

COURTROOM MANAGEMENT AND DECORUM ORDER

This case has generated substantial public interest and media attention. In light of this interest, the court has set forth rules of conduct and guidelines designed to govern the expectations of the people involved in the trial and those observing the trial so that the decorum of an open court will be maintained throughout the proceedings.¹

The purpose of this order is to secure the defendant's constitutional rights to a fair and impartial jury while permitting the public and the press to exercise their First Amendment rights.² In addition, the order protects the identity of jurors.³

Pursuant to the court's inherent authority to assure the proper administration of justice,⁴ it is therefore ordered that the following rules are in effect. The Court may rescind or modify the order at any time. Any person or organization who violates this order will be subject to the discipline of the court, including contempt and permanent exclusion from the courtroom.

Schedule⁵

The schedules are tentative and can be modified daily.⁶

- The judge invites media representatives to meet with him/her and counsel of record on XX at a.m./p.m. in courtroom XX of the XX County courthouse to discuss this order. At the conclusion of the meeting, video and/or still photographs of the interior of the XX courtroom may be obtained for media use as B-roll or stock photographs.
- Jury selection is scheduled to begin XX and last through XX in XX County.
- The trial is scheduled to begin XX and last through XX.
- All sessions are scheduled to begin at XX a.m. and conclude at approximately XX p.m.
- There will be a recess for lunch from XX until XX and brief recesses in the morning and afternoon.

1. In the modern technological/digital world, high profile trials generate great public and media interest. For more information on the necessity of establishing a high-profile decorum order related to dealing with the press, see Ron Keefover, "High Profile Trials--The Need for a Court to Have a Media Plan," *The Judges' Journal* 46, no. 2 (Spring 2007): 7; Carla Smith, "Developing a Media Plan for Your Court," in *Managing the Message: The NACM Media Guide for Today's Courts: 2010 Mini Guide*, ed. Giuseppe M. Fazari (Williamsburg, VA: National Center for State Courts, 2010), 20.

2. David A. Sellers, "The Circus Comes to Town: The Media and High-Profile Trials," *Law and Contemporary Problems* 71, no. 4 (Autumn 2008): 184-187.

3. Ind. Jury Rule 10.

4. See, e.g., *Noble County v. Rogers*, 745 N.E.2d 194, 198-99 & n.5 (Ind. 2001).

5. Clark Co. Circuit Court No. 1, *Courtroom Management and Decorum Order: State of Indiana v. Jeffrey Weisheit* by Hon. Daniel E. Moore, Court Order (Jeffersonville, IN, May 14, 2013), 1-2.

6. Morgan Superior Court II, *Order Re: Guidelines for Media Coverage of Trial: State of Indiana v. John R. Myers, Jr.* by Hon. Christopher L. Burnham, Court Order (Martinsville, IN, 2006), 1.

Security⁷

Security during these proceedings shall be provided by the XX County Sheriff's Department. All persons entering the XX County courthouse shall be subject to standard security protocols.

Upon entering the courthouse, all media representatives shall identify themselves and produce appropriate identification (photo preferred). Additionally, they shall declare whether they possess any electronic devices (including any audio or video recording device, camera, cell phone, tablet, etc.) and use the devices only in permissible locations.⁸

Media Credentials

The Court appoints XX to administer the media credentialing process. Credentials will be issued according to the Court's credentialing process and within the Court's discretion. All requests for credentials must be made to XX via email by noon on XX.

Any person requesting a media credential must be prepared to present credentials identifying the person as a member of a recognized media organization. Credentials shall be valid for entry to the media area and courtroom during the trial unless they are rescinded by court order. Media should be prepared to display credentials at any time during the proceedings. Credentials will be assigned to the media organization, as opposed to a specific individual in the organization.⁹

Media Area

A designated location for credentialed media (reporters, video and still photographers and their equipment) has been established and will be marked as such. The area is located NAME AREA and DESCRIBE IT (typically, this room has tables, chairs, multiple outlets, and wireless internet). It will be open for use by credentialed media during normal business hours and/or when the jury trial is in session.¹⁰

Access to the Courtroom¹¹

The bailiff will allow credentialed media to begin entering the courtroom no more than XX minutes/hours prior to the start of any court session. Once a court session begins, distractions will not be allowed.

7. Timothy R. Murphy, Geneva Kay Loveland, and G. Thomas Munsterman, "A Manual for Managing Notorious Cases: Criminal Procedure" (Williamsburg, VA: National Center for State Courts, 1992), 82–94, <http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/criminal/id/42/rec/1>.

8. Allan Parachini, "Working with the Media: High-Profile Cases and Times of Emergency," in *Managing the Message: The NACM Media Guide for Today's Court : 2010 Mini Guide*, ed. Giuseppe M. Fazari (Williamsburg, VA: National Association for Court Management, 2010), 25–26.

9. Murphy, et al, 89-91.

10. Floyd Superior Court No. 1, *Decorum and Media Procedures Order: State of Indiana v. William C. Gibson, III*, by Hon. Susan Orth, Court Order (New Albany, IN, September 10, 2013), 6.

11. Spencer Co. Circuit Court, *Guidelines for News Media: State of Indiana v. David R. Camm* by Hon. Jonathan A. Dartt, (Rockport, IN, July 10, 2013), 1–2.

Specifically, the bailiff will only allow entrance and exit during designated breaks in the trial or when a witness is entering or exiting the witness stand. If a person chooses to leave the courtroom during a court session, he/she shall not be allowed to reenter the courtroom until the next break in the proceedings.

Seating

All persons must be seated during proceedings; there will be no standing. No person will be admitted unless there is adequate seating. There will be designated seating areas for counsel, parties (families), and court-credentialed media.¹²

The defense will be allocated XX seats; the prosecution will be allocated XX seats; the families will be allocated XX seats; the media will be allocated XX seats; and the general public will be allocated XX seats in the courtroom. If seats are in high demand, media may be limited to one representative from each news organization.

During jury selection there may be a reduced number of seats available to allow seating for all prospective jurors. If the court employs individual *voir dire* in chambers, media will be required to observe that *voir dire* on a rotating basis. For example, a member of the press may take a 10 minute turn observing jury selection, vacate their seat to a colleague and take another turn when all present media representatives have had an opportunity to observe. The general public may be required to observe through a similar shared seating arrangement.

All reserved seats will be available on a first-come, first-served basis. Groups will be directed to their respective seating areas. Unoccupied seats in the courtroom may be given to the general public if the court determines it appropriate in the Court's discretion.¹³

Dispute

Any dispute among media (e.g. whether one organization/network is taking up too many seats, whether a specific individual constitutes media, whether a member of the press has correctly identified their network affiliation) will be decided by the media organizations collectively.

If the dispute cannot be resolved by the media and it results in seating issues, the court may employ a blind draw seating arrangement where all present members of the media place their name in a draw and the court seats press according to the drawn names and the number of media seats available.

Jury¹⁴

12. Allen Superior Court, *Courtroom Management and Decorum Order: State of Indiana v. David Bisard*, by Hon. John F. Surbeck, Jr., Court Order (Ft. Wayne, IN, September 17, 2013), 2–3.

13. Hamilton Superior Court No. 3, *Amended Media Procedures Order: State of Indiana v. Chad Cottrell*, by Hon. William J. Hughes, Court Order (Noblesville, IN, March 12, 2009), 11.

14. Keeping jurors free from bias both before and during a case can be difficult in today's information-sharing world. For a full set of information on juries, see Hon. Dennis M. Sweeney, "Worlds Collide: The Digital Native Enters the Jury Box," *Reynolds Courts & Media Law Journal* 1, no. 2 (Spring 2011): 121–146.

An unanswered copy of the jury questionnaire and supplemental questionnaire used for this trial will be available at the beginning of jury selection. Completed questionnaires will be treated as confidential documents pursuant to provisions of Indiana Administrative Rule 9 and Indiana Jury Rule 10.¹⁵

Personal information relating to a juror or prospective juror and not disclosed in open court will be kept confidential, other than for the use of parties and counsel. No party, counsel, or court staff member shall publish or otherwise disclose in any way the name, address or likeness of any juror or prospective juror in a manner that discloses the identity of that person except for information which is disclosed in open court. Potential and impaneled jurors will be identified only by their juror number.

During the trial, the media is directed that no photograph or record of the jurors is allowed, including the juror entrance/exit from the courthouse. If jurors are sequestered,¹⁶ this prohibition shall also include travel, dining and lodging locations for the jury as well as parking and transportation vehicles when the jurors are present.

The media shall make no attempt to contact or question prospective or empaneled jurors until the Court has discharged the juror. Each excused juror will be provided file-stamped dismissed/excused paperwork clearly indicating he/she is no longer a juror. To ensure prospective and empaneled jurors do not overhear media interviews, press interview locations will be restricted.

At the end of the trial, the court will ask jurors if they are interested in speaking with the press. The court will facilitate a location inside the courthouse where press will be permitted to interview jurors, if any, who wish to comment.¹⁷

Photography and Video in the Courtroom Prohibited

The Indiana Code of Judicial Conduct prohibits broadcasting, televising, recording, and taking photographs in a courtroom and areas immediately adjacent during sessions of court or during any recesses of the trial. No still or video photography or audio recordings shall be permitted in the courtroom or adjacent area.¹⁸

Any violation shall result in the item being confiscated and erased, and violators and their affiliated organizations are subject to being excluded from the courtroom for the remainder of the trial.

Any interception, transmission, reproduction, re-broadcast, or dissemination of the audio signal created by the Court's audio system is prohibited pursuant to the Rules of the

15. Ibid, 135-138; Quintin Cushner, Roger Hartley, and Darrel Parker, "Spreading the News: Communicating with the Media during High-Profile Trials," *Judicature*. 93, no. 2 (2009): 57-58.

16 Sweeney, 133.

17. Hughes, 5-6; Burnham, 3-5.

18. Ind. Rule of Judicial Conduct 2.17.

Indiana Supreme Court. Any voice recognition software used to capture and transcribe courtroom procedure is also prohibited.¹⁹

Still and video photography and audio recordings are permitted only in XX NAME SPECIFIC AREA. This will be designated by appropriate signage. All recording equipment is permitted in this designated area.²⁰

Interviews

Media interviews outside of the courthouse building generally are not regulated by this order and are, instead, subject to the administration of the law under the jurisdiction of the Sheriff of XX County.

The court must also guard against prospective and empaneled jurors from overhearing media broadcasts and interviews. To limit the potential exposure to jurors, the court will impose some restrictions as authorized by Indiana Code of Judicial Conduct Canon 3(B)(13).

No interviews or broadcast activities shall take place in the courtroom or adjacent area. Instead, media must conduct interviews outside the courthouse or in NAME AREA. All trial counsel are directed to comply and inform their clients, staff, and witnesses of the terms of this order regarding interviews.²¹

Electronics Devices (phones, iPads, laptops)²²

Easiest to manage²³

Electronic devices, such as laptops, iPads, cell phones etc. in silent mode are permitted inside the courtroom and media area. The electronic device can be used for note taking and for transmitting messages. No photographs or audio can be captured or transmitted with the device.²⁴

Acceptable, but hard to enforce/manageable

19. Tippecanoe Superior Court No. 2, *Courtroom Management and Decorum Order: State of Indiana v. Cody Mark Cousins*, by Hon. Thomas H. Busch, Court Order (Lafayette, IN, September 2, 2014), 5.

20. Marion Co. Superior Court, Criminal Division, No. 3, *Courtroom Management and Decorum Order/ Courtroom Management and Media Procedure Order: State of Indiana v. Bei Bei Shuai* by Hon. Sheila A. Carlisle, (Indianapolis, IN, 2013), 10.

21. Moore, 5.

22. For an analytical discussion on the pros and cons of cameras and electronics in courtrooms and the interactions cameras have with jurors, read A. Kozinski and R. Johnson, "Of Cameras and Courtrooms," *Fordham Intellectual Property, Media & Entertainment Law Journal*. 20, no. 4 (2010): 1119–1122; see also Sweeney, 144.

23. The importance of how courts can work with the media by providing court documents through the internet can be more fully examined with Stephen Key, "Supreme Court Offers Judge Trial Assistance," *The Indiana Publisher*, September 14, 2000, 9.

24. With the increase of internet usage by both the media and the public, an inherent risk of releasing information outside of the courtroom via handheld electronic devices exists; however, courts still want to be able to appropriately communicate with the media and for them to communicate with their audiences. Nevertheless, there is a general consensus, that the communication be controlled. Cushner, et al., 55–56. See also Sweeney, 121–146.

Electronic devices, such as laptops, iPads, cell phones etc. in silent and airplane mode are permitted for court credentialed media for the purpose of note taking. Electronic devices are not to be used for communicating from the courtroom. Text messaging, emailing, and/or Twitter communication from the courtroom is prohibited. No photographs or audio can be captured or transmitted with the device.²⁵

Recommended if prior local restrictions are in place

Court/City/County ordinance/order #***** prohibits XX. A limited exception will be permitted for this trial. Credentialed media will be allowed to bring electronic devices such as laptops, iPads, cell phones, cameras and other recording devices into the designated media area. The devices may only be used in the designated media area.²⁶

Not recommended

Electronic devices, such as laptops, iPads, cell phones etc. shall not be permitted in the courthouse or media area. Members of the press and public shall not use laptop computers, iPads, Tablets, Kindles, cellular telephones, pagers, or personal digital assistants or cameras.²⁷

Access to Exhibits²⁸

Evidence admitted during the trial will be made available for review by the media on an equal opportunity basis. The documents admitted during the trial will be photocopied and placed in a three-ring binder available for examination and photography by media. The binder is not to be removed from the designated location. Evidence other than documents will be made available for inspection... (Choose option below) The admitted exhibits will be made available in NAME LOCATION (media room):²⁹

OPTION 1

at the end of the court session each day.

OPTION 2

at the beginning of court session each day.

Option 3

as scheduling permits based upon staffing constraints, the needs of the media, security of the items, and time. All media will be informed of the time when it is set.

Option 4

to media organizations who have been granted a copier code/account for making their own copies.

25. Sweeney, 121-146.

26. Ibid.

27. Ibid.

28. Murphy, et al., 37.

29. Morgan Superior Court I, *Order Re: Guidelines for Media Coverage of Trial*: State of Indiana v. Michael Phelps by Hon. G. Thomas Gray, (Martinsville, IN, June 22, 2011), 4.

Any requests from the media or from other members of the public for copies of documentary exhibits admitted at trial should be made by contacting XX in writing. All requests regarding obtaining copies will be responded to as quickly as possible; however, response times to obtaining copies could be affected by the competing demands of the trial as well as other public business being conducted, and copies may not be available until the conclusion of the trial.

Court-produced recordings of any court proceedings are public record, but inspection during the course of the trial may be limited.³⁰ Media organizations may request to listen to an audio recording, or may purchase a copy of the transcript, but the recordings may not be broadcast, copied, or otherwise disseminated.

Parking

No reserved parking spaces are available to members of the public or the media. Paid public parking spaces are available near NAME LOCATION. Street side parking is regulated by the City of XX.³¹ Media organizations are welcome to make contact with NAME POLICE HERE to discuss accommodations for media satellite trucks/large press vehicles. Any possible accommodations are subject to any restrictions set out by the NAME ENTITIES HERE.

Media Contact

Pursuant to the Indiana Code of Judicial Conduct, the judge and other members of the Staff of COURT NAME are unable to respond to requests for comments or interviews at any time during the trial.

The Court appoints NAME HERE as the media liaison officer, to meet periodically with media representatives during the trial and to hear requests for temporary adjustments to this Order as a result of changed circumstances. All concerns and questions from media representatives should be directed to the Court's media liaison or the Bailiff of the Court during the trial.³²

SO ORDERED this ____ day of _____, 20__.

30. Judicial Branch of Indiana, "courts.IN.gov: Public Access to Audiotapes of Court Proceedings," accessed February 9, 2015, <http://www.in.gov/judiciary/2718.htm>. Note: There is little to no case law on this point. Given the unsettled law in this area, caution is always warranted. When in doubt, please contact either State Court Administration or the Indiana Judicial Center. See, David J. Remondini, "Access by litigants/media to a court's audio/video recordings and evidence," August 13, 2013.

31. Gray, 3.

32. Public information officers (PIOs) provide essential service to the government, media, and public by acting as the liaison between all three. Their work in high-profile cases maintains organized contact between the courts and the public via the media. Additionally, PIOs help guarantee that the media's rights of the First Amendment are properly balanced with a defendant's Sixth Amendment right to an impartial jury. For more information, see David A. Sellers, "How Your Court Benefits from a Public Information Officer," *The Judges's Journal* 46, no. 2 (Spring 2007): 40; Ron Keefover, "Using a Court Public Information Officer Effectively," in *Managing the Message: The NACM Media Guide for Today's Court : 2010 Mini Guide*, ed. Giuseppe M. Fazari (Williamsburg, VA: National Association for Court Management, 2010), 27–32.

Judge, _____ Court

References

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