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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

v.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

**Reply Memorandum on Camera Access
in the Courtroom**

THE ASSOCIATED PRESS; RADIO
TELEVISION DIGITAL NEWS
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BOISE, LLC/KBOI-TV (BOISE); STATES
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KAPP/KVEW-TV—MORGAN MURPHY
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corporation; THE SPOKESMAN-REVIEW/COWLES COMPANY; THE NEW YORK TIMES COMPANY; LAWNEWZ, INC.; ABC, INC.; WP COMPANY LLC, DBA THE WASHINGTON POST; SOCIETY OF PROFESSIONAL JOURNALISTS; THE MCCLATCHY COMPANY, LLC; and THE SEATTLE TIMES,

Intervenors.

The State, Mr. Kohberger, and Intervenors share many views on audio/visual coverage of this case. All agree that the Court ultimately has discretion to decide whether to allow audio/visual coverage. Nobody seems to dispute that most members of the impacted communities would be unable to observe the proceedings with their own eyes and ears absent audio/visual coverage or that there would be many benefits for the public and the criminal justice system if impacted members of the community could receive contemporaneous, complete, and objective evidence about this case as it is presented in the courtroom. Nonetheless, the State flags some concerns about audio/visual coverage while largely deferring to the Court and Mr. Kohberger more forcefully objects.

Idaho Court Administrative Rule 45 largely addresses the concerns that the State and Mr. Kohberger raise. Some witnesses may be acutely affected by audio/visual coverage, but those concerns can be addressed as they come up and on an individualized basis. Idaho Ct. Admin. R. 45(d).

The jury should hear only the evidence or arguments submitted to them, but Rule 45 regulates audio/visual coverage such that effectively only those aspects of the proceedings open to the public in the gallery are broadcasted. Intervenors Supplemental Memorandum on Camera Access in the Courtroom (“Opening Mem.”) at pp. 6–7. Regardless of whether the Court allows audio/visual coverage, there is going to be large amounts of publicity surrounding this case. There is no greater risk that potential jurors (for pre-trial proceedings) or jurors (for trial) will be unfairly biased if there is

audio/visual coverage, as any information shared in open court that is not broadcasted may still be published by reporters who attend the proceedings. For that reason, the Court will certainly instruct the jurors not to watch news coverage regardless of whether it allows audio/visual coverage.

Audio/visual coverage will not create a distraction in the courtroom. As Judge Boyce noted in Lori Vallow's case: "[T]he Court affirms that there is no indication that any orders relating to the conduct of the media during hearings in this case, or the companion case, Fremont County Case No. CR22-21-1623, *State of Idaho vs. Chad Guy Daybell*, have been violated. The Court has likewise witnessed no misconduct on any part of the media during hearings in these cases. The presence of media during the hearings has in no way interrupted those proceedings, and attending media have been respectful and professional." State's Brief on Video and Photographic Coverage, Ex. at p. 3. Those observations are unsurprising and consistent with Rule 45's carefully crafted regulations of the media's conduct. Opening Mem. at pp. 7–8.

Finally, Intervenors appreciate Mr. Kohberger's concerns about how certain images have been used on social media. Prohibiting audio/visual coverage will not eliminate the concern though, as those in the courtroom could publish similar statements about their observations of Mr. Kohberger's appearance and demeanor. To address Mr. Kohberger's concerns, while still allowing impacted community members to view the proceedings, the Court could regulate how cameras capture Mr. Kohberger, by for example allowing only wider shots or limiting how close the camera can zoom. What is more, a few selective examples are not reason to deprive all the members of the impacted communities the opportunity to observe the proceedings with their own eyes and ears. And again, once a jury is empaneled, the Court will certainly instruct them not to consume any information related to the case outside of what is presented to them in the courtroom.

Intervenors continue to request that the Court allow audio/visual coverage consistent with Idaho Court Administrative Rule 45.

DATED: June 8, 2023.

STOEL RIVES LLP

/s/ Wendy J. Olson _____

Wendy J. Olson

Cory M. Carone

Attorneys for Intervenors

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of June 2023, I served a true and correct copy of the within and foregoing upon the following named parties by the method indicated below, and addressed to the following:

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