

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA)
)
Plaintiff,)
)
 v.)
)
 GEORGE HUGUELY)
)
Defendant.)
)

Case No.: CR11-102

NOTICE

PLEASE TAKE NOTICE that on November 7, 2011 at 11:30 a. m. or as soon thereafter as counsel may be heard, Counsel for *In Session* will appear in the Circuit Court for the City of Charlottesville at its courthouse located at 315 East High Street, Charlottesville, Virginia 22902 and move for entry of an Order allowing electronic media coverage of the proceedings in this matter.

Respectfully Submitted,

BY: Andrew R. Oja
 Andrew R. Oja (VA Bar #80764)
 Holland & Knight LLP
 2099 Pennsylvania Ave., Suite 100, N.W.
 Washington, DC 20006
 Telephone: (202) 469-5139
 Facsimile: (202) 955-5564
 andrew.oja@hklaw.com
 Counsel for *In Session*

FILED

2011 NOV -4 A 10:51

CIRCUIT COURT CLERK'S OFFICE
 CHARLOTTEVILLE VA
 RAUL E. BARR - CLERK

[Handwritten signature]
 DEPUTY CLERK

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via first-class mail and facsimile on Thursday, November 3, 2011 on the following:

Warner D. Chapman
Commonwealth's Attorney's Office
Room 331
City Hall, PO Box 911
Charlottesville, VA 22902
Telephone: (434) 970-3176
Facsimile: (434) 971-8202
Counsel for Commonwealth of Virginia

Francis McQ. Lawrence
416 Park Street
Charlottesville, VA 22902-4738
Telephone: (434) 326-1666
Facsimile: (434) 296-1301
Counsel for George Huguely



Andrew R. Oja (VA Bar #80764)
Holland & Knight LLP
2099 Pennsylvania Ave., Suite 100, N.W.
Washington, DC 20006
Telephone: (202) 469-5139
Facsimile: (202) 955-5564
andrew.oja@hklaw.com

Counsel for In Session

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA)
)
 Plaintiff,)
)
 v.)
)
 GEORGE HUGUELY)
)
 Defendant.)
)

Case No.: CR11-102

IN SESSION'S MOTION FOR LEAVE TO BROADCAST AND RECORD PROCEEDINGS

Pursuant to Virginia Code § 19.2-266, *In Session*, a division of truTV,¹ respectfully moves for leave to record and broadcast the Court's proceedings in this matter, including the trial. As grounds for its motion, *In Session* states as follows:

1. *In Session* is a representative of the television news media and seeks to cover proceedings in this matter.
2. The granting of this motion will serve the public interest.
3. This matter is of great interest to the public, and will receive substantial attention on the local, state, and national levels. Granting this motion would allow citizens who cannot physically attend to have contemporaneous, complete and objective information about the proceedings and would bolster the confidence of the public in the integrity of the process and the result.
4. *In Session* seeks the placement of television cameras in unobtrusive locations in the courtroom. *In Session* would operate the cameras in strict compliance with the guidelines set

¹ truTV's corporate name is Courtroom Television Network LLC. truTV was formerly known as Court TV.

forth in Virginia Code § 19.2-266 and is entirely willing to pool footage upon requests from other electronic media.

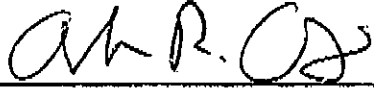
5. Any party opposing electronic coverage must demonstrate concrete evidence of prejudice that rises to the level of constitutional dimensions.

6. The Virginia General Assembly provided the Court with specific guidelines and limitations in Virginia Code § 19.2-266 that are intended to dissipate any potential prejudice to the parties and promote the integrity of the proceedings. In numerous cases, courts in the Commonwealth have permitted television broadcast of proceedings in a manner that ensures a fair trial or hearing.

WHEREFORE, for the foregoing reasons, those contained in the accompanying memorandum of law, as well as those that may be offered during oral arguments at the hearing on this motion, *In Session* respectfully requests that the instant motion be granted.

November 4, 2011

Respectfully Submitted,



Andrew R. Oja (VSB# 80764)
Holland & Knight, LLP
2099 Pennsylvania Ave., NW, Suite 100
Washington, DC 20006
Telephone: (202) 469-5139
Facsimile: (202) 955-5564
andrew.oja@hklaw.com

Counsel for In Session

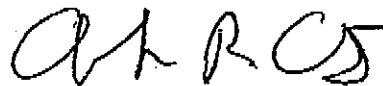
Of Counsel:
Charles D. Tobin
(*Pro Hac Vice* application pending)
Holland & Knight, LLP
2099 Pennsylvania Ave., NW, Suite 100
Telephone: (202) 419-2539
Facsimile: (202) 955-5564
charles.tobin@hklaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via first-class mail and facsimile on Thursday, November 3, 2011 on the following:

Warner D. Chapman
Commonwealth's Attorney's Office
Room 331
City Hall, PO Box 911
Charlottesville, VA 22902
Telephone: (434) 970-3176
Facsimile: (434) 971-8202
Counsel for Commonwealth of Virginia

Francis McQ. Lawrence
416 Park Street
Charlottesville, VA 22902-4738
Telephone: (434) 326-1666
Facsimile: (434) 296-1301
Counsel for George Huguely



Andrew R. Oja (VA Bar #80764)
Holland & Knight LLP
2099 Pennsylvania Ave., Suite 100, N.W.
Washington, DC 20006
Telephone: (202) 469-5139
Facsimile: (202) 955-5564
andrew.oja@hkllaw.com

Counsel for In Session

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA)
)
 Plaintiff,)
)
 v.)
)
 GEORGE HUGUELY)
)
 Defendant.)
)

Case No.: CR11-102

JOINT MEMORANDUM OF LAW IN SUPPORT OF NBC29-TV and IN SESSION'S MOTIONS FOR LEAVE TO BROADCAST AND RECORD PROCEEDINGS

Pursuant to Virginia Code § 19.2-266, NBC29-TV and *In Session*, a division of truTV,¹ jointly submit this memorandum of law in support of their respective motions to permit the television broadcasting and recording of certain proceedings in this case, including the trial.

I. Introduction

NBC29-TV, a local television station providing news and information in service to the Charlottesville and Harrisonburg communities, and *In Session*, a national cable television program that provides gavel-to-gavel coverage of noteworthy trials around the country, seek leave of the Court to provide the public with the maximum opportunity to observe the proceedings in this matter, which involve significant interests to this community and the country.

NBC29-TV and *In Session* each has applied for permission under Virginia Code § 19.2-266 (see attachments A and B), and they are working cooperatively under the auspices of the Virginia Association of Broadcasters, as the code requires. They propose to broadcast and record the

¹ truTV's corporate name is Courtroom Television Network LLC. truTV was formerly known as Court TV.

proceedings in a fashion that will be consistent with Virginia law, entirely unobtrusive to the parties and counsel, and fully supportive of the orderly process and decorum of the proceedings. NBC29-TV requests permission to cover all proceedings in which the Court does not specifically exclude the media. *In Session* requests permission to act as the pool media for gavel-to-gavel coverage of the trial in this case.

In conformity with our nation's tradition of open courtrooms, the Virginia Code recognizes the interest of the public and the parties by providing for the taking of photographs, the electronic recording, and the live broadcasting of court proceedings. Virginia Code § 19.2-266 provides that, within the restrictions set forth in the Code and through the joint cooperation of representatives of the media, the Court may permit coverage in proceedings such as this one. The burden lies with the party opposing coverage to demonstrate "good cause," and the statutory regimen suggests that the Court should only curtail coverage to the extent "appropriate to meet the ends of justice." Virginia Code § 19.2-266(1).

Here, the public interest in the administration of justice, the safety of the Charlottesville community, and the well-being on college campuses nationwide, support this request. With their promise to secure the joint cooperation of all television media representatives as the statute requires, and in the absence of good cause for the denial of their request in this specific case, NBC29-TV and *In Session* request that the Court permit the broadcasting and recording of the proceedings in this case, including the trial.

II. Legal Standard

The United States Supreme Court recognized decades ago that in and of itself, electronic coverage of criminal court proceedings will not hamper a defendant's right to a fair trial. *Chandler v. Florida*, 449 U.S. 560, 574-75 (1981). Video coverage is the most direct and

accurate means available to convey to the public unfiltered information about the judicial process. Indeed, although the direct issue of electronic media coverage was not before it at the time, the Supreme Court, in a seminal courtroom access case arising out of a murder trial in the Commonwealth, recognized that “[i]nstead of acquiring information about trials by firsthand observation . . . , people now acquire it chiefly through the print and electronic media.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572-73 (1980). The media – as “surrogates” for the public – are routinely provided courtroom access “so that they may report what people in attendance have seen and heard,” furthering “public understanding of the rule of law and . . . comprehension of the functioning of the entire criminal justice system.” *Id.* at 572 (citation omitted). Even in the face of rules that provide for *per se* closure, according to the U.S. Supreme Court, the First Amendment always requires courts to weigh the public interest in access against the interests to be served by closure. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607-08 (1982) (holding that a statute requiring closure of courtroom during testimony of minor in sex crimes cases must be considered under the particular facts).

The Virginia General Assembly, which in 1987 first enacted the statute providing for photography and broadcasting of court proceedings, long has recognized that courts in the Commonwealth further “the public understanding of the rule of law” and do not prejudice the parties’ rights, by permitting television coverage of court proceedings under carefully prescribed conditions.² Virginia Code § 19.2-266 provides the appropriate balance, allowing for electronic-media coverage of trials absent “good cause shown” for excluding cameras. Wholly consistent with the history and tradition in the United States of conducting public and open trials, Virginia

² The Virginia Code provides for the exclusion of electronic-media coverage for certain specific types of proceedings that do not apply here. *See* § 19.2-266(2) and (3).

Code § 19.2-266 provides courts with a specific framework to ensure that coverage does not adversely impact court proceedings.

III. No Specific "Good Cause" Warrants Exclusion in this Case

Under the Virginia Code, any party who opposes television coverage has the burden of demonstrating "good cause" that justifies prohibiting coverage. *See Diehl v. Commonwealth*, 9 Va. App. 191, 197, 385 S.E.2d 228, 232 (Va. Ct. App. 1989). Mere "conclusory allegations" of prejudice will not satisfy the "good cause" standard. *See Fisher v. Commonwealth*, 236 Va. 403, 410, n.2, 374 S.E.2d 46, 50 n.2 (Va. 1988) (Supreme Court of Virginia rejected defendant's "generalized objection" to cameras in the courtroom and found no prejudice or infringement on the defendant's rights.); *see also Vinson v. Commonwealth*, 258 Va. 459, 471, 522 S.E.2d 170, 178 (Va. 1999) (Supreme Court of Virginia rejected defendant's "conclusory argument" that television cameras prejudiced defendant's right to a fair and impartial jury and found no abuse of discretion in permitting cameras in the courtroom.)

Moreover, the "good cause" standard cannot be met absent a showing of prejudice that rises to a level of constitutional dimensions. *See Novak v. Commonwealth*, 20 Va. App. 373, 390, 457 S.E.2d 402, 410 (Va. Ct. App. 1995) (holding that absent "a showing of prejudice of constitutional dimensions . . . the mere presence of cameras does not result in an unfair trial."); *see also Stewart v. Commonwealth*, 245 Va. 222, 233, 427 S.E.2d 394, 402 (Va. 1993) (holding that the trial court did not abuse its discretion when it permitted in-court television coverage of a capital murder trial because the defendant failed to establish that cameras influenced the outcome of this and violated his due process rights.)

Here, no "good cause" would warrant excluding electronic-media coverage. NBC29-TV has experience covering proceedings in the local courts in this region without incident. *In*

Session, which would serve as the "pool" media for gavel-to-gavel coverage of the trial, has telecast over 1,000 trials and hearings since 1991 without distracting participants or disrupting proceedings. Moreover, *In Session's* experienced audio engineers are specially trained to protect privileged communications by turning off microphones during bench conferences and conversations at counsel tables. Indeed, *In Session* microphones are only "on" when an attorney, witness or the judge addresses the courtroom. *In Session* uses state-of-the-art camera technology, and its cameras are small, silent and do not require additional lights.

Both NBC29-TV's and *In Session's* experiences are consistent with the restrictions set forth in the Virginia Code, and they have the understanding and capability to respond to any concerns that the Court and the parties might have during these proceedings.

IV. Conclusion

For the foregoing reasons, NBC29-TV and *In Session* respectfully request that the Court grant their motions and permit the recording and broadcasting of the proceedings in this matter, including the trial.

November 4, 2011

Respectfully Submitted,



Gregory S. Duncan (VSB# 26692)
412 East Jefferson Street
Charlottesville, VA 22902
Telephone: (434) 979-8556
Facsimile: (434) 979-9766

Counsel for NBC29-TV



Andrew R. Oja (VSB# 80764)
Holland & Knight, LLP
2099 Pennsylvania Ave., NW, Suite 100
Washington, DC 20006
Telephone: (202) 469-5139
Facsimile: (202) 955-5564
andrew.oja@hklaw.com

Counsel for In Session

Of Counsel:
Charles D. Tobin
(*Pro Hac Vice* application pending)
Holland & Knight, LLP
2099 Pennsylvania Ave., NW, Suite 100
Telephone: (202) 419-2539
Facsimile: (202) 955-5564
charles.tobin@hklaw.com

EXHIBIT A

NOV 02 2011 11:12 CHARLES CITY CLERK OFFICE 11012701

28 October 2011

Request for Electronic Media Coverage of a Judicial Proceeding

Judge Edward Hogshire
Charlottesville Circuit Court
Charlottesville, Virginia

Your Honor,

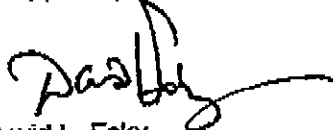
Pursuant to Code 19.2-266, and as the appointed Virginia Association of Broadcaster's Cameras in the Courtroom Coordinator, I am formally requesting permission to install television (video-audio) equipment in the Charlottesville Circuit Court for the Commonwealth vs. George Hugueley case including the trial and hearings in advance of that.

This request does not include the 7 November 2011 date that's on the court's schedule as the court has stated that media coverage request(s) are to be discussed on that date.

It is my understanding, with the network interest in this matter; we may have the use of either traditional manned camera equipment and/or remotely operated camera equipment - if the court so determines that second option better serves its needs.

Subject to direction from the court regarding pool coverage and technology limitations (as per 19.2-266), we look forward to the opportunity to discuss this matter as your Honor so best determines.

Respectfully yours,



David L. Foky
News Director
NBC29-TV
Charlottesville, VA

434.220.2937

REQUEST FOR ELECTRONIC MEDIA AND/OR STILL PHOTOGRAPHY COVERAGE OF JUDICIAL PROCEEDINGS

(This request shall be filed with the clerk of the court at least ten days prior to commencement of the proceeding to be covered.)

Pursuant to Code § 19.2-266, the undersigned hereby requests permission to install the following equipment:


- TV camera and recorder
- Still camera
- Audio
- Other (specify)

In courtroom CULBERTSONVILLE CIRCUIT in order to record, photograph, or televise all or portions of the proceedings in the following case(s) on PENDING DATES.
COMMONWEALTH VS LUQUELY

Subject to direction from the court regarding possible pooled coverage, the undersigned wishes to install this equipment in the courtroom on TBD DATES. The person who will be responsible for the installation and operation of this equipment during its use is:

Name DAVID L. FOX
 Address 503 E. MAKEY ST. CULBERTSONVILLE VA 22402
 Telephone No. 434.220.2937

I hereby certify that if this request is granted, all equipment will be installed and operated in accordance with the provisions of Code § 19.2-266 and, all personnel of this media organization will abide by the provisions of the statute and any rulings of the court made pursuant to its authority to control conduct in the courtroom and all areas adjacent thereto.



 Signature

NEWS DIRECTOR
NBC29-TV
CULBERTSONVILLE, VA
 Media Organization and Address
434.220.2937
 Telephone Number

28 OCTOBER 2011
 Date

The request for electronic media and/or still photography coverage is:

- Granted
- Denied
- Granted subject to satisfactory pooling arrangements being made.

 Date

 Signature of Judge

EXHIBIT B

September 2, 2011

VIA OVERNIGHT MAIL

The Honorable Edward L. Hogshire
Charlottesville Circuit Court
315 E. High St
Charlottesville, VA 22902

Re: *Virginia v. George Huguely (Case No. 11-102)*

Dear Judge Hogshire:

On behalf of *In Session*, formerly known as CourtTV, this application is submitted for permission to televise the trial in the above-referenced case, currently scheduled to begin February 6, 2012.

In our twenty years of experience, we have found that the use of three cameras provides for the least intrusive and most accurate means of covering a trial. Therefore, *In Session* seeks permission to place three cameras – two robotic and one manned – in the courtroom. Our equipment is compact, stationary and quiet, and requires no enhanced lighting. The robotic cameras are barely noticeable, and they do not pan, tilt or zoom. Their use lessens the need for the manned camera to move. The cameras are placed where they cannot film jurors.

In Session also proposes to place a sufficient number of microphones to accurately depict the court proceedings. *In Session* only broadcasts statements made by an attorney, witness or judge in open court. We have well-developed safeguards in place to protect against inadvertently recording privileged conversations.

In Session is willing to work with the Court and its staff regarding the placement of cameras and microphones, and will abide by any and all instructions issued by the Court regarding camera coverage.

In Session is also prepared to cooperate in a pooling arrangement with other media entities whose application to broadcast the proceedings may be granted. *In Session* would agree to operate the cameras and serve as the pool feed for other media outlets, including local television stations.

We would appreciate that any written objections to this request be served upon us and we are notified of any hearings regarding media coverage of this matter.

In the meantime, please contact me at (404) 827-3034 if you have any questions or need additional information about *In Session's* request.

Respectfully submitted,

Jessica Thill
Trials Editor

C: Commonwealth Attorney Dave Chapman, Esq. – 434-971-8202
Francis Lawrence, Esq. – 434-296-1301

Please contact Jessica Thill, Trials Editor, by phone at (404) 827-3034 or by fax at 404-827-5638 with your responses or questions regarding this application.