DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac Street Centennial, Colorado 80112	▲ COURT USE ONLY ▲
Plaintiff: **People of the State of Colorado** v. Defendant: **Holmes, James Eagan**	Case No. **12CR1522** Division: **22**

ORDER RE: MEDIA'S MOTION TO UNSEAL REDACTED INFORMATION (VICTIMS' IDENTITIES) (C-13)

This matter comes before the Court pursuant to the People's Motion to Redact the Victims' Names from the Original Complaint and Information in the Public Court File and on the Court's Website (P-24), filed September 27, 2012; Media Petitioners' Motion to Unseal Redacted Information (Victims' Identities) (C-13), filed September 28, 2012; Media Petitioners' Motion to Unseal Excessively Redacted Information From Judicial Records and to Amend Supplemental Case Management Order C-11 (C-15), filed October 9, 2012; Defendant's Response to Court's Request for Defense Position on Media's Motion to Unseal Redacted Information (Victims' Identities) (C-13), filed October 9, 2012; the People's Response to Court Order C-13: Media's Motion to Unseal Redacted Information (Victims' Identities) (C-13), filed October 9, 2012; the People's Supplemental Response to Court Order C-13: Media's Motion to Unseal Redacted Information (C-13), filed October 22, 2012; Media Petitioners' Supplemental Pleading in Response to Court's Order Allowing Opportunity to Submit Additional Documents Re: Motion to Unseal Redacted Information (C-13); and Defendant's Response to Court's Order Allowing Opportunity to Submit Additional Documents Re: Motion to Unseal Redacted Information (C-13), filed October 22, 2012. Having heard oral argument by Media Petitioners, the People, and Defendant on October 11, 2012, and having reviewed the Motions, Responses, Supplements, and applicable law, the Court hereby Finds and Orders:

FACTS

Defendant in this case is charged with 166 counts of murder, attempted murder, possession of explosives, and crime of violence (sentence enhancer) in connection with a shooting at a theater. On July 27, 2012, the People filed the initial Complaint and Information ("Complaint") which listed 142 counts, including 140 counts of murder and attempted murder, one count of possession of an explosive or incendiary device, and one count of crime of violence.

Each count included a description of the charges and the name of each of the alleged victims. The People signed the Complaint on page 40 and attached an additional thirty pages titled "Witness List" directly to the Complaint. The "Witness List" listed the names and addresses of numerous witnesses; many of those witnesses also appear as victims in the Complaint. The final page of the initial Complaint, page 42, lists "Defendant Information" and "Case Information." At the time the People filed the Complaint, all seventy-two pages were suppressed by the Court.

At a hearing conducted on July 30, 2012, the following exchange occurred:

The Court: Now, unsealing. Mr. Edson, it looks like you're up. Essentially, let's take it one piece at a time, because we have several issues on the table.

The first is the release of the felony Information and Complaint. Quite frankly, the Information therein seems to me should be released, including the victims' names, as most of that has been out there. However, I'm happy to hear what you have to say. Let's take the felony complaint first, Mr. Edson. And we'll break it down one point at a time after that.

...

Mr. Edson: Judge, regarding that, what the Court just brought up regarding the Complaint, we don't have an objection. Our concern is regarding the witness list and releasing that information. So it would be our request that that information not be provided. Other than that, we do not have an objection.

The Court: Thank you. Ms. Brady.

Ms. Brady: Your Honor, our position at this point is that everything in the court file should be sealed at least until the preliminary hearing. We have, like I said, no discovery, and so we are operating simply on things that we've heard and things that we assume are going to come down. And so I think the safe position for the defense at this point is just request everything in the court file remain sealed.

The Court: How is it that by keeping the Felony Complaint sealed, it helps you or it hurts you if it was released?

Ms. Brady: Again, Your Honor, not knowing what the discovery provides, I don't know. I don't know whether names in there would jeopardize the defense. It's just hard to try and imagine into the future what it could be. So for consistency's sake and to be on the safe side, we're simply going to object to anything being unsealed.

The Court: This Court finds and rules as follows:

> That after considering the argument of counsel, the applicable law in this area, that it is proper to release the Felony Complaint. The witness list will not be released at this time pending further order of the Court.

(Hr'g Tr., July 30, 2012, 20:18-25; 21:1-4, 7-25; 22:1-16). After the hearing on July 30, 2012, the Complaint was duly released to the public file with the names of victims intact/unredacted. The Complaint was also posted on the judicial website. The witness list was completely redacted so that no information was revealed on pages 41 through 72.

On September 18, 2012, the People filed a Motion to Add Additional Counts 143-152 and Motion to Amend Counts. Both motions were granted. This time, the People provided, without explanation, copies of the added counts and the amended counts with all names of victims redacted and asked that these redacted copies be placed in the public file and posted on the judicial website. The Court accepted the redacted copies and placed them in the public file and posted them on the website.

In an Order issued September 21, 2012, the Court unsuppressed the file, effective September 28, 2012, and instructed the Parties to file redacted copies of documents that had been previously suppressed. On September 27, 2012, the People filed a Motion to Redact the Victims' Names from the Original Complaint in the Public File and on the Court's Website (P-24). The People also filed a Motion to Add Counts 153-166 and a Motion to Amend Counts on October 9, 2012, which were both granted. Again, the People provided copies of the added and amended counts with the names of victims redacted and asked that those copies be placed in the public file and posted on the judicial website. The Court accepted the redacted copies and placed them in the public file and posted them on the website. After this last filing, on September 28, 2012, Media Petitioners filed their Motion to Unseal Redacted Information (Victims' Identities) (C-13), seeking to have the names of the victims released/unredacted from all the motions and orders in the public file concerning additional and amended counts. At present, the original Complaint in the public file and posted on the website contains all the names of the victims, unredacted. The copies of the added and amended counts in the public file and posted on the website have the victims' names redacted. The original witness list in the public file and posted on the website remains redacted, as well as any witness names referenced in pleadings filed by the Parties.

The Court heard oral argument from the Parties and Media Petitioners on this issue at a hearing on October 11, 2012. In oral argument and in their Motion (P-24), the People claim that at the time they originally consented to the release of the victims' names, the entire court file was suppressed (P-24, ¶1) and that "[s]ubsequently, parts of the Court file were unsuppressed by the Court and thus the names of the [v]ictims that were listed in the original Complaint also became available to the public." (P-24, ¶2). The People also argue that fraudulent motions have been

filed using the victims' information (P-24, ¶¶ 3-4); that the continued release of the victims' and witnesses' names "potentially compromises the rights of the [v]ictims to be free from harassment or abuse throughout the criminal justice process" pursuant to the Colorado Victims' Rights Act ("VRA"), C.R.S. §§ 24-4.1-302.5(1)(a), 303(5) (P-24 ¶8); that many of the victims and witnesses have expressed concerns for their personal safety (People's Response to C-13, ¶2); that the victims have a constitutionally protected right to privacy (People's Response to C-13, ¶5); and that "[v]ictim and witness safety and privacy is a compelling governmental interest of the highest order" and "sealing the victims' names from the public Court record is one of the most effective ways that the Court and the People can affect [sic] this governmental interest and redacting [v]ictims' names...is a narrowly tailored means to accomplish this goal...Additionally, no reasonable alternative means exists to protect this compelling governmental interest." (People's Response to C-13, ¶6). The People have offered no evidence in the form of affidavits or testimony to support these allegations.

Defendant has also averred, through written pleadings and in oral argument, that any additional disclosures from the court file will jeopardize his constitutional right to receive a fair trial by an impartial jury. Defendant states that "victims and witnesses have been repeatedly intimidated by the intense media scrutiny this case has engendered" and cites instances where reporters have "contacted witnesses and threatened to release their names in connection with personal or sensitive information unless they agreed to submit to an interview or confirm the accuracy of the information." (Defendant's Response (C-13), ¶4). Defendant states that, as a result, witnesses have been reluctant to speak openly with defense attorneys and investigators; therefore, the media's behavior has already been detrimental to Defendant's ability to investigate and prepare his defense. (Defendant's Response (C-13), ¶¶4–5). As support for these allegations, Defendant has offered evidence in the form of an affidavit filed under seal with the Court. Defendant also states that "the media's constant and insatiable demands for access to information are becoming a significant distraction and hindrance." (¶6). Defendant therefore asks that the Court consider imposing limitations on the media's ability to file further pleadings in this case.

In their Motion (C-13), Media Petitioners maintain that neither the Colorado Criminal Justice Records Act, C.R.S.§ 24-72-304(4)(a), nor Chief Justice Directive 05-01 warrants the redaction of victims' names. (C-13, ¶5). Media Petitioners note that the redaction of victims' names in the added and amended counts is not effective in protecting any governmental interest, since six of the eight names redacted in those documents have already been publicly disclosed and remain available for inspection in the public case file and on the judicial website. (C-13, ¶9). As to the other five additional names, Media Petitioners argue that no compelling need exists to redact them and no showing has been made why these individuals should be treated differently from the other, previously disclosed names. (C-13, ¶10). Instead, Media Petitioners assert that crime victims "have no protectable right of privacy with respect to information directly relevant to that investigation," and that their "identities as alleged victims of attempted murder are

unquestionably already a matter of legitimate public interest and concern." (C-13, ¶11). Because this case does not involve "extraordinary factors suggesting there is any danger to the physical safety of any witnesses, or the substantial probability of attempted witness tampering," Media Petitioners ask the Court to release the names of all crime victims in the two remaining redacted Orders. (C-13, ¶12). In addition, at oral argument, Media Petitioners also asked that the witness list attached to the original Complaint, as well as any redacted victim or witness names in the pleadings, be unredacted.

STANDING

First, the Court, consistent with prior motions and resolutions on this issue, FINDS that Media Petitioners have standing to assert the right of public access to court records. *See People v. Thompson,* 181 P.3d 1143 (Colo. 2008); *Star Journal Publ'g Corp. v. Cnty. Ct.,* 591 P.2d 1028 (Colo. 1979); *see also* Colo. R. Civ. P. 121(c) §1-5(4) (2012) (stating, upon notice to all parties of record and after holding a hearing, an order limiting access may be reviewed by the court at any time on its own motion or upon the motion of any person) (applicable as per Colo. R. Crim. P. 57(b)).

ANALYSIS

In a number of previous orders, this Court has adopted a specific legal analysis to determine whether the public and the media should have access to court documents. That analysis, as always, begins with the Colorado Criminal Justice Records Act, C.R.S. §§ 24-72-301:309 (2012) ("CCJRA"). Because the CCJRA analysis is different depending on the type of criminal justice record, this Court will analyze the Complaint, the warrants and affidavits, and the pleadings in turn.

1. The Complaint

Under the CCJRA, criminal justice agencies (which include any court with criminal jurisdiction) "*shall* maintain records of official actions" and such records "*shall* be open for inspection." C.R.S. § 24-72-303(1) (emphasis added). "Official actions" are defined as "arrest; indictment; *charging by information*; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence." C.R.S. § 24-72-302(7) (emphasis added). Records of official action shall be open for inspection "except as provided in [the CCJRA] or as otherwise provided by law." C.R.S. § 24-72-303(1).

Clearly, the Complaint at issue falls under the CCJRA's definition of "official actions." *See* Colo. R. Crim. P. 7(b) (defining "information" and requisites of the information). The relevant

analysis for sealing or redacting a record of official action is outlined in *People v. Thompson,* 181 P.3d 1143 (Colo. 2008). There, the Colorado Supreme Court held that because a grand jury indictment was a record of an official action under the CCJRA, a trial court lacked discretion to seal factual allegations in support of a charge that were contained in the indictment, even if those allegations were superfluous. *Id.* at 1146–47. The *Thompson* court reasoned that, under the CCJRA, a record of official action must be available for public inspection unless one of the two exceptions denoted in § 24-72-303(1) applies: (1) non-disclosure is required by the CCJRA, or (2) non-disclosure is required by other law. *Id.* The court stated that "[c]onsequently, the CCJRA does not grant any criminal justice agency, including a court, any discretion as to whether to disclose a record of official action in its entirety, in part, or not at all." *Id.* at 1145–46. The supreme court noted that, because a grand jury indictment is a record of official action, the trial court could not redact any of the extensive factual allegations contained in the indictment, unless required otherwise by § 24-72-304(4)(a) (a provision of the CCJRA which provides for the redaction of the name and any other identifying information of any victim of sexual assault or of alleged or attempted sexual assault) or by any other law. Because some of the factual allegations in the indictment suggested a sexual assault, the *Thompson* court held that the CCJRA required the entire indictment be available to the public, subject to the statutorily required deletion of identifying information of any alleged sexual assault victims. *Id.* at 1148.

Because nothing in the CCJRA itself prohibits disclosure of victims' and witnesses' names[1] or specifically allows for the redaction of those names, the Court must determine whether redaction of the names is "required by other law." *Thompson*, 181 P.3d at 1146–47; *see also Freedom Colo. Info., Inc. v. El Paso Cnty. Sheriff's Dep't,* 196 P.3d 892, 900 n.3 (Colo. 2008) (finding that redaction may be proper to promote goals of the CCJRA). The People point to C.R.S. §§ 24-4.1-301:304, commonly called the Victims' Rights Act ("VRA"), as a statute that authorizes the Court to redact victims' names. The VRA requires that "[l]aw enforcement agencies, prosecutorial agencies, judicial agencies, and correctional agencies *shall* ensure that victims of crimes are afforded the rights described in § 24-4.1-302.5." C.R.S. § 24-4.1-303(1) (emphasis added). The VRA also requires that "[a]ll reasonable attempts shall be made to protect any victim or the victim's immediate family from harm, harassment, intimidation, or retaliation arising from cooperating in the reporting, investigation, and prosecution of a crime," C.R.S. § 24-4.1-303(5), and states that all victims have the right "to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process," C.R.S. § 24-4.1-302.5.

[1] This Court notes that many of the names of the victims and the witnesses attached to the Complaint and Information may be one and the same, since the surviving victims are also necessarily listed as witnesses. However, while all victims are likely witnesses, all witnesses are not necessarily victims.

The Court notes that, initially, the People did consent with full knowledge to the release of the victims' names in the Complaint to the public and media—the People's assertions to the contrary notwithstanding—and while Defendant objected to the release of the victims' names, Defendant could cite only vague concerns about staying on the "safe side." (Hr'g Tr., July 30, 2012, 21:16–22:9). Even now, the People have offered no concrete evidence to support their assertions that "many of the [v]ictims and witnesses in this case are reluctant to speak to the District Attorney's Office because they are fearful that the members of the District Attorney's Office are actually media representatives posing as members of the District Attorney's Office" and that "other [v]ictims and witnesses have expressed fear of leaving their households with their minor children because the media is relentlessly trying to photograph and/or interview the minor children." (People's Supplemental Response C-13, ¶3). No affidavits of victims or witnesses have been filed in support of these statements.

However, the Court is aware that there has been some harm to at least some victims and witnesses. There have been two instances where it appears a third party has "stolen" the name of a victim or witness and used those names to file court documents in this case. Additionally, Defendant has offered an affidavit, filed under seal with the Court, which details instances where media contact with witnesses has harmed Defendant's investigation. The affidavit and redacted emails submitted by Defendant purport to show that unrestricted access to "additional victims' names would pose a substantial probability of harm to the fairness of the trial." (Defendant's Supplemental Response C-13, ¶7). Thus, the Court FINDS that there has been some harm and harassment of the witnesses and victims—though the Court notes again that it has not received any supporting affidavits from any of the actual victims or witnesses.

The legislature has stated that "an effective criminal justice system *requires* the protection and assistance of victims of a crime." C.R.S. § 24-4.1-101. Therefore, the Court FINDS that it is required to make all reasonable attempts to protect the victims and witnesses from harm and harassment under the VRA. That mandate in the VRA, under *Thompson*, may constitute an exception to the CCJRA provision requiring disclosure of a record of official action in its entirety. Colorado courts have not ruled extensively on the definition of "all reasonable attempts" that "shall be made" to protect victims from harassment, although the legislature has provided that the VRA is to be interpreted liberally. C.R.S. § 24-4.1-101. Certainly, case law exists which supports redaction of witnesses' names in cases where witnesses' lives have been threatened, *see People v. Ray*, 252 P.3d 1042, 1048–49 (Colo. 2011), though in this case neither Party has asserted that any victim's life has been threatened. To find that an exception to the CCJRA is provided by the VRA, the Court would have to determine that the redaction of the Complaint is a "reasonable attempt" to protect the victims and witnesses from "harm, harassment, intimidation, or retaliation arising from cooperating in the reporting, investigating, and prosecution of a crime." C.R.S. § 24-4.1-303(5). Looking to the plain meaning of the statute, "reasonable" is defined as, "[f]air, proper, just, moderate, suitable under the

circumstances; [f]it and appropriate to the end in view." *Black's Law Dictionary* 1265 (6th ed. 1990).

While it has the authority, the legislature has declined to mandate that courts shall, or even that courts may, redact the names of victims or witnesses from court documents, particularly to protect victims from harassment by the media, despite having addressed similar issues in comparative statutes. *See, e.g.*, C.R.S. § 24-4.1-303(2) (providing correctional officials shall keep victim information confidential upon request by the victim); § 24-4.1-303(5) (noting reasonable efforts should be made to minimize contact between the victim and the defendant); § 24-72-304(4)(a) (requiring the name and identifying information of a sexual assault victim be deleted from any criminal justice record). Nor does Chief Justice Directive 05-01, *Directive Concerning Access to Court Records* (2006) ("CJD 05-01"), require redaction of the name, address, or phone number of victims or witnesses. The CJD 05-01 was designed "to provide *reasonable* access to court records while simultaneously ensuring confidentiality in accordance within existing laws"; thus, this Court finds that directive instructive on what constitutes reasonable redaction. Despite the unusual and relentless media attention in this case, the investigation and proceedings in this case should, whenever possible, conform to the rules and usual practices of any other criminal case in Colorado. In an ordinary criminal case, victim and witness names and information would not be redacted from the court documents; thus, such disclosure is generally considered reasonable in criminal cases.

The Court's usual strict compliance with CJD 05-01 does require some redaction of identifying information. This provides at least some level of protection for the victims and witnesses. Additionally, as Media Petitioners point out, there are other methods of protection available to witness and victims, including, but not limited to, C.R.S. § 13-14-102 (civil protection orders), C.R.S. § 18-9-111 (criminal harassment), C.R.S. § 18-8-707 (tampering with a witness or victim), and C.R.C.P. 365 (injunctions, restraining orders, and orders for emergency protection). Any victim or witness can seek assistance from the District Attorney's Office, the county courts, or a local police station to bring criminal charges or to obtain a protection order if that individual believes he or she has been stalked, threatened, assaulted, or harassed. Thus, this Court's redaction of case documents is not the only remedy, and may not be the best remedy, for the attested harm to, and harassment of, the victims and witnesses.

Additionally, the Court finds that, to be considered "reasonable," an order designed to prevent harm must be likely to effectively prevent some degree of the harm. The Court suppressed the case file in its entirety for the first two months of the investigation, and it has allowed for many redactions by both parties with the intention of protecting the privacy and well-being of the victims and witnesses. To the dismay of the Court, many of these victims and witnesses have still been located, contacted, and, in some cases, harassed by the media and by third parties trying to use the names of victims and witnesses to intervene. The affidavit

submitted by Defendant and the assertions by the People illustrate that the attempts made by the Court have not been sufficient in preventing such harm to the victims and witnesses. Neither Party has articulated how court-ordered redaction of the names of the victims and witnesses at this time will better alleviate or remedy additional harm. Thus, redaction of the names of victims or witnesses at this point would be largely symbolic and have very little practical effect. This lack of efficacy, coupled with the availability of other remedies, cuts against the reasonableness of the redactions.

The Court notes that its analysis is statutory and does not involve the First Amendment or prior restraint, but case law regarding information in the public domain is instructive in analyzing the reasonableness of redacting the victims' and witnesses' names in this case. In *Oklahoma Publ'g v. Dist. Court*, 430 U.S. 308 (1977), the United States Supreme Court found that a court could not enjoin the media from publishing the name and photo of a juvenile defendant. The Court found that because the press had been allowed in the courtroom during the juvenile's first detention hearing with no objection by the parties, despite an Oklahoma statute that required juvenile proceedings be held in private, the information had been placed in the public domain and the order enjoining publishing that information violated the First and Fourteenth Amendments. *Id.* at 311–12. This Court finds itself in a similar situation: despite a statute providing for the Court to take action to alleviate victim and witness harm or harassment (the VRA), the information about the victims' and witnesses' identities is largely already in the public domain and was initially disclosed with the consent of the People. The *Oklahoma Publ'g* case indicates that attempting to redact information already in the public domain is often not reasonable, even if such redaction is done pursuant to a state statute designed to protect individuals from harm or harassment.

While the Court greatly empathizes with the plight of the People, Defendant, the victims, and the witnesses and wants to help prevent any additional harm to the Parties involved or the judicial proceedings, the Court must follow the law. Unfortunately for those victims and witnesses who have been harmed or harassed because of these proceedings, even applying the VRA liberally, the Court FINDS that redaction of victims' and witnesses' names that have already been released would not constitute a "reasonable attempt" to prevent harm under the VRA. The Court also FINDS it would not be a reasonable attempt to only redact the names of the few victims and witnesses not yet released, particularly given Media Petitioners' showing that they already know much about those individuals and have already contacted or interviewed some of them. Therefore, the Court ORDERS that the names and information of victims and witnesses shall be unredacted from the Complaint and the pleadings consistent with the CJD 05-01. Media Petitioners' Motion to Unseal is GRANTED with respect to the victims' and witnesses' names.

This Court notes that, under *Thompson*, a court must refrain from resolving constitutional questions or from making determinations regarding the extent of constitutional rights unless such determination is essential and the necessity of such is clear and inescapable. *Thompson*, 181 P.3d 1143, 1145. Since this Court resolves the issue of redaction of victim and witness names in the Complaint and Information under the CCJRA, no constitutional analysis is necessary.

2. Warrants and Affidavits

The Court refers back to and incorporates its analysis from its Order Re: Motion to Unseal Court File (Including Docket)/("Suppression Order") (C-4c), filed August 13, 2012. Records of criminal justice agencies that are not records of official action "may be open for inspection," C.R.S. § 24-72-304(1), unless such inspection would be "contrary to state statute, or is prohibited by any rules promulgated by the supreme court or by any order of the court," C.R.S. § 24-72-305(1). *See Harris v. Denver Post Corp.*, 123 P.3d 1166, 1170–71 (Colo. 2005). Under the CCJRA, affidavits of probable cause, search warrants, and arrest warrants are criminal justice records subject to discretionary disclosure. C.R.S. §§ 24-72-304:305. After considering once again the positions of Media Petitioners, the People, and Defendant, based on representations of the harm to the investigation and proceedings as articulated by the People and Defendant, the Court FINDS that under C.R.S. § 24-72-305(5), disclosure of affidavits of probable cause, arrest warrants, and search warrants continues to be contrary to the public interest. The Court also FINDS that, using the balancing test dictated in *Harris v. Denver Post Corp.*, 123 P.3d 1166 (Colo. 2005), and considering relevant public interest, such as the public's interest in knowing the contents of these affidavits and warrants versus the private interests of witnesses and victims and the interest of maintaining the integrity of the investigation and the proceedings, disclosure of such documents would be imprudent at this stage of the proceedings where the preliminary proof evident/presumption great hearing has yet to take place. Finally, the Court FINDS that, under the ABA Standard 8-3.2 for Criminal Justice Relating to Fair Trial and Free Press, unrestricted access to those documents would pose a substantial probability of harm to the fairness of the trial, continued suppression of those documents would effectively prevent such harm, and there is no less restrictive alternative reasonably available to prevent the harm.

Therefore, the Court ORDERS that any affidavits of probable cause, arrest warrants, and search warrants that are currently suppressed shall remain suppressed until further order of the Court. Media Petitioners' Motion to Unseal is DENIED as to the affidavits of probable cause, arrest warrants, and search warrants.

3. Pleadings in the Case File

Under this category, the Court considers the redactions in the general motions, responses, replies, and orders filed in this case. Specifically, the Parties have referenced the following

redactions: citations to statutes and case law, curriculum vitae of witnesses announced in open court, exhibits filed during the privilege hearing, and facts and information related to the package mailed to Dr. Lynne Fenton. These pleadings are criminal justice records subject to discretionary disclosure under the CCJRA. C.R.S. §§ 24-72-304:305. Thus, the Court *may* deny access to these records if disclosure would be contrary to the public interest or as otherwise provided by law. The Court and the Parties have undergone a number of hearings, substantial briefing, and extensive analysis and argument regarding the redaction of the case file. The Court agrees that there has been "excessive redaction" of some of the pleadings in the case file. Therefore, the Court FINDS that there would be no substantial harm in releasing any citations, quotations, or references to any statute or case law in the pleadings; to the contrary, it is in the public's interest—and the interest of the transparency of the proceedings at this point—to make those citations and references accessible. The Court ORDERS all such references to statutes and case law shall be unredacted.

Similarly, the Court FINDS that there would be no substantial harm in releasing the exhibits submitted to the Court during the hearing on privilege held August 23, 2012. The Court took judicial notice of the curriculum vitae of Dr. Lynne Fenton during that hearing. That information has been in the public domain for months, and there would be no harm in the Court unredacting that information from its pleadings. The two exhibits submitted to the Court during the hearing on August 23, 2012, were redacted by the parties at the time of submission to the Court to eliminate disclosure of any detailed medical or identifying information. Both documents were discussed extensively in open court. While the privilege issue has not been formally resolved, disclosure of these documents as redacted does not waive any claim of privilege Defendant might have. Therefore, the private and public interest in maintaining the redactions of these documents in their entirety does not outweigh the presumption of access to criminal justice records. The Court ORDERS that the curriculum vitae of Dr. Lynne Fenton and the two exhibits submitted to the Court on August 23, 2012, be released consistent with CJD 05-01. As noted by Media Petitioners, Dr. Fenton's curriculum vitae, in addition to being judicially noticed, is already in the public domain. (C-15 ¶6f). The curriculum vitae of Dr. Fox was never filed in open court or judicially noticed; it was simply attached to a pleading as a courtesy to the prosecution and is not in the public domain. Additionally, Dr. Fox has never testified in open court. Therefore, the Court FINDS that the public interest of upholding Defendant's constitutional rights to a complete and fair trial and Dr. Fox's private interest in redacting his curriculum vitae outweigh the small interest the public may have in accessing the document. The Court ORDERS Dr. Fox's curriculum vitae remain suppressed.

Regarding the facts and information related to the contents of the package, the Court FINDS that the relevant public and private interest mandate that information remains redacted. The Court has granted a hearing on the issue of the untimely release of details related to these facts. Because this issue is unresolved, the Court is concerned that unredacting these facts could

jeopardize the pending sanctions hearing. The Court, the Parties, and the public demand and deserve a full and fair trial on all of the issues in this case. To prevent any harm that could come from premature disclosure of privileged or sealed facts or information and to preserve judicial integrity, the Court ORDERS such references remain redacted pending the sanctions hearing.

CONCLUSION

The Parties have noted that litigating the media's right of access in this case has been a distraction that has taken this case off of the normal trajectory. Addressing the issues brought by Media Petitioners has necessitated substantial expenditure of valuable time and resources. To minimize the likelihood of further distraction, and to get this case back on a more normal track, the Court ORDERS that all redactions in court documents filed in this case shall comply with CJD 05-01, as well as with any appropriate statutes or law. The Court hereby amends its Supplemental Case Management Order (C-11), filed September 7, 2012, as follows:

1. Counsel shall file an unredacted original and one redacted copy of all pleadings/motions (including exhibits to pleadings/motions) only with the Clerk of the Court. The unredacted original shall be stamped "District" by the Clerk. The redacted copy shall be stamped "Redacted" by the filing attorney. The filing attorney is responsible for ensuring that the "Redacted" copy has any personal identifying information, including, but not limited to, HIPAA information, medical information, social security numbers, as well as any other information required to be protected by the CJD 05-01 or other law, blacked out. A copy MUST be filed and marked "Redacted" even if no redactions are required.

. . .

8. All motions or other filings that have attachments which include any personal identifying information, including, but not limited to, HIPAA information, medical information, social security numbers, as well as any other information required to be protected by law, shall be redacted by the filing attorney.

. . .

11. On the return date, third parties are to bring one set of the documents to the Court. The documents shall be redacted for the following information: HIPAA information, medical information, social security numbers, identifying contact information, driver's license numbers, state identification numbers, and any other information required to be protected by law. . . .

All other provisions of Case Management Order (C-11) remain in full force and effect.

Access to the public case file continues to be available at the Clerk's office Monday through Friday during regular court business hours. The Court notes that the judicial website is a courtesy provided to the public to facilitate public access to information about this case. However, the website also provides for the broad, world-wide access that is of particular concern to some of the victims and witnesses in this case. Therefore, the Court will continue to determine, *sua sponte*, what information shall be displayed on the judicial website.

DATED this 25th day of October, 2012.

BY THE COURT:

WILLIAM BLAIR SYLVESTER
DISTRICT COURT JUDGE