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Second Judicial District, Latah County
Julie Fry, Clerk of the Court
By: Deputy Clerk - Mottern, Beth

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 **ORDER DENYING THE ASSOCIATED PRESS'S MOTION TO VACATE THE AMENDED NONDISSEMINATION ORDER**

I. INTRODUCTION

This Order addresses the Motion to Vacate the Amended Nondissemination Order filed by Intervenors, a coalition of 20 media outlets[1] that will be collectively referred to as the "Associated Press." The Amended Nondissemination Order does not restrict, restrain, or in any way enjoin the press from reporting on or publishing information they obtain through their own investigations or interviews. The Amended Nondissemination Order is not a "gag order" on the media. Instead, the

[1] 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 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.

Amended Nondissemination Order restricts attorneys directly involved in the case who are representing a party, a witness, or a victim's family, and the agents for those attorneys, including law enforcement, from making certain statements about the case to the media or the public. Because "[m]embership in the bar is a privilege burdened with conditions," *Gentile v. State Bare of Nevada*, 501 U.S. 1030, 1066, 111 S. Ct.2720, 2740, 115 L. Ed. 2d 888 (1991), the U.S. Supreme Court has recognized that "the speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press." *Id.* at 1076, 111 S. Ct. at 2744. "As officers of the court, court personnel and attorneys have a fiduciary responsibility not to engage in public debate that will redound to the detriment of the accused or that will obstruct the fair administration of justice." *Id.* at 1074, 111 S. Ct. at 2744.

The purpose of the Amended Nondissemination Order, which was stipulated to by the parties,[2] is to protect Defendant Bryan C. Kohberger's ("Kohberger") right to a fair trial by an impartial jury as guaranteed by the Sixth Amendment. "Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors, and an outcome affected by extrajudicial statements would violate that fundamental right." *Id.* at 1075, 111 S. Ct. at 2745.

The Associated Press's Motion to Vacate the Amended Nondissemination Order is denied. This Court has the authority to regulate the speech of attorneys participating in this case, and the agents for those attorneys, to ensure that Kohberger is not denied his right to a fair trial by an impartial jury because of extrajudicial prejudicial statements. However, this Court will issue a Revised Amended Nondissemination Order that clarifies what cannot be discussed and what can be

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[2] The term "parties" is a precise legal term used to describe the State and the Defendant, Bryan Kohberger. There are no other parties to this case.

discussed. The Revised Amended nondissemination Order (1) is limited to apply only to speech that is substantially likely to have a materially prejudicial effect on the right to a fair trial; (2) applies equally to all attorneys participating in the case; (3) is neutral as to points of view; and (4) restricts attorneys' comments only until after the trial and any sentencing proceedings that may take place.

The Revised Amended Nondissemination Order is reasonable considering the facts of this case: (1) the evidence presented by the defense showing the pervasiveness of media coverage, including coverage prejudicial to Kohberger and coverage that includes extrajudicial statements by an attorney participating in the case; and (2) the impact such prejudicial news coverage has on potential jurors and the fair administration of justice. The restriction imposed serves a legitimate purpose, and the very limited incidental effects of the Revised Amended Nondissemination Order on the media's First Amendment rights are overridden by the compelling interest in ensuring that Kohberger's right to a fair trial under the Sixth Amendment is not jeopardized.

II. BACKGROUND

On November 13, 2022, four University of Idaho students, Kaylee Goncalves, Madison Mogen, Xana Kernodle, and Ethan Chapin, were found deceased in Goncalves, Mogen, and Kernodle's off-campus home in Moscow, Idaho. The cause of death for each was ruled a homicide. As news of the tragedy broke, media outlets from around the country descended upon Moscow. As law enforcement investigated, news stations, newspapers, and social media were flooded with stories and speculation about the homicides and law enforcement's investigative efforts and abilities. Throughout the course of the investigation, the Moscow Police Department, in partnership with the University of Idaho, the Latah County Prosecutor's Office, and the Idaho State Police, held press briefings to answer questions and reassure the public. Appropriately, the information released was limited to protect the integrity of the ongoing investigation.

On December 30, 2022, Kohberger was arrested and charged with four counts of Murder in the First Degree and one count of Burglary. Again, media outlets descended upon Moscow and the news coverage quickly focused on Kohberger.

The same day that Kohberger was charged, his attorney filed a Motion for Nondissemination Order asking the magistrate judge to enter an order "barring parties, their attorneys, investigators, law enforcement personnel, and potential witnesses from discussing [the case] with any public communications media." Thereafter, on January 3, 2023, the defense and the State filed a Stipulation for 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." The same day, the magistrate judge entered a Nondissemination Order prohibiting "the parties to the [case], including investigators, law enforcement personnel, attorneys, and agents of the prosecuting attorney or defense attorney, . . . 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."

On January 13, 2023, the magistrate judge held an in-chambers, off-the-record conference with Latah County Prosecuting Attorney William W. Thompson, Jr., Senior Deputy Prosecutor Ashley S. Jennings, defense counsel Anne C. Taylor, attorneys for two witnesses in the case, and Shanon Gray, attorney for the Goncalves family. A summary of the meeting, as prepared by the parties in the case, was filed with the Idaho Supreme Court on March 3, 2023, as part of the Declaration of Deborah A. Ferguson in the case of *In re Petition for Writ of Mandamus or Writ of Prohibition*, No. 50482, 2023 WL 3050829 (Idaho Apr. 24, 2023). The purpose of the conference was to address the applicability of the Nondissemination Order to the attorneys both present as

parties to the case and the attorneys participating in the case. The magistrate judge reminded the attorneys that this case is a high-profile case with both national and international media coverage, and that they each have a duty under the Idaho Rules of Professional Conduct to not interfere with the parties' right to a fair trial. The magistrate advised the attorneys that it was not their job to disseminate information to the media. The magistrate judge stated that the Nondissemination Order did not restrict the attorneys' nonparty clients from speaking to the media, but reiterated the importance of the case being tried in a court of law and not the media and encouraged each attorney to advise their clients accordingly in order to preserve the right to a fair trial by an impartial jury.

On January 18, 2023, the magistrate judge, based on the stipulation of the parties, entered the Amended Nondissemination Order to balance Kohberger's and the State's right to a fair trial and the "right to free expression as afforded under both the United States and Idaho Constitution." The magistrate noted that "[t]o preserve the right to a fair trial some curtailment of the dissemination of information in this case is necessary and authorized under the law." The Amended Nondissemination Order reads:

> IT IS HEREBY ORDERED:
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> 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.
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> 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 following:
>   a. Evidence regarding the occurrences or transactions involved in this case;
>   b. The character, credibility, reputation, or criminal records 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 the 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.

On February 6, 2023, the Associated Press filed a Petition for Writ of Mandamus or a Writ of Prohibition with the Idaho Supreme Court related to the Amended Nondissemination Order. On April 24, 2023, the Idaho Supreme Court issued an opinion dismissing the Associated Press's Petition, finding that although the media did have standing to challenge the Amended Nondissemination Order, they must first present their petition to the trial court. Thereafter, on May 2, 2023, the Associated Press filed a Motion to Intervene and a Motion to Vacate the Amended Nondissemination Order. The magistrate set a scheduling conference for May 22, 2023.

On May 16, 2023, an Indictment was filed against Kohberger, and this Court began presiding over the case. On May 22, 2023, after Kohberger's arraignment, this Court conducted a scheduling conference and set a briefing schedule and hearing for oral argument. The Associated Press's Motion to Vacate the Amended Nondissemination Order was extensively briefed, and both the State and Kohberger submitted extensive briefing in opposition to the Motion.

Oral argument was heard on June 9, 2023. The State was represented by William W. Thompson, Jr., and Bradley J. Rudley, Latah County Prosecutor's Office. Kohberger was represented by Anne C. Taylor and Jay W. Logsdon, Kootenai County Public Defender's Office. The Associated Press was represented by Wendy Olson and Cory Carone.

During the hearing, the defense put on the testimony of two expert witnesses. First, Jean R. Saucier, Senior Vice President of Truescope North America, testified. In sum, Ms. Saucier testified to the quantity of media coverage in this case. It is undisputed that media coverage in this case is rampant and ongoing, including on television, the internet, social media, and the radio. News surrounding the case is being reported by reliable sources of news, unreliable news outlets, and individuals engaged in spreading or fueling rumors, theories, and unfounded speculation. It is also worth noting that Ms. Saucier's testimony and the exhibits she showed demonstrate that in the "Share of Voice – Media Coverage" category, "Shanon Gray's stories [in the media] had the highest potential reach at 561,112,573 impressions" with impressions being the "opportunities to see" a story. Ex. A to Defendant's Objection to Media's Mot. to Vacate the Amended Nondissemination Order. Shanon Gray is the attorney for the Goncalves family and is bound by the Amended Nondissemination Order.

The defense also submitted several news articles demonstrating that at least some portion of the news, if not most of it, is prejudicial to Kohberger. *See* Motion to Take Judicial Notice of Press Coverage.

Second, Dr. Amani El-Alayli, Social Psychologist and Social Cognition Researcher, testified to the impact such media can have on a potential juror. It was Dr. El-Alayli's opinion "that vacating the non-dissemination order would increase the potential for bias among prospective jurors, both initially and throughout the trial." Dr. El-Alayli further opined that "my review of research illustrat[es] that anti-defendant pretrial publicity increases the probability of guilty verdicts, and that this bias persists despite the receipt of trial arguments/evidence, admonitions to disregard the publicity information, and jury deliberation. . . . commentary by individuals with status/expertise

(e.g., police, attorneys, and judges) in media coverage create more potential for biased jurors." Ex. D to Defendant's Objection to Media's Mot. to Vacate the Amended Nondissemination Order.

III. ISSUES PRESENTED

The Associated Press argues that the Amended Nondissemination Order restrains their "constitutional right [to gather news] before it can be exercised" in violation of the First Amendment. Mem. in Supp. of Mot. to Vacate the Amended Nondissemination Order at 15. The Associated Press asserts that their First Amendment rights are being violated because "[t]he media does not make the news; it reports the news." *Id.* at 17. The argument continues that "[i]f a court orders an individual not to provide information to the media, then the media has nothing to report." *Id.* "Intervenors' speech is thus being restrained before they can even speak." *Id.* at 15. Thus, The Associated Press alleges that the Amended Nondissemination Order is a prior restraint on the media and does not survive the strict scrutiny test applied to prior restraints on the press.

This decision addresses the following: (1) the obligation of the Court to ensure that Kohberger's right to a fair trial is not being jeopardized by prejudicial extrajudicial statements; (2) the Court's authority to impose restrictions on the speech of those attorneys and their agents involved in this case; and (3) the standard applied to reviewing constitutional challenges by the media to nondissemination orders aimed at trial participants, especially lawyers. Finally, this decision applies the law to the facts of this case in addressing The Associated Press's argument that the Amended Nondissemination Order violates their First Amendment rights.

IV. LAW

In 1966, the U.S. Supreme Court recognized a defendant's right to "a trial by an impartial jury free from outside influences" in the face of "massive, pervasive and prejudicial publicity." *Sheppard v. Maxwell*, 384 U.S. 333, 335, 362, 86 S. Ct. 1507, 1508, 1522, 16 L. Ed. 2d 600 (1966).

While recognizing that "[a] responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field," *id.* at 350, 86 S. Ct. at 1515, the Court chastised the trial judge for not taking "strong measures" to ensure Sheppard's right to a fair trial. *Id.* at 362, 86 S. Ct. at 1522. In *Sheppard*, there was not a nondissemination order on trial participants or any "gag order" on the media. Notably, in overturning Sheppard's conviction, the Court listed several things that the trial court should have done: 1) "the judge should have adopted stricter rules governing the use of the courtroom by newsmen," and "should have more closely regulated the conduct of newsmen in the courtroom"; 2) "the court should have insulated the witnesses. All of the newspapers and radio stations apparently interviewed prospective witnesses at will, and in many instances disclosed their testimony"; 3) "the court should have made some effort to control the release of leads, information, and gossip to the press by police officers, witnesses, and the counsel for both sides. Much of the information thus disclosed was inaccurate, leading to groundless rumors and confusion"; 4) "the judge should have at least warned the newspapers to check the accuracy of their accounts"; and 5) "it is obvious that the judge should have further sought to alleviate [inaccurate, prejudicial news] by imposing control over the statements made to the news media by counsel, witnesses, and especially the Coroner and police officers." *Id.* at 358-360, 86 S. Ct. at 1520-1521.

In summary, the Court stated that "the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters, such as the refusal of Sheppard to submit to interrogation or take any lie detector tests; the identity of prospective witnesses or their probable testimony; any belief in guilt or innocence; or like statements concerning the merits of the case." *Id.* at 361, 86 S. Ct. at 1521. "*In this manner, Sheppard's right to a trial free from outside influence would have been given added protection*

without corresponding curtailment of the news media. Had the judge, the other officers of the court, and the police placed the interest of justice first, the news media would have soon learned to be content with the task of reporting the case as it unfolded in the courtroom – not pieced together from extrajudicial statements." *Id.* at 362, 86 S. Ct. at 1522 (emphasis added).

In addressing the tension between the First Amendment and the Sixth Amendment, the Court stated:

> From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, *the trial courts must take strong measures to ensure that the balance is never weighed against the accused.* And appellate tribunals have the duty to make an independent evaluation of the circumstances. Of course, there is nothing that proscribes the press from reporting events that transpire in the courtroom. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity. In addition, sequestration of the jury was something the judge should have raised *sua sponte* with counsel. If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered. But we must remember that reversals are but palliatives; *the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures.*

Id. at 362–63, 86 S. Ct. 1507 at 1522 (emphasis added).

The Associated Press relies heavily on *CBS Inc. v. Young*, 522 F.2d 234 (6th Cir. 1975) in support of their position that the Amended Nondissemination Order is unconstitutional and must be vacated. In that case, the appellate court issued a decision addressing a nondissemination order entered in a civil case. There, the nondissemination order prohibited "all counsel and Court

personnel, all parties concerned with this litigation, whether plaintiffs or defendants, their relatives, close friends, and associates" from "discussing in any manner whatsoever these cases with members of the news media or the public." *Id.* at 236. The press challenged the order as violating the press's rights under the First Amendment.

The court held as follows:

> before a trial [court] can limit defendants' and their attorneys' exercise of first amendment rights of freedom of speech, the record must contain sufficient specific findings by the trial court establishing that defendants' and their attorneys' conduct is 'a serious and imminent threat to the administration of justice.' *Craig v. Harney*, 331 U.S. 367, 373, 67 S.Ct. 1249, 1253, 91 L.Ed. 1546 (1947). Applying either the standard that the speech must create a "clear and present danger," *Wood v. Georgia*, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962), of a serious and imminent threat to the administration of justice, or the lesser standard that there must be a "reasonable likelihood," *United States v. Tijerina*, 412 F.2d 661 (10th Cir. 1969), of a serious and imminent threat to the administration of justice, we hold that the trial court's order is constitutionally impermissible.

Id. at 239.

The court reasoned that the order issued by the trial court constituted a prior direct restraint upon freedom of expression. "In sweeping terms it seals the lips of 'all parties concerned with this litigation, whether plaintiffs or defendants, their relatives, close friends and associates . . . from discussing in any manner whatsoever these cases with members of the news media or the public.' Although the news media are not directly enjoined from discussing the case, it is apparent that significant and meaningful sources of information concerning the case are effectively removed from them and their representatives. To that extent their protected right to obtain information concerning the trial is curtailed and impaired." *Id.* The court continued, "[w]e find the order to be an extreme example of a prior restraint upon freedom of speech and expression and one that cannot escape the proscriptions of the First Amendment, unless it is shown to have been required to obviate serious and imminent threats to the fairness and integrity of the trial." *Id.* at 240.

In this Court's view, the *Young* court's reliance on the high standard applied in *Craig v. Harney*, 331 U.S. 367, 67 S.Ct. 1249, 91 L.Ed. 1546 (1947) and *Wood v. Georgia*, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962) is misplaced. Both of those cases dealt with contempt proceedings and did not address nondissemination orders restricting extrajudicial statements by specific persons to preserve the right to a fair trial.

In *Harney*, three media personal were found guilty of criminal contempt and sentenced to three days in jail for publications during an ongoing civil case in which they criticized the presiding judge. The judge found the news reports were designed to falsely represent to the public the nature of the proceedings and to prejudice and influence the court to grant a new trial. In reversing the decision of the trial court, the Court held that "[g]iving the editorial all the vehemence which the court below found in it we fail to see how it could in any realistic sense create an imminent and serious threat to the ability of the court to give fair consideration to the motion for rehearing." *Harney*, 331 U.S. at 378, 67 S. Ct. at 1256. This Court agrees that any attempt by a court to hold the media in contempt, and even jail them, for publications critical of the court should be viewed under the strictest scrutiny. However, the facts in *Harney* have no similarity to the restriction on the speech of trial participants in this case or in the *Young* case.

In *Wood*, a grand jury was impaneled and instructed by the judge to investigate a voting issue within the county. While the grand jury was in session, the elected sheriff issued a public statement criticizing the judge for singling out the African American community and essentially attempting, through the judicial process, to intimidate and silence the African American vote. The sheriff also wrote a letter to the grand jury "implying that the court's charge was false" among other things. A month later the sheriff was cited for contempt. Following a trial, where the court failed to make any findings or articulate any reasoning for its decision, the sheriff was found guilty of

contempt and sentenced to 20 days in jail. In overturning the contempt conviction, the Supreme Court held that, as an elected official, the sheriff "had the right to enter the field of political controversy, particularly where his political life was at stake. The role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matter of current public importance. Our examination of the content of petitioner's statements and circumstances under which they were published leads us the [sic] conclude that they did not present a danger to the administration of justice that should vitiate his freedom to express his opinions in the manner chosen." *Wood*, 370 U.S. at 394–95, 82 S. Ct. at 1375. Again, the facts in *Wood* have no similarities to the Amended Nondissemination Order in this case or the facts in *Young*.

Additionally, the *Young* court's finding that "before a trial [court] can limit *defendants' and their attorneys'* exercise of first amendment rights of freedom of speech, the record must contain sufficient specific findings by the trial court establishing that defendants' and their attorneys' conduct is 'a serious and imminent threat to the administration of justice'" is at odds with the Supreme Court's later holding in *Gentile* that will be discussed below. *But see Levine v. U.S. Dist. Ct. for Cent. Dist. of California*, 764 F.2d 590, 595 (9th Cir. 1985) (The trial court imposed a restraining order prohibiting attorneys involved in the case from communicating with the media regarding the merits of the case. In reviewing the restraining order, the 9th Circuit applied strict scrutiny.). Regardless of the standard applied to a constitutional challenge by a lawyer restricted by a nondissemination order, a less demanding standard is applied when the media challenges such an order. *Radio & Television News Ass'n of S. California v. U.S. Dist. Ct. for Cent. Dist. of California*, 781 F.2d 1443, 1444 (9th Cir. 1986).

In 1976, the U.S. Supreme Court again addressed the tensions between the First Amendment and the Sixth Amendment in *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 96 S. Ct.

2791, 49 L. Ed. 2d 683 (1976). Even then, in 1976, the Court acknowledged that "[t]he speed of communication and the pervasiveness of the modern news media have exacerbated" the tension between the First Amendment and the Sixth Amendment. *Nebraska Press*, 427 U.S. at 548, 96 S. Ct. at 2798. Unlike in this case, *Nebraska Press* dealt with a restraint on the media's ability to publish or broadcast specific information (i.e., a restraint on freedom of the press) and not a restraint on freedom of speech. The Court recognized that "when the case is a 'sensational' one tensions develop between the right of the accused to trial by an impartial jury and the rights guaranteed others by the First Amendment." *Id.* at 551, 96 S. Ct. at 2799. The Court noted that a prior restraint on speech is "most serious and the least tolerable infringement on the First Amendment rights," while also acknowledging that when the death penalty is on the table, "it is not requiring too much that [a defendant] be tried in an atmosphere undisturbed by so huge a wave of public passion." *Id.* at 552, 96 S. Ct. at 2799 (quoting *Irvin v. Dowd*, 366 U.S. 717, 728, 81 S.Ct. 1639, 1645, 6 L.Ed.2d 751 (1961)). The Court stated that "*[i]t is not asking too much to suggest that those who exercise First Amendment rights in newspapers or broadcasting enterprises direct some effort to protect the rights of an accused to a fair trial by unbiased jurors.*" *Id.* at 560, 96 S. Ct. at 2803 (emphasis added).

In a footnote in the concurring opinion, authored by Justice Brennan, the following was noted:

> A significant component of prejudicial pretrial publicity may be traced to public commentary on pending cases by *court personnel, law enforcement officials, and the attorneys involved in the case*. In Sheppard v. Maxwell, supra, we observed that "the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters." 384 U.S., at 361, 86 S.Ct., at 1521. See also Id., at 360, 86 S.Ct., at 1521 ("(T)he judge should have further sought to alleviate this problem (of publicity that misrepresented the trial testimony) by imposing control over the statements made to the news media by counsel, witnesses, and especially the Coroner and police officers"); Id., at 359, 363,

> 86 S.Ct., at 1521, 1522. *As officers of the court, court personnel and attorneys have a fiduciary responsibility not to engage in public debate that will redound to the detriment of the accused or that will obstruct the fair administration of justice. It is very doubtful that the court would not have the power to control release of information by these individuals in appropriate cases*, see In re Sawyer, 360 U.S. 622, 79 S.Ct. 1376, 3 L.Ed.2d 1473 (1959), and to impose suitable limitations whose transgression could result in disciplinary proceedings. Cf. New York Times Co. v. United States, 403 U.S., at 728-730, 91 S.Ct., at 2148-2149 (Stewart, J., joined by White J., concurring). *Similarly, in most cases courts would have ample power to control such actions by law enforcement personnel.*

Id. at 601, footnote 27, 96 S. Ct. at 2823, footnote 27 (emphases added).

Sheppard and *Nebraska Press* leave no doubt that, in appropriate cases, the Court has the authority to regulate the speech of attorneys involved in a case as well as their agents, such as law enforcement, to prevent prejudicial pretrial statements to preserve the right to fair trial by an impartial jury.

In 1985 and 1986, the 9th Circuit Court of Appeals addressed a situation strikingly similar to the one now before this Court in two separate opinions. As way of background, Defendant Richard Miller, a former FBI agent, was charged with espionage. The case received extensive local and national media coverage. After attorneys for both the prosecution and the defense engaged in extrajudicial statements to the media, the trial court entered an order prohibiting "all attorneys in [the] case, . . . [from] making any statements to members of the news media concerning any aspect of [the] case that bears upon the merits to be resolved by the jury." *Levine v. U.S. Dist. Ct. for Cent. Dist. of California*, 764 F.2d 590, 593 (9th Cir. 1985).

In *Levine* the court addressed a challenge to the nondissemination order brought by defense counsel. The court framed the issue as addressing "the clash between the basic and fundamental right to a fair criminal jury trial and the first amendment right of attorneys to engage in free speech." *Id.* at 591. In reviewing the restraining order, the 9th Circuit noted that "the district court's order

applies only to trial participants. The Supreme Court has suggested that *it is appropriate to impose greater restrictions on the free speech rights of trial participants than on the rights of nonparticipants. The case for restraints on trial participants is especially strong with respect to attorneys.*" *Id.* at 595 (internal citations omitted). The court nevertheless applied strict scrutiny. "Accordingly, the district court's order may be upheld only if the government establishes that: (1) the activity restrained poses either a clear and present danger or a serious and imminent threat to a protected competing interest, (2) the order is narrowly drawn, and (3) less restrictive alternatives are not available." *Id.* at 596 (internal citations omitted). The court concluded that the speech of the lawyers did pose a serious and imminent threat to the administration of justice and that the trial court's choice of remedy was appropriate. However, the court found that the nondissemination order was overbroad and directed the district court as follows:

> It is apparent that many statements that bear "upon the merits to be resolved by the jury" present no danger to the administration of justice. After the filing of this opinion, the district court must determine which types of extrajudicial statements pose a serious and imminent threat to the administration of justice in this case. The district court then must fashion an order specifying the proscribed types of statements. With regard to statements by the prosecution, it would be appropriate for the district court to order the government to observe the self-imposed limitations set forth in 28 C.F.R. § 50.2(b) (1984). With regard to statements by the defense, it would be appropriate to proscribe statements relating to one or more of the following subjects:
>
> (1) The character, credibility, or reputation of a party;
> (2) The identity of a witness or the expected testimony of a party or a witness;
> (3) The contents of any pretrial confession, admission, or statement given by a defendant or that person's refusal or failure to make a statement;
> (4) The identity or nature of physical evidence expected to be presented or the absence of such physical evidence;
> (5) The strengths or weaknesses of the case of either party; and
> (6) Any other information the lawyer knows or reasonably should know is likely to be inadmissible as evidence and would create a substantial risk of prejudice if disclosed.

Id. at 599 (citing Model Rules of Professional Conduct, Rule 3.6 (1983); ABA Standards for Criminal Justice Standard 8-1.1 (1982); Model Code of Professional Responsibility DR 7-107 (1979)).

The case then went back to the trial court. The trial court amended its restraining order to adopt the six categories of speech by lawyers specified by the 9th Circuit as appropriate to proscribe. The Radio and Television News Association then filed for a writ of mandamus with the 9th Circuit arguing that the restraining order, even as amended, posed "an unconstitutional prior restraint infringing freedom of the press." *Radio*, 781 F.2d at 1444. The 9th Circuit addressed the media's challenge in *Radio*.

Like here, the media argued that "the order, by effectively denying media access to the trial participants, constitutes an unconstitutional restraint on the media's ability to gather news." *Id.* at 1445. Much of the court's opinion concluding that the trial court's amended restraining order was reasonable and served a legitimate purpose is worth repeating:

> [T]he impact on the media in this case is significantly different from situations where the media is denied access to a criminal trial or is restricted in disseminating any information it obtains. . . .
>
> In contrast, the district court's order in this case is not directed toward the press at all. On the contrary, the media is free to attend all of the trial proceedings before the district court and to report anything that happens. In fact, the press remains free to direct questions at trial counsel. Trial counsel simply may not be free to answer. In sum, the media's right to gather news and disseminate it to the public has not been restrained.
>
> As we noted in *Levine,* the district court's order 'raises a freedom of the press issue that is analytically distinct from the issues that were raised in *Associated Press* and *CBS.*' Rather, the RTNA asserts a first amendment right of full access to trial participants. This assertion is not supported by constitutional case law. *See Pell v. Procunier,* 417 U.S. 817, 829-35, 94 S.Ct. 2800, 2807-11, 41 L.Ed.2d 495 (1974) (in holding that freedom of the press was not infringed by government restrictions on interviews with prison inmates, Court rejected media assertion of 'right of access to the sources of what is regarded as newsworthy information').
>
> The press does enjoy a constitutional interest in access to our criminal courts and criminal justice process. In *Richmond Newspapers,* 448 U.S. 555, 576, 100 S.Ct.

2814, 2827, 65 L.Ed.2d 973 (1980) (plurality), the Supreme Court affirmed the first amendment 'right of access' or 'right to gather information' granted to the press with respect to criminal trials. *However, the Court described that right only as a right to sit, listen, watch, and report.*

In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 609, 98 S.Ct. 1306, 1318, 55 L.Ed.2d 570 (1978), the Supreme Court held that '[t]he First Amendment generally grants the press no right to information about a trial superior to that of the general public.' *See also Branzburg v. Hayes*, 408 U.S. 665, 684, 92 S.Ct. 2646, 2658, 33 L.Ed.2d 626 (1972) (first amendment "does not grant the press a constitutional right of special access to information not available to the public generally."). As with the public, the press has no greater privilege than the right to attend the trial.

In short, the media's 'right to gather information' during a criminal trial is no more than a right to attend the trial and report on their observations. *KPNX Broadcasting Co.*, 678 P.2d at 439-42 (1984) (holding that limitations on the media's ability to interview trial participants do not violate the first amendment)[.]

The media is granted access to the same information, but nothing more, that is available to the public. The district court having determined that the free speech rights of the trial counsel must be restrained, the media has no greater right than the public to hear that speech.

The media never has any guarantee of or "right" to interview counsel in a criminal trial. Trial counsel are, of course, free to refuse interviews, whether or not restrained by court order. If such an individual refuses an interview, the media has no recourse to relief based upon the first amendment.

. . .

In sum, the media's collateral interest in interviewing trial participants is outside the scope of protection offered by the first amendment. The media's desire to obtain access to certain sources of information, that otherwise might be available, is not a sufficient interest to establish an infringement of freedom of the press in this case.

Consequently, *we are not required to consider whether the district court's amended restraining order can withstand strict scrutiny as a prior restraint on constitutional freedom of the press.*

We need only 'examine whether the restrictions imposed are reasonable and whether the interests [of the government] override the very limited incidental effects of the [order] on First Amendment rights.' The restrictions imposed also must not serve an illegitimate purpose.

The district court found that restrictions on the extrajudicial statements of trial counsel to the press were necessary to reduce prejudicial publicity. We cannot say it was unreasonable for the district court to conclude that statements by trial counsel on matters bearing on the merits of the trial might impair the fairness of the trial or threaten the integrity of the judicial process. Nor is there any indication in the record that the district court's order was intended to conceal the workings of the criminal justice system. The press remains free to attend the trial and scrutinize the fairness of the proceedings. On the basis of this limited standard of review, the

district court's amended restraining order is "reasonable" and serves a legitimate purpose.

Id. at 1446-1448 (some internal citations omitted) (emphasis added).

Radio makes clear that strict scrutiny does not apply to challenges by the press of nondissemination orders that do not restrain the media, but instead restrain trial participants, as in this case. Instead, the standard to be applied is "whether the restrictions imposed are reasonable and whether the interests [of the government] override the very limited incidental effects of the [order] on First Amendment rights," and whether the restrictions imposed serve a legitimate purpose. *Id.* at 1447.

As expressly recognized by the Supreme Court in 1991, "the speech of those participating before the courts [can] be limited." *Gentile*, 501 U.S. at 1072, 111 S. Ct. at 2743. In *Gentile*, Gentile, a defense attorney, held a press conference after his client was indicted. Gentile proclaimed that the evidence at trial would prove his client was innocent and that "crooked cops" were the ones responsible for stealing the drugs and money at issue. Gentile also commented on other aspects of the defense's case. Six months later Gentile's client was acquitted. Thereafter, the Nevada State Bar filed a complaint against Gentile alleging that he violated Nevada Supreme Court Rule 117, which prohibited a lawyer from making extrajudicial statements to the press that had a substantial likelihood a materially prejudicing a trial. However, Rule 117 expressly allowed a lawyer to "state without elaboration . . . the general nature of the . . . defense." The State Bar's disciplinary board found Gentile in violation of Rule 117 and recommended that he be reprimanded. Ultimately, the Supreme Court held that Nevada Supreme Court Rules, Rule 117, as applied to the facts of Gentile's case, was unconstitutionally vague. The Court noted that the "safe harbor provision" misled Gentile into thinking that he could make the statements he made without discipline.

Despite the holding that Rule 117 was unconstitutionally void for vagueness as applied, the Court continued to recognize "*that the speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press in Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976), and the cases which preceded it. Lawyers representing clients in pending cases are key participants in the criminal justice system, and the State may demand some adherence to the precepts of that system in regulating their speech as well as their conduct." *Id.* at 1074, 111 S. Ct. at 2744 (emphasis added).

> 'As officers of the court, court personnel and attorneys have a fiduciary responsibility not to engage in public debate that will redound to the detriment of the accused or that will obstruct the fair administration of justice.' Because lawyers have special access to information through discovery and client communications, their extrajudicial statements pose a threat to the fairness of a pending proceeding since lawyers' statements are likely to be received as especially authoritative.

Id. at 1074, 111 S. Ct. at 2744–45 (quoting *Nebraska Press*, 427 U.S. at 601, n. 27, 96 S. Ct. at 2823, n. 27.).

The key takeaways from *Levine* and *Gentile* are that a court can, to protect the right to a fair trial, prohibit lawyers involved in a case from making extrajudicial statements to the press so long as the regulation is not overbroad, is clear, and provides notice of what is prohibited. While the *Levine* court applied strict scrutiny, *Gentile* suggests that "a less demanding standard" applies to restrictions on the speech of lawyers participating in pending cases.

The ability of a court to restrict the speech of a lawyer participating in a case is rooted in a lawyer's status as "an officer of the legal system and a public citizen having special responsibility for the quality of justice." I.R.P.C., Preamble: A Lawyer's Responsibilities. "A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to

challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process." *Id.* As an "officer of the court," a lawyer has a duty "to preserve the integrity of the legal system's search for the truth while maintaining a professional, courteous and civil attitude toward all persons involved in the process." *Id.*

Lawyers licensed to practice law in Idaho are governed by the Idaho Rules of Professional Conduct. Rule 3.6(a) specifically states that "[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." Comment 5 to Rule 3.6 gives specific examples of subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a criminal matter or any other proceeding that could result in incarceration:

1) The character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
2) In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
3) The performance or results of any examination or test or the refusal or failure of a person to submit to any examination or test, or the identity or nature of physical evidence expected to be presented;
4) Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
5) Information that the 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; or
6) The fact that a defendant has been charged with a crime, unless there is included therein a statement explain that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

Rule 3.6 also expressly allows lawyers participating in a matter to state the following:

> (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
> (2) information contained in a public record;
> (3) that an investigation of a matter is in progress;
> (4) the scheduling or result of any step in litigation;
> (5) a request for assistance in obtaining evidence and information necessary thereto;
> (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
> (7) in a criminal case, in addition to subparagraphs (1) through (6);
> (i) the identity, residence, occupation and family status of the accused;
> (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
> (iii) the fact, time and place of arrest; and
> (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

Comment 1 to Rule 3.6 recognizes the difficulty in striking "a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved." Similarly, comment 6 to Rule 3.6 states that "[c]riminal jury trials will be most sensitive to extrajudicial speech."

The American Bar Association has also promulgated standards for conduct of attorneys. Standard 8-2.1 governs the conduct of lawyers participating in a criminal matter. Standard 8-2.1 reads:

> (a) Subject to any additional limitations imposed by local or professional rules, during the pendency of a criminal matter, a lawyer participating in that criminal matter should not make, cause to be made, condone or authorize the making of a public extrajudicial statement if the lawyer knows or reasonably should know that it will have a substantial likelihood of:
> (i) influencing the outcome of that or any related criminal trial or prejudicing the jury venire, even if an untainted panel ultimately can be found;

(ii) unnecessarily heightening public condemnation of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or of a witness or victim; or

(iii) undermining the public's respect for the judicial process.

ABA STANDARDS FOR CRIMINAL JUSTICE: FAIR TRIAL AND PUBLIC DISCOURSE (4th ed. 2016).

V. ANALYSIS

While "[o]nly the occasional case presents a danger of prejudice from pretrial publicity," *Gentile*, 501 U.S. at 1054, 111 S. Ct. at 2734, this case, as recognized by the Idaho Supreme Court, "has drawn widespread publicity, garnering worldwide media attention and much speculation" and, therefore, pretrial publicity does present a real danger of prejudice. *In re Petition for Writ of Mandamus or Writ of Prohibition*, No. 50482, 2023 WL 3050829, at *1 (Idaho Apr. 24, 2023). "Recognizing the high-profile nature of the case and the extensive coverage it has received, along with the need to minimize possible pretrial prejudice," the parties stipulated to entry of the original Nondissemination Order and the Amended Nondissemination Order. *Id.* As was noted by District Judge Steven W. Boyce in his Memorandum Decision and Order Prohibiting Video and Photographic Coverage in the case of *State of Idaho v. Lori Norene Vallow aka Lori Norene Vallow Daybell*, CR22-21-1624, "[a]greement between the State and Defense on any issue in a capital case is rare, further confirming to the Court the legitimacy and level of concern counsel have raised." The same is true in this instance.

1. This Court has an obligation to take measures to ensure Kohberger's right to a fair trial including proscribing potentially prejudicial extrajudicial statements by any lawyer participating in the case.

"Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors, and an outcome affected by extrajudicial statements would violate that fundamental right." *Gentile,* 501 U.S. at 1075, 111 S. Ct. at 2745. This Court also recognizes the

important role the press plays in the judicial system. "A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field." *Sheppard, 384 U.S. at* 350, 86 S. Ct. at 1515. However, with "the advent of the internet and social media," *In re Petition for Writ of Mandamus or Writ of Prohibition*, No. 50482, 2023 WL 3050829, at *11 (Idaho Apr. 24, 2023), the tensions between the First Amendment and the Sixth Amendment continue to increase. As was outlined in *Sheppard*, trial courts "must take strong measures to ensure that the balance is never weighed against the accused." *Sheppard*, 384 U.S. at 362, 86 S. Ct. at 1522.

In this case, the Amended Nondissemination Order – in place by the parties' stipulation to protect Kohberger's right to a fair trial – is not directed toward the press at all. Like in *Radio & Television News*, the Amended Nondissemination Order is aimed at attorneys participating in the case and their agents such as law enforcement. The U.S. Supreme Court has made clear that a trial court can "proscribe extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters." *Sheppard*, 384 U.S. at 361, 86 S. Ct. at 1521; *see also Nebraska Press*, 427 U.S. at 601, n. 27, 96 S. Ct. at 2823, n. 27. By doing so, the trial court can help to ensure a "*trial free from outside influence . . . without corresponding curtailment of the news media.*" *Sheppard*, 384 U.S. at 362, 86 S. Ct. at 1522 (emphasis added). Such restraining orders raise "a freedom of the press issue that is analytically distinct" from prior restraints on the media. *Radio*, 781 F.2d at 1446.

Nondissemination orders that restrain "*the speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press in Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976)." *Gentile*, 501 U.S. at 1074, 111 S. Ct. at 2744 (emphasis added). Lawyers

"have a fiduciary responsibility not to engage in public debate that will redound to the detriment of the accused or that will obstruct the fair administration of justice." *Id.* In a case as high profile as this one, a nondissemination order echoing the responsibilities of a lawyer found in the Idaho Rules of Professional Conduct does not violate the attorney's First Amendment rights.

The parties have a legitimate concern about information being disseminated to the media by way of attorneys participating in the case. Obviously, the State and the defense are privy to confidential information, but so too are attorneys representing a victim's family or a witness. As noted by the Court in *Gentile*, "[b]ecause lawyers have special access to information through discovery and client communications, their extrajudicial statements pose a threat to the fairness of a pending proceeding since lawyers' statements are likely to be received as especially authoritative." *Gentile*, 501 U.S. at 1074, 111 S. Ct. at 2744–45 (quoting *Nebraska Press*, 427 U.S. at 601, n. 27, 96 S. Ct. at 2823, n. 27.). This concern was echoed by defense expert Dr. El-Alayli who opined that "commentary by individuals with status/expertise (e.g., police, attorneys, and judges) in media coverage create more potential for biased jurors." Ex. D to Defendant's Objection to Media's Mot. to Vacate the Amended Nondissemination Order.

"Membership in the bar is a privilege burdened with conditions." *Gentile*, 501 U.S. at 1066, 111 S. Ct. at 2740. Requiring attorneys involved in the case to comply with I.R.P.C 3.6 as echoed in the Revised Amended Nondissemination Order is not unreasonable and does not unconstitutionally impinge upon the First Amendment. This Court has an obligation to help protect Kohberger's constitutional right to a fair trial, and this is just one measure that the U.S. Supreme Court has endorsed, in appropriate cases, to help ensure the Sixth Amendment is not violated. Thus, this Court has the authority to restrain prejudicial speech by attorneys participating in the case.

2. Strict scrutiny does not apply to the media's constitutional challenge of the Amended Nondissemination Order.

When the media challenges an order restraining the speech of lawyers participating in a pending case, the court "need only 'examine whether the restrictions imposed are reasonable and whether the interests [of the government] override the very limited incidental effects of the [order] on First Amendment rights.' The restrictions imposed also must not serve an illegitimate purpose." *Radio*, 781 F.2d at 1447. This is not strict scrutiny. The rationale for a lower standard of constitutional review is because "the impact on the media . . . is significantly different from situations where the media is denied access to a criminal trial or is restricted in disseminating any information it obtains." *Id.* at 1446. Strict scrutiny would apply in such a case.

While the press does have a "right of access" or "right to gather information" with respect to criminal trials, that right is described only as a right to sit, listen, watch, and report. *Id.* at 1446. "The media's desire to obtain access to certain sources of information, that otherwise might be available, is not a sufficient interest to establish an infringement of freedom of the press in this case." *Id.* at 1447. As such, strict scrutiny does not apply.

3. The restrictions on the extrajudicial statements of counsel and their agents to the press are necessary to reduce prejudicial publicity and protect Kohberger's right to a fair trial.

The evidence presented by the defense shows that 1) media coverage in this case is rampant and ongoing; 2) at least some, if not most, of the news coverage is prejudicial to Kohberger; 3) a portion of the statements being made to the media are coming from an attorney participating in the case; 4) "vacating the non-dissemination order would increase the potential for bias among prospective jurors, both initially and throughout the trial;" and 5) "anti-defendant pretrial publicity increases the probably of guilty verdicts, and that this bias persists despite the

receipt of trial arguments/evidence, admonitions to disregard the publicity information, and jury deliberation. . . . commentary by individuals with status/expertise (e.g., police, attorneys, and judges) in media coverage create more potential for biased jurors." Ex. D to Defendant's Objection to Media's Mot. to Vacate the Amended Nondissemination Order.

As currently drafted, the Amended Nondissemination Order is arguably overbroad and vague in some areas. However, it does serve a legitimate purpose, and restricting the speech of attorneys participating in the case is reasonable. The very limited incidental effects of the speech restrictions on the media's First Amendment rights are overridden by the compelling interest in ensuring a fair trial by an impartial jury. Statements by counsel participating in the case on matters bearing on the merits of the case might impair the fairness of the trial or threaten the integrity of the judicial process. The Amended Nondissemination Order is not intended to conceal the workings of the criminal justice system from the public. The media is not restrained in any way and is free to attend hearings and report on what they observe and hear. For these reasons, the media's request that the Amended Nondissemination Order be vacated is denied.

However, because the Amended Nondissemination Order is arguably overbroad and vague, the Court will issue a Revised Amended Nondissemination Order to further clarify and narrow what speech by lawyers participating in the case and their agents is allowed and prohibited by giving specific examples. The Revised Amended Nondissemination Order is narrowly drawn to prohibit only extrajudicial statements that have a "substantial likelihood of materially prejudicing" this case. The restriction on attorneys' speech applies equally to all attorneys participating in the pending case and will restrict the attorneys' comments only until after the trial and any sentencing proceedings. The regulation of attorneys' speech meets the

"less demanding standard" set forth in *Gentile* as well as strict scrutiny. The restrictions are necessary to protect Kohberger's right to a fair trial and the fair administration of justice.

As to the media's constitutional challenge, the restrictions imposed on attorneys participating in the case and their agents are not only reasonable and legitimate considering the high profile nature of this case, but also meet the strict scrutiny standard.

VI. CONCLUSION

The Associated Press's request that the Amended Nondissemination Order be vacated is denied. However, the Revised Amended Nondissemination Order will replace the Amended Nondissemination Order and will clarify and narrow the restrictions on speech and the individuals whose speech is restrained.

SO ORDERED this 23rd day of June 2023.

John C. Judge
District Judge

CERTIFICATE OF SERVICE

I certify that copies of the ORDER DENYING THE ASSOCIATED PRESS'S MOTION TO VACATE THE AMENDED NONDISSEMINATION ORDER were delivered by email to the following:

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on this 23rd day of June 2023.

CLERK OF THE COURT

By: _____
Deputy Clerk