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**DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO**

Court Address: 7325 S. Potomac St.  
Centennial, CO 80112

**Plaintiff:** PEOPLE OF THE STATE OF COLORADO

vs.

**Defendant:** JAMES E. HOLMES

and,

**Non-Party Movants:** ABC, Inc.; The Associated Press; Bloomberg L.P.; Cable News Network, Inc. ("CNN"); CBS News, a division of CBS Broadcasting Inc., and CBS Television Stations, Inc., a subsidiary of CBS Corporation; *The Denver Post*; Dow Jones & Company; Fox News Network, LLC; Gannett; KCNC-TV, Channel 4; KDVR-TV, Channel 31; KMGH-TV, Channel 7; KUSA-TV, Channel 9; *Los Angeles Times*; The McClatchy Company; National Public Radio ("NPR"); NBCUniversal Media, LLC; The New York Times Company; The E.W. Scripps Company; and *The Washington Post*

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Case No. 12-CR-1522

Division: 22

**MEDIA PETITIONERS' REPLY IN SUPPORT OF  
MOTION TO UNSEAL COURT FILE**

Movants, ABC, Inc.; The Associated Press; Bloomberg L.P.; Cable News Network, Inc. (“CNN”); CBS News, a division of CBS Broadcasting Inc., and CBS Television Stations, Inc., a subsidiary of CBS Corporation; *The Denver Post*; Dow Jones & Company; Fox News Network, LLC; Gannett; KCNC-TV, Channel 4; KDVR-TV, Channel 31; KMGH-TV, Channel 7; KUSA-TV, Channel 9; *Los Angeles Times*; The McClatchy Company; National Public Radio (“NPR”); NBCUniversal Media, LLC; The New York Times Company; E.W. Scripps Company; and *The Washington Post* (collectively, the “Media Petitioners”), by and through their undersigned counsel at Levine Sullivan Koch & Schulz, LLP, hereby respectfully file this reply in support of their Motion to Unseal the Court File.

1. On July 27, 2012, the Media Petitioners filed a motion asking the Court to unseal the Court file including the Register of Actions and the affidavits of probable cause in support of any warrant or request for production of records.

2. On July 30, 2012, the Court ordered the People to file its response to the Motion on or before August 6; the Defendant to file his response on or before August 9; and both parties and the Media Petitioners to appear for oral argument on the Motion on August 9 at 1:30 p.m.

3. The Court also authorized the Media Petitioners to file a “supplemental brief” prior to oral argument on August 9, 2012.

4. In its Response, the People join in the Defendant’s position, as stated in open court on July 30, that the entirety of the Court file should remain under seal, purportedly to protect the Defendant’s fair trial rights (the Defendant’s concern), and to protect the integrity of the ongoing investigation (the People’s concern). In the alternative, the People state that they do not oppose the unsealing of the Register of Actions, of all motions and orders presently on file with the Court (except People’s filing No. 5), and the affidavits of probable cause in support of any executed warrant, with the exception of certain unspecified names or other information in those affidavits concerning individuals, which the People ask for further time to brief.

5. The People have not *shown*,<sup>1</sup> nor can they show, that blanket sealing of the Court file is *necessary* to further a compelling governmental interest – one of “the highest order” – *and* that no less restrictive means, including release of redacted judicial records to minimize the amount of sealed information, cannot adequately protect the government’s interest in maintaining the integrity of its ongoing investigation. *See* Motion at ¶ 10 (establishing the constitutional standard a party must meet, through presentation of evidence,<sup>2</sup> to justify

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<sup>1</sup> *See* Motion ¶ 32 (citing authorities rejecting bald, unsubstantiated assertions of potential harm to investigations as a basis to maintain sealing of court file).

<sup>2</sup> *See Star Journal Publ’g Corp. v. County Ct.*, 591 P.2d 1028, 1030 (Colo. 1979) (holding that “[i]nherent in this standard are the requirements that *evidence be presented* as to the likelihood of interference with the impartiality of the jury” or with an ongoing investigation, and that written findings be made as to that showing) (emphasis added).

continued sealing of judicial records); *id.* ¶ 34 (citing authorities holding that release of redacted judicial records is a constitutionally required “less restrictive means” to protect governmental interest).

6. In determining whether either interest asserted as the basis for continued sealing – the protection of (1) the government’s ongoing investigation, and (2) the Defendant’s fair trial rights – the Court must take into account the degree to which keeping information in the court file under seal will be effective in achieving these goals;<sup>3</sup> to do so, the Court must consider the amount of information about these charged crimes that has already entered the public domain as a result of official governmental releases. *See United States v. Loughner*, 769 F. Supp. 2d 1188, 1195 (D. Ariz. 2011) (in the mass shooting case in Tucson, wounding then-Congresswoman Gabrielle Giffords and twelve others, and the death of six individuals, finding that because “much of the information in the warrant materials has already been reported by the media and is known to the public” there was no basis to continue the sealing of the arrest warrant affidavits).

7. Here, in the hours and days following the attack in theater 9 at the Century Aurora 16 multiplex, a series of public statements by law enforcement authorities (including at nationally televised press conferences) disclosed the following essential facts:

- Based on numerous eyewitness accounts and an unnamed federal official: just after midnight on July 20, 2012, James Eagan Holmes, 24, entered theater number 9 at the Century Aurora 16 multiplex through the audience entrance. Some moments later, Holmes exited through the emergency exit at the front of the theater, propped the door open, and retrieved a series of weapons from his car, a white Hyundai parked near the emergency exit in the parking lot. *See App’x A at ¶¶ 2, 4, 5, 10, 13, 16; see also Associated Press, Shooter Bought Ticket, Propped Open Door*, July 20, 2102 (quoting anonymous federal law enforcement official).

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<sup>3</sup> *See, e.g., Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1146 (9th Cir. 1983) (to justify continued sealing of court records, *inter alia*, “there must be ‘a substantial probability that closure will be *effective* in protecting against the perceived harm.’” (emphasis added) (quoting *United States v. Brooklier*, 685 F.2d 1162, 1167 (9th Cir. 1982))); *In re Charlotte Observer*, 882 F.2d 850, 853-55 (4th Cir. 1989) (finding it “dubious” that harm to defendant’s fair trial rights will result from re-publication of information already in the public domain; and, “[w]here closure is wholly inefficacious to prevent the perceived harm, that alone suffices to make it constitutionally impermissible.”); *In re N.Y. Times*, 828 F.2d 110, 116 (2d Cir. 1987) (holding that sealing of court papers is not proper where much of the information contained in them “has already been publicized”); *CBS, Inc. v. U.S. Dist. Ct.*, 765 F.2d 823, 825 (9th Cir. 1985) (finding that a substantial probability of prejudice cannot exist when “most of the information the government seeks to keep confidential concerns matters that might easily be surmised from what is already in the public record”).

- Back inside theater 9, Holmes deployed two separate grenades, one filling the theater with smoke, the other releasing a chemical irritant. *Id.* ¶¶ 7, 20.
- Holmes was dressed all in black. He was wearing a tactical ballistic vest, tactical ballistic helmet, bullet resistant leggings, a throat protector, groin protector, gas mask, and black tactical gloves. *Id.* ¶¶ 9, 19.
- Holmes' hair was dyed red; he told someone that he was "the Joker," one of the fictional villains in the Batman comic book and movie series. *Id.* ¶ 21.
- Holmes fired multiple rounds into the crowd, using an AR-15 assault rifle. *Id.* ¶ 5. He also had a 12-gauge shotgun, and two 40-caliber Glock handguns. *Id.* ¶¶ 5; 15.
- Holmes killed twelve people, ten of whom died in the theater, two in area hospitals. *Id.* ¶ 6. Holmes shot and injured another 58 individuals.
- Holmes exited the theater through the emergency exit and walked to his car, parked outside. There, he was observed by two Aurora Police Department officers, who noticed that one aspect of his clothing/body gear was unusual, *i.e.*, inconsistent with typical SWAT attire. *Id.* ¶ 10; *See also* "Face the Nation" transcripts, July 22, 2012: Aurora mayor and police chief, mayor Bloomberg, PM Netanyahu, CBSNEWS.COM (July 22, 2012 3:01 PM), [http://www.cbsnews.com/8301-3460\\_162-57477456/face-the-nation-transcripts-july-22-2012-aurora-mayor-and-police-chief-mayor-bloomberg-pm-netanyahu/?pageNum=2&tag=contentMain;contentBody](http://www.cbsnews.com/8301-3460_162-57477456/face-the-nation-transcripts-july-22-2012-aurora-mayor-and-police-chief-mayor-bloomberg-pm-netanyahu/?pageNum=2&tag=contentMain;contentBody). The two officers placed Holmes under arrest without encountering any resistance. App'x ¶¶ 11, 12.
- Upon being taken into custody, Holmes informed the officers that his apartment was armed or "booby trapped" with several incendiary devices. *Id.* ¶¶ 1, 28.
- Upon arriving at Holmes' apartment at 1690 Paris Street, number 10, in Aurora, police encountered an elaborate web of tripwires and explosive or incendiary devices. *Id.* ¶¶ 2, 22-25. According to official law enforcement statements, the tripwire at the front door to defendant's apartment was "set up to clearly detonate when someone entered that apartment and it was set up to kill that person and that could have been a police officer executing a search warrant." *Id.* ¶ 22; *see also id.* ¶ 27.
- Prior to the events of July 20, 2012, Holmes had been a student in the Ph.D. program in neuroscience at the University of Colorado campus in Aurora. *Id.* ¶ 17.
- Holmes had voluntarily withdrawn from that academic program in mid-June. *Id.*
- Holmes had no prior criminal record; he had one traffic summons for speeding, in October 2011. *Id.* ¶ 3.

- Beginning in approximately May 2012, Holmes had lawfully acquired the four firearms and some 6,000 rounds of ammunition – some purchased over the internet – including the 100-round barrel cartridge that was recovered at the scene. *Id.* ¶¶ 15, 26.
- Holmes has also been a [REDACTED] at the University of Colorado. D-10 (prior to its redaction on court’s website).

The above is an extremely small but illustrative sample of the vast amount of information that has already entered the public domain about this set of crimes. As the Court is aware, the events of July 20, 2012, and the response by law enforcement, have garnered extensive press attention, world-wide. In light of all of the information that has been publicly and officially disclosed about Mr. Holmes actions’ and statements, and the evidence concerning the charged crimes, the People and the Defendant cannot meet their burden of showing that continued sealing of the court file will be effective in furthering any compelling governmental interest.

8. The People’s bald, unsupported, and conclusory assertion that the investigation of the charged crimes will require investigators to complete interviews of “hundreds of potential witnesses,” People’s Resp. ¶ 5, and that unsealing of records in the court file could, potentially jeopardize the investigation, must be contrasted with the statements made by the District Attorney’s office at the hearing on July 30, 2012; at that time, the District Attorney stated that discovery being compiled as of that date included “a couple thousand pages of police reports.” *See also* People’s Resp. at 1 n.1 (indicating that as of Monday, August 6, 2012, the People had provided the defendant with “over 2600 pages of discovery”). In short, the People have already completed dozens of interviews with eyewitnesses to the charged crimes and have collected and analyzed abundant physical evidence, including forensic testing. *See* App’x ¶ 14.

9. Indeed, by July 27, 2012, the People had completed enough of their investigation to file 142 felony charges and to identify numerous witnesses to those crimes (contained in 32 pages presently under seal). By contrast, when the Colorado Supreme Court ordered the unsealing of the indictment in *People v. Aaron Thompson*, in 07-CR-1483, the court posted the 34-page witness list, attached to the indictment, on the court’s website: [http://www.courts.state.co.us/userfiles/File/Court\\_Probation/18th\\_Judicial\\_District/Arapahoe/Cases\\_of\\_Interest/07CR1483\\_Thompson/07CR1483\\_Thompson-DAWitnessList.pdf](http://www.courts.state.co.us/userfiles/File/Court_Probation/18th_Judicial_District/Arapahoe/Cases_of_Interest/07CR1483_Thompson/07CR1483_Thompson-DAWitnessList.pdf). Many of the witnesses on that list are law enforcement agents, identified by name and badge number or agency. Presumably the same is true here. The names of only six of the civilian witnesses were redacted therefrom, presumably because they were victims of sexual assault. *See also* App’x A ¶ 30 (statement of Carol Chambers, July 30, 2012: “it is important that we treat [the defendant herein] as we would treat any other defendant coming into the criminal justice system”).

10. Previous hearings in this case have demonstrated that the continued sealing of the court file undermines and infringes on the public’s constitutional right to attend and observe judicial *proceedings*. At the hearings on July 23 and 30, 2012, the Court addressed several substantive motions (and responses) that are under seal, and are also not listed on a public

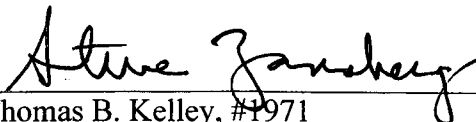
docket. Counsel for the parties referred to these filed pleadings by number (e.g., "People's 6") and, in some instances, by truncated titles (i.e., "People's motion re: production of records directed to CU," "People's Motion to Clarify"). As a result, members of the public attending these proceedings were left in the dark about what substantive matters were being argued before, and decided by, the Court, as well as the basis for the Court's rulings on those motions. See e.g., *Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982) ("[a]n adjudication is a formal act of government, the basis of which should, absent exceptional circumstances, be subject to public scrutiny." (emphasis added)), *superseded by statute on other grounds*, Conn. Gen. Stat. Ann. § 33-724; *In re N.Y. Times Co.*, 828 F.2d at 113-16 (constitutional right of access extends to written motions relating to any proceedings that are themselves subject to the constitutional right to attend judicial proceedings).

11. In other instances, e.g., Order granting D-2 and Order re Requests for Expanded Media Coverage of July 30, 2012 Hearing (D-7), the Court has issued orders determining substantive rights of the parties, and of third parties, without any public hearing, and has based such rulings exclusively upon written filing(s) to which the public has not been provided access. *But see In re N.Y. Times Co.*, 828 F.2d at 114 ("Access to written documents filed in connection with pretrial motions is particularly important in the situation . . . where no hearing is held and the court's ruling is based solely on the motion papers.").

WHEREFORE, the Media Petitioners respectfully ask the Court to grant their motion and to unseal the Court file, forthwith.

Respectfully submitted this 8<sup>th</sup> day of August,  
2012, by:

LEVINE SULLIVAN KOCH & SCHULZ,  
LLP



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Thomas B. Kelley, #1971  
Steven D. Zansberg, #26634  
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*Attorneys for Media Petitioners*

**CERTIFICATE OF MAILING**


I hereby certify that on this 8<sup>th</sup> day of August, 2012, a true and correct copy of this **MEDIA PETITIONERS' REPLY IN SUPPORT OF MOTION TO UNSEAL COURT FILE** was delivered via FACSIMILE to the attorneys below and was deposited in the United States Mail, postage prepaid, correctly addressed to the following:

Carol Chambers, Esq., District Attorney  
Karen Pearson, Esq., Deputy District Attorney  
6450 S. Revere Pkwy.  
Centennial, CO 80111

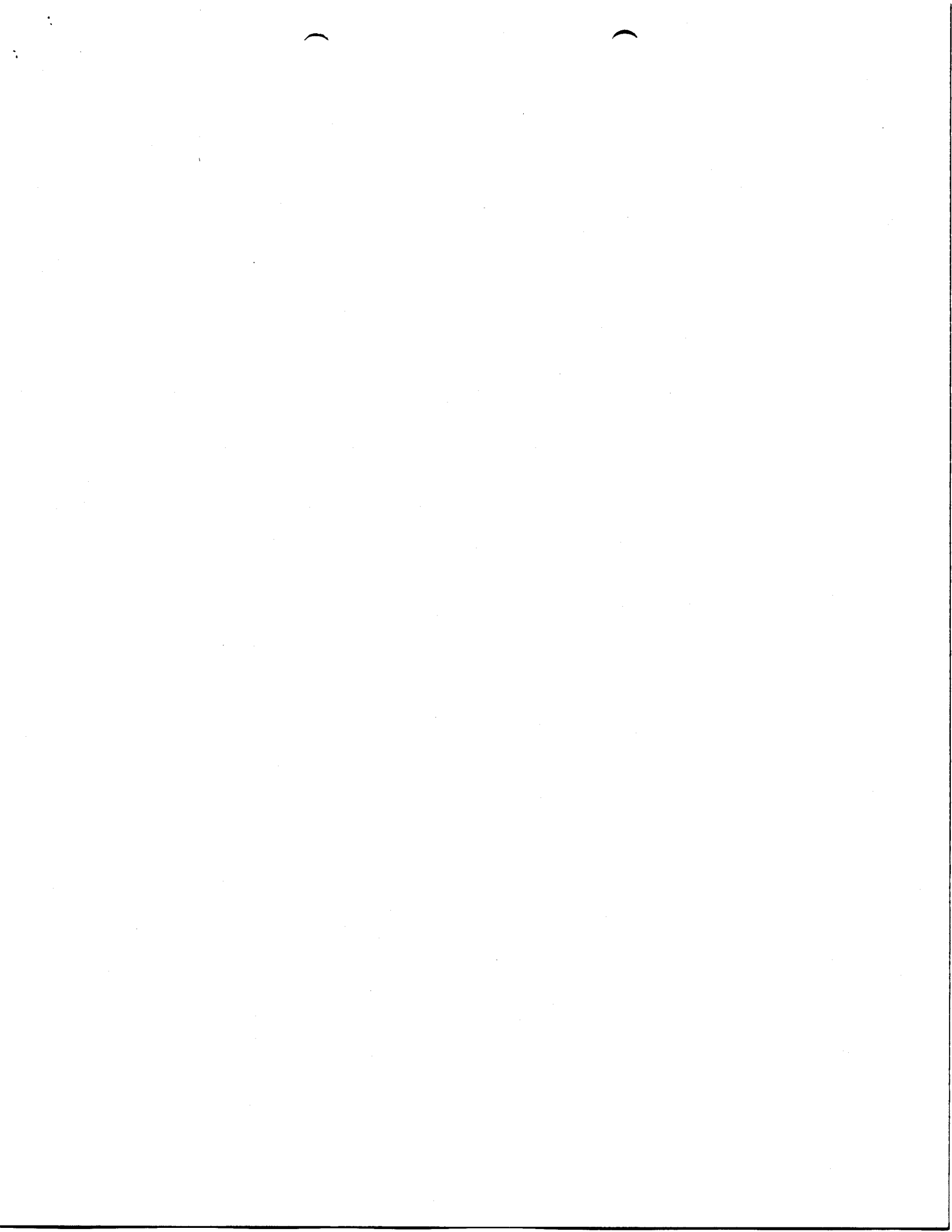
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Marla D. Kelley, Paralegal





## Appendix A to Media Petitioners' Reply Brief

### Public Statements of Law Enforcement Officials

July 20, 2012

Unnamed FBI Official:

1. "Statements made by the subject himself, again during his initial arrest indicated that he had explosive material at his house. So we're treating that with utmost caution, we're evacuating the neighborhood with the Aurora Police Department."

Aurora Police Chief Dan Oates (available at <http://www.youtube.com/watch?v=E8Pz7xnQf1k&feature=related>):

2. "Our suspect's name is James Eagen Holmes. . . . Date of birth: 12/13/87. He resides at 1690 Paris Street in Aurora, apartment 10."
3. "His history with the Aurora Police Department is one traffic summons for speeding in October 2011. We have no other criminal history on Mr. Holmes."
4. "Within roughly one minute to a minute-and-a-half police officers were on scene and apprehended Mr. Holmes in the back of the theater."
5. "Mr. Holmes was apprehended outside his white Hyundai parked in the back of the theater and he was apprehended with three weapons in the car and one was left at the scene inside the theater. The weapons are as follows. An AR-15 assault rifle, a Remington H70 shotgun, 12 gauge shotgun, and a 40 caliber glock handgun, we believe those three weapons were used on the scene and another 40 caliber glock handgun was found in the car, we are not sure if that was also used on the scene."
6. "There were many, many rounds fired. Our best account of injuries right now is that 71 were shot and that twelve are deceased. Two died at area hospitals and ten are deceased in the crime scene."
7. "We believe that as part of this assault Mr. Holmes set off two devices to distract the crowd. Um, they ignited in some form and released some sort of irritant and smoke and we know that his car was parked nearby in the back."
8. "We are not looking for any other suspect. We are confident that he acted alone."
9. "The suspect was dressed all in black. He was wearing a ballistic helmet. A tactical ballistic velvet, ballistic leggings, a throat protector and a groin protector and a gas mask and black tactical gloves."
10. "His car was parked just outside the back door."

11. "we were on scene within a minute and a minute-and-a-half and we immediately arrested the suspect at the back of the theater. From our first call to his apprehension was about a minute to a minute-and-a-half."
12. "He surrendered without any significant incidents to our officer."
13. "There is pretty significant evidence that he used the AR-15 within the theatre, the shotgun within the theatre and a 40 caliber glocks. In the end he was in possession of two 40 caliber glocks,"
14. "There is an awful lot of forensic and ballistic evidence."
15. "In the last 60 days he purchased four guns at local metro gun shops. And through the internet, he purchased over 6000 rounds of ammunition. more than 3000 rounds of 223, ammunition for the assault rifle, 3000 rounds of 40 caliber, ammunition for the two glocks in his possession. And 300 rounds for the 12 gauge shotgun. Also through the internet, he purchased multiple magazines for the 223 assault rifle. including one 100-round drum for the magazine which is recovered from the scene."
16. "...He could have gotten off 50 to 60 rounds, even if it was semi-automatic, within one minute."
17. "We know a little bit more about our subject. We know he recently left the University of Colorado Medical School neuroscience program. It was a voluntary separation, we know he held originally hailed from Riverside. California and attended UC California-Riverside campus."
18. "All the weapons that he possessed, he possessed legally, and all the clips that he possessed, he possessed legally, and all the ammunition that he possessed, he possessed legally."
19. "He was dressed all in black, . . . wearing a gas mask, a ballistic helmet, a tactical ballistic vest, as tactical means, places to put all kinds of gear and clips, and in addition it was bullet-proof, bullet-resistant, and in addition he was wearing bullet-resistant legging, in case he took a round in the legs, he was wearing throat protection and groin protection and he was wearing black tactical gloves."
20. "He released it appeared two devices and set out some sort of smoke and some sort of chemical irritant,"

Raymond Kelly, Commissioner, NYPD:

21. "...Most of it is public, looks like a deranged individual. He had his hair painted red, he said he was the Joker, obviously to quote 'the enemy of Batman.'"

July 21, 2012

Sargent Cassidee Carlson, PIO's spokesperson for Aurora Police Department:

22. "This tripwire was set up to clearly detonate when someone entered that apartment and it was set up to kill that person and that could have been a police officer executing a search warrant."

Jim Yacone, FBI:

23. "A robot bomb technicians and dynamic explosive disruption tools were used to render safe multiple booby traps in improvised explosive incendiary devices . . ."
24. "Once we got rid of that first booby trap, which was really a wire across the front door, we then had to neutralize a hyperbolic mixture. A form of an oxidizer and some fuel that we saw immediately inside. Once that was disrupted, the technicians went to the next IED and/or IID filled with an unknown substance and they had to attack a triggering mechanism and they did that very, very skillfully. We then saw multiple containers with accelerants. And what appears to be additional triggering mechanism, wires, and fuses."
25. "It was an extremely dangerous environment. If a neighbor or an unassuming pedestrian were to walk into that door, or god forbid a first responder, they would have sustained significant injuries and/or lost their life."

Aurora Police Chief Dan Oates (available at

[http://www.youtube.com/watch?feature=endscreen&v=2J\\_5aEjGW5w&NR=1](http://www.youtube.com/watch?feature=endscreen&v=2J_5aEjGW5w&NR=1) ):

26. "We've become aware that our suspect, over the last four months, had a high volume of deliveries, commercial deliveries of packages to both his work and home address. We think this begins to explain how he got his hands on all the magazines and the . . . ammunition, yesterday that we talked yesterday. We also think it begins to explain some of the materials that he had in his apartment"
27. "What we're seeing here is evidence, I think, of some calculation and deliberation."

July 22, 2012

Aurora Police Chief Dan Oates:

28. "Based on what he told us we were concerned about his apartment."
29. "All the available evidence we have right now suggests that he operated alone."

July 23, 2012

Carol Chambers, District Attorney, Eighteenth Judicial District:

30. "It is important that we treat him as we would treat any other defendant coming into the criminal justice system."

*See also*

<http://www.denverpost.com/theatershooting>

<http://kdvr.com/2012/07/20/at-least-14-killed-dozens-injured-in-shooting-at-aurora-movie-theater/>