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District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<p style="text-align: center;">Filed</p> <p style="text-align: center;">APR 10 2015</p> <p style="text-align: center;"><small>CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO</small></p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
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	Case No. 12CR1522 Division 201
<p>RESPONSE TO MEDIA PETITIONERS' MOTION FOR MID-TRIAL ACCESS TO NON-GRAPHIC EXHIBITS ADMITTED INTO EVIDENCE AND PUBLISHED TO THE JURY DURING THE TRIAL</p> <p>[C-193]</p>	

James Holmes, through counsel, submits the following in response to the media's motion for mid-trial access to non-graphic exhibits admitted into evidence and published to the jury during the trial:

1. In its motion, the media asks the Court to "grant them access, to make copies, of all Non-Graphic Images exhibits – including, but not limited to, audio and video tapes, photographs, documents, and physical evidence – that are admitted and published to the jury." Motion C-193, p. 2. The media makes clear in its motion that its request is for contemporaneous access. As authority, the media cites Colorado's Criminal Justice Records Act, C.R.S. § 24-72-301, *et. seq.*, and the First Amendment to the United States Constitution.

2. The defense objects to the relief requested.

3. As an initial matter, the media has no First Amendment right of access to the exhibits introduced at trial in this matter. The United States Supreme Court has never held that the public and the media's constitutional right of access to court proceedings applies to court files and documents. *See Nixon v. Warner Communications*, 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."); *United States v. Hickey*, 767 F.2d 705, 708 (10th Cir. 1985) (noting that U.S. Supreme Court has never held that constitutional right of access to court proceedings also applies to court files and documents, and analyzing defendant's request for access to sealed court documents under common law right of access).

4. With respect to the analysis under the Colorado Criminal Justice Records Act (the “CCJRA”), the defense disputes that all of the exhibits introduced at trial are subject to the CCJRA. C.R.S. § 24-72-302(4) defines “criminal justice records” as “books, papers, cards, photographs, tapes, recordings, or other documentary materials.” A number of the exhibits that may be introduced at trial do not fit that definition.

5. Moreover, even assuming that the exhibits introduced during trial do qualify under the CCJRA, or fall under the public and media’s common law right of access, the public’s right of access under both the common law and the CCJRA to the trial exhibits will already be fully satisfied by the procedures presently in place.

6. The Court is providing the media with extraordinary access in this case. It publishes the majority of the written pleadings filed and orders issued on the court’s website for the benefit of the media and members of the public. Its public information officer provides timely tweets and other updates about the case to members of the media and the public. It has made special accommodations for the media to have staging areas, tents, and podiums in the parking lot of the courthouse during the trial. Perhaps most significantly, the Court granted the media’s request for expanded media coverage of the case over the objection of both parties, and is allowing the media access to the remote-controlled closed circuit television camera operating in the courtroom. The media intends to live stream the trial on the internet, making the proceedings accessible to the public worldwide.

7. Obviously, as part of this access, both the media and the public will have the ability to view the trial exhibits that are introduced in this case. The media and the public will also have the opportunity to hear testimony and discussion about the exhibits while watching the trial either in person or via the live streaming.

8. In its motion, the media cites to a number of federal decisions in which courts granted the media contemporaneous access to exhibits in some degree or another. However, the obvious difference between this case and the federal cases cited by the media in its motion, including the Tsarnaev and Moussaoui trials, is that the federal rules of criminal procedure ban the taking of photography or the broadcasting of judicial proceedings from the courtroom. *See* Fed. R. Crim. P. 53 (“Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.”).

9. The access the media and the public will receive during this trial more than satisfies any requirements under the CCJRA or the common law right of access to public records.

10. The Court has significant discretion in determining whether to provide the media with even *more* access than it has already been given. The media’s access to judicial records is not absolute. *See Nixon*, 435 U.S. at 598 (holding that “the right to inspect and copy judicial records is not absolute” and “[e]very court has supervisory power over its own records and files.”). Thus, “the decision as to access [to judicial records] is one best left to the sound discretion of the trial court.” *Id.* at 599. The Court should exercise this discretion to deny the media’s request.

11. The defense strenuously objected to the request for expanded media coverage last fall. *See* Defendant's Response to C-134. One of the concerns the defense raised at the time was that granting expanded media coverage would pose additional threats to the integrity of the jury and the trial process. *See id.*, paragraphs 39-41. The defense noted that although the jurors will be given instructions prohibiting them from consuming media about this case, the Court should hesitate before providing access to the media that will exacerbate the difficulties jurors will inevitably face in this high-profile case. The more coverage the media provides, and the more documents and other materials it has access to, the more difficult it will be for jurors to avoid exposure to media about the case and to avoid having conversations with friends and family who are following the case.

12. Allowing the media to copy and broadcast exhibits will also further undermine the Court's ability to ensure that its sequestration order is effective with respect to witnesses, which was another concern expressed by the defense in its Response to C-134.

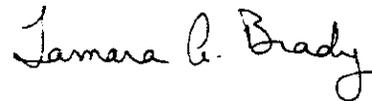
13. In addition, given the extraordinary amount of evidence and exhibits involved in this case, the media's request would impose additional administrative burdens on the Court and would increase the risk for mistakes to be made and for non-admitted exhibits to be provided to the media. During the trial, the focus of the Court and its staff must be on the parties, the trial itself, and the protection of Mr. Holmes's state and federal constitutional rights. The Court should deny any relief requested by the media that would interfere with this focus.

14. In short, allowing the media to copy and publish the trial exhibits in the case would most certainly exacerbate the issues that expanded media coverage of the trial already presents. The media's requested relief in C-193 places Mr. Holmes's rights to present a defense, to call witnesses on his own behalf, and his right to a fair trial and a reliable sentencing proceeding at risk and should be denied. *See, e.g., Holmes v. South Carolina*, 547 U.S. 319 (2006); *Sheppard v. Maxwell*, 384 U.S. 33 (1966); *Estes v. Texas*, 381 U.S. 532 (1965).

Mr. Holmes files this response, 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 Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



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Dated: April 10, 2015

I hereby certify that on April 10, 2015, I

mailed, via the United States Mail,
 faxed, or
 hand-delivered *to DA JK*

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

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