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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

**Declaration of Rebecca Boone in Support
of Intervenors' Opposition to Motion to
Remove Cameras from the Courtroom**

THE ASSOCIATED PRESS; RADIO
TELEVISION DIGITAL NEWS
ASSOCIATION; SINCLAIR MEDIA OF
BOISE, LLC/KBOI-TV (BOISE); STATES
NEWSROOM DBA IDAHO CAPITAL SUN;
TEGNA INC./KREM (SPOKANE), KTVB
(BOISE) AND KING (SEATTLE);
EASTIDAHONEWS.COM; THE LEWISTON
TRIBUNE; WASHINGTON STATE
ASSOCIATION OF BROADCASTERS;
IDAHO PRESS CLUB; IDAHO EDUCATION
NEWS; KXLY-TV/4 NEWS NOW AND
KAPP/KVEW-TV—MORGAN MURPHY
MEDIA KXLY-TV/4 NEWS NOW; SCRIPPS
MEDIA, INC., DBA KIVI-TV, A DELAWARE

Declaration of Rebecca Boone in Support of Intervenors' Opposition to Motion to Remove
Cameras from the Courtroom - 1

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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.

I, Rebecca Boone, declare and state as follows:

1. I am the supervisory correspondent for Idaho for The Associated Press. As such I have personal knowledge of the facts and statements contained in this declaration.
2. I have 25 years of journalism industry experience, much of that time spent covering the judicial branch and criminal justice issues.
3. I have reported on the Nov. 13, 2022 deaths of four University of Idaho students, the subsequent criminal investigation and the arrest and prosecution of Bryan Kohberger.
4. I graduated from the University of Idaho with a bachelor's degree in journalism in 1999, and I covered the courts and law enforcement beat for The Lewiston Tribune before I joined The Associated Press in 2002 as a reporter in the Boise bureau.
5. In 2013 I was promoted to my current position of supervisory correspondent, tasked with leading AP's news coverage in Idaho. I am also a member of AP's national law enforcement beat team and I have extensive experience covering criminal and civil litigation in state and federal courts.
6. I was an Idaho Press Club board member from 2014 until earlier this year, when I stepped down due to time constraints. I am a longtime advisory board member of the University of Idaho's School of Journalism and Mass Media.

7. I became a Loyola Law School Journalism Law School Fellow in 2012. I also regularly serve as a panelist for training programs offered to teachers and journalists through a partnership between the University of Idaho College of Law, the Idaho Supreme Court and the U.S. District Court of Idaho. During those panels I typically train attendees on subjects including news literacy, how to access court documents, the ethics of covering the courts, how to incorporate the rule of law into press coverage and why press access to the judicial branch is vital for an informed citizenry.

8. I have been a member of several press pools and helped facilitate press pool coverage during the course of my work at AP.

9. Press pools allow a small number of journalists to report on behalf of a larger group of news organizations.

10. In my experience, press pools serve multiple purposes which benefit the public and court administrators as well as news organizations.

11. Press pools allow news organizations to save money by reducing travel costs and staffing time. This, in turn, allows those news organizations to provide robust news coverage across multiple subject areas rather than focusing limited money and resources on one major story.

12. Press pools provide the courts with stronger controls over the logistics of news coverage, limiting the physical footprint and number of cameras in the courtroom without placing an undue burden on press and public access.

13. In my experience, judges and court administrators sometimes define the areas where pool journalists may set up inside a courtroom or constrain them from making certain types of visual images such as photographs of jurors.

14. Pool photographers and videographers are expected to have their equipment set up before court begins. They generally remain in that position throughout the proceedings. In my experience, press pools used in Idaho courtrooms typically include anywhere between one and four cameras, divided between photography operators and video operators. Pool photo and video operators are frequently positioned so that they can collect multiple views of the courtroom (for instance, one camera might face the bench and witness stand, while another faces the prosecution and defense tables). Having multiple views allows news organizations to more accurately depict events inside the courtroom.

15. Pool photographers and videographers also tend to be veteran journalists with experience covering the courts, skilled at producing strong news images in an unobtrusive manner. They are selected in part based on their skill level, experience, availability, and equipment. That equipment includes still cameras that can take photos silently without obtrusive shutter noise or loud flashes. Video cameras, though small enough to be operated while physically held by a videographer, are typically set up on tripods tucked near courtroom walls. Audio equipment is often plugged directly into the courtroom's existing sound system. It is my experience that during one-on-one interviews, news subjects often seem to ignore or forget about the cameras in the room within the first few minutes. The same phenomenon seems to occur during court cases – the video and photo cameras become part of the furniture in the courtroom while trial participants focus closely on attorneys and witnesses.

16. The pool camera operators are expected to provide a variety of images and recordings representing the events occurring in the courtroom. Pool members are not required to use all of the images or recordings but may pick and choose those which best fit their news coverage needs.

17. During the August 18 hearing, pool photographer August Frank provided 18 still photos to the rest of the pool. Four of those photos focused on Kohberger entering the courtroom, talking to his attorney and watching the proceedings. A fifth photo was focused on the image of Judge Judge displayed on the courtroom projector and included the back of Kohberger's head in the foreground.

18. The remaining 13 photos focused on other participants in the proceedings, including the court reporter, Judge Judge, Ingrid Batey, Jeff Nye, Bill Thompson, Steven Mercer, Elisa Matthoth, Anne Taylor, Bicka Barlow, Gabriella Vargas and Leah Larkin.

19. AP's photo editors opted to move 11 of those photos to the wire as part of AP's news coverage, including three showing Kohberger and eight showing the other hearing participants.

20. Press pools create a better informed public by providing credible and verifiable information about newsworthy events. They also build a historical record that can be immensely valuable for future scholarship – a role perhaps best demonstrated by the trial of the accused conspirators of Abraham Lincoln's assassination in 1865. The judge in that case initially barred newspaper reporters from the courtroom, but allowed the AP to hire the official stenographer for the U.S. House of Representatives to produce a transcript in case the censorship was lifted. The tribunal was opened to news reporters on the second day of the trial, and an AP news reporter's visual descriptions and notes paired with Francis H. Smith's transcripts informed readers across the country about the important court proceedings. The AP reports and transcript effectively served as pool coverage for newspapers around the world and became primary source material for historians. (Frances R. Mears and Reporters of The Associated Press, Breaking News, page 59, New York, Princeton Architectural Press, 2007).

21. There are several considerations involved in creating a press pool. First the news organizations interested in coverage of a courthouse event must get in contact with each other, forming the “pool.” They then must select the news outlets which will provide the pool video and photo images, and agree on a distribution method for sharing those images in a timely manner.

22. For instance, I called Lewiston Tribune managing editor Craig Clohessy in April to see if The Lewiston Tribune and Moscow-Pullman Daily News had interest in serving as pool photographers for Mr. Kohberger’s upcoming court proceedings. Around the same time, Tribune photo editor August Frank emailed AP and several other news organizations to set up the photo pool, making plans to distribute the photos using a Google drive folder accessible by a link provided to pool members as well as by sending them directly to AP.

23. For the video pool, I reached out to Idaho Supreme Court spokesman Nate Poppino on May 18 to find out which news organizations had requested video approval for Mr. Kohberger’s arraignment.

24. I used the list of 10 news outlets provided by Poppino to create an email chain, adding representatives from other news organizations that I knew were closely covering the case. The resulting email went out to 39 recipients, the majority of them based in Idaho and eastern Washington.

25. I included Poppino on the email chain so that court administrators would be looped in on the process. I did this as a courtesy because I felt it would aid in transparency and understanding between court and media personnel, especially given the broad public interest in the case.

26. Once CourtTV was selected as the video provider, the members of the pool began developing a plan to efficiently distribute the videos. Different news organizations use different technologies for collecting and transmitting images, and so transferring video from one outlet to another in a timely manner can be challenging. It often requires expensive on-site equipment, such as specialized news satellite trucks.

27. CourtTV's video-sharing equipment requires other news organizations to be on-site to physically plug in and download the courtroom videos. As a result, Seattle TV station KOMO agreed to send someone with additional equipment to Moscow to collect the video from CourtTV. KOMO was then able to remotely transmit the video to other regional television stations through an existing Seattle pool matrix, as well as to provide it to The AP and Reuters via an online platform called WeTransfer.

28. The AP shared the video with AP member news organizations via the AP wire. Gillian Flaccus, AP's assistant news director for the Pacific Northwest region, also emailed the WeTransfer link to pool members who are not AP subscribers so that they too could quickly access the court video.

29. The pool sharing process was complicated and required the cooperation of several normally competing news organizations, as well as significant investments in travel and staff hours by The Lewiston Tribune, CourtTV and KOMO. But those efforts meant that dozens of interested news organizations did not have to send their own photographers and videographers to Moscow to try to capture the images needed for informative and effective news coverage. To put it simply, the pool coverage allowed the media organizations to dramatically minimize the impact of the news reporting process on the Latah County Courthouse and on the Moscow community.

30. It has been my experience when there is not an opportunity for pool coverage on high-interest cases, more news outlets send journalists to the courthouse to set up still photo and video cameras outside the courtroom. That creates a much larger visible media presence, which can be distracting for people passing by as well as those entering and leaving the courthouse. The larger media presence can also have a broader impact within the community, with reporters filling their time outside of court proceedings by seeking on-air interviews and recording live shots at other visually relevant locations.

31. In a recent Idaho case, Lori Vallow Daybell was charged with multiple counts of conspiracy to commit murder, first-degree murder and grand theft in connection with the deaths of her two youngest children and of her fifth husband's late wife.

32. There was broad public interest in the case, and the deaths had a significant impact on people in several states including Idaho, Arizona and Utah.

33. The judge presiding over the case barred cameras from the courtroom after Vallow Daybell's defense team expressed concerns that the pool video images were too focused on their client's face. The judge also cited his own concerns that having cameras in the courtroom would fuel additional publicity about the case, which he felt could complicate jury selection.

34. News coverage of the case was not reduced by the decision, however. Instead, news organizations including The AP repeatedly reused images and videos shot earlier in the case. News organizations also stationed their own photographers and videographers outside the courthouse to gather new images taken as Vallow Daybell, attorneys and witnesses entered and left the building for various proceedings.

35. The trial was moved to Ada County, and dozens of news reporters, photographers and videographers from around the country attended to cover the proceedings gavel-to-gavel – from the jury selection to the verdict. The visual journalists set up on the plaza outside the courthouse, collecting images and filming live shots of people coming and going for weeks. Shortly before the court convened on May 12, the judge revised his order and allowed a pool photographer and videographer in the courtroom for the reading of the verdict. But the news organizations had already gathered on the courthouse plaza that day, and of course they had not anticipated the last-minute change allowing pool access.

36. Attached as **Exhibit A** is a true and correct copy of a photograph I took outside the Ada County Courthouse on May 12. The photo shows the large group of news reporters who had gathered to cover the trial in the absence of pool coverage. At the center of the group is Kay and Larry Woodcock, the grandparents of one of the murder victims.

37. The courts are a coequal, independent branch of government, yet they receive far less press coverage than the legislative and executive branches. I have often heard members of the judicial branch complain that when press coverage is given, it frequently focuses on the outcome of court actions rather than the equally important process of law. Press pools help mitigate that challenge, providing members of the public with a window through which they can directly witness the courts in action.

38. Being called to testify in criminal trials can be particularly stressful for people whose lives have been directly impacted by violence or other crimes, which is why the Idaho Press Club and other journalism organizations provide trainings and other resources to help journalists cover sensitive or traumatic court cases with ethical awareness, care and respect.

However, the critical role of the press does not change simply because there may be emotional or graphic testimony during a court proceeding.

39. In 2022, I covered the rape trial of former Lewiston Rep. Aaron von Ehlinger, who was accused of sexually assaulting a legislative intern. Pool photo and video cameras were allowed in the courtroom throughout the von Ehlinger trial. When the victim in the case testified, Judge Reardon instructed the news media not to make any audio or visual recordings of her testimony but allowed news media equipment to remain in the courtroom. The news media abided by the restriction, describing Doe's testimony and sudden departure from the courtroom using text reporting and supplementing that coverage with photos and videos taken of the attorneys and other witnesses who testified that day.

40. Most news media organizations including The AP have policies against disclosing the identity of a sexual assault survivor without the survivor's consent, and so would not have published images identifying the victim even if they had been allowed to record her testimony.

41. In 2009, I covered the Idaho rape trial of Jeffrey Marsalis, a Sun Valley Co. security guard who was accused of drugging and raping a Sun Valley Resort employee. The case had widespread interest across the country, in part because Marsalis had been charged but not convicted of similar allegations involving multiple women in Pennsylvania. Pool cameras were allowed in the Ada County courtroom throughout the Idaho trial, and the camera operators were allowed to continue recording the events as the victim in the case testified on the witness stand. The pool camera operators did not record visual images of the victim, but did capture audio recordings of her testimony as well as visual recordings showing Marsalis' reaction to her testimony as well as other views inside the courtroom.

42. Pool videographers also captured visual recordings of others who provided emotional testimony in the Marsalis case, including the victim's sister, who had been deeply impacted by the assault and struggled with persistent feelings of guilt because she had introduced the defendant to her sibling.

43. Robust news coverage is particularly important in the case in question here. The court proceedings will determine not only whether Mr. Kohberger is convicted, but whether he is put to death by the state, which acts on behalf of the residents of Idaho. It is my belief that the public deserves the fullest possible transparency on such a weighty judicial matter, and pool photo and video coverage helps to ensure that government transparency.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: September 8, 2023.

/s/ Rebecca Boone
Rebecca Boone

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of September 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:

Latah County Prosecutor's Office	<input type="checkbox"/>	Hand Delivered
William W. Thompson, Jr.	<input type="checkbox"/>	Via Facsimile
Prosecuting Attorney	<input type="checkbox"/>	U.S. Mail
Latah County Courthouse	<input type="checkbox"/>	Via email
P.O. Box 8068	<input checked="" type="checkbox"/>	Via iCourt efile & serve at:
Moscow, ID 83843		<i>paservice@latahcounty.id.gov</i>
Anne Taylor	<input type="checkbox"/>	Hand Delivered
Attorney at Law	<input type="checkbox"/>	Via Facsimile
P.O. Box 9000	<input type="checkbox"/>	U.S. Mail
Coeur d'Alene, ID 83816	<input checked="" type="checkbox"/>	Via email at <i>ataylor@kcgov.us</i>
	<input checked="" type="checkbox"/>	Via iCourt efile & serve at:
		<i>pdfax@kcgov.us</i>
Jeff Nye	<input type="checkbox"/>	Hand Delivered
Ingrid Batey	<input type="checkbox"/>	Via Facsimile
Deputy Attorney General	<input type="checkbox"/>	U.S. Mail
P.O. Box 83720	<input checked="" type="checkbox"/>	Via email at <i>jeff.nye@ag.idaho.gov</i>
Boise, ID 83720		<i>ingrid.batey@ag.idaho.gov</i>
	<input type="checkbox"/>	Via iCourt efile & serve at:
Shanon Gray	<input type="checkbox"/>	Hand Delivered
2175 N. Mountain View Road	<input type="checkbox"/>	Via Facsimile
Moscow, ID 83843	<input type="checkbox"/>	U.S. Mail
	<input type="checkbox"/>	Via email
	<input checked="" type="checkbox"/>	Via iCourt efile & serve at:
		<i>shanon@graylaw.org</i>
Elisa G. Massoth, PLLC	<input type="checkbox"/>	Hand Delivered
Attorney at Law	<input type="checkbox"/>	Via Facsimile
P.O. Box 1003	<input type="checkbox"/>	U.S. Mail
Payette, ID 83661	<input checked="" type="checkbox"/>	Via email at <i>emassoth@kmrs.net</i>
	<input checked="" type="checkbox"/>	Via iCourt efile & serve at:
		<i>emassoth@kmrs.net</i>

/s/ Wendy J. Olson

Wendy J. Olson

EXHIBIT A

