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Mark A. Casey  
Journalist  
3258 E. Vogel Ave.  
Phoenix, AZ 85028

Hon. John R. Lopez, IV  
Vice Chief Justice, Arizona Supreme Court

Hon. Kathryn H. King  
Justice, Arizona Supreme Court

Task Force on Rules of the Supreme Court of Arizona  
1501 W. Washington  
Phoenix, AZ 85007

Justice Lopez, Justice King, and Members of the Task Force:

My name is Mark Casey. I served as both Vice President of News and Station Manager at 12 News/KPNX (1999-2016) in Phoenix and News Director at ABC15 in Phoenix (2018-2021). I share my background only to contextualize my upcoming remarks regarding proposed changes to Rule 122 governing cameras in the courtroom in Arizona.

I've been a working journalist since 1974, and since 1980, a participant in creating cameras in courtroom policies and practices around the USA. As an editor in Arizona, I've acted as Coordinator for Cameras in the Courtroom, working with court administration and journalists to cover proceedings under Rule 122. In 2012, I advised members of the Committee On The Impact of Wireless, Mobile Technologies and Social Media On Court Proceedings. In 2014, I was part of a panel and presentation entitled "The Unblinking Eye – Cameras in the Courtroom on High Profile Cases" delivered at the Arizona State Bar Convention.

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**Throughout this time, largely due to the collaborative approach taken by Arizona journalists and Arizona courts, cameras have been used in courtrooms under Rule 122 without major disruptive incidents.**

Thankfully, Arizona's courts, especially under former Chief Justice Robert Brutinel, supported access to courtrooms and courthouses by journalists. As a result, we have operated under the presumption that courthouses and courtrooms are open to journalists and cameras. This has been advantageous to both parties.

Routinely, Arizona citizens have little interaction with the justice system. Through the combined work of the courts and journalists applying Rule 122, citizens regularly and easily look inside courtrooms and courthouses by watching the evening news or via their preferred digital and social channels. Due to this commitment to transparency by Arizona courts and Arizona journalists, the people see an accessible, fair, and professionally operated justice system.

Our relationship wasn't and isn't perfect. However, whenever complications have arisen, our collaboration resulted in low-drama operational solutions. Repairs were achieved because the judiciary's patience and willingness to listen was paired with strong self-policing by editors and news directors. Now, as I read through the Task Force's amended drafts of Rule 122 and Rule 122.1, it feels as if something has been lost in our relationship.

Apparently, the Task Force seeks to exert more control over what they don't overtly describe as a threat. Still, it appears they see one, especially when suggesting Rule-offending journalists could face criminal prosecution and sanctions. It's clear journalists deploying leading edge smart devices are no longer viewed by the Task Force as partners in furthering open courts.

**I'm unaware of journalists running roughshod over Rule 122, so this appears to be a flawed solution in search of a problem driven by overreaction to a) rapidly evolving technology changes, b) the growing prominence of content/creator/citizen journalists and c) the low approval ratings traditional/legacy journalists share with the legal profession.**

The Task Force's concern isn't a new or emerging issue. Worries over the conduct of journalists inside the courtroom have been present for decades (Sam Sheppard, O.J. Simpson, etc.). Journalists and specifically their cameras have been targeted as unwelcome incentives for performative prosecutors, defense attorneys, defendants, witnesses, the gallery, and even judges. The current alleged disrupter is the content/creator/citizen journalist with a smart device. Fortunately, the aforementioned collaboration by Arizona's courts and journalists has produced a system equipped to meet this moment without the wholesale changes proposed by the Task Force.

Here is a rundown of problem areas the Task Force has presented:

**A. *Cameras and Journalists Inside the Physical Courtroom Proceeding or a Virtual Proceeding***

- 1. Labeling a camera a "recording device" doesn't change its fundamental purpose. So, why do so? Inside the courtroom, a camera is a camera is a camera.** It can be a video camera or single lens reflex camera (SLR) operated by a traditional/legacy photojournalist. It can be a smart phone deployed by content/creator/citizen journalists. The fact that a smart phone fits in your palm and the video camera and SLR do not is irrelevant. Both capture video/still images and are capable of transmitting those video/images in real time. The processes and limitations of the existing Rule 122 are more than adequate in regulating how journalists use their devices of choice. Applied properly and collaboratively, the current Rule 122 will remain relevant even as photographic capabilities are added to other devices. Meta's eyeglasses come to mind.
- 2. A journalist is a journalist is a journalist whether part of a traditional or legacy news organization or a content creator/influencer/citizen journalist.** The current Rule 122 sets the standards of conduct a journalist must follow to gather content and report from inside a courtroom. The standard doesn't change if the journalist is publishing on Substack/YouTube/Instagram/Twitter/Truth Social or on 12 News at 6PM or in The Arizona Republic/azcentral.com. Under the current Rule 122, **all** journalists must conduct themselves in a

manner that maintains courtroom/courthouse decorum; doesn't violate security policies; follows the judge's instructions; respects the dignity of the proceeding.

3. **The proposed penalties for rules violations are extreme.** The Task Force is taking a mallet to a fly when a hard conversation will get the same result without insect goop splattered on the wall.

**“Rule 122. Use of Recording Devices – (h) Unauthorized Use of a Recording Device.**

Except as this rule permits, a person who uses a recording device in the courthouse or in a virtual proceeding without prior approval is in violation of this rule and is subject to sanctions, including contempt of court or criminal charges.”

In addressing a violation, shouldn't there be a solution somewhere between locking up the journalist and a “now don't do that” pat on the head? The proposed approach is extremely combative and temperamentally disdainful of the journalist. It puts the journalist, who under the current Rule 122 has a right to be inside the proceeding, on notice of hell to pay for violation. It ignores successful past approaches of dealing with these situations through admonitions, warnings, and effective self-policing by journalists.

**B. Cameras and Journalists Outside the Courtroom and Inside the Courthouse**

1. **As written, the Task Force's approach for regulating recording devices is extremely problematic because it simply isn't practical:**

**“Generally.** Use of a recording device in areas of the courthouse other than the courtroom must be approved by the presiding judge or the presiding judge's designee, or as otherwise provided by local administrative order.”

**“Limitations.** ...A judge's permission to use a recording device in the courtroom does not authorize use of the device in other areas of the courthouse. Judges, clerks, court administration, or court security are authorized to limit or terminate activity that is disruptive to court operations or that compromises courthouse security.”

Does this mean a journalist with a smart phone can't enter the courthouse to meet with or interview a subject in a non-courtroom space without consent of the presiding judge? Does this mean a journalist who wants to use a smart phone to photograph or scan a document in an administrative or clerical office can't do so without consent of the presiding judge? If so, how does the journalist seek permission? Is there a form to fill out? Is there an open review process? Is there an appeal process if rejected? Does the presiding judge have the time or even the incentive to handle this administrative task? Will the definition of “disruptive to court operations or that compromises courthouse security” vary from person to person?

Again, this is not practical. Further, it's onerous to the point of appearing to purposely limit news gathering access by journalists.

2. **These proposed rules further disincentivize coverage in areas outside the courtroom.** New section *Rule 122(l) [new]: “Use of a Recording Device Outside of a Courtroom.”* is problematic and should be totally reworked due to this language:

“New section I - would allow use of a portable electronic device in a courthouse, outside of a courtroom, “subject to the authority of judges, clerks, court administration, or court security to limit or terminate activity that is disruptive to court operations or that compromises courthouse security.”

What would be the basis of “the authority?” On any given day, if “judges, clerks, court administration, or court security” simply don’t want to be bothered by journalistic activity, they can shut it down? Or, if “judges, clerks, court administration, or court security” are intolerant of journalism and feel journalists are “fake news” merchants, can they shut them down? Without explanation? Without an appeal process?

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So, one may say in response, “What are we to do about content/creator/citizen journalists not bound by the professional standards of journalists in traditional/legacy media?”

The answer: Hold everyone to **THE STANDARD** of current Rule 122. Courts can prepare content/creator/citizen journalists by educating, explaining and enforcing THE STANDARD. They comply or they’re denied access. End of story.

Perhaps, in high-profile cases where large numbers of both traditional and non-traditional journalists are expected, the court can initiate a simple credentialing process like this one utilized by Maricopa County government – only it would include the essence of Rule 122. The credential informs the journalist of The Standard and binds them to it.

Maricopa County Press Credential Registration

Journalist or Support Staff Name	[REDACTED]	Declaration
Requestor Email Address	[REDACTED]	By digitally signing this application for a Maricopa County Press Credential, I certify that I meet the <a href="#">Press Credential Criteria</a> .
Position/Function	Photographer	Electronic Signature [REDACTED]
News Organization	Free Lance	Important Note:
Address	[REDACTED]	Please allow at least five business days before an event for credential approval. Credential must be picked up in person at the Maricopa County Administration Building, 301 W. Jefferson First Floor, Phoenix, AZ 85003, hours of operation 8:30 a.m. to 3:30 p.m. Monday through Friday.
City	Mesa	Be prepared to show a valid driver license, state ID, or passport to receive credential. Staff will take your photo and issue an approved credential onsite.
State	AZ	
Zip Code	85213	
Phone Number	[REDACTED]	
Name of Direct Supervisor	[REDACTED]	
Phone Number of Direct Supervisor	[REDACTED]	
Email of Direct Supervisor	[REDACTED]	
Dates of Planned Coverage	Continuous	
Three links (3) to work examples (If you are support staff, please provide a link to your parent news organization website)	[REDACTED] [REDACTED] [REDACTED]	

In closing, since 1980 I have sent reporters and photojournalists into courthouses and courtrooms to cover proceedings, pick up documents, meet with judges and attorneys, etc. Always, I've directed them to respect the law, treat judges as the highest authority in the courtroom; to make certain their actions do not violate an individual's legal rights to fair proceedings. My colleagues and competitors do the same.

Whenever a problem occurs, we act quickly and in collaboration with the court system to find a solution. The approach has worked extremely well for nearly 50 years. It can still function well even as technology and journalism evolve.

I strongly urge the Task Force to consider scrapping the latest recommendations for updating Rule 122 and instead stay with the current Rule. Rule 122 ain't broke. Don't fix it. It's **THE STANDARD.**

Submitted With Respect,

Mark A. Casey  
Journalist