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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	Criminal Case No. 93-174F
	)	
Plaintiff,	)	<b>DECISION AND ORDER ON</b>
	)	<b>DEFENDANT'S MOTION TO</b>
v.	)	<b>CLOSE COURTROOM AND</b>
	)	<b>SEAL RECORDS</b>
JUAN L. EVANGELISTA,	)	
	)	
Defendant.	)	
_____	)	
MARIANAS CABLEVISION,	)	
	)	
Intervenor.	)	
_____	)	

This matter came before the Court on September 2, 1994, on the motion of Defendant Juan L. Evangelista to close the courtroom during a portion of a hearing on his motion to suppress a confession and other evidence. Defendant claims that unless the hearing is closed to the public, evidence presented there will be the subject of sensational media coverage, prejudicing Defendant's right to a fair trial and violating his privacy. The Government and Intervenor Marianas Cablevision oppose the request, arguing that the public's right to be informed about the nature of these proceedings outweighs Defendant's personal privacy interests and

1 that alternatives short of closure can effectively protect  
2 Defendant's right to a fair trial.

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4 **I. FACTS**

5 Defendant was arrested on November 18, 1993, and was charged  
6 the following day with four counts of Theft. At the time of his  
7 arrest, Mr. Evangelista was the Chief of Taxation and Revenue for  
8 the Commonwealth of the Northern Mariana Islands. The charges  
9 stem from claims that Mr. Evangelista authorized issuance of tax  
10 rebates to fictitious taxpayers and then appropriated the rebate  
11 checks for his own use.

12 On the day of his arrest, Mr. Evangelista was interviewed by  
13 an Investigator from the Department of Public Safety. During the  
14 course of this interview, Mr. Evangelista made statements  
15 regarding the charges. After the interview, Mr. Evangelista  
16 provided documents to the Investigator. On May 18, 1994, Mr.  
17 Evangelista moved to suppress those statements and documents from  
18 this case on the grounds that the Investigator coerced him into  
19 making the statements and that he did not voluntarily waive his  
20 rights to silence and to representation during the interview.

21 The Court held a hearing on Defendant's motion to suppress on  
22 June 30, 1994. During the hearing, Defendant made an oral motion  
23 that the courtroom be closed, on the grounds that Defendant's  
24 witnesses would be testifying to material which would be subject  
25 to media sensationalism. Both the Government and certain persons  
26 in the courtroom objected to this request. The Court took

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<sup>1/</sup> The following summary is drawn from the parties' proposed findings of fact, submitted at the Court's request after the September 2, 1994 hearing.

1 testimony from two Government witnesses and recessed the hearing  
2 to allow Defendant to file a written motion for closure of the  
3 remainder. The suppression hearing is scheduled to resume on  
4 October 12, 1994.

5 In support of his motion, Defendant submitted for in camera  
6 inspection a videotape containing the deposition of Dr. Jeffrey  
7 Staab, as well as Dr. Staab's written psychological evaluation of  
8 Mr. Evangelista.<sup>2/</sup> These materials purport to evaluate Mr.  
9 Evangelista's state of mind at the time police interviewed him on  
10 November 18, 1994. This evaluation includes a discussion of  
11 certain over-the-counter and prescription drugs Mr. Evangelista  
12 had taken in the hours before the interview; Dr. Staab's proffered  
13 testimony also involves a psychological profile and diagnosis of  
14 Mr. Evangelista, formed on the basis of two interviews and medical  
15 records. This profile and diagnosis discloses aspects of Mr.  
16 Evangelista's personality and private life.

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18 **II. ISSUE**

19 Two main issues are presented here:

- 20 1. Whether protection of Defendant's right to a fair trial  
21 justifies closing the courtroom during all or part of the  
22 suppression hearing and/or the sealing of pertinent court records;  
23 2. Whether the asserted privacy rights of Defendant or his  
24 family justify closure or sealing of records.

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<sup>2/</sup> Dr. Staab will be unavailable to testify at the  
suppression hearing; therefore, Defendant intends to present his  
testimony through the videotape itself.



1           This interest in allowing public scrutiny of the workings of  
2 the criminal justice system are especially present in this case,  
3 where the Defendant is a former high government official accused  
4 of misappropriating public funds. The primary antidote to the  
5 taint of corruption such charges bring upon the Commonwealth  
6 Government is its ability to investigate and prosecute them in an  
7 honest, above-board manner, and the ability of the courts to pass  
8 judgment on those charges in the light of public scrutiny.

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10           **2. Fair Trial Rights.**

11           Balanced against the interests described above is the right  
12 of every criminal defendant to receive a fair trial. Nebraska  
13 Press Association v. Stuart, 96 S.Ct. 2791, 2798-2800 (1976).  
14 Where pretrial publicity is extremely sensational and pervasive,  
15 it becomes extremely difficult to obtain an impartial jury. See  
16 Rideau v. Louisiana, 83 S.Ct. 1417, 1419 (1963) (reversing  
17 conviction where **defendant's** staged confession was broadcast  
18 repeatedly on television several days prior to trial). In the  
19 vast majority of cases, pretrial publicity does not prevent a  
20 defendant from obtaining a fair trial. Stuart, supra, 96 S.Ct. at  
21 2799. However, in those few cases where media reports are likely  
22 to engender a **"pattern of deep and bitter prejudice,"** Courts are  
23 justified in taking steps to limit media access. Seattle Times v.  
24 U.S. District Court for the Western Dist. of Washington, 845 F.2d  
25 1513, 1517 (9th Cir. 1988) (citation omitted).

1           **3. Balancing Test.**

2           Federal Courts seeking to balance these countervailing  
3 interests place the burden on the party seeking closure to show  
4 "that it is strictly and inescapably necessary in order to protect  
5 the fair-trial guarantee." *Brooklier, supra*, 685 F.2d at 1167.  
6 *Brooklier* requires the moving party to satisfy a three-step test,  
7 demonstrating:

8           (1) a substantial probability that irreparable damage to  
9 his fair-trial right will result from conducting the  
10 proceeding in public; (2) a substantial probability that  
11 alternatives to closure will not protect adequately his  
right to a fair trial; and (3) a substantial probability  
that closure will be effective in protecting against the  
perceived harm.

12 *Id.* (citations omitted).<sup>4/</sup>

13           Here, Defendant's motion fails to satisfy any of these tests,  
14 as will be shown below.

15           **a. Likelihood of "Irreparable Damage to Fair-Trial Rights."**

16           Defendant claims that there has been an "unabated buildup of  
17 adverse publicity" in this case, prejudicing his ability to  
18 receive a fair trial. See Motion for a Protective Order at 2;  
19 Defendant's Exhibits A-C; Supplemental Exhibits. This  
20 characterization considerably overstates the facts. The media  
21 have printed articles covering various stages of this case and  
22 related civil proceedings; however, with the exception of an  
23 editorial in the *Marianas Variety* included in Defendant's  
24 Supplemental Exhibits, none of this publicity is particularly  
25 "adverse" in the sense of being biased against Defendant. Rather,  
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27           <sup>4/</sup> This standard is analytically indistinguishable from the  
28 one espoused by the U.S. Supreme Court in *Press-Enterprise, supra*,  
106 S.Ct. at 2743; the only difference is that *Press-Enterprise*  
combines the elements into a two-part test.

1 the articles generally present the relevant information without  
2 great sensationalism. Moreover, much of the recent publicity was  
3 engendered by Defendant's motion to close the courtroom itself,  
4 not by the underlying charges. In the Court's view the aggregate  
5 amount of media coverage can best be described as moderate in  
6 comparison to other high-profile criminal proceedings. Nothing  
7 about the media coverage so far causes concern that Defendant's  
8 right to a fair trial is in jeopardy.

9 Defendant next contends that what is revealed at the  
10 suppression hearing will prejudice his fair-trial right,  
11 generating unfavorable coverage in the future. It may be true  
12 that revelation of some details regarding Mr. **Evangelista's**  
13 personality and private life may cause some potential jurors to be  
14 biased against him. However, such potential bias among some  
15 members of the public does not approach the level required by the  
16 **Brooklier** test of "a substantial probability of irreparable  
17 damage." Even less could such publicity meet the **Seattle Times**  
18 test of creating a "deep and bitter prejudice throughout the  
19 community." The Court therefore holds that Defendant's fair-trial  
20 rights will not be placed at risk by allowing media access to his  
21 suppression hearing.

22 **b. Effective Alternatives.** Considering the second step of  
23 the **Brooklier** standard, the Court agrees with the Government and  
24 Intervenor that there are alternatives short of closing the  
25 courtroom which will correct for any potential juror bias  
26 generated by media coverage of the suppression hearing. Principal  
27 among these alternatives are careful juror voir dire, peremptory  
28 challenges and admonitions at the time of trial. The Court

1 believes that these procedures will prove effective especially  
2 because the suppression hearing will take place over six weeks  
3 prior to the time of trial; in the interim, media coverage of the  
4 suppression hearing will have faded in most potential jurors'  
5 minds. See Seattle Times, supra, 845 F.2d at 1518 (two month  
6 period between publicity and trial minimizes prejudice from  
7 publicity); Stroble v. California, 72 S.Ct. 599, 606 (1952) (six-  
8 week lag between media coverage and trial).

9 Defendant argues that the small size of Saipan amplifies the  
10 effects of pretrial publicity, as well as the influence of rumors  
11 in the tightly-knit society from which potential jurors are drawn,  
12 making selection of an impartial jury difficult if not impossible.  
13 However, the Court is aware of no evidence that the people of  
14 Saipan are more influenced by local media outlets than are  
15 citizens of larger communities; indeed, the reverse may well be  
16 true. As for the presence of local rumors and local prejudices on  
17 a small island, this factor is present in every criminal jury  
18 trial in the Commonwealth. See Commonwealth v. Santos, Criminal  
19 Case No. 93-163F(R), slip op. at 7 (Super. Ct. Sept. 30, 1994).  
20 Defendant has made no particularized showing here that the size of  
21 this community is more likely to affect him than others who  
22 receive jury trials on Saipan. Indeed, his ethnicity and family  
23 background suggest that some local prejudices run in Mr.  
24 Evangelista's favor, even if others run against him.

25 **c. Effectiveness of Closure.** Finally, the Court is  
26 unconvinced that closing the remainder of the suppression hearing  
27 from the public will protect Mr. Evangelista's fair-trial right.  
28 As noted above, the motion for closure itself generated a

1 substantial proportion of the media attention this case has  
2 received. The media is now aware that a psychiatrist will testify  
3 at the suppression hearing regarding Mr. Evangelista's private  
4 life. If the motion for closure is granted, media coverage will  
5 probably increase, as will the likelihood of media speculation and  
6 public gossip about the content of the "secret" testimony.

7 If the motion to suppress Mr. Evangelista's statements is  
8 granted, such media speculation and gossip are likely to increase  
9 even more. Such speculation could well take the form of  
10 suggestions that Mr. **Evangelista**, a well-placed ex-government  
11 official, received improper favorable treatment by the Court.  
12 This result would neither protect Mr. Evangelista's right to a  
13 fair trial nor serve the public function of airing charges of  
14 official corruption fully.

15 In sum, Defendant's motion for closure satisfies none of the  
16 tests which govern the balancing of First Amendment access rights  
17 against Sixth Amendment fair trial rights. Even if Mr.  
18 Evangelista is correct that the suppression hearing will engender  
19 substantial negative publicity, the Court remains unconvinced that  
20 less intrusive alternatives will not protect his rights or that  
21 the remedy he seeks will prevent the harm he predicts. The Court  
22 therefore finds that closure of the courtroom during the remainder  
23 of the suppression hearing is not warranted to protect the  
24 fairness of Mr. Evangelista's trial.

#### 25 26 **B. PUBLIC ACCESS VS. PRIVACY**

27 Other interests aside from fair-trial concerns can sometimes  
28 warrant closure of a courtroom or sealing of court records.

1 Courts may take such steps as: clearing a courtroom during the  
2 testimony of a sexual abuse victim who is a minor (*Renkel v.*  
3 *State*, 807 P.2d 1087 (Alaska 1991)); concealing the identity of a  
4 criminal informant (*U.S. v. De Los Santos*, 810 F.2d 1326 (5th Cir.  
5 1987), cert. den., 108 S.Ct. 490); sealing the terms of a plea  
6 bargain to protect the safety of a defendant and his family  
7 (*Oregonian Publishing Co. v. U.S. District Court for the District*  
8 *of Oregon*, 920 F.2d 1462 (9th Cir. 1990); or sealing or redacting  
9 testimony to protect the reputations of third parties (*U.S. v.*  
10 *Smith*, 776 F.2d 1104 (3d Cir. 1985) (sealing list of unindicted  
11 conspirators); *U.S. v. Criden*, 681 F.2d 919 (3d Cir. 1982)  
12 (redacting from taped conversations damaging references to third  
13 parties)).

14 However, a moving party must make a particularized  
15 evidentiary showing in order to seal court proceedings or records  
16 on these grounds. It is not enough merely to assert an interest  
17 such as the privacy of minor children, without providing evidence  
18 of the specific harms that public disclosure would cause to  
19 specific individuals. See *Renkel*, supra, 807 P.2d at 1093-4  
20 (letter from therapist and testimony of guardian insufficient to  
21 show necessity of closure of courtroom during abuse victim's  
22 testimony); *Oregonian Publishing*, supra, 920 F.2d at 1467 (sealing  
23 of plea-bargain was error where no evidence was offered to support  
24 court's finding that public disclosure would threaten safety of  
25 defendant and family). As for the privacy and reputational  
26 interests of third parties, the moving party must present evidence  
27 to show that disclosure would inflict "unnecessary and intensified  
28 pain on third parties." *Criden*, supra, 681 F.2d at 922. In this

1 regard, the threat of "mere embarrassment" is not sufficient.  
2 Id.; Smith, supra, 776 F.2d at 1110. A court granting a closure  
3 motion must make specific factual findings on the record, based on  
4 the evidence submitted by the moving party. Oregon Publishing,  
5 supra, 920 F.2d at 1467.

6 Here, Defendant has not come close to discharging this  
7 evidentiary burden. He alleges an impairment of his "privacy  
8 interests" and those of "his household," including children.  
9 Motion for Protective Order at 7-8; Reply at 4. Nowhere does  
10 Defendant state who the members of his household are or what  
11 difficulties they might suffer as a result of the opening of the  
12 suppression hearing. Defendant has given the Court no basis on  
13 which to find that any such harm would rise above the level of  
14 "mere embarrassment." Furthermore, Defendant has not demonstrated  
15 that closure of the suppression hearing will effectively protect  
16 his family members from harm; conversely, it is easy to imagine  
17 that the speculation and rumor generated by a closed hearing might  
18 prove equally harmful to Defendant's family.

19 Since Mr. Evangelista has not provided any evidence on these  
20 questions, any findings by the Court regarding his privacy or that  
21 of his "household" would amount to gross speculation, which cannot  
22 outweigh the real public interest in maintaining an open hearing.  
23 Therefore, the Court finds that Defendant's asserted privacy  
24 interests do not warrant the closure of the suppression hearing.

### 25 26 C. RELEVANCY OF PSYCHOLOGICAL EVALUATION

27 The Court's analysis thus far has assumed that the  
28 psychological profile presented by Dr. Staab will in fact be

1 presented at the hearing and will be deemed relevant to  
2 Defendant's motion to suppress. However, the Government has  
3 objected to the relevancy of this proffered testimony, and to Dr.  
4 Staab's written report, on the grounds that a defendant's mental  
5 state while making incriminating statements to police is  
6 irrelevant absent a showing of police misconduct aimed at taking  
7 advantage of that mental state. See *Colorado v. Connelly*, 107  
8 S.Ct. 515, 520-521 (1986).

9 Defendant has not yet presented any evidence of police  
10 misconduct in this case; the only witnesses so far have been the  
11 police investigators themselves, who deny coercing Defendant in  
12 any way. Thus, the Court cannot rule on the Government's  
13 relevancy objection until it has heard Mr. *Evangelista's* testimony  
14 regarding the coercion he allegedly suffered during the police  
15 interview. When the suppression hearing resumes, the Court will  
16 hear this initial testimony and then entertain arguments as to  
17 whether Defendant's psychological testimony should be admitted.

18 If this testimony is not admitted, a question arises as to  
19 whether the public still has a right of access to Dr. Staab's  
20 videotaped testimony and written report, which are currently under  
21 seal. The parties have not briefed the issue of whether a  
22 different balancing test governs material offered to the court but  
23 held inadmissible as evidence, nor has this Court researched the  
24 question.

25 Therefore, the Court will not yet unseal the file in this  
26 matter. Instead, if Dr. *Staab's* testimony and report are ruled  
27 inadmissible in the suppression hearing, the Court will entertain  
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1 arguments from the parties as to whether this material should  
2 remain under seal or should be made available to the public.

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4 **IV. CONCLUSION**

5 For the foregoing reasons, Defendant's Motion for a  
6 Protective Order closing the courtroom during the October 12, 1994  
7 suppression hearing is hereby DENIED. The hearing shall remain  
8 open to the public. All sealed portions of the Court's file in  
9 this matter shall remain sealed until further order of this Court.

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11 So ORDERED this 18<sup>TH</sup> day of October, 1994.

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14 MARTY W.K. TAYLOR, Associate Judge