COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-10798

GLOBE NEWSPAPER COMPANY, INC.,
Petitioner-Appellant,

v.

THE SUPERIOR COURT FOR THE COUNTY OF NORFOLK,
Respondent-Appellee,

ATTORNEY GENERAL FOR THE COMMONWEALTH OF MASSACHUSETTS,
Intervener pursuant to Commonwealth v. Silva,
448 Mass. 701 (2007), and

COMMITTEE FOR PUBLIC COUNSEL SERVICES
(ON BEHALF OF AMY BISHOP),
Intervener.

ON APPEAL FROM A RESERVATION AND REPORT PURSUANT TO G.L. C. 211, §3 OF A DECISION BY THE SUPERIOR COURT FOR THE COUNTY OF NORFOLK

BRIEF OF CITIZEN MEDIA LAW PROJECT, COMMUNITY NEWSPAPER HOLDINGS, INC., GATEHOUSE MEDIA, INC., MASSACHUSETTS NEWSPAPER PUBLISHERS ASSOCIATION, METRO CORP. d/b/a BOSTON MAGAZINE, AND NEW ENGLAND NEWSPAPER AND PRESS ASSOCIATION, INC., AS AMICI CURIAE IN SUPPORT OF PETITIONER-APPELLANT

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STATEMENT OF THE ISSUE

Whether the Superior Court erred by continuing to impound inquest documents after the grand jury returned an indictment, in light of the provision of Mass. G.L. c. 38, § 10 that requires the impoundment of inquest documents only until the grand jury returns an indictment or a no bill and the Massachusetts common law presumptive right of public access to judicial documents.

STATEMENT OF INTEREST OF AMICI CURIAE

As set forth more fully in the accompanying motion for leave to file this brief, Amici Curiae Citizen Media Law Project, Community Newspaper Holdings, Inc., GateHouse Media, Inc., Massachusetts Newspaper Publishers Association, Metro Corp. d/b/a Boston Magazine and New England Newspaper and Press Association, Inc. (collectively, "Amici" or "Amici Curiae") include a wide range of news media, bound together by a strong interest in disseminating news and information to the public. In keeping with the historic role of the press, Amici are committed to preserving and ensuring broad public access to records and proceedings that shed light on the operations of government - including, as in this case, the workings of the criminal justice system. Amici are vigilant in ensuring a public right of access that will allow journalists, publishers, bloggers, and other news gatherers to inform citizens on matters of public concern.

This appeal involves the public right of access to the results of an inquest that triggered the arrest of Amy Bishop on charges of murder in a closely watched case that has aroused very strong emotions. It is in just such a case that the public's right to information is critically important. Such access helps to ensure more accurate fact-finding by governmental officials; allows the public to monitor the conduct of public officials; and promotes greater understanding and respect for the rule of law. As advocates for the rights of those who gather and disseminate news and information, Amici have a strong interest in ensuring that the law's protections for the right to obtain information necessary for self-government be fully enforced.

By statute, Massachusetts law states a presumption that inquest reports become public documents once the grand jury returns an indictment. See Mass. G.L. c. 38, § 10 (the "Inquest Statute"). In this case, however, the lower court applied the opposite presumption. If allowed to stand, the Superior Court's ruling will help ensure, as a practical matter, that Amici and similar news organizations and journalists will rarely, if ever, receive such documents without a court battle. News organizations struggling to survive in today's financial climate have very limited resources to mount litigation. As a result, for Amici - many of them small newspapers and individual

bloggers - reversing the presumption of access to inquest reports has the practical impact of shutting the door on such records altogether. Such an outcome upends not only the Inquest Statute, but also the common law of Massachusetts.

SUMMARY OF ARGUMENT

Massachusetts law requires impoundment of inquest reports up to and throughout the period of grand jury investigation. G.L. c. 38, § 10. That requirement is consistent with the long-recognized shroud of secrecy over grand jury proceedings. Once a district attorney files notice with the district court of an indictment or a no bill (or of a decision not to present the case to a grand jury), however, the requirement of impoundment disappears. Id. The question before this Court is whether the Superior Court misapplied the Inquest Statute, and the common law of Massachusetts, by reflexively continuing to impound inquest documents even after the grand jury returned an indictment. While Intervener Committee for Public Counsel Services ("CPCS") argues that prior case law permits continued impoundment following indictment, the Inquest Statute and public access case law require just the opposite: Once a district attorney notifies the court that a grand jury has returned an

indictment, impounded inquest documents presumptively become public.[1]

Factual Background. The events underlying this dispute have generated headlines across the country. Amy Bishop, a professor of neuroscience at the University of Alabama in Huntsville, shot and killed three of her colleagues during a faculty meeting on February 12, 2010. During their investigation of these events, authorities noted that, in 1986, Massachusetts police had investigated Bishop's involvement in the fatal shooting of her brother, Seth Bishop, and had deemed the shooting accidental.

Investigation of the events in Huntsville sparked a new inquiry into the shooting death of Seth Bishop. On February 12, 2010, the Norfolk District Attorney began investigating Amy Bishop's involvement in her brother's death by initiating an "inquest," which is an investigative, fact-gathering procedure. Mass. G.L. c. 38, § 8. On June 16, 2010, a grand jury in Massachusetts indicted Bishop for the first-degree murder of Seth Bishop.

The Inquest Statute. Prior to the enactment of the Inquest Statute, an inquest report and transcript would be opened to the

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[1] Because, as the lower court noted, Amy Bishop's June 16, 2010 indictment "was returned to the court," In re an Inquest Concerning the Death of Seth Bishop, C.A. No. 10-1113 at 1 (Mass. Super. Ct. June 18, 2010), for simplicity, Amici generally refer throughout this brief only to the Inquest Statute's requirement that an indictment have been returned.

public only after the criminal trial was completed or after it was determined that no criminal trial would occur. Kennedy v. Justice of Dist. Court of Dukes County, 356 Mass. 367, 378 (1969). In 1993, however, the Massachusetts legislature abrogated these guidelines by enacting the Inquest Statute, which provides that inquest transcripts "shall be impounded until . . . the district attorney . . . files notice with the . . . court that the grand jury has returned a true bill or a no bill." Mass. G.L. c. 38, § 10. By explicitly altering the "general principles" that had been articulated in Kennedy, 356 Mass. at 377, the legislature struck a new balance. It lifted the requirement that inquest reports remain impounded until completion of a criminal trial, and replaced it with a significantly shorter period of mandated impoundment, one that ends well prior to trial: when the grand jury returns an indictment or a no bill.

By ensuring that inquest information would not be automatically impounded until after trial, the Inquest Statute reflected the increased recognition of a longstanding common law and First Amendment public right of access to judicial records. See, e.g., Republican Co. v. Appeals Court, 442 Mass. 218, 222, 812 N.E.2d 887, 892 (2004) (holding that "Massachusetts has long recognized a common law right of access to judicial records. . . . In addition to the common law right of access

. . . , the public has a First Amendment right of access to court records such as the transcripts of judicial proceedings . . . .").

When the Superior Court denied the motion of Petitioner-Appellant Globe Newspaper Company, Inc. ("Appellant" or the "Globe") to inspect and copy inquest documents following Bishop's indictment, the court essentially ignored the legislature's 1993 directive. It ruled, without citation to any law other than the Inquest Statute, that post-indictment impoundment "is required by statute" and "automatic." In re An Inquest Concerning the Death of Seth Bishop, C.A. No. 10-1113, at 5 (Mass. Super. Ct. June 18, 2010). It also rejected the Globe's argument that because the statute is silent as to the question of impoundment post-indictment, at the very least a court is required to make specific findings supporting impoundment (as required not only by common law but also by the Rules of the Trial Court (Uniform Rules on Impoundment Procedure) (1986) ("Unif. Rules on Impoundment"). Finally, the Superior Court relied on Kennedy v. Dukes County, 356 Mass. 367 (1969) for the proposition that continued post-indictment impoundment of the inquest documents was required - even though, on that point, the 1969 decision had been legislatively overruled.

The Superior Court's ruling ignores - indeed, makes a nullity of - the plain text of the Inquest Statute, which provides that impoundment is required only "until . . . the grand jury has returned a true bill or a no bill." Mass. G.L. c. 38, § 10. As a result, the court inverted the burden of proof: It wrongly placed that burden on the party seeking access, not on the party seeking impoundment.

The Importance of Public Access. The public's right of access to government information is essential to the functioning of a democracy. It enables citizens to stay informed about the workings of public agencies (and thereby promotes the development of an informed citizenry); allows citizen oversight of government and, thus, accountability of public servants; and encourages respect for the rule of law.

The lower court's decision threatens these interests by erecting significant barriers to public access. If allowed to stand, the ruling will sanction routine impoundment of inquest records, to be challenged only if a member of the public, or of the media, launches an uphill fight against secrecy. The impact will be most severe, of course, for smaller media organizations, citizen journalists, and others who lack the resources to engage in expensive litigation to unseal court records.

If affirmed, the lower court's ruling will substantially diminish the right of public access, corrode the interests

protected by the common law, and directly contradict the legislature's mandate. Reversing the lower court's decision would ensure that the Inquest Statute is applied in a manner consistent with its plain meaning, and will further the ability of journalists of all stripes to keep the public informed about how its elected and appointed officials operate.

ARGUMENT

I. THE STATUTE AND COMMON LAW PREVENT AUTOMATIC IMPOUNDMENT ONCE THE GRAND JURY RETURNS AN INDICTMENT.

A. THE STATUTE CREATES A PUBLIC RIGHT OF ACCESS ONCE THE GRAND JURY RETURNS AN INDICTMENT.

Contrary to the Superior Court's ruling, the Inquest Statute (Mass. G.L. c. 38), which governs inquest proceedings, does not require automatic, and continued, impoundment of inquest documents after a grand jury has returned an indictment. To the contrary, it provides only that after the court with jurisdiction over the death has concluded the inquest,

> [t]he court shall file its report and a transcript of the inquest proceedings in the superior court for the county in which the inquest is held. Said transcript shall be impounded until the district attorney files a certificate with the superior court indicating that he will not present the case to a grand jury, or files notice with the superior court that the grand jury has returned a true bill or a no bill after presentment by the district attorney.

Id. at § 10 (emphasis added). The statute sanctions impoundment of the inquest transcript only for a limited time: only "until

the district attorney . . . files notice with the . . . court that the grand jury has returned a true bill or a no bill." Id. (emphasis added). Even if that provision could be said to require automatic impoundment of the inquest transcript[2] at a pre-indictment stage, nonetheless it is clear that the requirement no longer exists once the grand jury returns an indictment.

This Court in 1989 considered and rejected a similarly strained interpretation of the language of an access statute. See Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dep't, 403 Mass. 628, 631, 637 (1989). The statute at issue provided that "upon the return of [a search] warrant, the [supporting] affidavit shall be attached to it and shall be filed therewith, and it shall not be a public document until the warrant is returned." Id. (quoting Mass. G.L. c. 276, § 2B (emphasis added)). This Court had no difficulty recognizing that the statutory language, particularly when

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[2] In its brief, Appellant argues that the language of the Inquest Statute requires the court to impound only the inquest transcript. The inquest report, Appellant argues, is not covered by the Inquest Statute. Intervener CPCS, on the other hand, argue that the court should impound both the transcript and the inquest report. Although Amici generally believe the law encourages public disclosure of the broadest possible range of public documents, Amici do not take a position on this particular issue. For purposes of this brief, Amici use the term "transcript" and "inquest documents" interchangeably. We note that, whatever position this Court takes, the time frame imposed by the Inquest Statute would apply.

examined in light of Massachusetts common law, compelled a ruling that the documents be public once the warrant was returned.[3] Id. at 631 ("On its face the statute provides, in effect, that, once the warrant and affidavit have been returned to the court, they become public documents."). In other words, the Court recognized that the word "until" signified a point at which the affidavit - previously "not . . . a public document" - takes on a new character, and becomes public. Id. ("On filing with the court the affidavit is a public document both under the statute and the common law."); see also Boston Herald v. Sharpe, 432 Mass. 593, 607-08 (2000) (holding that where statute listed specific categories of documents to be impounded in a divorce proceeding, failure to mention other documents supported a finding of public access).

The Superior Court erred by relying solely on this Court's 1969 ruling in Kennedy, 356 Mass. at 378. Under Kennedy's "general principles" of inquest procedure, inquest documents were to remain impounded until a trial was completed or declared to be unlikely. Id. (holding that an inquest "report and transcript shall be opened forthwith to public examination" if, among other things, "it shall appear that an indictment has been sought and not returned, or . . . if trial of the persons named

[3] The court did reject the argument that a First Amendment right of access existed in that particular case. Id.

in the report as responsible for the decedent's death shall have been completed"). Kennedy's principles, however, governed inquests only until 1993, when the legislature codified specific, different rules by enacting the Inquest Statute. Where Kennedy required impoundment until after trial or until "it shall appear that an indictment has been sought and not returned," the Inquest Statute only required impoundment until the grand jury had returned an indictment or a no bill.

The Superior Court's decision is particularly troubling for its omission of any clear rationale. It states little more than that the court "disagreed" with the legal conclusion, pressed by the Globe, that the Inquest Statute altered the "procedural rules for inquest proceedings" laid out in Kennedy. In re an Inquest Concerning the Death of Seth Bishop, C.A. No. 10-1113, at 6 n.5 (Mass. Super. Ct. June 18, 2010). This disagreement, however, cannot be reconciled with the clear language of the statute and would simply read the "until the . . . grand jury has returned a true bill" requirement out of the statute. The Superior Court also notes potential "embarrassment" arising from public release of the report. But nowhere does the court explain why it disregards the statute's clear provision of, "until the . . . grand jury has returned a true bill."

B. THE COMMON LAW RIGHT OF PUBLIC ACCESS REQUIRES THAT THE COURT MAKE INQUEST DOCUMENTS PUBLIC AFTER THE GRAND JURY RETURNS AN INDICTMENT.

Massachusetts common law supplies another reason this Court must reverse. Massachusetts courts have long recognized a right of public access to judicial documents.[4] Republican, 442 Mass. at 222 (recognizing right of public access in criminal cases); Sharpe, 432 Mass. at 593 (recognizing right of public access in civil cases). This right is presumptive: The law's default position favors public access to documents. Republican, 442 Mass. at 224-25.

The burden to demonstrate "good cause" for keeping the documents private rests on the party seeking continued impoundment. Id. (stating that "an impoundment order carries no continuing presumption of validity to sustain it against a proper challenge subsequently brought"). Once that burden is met, the judge then determines whether good cause exists by "balanc[ing] the rights of the parties based on the particular facts of each case." Republican, 442 Mass. at 223 (quoting

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[4] The common law right of access applies to "judicial records." Republican, 442 Mass. at 222. This Court has referred to inquests as "judicial hearings," Shepard v. Attorney General, 409 Mass. 398, 403 (1991), and "quasi-judicial" proceedings, Kennedy, 356 Mass. at 373. Given that the judge presides over an inquest, makes findings, and files a report of the proceeding in the superior court, Mass. G.L. c. 38, § 10, the conclusion that inquest documents are properly treated as judicial records seems apparent. Thus, absent contravening statutory language, they should be subject to disclosure under the common law.

Sharpe, 432 Mass. at 604). Among the factors the court should consider are "the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason for the request." Id. (quoting Unif. Rules on Impoundment, R. 7). The court must keep in mind, however, that "impoundment is always the exception to the rule." Id. (emphasis added). In every case, the court should err on the side of "the general principle of publicity." Id. (quoting Commonwealth v. Blondin, 324 Mass. 564, 87 N.E.2d 455 (1949).)

Presuming public access – and placing the burden on the party seeking continued impoundment (as opposed to the party demanding disclosure) – serves the public interest in at least three important ways. First, it "foster[s] more accurate fact finding." Grove Fresh Distributors, Inc. v. Everfresh Juice Co., 24 F.3d 893, 897 (7th Cir. 1994). Second, broad public access to information is essential to self-governance. "The presumption of public access 'helps safeguard the integrity, quality, and respect in our judicial system, and permits the public to keep a watchful eye on the workings of public agencies.'" In re Gitto Global Corp., 422 F.3d 1, 6 (1st Cir. 2005) (quoting In re Orion Pictures Corp., 21 F.3d 24, 26 (2d Cir. 1994)). As this Court noted in Sharpe, "The presumption of access facilitates 'the citizen's desire to keep a watchful eye on the workings

of public agencies,' permits the media to 'publish information concerning the operation of government,' and supports the public's right to know 'whether public servants are carrying out their duties in an efficient and law-abiding manner.'" 432 Mass. at 606 (internal citations omitted). In other words, it "provide[s] a check on the activities of judges and litigants." Grove Fresh, 24 F.3d at 897.

Finally, the right of public access also "promotes respect for the rule of law." Id. Public access improves a community's understanding of the functioning of the criminal justice system and promotes confidence in the fair administration of justice. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 572-73 (1980). In sum, a transparent and open legal system is a more respected legal system.

C. THE PRESUMPTION OF PUBLIC ACCESS ENSURES THAT THE MEDIA AND PUBLIC ARE ABLE TO GATHER FACTS AND REPORT ON MATTERS OF PUBLIC CONCERN.

Public access has never been a right held exclusively by the institutional press such as large newspapers, broadcast networks, media conglomerates. To the contrary, the history of reporting in the United States reveals that journalism has often been - and often still is - carried out by a variety of actors, including individuals with no formal training or special credentials. It was his printing press that turned Benjamin Franklin into a newspaper reporter, editor, and publisher all in

one. Thomas Paine spread his views by pamphleteering. The authors of the Federalist Papers, too, were journalists of a sort. See generally Dan Gillmor, We the Media: Grassroots Journalism by the People, for the People (2006). It was only in the mid-twentieth century that journalism came to be regarded as a specialized craft requiring credentials and training. That perception may now be ebbing. Some of the most vivid, world-changing journalism today is being carried out by individual Egyptian citizens connected to Twitter accounts and Japanese citizens wielding cell phone cameras. The internet has spawned a huge, decentralized network of individuals who - like Franklin and Paine - are working largely on their own, and often on a shoestring.

Recent events underscore the critical contributions such journalists make to the public discourse. In 2007, for example, a blogger from Firedoglake.com gained press credentials to cover the trial of Lewis "Scooter" Libby. He live-blogged the trial[5] and provided the public with what the New York Times described as the "fullest, fastest public report," one that institutional reporters relied on to fact-check their own stories.[6]

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[5] See, e.g., Libby Liveblog: Instructions, Firedoglake.com, Jan. 23, 2007, http://firedoglake.com/2007/01/23/libby-liveblog-instructions/ (last visited Mar. 3, 2011).

[6] Scott Shane, For Bloggers, Libby Trial is Fun and Fodder, New York Times, Feb. 15, 2005, http://www.nytimes.com/2007/02/15/

A legal presumption against public access, of the sort contained in the Superior Court's ruling, would exact a particularly heavy toll from such a citizen journalist. Citizen journalists, like small local or regional news organizations, typically cannot afford to vindicate the public's right of access by filing motions to unseal or by litigating them to their conclusion if they are filed. Absent a strong presumption of access, their attempts to obtain casually impounded judicial records may be thwarted early on, or they can languish on the court docket. Freelance journalist Jim Edwards, for example, had to wait almost three years (until 2010) before a New York state judge ruled on his motion to unseal court records that described "a multimillion-dollar kickback scheme involving an international advertising agency."[7] When it finally reversed the trial court's ruling in Edwards's case, the New York Appellate

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washington/15bloggers.html (last visited Mar. 3, 2011). Salon.com similarly applauded Firedoglake for producing "insightful" and "superb" coverage "that simply never is, and perhaps cannot be, matched by even our largest national media outlets." Glen Greenwald, FireDogLake's Libby Reporting Forces a Reevaluation of Blogs, Salon.com, Feb. 15, 2007, http://www.salon.com/opinion/greenwald/2007/02/15/blogs/index.html (last visited Mar. 3, 2011).

[7] Noeleen G. Walder, Embarrassing or Not, Documents Must be Unsealed, Court Says, Law.com, July 22, 2010, http://www.law.com/jsp/article.jsp?id=1202463769591&slreturn=1&hbxlogin=1 (last visited Mar. 5, 2011). See, e.g., Jim Edwards, Printing Money: Secret Transcripts Reveal How Grey Group Juggled Clients' Cash, Bnet.com, Nov. 8, 2010, http://www.bnet.com/feature/printing-money-secret-transcripts-reveal-how-grey-group-juggled-clients-cash/480119? (last visited Mar. 5, 2011).

Division articulated the legal cost of requiring a journalist to litigate for public access: "Undue delays in rulings on such motions," it wrote, "implicate the public's right to access the court records." Mosallem v. Berenson, 905 N.Y.S.2d 575, 582 (N.Y. App. Div. 2010).

By contrast, when the right of public access is properly applied, journalists have demonstrated an aptitude to use it responsibly to report on important public matters. In 2010, Adriane Fugh-Berman – a professor of physiology and biophysics at Georgetown Medical Center – examined 1,500 documents that had been unsealed in a class action lawsuit against drug-maker Wyeth. Without any funding, Fugh-Berman was able to show how the pharmaceutical "industry uses ghostwriters to insert marketing messages into articles published in medical journals." The right of public access enabled Professor Fugh-Berman to expose an industry's apparent attempt to mislead the public about health and safety issues.[8]

The lower court's ruling in this case threatens such public engagement on matters of societal concern. It might seem that by blocking access to the inquest materials, the lower court has only prevented reporting on a small aspect of a very big case.

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[8] Adriane J. Fugh-Berman, The Haunting of Medical Journals: How Ghostwriting Sold "HRT", plosmedicine.org, http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.1000335 (last accessed Mar. 5, 2011).

As the U.S. Supreme Court has noted, however, "An endless series of moratoria on public discussion, even if each were very short, could hardly be dismissed as an insignificant abridgment of freedom of expression." Bridges v. State of Calif., 314 U.S. 252 (1941).

For these reasons, this Court should uphold the presumptive right of public access to post-indictment inquest documents that is inherent in the Inquest Statute. Absent such a presumption, the costs of accessing information will routinely outpace the resources of many journalists. If inquest documents remain impounded by default, it is the public that will suffer.

II. THE UNIFORM RULES ON IMPOUNDMENT PROCEDURE PROVIDE ADEQUATE PROCEDURES AND SAFEGUARDS FOR THE PARTY SEEKING CLOSURE.

Amici recognize that defendants have important interests in maintaining the integrity of inquest proceedings and subsequent trials. Amici do not suggest that there is an unfettered right of access to all inquest documents in all circumstances, without regard for defendants' interests. Existing Massachusetts law, however, already incorporates procedural safeguards to protect defendants' interests. Notably, the Inquest Statute itself reflects the legislature's determination that a defendant's interest gives way to the public's only after a grand jury returns an indictment decision.

As a further check, the Uniform Rules on Impoundment provide a mechanism by which parties may address the necessity of impoundment. See generally Unif. Rules on Impoundment.[9] Specifically, Rule 2 requires a party requesting impoundment of documents to file a motion in writing, supported by legal grounds and reasons for the request. Unif. Rules on Impoundment, R. 2. A motion under the Unif. Rules on Impoundment must be specific: it must "describe with particularity the material sought to be impounded and the period of time for which impoundment is sought." Id. It also must "be accompanied by [a supporting] affidavit." Id.

The Unif. Rules on Impoundment strike a sensible balance. While maintaining a strong presumption in favor of public access – a presumption consistent with the Inquest Statute, Massachusetts common law, and the First Amendment - the Unif. Rules on Impoundment nevertheless allow a defendant to seek closure in appropriate cases. The Unif. Rules on Impoundment's presumption of public access exists in tandem with the defendant's opportunity to convince a court, in any particular case, that access would undermine substantial interests.

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[9] For the reasons advanced in the Attorney General's brief, the Rules have been deemed instructive in criminal as well as civil cases, and it is appropriate to apply their protections to the inquest proceedings at issue here. See Brief of Intervener Attorney General, at 27-29.

The opportunity to request closure is no guarantee that records will in fact be impounded. The burden rests on the party seeking closure to show that "good cause" exists. Thus, in keeping with the common law and Rule 2, a simple motion to impound will not suffice to tilt the scales toward closure. The moving party must provide reasons for seeking closure, and the court must weigh those reasons along with other considerations, such as the parties involved, the information involved, any privacy interests, and the community interest. Republican, 442 Mass. at 223; see also Unif. Rules on Impoundment, R. 7. Only if a court finds good cause, as substantiated by written findings, may it issue an order of impoundment. Id., R. 8.

Even in those cases where a moving party demonstrates that good cause exists, impoundment cannot continue indefinitely. Id., R. 2, 8. Once the specified period of impoundment ends, the presumption of public access applies. Put another way, when a party shows good cause for closure, it still carries a burden of showing that closure continues to be justified.

CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court vacate the Superior Court's June 18, 2010 order denying the Globe's request to copy and inspect the inquest documents. Amici also respectfully request that this Court remand this case to the Superior Court with instructions to grant public access to the inquest report and transcripts unless Bishop meets her burden, under the Unif. Rules on Impoundment and the common law, of demonstrating sufficient good cause to overcome the strong presumption of public access.

Respectfully submitted,

CITIZEN MEDIA LAW PROJECT,
COMMUNITY NEWSPAPER HOLDINGS, INC.,
GATEHOUSE MEDIA, INC., MASSACHUSETTS
NEWSPAPER PUBLISHERS ASSOCIATION,METRO
CORP. D/B/A BOSTON MAGAZINE,
and NEW ENGLAND NEWSPAPER AND PRESS
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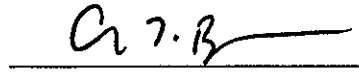
Dated: March 21, 2011

[10] Amici thank Harvard Law School Cyberlaw Clinic students Aatif Iqbal and David Simon for their valuable contributions to this brief.

CERTIFICATE OF COMPLIANCE

I, Christopher T. Bavitz, hereby certify pursuant to Mass. R. App. P. 16(k) that the instant brief complies with the rules of court pertaining to the filing of briefs, including, but not limited to, Mass. R. App. P. 16(a)(6), (b), (e), (f), and (h), 18, and 20.



Christopher T. Bavitz

Dated: March 21, 2011

ADDENDUM

Massachusetts General Laws

Chapter 38, Section 8: Inquests

The chief medical examiner or his designee may request the attorney general or the district attorney to direct that an inquest be held. The attorney general or district attorney may, regardless of whether or not action has been taken by the office of the chief medical examiner, require an inquest to be held in case of any death. The district court which has jurisdiction over the matter shall thereupon hold an inquest.

The court shall give seasonable notice of the time and place of the inquest to the department of telecommunications and energy, in any case of death by accident upon a public conveyance regulated by said department, and to the registry of motor vehicles in any case of death in which any motor vehicle is involved. Such notice shall also be given to any parent, spouse, or other member of the deceased's immediate family or to the deceased's legal representative or legal guardian.

Any person who has been identified by the attorney general or the district attorney, as the case may be, as the target of an investigation in connection with the death of the deceased may be present during the holding of such inquest and be represented by counsel, and may request leave of the court to present or examine witnesses, and shall at the completion of the court's report of said inquest have the right to examine said report; provided, however, that no indictment shall be dismissed nor shall any evidence be suppressed for violation of the provisions of this paragraph. All other persons not required by law to attend may be excluded from the inquest; provided, however, that the parents, guardian or next of kin of the person whose death is the subject of the inquest shall be deemed to be interested persons who may be present during the holding of such inquest. The court may order, as it deems appropriate, that witnesses to be examined during the inquest be sequestered.

Chapter 38, Section 9: Accidental deaths; public conveyances; transcript of inquest

If the court determines that the inquest relates to an accidental death upon a conveyance regulated by the department of telecommunications and energy, the court shall cause a

transcript of the inquest proceedings, after review and written approval by the court, and the bill for such transcript, to be forwarded to said department within thirty days after the closing of the inquest proceedings, and, when made, a copy of the court's report on the inquest.

Chapter 38, Section 10: Report of findings by court

The court shall report in writing when, where, and by what means the person met his death, the person's name, if known, and all material circumstances attending the death, and the name, if known, of any person whose unlawful act or negligence appears to have contributed thereto. The court shall file its report and a transcript of the inquest proceedings in the superior court for the county in which the inquest is held. Said transcript shall be impounded until the district attorney files a certificate with the superior court indicating that he will not present the case to a grand jury, or files notice with the superior court that the grand jury has returned a true bill or a no bill after presentment by the district attorney.

Uniform Rules on Impoundment Procedure

Rule 2: Motion for Impoundment

A request for impoundment shall be made by written motion which shall state the grounds therefor and shall include a written statement of reasons in support thereof. The motion shall describe with particularity the material sought to be impounded and the period of time for which impoundment is sought.

A motion for impoundment shall be accompanied by affidavit in support thereof. Unless otherwise provided herein, the rules governing motions and affidavits in civil proceedings generally shall apply to requests for impoundment.

An order of impoundment may be requested prior to the filing of the material sought to be impounded.

Rule 7: Hearing

An order of impoundment may be entered by the court, after hearing, for good cause shown and in accordance with applicable law. In determining good cause, the court shall consider all relevant factors, including, but not limited to, the nature of the parties and the controversy, the type of information and the

privacy interests involved, the extent of community interest, and the reason(s) for the request. Agreement of all parties or interested third persons in favor of impoundment shall not, in itself, be sufficient to constitute good cause.

Interested third persons who are notified in accordance with Rule 4 of these rules and those third persons who have filed motions to be heard in accordance with Rule 6 of these rules may, in the court's discretion, be given an opportunity to be heard.

Where a public hearing may risk disclosure of the information sought to be impounded, the court may close the hearing to the public. If a hearing is closed to the public, a record of the proceedings shall be preserved stenographically or by a recording device. Appropriate steps shall be taken to preserve the confidentiality of the record.

Rule 8: Order of Impoundment

An order of impoundment, whether ex parte or after notice, may be made only upon written findings. An order of impoundment shall specifically state what material is to be impounded, and, where appropriate, may specify how impoundment is to be implemented. An order of impoundment shall be endorsed with the date of issuance and shall specify the duration of the order.

In its order, the court may allow persons other than those described in Rule 9 of these rules to have access to impounded material, and may order that appropriate deletions or notations be made in the civil docket and indices kept by the clerk.

CERTIFICATE OF SERVICE

I, Robert A. Bertsche, hereby certify that on March 21, 2011, I caused two true and correct copies of the above document to be served on counsel of record for each other parties by mailing the document by first-class mail, postage pre-paid, to the following:

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Intervener pursuant to Commonwealth v. Silva, 448 Mass. 701 (2007)

Dated: March 21, 2011

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