

<p>DISTRICT COURT, FREMONT COUNTY, COLORADO Court Address: 136 Justice Center Rd., Rm. 103 Canon City, CO 81212 Court Phone: (719) 269-0100</p>	<p style="text-align: right;">DATE FILED: April 5, 2022</p>
<p>THE PEOPLE OF THE STATE OF COLORADO, v. BARRY LEE MORPHEW, Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;">MOTION TO LIMIT PUBLIC ACCESS [D-80a]</p>	

Pursuant to Crim. P. Rule 55.1, Mr. Morphew requests that this Court limit public access to his Motion “Motion *in limine* to Exclude Evidence about Radio [D-80],” submitted for filing on April 5, 2022. Mr. Morphew also requests in this Court’s order, this Court limit public access to any Response and any Reply.

Pursuant to Rule 55.1(a)(2), upon receipt of this motion, **the Clerk “shall make the subject court record inaccessible to the public pending the court’s resolution of the motion....”**

Pursuant to Rule 55.1(b), Mr. Morphew states:

1. Identify court record. The court record is being submitted on April 5, 2022 and is titled: “Motion *in limine* to Exclude Evidence about Radio [D-80],”

2. Reasons for the request. The document is a Motion in Limine designed to exclude evidence for trial because, among other reasons, the evidence would risk Mr. Morphew’s right to a fair trial and violate CRE 403. The motion describes in some detail the contents of three episodes of a radio program, *Forensic Files*. The documentary segment features true crime stories – in this circumstance, brutal, graphic violent crimes. In order to show this Court why the evidence is inadmissible, Mr. Morphew has to set it forth in some detail.

The reason that an inflammatory, inadmissible document should not be accessible to the public is that, this close to trial when juror summons have already gone out, there is a substantial risk of tainting the jury pool. There is no doubt that everything in motions in limine – particularly this one, which describes in some detail brutal crimes including child sex assault, mutilation, serial killings, etc. – will be splattered all over social media instantly and within reach of the prospective jurors. This material is indisputably inadmissible at trial.

Unfortunately, the prosecution included it in the Affidavit for Arrest Warrant. Thus, Mr. Morphew is compelled to file in limine to prevent this inflammatory, irrelevant material from reaching the jury.

As evidence for his concern about the summoned jurors reading or worse, posting and broadcasting, inflammatory, inadmissible evidence, Mr. Morphew’s counsel can report to the court that at least one prospective juror on the summons list made a social media post broadcasting the fact she received a juror summons for this case, immediately after she received it. In this post, she took a picture of the summons and described her strong feelings that Barry Morphew is guilty. Putting out inflammatory, highly prejudicial, information and speculation that will certainly never be ruled admissible will substantially risk Mr. Morphew’s right to a fair trial and will jeopardize the ability to empanel a jury in this County.

3. **Length of inaccessibility.** At a very minimum, the Motion, any Response, and any Reply should be inaccessible until after the trial of this case, at which point this court can make a decision about public access at that time.

4. **Court hearing.** This Court has the authority to close the hearing on this motion to limit access if this Court “finds that doing so is necessary to prevent the public from accessing the information that is the subject of the motion under consideration.” Rule 55.1(a)(5). Such closure is necessary to prevent the public from accessing the material in the Motion.

It is possible that a partial closure of the hearing would prevent the material from reaching the public until a ruling, if the parties were ordered to refrain from discussing the actual material except at the bench.

5. **Redactions.** Mr. Morphew has considered whether redacted documents could be released to the public without contaminating the jury pool. It is possible that a heavily-redacted document could be filed publicly. If this Court elects to redact the document, Mr. Morphew requests that he be given notice and an opportunity to submit proposed redactions before the Motion, any Response, and any Reply are made accessible to the public.

6. **Court order and findings requested.** Rule 55.1(a)(6).

The substantial interests that would be served by making the court records inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public include: Mr. Morphew’s constitutional right to a fair and impartial jury and the interests of all parties and the court in being able to seat a jury that has not been contaminated by pretrial exposure. Substantial interests would be severely impaired if it becomes impossible to seat a jury, because it would cause a mistrial, a delay in resolution of this case, and quite probably a change of venue.

No less restrictive means than making the record inaccessible to the public exists to achieve or protect the substantial interests identified. A redaction process would be cumbersome, time consuming, and most probably ineffective. It would also take away valuable time needed to prepare for trial.

The substantial interests identified override the presumptive public access to the court records. Restricting access only until the trial is concluded does not deprive the public of the filing forever, but places a reasonable restriction on its dissemination at this critical point prior to trial. This Court has been very expansive with access to the public in this case. This minimal restriction – a delay only, not a complete bar – is necessitated by the closeness to trial, the fact

that the juror summons have already been issued, and the fact that the subject matter of the Motion will be ruled inadmissible and excluded from trial. documents contain information that has already been excluded as evidence and additional material that this Court will exclude from trial.

7. **Duration of Order Granting Request.** Rule 55.1(a)(7). Mr. Morphew requests that access be limited until the trial is concluded, and then a decision can be made whether this document may be disclosed

Mr. Morphew requests that the Clerk immediately limit public access to Mr. Morphew's "Motion *in limine* to Exclude Evidence about Radio [D-80]," submitted for filing on April 5, 2022, and that this Court order that public access will also be limited to any Response and any Reply. Mr. Morphew requests that, if this Court does not grant this motion outright, this Court hold a hearing on this motion.

Respectfully submitted this 5th day of April 2022.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

FISHER & BYRIALSEN, PLLC

s/ Jane Fisher-Byrialsen
Jane Fisher-Byrialsen, #49133

SAMPLER AND WHITSON

s/ Hollis Whitson
Hollis Whitson, #32911

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April 2022, a true and correct copy of the foregoing **MOTION TO LIMIT PUBLIC ACCESS [D-80a]** was served via CCE as follows: 11th Judicial District Attorney's Office, 101 Crestone Ave., Salida, CO 81201

s/ Hollis Whitson _____
Hollis Whitson