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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA,
Plaintiff,

vs.

ROGER WILSON,
Defendant.

DAVID MORGAN and
TERRI JO NEFF,
Intervenors

No. CR2017-00516

**MOTION TO INTERVENE FOR THE
LIMITED PURPOSE OF
CLARIFYING QUESTIONS OF
PUBLIC ACCESS AND
ACCESS TO JUROR NAMES**

Hon. Timothy Dickerson

Expedited Consideration Requested

David Morgan (“Morgan”) and Terri Jo Neff (“Neff”) respectfully ask the Court for clarification related to the public’s access to court proceedings and the names of the jurors. As Morgan and Neff are unaware of any express order on either issue, they file this Motion to Intervene for the Limited Purpose of Clarifying Questions of Public Access and Access to Juror Names. Given the difficulty and uncertainty surrounding the current public health event, Morgan and Neff request the Court clarify (1) the extent to which the public and press will be able to attend the trial in-person and (2) that the public and press will have

access to the names of both prospective and empaneled jurors in the trial. Specifically, Morgan and Neff request:

1. The Court allow at least one reporter in person in the courtroom during all proceedings when the jury is present. Given the limited number of attendees due to pandemic-related restrictions, if only one seat is available, Morgan and Neff agree to be part of a pool reporting system to be managed by any reporters who appear in person at the courthouse, without the need to involve court personnel.
2. The Court allow all reporters present in the courthouse to enter the courtroom when the jury has been removed for case proceedings that are open to the public. This means providing full access to the courtroom, including exhibits, for any reporter when the jury is not present.
3. The Court provide a live video feed of all trial proceedings as an alternative to in-person viewing of the trial if no reporters are allowed in the courtroom.
4. The Court instruct courthouse personnel that reporters are not loitering when present in the courthouse foyer or in the law library. Access to the courthouse is an essential part of gathering information when not physically able to access the courtroom. As such, reporters should not be removed from any public space in the courthouse as long as they are complying with the Court's public health protocols.

5. The Court instruct courthouse personnel to continue to allow the use of the law library for reporters as a “home base” during the trial because being physically present in the courthouse is critical to reporters.
6. The Court instruct security personnel to allow journalists to bring their computers and recording devices into the courthouse as necessary tools of the trade.
7. The Court make public the names of the prospective jurors during *voir dire*. Once the jury has been selected, the Court will provide the names of the fourteen empaneled jurors.
8. Should the Court decide not to make the names of the prospective or empaneled jurors public, it should provide its reasoning on the record and agree to unseal such names once the Wilson trial has concluded.

Morgan and Neff are unaware of any express order from the Court related to either in-person attendance or the public’s access to juror names. In addition, they acknowledge that the Court is dedicating a great deal of attention to the difficulties of conducting a high-profile trial during an unprecedented global health crisis resulting in the most severe health-related restrictions in a century. However, it is not clear whether or when reporters will be allowed in the courtroom due to the current pandemic, and other Cochise County courts have begun limiting access to jury names during and after trials. For these reasons, Morgan and Neff request clarification from the Court out of an abundance of caution.

Request for expedited consideration. Morgan and Neff request that the considerations of media access be handled as soon as is practical. Because these are not

issues that affect the parties, and because full press access to the courtroom would be allowed in this trial but for the pandemic-related restrictions, this motion can be decided by the Court without delay or need for a hearing. In this sense, the relief sought by the Intervenor is more like a Decorum Order than a typical demand for relief that directly affects the parties. However, Counsel for Intervenor can be available by telephone for a hearing the day before the trial on Monday, Sept. 14, or on the first day of the trial, Tuesday, Sept. 15, if the Court would prefer a hearing.

Request to waive page limit. Because this motion concerns (1) the right of access to the courtroom and (2) the right to receive juror names, as well as the need to argue the right to intervene for a limited purpose, Morgan and Neff request that the Court waive the 11-page limit, in accordance with Ariz. R. of Crim. Pro. Rule 1.9(d), so they do not have to file multiple motions.

Respectfully submitted,

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Sept. 13, 2020

MEMORANDUM IN SUPPORT OF MOTION TO CLARIFY

FACTUAL BACKGROUND

David Morgan is a local reporter in Cochise County who has written and self-published many news stories that focus on the county court system and local government. Terri Jo Neff is an experienced journalist based in Cochise County whose work has been recognized by the Arizona Press Club. Over the past three years, Morgan and Neff have reported on the of story of Roger Wilson’s alleged murder of Jose Daniel Arvizu and subsequent criminal proceedings. Morgan and Neff respectfully request they be permitted to attend in person Wilson’s criminal trial, beginning September 15, 2020, as members of the press.

Morgan and Neff believe their ability to attend Wilson’s criminal trial will be impeded due to the emergency provisions Arizona courts have adopted in light of the COVID-19 pandemic. Morgan and Neff recognize the Court’s burden to enforce social distancing in order to limit the spread of the novel virus while conducting in-person trials in the ongoing public health crisis. Morgan and Neff, as in-person attendees, will comply with all public health policies, including social distancing, face coverings, and pre-entry health screenings.

The Arizona Supreme Court most recently issued Administrative Order 2020-143 (“Order”) on August 26, 2020, updating court policies to ensure the safety of the officers and employees of the judiciary and the public. The Order permits presiding superior court judges to determine for the courts in their respective counties how in-person court proceedings are to be conducted. The Order states until the start of Phase III, judges “should

limit any required in-person proceedings to attorneys, parties, victims, witnesses, jurors, judicial officers, court employees, and other necessary persons.” Morgan and Neff file this motion for clarification they be permitted to attend Wilson’s criminal trial in person as “necessary persons” — members of the news media. Morgan and Neff, as members of the public and of the press, are afforded a right of access to criminal trials under the First Amendment to the United States Constitution and the Arizona Constitution. Absent an overriding interest found by the Court, criminal trials must be open to the public.

Moreover, Morgan and Neff also respectfully request clarification that the names of the potential jurors during *voir dire* and the names of the empaneled jurors in the Wilson trial be released to the public. Under both First Amendment and Arizona statutes, the press has a qualified right of access to all parts of criminal trials. The United States has a long history of open and public trials where defendants were tried by a jury of their known peers, and this should continue to be the practice. Departing from the historical transparency of the American court system will ultimately lead to a loss of public confidence in the justice system as a whole, so Morgan and Neff seek clarification from the Court that the juror names will be publicly available in order to ensure proper oversight of the judicial system.

ARGUMENT

I. The Court Should Permit Morgan and Neff to Intervene for the Limited Purpose of Clarifying Access Issues.

Reporters are routinely allowed to intervene to object to court procedures that burden First Amendment rights and restrict public access to court proceedings. *See, e.g., Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) (“Press-Enterprise I”)

(allowing the press to object to closure of *voir dire* examinations in criminal trial); *KPNX Broadcasting Co. v. Superior Court*, 139 Ariz. 246, 254, 678 P.2d 431, 439 (1984) (permitting news media to challenge gag order and prior restraint on publication of juror sketches). Given the journalists' strong interest in reporting news to the public in Cochise County, limited intervention in this case should be permitted.

II. The Public has a Right of Access to Criminal Trials.

A. Morgan and Neff Have a Right of Access to the Criminal Trial Under the United States and Arizona Constitutions.

Courts have long recognized the importance of granting the public and press access to criminal trials. The Arizona Constitution demands “[j]ustice in all cases shall be administered openly, without unnecessary delay.” Ariz. Const. Art. 2 § 11. The United States Supreme Court recognizes the right of the press to attend criminal trials is implicit within the First Amendment, warning that, without this right of access, “important aspects of freedom of speech and of the press could be eviscerated.” *Richmond Newspapers v. Virginia*, 448 U.S. 555, 558 (1980) (plurality opinion) (internal citation omitted). The Arizona Supreme Court has affirmed this right of access under both the First Amendment and under the State Constitution. *Ridenour v. Schwartz*, 875 P.2d 1306, 1308 (Ariz. 1994). Any exclusion of the press observing court proceedings must be necessitated by a compelling state interest, and such exclusion must be narrowly tailored. *Id.*; see also *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (striking down order closing preliminary hearing absent specific findings of compelling need) (“Press-Enterprise II”). Specifically, “members of the news media, as members of the public, have the necessary

standing to judicially question” an order restricting access to a preliminary hearing in a criminal trial. *Phoenix Newspapers v. Jennings*, 107 Ariz. 557, 561 (1971). As members of the press, Morgan and Neff have a right of access to the criminal trial under both the First Amendment and the Arizona Constitution.

B. The Court Should Define Members of the Press as “Necessary Persons” Under Administrative Order 2020-143.

The Arizona Supreme Court Order permits judicial leadership to allow “necessary persons” into the courtroom for in-person proceedings. Ariz. Admin. Order 2020-143 at 3. Members of the press exercise an essential function in the judicial process and thus should be considered necessary persons under the administrative order. The Arizona Supreme Court recognizes the critical role the press serves:

A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.

Phoenix Newspapers, Inc. v. Superior Court, 418 P.2d 594, 597 (Ariz. 1966) (internal citation omitted). The right of access serves as a check on the judicial process, which the United States Supreme Court calls “an *essential* component in our structure of self-government.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982) (emphasis added); *see also Press-Enterprise II*, 478 U.S. at 11-12 (citing cases holding public access to criminal trials and selection of jurors is “essential to the proper functioning of the criminal justice system”). Given the emphasis that the Courts have placed on the

importance of the press in the judicial system, this Court should include members of the press in the definition of necessary persons allowed to attend in-person proceedings.

C. The Court Should Allow At Least One Member of the Press to Attend the Criminal Trial In-Person.

1. In-Person Attendance at a Criminal Trial Enhances Public Access to the Court.

In defining the press's right of access to criminal trials, the Arizona Supreme Court recognizes that the First Amendment guarantees both "the right to attend the trial and report on what transpires" in criminal trials. *KPNX Broadcasting*, 678 P.2d at 441. The Court defines the right of access as the right to "sit, listen, watch, and report." *Id.*

For the press, especially, attending a trial in-person is important for quality reporting. In order to provide the public with the most accurate picture of a criminal trial, the press must sit, listen, watch, and report from the courtroom. The Arizona Supreme Court's definition of the right of access includes both listening to and watching court proceedings. This language implicitly recognizes the value of being able to both see and hear what transpires in the courtroom. Without being able to see around the courtroom, members of the press cannot provide the public with the most accurate report on a criminal trial. For example, the ability to assess witness credibility is inhibited without being able to physically see the witness's body language. Without observing from inside the courtroom, a member of the press will not be able to see a defendant's reaction to testimony, the emotions of spectators in the gallery, or the expressions of the jurors. If not on-premise, Morgan and Neff risk missing the personal level of contact that matters to a journalist: an opportunity to see the emotional responses by parties and witnesses, visual

access to exhibits submitted to the clerk, reactions from family members of both the victim and the defendant, the ability to approach jurors post-verdict, as well as the ability to identify and later speak with an attorney, a family member, or a witness who wishes to speak on the record. Thus, it is imperative Morgan and Neff be physically present in the courtroom for Wilson’s criminal trial to the greatest extent possible.

The United States Supreme Court recognizes the press is the public’s chief source of information about criminal trials and other court proceedings. *Richmond Newspapers*, 448 U.S. at 572-73. In this sense, the press serves as a surrogate for public when reporting on criminal trials. Because of social distancing requirements, normal access will of course be curtailed. But by permitting at least a single member of the press to act as a “pool” reporter for all those who would like to attend, the Court accommodates any members of the public who read or watch the press’s stories on the criminal trial. Any accommodation that makes the court more accessible to the public, or its surrogates in the press, serves the important functions discussed above. For these reasons, Morgan and Neff request the Court allow them to be physically present in the courtroom.

2. Permitting At Least One Member of the Press to Attend the Trial In-Person Is A Reasonable Accommodation.

During Phase I of the resumption of on-site court operations, the Court can permit up to thirty people at any court event with appropriate precautions. Ariz. Admin. Order Attach. A at 2. The United States Supreme Court has held that “[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials.” *Presley v. Georgia*, 558 U.S. 209, 215 (2010).

The greatest means of accommodation would be to admit as many members of the public and press into the courtroom as possible, up to the thirty-person limit set by the Arizona Supreme Court. Such access would promote the value and functions espoused above related to the public's and press's right of access. However, recognizing the number of people involved in a criminal trial, including parties, jurors, and court staff, there may only be a few seats available for members of the press and public.

If admitting several members of the press is not possible due to the thirty-person limit, the Court should permit one member of the press to attend the trial in-person as a pool reporter when the jury is present in the courtroom. This accommodation, at least, would allow members of the press to work together to provide the public with the most accurate information, while limiting the number of people in the courtroom. Multiple press members interested in the present case have already agreed to participate in pool arrangements should the Court not allow several members of the press to attend the trial in person. The inclusion of at least one member of the press in the courtroom as a pool reporter would still be a valuable method to balance the interests of the public's and press's right of access and the requirements of handling a public health event. If the Court allows only one pool reporter in the courtroom during the trial, Morgan and Neff request the Court allow all reporters present in the courthouse to enter the courtroom when the jury has been removed for case proceedings that are open to the public. This would provide full access to the courtroom, including exhibits, for any reporter when the jury is not present.

D. The Court Should Provide Video Access to the Trial if No Member of Press Is Permitted to Attend the Trial In-Person.

Under direction of the Arizona Supreme Court, whenever the public's access to court proceedings is limited, the Court should make video feeds available to the greatest extent logistically possible. Ariz. Admin. Order 2020-143 at 5. During Phase I of the resumption of on-site court operations, the court shall provide video or audio access to all court proceedings that are generally open to the public. *Id.* at Attach. A 2. Again, the United States Supreme Court instructs trial courts they must take every reasonable measure to accommodate public attendance at a criminal trial. *Presley*, 558 U.S. at 215.

Based on previous experiences in the courthouse, Morgan and Neff believe the Court has the capacity to provide video access to the trial. As discussed above, the public's and press's interest in maximum access would best be served by a live-streamed video feed of the trial and later in-person access to the exhibits if the Court determines in-person access is not possible.¹ While video provides far less visual access than in-person attendance, the visual component of a video stream increases access when compared to audio-only access.

¹ The Judicial Conference of the United States, which is the national policy-making body of the federal courts, expressly authorized the use of video technologies to increase the public and press's access to criminal proceedings. *Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic*, (Mar. 31, 2020) <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>.

E. The Court Should Ensure that Members of the Press Have Full Access to the Courthouse During the Proceedings.

Morgan and Neff request the Court acknowledge the importance of a reporter's physical presence at the courthouse during trial for interactions with others, and as such, declare a reporter is not loitering when a reporter is present in the foyer or in the law library. Instead, a journalist is performing an essential job function in his or her professional capacity to gather information from the courthouse hallway or steps when not physically able to access courtroom. In keeping with this tradition, Morgan and Neff ask the Court to protect their physical access to the courthouse and declare a reporter will not be removed from any public space as long as he or she is complying with the Court's public health protocols. Similarly, the journalists request the Court will not close the law library for reporters' use as a "home base" during the trial because being physically present in the courthouse is critical to reporters.

F. The Court Must Provide Audio Access to the Trial if the Court Determines In-Person Access Cannot Be Accommodated and Video Access Is Not Possible.

The Court must at a minimum provide public real-time audio access to court proceedings that are generally open to the public, if the Court determines video access is logistically impossible. Ariz. Admin. Order 2020-143 Attach. A at 2. The Arizona Supreme Court specifically designates criminal proceedings for the purposes of this Order. Ariz. Admin. Order 2020-143 at 7. (Morgan and Neff acknowledge that the Court's current plans are to indeed provide telephonic access to the trial proceedings.)

Under the Order, the Court must provide audio access that is logistically possible. If the Court determines that in-person access cannot be accommodated and video access is

logistically impossible, the Court is required to make an audio feed available to the press and the public. Because the Order outlines the use of distancing procedures and the use of video or teleconferencing technology to ensure public access to criminal trials, the complete closure of Wilson's criminal trial is unnecessary due to feasible alternatives.

III. The Public has a Right of Access to Juror Names.

A. Under the First Amendment, the Public and Members of the Press Have a Qualified Right of Access to Juror Names.

The United States judicial system was founded on traditions of openness and transparency. This historical precedent affords the public and the press an implicit right to attend criminal trials. *Richmond Newspapers*, 448 U.S. at 575-578. Furthermore, the Supreme Court has long recognized that the presumption of judicial openness is so pervasive that without an overriding interest, based on proper findings by a court, criminal trials must be conducted publicly in order to ensure public trust in the justice system. *Press-Enterprise I*, 464 U.S. at 510. The First Amendment right of access to criminal trials has been extended to cover various aspects of the criminal trial process. For example, the qualified right of access has been extended to protect public access to both *voir dire* examination and pre-trial hearings in criminal cases. *Press-Enterprise I*, 464 U.S. at 503; *see also Press-Enterprise II*, 478 U.S. at 5. The Supreme Court determined due to the historical tradition of the open jury selection process and the beneficial utility public oversight provides in ensuring a fair judicial system that the right of access must be extended to protect public access in these contexts. *Press-Enterprise I*, 464 U.S. at 505.

Specifically, that jurors' identities would be known not just to the litigating parties but also to the general community has been a fundamental principle of the American judicial system. *See, The right of access to juror names and addresses*, Reporters Committee for Freedom of the Press, <https://www.rcfp.org/journals/news-media-and-law-summer-2016/right-access-juror-names-an/> (last visited Sept. 10, 2020). As members of the public press, Morgan's and Neff's qualified right of access to criminal trials extends to juror name information in order to preserve the historically open role of juries in the criminal procedure and also to promote a fair judicial process. Here, the Court should provide the public with juror names because an open jury selection process provides the appearance of fairness in criminal trials.

In order to evaluate whether a presumptive right of access applies to a certain aspect of a trial, the court must consider: (1) "whether the place and process have historically been open to the press and general public" and (2) "whether public access plays a significant positive role in the functioning of the particular process in question." *Press-Enterprise II*, 478 U.S. at 8. If a court finds that a certain part of a proceeding passes both parts, the First Amendment right of access applies.

Using the "experience and logic test" as applied to Morgan's and Neff's specific request to access juror names in Cochise County, the first prong of the test is satisfied. Juror identities have long been available to the public and the press historically and locally to Morgan and Neff, aligning generally and specifically with the first part of the test. Until this year, the *voir dire* examination process and the empaneled juror names were typically available to the public and media. Juror names have long been considered public

information that should be available to not only the parties involved in a case but also the public at large. *Richmond Newspapers*, 448 U.S. at 572. Traditionally, this was the case in Cochise County; Morgan and Neff only recently became aware some Cochise County courts have started to seal juror names.

The second prong is also clearly satisfied. The historical understanding of the judicial process included the concept that a defendant would be tried by a jury of his or her peers. *Richmond Newspapers*, 448 U.S. at 565-569. The Supreme Court has affirmed that access for the public, including media representatives, “historically has been thought to enhance the integrity and quality” of courtroom procedures. *Id.* at 578. Providing journalists with juror names allows members of the media to fully provide context to public citizens about all facets of a criminal trial, including the composition and opinions of the jury. Shedding light on participating jurors by providing the names of the empaneled jurors in a criminal trial ensures jury biases and prejudices are properly reviewed and provides the public another invaluable avenue of scrutiny over the judicial process. As local journalists, Morgan and Neff pay specific attention to juror names and juror information available during the *voir dire* examination in order to ensure fairness throughout the judicial process. Their duty as journalists is to act on behalf of the public and hold public institutions accountable, and as such, need to know who is serving on the jury.

The press and public’s qualified right of access under the First Amendment is broad, though not absolute. When the press and public have a presumption of access as discussed above, the Court may only limit that access if the closure is necessary to preserve higher values. *Press-Enterprise I*, 464 U.S. at 510. The overriding interest must be supported by

specific factual findings on the record. *Id.* Further, a limitation on the right of access must be narrowly tailored to preserve the specific interest. *Id.* The parties in Wilson have made no such showing here. As such, the Court should provide Morgan and Neff access to the *voir dire* proceedings and the names of the empaneled jurors in Wilson’s criminal trial.

B. Arizona Revised Statutes Governing the Formation of Juries Does Not Bar Public Access to Juror Names.

Under Arizona Revised Statute §21-312 (a) (Juror Records), “juror names or other juror information shall not be released *unless specifically required by law or ordered by the court*” (emphasis added). These two exceptions to the nondisclosure of juror names under the law save the statute from being unconstitutional. The Supreme Court has upheld the public’s right of access to juror names and the *voir dire* process. *See Press-Enterprise I*, 464 U.S. at 513 (holding that *voir dire* examination may be sealed only when a court provides specific justification for the sealing and the court must consider available alternatives). Furthermore, under Arizona Supreme Court Rule 123(e) (10), juror names are provided as a specific exception to confidentiality in comparison to other jury biographical information, such as home and work addresses and telephone numbers. Thus, A.R.S. §21-312 must be interpreted as carving out an exception to reveal juror names in order to be consistent with both with Arizona Supreme Court Rules and also First Amendment precedent, unless the court can demonstrate an overriding interest which preserves higher values. *Press-Enterprise I*, 464 U.S. at 510.

While A.R.S. §21-312(b) states that “all records that contain juror biographical information are closed to the public,” the exemption language of both A.R.S. §21-312(a)

and Court rule 123(e) (10) imply juror names to have special status in comparison to other juror related information. Interpreting the Juror records statutory language as permitting the release of juror names to the public best serves the policy interest of providing the public an opportunity to scrutinize the sophisticated operations of the judicial system.

Under Arizona Supreme Court Rule 123(e) (10):

“[t]he home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in *voir dire* proceedings that personally identifies jurors summoned for service, **except the names of jurors on the master jury list**, are confidential, unless disclosed in open court or otherwise opened by order of the court.” (emphasis added)

Interpreting A.R.S. §21-312 as broadly excluding all jury identifying information, including the jurors’ name information, causes the statute to become unconstitutional. Here, for Wilson’s trial, there is a lack of clear justifications based on specific court findings and explicit orders for the sealing of jury information. Under the First Amendment precedent described above, without proper justification based on specific court findings that sealing of juror information in a particular case is required to serve a higher interest, the juror name information should be provided to the public.

C. The Court’s Sealing of Juror Names Must Occur Only when an Open Proceeding Presents “Clear and Present Danger” to a Defendant’s Fair Trial Right.

The qualified right of access to criminal trials is not absolute and can be limited when a court justifies their order based on specific court findings. *Press-Enterprise I*, 464 U.S. at 510. The general right to access criminal trials in Arizona includes the standard for closing such a proceeding. *See* Ariz. R. Crim. P. 9.3(b)(1) (“All proceedings must be open to the public, including news media representatives, unless the court finds, on motion or

on its own, that an open proceeding presents a clear and present danger to the defendant's right to a fair trial by an impartial jury.”).

One example of a court's finding of a “clear and present danger” to the defendant's right to a fair trial is found in the unpublished case *State v. Greer*, where the Arizona appellate court determined that the sealing of juror identifying information may be appropriate when faced with clear threats to juror safety by a defendant's affiliation with a criminal organization. *State v. Greer*, No. 2 CA-CR 2018-0080, 2020 WL 1862300 (Ariz. Ct. App. Apr. 13, 2020), *review denied* (July 28, 2020).² There, the court determined there existed credible juror safety concerns due to a detective's testimony about the defendant's relationship with the Arizona Aryan Brotherhood and that group's known activity to research targets for organized killings. There the court properly justified its court order to seal *voir dire* examination transcripts and refer to jurors by a randomly assigned number.

In the Wilson trial, absent a clear danger to either the defendant's right to a fair trial or particular judicial findings of concerns for juror safety, juror names should be released to the public and press in order to preserve public confidence in the criminal system. There is no indication releasing the jurors' names to the public will present a “clear and present danger” to Wilson's right to a fair trial by an impartial jury, and there is no indication the Wilson jurors should have a particular concern for their safety. As such, the Court should allow Morgan and Neff to observe the *voir dire* proceedings in person and provide the names of the empaneled jurors before the trial begins.

² This memorandum decision is cited in accordance with Ariz. Sup. Ct. R. 111. A copy of this unpublished opinion is attached.

Based on current court policy in Cochise County, it appears judges are broadly ordering the sealing of jury information without specific safety concerns as demonstrated in *Greer*. This sealing policy lacks clear boundaries for judicial discretion if applied without specific court findings or justifications for the sealing. Based on Morgan’s and Neff’s experiences, the new, arbitrary sealing policy makes it impossible for local reporters to conduct background research on empaneled juror members or to seek comment from them later. The Arizona Supreme Court directs courts to consult the guidance provided in the Arizona Jury Management Subgroup Best Practice Recommendations During the COVID-19 Public Health Emergency,³ which had a goal of “ensuring a jury pool that is a fair cross section of the community.” Ariz. Admin. Order 2020-143 at 8. One way to do that is to know who is serving on the jury. Morgan and Neff seek the ability to do so, and this Court should allow it by providing the names of the jurors in the Wilson trial.

³ Available at <https://www.azcourts.gov/Portals/216/Pandemic/JuryManagementWkGp.pdf?ver=2020-06-02-131720-410> (last visited Sept. 13, 2020).

CONCLUSION

For the foregoing reasons, Morgan and Neff respectfully request the Court clarify, as more fully described in the Motion, that (1) they are given meaningful access to the criminal trial of Roger Wilson, and (2) they will be provided with the prospective and empaneled juror names.

Respectfully submitted,

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Sept. 13, 2020

CERTIFICATE OF SERVICE

I, Gregg P. Leslie, certify that the above document was served on the following parties through the court's E-File system on Sept. 13, 2020:

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