STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	

EX PARTE: EVENING POST INDUSTRIES, INC.,)	
SOUTH CAROLINA PRESS ASSOCIATION,)	
SINCLAIR PROPERTIES, L.L.C., D/B/A WCIV-TV,)	
THE ASSOCIATED PRESS, ABC, INC., AND THE)	
STATE MEDIA COMPANY D/B/A THE STATE,)	
ET AL.,)	
INTERVENORS,)	

IN RE:)	
)	
STATE OF SOUTH CAROLINA)	DOCKET NOS. 2015-GS-10-4115-4124
)	2015-GS-10-4186-4188
VS.)	
)	REPLY TO EXTENSION OF
DYLANN S. ROOF,)	RESTRICTIVE ORDER
)	

Several individuals and entities have asked the court to extend its order instructing public bodies not to release records relating to the Emanuel Church shootings. The reasons advanced for this court's previous order and the requests for the extension of the order – protection of the fair trial rights of the defendant and privacy considerations – do not support the initial order or its extension.

The context in which these issues are to be considered was stated forcefully by the United States Supreme Court in *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) with the court noting the benefit to a community in which a shocking crime has occurred if the judicial process is open:

> When a shocking crime occurs, a community reaction of outrage and public protest often follows. [citation omitted] Thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Without an awareness that society's responses to criminal conduct are underway, natural human

> reactions of outrage and protest are frustrated and may manifest themselves in some form of vengeful "self-help" as indeed they did regularly in the activities of vigilante "committees" on our frontiers.
>
> ***
>
> The crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is "done in a corner [or] in any covert manner."

Id., 448 U.S. at 571, 100 S.Ct. at 2824 (internal citation omitted).

Richmond Newspapers concerned a challenge to a closed criminal trial, but the value of openness in the process relates to the actions of other public institutions as well as to the trial. If the public is foreclosed from obtaining information about the performance of its public institutions, they may lose confidence in those institutions. As the court noted, "...the appearance of justice [in the criminal process] can best be provided by allowing people to observe it." *Id.*

Foreclosing public access to public records has no basis in law, and it threatens the confidence the public has that its officials performed as they should have in the difficult circumstances that obtained. Both the United States Supreme Court and the Supreme Court of South Carolina have held that a defendant's right to a fair trial is to be protected by extensive *voir dire*, continuance, change of venue, and detailed jury instructions. *Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683, 1 Media L. Rep. 1064 (1976); *Ex parte Hearst-Argyle Television Inc.,* 369 S.C. 69, 631 S.E.2d 86 (2006). While it is true that the outrageous nature of the crime for which this prosecution is to be undertaken has and will generate widespread publicity, "pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial." *Nebraska Press,* 427 U.S. at 565, 96 S.Ct. at 2805.

This court's order of July 10, 2015, countermands the General Assembly's finding that it is vital in a democratic society that public business be conducted in an open and public manner, and that citizens and their representatives are to be given access to public records unless a narrowly construed exemption applies. S.C. Code Ann. 30-4-15. The order of July 10 creates a blanket exemption from disclosure without regard to whether the General Assembly has determined that certain records may be sheltered from mandatory disclosure or whether a public body would assert an exemption. The Supreme Court of South Carolina has held that "[w]hether a record is exempt depends on the particular facts of the case," and that the statutory exemptions "are to be narrowly construed." *Evening Post Pub. Co. v. City of North Charleston,* 363 S.C. 452, 611 S.E.2d 496, 33 Media L. Rep. 1532 (2005).

Several persons have requested an extension of the July 10 order on grounds that release of public records would constitute an unreasonable invasion of their privacy. While we have great sympathy to those families who have lost loved ones, under South Carolina law, these persons have no privacy rights that would outweigh the public interest in access to records which reveal the performance of government. The "unreasonable invasion of personal privacy" exemption found in S.C. Code Ann. 30-4-40(a)(2) (1976) is to be construed in the context of the common law right of privacy. *Society of Professional Journalists v. Sexton,* 283 S.C. 563, 324 S.E.2d 313 (1984); *Burton v. York Sheriff,* 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). As a starting point, as the Supreme Court of South Carolina held in *Society of Professional Journalists,* "[g]enerally privacy rights are considered personal rights which do not survive" death. 324 S.E.2d at 315.

More significantly, as the Supreme Court of South Carolina explained in *Meetze v. Associated Press,* 230 S.C. 330, 95 S.E.2d 606 (1956), the seminal South Carolina privacy

decision, one can lose a right of privacy involuntarily by becoming involved in an occurrence of general or public interest:

> There are times when one, whether willingly or not, becomes an actor in an occurrence of public or general interest. When this takes place, he emerges from his seclusion and the publication of his connection with such occurrence is an invasion of his right of privacy. [Citations omitted] The law does not recognize a right of privacy in connection with that which is inherently a public matter.

Id., 95 S.E.2d at 609 (internal citations omitted).

The Supreme Court of South Carolina held in *Doe v. Berkeley Publishers, Inc.*, 329 S.C. 412, 496 S.E.2d 636, *certiorari denied*, 525 U.S. 963, 119 S.C. 406, 142 L.Ed.2d 330 (1998), that the commission of a violent crime between county jail inmates was a matter of public significance a matter of law. If a cloistered assault can be considered a matter of public interest, a mass murder in a place of worship certainly is. Privacy is not an absolute right and the claim of such right must be balanced against the public's interest in "a free dissemination of news and information." *Meetze*, 95 S.E.2 at 609.

Some persons seeking to extend the July 10 order have argued that the decision of the United States Supreme Court in *National Archives and Records Admin. V. Favish*, 541 U.S. 157, 124 S.Ct. 1579, 158 L.Ed.2d 768 (2004) is controlling. This case is unavailing as it deals solely with construction of a provision of the Federal Freedom of Information Act, 5 U.S.C. 552(b)(7), a statutory right of privacy which the United States Supreme Court notes "goes beyond the common law and the Constitution." *Id.* at 170. If any freedom of information act has application to the matter before the court here, it is the South Carolina act, which is construed in the framework of common law invasion of privacy.

The argument will no doubt be made that the press, or others, will act irresponsibly should they come into possession of public records relating to the crime and the governmental response

to it. Such is the risk the framers of the Constitution struck, as noted by Justice White in his concurring opinion in *Miami Herald v. Tornillo,* 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974):

> Of course, the press is not always accurate, or even responsible, and may not present full and fair debate on important public issues. But the balance struck by the First Amendment with respect to the press is that society must take the risk that occasionally debate on vital matters will not be comprehensive and that all viewpoints may not be expressed.

Id., 418 U.S. at 260, 94 S.Ct. at 2841 (White, J., concurring).

CONCLUSION

To the extent that the order of July 10, 2015 seeks to prevent public access to public records, it should be vacated. The fair trial rights of the defendant can be protected by measures far less dismissive of the public interest in evaluating the performance of public officials before, during and following a mass murder. The requests that a claim that an unreasonable invasion of personal privacy will result if public records are disclosed in accordance with South Carolina law should be rejected.

Respectfully submitted,

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September 1, 2015

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

Via FEDEX OVERNIGHT

Honorable Julie J. Armstrong
Charleston County Clerk of Court
c/o General Sessions Filing Clerk
100 Broad Street, Suite 106
Charleston, SC 29401-2258
(843) 958-5024

Re: The State of South Carolina v. Dylann S. Roof
Case No. 2015-GS-10-4115-4124 and 2015-GS-10-4186-4188

Dear Madam Clerk:

Enclosed with this letter you will find a reply to the extension of the restrictive order in the above-referenced matter. Kindly file the reply and place its duplicates in the pre-stamped envelope for the mailed return to our office. To the extent any defect with this paperwork precludes filing, please call our law firm at the number listed above immediately.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.

Taylor Smith

Taylor M. Smith IV

TMS/
Enclosure as stated