

STATE OF INDIANA)	IN THE CARROLL COUNTY CIRCUIT COURT
) SS:	
COUNTY OF MARION)	CAUSE NO. 08C01-2210-MR-000001
STATE OF INDIANA)	
)	
Plaintiff,)	
)	
v.)	
)	
RICHARD M. ALLEN)	
)	
Defendant.)	

MEDIA INTERVENORS’ POST-HEARING BRIEF SEEKING PUBLIC ACCESS TO PROBABLE CAUSE AFFIDAVIT AND CHARGING INFORMATION

The Media Intervenors¹ submit this Post-Hearing Brief following the November 22, 2022 public hearing (the “Public Hearing”) on the State’s Verified Request to Prohibit Public Access to a Court Record (the “Motion”). This Post-Hearing Brief addresses three points in response to the State’s arguments presented at the Public Hearing.

I. Media Intervenors Are Not Looking for A “Soundbite.”

During the Public Hearing, the State trivialized the media’s interests by referring to “extraordinary lengths” taken to get a “soundbite.” The Media Intervenors’ interests are not so trivial—quite the opposite. The media, as the Fourth Estate, serves the public by reporting on matters of keen public interest (such as the Defendant’s arrest and charges), promoting transparency, and holding the government accountable. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975) (emphasis added) (“With respect to judicial proceedings in particular, the function

¹ The term “Media Intervenors” refers to the following entities collectively: Indiana Broadcasters Association, Inc.; Hoosier State Press Association, Inc.; The Associated Press; Circle City Broadcasting I, LLC d/b/a WISH-TV; E.W. Scripps Company d/b/a WRTV; Nexstar Media Inc. d/b/a WXIN/WTTV; Neuhoff Media Lafayette, LLC; Woof Boom Radio LLC; TEGNA Inc. d/b/a WTHR; Gannett Satellite Information Network, LLC d/b/a The Indianapolis Star; and American Broadcasting Companies, Inc. d/b/a ABC News.

of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice.”). When the government denies access to full information, it is not only the media’s job, but its *responsibility*, to seek what little information it can obtain. Full access would improve the depth of reporting, avoid misinformation, and promote accountability.

In sum, the Media Intervenors’ newsgathering efforts should not be cast as a nuisance, or worse, actively discouraged. Doing so would undermine the Media Intervenors’ federal and state constitutional rights and Indiana’s public policy favoring access.

II. Concerns Regarding Safety and Further Investigations Do Not Warrant Exclusion.

The State during the Public Hearing acknowledged the public’s “right to know” but suggested that the “cost” was too high to allow it. In so doing, the State downplayed the significant costs of *nondisclosure*, as outlined above, which are central to democratic society.

In any event, the State’s arguments regarding the “costs” of disclosure do not rebut the presumption of access. *See* Commentary to Rule 6 (explaining that Rule 6 “incorporates a presumption of openness and requires compelling evidence to overcome this presumption”).

First, as to the State’s concern for the ongoing investigation: Though the State indicated that actors *other* than the Defendant may have be involved in the alleged crimes, the State apparently has conducted sufficient investigation *as to the Defendant himself* to charge him with double felony murder. The State may continue investigating other actors while disclosing why the Defendant was charged. The supporting information should not be kept under the rug for months or years on-end.

Second, to the extent there is a concern for witness harassment or courtroom decorum, the course of the Public Hearing demonstrated that the Court and law enforcement were well-equipped

to implement appropriate security measures, and the public was able to abide by the Court's rules for decorum. As for witnesses outside the courtroom setting, the State has already provided the Court a copy of the Probable Cause Affidavit with their names redacted. At minimum, the Court can (and should) release the redacted copy without compromising witness privacy.

III. These Proceedings Should Not Be Cloaked in Secrecy Until A Verdict.

Finally, the State's concern for witness privacy suggests that the State may ask for future hearings—or even the trial itself—to be blocked from public access. If the public is to accept the ultimate result of any trial, this is not a realistic solution. *See Richmond*, 448 U.S. at 572 (“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing”). A public trial and public proceedings are essential to ensure justice for the victims, fairness to the accused, and overall legitimacy of the process. No matter the ultimate result, the public needs to be apprised of the process along the way. If the Defendant is acquitted or enters into a plea agreement, the public needs to know why to ensure the government is doing its job. If the Defendant is found guilty, the public needs to know why to ensure that the government is delivering justice. There are too many instances in our nation's short history of criminal sanctions being handed down without appropriate process and public oversight. This is not an occasion to return to that practice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2022, the foregoing was filed with the Clerk of the Carroll County Circuit Court and served to all counsel of record via IEFS.

/s/ Margaret M. Christensen