

<b>DISTRICT COURT, CITY AND COUNTY OF DENVER COLORADO</b>  <b>Address: City and County Building 1437 Bannock Street Denver, CO 80202</b>	<p style="text-align: center;"><b>COURT USE ONLY</b></p> <p><b>Case No. 08CR10425</b></p> <p><b>Courtroom 11</b></p> <hr/> <p><b>Case Nos. 08CR10479 08CR10480 08CR10481</b></p> <p><b>Courtroom 11</b></p>
<hr/> <b>Plaintiff: THE PEOPLE OF THE STATE OF COLORADO</b>  <b>v.</b>  <b>Defendant: WILLIE CLARK</b>	
<hr/> <b>Plaintiff: THE PEOPLE OF THE STATE OF COLORADO</b>  <b>v.</b>  <b>Defendants: BRIAN HICKS WILLIE CLARK SHUN BIRCH</b>	
<b>DECORUM ORDER (COMBINING CASES)</b>	

This matter comes before the Court following the previous Decorum Order in the above captioned cases. The Court has reviewed the respective pleadings filed on issues involving the media by the above captioned Defendants, by the People, and by media representatives (hereinafter “Media”) and the United States Attorney’s Offices. The Court has also reviewed applicable authority, the Court’s respective files, and has heard argument by all counsel. The Court is fully advised.

These cases involve two separate homicide proceedings. The first, involving only Defendant Willie Clark, arises from the death of Darrent Williams. The second case, involving Mr. Clark and the remaining two Defendants, arises from the death of Kalonniann Clark. These cases have garnered significant media attention, and because of this, the Court has elected to issue an Order that will govern all future hearings, including trial, that occur in any of the above captioned cases. This Order shall govern all proceedings from this point forward, absent further specific Court Order.

The facts of the first of these cases involve the death of a high profile victim, Mr. Williams, who was at the time of his death a member of the Denver Broncos. The witness list

in that case includes other high profile witnesses, as well as a witness who is currently under the protection of the United States Marshal through the Federal Witness Security Program pursuant to 18 U.S.C. §§ 3521-3528 (1999). Those statutes require an independent assessment of a serious threat toward the witness. In the above captioned cases, there have been allegations of potential witness intimidation and threats to witnesses<sup>1</sup>. This Court has not yet been requested to make any determinations regarding witness protection in that case.

The named victim in the other case, Ms. Clark, was a witness in a previous felony prosecution, and was allegedly murdered in order to prevent the successful prosecution of that case. There are allegations of the continuing potential of witness intimidation and threats in that case as well.

Immediately following the unsealing of the Indictment in the case involving Mr. Clark alone, the Court received media inquiries and requests for Expanded Media Coverage (EMC) under the terms of Canon 3(A)(8) of the Colorado Code of Judicial Conduct. This Court previously entered an Order in that case, allowing a camera to be present in the courtroom at the time of the advisement. On that date, photographs of the Defendant were published and utilized by various local and national media outlets. Those photographs have also been used in connection with ongoing proceedings in both of these cases. Further, on the same date of that initial proceeding involving an EMC Order from this Court, Defendant's counsel at the time of the hearing in this matter advised that there were media representatives outside of Courtroom 11 who asked questions of Mr. Clark while he was being transported to the Courtroom from the holding cells, also located on the fourth floor of the Courthouse.

In proceedings following that initial Advisement, this Court denied a further EMC Request on December 18, 2008 (for the 08CR10425 case) and again on January 29, 2009 (for the remaining three cases).

Because of anticipated requests in the future for EMC, the Court elected to hold an Omnibus Hearing on April 17, 2009, and provided notice to the attorneys who have, in the past, appeared before the Court to represent those media outlets. In the Court's view, this procedure was the most likely to provide all parties and interested outlets the opportunity to participate in a meaningful way to provide the Court with all positions on the issues raised by EMC. An Order governing all proceedings in the above captioned cases will best serve the interests of all of the direct parties to this case, the media representatives and the public. This Order is intended to bind any person or entity wishing to attend any proceeding in the above captioned cases, whether they were present at the time of this Court's hearing or not.

Some factual context is required for a complete understanding of this Order. The fourth floor of the Denver City and County Building houses seven District Court felony Criminal Divisions (Courtrooms 10, 11, 12, 13, 16 and 17) as well as the Jury Commissioner's Office, the holding cells of the Denver Sheriff's Department, and the City Council Chambers for the City and County of Denver. When individuals in the custody of the Sheriff's Department are removed from the holding cells, they are walked down the hallways of the fourth floor, with

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<sup>1</sup> The U.S. Marshal's Service has requested that this Court enter Orders restricting the public's view of this witness, and U.S. Marshals appearing with that witness. The Court defers any such Orders until closer to trial.

appropriate restraints, depending upon the nature of their custody and the nature of the proceedings involved. It is frequently the case that an individual Judge will enter an Order that a Denver inmate will be clothed in civilian clothing, with no visible restraints, for purposes of trial. The District Attorney's Office also routinely uses offices located on the third and fourth floors of the building as an area to hold various witnesses who will testify, both during trial and in hearings. Those witnesses are often escorted to the various courtrooms on that same floor.

Depending upon the time of day and the day of the week, it is common to have potential jurors, Defendants in and out of custody (including those in civilian clothing and those who have visible restraints, such as handcuffs, shackles or belt chains), witnesses, spectators, District Attorneys and Defense Attorneys, individuals with business before the City Council and employees, as well as judges, together on the fourth floor. This situation requires careful and appropriate security measures to be taken, often with additional Sheriff's Deputies assigned in the hallways of the courthouse, especially on the fourth floor. At the time of the hearing, however, Captain Jodi Blair (who is in direct supervision of the courthouse) indicated that there have been recent cutbacks in the Sheriff's Department, which may directly impact the number of Sheriff's Deputies available and assigned to general security on the fourth floor.

Adding to this general state of concern are high profile cases, which often include not only intense media scrutiny, but also additional members of the public who wish to attend proceedings. While this Court is devoted to the idea that the courts must be operated so as to be accessible to the public unless specifically authorized to be a closed proceeding, this does not necessarily require the Court to allow EMC of all proceedings. Instead, the Court must directly balance the respective rights of the direct parties to the case against allowing additional access, through the media, of various proceedings.

It is axiomatic that the rights of the defendant to a fair trial are the highest priority of the Court: "No right ranks higher than the right of the accused to a fair trial." Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984). The mere existence of a camera in a courtroom, however, does not *per se* violate a defendant's Due Process rights. Chandler v. Florida, 449 U.S. 560 (1981). Existing authority makes it clear that, while the Court must take great care to grant public access to criminal proceedings, the issue of "public access" is not identical to EMC. Simply put, there is no constitutional right to use of cameras or audio-transmitting devices, as conceded by the media representatives in their brief. *See, e.g. United States v. Edmonds*, 785 F.2d 1293 (5<sup>th</sup> Cir. 1986). The First Amendment provides for a right to attend trial (*see, United States v. Hastings*, 695 F.2d 1278, 1280 (11<sup>th</sup> Cir. 1985)), "rather than a license allowing cameras or tape-recorders into the courthouse \* \* \*." The rights of the press to access a criminal proceeding are "no greater than those of any other member of the public." Nixon v. Warner Communications, Inc., 435 U.S. 589, 609, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978) quoting Estes v. Texas, 381 U.S. 532, 589, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965)(Harlan, J., concurring).

The Media has argued to this Court that there is a "presumption" in favor of media access, which may only be rebutted with specific evidence. The Media cites People v. Wiegand, 727 P.2d 383 (Colo.App.1986) in favor of this proposition. The Court respectfully disagrees with this statement of the applicable law. The Court concludes that while it has been

given the *discretionary authority* to allow EMC, there is no *presumption* in favor of EMC. Instead, this Court must balance the impact of such coverage not only against those important rights held by a criminal defendant, but also against security issues in any given case (including protection of members of the public), and security issues involving witnesses who may be harmed. It is no stretch for this Court to conclude that there is a credible issue of witness safety in these cases, given the nature of the allegations in the Kalonniann Clark case. Only after all of these respective rights and concerns have been addressed does this Court ultimately consider its own interests in the case, which involve the decorum and dignity of the Court's proceedings. While media coverage in courtrooms has become commonplace, there are significantly unique facts and circumstances in the above captioned cases which require a separate analysis.

Courts have the "broad discretion to determine what actions are necessary to regulate the courtroom." People v. Marquantte, 923 P.2d 180, 183 (Colo.App. 1995) *citing* People v. Angel, 790 P.2d 844 (Colo.App. 1989). In Marquantte, the trial court was faced with reports of witness intimidation occurring in the hallway during trial. Unfortunately, those episodes are not uncommon during trials in the Denver District Court. For this reason, this Court concludes that under the specific circumstances of this case, the Court's broad discretion extends to the hallways of the City and County Building, especially those on the fourth floor. The Court concludes that those hallways do not constitute public forums during Court hours which would require this Court to utilize a strict scrutiny analysis as to the exercise of any First Amendment rights (including, but not limited to: conducting interviews of willing participants; photography of individuals in the hallways; and access to any person appearing in the hallway for purposes of asking questions). The Colorado Supreme Court in People v. Aleem, 149 P.3d 765 (Colo. 2007) examined the issues surrounding a court's power to restrict the exercise of free speech in a courtroom setting. While the Court stopped short of concluding that courthouses themselves are non-public *fora*, the Court recited precedent holding that other areas of a courthouse outside of the courtroom itself may not be a public forum. *See, Huminski v. Corsones*, 396 F.3d 53, 90-91 (2d Cir. 2005) in which the Court noted:

The function of a courthouse and its courtrooms is principally to facilitate the smooth operation of a government's judicial functions. A courthouse serves

"to provide a locus in which civil and criminal disputes can be adjudicated. Within this staid environment, the presiding judge is charged with the responsibility of maintaining proper order and decorum. In carrying out this responsibility, the judge must ensure that the courthouse is a place in which rational reflection and disinterested judgment will not be disrupted.... [T]he proper discharge of these responsibilities includes the right (and, indeed, the duty) to limit, to the extent practicable, the appearance of favoritism in judicial proceedings, and particularly, the appearance of political partiality."

Berner v. Delahanty, 129 F.3d 20, 26 (1<sup>st</sup> Cir. 1997)(citations omitted), *cert. denied*, 523 U.S. 1023, 118 S.Ct. 1305, 140 L.Ed.2d 370 (1998).

Id., at 90-91. *See also*, United States v. Grace, 461 U.S. 171, 177, 103 S.Ct. 1702, 83 L.Ed.2d 736 (1983); and Sefick v. Gardner, 164 F.3d 370, 372 (7<sup>th</sup> Cir. 1998) (“The lobby of the [federal] courthouse is not a traditional public forum or a designated public forum, not a place open to the public for the presentation of views. No one can hold a political rally in the lobby of a federal courthouse. It is a nonpublic forum ....” (citation and internal quotation marks omitted)), *cert. denied*, 527 U.S. 1035, 119 S.Ct. 2393, 144 L.Ed.2d 794 (1999).

Instead, the Court concludes that because of the unique design and use of the fourth floor of this Courthouse, the hallways of the fourth floor are a reasonable extension of the Courtrooms located on the floor, during the hours that the Courts are in session. As the Supreme Court noted in Aleem, *supra*:

\* \* \* A courtroom is for the adjudication of civil and criminal disputes. To fulfill this purpose, courtrooms demand intense concentration on important matters. Hence, the disruption created by expressive activity within a courtroom weighs heavily against the conclusion that a courtroom is a public forum. Further, courts have not granted general public access to the courtroom for expressive use. The mere fact that the public is admitted to the courtroom does not render it a public forum.

Id., at 776, case citations omitted. While Aleem dealt exclusively with First Amendment issues within the confines of a courtroom, those policy considerations apply equally to the unique circumstances of the fourth floor of the Denver City and County Building. Those hallways demand no less intense concentration on the safe transport of prisoners, jurors, witnesses, attorneys, spectators, the public in general, and court staff in that hallway, especially in a case garnering such high profile attention. The dangers implicit in these cases to not only the safety of those participants during these hearings and trials, but also the general public, require this Court to enter Orders that are designed to minimize the disruptions and security considerations during the time proceedings are held in these cases. Further, there is a significant danger that media contacts with parties or witnesses in the hallways would directly impact the fairness of a proceeding, and potentially disrupt other Court proceedings occurring on the fourth floor. Indeed, there has been more than one trial in which a mistrial was declared as a direct consequence of media contacts with witnesses or parties in the hallways in full view of jurors<sup>2</sup>. In Tribune Review Publishing Co. v. Thomas, 254 F.2d 883, 885 (3<sup>rd</sup> Cir. 1958), the Court reasoned that, “[r]ealizing that we are not dealing with freedom of expression at all but with rules having to do with gaining access to information on matters of public interest, can it be argued that here there is some constitutional right for everybody not to be interfered with in finding out things about everybody else \* \* \*. We think that this question of getting at what one wants to know, either to inform the public or to satisfy one's individual curiosity is a far cry

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<sup>2</sup> People v. Thomas Charles Armstrong, as reported by Felisa Cardona of the Denver Post, January 3, 2008 (“*Comments near jurors bring a mistrial ruling*”) Article ID: 1391832; Further, in People v. Kevin Adams, Denver Case No. 07CR4691, the Court declared a mistrial on October 15, 2008 when a member of the media attempted to interview a criminal Defendant during trial, in full view of jurors.

from the type of freedom of expression, comment, criticism so fully protected by the first and fourteenth amendments of the Constitution. If a judge may, for the purpose of maintaining order and decorum, control the taking of pictures in his own court-room it can hardly be successfully argued that his power stops when one closes the court-room door.” (emphasis supplied). For those reasons, the Court concludes that it has authority to control the use of those hallways when necessary in order to effectuate the purposes cited in Canon 3(A)(8).

As the Court conceded at the time of this hearing, the Court concludes that the outside of the courthouse, especially the front steps of the courthouse, constitutes a public forum. Those front steps and entrances have historically been utilized for purposes of public gatherings and speeches, and this Court will not interfere with that use. Accordingly, this Court does not intend to issue any Orders restricting the access of the public or the media as to the outside of the courthouse.

The Request for EMC specifically requests that this Court allow one single still camera, and one single video camera in the courtroom; that the Court allow various members of the media to use a wide variety of electronic devices to not only take notes of the proceedings, but also to email and send other messages to their respective media outlets with updates, and also to post “blogs” in real time, directly from the Courtroom. They suggest that various limitations might be placed, including issuing permits or badges that must be worn, indicating that members of the media are allowed to utilize these electronic devices, and that they would also agree, with this access, that they would not utilize cameras in the hallways outside of this Courtroom. The media representatives argue further that this Court should not impose limitations on the media in the hallways of the fourth floor of the Denver City and County Building, and argue that those hallways (with the exception of the hallway directly outside of Courtroom 11) are public forums, both because routinely the media have utilized those hallways to photograph individuals and also to interview them, but also because the fourth floor hallway has a mixed use, which includes the City Council Chambers, and that the hall in front of those Chambers have historically been used as a public forum.

All Defendants initially object to the use of cameras in the Courtroom, but concede that this Court could appropriately allow those cameras under the Rule. They also indicate a preference that no cameras be allowed outside of the Courtroom to film the Defendants as they are walked from the holding cells to the Courtroom. Defendant’s respective counsel have advised the Court that, in a previous hearing, a member or members of the media attempted to speak directly to one Defendant, and that this was improper given the clear Constitutional rights of any criminal defendant to remain silent. This situation is of great concern to this Court. The Court knows of no legitimate purpose for any member of the public or the media to ask questions directly of a criminally charged Defendant on camera. Defendants’ counsel also argues that this type of media intrusion, once made public, subjects that Defendant to a potentially tainted jury pool because members of the public may not understand that right. Further, counsel for Mr. Clark raises the legitimate question of whether intense media coverage of his first trial, where he is the only Defendant, would seriously prejudice him as to the next trial, in which he is one of three Defendants. One other Defendant’s counsel provided this Court with information from a criminal trial that occurred recently in this Courthouse, showing this Court that certain inflammatory photographs of an exhibit, and the parties to the case,

remain on that media website. (Exh. “A” at hearing). This counsel argued to this Court at the hearing that photographs serve little purpose other than to sensationalize criminal proceedings, and commercialize dramatic testimony. Counsel for the media outlets provided this Court with a different context, and argued that the conclusions reached by Defendants’ counsel were insufficient reason to deny EMC.

The People object to the media requests, citing concerns about witness protection, and concerns about limitations on available security on the fourth floor. The United States Attorney also provided this Court with specific information regarding their requirements for security for any witness within the federal witness protection program, and indicated that photographs of either that witness or witnesses, or the Marshals assigned to protect them, would have a significant security impact and direct impact on the safety of those people.

Captain Blair advised the Court that she shared certain concerns about interactions between people in custody, victims’ and defendants’ families and friends, witnesses, attorneys and jurors on the fourth floor. She also advised the Court that there have been budget cuts in the Sheriff’s Department that are likely to directly impact available security.

At the hearing, the Media conceded that in recent experiences with direct electronic transmissions (blogging) from the courtroom, certain inaccurate information was provided to the public. This information was generally in the form of inaccurate information about the appearance of certain witnesses during those proceedings. The Court is concerned, given the number of high profile witnesses in these cases, that such inaccuracies will result in improper and undue emphasis on certain testimony to the exclusion of other evidence in the trial, and also the consequence that the Court will have to address the distractions of large crowds seeking entrance into the Courtroom, and addressing the further consequence of advising those same crowds in the event witness scheduling is not accurately reported. The Court is mindful that the Media has its own rules of professional conduct, requiring that members of the Media take care to report accurate information, but the use of immediate electronic transmissions from the courtroom reduces the time for investigation, and for corroboration of that information, before it is shared with the public.

It is nothing new for the courts, under certain circumstances, to severely limit the use of cameras or other recording devices, and to prohibit their use not only in the courtroom itself, but in the courthouse. In Seymour v. United States, 373 F.2d 629 (C.A. Tex. 1967), the Court upheld a trial court’s entry of the following Standing Order:

Misc. Order No. 381 (December 17, 1965), subscribed by each judge of the Northern District of Texas, provides: STANDING ORDERThe Judicial Conference of the United States having adopted the following resolution: ‘RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceeding, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and

that they ought not be permitted in any federal court'; and the 'environs' of the courtroom having been generally interpreted to include all areas upon the same floor of the building upon which the courtrooms are located, IT IS ORDERED that the taking of photographs or broadcasting or televising in connection with any judicial proceeding on or from the same floor of the building on which courtrooms are located is forbidden.

In that case, a member of the media had been adjudged guilty of Contempt for his violation of that Standing Order. That finding was affirmed. The Court noted at page 632:

It is beyond argument that a trial court must be afforded ample latitude to insure that an accused receives a fair trial comporting with fundamental due-process requirements- a proceeding conducted in an atmosphere of procedural decorum and as free as possible from the threat of prejudicial publicity. A defendant in a criminal proceeding should not be 'forced to run a gantlet of reporters and photographers' each time he enters or leaves the courtroom. See Sheppard v. Maxwell, 384 U.S. 333, 354, 86 S.Ct. 1507, 1518, 16 L.Ed.2d 600 (1966). The Supreme Court has recently observed that

"Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effecting prejudicial publicity from the minds of jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. \* \* \* Reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences."

Sheppard v. Maxwell, *supra*, 384 U.S. at 362-363, 86 S.Ct. at 1522, at L.Ed.2d at 620. (Emphasis added.)

The Court is not convinced that there is an overriding purpose that justifies the admission of cameras in the Courtroom in these cases. Any such purpose is equally served (as it has been for decades before Canon 3(A)(8) was adopted) by Media accurately reporting the occurrences of the day during any given proceeding. Indeed, even the presence of a camera inside the courtroom, or in the hallways of the courthouse, can lead to intimidation of jurors and witnesses alike. Protection of the private information and potentially the identities of the jurors who will be selected to try these cases is a paramount concern of this Court, given the intense public scrutiny of these cases. It is this Court's intention to preserve, to the best of its ability, the jurors' confidentiality, because that has a direct impact on those jurors' abilities to listen carefully to the evidence presented at trial, and to make a decision based only on that information, and not based upon information outside of the courtroom, or based upon a perception of public pressure.



All of this information leads the Court to conclude that, both as a matter of security of witnesses, jurors, court staff and members of the public, and also to protect the individual Defendants' Due Process rights, that it is appropriate to enter an Order prohibiting any person (media representative or not) from photographing any person involved as a witness, attorney, Court staff member or juror, in these cases. Further, after consideration of all of the varied interests in this case, the Court believes that the overriding interests of conducting a fair trial, ensuring the decorum of court proceedings, and preserving the security and safety of members of the public, as well as other direct participants in this trial, require the entry of specific Orders about the use of cameras and other electronic devices. The Court concludes that the significant potential that these proceedings will be unfairly sensationalized, and that inaccurate information will be provided to members of the public, thus increasing the risk of interference in a fair trial, justifies restrictions on those devices during these proceedings.

Because there is no efficient or effective way to identify media representatives from members of the general public who are present in this Courthouse on any given day, THE COURT ORDERS that no camera of any kind (video, still, cell phone or computer) shall be used on the fourth floor of the City and County Building from the hours of 8:00 a.m. until 5:30 p.m. on any day for which a proceeding in these cases is scheduled, unless otherwise ordered. A copy of a Court Order advising of this prohibition will be posted throughout the Fourth Floor to provide notice to all persons who are present as to this prohibition, and this Order shall be enforced through the Denver Sheriff's Department. Any person in violation of this portion of the Court Order will be subject to further process, including, but not limited to, contempt proceedings, and any electronic device used in derogation of this Order shall be confiscated pending further Court Order. This Order is required, in the Court's view, to protect witnesses and jurors from potential intimidation, and to prevent dissemination of any image of any witness or juror to the general public. The very real potential of danger to parties, witnesses, jurors, attorneys and Court staff require this Order.

THE COURT FURTHER ORDERS that the fourth floor hallways shall not be utilized by any person to conduct an interview of any person during those same hours, in order to minimize the disruption to this, and other, Courtrooms conducting business during those hours. Instead, the Court will make City Council Chambers available for this purpose, upon the request of any member of the media to use those Chambers. Within the confines of City Council Chambers only, the Court will allow the use of video or still cameras by members of the media, in order to record such interview. Any such camera shall not be directed outside of those Chambers to record images of persons who are in the fourth floor hallway.

THE COURT FURTHER ORDERS that no camera of any kind will be allowed inside Courtroom 11. The Court finds insufficient reason to allow this EMC, given the continuing issues of security, and also the Due Process rights of the individual Defendants. While there may well be cases where cameras in the Courtroom are appropriate and reasonable (this Court has previously allowed such access), the Court is convinced that the nature of these specific cases, along with the potential risk for witnesses weigh against allowing EMC. The Court takes no position on the availability of sketch artists within the Courtroom, but Orders that no image or depiction of any kind will be allowed as to any juror, the Court or the Court's staff. The

Court may enter further Orders, as necessary and appropriate, regarding any potential witness involved in the case.

THE COURT FURTHER ORDERS that it will allow one or more audio microphones to be utilized inside the Courtroom, in order to allow audio access to proceedings in these cases. The specifics of this arrangement will require that there be a specific proposal made to the Court as to the location, control and transmission of that audio. The Court must also involve Court employees in that process, in order to assure that there would be no recording or broadcast of attorney/client communications, or sidebar discussions with the bench and any party. In this respect, therefore, the Court GRANTS the Request for EMC. In the Court's view, this microphone serves a legitimate purpose of allowing contemporaneous reporting to the public of the proceedings in the Courtroom, with little or no potential of creating a dangerous situation to any witness, juror or Court staff. The Court would be amenable to considering that a "satellite" room be set up, so that media representatives could listen to the proceedings in real time, so long as adequate arrangements consistent with the Court's resources can be made. If said "satellite" room is made available the same restrictions regarding EMC and electronic transmissions apply. In the event any party wishes to request this arrangement, they should make a specific request so that the Court may arrange for them to meet with Court personnel to determine how audio will be set up.

THE COURT FURTHER ORDERS that no person shall use any electronic device for the purposes of sending an email communication, text message, blogging or tweeting, taking a photograph or otherwise directly communicating with any person or entity outside of the Courtroom during any proceeding attended by that person within the Courtroom itself. The Court is unable to differentiate in a meaningful and effective manner between members of the public who seek to send such communications, and media representatives who seek to send those communications for legitimate purposes. There is a significant risk that those communications would be utilized in order to place witnesses, parties, attorneys, jurors or Court staff in physical jeopardy. While the Court recognizes that it is never the intention of media representatives to have that impact, the Court nonetheless recognizes that public dissemination of information such as timing of witnesses being present, identifying information for witnesses and other such information makes the potential that the information will be used for nefarious purposes more likely than it would be in the absence of such immediate communication. This Order is not intended to prohibit such communication by members of the media who are present from making such contacts outside of the fourth floor during breaks in the proceedings.

THE COURT FURTHER ORDERS that it shall make available, on a first-come, first-serve basis, two rows of benches in the Courtroom for the use of media representatives. In that section only, the Court would allow the use of a laptop computer for the purposes of taking notes only, but any such laptop must have any available camera lens and microphone disabled. Further, any media representative using a laptop must comply fully with other Orders of this Court involving contemporaneous communication outside of the Courtroom.

This Order shall remain in full force and effect as to any proceeding in the above captioned cases. A brief version of this Order shall be posted on the Fourth Floor of the City and County Building, and on the outside of Courtroom 11 to serve as notice to all persons as to

the contents of this Order. The Court reserves the right to amend this Order *sua sponte* in the future, should an amendment be appropriate. In the event of any Request for Expanded Media Coverage being filed by any person or entity, the Court will provide a copy of this Order to the requesting party. This Order shall also be made available electronically on the Colorado State Judicial Branch website at: <http://www.courts.state.co.us/Media/Opinions.cfm> for review by any member of the public. Questions about this Order should be directed to either Rob McCallum or Jon Sarché, Public Information Officers through the State Court Administrator's Office, at that same website, <http://www.courts.state.co.us/Media/Index.cfm> or by telephone at 303-837-3633 for Rob McCallum, or 303-837-3644 for Jon Sarché.

DATED: Tuesday, May 19, 2009

BY THE COURT:



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Christina M. Habas  
District Court Judge

cc: All Counsel of record

<b>DISTRICT COURT, CITY AND COUNTY OF DENVER COLORADO</b>  <b>Address: City and County Building 1437 Bannock Street Denver, CO 80202</b>	<b>COURT USE ONLY</b>  <b>Case Nos. 08CR10479 08CR10480 08CR10481</b>  <b>Courtroom 11</b>
<b>Plaintiff: THE PEOPLE OF THE STATE OF COLORADO</b>  <b>v.</b>  <b>Defendants: BRIAN HICKS WILLIE CLARK SHUN BIRCH</b>	
<b>DECORUM ORDER (COMBINING CASES)</b>	

THIS ORDER governs all persons who are present during the hours of 8:00 a.m. and 5:30 p.m. on the Fourth Floor of the City and County Building. THE COURT ORDERS that no person shall use a camera, whether a still camera, video camera, cell phone camera, or other object for purposes of taking photographs of any person, on the Fourth Floor, including but not limited to the confines of Courtroom 11, except within the direct confines of the City Council Chambers, or as otherwise allowed by specific Court Order.

IN THE EVENT OF VIOLATION OF THIS ORDER, the person who has possession of the camera shall be subject to further Court proceedings, including, but not limited to, proceedings for Contempt of Court for violation of this Court Order. A copy of this Order shall be posted in several conspicuous places on the Fourth Floor, and shall be made available to any person upon request by the Clerk of Courtroom 11.

WITHIN COURTROOM 11, no person shall use any telecommunication or electronic device of any kind, including but not limited to cell phones, Blackberry devices, iPhones, laptop computers or any other electronic device for the purposes of transmitting emails, texts, blogs or other communications, **without prior Court approval**. In the event any person utilizes any such device within the Courtroom in violation of this Order, the device shall be immediately confiscated, and the person subject to further Court proceedings, including, but not limited to, proceedings for Contempt of Court for violation of this Court Order.

DATED: Tuesday, May 19, 2009

BY THE COURT:



Christina M. Habas  
District Court Judge