



IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.*,  
MIKE HUNTER, ATTORNEY GENERAL,

Plaintiff,

v.

PURDUE PHARMA L.P., *et al.*,

Defendants.

STATE OF OKLAHOMA }  
CLEVELAND COUNTY } S.S.

FILED

MAR 06 2019

Case No. CJ-2017-816

Honorable Thad Balkman

William C. Hetherington

Special Discovery Master

In the office of the

Court Clerk MARILYN WILLIAMS

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NOTICE REGARDING RULINGS BY COURT

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Yesterday, due to the press of time, two rulings by the Court were announced by email. Comes now Teva Pharmaceuticals U.S.A., Inc. and files this Notice so the Court's rulings will be reflected in the court file. Exhibit 1 attached contains the Court's ruling on whether there will be a hearing on March 14, 2019. Exhibit 2 attached contains the Court's ruling on whether the Wall Street Journal and Reuters will be allowed to attend the hearing on March 8 by telephone.

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Pharmaceuticals USA, Inc., Watson Laboratories,  
Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a  
Watson Pharma, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was emailed this 6 day of March 2019, to the following:

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Robert G. McCampbell



# **EXHIBIT 1**

## Robert McCampbell

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**To:** Robert G. McCampbell  
**Subject:** Scheduling Matters with Judge Balkman

**From:** Welbourne, Jami <Jami.Welbourne@oscn.net>

**Sent:** Tuesday, March 05, 2019 4:42 PM

**To:** Michael Burrage <mburrage@whittenburrigelaw.com>; Mike Hunter <mike.hunter@oag.ok.gov>; Abby Dillsaver <abby.dillsaver@oag.ok.gov>; Ethan Shaner <ethan.shaner@oag.ok.gov>; Brad Beckworth <bbeckworth@nixlaw.com>; Glenn Coffee <gcoffee@glenncoffee.com>; sandy.coats@crowedunlevy.com; Sheila.Birnbaum@dechert.com; Mark.Cheffo@dechert.com; Hayden.Coleman@dechert.com; Paul.Lafata@dechert.com; patrick.fitzgerald@skadden.com; Ryan.Stoll@skadden.com; tjett@gablelaw.com; Reed, Steven A. <steven.reed@morganlewis.com>; Bartle IV, Harvey <harvey.bartle@morganlewis.com>; Ercole, Brian M. <brian.ercole@morganlewis.com>; sparksj@odomsparks.com; odomb@odomsparks.com; clifland@omm.com; jcardelus@omm.com; sbrody@omm.com; Patterson, Nancy L. <nancy.patterson@morganlewis.com>; nmerkley@gablelaw.com; Ashley Quinn <aquinn@gablelaw.com>; Trey Cox <tcox@lynlllp.com>; Trey Duck <tduck@nixlaw.com>; Ottaway, Larry <larryottaway@oklahomacounsel.com>; Amy Fischer <amyfischer@oklahomacounsel.com>; Elizabeth Ryan <eryan@lynlllp.com>; dpate@nixlaw.com; Reggie Whitten <rwhitten@whittenburrigelaw.com>

**Cc:** Bill Hetherington <hethlaw@cox.net>

**Subject:** Scheduling Matters with Judge Balkman

[EXTERNAL EMAIL]

Dear Counsel:

In an effort to clear up any confusion about upcoming hearing dates with me, I will address Mr. McCampbell's letter as well as related matters.

There will be no hearings Thursday, March 14, 2019.

Defendant Cephalon's Motion for Partial Summary Judgment will be set after sufficient time for the parties to file responses and replies.

The Motion to Hold Trial at OU College of Law has not been set for hearing, and the Court reserves the right to rule on the written briefs without oral arguments.

Defendant Janssen's Objections to the Special Master's Order on Defendant Janssen's Motion to Compel Responses to its Third Set of Interrogatories will either be ruled on based upon the written briefs, or if any party desires, will be set for oral arguments on Tuesday, March 26, 2019 at 4 PM. I will be in the middle of a jury trial that week, and will be limited to a one hour hearing for this motion. Please let Jami know if you request it be set for hearing.

On the issues of severance, consolidation and misjoinder, as per my Order filed yesterday, the Court will hold the State's motion in abeyance until the parties have an opportunity to submit responsive briefs to Defendant Teva's Motion for Severance and Separate Trials. Oral arguments for these motions and any other motions that will be filed on these subjects will be heard Thursday, April 11, 2019 at 9:00 am. To accommodate this hearing date, it is necessary to shorten the response and reply times. Therefore the final round of reply briefs shall be filed no later than Friday, April 5th.

Thank you,

Thad Balkman



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## Robert McCampbell

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**From:** Reggie Whitten <[rwhitten@whittenburrigelaw.com](mailto:rwhitten@whittenburrigelaw.com)>  
**Sent:** Tuesday, March 5, 2019 11:38 AM  
**To:** Robert McCampbell  
**Cc:** Welbourne, Jami; Michael Burrage; Mike Hunter; Abby Dillsaver; Ethan Shaner; Brad Beckworth; Glenn Coffee; Sandy Coats; Sheila.Birnbaum@dechert.com; mark.cheffo@dechert.com; HAYDEN.COLEMAN@DECHERT.COM; PAUL.LAFATA@DECHERT.COM; patrick.fitzgerald@skadden.com; Ryan.Stoll@skadden.com; Travis Jett; steven.reed@morganlewis.com; harvey.bartle@morganlewis.com; brian.ercole@morganlewis.com; John Sparks; odomb@odomsparks.com; Email;; Email;; sbrody@omm.com; Patterson, Nancy L.; Nicholas V. Merkley; Ashley Quinn; Trey Cox; Trey Duck; Larry Ottaway; Amy Fischer; Elizabeth Ryan; dpate@nixlaw.com  
**Subject:** Re: March 14

Jami, I agree with my friend Robert. We cannot be there the 14th because we are in Court ordered mediation that day with Judge Phillips on this case. Thanks, Reggie

Sent from my iPhone

On Mar 5, 2019, at 11:32 AM, Robert McCampbell <[rmccampbell@gablelaw.com](mailto:rmccampbell@gablelaw.com)> wrote:

Jami

It appears we will need guidance from the Court on whether there will be hearing on March 14.

Thanks

Robert

---

**From:** Reggie Whitten <[rwhitten@whittenburrigelaw.com](mailto:rwhitten@whittenburrigelaw.com)>  
**Sent:** Tuesday, March 5, 2019 11:15 AM  
**To:** Robert McCampbell <[rmccampbell@gablelaw.com](mailto:rmccampbell@gablelaw.com)>  
**Cc:** Welbourne, Jami <[Jami.Welbourne@oscn.net](mailto:Jami.Welbourne@oscn.net)>; Michael Burrage <[mburrage@whittenburrigelaw.com](mailto:mburrage@whittenburrigelaw.com)>; Mike Hunter <[mike.hunter@oag.ok.gov](mailto:mike.hunter@oag.ok.gov)>; Abby Dillsaver <[abby.dillsaver@oag.ok.gov](mailto:abby.dillsaver@oag.ok.gov)>; Ethan Shaner <[ethan.shaner@oag.ok.gov](mailto:ethan.shaner@oag.ok.gov)>; Brad Beckworth <[bbeckworth@nixlaw.com](mailto:bbeckworth@nixlaw.com)>; Glenn Coffee <[gcoffee@glenncoffee.com](mailto:gcoffee@glenncoffee.com)>; Sandy Coats <[sandy.coats@crowedunlevy.com](mailto:sandy.coats@crowedunlevy.com)>; Sheila.Birnbaum@dechert.com; mark.cheffo@dechert.com; HAYDEN.COLEMAN@DECHERT.COM; PAUL.LAFATA@DECHERT.COM; patrick.fitzgerald@skadden.com; Ryan.Stoll@skadden.com; Travis Jett <[tjett@gablelaw.com](mailto:tjett@gablelaw.com)>; steven.reed@morganlewis.com; harvey.bartle@morganlewis.com; brian.ercole@morganlewis.com; John Sparks <[sparksj@odomsparks.com](mailto:sparksj@odomsparks.com)>; odomb@odomsparks.com; Email: <[clifland@omm.com](mailto:clifland@omm.com)>; Email: <[jcardelus@omm.com](mailto:jcardelus@omm.com)>; sbrody@omm.com; Patterson, Nancy L. <[nancy.patterson@morganlewis.com](mailto:nancy.patterson@morganlewis.com)>; Nicholas V. Merkley <[nmerkley@gablelaw.com](mailto:nmerkley@gablelaw.com)>; Ashley Quinn <[aquinn@gablelaw.com](mailto:aquinn@gablelaw.com)>; Trey Cox <[tcox@lynnllp.com](mailto:tcox@lynnllp.com)>; Trey Duck <[tduck@nixlaw.com](mailto:tduck@nixlaw.com)>; Larry Ottaway <[larryottaway@oklahomacounsel.com](mailto:larryottaway@oklahomacounsel.com)>; Amy Fischer <[amyfischer@oklahomacounsel.com](mailto:amyfischer@oklahomacounsel.com)>; Elizabeth Ryan <[eryan@lynnllp.com](mailto:eryan@lynnllp.com)>; dpate@nixlaw.com  
**Subject:** Re: March 14

You want a summary judgment motion to be heard the same day me, Judge Burrage and Brad Beckworth are in a court ordered mediation in New York City?

I think not. Reggie

Sent from my iPad

On Mar 5, 2019, at 11:13 AM, Robert McCampbell <[rmccampbell@gablelaw.com](mailto:rmccampbell@gablelaw.com)> wrote:

I disagree. The March 14 hearing date has been scheduled for months. Just as the parties can handle multiple depositions on the same day, the parties can handle a hearing and a mediation on the same day.

Robert

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**From:** Reggie Whitten <[rwhitten@whittenburrage.com](mailto:rwhitten@whittenburrage.com)>  
**Sent:** Tuesday, March 5, 2019 11:03 AM  
**To:** Robert McCampbell <[rmccampbell@gablelaw.com](mailto:rmccampbell@gablelaw.com)>  
**Cc:** Welbourne, Jami <[Jami.Welbourne@oscn.net](mailto:Jami.Welbourne@oscn.net)>; Michael Burrage <[mburrage@whittenburrage.com](mailto:mburrage@whittenburrage.com)>; Mike Hunter <[mike.hunter@oag.ok.gov](mailto:mike.hunter@oag.ok.gov)>; Abby Dillsaver <[abby.dillsaver@oag.ok.gov](mailto:abby.dillsaver@oag.ok.gov)>; Ethan Shaner <[ethan.shaner@oag.ok.gov](mailto:ethan.shaner@oag.ok.gov)>; Brad Beckworth <[bbeckworth@nixlaw.com](mailto:bbeckworth@nixlaw.com)>; Glenn Coffee <[gcoffee@glenncoffee.com](mailto:gcoffee@glenncoffee.com)>; Sandy Coats <[sandy.coats@crowedunlevy.com](mailto:sandy.coats@crowedunlevy.com)>; Sheila.Birnbaum@dechert.com; mark.cheffo@dechert.com; HAYDEN.COLEMAN@DECHERT.COM; PAUL.LAFATA@DECHERT.COM; patrick.fitzgerald@skadden.com; Ryan.Stoll@skadden.com; Travis Jett <[tjett@gablelaw.com](mailto:tjett@gablelaw.com)>; steven.reed@morganlewis.com; harvey.bartle@morganlewis.com; brian.ercole@morganlewis.com; John Sparks <[sparksj@odomsparks.com](mailto:sparksj@odomsparks.com)>; odomb@odomsparks.com; Email: <[clifland@omm.com](mailto:clifland@omm.com)>; Email: <[jcardelus@omm.com](mailto:jcardelus@omm.com)>; sbrody@omm.com; Patterson, Nancy L. <[nancy.patterson@morganlewis.com](mailto:nancy.patterson@morganlewis.com)>; Nicholas V. Merkley <[nmerkley@gablelaw.com](mailto:nmerkley@gablelaw.com)>; Ashley Quinn <[aquinn@gablelaw.com](mailto:aquinn@gablelaw.com)>; Trey Cox <[tc Cox@lynnllp.com](mailto:tc Cox@lynnllp.com)>; Trey Duck <[tduck@nixlaw.com](mailto:tduck@nixlaw.com)>; Larry Ottaway <[larryottaway@oklahomacounsel.com](mailto:larryottaway@oklahomacounsel.com)>; Amy Fischer <[amyfischer@oklahomacounsel.com](mailto:amyfischer@oklahomacounsel.com)>; Elizabeth Ryan <[eryan@lynnllp.com](mailto:eryan@lynnllp.com)>; dpate@nixlaw.com  
**Subject:** Re: March 14

Robert, you are aware that we have been ordered by Judge Phillips to be at mediation in New York City that day. We obviously cannot hear anything in Norman on that date.

Sent from my iPad

On Mar 5, 2019, at 10:55 AM, Robert McCampbell <[rmccampbell@gablelaw.com](mailto:rmccampbell@gablelaw.com)> wrote:

Jami—

I attach a letter regarding the items before the Court for the morning of March 14

Thanks

Robert

**<image001.jpg>** **Robert McCampbell | Attorney At Law | GableGotwals**  
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(w) 405.235.5567 | (f) 405.235.2875 | [www.gablelaw.com](http://www.gablelaw.com)

This message and any attachments are for the addressee(s) *only* and may contain privileged or confidential information. If you have received this in error, please notify me immediately and permanently delete the message and any prints or other copies. Thank you.

<2019-03-05 Ltr to Judge Balkman re Hearing on March 14.pdf>

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March 5, 2019

The Honorable Thad Balkman  
District Judge  
200 S. Peters Ave.  
Norman, Oklahoma 73069

Re: Hearing on March 14

Dear Judge Balkman:


For the hearing scheduled before you on the morning of March 14, I am aware of four items that will be ready for presentation to the Court.

1. Motion of Defendant Cephalon Inc. for Partial Summary Judgment (filed February 26, 2019).
2. Motion to Hold Trial at O.U. College of Law (filed February 21, 2019).
3. Defendant Janssen's Objection to the Special Discovery Master's Order on Defendant Janssen's Motion to Compel Responses to its Third Set of Interrogatories (filed February 25, 2019).

Additionally, as directed by the Court, the parties have briefed the issue of the State's request to sever Purdue and then reconsolidate the actions. The State's Brief was filed on February 15, 2019, and the Defendants' responses were filed on February 22, 2019. In light of the fact that the Court has ordered further briefing by March 22 on Teva's motion for severance (filed February 26, 2019), the defendants assume the severance issues briefed on February 15 and 22 will not be heard on March 14, but please let us know if you would like to proceed with the State's severance and reconsolidation request on March 14.

We appreciate the Court's assistance.

Sincerely yours,

  
Robert G. McCampbell  
for the Firm

RGM/jrs  
cc: Counsel of record  
S491505



# **EXHIBIT 2**

**Robert McCampbell**

---

**From:** bob@bobburkelaw.com  
**Sent:** Tuesday, March 5, 2019 9:26 PM  
**To:** Thad Balkman; Jami Welbourne; Robert McCampbell; Sandy Coats; Mike Burrage  
**Subject:** In regard to Friday's hearing....State of Oklahoma v. Purdue Pharma, et al

**Judge Thad Balkman has overruled the objection of the Defendants and will allow Reuters and the Wall Street Journal to cover the hearing in this case on March 8, 2019, by telephone. This allowance is made on the condition that both Reuters and the Wall Street Journal affirmatively acknowledge and agree that no recording will be made of the audio feed.**

**The telephone access can be completed by calling 405-329-2400. Judge Balkman's deputy, Jami Welbourne, will transfer the call to the telephone receiver on Judge Balkman's desk.**

**If at any time during argument, counsel for any party anticipates referring to information that is covered by an existing protective order, counsel shall immediately notify the Judge. At that moment, the telephone access shall be muted. The Court shall strictly protect information covered by a protective order from access to the media by removing live reporters from the courtroom and by taking adequate precaution to make certain that reporters from Reuters and the Wall Street Journal do not hear prohibited argument.**

**If anything changes between now and the hearing on Friday, I will let you know.**



**Bob Burke, attorney and author  
308 N.W. 13th Street, Suite 200B  
Oklahoma City, OK 73103**



**bob@bobburkelaw.com**

**Phone: 405.848.0314**

**Fax: 405.848.0350**

**More information at www.bobburkelaw.net**

## Robert McCampbell

---

**Subject:** FW: Quick Response Needed in regard Friday hearing  
**Attachments:** 2018-05-09  
\_Defendants\_letter\_to\_Judge\_Balkman\_regarding\_cameras\_in\_courtroom.PDF

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**From:** Sanford C. Coats  
**Sent:** Tuesday, March 05, 2019 3:55 PM  
**To:** 'bob@bobburkelaw.com'; Thad Balkman; Jami Welbourne; Robert McCampbell; Mike Burrage  
**Cc:** Larry Ottaway; Amy Sherry Fischer ([amyfischer@oklahomacounsel.com](mailto:amyfischer@oklahomacounsel.com))  
**Subject:** RE: Quick Response Needed in regard Friday hearing

Mr. Burke,

The Purdue defendants object to the prospect of having the media “cover” the hearing on Friday via telephone, and I am authorized to state that the other Defendants in this case join in this objection. First, if these (or any other) media outlets desire to attend and report on the hearing, they are able to attend in person, listen, take notes and report. As you are aware, that is the way the media has reported on this case since it was filed, and there is no reason to deviate from that process at this juncture. Second, the parties are in the process of working on a media order on the manner in which the trial will be covered by the media (to which the defendants continue to object in general as outlined in my May 9, 2018 letter to Judge Balkman, attached hereto). As this is unsettled, including whether the media may record the arguments of counsel and statements of the Court and, if so, what they can do with that recording, allowing the media to be present through electronic means at this hearing is premature and imprudent.

As to the second point, if the Court is inclined to allow these outlets to dial into the hearing, I suppose it would be incumbent upon the attorneys, the Judge and his staff to ensure that any protected statements are not broadcast, which I suppose could be effectuated by either terminating the call during that portion or muting the audio so participants cannot hear what is being said. However, for all of the reasons stated above and in my May letter, that is tenuous and can much more properly be addressed if the media is actually required to be in the courtroom if they choose to report on the hearing.

Thank you for the opportunity to address this issue.



Sanford C. Coats  
Attorney at Law  
405.235.7790

This message may be protected by the attorney-client privilege and/or other privileges or protections. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error and then delete it. Thank you.

**From:** [bob@bobburkelaw.com](mailto:bob@bobburkelaw.com) [mailto:[bob@bobburkelaw.com](mailto:bob@bobburkelaw.com)]

**Sent:** Monday, March 04, 2019 8:06 PM

**To:** Thad Balkman; Jami Welbourne; Sanford C. Coats; Robert McCampbell; Mike Burrage

**Subject:** Quick Response Needed in regard Friday hearing

**Dear Counsel:**

**Reuters and the Wall Street Journal have requested permission to cover this Friday's hearing telephonically by using the speaker function on the telephone on Judge Balkman's bench.**

**Judge Balkman is inclined to allow the requests if a procedure can be developed in which access by telephone can be limited in the event that arguments cover subjects covered by the protective order.**

**(1) If you have an objection, please respond to me as soon as possible. I will relay any objection to Judge Balkman.**

**(2) Do you have suggestions of how we can insure that no one listening by telephone hears argument of subjects covered by the protective order?**

**Thank you. Please contact me if you have any questions.**



**Bob Burke, attorney and author**

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May 9, 2018

**VIA HAND DELIVERY**

Hon. Thad Balkman  
District Judge  
Cleveland County Courthouse  
200 S. Peters  
Norman, OK 73069

Re: *Oklahoma ex rel. Hunter v. Purdue Pharma, LP*, No. CJ-2017-816  
(Okla. Dist. Ct.): Response to Letter by The Oklahoma Publishing Co.

Dear Judge Balkman:

I write on behalf of Defendants Purdue Pharma, L.P., Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson & Johnson, Inc.; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.; Watson Laboratories, Inc.; Actavis LLC; and Actavis Pharma, Inc., f/k/a Watson Pharma, Inc.

This letter is in response to Your Honor's request to respond to a May 7, 2018 letter by The Oklahoma Publishing Co. to allow its television cameras in the courtroom to broadcast the trial in this matter. Defendants respectfully submit that the Court should defer decision on this request until a time closer to trial, so that the Court may have the opportunity to fully consider all evidentiary issues, including those related to the presentation of testimony and other evidence involving confidential health information. If, however, the Court considers this issue ripe for consideration, then Defendants respectfully oppose the request by The Oklahoma Publishing Co.

As an initial matter, whether cameras may be permitted at trial is a premature question. The trial in this matter is scheduled over a year from now on May 28, 2019, and the Court has not yet had an opportunity to consider several evidentiary issues that will affect this decision – principally those related to testimony about

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and documents containing “Confidential Protected Health Information” under the protective order pursuant to the federal Health Insurance Portability and Accountability Act (HIPAA). (See Apr. 11, 2018 Agreed Qualified Protective Order for Protected Health Information.) The Order states that the parties and the Court need to resolve “[t]he procedures for use of designated confidential documents during ... the trial.” (*Id.* ¶ 6.) The Order prohibits “disclosure of designated Confidential Protected Health Information in open Court” absent prior “consideration by the Court.” (*Id.*) Given the nature of the claims in this matter and the likelihood that testimony and documents will be introduced at trial regarding specific patients’ Confidential Protected Health Information, the Court will need to determine the procedures for presenting this evidence and protecting it from unnecessary disclosure. This Court is not presently in a position to make those determinations at this stage of discovery and will not likely be able to fully hear the issues until after pretrial proceedings have concluded. Further, no prejudice will inure to The Oklahoma Publishing Co. if this Court defers until its decision pending consideration of the evidence to be introduced at trial. Accordingly, the request by The Oklahoma Publishing Co. is premature and should be deferred until after pretrial proceedings in this matter are completed.

If the Court considers the issue ripe for resolution now, then Defendants respectfully oppose the request. Members of the public will be able to come to the courthouse during the trial and observe the trial from the gallery. But the presence of cameras—no matter how unobtrusive or limited in number—will detract from the fundamental objective of a trial: the pursuit of truth. The use of television cameras “cannot be said to materially contribute to [the] objective of a fair trial.” *Nichols v. District Court*, 2000 OK CR 12 ¶ 6 (Okla. Crim. App. 2000), citing *Estes v. Texas*, 381 U.S. 532, 544 (1965). Cameras in the courtroom during trial inject an “irrelevant factor” into court proceedings and distort the integrity of the judicial process. See *Nichols*, 2000 OK, at ¶¶ 6, 8. This risk is magnified when the Plaintiff is an elected official, for whom video may be used to promote political or electoral ambitions.

Broadcasting this trial across the internet and airwaves presents a needless but serious risk of undermining Defendants’ right to be tried by a fair and impartial jury. Sensationalizing a trial through a media broadcast may “cause actual unfairness” in ways “so subtle as to defy detection” and that are beyond “control by the judge.” *Nichols*, 2000 OK CR, at ¶ 6. Specifically, Defendants are concerned about the effect of cameras on jurors, witnesses, and the parties’ ability to secure a fair trial. A multi-year study by the Federal Judicial Center into the effect of cameras in state and federal courtrooms found that “the intimidating effect of cameras on some witnesses and jurors [is] cause for concern” and resulted in the ongoing ban on cameras in most federal court proceedings. See *Hollingsworth v.*

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*Perry*, 558 U.S. 183, 193 (2010) (staying the broadcast of a bench trial). “While some of the dangers” from a televised trial “are present as well in newspaper coverage of any important trial, the circumstances and extraneous influences intruding upon the solemn decorum of court procedure in the televised trial are far more serious than in cases involving only newspaper coverage.” *Estes v. Texas*, 381 U.S. at 548.

*First*, jurors will be unduly influenced by the presence of cameras in the courtroom, even if a limited number of cameras are unobtrusively stationed in court. The knowledge that an event is being broadcast inevitably changes its character, as the U.S. Supreme Court summarized in *Estes*:

[W]e know that distractions are not caused solely by the physical presence of the camera and its telltale red lights. It is the awareness of the fact of telecasting that is felt by the juror throughout the trial. We are all self-conscious and uneasy when being televised. Human nature being what it is, not only will a juror’s eyes be fixed on the camera, but also his mind will be preoccupied with the telecasting rather than with the testimony.

*Estes*, 381 U.S. at 546. “Where pretrial publicity of all kinds has created intense public feeling which is aggravated by the telecasting or picturing of the trial the televised jurors cannot help but feel the pressures of knowing that friends and neighbors have their eyes upon them.” *Id.* at 545. This outside influence may sway jurors to support the prevailing opinion of the case presented in the media—not by the evidence presented in court. *Id.*

In addition to the distraction posed by cameras, the fact that a trial is being broadcast may also impress on the jury “the notorious character” of the proceeding or defendants. *Estes*, 381 U.S. at 536-37. The Supreme Court recognized that broadcasting a trial has a psychological impact on jurors, noting that “it is not only possible but highly probable that [televising a trial] will have a direct bearing on [a juror’s] vote.” *Id.* at 545. Research after *Estes* into the psychological impact of cameras in the courtroom supports this view. See, e.g., J. Marvelley, *Lights, Camera, Mistrial: Conflicting Federal Court Local Rules & Conflicting Theories on the Aggregate Effect of Cameras on Courtroom Proceedings*, 16 *Suffolk J. Trial & App. Advoc.* 30, 48 (2011) (“If the jury is aware of the public’s disposition in a case, the jury may then try to decide in accordance with public opinion.”).

*Second*, cameras should not be permitted in the courtroom because their presence will impact witnesses. A witness’s knowledge that testimony may be viewed by a “vast audience” causes an “incalculable” impact. *Estes*, 381 U.S. at 547. A person

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changes their behavior, even in public, with the knowledge that they are being filmed. "Some may be demoralized and frightened, some cocky and given to overstatement; memories may falter, as with anyone speaking publicly, and accuracy of statement may be severely undermined. Embarrassment may impede the search for the truth, as may a natural tendency toward overdramatization." *Id.* The potential for exposure to a vast audience on the internet and television may cause a witness to focus more on his "role" in the broadcast than his role in the trial. See *United States v. Kerley*, 753 F.2d 617, 622 (7th Cir. 1985). Any impact on the witness's testimony necessarily "impede[s] the search for truth." *Estes*, 381 U.S. at 546-47. The witnesses in this case should be focused only on their role in the fact-finding process, not how their demeanor or choice of words will appear in a subsequent news or online broadcast.

It is likely that video of this trial will be disseminated not just on a nightly newscast but on the internet. This undermines the privacy interests of both jurors and witnesses, who could have video of themselves permanently broadcast over the internet. Both jurors and witnesses perform a public service by appearing in court and should not lose control over the nature and breadth of their own "internet presence" by responding to a demand to appear in court.

*Finally*, the presence of cameras in the courtroom will impact the parties to this litigation. The broadcast of courtroom proceedings, including pretrial proceedings, will make it more difficult for the parties to select a fair and unbiased jury, including for the reasons noted above. The problem of jury selection will be compounded if there is ever need for a new trial. Even if the trial goes to a verdict by the first jury impaneled in this case, the broadcast may impact subsequent proceedings in the case. Together, these risks outweigh the marginal benefit of permitting the journalists covering this trial to use their cameras in court. The law entrusts the jury, not the media, with the responsibility of assessing the credibility of evidence.

The State asserts in its May 7, 2018 letter that "a trial is a public event." While true, it is immaterial to the question at hand. Under Oklahoma law, "[t]he requirement of a public trial is satisfied by the opportunity of members of the public and the press to attend the trial and to report what they have observed." *Nichols*, 2000 OK CR, at ¶ 7; accord *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 610 (1978). Contrary to the State's view (as well as that of The Oklahoma Publication Co.) that cameras are necessary to report on the trial proceedings (Ltr. at 1), the U.S. Supreme Court rejected that argument and held that "there is no constitutional right" to have the testimony of a live witness "recorded and broadcast." *Nixon*, 435 U.S. at 609.



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The Oklahoma Publishing Co. claims that their cameras would be "quiet and unobtrusive." (Ltr. at 2.) That is immaterial. "Even in an era of lightweight, silent, unobtrusive television cameras, there is a sense that the knowledge of being televised might cause the judge, jurors or witnesses to be distracted — whether by embarrassment, self-consciousness, anxiety or desire to 'star.' It is not unreasonable, whatever may be the precise facts in any particular trial, for the courts to prefer that the 'actors' concentrate on their roles in the trial rather than on their roles on television." *Kerley*, 753 F.2d at 622.

The cases cited by the State are also off point. *Craig v. Harney*, 331 U.S. 367 (1947) did not address the use of cameras or other recording devices in court. Nor did *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), which involved the closure of a trial to the public and removal of journalists from the courtroom.

The State and The Oklahoma Publishing Co. rely on *Lyles v. State*, 1958 OK CR 79, 330 P.2d 734 (Okla. Cr. App. 1958), but that court did not grapple with the effects of cameras on the judicial process. Video coverage of the *Lyles* trial was limited to a five-minute recess when the court was not in session and before the jury was selected. *Id.* at 738. After *Lyles* was decided in 1958, research and judicial decisions in Oklahoma and around the country have concluded that cameras negatively impact the judicial process. *See, e.g., Nichols*, 2000 OK CR, at ¶¶ 9-10 (holding that televising a trial can violate due process); *Hollingsworth*, 558 U.S. at 193 (denying a request to broadcast a civil bench trial); *United States v. Hastings*, 695 F.2d 1278, 1284 (11th Cir. 1983) (denying media organizations' application for order permitting them to use electronic audiovisual equipment during trial due to the adverse impact on jurors, witnesses, and other trial participants).

The public's right to observe a trial should never outweigh the key function of the jurors at the center of the fact-finding process. The risk of prejudice to a fair proceeding is too great to justify the presence of cameras in the courtroom. Defendants respectfully submit that The Oklahoma Publishing Co.'s request to bring television cameras in the courtroom to broadcast the trial of this matter be denied.

Sincerely,

  
Sanford C. Coats  
For the Firm

SCC:sg

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bcc: All counsel of record (via e-mail)