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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 NUMBER CR29-22-0002805

**MOTION TO REMOVE CAMERAS
FROM COURTROOM**

Comes Now, Bryan C. Kohberger, through his attorneys of record and files this Motion to remove cameras from the courtroom for the remainder of the proceedings in this matter pursuant to his right to a fair trial and the effective assistance of counsel guaranteed him by the Sixth and Fourteenth Amendments to the United States Constitution and Art. I Section 13 of the Idaho Constitution.

I. Camera-Weilding Courtroom Observers Have Failed to Obey the Court’s June 27th Directive to Cease Focusing Exclusively on Mr. Kohberger, Necessitating the Expulsion of Cameras from Future Proceedings

The question presented by this Motion is whether Mr. Kohberger faces deprivation “of his right under the Fourteenth Amendment to due process by the [continued] televising and broadcasting of his trial.” *Estes v. State of Texas*, 381 U.S. 532, 535 (1965). Recent press behavior in the courtroom clearly demonstrates that such is the case.

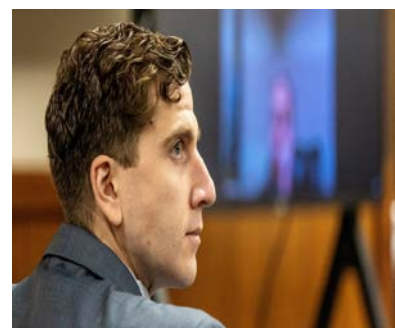
Nearly two months ago, on June 27th, 2023, the Court warned press observers not to focus strictly on Mr. Kohberger and to show a wide shot of the courtroom if they wished to continue filming court proceedings live. Fox News, *Bryan Kohberger judge issues warning to media at start of hearing on Idaho student murders*, June 27, 2023, available at: [Bryan Kohberger judge issues warning to media at start of hearing on Idaho student murders | Fox News](#). Press observers have thus far failed to comply with the court’s direction, as the continued publication of images such as those shown below continues to the present day.



Lewiston Tribune, via AP, August 18, 2023



Reuters, August 18, 2023

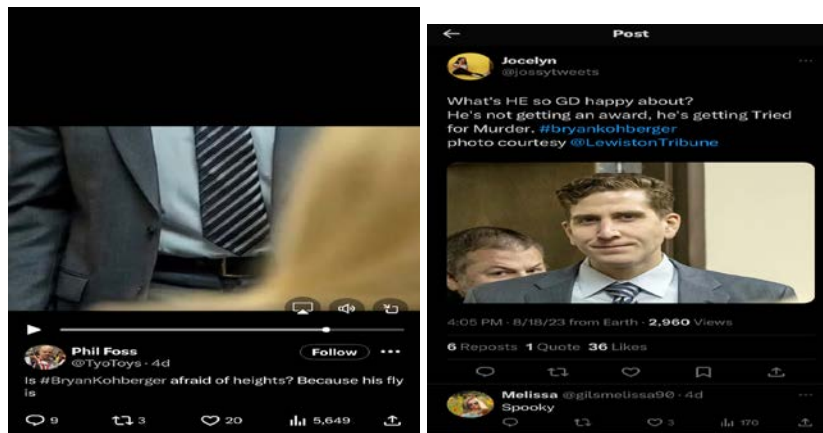


Reuters, August 18, 2023

These photos, a blatant violation of the Court’s directive to cease focusing exclusively on Mr. Kohberger in their own right, are also later appended to articles with blatantly sensationalistic and prejudicial headlines and content—the rightmost of the three photos above being used in an August 22, 2023, Daily Beast article, “*Report Says Kohberger’s Creepiness With Women Goes Back to High*

School.” Available at: <https://www.thedailybeast.com/idaho-suspect-bryan-kohberger-was-reportedly-kicked-out-of-high-school-law-enforcement-program>.

Further, the cameras’ continued exclusive focus on Mr. Kohberger provides fodder for observers and purported “analysts” on social media, who are not bound by notions of journalistic integrity and who have potentially an even greater reach than traditional media outlets. The proliferation of these images and videos is plainly observable on social media platforms such as Tik’Tok and “X” (formerly Twitter) in posts such as those provided below:



At: <https://x.com/tyotoys/status/1692705716874662159?s=46> At: <https://twitter.com/josytweets/status/1692673987296338019?s=46>

As the press itself notes, in the Court’s June 27th admonition, the Court “referenced the recent Chad Daybell trial, when cameras were asked to leave because they focused too much on the defendant.” Fox 13 Seattle, *Idaho judge reins in court cameras in Bryan Kohberger evidence hearing as trial in student murders looms*, June 27, 2023, available at: <https://www.fox13seattle.com/news/idaho-judge-reins-in-court-cameras-in-bryan-kohberger-evidence-hearing-as-trial-in-student-murders-looms>.

Indeed, such a parallel was drawn in the Defense’s prior *Memorandum on Cameras During Hearings*. Yet camera-wielding courtroom observers remain undeterred. “[T]he chief function of our judicial machinery is to ascertain the truth. The use of television, however, cannot be said to contribute materially to this objective. Rather its use amounts to the injection of an irrelevant factor into court proceedings.” *Estes*, 381 U.S. at 545.

As has previously been argued, the circumstances present in Mr. Kohberger's case are singular and pose an extraordinary risk of prejudice beyond even that posed in *Estes*. Observers' continued failure to comply with the Court's June 27th directive compounds this problem and results in the potential jury pool's constant inundation with conclusory accusations and sensationalistic nonsense guised as factual reporting and analysis. Whereas in *Estes* the attendant risk of prejudice was limited to potential jurors' watching of television or reading of print media, now this risk follows the potential jury pool wherever they go, viewable on their smartphones and constantly updated by thousands of unchecked sources. "Each juror carries with him into the jury box these solemn facts and thus increases the chance of prejudice that is present in every criminal case.... [I]t is not only possible but highly probable that it will have a direct bearing on his vote as to guilt or innocence." *Id.*

The images and videos provided above were taken during pre-trial court proceedings, but pose no less danger. To the contrary, they gradually poison the potential jury pool prior to trial even occurring, winnowing the number of jurors able to render a just, unbiased verdict. "To the extent that television shapes...sentiment, it can strip the accused of a fair trial." *Id.*, 381 U.S. 550. The *Estes* Court itself noted that unrestricted television coverage can be corrosive to non-trial proceedings and preemptively limit the potential for an eventual fair verdict:

It is contended that this two-day pretrial hearing cannot be considered in determining the question before us. We cannot agree. Pretrial can create a major problem for a defendant in a criminal case. Indeed, it may be more harmful that publicity during the trial for it may well set the community opinion as to guilt or innocence. Though the September hearings dealt with motions to prohibit television coverage and postpone the trial, they are unquestionably relevant to the issue before us.

Estes, 381 U.S. at 536.

As such, far from constituting an undue and over restrictive burden on the press' right of free speech, expulsion of cameras used to flout the Court's limited directive that Mr. Kohberger not

be the sole focus of images and videos taken is the sole means of limiting what the *Estes* Court expressly recognized to be “a form of mental—if not physical—harassment...” *Id.*, 381 U.S. at 549. “The inevitable close-ups of his gestures and expressions during the ordeal of his trial might well transgress his personal sensibilities, his dignity, and his ability to concentrate on the proceedings before him—sometimes the difference between life and death—(as indeed it is here), dispassionately, freely, and without the distraction of wide public surveillance.” *Id.*, 381 U.S. at 549. “A defendant on trial for a specific crime is entitled to his day in court, not a stadium, or a city or nationwide arena.” *Id.* Similarly, Mr. Kohberger is entitled to defend himself against capital criminal charges without cameras focused on his fly.

II. Observers’ Continued Minute Scrutiny of Counsel Table is Violative of the Court’s May 16th Order Governing Courthouse and Courtroom Conduct and Distracting to Defense Counsel

In addition to the inordinate and exclusive focus on Mr. Kohberger, courtroom observers have routinely violated the Court’s May 16, 2023 Order providing, in part, that “[n]o video or still photograph shall be taken of any papers, documents, or notes which may be located on or around counsel tables or used by counsel.” *Order Governing Courthouse and Courtroom Conduct*, § III(D). This noncompliance is clearly demonstrated in the below-provided photos taken during the most recent hearing, and has continuously undermined the Court’s stated interest in “maintaining order and an environment that permits all participants to focus on their responsibilities without undue distractions.” Aware of the constant attention paid to counsel table and the risk that confidential and sensitive information could be scrutinized, photographed and published, defense counsel has been

forced to divert their attention to ensure notes and other materials are hidden from prying eyes.



This exact conduct was found by the *Estes* Court to be a circumstances depriving the petitioner of a fair trial. *See Estes*, 381 U.S. at 538 (“The petitioner was subjected to characterization and minute electronic scrutiny to such an extent that at one point the photographers were found attempting to picture the page of the paper from which he was reading while sitting at counsel table.”) Whereas in *Estes* this conduct was characterized as a singular and extreme occurrence, in the present case it has become disruptively routine, and must be abated if Mr. Kohberger is to receive effective representation.


CONCLUSION

The press have failed to obey the Court’s directive not to exclusively photograph and record Mr. Kohberger to the exclusion of all else, jeopardizing his ability to undergo fair judicial

proceedings, free of undue prejudice and juror bias. As such, cameras must be expelled from the courtroom for the duration of Mr. Kohberger’s case, including pretrial hearings, as well as trial itself.

DATED this ___23___ day of August, 2023.

ANNE C. TAYLOR, PUBLIC DEFENDER
KOOTENAI COUNTY PUBLIC DEFENDER

BY: 

JAY WESTON LOGSDON
CHIEF DEPUTY LITIGATION
ASSIGNED ATTORNEY

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the ___24___ day of August, 2023 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov
Elisa Massoth – via Email: legalassistant@kmrs.net