

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
Honorable Christopher E. McGraugh

Exhibit A

ST. LOUIS REGIONAL)	
CONVENTION AND SPORTS)	
COMPLEX AUTHORITY, et al,)	
)	
PLAINTIFFS,)	
)	CAUSE NO. 1722-CC00976
vs)	
)	
NATIONAL FOOTBALL)	
LEAGUE, et al,)	
)	
DEFENDANTS.)	

~~TRANSCRIPT OF HEARING~~

On August 31, 2021, the above-entitled cause came on regularly for hearing before the Honorable Christopher E. McGraugh, Judge of Division 19 of the Twenty-Second Judicial Circuit in the City of St. Louis. Plaintiffs' and Defendants' counsel were in appearance.

JACQUELYN S. WILLIAMS, CCR, RPR
OFFICIAL COURT REPORTER
CITY OF ST. LOUIS CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT

1 THE COURT: We're here in the matter of St.
2 Louis Regional Convention and Sports Complex Authority, et
3 al versus NFL, et al, Cause No. 1722-CC00976.

4 We are here in two matters. First, we are
5 taking up the defendants' motion to close this hearing on
6 their application to change of venue.

7 The defendants appear as well as the plaintiffs
8 appear. Mr. Haar, are you presenting this motion?

9 MR. HAAR: Yeah. I will address it, Judge.

10 THE COURT: Please do.

11 MR. HAAR: Judge, on August 23rd, we moved to
12 close the hearing on our application for change of venue.
13 The underlying pleadings regarding the application have
14 been sealed because they cite quote: Confidential
15 discovery materials and pleadings. And the application
16 itself seeks a change of venue for cause based on, among
17 other things, extensive prejudicial pretrial publicity.
18 Obviously, that publicity will be the subject of the
19 hearing.

20 We move to close the hearing to avoid the undue
21 risk that publicity resulting from a public hearing on
22 venue application will exacerbate the prejudice from the
23 pretrial publicity and further jeopardize the defendants'
24 right to a fair trial before an impartial jury.

25 Now, the propriety of closing a hearing under

1 these circumstances was recognized by the Missouri Court
2 of Appeals for the Eastern District in the *State ex rel.*
3 *Pulitzer v Autrey* case. The Court of Appeals explained
4 that even in a criminal proceeding in which the right to
5 access judicial proceedings has historically been much
6 greaser than in civil cases, the public's right of access
7 must be balanced against the party's right to a fair
8 trial.

9 And the Court of Appeals held in weighing that
10 balance, the trial court must analyze the character of the
11 proceedings for which closure is sought. Unlike the
12 summary judgment hearing we had last week, this hearing
13 does not go to the merits of the legal claims in this
14 lawsuit. It's collateral to them; a factor that militates
15 in favor of closing.

16 On the other hand, what you have in the balance
17 is the fact there's nothing more important than a
18 litigant's fundamental constitutional right to a fair
19 trial before an impartial jury.

20 And the Court of Appeals in the Autrey case
21 addressed the type of situation that we have here. It
22 said generally defendants seek a change of venue because
23 he thinks he cannot draw a fair and impartial jury in a
24 particular venue.

25 The defendants' evidence at the hearing, by

1 definition, is directed to the populous in that venue.

2 Evidence sufficient to sustain such a motion may also make
3 it more difficult to impanel an impartial jury if the
4 motion is denied.

5 Though collateral to the defendants' guilt or
6 innocence, and that was a criminal case, here, collateral
7 to the merits of the case, this evidence, if made public,
8 could prejudice defendants' assertion of this right to a
9 fair trial. The conundrum may effectively chill the
10 filing of such a motion, a result we cannot condone.

11 The concerns about impaneling an impartial jury
12 that are discussed in Autrey are acutely present in this
13 case. And it's for that reason that we respectfully
14 request that the motion to close the hearing on the
15 application for change of venue for cause be granted.

16 THE COURT: Does the plaintiff wish to be heard
17 on this?

18 MR. BENNETT: No, Your Honor. We think you
19 understand the factors that need to be considered and can
20 rule based on the arguments.

21 THE COURT: I see Mr. Hessel is in the
22 courtroom. Mr. Hessel, do you wish to address the Court?

23 MR. HESSEL: I would if you'd allow me, Your
24 Honor. First off, Judge, thank you for allowing me to
25 speak. You received my letter on Friday I assume. And as

1 noted in the letter, we obviously oppose any motion to
2 close this proceeding. As Mr. Haar alluded to, we're not
3 looking to be in attendance. If any confidential
4 discovery is going to be discussed during that hearing, we
5 can be excluded from that process, but as Mr. Haar noted,
6 the Autrey case in which they rely upon, which by the way,
7 was handled by my mentor Bob Hoemeke, and I assisted in
8 that case.

9 The court emphasized -- that was a criminal
10 proceeding. And the court emphasized the right to a Sixth
11 Amendment right to a fair trial. The court also
12 emphasized that there ought to be testimony; there ought
13 to be evidence that, in fact, there is some prejudice
14 that's going to be caused unless the hearing is closed.

15 Mr. Haar, he's very knowledgeable on the First
16 Amendment; very highly respected by me and everyone else.
17 All he does is give the blanket statement that a hearing
18 concerning a motion for change of venue is somehow going
19 to exacerbate the situation. The adverse -- I guess he's
20 suggesting the adverse publicity that already exists is
21 going to somehow be worse without any support whatsoever.
22 It's just a blanket statement that he's making.

23 And I suggest to the Court that that is
24 insufficient, and there is no justifiable reason for
25 closing this hearing on a motion for change of venue.

1 Now, motion of change of venue deals with all
2 sorts of issues and I assume they're going to talk about
3 the past publicity that's already occurred. What's
4 already occurred I'm not sure how that can further
5 prejudice by repeating something that has occurred.

6 So on behalf of the Post Dispatch and all media,
7 we're asking this Court to deny the motion and to allow us
8 to be in attendance except to the extent that this Court
9 determines that there is some confidential propriety
10 information, such as financial information, that they want
11 to bring forward, if any, during that hearing.

12 And I won't elaborate anymore than I've already
13 indicated in my letter, Judge. Again, thank you for
14 allowing me to speak.

15 THE COURT: Thank you, Mr. Hessel. Mr. Haar.

16 MR. HAAR: Yes, Judge. First of all, neither
17 the US Supreme Court of the 8th Circuit has extended a
18 First Amendment right of access to the press in civil
19 cases.

20 And as the Autrey court noted, historically the
21 right of access to criminal cases is greater than in civil
22 cases. And the common law right of access can be overcome
23 by a compelling justification, which we submit we have
24 here.

25 And I'd like to emphasize this is a limited

1 request regarding one hearing. We have not moved to close
2 any of the other hearings, any of those related to any of
3 the substantive issues in this case.

4 The reason why closure is appropriate here is
5 because of the specific current concerns inherent in a
6 change of venue application and the defendants' right to a
7 fair trial, which was recognized in the Autrey case.

8 Regarding to responding to Mr. Hessel, this
9 hearing implicates a confidential expert report, a very
10 sensitive and private communication; extensive pretrial
11 publicity that we believe already seriously prejudices the
12 defendants' right to a fair trial that will only be
13 amplified and exacerbated if there is another public
14 hearing in which those matters are discussed.

15 So we, again, request that the Court close the
16 hearing on the application for the change of venue for
17 cause so that, again, the defendants' constitutional right
18 to a fair trial before an impartial jury is not further
19 compromised. Thank you.

20 THE COURT: Anything further? Anyone else wish
21 to be heard on this? Mr. Haar, do you anticipate your
22 remarks as it relates -- we're not hearing any evidence as
23 it relates to this. Is that correct?

24 MR. HAAR: No. Obviously large volumes of
25 evidence have been submitted with the application.

1 THE COURT: Which obviously none of those are
2 confidential. Most of those are publications. Is that
3 correct?

4 MR. HAAR: There are publications. Obviously
5 there are communications. There are reports. There are
6 other things that clearly are confidential.

7 THE COURT: And do you intend to address those
8 portions of the submissions that are confidential in your
9 hearing?

10 MR. HAAR: Judge, in fairness, at a high level.

11 THE COURT: I'm sorry?

12 MR. HAAR: At a high level.

13 THE COURT: Besides those confidential
14 materials, are you concerned that there may be remarks
15 that might be considered inflammatory that would cause
16 prejudice to your client?

17 MR. HAAR: Judge, I don't think there's any way
18 that you can address the prejudicial pretrial publicity
19 without reference to some of the inflammatory aspects of
20 it. That's inherent in having a hearing on that
21 particular issue.

22 THE COURT: Okay. Thank you, Mr. Haar. The
23 dictates of the Autrey case -- I hope they don't name a
24 case like this after me. The dictates of the Autrey case
25 seeing that if I am to close the hearing that it be

1 specifically tailored to the circumstances that address
2 either the inflammatory evidence and or confidential
3 materials.

4 Otherwise, it's pretty directive that although
5 this was a criminal matter, it doesn't seem like it
6 isolates itself solely to criminal matters. So I'm going
7 to grant in part and deny in part the motion.

8 I'm going to permit argument of this by the
9 parties under closed session. However, I will reopen the
10 hearing of the parties to address specific questions the
11 Court may have and any additional comments the parties may
12 wish to make.

13 Obviously, if they think they're going to
14 address confidential, they should do it while we're in
15 closed session and not when we're back in session. So the
16 motion is granted in part and denied in part.

17 Is there anything further as it relates to that
18 motion?

19 MR. HAAR: No, Your Honor.

20 THE COURT: All right. So I know we're running
21 a little early now. I always anticipate us taking longer
22 than we actually do. So we have an extra 15 minutes
23 before I had scheduled the motion of your application on
24 change of venue. Do you want to take that up now?

25 MR. HAAR: We're ready to go now, Judge.