STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. 81-300

In Re Modification of Canon 3A(7)
of the Minnesota Code of Judicial
Conduct.

O R D E R

WCCO Radio, Inc., et al,

Petitioners.

TO: Petitioners and other interested parties

IT IS HEREBY ORDERED AND DIRECTED that the time for filing briefs in the above-entitled matter may be, and hereby is, set for October 30, 1981, for petitioners and December 7, 1981, for all other interested parties.

DATED: October 29, 1981.

SUPREME COURT
FILED
OCT 30 1981
JOHN McCARTHY
CLERK

John S. Pillsbury, Jr., Chairperson
Minnesota Advisory Commission on
Cameras in the Courtroom, established
by Order of the Supreme Court dated
August 10, 1981

APPROVED:

Robert J. Sheran, Chief Justice

Copy to each judge

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL 55102

JUDGE OTIS H. GODFREY, JR.
1539 COURT HOUSE

October 20, 1981

Honorable Robert J. Sheran
Chief Justice, Supreme Court
State Capitol
St. Paul, Minn. 55101

In Re: Modification of Canon 3A(7)
Special Commission

81-300

Dear Chief Justice:

On October 20, 1981, I appeared as a witness before the Commission and have filed my written statement on the issue before that body. It is my understanding that the Commission is operating under an order and rules laid down by the Supreme Court, including a provision that requires the Commission to file its report by November 16, 1981.

Because of this severe time limitation, they have indicated that all briefs must be filed by October 30, 1981, making it well nigh impossible for the trial bench to prepare a meaningful presentation of its position.

We have requested 60 days after the filing of petitioner's brief so that we may include comments on the testimony of witnesses and the exhibits filed with the Commission. Mr. Pillsbury, the Chairman of the Commission, denied our request, and indicated that any such request should be addressed to the Chief Justice. We would therefore respectfully request, pursuant to Rule 121, that your original order be amended to afford adequate time for the filing of briefs on this vital question. Mr. Paul Hannah, who represents the petitioners herein, has indicated that he would not oppose our request.

Very truly yours,

Otis H. Godfrey, Jr.

OTIS H. GODFREY, JR.

SUPREME COURT
FILED
OCT 22 1981
JOHN McCARTHY
CLERK

OHG:re
cc: Paul Hannah

December 14, 1981

Mr. John S. Pillsbury, Jr.
930 Dain Tower
Minneapolis, Minnesota 55402

Re: Minnesota Advisory Commission on Cameras
in the Courtroom

Dear Mr. Pillsbury:

This is in response to your letter of December 10, 1981.

The facts as you state them are correct. I believe that your letter, a copy of Judge Godfrey's letter and a copy of this letter should be made a part of the record in this case. I add these observations:

1. The findings and recommendations of the Commission are advisory only. The Supreme Court will act de novo in deciding what, if any, action will be taken on the petition. If any change from the status quo is recommended by the Commission, a hearing will be held before the Supreme Court. Public notice of such a hearing is given.

2. Knowing of your background, a former district judge and a person with no prior experience with the electronic media or the trial courts were named to the Commission to assure balance.

I will be leaving the court on December 18, 1981, and will not be a member of it when your report is filed. This exchange of correspondence will be useful to the court in evaluating the situation, I believe.

Yours very truly,

Robert J. Sheran

cok

JOHN S. PILLSBURY, JR.
930 DAIN TOWER
MINNEAPOLIS, MINNESOTA 55402
612 • 338-4382

December 16, 1981

Chief Justice Robert J. Sheran
Minnesota Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

RE: Minnesota Advisory Commission on Cameras in the Courtroom

Dear Chief Justice Sheran:

I found the enclosed letter from Judge Godfrey on my desk on Wednesday, December 9 after returning from a brief business trip.

I am sure you will remember that when you first approached me about becoming involved in this matter of the media in the courtroom, I told you about both of the items referred to in his letter. My recollection is that you called me back after a few days and told me that you had discussed the matter with some or all of the other justices and had concluded that the circumstances of this matter and the assignment of the Commission did not create a situation where I should not serve.

I concluded yesterday that the best way to handle Judge Godfrey's letter was to call him on the phone and tell him about our conversation, which I did. While I don't think it is of much significance, he told me that he had sent a copy of his letter only to Judge Segell.

While in view of our conversation I don't really believe it is important, I can say with respect to the points raised in Judge Godfrey's letter that my son did move to Phoenix, Arizona at the end of August and resigned from the Board of KSJN. With respect to my own situation, I have subsequently found out for another reason that my precise status in respect to Channel 2 is set forth in the by-laws of that corporation as follows. "It states that the Board:

> may, in recognition of past service to the corporation, elect any former Trustee as a Founding Trustee. Founding Trustee shall have the rights and privileges of a Trustee of the corporation, except that the Founding Trustee may not vote as a Trustee or be counted for purposes of a quorum under Section 4 above, nor be required to consent to any action in lieu of a meeting under Section 5 above."

Obviously I would not have undertaken the assignment if I had felt in my own mind that these situations would affect my objectivity and now that we have had the hearings and learned more about the matter, I feel even more that way.

Sincerely yours,

John S. Pillsbury, Jr.

JSP:bp

Enclosure

DEC 8 1981

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL

JUDGE OTIS H. GODFREY, JR.
1539 COURT HOUSE

SUPREME COURT
FILED
DEC 16 1981
JOHN McCARTHY
CLERK

December 3, 1981

Mr. John S. Pillsbury, Jr.
930 Dain Tower
Minneapolis, Minnesota 55404

Re: Supreme Court Commission on
Modification of Canon 3A(7)

Dear Mr. Pillsbury:

As you know I appeared as a witness and submitted a written statement to the Commission at the October 20, 1981 hearing on cameras in the courtroom. Since receiving the Court's order of extension of time, I have prepared a brief, hopefully setting forth the position of the State District Judges' Association.

In that process, and within the last two weeks, it has come to our attention that you are a founding trustee of Twin Cities Public Television, Channel 2, one of the petitioners in these proceedings. It is my understanding that founding trustees receive board minutes and are welcome to participate in board meetings as non-voting members. We have also learned that your son, Jock Pillsbury, was serving as chairman of the board of directors for Minnesota Public Radio, KSJN, another of the petitioners, until his very recent move to Arizona.

You will recall that Rick Lewis, a general manager of KSJN, and William Kobin, president of Channel 2, both were called as witnesses on behalf of petitioners in these proceedings.

We are well aware of the outstanding record of achievement that you and your family have continuously made throughout the years in innumerable areas of civic improvement. Our community has unquestionably been the beneficiary of these altruistic activities.

It would seem, however, that the Pillsbury affiliations with Twin Cities Public Television (Ch. 2) and Minnesota Public Radio, two of the petitioners, create an apparent conflict of interest in these proceedings which should be reviewed as soon as possible.

Sincerely,

Otis H. Godfrey, Jr.

OTIS H. GODFREY, JR.

DEC 8 1981

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL 55102

JUDGE OTIS H. GODFREY, JR.
1539 COURT HOUSE

December 3, 1981

Mr. John S. Pillsbury, Jr.
930 Dain Tower
Minneapolis, Minnesota 55404

Re: Supreme Court Commission on
Modification of Canon 3A(7)

Dear Mr. Pillsbury:

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Sincerely,

Otis H. Godfrey, Jr.

OTIS H. GODFREY, JR.

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL 55102

HYAM SEGELL
JUDGE
ROOM 1409
COURT HOUSE

STEVE JANICEK, JR.
OFFICIAL COURT REPORTER
TEL. 298-4101

November 25, 1981

Mr. John S. Pillsbury, Jr., Chairman
Advisory Commission on Cameras in the Courts
930 Dain Tower
Minneapolis, Minnesota 55402

Dear Mr. Pillsbury:

As you probably know, Judge Godfrey is in the process of writing a brief which will summarize the position of the District Judges Association in opposition to Paul Hannah's brief. Consequently, I do not feel the necessity of writing anything further myself. As I indicated to you previously, however, I thought I should submit the article which appeared in the Minnesota Trial Lawyer in its March-April, 1981, issue. That also, incidentally, contains the position of Judge Joseph Summers of our Bench, who, as you know, is generally in favor of cameras in the trial courts.

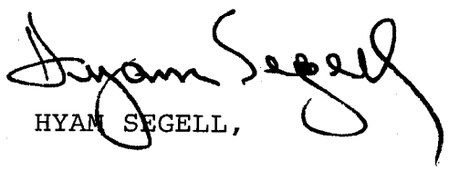
I have added three footnotes to my article, which are self-explanatory, and have enclosed the original article from Quaere, the University of Minnesota Law School newspaper, from which I quote in a footnote.

The only other thing that I would add is that, in my judgment, petitioners in this matter have wholly failed to sustain the burden of proof, which is theirs, to establish (1) that the public's understanding of the operation of the courts would be improved and elevated, and (2) that the use of cameras in the trial courts would not endanger the proper functioning of those courts and the liberties of individuals, particularly in criminal cases. I submit that you cannot allow cameras to be used in the trial courts if you only find that their use will have entertainment value for the public, because you would then be saying that the courts may be used as an entertainment

vehicle; this would be utter folly, and in so saying, you would be totally abdicating your responsibilities as Commission members. You can only allow cameras in the trial courts, I submit, if you find (1) that you are convinced by a fair preponderance of the evidence that the use of cameras will raise the public's understanding of the operation of the courts and (2) that the educational value of this benefit outweighs the risks and detriments which have been so carefully outlined in the testimony of the respondents. In other words, you must find that the benefit which you foresee outweighs to an appreciable extent the possible danger to the liberties of individuals and the added burdens on courts. Absent such findings, the prohibition against cameras contained in Canon 3(A)7 must be continued.

On that note, I would submit the issue to you and your colleagues.

Respectfully yours,



HYAM SEGELL, Judge.

HS/sj

Enc.

cc: Paul R. Hannah, Esq.
W-1700 First National Bank Building
Saint Paul, Minnesota 55101

Chandler v. Florida *Should* Open the Door of Minnesota Trial Courts to Cameras

by Hon. Joseph Summers

On Jan. 26, 1981, the United States Supreme Court decided the case of *Chandler* v. *Florida*, 49 Law Week 4141. Although the Court recognized the serious risk of juror prejudice in some cases and the impediments which might result from prejudicial broadcast accounts of pretrial and trial events, it nevertheless determined that, under the principles of federalism, it could not impose an absolute constitutional ban on all broadcast coverage. The ink was barely dry on the opinion when the hue and cry went up from the news media in the Twin Cities area. For a week or more the public was bludgeoned with the time-worn cliches which the bench and bar of Minnesota have heard repeated so often in the last three or four years. For example, in newspaper articles and editorials they regaled us with the usual litany about freedom of the press, which somehow has been translated into some kind of freedom of the photographer and freedom to intrude into the judicial process. Then came the argument about the people's right to know, which, according to the media, emanates from the language of the First Amendment. This fiction, which the media has perpetuated for years, has begun to achieve an almost hallowed status in their minds. The proven record of commercial television in the field of public education is, no doubt, responsible for this. Again it was acclaimed that a 90-second segment of trial news could prove to be a valuable learning

Chandler v. Florida *Should Not* Open the Door of Minnesota Trial Courts to Cameras

by Hon. Hyam Segell

The disagreement between those who believe the mass media should be able to use modern technology to cover the courts and those who do not is based upon passionate convictions.

This disagreement will not go away because of the *Chandler* decision.

What is needed, I think, is a new approach. Let each side practice what it preaches. Judges who prefer sketch artists to Nikons should not be forced to accept methods of news coverage which they believe will distort the proceedings before them.

In the same breath, however, we should not all have to march in the same lock-step. Judges who believe—with the U.S. Supreme Court—that the mass media are surrogates of the public in getting and disseminating news ought to be free to allow the media to use 20th-century technology to broaden coverage of the courts.

Canon 3A (7) ought to be repealed. "Technological coverage" ought to be left up to the trial judge. Let those who want to allow use of the new technology in

their courtrooms do so, and let those who do not, refrain. If a trial judge doesn't want a camera in his court, he shouldn't have to put up with one—but how is he hurt, if I have a camera in mine?

Judges who don't want cameras in their courts will argue that "local option" leaves them open to pressure from their local media to change their minds. The answer to this, of course, is "yes." I doubt, though, whether the pressure would be any greater than that to which judges are now subjected when newsworthy matters occur in their courts.

Pressure is pressure and it goes with the territory.

"What about litigants?" many will ask.

Within my own experience, the presence of a large audience in the courtroom sometimes has had such an intimidating effect on witnesses that a nice unobtrusive camera would have been a relief. We do not keep audiences out of our courtrooms because a witness is nervous. Why keep out the cameras?

If trial judges have the discretion to control technological coverage of court proceedings we can handle those situations where a witness may truly be intimidated by such coverage as these situations arise.

I wish the Supreme Court would repeal Canon 3A (7), adopt rules governing lighting, equipment, and pool feed such as are contained in the rules proposed by the Joint Bar-Press-Radio-TV Committee, and leave it up to each trial judge to decide if technological coverage is to be allowed in his or her court.

If this is done, the common law and the pressures of litigation will work out an ethic of technological coverage which will be as satisfactory as the customs which have grown up about print reporting. The courts and the media will get along fine.

I have watched TV coverage of the Carol Burnett libel trial and seen TV and radio coverage of the California evolution trial. I think the people of Minnesota should have as much chance to see their courts in action as do the people of California.

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experience for all of us. Finally, we were told that, with the *Chandler* decision and the enormous success of the Minnesota Supreme Court's experiment with cameras, we now could come out of the dark ages of trial court coverage if we allowed the experimentation to be conducted in Minnesota.

Our Minnesota Supreme Court has had, on a rather minimal basis, an opportunity to observe the effect of television cameras in its court. Far from being the huge success that has been portrayed by the news media, the members of the Supreme Court have not been impressed with the editorial content of the material shown on television; moreover, the kinds of cases which have been televised have not been informative to the public, nor could the public get the flavor of what transpires in the Supreme Court.[2] It has become quite clear that our Supreme Court has the gravest doubts that, even with the greatest perception on the part of members of the public, they could be informed about the workings of the court in 90 seconds. If the public's perception of what transpires in that court has not been enhanced, it could hardly be said that its perception of the trial courts would be enhanced by the same kind of experience. Notwithstanding the repeated statements of the media regarding the success of the experiment in our Supreme Court, the fact is that it has proved to be a dismal failure. Moreover, it has been of so little interest to the news media to broadcast from that court that they have not even taken the trouble to go there for more than a year.[3] Somehow, though, the public's right to know does not seem to have suffered.

The perception of the news media people as to the effect of *Chandler* is strangely different from the perception of lawyers and judges. The decision does not really open the door to the use of cameras in the trial courts in Minnesota or anywhere else. In fact, it strongly suggests the use of great caution in this area. Since what the United States Supreme Court said in *Chandler* is what the trial bar and trial bench in Minnesota has said for years, there really should be no further controversy engendered in Minnesota.

One cannot quarrel with the concept of federalism expressed in the *Chandler* case. States should have the right to determine how authority is to be exercised in their own courts in the area of broadcast journalism. By ruling as it did, however, the Supreme Court did not put its imprimatur on such experimentation in this area. On the contrary, the risks of such experimentation were fully recognized not only in the majority opinion but more especially in the concurring opinions of Justices Stewart and White.

After referring to Justice Harlan's statement in *Estes* v. *Texas*, 381 U.S. 532, that "courtroom tele-

(con't. p. 23)

vision introduces into the conduct of a criminal trial the elements of professional 'showmanship,' an extraneous influence whose subtle capacities for mischief in a case of this sort will not be underestimated by any lawyer experienced in the elusive imponderables of the trial arena," Justice Stewart went on to say in *Chandler*:

> "It can accurately be asserted that television technology has advanced in the past 15 years, and that Americans are now much more familiar with that medium of communication. It does not follow, however, that the 'subtle capacities for serious mischief' are today diminished, or that the 'imponderables of the trial arena' are now less elusive."

This is very little different from what the Board of Governors of the Minnesota State Bar Association and the bar itself in convention assembled said when it adopted the following statement contained in the Minority Statement of the Joint Bar, Press, Radio and TV Committee Report:

> "2. While the physical distractions of cameras and other electronic devices have been lessened by state-of-the-art improvement, the subtle psychological distractions resulting from their presence have sufficient adverse impact upon jurors and witnesses to detract from the full presentation and careful evaluation of evidence in both civil and criminal cases."

The risks of cameras in the courtroom are as real today as they were at the time of *Estes*, according to Justice White in his concurring opinion in *Chandler:*

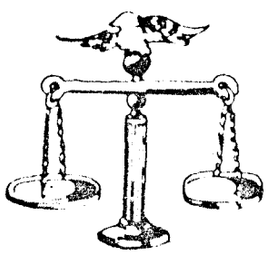
> "By reducing *Estes* to an admonition to proceed with some caution, the majority does not underestimate or minimize the risks of televising criminal trials over a defendant's objections. I agree that those risks are real and should not be permitted to develop into the reality of an unfair trial. Nor does the decision today, as I understand it, suggest that any state is any less free than it was to avoid this hazard by not permitting a trial to be televised over the objection of the defendant or by forbidding cameras in its courtrooms in any criminal case."

The television, radio and newspaper people constantly berate us with the idea that they are working in the public interest, that they have only the public good at heart, and that they want to educate the public. Nothing could be further from the truth. The extensive and wealthy commercial enterprises which comprise our radio and television stations operate under one simple formula, to assemble viewers and listeners and sell advertising, and to state that they are motivated by promoting the public good and that they are acting as public service organizations in doing this is a sheer masquerade. They should not be permitted to look to the courts for entertainment of the public, and they should not be allowed to mislead the public that they will be able to educate them if they get into the courts. They alter reality every time they point a camera at it, and the courts of this state simply should not become vehicles for entertainment; nor should they become involved in the perennial ratings war between competing television and radio stations.

The words of Chief Justice Warren in his concurring opinion in *Estes* v. *Texas*, supra, are as timely today as they were when he wrote them, because they express clearly the risks that all lawyers and trial judges see in having television cameras in their courtrooms:

> a. Televising trials would divert them from their proper purpose and would have an inevitable impact on the participants.
>
> b. Televising trials would give the public the wrong impression about the purpose of trials, thus detracting from the dignity of court proceedings and lessening the reliability of them.
>
> c. Televising trials singles out certain defendants and subjects them to trials under (different) conditions not experienced by others.

Now that *Chandler* has been decided, the Supreme Court has confirmed that the risks are as great today as they were at the time of *Estes*. Since any state is free to avoid these risks by keeping cameras from intruding into their courtrooms and intruding upon the adjudication of human rights, which, of course, is the sole function and purpose of the judicial machinery, the door should finally be closed on the photographic coverage of trials in Minnesota. More importantly, the not-so-subtle efforts of the media to intimidate the Minnesota Supreme Court into allowing experimentation in the trial courts should finally come to an end.



FOOTNOTES

Footnote 1. The Supreme Court framed the issues in the following language:

"(W)e have before us only the limited question of the Florida Supreme Court's authority to promulgate the canon for the trial of cases in Florida courts.

"This Court has no supervisory jurisdiction over state courts and, in reviewing a state court judgment, we are confined to evaluating it in relation to the Federal Constitution." After ruling that the use of television cameras did not constitute a per se denial of due process, the court held that the concept of federalism expressed by Justice Brandeis in his dissent in *New State Ice Co. v. Liebmann*, 385 U.S. 262, 311 (1932), must stand as a guideline for their decision.

The Court quoted this language from the dissent:

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious, or unreasonable . . . but in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold."

Footnote 2. The quoted statements of Chief Justice Robert J. Sheran which appeared recently in Quaere, which is the University of Minnesota Law School newspaper, corroborate the expressed view that the public's understanding of the operation of the Supreme Court in Minnesota has not been improved.

In an interview which appeared in the October, 1981, edition of that newspaper, the Chief Justice, in commenting upon the introduction of television cameras into the Supreme Court, was quoted as saying:

> "I haven't seen any great public benefit that has followed from it; I don't think the citizens of the State of Minnesota have any better idea of what goes on in the Supreme Court than they did before."

Footnote 3. It is interesting to note that in the more than four years in which the electronic media have been in the Supreme Court of Minnesota, not one station has seen fit to do a public service broadcast or a documentary which might have proved informative to the public about the workings of that court.

University of Minnesota Law School newspaper

QUÆRE

Volume 8
Number 1
October 1981

Retiring chief justice reflects on term

by Don Fulkerson

Robert J. Sheran will retire from the Minnesota Supreme Court December 18, 1981 -- the eighth anniversary of his tenure as Chief Justice. Prior to his term as an associate justice on the Minnesota Supreme Court (1963-70), Sheran, now 65, was a member of the Minnesota House of Representatives (1947-51). From 1970-73, Justice Sheran served on the Governor's Commission on Crime Prevention, and was a member of the firm of Lindquist and Vennum.

In a recent interview, the Chief Justice discussed at length his years on the court, changes underway in Minnesota and Washington, and the future of the Minnesota court system.

"I see the role of the Chief Justice as primarily that of doing the best he possibly can to make the (judicial) system work harmoniously -- that he must have a higher priority on his time and energies than any other responsibility." Sheran noted, however, that complicating this role are the contact burdens of a court system short of time, personnel, and resources at every level. The case load of the Minnesota Supreme Court has doubled since his appointment as Chief Justice in 1973. As a result, Sheran explained that "the work load of this court, which is approximately 1,400 cases a year, is not manageable."

To alleviate the need to deny appellate review of a large number of cases, which the Chief Justice believes the Court is not privileged to do, Sheran considered the alternative of creating an intermediate appellate court in Minnesota.

Should a writ system be created, the Supreme Court could limit its case load, Sheran explained. "You have to have an intermediate court of appeals to deal with the vast volume of cases that do not have long term precedential significance and free up the Supreme Court... to work on about 150 cases a year that are of real precedential significance."

The creation of this court undoubtedly will be orchestrated by a Constitutional amendment -- a process that could take over four years. To relieve the burden in the interim, Sheran discussed the possibility of a legislatively created appellate divi-

SHERAN to 10

district maintains the district court's contrary findings to be erroneous and unsup-

448 U.S. 297 (1980), and Williams v. Zbaraz 448 U.S. 358 (1980), the Court upheld

to be demonstrated in order to reverse a prior judgment. The burden is on the ap-

these factors as indicia of unconstitutionality.

Sheran: caseload overwhelms state's highest court

SHERAN from 1

sion of the District Court, drawing personnel from the district judges of the state, with the legislature adding judges to ease the congestion of the trial courts.

Judicial administration has been the primary concern of the Sheran Court. Because 90 percent of the cases in this country are decided in trial courts, Sheran emphasized that "the function of a court system is to resolve controversies between people expeditiously and economically... it has to be handled in such a way that you can be of service to people in their time of need... To devise methods and techniques to make that possible, as far as state court systems are concerned, (is) what it's all about."

Although Sheran does not claim any leading personal contribution during his tenure as Chief Justice, several court reforms, such as the Court Reform Act of 1977 and Uniform Rules of Criminal Procedure, have been established since 1973.

Of the efforts in which Sheran has been involved, the one he feels will have the most long term influence is the attempt to create "on the national level, an entity that will concern itself with the operation of the state court systems and move the federal government into discharging its responsibility to the state court systems by providing the funds that we need to carry out our work." Sheran called the organization, which would consist of representatives from state courts, "an absolutely magnificient idea that is long overdue."

After nearly 16 years on Minnesota's Supreme Court, Sheran has encountered many problems unique to the position of appellate judge. Reflecting on his work in both the executive and legislative branches, the Chief Justice said, "One of the problems that an appellate judge has is the problem of recognizing the limits of judicial authority... where you've had experience in the legislature, you have to fight a tendency to legislate... As a member of this court I have to constantly be on the alert that I don't function as a legislator from my position as a judge."

The position of an appellate justice is further complicated by the chance that certain irreconcilable issues, such as abortion or capital punishment, will come up for determination. Although the Minnesota Supreme Court has faced neither issue during his tenure, Sheran explained that he would resign if he could not accept the law as delineated by the United States Supreme Court.

Sheran spoke favorably of the nomination of Judge Sandra Day O'Connor to the United States Supreme Court, saying: "She would make a strong addition to the United States Supreme Court, and if I were in the United States Senate I would vote for her confirmation." While Sheran favors a system of selecting appellate justices based solely on merit, without pre-commitments to appointments, he stated that "women are so woefully lacking in representation in significant court positions... that preferring a female to a male" becomes necessary. The Chief Justice added that he "felt very comfortable" with both the nomination of O'Connor and the appointment of Justice Rosalie Wahl, the only woman on the Minnesota Supreme Court.

Another issue currently at the forefront in Washington is the effort by Senators, such as Jessie Helms, to pass legislation that would eliminate cases on school prayer and busing from the appellate jurisdiction of the Supreme Court. Although Justice Sheran related that he had not studied the problem sufficiently to decide whether such a statute would be constitutional. He stated that he was opposed to the proposal as a matter of legislative policy.

In 1978, the Minnesota Supreme Court altered its rules and allowed electronic media access to oral arguments before the court. Sheran noted that the introduction of mass media into the Supreme Court has had no impact on its proceedings, and added, "I haven't seen any great public benefit that has followed from it; I don't think the citizens of the state of Minnesota have any better idea of what goes on in the Supreme Court than they did before."

As for the introduction of electronic media in trial courts, Sheran noted that the Court has appointed a commission to assemble all the evidence presented on the question, and emphasized "if a person could be assured that the public's understanding of the operation of the courts would be improved and elevated without endangering the proper functioning of the courts and the liberties of individuals -- particularly in criminal cases -- then some accomodation to the request could be made. On the other hand, if the members of our Court were not satisfied that that could be done, the burden of proof is on those seeking the change."

On the subject of the new criminal matrix sentencing structure in Minnesota, the Chief Justice noted that the desired effect of uniformity in sentencing has taken place, but that it is too early to determine if the system has had an impact on deterring crime.

Upon his retirement Sheran will return to private trial practice, possibly with his younger son. His decision to retire now, well before the end of his term in 1982, was grounded in his desire to give the governor ample time in appointing a new Chief Justice, as well as his inability to commit himself to hold the office until 1989 -- an office which, Sheran explained, "takes younger people."

Sheran feels that the selection of Douglas Amdahl as the new Chief Justice is a wise choice. Amdahl currently is an associate justice of the Minnesota Supreme Court. Being appointed "from the ranks," Amdahl will not face the problems of transition a new chief justice would encounter on a court taxed to the limit with tensions and a massive case load. Further, since Amdahl served as a trial judge, Chief Justice Sheran believes him ideally suited to continue in the role of making the judicial system work harmoniously.

Exhibit 'B'

Saint Paul Black Ministerial Alliance

451 W. Central Ave.
St. Paul, Minn. 55103
Phone 227-4444

Justice And Righteousness For All.

NOVEMBER 2, 1981

Judge Otis H. Godfrey
District Court

Dear Sir:

This letter is to inform you of our opinion and concern of Television Cameras being admitted to the Court Room. We have discussed both sides of the issue, pro and con, and we feel very strongly against allowing T.V. Cameras to be admitted in any court rooms.

We feel this will do great damage to the person or party's appearing before the Judge or Jury, wheather innocent or quilty before the law. It even puts the witness in an embarrassing position, as well as all others in the eyes of the public.

We further realize that the court rooms are not private, but further than that why should the actions of the courts be into the private home. It also intrudes upon the rights of the Judges in their own court room, who must make all types of right and just decisions.

Therefore, our organization bitterly oppose permitting Television Cameras into our courts 100 Percent.

Yours truly,

James Battle

Rev. James Battle,
President
Black Ministers Alliance

DEC 9 1981

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December 8, 1981

Mr. John S. Pillsbury, Jr.
Chairman
Advisory Commission on Cameras in the Courtroom
960 Dain Tower
Minneapolis, MN 55402

Dear Mr. Pillsbury:

A question that is now before the State of Minnesota has passed through the State of Wisconsin. The question I believe basically is this -- is "the news" that important that it may undermine the rights of a litigant, counsel for each litigant, whether they be plaintiff or defendant, and also hamper the trial judge with reference to the conduct of a trial, and also aiding the lawyers to make a capable and competent record in the event the case be appealed.

I believe that to allow cameras within the confines of a courtroom during the course of a jury trial, whether it be civil or criminal, would very definitely dampen the rights of that litigant, plaintiff or defendant, as well as would work to the advantage or the disadvantage of counsel that may be in trial at that time. The court reporter is not forgotten, as without question the record and presence of different types of camera equipment is not only going to have an effect upon the jury but certainly as a practical matter will have an effect upon the witnesses and witnesses that are to follow which are sitting in the courtroom waiting their turn to be called. Also, it is extremely important that not only the atmosphere and the actions of litigants and the counsel and the court be kept as clear as can be, the most important factor is rights of that litigant and the duty of the trial judge to make as clear a record, together with the action by counsel that will protect everyone concerned upon appeal. These particular items are but a few that should be mentioned and that have been felt by anyone who is trying cases in the courtrooms in this and other states. I felt it was my duty to write you as I did in the State of Wisconsin that we cannot substitute the question of people having the news and all information as they have not lost that right because a courtroom is open to all at any time unless a determination is made to the contrary by the trial judge. Therefore, the news media are losing nothing and the absence of a collateral

factor which may influence not only the jury but witnesses, prospective witnesses, as well as the Court and attorneys should not be allowed to be tampered with or even a chance be taken with it.

I would ask that your committee determine preferably that cameras not be used within the confines of the courtroom or in the alternative to lay down specific guidelines as it is very necessary, and once the damage is done it is too late.

I thank you for allowing me to write you on this, I am,

Very truly yours,

John W. Fetzner

JWF:jb

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OF COUNSEL
ARNOLD A. KARLINS

November 25th, 1981

Mr. John S. Pillsbury, Jr.
Advisory Commission on Cameras
in the Courts
930 Dain Tower
Minneapolis, Minnesota 55402

Dear Mr. Pillsbury:

In your capacity as Chairman of the Commission on Cameras in the Courts, I am taking the liberty of sending you three (3) copies of an article "Critical Focus" in the November 1981 Popular Photography and a review of "Joe McCarthy and the Press" in the October 18, 1981, issue of the New York Times Book Review. I send them to you in the hope that you might think them related to the subject matter of your Commission and of interest to you in forming your decision.

Sincerely yours,

Sheldon D. Karlins, P.A.

SDK/ms

Enclosures

Critical Focus

By Kenneth Poli

The all-seeing lens: is it used to bring the truth—or sensationalism (and sales)?

As this is written, an Atlanta judge had just barred cameras from his courtroom during the trial of an accused murderer of two young Atlantans.

Four TV cameramen and four news photographers had been denied access to the courtroom to cover the trial.

The trial promised to have wide public interest, since the defendant is charged with murdering two of 28 young people whose deaths have occurred over a two-year period, creating great fear in Atlanta, especially among children.

Furthermore, photographers and cameramen have frequently been permitted into the courtrooms in several states as a part of modern journalistic coverage of trials. The arguments for the presence of cameras at a trial are several and quite valid.

The lawyer for the Atlanta Press Club is quoted in *The New York Times* for Aug. 26 as saying that television would allow reporters to watch and report the progress of the trial from an adjoining room, phoning in their stories without the need for leaving and reentering the courtroom.

It was further argued that televising the proceedings would insure more accurate news reports.

Such arguments are persuasive and have won permission for photojournalistic trial coverage in the past. And I suppose we will be hearing outcries from photographers and print journalists' groups about first-amendment rights.

But the dark side of freedom of the press is the possible slanting of news stories, consciously or otherwise, by reporters, photographers, and editors.

The tendency to believe what is shown in a sharp, clear, well-reproduced picture is nearly irresistible. Yet, it represents but a small fraction of a second in the life of the subject. For example, a photograph of an angry-looking accused man's wife turning her head away from her husband as he passes her in the courtroom: is she spurning him, as it might seem? Or, a split-second before did another spectator make an accusatory remark to the defendant, causing his loyal wife to look angrily in the direction of the spectator?

Chances are that you can't tell from looking at the picture and you are free to put the most sensational interpretation on it that you wish, unless a caption is at pains to tell the story. The picture hasn't told the whole truth.

Much is made in journalism of its mission to inform the public. But the selling of newspapers, magazines, and television news shows often seems to insist that the public be informed in the most interesting (i.e. sensational) way possible, rather than dispassionately.

Think about the Pulitzer Prize news photos you've seen over the years. With rare exceptions they show life at its grisliest—executions, deaths by fire, explosion and accident, criminal acts—in short, they often */continued on page 80*

Critical Focus

continued from page 16

show what will sell papers.

I don't blame the photographers or the television cameramen who seek out similarly titillating material to show us at dinnertime. As viewers who continue to accept sensationalism in picture presentations, we are to blame. Photographers and cameramen are giving us what we collectively seem to want.

Picture coverage *itself* often influences events. We hear, for example, of groups of demonstrators for or against a particular cause, who have rather listlessly been circling with their placards. Suddenly a TV crew arrives to cover the story. The demonstrators quickly become vocal, militant, loud with slogans, vibrant with shaking fists. Willy-nilly, the very presence of the camera has created a "media event"—the image the photographer wants for widest viewer attention.

So it would seem that total access to courtroom trials by *photographers* is not absolutely necessary to protect the public's right to know the truth.

Regardless of the crime the defendant is supposedly to be tried by his peers, a jury—not the newspaper and television audience. The presence of TV and still cameras, even those as silent as the Leica, can be far more intrusive than the lap-held notebook of a print reporter—and far more likely to produce a media event on the part of participants in the trial.

In short, photo coverage, especially of trials that are inherently sensational, could conceivably even warp the already eccentric course of justice.

The judge who denied photographers access to the trial of the suspect in the killing of two of 28 young Atlantans cited several thoughtful reasons for his decision.

"Because of the worldwide publicity generated by the . . . case," he said "it is only natural that an overwhelming majority of the public—out of sheer interest and curiosity—would want to see a publicly televised trial.

"However, we must not let our emotions color our good judgment, for we must weigh and balance the desire for a televised trial against the potential harm or danger that might be done to those children and families who were adversely affected by the ordeal. Some of them had to undergo psychiatric therapeutic treatment while others are still being treated today."

Cameras communicate powerfully. And each year they probe more deeply into areas of society and personal life that have in the past remained private. In general, this is good, because, in general, the truth *will* make us free.

But there remain events, emotions, relationships, and principles that serve society better by their being kept from the camera's all-seeing eye. It remains for thoughtful men to balance the public's right to know against the individual's right to fair treatment.

Society's freedom survives only as long as that of its individual members. Keeping cameras out of this particular courtroom seems to interfere little with the freedom of the press. ○

Lens Test Glossary

(See Lab Report on page 133)

Aberrations: A flawlessly manufactured lens may still exhibit residual aberrations (image faults). Often, certain aberrations are permitted by the designer to minimize others felt to be more harmful to image quality.

Astigmatism: Causes lines radial to the optical axis, and lines perpendicular to these, to focus in two different planes. Improved by stopping down.

Centering: The center of curvature of each lens surface should lie on a common line.

Coma: Comet- or tear-drop-shaped images of off-axis points of light. Improved by stopping down.

Contrast test: Contrast levels are compared electronically between the image of a coarse and fine slit, and the result is expressed as a percentage.

Critical f-stop: The largest opening at which the aberration being examined is considered to be under satisfactory control.

Distortion: Causes image of window frame (for example) to bow out (barrel type) or in (pincushion type), but does not influence sharpness. Not improved by stopping down.

Flare: Causes an overall loss in contrast. Sometimes called "veiling glare."

Flare test: The lens is presented to a target consisting of a totally black spot surrounded by a uniformly bright field of infinite dimension. The amount of light energy present in the center of the image of the black spot is measured and expressed as a percentage of the light energy in the image of the bright surround.

Lateral chromatic aberration: A variation of magnification with color. Not improved by stopping down.

Longitudinal chromatic aberration: A shift of focus with color. Not improved by stopping down.

Spherical aberration: Causes a focus shift as the lens is stopped down.

T-number: The actual maximum f-number divided by the square-root of the percentage of transmitted light.

Vignetting: Causes underexposure at the corners of the film. Improved by stopping down.

Misc. terms and practices: *Close working limits* are measured from the target to the foremost portion of the lens when it is set to its closest focusing position. The *close-limit field size* is measured at this point. The portions of the image field examined during both the contrast and star tests are the center, ⅓ out, ⅔ out, and far edge for rectangular formats and correspond to the following positions within the 24x36-mm format of a 35-mm camera's image: the center, 6 mm off-center, 12 mm off-center, and 18 mm off-center. Square formats are examined at the center, halfway to the edge, at the edge, and at the corner. ○

10/18/81 New York Times, Book Review

The Art of Innuendo

JOE McCARTHY AND THE PRESS

By Edwin R. Bayley.
270 pp. Madison:
The University of Wisconsin Press. $16.50.

By GEORGE E. REEDY

PERHAPS the most traumatic experience for the American press in the 20th century was the discovery, through the late Joe McCarthy, of its vulnerability to manipulation by an outsider using rules devised by journalists themselves. To this day, correspondents who covered the career of the Wisconsin Senator wince when they recall the feeling of impotence with which he left them.

This is the slice of history addressed by educator and former reporter Edwin R. Bayley in "Joe McCarthy and the Press." It is a tale worth repeating at this time, for though the word *McCarthyism* has virtually displaced the word *demagoguery*, the man himself and his crusade against "Communists in government" are almost forgotten. There is a whole new generation that needs to know what happens when a political freebooter smashes through conventions designed to keep the social dialogue civilized.

Mr. Bayley — in a rare combination of scholarship and readability — painstakingly puts together the records that are available and the recollections of reporters of that period. The result is still confusing, but Senator McCarthy produced confusion throughout his lifetime. However, an overall picture emerges, and it is one of a press that was virtually controlled by strings in the hands of an extraordinarily deft puppeteer:

Joseph McCarthy, a man in a hurry to go someplace even though he was not certain of his destination, discovered early that most Americans got their news from the big wire agencies and that these agencies would carry almost any accusation from an authoritative source even if the validity of the accusation was suspect. This was a routine discovery that had been made by many Washington politicians in the past. None of them, however, had really made much use of it, simply because the wires also carried the factual material that enabled the public to put the story into perspective. Mr. McCarthy was not a routine senator. He devised the brilliant strategy of making charges of Communist subversion with no factual basis whatsoever; this meant that the charge would stand unchallenged except by the victim himself — whose response would appear self-serving to the public.

There were many other facets to the McCarthy operation. He learned the press cycles — those periods when correspondents had to write a story even though they had inadequate facts, and those periods when they might have time to dig up the facts. He knew how to smother the response to a charge with a new charge, and he was a master of what lawyers call subreption — the fine art of using misleading innuendo. In the employ of a lesser man, none of these devices would have worked. Even in his hands they would not

Continued on Page 39

George E. Reedy, Nieman Professor of Journalism at Marquette University, reported on Congress for the United Press for many years and was White House press secretary in the Administration of President Lyndon B. Johnson.

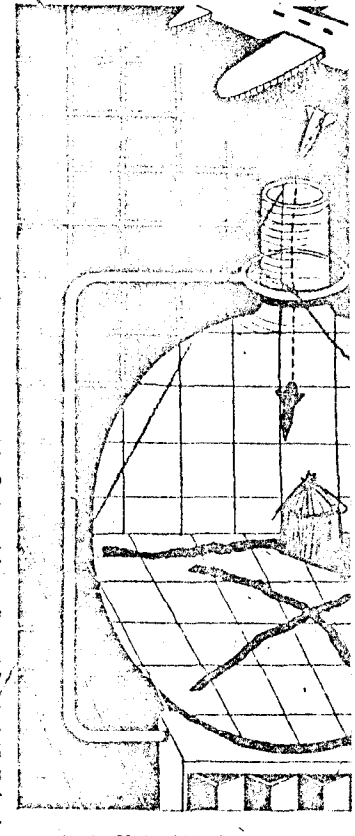
Russian Chemist

YELLOW RAIN

A Journey Through the Terror of Chemical Warfare.
By Sterling Seagrave.
316 pp. New York:
M. Evans & Co. $11.95.

By THOMAS POWERS

THE evidence is circumstantial. The first reports came more than 15 years ago from mountain villages in Yemen where a bloody civil war was being fought between royalist tribesmen backed by Saudi Arabia and a leftist government backed by Egypt. In 1963 Soviet-built planes dropped unusual bombs which gave off dense smoke variously described as dark gray, brown or black. Skin blisters broke out on people touched by the smoke, suggesting mustard gas of the sort used in World War I. Children were especially vulnerable. A British observer reported that at least six died vomiting and coughing up blood. The blood was puzzling. Conventional poison gases do not cause hemorrhaging.



Three years later new reports emerged of gas attacks on Yemeni villages. This time the smoke was described as gray green in color. A wide range of effects was reported by a medical team from the International Red Cross that questioned survivors: vomiting, blood pouring from nose and mouth, blood in the urine, bloody stools, blood welling up through the mucous membranes of the eyelids. At least several hundred people died in a number of separate attacks. It was difficult to make a precise survey in the rugged and remote Yemeni mountains. No actual sample of the alleged gas was obtained. None of the aircraft allegedly involved were photographed. Pilots of the planes were never identified. Egypt vehemently denied using poison gas. At the United Nations Secretary General U Thant said, "The facts are in sharp dispute and I have no means of ascertaining the truth."

In the late 1970's refugees from the Laotian highlands reported strange attacks by Soviet-built planes which dropped large bags that burst in the air and spread a fine yellow powder over Hmong villages. One witness described the people as lying down and going to sleep. When the witness came closer, he saw skin blisters on the victims and blood coming from nose and mouth. Some of those who did not die right away

Thomas Powers, the author of "The Man Who Kept the Secrets," is writing a book about strategic weapons.

McCarthy

Continued from Page 11

have worked had it not been for support, tacit and open, from the Republican establishment and, what is more important, had there not been an audience with a passionate desire to believe. Furthermore, he was capitalizing on earlier revelations that Communists really had worked their way into government.

If there is a weakness in this book, it lies in the absence of Senator McCarthy's "true believers" — that collection of embittered men and women who shared his burning resentment against all those who, because of race, creed and ancestral pedigree, "had it made" the day they were born. These followers swarmed through the corridors of Capitol Hill breathing Jacobin fire and exulting in the terrorizing of "striped pants" diplomats by their champion. For them, evidence and argument were a waste of time; all they sought was target identification.

Mr. Bayley tells some revealing anecdotes. He cites the experience of columnist Joe Alsop, who in a discussion with a Wisconsin automobile dealer was told that Secretary of State Dean Acheson must be a Communist because he was "in jail." Since Mr. Acheson had not even been indicted, those who remember Joe Alsop can easily picture his sputtering response. Those who remember the McCarthy followers can just as easily picture the failure of that response to make any impact on the automobile dealer. This situation was typical of the period, when both support and opposition took on the quality of mystical belief. What is missing in Mr. Bayley's book is better insight into what made people feel that way.

Generally speaking, as the author demonstrates, the press did not do a good job in straightening out the confusion. There

Senator Joseph McCarthy.

were some outstanding exceptions — correspondents attached to large "prestige" newspapers that could afford the time for thoughtful research and dared to use innovative presentations. But Mr. Bayley does not make the point that these exceptions were reporters who worked for newspapers whose readers were generally anti-McCarthy anyway. It is doubtful whether even the most perceptive reporting had much to do with the Senator's ultimate fate. That was probably the result of changing social and economic conditions and of the Senator's own bad judgment in turning his fire on fellow Republicans of a more moderate stripe. stretched credulity beyond limits of all but the inner ci of the faithful — a small nority at any time.

This is not the definitive b on Senator McCarthy simply cause that will require m more perspective on the ti than is now possible. But w the definitive book is writte will have to draw heavily on Bayley's work. Meanwhile, book should not accumul dust on some archival shelf should be required reading the nation's journalism scho and serve as a needed jolt those modern-day journali who may suffer from the i sion that manipulation of press is possible only thro corruption.

There are many contem rary reporters who have s lime confidence that it ca happen again. Mr. Bayley, this reviewer, was part o reportorial generation that o had a similar confidence in ability to repel the attacks those who would bend the pr to their own ends. Reading wh happened to that generat might instill some useful mility into the correspond of the present time. ☒

Author's Query

For a study of my great-uncle Sylvester Phelps Hodgdon (1830-1906), Boston artist, I would appreciate hearing from anyone with information relating to his life or the whereabouts of his paintings.

RACHEL T. BASTIAN
82 Washington Street
Ayer, Mass. 01432

JOHN S. PILLSBURY, JR.
930 DAIN TOWER
MINNEAPOLIS, MINNESOTA 55402
612 • 338-4382

November 30, 1981

Mr. Sheldon D. Karlins, P.A.
Grossman, Karlins, Siegel & Brill
512 Builders Exchange Building
Minneapolis, Minnesota 55402

Dear Mr. Karlins:

Thank you for your letter of November 25 with the enclosures.

I haven't yet had an opportunity to read them, but I am sure they will be interesting and helpful and I am having copies sent to the other Commissioners as well as to Paul Hannah, the counsel for the petitioners.

Sincerely yours,

John S. Pillsbury, Jr.

JSP:bp

John S. Pillsbury, Jr., Chairperson
The Minnesota Advisory Commission
on Cameras in the Courtroom

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL 55102

JUDGE OTIS H. GODFREY, JR.
1539 COURT HOUSE

December 7, 1981

Mr. John S. Pillsbury, Jr.
Commission Chairman
123 State Capitol
St. Paul, Minn. 55155

Re: Modification of Canon 3A(7)

Dear Mr. Pillsbury:

Under separate cover we have provided you with copies of my brief in opposition to the petition herein. Please be advised that this brief was discussed by the State District Judges at their recent meetings on December 1st and 2nd, 1981.

While the brief remains the work product of the undersigned, I can advise you that it has been overwhelmingly endorsed by the Minnesota District Judges Association.

Very truly yours,

Otis H. Godfrey, Jr.

OTIS H. GODFREY, JR.

OHG:re

cc: Paul Hannah
Judge J. Fitzgerald

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. 81-300

- -

In Re:

Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct.

WCCO Radio, Inc., et al,

Petitioners.

- -

BRIEF IN OPPOSITION TO PETITION

"The purpose of a trial is to determine whether or not the accused is guilty -" Justice Benjamin Cardozo.

This Commission was appointed by the Supreme Court to hear testimony and make recommendations on the use of cameras in the courtroom. The selection of such a Commission is unique in Minnesota, since all previous civil or criminal rules have been adopted under the procedures prescribed by Chapter 480 of Minnesota Statutes.

The petitioners seek to have the Supreme Court modify Canon 3A(7) of the Code of Judicial Conduct so as to permit the unlimited use of cameras in the trial courts of this state. Considerable time was spent demonstrating the use and technique of television equipment. We agree that cameras today are relatively quiet and can apparently be used under normal room lighting. All of the paraphernalia, however, is not yet invisible, and the mere presence of television may create untold psychological pressure on anyone put on public display by the all seeing eye.

After years of training and experience, perhaps professional actors and anchormen can act normally, but even the Commission members, in these

comparatively informal proceedings, may have felt the pressure of constantly being "on stage." What will the reaction be of that unknown subpoenaed witness in a future murder trial, as she walks up to the witness stand and sees that "unobtrusive" silent camera pointed in her direction?

Unfortunately I don't have the answer to that question, but neither does the media, this Commission or the Supreme Court. Mr. Hannah argues, nevertheless, that any risk of violating the rights of a defendant or other litigants in a televised trial is "manageable." This viewpoint of petitioners is not shared by the public, and has been rejected by an overwhelming majority of the trial judges and experienced attorneys in Minnesota.

If the members of this Commission, unencumbered by any ties to the petitioners, do in fact "represent the bench, the bar, and the citizens of this state", as petitioners allege in their brief, then the mandate is clear: the votes have already been cast by all three groups against the petition.

In a two year informal poll of hundreds of jurors in Ramsey County, Judge Hyam Segell found almost no support for the presence of cameras in the courtroom. After months of maneuvering at the committee level, the Board of Governors of the Minnesota State Bar Association likewise rejected a proposal to modify Canon 3A(7) of the Code of Judicial Conduct, and the 1980 Bar Convention also voted its opposition to a relaxation of the rule. It is worth noting that the proposals of the media then debated were far less pervasive than those under consideration by this Commission.

As did the trial bar, the trial judges studied the problem of cameras in the courtroom for over three years. A representative committee sought out articles on the experience in other states, read numerous commentators on both sides of the issue, and made its report in June, 1980. With only two or three dissents the State District Judges' Association voted to oppose any

change in Judicial Canon 3A(7). This brief attempts to articulate our opposition to the petition, and the reasons therefor.

We would concede that cameras in the courtroom are technically feasible, but that is not the crux of the controversy. The dangers are eloquently stated in the landmark decision of the U.S. Supreme Court, Estes v. Texas, 381 U.S. 532 (1965). The logic is still compelling:

> "(1) Televising of trials diverts the trial from its proper purpose, because it has an inevitable impact on all the trial participants.
>
> (2) It gives the public the wrong impression about the purpose of trials, thereby detracting from the dignity of court proceedings and lessening the reliability of trials; and
>
> (3) It singles out certain defendants and subjects them to trial under prejudicial conditions not experienced by others." (p. 565)

"Thus the evil of televised trials, as demonstrated by (Estes), lies not in the noise and appearance of the cameras, but in the trial participants' awareness that they are being televised." (p. 569-570)

As stated by Justice Clark in his concurring opinion, "ascertainment of the truth is the chief function of the judicial machinery. The use of television cannot be said to contribute materially to that objective, rather its use amounts to the injection of an irrelevant factor into court proceedings." (p. 544)

We submit that we do not need any 'instant replays' on television to secure the rights of all parties, or to arrive at an impartial judgment of legal issues.

Justice Clark further states in Estes that the impact of courtroom television on the defendant cannot be ignored. "Its presence is a form of mental, if not physical, harassment. The inevitable close-ups of his gestures and expressions during the ordeal of his trial might well transgress his personal sensibilities, his dignity, and his ability to concentrate on the proceedings before him - sometimes the difference between life and death - dispassionately, freely and without the distraction of wide public surveillance. A defendant on trial for a specific crime is entitled to his day in court, not in a stadium or a city or a nationwide arena." (p. 549) (Emphasis supplied)

Have those ringing words lost their meaning to us today? Petitioners would have us so believe. They state that the Chandler decision "rejects the arguments found to be persuasive in Estes", and apparently find "a fundamental change of philosophy" of the Supreme Court. (Petitioners' brief, p. 25). Nothing could be further from the truth.

Chandler v. Florida, 101 S. Ct. 802, 66 L.Ed. 2d 740 (1981), holds that Estes does not stand as an absolute ban on state experimentation of television coverage of trials, but the decision falls far short of endorsing the experiment of cameras in the courtroom. It does not change the Estes holding that reporters have only the rights of the general public, namely, to be present, to observe and thereafter if they choose, to report on a trial. We would quote but a few of the statements of Chief Justice Burger in Chandler:

"There was not a court holding of an (unconstitutional) per se rule in Estes ... There is no need to overrule a 'holding' never made by the court." (Footnote 8, p. 809).

"Selection of which trials, or parts of trials, to broadcast will inevitably be made not by judges but by the media, and will be governed

by such factors as the nature of the crime and the status and position of the accused - or the victim; the effect may be to titillate rather than to educate and inform. (Emphasis supplied) The unanswered question is whether electronic coverage will bring public humiliation upon the accused with such randomness that it will evoke due process concerns by being 'unusual in the same way that being struck by lightning is unusual.' Furman v. Georgia, 408 U.S. 238, 309 (1972) Societies and political systems that, from time to time, have put on 'Yankee Stadium show trials' tell more about the power of the State than about its concern for the decent administration of justice - with every citizen receiving the same kind of justice.

"The concurring opinion of Chief Justice Warren joined by Justices Douglas and Goldberg in Estes can fairly be read as viewing the very broadcast of some trials as potentially a form of punishment itself - a punishment before guilt. This concern is far from trivial." (Chandler, p. 812)

Perhaps we could all agree that these statements by Chief Justice Burger in Chandler fall somewhat short of indicating support of petitioners' views in these proceedings, much less constituting a "rejection" of the holding in Estes, or an expression of any changed philosophy. There are no cameras in the U.S. Supreme Court or in any Federal Courts in this land.

The decision in Chandler v. Florida, supra, simply permits Florida to continue its experiment, but gives no support to that effort. Commenting on the results in Florida, petitioners' brief at page 16 alleges that "while Florida's survey (was) not performed as part of a social science experiment, the validity of the data is unquestionable." Neither the U.S. Supreme Court nor the Florida Supreme Court agree with that conclusion. In footnote 11, (p. 810) of Chandler, the Court states:

"The Florida pilot program itself was a type of study ... While the data thus far assembled are cause for some optimism about the abilities

of states to minimize the problems that potentially inhere in electronic coverage of trials, even the Florida Supreme Court conceded the data were limited and non-scientific." (Emphasis supplied)

Petitioners' brief, pages 17-18, regarding Judge Thomas Sholts' views on televised trials is likewise a startling misrepresentation of the truth. Petitioners seem to feel that Judge Sholts could find no adverse effect from the presence of broadcast media in his court, nor any unfairness because of that presence. The Commission has heard his statement, and of course has before it Judge Sholts' report to the Florida Supreme Court following the Herman murder trial. Any fair minded observer could only conclude that Judge Sholts has impartially considered the pros and cons and has voted 'no' on cameras in the courtroom. I would nevertheless quote some highlights of his evaluation:

1. The widow of the deceased murder victim in the Herman trial objected to televising her testimony, but her challenge was rejected by the Florida Supreme Court.

If this is an example of the standard of fairness urged upon us by the petitioners, it must be summarily rejected. Such a rule approaches a barbaric perversion of decent justice, which we thought had been long abandoned.

2. There were no histrionics and no thespians, although the danger of acting for the camera will always exist ... One witness refused to testify from fear of her safety, partially contributed to by the television's presence.

It takes only common sense to realize that such a circumstance is one of the inherent dangers in televised trials. Victims of crimes have

already suffered psychological and even physical harm, and an impartial observer could well ask why petitioners would seek to televise such a reluctant witness. Ms. Burton called particular attention to the emotional problems of sexual assault victims. The media's proposal that a trial judge's finding against televising should be appealable raises the spectre of long trials with interminable TV recesses for appeal purposes, strangely reminiscent of those TV commercial breaks we have come to tolerate in professional football.

3. Subsequent to the Herman verdict, the prosecutor objected on security grounds because of possible retribution against several prison inmate witnesses who testified for the State, and might not have been identified but for exposure on television.

The Commission should know that even today we have some 60 to 70 inmates in protective custody at Stillwater Prison alone, at a considerable extra expense to the State. We all are aware of the retribution and scorn heaped upon "stool pigeons" and "squealers" within penal institutions. If the proposed rules are adopted, we can be assured that a sensational crime within prison walls, or one involving recently paroled felons, will be just that sort of case that TV will select "to educate the public." Mr. Hannah's argument that TV trial risks are "manageable" would probably not get concurrence from Warden Erickson or the inmate-witness.

4. Because of excessive pretrial publicity and the decision to televise the trial, the court sequestered the jury.

Such a step is extremely rare in Minnesota, and has never been ordered in Ramsey County during my twenty years on the bench. At 1978 prices the expense of jury sequestration in the Herman case amounted to $11,500. Ever greater burdens on the strained county budgets can reasonably be anticipated should the Supreme Court permit televised trials.

The obvious inconvenience to citizen jurors from such a long separation from their normal lives is another factor to be considered.

The other problems mentioned by Judge Sholts, i.e. possible change of venue, length of jury selection, bomb threats and security searches were apparently all caused or exacerbated by televising the murder trial. A reasonable person could not argue that such incidents enhanced the deliberative process. Rather the risk of creating a prejudicial atmosphere far outweighs any minor benefit of permitting a cameraman in the courtroom.

As Judge Sholts states in his report, "when a defendant's problems become entertainment for the public, the trial takes on a different form than an orderly search for the truth. The chief function of our judicial trial machinery is to ascertain the truth. The use of television does not materially contribute to this objective." (p. 16)

While Judge Sholts concedes that the experiment of televising the Herman trial worked out better than he believed possible, he nevertheless does not endorse cameras in trial proceedings.

Petitioners' brief at pages 18-20 on related problems, "Fairness to parties, witnesses refusal, witnesses and jurors adversely affected and other objections", i.e. grandstanding lawyers and judges, seems to have a refreshing naivité, but it indicates little knowledge or appreciation of the tough realities of criminal proceedings. The trial judges know, from hundreds of years of collective experience, that witnesses <u>are</u> threatened; that publicity sometimes makes it difficult to draw an impartial jury; that many people are reluctant to serve as jurors, or come into court to testify, because of their shy personalities; and yes, there are possibly some attorneys out there (certainly no judges!)who would love to grandstand

before a television audience, perhaps even furthering a political ambition. Human nature being what it is, we have not really changed much since the days of Estes, or even since the founding of the Republic. We must respectfully resist the temptation to make the jury box and the courtroom a sporting arena for the edification of our almost insatiable interest in the bizarre and violent acts of our fellow man.

The news media caters to that curiosity for its own gain, trying to sell more newspapers than the competition, or striving for higher ratings in order to sell more advertising. We are not overly critical of this manifestation of the American pursuit of material wealth and success, but we do say that the courtrooms of this state should not become part of that process. Petitioners argue that reporters, editors and cameramen have now reached maturity, and that we need not fear such abuses as were present in the Hauptmann, Sheppard or Estes trials. Regrettably the facts are otherwise.

In the Mossler murder trial, "the public went wild, the press went crazy." (St. Paul P.P. 10/11/81) Jean Harris' trial in the early part of this year for the murder of Dr. Tarnower became the center of what reporters called a "media zoo". The reporters themselves didn't enjoy the chase, and one New York Times photographer said she thought it "demeaning for everybody, for the defendant and the press." (St. Paul Disp. 2/24/81) On the local scene I would refer again to the attempt of at least two of the petitioners, WCCO Television (Ch. 4) and Hubbard Broadcasting (Ch. 5), to obtain the Ming Shiue tapes used in Federal Court. Their request was promptly denied by Judge Devitt, but we can legitimately ask if petitioners' purpose therein was to educate the public, and also ask if this is an example of the mature judgment and editorial policy referred to in petitioners' brief.

Other glaring examples of excessive zeal by the media I will leave for the Commissioners to recall from your own observations and experiences.

As Justice Cardozo succinctly stated, "the purpose of a trial is to determine whether or not the accused is guilty", and the role of the judiciary is to secure a steady and impartial administration of the laws. Any infringement of a defendant's right to a fair trial must be respectfully rejected, and the invasion of cameras into the courtroom comes within those parameters.

The Constitution, Article VI, says that "the accused shall enjoy the right to a speedy and public trial," but this guarantee confers no special benefit on the press, the radio industry or television. To satisfy the constitutional requirements of a public trial, it is not necessary to provide facilities large enough for all who might like to attend. To do so would interfere with the integrity of the trial process and make the publicity of trial proceedings an end in itself. The function of a trial is not to provide an education experience. Rather the guarantee of a public trial is a safeguard against any attempt to use our courts as instruments of persecution, and the Sixth Amendment does not require that the trial be broadcast live or on tape to the public. The press may, of course, attend the trial and report on what they have observed. See Estes v. Texas, 381 U.S. 532, 575, 583-584 (1965); Nixon v. Warner Communications, 435 U.S. 589, 610 (1977).

The trial of a lawsuit is a deliberative process, and the entertainment of the public and specific rights of a defendant have never mixed well. Televised trials would be a dangerous experiment in Minnesota and the possible impact on defendants, witnesses and jurors is simply incalcuable.

The quality and integrity of all future trials is at stake. Petitioners concede that they want no rule limiting coverage to civil proceedings, nor do they want any consent provision, since experience in other states tells us that the bench, the bar and the public have consistently refused to give consent to be televised, thereby proving of course the lack of support for petitioners' proposal.

We agree with petitioners' (Brief, p. 15) that anything which can increase our knowledge and improve our understanding of how courts work benefits a democratic government. To that end the bench and bar have long had an excellent educational program of speakers, pamphlets and slides available to schools, churches and civic organizations with precious little support, I might add, from any of the media. The State Bar Association has resorted to paid ads in newspapers, radio and television in order to tell its story.

If one of the goals of the media is really to educate the public about the mysteries of the courtroom, we would call their attention to existing Canon 3A(7):

> "A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:
>
> (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
>
> (b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;
>
> (c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
>
> (1) the means of recording will not distract participants or impair the dignity of the proceedings;

(2) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
(3) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
(4) the reproduction will be exhibited only for instructional purposes in educational institutions."

We know of no request by Channel 2, the public television station, or any commercial enterprise for permission under this present rule to televise a trial. Perhaps we could all agree that the average litigation, civil or criminal, would probably not appeal to a large number of citizens and accordingly would not sell advertising or build ratings. As Mr. Hannah candidly stated in his closing remarks, his clients want to be in on criminal trials, without adding the unneeded explanation - the Caldwells, Piper, Howard, Thompson, Trimble, Ming Shiue type trials are their abiding interest.

In the opinion of the bench, the bar and the public, the tyranny of television is threatening the basic structure of our courts. Trials should reflect the integrity and moderation of the judicial process, although we concede that even under present conditions this is sometimes strained to the breaking point. Considerate men ought nevertheless to prize whatever will fortify that temper in the courts, and to reject whatever would threaten this unique and yet vulnerable institution. No man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today. And every man must now feel that the inevitable tendency of such a spirit is to sap the foundation of public and private confidence in the courts, and to introduce in its stead universal distrust and distress.

Such would be the result of piecemeal televising of only the more sensational trials. In the world today the television camera is a powerful

weapon. Intentionally or inadvertently it can destroy an accused and his case in the eyes of the public. It has helped to bring down a president, it has destroyed political careers, it has jeopardized businesses to the point of bankruptcy. We do not contend that all such actions have been with evil intent or without some public purpose, but such an instrument has no place in the courtroom, where we attempt to insulate the juries and participants from the waves of public sentiment.

The inflexible and uniform adherence to the rights of the Constitution, and of individuals is indispensable in the courts of justice. All citizens support the principles of freedom of the press, reasonable access of the public to open trials, and the right of every defendant to due process of law in every courtroom in this state.

We submit that cameras in the courtroom will not enhance these rights. We respectfully urge this Commission to recommend to the Supreme Court that there be no modification of Canon 3A(7) of the Code of Judicial Conduct.

Respectfully submitted,

Otis H. Godfrey, Jr.

OTIS H. GODFREY, JR.
Judge of District Court
1539 Court House
St. Paul, Minnesota 55102

Metropolitan News
The Dispatch

■ Sports / 4B
■ Money/Finance / 14B
■ Classified / 9B

Tuesday, Dec. 1, 1981 / 1B

Mother details Diane Edwards' las

By Nancy Livingston
Staff Writer

ELK RIVER — Bonnie Edwards, mother of murder victim Diane Edwards, struggled valiantly to maintain her composure on the witness stand Monday as she answered questions about how her 19-year-old daughter spent the last day of her life.

Mrs. Edwards said Diane, an engineering student at the University of Minnesota who was planning to switch to a business major, slept until noon on Friday, Sept. 26, 1980. Diane got up when a friend called to make plans to go to the university football game the next day, her mother said.

After a breakfast of toast and juice, Diane went to a grocery store, Mrs. Edwards said, and then went to a local drugstore. When she returned home, Diane read until she left for work about 4 p.m. She was wearing her Perkins Restaurant uniform and a white, zipper-front sweater. She was a waitress at the restaurant.

"Diane told me she thought she would be off (work) by 9 p.m. and I told her to call me," said Mrs. Edwards, breaking into tears. Momentarily unable to continue her testimony, Mrs. Edwards wiped her eyes and took a drink of water before going on.

"Then the police came and told us somebody had forced her (Diane) into a car. They thought it was Diane, but they were still checking," said Mrs. Edwards.

Asked to identify a large, color picture of her daughter, Mrs. Edwards went and then managed to regain her composure as she identified the picture and also identified Diane's ripped white sweater and broken glasses. The sweater and glasses were found Oct. 9, 1980, near Diane's nude body in a rural area north of Elk River.

Prosecutor Thomas Van Horn's last question to Mrs. Edwards was, "Was Diane a good daughter?" Mrs. Edwards smiled then and said she was. "She helped me around the house, helped cook, she did things for me." Her voice trailed off, and she was excused from the witness stand.

Her husband, Don, a chemical engineer at 3M Co., put a comforting arm around her as the two left the Sherburne County District courtroom.

Mrs. Edwards was testifying at the first-degree murder trial of Joseph Ture, 31, an itinerant mechanic who is charged with kidnapping and killing Diane Edwards the night of Sept. 26, 1980. Dressed in a three-piece, pin-stripe suit, Ture listened to Mrs. Edwards' testimony and showed no emotion.

Also testifying Monday afternoon was Frank Beebe, a former Perkins manager, who said Diane told him shortly before she left the restaurant the night of Sept. 26 that she was going to meet two other waitresses later for a small get-together.

The two waitresses, Susan Danner Olson and Dana Larsen, then took the stand and testified that they and Diane had planned to gather at Susan's house "to make daquiris." Their plan never was

Please see Trial / 2B

EXHIBIT "A"

Would TV coverage have made it more difficult for Mrs. Edwards to Testify?

EDWARD R. CLARK #100675
Box 55
Stillwater, Mn. 55082

October 11, 1981

Committee On Cameras In The Courtroom
c/o Minnesota Supreme Court
230 State Capitol Building
St. Paul, Minnesota 55155

Dear Committee Members:

I am incarcerated at the Minnesota Correctional Facility - Stillwater. I have been following the hearings over the past two years regarding the news media wanting to use cameras in the courtrooms, and would like to offer my personal opinion.

One of the repeated arguements against it has been "it will infringe upon the rights of the defendant". To the contrary, I, and many other men here who I have discussed this matter with, agree that if the testimony of witnesses and the decisions of the judges while the trial is in progress were to come under the scrutiny of TV viewers, mainly law professors and experts in the field of forensic science, a defendant would stand a better chance of receiving a fair trial.

Although its not openly admitted in the judicial system, the more serious the charge, the more burden upon the defendant to prove his innocence. And there have been many instances where the conviction has been based upon the "expert" witneses' testimony. I believe the experts would be more inclined to testify to the facts rather than what the prosecution wants the jury to hear if there was a possibility of such testimony being aired.

Also, there have been numerous cases where the prosecution withholds evidence favorable to the defense. There again, if the trial was aired to the general public, persons with such information may be inclined to contact the court or the defense counsel when they discover the information is withheld.

In closing, I believe that every defendant would not object to cameras in the courtroom if their was the slightest inclination that by their presence it would contribute to a fair trial. The reputation of the accused has already been damaged by the mere fact of the accusation, irregardless of the outcome of the trial.

Respectfully yours,

Edward R. Clark

Edward R. Clark

No. 81-300

STATE OF MINNESOTA

IN SUPREME COURT

In Re

Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct

WCCO Radio Inc.; WCCO Television Inc.; WCCO FM Inc.; WTCN Television, Inc.; United Television, Inc. - KMSP-TV; KTTC Television, Inc.; Hubbard Broadcasting, Inc.; Northwest Publications, Inc.; Minneapolis Star and Tribune Company; Minnesota Public Radio, Inc.; Twin Cities Public Television, Inc.; Minnesota Broadcasters Association; Minnesota Newspaper Association; Radio and Television News Directors Association, Minnesota Chapter; and Sigma Delta Chi/Society of Professional Journalists, Minnesota Chapter,

Petitioners.

PETITIONERS' POST-HEARING BRIEF

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INTRODUCTION

WCCO and its co-petitioners have requested that Minnesota consider whether its courtroom doors should be opened to advanced broadcasting technology. This is a question which the Supreme Court of the United States says each state should decide for itself. Many states have already considered the issue. Most have decided to open their courtroom doors to advanced technology, at least on an experimental basis.

The Minnesota Supreme Court has entrusted the duty of considering the evidence on the issue and making recommendations for the state to follow to a three member Commission. You, as Commissioners, are representatives of the bench, the bar and the citizens of this state.

In this representative capacity you have heard five days of testimony from proponents and opponents of expanded courtroom coverage and you have received voluminous exhibits. You must now sift through all that information as you ask yourselves several questions. Are there any benefits to be gained from allowing advanced broadcast technology into Minnesota courtrooms? If so, do these benefits outweigh any potential risks? Are the circumstances which spawned the Estes and Sheppard cases inherent in media coverage of our courts or are they problems which have been solved as the media has grown and matured? Do you trust Chuck Biechlin,

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Reid Johnson, Bob Jordan, John Finnegan and the others to deliver what they promised in the way of increased coverage of our judicial process? Do you trust your fellow lawyers and judges to continue to act in a competent and professional manner? Do you trust your fellow citizens to continue to perform the duties of witnesses and jurors to the best of their abilities? Do you trust your sister states, who have already allowed an enhanced media presence into their courtrooms?

This brief by WCCO and its co-petitioners attempts to focus your attention on these questions and to highlight some factors to be considered in deciding them.

I. TESTIMONY OF PETITIONERS

Testimony was taken on five separate days over three weeks. Obviously, we cannot recount that testimony in detail, nor do we need to summarize it. The issues have been well presented. However, since the Petitioners have the burden of convincing you to support an experiment with cameras and microphones, we felt it would be appropriate to capsulize their own thoughts and plans.

A. Technical Presentation

While much of the testimony presented by all interested parties was well-considered opinion or thoughtful

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speculation, Petitioners discussed and demonstrated the type of equipment that would be used in and around courtrooms if the media were allowed to electronically cover trials.

Kent Kobersteen, a staff photographer with the Minneapolis Tribune for sixteen years, demonstrated the types of still photography cameras that can be used in a courtroom. Cameras suitable for courtroom use are either instrinsically quiet, such as the Leica or Nikon Rangefinder, or "silenced" by being put in a blimping mechanism.

Kobersteen stressed that photographers can work within guidelines which require them to remain in a designated area. The price a photographer pays for being a professional is being unobtrusive, stated Kobersteen.

Stan Turner, a reporter/anchor at KSTP-TV, demonstrated the type of camera which would be used by television stations to cover court proceedings. (The same type of camera was used during the Commission hearings). This camera, using videotape rather than film, is completely silent and does not require extra lighting. The only part of the videotape equipment which has to be in the courtroom is the camera, which is stationary. The camera electronically feeds the picture to a videotape distribution unit which can be located outside the courtroom. Television stations can then obtain

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tapes of the proceedings simply by plugging videotape recorders into the distribution unit.

Turner stated that the cameras presently in use by Minnesota television stations could get marginal, but usable, pictures from courtrooms even as dark as Judge Segell's. Both Turner and the camera operator felt that upgrading the existing light bulbs in dark courtrooms would probably be all that would be necessary to get usable pictures from even the darkest Minnesota courtrooms.

Mark Durenberger, an audio consultant with 25 years experience in the sound industry, described different ways to expand audio coverage of court proceedings. Durenberger admitted that microphones can be obtrusive but stated that there are two ways to solve this problem. In courtrooms which already have audio systems (and most newer courtrooms do) the media need only tap into the existing system. No additional microphones would be needed. In courtrooms that have no audio systems, small, unobtrusive microphones can be used. Durenberger demonstrated the pressure zone mike which is very small, flat and picks up sounds over quite a long distance. Durenberger thought that one pressure zone mike might be sufficient to pick up all voices in a small courtroom that did not have much background noise.

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As with the television camera, each radio and television station would not need its own microphone in the courtroom. The sound from one audio system could be fed to a multiple feed box outside the courtroom into which any station could plug its own recording machine.

Modern broadcasting technology has advanced far beyond the bulky, noisy cameras, intensely bright lights, and banks of microphones that characterized the media's early attempts at broadcasting trials. Even the witnesses opposed to expanded broadcast coverage of court proceedings, such as Judge Thomas Sholts, admitted that their opposition was not based on the obtrusiveness of the equipment that would be used.

B. Editorial Presentation

The Petitioners also presented testimony from the people who will decide which trials to cover and what portions of those trials to show to the public. The news directors from the three largest television stations in the Twin Cities, the news director of the Rochester, Minnesota television station and the news director of a radio station in Willmar all discussed why expanded broadcast coverage of Minnesota's courtrooms was important and what their stations would do with such coverage.

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Wayne Ludkey, the news director at KTTC-TV in Rochester, worked at a Wisconsin television station before coming to Minnesota. In Wisconsin he actively participated in clarifying the broadcast guidelines Wisconsin uses in its courts. His station held clinics for its personnel to explain the Wisconsin guidelines and the reporters and technicians were committed to operating within those guidelines.

Ludkey also stated that TV news is to a large extent the eye of the public; the public expects TV to be on hand to report on important events. Just as his Rochester station now covers city council and school board meetings in an effort to inform the Rochester citizens of the workings of their government, Ludkey would like to cover trials in the same fashion.

Bob Jordan, the news director at KSTP-TV, worked in Florida when the Florida broadcast experiment began. Jordan testified that in his opinion the Florida experiment worked beautifully; the novelty of a camera in the courtroom quickly wore off and the media and judges cooperated to make the procedure run smoothly.

Jordan stressed that cameras and sound equipment in a courtroom allow reporters to be more accurate in reporting on

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trials. The reporter does not have to rely on memory, hastily scribbled notes or his own interpretation of courtroom events; the actual words and pictures of the trial can be shown to the public and sensational testimony can be put in perspective. Jordan's Florida station covered civil as well as criminal matters, including labor disputes and bond validations.

Chuck Biechlin, news director at WTCN-TV, commented that television news teams can either reconstruct events for the public or show the public the actual event. Biechlin believes the latter is preferable because it is fairer and more accurate. Biechlin is excited about the possibility of being able to cover civil cases more thoroughly because he believes many of society's changes start with civil court decisions.

Joyce Holm Strootman, the news director at KWLM-AM in Willmar, stated that people in her community were very interested in community news and followed local news stories very closely. Complicated civil matters would be much easier to report, she felt, if it could be done with the actual words of the trial participants. Strootman cited a recent credit union bankruptcy hearing and a school board controversy as matters which could be better presented to the public if actual audio tapes were used.

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Reid Johnson, the news director at WCCO-TV, pointed out that the media was continually involved in the process of distilling information and events for presentation to the public in two to three minute reports or two to three paragraph stories. The issue facing the media is not whether it should distill events, stated Johnson, but what tools it should use. Cameras and microphones in the courtroom would enable the media to do a better, more accurate job of distilling information. Thus, allowing cameras and microphones into the courtroom will actually encourage additional coverage of the courts.

Ron Handberg, the former news director and now general manager of WCCO-TV, agreed that allowing cameras and microphones into the courtroom would open up many opportunities for in-depth coverage of court proceedings. He envisions documentaries and special programs on specific trials and the justice system in general as well as more accurate news casts.

Handberg also spoke about the fairness to the criminal defendant of expanded coverage. He stated that the media can actually be fairer to such a defendant by being in the courtroom. The defendant can present his case in his own words and not in the words of a reporter. The public can see the defendant testifying, and not trying to avoid being followed down the hall and out of the courthouse.

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Nancy Reid, a legal reporter for KDLH-TV in Duluth, testified that she had the opportunity to cover trials in Superior, Wisconsin where expanded broadcast coverage of trials is allowed. Reid echoed the sentiments of Jordan and Ludkey who also had experience with televised trials. She stated that she had never seen the media violate Wisconsin's guidelines and that the judges and media people cooperated to ensure that trials ran smoothly.

Both John Finnegan, executive editor of the St. Paul Dispatch/ Pioneer Press and Charles Bailey, editor of the Minneapolis Tribune, testified in support of the Petitioners' request for expanded courtroom coverage. Although coverage by microphones and cameras will not be as direct a benefit to newspapers as to radio and television, both Finnegan and Bailey felt that such coverage was important if the news media was to continue to do its job effectively.

Both the St. Paul and Minneapolis newspapers have reporters regularly assigned to cover court proceedings. These reporters will be able to write better and more accurate stories if they can use audio tapes of court proceedings rather than relying entirely on their notes. People will receive an added dimension from the newspaper stories if they are accompanied by pictures which highlight and illustrate

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particular points. Both editors stressed that the reporters they assigned to cover the courts were experienced individuals who took their jobs seriously and who would use expanded coverage rules to do their jobs even more professionally.

C. Public Broadcasting Presentation

Rick Lewis, the general manager of News and Information for KSJN, one of the seven Minnesota Public Radio stations and William Kobin, President of Twin Cities Public Television, Channel 2, both feel that expanded courtroom coverage would improve public broadcasting's ability to inform the public.

Kobin commented that public television had more of an ability than commercial television to do live coverage of trials and lengthy reports. A newly formed community affairs unit at KTCA/KTCI-TV will do ten specials this year on various community issues. Important court proceedings might be a part of these issues.

Lewis explained that Minnesota Public Radio stations, which reach 95% of Minnesota, spend a longer time reporting news events than do commercial radio or television stations. The stations do not take editorial positions but try to fairly explore both sides of important issues. Minnesota Public Radio stations have broadcast live the Panama Canal

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hearings, the hearings on the sale of AWACS jets to Saudi Arabia and the Sandra Day O'Connor confirmation hearings. Minnesota Public Radio could do the same with important trials. Lewis would like to use this same kind of coverage for our courts.

II. MINNESOTA'S CITIZENS WILL BENEFIT FROM THE PRESENCE OF CAMERAS AND MICROPHONES IN THE COURTROOM

One of the central issues the Commission must consider in deciding whether to permit expanded broadcast coverage of Minnesota's courts is whether there is any benefit to be gained from opening the courtroom doors to advanced broadcast technology. The media representatives told you what they will do with camera and microphones. Others describe the benefits.

Most of the studies of the effect of cameras and microphones on the trial process contain "next-best" data. That is, the studies ask the trial participants to describe their experiences with camera/microphone coverage and do not independently measure the effect of the coverage on the participants. Most studies reveal that trial participants are not unduly affected either positively or negatively by the presence of broadcast equipment. (See, The Wisconsin study, Commission Exhibit 18, and the Florida study, Exhibit D to the brief Petitioners filed with their Petition).

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There is only one published study which has attempted to directly measure the effect of cameras on witnesses. The study, done by Dr. James Hoyt, a professor of journalism at the University of Wisconsin, measured subjects' responses to questions under three conditions: questioning in the presence of an observable camera, questioning in the presence of a hidden camera and questioning with no camera.

The only variable in the experiment was the presence of the camera. The results were surprising. There was no measurable difference between responses given in front of the hidden camera and responses given with no camera present. However, subjects who answered the questions in front of the observable camera gave longer, more thorough answers which were more complete and contained more correct information.

Thus, the only study which attempts to directly measure the effects of a camera on a witness (rather than collecting the perceptions of the witness regarding the effect) indicates that cameras may actually improve witnesses' testimony by encouraging witnesses to give longer, more correct answers. Such a result is surely a benefit to a judicial system whose prime goal is to ascertain the truth and whose main assumption is that witnesses will tell the truth.

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Petitioners expect Dr. Hoyt's findings to be strengthened and confirmed by new research he is undertaking at the request of the American Bar Association Foundation.

The other benefits to be derived from allowing advanced broadcast technology into Minnesota's courtrooms flow from the media's function in informing people about the world around them. People get their news from television, radio or the newspapers. They know about and understand events only to the extent the media report and explain such events to them. Who could explain the President's economic plan or the pros and cons of the AWACS sale if they did not read the newspaper and magazines or listen to television and radio? What the media don't tell us about current events, most of us don't know, and what the media can't tell us about current events, most of us will never know.

Whether the media will use expanded coverage rules to broadcast trials gavel to gavel, to present hour long documentaries and commentaries or to improve courtroom coverage on the nightly newscasts is not important. What is important is that when the media do any one of things (and we expect them to do all this and more) people will know something they didn't and couldn't know before.

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Knowledge about the judicial process -- what a courtroom looks like, who participates in a trial, what happens during a trial and how the outcome is determined -- can increase the public's respect and trust for our judicial system. If regular exposure to the process can make the judicial system seem less frightening, less intimidating and less mysterious then perhaps people will trust that system more. If regular exposure to the process can show the judicial system being fair and just to all classes of citizens under all kinds of circumstances then perhaps people will respect that system more.

Increased exposure to the judicial system will, at the very least, result in increased knowledge and understanding of the process. Anything which can increase our knowledge and improve our understanding of how courts work benefits the premise of a democratic government: an informed citizenry.

Most benefits to be derived from expanded coverage of our judicial system cannot be measured. They are intangibles which come from an increased awareness and deeper understanding of the public environment. Although these intangibles tend to sound like a civics lecture when articulated, they are important factors in making our system of laws work. If expanded courtroom coverage enhances these intangibles, an experiment is in order.

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III. OBJECTIONS TO AN ENHANCED MEDIA PRESENCE IN THE COURTROOM

Some initial caveats are appropriate. Over two dozen states, presumably populated by responsible and intelligent men and women, have determined that the objections to media in the courtroom have not been proven to exist, and that insidious influences upon courtroom participants have not occurred. This Commission has the results of exhaustive studies of participants in televised hearings and of their perceptions of the effect of the presence of the media on them.

The opponents to the Petition argue that these studies are useless, because people will not admit that the presence of cameras causes them to perform their duty in a shoddy fashion. This is ridiculous. While the surveys prepared in Florida and Wisconsin were not performed as part of a social science experiment, the validity of the data is unquestionable. Participants in televised proceedings could easily have described the tensions caused by the presence of cameras and microphones without challenging the job they performed. If those surveys demonstrated that participants were made nervous by the presence of cameras, and if that nervousness was commonly experienced, concern would surface. That was not the result of those surveys.

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The surveys tell us more. The Supreme Courts of Florida and Wisconsin were certainly aware of the scientific limitations of their studies. Their concern for the fair and efficient administration of justice cannot conceivably be less than here in Minnesota. Those Supreme Courts recognized the strengths and weaknesses of the surveys they commissioned, but they saw no serious risks in extending their experiments into the future.

Finally, the experience of all testifying trial judges who took part in televised cases was positive. Even Judge Sholts, who testified that he disliked the concept of cameras in his courtroom, could find no adverse effect from the presence of broadcast media in his court. While an issue was raised regarding the Palm Beach Newspaper case, Judge Sholts acknowledged that at least one cause of that dispute was his own reluctance to hold a hearing and to prepare findings for the decision he felt was proper. Under the proposed guidelines now before this Commission, this problem would not occur.

Although it seems almost impossible to discuss these arguments with any enthusiasm after the hearings, Petitioners will quickly catalogue certain objections and their responses to those objections.

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A. Fairness to the Parties.

This is a serious but unproven objection to the presence of cameras and microphones in our courts. Conceptually, the issue is important. But, in fact, the element of fairness must be measured by the conduct of each day of each trial of each defendant. Obviously, Petitioners would not wish to participate in any event in which their mere presence adversely affected the outcome.

And what is most persuasive is that when we move from the philosophical objection to the practical effect of cameras in the courtroom, as have Judges Cowart, Sholts and Barland, we find no unfairness because of that electronic presence.

B. Witnesses Will Refuse to Testify.

There will always be people who will seize upon any means of avoiding a necessary but unpleasant task. There are also people whose lives or emotional well-being will be threatened by the presence of cameras in a courtroom. Under the proposed guidelines, no witness whose physical or mental well-being is threatened will be required to testify before a camera. All Petitioners ask is that trial judges make a specific finding of such a threat, and that the finding be appealable.

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In fact, as Judges Cowart and Barland testified, and as the experience in other states has shown, this risk evaporates with time, as the public becomes familiar with and accepts the electronic presence in a courtroom.

C. Witnesses and Jurors Will be Adversely Affected. Again, the philosophical objection is strong, but practical experience demonstrates that this risk simply fails to materialize once broadcast technology moves into the courts. People are concerned about their roles and the rules under which trials are conducted. If judges and lawyers appear unaffected by the presence of cameras and microphones, witnesses and jurors will accept the results of the experience of those participants.

In fact, the formality of a courtroom has an affect upon witnesses and jurors, as do the actions of the lawyers and judges. That is how the process is supposed to work. History simply does not support the argument that citizens will fail to perform their duties because of the presence of the media. They have not shirked their responsibility in the past and will not do so in the future.

D. Other Objections.

Several other objections were raised during the course of the hearings. We were told that judges would become more

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political, while at the same time being more harassed by the administrative burden placed on them by the presence of cameras and microphones. We were told that judges would lose control of their courtrooms and be unable to administer the law in an effective way. We were told that lawyers would "grandstand" before the cameras, turning a formal trial into a soapbox for their personal ambitions.

Judges and lawyers in Minnesota are responsible to themselves, their clients, the law and the people of this state. They will act accordingly.

IV. THE SHEPPARD CASE: REASON TO DENY THE PETITION?

Opponents of the Petition happily regaled this Commission with the facts of the now infamous Sheppard case. Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966).

Marilyn Sheppard, wife of a prominent Cleveland physician, was brutually murdered at her suburban home in July of 1954. The murder investigation and trial of Dr. Sheppard received incredible amounts of publicity. The county coroner carried out his inquest in a school gymnasium. Dr. Sheppard was forced to testify for over five hours. The proceedings were broadcast live.

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During the investigation, numerous police officials, the coroner and prosecutor continually leaked damaging leads to the press which consisted of "evidence" which was never produced at trial. As a result, pretrial publicity was extensive, and consistently painted Dr. Sheppard in an unfavorable light.

The trial was not much better. The trial judge, two weeks before an election in which he and the prosecutor were candidates for judgeships, refused to interrogate jurors about their exposure to the pretrial publicity. Reporters were seated at a long press table a few feet from the jury box. The courthouse was filled with reporters and broadcast equipment; one radio station was allowed to broadcast live from a room adjoining the jury room.

Witnesses and investigators were interviewed by the media, sometimes before giving their testimony. Jurors were identified by the press by name and address, and even posed in formal picture taking sessions. Although sequestered during their deliberations, they were allowed to make phone calls.

There is no doubt but that bedlam reigned during Dr. Sheppard's trial; there can be little doubt but that Dr. Sheppard's right to due process was violated and that the reversal of his conviction by the Supreme Court was correct.

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Who is to blame? The Supreme Court correctly laid the blame upon the person charged with the protection of a defendant's rights.

> "...the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom..."
>
> Id., 384 U.S. at 363, 16 L.Ed.2d at 621.

In an unusual move, the Supreme Court noted several actions which could have been taken by the trial court which "would have been sufficient to guarantee Sheppard a fair trial." The court could have adopted stricter rules governing the courtroom activities of the media. The jury could have been insulated from the public. Lawyers, witnesses and public officials could have been ordered to refrain from making extra-judicial statements.

> "Had the judge, the other officers of the court, and the police placed the interest of justice first, the news media would have soon learned to be content with the task of reporting the case as it unfolded in the courtroom -- not pieced together from extra-judicial statements."
>
> Id., 384 U.S. at 362, 16 L.Ed.2d at 620.

Frankly, reliance upon the Sheppard decision by opponents of an enhanced media presence in the courtroom is completely

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misplaced. Had public officials acted properly, no damage would have been done to Dr. Sheppard's constitutional rights.

Petitioners do not ask for the right to turn Minnesota courtrooms into carnivals or circuses. They want to enhance their reports from those courtrooms. They expect, and, as citizens, hope that trial judges maintain control over their courtrooms. To tar the media with the failure of public officials to do their duty is unfair, and reliance on Sheppard to keep Petitioners from the courtroom is absurd. In fact, Sheppard suggests that use of a few protective measures, routinely utilized even now in Minnesota courts, provides more than adequate protection for a criminal defendant's constitutional rights.

V. THE ESTES CASE: IS IT GOOD LAW?

The opponents to the Petition rely on the arguments presented by the Supreme Court against a broadcast and photographic presence in the trial courts in Estes v. Texas, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965). For a number of reasons, the opponents to the Petition again miss the point.

Billie Sol Estes, a well-known financier with political connections, was convicted for swindling in a Texas state court in 1962. A two day pretrial hearing was carried live on

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radio and television. Twelve cameras and their technicians, still photographers and assorted broadcast paraphenalia were jammed into the courtroom. Live broadcasting was prohibited during the trial, although four cameras were placed in a booth at the back of the courtroom to record portions of the proceedings for use on evening newscasts.

The United States Supreme Court reversed Estes' conviction on the ground that Estes was deprived of due process of law by the televising and broadcasting of some of the proceedings. Chief Justice Warren and Justice Clark wrote harsh indictments of the broadcast coverage of these trial proceedings. In fact, most of the arguments made by the opponents to the Petition before this Commission were used by these Justices.

Four Justices believed that televising trial proceedings was inherently a denial of due process. However, because Justice Harlan's vote for reversal was necessary for a majority, his separate opinion received much attention. To many commentators, Justice Harlan's opinion seemed limited to the circumstances of the Estes proceedings.

Thus, the question of the constitutionality of a broadcast presence in the courtroom was open, at least until January of 1981. At that time the Supreme Court, through Chief Justice

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Burger, closely analyzed Justice Harlan's opinion, and in so doing expressly limited the holding in Estes to the peculiar circumstances of that case. As Chief Justice Burger pointed out:

> "...we conclude that Estes is not to be read as announcing a constitutional rule barring still photographic, radio and television coverage in all cases and under all circumstances. It does not stand as an absolute ban on state experimentation with an evolving technology, which, in terms of modes of mass communication, was in its relative infancy in 1964, and is, even now, in a state of continuing change. (Footnote omitted.)
>
> Chandler v. Florida, ___ U.S. _____, 66 L.Ed.2d 740, 751 (1981).

Chandler's limitation of Estes to its own facts is important because it allows state experimentation with broadcast and photographic technology in courtrooms. It is more important because it rejects the arguments found to be persuasive in Estes, which have been asserted almost verbatim in this case by the opponents to the Petition.

Why did such a fundamental change of philosophy occur in the span of sixteen years? Why is the present Supreme Court willing to allow experimentation with broadcast technology in courtrooms? One reason for the change, of course, is that the Court has changed. Younger members have been appointed,

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who have become familiar with television and radio news coverage. Familiarity reduces the fear of unknown danger, as it reduces the psychological impact of the media's presence. Because of technological advances, the presence of news media has become a common occurrence. We are used to small handheld cameras being used everywhere in the community, and have come to expect the personal and first hand news coverage which results from the use of this technology.

The Estes decision may have been necessary to curb the excesses of an infant television industry in 1962, and to protect people then unaccustomed to its presence. However, the industry has grown and matured. Its audiences are more sophisticated and demanding, and its presence more acceptable.

Those who continue to mouth the objections raised in Estes simply ignore the effects of the passage of time. It is no wonder that Mr. Hirschhorn, using 1962 arguments, completely failed to convince a 1981 court of their validity. As we pointed out to this Commission, Mr. Hirschhorn lost his case, because he refused to acknowledge that the news media occupy a position of importance in our society and perform a necessary informational function. Estes is no longer good law, because the circumstances which caused it are not and will never be with us again.

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VI. EXPERIENCE IN OTHER STATES

As of August 6, 1981, twenty-six states permit some type of electronic or photographic coverage of both their trial and appellate courts. Another six states (including Minnesota) permit such coverage at only the appellate level and one other state (Pennsylvania) permits such coverage only at the trial level. Of these states, fifteen have rules permitting permanent coverage at both the trial and appellate level, and five have rules permitting permanent coverage on the appellate level.

In all 33 states which permit some type of expanded coverage the court retains the absolute right to prohibit or limit the coverage. The authority of a judge to control the courtroom is not hampered by expanded coverage rules.

Six states require the consent of the parties in civil cases and criminal appeals before coverage is permitted and five states allow each party to choose whether or not to be covered (if one party chooses not to be covered, the rest of the trial can still be broadcast). Twenty-two states do not require the consent of the parties before a civil trial or criminal appeal can be covered.

Six states require the consent of the attorneys before a civil case or a criminal appeal can be covered. The remaining 27 states do not require such consent.

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Of the 27 states which permit electronic coverage at a trial court level, ten permit individual witnesses to object to coverage of their own testimony and fourteen states do not. One state gives the right to object to coverage only to victims of crimes and two states give such right only to witnesses appearing under court order or subpoena.

Surveying the 26[1] states which permit coverage of jury trials (both civil and criminal), seven permit individual jurors to object to coverage of themselves, two permit only jurors in attendance by court order or subpoena to object and one does not permit any coverage of the jury. Of the 16 states which permit jury coverage but do not require the consent of the jurors for such coverage, two states prohibit individual coverage of jurors and one state requires the express prior approval of the presiding judge of the state Superior Court.

Of the 24[2] states which permit coverage of criminal trials, eight require the defendant's consent and four allow an individual defendant to object to coverage of his own

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[1] Pennsylvania permits only non-jury cases to be electronically covered.

[2] Maryland, New York and Pennsylvania permit only civil trials to be electronically covered.

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testimony. The remaining twelve states do not require the defendant's consent in any fashion.

In these same 24 states, six require the prosecutor's consent before coverage is permitted and 18 do not.

Within this general consent/no consent framework several states have carved out special rules governing coverage of certain types of court proceedings. The types of proceedings which are treated in this fashion include juvenile matters, family court matters, sexual assault cases and cases involving undercover agents or trade secrets.

VII. RELIEF SOUGHT BY THE PETITIONER

Initially, Petitioners wish to amend the proposed guidelines attached to their Petition. The proposed guidelines, in paragraph 1(b), would now allow only one still photographer into the courtroom. The experience in the Minnesota Supreme Court, and in these proceedings, leads to the conclusion that two still photographers should be allowed into the courtroom. Petititioners therefore amend paragraph 1(b) of the proposed guidelines to read as follows:

> Not more than two still photographers, each utilizing not more than two still cameras with not more than two lenses for each camera, and related equipment for print purposes, shall be permitted in any proceeding in any trial court.

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The proposed guidelines provide the news media with a chance to expand and enhance their coverage of courtroom proceedings. The amended canon does not interfere with a judge's ability to control her courtroom. More importantly, the amended canon provides standards which allow the news media to assess the validity of a trial judge's decisions, and the prompt appeals process set forth in the proposed guidelines insures a quick resolution of any dispute. The process will work to everyone's benefit.

As Petitioners pointed out during these hearings, any attempt to require the consent of trial participants will simply negate the possibility of electronic coverage of trial proceedings. Serious individual objections may be dealt with on a case-by-case basis. If you believe that electronic coverage will not adversely affect trial proceedings, there is no need for a consent requirement.

This Commission may feel that certain classes of witnesses require specific protection. Some examples are: victims of sexual assault and undercover agents. Some proceedings may be exempt from coverage, such as juvenile court proceedings.

Florida and Wisconsin have set forth formal, but limited, exceptions to coverage, relying on the power of trial judges to control activities in their courtrooms. Petitioners

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believe a similar system would work in Minnesota. There is no need to overdefine protected groups prior to any experimental period. In Florida and Wisconsin, the coverage experiment proved that few serious objections to coverage arose in the practical world.

Finally, Petitioners categorically reject any argument that coverage should be limited to civil matters. If you believe there are serious risks caused by an enhanced media presence in the criminal court, those risks, by their very nature, will affect the civil litigation process as well. Excluding cameras and microphones from criminal courts will reflect a lack of confidence in the protections provided by the amended canon and proposed guidelines. Respected sister states have refused to be impressed by such a double standard. Petitioners respectfully request that this Commission recommend to the Minnesota Supreme Court that it adopt, on an experimental basis, the amended canon and proposed guidelines attached as exhibits to the Petition.

CONCLUSION

At the root of Petitioners' request is a wish, enunciated by the many media representatives who testified, to improve their coverage of courtroom events. It is typical of professionals to want to improve the work they do; Petitioners are such professionals. It is also typical that

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many people do not wish to change a process which has worked for them in the past; the judicial system is one such process.

This tension exists between Petitioners and those opposed to any change in courtroom coverage. The only way this tension will dissipate is to allow the news media and the legal community to work on a common understanding during a period of experimentation. Remember, those judges who testified on behalf of an enhanced media presence felt strongly that problems were resolved by close cooperation between the third branch of government and the fourth estate.

The press will benefit from enhanced coverage. The judicial system will benefit from more thorough coverage of its proceedings. And, without a doubt, Minnesota citizens will benefit from more direct coverage of their courts. The effects will only be felt over time. But they will occur.

To refuse to accept this fact is to ignore the place that news organizations occupy in our continuing effort to make sense of the things that affect us. To refuse to allow an experiment is to deny the obvious: that people rely now, and will even more so in the future, on the news media for the communication of facts and events. This may make you uncomfortable, but it is the truth.

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To deny this group of professionals the chance to improve its coverage of the courts denies to Minnesota citizens more direct information about the operation of the judicial system. People will benefit from more information. The job of the courts may be easier because of this increased knowledge.

Respectfully submitted,

Dated: November 2, 1981

OPPENHEIMER, WOLFF, FOSTER, SHEPARD AND DONNELLY

By _____

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ATTORNEYS FOR PETITIONERS

November 11, 1981

To the members of the commission:

The tension between two constitutionally guaranteed rights — the citizens' right to know and the defendant's right to a fair trial is always with us. New factors are introduced periodically which demand that we think again about the proper balance between these two values in our democracy. I have several concerns about the current proposal to allow cameras in the courtroom.

I served on two juries in Olmsted County District Court in the winter of 1979. The experience was absorbing, demanding and ultimately satisfying. I developed great respect for my fellow jurors; their attention to and discernment of the testimony presented, and their thoughtful deliberation in the jury room.

At the same time I recognized both our inexperience in this setting and the pressure created by the ban on discussing what we were hearing with anyone else. [One trial ran for two weeks]. I was surprised at how difficult it was to return home each day and to spend a weekend at my usual tasks without talking about what was always on my mind.

For the inexperienced, the cameras, no matter how unobtrusive would add another source of stress. Judges and Counsel might grow accustomed to this process; defendants, witnesses and juries would not. The camera

would change the whole ambience of the court room. There would be two foci for the jury's attention; two audiences, one present, one unseen. One would become more self-conscious, more self-aware, more likely to be distracted.

During the period of my jury duty the Rochester Post Bulletin ran a series on the court system. They asked to photograph a jury, and by chance the article with our picture was published the same day that a verdict was rendered in the trial. Readers assumed - correctly - that we were the jury and someone who had seen my picture stopped me on the street to offer some gratuitous information about one principal in the case. I wondered what I would have done if this had happened a day earlier. Would I have been influenced by what I had heard? Would I have been surprised into some inappropriate response? Would I have reported it to the judge? I was only targeted for a question. What if it had been for an argument or abuse?

I can see two outcomes of the above problems. ① I think you can expect more citizens to avoid jury duty if cameras are permitted. It is quite possible to be excluded during the challenge process by answers which do not reveal the true reason for one's reluctance to serve. ② In many more trials it will be necessary to sequester the jury to avoid interaction with the public. This would be a hardship for many jurors and would tend to reduce

in number and breadth the pool of those able to serve.

However, the most compelling reason for not allowing cameras in the courtroom is the use to which the film may be put. Television news stories are covered in parcels of time ranging from 1-3 minutes and accompanying film footage often takes less. In an event as long-running as a trial, any 1½ minute segment is, by definition, edited. The camera can zoom in on a facial expression, an improper question (objected to and stricken but unseen by the audience), an evasive answer which may then convey to the viewer a feeling totally unsubstantiated by the thrust of the trial itself. The gradual unfolding of evidence to which the jury is subject is by-passed on TV. The more complex the content of the trial, the more likely a capsule reporting will distort it. Whether the reporter/photographer present in the courtroom will not decide what will be shown on the news.

For these reasons I respectfully urge your commission to recommend the continued exclusion of cameras from the courtroom. The court process is open now to the press and to the concerned citizen. No additional advantage will be gained by permitting the truncated, edited, possibly misleading coverage of TV news.

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STATE OF MINNESOTA

IN SUPREME COURT

In Re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct.

File No. 81-300

WCCO Radio, Inc.; WCCO Television, Inc.; WCCO FM, Inc.; WTCN Television, Inc.; United Television, Inc.-KSMP-TV; KTTC Television, Inc.; Hubbard Broadcasting, Inc; Northwest Publications, Inc.; Minneapolis Star and Tribune Company; Minnesota Public Radio, Inc.; Twin Cities Public Television, Inc.; Minnesota Broadcasters Association; Minnesota Newspaper Association; Radio and Television News Directors Association, Minnesota Chapter; and Sigma Delta Chi/Society of Professional Journalists, Minnesota Chapter,

Petitioners.

BRIEF OF RESPONDENT MINNESOTA TRIAL LAWYERS ASSOCIATION

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PROCEDURAL BACKGROUND

Pursuant to an Order of the Minnesota Supreme Court issued August 10, 1981, "the Minnesota Advisory Commission on Cameras in the Courtroom" was created. Following this, the Commission met on August 21, 1981. After several other organizational meetings, hearings were held on October 5, 6, 12, 13, and 20, 1981.

Following the close of testimony, the Commissioners made findings of fact which were issued on January 11, 1982.

STATEMENT OF FACTS

The majority of the Commission found that still cameras cannot be totally muted in the courtroom *(p.7); that there may be a distraction of court proceedings by the presence of video and still cameras (p. 7); that there is no fail-safe way of preventing audio pickup of conversations at the bench (p. 8); and that experiments to date are inconclusive as to the impact of cameras in the courtroom (p. 8).

The Commission further concluded that the rights of a litigant must prevail over all other rights, as there is no constitutional right by the press to video or audio coverage of trial court proceedings (p. 9).

With respect to claims by the petitioners that cameras in the courtroom will permit more accurate coverage of court

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* Page references are to the Report of the Commission dated January 11, 1982.

proceedings and education of the general public, the Commission found that video and audio coverage has generally been limited to a few minutes or even seconds of a regularly scheduled news program (p. 10). With respect to the conduct of the media in coverage, the Commission had called to its attention strong evidence (emphasis added) "of real absence in good taste and in concern for sensibilities of individuals . . ., including specific evidence of rather poor taste directed against the presiding judge when rulings adverse to the media were made by him" (p. 11).

Finally, the Commission noted that the Minnesota District Judges Association, the Minnesota State Bar Association, and the Minnesota Trial Lawyers Association were all opposed to television or audio reporting of trial court proceedings (p. 14).

Concluding, the Commission held that an affirmative burden was placed on the petitioners to show that the change was necessary or desirable, and that the burden had not been met (p. 15, 18). There was no evidence of any advantages to cameras in the courtroom, as well as no evidence of any public demand for such coverage (p. 16). Further, there was no evidence of any meaningful education or informational value to the public from the "limited and unbalanced coverage that is characteristic of presenting video and audio coverage under current commercial television news formats for such coverage" (page 17).

ARGUMENTS

I. CANON 3A(7) SHOULD NOT BE MODIFIED ON A PERMANENT BASIS.

The Commission's findings leave little doubt that no permanent change should be made in Canon 3A(7) of the Canons of Judicial Conduct. All three Commissioners found that the Petitioners had failed to produce evidence sufficient to justify a change in the Canon.

Without long elaboration, we would point out that in each area of claimed "advantages" of cameras in the courtroom, the Petitioners could not produce evidence to prove an "advantage". Even the so-called "education of the public advantages" were found to not exist due to the types of coverage routinely provided by the collective "media".

The key to the findings must focus on the rights of the litigants to a fair trial, as opposed to any so-called rights of the media (p. 9). Courts were not established to help television stations increase their ratings, or to let newspapers sell more classified ads. Our court system has evolved over many hundreds of years to obtain justice for individuals.

This is not to say that technical progress has not been brought to the court by way of videotaped depositions and demonstrations, use of psychologists in jury selection, use of overhead projectors, and other advancements. However, a review of the introduction of each new step of technology, from

day-in-the-life-of movies to videotape to slides, has been justified by the courts because of the need of an individual litigant. No court decisions justify the introduction of a change in the court system on the basis of a public need exceeding the needs of an individual.

This focus on the individual must remain the focal point of the courts. As long as there is a chance that the trial process will be affected by cameras in the courtroom, then Canon 3A(7) should be left as is.

A. The media of this State have not demonstrated their public responsibility.

The history of cameras in the courtroom revolves around the cases of Estes v. Texas, 381 U.S. 532, 85 S.Ct. 1628 (1965) and Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507 (1966). Both of these cases demonstrated the total inability of the press to restrain itself once access to the courtroom was granted. The conduct of the media at the Sheppard trial was described by the Supreme Court in the following sentence: "The fact is that bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom, hounding most of the participants in the trial, especially Sheppard". 384 U.S. at 355, 86 S.Ct. at 1518. The Ohio Supreme Court described the case as:

> Murder and mystery, society, sex and suspense were combined in this case in such a manner as to intrigue and captivate the public fancy to a degree perhaps unparallelled in recent annals. Throughout the preindictment investigation, the subsequent legal

> scrimmages and the nine week trial, circulation conscious editors catered to the insatiable interest of the American public in the bizarre . . . In this atmosphere of a 'Roman holiday' for the news media, Sam Sheppard stood trial for his life. 165 Ohio St. at 294, 135 N.E.2d at 342.

Although the Commission found that local media representatives "spoke very positively and with every appearance of sincerity about their sense of public responsibility and the conduct that can be expected of them in connection with courtroom proceedings", the Commission also found that there was evidence of lapses in good taste and in concern for the sensibilities of individuals.

These concerns should not go by without elaboration, as two recent instances of media action demonstrate most clearly that the local media is motivated by the same concerns as the papers, television, and radio found in Sheppard. These recent cases show that the media is not at a point in its "maturity" that it should be trusted with video and audio equipment in the courtroom.

The first instance occurred when representatives of KSTP and WCCO sued for release of the Mingh Sen Shiue videotapes which were made of Mr. Shiue raping Mary Stauffer following her kidnap. Although the only purpose for release of those tapes would be the titillation of the public, KSTP and WCCO maintained that the tapes would not be misused in any way. Judge Devitt lost no time in ruling that such a request was not proper and

would not be honored by release of the tapes. In re Application of KSTP Television, 504 F.Supp. 360 (D. Minn. 1980).

The more recent coverage of questionable merit was the publicity surrounding Judge Crane Winton. The implications from the coverage were such that the Minnesota State Bar Association felt compelled to comment on the actions of WCCO. Such comment was as unprecedented as the coverage provided by WCCO.

Although the local media would like to claim that they have grown up since the days of Sheppard and Estes, such growth is not demonstrated by the recent actions in court related items. One can only imagine the lead-in advertisements for the ten o'clock news should cameras be allowed in the courtroom.

The findings of all three Commissioners concerning permanent modification to Canon 3A(7) need no further discussion from the Minnesota Trial Lawyers Association. All of the findings indicate that there is no reason to risk harm to individual litigants by allowing cameras into the courtroom. For this reason, the Supreme Court should make no permanent modification to Rule 3A(7).

II. NO EXPERIMENTAL PERIOD SHOULD BE PROVIDED FOR CAMERAS IN THE COURTROOM.

All three Commission members found that petitioners had not sustained their burden of proving that no harm would be caused by amending Canon 3A(7) of the Code of Judicial Conduct. The Commission members went on to find that the coverage did not have educational benefit and that costs of

the courts would be increased because of the additional need for sequestration of jurors during court proceedings. Despite such findings, two members of the Commission went on to recommend that the Supreme Court authorize an experimental period for cameras in the courtroom.

Why?

The stated reason is that without an experiment we will not know the impact of cameras in the courtroom, or the costs associated with audio and video broadcasts.

If this is the real reason that the Commission recommended an experimental period in Minnesota, there is an easier way to obtain the data without amending Canon 3A(7). The method to obtain the data would be to sit back and wait for the evidence to come in from states which have authorized such experiments or are now allowing cameras in the courtroom as a matter of course. Such a wait would avoid any conflict between individual rights and "public" rights, and assure that no Minnesotan would be adversely affected by the audio and visual presentation of trial coverage.

The real reason for allowing an experimental period would be to guarantee that cameras be forever ensconced in Minnesota courtrooms. As the two Commission members who recommend the experiment noted "no evidence was presented to the Commission that any states which had adopted rules on an experimental basis have revoked such rules . . ." (p. 13). Given this quote, it is doubtful that the real reason for an experiment was to obtain data on cameras in the courtroom.

What would happen if an experiment was started which would allow cameras in the courtroom in Minnesota?

It is doubtful that any experimental research data would be accumulated for use by the Supreme Court by such an experiment. The State certainly does not have the money for additional research to be conducted by sociologists, psychologists, or others, should an experiment be undertaken. Thus, an experimental period would not provide data otherwise available. Given the opposition of the MSBA and the MTLA, there will not be funding for research from the private bar.

The media would certainly not fund a study which might have adverse results. The likelihood of any data being accumulated during an experimental period is minimal.

In addition, at the time of the current state financial crisis, who is going to pay: (1) the additional costs of sequestration of jurors; and (2) the cost of retrial for any case found "tainted" by the presence of cameras in the courtroom? The litigants won't. The media has not offered to. The State can't afford it. The answer of course is that such costs would ultimately be passed back to the taxpayers.

Further, under existing case law, it will be a virtual impossibility for a litigant to overthrow a verdict by reason of the influence of cameras on a Minnesota jury. Such an attempt would run into Schwartz v. Minneapolis Suburban & Bus Company, 104 N.W.2d 301 (1960), which prevents a gathering of information by a defeated litigant except in special circumstances.

In Schwartz, this court held that a jury verdict could not be challenged on the grounds of jury misconduct unless: (1) the facts of misconduct come to light after a trial; (2) the matter is called to the attention of the trial court; (3) the court determines that the facts warrant an investigation; (4) following a hearing the court determines that the defeated litigant was prejudiced by jury misconduct or influence from outside sources. This precedent stands as firmly today as it did at the time it was decided, despite several challenges since 1960.

Under the Schwartz doctrine, it will not be possible for a litigant to successfully challenge misconduct by the media without going through all of the steps set forth above. Because a defeated litigant may not undertake a jury investigation under the dictates of Schwartz, the influences of cameras in the courtroom will not come to light.

The media could suggest that to get around the Schwartz doctrine, a modification be made in the ruling for purposes of an experimental period. Where this court has determined the proper way for a litigant to attack a jury verdict, such a determination should not be upset merely for the purpose of getting cameras in the courtroom. To do so would be to ignore the dictates of State ex. rel. Foster v. Naftalin, 74 N.W.2d 249 (1956), before a decision of the Supreme Court is overruled or ignored in subsequent cases, there should be some good reason for doing so. 74 N.W.2d at 267. Here, there is no good reason

to change our protection of jurors from harassment by allowing post-trial interviews.

Schwartz was decided the way it was to prevent harassment of jurors. Any change in that position should only come about in the crucible of a live controversy rather than in the context now raised before this court.

CONCLUSION

There is a constant demand from the media that cameras be allowed in the courtroom. This issue has been before the Minnesota State Bar Association Convention, before the Convention of the Minnesota Trial Lawyers Association, and now, by petition, before this court.

There is no need for cameras in the courtroom. Their presence will not enhance the trial process; will not provide better coverage of trials for the public; and will not enhance the purpose for which courts exist.

On the other hand, the Commission appointed by this court has found that there can be intrusions on the trial process; that costs will be increased (in an unknown amount); that lapses in good taste and in concern for the sensibilities of individuals have occurred; and that the Petitioners have failed to sustain their burden of proof. Given this, this court should deny the Petition and leave Canon 3A(7) as is.

Respectfully submitted,

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