IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY JAMES McVEIGH and TERRY LYNN NICHOLS,

Defendants.

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REPORTER'S TRANSCRIPT
(HEARING ON MEDIA OBJECTIONS TO SEALING)

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Proceedings before the HONORABLE RICHARD P. MATSCH, Judge, United States District Court for the District of Colorado, commencing at 9:00 a.m., on the 3d day of January, 1997, in Courtroom C-203, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription Produced via Computer by Paul Zuckerman, 1929 Stout Street, P.O. Box 3563, Denver, Colorado, 80294, (303) 629-9285

APPEARANCES

JOSEPH H. HARTZLER, SEAN CONNELLY, and BETH WILKINSON, Special Attorneys to the U.S. Attorney General, 1961 Stout Street, Suite 1200, Denver, Colorado, 80294, appearing for the plaintiff.

STEPHEN JONES and ROBERT NIGH, JR., Attorneys at Law, Jones, Wyatt & Roberts, 114 East Broadway, Suite 100, Post Office Box 472, Enid, Oklahoma, 73702-0472, and JERALYN MERRITT, 303 East 17th Avenue, Suite 400, Denver, Colorado, 80203, appearing for Defendant McVeigh.

MICHAEL E. TIGAR, REID NEUREITER, and JANE TIGAR, Attorneys at Law, 1120 Lincoln Street, Suite 1308, Denver, Colorado, 80203, appearing for Defendant Nichols.

THOMAS B. KELLEY, Attorney at Law, Faegre & Benson, L.L.P., 2500 Republic Plaza, 370 17th Street, Denver, Colorado, 80202-4004, appearing for the media consortium.

PAUL C. WATLER and RACHEL BOEHM, Attorneys at Law, Jenkens & Gilchrist, 1445 Ross Avenue, Suit 3200, Dallas, Texas, 75202-2799, appearing for the Dallas Morning News.

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PROCEEDINGS

THE COURT: Be seated, please.

We're convened in 96-CR-68, United States against Timothy James McVeigh and Terry Lynn Nichols, for the purpose of hearing objections filed December 19, 1996, by The Dallas Morning News to the sealing of documents and in camera

proceedings ordered in Scheduling Order No. 6. That was joined yesterday by The New York Times filing the same objection; and today the Dallas Morning News filed an additional objection to the sealing of what is called the "Brief of the United States Regarding Co-conspirator Statements."

This -- these objections I consider to be consistent with the opportunity for objections to be filed as provided in the order on media motions entered January 24 of last year.

So we'll take the appearances first for the parties.

MR. HARTZLER: Good morning, your Honor.

THE COURT: Good morning, Mr. Hartzler.

MR. HARTZLER: Joe Hartzler for the United States. I'm joined today by Mr. Sean Connelly and Beth Wilkinson.

You may recall Ms. Wilkinson had surgery yesterday, so I hope you will not call upon her, because she's trying not to speak at all.

THE COURT: All right. I'm glad you're out of the surgical arena and back in this one.

Mr. Jones . . .

MR. JONES: Good morning, your Honor. Stephen Jones on behalf of Mr. McVeigh; and I'm joined by Mr. Nigh and Ms. Merritt.

THE COURT: All right.

Mr. Tigar . . .

MR. TIGAR: Good morning, your Honor. Michael Tigar for Terry Lynn Nichols, joined by Reid Neureiter and Jane Tigar. Mr. Nichols is not here this morning. He has waived his appearance, and in any case we state for the record this is a Rule 43 situation that would not require his presence.

THE COURT: We've previously had a waiver of Mr. McVeigh's appearance; correct?

MR. JONES: Yes, your Honor.

THE COURT: Now for the objectors, Mr. Kelley, I see you're present.

MR. KELLEY: Your Honor, for the media consortium, I'm here primarily to introduce Mr. Watler, who was admitted in the case while it was in an Oklahoma matter, has not been formally admitted here.

I would ask that he be permitted to appear and argue the objections that have been filed.

THE COURT: We'll recognize him and also a colleague from the same office. Ms. Boehm, is it?

MR. KELLEY: Rachel Boehm, your Honor.

And I'd state for the record that the consortium does

object to the closure of these proceedings. We made an objection in open court during the last open court proceeding in November which your Honor overruled, and I don't want it to appear that the other media covering this trial aren't just as interested as The Dallas Morning News and New York Times in these closure issues. I have been contacted by the Denver Post, CBS, and others are attempting to contact me to see if it's necessary for them for file separate objections and --

THE COURT: Well, I hope you don't have a pager or something that's going to go off, or a cell phone.

MR. KELLEY: Absolutely not; and in a few minutes I'll just act like Ms. Wilkinson, or I'll try.

THE COURT: All right.

MR. KELLEY: But your Honor, please understand that we

are dealing with what we understand to be some decisions or at least information being provided by the Court for purposes of decisions and wish to be on the record as objecting. And with that, I'm sure your Honor is tired of hearing from me on these issues; and I'll let the Court listen to a different voice.

THE COURT: All right. Have -- I assume that counsel for the papers has received the memorandum --

MR. WATLER: We have, your Honor.

THE COURT: -- from Mr. Tigar --

MR. WATLER: Yes, your Honor.

THE COURT: -- on behalf of Mr. Nichols.

I have a couple of comments to make before I hear from Counsel, because I've reviewed Scheduling Order No. 6 of November 22, 1996, and also the order that I earlier referred to on media motions which set out what I have established as the criteria for closure or sealing of documents and the five

But in reviewing the scheduling order, it's not, I think, as clear as I wish it had been; and perhaps some of the objections may be rooted in some uncertainty about what the Court intends with respect to further proceedings and what indeed is the nature of our meetings next week. And if you have a copy of that scheduling order, in the order part that

submitting to counsel for Defendant McVeigh materials related to proof of identification and the objections and the hearing, if necessary: Now, if a hearing on that is necessary, it will be in open court. It's not intended that the hearing be closed.

The second item, deposition, is not a matter, I think, that's in dispute. It's a discovery-type deposition.

The third item relates to this proffer of statements

under 801(d)(2)(E) of the Federal Rules of Evidence; and this is, as I understand it, the subject of the objection filed this morning. But I want to clarify my intention with respect to that as well.

I directed that the proffer be filed so that there could be an evaluation of whether it will be necessary to hold a James hearing, "James hearing" as it's called in this circuit because of the James case in this circuit, before trial to determine whether statements are presumably going to be admissible under the provision regarding co-conspirator evidence or testimony.

Now, the proffer itself, it seems to me, is an appropriate matter to be sealed. If there were to be a James hearing, if there is to be a James hearing, that would be open because that's a part of the adjudicative process.

The fourth item that's listed, the review of -- well, that sets the meeting for January 7 and establishes that I wish to meet with counsel to review jury selection procedures, the proffer already referred to, to discuss whether there are going to be any fact stipulations and whether there will be motions to suppress some testimony that may be offered by deposition. With respect to the latter, a hearing on that issue, I would anticipate, would be in the open; but Mr. Tigar has indicated an objection to that in his papers filed in opposition to these objections.

Then what I'm doing is attempting to draw the distinction here that is not explicit in the Scheduling Order No. 6 between adjudicative hearings and these preliminary planning phases.

Now, the witness and exhibit lists -- I don't know if that -- well, I guess that is objected to; but the statute dealing with capital offense here requires the delivery of lists of witnesses three days before trial to the defendant. There is no provision in the statute of which I'm aware that requires that to be filed in court in a public record; and the same is true with the exhibit lists.

The seventh item as to whether there will be hearings necessary on forensic testimony, opinion testimony, referred to usually as "expert testimony": Here again, the discussion of that and the filings made or to be made are preliminary; and if there are hearings with respect to the forensics, those hearings are expected to be in open court.

And of course, the trial proceedings to begin March 31 will be in open court.

Now, in my view, the sessions to be held next week scheduled thus far to be in camera by way of being in chambers and non public is that these are really trial planning conferences; and I would remind the objectors that Rule 17.1 of the Federal Rules of Criminal Procedure provides for a pretrial conference. The rule says that the court either on motion or on its own initiative may hold one or more conferences to consider such matters as will promote a fair and expeditious trial, and that's exactly what I'm attempting to do.

One of the aspects of this is that I'm trying to, with

the help of counsel, get certain matters out of the way so that trial itself is not going to be delayed by interruptions with

side bar conferences or in chambers or, as sometimes called, "robing room motion hearings." And of course, there a is considerable amount of law that supports side bar conferences and conferences in chambers in the course of trial on matters that are non-public; and essentially what we're anticipating doing next week is very much along that line.

Additionally, these sealings, sealed papers filed thus far have included a considerable amount of discovery material; and in part, there is a reliance on a provision of 16(d)(1) in the discovery rules, which provide that the court may permit a party to make a showing for protective and modifying orders under discovery in camera by the submission of a written statement to be inspected by the judge alone. That even contemplates not only in camera but ex parte.

And under Rule 26.2(c), there is the same kind of provision for in camera and indeed ex parte submission of a statement -- witness statements, where there are redactions, for the court to review redactions. And that's also consistent with Section 3500 of Title 18 United States Code; and indeed, there are a number of case authorities for the Court actually requiring the court to consider in camera matters where there is a dispute as to whether a particular record or report or notation constitutes a statement under the act and the rule.

And I can simply advise publicly that within this material that has been sealed under this scheduling order, there are some things that I think come under that category.

So I make these observations simply to assist in understanding of the objectors as to what's sealed and what I anticipate doing next week.

And of course, one of the things that I mentioned in the order a year ago, the order on media motions, was the timing as an aspect of disclosure, as the law clearly indicates, so that some of the things that are now sealed will

With that, I'll call on Mr. Watler or whoever is going to speak in support of these objections.

Mr. Watler?

MR. WATLER: Thank you, your Honor.

Thank you. Good morning.

THE COURT: Good morning.

MR. WATLER: I do appreciate the Court's comments, and I think they are very useful in narrowing the focus of what needs to be dealt with from our perspective this morning, your Honor.

I agree with the Court: I think there was some ambiguity and some uncertainty.

THE COURT: I take responsibility for that. It was a pretty concise order.

MR. WATLER: And I appreciate that; but there was some question of whether or not there was going to be some adjudication, if you will, in chambers. And I think we certainly agree with what the Court observed, as I was listening to your comments just moment ago, that I think the basic line-drawing has to be and must be at the point between simply conferences between counsel that are aimed at efficient trial administration, and so forth, as the Court indicated, and the actual determination of issues that may affect the substantive rights of the parties, whether it's the Government or the defendants.

And I think clearly as to those type of proceedings,

the case law is clear that if there is going to be any kind of substantive determination/adjudication, the First Amendment right of access attaches, and all the analysis that goes with it has to be carried through in order to justify closure.

As I followed the Court in your comments, it appears that the only category that would apparently remain of whether or not there should be any closed in camera proceedings that may fall in that category would be the motion to suppress deposition testimony; and as the Court noted, apparently counsel for Defendant Nichols, at least, believes such a proceeding should not be in court.

So I had really prepared my comments to more globally address these things; but I will try to focus on that particular issue, which I believe appears to be the main outstanding one, if you will.

THE COURT: And I might say in a little additional self-justification that I did not forget about the procedure that I established in the order a year ago that said if any hearing in the sense that we're now discussing is to be sealed, it has to be posted and an opportunity for objections for three days and all that sort of thing. And I didn't follow that procedure, because as I have now better explained, I hadn't intended to use Scheduling Order No. 6 as an order closing hearings.

MR. WATLER: Well, your Honor, I don't know if it may be premature. I mean, perhaps the Court contemplates this; but before there was a closed hearing on motions to suppress, for instance, that the Court would have notice --

THE COURT: I would, yes. And what I intend to do

with respect to this deposition that's shown as sealed -- the objections to it and so forth -- is to determine whether it's really necessary to hold a hearing.

MR. WATLER: Your Honor, it may be premature; and if the Court deems it so, obviously maybe this should be saved for another day, except I would point out we are here today and prepared to address that. If the parties consent to it being

heard now, I certainly think it might be more efficient to proceed.

THE COURT: Go ahead. I have no problem with that. I may not rule on it today, but I'll take your views.

MR. WATLER: Your Honor, basically, I mean, we're talking about a motion to suppress deposition testimony. Clearly the U.S. Supreme Court --

THE COURT: Now, this, I'll make clear: This particular deposition testimony is, as I understand it, intended to be offered at trial.

MR. WATLER: Correct.

THE COURT: This is trial testimony, as compared with the discovery that I mentioned in the scheduling order.

MR. WATLER: All right. All the more so, I believe, given the fact that it's intended to be offered for trial in its determination of whether or not evidence will come into evidence at trial. I think it clearly falls within the classical suppression hearing which the U.S. Supreme Court has held in the Waller vs. Georgia case to be the type of hearing that the First Amendment right of access attaches to. The Waller case, as the Court probably knows, is a 1984 or '85 decision that fell right in the midst of this line of U.S. Supreme Court cases dealing with the right of access.

That particular case dealt with the defendants' asserted right of -- to public trial, but it did concern a

suppression hearing, importantly. And of course, the court held that a suppression hearing was part of the Sixth Amendment right to a public trial.

There is no case law that I'm aware of, your Honor -- and we did look for some specifically dealing with motions to suppress deposition testimony; but I think in form and function, it's identical to any other type of motion to suppress. And we think Waller vs. Georgia indicates that the First Amendment right of access attaches to it.

So essentially, that takes us past, at least in my view, the first two prongs of the test that both this court has identified and the Press Enterprise case sets out: That's the so-called "test of experience and logic."

We next move on, your Honor, to whether or not in light of the fact that it's a qualified right of access -- First Amendment right of access is qualified, which means it certainly can be overcome in certain instances. And what the U.S. Supreme Court has said and this court has recognized is it can be overcome if there is a countervailing interest of the highest order.

Certainly a defendant's' fair trial rights are such a countervailing interest, and the case law well recognizes that. The case law is also well developed that where the right to a fair trial is the interest asserted to justify closure that there is a few more prongs of the test that have to be

followed. And that's the substantial probabilities standard. There has to be showing of substantial -- of a substantial probability of prejudice flowing from the closed proceeding that closure would prevent. And I think there are several aspects of that that bear examining here in this context.

One is, as the Court alluded to in its comments, Defendant Nichols has submitted a packet of 11 articles, I believe, that have been published basically over the last three or four months, published here in the Denver area or available in the Denver area; and to my understanding, those are offered to show that there is prejudicial adverse publicity that has been associated with this case.

THE COURT: That's my understanding of the offer, yeah.

MR. WATLER: Your Honor, without delving into any great detail about those articles, my own view of them is that they are very representative of balanced, responsible, nonpartisan, non-inflammatory journalism; but even if they reasonably could be viewed as prejudicing any of the fair trial rights of the defendants, that -- the test does not stop there. It's not, in fact, whether or not there has been prior previous adverse publicity or prejudicial publicity. And at most those are offered for some evidence that there has been such publicity on prior occasions.

The test is is there going to be publicity flowing out

of the particular consideration -- particular issue under consideration, the particular proceeding sought to be closed. And we think not. We think that -- my understanding -- and I may be mistaken on the content of the motion to suppress that

deals with the deposition of Agent Whitehurst, and the Court may correct --

THE COURT: Actually, it doesn't. It's another witness. I don't know if Agent Whitehurst is a witness; but the person whose deposition is at issue here, the deposition was taken as a testimonial and it's not Whitehurst.

MR. WATLER: Your Honor, trying to read between the lines, if you will --

THE COURT: I'm not going to have a 20 Questions exercise here.

MR. WATLER: That's not my purpose; but I'll simply say that my reading of the Scheduling Order 6 led me to the inference, at least, that that might be the subject of it; but what is required, your Honor, is a showing that something that would transpire in a proceeding will result in prejudicial

that.

I think obviously the record offered by Defendant Nichols shows -- no one disputes this -- that this case has been extensively covered by the media; that many, many aspects have been reported by the media. It's difficult to see how

some incremental additional amount of publicity is suddenly going to tip the balance over to there being a finding of

defendants' fair trial rights.

And I would point the Court to that consideration in large measure.

There also -- the other aspect of that substantial probability test requires not only that there is a substantial probability of prejudice but a showing that closure will prevent that; that closing the proceedings will prevent that.

And once again, I would point to the record that

Defendant Nichols has submitted to you. The Court needs no explanation here or detailed recital here. The Court has taken many steps towards closure. There is many pleadings have been sealed, and so forth; and that's well known and well documented.

Despite that closure that has already taken place, you have the reporting that the defendants submit or Defendant Nichols submits claimed to be prejudicial. I think their own submission shows that closure is not going to be effective; that you have -- you have media -- news media who are quite interested in these proceedings, who are enterprising, who are thorough; and in fact when -- I think there is a tendency when proceedings are closed to send them to find less reliable sources and less verifiable sources of information. So I think

to some extent you have the phenomenon of creating or encouraging the creation of the very thing that the Court is trying to prevent, and that is unreliable reporting, information that may be inflammatory; that may not be reliable; that may not ever even come into evidence. And I think that is more likely to occur and not less likely to occur by closing proceedings of this kind.

Finally, even if all these tests that we've been talking about up to point are deemed to favor closure, there is still one final measure that has to be dealt with; and that is whether there are reasonable alternatives to closure, and I think clearly there are here.

The first and foremost of those, as the case law recognizes, is voir dire. In conjunction with that point, I would also point to part of the submission by Defendant Nichols, which was a news report of a public opinion poll that

shows that in this venue that half of those surveyed in this public opinion poll had reached no determination in their own minds of guilt or innocence, which means there must be several hundred thousand people in this area who have an open mind as to the defendants' guilt or innocence.

18 are needed to serve as jurors, 12 jurors and 6 alternates. I think voir dire, particularly with skilled advocates, as the Court has the benefit of before it, and of course the Court's own long experience at the bench is a very

effective remedy to root out and make sure that any prejudicial pretrial publicity does not influence any person who is chosen as a juror in this case or as an alternate. It's very efficacious; and I think it's certainly available, and there is no showing that it would not be so. In fact, there is really no attempt to make that showing here, as I understand it, on the part of the Defendant Nichols.

Other alternatives would also include admonitions to jurors once they are seated to decide the case only on the evidence. And I think there is both empirical and case law support that jurors do follow those admonitions. Jurors do take very seriously your Honor's instructions when they're given from the bench under the authority of the United States, and I think there is obviously here no showing that they would not do so here.

In sum, your Honor, as far as any hearing on the motion to suppress deposition testimony, we think clearly the public right of access would attach to that. We think there is not sufficient showing to overcome that right of access, and we would urge the Court to hold any such hearing in open court.

A few more comments. Perhaps there are not too many items, I don't think, outstanding, given the Court's comments.

One thing I would point out, your Honor: The Court referred to the hearings next week, or the chambers conferences next week are aimed at trying to eliminate the necessity for

side bars and mid-trial disruptions and delays. And a couple of comments here, your Honor: One is I think there is perhaps not explicitly recognized but there are certainly very salutary benefits of having side bars in mid trial, rather than as stand-alone procedures. And those are the fact that they occur mid trial; that those persons in attendance among the public and the press have some context for what is occurring in chambers.

Obviously, the Court has provided a great deal of that today with it its comments that we didn't have before; but when a mid-trial bench conference or chambers conference occurs, the public has some understanding of the context in which it is occurring in. It has -- it can judge the duration of it, because typically the Court will convene into chambers and reconvene into open court, and the members of the public can judge who the participants are.

All that is lacking. All those salutary benefits of mid-trial bench conferences or chambers conferences are lacking. And I think that to the extent that you're looking at a tradition that bench conferences or robing room conferences may take place without regard to rights of access, I think it has to be born in mind that's the tradition. The tradition is that the public have that context and have those salutary benefits. And I think that is denied when there is just essentially a stand-alone proceeding that no one really knows

what's -- can have a context of what's going on or how long it's lasting or who the participants are.

Obviously, the Court is quite appropriately concerned with having expeditious proceedings and well ordered proceedings, and that is certainly a very appropriate goal. However, that is -- when it comes to consideration of the right of access, that cannot be the only consideration.

There also has to be consideration clearly of the First Amendment rights; and the mere fact that it will expedite proceedings, I think, standing alone, does not suffice. In fact, the test itself, as we just reviewed it, does not really determine or take into account whether or not the goal is to expedite proceedings.

Your Honor, frankly, we had considered that we would file objections at the time that any exhibit lists are submitted it the Court, whether there are fact witnesses or expert witnesses. We're certainly prepared if the Court wants to hear us on that today; but we, from our own viewpoint, didn't necessarily consider our objection to Scheduling Order 6 to be specifically speaking to witness lists.

We do believe that there is a right of access to witness lists by virtue of the tradition that such lists are usually available for public inspection. There is no showing that they're not, and we would primarily rely on that and pretty much the same as far as any expert witness lists.

Essentially, that's my comments. I'd be happy to

address any questions the Court may have.

THE COURT: No. I understand your position. I'll hear from the parties.

MR. WATLER: Thank you.

THE COURT: For the Government, Mr. Connelly?

MR. CONNELLY: Good morning, your Honor.

THE COURT: Good morning.

PLAINTIFF'S ARGUMENT

MR. CONNELLY: As Justice Department attorneys, we're required by Federal Regulation 28 C.F.R. Section 50.9 to oppose the closure of any judicial proceedings. There is an important exception to that, however, and it's consistent with this court's planning vs. adjudication exception; and that is we do not have to oppose and consent to closure of conferences traditionally held at the bench or in chambers. And I think this court's description of planning-type conferences fall comfortably within that; for example, discussions about fact stipulations or general jury selection procedure or scheduling, even with respect to suppression hearings or any other type hearings.

For example, as the Court held the trial scheduling conference, I think those are matters traditionally held in conference; and there is no presumptive right of public access under this court's media motions opinion back a year ago today

or a year ago this month, I think. It doesn't satisfy the first test: Has that type of proceeding traditionally been open to the public? So we're very comfortable with this court's decision to hold planning-type conferences in chambers and not in public.

I think, though, as the Court has recognized, there is

an important distinction for adjudication-type conferences; and I think we would agree with the media this that motions to suppress under Waller and under Press Enterprise II are precisely the type of hearing that is presumptively open to the public and that there is a qualified First Amendment right of attendance. And we would support holding all those type hearings in the open; and in fact, we'd go a little further, I think, than that and say that motions to suppress are presumptively public.

These motions are the type of motions that precisely challenge the Government's conduct, so they're not motions that by design are intended to put the Government in a good light. By definition, every motion to suppress alleges some Government misconduct. That's true with respect to the deposition-type motion that's been filed. That's true with respect to, I presume, the eyewitness identification motions. Mr. Nichols filed a motion to suppress eyewitness identification testimony that was filed publicly. We believe that was appropriate, and we believe our response to that motion and to the forthcoming

motions by Mr. McVeigh should also be in public.

So I think the authority for that, or one line of authority for that, is The New York Times case, 828 F.2d 110, which involved a prosecution of Mario Biaggi and Meade Esposito. In that case, Judge Weinstein decided a motion to suppress Title III evidence without a hearing. Judge Weinstein found that the motion was to be decided on the papers; there was no need for an evidentiary type hearing, and therefore ordered that the papers themselves remain under seal,

particularly as they involved Title III type materials. The Second Circuit reversed that and said there is a presumptive public right of access to motions papers as well as the actual hearings themselves and in that case especially, because there was no hearing held; that there was the public right to know what the allegations were and what the court's rulings were and to evaluate that.

So we would submit that motions to suppress as well as the hearings themselves should be out in the open, and we would therefore seek the unsealing of the motion to suppress the deposition testimony and our response to that motion. And we would also support filing of the motions to suppress eyewitness testimony in public, so that not only the hearing will be held in public but also the motions papers, because that's the type of filing --

THE COURT: It's identification witnesses, isn't it?

MR. CONNELLY: Identification witnesses, right. Your Honor, that's right. They are not eye witnesses; they're people that would identify one defendant or the other. We expect that motions to suppress those identifications will be filed in the coming week; and Mr. Nichols in fact has already filed his, and as we say, appropriately so, we believe, in public. So that is the type of adjudicatory motions and hearings we believe should be held in public.

I think the closest case really is the proffer filed by the Government with respect to co-conspirator statements. I think since that is not directly seeking an adjudicatory proceeding. there is an argument that that can remain sealed.

I think it's a little bit of a close case, with all candor.

There is a case of the Third Circuit, United States vs. Smith, 776 F.2d, which held that a bill of particulars is presumptively open and in public; and I think --

THE COURT: Well, I wouldn't quarrel with that. That's almost like an amendment to the indictment.

MR. CONNELLY: Well in that case, the district court had sealed it, saying that it named eight -- I believe it was eight unindicted co-conspirators and was as a predicate in that case for supporting the co-conspirator hearsay exception. And the court -- district court found that it would possibly tarnish the reputation of these eight unindicted co-conspirators and sealed it for that reason. The court of

appeals confirmed that and said that is the type of document that is presumptively open and public. There is something of a gray area there; but I think it is different in kind from motions to suppress, which we believe the papers and hearing should presumptively be open. We have filed those papers and otherwise our response under seal, because that's the Court's directive; but it's not that we are seeking to maintain them under seal. In fact, quite the contrary.

THE COURT: All right. Thank you.

MR. CONNELLY: Thank you your Honor.

THE COURT: Mr. Jones . . .

MR. JONES: May it please the Court.

THE COURT: Counsel.

DEFENDANT MCVEIGH'S ARGUMENT

MR. JONES: We have agreement with the position of the Government in some respects and with Mr. Tigar's position. I think it perhaps might be best for me first to state

specifically with respect to the issues before the Court this morning what our position is; and then with the Court's indulgence, I would like very briefly to discuss how this problem might be resolved in the future, or at least enhance the possibility of resolving it.

I agree with Mr. Connelly that the motion to suppress the deposition testimony should be unsealed. There are serious allegations made there on the papers of government influence of

a witness and government misconduct by withholding exculpatory evidence from a defendant. It seems to me that those are precisely the type of allegations and evidence to support them that should be in the public domain, along with, of course, the Government's response; so to that extent, we agree.

With respect to the motions relating to suppression of identification testimony, I likewise agree with Mr. Connelly that our motions and the Government's response should be made public. And of course, we're all in agreement that if there are any hearings on either one of those two matters, those should be public.

With respect to the Government's statement and proffer of the co-conspirator statement, we agree with the Court's position that those papers are first to be sealed involving, as they do, discovery materials but that any hearing on the matter, specifically the James hearing, if the Court decides to conduct one, should be public.

But I want to come back and address the issue of the brief in a moment. With respect to the matters concerning the jury selection issue and the proposed stipulations, it seems clear to me that those are management issues -- excuse me --

involving necessary conferences between the Court and Counsel and that they clearly fall within the discretion of the Court to seal and close those proceedings with, of course, the understanding that any proposed stipulations that are finally

agreed to become a matter of the public record because they are in effect evidence in the case. And the Court undoubtedly will enter the appropriate orders which would be public concerning some of, if not the entire, jury selection process. And even if the Court didn't enter a specific order, the matter in which it has been resolved, such as voir dire of the jury by counsel, would of course become obvious at the time of trial.

Mr. Tigar listed that there was one other matter that might come up at the hearing on the 7th, 8th and 9th, and that was the discovery matters concerning our motions with respect to national intelligence data. And I'm using that in a generic sense; and as the Court has previously indicated, there are some statutes and case law that specifically authorize ex parte and in camera or in camera proceedings, and clearly those matters are one that fall within that category. That is our position with respect to the specific matters that are before the Court on the 7th, 8th and 9th.

Having said that, however, I would like to bring to the Court's attention our concern that there is too much, if I could use the word, if there is such a word, "routinization" of filing sealed documents in this case. A couple of weeks ago, the Government filed a motion in limine concerning a certain procedure that it asked the Court to consider concerning identification of the deceased. That was filed under seal.

I reread it last night, and I can't imagine any

conceivable circumstance that would justify the filing of that particular document under seal.

THE COURT: Well, as I advised you earlier on December 19, I considered it in the nature of an offer to stipulate.

MR. JONES: Well, I thought from the way I read it that they had moved beyond that and were asking the Court under, I think, Rule 104 to adopt that particular procedure.

The only thing that I saw specifically attached to it was my letter to them, which, of course, that could have been sealed, although I didn't have any objection to it being made public. But the r,sum, of the witness -- the witness is well known; and certainly there was no discovery material inside the motion itself. And I understand that probably what is happening here is that counsel -- and that includes ourselves -- are erring on the side of caution. In other words, it's best first to file it under seal; and if the Court then decides it shouldn't be filed under seal, it can always be unsealed.

We've had one or two things, occasions --

THE COURT: It should be filed with a motion to seal and sealed until the motion is ruled on. That, I think, is the procedure established by the media order.

MR. JONES: I believe that's correct, your Honor.

With respect to the right of the media -- and

recognizing, of course, that the -- they do represent with rare exceptions a commercial enterprise, or at least designed to be

a commercial enterprise, and recognizing also that as The New York Times recently wrote in a front page story, there is intense media competition in the Denver market, certainly among the newspapers and, we all know, among the television stations and recognizing further, to be realistic, that the media increases its audience by the creation of controversy and tension, nevertheless, as Justice Douglas said one time, "It is, after all, the First Amendment"; and it was part of the great bargain made in 1789 to secure the ratification of the Constitution that the Bill of Rights would be passed limiting the powers of the Federal Government.

statement that life is not fair; that sometimes events occur which make us unhappy, and trying to mesh all of that into some balance, as I know the Court has done, I would like to suggest two or three possibilities that the Court might at least consider and also Counsel could consider. There was a period of time in this case, your Honor, when we filed matters under

record. And we did that on some of the very types of motions that are involved here. And it seems to me that that is at least a start in the right direction to satisfy some of the very legitimate interests of the media and the press which the

First Amendment serves.

The other possibility that the Court could consider in addition to ordering the redacted versions is that on

Government's submission to the Court concerning the 801 issue and the co-conspirators was egregiously out of balance; and Mr. Nigh will address some of that in his motion. But some of the very witnesses cited for certain propositions also made statements to the FBI that directly take away the representation made by the Government in its papers.

The problem with filing those in the public is this: He who wins the race first -- that is to say, he who files first -- can reasonably count on commanding a fair amount of public attention in this case, which translates into what people read or see and form opinions on, and the reply is on page 6. And that's just a reality of life.

Now, the Court could minimize that to the extent that the Court is even concerned about it by requiring that those types of documents be filed under seal; but then the Court could release them, if the Court decides they should be released, simultaneously, so that when they become available, both the Government's position, if it's the Government that filed first, and our position and Mr. Tigar's position, if he's there, are made available at the same time, which in itself works to achieve some type of balance in what is being

presented.

I do agree with the Dallas -- Dallas Morning News counsel concerning the interpretation that could be made of the survey, which I believe was the Rocky Mountain News survey concerning the number of people that didn't have opinions in this case. But I --

MR. NEUREITER: Article 2.

MR. JONES: Article 2. Thank you.

But I would point out that the way the question was written, which they responded to, was, question: "Based on what you have read, heard, and seen about the Oklahoma City bombing, do you think Timothy McVeigh," and then later they have Terry Nichols, "is guilty or not guilty?"

Well, of course, that's our precise point: that they

are making this opinion based on what they have read, heard, and seen; and yet no evidence has been introduced in this case on the question of guilt or innocence, and the trial hasn't even started. But already 50 percent of the people have an opinion that our client is guilty and a slightly less percent have the opinion that Mr. Nichols is guilty.

It is true that those matters can be addressed at trial in the usual case by the very means suggested. But we cannot try this case indefinitely, and so to the extent we can take cautionary steps now and the old theory that an ounce of prevention is worth a pound of cure, then we assure the

integrity of the fact-finding process.

Finally, having said all of that, I do want to bring to the Court's attention that it is very disturbing to me, deeply disturbing -- and these matters have been addressed before -- that the Court has entered two orders, a protective order concerning discovery material and other material and has also entered an order concerning extra-judicial statements. And the Court denied Mr. McVeigh's right -- and I'm putting quotations around the word "right," since the Court in its sound discretion said he didn't have a right to have a media interview. And yet even though discovery materials cannot be filed in the public record, one of the Government's experts in this case wrote an article -- and the Court is probably familiar with the one that I'm talking about -- which appeared in a recent publication specifically discussing evidence in this case, specifically discounting defense theories, and explaining why those theories are not valid under scientific principles.

Now, it's a little difficult for me to understand why

this particular magazine, which I will admit is a scholarly magazine but nevertheless is available at most large book stores, can run a Government's expert's version of the evidence but these ladies and gentlemen behind me and others that are not here are not.

And in addition to that, another Government expert who

was initially listed as a witness and taken off and another witness from the same company put on, has been going around the country giving public workshops on the very issue that she was going to testify to in this proceeding. Specifically on September 4, 1955; September 27 -- I'm sorry -- September 25, 1995; November 4 through the 9 of 1995, and November 11, 1995.

In addition, there is a motion pending before the Court that we be given, the report from this company and we were told that there is no report. Well, there most certainly is. It's on the internet. And along with some rather interesting graphs and conclusions.

THE COURT: Well, Mr. Jones, I'm not here to hear a motion that there is a violation of the extra-judicial statements order.

MR. JONES: I understand that.

THE COURT: If there is, you can file one.

MR. JONES: I am; but I would ask the Court to consider, so that there is no question about it, although I think it is clear that the extra judicial statement order applies to witnesses and experts in this case. And my point is that -- and the reason I think that it is relevant to consider on this issue is that we don't have a blanket prohibition here. Matters come out, and what we have to achieve is some type of

balance so that the integrity of the fact-finding process is preserved. And when there are those types of disclosures about

matters that go to the heart of a case, it's difficult to argue and sustain the position that other matters cannot also be released; and that's my concern, your Honor.

THE COURT: All right. Thank you.

Mr. Tigar?

All right, Mr. Neureiter.

MR. NEUREITER: Good morning, your Honor.

THE COURT: Good morning.

DEFENDANT NICHOLS' ARGUMENT

MR. NEUREITER: As a matter of clarification, your Honor, with the two documents that we filed with the Court late last night, the certificate of service says they were served by hand or by fax or by first class mail. We decided after that had been created that it would be better and fairer to serve it by hand, so that's what we did.

THE COURT: All right.

MR. NEUREITER: So the certificate is inaccurate.

The packet of newspaper articles, I did want to bring to the Court's attention, because we felt we needed for the record to show with just selecting a few of the literally hundreds of articles that have been published in the Denver trial venue that there truly is the substantial probability that the defendant's right to a fair trial before a fair jury will be prejudiced by this publicity. And Article 2 shows that, as Mr. Jones referred to the infamous poll, where nearly

half of Denver citizens thought that Mr. McVeigh and a little bit less than half thought that Mr. Nichols were guilty. And that was published in September. As we approach trial, more articles will be coming out, making it more difficult to obtain a fair jury at the voir dire.

One other article I wanted to bring to the Court's attention is Article 8, a Denver Post full-page -- six-page special insert which was advertised for the full week beforehand that is entitled, "Who Bombed the Murrah Building?" It has a large graphic that looks like somebody wearing a face mask from the "Texas Chainsaw Massacre" and details at length what the Denver Post purports to be evidence in the case. I don't need to go into the number of factual errors in that article; but it's enough to say that there have been significant leaks of information in other articles in this packet, discovery material, and there truly is in this extraordinary case a threat to the defendants' fair trial rights.

THE COURT: Well, of course, since we're having separate trials, there will be a good deal of information. There will be the trial testimony in the public venue before your client's trial begins; and to get to the specifics that are in issue here this morning, now that we've narrowed it down a bit with respect to the motion to suppress this testimonial deposition, both the Government and Mr. McVeigh's counsel agree

to unseal that. Do you oppose that?

MR. NEUREITER: Yes, your Honor. Your Honor, I want to clarify two points there: Mr. Woods represented to the Court that we would not be joining in that motion. Over the

delivered to us by the Government, much of it on Christmas Eve, when our office was closed. Review of that material has led counsel to reevaluate our position in joining that motion to suppress, so we may well be -- and Professor Tigar indicates that we will be -- filing motion joining that motion to suppress; so I wanted to alert the Court to that.

MR. NEUREITER: The motion itself, your Honor, I think there are portions of it which discuss discovery material and much like the motion to suppress was dealt with earlier in this case.

There was a public hearing, but the motion that was filed had specific redactions of sensitive discovery material.

Mr. Kelley objected to that; and your Honor said no, that was, with respect to the exhibits and the motion -- that was a proffer to me in order to show that they're entitled to a hearing. And the hearing was held in public, and all the

publicize sensitive discovery material which wasn't necessary

to the determination of the cause.

THE COURT: Yes, I'm aware of all that.

MR. NEUREITER: For that reason, a wholesale unsealing of material that includes discovery material would continue to generate more prejudicial articles.

With respect to the hearing, in our memorandum we

recognizing the extraordinary nature of this case, could seal if it chose; however, we are not hard and fast on that. That hearing, if the Court desires, could be made public. We only ask that there be steps taken and that all counsel be directed not to discuss the facts of the testimony unless it is absolutely necessary to the Court's consideration. And in some

agent's notes of Mr. Nichols' statement that even though it was necessary to the Court's determination and was entered into evidence --

THE COURT: Well, I'm talking about this deposition motion.

MR. NEUREITER: Yes, your Honor.

THE COURT: And I want you to focus on that: Why is that -- why should that remain under seal when Mr. McVeigh, who has a greater interest in that, as I read it, than you, although you may join it, certainly --

MR. NEUREITER: Yes, your Honor.

THE COURT: -- because it does affect the case of Nichols, agrees that it should be now unsealed? Why do you oppose that?

MR. NEUREITER: Your Honor, because we believe there is one particular factual statement in there which relates to our client, which, if publicized unnecessarily, would generate pretrial publicity and lead to more people in Denver believing our client guilty without us having an adequate opportunity to rebut that evidence.

THE COURT: In view of the fact that there will be a whole trial before your client comes to trial, it's not very persuasive.

MR. NEUREITER: Yes, your Honor. I might also add that merely the fact that Mr. Jones has elected to take a certain position with respect to media disclosures does not necessarily mean that our client's interests correspond.

THE COURT: Well, I'm not suggesting that. That's why there are separate counsel and that's why there are separate trials.

MR. NEUREITER: Yes, your Honor.

I think our position with respect to many of the other issues is adequately reflected.

THE COURT: You don't object to the identification issues because indeed your position on that was filed unsealed.

MR. NEUREITER: That's correct, your Honor. And a

careful review of that will indicate that no discovery material, I believe, was revealed in that pleading, although counsel, if they disagree, can correct me. We tried to make an effort not to -- not to put anything into the public record that would prejudice the rights of any parties.

I would like to address some of the arguments raised by the media, because they may affect both this court's consideration of the present motions and future motions that they may file to unseal materials.

We recognize that adjudicative procedures are different, but the media has suggested that an incremental amount of publicity with respect to additional discovery will be like a drop of water in the sea and won't make that much difference.

That is an argument that this court has already rejected when it decided not to permit Mr. McVeigh to speak to the media. It's essentially a "so much bad stuff has come out already, we can't do anymore harm." The Supreme Court in Estes vs. Texas, in Sherard vs. Maxwell, has directed trial courts not to take that approach and to continue to make every effort to ensure the defendant's fair trial rights are preserved.

Second, they argue that, well, we're so good at our jobs and we are so effective as journalists in getting leaks of

material that it's better to hold it all out in public anyway because then we'll be more accurate.

Well, this -- the revelation of leaked material, leaked discovery material, is a violation of this court's order; and we expect that if leaks are discovered and the leaker is identified that that person would be appropriately dealt with; and so simply because the journalists are good at doing their jobs does not mean that everything should come out into the open.

Finally, with respect to the point raised by counsel for the Government that there is the Second Circuit case New York Times, 828 F.2d 110 -- that case addressed a situation where Judge Weinstein only ruled on the papers, and the papers in their entirety were sealed. The Second Circuit said explicitly in that case where there has been a public hearing, it might be different if certain materials, sensitive materials, are filed under seal, and so if the court decides to hold hearings on these issues, the entirety of the motions need not be made public; that there could be appropriate redactions, which is one of the alternatives the Supreme Court and other courts have said are appropriate when dealing with material of this nature.

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THE COURT: All right. I'll come back to counsel for the movants here; but before doing that, I am going to order that the materials regarding the identification testimony be public. We already have the filing made on behalf of

Mr. Nichols. The filing from Mr. McVeigh will be filed unsealed.

Mr. Tigar?

MR. TIGAR: Your Honor, in that case, may I ask for some guidance from the Court, because given the postponement of the McVeigh filing date, we were going to file additional material. The Government was supposed to make some discovery available to us on the identification. It didn't come in until after the date when we filed.

I have in my hand a draft motion that extensively quotes from the new discovery material the Government has furnished on the eyewitness identification we were challenging. I'm perfectly prepared to file in the public record. I don't have any problem in light of the Court's order, but I want to alert the Court that that's what I will be doing.

Would the Court prefer to see that come in this afternoon with a motion to seal, reciting what I've said, so the Court can look at it, or should I just do it, because there is one person I don't want to anger, and I'm looking at him.

THE COURT: Well, I -- the basic premise here is that it's unsealed. Now, if it relates to discovery material, you know, it depends upon what it is, I suppose.

MR. TIGAR: I will file it with a cover motion, your Honor, so that your Honor can look at it and see if it --

THE COURT: All right. What I think I'll do is

provide an opportunity for the other parties to take a position on it.

MR. TIGAR: Thank you, your Honor.

THE COURT: You should give it to them, of course.

MR. TIGAR: Oh, yes. Of course we would, your Honor, with the normal procedure. I just wanted guidance from the Court in light of that.

THE COURT: All right. Then with a motion.

But with respect to the motion to suppress the deposition that is the testimonial deposition, although there is opposition on that from Mr. Nichols' counsel, I'm going to unseal it. I do think that that relates directly to the forthcoming trial of the charges against Mr. McVeigh, and I really don't see that keeping that sealed meets the criteria for sealing it or that it's within the criteria that I've established, particularly since, as I look at Mr. Nichols' situation here, that's going to be in the open before his case begins.

MR. TIGAR: Once again, your Honor, our filing to join

procedure of attaching a motion to seal? Our filing is going to contain much of this discovery material we received over Christmas that led us to believe that we simply had to join the Manning deposition --

THE COURT: Yes, file with a motion to seal that

portion of it.

I think Mr. Jones is correct that not everything that

of redaction technique; and we did do that earlier in the case, where there is an appendix or there is an exhibit which comes within the criteria or is thought to established by the order on media motions. And that part of it can be submitted under seal, but the rest of the pleading in the open.

MR. TIGAR: Yes, your Honor. Thank you.

THE COURT: So we'll see what comes in with respect to that; but what's already filed with respect to the motion and the Government's response will be unsealed.

Now, with respect to the proffer, I'm going to keep that sealed for now; and indeed, the proffer will be a matter that will be discussed in camera next week as to what the appropriate procedure should next be with respect to whether there is a need for a James hearing and the like. If there is a James hearing -- we call that a "James hearing" here in this circuit. I know you're in a different circuit, but you probably are aware that, you know, it's not different in other circuits, I don't think; but there is provision for having a pretrial hearing on the admissibility of co-conspirator statements. If there is such a need, the hearing will be in the open.

Given that, Mr. Watler, do you have any other comment?

MR. WATLER: Your Honor, a couple points. The matters that the Court has ordered to be unsealed: Will those be available today?

THE COURT: Yes.

MR. WATLER: And can we stand as being on record as objecting to the continued closure, the sealing of the
T Government proffer?

THE COURT: Yes.

MR. WATLER: Thank you, your Honor.

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unseal that now; but it will be a subject discussed with counsel in the forthcoming meetings. And I am going to go forward with those conferences in camera, because I believe
T that they all relate to preparation and planning, as opposed to adjudication functions.

MR. WATLER: Thank you.

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MR. CONNELLY: May I be heard briefly, your Honor?

THE COURT: Yes, assuming that you're going to say something germane.

T MR. CONNELLY: I'll try to; and actually it's about things that may not be germane. One of the things we're concerned about -- we agree that motions to suppress should be

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though, that things that are not germane may be attached to

them; and I speak to this particularly because of Mr. Tigar's remarks that things that we gave him before the Christmas --

THE COURT: He's going to submit that with a motion to seal, at least to redact and submit part of it under seal, as I understood his statement and particularly those things that are discovery matters.

Isn't that what you said?

MR. TIGAR: That's correct, your Honor.

THE COURT: All right.

MR. CONNELLY: My concern -- and I just use that as an example -- is that nothing we gave him on that date pertains to this deposition. I think the same thing --

THE COURT: Well, I don't want to get into that.

MR. CONNELLY: I understand. But in terms of Mr. Jones' filing -- and there may be something in terms of procedure: Mr. Tigar has suggested that it be filed initially with a motion to seal and then within a day or two we could all assure that everything was germane --

THE COURT: You mean on identification.

MR. CONNELLY: On the identification. If it is strictly limited to identification-type evidence, then we would not have an objection; but it may be some discovery materials that we think are not germane to the issue that don't belong properly filed as part of that public motion. And for that reason, there may be some merit to this procedure of, you know,

24-hour or 48-hour cover motion and then unseal it after it's determined by all parties and by the Court that the matters are in fact germane to a traditionally public motion.

So there may be -- I guess I'm suggesting that the procedure that Mr. Tigar proposed for his filing be also followed with respect to Mr. Jones' filing.

THE COURT: Well, Mr. Jones, Mr. Nigh?

MR. NIGH: Your Honor, in the past, when there was any kind of a question about whether something should be filed publicly or under seal, I've addressed it with the Government in advance and asked them what their position was. If they thought it should be under seal, we filed the motion for it to be held under seal until the Court could determine it. And that's worked well in the past, and I don't know why it can't continue to work.

THE COURT: Well, I think what the order is is that under Scheduling Order No. 6, I think I said it should be sealed. I'm vacating that; and the sealing, if it is to take

Mr. McVeigh's filing on identification. Have the discussion with opposing counsel first; and if there is any question about it, then move to seal those portions of it as to which there is some dispute.

Now, Mr. Tigar.

MR. TIGAR: The procedure that I said I was going to

follow, I thought was in accordance with the Court's prior

Mr. Connelly's characterization of a pleading he has not seen with respect to the potential irrelevance of material that he has not read is appropriate.

THE COURT: All right. Well, the adversary process is alive and well in the case, and that's always a healthy sign.

Yes.

will: It seems to me the Court has covered a fair amount of ground here today. I think it may be useful if the Court entered a written order on its ruling today.

THE COURT: Are you telling me to enter an order today?

MR. WATLER: I'm requesting.

MR. JONES: Judge, can I move --

MR. WATLER: I certainly am not telling you anything, your Honor.

THE COURT: We'll follow it up, whether it's today or not; but the unsealing is a direction from the bench, and that will be followed, I'm sure.

MR. WATLER: By the district clerk?

THE COURT: He's here.

MR. WATLER: Thank you.

THE COURT: All right.

All right.

Yes, Mr. Kelley.

MR. KELLEY: Your Honor, with respect to --

THE COURT: I thought you weren't going to speak any more.

MR. KELLEY: I said I would try, your Honor; and I hope I never have that problem that Ms. Wilkinson has.

Several motions have been promised with respect to sealing of motions to be filed in the next few days. Might the media be on record as objecting to those without having to do so afterwards per the Court's prior order?

THE COURT: Well, you know, I'm not sure. It's sort of a blank check. I think that copies can be served on counsel who have appeared here for the media, and then you can do what you want to.

MR. KELLEY: Very well.

THE COURT: I'm not going to just recognize some blanket objection because, you know, I assume that counsel are going to submit a motion to seal advisedly and in consideration of the five questions that are in the media motion -- media order.

MR. KELLEY: All right. We will respond with objections.

THE COURT: Mr. Tigar?

MR. TIGAR: Your Honor, I would respectfully oppose a

direction to counsel to start serving the media with motions to seal. We have been through that before. If Mr. Kelley wants

to call our office or Mr. Watler wants to call our office, we'll make available courtesy copies; but it does create an administrative problem for us, and I would not like --

THE COURT: What's the administrative problem besides putting another address on your word processor?

MR. TIGAR: Because, your Honor, for this particular thing we can serve this particular group of motions but --

THE COURT: That's what I'm talking about: This particular group.

MR. TIGAR: So there is no direction that for any other group of motions in the future there is to be service on the media.

THE COURT: That's correct.

MR. TIGAR: We've opposed that as a routine matter, because service of these pleadings is an administrative difficulty.

THE COURT: Those things that you're moving to seal will not be served.

MR. TIGAR: Just the motions themselves.

THE COURT: It would not serve very much purpose to give to them copies or their counsel copies of what you're seeking to seal, because I do know the law that I can't ever call it back once it gets in the hands of the media.

MR. TIGAR: I understand that, your Honor.

THE COURT: So you just serve the motions.

MR. TIGAR: Yes, your Honor.

THE COURT: And these motions that have been discussed today. All right? Is that clear enough?

Good.

Thank you. The matter is concluded.

(Recess at 10:15 a.m.)

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 3d day of January, 1997.

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Paul A. Zuckerman