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IN THE DISTRICT COURT IN AND FOR CLEVELAND COUNTY

STATE OF OKLAHOMA

THE SUSTAINABLE )  
JOURNALISM FOUNDATION, )  
D/B/A NONDOC MEDIA, )  
PLAINTIFF, )

WILLIAM W. SAVAGE III, )  
PLAINTIFF, )

vs. ) Case No. CV-2021-1770

THE STATE OF OKLAHOMA, EX )  
REL. BOARD OF REGENTS OF )  
THE UNIVERSITY OF )  
OKLAHOMA, )

DEFENDANT. )

\*\*\*\*\*

PROCEEDINGS OF:

MOTION HEARING  
AUGUST 28, 2024

BEFORE THE HONORABLE MICHAEL TUPPER  
DISTRICT JUDGE  
NORMAN, OKLAHOMA

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REPORTED BY:

Victoria Horner, CSR  
Cleveland County Courthouse  
(405) 366-0292

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1 University, I've got Mr. Burrage.

2 MR. BURRAGE: Yes.

3 THE COURT: We've got Mr. Austin Vance is  
4 present.

5 MR. VANCE: Yes.

6 THE COURT: We've got Mr. Drew Neville  
7 present, correct?

8 MR. NEVILLE: Yes, Your Honor.

9 THE COURT: Okay. And we've got who else  
10 present?

11 MR. PALIOTTA: Armand Paliotta.

12 THE COURT: I'm sorry?

13 MR. PALIOTTA: Armand Paliotta.

14 THE COURT: Okay. Thank you.

15 MR. WHITEMAN: Dan Whiteman, Judge.

16 THE COURT: All right. Very good.

17 Okay. Let's get started. This matter comes  
18 on before the Court on Defendants' motion for summary  
19 judgment in response to Plaintiffs' open records  
20 request for the release of two reports that have been  
21 generated by a private law firm that was hired by the  
22 University to investigate some allegations of  
23 misconduct.

24 The Plaintiffs, the media organization and an  
25 individual, they're seeking access to these reports

1 under the Oklahoma Open Records Act. The University  
2 takes the position that these reports are privileged  
3 and are not subject to release under the Open Records  
4 Act. We'll all be referring to that, I'm sure, as the  
5 ORA.

6 The two reports that are at issue in this  
7 matter for today, I'm gonna be referring to those as  
8 the Alumni Donor Report and the Sexual Misconduct  
9 Report.

10 So I have received all the briefing of the  
11 parties related to this motion for summary judgment.  
12 I have read all of the briefing in its entirety. I  
13 have received all of the evidentiary materials that  
14 the parties have submitted to their briefings. And I  
15 have reviewed those matters in great detail. I have  
16 reviewed the applicable law in this matter.

17 And so for today I want to consider the oral  
18 argument of the parties and allow both parties to make  
19 additional record today for purposes of the motion for  
20 summary judgment.

21 So on behalf of the Plaintiffs, who's gonna  
22 be making that presentation?

23 MR. JOHNSON: I will be presenting on behalf  
24 of Mr. Savage, Your Honor. Mr. Weeks will be  
25 presenting on behalf of the Sustainable Journalism

1 Foundation. We'll be kind of dividing the arguments  
2 for economy's sake in that manner.

3 THE COURT: Okay. That will work, then. Why  
4 don't we -- well, it's the Defendants' motion, so I'd  
5 like to hear from the University first.

6 Who's gonna be making the presentation on  
7 behalf of the University?

8 MR. BURRAGE: Mr. Vance and myself, Your  
9 Honor.

10 THE COURT: Okay. Well, then let's go ahead  
11 and get started, then. I'd like to hear from the  
12 University on -- by way of oral argument in support of  
13 its motion for summary judgment.

14 MR. VANCE: Your Honor, before we make a  
15 request or a motion before we get into it, it -- our  
16 motion for summary judgment, both the initial motions,  
17 contains exhibits that were filed under seal, as well  
18 as the entire reply.

19 And so we're gonna be discussing those  
20 documents that were sealed from the public and remain  
21 confidential. So we'd motion to seal the courtroom  
22 and leave it to the parties that have previously had  
23 access to this information that we're gonna discuss  
24 today.

25 THE COURT: I didn't follow the last part of

1 that.

2 MR. VANCE: Just limiting it to the parties  
3 and their counsel that have reviewed the confidential  
4 information that's sealed. Just so we don't expose  
5 confidential -- information that the Court has  
6 previously sealed to the public through the hearing.

7 THE COURT: You're talking about the power  
8 point presentations that you're going to be  
9 presenting?

10 MR. VANCE: Yes, Your Honor. As well as any  
11 other discussion we might have about any sealed  
12 exhibits or evidence that the Court has reviewed, but  
13 are not publically available.

14 THE COURT: Okay. So what is the specific  
15 request, then?

16 MR. VANCE: To have the -- anyone who's not a  
17 party to the case leave the courtroom so we can have  
18 the hearing remain confidential.

19 MR. BURRAGE: Confidential matters will be  
20 discussed in this hearing regarding what happened,  
21 involvement, so forth. And that shouldn't be in the  
22 newspaper the next day, Judge.

23 THE COURT: Okay.

24 Response?

25 MR. JOHNSON: Yeah, we obviously object to

1 that. This is a matter that could have been covered  
2 by a protective order that's been an issue in this  
3 case for well over a year, at their insistence. That  
4 protective order doesn't contemplate anything like  
5 that procedure.

6           It's a wildly abnormal procedure. And one  
7 that goes, really, to the heart of the matter, Your  
8 Honor. This is another of the University's attempts  
9 to stifle public access to matters that are ordinarily  
10 opened to the public.

11           They're asking you to close the courtroom  
12 without ever having -- we had a status conference  
13 wherein this issue wasn't raised. This is an issue  
14 that ought to have been presented to the Court and  
15 briefed.

16           And if the Court were to entertain it, then  
17 we would insist on an opportunity to brief it fully.  
18 If the Court were to -- frankly, if the Court were to  
19 entertain summarily granting that request, then we  
20 would ask to continue this summary judgment hearing so  
21 we can seek a writ.

22           MR. VANCE: Also, Your Honor, I would say,  
23 this -- similar to the previous Court's orders where  
24 the Court has sealed the documents, the -- if the  
25 Court were to grant -- obviously, we're on the record



1 here -- if the Court were to grant our motion and then  
2 later determine that we didn't discuss -- in the live  
3 action of this hearing we didn't discuss confidential  
4 materials or it shouldn't be confidential, then the  
5 transcript could be released at that point. It would  
6 be the same recording of the hearing that's gonna be  
7 heard today.

8           And so it's not a matter -- as though this  
9 hearing would never be public, it's just as a matter  
10 of protecting those documents the Court has already  
11 sealed.

12           MR. JOHNSON: The record is -- the transcript  
13 is not a court record; this is a public courtroom.  
14 Members of the public, members of the press have a  
15 constitutional right to be present. That should not  
16 be abrogated on the whim of the University at the 11th  
17 hour. That is a matter that ought to have been  
18 presented to this Court and fully briefed and argued,  
19 if it was to be presented at all.

20           Again, there is a protective order at issue  
21 in this case that concerns confidential materials; it  
22 does not contemplate this procedure. Nor does the  
23 Oklahoma Constitution.

24           And I would add to Mr. Vance's point, we have  
25 been before this Court on half a dozen occasions now,

1 I mean, we're discussing materials and matters that  
2 are purportedly, by the University's argument,  
3 confidential.

4 We have never sealed the courtroom. We have  
5 never prevented access to the courtroom. And that is  
6 a -- a step so drastic and so dramatic that the Court  
7 should not even entertain doing so summarily and with  
8 such little notice to the parties.

9 MR. BURRAGE: It's not dramatic. This is  
10 confidential information, Your Honor --

11 MR. JOHNSON: I bet the Court's never done  
12 it.

13 THE COURT: Hang on. Let Mr. Burrage finish.

14 MR. BURRAGE: This is confidential  
15 information that's -- be confidential by one of six  
16 reasons that the public is not entitled to know.  
17 These statutes and privileges are there for  
18 protection. And that's all we're asking.

19 THE COURT: All right. So I understand. I'm  
20 very concerned about closing a courtroom to the  
21 public. I'm also very sensitive to the -- what's in  
22 dispute in this case. So trying to balance those  
23 things, I don't know what you're gonna say today. I  
24 mean, I think it's -- the --

25 MR. BURRAGE: Your Honor, we're gonna

1 reference privileged information.

2 THE COURT: Yeah. Well -- and that's  
3 important because that's at the heart of this dispute.  
4 The Court has to make some findings on whether the  
5 Oklahoma Records Act applies to these reports or  
6 whether it doesn't. And if doesn't, that's because  
7 they're either privileged or they're exempt.

8 And -- so I don't -- I am struggling to -- on  
9 how to have a meaningful hearing when the Court hasn't  
10 made that decision, that's what you're all here for me  
11 to make that decision.

12 So if I -- and as we get into this, at the  
13 end of this, if the Court determines that the Oklahoma  
14 Open Records Act applies then, you know, there's no  
15 harm done. But if the Court determines that it  
16 doesn't apply, then that's a big problem if there's  
17 been open discourse of what the Court has later  
18 determined to be privileged. And that would be a big  
19 problem.

20 MR. JOHNSON: Yeah. I think it's --

21 THE COURT: I understand the reason there.  
22 So is there a suggestion to how we could do this in  
23 the absence of closing the courtroom?

24 MR. JOHNSON: My suggestion would be that  
25 this matter had been pending for over a year and these

1 -- counsel has known for over a year what was gonna be  
2 discussed in this courtroom.

3 THE COURT: Well, they've been consistent for  
4 over a year that they believe this is privileged.

5 MR. JOHNSON: The protective order in the  
6 case that contemplates discussion of confidential  
7 materials in open court, it does not contemplate any  
8 procedure by this Court to abrogate the ordinary  
9 constitutional principles that Oklahoma law --  
10 ordinary civil procedure.

11 This is an extremely abnormal request. And  
12 I'm sure the Court appreciates that, because I can't  
13 imagine he's ever done something like that.

14 THE COURT: I do. And I haven't.

15 MR. JOHNSON: Again, if we -- you know, when  
16 we were before the Court, I believe it was the most  
17 recent time, we discussed briefly the 2023 decision in  
18 *Farmers Insurance Company*. Those are -- the Court has  
19 to make specific findings in order to take such a  
20 drastic measure that would require that those issues  
21 be fully litigated, briefed, and presented to the  
22 Court. Not on a whim, not cursorily and abruptly at  
23 the 11th hour.

24 Again, it was their protective order that  
25 they -- they could have, but did not, propose to --

1 and we did not agree to a proceeding so out of line  
2 with the ordinary operation of the Oklahoma court  
3 system.

4           And, again, I just want to urge that to take  
5 a step that drastic ought to require, at a minimum,  
6 opportunity for the parties to litigate the issues.  
7 We had a status conference where we were specifically  
8 tasked with addressing any anticipated concerns about  
9 how the procedure of this hearing was to occur.

10           I think -- I just want to urge the Court  
11 again, if that is -- something that the Court  
12 entertains, then this hearing ought not be conducted  
13 today, with one hand tied behind my back, or in the  
14 absence and in derogation of the constitutional rights  
15 of the public and the press.

16           MR. BURRAGE: Wait a minute. Wait a minute.  
17 Can I make one response, Your Honor?

18           THE COURT: Sure.

19           MR. BURRAGE: We've maintained these  
20 documents were confidential throughout this whole  
21 proceeding. You can harp on the constitution and all  
22 these words, but they mean nothing because these --  
23 we've always maintained these documents are  
24 confidential.

25           If we had to put on a presentation where the

1 public is present, the confidentiality is gone. So if  
2 we can't seal the courtroom, we need to decide whether  
3 we want to make -- even want to make a presentation or  
4 not.

5 THE COURT: Yeah -- I mean, that's -- an  
6 alternative is to -- I mean, oral argument is just  
7 that. The case is submitted. I mean, the motion has  
8 been submitted, it's been fully briefed. That's one  
9 resolution. I mean, oral argument is for purposes of  
10 persuasion. But I promise you, I've got the case.

11 So, I guess, Mr. Johnson, I'm really  
12 struggling, then, with -- an open courtroom defeats  
13 the whole purpose of what the Court has to do.  
14 Because this could go one of two ways. And if it  
15 doesn't go the way that your client is asking, then  
16 the privilege, confidential, exempt matters are out in  
17 the public domain.

18 MR. JOHNSON: Yeah, so -- what the protective  
19 order in this case concerns, and what all the filings  
20 concern, are documents and material themselves. We  
21 appreciate that we are not gonna be able to parade  
22 around or distribute to the members of the gallery --

23 THE COURT: Or -- I think I've got your  
24 slides, and they are some documents on there.

25 MR. JOHNSON: And none of those are sealed

1 documents. I mean, I do think we're gonna be  
2 discussing matters that the University contends are  
3 confidential. This goes to the heart of the issue:  
4 Facts are not confidential, communication are  
5 confidential; facts are not privileged, communications  
6 are privileged.

7           But the -- really, what I think is most  
8 urgent is this -- if it was to be addressed, should  
9 have been addressed before today. And for the Court  
10 to grant a -- any sort of even provisional relief  
11 along the lines of what they're requesting, is such an  
12 abrogation of --

13           The University says the words like the  
14 constitution are just words, and that's in keeping  
15 with its position with the course of this litigation.  
16 That's not the case. The constitution enshrines the  
17 right of the public to participate in local and state  
18 government, that includes monitoring what happens in  
19 this courtroom. And except in extraordinary  
20 exceptional cases.

21           You know, that's -- Justice Edmondson has  
22 written about this. That's the Court of Civil Appeals  
23 case that I just mentioned, *Good vs. Farmers*. In  
24 order for the Court to take a measure like that, it  
25 has to make specific findings that are not available

1 to it under the circumstances, and the parties have a  
2 right to be heard.

3           This is an extremely abrupt and last minute  
4 request for extraordinary relief. And I think the  
5 Court should summarily deny it.

6           MR. VANCE: Your Honor, I have a few more  
7 points, but I, you know, don't want to keep beating a  
8 dead horse here, so to speak.

9           First, as it relates to the protective order,  
10 we -- the protective order in this case, and in the  
11 last years, has largely changed due to guidance from  
12 the Oklahoma Supreme Court where we've been told that  
13 they don't like protective orders that have preemptive  
14 sealing mechanism within them.

15           Because the Oklahoma Supreme Court has said  
16 that it usurps the statutory basis for sealing the  
17 courtroom and sealing documents. So most modern  
18 protective orders will not have a preemptive mechanism  
19 to seal the courtroom or seal documents, because the  
20 Oklahoma Supreme Court has told us, "Stop putting  
21 those in protective orders."

22           They have a statutory mechanism for sealing  
23 the courtroom with protective orders. And so any  
24 absents -- absence of that contemplation in the order  
25 is just natural to the instruction from the Oklahoma



1 Supreme Court.

2           And I would again go back to the -- I think  
3 the -- as far as weighing any harms that are  
4 considered here, I go back to the -- when I think  
5 previously that, you know, if we conduct this hearing  
6 and seal today and the Court determines nothing  
7 confidential actually came about -- which I would find  
8 highly unlikely.

9           But if that happened, then releasing the  
10 transcript to the public, I don't know what additional  
11 -- I don't know what the public is missing if they get  
12 the transcript of the proceedings released afterwards  
13 if it turns out we're wrong. I don't know what the  
14 harm to the public is.

15           It's a delay a little bit, but other than  
16 they didn't get to sit in here and hear us argue, it's  
17 not that -- you know, the weight of that prejudice  
18 isn't high.

19           MR. BURRAGE: And we would be willing to  
20 waive argument if that would solve this issue.

21           MR. JOHNSON: Yeah, well, we're not. This  
22 matter has been pending for a year. This is easily  
23 anticipated, if it was a legitimate concern on their  
24 part. I find it dilatory, frankly. I find it  
25 cynical.

1           But, you know, more importantly, there's not  
2 minimal or marginal harm to the public when violations  
3 of the constitution occur. The violation of the  
4 constitutional right to public access to the courts is  
5 an irreparable harm.

6           And one that if we were to lose here today --  
7 which I find highly improbable -- if we were to lose  
8 here today, then that harm would be lasting; the  
9 public would have absolutely no idea what happened in  
10 this case.

11           Or why the University maintains so  
12 dogmatically and so doggedly that no one other than  
13 its regents have a right to know how \$1.5 million of  
14 tax payer money was spent to investigate grave matters  
15 of public interest. That's just unacceptable.

16           And that -- the sort of casual references  
17 that they make to violating the constitutional right  
18 of the Oklahoma citizen to participate in its  
19 government is once again what drives to the heart of  
20 this matter.

21           And the -- it's -- I just want to urge once  
22 again that that is drastic extraordinary relief. And  
23 it would be inappropriate for the Court to grant  
24 something of that --

25           Mr. Vance is making legal arguments that we

1 have not previously heard. We've had no opportunity  
2 to research. We've had no opportunity to dispute or  
3 litigate.

4           And it is their fault, not ours, that this is  
5 -- at 3:01 p.m. on the date of the summary judgment  
6 hearing, the Court is just now being presented with a  
7 request of this -- as extraordinary as this one.

8           THE COURT: Okay. So, again, I go back to  
9 what is at the heart of this dispute. So this is a  
10 dispute between two parties regarding the privilege  
11 and confidentiality of reports. And I've got to  
12 settle that dispute. And in settling that dispute,  
13 I'm going to be required to make some findings.

14           So the -- until I make -- until I get you  
15 folks a decision, the need to maintain the asserted  
16 privilege and confidentiality I think is paramount.

17           MR. JOHNSON: (Stood up.)

18           THE COURT: So let me just keep going here.

19           So the -- if we had an open hearing today,  
20 and all this reference to asserted privileged and  
21 confidential documents is aired in open court, that  
22 just obliterates the asserted privilege and the  
23 confidentiality.

24           And then once I get to findings, if my  
25 findings are -- if I agree with the Plaintiffs, then,

1 okay. The -- that's -- there's no concern there. But  
2 if I don't, then the -- that's a big problem.

3 But, regardless, I'm going to make findings  
4 in this case. And I think the public can and should  
5 have access to those findings. I don't think my  
6 ruling is confidential in any -- in any regard. So  
7 the public is going to get that ruling.

8 And if it is favorable to the Plaintiffs,  
9 then there will be a transcript that could be made  
10 available of this. And the public has access to that.  
11 And -- but if I make a ruling favorable to the  
12 Defendants, then the public isn't entitled to access  
13 of -- to the reports in reference to the documents.

14 So it seems to me that there's only, really,  
15 two ways to proceed to -- to move forward: Either  
16 close the courtroom or to have the Court issue a  
17 ruling on the evidentiary record presented. No one's  
18 presenting any new evidence to me today.

19 MR. JOHNSON: Respectfully, Your Honor, I  
20 think the Court is inverting the actual principle and  
21 analysis. They have asserted a privilege, it's their  
22 burden to prove that that privilege clearly applies.  
23 That's a heavy burden. We don't pretend or operate  
24 under the assumption that it does apply until the  
25 Plaintiff disproves that premise.

1 THE COURT: No, but they -- through their  
2 evidentiary materials, they're gonna argue to me today  
3 that they have --

4 MR. JOHNSON: I --

5 THE COURT: -- that they have --

6 MR. JOHNSON: -- appreciate that.

7 THE COURT: -- met their burden.

8 MR. JOHNSON: I appreciate that. That is  
9 their argument. But we do not presume that that is  
10 true for the purpose of --

11 THE COURT: I'm not presuming.

12 MR. JOHNSON: -- this litigation until such  
13 time that we win otherwise. They have to win that.  
14 And it is routinely the case, as Your Honor knows, the  
15 confidential materials or the materials that are  
16 subject to a protective order or otherwise privileged  
17 or confidential are routinely discussed in this and  
18 other courtrooms. Including in this very litigation.

19 And this measure has never been taken before.  
20 It was not discussed in the status conference, where  
21 the Court asked us to hold in order to -- to resolve  
22 any anticipated disputes that may arise in this  
23 proceeding.

24 It was not discussed in the protective order  
25 the parties agreed, then stipulated to in order for us

1 to ever get access to any of the documents that they  
2 provided us three weeks before our response brief to  
3 this motion was due.

4           This is a derogation of the constitution, the  
5 public, the people who are here, they have a  
6 constitutional right to be here. They are standing  
7 here to assert that right and to object to the  
8 proposal that the University is making.

9           The press, members of the press who are here,  
10 they have a constitutional right to be here. Their  
11 readership depends on -- in order to be informed on  
12 what is happening in local and state government -- on  
13 their ability to openly attend these proceedings  
14 unless or until the Court makes those findings.

15           Unless or until the Court make the findings  
16 that this is an exceptional case, one that justifies  
17 suspension of ordinary application of the Oklahoma  
18 Constitution, and the United States Constitution for  
19 that matter.

20           And the Court ought not grant such an  
21 extraordinarily -- and we ought not be blackmailed out  
22 of our right under the civil procedure code to an  
23 actual hearing on these matters. These are matters  
24 that we deserve an opportunity to discuss, to discuss  
25 frankly.

1           And if there is to be any sort of provisional  
2 remedy of the kind that the Court -- that I understand  
3 the Court to be potentially contemplating, then that  
4 is a matter that ought to have been brought before the  
5 Court with an opportunity for us to address it.

6           And this last minute request is extraordinary  
7 in its form and extraordinary in substance. They're  
8 asking you to suspend -- suspend the application of  
9 the Oklahoma Constitution, and they're asking you to  
10 do is summarily without so much as prior notice to the  
11 opposing party that that request was going to be made.

12           MR. BURRAGE: Well, I think the Court's got a  
13 real good grasp on what the issues are. And it's  
14 become obvious, they want to try this case in the  
15 summary judgment hearing for the press. And it would  
16 be all over every paper tomorrow.

17           MR. JOHNSON: I object to that too. I object  
18 to the frequent intimations by opposing counsel that  
19 our motives are impure, that this is anything less  
20 than an earnest and good faith attempt to hold a  
21 public institution accountable to its obligation to  
22 the public.

23           We are not gossip journalists. This is not a  
24 salacious story. This is a legitimate story reported  
25 by every mainstream media outlet. Nothing we're gonna

1 be discussing here today is going to include a  
2 privileged document or communication.

3           It all includes matters that they just say  
4 are confidential because they say so. And we've  
5 operated for way too long in this litigation on taking  
6 them at that word until we prove otherwise. This is  
7 the summary judgment hearing. It's their burden to  
8 prove that stuff.

9           And, again, if the Court is to entertain  
10 relief of that kind, that we would ask to continue the  
11 hearing. We would like to see a writ.

12           THE COURT: All right. You've got a couple  
13 of gentlemen standing. I don't know if they're  
14 parties but -- and I don't know if I need to hear from  
15 them. Do you want to confer with them so --

16           UNKNOWN MALE: Your Honor, I'm a journalist,  
17 I do work for NonDoc, but I'm still a journalist;  
18 there are plenty of other journalists here in the  
19 audience. I think we would object to being removed  
20 from the courtroom. We do -- we can go read the  
21 record -- transcript later if it is released, but we  
22 do also have a right to see how justice is carried  
23 out. And part of that is witnessing it in the moment.

24           UNKNOWN MALE: And, Your Honor, I'm a victim  
25 of David Boren's sexual assault, and I've been dealing



1 with this University covering this up. The Open  
2 Record Act's opening language is records are --

3 MR. BURRAGE: Judge --

4 UNKNOWN MALE: -- presumed open unless proved  
5 otherwise. And you're giving them all the privilege  
6 all along. And, Your Honor, I respect you as a legal  
7 professional and a human being, but I'm not leaving  
8 this courtroom unless there's a deputy taking me out  
9 of here and taking me to jail. Because I'm sick and  
10 tired of this injustice. It happened to too many  
11 other people. And they've been covering it up for 30  
12 -- 40 years.

13 THE COURT: Okay. Thank you.

14 Counsel be seated. Thank you. Let's breathe  
15 for a moment here.

16 (Pause.)

17 MR. JOHNSON: Your Honor, I don't want to  
18 beat a dead horse, and I appreciate that the Court has  
19 before it a comprehensive understanding of the issues.  
20 I just want to point out for the record, if for no  
21 other reason, they have not even identified a  
22 privileged, confidential, or otherwise concerning  
23 material or matter for this -- that they propose is  
24 going to be discussed here or is going to be made  
25 public.

1           They're asking this Court, again, to take  
2 them at their word.

3           THE COURT: Well.

4           MR. VANCE: (Raised hand.)

5           THE COURT: Mr. Johnston [sic], I go back to  
6 these presentations, are you telling me that none of  
7 the documents that are displayed in your presentation  
8 are subject to the Court's order previously sealing  
9 the exhibits?

10          MR. JOHNSON: Yeah, that's correct. There  
11 are notations on some of those slides that refer to  
12 exhibits that were filed under seal. The exhibits  
13 themselves are not displayed on any of those slides  
14 for the reason that -- for the obvious reason.

15          MR. VANCE: Your Honor, if I can briefly  
16 respond to that?

17          THE COURT: I'm sorry?

18          MR. VANCE: If I may briefly respond to that?

19          THE COURT: Yeah.

20          MR. VANCE: First off, obviously, I don't --  
21 we would have to see how it's done live, but I don't  
22 know why you would reference an exhibit on your  
23 demonstrative that's sealed to then not explain what  
24 the demonstrative was or how it affects summary  
25 judgment. So I believe the demonstrative clearly

1 contemplated discussing the sealed document.

2           But setting that aside, I promise the Court I  
3 am going to be referencing the representative  
4 transcript, which the Court has under seal. And so  
5 the -- all of that, any reference to that, is going --  
6 it's not part of the public record; it's just  
7 evidence. It is submitted to the Court under seal.  
8 And I will be having to talk about that during my  
9 presentation, I know.

10           (Pause.)

11           MR. BURRAGE: Your Honor, I might observe,  
12 you don't have to hear oral argument if you don't want  
13 to; it's not required. And we'll be glad to brief  
14 these issues if that's what counsel wants to do.

15           THE COURT: I think that may be where we go.  
16 This is just really extraordinary. And I maintain  
17 what I've said repeatedly now. And I haven't changed  
18 my position about the posture of this.

19           So if the Court were to make specific  
20 findings today, you absolutely have the right to writ  
21 that. And that is an option. And then we could get  
22 an appellate decision on that. And I'll certainly  
23 abide by any appellate decision on that. That's one  
24 way to proceed.

25           Second way to proceed is to just outright

1 deny the request. But because of what I consistently  
2 said, the central issue of this case concerns the work  
3 of Jones Day, and there are confidentiality concerns,  
4 there's privilege concerns, and exemption concerns;  
5 those are squarely at issue in this case.

6           The arguments and the documents, the  
7 transcripts that are going be -- that have already  
8 been submitted in the case -- and that you've  
9 indicated that you want to reference today -- those  
10 all relate to what is alleged confidential  
11 information.

12           So the University's interest in withholding  
13 this information from the public, at this stage, I  
14 think is key. It's important because of what the  
15 Court has to decide here. At least pending resolution  
16 of the litigation.

17           If your -- if the Plaintiffs' theory in this  
18 case, if your petition is correct, then that harm to  
19 the public, by closing the hearing, which would be  
20 consistent with all of the previous orders in this  
21 case, sealing documents, the harm is delay. And  
22 that's not something that I take lightly, but it's  
23 delay, it's not denial.

24           So I think the Court has the ability to just  
25 decide I don't want to hear oral arguments today. I

1 think I have that authority. But the fact of the  
2 matter is I want to. I want to hear from the parties.

3           So why don't we do this, then, having said  
4 all that, why don't the parties brief this matter.  
5 And we'll look at -- surely this has come up in some  
6 courtroom in some jurisdiction; I'm not aware of any.  
7 And I wasn't prepared to get into this today, but it's  
8 important; it goes to the very heart of the case.

9           So I want to be fair to both sides. And I  
10 want to -- any final decision I make on this, I want  
11 to be comfortable that it is supported by specific  
12 authority. So we're gonna have to reset this.

13           And we will implement a briefing cycle on  
14 this issue -- this specific issue of the Court's  
15 authority and under what authority and under what  
16 circumstances the Court has in closing a courtroom for  
17 a hearing such as this.

18           And submit that authority and -- or we'll  
19 have a briefing cycle on that. I will enter a  
20 decision based upon the briefing. And depending upon  
21 how that goes, either side can take that up depending  
22 on how I come out on it. And I think that's the most  
23 appropriate way to proceed.

24           That gives both sides a ruling, which it can  
25 take up and we can get some definitive authority on it

1 from our appeals court. And, you bet, I will abide by  
2 whatever decision the appeals court takes.

3 Okay. So we can talk briefing schedule -- we  
4 can do that in chambers. Just -- we don't need to --  
5 'cause I don't have my schedule in here.

6 So what else for purposes of the record today  
7 on behalf of the Plaintiffs?

8 MR. JOHNSON: Your Honor, our objections are  
9 noted.

10 THE COURT: Objections are noted, you bet.  
11 Anything for the record on behalf of the  
12 University on this?

13 MR. BURRAGE: No, Your Honor.

14 THE COURT: Okay. I'm gonna show that we are  
15 adjourned.

16 (Whereupon, the proceedings ended.)  
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STATE OF OKLAHOMA            )  
  ) SS:  
COUNTY OF CLEVELAND        )

I, Victoria Horner, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that on the 28th day of August, 2024, before the Honorable Michael Tupper, District Judge, in the District Court of Cleveland County, Oklahoma, I reported in machine shorthand the proceedings had and the evidence given and that the above is a full, true, correct and complete transcript of the proceedings taken at said time and place.

I further certify that I am not related to nor attorney for either of said parties nor otherwise interested in said action.

WITNESS MY HAND THIS 18th day of September, 2024.

\_\_\_\_\_  
Victoria Horner, CSR #2009