

STATE OF MINNESOTA  
HENNEPIN COUNTY

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

The Honorable Peter A. Cahill

vs.

J. Alexander Kueng  
Thomas Kiernan Lane  
Tou Thao

Dist. Ct. File 27-CR-20-12953

Dist. Ct. File 27-CR-20-12951

Dist. Ct. File 27-CR-20-12949

Defendant

**DECLARATION OF EMMY PARSONS**

I, Emmy Parsons, under penalty of perjury and subject to Minn. Stat. § 358.116, declare as follows:

1. I am an attorney with the law firm of Ballard Spahr, LLP, 1909 K Street, NW, 12<sup>th</sup> Floor, Washington, D.C. 20006. I am licensed to practice law in the District of Columbia and the state of New York, and am admitted to practice before this Court *pro hac vice*. I am counsel for the Media Coalition and submit this declaration in support of its Supplemental Memorandum in Opposition to Defendants' Motion to Exclude Video and Audio Recordings of Proceedings in the above-referenced case.

2. I have personal knowledge of the facts stated in this declaration, and I am competent to testify to them.

3. Attached hereto as Exhibit A is a true and correct copy of this Court's January 28, 2022 written remarks provided to the Advisory Committee on the Rules of Criminal Procedure regarding cameras in the courtroom, which appended this Court's November 4, 2020 order in the above-captioned matter.

4. Attached hereto as Exhibit B is a true and correct copy of Paul Walsh, As

*retirement looms, Judge Regina Chu reflects on a long career, impact of Kimberly Potter Trial*, Star Tribune (Apr. 1, 2022), <https://www.startribune.com/regina-chu-judge-who-presided-over-kimberly-potter-trial-is-retiring/600161338/?refresh=true>.

5. Attached hereto as Exhibit C is a true and correct copy of Chisty E. Lopez, *Opinion: The officers who didn't stop Derek Chauvin are on trial. Their prosecution may matter even more than his did*, Washington Post (Jan. 23, 2022), <https://www.washingtonpost.com/opinions/2022/01/23/officers-who-didnt-stop-derek-chauvin-are-trial-their-prosecution-may-matter-even-more-than-his-did/>.

6. On December 15, 2021, I accessed the livestreamed proceedings of the criminal trial *State of Minnesota vs. Kimberly Ann Potter*, Dist. Ct. File 27-CR-21-7460, provided by five news organizations including *Star Tribune*, KARE 11, CBSNews, Fox 9 and MPR News. According to the “live” viewer statistics reported by these livestreams, there were roughly 16,000 viewers at approximately 12:00 p.m. CT.

I declare under penalty of perjury that everything I have stated in this document is true and correct to the best of my knowledge.

Dated: April 7, 2022



Emmy Parsons

Signed in Washington, D.C.

# Exhibit A

STATE OF MINNESOTA  
FOURTH JUDICIAL DISTRICT COURT

PETER A. CAHILL  
JUDGE  
HENNEPIN COUNTY GOVERNMENT CENTER  
MINNEAPOLIS, MINNESOTA 55487-0422  
(612) 596-8733  
peter.cahill@courts.state.mn.us

January 28, 2022

To the Advisory Committee on the Rules of Criminal Procedure

Re: Cameras in the courtroom

Thank you for the opportunity to comment on potential modifications to the rules governing cameras in the courtroom. My comments are limited to the use of cameras in criminal cases.

As a district court judge, I have opposed the use of cameras in the courtroom in criminal cases, but my recent experience in *State v. Chauvin* has changed my opinion such that I now believe cameras in the courtroom can be helpful in promoting trust and confidence in the judicial process and are sometimes necessary to safeguard both the defendant's right to a public trial and the public's right of access to criminal trials. I am not, however, a proponent of removing all limits on the use of cameras. Instead, I believe the use and limitations on cameras in criminal cases should be left primarily to the discretion of the trial judge presiding over an individual case. As trial judges, it is our responsibility to manage hearings and trials such that dignity and decorum are maintained while constitutional rights and Due Process requirements are respected. As part of that process, cameras can facilitate effective trial management in the right case but might be unnecessary or inappropriate in other cases. While parties certainly should have input into the court's decision, the party-consent provision that is currently in the rules should be eliminated.

A trial court judge's discretion should not be completely unfettered and should be subject to certain presumptions and prohibitions. For example, I believe that there should be a presumption against broadcasting pretrial hearings. Those hearings will often involve litigation about evidence that might ultimately not be admissible and the possibility that potential jurors could be inadvertently exposed to such excluded evidence should be limited as much as possible before trial. On the other hand, there should be a presumption that cameras be allowed in trials and sentencings. Jurors are routinely ordered to avoid media coverage once jury selection begins, and my experience, based on post-trial discussions with jurors, is that jurors regularly follow that order. To guide trial judges in deciding whether cameras will be allowed, factors

should be listed in the rule, including whether there is high public interest in the trial, whether security or public health concerns exist that would merit restriction of observers from the physical courtroom itself, and whether the use of cameras would promote transparency and public access.

If cameras are allowed, limitations should be placed in the rule concerning what proceedings should be limited to audio coverage only or not broadcast at all. Jurors should never appear on video. No minor witnesses should appear on video. No criminal sexual conduct victims should appear on video or audio. Autopsy photos or video should never be broadcast outside the courtroom. The same should be true for any exhibits that are extremely graphic or emotionally disturbing.

Finally, as you can tell from my order in *State v. Chauvin* (attached), details matter, and the trial judge should have wide discretion over the choice of the pool camera vendor and the procedures to be followed during the trials or hearings. A single person claiming to be a member of the media who just wants to prop a camera up in the courtroom would be distracting and not meet the goal of cameras being unobtrusive. To effectuate all the detailed procedures that should be a part of any court order allowing cameras, only experienced and professional media sources should be utilized.

Thank you again for allowing me to share my thoughts.

Sincerely,



Digitally signed by Cahill, Peter

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Peter A. Cahill  
Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

**STATE OF MINNESOTA,**

Plaintiff,

**ORDER ALLOWING  
AUDIO AND VIDEO COVERAGE  
OF TRIAL**

vs.

**DEREK MICHAEL CHAUVIN,  
TOU THAO,  
THOMAS KIERNAN LANE,  
J. ALEXANDER KUENG,**

Dist Ct. File 27-CR-20-12646

Dist Ct. File 27-CR-20-12949

Dist Ct. File 27-CR-20-12951

Dist Ct. File 27-CR-20-12953

Defendants.

This matter came before the Court on June 29, 2020 and September 11, 2020, on Defendants' motions for audio and video broadcast of the trial(s) in these cases.

Matthew Frank, Assistant Attorney General, appeared on behalf of the State of Minnesota at the June 29, 2020 hearing. Keith Ellison, Minnesota Attorney General, Matthew Frank, Assistant Attorney General and Neal Katyal, Special Assistant Attorney General, appeared on behalf of the State of Minnesota at the September 11, 2020 hearing. The State does not consent to audio or video coverage of any trials in these cases.<sup>1</sup>

Eric J. Nelson, Attorney at Law, appeared on behalf of Defendant Chauvin. Robert M. Paule and Natalie R. Paule, Attorneys at Law, appeared on behalf of Defendant Thao. Earl P. Gray, Attorney at Law, appeared on behalf of Defendant Thomas Lane. Thomas C. Plunkett,

<sup>1</sup> The State filed its July 27, 2020 letter stating this position into all for cases. *See, e.g., Chauvin*, 27-CR-20-12646, Dk # 62; *Thao*, 27-CR-20-12949, Dk # 66; *Lane*, 27-CR-20-12951, Dk # 76; and *Kueng*, 27-CR-20-12953 Dk # 70.

Attorney at Law, appeared on behalf of Defendant Kueng. All Defendants were present at the June 29 and September 11, 2020 hearings, with Chauvin appearing remotely via Zoom at the June 29, 2020 hearing. All Defendants have requested audio and video broadcast of the trial pursuant to Rule 4.02(d) of the Minnesota General Rules of Practice for the District Courts.

Based upon all the files, records, and proceedings, the Court makes the following:

### **ORDER**

1. The joint jury trial to be held in the above-captioned cases commencing March 8, 2021 may be recorded, broadcast, and livestreamed in audio and video subject to the conditions listed below.
2. Audio and video recording, broadcasting, and livestreaming will be allowed only from Courtroom 1856, the trial courtroom, of the Hennepin County Government Center and only during trial sessions. Only matters that are on the record are subject to audio coverage. Sidebar discussions among the Court and counsel will be presumed to be off the record unless the Court indicates otherwise. Off the record matters may be covered by video, but only when the judge is on the bench and the trial is in session.
3. No video photography, still photography, or audio recording may be conducted in any other Hennepin County Government Center location where the use of recording devices is otherwise prohibited.
4. Up to three video cameras may be installed in the trial courtroom: one in the back of the courtroom facing the witness stand, one on the wall behind the jury box, and one on or near the bench facing the lectern where counsel examines witnesses. After installation before the beginning of trial, cameras will not be moved from their fixed positions.

5. Video cameras will be installed and operated by a single media organization (“Pool Producer”), selected by the Court, that is experienced in televising court proceedings. The Pool Producer will also be responsible for producing a single transmission feed to the Court for use in overflow courtrooms and to media outlets for recording, broadcasting, and livestreaming. The Pool Producer will not be compensated for its operation of the cameras and production of the single transmission feed. Neither the Pool Producer nor any media outlet will hold a copyright or any other intellectual property right for any of the raw footage from cameras or the single transmission feed that is produced that would prevent any other media outlet or entity from using, broadcasting, or sharing the footage or any other free use thereof. The Pool Producer shall also manage an audio, still photography, and video feed from the computers being used to publish exhibits to the jury, and may include such footage in its production of the single transmission feed. Finally, the Pool Producer will provide a “YouTube ready” version of the single transmission feed for the Minnesota Judicial Branch to use as it wishes.
6. Pan, tilt, and zoom (PTZ) functions of cameras may be used at the discretion of the Pool Producer, but with the following limitations:
  - a. No juror or potential juror shall appear in any video at any time. Audio of potential jurors during jury selection will be allowed, except that no audio shall be allowed for any *in camera* examination of a juror pursuant to Minn. R. Crim. P. 26.02 subd. 4(4).
  - b. No witness under the age of 18 shall appear in any video unless the witness and at least one parent or guardian of the witness consents in writing before the witness is called. Audio coverage shall be allowed regardless of whether video is allowed.
  - c. No members of the George Floyd family shall appear in any video unless the witness consents in writing or orally on the record before the witness is sworn. Audio coverage shall be allowed regardless of whether video is allowed.



- d. With the exception of when a verdict is taken, no video of counsel tables, including video of counsel for the State, the defendants, or defense counsel, shall be allowed unless all tables, counsel and parties are visible in the image (*i.e.*, no zooming in on any one table of participants).
  - e. The camera on or near the bench cannot be positioned or manipulated to view anything on the horizontal surface of either the bench or witness stand.
  - f. Camera PTZ functions shall be performed remotely and as quietly as possible so as to be imperceptible to trial participants.
7. The Pool Producer shall have a technician present in the courtroom during trial to troubleshoot and to facilitate communication between the Court and the Pool Producer.
  8. No microphones will be placed at any counsel table and no audio coverage of conversations occurring at counsel tables shall be allowed.
  9. Within two weeks of the conclusion of trial, the Pool Producer will provide to the Fourth Judicial District Administrator four copies of the single transmission feed. The District Administrator will file a copy of the single transmission feed as a court exhibit in each of the four cases. The format of the copies should be in a format approved by the Court.
  10. The attached memorandum is incorporated.

**BY THE COURT:**

Digitally signed by Cahill, Peter  
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Peter A. Cahill  
Judge of District Court

## Memorandum

The right to a public trial, guaranteed by both the Sixth Amendment of the United States Constitution and Art I, § 6 of the Minnesota Constitution, is for the benefit of the defendant, not the public. *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 381 (1979); *State v. Lindsey*, 632 N.W.2d 652, 660 (Minn. 2001). This right ensures that:

the public may see [the defendant] is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and the importance of their functions.”

*Gannett Co.*, 443 U.S. at 380; *see also Estes v. Texas*, 381 U.S. 532, 538-39 (1965).

But concurrent with the defendant’s right to a public trial is the press and general public’s First Amendment right of access to public trials, recognized in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573, 580 (1980), *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 605-06 (1982), and *Waller v. Georgia*, 407 U.S. 39, 44 (1984). The interests promoted by this First Amendment right of public access are similar to those promoted by the defendant’s Sixth Amendment right to a public trial:

Public 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. . . . Moreover, public access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process. And in the broadest terms, 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.

*Globe Newspaper*, 457 U.S. at 606 (citations omitted).<sup>2</sup>

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<sup>2</sup> *See also Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508-09 (1984) (emphasis in original; citations omitted):

The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system. . . . [The openness of criminal trials] has what is sometimes described as a “community therapeutic value.” . . . Criminal acts . . . often provoke public concern, even

The defendant's Sixth Amendment right to a public trial and the public and media's rights of access to criminal trials under the First Amendment are not unlimited. *Globe Newspaper*, 457 U.S. at 606; *State v. Fageroos*, 531 N.W.2d 199, 201 (Minn. 1995). In the past, failures to restrict public and media access inside the courtrooms of high-profile trials resulted in media action that was so intrusive and disruptive that defendants' rights to a fair trial were violated.<sup>3</sup> While the right of the press and public to attend criminal trials is sacrosanct, and carries with it the right to report what has occurred during the trial, the right does not include a right to "telecast" the actual proceedings. *Estes v. Texas*, 381 N.W.2d 532, 541-542 (1965).

Against this historical background, the Minnesota Supreme Court promulgated the current version of Minn. Gen. R. Prac. 4, which limits audio and visual media coverage of criminal proceedings. While that rule sets out a general rule of prohibition,<sup>4</sup> it also allows for the visual and/or audio recording and reproduction of trial proceedings with the consent of all parties.<sup>5</sup> Even with the consent of all parties, visual or audio recording of trial proceedings is limited.<sup>6</sup> Normally, this rule can be applied without concern that it will impinge on the right to a public trial or the right of access held by the public and press. Spectators may freely attend trials, and the usual trial receives little attention, except from family and friends of the victim or

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outrage and hostility; this in turn generates a community urge to retaliate and desire to have justice done. . . . Whether this is viewed as retribution or otherwise is irrelevant. When the public is aware that the law is being enforced and the criminal justice system is functioning, an outlet is provided for these understandable reactions and emotions. Proceedings held in secret would deny this outlet and frustrate the broad public interest; by contrast, public proceedings vindicate the concerns of the victims and the community in knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected.

<sup>3</sup> See *Estes v. Texas*, 381 U.S. 532 (1965); see also *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 548-549 (1980) (discussing trial in the Lindbergh baby kidnapping and murder).

<sup>4</sup> Minn. Gen. R. Prac. 4.01.

<sup>5</sup> Minn. Gen. R. Prac. 4.02(d). All Defendants have moved for audio and video broadcast of the trial. The State has objected.

<sup>6</sup> Minn. Gen. R. Prac. 4.02(d)(i)-(v).

the defendant and the Court can easily accommodate those wishing to attend the trial in person. On occasion, members of the media attend and report on the proceedings. All spectators, whether journalists, interested parties, or casual observers, may, in normal times, come and go as they please.

The instant situation, however, not only is abnormal—it is in fact quite unique. The COVID-19 pandemic persists and requires social distancing, especially during jury trials. All four Defendants here have been joined for trial by separate order filed today in all four cases in which this Court has granted the State’s motion for trial joinder. The joint trial requires extra counsel tables, and thus a higher demand on the space within the courtroom. Even when this Court used the largest courtroom in the Fourth Judicial District<sup>7</sup> for the joint motion hearing on September 11, 2020, only a handful of family and media representatives could fit into the courtroom given all the parties and counsel and the social distancing requirements in the courtroom necessitated by the COVID-19 pandemic and various orders issued by Chief Justice Gildea and the Judicial Council in the wake of the COVID-19 pandemic.<sup>8</sup> Most family and media had to observe the proceedings through a closed-circuit feed to other courtrooms,<sup>9</sup> and even then had trouble hearing all of the proceedings. The general public could only observe from a closed-circuit feed to a courtroom several blocks away in the Hennepin County Government Center. The closed-circuit feed was limited to a static wide-view of the courtroom

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<sup>7</sup> Courtroom 630 of the Hennepin County Family Justice Center.

<sup>8</sup> See, e.g., <https://mncourts.gov/mncourtsgov/media/CIOMediaLibrary/COVID-19/Statewide-JMRT-Recommendations-for-Jury-Trials.pdf>; <https://mncourts.gov/mncourtsgov/media/CIOMediaLibrary/COVID-19/Order-5152020.pdf>; <https://mncourts.gov/mncourtsgov/media/CIOMediaLibrary/COVID-19/Order-070720.pdf>.

<sup>9</sup> Arguably, the use of these “overflow courtrooms” necessitates audio and video coverage of the proceedings that is not permitted by Minn. Gen. R. Prac. 4.02(d).

from a single camera above the jury box. This was a hearing that did not require space for jurors and it was still cramped.

A courtroom has been rebuilt in the Hennepin County Government Center, Courtroom 1856, for the upcoming joint trial in these cases. Spacing requirements mean there will be little, *if any*, room for any spectators in that courtroom during the trial.<sup>10</sup> That includes not only family members and friends of George Floyd and the Defendants, but also members of the public and the press.

Not surprisingly, these cases continue to hold the interest of the press and the general public on an international scale. Virtually every filing by the parties in these cases is reported in the media, both locally and nationally. This Court's substantive orders also receive local and national news coverage. Protests demanding justice for George Floyd continue. It is expected that, even with some overflow courtrooms, the demand by family members, the public, and the press to attend the joint trial will outstrip the court's ability to provide meaningful access.

This Court concludes that the only way to vindicate the Defendants' constitutional right to a public trial and the media's and public's constitutional right of access to criminal trials is to allow audio and video coverage of the trial, including broadcast by the media in accordance with the provisions of the attached order. As the U.S. Supreme Court observed in *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966):

A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. . . . The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.

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<sup>10</sup> A non-traditional setting for the trial (high school auditorium, *etc.*) is not a feasible alternative because of the security concerns outlined in a separate Order for an anonymous jury, also being filed today.

The Court acknowledges that the attached order allows for greater audio and video coverage than that contemplated by Minn. Gen. R. Prac. 4.02(d), even if all parties had consented. It could be argued that the Court should simply follow the limitations of the rule to protect the constitutional rights of the Defendants, the public, and the press. The limitations of the rule are so extensive, however, that nothing would be known about the empaneled jurors, all witnesses could veto coverage of their testimony, and the public would be left with nothing but the arguments of counsel. That is hardly a basis for the public “to participate in and serve as a check upon the judicial process.”

The Court’s attached order seeks to accommodate the interests served by the current rule by expanding audio and video coverage only as necessary to vindicate the Defendants’ constitutional right to a public trial and the public’s and press rights of access to criminal trials in the unique circumstances currently prevailing in the COVID-19 pandemic and the intense public and media interest in these cases. By doing so, the Court is confident that “the public may see [that Defendants] [are] fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep [their] triers keenly alive to a sense of their responsibility and the importance of their functions.”

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# Exhibit B

LOCAL

# As retirement looms, Judge Regina Chu reflects on a long career, impact of Kimberly Potter trial

The world watched live as the manslaughter trial of the fired Brooklyn Center officer kept the spotlight on police use of force.

By Paul Walsh (<https://www.startribune.com/paul-walsh/6134706/>) Star Tribune |

APRIL 1, 2022 — 9:23PM

Hennepin County District Judge Regina Chu had second thoughts when her chief asked her to preside over the manslaughter trial of ex-Brooklyn Center police officer Kimberly Potter — another case certain to bring intense public interest and emotion — but a sense of duty led her to set them aside.

That trial, which led to Potter's conviction and prison sentence, became the hallmark of Chu's 20-year career on the bench, but also made for emotional days and restless nights.

Now, fewer than six weeks after she sent Potter to prison on a two-year sentence for the death of Daunte Wright, Chu will hang up her robe next month.

"I thought about the trial a lot" away from the courtroom, Chu, 68, said in an interview with the Star Tribune on Friday, one day after Gov. Tim Walz announced her retirement.

"I would wake up in the middle of the night thinking about it. We had this rule at home: No talking about Potter after 8 o'clock," Chu said of her pact with her husband, Jack Moore. "And then we'd be in bed at 10, and I'd go, 'I just thought about something, Jack.'"

"I sleep a lot better now. Let's just say that."

Chu was unapologetic about letting her emotions surface in the courtroom on Feb. 18 as she explained the sentence, which fell well below state guidelines, to the stunned disapproval of Wright's family members and their supporters. Potter will serve in prison 16 months of the 24-month sentence for the death of Wright, 20, a Black man, killed when Potter fired her handgun instead of her Taser at him during a traffic stop.



GLEN STUBBE - STA

Judge Regina Chu, the Hennepin County District Court judge who recently presided over the manslaughter trial of fired Brooklyn



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"It was the saddest case I've had in 20 years, and I've had a lot of sad cases," Chu said. "You try to control [emotions], but judges are human beings."

A hitch in her voice forced her to pause before she continued, "I'm not really a crier, but I've cried in other cases before. ... I don't think there is any judge on this bench who hasn't cried at one time or another. At least, I would highly doubt it."

Chu could have sought reelection in the fall to another six-year term, but the state's mandatory retirement age for jurists of 70 would have meant her departure from the bench by July 2023 after barely 1½ years.

Instead, Chu submitted her retirement letter to Walz on Feb. 15, three days before she imposed Potter's prison sentence. She's adamant that the Potter trial did not influence her decision.

With a husband who has a 1½-year head start on retirement from a career as a lawyer, Chu said she made up her mind many weeks before the trial started that it was about time to look forward to volunteer tutoring, traveling and working on her cooking skills.

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The daughter of Chinese immigrant parents who fled communism in the late 1940s, Chu became the first Asian American female district judge in Minnesota, when she was appointed by Gov. Jesse Ventura in 2002. She was elected in 2004 and reelected twice, sending her on a path toward one of the most scrutinized legal proceedings in state history in her final months on the bench.

The two-year sentence imposed by Chu fell well below the state guidelines of about six to roughly 8½ years for first-degree manslaughter for a defendant like Potter, who had no other criminal history. The presumed term was a little more than seven years.

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Wright's family and attorneys angrily condemned Chu after the sentencing, saying the judge had been wrongly persuaded by Potter's often teary expressions of remorse.

Chu on Friday expressed no misgivings about her sentence, nor did she second-guess the verdicts, saying, "I respect the jury. I've always been impressed with how seriously juries take their duties, and how intently they listen to the evidence, and how hard they try to make the right decision."

In the run-up to Chu presiding over Potter's trial, protesters gathered outside the downtown Minneapolis building where they believed she lived and advocated for her to allow the court proceedings to be livestreamed. [Chu eventually reversed a decision against live streaming the trial \(https://www.startribune.com/former-brooklyn-center-officer-kimberly-potter-s-trial-will-be-livestreamed/600114624/\)](https://www.startribune.com/former-brooklyn-center-officer-kimberly-potter-s-trial-will-be-livestreamed/600114624/), saying protesters did not influence her but rather a resurgence of the COVID-19 pandemic. In retrospect, she said, both the Potter trial and the trial ex-Minneapolis officer Derek Chauvin, convicted of murdering George Floyd, proved to her that cameras can be present in the courtroom without being disruptive.

"I thought it was appropriate in the two cases and it went very smoothly, but I'm going to leave it to others as to what the parameters should be [in the future]," she said. "I forgot they were even there..."

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Chu nodded from behind her desk in chambers Friday toward a rowing machine she brought to her office after building security wouldn't let her work out in the gym — a testament to the lengths she went to keep her head clear.





# Exhibit C

# Opinion: The officers who didn't stop Derek Chauvin are on trial. Their prosecution may matter even more than his did.

By [Christy E. Lopez](#)

Contributing columnist

January 23, 2022 at 3:46 p.m. EST

The federal criminal trial of the three police officers who stood by as fellow officer Derek Chauvin slowly killed George Floyd begins Monday in St. Paul, Minn. This trial may be even more important than Chauvin's was.

Former Minneapolis officers J. Alexander Kueng, Thomas K. Lane and Tou Thao are charged with failing to render medical aid after Chauvin pinned Floyd's neck to the ground for more than nine minutes on May 25, 2020. Additionally, Kueng and Thao are charged with failure to intervene to stop Chauvin. Legally, the trial is unprecedented. Chauvin, who was convicted in April on state murder and manslaughter charges and later pleaded guilty to a federal charge of violating Floyd's constitutional rights, was the senior officer on the scene that day (Lane and Kueng had only been on the streets for a few days). While a "duty to intervene" to prevent another officer from using unreasonable force has existed for 50 years, it has led to few federal prosecutions. In fact, I can find no federal prosecutions of lower-ranking officers for failing to intervene to prevent a higher-ranking officer — or even a peer officer — from using unreasonable force.

Thus, this trial could set federal precedent for holding officers criminally culpable not just for committing civil rights violations themselves, but also for failing to prevent another officer — even a peer or superior officer — from committing them. And that precedent could add momentum to a badly needed sea change in policing — toward a shared expectation that every officer will take all feasible steps to prevent another officer from violating constitutional rights, regardless of rank.

There are signs this shift may be underway already. Compare the experience of former Buffalo officer Cariol Horne, fired after intervening in 2006 to prevent another officer from using an unnecessary chokehold, to that of a Sunrise, Fla., officer who in November was grabbed by the throat by a sergeant after she intervened to stop him from using apparently excessive force. Horne spent years fighting her firing before finally being vindicated last year. In contrast, Sunrise Police Chief Anthony Rosa answered police union criticism of his support for the intervening officer with a long statement further praising the officer.

It is difficult to overstate the impact such a change culture would have. As I wrote just a few days after Floyd's death, our central concern should be preventing deaths like his; no after-the-fact measure of accountability can make up for the brutal, unnecessary snuffing out of a human life. Intervention by officers in real time is often the best way — sometimes the only way — to prevent harm.

Further, building a culture of intervention is an essential component of broader efforts to transform policing and public safety. When officers stand by while another officer causes needless harm, they commit a separate, in some ways more corrosive, damage: the delegitimizing of police and rule of law that takes hold when abuse committed by bad-apple officers is tacitly condoned by passive bystander officers.

Another reason the trial of Kueng, Lane and Thao is so important is that the particular facts of Floyd's murder underscore the importance of training officers in *how* to effectively intervene. Turning the legal duty to intervene into routine practice requires building a policing culture that supports active bystandership. Accountability — criminal, civil and administrative — is part of this, but so is demonstrating that officers will be supported when they step in. Training signals that support and increases the likelihood that interventions will be effective — a precursor to intervention becoming the norm. While not having been trained cannot be an excuse to avoid accountability for a failure to intervene, strong training can create a culture in which effective interventions are more likely.

In Minneapolis, for instance, Lane twice asked whether Floyd should be rolled onto his side. He was first rebuffed and then ignored. Active bystandership programs, such as the one focusing on policing that I helped found at Georgetown Law, teach people to anticipate this reaction and be prepared to overcome it. We use the acronym PACT — for probe, alert, challenge, take action — to help officers remember not only the potential need to ratchet up intervention, but also how to do so. Officers role-play escalating stages of intervention. Imagine if just one of the officers had directly challenged Chauvin ("Take your knee off his neck!") and, if that didn't work, taken action to physically remove him.

Training cannot guarantee better outcomes, but when good training is bolstered by accountability — like that possible through the trial in St. Paul — it can become a potent component of culture change. Building this culture in policing is essential, not only to prevent tragedies like Floyd's death but also to stop the everyday violations that steadily erode police legitimacy and that other officers are often the only ones in a position to prevent.