E-FILED
Friday, 03 February, 2017 11:20:03 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
vs.	)	Case No. 16-30061
	)	
AARON J. SCHOCK,	)	
	)	
Defendant.	)	

GOVERNMENT'S RESPONSE TO POLITICO'S REQUEST TO UNSEAL DOCUMENTS

The United States of America, by its attorneys, Patrick D. Hansen, Acting United States Attorney for the Central District of Illinois, and Timothy A. Bass, Assistant United States Attorney, respectfully submits its response to Politico's request to unseal documents. The government states the following:

Relevant Background

Grand Jury Litigation: No. 15-3005 (C.D. IL)

1. In the Grand Jury litigation in No. 15-3005, the government filed a motion for order to Aaron Schock to show cause why he should not be held in civil contempt of court order enforcing Grand Jury subpoenas. (15-3005: R.51) In its brief in support of a finding of civil contempt, the government advised the district court, "in accordance with Fed.R.Crim.P. 6(e)(5) ("Subject to any right to an open hearing in a contempt proceeding, the court must close the hearing to the extent necessary to prevent disclosure of a matter occurring before the grand jury"), Department policy

with regard to open judicial proceedings, 28 C.F.R. § 50.9 and USAM § 9-5.150, and circuit court authority, that the Court may require that at least its finding of contempt and any remedy imposed be announced in open court. *See United States v. Index Newspapers LLC*, 766 F.3d 1072, 1090 (9th Cir. 2014); *In re Grand Jury Matter*, 906 F.2d 78, 86-87 (3d Cir. 1990); *In Re Rosahn*, 671 F.2d 690, 696-97 (2d Cir. 1982)." (*See* 15-3005: R.51, at p.20-21)

2. On July 28, 2015, at the outset of the hearing on the government's motion, Schock advised the Court that "the law is pretty clear that these proceedings should be open" and that the Court should "open the proceedings and open that record" unless there was disclosure of a "matter occurring before the Grand Jury." (7/28/15 Tr. at p.4-6) Schock further suggested that the record in this matter be unsealed "from the motion for the order to show cause forward." (7/29/15 Tr. at p.25) The Court granted the request to unseal the contempt hearing and directed the government to request any resealing of the hearing. (7/28/15 Tr. at p.9) The Court also allowed the request, with the agreement of the government, to unseal the record from the government's motion for order to show cause going forward, provided that the parties were given the opportunity to advise the Court of necessary redactions. (7/29/15 Tr. at pp.24-27) Following the government's submission of proposed redactions, the Court, on August 10, 2015, unsealed the record in the Grand Jury matter from June 13, 2015, forward, with certain exceptions. (15-3005: d/e 8/10/15)

3. In the months following the hearing on the government's motion, the

Grand Jury litigation in 15-3005 continued, with many of the pleadings being publicly filed. (*See* 15-3005)

4. Beginning on February 11, 2016, additional sealed pleadings in the Grand Jury litigation were filed, namely, sealed motions, text orders, responses, and documents. (15-3005: R.116 – R.142) These pleadings contained references to "matter[s] occurring before the grand jury." Fed.R.Crim.P. 6(e)(2)(B).

5. On March 23 2016, a letter from representatives of Politico to the Court was filed of record, requesting that the Court "make publicly available, in redacted form if necessary, a series of filings and orders issued in recent weeks" in the Grand Jury matter. (15-3005: R.148). The Court docketed the letter as a motion to unseal documents and directed the parties to respond to the motion and advise whether certain documents could be unsealed with redactions. (15-3005: R.148) Following responses from the parties, the Court denied Politico's request without precluding it from renewing the request in the event the matter resulted in a "public judicial proceeding." (15-3005: d/e 3/30/16)

Post-Indictment

6. On November 10, 2016, Defendant Schock was charged in an indictment with nine counts of wire fraud, in violation of 18 U.S.C. §1343, one count of mail fraud, in violation of 18 U.S.C. §1341, one count of theft of government funds, in violation of 18 U.S.C. §641, two counts of making false statements, in violation of 18 U.S.C. §1001(a)(2), (c)(1), five counts of falsifying FEC filings, in violation of 18 U.S.C.

§1519, and six counts of filing false tax returns, in violation of 26 U.S.C. §7206(1).

7. As part of its pretrial review, the probation office recommended Defendant Schock's release on bond with certain conditions relating to, among other things, the surrender of his passport, no contact with witnesses, travel restrictions, and the posting of collateral. The probation office further recommended as an additional condition of release that Defendant Schock not spend or direct spending of any funds from his campaign accounts without the Court's approval. (R.42 at p.25)

8. At the outset of the arraignment hearing on December 12, 2016, the government filed a written proffer of evidence. (R.42 at 25; R.19)[1] The proffer of evidence (Exhibits A-G) contained both non-grand jury, including publicly-available, materials and grand jury materials, including an excerpt of a grand jury transcript, that related to the indictment allegations of Defendant Schock's personal use of campaign funds and to the bond condition recommended by the probation office. (R.19)

9. As part of Defendant Schock's conditions of release, the Court ordered that he avoid all contact with any witness concerning the subject matter of the criminal case, and that the government provide a list of potential witnesses to whom the condition related. (R.22)

10. Following the arraignment, and pursuant to Defendant Schock's request,

[1] The government filed the proffer without objection pursuant to 18 U.S.C. §§ 3142(c), 3142(f) and to assist the government in carrying out its duties to enforce federal law, Fed.R.Crim.P. 6(e)(3)(A)(i), (ii).

the government filed a sealed motion to seal the government's proffer of evidence. (R.20) The Court allowed that request and sealed the proffer. In addition, the government later filed a sealed list of witnesses to whom the no-contact-with-witnesses bond condition applied. (R.34)

11. On January 5, 2017, Defendant Schock filed a sealed motion relating to the government's proffer that was filed at the arraignment on December 12, 2016. (R.30) The parties thereafter filed additional pleadings relating to Defendant Schock's sealed motion. (R.38, R.40, R.41) On January 27, 2017, Defendant Schock filed a notice of withdrawal of his sealed motion, advising the Court that the parties had resolved the subject matter of the motion. (R.52)

12. On January 9, 2017, the government filed a motion to modify conditions of pretrial release. (R.32) The motion related to the condition of pretrial release recommended by the probation office that the parties requested the Court defer ruling on at the arraignment. (R.32) On January 19, 2017, the government filed a notice of withdrawal of the motion to modify conditions of pretrial release, advising that the parties had resolved the issue of probation's recommended condition of pretrial release. (R.32)

13. On January 23, 2017, an additional letter from Politico was filed with the Court, renewing its request for unsealing of records in the Grand Jury litigation and requesting that various sealed filings in this criminal matter be unsealed. (R.50)

14. As of January 27, 2017, the matters relating to the government's written

proffer of evidence filed at the arraignment, Defendant Schock's later sealed motion and related pleadings, and the government's motion to modify conditions of pretrial release were resolved and thus rendered moot.

Response to Politico's Letter Request

Standing and Merits of Request for Unsealing of Grand Jury Documents

15. "[C]ourts have permitted intervention when the potential intervenor has a legitimate interest in the outcome and cannot protect that interest without becoming a party." *United States v. Blagojevich,* 612 F.3d 558, 559 (7th Cir. 2010) (citing *In re Associated Press*, 162 F.3d 503, 507–08 (7th Cir.1998)).

16. In addition, "there is no First Amendment right of access to grand jury proceedings." *In re: Motions of Dow Jones & Company, Inc. et. al.*, 142 F.3d 496, 499 (D.C. Cir. 1998). "A grand jury is a body that conducts its business in private." *Id.* at 499-500. Under Rule 6(e)(2) of the Federal Rules of Criminal Procedure, Grand Jury proceedings are subject to "[s]ecrecy." Fed.R.Crim.P. 6(e)(2). Thus, "[g]rand jurors, prosecutors, stenographers and others are forbidden from disclosing 'matters occurring before the grand jury.'" *In re: Motions of Dow Jones & Company, Inc. et. al.*, 142 F.3d at 499-500. "Encompassed within the rule of secrecy are the identities of witnesses or jurors, the substance of testimony as well as actual transcripts, the strategy or direction of the investigation, the deliberations or questions of jurors, and the like." *Id.* at 500. In addition, under Rule 6(e)(6), "records, orders and subpoenas

relating to grand jury proceedings shall remain under seal to the extent and for such time as necessary to prevent disclosure of matters occurring before a grand jury." *Id.* (quoting Rule 6(e)(6)).

17. In this case, the government acknowledges the unusual circumstance of the prior partial unsealing of the Grand Jury record in 15-3005 and the understandable public interest in litigation between the executive and legislative branches of government. However, it does not appear that Politico's letter request to the Court is a proper motion to intervene, nor does it appear that the public has a right of access to grand jury proceedings. *In re: Motions of Dow Jones & Company, Inc. et. al.*, 142 F.3d at 499-505. Further, even assuming the letter request is construed as a proper motion to intervene, any further disclosure of matters that remain under seal in the Grand Jury litigation will most certainly reveal, without a proper purpose, "matter[s] occurring before the grand jury." Fed.R.Crim.P. 6(e)(2)(B). Specifically, such disclosure would reveal and confirm the existence of the Grand Jury investigation and Grand Jury subpoenas, the target and focus of the investigation, and the names of witnesses. Similarly, because of the nature of the litigation, any disclosure of even redacted portions of the various pleadings, exhibits and orders is impractical and will also "almost invariably reveal matters occurring before the grand jury." *In re: Motions of Dow Jones & Company, Inc. et. al.*, 142 F.3d at 502.

18. Accordingly, the government respectfully submits that Politico's letter request to further unseal the record in the Grand Jury matter, 15-3005, be denied.

Standing and Merits of Request for Unsealing of Post-Indictment Documents

19. The Supreme Court has held that "the press and general public have a constitutional right of access to criminal trials." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982). This right, however, "is not absolute." *Press-Enterprise Co. v. Superior Court of California for Riverside Co.*, 478 U.S. 1, 9 (1986). A court "must determine whether the situation is such that the rights of the accused override the qualified First Amendment right of access." *Id.*

20. The government acknowledges and understands that, unlike Grand Jury matters, the public has a qualified right of access to criminal proceedings. In this case, however, the limited number of sealed filings in the criminal case involve a witness list applicable to a bond condition and pleadings relating to issues that have been resolved by the parties and are therefore moot. In addition, Defendant Schock objects to the unsealing of these documents. Given these circumstances, the government agrees with Defendant Schock that Politico's request for unsealing of the documents should be denied.[2] Should the Court conclude, however, that partial unsealing of non-Grand Jury materials, other than the witness list and defendant information sheet, that were filed post-indictment is appropriate over Defendant Schock's objection, the government is able to propose to the Court such unsealing with appropriate redactions.

[2] Given that the government has responded to the Court's directive to address standing and unsealing and unless the Court directs otherwise, the government has not attempted to relitigate or address its filing without objection of its written proffer of evidence at the arraignment.

Respectfully submitted,

PATRICK D. HANSEN
ACTING UNITED STATES ATTORNEY

BY: s/Timothy A. Bass

Timothy A. Bass, Bar No. MO 45344
Assistant United States Attorney
318 S. Sixth Street
Springfield, IL 62701
Phone: 217/492-4450
Fax: 217/492-4044
tim.bass@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February 2017, I filed the foregoing response with the Clerk of Court using the CM/ECF system, which will email a copy of response to the following:

Counsel of record

s/Timothy A. Bass
Timothy A. Bass, Bar No. MO 45344
Assistant United States Attorney
318 S. Sixth Street
Springfield, IL 62701
Phone: 217/492-4450
Fax: 217/492-4044
tim.bass@usdoj.gov