

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

FILED

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

AB

**UNITED STATES OF AMERICA, )  
)  
v. )  
)  
RICHARD M. SCRUSHY, )  
Defendant. )**

**CR-03-BE-0530-S**

**GOVERNMENT’S AMENDED RESPONSE TO MOTION BY BLOOMBERG NEWS,  
THE ASSOCIATED PRESS, THE REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS, THE HEARST CORPORATION, AND THE  
BIRMINGHAM NEWS COMPANY FOR LEAVE TO INTERVENE**

The United States Attorney for the Northern District of Alabama and the Department of Justice (hereafter "the Government") respectfully submit this amended response to the Media’s motion to intervene and would state as follows:

1. The media has filed a motion to intervene and moved this Court to enter an order: (1) requiring that all previous docket entries pertaining to sealed filings in this case be amended to disclose information regarding the substance, type, and/or kind of information that is sealed; and (2) mandating that no additional filings be made under seal unless it has first been preceded by a motion, publicly docketed, and with sufficient notice to the public, describing the substance, type, and/or kind of information sought to be sealed.

2. Because of the vital public interest in open judicial proceedings, the Government has no objection to the Court’s granting prong one of the media’s request as to all documents except

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for those documents that relate to asset forfeiture because such documents contain financial information and any discovery related documents that are not normally released to the press or the public. While recognizing that there is a presumption that the public has a common law right of access to documents relied upon in judicial proceeding, and that the appropriateness of making court files accessible is accentuated in cases where the government is a party: in such circumstance, the public's right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch. *Standard Fin. Mgmt. Co.*, 830 F.2d 404, 410 (1<sup>st</sup> Cir. 1987). See *United States v. Sampson*, 297 F. Supp. 2d 324, 344. This presumptive right, while vibrant, is not unfettered and countervailing interests can, in given instances, overwhelm the usual presumption and defeat access. *Siedle v. Putnam Inv., Inc.*, 147 F.3d 7, 10 (1<sup>st</sup> Cir. 1998). A defendant's Sixth Amendment right to a fair trial is a compelling interest that this Court must consider in determining which documents will remain sealed and which documents will be unsealed.<sup>1</sup>

3. This Court should carefully balance the competing interests that are at issue in this case. *Siedle*, 147 F.3d at 10. In substance, this Court has the discretion, which must be exercised in light of the relevant factors and circumstances of this particular case. *United States v. Connolly*, 206 F. Supp. 187 (D Mass. 2002) (*In re Boston Herald, Inc.* 321 F. 3d 174, 190 (1<sup>st</sup> Cir. 2003) (quoting *Nixon v. Warner Communication, Inc.*, 435 U.S. 589, 599, 98 S. Ct. 1306).

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<sup>1</sup>Also “[a]mong the countervailing factors favoring non-disclosure are: (i) prejudicial pretrial publicity; (ii) the danger of impairing law enforcement or judicial efficiency; and (iii) the privacy interest of third parties.” *United States v. Salemme*, 985 F. Supp. 193, 195 (D. Mass. 1997) (citing *United States v. Amode*, 71 F. 3d 1044, 1047-1050 (2d Cir. 1995); *United States v. McVeigh*, 199 F. 3d 806, 813-14 (10<sup>th</sup> Cir. 1997); *In re Globe Newspaper Co.*, 729 F. 2d 47, 59 (1<sup>st</sup> Cri. 1984 ); See also, *Gardner v. Newsday, Inc.* 895 F. 2d 74, 79-80 (2d Cir. 1990).

4. In the instant case, the Government has filed motions requesting this Court to accept under seal pleadings such as Writ of Entry, Search Warrants, Orders of Restraint, amendments of Restraining Orders, and other pleadings relating to the restraint and disposition of specific assets, including financial accounts, investment accounts, banking accounts, checking accounts (defendant's personal financial information). Presently a number of forfeiture pleadings which relate to defendant's personal financial information and contain the actual account numbers and the balance in each account are under seal. The personal financial information, such as one's income or bank account balance, is universally presumed private and not public. *In re Boston Herald, Inc.*, 321 F. 3d at 190 (1<sup>st</sup> Cir. 2003). Furthermore, sensitive financial information is commonly an example of the type of information which has been protected by courts. *See, e.g., Vollert v. Summa Corp.*, 389 F. Supp. 1348 (D. Hawaii 1975) (financial records containing information regarding corporation's capital, net worth, and net income); *Corbett v. Free Press Association*, 50 F.R.D. 179 (D. Vt. 1970) (net profit data); *Hecht v. Pro-Football Inc.*, 46 F.R.D. 605 (D. D.C. 1969) (financial statements). *In Estate of Hall v. Commissioner*, 92 T.C. 312, 322 (1989), by agreement of the parties and order of the Court, numerous portions of the record involving sensitive financial information were sealed at the taxpayer's request. Consequently, the Government requests that those pleadings which relate to the asset forfeiture and discovery related documents remain under seal.

5. Now turning to prong two of the Media's request, the Government agrees that all pleadings or other documents sought to be filed under seal should be preceded by a publicly docketed motion for leave to file under seal that indicates within its body an informative title of the subject pleading or document. However the Government objects to this Court requiring the

parties to give the press prior notice before such pleadings to seal are filed.

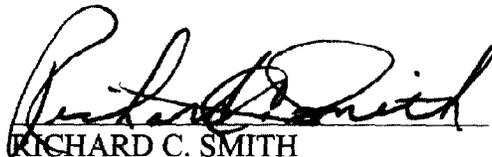
**CONCLUSION**

For all of the above reasons, the media's motion to intervene should be granted with the above stated limitation.

Respectfully submitted,



ALICE H. MARTIN  
United States Attorney  
Northern District of Alabama



RICHARD C. SMITH  
Principal Deputy Chief for Litigation  
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**CERTIFICATE OF SERVICE**

This is to certify that I have this date served the foregoing on counsel for the Defendants  
by mail and/or faxing true and correct copies to:

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And further certify that I have this date served the foregoing on counsel for the media by mail to:

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This 14<sup>th</sup> day of October, 2004.



RICHARD C. SMITH  
Principal Deputy Chief for Litigation  
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