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MINNESOTA ADVISORY COMMISSION ON CAMERAS IN THE COURTROOM

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White Collar Crime.

TODAY'S INVISIBLE CRIMINAL COULD BE COSTING YOU A BUNDLE!

by Fred Fico, Dan Gahlon and Craig Nienaber

EVERYONE knows how much the knife-wielding street criminal and ransacking burglar cost their victims. But the smooth-talking con artist, the unnoticed embezzler and the prominent corporate executive who fixes prices may be costing us all far more.

These are the so-called "white collar" criminals. They don't use knives, guns or force against their victims. Their intelligence is a far more dangerous weapon.

No one knows just how dangerous. But a recent study suggests that white collar crime in Hennepin County may be costing victims much more than street crime.

A scientific survey of criminal cases arraigned in Hennepin County District Court in 1973 disclosed that white collar crimes were only two-thirds as numerous as street crimes tried in court. However, the dollar damage from white collar crimes was nearly two-and-a-half times larger.

The average white collar crime costs victims almost five times more than the average street crime. Forgery accounted for almost four times more dollar loss than robbery, the street crime with the greatest threat of violence.

Twenty-two percent of the street crimes prosecuted resulted in no dollar loss to victims. The criminal was either apprehended in the act or no property was taken. Only two percent of the white collar crimes resulted in no dollar loss.

The study may not be an entirely accurate reflection of crime in Hennepin County because only a fraction of all crimes are tried in court. However, such a study is probably the closest possible approximation to a true picture.

For the purposes of the study, a white collar crime was defined as one using guile to deceive an unsuspecting victim. While the street criminal uses force or the threat of violence against victims, the white collar criminal exploits the trust of a cooperative victim.

A white collar crime can be committed by members of all social and economic classes, not just by white collar persons. A prostitute passing a forged check, a clerk embezzling company funds, and an executive conspiring with others to monopolize a market are all committing white collar crimes.

According to Assistant U.S. Attorney Frank Hermann, "'White collar crime' is just a convenient handle, a magical phrase for something that is difficult to easily categorize."

The representative sample of 461 cases used in the study was selected from among the 1,841 district court criminal cases arranged in 1973. White collar crimes found in the sample included forgery, theft by check (writing bad checks), embezzlement, false representation and other frauds.

Street crimes were categorized according to the criminal charge tried in court — burglary, robbery, theft, and receiving stolen property. Burglary involves the physical act of breaking and entering, and unlike the other three groups of street crimes studied in the sample, implies no dollar loss. Of the 47 burglaries in the sample, 24 were either interrupted in progress or occurred without property loss.

Receiving and concealing stolen property was considered as a street crime in the study. Usually regarded as a white collar crime, in court it is frequently used as a charge against a burglar when it is difficult to prove that the burglar himself had removed the property from a building. Street crime figures may then be somewhat inflated, containing some crimes committed by "fences," who are actually white collar criminals.

Dollar loss figures reflected in the study are minimal because they do not include those losses listed in counts which were dropped.

Estimates projected from the sample disclose about 575 street crimes and only about 350 white collar crimes arrainged in 1973. But the projected white collar crime dollar loss was nearly half a million dollars, while the projected street crime dollar loss was well under $250,000.

Other findings include:

■ Embezzlements and various types of fraud made up only a quarter of all the white collar crimes in the sample, but accounting for 82 percent of the white collar crime dollar loss. These major white collar crimes resulted in more dollar loss than all types of street crime.

■ Eighteen percent of the white collar crimes cost more than $1,000 per crime and accounted for 88 percent of the total white collar crime dollar loss. Only 9 percent of the street crimes cost more than $1,000 per crime, accounting for 56 percent of the total street crime loss. The average cost of the remaining 82 percent of the white collar crimes was $201 per crime. The average cost of the remaining 91 percent of the street crimes was $183.

■ White collar and street crimes were prosecuted with nearly equal success. Of the 142 street crime cases appearing in the sample, the defendant in 129 cases — 91 percent — was convicted, placed on the miscellaneous calendar for at least a year or committed to a state hospital, or he jumped bail.

Of the 88 white collar crime cases found in the sample, 79 — 90 percent — resulted in similar dispositions.

■ Street crimes comprised 31 percent of the total sample and white collar crimes 19 percent. Of the remaining cases, 88 drug-related crimes made up the largest category — 19 percent of the sample. There were also 28 cases of unauthorized use of a motor vehicle (6 percent of the sample), 27 appeals from municipal court (6 percent), 15 assaults (3 percent), 15 sex crimes (3 percent) and 12 cases of prostitution (3 percent).

These figures may not be completely representative of crime in Hennepin County. Not only do court cases reflect just a fraction of all crimes, but street and white collar crimes are reported to authorities at different rates. Criminals are also apprehended and prosecuted at different rates.

Some major white collar crimes, including bank embezzlement, mail fraud and tax evasion, and a few large street crimes such as bank robbery, are prosecuted in federal court. A few cases of each of these types of crime occurred in Hennepin County and were resolved in federal court in 1973. Also, many victims seek restitution for crimes through civil proceedings and the government sometimes proceeds in civil cases against large-scale criminal schemes. None of these federal or civil cases are included in the study.

The study may reflect a general pattern in the incidence and dollar cost of crime in Hennepin County, confirming the beliefs of several law enforcement officials about the impact of white collar crime. "Unfortunately, people are more concerned with street crime — because it hurts," Minnesota Attorney General Warren Spannaus said. "But money-wise, white collar crime is probably more expensive."

"People are more concerned with street crime . . . because it hurts."

2

Trying to save $5 on a roof repair job, a Minneapolis homeowner turned down the estimate of a reputable company and gave the job to an itinerant worker. Now the homeowner is out $70, and his roof still leaks.

More than 7000 people in the Upper Midwest lost $250,000 in an Edina-based buyers club swindle. Companies dealing with the buyers club operation lost another $50,000.

A "Girl Friday" with more initiative than her employers expected falsified a local company's records, embezzling over $14,000.

Twelve employees of the Hennepin County Welfare Board recently pleaded guilty in District Court to stealing over $66,000 from funds intended for needy families.

EVERY RESIDENT of Hennepin County was a direct or indirect victim of these and similar types of white collar crimes. Losses suffered by businesses and government were passed on to consumers and taxpayers in the form of higher prices, higher taxes and reduced services.

The dollar loss to the public from white collar crimes may far exceed that of street crime, and there are indications that several types of white collar crimes are on the rise.

A study of Hennepin County District Court records of criminal cases arraigned in 1973 disclosed only two-thirds as many white collar crimes as street crimes. But the dollar cost of the white collar crimes was nearly two-and-a-half times greater. And the cost was borne by individuals, groups, business and government — all vulnerable to the white collar criminal.

White collar crimes exploit the trust of an unsuspecting and cooperative victim through the use of guile or deceit. Frauds, embezzlements, forgeries and price-fixing are all types of white collar crimes.

Individuals trying to save money are particularly susceptible to frauds, especially home improvement and auto repair schemes. As in the case of the homeowner with a leaking roof, a "good deal" often turns out to be fraudulent and even more costly for the consumer than an expensive but competent job.

The more elaborate buyers club scheme exploited over 7,000 Midwesterners trying to save money through cooperative buying. Each club member paid $395 for a 10-year membership in Mid-America Savers, Inc., of Edina, and was guaranteed wholesale buying rights. But the club's announced 6 percent handling fee was soon increased by an illegal and hidden 8 percent markup in the wholesale prices listed in the club catalog. The club also began charging down payments, another violation of the original membership agreement.

By the time the state became aware of the fraud in October, 1973, the club owed members $48,000 in down payments and $200,000 in refunds on the remaining years of memberships. Another $48,000 was owed to companies which had delivered merchandise but had not been paid by the club.

Even through the club officers were convicted in federal court last summer and company assets were placed in receivership, defrauded members and companies will never receive refunds or payments.

Mel Vander Meer, a St. Paul postal inspector who worked on the case, explained that "all the company money went into operating and personal expenses, and that's why you never find a bundle at the end of these schemes, even though people think you do. Ninety-five percent of the time, nothing is recovered."

While the need to economize makes the individual vulnerable to white collar frauds, the hope of easy gains is equally dangerous.

Ads for work-at-home schemes, for example, promise great earnings with "no experience necessary." Clipping newspapers, addresssing envelopes, assembling items, making clothing and raising animals are among the jobs offered. The initial investment by the individual often exceeds the profits possible. Although each person loses only a few dollars, the U.S. Chamber of Commerce estimates that, nationally, $500 million is milked from the public each year through these schemes.

Mail order investment frauds also victimize people seeking financial gains for no work. Recently a Twin Cities man advertised silver dollars in the newspaper, priced at less than market value. He collected $1,900 by mail in three weeks, sent no silver dollars and left town.

On a more devastating scale, 14 Twin Cities residents lost a total of $31,000 during the first six months of 1973 to a man who promised investment gains on the commodities market. False charts and a fluid sales technique won the trust of the victims, but their money was stolen, not invested. The loss represented the life savings of several of the victims.

And occasionally an individual who is neither trying to save nor earn money is victimized through no fault or action of his own. Last year, some Minnesota residents discovered that they had been bilked by car dealers turning back odometers and artificially increasing the value of used cars. No one knows yet — and some victims may never know they were "taken" — how many people were defrauded or what the dollar loss has been.

On a more personal level, members of a Minneapolis church bowling league paid $1,800 in dues to the league treasurer to pay for the annual banquet. After the members finished their banquet dinner and received their trophies, the treasurer slowly rose and haltingly announced that there was no money to pay for the banquet. He had spent the dues on himself.

While customers, clients and club members are prey to many schemes, businesses also suffer from frauds at the hands of their own customers and employees.

Jerry Schuller, part owner of Tower Grocery and Ralph and Jerry's in Minneapolis, estimated his losses at both stores from bad and forged checks at over $1,000 per year. Schuller's Tower Grocery has been held up three times in the last year, but his losses to the armed criminals were considerably less than losses to the bad check artists.

William Rose of Kick's Liquors in Minneapolis said that he loses a "substantial amount" of money each year to bad checks and forgeries.

"It's equivalent to stealing," Rose said. "The only difference is that they don't use a gun." Rose estimates that several thousand dollars of "pure losses" are absorbed by Kick's each year.

Brooks Superettes in the Twin Cities loss nearly 2.5 percent of its annual gross earnings to "internal and external frauds," estimates Keith Carlson, president. Losses of the 20 Brooks stores probably exceed $100,000 annually from bad checks, forgeries, shoplifting and employee theft, Carlson said. All Brooks employees — man-

"It's equivalent to stealing. The difference is . . . they don't use a gun."

agement included — are strongly encouraged to take a polygraph test each year as a "preventive measure." Brooks has even been victimized by a collection agency used to help resolve bad check losses. According to Carlson, the checks written to Brooks by the agency bounced.

Northwestern National Bank of Minneapolis loses several thousand dollars a month due to various frauds, according to J. G. Stocco of the Special Discount Section. In one common scheme, the "split account," an account is opened under the name on a stolen check from another account. Another forged check is later written, part is deposited and most is taken in cash. Major losses also result from people taking out loans in someone else's name, loans on non-existent property, and bad checks.

"Our problem is that as we tighten security we create inconvenience and lose customers," Stocco said. "We have to regard much of our losses as public relations."

A large department store like Dayton's can expect to lose about $50,000 a year in forgeries, about $75,000 in bad checks, and sometimes over $100,000 in credit card frauds. These figures indicate pure losses and don't include frauds in which money is recovered, according to James Dirlam, Dayton's credit manager.

Insurance companies can suffer serious losses from white collar schemes. One case investigated by Assistant Hennepin County Attorney James Gaffney, supervisor of the Business Fraud Division, involved a group of friends who sold a building property among themsleves to inflate its value, allowing them to insure it at a higher rate than the original value warranted. The friends then "torched" the building to obtain the inflated insurance claim.

Business must also guard against fraud by employees. An accountant for a Minneapolis tire company diverted company funds to his own use. He also sold the company's merchandise at a discount to his brother in Northern Minnesota and to his brother-in-law in Michigan, both of whom operated tire companies of their own. The accountant's take was over $40,000.

Government is also a victim of some white collar crimes, such as tax fraud. During 1973 the metropolitan area office of the Internal Revenue Service alone handled 33 tax fraud cases amounting to $1,366,000 in unpaid taxes. Another $2,300,000 was recovered in 1973 by other investigative means.

Businesses, individuals and government were directly affected by these and other types of white collar crimes. But consumers had to pay the retail price, tax and interest rate increases caused by these crimes.

Ray Voss of Northwestern Bell, referring to Bell's losses from telephone fraud, said, "The paying customer suffers by paying higher rates." For the past few years "blue boxes" — electrical devices used to gain entry to Bell's switching system — made possible long distance calls at no charge. Toll frauds and third party billings are responsible for much of the fraud losses abosrbed by Bell — and the public.

Richard Risley, chief investigator for the Legal Services Division of the Hennepin County Welfare Board, said that 4 percent of all the money disbursed by the board last year was actually proved to be fraudulently claimed.

"Fraud really hurts the people who need welfare the most," Risley said. "There's got to be a better welfare system to help them, but we can't now afford to provide it."

The U.S. Chamber of Commerce estimates that insurers lose about $1.5 billion annually from fraudulent claims, and that nearly 10 percent of the claims filed with some companies are false. A study by the Chamber, published as "The White Collar Crime Handbook," notes that "fraudulent claims result in such indirect victims as policyholders, whose premiums, on average, may be 15 percent higher than would be the case in the absence of fraud."

The Chamber handbook also estimates that dishonesty by corporate employees has raised retail cost of some goods and services by as much as 15 percent. While these figures are provocative, the Chamber provided no information about how these estimates were made.

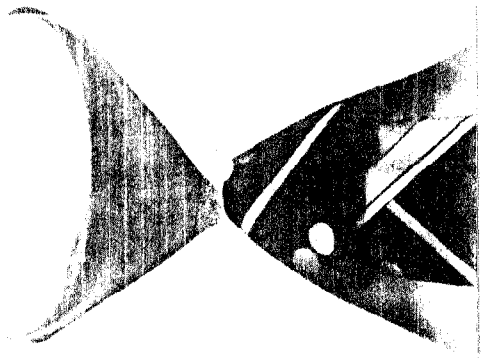
Costs of another type of white collar crime can't even be estimated, although such crimes surface from time to time to reveal the staggering sums a large corporation can illegally charge the public through price-fixing and anti-trust violations. It is impossible for consumers to know how large a part of the prices they pay for goods and services are the result of illegal business practices. However, just how costly these practices can be was revealed in 1960 when General Electric was fined $1 million and several corporate vice-presidents were sent to jail for a price-fixing scheme which netted GE $250 million.

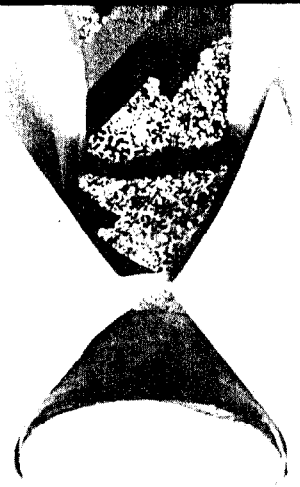
In a civil action begun in November in federal court in Minneapolis, a group of consumers claimed $1.5 billion in damages against the nation's five largest drug companies for price-fixing. In 1966 the Federal Trade Commission ordered the five companies to relinquish a patent monopoly. Increased production of certain antibiotics dropped the price from $50-$70 per 100 capsules to less than $5 per 100 capsules. A criminal conviction against the companies, however, was overturned in 1968.

In addition to the monetary loss resulting from white collar crime, there are less tangible social costs. White collar crime exploits the trust necessary in business and personal relationships, creating suspicion among government, business and the public. According to the President's Commission on Law Enforcement and Justice, "White collar crime affects the whole moral climate of our society."

U.S. Attorney Robert Renner believes that white collar crime "has an immediate impact on the economy and government, but another reason it costs so much is that it can erode. It creates disrespect for law at the highest level. After all, you might say that Watergate was a 'white collar crime.'

(More)





3

PLACING A POLICEMAN on every corner would go a long way in eliminating street crime. But it would have no effect on white collar crime.

The white collar criminal doesn't rely on a weapon or force to subdue a victim. His weapon is a keen brain and the ability to exploit the trust of unsuspecting people.

The white collar criminal commits a unique type of crime. And unique efforts by law enforcement authorities are needed to deal with him.

Law enforcement agencies and the public have recently become more aware of the high cost of white collar crime. Increased efforts have been made at nearly every level of law enforcement to cope with the problem. But despite these efforts, white collar crime promises to increase in the future, especially in Hennepin County.

"White collar crime is now the 'in thing'," said Renner. "Attorney General Saxbe was more concerned about white collar crime than any attorney general in memory." According to Renner, Saxbe issued directives to all U.S. Attorneys to give greater priority to white collar crime.

In December, 1973, a Business Fraud Division was established in the Hennepin County Attorney's office. Its staff has now been increased to four lawyers and two trained investigators to deal with economic crimes full time.

At the same time, a special Citizen Protection Office was also set up to handle business misconduct through civil proceedings. According to County Attorney Gary Flakne, this new office performs an ombudsman and conciliation service by preventing and solving business problems and educating the public. The office has the power to go to court to obtain injunctions against businesses, and will handle about 400 citizen complaints this year.

"We have pointed our activities in the whole area of economic crime, which is probably the most serious crime in the country today," Flakne said. "With manpower increases in our Business Fraud Division and Citizen Protection Office, very soon 10 percent of the county attorney's office will be dealing exclusively with economic crimes."

Working closely with the county attorney is the welfare fraud division of the Hennepin County Welfare Board, established in 1971. Prior to that year, only six cases of welfare fraud had been prosecuted in Hennepin County since the inception of welfare in the early 1930s. Six investigators last year handled over 700 welfare fraud cases, with a total dollar loss of over $1 million, and now have a backlog of 1,600 cases still to be investigated.

With two investigators and a medical clerk recently added to his staff, Chief Investigator Richard Risley (who is also president of the National Welfare Fraud Association), believes that he has one of the leading welfare fraud divisions in the country. As well as false claims by welfare recipients, the fraud unit is now beginning for the first time to investigate the false claims filed with the welfare board by professional people for supposed services rendered, and Risley has already uncovered substantial fraud in this new area.

Businesses are also increasing their efforts to prevent and detect white collar crime. Some businesses are establishing their own security forces and protection systems, such as Identiseal, a check identification system using thumbprints.

Dayton's uses a more sophisticated mini-computer authorizing system with a terminal at every cash register. After the system was installed in 1972, shoppers card losses dropped from $86,000 in 1971 to $36,000 in 1973.

Compared with street crime, very little is known about white collar crime. But the Bureau of Criminal Apprehension has recently begun gathering minimal statistics from area police department records on certain white collar crimes, for the first time providing some concrete statistics to Minnesota law enforcement officials. The Governor's Crime Commission also has tentative plans to begin gathering information and figures on white collar crime.

Increased efforts in the field of consumer protection have aided in bringing to light potential white collar crimes. The Minneapolis Consumer Affairs Division, supervised by Edward Grabowski, was established in March, 1973, to handle complainst from consumers. Since beginning, the office has handled over 900 complaints, and Grabowski claims that his office has saved consumers over $87,000 in refunds, price adjustments and replacement of defective products.

The Minnesota Attorney General's office receives 500-600 complaints a month from consumers, in addition to

Gary Flakne, county attorney

80-90 phone calls each day. Some of this information is being relayed to the Better Business Bureau for their files on business practices.

Shirleen Knapp of the Better Business Bureau estimates that the workload of her office has increased 60-80 percent since 1972. The office receives an average of 350 calls per day, with 25 percent of the calls complaints registered by consumers, and 75 percent requests for purchase information.

Despite these increased efforts, a great many problems remain in controlling white collar crime. White collar criminals are not only difficult to apprehend and prosecute, but white collar crime is difficult to detect. Nobody knows how much white collar crime actually exists, although the U.S. Chamber of Commerce estimates that it costs the public over $40 billion annually.

Often victims of white collar crime don't even know they're victims. St. Paul postal inspectors are now investigating a $5 million mail fraud, but they have not yet received even one complaint from a victim.

The trust relationships exploited in white collar crimes provide cover for the criminal. A school teacher from Austin, Minnesota, prepared income tax returns for area residents for many years. Roy Scott of the IRS said that the teacher was paid in cash for the taxes and his fee, but never filed the returns, pocketing all the money he received. He was caught when one of his clients, an elderly man, filed for social security and was told that he had no money in the fund.

Business is often an unknowing victim because employees have control over the business records. A case prosecuted in District Court last year involved a bookkeeper for an Edina company who was convicted of embezzling funds over a four-year period. The employee handled the company's cash intake and records, and may never have been detected if he hadn't grown so bold that he stole the actual records from the company safe. There were no marks on the safe, only four employees had access to it, and only the bookkeeper failed to pass a polygraph test.

Because the bookkeeper controlled the records, company officials were unable to determine exactly how much cash he had embezzled. Only through comparing the company cash sales during the bookkeeper's four-year tenure with records of cash intake during previous years were they able to estimate that over $100,000 in cash had been taken.

Even following the detection of white collar crime, apprehension of the criminal is difficult because of a lack of manpower, investigative training, and organized staffing.

Standard police procedures and resources are geared almost exclusively to street crime. Less than 2 percent of the crimes investigated by Minneapolis police between mid-July, 1971 and mid-July, 1972, were white collar crimes. This was disclosed by a representative sample of 756 police offense reports selected from a total of nearly 40,000 filed.

An offense report was filed each time police acted upon a complaint. Based on the sample, it is estimated that less than 500 complaints involving white collar crimes — mostly check forgery — were investigated by Minneapolis police. There were an estimated 22,000 investigated complaints of street crimes comprising nearly 60 percent of the sample. Many victims bypass the police department and report white collar crimes directly to other agencies.

According to Assistant Hennepin County Attorney James Gaffney, "The police department is traditionally involved in the detection and prosecution of property crime, but much theft — particularly business theft — just doesn't fall into traditional police department categories. The investigation these crimes require is much more complex, and the police are not equipped to deal with it."

John McGough of the Metro Council's Criminal Justice Planning Department emphasized that "police are oriented toward street crime because people are more afraid of it, and it is the crime that most people perceive as a threat. The existing agencies of social control simply aren't geared to deal with white collar crime."

County Attorney Flakne believes that "police have a tendency to concentrate in the area where they are most needed — the protection of human life."

Flakne's office investigates many of the major white collar crimes reported in Hennepin County. However, the resources available for investigation have been limited. Assistant Attorney Gaffney, heading the Business Fraud Division, has had one law student to assist him and one investigator who is a retired policeman.

"We could probably put to work six or seven full-time investigators in this area," Flakne said. "In our files we have major crimes that are going on today that we haven't had time to investigate."

Yet Hennepin County is fortunate to have the resources it does. Many outstate county attorney offices are staffed by part-time officials who also have to attend to their own practices.

Bill Kuretsky, head of the Consumer Protection Division of the attorney general's office, said that out-state officials often request assistance from the attorney general because they lack expertise, have conflicts of interest or

lack adequate manpower to carry out an investigation or prosecution.

Complaints to the attorney general's office by the public are sometimes followed up with an investigation. "We have to set a priority on who to go after," Kuretsky said, "but I think the need is being met."

Kuretsky has eight full-time people on his staff, but needed the assistance of about 20 William Mitchell law students to complete the odometer investigation initiated by the attorney general. The students logged over 400 hours on the investigation.

Although many complaints received by the U.S. Attorney's office are forwarded to the IRS, FBI, Post Office and other agencies, investigation of white collar crime is also difficult on the federal level.

"In our files we have major crimes going on today that we haven't had time to investigate."

"We already have ongoing crimes to deal with, and white collar crimes take an inordinate amount of time to investigate," U.S. Attorney Renner said. "As a result, white collar crime exists, we know it does, but we just aren't able to pursue it to the full extent. We have so much work to do already that we can't do anymore and do it right."

Even when complaints are made and investigations initiated, the complexity of the crime and the intelligence of the white collar criminal make investigation and apprehension difficult. According to Renner, "The white collar criminal is usually the smarter type, and he's operating within his own area of expertise."

St. Paul postal inspectors will attest that many check kiters border on being brilliant. Check kiting involves "creating money." A check kiter in Minneapolis, for example, writes a check overdrawing his account in an Oklahoma bank and deposits the check in his Minneapolis account. He then races the check back to Oklahoma, where he covers the check written in Minneapolis by another check overdrawing the Minneapolis account. As he includes more banks in this operation, the amounts of the checks increase, creating a financial kiting effect.

The check kiter must not only be smart enough to deal with a large number of banks, but he must also calculate the exact time it takes checks to travel between banks, taking into account weekends and holidays. One check kiter now under investigation by St. Paul postal authorities has defrauded 37 banks of over $1 million.

The white collar criminal is also difficult to apprehend because he's operating on his own home ground. In early 1970, after hearing rumors of a large-scale fraud going on within the welfare department, Hennepin County welfare fraud investigators spent three weeks going through case files looking for evidence. They found none.

It wasn't until a bank clerk, who happened to know one of the investigators, questioned whether to cash an eight-month-old welfare check that the first clue surfaced. It was then necessary for investigators to examine by hand more than 900,000 cancelled checks before enough evidence was amassed to charge 13 welfare department employees with the theft of $66,000 over a two-year period.

"The scheme was moving so smoothly, God knows how long it could have gone on if the bank clerk hadn't called us almost by accident," Richard Risley, chief welfare fraud investigator, said. "When we first examined the case files, even if we had known what we were looking for, we wouldn't have found it. That's how well the tracks were covered."

Special problems also exist in the prosecution of white collar crimes. White collar criminals are often respected members of the community. They can afford better attorneys, the non-violent nature of the crime may make judges more lenient, and juries may be more sympathetic to the white collar criminal.

The vice-president of an Illinois cologne supply company that defrauded several Minnesota residents of more than $100,000 by selling non-existent distributorships was able to muster community support after his conviction in federal court in Minneapolis last spring. There was a letter-writing campaign in his behalf appealing his imprisonment, and the director of an Illinois college also wrote the judge, offering the convicted felon a $17,500 a year position as director of admissions if he could be released from prison.

Juries also may respond more sympathetically to the white collar criminal. According to Barry Feld, a professor of law and sociology who teaches a course on white collar crime at the University of Minnesota, many white collar criminals and jurors are likely to share the same ethnic, social and economic

characteristics, and it is much easier for them to identify with the white collar criminal than with the street criminal. He added that since the "essence of the law is to distinguish people who are different from us, it is much easier for the jury to be punitive if defendants are 'different'."

Feld also thinks that juries regard the white collar crime itself differently. "We have some firm social norms about the badness of hurting a person, but it's hard to visualize the effects and consequences of the more impersonal white collar crime," he said. Another factor that Feld pointed out is that the white collar criminal is often more educated and articulate, and this makes it possible for him to take the stand more often and present a better case before the jury.

FBI Agent Walter Versteeg believes that there should be more trials by judges alone than by jury in white collar crime cases. "The white collar criminal can bring in priests, rabbis, or ministers to vouch for his moral character," he said, "and the jury can't help but be influenced by this."

Investigators and prosecutors almost universally believe judges are also softer on white collar criminals. According to Hennepin County District Court Judge Andrew Danielson, one reason courts may go easier on white collar criminals is that this type of crime does not involve violence and therefore doesn't pose the same danger to the community as violent or potentially violent street crime. He also believes that a large number of white collar criminals are rehabilitated immediately after being caught because of the stigma of being considered a criminal and the impact that this has on family and employment.

Another problem for prosecutors is the reluctance of some victims to prosecute the criminal. In smaller white collar crimes like forgery and writing bad checks, it often costs more to prosecute than it does to take the loss.

According to Carl Johnson, head of the Minneapolis Police Forgery Division, very few forgeries and bad checks are even reported to police. Employees must be given time off for police investigations and court appearances, and many businessmen are reluctant to do so. Other businesses give employees time off without pay to testify, and consequently some employees will not admit that they can identify the criminal.

Johnson said that sometimes bad checks for $10 or $15 can be written in the same area for a year or two before the Forgery Division ever receives a complaint. Only $174,000 in forged and bad checks were reported in 1973. "What we see is only a fraction of what is out there, but it's difficult to say that it's the role of the policeman to go out and solicit victims," he said.

Businesses are sometimes reluctant to prosecute employees because of the bad publicity involved. Banks, for example, don't always prosecute employees who have embezzled funds because they fear the public will think the bank unsafe, said FBI Agent Versteeg, a certified public accountant who deals frequently with bank fraud.

According to Professor Feld, only when amounts taken are large and restitution impossible will businesses overcome their fear of bad publicity and attempt criminal prosecution. Feld also believes that vigorous government prosecution of corporate crimes such as price-fixing will occur "only when the public becomes as outraged over an overpriced and defective GM car as they do over a robber who escapes in one."

Another deterrent to prosecution is the overload of cases. "Most investigators working on economic crimes aren't trained to prepare a case for trial," according to County Attorney Flakne. "Putting a case together involves working with documents, which takes a lot of time, and this is where specialized investigators are required. Having enough manpower is our biggest problem."

Flakne believes that "some sort of organized staffing", whether lodged in the county attorney's or the state attorney general's office, will be necessary to provide investigators the standard and specialized training that is now lacking.

Present criminal laws also make prosecution difficult. Embezzlements, swindles and frauds are prosecuted under the standard theft statute, which requires the demonstration of an intent to commit a crime. But while intent in street crime is obvious, it is much harder to prove in white collar crimes, where a claimed business failure may actually conceal a deliberate fraud.

To show criminal intent, it is necessary to demonstrate that a business or individual had no intention of performing promised services when money was taken from the customer. If an otherwise legitimate businessman suddenly leaves town or fails to honor his commitments, this by itself is not considered proof that he intended to defraud.

"Unlike street crime, white collar crime is not a smoking gun," Postal Inspector Mel Vander Meer said. "It's a series of events and you hardly ever catch anyone in the act. You have to prove intent and you often have to prove it through repetition of facts, placing victim after victim on the stand."

Faced with the difficulties of proving intent, many prosecutors opt for civil proceedings against offenders. According to Assistant County Attorney Bob Rudy, who prosecutes business misconduct in civil court, in order to show civil intent it is only necessary to demonstrate that a product has been misrepresented and that not all services promised have been rendered.

Warren Spannaus, attorney general

Bill Kuretsky, head of the Consumer Protection Division of the attorney general's office, said that other advantages of a civil prosecution are that the injunction power is often effective and the attorney has greater freedom in questioning. But, he stated, criminal proceedings are faster than civil actions, court powers are greater, and the public nature of the proceedings is helpful in deterrence.

An additional problem in prosecution involves the "grey area"—the borderline white collar crimes which are the concern of consumer protection agencies. Prosecutors must often proceed cautiously against questionable business activities. "In business there is a pretty thin line between bad business and fraud," Inspector Vander Meer said.

According to Shirleen Knapp of Better Business, "Only an infinitesimal number of companies are involved in intentional fraud compared to other types of complaints arising out of honest mistakes or business incompetence." In 1973, Better Business received 5,781 complaints involving 2,559 companies.

Of these complaints, 4,702 were settled to the satisfaction of the customer, the company, or the Better Business Bureau. Others were referred to con-

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Executive Row

(Continued from page 6)

vancement of Maintenance and Repair Welding Techniques has announced Owatonna Public Power Co. as the national "Conservationist of the Year" award winner. The award was given in recognition of the firm's success in saving significant amounts of energy and natural resources with a Eutectic-Castolin program of maintenance and repair welding.

Peter Flint Fox, former vice president and manager, has purchased controlling interest in Frederic Herfurth Real Estate, Inc., from its founder, Frederic Herfurth . . . **Harry W. Zinsmaster,** chairman of the Zinsmaster Baking Co., was honored with a party given by company officers and directors on his 90th birthday. Zinsmaster founded the firm in Duluth in 1913, and has been active in it for 62 years.

Zinsmaster

Fox

Elaine J. Grensing has been appointed lease administrator for Red Owl Stores, Inc. . . . **Glenn O. Benz** was honored by the Sales and Marketing Executives of Minneapolis as the group's outstanding member of the year. Benz, assistant to the president of Northland Aluminum Products, Inc., was also elected first vice president of the organization. **Judson Bemis,** chairman and chief executive officer of Bemis Company, Inc., was recognized by SME as Minnesota's 1974 "Salesman of the Year."

Other officers elected are **James Van Hercke,** general advertising manager of the Minneapolis Star and Tribune, president; **James H. MacLachlan,** owner of J. MacLachlan & Associates, executive vice president; **Fredrick C. Moors,** vice president - marketing of Northwestern National Bank Southwest, second vice president; and **Douglas D. Gillespie,** assistant vice president of Minnesota Federal Savings & Loan, secretary-treasurer.

Newbeck

Sullivan

Eileen Schell has been named production manager for Reid Ray Films, Inc. . . . **Bonnie Neubeck,** international planning manager, Tennant Co., has been named "1975 Minnesota World Trader of the Year" by the Greater Minneapolis Chamber of Commerce. The award was established by the Minneapolis Chamber of Commerce in 1961, and is presented to a Minnesota resident active in foreign trade or investment as a profession, preferably at the operations level in his company. In addition to his regular commercial efforts during the year, the winner must have contributed significantly to the advancement of the international trading community through personal involvement and services.

Donald Sullivan, senior vice president of Rosemount, Inc., has been elected to the firm's board of directors.

White Collar Crime

(Continued from page 16)

sumer arbitration, and some were relayed to the county attorney or the attorney general.

"Dealing with these types of crimes is an awesome responsibility," Attorney General Warren Spannaus said. "If it's a businessman who has made an honest mistake, we don't want to run him out of business, we want to rehabilitate him. There are times when an example can be made and it is useful, but we don't try to make scapegoats. Good consumer protection protects small businessmen, too."

There are indications that white collar crime in Hennepin County may present an even greater challenge in the future. Spannaus foresees a general increase in white collar crime, in part due to the tight money situation and a slumping economy. Spannaus also believes that Minnesota has to date been relatively free of large-scale white collar crime schemes. "We have a very clean operation here," he said.

But nearly all law enforcement experts in Minnesota expect larger and more complex white collar schemes to move into the area. "As the community grows and becomes more sophisticated, we can expect to see more sophisticated schemes," Dwain Thomsen, a St. Paul mail fraud investigator, said. "Operators from New York and Chicago see this as virgin territory."

Through the National District Attorneys Association, Flakne shares information about white collar crimes with attorneys throughout the country. "I keep tabs on what's happening in Detroit, Chicago and other cities to see what may be coming our way," he said. "So far, we've been sort of tucked out of the way of the mainstream of economic crime."

The crimes themselves are also becoming more complex. Even relatively simple crimes like forgery are evolving into major operations with the coming of check theft and forgery rings. Recently, an organized ring of prostitutes, pimps, and check thieves passed forged checks worth $250,000 in four months in the metropolitan area.

Computer crime is thought by some to be a major crime of the future. The schemes are often so complicated that only the criminal can understand them. And according to Assistant U.S. Attorney Francis Herman, "The only ones you will ever catch are the dumb ones."

"White collar crime is as unique as the thinker behind it," said FBI Agent Versteeg. "No matter how good the controls are, if you're willing to bide your time and take some risks, you can beat the system." **END**

McKinnon

(Continued from page 24)

partments on the campus dealing with insects and diseases, so it is really a multi-departmental activity. University of Minnesota Agricultural Experiment Station branch facilities throughout the state have test and demonstration plots for flowers, fruits and vegetables of interest to home gardeners. Extension and Experiment Station staff cooperate on educational programs during field days at the branch stations.

Seeing the need to increase service throughout the state, Extension Service Director Roland H. Abraham and Associate Director Harlund G. Routhe are strong supporters of the Horticultural Clinic and other programs of Extension Horticulture.

"It is lucky for me that the climate has changed allowing a woman to be a horticulturist in a challenging job in an interesting state," Mrs. McKinnon says. Yet luck is only a part of it. Jane McKinnon brings determination, gusto and compassionate understanding to the task. She has been involved in the Extension's expanded food and nutrition program with adults and youngsters in the inner-city, where she helped conduct day-long workshops on vegetables. She also is interested in teaching 4-H'ers the ecology of Minnesota so they do not "call all the evergreens Christmas trees." She hopes to give them a sensitivity to the relationship of soils, plants, climate and scenery so they can enjoy the state's unique environment.

"The first Latin I ever learned was the scientific name of the cucumber beetle that my father made me memorize when I was six years old," starting an early interest in entemology. She received a bachelor of science degree in 1957 and a master of science degree in 1970, both in horticultural science from the University of Minnesota. Mrs. McKinnon was appointed to her present position in 1970 and previously worked as a landscape consultant to the University. She has worked as a professional designer and landscape nursery designer and served as assistant field director with the American Red Cross.

A native Mississippian, Mrs. McKinnon received an associate of science degree from Whitworth College at Brookhaven. In the fall of 1970, she spent six weeks in England and Scotland and a number of countries on the continent of Europe studying their educational programs in home gardening and their methods of teaching appreciation of the environment and horticultural beauty.

Mrs. McKinnon says she "cannot resist telling Northern gardeners that one reason they cannot grow peanuts very well is because they do not have a hot tin chicken house roof to dry them on."

It could all have turned out differently, she reflects: "I would have been an entomology study at Mississippi State University in the late '30s, but they would not take a woman."

—David Zarkin

Exhibit 2

View From the Bench: A Judge's Day

by Judge Lois G. Forer

At 9:30 the court personnel begin to assemble. The crier opens court. "All rise. Oyez, oyez, all persons having business before the Court of Common Pleas Criminal Division come forth and they shall be heard. God save this honorable court. Be seated and stop all conversation. Good morning, Your Honor." The crier calls out the names of the defendants. Most of them are represented by the public defender. He checks his files. One or two names are not on his list. A quick phone call is made to his office to send up the missing files.

On one particular day when I was sitting in criminal motions court, three cases had private counsel. One had been retained by the defendant. The other two had been appointed by the court to represent indigents accused of homicide. Where are these lawyers?

As is customary, the court officer phones each of them and reminds his secretary that he has a case listed and he must appear. Several of the defendants are not present. The prison is called to locate the missing parties. The judge, if he wishes to get through his list, must find the lawyers and litigants and order them to come to court.

Frequently the prosecutor cannot find his files. When he does, he discovers that a necessary witness has not been subpoenaed. The case must be continued to another day. The other witnesses, who are present and have missed a day's work, are sent home. The defendant is returned to jail to await another listing. Often cases are listed five and six times before they can be heard.

On this day there were three extraditions. Amos R. is wanted in South Carolina. Seven years ago he had escaped from jail and fled north. Since then he has been living in Philadelphia. He married here and now has two children. His wife and children are in the courtroom. He is employed. Amos has not been in trouble since leaving South Carolina, where 10 years ago he was convicted of stealing a car and sentenced to nine to 20 years in prison. He had no prior record. In Pennsylvania, for the same crime, he would probably have been placed on probation or at most received a maximum sentence of two years.

Now he testifies that he didn't

Lois G. Forer is a judge in the Philadelphia Court of Common Pleas. This article is adapted from her book, The Death of the Law, *to be published in March by David McKay.*

steal the car, he only borrowed it. Moreover, he didn't have a lawyer. When he pleaded guilty he was told he would get six months. This is probably true. Also, he was undoubtedly indicted by a grand jury from which Negroes were systematically excluded. All of these allegations would be grounds for release in a postconviction hearing, for they are serious violations of constitutional rights. But they are irrelevant in extradition hearings. The only issues that the judge may consider before ordering this man to leave his family and shipping him off to serve 18 more years in prison are whether he is in fact the Amos R. named in the warrant and whether the papers are in order. There is little judicial discretion. One is often impelled by the system to be an instrument of injustice.

This is the dilemma of a judge and of many officials in the legal system. Following the rule of law may result in hardship and essential unfairness. Ignoring the law is a violation of one's oath of office, an illegal act, and a destruction of the system. Some choose to ignore the law in the interests of "justice." Others mechanically follow precedent. Neither course is satisfactory. The judge who frees a defendant knows that in most instances the state cannot appeal. Unless there is an election in the offing and the prosecutor chooses to use this case as a political issue, there will be no repercussions. But it is his duty, as it is that of the accused, to obey the law. If the judge is not restrained by the law, who will be? On the other hand, it is unrealistic to say, "Let the defendant appeal." In the long period between the trial judge's ruling and that of the higher court, if it hears the appeal, a human being will be in jail. One does not easily deprive a person of his liberty without very compelling reasons. Almost every day, the guardians of the law are torn between these conflicting pulls.

After hearing the life story of Amos R., as reported by the prosecutor, the young defender said, "Mr. R. wishes to waive a hearing."

I looked at the lawyer. "Mr. R., do you know that you have a right to a hearing?"

"Yes."

"Have you consulted with your attorney about waiving a hearing?"

"My attorney?" R. looks bewildered.

"Your lawyer, the defender," I pointed to the young man.

"Oh, him," R. replies. "Yes, I talked to him."

"How long?"

" 'Bout two minutes."

"Your Honor," says the defender, "I have spoken to the sheriff. There is no question that this is the Amos R. wanted. The papers are in order."

I search through the official-looking sheaf of documents with gold seals and red seals and the signatures of two governors, hoping to find a defect, a critical omission. At last I discover that Amos R. was arrested in New Jersey on a Friday night. He was not taken to Pennsylvania until the following Monday. It is 89 days that he has been in jail in Pennsylvania. The extradition hearing must by statute be held within 90 days of arrest. By adding on the three days he was in custody in New Jersey, I conclude that the 90-day time limit has not been met. Amos R. is once again a free man. This happy ending is unusual. Bureaucratic inefficiencies seldom redound to the benefit of the individual.

Prisoners of Bureaucracy

The next four matters are bail applications. All the defendants fit the stereotype. They are black males under the age of 30. Only one is in the courtroom. The others are in the detention center. It is too much trouble and too expensive to transport them to court for a bail hearing. I must decide whether to set free or keep locked up men whom I cannot see or talk to. If I don't release them, they may be in jail for as long as a year awaiting trial. The law presumes that they are innocent. I look at the

applications. This is not the first arrest for any of them. For one there are records going back to age nine, when he was incarcerated for truancy.

"The defendant's juvenile record may not be used against him in adult court," I remind the prosecuting attorney.

"I know, Your Honor," he replies apologetically, "but the computer prints out all the arrests."

"How many convictions?"

The computer does not give the answer to that question.

One man is accused of rape. The record shows that his prior offenses were larceny of an automobile and, as a child, running away from home. The police report indicates that when the police arrived the defendant was in the complainant's apartment with his clothes off. He left so quickly that he abandoned his shoes and socks. The complainant admitted knowing him and gave his name and address to the police. No weapon was involved.

My usual rule of thumb is a simple one: "If he had time to take off his shoes, it wasn't rape."

Before releasing an alleged rapist from jail, possibly to prey on other victims, I want to speak with the accused. Although Lombroso's theory that one can tell a criminal by his physical appearance is out of fashion, I still want to see him, but he is not in the courtroom. Perhaps his lawyer, the defender, can give some helpful information. The defender, however, has never seen the accused. Someone else interviewed him on a routine prison visit. No one knows whether he has a family, a job, a home.

"Please have this defendant brought to court tomorrow and get me some information on him," I tell the defender.

He replies, "I'm sorry, Your Honor. I'll be working in a different courtroom tomorrow. There is no way I can find out about this man."

"We're dealing with human beings, not pieces of paper," I expostulate. "You are his lawyer. You should know him."

The young defender sadly shakes his head. "Your Honor, I work for a bureaucracy."

So do I, I remind myself, as I look at the clock and see that it is past 11:00 and there are 14 more matters to be heard today.

Four Up, Four Down

I refuse bail for a 14-year-old accused of slaying another child in a gang rumble. Will he be safer in jail than on the street, where the rival gang is lying in wait for him? I do not know. The boy is small and slender. The warden will put him in the wing with the feminine homosexuals to save him from assault. I mark on the commitment sheet that the boy is to attend school while in prison awaiting trial. But if the warden does not honor my order, I will not know.

A 23-year-old heroin addict tells me that there is no drug treatment program in prison. "It's just like the street. Nothin' but drugs," he says. I try to move his case ahead so that he can plead guilty at an early date and

be transferred to the federal drug treatment center. He, like so many others up for robbery and burglary, is a Vietnam veteran. He acquired his habit overseas and now must steal in order to pay for his daily fix.

The next matter is a petition to suppress a confession. Court appointed counsel alleges that the defendant did not make a knowing and intelligent waiver of his rights when he confessed three murders to the police. Cornelius takes the stand and describes his life. His history is typical. He was sent to a disciplinary school at 11, ran away at 12, and spent a year in juvenile jail. At 17, there was a conviction for larceny and another period of incarceration. He is married, two children, separated from his wife. He is vague about the ages of the children. Cornelius works as an orderly in a hospital earning $80 a week take-home pay. At the end of each week he divides his money in two parts: $40 for living expenses and $40 for methadrine, which costs $20 a spoon.

Where does he buy it? On any corner in the ghetto. He steals the syringes from the hospital. His expenses are minimal except for the precious methadrine. He is riddled with V.D. He seldom eats.

While on a high, he shot and killed three strangers. Why did he do it?

"There are these voices I hear. They're fightin'. One tells me to kill; the other tells me not to. Sometimes I get so scared I run out into the street. That's when I'm in a low. But when I'm in a high, I feel I can walk in the rain without getting wet. I don't feel sad, I ain't lonely. When I'm comin' down from a high, I got to get another shot."

Now he is in a low—sad, soft-spoken, withdrawn, disinterested in his own fate. I see his skinny brown arms pocked with little needle scars. The psychiatrist says that when Cornelius is on drugs he cannot gauge reality. He could not understand the meaning of the privilege against self-incrimination and make a knowing and intelligent waiver of his rights.

The earnest psychiatrist explains patiently. I watch Cornelius, wraith-thin, sitting in withdrawn disinterest, lost in some dream of flight. Is he mad or are we—the prosecutor, the defense lawyer, the psychiatrist,and the judge? After five hours of testimony, I rule that the confession must be suppressed. There are dozens of eye-witnesses. The confession is not necessary to convict Cornelius. After this hearing, and before trial, a psychiatrist for the defense will testify that Cornelius is not mentally competent to stand trial; he cannot cooperate with his lawyer in preparing his defense. A psychiatrist for the prosecution will testify that when Cornelius has withdrawn from drugs he will be able to participate intelligently in his defense. The motion to defer trial will probably be denied. At the trial itself, one psychiatrist will testify that at the time of the shootings Cornelius did not know the difference between right and wrong and the nature and quality of his act. Another will testify that he did. Neither psychiatrist saw Cornelius at the time of the crimes. Both of them examined him in prison months later. They are certain of their opinions.

A middle-aged, white, epicenely soft man is next on the list. His face is a pasty gray. He mutters under his breath. He is accused of committing sodomy on three teenaged boys. Most of his meager salary he spent on these boys, and now they have turned on him. I order a psychiatric examination simply because I don't know what else to do. A month later the report is sent to me. It follows a standard format: facts (gleaned from the accused), background, diagnostic formulation and summary, and recommendation. This report states: "Probable latent schizophrenia. We recommend a full examination 60-day commitment." At the end of 60 days and the expenditure of hundreds of dollars, the doctors will decide that he is or is not schizophrenic, possibly sociopathic. A long period in a "structured environ-

ment" will be recommended. But what will the judge do? There are only two choices: prison, where he will be tormented and perhaps beaten by strong young thugs, or the street.

Lost in the Jailhouse

Most of the prisoners brought before me are young—under 30. I also see children who are charged with homicide. They are denied even the nominal protections of the juvenile court and are "processed" as adults. The 14-year-old accused of slaying another child in a gang rumble; the 16-year-old dope addict who, surprised while burglarizing a house, panicked and shot the unwary owner; the girl lookout for the gang, who is accused of conspiracy and murder. Many of these children are themselves parents. Can they be turned back to the streets? I refuse bail for an illiterate 15-year-old accused of murder and note on the bill of indictment that he be required to attend school while in detention. I ask the court-appointed lawyer to check with the warden and see that the boy is sent to class. But is there a class in remedial reading at the detention center? Who would pay for it? Not the overburdened public schools or the understaffed prisons. It is not a project likely to find a foundation grant.

A perplexed lawyer petitions for a second psychiatric examination for his client. The court psychiatrist has found him competent to stand trial but the lawyer tells me his client cannot discuss the case with him. Randolph, who is accused of assault with intent to kill, attacked a stranger in a bar and strangled the man, almost killing him. Fortunately, bystanders dragged Randolph away. I ask to speak with Randolph. A big, neatly dressed Negro steps up to the bar of the court. He speaks softly, "Judge," he says, "I'm afraid. I need help."

Randolph is out on bail. This is his first offense. He has a good work record. He is married, has two children, and lives with his family. It is Friday morning. I fear what may happen to him over the weekend. The court psychiatric unit is called.

"We've got people backed up for a month," the doctor tells me. "Even if I took Randolph out of turn I couldn't see him until next week." When he does see Randolph it will be a 45-minute examination. A voluntary hospital commitment seems to be the only safeguard. But at least he will be watched for ten days. Gratefully, Randolph promises to go at once to the mental health clinic. What will happen to him after the ten-day period?

There is no time to wonder. The next case is waiting.

It is a sultry day. When the ancient air conditioner is turned on we cannot hear the testimony. When it is turned off the room is unbearable. At 4:45 p. m., I ask hopefully, "Have we finished the list?" But no, there is an application for a continuance on an extradition warrant. The papers from the demanding state have not arrived. It is a routine, daily occurrence.

I look around the courtroom. By this hour only the court personnel and a few policemen and detectives are present. "Where is the defendant?" I inquire. The prosecutor does not know. He is not responsible for producing him. The defender does not have him on his list. "Is he in custody?" I ask. We all search the records and discover that he was arrested more than five months ago. There is no notation that bail has ever been set. No private counsel has entered an appearance. A deputy sheriff checks and reports that he has not been brought up from the prison. The computerized records show that this man has never had a hearing. Hardened as we are, the prosecutor, the defender and I are horrified that someone should be sitting in jail all this time without ever having had an opportunity to say a word. Is he, in fact, the person wanted for an offense allegedly committed years ago and hundreds of miles away? Was he ever there? Is he a stable member of

society? Has he a family, a job, a home? Is he a drug addict? No one knows. The papers do not indicate. No one in the courtroom has ever seen him. Each of us makes a note to check on this forgotten prisoner whom the computer may or may not print out for appearance on some other day in some other courtroom.

Nobody Waived Good-bye

The scene in criminal trial court is similar. Most of the cases are "waivers" and guilty pleas. The accused may waive his constitutional right to be tried by a jury of his peers and be tried by a judge alone. Fewer than five per cent of all cases are tried by jury. In most cases, the accused not only waives his right to a jury trial but also to any trial and pleads guilty. Before accepting a waiver or a plea, the accused is asked the routine questions. Day after day defense counsel recites the following formula to poor, semiliterate defendants, some of whom are old and infirm, others young and innocent. Read this quickly:

" Do you know that you are accused of [the statutory crimes are read to him from the indictment]?

"Do you know that you have a right to a trial by jury in which the state must prove by evidence beyond a reasonable doubt that you committed the offenses and that if one juror disagrees you will not be found guilty?

"Do you know that by pleading guilty you are giving up your right to appeal the decision of this court except for an appeal based on the jurisdiction of the court, the legality of the sentence and the voluntariness of your plea of guilty? [The accused is not told that by the asking and answering of these questions in open court he has for all practical purposes also given up this ground for appeal.]

"Do you know that the judge is not bound by the recommendation of the District Attorney as to sentence but can sentence you up to — years and impose a fine of — dollars? [The aggregate penalty is read to him. Judges may and often do give a heavier penalty than was recommended. They rarely give a lighter sentence.]

"Can you read and write the English language?

"Have you ever been in a mental hospital or under the care of a psychiatrist for a mental illness?

"Are you now under the influence of alcohol, drugs, or undergoing withdrawal symptoms?

"Have you been threatened, coerced, or promised anything for entering the plea of guilty other than the recommendation of sentence by the District Attorney?

"Are you satisfied with my representation?"

All this is asked quickly, routinely, as the prisoner stands before the bar of the court. He answers "Yes" to each question.

The final question is: "Are you pleading guilty because you are guilty?" The defendant looks at the defender, uncertainly.

"Have you consulted with your lawyer?" I inquire.

"Right now. 'Bout five minutes."

"We'll pass this case until afternoon. At the lunch recess, will you please confer with your client," I direct the defender.

In the afternoon, the accused, having talked with the lawyer for another ten minutes, again waives his right to a trial. He has been in jail more than eight months. The eight months in jail are applied to his sentence. He will be out by the end of the year—sooner than if he demanded a trial and was acquitted.

The plea has been negotiated by the assistant defender and the assistant prosecutor. The defendant says he was not promised anything other than a recommendation of sentence in return for the guilty plea. But the judge does not know what else the defendant has been told, whether his family and friends are willing to come

and testify for him, whether his counsel has investigated the facts of the case to see whether indeed he does have a defense. The magic formula has been pronounced. The judge does not know what the facts are. Did the man really commit the offense? Even if there were a full-scale trial, truth might not emerge. Many of the witnesses have long since disappeared. How reliable will their memories be? The policeman will say he did not strike the accused. The accused will say that he did. Friends and relatives will say that the accused was with them at the time of the alleged crime. The victim, if he appears, will swear that this is the person whom he saw once briefly on a dark night eight months ago.

The lawyers are in almost equal ignorance. The prosecutor has the police report. The defender has only the vague and confused story of the accused. The judge is under pressure to "dispose" of the case. There is a score card for each judge kept by the computer. The judges have batting averages. Woe betide those who fail to keep pace in getting rid of cases. A long trial to determine guilt or innocence will put the judge at the bottom of the list. The prosecutors and public defenders also have their score cards of cases disposed of. Private defense counsel—whether paid by the accused or appointed by the court and paid by the public—has his own type of score card. For the fee paid, he can give only so many hours to the preparation and trial of this case. He must pay his rent, secretary and overhead. All of the persons involved in the justice system are bound by the iron laws of economics. What can the defendant afford for bail, counsel fees, witness fees, investigative expenses? All of these questions will inexorably determine the case that is presented to the court.

The National Conference on Criminal Justice, convened in January 1973 by Attorney General Kleindienst, recommends that plea bargaining be abolished within five years. What will replace it?

At the end of a day in which as a judge I have taken actions affecting for good or ill the lives of perhaps 15 or 20 litigants and their families, I am drained. I walk out of the stale-smelling, dusty courtroom into the fresh sunshine of a late spring day and feel as if I were released from prison. I breathe the soft air, but in my nostrils is the stench of the stifling cell blocks and detention rooms. While I sip my cool drink in the quiet of my garden, I cannot forget the prisoners, with their dry bologna sandwiches and only a drink of water provided at the pleasure of the hot and harried guards.

Was Cottle really guilty? I will never know. Fred made bail. Will he attack someone tonight or tomorrow? One reads the morning paper with apprehension. It is safer for the judge to keep them all locked up. There will be an outcry over the one prisoner released who commits a subsequent offense. Who will know or care about the scores of possibly innocent prisoners held in jail?

This is only one day in a diary. Replicate this by 260 times a year, at least 15,000 courts, and 10 or 20 or 30 years in the past. Can one doubt that the operation of the legal system is slowly but surely strangling the law?

I must sit only three and a half more weeks in criminal court. But there is a holiday. So with relief I realize that it is really only 17 more days that I must sit there this term. Next year I shall again have to take my turn.

I am reminded of Ivan Denisovich. Solzhenitsyn describes Ivan's bedtime thoughts in a Soviet prison. "Ivan Denisovich went to sleep content. He had been fortunate in many ways that day—and he hadn't fallen ill. He'd got over it. There were 3,653 days like this in his sentence. From the moment he woke to the moment he slept. The three extra days were for leap years." ■

Exhibit 3

I. Civil Case - State Courts

A. Conciliation Court - Hennepin & Ramsey Counties, City of Duluth

1) All civil claims where amount in controversy does not exceed $1,000 may be brought in conciliation court.

2) A "citizen" court where one can bring small civil claims without an attorney. The case is heard/ decided by a conciliation court referee or municipal court judge. No juries.

3) Appeal - A cause may be removed to the municipal court for trial de novo (a new trial) by any person aggrieved by an order of judgment granted by a conciliation court judge or referee.

4) In Hennepin County: Administrative Office, 807C Government Center, Minneapolis, MN 55487, 348-2602.

B. Municipal Court - Hennepin and Ramsey Counties

1) Jurisdiction over civil claims where amount in controversy does not exceed $6,000.

2) Person is usually but not always represented by an attorney. Typical cases include landlord-tenant cases (forcible entry, unlawful detainer) and small collection of personal injury cases where jury tiral is desired.

3) Hears appeals from conciliation court.

4) Cannot grant any injunctive relief.

5) Appeals may be taken to district court if a violation of a municipal ordinance is involved; if it is an appeal from a decision in a case involving a state statute it may go directly to the State Supreme Court.

6) In Hennepin County: Administrative Office, 809C Government Center, Minneapolis, MN 55487, 348-2263.

C. County Courts - Located in Rural Areas

1) The conciliation courts and municipal courts of rural Minnesota.

2) Jurisdiction over civil claims where the amount in controversy does not exceed $5,000.

3) Each county court has a probate division, a family court-juvenile court division as well as its civil and criminal divisions. (See p. 2, 3 infra).

4) Appeals may be taken to the district court where the appeal is heard "on the record" (on the basis of what happened in the county court) and oral arguments of the attorneys.

D. District Courts

1) Original civil jurisdiction over all civil matters arising within its territorial boundaries. In practice, district courts limit their jurisdiction to cases over $100.

2) Appellate jurisdiction from municipal court decisions; also reviews some agency decisions.

3) Power to grant injunctive relief including extraordinary writs (habeas corpus, mandamus).

4) The State is divided into 10 districts on the basis of geography.

5) Procedure is governed by Minnesota Rules of Civil Procedure and local rules of the particular district. Persons bringing claims are usually represented by an attorney as procedure is quite formal.

6) Appeals in law or fact are taken directly to the Minnesota Supreme Court.

7) Hennepin County District Court: Hennepin County Government Center, Minneapolis, Minnesota 55487 (General Information: 348-3155).

E. Probate Court

1) Separate county-wide probate courts exist in Hennepin, Ramsey and St. Louis Counties; in the other 84, the general county courts have probate division.

2) Jurisdiction to probate (prove) wills and for the administration of the transfer of a deceased

persons assets.

3) Also has jurisdiction over guardianships and incompetency procedures (appointing and supervising guardian for minors and those mentally incompetent as well as hearing competency petitions); (in outstate counties - incompetency petition heard in county court).

4) In Hennepin County there is one probate judge and three probate referees.

F. Family Court

1) In Hennepin, Ramsey, and St. Louis Counties at the district level; in the remaining 84 a division of the county courts.

2) Jurisdiction over dissolution, annulment, separate maintenance, child custody and support and patefnity matters.

3) In Hennepin County one family court judge and 4 referees.

G. Juvenile Court

1) In Hennepin and Ramsey Counties juvenile matters handled in juvenile court division of the district court, in St. Louis County in the probate court and in the 84 rural counties in the county courts.

2) In addition to criminal juvenile jurisdiction, also has jurisdiction over "juvenile status offenses" including truancy, chronic absence and incorrigibility. Also jurisdiction where children are judged neglected or dependent (parental adjudication) as well as adoption proceedings.

3) Juvenile proceedings are generally closed to the public and names of juvenile offenders are not released to the press.

4) In Hennepin County there is one juvenile court judge and 5 referees.

H. Supreme Court

1) The highest court in Minnesota consisting of a chief justice and eight associate justices. Has appellate jurisdiction over all cases, civil and criminal, may issue writs and reviews

some agency decisions.

2) Supreme Court also prescribes rules governing conduct of attorneys and regulates practice, pleading and evidentiary rules.

3) Unlike U.S. Supreme Court, the Minnesota Supreme Court must consider all appeals brought to it. To expedite the process there is a pre-appeal conference in civil cases during which a justice and the parties sit down and discuss the appealable issues.

4) There are also four court commissioners who pre-screen cases and suggests whether the case should be heard by 3, 5, or all 9 judges. The commissioners also make recommendations that some cases by dispersed of by per curiam (by the court) opinions.

5) Appeals from the Minnesota Supreme Court may be taken to the United States Supreme Court if the issue concerns the consitutionality of a state statute or ordinance.

II. Criminal Cases - State Court

A. Traffic and Ordinance Violations Bureaus

1) Handles traffic tickets and minor ordinance violations. If one pays the fine, he/she pleads guilty and pays the penalty at the same time.

2) Failure to pay fine transfers jurisdiction to the Municipal Court in Hennepin or Ramsey County or to the County Court in the other 85 districts.

B. Municipal Court - Hennepin and Ramsey County
County Courts - Rural Minnesota

1) Jurisdiction over misdemeanors (violation of statutes or ordinances punishable by penalties not exceeding 90 days in jail and/or a $300 fine) committed within that county's borders.

2) Jurisdiction to hear violation of ordinances or statutes of the city in which the court is located.

3) Jurisdiction to conduct preliminary hearings for violation of any state criminal statute.

4) Appeals taken to District Court

C. District Courts

1) General original jurisdiction for alleged violations of all state criminal statutes.

2) Also hears appeals from municipal court (with a jury if potential punishment may be a jail sentence and trial below was to the court).

3) Juries are six member except in criminal cases where the charge is a gross misdemeanor or felony where a petit jury of 12 is authorized.

4) Appeals taken to Minnesota Supreme Court.

D. Minnesota Supreme Court

1) Hears appeals from District Courts.

2) Appeals of a constitutional nature may be taken to the U. S. Supreme Court.

III. Civil Case - Federal Court

A. United States District Court

1) Basic federal trial court jurisdiction.

2) There must be a specific statute authorizing federal court jurisdiction. The two most basic ones are:

a) Federal Question Jurisdiction - Cases arising under the Constitution, laws or treaties of the United States where the amount in controversy exceeds $10,000 (28 U.S.C. §1331).

b) Diversity Jurisdiction - Cases between parties that are citizens of different states or a foreign state where the amount in controversy excees $10,000 (28 U.S.C. 1332).

3) The Federal District Court also has exclusive jurisdiction over admiralty patent and bankruptcy matters as well as jurisdiction over labor, civil rights and anti-trust.

4) There is one Federal District Court in Minnesota with four active judges: United States District Court, Clerk's Office, 316 North Robert Street, St. Paul, Minnesota (725-7179).

B. United States Court of Appeals

1) Hears appeals from United States District Courts (28 U.S.C.-§1291, 1292).

2) Has jurisdiction to review administrative agency decision (e.g. National Labor Relations Board, Federal Trade Commission).

3) Sits in three judge panels except for major en banc or full court (9 judge) decisions

4) Minnesota is within the Eighth Circuit which sits (hears cases) in St. Louis, Missouri.

C. United States Supreme Court

1) Hears direct appeals from U.S. Court of Appeals or State Supreme Courts that hold a State or Federal statute unconstitutional [28 U.S.C. §§1254(2), 1257(1)(2)].

2) Hears cases by writ of certiorai (cases the court feels that it is important to decide) decided in the U. S. Court of Appeals (28 U.S.C. §1254(1)) or in the state court concerning the constitutionality of state statutes (28 U.S.C. §1257(3)).

3) Original jurisdiction over controversies between two states or against foreign countries (rarely exercised) (28 U.S.C. §1251).

4) Hears direct appeals from U. S. District Courts sitting in three judge panels (special cases whereby the Court grants an injunction against the enforcement of a State or Federal statute) (28 U.S.C. §1253).

IV. Criminal Cases - Federal Court

A. United States District Court

1) Basic trial court criminal jurisdiction.

2) Congressionally passed statutes provide jurisdiction of Federal court. Usually some interstate conduct is required for Federal criminal jurisdiction.

3) Generally more major (felony) crimes.

4) Although classified as a civil case, U.S. District Court hear habeus corpus (post-

conviction appeals from State court conviction) and 28 U.S.C. §2255 (post-conviction appeals from Federal court conviction.

B. United States Court of Appeals

1) Hears appeals from both criminal conviction and decision in habeus corpus §2255 cases.

C. United States Supreme Court

1) Hears criminal a peals by writ of certiorari (on the criminal appeals four of the nine Supreme Court Justices feel are important to consider).

Exhibit 4

Journalism 3-121: Public Affairs Reporting

Fall, 1981

Arnold H. Ismach
Room 33, Phone 373-5603
Home Phone: 571-8867
Hours: 10-11:30 T,Th,F and by appointment

TEXTBOOKS: George S. Hage, Everette E. Dennis, Arnold H. Ismach and Stephen Hartgen, New Strategies for Public Affairs Reporting, Prentice-Hall, 1976.

William Rivers, Finding Facts, Prentice-Hall, 1976.

The Associated Press Stylebook, 1977.

ADDITIONAL READING: Minneapolis City Government, League of Women Voters, 1977.

The Action Behind the Numbers: Understanding the Minneapolis City Budget, League of Women Voters, 1978.

Todd Hunt, "Beyond the Journalistic Event," Mass Comm Review, April 1974.

Dan Noyes, Raising Hell, San Francisco: Mother Jones.

Alex Edelstein and William Ames, "Humanistic News-Writing," The Quill, June 1970.

The Minnesota Courts, Minnesota Supreme Court, 1979.

The Courts of Hennepin County, Hennepin County, 1978.

Lois G. Forer, "View From the Bench: A Judge's Day," Washington Monthly (February 1975), p. 33-39.

Court Guide to Public Information, Supreme Court of Minnesota, chapters 5, 6, 13.

There will be additional articles placed on research in the SJMC library.

Students who have not yet read The Writing Process by David Grey should read Ch. 1-3 by the next class period. It is on reserve at the library.

For help with prose style and structures, some may wish to read The Elements of Style, By William Strunk Jr. and E.B. White, and Writing: Art and Craft by William Rivers.

Everyone is expected to read at least one of the Twin Cities dailies faithfully and thoroughly, and to monitor other newspaper in the SJMC library to compare handling of public affairs stories. A professional approach also demands keeping up with professional publications, such as The Quill, Columbia Journalism Review, etc.

COURSE STRUCTURE: Most course work is done outside of class. Three weeks will be devoted to each of three news "beats," beginning next week. One story must be submitted each week. Extra stories, to a maximum of 10, may be submitted for extra credit.

Class meetings are devoted to discussion, review, student reports, and critiques of stories produced by students and professionals. You are expected to attend and participate in all class sessions.

In addition to the weekly stories, each person must submit a critique of a newspaper story related to his/her beat. They are due at the end of each three-week beat period. The critiques (250-500 words) should apply criteria of evaluation discussed in class and in readings.

GRADING: Stories are graded on a 0-10 scale, with 5 the lowest passing (D) grade. Stories with a grade of 5 or less must be rewritten. Correct style, spelling, grammar, punctuation and factual accurary are expected in all stories. Grades will be based largely on news judgment, clarity, organization and completeness. Assume you are writing for publication. Deadlines will be enforced. News stories based on events must be turned in by 9 a.m. the day following. The objective is the same for non-event stories: write it when the information is fresh. All weekly assignments must be submitted by 4:30 p.m. Firday. NO credit is given for late work not excused in advance. Stories will not be accepted more than one week past deadline under any circumstances.

Extra credit stories count one point, if they are accepted. Trivial stories won't be accepted for extra credit, nor will those that would have received a grade of 6 or less. No more than two extra credit stories may be submitted in one week. They may be on any public affairs subject.

Ten percent of the final grade will be determined by a copyediting exam, based on home study material. It will be given in week six. The home study material is available for puchase at Kinko's in Dinkytown.

Quizzes on reading assignments will influence the final grade. There won't be a final exam.

CONFERENCES: Laboratory classes such as this one provide an opportunity for individual attention and frequent feedback. It is up to each person to take advantage of these opportunities. Feel free to visit during office hours or by appointment. Call me at home if you are "stuck" on a story assignment. Also, use other class members as sources of advice and consultation; the pros do it. An individual conference will be scheduled with each class member between weeks 5 and 7.

COPY PREPARATION: Double-space or triple-space all stories. Save returned stories until the quarter is over.

Use a cheap grade of white paper, not bond. At the top of the first page, give your name, date story was written, and target audience. Also give the number of assignment (from 1 through 10). Start the story a third of the way down the page.

Leave one-inch margins on the sides and bottom. Don't hyphenate words at the ends of lines. Don't break grafs from one page to the next. Number the pages. Indicate the end of the story. Don't strike over letters; retype major corrections. Edit your copy with a soft pencil, using standard copyediting symbols. List sources and references at the end of each story.

BEAT ASSIGNMENTS: You'll choose a beat for three 3-week periods, and work as a member of a team.

I. Government Agencies
   Team A -- City
   Team B -- County
   Team C -- Metro

II. Legislature and Politics
   A. Legislative update
   B. Two political assignments

III. Courts, Police
   Team A -- Police
   Team B -- County District Court
   Team C -- U.S. District Court
   Team D -- Minnesota Supreme Court

In each beat area, team members may share story ideas and sources, but will write independent stories. Assigments will be discussed in class the week before each is due.

At the end of beat periods, each team will be responsible for making a class presentation on the subject. Elements to include in the presentation:

--Strategies for continuing coverage of the beat;
--Useful human and documentary sources;
--Ideas for selecting story subjects;
--Special problems in covering the beat

READING
SCHEDULE:

Week 1 -- New Strategies, ch. 1-3; Hunt article
Week 2 -- Ch. 4, 8; both booklets by the League of Women Voters
Week 3 -- Handout material on budgets
Week 4 -- Ch. 9, 10 and handout materials. You should have completed FINDING FACTS.
Week 5 -- Ch. 5; Edelstein-Ames article; RAISING HELL
Week 6 -- Both court booklets
Week 7 -- Ch. 6, 7 and appendices a, b, c
Week 8 -- Handout materials
Week 9 -- Ch. 11

Finding Facts should be read independently, but completed by week 4.

He who asks is a fool for five minutes. He who does not ask is a fool forever.

-- Chinese proverb

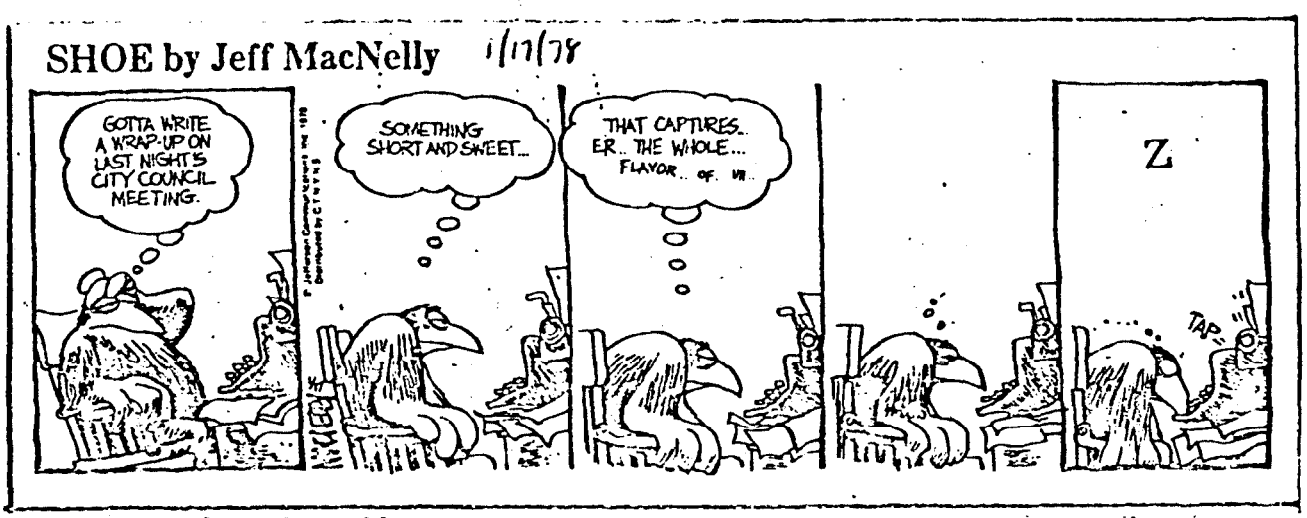

Exhibit 5

Journalism 3-776; Mass Communication Law — 34 Murphy Hall

4 credits -- Gillmor — Office hours - open

A. Course Objectives

Only journalists possessing some knowledge of mass communication law can thoughtfully assert their rights and avoid needless infractions of the law. This course is designed to make journalists expert in recognizing their legal rights to gather, prepare and disseminate news and public information, and to suggest guidelines for ethical pratice.

An effort will be made to cover the following topics: Anglo-American antecedents and the historical assumptions of freedom of expression in America; mass media and the First Amendment; the doctrine of no prior restraint; libel and the defenses against it; privacy and the press; journalist's "privilege" to protect the identity of sources and the contents of notes, tapes, outtakes, etc.; the "right" to gather news and the statutory right of access to information; free press and fair trial, judicial orders restricting publication, attendance of press and public at judicial proceedings, and the availability of judicial records and documents, the judge's contempt power, cameras and broadcast equipment in the courtroom; the censorship of obscenity; the "right" of citizens to have access to the channels of communication; lotteries; copyright; the press and the antitrust laws; the press and the labor laws; and the regulation of broadcasting, with emphasis on the Equal Time provision of section 315 of the Communications Act and the Fairness Doctrine.

Special sections on the constitutional protection and regulation of advertising, the photojournalist and the law, and the influencing of the opinion process in public relations will be assigned students in those specializations.

This course is a necessary first step toward a more comprehensive, philosophical and research oriented study of freedom of speech, press, assembly and petition in 5-777 and subsequent graduate seminars.

B. Textbook

Gillmor, Donald M. and Jerome A. Barron, Mass Communication Law: Cases and Comment. St. Paul: West Publishing Company, 3d ed., 1979.

Reference

Denniston, Lyle W., The Reporter and the Law: Techniques of Covering the Courts. New York: Hastings House, 1980. Murphy Reserve.

C. Course Outline

I. Glossary, Federal and State Court Systems, Text, pp. XLV-(LVI). LXII

II. An Introduction to the Study of the First Amendment, Text, 1-9, Gitlow v. People of State of New York (1925), Text, 18-21.

III. The Doctrine of Prior Restraint, Near v. Minnesota, the Pentagon Papers case, Nebraska Press Ass'n v. Stuart, Text, 110-145, 512-518. Snepp v. United States, 100 S. Ct. 763, 5 Media Law Reporter 2409 (1980), Murphy Reserve. Floyd Abrams, "The Pentagon Papers A Decade Later" The New York Times Magazine, June 7, 1981.

IV. Libel and the Journalist, Text, chapt. II. Read also, Wolston v. Reader's Digest Assoc., Inc., 99 S. Ct. 2701 (1979); Hutchinson v. Proxmire, 99 S. Ct. 2675 (1979), Murphy Reserve.

V. Privacy and the Press, Text, Chapt. III.

VI. Journalist's Privilege, Text, Chapt. IV.

VII. Free Press and Fair Trial, Text, Chapt. VI. Read also, Chandler v. Florida, 101 S. Ct. 802 (1981), Murphy Reserve.

VIII. The Law of News Gathering, Text, Chapt. V. The Freedom of Information Act, state open meetings and open records laws read also, Richmond Newspapers, Inc. v. Virginia, 100 S. Ct. 2814 (1980), Murphy Reserve.

IX. Access to the Media, Chapt. VIII, Sec. 1 with emphasis on Miami Herald Publishing Co. v. Tornillo, pp. 610-625.

Note: At this point, and as a substitute for IX, advertising students will read Chapt. VIII, Sec. 3, "The Law and Regulation of Advertising." Public relations students will read Chapt. VIII, Sec. 5, "Lobbying and Campaign Regulation." Photojournalism students will read Robert Cavallo and Stuart Kahan, Photography: What's the Law? Chapts. I, II, III and IV. Murphy Reserve. Students assigned these substitute sections will be responsible for them on examinations.

X. The Puzzle of Pornography, Text, Chapt. VII.

XI. Lotteries, Chapt. VIII, Sec. 4.

XII. Copyright, Unfair Competition and the Print Media, Chapt. VIII, Sec. 8.

XIII. The Press and the Antitrust Laws, Chapt. VIII., Sec. 6, and pp. 940-955.

XIV. The Media and the Labor Laws. Chapt. VIII. Sec. 7, A & B.

XV. The Regulation of Broadcasting, Text Chapt. IX.

(a) The Rationale of Broadcast Regulation, pp. 754-764.

(b) The Concept of "Balanced" Programming, pp. 775-785.

(c) "Equal Time". pp. 785-795.

(d) The "Fairness" Doctrine, pp. 795-871.

D. Examinations

There will be midterm and final examinations: short answer essay. Since careful and sustained reading is necessary and because this is an introductory course, no term paper will be assigned.

E. Selected Bibliography

Barron, Jerome A., Freedom of the Press for Whom? The Right of Access to Mass Media, 1973.

Chafee, Zechariah, Jr., Free Speech in the United States, 1941.

Chernoff, George and Hershel Sarbin, Photography and the Law, (4th ed.), 1971.

Cullen, Maurice R., Mass Media and the First Amendment, 1981.

Emerson, Thomas I., The System of Freedom of Expression, 1970.

Franklin, Marc A., The First Amendment and the Fourth Estate, 1977.

Franklin, Marc A.,The Dynamics of American Law, 1968.

Friendly, Fred W., The Good Guys, the Bad Guys and the First Amendment, 1976.

Friendly, Fred W., Minnesota Ragtime: The Scandal Sheet that Shaped the Constitution, 1981.

Gavin, Clark, Famous Libel and Slander Cases of History, 1962.

Gillmor, Donald M., Free Press and Fair Trial, 1966.

Gillmor, Donald M. (with Everette E. Dennis and David Grey), Justice Hugo Black and the First Amendment, 1978.

Ginsburg, Douglas H., Regulation of Broadcasting, 1979.

Gora, Joel M., The Rights of Reporters, 1974.

Hanson, Arthur B., Libel and Related Torts, Vols. I & II, 1969, rev. 1974 with additional supplements thereafter.

Hentoff, Nat, The First Freedom, 1980.

Hudon, Edward G., Freedom of Speech and Press in America, 1963.

Journalism Quarterly (articles and extensive bibliographic resources).

Index to Legal Periodicals (Law School).

Krasnow, Edwin O. Lawrence D. Longley, The Politics of Broadcast Regulation (rev. ed.), 1977.

Lewis, Anthony, Gideon's Trumpet, 1964.

Levy, Leonard, Legacy of Suppression, 1960.

Lockhart, William B. (Chariman), Report of the Commission on Obscenity and Pornography, 1970.

Lofton, John, Justice and the Press, 1966.

Lofton, John, The Press as Guardian of the First Amendment, 1980.

London, Ephraim (ed.), The Law in Literature, 1968.

Miller, Arthur, The Assault on Privacy, 1971.

Murray, John, The Media Law Dictionary, 1978.

Murphy, Paul, The Meaning of Freedom of Speech: First Amendment Freedoms from Wilson to FDR, 1973.

Murphy, Paul, World War I and the Origin of Civil Liberties in the United States, 1979.

Nelson, Harold L. (ed.), Freedom of the Press from Hamilton to the Warren Court, 1967.

Nelson, Harold L. and Dwight L. Teeter, Law of Mass Communication, (2d ed.), 1973.

Nelson, Jack (ed.), Captive Voices: The Report of the Commission of Inquiry Into High School Journalism, 1974.

Pember, Don R., Privacy and the Press, 1972.

Pember, Don R., Mass Media Law, 1977.

Preston, Ivan, The Great American Blow-Up: Puffery in Advertising and Selling, 1974.

Rembar, Charles, The End of Obscenity, 1968.

Schmidt, Benno C., Jr., Freedom of the Press v. Public Access, 1976.

Stevens, George and John Webster, Law and the Student Press, 1973.

Trager, Robert, Student Press Rights, 1974.

Trager, Robert and Donna L. Dickerson, College Students Press Law, 2d ed., 1980.

Westin, Alan F., Privacy and Freedom, 1967.

Woodward, Bob and Scott Armstrong, The Brethren, 1979.

F. Current Services

Supreme Court Reporter, Murphy Reserve.

Media Law Reporter, Vol. 1-6, Murphy Reserve.

The News Media and the Law, Murphy Reserve.

Exhibit 8

Statement on "Cameras in the Courtroom"

Jack G. Day

Minnesota, October 6, 1981

My statement requires a preface.

First, nothing I have to say is intended to discount in any way the importance of open trials and the role of the media in securing that condition. Rather, I take aim at a particular media technique because of the potential deleterious impact on fair trials. Second, it is clear that the Supreme Court of the United States in Chandler v. Florida, ___ U.S. ___, 66 L.Ed. 2d 740 (1981) has said only that based on present data, trials do not inherently infect federal due process. The Court has not said that the media have a federal constitutional right to camera coverage. This leaves the states free, either under state constitutions or state perceptions of wise policy, to exclude such coverage.

These caveats provide the backdrop for the statements and questions which follow:

(1) I take it a first commitment common to all judges is to see that justice be done.

(2) Any doing of justice must incorporate procedural fairness.

(3) The reason for a public trial, civil or criminal, is to insure the integrity and the fairness of the process. Those conditions are fundamental if the process is entitled to be called "Due".

(4) The Constitution specifically places the right to a public trial in the individual defendant charged with crime.

(5) The penumbra of a fair trial, civil or criminal, spawns a corollary public right to the limited extent that openness is necessary to insure the integrity of the process. Informational access is designed to protect the public interest in a trial free from chicanery or skulduggery.

(6) The nexus of openness with fairness and honesty in trials is sufficiently protected by access guaranteed to any member of the public interested enough to attend, to the representatives of all media without cameras or microphones and, finally and especially, by a verbatim transcript.

(7) The fundamental interest of the public in the fairness of trials is exemplified in the constitutional and statutory provisions which both regulate and guarantee Due Process of law. Trial procedures must be designed to reflect the guarantees.

(8) To the degree that a trial educates the public at all, the learning is a by-product not an objective.

(9) The service of theatricality in trials is not the office of courts.

(10) Trial participants - parties, witnesses, jurors, lawyers and judge - are engaged in a public performance. Universal experience supports the conclusion that public performances generate anxieties in most persons, even professionals. So common is this entity that show business has developed shorthand phrases for it - "stage fright" and "mike fright".

(11) If professionals (and semi-professionals - lawyers and judges) freeze or stumble before cameras what will be the effect on lay witnesses performing before polite but (at best) adversary counsel, a jury, an autocrat on the bench, and courtroom spectators?

(12) Anxiety caused by a public appearance will be compounded and magnified by the presence of electronic media.

(13) Data in a Cleveland study indicated that the anxiety phenomena were substantial. How substantial must the evidence be to justify outlawing the practice? This is not an issue to be decided by majority vote. So long as the taint is not miniscule, it impedes fair trial objectives and is irremedial. It is fungible with process and cannot be strained out. One of the problems is the difficulty of measurement.

One never knows for sure what the impact is. Because it may jeopardize fairness and because broadcasting is not court business, why put process at risk by an unmeasureable procedure that is at best peripheral to court responsibility?

(14) If broadcasts are made, how will the separation of witnesses rule be enforced? What will lack of separation do to the power of suggestion? How will the courts calibrate its effects?

(15) If a broadcast trial eventually has to be retried, where will an impartial jury be secured for a second trial? Will it be necessary to develop a rule totally sterilizing bias by simple disavowal?

(16) Is there jeopardy for participants in the widespread identification by photograph whether still, taped or live?

(17) If a public broadcast is essential to a public trial, what of equal protection? If one party has a public electronic trial, can another insist upon it?

(18) The electronic media are understandably interested in drama. If dramatic eclecticism results in one-sidedness, has Due Process been violated?

(19) If editorial choice results in one-sided presentations, will the courts get into the business of editing to guarantee fairness? Perhaps worse, will courts get into the business of compelling coverage to ensure balance?

(20) If live or taped electronic coverage is a right of the media, subject to judicial discretion, are they entitled to notice before closing a trial to them?

(21) If the answer to 20 is "Yes", are already overburdened trial courts to mount an "extra" trial of media rights? If the access order is appealable, is the merit trial put on hold while the access appeal runs its course?

(22) Will the refusal of a witness to testify on camera trigger problems noticed in questions 20 and 21?

(23) Every extra layer of trial is expensive but in addition, there is the preliminary heavy expense of preparing trial rooms to accomodate electronic broadcasts without physical intrusion. Who bears this cost?

(24) Assuming all the fiscal problems suggested in 23 are solved and assuming that the state of the art makes physical disturbance non-existent, burning questions remain — can the courts (ought the

courts) try to serve fair trial and good theatre at the same time?

My answer is no. Fair trial is the court's business. Anything that adds to that the judiciary ought to nurture. Anything that subtracts it ought to quell. The opposite of star chamber is not circus.

Exhibit 9

The Case against Cameras in the Courtroom

By Jack G. Day

In January, the Supreme Court of the United States decided in *Chandler v. Florida* [49 LAW WEEK 4141; 12681] that the states were free to experiment with the television broadcast of trials, that such broadcasts were not "inherently a denial of due process," and that the burden of proving that a fair trial was compromised by a broadcast was on the defendant. These conclusions do not foreclose opposition to cameras in the courtroom.

Opponents can still attempt to persuade a state that the experiment is an inherent violation of the state constitution or is unwise as a matter of state policy. In addition, the federal issue is still open. Obviously, the Supreme Court has *not* said what it would do in future cases. It is implicit in *Chandler* that the court will opt for "inherent infection" if sufficient empirical data are developed to support it.

Some data and an abundance of argument already exist to oppose an extension of the *Chandler* result. It follows that the field should not be left to the victors in that cause.

The traditional argument over cameras in the courtroom focuses on whether or not the broadcasting industry has sufficient technical skills to screen trial proceedings absolutely from physical or noise interference. I assume this argument to be correct, but it provides no justification for allowing cameras in the

John Neubauer

courtroom. Instead, overwhelming reasons for forbidding videotaping or televising trials still remain.

The judicial process is not designed or intended to educate, inform, or entertain the public. It is a search for truth. It is a solemn, frequently tedious effort that settles questions about the rights of litigants according to law. True, an open trial is essential to a fair trial and prevents subversion of process, but that objective is served adequately by a full transcript, a public presence, and media representatives in the courtroom. Additional public gains other than securing a fair trial are ancillary and must be considered

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bonuses, not goals.

While a trial may be dramatic, anything that promotes theatrics in the courtroom should be deterred. The thespians in the legal profession (both on and off the bench) need no urging, and the system should not encourage them by enlarging the audience.

The media like to talk about the right to know and the educational process, but their interest is mainly, and understandably, in good theatre. Therein lies the problem. The media determine what deserves airing and what does not, which trials are to be broadcast, and what portions of those trials. And that eclecticism is exercised without regard to a just balance, except as the editors see it. A two-minute televised news story—which is considered very long—cannot do adequate justice to the complexities in many cases.

Thus, the supposed issue of the right to know is honored only speciously, because a whole case is seldom if ever presented on public or even nonpublic television. Legally, the media do not have to do this, since it is not the viewing audience's responsibility to determine guilt or innocence; thus, it is argued, the public needs no more than fragmented information further fractured by the accidents of interest and chance viewing. But why must we suffer distortion, when a real interest in the right to know is preserved by the public record available to anyone sufficiently motivated to read it?

The so-called educational objectives of televising trials are susceptible to much the same criticism. Knowledge about the facts and applicable law in a particular case cannot come in bits and pieces; random selections from a lurid trial may do no more than excite and misinform the public. What is the educational value of that?

Moreover, the media's educational goals are poorly defined. Do they want to explain the judicial process, clarify court procedures, or let the public know that justice is being done? The first two goals cannot be achieved by limited television exposure even if judges and lawyers were able to explain their reasons for objections, rulings, and orders. The last cannot be accomplished without a full exposition of trial issues and evidence, including considerable material of interest only to attorneys, judges, and insomniacs.

On the other hand, what a fragmented version of a trial is apt to do is persuade the public to take sides on the basis of limited, even esoteric, information. The viewers' varying perceptions of the events they witness on their televisions could even do the administration of justice inestimable harm, because distorted views may lead to unfounded public decisions about both the judicial process and its product.

THE WITNESS/JUROR AS ACTOR

Regardless of the media's objectives, cameras in the courtroom make it a stage on which nonprofessionals must perform whether they like it or not. The average witness takes the stand with all the anxieties of a person not accustomed to public speaking compounded by the presence of a civil but hostile counsel. The possibility of legitimate humiliation is, at best, threatening. Add to that an immense radio-television audience, which can cause even experienced performers to suffer attacks of nerves, and the judicial process is not assisted, but impeded. Moreover, the wide dissemination of the faces and testimony of witnesses makes them fair game for ridicule, pressure, and threats.

Jurors, too, are susceptible to public broadcast jitters, even though they do not have to perform like witnesses. The recognition that accompanies television exposure may intrude on their attentiveness and, in a notorious case, subject them or their families to unwelcome attention, harassment, or coercion. In addition, some nonsequestered jurors may have an irresistable urge to see themselves on television and, therefore, will be exposed to the hazards of partial repetition of the evidence.

Also, the rule separating witnesses may be impaired when a trial is broadcast, and witnesses may become judges of their own and other witnesses' credibility. If a suggestible witness sees or hears an earlier witness, the integrity of his or her testimony may be subverted. Indeed, a fair witness may become involved in a derogatory assessment of his or her recollection simply because of exposure to a different one.

Finally, no one can predict constitutional developments with assurance. And grave constitutional issues may be opened if trials are allowed to be broadcast selectively. Consider these questions: Would not disparate treatment raise an equal protection problem? Do the broadcast media have a right of access protected by the Sixth Amendment? Will the broadcast media determine which defendant's trial is to be broadcast and which not? What portion of a trial must be aired? If not all, how much is necessary and in what balance required to satisfy due process? Will public obloquy punish before conviction?

Should these questions be answered in any way that requires substantial coverage for all criminal cases, one can predict staggering costs and numbing monotony. And who will pay the costs? Will there be a different rule for rich and poor?

It may well be that the enormous cost of television accounts for the relative brevity for the telecast experience so far. That same factor may provide some shield for the

Add an immense radio-television audience and the judicial process is impeded

future. If so, the high price will have an intrinsic value.

FINDING AN IMPARTIAL JURY

Telecasting a trial can pose many problems if a new trial becomes necessary. What will be the source of an impartial jury on retrial if the first trial was made notorious before a wide public audience? Take, for example, the case of *Rideau v. Louisiana* [373 U.S. 723, 83 S.Ct. 1417 (1963)]. The defense filed a motion for a change of venue, saying that the defendant would be deprived of his constitutional rights if he was tried in Calcasieu Parish because, during a televised interview from the jail in which the defendant was interrogated by the sheriff, he confessed to the crimes with which he was charged. The motion was denied and the defendant was convicted of murder and sentenced to death—a judgment that was confirmed by the Louisiana Supreme Court. On certiorari, however, the U.S. Supreme Court reversed the decision, holding that due process of law required a trial before a jury from a community of people who had not seen or heard the televised interview.

Now, as many states are reviewing their policies admitting cameras in the courtroom, there is important empirical data supporting the stand against such a practice. The Bar Association of Greater Cleveland conducted a study in early 1980 that surveyed the attitudes of judges, jurors, attorneys, and witnesses involved in either a major trial that received gavel to gavel television coverage or two other proceedings in which cameras appeared only episodically.

The data indicate that the presence of television cameras in the courtrooms had a substantial deleterious influence on a sizeable number of participants in the trial proceedings. Admittedly, litigants are not guaranteed a perfect trial, only a fair one, but can that requirement be met in an environment in which 50 percent of the jurors, 30 percent of the witnesses, and 54 percent of the lawyers are distracted? And isn't that ill effect compounded when 36 percent of the jurors, 43 percent of the witnesses, and 54 percent of the lawyers are nervous in the presence of the cameras? And when those emotions are coupled with a fear of harm by 65 percent of the jurors, 19 percent of the witnesses, and 24 percent of the lawyers, what then becomes of a "fair trial"?

A legal system that cannot equate due process with even the "reasonable possibility" of prejudice from the admission of illicitly acquired evidence can hardly be expected to tolerate prospects of unfairness of the dimension demonstrated in the Cleveland data. The Cleveland experiment should be run again and again across the country. If its results cannot be replicated, then it will be time to consider, and reconsider, the place cameras and microphones have in the courtroom.

AWARNESS AND EFFECTS OF CAMERAS IN THE COURTROOM ON JURORS, WITNESSES, LAWYERS, AND JUDGES*

(Reprinted with permission from the *Cleveland Bar Journal*, Vol. 7, No. 51, May 1980)

AWARENESS OF CAMERAS IN THE COURTROOM

Jurors — 88% yes
Witnesses — 74% yes
Attorneys — 100% yes
Judges — 100% yes

PERCEPTION OF THE COURT AND THE EFFECT ON ITS PROCEEDINGS

What is the effect of cameras in the courtroom upon the dignity of the court?

Jurors — 47% decreased, 44% no effect
Witnesses — 21% decreased, 51% no effect
Attorneys — 23% decreased, 77% no effect
Judges — 33% decreased, 66% no effect

Is the presence of cameras in the courtroom disruptive of court procedures?

Jurors — 50% yes (12% very disruptive)
Witnesses — 32% yes
Attorneys — 61% yes
Judges — 33% yes

Do cameras in the courtroom make the public more informed on court procedures?

Witnesses — 92% yes
Attorneys — 92% yes
Judges — 66% yes

QUALITY OF CONCENTRATION OF THE PARTICIPANTS IN THE TRIAL

Did the cameras distract you?

Jurors — 50% yes
Witnesses — 30% yes
Attorneys — 54% yes
Judges — 33% yes

Did the presence of cameras in the courtroom make you nervous?

Jurors — 36% yes
Witnesses — 43% yes
Attorneys — 54% yes
Judges — 100% no

(Please turn to page 51)

Day

(Continued from page 21)

Did the cameras make you self-conscious?

Jurors — 48% yes
Witnesses — 47% yes
Attorneys — 46% yes
Judges — 100% no

Did the cameras make you more attentive?

Jurors — 82% no
Witnesses — 68% no
Attorneys — 77% no
Judges — 66% no

FEAR OF HARM BY PARTICIPANTS IN THE TRIAL

Jurors — 65% yes (12% extreme)
Witnesses — 19% yes
Attorneys — 24% yes
Judges — 66% no, 33% no answer

PLAYING TO THE CAMERAS

Did you watch yourself on TV?

Jurors — 21% wanted to see self
Jurors — 53% difficult to avoid watching self
Witnesses — 70% yes
Attorneys — 85% yes
Judges — 66% yes

Do cameras in the courtroom extend the length of the trial?

Attorneys — 62% yes

Is there a danger that the TV exposure an attorney would gain during trial might influence his decisions and advice to a client on whether to settle a case or enter a plea?

Attorneys — 84% yes

Do you feel that the TV exposure given to a judge who is up for election in the near future might influence his decisions, even subconsciously, during the trial?

Attorneys — 84% yes

Do cameras in the courtroom exaggerate the importance of the trial?

Jurors — 50% yes
Witnesses — 59% yes
Attorneys — 77% yes
Judges — 33% yes

Are trial participants more flamboyant as the result of cameras in the courtroom?

Attorneys — 23% yes

CONSENT FOR CAMERAS IN COURTROOM

Should consent of the lawyer *be secured as a condition precedent to cameras in the courtroom?*

Lawyers — 62% yes

Should consent of the parties be secured as a condition precedent to cameras in the courtroom?

Lawyers — 54% yes

Should feelings of victims be taken into consideration before having cameras in the courtroom?

Lawyers — 62% given consideration
Lawyers — 38% followed completely

OVERALL, WOULD YOU FAVOR OR OPPOSE ALLOWING CAMERAS IN THE COURTOOM?

Jurors — 50% opposed
Witnesses — 40% opposed
Attorneys — 69% opposed
Judges — 33% opposed

*Data supplied by the judges has little or no significance because only three were involved. Fourteen lawyers responded (74 percent of those asked), 34 jurors (85 percent of those asked), and 37 witnesses (39 percent of those asked).

Court News

(Continued from page 1)

tain membership in these clubs. This higher standard," she continued, "is wholly in keeping with the high standard of conduct imposed on judges by . . . the commentary to Canon 2:"

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and the appearance of impropriety. He must expect to be the subject of constant public scrutiny. *He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen* and should do so freely and willingly. (Emphasis added.)

Schafran further supported her stance by quoting the directive of New York Governor Carey and the New York State Unified Judicial System that states: "All judges and nonjudicial employees of the Unified Court System are prohibited from conducting official business at clubs or other facilities which restrict membership or admission on the basis of sex, race, ethnicity, religion, creed or political affiliation. Reimbursement for expenditures at such facilities will be denied." (Schafran, of course, called for more than a restriction against conducting business at such clubs.)

Schafran also submitted the testimony of Eric Schnapper on behalf of the NAACP Legal Defense and Education Fund before the U.S. Senate Committee on the Judiciary in 1979. He stated that "both the Legal Defense Fund and the Congress have insisted that there are certain minimal standards that must be met by any nominee for the federal bench. For our part we have maintained, and so advised the Administration and the Committee, that one extremely troubling action on the part of a nominee would be knowing membership in an organization which discriminated on the basis of race, national origin, sex or religion." He too noted the commentary to Canon 2, adding,

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

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

Syllabus #1

It is the Ad Hoc Committee's unanimous opinion after studying and evaluating the in-depth attitude questionnaires submitted to judges, jurors, witnesses and attorneys who had actually participated in trials involving cameras in the courtroom, that the position of the Bar Association of Greater Cleveland adopted by its Board of Trustees on September 7, 1978, recommending to the Supreme Court of Ohio the disapproval of the experimental amendment to Canon 3(A)(7) of the Code of Judicial Conduct and Rule 11 of the Rules of Superintendence which permitted cameras in the courtroom be reaffirmed and conveyed with this report to the Supreme Court of Ohio.

Syllabus #2

It is the Ad Hoc Committee's further unanimous opinion, that if the experimental rules set forth above are not withdrawn, then the alternate recommendation as approved by the Trustees on September 7, 1978, that Canon 3(A)(7)(c)(iii) be amended to read as follows: "The filming, videotaping, recording, or taking of photographs of victims, witnesses, jurors, and parties, who object thereto, shall be prohibited," be reaffirmed and conveyed again to the Supreme Court of Ohio.

HISTORY OF THE STUDY

On June 1, 1979, the Supreme Court of Ohio amended Canon 3 (A) (7) of the Code of Judicial Conduct, Superintendence Rule 11, and Municipal Court Superintendence Rule 9 to permit cameras in the courtrooms, both trial and appellate, throughout the State of Ohio on an experimental basis for one year.

The words "cameras in the courtroom" unless the context otherwise requires, encompasses television film, and videotape cameras, still photography cameras, tape recording devices and radio broadcast equipment.

During the early months of this experimental period, a well-publicized case in Cuyahoga County entitled, *The State of Ohio v. George Forbes et al.*, CR 43564 was televised by WVIZ in Cleveland, Ohio, in its entirety from "gavel to gavel."

Following the conclusion of this case, the President of the Bar Association of Greater Cleveland, William L. Calfee, appointed an Ad Hoc Committee consisting of Norman W. Shibley, Chairman, William J. Coyne, Aaron Jacobson, Robert J. Rotatori, John L. Strauch and James R. Williams to investigate as objectively as possible, what effect, if any, cameras in the courtroom had upon the administration of justice in Cuyahoga County.

Initially, it was determined to prepare in-depth questionnaires for submission to the judges, attorneys, jurors and the witnesses in the *Forbes* case only.

Subsequently, it was decided to broaden the inquiry to include judges, attorneys, jurors and witnesses who had cameras in the courtroom in two other cases.

Attitude questionnaires originally prepared by experts in this field from Florida State University and used by the Florida Supreme Court were secured and adapted for use in our study.

The questionnaires were essentially based upon a five point Lickert scale but with an additional summary question permitting the expression of personal views.

The questionnaires while seeking similar information from the judges, attorneys, jurors and witnesses were not the same either in number or scope.

The response to the questionnaires and the individual's willingness to respond to further oral inquiry can only be described as exceptional under any standards.

As the time for the end of the Supreme Court's one-year experiment is rapidly approaching, the Ad Hoc Committee felt it best to report its findings and conclusions to date to the officers and Trustees of the Bar Association.

This report, therefore, is concerned only with the results of answers to the detailed questionnaires as time has not permitted a follow-up with oral interviews.

Due to the scope and range of the various questionnaires, it seems highly unlikely that any substantive changes of opinion would result from oral interviews with the participants.

It should be added, parenthetically, at this point that the Florida Supreme Court originally started to evaluate their program with oral interviews only to abandon it as impractical in favor of the questionnaire technique used by this Committee.

A SUMMARY OF THE PERCENTAGE OF RESPONSES TO THE VARIOUS QUESTIONNAIRES

Judicial Questionnaires

Fifty one (51) questions, most with many parts, were submitted to three (3) Common Pleas Judges who had presided over trials involving cameras in the courtroom.

All three judges or 100% answered the questionnaires.

Attorney Questionnaires

Sixty two (62) questions, most with many parts, were submitted to nineteen (19) lawyers who had participated in trials involving cameras in the courtroom.

Fourteen (14) lawyers or 74% responded to the questionnaires.

Jurors Questionnaires

Twenty (20) questions, most with many parts, were submitted to forty (40) jurors who had participated in trials involving cameras in the courtroom.

Thirty four (34) jurors or 85% responded.

Witness Questionnaires

Thirty three (33) questions, most containing many parts, were submitted to ninety five (95) witnesses who had testified in trials involving cameras in the courtroom.

Thirty seven (37) witnesses or 39% responded.

Recapitulation of Percentage of Responses

Judges – 100%
Jurors – 85%
Attorneys – 74%
Witnesses – 39%

As was stated above, the response to our questionnaires was exceptionally high.

OBSERVATION

The obvious cannot be overstated.

The opinions and attitudes elicited by the Ad Hoc Committee were not from professors in a classroom, or lawyers at a bar association meeting, or judges in a rule-making conference or media people in their offices but were opinions and attitudes elicited from judges, attorneys, jurors and witnesses who had actually participated in a real trial situation in a real courthouse involving real cameras in the courtroom.

It seems logical, therefore, that their opinions based on actual experience ought to carry more weight than people's opinions that are just that—"opinions."

IMPORTANT CAVEAT

Any attempt to find an answer to the question of what effect do cameras in the courtroom have on the administration of justice which is based upon what a majority thinks, is way wide of the mark.

The great constitutional guarantees such as due process of law, the right to counsel, freedom from illegal search and seizure, the Miranda warnings and many other

similar safeguards were not brought about as majority propositions.

Rather, they were forged throughout the years of jurisprudence to protect the minorities—sometimes a minority of one—from the majority.

It goes without saying in our system of justice that a "majority" of eleven jurors do not convict in a criminal case.

The real focus, therefore, must be upon whether or not there is any substantial or in some cases *any* adverse effect on the fair and just administration of justice.

With life or freedom at stake, any impairment of the capacity of any of the participants in the trial to attentively and fairly receive or give evidence, unacceptably compromises our system of justice.

A SUMMARY OF THE RESPONSES BY THE JUDGES, LAWYERS, JURORS AND WITNESSES TO OUR QUESTIONNAIRES

I.

Awareness of Cameras in the Courtroom

Jurors – 88% yes
Witnesses – 74% yes
Attorneys – 100% yes
Judges – 100% yes

II.

Perception of the Court and the Effect on its Proceedings

What is the effect of cameras in the courtroom upon the *dignity* of the court?

Jurors – 47% decreased, 44% no effect
Witnesses – 21% decreased, 51% no effect
Attorneys – 23% decreased, 77% no effect
Judges – 33% decreased, 66% no effect

Is the presence of cameras in the courtroom *disruptive* of court procedures?

Jurors – 50% yes, (12% very disruptive)
Witnesses – 32% yes
Attorneys – 61% yes
Judges – 33% yes

Do cameras in the courtroom make the public *more informed* on court procedures?

Witnesses – 92% yes
Attorneys – 92% yes
Judges – 66% yes

III.

The Quality of Concentration of the Participants in the Trial

Did the cameras distract you?

Jurors – 50% yes
Witnesses – 30% yes
Attorneys – 54% yes
Judges – 33% yes

Did the presence of cameras in the courtroom make you nervous?

Jurors – 36% yes
Witnesses – 43% yes
Attorneys – 54% yes
Judges – 100% no

Did the cameras make you *self-conscious?*

Jurors – 48% yes
Witnesses – 47% yes
Attorneys – 46% yes
Judges – 100% no

Did the cameras make you more *attentive?*

Jurors – 82% no
Witnesses – 68% no
Attorneys – 77% no
Judges – 66% no

IV.

Fear of Harm by the Participants in the Trial

Jurors – 65% yes (12% extreme)
Witnesses – 19% yes
Attorneys – 24% yes
Judges – 66% no, 33% no answer

V.

Playing to the Cameras

Did you *watch yourself* on T.V.?

Jurors – 21% wanted to see self

Jurors – 53% difficult to avoid watching self
Witnesses – 70% yes
Attorneys – 85% yes
Judges – 66% yes

Do cameras in the courtroom *extend the length* of the trial?

Attorneys – 62% yes

Is there a danger that the T.V. exposure an attorney would gain during trial might influence his decisions and advice to a client on whether to settle a case or enter a plea?

Attorneys – 84% yes

Do you feel that the T.V. exposure given to a judge who is up for election in the near future might influence his decisions, even subconsciously, during the trial?

Attorneys – 84% yes

Do cameras in the courtroom exaggerate the importance of the trial?

Jurors – 50% yes
Witnesses – 59% yes
Attorneys – 77% yes
Judges – 33% yes

Are trial participants more flamboyant as the result of cameras in the courtroom?

Attorneys – 23% yes

VI.

Consent for Cameras in Courtroom

Should *consent of the lawyer* be secured as a condition precedent to cameras in the courtroom?

Lawyers – 62% yes

Should consent of the parties be secured as a condition precedent to cameras in the courtroom?

Lawyers – 54% yes

Should feelings of victims be taken into consideration before having cameras in the courtroom?

Lawyers – 62% given consideration
Lawyers – 38% followed completely

VII.

Overall, would you favor or oppose allowing cameras in the courtroom?

Jurors	– 50%	opposed
Jurors	– 58%	opposed who had opinion
Witnesses	– 40%	opposed
Witnesses	– 44%	opposed who had opinion
Attorneys	– 69%	opposed
Judges	– 33%	opposed

SUMMARY

It should be clear to all, even with a cursory analysis of the results of the responses to our questionnaires, that a very substantial adverse and chilling psychological effect on justice does in fact exist as pertains to all the participants—judges, lawyers, jurors and witnesses—in a case involving cameras in the courtroom.

CONCLUSION

The position adopted by the Trustees of the Bar Association of Greater Cleveland on September 7, 1978, in opposition to cameras in the courtroom should be reaffirmed in its entirety and conveyed with this report to the Supreme Court of Ohio.

NORMAN W. SHIBLEY
Chairman
WILLIAM J. COYNE
AARON JACOBSON
ROBERT J. ROTATORI
JOHN L. STRAUCH
JAMES R. WILLIAMS
Members

APPENDIX I

The Committee felt it would be of interest to attach some of the narrative comments by actual participants in a trial involving cameras in the courtroom.

JUDICIAL COMMENTS

The equipment is no problem. In fact, neither are the operators. The problem lies with the reporters who lack understanding and concern for the courts. They are only interested in themselves and their product.

WITNESSES' COMMENTS

I believe that many judges, attorneys & witnesses, once they realize the proceedings are being televised, will turn it into an acting audition. Also, there is a difference between making a fool of a witness before a mass audience and just the people in the courtroom. Once this has occurred, people will be reluctant to appear as a witness. If some proceedings are televised then *all* proceedings should be and not just select cases. The public should get an overall picture of what really occurs in the court system and not only special, selected cases.

This makes a "soap opera" of the system.

Cases in which victims and/or witnesses would be unduly embarrassed by their own testimony or the testimony of others, should not be televised.

For this reason trials involving any forms of sexual crimes should be excluded.

Unfortunately, this will severely limit the audience and will eventually discourage TV stations from broadcasting trials.

I feel that it is important to have photographic equipment in the courts to give the general public an idea how the legal system *really* works.

Thank you.

The use of television cameras in the courtroom are a very good way to reveal to the public some of the procedures of the court. Also, there are many people today who have never seen the inside of a courtroom. This may in some way encourage them to seek more information on today's judicial system and its procedures.

I cannot make any comment since I have not been and was not told or aware of any camera, TV or radio in the courtroom while I was on the witness stand.

Witnesses, including police officers, often say things which do not come out right, and thus appear ridiculous. It is embarrassing enough for the witness to have erred in front of the persons in attendance (judge, jury, spectators, etc.); much less have it broadcast for the rest of the world to see. It is also embarrassing enough for *victims* to relate happenings, especially sexual happenings but knowing that it is being filmed and recorded, would add trauma. Unfortunately, I have *no* confidence in the media's discretionary abilities or desires.

As a result of the media coverage and resultant publicity, I fear that my career may have been damaged. I felt that my testimony was a civic duty but, in subsequent job interviews, I came to realize I paid a dear price in the performance of that duty.

As a frequent witness in civil and criminal trials, and as an individual who is accustomed to regular exposure to the news media as a consequence of my professional activities, I, personally, do not feel at all disturbed by the presence of cameras, whatever their type, and

cameramen in the courtroom. I have no solid opinions on the effect of the presence of the news media accoutrements on the administration of justice.

JURORS' COMMENTS

Even though the effects of the TV cameras were minimal there still was some distraction due to their presence. Even a small amount of distraction is too much. A juror cannot take notes and must rely only on what he sees and hears. Distraction even momentarily could cause him to miss a word or phrase which could have major significance in the case.

The media had been instructed *not* to film or televise pictures of the jury and yet they attempted to do so anyway. I feel the media are *incapable* of *following court instructions*. Further, the media acts as judge and jury. And, the media will do almost anything, right or wrong, to make "news" of a particular trial. They never state even the most fundamental facts for *both* sides of an issue. They *take* sides. Such should *not* be the case in a trial.

I truly feel that in a long criminal case there are enough disruptions, due to the nature of the case, and also due to the entrance and exodus of spectators and reporters that the presence of cameras works a further burden on the court. It is sometimes difficult to hear a witness. Therefore, I feel that the courtroom should be as quiet and uncluttered as possible.

Our judge did not permit photographs to be taken of the jurors, at our request. I see no reason for cameras in the courtroom and am totally opposed to their presence. Had we been photographed my responses to the above questions would have been far stronger!

I oppose strongly media (TV) in the courtroom. While the jury was advised by the judge that portions of the trial would be televised the *jury would not be shown*—it was. Serving on this jury, to say the least, was most difficult—emotionally, physically and trying to bring in the right verdict on all counts according to the law—with the clicking of the camera and movement it was most distracting. Talk about rights—I believe it violates the rights of the jurors.

It was very disruptive when the judge had to stop talking in the middle of a sentence because the cameras were making so much noise, or when they took a shot and the judge had to tell them they could not use it. It was also *extremely* difficult for me outside of the courtroom, since the case was so publicized many people tried to talk to me about the case—when I could not discuss it. I felt that if there were no cameras inside the courtroom—it would have been a little easier on myself and not so much pressure outside the courtroom.

Television coverage may not be right for all trials! But it is good, to a point on informing the people on what is going on.

In regards to the questions #17 & #18. From the time we were taken to view the sites to 3 days after the trial I was bothered by the news media and newspapers. Also from people whom I know but did not say what case I was on after viewing the sites and the media giving coverage I was called so often I refused to answer the phone. I was so unhappy with the whole case—jury selection (I felt being questioned separately made me feel like I was on trial) and treatment by the judge—defendants lawyers and prosecutors before—during—and after I hope I'm never called for jury duty again.

I feel like when I was on camera in the courtroom that I was afraid because although someone might know me on there and they will be coming after me, but I did it because I know God was with me.

ATTORNEYS' COMMENTS

My client, the defendant, did not want media coverage. As an important *party* to the action, I believe his wishes should have been respected.

STOP IT!

I oppose the use of TV in a courtroom. The distractions are too great. In two trials that I participated in which had extensive TV, radio and still camera coverage —I noticed that jurors would be constantly looking at the media and reporters' activities.

My experience is limited to a single, total coverage political case. The prosecution of that case had been instituted by a newspaper that was hell-bent for convictions (and a Pulitzer Prize). In my opinion, the total TV, radio and photographic coverage helped to counteract the massive uncontrolled propaganda of the powerful newspaper and enabled the citizens of this community to reach a clearer understanding of the real issues involved.

Exhibit 11

OFFICE OF THE PUBLIC DEFENDER

605 Minnesota Building, St. Paul, Minn., 55101 (612) 298-5797

William E. Falvey, Chief Public Defender

October 1, 1981

Mr. John Pillsbury, Jr., Chairman
Minnesota Advisory Commission on
Cameras in the Courtroom
Minnesota Supreme Court
State Capitol Building
St. Paul, MN 55155

Dear Chairman Pillsbury:

Since I cannot personally appear at your upcoming hearings on the subject of "Cameras in the Courtroom" I am writing this letter to express my views, and I would ask that my letter become part of your records.

I have been an attorney since 1966 and Chief Public Defender of Ramsey County since October of 1973. Throughout my legal career I have been intimately involved with the Criminal Justice System at the trial court level. At the present time my office represents over 8,000 people a year in criminal and juvenile proceedings.

I am unalterably opposed to cameras in the courtroom, particularly in criminal cases. I believe that such media presence in a courtroom would seriously jeopardize the defendant's right to a fair trial, and to allow the same would dangerously undermine our criminal justice system.

From many years of dealing with people in courtroom settings, it is my belief that human nature is such that with the eye of the camera upon them, judges, prosecutors, defense counsel, witnesses and jurors would have a tendency to act or react in ways inconsistent with substantiative fairness.

October 1, 1981

The trial of a lawsuit, particularly a criminal lawsuit, is very serious business in that the rights of the public and of individuals are at stake. In my view, cameras would only contribute to a carnival-type atmosphere and in no way serve any compelling public interest.

Again, I would hope that you would make the comments contained in this letter a part of your record.

Respectfully submitted,

William E. Falvey

William E. Falvey

WEF/cms

Exhibit 12

District Court of Minnesota

NINTH JUDICIAL DISTRICT

CHAMBERS OF JUDGE JOHN A. SPELLACY/COURTHOUSE/P. O. BOX 237/GRAND RAPIDS, MINN. 55744

September 10, 1981

Mr. John S. Pillsbury
Advisory Committee on Cameras in the Court
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

Dear Mr. Pillsbury:

I wish to echo the sentiments of Judge Summers, so aptly expressed in his letter of September 9, 1981. I am informed by Judge Richard Kantorowicz that the "minority" of Judges who are not opposed to camera coverage is growing and, at least among District Judges, is within 10 votes of becoming a majority.

I speak only for myself when I suggest that some Judges may oppose cameras because they are not anxious for the public to see how they manage a Court Room and what hours they work. I believe the public has a right to see what is going on, and that the value of public knowledge and understanding greatly outweighs potential prejudice to litigants.

There is bound to be an occasional clash between the Court system and news media. Open coverage of Court trials will, in the long run, foster greater responsibility and understanding on the part of those seeking the right to film and photograph Court proceedings.

Sincerely yours,

John A. Spellacy

cc: Honorable Joseph P. Summers
Honorable Richard Kantorowicz

Exhibit 13

Minnesota District Judges Association

September 1, 1981

Mr. John S. Pillsbury, Jr.
C/O Minnesota Advisory Commission
on Cameras in the Courtroom
123 State Capitol Building
St. Paul, MN 55155

Dear Mr. Pillsbury:

In reply to your recent letter to our organization concerning the September 10, 1981 dead-line for filing a proposed agenda and witness list for those who wished to call their views to the attention of the Commission, be advised that the Executive Committee of our Association has authorized me to present our position before the Commission by way of this letter.

In June of 1978, at our Annual Meeting in St. Paul, the Association adopted a resolution wherein we "opposed the use of cameras and recording equipment in all trial courtrooms in this state."

Thereafter, in June of 1979, at our Annual Meeting in Bloomington, we reaffirmed this position by adopting a Committee Report of our News Media and the Courtroom Committee which opposed the use of cameras in the trial courtrooms of our state by a vote of approximately 52 to 9.

More recently, in June of 1980, at our Annual Meeting in Rochester, we again affirmed our opposition to this concept by approving a motion to adopt the Minority Report of the Minnesota State Bar Association Joint Bar, Press, Radio and TV Committee, which opposed any change in Minnesota Standards of Judicial Responsibility No. 3a.7.

The matter was not addressed at our June 1981 Meeting in Duluth because it had not been placed on the agenda.

I believe that it is fair to state that the great majority of the members of our Association of trial judges are of the opinion that the pressure for this change is motivated more by an interest in the "entertainment" value involved in a relaxation of the Standard than by an interest in any "educational" value that might result therefrom. I also think that the Commission might well keep in mind in rendering their recommendations to the Supreme Court on this matter that the trial judges are the persons primarily charged with the responsibility of making sure that the "search for the truth", which we call a trial, is fairly conducted.

Very truly yours,

John M. Fitzgerald
Judge of District Court
President, Minnesota District Judges Association

JMF/clm
enclosure MSBA Minority Report

MINORITY STATEMENT

The undersigned members of the committee oppose any change in Minnesota Standards of Judicial Responsibility No. IIA.6 [ABA Judicial Canon No. 3A.(7)], as well as any experimental program of cameras in the trial courts, for the following reasons:

1. The determination of whether cameras and electronic media should be in the courtroom and whether their presence will deny a fair trial is the primary responsibility of the trial bench, assisted by the trial bar. Rules of Procedure, therefore, which deprive the trial bench and bar of this function and responsibility are, therefore, inappropriate.

2. While the physical distractions of cameras and other electronic devices have been lessened by state-of-the-art improvements, 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.

3. Since commercial television stations would offer minimal coverage of court proceedings, their impact on the public's perception of the judicial system would also be minimal.

4. The courts of this state should not become vehicles for entertainment or involved in the perennial ratings war between competing television stations.

5. There are two effective means of educating the public in the intricacies of the judicial system, and both of them are available today. Surveys of jurors show that the most desirable method is to involve them as jurors, because only in this way can they get a contextually correct perspective of the system. As an alternative to this method, complete "gavel-to-gavel" coverage of a full trial by a recognized educational institution for use in its curriculum would have similar value. This, of course, is presently available under Canon 3A.7.

6. There is neither urgency nor inevitability about the use of cameras and other electronic devices in the courtrooms, except in the minds of media people. While the media continues to urge their use, the trial bench and trial bar are strongly opposed to it.

7. The three reasons given by Chief Justice Warren in his concurring opinion in *Estes v. Texas*, 381 U.S. 532, in support of his conclusion that televising criminal trials violates the Sixth and Fourteenth Amendment rights of criminal defendants have the same validity today as they did at the time of *Estes* and are as violative of the right to a fair trial in a criminal case today as they were at that time. Those reasons are as follows:

   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 pubic 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 prejudicial conditions not experienced by others.

Respectfully submitted,
The Honorable Kenneth W. Bull,
Mark W. Gehan, Jr.,
The Honorable Otis H. Godfrey,
William J. Mauzy,
The Honorable Hyam Segell,
The Honorable Crane Winton.

John D. Tierney

Exhibit 14

STATE OF MINNESOTA
DISTRICT COURT
SECOND DISTRICT

JOSEPH P. SUMMERS
JUDGE

September 9, 1981

Mr. John S. Pillsbury
Advisory Committee on Cameras in the Court
Minnesota Supreme Court
State Capitol
St. Paul, MN. 55155

Dear Mr. Pillsbury:

Although the Minnesota District Judges' Association is on record as opposed to allowing coverage of the courts through modern technology, there is a substantial minority of judges who believe that radio, television, and still camera can have access to court proceedings without hurting the process or the participants.

I hold that belief myself. The arguments pro and con have been repeated ad nauseam and I shall not go into them except to say that both sides proceed from visceral reactions rather than reason.

I do wish to call to the committee's attention my personal belief that I can accommodate electronic and photographic coverage in my court without any adverse effect on the dispensation of justice and my feeling that such coverage would be an important step forward in improving citizen support for the legal system.

Sincerely,

Joseph P. Summers

JOSEPH P. SUMMERS

JPS:hk

Court House, Saint Paul, Minnesota 55102

612 298-4759

Exhibit 15

SIDNEY E. KANER

Attorney at Law
508 Alworth Building
Duluth, Minnesota 55802
Phone: 218/727-1533

Sidney E. Kaner
Home: 525-5332

Robert M. Kaner
Home: 722-0620

September 8, 1981

Ms. Deb Regan
Law Clerk of Chief Justice Robert J. Sheran
Office of the Clerk of the Minnesota Supreme Court
123 State Capitol Building
St. Paul, MN 55155

Re: Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct
File No. 81-300

Dear Ms. Regan:

Enclosed you will find letter of Chief Judge Mitchell A. Dubow, District Court of the Sixth Judicial District, dated September 4, 1981, and a copy of the Resolution enclosed in Judge Dubow's letter.

Please file the aforesaid in the records of the Commission pursuant to Rule 6.06 of the Order of the Minnesota Supreme Court dated August 10, 1981.

Yours very truly,

SIDNEY E. KANER

SEK:smd
Enclosures
cc: Hon. Mitchell A. Dubow, Chief Judge
Hon. John M. Fitzgerald, President,
Minnesota District Judges Association
Hon. Donald C. Odden
Hon. Jack J. Litman
Hon. David S. Bouschor
Hon. Charles T. Barnes
Hon. Joseph R. Scherkenbach

DISTRICT COURT OF MINNESOTA
SIXTH JUDICIAL DISTRICT
VIRGINIA
55792

CHAMBERS OF
MITCHELL A. DUBOW
JUDGE

September 4, 1981

Mr. Sidney E. Kaner, Member Minnesota
Advisory Commission on Cameras in the Courtroom
508 Alworth Building
Duluth, Minnesota 55802

Dear Mr. Kaner:

In response to your communication dated August 24, 1981, addressed to the six judges of the District Court of the Sixth Judicial District, and in their behalf, I wish to state that our unanimous view is in complete support of the position taken by the Minnesota District Judges Association in opposition to the proposed modification of Canon 3A(7) of the Minnesota Code of Judicial conduct relating to cameras in the courtroom, as stated in the attached copy of Resolution adopted by the Association.

Very truly yours,

Mitchell A. Dubow
Chief Judge

cc: The Honorable John M. Fitzgerald, President,
Minnesota District Judges Association

pc: The Honorable Donald C. Odden
The Honorable Jack J. Litman
The Honorable David S. Bouschor
The Honorable Charles T. Barnes
The Honorable Joseph R. Scherkenbach

MAD/dmu

RESOLUTION

WHEREAS, on January 26, 1981, in its decision in *Chandler v. Florida* the United States Supreme Court determined that because it has no supervisory authority over state courts, it could not prohibit in all cases experiments involving electronic media, and,

WHEREAS, there is no comprehensive empirical data from which to determine whether the subtle psychological distractions resulting from the presence of cameras and other electronic devices have an adverse impact upon jurors and witnesses, and,

WHEREAS, the concurring opinion of Justice White in *Chandler v. Florida* recognizes that there are real risks in televising criminal trials over a defendant's objections and that all trial courts should be free to avoid this hazard by not permitting televised trials, and,

WHEREAS, although television technology has advanced since the decision in *Estes v. Texas* and the physical distractions of cameras have been lessened by state-of-the-art improvements, the "subtle capacities for serious mischief," which may be caused by the extraneous influence of television cameras, have in no way been diminished, and,

WHEREAS, all of the federal courts of this country and the vast majority of state trial courts continue to recognize the serious problems which may result from the use of cameras and other recording devices in a trial court,

Now, therefore, BE IT RESOLVED that the Minnesota District Judges Association declares its continuing opposition to the use of cameras and recording equipment in all trial courts of this state and to any change in Canon 3(A)7 of the Code of Judicial Conduct.

Exhibit 16

MARTIN J. MANSUR
JUDGE

DAKOTA COUNTY GOVERNMENT CENTER
HASTINGS, MINNESOTA 55033

STATE OF MINNESOTA
DISTRICT COURT, FIRST JUDICIAL DISTRICT

September 25, 1981

Mr. John Pillsbury, Jr.
Chairman, Minnesota Advisory Commission
on Cameras in the Courtroom
State Capitol
St. Paul, Minnesota 55155

Dear Mr. Pillsbury:

I am writing to you to voice my opposition to the use of cameras in the courtrooms. My opposition is based upon over thirteen years of experience as a trial judge in every level of our state trial courts.

It is difficult to envision under what circumstances that television coverage of any litigation would be informative to the public. To be fair to all participants the coverage would have to include the entire trial, not some specific evidence which would tend to be taken out of context and not be given its full meaning. The public not only has a right to know but also a right to be informed. The doors of the courtrooms are in practically all cases open for the public. The argument that people cannot take time off from work is without merit, since I am at a loss to determine how a thirty-second flash on the screen of some aspect of any trial will fulfill this right.

Should there be a desire to film an entire trial for educational purposes in any of our schools, I am of the opinion that the Canons of Judicial Conduct as now promulgated provide for the appropriate relief to allow for such filming, and if there be any doubt then an amendment to that end could be effected.

Chief Justice Burger has stated that use of cameras is permissible in the state courts if the individual states so mandate, but the use of cameras is forbidden in the federal courts. One does not have to be a legal scholar to appreciate the redundancy of such a pronouncement. Certainly the state courts as well as the federal courts affect the rights of our citizens and the public's right to know. I am at a loss to find any basis for this distinction, save and except the federal judiciary sees no benefit whatsoever to be derived from the use of cameras in their courtrooms.

Our strength as a democracy is built in part upon the separation of our three branches of government, and we who serve in the judicial branch strive to give meaning to "one's right to be tried by a fair and impartial jury of one's peers." The introduction of cameras in the courtrooms will hinder this constitutional right. What, may I ask, is

more important to our form of government, the right of litigants to have their claims, regardless of size and even merit, litigated in a judicial atmosphere or the need to present on the evening news in between commercials ranging from dog food to Tampons matters of great importance to our litigants and to our form of government.

You should be, and I have no reason to believe that you are not, proud of our judiciary in this state. We rank near the top nationwide, and we are proud of our achievements, and we shall continue to dedicate ourselves to serve the people of this state and to guarantee to all of our residents who have need to seek redress in the courts the fundamental concept of fairness and impartiality guaranteed to them by our constitution.

Finally, please, before you decide, you and members of your commission should ask yourselves: "What purpose will a one-minute report of any trial on the television screen serve?"

Thank you.

Sincerely,

Martin J. Mansur

MJM/ovw
cc: Honorable Hyam Segell

Exhibit 17

Courtroom Coverage: The Effects of Being Televised

JAMES L. HOYT

Dr. Hoyt is an Associate Professor and Head of the Broadcast News Sequence in the School of Journalism and Mass Communication at the University of Wisconsin. *(Manuscript accepted April, 1976).*

"Free press and fair trial" has become an umbrella term covering a host of concerns and controversies involving journalists, lawyers, and the judiciary. Under this topic few issues have been as intensely debated as the question of whether journalists' cameras and other electronic equipment should be permitted inside courtrooms during trials. For the most part the judicial and legal professions have opposed such devices in courtrooms whereas journalists and their professional organizations have argued against restricting any type of media coverage of public trials.

Much of the debate stems from the 1930s when, in reaction to photographic coverage of the Bruno Hauptman trial, the American Bar Association passed Canon 35 of its Canons of Professional Ethics.[1] The Canon, passed at the organization's 1937 convention, originally read, in part, "The taking of photographs in the courtroom during sessions of the court or recesses between sessions, and the broadcasting of court proceedings, are calculated to detract from the essential dignity of the proceedings, degrade the court, and create misconceptions with respect thereto in the mind of the public, and should not be permitted."[2]

In 1952 the ABA amended Canon 35 to specifically include a prohibition against television coverage of courtrooms,[3] and added the clause, "distract the witness in giving his testimony," as an additional danger of permitting photographers in courtrooms. Then in 1963 the ABA omitted the words "are calculated to" and "degrade the court."[4] A canon of the ABA, of course, has no legal standing, but the ABA members worked to enact the canon into state laws or court regulations and succeeded in implementing some form of prohibition of broadcasting, televising, or photographing a trial in virtually every state.[5]

Further impetus was added to the issue on June 7, 1965 when the Supreme Court of the United States overturned the Texas swindling conviction of Billie Sol Estes on the grounds that Estes had failed to receive a fair trial because his Texas trial had been televised.[6] The various justices' opinions in the 5 to 4 decision represented most of the principal arguments which had been raised since the original passage of Canon 35.

The court's majority emphasized not so much the physical distraction of cameras and photographers in the courtroom as they did the psychological distraction of participants in a trial knowing they are being televised. In the majority opinion Justice Tom Clark wrote, "The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to overstatement; memories may falter, as with anyone speaking publicly, and accuracy of statement may be severely undermined. . . ."[7] And Chief Justice Earl Warren, in a concurring opinion, wrote, "The evil of televised trials . . . lies not in the noise and appearance of the cameras, but in the trial participants' awareness that they are being televised. . . ."[8]

The dissenting justices generally agreed with the traditional positions held by journalists. Justice Potter Stewart, in the dissenting opinion, wrote, "The suggestion that there are limits upon the public's right to know what goes on in the courts causes me deep concern. The idea of imposing upon any medium of communications the burden of justifying its presence is contrary to where I had always thought the presumption must lie in the area of First Amendment freedoms. . . ."[9] And Justice Byron White, arguing for more data on the issue, wrote, "In my view, the currently available materials assessing the effect of cameras in the courtroom are too sparse and fragmentary to constitute the basis for a constitutional judgment permanently barring any and all forms of television."[10]

Trial judges seem to have taken the Estes decision to heart despite the narrowness of the decision. A Madison, Wisconsin judge ruled against televising a taxpayers' suit against the city primarily because of the Estes decision.[11] A 1970 survey of trial judges from throughout the country reported that 92% of the 483 judges polled believed television cameras should *not* be permitted to operate in courtrooms during trials.[12]

Despite the generally discouraging climate for trial coverage by television, however, a number of recent developments have given broadcast journalists some encouragement. In 1970 National Educational Television carried extensive excerpts of a trial filmed in Denver. At the time Colorado was one of two states which permitted judges to decide if cameras could operate in their courtrooms. The program, entitled "Trial: City and County of Denver vs. Lauren R. Watson," was serialized by the network and shown nightly for a week. In 1971 a Wichita, Kansas, judge permitted KAKE-TV of Wichita to film a juvenile court hearing. The station used the film in its newscasts and the judge, in supporting his decision to allow the television coverage, said, "We must be smart enough to be able to establish a system whereby the public can be informed and the judicial decorum maintained."[13]

Recent movements toward a more accommodating position regarding television coverage of trials extend even beyond these experimental cases. In Seattle, following experimental coverage of a manslaughter trial (The coverage was not actually telecast.) a committee of judges, lawyers, and journalists, chaired by the chief justice of the Washington Supreme Court, recommended in 1975 that Washington state courts be opened to broadcast coverage.[14]

The Florida Supreme Court recently agreed to permit television cameras in some state courtrooms. The experiment, which has been opposed by the Florida Bar Association, involves an initial test of one civil and one criminal case in which all parties to the trial and witnesses must consent to being televised.[15] And in Alabama, the state's supreme court adopted new "Canons of Judicial Ethics" which could open courtrooms in that state to broadcast coverage.[16] In a "Commentary" section, the Canons say, "It is now universally recognized that the dignity of a church service is not affected in any degree by photographing or broadcasting by television or radio . . . when sophisticated and advanced equipment and technology is used."[17]

The overall controversy about cameras in courtrooms is unusual for the lack of specific data which have been brought to bear on the questions raised. When two U.S. Supreme Court justices suggest, in opinions, that during televised trials witnesses' memories may fail and the accuracy of their statements may diminish, one expects to find compelling supporting data. But such evidence has not been systematically produced. The current study attempted to

experimentally test that speculation, to determine if, in fact, individuals are affected by the awareness that they are being televised.

The study simulated some of the pressures placed on witnesses in a courtroom setting while at the same time maintaining experimental control so the results could be meaningfully analyzed. Subjects were shown a brief film containing rather detailed information, then were asked specific questions about the content of the film. While answering the questions they were either facing a conspicuous television camera purportedly recording their answers to be viewed by a large number of people, or an unobtrusive camera hidden behind a mirror, or no camera at all.

Based on the assumptions obvious in the reasoning of Justices Clark and Warren it was predicted that when they were televised (whether by an obtrusive or unobtrusive camera) the participants would recall significantly less correct information about the film than when they were not being televised. Because a number of the recent proposals for courtroom coverage by television have mentioned that cameras should be camouflaged,[18] the unobtrusive camera condition was included to determine the effects of hiding the camera.

Method

Subjects were 36 volunteers enrolled in a media and society class at the University of Wisconsin, Madison. The course, being offered during the summer session, contained a highly heterogeneous student population, consisting of a mixture of undergraduates, graduate students, and special students on campus only for the summer. It also included a number of military personnel participating in the school's annual public relations institute.

Each subject participated individually in an experimental session which lasted about 15 minutes. When subjects arrived at the experimental room they were met by the experimenter, an undergraduate female unknown to the participants. Subjects were seated at a table near the center of a large room and told the study was an attempt to assess the "effectiveness of some different types of media presentations." Their only other initial instruction told them they were going to see a brief film "containing a feature story recently used by a number of television stations."

All subjects were then shown a two-minute color film describing

the operation of the Federal German Post Office in West Berlin. The film described the various functions of the post office, such as operating telephone and telegraph services, banking, radio and television transmissions, intercity buses, and the mail. The film was selected because it contained a substantial amount of specific, detailed information and was a subject most likely unfamiliar to the participants in the study. As it turned out, one of the military students had been stationed in Berlin and was familiar with the post office there. He was dismissed as a subject and his responses discarded.

After viewing the film there was a pause of a few minutes after which the subjects were given some general instructions repeating much of what they had been told at the start of the session. Then the experimenter said, "I now have a few questions to ask you about what you have just seen. Please answer each as directly as you can." This was the first hint the subjects had that they were going to be required to answer specific questions about the content of the film. The experimenter then mentioned that she would take notes about their answers. From this point on the treatment varied according to condition. The subjects had initially been assigned randomly to one of three conditions: (a) obtrusive camera condition, (b) unobtrusive camera condition, and (c) no camera condition.

In the obtrusive camera condition a television camera was situated in the room in front of the subjects and to the side of the experimenter. The lens of the camera was pointed directly at the subjects. In this condition the experimenter included, as the final part of the instruction, "We have a television camera operating here which is connected to a videotape recorder so we can record your answers. These videotapes will be used as part of a follow-up study in the fall and at that time will probably be seen by a large number of people." The final sentence was included to add to the realism of the setting, causing the participants to actually believe that their performances would be seen by others.

In the unobtrusive camera condition the same television camera was located in the same spot, but a full-length mirror was placed in front of the camera so it could not be seen from the respondents' chair. The instruction was the same as that received by those subjects in the obtrusive camera condition, except it said, "We have a television camera operating behind this two-way mirror. The camera is connected to a. . . ."

In the no camera condition the camera was simply removed from the room and no mention was made of it in the instructions which read simply, "I'll be jotting down a few notes about your answers because they will be used as part of a follow-up study in the fall, and at that time will probably be seen by a large number of people." It was felt it was important to create the same belief that even though there was no camera, just as in an actual courtroom situation, the participants should be aware that their answers would be widely circulated even though not electronically recorded in the courtroom.

Each subject was then asked six specific questions about the content of the film. The questions and answers were recorded for subsequent analysis on an audio cassette recorder hidden from the subjects' view. The questions were developed and pre-tested for clarity, precision, and comprehensiveness. Two of them were: "What services are handled by the Federal German Post Office?" And: "What do humans need to do in the sorting and distributing of letters in the computer-controlled post office in West Berlin?"

After the questions were asked and the answers recorded, the subjects were dismissed and asked to not discuss the study with their classmates. All testing was completed in four consecutive days, thus minimizing the opportunity for discussion among past and future participants.

Results

Coding: Coders carefully listened to the audio tapes of the answers to the six questions, coding a number of items, both in terms of speech characteristics and content. For example, using stop watches, they coded such things as latency (time from end of question until start of answer) and total time talking. Coders also counted the number of words generated by each subject in answering the questions and the number of times each asked for clarification.

Prior to the actual coding a list was compiled which included all possible correct answers for each of the six questions. The coders then checked each component of each answer against this list and coded each part of each answer as either correct or incorrect.

The tabulating of the times was done by a single coder, with a second coder independently timing a sample of the respondents to

check for accuracy of coding. The two coders agreed with each other within one-half second on all timings, thus establishing the accuracy of the coding. Two coders independently did all the content coding and they agreed with each other in 92% of the cases. For those on which they disagreed a compromise code was reached.

Analyses: With 12 subjects in each of the three conditions, a series of one-way analyses of variance was conducted, using each of the dependent variables of interest in the study.

Correct information in answers: Those subjects who faced the obtrusive television camera included more correct information in their answers than did those in either of the other two conditions ($F=4.63$, $df=2/33$, $p<.025$). The mean amount of correct information contained in all six answers for those in the obtrusive camera condition was 20.17, compared to 16.33 for those in the hidden camera condition, and 16.83 for those who faced no television camera.

Incorrect information in answers: There were no significant differences between conditions in terms of the amount of incorrect information the subjects provided in response to the questions.

Length of answers: Again, subjects in the obtrusive camera condition behaved differently. Those who faced the conspicuous camera spoke for a longer time in answering the questions than did the subjects in the other two conditions ($F=5.35$, $df=2/33$, $p<.01$). The mean total answer length for those in the obtrusive camera condition was 36.50 seconds, compared to 28.21 seconds for those facing the hidden camera and 29.71 seconds for those not confronting a camera at all.

Number of words in answers: In a closely related measure, subjects in the obtrusive camera conditon also used more words in composing their answers than did subjects in the other two conditions ($F=4.96$, $df=2/33$, $p<.025$). The mean number of words for those facing the obvious camera was 70.25, for those facing the hidden camera was 60.50, and for those not facing a camera was 56.17 words.

Latency: In addition to speaking for a longer time and using more words, those subjects facing the obtrusive television camera also waited for a shorter time before beginning to answer the questions ($F=7.62$, $df=2/33$, $p<.01$). Thus they began to generate their answers more quickly after the questions were asked than did the subjects in the other conditions. The mean total latency score

for those subjects in the obtrusive camera condition was 17.75 seconds, for those in the hidden camera condition it was 20.42 seconds, and for those in the no camera condition it was 22.88 seconds.

Clarification: The one other measure used in the study, the number of times the subjects asked for clarification of a question, yielded no differences between the three conditions.

Discussion

In an experiment simulating many of the pressures and expectations faced by witnesses in courtroom trials, the current study found no significant differences in the respondents' verbal behavior when they faced a hidden television camera as compared to when no camera was present. Thus the assumption that when faced by a television camera, persons' memories may fail, etc. was not supported.

In fact, if the television camera was hidden from the sight of the "witness," the presence of the camera seemed to be irrelevant. It was as if when the camera was out of sight it was also out their thoughts and concerns.

But what about the effects of the obtrusive camera? Are there any reasons for concern? Some of the more mechanical effects, such as talking longer, waiting less time after a question, etc. are not particularly surprising. People apparently feel more compelled to speak more and to pause less when they are conspicuously aware they are being televised.

The key question, however, is: What is contained in those additional words they speak? Do those words contain irrelevant information, incorrect information, or do they contain more of the type of information the courts seek to obtain, i.e., correct information to more fully answer the questions?

The data from the current study provide a clear answer to that question. The longer answers do *not* contain additional incorrect information. What they do contain is significantly more *correct* information directly relevant to the questions. It is this finding which has the broadest implications for courtroom coverage by television.

These data indicate that far from being a danger and a potential hindrance to a fair trial, in this context television cameras can, in

fact, lead to a fairer trial. Because the witnesses could be expected to generate more complete and more correct information in response to the questions from the various attorneys, both sides should benefit from the increased information on which the court's decision could be reached.

This study, admittedly, was an experimental approximation of some of the key aspects of the courtroom environment. It was not, quite obviously, a trial itself. The definitive test, of course, is impossible. The same trial couldn't be conducted twice simultaneously with all conditions the same except for the use of television to cover one. What the current study did was to provide some original systematic data bearing on the significant overall question of the effects of camera coverage of courtroom trials.

[1] P. Hightower, "Canon 35 Remains Same Despite Courtroom Tests," *Journalism Quarterly*, 52:546-548 (Autumn 1975).

[2] American Bar Association Canons of Judicial Ethics, "Canon 35: Improper Publicizing of Court Proceedings," *Journal of Broadcasting*, 12:18 (Winter 1967-68).

[3] Special Committee on Radio and Televison of the Association of the Bar of the City of New York, *Radio, Television and the Administration of Justice*, (New York: Columbia University Press, 1965), pp. 144-145.

[4] American Bar Association Canons of Judicial Ethics, *op. cit.*

[5] H. L. Nelson and D. L. Teeter, Jr., *Law of Mass Communications* (Mineola, N. Y.: The Foundation Press, Inc., 1969), p. 256.

[6] American Newspaper Publishers Association, *Free Press and Fair Trial* (New York: ANPA, 1967), pp. 123-132.

[7] *Radio, Television and the Administration of Justice*, *op. cit.*, p. 201.

[8] *Ibid.*, p. 217.

[9] *Ibid.*, p. 248.

[10] *Ibid.*, p. 249.

[11] J. M. Ripley, "An Argument for Television in the Civil Courtroom," *Journal of Broadcasting*, 12:23-31 (Winter, 1967-68).

[12] F. S. Siebert, W. Wilcox, G. Hough III, *Free Press and Fair Trial* (Athens, Ga.: University of Georgia Press, 1970), pp. 106-110.

[13] Hightower, *op. cit.*, p. 548; "TV News Cameras in Another Court," *Broadcasting* (October 11, 1971), p. 52.

[14] "Foot in Courtroom Door," *Broadcasting* (June 16, 1975), p. 45.

[15] "TV in Courtrooms," *News from Associated Press Broadcasters* (January 1976), p. 8.

[16] "Alabama Adopts Judicial Ethics Which Could Open Courts to TV," *RTNDA Communicator*, 30:1 (January 1976), p. 1.

[17] Supreme Court of Alabama, "Canons of Judicial Ethics," Sect. 7, Commentary, pp. 10-11.

[18] Hightower, *op. cit.*

Exhibit 18

REPORT OF THE

SUPREME COURT COMMITTEE

TO MONITOR AND EVALUATE THE USE OF

AUDIO AND VISUAL EQUIPMENT IN THE COURTROOM

April 1, 1979

Contents of the Report

REPORT OF THE COMMITTEE TO MONITOR CAMERAS IN THE COURTROOM

MARCH 24, 1979

I.

THE COURT ORDER

The Supreme Court issued an order on December 23, 1977, which suspended Rule 14 of the Code of Judicial Ethics for a one-year period beginning April 1, 1979, and following a hearing which was held on February 20, 1978, the Court, on March 16, 1978, adopted rules or guidelines to govern the use of audio or visual equipment in the courtroom during the one-year period. The Court also decided, in its general order, to appoint a committee to monitor and evaluate the use of audio or visual equipment in the courtroom, the committee to consist of three representatives of the news media to be nominated by the news media, three trial judges, two members of the State Bar nominated by the State Bar, and three non-lawyers. The committee was directed to report to the Court no later than March 1, 1979, but at the request of the committee the Court extended the reporting date to April 1, 1979.

The following persons were appointed to the monitoring committee:

Judge Michael T. Sullivan, Milwaukee
Judge William F. Eich, Madison
Judge William J. Duffy, Green Bay
Professor David Fellman, University of Wisconsin-Madison, Chairman
Professor James Hoyt, University of Wisconsin-Madison
Ms. Anne Rossmeier, Stevens Point
Attorney William Adler, Eau Claire
Attorney James Peter O'Neill, Milwaukee
Ms. Nancy Mersereau, Port Washington
Edward Hinshaw, Milwaukee
Mr. Richard Bauer, Milwaukee

The reporter for the committee was Court Commissioner William Mann, and the committee was assisted by William Gansner of the Wisconsin Department of Justice and a representative of the State Public Defender's office. The

committee takes this opportunity to express its special appreciation for the efficient services of Mr. Mann. At its request, the committee was authorized by the Chief Justice to employ several graduate students or law students, to be compensated at an hourly rate, to serve as court observers. The Court's instructions to the committee were spelled out by the Chief Justice in a statement dated April 26, 1978, attached to this report as Appendix A.

The Court adopted the following guidelines governing the use of audio or visual equipment in courtrooms for the duration of the experimental year, April 1, 1978 through March 31, 1979:

1. Authority of Presiding Judge

These standards of conduct do not limit or restrict the power, authority, or responsibility otherwise vested in the presiding judge to control the conduct of proceedings before the judge. The authority of the presiding judge over the inclusion or exclusion of the press or the public at particular proceedings or during the testimony of particular witnesses is applicable to any person engaging in any activity authorized by these standards.

2. Media Coordinator

The media covering each administrative district shall designate a coordinator to work with the chief judge of the administrative district and the presiding judge in a court proceeding in implementing these standards.

3. Equipment and Personnel

a) One portable camera, (either 16 mm sound on film, self-blimped, camera, or videotape electronic camera) operated by one person is authorized in any court proceeding. One additional camera operated by one additional person is authorized if a request to film or tape the proceeding is received from a person or organization which does not have a camera of the same type as the first camera authorized. One additional camera operated by one additional person is authorized to permit a person or organization to televise live or to film the entire court proceeding from beginning to end. A maximum of three cameras are authorized under this standard.

b) Two still photographers, each using not more than two cameras with not more than two lenses for each camera, are authorized to take photographs for the print media in any court proceeding.

c) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes must be made through any existing audio system in the court facility. If no suitable audio system exists in the court facility, microphones and related wiring must be unobtrusive.

d) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by these standards in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all audio or visual equipment from the proceeding.

4. Sound and Light Criteria

Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices must not be used in connection with any audio or visual equipment. Only equipment approved by the presiding judge in advance of the court proceeding may be used during the proceeding.

5. Location of Equipment and Personnel

a) The presiding judge shall designate the location in the courtroom for the camera equipment and operators. The presiding judge shall restrict camera equipment and operators to areas open to the public, but the camera equipment and operators must not block the view of persons seated in the public area of the courtroom.

b) Camera operators shall occupy only the area authorized by the presiding judge and shall not move about the courtroom during the court proceeding. Film, tape, or lenses must not be changed during the court proceeding. Equipment authorized by these standards must not be moved or changed during the court proceeding.

6. Courtroom Light Sources

Modifications in the lighting of a court facility may be made only with the approval of the presiding judge. Approval of other authorities may also be required.

7. Conferences

Audio pickup, broadcast, or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the presiding judge held at the bench is not permitted.

8. Recesses

Audio or visual equipment authorized by these standards must not be operated during a recess in a court proceedings.

9. Use of Evidence

Any film, videotape, photograph, or audio reproduction made as a result of these standards is inadmissible as evidence in any court proceeding.

10. Resolution of Disputes

A dispute as to the application of these standards in a court proceeding may be referred only to the chief judge of the administrative district for resolution as an administrative matter. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by these standards any order or ruling of a presiding judge or chief judge under these standards.

11. Prohibition on Photographing at Request of Participant

A presiding judge may for cause prohibit the photographing of a participant with a film, videotape or still camera on the judge's own motion or the request of a participant in the court proceeding.

12. Inapplicability to Individuals

The privileges granted by these standards may be exercised only by persons or organizations which are part of the news media.

In addition, on April 21, 1978, Chief Justice Beilfuss sent to all judges in the State the following explanatory statement:

The first two weeks of the one year trial period during which audio and visual equipment is permitted in courtrooms have demonstrated that there may be some misunderstanding concerning the Standards and their application. For this reason the following explanatory comments may be helpful.

1. Perhaps the greatest confusion has arisen over the authority of the presiding judge to prohibit the use of audio or visual equipment in the courtroom. This involves the application of Standards 1 and 11.

Standard No. 1 is intended to point out that the rights granted under the Standards to the news media are not superior to those of the public or reporters for the news media to attend court proceedings. Thus, if the presiding judge under existing law can exclude the public and representatives of the news media from a court proceeding, then persons operating audio or visual equipment under the standards can also be excluded.

Standard No. 11, on the other hand, is intended only to permit the presiding judge for cause in the exercise of discretion to prohibit the photographing of an individual participant in a trial (including parties, witnesses, jurors, counsel, or court personnel) either at the request of a participant or on the judge's own motion. It is not intended to permit the judge to ban all cameras and audio equipment from a trial except as may be authorized under Standards No. 1 and 10. It is not intended to give a witness or other participant the right to prohibit the photographing of the witness while testifying. It is not intended to permit the presiding judge to prohibit the recording of the testimony of a witness, except as may be authorized under Standards No. 1 and 10.

"Cause" as used in Standard No. 11 is intended to require that there be some reasonable basis other than the desire not to be photographed to justify prohibiting the photographing of a participant. Cause may include a reasonable fear of physical harm, the protection of a minor's reputation, a reasonable fear of undue embarrassment, or the like. The trial judge may require requests under Standard No. 11 to be filed with the Clerk of the Court.

2. Standard No. 3(d) requires that any request to engage in an activity authorized by the Standards be made through the media coordinator. A request should not be made to the presiding judge. The fact that only one request is received initially does not mean that additional requests will not be filed later, and thus all should go to the coordinator. The presiding judge should not be involved in the granting of a request to use audio or visual equipment unless the media coordinator is unable to obtain agreement among media personnel.

3. Standard No. 4 requires that only equipment which is approved by the presiding judge may be used in the courtroom. The presiding judge must check prior to trial each item of equipment, including both TV and still cameras, to determine whether the item produces distracting light or sound. Once a judge has approved a certain type of equipment, it need not be reinspected for each trial.

4. Standard No. 5(a) provides that the presiding judge must restrict camera equipment to areas open to the public. This means the spectator area behind the rail. It has come to my attention that some judges have permitted cameras to be placed in the jury box or other locations in front of the rail. This is not permissible under the Standards.

5. Standard No. 12 limits the right to use audio or visual equipment in the courtroom to representatives of the news media. Individuals who are simply spectators, relatives, tourists, or curiosity seekers may not use audio or visual equipment in the courtroom.

For use by the committee's court observers, where feasible, questionnaires were prepared by the committee to serve as a basis for interviews with trial judges, counsel, witnesses and jurors. These questionnaires are attached to this report as Appendices B, C, D and E.

It is of some interest to note, as part of the history of the problem under discussion, that on January 27, 1970, the Supreme Court created a committee of 12 persons, which included 3 judges, several lawyers, several people from the media, and one University Professor, to advise the Court on the desirability of modifying or dropping Rule 14. While that committee, in its final report of August 18, 1970, agreed on many matters, on the crucial issues it was sharply divided. Thus, 8 members of the committee favored the broadcasting of court proceedings by radio, whereas 4 were opposed, while the vote was 6-6 on the question of permitting the televising of judicial proceedings. The text of the 1970 report is attached as Appendix F. Following receipt of this report, the Court, by a vote of 4-3, voted to retain Rule 14.

II.

VARIOUS CASES

In the course of its work, the committee was informed by various sources of a variety of experiences in Wisconsin courtrooms relating to the use of photography. A few of these experiences are spelled out in the following sections.

(1) STATE v. DILLABAUGH

This highly publicized case was heard in the Circuit Court of Dane County, before Judge William C. Sachtjen and a jury. The trial began on the morning of June 5, 1978, and ran for 3 days. One of the committee's court observers, Mr. Kim Kodousek, a law student at the University of Wisconsin-Madison, sat through the entire trial, and interviewed most of the participants

afterwards. This summary of the case consists of his observations. The point at issue was the alleged battery of a young boy by a minister.

Our observer wrote a detailed account of the progress of the case, day by day, and then interviewed the major participants (except the jurors) on the basis of the prepared questionnaires. What follows is a reproduction of all the materials submitted by Mr. Kodousek:

June 5, 1978

The equipment in the courtroom consisted of 1 black and white cable TV camera, 1 color "mini-cam" TV camera, 1 movie film camera for TV, and 2 still photographers, each with 2 still cameras.

The three TV cameras, each with one cameraman, were placed in the far right aisle near the front of the gallery, effectively blocking that aisle. The still cameramen were seated in the front row of the gallery. All were reminded of the guidelines as to photographing recesses and bench conferences by the chief bailiff before the voir dire began.

The Madison cable TV station broadcast the proceedings "live" during the day and showed several hours of it each night. A monitor was placed in the hallway of the courthouse, and when it was learned that witnesses in the hall could hear and see the proceedings, the monitor's audio was ordered turned off by the judge.

The sound for the TV cameras was supplied by 4 microphones placed in the courtroom, in addition to the regular courtroom microphones. Two TV mikes were on the counsel table, one was at the judge's bench and one was on the witness stand.

Photographing began during the voir dire as the TV cameras followed the jurors taking their seats. The movie camera could be heard by the observer just before the rail, but only during very quiet pauses. The shutters of the still cameras were clearly audible throughout the trial. No flash equipment or special lights were used by any of the cameras.

At the voir dire the prosecutor mentioned the cameras' presence to the jury, and asked "Are there any of you who feel that the presence of cameras might affect your duties as a juror?" There was no response.

The jurors were instructed not to watch anything on television or view other news media by the judge, but the instruction was not specific as to the televised trial itself. The cameras themselves were apparently no distraction to the jurors, since their eyes rarely, if ever, strayed to the direction of the TV cameras or the still photographers.

Two media-related problems were observed the first day. First, a still photographer requested permission of the bailiff to photograph the gallery. Raising the camera above his head would have been a distraction, the bailiff reasoned, but the photographer was allowed to turn around from his front row seat and take pictures from eye level.

Second, as mentioned above there was some concern that the witnesses, who were excluded from the courtroom, were viewing the trial from the TV monitors in the hallway outside. The sound on these monitors was ordered turned off by the judge, and the witnesses apparently instructed to refrain from watching the live telecast while waiting in the defense counsel's nearby office.

The two still photographers took approximately 53 photos during the first day.

Tuesday, June 6, 1978

When the trial was convened the next morning the media equipment in the courtroom was the same as had been there Monday. However, at the first recess the bailiff received requests from two other still photographers to take the place of the photographers who had originally applied for permission to photograph the trial and who had sat through it the day before. All wanted photographs of the 5-year-old complainant who was to take the stand after the recess. The photographers were from each of Madison's three daily newspapers, and one from the student daily, The Cardinal.

The bailiff relayed the problem to the judge, who allowed all four still photographers in the courtroom for the remainder of the day. The extra two stayed only briefly, however, because the witness was not allowed to testify to the jury. There were never more than two photographers present in the afternoon.

There had been some problem the day before with the microphones on the counsel's table picking up defense counsel-client and co-counsel-counsel conversations. Apparently, if the volume of a home television set was turned up high enough, these conversations could be understood. The bailiff informed counsel of this fact.

One still photographer from the Capital Times brought as his backup camera a Leica viewfinder camera. Unlike the reflex cameras used by all other still photographers at the trial, this camera was extremely quiet and almost inaudible from a seat just in front of the rail. Apparently this type of camera has fewer moving parts.

At least 81 photographs were taken by the still photographers this day.

Wednesday, June 7, 1978

As court was convened, there were three TV cameras and cameramen present and four still photographers in the courtroom. After the defendant took the stand two still photographers left, leaving two in the afternoon.

While the defendant was testifying, his attorney objected to the fact that the defendant was being photographed with one of the exhibits (the paddle used in the alleged battery) in his hand. He objected, for the record, that the prosecutor had made his client pose in a manner "calculated for picture taking and improper."

After the noon recess, one TV cameraman finished setting up his camera after court was convened. Later, one of the TV technicians in the hall came in the court while in session and spoke to one of the cameramen. Both were warned about this later by the chief bailiff.

At least 135 photographs were taken by the still photographers this day.

In-court observation of the trial ended as the jury left for the final deliberation.

Judge William Sachtjen indicated that he delegated much of the responsibility for media problems during the trial to the chief bailiff. The following is a digest of an interview with the chief bailiff at the trial, Sgt. Gordon Butler:

"The rotation problem with the still photographers brought up the question of who has authority to decide the question of which paper gets a seat. The media coordinator should not be connected with any TV station or paper, to avoid problems of favoritism. More details should be provided as to how to deal with the problem of photographers from 4 competing local papers. They don't carry press cards, either, so it was hard to tell just who was authorized to take pictures. The media coordinator should issue color-coded cards for each trial to the media people.

"The TV cameramen should wear headsets hooked up to the technicians in the hall. This would avoid the problem of the technicians coming in to request a certain shot, which happened twice and was very distracting.

"There were problems with the conduct of the still photographers-- some laughed and made comments during the trial. We reserved the two front benches for the newspeople, including the photographers, but the guidelines should set out where the reserved area should be. It also should be clarified whether the still photographers can leave the courtroom to change film and lenses and then come back in. Some had deadlines to meet, so I told them that

they could leave but could not come back in. At another televised hearing this month, the photographers who were late for my instructions were not aware of the standards.

"Since the TV cameras have a long warm-up period, they were turned to the wall during recesses rather than turned off. However, the microphones should be turned off so as not to pick up conversations.

"With the exception of the still photographers trying to freeze each other out, the media people were very cooperative.

"After the verdict was in and court was adjourned, the media people and cameramen requested permission to conduct interviews in the courtroom. The judge granted it."

The following questionnaires were handled by Mr. Kodousek, and are reproduced here as he submitted them to the committee.

QUESTIONS TO BE ADDRESSED TO THE JUDGE

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record the name of the judge and how long he has served as a judge; also note which of the three media were used in the trial: (a) television cameras; (b) radio equipment; (c) still cameras)

Judge William C. Sachtjen. All three media used in the trial.

1. What, if any, influence do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on you during the trial?

I was conscious of their presence, although I couldn't hear the camera shutters, for instance. They had an indirect effect in that a large courtroom with good acoustics was used, which made it easier to hear the witnesses. The cameras made me more aware of my posture, so I sat erect much of the time.

2. Did the presence of (a) television cameras, (b) radio equipment, and (c) still cameras seriously increase your supervisory responsibilities?

I delegated most of the responsibility to the chief bailiff, and I conferred with the media coordinator. The only serious problem was when four photographers (still cameras) from each of the four local papers wanted to get in, and I finally let them all in.

3. If your response to question 2 was in the affirmative, did those responsibilities interfere with your principal duties as a presiding judge?

No, a good bailiff handled all of it.

4. Did the presence in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras produce more letters, telephone calls, et cetera, than you usually receive?

No, there were some comments from acquaintances who had seen me on TV, but I don't get many calls or letters about cases anyway.

5. What, if any, impact do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on the witnesses?

They were more apprehensive, nervous, scared. The fact that it was a full courtroom with a lot of activity may have combined with the presence of the cameras to cause this.

6. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the behavior of counsel?

The cameras affected them in their unconscious actions, in the same way the cameras affected me-- little things like sitting up instead of slouching down.

7. What, if any, problems occurred because of the use of (a) television cameras, (b) radio equipment, and (c) still cameras in your courtroom?

No problems at all. The 5-year-old witness was scared, but it wasn't from the cameras.

8. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

No effect.

9. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

No effect.

10. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

No effect in this case.

11. Describe any requests you received for the prohibition of (a) television cameras, (b) radio equipment, and (c) still cameras, the action you took based on those requests, and the reason(s) for your action.

I received no such requests.

12. Overall, what is your general evaluation of the use of (a) television cameras, (b) radio equipment, and (c) still cameras, in the courtroom?

Basically, I don't believe in them. If I were charged with a crime, I would not want it to be televised or photographed.

Everything went beautifully in this case, but this wasn't a serious enough case. There will be trouble with cameras in the courtroom in other cases.

If the defendant had been convicted, I would have been criticized for not sequestering the jury. As it was, they probably watched themselves on TV at night during the trial.

Defense attorney: Jack McManus, Madison

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

The still cameras were too loud, there was too much movement and jockeying for position by the still photographers, especially during dramatic moments when there was a distracting flurry of activity by the photographers.

The television cameras in the hallway outside followed the jurors entering and leaving the jury room, and I think that this had an undue influence on the jurors, giving them almost a celebrity status.

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

No effect on my strategy, although the prosecutor posed my client (holding an exhibit) for the still cameras.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

No effect; I was unaware of their presence while I was examining and cross-examining.

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

No effect on the relationship with this judge, but I can forsee problems with other judges.

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

I don't know. I ordinarily get a lot of calls because of the kind of cases I take, and this time was no different.

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

There was unnecessary filming of them when they were not in the jury box. This placed an undue influence on the jury, and they may have been caught up in the drama of the thing. The cameras, TV and still, could have affected their judgment and distracted them from their duty.

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

No effect.

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

No effect.

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

No effect.

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

It made no difference in this case.

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

The still cameras had no benefit other than serving the public's need to know.

As far as television is concerned, if they become commonplace in the courtroom, they will act as a deterrent to incompetent attorneys whose knowledge of trial tactics won't meet the public or peer group scrutiny.

TV is an asset in that witnesses who know that their answers will be given wide dissemination will watch what they say. It also serves as an educational process-- the public will learn of the role of the courts, juries and counsel, and the uses of their tax dollars.

Prosecutor, Assistant District Attorney (Dane Co.) Gerald Mowris

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

The clicking of the still cameras was distracting.

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

No effect.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

No effect.

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

I couldn't tell if it had an effect.

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

The nature of the case made it hard to determine if they had an effect.

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

I have no idea.

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

Probably no effect.

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

I have no idea.

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

They had no effect that I could see.

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

Unless the shutter sounds could be muffled, I would prefer not to try the case with (c) in the courtroom.

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

The nightly replay was helpful.

My only concern with cameras is their effect on reluctant or frightened witnesses. Testifying in public is hard enough without putting their performance on television.

Defendant and defense witness Pastor Wayne Dillabaugh

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

No distraction-- I did not notice their presence while I was testifying. I have become somewhat accustomed to the presence of cameras lately, but I was not distracted nor could I hear them while I was on the stand.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

No effect.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

It probably will result in more letters and phone calls, but I have been staying away from home during the trial.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

It made no difference to me.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

Their presence made no difference either way , as far as I could tell, and made no effect on the veracity of the witnesses.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

One problem was that the attorney-client conversations were picked up by the TV microphones at the counsel table, and this made it difficult to discuss anything with my attorney.

Detective Richard J. Miller, prosecution witness

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

No distraction. I didn't realize that they were there after I took the stand. I have testified before, and you're ordinarily nervous, but the presence of the cameras did not distract me or make me more nervous. I could not hear the cameras while I was on the stand.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

No effect.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

There was recognition the next day from people who had seen me on TV, but no harassment and no phone calls.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

From a policeman's point of view, you're made more responsible for your actions-- you had better be sure of yourself before you take the stand.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

Because of the publicity it was hard to tell. In a regular case you could tell if it had an effect on fairness or not, but because of the nature of this trial, I don't know.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

They don't distract, and their presence is a good influence.

Richard D. Hochsteader, defense witness

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

I heard the clicking of the still cameras, and it does disturb you when you're trying to think. The TV cameras had no effect.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

No effect.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

I expect some tonight. (Interviewed on day of testifying.)

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

They didn't have enough of an effect, they really didn't matter.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

They possibly will have an effect, but I don't know yet.

6. Overall what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

They had no effect on my testimony.

Kathleen Brandt, key prosecution witness.

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

There was no distraction-- I did not notice either the TV or still cameras at all during my testimony.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

They had no effect, since I did not notice them once I was on the stand.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

None received (as of one day after appearing on television).

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

It didn't bother me that the cameras were there.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

They allowed both sides to be seen, by bypassing the news and allowing people to see the trial from start to finish. They made the trial more fair in that way.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I think that it's a good idea-- the TV cameras allow people to see the entire trial and decide for themselves.

(2) THE McCOY MURDER CASE

For six days beginning April 24, 1978, Judge James W. Rice, then County Judge in Monroe County, tried a first degree murder case in the La Crosse County Circuit Court. Television and still photography were permitted throughout the trial. The chairman of the Monitoring Committee has had considerable correspondence with Judge Rice. On May 8, 1978, the judge wrote that he had asked the attorneys, the defendant, the jury, the witnesses and the Court Reporter "to be alert during the trial for any distractions the cameras may have caused. I received no complaints." When requested to report his experiences and impressions more fully, Judge Rice wrote in part as follows:

> "In response to your specific questions, there was no interference with my duties as a presiding judge. There was no effort by an attorney, a witness or any participant to play a little bit for the benefit of the cameras. I did feel that I made it a point to sit more alertly, and to be more selective in my choice of neckties each morning, but nothing more.
>
> "Were there any special problems? Only that I spoke to the coordinator prior to the trial as to location of the cameras and to remind them to remain behind the rail at all times.

"I cannot believe that the cameras had any effect on the length of the trial, its outcome or the conduct of counsel. I can believe that some attorneys would ham it up but they would have to be handled on an individual basis. Those involved in my case were professional always.

"I received no letters or phone calls regarding the trial, except from the news people. There is no question, however, that there was more conversation in the community than is normal. People spoke of the hardness of the defendant, the stupidity of a particular witness, of my stern demeanor (I don't think I was) and generally appeared much more interested.

"I have been in favor of cameras because I have felt they would give the public a better flavor of what goes on in a courtroom, rather than the picture TV now gives. I don't think it does as much as I had hoped. The total testimony of a witness, or the total argument of a lawyer, is not presented, just excerpts. This, of course, can only be changed by filming and presenting the whole trial and the commercial media people tell me that is not economically feasible....

"The experience was a success with only one or two very minor negatives. Once, a TV photographer had difficulty dismantling a camera and just once I heard a TV camera whining.

"I think one of the factors which made the experience unremarkable, was that one TV camera was in the courtroom all the time, but was operated only periodically. This, I think, allowed us to forget about it.

"The attorneys were well behaved and the media responsible. I think only good can come from that combination."

At the request of Judge Rice, Mr. Bill Hoel, News Director for WLCX, and media coordinator for the area, wrote to the Committee Chairman, and the following are some of his remarks on the televising of the McCoy murder case:

Coordinating coverage by the media was easy in this instance because of two factors. All local media had already cooperated in covering a nontrial hearing which took two days. This allowed us to get the bugs out of all systems, and to custom build some small pieces of equipment with which to distribute a sound feed to all who needed it. It gave us, secondly, a known quantity, if you will, to present Judge Rice. We were able to respond to his questions about how we'd work in the courtroom with definite answers, because we'd already had experience.

I daresay the fact that Judge Rice is liberal in applying the Supreme Court Guidelines was a major factor in the successful coverage, also. I am of the belief the guidelines are far too

strict in their construction. They set very tight limits in an area where cooperation between all media is not always available. Judge Rice waived the rules governing number of cameras. Because of this, there were still only three cameras in the courtroom, but two of them were of the same type (film), while only one was of the electronic "TV camera" type.

Our standard mode of operating when in the court was a very low profile. Outside of the presence of three cameras in the far corner of the room, a jury member would have had a hard time distinguishing the rest of the reporters from normal courtroom observers. We use small, portable cassette recorders for radio. These can be held in the lap, and turning them on or off creates no noticeable noise.

Once an hour, radio reporters get up, leave the courtroom, and file their stories for that hour's newscasts. This activity is staggered, so it is not a mass movement, which might be distracting.

All in all, I saw the jury distracted from their concentration on testimony perhaps once or twice during the entire proceeding; and only one or two jurors at each of those times. This doesn't prove any theories, or make any points. It does show me, however, that given proper facilities in which to operate, the media can be a very low profile presence in the courtroom.

At the conclusion of the trial, Judge Rice asked each juror to write him a letter explaining what, if any, effects the cameras had on them. All of the jurors responded. One juror wrote: "I would just as soon see cameras in court discontinued. It was neither a good or bad experience for me." He also said that his wife received a number of calls on seeing him on television, and he expressed the fear that in some cases those could be crank calls. All of the other jurors wrote, in one way or another, that the cameras in the courtroom did not have a distracting impact upon them. Here are some sample comments: "The fact that the trial was televised did not bother me. I was hardly aware they were in the courtroom." "From my own personal experience I would say it did not bother me because I was intent upon trying to hear every single word that each person had to say concerning the case at hand." "The cameras in the courtroom made no difference to me as a juror in the McCoy trial....In listening and concentrating on what was said and presented in evidence, I'd forget the TV cameras and news media were present in the

courtroom." But this juror was apprehensive that the presence of cameras might make witnesses less willing to tell what they know. Another juror wrote: "In my case, it did not interfere with my concentrating on the McCoy trial and I wouldn't be opposed to being on another case which had cameras in the courtroom." Still another wrote: "The cameras in the courtroom during the McCoy trial were no distraction whatsoever as far as I am concerned." Another juror added the thought that he felt that it was "very good" to have cameras in the courtroom, and that he was unaware of them most of the time. Still another reported that the cameras "did not bother" her, and that during most of the trial she was not aware of their presence in the courtroom. Finally, another juror observed that while she was aware of the cameras, they had "little affect" on her; she said that she did not find the cameras distracting, and that she could not detect any impact upon anyone involved in the trial. She also wrote: "I feel that if the cameras in a Court Room can in any way educate the public about our judicial system and make people aware of it's impact in our community, it is certainly a plus for everyone."

(3) TRIAL OF RICHARD TODD BUCK

This criminal case was tried before Circuit Judge M. C. Holz and a jury in the Circuit Court of Milwaukee County. This summary is based on the written observations of the committee's observer, Mr. James H. Kaster, of Milwaukee. The trial ran from July 18 to July 24, 1978. The case involved various sensitive issues. The victim of an alleged second degree murder was a physician with an outstanding reputation in the community. The defendant claimed that the Doctor had subjected him to a homosexual rape attempt, as a result of which, in the heat of passion, he grabbed a kitchen knife and stabbed the victim to death. The defendant's main position was that the crime, if any, was manslaughter, and not murder in the second degree.

The jury was chosen in an extensive two-day voir dire examination, and one of the questions put to the jurors was whether they felt that the use of cameras would affect their impartiality adversely. Those who served on the jury responded to that question in the negative. There were no cameras or radio equipment in the courtroom during the voir dire. Defense counsel James Shellow stated to our observer that he intended to challenge the use of cameras in the courtroom on the ground that it would be injurious to the defendant, in that it would have a negative effect on the impartiality of the jury and the effectiveness of counsel. The jury was sequestered until it reached its verdict.

During the trial, the television cameras were in plain view of the jurors, the judge, counsel, and the general public. Both defense counsel and the judge stated that they preferred to have the cameras in a less conspicuous place. Defense counsel claimed that several jurors were distracted by the cameras being in open view. On the other hand, the prosecutor, Mr. William Sosney, said that he preferred a small camera used openly, rather than a large stand-up camera placed in a back room out of the immediate view of the jury.

Though the trial attracted tremendous interest in the community, involving the death of a prestigious doctor, and very sensitive issues of rape, homosexuality and drug use, the coverage was low-key, and the media were content simply to present the public with but a few significant moments of the trial, such as the opening arguments and the testimony of an important witness. The trial was not covered in its entirety. There was full coverage for the closing arguments, but our observer noted that even so, there was little, if any difference between that day's proceedings, and the proceedings on days when no cameras were

being used in the courtroom. He observed that "the jury seemed completely unaffected. I never noticed any juror turn his head toward the camera. Counsel also seemed unaffected; yet Mr. William Sosney later reported that the cameras made him 'more nervous than usual.' The judge, although it was apparent that he was aware of the presence of the camera, appeared unaltered." During the final argument, defense counsel Stephen Glynn made an issue of the use of cameras; he referred to the fact that others watched parts of the trial on television, and admonished the jury not to be afraid that their verdict might be criticized by viewers. The prosecution made no reference in closing argument to the use of media devices.

Our observer concluded that, "in my own subjective opinion, the cameras did not affect the fairness of the proceedings. The jury was unconcerned, and, I would say, unaffected. Yet, counsel for both sides claimed that they preferred not to have cameras in the courtroom. The judge managed his extra supervisory responsibilities well. The jurors interviewed all agreed that the cameras, etc., had no affect on them. Although they were aware of the presence of these media devices, they claimed it did not alter their deliberation or final decision. My observations support their claims. Judge Holz, however, claimed that the cameras simply add an extra burden on the judge in an already difficult situation, for example, an important murder trial....The defense and prosecution both agreed that they would rather try a case without cameras in the courtroom. Their rationale, however, differed. The prosecutor claimed that media coverage puts the trial in the public eye. For that reason, he claimed, the jury is reluctant to return a harsh verdict. He further complained that camera use automatically gives defense counsel an issue for appeal. Defense, on the other hand, claimed that the notoriety of a covered trial makes the jury more reluctant to return a lenient verdict. According to them, jurors fear the peer pressure resulting from a lenient verdict more

than any pressures resulting from a harsh one."

In response to the queries set out in the prepared questionnaire, the judge expressed the opinion that the use of cameras "is overly disruptive, especially in a difficult case where the judge already has immense responsibility." At the same time, the judge indicated that the added responsibilities did not interfere with his principal duties as a presiding judge. In response to the questions as to whether the use of cameras resulted in more letters, telephone calls, etc. than he usually receives, the judge responded, "definitely." He also thought that the cameras have "a noticeable effect" on the witnesses. In addition, he expressed the belief that the presence of the media in the courtroom had some effect on the behavior of counsel in that they seemed to be more "solicitive of the press so as to have 'their' story told." He stated that the use of cameras did not affect the length of the trial, its outcome, or its fairness. Asked for a general evaluation of the matter, Judge Holz replied: "The use of media devices in the courtroom makes the tasks to be performed by the judge more difficult in an already difficult situation. It upsets the flow of the trial. Further, the state is forced to bear the burden of added expense, such as is caused by sequestration."

Our observer was able to interview 4 jurors. All agreed that they were aware of the presence of cameras in the courtroom. All 4 stated that the cameras had no effect on their deliberations, and that none received phone calls or letters during or after the trial because of the use of cameras. In reply to question as to whether the cameras had any impact on the behavior of the witnesses, all replied, "I don't know." All 4 agreed that they did not believe the cameras had any effect upon the behavior of counsel, or of the judge, or on the fairness of the trial. Asked whether, if they had a choice, they would have preferred to be on a jury with or without cameras in the

courtroom, all 4 declared that they had "no preference," although one of them said that "a murder trial should be a private matter, especially in such a sensitive situation." (Of course, this juror did not seem to understand that no criminal trial is ever a private matter, and that public trials are guaranteed by the Constitution.)

In his responses to the questions put to him by our observer, defense counsel Shellow asserted that the presence of cameras in the courtroom distracted him from the tasks at hand during the trial "regularly." As to whether the presence of cameras affected the strategy of litigation, Mr. Shellow declared that "it affected the basic decision of whether we would have the defendant take the stand in the case." He also expressed the opinion that the cameras had "an obvious effect on one witness,...who was extremely distraught while testifying in front of the cameras." While he conceded that there was a potential for theatrical antics by the judge, he said that the judge conducted himself very well and appeared unaffected by the cameras. Mr. Shellow noted that the use of cameras did not produce more letters, telephone calls, etc. than he usually receives, but as to whether they had any effect on the jury, he responded that it is "difficult to say." He did not believe that the cameras had any effect on the length of the trial. At the same time, he thought that "it is possible that the jury may have come back with a not guilty verdict had the cameras not been used." Our observer points out that defense counsel did not argue for a not guilty verdict at any time during the proceedings, and that the verdict of manslaughter rather than second degree murder was regarded as a victory for the defense. When asked whether he thought the use of cameras had an effect on the fairness of the trial, Mr. Shellow responded, "Certainly. Prosecutor Sosney was obviously responding to camera use during the trial." Finally, Mr. Shellow indicated that he would have preferred to try the case without cameras in the courtroom,

asserting that the practice "unfairly prejudices the jury. Distorts fact finding. Only one juror during the voir dire was candid enough to admit that the cameras might have affected him. The others were 'less than candid,' when they claimed their use would have no effect."

In his responses, defense counsel Glynn said that the cameras distracted him "on occasion," that the presence of cameras affected the choice of exhibits offered into evidence, because of the sensitivity of matters at issue, and he declared that "we changed examination strategy" because of the presence of cameras in the courtroom. He also said that the cameras did not affect his contacts or relationships with the judge, but that he did receive more office calls and calls from television stations than usual. He said that he did not know whether the cameras had any effect on the jury, but he added, "I noticed that one juror was distracted by a TV camera when it was allowed out into the open court room." While in his judgment the cameras did not affect the length of the trial, he added, "I am afraid that it may affect the outcome," when asked about this before the verdict was reached. Asked whether the cameras affected the fairness of the trial, he responded, "I don't know." Finally, asked about his overall preference, he replied: "I would prefer that they not be allowed into the courtroom; however, if they are allowed, I would prefer that their use not be revealed to the jury. Such use of cameras, however, may violate privacy rights of individual jurors." At the same time, he conceded that there may be "theoretical" advantages. For example, a judge normally belligerent to a defendant might be moved to maintain a more objective demeanor. Overall, however, there are more disadvantages than advantages."

Mr. W. Sosney, the prosecutor, said that the cameras made him feel "nervous- more than usual." But he did not think that the presence in the

courtroom of cameras affected the strategy of litigation, or the manner with which witnesses were examined or crossexamined, or his contacts or relationships with the judge. On the other hand, he noted that "more people contacted me to talk about the case than usual," and when asked about the effect of the cameras on the jury, he responded: "It is difficult to speculate on that. Yet, the defense used reverse psychology with the jury. They attempted to get the jury to over-react to the possibility that they might feel pressure to convict. By doing so,....they may have successfully made the jury overly reluctant to convict." Mr. Sosney did not believe that the use of cameras had any effect on the length of the trial, but when asked whether it had any effect on the outcome of the trial, he responded: "It is difficult to speculate. Yet, jurors must feel unusual because of the uniqueness of media coverage." In response to the question as to whether the cameras affected the fairness of the trial, the prosecutor replied: "If anything, it is unfair to the state's interest and to the people of Wisconsin. The cameras made conscientious people reluctant to pull the trigger." Asked whether, if he had a choice, he would have preferred to try the case with or without the cameras in the courtroom. Mr. Sosney replied: "The use of cameras is not only unfair to the people of Wisconsin, it adds an unneeded expense to the trial of cases. For example, the jurors were sequestered in this case, when they otherwise would not have been." Finally, in response to the query as to whether the use of cameras had any overall advantages, our observer quotes the prosecutor as follows: "None. There is not a need for the extra coverage allowed by the use of cameras. The media are there only to present sensational issues to the public, not to satisfy the public's need to know. This is well illustrated by the manner in which the cameras have been used up to this time."

(4) THE CASE OF FILEMON AMARO

Accused of first degree murder and abduction of a hostage in a stolen vehicle, Mr. Amaro was put on trial before a sequestered jury, in Waukesha, on November 27, 1978, with Judge Max Raskin presiding. Public television channel 36, with the full approval of Judge Raskin, broadcast the entire trial live after the jury had been selected. According to a news story written by John Schroeder for the Waukesha Freeman, November 10, 1978, Judge Raskin adopted the following guidelines for this particular trial:

> "The cameras can focus on trial witnesses only momentarily. Raskin said he wants to avoid making the witnesses anxious.
>
> "No closeups of jurors will be allowed.
>
> "The camera is to be placed at the rear of the courtroom to avoid blocking spectators' views.
>
> "Reporters won't be allowed to speak during the trial. That includes a ban on talking even quietly into a microphone."

In a news release dated November 13, 1978, Channels 10/36 noted:

> "Both Judge Raskin and 10/36 General Manager Otto Schlaak, feel that televising this trial is in the interest of the public for the following reasons: it will demonstrate exactly how the court system works, and show the complexity of a murder trial in which the defendant is assured and guaranteed his right to a fair trial. This trial should also prove to the public one of the basic tenets of the American judicial system, that the defendant is presumed innocent until proven guilty."

Furthermore, 10/36 Program Manager, Don Burgess was quoted as follows:

> "We are committed to stay with the trial as long as it lasts and we will not, during the trial's duration, editorialize, opinionate (sic!), or analyze the effects of what happens. We will only televise and report the event as it happens."

Since Mr. Amaro was a Spanish American, some members of Milwaukee's Spanish community protested the televising of the trial, on the ground that it would have the effect of stirring up group prejudice, and tend to reinforce a sense of stereotyping against the Spanish community as a whole. Responding to such complaints, Dr. Schlaak pointed out that while he recognized that at

least part of the Spanish community had honest concerns about the impact of broadcasting the trial, "we would have a very hard time finding any trial where the person being tried didn't reflect on some portion of the community." He also noted that the Milwaukee Sentinel reporter who covered the Amaro case "formed the impression that the two cameras...had little or no effect on the attitudes and demeanors of the participants. The reporter said that he saw no 'camera glances' by anyone involved in the case. He said that with the red 'on the air' lights disconnected and a minimum of movement while 'panning' from one side of the courtroom to another, both cameras were very inconspicuous. Generally, the reporter said, everyone involved forgot that the cameras were present." (Milwaukee Sentinel, December 1, 1978).

Editorial opinion in responsible newspapers in the area rejected the notion that the televised trial involved an ethnic slur. In an editorial published by the Milwaukee Journal on November 30, 1978, it was noted that there was great public interest in the trial because of the unusual nature of the incident in June which led to the trial. "We think that fact, rather than any effort to highlight alleged deviant behavior on the part of Hispanics, led to the choice of this case for live TV coverage...No reasonable viewer is likely to be swayed by racial or ethnic bigotry as a result of watching the trial on TV. The unreasoning bigots among us doubtless would hold their prejudices if these proceedings were sealed." The editorial went on to argue that while minorities are fully justified in saying that media images are often negative, the remedy lies in insisting on balanced coverage, but that "it does not lie in an ill-advised effort at restraining the flow of information."

In addition, an editorial published in the Waukesha Freeman on November 23, 1978, took the position that the Amaro trial was not singled

out for televising because the accused was of Spanish extraction; it merely happened that this trial was the first involving a murder charge in the area since judges in Wisconsin were first given permission to allow television cameras in the courtroom. The editorial also noted that almost every defendant could make similar objections on such grounds as nationality, sensitivity or an alleged right to anonymity. "The judicial system depends for its credibility and the protection of those brought before it on the principle that proceedings shall be open to the public. To tamper with that requirement can only be detrimental to our system of jurisprudence and the philosophy supporting it." In an editorial published on December 11, 1978, as the trial was drawing to an end, the Freeman expressed the opinion that "it can be said without arguments to the contrary that the experiment of television in the courtroom has successfully passed its first critical test in Wisconsin." The editorial argued that the experience disproved all of the old objections, such as the danger of distracting from the essential dignity of the court proceedings, the distraction of witnesses, the degrading of the court, or the creation of misconceptions in the mind of the public.

Similarly, an editorial published in the Racine Journal Times on December 12, 1978, pointed out that "the Amaro case was not singled out for television because the accused happened to be Hispanic. There has been considerable public interest in the proceedings because of the shocking nature of the crimes." It also noted that Channel 36 "has taken pains to avoid turning courtroom drama into a carnival atmosphere." It concluded with the observation that "as long as news photographers are discreet and don't interfere with the proceedings, they should be allowed in courtrooms so the public can get a better understanding of our system of justice."

In a letter to the committee dated January 9, 1979, Judge Raskin made the following comments about the inferences he drew from his experience with the Amaro case:

From this experience I draw the following conclusions:

(a) I found the placement and use of the two cameras in the courtroom to be unobtrusive, not to have distracted trial participants and not to have interfered with the progress or process of the trial under the guidelines previously established by the court.

(b) No editorial or critical comment was permitted to be made by channel personnel from court premises.

(c) Two problems arose with respect to witnesses refusing to be televised while testifying. One was a witness for the state. The District Attorney asked that the cameras be turned off while he is testifying for the reason that he feared for his life. In view of the fact that this witness was under a criminal charge and was about to be tried, I believed that compelling him to testify with the cameras turned on might interfere with the state's prosecution of that witness on an unrelated charge.

The second instance arose when the defendant who had entered a plea of not guilty by reason of mental disease or defect, and who had already been found guilty by the jury in the first phase of the trial; said that he would refuse to testify in his own behalf during the second phase if he was to be televised while testifying.

In order to avoid a constitutional issue I agreed that while he is testifying the cameras were not to televise him. He testified and no further complications arose.

(d) All witnesses except expert witnesses relating to the mental condition of the defendant were sequestered. This presented the problem whether any witness was watching the telecast away from the court house before being called to testify. I informed counsel that any witness may be voir dired outside the presence of the jury with respect to whether a witness listened or watched other witnesses when testifying. No such requests were made.

(e) The above situation could become a problem and my recommendation for the future would be that all lay subpoened witnesses including police officers receive a written order from the court banning them from listening to other witnesses testifying, provided such a request is made by counsel. The fact that a witness who violates the order may not be permitted to testify would tend to insure enforcement of the order.

(f) Throughout the trial I did not permit any inquiry by counsel touching upon the subject of the presence of television cameras. My position was that the presence or absence of cameras should not be made a subject of controversy or comment in the presence of the jury. I looked upon the presence of the cameras as pieces of equipment and no different than the presence of a newspaper reporter sitting in court and making notes.

(g) Of significance was the fact that I directed channel personnel that the red beam lights in front of the cameras indicating that the particular subject was being televised were to be turned off. This in no way affected the televising process and at the same time gave no indication to the witness or anyone else that the camera was in use.

(h) From my observations I could detect no impact upon Jurors, Witnesses or Counsel by reason of the presence of the television cameras. Nor was there any adverse impact upon the defendant, other than what was noted previously.

(i) I found the administrative responsibility in moving the trial along no different than any other times. I experienced no burden with the television cameras being present in court.

(j) There was complete cooperation from all television and channel personnel.

(5) BAIL HEARING OF RAY MENDOZA

This hearing was held before Circuit Judge Robert W. Landry, on September 15, 1978. The issue was whether Mendoza's bail money should be forfeited as a result of Mendoza's alleged violations of conditions relating to his trial. Audio and visual material were used in the courtroom; two cameras were used, one being carried and the other being permanently stationed in the back of the courtroom. According to the committee's observer, the stationary camera was out of the immediate sight of those within the courtroom, and thus presented no problem of distraction. The carried camera, however, presented more of a problem. The cameraman carried the camera into the courtroom, before the judge arrived on the scene, to shoot a close-up of defense counsel James Shellow. He also shot a close-up of those members of the Mendoza family who were present, and our observer records that they were "noticeably uncomfortable as a result." There being no jury, our observer noted that it was

difficult to assess the impact of the media. "The professionals (the judge and counsel) were apparently unaffected. Some of the camera techniques were potentially objectionable; yet the fairness of the proceeding was untarnished."

The committee observer was able to interview both Judge Landry and assistant district attorney T. Hammer. Judge Landry, who has served on the bench for over 24 years, responded to the questions put to him with commendable candor. Asked whether the cameras exerted any influence on him, he responded: "None that I am consciously aware of. Everything is on the record anyway. I really don't consider that publicity makes a difference, since our trials are already public proceedings." But Judge Landry also pointed out that as a result of the presence of cameras in the courtroom, "there is an increase in supervisory responsibilities. Yet, once the newspeople get used to your guidelines, the procedure is self-executing." Asked whether the additional responsibilities interfered with his principal duties as a presiding judge, he replied in the negative. In reply to the query as to whether the use of cameras produced more letters, phone calls, etc., he replied: "None- at least I have never had that problem in the past." Asked about the impact of the cameras on witnesses, Judge Landry replied: "I think it does make the witnesses more nervous at first. However, the effect becomes considerably diminished as the testimony of a witness continues." As for the behavior of counsel, the judge observed: "There is probably what I would consider a small effect on counsel, which might make them more theatrical." Judge Landry was asked whether problems occurred because of the use of the cameras, and he replied, "None", and he gave the same response to the question as to whether the length of the trial was affected. He also declared that the use of cameras had no effect on the outcome of the proceeding. He explained: "Under the controls as presently prescribed by the Wisconsin Supreme Court,

the possibility of abuse is minimal. However, if the media violate the rules, they could affect the outcome. For example, I know of an incident in Judge Barron's courtroom where, contrary to specific instructions by the judge, the media reported the jurisdictional award to the public. Even considering such potential for abuse, I still do not favor prohibition of news coverage in the above forms."

Judge Landry was asked whether he had received any requests to prohibit the use of camera and sound equipment in the proceeding. His reply was as follows, as recorded by the committee's observer: "In the Mendoza trial, both state and defense counsel vigorously argued that television not be allowed in the proceeding. I denied the request. That denial was appealed to the Wisconsin Supreme Court, and affirmed. Application is presently before the United States Supreme Court on the same issue. I denied the request because I felt that the Wisconsin Supreme Court had made a policy decision to allow cameras and other media in the courtroom, and that therefore, they should be allowed in the great majority of cases." Asked for an overall judgment, Judge Landry responded as follows: "Overall, I am favorably disposed to media presence. I feel the public has a right to know what is happening in a courtroom. However, I wish that the media would attempt to present a more objective picture of what is happening in the courtroom. The public should be proud of the good job that the courts are doing for them. However, when the public only sees the sensational issues being presented, they get a perverted idea of what is happening in the courtroom."

Assistant district attorney Hammer, responding to the question as to whether the cameras exerted a distracting influence upon him, replied in the negative, but added, "However, since this was a non-jury hearing, my answer does not reflect my true attitude toward camera use." He said that the use

of cameras in the courtroom did not affect the strategy of litigation he intended to use, and did not have any impact on his contacts or relationship with the judge. As for the impact upon the manner of examining or cross-examining witnesses, Mr. Hammer said, "There was an effect. I refrained from asking questions I otherwise would have asked because part of the proceeding was to be seen on T.V." Whether he received more letters and telephone calls than usual, he replied that "it is impossible to say right now, immediately after the proceeding." Mr. Hammer said that in his judgment the use of cameras did not affect the length of the proceeding or its essential fairness. Asked if he had an overall preference, he replied: "I would try a case without cameras. Witnesses have a tough enough time responding to the normal pressures of the courtroom without the added pressure of publicity. Furthermore, it is distracting for all involved." Finally, when asked whether he saw any overall advantages in the use of cameras in the courtroom, Mr. Hammer replied: "If the entire proceeding were filmed, the films could be used as a training technique for law students. However, erratic as the coverage is, it serves no useful purpose whatsoever."

(6) THE SENTENCING OF ROXANNE STEVENS

In October, 1978, Roxanne Stevens, on a no-contest plea, was convicted for neglecting her children, two of whom suffered smoke inhalation and died after a fire in their apartment. Cameras were permitted during Stevens' initial appearance in September, and at a session on October 11, when she waived preliminary hearing, pleaded no-contest, and was found guilty by Circuit Judge Clarence W. Nier of Brown County. On motion of her counsel, however, the cameras were banned from the courtroom for the sentencing. The following excerpts from a lengthy account of this matter written by reporter

Ellen Zettel and published in the Green Bay Press-Gazette on November 19, 1978, explain what happened:

> A victim of telephone harassment, the woman has alledgedly suffered from the publicity her case has brought. She has been embarrassed and ridiculed. With television and still cameras focusing upon her at the sentencing, she might be reluctant to speak on her own behalf.
>
> Her attorney, Geoffrey Dowse of Wisconsin Indian Legal Services, claims that "the presence of audio and visual equipment in the courtroom has previously caused her great mental anguish and has subjected her to undue public scrutiny."
>
> As a result, the equipment will be prohibited from the courtroom upon the order of Brown County Circuit Judge Clarence W. Nier, who will preside during the sentencing of the 23-year-old mother.
>
> News professionals, however, have some trouble understanding the reasons for the ban. This is one instance of the media's attempt to define what constitutes "reasonable cause" for prohibiting audio-visual equipment during this trial period of access to the courtroom, which started April 1 and ends March 31, 1979.
>
> Dowse requested the ban on audio-visual equipment from the courtroom on Oct. 17. He has nothing against cameras being set up outside the courtroom-- "just not while we're in there.
>
> "Sentencing is so important," he explains. "Any feeling of unease is going to influence how I argue for sentencing and it's going to influence Roxanne if she's going to make a statement."
>
> Cameras were permitted during Stevens' initial appearance in September and at a session on Oct. 11 when she waived her preliminary hearing, pleaded no contest and was found guilty by Nier.
>
> The attorney says that the presence of cameras works to destroy "personal" quality of an appearance before a judge for sentencing. "Sentencing is a one-on-one thing between a judge and a defendant," he says.
>
> Nier says he granted Dowse's request as the presiding judge in the Stevens case "because her attorney pointed out to me that she had great exposure at the time she waived her preliminary hearing, and as a result of that exposure, if cameras were in the court at the time of sentencing, she might decide to stand mute. I would want her to tell me her story."

Nier and Dowse say they respected Stevens' wishes "to stay as much away from the public as possible."

According to Dowse, "Roxanne has been living in a fishbowl ever since this happened last summer.

"She had some phone calls from people in our community that called her a murderer," he explains. "These phone calls came from pretty sick people who consider her sick."

Dowse says his client has not complained about annoying phone calls lately. Most of the calls were apparently provoked just after news of the fire and the subsequent deaths of the two children was reported.

He adds that Stevens has been living in Oneida with her mother, who has been in poor health and was hospitalized shortly after the incident. Her mother was terribly shaken by some of the phone calls which she answered.

"The media in general made such a big story of the case that it has been almost impossible for Roxanne to live a normal life," he says.

Dowse stresses that he thought that photographers and camera operators "did a good job last time." He feels that, for the most part, they abided by the state Supreme Court's guidelines regarding audio-visual equipment in the courtroom.

However, he points out the instance when a television camera operator "chased Roxanne down the street" just after her last court appearance.

There seems to be no question among news personnel that reasons such as the fear of physical harm or of undue embarrassment serve as just cause for banning cameras from the courtroom. But they hesitate at allegations that the defendant may not be able to speak in his or her own behalf with cameras present.

Charles Leonard, news director at WBAY-TV and media coordinator for the 8th Judicial District, says he felt the reasons given for the ban-- namely, that the defendant suffered "great mental anguish" and "undue public scrutiny"-- are "a little foolish."

He notes that cameras were permitted at Stevens' two previous court appearances. "It seems to me that barring the cameras from the courtroom is like closing the door to the barn after the cows have escaped," Leonard says, adding that he is speaking as a journalist and not as the media coordinator.

Leonard says the fear that Stevens might stand mute is "Probably a fairly valid cause" to ban cameras. "You would have to know the individual before you make that kind of judgment, but there are people who just can't talk before a camera."

He adds that Nier, as chief judge of the district, has been "quite supportive" of the media in their attempts to bring cameras into court. "He's been very good to us."

(7) OTHER PROCEEDINGS

Wisconsin Bankers' Assoc. v. Mutual Savings & Loan Co.

This case involved the use of cameras in a court of appeals. Oral argument was heard on September 25, 1978. In this instance, Judges Decker and Cannon presided. The case involved the use by savings and loan associations of sight drafts. According to the banks, this practice constituted an infringement on areas traditionally reserved for banks.

The committee's observer made the following comments:

"The attorneys made their arguments without ever looking at the cameras set up in the back of the Court of Appeals. While one was busy speaking, the others were preparing rebuttal to what was being said. Although Attorney Brody appeared nervous, it was difficult to determine whether the camera was the source of his hesitant manner.

"The judges involved, Judge Decker and Judge Cannon, also appeared unaltered by the camera presence. They were engrossed in the argument being presented. It would seem that in a proceeding of this nature - without a jury - they could more easily disregard the media activities. Their supervisory responsibilities seem lessened immensely when there is no possibility of jury prejudice.

"As Attorney Friedman told me after the proceeding, the camera presence has little effect on trial attorneys and judges. They are hardened to publicity and accept it as an every-day occurrence. It is only when a jury is present that prejudice will possibly result."

Observations from Circuit Judge Peter G. Pappas of LaCrosse

Circuit Judge Peter G. Pappas, who sits in the Circuit Court of LaCrosse County, wrote a letter to the chairman of the committee on May 9, 1978 recounting some of his experiences with the media people and expressing several opinions about the use of cameras in the courtroom. Portions of this letter follow:

"At the time that the rules were announced by the Supreme Court, there was pending in my Court a court matter involving annexation of a portion of the Town of Medary by the City of La Crosse which had great interest in the community and the first hearing was scheduled for March 29th, 1978 and even though that was prior to April 1st, I felt that, in view of the fact, that a jury would not be involved, that would be an excellent opportunity, to allow radio and T.V. into my Courtroom for the first time.

"I met with the media representatives and they made arrangements for the placing of their equip ment, etc., and frankly, I felt that it went very well. There was no posturing by the attorneys, as a matter of fact, very soon after the trial started, I think that we were all pretty well oblivious to the presence of the media.

"There was a subsequent hearing on April 18th, 1978 and it also was covered by the media, although not to the extent that it had been covered the first time. Again, there was nothing unusual that happened, and no problems posed insofar as conduct of the trial was concerned.

"Early in April there was a trial involving charges of Soliciting of Prostitution and Keeping a House of Prostitution, and although the media had evidenced some interest in it, the only coverage was a newspaper photographer coming in and taking some still shots and one of the T.V. reporters came in with a hand-held camera and took a few pictures. Prior to that trial, I had had some indication that this particular reporter was coming in because she had approached me and told me that she would be coming in and wondered if I had any objections. I had told her that I had no objections except that I did not want any pictures taken of the State's undercover agents. No objection was raised by the reporter to this and, as a matter of fact, she went out of her way to make certain that she did not get any shots of the undercover agents. She even went so far as to delete part of her film when she discovered she had the backs of the heads of two of the agents which had gotten into her picture because of the scope of the lens.

Since then, they have come in on an occasional basis, although I have not had the same set-up of equipment that they had at the March 29th hearing....

"So far, the only media that we have had interested are the two local television stations, the Television Department of Western Wisconsin Technical Institute which has a connection with cable television and then the three local commercial radio stations plus the University radio station.

"When the jury was present for the trial I have referred to, they did not seem to be at all aware of the fact that there were

any photographers in the Courtroom taking any pictures. As I was observing them closely, their attention did not go from the witnesses and the attorneys to the back of the Courtroom to be curious as to what might be going on.

Our local media people, even though very competitive, have been very cooperative and responsible. Now, this attitude might change if the rules are eventually changed so that their admission to the Courtroom will be more or less a matter of right, rather than on a trial basis, as at the present time, but I do not anticipate any problems that cannot be handled. I could foresee if we had a trial which was so notorious as to bring in network people, and if that should ever happen, then I am quite certain that the Court would probably have to lay down some pretty tight rules because otherwise, I have no doubt that they will do anything at all possible to gain some sort of competitive advantage.

As the year goes on, and if I have any additional experience which would lead me to come to a different conclusion, I will certainly let you know. But at this point, I see no problems attendant to allowing cameras, radio, and television into the Courtroom."

A Fire and Police Commission Hearing

On July 5, 1978, Mr. William A. Adler, an attorney in Eau Claire, and a member of the committee created to monitor the use of photography in the state's courtrooms, wrote a letter to the chairman of the committee regarding his experiences with the media. Since his account and observations have a direct bearing upon the problems confronting the committee, the letter is herewith reproduced in full:

"I have just completed a highly publicized Fire and Police Commission trial that covered a period of some seven weeks. The hearings were conducted in the Altoona High School Gymnasium with spectator crowds of from 200 to 300 people filling chairs set up on the gym floor and bleacher seats along the walls. The commission members, counsel and principal parties, including court reporter, were all seated at a table grouping out on the gymnasium floor. There were times when the crowd reaction was quite disturbing -- on one occasion to the point where the president of the Police and Fire Commission announced that he was going to move the hearing to smaller quarters. With adequate warning the crowd became somewhat subdued at later hearings.

"In this atmosphere there was constant monitoring by representatives of radio, television and the news.

"The television cameras were moved from point to point in the hearing room and the camera itself was backed up by a bank of several rather high intensity lights. The intensity was such that the commission members complained of the lights shining in their face on at least one occasion.

"Around the table where the commission members, attorneys, etc. were seated, were several microphones. The floor in the area had many wires from the audio and tv equipment.

"During the course of the trial, radio and media people would place hand-held recording devices on the tables and in proximity to the witnesses to record what was being said.

"In short, the entire atmosphere was violative of practically all of the standards for maintaining decorum that have been set up by the Court for the year study period. Of course, this was not a court hearing, it was a commission hearing.

"Because of my membership on your committee, I was interested in what my personal reaction would be to the presence of the media and I also made inquiry of some of the witnesses and other parties involved.

"My own reaction was that I was almost completely oblivious to what would be considered a very distractive atmosphere. I recall having to watch my step when handling exhibits so that I didn't trip over some of the wires strewn around the floor. I recall several instances when I was giving a somewhat prolonged address to the members of the Police and Fire Commission that I had to adjust my position, at the direction of the media people, so that I was either in line with the television camera or I didn't block the television camera's view of what was going on. I recall that there was some distraction resulting from either inoperation of the microphones or my not being in a position to be picked up properly by the microphones and the various recording devices. However, these distractions, I did not feel, affected my presentation of my client's case.

"Considering the exaggerated atmosphere I was in and relating that atmosphere to what we would hope to find in the courtroom in a proceeding that complied with the rules that have been set up, I do not feel that camera noise and the other possible areas of distraction set forth in the Dillabaugh report would have affected me.

"As far as the reactions of witnesses, commission members, etc., they indicated an initial awareness of the media and media equipment but did not feel that their presence had any particular affect on them as far as giving their testimony or the nature of their testimony. In other words, their awareness appeared somewhat transitory and once they began answering questions, they seemed to be oblivious to the effect of media.

"As to the overall effect on the hearings themselves and the people who had to make the ultimate decision, this would be extremely difficult to evaluate since the matter was quite emotional, was highly publicized, and, the overall psychological impact would be impossible to evaluate at this time.

"I send you these comments for purposes of allowing the committee to contrast a completely uncontrolled situation with the court cases that will be reviewed under controlled, restrictive circumstances."

Case of Larry Solles and Steven Drenning

Solles and Drenning were convicted in August, 1976, in Rock County, of the shooting death of a gas station attendant in Janesville, and given the maximum sentence of 60 years. At the hearing for a new trial, Judge Gerald Jaeckle ordered cameras and tape recorders out of the courtroom, on motion of the public defender's office. This was reported in the Janesville Gazette for April 11, 1978, but no reason was given in the press account for the judge's order.

Case of Barbara Hoffman

At the arraignment on a charge of murder, in the Circuit Court for Dane County, Hoffman's lawyer, Mr. Donald Eisenberg, objected to the presence of cameras in the courtroom, alleging that their presence there constituted a "cruel and unusual punishment." Mr. Eisenberg claimed that his client was "so frightened" that she could not talk in front of the cameras. Mr. Eisenberg, however, did not ask the court, by motion, to bar cameras, apparently being content merely to state his point. All this was reported in a story appearing in the Capital Times of Madison on April 7, 1978.

Case of Paul T. Jones, Jr.

According to a story which was published in the Milwaukee Journal on April 25, 1978, Circuit Judge Robert W. Landry of Milwaukee barred

television and radio recording in the murder trial of Jones. However, Judge Landry did permit the use in the courtroom of still cameras operated by newspaper photographers. The judge, according to the news account, expressed concern about possible references by witnesses to a particular juvenile witness; the witness had informed the court that he feared for his safety if identified. The matter was appealed to Chief Judge Michael T. Sullivan who, on April 25, 1978, declined to overrule Judge Landry's decision in this case. [1/]

III.

FEDERAL AND STATE VIEWS

The special interest of the American legal profession in the photographing of trial proceedings dates from its concern with the events that occurred at the Lindbergh kidnapping trial in 1935. Unquestionably, the trial of Bruno Hauptmann was conducted in a circus atmosphere, with some 700 newsmen and 129 photographers milling about the little town of Flemington, New Jersey. See State v. Hauptmann, 180 A. 809 (N.J. 1935), cert. denied, 296 U.S. 649 (1935). The events at Flemington led to the adoption by the House of Delegates of the American Bar Association, in 1937, without debate, of Canon 35 of the Canons of Judicial Ethics, a rule banning all still photography and radio from the courtroom. In 1952 the Bar Association added television to Canon 35. Rule 53 of the Rules of Criminal Procedure for the U.S. District Courts is to the same effect, providing as follows: "The taking of photographs in the courtroom during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the courtroom shall not be permitted by the court." Thus it is clear that neither still photography nor televising of proceedings is permitted today in any federal court.

[1/] The observer's report of State v. Patri tried in La Crosse County before Judge Frederick Fink was not received in time to be included in the report. Because the observer Joseph Zobin did a thorough job of interviewing witnesses and all of the jurors, his report is included as Appendix I.

There is, however, at the present time, no federal due process rule which forbids the states to permit photography in their own courts. The key decision on this point, Estes v. Texas, 381 U.S. 532 (1965), did not, as is often asserted, prescribe a specific rule on the point. Estes, a much-publicized financier, was convicted in a Texas District Court of the offense of swindling, after a trial of great notoriety, portions of which had been televised and broadcast over his objection. While Estes succeeded in persuading the U.S. Supreme Court to set aside his conviction on the due process ground that he had been denied a fair trial, only four Justices voted in favor of a per se rule which would flatly forbid the televising of trials by state courts over objection. The opinion of the Court, pronounced by Justice Clark, was only a plurality opinion of four Justices. Justice Harlan concurred separately in the judgment of the Court, but he rejected the concept of a per se rule against the televising of courtroom proceedings. He voted to reverse on the ground that all things considered, this particular criminal trial, of such great notoriety, had been flawed by the failure of the trial judge to control his environment, but he added that "forbidding this innovation,...would doubtless impinge upon one of the valued attributes of our federalism by preventing the States from pursuing a novel course of procedural experimentation." (381 U.S. 587) Thus, in a very brief explanatory opinion, Justice Brennan stated: "I write merely to emphasize that only four of the five Justices voting to reverse rest on the proposition that televised criminal trials are constitutionally infirm, whatever the circumstances.... Thus today's decision is not a blanket constitutional prohibition against the televising of state criminal trials." Justice White, who also dissented, observed that we do not know enough about the impact of television to warrant the framing of a general per se rule. In his dissenting opinion, Justice

Stewart pointed out that the techniques of public communication are subject to continuous and unforeseeable change, and that the Court should not interfere with the considerable discretion of the trial judge. Even Justice Clark, who wrote the plurality opinion, concluded with this observation: "It is said that the ever-advancing techniques of public communication and the adjustment of the public to its presence may bring about a change in the effect of telecasting upon the fairness of criminal trials. But we are not dealing here with future developments in the field of electronics. Our judgment cannot be rested on the hypothesis of tomorrow but must take the facts as they are presented today." (381 U.S. 551)

It must be noted that the Estes case was not only inconclusive on the point at issue, but was decided fifteen years ago. Most assuredly, there have been tremendous improvements since then in the equipment and techniques available for television and still photography. It may be said with some confidence that the electronic media have developed technologically to the point that still cameras and broadcasting equipment are no longer obtrusive. Furthermore, many states have proceeded on the assumption that the Estes case did not settle the issue. Indeed, all over the country electronic equipment has been used in many aspects of judicial proceedings, to record testimony, to record police line-ups, to record confessions and statements by material witnesses. Furthermore, there were several instances of the broadcasting of trials in the 1950's in a few states, e.g. Texas, Kansas, Oklahoma and Idaho. By order of February 27, 1956, the Supreme Court of Colorado voted to permit the photographic coverage of certain trials, provided that all parties involved had given their prior permission. The Florida Supreme Court began an experimental year of broadcasting trials by order effective July 5, 1977. At the present time, the Florida Court has under advisement the question of

making the experimental rules permanent. Today about fourteen states permit some sort of broadcasting of judicial proceedings under a wide variety of rules. Thus, the Supreme Court of Louisiana began a one-year trial for one district court, beginning February 23, 1978. The highest courts of Minnesota and Montana have recently authorized one or two-year experiments with broadcasting trials. In New Hampshire, broadcasting is entirely within the discretion of the trial judge. In Tennessee broadcasting is permitted only in the State Supreme Court. New Mexico is conducting an experiment which requires all participants in the trial to give their consent. Since 1975 the Supreme Court of Alabama has permitted photography subject to authorization by the presiding judge, and any participant may request that the cameras be turned off. Currently, the issue is a live one in several states, including California, Kentucky, Ohio and Oklahoma.

Thus, it is worth noting that in August, 1978, the Conference of Chief Justices, by a vote of 44-1 adopted a resolution which would relax ABA Canon 35. The resolution declared that the supervising appellate court "may allow television, radio and photographic coverage of judicial proceedings in courts under their supervision consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice." On the other hand, in February, 1979, the House of Delegates of the American Bar Association voted against courtroom photography.

The experiment with courtroom photography in Florida has stirred up a great deal of interest. The guidelines were put to a serious test in the widely-discussed murder trial of Ronny Zamora. Dade Circuit Judge Paul Baker, who presided over the Zamora trial, declared: "The First Amendment right to a public trial means just exactly what it says." Defense counsel

Ellis Rubin advanced, without success, the very unique defense of "television insanity," but this made for a very dramatic trial which riveted the attention of hundreds of thousands of Floridians. Trial Judge Baker, at its conclusion, pronounced the conduct of the case as worthy of being viewed as a "success." During the experimental year in Florida, several murder trials were televised in their entirety, as well as an insurance fraud trial in Dade County. One judge turned off the cameras to prevent the filming of testimony by several federal informants who were living under new identities, and one judge forbade the filming of a 16-year old rape victim. A report by three professors at Florida Technological University concluded that 76.6% of the 130 circuit judges who responded to a survey indicated that the television cameras caused no "serious distraction" in court, and 68.1% of these judges said that the television cameras had no "adverse influence" on witnesses. Furthermore, of the 52 jurors who were questioned, 56% said that the television cameras were not distracting, while 35% thought they were. Said Chief Justice Ben Overton at the end of the experimental year: "There have been no substantial problems presented in this court with regard to the pilot program." As reported in a story by Al Messerschmidt in The Miami Herald for June 30, 1978, however, there is formidable opposition in Florida to making the experimental rules permanent, from the Florida Bar, the state's Conference of Circuit Judges, the Florida Public Defender's Association, and prominent private defense attorneys. By a 4-3 vote, the Supreme Court of Florida refused to extend the experiment beyond the designated year, and the matter is still under advisement.

On January 3, 1979, the Chairman of this Committee wrote a letter to all circuit judges in Wisconsin, requesting their reaction to whatever experience they may have had, or were aware of, with regard to the impact of photography

and radio broadcasting in the courtroom. Specifically, the judges were requested to state an opinion, with or without supporting rationale, as to whether or not they approved of the televising of courtroom proceedings, and they were encouraged to comment on the guidelines prescribed by the Supreme Court for the experimental year. The Committee attaches the highest importance to the views of the judges who preside over our general-jurisdiction trial courts, for, after all, they are right on the firing line, and must live with the rules laid down for their guidance. It is highly regrettable that a majority of the 181 circuit judges did not reply, at least by the day which had to be treated as the cut-off date for the preparation of this report. But, of the 55 circuit judges who did reply, 44 judges indicated, in one fashion or another, that they approved of the televising of trials, and did not believe that photography in the courtroom defeated the holding of fair trials. Candor suggests that it ought to be stated that approval was expressed in many different ways, some with whole-hearted enthusiasm, and other rather grudgingly. On the other hand, only 8 circuit judges clearly expressed opposition to the use of photography in the courtroom, although here again the opposition was expressed with varying degrees of emphasis. Only one circuit judge went so far as to pronounce the year's experiment a "flop". On the other hand, Judge Richard G. Greenwood of Green Bay spelled out a fully reasoned statement of opposition to the televising of trials. He alluded to the technological difficulties involved, the reporting out of context where only portions of a trial are televised, "the natural fear and anxiety" of witnesses, though he was not worried about the impact upon judges and lawyers, the belief that sensitive personal matters, as in divorce cases, should not be exposed to the view of the public at large, and the conviction that the open court room suffices for those who are interested in finding out how our courts operate. Three responding judges expressed no opinion.

Some 11 judges said, in various ways, that our courtrooms are not physically adequate to accommodate television cameras and should be altered accordingly. On the other hand, 7 judges took the position that the alteration of existing courtrooms to accommodate television is not an expense which the county should be asked to assume. Apparently the tenor of their remarks on this point was that since television is a commercial enterprise, it ought to pay its own costs. Perhaps a short answer would be that the televising of trials, at least in the view of this Committee, is in the public interest. Several judges stressed the importance of retaining intact the authority of the trial judge over his courtroom. Several judges thought that television is interested mainly in sensationalism, and broadcasts only bits and pieces of trials, from which it follows, in their view, that broadcasting by television is not likely to be as educational to the general public as is generally asserted. Five judges took the position that it is too early to arrive at a firm policy, and that the experimental period should be extended in order that a final decision can be made on the basis of a more substantial experience.

The Committee regrets that it heard from only a minority of the circuit judges, although 55 returns out of a possible 181 represent a substantial sample worthy of our attention. No doubt, if we waited longer, more replies would drift in, but in order to get this report prepared in time for submission to the Court on the agreed-upon date, we had to be content with the replies that had already come in. On the whole, the Committee reads the replies as indicating that a substantial majority of the circuit judges either approve of the televising of trials, or at the very last, do not disapprove of doing so. The Committee attaches considerable weight to this body of expert opinion.

IV

BASIC POLICY VIEWS OF THE COMMITTEE

The basic concept upon which this report rests was well stated by Justice Douglas in a leading case decided in 1947: "A trial is a public event. What transpires in the courtroom is public property. . . . Those who see and hear what transpired can report it with impunity. There is no special prerequisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." Craig v. Harney, 331 U.S. 367, 374. In a larger sense, there is a growing feeling in the country, as reflected in many open-meeting state statutes and in such federal statutes as the revised Freedom of Information Act, that the general public has a right to know what is going on in all branches of government at all levels. As stated by Justice Joseph A. Boyd, Jr., of the Supreme Court of Florida, in a recent law journal article: "The dramatic political and governmental revelations of recent years have inspired a renewed interest in public affairs. Citizens are becoming increasingly conscious of their right to be informed about the activities of their local, state and federal governments. Public institutions are responding to this growing citizen awareness by becoming more open to the public view." ("Cameras in Court: Estes v. Texas and Florida's One Year Pilot Program," University of Miami Law Review, Vol. 32, 815, September, 1978).

Accordingly, the committee concludes unanimously that under appropriate guidelines pronounced by the Supreme Court and administered by the state's trial judges armed with a broad discretion to exercise necessary control over the judicial environment, still photography, radio broadcasting and

television cameras should be permitted in the courtrooms of the state. The committee is well aware of the objections generally voiced by those who oppose photography in the courtroom, and it is not prepared to assert that the objections are wholly without merit. There is some danger of distraction; it is quite possible that some witnesses will be affected by the knowledge that they are on the television screens of the community; and it is even possible that some attorneys and judges will alter their behavior because of the cameras, but while in some cases they may be tempted to strike special poses, on the other hand, the presence of cameras may well have the effect of reducing irascible behavior from the bench and rudeness from the counsel table.

On the basis of the evidence which has come to the attention of the committee, it has concluded that the advantages of permitting audio-visual coverage of the courtroom outweigh the disadvantages, and that within rules duly pronounced by the Supreme Court, and with more experience with the problems involved, and the development of better and more efficient cameras, procedures can be followed which would not defeat the right of parties involved in litigation to have fair trials.

So far as the broadcasting of courtroom proceedings by radio is concerned, the committee is unaware of any serious objections. Many modern courtrooms are already equipped with sound systems, and in such instances all the radio people have to do is to plug their equipment in the existing system. Even where courtrooms do not have electronic sound systems, the amount of equipment which the radio people would have to bring into the courtroom would be so minor in bulk, and so unobtrusive, as to present no problems worth discussing. Of course, the operator of the radio broadcasting apparatus should

not be permitted to speak into the mike in the courtroom while the trial is proceeding, but apart from this, the committee is unaware of any problem which would make radio broadcasting of judicial proceedings unwise or undesirable.

Similarly, the committee sees no serious problem in permitting still photography on the part of still photographers, even though the committee recognizes a sound problem. Of course, as the present rules make clear, no flash or other special lighting should be permitted, but modern still cameras are now so efficient and so sensitive that good pictures can be taken with ordinary lighting in the room. Still photographers should not be permitted to move about the courtroom for picture-taking purposes, however, and the judge and the bailiff should make that clear, and if a press photographer persists in violating this simple rule, then that person's right to take pictures in the courtroom should be withdrawn. Furthermore, the committee sees little point in insisting that once in the courtroom, the still photographer must not leave the chamber until the next recess. It is reasonable to ask that person to be in place before the proceeding begins, but once the photographer has the desired pictures, he or she ought to be permitted to leave the room. After all, visitors sitting behind the rail are free to come and go, and do come and go, during the proceedings, and the committee can see no good reason for insisting that still photographers must remain in their seats until the next recess, once they have the pictures they want.

While many people assert that television exerts a distracting influence on the participants in the courtroom proceedings, the evidence before the committee suggests that the distraction does not rise to such dangerous levels as to defeat the objective of holding fair trials. It is also argued that television has the result of imposing additional responsibilities upon an already over-burdened judge who, at least in serious criminal trials, has

many other things to do, but the general tenor of responses from trial judges in this state is to the effect that not much extra work is involved, and that as the media people and the judges and lawyers get accustomed to the processes involved in television, and particularly as there is growing familiarity with the rules of the court on the subject, trial judges will not find this a source of unduly great added work. The committee believes that it might be wise to ask the television operator to turn off the red light, which can be done very easily, and which seems to signal attention unnecessarily. The committee also believes that it would be desirable to remodel our courtrooms so that the television cameras are actually walled off from the bulk of the courtroom, and thus are as out of sight and unobtrusive as possible. Certainly it is possible to remodel the larger courtrooms for this purpose, and it is suggested that hereafter new courtrooms should be designed with this in mind, to provide separate facilities behind screens or walls for the location of the cameras.

The committee recommends that special mention should be made with respect to the photographing of the victims of sexual assault, very young children, undercover agents, relocated government witnesses, and in cases involving trade secrets, domestic relations and child custody. Furthermore, the sound of conferences between counsel and client, or between counsel and judge, should not be broadcast. Finally, the committee recommends the adoption of a rule which would control the photographing of the jury, to the extent that individual jurors are identifiable, except in extraordinary situations where consent has been given. It is obvious that in many courtrooms it would be physically impossible to photograph a witness or other participant in the proceeding which did not in some measure include the jury. What the committee thinks should be forbidden are tight shots which actually identify individual jurors. The committee is deeply concerned about the dangers involved in any

invasion of jury anonymity; jurors are drawn at the last moment from the general mass of the community, and disappear into the community when the trial is over.

As John H. Wigmore once wrote:

> "We are good friends of jury trial. We believe in it as the best system for a free people in the world's history. In spite of all suggestions to substitute the trained judge of fact, we believe that a system of trying facts by a regular judicial official, known beforehand and therefore accessible to all the arts of corruption and chicanery, would be fatal to justice. The grand solid merit of jury trial is that the jurors of fact are selected at the last moment from the multitude of citizens. They cannot be known beforehand, and they melt back into the multitude after each trial." (Journal of the American Judicature Society, Vol. 9, p. 61, 1925).

If this is a proper view of the nature of the jury, it would seem to follow that the anonymity of jurors should be respected. An interesting letter from Circuit Judge Thomas H. Barland of Eau Claire, dated 18 January 1979, supports this position. He writes: "I have excluded the photographing of jurors. The cameramen have not been happy with this rule, but with one exception, all of the jurors quizzed as to their reactions to be photographed on a criminal case, have responded that they do not wish to be photographed. They are afraid of undue publicity or outside pressure." Similarly, Mr. James C. Eaton, the District Attorney for Barron County, wrote to the committee as follows on 10 January, 1979: "Frankly I found the cameras somewhat distracting but not a real source of irritation. My concern, however, lies with complaints of the jury who came to me after having seen the cameras and then having seen their picture all over the front pages of Minnesota and Wisconsin newspapers. The jury members that approached me were very concerned and, in my opinion, somewhat frightened by the attention. Anonymity is not a luxury in a rural community as it would be in an urban area."

V

SPECIFIC RULES RECOMMENDATIONS

The Committee closes this report with some recommendations for the revision of the guidelines which the Supreme Court adopted at the beginning of the experimental year. The Committee recommends the use of the word "Rules" instead of "Guidelines." There seems to be a formality about the term "Rules" which makes it more appropriate to serve as a body of procedural law, whereas the term "Guidelines" seems to convey an informal and tentative intent on the part of the Court. Furthermore, wherever the word "standards" has been used, the word "rules" has been substituted. In addition, the Committee recommends that wherever "presiding judge" is used, the term "trial judge" should be substituted, since the phrase "presiding judge" has a meaning of its own in Wisconsin.

This report deals with the Court's Guidelines seriatim, and adds comment and suggests changes where they seem warranted.

Court Guideline No. 1

Authority of Trial Judge

> (a) These rules of conduct do not limit or restrict the power, authority, or responsibility otherwise vested in the trial judge to control the conduct of proceedings before the judge. The authority of the trial judge over the inclusion or exclusion of the press or the public at particular proceedings or during the testimony of particular witnesses is applicable to any person engaging in any activity authorized by these rules.

Suggested Addition

> (b) The term "trial judge" includes any judicial officer who conducts a public proceeding.

Comment: This rule seems to be altogether proper, and only a minor change in its language is recommended. Many circuit judges, either in direct testimony or by letter, have indicated how important it is that the traditional authority of the trial judge to control the courtroom environment should be preserved.

Furthermore, no rules can be or should be so detailed as to cover all possible contingencies, and the judge must have elbow-room in which to make decisions relating to problems growing out of the presence of the electronic media in the courtroom. The new subsection (b) is intended to include other judicial officers, such as court commissioners, who conduct public judicial business.

Court Guideline No. 2

Media Coordinator

> The media covering each administrative district shall designate a coordinator to work with the chief judge of the administrative district and the trial judge in a court proceeding in implementing these rules.

Suggested Restatement:

> (a) The Wisconsin Freedom of Information Council shall designate for each administrative district a coordinator who shall work with the chief judge of the administrative district and the trial judge in a court proceeding in implementing these rules. Geographically large administrative districts shall be subdivided by agreement between the Council and the chief judge, with a coordinator designated for each subdistrict.
>
> (b) Where possible, the trial judge shall be given at least five days' notice of the intention of the media to bring cameras or recording equipment into the courtroom. In the discretion of the trial judge, this notice rule may be waived where cause for such waiver is demonstrated.

Comment:

The Committee believes it desirable to focus responsibility as precisely as possible for the selection of media coordinators. The original rule is much too vague and open-ended. The Wisconsin Freedom of Information Council, of which Mr. Robert H. Wills, editor of the Milwaukee Sentinel is currently President, is almost ideally suited to carry out the selection function. The Council is sponsored by the Wisconsin Associated Press, the Broadcast News Council, the United Press International, the Society of Professional Journalists, Sigma Delta Chi, the Wisconsin Broadcasters' Association, the Wisconsin Press Photographers, the Wisconsin Newspaper Association, and the

Wisconsin Universities Journalism Council. Clearly this umbrella organization represents most of the print and broadcast media in the State. It already has a standing committee, one of whose functions is to select regional coordinators.

Several witnesses who appeared before the Committee, or communicated with it by letter, called attention to the fact that some of the ten administrative districts are much too large to be supervised by a single coordinator. For example, District 10 consists of 13 counties; District 9 has 14 counties; and there are 12 counties in each of Districts 6 and 7. Accordingly, it is suggested that the rule require the creation of subdistricts, at least in the very large districts, by agreement between the chief judge and the Council.

Finally, many circuit judges have stressed the desirability of requiring the media to give them some notice of their intention to bring electronic equipment into the courtroom. They expressed considerable irritation with media representatives descending upon them at the very last moment before proceedings are to get under way. The committee believes it is reasonable to require the media to give the judge reasonable notice of what they plan to do. One judge suggested two weeks' notice, but five days' notice seems to be adequate and probably more likely to be workable. Of course, there is always the possibility of exceptions, and the judge should have discretion to waive or shorten the notice rule if good cause is demonstrated.

Court Guideline No. 3

Equipment and Personnel

(a) One portable camera (either 16 mm sound on film, self-blimped, camera, or videotape electronic camera), operated by one person is authorized in any court proceeding. One additional camera operated by one additional person is authorized if a request to film or tape the proceeding is received from a person or organization which does not have a camera of the same type as the first camera authorized. One additional camera operated by one additional person is authorized to permit a person or organization to televise live or to film the entire court proceeding from beginning to end. A maximum of three cameras are authorized under this rule.

(b) Two still photographers, each using not more than two cameras with not more than two lenses for each camera, are authorized to take photographs for the print media in any court proceeding.

(c) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes must be made through any existing audio system in the court facility. If no suitable audio system exists in the court facility, microphones and related wiring must be unobtrusive.

(d) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by these rules in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude all audio or visual equipment from the proceeding.

Suggested Restatement:

(a) Three television cameras (film, videotape, live), each operated by one person, are authorized in any court proceeding. Priority consideration will be extended to one of the three cameras to televise an entire proceeding from beginning to end.

(b) Three still photographers, each not using more than two cameras, are authorized to take photographs for the print media in any court proceeding.

(c) The trial judge or the chief judge may authorize the use of additional cameras at the request of the media coordinator in extraordinary court proceedings or may limit the number of cameras where physical circumstances require limitation.

(d) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes must be made through any existing audio system in the court facility, when practical. If no suitable audio system exists in the court facility, microphones and related wiring must be unobtrusive.

(e) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by these rules in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude all audio or visual equipment from the proceeding.

Comment:

The slight change in subsection (d), is based on the fact that some court sound systems would not satisfy the requirement of adequate broadcasting.

The Committee believes that the original Court guidelines, which ruled out more than three television cameras or two still cameras, are unduly restrictive. There is no persuasive reason why, at least in a large courtroom, in the case of a trial commanding unusual public interest, the judge should not be permitted to admit more than 3 television cameras or more than two still cameras. For example, five television cameras were present in one of Dane County's larger courtrooms for the arraignment of two state legisators on credit card abuse charges. Furthermore, there does not seem to be any persuasive reason why a still photographer should be limited to two lenses for each camera. A demonstration before the Committee indicated beyond any doubt that changing lenses is a very quick and simple operation that should create no problems of distraction at all.

Court Guideline No. 4

Sound and Light Criteria

Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices must not be used in connection with any audio or visual equipment. Only equipment approved by the trial judge in advance of the court proceeding may be used during the proceeding.

Comment: This guideline should remain as is.

Court Guideline No. 5

Location of Equipment and Personnel

(a) The trial judge shall designate the location in the courtroom for the camera equipment and operators. The ~~presiding~~ judge shall restrict camera equipment and operators to areas open to the public, but the camera equipment and operators must not block the view of persons seated in the public area of the courtroom.

(b) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom during the court proceeding. Film, tape, or lenses must not be changed during the court proceeding. Equipment authorized by these rules must not be moved or changed during the court proceeding.

Suggested Restatement:

(a) The trial judge shall approve the location in the courtroom of audio-visual equipment and operators.

(b) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom for picture taking purposes during the court proceeding. Equipment authorized by these rules may not be moved during the court proceeding.

Comment:

The Committee suggests two changes in subsection (b). One is to forbid camera operators from moving about the courtroom for picture taking purposes. Otherwise, we see no very good reason why a photographer may not, for example, leave the courtroom to go to a toilet, or for that matter, why that person may not leave the courtroom once he or she has the desired pictures. It seems to the Committee wholly unnecessary to insist that once a still photographer has taken pictures, that person must remain seated until the next recess. The photographer ought to have the same freedom to come and go that other members of the public enjoy. What we want to forbid is a camera operator jumping around from place to place during a proceeding to get different shots. We also suggest deletion of the second sentence of (b) on the ground that it serves no useful purpose and is unduly restrictive. Demonstrations before the Committee indicated that film, tapes and lenses can be changed without causing any noticeable distraction or commotion. Actually, with modern equipment they are very simple operations that are accomplished in a few seconds. Finally, the second sentence in subsection (a) is superfluous. The Committee believes that it is sufficient to require the approval of the trial judge.

Court Guideline No. 6

Courtroom Light Sources

Modifications in the lighting of a court facility may be made only with the approval of the trial judge. Approval of other authorities may also be required.

Comment: Leave as is.

Court Guideline No. 7

Conferences

Audio pickup, broadcast, or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the trial judge held at the bench is not permitted.

Comment: Leave as is.

Court Guideline No. 8

Recesses

Audio or visual equipment authorized by these rules must not be operated during a recess in a court proceeding.

Comment: The Committee is unaware of any compelling consideration that justifies this rule. Newspaper reporters are certainly free to move about the courtroom during a recess and talk to anyone who will talk to them, and it is not at all clear that the operators of television cameras should be denied the same privilege. Accordingly, it is suggested that this guideline be dropped, or restated as follows:

Recesses, Periods before and after Court

Audio or visual equipment authorized by these rules may be operated during recess in court proceedings and before and after court, subject to reasonable restrictions imposed by the trial judge to maintain proper decorum and security and to avoid any photography or broadcasting which would impair the right to a fair trial.

Court Guideline No. 9

Use of Evidence

Any film, videotape, photography, or audio reproduction made as a result of these rules is inadmissible as evidence in any court proceeding.

Suggested Restatement:

Any film, videotape, photography, or audio reproduction made in a court proceeding as a result of these rules is inadmissible as evidence in any appeal or retrial of the same action.

Comment: The thought occurred to the Committee that the cameras may record a fresh crime actually occurring in the courtroom. Surely such photography could be used as evidence in a later trial for that crime.

Court Guideline No. 10

Resolution of Disputes

A dispute as to the application of these rules in a court proceeding may be referred only to the chief judge of the administrative district for resolution as an administrative matter. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by these ~~standards~~ rules any order or ruling of a ~~presiding~~ judge or chief judge under these rules.

Suggested Restatement:

(a) A dispute as to the application of these rules shall be referred by the trial judge, after making a record, to the chief judge of the administrative district for final resolution. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by these rules any order or ruling of a trial judge or chief judge under these rules.

(b) At the conclusion of a proceeding, the media shall have standing to litigate in the appellate court the validity of decisions made under these rules.

Comment: The slight change in the language of 10(a) is to make it clear that the trial judge must give reasons for the decision appealed from, and that the decision of the chief judge is final.

The new section 10(b) is designed to give the media standing to litigate in the appellate court legal issues growing out of decisions made by trial judges and/or chief judges under these rules. While the media are not parties to the cases themselves, the committee believes that they ought to have some way to test in an appeals court the legality of decisions made under these rules. Such a procedure would promote the rule of law so far as the agencies of mass communication are concerned and free them from dependence upon the actions taken or not taken by the parties in particular cases. For example, a defendant who has been acquitted in a criminal case has no reason or standing to appeal any error alleged to have occurred in the course of the trial, but it may happen that in the course of the trial the judge made a ruling or rulings directly affecting the freedom of the media to function as they deem essential and raising legal issues which a higher court ought to have jurisdiction to resolve. Whether it is constitutionally proper for the Supreme Court to separate appealable issues in this fashion and confer standing on a nonparty are questions which the Committee believes are for the Supreme Court to resolve.

Committee Members Edward Hinshaw, James Hoyt, Richard Bauer, Nancy Mersereau and Anne Rossmeier make the following minority statement: To make it clear that these rules do not preclude other legal actions which may be important to the news-gathering process, we propose the following language be added to Rule 10(b):

> The foregoing limitations on appeals or requests for supervisory relief from the appellate court apply only to orders or rulings which prospectively deny or limit the use of audio or visual equipment in the courtroom. They do not limit or restrict the power, authority or responsibility of the appellate court to review orders or rulings even though related to or arising from such recording or photography, which otherwise affect such persons or organizations, including, without limitation, contempt citations and restraints on publication.

Court Guideline No. 11

Prohibition on Photographing at Request of Participant

A trial judge may for cause prohibit the photographing of a participant with a film, videotape or still camera on the judge's own motion or the request of a participant in the court proceeding.

Suggested Restatement:

(a) A trial judge may for cause prohibit the photographing of a participant with a film, videotape or still camera on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, including sex crimes, police informants, undercover agents, relocated witnesses and juveniles, and in confession hearings, divorce proceedings and cases involving trade secrets, a presumption of validity attends the requests; the trial judge shall exercise a broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption is not inclusive; the judge may in his or her discretion find cause in comparable situations.

(b) Individual jurors shall not be photographed, except in extraordinary instances in which a juror or jurors consent. In courtrooms where photography is impossible without including the jury as part of the unavoidable background, such is permitted, but close-ups which clearly identify individual jurors are prohibited. Trial judges shall enforce this rule for the purpose of providing maximum protection for jury anonymity.

Comment: As the Court knows, and this was reflected in the explanatory statement circulated to all judges by the Chief Justice on 21 April 1978, there has been a great deal of discussion as to the precise meaning of "cause" within the scope of Rule 11. While the Committee believes it would be unwise to spell out to the last precise detail just what constitutes good cause, it does hold that to some extent specific content may be supplied by including the suggested additional language.

Committee Members Edward Hinshaw, James Hoyt, Richard Bauer and Nancy Mersereau make the following minority statement: While we support the revised Rule 11, we do so in the spirit of compromise.

In our judgment any proscription of photography or recording is inconsistent with the intent and spirit of the original Supreme Court experimental guidelines. This should not, however, suggest that we are insensitive to the right of privacy of certain classes of individuals. Our preference would be to continue the original Guideline 11, with the language of clarification contained in the letter of Chief Justice Beilfuss dated April 21, 1978, addressed to all judges.

Court Guideline No. 12

Inapplicability to Individuals

> The privileges granted by these rules may be exercised only by persons or organizations which are part of the news media.

Comment: Leave as is.

For the convenience of the Court, the amended rules endorsed by the Committee are restated in Appendix H.

VI

CONCLUSIONS

The Committee recognizes that the case for permitting photography in the courtroom is not a simple one, nor is it a one-sided case. It attaches great weight to the objections voiced by those who fear that the introduction of photography into the courtroom will defeat the right to a fair trial. The most persuasive and best thought out statement of objections to courtroom photography which was submitted to the Committee came from Robert J. Paul, the Deputy State Public Defender. As part of this report, Mr. Paul's statement is attached as Appendix G. Members of the Court may wish to read this statement. While the Committee does not share all of the fears that Mr. Paul has spelled out, it believes that the views he has expressed are shared by many, in and out of the legal profession, and are worth serious consideration.

The Committee believes that while problems have arisen in the past, and will in the future, when cameras are allowed to operate in the courtroom, on balance the advantages to society to be derived from courtroom photography outweigh the disadvantages. So far as radio broadcasting and still photography are concerned, the Committee has had little difficulty in reaching a positive conclusion. The debate centers on the use of television in the courtroom. The Committee takes the position that television is here to stay; it is not only a fact of life, but a very important fact of life in our society. The television people are, like the newspapers, in the business of gathering and disseminating news. In fact, it is widely believed that more people rely upon television for news than upon newspapers. It is said that the television companies are private enterprises in the business of making money. It is hardly necessary to recall that newspapers are not eleemosynary institutions, but are also published for profit. It is true that television stations are likely to concentrate upon sensational cases, but the same can be said for newspapers. In any event, in the case of both the print media and television, we have no choice but to rely upon the judgment of the professionals as to what is truly newsworthy. Whether a particular event is newsworthy is a matter of informed judgment, best made by those whose everyday business it is to make such judgment. An item may be newsworthy one day, and not another, depending on what is going on in the society covered by the particular media. So long as we continue to believe in a free press, and a free press is specifically guaranteed by the United States Constitution and the Constitution of the State of Wisconsin, then we must recognize that one essential element of that freedom is the right to decide the issue of the newsworthiness of an event. Furthermore, the committee believes that with further experience, as the judges, lawyers and media get

accustomed to operating under duly constituted rules, difficulties encountered so far will be smoothed away. The day is not far distant when photography in the courtroom will arouse no more excitement than the presence of newspaper reporters in the courtroom.

Accordingly, the Committee recommends:

1. In general, the guidelines or rules pronounced by the Court, as amended by the Committee, should be adopted as a permanent set of rules, it being understood, of course, that the Court will always be free to reconsider its position in the future, if events dictate reconsideration.
2. Radio broadcasting, still photography, and television cameras should be permitted in the courtroom, subject to strict observance of the rules of the Court, and subject also to the understanding that the presiding judge at a trial has a wide discretion to control the judicial environment, because ultimately it is his or her responsibility to assure to all parties a fair trial.

In making these recommendations, the Committee recognizes that various broad objectives must be pursued. It is vitally important that not only should justice be done in our courts, but that justice should appear to be done. Litigants are entitled to fair trials, and all persons who are involved in court proceedings should be treated with respect for their essential dignity as the citizens of a free society. At the same time, trials are public events; our tradition frowns upon secrecy in government, and few events are more abhorrent in our historical experience than secret trials. The guarantee of a public trial, Justice Black once wrote, "has always been recognized as a safeguard against any attempt to employ our

courts as instruments of persecution." (In re Oliver, 333 U.S. 257, 270, 1948). The essential problem is to find a proper balance between these various interests. The task of discovering points of balance between various interests, however, is no novelty in the law. The Committee believes that in respect to the subject matter of this report, an acceptable balance has been struck. If future experience should indicate that the rules are not suitable, then it is within the province of the Supreme Court to revise them. In the present state of our knowledge and available technology, the Committee is satisfied that the amended rules it has recommended to the Court represent a policy with which we can go forward with confidence.

This report was approved by a unanimous vote of the committee on March 24, 1979

David Fellman, Chairman

William Adler

Richard Bauer

William J. Duffy

William F. Eich

Edward Hinshaw

James Hoyt

Nancy Merséreau

James Peter O'Neill

Anne Rossmeier

Michael T. Sullivan

CORRESPONDENCE/MEMORANDUM — STATE OF WISCONSIN

Date: April 26, 1978 File Ref:

To: Professor David Fellman, Chairman
Committee on Audio-Visual Equipment in Courtrooms

From: Chief Justice Beilfuss

Subject: Audio-Visual Equipment in Courtrooms

The Supreme Court in its orders concerning the one year experiment with the use of audio or visual equipment in courtrooms provided for the appointment of your committee. The committee is to monitor and evaluate the use of audio or visual equipment in courtrooms during this experimental period and is to file a report with the Court no later than March 1, 1979.

The purpose of the Court in appointing the Committee was to have an independent body advise the Court on the success, failure or problems with the use of audio or visual equipment in courtrooms, whether the use of such equipment should be permitted on a permanent basis, and if so, under what conditions. If the committee concludes that such equipment should be authorized on a permanent basis, it should prepare proposed rules in its report.

The committee in gathering information upon which to make its report should rely upon the experience of its members, a review of reports in the news media on the use of the equipment in courtrooms, reports to the committee made by judges who preside over trials at which audio or visual equipment is used, the reports of staff members who may observe the use of the equipment in the courtrooms, and any other information the committee believes relevant.

The Committee is expressly authorized to request judges to file with the committee reports on their experiences with the equipment, and all judges in the state are requested to prepare such reports for the committee.

The committee may employ observors upon such terms and conditions as may be authorized by the Chief Justice or his designee.

The members of the Committee are entitled to be reimbursed for their expenses in connection with service on the committee in accordance with the Supreme Court's travel expense regulations.

William Mann, Supreme Court Commissioner, is designated to serve as reporter for the committee.

BFB/skk

APPENDIX B

QUESTIONS TO BE ADDRESSED TO THE JUDGE

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record the name of the judge and how long he has served as a judge; also note which of the three media were used in the trial: (a) television cameras; (b) radio equipment; (c) still cameras)

1. What, if any, influence do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on you during the trial?

2. Did the presence of (a) television cameras, (b) radio equipment, and (c) still cameras seriously increase your supervisory responsibilities?

3. If your response to question 2 was in the affirmative, did those responsibilities interfere with your principal duties as a presiding judge?

4. Did the presence in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras produce more letters, telephone calls, et cetera, then you usually receive?

5. What, if any, impact do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on the witnesses?

6. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the behavior of counsel?

7. What, if any, problems occurred because of the use of (a) television cameras, (b) radio equipment, and (c) still cameras in your courtroom?

8. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

9. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

10. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

11. Describe any requests you received for the prohibition of (a) television cameras, (b) radio equipment, and (c) still cameras, the action you took based on those requests, and the reason(s) for your action.

12. Overall, what is your general evaluation of the use of (a) television cameras, (b) radio equipment, and (c) still cameras, in the courtroom?

APPENDIX C

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

APPENDIX D

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

APPENDIX E

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

APPENDIX F

THE UNIVERSITY OF WISCONSIN
NORTH HALL
1050 BASCOM MALL
MADISON, WISCONSIN 53706

DEPARTMENT OF POLITICAL SCIENCE

18 August 1970

To: Members of the Committee on Courtroom Photography

From: David Fellman

Dear Colleagues:

I am enclosing, for your file, the final Report of our committee, revised in accordance with suggestions that came to me since the last meeting of the Committee. I am also enclosing copies of the letter of transmittal to the Court. You will observe that I have requested that the Committee be discharged. I have also indicated our willingness to meet with the Court to discuss the Report.

May I take this final opportunity to thank you for the constructive manner in which all of you cooperated in this assignment. I deeply regret that we could not produce a unanimous report, but I hope that what we have accomplished will be of some assistance to the Court as it confronts once more the problems of courtroom photography.

THE UNIVERSITY OF WISCONSIN
NORTH HALL
1050 BASCOM MALL
MADISON, WISCONSIN 53706

DEPARTMENT OF POLITICAL SCIENCE

18 August 1970

Chief Justice E. Harold Hallows
Supreme Court Chambers
State Capitol Building
Madison, Wisconsin 53702

Dear Chief Justice Hallows:

In behalf of the Advisory Committee to Recommend Rules on Use of Sound and Camera Equipment in the Courtroom, appointed by order of the Court on 27 January, 1970, I herewith submit to you its final report.

While all members of the Committee have signed the report, and while there were large areas of agreement, as spelled out in the report, I regret to say that on crucial questions there was a great deal of disagreement among them. On all questions concerning which agreement could not be achieved, the report indicates where each member of the committee stands.

I have been instructed by the Committee to inform you that all of its members are ready and willing to meet with the Court to discuss this report, if the Court so chooses.

This report concludes the work of the special advisory committee, and it therefore now requests that it be discharged.

I am enclosing a sufficient number of copies of the report so that some will be available for the press, should the Court decide to release this document to the press. If you need additional copies, I will be glad to supply them, since my secretary has kept the stencils.

All members of the Committee join me in thanking the Court for this opportunity to be of some service to the cause of the administration of justice in Wisconsin.

Sincerely yours,

David Fellman

David Fellman
Chairman

DF:nl

Final Report

COMMITTEE TO RECOMMEND RULES ON USE OF SOUND AND CAMERA EQUIPMENT IN THE COURTROOM

I

Pursuant to the mandate of the Supreme Court in reference to the desirability and feasibility of amending Rule 14 of the Code of Judicial Ethics promulgated by the Supreme Court of Wisconsin, the Committee advises as follows:

Rule 14 reads:

"A judge shall not, when it will interfere with the judicial process or fair trial, permit any radio or T.V. reproductions or taking of pictures in the courtroom during recess or before or after proceedings, or in adjoining corridors or offices; nor shall he permit any radio or T.V. reproductions or taking of pictures in the courtroom at any time during judicial proceedings.

Comment: The rule applies to all judicial proceedings but shall not be applicable to investiture, ceremonial, or naturalization proceedings."

The Committee was constituted by order of the Court on January 27, 1970. The order of the Court read as follows:

"This court has under consideration for sometime a petition requesting it to reconsider and modify Rule 14 of the Code of Judicial Ethics. The court has heard arguments and has seen demonstrations by the news media of sound equipment and of cameras in the courtroom. While the court has not decided that Rule 14 should be modified, it is interested in being more fully informed on the question of whether specific uniform rules of court can be devised for promulgation by the supreme court which would recognize reasonable demands of the news media to take pictures and to record voices in the courtroom and at the same time not tend to endanger the right to a fair trial by any litigant or to degrade the dignity of the court or to interfere with the administration of justice. Such rules must be specific as to type and amount of equipment permissible in a courtroom, the time and manner of its use, the distance from the subject, the supervision of the

court over the use of the equipment, necessary prohibitions on the use of such equipment, whether any reproduction should be limited to news purposes, and other conditions or necessary restrictions. Such recommendation of specific rules shall be advisory to the supreme court in its consideration of the motion to modify Rule 14."

The Committee has discussed Rule 14 very thoroughly in several meetings. It held one meeting in Milwaukee, in the courtroom of Judge Steffes, where representatives of the various media put on a demonstration through the staging of a mock trial by students of the Marquette Law School. Various technical aspects of still and television photography and radio recording were presented in their present state of technology.

II

While the Committee has been unable to produce a unanimous report, there is a considerable area of agreement. This report will first summarize the subjects as to which there is a general concensus.

1. The Committee wishes to call attention to the fact that in its present form Rule 14 does permit some picture-taking in the courtroom during recess or before and after proceedings, or in adjoining corridors or offices, with the permission of the judge. While the Rule admonishes the judge not to permit any interference with the judicial process or with a fair trial, he does have discretion to permit a limited amount of recording and picture-taking in or near the courtroom except during actual judicial proceedings. It is possible that the representatives of the various media have not been aware of the discretionary authority which is vested by Rule 14 in the trial judge, and that under it some picture-taking is permitted.

2. The members of the Committee agree that it would not be objectionable for the Supreme Court to permit an occasional televising of a trial,

in whole or in part, strictly for educational purposes, by a responsible broadcaster. The Court should be satisfied that the purpose of the filming is wholly educational, that all of the parties have consented, and that the entire process is under the strict supervision of the presiding judge. The Committee recommends that on the rare occasions where an educational filming is desired permission should be sought directly from the Supreme Court itself.

3. Members of the Committee agree that still photography creates fewer problems than television photography or voice recording for radio purposes, and a majority of members agree that it should be permitted, with appropriate safeguards. They recommend that no flash bulbs should be permitted, that hand-held cameras are to be preferred, and that no tripods should be used unless they are properly screened from view.

4. Members of the Committee also agree that voice recording for radio presents fewer problems than television, and that therefere there are fewer objections to recording for radio broadcasting than to the televising of court proceedings.

5. Members of the Committee also agree that if the televising of court proceedings is permitted, undoubtedly television stations will be highly selective, in that they will televise only a few trials, and not televise all trials routinely. For reasons of expense, time and public interest, a television station will only wish to televise an occasional trial; thus the station will have to pick and choose among all trials which are held in the community, and this factor of selectivity will unquestionably affect the proceedings in some fashion, by drawing special public attention to a few trials deemed unusually newsworthy.

6. While the Committee is divided as to the desirability of permitting still photography in the courtroom while court is in session, and radio and television broadcasting of actual judicial proceedings in the courtroom, its members agree that it is possible, from a technical point of view, to record or televise a trial without any serious physical obstruction of the proceedings, if the following guidelines are observed:

(a) Under no circumstances should there by any voice recording or photographing of any juror, or jurors, or any venireman.

(b) All television cameras should be in the rear of the courtroom, preferably behind a screen or some sort of partition.

(c) Under no circumstances should any cameras be permitted in front of the railing.

(d) All equipment should be installed at least ten minutes before the start of proceedings, and removed only during a recess.

(e) All electrical cords should be taped to the floors or to corners of walls in order to be as inobstrusive as possible.

(f) If at all possible, the available light in the courtroom should suffice. If the available light must be supplemented, the necessary equipment should be turned on before the start of proceedings, and remain on until a recess.

(g) It should be stipulated that there should be no moving about the courtroom on the part of media personnel.

(h) The existing public address system should be used if there is one in the courtroom. If not, the method of recording voice should be determined at a pre-trial meeting with the judge.

(i) Only noiseless cameras should be used while court is in session.

(j) The Committee recommends that before every trial there should be a pre-trial meeting of the media people with the trial judge to review guidelines, to determine camera position, and to deal with any specific

7. Assuming that recording for radio or photographing for television of courtroom proceedings is permissible, the Committee was divided as to whether or not the prior consent of any party or witness would have to be secured as a condition for the recording or photographing. Those who believe that consent should be required take the position that the individual party or witness has a right to safeguard his privacy and to protect himself from the pressures which may be generated by the recording or photographing. Furthermore, they hold that if prior consent is secured, grounds for a later allegation that a fair trial had been denied will be eliminated from a subsequent appeal. Those who believe that prior consent should not be required take the position that a trial is by definition a public event, and that therefore those who are involved have no right to be unidentified, just as they now have no right to remain unidentified so far as newspapers are concerned.

The Committee took separate votes on the issue of consent with respect to radio, television and still photography. Five members (Byers, Fellman, McCann, Pfiffner and Steffes) believe that consent should be required in the case of voice recording for radio broadcasting, while seven members (Bodden, Hopp, LeGrand, Schwandner, Shinners, Stafford and Steinmetz) believe that consent should not be required. With respect to television, six members (Byers, Fellman, McCann, Pfiffner, Steffes and Steinmetz) believe that consent should be required, while six members (Bodden, Hopp, LeGrand, Schwandner, Shinners and Stafford) do not believe that consent should be required. With respect to still photography, three members of the Committee would require consent (Byers, McCann and Pfiffner), whereas nine take the position that consent should not be required. (Bodden, Fellman, Hopp, LeGrand, Schwandner, Shinners, Stafford, Steffes, and Steinmetz).

8. In addition, the Committee believes that while pooling, particularly among television stations, is not generally to be desired, in unusual cases, with the permission of the judge, some sort of pooling arrangement may be

necessary in order to prevent overcrowding the courtroom with cameras. Each such case would have to be dealt with on its terms. From the point of view of the requirements of a fair trial there is no objection to pooling arrangements.

III

A majority of the Committee believes that with the safeguards spelled out above, it would be desirable to permit radio and television stations to record and broadcast actual courtroom proceedings. They believe that the electronics news media, holding a commanding position in the world of modern communications, are entitled to a full opportunity to report courtroom events in their own manner. They hold that since a trial is a public event to begin with, this merely expands the public in which the event occurs. They maintain that broadcasting or televising trials would tend to bring to the public a greater understanding of the court as an instrument of justice. They also believe that such broadcasting might possibly have the desirable effect of bringing the events of the trial to the attention of potential witnesses who might thereby be alerted to come forward and give testimony themselves. In addition, those who favor broadcasting, both by radio and television, believe that it would tend to correct the misconceptions about the nature of courtroom proceedings which many people have derived from the fictionalized and misleading presentations which appear in so many commercial radio and television programs. Thus they believe that broadcasting would strengthen public confidence in the courts as instruments of justice.

A minority of the Committee is opposed to the broadcasting of actual courtroom proceedings by radio or television largely on psychological grounds. The minority concedes that it is technically possible to record what goes on in the courtroom for radio and television without any physical disruption of the proceedings. The minority, however, does not believe that it is possible to erase the psychological impact of even the best-conducted forms of recording. It is apprehensive of the possible impact upon judges, upon the accused, upon witnesses, and upon the community in general. Perhaps

the major concern of the minority is with the possibility that radio and television may have the effect of reducing the willingness or ability of witnesses to come forward and tell what they know in a straightforward manner. They fear that if witnesses know that they are speaking to a large unseen audience, they may become either overly bold or overly timid, and that some witnesses might be unwilling to testify at all if they can possibly get out of it. Where judges are elected, as they are in Wisconsin, it is feared that television might, perhaps unconsciously, induce some of them to assume a posture for broadcasting purposes which would not be in the best interests of the administration of justice. It is also felt that television might have a harmful effect upon the accused, particularly if he does not have a good apperance, or if he does not conduct himself in a manner which comes through the television tube with maximum affectiveness. Finally, the minority believes that broadcasting from the courtroom will give the trial judge too many additional chores when his situation already imposes very heavy responsibilities upon him.

IV

In conclusion, the members of the Committee agree that it is possible, from a technical point of view, and following certain prescribed guidelines, to record or televise a trial without any serious physical obstruction of the proceedings. The Committee divides on the issue of the possible psychological impact of radio and television upon witnesses, parties, judges, and the public. Finally, the Committee, (with McCann and Pfiffner opposed) is prepared to recommend that still photography be permitted subject to the safeguards outlined above. It is therefore suggested that Rule 14 be amended by striking the phrase "or taking of pictures", and substituting in its place the following phrase: "but a judge may permit the taking of still pictures in the courtroom during judicial proceedings

when it will not interfere with the judicial process or fair trial under regulations pronounced by him, but never of any member of the jury".

V

On the central issue of whether radio and television broadcasting of court proceedings should be permitted, it is thought that the actual division of the Committee should be recorded, and that the division on the two forms of broadcasting should be indicated separately. The following eight members of the Committee are in favor of permitting the broadcasting of court proceedings by radio: Bodden, Byers, Hopp, LeGrand, Schwandner, Shinners, Stafford and Steinmetz. The following four members of the Committee do not favor radio broadcasting of judicial proceedings: Fellman, Pfiffner, McCann and Steffes. The following six members of the Committee are in favor of permitting the televising of judicial proceedings: Bodden, Hopp, LeGrand, Schwandner, Shinners and Stafford. The following six members of the Committee are opposed to the televising of judicial proceedings: Byers, Fellman, McCann, Pfiffner, Steffes and Steinmetz.

Respectfully submitted,

David Fellman, Chairman

Robert Bodden

James W. Byers

Duane W. Hopp

Roger W. LeGrand

Ray T. McCann

Robert F. Pfiffner

Harvey W. Schwandner

John J. Shinners

Willard S. Stafford

Herbert J. Steffes

Donald W. Steinmetz

COMMITTEE TO RECOMMEND RULES ON USE OF SOUND

AND CAMERA EQUIPMENT IN THE COURTROOM

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Political Science
217 North Hall
Madison, Wisconsin 53706

Robert Bodden
Radio Station WSWW
Platteville, Wisconsin 53818

Hon. James W. Byers
County Judge, Branch 2
Brown County Courthouse
Green Bay, Wisconsin

Duane W. Hopp, Chairman
Police-Fire-Court Comm. of
Wis. Press Photographers Ass'n
2330 Tanager Trail
Madison, Wisconsin 53711

Roger W. LeGrand, President
Wisconsin Broadcasters Association
c/o WITI-TV
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Milwaukee, Wisconsin 53209

Ray T. McCann, Atty.
425 Caswell Building
152 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203

Hon. Robert F. Pfiffner
Circuit Judge, 19th Jud. Cir.
Chippewa County Courthouse
Chippewa, Wisconsin 54729

Harvey W. Schwandner, Editor
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Willard S. Stafford, Atty.
204 South Hamilton Street
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Hon. Herbert J. Steffes
Circuit Judge, Branch 11
Milwaukee County Courthouse
Milwaukee, Wisconsin 53202

Hon. Donald W. Steinmetz
County Judge, Branch 8
Milwaukee County Courthouse
Milwaukee, Wisconsin 53202

APPENDIX G

The State of Wisconsin

STATE PUBLIC DEFENDER

State Public Defender
Richard Cates (608) 266-3440

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Deputy State Public Defender
Post-Conviction Division
Robert J. Paul (608) 266-8374

Deputy State Public Defender
Trial Representation Division
Ronald L. Brandt (414) 224-4807

February 1, 1979

Professor David Fellman, Chairman
Committee to Monitor Cameras in the Courtroom
University of Wisconsin
Department of Political Science
North Hall
1050 Bascom Mall
Madison, Wisconsin 53706

Dear Professor Fellman:

The following is a summary of the position of the State Public Defender's Office Appellate Unit concerning the continued use of cameras in the courtrooms.

At the outset, several introductory comments are perhaps in order so that the basis for our position, in opposition to the continued use of cameras in the courtroom, is well understood.

First, our position is founded on our attorneys' limited specific experiences with a few recent important cases involving television and cameras in the courtroom and on some experience with newsprint and other media. The office was involved in a minor fashion in a case in Milwaukee which concerned the televising of a retrial. We are presently involved in an interlocutory appeal of a Sauk County case which concerns newspaper and possibly television coverage of pre-trial proceedings in a murder-rape case. Our trial unit in Eau Claire represents a client on two counts of second degree murder and one of arson. Pre-preliminary hearing motions to exclude media reference to a confession were heard in chambers and denied. Other motions are contemplated.

We feel these experiences and our experience in the criminal justice system, as criminal defense specialists, qualifies us to make some observations and comments concerning this issue. We hope the Committee and the Supreme Court will consider comments based not only on the observations of the persons who directly participated, over the last ten months, in the handful of trials which were televised or photographed, but also the observations based on the more general experience of concerned practitioners.

Second, we do not cite any studies in support of our conclusion that cameras can, and in some cases will, render a criminal trial unfair. We are not aware of any definitive or comprehensive studies having been conducted in this area. The lack of such studies perhaps supports our belief that, ordinarily, it is extremely difficult to measure the effects cameras have on trial participants. The persons actually influenced by the cameras may not even recognize the impact the cameras have had on them. For this reason, we are particularly skeptical of "studies" which merely ask the trial participants whether they felt they or anyone else had been affected or influenced by the presence of cameras in the courtroom.

Third, our opposition to cameras in the courtroom stems in part from an obligation to protect the interests of the clients whom we represent. We represent indigent persons who have been charged with, or convicted of, state crimes. All of our clients are indigent, a substantial number are minorities, and the offenses generally involve "street crimes" (crimes of violence, theft, burglary, robbery, drug-related offenses, etc.).

Our clients generally do not desire, or benefit from, publicity in <u>any</u> form. Obviously, any publicity concerning the commission of a crime embarrasses and degrades not only the person charged but his family as well. More importantly, such publicity reinforces negative community attitudes toward indigents and minorities. Our clients, because of the types of crimes they have allegedly committed, their indigency, and at times other characteristics, already generate little public sympathy. Publicizing their problems with the law is not to their benefit. Fourth, it has been our experience that some trial judges respond to the public attitude toward "street crimes" by imposing heavier sentences (and using more colorful and humuliating language while doing so) when the proceedings are being covered by the media. Finally, pre-trial publicity is unavoidably one-sided and anti-defendant, for the simple reason that pre-trial proceedings generally involve only the disclosure of the prosecution's case. Rarely, if ever, will a defendant testify, call witnesses, or otherwise divulge the evidence in support of his defense prior to trial.

Thus, we are concerned about publicity in any form, but we are <u>most</u> concerned about the use of cameras (especially television cameras) in the courtroom. We, of course, recognize that virtually everything which happens in the courtroom is a matter of public record, and that any citizen could generally obtain the same information broadcast by the media by simply appearing at the courtroom and observing the proceeding. Realistically, however, the probability that a criminal defendant will not receive a fair trial because of the public's opportunity to attend the proceedings is not significantly increased because so few persons take advantage of the opportunity.

Television, however, presents a special problem. There is something about the medium which makes it particularly effective in shaping public opinion, even when matters are reported objectively (e.g., coverage of the presidential debates, Vietnam War, Watergate). Perhaps because its audience is passive, it reaches a much larger audience than any other medium. (The Ronny Zamora trial in Florida, wherein the "television intoxication" defense was raised, was viewed by an estimated 100,000 persons.) Unlike other media, television allows for the instantaneous dissemination of information, after providing little opportunity for the editing of prejudicial material. The information is absorbed by the public at or very near the time decisions regarding the criminal defendant's future are being made.

Television also presents a special problem because the high cost of broadcasting court proceedings will result in only the sensational trials being televised. These cases are exactly the ones where, because of the publicity already generated

by other media, there is the greatest risk that a fair trial cannot be had. The incremental harm wrought by simply televising the trial might be enough to "tip the scale," and to render the trial unfair.

The combination of these factors gives television the greatest potential for denying the accused his constitutional right to a fair trial, and it is the denial of this right with which we are most concerned. We, therefore, do not object to the use of cameras in appellate courtrooms. Because our concern involves the fairness of trials, the minimal disruption which is occasionally caused by technical and logistical problems in photographing or televising courtroom proceedings do not concern us. We assume that the media can solve most of these problems, or that they will resolve themselves through technological advances. We take no position on the use of cameras in civil trials, except to note that due to constitutional considerations applicable only to criminal cases, the argument against the use of cameras in courtrooms is perhaps more compelling in criminal cases.

Fair trials are threatened by the presence of cameras in the courtrooms because some witnesses will be reluctant to testify, and some jurors will be reluctant to acquit the accused, once the identities of these witnesses and jurors becomes public knowledge. The observation that "the honest witness doesn't object" to the cameras is an easy, but inaccurate, over-simplification. Our experience demonstrates that the incentive to testify, especially given the high stakes inherent in criminal cases, involves more complex considerations than this maxim suggests. (A recent example is the Milwaukee Journal story about Betty Kilmer who testified in a homicide trial which was not televised. A right to privacy is also at stake here and it concerns persons other than the defendant. A copy of the article is attached.)

A variety of factors enter into a jury's decision making process. Juries do not always decide cases solely on the evidence adduced at trial. A juror may be subconsciously motivated to convict a defendant if he believes that, as a result of the cameras being in the courtroom, he will be ridiculed for having acquitted the defendant. Of course, what is important is not whether jurors or witnesses are actually placed in danger or are actually held in public disrespect, but whether the jurors or witnesses consciously or unconsciously perceive these as possible consequences of the media coverage. The real danger is that trial judges, using the legal means traditionally available to them, will be unable to detect, much less minimize, the often subtle influences for which cameras are thought to be responsible.

Television cameras might also create incidental procedural problems effecting the fairness of the accused's trial. Coverage of pre-trial hearings will not only result in the publication of the evidence implicating the defendant, it will in some cases, result in the publication of evidence which is inadmissible at trial. This issue is presently pending before the United States Supreme Court in Gannett Co. Inc. v. DePasquale argued November 7, 1978.

Similarly, in those cases in which the defendant is retried (because a new trial or mistrial is ordered), it will be difficult to insure the fairness of the second proceeding if the first was televised: many prospective jurors will already know the evidence against the accused, and will already have formed an opinion of the case.

Our experience is that the traditional methods employed to ameliorate the prejudice created by such situations have been generally ineffectual. Changes of venue accomplish little if publicity is wide-spread; and, cameras increase the media's opportunity to reach larger audiences and remote areas. Changes of venue also deny the defendant the important right to a trial in the community where the crime was committed. Voir dire during jury selection has also proven an ineffective tool to combat prejudice, because jurors are naturally reluctant to admit that they are biased, and because it is difficult to explore the degree and pervasiveness of the prejudice without actually reemphasizing to the jury what the prejudicial "event" was. Admonitions from the court to disregard any information already known about the case are difficult to follow, especially if the information is in the form of a confession or tangible evidence implicating the defendant.

Another problem created by cameras is that jury sequestration will be necessary anytime there is a delayed broadcast of a witness' testimony, delayed commentary concerning the trial, or there is coverage of proceedings heard outside the jury's presence. Sequestration is not only extremely costly, but is very inconvenient for the jurors. In trials that last more than several days, sequestration can be so inconvenient as to effect jury deliberations, by giving the jury an incentive to merely "get the case over with."

A third problem is created by televising or photographing only a portion of a trial or of a witness' testimony. Such a procedure potentially places undue emphasis on the proceedings which are covered, and could tend to convey to the jurors the impression that the proceedings not covered were less important.

We would expect that permitting cameras in the courtroom will, as indicated above, introduce a new variety of problems and that the number of mistrials will accordingly increase. Mistrials are costly to the state and inconvenient for the parties, and in some instances, could possibly have double jeopardy implications.

As our comments suggest, we believe the continued use of cameras in the courtroom would not only impair the defendant's interests, but would also significantly increase the costs (monetary and otherwise) of criminal justice administration. Trial and appellate courts would undoubtedly be faced with a variety of legal challenges concerning the use and effect of cameras in the courtroom. Trial judges presiding over televised trials will face additional administrative and supervisory responsibilities. The trial judge will be charged with the duties of (1) establishing, within the guidelines, the ground rules for media coverage: (2) monitoring the media activity during trial: (3) detecting and minimizing any prejudice resulting from the coverage; and (4) sanctioning improper media activity when appropriate. These duties must be performed in addition to the considerable duties already performed by trial judges.

Guidelines can be implemented concerning the use of cameras, but each case will present a unique fact situation, unique procedural problems, and a unique potential for unfairness. It is unrealistic to expect any guidelines to be "self-executing." The media's interest, in fact it's sole reason for existence, is to publicize events considered to be newsworthy. Such an interest directly conflicts with the interests of an accused in a criminal trial. The materials before the Committee indicate that the guidelines promulgated by the Supreme Court, and specific instructions by trial judges, have on occasion been intentionally ignored by media personnel. The materials also demonstrate that some media representatives are generally insensitive to the legal issues presented by camera coverage and not surprisingly, are unsympathetic to the claim that camera coverage can adversely effect trial participants or the rights of an accused.

None of our comments are intended as criticism of the media; rather, we simply recognize that the media representatives have different interests and different perspectives on this issue. We are confident that cameras will rarely be intentionally manipulated so as to achieve a particular outcome at trial. Our major concern is that camera coverage itself will create the risk that an accused will be unable to obtain a fair trial. We obviously cannot "prove" this will happen, but believe this risk is sufficiently real so as to require, at the minimum, further study of the effects cameras might have on trial participants. From our perspective, if one criminal defendant is denied a fair trial because cameras were present in the courtroom, we have paid too high a price for our "right to know."

We thank the Committee for this opportunity to express our position on this matter. If you have any questions concerning our position, please feel free to contact me.

Respectfully submitted,

Robert J. Paul

ROBERT J. PAUL
Deputy State Public Defender

RJP:SDP:jkb

Attachment

Open Wound: Testimony Ends, Threats Linger

By Doreen Weisenhaus
of The Journal Staff

Kilmer is bitter and frightened.

She claims that she and her family are being viciously threatened because she testified as a witness in a murder trial 2½ years ago.

"We didn't do nothing but try to help," Mrs. Kilmer said. Now she fears for the lives of her husband, three children and herself.

She said relatives and friends of the two men convicted of second degree murder for the death June 3, 1976, of Steven S. Carroll, 20, have frequently harassed her family.

Carroll was beaten to death by at least a dozen persons in front of his apartment at N. 10th and W. State Sts.

Jose Sanchez, then 23, and Juan A. Gonzalez, then 20, were found guilty by a jury in Feburary, 1977.

Sanchez was sentenced to 18 years in prison and is at the State Prison in Waupun. Gonzalez was given an eight year sentence and is at the Kettle Moraine Correctional Facility. Two other men were charged but were found not guilty.

Carroll was killed after he had first shot at the group of men with a rifle. Police said Carroll was angry because he thought he had been cheated out of a dollar in a dice game with the group.

Mrs. Kilmer, her husband and her two teenaged sons witnessed the killing, but only Mrs. Kilmer testified in the murder trial.

Authorities agree that theirs is a potentially vio situation that they cannot much about until somet happens. Mrs. Kilmer she did not want to wait f family member to get hur

And she's not going to any more help from the c tim's Witness Protection The 3½ year old experi tal program that gives port to witnesses who te

Turn to Family, page 8, col.

Family

Testimony Leads to Threats

From Page 1

in criminal cases expires today.

Milwaukee County Sheriff's Lt. Arnold Nannetti, head of the program, predicted last week that a witness would get injured.

"There's going to be a problem eventually, but what am I going to do?" Nannetti asked. The County Board decided not to finance the program for 1979.

Nannetti said that, because the Kilmers moved back to the same general area where the murder occurred, they could expect harassment.

A Milwaukee police official said last week that the department was aware of the situation but could not offer 24 hour protection for the family.

Milwaukee Dist. Atty. E. Michael McCann said that, although he supported the work of the special unit, he sympathized with the County Board's struggle to control spending.

"Very few witnesses are subjected to threats," McCann said, "and the county is under intense pressure to keep the tax level down."

In addition to threatening telephone calls, the Kilmer family has complained to police of the following incidents:

Mrs. Kilmer's 18 year old son, Kirk, was shot at but not injured early Thursday while at a friend's house nearby. Milwaukee police detectives are investigating.

Two young men armed with a machete and a gun stood on the porch of the Kilmers' West Side home Christmas Day. The Kilmer house was filled with friends and relatives. Threats were exchanged, but no violence occurred.

Mrs. Kilmer's car broke down Thanksgiving Day two blocks from where the murder took place, and she received threats of physical harm.

"We're afraid to walk outside because someone is going to blow our heads off," said Gene Kilmer, her husband.

As she looked around at the family, Mrs. Kilmer said, "If one of them got shot, I'd never forgive myself for what I've done."

The family also fears financial ruin.

Within weeks of Carroll's murder, the Kilmers were forced to move to Oklahoma, Mrs. Kilmer said. They returned to Milwaukee in April, 1977, after the trial was over. Since then they have moved four times, trying to get away from their tormentors, they said.

"We've lost everything," Mrs. Kilmer said.

Gene and Betty Kilmer and sons Kirk Sintzler, 15, and Scott Sintzler, 17, said they saw the beating. But Mrs. Kilmer said she tried to stop the men.

"I told them to please stop and that they were going to kill him," Mrs. Kilmer said. But the men only warned her to stay away, she said. That's when she decided that she would testify, she said.

Mrs. Kilmer has feared retaliation for more than two years. But not Kirk. He said he carried a .38 caliber gun with him and would use it if he had to.

"I'm going to shoot right back at them," Kirk said. "We've been pushed around for two years."

When asked what she would do if she could relive the situation, Mrs. Kilmer replied:

"I would help, but I'd walk away before the cops came. I wish that night that I didn't see anything."

—Journal Photo

Gene and Betty Kilmer and sons, Kirk and Scott Sintzler (right).

APPENDIX H

RECOMMENDED REVISED RULES

1. Authority of Trial Judge

(a) These rules of conduct do not limit or restrict the power, authority, or responsibility otherwise vested in the trial judge to control the conduct of proceedings before the judge. The authority of the trial judge over the inclusion or exclusion of the press or the public at particular proceedings or during the testimony of particular witnesses is applicable to any person engaging in any activity authorized by these rules.

(b) The term "trial judge" includes any judicial officer who conducts a public proceeding.

2. Media Coordinator

(a) The Wisconsin Freedom of Information Council shall designate for each administrative district a coordinator who shall work with the chief judge of the administrative district and the trial judge in a court proceeding in implementing these rules. Geographically large administrative districts shall be subdivided by agreement between the Council and the chief judge, with a coordinator designated for each subdistrict.

(b) Where possible, the trial judge shall be given at least five days' notice of the intention of the media to bring cameras or recording equipment into the courtroom. In the discretion of the trial judge, this notice rule may be waived where cause for such waiver is demonstrated.

3. Equipment and Personnel

(a) Three television cameras (film, videotape, live), each operated by one person, are authorized in any court proceeding. Priority consideration will be extended to one of the three cameras to televise an entire proceeding from beginning to end.

(b) Three still photographers, each not using more than two cameras, are authorized to take photographs for the print media in any court proceeding.

(c) The trial judge or the chief judge may authorize the use of additional cameras at the request of the media coordinator in extraordinary court proceedings or may limit the number of cameras where physical circumstances require limitation.

(d) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes must be made through any existing audio system in the court facility, when practical. If no suitable audio system exists in the court facility, microphones and related wiring must be unobtrusive.

(e) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by these rules in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude all audio or visual equipment from the proceeding.

4. Sound and Light Criteria

Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices must not be used in connection with any audio or visual equipment. Only equipment approved by the trial judge in advance of the court proceeding may be used during the proceeding.

5. Location of Equipment and Personnel

(a) The trial judge shall approve the location in the courtroom of audio-visual equipment and operators.

(b) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom for picture taking purposes during the court proceeding. Equipment authorized by these rules may not be moved during the court proceeding.

6. Courtroom Light Sources

Modifications in the lighting of a court facility may be made only with the approval of the trial judge. Approval of other authorities may also be required.

7. Conferences

Audio pickup, broadcast, or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the trial judge held at the bench is not permitted.

8. Recesses, Periods before and after Court

Audio or visual equipment authorized by these rules may be operated during recess in court proceedings and before and after court, subject to reasonable restrictions imposed by the trial judge to maintain proper decorum and security and to avoid any photography or broadcasting which would impair the right to a fair trial.

9. Use of Evidence

Any film, videotape, photography, or audio reproduction made in a court proceeding as a result of these rules is inadmissible as evidence in any appeal or retrial of the same action.

10. Resolution of Disputes

(a) A dispute as to the application of these rules shall be referred by the trial judge, after making a record, to the chief judge of the administrative district for final resolution. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by these rules any order or ruling of a trial judge or chief judge under these rules.

(b) At the conclusion of a proceeding, the media shall have standing to litigate in the appellate court the validity of decisions made under these rules.

11. Prohibition of Photographing at Request of Participant

(a) A trial judge may for cause prohibit the photographing of a participant with a film, videotape or still camera on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, including sex crimes, police informants, undercover agents, relocated witnesses and juveniles, and in confession hearings, divorce proceedings and cases involving trade secrets, a presumption of validity attends the requests; the trial judge shall exercise a broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption is not inclusive; the judge may in his or her discretion find cause in comparable situations.

(b) Individual jurors shall not be photographed, except in extraordinary instances in which a juror or jurors consent. In courtrooms where photography is impossible without including the jury as part of the unavoidable background, such is

permitted, but close-ups which clearly identify individual jurors are prohibited. Trial judges shall enforce this rule for the purpose of providing maximum protection for jury anonymity.

12. Inapplicability to Individuals

The privileges granted by these rules may be exercised only by persons or organizations which are part of the news media.

APPENDIX I

Observer's Report

State v. Patri

The arson trial of Jennifer Patri, 33, of Waupaca, was moved to La Crosse by order of Wood County Circuit Judge Fredrick Fink because of publicity surrounding her earlier trial for murder in Waupaca County.

Mrs. Patri was convicted in December 1977 of manslaughter in the death of her husband, Robert, at their home southeast of Waupaca. She was accused of killing her husband and then setting fire to their house to conceal the killing.

The murder trial and the subsequent arson trial were widely publicized as Mrs. Patri was pictured by her attorney as an example of a battered wife who finally retaliated after years of abuse.

The arson trial, held in La Crosse County Circuit Court Branch 1, started December 4, 1978, with the jury selection. After 2½ days of questioning, 12 jurors and an alternate were selected, and testimony began December 6, 1978. The trial lasted until December 11. Mrs. Patri was found guilty of arson, but the jury of nine women and three men also found her mentally ill and not criminally responsible at the time she set fire to the Patri home. The jury was sequestered.

***

The use of cameras and microphones in the courtroom followed the guidelines established by the Wisconsin Supreme

Court. Arrangements were made by Media Coordinator Jack Marlowe, of WLSU-FM, La Crosse, working with Judge Fink.

RADIO--One audio system for broadcast purposes was used by all local radio stations. La Crosse has three commercial AM-FM combinations and an FM station operated by the University of Wisconsin-La Crosse. The audio system was installed cooperatively by the local stations earlier in the year when the test on cameras and microphones in the courtroom began.

The local stations did not use the audio system for live broadcasting, but made extensive use of it to gather material for newscasts.

In addition, the audio system was used to provide sound to one on-sound TV camera and one video tape camera.

The audio system was unobtrusive, located immediately behind the bar. The system, for the most part, would not have been noticed by jurors, witnesses, the judge or counsel. The only part of the sound apparatus that was visible was the microphones, and the cords. The cords might have been the most noticeable because heavy tape was used to secure the cords to the floor. Five microphones were used: one by the jury box, one for the prosecuting attorney, one for the defense attorney, one for the judge, and one for witnesses.

TELEVISION--There were three TV cameras in the courtroom, the maximum authorized under the guidelines.

WXOW-TV, Channel 19, of La Crosse, had one camera, and was provided sound by the radio audio system. WEAU-TV, Channel 13, of Eau Claire, had a silent camera. Western Wisconsin

Technical Institute, of La Crosse, operated a video tape camera. Sound was provided by the audio system mentioned above. Western Wisconsin Technical Institute (WWTI) offers some technically oriented television courses and does some limited programming over the local cable system operated by Teleprompter. WWTI did not use the video tape camera to do any live telecasting of the trial.(And Channels 13 and 19 did not have live telecasts.)

WWTI did record the entire trial, and the tape is available for review.

WWTI also provided video for three commercial stations. It provided two tapes of courtroom scenes for WFRV-TV, of Green Bay. The tapes were sent by bus to Green Bay. It also allowed WLUK-TV, of Green Bay, to use its camera to make some tapes. WLUK had a reporter in La Crosse for the trial, and had a cameraman in La Crosse at the early stages of the trial.

WKBT-TV, of La Crosse, Channel 8, obtained its video material through WWTI. A line was run from the video tape camera in the courtroom to a small wash closet next to the men's room outside the courtroom. The closet was on the same floor as the courtroom, but across the hall. It would not be visible from the courtroom. Channel 8 recorded the trial in the closet, and used its tapes in parts of newscasts.

Channel 8's recording operation was visible to those in the hallway. But Channel 8 was instructed to turn down the volume when jurors or witnesses used the adjoining men's

room. The Channel 8 reporter was kept informed by bailiffs.

STILL CAMERAS--There were never more than two still cameras in the courtroom (as specified in the guidelines), but photo coverage was not limited to two newspapers. The La Crosse Tribune, Waupaca County Post, Minneapolis Tribune, Milwaukee Sentinel and Coulee Gazette (La Crosse community weekly) were represented at the trial. Photo coverage in newspapers was light, apparently. The La Crosse Tribune used two pictures during the trial. The Milwaukee Sentinel used one--provided by the Associated Press.

***

Overall, the media equipment did not appear to be obtrusive; at least not anymore than it would elsewhere, such as in City Council chambers. The microphones for the audio system could have been taken for microphones for a court sound system; still cameras did not appear too bothersome. The long cords necessary in the audio system were noticeable, but did not appear too unsightly. They were taped down and did not appear unsafe. Perhaps the most noticeable were the TV cameras. All three were on the left side of the audience part of the courtroom. The video tape camera was in the extreme left aisle. The other two were set up among the front benches, primarily where the press was seated. The judge and witnesses looked directly at the cameras. The defendant and counsel (if seated) had their backs to the cameras. The jury normally

would not look directly at the cameras. However, the cameras were easily visible, especially when jurors were looking at counsel, rather than the witnesses. My observations indicated that the jurors did not pay much attention to the cameras; at least not anymore than they looked at other things in the courtroom (such as spectators walking in during testimony). Two of the cameras were quiet, but Channel 13 had an older model that was somewhat noisy. The jurors, perhaps, could not hear it, but spectators could--and the courtroom is relatively small.

The media representatives appeared to work under the guidelines once the trial was under way. There was only one major problem, and that came during voir dire. It was soon settled, and I am not aware of any others.

Prospective jurors were questioned in a room behind the courtroom and near the judge's chambers. The room was not visible from the courtroom. Alan Rappoport, reporter-cameraman for WEAU-TV, Channel 13, wanted to get pictures of prospective jurors during questioning. He said he had gone beyond the bar to get pictures of veniremen seated in the jury box while others were being questioned in the room. He said that he thought that pictures could be taken because the court was in recess--with the judge and counsel away. Others, he said, had taken pictures when the court was not in session. Judge Fink (see his answer to Question 11) also cited the cameraman

as taking pictures at the doorway of the questioning room. Judge Fink did not want the room being panned. Judge Fink confiscated the film taken of the prospective jurors.

Rappoport suggested that in the future it be made more clear when court is in session, and when it is not, and what "the limitations are."

Following the incident, defense counsel made a motion to ban cameras from the courtroom, but Judge Fink denied it.

Joseph Zobin,
Court Observer
February 24, 1979

Judge Frederick Fink of Wood County (Wisconsin Rapids)

QUESTIONS TO BE ADDRESSED TO THE JUDGE

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record the name of the judge and how long he has served as a judge; also note which of the three media were used in the trial: (a) television cameras; (b) radio equipment; (c) still cameras)

TV, radio and still cameras were present

1. What, if any, influence do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on you during the trial?

Apprehension. I've got a much-publicized trial; tried to get a jury in the other place (Waupaca County) and there was tremendous pressure. And I had never worked with cameras in the courtroom.

2. Did the presence of (a) television cameras, (b) radio equipment, and (c) still cameras seriously increase your supervisory responsibilities?

Yes. It does. No question. You've got to keep an eye on them to assure they are following the guidelines, in addition to other things you have to supervise.

3. If your response to question 2 was in the affirmative, did those responsibilities interfere with your principal duties as a presiding judge?

Not substantially.

4. Did the presence in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras produce more letters, telephone calls, et cetera, then you usually receive?

I can't answer that.

5. What, if any, impact do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on the witnesses?

I think there is always some ham in every human being and a tendency to play up to the media is there. And I'm concerned. I didn't see much of this [in this trial]. I saw some in the aborted trial in Waupaca.

NOTE: Judge Fink wanted to answer this as an all-inclusive statement that applies to all parties--counsel, witnesses, and others, and not just to witnesses.

6. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the behavior of counsel?

Very definitely, yes. To some counsel, it doesn't make a difference. To some, in varying degrees, it makes a tremendous amount of difference.

7. What, if any, problems occurred because of the use of (a) television cameras, (b) radio equipment, and (c) still cameras in your courtroom?

I didn't really have a problem; I had the problem contemplated. I confiscated some film. This is in the area of picking a jury. You may have to reach out to another panel. This panel is out there and watching TV. It becomes harder to pick a jury. In the preliminary phase, it may be necessary to prohibit TV cameras and still cameras.

8. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

I suppose I can answer that hypothetically. If a particular counsel wants to glean publicity from a trial that has publicity merit, then he can milk it for all it's worth. I'm not saying it was done. It can be done. I don't know how you can be certain it's happening.

9. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

I don't think I can answer that. The jury brought back a verdict. I can't say that it had an effect.

10. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

There, again, I can't answer the question. I would hope it didn't have any effect.

11. Describe any requests you received for the prohibition of (a) television cameras, (b) radio equipment, and (c) still cameras, the action you took based on those requests, and the reason(s) for your action.

Defense counsel--at the opening of the trial--asked that all cameras and radio be prohibited. I asked him his reasons and he said his client felt it would be detrimental. He gave no reasons, so we followed the guidelines of the Supreme Court. When we were voir direing individuals, an attempt was made by TV to photo part of this. I had seated the juror so her back was to the door. He (the cameraman) wanted to pan [the room]. I refused. I said they could take pictures from the doorway. I wanted as little of the jurors' faces on TV as possible. I may have been too lenient. Maybe I should have prohibited [all cameras at this time].

NOTE: Questioning of panel members took place in a room behind the main courtroom.

12. Overall, what is your general evaluation of the use of (a) television cameras, (b) radio equipment, and (c) still cameras, in the courtroom?

<u>On still cameras</u>: With advances [in technology], no objections, provided the cameraman is not obnoxious.

<u>On radio:</u> I can't see any objections as a news medium. If it could be used for challenges in the court--there are too many ways it can be doctored--I can see objections. I saw in Waupaca and here that older courtooms do not lend themselves [to having all this equipment]. There are cables all over and you are stumbling over it. You will have problems from an operational standpoint. You don't have room.

NOTE: The judge also mentioned the safety factor.

<u>Television:</u> Here, I feel a danger to a fair trial in the initial and preliminary hearings--in the initial stages of a trial, especially when it has been highly publicized (and you don't have TV unless it has been highly publicized). It can make it very difficult to get a jury [that is impartial]. The trial judge should be given a great deal of discretion [at this stage]; it is an area frought with danger. Once you've got a jury picked, I can't seen anything wrong with television in the courtroom.

Defense Attorney: Alan Eisenberg, Milwaukee

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

They didn't distract me at all; but three jurors, in voir dire, said they felt the cameras were a distraction... Because one newsman violated the rules.

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

I felt that the judge was less publicly abusive because of it. Therefore it was a help.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

Zero

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

See above. He was less abusive than in the first [atri] trial.

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

No.

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

Before the trial three /jurors / said it would be a distraction. You would have to ask them now. I don't know.

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

Zero

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

Zero. Maybe a help, because it kept the judge from getting publicly abusive. Therefore, it was helpful.

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I felt it was helpful. It inhibited the judge's abuse. This is speculation on my part. I don't really know if that was an inhibiting factor.

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

With. It keeps everybody honest.

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

It keeps people from getting abusive. Both the prosecutor and the judge would have been caught in the act by the camera.

Prosecuting Attorney: Philip Kirk, assistant district attorney, Waupaca County

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

It didn't distract me at all.

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

Absolutely none at all.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

None at all.

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

I don't think it affected it at all; there was not that much contact.

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

Well, I would say during the course of the trial, I had quite a number of calls, but I don't know if they resulted /from the equipment in the courtroom/. It was the substantive nature of the trial /and the news/ disseminated by the media. There was a built-in interest factor.

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

In questioning /to get a jury/ a few said they felt it was a distraction, but not a single one indicated it...would interfere with being able to make a fair decision. I would think that once the trial began, they would be more aware of the equipment than I was because of the positioning. When they looked at counsels' table, they saw the equipment; I didn't.

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

None, because there was never an instance where there /was a delay/ because the equipment wouldn't work. The only dilatory situations were indigenous to this trial.

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

I would like to say none, but I might hedge to a degree. Since the jurors were isolated, they were not exposed to /media reports/ I think the fact that they were there indicated the significance or importance of the trial, and might have been a signal /to the jurors/ to be more scrutinizing and careful to come up with a decision.

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

To me, the trial was fair. I think that the evidence both sides wanted to present was presented.

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

No difference to me. My presentation was based on what I wanted to elicit from the witnesses. There was no concern. I made no changes. It was something that was there, and that was it.

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I don't think there were any advantages to have TV cameras in the courtoom to attorneys, judges or jury. I think the advantage in having the equipment was to disseminate as accurate an account as possible of what happens in a courtroom to the public. People have such little appreciation of what happens in /criminal matters/; there may be misconceptions. This is very good for that. It can be very educational. Certain witnesses and defendants would be against it...but it can be very educational.

Harold Bauer, Waupaca County sheriff's deputy

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

Investigator, called by the state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

I imagine somewhat.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

No effect. They put you more ill at ease than you are /normally/

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

None. I don't live in the area /where the trial was/.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

Without.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I couldn't answer that. You would have to ask the jury.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I don't know. In many cases, it would be so well publicized that if there was a re-trial, it would be hard to get a jury that was not informed.

Lawrence Schmies, Waupaca County Sheriff

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

investigator, called by the state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

You are a little conscious of the cameras. It is a little bit like when someone says, "I want to take a picture," and you straighten your tie. It takes away from the natural testimony. You are more conscious and you try to avoid slang (like ain't). You try to sound reasonable and half-way decent to the public.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you? I don't know if it would. I tried to keep it short and precise...and /not/ open new fields. I don't think it had an effect on the length. Most /law enforcement agents/ are trained to give straight, simple and direct answers.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

I don't think any from the cameras. I did receive some letters from California and Colorado from people who read stories in newspapers. They had the same name and wanted to know if our forefathers came over on the same boat.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom? It makes no difference. In this case, we were not being dramatic. The defense attorney was; that's his style. Most law enforcement /agents/ don't try to get dramatic; just give direct, simple answers.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

Well, a picture's worth a thousand words. He's (defense attorney) got a product he's selling to jury. It does carry an effect--not on the jury, but on the public. But, I don't know. I don't see any harm to it.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I think a lot would depend. Every case is not alike. Some will incite the public; some inflame. It depends on the case. If it disturbs the public, no. If there is human interest, yes..... It didn't bother me. We try to be simple and direct. It makes you conscious; cuts out a lot of foolishness.

The Rev. Richard Mundt, pastor of Emmaus Evangelical Lutheran Church in Weyauwega

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

reference, called by defense

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   Mildly so. I was aware of them, and mildly bothered, but that's it.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   Made no difference at all.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   Nothing.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

   I would say without.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I have no idea. I didn't really consider that. I just don't know.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   It makes people more uneasy. I'm not sure whether it should be allowed; that's up to the court. It makes people nervous.

Dr. John Mulvaney, psychiatrist from Marshfield

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

expert witness, court-appointed psychiatrist

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

Oh, I suppose to some degree. I felt it was not just me. It had an effect on the entire proceeding. I had a negative feeling. The proceeding is more important than the publicity. Newspaper and TV people had a detrimental effect; and not just in the courtoom. I was not in favor of it. I didn't think people should be on exhibit. It's enough of a circus without making it public.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you? I don't think it affected it too much that way. My answers were determined by the questions. They /the questions/ were not adequate to express my viewpoint.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

It didn't. I wasn't on TV. My testimony was later and they were more interested in the decision than the people. I got some comments before the trial.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom? Without. I feel my /appearance/ was an obligation to the psychiatric community and I was not interested in demonstrating for publicity. TV makes it a public exhibition.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

You would have to ask the jury. I don't know what affect it had on the questions that were asked me; ask the prosecutor and the defense attorney.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

It doesn't have to be there. The court doesn't have to justify to the public that it is doing right; it doesn't have to apologize to the public. I don't think putting witnesses with instability will make them more stable. It may be a disservice. When a witness has a problem with stability, it won't make him more comfortable.

Mr. Jean Clark, assistant fire chief of Weyauwega

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

investigator, called by state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   Just in an unreasonable delay while they were argueing about having it /equipment in the courtroom/.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   None

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   None

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

   I don't think it makes much difference.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I don't know.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   I don't think it should be allowed. Too much publicity is put one these trials.

Herbert Loehrke of rural Weyauwega

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)
Had sold house to Patris' and was owed money; called by state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

Really none.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

Mine was just a testimony of fact; nothing would distract me much.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

None

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

Preferred that they were gone---out.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I couldn't really say. People in that area got the wrong impression of the lady.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I really don't believe they belong there.

Mr. Leslie Meyer, state fire marshal from Weyauwega

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

investigator, called by the state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

I didn't notice them while testifying.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

None at all.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

Just this one.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

It doesn't matter to me, either way.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I would be hard pressed to give an answer. I can't conceive how it would affect the fairness of a trial, as long as they were kept unobtrusive and don't creat problems for the jury.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I wouldn't think I would have an evaluation. I haven't really studied it.

Dr. Kathryn C. Bemmann of Waukesha, psychiatrist

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

Expert witness, called by defense

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   I did not feel uncomfortable. I was not aware they were there. I was doing my thing.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   On a conscientious level, I was not playing to them. If it was on an unconscientious level, I was not aware. I don't think it had /any effect/.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   I suppose some people saw me and commented. But because it was so far away /from where I practice/, I would say it was not a very great influence. On a scale of zero to 10, about a 2; nothing hostile.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

   I don't think I have a choice.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I feel it did not affect the fairness of the trial.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   I think that overall a lot depends on how obtrusive the cameras /are/....Overall, for me, it was a neutral experience; neither positive nor negative.

Dr. Anna Campbell of Elm Grove, psychologist

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

expert witness, called by defense

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   I'd say not at all.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   I'd say no effect; none.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   I received none, so it must not have had any effect.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom? From the perspective that it is valuable for the public to have awareness of what is going on in the courtroom, I would choose to have TV equipment there; not because of the affect, personally, but because it's valuable for the public.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I think it had no effect at all. The jury was sequestered and couldn't see it.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   I think if it was done as in La Crosse--with the cameras stationary and unobtrusive at the rear of the court--it's fine. It could be done obtrusively, but it was not.

Mrs. Jacqueline Bartlett

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

Initially, I was quite aware, and bothered. But after the third day, I was not even aware of it.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

None

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't think that much, especially the professional people.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I would say probably none as far as the state /attorney/. It seemed to me that Jennifer's attorney kind of was on stage; he was using theatrics. Maybe that's just his delivery. He seemed dramatic...for the benefit of TV.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

None

7. What; if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't think it had anything to do with the fairness.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I guess I would have to say I would rather it had been without. It seems cameras have a tendency to sensationalize things. /The media/ could have gotten material for a factual report without /the cameras/ in the courtroom.

Mrs. Elaine Betz

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

It didn't matter that much. We knew they would be there, and that was it. I didn't think about it.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

It didn't have any on our deliberation.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

Nothing, as far as letters or phone calls. A friend said she'd seen me on TV, after I got home.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I didn't even think about it then. I was so intent on what they were saying that I didn't think about it.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I don't think ithad much to do. Mr. Eisenberg was always flamboyant. But not knowing him, maybe he's always flamboyant. I don't think they even thought about it.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think they bothered him at all.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I doubt it had anything to do with the way /the case/ was decided. It made no difference at all.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

It would make no difference. I was so intent on what was going on that I didn't give it a thought at all.

Mrs. Marian Boyle

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

We knew they were there; we could see them moving up and down. It was sort of distracting. The newspaper people were moving, too; they were no worse than the newspaper people.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None at all

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

Haven't had any

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I can't say. Most professional people seemed to be at ease. Some were nervous. It could just be being on the witness stand; can't say.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I don't think it affected the prosecutor any. But Jenifer's lawyer, I thought a lot of what he did was affected. Maybe he would have beenthat way anyway. He was very effected, but maybe he was doing ti just for the jury. This is the only trial I have seen him.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think any.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't think it had any effect at all.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I think without.
(Her overall observation):
I think they [radio and TV equipment] somewhat distracted [jurors] but not to the extent that would have affected our coutcome.

Mrs. Leona Choate

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

Didn't bother me. Knew they were there. Didn't interfere with the proceedings; they were in the rear.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

Didn't make any difference.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

Not any.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

Most of the witnesses were...professionals and used to it. I don't think it had too much effect.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

Well, it was kind of publicized. It may have had a little effect /to/ emphasize their point.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think it bothered him too much. At one time, before the trial, someone came forward and he said that was not permissable. He was concerned that they abide by the rules.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't think it had any effect.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

This my first time on a jury. I was so interested /that I/ kepy my eyes forward. It didn't really bother me; I wasn't concerned.

Mr. Glenmore Eggum

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I realized they were there.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None, whatsoever.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

None.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't think it bothered them at all.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

It might have affected the defense a little; the other, it didn't make any difference.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

None, whatsoever.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't believe it bothered the trial at all.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

Immaterial to me.

Mrs. Eva Farris

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I knew they were there.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None, as far as I was concerned.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

I have had none.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I think it did have some. I know at times when some went up, you could tell they noticed the cameras. With gestures and facial expressions, yes.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I think at times they became very upset that the cameras and broadcasters were there. I am thinking of two instances in particular.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

They didn't seem to bother him when they were within the assigned areas. When they were not within, he became very upset.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

No effect. I knew nothing of anything until everything was brought out. I was unaware of anything about it. No effect on me.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

Made no difference to me.

Mrs. Jacqueline Holmes

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I knew it was there, but it didn't bother me.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None. We did not see TV, newspaper or radio coverage.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

I got one call from a reporter the night I got home. A lot didn't know I was on it (the jury).

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't think it had any. Once called upon, they couldn't talk /about the case/ until dismissed.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I think so; yes. At least on one part; he (the defense attorney) was very dramatic.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

He wasn't pleased with them. I don't think he wanted them in there. He was rather upset with them.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

We didn't hear; we couldn't see...so what we saw [ourselves] that was it.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I don't think it would make any difference. I really don't. You would have news media anyway, and pictures in the newspaper, but really no difference. I think if people could see this on TV, they could tell better [what happens in court] than from just a newspaper.

Mr. Frank Kitson

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

You knew they were present all the time.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

Nothing that I knew of. One reporter called after the trial, but that was not related.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I would say, yes; they played to the cameras.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

Very much. Dramatized a lot of places where it was not necessary; were on an ego trip.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think it had any.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't think it affected the trial or jury at all.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I'd have been better off without /it/; it wouldn't have been dragged out; a lot was unnecessary; they were palying to the cameras. Cameras, per se, didn t bother me, or the others. I can see both sides. But it lengthened the trial.

Mrs. Helen Nelson

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

   It really didn't bother me.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

   I don't think any, whatsoever.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

   None.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

   I don't really know. None that I noticed.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I don't think it ordinarily would have affected her lawyer. He was a bit more flamboyant than most lawyers.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't believe any, that I noticed.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't believe any.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I had never been on a jury before. Didn't bother me; I shut it out of my mind. It didn't bother me, but I can see where it could bother some.

Mrs. Beverly Pralle

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

When the trial was going on, I was oblivious to them. When we came back in /to the jury box/ you'd say, "Oh, the cameras are there," but I got too absorbed to notice them.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None at all.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

I didn't have experience like that at all.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't know. I don't think it bothered anyone. It may have bothered some on the jury, but after the first day, you got used to it.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I just don't think either one performed for the cameras. They were trying to impress the jury rather than the cameras. Mr. Eisenberg was very colorful. I don't know him; that's probaly his way; it was not for the cameras.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think it was affected by the cameras.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

Cameras didn't have a thing to do with it. They were there and part of the background. I hope they didn't; they didn't me. They didn't affect the fairness.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

They didn't bother me. I was so absorbed, I forgot them. They were not very obtrusive.

Mr. James Shoults

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I'd say very aware.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

Not any.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

I would say nothing. I haven' received any. A lot of people did know I was on the jury by seeing me on TV.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

This was really the first trial I ever saw, so I don't know. I don't think it had very much

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I don't think it had any effect.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think there was any. Although there was a time when he kind of blew up; other than that, none.

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(NOTE: The "time" referred to involved a news photographer going where he wasn't supposed to go.)

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

It didn't have any effect.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

Oh. I think without.

Mrs. Sandra Wheat

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I was not aware as long as they stayed behind the /bar/; when they didn't, they were obnoxious. More /aware/ as they walked back and forth to the judge's chambers. Wasn't aware at all during testimony. They made a noise, but it didn't bother me.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

None

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I wasn't a witness, but I noticed a couple of times people looked around (at the jury, attorneys and jury). The ladies arranged themselves more decorously than otherwise.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I wasn't a lawyer. One played it up and one was inhibited by it. But that's my opinion; not fact.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I wasn't the judge, you'd have to ask him. As far as I could discern, none. I didn't know him; he's not from here.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I must say some effect, and simply because one (attorney) was flamboyant and knew how to use it to his advantage. He might have done that anyway, but he used the resources at hand and used them to greater advantage than the other.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

It didn't bother me. It lent some excitement--and to some upset stomachs in the jury room, and hotel. You were more aware that you were doing something important /with the press coverage/. There was no ill effect, as far as I could discern; it didn't affect the judgment or the thinking.