

Anne Taylor Law, PLLC
Anne C. Taylor, Attorney at Law
PO Box 2347
Coeur d'Alene, Idaho 83816
Phone: (208) 512-9611
iCourt Email: info@annetaylorlaw.com

Elisa G. Massoth, PLLC
Attorney at Law
P.O. Box 1003
Payette, Idaho 83661
Phone: (208) 642-3797; Fax: (208)642-3799

Bicka Barlow
Pro Hac Vice
2358 Market Street
San Francisco, CA 94114
Phone: (415) 553-4110

Assigned Attorney:

Anne C. Taylor, Attorney at Law, Bar Number: 5836
Elisa G. Massoth, Attorney at Law, Bar Number: 5647
Bicka Barlow, Attorney at Law, CA Bar Number: 178723
Jay W. Logsdon, First District Public Defender, Bar Number: 8759

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO

Plaintiff,

V.

BRYAN C. KOHBERGER,

Defendant.

CASE NUMBER CR01-24-31665

**MOTION TO PERMIT MITIGATION
WITNESSES TO WATCH TRIAL**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby moves this honorable Court to amend its exclusion orders in this case to permit mitigation phase witnesses to watch the trial. This Motion is based on the fact that the evidentiary rules do not

apply to the mitigation phase as this Court has previously ruled. Additionally, the purpose of the exclusion of witnesses rule does not apply to the mitigation phase.

Rule 615 of the Idaho Rules of Evidence governs exclusion of witnesses. It reads “At a party's request, the court may order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own.”

The purpose of I.R.E. 615 is to allow courts to prevent witnesses from “shaping their testimony to conform to or to rebut the prior testimony of other witnesses.” *State v. Huntsman*, 146 Idaho 580, 589 (Ct.App.2008). The vital importance of sequestering witnesses is recognized as a foundational element of due process in American jurisprudence. The United States Supreme Court observed that this practice, which goes back to "our inheritance of the common Germanic law," serves two purposes: it "exercises a restraint on witnesses 'tailoring' their testimony to that of earlier witnesses; and it aids in detecting testimony that is less than candid." *Geders v. United States*, 425 U.S. 80 (1976).

In the mitigation phase, the witnesses are not true fact witnesses as in the guilt phase. They are not intended to provide accounts of events that are disputed, and thus the concern for tailoring their testimony does not exist.

While it is unclear that the mitigation witnesses will want to watch any part of the trial, there is no reason to penalize them if they do. This Court is therefore requested to amend its earlier exclusion related orders to permit them to watch the trial.

DATED this 22 day of May, 2025.



JAY WESTON LOGSDON
FIRST DISTRICT PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 22 day of May, 2025 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

Elisa Massoth – via Email: legalassistant@kmrs.net

Jay Logsdon – via Email: Jay.Logsdon@spd.idaho.gov

Bicka Barlow, Attorney at Law – via Email: bickabarlow@sbcglobal.net

Jeffery Nye, Deputy Attorney General – via Email: Jeff.nye@ag.idaho.gov


