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STATE OF MINNESOTA DISTRICT COURT

HENNEPIN COUNTY FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Mohamed Noor,

Defendant.

File No. 27-CR-18-6859
The Honorable Kathryn L. Quaintance

MEDIA COALITION'S RESPONSE TO STATE'S POSITION REGARDING COPYING OF TRIAL EXHIBITS

Star Tribune Media Company LLC, Minnesota Public Radio, Hubbard Broadcasting, Inc. (on behalf of KSTP), CBS Broadcasting Inc. (on behalf of WCCO), TEGNA Inc. (on behalf of KARE), Fox/UTV Holdings, Inc. (on behalf of KMSP), and the Minnesota Coalition on Government Information (the "Coalition"), by and through undersigned counsel, hereby submit this Response to the State's Position Regarding Copying of Trial Exhibits ("State's Position") and respectfully request that the Court, consistent with the First Amendment, common law, and its own access and procedural rules, enter an order authorizing its administrative staff to make copies of the trial exhibits available to members of the press and public upon request.

INTRODUCTION

The State refers to the media's coverage of former police officer Mohamed Noor's criminal trial as "pervasive and nearly instantaneous." *See* State's Position at 2. The Coalition would add "detailed," "in-depth," and "nuanced" to the list.

Mr. Noor's criminal trial was of significant public interest and concern, and the media's timely, comprehensive, and careful coverage of the tragic shooting, the run-up to trial, the trial itself, the jury's conclusion that Mr. Noor was guilty of manslaughter and third-degree murder,

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and the aftermath of that verdict, including a $20 million, record-setting settlement that the City of Minneapolis reached with the family of Justine Ruszczyk Damond should be commended—not cited as a reason to restrict access going forward.

Although the question of Mr. Noor's guilt or innocence may be resolved, there remain many open questions about how he came to shoot an unarmed woman on the night of July 15, 2017, and the repercussions of that tragic event, including questions about law enforcement's training practices and shooting policies, the adequacy of the Bureau of Criminal Apprehension's investigation into the shooting, whether racial dynamics played a role in the jury's verdict, and how that verdict might change policing in this State and across the country. Essential to thorough, accurate reporting on these important issues is a full understanding of the evidence presented at trial. That understanding can only be achieved if members of the Coalition are able to view and copy that evidence so that they can study and refer back to it over the coming weeks, months, and even years as they continue to report on these issues of utmost pubic interest and concern.

The alternative proposed by the State—to require journalists to make appointments to sit in a room at the courthouse, to sift through and attempt to digest nearly 300 exhibits over the course of a few hours, to take copious notes, and to then return to their newsrooms and try to write news reports that thoroughly and accurately reflect what they saw—is neither practical nor reasonable. Indeed, under the State's proposal, every time a journalist, whether sitting in the Twin Cities or Australia, doubted the accuracy of something in her notes—or any time a new story idea emerged, requiring a fresh review of the evidence—she would have to schedule another appointment to review the exhibits and take another trip to the courthouse, all of which would not only burden the limited resources of both the judicial system and the Coalition's

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newsrooms but also would intolerably delay the dissemination of important information to the public. Moreover, if adopted, the State's position would completely deprive members of the public—most of whom do not have the time to personally visit the courthouse to view the exhibits—from being able meaningfully scrutinize crucial evidence in Mr. Noor's case.

In short, to adopt the State's position would greatly diminish the breadth, quality, and usefulness of the news reporting on one of the most important issues of our time—gun violence, particularly that perpetrated by police, and the possibility that the race of both victim and perpetrator may impact the prosecution and punishment of such violence. For that matter, it would also significantly hinder the ability of academic researchers, policy makers, and others to research and learn from Mr. Noor's trial and conviction both today and years from now.

For these reasons, the First Amendment, the common law, and Minnesota statutory law protect against sweeping, speculative arguments for blanket prohibitions on copies, such as the one the State makes. The Court should reject the State's position and it should make copies of all trial exhibits immediately available to the Coalition, for the benefit of the press and the public.

BACKGROUND

Members of the press and public who attended Mr. Noor's trial were able to observe the presentation of evidence to the jury. However, pursuant to the Court's April 9, 2019, Standing Order on Requests for Trial Exhibits During Trial, no member of the press or public was able to view or copy exhibits during trial.

The trial concluded on April 29, and the jury returned a verdict on April 30. According to the State's Position (filed May 10), the Court contacted the parties on May 7 and offered them the opportunity to take a position on the copying of exhibits introduced at trial.

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After the State filed its position, on May 13, the Court entered its First Order Regarding Copy Access to Trial Transcripts. That order stated that media representatives would be allowed "access to and the opportunity to view the trial exhibits" but postponed decision on whether members of the press or public would be permitted to copy the trial exhibits. The May 13 Order invited members of the media to respond to the State's position by May 16.

Since issuance of the May 13 Order, various members of the Coalition have contacted the Court to schedule a time to view the exhibits, but none has yet been given an appointment time. Further, the Coalition members understand from an email that Spenser Bickett sent to Hubbard Broadcasting that Court staff is "scheduling a time/date for members of the media to come all at once and view the exhibits, instead of trying to accommodate each individual request. Once we have something scheduled, we'll share the details on the case webpage." *See* Declaration of Leita Walker Ex. 1. This approach is troubling, not only because it results in further delay but also because members of the Coalition have difficulty envisioning how multiple journalists—some news organizations will likely send more than one reporter—are expected to conduct the sort of diligent review necessary when jockeying with one another to review a single set of physical documents and other evidence.

Meanwhile, in addition to seeking access to the trial itself and to documents, exhibits, and other materials in the Court's file, various members of the Coalition have separately sought copies of "investigative data presented as evidence in court" from various government entities subject to the Minnesota Government Data Practice Act ("MGDPA"), including the Minneapolis Police Department ("MPD"), the Minnesota Department of Public Safety ("DPS"), and the Hennepin County Attorney's Office ("HCAO"). The MGDPA is clear that such data is public. *See* Minn. Stat. §13.82, subd. 7.

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The question of what is public and subject to disclosure under the MGDPA is separate and apart from how this Court chooses to control access to its files pursuant to the Rules of Public Access to Records of the Judicial Branch, the common law, and the First Amendment right of access to court proceedings. Thus, on behalf of Coalition members Star Tribune and MPR, the undersigned explained in letters sent to the MPD, DPS, and HCAO this week why the requested information is public if in *their* possession (notwithstanding this Court's prior orders or its decision on whether copies of evidence in *its* possession should be made available) and demanded production of responsive data no later than Friday. As a courtesy to the Court, those letters are attached to the Declaration of Leita Walker as Exhibits 2, 3, and 4.

ARGUMENT

The State's position is a blanket one—*none* of the trial exhibits should be copied. It is also highly speculative. Although it claims that "piecemeal release of exhibits" could affect Mr. Noor's appeal rights and that there "is significant potential for misuse" of the trial exhibits, *see* State's Position at 2–3, it provides no explanation for these conclusory statements, much less actual evidence that misuse of the evidence is likely or that there is any real threat to Mr. Noor's ability to challenge his conviction on appeal (which could take years). Meanwhile, the State points to a single case from 1978 analyzing only the common law right of access, and not the First Amendment right. The State's brief is wholly insufficient to overcome the constitutional, common law, and statutory right of access to criminal courts and their records.

As acknowledged by Minnesota courts and every federal Circuit Court of Appeals to rule on the issue, the public's First Amendment right of access to judicial proceedings extends to judicial records—including trial exhibits presented to the jury. This constitutional access right includes the right to copy and publish trial exhibits. And, in order to overcome that qualified

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right, the State has the burden of proving that limitations on access are necessary to protect a compelling interest, that no alternative means are available, and that the remedy is narrowly tailored and effective. Likewise, under the public's common law right, access to and the ability to copy trial exhibits may only be limited under "the most compelling circumstances," and speculation is insufficient as a matter of law to overcome the common law right.

Finally, even if the State were able to meet its burden as to a particular exhibit—or a particular portion of a particular exhibit—a blanket prohibition on copying *any and all* exhibits is entirely inappropriate. The vast majority of trial exhibits are non-controversial documents that do not contain sensitive information. And even for those that are graphic or otherwise sensitive, there are narrower remedies—such as redacting or pixelating portions of a document or video footage—that would effectively protect the interest without eradicating the press and public's right of access.

I. The State has not met its burden to overcome the press and public's First Amendment right to access and copy trial exhibits.

As this Court recognized in its April 10, 2019, Order and Memorandum Opinion addressing issues previously raised by members of this Coalition (as well as other members of the media), the First Amendment provides to the press and public a presumptive right of access to criminal trials. April 10 Order at 11–21.

The Minnesota Supreme Court has recognized that this First Amendment right extends not only to trials but also to judicial records, even in civil cases. *See Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 203 (Minn. 1986) ("Several jurisdictions have established a constitutional right of access to civil court files and records. . . . As under the common law

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standard, a presumption in favor of access exists under the first amendment.");[1] *accord Star Tribune v. Minn. Twins P'ship*, 659 N.W.2d 287, 296 (Minn. App. 2003) ("a presumption of access to judicial records exists under the First Amendment").

Notably, the position of Minnesota courts is in line with every federal Circuit Court of Appeal that has directly addressed the issue. *See, e.g.*, *In re Providence Journal Co.*, 293 F.3d 1, 10 (1st Cir. 2002) (right applies to "documents and kindred materials submitted in connection with the prosecution and defense of criminal proceedings"); *United States v. Haller*, 837 F.2d 84, 87 (2d Cir. 1988) (records of plea hearing); *United States v. Smith*, 123 F.3d 140, 146 (3d Cir. 1997) (records of a criminal proceeding); *In re Associated Press*, 172 F. App'x 1, 3 (4th Cir. 2006) (records filed "in connection with criminal proceedings"); *United States v. Edwards*, 823 F.2d 111, 112–13 (5th Cir. 1987) (transcript of midtrial questioning of jurors); *In re Storer Commc'ns, Inc.*, 828 F.2d 330, 336 (6th Cir. 1987) (records pertaining to recusal of judge); *United States v. Peters*, 754 F.2d 753, 763 (7th Cir. 1985) (trial exhibits); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 573 (8th Cir. 1988) (documents filed in support of search warrant applications); *CBS v. U.S. Dist. Ct.*, 765 F.2d 823, 825–26 (9th Cir. 1985) (documents filed in pretrial proceedings and post-trial sentencing records); *United States*

[1] *Schumacher* involved a request for access to a settlement agreement in a civil case, and the court ultimately concluded that no First Amendment right of access existed as to such documents and proceeded to decide the case based on the common law rather than the Constitution. However, in holding that the First Amendment did not apply to the specific request at issue, the court "emphasize[d] the narrowness of the question presented to us and the narrowness of our decision. We are specifically considering only what standard should apply when a party seeks to restrict access to settlement documents or transcripts made part of a civil court file by statute." *Id.* at 203.

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v. Ignasiak, 667 F.3d 1217, 1237–39 (11th Cir. 2012) (post-trial pleading revealing impeachment information); *Wash. Post v. Robinson*, 935 F.2d 282, 287–88 (D.C. Cir. 1991) (plea agreement).[2]

With regard to criminal trial exhibits specifically, they "have historically been open to the press and general public," "these types of documents are presumed to be public as a result," and "because the process in question is a criminal trial, public access plays a significant role in its functioning." *United States v. Loera*, No. 09-cr-0466 (BMC), 2018 WL 5906846, at *5 (E.D.N.Y. Nov. 11, 2018). This is especially true where the trial exhibits depict shootings and serve as key evidence in a criminal proceeding. *See, e.g.*, *Angilau v. United States*, No. 2:16-00992-JED, 2017 U.S. Dist. LEXIS 197135, at *8 (D. Utah Nov. 29, 2017) (when a video of a shooting served as "the key document for the Court to use in deciding the merits of th[e] case . . . [t]here can be no serious question that the courtroom video at issue is a judicial document" to which the First Amendment right of access applies).

Finally, the First Amendment right to access judicial records necessarily includes the right to copy those records. *See, e.g., United States v. Loughner*, 769 F. Supp. 2d 1188, 1191 (D. Ariz. 2011) ("increased openness in criminal proceedings also encompasses a qualified First Amendment right to inspect *and copy* public records and documents, including judicial

[2] In support of its position, the State cites just one case—*Nixon v. Warner Commc'ns*, 435 U.S. 589 (1978)—which addresses only the common law right of access and which pre-dates the First Amendment right of access canon, which began in 1980 with the Supreme Court's decision in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573–78 (1980). Courts have subsequently made clear that *Nixon* did not hold against the existence of a First Amendment right. *See United States v. McVeigh*, 119 F.3d 806, 810, 812 (10th Cir. 1997) ("Of course, *Nixon* did not hold that there is no First Amendment right to access court documents. . . . [T]hat case did not address whether there was a First Amendment right to access to court documents when access to those documents is an important factor in understanding the nature of proceedings themselves and when access to the documents is supported both by experience and logic.").

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documents and records") (emphasis added); *United States v. Lexin*, 434 F. Supp. 2d 836, 849 (S.D. Cal. 2006) (same).

As this Court recognized in its April 10 order, the constitutional presumption that criminal trials—and therefore, judicial records—are to open to the press and public may be overcome only if: (1) failure to restrict access creates a substantial probability of prejudice to a compelling interest; (2) no reasonable alternatives exist to adequately protect the threatened compelling interest; (3) any restrictions on access are narrowly tailored to serve the threatened interest; (4) any restrictions must be effective in protecting the threatened interest; and (5) the court enters detailed findings of fact on the record demonstrating that these standards have been met. April 10 Order at 16–17.

The State's speculative, conclusory argument does not even attempt to meet this high bar. Rather, the State simply states the irrelevant fact that there will likely be post-trial proceedings, and then asserts—with no factual support whatsoever—that there are "real concerns of, and potential for, misuse of highly sensitive material without the broader context of why the material was relevant." State's Position at 1–2.

As a preliminary matter, the possibility of post-trial proceedings is not a compelling interest; it is a simply a procedural fact common to virtually every criminal trial. To the extent the State is intending to argue that standard post-trial procedures always override constitutional rights, such a position would essentially eradicate the public's right of access.[3]

With respect to the "real concerns" of misuse, the State vaguely argues that the copying and dissemination of exhibits introduced in open court could lead to unwanted publicity for the

[3] The State's argument is further inconsistent with the Minnesota Government Data Practices Act ("MGDPA"), which, as explained below, provides immediate access to all "investigative data presented as evidence in court." Minn. Stat. § 13.82, subd. 7.

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victim and/or her family, jurors, and the defendant. However, this Court has already correctly recognized that a person's interest in privacy typically does not survive that person's death and that, in any event, interests in privacy such as those asserted by the State are insufficient to overcome the press and public's rights of access. April 10 Order at 17–20.

Indeed, in similar cases in Minnesota, most notably the fatal shooting of Philando Castile by former police officer Jeronimo Yanez, the Bureau of Criminal Apprehension released its entire investigatory file, including graphic dash-cam and Facebook Live videos. *See* Matt DeLong, "See evidence from the BCA investigation of the Philando Castile shooting," StarTribune.com (June 22, 2017), http://www.startribune.com/see-evidence-from-bca-investigation-of-castile-shooting/429662023/. The trial exhibits here, including video from the crime scene—disturbing though it may be—do not give rise to some greater privacy interest than that in the Castile case.

As for the jurors' interest in avoiding "unwanted publicity and harassment," the Coalition does not understand the State's argument. The jurors' names remain confidential, and the State does not provide any explanation as to how making copies of exhibits introduced at trial could possibly compromise the privacy rights of the jurors.

Even if the State could show a "substantial probability of prejudice to a compelling interest," its proposed blanket prohibition on copies would fail because alternative, narrower means of protecting the vague interests the State identifies are available. The vast majority of the exhibits are not particularly sensitive, and the State presumably would not object to their copying. Moreover, even as to the discrete number of trial exhibits that the State alleges are subject to exploitation, the solution is not to prohibit copying altogether but to redact or pixelate particularly graphic imagery before copies are disseminated. To be clear: because the State has

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not shown a compelling interest, the Coalition does not believe any sort of redaction is appropriate and raises this point primarily to illustrate the State's sweeping, incautious approach to the issues. Moreover, before permitting any redactions, the Court should first task the State with identifying the specific portions of exhibits that it believes should be redacted and providing justification for such redaction and then hold a hearing on the issue at which the Coalition has an opportunity to be heard (after viewing the unredacted exhibits at issue).

Finally, prohibiting copying of the trial exhibits would not be effective. As noted above, members of the Coalition are pursuing copies of the trial exhibits in the possession of various government agencies, and the MGDPA is clear that all "investigative data presented as evidence in court shall be public." Minn. Stat. § 13.82, subd. 7. As this Court recognized in its April 10 Order, the MGDPA's preference for openness would undermine any attempts to limit access to the judicial records through the Court. April 10 Order at 20–21. The MGDPA, and not any order regarding documents in the Court's *own* custody, governs the obligations of the MPD, DPS, and HCOA to provide copies of records in *their* custody. *In re Quinn*, 517 N.W.2d 895, 900 (Minn. 1994). In its forthcoming decision, this Court should remind those agencies of their independent obligations and direct them to respond to the requests of members of the Coalition consistent with the provisions of the MGDPA.

Simply put, the State's abstract and unspecified "concerns" do not constitute a compelling interest sufficient to overcome the public's First Amendment right to not only access but also copy the trial exhibits. Even if the State could articulate a compelling interest, given the requirements of the MGDPA this Court cannot effectively protect that interest, and the State's proposal for a blanket ban on copying is not at all narrowly tailored. Because the State cannot meet its burden to overcome the First Amendments presumptive right of access to trial exhibits,

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consistent with its April 10 Order, this Court should reject the State's position and permit copying of trial exhibits.

II. The State has not met its burden to overcome the press and public's common law right to access and copy trial exhibits.

In addition to the First Amendment, the common law ensures the Coalition's right to copy the trial exhibits. *See, e.g. Schumacher*, 392 N.W.2d at 202 ("It is undisputed that a common law right to inspect *and copy* civil court records exists." (emphasis added)). In fact, as numerous courts around the country have recognized:

> [T]here is a presumption in favor of public inspection *and copying* of any item entered into evidence at a public session of a trial. Once the evidence has become known to the members of the public, including representatives of the press, through their attendance at a public session of court, it would take the most extraordinary circumstances to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence, when it is in a form that readily permits sight and sound reproduction. . . . Though the transcripts of the videotapes have already provided the public with an opportunity to know what words were spoken, there remains a legitimate and important interest in affording members of the public their own opportunity to see and hear evidence . . . .

In re NBC, 635 F.2d 945, 952 (2d Cir. 1980) (emphasis added); *see also In re CBS*, 828 F.2d 958, 959 (2d Cir. 1987) ("common law right to inspect *and copy* judicial records applies to videotaped depositions of witnesses" (emphasis added)); *Valley Broad. Co. v. U.S. Dist. Ct.*, 798 F.2d 1289, 1293–97 (9th Cir. 1986) (granting request by the press to make copies of audio and video tapes introduced into evidence at the close of each day of trial); *United States v. Guzzino*, 766 F.2d 302, 303–04 (7th Cir. 1985) (stating that "the common law right of the public to inspect *and copy* judicial records . . . includes the right of the media to copy audio or video tapes which have been admitted into evidence in a criminal trial" (emphasis added)); *In re Phila. Newspapers, Inc.*, 746 F.2d 964, 967–69 (3d Cir. 1984) (discussing "common law right of the public to inspect *and copy* judicial records" (emphasis added)).

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While the common law right is not absolute, the "most extraordinary circumstances" have typically been limited to those involving intimate privacy rights of living victims where no public officials or servants were involved, and the copying could impact the ability to conduct a fair and impartial trial. *See, e.g., In re KSTP Television*, 504 F. Supp. 360, 363 (D. Minn. 1980) (limiting copying of video tape showing rape victim bound immediately prior to rape because it would constitute "an unconscionable invasion of [the living victim's] privacy," there was no involvement by a public servant or official, and the release "would run the risk of impinging upon [the defendant's] right to a fair trial").

Here, as discussed above, the State's "real concerns" are nothing but rank speculation of the most general sort. As a matter of law, such abstract hypothetical concerns cannot override the public's common law right. *See, e.g., United States v. Massino*, 356 F. Supp. 2d 227, 232 (E.D.N.Y. 2005) ("speculation is insufficient to justify restricting access to materials that have been entered into evidence in a public trial").

In any event, the vast majority of the trial exhibits are not controversial, and although some of the exhibits may include graphic and disturbing materials, there are no concerns that would justify suppression of the common law right of access. As the Court recognized in its April 10 Order at 17–18, because privacy rights do not survive death, concerns over the victim's privacy cannot serve as the basis to override the public's common law right. Further, because the defendant was a public official, *see Britton v. Koep*, 470 N.W.2d 518, 521 (Minn. 1991) (police officers are public officials), this case indisputably involves a matter of public concern under the logic of *KSTP Television*. And, because the trial has concluded, there are no Sixth Amendment concerns regarding the ability to conduct a fair trial.

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Simply put, the public and press have a common law right to copy the trial exhibits, and the State cannot sustain its burden to override this right.

III. The Rules of Public Access to Records of the Judicial Branch confirm the right to copy the trial exhibits.

Finally, in addition to the First Amendment and common law, the Minnesota Rules of Public Access to Records of the Judicial Branch state as a matter of general policy,

> Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection *or copying* at all times during the regular office hours of the custodian of the records. Some records, however, are not accessible to the public, at least in the absence of a court order, and these exceptions to the general policy are set out in Rules 4, 5, 6, and 8.[4]

Access Rule No. 2 (emphasis added); *see also* Access Rule. No. 8, subd. 1 ("Upon request to a custodian, a person shall be allowed to inspect *or to obtain copies* of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours." (emphasis added)).

Access Rule No. 4 addresses restrictions on access to case records, and cross references Minn. R. Crim. P. 25, which states that a restrictive order may issue only if "(a) Access to public records will present a substantial likelihood of interfering with the fair and impartial administration of justice. (b) All reasonable alternatives to a restrictive order are inadequate." Minn. R. Crim. P. 25.03, subd. 4. The Rule goes on to state that "A restrictive order must be no broader than necessary to protect against the potential interference with the fair and impartial administration of justice." *Id.*[5]

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[4] Rules 4 and 8 are addressed herein; Rules 5 and 6 address administrative and vital statistics records and are not relevant here.

[5] The Coalition further notes the procedural requirements of Rule 25.03, including the requirement that the Court hold a hearing before limiting access to or copying of trial exhibits, that the media has an opportunity to be heard at that hearing, and that any restriction must be

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The State has made no attempt to satisfy the joint requirements of the Access Rules and the Minnesota Rules of Criminal Procedure and for the reasons discussed above they could not satisfy these requirements. For this additional reason, the Court should reject the State's position and permit copies of the trial exhibits.

IV. Any request for access to and copies of trial exhibits should be granted immediately.

The public's right to judicial records is a right of *contemporaneous* access. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 126–27 (2d Cir. 2006) ("Our public access cases and those in other circuits emphasize the importance of *immediate* access where a right of access is found." (emphasis added)); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (noting that access to court documents "should be immediate and contemporaneous").

Since the public's presumptive right attaches as soon as a document is submitted to a court, any delays are in effect denials of access, even though they may be limited in time. *See, e.g.*, *Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1147 (9th Cir. 1983) (even a 48-hour delay constituted "a total restraint on the public's first amendment right of access even though the restraint is limited in time"); *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) ("even a one to two day delay impermissibly burdens the First Amendment"); *Courthouse News Serv. v. Jackson*, 38 Media L. Rep. (BNA) 1890, 2009 WL 2163609, at *3–4 (S.D. Tex. July 20, 2009) ("24 to 72 hour delay in access" to civil case-initiating documents was "effectively an access denial and is, therefore, unconstitutional").

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made in a written order that includes "facts and reasons" supporting the restriction and "address possible alternatives" and "explain why the alternatives are inadequate."

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As the Supreme Court observed in *Nebraska Press Association v. Stuart*, "[d]elays imposed by governmental authority" are inconsistent with the media's "traditional function of bringing news to the public promptly." 427 U.S. 539, 560–61 (1976).

The trial in this case concluded more than two weeks ago and this Court issued an order three days ago that members of the media should be permitted to access and view the trial exhibits. Yet, as discussed above, members of the Coalition have been unable to schedule viewing appointments and the Court's staff has given no indication when viewing of the exhibits might be permitted. This is intolerable. The exhibits should be made immediately accessible for both viewing and copying.

CONCLUSION

For the reasons set forth above, the Coalition respectfully requests that the Court enter an order rejecting the State's position and authorizing its staff to make copies of all trial exhibits that are able to be copied (i.e., documents, photographs, video and audio recordings and the like) available to the press and public upon request.

Because the right of contemporaneous access is so central to the First Amendment's protections and guarantees, the Court should further instruct its staff to either *immediately* make the exhibits available—and to either allowing photographing and/or filming of the exhibits or to make copies of discreet exhibits upon request—or alternatively, to digitize the enter set of trial exhibits and provide them to members of the Coalition so that multiple journalists can easily view them simultaneously (e.g., on a public website, FTP site, CD-ROM, or thumb drive).

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BALLARD SPAHR LLP

s/ Leita Walker

Leita Walker, MN #387095
2000 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2119
612-371-6222
walkerl@ballardspahr.com

Attorneys for Star Tribune Media Company LLC, Minnesota Public Radio, Hubbard Broadcasting, Inc., CBS Broadcasting Inc., TEGNA Inc., Fox/UTV Holdings, Inc., and the Minnesota Coalition on Government Information