No. 81-300

STATE OF MINNESOTA

IN SUPREME COURT

In Re

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

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

Petitioners.

TRANSCRIPT OF COMMISSION HEARING ON MODIFICATION OF CANON 3A(7) OF THE MINNESOTA CODE OF JUDICIAL CONDUCT

Transcript of Commission hearing held on Tuesday, October 6, 1981 in Room 1753 of the Hennepin County Government Center, Minneapolis, Minnesota at 9:30 A.M. before John S. Pillsbury, Jr., Chairman, Sidney E. Kaner and Rosemary M. Ahmann, Commissioners.

Pillsbury: Maybe we should just say for the record that we are reconvened in Hennepin County Courtroom No. 1753 with substantially, am I right, the same media equipment here. There are some differences, but I understand from counsel that one of the witnesses will describe the differences as part of his testimony? Am I correct?

Hannah: That's correct.

Pillsbury: All right, we're ready for the witness. Do you want to swear the first witness?
(MR. DURENBERGER SWORN IN)
Will you identify yourself?

Durenberger: I am Mark Durenberg and I am here as a broadcast audio consultant. I have about twenty-five years experience in miking, public address equipment and mike pickups. Let me describe briefly what you see here this morning. These microphones are going back into that anteroom.There is an engineer back there mixing them all together and watching volume levels and making sure that all of it comes out balanced. He also has a piece of equipment which distributes this audio to as many television or radio station cassette machines, film cameras, etc. We have a box that I will describe later that does all this connecting. The normal equipment you'll find in a

courtroom will be a part of the public address system. This equipment this morning we set up here because we wanted to not only record it, we're not sitting in the usual chairs, but also to show you the extreme. This is probably as complicated as a recording set up would get -- the microphones in front of you here. I have a few comments and then I will be glad to answer your questions. First, microphones can be obtrusive. You have all seen pictures of a news maker where there are thirty-five microphones in front of him. People approaching with a cassette machine trying to turn the cassette over and that can be bothersome. Fortunately, there is a way out of this. The guidelines you have before you recognize the problem and deal with it effectively. It's a lot easier, my job is a lot easier doing audio pickup because my equipment is a lot smaller. There are two ways to do this to solve the problem of picking up the audio in the courtroom. The first, as the guidelines propose, is the use of existing public address equipment. The judge has a microphone, there may be a microphone here at the bench, there may be loud speakers connected to it, but regardless of the sound, where it's coming from, it all comes together in an amplifier, usually in a back room. What we propose is that this amplifier has a connection made with a device like this. This is

called a transformer. You can install this on the public address system, take the output of this thing and feed as many microphones as you need. You don't touch anything in the courtroom. There is no equipment added in the courtroom other than the public address system - microphones. This approach is really the easiest because it doesn't require any additional equipment and, in the case of pickups that are done in a hurry, for some reason we don't have advanced warning we need to record, we can usually go in and make this connection very quickly. The second approach is used when there is no P.A. system in the courtroom. You could do an arrangement like we have this morning. The station,and usually there will be one station responsible for the pool feed, will provide the miking. In this case it is WCCO Radio and, as I said, they have set up these microphones here to pickup all the proceedings. The microphones may or may not be as big as you see them. There are several types of microphones. There is a new microphone that I am talking into. You may not know that I am miked right now, but this little device takes advantage of new technology in miking called pressure zone miking,and it's a technical term that means any sound reflected anywhere in this area will be picked up by this little device. What we do with this, in this case of your arrangement here, would be to set

this right down in front of you and that's all you'd have on the table. It will pick up the entire table. This is new technology. This is one of the reasons we feel we can do an effective job of coming into the courtroom at the last minute, installing such a device on the table, running a wire out and we are ready to pick it up. It's called pressure zone miking. It's called a PZM, it's a trade name. Now, what can you expect to hear if you don't have an engineer mixing the sound, You have to deal with the fact that everyone has his own speaking style and volume and sometimes you're going to have a problem whether it's a P.A. system in the courtroom or this sort of an arrangement. What may happen is I may sound louder on the tape than perhaps you.

Pillsbury: Can I just ask one question?

Durenberger: Sure.

Pillsbury: I think you said, am I right, you are not using the courtroom system at all now.

Durenberger: Not this morning.

Pillsbury: You're using your own system entirely.

Durenberger: Right. The engineer is back in that room mixing this together. So your problems are two-fold when you do this. You have a problem of volume

level among the speakers in the room. The other problem is visual identification. If you don't have a camera on, say you're doing a radio pickup, it's sometimes pretty hard to tell who is speaking. Of course, the camera solves that problem, but the radio station has to rely on some other sort of identification means. The problem with the volume is something that we can deal with technically. There may be a tremendous difference in volume between, let's say, these two microphones. We have a device that will do this automatically. This is one example of what's called a compressor. This little box will automatically adjust the volume so that you get some consistent level coming out of the system. This can be installed, again, in the back room and will do the job for you automatically. Now about sound distribution. It is easy for us to pick up the sound and with this microphone we could set it on this table and that would solve our problem, but how do we get it to the other stations? There may be fifteen or twenty stations that want to record. We want to get away from the problem of the twenty microphones, so we solve this by bringing our audio into what we call a multbox, a multiple box, or a distribution box. It's nothing but a device that accepts a single input and provides as many outputs as you need. We are using one back here. It's an aluminum box, perhaps

this big, with a bunch of little connectors on it that look like your stereo connectors at home. You plug the audio from the P.A. or from these microphones into one side and you can take out as much as you want on the other side. These devices are usually built by radio stations or they can be purchased and they are called distribution amplifiers when you buy them. Again, they're very easy to build and they are readily accessible in the market. This distribution system would be installed in an anteroom, as in the case of today's setup. You would then have all of your technical equipment in that room with the exception of a cord that might run back into the camera, so that the audio is put back into the camera from this sytem. You would want, it is my recommendation that you'd want, to do this on a permanent basis in major courtrooms, particularly a room like the Supreme Court room. The P.A. system is adequate. You should have some sort of an internal connection that takes advice of this type of technology and the distribution system installed permanently. I would recommend to the Commission that we do provide some funding so that we can equip several of the major courtrooms with this kind of equipment. I think most of them have P.A. systems now.

Pillsbury: Excuse me. When you use the word "we", we should

provide funding. Who is we?

Durenberger: I just asked that the Commission. I don't know where the funding comes from. I am a bit naive in that regard. An engineer always has this dream that money is available. If he comes up with the idea, there is nothing to it, someone will provide the money and we will have the equipment. I do submit to you that audio pickups can be done effectively with no interference to the proceedings. There's no reason why a microphone has to be installed for a special pickup when it can be something like this. It doesn't have to be a desk mike and it will generally be the P.A. system in the courtroom. So it can be done without any interference to the proceedings and I suspect that there will be some technical questions, so I would like to stop now and answer some of those if I might. Have I confused you, I hope not?

Kaner: What would you do about rural courtrooms? What would be the thought there as to how you would solve the problem?

Durenberger: I think any courtroom that doesn't have a good installed public address system, we would take this approach, this microphone, because you can take this microphone and feed it directly into a tape machine or a recorder. It works just like any other mike, but what this will do, if I set

this down here in the middle of the floor, it's not an ideal location, but it will pick up everything that's said in this room. If there is not a lot of air conditioner noise, for example, you'll get a very good pickup. So this is a very simple and effective way to do it. It's quite unobtrusive.

Pillsbury: Perhaps I missed it, but I would think that since this is a relatively new courthouse that this system in this courtroom would probably be one of the more sophisticated in the State of Minnesota. You are not using, and maybe I missed why you are not using it, or would you use it in a normal court proceeding?

Durenberger: Yes, you would. We wanted to demonstrate this. Also you might normally be sitting at the bench, for example, where there is a microphone there, as you can see. When you move out into this area, we would normally use this. We wouldn't have these three microphones here, but we wanted to show you how this is the most complicated it can get -- what you see right here now.

Ahmann: You mentioned that that can pick up sound from a distance. What distance could it pick up a sound?

Durenberger: One of these microphones would work in this room. I am listening to the sound of the room, because the air conditioning is pretty quiet. If you had

a lot of room noise, you would localize it. You probably would use two of these. This particular microphone would be effective with this kind of radius. If there was a lot of noise in the room, you would probably have one of these at your table, another one up here maybe, and one over here. But one will do it in most smaller courtrooms, one microphone will do the job.

Ahmann: It was pointed out yesterday that there is some concern about microphones picking up conversations that are considered confidential. How could you operate that to insure that the confidentiality would not be invaded?

Durenberger: I would install a master switch, perhaps in front of the court reporter, so that the microphone, the entire system if you want it, could be turned off momentarily while such conferences are taking place, when counsel approaches the bench, for example. I don't think it is fair to ask the judge to do it because he may forget to turn it off or forget to turn it back on again, then you've got a problem. But if it were someone like a court reporter who is following what's going on, then I think it would work effectively. It would be very easy to build a little box with a switch on it that would work on any P.A. system, runaway or back to shut it off.

Pillsbury: Yesterday in our proceedings we went out into

the corridor and saw the monitoring equipment that was in the Ramsey County Courthouse. Is there anything new or different that would pay for us to go in there and take a look at it or is it about what we saw yesterday?

Durenberger: I think it is. This is really the new technology we wanted to show you today, because this is the only thing that has to be in the courtroom. What's in there now is a mixing console which sums all the microphones together. It's very much like the P.A. system amplifier. In addition, there is this multbox that I was talking about. There are several radio stations and TV stations right now recording us, taking a feed out of this little box. We have a single source of sound being spread in many different directions.

Pillsbury: But you're saying that new piece of equipment, if it was in the center of the room here on the rug, would probably suffice to pick up what I'm saying and what you're saying?

Durenberger: Yes, I was using that as an example. You wouldn't place it there normally. It would be placed at table level, but setting on this floor in this room, it would work.

Hannah: Why don't we go back in, we have a travelling microphone, because it is a little different setup from yesterday visually and you might want to take

a look at it.

Pillsbury: I see that Judge Segell has arrived. Do you have any questions that you would like to ask, Judge Segell?

Segell: I was just thinking about my with all the switches I have there.

Pillsbury: Well, as I understand, there are two principal circumstances. One of the rules when you would want to turn the mikes off is a conference between counsel and the bench, the judge, and the other is a conference between counsel and their clients. There was some discussion yesterday about that problem -- would the judge remember, or should he be expected to remember, or would counsel remember, or should they be expected to remember when they have got all the concerns of the proceedings to have to do that themselves.

Durenberger: Yes, I understand that. The court reporter may not be the real answer, but it seems to make more sense because the court reporter is in tune with the proceedings at all times.

Segell: The problem with that is that the court reporter in your criminal cases is required

Pillsbury: Excuse me. Excuse me, judge. If we would like to get this in the record, we'll have to get this

travelling mike over to you.

Segell: The difficulty is that the court reporter in all criminal proceedings is required to tape the proceedings, that means he has to have a tape recorder in front of him. What you're asking him to do is to switch two things -- switch off the tape recorder and switch off your microphone every time there is a conference either between counsel, conference between counsel and his client, or a conference at the bench.

Durenberger: Does he normally stop the tape recorder?

Segell: Yes, he does.

Durenberger: This could be done with one switch.

Segell: It could.

Durenberger: Yes, sir.

Pillsbury: Judge, if you would like to be a little more in this informal proceedings, we'd be very happy to have you sit over here or over here. I would suggest don't sit in those three chairs or you'll block the television camera.

Segell: Can I have Judge Day join me?

Pillsbury: Yes, indeed.

Durenberger: Would you like to take a look in this room?

Pillsbury: Yes.

Durenberger: Now my voice is coming through a couple of places here. It's also coming out of that TV set, but this is being mixed together. Your microphones and mine are coming together into this console, which is very much like a P.A. amplifier. From here it's fed into this distribution box and that is the device I was describing that takes the audio from here and sends it to as many recorders as are connected. Down here you'll see some videotape machines, there are some cassette machines connected to this one. This is a very simple type of arrangement. Normally you don't have this kind of wiring because, as I said, we are doing an unusual, this is more of a demonstration. The microphones, for example, spread out here onto the floor. This would be a worst case situation where something came up at the very last minute and you had to get it on record. You'd have to go in there with this. You'd have this down to one cord where there are now four. Any questions in here?

Segell: In Ramsey County, all this would be out in the hall.

Durenberger: It would all be in an anteroom, yes, sir.

Segell: No, it would be in the hall because we don't have any anterooms. We don't have this kind of thing.

Pillsbury: One of the questions raised yesterday was, in reading of the reports of the experiments of some other states, there was some concern expressed that with the monitoring equipment in the corridors that certain persons, witnesses presumably, who were out there and not intended to see the proceedings at that time in the courtroom, could, in effect, follow them on a monitoring system in the corridor. That was why the question was raised as to how that could be handled and, of course, in this place it's handled well because there's an anteroom available. I don't know how much that's true in courtrooms generally around the state. I presume the newer the courthouse, the more the room. Where is the monitoring? Is there a monitoring screen?

Durenberger: It's right here.

Pillsbury: It's different than we had yesterday, I see.

Kaner: Would that be an inherent part of all of this procedure no matter what courtroom you're in?

Durenberger: The video.

Kaner: Yes.

Durenberger: This particular monitor is just one way of looking at the picture. The camera might be, you may have a camera with a screen in the back of the camera perhaps. That may be the only place that there's video seen. I don't believe, there is no screen

on that camera, is there?

Tschudin-Lucheme: No, but if I can point out, normally in this kind of a situation we would have some kind of a monitor because it's the only way for a reporter to intelligently see what, in fact, is going out from the camera. I also might add, if I might, that in Wisconsin the problem that you mentioned.

Pillsbury: Will you please identify yourself?

Tschudin-Lucheme: Oh, I'm sorry, sure. My name is Rob Tschudin-Lucheme am a reporter with WTCN. In Wisconsin the way the judges solved the problem of witnesses seeing what was going on with the reporters and the TV cameras and the screens and so forth is they simply figured out the geography. They had bailiffs and clerks and so forth and they managed to keep the jurors and the witnesses away from the area where this monitoring equipment was, whether it was in the corridor or in an anteroom. Often it was in the corridor out there, but it worked quite smoothly and there didn't seem to be any problems, so I think it's where there is a will, there's a way.

Durenberger: Any other questions of the equipment in here? Again, please remember that this system would be greatly simplified if we were doing a live pickup. We would be using the single microphone and a single wire back into the room.

Pillsbury: Are you finished?

Durenberger: I finished. I'd answer questions, if you'd like?

Pillsbury: Any further questions? If not, thank you very much Mr. Durenberger (RETURN TO COURTROOM) Perhaps as long as he came from Ohio, Justice Day is not going to appear until this afternoon, but maybe you would like to introduce him, Judge Segell, for the benefit of all those people here. Would you want to give him the microphone for a minute here? We won't swear him in as a witness for awhile.

Segell: Judge Day is on the Court of Appeals in Cleveland. He has been there for thirteen years and prior to that time was a trial lawyer in that area for about twenty years. He is a past chairman of the Criminal Justice Section of the ABA. He's a past president of the National Association of defense counsel in criminal cases. Judge Day.

Pillsbury: Judge, we appreciate very much your willingness to come and look forward to hearing what you have to say.

Day: Thank you very much.

Pillsbury: Counsel, do you want to proceed with your next witness?

Armour: I will be introducing the Executive Editor.

Pillsbury: Would you identify your name for the record?

Armour: I'm Norton Armour, General Counsel, Minneapolis Star and Tribune. I will be introducing the Executive Editor of the St. Paul Dispatch/Pioneer Press, John Finnegan, and the editor of the Minneapolis Tribune, Charles Bailey. The order of appearance, I think, it would be best to have each of them make their prepared statement. We can have them sworn together and then save questions until they are both through. The uniqueness of this appearance has to do with both of these editors already are allowed in the courtroom with their reporters, the print reporters, and so in this case their particular description would have to do with allowing still photographers in and their concern, in a sense, with what that would mean in terms of courtroom coverage. So I think at this time it might be good to have both John Finnegan and Chuck Bailey come up to be sworn in.

(MR. FINNEGAN AND MR. BAILEY SWORN IN).

Armour: Maybe because John Finnegan traveled farther to get here, we'll let him go on first.

Finnegan: We were thinking about doing a buck and wing act here for a minute. My name is John Finnegan. I am the Executive Editor of the St. Paul Dispatch/Pioneer Press and I am appearing here on behalf of my newspaper. I think it's time that Minnesota opens its

trial courts to cameras, both television and still. It's time that the media be allowed to use all of its reporting tools fully in covering the criminal justice system in this state. Other states have already moved to accept electronic journalism and still photographers in their courtrooms. I still find it hard to understand why Minnesota has been unwilling to follow suit. I want to list a few reasons why I do strongly support this proposal. One, I think there is strong evidence, both in the nation and in Minnesota, that the court systems are not held in very high esteem by the public. Part of the problem I submit is that the public is not adequately informed on the legal system. A (INAUDIBLE) survey made several years ago showed that of fifteen major institutions in this country, the state and local courts ranked only eleventh in public confidence, just behind labor unions and just ahead of Congress. In a similar survey made by my newspaper several months, the state courts did come out a little better -- in ninth place. That was still lower than the media. I do not argue that putting cameras in the courtroom will eliminate that problem, but certainly broader exposure of the public to what is going on in the court and in the legal system should improve understanding and eventually raise the image of the courts. There still is a certain cloak of mystery over the court system and lifting a corner of that cloak through

can prove television and radio coverage could help eliminate some of that mystery. Wipe out some of the harmful myths and misconceptions about the legal process. Justice Otto Moore of Colorado once said that there was no field of government activity concerning which people are as poorly informed as the field occupied by the judiciary. We must correct that situation. To better inform and educate the public, we cannot assume that it has access to observe the system today. It is not practical for all members of the public to attend public trials and we should not expect them to. The print medium tries to provide that daily coverage and explanation of what's going on and, I think, we do a creditable job. But it is clear to me that to reach the broadest and most complete cross-section of our communities, other media must be involved. The electronic media have become a significant factor in disseminating news and information in our society. I believe currently it is hamstrung in reporting on the courts. A second reason for my support of this proposal is that reporters' tools today are much more sophisticated than they were just even a decade ago. I am not going into a discussion of the quiet cameras, the high speed cameras, the remote feeds for radio and TV, you're getting that from experts. The fact is that advanced technology has made coverage of the courts unobtrusive and certainly possible today more

than ever before. A third reason for my support is that the print media will use the additional access to the courts as well. Still photos can provide readers with a much better look at the courtroom environment and of the people involved in the court system and processes. It will add another dimension of coverage we do not now have. It will not materially change our coverage. The opportunity for reporters to use tape recorders, however, certainly will enhance our reports by insuring greater accuracy in our note taking. Reporters will be able to concentrate more on the significance of what is being said, rather than on the words and that, in my judgment, will be a gain. In short, overall trial coverage can be improved. There is a fear, I know, that media people will get out of hand, will violate report rules and protocol, will run rough shot over a defendant's right to a fair trial -- that is a risk. The judges are not being asked to relinquish control of their courtrooms. Guidelines can be written to protect a defendant's right to a fair trial while still opening the court to this greater public access. Earlier this year I wrote a column in my newspaper in which I suggested that Minnesota could come out of the dark ages of trial court coverage if it followed the light provided by the United States Supreme Court in its decision on the Florida television case that appeared last winter. The

high court said that trial courts could be opened to broadcasters and that they can set standards for broadcast coverage. In other words, it is not inherently unconstitutional for the states to do so. Now that that constitutional ban is finally out of the way, let's find a way to open the courts rather than strive to find ways to keep them veiled. Thank you Mr. Chairman.

Pillsbury: Would you rather have Mr. Bailey testify before we have questions?

Armour: We thought we would have Mr. Bailey make his speech and then both would be available for questions.

Bailey: Thank you, Mr. Chairman and those on the committee. I am Charles Bailey. I have been editor of the Minneapolis Tribune for the last nine years and before that I worked as a reporter in Minnesota and in Washington for about twenty-two years. Along the way I spent a good deal of time covering court proceedings, both criminal and civil, and at both trial and appellate levels. I have served in various capacities in professional journalistic organizations and am currently a member of the Board of Directors of the American Society Newspaper Editors. I served for the two years just past as chairman of that Society's Freedom of Information committee.

Pillsbury: Did we have copies of this?

Bailey: Norton, I think, left some copies, if anybody needs them afterwards. I am happy to join my friend and my friendly rival, John Finnegan, today and not in the combination in restrain of trade, but towards the adoption of the proposed new standards of conduct on the use of photographic, electronic broadcast coverage of judicial proceedings in Minnesota. I hope that the Committee will recommend the adoption of the proposed standards, you have heard, or will hear, from broadcasters and from photographers and others who are learned in the technical end of this matter. I would like to offer some brief comments from the point of view of newspapers and would be glad to try to

(END OF TAPE) answer any questions you may have. Putting it simply, I believe that rule is too broad and is arbitrary and unnecessary. I think my belief is in line with the opinion of the Supreme Court in Chandler v. Florida this year. In which the Court said that the earlier Estes holding could not be read as an absolute ban on state experimentation with an advancing technology. That no absolute ban could be justified merely because there is a danger that in some cases broadcast accounts of trial events might impair the ability of jurors to reach a verdict uninfluenced by extraneous matter. But even if a judge has the right to allow photography

in his courtroom, is it wise to do so? That I think is really the issue here and I think the answer, in the great majority of cases, must be yes. Photographic coverage is one of the essential aspects of newspaper coverage of news. That is as true inside a courtroom as it is at a baseball game or a political convention. The judge is in charge of his courtroom. There ought to be no disagreement about that. The proposed rules here would give trial judges ample discretion to forestall prejudicial conduct by photo journalists and to regulate what may be photographed or recorded. I am sure the Committee is familiar with the landmark Supreme Court decision in the Sam Sheppard case -- Sheppard v. Maxwell. That opinion is more critical of the trial judge's failure to use his authority to control the behavior of the press than it is of the content of what that press published. Existing rules already give justice the means of insulating jurors from exposure to the results of photographic coverage just as they can now be insulated from the results of pencil and paper coverage by writers. We are not talking here merely about trials involving murder or sexual misconduct or other so-called sensational subjects. Matters of great importance to our society come before the trial courts. The ability of newspapers to publish photographs of those proceedings will,

I think, increase our ability to focus public attention on these issues. It will also help the public understand the issues and the people involved in adjusting them. Examples of such cases might include those involving civil rights, environmental quality, political issues such as reapportionment and the like. Finally, I would respectfully suggest that photography can also serve a valuable part in helping the press fill its responsibility to monitor the operation of the courts. To serve as the eyes as well as the ears of those citizens who for one reason or another, including simple limitations of space, cannot personally monitor the performance of the courts. It is easy for editors to put too much emphasis on this aspect of a newspaper's function. We are, after all, primarily in the business of collecting news and information and offering it for sale at a profit. But the oversight function is also a key role for the press, and, indeed, it is that function, I believe, which justifies the special protections afforded the press in law and in the Constitution. Cameras can help us perform that function more accurately and more completely. I want to make this one sort of specific digression here. The ability to record proceedings electronically, that is to use tape recorders, can help us perform the monitoring function more accurately. It is one area where the electronic access is as useful

to us as it is to the broadcast media in that it would make it possible for us to have electronic notes, so to speak, rather than to rely on the handwritten notes in the notebook, which are necessarily incomplete and difficult to transcribe and subject to inaccuracy. That's one case where that device that you saw out there -- that multiplex -- would be useful to us too. I hope the Committee will see fit to recommend adoption of the proposed guidelines. They may require some amendment in one aspect or another, although it appears to me that they have asked enough discretion in the trial judge to deal with any imaginable circumstance. They will not guarantee flawless performance by the press in covering trials, but neither does the present absolute prohibition of any photographic coverage. I understand there were some questions yesterday about the editorial decision making process and I would be happy to respond on that subject or any other, if the Committee members have specific questions.

Pillsbury: Do any of the Commission members have any questions they would like to ask at this time?

Kaner: I don't think so. Let the discussion proceed.

Ahmann: I have a question. I did raise the question yesterday about editorial decision about the story and photograph in this case the print media. I just thought

I might also bring up the situation we discussed earlier this morning and that is one of the major newspapers carried a photograph of the proceedings yesterday and a news story that went with it. Had I read that and proceeded to the meeting this morning, I would be in Ramsey County Courthouse today and not here in Hennepin. I would appreciate the explanation of how you direct that. I think the gentleman yesterday did explain, to some extent, how two groups -- photographers and journalists -- work together on your newspaper.

Bailey: First of all, photographers and reporters do not decide what goes in the newspaper. Editors decide what goes in the newspaper at various levels and in various ways. The process differs in detail from paper to paper, but generally speaking, I think, the process that we follow is probably pretty much the same as John's. He can explain where they differ. Decisions about what goes into the newspaper are made really at two points in time. First, a decision is made to send a reporter or a photographer to a place or an event, so that the event will be covered and can be put in the newspaper. If you don't report it, you can't publish it. But reporting it doesn't mean that you always publish it. Indeed we receive probably on the order of forty or fifty times as much

material of one kind or another everyday as we can publish, probably more than that, in fact, if you count the wire services which just pour material in all day long. The elemental decisions we make are decisions about what to leave out. Really it's kind of a discouraging situation. We make those decisions based, at our paper at the Tribune, on a meeting of the ranking editors that's held at four o'clock in the afternoon at which time the city editor, the state editor the national editor, the foreign editor, the sports editor and the chief photographer report to this meeting which is chaired by the managing editor. I also attend. Assistant managing editors are there. They report on what they have from their segments of coverage, from their activities of the day to offer for the newspaper and the managing editor will sort that out. He will decide what goes on page one, sometimes with some friendly advice from the editor, and what goes inside the paper. By ranking the importance of those stories in his judgment, he, in effect, determines what falls off the edge of the table because there isn't room for it. The question of the linking of photographic and word coverage arises in that we will ask in a given story did we have a photographer there as well as a word reporter, or in some cases we will have photographs which are not connected with a story. A photographer will have been

cruising on the streets, for example, and will have been dispatched to an accident scene, or will have been on his way back from an assignment out of state and will have noticed a particularly picturesque scene and will have taken a picture of it. We have photographers who can't resist taking pictures of horses in meadows, for example.

Finnegan: Mozart.

Bailey: There are photographers who can't resist people strolling in the park -- we look for weather pictures. Those pictures run independent of any connection with a news story. They are illustrative of the day or they are decorative. Take a trial though, if we were in that situation where we could have pictures, we would want to see what the photographer had and see how it related to what happened in court and the decision would be made then as to which picture you would use, or whether, in fact, you would use any pictures.

Finnegan: Let me, say so that you don't misunderstand, that every editor is sitting there and calling up the court reporter and saying hey I want you to cover courtroom 13 today and not courtroom 1. We have beat people who cover the courthouse and who are assigned to the court run and they will go over the proceedings that are going on. They will keep

track of what is going on in the court system on any given day and make judgments as to what they ought to cover, report back to their city desk and discuss it and decide whether they ought to go here or go there. Then that decision is made. Now often the reporter's recommendation or decision is the one that is followed. Whether or not there would be photo coverage would then depend on the reporter calling and talking to the editor and saying, if the trials were open, maybe we ought to have some coverage on this particular trial today for whatever reasons at that point. Then the decision would be made to send the photographer to the trial. Obviously, in the case of the rules that we're talking about, there would be a pool photographer and you would take on this particular courtroom. There would be a series of pictures that would come out of that process and then you would make some judgments as to what you were going to use from that group of pictures that everyone would have access to. I am making the assumption that, if these rules went through, not every court session would require a pool arrangement. We might very well, probably would, wish to cover trials in Ramsey County that would have no relation or no interest to Minneapolis papers or to the Rochester papers or to the Associated Press, and we would be the only individuals indicating interest in having a

camera there. We would then be shooting our own pictures for our own use. I am sure there would be a lot of that going on and we would be making value judgments on the basis of what our photographer sees and then what our editors decide should be used to either illustrate the story, or, hopefully with good photography, to advance the information that's being transmitted to the public to the photo process, to the graphic process.

Bailey: If I may just pick up on one point there, I would think that in out-state courts the newspaper photographer access would be of particular importance, because I think of newspapers in county seats covering trials of purely local interest. I have great faith in the ability of the media when required to work out unobtrusive and cooperative arrangements and in the ability of judges to make sure those arrangements are, indeed, in keeping with the appropriate decorum. There is that, I think for the out-state courts, I think the still photography thing is important. Out-state courts interest us too, of course, because a number of cases have a change of venue in which they move them as far as they can get from the district in which the alleged crime occurred. We find ourselves covering trials, indeed, in Grand Rapids and points of equal distance from here.

Pillsbury: I think I might just ask a question just to advance discussion without trying to, as I said yesterday, one of our duties as Commissioners is to be kind of a devil's advocate and not necessarily imply by our questions that we have any particular point of view. But, I think, one of the concerns, as I read through some material in preparation for this assignment, is the question of distinguishing between what is spectacular and what is objective news? I think there's a concern in covering the trials, as to selection of trials and as to selection of maybe individual witnesses in trials. On this question would either of you want to comment anything on that point?

Bailey: Well, I say one thing and that is the question of what is allowed to be photographed will remain under the authority of the judge. I see these rules as being broad enough to allow a judge to exclude things when he wished to. Now there is a procedure established and that kind of a ruling would be subject to appeal and, therefore, the real point of having an appeal procedure is to make sure it is a considered judgment. It has a cautionary impact on the authority that can issue the ruling in a courtroom or outside. I would say that first that authority will always be there. Second, you are raising a question that is a difficult one, because it has no good answer.

If the press is to perform its societal oversight functions at all, it must be free to make editorial judgments about what it publishes. Given that freedom, it will not always make those judgments wisely. I would submit that we make those judgments less sensationally and more wisely to some degree than we used to. The professionalism level in the newspapering is higher than it used to be. It is unlikely that you would have, either on the part of the judicial system or on the part of the press, a rerun of the Hauptmann situation -- the Lindberg kind of thing. I think it is unlikely in most jurisdictions, in a vast majority of jurisdictions, that you would ever again have the kind of situation that was described in the Supreme Court holding in Sheppard v. Maxwell, where, for example, the trial court was allowing, the judge was allowing reporters during a recess to paw over exhibits in the case. I was startled when I read that because I knew some Hennepin County judges that would have riveted me to the floor on the spot if I'd even reach for that stuff in a recess. So I think there's protection there. The core of the question you ask is unanswerable in the sense that with freedom goes license and the trick in our society is to minimize the license that is taken in exercising the freedoms that are essential. An honest answer to a devil's advocate question, John, I don't know how to say it any more strongly.

Finnegan: Let me kind of expand on that a little bit because it is a question we are always wrestling with and, obviously, does not just relate to the selection of photographs. We are under a selectivity process all the time in the editing process and in the reporting process. It's right that there are times when a reporter may very well pick what is the good quote, may be the attention getter, and may, from your point of view or some other reader's point of view, not be the core of the case --that does happen, obviously. I think, as Chuck said however, certainly in our papers,and it may not be as true in the rural areas where you have less experienced reporters in some towns, but we send experienced people up to the courts and we keep them there for a period of time. We try to give them some expertise and background, so that we feel a lot more comfortable with what they are reporting than we would if we were sending a first year reporter right off the street who has never been up in court and doesn't know anything about the court system. Not that they won't make mistakes or not that they won't perhaps oversensationalize from time to time, but, I think,by and large, the coverage of the courts has improved in the print media. I think we are continuing, we are conscious of it, we are continuing to attempt to make those improvements. But the selectivity is there and it's always going to be. Fifteen or twenty people can read the same story and go to the same trial and

wonder if they were all sitting in the same room because they don't perceive what happened in quite the same light as you or I might perceive.

Bailey: We have some formal procedures that we follow in making judgments about whether or not we publish material relating to judicial proceedings in crimes and we have more informal proceedings that we follow. The guidelines that we have established for the exercise of our own editorial judgment go beyond the rather skeletal guidelines that were set down in the Press Bar Code some years ago. We have occasion to review those things from time to time and to tighten them up. I guess the point that I would make is that we wrestle with questions of content. It is a little difficult to deal with the questions of public appetites. We find that crime news, even when buried in the inside of the paper, is always among the best read news in the newspaper. I guess you can't change human nature on that. We try not to sensationalize the handling of that kind of material, but it is of great interest. There isn't any question about that. You can hide those stories and people will find them. That poses kind of a problem for an editor who wants to report, according to his own standards, but is dealing with an audience that has certain tastes. We're, I think, fortunate in this community and in this state in that that appetite is minimal compared to some places,

but it's there.

Pillsbury: Do you have any further questions?

Kaner: I have no further questions.

Pillsbury: Perhaps to tease you a little bit, and this proceedings obviously is not as colorful as a criminal case, but, nevertheless, your counsel did petition the Supreme Court under the current rules for authority to or permission to have the media in the courtroom. There was testimony yesterday, and I think one of you said something to this effect, if you are able to cover these proceedings by being here and by recording it and by photographing it, the accuracy can be improved. Needless to say, we were told that we would probably see something on the six o'clock news and I had two television sets in front of me at the six o'clock news for two stations and I have a story from one of the newspapers. In all honesty, having been here and been part of the process or the proceedings, I don't think what I saw on at least one of the television reports and what I saw in the paper gives a very good, a very specific and good story about what exactly this is all about. I don't know whether I'm asking a question or just making a comment, but somebody sees a picture. Whether we are photogenic, that's not important, but it doesn't describe it as being who is hearing this matter. Is it being heard by a District Court,

is it being heard by a Supreme Court or a Commission appointed by the Supreme Court. It even happens to mention the locations where the hearing is going to be held wrong. On the television the impression I got from what I saw was that it was a proceeding in Ramsey County District Court. I think all of us are concerned about this point. The point was made, and I think rightly, that if you are here you do have the opportunity to be more accurate than if you have reporters taking notes or have television people just making sketches. This is just a question that goes through my mind. I think Ms. Ahmann, Commissioner Ahmann, eluded to the same matter.

Bailey: Well, John, I hope before I leave this (INAUDIBLE) I will satisfy you with our coverage of some story. I would say this. I think the absence or presence of photographs in connection with a story would make it neither more nor less accurate as far as the words are concerned. When we blow it, we blow it and we wish we didn't. If we didn't have a good story about yesterday's hearing, if, indeed, you are referring to the Tribune, I don't know whether you are, maybe with all those mistakes it's the Pioneer, but if we made a mistake in the story, we would make that mistake whether or not we had a photograph going with the story. I make no excuses for the mistake, if there was one, but the presence or absence of the photograph,

the photograph simply serves to illustrate the situation and the story. Photography in a courtroom at a trial is illustrative. It is not a piece of journalism that stands by itself. It is not a horse in a meadow. It is not what we call a weather picture. It is illustrative of the story, it is complimentary to the story, rather than standing alone. There are situations, usually situations of human emotion or of action, where the photograph can stand alone. Those are rare and, I would think, never arise in a court situation.

Pillsbury: Judge Segell, would you like

Segell: Yes, I have a question which I think is one of the key questions as far as this Commission is concerned, and I think it's time to pose it. And that is why you have proposed rules which are the same as the rules in Florida which are the most stringent rules as far as a court is concerned and require no consent on the part of anybody. I pose this not just to you, Jack and to you, Mr. Bailey, but to Mr. Beckmann who is here representing the radio. I would like to know why Minnesota should have as stringent rules as Florida. Those rules have generated more litigation in Florida, have generated more litigation in the appellate courts in Florida because the courts don't have discretion to act. Each case goes on a case-by-case basis to the

appellate court before the case is tried. It has caused some great injustices. I don't whether you are familiar with the Palm Beach Newspapers v. State of Florida case, but that case, which will be commented on, I am sure, by Judge Sholts when he gets here, is a case where a real injustice was done because of the litigation that is generated by stringent rules. Now Florida is the only state in the country that has rules like that. I would like to know why you are propounding those rules here.

Pillsbury: Could I just clarify. Judge, you are talking about stringent rules in terms of their application to the judges, but in terms of the application to the media, you would call them liberal rules. Is that correct?

Segell: Yes.

Pillsbury: I just thought I would clarify that as long as it is being recorded. Stringent to the court and liberal to the media.

Segell: The court, the litigants, the jurors and witnesses.

Bailey: I would just say I think I indicated in my testimony that the bedrock of my own position and there are two basic positions, three. One is that I think there should be no absolute prohibition on photography in the trial court. I come at it from the

other end of the tunnel, all right? That's hardly a stringent position. There should be no absolute ban. The judge should have broad discretion and, third, if the Commission or the Supreme Court in its wisdom wants to amend these rules, that's their business. I really appear here in support of principle and of the general proposition and of its specific follow throughs within a framework of discretion by the trial judge and within a framework of consideration and discretion exercised by the Commission and by the Supreme Court in promulgating the rules.

Segell: If we were in the court, I would say the answer is not responsive. I would like to know what the answer is.

Bailey: But we are not in court are we, Judge.

Segell: No we aren't.

Hannah: Perhaps I can respond at least.

Pillsbury: Are you assuming their testimony is concluded?

Hannah: No, I just presume that the Judge will have some other questions. These two witnesses were not involved in drafting the guidelines that you now have before you, nor were they involved in drafting the specific amendment to the Canon. It could be that beauty here is in the eyes of the beholder, Judge. These are not stringent guidelines by any means.

All you have to do is look across the border to Wisconsin and see a great deal more liberality being given to the press in those areas where it is probably most important and that is in the area of obtrusiveness in the courtroom. Here the guidelines which we propose, which are the same as the guidelines in Florida with very few exceptions, are very conservative in terms of the kind of technology that we can bring to bear on our coverage of courtrooms, should we be allowed to do it. In terms of the Canon, and I think Mr. Bailey was speaking to that when he described the standards which are available to any court, those standards are probably the same standards as all of the twenty-six states which now allow coverage provide for.

Segell: But you know that there are only sixteen states, at least as of May, 1981, there were only sixteen states that had any rules for permanent coverage. I think in seven of those states there was only a rule for Supreme Court coverage, so that left nine states with permanent rules. Of those nine states, seven of them had consent in their rules. Is there something wrong with having consent as far as litigants, witnesses and jurors is concerned? That's what I'm trying to find out?

Hannah: If the consent question is the one you want to speak to, I think we can be very, very blunt here.

Consent in all tates that have determined that consent of parties and the court is necessary, don't have trial coverage. Now it's really simple. If you don't want trial coverage, you simply decide either we're not going to allow those proposed guidelines to be passed or you come on the back door and you say we will require everyone to consent. Colorado has had a statute allowing trial court coverage by broadcast media since 1954, 56, I think it's 54, there has never been same day coverage in a Colorado court because that statute requires consent. We are saying we want to be there. If you don't think we should be, then please just tell us so and tell us the guidelines are inappropriate, but don't hamstring us with consent because it simply doesn't work.

Segell: Okay,what it does if you don't have it, is to generate litigation. That's what you have in Florida and that's what you have had since you had permanent rules there.

Hannah: Judge, generating litigation can really come from both sides. If the media is acting in an improper manner, presumably the court in exercising its power can deal with that. If the court in exercising that power exceeds the discretion that is given to the court by the Canon, then there will be litigation. So that, in a way, the court system becomes its own prophet and by saying that

litigation will be generated and then by acting unreasonably, litigation is, in fact, generated. (END OF TAPE).

Segell: I wanted to ask Mr. Bailey this question. Because of the deadlines in newspapers, isn't it true that the concept of a newspaper reporter monitoring a tape something of a myth?

Bailey: No. I will tell you why. Because, and I am not a, probably it's a generational situation, but I am not one of those journalists who can use tapes comfortably and easily. It kind of came along after I learned to take notes, and I find it a difficult tool to use, but I have used it, tape recorders, in covering political campaigns. You use the tape recorder, you go back to the tape recorder for portions of a speech or of testimony or of whatever, an interview, where you know you want to check your quotes. You don't have to listen to the whole thing. As I understand tape recorders today, you can, there's ways of indicating, even I can scratch on a cassette, where on the tape the thing is that you are going to want to refer back to. You use it as a check on the accuracy of your notes. That's primarily what a writing reporter does with a tape. You know, if you listen to a political speech, for example, and you make notes on it while your tape recorder is running. You know that there is a couple of places where the man has said something interesting or startling or something that you want to quote because

it's colorful, or it has a particular applicability, or it's the central thing that he says in his speech. You know roughly where that is in a speech if you have taken your notes. You use the fast forward on your tape until you get to it, you listen to that part of the tape, you verify your notes or correct them and then you go ahead and write your story. It's not a question of listening to the whole thing.

Segell: I can appreciate that if you're talking about interviewing somebody or listening to a speech, but you're talking about six hours of courtroom testimony. You say that a reporter with deadlines is going to monitor a tape recording of six hours of testimony in that fashion before he writes his story.

Bailey: I don't think there's any problem with that. I think reporters do it all the time.

Pillsbury: Would you like to ask a question?

Kaner: There's one criticism that, I think, is basic to this and that is that on your news coverage either at six o'clock or ten o'clock, I want to ask you folks this. When a very short segment is put on, now someone has to take the responsibility for determining what the affect

that is going to be on the fairness of the trial, particularly say in a criminal case. I recognize your position when you say that you have to exercise your own discretion, that you folks are human and sometimes you may make mistakes, but how do you respond to the criticism that the item that is selected, as distinguished from your position, that openness to the courtroom will educate the people and generate more respect for the judicial system and so on? How do you escape the criticism that the small item that you put on may influence the fairness of results?

Bailey: Let me try to come at it this way. I would say first, I think, you have to answer the question at two levels. Your first question you are asking is if you select in such a way, if you are overly selective, you may distort the overall thrust of the story. That's the first question before we get to influencing the fairness of the trial. As to distortion, the danger is always there. I don't know how you get away from it. You do your best not to distort. You do your best to distill, rather than to distort if you have to shorten the account. I'd like to stay away from television, since I am not an expert in that field nor in it, in fact, and I would just say let's talk about a long story versus a very short story in a newspaper, which is the same problem you are talking about.

Kaner: Same thing.

Bailey: You do your best to distill. The process of teaching reporters how to distill and teaching editors how to teach reporters and how to do that work is a continuing one. You just try to do it as well as you can and as professionally as you can. In the case of stories where you are dealing with the reputations of the people you are writing about, you try to be extra careful. You try to be aware of the fact that what you write affects people's lives. The hardest, the most agonizing lesson that a young reporter learns is, when for the first time, the affect of his impact of his reporting or his writing or the publication of something he's written on the person he has written about. I will never forget the first time I informed somebody that a person in their family had been killed in an accident. That affected the way I dealt with those kinds of situations for the rest of my life, because I dealt with it badly the first time at the age of 22. Those lessons are learned. We try not to put (INAUDIBLE) reporters in court on difficult and controversial cases. We try to use experienced people like John said. The second part of your question is the impact of, let us assume, distorted or imperfect, overdistilled coverage on the fairness of a trial. You're speaking of proceedings at trial or pretrial or both.

Kaner: At trial.

Bailey: At trial. I have a strong feeling about that which is not terribly popular with members of the bench. I would say first that it's up to us to exercise our responsibility in covering a trial, but it is, I think, the responsibility of the court to insulate the jury, which is really what you're talking about. Once you get to trial, it's the jury that you are dealing with, I think. The defendant is in the hands of the jury at that point. It is expensive to insulate a jury effectively. It's a cost for the county. It's a cost for the taxpayers because you are really talking about sequestration or you're talking about the kind of supervision that insures that they don't watch television or read the newspaper accounts of the trial. It's my experience, and I suspect that of most judges, that warnings to that effect and admonitions and so on are only partly effective.

Kaner: They are useless.

Bailey: They are marginally effective.

Kaner: This Commissioner was a judge once.

Bailey: I know, but I guess, I think, that if the jurors are not suppose to read accounts of the trial or watch television accounts of the trial, then the problem is to prevent them from doing so, not to seal off

the trial from the rest of the society. That is not easy. It's not a very happy answer. It's not an easy answer. It's not an inexpensive answer, but I think it's preferable to closing a courtroom. Here we are really talking about words as well as pictures. We are not talking, this is not a photographic question, this is an elemental question.

Kaner: A more general question.

Bailey: Yeah, and I don't know an easy, there is no easy answer to that one.

Finnegan: The answer is not just length of a story either, because you can have a long story that some people will perceive as being very biased one way or another. The selectivity goes through that kind of presentation. We have been, once in awhile, accused of oversensationalizing because we have run too much on a trial when we've been trying to explain it and give background. When we try to balance today's testimony against, and remind somebody that testimony to the contrary took place the day before, they are saying, hey you're selective and you're trying to direct the verdict in the minds of the jury by selecting information that counters the information which was presented today. So it is a kind of a no end situation in coverage from our point of view and we are conscious of the problem. Our city editors and managing editors go over some of these areas

very carefully and say now is this balanced properly or not? We sometimes, I think, are accused of shoveling it into the paper without any concern of its impact or its accuracy or its balance and that is not true. We obviously didn't make mistakes that have been said before, but we are very conscious of that and length does not necessarily mean that it is complete. The other complete thing I think that would satisfy perhaps Hy Segell would be a complete transcript.

Segell: I'd like to let him off the hook, Jack. In that connection let me just remind you of what you did in T. Eugene Thompson. You did have a full transcript and, if you think that wasn't harmful in terms of the jury, you have another thing coming. Because you did, you had a full transcript of the testimony in the Thompson case.

Finnegan: That's right.

Segell: So if you think that you're saying you don't shovel it into the paper, you certainly did in that case.

Finnegan: That's what was coming out of the trial, however. That was accurate.

Segell: Oh yes, it was accurate, it certainly was accurate.

Finnegan: You would rather have had us been selective in that, Judge.

Segell: It might have been a little bit better if the jury had not seen all of that material in the paper. They couldn't possibly miss it, nor could they miss anything on television.

Bailey: I was out of the state at the time of that trial. Was that jury not sequestered? With a case with that much publicity, that jury was not sequestered?

Segell: It was not sequestered.

Bailey: I think that's outrageous. Is that right, they weren't sequestered?

Segell: They were not sequestered.

Ahmann: Mr. Chairman, I am a little reluctant to into such a controversial discussion.

Segell: That's what you're here for.

Ahmann: I know. One of my flaws. I think it raises a question that is often asked of me. I am not the professional on this Committee and what is bothersome, I think, to a number of people is in the question before us is the courtroom. But we know and we can't ignore the fact that presumption of innocence in this country is a very fragile, I think very fragile, belief in something that we have to work very hard to protect. And that, in fact, it's not just the jury, but, in fact, the community in some ways is the jury and that the information we give goes well

beyond that courtroom. I prefer not to think of this in terms of such a controversial issue as one that's already happened in the state, and I don't have all the facts, but rather the future. We are thinking about that, in fact, the way we cover or the way we get information. I hear those of you testifying today the more information we have the better we can do that. That in the past that's not good enough. We have to do that. I guess I can't disagree with that, but I am concerned about presumption of innocence and I am concerned about the community's judgments about the people who come to trial.

Bailey: Well, I think, I must say you have hit upon a question that is deeply troubling to me. I think the presumption of innocence is so fragile as to be almost not there in many, many situations in our society. We see these waves go through our society. It isn't always a matter of the criminal courts and crimes or political situations -- those we have to simply remember the early 1950's, for example, in a period of fear that amounted to hysteria, for example, in the bureaucracy in Washington at the time that Senator McCarthy was running around on the loose. You find recurring situations of that kind from time to time. We have to deal again now with a federal program designed to, aimed to, proclaimed to fight the street crime -- something that previous

administrations have tried to deal with. People get all, and appropriately, exercised about that, and yet it's very difficult to do something about, on the other hand, dealing with presumptions of innocence with individual rights. Newspapers of all institutions ought to be concerned about that. We worry a lot about the infringement of what we regard as our own rights and privileges and probably not enough about others. We worry too much about free press and not enough about free speech in general. Too much about the First Amendment and not enough about the other nine sometimes, I think. But, I think, to try to answer your question and come a little bit obliquely at it, there is more danger to the presumption of innocence in this dark chamber and in the closed courtroom than there is in too much publicity. One of the foundation stones of the Constitution had to do with the way the British courts conducted their business in the colonial period and before then. I think you have to keep that question a public trial has to be looked at in that context. It was concluded that public trial was better than secert trial. First of all, for the accused. He was likelier to get a fairer trial if the society was able to observe what was going on and if he was able to be tried by a jury of his peers, rather than a judge in the back-room. I think I would sort of hang my hat on that

as being consistent with the kind of request we are making here and to say that photographic coverage is a logical extension of the essential openness of the court to journalistic coverage generally. The defendant in a notorious case who is acquitted after a well publicized trial doesn't come away clean. I don't know how you can avoid that and I certainly don't think you can avoid that by not allowing photography in the courtroom. I think it is one of the central injustices.

Kaner: Let me ask you this along the line of Ms. Ahmann's inquiry. I am sure you are familiar with the fact that the court in the Williams case in Atlanta. The man was charged with murdering the two young black children. That court has decided that he will not permit cameras and so on in the courtroom. Apparently he did it because of one of the things he considered was its affect on the community itself. It would have a very inflammatory affect on the people of that community. I would appreciate your comment on that.

Bailey: Sure. I would comment on two parts of that. I would say first of all I don't see how that man can have a fair trial at all given the nature of the pretrial publicity. I don't think he should be tried in Atlanta and perhaps not in the State of Georgia. I think the pretrial publicity in that case was obscene,

and I would make absolutely no defense of that kind of coverage. I really think it was awful. If I were his attorney, I would have a full library of television tapes in support of the motion for a change of venue to the other side of the moon. Now, as to whether the judge, in his discretion, thinks that trial coverage would I think I hear you saying that it would so inflame the community as to put the defendant's life at hazard. Is that the thrust of what he is saying?

Kaner: I think it's not only that, but I think he's thinking of the affect on the community itself.

Bailey: On the community itself. I think judges have to have broad discretion. I think this is an extra-ordinary case. The man is, in effect, in the public mind, the man is accused of murdering twenty-two children, not just the ones he is formally charged with. In fact, there seem not to have been any murders since his arrest.

Kaner: But do you think that that is illustrative of the way the media would act in a case of that sensational nature? Is that the way we would expect the media to act?

Bailey: I hope not. I must say I think there were a lot of things that those who manage the criminal justice system could have done, even at early stages, to prevent that kind of thing. First of all, they could

have called in the people from the media and said look fellas at the end of this road there's going to be a trial, we hope. Now let's make sure that we have a fair trial and you help us with it and see what happened. That would be the first thing to do.

Finnegan: The problem is the circumstance there which is so bizarre. You have the entire community in panic after all of these murders. Murders that you have to cover and are public knowledge and as they grow in number, the panic in the community grows. So I can see the judge looking at that kind of background and being concerned about the impact on the community on the trial. I think in that case I would have to make that's a unique case that I think has to be put aside. It's not just the way it was covered, it's the whole circumstance of that crime and just the immensity of it, the enormity of it. The terror in the community that developed before anybody was ever caught. You can predict that when anybody was caught and was arrested that individual was going to be the focus of the entire community anger. I think that's a real problem. As Chuck says, I am concerned about that in terms of the trial, but it isn't necessarily merely the pretrial coverage, it's the whole circumstance.

Bailey: You have a very odd situation there where the man who is now the defendant in the case was arrested

and then released and then charged. A not typical situation I would submit in homicide generally and a situation that particularly had an impact in this kind of a case where the whole community was afraid. Getting back, that was weird. Weird is probably, I think, an appropriate word to describe that succession of events which made it very difficult for the defendant, who was not a defendant at that point, but a free man who had been told not to leave town. You know hang around, but you can go home now. At which point the criminal justice system says out you go fella and take care of yourself and don't leave town. I don't know how, this is a very strange set of circumstances.

Finnegan: Before I forget it in answer to Ms. Ahmann's question, I feel in terms of the presumption of innocence, I think there are surveys that have shown when an individual is arrested there seems to be a public reaction that that individual has to be guilty or they would not be arrested. They would not be put into the criminal justice system. I don't know how you get over -- education. Public education I think is one, but there is that feeling. If the police are out there and the government says that individual obviously is going to be charged and, therefore, there is some presumption that he or she is guilty of the charge,

therefore, the public says okay that individual has now got to prove that he's innocent or she's innocent. I think that's unfortunate. I think better education of the public through whatever means is essential to deal with that. I must confess that the media does not do a lot in educating in that way, certainly not enough and neither do the courts in my view.

Segell: Fortunately, and I point this out to the Commission, in Georgia they have a consent rule which allows the judge to determine whether there is going to be cameras in his court. It is a non-appealable decision and that's what the judge did in that case. That's the kind of thing that this Commission should have here, if it decides to go that route.

Kaner: Judge, as you understand, as counsel has pointed out, that if you insist on the consent feature, the effect of anything we are trying to do

Segell: Not necessarily. I think there has been television in the various states where they have had consent provisions. There are always judges around who will consent to television, believe me.

Kaner: I know but how about defendant. It seems to me no defendant would ever agree.

Segell: Why would he?

Kaner: I say he wouldn't.

Segell: No, why would he? If he wants his rights protected, why would he ever consent to having television there?

Kaner: That's why, as counsel says, I think

Segell: That's why we are here.

Kaner: That's why, as counsel says though, I think that if you insist on the consent being a feature of this then this whole procedure is of no value to them. Isn't that your position?

Segell: That's right.

Bailey: Can I comment on one thing that the judge said. I think if a judge can close a courtroom, it ought to be appealable and I think that same principle should apply in any case where a judge can partially close his courtroom. The requirement to provide a memorandum of reasoning in support of action, as I suggested earlier, it seems to me is a very healthy requirement whether it's a court or an administrative officer or a rulemaker in a quasi-judicial agency, or whatever to require the public servant to justify what he's doing. It seems to me is an elemental protection.

Segell: The judge hasn't closed his courtroom in Georgia anymore than any other judges have closed their courtrooms. We don't operate as star chambers.

Bailey: They can't anymore, but they have. The Richmond case

Segell: For 200 years we have had the courts open.

Bailey: Yeah, but then we had Gannett and then we had Richmond and the Supreme Court of the United States had to say to the court in Virginia that you may not close a criminal trial. Now that suggests that we haven't quite had an unbroken record. That criminal trial for murder proceeded and was completed in a closed courtroom. That is why the case got to the Supreme Court. So indeed there was a necessity for a Supreme Court ruling. We did have a closed criminal trial.

Segell: I wonder if Judge Day could comment on that.

Day: My first comment is that that isn't what Richmond said. What Richmond said was you cannot close it without appropriate findings to support the point of closure. In Gannett they found there were such situations.

Bailey: In pretrial proceedings.

Day: In pretrial proceedings. The Richmond case also turned on a motion which was cited the following day following closure. I am not taking away from your point. I happen to agree with the Richmond decision. It should not be closed, but the right to an open

trial, if you read the Sixth Amendment literally, is a right which belongs to the defendant. The right to have an open trial is designed primarily, I think historically,despite Supreme Court of the United States history,which is distilled through several law clerks and, therefore, subject to some inaccuracies, I think, despite Supreme Court history on that score the primary point in an open trial was to protect the defendant, not to titillate the public.

Bailey: Judge I am not allowed to argue with the Supreme Court. You may be, but I am not.

Day: Lawyers argue at the Supreme Court all of the time. They reverse themselves constantly. I can give you fifty or so examples in the hour.

Bailey: One of the things that I have had to think hardest about in the Richmond case is the suggestion that there is a First Amendment right, not just Sixth amendment rights that are involved here. We talk too much about the First Amendment in our business, but, you know, I think that case is taken as a clear indication by most trial judges at this point that they can't close criminal trials.

Day: Well, then they're not reading the case.

Bailey: And they certainly can't close them without saying why and having it subject to an appeal.

Day: I have Richmond in my hand. I could read you what you need if you want to know what it means.

Pillsbury: The judge is going to have an opportunity to be sworn as a witness later and may be we will let it drop there. Are there any other questions that the Commission members have?

Kaner: None further.

Pillsbury: Anything further you'd like to ask? Counsel, do you want to ask any questions? Do you gentlemen want to say anything further?

Bailey: No.

Pillsbury: If not, we thank you very much for coming and helping us out.

Bailey: Thank you very much.

Pillsbury: I think we'll declare a recess for about five minutes.
(RECESS)

Hannah: By the way the report from the backroom was that when Mr. Bailey was standing here and Mr. Finnegan was standing here that this microphone was showing no fluctuation at all in terms of the audio, and I didn't want to bring that to anybody's attention while it was going on because I did want to check in the back after they were finished. So apparently it is, that's obviously not a very long distance, but it helps when there is more than one person at

the podium. Curt Beckmann from whom you heard yesterday who is the news director at WCCO-AM is going to be describing to you for the remainder of the morning the pooling concept that we put together. The pooling really is not a part of the guidelines at this time simply because the guidelines state that, if there is any pooling to be done, the media should resolve the problem and that that problem will be resolved without involving the trial judge. We didn't feel it was appropriate to include fairly copious descriptions of a pooling arrangement because we have a feeling that that arrangement may change as experience grows, if we are allowed to bring our technology into the courtrooms, and that the pooling may well be different in the metro area as opposed to the out-state area. So what Curt will do is give you some of our thoughts and I am sure we will be entertaining any suggestions or questions you may have.

Beckmann: The point that Paul makes should be emphasized. What we propose for Minnesota and what now exists in virtually all of the other states and I am not aware of a state where it does not exist is that the pooling -- the process of collecting the audio and video and distributing it to other members of the media -- is our concern. We don't propose that the courts involve themselves with what is probably

a technical consideration and really beyond the scope of expertise of any court. So what we are saying is we will take care of this and we won't bother you with it. It needs to be fair. It needs to be fair to the pooling parties -- to all of the news media who want to come in. Wisconsin is a little bit different than most of the other states inasmuch as their guidelines permit up to three cameras in a courtroom. What the Supreme Court in Wisconsin, which went through this process, intended by that I'm certain is to allow markets such as Sparta, Superior, Green Bay where the sophisticated equipment may not exist to distribute the video and the audio. What they said in essence was three cameras won't be anymore obtrusive than one so long as they are in one spot. So, if television wanted to come in and make their pictures, they can just all sit in one corner and we won't have to insist that they have the pooling equipment somewhere outside a courtroom.

Pillsbury: Could I ask a question? Are you saying that in Minnesota whether a trial could be covered as in say Fergus Falls or Grand Rapids or most any county seat the problem of pooling is not anymore difficult than if it's in the Twin Cities?

Beckmann: Let's dissect that question. If the television station in Alexandria were going into the courthouse

in Douglas County to cover a trial there probably, I mean,I doubt that any other television station would be interested. There are only twelve television stations in Minnesota and they are probably not going to be interested. The same would be true, one presumes, in Rochester where there is the Rochester television station. If a story is particularly local and uninteresting, for example, to people in

(END OF TAPE)

Austin where there is a television station you wouldn't have the need to pool. Now if a case were occurring in Rochester which was getting state-wide attention and, if the Twin Cities media and/ or Channel 6 in Austin also wanted to cover, then the pooling procedures which we propose would be invoked. That is then they would have to come up with the pooling equipment and, if it were drawing the attention of the Twin Cities stations, that equipment would come with them. So what I am saying is that probably the Twin Cities television stations are the only ones equipped to conduct a pool. Did we hear someone say yesterday Duluth is prepared to distribute video among the three television stations there?

Pillsbury: Are the smaller stations, such as Alexandria or Rochester, equipped to cut in on a pool if you are conducting the pool?

Beckmann: Yes. Simply with a cord. That's quite easily done. We haven't addressed specifically what would happen

in the courtroom in Douglas County or in Rochester where a single television station wants to cover. It's my judgment that we would not suggest that he somehow remote the tape recording of what he is doing. Alongside of that cameraman could be sitting the tape recorder and he could be feeding his pictures directly into that. If he is the only station there, why shouldn't he be able to just plug it into the recorder at his feet, rather than stretch that recorder out into an ancillary room. So it would seem far more convenient equally as obtrusive or unobtrusive for the single television photographer in an out-state market to simply bring his recorder with him and put it at his feet and record directly into it. Is that respondent to the question which you raised?

Pillsbury: Yes, that explains it. From the point of view of the court generally or the jury you wouldn't see anymore than you do under a pooling arrangement. Is that right?

Beckmann: Right, except for the valise looking box at his feet which is a video tape recorder. In that room now there are two or three video tape recorders plugged into the pool. If there was only one station, why shouldn't he have that just at his feet rather than have to string it into another room and then exit and enter as he starts and stops. So I don't

think that would be an obtrusive extension of the pooling process where a single station wants to cover whether it's metro or whether it's in the out-state area. Incidentally, coverage in the Wisconsin courts,as it has been characterized to me, is quite pervasive. Harking back to our first meeting with you Commissioners, you asked me to inquire in Milwaukee and Madison about cases that were coming up and couldn't you perhaps, or at least consider, going into one of these areas to witness and see the coverage. I called some assignment editors and there is no big trial in the next two, three, four weeks that they can identify, but their response to me was have them come anytime because we are in almost everyday. Almost everyday you will see something out of the Milwaukee County courts and the broadcast media in Milwaukee. I mention that now to emphasize that the trial going on in this courtroom two months from now may be a civil case which involves dumping hazardous wastes or something and may be one of the stations in town is in the process of doing an investigation of that whole process. This court appearance, while not getting wide public attention at the time, is nonetheless part of that story which they are preparing and we can presume that the editors who are doing that would want to cover this case. I am saying that to suggest that there are going to be times, and perhaps often times, when

a single television station will come into a courtroom not for the immediate reportage of the story on today, but because it's part of a larger investigation which they are doing on a general topic. In that case, a single photographer, a single camera, a single tape recorder and access to the public address system in the courtroom that could well be quite common were we allowed into the courtrooms with microphones and cameras. We propose, as has been done in Wisconsin where the rules are permanent, in Iowa where the rules are temporary where the experimentation is going on, that each of the district court districts would have at least one coordinator. Someone in my profession with whom the judge or your representative can be in touch if there is a request for coverage in your courtroom. That coordinator would be the buffer between the media and the court, the judge. He would keep track of, for example, who was the last station to pool, whose turn is it, who by just out of fairness, should be doing it tomorrow or the next day. We propose that this coordinator become active as a coordinator if the judge has two or more requests for coverage. If you, Judge Kaner, were you on the bench and if you are handling one of those cases which is ancillary to a larger investigation, if one station were to call your clerk and say we would like to come in and cover today

and tomorrow, I think it would be counterproductive administratively for us to call in a coordinator now to set this up. Assuming there is common understanding of the rules, I can see your clerk saying fine we start at this time. The rules say you have to be set up fifteen minutes ahead of time or half an hour. On the second call that somebody wanted to come then I can see your clerk saying now it's out of our hands, call the coordinator. Now the coordinator has to come in and handle the pooling process and notify the other news media that there is going to be a pool on this court case.

Pillsbury: The coordinator would be designated by the media or by the court.

Beckmann: I would propose to do that through the Minnesota Chapter of the Radio-Television News Directors Association. In essence, it is someone known to me in each of these districts and we turn it over to the people in that district and discover who is the most appropriate for it. We have identified someone in Duluth who is especially interested here. I think it would be safe to assume that we would go to Mr. Ludkey at Channel 10 in Rochester to act as coordinator for the area, because of his interest, because his newsroom would be active in covering. We'd find that person who is most active in those areas. Where a district is too large and where it's

inconvenient for a coordinator in Duluth, for example, to be involved in coverage in northern St. Louis county or whatever, we would split the districts and arrange for another coordinator to do it. So that is the central point to this pooling -- we propose to handle that ourselves. If there is a dispute among us, our guidelines suggest that you, as the judge, may exclude us all if we are warring over arrangements for the pooling. Is that fair?

Pillsbury: It doesn't cause a problem for the courts at all actually. It's a problem for the media then.

Beckmann: Right. Now you see the pooling that has been going on yesterday and today and which will go on next week--KSTP pooled the video yesterday, WCCO Television is pooling the video today, WCCO Radio has pooled the audio for both days --next Monday, Channel 11, Chuck Biechlin's station will pool the video and we had public radio lined up to pool the audio. We have a problem there with staffing, but the point is under the current rules with the Supreme Court under which we arrange for the pooling here, we took care of that. It hasn't even come to your attention who is doing what and whose turn it is. We've taken care of that and it hasn't stood in the way of your consideration of the greater issues that are involved. Our proposal which should be among your materials spells out rather specifically the camera positions,

use of existing sound systems, lighting, those technical kinds of things which are fairly clear, I think. Are there any other questions?

Pillsbury: Perhaps counsel could identify the specific document which has this pooling arrangement.

Kaner: I think it was in connection with their petition, wasn't it?

Pillsbury: Is it the one attached to your petition or to your brief?

Hannah: It's attached to our brief as Exhibit B and I also have some extra copies, I think, in my briefcase that I can simply put out on the table.

Pillsbury: I just want to be set that we are all talking about the same document.

Hannah: That would be helpful to us, unless you didn't like some part of it in which case here are some copies. I will put them on the table. It probably will be a little easier to read. We have several in addition to those copies for members of the Commission.

Beckmann: We have been operating under similar kinds of rules in the Minnesota Supreme Court in the several times we have been in there. The decorum, the position of the camera -- the court designated where it wanted

the cameras in the case of the Supreme Court. They have an excellent sound system which was easily tapped for pooling purposes. Stan Turner mentioned yesterday that we are proposing to deliver the audio and video from the Supreme Court, if they make the rules there permanent which they haven't done yet. We propose to deliver the audio and video from the Supreme Court chamber to the press room in the subbasement. So that the only intrusion, if we want to call it that, into the Supreme Court proceedings is three potential people -- a television photographer and two still photographers. We would propose to on and off switch the delivery of the audio and video to the press room to the marshall's table, so that when the court said coverage there was permitted, throw the switch and now this pooling process--the room with the reporters, technicians -- is now in the subbasement in the press room, rather than in the visiting judge's chamber just behind the courtroom itself.

Pillsbury: Who is paying for all that?

Beckmann: We would propose to pay for that. We have walked through the building in conjunction with the court to look at what it would take to deliver it up. We would have to go through the walls and around the dome and then straight down the walls. We would need a couple of amplifiers along the way for the

video picture, but we would propose to pay for that.

Pillsbury: I have no further questions. Do you have anything further?

Beckmann: No. If other questions occur, as we proceed in the days ahead, I expect to be here all the time and, I think, Chuck Biechlin will be here most of the time, and feel free to inquire about the apparatus at all times. Something might be pointed out here, there are two brass spots on the floor. Those are, in this courtroom, plugs for microphones into the sound system. They have here one, two, three, four microphone inputs.

Pillsbury: I don't suppose it's really material, but just as a matter of curiosity. In particular this county where you have several courtrooms where a case might be tried that you would wish to cover by pooling. You can't make as simple an arrangement as you can where you have one Supreme Court chamber. You can't have say everything in the basement with literally a switch in each courtroom without quite a bit of expense, can you?

Beckmann: That's right. I can't predict the expense. Durenberger was holding up some rather simple looking devices this morning and I expect that the cost of those things is going down. This microphone, if it is new, it's expensive now and in two years it's not

going to be. We all know that story. I think that,as courtrooms are remodeled around the state, were we to get a favorable recommendation from you and do an experiment and after that period the Supreme Court adopted permanent rules, we presume that whenever there is a proposal to remodel a courtroom in Minnesota that some account would be taken of this new facility and, therefore, build it in. In the State Capitol where we will be next week, you recall the big horseshoe table, at the end of the table on the lefthand side are four or five wires that dangle from the end of it which are sound system. The television cameras are in that spot ready to take one of those wires, plug it into the camera and now they are getting sound and picture. The audio reporter will just plug that into his tape recorder and sit at the end of the table and record the proceedings. All you see are the microphones on the table, the sound system is feeding it and they have accommodated the news media to that extent.

Pillsbury: Any further questions?

Ahmann: Just one that occurred to me. What would be the next step that would be necessary? For example, you're pooling over here, but it wouldn't have to be there. You say in the Supreme Court you did it in other places and so on. How far away is it that you might

be just plugging it in say back at the newsroom?

Beckmann: Here's how that can occur. If a station, and probably a public station, we thought a few weeks ago that Channel 17, the UHF station in town might be doing a broadcast of these proceedings, but it didn't work out. Had that occurred all of this video pooling would not have been necessary because the stations covering here could have covered back in their newsrooms by receiving Channel 17 and videotaping from that. If there were gavel-to-gavel coverage by whatever television station, you'd still have the same equipment here -- a single camera -- and they would perhaps be running cables to a truck outside. In that case, nobody else would have to show up because you could catch it all in your newsroom by recording the audio and/or video. So that is a way of pooling also which is available. I suppose only in the most extraordinary circumstances, that's the only way. I suppose that TVs could beam their coverage by microwave to their towers or the top of the Foshay, wherever they have a microwave unit, but I think that's impractical for them right now.

Ahmann: It's an interesting question because, while the metropolitan area hasn't had the cable that we have had in the rural area of the state, I know, for example, that a lot of services are provided to the

public school when they are franchised or re-franchised and that is, as you pointed out, in the future something that may be considered when you are redoing a courtroom some kind of agreements can be written that will require, as a matter of public service, access for these (INAUDIBLE).

Beckmann: Something else which is worth considering, as these cable companies come into the metropolitan areas and in the bidding war to get the franchises, they bid up the number of channels they are going to offer. When those franchises are finally granted, they will have to put something on those channels. It is conceivable that a cable company will want to do a lot of this gavel-to-gavel coverage of legal proceedings. In which case, again, it would be available in newsrooms. Anybody that could receive it could tape record from it. So those things are in the future.

Hannah: In fact, Curt didn't that happen in Florida? Wasn't that gavel-to-gavel coverage a cable connection?

Beckmann: Yes. In one of the celebrated cases there was a public television, but in another case I think it was a cable company doing it.

Segell: Same on the Carol Burnett case. Cable news network was carrying it live very frequently out of Sacramento when that case was heard.

Pillsbury: Further questions? Adjourned until 1:30.

(RECONVENE)

We are ready to proceed and I believe the first witness is Mr. Schroeder. Right.

Schroeder: Right.

Pillsbury: Petitioners' witness. No, not Petitioners' witness, excuse me, not Petitioners' witness.

(MR. SCHROEDER SWORN IN)

Schroeder: Thank you.

Pillsbury: Will you identify yourself first?

Schroeder: Yes, I am Clint Schroeder. I am the president of the Minnesota State Bar Association and I am appearing here in that capacity and for that reason things that I testify about, although they will be true to the best of my knowledge, may not reflect my own opinion in every case. What I'd like to do is take just a few minutes and report for the benefit of the Commission on the actions that the Minnesota State Bar Association has taken and the study that it has given to the subject of cameras in the court. During the 1977 Annual Meeting of the Minnesota State Bar Association, Chief Justice Sheran requested input from the Bar Association membership and leadership regarding the entire issue of cameras in the courtroom. As a result of that request and the desire of the leadership of

the Bar Association to adequately study the matter and to make known the desires and the preferences of the membership a Joint Bar, Press, Radio and TV Committee was appointed and it initially met in August of 1977. The Committee reviewed the activities throughout the nation regarding the possible effects on the parties involved, on judicial or injudicial actions, and, with respect to other similar concerns and consequences, relating to the use of cameras in the courtroom. Following the review and the analysis by the Committee, a recommendation was made to the Board of Governors of the State Bar Association that still cameras, video equipment and sound recordings be permitted on a trial basis and at the discretion of the Minnesota Supreme Court during the Supreme Court proceedings. That recommendation was then presented to the Board of Governors of the State Bar Association. It approved the action and recommendation of the Committee and referred that recommendation to the 1978 Convention of the State Bar. In the interim, it communicated its action to the Minnesota Supreme Court and further it directed that that Committee continue its research and make later recommendations regarding the use of video and sound coverage in the trial courts at a future date. Then at the 1978 Annual Convention of the State Bar Association the recommendation of the committee with respect to

the experimental rules for use of cameras and other equipment in the Supreme Court was approved by the convention At the same time a resolution was adopted requesting that the committee be expanded to allow participation and input by judicial organizations within the state who would then be added to the membership, which previously was composed of lawyers and media representatives. As a result of that recommendation, the committee was expanded so it then included 26 lawyers, 8 judges and 7 news representatives -- total of 41 members. The committee held several meetings thereafter and, as you might expect with a diverse membership, it reached some divergent conclusions. The recommendation of that committee included a majority report and two minority reports and they were presented to the Minnesota State Bar Convention a year ago last June in Rochester, Minnesota. At that time the majority report proposed a model code of rules to facilitate relaxation of judicial Canon 3A(7) relating to the broadcasting,televising, recording or taking of photographs in the courtroom. The majority report did not contain an affirmative recommendation with respect to adoption of those rules, but merely presented those rules for consideration of the convention. The first minority report, which was joined in by several members of the media many of whom have spoken and appeared before this Commission already, proposed some changes, not major

changes, but some changes in the proposed model rules that would have made the use of cameras in the trial court a little less restrictive than the model rules. The second minority report, which included most or maybe all of the judicial members of the committee, contained a recommendation that no change whatever should be made in the Minnesota standards of judicial responsibility and that no experimental program of cameras in the trial court should be approved. At the convention in Rochester, after the majority report was presented with the model rules being placed before the convention, there then was a motion to substitute the second minority report. That is the report that would have opposed the use of any cameras in the trial and would have opposed any change in the Minnesota standards of judicial responsibility relating to cameras in the court. Following extended debate and rather well informed presentations in my opinion, on both sides of the question, the convention, which is the ultimate legislative body of the Minnesota State Bar Association, voted to adopt the amendment. In other words, the convention took action to adopt the second minority report and, for the benefit of the Commission, I will highlight, very briefly, the principal bases for the recommendation in that minority statement. As I indicated, the minority report did oppose any change whatever in the rules with respect to the use of cameras or other video

equipment in the trial courts. The opposition was predicated on three principal bases. First, the impact on the witnesses and the jurors. Here the report indicated that,despite the improvements that had been made in the electronic devices and still cameras, nevertheless the subtle, psychological distractions that result from the mere presence of this equipment in the trial court will have sufficient adverse impact upon both jurors and witnesses to detract from the full presentation and careful consideration of evidence in both civil and criminal cases. The second primary objection was that the courts of the state should not become vehicles for entertainment. The report indicated that the primary thrust, particularly of the television media, is entertainment, not providing of information. Those of us who recently have locally observed the decision by one of our local TV stations to discontinue the morning program of Charles Kurault and substitute movies of The Three Stooges, I assume would be inclined to agree with that statement that perhaps the TV stations are more concerned about pure entertainment than they are information. That is not included in the report, that's a personal observation. In particular, the report suggested that the courts of the state should not become involved in the perennial rating wars that occur between competing television stations. The third primary objection to the use of cameras in the court

cited in that report was that the proposal ignores
(END OF TAPE) the primary purpose of trials. Anytime that there is permitted an introduction into the trial sequence of distracting influences or other devices that don't relate to the resolution of the dispute or the determination of the facts or the presentation of the evidence, there obviously is a danger that that very presence can be distracting. The purpose of trial is not to entertain the public, it's to help resolve disputes in a society such as ours. Finally, that report which became the action of the convention, and consequently the position of the Minnesota State Bar Association, quoted from Chief Justice Warren in an early opinion of Estes v. Texas when he cited three reasons why he believed that television should not be permitted in a particular trial. Number one, he stated that televising trials would divert them from their proper purpose and would have an inevitable impact on the participants. Number two, televising trials would give the public the wrong impression about the purpose of trials, thus detracting from the dignity of the court and lessening the reliability of them. Third, televising trials singles out certain defendants and subjects them to trials under prejudicial conditions not experienced by others. In summary then, the present position of the Minnesota State Bar Association, after nearly four years of consideration of this issue by members of

the Association and by other interested persons who have served on committees of the Association, is that limited use of cameras and other equipment is permissible in the Supreme Court proceedings, but there should be no use of cameras in the trial courts. That summarizes the statement of position. If there are any questions from any members of the Commission, I will try to answer them?

Pillsbury: Any, Ms. Ahmann.

Ahmann: Yes, because I'm not familiar with professional organizations, how many of the practicing attorneys in Minnesota are members of the Bar Association here in Minnesota?

Schroeder: The Bar Association has about 8,000 members. We have a voluntary association -- lawyers are not required to be members in order to practice in the state, but Minnesota traditionally has had a very high percentage of participation by its practicing lawyers. While we don't have an accurate number of the actual number of practicing lawyers, there are a total of something in excess of 10,000 lawyers licensed by the state under the Supreme Court licensing procedure, but this includes administrative personnel, non-practicing lawyers, in the sense that they are not involved in the day-to-day practice. Therefore, we believe that the participation in the Association probably is in the

85% range of the actual practicing lawyers of this state, lawyers and judges.

Ahmann: Of that number how many of them would you say were actually voting on this issue at that convention? What did this represent?

Schroeder: The participation at the convention normally would involve about 1,000 registrants. We have a two-part procedure with both an assembly and a house of delegates. Every issue is first submitted to the assembly and any member in attendance at the convention who is registered is authorized to vote. That vote is controlling unless there is a request by at least ten members who have been certified as delegates to have a separate vote of the house of delegates. The only purpose of that is to prevent regionalism in controlling a particular vote. In this case I don't believe there was a second vote of the house of delegates. The vote of the assembly which would be all of the registered members was quite a strong vote. I would say it was probably 60% or 70% voted in favor of that minority report. The leadership of the Bar Association, as some of the other members might testify, was not particularly in agreement with the general action of the convention, but it was quite clear that the feeling of the practicing members of the Bar was quite strong against use of cameras in the trial courts. Judge Segell has a comment, if

the Commission would allow.

Segell: I just wanted to mention that that, as I recall, minority report came to the floor of the convention with the endorsement of the Board of Governors, isn't that correct?

Schroeder: That may be correct.

Segell: I think it was because I argued it in front of the Board.

Schroeder: I know that we had heated debate within the Board of Governors and, of course, that probably was right because Judge Segell was very persuasive both before the Board and the convention and I would not disagree. I do not have a specific recollection.

Segell: I think that that is the situation, Clint.

Schroeder: I would accept that.

Pillsbury: Are there other questions from the Commissioners, Commission members?

Kaner; Mr. Schroeder, we have heard the argument made by the media that the affect of permitting cameras into our trial courts will be an affect which will generate further education among our people, further familiarity with court procedures and will be of some general enlightenment of the people. Do you want to comment about that?

Schroeder: Yes, that point has been discussed in the past. One of the points, in fact, made by Judge Segell at our convention in Rochester was, and I can quote here because right next to his picture there's a statement, "Ramsey County District Judge Hyam Segell points out that TV would cover only notorious trials and would at best devote only seconds to these trials." In that report that was adopted by the convention there also is a statement that it is unlikely that a true educational function would be performed if television cameras were permitted in the trial court, because of the obvious selective nature of the presentation that would come to the public. That's the argument against the educational thrust -- that is that it would present a distorted and limited view of trials rather than a fair reflection of what goes on in the trial court, which would be apparent to someone who was able to attend and observe the entire proceeding.

Kaner: Of course the media also argues that this selective process goes on with whoever you have reporting the trials, whether it's a representative of the newspaper who is there or anyone else who obviously has boiled down whatever occurs. You can't have a transcript of an entire trial given and so they claim that they are responsible people who exercise good judgment in making their selection of what goes out.

Schroeder: I have no disagreement with that. I think that's probably accurate. They are responsible. I think the statement made in the report though is that, since commercial television stations would offer minimal coverage of court proceedings, their impact on the public's perception of the judicial system would be minimum.

Pillsbury: Mr. Schroeder, in preparing myself for this assignment, I read quite a bit about the study in Wisconsin and the study in Florida and there is reference time and again, as I remember, to empirical evidence to support the proposition that, for example, it has a psychological impact on witnesses and jurors. What comment have you got? I don't believe you gave us any empirical evidence. What can you tell me?

Schroeder: First of all, I should say I'm primarily a tax attorney and not a trial attorney. I cannot speak from extensive personal experience and my primary court experience has been at the appellate level, but I do think that it is well recognized that participating as a witness in a trial is a very traumatic experience for many people and it is to some a terrifying experience. The prospect of facing not only the judge and the opposing counsel and the jurors, but also the prospect of having a TV camera and still photographs being taken of the person obviously is going to have some impact on witnesses. I am not sure that we can predict what

the exact effect would be, but it may well cause some witnesses to decline to be witnesses. Our whole judicial system and our resolution of dispute method requires participation voluntarily by our citizenry. Anything that detracts from that participation ought to be really given great and serious consideration.

Segell: Mr. Pillsbury, may I comment on that last statement of his.

Pillsbury: Yes.

Segell: I just wanted to say in that connection that most of the people who appear in courts don't appear voluntarily. Most of the witnesses are there by subpoena. They are not there as volunteers and that's what makes it so terrifying there. They are there under compulsory process. The jurors are there under compulsory process. They are not there as volunteers. The litigants are there, perhaps because they have instituted a lawsuit, but the defendant isn't there as a volunteer. He's there because he was sued and he doesn't want to be there. For the most part they are not there as volunteers, they are there because they are compelled to be there. That's what makes the experience so traumatic for them, I think.

Pillsbury: Are there any further questions from the Commission?

Would you like to, counsel for the petitioners?

Hannah: Please. Mr. Schroeder, my name is Paul Hannah. I am counsel for the petitioners in this case. As I understand it now, a considerable amount of your testimony was taken from the records of the Minnesota State Bar Association, is that right?

Schroeder: That's right.

Hannah: And there were several references to a report -- the minority report -- which the Minnesota State Bar Association eventually passed. When you were referring to a report and quoting from it, that was the report prepared for the convention, is that correct?

Schroeder: It was the report prepared by the Joint Committee and was, in turn, presented to the 1980 convention, right, and it is published in the Bench and Bar magazine in the May-June issue.

Hannah: And I presume it was prepared by, since it was a minority report, it did not obtain a majority of signatories to it and, therefore, was labeled second minority report.

Schroeder: Yes, it was labeled minority statement is the label.

Hannah: First of all, the vote that was taken on the adoption of that report that was a voice vote, wasn't it?

Schroeder: Yes, it was.

Hannah: So that when we say 60% or 70% of the lawyers who were present in that room we're making an educated guess.

Schroeder: That's right. That's merely my personal impression and I was acting as parliamentarian at the convention so I was at the

Hannah: And at any one time in those proceedings would you or anyone else have an accurate count of the number of voices that were being raised for or against an issue?

Schroeder: Not really. No, there was no need for a standup vote, so we did not have a count.

Hannah: But what I'm saying is that people drift in, leave, sometimes take part, sometimes around the floor and don't, it is a typical convention.

Schroeder: Yes, although at that particular time, at the Rochester convention it was really the highlight of the convention and we had testimony or commentary from people like former Governor LeVander, Judge Summers from St. Paul who spoke for the first minority report, noted trial counsel like Charles Laus, Judge Segell was one of the speakers. There was a very learned debate and I think the participation by the members of the convention was at its high point.

Hannah: You referred to that report several times in stating as reasons for the opposition to the use of cameras. I believe you said that the report stated it would have an impact on witnesses and jurors,that it would be a vehicle for entertainment which is the primary thrust of television, and that the primary purpose of trials would be ignored. Now was the report basically in the form of an argument, a brief, would you say?

Schroeder: No, the report itself was a mere statement of that minority and it gave seven reasons, seven paragraphs. My statement of the three was a paraphrasing of those.

Hannah: Okay, so it would be accurate to say that those were the arguments that swayed the lawyers who voted in favor of that report.

Schroeder: Now I don't think that's accurate because the minority report itself wasn't read. I doubt if there were many other people that come to the convention spend time reading the whole report. I think the debate on the floor of the convention was probably the most persuasive.

Hannah: I presume it had some of these arguments.

Schroeder: Yes.

Hannah: I guess this is a question that I will direct to you, although Judge Segell also mentioned something about it. In the report and in your own testimony you

indicate that one of the fears you have is that testifying before a camera will obviously impact a witness and might make him more frightened because of the possibility that his picture would be taken. At the same time, perhaps if I am miss characterizing your testimony, please tell me, is it true that the witness already comes to the courtroom with some trepidation about the function he is going to perform there?

Schroeder: Yeah, no question about that.

Hannah: If this is a major trial which has evoked an amount of public concern, he may be photographed walking in a courtroom, mightn't he?

Schroeder: Yes.

Hannah: He could be named in the newspapers. And that, in fact, he may not be there voluntarily, but that doesn't have anything to do with the camera if someone else already figured that out and had to subpoena him? Isn't that right?

Schroeder: Right.

Hannah: So there may be a lot of reasons for this nervous, but none of us can attribute it all to a camera being here.

Schroeder: Not at all. In fact, I think that's the very point that the witness already is being subjected to a

certain amount of trauma and then to add to it at the point where he is actually giving his testimony is something that really ought to be considered, as to whether or not the benefits to be achieved by permitting the cameras are sufficient to warrant that intrusion into the factfinding and injustice determining process.

Hannah: Well, would you personally,and I wouldn't ask you now to speak on behalf of the Bar Exam, but wouldn't it seem reasonable to you then to experiment for a period of time and see if those psychological factors, in fact, did impact witnesses?

Schroeder: I think that that is a reasonable position.

Hannah: Wouldn't it be reasonable, especially in terms of the argument that states the witnesses may not appear at a trial, to see if that really happens here in Minnesota?

Schroeder: I'm not sure that you are going to be able to determine that, but sure those are arguments I think in favor of the proposition.

Hannah: Okay. I have nothing else.

Pillsbury: Commissioners, any further questions?

Kaner: Nothing further.

Pillsbury: Judge Segell, have you got further questions?

Segell: It is true, Mr. Schroeder, that you have never seen a witness impeach his testimony, isn't it? You've never heard a witness who has been in court and who has been on television say that I lied.

Schroeder: No that's not true. Witnesses are very reluctant to admit they lied. Yes.

Segell: Jurors might also be reluctant to impeach their verdicts, isn't that true?

Schroeder: I think that's true.

Segell: So those statements that we get out of Florida and Wisconsin as to the affect of the camera on a witness or a juror, isn't exactly what we would call empirical evidence is it?

Schroeder: It may be not completely reliable. I am not sure that these are things that I am an expert in, however, as a Bar officer.

Segell: But certainly we know so little about the pscyhology of what impacts on a juror that we can't rely on the data that we've gotten from those other states.

Schroeder: I guess I don't have the background to have an opinion on that.

Segell: You're familiar with having a camera put on yourself I take it. Having somebody take your picture.

Schroeder: Oh yes.

Segell: Do you react to that?

Schroeder: Sure.

Segell: Do you react when a television camera is put on you in some fashion?

Schroeder: Sure, I think that's fairly accurate.

Segell: Do you react when somebody puts a microphone in front of your face?

Schroeder: Right. Or if somebody wants to tape a conversation, it changes one's outlook. I agree.

Segell: Right and we know that that happens to many, many people, isn't that true?

Schroeder: Sure.

Pillsbury: Counsel.

Hannah: (INAUDIBLE) Mr. Schroeder, you said that you react when people put a camera on you or put a microphone in your face, were you aware that these proceedings were being televised or that there might be a camera present?

Schroeder: Yes, I was.

Hannah: And you were aware that there would be a microphone that would pick up your voice and probably send it out to unknown thousands of people.

Schroeder: Yes, I was.

Hannah: And you ran for the presidency of the Minnesota State Bar Association and I presume you were aware that you would not perform your duties in that job in a closet.

Schroeder: That's right.

Hannah: And nonetheless you managed to step away from that fear and trepidation long enough to perform your duty as a witness here before the Commission for which you shall be commended.

Schroeder: Yes, I think there's a higher duty that I am responding to.

Hannah: Do you think that several of our citizens in this state probably feel that being a witness in a trial, be it major or minor, or attending to their jury duty, would also feel that that was a higher duty?

Schroeder: I assume that that would be the case.

Hannah: I have nothing else.

Pillsbury: Any further questions? If not, thank you very much, Mr. Schroeder.

Schroeder: Thank you. I would like to, in closing, add a thank you from the Bar Association to each of you members of the Commission. We realize you are devoting your time and it's intended to assist in the administration of justice. I think that's a high calling which you are responding to and you should be commended

for it.

Pillsbury: Thank you. The next witness is Justice Day. Judge Segell you have introduced him to some extent. Would you like to make further introduction?

Segell: I did introduce him this morning, Mr. Pillsbury, and I just wanted to add that he does appear as a witness on behalf of the Minnesota State District Judges Association, not on behalf of Judge Segell, as appears in the agenda. He is appearing on behalf of the Association itself. The vast majority of which are opposed, of course, to cameras in the courts. As I did introduce him and give some background this morning, I present to you Judge Day at this time.

Pillsbury: As I said this morning, we very much appreciate the fact that Judge Day would make the trip here. I will swear him in. I don't know how often a judge gets sworn in, but this is an experience that might be something he'd enjoy.
(JUDGE DAY SWORN IN).

Day: There have been a number of claims, Mr. Chairman, members of the Commission, on my behalf there should be some disclaimors too. I should say whom I do not represent. I am not here with a constituency beyond myself. I am president, rank and file, and the only dues paying member of the coalition against cameras in the courtroom from northern Ohio, which is

a non-existent organization. I speak without trepidation for its positions, because I am it, not that I do not have those who join with me in my position on this very important issue. Another part of a preface, and I have left copies of statements on the desk, which are in a way statements and in a way raise questions about the issue which is before the Commission. I have a preface in that statement. It meets more besides saying that I only represent myself and appear on behalf of the Minnesota Judges, who have requested my presence here. Part of the preface is to thank you for allowing me to be there. Part of it is to suggest that I have an almost unmitigated admiration for the First Amendment. Indeed, if one could show what is written on the inside of his skull, right here on my forehead, I think, would be the First Amendment, and those subsequent Amendments which fill out the Bill of Rights, both the first ten and those which come after it -- thirteen, fourteen and fifteen, that giving the vote to women and so on. I think in the English language there is very little that has an importance that has been written that compares with this election of rights. But that collation involves a number of rights. It includes among other things a right to a fair trial and the right to be represented by counsel and the right to an open trial. The Sixth Amendment is quite explicit that there is a right to an open trial. I apologize for reading from notes,

well I don't apologize because I'm not going to read from notes. Usually when I know what I'm talking about, I don't need any notes. We once had a senator in our state who thought that was a signal for subversion, if you read without notes then you must be a subversive of some sort. I will run that risk in Minnesota. But I did take some notes about what was said this morning and a few observations I do not want to forget I have written down here and to that extent I will refer to notes. I also had with me a copy of my article in the Judges Journal on the case against cameras in the courtroom. Judge Segell has assured me he will have that reproduced. I have only the one copy. I also have a copy of the Missouri Supreme Court rule on this subject which is an absolute rule in the sense that it is entirely up to the judges. There must be consent. The recording cannot be displayed until after the trial is over and the appeals have been exhausted and then only for the purposes of educational enlightenment. It is true that in some law schools literal trials are used in order to educate incipient trial lawyers in the process and the method. I think I should tell you too that I began at a point that admits almost everything that has been said preceding me about obtrusiveness in the courtroom. I think it matters none at all that technology has advanced to the point that television and radio can be in the courtroom without

creating a racket or intruding in a way which interferes physically with what is going on in the trial. But at the same time, one must say that,as important as it is to have a First Amendment, there is a balancing importance in having a fair trial. It is not possible to eliminate some of the obtrusiveness which a microphone or a television camera introduces into a trial. If my word for every man, Morrie McKluckenfuts, were to appear at a trial anywhere, he already comes frighted with all kinds of anxieties because he is making a public appearance. He is making a public speech. There is an autocrat on the bench, twelve citizens in the box, a hostile lawyer, polite maybe, but hostile at best, and if he is not nervous, than he simply doesn't know what is going on. So it seems to me that what we are saying is that we ought, in the interest of the First Amendment, so exacerbate the anxieties which necessarily inhere in witness testimony that we threaten a corollary a right to the fair trial. There are other aspects of it. One is that we, as judges, are not in the business of theatricality. I don't blame television stations and newspapers for dealing in the dramatic, that's where they live. I have never heard of a television station being at the airport to record landings, unless the President of the United States, or someone else was coming with him. I have never heard of them being there to record takeoffs, except

for the same reason, but I would bet on their presence if there is a crash. So what happens in a trial. There are dozens of trials going on all the time and, as one who has now heard and I know that lawyers are proned to exaggerate. A lawyer in Los Angeles became something or other and said he tried five thousand cases that means about two a day since he was four years old. I don't want to exaggerate like that, but in thirteen years on the bench, hearing roughly three hundred cases a year, I have now heard nearly four thousand cases. I think that's a fair sample so that I can testify personally that most of what inheres in those cases is dull. If one were to give it gavel-to-gavel coverage, he would tempt the medical association to get it bottled for insomnia treatment, because it is very dull stuff by and large. Beyond that there is a specious argument made,and that's a proper or so word I guess for phony, that this is educative. I doubt very much whether it is educational about the judicial process --to pan in on the victim of a rape, or a sweating defendant, or a confession as it goes into evidence in court, or some dramatic part of the trial and then forget it. Everybody knows that two minutes is a long time on television. Trials last for weeks and weeks and weeks. It is the dramatic trial that is going to draw attention It is the dramatic parts of a dramatic trial that are going to draw attention. There will be tons of

technical information in the average murder case, average personal injury case or reapportionment case or ecological case, which is basically scientific and not very exciting. You have to qualify witnesses, for instance. Are they going to show that? Not at all. How do you educate by giving porcels, tiny porcels of information about how the process works? (END OF TAPE) Strain it through what they know and it comes out sometimes with slight distortion. There is enough trouble sifting through facts when one is a trained lawyer, a trained judge and spends hours and hours and weeks and weeks in the process of finding out what it is all about. I emphasize again that what the courts are concerned with primarily, solely really, is the integrity of the trial, the search for truth. I take a back seat to no one in my admiration for the concept of an open trial, but the openness is not because it is a vehicle for entertainment, the openness is designed to prevent chicane or skull duggery in the course of the trial. I think it is at least a half reading of history to see just that the boast of Anglo-Saxon jurisprudence is the open trial depends upon the fact that certain of the citizenry can come and enjoy themselves at the proceedings. The glory is that you no longer have a star chamber and I think the reference to star chamber this morning may have been inadvertent, but, in any event, it was slightly curved because no one

that I know of who opposes a television in the courtrooms is doing it because he wants to close a trial. He or she is doing it because it involves courts and things which are not their concern, because it exacerbates the difficulty of getting the truth from a witness, because it interferes with court process. For example, and the lawyers will pardon me for this technical reference, there is a rule in every jurisdiction I know of on separation of the witnesses, which is a way of saying that you say at the outset, Your Honor I want the witnesses who are going to testify in this trial, except for the one that is on trial and perhaps somebody who may be assisting one side or the other who may also be a witness, to leave the room. The purpose of that rule is to keep the power of suggestion out of the testimony that witnesses get. It is thought to be inappropriate that witnesses should listen to one another, and either advertently or inadvertently, dovetail their testimony so it is of one piece, because one of the great assets of cross-examination is that an unfriendly lawyer gets a witness and puts him through the jumps in terms of which shake his credibility, test his credibility and see whether or not he is able to tell a consistent story. Now you can say well we can do that. We will put witnesses in a hall away from the monitor so they cannot see what is going on. What about the witness that is going to testify the next day, if the television gets on the air that night?

Another way in which televising trials gets in the way of a fair trial is this. Once you have had a trial you may have a mistrial, or you may have a reversal. Once it starts and the evidence has gone out, you have immediately introduced some material into the potential jury pool which may condition it one way or other in connection with a trial. That's what we try to avoid. The whole purpose of voir dire, which in layman's language is speaking the truth, is to try to get jurors who will not be aware of what has gone on, at least not aware in any way which contaminates their impartiality. Now it is true that in a great many states if you press a juror and he says in spite of all that I have said I can still sit as a fair and impartial juror in this case, the court will not let you disqualify him for cause. But sometimes he will be disqualified for cause, and it's important to know what he might think and that's the reason for voir dire in order to exercise your peremptory strikes. These are all factors that have to do with the fairness of the trial. You may remember, the lawyers among you at least, the case of Rita v. Louisiana where an interview on television took place in the jail cell three times. Supreme Court of the United States did not even pause to determine whether there was proof and prejudice. They said under these circumstances there can be no fair trial in this parish and you start all over again. There are many ways, of course,

to deal with taking evidence besides closing trials. I, for one, would say closing a trial is the last resort. I would follow entirely what the court said, not in dictum, but in dispositional language in the Richmond case. You cannot close a trial without sufficient findings to support that process and those findings must make it perfectly clear, I am paraphrasing now, that you cannot get a fair and impartial jury without the closure. I would put the barrier high to that and use it only in the most unusual situations. Again, that case represents one of the areas in which it may make sense, because at that point you may be dealing in the preliminary part of a trial before the regular proceedings begin -- you may dealing with the admissibility of confessions, the admissibility of evidence, legally or illegally seized. There may be material which, if it gets out to the public, would thoroughly condition anybody who may participate in the trial against the person who is on trial. There are arguments made that, of course, for the televising would say well this may be a huge ecological problem. It may be a civil rights problem. It may be something else that has an impact which the public is interested. That's true, but the place to make those points is not in the courtroom because the courtroom is not interested in the public debate. To the degree that the public is educated by a trial is incidental and it is peripheral to the main concern of the courts. It is not that we are interested in

public ignorance, that isn't it at all. It is not that we are interested in a curtain over everything we do, it is not that. The curtain must be wide and the record is there for anybody to read who has an interest. The media are entitled to be present and they can interpret what they hear anyway they like. I think it would be a sad, sad day for America if we ever got to the point at which the courts were having to edit what the media does, whether it be print or whether it be television. But we do have the right to set the conditions under which evidence is gathered in the courtrooms where we preside over the life and the liberty and the property of citizens. It seems to me you could almost take judicial notice of the proposition that the inducement to anxiety which comes from testifying publicly is exacerbated by the presence of a microphone. Stage people call it mike fright. I have seen experienced lawyers sweat until water dropped on the table. In a program on the advocates in which I participated I saw one of the brightest law professors in the land almost get tongue-tied before he went on. When he got on, he was all right, but he was as nervous as could be. I was nervous. We all are nervous. I am nervous now. You can tell, but the fact is that I am not unaccustomed to public speaking, far from it. But there still is a certain amount of anxiety that you are up a little when you get ready to testify and for someone who never does it, you can

have a freeze. Stage people call that going up. You just lose your lines and there is no way to come down, no way to get back. Now on the question of what the media may do to tell the public about what's going on, that's their privilege, but it seems to me the jury must be insulated from that, because their job is not to derive information from what the media interpret as being the fact in the case. The jury must do it itself and it must do it untrammeled by suggestions that come from people who may or may not give more weight than their opinions are entitled to. There was a suggestion made this morning that sequestration was a remedy for this. In one sense of the term sequestration will remedy exposure of a jury. It doesn't do anything to exposure of witnesses. It's a highly expensive proposition. If you had, for instance, say three months trial, and this is not unknown, you could run hotel bills into thousands and thousands and thousands of dollars in order to protect the jury from these shots that are going to come on the television at night, usually showing some particular aspect of the case and that leads me to another point. It is not the function of the trial to distort the evidence, to over-emphasize the evidence. All trial lawyers know that,if a judge has to re-read his instructions, he frequently reads more than he is asked to re-read in order to maintain a balance between that portion which is emphasized in one re-reading. He does it by reading another portion of the instructions, so

that the jury has a fair shot at what the law to be applied is. When you see a neglectedly selected shot from television which emphasizes a dramatic part of the trial, you not only do not educate the public, and if you were going to, it's a very poor educational device. If you were going to educate the public, you'd show it all. But you see the confession, and that's all you see. Then there's an acquittal, let's say, and what happens. Well something went wrong, something is obviously, curiously at odds in that courtroom, because we heard the confession of the man. Heard nothing else, didn't hear the repudiation didn't hear the other evidence, maybe evidence that totally blocked any verity for the evidence. This kind of thing goes on and on and on. Let's suppose that a witness is asked a question, which to a layman makes great sense, but it's hearsay and there's an objection. The court sustains it. That's on television. What's the judge doing sustaining that evidence? Can he lean over to the microphone and say ladies and gentlemen of the radio and television audience, I sustain that objection because we have a rule called hearsay and, in addition to hearsay, we have about twenty-two exceptions which eat up the rule. What was asked here does not fall within one of the exceptions, therefore I had to rule this out. Hearsay is gossip, in your language, and, therefore, I rule it out. Do we have time for that? Is that what the judges and courts are here for? I think not. What we do

have the media for and I will stop with this, excuse me, and let you take shots at me. I have some twenty or so theses in this little paper, not as many as Luther, but enough. We will answer some questions, but it seems to me perfectly obvious we ought to look at this problem in terms, not just to the First Amendment although it's an important consideration, but in terms of the fundamental purpose of the courts. Why are we here? What are we here to do? To titillate, to educate, to provide theater, not at all. We are here to deal with some of the most serious matters that confront human beings in their daily lives. We deal with it at a time when the whole power of the state, in a criminal case at least, is a raid against a single individual. He has nothing, but the privilege of self-incrimination. He has nothing but a very frail presumption of innocence, and, if he is lucky, a hard-nosed lawyer who will not back off from anything. He's got all of that. He still has an excellent chance of being convicted because of the array of power on the other side. One final point -- never trust a lawyer who says there's one more point, because there's apt to be three. One more point. This is not a plebiscite. A trial is not a plebiscite. What the community thinks may influence it, as was evident in such cases as Sheppard, or at least it was assumed to be evident, Erwin v. Dodd, Sheppard v. Florida, another case that doesn't get much attention, and a case we heard talked about this

morning from Minnesota. But the fact that the public has a heavy interest, a titillated interest, is not really the point. The public's interest in a fair trial is represented in the Constitution. The implementation of that interest is represented in the particular trial and we do not jettison the basic principle in order to provide entertainment in the particular implementation. So I suggest to you in considering what you recommend to the Supreme Court that you keep account of the fact that there are many, many avenues open to a court that wants to protect the jury--continuance, sequestration, admonition, although we all know that admonitions are more apt to be litany than effective --all of those things are available and it is only as a last resort you close the courtroom, but you are not closing it when you say we will not exacerbate anxieties by adding microphones to what is already a tense situation. Now with that, I will lay myself open for questions.

Pillsbury: Have any of the Commissioners questions at this point?

Kaner: I would appreciate your comment, Judge, on what the media contends is one of the effects of allowing cameras in the courtroom that it will educate the people and further develop their respect for the judicial process. What do you say about that?

Day: I think it may further develop their disrespect for the judicial process because it presents it in a

fragmented way. As I suggest, if they hear a confession read, and that's all, or they see a witness who seems devious, or if they hear a judge ruling on testimony, which a trained lawyer knows is an appropriate ruling but to a layman seems pertinent, they may go away with the notion, if the trial does not come out the way that experience leads them to believe it should, the judiciary is functioning in some sort of mysterious and inappropriate, if not to say illegal, way. That to me does seem to be education. I am reminded of the case of Betts v. Brady, which you are undoubtedly familiar, Judge. In that case, before you had a right to a lawyer in anything but a capital case, it was said, later overruled, in effect well this defendant has had other convictions. He is not unfamiliar with courts. I read that as saying why go to law school, just get a couple of convictions and you are competent. Now that's nonsense and, I think, it is nonsense to suggest that by having eclectically fashioned shots for their drama put out to the public that you give the public a fair impression of what courts do. Actually what we do is pretty dull suds day in and day out. If cable television ever puts on gavel-to-gavel television, I will guarantee it will not involve the mechanics lien act, nor will it involve securities law unless there's a huge theft. What it will involve is the dramatic rape, the dramatic murder. Things like the Sheppard case. A beautiful

woman pregnant by whom it was debatable according to the prosecution as in a search for motive and so on. That kind of thing really rivets the attention of the public. I dare say it does not do much for the education of the public about the judicial system. Education about what we do is really very hard to come by. You have to study it. You have to spend time with it. You have to know what the objectives are. Why, for instance, do we rule out certain kinds of evidence on the ground of hearsay? Actually the rules are being modified, as you know, so a lot of hearsay is going to come in now because it seems to be verifiable in one way or another. That may be all to the good, but my point is that the technical aspects of a trial cannot be grasped on the fly. It cannot be gotten while one sits in front of the television set waiting for the football game.

Kaner: Of course the media also argues that it would be educational that they provide coverage of such things as environmental problems. Let's assume that schoolteachers are on strike and there's a process in a courtroom involving them or a labor union with problems of interest to the people. They would all share that type of thing when it got into a courtroom. What do you say about that?

Day: My say about that is that there is simply not enough time. I do not mean to be smartalick in what I

say now, but I am comforted by the fact that television is so expensive that they can't do much of it with us. That will save us from ourselves and from them and from a great many trials from the lack of fairness, but you cannot deal with a labor problem in a two minute segment. Two minutes is a long time by the way. The notion that cameras are in the courtroom everyday as in Wisconsin is true, but it is a half truth in the sense that Steven Wycock used it like a half brick it carries better. They come in and they will have a quick shot of arraignment -- someone pleads not guilty and out they go. It is a notorious case. But of all the cases that are tried in any particular day in a heavy jurisdiction in an urban area like this, there are only a few selected pieces. I think that if it got to the point where there was a one-sidedness, someone might want to ask us why don't you police this so that both sides get shown on television. That gets us into their business, I don't think we belong there. There is also another question, if it ever becomes, and I realize I am going beyond what you just asked. This is a hazard, I guess in asking me a question, but if you say that a public trial on television or televising of a trial is part of a public trial, what then becomes of the equal protection argument? They televise your trial, they don't televise mine. Do I have a right then

to argue that I have not had an open trial. Now we know that we have no right to a closed trial. The Supreme Court has told us so, but we don't know precisely what an open trial means. Does that get us into the position that we must say to the media you must televise every single trial from gavel-to-gavel. Or does it get us into the position, somebody in the judiciary, of saying I am going to review what you did and then I am going to review what you could have done and I am going to insist that you put on much as you would do a retraction in the case of a mistake in the newspaper. I think that gets us far afield from where we belong. It gets us involved in things which are none of our affair and really it may get the media into matters which they would be very unhappy in participation.

Pillsbury: Would like a little wait until counsel?

Ahmann: I just had a quick question. Yes I am looking forward to that.

Hannah: Don't judge.

Ahmann: True. I have one question. It seems to me that some of the objections you have raised is on the commercial television in that it is short, it is not detailed enough, it really doesn't give the public as much information as they really need to make some kind of decision about this trial. But I think you would agree that the public is now

getting some of that information. It certainly probably is not as detailed as you would like it to be. Would you have a different view if we were talking about an educational program that would film a trial from gavel-to-gavel?

Day: I would not have the objection if the educational film was designed to illustrate, and not just to make dramatic a particular trial which is involved with the life and liberty of a particular person or the property of a particular person in some dramatic way, if the television stations simply want to educate, and if there is nothing to my point that microphones traumatize, and I think there is a great deal to that point, assuming it is nothing to that, they could make the film and show it after the trial is over, as the Missouri rule requires. I have no objection to education. I wish the public would understand what we do. I have tried to write a Law Review article about what judges do. I did not try, I did. I don't know if I succeeded in telling what judges do, but it was printed in a journal and for some thirty-one pages I attempted to lineate why we have and have to from time to time make some law. But how many people are really that interested? If they are, I am for providing it. But I do not want to provide it at the risk of the rights of the particular person on trial. I think it interesting or the point is not made to support the position of

those of us who oppose cameras in courtrooms, but I think it is interesting that someone says if you are going to have consent, you are not going to have cameras in the courtroom. That proves what defendants feel about their rights -- the way they are handled by the television media, it seems to me. Now I am not saying whether they are right or wrong. I have my own views on that, but I think it would be very hard for anybody,even of genius quality, to pick out two or three or a dozen epsiodes in say a ten week trial. Flash them on the television screen at night and be fair. Now if those persons who see it are not going to participate in the judgment and the jurors are not going to see it, perhaps no harm is done except as the witness may be harmed. Let's assume that we were trying a case where a mafia figure is on trial. The witnesses are apt to be very nervous. An old trial lawyer of my acquaintance in Ohio used to say it was easier to seduce the whole Ursulan order than to get a witness to take the stand without trepidation. I think that's probably true, because it is a very unique situation. Now if you can overcome that hurdle which I think cannot really be overcome, but you really want to educate, stage a mock trial. Go through the detail in precisely the way that you would do it in a regular trial. Then for academic purposes you can teach and that deductic method I have no trouble with.

Ahmann: Mr. Chairman, I hold any other questions.

Hannah: First of all, Judge, I really am probably the one suffering at this point from some fright and it has nothing to do with the microphone. This may be the only chance I get to question a judge and I don't know that I'm really up to it today or any other day. I am afraid of this and I wish that Judge Segell would leave, but he's going to be right here.

Day: As we have said to the man we have sentenced to 100 years, just do the best you can.

Hannah: You will note that a witness in this courtroom who comes here for a criminal case, even if it isn't televised, is going to have mike fright because this courtroom is wired and it is wired to a PA system. We do have a camera and we have some wires and we also have a room with six people who are not now in this courtroom. Now my question is this, if we aren't successful in obtaining the right to bring cameras into a courtroom, can you honestly today tell us that a witness will feel any differently stepping up to that microphone and looking out in that gallery at seats filled with reporters, some of whom they know are going to be on TV that night.

Day: No, I can't tell you anymore than you can tell me the contrary, because these are unmeasurable problems. That's one of the points I would have made had I been

reading instead of extemporizing. You cannot measure these impacts and because you can't we should not get the courts into the hazardous waters which are involved in televising. Now the use of any mike at all is a problem. No question. To be there at all is a problem and I can't tell you what proportion of a man or a woman's trepidation depends upon which of these particular elements. But I do say there is no reason for exacerbated what I guess we would all concede is a fact --that people do get nervous in front of microphones.

Hannah: All right, but I guess what I'm trying to get from you then is at least an acknowledgement that we don't even know if that exacerbation occurs.

Day: The only way we can know is by what is virtually called empirical evidence, where you exam people. The Cleveland experience is that large quantities of people of jurors, participants as witnesses and lawyers are willing to acknowledge some trepidation. Now that kind of nervousness probably ought to be enhanced by some factor because most people do not like to concede particular lawyers if they are nervous about anything, particularly trial lawyers. Who is going to admit, for example, that he is afraid? You do have situations on this and by the way that raises the point which I should have touched in passing. If there comes a time in a trial where a

witness says I am afraid and I will not testify unless the mikes are taken off me, what happens? You can put him in jail until he testifies, that's one thing. Or you can call the media, adjourn trial, have a little trial within the trial, put everything on hold until you have exhausted an appeal and the already overburdened courts are now going to argue this point. The complexity of this is well illustrated in the Nebraska Press Association case where all kinds of writs were applied for -- mandamus, prohibition, what not, special stops and stays from the Supreme Court of the United States -- until finally when they got to the opinion the case was over and gone the man had been convicted. Now I think it unfortunate that we ought to have to stop a trial because that implicates other constitutional rights --speedy trial, for example. I think that refusal of a witness to testify and one who really is serious and who goes to jail if they refuse forever intends to involve a lack of due process for the defendant, whether it's a civil or a criminal case, because he cannot put his whole case because an extraneous element in the trial has limited his access to the data which is essential for him.

Kaner: Judge let me ask you this. Have you presided over some trials in which cameras were permitted in the courtroom?

Day: Only an appellate one and there my objection was

primarily that the television station that was there came because one of their employee's case was on trial. A little bit of background. A splinter political group with high hopes and no power had thrown a pie in this lady's face. She's a kind of local monument and they arrested a bunch of these people for assault and battery and they were convicted. When the case came up to the Court of Appeals, her station came and televised the trial. I saw a slight conflict of interest element in that and I voted against it. There is a difference. I am not suggesting I would want to retreat on this point, because television is not our business, but there is a difference between televising a Supreme Court or an intermediate Court of Appeals and a trial because laymen are not involved. A great many judges have an element of exhibition in them and they are perfectly willing to perform for the cameras. A great many lawyers have it and I would on good report that most judges have been lawyers and they tend to perform. I think that's an unfortunate ingredient, if that comes out, if that becomes a factor. I would like to have a trial as pristine as it could be made from the standpoint of objective search for truth. I know there are cynicates who say that a trial is not an objective search for truth, it is a subjective effort to flim flam and keep the truth from ever coming. Well that shouldn't

be the case, if it is. I do not say that it is I am simply reporting what some others say. I had that single experience, but I have had a great deal of experience in courtrooms. Nobody who has ever not tried a substantial criminal case or a substantial civil case that has gone for weeks and weeks can understand what the load is, and I know I'm not talking to the lawyers now. You not only have life and property in your hands and liberty, but you have an enormous workload. That gets exaggerated by the fact that you may say or do something on camera which will hurt your client. I am also troubled by the possibility that this master switch, which was spoken of this morning, may not be thrown in timely fashion, so that when counsel is consulting with his client, it doesn't get out over the air. That's a very important point. Confidentiality is a basic ingredient and the right to counsel. It's the right to effective counsel who we are talking about. So that if you do not safeguard those rights, what you are, in effect, saying is that a segment of the right to publicize, which I concede is an important part of the First Amendment, overwhelms every other consideration in the Bill of Rights -- fair trial, effective counsel, due process, equal protection.

(END OF TAPE)

Kaner: Do you have any comment about the task of the trial judge when a camera comes into his courtroom?

Day: I have a great deal of sympathy for a trial judge, particularly in the jurisdiction where he has to be elected. This is one I understand. I come from one. I think that no matter how good a judge's motives are going to be and no matter how socially oriented a news person may be, there has got to be a little tendency to put the heat on the judge, who does not allow it. It would be less inhuman, if there was not. I would like you to believe that every judge I know is as brave as a lion and as incorruptable as Rose Pierre, but I'm no better and you're no better so I am not trying to flim flam you. They come in all sizes, some are brave and some are weak. Some would not take a nickel corruptly, but they'd die over the chance of being defeated at an election. I don't think they ought to be subjected to that kind of pressure.

Kaner: About the actual courtroom procedure, how does it affect them there?

Day: He has to be nervous and he may make mistakes that stem, not from his lack of competence, but from his lack of ease with the situation in which he finds himself. He knows that tonight on the news two hundred thousand people who vote for him are going to hear him rule. Let's suppose it's a very hot case. Let's suppose it is hearsay. Let's suppose the hearsay goes to the heart of the case. He rules it out. Two hundred thousand people are

going to say what's the matter with that fella? Is that good for the judiciary? The next step in the what's the matter is he is some sort of thief. Skull duggery is at work at the courts. I have no hesitation in saying that is not good for the judicial process or for the public appreciation of the administration of justice. Incidentally, there is one typographical in that handout I gave you on page four, first line,"that"should be"what". "One never knows for sure what the impact is." I'm sorry I didn't notice that until I got here.

Pillsbury: Have you any further questions?

Hannah: Yes, I do. I am sorry, Judge, but it seems to me you have argued away our right to be in the court-room. I have got to ask you now to think about this for just a moment. Consider this to be a trial court. Presume that that camera isn't there and presume that we have banks of reporters and that the judge in our hypothetical case decides that the evidence has to go out. Now you don't want the jury to see what the evidence is, so you tell them don't look at the papers, don't watch the TV and you tell the witnesses the same thing. Now they all go home and they all disregard your instructions and they all watch. They find out what that evidence was which could happen exactly as we are today. Now add the camera. My question is what is the difference between having a reporter standing out

in front of this courtroom saying today Judge Kalina ruled on XYZ piece of evidence and it was not placed into evidence, or having Judge Kalina say based on your hearsay objection counsel, I am not going to let it in. Can there be a monumental difference between the two circumstances?

Day: Yes.

Hannah: Please.

Day: Yes. In one case the print media had time, not only to say what he did, but if they know enough, and we have to assume that if they don't know enough they will try to find out, to do something about.

Hannah: We have got all the TV people here too though.

Day: All right. I would assume that TV reporters are just as intelligent as print reporters and, if you want to argue with me about that, I will read the rule while you fight. But the point is that there is time and opportunity in the print media to make a full statement of what the judge did, while in the quick shot, there is not. For one thing I take it for granted that we are not going to have a situation in which the judge can lean over to the microphone and say now ladies and gentlemen I want to explain why I ruled as I did. We are not taking the public to law school and, if we did, it is a very poor way to do it because it is so chopped up. I think there's a vast difference between the one

situation and the other. Of course, when I say media I mean everybody -- print and electronic -- but the electronic media have reporters. They can take notes, they can go on the air and give a full explanation. I might not like what they do. I might not have any confidence in their comprehension of what's going on at all, but that doesn't mean I have a right to stop them. What I do have right, it seems to me, or the courts have a right to do, is to make it impossible for them to intrude on the courtroom procedures. Now the printed word, in addition, does not have the impact of what is seen. As a matter of fact, if the judge's ruling is seen on the television sets at night and the print reporter explains it, the public is apt to be saying somebody's lying and I saw what I saw. I did not see what he saw. Now he's writing, I cannot believe him. Now why do we get involved in it. That's not our business. We cannot avoid that, as long as we have open trials and,if somebody is suggesting we close trials, I would be here, if invited, I realize I'm, I guess, an expert, a damn fool from out of town, but the fact is that I would be on the other side of that. All I am saying is that there is a balance to be made between due process for a litigant and the First Amendment. That's all.

Hannah: I'm a little bothered about your idea of education. I know a lot about the Civil War, but I wasn't there and nothing I ever read chronicles the Civil War from

start to finish. Now my idea of education is at the end of an article on the Civil War I may know there was a north and a south and that the north think they won, but the people in the south are pretty sure they probably won and that there were all sorts of repercussions, some of which I know, a lot of which I don't. I am better educated after reading that article. I don't think you mean to say that in order to have education occur we have to show every tiny jot of time and every event that occurs in a courtroom, because if that is your view of education, then I don't believe that anyone else prescribes to that view.

Day: Subscribes. Now the point that you make is not well taken. You did not decide who won the Civil War just because you read about it. Now the people who are in the jury box, the people who are seeing this on the outside and making judgments about the judicial system, the jury box is going to decide who wins, the people on the outside are going to decide whether there is fairness going on in the administration of justice and they have had a piece of education. Now when you read about the Civil War and read volumes, you may know a great deal, but there is no decision that hangs in the balance depending on the clarity of your understanding. None. And the jurors, admonition or no, may be looking at home and getting an impression which is

totally false.

Hannah: If the jurors, though, go home under the present system, they may likely hear a reporter digest what occurred and tell us. If under the system we are proposing, the jurors go home they will in part see what they already saw. So aren't they better off because, as it stands now, everything that gets to them gets to them through another set of hands, another mouth and that's where the problem is.

Day: You have tried lawsuits haven't you?

Hannah: Yes.

Day: Okay. Do you ever try to get the witness to repeat himself for emphasis? Do you ever get him to go over the material to show that it's by rout? Do you ever wonder if you can get him to say it three times it has more impact than if he says it once? Of course, and it's wrong and if you do it in open court, at least with a judge who is on his toes and beyond a certain point, you'll get stopped. But this is an extraneous re-emphasis. This is something that happens where there is no time nor basis for explanations.

Kaner: Judge Day, let me ask you one thing. We have to treat you as an expert witness, of course.

Day: Well, I was making a joke, I'm really not. I'm just a damn fool from out of town. We can all

agree on that.

Kaner: No, I think you are. On this basis now I am sure you have in mind that these petitioners at this point, among other things that they ask for, is that the State of Minnesota shall adopt such rules which enables them as an experiment to go into the courtroom. Now obviously you are opposed to cameras in the courtroom, right?

Day: Yes.

Kaner: Are you equally opposed to allowing the media to try this experiment under a rule of the Supreme Court that would allow them to do that?

Day: I find it very hard to be against gathering information. It would be very hard for me to say flatly yes to your question. That does not mean that I would be in favor of opening up any trial they chose to hear and as many as they choose to televise. If you want to experiment, it would seem to me the way to do that is to do it under controlled circumstances so that the splash does not go beyond the case you are in. You only have one case that has to be retried, not fifteen or twenty. You do it with a carefully constructed questionnaire and maybe even some devices to test witnesses before they go on the stand to see how respiration rates and heart beat and sweating operates while they are in that posture and the same for the jurors. Now we have already made a hypothesis

which I suppose would chase most people away, but as long as there is a chance that we are jeopardizing such fundamental rights as liberty and property, and of the two I think the first is the more important, I think that we have to lean over backwards to make sure. If the suggestion is that there will be skull duggery, if there is a question of corruption, then I'm on the media side, but I don't think they claim that. I am well aware that of the debt we owe the media in the United States. For anyone who has lived through the last fifteen years, anyone who ever knew Richard Nixon could hardly say that this was not something that needed to be done, whether you are for him or against him, this was something that needed an airing and they did it. So you have to say they play an important role. That oversight rule is important. The question is is it important that they do it a particular way? The record is there to be read. The reports can be made. There are people watching. On the other hand, of course, chicanery ordinarily does not take place in open court, just the results, if there's going to be any, takes place there. I have had no experience with (INAUDIBLE) except as a criminal defense lawyer, but by and large they don't do it at high noon on the public square. But the media have a role to play and saying, for example, that plea bargains are honest bargains, that prosecutors do not throw cases.

that defense lawyers do not importune judges in the wrong way and that covers everything from suggestion to money, I applaud that objective. It is essential. If they can conduct the experiment in a way which makes the proof, I suggest at the end of my article that, if the Cleveland experience is tried, and it was tried with some specific cases, it was not done broadside at the beginning, and cannot be replicated, then there is a time to consider whether we ought not to open this up. One of the things that have been opening up, though I must emphasize that troubles me most, is that there is going to be a deliberate attempt to do theater. I don't blame them. If I were a news person, I would want something that had some pitch and some pro. I don't put on the fact that the airplanes land just because. I put on the fact the airplanes crash. So I don't take the mechanics lien case or the municipal bond case unless there is some chicanery, some illicitness that will make people excited, but I take the case which has the glamour. Why not, that's my business. I don't fault them for that. What I would fault is the courts if they let that interfere with process.

Kaner: What happened in Cleveland? Is that from cameras in the courtroom? What is the rule there?

Day: The whole results are included in my article at the very end and Judge Segell also has a copy of

the material which the Cleveland committee reported. There were large portions of witnesses and lawyers, not majorities necessarily, but this is not the kind of thing that can be decided by majority rule, but large segments who said they were made more anxious, more nervous, that it interfered with the trial, it detracted from the dignity and so on. Now when I say what I'd do about not deciding by majorities, I do not want to be put down as against democracy, but there are some things in a democracy that are not decided by counting heads. For instance, you do not decide whether or not a person is allowed to vote or go to an integrated school by counting heads. There are portions of the Constitution which say there must. I dare say if we put the Bill of Rights to a plebiscite that a number of things, like double jeopardy, might lose this minute. But the founding fathers made the amending process difficult because they did not want transient humors to interfere with these basic principles. We are dealing with some very basic principles. So they'll try it again and again, that's my point. And if it comes out that Cleveland is dead wrong and the Florida thing, if you look at the Florida question, there is substantial proportions of people, and some of the questions I don't know why they are asked, but many of them there are substantial proportions of people who say this was interference -- this interfered moderately, it interfered a lot or so on.

But the question that I have if there is any interference that is substantial, if there's a one percent chance that justice will not be done, then the Sixth Amendment is the guiding principle, not the First.

Hannah: There's one thing I want to point out and then I have one more question. I believe that Judge Day's article has a questionnaire at the end with certain findings. They were taken from Cleveland.

Day: That's Cleveland.

Hannah: There were three hearings involved. Total response was fourteen lawyers, thirty-four jurors and thirty-seven witnesses makes up the sample of the

Pillsbury: Could you tell us precisely what happened in Cleveland? Did they decide in the State of Ohio that they would have an experiment in the one court and this is the result. I'm not quite clear.

Day: The State of Ohio has the rule. The rule that you are asked to put in. The Supreme Court asked the judges to comment on this. I commented. Everybody got excited, except the Supreme Court, and they put the rule in. I don't mind cataloguing my defeats, that's one of them. The fact is though that we have not had any outrageous examples, because we haven't had an outrageously dramatic trial. What was involved in one of the cases that they did from gavel-

to-gavel, as I recall it, was a charge that councilmen had taken a bribe from a carnival operator who ran his fair in his ward and plus the councilman said he gave the money to charity and the trial judge, as I recall, directed. No there was a jury verdict in that case and they were acquitted. It is true that is a small sample relatively speaking. I think though that that's the point of my saying the experiment ought to be devised again and tried again with the consequences, recognizing always that the questions ought to be asked in a way which does not embarrass a truthful answer. Not many people want to say I'm frightened and, if the questions could be implemented, let's say by some objective gathering of data, like respiratory increases and heartbeat, pulse, that kind of thing, then maybe you could tell. But I certainly would think it unfortunate if we were to leap into a widespread use of this thing until we know. There's just too much at stake.

Kaner: How long has this rule been in effect in Ohio?

Day: I think it's in its second year. There has been very little use of it.

Pillsbury: I interrupted you in the middle of your question, counsel.

Hannah: This may be a recap, but as I would reconstruct your testimony you feel that lawyers will become flamboyant,

that judges in districts where they are elected will somehow bow to some subtle or unsubtle pressures, that witnesses will be too frightened to speak, that potential jurors by seeing one program on TV will somehow be prejudiced from that point until a point two years from then when a case might come back for retrial and that jurors will somehow be influenced not by what they see in the courtroom, but by what they see on a television set. Judge I am glad that I don't feel exactly the same way you do about the people who are involved in that process.

Day: That's what makes the First Amendment so important. You are free to disagree with impunity let's hope.

Pillsbury: Have you any questions you would like to ask, Judge Segell?

Segell: No.

Pillsbury: Any further questions on the part of the Commission? Any further from you Mr. Hannah?

Hannah: None.

Pillsbury: Well, thank you very much again for being here and making the trip up here and I understand that Judge Segell, will you furnish us with

Segell: I will see that you each have a copy of the report and recommendations of the ad hoc committee as well as Judge Day's article.

Pillsbury: Thank you.

Day: Would you like this rule from Missouri if you get it? It's very short.

Pillsbury: Yes, I don't know whether we have it or not.

Hannah: I think we have to look at it. I think it is the same as the one Minnesota has now.

Pillsbury: Oh it is.

Hannah: I believe it is the same Canon. The ABA Canon.

Day: Yeah. Canon (INAUDIBLE)

Pillsbury: Thirty-six. All right I think we should have a recess. Five minutes.
(RECESS)
Well we can reconvene and according to the agenda you have a videotape as the next presentation.

Hannah: If I could, Mr. Pillsbury, what I would like to do is switch the schedule just a bit. What we will do is put on our next two live witnesses, Mr. Rick Lewis from KSJN and Mr. Irving Fang from the journalism department and then, if we have time,

Pillsbury: In other words, the videotape is something that could be postponed.

Hannah: It could be. Hopefully we will still be able to get it in this afternoon.

Pillsbury: Well, I think that's good to know and I agree with that, because some of us do have commitments that would make it desirable to leave here around 4:30.

Hannah: Okay, we will hear our live testimony first. So I will call Mr. Rick Lewis who is general manager at KSJN and ask him to provide you with the benefit of his knowledge.
(MR. LEWIS SWORN IN).

Lewis: In the interest of moving along, I will try to be brief. We are grateful for the opportunity to contribute to all of this and let me begin with a brief description of our organization. Minnesota Public Radio is a non-profit.

Pillsbury: Just a minute. I don't know whether you announced him from a point of view where it is on the tape. Would you just restate your name and your position?

Lewis: Of course. I am Rick Lewis, manager of news and information for Minnesota Public Radio in St. Paul. We are a non-profit and publicly supported community corporation providing a non-commercial radio service to Minnesota through a statewide network of seven interconnected stations, six of those are full power FM stations and provide a service devoted primarily to fine arts and performance programming, but also recognized for a commitment to superior news and public affairs coverage. That recognition is evidenced by the fact that MPR in its fifteen years

has received every major award for radio journalism, most of them several times. Our newest service KSJN-AM provides news and information programming to the Twin Cities area. More than 95% of the population of Minnesota is within range of an MPR signal and portions of adjacent states. In addition, we are engaged in the production of national programming by satellite and frequently contribute news material for use by the national public radio network. Our commitment to thoughtful and comprehensive coverage of important public issues and events is a serious one. Our news department in St. Paul has a staff of twenty-one full-time professionals. We maintain a full-time bureau in City Hall in Minneapolis and are the only broadcast organization with a full-time bureau at the State Capitol. Each of the media represented in these proceedings has the unique advantage -- for newspapers it's photographs, for radio, it is sound, for television, it is film -- and all of us share a devotion to good writing, to sound editorial judgment, to fairness and accuracy, but our sound and our pictures are really our strengths. They convey reality and, therefore, accuracy, rather than relegating the substance of important events to in an adequate description. The special strength of each medium is not ornamental in function, it is a method of enhancing communication and proving understanding. At MPR significant stories are routinely

given special treatment in a variety of ways. We spend five or six minutes probing the meaning of an issue or event when forty or fifty seconds may be more common elsewhere. We report on the story, then explore the motivations behind it and investigate its possible effects. It is worth noting here that while we report the occurrence of event and place it in its proper context, we do not presume to decide whether one side or another on an issue is right or wrong. We do seek a wide and balanced range of opinion from others, but we do not take an editorial position ourselves. Public broadcasters are forbidden by law to do so. We believe that our coverage is fair and thorough. That it makes the best possible use of our medium and that it causes citizens to think about and understand the issues that affect their lives. But beyond thorough reporting, we believe that we have a further responsibility and an opportunity to provide the listener with access to live events in their entirety, as a sort of primary source of information. Public radio since it began has devoted thousands of hours to this kind of coverage and unless you count sports play-by-play, we are more experienced at it perhaps than anyone else. In the executive branch the broadcast of news conferences, addresses and the proceedings of government agencies provides direct communication between elected leaders and those who elect them.

In the legislative branch we offer live coverage of important debates in the State legislature, live Congressional hearings and in 1978 broadcast the entire debate in the U.S. Senate on the Panama Canal treaties. Tens of millions of Americans had the opportunity to weigh the arguments, to evaluate the performance of their elected representatives, to understand the legislative process and to formulate their own opinions on a volatile national issue. One of the reasons for this historic first broadcast from the Senate by radio was the fact that the technology of the medium is so simple. While serving as an effective means of communication, radio is absolutely unobtrusive on the floor of the Senate. The presence of microphones, especially where microphones were present already, did not intrude on the presentation of ideas. Our own broadcast of live events from both local and national sources is a continuing enterprise. In the last three weeks or so we have broadcast Senate Armed Services and Senate Formulations Committee hearings on the sale of military equipment to Saudi Arabia, confirmation hearings on the nomination of Judge Sandra Day O'Connor to the Supreme Court, the Presidential news conference and two Presidential addresses, House committee hearings on the Federal budget, an address from Minneapolis by Neville Mariner of the Westminister Forum and many others. If an

agreeable set of guidelines can be approved, we anticipate offering the same sort of live, complete coverage of significant proceedings in the courtrooms of the State of Minnesota. Now the word significant is important here. I won't second guess the editorial judgment of our news department on whether or not to broadcast some future trial, but I can offer some guidelines under which those judgments would be made, because they are the same guidelines we use everyday in deciding which stories to cover at all. A recent sensational murder trial was mentioned in our newscast, but a reporter was never assigned by us to cover it. It was sensational and it was a public trial, but not terribly significant in our view. Exhaustive coverage by MPR would have added nothing in particular to that available from other media. The series of legal battles over use of the boundary waters canoe area,on the other hand, has been covered at length by us over the years, because it affects a large area important to many citizens of the state regardless of how the question may eventually be decided, and it explores the issues of state's rights versus federal rights. We would be likely to cover or broadcast a trial that seemed likely to set legal precedent or reverse one or to settle a constitutional question or trial whose outcome seemed likely to affect the lives of a significant portion of the population. We would be very unlikely to broadcast

a trial whose outcome would only affect the defendant or a hearing which had only courtroom drama to recommend it. We, speaking for Minnesota Public Radio, do not routinely cover traffic accidents unless they begin to indicate something that might affect the welfare of the larger population, such as a dangerously designed highway or intersection. We don't normally cover fires, but we are concerned about arson and fire safety in general. We would not broadcast an entire trial for its melodramatic value, but we would carry a proceeding whose affect would be felt long after the broadcast had ended. As I mentioned though, we might cover a less momentous trial, even briefly, in a newscast. We do offer newscasts as part of our service and intend them to serve as a headline index, a sort of table of contents to the more detailed reporting elsewhere in the broadcast schedule. And just because a story is short, it is not necessarily unfair or inaccurate. Any journalist will agree it's a far greater task to write short than to write long. To capture the essence of a story in a limited amount of time, while maintaining balance and accuracy, is the most challenging kind of writing, but we do it every day and we believe we do it well. Beyond newscasts, reports and live events, there are all kinds of other ways in which public issues can be treated by radio. They include interviews, calling programs with expert guests, panel discussions,

public meetings which we have occasionally organized and broadcast and documentaries. Like direct coverage of events in the courts, all these methods of presentation can combine to improve public understanding of public issues. A different media will choose different stories, and a different media will probably choose different trials to cover in many cases. No two newspapers cover every story in the same way. No two broadcast organizations necessarily agree on which story should lead a newscast. That doesn't mean that anyone is wrong. The process of editorial decision making is informed but subjective. We are here to defend the right of the media to make those decisions. (END OF TAPE). Judicial proceedings are simple,straightforward and easily enforced. They provide for reasonable access without, we believe, disrupting the decorum of the court or the rights of the accused. In our own case a radio microphone is no different from the microphone already used to record courtroom testimony. In fact, under the proposed rules it is the same microphone. In Washington, where I last worked, the rules for the conduct of journalists throughout the city, not in the courts but elsewhere, are in many cases more demanding than those under discussion here and usually developed and enforced by the media themselves. A broadcast reporter cannot plug into a pool feed of an event once the event has begun and cannot be disconnected until the

event is over. Television correspondents, videotaping reports outside the Capitol, can stand only in a very few designated spots. Station or network emblems are generally not allowed on microphones in a news conference. Pool feeds are handled by the networks on a rotating basis in an efficient and self-governed system. All these guidelines are intended to guarantee equal and effective access to important events without disruption and they were. If we are to accept the notion

that the presence of the media in the courts under the proposed rules will be neither disruptive nor influential in the outcome of a proceeding, that leaves the question of fairness and accuracy. The commonality of opinion among the media represented before this Commission does not reflect a unanimous desire for inaccuracy in reporting. We do not seek license to be irresponsible. To be perfectly frank, all of us have the ability, whose danger we recognize, to distort, to mislead, to twist the facts, to cover the arguments in an issue selectively, even to lie and it has nothing to do with whether or not our cameras and microphones are in a courtroom. It has everything to do with people and their principles and the fact that no one in this business who makes a practice of deception can long survive. Lack of access to the courts

will diminish the ability of well intentioned journalists to report fairly and accurately. It will do nothing to discourage those few who might do otherwise. For them there are significant, rather sufficient, remedies available to plaintiffs and defendants and to the courts themselves to obviate the need for any kind of restraint on the coverage of judicial proceedings. Our purpose is to improve communications between citizens and their government, to present facts and events in a manner whose accuracy is beyond question and to enhance understanding of the judicial process without prejudice to the rights of those whose cases are argued in the courts. I will stop at that point in record time.

Pillsbury: Thank you. Are there questions from the members of the Commission? Judge Segell, would you happen to ask any questions? I think as you started I had a question, but I think you have really answered it. You could conceive of trials that you would really, to use the terminology we have heard today, cover from gavel-to-gavel?

Lewis: Sure.

Pillsbury: Your programming is such that there is available time to do that kind of thing.

Lewis: Yes, as I said we have done a lot of it just in the last few weeks and more besides.

Pillsbury: Have you any questions you would like to ask?

Kaner: Let me ask you. On public radio what finances your operation?

Lewis: A portion of it is from Federal funds which come through the corporation for public broadcasting, a declining portion. The rest is from memberships from listeners who become members and join and pay an annual amount. The rest is from corporate and foundation grants.

Kaner: In other words, there isn't the same competitive position that your organization has is comparable to other radio stations and TV stations?

Lewis: No, it is not quite the same thing.

Pillsbury: Thank you very much.

Hannah: Our next witness will be Professor Irving Fang from the University of Minnesota School of Journalism and Mass Communication. My notes say he will be describing the University curriculum for public affairs reporting. Professor.
(MR. FANG SWORN IN).

Fang: Professors never go anywhere without a lot of books. Would you like me to repeat my own identification?

Pillsbury: I think you did it from the microphone, did you not? So it is not absolutely necessary, but you might elaborate a little more on your obligations of what

you do really means. You do as you wish.

Fang: I am in charge of the broadcast journalism sequence in the School of Journalism at the University of Minnesota. The question has been asked to what extent does the University of Minnesota School of Journalism and Mass Communication prepare journalism students for courtroom coverage. All students, both graduate and undergraduate, in the news editorial, broadcasting and photographic sequences are required to take a course in mass communications law and a course in public affairs reporting which heavily emphasizes courtroom reporting. News editorial students may also take courses in interpretative reporting and precision journalism, either of which may involve students in matters concerning the courts. A basic political science course is required of all students. Broadcast journalism students receive a brief history of the use of microphones and cameras in the courtroom. As it happens, the textbooks used in these classes and at quite a number of other universities throughout the United States were written by professors teaching courses in the University of Minnesota School of Journalism, so their own concerns about courtroom coverage, which are likely to be reflected in their lectures, are documented. Testimony to the breadth and depth of our interest in questions

having to do with the judicial branch of our government is the fact that an unusually large proportion of our graduates are deflected from journalism into the law schools of the Twin Cities and the nation. A number of articles which have appeared in Law Reviews were written by our graduate degree holders. Those faculty members who are charged with training people in these areas have for many years had close relationships with members of the bench and the bar. I refer specifically to emeritus professor, J. Edward Gerald, emeritus professor, Cameron Simm and to Professors Donald Gilmore, Arnold Ismack and Everett Dennis. I would like to submit for your records the textbook on public affairs reporting. My own textbook on broadcast journalism plus some syllabuses and a couple of handouts which students receive. I also brought with me, in case anybody would like to look at it, but I would rather not leave it, a text on mass communications law written by one of our faculty members and an attorney from out of state, plus some syllabuses and a couple of handouts which students receive. I would also like to note briefly a bit of what's written in them. Professor Donald Gilmore's syllabus in mass communication law begins with these two sentences. "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 practice." The syllabus also refers to and I quote "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." Professor Gilmore has also placed on library reserve and urges student reading of the (INAUDIBLE) book, The Reporter and the Law, Techniques of Covering the Court. Professor Arnold Ismack is one of four authors all present or former faculty members of our school of the textbook, New Strategies for Public Affairs Reporting. This one here. A principal chapter is titled "Covering the Legal Process." Of the four appendix sections, the first three are titled "The Newsman's Guide to Legal Ease,""Federal and State Court Structure,"and "Criminal Justice"and"Criminal Trial Process." The course in which it is used which is required of all journalism students assigns beats to each student including three weeks covering either a police beat, the county district court, the U.S. district court or the Minnesota Supreme Court. The students cover these beats in teams. In my own textbook, Television News (Radio News, there is one chapter entitled, "The Law" and another

entitled "Mike and Camera in the Courtroom." The latter chapter reviews the checkered history of broadcast coverage of trials and pays some attention to criticism. While the chapter places the heavy weight of argument on the side of permitting broadcast coverage, I do argue as forcefully as I can that, and with your permission I quote myself, "reporters and photographers should dress and comport themselves with as much dignity and respect for the court as attorneys do." It is a shame that this needs to be said but it does. The book is required reading for all broadcast journalism students at the University.

Pillsbury: You would like, as I understand it, two of those books to leave with us and have made part of the record.

Fang: Yes, I would like to leave those with you. I would also like to leave with you copies of the syllabuses in public affairs reporting and in mass communication law and my own remarks which I have made here. I can also leave for you samples of the, I have multiple copies of those and I have single copies of samples, just a few of many handouts to students. This one is called <u>View from the Bench: A Judge's Day</u> by Judge Lois Forer about how she sees a typical day in a courtroom. This is a brief description of what goes on at various courtrooms -- juvenile court, civil cases at state courts and so on. This, which

I intend to leave with you, is an example of what students can do when they have interest in and access to court procedures. This is an article which appeared in the Greater Minneapolis magazine a few years ago written by three Minnesota journalism students on white collar crime and it is based on extensive examination of court record.

Pillsbury: I think that we will, we have some statements. There are some witnesses who, I guess I don't know whether witness is the right term, but their are some who have indicated that instead of appearing in person they will present statements, so that we have them here. We have not yet introduced them, but we will introduce them into the record as exhibits. These are the first exhibits we have, but I think that the appropriate procedure, if the Commission is agreeable, would be accept these as exhibits in this proceeding and have Ms. Regan note them as exhibits. What are there five, four or five, of them there?

Fang: Yes. Four or five and if you don't want the books, I thought you might like to take a look at them.

Pillsbury: We will do the best we can with them and certainly we appreciate them, so I think you might mark them in order, Ms. Regan, and identify them as exhibits 1,2,3,4, and 5 and receive them as part of the record.

(EXHIBITS PRESENTED INTO RECORD)

Have you any questions of your witness that you would like to ask?

Hannah: I just have one question. Professor Fang, do you have of your own knowledge any idea of whether these books or comparable books or comparable materials are also required reading at other journalism schools, either in the upper northwest or across the country?

Fang: My own textbook is now in about 105 colleges and universities and about five high schools in the country. Professor Gilmore's book, Mass Communications Law, is used at dozens and dozens, maybe hundreds of journalism schools and law schools. It is also used in law school. The book written by Professor Ismack and and the others, I would just take a shot at 50 schools, but I could be wrong. As for their use in other parts, I can tell you about my own textbook. It is used in about four or five campuses in Wisconsin. It's used in North Dakota, not in South Dakota. It's used at Drake in Iowa -- two or three schools -- and in Minnesota only Duluth used it. We don't have that many journalism schools in Minnesota outside of ours.

Ahmann: Mr. Chairman.

Pillsbury: Yes.

Ahmann: To what extent is it required that you be a graduate of a journalism school for employment either in radio, newspaper or television?

Fang: It's not required at all, but over the years as the competition has increased for positions in what is, and I suppose, will continue in the foreseeable future to remain, a buyer's market. That is there are many more applicants than there are jobs available. The news director gets a choice and increasingly the choice is a broadcast journalism graduate. If he wants somebody to start on Monday morning at nine o'clock, he really wants somebody who has the kind of training that we offer -- can tell how to use a camera, knows how to use a microphone, can recognize a news story, can make the necessary judgments to a great extent, can write in the unique style that is broadcast news style, and can appear on camera with some degree of presence. It hasn't always been the case, but broadcast journalism students have been preferred, because broadcast journalism departments and sequences within larger schools haven't been around that long. When I wrote the first edition to my textbook in 1968, it was the first book of its kind in the field. There are now half a dozen. Minnesota, a dozen years ago, hardly had anything in the area of broadcast journalism. It now has a rather substantial sequence, and that's true around the country.

Ahmann: This isn't meant to be a flip comment, but my observations I thought you had to play football. I am pleased to know that it requires more than that, and I know it does.

Fang: Without a helmet.

Ahmann: No, no.

Pillsbury: Professor Fang, I gather from what you said in your testimony and from what you said in referring to these exhibits that the thrust of your testimony is that people who go to a school of journalism, such as the University of Minnesota, do come out of there with, as you might say, a certain technical knowledge about the broadcast field, certain understanding, knowledge, certain concepts of ethical standards and so forth. That is really what the thrust of your testimony is directed at. Maybe you want to elaborate on what I have said.

Fang: Journalism students by an agreement throughout the country at all established schools of journalism are required to take only one-fourth of their courses in journalism departments. The other three quarters have to be in the general liberal arts area to give the student a broad background in journalism. Our students are required to take political science and history and economics, the odd science course and so on to get that breadth of knowledge. About one-quarter or it would be

approximately a dozen courses, give or take one or two, are taken in journalism. Some of these are how to techniques courses. Some of them are broad lecture courses, giving them a sense of journalism history, of ethics, of problems and these elements are actually also incorporated in the techniques courses as well. The students, of course, as I tried to stress, get some breadth of introduction into the law and to legal matters and to courtroom procedure. But like anything else the student doesn't come out of a school, I am sure it's true of a law student as well, in four years or five years or six years an expert in much of anything. We have given them the best introduction we can given the constraints of time, and we assume that beyond they will learn on the job. But we try to give to them a sense of responsibility, a sense of the importance of what they are doing.

Ahmann: Mr. Chairman.

Pillsbury: Yes.

Ahmann: I would agree the liberal arts education is an excellent education. In fact, if anything today is under question, I think it is the liberal arts education. One would like to think that we could promote that, but in the case of law and medicine I think there is a certain expertise that probably is required perhaps more than in some areas. For

example, say covering a county board which I am more familiar with. It does require some knowledge about government, but, on the other hand, the proceedings there are geared to the community. While the proceedings in a court or in medicine, science, requires more than just layman's knowledge, my question is do you see that this is becoming more of a professionalized area. That is that it is becoming more skilled in one area over other areas. The general knowledge -- yes -- but to some extent expertise in the areas that are more complicated and require more knowledge before one is asked to cover.

Fang: That's a thoughtful question. I wish we could increase the degree of knowledge in specialized areas, but the very nature of journalism is a generalist's nature. Journalists have to know a little bit about a lot of things, because you never know what's coming up the road at the next minute. So, while we might wish they could go to a physician and be able to have a thorough knowledge of medicine, at least enough to make a lot of sense in discussion, that is not always the case and often they go in as rank amateurs and have to get basic knowledge. What we try to teach them is how to ask sensible questions? Where to go to get information? In that sense the very nature of being a generalist is a degree of professionalization of itself plus teaching

them techniques. We can't impart that rather rigorous body of knowledge that an attorney gets or a physician, our field is by definition just too broad. Does that address itself to your question?

Ahmann: Yes, and no. I understand that the student who is interested in a field may not know where they want to specialize, but, I guess, the question was more futuristic. Do you see it becoming more professional and more specialized in some areas? For example, we know that some major newspapers cover the Supreme Court. They are considered experts. They really know what is going on there and they devote most of their time to that effort. I don't know how practical or financially feasible it is to expect that that may be occurring in the major metropolitan areas of this country, but that's the question.

Fang: No I don't see that happening, because these specialists to whom you refer have usually had a number of years of journalism experience before they develop that specialization. In almost every case, a journalist starts out as a generalist --he covers the police beat, he writes obituaries, he covers whatever story is of significance -- and it is only later when he really gets his feet on the ground and gets a sense of things that he or she might decide this particular area -- the arts, or music, or the law, or international

affairs -- is what really appeals to him or her and moves in that direction. At the same time opportunity plays a great part. Does the station of a newspaper need somebody in this field? It tends to work that way. We don't send people out of school specializing in a particular area, although a lot of them may have personal interests in these fields and know more about them, but we don't set out to impart that kind of information. There is just too much to learn in the available time.

Biechlin: I would like to add a comment to that. The reporter who was covering these hearings for us is a lawyer. There is one medical doctor working on the staff of the television station in the Twin Cities. This isn't an anamoly I had a lawyer on my staff in Oregon and I interviewed a number of doctors who are trained also as journalists for the position that Dr. Green vacated in our station. There is that degree of specialization that you are seeking is coming to us. They have an interest in journalism. They have training already in another field. I might add also in the Supreme Court that Fred Graham is a lawyer who covers for CBS.

Fang: That's a good point, Mr. Biechlin. I should have made that that the profession is getting people trained in other fields, but the journalism schools don't do that training.

Ahmann: I think that's the point I was going to when I did make the slip comment. I mean it is clearly not unlikely that some football players or people that are more knowledgeable in that field may come out of experience to journalism. I am sure that that's true of medicine, law and others. I guess my question to you was as a professional in the school of journalism whether or not you were getting that kind of request from the field or is it just occurring out there.

Fang; No, we are not getting it.

Pillsbury: Do you have anything further?

Fang: Nothing further.

Pillsbury: Would you like to ask some questions?

Segell: I have no quarrels with professors of journalism. Both the Judge Day and I have children that have masters' degree from Columbia in journalism.

Hannah: Then we know who our witnesses were going to be

Segell: Next week.

Pillsbury: You have no further questions do you, Mr. Hannah? Thank you very much.

Fang: You are welcome, sir.

Pillsbury: Could you just for the record, Ms. Regan, could you tell us what you've introduced here? You

have marked and we are accepting in the record. Could you maybe describe what you've got and what their numbers are?

Regan: I have exhibit 1 which is an article by journalism students called White Collar Crime. Exhibit 2 is called View from the Bench: A Judge's Day by Judge Lois G. Forer. Exhibit 3 is a breakdown of the court systems -- state and federal court systems. Exhibit 4 and exhibit 5 are syllabuses. Exhibit 4 is the syllabus of public affairs reporting and exhibit 5 is a service of mass communication law. Exhibit 6 is a book by Professor Fang called Television News Radio News and exhibit 7 is New Strategies for Public Affairs Reporting by four authors.

Pillsbury: They will be received as exhibits in this matter then. Do you wish to

Hannah: Our final I think we have enough time. It's five to four and we did promise for those of you who brought popcorn that we'd have a little movie this afternoon. We have a videotape that was prepared by the National Organization of Radio and Television News Directors in conjunction with the American Bar Association and it's a discussion of the history of camera in the courts. It is one that you may find interesting.

(FILM SHOWN)

Pillsbury: Any feelings or comments about that from any of the

interested parties or the petitioner?

Hannah: We have no questions or comment. I think Curt knows the source, if anybody is interested in that, would probably be the only

Beckmann: This tape was produced (INAUDIBLE) by the Radio Television News Directors Association and the National Association of Broadcasters. It is available. Copies of it would be available from the office of (INAUDIBLE) in Washington or, as long as I have this copy, I suppose we could make a good (INAUDIBLE) and secure copies.

Pillsbury: No we don't need to see it again I don't think. Any questions or comments? If that's all the witnesses we have planned for today, I note that on our schedule we are meeting here on Monday morning, October 12 at this time, am I right? There are no witnesses scheduled for that morning. There are some scheduled for that afternoon.

Hannah: We do have two scheduled for the morning. By the time, I think, Ms. Regan had sent a second handwritten notice about it and we will try and get something typed up and out to the interested parties. We will have Professor Hoyt from the University of Wisconsin and we will also have Mr. William Kobin, the president of KTCA/KTCI-TV. If we can, we will try to see to it that any further witnesses that

we might anticipate we will begin to pop into the open spaces as we see them. But we will try and get something out probably tomorrow that specifies exactly (END OF TAPE).

Pillsbury: Probably move some of those up so there would be flexibility in the afternoon which might mean we would adjourn earlier. I don't know whether that's possible or not.

Hannah: I can certainly try to organize that.

Pillsbury: Don't you think that would be desirable if we could do that? On Tuesday morning we do have an out of town witness, Judge Sholts, so that we can't change.

Segell: There are two actually, Mr. Pillsbury. Joel Hirschhorn is scheduled that morning.

Pillsbury: Oh yes. He's scheduled on the 20th isn't he?

Regan: No.

Pillsbury: Oh you changed that.

Regan: To the 13th.

Segell: He's coming in on the 13th.

Pillsbury: Why don't you get together with Deb and get a revised schedule, but if we can leave the afternoon free, then fine.

Hannah: Okay, I'll do that.

Pillsbury: Thank you very much. We are adjourned. I wish the publisher of the Minneapolis paper were here, but despite what his paper says, we will be meeting at the Senate Hearing Room at the State Capitol.

Kaner: Is that room 15?

Pillsbury: Is that right, room 15? Yes Room 15, I guess.

(END OF OCTOBER 6, 1981 HEARING)