

STATE OF MINNESOTA
HENNEPIN COUNTY

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

The Honorable Peter A. Cahill

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

Declaration of Suki Dardarian

Suki Dardarian, declares as follows:

1. I am Managing Editor of the *Star Tribune*. I submit this declaration in support of the Media Coalition's Opposition to the State's Motion for Reconsideration of Order Allowing Audio and Video Coverage of Trial. This declaration is based on my review of *Star Tribune's* records and published news reports, on my personal knowledge, and on conversations I have had with the journalists I supervise. I am competent to testify to the facts set forth below.

2. I have been a journalist for nearly 40 years and I have been managing editor at the *Star Tribune* since 2014. I have personally covered many civil and criminal trials throughout my career as a journalist. I have attended certain pretrial proceedings in the above-referenced case and I am overseeing the *Star Tribune's* coverage of it. I also oversaw *Star Tribune's* coverage of the criminal trial of Mohamed Noor, and that experience informs the views stated below.

3. I understand that the State is challenging the Court's decision, based on the exigencies of the COVID-19 pandemic and the public trial guarantees of the First and Sixth Amendments, to allow extensive audio-video coverage of the Trial. I further understand that the State believes the Court can satisfy the constitutional requirements of a public trial by sending a closed-circuit

audio-video feed of the proceedings to an overflow room at the courthouse. I have serious concerns about the feasibility of the State's proposal.

4. The courtroom in the Noor trial was not large enough to accommodate every member of the press and public who wanted to attend. Court staff wedged as many seats into the gallery as possible and everyone sat shoulder to shoulder. Some members of the media had reserved seats but those who did not tried to be the first to arrive every morning, to beat other members of the press and public to a non-reserved seat in the courtroom. This meant that lines often formed outside the courtroom where everyone was made to go through rigorous security. Overflow rooms featuring a closed-circuit feed were available to the press and public during the Noor trial, but the situation in those was similar—they too became crowded on certain days of trial.

5. The number of people interested in observing the Noor trial was particularly crushing on the day of the verdict and on the day of Noor's sentencing. On both days, because court security allowed only so many people on the floor of the courthouse where the trial was taking place, members of the press and public packed into elevators and rode them up and down, repeatedly stopping on the courtroom floor until security allowed them to disembark. I understand that on both days the elevator bank was crammed with people, snaked in a line and waiting to go through security. I understand that many of them were ultimately turned away because not even the overflow rooms could accommodate them.

6. Of course, the Noor trial happened before the current pandemic. So while the crowding at the Noor trial was uncomfortable and inconvenient, it did not present a risk to public health. It will be difficult for the Court to enforce social distancing among those trying to attend the Trial in this case if it requires interested members of the press and public to come to the courthouse in

person to watch it. Indeed, I expect there to be even greater public interest in the Trial in this case than in the Noor case.

7. Thus, if attending in person is the only way to monitor the proceedings—and even if the Court can, consistent with the First Amendment, limit in-person attendance to a few people socially distanced in the courtroom and overflow rooms—it will struggle to control the jockeying for seats. If *Star Tribune*'s experience in the Noor case is any indication, people will congregate outside the courthouse,¹ in the skyway level of Government Center, and in the elevators and the elevator banks as they vie for one of the limited spots available. As such, the courthouse and the Trial in this case may unnecessarily become a vector for COVID-19 to spread not only among those who seek to witness this important Trial but to trial participants, courthouse staff, and the Community at large.

8. I am also seriously concerned by the State's position that sending a closed-circuit video feed to an overflow room (using courthouse staff and technology) provides adequate access to the press and public. As an experienced courts reporter, I can attest that there really is no substitution for being in the courtroom itself. Only those sitting in the actual courtroom can simultaneously observe the defendants and their counsel, the families of the defendants and the victim, the witnesses, the jurors, and the judge and reliably report not only what they said but how they said it and how they acted—and reacted—as each day of trial wears on. Only those sitting in the courtroom can hear quiet nonverbal noises—gasps, sighs, clicks of the tongue,

¹ It bears noting that the State of Minnesota is so concerned about the spread of COVID-19 that Governor Tim Walz's most recent Executive Order bans not just indoor gatherings but also spontaneous outdoor gatherings, even if people are socially distanced and masked. *See* https://mn.gov/governor/assets/EO%2020-99%20Final%20%28003%29_tcm1055-454294.pdf.

muffled weeping—and observe important gestures and body language that are either too subtle for the camera lens to pick up or out of its view finder.

9. I regret but understand that the pandemic may severely limit the ability of the press and public to watch the trial from the actual courtroom. But if they are to be excluded, then every effort should be made to capture the proceedings as comprehensively and accurately as possible. In my own personal experience and based on accounts provided by my staff, including those who covered the Noor trial, closed-circuit television falls woefully short.

10. More to the point, my reporters' experience in the overflow room during the Noor trial was terrible. The video on the close-circuit television was static—in that the vantage point was singular and did not move—and poor. It gave a grainy, panoramic view of the courtroom from a single camera mounted near the ceiling, showing counsel tables, the judge, and the witness stand. Neither jurors nor people in the gallery were visible at all.² And even those shown on the screen were so far away from the camera and depicted from such an angle (i.e., an “eye in the sky”) that it was often difficult to tell who was sitting at each counsel table, much less discern visuals such as facial expressions. As in the upcoming Trial, video evidence captured by police body-worn cameras was key at Noor's trial, and yet I understand that it was all but impossible to see that evidence from the overflow rooms. When video evidence was played in the courtroom, all people in the overflow room could see was that trial participants were watching a television screen. They could not discern what was actually transpiring on that screen. Nor could people in the overflow room see the contents of documentary exhibits. Meanwhile, I understand that the audio in the overflow room was poor—there was an echo effect as if people were speaking from

² I understand that, under the Court's operative order, jurors may not be depicted by video and members of George Floyd's family may be depicted by video only if they consent.

inside a tunnel. Further, the video on the closed-circuit feed sometimes lagged the audio (making gestures incongruous) and that attorneys sometimes failed to speak near microphones, making their remarks inaudible.

11. Finally, I understand the State has argued that audio-video coverage of the Trial in this case may cause witnesses to fear for their privacy or security and make them less likely to come forward and testify at trial. I am skeptical of this for two reasons.

12. First, I have personally covered several criminal proceedings where still cameras or audio-video coverage was allowed. For example, decades ago I covered the “Wah Mee Massacre” trial in Washington—the trial was for the murder of 13 people killed in a robbery at Seattle’s Wah Mee Club. Cameras were permitted at the trial and two of the prosecutors in that case both later became judges and championed open courts. Looking back, I do not believe that the presence of cameras in that case changed how trial participants behaved or in any way altered the willingness of witnesses to testify and tell the truth.

13. Likewise, *Star Tribune* reporter Chao Xiong recently covered the Wisconsin trial of Levi Acre-Kendall, a Minnesota man charged with killing Wisconsin resident Peter S. Kelly after a dispute along the St. Croix River. Audio-visual coverage was allowed throughout the entire guilt-innocence phase of the Acre-Kendall trial, without incident and without anyone expressing concern about witnesses’ willingness to testify truthfully.

14. Second, many of the eyewitnesses to George Floyd’s death and many members of George Floyd’s family have already spoken to the press, knowing their names and often their photographs would be published. Here is non-comprehensive list:

- a. *Star Tribune* reporter Chao Xiong interviewed Judeah Reynolds, a child who witnessed Floyd’s death, and her mother, Diva Reynolds, the day after Floyd was

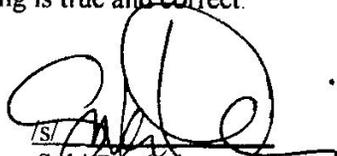
- killed and livestreamed that interview to <https://twitter.com/ChaoStrib/status/1265344048350613506?s=20>. It is still available online and depicts the names, voices, and faces of both Judeah and her mother.
- b. Judeah Reynolds also participated in an interview with *Star Tribune* columnist Jennifer Brooks, who wrote a column about how Judeah is writing a children's book. That column remains available at <https://www.startribune.com/brooks-young-eyewitness-to-floyd-s-killing-is-writing-children-s-book/571630222/> and includes a photograph of Judeah.
- c. Xiong separately interviewed Diva Reynolds outside the presence of her daughter and posted videos of that interview to <https://twitter.com/ChaoStrib/status/1265329361286291457?s=20> and <https://twitter.com/ChaoStrib/status/1265330559204679680?s=20>.
- d. Xiong interviewed Pastor Curtis Farrar, who witnessed Floyd's death, the day after Floyd was killed and posted that interview to <https://twitter.com/ChaoStrib/status/1265342516410318848?s=20>. It is still available and depicts his name, voice, and face.
- e. Xiong interviewed Charles McMillian, who witnessed Floyd's death, the day after Floyd was killed and posted that interview to <https://twitter.com/ChaoStrib/status/1265327783837937667?s=20> and <https://twitter.com/ChaoStrib/status/1265328860012445696?s=20>. The videos depict his name, voice, and face. In one interview McMillian said he did not want to be identified by name. Xiong advises me, however, that after he concluded the interview

- McMillian said it was ok and also told Xiong to share his name with a videographer for KARE who was nearby.
- f. *Star Tribune* reporter Paul Walsh interviewed Darnella Frazier. Frazier witnessed Floyd's arrest and death and captured the incident in a cell phone video that, just a day after Floyd's death, had already been viewed hundreds of thousands of times. An article about Frazier and her video, which includes her name, is posted at <https://www.startribune.com/world-needed-to-see-says-woman-who-took-video-of-man-dying-under-officer-s-knee/570774152/>.
- g. Xiong has livestreamed videos of Floyd's family speaking to the press and public outside the courthouse after hearings in this case.
- i. One video was after a September hearing. That video remains available at <https://twitter.com/ChaoStrib/status/1304476114870558720?s=20> and depicts the names, voices, and faces of two of Floyd's brothers, his sister, and his nephew.
- ii. Two more were after a June hearing. Those videos remain available at <https://twitter.com/ChaoStrib/status/1277662883942457344?s=20> and <https://twitter.com/ChaoStrib/status/1277667476034269184?s=20> and depict the names, voices, and faces of Floyd's uncle Selwyn Jones and his aunt Angela Harrelson, among others.
- h. Members of Floyd's family have also spoken to the press on other occasions, including for example in a report published at <https://www.startribune.com/s-d-town-lashes-back-at-george-floyd-his-uncle-over-flag-fight/572703391/> that includes video of Floyd's uncle Selwyn Jones.

- i. *Star Tribune* staff have also interviewed many of Floyd's friends and family members in Houston.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 11, 2020.


/s/ Suki Dardarian