STATE OF MINNESOTA
IN SUPREME COURT

ADM10-8049
ADM09-8009

Comments Submitted on Behalf of News Media Coalition Regarding Amendment to Rule 4 of the General Rules of Practice and Request of Coalition to be Heard on September 20, 2022

American Public Media Group (which owns Minnesota Public Radio), Association of Minnesota Public Educational Radio Stations, BLCK Press, CBS Broadcasting Inc. (on behalf of WCCO-TV), Gray Media Group (on behalf of its stations KEYC, KVLY, KSFY, KTTC, KBJR, and WEAU), Hubbard Broadcasting, Inc. (on behalf of its stations, KSTP, WDIO, KAAL, KOB, WNYT, WHEC, and WTOP), National Press Photographers Association, Sahan Journal, Silha Center for the Study of Media Ethics and Law, Star Tribune Media Company LLC, and TEGNA Inc. (on behalf of its station KARE) (the "Coalition")[1] hereby submit the following comments regarding amendments to Rule 4 of the General Rules of Practice.

The Coalition wishes to express its sincere gratitude to the Court for the opportunity to submit these comments and asks that the Court amend Rule 4 to presumptively permit audio-visual recording of *all* criminal proceedings in Minnesota district courts and to require a showing of good cause to overcome the presumption. The undersigned request to be heard on behalf of the Coalition at the hearing set for September 20, 2022.

Introduction

This is not the first time in recent years that this Court has considered the role of cameras in Minnesota district courts. Nor is it the first time that opponents of expanded camera coverage have made highly speculative arguments about what "could,"[2] "might," or "may" happen if the rules are liberalized to bring twenty-first century technology into the courtroom, catching Minnesota up with the vast majority of state courts across the country.

This time is different, though. Because of the COVID-19 pandemic, Minnesota was forced to adjust its legal system to social distancing, "Stay at Home" orders, and remote access needs. The way it did so: through technology. Indeed, this State's court system has now had the benefit of three pandemic-induced "experiments" that have demonstrated that historic concerns

[1] Certain members of the News Media Coalition are also separately submitting their own comments addressing discrete topics on which they can offer unique perspectives.

[2] This word alone is used 11 times in the Report and Recommendation (the "Report") of the Advisory Committee on Rules of Criminal Procedure to voice concerns about how, for example, camera coverage "could" poison the jury pool, "could" impact the cooperation of victims and witnesses, and "could" result in harm to various trial participants. *See, e.g.*, Report at 5. None of these references contain any citation to any statistical or empirical evidence, nor do they cite anecdotal evidence.

about expanded coverage, though perhaps genuinely held, are not borne out by actual evidence or experience—either locally or around the country.

Two of these experiments were trials themselves: first Derek Chauvin's trial for the murder of George Floyd, and then Kimberly Potter's trial for the manslaughter of Daunte Wright. Both were livestreamed, gavel-to-gavel, due to pandemic restrictions that severely limited the number of spectators allowed to attend the trials in person. And the livestreaming of both received praise from many, even most, quarters, including some unexpected ones:

- Attorney General Keith Ellison, whose office opposed camera coverage of the Chauvin trial and filed an unsuccessful motion asking the Court to reconsider its decision to allow such coverage, told WCCO-TV after the trial ended that his viewpoint had changed: "Things went better than I thought they were going to," he said. "I thought it would alter the way the lawyers handled the case and handled the evidence, but it went pretty well."[3] Ellison repeated the sentiment in an interview with Fox 9: "It worked out better than I thought. I'll say, hey, I can be wrong and I guess I was a little bit."

- In the same interview, prosecution team member Steve Schleicher compared the cameras to "shopping at Target. You didn't really notice. You just go in and you do your thing." He further said that he was "vaguely aware" of the cameras but "not really. You didn't notice them. I didn't really pay attention to the media afterwards … We're in trial, we have work to do." Prosecution team member Jerry Blackwell agreed. "When you're in the courtroom there's no cognizance or awareness or thought … about who's watching," he said.[4]

- Minnesota defense attorneys similarly saw the value in livestreaming such a high-profile trial. Mary Moriarty, Hennepin County Public Defender for more than thirty-one years and a recent candidate for Hennepin County Attorney, tweeted, "I was against cameras in the courtroom at the beginning of this trial, but I may have to move off that position because this trial exposed so much of what happens that

[3] Esme Murphy, *AG Keith Ellison Speaks Out After Derek Chauvin's Conviction*, CBS News Minnesota (Apr. 25, 2021), https://www.cbsnews.com/minnesota/news/full-interview-ag-keith-ellison-speaks-out-after-derek-chauvins-conviction/ (relevant comments at 5:17-5:27).

[4] *See* Paul Blume (@PaulBlume_FOX9), Twitter (Apr. 26, 2021), https://twitter.com/PaulBlume_FOX9/status/1386784094911008768.

the public has no way of knowing."[5] Joe Tamburino, another long-time criminal defense attorney, put it more bluntly: "cameras in the courtroom worked."[6]

- Likewise, Hennepin County Chief Judge, The Honorable Toddrick Barnette—who, prior to becoming a judge, worked both as a public defender and for the Hennepin County Attorney's Office—told the Associated Press that he grew to feel "comfortable that [the media] were really interested in the integrity of the process," that they "worked very hard to make sure there were no violations of Judge Cahill's order," and that one of the biggest benefits of livestreaming the trial was the public's ability to watch and learn from the process.[7]

- So too the Chief Judge of the U.S. District Court for the District of Minnesota, The Honorable Patrick J. Schiltz. He told the *Star Tribune* that when he learned the Chauvin trial would be livestreamed, "I thought that was a huge mistake but by the time he was done I admitted I was wrong." Judge Schiltz explained his change of heart this way: "It really helped people see what a criminal trial looked like;" they were able to see how "careful" such trials are often managed while also observing the more monotonous, technical moments of a trial.[8]

- Perhaps most notably, the judge who oversaw the Chauvin trial—The Honorable Peter A. Cahill— explained in a written comment to the Advisory Committee on Rules of Criminal Procedure (the "Committee") that although he had previously "opposed the use of cameras in the courtroom in criminal cases," his "recent experience in *State v. Chauvin* has changed my opinion such that I now believe cameras in the courtroom can be helpful in promoting trust and confidence in the judicial process and are sometimes necessary to safeguard both the defendant's right to a public trial and the public's right of access to criminal trials." *See* Report App'x at Jan. 28, 2022 Ltr. from Juge Peter A. Cahill.

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[5] See Mary Moriarty (@MaryMoriarty), Twitter (Apr. 21, 2021), https://twitter.com/MaryMoriarty/status/1385025113867702273.

[6] Joe Tamburino, *Chauvin Trial Proves Cameras Belong in Minnesota Courtrooms*, Minnesota Lawyer, https://minnlawyer.com/sponsored_content/chauvin-trial-proves-cameras-belong-in-minnesota-courtrooms/ (last visited Aug. 29, 2022).

[7] Associated Press, *Other officers' trial in Floyd death to be broadcast*, Minnesota Lawyer (Apr. 30, 2021), https://minnlawyer.com/2021/04/30/other-officers-trial-in-floyd-death-to-be-broadcast/.

[8] Stephen Montemayor, *New chief federal Judge Patrick Schiltz sees caseloads, security as Minnesota court's top issues*, Star Tribune (July 11, 2022), https://www.startribune.com/new-chief-federal-judge-patrick-schiltz-sees-caseloads-security-as-minnesota-courts-top-issues/600189351/.

- And although she has been less vocal than Judge Cahill in advocating for a rule change, The Honorable Regina Chu, who oversaw the Potter trial, told *Star Tribune* that both the Potter and Chauvin trials proved to her that cameras can be present in the courtroom without being disruptive. "I thought it was appropriate in the two cases and it went very smoothly, but I'm going to leave it to others as to what the parameters should be [in the future]," she said. "I forgot they were even there . . . ."[9] Likewise, she told KSTP, "I think it was important that people could see what the testimony was, to be able to understand how the courts work because a lot of people haven't been through a trial." She continued, "Hopefully, they could see it was fair and open."[10]

The third experiment received less fanfare but was equally important and instructive: the move to livestreamed, virtual proceedings in most cases, criminal and civil alike, over the past two and one-half years. Far from causing the sky to fall, the ability of citizens to remotely participate in and observe court proceedings—alleviating the need to take time off work, schedule childcare, arrange transportation, or risk contracting a highly-transmissible, infectious virus[11]—proved to be such a boon to the administration of justice that this Court opted to continue holding many types of hearings remotely, absent exceptional circumstances, even as we "arriv[e] at the other side of the pandemic."[12] In a press release about the decision, the Chief Justice explained that "[c]ommitting to the long-term use of remote hearings in our district courts will greatly expand access to justice and improve our service to the people of Minnesota."[13] The Coalition could not agree more.[14]

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[9] Paul Walsh, *As retirement looms, Judge Regina Chu reflects on a long career, impact of Kimberly Potter trial*, Star Tribune (Apr. 1, 2022), https://www.startribune.com/regina-chu-judge-who-presided-over-kimberly-potter-trial-is-retiring/600161338/.

[10] Eric Chaloux, *In retirement, Judge Chu reflects on Potter case and decades on the bench*, KSTP (Aug. 18, 2022), https://kstp.com/kstp-news/top-news/in-retirement-judge-chu-reflects-on-potter-case-and-decades-on-the-bench/.

[11] "[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 490-91 (1975).

[12] Order Governing the Continuing Operations of the Minnesota Judicial Branch, Case No. ADM20-8001 (Apr. 19, 2022).

[13] *See Chief Justice Issues Order Lifting Pandemic-related Restrictions And Announces Policy Continuing Remote Hearings*, (Apr. 20, 2022), https://www.mncourts.gov/About-The-Courts/NewsAndAnnouncements/ItemDetail.aspx?id=2105.

[14] Near the end of its Report, the Committee asks the Court to clarify that "while remote hearings are 'livestreamed,'" there should not be "any media broadcast of such hearings unless specifically authorized by the judge." Report at 15. The Coalition cautions that any attempt by

Granted, criminal proceedings are excluded from the April 19 Order, and this is perhaps for good reason: the liberty interests at stake and the nature of how the criminal justice system is designed (with more contested evidentiary hearings, constitutional rights to confront accusing witnesses, etc.) means the process is facilitated by having all case participants in the same room. But this does not mean spectators—members of the press and public—need to be in person too. Our pandemic-era experiments have taught us that there are many benefits to cameras in courts. Moreover, they have debunked the over-used and under-proven arguments against cameras found in the Committee's Report, which this Court should reject. The Court should revise Rule 4 so that it presumptively permits cameras in all criminal proceedings and requires a showing of good cause to overcome the presumption.

Trials are already public events and the Committee fails to show how permitting cameras in court will materially exacerbate the threat to any of the interests it identifies.

This much is beyond dispute: "A trial is a public event. What transpires in the courtroom is public property." *Craig v. Harney*, 331 U.S. 367, 374 (1947). There is no doubt that the press and public can attend criminal proceedings, including not only the trial but also proceedings such as pretrial hearings and *voir dire*. This is for good reason: The First Amendment guarantees this right of access because it "enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole." *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 606 (1982); *see also State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012) (open trials hold prosecutors and judges "keenly alive to a sense of their responsibility."). "[P]ublic access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process." *Globe Newspaper*, 457 U.S. at 606; *see also Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 508 (1984) ("[K]nowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known."); *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550, 556 (Minn. 1983) (publicity promotes public confidence). And access serves a therapeutic and "prophylactic purpose, providing an outlet for community concern, hostility, and emotion." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 571 (1980). "Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated and may manifest themselves in some form of vengeful 'self-help.'" *Id.*

Given the media's existing and well-established right to attend and report on criminal proceedings, the Committee's argument that cameras should not be permitted because the media will only cover "exceptional" cases and will only distribute "brief snippets" of the audio-visual recordings, Report at 4, is confusing, as is its concern that the "jury pool could be poisoned" or judges "could" be "influence[d] by the media's coverage. So is its (accurate) statement that "there are limits to what the court can do to control the use and dissemination" of audio-visual recordings, *id.* at 5.

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the judicial system to reach into people's private homes and offices and prohibit them from recording content made available on the Internet when such recording cannot possibly disrupt the proceedings raises serious constitutional issues.

Similarly confusing is the Committee's repeated reliance on some amorphous privacy interest belonging to trial participants. *See, e.g.*, *id.* (suggesting that cameras "could" cause victims to fear for their safety, "could" result in actual harm or threats of harm to witnesses and other trial participants, and "may" also have a chilling effect on future victims or witnesses); *see also id.* at 6 (suggesting that not even audio recording should be permitted because "individuals can still be identified by their speaking voice or if anyone says the person's name").

"When media is involved," the Committee writes, "it will most certainly make attorneys' and judges' jobs more difficult." *Id.* at 5. But, the Committee seems to have forgotten, *the media is already involved*. Journalists *already* cover only a subset of cases—the newsworthy ones.[15] They *already* necessarily distill for their readers, viewers, and listeners the most salient aspects (i.e., "brief snippets") of a proceeding. Their coverage is *already* available to potential jurors[16] and capable of influencing less-than-resolute judges. *Already* their coverage lives in perpetuity on the Internet. And *already* they identify victims and witnesses, attorneys and judges, not only by name but also by publishing photographs and video of these trial participants taken from professional profiles; LinkedIn, Facebook, and other social media platforms; jail records (e.g., mug shots); and out-of-court appearances and interviews.[17]

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[15] Deciding what is "newsworthy"—*i.e.*, what is a matter of public interest and concern and how best to prioritize news items—is not always easy, but the decision is one for reporters and their editors, not this Court or members of the Committee. *See Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials . . . constitute the exercise of editorial control and judgment," and "[i]t has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment."). Often the cases the media covers are "shocking," Report at 5, because crimes that shock the conscience understandably give rise to public interest and concern. But to suggest that the media *only* covers cases that are shocking or that their shock value is the *only* reason they are covered suggests a fundamental and deeply troubling misunderstanding of the role of the media in American democracy. Further, to suggest that "mundane cases should be covered along with the exceptional," *id.*, is to suggest a reallocation of the media's financial and human resources that is both pointless—just because the media covers a "mundane" case doesn't mean the public will consume the coverage—and detrimental. Newsroom resources are limited, and devoting resources to covering mundane cases deprives other, more worthy issues of the reportorial attention they deserve.

[16] This is precisely why courts already have standard jury instructions to admonish potential and empaneled jurors that they are to avoid reading or watching any news reports about the case on which they may serve.

[17] The Report claims that "both public defenders and private defense attorneys have expressed concerns that the presence of cameras is a safety issue for them." Report at 5; *see also id.* (public recognition "could" be a safety issue). However, a cursory Google search revealed that photographs of the vast majority of Committee members already appear online, and many members have voluntarily posted those photographs themselves, in connection with professional

As Judge Cahill pointed out back in January, in response to concerns that certain witnesses might not want to testify at the trial of Chauvin's co-defendants "because of the notoriety of the cases":

> As the notoriety of these cases is neither enhanced nor diminished by livestreaming, the defense arguments fail. The joint trial of these defendants, as was the case with the trial of their co-defendant Derek Chauvin, can be expected to receive ubiquitous media coverage given the vast public interest whether or not the joint trial is livestreamed. That is simply the nature of highly publicized trials in which the public and media have an intense interest.[18]

Despite all this, the judiciary seems to be functioning just fine: Judges remain independent.[19] Neutral jurors were found for the Chauvin and Potter cases, despite the enormous amounts of publicity those cases received in the run-up to both trials. Indeed, despite the livestreaming of the Chauvin trial, the U.S. District Court for the District of Minnesota was able to empanel a jury for the civil rights trial of his codefendants in just a *single day*.[20] Although the names of jurors in the Potter, Chauvin, and Noor cases were released many months ago, not one has reported a single incident of being targeted by threatening or harmful behavior. Victims of and witnesses to criminal conduct voluntarily participate in prosecutions of that conduct, despite knowing their testimony may receive news coverage—and lives forever in the public court

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biographies. Again, the Media Coalition does not doubt the Committee's concerns are genuine, but prohibiting cameras in court hardly seems to address or alleviate those concerns.

[18] Order Denying Motion to Reconsider Nov. 4 Order Allowing Audio and Video Coverage of Trial at 4, *State v. Thao et. Al*, Nos. 27-CR-20-12949, 27-CR-20-12951, 27-CR-20-12953 (4th Jud. Dist., Minn. Jan. 11, 2022), *available at* https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12951-TKL/Order.pdf; *see also* Order Granting A/V Coverage of Trial, at 3, *State v. Potter*, No. 27-CR-21-7460 (4th Jud. Dist., Minn. Nov. 9, 2021), *available at* https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-21-7460/Order-Regarding-Audio-Video-Coverage_1.pdf (relying on the experience of the Chauvin trial, Judge Chu wrote: "The Chauvin trial should allay any trepidations about cameras in the courtroom.").

[19] Order Granting A/V Coverage of Trial at 2-3, *supra* note 18 ("The recent protest at the presiding judge's home needs to be addressed. The unfortunate timing suggests the protest had an impact on the Court's decision to allow A/V coverage. The honest answer is the protest did not have any impact on the Court's decision, nor should it. . . . The bedrock of our democracy is the rule of law and that means we must have an independent judiciary and judges who can make decisions independent of the political winds that are blowing, protests or attempts at intimidation.")

[20] *See* Rochelle Olson and Chao Xiong, *Jury is seated in federal trial for the other officers in George Floyd death*, Star Tribune (Jan. 20, 2022), https://www.startribune.com/jury-selection-begins-today-in-federal-trial-for-the-other-officers-in-george-floyd-death/600137733/.

records regardless. And if they don't, courts can compel them to do so.[21] What's more, orders for new trials due to negative pretrial publicity are exceedingly rare.

This is the current landscape, without cameras, and the Report fails to explain how permitting cameras in court materially increases the risks to any of the interests it identifies. Indeed, given the long history of cameras in the vast majority of states, there is every reason to believe the risks identified are negligible, if not entirely speculative, and the Coalition points the Court to the separate submission of Court TV in particular for this national perspective. Meanwhile, the Chauvin and Potter trials demonstrated the many benefits of permitting cameras: The livestreaming of those trials helped people understand what was happening and built trust and confidence in the system. It had a therapeutic value, perhaps especially in the Chauvin case, a trial over a murder that itself was subject to a recording that "went viral." And in these times of partisan politics and a fragmented media ecosystem—at a time when "fake news" is, for some, an unfortunate mantra—the livestreaming allowed the public to bypass the media as a gatekeeper and watch events unfold for themselves, free of any "bias" they might suspect journalists harbor.

Concerns about the burdens cameras may create are overwrought; regardless, it is a burden worth bearing.

The Report also expresses concern that "litigating the question of camera coverage creates more work and is burdensome for the parties and the judge," Report at 4, that there "could" be "costs associated with more widespread coverage," and that the "Committee is concerned the process not be overly burdensome for court administration," *id.*at 6.

To this, the Coalition has two responses: First, as the Report acknowledges, "the costs of cameras and broadcasting fall on the media." *Id.* at 6. There may be some spillover cost to the judicial system, but the Coalition is confident that these costs will be negligible, especially when spread over a period of years. No one expects every courtroom in the state to suddenly be outfitted with the requisite technology tomorrow. In the interim, the media has proven more than capable of providing the necessary equipment to provide the kind of camera coverage that may be needed. And many other states have found ways to absorb the costs of accommodating cameras. Minnesota would certainly be no exception.

Second, whether the costs arise in terms of building out the infrastructure or in having judges and attorneys devote the time it takes to litigating camera-related issues, it is worth it. The Coalition does not say this flippantly. It understands, for example, the significant time and energy Judge Cahill devoted to considering (and re-considering) access issues of first impression in the prosecutions of Chauvin and his codefendants. But thanks to Judge Cahill and also Judge Chu we now have a body of case law from which to build. And as both of those judges clearly

[21] *See* Order Denying Motion to Reconsider at 3, *supra* note 16 (rejecting "vague and general" allegations that certain witnesses would "not testify because this matter is televised" and stating, "the Court is willing to enforce defense subpoenas by various means, up to and including arrest of recalcitrant witnesses to force them to testify, a common practice in many other trials in Hennepin County District Court in which witnesses are unwilling to cooperate with either or both of the parties seeking their testimony at trial").

understood, ensuring transparency in and access to our judicial system is not somehow tangential to a judge's job—or a prosecutor's job, or a public defender's job, for that matter. Rather it is a *core function* of those positions, and to suggest our public employees cannot make time for disputes over public access to our courts is to overlook the values upon which the system was built.

Concerns about cameras causing disruption ignore modern technology and defy common sense.

Finally, the Committee's concern that cameras somehow disrupt or change the prosecutorial process is twofold. First, the Report argues that "some types of tripod cameras are still in use across the state" and "[i]n some courts it would be almost impossible to accommodate a tripod camera." Report at 6. This is a watered-down version of the historic argument—harkening back to the "circus atmosphere" of the 1995 O.J. Simpson trial—that cameras are big and clunky and thus distracting and disrupting. As explained in greater detail in the separate submission of Court TV, however, modern recording equipment is small, quiet, and remotely operated.[22] Moreover, logic dictates that if people can watch the trial remotely, fewer will attend in person, making for a more efficient, solemn proceeding.

The second, separate but related argument is that "the presence of cameras distorts the process in that people may behave differently due to the presence of cameras." Report at 4. The Report further states there is a "potential" that judges "may modify their behavior" or that jurors will "have the perception a defendant is 'acting' for the camera." *Id.* at 4. The Report cites no evidence in support of this notion that people somehow "preen for the camera." But even if the Court gives credence to the notion that trial participants remain aware of the cameras and change their behavior as a result of their presence, there is just as much reason to believe they modify their behavior for *better*, as for worse. Indeed, common sense dictates that if trial participants know cameras are present they will be on their *best* behavior. Judges, for example, may be more patient and provide more explanation, to the benefit of both the lay person case participants and the public. Witnesses may be more truthful and less evasive. As for the possibility that jurors "may" believe the defendant is "acting" for the cameras, it seems much more likely that defendants would "act" for the jurors—the people literally deciding their fates—and those sorts of theatrics will happen whether cameras are in the room or not.

Ultimately, and as to both prongs of this common argument, we should trust our judges to control their courtrooms: to hold newsworthy trials in courtrooms that can accommodate the presence of journalists with recording equipment; to work with the media to ensure their coverage and equipment is not disruptive; and to hold trial participants (and themselves) to high standards. And if they cannot—or if a judge himself is the problem because he is grandstanding,

[22] Further, as we all witnessed during the Chauvin and Potter trials (and others around the country, such as the trials of Kyle Rittenhouse and the three men who murdered Ahmaud Arbery), the modern age also offers the ability to stream trials, in their entirety, over the Internet, a capability that mitigates concerns that the media must confine their coverage to a few seconds on the nightly news and that they will broadcast only the most emotional and inflammatory parts of trial.

condescending, or engaging in other inappropriate behavior—the public deserves to see that, too. Transparency is a feature, not a bug, of our system.

Rule 4 should be revised to presumptively permit camera coverage at all criminal proceedings and to require a showing of good cause to overcome the presumption.

The Committee is against any expansion of the use of cameras in Minnesota courtrooms, but acknowledges that the Court may reject its Report and so offers some thoughts if the rules are to be revised so that cameras may be permitted without the consent of all parties. The Committee's proposal is to set a very "high standard" such as the sort of "exceptional circumstances" that Judge Cahill found arose from the pandemic and social distancing requirements. Report at 8. In conjunction with this proposal, the Report lists more than a page of considerations, categorical exclusions of certain case types, and procedural requirements. *Id.* at 8-9. It then goes on to recommend that any expansion of camera coverage should not include hearings held outside the presence of the jury, *id.* at 10, and that recording should not be permitted of any witness who "opts out" or of any minor witness, minor victim, or minor defendant, *id.* at 11. The framework the Committee would set up if expanded camera coverage is permitted is, to say the least, complex.

The Coalition disagrees with such draconian limitations and instead proposes that Rule 4 be revised to presumptively permit cameras at all criminal proceedings and to require a showing of good cause to overcome that presumption. Beyond the sound public policy underpinning this proposal, it has the advantage of mirroring the tried-and-true approach found in Rule 4.02(e), which governs cameras at sentencing.

The Coalition is aware that the Minnesota District Judges Association ("MDJA") has advocated against a presumption and in favor of leaving questions about camera access entirely to the discretion of the presiding judge. The Coalition does not believe this goes far enough. For example, Ellison, Moriarty, Barnette, Schiltz, and Cahill—all have publicity stated that they were against cameras in courts before the Chauvin trial changed their mind. The Coalition fears that many judges may feel the same way and that inertia, fear of the unknown, or simply a desire to move expeditiously through their caseload will cause them to exercise unbridled discretion in denying requests for camera coverage. As Judge Cahill seems to recognize in also advocating for a rebuttable presumption that cameras be allowed at trials and sentencings, judges might need to experience a livestreamed or televised trial at least once to understand the value of the technology. The good cause standard will force judges to think critically about why they might not want cameras in their court for a particular proceeding and to justify their decision as something more than a mere "preference."

Meanwhile, and to quote from the MDJA's written comments to the Committee, a good cause standard will in no way prevent judges from "weigh[ing] factors, such as the nature of the case, the procedural posture, the parties, the public's right to observe, the hardship on a victim, the hardship on the victim's family, and the Defendant's right to a fair trial." It will not prevent them from "ensuring a result that is right and just." Indeed, whatever the rule change, the law is clear that judges have authority to manage their courtrooms. *See, e.g.*, *State v. Lindsey*, 632 N.W.2d 652, 658 (Minn. 2001), and appellate courts rarely second-guess a trial judge's determination regarding threats to order and decorum in his or her courtroom, *id.*, as "the right of

courts to conduct their business in an untrammeled way lies at the foundation of our system of government," *Wood v. Georgia*, 370 U.S. 375, 383 (1962). Moreover, a recent one-page order (attached as Exhibit A) prohibiting cameras at the sentencing of Mekhi Speed, the cousin of Amir Locke,[23] shows how malleable even the good cause standard can be, especially when the press and public have no right of appeal under Rule 4.03(d).

The Coalition further believes that the good cause standard provides judges with adequate flexibility to address many of the considerations and circumstances that the Committee would spell out in a complicated rule. Judge Cahill, for example, prohibited video recording of jurors during *voir dire* and of testimony by minor witnesses and members of George Floyd's family, but permitted audio recording.[24] For this reason, the Coalition discourages the Court from adopting the Report's proposed lengthy considerations, categorical exclusions, and procedural requirements. It also discourages the Court from including in a revised rule many of the limitations found in the current version Rule 4.02(d)(i)-(vi). For example, *voir dire* already occurs in open court and is subject to news coverage. The chances of a juror being identified by their voice alone is so vanishingly small that there is no reason to prohibit audio coverage, even if compelling interests require a prohibition on video coverage of jurors Likewise, the coverage of witnesses, including minor witnesses, can and should be dealt with on a case-by-case basis, as Judge Cahill demonstrated judges are perfectly capable of doing. Finally, cameras should be presumptively permitted, absent a showing of good cause to exclude them, at pretrial hearings and other proceedings held outside the presence of the jury. Again, these proceedings are already open to the public and subject to news coverage. Understanding what happens at suppression hearings and other pretrial proceedings is often essential to understanding the ultimate outcome of a case. Meanwhile, there is no reason to believe the presence of cameras will routinely jeopardize any protected interest. Indeed, many of the Committee's concerns about cameras center on the privacy of jurors (who do not attend such proceedings) and witnesses and victims (who rarely attend such proceedings).[25]

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[23] Minneapolis police shot and killed Locke while executing a no-knock warrant in downtown Minneapolis earlier this year.

[24] *See* Order Allowing Audio and Video Coverage of Trial at 3, *State v. Chauvin et al.*, Nos. 27-CR-20-12646, 27-CR-20-12949, 27-CR-20-12951, 27-CR-20-12953 (4th Jud. Dist., Minn. Nov. 4, 2020), *available at* https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/27-CR-20-12646_Order-Regarding-Audio-Video-Coverage.pdf.

[25] For many of the same reasons, the Coalition disagrees with the Committee's recommendations regarding Rule 4.02(e), governing post-guilt proceedings, and encourages the Court to simplify the rule by considering whether subdivisions (i)-(vi) can be adequately addressed on a case-by-case basis via the good cause standard. In particular, the Coalition is concerned by the Committee's willingness to permit cameras into treatment courts "only for promotional videos or for stories in the public interest," Report at 12, which suggests cameras are acceptable when used to paint our judiciary a positive light but not when used to give the public an accurate portrayal of what "those in the justice system do every day," *see id.* at 4.

Conclusion

Transparency comes with costs, no doubt about it: a loss of privacy and sometimes undeserved scrutiny, criticism, and—in the rare case—even harassment. But since the founding of our country, our courts have embraced a profound commitment to transparency, openness, and press and public access, recognizing that its benefits—fair trials, societal trust in verdicts, community catharsis, and the ability to understand how the system fails, so it can be fixed—far outweigh the costs. Cameras are an important part of transparency and access. And although the use of cameras in our State's courtrooms may theoretically pose a risk of some additional, incremental cost, those costs are still outweighed by the benefits. As the U.S. Supreme Court has emphasized, because few citizens have time to attend criminal trials, the First Amendment empowers the media to act as their surrogates and "bring to bear the beneficial effects of public scrutiny upon the administration of justice." *Cox Broad. Corp.*, 420 U.S. at 491-92.

The criminal legal system belongs to the people, and they should get to *see* our judicial system at work. For this reason, and all the others stated herein, the Court should revise Rule 4 to presumptively permit audio-visual recording in all criminal proceedings and to require a showing of good cause to overcome the presumption. Members of this Coalition stand ready to work with courts across the State, regardless of size, to make expanded camera access easy to implement and an asset to all Minnesotans.

Dated: August 30, 2022

Respectfully submitted,

/s/ Leita Walker

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EXHIBIT A

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,
and

Mekhi Camden Speed,
Defendant.

ORDER REGARDING VISUAL AND AUDIO COVERAGE

Court File Number 62-CR-22-2629

The above-entitled matter came before the undersigned Judge of District Court on the below date for administrative review. The State is presented by George Joyer, Assistant Ramsey County Attorney. The Defendant is represented by Paul D. Sellers, Esq. Based on all of the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. Multiple media organizations (KARE 11, KMSP) have filed notices of visual or audio coverage of the sentencing hearing scheduled in this matter for July 8, 2022. Defense has filed an objection.

2. Audio and/or visual coverage may be excluded if good cause is found. Minn. Gen. R. Prac. 4.02(e). To determine whether there is good cause to prohibit coverage of the proceeding, or any part of it, the judge must consider (1) the privacy, safety, and well-being of the participants or other interested persons; (2) the likelihood that coverage will detract from the dignity of the proceeding; (3) the physical facilities of the court; and, (4) the fair administration of justice. Id. The Court has considered these factors.

3. Defendant is 18 years old and was a minor when this matter was initiated in juvenile court. The offense was committed as a juvenile and comes to adult court via certification proceedings. Due to its connection to another matter, the case has drawn significant media and public interest. Defense argues audio and visual coverage is likely to unfairly influence decision-making and impact participants and negatively impact the privacy, safety and well-being of the defendant and other participants of the hearing. The impact of coverage is likely to detract from the dignity of the proceeding.

4. Good cause exists to exclude audio and visual coverage of the hearing.

ORDER

1. Visual or audio coverage of the sentencing hearing in this matter shall not be permitted.

Dated: June 27, 2022

BY THE COURT

_____
Timothy Mulrooney
Judge of District Court