

**UNITED STATES OF AMERICA, Plaintiff, vs. INDIANAPOLIS BAPTIST  
TEMPLE, GREGORY JEROME DIXON and NBD BANK, INC., Defendant.**

**IP 98-C-0498-B/S**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
INDIANA, INDIANAPOLIS DIVISION**

*2001 U.S. Dist. LEXIS 5855; 87 A.F.T.R.2d (RIA) 2090*

**April 6, 2001, Decided**

**DISPOSITION:** [\*1] Intervenor's Motion to Unseal Additional Documents DENIED.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Intervenor moved to unseal additional documents that were generated in the course of the particular litigation before the court.

**OVERVIEW:** In its prior order to the marshal, the court had not made the response of record and did not so intend. The report of the marshal was received as an ex parte matter in connection with the marshal's statutory obligation to execute the lawful orders of the court. Such communication to the court from the marshal was not to be disclosed. Discussions between the marshal's services and the court were to occur unimpeded by requirements of public disclosure in order to permit a full exchange of information and the requisite openness and candor concerning matters of mutual responsibility. To the extent that the report covered operational details either under consideration by or in place by the marshal's service at that time, the court found that their disclosure would create the same kinds of harms and difficulties outlined in its prior order. The motion was denied.

**OUTCOME:** The intervenor's motion to unseal additional documents was denied.

**CORE TERMS:** marshal, execute, lawful, disclosure, ex parte, mutual

**COUNSEL:** For UNITED STATES OF AMERICA, plaintiff: DOUGLAS SNOEYENBOS, TRIAL ATTORNEY, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC.

For UNITED STATES OF AMERICA, plaintiff: HAROLD BICKHAM, UNITED STATES ATTORNEY'S OFFICE, INDIANAPOLIS, IN.

For INDIANAPOLIS BAPTIST TEMPLE, DIXON, GREGORY JEROME, defendants: ALBERT F CUNNINGHAM, ATTORNEY AT LAW, MONTGOMERY CREEK, CA.

For DIXON, GREGORY JEROME, defendant: GREGORY J DIXON, INDIANAPOLIS, IN.

For NBD BANK, INC., defendant: STEVEN L YOUNT, ATTORNEY AT LAW, INDIANAPOLIS, IN.

For WTHR, defendant: MICHAEL A WILKINS, ICE MILLER, INDIANAPOLIS, IN.

**JUDGES:** SARAH EVANS BARKER, JUDGE, United States District Court, Southern District of Indiana.

**OPINION BY:** SARAH EVANS BARKER

**OPINION:**

**ORDER DENYING MOTION TO UNSEAL  
ADDITIONAL DOCUMENTS**

Intervenor, WTHR, by counsel, in its April 4, 2001 Motion, seeks further disclosures of materials generated in the course of the above-captioned litigation. This second request pertains to a report referenced in prior docket disclosures as having been elicited from the United States Marshal Service by this judge in an order dated December 11, 2000 (Docket No. 151). That order directed the Marshal to respond in writing, under seal, on or before December 15, 2000. Counsel correctly notes that the Marshal's response was neither filed nor docketed.

The Court did not make that response of record and never intended that the response ever be made of record.

It solicited and received the written report of the Marshal as an ex parte matter in connection with the Marshal's statutory obligation to execute the lawful orders of the Court. The powers and duties of the Marshal's Service are set forth at 28 U.S.C. § 566 as follows:

(a) [\*2] It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals and the Court of International Trade.

(b) The United States marshal of each district is the marshal of the district court...

(c) Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties.

Communications between the Court and the Marshal's Service occur routinely in the ordinary course of court business concerning many matters of mutual interest and often in relation to the execution of lawful orders of the Court. As such, these communications are not on the record or otherwise subject to public review and disclosure in that they do not relate to adversarial matters involving parties to a litigation. They are properly re-

garded, and in every sense treated as ex parte, confidential discussions between the Court and the officials charged with executing the Court's [\*3] lawful orders.

In this case, not surprisingly perhaps, many such communications occurred. More specifically, the Marshal's report was provided in letter form (not as filings in the litigation file) in response to an inquiry by the Court concerning the steps being then undertaken and the plans then in place by the Marshal's Service to enforce the Court's previous order requiring the Defendant to vacate the subject premises which had gone unheeded by the Defendant. This communication to the Court from the Marshal shall not be disclosed. Discussions between the Marshal's Service and the Courts must be allowed to occur unimpeded by requirements of public disclosure in order to permit a full exchange of information and the requisite openness and candor concerning matters of mutual responsibility. In addition, to the extent that the report covered operational details either under consideration by or in place by the Marshal's Service at that time, the Court finds that their disclosure would create the same kinds of harms and difficulties outlined in its prior order.

Accordingly, the Intervenor's Motion to Unseal Additional Documents is **DENIED**.

It is so ORDERED this 6th day of [\*4] April 2001.

SARAH EVANS BARKER, JUDGE

United States District Court

Southern District of Indiana