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13 ARIZONA SUPREME COURT

14 In the matter of:)
15) No. R- _____
16)
17) **PETITION TO AMEND**
18) **RULE 122**
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26 This Petition is submitted by KPNX Broadcasting Company
27 (“KPNX”), which produces “12 News,” a television news program broadcast in
28 metropolitan Phoenix and other Arizona communities. KPNX is a local affiliate
of NBC News, and it regularly reports news of widespread public interest and
concern to the citizens of this State. KPNX also partners with Phoenix
Newspapers, Inc., publisher of *The Arizona Republic*, in reporting news on the
Internet at www.azcentral.com. KPNX has extensive experience with requests for
camera coverage of Arizona Superior Court proceedings under Rule 122 of the
Rules of the Arizona Supreme Court (“Rule 122”).

As shown below, Rule 122 should be amended to include basic
procedural safeguards that would permit camera coverage of judicial proceedings
except upon a finding of a “substantial likelihood of harm” to one or more of the

1 interests enumerated in Rule 122. Such an amendment will improve public access
2 to the courts, foster greater public understanding of the judicial system and
3 enhance public confidence in the legitimacy and integrity of the judicial process.

4 Preliminary Statement and Summary of Proposed Changes

5 This Court has recognized that “[i]t is in the public interest that
6 people understand as fully as possible the operation of the justice system, and the
7 courts in particular.” *In the Matter of: Special Electronic Access to Superior*
8 *Court Proceedings*, Admin. Order No. 2006-9 (Jan. 11, 2006) (McGregor, C.J.).
9 Indeed, this Court has been at the forefront of efforts to expand public access to
10 the courts and further public education and understanding of the judicial process.
11 *See, e.g., A Strategic Agenda for Arizona’s Courts 2005-2010*, at 2 (“Arizona
12 citizens have the right to [a judicial system that] . . . is open and available to all
13 members of the public.”); *id.* at 3 (“Courts should increase . . . their efforts to
14 foster public understanding of the judicial branch.”). Since Rule 122 was adopted
15 in 1993, this Court has supported the use of electronic and still photographic
16 coverage of public judicial proceedings, and Rule 122 has done much to improve
17 public access to information about judicial proceedings in this State.
18 Nevertheless, camera coverage requests have been denied with increasing
19 frequency in recent years, often without explanation or hearing – and often in
20 cases of acute public interest and concern. As currently drafted, the Rule easily
21 permits such summary denials, limiting the quality, quantity and accuracy of news
22 that the public receives about the administration of justice.

23 KPNX respectfully submits that the time has come to afford basic
24 procedural safeguards to judicial decisions involving camera coverage of court
25 proceedings. KPNX’s proposed amendments to the Rule – which are identified in
26 Appendix A – would require, before denying a request for camera coverage, the
27 trial court to make specific, on-the-record findings that there is a substantial
28 likelihood of an overriding harm to one or more of the interests enumerated in

1 Rule 122(b)(i)-(vi). The proposed amendments also would require a prompt
2 hearing if objections are made to a request for camera access or to an order
3 granting such access.

4 All of the protections for trial participants, jurors and witnesses that
5 are embodied in the current Rule would remain in place. Moreover, none of the
6 limits and requirements imposed on requestors would change. The only
7 differences between the current Rule and the amendment are that trial courts
8 would have to support denials of access with specific findings, requestor(s) or
9 parties would be entitled to a hearing if objections are made, and decisions on
10 camera coverage would be subject to appellate review. As explained below, these
11 changes will prevent reflexive denials of camera access requests, safeguarding the
12 strong “public interest in understand[ing] as fully as possible the operation of the
13 justice system” in our State. Admin. Order No. 2006-9.

14 Argument

15 I. CAMERA COVERAGE OF COURT PROCEEDINGS ADVANCES 16 ARIZONA’S LONG TRADITION OF OPEN GOVERNMENT AND 17 PROMOTES PUBLIC UNDERSTANDING OF THE JUDICIARY.

18 Arizona has long been at the forefront of efforts to increase openness
19 in the conduct of government. To ensure public access to government records, the
20 Territorial Legislature enacted the Arizona Public Records Law (now codified at
21 A.R.S. §§ 39-121 to 39-126) in 1901, eleven years before statehood.
22 Guaranteeing similar access to court records, this Court adopted Rule 123 and
23 recognized that “[h]istorically, this state has always favored open government and
24 an informed citizenry.” Ariz. R. Sup. Ct. 123(c)(1). In *Phoenix Newspapers, Inc.*
25 *v. Jennings*, this Court recognized a constitutional right of access to criminal court
26 proceedings several years before the U.S. Supreme Court confirmed a similar
27 right under the First Amendment. 107 Ariz. 557, 561, 490 P.2d 563, 567 (1971)

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1 (Observing that “[d]emocracy blooms where the public is informed and stagnates
2 where secrecy prevails.”).

3 Indeed, it is now well-established – under the First Amendment and
4 Arizona law – that the public and press have a strong presumptive right to attend
5 criminal and civil court hearings. *See, e.g., Richmond Newspapers, Inc. v.*
6 *Virginia*, 448 U.S. 555, 580 (1980) (First Amendment right of access applies to
7 criminal trials); Ariz. Const. art. II, § 11 (“Justice in all cases shall be
8 administered openly”); Ariz. R. Crim. P. 9.3(b) (“All proceedings shall be
9 [presumptively] open to the public, including representatives of the news media . .
10”); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984)
11 (recognizing First Amendment right of access to civil trials). Moreover, both the
12 U.S. Supreme Court and this Court have recognized the fundamentally public
13 nature of court hearings. *Craig v. Harney*, 331 U.S. 367, 374 (1947) (“A trial is a
14 public event. What transpires in the court room is public property.”); *Phoenix*
15 *Newspapers, Inc. v. Superior Court*, 101 Ariz. 257, 259, 418 P.2d 594, 596 (1966)
16 (“[C]ourts are public institutions. The manner in which justice is administered
17 does not have any private aspects.”).

18 While there is no constitutional presumption for or against camera
19 access, promoting camera coverage of the courts is fully consistent with Arizona’s
20 strong tradition of open government and the constitutional rights of the public and
21 the press to attend court proceedings. The U.S. Supreme Court has long
22 recognized that at least three important public interests are served by advancing
23 public access to the courts. In *Globe Newspaper Co. v. Superior Court*, the Court
24 wrote:

25 [T]he right of public access to criminal trials plays a
26 particularly significant role in the functioning of the
27 judicial process and the government as a whole. [1] Public
28 scrutiny of a criminal trial *enhances the quality and*
safeguards the integrity of the factfinding process, with
benefits to both the defendant and to society as a whole.

1 [2] Moreover, public access to the criminal trial fosters an
2 appearance of fairness, thereby *heightening public respect*
3 *for the judicial process*. [3] And in the broadest terms,
4 public access to criminal trials *permits the public to*
participate in and serve as a check upon the judicial
process – an essential component in our structure of self-
government.

5 457 U.S. 596, 606 (1982) (emphasis added).

6 These interests are all the more important in controversial cases
7 where the results of the judicial process might be difficult for many to accept. As
8 then-Chief Justice Warren Burger wrote in *Richmond Newspapers*, open justice
9 has a “significant community therapeutic value” because it allows for public
10 observation and participation in the process of administering justice. 488 U.S. at
11 570. That value may be thwarted where public access is curtailed unnecessarily:
12 “[W]here the trial has been concealed from public view an unexpected outcome
13 can cause a reaction that the system at best has failed and at worst has been
14 corrupted. . . . [¶] People in an open society do not demand infallibility from
15 their institutions, but it is difficult for them to accept what they are prohibited
16 from observing.” *Id.* at 571-72.

17 Camera coverage advances the strong public interests in access to
18 court proceedings by encouraging openness and allowing the public to monitor
19 court hearings and trials for themselves. *See, e.g., Press-Enterprise Co. v.*
20 *Superior Court*, 464 U.S. 501, 508 (1984) (“*Press-Enterprise I*”) (Openness in
21 criminal proceedings “enhances both the basic fairness of the criminal
22 [proceeding] and the appearance of fairness so essential to public confidence in
23 the system.”); *Ariz. Sup. Ct. Admin. Order 95-35* at 1. As this Court observed
24 when it expanded camera coverage of a criminal case involving the murder of a
25 popular Tucson children’s ophthalmologist, camera coverage fosters public
26 understanding of “the justice system, and the courts in particular.” *Admin. Order*
27 *No. 2006-9*. In that case, *State of Arizona v. Bradley A. Schwartz*, *Ariz. Super.*
28 *Ct., Pima County, CR-20043995*, the Court waived the one-camera limit to allow

1 a national television network to produce a program that would promote improved
2 understanding of courts. *Id.*

3 The Court’s findings in *Schwartz* are consistent with numerous
4 studies on camera coverage of court proceedings, which have found significant
5 benefits and few measurable harms as a result of cameras in the courtroom. *See*
6 *In re Petition of WMUR Channel 9*, 813 A.2d 455, 460 (N.H. 2002) (citing studies
7 that have found that allowing cameras in the courtroom “improves public
8 perceptions of the judiciary and its processes, improves the trial process for all
9 participants, and educates the public about the judicial branch of government.”);
10 *In re WLBT, Inc.*, 905 So. 2d 1196, 1199 (Miss. 2005). *Cf. Chandler v. Florida*,
11 499 U.S. 560, 578-79 (1981) (noting the dearth of empirical support for the notion
12 that the mere presence of cameras in the courtroom “has an adverse effect” on the
13 judicial process).

14 In particular, one study of New York’s experiment with cameras in
15 the courtroom between 1987 and 1997 concluded that camera coverage provided
16 significant benefits to the public. *See* New York State Committee to Review
17 Audio-Visual Coverage of Court Proceedings, *An Open Courtroom, Cameras in*
18 *New York Courts*, at 71 (Fordham University Press 1997) (“Feerick Report”)
19 (“Video and photographs have become important tools in presenting news to the
20 public, many of whom now rely on television as their principal source of
21 information about public affairs.”). The study concluded that camera coverage of
22 courtrooms improved public scrutiny of judges and courts, enhanced the public’s
23 knowledge and understanding of the courts, helped draw public attention to major
24 societal problems such as domestic violence and child abuse, and served a
25 cathartic purpose for the families of some homicide victims. *Id.* at 70. In
26 contrast, the study found few problems with camera coverage. *Id.* at xv (“Our
27 review of the experiment . . . did not find that the presence of cameras in New
28 York interferes with the fair administration of justice.”).

1 Numerous other states have recognized the importance of camera
2 coverage of court proceedings. As the Supreme Court of Florida has recognized,

3 [B]ecause of the significant effect of the courts on the day-
4 to-day lives of the citizenry, it was essential that the people
5 have confidence in the process.... [B]roadcast coverage of
6 trials would contribute to wider public acceptance and
7 understanding of decisions.

8 *Chandler*, 499 U.S. at 565-66 (discussing Florida’s rule regarding camera
9 coverage); *Chavez v. Florida*, 832 So. 2d 730, 758-59 (Fla. 2002) (recognizing
10 that trial courts must hold hearings and make findings that camera coverage
11 would have a “substantial effect” on a trial participant before restricting camera
12 access). New Hampshire, Massachusetts, Washington, Tennessee, Florida and
13 Mississippi have all adopted rules or case law that presumptively favor camera
14 coverage of courtroom proceedings, or that require courts to make specific factual
15 findings and consider less restrictive alternatives before prohibiting such
16 coverage. In New Hampshire, for instance,

17 Complete closure of trial proceedings to the electronic
18 media . . . should occur only if four requirements are met:
19 (1) closure advances an overriding interest that is likely to
20 be prejudiced; (2) the closure ordered is no broader than
21 necessary to protect that interest; (3) the judge considers
22 reasonable alternatives to closing the proceeding; and (4)
23 the judge makes particularized findings to support the
24 closure on the record.

25 *Petition of WMUR*, 813 A.2d at 458-60. See *Commonwealth v. Clark*, 730 N.E.2d
26 872, 881 (Mass. 2000) (same); *WLBT*, 905 So. 2d at 1199 (“[P]rohibiting cameras
27 does restrict the ability of the public to access the proceedings, and . . . the
28 complete exclusion of cameras should be resorted to only after less restrictive
measures have been considered and found to be inadequate.”); Tenn. R. Sup. Ct.
30; Wash. R. Gen. 16.

As a practical matter, the public’s constitutional right of access to
court proceedings under the First Amendment and Arizona law can be realized

1 fully only if camera coverage is generally permitted when sought. Instead of
2 attending court proceedings in person, most people acquire information about the
3 justice system “chiefly through the print and electronic media.” *Richmond*
4 *Newspapers, Inc.*, 448 U.S. at 572-73. Camera coverage provides an effective
5 means of “carrying the unfiltered content of the proceedings directly to the
6 public,” and serves as “an extension of the reporting function of the more
7 traditional arms of the press.” *Petition of WMUR*, 813 A.2d at 459-60. Such
8 coverage is the most direct and accurate tool available to allow citizens who
9 cannot attend courtroom proceedings in person to see for themselves what
10 transpires in the courtroom and observe the administration of justice first-hand.
11 Simply put, promoting camera coverage furthers the news media’s First
12 Amendment right to gather and report the news – and the public’s right to attend
13 court proceedings and receive such information. *See, e.g., CBS Inc. v. Young*, 522
14 F.2d 234, 238 (6th Cir. 1975) (newsgathering is activity protected by the First
15 Amendment; “[t]he protected right to publish the news would be of little value in
16 the absence of sources from which to obtain it.”); *Ariz. Sup. Ct. Admin. Order 95-*
17 *35* at 1 (“This Court has long been cognizant of the value of an informed public as
18 a restraint upon government, and upon the value of the press as a vital source of
19 public information.”).

20 As currently written, Rule 122 often results in blanket prohibitions of
21 camera coverage of court proceedings, despite the availability of less-restrictive
22 alternatives and the well-established benefits of photographic coverage to the
23 public.

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1 II. RULE 122 UNDULY RESTRICTS CAMERA COVERAGE OF COURT
2 PROCEEDINGS BY FAILING TO REQUIRE TRIAL COURTS TO
3 MAKE FINDINGS AND CONSIDER ALTERNATIVES TO CLOSURE,
4 AND BY FORECLOSING APPELLATE REVIEW.

5 Rule 122 permits camera coverage of court proceedings
6 “in the sole discretion of the judge” of the particular proceeding. Ariz. R. Sup. Ct.
7 122(b). While many judges allow still and video camera coverage of proceedings,
8 courts have increasingly denied requests for camera coverage, even where less
9 restrictive alternatives to closure exist. Such denials are often made perfunctorily
10 and without a hearing. While a rule enabling such arbitrary denials may have
11 been justified at one time, Rule 122 ignores the central role cameras play today in
12 conveying information to the public. As the Feerick Report concluded: “The
13 courts, like other public institutions, belong to the people, and a principal way for
14 most [individuals] to view their legal system in action is through television.”
15 Feerick Report at xvi.

16 Despite the public’s growing reliance on television as a source of
17 news, some courts have been reluctant to consider camera coverage of hearings.
18 For example, in one recent case, a trial judge denied a request for camera
19 coverage despite the strong public interest in access to the hearing. *State v.*
20 *Dudley*, CR2006-176550 (Ariz. Super. Ct., Maricopa County). The case involved
21 a mother who was accused of aggravated DUI after her 12-year-old son refused to
22 ride in the car with her because she had been drinking. Neighbors overheard the
23 defendant’s argument with her son and called the police. Evidently, at the time of
24 her arrest, the defendant was on probation for a previous DUI, was barred from
25 drinking alcohol as a term of her probation, had a revoked driver’s license and
26 was in control of an automobile that lacked the ignition Interlock device she is
27 required to use. As such, the public had a strong interest in the case, which shed
28 light on the state’s efforts to prevent intoxicated drivers from endangering
themselves, their families and the public at large. The court denied the request for

1 camera coverage without hearing or explanation. Sept. 12, 2007 Minute Entry,
2 <http://www.courtminutes.maricopa.gov/docs/Criminal/092007/m2837460.pdf>.

3 Similarly, in *State v. Bennett*, Case No. C2006010499J, and *State v.*
4 *Wheeler*, C2006010500J (Prescott Justice Court, Yavapai County), the trial court
5 denied requests for camera coverage of the change of plea hearing for two
6 suspects accused of sexually abusing more than a dozen summer campers at a
7 student council camp in Prescott. The trial court denied the request summarily
8 without making findings or holding a hearing, even though the change of plea
9 involved what some had perceived as an overly lenient result for a defendant who
10 was also the son of a prominent Arizona politician.

11 Another Yavapai County court denied a request for camera coverage
12 in hearings involving Neil Havens Rodreick, a 29-year-old man who disguised
13 himself as a 12-year-old boy and enrolled in several Arizona schools. *State v.*
14 *Rodreick*, CR20070142 (Ariz. Super. Ct., Yavapai County). The denial of camera
15 coverage extended to hearings involving the media's attempts to obtain public
16 records in the case, including police reports and witness interview tapes withheld
17 by the State, most of which the court later ordered disclosed to the public. The
18 case raised issues of widespread public interest and concern.

19 In a matter involving a challenge to the nearly year-long detention by
20 Maricopa County Sheriff Joe Arpaio of a Russian-American man suffering from
21 acute tuberculosis, the trial court denied media requests for camera coverage –
22 even though the case raised important civil rights issues of national and
23 international importance and concern. *See In the Matter of: Robert Daniels*, Case
24 No. PB2006-002150 (Ariz. Super. Ct., Maricopa County). Similarly, camera
25 access was denied at an administrative hearing regarding a plastic surgeon whose
26 medical license was suspended following the deaths of several patients in his care.
27 *In the Matter of: Peter J. Normann*, M.D., No. 07A-070589-MDX (Arizona
28 Office of Administrative Hearings).

1 As these cases suggest, many courts are applying Rule 122 in a
2 manner that is inconsistent with both the public’s presumptive right of access to
3 court proceedings and the practical reality that many Arizonans rely upon
4 television or internet webcasts for news about legal proceedings. By allowing
5 such ready denials of camera coverage requests, Rule 122 has effectively
6 established a presumption *against* camera access. While such a presumption
7 might have been appropriate 20 years ago – when cameras were bulky,
8 cumbersome and distracting, and fewer people relied upon television as a source
9 of news – advances in technology have rendered such an approach obsolete. *E.g.*,
10 *Petition of WMUR*, 813 A.2d at 648-49 (holding that a rule that created a
11 presumption against television coverage was inconsistent with the public’s right
12 of access to court proceedings; “[a]dvances in modern technology, however, have
13 eliminated any basis for presuming that cameras are inherently intrusive. In fact,
14 the increasingly sophisticated technology available to the broadcast and print
15 media today allows court proceedings to be photographed and recorded in a
16 dignified, unobtrusive manner, which allows the presiding judge to fairly and
17 impartially conduct court proceedings.”).

18 As shown more fully below, the Court should revise Rule 122 to
19 ensure that its rules on camera coverage are consistent with Arizona’s abiding
20 commitment to the open administration of justice and basic procedural fairness.

21 III. THE PROPOSED AMENDMENTS TO RULE 122 PRESERVE
22 IMPORTANT SAFEGUARDS FOR TRIAL PARTICIPANTS, JURORS
23 AND VICTIMS, WHILE ENHANCING PUBLIC UNDERSTANDING
24 OF AND CONFIDENCE IN THE COURTS.

25 In summary, KPNX’s proposed amendments to Rule 122 would: (1)
26 require trial courts to make findings before denying a request for camera
27 coverage; (2) strike language stating that the decision to allow camera coverage is
28 vested in the “sole discretion” of the trial court; (3) encourage trial courts to
consider reasonable alternatives to blanket closure of hearings to cameras (such as

1 allowing camera coverage of portions of the proceeding); (4) require a prompt
2 hearing if objections are made to a request for camera access or to an order
3 allowing such access; and (5) permit appellate review of decisions regarding
4 camera coverage.

5 The amended Rule has several advantages over the current Rule.
6 First, the amendments recognize that a request for camera coverage should be
7 granted unless the trial court makes findings that one or more of the six factors in
8 Rule 122(b) overrides the public interest in cameras in the courtroom. This
9 change preserves the strong protections in the current rule for fair trial rights and
10 the privacy and safety of parties and witnesses (including victims and juveniles),
11 and it continues to allow trial courts to consider the likelihood of distractions,
12 limitations of courtroom facilities and any other factors “affecting the fair
13 administration of justice.” Ariz. R. Sup. Ct. 122(b)(i-vi).

14 Second, the amended Rule’s requirement that the trial court make
15 specific, on-the-record factual findings will focus trial courts on specific facts that
16 suggest risks from camera coverage, rather than generalized concerns and
17 speculation about photographic coverage. As courts have long recognized in
18 analogous First Amendment cases, requiring findings results in better-reasoned
19 decisions. *See Phoenix Newspapers, Inc. v. District Court*, 156 F.3d 940, 950
20 (9th Cir. 1998) (holding court’s sealing order failed to state specific grounds for
21 closure; “[N]either in the written closure orders nor in the hearings themselves did
22 the court specify just how security would be ‘thwarted,’ and how, in turn, this
23 ‘thwarting’ would threaten Symington’s fair trial rights.”); *Petition of WMUR*,
24 813 A.2d at 461 (“[T]he more reason there is in the decision to admit or exclude
25 [electronic media from the courtroom], the more apt it is to be fair. Both bench
26 and bar benefit at trial if critical questions . . . are exposed and reasons clearly
27 stated.”) (internal citations and quotations omitted).

28

1 Put another way, trial courts will be required merely to articulate *how*
2 any of the six Rule 122 factors weighs against camera coverage. *Id.* As the
3 Mississippi Supreme Court observed:

4 The decision to restrict press access, whether by closing the
5 proceedings or eliminating the use of tools of the trade
6 must be supported by specific, on the record findings of
7 fact which show in what manner the coverage will cause a
8 party to lose the right to a fair trial.

9 *WLBT*, 905 So. 2d at 1199 (holding that trial court’s finding that camera coverage
10 “may” impact a companion case was insufficient to deny camera coverage
11 request); *Petition of WMUR*, 813 A.2d at 460-61 (requiring specific findings of
12 fact to support closure to camera coverage and noting that the findings “should
13 not be based upon speculation, but rather on the specific facts of the case at
14 hand”). Requiring findings also would result in more consistent decisions. *Id.* at
15 460.

16 Third, requiring findings will encourage courts to consider
17 reasonable alternatives to a complete denial of camera coverage, and to more
18 fairly strike the balance between the public interest in monitoring court
19 proceedings and the Rule 122 factors that may justify limiting camera access.
20 Courts sometimes close entire trials based on concerns that relate to one witness
21 only. But there is often no reason why the rest of the proceeding should not be
22 opened to cameras. Similarly, courts sometimes fail to consider other alternatives
23 to blanket closure – such as turning off cameras during sensitive portions of
24 hearings, or recognizing the ability of media outlets to “digitize” or obscure the
25 identity and voices of some witnesses. *WLBT*, 905 So. 2d at 1199 (“It is generally
26 better for the courts to limit or terminate coverage as needed than to exclude
27 camera and television coverage altogether.”).

28 Fourth, allowing a “prompt” hearing upon request regarding an order
granting camera access or on an objection to a request for camera access ensures

1 that interested parties can be heard on the issue. Under the current rule, camera
2 coverage decisions are sometimes made without a hearing. The proposed rule
3 will strengthen the protections in the rule by allowing victims or other interested
4 parties who have concerns about camera coverage to be heard if they so desire.
5 The amendment will improve the trial court's ability to analyze the specific facts
6 of each case in relation to the Rule 122 factors, resulting in fair, accurate and
7 consistent decisions about photographic coverage.

8 Fifth, the amended Rule's allowance for appellate review will
9 provide accountability for Rule 122 decisions and curtail the perfunctory denial of
10 such requests. Coupled with the new findings requirement, appellate review will
11 allow parties to evaluate the trial court's reasoning and seek review of camera
12 coverage decisions where appropriate. This requirement will not unduly burden
13 the courts. Only a fraction of cases involve requests for camera coverage – and
14 fewer still will be worthy of filing a special action petition. Simply put, allowing
15 appellate review of camera coverage decisions will modernize Rule 122 by
16 recognizing the unique role of cameras in conveying information to the public in
17 the 21st Century. *WLBT*, 905 So. 2d at 1199; *Petition of WMUR*, 813 A.2d at
18 461.

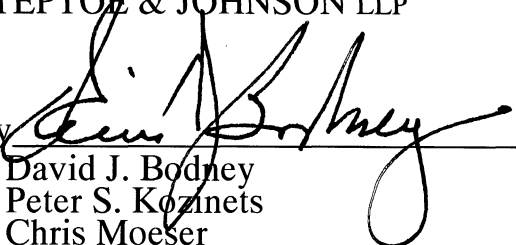
19 Conclusion

20 For the foregoing reasons, KPNX's Petition to Amend Ariz. R. Sup.
21 Ct. 122 should be granted.

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RESPECTFULLY SUBMITTED this 1st day of November, 2007.

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APPENDIX A

Rule 122. Electronic and Photographic Coverage of Public Judicial Proceedings

Electronic and still photographic coverage of public judicial proceedings in the courtroom and areas immediately adjacent thereto during sessions of court may be permitted in accordance with the following guidelines:

(a) No electronic or still photographic coverage of juvenile court proceedings shall be permitted, except that such coverage may be permitted in adoption proceedings for the purpose of memorializing the event, with the agreement of the parties to the proceeding and the court.

(b) Electronic and still photographic coverage of public judicial proceedings other than the proceedings specified in paragraph (a) above may be permitted ~~in the sole discretion of the judge of the particular proceeding~~ giving due consideration to the following factors:

- (i) The impact of coverage upon the right of any party to a fair trial;
- (ii) The impact of coverage upon the right of privacy of any party or witness;
- (iii) The impact of coverage upon the safety and well-being of any party, witness or juror;
- (iv) The likelihood that coverage would distract participants or would detract from the dignity of the proceedings;
- (v) The adequacy of the physical facilities of the court for coverage; and
- (vi) Any other factor affecting the fair administration of justice.

(c) THE JUDGE MAY LIMIT OR PROHIBIT ELECTRONIC OR STILL PHOTOGRAPHIC COVERAGE ONLY AFTER MAKING SPECIFIC, ON-THE-RECORD FINDINGS THAT THERE IS A SUBSTANTIAL LIKELIHOOD OF AN OVERRIDING HARM ARISING FROM ONE OR MORE OF THE ABOVE FACTORS.

~~(e)-(d)~~ Electronic and still photographic coverage of the appearance or testimony of a particular witness may be prohibited if ~~in the sole discretion of the judge of the proceeding,~~ the judge determines that such coverage would have a substantially greater adverse impact upon the witness or his or her testimony than non-electronic and non-photographic coverage would have.

~~(d) Nothing in paragraph (b) or (c) above shall be construed as requiring the judge of the particular proceeding to state grounds or make findings in support of the determination to permit, limit or preclude electronic and still photographic coverage, and the exercise of the judge's discretion in limiting or precluding such coverage shall not be subject to judicial review.~~

(e) The law generally applicable to inclusion or exclusion of the press or public at court proceedings or during the testimony of particular witness shall apply to the coverage hereunder.

(f) Requests by the media for coverage shall be made to the judge of the particular proceeding sufficiently in advance of the proceeding or portion thereof as not to delay or interfere with it. The judge shall notify all parties and witnesses of the request. **IF THERE IS ANY OBJECTION TO A REQUEST FOR CAMERA COVERAGE OR AN ORDER ALLOWING ELECTRONIC OR STILL PHOTOGRAPHIC**

COVERAGE, THE COURT SHALL HOLD A HEARING PROMPTLY.

(g) Objections of a party to coverage must be made on the record prior to commencement of the proceeding or portion thereof for which coverage is requested. Objections of a non-party witness to coverage of his or her appearance or testimony may be made to the judge at any time. Any objection not so made will be deemed waived. ~~This provision shall not diminish the judge's authority to preclude or limit coverage of a proceeding in the judge's sole discretion as above provided.~~

(h) Nothing herein shall alter the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.

(i) Individual journalists may use their personal audio recorders in the courtroom, but such usage shall not be obtrusive or distracting and no changes of tape or reels shall be made during court sessions. In all other respects, news reporters or other media representatives not using cameras or electronic equipment shall not be subject to these guidelines.

(j) No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall be admissible as evidence in such proceeding or in any retrial or appeal thereof.

(k) Coverage of jurors in a manner that will permit recognition of individual jurors by the public is strictly forbidden. Where possible, cameras should be placed so as to avoid photographing jurors in any manner.

(l) There shall be no audio recording or broadcasting of conferences in the courtroom between attorneys and their clients, between attorneys, or between attorneys and the court.

(m) It shall be the responsibility of the media to settle disputes among media representatives, facilitate pooling where necessary, and implement procedures which meet the approval of the judge of the particular proceeding prior to any coverage and without disruption to the court. If necessary the media representatives shall elect a spokesperson to confer with the court.

(n) No more than one television camera and one still camera mounted on a tripod, each with a single camera operator, shall be permitted in the courtroom for coverage at any time while court is in session. The broadcast media shall select a representative to arrange the pooling of media participants. The court shall not participate in the pooling agreement.

(o) The judge of a particular proceeding shall, in a manner which preserves the dignity of the proceeding, designate the placement of equipment and personnel for electronic and still photographic coverage of that proceeding, and all equipment and personnel shall be restricted to the area so designated. Whenever possible, media equipment and personnel shall be placed outside the courtroom. Videotape recording equipment not a component part of a television camera shall be placed outside the courtroom. To the extent possible, wiring shall be hidden, and in any event shall not be obtrusive or cause inconvenience or hazard. While court is in session, equipment shall not be installed, moved or taken from the courtroom, nor shall photographers or camera operators move about the courtroom.

(p) All persons engaged in the coverage permitted hereunder shall avoid conduct or dress which may detract from the dignity of the proceedings.

(q) If possible, media equipment shall be connected to existing courtroom sound systems. No flash bulbs, strobe lights or other artificial lights of any kind shall be brought into the courtroom by the media for use in coverage of a proceeding. Where the addition of higher

wattage light bulbs, additional standard light fixtures, additional microphones or other modifications or improvements are sought by the media, the media, through their spokesperson, shall make their recommendations to the presiding judge of the Superior Court, who may direct whatever modifications or improvements deemed necessary. Any such modifications or improvements shall be made and maintained without public expense.

(r) Television or still cameras which produce distracting sound shall not be permitted. In this regard, the presiding judge may consider a still camera acceptable so long as it is contained in a "blimp" system or is the type of camera such as a Nikon F4 with a Nikon CS-13 camera blimp (otherwise known as a "corduroy sock") which effectively muffles camera sounds.

(s) Cameras and microphones used in the coverage permitted hereunder shall meet the "state of the art." A camera or microphone shall be deemed to meet the "state of the art" when equal in unobtrusiveness, technical quality and sensitivity to equipment in general usage by the major broadcast stations in the community in which the courtroom is located. The current "state of the art" for television cameras shall be met by cameras meeting or exceeding the performance levels of the RCA TK-76 camera system or the IKEGAMI HL-77 camera system or the SONY BP300 camera system.

(t) Any questions concerning whether particular equipment complies with these guidelines shall be resolved by the presiding judge of the Superior Court or designee.

(u) To facilitate implementation of this rule, the presiding judge of the Superior Court may appoint an advisory committee to make recommendations regarding improvements affecting media coverage of judicial proceedings.

(v) In the case of coverage of proceedings in the Arizona Supreme Court and Courts of Appeal, references herein to the "judge of the particular proceeding" or the "presiding judge of the Superior Court" shall mean the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as the case may be.