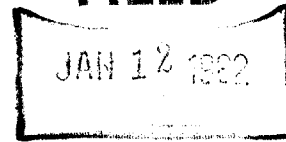


THE MINNESOTA ADVISORY COMMISSION
ON CAMERAS IN THE COURTROOM
OFFICE OF THE CLERK
THE SUPREME COURT
123 STATE CAPITOL BUILDING
SAINT PAUL, MINNESOTA 55155

January 11, 1982

Chief Justice and Associate
Justices
Minnesota Supreme Court
230 State Capitol
Saint Paul, Minnesota 55155

**SUPREME COURT
FILED**



**JOHN McCARTHY,
CLERK**

On behalf of the Minnesota Advisory Commission on Cameras in the Courtroom, I am transmitting to you herewith its Report to the Supreme Court of the State of Minnesota.

This Report and the recommendations contained therein are concurred in by Commissioner Ahmann and myself. Commissioner Kaner dissents from the recommendation and has prepared separate Findings, Recommendations and a Memorandum which are also transmitted to you herewith.

I also transmit to you herewith the following items:

1. A letter dated January 5, 1982, from the Honorable Hyam Segell and the enclosure together with my reply of January 7, 1982. As indicated in my letter, this came too late to be considered in connection with our Report.

2. A letter dated September 14, 1981, from Dr. Eugene Borgida, Associate Professor in the Department of Psychology of the University of Minnesota, addressed to Ms. Deb Regan, who served as our Law Clerk.

As you undoubtedly know, our Commission was operating under a very tight time limitation until the limitation was lifted by the Supreme Court in order to afford opponents to the petitioners additional time to file a brief. Accordingly, we neither had time nor did we consider it part of our charge "to pursue a full-scale research evaluation," to use the words of Professor Borgida towards the end of his letter. This letter was not, therefore, formally received as an exhibit in our proceedings, but we believe that the court should have it in the event at a later date--perhaps in connection with an appraisal of a period of experimental coverage--the court should consider his suggestion or something like it desirable.

All of the Commission's files, records, exhibits, the taped transcript of its proceedings, the pleadings and the briefs of the parties are on file in the Office of the Clerk of the Supreme Court.

Chief Justice and Associate Justices

-2-

January 11, 1982

I know I speak for the other Commissioners when I say that while we have regarded serving on the Commission as a serious responsibility, it has also been a privilege. It seems to the Commission that its assignment is now completed, but I am certain that the members would agree with me that we stand ready to assist you if there is anything further that you would like to call on us for.

The Commission's work has been made very much easier because the court assigned to it one of its law clerks, Deborah Regan, to serve as its clerk. We both wish to express our appreciation to the court and to take this opportunity to express to you our high regard for her ability and helpfulness.

Respectfully submitted,



John S. Pillsbury, Chairperson
For the Commission

cok

enclosures

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

January 5, 1982

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

Dear Mr. Pillsbury:

I enclose herewith modification of Ohio's rules concerning cameras in the courts, which I believe will be of interest to you and your committee.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Hyam Segell".

HYAM SEGELL,

Judge.

HS/sj

Enc.

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

NEW BROADCAST & PHOTO RULES FOR OHIO COURTS

The Supreme Court of Ohio has amended The Code of Judicial Conduct, effective January 1, 1982, as follows:

CODE OF JUDICIAL CONDUCT

CANON 3 A

(7) A trial judge or appellate court should permit:

(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; and

(c) the broadcasting, televising, recording, and taking of photographs in the courtroom by news media during sessions of the court, including recesses between sessions, under the following conditions:

(i) permission should be expressly granted in advance in writing by the trial judge or appellate court pursuant to such conditions as the judge or appellate court and superintendence rules of the Supreme Court may prescribe;

(ii) the trial judge or appellate court determines, upon consideration of a request for permission for the broadcasting, televising, recording, or taking of photographs in the courtroom in a particular case, that the broadcasting, televising, recording, and taking of photographs would not distract participants or impair the dignity of the proceedings or otherwise materially interfere with the achievement of a fair trial or hearing therein;

~~(iii) the filming, videotaping, recording, or taking of photographs of victims or witnesses who object thereto may be prohibited if the court determines that there is reasonable cause for such objection. SHALL NOT BE PERMITTED;~~

~~(iv) THE FILMING, VIDEOTAPING, RECORDING, OR TAKING OF PHOTOGRAPHS OF JURORS SHALL NOT BE PERMITTED.~~

The Supreme Court of Ohio has amended Superintendence Rules, effective January 1, 1982, as follows:

SUP. R. 11

M. C. SUP. R. 9

Conditions for Broadcasting and Photographing Court Proceedings

(A) Presiding Judge.

The judge presiding at the trial or hearing shall permit the broadcasting or recording by electronic means and the taking of photographs in court proceedings open to the public as provided in Canon 3A(7) of the Code of Judicial Conduct. The judge, after consultation with the media, shall specify the place or places in the courtroom where the operators and equipment are to be positioned. Requests for permission for the broadcasting, televising,

recording or taking of photographs in the courtroom shall be in writing and the written permission of the judge required by Canon 3A(7) shall be made a part of the record of the proceedings.

(B) Permissible Equipment and Operators.

(1) Use of more than one portable camera (television, videotape or movie) with one operator shall be allowed only with the permission of the judge.

(2) Not more than one still photographer shall be permitted to photograph trial proceedings without permission of the judge. Still photographers shall be limited to two cameras with two lenses for each camera.

(3) For radio broadcast purposes, not more than one audio system shall be permitted in court. Where available, and suitable, existing audio pickup systems in the court facility shall be used by the media. In the event no such systems are available, microphones and other electronic equipment necessary for the audio pickup shall be as inconspicuous as possible but must be visible.

(4) Visible audio recording equipment may be used by news media reporters with the prior permission of the judge.

(5) Arrangements between or among media for "pooling" of equipment shall be the responsibility of the media representatives authorized to cover the proceeding. Such arrangements are to be made outside the courtroom and without imposing on the judge or court personnel. In the event disputes arise over such arrangements between or among media representatives, the judge shall exclude all contesting representatives from the proceeding.

(6) The use of electronic or photographic equipment which produces distracting sound or light shall be prohibited by the judge. No artificial lighting other than that normally used in the courtroom shall be employed, provided, that if the normal lighting in the courtroom can be improved without becoming obtrusive, the judge may permit modification.

(7) Still photographers, television and radio representatives shall be afforded a clear view but shall not be permitted to move about in the courtroom during court proceedings from the places where they have been positioned by the judge, except to leave or enter the courtroom.

(8) The changing of film or recording tape in the courtroom during court proceedings is prohibited.

(C) Limitations.

(1) There shall be no audio pickup or broadcast of conferences conducted in a court facility between attorneys and clients or co-counsel, or of conferences conducted at the bench between counsel and the judge.

~~(2) The judge shall have the discretion to limit the photographing of victims or witnesses.~~ **INFORM VICTIMS AND WITNESSES OF THEIR RIGHT TO OBJECT TO BEING FILMED, VIDEOTAPED, RECORDED OR PHOTOGRAPHED.**

(3) This rule shall not be construed to grant media representatives any greater rights than permitted by law wherein public or media access or publication is prohibited, restricted or limited.

(4) Media representatives shall not be permitted to transmit or record anything other than the court proceedings from the courtroom while the court is in session.

(D) Revocation of Permission.

Upon the failure of any media representative to comply with the conditions prescribed by the judge, or the superintendence rules of the Supreme Court, the judge may revoke the permission to broadcast or photograph the trial or hearing.

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AND A
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612 • 888-4888

✓ bcc: Deb Regan

January 7, 1982

The Honorable Hyam Segell
State of Minnesota
Room 1409, Court House
Saint Paul, Minnesota 55102

Dear Judge Segell:

This morning I received your letter of January 5 with which you enclosed a report of modifications in Ohio's rules concerning cameras in the courts.

Our Commission's report is now in process of final preparation and we have no further formal meetings planned. In view of this I do not plan to take up with the other Commissioners the question of whether or not any reference to this should be included in our Report.

In a sense with the subject of cameras in the courts we are dealing with a moving target since, in addition to what you have sent me about Ohio, I know from news articles and hearsay that there are other states taking action on this subject and very probably there are some states doing so that I know nothing about.

In any event, I am transmitting your letter and the enclosures to The Supreme Court so that they will have the benefit of the information contained therein when they consider the matter of cameras in the courtroom for Minnesota. I am also sending a copy of your letter and the enclosures to the other Commissioners.

Sincerely yours,

JSP:bp
cc: Paul R. Hannah, Esq.





UNIVERSITY OF MINNESOTA
TWIN CITIES

Department of Psychology
Elliott Hall
75 East River Road
Minneapolis, Minnesota 55455

September 14, 1981

Ms. Deb Regan
Supreme Court
State Capitol, Room 230
St. Paul, MN 55155

Dear Ms. Regan:

On the basis of my conversations with you, Mr. Paul Hannah of the Oppenheimer law firm, and Mr. Jim Keeler of the Minnesota State Bar Association, it is apparent that the Commission appointed by the Supreme Court to study Cameras in the Courtroom might be interested in conducting a social science evaluation of the effects (or lack of effects) associated with media coverage of the courtroom. As a psychologist with research interests and publications in psychology and the law, I would like to offer my services to the Commission should the Commission decide to conduct such an evaluation. Other states like Florida and Wisconsin have conducted such research and I am very familiar with their efforts. In fact, as I mentioned to you on the phone, I was one of the social science consultants to The New York Times coverage of this issue. I am currently the national membership chair for the division of Psychology and Law of the American Psychological Association and hopefully will be joining the Law faculty here as an adjunct professor to teach Psychology and Law as well as social science and public policy beginning in 1982-83. Dean Robert Stein at the U of Mn Law School knows me and can be contacted as a reference.

I have some very definite opinions about the quality of previous research that has been conducted in this area and some very definite opinions about the type of inferentially strong and policy relevant research that I believe the state of Minnesota should conduct to evaluate the impact of cameras in the courtroom (apropos Canon 3A-7). I would appreciate if you would inform the Commission of my interest in discussing these ideas with them should the Commission decide to pursue a full-scale research evaluation.

Should you have any further questions, please do not hesitate to call me at 373-2831.

Sincerely,

Eugene Borgida, Ph.D.
Associate Professor

EB:cf

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. 81-300

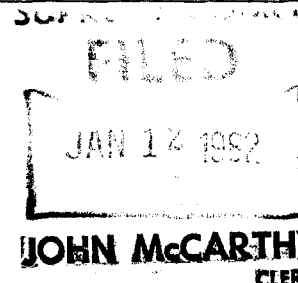
In Re

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

WCCO Radio, Inc.; 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 News-
paper Association; Radio and Television
News Directors Association, Minnesota
Chapter; and Sigma Delta Chi/Society of
Professional Journalists, Minnesota
Chapter,

Petitioners.

FINDINGS AND RECOMMENDATION
OF COMMISSIONER SIDNEY E.
KANER



Pursuant to Order made by the Supreme Court of the State of
Minnesota on August 10, 1981, appointing John S. Pillsbury, Jr., Rosemary
M. Ahmann and Sidney E. Kaner as Commissioners of a Commission designated
as "The Minnesota Advisory Commission on Cameras in the Courtroom", hearings
were held before said Commission in St. Paul, Minnesota, and Minneapolis,
Minnesota, on October 5, October 6, October 12, October 13 and October 20,
1981.

Petitioners were represented by Paul R. Hannah and Catherine A.
Cella of the lawfirm of Oppenheimer, Wolff, Foster, Shepard and Donnelly.
There was no formal appearance in opposition, but Judge Hyam Segell appeared

on behalf of the Minnesota District Judges Association, and a Brief was filed by Judge Otis H. Godfrey, Jr. in opposition to the Petition.

At the aforesaid hearings, the following witnesses testified:

Curtis Beckmann, News Director, WCCO Radio, Minneapolis, outlining the four-year history of efforts of the media to secure permission of cameras in the courtrooms.

Kent Kobersteen, Minneapolis Tribune photographer, demonstrating still photo equipment.

Ron Handberg, General Manager, WCCO-TV, representing Midwest Radio TV, Inc., discussing the good reputation of the local media and requesting the opportunity to demonstrate it.

Stan Turner, reporter and anchorman, KSTP-TV, demonstrated video equipment.

Wayne Ludkey, News Director, KTTC-TV, Rochester, explained the experience in Wisconsin and described anticipated court coverage by out-state television stations.

Bob Jordan, News Director, KSTP-TV, St. Paul, discussed the Florida experience and anticipated court coverage by the metropolitan television stations.

Chuck Biechlin, News Director, WTCN-TV, Minneapolis, described the experience in Oregon.

Joyce Holm, News Director, KWLM-AM, Willmar, described the anticipated court coverage by rural radio stations.

Nancy Reid, reporter, KDLH-TV, Duluth, described use of the cameras in courts in Superior, Wisconsin.

Reid Johnson, News Director, WCCO-TV, described TV coverage in the metropolitan area.

Mark Durenberger, Minneapolis and St. Paul, audio consultant, described the available equipment.

John Finnegan, Executive Editor, St. Paul Dispatch and Pioneer Press, spoke of the responsibility of editors of the metropolitan papers.

Chuck Bailey, Editor, Minneapolis Tribune, spoke of the procedure and responsibility of newspaper editors.

Clinton A. Schroeder, President of the Minnesota State Bar Association, gave the history of the Association's opposition to cameras in the courtroom, described the impact of cameras on witnesses and jurors and set forth his opinion that cameras be permitted as they now are in the Supreme Court but not in the trial courts.

Justice Jack G. Day, Court of Appeals, Eighth Circuit, Cleveland, Ohio, testified as to his experience in opposition to the allowance of cameras in the courtrooms.

Rick Lewis, Station Manager, KSJN, described the function of radio broadcast of trial proceedings.

Irving Fang, Professor, University of Minnesota, School of Journalism and Mass Communication, described the training given by the University to journalism students, especially those specializing in broadcasting.

Dr. James L. Hoyt, Professor, School of Journalism and Mass Communication, University of Wisconsin, testified as to experiments with mock trial situations in favor of the allowance of cameras in the courtrooms.

William Kobin, President, Twin Cities Public Broadcasting, KTCA, Channel 2, emphasized that cameras in the courtrooms would educate the public.

Judge Edward D. Cowart, Associate Dean, National College of the Judiciary, Reno, Nevada, formerly Chief Judge of the Circuit Court of Dade County, Florida, testified by telephone interview about the background of the experiment in Florida in favor of allowing cameras in the courtrooms.

Charles Hvass, Jr., President, Minnesota Trial Lawyers Association, testified in opposition to cameras in the courtrooms, describing its effect on litigants, witnesses and jurors.

Carol Grant, Representative of the Criminal Bar, testified against cameras in the courtrooms, especially its effect on victims of assault, rape, etc.

Joel Hirschhorn, Attorney, Miami, Florida, who represented Chandler, both in the trial court and on the appeal, testified in detail as to his opposition to cameras in the courtrooms.

Judge Thomas E. Sholts, Circuit Judge, Fifteenth Judicial Circuit, West Palm Beach, Florida, testified in opposition to cameras in the courtroom, describing his experience in the courts in Florida.

Further testimony against allowance of cameras in the courtrooms was given by Judge Noah S. Rosebloom, Judge Hyam Segall, Judge Otis H. Godfrey, former Governor Harold LeVander and Marjorie Burton.

Judge Thomas H. Barland, Circuit Judge, Branch 1, Eau Claire County, Wisconsin, testified as to his experience in Wisconsin courts in favor of allowance of cameras in the courtrooms.

In addition to the foregoing testimony, the exhibits listed hereinafter were received, marked as Exhibits 1 through 33.

Briefs were filed by the Petitioners and by Judge Otis H. Godfrey, Jr. in opposition to the Petition.

FINDINGS

Upon all the files, records and proceedings herein, the evidence received and the Briefs submitted, and upon due consideration of the aforesaid, Commissioner Sidney E. Kaner makes the following Findings:

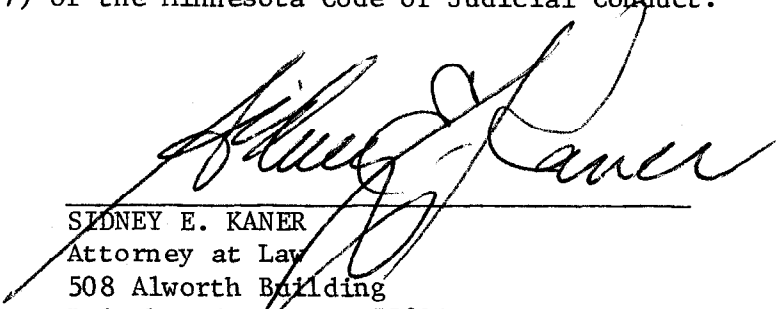
1. The present technology and equipment for video broadcasting will not substantially affect courtroom proceedings.
2. The allegations of Petitioners as to the benefits to be gained from their proposed Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct have not been established by the evidence.
3. The evidence does establish that the proposed Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct will have the effect of causing substantial prejudice to the rights of litigants, witnesses,

jurors and trial judges, and will adversely affect the fairness of trial proceedings.

The Memorandum attached hereto is hereby incorporated herein.

RECOMMENDATION

Based upon the foregoing, it is the recommendation of Commissioner Sidney E. Kaner that the Petition be dismissed on the merits and that there be no Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct.



SIDNEY E. KANER
Attorney at Law
508 Alworth Building
Duluth, Minnesota 55802
(218) 727-1533

EXHIBITS

MINNESOTA ADVISORY COMMISSION ON CAMERAS IN THE COURTROOM

- Exhibit 1: White Collar Crime, an article published by University of Minnesota journalism students
- Exhibit 2: View from the Bench: A Judge's Day, by Judge Lois G. Forer
- Exhibit 3: A Breakdown of the Court System, given to journalism students
- Exhibit 4: Public Affairs Reporting syllabus
- Exhibit 5: Mass Communication Law syllabus
- Exhibit 6: Television News, Radio News, by Irving E. Fang (textbook used by journalism students)
- Exhibit 7: New Strategies for Public Affairs Reporting (textbook used by journalism students)
- Exhibit 8: Statement on "Cameras in the Courtroom" by Jack G. Day
- Exhibit 9: The Case against Cameras in the Courtroom, by Jack G. Day
- Exhibit 10: Report and Recommendations of the Ad Hoc Committee of the Bar Association of Greater Cleveland on the Effect of Cameras in the Courtroom on the Participants in Such a Trial
- Exhibit 11: Statement from William E. Falvey, Chief Public Defender for Ramsey County
- Exhibit 12: Statement from the Honorable John A. Spallacy, Judge of the District Court
- Exhibit 13: Statement from the Honorable John M. Fitzgerald, representing the Minnesota District Judges Association
- Exhibit 14: Statement from the Honorable Joseph P. Summers, Judge of the District Court
- Exhibit 15: Statement from the Honorable Mitchell A. Dubow, representing the District Court Judges of the Sixth Judicial District
- Exhibit 16: Statement from the Honorable Martin J. Mansur, Judge of the District Court
- Exhibit 17: Courtroom Coverage: The Effects of Being Televised, by James L. Hoyt

- Exhibit 18: Report of the Supreme Court Committee to monitor and evaluate the use of audio and visual equipment in the courtroom
- Exhibit 19: Cartoon from the Palm Beach Post-Times
- Exhibit 20: Report to the Supreme Court of Florida re: conduct of audio-visual trial coverage for State of Florida v. Herman, submitted by the Honorable Thomas E. Sholts, Judge of the Circuit Court, Florida
- Exhibit 21: Palm Beach Newspapers v. State of Florida, 378 So.2d 862 (1980)
- Exhibit 22: State of Florida v. Palm Beach Newspapers, 395 So.2d 544 (1981)
- Exhibit 23: Statement from Edward R. Clark, prisoner at the Minnesota Correctional Facility - Stillwater
- Exhibit 24: News Media Coverage of Judicial Proceedings with Cameras and Microphones: A Survey of the States (as of August 6, 1981) (survey compiled by the Radio Television News Directors Association)
- Exhibit 25: Brief and Reply Brief of Appellants in Chandler v. Florida
- Exhibit 26: Potential Witnesses who reluctantly cooperate in Criminal Litigation and would not do so if they anticipated Television Coverage
- Exhibit 27: Proposed Code of Rules to Facilitate Relaxation of Judicial Canon 3A(7) relating to the Broadcasting, Televising, Recording or Taking Photographs in the Courtroom
- Exhibit 28: Transcripts of Juror Interrogations by Judge Hyam Segell between March 23, 1978 and March 25, 1980
- Exhibit 29: The Position of the Minnesota District Judges Association on the Use of Cameras and Electronic Devices in Trial Courtrooms
- Exhibit 30: Resolution of Ramsey County District Judges
- Exhibit 31: Resolution of Ramsey County Municipal Court Judges
- Exhibit 32: Newspaper clipping from St. Paul Dispatch, February 24, 1981: "Media 'zoo' bulging at Harris murder trial"
- Exhibit 33: Newspaper clipping from St. Paul Pioneer Press, October 11, 1981

MEMORANDUM

It is elementary that a trial is a search for truth, and any thing that interferes with the fairness of the trial must not be permitted.

In Petitioners' Post-Hearing Brief, Petitioners have clearly set forth the basic issue herein, as follows:

"Are there any benefits to be gained from allowing advanced broadcast technology into Minnesota courtrooms? If so, do these benefits outweigh any potential risks?"

Careful consideration of the evidence leads to the conclusion that the alleged benefits have not been proved and that, in any event, any of such claimed benefits are far outweighed by the potential risk inherent in allowing cameras in the trial courtrooms of Minnesota.

The applicable decisions of the United States Supreme Court are Estes v. Texas, 381 U.S. 532 (1965) and Chandler v. Florida, 101 S.Ct. 802.

The Opinions of the Court are as applicable today as the day they were written. In Estes, the Court said:

"(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."

As stated by Justice Clark:

"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."

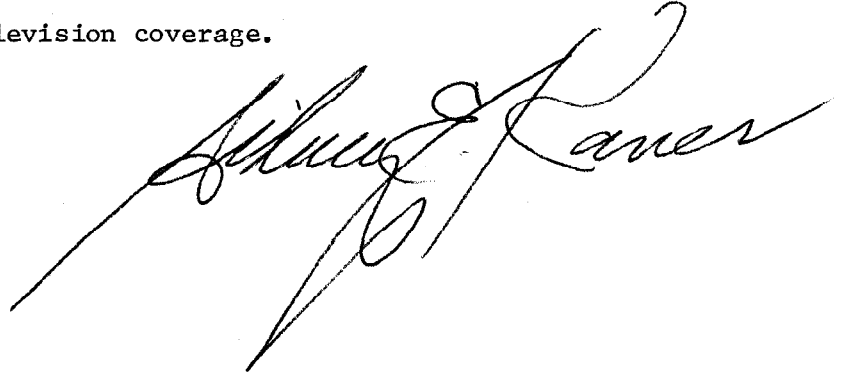
Even in the Chandler case, the Court, while holding that broadcast coverage of a criminal trial was not a denial of due process and that Florida's experimentation with television coverage could continue, nevertheless, pointed out again the danger, saying at page 811 of 101 S.Ct. the following:

"Inherent in electronic coverage of a trial is a risk that the very awareness by the accused of the coverage and the contemplated broadcast may adversely affect the conduct of the participants and the fairness of the trial, yet leave no evidence of how the conduct or the trial's fairness was affected."

It is difficult to understand why such a "risk" of an entirely irrelevant factor should be incurred. To incur such a "risk" violates the accused's right, not only to a fair trial, but to his right to know that he had a fair trial.

Furthermore, consideration must be given to the testimony of the Minnesota District Judges Association, the Minnesota State Bar Association and the Minnesota Trial Lawyers Association who have, after much discussion and consideration, expressed their opposition to the television coverage. Apart from the litigants themselves, these are the people whose interest in and knowledge of the problem gives their position much weight; they are the persons who will be involved with this situation every day.

This must also be added: Any trial judge who presides over a murder or rape trial will face problems enough in the course of the trial, and he will not welcome the additional problems added by the "injection of an irrelevant factor", the television coverage.

A handwritten signature in cursive script, reading "Albert J. Kaner". The signature is written in dark ink and is positioned to the right of the typed text. It features a long, sweeping underline that extends to the left and a large, stylized initial "A".

STATE OF MINNESOTA

IN SUPREME COURT

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

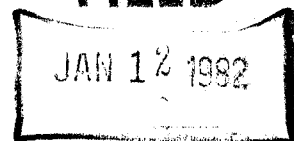
FILE NO. 81-300

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

Petitioners.

REPORT OF THE MINNESOTA
ADVISORY COMMISSION ON
CAMERAS IN THE COURTROOM
SUPREME COURT

FILED



JOHN McCARTHY
CLERK

Pursuant to an Order made by the Supreme Court of the State of Minnesota, on August 10, 1981, this Commission, designated "The Minnesota Advisory Commission on Cameras in the Courtroom" was named. Rosemary M. Ahmann, Sidney E. Kaner and John S. Pillsbury, Jr. were appointed as Commissioners and rules governing the proceedings of the Commission were established.

The Commission convened for its first meeting on August 21, 1981. After electing Commissioner Pillsbury as Chairperson, it directed him, in compliance with Commission Rule 4.01, to cause notice to file "proposed agendas and witness lists" to be sent to Counsel for the Petitioners and the following named persons or organizations as Interested Parties: the Honorable Hyam Segell (at the request of former Chief Justice Sheran); the

Minnesota State Bar Association; the Minnesota District Judges Association; the Municipal Judges Association; the Minnesota County Judges Association; the Minnesota Trial Lawyers Association; the Minnesota County Attorneys Association; the County Attorneys Council; the American Civil Liberties Union; the Defense Attorneys Association; and the Joint Bar, Press, Radio and TV Committee of the Minnesota State Bar Association.

Said notice, dated August 25, 1981, and duly mailed on said date, set September 10, 1981, as the date by which such agendas and witness lists must be filed. A press release containing such notice was also distributed on August 28, 1981.

Pursuant to further notice duly given to those parties who responded to the notice of August 25, a conference of the Commission and representatives of such parties was held on September 21, 1981. At such conference an agenda and witness list was adopted. A few individuals who had not received and therefore not responded to the notice of August 25 were nevertheless permitted to file statements and/or appear as witnesses by consent of the Commission without objection from Petitioners or Interested Parties.

With the consent of the Commission and pursuant to a request filed by Petitioners with the Supreme Court, video and audio coverage of the Commission's proceedings was authorized.

Hearings were held before said Commission on October 5, 6, 12, 13 and 20, 1981. The hearing on October 5 was held in Room 1321 of the Ramsey County Courthouse, and the hearing on October 6 was held in Room 1753 of the Hennepin County Government Center for the purpose of giving

the Commission first-hand experience with video and audio coverage in different courtroom settings. The Commission also visited, but did not hold hearings in, Ramsey County District Courtroom 1409 in order to see first-hand a smaller courtroom with darker decor and a lower level of lighting. The remaining hearings were held in Senate Hearing Room 15 in the State Capitol.

Petitioners were represented by Paul R. Hannah and Catherine A. Cella of the law firm of Oppenheimer, Wolff, Foster, Shepard and Donnelly. There were no formal appearances in opposition, but Judge Hyam Segell appeared as an Interested Party informally in that capacity on behalf of the Minnesota District Judges Association.

At the aforesaid hearings, the following witnesses testified:

Curtis Beckmann, News Director, WCCO Radio, Minneapolis, outlining the four-year history of efforts of the media to secure permission of cameras in the courtrooms

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Chuck Bailey, Editor, Minneapolis Tribune, speaking of the procedure and responsibility of newspaper editors

Clinton A. Schroeder, President, Minnesota State Bar Association, giving the history of the Association's opposition to cameras in the courtroom, describing the Association's concern about the possible impact of cameras on witnesses and jurors and setting forth his opinion that cameras be permitted as they now are in the Supreme Court but not in the trial courts

Justice Jack G. Day, Court of Appeals, Eighth Circuit, Cleveland, Ohio, testifying as to his experience in opposition to the allowance of cameras in the courtroom

Rick Lewis, Station Manager, KSJN, a public broadcasting station, describing the function of radio broadcast of trial proceedings

Irving Fang, Professor, University of Minnesota, School of Journalism and Mass Communication, describing the training given by the University to journalism students, especially those specializing in broadcasting

Dr. James L. Hoyt, Professor, University of Wisconsin, School of Journalism and Mass Communication, testifying as to experiments with mock trial situations in favor of the allowance of cameras in the courtroom

William Kobin, President, Twin Cities Public Broadcasting, KTCA, Channel 2, emphasizing that cameras in the courtroom would educate the public

Judge Edward D. Cowart, Associate Dean, National College of the Judiciary, Reno, Nevada, formerly Chief Judge of the Circuit Court of Dade County, Florida, testifying by telephone interview about the background of the experiment in Florida in favor of allowing cameras in the courtroom

Charles Hvass, Jr., President, Minnesota Trial Lawyers Association, testifying in opposition to cameras in the courtroom, describing his concern about possible effect on litigants, witnesses and jurors

Carol Grant, Representative of the Criminal Bar, testifying against cameras in the courtroom, especially her concern about its possible effect on victims of assault, rape, etc.

Joel Hirschhorn, Attorney, Miami, Florida, who represented Chandler both in the trial court and on the appeal, testifying in detail as to his opposition to cameras in the courtroom

Judge Thomas E. Sholts, Circuit Judge, Fifteenth Judicial Circuit, West Palm Beach, Florida, testifying in opposition to cameras in the courtroom, describing his experience in the courts in Florida

Judge Noah S. Rosenbloom, Judge of Brown County, testifying in opposition to cameras in the courtroom

Harold LeVander, former Governor of the State of Minnesota, testifying as to his experience with the media, and expressing his opposition to cameras in the courtroom

Marjorie Burton, counselor for Sexual Offense Services of Ramsey County, testifying in opposition to cameras in the courtroom, describing her concern about its possible effect on rape victims

Judge Hyam Segell, District Court, Ramsey County, testifying in opposition to cameras in the courtroom

Judge Otis H. Godfrey, Jr., District Court, Ramsey County, testifying in opposition to cameras in the courtroom

Judge Thomas H. Barland, Circuit Judge, Branch 1, Eau Claire County, Wisconsin, testifying as to his experience in Wisconsin courts in favor of allowance of cameras in the courtroom

In addition to the foregoing testimony, exhibits were received and marked as Exhibits 1 through 33. A list of exhibits is attached to this report. Briefs were filed by the Petitioners and by Judge Otis H. Godfrey, Jr. in opposition to the Petition. Judge Hyam Segell filed a letter together with the items referred to therein as a supplement to Judge Godfrey's brief.

Commission Rule 3.03 provides that a majority of the Commission shall be sufficient to determine those questions which may come before it. The Findings, Conclusions, Recommendations and Memoranda of the Commission which follow are concurred in by Commissioners Ahmann and Pillsbury.

Commissioner Kaner dissents from the recommendation of the Commission and has prepared separate Findings, Recommendations and a Memorandum which are filed herewith.

FINDINGS

Upon all the files, records and proceedings herein, the evidence received and the briefs submitted and upon due consideration of the foregoing, the Commission makes the following findings:

1. The technology of video recording equipment has advanced to the extent that the only part of the equipment which must be in the courtroom is a camera. The camera is no longer large and ungainly but is now small, compact, relatively unobtrusive, can be stationary, is completely silent and does not, in most courtroom settings, require enhanced lighting. In courtrooms which have an unusually dark decor (which apparently is a relatively small number), marginal and possibly useable images can be obtained, but satisfactory lighting can be accomplished in most situations by merely upgrading the existing lighting to a higher wattage. Only one person is required in the courtroom to operate the equipment. The video recording equipment other than the camera, including such items as a monitoring screen and a video tape distribution unit, can be located outside the courtroom, in many courtroom situations in an adjoining room, so as not to be observable by persons outside the room. If it must be in

the corridor or some public area, arrangements can be made where necessary so that the monitoring screen cannot be viewed except by those handling the equipment.

2. Still cameras are available for news photographers for courtroom use which are either inherently quiet or can be silenced by a blimping device. While this can reduce the noise to a very minimum level, it cannot totally mute the click of the camera shutter. Such cameras do not require flash bulbs or any lighting greater than required for video camera equipment.

3. Audio coverage of courtroom proceedings can, in most relatively new courtrooms, be provided by tapping into existing systems with which the rooms are equipped. In courtrooms which do not have audio systems, the necessary wiring can be installed unobtrusively, and an ever-developing technology is producing microphones which, while already not disturbing to courtroom decorum, are increasingly unobtrusive.

4. Video cameras, still cameras and audio equipment can easily be positioned on the one hand so as to provide adequately for the needs of the media and, on the other hand, so as not to be a significant distraction from the court proceedings. Limits on the number and location of the courtroom equipment and on the number and movement of the operators of the equipment in the courtroom plus self-policing pooling arrangements agreed to among the media as a pre-condition to courtroom coverage, can accomplish these objectives with a minimum burden on the presiding judge. The Commission was presented with evidence, in the form of rules and standards and in the form of testimony of witnesses from jurisdictions which permit cameras and audio equipment in the courtroom, that this can

be effective.

5. Court rules or standards in jurisdictions which permit cameras and audio equipment in the courtroom normally prohibit audio pick-up or audio broadcasting of conferences that occur in the courtroom between attorneys and their clients, co-counsel of a client, opposing counsel or counsel and the presiding judge held at the bench. The implementation of such prohibition appears to be accomplished either by the judge, court reporter or counsel by turning off a switch or by placing trust in the media for self-compliance. Considering the possibility that these persons may be preoccupied with the conduct of the trial and may inadvertently overlook the problem, there does not appear to be any absolutely fail-safe method of enforcing such a prohibition, although there was no evidence that this has actually been a serious problem.

6. The possibility of lip reading, obtaining video images of work papers or gaining an impression of the tenor of conferences by viewing broadcasts of the video coverage, while recognized, does not seem to have been generally prohibited or restricted.

7. An experiment has been performed in Wisconsin (see Exhibit 17) and studies have been performed in jurisdictions other than Minnesota, notably Florida and Wisconsin, endeavoring to find out what impact the mere presence of cameras and audio equipment might have on litigants, witnesses, jurors, counsel and judges. The experiment was based on simulated, as opposed to real, trial situations while the studies are based largely on the perceptions of the persons involved which, in some cases at least, appear to reflect preconceived notions or personal prejudices.

8. The Commissioners, petitioners and the opponents of video and audio coverage of trial court proceedings who appeared before the Commission as "Interested Parties" all accept the fact that, where a likelihood exists of a conflict between the rights of a litigant to a fair and public trial and the desire of the media for video and audio coverage of the proceedings, the former must prevail. They also accept the fact that, on the one hand, the litigants in trial court proceedings do not, per se, have a constitutional right to oppose video or audio coverage of trial court proceedings, and on the other hand, that the media does not have a constitutional right to be admitted into a trial court with video and audio equipment to provide such coverage.

9. The petitioners believe that there have been benefits and other positive reasons in favor of permitting video and audio coverage of trial court proceedings which outweigh any legitimate objections to providing such coverage. They assert that such coverage will not adversely affect the fairness of court proceedings, the behavioral pattern of the participants or the general decorum of the courtroom. In support of this position, they point to the following:

- A. The ability to obtain more accurate coverage than is possible when media representatives merely take notes and make sketches of trial court proceedings.
- B. The opportunity and desirability of informing and educating the general public as to what actually occurs in a trial courtroom.
- C. The fact, which was not disputed, that a large majority of the general public regard television as their prime source

for reports of important news events. The media claims an obligation to fulfill the public's expectations in this regard.

10. Commercial video and audio coverage has generally been confined to a very few minutes or even seconds on regularly scheduled news programs. The video coverage may include some direct audio reporting of the proceedings, but there is still some summarization, and at times editorialization, by media newscasters which is usually necessary because of the format and time constraints of current normal news reporting. The portions of the proceedings televised and the portion given direct audio coverage are, of course, selected solely by the media. Coverage of the Commission's own proceedings as viewed by the Commission members substantiates these findings. So-called "gavel to gavel" coverage of trial court proceedings has been provided in a few situations over public (as opposed to commercial) television.

11. Opponents of video and audio coverage of trial court proceedings testified that, unlike judges and attorneys who operate within legal constraints and under canons of legal conduct, the media operates under the protective umbrella of the First Amendment, and in respect to constraints, only within the laws of libel and slander and the media's own concept of what is newsworthy, in good taste, or not likely to unduly affect the sensibilities of individuals. They believe that the media, in deciding what to cover, is much more concerned with the sensational, the frequently prurient interests of the public and with what will perhaps improve the ratings of one television station or radio station as compared to its competitors.

12. The representatives of the media who testified before the Commission 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. They asserted that they have grown in "maturity" since earlier trials such as the Hauptmann, Sheppard and Estes cases and that they are for the most part responsible people. They appear to recognize an obligation of self-discipline and assert that rules and guidelines such as those proposed by the Petitioners would give the presiding judge adequate authority to prevent excesses, maintain proper decorum and provide adequate protection to the participants in the courtroom proceedings. Nevertheless, rather strong evidence of real lapses in good taste and in concern for the sensibilities of individuals was brought to the attention of the Commission, including specific evidence of rather poor taste directed against the presiding judge when rulings adverse to the media were made by him.

13. Opponents of television and audio coverage of trial court proceedings including those who filed statements with the Commission, those who appeared in person as "Interested Parties" and witnesses invited by such interested parties expressed sincere and earnest concern that the presence of television and audio equipment in the courtroom and the knowledge that the proceedings may be or were being broadcast are bound to have an impact on the demeanor, behavior, emotional stability and veracity of witnesses, litigants, jurors, attorneys and judges. They believe that this raises a real but perhaps unmeasurable risk of affecting the results of any court proceeding.

14. If trial court proceedings are subject to video and audio coverage,

the difficulty in impaneling a jury is increased for a variety of obvious reasons. These include the inherent timidity of some people about being on television or their concern about being viewed by the general public (including acquaintances) outside the courtroom as participants in a publicized legal controversy. There is also a more frequent necessity for sequestering jurors, which can markedly increase the personal inconvenience for the jurors, the administrative burdens on court personnel and the expense of the proceedings.

15. Minn. Stat. § 631.04 was cited to the Commission by one of the witnesses speaking in opposition to video and audio coverage of trial court proceedings. It provides as follows:

No person under the age of 17 years, not a party to, witness in, or directly interested in a criminal prosecution or trial being heard before any district, municipal, police, or justice court, shall attend or be present at such trial; and every police officer, constable, sheriff, or other officer in charge of any such court and attending upon the trial of any such criminal case in any such court, shall exclude from the room in which such trial is being had every such minor, except when he is permitted to attend by order of the court before which the trial shall be had; and every police officer, constable, sheriff, or deputy sheriff who shall knowingly neglect or refuse to carry out the provisions of this section shall be guilty of a misdemeanor and punished by a fine of not less than \$10 nor more than \$25.

It was pointed out that telecasting part or all of criminal proceedings would permit them to be viewed outside of the courtroom by persons within the purview of the statute.

16. As of August 6, 1981, thirty-three states permitted some kind of television and audio coverage. Most of these states require some kind of consent or approval. Six of these states, including Minnesota, permit coverage only at the appellate level. Of these thirty-three states, twenty

have adopted rules permitting some form of permanent coverage, while the remaining states permit coverage so far only on an experimental basis. No evidence was presented to the Commission that any states which had adopted rules on an experimental basis had revoked such rules,¹ while there was evidence that some states which started on experimental bases have now made their rules and guidelines permanent. Among the thirty-three states permitting some kind of coverage, there are diverse regulations and guidelines limiting coverage in respect to civil, criminal, jury and non-jury cases and also a variety of regulations and guidelines in respect to requirements of consent by some or all of the following: witnesses, attorneys, litigants, individual jurors and judges.

Only eleven states allow video or audio coverage without a requirement for consent by or permission from any participants in the courtroom proceedings. The request to provide coverage is initiated by application to the court. It is only these few states that have rules and guidelines generally comparable to those proposed by Petitioners herein for Minnesota trial courts.

17. Some states have special rules or guidelines prohibiting or restricting video and audio coverage in particular types of cases which deal with what might be broadly described as sensitive matters. These are catalogued in Exhibit 24, pages B-12 to B-16. The Commission heard specific testimony in respect to one of such types--sexual assault cases--from an official of the Sexual Offense Services of Ramsey County. This

¹ The Commission is aware that some states, e.g. Iowa and Ohio, adopted rules which were later made more restrictive.

witness was very firm in asserting that coverage of victims in these types of cases must be absolutely protected from video and audio coverage and that it was not sufficient for the matter to be left up to the discretion of the presiding judge.

18. The Minnesota District Judges Association, the Minnesota State Bar Association and the Minnesota Trial Lawyers Association have all taken official action opposing television or audio reporting of trial court proceedings in Minnesota. Testimony, in the form of statements filed with the Commission, was presented, however, by some district judges in Minnesota indicating that the position of the Minnesota District Judges Association is not unanimous. In addition, testimony was received from a lawyer and judges from states which now permit video and audio coverage of trial courts indicating their continuing opposition to the relaxation of the guidelines which had occurred in their states, but there was also testimony to the contrary from a judge located in such a jurisdiction.

19. No television or audio coverage is permitted in federal trial courts.

CONCLUSIONS

In stating its conclusions and making its recommendations, the Commission wishes to call attention, at the outset, to the fact that it is the Petitioners who are seeking a modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct by the adoption of an amended Canon 3A(7) and proposed Standards of Conduct and Technology. They seek this change not as a matter of right--constitutional or otherwise--but as a

grant of a privilege now denied to them. This, in the view of the Commission, places an affirmative burden on the Petitioners to show that the change is necessary or desirable and places no obligation on those who appeared as "Interested Parties" in opposition to the Petitioners to show that Petitioners have not sustained that burden.

The Commission, having weighed the evidence and considered the briefs of the parties in this context, makes its Conclusions as follows:

1. The technical aspects of providing video and audio coverage of courtroom proceedings can be adequately controlled so as to maintain courtroom decorum, not adversely affect the fairness of the trial and still adequately satisfy the needs of the media by the implementation of guidelines generally comparable to the Standards of Conduct and Technology attached to the Petitioners' Petition as Exhibit B. Accordingly, the Commission is satisfied that this matter, taken by itself, should not be a deterrent in considering whether Canon 3A(7) of the Minnesota Code of Judicial Conduct should be amended so as to permit video and audio coverage of trial courtroom proceedings.

2. If video or audio coverage of trial court proceedings is to be permitted in Minnesota, any rules or guidelines adopted by the Supreme Court should not only protect conferences in the courtroom between attorneys and their clients, co-counsel of client, opposing counsel or counsel and the presiding judge held at the bench from audio coverage as provided in the proposal of Petitioners, but should also protect such conferences from video coverage, and such protection should extend to work papers of those persons.

3. The results of the experiments and studies which have been

conducted for the purpose of exploring what impact the mere presence of video and audio equipment in the courtroom might have on participants have serious shortcomings in providing reliable evidence, either in favor of or opposed to, video or audio coverage. While interesting and obviously of some value, such results, when taken together with the testimony of trial lawyers and judges from Minnesota and from other jurisdictions which permit such coverage, lead to the conclusion by the Commission that while there is a great deal of sincere, sometimes emotional opinion and behavioral theory both in support of and opposed to video and audio coverage of trial court proceedings, there is almost no solid empirical evidence to support either position.

4. While the benefits and desirability of video and audio coverage of trial court proceedings asserted by the Petitioners cannot be entirely denied, they are not as broad as claimed by them in that:

- A. There was no evidence of any general public demand for, or interest in, video or audio coverage of trial court proceedings.
- B. There was no evidence that commercial video or audio coverage is balanced or comprehensive either in respect to a specific trial or in respect to the types of trials covered. It is significant that according to Chief Justice Burger in Chandler v. Florida, 101 S.Ct. 802 (1981), the television coverage in that case was only two minutes fifty-five seconds in length and depicted only the prosecution's side.
- C. Aside from acknowledgement of the fact that any video or

audio coverage, regardless of its nature, is bound to lead to some educational and informational benefits, there was no evidence of any meaningful educational and 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.

- D. There was no evidence tendered nor were there any special arguments made by Petitioners that they regard any of the foregoing considerations expressed in this Paragraph 4 as determinative of, or of any specific significance in respect to, their request for a change in Canon 3A(7).

5. The media derives broad protection from the First Amendment. For its own protection, it must also have due regard for the laws of libel and slander. However, aside from that consideration, and aside from rules or guidelines prescribing the conditions under which video and audio equipment can be brought into the courtroom and limitations on what can be covered, the media has very broad discretion in the selection of the portions of the proceedings to be broadcast and what commentary it can make thereon.

6. Rules and guidelines regulating video and audio coverage of trial courts and adequate authority vested in the trial judge are essential to establish constraints so as to assure courtroom decorum, fair treatment of courtroom participants and a fair and open trial of the litigants. Reliance on self-discipline by the media is not adequate. Appellate courts appear to accept this fact, or at least to expect that the primary duty to

maintain constraints on the media rests with the trial judge and within the judicial system.

7. The evidence received in respect to whether or not or how video and audio coverage impacts on the participants in the courtroom (aside from the technical aspects discussed in Paragraph 1) is inconclusive and has the inherent weakness of being largely based on opinion, behavioral theories, unprovable suppositions and personal prejudices. It is very deficient in solid empirical data and could as easily support a recommendation that Canon 3A(7) not be amended as that it be amended to permit video and audio coverage of trial courts. While the Commission does not question the sincerity of witnesses, after reviewing all such testimony it has difficulty finding any empirical support for the fact that the alleged impact on the courtroom participants (when coverage is provided under guidelines placing reasonable limitations on the conduct of the media in the courtroom) has affected the outcome of any litigation in those jurisdictions which permit video or audio coverage of trial courts or will affect such proceedings if Minnesota were to permit such coverage.

Rules and guidelines of states which permit video and audio coverage of trial court proceedings are in most cases of very recent origin and, in a large number of those states, still on an experimental basis. Colorado, in 1956, was by a considerable margin the first state to permit broadcasting and photography by express judicial rule, since most other states did not adopt any rules or guidelines in this regard until the middle or late 1970's. This relatively short experience with video and audio coverage of trial court proceedings is a major limiting factor on the availability of empirical data bearing on this question.

8. If trial court proceedings are to be subject to video and audio coverage, the judicial system must be willing to accept the fact that there will be more frequent need for sequestering jurors with the attendant additional inconvenience to the jurors, the additional burdens on court personnel and the attendant additional expense. Only an experimental program can provide data to assist in determining the magnitude of this problem.

9. Minn. Stat. § 631.04, prohibiting, subject to certain exceptions, the attendance at criminal trials of persons under the age of 17 years, has been part of the Minnesota statutes since 1891. The Commission can find no legal precedents which give it any assistance in determining whether that statute should be regarded as any limitation on video or audio coverage of trial court proceedings. The Commission believes that this is more appropriately left for decision by the Supreme Court and therefore makes its recommendations herein without regard to that statute.

10. Minnesota is one of twenty-three states which, by reason of a prohibition such as contained in present Canon 3A(7), totally prohibits video and audio coverage of trial court proceedings.

11. The evidence received expressing concern about leaving the question of video and audio coverage of witnesses and parties in sexual assault cases to the discretion of the presiding judge has merit, and the considerations involved are applicable as well to the other special types of cases catalogued in Exhibit 24, pages B-12 to B-16. Accordingly, if any video or audio coverage of trial courts is to be permitted, there should be an absolute prohibition of such coverage as to participants in such situations on timely objection made by them to the court.

12. The Petitioners have failed to sustain the burden of showing that they are entitled to the relief requested in their Petition.

RECOMMENDATION

The Commission, despite its conclusion that Petitioners are not entitled to the relief which they have requested, nevertheless recommends that the Supreme Court give consideration to amending Canon 3A(7) and adopting Standards of Conduct and Technology so as to permit video and audio coverage of trial court proceedings on an experimental basis for a reasonable period of time. A Memorandum supporting this conclusion is attached hereto and hereby incorporated herein.

Specifically, the Commission recommends that the Supreme Court should give consideration to amending Canon 3A(7) and adopting Standards of Conduct and Technology substantially like those proposed by Petitioners as Exhibits A and B to their Petition, subject to the following qualifications and modifications:

1. That such expanded coverage be permitted on an experimental basis for two years.

2. Petitioners, on page 29 of their post-hearing brief, request an amendment to their proposed guidelines in Paragraph 1(b) to permit two still photographers instead of one. Aside from their assertion that their experience in the Minnesota Supreme Court and in these proceedings indicates that this change is desirable, there is no evidence to support it. Accordingly--at least in an experimental period--this change seems unnecessary.

3. Paragraph 6 of the proposed Standards of Conduct and Technology

covering "Conferences of Counsel" should be amended to read as follows:

To protect the attorney-client privilege and the effective right to counsel, there shall be no video or audio pickup or broadcast of conferences which occur in a court between attorneys and their client, co-counsel of a client, opposing counsel, or between counsel and the presiding judge held at the bench. In addition, there shall be no video pickup or broadcast of work papers of such persons.

4. Coverage of parties or witnesses in cases involving child custody, divorce, juvenile proceedings, motions to suppress evidence, police informants, relocated witnesses, sex crimes, trade secrets and undercover agents should either be categorically prohibited or prohibited on objection by the parties.


5. It is recognized that the categories mentioned in Paragraph ⁴ may overlook other situations requiring special consideration by the presiding judge. In any such situations and in any rulings of the presiding judge adverse to the media in respect to their video or audio coverage of a particular proceedings, any rules or guidelines adopted should provide for a strong presumption of validity in favor of the judge's ruling.

6. Trial judges and lawyers, in trial court proceedings where there is visual and audio coverage, should be encouraged--or perhaps directed--during the experimental period to report to the Supreme Court any difficulties or excesses which create special burdens for the presiding judge and special problems in respect to counsel, witnesses, litigants or jurors. Such reports would be valuable for a review process at the end of the experimental period before making a final determination as to whether the rules and guidelines here recommended should be made permanent, modified or revoked.

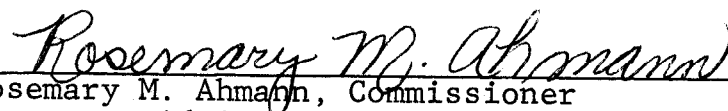
As previously stated, Commissioner Kaner dissents from these Recommendations and recommends that the Petition be dismissed on the merits

and that there be no modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct.

DATED: January 11, 1982.



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



Rosemary M. Ahmann, Commissioner
Minnesota Advisory Commission on
Cameras in the Courtroom, established
by Order of the Supreme Court dated
August 10, 1981

MEMORANDUM IN SUPPORT OF CONCLUSION CONTAINED IN REPORT OF
THE MINNESOTA ADVISORY COMMISSION ON CAMERAS IN THE COURTROOM
TO THE SUPREME COURT

The "Recommendations" of the Commission in its Report are couched more in terms of suggestions than flat-out recommendations. This is intentional and seems more appropriate to the Commission in view of its conclusion that the Petitioners have not sustained the burden of showing that they are entitled to the relief that they request.

The Commission is of the opinion that since television and radio broadcasting is still an evolving communications medium, more experimentation is needed than has so far taken place in coverage of trial court proceedings. A body of experience is developing in the trial courts of several states (excluding Minnesota) which now permit video and audio coverage of trial courts under a diverse pattern of rules and restrictions on either an experimental or permanent basis.

The Commission suggests that it might be remiss not to gain some experience on this subject in the trial courts of this state, and this is the basis of its Recommendation.

Two key decisions of the United States Supreme Court, Estes v. Texas, 381 U.S. 582 (1965) and Chandler v. Florida, 101 S.Ct. 802 (1981), bear directly on this problem. The majority opinion of Justice Clark in Estes, joined in by three other justices, in holding that the defendant was deprived of due process of law by the television and radio coverage of a portion of his trial, contained language more sweeping than necessary to decide that case, particularly in its broad condemnation of video and audio coverage of trial court proceedings. This was even more true of the

separate concurring opinion of Chief Justice Warren with whom Justice Douglas and Justice Goldberg concurred. They also joined in Justice Clark's opinion.

Justice Harlan, who provided the fifth and deciding vote to make the majority in the Estes case, concurred in the result, but in a separate opinion limited his decision to the facts of that particular case. This was, of course, reflected in his opinion and was sharply pointed up in a separate dissenting opinion by Justice Brennan. Chief Justice Burger's opinion in the Chandler case also pointed this out.

The decision in the Chandler case held that the constitutional rights of a defendant in a criminal case are not, per se, violated by providing for radio, television, and still photographic coverage for public broadcast of his trial over his objection. It also held that the Constitution does not prohibit a state from experimenting with video and audio coverage in trial courts.

In the course of his opinion, Chief Justice Burger quoted as relevant Justice Brandeis' dissent in New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1982) as follows: "To stay experimentation in things social and economic is a grave responsibility." 101 S.Ct. at 812. Later, the Chief Justice makes the following statement:

Unless we were to conclude that television coverage under all conditions is prohibited by the Constitution, the states must be free to experiment.

Id. at 813.

The foregoing seems to provide adequate rationale for recommending that an experimental program be conducted in Minnesota trial courts.

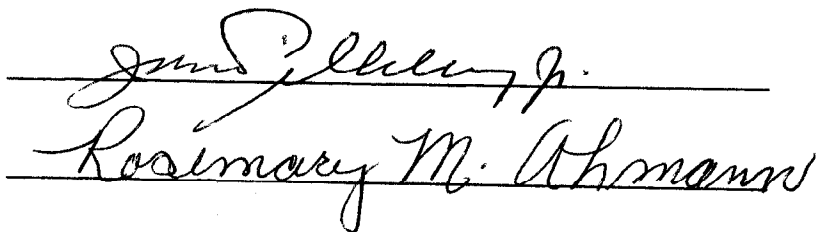
One other item in the Commission's Report is worthy of comment. In

its Conclusions (particular attention is called to Paragraph 4), the Commission left undecided the question of whether or not and to what extent video and audio coverage of trial court proceedings must do more than merely not impact negatively on the decorum of the courtroom and the fairness of the trial court proceedings. Must it provide some positive benefits over and above its own self-interest?

On one end of the spectrum, there has been "gavel to gavel" coverage over public broadcasting stations in a few cases. If such coverage is provided, subject to the rules and guidelines recommended by the Commission, it would seem to provide the opportunity for a broad educational and informational experience.

On the other end of the spectrum if only limited coverage is provided as has been characteristic of most commercial broadcasting, and if the selection by the media of the portion of the proceeding to be broadcast is unbalanced and any commentary reflects the bias of the media, then there is a good question of the desirability of such coverage.

The Commission submits that it would be desirable for the Supreme Court to express its views on this question. Such views so expressed would be helpful to the media as guidance as to what is expected of them if video or audio coverage on an experimental basis is authorized. In like manner, it would provide guidelines for appraising the results of an experimental period before a decision to make rules and guidelines authorizing such coverage permanent, to modify them or to revert to the present Canon 3A(7).


Rosemary M. Ahmann

EXHIBITS

MINNESOTA ADVISORY COMMISSION ON CAMERAS IN THE COURTROOM

- Exhibit 1: White Collar Crime, an article published by University of Minnesota journalism students
- Exhibit 2: View from the Bench: A Judge's Day, by Judge Lois G. Forer
- Exhibit 3: A Breakdown of the Court System, given to journalism students
- Exhibit 4: Public Affairs Reporting syllabus
- Exhibit 5: Mass Communication Law syllabus
- Exhibit 6: Television News, Radio News, by Irving E. Fang (textbook used by journalism students)
- Exhibit 7: New Strategies for Public Affairs Reporting (textbook used by journalism students)
- Exhibit 8: Statement on "Cameras in the Courtroom" by Jack G. Day
- Exhibit 9: The Case against Cameras in the Courtroom, by Jack G. Day
- Exhibit 10: Report and Recommendations of the Ad Hoc Committee of the Bar Association of Greater Cleveland on the Effect of Cameras in the Courtroom on the Participants in Such a Trial
- Exhibit 11: Statement from William E. Falvey, Chief Public Defender for Ramsey County
- Exhibit 12: Statement from the Honorable John A. Spallacy, Judge of the District Court
- Exhibit 13: Statement from the Honorable John M. Fitzgerald, representing the Minnesota District Judges Association
- Exhibit 14: Statement from the Honorable Joseph P. Summers, Judge of the District Court
- Exhibit 15: Statement from the Honorable Mitchell A. Dubow, representing the District Court Judges of the Sixth Judicial District
- Exhibit 16: Statement from the Honorable Martin J. Mansur, Judge of the District Court
- Exhibit 17: Courtroom Coverage: The Effects of Being Televised, by James L. Hoyt

- Exhibit 18: Report of the Supreme Court Committee to monitor and evaluate the use of audio and visual equipment in the courtroom
- Exhibit 19: Cartoon from the Palm Beach Post-Times
- Exhibit 20: Report to the Supreme Court of Florida re: conduct of audio-visual trial coverage for State of Florida v. Herman, submitted by the Honorable Thomas E. Sholts, Judge of the Circuit Court, Florida
- Exhibit 21: Palm Beach Newspapers v. State of Florida, 378 So.2d 862 (1980)
- Exhibit 22: State of Florida v. Palm Beach Newspapers, 395 So.2d 544 (1981)
- Exhibit 23: Statement from Edward R. Clark, prisoner at the Minnesota Correctional Facility - Stillwater
- Exhibit 24: News Media Coverage of Judicial Proceedings with Cameras and Microphones: A Survey of the States (as of August 6, 1981) (survey compiled by the Radio Television News Directors Association)
- Exhibit 25: Brief and Reply Brief of Appellants in Chandler v. Florida
- Exhibit 26: Potential Witnesses who reluctantly cooperate in Criminal Litigation and would not do so if they anticipated Television Coverage
- Exhibit 27: Proposed Code of Rules to Facilitate Relaxation of Judicial Canon 3A(7) relating to the Broadcasting, Televising, Recording or Taking Photographs in the Courtroom
- Exhibit 28: Transcripts of Juror Interrogations by Judge Hyam Segell between March 23, 1978 and March 25, 1980
- Exhibit 29: The Position of the Minnesota District Judges Association on the Use of Cameras and Electronic Devices in Trial Courtrooms
- Exhibit 30: Resolution of Ramsey County District Judges
- Exhibit 31: Resolution of Ramsey County Municipal Court Judges
- Exhibit 32: Newspaper clipping from St. Paul Dispatch, February 24, 1981: "Media 'zoo' bulging at Harris murder trial"
- Exhibit 33: Newspaper clipping from St. Paul Pioneer Press, October 11, 1981