

IN THE SUPREME COURT OF THE STATE OF IDAHO

SUPREME COURT DOCKET NO.

THE ASSOCIATED PRESS; RADIO TELEVISION DIGITAL NEWS ASSOCIATION; SINCLAIR MEDIA OF BOISE, LLC/KBOI-TV (BOISE); THE MCCLATCHY COMPANY, LLC; STATES NEWSROOM dba IDAHO CAPITAL SUN; THE SEATTLE TIMES; TEGNA INC./KREM (SPOKANE), KTVB (BOISE) AND KING (SEATTLE); EASTIDAHONEWS.COM; THE LEWISTON TRIBUNE; WASHINGTON STATE ASSOCIATION OF BROADCASTERS; ADAMS PUBLISHING GROUP dba POST REGISTER; 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 corporation; BOISE STATE PUBLIC RADIO; THE TIMES-NEWS; THE SPOKESMAN-REVIEW/COWLES COMPANY; COEUR D'ALENE PRESS; THE NEW YORK TIMES COMPANY; DAY365 dba BOISEDEV; LAWNEWZ, INC.; SCRIPPS MEDIA, INC., a Delaware corporation; ABC, INC.; WP COMPANY LLC, dba THE WASHINGTON POST; SOCIETY OF PROFESSIONAL JOURNALISTS,

Petitioners,

vs.

SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, COUNTY OF LATAH;
HONORABLE MEGAN E. MARSHALL, MAGISTRATE JUDGE,

Respondents.

**DECLARATION OF WENDY J. OLSON IN SUPPORT OF THE PETITION
FOR A WRIT OF MANDAMUS OR A WRIT OF PROHIBITION**

For Petitioners

WENDY J. OLSON, ISB No. 7634
wendy.olson@stoel.com
CORY M. CARONE, ISB No. 11422
cory.carone@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702-7705

Respondents Second Judicial District of the
State of Idaho, County of Latah; Honorable
Megan E. Marshall, Magistrate Judge.

I, Wendy J. Olson, declare and state as follows:

1. I am a partner with the law firm of Stoel Rives LLP, counsel for Petitioners in the above-captioned matter. As such, I have personal knowledge of the facts and statements contained in this declaration. I submit this declaration in support of the Petition for A Writ of Mandamus or a Writ of Prohibition.

2. Attached hereto as **Exhibit A** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

3. Attached hereto as **Exhibit B** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

4. Attached hereto as **Exhibit C** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

5. Attached hereto as **Exhibit D** is a true and correct copy of a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

6. Attached hereto as **Exhibit E** is a true and correct copy of a filing in *Whitcom 911 v. Nash Holdings, LLC d/b/a The Washington Post*, case no. 23-2-00042-38.

7. Attached hereto as **Exhibit F** is a true and correct copy of a press release from the Moscow Police Department.

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

DATED: February 6, 2023

/s/ Wendy J. Olson

Wendy J. Olson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of February 2023, I served a true and correct copy of the within and foregoing **DECLARATION OF WENDY J. OLSON IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS OR A WRIT OF PROHIBITION** upon the following named parties by the method indicated below, and addressed to the following:

Second Judicial District of the State of Idaho,	<input type="checkbox"/>	Hand Delivered
County of Latah	<input type="checkbox"/>	Mailed Postage Prepaid
Attn: Roland Gammill	<input type="checkbox"/>	Via Facsimile
Trial Court Administrator	<input checked="" type="checkbox"/>	U.S. Mail
Latah County Courthouse	<input checked="" type="checkbox"/>	Via email
P.O. Box 896	<input checked="" type="checkbox"/>	Via iCourt efile & serve at:
Lewiston, ID 83501		<i>TCA2@co.nezperce.id.us</i>

Hon. Megan E. Marshall	<input type="checkbox"/>	Hand Delivered
Latah County Courthouse	<input type="checkbox"/>	Mailed Postage Prepaid
P.O. Box 8068	<input type="checkbox"/>	Via Facsimile
Moscow, ID 83843	<input checked="" type="checkbox"/>	U.S. Mail
	<input type="checkbox"/>	Via email
	<input type="checkbox"/>	Via iCourt efile & serve at:

/s/ Wendy J. Olson
Wendy J. Olson

EXHIBIT A

Anne C. Taylor, Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836
iCourt Email: pdfax@kcgov.us

Assigned Attorney:

Anne C. Taylor, Public Defender, Bar Number: 5836
Jay Weston Logsdon, Chief Deputy Litigation, Bar Number: 8759

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

STIPULATION FOR
NONDISSEMINATION ORDER

COMES NOW, Bryan C. Kohberger, by and through his undersigned attorneys, Anne C. Taylor, Public Defender and Jay Weston Logsdon, Chief Deputy Litigation, and Latah County Prosecutor William W. Thompson, Jr., and hereby stipulate to the issuance of a nondissemination order prohibiting attorneys, investigators, and law enforcement personnel from making any extrajudicial statement, written or oral, concerning this case, other than a quotation from or reference to, without comment, the public records of the Court in this case.


This stipulation is based on the Sixth Amendment and the Defendant's and State's interests under both the Idaho and U. S. Constitution. This Court has both a constitutional duty and the

inherent authority to "minimize the effects of prejudicial pretrial publicity" and "to ensure the efficacious administration of justice." *Gannett Co. v. DePasquale*, 443 U.S. 368,377 (1979); *Hall v. State*. 151 Idaho 42,46 (2011).

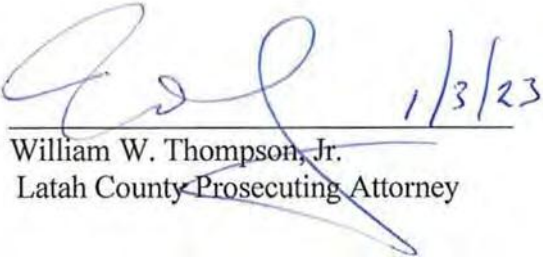
As this Court is aware, this case involves matters that have received a great deal of publicity. The United States Supreme Court has identified nondissemination orders as being properly narrowly tailored as well as the least restrictive means to ensure a fair trial in the view of First Amendment protections. *Nebraska Press Ass 'nv. Stuart*, 427 U.S. 539 (1976); *Sheppard v. Maxwell*, 384 U.S. 333, 361 (1966).

Therefore the parties stipulate that a nondissemination order be issued to protect against adversely affecting the integrity of the case to be presented at trial.

SO STIPULATED 1/3/2023



Anne C. Taylor
Kootenai County Public Defender



William W. Thompson, Jr.
Latah County Prosecuting Attorney

EXHIBIT B

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

NONDISSEMINATION ORDER

The Court, by stipulation of the parties, enters its Order as follows:

IT IS HEREBY ORDERED that the parties to the above titled action, including investigators, law enforcement personnel, attorneys, and agents of the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements, written or oral, concerning this case, other than a quotation from or reference to, without comment, the public records of the case.

This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the following:

1. Evidence regarding the occurrences or transactions involved in this case;
2. The character, credibility, or criminal record of a party;
3. The performance or results of any examinations or tests or the refusal or failure of a party to submit to such tests or examinations;

4. Any opinion as to the merits of the case or the claims or defense of a party;
5. Any other matter reasonably likely to interfere with a fair trial of this case, such as, but not limited to, the existence or contents of any confession, admission, or statement given by the Defendant, the possibility of a plea of guilt to the charged offense or a lesser offense, or any opinion as to the Defendant's guilt or innocence.

IT IS FURTHER ORDERED that no person covered by this order shall avoid its proscriptions by actions that indirectly, but deliberately, cause a violation of this order.

IT IS FURTHER ORDERED that this order, and all provisions thereof, shall remain in full force and effect throughout these proceedings, until such time as a verdict has been returned, unless modified by this court.

SO ORDERED **1/3/2023 4:58:57 PM**

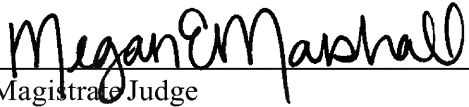

Magistrate Judge

EXHIBIT C

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,

vs.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

AMENDED
NONDISSEMINATION ORDER

There is a balance between protecting the right to a fair trial for all parties involved and the right to free expression as afforded under both the United States and Idaho Constitution. To preserve the right to a fair trial some curtailment of the dissemination of information in this case is necessary and authorized under the law.¹ Therefore, based upon the stipulation of the parties and with good cause,

IT IS HEREBY ORDERED:

1. The attorneys for any interested party in this case, including the prosecuting attorney, defense attorney, and any attorney representing a witness, victim, or victim's family, as well as the parties to the above entitled action, including but not limited to investigators, law enforcement personal, and agents for the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements (written or oral) concerning this case, except, without additional comment, a quotation from or reference to the official public record of the case.
2. This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the

¹ See ABA STANDARDS FOR CRIMINAL JUSTICE: FAIR TRIAL AND PUBLIC DISCLOSURE (4th ed. 2016); IRPC Rule 3.6; *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976); *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

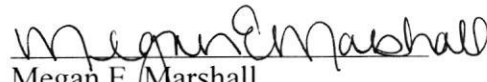
following:

- a. Evidence regarding the occurrences or transactions involved in the case;
- b. The character, credibility, reputation, or criminal record of a party, victim, or witness, or the identity of a witness, or the expected testimony of a party, victim, or witness;
- c. The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test;
- d. Any opinion as to the merits of the case or the claims or defense of a party;
- e. Any information a lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial;
- f. Any information reasonably likely to interfere with a fair trial in this case afforded under the United States and Idaho Constitution, such as the existence or contents of any confession, admission, or statement given by the Defendant, the possibility of a plea of guilt, or any opinion as to the Defendant's guilt or innocence.

IT IS FURTHER ORDERED that no individual covered by this order shall avoid its proscriptions by actions directly or indirectly, but deliberately, that result in violating this order.

IT IS FURTHER ORDERED that this order, and all provisions herein, shall remain in full force and effect throughout the entirety of this case unless otherwise ordered by this court.

Dated: 1/18/2023


Megan E. Marshall
Magistrate Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a true and complete copy of the foregoing was served as follows:

William Wofford Thompson	<u>paservice@latahcountyid.gov</u>	[X] By E-mail
Anne Taylor	<u>pdfax@kcgov.us</u>	[X] By E-mail

JULIE FRY
CLERK OF THE DISTRICT COURT

DATE 1/18/23

By: J. Oiphant
Deputy Court Clerk

EXHIBIT D

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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,)	
)	
Plaintiffs,)	Case No. CR29-22-2805
)	
v.)	MEMORANDUM IN SUPPORT OF
)	MOTION FOR APPEAL AND/ OR
)	CLARIFICATION OF AMENDED
BRYAN C. KOHBERGER,)	NONDISSEMINATION ORDER
)	
Defendant.)	

I Shanon L. Gray am an attorney licensed in the State of Idaho.
I represent Victim Kaylee Goncalves’s family in the above referenced matter.

I make this Memorandum in Support of the Motion to Appeal, Amend and/or Clarify
the Amended Non-dissemination Order on this case.

The Courts current Amended Non-dissemination Order is based on the following
referenced case law and legal guidelines:

1. ABA Standards for Criminal Justice: Fair Trial and Public Disclosure (4th Ed. 2016)
2. IRPC Rule 3.6
3. Sheppard v. Maxwell, 384 U.S. 333 (1966)
4. Nebraska Press Ass’n v. Stuart, 427 U.S. 539 (1976)
5. Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991)

1
2 The Order states as follows:

3 “Therefore, based upon the stipulation of the parties and with good cause,

4 IT IS HEREBY ORDERED:

- 5 1. The attorneys for any interested party in this case, including the prosecuting
6 attorney, defense attorney and any attorney representing a witness, victim or
7 victim’s family, as well as the parties to the above entitled action, including but not
8 limited to investigators, law enforcement personnel, and agents for the prosecuting
9 attorney or defense attorney are prohibited from making extrajudicial statements
10 (written or oral) concerning the case, except, without additional comment, a
11 quotation from or reference to the official public record of the case.
- 12 2. This order specifically prohibits any statement, which a reasonable person would
13 expect to be disseminated by means of public communication that relates to the
14 following:
- 15 a. Evidence regarding the occurrences of transactions involved in the case;
 - 16 b. The character, credibility, reputation, or criminal record of a party, victim,
17 or witness, or the identity of a witness, or the expected testimony of a party,
18 victim, or witness.
 - 19 c. The performance or results of any examination or test or the refusal or
20 failure of a person to submit to an examination or test;
 - 21 d. Any opinion as to the merits of the case or the claims or defense of a party;
 - 22 e. Any information a lawyer knows or reasonably should know is likely to be
23 inadmissible as evidence in a trial and that would, if disclosed, create a
24 substantial risk of prejudicing an impartial trial;
 - 25 f. Any information reasonably likely to interfere with a fair trial in this case
26 afforded under the United States and Idaho Constitution, such as the
existence or contents of any confession, admission, or statement given by
the Defendant, the possibility of a plea of guilt, or any opinion as to the
Defendant’s guilt or innocence.

IT IS FURTHER ORDERED, that no individual covered by this order shall avoid its proscriptions by actions directly or indirectly, but deliberately, that result in violating this order.

IT IS FURTHER ORDERED, that this order, in all provisions herein, shall remain in full force and effect throughout the entirety of this case unless otherwise ordered by this court.”

1 RELEVANT FACTS

2 1. On January 12, 2023 I participated in a zoom call with Magistrate Judge Megan
3 Marshall in which several of the victims and witnesses’ attorneys were present as well
4 as Latah County Prosecutor’s Office and counsel for the Defendant.

5 2. In that zoom call I informed Judge Marshal that my clients, the surviving family of
6 the family of the late Kaylee Goncalves **are not parties to the case** and therefore are
7 not subject to the Order. The Judge stated that she mistakenly believed that they were
8 “parties” and were therefore subject to the Order and she instructed me to advise them
9

10 3. I also informed Judge Marshall that I did not believe that I was covered under the
11 initial dissemination order as well and informed her that after the original dissemination
12 order came out that I emailed the Latah County Prosecutors Office for clarification and
13 for the Judge’s email. They offered no clarification and refused to provide Judge
14 Marshall’s email address.
15

16 4. During the zoom call I informed Judge Marshall that I would be contacting the
17 Idaho State Bar for clarification of her order as well.

18 5. Since the amended Order was issued on January 18, 2023, my clients and I have not
19 made any statements to the media, out of fear of being held in contempt of court.

20 6. Neither I nor my clients, the Goncalves have stipulated to the Order and upon
21 receiving it I (emailed) informed the Court and requested that the Order be changed as
22 it did not accurately reflect an agreement by the parties. The Court did not honor my
23 request.
24
25
26

1 ARGUMENT

2 Properly construed, the Order does not apply to the Victims’ families in this matter.

3 The only “parties” to the case are the People and the Defendant. Accordingly, as a non-party
4 citizens, the Victims surviving family members are free to speak to the public and the media
5 under the First Amendment to the Constitution. Simply put, their rights to freedom of speech
6 cannot be restricted through a judicial prior restraint. *Gentile* makes clear that only the rights
7 of attorneys who are actively engaged in litigating a pending matter can be restricted without
8 satisfying the rigorous prior restraints standard set forth in *Nebraska Press Association v.*
9 *Stuart*. See *Gentile v State Bar of Nevada*, 501 U.S. 1030, 1072-1074 (1991). (“The speech of
10 lawyers representing clients in pending cases may be regulated under a less demanding
11 standard than that established for regulation of the press in *Nebraska Press Assn. v. Stuart*,
12 427 U.S. 539, 49 L. Ed. 2d 683, 96 S. Ct. 2781 (1976) ...”) (emphasis added.)
13
14

15 As attorney for one of the Victim’s families, I am allowed to relay to the media any of
16 the opinions, views, or statements of those family members regarding any part of the case (as
17 they are allowed to speak about the case under the First Amendment).

18 This is different from offering up my own opinion regarding the facts and issues
19 surrounding the case. It would place an undue burden on the Victims’ families if the attorney
20 whom they have retained to represent their interests was prohibited from serving as their
21 spokesperson (conduit) to the media and other parties in transmitting the Victims’ families
22 thoughts and opinions.
23

24 As attorney for the Victim’s family members, who are not parties to this action, I too
25 am allowed to comment on the case and other issues surrounding the investigation pursuant to
26 IRPC Rule 3.6.

1 I am not an attorney of record involved in this case. I have played no part in the
2 investigation, prosecution or defense of the case. Neither the State nor the Defense has shared
3 any information regarding the case and therefore the only governing rule for public comment
4 regarding this case would be IRPC Rule 3.6.
5

6 Additionally, in the Gentile case the Court upheld ABA Rules 3.6 and 3.8 as they
7 applied to attorneys who are representing a party to the case but held that the wording of those
8 rules was unconstitutionally vague.

9 IRPC Rule 3.6 is similar in wording to ABA Rules 3.6 and 3.8 and therefore is vague
10 in its application to attorneys who are representing a party to the case and even more vague to
11 attorneys like I, who are **not representing any party to the case.**
12

13 The Order is facially overbroad and vague. On its face it precludes all comments or
14 opinions (other than reciting matters of public record), even if there is no possibility, much less
15 “substantial probability” of prejudicing the tribunal, and it also extends (remains in effect) even
16 after a jury has been seated and admonished to avoid all press coverage regarding the case. As
17 such, the Order is unconstitutionally overbroad.

18 The point of a non-dissemination order is to protect the rights of the parties in the case
19 and especially in criminal cases it is an attempt to preserve a fair and impartial jury pool. Once
20 the jury has been selected the non-dissemination order becomes moot and therefore would not
21 be allowed to be in full force for the “entirety of the case.”
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AUTHORITIES

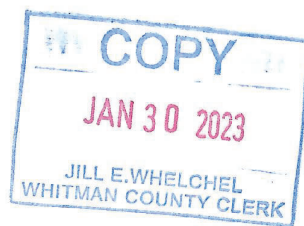
Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991)
First Amendment to the United States Constitution.
IRPC Rule 3.6

THEREFORE, I request that the Court forthwith amend and/or clarify the Amended Non-dissemination order regarding the issues addressed above and I request a hearing on the matter.

DATED THIS 2nd DAY OF February, 2023

By: elect. Sign. Shanon L. Gray
Shanon L.Gray, IDB#12061
Attorney for Goncalves Family

EXHIBIT E



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHITMAN COUNTY

WHITCOM 911, a Washington agency,

Plaintiff,

v.

NASH HOLDINGS, LLC d/b/a THE WASHINGTON POST, a Delaware limited liability company, THE NEW YORK TIMES COMPANY d/b/a THE NEW YORK TIMES, a corporation incorporated under the laws of the state of New York, SPOKANE TELEVISION, INC. d/b/a KXLY, a Washington Profit Corporation,

Defendants.

NO.

23 2 00042 38

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, WHITCOM 911, by and through its attorneys, Jeffrey R. Galloway and Brian M. Werst of Witherspoon Brajcich McPhee, PLLC, claims for relief against the above-named Defendants, complains, and alleges as follows:

I. PARTIES

1.1 Plaintiff WHITCOM 911 is a Washington agency established pursuant to interlocal agreement under RCW 39.34 *et seq.*, through the cooperation of Washington State

1 political/municipal entities consisting of the County of Whitman, Washington; City of
2 Pullman, Washington; and Washington State University. WHITCOM 911 is a “person” as
3 defined under the Washington Uniform Declaratory Judgments Act.
4

5 1.2 Upon information and belief, Defendant NASH HOLDINGS, LLC d/b/a THE
6 WASHINGTON POST is a Delaware limited liability company and news organization
7 operating in the District of Columbia. Defendant NASH HOLDINGS, LLC d/b/a THE
8 WASHINGTON POST (“The Washington Post”) is a “person” as defined under the
9 Washington Uniform Declaratory Judgments Act.
10

11
12 1.3 Upon information and belief, Defendant THE NEW YORK TIMES COMPANY d/b/a
13 THE NEW YORK TIMES is a corporation incorporated under the laws of the state of New
14 York and a news organization located and operating in New York County, State of New
15 York. Defendant THE NEW YORK TIMES COMPANY d/b/a THE NEW YORK TIMES
16 (“The New York Times”) is a “person” as defined under the Washington Uniform
17 Declaratory Judgments Act.
18

19
20 1.4 Upon information and belief, Defendant SPOKANE TELEVISION, INC. d/b/a KXLY, a
21 Washington Profit Corporation, is a news organization located and operating in Spokane
22 County, State of Washington. Defendant SPOKANE TELEVISION, INC. d/b/a KXLY
23 (“KXLY”) is a “person” as defined under the Washington Uniform Declaratory Judgments
24 Act.
25
26

27 **II. JURISDICTION AND VENUE**

28 2.1 This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 7.24 *et seq.*
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30 2.2 Venue and jurisdiction are proper in Whitman County, State of Washington.
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III. FACTUAL ALLEGATIONS

3.1 WHITCOM 911 re-alleges the foregoing paragraphs as though fully set forth herein.

WHITCOM 911

3.2 WHITCOM 911 provides Emergency 911 (“911”) services for various public agencies, including the City of Moscow, Idaho (“City of Moscow”).

3.3 Providing 911 services requires, inter alia, that WHITCOM 911 receives the call, gathers information, and then based upon the information provided by the caller, dispatches the proper agency to the caller’s location to assist.

3.4 WHITCOM 911 is an agency subject to the Washington Public Records Act, codified at RCW 42.56 *et seq.*

3.5 WHITCOM 911 and the City of Moscow have entered into an agreement regarding services to be performed by WHITCOM 911 (“Agreement”). Pursuant to the Agreement, 911 calls made by callers in the City of Moscow are received by WHITCOM 911.

3.6 Pursuant to the Agreement between WHITCOM 911 and the City of Moscow, WHITCOM 911 provides 911 services for the Moscow Fire Department, Moscow Police Department, and EMS emergency services for the City of Moscow.

3.7 Pursuant to the Agreement, WHITCOM 911 is affiliated with the Moscow Police Department.

NOVEMBER 13, 2022, 911 CALL

3.8 On November 13, 2022, WHITCOM 911 received a 911 call from a caller located in Moscow, Idaho, requesting assistance to 1122 King Road located in Moscow, Idaho (“1122 King Road”).

1 3.9 WHITCOM 911 recorded the 911 call. Based upon the information provided in the 911
2 call, WHITCOM 911 dispatched the Moscow Police Department to 1122 King Road.

3
4 **ARREST OF BRYAN C. KOHBERGER**

5 3.10 Based upon the investigation of the Moscow Police Department, on December 29, 2022,
6 a Criminal Complaint and Probable Cause Order was issued for the arrest of Bryan C.
7 Kohberger.
8

9 3.11 Mr. Kohberger was arrested, and criminal charges are currently pending in Latah County
10 District Court in Moscow, Idaho.
11

12 **NONDISSEMINATION ORDERS**

13 3.12 On January 3, 2023, Mr. Kohberger's counsel and the Latah County Prosecuting Attorney
14 stipulated to a Nondissemination Order.
15

16 3.13 On January 3, 2022, the Latah County District Court issued a Nondissemination Order
17 (attached hereto as "Exhibit 1" and hereinafter referred to as "Nondissemination Order")
18 that specifically prohibits:
19

20 ...any statement, which a reasonable person would expect to be
21 disseminated by means of public communication that relates to the
22 following:

- 23 1. Evidence regarding the occurrences or
24 transactions involved in this case;
- 25 2. The character, credibility, or criminal record of a
26 party;
- 27 3. The performance or results of any examinations
28 or tests or the refusal or failure of a party to
29 submit to such tests or exmninations [sic];
- 30 4. Any opinion as to the merits of the case or the
31 claims or defense of a party;

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5. Any other matter reasonably likely to interfere with a fair trial of this case, such as, but not limited to, the existence or contents of any confession, admission, or statement give [sic] by the Defendant, the possibility of a plea of guilt to the charged offense or a lesser offense, or any opinion as to the Defendant's guilt or innocence.

7 3.14 On January 18, 2023, the Latah County District Court amended its January 3, 2023
8 Nondissemination Order. The Amended Nondissemination Order (attached hereto as
9 "Exhibit 2" and hereinafter referred to as "Amended Order") provides:
10

11 1. The attorneys for any interested party in this case, including the
12 prosecuting attorney, defense attorney, and any attorney
13 representing a witness, victim, or victim's family, as well as the
14 parties [to the case], including but not limited to investigators,
15 law enforcement personal [sic], and agents for the prosecuting
16 attorney or defense attorney, are prohibited from making
17 extrajudicial statements (written or oral) concerning this case,
18 except, without additional comment, a quotation from or
19 reference to the official public record of the case.

20 2. This order specifically prohibits any statement, which a
21 reasonable person would expect to be disseminated by means
22 of public communication that relates to the following:

23 a. Evidence regarding the occurrences or
24 transactions involved in the case ...

25 **PUBLIC RECORDS REQUESTS**

26 3.15 On January 10, 2023, The Washington Post, submitted a public records request to
27 WHITCOM 911. The Washington Post requested a "copy of the 911 call placed from 1122
28 King Road, Moscow, Idaho on Nov. 13 at 11:58 a.m."

29 3.16 On January 16, 2023, The New York Times, submitted a public records request to
30 WHITCOM 911. The New York Times requested "[c]opies of any 911 calls regarding
31

1 incidents at King Road or Queen Road in Moscow on November 12 or 13” as well as
2 “[a]ny 911 calls from 1122 King Road since January.”

3
4 3.17 On January 20, 2023, KXLY, submitted a public records request to WHITCOM 911.
5 KXLY requested “...a copy of the audio and a transcript of the 911 call made from 1122
6 King Road on 11/13/2022 at 11:56 am.”

7
8 3.18 WHITCOM 911 reasonably anticipates that there will be additional public records requests
9 for the 911 call made from 1122 King Road on November 13, 2022.

10 **WASHINGTON PUBLIC RECORDS ACT**

11
12 3.19 WHITCOM 911 is an agency, as defined by RCW 42.56.010(1), subject to the Washington
13 Public Records Act, RCW 42.56 *et al.*

14
15 3.20 The Washington Public Records Act requires disclosure of public records. However, there
16 are many exemptions that may exempt disclosure of said public records.

17
18 3.21 WHITCOM 911 has not released the 911 call made from 1122 King Road on November
19 13, 2022, as requested by The Washington Post on January 10, 2023.

20
21 3.22 WHITCOM 911 has not released the 911 call made from 1122 King Road on November
22 13, 2022, as requested by The New York Times on January 16, 2023.

23
24 3.23 WHITCOM 911 has not released the 911 call made from 1122 King Road on November
25 13, 2022, as requested by KXLY on January 20, 2023.

26
27 3.24 The 911 call requested by the Defendants is reasonably believed to be a public record
28 under the Washington Public Records Act, RCW 42.56 *et al.*

29
30 3.25 The rights, status, and/or legal relations of WHITCOM 911 in responding to the
31 Defendants’ public records requests, in light of the Nondissemination Order, Amended

1 Order, and the exemptions applicable to WHITCOM 911 under the Washington Public
2 Records Act, are directly affected.

3 **IV. CAUSE OF ACTION**

4
5 4.1 WHITCOM 911 re-alleges the foregoing paragraphs as though fully set forth herein.

6 **DECLARATORY JUDGMENT**

7
8 4.2 WHITCOM 911 is an agency subject to the Washington Public Records Act, RCW 42.56
9 *et al.*

10 4.3 Defendants have requested the 911 call made from 1122 King Road on November 13,
11 2022, under the Washington Public Records Act.

12
13 4.4 The Latah County District Court issued a Nondissemination Order and Amended Order.

14 4.5 To date, WHITCOM 911 has not disclosed the 911 call made from 1122 King Road on
15 November 13, 2022, as requested by Defendants.

16
17 4.6 A controversy exists between WHITCOM 911 and Defendants as to whether WHITCOM
18 911 is required to disclose the requested 911 call made from 1122 King Road on November
19 13, 2022, in light of the Nondissemination Order, the Amended Order, and the exemptions
20 applicable under the Washington Public Records Act.

21
22
23 4.7 Pursuant to the Uniform Declaratory Judgment Act, Chapter 7.24 Revised Code of
24 Washington, WHITCOM 911 seeks to have this Court declare the rights, responsibilities,
25 and duties of the parties, including whether WHITCOM 911 must disclose the 911 call
26 made from 1122 King Road on November 13, 2022, as requested by the Defendants.

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V. WHITCOM 911'S PRAYER FOR JUDGMENT

WHEREFORE, WHITCOM 911 prays for judgment as follows:

1. For judgment declaring the rights, responsibilities, and duties of the parties, including whether WHITCOM 911 must disclose the 911 call made from 1122 King Road on November 13, 2022, as requested by the Defendants; and
2. For such other and further relief as may be just, equitable and permitted by law.

DATED this 30th day of January, 2023.

WITHERSPOON BRAJCICH MCPHEE, PLLC

By: 

Jeffrey R. Galloway, WSBA #44059

Brian M. Werst, WSBA #28457

Attorneys for WHITCOM 911

EXHIBIT 1

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

NONDISSEMINATION ORDER

The Court, by stipulation of the parties, enters its Order as follows:

IT IS HEREBY ORDERED that the parties to the above titled action, including investigators, law enforcement personnel, attorneys, and agents of the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements, written or oral, concerning this case, other than a quotation from or reference to, without comment, the public records of the case.

This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the following:

1. Evidence regarding the occurrences or transactions involved in this case;
2. The character, credibility, or criminal record of a party;
3. The performance or results of any examinations or tests or the refusal or failure of a party to submit to such tests or examinations;

4. Any opinion as to the merits of the case or the claims or defense of a party;
5. Any other matter reasonably likely to interfere with a fair trial of this case, such as, but not limited to, the existence or contents of any confession, admission, or statement given by the Defendant, the possibility of a plea of guilt to the charged offense or a lesser offense, or any opinion as to the Defendant's guilt or innocence.

IT IS FURTHER ORDERED that no person covered by this order shall avoid its proscriptions by actions that indirectly, but deliberately, cause a violation of this order.

IT IS FURTHER ORDERED that this order, and all provisions thereof, shall remain in full force and effect throughout these proceedings, until such time as a verdict has been returned, unless modified by this court.

SO ORDERED 1/3/2023 4:58:57 PM

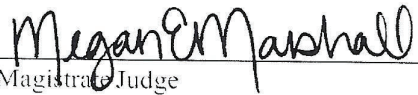

Magistrate Judge

EXHIBIT 2

op. CR29-22-2805

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,

vs.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

AMENDED
NONDISSEMINATION ORDER

There is a balance between protecting the right to a fair trial for all parties involved and the right to free expression as afforded under both the United States and Idaho Constitution. To preserve the right to a fair trial some curtailment of the dissemination of information in this case is necessary and authorized under the law.¹ Therefore, based upon the stipulation of the parties and with good cause.

IT IS HEREBY ORDERED:

1. The attorneys for any interested party in this case, including the prosecuting attorney, defense attorney, and any attorney representing a witness, victim, or victim's family, as well as the parties to the above entitled action, including but not limited to investigators, law enforcement personal, and agents for the prosecuting attorney or defense attorney, are prohibited from making extrajudicial statements (written or oral) concerning this case, except, without additional comment, a quotation from or reference to the official public record of the case.
2. This order specifically prohibits any statement, which a reasonable person would expect to be disseminated by means of public communication that relates to the

¹ See ABA STANDARDS FOR CRIMINAL JUSTICE: FAIR TRIAL AND PUBLIC DISCLOSURE (4th ed. 2016); IRPC Rule 3.6; *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976); *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

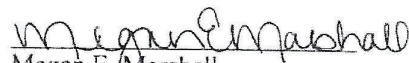
following:

- a. Evidence regarding the occurrences or transactions involved in the case;
- b. The character, credibility, reputation, or criminal record of a party, victim, or witness, or the identity of a witness, or the expected testimony of a party, victim, or witness;
- c. The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test;
- d. Any opinion as to the merits of the case or the claims or defense of a party;
- e. Any information a lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial;
- f. Any information reasonably likely to interfere with a fair trial in this case afforded under the United States and Idaho Constitution, such as the existence or contents of any confession, admission, or statement given by the Defendant, the possibility of a plea of guilt, or any opinion as to the Defendant's guilt or innocence.

IT IS FURTHER ORDERED that no individual covered by this order shall avoid its proscriptions by actions directly or indirectly, but deliberately, that result in violating this order.

IT IS FURTHER ORDERED that this order, and all provisions herein, shall remain in full force and effect throughout the entirety of this case unless otherwise ordered by this court.

Dated: 1/18/2023


Megan E. Marshall
Magistrate Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a true and complete copy of the foregoing was served as follows:

William Wofford Thompson	<u>paservice@latahcountvid.gov</u>	[X] By E-mail
Anne Taylor	<u>pdfax@kcgov.us</u>	[X] By E-mail

JULIE FRY
CLERK OF THE DISTRICT COURT

DATE 1/19/23

By: J. Oiphant
Deputy Court Clerk

EXHIBIT F



PRESS RELEASE

FOR IMMEDIATE RELEASE

January 3, 2023

CONTACT

Moscow Police Department

moscowpdpio@ci.moscow.id.us

Media Line: 208-883-7181

Media Line Hours: 7 a.m. to 5 p.m. (PST)

Moscow Homicide Case Nondissemination Order

MOSCOW, Idaho – The Moscow Police Department (MPD) is providing the following information to update the public on the on-going homicide investigation and court processes.

On January 3, 2023, Latah County Magistrate Judge Megan Marshall issued a nondissemination order in regard to the murder case against Bryan C. Kohberger. The order prohibits any communication by investigators, law enforcement personnel, attorneys, and agents of the prosecuting attorney or defense attorney concerning this case. A copy of the order can be found on our website. Due to this court order, the Moscow Police Department will no longer be communicating with the public or the media regarding this case.