FLEESON, GOOING, COULSON & KITCH, L.L.C.
125 N. Market, Ste. 1600
Wichita, Kansas 67202
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IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2005 CR 498
	)	
DENNIS L. RADER,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AND FOR RELEASE OF SEALED DOCUMENTS

COME NOW Wichita Eagle and Beacon Publishing Company, publisher of *The Wichita Eagle*; Media General Operations, Inc. d/b/a KWCH-TV; Gray Television Group, Inc. d/b/a KAKE-TV; KSNW, a property of Emmis Communications; The Associated Press; and the Kansas Press Association (hereinafter "movants") and submit this memorandum in support of their motions to intervene and to vacate seven orders sealing documents previously filed in this matter. The seven orders at issue are collectively attached hereto as Exhibit A.

BACKGROUND

Beginning in 1974, and continuing for nearly two decades, a serial killer identifying himself as "BTK" committed a string of heinous murders in the Wichita area. On February 25, 2005, police arrested the defendant, Dennis L. Rader, and charged him with eight murders previously attributed to BTK, and two additional murders which had not previously been so attributed.

The BTK killings were a matter of intense public interest and concern. Over the course of an investigation spanning 31 years, the Wichita community was, at various times, mesmerized, terrified and mystified by the serial killer who seemed to relish communicating with police and the media about his crimes. At times, law enforcement would release selected pieces of information in hopes that the public might be of assistance in providing viable leads.

After an extended silence, BTK resurfaced in March of 2004 with a letter to *The Wichita Eagle*. Subsequently, BTK sent communications to KAKE-TV and KSAS-TV. These media outlets cooperated fully with law enforcement by turning over what they received and by agreeing to withhold from publication some of the information contained in the BTK communications.

The day following the arrest of the defendant, a news conference was called in which the Wichita police chief announced: "The bottom line, BTK is arrested." (Exhibit B hereto). Thanks and congratulations were extended to a variety of governmental entities including the Wichita Police Department, Kansas Bureau of Investigation, Sedgwick County District

Attorney's office, Federal Bureau of Investigation, Sedgwick County Forensic Center, Sedgwick County Sheriff's Office, Office of the Inspector General of the Social Security Administration and the city of Park City, Kansas. The public was introduced to the Sedgwick County District Attorney's trial team.

Upon the completion of this very public and highly publicized news conference, however, a veil of secrecy descended on this case. The Complaint against the defendant and Journal Entry of his first appearance were filed of record on March 1, 2004. There followed thereafter, however, seven orders sealing various other documents filed in the case. Since then, the only public filings are an order allowing the District Attorney's office to substitute pages in the Complaint to correct errors, a Journal Entry indicating that the defendant waived his right to a preliminary hearing, and a minute order sustaining the State's motion to endorse an unknown witness (the motion itself was sealed).

To date, the following sealing orders have been entered:

> March 2, 2005 - "Protective Order of Seal," sealing the defendant's financial affidavit (hereinafter "Order 1")
>
> March 2, 2005 - "Protective Order of Seal," sealing the probable cause affidavit issued in affiliation with the Complaint (hereinafter "Order 2")
>
> March 3, 2005 - "Protective Order of Seal," sealing an unidentified "attached Order of March 3, 2005" (hereinafter "Order 3")
>
> March 17, 2005 - "Order of Seal," sealing an unidentified "attached Motion of March 17th, 2005" (hereinafter "Order 4")

March 31, 2005 - "Order of Seal," sealing an unidentified "attached Order" (hereinafter "Order 5")

April 14, 2005 - "Order of Seal," sealing an unidentified "attached Motion of April 13th, 2005" (hereinafter "Order 6")

April 19, 2005 - "Order of Seal," sealing an unidentified "attached Order of April 19th, 2005" (hereinafter "Order 7")

To the best of movants' knowledge, no motions were filed requesting these sealing orders, no hearings were conducted and no notice of any kind was given to the press or public. Rather, it appears that the orders were prepared and mutually agreed to by the attorneys involved, and then simply submitted to the Court for pro forma approval.

As for *why* the court papers have been sealed, Order 5 states generally that the "attached Order" is being filed under seal "to protect the integrity and confidentiality of the criminal proceedings herein, and to comply with Kansas Supreme Court rules regarding pretrial publicity." The order contains no findings suggesting how the integrity of the criminal proceedings will be threatened without the sealing order, and no "Kansas Supreme Court rules regarding pretrial publicity" are identified.

None of the other orders contain any findings whatsoever purporting to justify the sealing of the documents to which they apply.

ARGUMENT AND AUTHORITIES

I.
THE MOVANTS ARE ENTITLED TO INTERVENE FOR THE LIMITED PURPOSE OF SEEKING TO VACATE THE SEALING ORDERS

Movants are all members or representatives of the local media, which seek to intervene for the limited purpose of requesting that the Court vacate the seven sealing orders previously issued in this case. The movant's right to intervene under these circumstances is established by the Kansas Supreme Court's decision in *The Wichita Eagle Beacon Company v. Owens*, 271 Kan. 710, 27 P.3d 881 (2001). In that case, the court held that "the news media, as a member of the public, may intervene in a criminal proceeding for the limited purpose of challenging a pretrial request, or order, to seal a record or close a proceeding. 271 Kan. at Syl. ¶ 2.

Given this clear authority, movants' motion to intervene should be granted.

II.
THE SEALING ORDERS PREVIOUSLY ENTERED IN THIS CASE SHOULD BE VACATED

At the root of all liberty is the liberty to know.
—Benjamin Cardozo (Legal Paradoxes (1928))

It is well-established that the press and public have a common law right of access to court records. This right has been recognized by both the United States and Kansas Supreme Courts. *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."); *Stephens v. Van Arsdale*, 227 Kan.

676, Syl. ¶ 4 (1980) ("The right of the press or any other person to access court records . . . is based in the common law.").

In addition, in Kansas the right of access to court records is established by statute. The Kansas Open Records Act (KORA) states:

> It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.

K.S.A. 45-216(a). Although KORA exempts *judges* from its coverage (K.S.A. 45-217(e)(2)(B)), courts are not excluded, and the Act is applicable to court records. *See* Kansas Attorney General Opinions 94-7 and 87-145.

Moreover, several courts have held that the right of access to court records is also guaranteed by the First Amendment to United States Constitution. *See, e.g., Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91 (2d Cir. 2004); *In re Providence Journal Company, Inc.*, 293 F.3d 1 (1st Cir. 2002). While the Kansas Supreme Court in *Stephens* refused to hold that the right of access is constitutional in nature (227 Kan. at 686), a more recent decision of the court agreed with the proposition that the public right of access to judicial records and proceedings, "'has as its bases, constitutional law, the common-law and public policy grounds.'" *Unwitting Victim v. C.S.*, 273 Kan. 937, 947 (2002) (quoting *Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464, 466-67 (E.D. Pa. 1997)).

In *Kansas City Star Co. v. Fossey*, 230 Kan. 240 (1981), the Kansas Supreme Court addressed the restrictions that may permissibly be placed on the flow of information in

highly-publicized criminal trials. In so doing, the court expressly adopted the American Bar Association's Fair Trial and Free Press Standard 8-3.2. (1978), and held that that standard would "govern the closure issues in future cases." 230 Kan. at 251.

Based upon the ABA standard, the court set forth the following test for the closure of hearings or records:

> A trial court may close a preliminary hearing, bail hearing, or any other pretrial hearing, including a motion to suppress, and may seal a record only if:
>
> (1) The dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial, and
>
> (2) the prejudicial effect of such information on trial fairness cannot be avoided by any reasonable alternative means.

230 Kan. at 240, Syl. ¶ 2. *Accord Wichita Eagle Beacon Co. v. Owens*, 271 Kan. 710, 712 (2001); *State v. Alston*, 256 Kan. 571, 583-584 (1994); *State v. Cheun-Phon Ji*, 251 Kan. 3, 30 (1992); *State v. Boan*, 235 Kan. 800, 805 (1984).

Among the "reasonable alternative means" that the trial court must consider before sealing a record are:

> (1) continuance, (2) severance, (3) change of venue, (4) change of venire, (5) intensive voir dire, (6) additional peremptory challenges, (7) sequestration of the jury, and (8) admonitory instructions to the jury.

230 Kan. at 249.

Compliance with the directives of *Fossey* is not optional. A motion to seal records, "cannot be granted unless the court affirmatively concludes that the requirements of the clear

and present danger and least restrictive alternative tests have been met. The burden of proof is on the party making the motion. *Fossey*, 230 Kan. at 249.

Underlying the holding in *Fossey* "is a strong presumption in favor of open judicial proceedings and free access to records in a criminal case." 230 Kan. at 248. As the United States Supreme Court has stated, "we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980). *Accord Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 510 (1984); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 605 (1982); *Davis v. Reynolds*, 890 F.2d 1105, 1109 (10th Cir. 1989); *United States v. Storey*, 956 F. Supp. 934, 938 (D. Kan. 1997).

Given this presumption of openness, the closing of a hearing or sealing of documents is justified only in the rarest of circumstances. As explained in *Fossey*, even if the defendant desires to waive his Sixth Amendment right to public criminal proceedings, this is insufficient to overcome the presumption:

> The sixth amendment speaks in terms of the right of the accused to a public trial, but this right does not belong solely to the accused to assert or forgo as he or she desires. Many courts have recognized that the public generally has an overlapping and compelling interest in public trials. The defendant's interest, primarily, is to ensure fair treatment in his or her particular case. While the public's more generalized interest in open trials includes a concern for justice to individual defendants, it goes beyond that. ***The transcendent reason for public trials is to ensure efficiency, competence, and integrity in the overall operation of the judicial system.*** Thus, the defendant's willingness to waive the right to a public trial in a criminal case cannot be the deciding factor. This holds true no matter how

> personally beneficial private proceedings in a criminal case might be to the defendant. It is just as important to the public to guard against undue favoritism or leniency as to guard against undue harshness or discrimination.

Fossey, 230 Kan. at 248 (emphasis added).

The *Fossey* court also made clear that any decision to close court proceedings or seal records must be made pursuant to a hearing on the record, and accompanied by sufficient, well-supported findings that justify the action:

> To insure compliance with this standard, a record of the hearing where the issue of closure is determined should be prepared. In making a decision of either closure or nonclosure, the trial judge should make findings and state for the record the evidence upon which the court relied and the factors which the court considered in arriving at its decision. Such a procedure will protect both the right of the defendant to a fair trial and the right of the public and news media to have access to the court proceedings.

230 Kan. at 250. *See also United States v. McVeigh*, 119 F.3d 806, 814 (10th Cir. 1997) ("[S]ealing is only appropriate if the district court makes 'specific, on the record findings demonstrating that "closure is essential to preserve higher values and is narrowly tailored to serve that interest."'" [citations omitted]); *Providence Journal* 293 F.3d at 13 ("the First Amendment right of public access is too precious to be foreclosed by conclusory assertions or unsupported speculation.).[1]

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[1] The most recent version of ABA Standard 8-3.2 (attached hereto as Exhibit C) also provides that "(a) court may issue a closure order to deny access to the public to specified portions of a judicial proceeding or related document or exhibit only after reasonable notice of and an opportunity to be heard on such proposed order has been provided to the parties and the public . . .." ABA Standard 8-3.2(b)(1).

The fact that records are sealed pursuant to a joint request of the parties—as is the case here—does not relieve the trial court of its obligation to consider whether such action is legally justified. A similar situation was addressed in *State ex rel. The Missoulian v. Montana Twenty-First Judicial Dist. Court*, 933 P.2d 829, 834 (Mont. 1997):

> In fairness to the trial court, it should be noted that the order was entered with the consent of counsel for the State and for the defendant. Thus, given the consent of the parties, there would appear to be no basis for faulting the court for failure to hold an evidentiary hearing and make appropriate findings. However, consent of the parties cannot serve to override the clear intent of § 46-11-701, MCA[2], to balance the public's right to know with the defendant's right to a fair trial. This balancing can only be accomplished by including the media in the process even though the media is not a "party" to the proceeding in the usual sense of that term.

See also Bryan v. Eichenwald, 191 F.R.D. 650, 652 (D.Kan. 2000) ("The judge is the primary representative of the public interest in the judicial process and is duty-bound therefore to review any request to seal the record (or part of it). He may not rubber stamp a stipulation to seal the record."); *Owens*, 271 Kan. 710, 712-713 (2001) ("We believe an integral part of the rule announced in *Fossey*, however, is the need for a trial court, when considering the sealing of a record or the closure of a proceeding, to consider also the societal interest the public has in open criminal proceedings and records.")

Notwithstanding the clear directives of *Fossey* and other cases, the present proceedings have been conducted as if there were no rules governing the sealing of court records. Virtually every motion and order filed in this case has been accompanied, as a

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[2] The cited statue is Montana's codification of ABA Standard 8-3.2. *See* 933 P.2d at 834.

matter of course, with a sealing order. There is no indication that the parties have ever been required to justify their requests to seal documents. There has never been a hearing held concerning the need to seal the documents. There have been no specific findings whatsoever supporting the sealing orders and no indication that any alternative means were considered.

Simply stated, it appears that this case is being conducted under a presumption of secrecy rather than a presumption of openness. This is demonstrated by Order 5, in which the sealing of an unidentified order is purportedly justified by the need "to protect the integrity and confidentiality of the criminal proceedings herein."[3] The notion that the integrity of criminal proceedings can only be protected through secrecy, or that there is a right to confidentiality in such proceedings, is directly contrary to the basic principles underlying the American judicial system.[4]

Movants assume that the desire of the parties to seal virtually everything of substance in this case has something to do with a concern that an impartial jury cannot be impaneled in this county of 460,000 residents if information is released to the public. This concern is unwarranted. "Media publicity alone has never established prejudice per se." *State v.*

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[3] The order also states that its purpose is to "comply with Kansas Supreme Court rules regarding pretrial publicity." No such rules are identified and movants are unaware of any Supreme Court rules allowing, let alone compelling, the sealing of pleadings.

[4] *See, e.g., State v. Osborne*, 102 P. 62, 65 (Or. 1909) ("[T]he flagrant abuses extant in England, as well as in this country, prior to our Revolution, impressed upon the founders of our national and state governments the importance of providing against them by inserting in our fundamental laws the express provision that every person charged with crime shall have a public trial. . . . 'History brings to us too vivid pictures of the oppressions endured by our English ancestors at the hands of arbitrary courts ever to satisfy the people of this country with courts whose doors are closed against them.'" [quoting *Williamson v. Lacey*, 29 A. 943 (Me. 1893)]).

Jorrick, 269 Kan. 72, 77 (2000). High profile cases on both a national (O.J. Simpson, Robert Blake, John DeLorean) and local level (Bill Butterworth, Jonathan and Reginald Carr, Earl Bell II), have demonstrated that it is possible to impanel an unbiased jury even in the light of extensive pretrial publicity. *See Columbia Broadcasting Systems, Inc. v. United States Dist. Court for Cent. Dist.*, 729 F.2d 1174, 1179 (9th Cir. 1983) ("Recent highly publicized cases indicate that even when exposed to heavy and widespread publicity many, if not most, potential jurors are untainted by press coverage.").

Movants are aware of no Kansas case in which it was found that the defendant failed to receive a fair trial because of pretrial publicity alone,[5] even though the contention has been frequently advanced. *See, e.g., State v. Higgenbotham*, 271 Kan. 582 (2001); *State v. Cravatt*, 267 Kan. 314 (1999); *State v. Jackson*, 262 Kan. 119 (1997); *State v. Shaw*, 260 Kan. 396 (1996); *State v. Knighten*, 260 Kan. 47 (1996); *State v. Shannon*, 258 Kan. 425 (1995); *State v. Brown*, 258 Kan. 374 (1995); *State v. Swafford*, 257 Kan. 1023 (1995), *modified on other grounds*, 257 Kan. 1099 (1996); *State v. Anthony*, 257 Kan. 1003 (1995); *State v. Butler*, 257 Kan. 1043 (1995), *modified on other grounds*, 251 Kan. 1110 (1996); *State v. Wacker*, 253 Kan. 664 (1993); *State v. Grissom*, 251 Kan. 851 (1992); *State v. Tyler*, 251 Kan. 616 (1992); *Cheun-Phon Ji, supra*; *State v. Mayberry*, 248 Kan. 369 (1991); *State v. Goss*, 245 Kan. 189 (1989); *State v. Hunter*, 241 Kan. 629 (1987); *State v. Ruebke*, 240 Kan. 493, *cert. denied*, 483 U.S. 1024 (1987); *State v. Bird*, 240 Kan. 288 (1986), *cert. denied*, 481 U.S. 1055

[5] In *State v. Lumbrera*, 252 Kan. 54 (1992), the defendant was granted a new trial based upon cumulative errors, one of which was the failure to change venue due to pretrial publicity. She was convicted again on retrial. *State v. Lumbrera*, 257 Kan. 144 (1995).

(1987); *State v. McKibben*, 239 Kan. 574 (1986); *State v. McNaught*, 238 Kan. 567 (1986); *State v. Haislip*, 237 Kan. 461, *cert. denied*, 474 U.S. 1022 (1985); *Boan, supra*; *State v. Crispin*, 234 Kan. 104 (1983); *State v. Crump*, 232 Kan. 265 (1982); *State v. Moore*, 229 Kan. 73 (1981); *State v. May*, 227 Kan. 393 (1980); *State v. Soles*, 224 Kan. 698 (1978); *State v. Gilder*, 223 Kan. 220 (1977); *State v. Black*, 221 Kan. 248 (1977); *Green v. State*, 221 Kan. 75 (1976); *State v. Ayers*, 198 Kan. 467 (1967); *State v. Poulus*, 196 Kan. 253, *cert. denied*, 385 U.S. 827 (1966); *State v. Furbeck*, 29 Kan. 532 (1883); *State v. Arculeo*, 29 Kan. App. 2d 962 (2001); *State v. Moss*, 7 Kan. App. 2d 215, *rev. denied*, 231 Kan. 802 (1982); *State v. Allen*, 4 Kan. App. 2d 534, *rev. denied*, 228 Kan. 807 (1980).

As indicated in *Fossey*, fears over jury impartiality provide an insufficient basis for sealing records unless and until the court has first considered alternative measures such as change of venue, change of venire, intensive voir dire and additional peremptory challenges. Given the skill of the Court and the attorneys representing the parties in this matter, movants have little doubt that the jury ultimately seated in this case will have been sufficiently screened in voir dire so as to assure that they will decide the matter based solely on the evidence presented at trial. Simply stated, any argument that the indiscriminate sealing of documents is necessary to protect the purity of the jury pool overestimates the effect of pretrial publicity and sells the citizens of Sedgwick County short.[6] Moreover, it is highly

[6] The fact that the trial in this matter is not even scheduled yet, further minimizes any concern over the impact of information released today. *See Boan*, 235 Kan. at 805 (three month time lapse "would ordinarily be sufficient to dissipate any pretrial publicity arising at the preliminary hearing.").

unlikely that there is anything in the documents sealed by the court that would have as significant an impact on the potential jury pool as the unequivocal statement on national television that "BTK is arrested." It is unreasonable and unfair to saddle the media, under the guise of belated "pretrial publicity" concerns, with the consequences of a potential community bias that is not of its own making.

Perhaps most disturbing about the sealing orders entered in this case is the fact that in most cases (Orders 3-7), it is impossible to determine what is being sealed. These orders refer to attached "motions" or "orders" that are not identified in any other way. Not only does this deprive the public of even the most basic information as to what is going on in this case, it also deprives an appellate court of the ability to review whether the sealing orders were properly entered. Even if the content of the underlying documents justify their sealing (which has certainly not been established) there is no justification in the law for going so far as to shield the *nature* of the document.

The sealed documents that *are* identified—those covered in Orders 1 and 2—are clearly not the type of documents which "create a clear and present danger to the fairness of the trial." *See Fossey*, 230 Kan. at Syl. ¶ 2. Order 1 seals the financial affidavit completed by the defendant in order to obtain state-provided defense counsel. Affidavits of this nature have always been open to the public in this jurisdiction. The information sought in the affidavit (a blank copy of which is attached hereto as Exhibit D) is hardly earthshattering. Essentially, the affidavit sets forth the defendant's employment status, assets and monthly financial obligations. When a person becomes a criminal defendant and seeks to have the

citizens of the state provide his defense, any privacy right applicable to this information is lost. This is made clear to a defendant when he or she completes the affidavit. The Application for Appointed Defense Services which accompanies the affidavits states: "The information on the attached affidavit is not confidential."

The sealing of the probable cause affidavit that was filed in conjunction with the issuance of an arrest warrant for the defendant (Order 2) requires a slightly different analysis. Unlike most states which treat probable cause affidavits like any other court record (*see, e.g., State v. Schaefer*, 599 A.2d 337 (Vt., 1991)), probable cause affidavits in Kansas are "not made available for examination without a written order of the court." K.S.A. 22-2302(2).[7] Because the probable cause affidavit is already presumed closed pursuant to statute, it is unclear why an additional sealing order was entered.

Movants seek to have Order 2 vacated, and further seek an order releasing the probable cause affidavit for examination. As of April 19, 2005, the State was prepared to publicly come forward with evidence at a preliminary hearing demonstrating that probable cause exists to believe that the defendant committed the crimes of which he is accused. *See* K.S.A. 22-2902(3). Rather than put the State to this task, the defendant stipulated that probable cause does, in fact, exist.

The public, however, knows virtually nothing about the basis for the charges against the defendant. Given the 30+ year investigation that preceded the defendant's arrest not to mention the level of terror these crimes struck in the hearts of tens of thousands of Wichitans,

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[7] *See also* K.S.A. 22-2502(c), applying the same rule to search warrant affidavits.

the public is entitled to at least a glimpse of the evidence which causes the State to believe the defendant is responsible for ten murders. Because of the secrecy under which these proceedings have been conducted, the community has no ability to assess whether this prosecution is being conducted competently or fairly. "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers*, 448 U.S. at 572. "Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Press-Enterprise Co.*, 464 U.S. at 508.

At this stage of the proceedings, it is inconceivable that the information contained in the probable cause affidavit would "create a clear and present danger to the fairness of the trial." *See Fossey*, 230 Kan. at Syl. ¶ 2. At most, it would reveal a small portion of what the State was prepared to make public at the preliminary hearing. Accordingly, the probable cause affidavit, along with the other documents previously sealed, should be released.

CONCLUSION

The citizens of the Wichita area deserve more information about this case than they have received. The crimes at issue in these proceedings impacted—indeed, terrorized—the entire community and it is unreasonable to expect the public to be content with criminal proceedings conducted under a shroud. As the United States Supreme Court has observed:

> Criminal acts, especially violent crimes, often provoke public concern, even outrage and hostility; this in turn generates a community urge to retaliate and desire to have justice done. *See* T. Reik, The Compulsion to Confess 288-295, 408 (1959).

> Whether this is viewed as retribution or otherwise is irrelevant. When the public is aware that the law is being enforced and the criminal justice system is functioning, an outlet is provided for these understandable reactions and emotions. Proceedings held in secret would deny this outlet and frustrate the broad public interest; by contrast, public proceedings vindicate the concerns of the victims and the community in knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected.

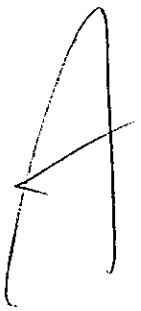
Press-Enterprise, 464 U.S. at 508-09.

The continued secrecy of these proceedings can only breed suspicion, distrust and cynicism. Movants submit that the only way to *truly* protect the integrity of the proceedings is to return to the presumption of openness mandated by the law. Accordingly, movants request that the Court vacate the sealing orders previously entered in this case and release for examination all documents covered by those orders. Movants further request that, in accordance with *Fossey*, any future requests to seal documents be heard in open court preceded by notice to the movants so that they might be heard on such requests.

Respectfully submitted,

FLEESON, GOOING, COULSON & KITCH, L.L.C.

By _____
Lyndon W. Vix - #12375
William P. Tretbar - #10473
Attorneys for Movants



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2005 MAR 2 PM 2 33

CLERK OF DIST. COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KS
BY

djm
KIM T. PARKER, #11203
Deputy District Attorney
Sedgwick County Courthouse
Wichita, Kansas 67203
(316) 383-7281

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS, Plaintiff,	)	
vs.	)	Case No. 05CR498
DENNIS L. RADER, Defendant.	)	Division 5

PROTECTIVE ORDER OF SEAL

NOW on this 2nd day of March, 2005, the Court finds upon hearing the joint motion of the State by Chief Deputy District Attorney Kim T. Parker, and the defendant, Dennis L. Rader by his attorney, Chief Public Defender Charles S. Osburn, that the defendant's financial affidavit in Case No. 05CR498 shall hereby be sealed from public disclosure and a copy of this Order shall be served upon the Clerk of the District Court.

IT IS SO ORDERED.

GREGORY L. WALLER
Judge of the District Court

APPROVED BY:

KIM T. PARKER, #11203
Chief Deputy District Attorney

CHARLES S. OSBURN, #14982
Attorney for Defendant

djm
KIM T. PARKER, #11203
Deputy District Attorney
Sedgwick County Courthouse
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(316) 383-7281

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS,	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 05CR498**
	)	
DENNIS L. RADER,	)	**Division 5**
Defendant.	)	
	)	

PROTECTIVE ORDER OF SEAL

NOW on this 2nd day of March, 2005, the Court finds upon hearing the joint motion of the State by Chief Deputy District Attorney Kim T. Parker, and the defendant, Dennis L. Rader by his attorney, Chief Public Defender Charles S. Osburn, that the probable cause affidavit issued in affiliation with the complaint information charging Dennis L. Rader in Case No. 05CR498 shall hereby be sealed from public disclosure and a copy of this Order shall be served upon the Clerk of the District Court.

IT IS SO ORDERED.

GREGORY L. WALLER
Judge of the District Court

APPROVED BY:

KIM T. PARKER, #11203
Chief Deputy District Attorney

CHARLES S. OSBURN, #14982
Attorney for Defendant

FILED

2005 MAR 3 PM 3 58

CLERK OF DIST. COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KS
BY

djm
KIM T. PARKER, #11203
Deputy District Attorney
Sedgwick County Courthouse
Wichita, Kansas 67203
(316) 383-7281

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS, Plaintiff,	)	
vs.	)	Case No. 05CR498
DENNIS L. RADER, Defendant.	)	Division 5

PROTECTIVE ORDER OF SEAL

NOW on this 3rd day of March, 2005, the Court directs the Clerk of the District Court to Seal the attached Order of March 3, 2005, in State v. Dennis L. Rader in Case No. 05CR498 from public view or disclosure.

IT IS SO ORDERED.

GREGORY L. WALLER
Judge of the District Court

APPROVED BY:

KIM T. PARKER, #11203
Chief Deputy District Attorney

CHARLES S. OSBURN, #14982
Attorney for Defendant

djm
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FILED
APP DOCKET NO.
2005 MAR 17 P 3:26
CLERK OF THE DISTRICT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS,	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 05CR498**
	)	
DENNIS L. RADER,	)	**Division 5**
Defendant.	)	
	)	

ORDER OF SEAL

NOW on this 17th day of March, 2005, the Court directs the Clerk of the District Court to Seal the attached Motion of March 17th, 2005, in State v. Dennis L. Rader in Case No. 05CR498 from public view or disclosure.

IT IS SO ORDERED.

GREGORY L. WALLER
Judge of the District Court

APPROVED BY:

KIM T. PARKER, #11203
Chief Deputy District Attorney

CHARLES S. OSBURN, #14982
Attorney for Defendant

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

FILED
APP DOCKET NO. _____
2005 MAR 31 A 10:21
CLERK OF DISTRICT COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS
BY _____

THE STATE OF KANSAS, Plaintiff, v. DENNIS L. RADER, Defendant.	)	CASE NO. 05 CR 498

ORDER OF SEAL

NOW ON THIS 31st day of March, 2005, the Court finds that the attached Order shall be filed under seal to protect the integrity and confidentiality of the criminal proceedings herein, and to comply with Kansas Supreme Court rules regarding pretrial publicity.

GREGORY L. WALLER
Judge of the District Court

Prepared by:

Jama Mitchell
JAMA MITCHELL, #16980
Deputy Public Defender

djm
KIM T. PARKER, #11203
Deputy District Attorney
Sedgwick County Courthouse
Wichita, Kansas 67203
(316) 383-7281

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS, **Plaintiff,**	)	
vs.	)	**Case No. 05CR498**
DENNIS L. RADER, **Defendant.**	)	**Division 5**

ORDER OF SEAL

NOW on this 13th day of April, 2005, the Court directs the Clerk of the District Court to Seal the attached Motion of April 13th, 2005, in State v. Dennis L. Rader in Case No. 05CR498 from public view or disclosure.

IT IS SO ORDERED.

GREGORY L. WALLER
Judge of the District Court

APPROVED BY:

KIM T. PARKER, #11203
Chief Deputy District Attorney

CHARLES S. OSBURN, #14982
Attorney for Defendant

FILED

2005 APR 19 AM 10 14

CLERK OF DIST. COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KS
BY

djm
KIM T. PARKER, #11203
Deputy District Attorney
Sedgwick County Courthouse
Wichita, Kansas 67203
(316) 383-7281

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS, Plaintiff,	)	
vs.	)	Case No. 05CR498
DENNIS L. RADER, Defendant.	)	Division 5

ORDER OF SEAL

NOW on this 19th day of April, 2005, the Court directs the Clerk of the District Court to Seal the attached Order of April 19th, 2005, in State v. Dennis L. Rader in Case No. 05CR498 from public view or disclosure.

IT IS SO ORDERED.

GREGORY L. WALLER
Judge of the District Court

APPROVED BY:

KIM T. PARKER, #11203
Chief Deputy District Attorney

CHARLES S. OSBURN, #14982
Attorney for Defendant

Kansas.com

Posted on Sat, Mar. 26, 2005 The Wichita Eagle

Transcript of the news conference

Mayor Carlos Mayans: Good morning. Thank you for being here with us. I want to especially thank the families for being here today with us. I would like to recognize my colleagues in the City Council. Vice Council Carl Brewer, Council persons Bob Martz, Sue Schlapp, Mr. Gray, Mr. Lampke and Sharon Fearey. As you know with a group this large I'm going to miss some, so I'm going to count on the chief to fill in those which I missed. Congressman Tiahrt is on the way. He's a little bit delayed. U.S. Attorney Eric Melgren is here today. Also Phill Kline, Attorney General; Larry Welch, KBI; Kevin Stafford, FBI; Nola Foulston, District Attorney, and State Senator Carolyn McGinn.

It has been a very long journey that has brought us to this day. It certainly has been a challenge. The national spotlight has been shining upon us. Through diligence, tenacity, determination and just plain good police work, the men and women of the Wichita Police Department have once again made us proud of their accomplishments. Today I stand a proud mayor of the city of Wichita and our police department. I am proud of our Police Chief Norman Williams, Lt. Kenneth Landwehr and the members of our Wichita Police Department who have put thousands and thousands of hours into this senseless and horrendous series of crimes that plagued our city many years ago. This has not been an easy task. Our fine police Department has been at many times been questioned. Their competence questioned. Their actions were often second-guessed. But all the while, these officers were steadfast in their commitment to solve the biggest police case in Wichita history. We knew that these officers were doing their job and that one day this madness would end. I would now like to ask our team of experts, led by our Police Chief Norman Williams to brief you on the case, known as the BTK. Chief?

Police Chief Norman Williams: Whew! Good morning ladies and gentlemen. Today is a very historic day for the Wichita Police Department, the Kansas Bureau of Investigation, the District Attorney's office, the Federal Bureau of Investigation, the Sedgwick County Forensic Center, the Sedgwick County Sheriff's Office, the Office of the Inspector General of the Social Security Administration, and also to the city of Park City, Kansas, who have been instrumental in helping us in the past several days. The bottom line, BTK is arrested. (Standing ovation).

To the task force members, outstanding job. Outstanding. Please stand and be recognized. You know this has been the most intense and challenging investigation in the entire history of the Wichita Police Department.

When you look back on March 2004, when we began to receive our first correspondence, we knew that we had a very challenging and very tiring road ahead of us. But then when you look at what drove us, it was a commitment we made to the families and friends of the victims. We knew that we had to get to this day. We knew that we had to do everything in our power to bring about resolution and justice. And that is what we set our sites on. When you look at this investigation, it wasn't about one department. It wasn't about two departments. It was about the law enforcement community coming together with one goal and one goal only, to identify and apprehend BTK. And doggone it, we did. We did. As I mentioned to you, it was a law enforcement team effort. And before I continue with my comments, I'm going to introduce some of the key members that make up this law enforcement team. The first person I'm going to ask to address you is Ms. Nola Foulston. Despite the challenges of her office, and despite all the things going on, Ms. Foulston and several of her key staff were with us from day one. They were with us during the briefings over the last 12 months. They were with us during the criticism. Ms. Foulston stepped forward to correct the media and provide direction to community despite inaccurate information. Ms. Foulston.

District Attorney Nola Foulston: Ladies and gentlemen, thank you for coming today to this very important meeting of our community, and to bring together those individuals who have waited so long over these past decades for a resolution to a very trying time in our community and in the criminal justice system. I would be remiss if I didn't point to, not only wonderful members of the task force, other members of our law enforcement community, from our local, state and federal partners, but also to the partners of our task force members, to the wives and families who have been working along side of our law enforcement officers and I see them in this group as well. And I thank you too, ladies and gentlemen, for the time you have lent us your spouses to do this very difficult work and you are wonderful ladies and wonderful gentlemen, you have lent us your husbands and your wives in this very important investigation for our community. I also look around me and I see some of the wonderful law enforcement people that I have worked with. I started in law enforcement as an assistant district attorney in 1976, shortly after the Otero murders had occurred. And as an assistant district attorneys, one of the most horrible things that had happened was that I was in the office at the time of the Nancy Fox homicide. But I was privileged to work with Chief LaMunyon and members of

his staff as they began the long and arduous task of working with our community in an attempt to solve and put together the long investigation that was to commence at that time. And with what they had at that time, they gathered evidence and worked day and night with their task force . And so in those years, I'm even thankful to this day. Chief LaMunyon, thank you for your work and your dedication. And now comes the time when this investigation is still in the hands of law enforcement. And so the inquiry becomes: what happens next? As we work along side of law enforcement it is our responsibility to work with them in a legal capacity, to assist them in questions of law, not to direct their investigation, but to be their partners and as the chief law enforcement office in this community. To assist them in making sure that legal issues are completed in a timely fashion and that they are done properly. It is our job to oversee and to watch for those legal matters, to make sure that things are done correctly. And so we monitor those issues and then this matter is at a point in time when the investigation has concluded turned over to the office of the District Attorney for its final review. At that time, members of the law enforcement community will present their case, their evidence, their information, all that they have over to the office of the District Attorney. And at that time, my staff will make determinations as to what charges, if any, will be filed in the District Court of Sedgwick County, Kansas. In that effort following this case for the years as it has been in process in the law enforcement community have been the brightest and the best of prosecutors from my office. In the last year since the reemergence of the individual, of the John Doe serial killer, I have appointed and have maintained a confident and extraordinarily qualified prosecution staff to work with law enforcement 24 hours a day, seven days a week. And those prosecutors have been named to assist me in the prosecution of any case that will be filed as the result of this investigation. Please let me introduce to you Chief Deputy Assistant District Attorney Kim Parker. I'm sure you're all well acquainted with Ms. Parker. She and I tried the state of Kansas vs. Jonathan and Reginald Carr to its successful conclusion. In this particular case, I needed some fighting Irish. I, therefore, have asked and received the assistance of Deputy District Attorney Kevin O'Connor, the head of my criminal division. So that is the trial team and the three of us will be the prosecutors of this case.

We will be reviewing this case and looking at each and every piece of evidence that has been brought to us in making our determination. Now I have to tell you that in the prosecution of any criminal case we must look at the statute of limitations that applies to a case.

The statute of limitations on most criminal cases runs after two years. Those charges that are older than two years may not be prosecuted. However, there is no statute of limitations on the crime of homicide. However, in the state of Kansas you will know that the death penalty in the state was not introduced until the later, past years, 1994. Prior to that date, no death penalty applies to cases of homicide. In the recent past, the state of Kansas vs. Michael Marsh eradicated the death penalty in the state of Kansas. And at this time the death penalty is in abeyance for those crimes that occurred from the date of that case forward. There have been no allegations of crimes that have occurred subsequent to the Marsh case. So any crimes that have occurred in a case prior to 1994 are not eligible for the death penalty. Any crimes of homicide that have occurred at any point in time are eligible to be considered for filing. Any other charges that are not in a window of opportunity of two years cannot be charged. That is the basic information with regard to the charging of criminal indictments.

I would also like to tell you that while one would like to give you every bit of information that we can possibly tell you to alleviate any questions to give you all the information that we possibly could to put your mind at ease, the law provides that we cannot give you information with regard to any statements made, any evidence that has been used in the case, any forensic sciences that have been used. Once the case has been closed by investigation we are sealing our files. We will not be discussing our case because as you know we want the case to proceed through the justice system so that any case that is filed remains as pristine as it can be and that any conviction that may be given is given in the most constitutional manner. And, therefore, we will not be discussing this case publicly after any charges that might be filed are filed with the courts and I hope that you understand that. We will, however, have a website with the District Attorney's Office. And on that website will be posted only the most basic of information regarding this case. And at the time when a complaint and information is filed it will be accessible on the website and you will be getting further instructions regarding that. There also will be a dedicated communication line to the District Attorney's office with a private number for individuals who call with the media for a daily update on changes that may be made regarding status of the case. And that is the basic information that we can give you. That is the basics of things that will be happening within the next period of time. And I give you this information so that you have that for your confer today but mainly to be here today to say thank you to a community that has responded to the law enforcement. And with a smile on my face, thank you to the media for being here today and to be able to report what is being told to you today without having to scramble any place to get the information except for those who give it to you freely, willingly and voluntarily. Thank you.

Police Chief Norman Williams: I would like to ask the Kansas Attorney General, Mr. Phill Kline, if would like to make any comments. Before he does, I'd just like to say to Mr. Kline, thank you. In December, when the Wichita Police Department was criticized for inappropriately entering a residence, Mr. Kline, at a news conference, very boldly stated that he had confidence in the Wichita Police Department, that they were doing a good job, and that was it. So I just want to say thank you, sir, for your comments.

Kansas Attorney General Phill Kline: My confidence was well-placed. Congratulations Wichita. The perseverance and dedication to truth and justice has made Kansas proud. On this day, the voice of justice is heard in Wichita. And due to the dedication of the community, and the commitment to duty of literally hundreds of law enforcement officers

across this nation, victims whose voices were brutally silenced by the evil of one man, will now have their voices heard again. Justice alone cannot bring healing. For justice cannot undo that which never should have happened in the first place. And so our prayers, our thoughts, and our hearts go out to those family members, who at the hands of one evil man have had a life sentence of agony and pain. Justice, however, can give us hope. The hope that we can prevent such evil in the future, the hope that right will eventually prevail, the hope that if our dignity and our rights are violated, there will be someone who cares and who is concerned enough that they will pursue the ends of justice, whether that pursuit takes one year or 30 years. The full story of this investigation, as the district attorney said, cannot be made known now in order to protect the integrity of the judicial process and to protect innocent persons. In fact, the full story really will never be known. But as the story is told, let me tell you of some things that you will learn. You will learn of a community that came together to overcome fear with action. If you desire, you will learn of neighbors who watched homes for neighbors, those who stepped into dark driveways and parking lots to ensure the safety of those who were cautious and afraid. Of the significance of the eyes and ears of a community that provided reasonable and meaningful tips and of a law enforcement agency and task force that investigated every lead. Of a mayor of a community and its City Council that resolutely expressed determination for the right results and who stood firmly behind the efforts of their community's law enforcement officials and whose passion inspired all involved. I've spoken often to the mayor about this case. And mayor, thank you, for your leadership. Of a congressman who ached for his community and turned his concerns into actions by moving critical legislation through Congress, which greatly assisted this effort. So Congressman Tiahrt deserves our appreciation. You will learn of a remarkable team of law enforcement personnel who came together under remarkable circumstances to approach this investigation with tireless dedication, unparalleled professionalism and incredible humility to what is right and true. A team of all jurisdictions. The Wichita Police Department, led by a tremendous leader in Chief Williams, and which is comprised of some tremendous law enforcement officials, including the man who led this effort and who never gave up in his pursuit and a man who deserves our full appreciation, Lt. Ken Landwehr. A team that included members of the Kansas Bureau of Investigation, led by the best director of such a bureau in the nation, Director Larry Welch. And a cold case squad that includes a man that I know now of as a friend, Mr. Larry Thomas. And is directed by a man that does not rest until justice is served, Mr. Ray Lundeen. You will learn the importance of the Wichita lab and the KBI lab and a woman in the KBI lab by the name of Cindy Schuler. You will learn of remarkable technology and you will learn of our appreciation for all of those jurisdictions that assisted. You will learn of a Federal Bureau of Investigation that provided significant and meaningful assistance in virtually every category of the investigation and the leadership of the special agent in charge of the Kansas City field office, Mr. Kevin Stafford. Of the dedicated efforts of Sheriff Steed and his leadership within the Sedgwick County Sheriff's Office. And you will learn how this team together under tremendous media pressure who in a matter of only 11 months were able to solve heinous crimes since the latest communication, the oldest crime of which occurred over 30 years ago. And will come face-to-face with evil, if you desire. The horrific knowledge of what this evil did, and the knowledge that this law enforcement team and the family members have been burdened with every day since this investigation began. All investigations involve delicate information and especially one of this type. There are demands from media for greater information and others. But you will learn if you allow of how this team properly balanced the need for public safety and the need for public assistance with privacy in order to protect the innocent by not revealing sensitive information and in order to protect the integrity of the investigation. And you will come also to know of the office of a competent and professional district attorney who is well suited to ensure that justice is served, and that is District Attorney Nola Foulston. This story, as of all stories of justices achieved, is a story of our best brought out by the necessity of the worst of mankind. And our best will prevail. Next to being a husband to my wife, the father of my daughter, the greatest honor I've had is to serve with these men and women, the men and women of law enforcement. And personally and on behalf of our state, I thank you.

Police Chief Norman Williams: I would like to ask the Director of the Kansas Bureau of Investigation, Mr. Larry Welch, for a comment.

KBI Director Larry Welch: As is undoubtedly clearly evident to you, I've been in law enforcement 44 years. And let me assure you that today is one of the happiest days in all of those 44 years. In law enforcement when the numbers of agencies in an investigative endeavor exceeds the number of potential defendants in the case, the good guys always win. And this multi-agency task force in place since March of 2004 under the command of Chief Norman Williams and Lt. Kenneth Landwehr is a marvelous example of that well established, law enforcement principle. It has been the privilege and the pleasure of the KBI to have agents of our cold case squad and our forensic scientists involved in this since March 2004 and we are delighted at this predicted outcome. Thank you very much.

Chief Norman Williams: To give you an indication of the KBI's commitment to this investigation, the committed, as Mr. Welch has alluded to, two full-time special agents as well as a chemist at our disposal throughout this investigation, despite some of the shortages he had in his staff, because he felt that this case was so important that he stepped forward and said, chief, what do you need, we will provide. And to me, that's what it's all about ladies and gentlemen. So let's just give him a hand. You know, so often you hear criticism of the Federal Bureau of Investigation in the fact that the only time you see them is in a major case, which to me is unjust. I can tell you first hand that I worked closely with this gentleman, Mr. Kevin Stafford. Early on in this investigation he contacted me and he said, hey, whatever you need, call us. In the month of November, he and I traveled to Washington, D.C. We met with key people in the management staff at the Federal Bureau of Investigation. We walked away from that meeting feeling good. Within 30 days, Mr. Stafford called me and said, chief, the question is, what do you need, how soon do you need it, we'll get it. Ladies and gentlemen, Mr. Kevin Stafford.

Kevin Stafford, FBI: I've never heard of any of those criticisms before. I very simply want to thank the chief and Lt. Landwehr for inviting the FBI to be a member of this very exceptional and talented task force. And on behalf of the men and women of the FBI, I want you know that it's been our pleasure to bring the investigative and technical forces of the FBI to serve the citizens of Sedgwick County and the city of Wichita. I hope you all sleep better at night. Thank you very much.

Chief Norman Williams: The next individual I would like to introduce is the House of Representative for the state of Kansas in the Fourth District, Todd Tiahrt. Early on in this investigation, we realized we were in for a long haul. And part of that was being able to come up with the necessary financial resources to augment the task force as well as respective departments but Mr. Tiahrt stepped to the plate and went to work for the citizens of Kansas. And as the result of his efforts, we were able to procure about $1 million in regards to this investigation. Mr. Tiahrt.

Congressman Todd Tiahrt: Thank you very much. I was pleased to be a part of this but the real heroes are behind me here and the detectives that went out and did the hard work. And I'd like to congratulate Chief Williams and Lt. Landwehr because they did fine job. You know, it was really a community effort, a community law enforcement effort. The KBI with Larry Welch and Kevin Stafford with the FBI. It wasn't like the movies where you see Tommy Lee Jones come in and say I'm going to take over the investigation. We're going to have a six-mile diameter where we're going to close off all the roads. It wasn't like that at all. It was everybody working together and I think that's when America does its best, when we work together. And I want to thank the community outside law enforcement, the faith community. Well, that does include law enforcement, too, excuse me. The faith community in Wichita got together and not only prayed that that which was hidden would be revealed but they also prayed for the families of the victims, and I know many of them are here. And I hope this is a good first step for the families of the victims towards some reconciliation. I know from personal experience you will never be able to replace those that you loved who are lost. But you can come to some closure and move forward. And I think what we overlook sometimes is the long term impact that our law enforcement has on the safety and the security in the country, and how it helps us to build not only a strong community but a place where we can have second chances to rebuild our lives and make our dreams once again come true. Dreams coming true are important to all of us. So I want to congratulate those who did the hard work, spent the long night, dug through all kinds of things you we probably don't want to think about, trash and whatnot, and worked hard in the labs, laid awake at night trying to solve this problem because it was that hard work that gives us hope for the future. So I want to say God bless you, all you in law enforcement, and to the victims, I hope that you heal quickly.

Chief Norman Williams: I would now like to present my colleague, Sedgwick County Sheriff Gary Steed.

Sedgwick County Sheriff Gary Steed: Good morning. I'm very proud to be in law enforcement in Kansas and in Sedgwick County and to work side-by-side with the Wichita Police Department, the FBI, the KBI and all of the organizations that came together in partnership to work on these particular cases. I think that they exhibited a vast amount of skill, tenacity and effort in bringing some closure to these investigations. I think that there is one other group of people that we should recognize that have been involved in this investigation over the years, these investigations occurred over 30 years, and there are a number of law enforcement officers who have participated in these investigations over the years, Chief LaMunyon being but one example, dedicated people who collected evidence meticulously and put together cases that we're able to go back and look in files and look in evidence racks and use that evidence over the years in these cases today to provide us with successful prosecution. I'm very pleased that we're being able to provide some closure to all of these law enforcement officers that worked on these cases both today and over the years. And I'm also pleased to announce today that we have brought closure to two cases that were in the jurisdiction of the Sedgwick County Sheriff and that was the homicides of Marine Hedge and Delores Davis. On behalf of the officers of the Sedgwick County Sheriff's Office, I want to thank those members of the task force as well. Thank you.

Police Chief Norman Williams: I would like to ask you to please join me in an expression of gratitude and appreciation to the family members of the 10 victims that died at the hands of this individual. Please join me. Family members. (Standing ovation)

As many of you are aware, we received our first correspondence in almost 20 plus years back in March of 2004 from the serial killer known as BTK. At that time, he sent us some information on a person known as Mrs. Wegerle. We suspected for many years that he may have committed that crime but when he sent us that correspondence that verified it. From that date forward, Lt. Landwehr was called upon to spearhead the investigation, the reemergence of BTK. In the last 11 months, the toll that it has taken on every member of not only the task force but every member of law enforcement that are out there on the streets because citizens were concerned about -- is BTK my next door neighbor? But when you look at the ebb and flow of this investigation, you look at the trials and tribulations, we continue to maintain our focus on professionalism, we've maintained our commitment to working within the United States Constitution because we had an obligation to ensure a professional quality and successful investigation for the family members. Lt. Landwehr took that charge, took that challenge and he spearheaded that investigation. And he's done a damn good job with it.

I'd like to acknowledge the police chief from Park City as well as the mayor, Mayor Bergquist. Thank you for your

assistance over the past couple of days. We realize that we invaded your city and we appreciate the cooperation you've given us. I will now turn it over to Lt. Ken Landwehr. (Standing ovation)

Lt. Kenneth Landwehr: Janet, you didn't give me a script today, so I guess I'm done. I want to thank the families of the victims that gave us their trust and stood behind us. I want to thank the families of our task force who stood behind them, the other agencies, the other offices in this department and across the state, and the citizens of Wichita, citizens that responded to our investigation, that cooperated with our investigation and I want to thank them, everybody, from our task force. My eyes are not good so I might miss some of my members, but before I start with the members of my task force, I would like to thank the KBI who gave me two great guys plus about 10 other agents whenever I needed them. That's because they have an unbelievable director, Larry Welch, a great friend of mine for many years who never ever has turned down a request from myself or this department. From the Forensic Science Center, from Dr. Dudley, Tim Moore, Shelly Stedman, Dan Fahnestalk, who worked hundreds and hundreds of hours to help us with this investigation. To the FBI, who have always been there, Chuck Pritchett who've been there from day one. John Sullivan and ATF, Secret Service, Social Security Administration, John Guilliford, and I'm sorry if I forgot anybody. I'm sure I have. The Sheriff's Department. Sheriff Steed who's worked with me even back in 1984 on some of these cases when we looked at them then and now we've been able to go full circle with Tom Lee, Sam Houston, Kevin Bradford, Annette Aga, and several others from the past. The detectives of the Wichita Police Department, the Sheriff's department, that worked on these cases did such a good job that we were able to use their evidence before anyone had any inkling of what technology would do. They did the job so well then that we could do our job now. Part of my task force have other assignments so I'm going to ask you not to film them, please. But like I said, my eyes aren't good so if I miss anyone please stick up your hand or I'll have Detective Bachman or Detective James to throw something at me because they're always the ones that always bail me out. Officer Elmore, Detective Fransheen Det. Gordon, Detective Mears, Sgt. Mike Hennessy who's been with me for years and came back to assist me on this. Detective Milton, Detective Fasig, Officer Shea. I'm going to forget everyone. I'm sorry. Officer Eisenbise. Of course, Ray, Detective Stone, Officer Hardey, Detective Snyder, Officer Miller, Officer Beard, Officer Moon. I miss anybody on this side of the room? Det. James, Det. Tim Relph, John Sullivan, Chuck Prichett, Detective Dana Gouge, Sean Stroud. Where's Otey? I can't see him. Detective Kelly Otis and, I just, Officer Griggs is back there. I'm going to see you all sooner or later. It's just like I say, know I'm missing somebody. It just doesn't sound like it. But all the other officers assigned to the task force, the other homicide detectives, all the detectives up on sixth floor, the captains, the lieutenants, the deputy chiefs, especially Capt. Mosely who was with us most of the time, Capt. Langdon, Capt. Nelson , Lt. Easter, all those supported, Capt. Spear. I almost called him lieutenant. I'd have probably gotten a day off for that. Janet Mitchell. Everybody who assisted, all the gang guys, all the sex guys, the M2 guys, Det. Stone. Did I forget to mention you? I had. See, I'm losing it. I want to thank everybody and their families who gave up a lot for this task force. I'm going to quit rambling. Let's do it. Let's do this the right way.

Shortly after noon yesterday afternoon, agents from the KBI, agents from the FBI and members of the Wichita Police Department, arrested Dennis Rader, 59, a white male, in Park City, Kansas, for the murders of Joseph Otero, Julie Otero, Josephine Otero, Joseph Otero Jr., Kathryn Bright, Shirley Vian Relford, Nancy Fox and Vicki Wegerle. He was arrested for the first-degree murder of all those victims. He's being held at this time at an undisclosed location. We will be approaching the district attorney's office next week reference charges to see if charges will be filed against this individual. I thank you very much for your support and I'll turn it back over to Chief Williams. Thank you, sir.

Police Chief Norman Williams: We're now going to open it up for questions from the media. This is the first time since this investigation. We will now allow the media to ask myself, Lt. Landwehr. Questions from the media that you may have.

Question: How did you break the case? What was the thing that broke the case?

Williams: We're not at this time at liberty to give that information because the investigation is ongoing. So at this time, we're not able to give that information.

Question: inaudible

Williams: There again, we're not going to discuss the particulars of the investigation. It's all come out during the judicial system.

Question: inaudible

Williams: Sheriff Steed, could you join us up here, please? There's a question on the two homicides you made reference to.

Steed: Could you repeat the question please?

Question: I do believe you said he was responsible for two other homicides. Could you tell us who?

Steed: The death of Marine Hedge which occurred in, I believe, April of 1985, and the death of Delores Davis that I believe was in January of 1991. We'll take information from this investigation, information developed by the task force, and put that information together to file. And along with the Wichita Police Department, present that information to District Attorney Nola Foulston to obtain homicide charges there, there as well.

Question: Did you get that information from the suspect or... ?

Steed: All of this information was being developed along with the task force and the investigators involved in this investigation.

Question: inaudible.

Landwehr: The investigation is continuing. At this time we're going forward with 10 charges at this time. We won't comment on any additional charges that will be filed later.

Question: inaudible.

Williams: I wasn't there. I can't answer that.

Landwehr: The suspect was arrested without incident. I can't comment any further on that but he was arrested without incident in Park City.

Question: inaudible.

Landwehr: We cannot discuss specifics of the investigation. We have, as I said, arrested an individual and we will present that case to the District Attorney.

Question: inaudible.

Landwehr: I can't comment on any interview of any suspect if it did happen.

Question: inaudible.

Landwehr: I cannot comment on specifics of the investigation. There is no booking photo at this time but there will be shortly, before the end of the day.

Question: Was the family at all aware of who he was?

Landwehr: Ah, his family knew who he is, yes, but I'm not going to... (laughter). I'm sorry, Larry, that was uncalled for. You've been a great defender of us. I appreciate that.

Question: inaudible.

Landwehr: I'm sorry, I cannot comment on any specifics of the investigation.

Question: inaudible.

Landwehr: A car stop was made on east Kechi Road and as I say Mr. Rader was taken into custody by members of the task force and transported to an undisclosed location. There was no incident and that's all I can comment right now.

Question: inaudible.

Landwehr: I cannot comment on any specifics of the investigation. I'm sorry.

Question: inaudible.

Landwehr: I cannot comment on any specifics of the investigation.

Question:... that he would never be found, and is this maybe an indication that he wanted to be caught?

Landwehr: I wouldn't want to speculate on anybody's mind set.

Question:... was he trying to get away at all?

Landwehr: No, he was pulled over during a routine stop and was arrested.

Question: inaudible.

Landwehr: I can't comment on specifics of the investigation.

Question: inaudible.

Landwehr: We will present the case to the District Attorney early next week then it will be in their court, so to speak.

Question: inaudible.

Landwehr: No, sir.

Question: inaudible.

Landwehr: We informed the victims' families yesterday. At that time, it was very emotional for everyone involved.

Question: Chief Williams, can you give a clarification on the death penalty? The death penalty will not be sought in this case?

Foulston: For any prosecution for a crime, you have to look at the date of the incident, as alleged . The law that was applicable at that time of the incident would control what you would be able to charge and any punishment that would be applicable to that crime. You wouldn't apply today's standards, you would apply the law that existed at the time of the crime and when it was committed. At the time of any of these allegations -- they were in different years, 1974, 1977, all of those different time periods. At that time, Kansas did not have a death penalty. Through all of those periods of years when these allegations of these homicides were made none of them would fall within an applicable death penalty in the state of Kansas. At various points, there were different punishments for the crime of first-degree murder. Some of them would be a Hard 40, some would be life at a different number of years, etc. But there was no death penalty applicable at any period during those years of first degree murders.

Question: inaudible

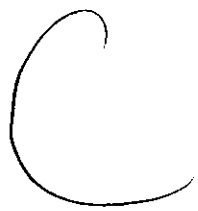
Foulston: Any prosecution will occur in the state of Kansas in the jurisdiction of the 18th Judicial District. This is not a federal prosecution.

Question: How long do you hold a man without pressing charges?

Foulston: That's it.

Landwehr: I've got one comment. I forgot to mention two key people that we involved in this investigation and that would be from Quantico, Jim McNamara and Bob Morton who assisted us in every step of our strategies in bringing this case to this state. They will continue to assist us as we move into the prosecution phase. Thank you very much.

Williams: I'd just like to say that for many of the media that may not be aware of the Wichita Police Department's policy, once the conference ends today there will be no other briefings from the Wichita Police Department. There will be no additional information coming from the Wichita Police Department. Once we file the case with Ms. Foulston's office, it will then be in the judicial arena and we will not respond. So please don't call the chief's office because you ain't gonna get nothin'. Mr. Chief LaMunyon, thank you for being here today.



THE REPORTER'S KEY:
ACCESS TO THE JUDICIAL PROCESS
SECTION I. The Standards and Criminal Justice Reporting
C. Conduct of Judicial Proceedings in Criminal Cases

ABA Standard 8-3.2

(a) In any criminal case, all judicial proceedings and related documents and exhibits, and any record made thereof, not otherwise required to remain confidential, should be accessible to the public, except as provided in section (b).

(b) (1) A court may issue a closure order to deny access to the public to specified portions of a judicial proceeding or related document or exhibit only after reasonable notice of and an opportunity to be heard on such proposed order has been provided to the parties and the public and the court thereafter enters findings that:

(A) unrestricted access would pose a substantial probability of harm to the fairness of the trial or other overriding interest which substantially outweighs the defendant's right to a public trial;

(B) the proposed order will effectively prevent the aforesaid harm; and

(C) there is no less restrictive alternative reasonably available to prevent the aforesaid harm.

(b) (2) A proceeding to determine whether a closure order should issue may itself be closed only upon a prima facie showing of the findings required by Section b(1). In making the determination as to whether such a prima facie showing exists, the court should not require public disclosure of or access to the matter which is the subject of the closure proceeding itself and the court should accept submissions under seal, in camera or in any other manner designed to permit a party to make a prima facie showing without public disclosure of said matter.

(c) While a court may impose reasonable time, place and manner limitations on public access, such limitations should not operate as the functional equivalent of a closure order.

(d) For purposes of this Standard, the following definitions shall apply:

(1) "criminal case" shall include the period beginning with the filing of an accusatory instrument against the accused and all appellate and collateral proceedings;

(2) "judicial proceeding" shall include all legal events that involve the exercise of judicial authority and materially affect the substantive or procedural interests of the parties, including courtroom proceedings, applications, motions, plea-acceptances,

correspondence, arguments, hearings, trials and similar matters, but shall not include bench conferences or conferences on matters customarily conducted in chambers;

(3) "related documents and exhibits" shall include all writings, reports and objects, to which both sides have access, relevant to any judicial proceeding in the case which are made a matter of record in the proceeding;

(4) "public" shall include private individuals as well as representatives of the news media;

(5) "access" shall mean the most direct and immediate opportunity as is reasonably available to observe and examine for purposes of gathering and disseminating information;

(6) "closure order" shall mean any judicial order which denies public access.

Question: When can court proceedings be closed or access to court documents and records be denied?

Answer: Rarely and then only after a hearing, arguments, and written findings. For more than 20 years, criminal trial proceedings and documents have been presumed to be open proceedings and open records, until a definitive and limited finding is made to the contrary.

The Supreme Court framed its current approach to public access in a quartet of cases dating from the early 1980s. The first and most important of these was *Richmond Newspapers Inc. v. Virginia*[46], which firmly established that criminal courts have historically been, and must remain open to the public, and thus to the news media. The Court adopted a functional approach to the central issue of the *Richmond Newspapers* decision. If access to information about the criminal process provides citizens and voters with the means to evaluate the performance of an important branch of government, such information should be public, to ensure "freedom of communication on matters relating to the functioning of government."[47] Only by finding an "overriding state interest" to the contrary of an open hearing could a trial judge close the courtroom.[48]

In his concurring opinion in *Richmond Newspapers*, Justice Brennan wrote,

> [T]he First Amendment embodies more than a commitment to free expression and communicative interchange for their own sakes; it has a structural role to play in securing and fostering our republican system of self-government. (citations omitted.) Implicit in this structural role is not only 'the principle that debate on public issues should be uninhibited, robust, and wide-open,' (cite omitted), but also the antecedent assumption that valuable public debate - as well as other civic behavior - must be informed. The structural model that links the First Amendment to that process of communication

[46] 448 U.S. 555 (1980).
[47] *Id.* at 575.
[48] *Id.* at 581.

> necessary for a democracy to survive, and thus entails solicitude not only for communication itself, but for the indispensable conditions of meaningful communication.[49]

Such a constitutional judgment is quite consistent with an expanding concept of openness. Legislatures had relied on this principle to apply "sunshine laws" increasingly to state government and to federal government operations in the 1960s and 1970s. In 1980, *Richmond Newspapers* held this presumption of openness would apply to the courts as well.

Aware that it had brought about an important change, the Court quickly took three related cases and wrote extensively on the nature of court access in the six years after *Richmond Newspapers*. In the 1982 case of *Globe Newspaper Co. v. Superior Court*[50], the Court rejected the concept of mandatory or automatic closure for any part of the criminal process, striking down a state law that required a judge to close a criminal trial during the testimony of a child who had been the victim of a sexual assault. The decision was a narrow one, which continued to recognize the need occasionally to close some portion of an otherwise open trial. While special circumstances might justify closure in a special case, particular and detailed findings, defining the risk or harm, must be made before any such action is taken.

In *Press-Enterprise v. Superior Court* (I)[51], and *Press-Enterprise v. Superior Court* (II)[52], the Court extended the principle of access to include jury selection -- specifically, a special death penalty jury selection process -- and the preliminary hearing, making clear that the presumption of openness applied to the entire criminal proceeding. Any exceptions must be based on detailed and specific findings of potential harm, must be announced in open court, and must demonstrate the inadequacy of alternative means short of closure by which to meet the needs of defendant or witness. Yet the Court recognized that closure might occasionally be warranted, and made special mention of the privacy interests of jurors.

A judge issuing a closure order must make the requisite findings on the record. The absence of any one of them can jeopardize the constitutionality of the closure order:

(1) there is a substantial threat to a criminal defendant's right to a fair trial;

(2) no alternative available in the case will avert that threat;

(3) closure will avert the threat;

(4) the closure is narrowly tailored or is as brief as possible to avert the threat to a fair trial.[53]

Reports from media lawyers indicate that some proceedings are closed, and that protective orders are issued and records are sealed regularly, especially when the news media do not promptly

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[49] *Id.* at 587-588.
[50] 457 U.S. 596 (1982).
[51] 464 U.S. 501 (1984).
[52] 478 U.S. 1 (1986).
[53] *Id.* at 13-15.

challenge the closure motion. Courtroom access litigation is described by one prominent media law firm as "one of the most intense activities" in representing a media client. Often litigation concerns access to a proceeding that is ancillary to the trial, or to an unusual piece of evidence, but equally often those who cover the criminal courts are presented with the need to litigate over the basic issues of access to the trial itself, or to a clearly related proceeding such as a preliminary hearing.

In such a case, it is important for reporters to remember the cases say that the criminal defendant's Sixth Amendment rights to a fair trial may outweigh the public's First Amendment rights to an open proceeding when there is a genuine and otherwise irremediable threat to the fairness of an open trial. Many defense lawyers will feel an obligation to seek closure, especially when there has been special media attention to their case or when news reports describe evidence suppressed by the judge. This is when it is up to the court to decide whether the news reports did actually or are most likely to create an unfair influence, according to the test described in this section.

Question: When and how may a reporter challenge a closure order?

Answer: Whether the journalist is at the office, in the courthouse or in the courtroom, he or she may challenge (or ask a lawyer to challenge) a motion to seal a document or close a hearing during any criminal proceeding. The decision to object during the proceeding should be made with great care. The ideal moment for raising such an objection would be right after the motion for closure has been made and the opposing party has responded. At this point, the reporter should stand, remaining behind the bar, and ask the judge's permission to address the court.

Identifying oneself as a reporter, the person who objects should explain that he or she (and the employer news organization) has standing to object to the closing on the basis of the public's First Amendment right of access to the courtroom, and that the organization's lawyer should have an opportunity to oppose the closure motion. The judge may insist on hearing argument at once, requiring the organization's lawyer to appear in the next hour or so. Anticipating such emergencies, many news organizations ask their lawyers to be prepared in advance, and have equipped their reporters with cards that spell out the nature of objections that may be raised in the courtroom.

Journalists should also recognize that the presumption of openness may not be used to disrupt the orderly court processes. Judges may and often do meet in chambers with lawyers to discuss procedure, schedules, and prospects for settlement, though there are occasions when reporters may appropriately seek access to these meetings. Judges may and do summon lawyers to the bench during a trial, out of the hearing of the jury, to discuss procedural issues such as the admissibility of evidence. Judges can impose requirements of orderliness on anyone attending trials or hearings, and this includes, as discussed below, the ability to control photographic recording of courtroom events.

Question: Does the right of access to the criminal trial extend to proceedings outside of the trial itself and to every part of the trial?

Answer: Yes, the right of access applies to most parts of the criminal process. While the right of access to the trial itself is virtually absolute, that right may not extend to every moment of the trial. Access to other stages in the process is less certain. Grand jury proceedings, for example, are almost universally closed to the public and the media, and such secrecy is seldom questioned. Most other parts of the criminal process are presumptively open, though special circumstances may create exceptions.

Following the Supreme Court's lead in the cases after *Richmond Newspapers*, lower courts quickly recognized that meaningful access to the criminal justice system would have to include the many different kinds of proceedings that precede a trial. At preliminary hearings, for example, many state courts decide whether there is sufficient evidence for the prosecutor to proceed with charges against the suspect. At suppression hearings, the defense is allowed to test the admissibility of the prosecution's evidence. At plea-bargaining sessions, defense and prosecution decide whether the case will go to trial at all. In about 90 percent of the criminal cases brought, defendants go free or go to jail based on these negotiations. The agreements are announced and approved by the judge at plea hearings. On the other hand, if the case goes to trial, jury members are questioned and selected at jury selection proceedings. What follows is a list of these and a few other critical points in a criminal case, with brief discussion of federal appellate treatment of the right of access to each event. The following discussion provides a sampling of decisions and entry points into the law for further research.[54]

Preliminary Hearings: *Press-Enterprise II* controls; the Supreme Court found that the right of access is presumed in a hearing to determine whether there was probable cause to try the accused. The Court found that later release of a transcript did not render the question moot. It found that the right of access was necessary to the proper functioning of the criminal justice system, thus a hearing must precede any decision to close the preliminary hearing. The court must find "substantial probability" of a threat to a fair trial, and must consider all reasonable alternatives to closure. The Court noted that the "vast majority of states considering this issue" have concluded that the probable cause hearing is presumptively open.[55] In May 1993 the Supreme Court issued a brief unsigned opinion declaring that Puerto Rico's rule permitting "privacy" at preliminary hearings at the defendant's request was "irreconcilable" with *Press-Enterprise II*.[56] The cursory nature of that disposition illustrates the Court's firm and continuing commitment to this principle. Nonetheless, there is considerable litigation; though closure orders are disfavored, some are occasionally upheld by reviewing courts.

Suppression Hearings: In *Waller v. Georgia* the Supreme Court held that the *Press Enterprise* standard applied to pre-trial suppression hearings.[57] The complicating variable is that this case was decided on the basis of a defendant's Sixth Amendment right to a fair trial, so the First

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[54] These cursory summaries rely heavily on the courtroom access outline provided in the 1993 COMMUNICATIONS LAW outlines published by the Practicing Law Institute in New York. The access summary is written annually by Dan Paul and Richard J. Ovelmen. This reference and the Media Law Reporter, published by the Bureau of National Affairs in Washington, D.C., are excellent resources because they provide summaries and indices to access litigation.

[55] 478 U.S. at 10, n.3.

[56] *El Vocero De Puerto Rico v. Puerto Rico*, 508 U.S. 147 (1993).

[57] 467 U.S. 39 (1984).

Amendment right of access was not reached.[58] However, the Court did acknowledge "[a] challenge to a seizure of evidence frequently attacks the conduct of police and prosecutor... The public in general also has a strong interest in exposing substantial allegations of police misconduct to the salutary effects of public scrutiny."[59] The matter has been addressed by several Circuit Courts of Appeal. The consensus seems to be the logic of *Richmond Newspapers* and *Press Enterprise* compels recognition that the press and public have a presumptive right to attend suppression hearings.[60]

Plea Hearings, Plea Bargaining: At least four federal circuits have extended the right of access to plea hearings, principally because the plea hearing effectively takes the place of a trial and traditionally occurs in the courtroom.[61] Access is also justified by the high proportion of criminal cases concluded by plea-bargaining. The plea agreement documents may be open if there is no compelling reason to seal them[62], although the right of access does not permit the co-defendant to see plea agreements for co-conspirators or prosecution witnesses.[63] A compelling need for closure has been readily found in concern for on-going criminal investigations and grand jury secrecy.[64]

Jury Selection: The Supreme Court extended the right of access to the jury selection in *Press-Enterprise I*[65], after a California criminal trial court closed access to a six-week long jury selection process in a rape and murder trial, and continued to deny access to transcripts after the defendant was convicted and sentenced to death. The Supreme Court decision reflected an historic tradition of access to the jury selection process and the public interest in observing the selection of jurors. It is clear that any closure of the jury selection process must serve some compelling interest and that the closure be as narrow as possible. The federal circuits have provided extensive discussion of the jury selection process access.[66]

Bench Conferences: "Bench conferences" is a commonly used term that has no precise meaning. It may apply to whispered conferences at the bench over an objection to a lawyer's question, as well as to mid-trial evidentiary hearings over the admissibility of evidence. The Fifth

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[58] *Id.* at 48 n.6.
[59] *Id.* at 47.
[60] See, e.g., *In re New York Times Co.*, 828 F.2d 110, 114 (2d Cir. 1987)("It makes little sense to recognize a right of public access to criminal courts and then limit that right to the trial phase of a criminal proceeding, something that occurs in only a small fraction of criminal cases. There is a significant benefit to be gained from public observation of many aspects of a criminal proceeding, including pretrial suppression hearings that may have a decisive effect upon the outcome of a prosecution." (quoting *In re Harold Co.*, 734 F.2d 93, 98 (2d Cir. 1984))).
[61] See, e.g., *In re Washington Post Co.*, 807 F.2d 383, (4th Cir. 1986).
[62] See, e.g., *Oregonian Publishing Co. v. United States Dist. Ct.*, 920 F.2d 1462 (9th Cir. 1990).
[63] *United States v. Hickey*, 767 F.2d 705 (10th Cir.), cert. denied, 474 U.S. 1022 (1985).
[64] *United States v. Haller*, 837 F.2d 84 (2d Cir. 1988).
[65] 464 U.S. 501.
[66] See, e.g., *United States v. King*, 140 F.3d 76 (2d Cir. 1998); *United States v. Three Juveniles*, 61 F.3d 86 (1st Cir. 1995); *United States v. Antar*, 38 F.3d 1348 (3d Cir. 1994); *CNN, Inc. v. United States*, 824 F.2d 1046 (D.C. Cir. 1987); *United States v. Peters*, 754 F.2d 753 (7th Cir. 1985).

Circuit has recognized that conferences between lawyers and judges at the bench are an "established practice" and "generally within a trial judge's broad discretion."[67] In *United States v. Valenti*[68], the court denied access to transcripts of closed proceedings in the judge's chambers, pre-trial and bench conferences during the trial, based on a continuing threat to an on-going criminal investigation. This court also held that the practice in the Middle District of Florida to maintain a secret "double docket" (a concept explained below) in certain criminal cases violated the public's qualified right of access to criminal proceedings.

Trial Exhibits and Other Evidence: The question here is whether reporters may obtain physical access to evidence already introduced so that it may be copied and published or broadcast further, especially when the evidence consists of taped recordings. In *Nixon v. Warner Communications, Inc.*[69], the Supreme Court declared that the media did not have a First Amendment right to copy audio-tapes of conversations between then-President Richard Nixon and presidential advisers who were on trial for obstructing justice in the investigation of the Watergate break-ins. There was no question of the right to hear the tapes as evidence or to read the transcripts; the decision was confined to a limitation on physical access to the evidence itself. In *Group W. Television v. Maryland*[70], a television station tried to copy a videotape made of a notorious "carjacking" in which a young mother died trying to retrieve her baby from the back seat of the stolen car. The Maryland Court of Special Appeals supported the lower court's decision to withhold the tape in deference to the fair trial rights of a co-defendant who was awaiting trial. The Maryland court observed that none of the U.S. Supreme Court's courtroom access decisions subsequent to *Nixon v. Warner Communications* had limited or changed its holding in any way.[71]

Search Warrant Affidavits: Search warrants are issued by magistrates or judges after examining the investigatory work of law enforcement agents submitted in the form of affidavits sworn by an investigating officer. Customarily the affidavits and search warrant returns are filed at the courthouse, even before an indictment and prosecution have begun. They are court records, not law enforcement records. Furthermore, they form a critical part of the criminal justice process. "[A] search warrant is certainly an integral part of a criminal prosecution. Search warrants are at the center of pretrial suppression hearings, and suppression issues often determine the outcome of criminal prosecutions."[72]

Based on this reasoning, at least two federal circuits have found a qualified right of access to search warrant documents.[73] In contrast, several federal circuits have found no First Amendment right of access to these documents, and have not addressed the issue of access after an

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[67] *United States v. Gurney*, 558 F.2d 1202, 1210 (5th Cir. 1977).
[68] 987 F.2d 708 (11th Cir.), cert. denied sub nom., *Times Publishing Co. v. United States Dist. Ct.*, 510 U.S. 907 (1993).
[69] 435 U.S. 589 (1978).
[70] 626 A.2d 1032 (Md. Ct. Spec. App. 1993).
[71] *Id.* at 1035.
[72] *In re Search Warrant for Secretarial Area -- Gunn*, 855 F.2d 569, 573 (8th Cir. 1986).
[73] *In re Application of Newsday, Inc.*, 895 F.2d 74 (2d Cir. 1990); *Secretarial Area*, 855 F.2d at 573).

investigation is concluded or an indictment returned.[74] The latter result has been justified on the ground that proceedings for the issuance of search warrants have not been traditionally open to the public.[75] Since the Supreme Court has not resolved this dispute, the split in the circuit remains, and reporters should consult the controlling law in their jurisdiction. It should be noted that even in jurisdictions with a qualified right of access, this right is sometimes more illusory than real because courts have sometimes found that maintaining the secrecy of an on-going investigation is a compelling interest.[76]

Grand Jury Documents: Cloaked as it is in a tradition of secrecy, the proceedings of the grand jury itself are usually virtually impervious to public access. However, there are exceptions. For example, in *Butterworth v. Smith*[77], the Supreme Court ruled that Florida could not penalize a grand jury witness for publishing an account of his testimony after the grand jury's term had ended. However, the *Butterworth* decision states an exception, rather than the rule. The extreme to which grand jury records are traditionally kept private can be seen in a notable decision by the chief judge of the U.S. District Court for the District of Colorado. The judge found with express regret that federal law[78] barred the court from requiring the release of substantive grand jury documents regarding allegations of environmental crimes at the Rocky Flats Nuclear Weapons Plant after lengthy investigation in which no indictments were issued.[79] However, this court and others have found a right of access to the ministerial documents relating to the empanelling and operation of a grand jury.[80]

The preceding discussions provide a small sample of the extensive litigation prompted by the question of access to proceedings and documents generated by the criminal justice systems in state and federal courts. The frequency of litigation illustrates two points. There is constant tension between the perception of the Sixth Amendment right to a fair trial and the parallel but not co-extensive Sixth and First Amendment rights to a public trial. The presumption of openness is only a presumption; closure is possible and many criminal defense lawyers feel the obligation to seek closure.

Question: How much effort must lawyers and judges make to let the media (and the public) know when a closure motion has been made?

Answer: In theory, if the right of access is presumed, a closure motion must be disfavored, and always subjected to the four-part test set out above. In practice, it doesn't always work that way. Reporters must be in the courtroom, be told about the closure motion by trial participants, or have a dependable source willing to call when a closure motion is made.

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[74] See, e.g., *In re Eyecare Physicians of Am.*, 100 F.3d 514 (7th Cir. 1996); *Times Mirror Co. v. United States*, 873 F.2d 1210 (9th Cir. 1989).
[75] *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64 (4th Cir. 1989).
[76] See, e.g., *Certain Interested Individuals v. Pulitzer Pub.*, 895 F.2d 460 (8th Cir. 1990).
[77] 494 U.S. 624 (1990).
[78] 18 U.S.C. § 3333(b) (1998).
[79] *In re Grand Jury Proceedings*, 813 F. Supp. 1451 (D. Colo. 1992).
[80] See, e.g., *In re. Grand Jury Investigation*, 903 F.2d 180 (3rd Cir. 1990); but see *United States v. Enigwe*, 17 F. Supp. 2d 390 (E.D.Pa. 1998) (refusing discovery of grand jury ministerial records by a criminal defendant).

Some courts had been in the practice of scheduling certain hearings secretly, and maintaining a "double docket." "Docket" is a term sometimes used to mean the court's calendar. "Docket" as used here is another name for the court's schedule of hearings, trials and other proceedings. Dockets are typically posted on a central bulletin board in the courthouse or just outside each courtroom, and are also kept in the clerk's office. More recently, dockets may also be posted on the Internet. However, if a second docket is kept secretly, this prevents reporters from knowing anything about the court's business in secretly docketed cases. Decisions in two circuits[81] hold that the "maintenance of a dual-docketing system is an unconstitutional infringement on the public and press's qualified right of access to criminal proceedings."[82]

The larger question is whether the closure motion itself must be docketed, and what effort (if any) must be made to let reporters know that the closure motion is before the court. One Justice of the Supreme Court has written that the right to be heard on a closure motion "extends no farther than the persons actually present at the time the motion for closure is made, for the alternative would require substantial delays in trial and pretrial proceedings while notice was given to the public."[83] Subsequent decisions in the federal circuit courts have been more generous, requiring that closure motions be on the public docket[84], and sometimes requiring the motion far enough in advance to let the public have the opportunity to present their views to the court.[85] Where there is no such case law, however, this problem might easily be solved by discussion in bench-press conferences, jurisdiction by jurisdiction.

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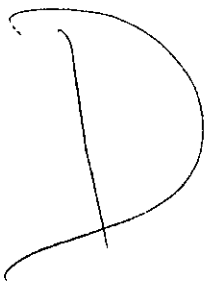
[81] *CBS, Inc. v. United States Dist. Ct.*, 765 F.2d 823 (9th Cir. 1985); *United States v. Valenti*, 987 F.2d 708 (11th Cir.), cert. denied sub nom., *Times Publishing Co. v. United States Dist. Ct.*, 510 U.S. 907 (1993).

[82] *Valenti*, 987 F.2d at 715.

[83] *Gannett Co. v. DePasquale*, 443 U.S. 368, 401 (1978) (Powell, J. concurring).

[84] See, e.g., *Washington Post v. Robinson*, 935 F.2d 282 (D.C. Cir. 1991).

[85] See, *e.g., In re Knight Publ'g. Co.*, 743 F.2d 231 (4th Cir. 1989); *United States v. Brooklier*, 685 F.2d 1162 (9th Cir. 1982).



APPLICATION FOR APPOINTED DEFENSE SERVICES

(to accompany Financial Affidavit)

STATE VS. _____ District Court Case No._____

or

IN RE: _____ County _____

NOTICE TO APPLICANT:

A. *General Information*

1. The information on the attached affidavit is not confidential.
2. Any information contained on the attached affidavit may be verified by the judge or the Kansas Board of Indigents' Defense Services.
3. False entries may lead to criminal prosecution and conviction.
4. If you do not understand a specific question or need help, ask for assistance.
5. The judge may place you under oath and inquire further about any information provided on this form.

B. *Eligibility for Defense Services*

1. Appointed counsel and other defense services will only be provided to people who cannot afford to pay for these services themselves.
2. If the judge determines that you are able to pay a part of the costs of your defense, you will be found partially indigent and the court will order you to pay for a part of these costs.
3. If, after the date of the alleged offense, you transfer any of your property for less than it is worth, the State may sue to obtain repayment of the cost of your defense.
4. You must inform the court if there is a change in any of the financial information given on the affidavit.

C. *Repayment to the State*

K.S.A. 1997 Supp. 21-4603 provides that persons who are convicted of a crime must reimburse the state general fund **for all or part** of the attorney fees and expenses paid by the Kansas State Board of Indigents' Defense Services. K.S.A. 1997 Supp. 21-4610 also provides that persons who are placed on probation or whose sentence is suspended must, as a condition of probation, reimburse the state general fund for **all** or **part** of the attorney fees and expenses paid by the Kansas State Board of Indigents' Defense Services.

The court shall take into account the financial resources and the nature of the burden that payment of such sum will impose. Any person who has been required to pay such sum and who is not willfully in default may petition the sentencing court to waive payment of any remaining balance or portion thereof.

I have read or have had read to me and understand the above notice. I hereby request that court-appointed counsel be provided to me and agree to attempt to repay the State for the costs of my defense if the court so orders.

_____ _____

Date Signature of Defendant

FINANCIAL AFFIDAVIT

For Court-Appointed Attorney, Expert or Other Services
(K.A.R. 105-4-3)

FOR CLERK'S USE ONLY

Judicial Dist._____

County_____

CASE NO._____

FALSE STATEMENTS COULD RESULT IN ANOTHER CASE BEING FILED AGAINST YOU!!

Name_____ Age_____ D.O.B._____ Phone_____ S.S.#_____

Address_____ City_____ State_____ Zip Code_____

Spouse (If married – including common-law)_____

1. Are you ☐ Self-Employed ☐ Employed ☐ Unemployed

   If self-employed, what line of work?_____

   If employed, who do you work for?_____

   If unemployed, for how long?_____

   Are you receiving unemployment benefits? Amount $_____ If, not, state reason _____

2. List the places you have worked in the last six months:

   1. Name _____ Address _____
   2. Name _____ Address _____
   3. Name _____ Address _____

3. If employed, give an approximate monthly rate of pay_____

4. Is your spouse ☐ Self-Employed ☐ Employed ☐ Unemployed

   If self-employed, what line of work?_____

   If employed, who does he/she work for?_____

   If employed, give an approximate monthly rate of pay_____

   If unemployed, for how long?_____

   Is he/she receiving unemp loyment benefits? Amount $ _____ If, not, state reason _____

5. Do you own a car, truck, or motorcycle? ☐ Yes ☐ No

   If yes, give year, make and model: 1._____

   2._____

   Please give value_____ Is it paid for? ☐ Yes ☐ No Amount owing_____

6. Do you receive, or have you received, in the past six months, income from rental property, public assistance, support, alimony, maintenance, or other sources, including from a business? ☐ Yes ☐ No

   If yes, give source and monthly income:_____

7. Do you have money or cash in savings, checking accounts or other funds? ☐ Yes ☐ No

   If yes, list amount of money available to you_____

8. Do you own a home, land, or other property? ☐ Yes ☐ No If yes, give value_____

9. Can you afford to pay anything toward the costs of your defense at this time? ☐ Yes ☐ No

   If yes, how much_____

10. Do you currently have any other court cases pending in the District, in which you already have counsel appointed?

    ☐ Yes ☐ No

    If yes, give attorney's name_____

(Check One)	DEPENDANTS	MONTHLY BILLS	
☐ SINGLE	TOTAL NUMBER_____	RENT/HOUSE PAYMENT	_____
☐ MARRIED	LIST NAMES, AGES AND	FOOD/CLOTHING	_____
☐ WIDOWED	RELATIONSHIP TO YOU	UTILITIES	_____
☐ SEPARATED/DIVORCED	_____	ALIMONY/MAINTENANCE	_____
	_____	CHILD SUPPORT	_____
	_____	INSTALLMENT PAYMENTS	_____
	_____	OTHER PAYMENTS	_____
		TOTAL PAYMENTS	0.00

I certify under the penalty of perjury that the foregoing is true and correct. By signing below, I authorize the STATE OF KANSAS to verify my past and present employment earnings, records, bank accounts, stock holdings, and any other asset balances that are needed to process this affidavit with the district court. I further authorize the STATE OF KANSAS to order a consumer credit report and verify other credit information, including past and present mortgage and landlord references. Executed this_____ day of_____, 20_____.

_____
SIGNATURE OF APPLICANT

FOR JUDGE'S USE ONLY

DETERMINATION OF ELIGIBILITY – K.A.R. 105-4-1(b): "An eligible indigent defendant is a person whose combined household income and liquid assets equal less than the sum of the defendant's reasonable and necessary living expenses plus the anticipated cost of private legal representation."

Estimate of anticipated cost of private legal representation:_____ Applicable poverty guideline level: _____

☐ APPOINTMENT DENIED

☐ PUBLIC DEFENDER APPOINTED

☐ _____ ATTORNEY APPOINTED

TO BE COLLECTED PURSUANT TO K.S.A. 22-4529:

☐ APPLICATION FEE OF $50 effective 5/1/03

☐ APPLICATION FEE OF $100 effective 7/1/04

☐ PARTIALLY INDIGENT, ABLE TO PAY $_____

_____
Judge

2004 Poverty Guidelines for the 48 Contiguous States & the District of Columbia

Size of family unit	Poverty Guideline
1	$ 9,310
2	$ 12,490
3	$ 15,670
4	$ 18,850
5	$ 22,030

For family units with more than 5 members, add $3,180 for each additional member

Guidelines for estimated cost of private legal representation:

Severity level	Nondrug Cost	Drug Cost
Off-Grid	$6,000	
1	$7,158	$3,060
2	$5,168	$4,334
3	$4,542	$3,368
4	$2,340	$2,324
5	$2,964	
6	$4,330	
7	$2,524	
8	$2,140	
9	$1,754	
10	$2,640	

REV 6/04