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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 CR29-22-2805

**REPLY TO INTERVENORS'
OPPOSITION TO MOTION TO
REMOVE CAMERAS FROM THE
COURTROOM**

Comes Now, Bryan C. Kohberger, through his attorneys of record and submits the following Reply to the Intervenors' Opposition to his previously filed request to remove cameras from the courtroom.

Understandably, the Media's Opposition cloaks itself in the mantle of public good, purveyors of the inner workings of our government. Were it only the kind of cameras used to show the workings on the house floor on C-SPAN, Mr. Kohberger would not have needed make his

request. The Media wants to make money, and it does so by making a spectacle of Mr. Kohberger and everyone involved in this case. In pursuit of its desires, the Media makes two basic, and incorrect, arguments.

I. ***Estes v. Texas* Was Not Limited to Concerns About the Impact the Number of Cameras and Obtrusiveness of Camera Equipment Had and the Proceedings, and *Chandler v. Florida* Mandates Expulsion of Cameras from the Courtroom**

With regard to the first of Intervenors' arguments, the characterization of *Estes v. Texas*, 381 U.S. 532 (1965), as being concerned only with the disruptions posed by the logistical implications of a courtroom filled with press observers is a partial reading of the case. Media's Brief at 4. Indeed, it appears the Media simply stopped reading halfway through page 536 of the opinion. The rest of the opinion goes on to consider the larger issues at stake:

The television camera is a powerful weapon. Intentionally or inadvertently it can destroy an accused and his case in the eyes of the public. While our telecasters are honorable men, they too are human. The necessity for sponsorship weighs heavily in favor of the televising of only notorious cases, such as this one, and invariably focuses the lens upon the unpopular or infamous accused. Such a selection is necessary in order to obtain a sponsor willing to pay a sufficient fee to cover the costs and return a profit. We have already examined the ways in which public sentiment can affect the trial participants. To the extent that television shapes that sentiment, it can strip the accused of a fair trial.

Id., 381 U.S. at 549-50.

Intervenors argue that the *Estes* Court “concluded that the camera coverage so distracted *trial participants* as to deprive Mr. Estes of a fair trial and reversed his conviction,” and that “Mr. Estes’s conviction was overturned because the Supreme Court found the camera operators conduct was distracting for the people inside the *courtroom*, not because the coverage was receiving attention *outside of the courtroom*.” Media’s Brief at 5 (emphasis in the original). This argument, again, is flatly contrary to the *Estes* holding, which was expressly extended to pretrial coverage and was additionally concerned with what each juror would carry “with him into the jury box” as a result of

their exposure to prejudicial publicity prior their becoming “trial participants,” to use the Intervenor’s categorization. *See Id.*, 381 U.S. at 545.

Indeed, the precedential support chosen by the Media for their interpretation of the *Estes* holding *Chandler v. Florida*, 449 U.S. 560 (1980), has to do with whether there’s constitutional rule against *coverage*. Media’s Brief at 5. It would be rather odd for *Chandler* to worry about coverage if *Estes* was a case about too many wires in a courtroom as the Media claimed. In any case, Mr. Kohberger asks for no such *per se* rule. To the contrary, the prior Motion cited those factors now ignored by the Intervenor’s flawed interpretation of the *Estes* decision, namely the extraordinary publicity of the present case and ensuing risk to Mr. Kohberger’s right to a fair trial.

That argument is entirely consistent with *Chandler*’s focus on Justice Harlan’s concurring opinion in *Estes*, which it deemed to be “fundamental to an understanding of the ultimate holding” of that case. *Chandler*, 449 U.S. at 571. In particular, the *Chandler* Court emphasized Justice Harlan’s “conclusion that there is no constitutional requirement that television be allowed in the courtroom, and, at least as to a notorious criminal trial such as this one, the considerations against allowing televisions in the courtroom so far outweigh the countervailing factors advanced in its support as to require a holding that what was done in this case infringed the fundamental right to a fair trial asured by the Due Process Clause of the Fourteenth Amendment.” *Id.* (quoting *Estes*, 381 U.S. at 387 (Harlan, J., concurring) (emphasis in the original)).

The *Chandler* decision is substantially based on Justice Harlan’s *Estes* concurrence and it’s assertion that disallowance of cameras from the courtroom is to be decided on a case-by-case basis, with extraordinarily notorious trials presenting a particular danger to a defendant’s fair trial right and, resultantly, a greater need for judicial safeguards, such as those requested in the prior Motion. *Chandler*, 449 US at 573-74. Mr. Kohberger’s case is not one concerning alleged burglary and larceny, as was *Chandler*. Given the sheer extent of the publicity, the gravity of the charges and real risk to

Mr. Kohberger's life, this case is not one suited for "experimentation with evolving an evolving technology," but rather demands strict measures necessary to safeguard his right to a fair trial.

II. Intervenors Misrepresent Their Compliance With the Court's Order and Fail To Demonstrate the Viability of Alternative Remedies

Admitting that press observers have violated the terms of the Court's prior Order, Intervenors nonetheless contend that because their observation and coverage is occasionally non-violative, defense counsel's concerns are unjustified. Media's Brief at 7. And while the sample provided in Mr. Kohberger's Motion admittedly "shows a full view of defense counsel table," Intervenors argue, "[t]he image simply shows the personnel at defense counsel table without any effort to zoom in or scrutinize the documents."

First, it seems relatively obvious that the easiest way to fix the counsel table issue is to move the cameras. There is simply no reason the cameras need to be placed so they have a clear view of counsel's laptop screens and notes. Mr. Kohberger is not required to accept promises that no one is going to zoom in on the contents, or capture them at a high enough resolution that someone else can zoom in on it once it has been posted online. Various examples of this occurring exist, the focus on Mr. Kohberger's fly being one.

Second, the Media's (and social media users') behavior is likely as uncontrollable outside the courtroom as they admit. *See* Media's Brief at 7, Boone Declaration at 8. As they say, even without cameras, they will simply go on using old images. *Id.* Yet the Media prefers new images because human beings crave novelty. The Media knows the outlet with the latest scoop wins. The social media users constantly post any new information they get about this case. Images from court are no different. Thus, to say there would be no effect would be inaccurate. A reduction to the novelty of images would have the beneficial effect of focusing the public on the facts of the case. Moreover,

federal courts do not permit cameras, yet the public remains well acquainted the facts of many federal cases.

These proceedings are not entertainment. “[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. In addition experience teaches that there are numerous situations in which it might cause actual unfairness—some so subtle as to defy detection by the accused or control by the judge.” *Estes*, 381 U.S. at 544-45.

The accepted benefit, as Intervenors note, of unfettered press access is the provision to the public “of the opportunity to observe first-hand how the criminal justice system is working in this case” and the ability to observe each step of Mr. Kohberger’s prosecution. Media’s Brief at 9. Yet implementation of the requested restriction is not as draconian as Intervenors seek to portray. The removal of cameras from the courtroom does not render this case closed to affected community members and the public. Indeed, those most affected due to interrelation with and physical proximity to the community would remain able to observe proceedings in person, and would therefore be those least affected by the requested limitation. Moreover, the accused’s right to a fair trial is “paramount.” *Chandler*, 449 U.S. at 566. Mr. Kohberger asks this Court to protect it.

DATED this 12 day of September, 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 12 day of September, 2023 addressed to:

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