

ARAPAHOE COUNTY
DISTRICT COURT
2012 JUN 16 AM 11:49

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; 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' MOTION TO UNSEAL
AFFIDAVITS OF PROBABLE CAUSE IN SUPPORT OF
ARREST AND SEARCH WARRANTS AND
REQUESTS FOR ORDERS FOR PRODUCTION OF DOCUMENTS**

Media Petitioners, ABC, Inc.; The Associated Press; 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*, by and through their undersigned counsel, hereby respectfully move the Court for an order unsealing the warrants of probable cause in support of arrest and search warrants and for request for production of documents on file in this Court. As grounds for this motion, the Petitioners state:

1. These Media Petitioners have previously appeared herein in support of prior motions to unseal the court file. This Court has previously recognized the standing of Media Petitioners, as members of the public, to be heard in opposition to any court order sealing, or continuing the sealing, of any portion of the court file herein.

2. This Court has recognized that "the fundamental nature of First Amendment rights . . . may only be abridged upon a showing of an overriding and compelling state interest." *See Order Unsuppressing Court File* (Sept. 21, 2012) at 1 (quoting *Star Journal Publ'g Co. v. County Court*, 591 P.2d 1028, 1030 (Colo. 1979)).

3. Furthermore, under ABA Standard 8-3.2 adopted in *Star Journal*, the suppression of any portion of the court file can only be sustained upon the entry of express judicial findings that: (1) disclosure of information in the court file poses a substantial probability of harm to the fairness of the trial or to another compelling state interest; (2) continued suppression of the court file "will effectively prevent the aforesaid harm"; and (3) there is no less restrictive alternative reasonably available to prevent the aforesaid harm. *See Order re: Motion to Unseal Court File (Including Docket) (C-4c) (Aug. 13, 2012) at 4.*

4. In the interest of brevity, the Media Petitioners hereby incorporate all of their prior motions seeking the unsealing of the court file herein, and reassert all of the authorities cited in those motion papers, as if fully set forth herein.

5. At each prior juncture in this proceeding in which the Media Petitioners have asked the Court to unseal the court file, the Court entered findings that the entirety of the affidavits of probable cause, arrest warrants, and search warrants shall remain suppressed "until further order of the Court." *See Order re: Media's Motion to Unseal Redacted Information (Victims' Identities) (C-13) (Oct. 25, 2012) at 10.* In that same Order, the Court balanced "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," and concluded that "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." *Id.* (emphasis added).

6. Similarly, in its September 21, 2012 Order Unsuppressing Court File, the Court stated that:

disclosure of affidavits of probable cause, subpoenas, arrest warrants, search warrants, and requests for and court orders for production of records would be contrary to the public interest at this time. . . . that may well change after the preliminary/proof evident hearing . . .

Order Unsuppressing Court File (Sept. 21, 2012) at 2.

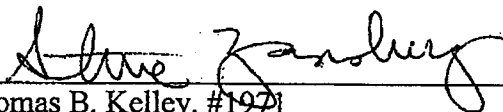
7. On January 7 through 9, 2013, the preliminary hearing/proof evident hearing was conducted before this Court. On January 10, 2013, the Court issued a 61-page Order detailing the evidence presented at that hearing and finding that the People had presented sufficient evidence to establish probable cause to believe the Defendant had committed each of the 166 charged counts herein.

8. In determining whether to maintain court documents under seal, pursuant to the standards set forth for such sealing by the United States Supreme Court under the First Amendment, and the Colorado Supreme Court in adopting ABA Standard 8-3.2, the Court must take into account the quantity and nature of the information that has already entered into the public domain. *See, e.g., United States v. Loughner*, 769 F. Supp. 2d 1188, 1195 (D. Ariz. 2011) (in the mass-shooting case in Tucson, 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 is no basis to continue the sealing of the arrest warrant affidavits); *see also Associated Press v. Bell*, 510 N.E.2d 313, 317 (N.Y. 1987) (no substantial probability of prejudice exists where “the contents of the [material sought to be sealed] have in substance already been disclosed”); *In re New York Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987) (concluding that “the wholesale sealing of the motion papers was more extensive than necessary” particularly where “much of the . . . material contained in the papers has already been publicized”). Given the wealth of information already made public in the proceedings thus far, there is no basis for the continued sealing of these documents.

WHEREFORE, the Media Petitioners respectfully ask that the Court order the unsealing of the affidavits of probable cause in support of warrants for arrest and for search, and requests for and orders for production of records that are presently under seal, in their entirety, in the court file.

Respectfully submitted this 16th day of
January, 2013, by:

LEVINE SULLIVAN KOCH & SCHULZ, LLP



Thomas B. Kelley, #1971

Steven D. Zansberg, #26634

Christopher P. Beall, #28536

Attorneys for Media Petitioners

CERTIFICATE OF MAILING

I hereby certify that on this 16th day of January, 2013, a true and correct copy of this **MEDIA PETITIONERS' MOTION TO UNSEAL AFFIDAVITS OF PROBABLE CAUSE IN SUPPORT OF ARREST AND SEARCH WARRANTS AND REQUESTS FOR ORDERS FOR PRODUCTION OF DOCUMENTS** was delivered via FACSIMILE to the attorneys below and was deposited in the U.S. Mail, postage prepaid, correctly addressed to the following:

Carol Chambers, Esq., District Attorney
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