stories bolster the articles described below wherein victims and family members are quoted regarding their opinions and desires as they relate to this case.

52. The coverage by the Aurora Sentinel, both in print and on-line, paralleled the prejudicial coverage in the Denver Post described in the attached affidavit. A number of articles focus on victim-impact evidence that should not be available to a jury during the merits phase of

the trial as it will have a significant and impermissible emotional impact on their decision-making. *See e.g.* Exhibit Y, p. 60, *Rising up, helping others – Megan Sullivan, sister to slain theater victim Alex, now marks tragic day in a different way*, July 19, 2013; Exhibit Z, p. 32, *Theater shooting victim moving into modified home thanks to charity*, October 24, 2013; Exhibit W, p. 32, *Survivors to wed on anniversary of Colorado shootings*, May 8, 2013; Exhibit S, p. 42, *Lawsuit: Holmes told doc of rampage fantasy*, January 15, 2013; p. 134, *Goldstein: Gateway’s Zack Golditch to be featured in super bowl pre-show*, January 31, 2013; Exhibit R, p. 12, *Theater shooting victim awarded posthumous degree*, December 17, 2013; Exhibit P, p. 12, *Victims donation fund: compensation and consternation*, October 18, 2012; Aurorasentinel.com.

53. The in-depth coverage of the lives of those who were injured or killed began at the outset of this case. *See e.g.* Exhibit BB, p. 8, *Intersection of tragedy and grief*, July 26, 2012, Aurora Sentinel; Exhibit BB, p. 13, *The Victims: As of July 25, 12 people were confirmed dead after the shooting*, July 26, 2012, Aurora Sentinel; Exhibit BB, p. 15, *The Victims: As of July 25, 58 were confirmed wounded. Below are names confirmed by the Aurora Sentinel*, July 26, 2012, Aurora Sentinel; Exhibit BB, p. 29, *Rebecca Wingo ‘never knew a stranger,’* August 2, 2012, Aurora Sentinel; Exhibit AA, p. 51, *Nevada vet killed in Aurora shooting remembered at funeral*, August 9, 2012, Aurora Sentinel; Exhibit BB, p. 59, *A month after shooting, two patients remain in area hospital*, August 16, 2012, Aurora Sentinel.

54. Channel 9 News, or KUSA, a metro Denver news station, aired a number of news articles on the Holmes case since July of 2012. Channel 9, along with most other news agencies, had extensive media coverage at the outset of the case. *See* DVD 2, Exhibit DDDDD. A number of these initial broadcasts focused heavily on the victims, their family, and the impact of this tragedy on their lives. *Id.*

55. During the summer of 2013, Channel 9 aired a number of broadcasts providing coverage of the one-year anniversary of the theater shooting.

56. One of these series Channel 9 aired was called “Remember Aurora.” There were at least 11 parts to this series:

- (1) Alex Teves Story, Attached DVD, Exhibit CCCC;
- (2) The childhood I could’ve had was stolen (Kaylan Bailey), Attached DVD, Exhibit BBBB;
- (3) Finance, mother of theater victim AJ Boik share intimate process of healing (Theresa Hoover and Lasamoa Cross), Attached DVD, Exhibit AAAA;
- (4) Aurora shooting victim Matt McQuinn’s family focuses on doing good, Attached DVD, Exhibit ZZZ;
- (5) Coping with the one year mark of the Aurora Theater Shooting, Attached DVD, Exhibit QQQ;
- (6) Jacob Garrett’s Story, Attached DVD, Exhibit OOO;
- (7) Jessica Ghawi’s Story, Attached DVD, Exhibit NNN;
- (8) Marcus Weaver’s Story, Attached DVD, Exhibit MMM;
- (9) Coping with Tragedy: Ian Sullivan, Attached DVD, Exhibit WWW;

- (10) Coping with Tragedy: Jessica Watts (Jonathan Blunk's cousin), Attached DVD, Exhibit LLL;
- (11) Alex Sullivan's family helps victims, Attached DVD, Exhibit PPP.

57. These stories focused on the tragedy that hit the victims in this case as well some of the healing that has taken place. In covering the good and courageous things the victims have done, the coverage often simplistically and inaccurately implied that Mr. Holmes was "evil," as opposed to mentally ill. As noted in the coverage of Matt McQuinn, who lost his life in the theater, they will "overcome evil with good." Attached DVD, Exhibit ZZZ.

58. Additionally the KUSA video coverage on DVD 2 contains numerous stories about the victims and their families that were broadcast in the initial weeks and months following this crime.

- iv. *The Specificity of the Coverage Has Gone Far Beyond Merely Reporting on the Basic Procedural Facts of the Case, But Rather Has Included Extensive Analysis of Numerous Factual Accounts Involved in This Case.*

59. The fifth relevant factor is the factual content of the coverage. The more specific the factual detail, the more prejudicial the coverage. *Botham*, 629 P.2d at 597. In *Botham*, "Certain facts in this case were reported with specificity." *Id.* For example, the condition of the bodies upon discovery, details surrounding the defendant's arrest, details from the affidavit that supported the arrest warrant, testimony from the preliminary hearing, and pretrial motions. *Id.*

60. Dr. Edelman's content analysis revealed that "the media coverage has provided detailed descriptions of the Aurora theater shooting, including graphic and sensational firsthand accounts." Exhibit A, p. 13. The significance and prejudice of this type of media coverage is that it serves to "put the reader inside Theater No. 9" well prior to ever hearing any evidence in this case. *Id.*

61. Not only did this coverage describe what happened at the theater, but also provided detailed accounts of "evidence found on Holmes and by his car when he was arrested" as well as items found inside his apartment. *Id.*, pp. 15-16.

62. Dr. Edelman finds this coverage "described and connected the evidence the prosecution will likely use to undermine Holmes' insanity defense." He notes that "[t]his coverage is particularly prejudicial given that it is the key question jurors will have to decide during the guilt phase." *Id.*, p. 16.

63. In addition to publishing photos found on Mr. Holmes's phone and iPod, the media fully discussed what was known about Mr. Holmes's online activities. Finally, "there was widespread reporting on the notebook that Holmes mailed to his psychiatrist, Dr. Fenton, just before the shooting." *Id.*, p. 17. All of this coverage "serves to undermine the burden of proof in regards to his insanity defense." *Id.*

64. From the outset, the Aurora Sentinel also published highly specific detailed accounts of the shootings and the subsequent investigation. *See e.g.* Exhibit BB, p. 6, *First*

responders play crucial role in minutes after theater massacre, July 26, 2012, Aurora Sentinel; Exhibit BB, p. 7, *Timeline of Tragedy*, July 26, 2012, Aurora Sentinel.

65. The Sentinel also published blow-by-blow coverage of the pre-trial evidentiary hearings from the filing of pleadings through to the Court's rulings. See e.g. Exhibit Y, p. 46, *Attorneys: Holmes peppered with questions*, July 19, 2013; p. 91, *DA want to use Holmes' statements after arrest*, July 5, 2013; Exhibit Y, p. 95, *Theater shooting suspect's dating profile at issue*, August 2, 2013; p. 97, *Judge sets hearing on Holmes statements, evidence*, August 12, 2013; p. 106, *Holmes DA wants to limit death penalty testimony*, August 19, 2013; Exhibit Z, p. 21, *Holmes lawyers want email evidence tossed*, October 18, 2013; p. 23, *Holmes defense, prosecutors resume evidence battle*, October 21, 2013; p. 25, *Holmes lawyers seek to bar bomb experts' testimony*, October 22, 2013; p. 28, *Holmes' lawyers: apartment search was illegal*, October 23, 2013; p. 30, *Police say Holmes had batman mask*, October 24, 2013; p. 36, *Judge allows evidence from Holmes' wallet*, October 28, 2013; p. 39, *Next phase of Holmes trial sets evidence rules*, October 31, 2013; Aurorasentinel.com.¹

66. Coverage of the court proceedings began on the very first day of court and has continued unabated to present day. See e.g. Exhibit BB, p. 19, *First appearance sparks more questions*, July 26, 2012, Aurora Sentinel; p. 57, *From start, Holmes handled differently in court, jail*, August 16, 2012, Aurora Sentinel; p. 65, *Holmes doesn't react to talk of struggling victims*, August 23, 2012, Aurora Sentinel; p. 72, *Holmes trial focuses on access to records*, August 30, 2012, Aurora Sentinel; p. 77, *Lawyers haggle over package mailed by Holmes to psychiatrist*, September 5, 2012, Aurora Sentinel; p. 97, *Court docs: Early handling of Holmes' notebook comes into view*, October 4, 2012, Aurora Sentinel; p. 108, *Judge: School records may shed light on Holmes' thought process*, October 25, 2012, Aurora Sentinel; p. 119, *Holmes' defense will seek subpoena for reporter*, December 13, 2012, Aurora Sentinel; p. 135, *Amidst brutal massacre details, humanity and emotion rule preliminary hearing*, January 10, 2013, Aurora Sentinel; p. 158, *Holmes defense questions insanity defense*, March 7, 2013, Aurora Sentinel; p. 159, *Forced plea presses Holmes defense to move to August trial*, March 14, 2013, Aurora Sentinel; p. 161, *Life and death in the Aurora massacre courtroom - Holmes trial mixes two Colorado courtroom rarities: death penalty and insanity case trials*, March 21, 2013, Aurora Sentinel; p. 173, *Mind changed: Holmes defense team wants to plead insanity, judge likely to accept plea*, May 9, 2012, Aurora Sentinel; p. 175, *Judge rejects Holmes' challenge to insanity law*, May 30, 2012, Aurora Sentinel; p. 177, *Judge accepts Holmes' insanity plea in aurora theater shooting*, June 6, 2013, Aurora Sentinel; p. 196, *Holmes DA wants to limit death penalty testimony*, August 22, 2013, Aurora Sentinel; p. 201, *Holmes hearing case may focus on accused shooter's sanity*, September 26, 2013, Aurora Sentinel.

67. Similar articles were also published in the Denver Post. Exhibit A, p. 17-18.

68. Channel 9 News, or KUSA, a metro Denver news station, has aired a number of news articles on the Holmes case since July of 2012. Channel 9, along with most other news agencies, had extensive media coverage at the outset of the case. See e.g. DVD 2, Exhibit DDDDD.

¹ A number of these articles were also published in the October 2013 print editions. See Exhibit AA, pp. 201-204.

69. However, Channel 9 aired two different series as part of their one-year anniversary coverage of the shootings. One series was called “After Aurora.” There were 7 parts to this series:

- (1) The Victims, Attached DVD, Exhibit RRR;
- (2) The Heroes of the Theater, Attached DVD, Exhibit SSS;
- (3) Aurora Response – The Call, Attached DVD, Exhibit TTT;
- (4) Aurora Response – The Ride, Attached DVD, Exhibit UUU;
- (5) Aurora Response – The ER’s, Attached DVD, Exhibit VVV;
- (6) Aurora Response – The Lessons Part 1, Attached DVD, Exhibit XXX.
- (7) Aurora Response – The Lessons Part 2, Attached DVD, Exhibit YYY.

70. These news stories replayed the details of the incidents surrounding the shooting from the 911 calls to the response of the medical and police communities.

- v. *There Has Been Significant and Continuing Commentary by the News Media on the Facts of this Case, Often Exhibiting Prejudgment on the Issues of Guilt and Sanity.*

71. Mr. Holmes’s federal and state constitutional rights to due process and a fair trial mandate that any merits-phase verdict be based upon admissible evidence and not be a product of emotion or prejudice nor based upon opinions formed from exposure to pretrial publicity.

72. A number of cases have highlighted the fact that the media did not publish editorialized commentary about the case. *See e.g. People v. McCrary*, 549 P.2d 1320, 1326 (1976); *People v. Bartowsheski*, 661 P.2d 235, 240-241 (1983). However, the Colorado Supreme Court specifically cited the editorial comments inferring the guilt of the defendant in finding Mr. Walker was denied a fair trial. *Walker v. People*, 458 P.2d 238, 242 (1969).

73. Additionally, the *Walker* Court noted that some of the content of the media stories intimated the defendant’s guilty such as reports that several local attorneys refused to represent him. *Id.*

74. However, “[i]mmediately after the shooting – well before the defense had an opportunity to evaluate its options – the media began to undermine the burden of proof.” Exhibit A, p. 21.

75. Numerous Aurora Sentinel articles have also highlighted pro-prosecution information that details the incidents in this case, much of which undermines the burden of proof on insanity. *See e.g. Exhibit X, p. 5, Lawyers – Holmes could withdraw insanity plea*, June 14, 2013; *Exhibit X, p. 26, Theater shooting suspect to get mental evaluation*, June 5, 2013, *Aurorasentinel.com*; *Exhibit V, p. 23, Who knew? Court docs shed light on Holmes’ relationship with CU*, April 10, 2013, *Aurorasentinel.com*; *Exhibit V, p. 40, Judge gives Holmes’ lawyers more time to respond*, April 21, 2013, *Aurorasentinel.com* (“Holmes’ lawyers have indicated in court papers that they may pursue a defense of not guilty by reason of insanity. That carries great risk: Prosecutors could argue that Holmes methodically planned his attack, casing the theater, stockpiling weapons and booby-trapping his apartment with explosives.”); *Exhibit S, p. 7, Judge*

finds ample evidence in Holmes case, January 10, 2013, Aurorasentinel.com; Exhibit S, p. 46, *Family: Holmes is 'evil,' not insane*, January 16, 2013, Aurorasentinel.com (Article detailing evidence presented at preliminary hearing and some victim response.)²; Exhibit S, p. 151, *Day One: Accused Aurora theater shooter James Holmes in court*, January 7, 2013; p. 162, *Fighting back tears, cops detail horror of Aurora theater shooting*, January 7, 2013; Exhibit Y, p. 40, *A Year Later, Survivors Recall Aurora Shooting*, July 19, 2013; Aurorasentinel.com.

76. On numerous occasions, the legitimate defense of insanity was not described as such. Rather, it was described as Mr. Holmes's "best hope of avoiding the death penalty, and possibly his only hope, given the weight of the evidence." Exhibit X, p. 18, *James Holmes could enter insanity plea Tuesday*, June 4, 2013, Aurora Sentinel, on line; *See also*, Exhibit W, p. 3, *Holmes asking judge to change plea to insanity*, May 13, 2013, Aurorasentinel.com ("The plea is widely seen as Holmes' best hope, and perhaps his only hope, of avoiding the death penalty."); Exhibit W, p. 7, *Insanity plea by Holmes holds risks for both sides*, May 14, 2013, Aurorasentinel.com ("Such a plea is seen as his best hope of avoiding the death penalty in the killings of 12 people at a packed" theater.); Exhibit W, p. 27, *Holmes pleads insanity in Aurora theater massacre*, May 7, 2013, Aurorasentinel.com ("Experts have said an insanity defense was likely the only route Holmes' defense could take avoid a death sentence, considering the mountain of evidence police have against Holmes.").

77. News articles stating that the defense's only option would be to pursue an insanity defense were published even at the very beginning of the coverage of this case. Exhibit BB, p. 32, *Surprise package*, August 2, 2012, Aurora Sentinel ("Several experts have speculated that with the evidence police have against Holmes – he was arrested outside the theater seconds after the shooting carrying several weapons and wearing body armor, as well as his booby-trapped apartment – an insanity defense is likely his only option.")

78. One article talked about the insanity defense as follows:

Prosecutors have a mountain of evidence against Holmes, so the plea might be his only chance to avoid a death sentence...

Doctors also look for signs of possible "malingering" — the medical term for faking it...

Sometimes it's a defense of last resort if someone is caught red handed," he said...

That means guilty defendants will see faking a mental illness as their only option for avoiding a harsh punishment...

At Holmes' preliminary hearing in January, prosecutors detailed his meticulous planning in the days and months leading up to the shooting, seemingly laying the groundwork for an argument that Holmes knew what he was doing when he opened fire inside the

² This article was also published in the print version of the Aurora Sentinel with side coverage on the front page of the paper. Exhibit AA, pp. 137, 139.

packed theater, killing 12 and injuring 70. That planning included several months spent stockpiling his arsenal and multiple trips to the theater to take reconnaissance pictures of the exit doors...

Gold said planning isn't evidence of sanity. People can be mentally ill and still have the capacity to make detailed plans, she said.

'The ability to organize and carry out a plan doesn't mean that plan is not based on delusional thinking,' she said. 'You can have a plan that is delusional.'

Gold said Holmes will likely be evaluated by multiple doctors, and those doctors could reach different conclusions, including some doctors ruling him sane, while others say he is insane.

'Different doctors will come to different conclusions. There can be an honest disagreement between experts based on the evidence they are presented,' she said."

Exhibit V, p. 60, *Mind Games: Chasing the insanity defense in the courts*, April 4, 2013, Aurorasentinel.com.

79. Another article stated as follows:

Pleading insanity could be the only way he can avoid life in prison or execution, given the evidence that has emerged so far, some legal experts said.

Prosecutors laid out a case that Holmes methodically planned the shooting for months, amassing an arsenal and elaborately booby-trapping his apartment to kill anyone who tried to enter. On the night of the attack, they say, he donned a police-style helmet, gas mask and body armor, tossed a gas canister into the seats and then opened fire.

The attack killed 12 people and injured dozens more.

'This is not a whodunit,' criminal defense attorney Dan Recht said in January. He is not involved in the case.

Exhibit U, p. 4, *Judge enters not guilty plea for Holmes after defense stalls on insanity move*, March 12, 2013, Aurorasentinel.com.

80. The Aurora Sentinel has repeatedly reported victims' opinions about Mr. Holmes's mental state. See Exhibit X, p. 24, *Judge accepts insanity plea in Colorado shooting case*, June 5, 2013, Aurorasentinel.com ("Marcus Weaver, who was wounded and lost his friend Rebecca Wingo in the shooting, doesn't believe Holmes is insane."); see also Exhibit W, p. 27, *Holmes pleads insanity in Aurora theater massacre*, May 7, 2013, Aurorasentinel.com ("Tom

Sullivan, whose son, Alex, was killed in the attack, said prosecutors have warned victims that an insanity plea would delay the case. ‘We’re just mortified that this is the process that we’re going through, and we still have a long way to go,’ Sullivan said Tuesday. ‘I know justice will win out in the end.’”)

81. The Aurora Sentinel reported that Tom Teves, who lost his son, Alexander, in the tragedy, has publicly stated that he does not believe Mr. Holmes is insane. He is quoted as saying “You heard the evidence they have. There is no doubt that he knew what he was doing was wrong, there’s no doubt it was premeditated...There’s no doubt he did it. Zero. So why are we playing a lot of games?” Exhibit U, p. 4, *Judge enters not guilty plea for Holmes after defense stalls on insanity move*, March 12, 2013, Aurorasentinel.com. Mr. Teves was also quoted saying “Don’t pretend he’s crazy...He’s not crazy. He’s no more crazy that you and I.” Exhibit S, p. 7, *Judge finds ample evidence in Holmes case*, January 10, 2013, Aurorasentinel.com. Tom Teves was also quoted as saying “He’s not crazy, he’s evil...He’s an animal.” Exhibit S, p. 13, *Self-portrait: Holmes sticks out tongue, has guns*, January 10, 2013, Aurorasentinel.com.

82. Caren Teves, Alexander Teves’s mother, reported to the media that “she saw Holmes smile when his self-portraits were shown in court. “He just sat in the courtroom pretty much delighted. He was smiling. He was smirking.” Exhibit S, p. 7, *Judge finds ample evidence in Holmes case*, January 10, 2013, Aurorasentinel.com. She also told the media, “He is definitely not crazy. He is evil, but he is not insane.” Exhibit S, p. 46, *Family: Holmes is ‘evil,’ not insane*, January 16, 2013, Aurorasentinel.com.

83. As noted above, given the intense coverage of the lives and reputations of the victims, these types of statements are likely to have credibility and force with the public.

84. The editor of the Aurora Sentinel has supplied prejudicial commentary regarding Mr. Holmes’s federal and state constitutional rights to a fair trial. An Aurora Sentinel editorial reads as follows:

Now ‘fair’ is an interesting word in the case of Holmes. Just minutes after the shooting it became indisputable that Holmes was the gunman responsible for the slaughter. The only unanswered questions are: How did he amass such an arsenal, and what made him do such a vile thing?

Prosecutors answered those questions last month when they made their case against Holmes in open court. The Aurora Sentinel and hundreds of newspapers and TV stations across the planet revealed to everyone a mountain of evidence against Holmes, evidence that makes it seem likely that an insanity defense for Holmes will be a reach.

There’s very little reason to continue a gag order against school and police officials who revealed all during Holmes’ preliminary hearing. In fact, there is no reason to keep police and others muzzled at a time when the public has a real need to know how it

was that Holmes amassed his arsenal, tipped his hand and stayed out of jail or a mental hospital.

Sylvester's priority isn't public safety or the First Amendment. It appears he's interested in a fair trial above all else. Now in Sylvester's case, 'fair' means finding a pool of jurors that have open minds about the details of the case against Holmes. It's TV-courtroom fiction that has lawyers looking for 12 people living under rocks that haven't heard anything about the melee at the Aurora cinema.

Holmes' lawyers see 'fair' as a pool of people willing to agree that Holmes was too crazy to know what he was really doing. That's going to be a hard job since he obviously kept it together for a long time to amass his arsenal, set up an extensive array of booby traps in his apartment, and pull off a well-orchestrated rampage. Rest assured, an insanity hearing is in the making, and this is going to drag out for a long, long time.

Exhibit T, p. 15, *Editorial: Gag order is no joke: court needs to rule effectively on Holmes case*, February 15, 2013, Aurorasentinel.com.³

85. As noted by Dr. Edelman, "[t]his type of reporting – coupled with the detailed coverage surrounding Holmes' conduct leading up to the shooting – serves to undermine the defendant's federal and state rights to a fair and impartial jury." Exhibit A, p. 23.

86. Another more recent editorial stated that "[d]efense attorneys are far less interested in ensuring Holmes' get a 'fair trial' than they are in ensuring that they win the case against their client." Exhibit BB, p. 210, *Editorial: Justice, fairness are lost in closing Holmes' hearings*, Aurora Sentinel, January 9 – January 15, 2014. Not only does this serve to denigrate the Mr. Holmes's defense and his counsel, it misapprehends the ethical obligations, role, and commitment of defense attorneys in our adversarial system. It is exactly this type of commentary that fuels the public fervor against the defense and thus against Mr. Holmes.

87. In addition to being likened to the tragedy at Columbine High School, the theater shootings have been front and center in local discussions about the death penalty. In particular, the murder of state Representative Rhonda Fields' son, Sir Mario Owens, has been referenced in comment about the theater shooting and capital punishment. Joe Cannata, whose daughter was murdered 25 years ago, has also publicly espoused his opinion that he "believes the death penalty should remain in place and reserved for people who commit the most heinous crimes, such as Holmes, the accused Aurora theater shooter." Exhibit S, p.1, *Colorado's life and death decision comes from Aurora*, January 10, 2013, Aurorasentinel.com; Exhibit BB, p. 134, *Two directions, one decision*, January 10, 2013, Aurora Sentinel.

³ Aurora Sentinel Editor Dave Perry used very similar language in his editorial in the August 2, 2012 print edition of the newspaper. Exhibit AA, p. 26, *Massacre trial judge fires off the hush heard 'round the world*, August 2, 2012, Aurora Sentinel.

88. Recently, the Aurora Sentinel published an editorial urging the District Attorney to let Mr. Holmes plead guilty in exchange for a life sentence. While at first blush this seems favorable to Mr. Holmes, the editorial actually states that even a legitimate finding of insanity “is an unthinkable end to this case.” Exhibit BB, p. 221, *Editorial: Don’t risk the worst in the Holmes trial, DA should let Aurora’s mass murder plead for life sentence*, Aurora Sentinel, November 21 – November 27, 2013. The editorial also denigrates Mr. Holmes’s legal defense of insanity through comments such as “pull off an insanity defense,” calling it “innocent by reason of insanity” and further highlighting that it could result in Mr. Holmes leaving “prison a free man.” *Id.* The article also notes that should a jury return of verdict of not guilty by reason of insanity, it would fail “to protect the public from another attack” and Mr. Holmes would not be punished “for his sadistic and cruel crimes.” *Id.*

vi. *The Revealed Sources of the Information Reported*

89. Where the revealed sources of the media coverage bolster the credibility of the facts contained in the news stories, that publicity is highly prejudicial. *People v. Botham*, 629 P.2d at 597. In *Botham*, because the stories were attributed to the police, sheriff’s office, the district attorney, or neighbors of the victim and defendant that ultimately testified against Mr. Botham at trial, this “lend[ed] credence to the facts contained in the news stories.” *Id.*

90. The Aurora Sentinel reported that Mr. Holmes offered to plead guilty and accept a life sentence if the prosecution would take the death penalty off the table. Additionally, they published the prosecution’s reply that “anyone reading stories about the offer [to plead guilty in exchange for a life sentence] would inevitably conclude ‘the defendant knows that he is guilty, the defense attorneys know that he is guilty, and that both of them know that he was not criminally insane.’” Exhibit U, p. 29, *Aurora Massacre suspect’s plea offer rejected by prosecutors*, March 28, 2013, Aurorasentinel.com.

91. An Aurora Sentinel reader wrote in commenting on whether or not James Holmes should be given a plea bargain. The reader stated

After snuffing out 12 innocent lives and injuring 60 others, James Holmes is trying to negotiate a life sentence of food, shelter, heat, TV, Gym, library for pleading guilty. I might give him life in solitary confinement for life. What bargaining power does he have? If he’s able to determine what is best for him in this instance then he is mentally competent be [sic] face a court setting. And hopefully the jury will see that this animal deserves no mercy and no consideration. James Holmes deserves to be executed like Timothy James McVeigh was. And if there is a God, may he subject Mr. Holmes to the sum total of all the pain and trauma which Holmes subjected all of his victims to.

Exhibit U, p. 22, *Holmes defense lawyers may plead guilty to avoid death penalty – “He didn’t give 12 people the chance to plea bargain and say, ‘Let’s see if you’re going to shoot me or not,’” said Melissa Cowden, whose two teenage daughters were with their father when he was killed*, March 27, 2013, Aurorasentinel.com.

92. The Aurora Sentinel published Arapahoe County District Attorney George Brauchler's proclamation that "for James Eagan Holmes, justice is death." In response, Bryan Beard, Alex Sullivan's best friend, was quoted saying "I had a huge adrenaline rush...I love the choice. I love it, I love it... I hope I'm in the room when he dies." Exhibit V, p. 7, *Prosecutor's seeks Holmes' execution in Aurora theater attack*, April 1, 2013, Aurorasentinel.com; Exhibit BB, p. 163, Cover Story, *Insanity In Mind*, April 4, 2013, Aurora Sentinel.

93. The Sentinel published other readers' statements expressing the same sentiment calling for Mr. Holmes's execution. See Exhibit R, p. 39, *Holmes lawyers object to ending the gag order, Comments*, February 6, 2013, Aurorasentinel.com (Johnnybgood: "Give him the same fair trial he gave the people he killed. Shoot first an (sic) ask questions later. That's the fair trial he gave them." Cammy: "And the attorneys for the shooter are concerned he might not receive a fair trial...how sad! He killed 12 and injured many many others, and he thinks he deserves a fair trial! He didn't give his victims anything fair."); Exhibit BB, p. 40 ("Holmes deserves death penalty. What else can it be? A lifetime in prison is not freaking enough for this. Lethal injection a dozen times would be enough, I guess. That's nothing compared what he did to those innocent victims."); Exhibit BB, p. 67, ("I have heard just about enough...In my opinion the justice system is a joke. This theater had so many witnesses as to 'who' shot and killed 12 people and injured 58. Plain and simple, Holmes planned this for weeks, he bought guns, ammo, gas masks, SWAT suit, traps etc., executed his plan...and got caught. Protecting him? My Lord, what is this world coming to? No doubt he killed a 6 year old...Just kill him now.")

94. As noted by Dr. Edelman, "[p]ublished opinions regarding the appropriate punishment for Holmes are highly prejudicial, particularly those made by the victims and survivors. This is precisely why victim impact statements preclude such comments." Exhibit A, p. 25.

95. One of metro Denver's television news stations published a series entitled "Remember Aurora" in the weeks leading up to the one-year anniversary of the theater shootings. One of those articles aired on July 2, 2013 told the story of Jacob Garrett who was inside the theater on July 20, 2012. He is a teenager who now turns to poetry to discuss his experience. One of his poems that he recites on air calls for James Holmes's death saying "I don't think I will ever be the same. Ever since that day, even fortune or the fame wouldn't fix it. No that dude is so twisted. The day he dies I don't think I'm gonna miss it. But that's wrong to want someone to die. But I do. It's true. I'm not gonna lie. I hate his guts. He disgusts me so much. But he's a guy I despise." Attached disc, Exhibit OOO, *Remember Aurora: Jacob Garrett's Story*, July 20, 2013, 9news.

vii. *The Publication of Highly Incriminating Facts not Admissible at Trial is Extraordinarily Prejudicial.*

96. Where the media reports facts that are not admissible at trial there is a stronger likelihood that the jury panel will be infected and a fair trial cannot be had. *People v. Harlan*, 8 P.3d at 469.

97. For example, in *Walker v. People*, the media published, in detail, the opinions of a prosecution polygrapher that the defendant's claim of innocence was false, despite knowing that

this information would be inadmissible at trial. *Id.* at 242. There was also publication of the defendant's alleged prior criminal history that was later excluded from trial. *Id.* at 245.

98. Here, as noted by Dr. Edelman, "the *Denver Post* reported that Holmes was willing to plead guilty of murder to avoid the death penalty" 13 times between March 28, 2013 and October 15, 2013. Exhibit A, p. 22. He further states that "[t]he initial plea offer by the defense team is highly prejudicial, and would not be admissible at trial" and that "[t]his type of reporting would likely have a significant impact on potential jurors' perception of Holmes' insanity defense, which was described as his only alternative." *Id.* pp. 22-23.

99. The *Denver Post* also repeatedly reported that Mr. Holmes' lawyers have admitted that he was the shooter in this case. *Id.*

100. The *Aurora Sentinel* has repeatedly published similar information. Exhibit U, *Holmes defense lawyers may plead guilty to avoid death penalty*, *AuroraSentinel.com*, March 27, 2013. In the byline, the *Sentinel* noted that Melissa Cowden, whose two teenage daughters were with their father when he was killed, responded "[h]e didn't give 12 people the change to plea bargain and say, 'Let's see if you're going to shoot me or not.' No. No plea bargain." *Id.*

101. The *Aurora Sentinel* went further reporting the prosecution's response. On March 28, 2013, the published the following:

No plea agreement exists, prosecutors said in a scathing court document Thursday, and one 'is extremely unlikely based on the present information available to the prosecution.'

They also said anyone reading news stories about the offer would inevitably conclude 'the defendant knows that he is guilty, the defense attorneys know that he is guilty, and that both of them know that he was not criminally insane.'

Exhibit U, p. 30, *Aurora massacre suspect's plea offer rejected by prosecutors*, *AuroraSentinel.com*, March 28, 2013.

102. This coverage is tantamount to publishing a confession that is later excluded from the evidence in the trial.

103. Also of particular importance are the news reports about the suppression hearings detailing evidence that the media claims the prosecution will use to argue that Mr. Holmes was sane. See e.g. Exhibit Z, p. 10, *Holmes' lawyers spar over his statement to police*, October 15, 2013, *Aurorasentinel.com*; Exhibit Z, p. 36, *Judge allows evidence from Holmes' wallet*, October 28, 2013 (Reporting that "Arapahoe County District Judge Carlos Samour Jr. sided with the defense in a separate ruling, saying a police officer won't be allowed to testify at the trial that Holmes smirked at him when he asked if he had accomplices."); Exhibit BB, p. 204, *Next Phase of Holmes trial focusing on what's admissible and what isn't*, *Aurora Sentinel*, October 31 – November 6, 2013.

104. Through some of these reports, the public has been informed of evidence that will not be admissible at trial. In particular, the media has published numerous articles discussing Mr.

Holmes facial expressions at the time of his arrest. Exhibit Z, p. 13, *Officer: Holmes gave 'self-satisfying' smirk*, October 15, 2013, Aurorasentinel.com; Exhibit MM, *James Holmes' smirk tossed, wallet evidence allowed at trial*, Denver Post, October 24, 2013.

105. The Aurora Sentinel also reported that the District Attorney believes the “smirk was Holmes’s way of saying he was satisfied with what just happened inside the theater” adding credibility to the existence and meaning of this alleged behavior. Exhibit BB, p. 203, *Lawyers debate whether Holmes' 'smirk' is evidence*, October 17, 2013 – October 23, 2013. Reporting this information to the public also enhances the credibility of the prosecution’s argument that Mr. Holmes was sane at the time of the crime and thus reducing their burden of proof on this issue.

106. The actual testimony from an Aurora police officer, who is, as noted above, a more credible source, was also disseminated through repeated media coverage of the motions hearings. The Aurora Sentinel specifically reported that “Aurora police officer Justin Grizzle described Holmes’ expression as ‘a self-satisfying offensive smirk.” *Id.* The Denver Post reported the same information. Exhibit MM, *James Holmes' smirk tossed, wallet evidence allowed at trial*, Denver Post, October 24, 2013.

107. To further exacerbate this prejudicial media coverage, the Aurora Sentinel also stated “[t]he defense has been fighting to exclude any evidence that prosecutors might use to make that point” that Mr. Holmes was not insane. Exhibit Z, p. 16, *Aurora shooting lawyers tussle over sanity evidence*, October 17, 2013, Aurorasentinel.com; *See also* Exhibit Z, p. 18, *Battle over theater shooting evidence grows heated*, October 18, 2013, Aurorasentinel.com. This type of commentary implies that the defense is attempting to prevent the jury from hearing credible evidence that is contrary to their position that Mr. Holmes was insane at the time of the crime.

108. Typically, a jury will not be privy to the pretrial motions process. While knowledge of evidence previously suppressed by the court is a significant problem, jurors’ pretrial knowledge of, for example, an unsuccessful motion by the defense to suppress specific information will make the jurors suspicious and encourage speculation there are things the defense is trying to hide. The fact that the evidence is admitted by the court publicly sanctions the prosecution’s position, further shrouding the defense in a cloud of suspicion while bolstering the prosecution as the party seeking the truth.

109. Further, the public has been given one-sided information that bears directly on the central issue in the merits phase of this case: whether Mr. Holmes was insane at the time of the shootings. *See e.g.* Exhibit Z, p. 6, *Holmes looked up 'Rational Insanity' before theater shooting*, October 10, 2013, Aurorasentinel.com.

110. The Sentinel reported on this Court’s June ruling that Mr. Holmes will be allowed to wear civilian clothing during his trial. The article noted “[r]equiring Holmes to wear a jail uniform would violate the principle that defendants are presumed to be innocent until proven guilty.” Exhibit X, p. 1, *Holmes can wear civilian clothes at murder trial*, June 11, 2013, Aurorasentinel.com. Of course, while noting that Mr. Holmes had worn jail jumpsuits, and had “his hands and feet...shackled” during all of his court appearances, they accompanied the article with a picture of Mr. Holmes in jail attire. *Id.* While jurors won’t see a harness that will chain

Mr. Holmes to the floor during trial, the media coverage guarantees that many will know of it anyway. Exhibit X, p. 14, *Holmes to wear hidden harness anchored to floor*, June 28, 2013, Aurorasentinel.com.

111. Even the court's recent decision to close the evidentiary hearings regarding the prosecution's request for a second evaluation has not prevented the news media from repeated comments and speculation regarding the facts of this case. *See e.g.* Exhibit BB, p. 220, *Court motions hint that doctors believe Holmes is insane*, Aurora Sentinel, November 21 – November 27, 2013; Exhibit OO, *Holmes insanity case shapes up as battle of mental health experts*, Denver Post, February 24, 2014; Exhibit PP, *Judge orders new sanity examination for Aurora theater shooter James Holmes*, 7news The Denver Channel, February 20, 2014; Exhibit QQ, *Legal analyst: James Holmes found insane in 1st mental evaluation*, 9 news, February 20, 2014; Exhibit RR, *Judge Orders second psychiatric exam for James Holmes*, Aurora Sentinel.com, February 20, 2014.

112. Of particular concern are the vituperative comments following a recent Denver Post article about this second evaluation. One reader wrote the following:

What a total waste of resources and time! This moron is guilty!
Of course he is and was nuts. Who in the world could be in their right mind and do such a heinous thing?... Send the message to this killer and any others that may consider such acts! Without media and fanfare take this and any other perpetrator of such a crime to the tree limb with a rope and give him the humane treatment he never gave to his victims and their friends and family!

Exhibit SS, *Judge orders new psychiatric exam for James Holmes*, Denver Post, February 20, 2014, p. 6.

113. Another reader commented

This trial should have been over in a weekend. Ok, 2 weeks at the most. Did he do it? Yes. Guilty, yes? Sentence, death, Drag him out to the nearest street light pole and hang him. Leave him there until the wind whistles through his bones. End of story!! And while you're at it, go get that guy that murdered the Chuckie Cheese Kids and put him along side of Holmes there too.

Id. at p. 7.

114. The continued reporting of inadmissible information infects the jury pool and biases potential jurors against Mr. Holmes.

viii. *The Proximity of the Media Coverage to the Time of Trial*

115. Yet another factor relevant to the determination of whether there is a reasonable likelihood that a fair trial cannot be had in Arapahoe County is the proximity of the prejudicial coverage to the time of the trial. A *sufficient* period of media silence between the prejudicial

articles and the beginning of trial can ameliorate highly prejudicial pre-trial publicity. *See e.g. People v. McCrary*, 549 P.2d 1320, 1326 (Colo. 1976) (The court cited the fact that a bulk of the media coverage occurred 1 ½ years prior to the trial as one basis for denying the defendant's motion for a change of venue.); *People v. Bartowsheski*, 661 P.2d 235, 240-1 (1983)(The court cited the fact that most of the media coverage occurred at the time of the crime which was six months prior to trial as one basis for denying the defendant's motion for a change of venue.)

116. In *Irwin v. Dowd*, the prejudicial coverage came in the 7 months directly preceding the trial. This was a significant factor supporting the United States Supreme Court's decision to reverse the trial court's denial of the defendant's motion for a fair trial. *Irwin v. Dowd*, 366 U.S. 717, 725 (1961).

117. Conversely, the United States Supreme Court found that a four year lapse of media "greatly diminished" the prejudicial publicity and "softened" community sentiment. *Patton v. Yount*, 467 U.S. 1025, 1032 (1984). Further, during that lapse, newspaper coverage dropped to less than one article per month and these articles mostly covered only scheduling issues. *Id.*

118. Here, a review of the Aurora Sentinel alone shows that media coverage continues unabated to the current date as shown by the numerous recent articles cited above. *See also* Exhibit Z, p. 43, *DA can use Holmes' first statements to police in murder trial*, November 1, 2013; Exhibit Z, p. 55, *Judge: DA can use evidence from Holmes' apartment*, November 18, 2013; Exhibit Z, p. 60, *Holmes due in court Thursday for hearing on sanity evaluation*, November 19, 2013; Exhibit Z, p. 65, *Holmes due in court Thursday for hearing on sanity evaluation*, November 19, 2013; Exhibit Z, p. 77, *Media object to secret sanity hearing for Holmes*, December 12, 2013; Exhibit Z, p. 79, *Hearing set on more sanity exams for James Holmes*, December 18, 2013; Exhibit Z, p. 81, *Holmes back in court for scheduling hearing*, December 18, 2013; Exhibit AA, p. 1, *No transcript coming from closed Holmes hearing*, January 8, 2014; Exhibit AA, p. 6, *Holmes statements on bombs can be used in trial*, January 10, 2014; Exhibit AA, p. 11, *Holmes lawyers don't have to tip hand on arguments*, January 16, 2014; Exhibit AA, p. 13, *Death penalty's impact off-limits in Holmes trial*, January 24, 2014; Exhibit AA, p. 15, *Closed court hearing: 5 things to know as James Holmes returns to court*, January 27, 2014; Exhibit AA, p. 17, *Bill to bolster state media shield law based on Aurora theater shooting case fails*, January 28, 2014; Exhibit AA, p. 20, *Lawyers in closed courtroom arguing 2nd sanity evaluation for Holmes*, January 28, 2014; Exhibit AA, p. *Judge limits what Holmes jury is told of execution*, January 29, 2014; Exhibit AA, p. 24, *Victims attend Colorado theater shooting hearing*, January 31, 2014; Exhibit AA, p. 26, *James Holmes in court for expert witness hearing*, January 31, 2014; Exhibit AA, p. 28, *Judge: DA can use Holmes' cellphone as evidence*; Exhibit AA, p. 34, *Doctor appointed for James Holmes' 2nd sanity exam*, March 11, 2014; Exhibit AA, p. 36, *Holmes' lawyers want to talk to hospital staff*, March 14, 2014; Exhibit AA, p. 38, *Judge puts James Holmes' 2nd mental exam on hold*, March 19, 2014; Exhibit AA, p. 41, *More arguments filed over James Holmes' sanity*, March 25, 2014.

119. While there is less coverage during months where little litigation occurs, the media continues to publish articles detailing court hearings, filed motions and orders, and editorial commentary on the status of the case. Exhibit BB, p. 205, *Fox reporter's lawyer seek to keep sources secret*, Aurora Sentinel, November 14 – November 20, 2013; Exhibit BB, p. 207,

Judge rebuffs move for more secrecy in Holmes case, Aurora Sentinel, November 28 – December 4, 2013; Exhibit BB, p. 216, *Public, media barred from sanity hearing*, Aurora Sentinel, December 26, 2013 – January 1, 2014; Exhibit BB, p. 210, *Editorial: Justice, fairness are lost in closing Holmes' hearings*, Aurora Sentinel, January 9 – January 15, 2014; Exhibit BB, p. 209, *Holmes' next court hearing closed to the public*, Aurora Sentinel, January 9 – January 15, 2014.

120. The same will undoubtedly hold true of the Denver Post coverage.

121. Additionally, as noted in the anniversary coverage above, the media continues to reframe the issues here to maintain the local interest of a public uniquely and extraordinarily impacted by this case. It is clear from all of the media publications discussed, cited, and attached as exhibits, that the publicity surrounding this case, while not as intense as in the first weeks, persists to this day and covers significant content. The local papers and television stations have not just resorted to notifying the public of scheduling issues. Rather they continue to publish articles about specific facts in this case, the impact on and history of the victims, negative information about Mr. Holmes, editorials and speculation, and the content of motions and hearings in this case.

122. Recently in *People v. Montour*, another death penalty case that went to trial in the 18th Judicial District, Douglas County, and sat a jury before settling for a life sentence, jurors frequently pointed towards Mr. Holmes as an example of a criminal defendant that should be put to death. Prospective jurors from a neighboring county were able to identify specific facts regarding Mr. Holmes case and cited many of those facts as reasons that would justify killing him. See Exhibit BBBB, Partial Transcript of Montour Jury Selection. Thus, it is clear that the media is indeed having a prejudicial impact on the jury pool.

123. Ultimately, whether one looks to the Aurora Sentinel, the Denver Post, or the television coverage, the local pre-trial media coverage is massive, pervasive, and prejudicial under all of the relevant factors.

III. A CHANGE OF VENUE IS WARRANTED BECAUSE THIS CASE HAS HAD AN UNPRECEDENTED AND PALPABLE IMPACT ON THE LOCAL COMMUNITY IN ARAPAHOE COUNTY.

124. The Aurora Theater Shooting has had an unparalleled impact on Arapahoe County, not only because of the media coverage of the case, but also simply because of the size and scale of the tragedy. Neither the media nor the public has received a fair and balanced presentation of the facts surrounding this case, or of James Holmes and his mental health, based on the information concerning the facts that has been made public thus far. Unfortunately, the palpable effects of this case have festered within a community surrounded by unremitting prejudicial news coverage. As a result, prejudgment abounds, including the vilification of James Holmes as evil rather than a severely mentally ill young man. It is precisely this environment that will prevent Arapahoe County jurors from providing Mr. Holmes a fair trial on the issues of guilt, sanity, as well as the appropriate penalty.

A. The Number of Witnesses from Arapahoe County Extends the Impact of this Case Far Beyond Any Other Case.

125. An unprecedented number of witnesses come from Arapahoe County. A review of the prosecution's endorsed witness list indicates over 2600 people that live and/or work in Arapahoe County.

126. It is likely that all of these witnesses have family, friends, and colleagues that are also from Arapahoe County. Many of those individuals will likely have heard, seen, and been involved in the impact of this case on those endorsed witnesses.

127. While it is difficult to quantify the number of eligible jurors that will fall into the above categories, it is likely to be significant in relation to the total amount of eligible jurors in Arapahoe County.

B. High Profile Individuals Visited the Local Community, Adding Emphasis to the Shootings and Their Impact on the Local Citizenry.

128. The first 72 hours after the shooting brought local community briefings by the Governor of Colorado, the Mayor of Aurora, the District Attorney, the FBI, and the Aurora Police Chief. *See Exhibit UU, p. 7.*

129. Christian Bale visited local police as well as several hospitals, victims and the memorial. Exhibit UU, p. 17; Exhibit BB, p. 11, *Batman star Christian Bale visits Aurora shooting victims, memorial, July 26, 2012, Aurora Sentinel.*

130. Members of the Denver Broncos also visited some of the survivors at the hospital. *Id.* Notably, in the first days after the shooting, the Denver Post reported that Broncos Defensive Tackle Mitchell J. Unrein tweeted "A cowardly act deserves no mercy!!! Put him down!!!" Exhibit FF, p. 2, *Aurora theater shooting: Celebrities tweet on tragedy, July 20, 2012, denverpost.com.*

131. Both the President of the United States and the First Lady visited Colorado within weeks of the shootings. First Lady Michelle Obama visited the Medical Center of Aurora-South on August 11, 2012. *See Exhibit UU, page 12.* President Obama also visited victims in the hospital and also gave a nationally televised news conference. Exhibit BB, p. 16, *Obama's visit draws details of victims, survivors, July 26, 2012, Aurora Sentinel.*

C. The Impact on the Local Medical Community Went Beyond Those Persons Directly Involved.

132. The Medical Center of Aurora, located in the heart of Arapahoe County, received and treated 18 patients from the movie theater on July 20, 2012. They noted on their website how "the community of Aurora has truly pulled together in response to this terrible tragedy." Exhibit VV, p. 2.

133. Both the Medical Center of Aurora and Children's Hospital, also located in Aurora, have pledged to use donations and charity to cover the medical expenses of the

uninsured victims of the theater shooting. Exhibit VV, p. 5-6, *Hospitals limit medical bills for Aurora theater shooting victims*, thinkprogress.org, 7/20/12.

134. The University of Colorado's Anschutz Medical Campus, also located in the heart of Aurora, received 23 victims from the shooting on July 20, 2012. Exhibit VV, p. 12-13, *The Night the E.R. Staff Can Never Forget*, New York Times, 8/16/12. One of the surgeons told the media "how lucky it was that the gunman's semiautomatic rifle jammed," otherwise, there would have been more deaths. *Id.*

135. In a video now posted on YouTube, Dr. Comilla Sasson, who was running the University of Colorado Hospital ER on July 20, 2012, describes how the entire hospital came together to handle the emergency treatment that night. She noted the resulting ongoing trauma on the local hospital community. See Attached DVD, Exhibit AAA, *ACEP: Aurora Theater Shooting: Lessons from ED*, Imng Medical Media.

136. On Saturday, March 23, 2013, nurses from the University of Colorado Hospital gave a training at a national seminar taking place in Denver, Colorado. The title was "When Disaster Strikes: University of Colorado Hospital's Response to the July 20, 2012, Aurora Shooting." Exhibit VV, p. 14, 18, 46th Annual Meeting & Exposition, American Association of Nurse Executives. The PowerPoint presentation makes it clear that the Aurora shootings affected the entire University of Colorado Hospital family. Exhibit VV, p. 22-73. The training also highlighted, in detail, the entire timeline of the treatment of the victims that night. It was described that "patients arrived as 'war casualties' instead of usual ambulance condition." *Id.* at 30. "More than 50 directors, managers, staff and physicians physically responded to the hospital" within an hour. *Id.* at 52. The hospital hotline answered over 1,000 calls that night. *Id.* at 53. This PowerPoint presentation can also be found online at:

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCsQFjAA&url=http%3A%2F%2Fwww.aone.org%2Fconference2013%2FHandouts%2F2013_concurrent_handouts%2FSat_6_605_L_13.pdf&ei=5k-mUqCNLJLdoATXp4KwDA&usq=AFQjCNG3uzhUBV1XI9pmTC9FsAxcIEdOVQ&bvm=bv.57799294,d.cGU .

137. According to a July 21, 2013 Denver Post article, the local Aurora Hospitals also incurred significant financial costs due to this case. Children's Hospital had more than \$280,000 in charges for treated victims. The University of Colorado's Anschutz Medical Campus "said discounts and write-offs for Aurora [theater] patients amounted to more than \$2,000,000." The Medical Center of Aurora and Swedish Hospital provided nearly \$500,000 in charity cases. Exhibit JJ, *Aurora still praying and paying for recovery one year later*, July 21, 2013, denverpost.com.

D. The Aurora Police Department Was Uniquely Impacted Relative to Other Cases.

138. According to the Denver Post, the Aurora Police Department "spent nearly 26 percent of the year's law enforcement budget for overtime pay in responding to the July 20 mass shooting." Exhibit HH, *Aurora theater shooting: Costs for police, lawyers already soaring*, Denver Post, August 15, 2012. As of August 15, 2012, the City of Aurora had spent \$462,600 on

overtime costs for police officers and civilian employees which not only covered responding to the incident itself, but also to cover security at the community vigil and protection for visiting dignitaries. *Id.*

139. While some of these costs were covered by grants through the Department of Justice, the City of Aurora (thus the people of Aurora) have been forced to absorb a significant amount. Exhibit VV, pp. 19-20.

140. The Aurora Police Department had a total of 55 patrol vehicles on scene by 12:55 am on July 21, 2012. Exhibit VV, p. 6.

141. Dr. John Nicoletti and his team counseled numerous first responders and city staff including local police officers after the theater shooting. Unlike other cases, Nicoletti said “[t]his was too much, too ugly, too different...[j]ust totally different.” Exhibit CC, p. 31. He knows that “[a] trauma like the theater shooting carries a substantial emotional cost for cops. More so than other horrific crimes.” *Id.* at p. 7. The psychological impact on the officers and other first responders could be severe and “last a long time.” *Id.*

E. The Impact of this Case on the Entire Aurora and Arapahoe County Community Goes Far Beyond Any Previous Incident.

142. One article from the Aurora Sentinel described the impact of this tragedy on the community as follows: “With chilling effectiveness, police say James Holmes unleashed horror on an Aurora movie theater. He also helped define a city...It’s that place, the place where moviegoers were picked off with lethal efficiency, the place where a lone gunman toting an arsenal of high-powered weapons wreaked unimaginable havoc. Twelve dead, 58 wounded, numbers forever linked to Colorado’s third largest city.” Exhibit BB, p. 3, *Aurora’s identity begins to emerge after the shootings*, July, 26, 2012.

143. All citizens of Arapahoe County have a unique and palpable connection to this case on numerous levels. As a result, the local media coverage has heightened salience in this particular community.

i. *Physical Connection*

144. Arapahoe County residents have a physical connection to the sites involved. As Aurora Sentinel reporter Adam Goldstein noted, he “was sitting in that theater less than three weeks [before the shooting], watching the new Spider-Man movie with his father. The medical campus where” he interviewed numerous emergency room doctors after the shooting once held his grandfather, and Mr. Holmes’ apartment was only blocks from his grandparents’ first home. Exhibit BB, p. 23, *When horror hits home*, July 26, 2012, Aurora Sentinel.

145. The Century 16 Theater in Aurora re-opened in January of 2013. Members of the community will forever be reminded of this tragedy when they attend or even drive by the theater. At the re-opening ceremony, Mayor “Hogan, flanked by John Hickenlooper, the chief executive of Cinemark and local pastors, said the July 20, 2012 theater massacre would never be forgotten...We are a community that has not been defeated. We are a community of survivors

and a community that is united in our recovery.” Exhibit BB, p. 213, *Months after massacre, theater reopens doors*, Aurora Sentinel.

146. To assist in making the decision about whether or not to re-open the theater, the local government enlisted the input of the local community through a single question questionnaire. Exhibit BB, p. 66, *City asking for public opinion on fate of theater at Aurora massacre site*, August 23, 2012, Aurora Sentinel.

147. Aurora Rise, a local organization created to raise funds for victims in this case has also created physical reminders in the Aurora community. They placed three bench advertisements throughout Aurora reminding the public to support the “7/20 Survivors,” two of which remain today. See Exhibit LL.

148. Arapahoe County is also home to Buckley Air Force Base. According to the base Commander, “more than 50 people with Buckley connections were there that night. Included in the dead were two enlisted men from Buckley, John Larimer and Jesse Childress.” Exhibit S, p. 111, *Base Commander: Buckley thrives despite last year’s tragedies*, January 25, 2013, Aurorasentinel.com.

ii. *The memorials*

149. Ten thousand people responded to the formal community memorial on July 24, 2012 at the Aurora Municipal Center’s Great Lawn. Exhibit UU, p 13; Exhibit CC, p. 33, *The Price We Paid*, The Aurora Magazine, July 15, 2013. Religious leaders, congressmen, local area mayors, senators, and Governor Hickenlooper all attended. Exhibit BB, p. 18, *Thousands gather to mourn victims*, July 26, 2012, Aurora Sentinel.

150. Hosting vigils for the victims had a fiscal impact. Arapahoe County paid \$78,000 to Parks and Recreation Staff as well as other costs for security. See Exhibit HH, *Aurora Theater Shooting: Cost for police, lawyers already soaring*, August 15, 2012, denverpost.com.

151. In the days after the shooting, a temporary makeshift memorial sight was set up near South Sable Boulevard and East Exposition Avenue near the Century Aurora 16 theater. City employees collected 160 boxes of items donated or left at the memorial cite. *Id*; see also Exhibits DD, EE for additional photographs of the memorial on July 26, 2012 and July 28, 2012; see also Exhibits DDD, EEE, and FFF on the attached disc, for videos of the memorial taken on July 26, 28 and August 11, 2012; Exhibit BB, p. 8, *Intersection of tragedy and grief*, July 26, 2012, Aurora Sentinel.

152. The memorial stood for months and was described as follows:

The makeshift memorial on South Sable Boulevard and East Centerpoint Drive built up steadily in the days and weeks following the massacre that unfolded at the Century Aurora 16 theater on July 20, 2012. The piles of stuffed animals, hundreds of candles and homemade placards with hand-written messages of grief and sympathy accumulated on the edge of the dusty vacant lot across the street from the theater. Along with the 12 wooden

crosses, those tokens of sympathy and grief lingered for two months before staff and volunteers from the Aurora History Museum collected them in September.

As victims, families and the larger community brace for the one-year anniversary of the tragedy, questions about the future of those items — as well as a more permanent memorial — still remain. Many of the hundreds of items remain boxed up in an undisclosed warehouse space somewhere in the city, a storage facility donated by an anonymous community member. A crew of more than 20 are still working to catalogue the items that filled more than 160 boxes in September...

‘It has quite a bit more emotions attached to it because it’s so current,’ Kuehner said. ‘Those of us on staff have memories connected to the event. There’s more of a personal connection ... than there sometimes is in collecting objects. ‘It’s taking its toll on my staff a little bit; but we’re getting through it,’ she added.

For now, the only reminder of the makeshift memorial that grew up on a hill off South Sable Boulevard and drew visits from community members and celebrities alike is a white sign that’s already showing the wear and tear of weather and time. ‘Thank you for the outpouring of love and support for the victims of the 7/20 tragedy. Always remember,’ the sign reads. Finding a more permanent way to remember will take time.

Exhibit Y, p. 64, *Temporary Memorial, Permanent Memories*, Aurorasentinel.com.

153. The memorial near the theater was not removed until two months after the shootings. Exhibit BB, p. 93, *Moved, but not forgotten*, September 27, 2012, Aurora Sentinel. The items collected from the site are being stored while plans are made for a permanent memorial. *Id.*

154. Flags were flown at half-staff all over the community including at the Arapahoe Detention Center, the Arapahoe Court House, the Sheriff’s Office, and at a local Wells Fargo Bank located on Arapahoe Road and South Clinton. *See* Exhibit WW.

iii. *Mental Health Services to Community*

155. As a way to address the enormous impact of the shootings on the entire community, the Aurora Strong Resilience Center opened in Aurora on Thursday July 11, 2013. Exhibit XX, p. 1, *Resilience center open before shooting anniversary*, The Denver Post, 7/11/13; *see also*, Exhibit BB, p. 149, *City looks at creating ‘resiliency center’ for Aurora residents dealing with aftermath of theater shooting*, February 7, 2013, Aurora Sentinel. The center is a partnership with the city of Aurora, the Aurora Mental Health Center, the University of Colorado’s Anschutz Medical Campus, and Aurora Parks and Recreation. *Id.* The Denver Post reported that “Megan Sullivan, whose older brother was killed in the shootings, runs a women’s

support group at the center.” *Id.* One article stated that city officials created the Aurora Strong Resilience Center in response to the festering pain amongst the community in the months after the theater shootings. Exhibit CC, p. 39.

156. The center is located at 1298 Peoria Street in Aurora, Colorado and has a website at www.720recovery.com. Exhibit XX, p. 3, *Healing Takes a Name and a Place*, Aurora Magazine, July 2013.

157. The Resilience Center website states “The Century 16 Theater Shooting on July 20, 2012 stunned Aurora, Colorado and the nation – the ripple effects can still be felt today.” Exhibit XX, p. 6.

158. The center works with the 7/20 Recovery Committee. Most of the members of the 7/20 Recovery Executive Committee come from the local community. Exhibit XX, p. 36-7, 7/20 Recovery Executive Committee Members.

159. The mission of the 7/20 Recovery Committee “is to provide leadership in developing a coordinated community-wide effort that addresses the long-term impact of the July 20, 2012 (7/20) tragedy at Century 16 Theater in Aurora. The committee includes representatives from non-profit service providers, community foundations, business, government, education and the faith community.” *Id.* at p. 51. The reason this group formed was because mass tragedies “have a tremendous impact on the immediate victims and their families, as well as the broader community as a whole. Studies from similar violent events” show cases of PTSD and anxiety disorders increase by as much as 30% which can lead to significant substance abuse issues and a surge in requests for counseling and therapy within the community. *Id.* “Following the 7/20 Century 16 theater shooting, within the first six weeks alone, Aurora Mental Health experienced a 233 percent increase in calls for help.” *Id.* According to law enforcement, hundreds of victims have been seeking “post-event mental health counseling for trauma.” Exhibit UU, p. 21.

160. The Resilience Center website provides a link to a video recorded by Dr. Nicoletti. On that recording, Dr. Nicoletti addressed the ways in which the community came together in response to the theater shootings but noted that the community was still in the middle of the tragedy with much work yet to do in order to heal. Exhibit BBB, *Trauma Recovery with Dr. John Nicoletti*, on attached disc.

161. Aurora Mental Health dedicated 1,019 hours to a 24-hour hotline and walk-in visits for 1,138 people. 1,373 individuals received care from AMH’s Disaster Response Team at 27 locations throughout the community. Exhibit XX, p. 18, *Distribution of Victim Resources*, 7/20 Recovery Committee, 10/19/12. Aurora Mental Health incurred \$290,771 in direct costs from the theater shootings as of September 11, 2012. They incurred an additional \$50,000 to cover management, administrative, and other costs. *Id.* According to Cindy Bohl, a spokeswoman for Aurora Mental Health, the free care they gave after the shootings cost \$1,400,000. Only \$463,000 was recovered through donations and community support. Exhibit JJ, *Aurora still praying and paying for recovery one year later*, July 21, 2013, denverpost.com.

162. The Denver Foundation donated \$22,500 as of October of 2012 to address the secondary trauma experienced by the staff at Aurora Mental Health. Even the counselors had to get counseling to address the aftermath of the theater shootings. Exhibit XX, p. 19.

163. In January of 2013, the 7/20 Recovery Committee also provided a website “designed by a psychologist who is an expert in trauma recovery.” Exhibit NN, *Help for coping with trauma of Holmes hearing*, 9 News, 1/8/13. According to Karen Morales, victims and family members are not the only people that can be traumatized by the testimony of what happened on July 20, 2013 that came out at the preliminary hearing in January of 2013. Attached DVD, Exhibit HHH.

iv. *Aurora Public Schools*

164. Even Aurora Public Schools incurred \$69,570 in costs as of October 19, 2012 in overtime costs for evacuation site and recovery efforts, off-duty safety officers, substitute teachers, and counseling experts in child trauma. Exhibit XX, p. 19.

165. Certainly, the theater shooting had an impact on the children and adults involved in the Aurora Public School system, as an additional \$50,000 was given by the Denver Foundation for mental health therapists serving the schools. *Id.* Further, Aurora Mental Health provided therapists to 25 different Aurora public schools on the first day of school following the shootings. As of September 24, 2012, 903 hours in staff time was provided to 192 school staff, students and parents. *Id.* at p. 14.

166. Aurora Public Schools Superintendent John Barry noted the impact of the theater shootings on the local schools. Not only did Gateway High School become “ground zero for families to get relieving news about shooting victims or face every parent’s worst nightmare” but it was the *alma mater* of Alexander Boik. *Id.* at p. 38. “Gateway, Aurora Central, Rangeview and Hinkley High schools opened their doors to victims, displaced residents and other community members.” *Id.* The Aurora Public Schools have been referred to as “ground zero, and that proximity robbed the district of an already fragile sense of security...those lessons came with a deep loss of innocence, one that could very well be permanent.” Exhibit CC, p. 38, *Schools Enlisted to Provide a Teachable Moment*, July 2013, Aurora Magazine; Exhibit BB, p. 47, *Dealing with Disaster: Aurora Public Schools outlines plan for dealing with aftermath of nearby theater shooting*, August 9, 2012, Aurora Sentinel.

167. Even students at the Community College of Aurora created an original stage production called “Glimpses – The Rising Dawn” as “a collective response to a community tragedy.” Exhibit Q, p. 1, *From Catastrophe, a conversation: College students use stage to explore emotions from Aurora Massacre*, November 2, 2012, Aurorasentinel.com.

168. According to John Berry who recently retired from his position as Aurora Public Schools Superintendent, “the school district spent about \$310,000” to provide information and trauma counseling to people. They also added six security positions with an annual cost of \$300,000 and a full-time recovery coordinator. Not only were there 150 people at the theater that night with direct ties to the Aurora schools, but in providing counselling to their students, they

even “had to have talking points for their kindergartners.” Exhibit JJ, *Aurora still praying and paying for recovery one year later*, July 21, 2013, denverpost.com.

v. *Economic Impact on the Local Community*

169. According to the Resilience Center, a number of funds from a number of sources had been distributed to victims as of October 19, 2012. A total of \$208,056 in Victim Compensation Funds from the 18th Judicial District had been paid out in cash payments. \$290,771 in mental health care had been incurred and paid for by Aurora Mental Health funds. Schools and non-profits involved in the tragedy response received \$173,863 from the Aurora Victim Relief Fund and the Denver Foundation. Exhibit XX, p. 18, *Distribution of Victim Resources*, 7/20 Recovery Committee, 10/19/12.

170. City overtime costs through August of 2012 totaled \$738,451.61. Exhibit CC, p. 33.

171. Taxpayers and college students at the University of Colorado will have to cover legal fees billed at between \$165 and \$505 per hour to address a variety of issues. Exhibit YY, *Aurora theater shooting: Costs for police, lawyers already soaring*, Denver Post, 8/15/12.

172. The City of Aurora had to enlist the services of TriData to conduct a study on the response to the theater shooting. The city will pay \$248,927 for this report. Exhibit W, p. 21, *Aurora to study emergency response after theater shooting*, May 6, 2013.

173. The city also incurred fees of more than \$110,000 to hire outside lawyers to handles issues arising from the July 20, 2012 shooting. Exhibit T, p. 22, *Feds say grant can't go for legal requests from shooting, city on the hook for more than \$100K*, February 21, 2013.

174. By May of 2013, the “city of Aurora shouldered costs of nearly \$740,000.” Over half of this amount is expected to come from the City’s general fund. Exhibit JJ, *Aurora still praying and paying for recovery one year later*, July 21, 2013, denverpost.com.

175. Another important fact is that the Arapahoe County courthouse has already made a significant financial investment in improvements as a result of this case. As has been visible in Courtroom 201 for many months now, the jury box has been physically modified to handle 24 jurors, the amount of jurors and alternates that will be selected in Mr. Holmes case. This cost \$26,397.00. Exhibit ZZ, p. 3. In addition, the sound systems in Courtroom 201 and the prior Division 22 were both upgraded to improve the quality of the sound. The total cost of this was \$6,4037.00. *Id.* at p. 7.

vi. *Donations from the Local Community*

176. Six hundred and ninety first-time blood donors from the community gave blood between July 20, 2012 and July 27, 2012. Exhibit XX, p. 22, *Distribution of Victim Resources*, 7/20 Recovery Committee, 8/31/12.

177. Aurora Rise is another organization created to support the victims from the Century 16 theater shootings. Its website is located at <http://www.aurorarise.org>. It is a non-

profit organization that continues their effort “so that no one will ever be forgotten and so that the public will never forget.” Exhibit NN, p. 4. They take donations directly, hold charity events, and sell products including T-shirts, bumper stickers and key chains. *Id.* at p. 7-8. The organization was created by a local comic book store that had customers in the theater on July 20, 2012. Exhibit BB, p. 170, *From pages to proactive*, May 9, 2013, Aurora Sentinel.

178. Aurora Rise continues to seek and accept donations to this day in efforts to support victims. As noted previously, they recently installed three city bus bench adds to support their cause. According to their Facebook page, the following is a list of events they have hosted since July of 2012:

- J. Scott Campbell signing event, September 22, 2012;
- Man of Steel night, June 18, 2013;
- Aurora Rise’s One Year Anniversary Event at The Blue Tattoo, July 20, 2013;
- 2nd Annual Aurora Rise Charity Auction, August 17, 2013;
- Heather Gardens and Aurora Rise Charity Gold Tournament, September 28, 2013;
- Thor: The Dark World benefit movie screening, November 12, 2013.

See Exhibit KK, Copy of Events Page from Aurora Rise Facebook page.

vii. A Day of Remembrance – the One-Year Anniversary

179. “A year after the tragic shooting, thousands poured into Aurora to remember the theater shooting that killed 12.” Exhibit BB, *Overwhelming emotions dominate year anniversary for Aurora massacre*, p. 215. The community of Aurora held a Day of Remembrance on the one-year anniversary of the theater shootings. The “line of attendees...included congressmen, Aurora city council members, school district officials, victims and their families and community members.” Exhibit Y, p. 77, *Remembering Aurora – Aurora theater shooting vigil draws victims, families, dignitaries*.

180. It is clear from the anniversary coverage that this incident affected the entire community and not just the listed victims. Dan Deny wrote “One year after the shooting, writers here talked to dozens of people connected to the massacred, as if any of us aren’t direct-wired to that cataclysm. What we found is that Aurora is far from cured of the disease that Holmes unleashed on July 20, 2012.” Exhibit CC, p. 6, *Aurora looks for ways to heal the individuals, itself*, Aurora Magazine, July 2013.

181. According to Aurora Mayor Hogan, “[t]he intangible costs can still be seen in the faces of city employees, whose eyelids still brim with tears when they recall that day.” *Id.* at p. 37, *Making Aurora’s undefining moment*, Aurora Magazine, July 2013.

182. Aurora Sentinel reporter Perry wrote

When James Holmes started firing into Theater 9 at the Century 16 cinema last year just after midnight, he shot through everyone’s heart in Aurora, including mine. The kids he maimed and

massacred waited on us at local restaurants. They played on local football teams. They were full of the life we all take for granted.

No, I'm not at all callous. A year after the funerals, the memorials, the checking of lists of names and reporting of court proceedings, I still look off when I talk about July 20, and I never talk about it for very long. I'm angry for the dead and injured. But I'm connected to the victims' families by raw nerves that have bound this town of 330,000 people together for the rest of our lives.

Exhibit Y, p. 32, *Perry: Holmes slaughtered innocents, but we murdered reason after theater massacre*, July 18, 2013, Aurorasentinel.com.

183. Additionally, the Aurora Magazine, a monthly lifestyle magazine for the greater Aurora region also owned by the Aurora Media Group that puts out the Aurora Sentinel, dedicated much of its July 2013 edition to the anniversary of this incident. *See* Exhibit CC. The cover of the magazine was entitled "The price we paid: reflecting on the dead, the wounded, the shaken, the city and its future." It is clear from this anniversary issue that this incident affected the entire community in Aurora and not just the listed victims. *See* Exhibit CC.

184. Some articles in the anniversary edition give detailed factual accounts of what happened inside the theater as well as how some victims have been impacted by those events. *See* Exhibit D, pp. 30, 35. Others note the tangible and intangible long-lasting impacts on the local community. *See* Exhibit CC, pp. 32-39.

185. An Aurora Sentinel on-line article discussing the Day of Remembrance stated:

It was one year ago Saturday that a gunman opened fire early into a packed midnight screening of the Batman film "The Dark Knight Rises." The rampage lasted less than two minutes but left deep wounds that still ache today in Aurora.

Exhibit Y, p. 73, *A year after shootings, Aurora Colorado looks for healing*, Aurorasentinel.com.

186. A schedule of events put on for the one-year anniversary can be seen on page 15 of the Aurora Sentinel's July 18, 2013 edition. *See* Exhibit BB, p. 188. Not only did that edition contain articles, but there were also a number of community support advertisements placed throughout the edition. *See* Exhibit BB.

187. Channel 9 News, or KUSA, a metro Denver news station, aired a number of news articles on the Holmes case since July of 2012. Channel 9, along with most other news agencies, had extensive media coverage at the outset of the case. *See e.g.* DVD 2, Exhibit DDDDD.

188. During the summer of 2013, Channel 9 aired a number of broadcasts providing coverage of the one-year anniversary of the theater shooting.

189. These news stories replayed the details of the incidents surrounding the shooting from the 911 calls to the response of the medical and police communities. As noted in the news

coverage of the one-year anniversary vigil, “The pain in this community is still very real.... This community remembers.” See attached disc, Exhibit GGG, *Community Remembers with late night vigil*, KUSA 9news, July 20, 2013.

viii. *Resulting Biased Community Sentiment*

190. In the first days after the shooting, the Denver Post reported that Broncos Defensive Tackle Mitchell J. Unrein tweeted “A cowardly act deserves no mercy!!! Put him down!!” Exhibit FF, p. 2, *Aurora theater shooting: Celebrities tweet on tragedy*, July 20, 2012, Denver Post. Governor Hickenlooper stated “This is not only an act of extreme violence, it is also an act of depravity.” Exhibit GG, p. 2, *Colorado Gov. Hickenlooper faces challenges after shooting, say predecessor*, July 20, 2012, Denver Post.

191. A year later, during the coverage of the anniversary in Aurora, Governor Hickenlooper was asked “You didn’t use the shooter’s name in the days after. Why?” In response he said “We almost seem to create cult heroes out of these twisted killers. It still seems better to deny them whatever evil satisfaction they derive from seeing or hearing their name ever spoken publicly.” Exhibit Y, p. 58-59, *Q&A with Colorado Gov. John Hickenlooper on that day, and decisions made afterward*, July 19, 2013, Aurorasentinel.com.

192. Early on, one community member wrote “It’s time for justice to be served on this animal!” Exhibit M, p. 4, *Aurora’s tragedy in pictures, Comment*, July 20, 2012, Aurorasentinel.com.

193. This community sentiment continues. Over a year later, another community member wrote:

Did the people in the movie theatre receive a fair and just trial before Holmes started shooting? No. Holmes was both judge and jury!!! All the defense attorneys are doing is wasting taxpayers money. Just because a law isn’t used very often doesn’t make it unconstitutional. It means the law is taken very seriously and applied only in the worst of cases. Gov. Hick was afraid to make a decision as he was more concerned about his political career than about carrying out the decision of the courts. The defense attorneys are just wasting taxpayers money by all their delays. Holmes is guilty - they cannot overcome that fact!!!

Exhibit Y, p. 130, *Letter to the editor from A citizen of Aurora*, September 5, 2013.

194. A response stated:

O.K. I’m old so maybe this is all too much for me. James Holmes was caught at the scene with guns, his flack jacket, and a bunch of extra ammo. He was then stripped of his clothing, and taken into custody. He asked if anyone went to his apartment, which was booby trapped. So what else is needed for a conviction? Does it matter if he had a bad childhood, that he was abused or whatever

excuse is forthcoming? Other than making money for the lawyers and names for themselves, what else is needed? And of course the media coverage. He admitted he did it. Was he insane? Most likely. Should he ever go free? I'd say no.

FBI reports from another country, New York courts. Just who the heck is insane?

I'm sure there are a lot of answers to my questions. I would like to hear them.

Id.

195. The Century 16 Theater reopened in January of 2013 amid much controversy. The opening itself "was attended by victims, their families, Aurora City Council members, Aurora police, and other lawmakers." Exhibit S, p. 50, *Aurora Theater reopens with support from some, protest from others*, January 17, 2013, *Aurorasentinel.com*. Governor Hickenlooper was quoted at the event saying for many of those present, it was a way of "making sure you don't allow evil to trump good." *Id.*

196. In response to an article about the redesign of the theater, readers highlighted the idea that the community cannot let James Holmes win:

"Never forget, never surrender - to reopening dishonors the victims...it gives continued power to the one responsible...he would love for them to continue letting him take away from them...collateral damage."

"I agree with you WE CANNOT LET HIM WIN!!"

Exhibit P, p. 11, *Century 16 redesign plans unveiled, Comments*, October 18, 2012, *Aurorasentinel.com*.

197. There is also evidence of readers' animosity toward Mr. Holmes insanity defense. One "perplexed citizen" wrote in saying "[i]t appears the 'reason of insanity' *excuse* is the problem, not whether he in fact conceived and carried out this heinous crime against humanity indiscriminately and with malice of forethought." Exhibit BB, p. 217, *Re: Aurora Sentinel editorial insisting the DA plea bargain with massacre shooter James Holmes*, *Aurora Sentinel*, December 19 – December 25, 2013 (emphasis added).

198. This type of community sentiment is exactly what the Colorado Supreme Court described, noting that the jurors themselves would be unable to self-diagnose this bias. *People v. Botham*, 629 P.2d at 599.

IV. SOCIAL SCIENCE RESEARCH SUPPORTS A CHANGE OF VENUE IN THIS CASE.

199. In addition to his analysis of media coverage of this case, Dr. Edelman discusses the scientific research regarding the impact pretrial publicity can have on potential jurors in his affidavit. Dr. Edelman first discusses “the impact of attitudes on information processing.” Exhibit A, p. 4. In summary, Dr. Edelman notes that

[W]hen a venue is inundated with media coverage surrounding a crime, there is a risk that potential jurors will develop a large network of linked attitudes and beliefs relating to the victim, the defendant, and the crime. These linked attitudes include opinions about the guilt of the defendant, appropriate sentence, and evaluation of the evidence presented through the media. When the links between attitudes are strong, they can be activated at a subconscious level and have an impact on jurors’ evaluation of the evidence and arguments presented at trial. Attitudinally supporting arguments will be more closely attended to, evaluated as persuasive, integrated into the existing network of attitudes and beliefs, and made easily accessible during deliberations.

Id. at p. 6.

200. Further, “counterarguments and evidence conflicting with well-established attitudes may create cognitive dissonance. As a result, jurors will either ignore this evidence or make cognitive efforts to refute it.” Ultimately, “[t]hese psychological processes put the defendant at a significant disadvantage, tend to undermine the presumption of innocence, and diminish the prosecution’s burden of proof.” *Id.*

201. Dr. Edelman next discusses the research addressing “the impact of pretrial publicity on decision-making in the courtroom.” *Id.* at p. 7. He notes that studies show that “the best predictor for the presumption of guilty was pretrial knowledge about the case.” *Id.* at p. 8. Studies have shown that seeing as few as 5 newspaper articles led some potential jurors to feel there was “a lot of evidence” against the defendant. Most importantly, Dr. Edelman notes that studies indicate that even extensive *voir dire* failed to ameliorate the impacts of negative pretrial publicity. *Id.*⁴

202. The research cited by Dr. Edelman supports a finding that the pervasive media coverage of this case in Arapahoe County, combined with the undeniable impact of the tragedy on the community itself given its size and scope, has created an atmosphere where there is an inescapable risk that the citizens of Arapahoe County have developed these “linked attitudes and beliefs” about the crime. The strong community sentiment against Mr. Holmes which has arisen as a result of these linked attitudes and beliefs will made it impossible for him to receive a fair trial within this community.

⁴ A more detailed analysis of the supporting social science research can be found in Dr. Edelman’s affidavit and the cited social science articles. Additionally, should the Court grant a hearing on this motion, Dr. Edelman will provide testimony about the substantial body of research and writing that supports a change of venue in this case.

V. CONCLUSION

203. The people of Arapahoe County have lived this case differently than those of any other county in Colorado. They have closer ties and associations with the victims and all who were involved in the aftermath of this case. In fact, July 20, 2012 is a day by which the citizens of Arapahoe County will measure time. It is thus sensible that they would hold stronger opinions and feel stronger emotions with regard to the facts of this case, the defense of insanity, and the appropriate punishment.

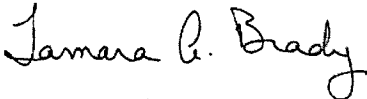
204. Given their unique attachment to this case, the salience of the prejudicial media coverage is stronger in Arapahoe County. This will have an undeniable impact on the ability to empanel a fair and impartial jury in this jurisdiction.

205. For all the reasons cited herein, Mr. Holmes requests that this Court grant a change of venue.

Request for a Hearing

206. Mr. Holmes requests a hearing on this motion to present additional evidence, testimony, and argument on this important issue.

Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth United States Constitutions, and Article II, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Amendments to the sections 3, 6, 7, 10, Constitution.



Daniel King (No. 26129)
Chief Trial Deputy State Public Defender

Tamara A. Brady (No. 20728)
Chief Trial Deputy State Public Defender



Kristen M. Nelson (No. 44247)
Deputy State Public Defender

Rebekka Higgs (No. 39511)
Deputy State Public Defender

Dated: April 4, 2014

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant	
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	σ COURT USE ONLY σ Case No. 12CR1522 Division 201
ORDER RE: MOTION FOR CHANGE OF VENUE [D-206]	

Defendant's motion is hereby GRANTED _____ DENIED _____.

BY THE COURT:

_____ JUDGE

_____ Dated

I hereby certify that on April 4, 2014, I

mailed, via the United States Mail,

faxed, or

hand-delivered

a true and correct copy of the above and foregoing document to:

George Brauchler
Jacob Edson
Rich Orman
Karen Pearson
Office of the District Attorney
6450 S. Revere Parkway
Centennial, Colorado 80111
Fax: 720-874-8501

AKM