

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION**

DOYLE LEE HAMM,

Plaintiff,

v.

**JEFFERSON S DUNN, COMMISSIONER,
 ALABAMA DEPARTMENT OF
 CORRECTIONS;
 CYNTHIA STEWART, WARDEN,
 HOLMAN CORRECTIONAL FACILITY;
 LEON BOLLING, III, WARDEN,
 DONALDSON CORRECTIONAL FACILITY;
 OTHER UNKNOWN EMPLOYEES AND
 AGENTS, ALABAMA DEPARTMENT OF
 CORRECTIONS**

Defendants.

2:17-cv-02083-KOB

ORDER

This matter is before the court on the Intervenor’s motion to unseal judicial records. (Doc. 107). The Intervenor’s are three media entities (Advance Local Media LLC, the *Montgomery Advertiser*, and The Associated Press), which seek to unseal “the judicial records, transcripts, and briefs in this case discussing Alabama’s execution protocols.” (*Id.*). The court **ORDERS** Defendants to SHOW CAUSE, in writing, **on or before April 17, 2018**, why the court should not grant the Intervenor’s motion to unseal the lethal injection protocol and court records related to it.

The court notes that the motion itself seeks only sealed records about Alabama’s lethal injection protocol, but the Intervenor’s brief requests that the court “unseal all records.” (*Compare* Doc. 107 with Doc. 108 at 2, 7). Specifically, the Intervenor’s seek (1) Alabama’s lethal injection protocol, which they suggest is located at docket entry 54; (2) the sealed

transcript of a telephone conference held on February 7, 2018, located at docket entry 72; (3) the sealed transcript of a telephone conference held on February 14, 2018, located at docket entry 70; (4) the sealed transcript of an *in camera* hearing held on January 31, 2018,¹ located at docket entry 53; (5) the sealed transcript of a closed hearing held on February 16, 2018, located at docket entry 71; and (6) an order authorizing the parties to release unredacted versions of their submissions to the Eleventh Circuit Court of Appeals and the United States Supreme Court. (Doc. 108 at 13).

Before Defendants respond to the Intervenors' motion, the court must clarify several matters. First, docket entry 54 is not a sealed copy of Alabama's confidential lethal injection protocol, but Plaintiff Doyle Lee Hamm's sealed motion for leave to supplement his first amended complaint, in which he quoted extensively from the lethal injection protocol and from testimony provided at the *in camera* hearing held on January 31, 2018. The parties never filed an electronic version of the lethal injection protocol, and it does not appear on the court's electronic docket.


Second, docket entries 70 and 72 are sealed transcripts of telephonic status conferences at which the court and the parties discussed procedural matters relating to the case; the court made no rulings at those conferences. The court transcribed those conferences only for the convenience of the parties to this case. In-chambers status conferences are not like court hearings, which are open to the public. *Cf. Press-Enter. Co. v. Superior Court of Cal. For Riverside Cnty.*, 478 U.S. 1, 8 (1986) (holding that the public has a right of access *if* the proceeding is one that historically has been public and if public access is important to its functioning); *see B.H. v. McDonald*, 49 F.3d 294, (7th Cir. 1995) (“[P]ublic scrutiny of in-

¹ The court had already planned to release a redacted version of the sealed hearing held on February 16, and that redacted version will be forthcoming soon.

chambers conferences could undermine their very function An enforceable right of bystander access to these processes could change the way the conference works and impede, rather than advance, problem-solving.”). Because the in-chambers conferences held on February 7 and 14, 2018, addressed only procedural matters and the court made no rulings at them, the court will not unseal the transcripts—located at docket entries 70 and 72—from those conferences. *See, e.g., United States v. Scrushy*, no. 2:03-cr-530-KOB-TMP, Doc. 546 at 1 n.1, 12–14 (N.D. Ala., Nov. 23, 2005).

But the court will allow briefing on whether to unseal Alabama’s lethal injection protocol and records relating to that protocol. Those records are: (1) the paper copy of the confidential lethal injection protocol; (2) the sealed transcript of the *in camera* hearing held on January 31, 2018, located at docket entry 53; and (3) the sealed transcript of the closed hearing held on February 16, 2018, located at docket entry 71. The court DIRECTS Defendants to respond **only** to the Intervenors’ request to unseal those documents. Defendants must file their response **on or before April 17, 2018**.

DONE and **ORDERED** this 3rd day of April, 2018.


KARON OWEN BOWDRE
CHIEF UNITED STATES DISTRICT JUDGE