

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 Monday, October 12,
1981 in Senate Hearing Room Number 15, State Capitol, Saint Paul,
Minnesota at 9:30 A.M. before John S. Pillsbury, Jr., Chairman,
Sidney E. Kaner and Rosemary M. Ahmann, Commissioners.

SUPREME COURT COMMISSION HEARINGS ON CAMERAS IN THE COURTS

October 12, 1981

Pillsbury: The first witness will be Dr. Hoyt, a professor, School of Journalism from the University of Wisconsin. The second one will be William Kobin, president of Twin Cities Public Broadcasting, Channel 2. At 11:15 we have a conference telephone call arrangement under which we will hear the Honorable Edward Cowart, Associate Dean, National College of the Judiciary, Reno, Nevada, formerly Chief Judge of the Circuit Court of Day County, Florida and this will come in by phone. If the timing works out the way we intended, we will have the first two witnesses and then have a recess after that so we can get everything straightened out for the telephone appearance by Mr. Cowart, Dean Cowart. That being the case, Mr. Hannah, why don't we proceed with your witness.

Hannah: Mr. Pillsbury, I would like to call Professor Hoyt to the witness area. For the Commission's benefit, Professor Hoyt wrote an article in 1976 entitled Courtroom Coverage: The Effects of Being Televised and I believe the Commissioners have a copy of that article. In addition, Professor Hoyt was a member of the committee which was appointed by the Supreme Court to study the effects of the experimental coverage which occurred in Wisconsin under experimental

rules propounded by the Supreme Court and will be talking to you this morning on both of those topics. Perhaps I could start it out, Professor Hoyt, by asking you to give the Commission a very short background on yourself, sir.

Pillsbury: I am going to say excuse me. The Commission, members of the Commission, have been furnished both with your article, which is entitled Courtroom Coverage: The Effects of Being Televised, and a copy of the report of the Supreme Court committee to monitor and evaluate the use of audio and visual equipment in the courtroom dated April 1, 1979. Those are the two items you referred to I believe.

Hannah: That's right.

Hoyt: Yes, thank you and I am glad to be here to have an opportunity to discuss this with you.

Pillsbury: I am happy that you are able to come.

Hoyt: My current position is acting director of the journalism school at the University of Wisconsin. I have previously been head of the broadcast news program at the University of Wisconsin. I have a career in broadcast news as a reporter for a television station in Milwaukee and as a producer and editor for NBC News in Washington.

My Ph.D. is from the University of Wisconsin
Mass Communications program. I published
research in a variety of areas, one of which
is courtroom cameras, or relates to courtroom
cameras, so I have a variety of both academic
and professional experiences and interests
that have brought me into this particular area.

Hannah:

Professor Hoyt, one of the issues that this
Commission has been wrestling with is the
question of whether or not we can anticipate some
influences upon witnesses or jurors or other
participants in a trial because of the presence
of television cameras and microphones and also
still photographers. Could you give the Commission
an idea of the state of the art of the research
at this point in that area?

Hoyt:

This was something that our Wisconsin committee
hit head on right from the beginning; that being
we tried to assess the quality of the research,
what evidence there was for us to go on, and
immediately became aware of the fact that most of
the evidence that had been accumulated would
fall in the category of what I guess I would
call next best data. That is, in the absence of
being able to directly, I am talking now more about
psychological impact as opposed to physical distraction
from psychological distraction as opposed to physical
distraction. The physical distraction argument, I

think, is a separate one. We can deal with that also, if you would like to, but at this point we are talking and interested in what types of documentable, demonstrable effects may exist in the literature as far as people's reactions when they are being televised. In the courtroom setting we came up empty handed, after extensive literature search trying to find out what specifically was wrong. We then set about, as a part of our experiment in Wisconsin, to try to gather data by using, again what I would term next best method, and that is to simply ask people. If you have read our report and have referred to it, you see we had a rather extensive series of questions in our selective files throughout the year in which we asked questions of the judges, of the attorneys, of the witnesses and of the jurors and other participants in the trials for their reactions. Overall there were not many problems that showed up in those data, but then, again, I always put a little grain of salt in looking at those, realizing that there is a considerable amount of evidence that none of us are actually very good analysts of our own behavior -- that is, if you would ask me right now if I am behaving any differently than I would if you all weren't sitting there, and if there wasn't a television camera in the room -- I'm not sure I know, because I am not experiencing the same thing in two different situations. So it is

this kind of vacuum of information, I attempted to conduct the one piece of research, which you indicated you also have. First of all, I would like to, in discussing it a little bit, say that my claims for the generality of the research are somewhat modest. I recognize it as a first attempt to try to quantify, in some way, things that for the most part up until now have been merely speculative. The question of the effect of being televised on anyone who is being asked questions -- a witness -- but anybody who is under that type of a situation. So my attempt in conducting the study was simply to set up experimentally in a way we could measure effects as best we could. A situation that approximated some of the types of conditions that a witness would be under. You have read the details of it. We set up three conditions -- one in which the person was asked questions being faced with a camera that was conspicuous, one in which the person answered questions facing a camera that was hidden behind a one-way mirror, and one in which the person answered questions with no cameras present. We recorded their answers and then we subjected the answers to a content analysis, attempting to determine how accurate the answers were, how complete the answers were and tried to measure, if, in fact, there were any systematic distortions or inaccuracies that came in in the different conditions. Digressing

for just a second and mention that often times when we ask questions, as we did during the year experiment in Wisconsin, we asked trial participants for their reactions. In effect, we are looking for negative things. We are asking them did it distract you? We are asking the judges did it create any problems for you? We are asking the witnesses were you aware of them, did it distract you, did it bother you in any way? In effect, we are concerned about any variations from the absence of the camera, so the focus of most of the questions addressed as specifically looking for negatives, looking for problems. When we measured in this particular experimental study, we were interested, first of all, to discover that there were no differences that showed up whatever between the condition in which there was no camera and the condition in which there was a hidden camera. Of all the measures that we used for the completeness of the answers, for the accuracy of the answers, for distortion, length of speaking, etc. were essentially exactly the same in those two conditions. However, we did find a significant difference between those two conditions and the condition in which the camera was visible in the room at the time. Very much to our surprise, the direction of the difference was toward the respondent giving more complete answers, more thorough answers, longer answers

which included more correct information. When I started to first look at the data, I wasn't too surprised by those first ones. I was then concerned to look at, in fact, what is the content of those additional words -- of the longer answers that were generated in those conditions. In fact, there was no additional incorrect information, there was no distortion evident, but, in fact, the additional length of the answers was accounted for by more correct information that was included. So at a minimum I would say this study fails to support the position that witnesses may be given to distort, may be given to clam up, may be given to be reluctant in speaking in that type of a situation. As far as the poll generality, I am very modest. I recognize completely that it is an experimental approximation. It was not a trial and people were not under exactly the conditions that a witness is under. I will be the first to admit that, but, nevertheless, I think we were able to successfully isolate some of the pressures and some of the variables in a way that we could measure them. I guess I let it stand at that. People have said well where can you go from here? In fact, I just agreed to serve on a committee, I believe funded by the American Bar Foundation, which is to attempt to ask the question is there any more research that is doable in the area. I am not sure because obviously the ideal next step to take that type of

a study and put it in an actual courtroom setting is impossible, because you have to compare it to something. So you can recognize, as well as I can, the absurdity of conducting the identical trial place simultaneously with the same people involved only one's being televised and one's not being to try to look for differences that can't be attributed to any other reasons in there, So I'm not really sure how much further I can go from there, but I do recognize the limits in which I think those types of results should be viewed.

Hannah:

Well, in fact, the way you set the experiment up there weren't a lot of other distractions as there would be in a normal trial situation. There weren't a lot of people around. There wasn't a judge in a black robe or jurors sitting over in a box or someone asking you pointed questions, as a lawyer on cross-examination might do. So, in that way, wouldn't it seem that the responses you are getting were legitimate responses for the presence of the camera. Whether the witness would be even more accurate or whether he would be less accurate in a trial situation might then be put off on some of the other factors that have always been there.

Hoyt:

I would say actually in support of the evidence that in setting up an experiment in that isolated type of situation, if anything, I'm stacking the cards against myself, because we are ruling out virtually

any other possible source of variance, any other contamination, any other possible ways. One area that I have very strong confidence is the fact that the differences that showed up were, in fact, function of that camera being there, because there was absolutely nothing else that differed between the two. In fact, I even required the experimenter to wear the exact same clothes every day in conducting it so that there was nothing in the room whatever that differed other than the presence or absence of the camera. With that research I would have to maybe spin off from that a little bit into some of our Wisconsin experiences that may be of help to you, because, in effect, I was in a similar position to the one you are in right now in Wisconsin as we attempted to gather information. As I said, we did send, and you have seen the reports, these observers out to the courtrooms and interviewed the numerous people. However, I have had a considerable amount of contact over the two years since that time with people who have been continuing to operate under our Wisconsin rules -- the media coordinators and a number of other participants -- and I have to report that from everything that I have heard back from people throughout the state of Wisconsin our experience seems to be working very, very smoothly in this way. The media coordinator, the presence of that person, turns out to be a very,

very important link in how smooth our courtroom camera system operates. Initially, during our experimental year, there was no good vehicle for the appointment of these. We now do have a statewide organization, The Wisconsin Freedom of Information Council, which is made up of virtually all of the media organizations in this state. They take care of the appointing of the coordinators, so that the burden is completely taken away from the judge in terms of dealing with the media, handling the logistics. The requests go, depending on the district, either direct for access to the courtrooms go either directly to the bailiff or through the media coordinator. Some have worked out somewhat of a shorthand system whereby the media requests for courtroom access go directly to the bailiff up to the point that they reach the maximum permitted in the courtroom. Then the bailiff simply says from this point on you have to deal with the media coordinator and the media coordinator takes over. There have been a few small glitches in that system, but overall it has run very smoothly. Media coordinators, judges and attorneys, for the most part, have had very few problems with that. A couple other aspects that have shown up during our experience in Wisconsin. Let me return to physical distraction. I said it's essentially a non-issue because of technology and this is true. You are aware of

our rules. They forbid the additional use of lights. Any microphones have to be set up with the agreement of the judge and, in fact, a good number of the courtrooms are wired already, so it simply involves tapping into a system. In some cases the media coordinator has gone into a courtroom that was not very well lighted and sat down with the judge or the bailiff and said why do you have 75 watt lights up there? Couldn't we screw in 150 watt lights and they said fine. In a very easy way we have been able to make very modest changes in the courtroom that are no problem. The distraction of the cameras has turned out to be in our interviews and in a number of the follow-up interviews essentially a non-problem. Reports of witnesses and attorneys are that they are aware of them as a trial begins, but within minutes the drama of the court, the pressures, the tensions between the attorneys and the witnesses and the other trial participants, is so gripping and so engrossing that the fact that there may or may not be a camera back in the corner that may or may not be operating is completely lost. So that has not been a major problem. In fact, the only physical distraction that has come up more than a few times interestingly has nothing to do with television, has nothing to do with radio, but it is the sound of the click on the 35 mm single lens reflex still camera. When the

still camera is activated there is a clicking sound. In fact, a memo went out from the chief media coordinator recently asking them to tell photographers to simply exercise their discretion. When they take a picture if there is going to be a clicking sound to have it come up during a time that somebody is talking, rather than a time that there is silence. That appears to have taken care of even that very minor, although it repeated a number of times, physical distraction type of problem. I guess another comment I would like to make about Wisconsin is the, as you read through our rules, exclusionary language. I look on that as being the most crucial part of any state's rules or guidelines. Infact, I had an article about a year ago in Judicature specifically on that topic. It seems to me that once cameras are admitted and states make those decisions, as a majority of states have now, the key thing to look at becomes under what conditions can they be turned off. We went through a considerable amount of debate and discussion within our committee involving virtually all interest groups on the question of the exclusionary language. During our one year experiment in Wisconsin, our exclusionary language simply said cameras can be ordered turned off by the judge for cause. In other words, if there is a reason. The Chief Justice of the state, Bruce Bilfus , subsequently wrote a clarifying memo essentially saying that for cause means something more than simply the desire to not

be photographed. That's not a cause, there has to be a reason advanced. Essentially during our one year experiment, that was not a problem. There were cases where cameras were ordered off -- rape victim testifying in her own case, case of a witness who was currently a prisoner in a state institution who was testifying against another prisoner in that state institution. They feared for his safety when he returned to the prison, if, in fact, his testimony was televised and viewed by the other prisoners back in the prison that he was going to be returning to, and they accepted that as a valid reason for turning them off. Nevertheless, we were under a significant amount of pressure, as you may very well be, to more precisely define those conditions. There were a number of attorneys, not too many judges, more attorneys, both defense attorneys and prosecutors, who wanted us to come up with a list of absolutely forbidden conditions for televising -- undercover agents, relocated witnesses, crime victims, rape victims and so on. We decided to not write our rules in the absolute on that, although we did recognize the position that those people took by simply including a sentence or two which said in conditions such as this -- a rape victim testifying in her own case, a relocated witness, undercover witness, etc. -- that we presume that the reasons that the person gives for not being televised are valid. In effect, it changes

the burden of proof from the judge or from the witness to the news media to prove, in effect, that their reason was not valid. That has not been a problem. It has worked. There have been a number of cases in which they have been ordered off and the media have abided by it. I guess my overall impression in Wisconsin has been that many of the horror stories that we heard as we began our experiment or just before we began the experiment -- district attorneys coming and saying that they didn't think they would get any witnesses to testify, that victims would no longer press charges because they didn't want to be televised -- those fears have not materialized.

Pillsbury: Could I just ask a question for collaboration?

Hoyt: Yes. Sure, please.

Pillsbury: You say there has not been a problem. Do I interpret that that means that there has not been any kind of confrontation. In other words, when the judge has ruled that the witness will not be covered by the media, the media has accepted that.

Hoyt: Our rules permit an appeal of that decision only to the chief judge of the district and the chief judge's opinion is not appealable after that. I am aware, personally, of about four cases in which there have been appeals. I believe at least three of them and maybe all four of them have been in

Milwaukee County. The chief judge has heard the case within a very short period of time and issued a decision. I believe in all of the cases except one has supported the judge, and it went from there. The media have disagreed with it and in some cases have appealed it, but essentially, I guess my bottom line is that the system has worked the way it was intended to work.

Pillsbury: I just wanted you to define what you meant by it has not been a problem.

Hoyt: By no problem I don't mean that everybody has been happy every time that they have been told they couldn't shoot and that everybody has been pleased with every decision that's been made, but that the system, as set up in the rules, has operated essentially quite well. One other comment I would like to make before concluding and letting you probe me on any specific areas you would like me to talk about has been the fact that we did receive in Wisconsin a considerable amount of concern came before our committee expressed by a variety of people -- some judges, although more prosecuting attorneys and some defense attorneys -- concerned about media treatment of the trials themselves. Concern that, in fact, only the more visible, more sensational cases are those which are going to be televised. Concern that, in fact, the public will receive a warped or distorted view of our criminal

justice system through the selection process.

I think it is interesting to look at how we have dealt with that in Wisconsin. Essentially the response of our Supreme Court has been what the media do with the information once they gather it is outside of our purview. That that is protected by the First Amendment. That our concern, i.e. the concern of our committee and the concern of the court, was the fact that the trial be conducted fairly. Just as newspapers select a subsample of all trials that are covered to write articles about, just as radio stations select a subsample of all the trials that are conducted to put stories on their newscasts about, and just as the public selects a very small subsample to go sit in the gallery and attend, and television stations select probably even smaller subsample but similar of trials in which they are going to cover, they are going to cover them anyhow. They are going to be there with or without cameras. The stories are going to be on the air with or without the access. The concern that, in fact, somehow the fact that it is going to be a television camera in there, rather than a sketch artist or rather than somebody telling about what happened, will lead to a more distorted view on the part of the public has been treated as something that simply goes with the territory by the Supreme Court in Wisconsin. Essentially they have said that is not a concern of ours. There were some people who were not very happy that they

weren't going to consider that as a part of it. But, nevertheless, whenever that issue has come up essentially their response was it is our decision to be concerned with the fairness of the trial, the conduct of the trial, any problems in the courtroom, any distractions in the courtroom and to that end, I think, we have a very workable set of rules that specify how the media people conduct themselves in the courtroom. But as far as what they do with the material once they have gathered it, have considered that outside their purview. I should mention one exception. One case only. A very highly unusual case that you actually see showing up in our final rules as a kind of an appendix to the end with a couple dissents. That was the case of a woman who in one of the more visible murder trials during the one year experiment, the Morrow trial that you see referred to in the report. He was the person who was convicted of murdering two Waukesha County deputies in a courtroom while he was appearing in a pretrial. He took a gun from one, killed two and then took a social worker from the courtroom as a hostage, drove her to Madison and held a gun at her head at a downtown intersection for about six hours before he finally surrendered. The hostage woman was called to testify at the trial. Her testimony was quite emotional. One of the Milwaukee radio stations covered the trial, entered its trial coverage into

a national journalism contest and won a national award. It then put together a promotional spot. A thirty second spot on its radio station to feature her voice from the trial, as a part of this promotion of how good a job they did covering the news, and she objected to the fact that her voice in this very emotional trial was being used, in effect, by the radio station for its own commercial purposes to promote itself. She objected very strongly to that, and it was actually her objection to that one case where that Milwaukee radio station did incorporate her voice in that promotion that led to the final added on rule that says something about the material gathered in the courtroom should not be used for commercial purposes, as opposed to something for news purposes. So there's one, and a minor asterisk, point in which the court did breach that what they do with it after they get it is outside of our purview. I will stop there. (END OF TAPE).

Hannah: Been orders excluding witnesses from coverage, can you give the Commission an idea of the kind of procedure that was followed, if you know. Is there, for example, a hearing where the parties are air their views, where the witnesses perhaps questioned by lawyers for the press.

Hoyt: I do not know precisely. It is generally not done in the courtroom. It is usually done between attorneys in chambers. Precisely how they go about

doing it, I do not know.

Hannah: Is the appeal that you talked about to the chief judge of the district informal? That is, a phone call or a walk down the hall to try to get the issue to him as quickly as possible.

Hoyt: In Milwaukee County where the chief judge exists in the same courthouse as the trial judges, they have been able to set up a face-to-face hearing between the parties and the trial judge and the chief judge. On very short order, have been able to do that. A couple of cases in outlying counties, where not a formal appeal, but some questions have come up and the chief judge may be three counties removed from the trial judge, I have heard that they have done by conference call on a couple of occasions. Simply presented the case to the this is not a formal appeal just a question that came up. If this happens then what, and the judge said I think this, but let's ask the chief judge and they simply got together in a matter of minutes on the phone and handled it in that way.

Hannah: Did you testify that the potential problem, the risk, of a large number of witnesses failing to appear or threatening not to appear at a trial because of the presence of cameras, that that wasn't a problem?

Hoyt: When the district attorneys, there were one or two

of them who were particularly strong about that after our one year's experiment was up, and they came to testify before us. When we asked them for specific cases how many times during this year did you, in fact, lose a witness because of this, there were none that were brought before us. There was one that was pending at the time. A woman who had witnessed her husband's murder and had said, in fact, that she would not testify in the trial, if, in fact, her testimony was going to be televised. That one had never had a chance to be resolved. It seemed to us to be a case that clearly would fall within the exclusionary language. In fact, if she was not going to testify and her testimony was essential for the case, that it would fall, I believe. That one was essentially settled on a plea bargain and never did go to trial. But there was that one pending one before us, but there were none that were brought before us. They talked about it being a problem, but it did not materialize.

Hannah: What about relationships between the press and the judges generally? How would you characterize the way they got together during that experimental period?

Hoyt: I sensed, very strongly, a willingness on both of their parts to make the experiment work. Again, the media coordinator was a very central person

in this. Many of the media coordinators went out of their way to set up personal meetings with judges in their districts, even without a major agenda to go over with them. Simply to talk through what would happen, how they would operate if, in fact, that judge did have a trial that came up that was going to have some sort of photographic attention paid to it. The judges, in fact, after the one year experiment, I would have to say that probably some of the strongest supporters that testified after the year were judges who had initially opposed it, and then had had one or more cases in their courtrooms, and had had firsthand experience with cases that were photographed or broadcast. If I can summarize their reaction, their fears were not in any way endorsed by the actual trial.

Pillsbury: You have no further questions, Mr. Hannah?

Hannah: Not at this point.

Pillsbury: Professor Hoyt, in conducting this hearing we made a pretty good attempt to try to get anybody who was interested to be able to appear, and this will give me the opportunity to introduce Judge Segell who requested to be considered an interested party and has made an appearance and represents really the district judges and their position in the State of Minnesota. I am going to now ask him if he would

like to ask any questions of you. This is Judge Segell over here.

Hoyt: Surely.

Segell: I gather Professor Hoyt that you are not a trained psychologist.

Hoyt: I am not a trained psychologist. My Ph.D. is in an interdisciplinary program which is called mass communications, which for me was about equal amounts of social psychology, journalism, sociology, statistics, a variety of fields, but no, not specifically.

Segell: Your experiment was conducted, more or less, in a vacuum. That is, you didn't use witnesses or jurors in actual cases to conduct your experiment.

Hoyt: No.

Segell: Who were the subjects of your experiment? How did you get them?

Hoyt: They were simply students who were enrolled at the University of Wisconsin during a summer session. They were a far greater diversity than normally we get during the regular year. I think they ranged in age from about 18 to 55. Some of them were in degree programs and some of them were not in degree programs. A few of them were military people who were on campus for a refresher course.

Many of them were people who were just taking a course on the side. So it was more hetrogenius than during a regular semester. I simply went to a variety of courses, classes, and under the subterfuge of a study in which we would like people to look at some mass media presentations asked if they could spend an hour. They were not paid for participating at all. They did not know what was to be involved. They simply came in, sat down, saw a movie for two minutes, and then we distracted them with a variety of other activities for half an hour. Then after that was up and only then did we say okay now we would like to ask you some questions.

Segell: So these people were essentially volunteers.

Hoyt: Yeah.

Segell: You didn't get any of them there by way of a subpoena or by way of a court summons.

Hoyt: No.

Segell: Let me ask you this. Do you think that a person who in good faith believes that a camera should not be put on them as either a witness or a juror has a right to have the camera turned off?

Hoyt: I would go for in that case I would look for reasons.

Segell: Suppose they just say I don't want the camera on me.

I am fearful of having somebody see me out in the public. Suppose they just in good faith don't want the camera on them. Do you think they should be allowed to have the camera turned off?

Hoyt: When they are involved in a public proceeding in which any member of the public can come in and sit and watch their behavior, their testimony as a witness, and which is by law open to the public such that it can be covered by any news media organization that would send a reporter to it, I find it very difficult to come up with a reason for why they should not be included, if, in fact, it is just simply a personal desire.

Segell: That's right. Just simply a personal desire, but it's in good faith. It's made in good faith. They simply don't want the camera on them, either a television camera or they don't want the still camera clicking at them while they are testifying. Do you think they should be forced then to have the camera?

Hoyt: There are cases, I guess, go back to our one Wisconsin example of the wife who witnessed the murder of her husband. Her reason for not wanting to be televised was simply that it was going to be a very traumatic, trying time for her to be on the witness stand and this would simply add to the pressure.

Segell: Was the camera turned off?

Hoyt:

That one, as I recall, was plea bargained and never came about. But that was the one case that I said was pending before us, that was brought before us as evidence for creating a laundry list of people who could be automatically excluded. I guess my preference in a case like that is to trust the judge to make a decision in a case. I believe our exclusionary language permits that, essentially saying the desire not to be photographed is not sufficient, but if there is something beyond that, if it can be demonstrated that this person would be put under considerable amount of needless pressure. I mentioned the trial the person convicted of killing the two deputies in the courtroom was a Spanish-American who did not have good command of the English language. His attorney requested in that trial that he not be televised because it would add to the pressure and that gave him difficulty, in that English was a second language for him, in generating his answers, and the judge agreed, in that case and ordered them out. So I guess I would like to see some evidence of reasoning for doing it that goes beyond just the desire to not be photographed in and of itself. In the kind of case that you are saying, it may be quite possible to get that. To get a psychologist, to get someone to testify that this person, in fact, is under stress when being questioned on this subject, and it would be harmful

to the testimony.

Segell: Do you think the courts should have to go to that trouble to get a psychologist in before they make the determination as to whether a person is in good faith and really doesn't want to be televised?

Hoyt: I guess I go back to Wisconsin experience has been that the witnesses whom we have interviewed following their testimony have almost, without exception, indicated that once they got their first question or the second question put to them the camera completely disappeared from their thoughts. That they were so limited in their attention between the attorney who was asking them the questions that it did not turn out, at least that they were able to verbalize.

Segell: Why do you suppose it is that when you ask people on the street whether they want cameras on them they say no and then after they have been through a trial they say it didn't bother me.

Hoyt: I think on the street they are probably responding in a vacuum. They don't know. They haven't had cameras on them before. I think we are probably inclined to answer in favor of the status quo, and I'm not used to having cameras. It's unfamiliar to me, it's unknown to me, and if you ask me or give me the choice, I will say no. But once they have been through the situation and have actually

experienced it and are answering based on a concrete example or experience rather than in the abstract, those fears appear to not be nowhere near as significant as they had in a vacuum without experience.

Segell: We all react to cameras to some extent. Don't you feel that that is a fair statement? If I put a camera on you, I want to take your picture, you react to some extent to that.

Hoyt: I would be aware of the presence of it for a short time. It would depend on what activity I was doing. How riveting of my attention the activity was. You are asking me personally I think of two semesters ago a television station broadcast my lectures in a particular class, and yes I was very aware of it. I recall, during the first couple minutes, making sure my tie was straight and that I was enunciating clearly. Within two or three minutes, when I got into the substance of the lecture, it was totally lost because the activity I was involved in demanded so much of my attention that it was peripheral, so peripheral to my attention.

Segell: And you think that if a camera is in the back of the room pointed at a witness that there is no reaction to that after a minute or two.

Hoyt: The witnesses that we have talked to essentially

told us that, yes.

Segell: Well, they are not going to impeach their testimony, are they? They are not going to tell you that I reacted to the camera.

Hoyt: One question simply asked them for level of awareness. No, clearly I even said that before that I don't believe that we are very good judges of our own reaction in that way, but I think we probably can. The other question was were you aware of it. I probably can answer that if I was aware, if it was in the back of my mind as I was answering your questions directly, if the camera was over there or over there, for the most part they told us no once they got started. There was concern before they began.

Segell: If there was concern before they began, do you think that could have affected their testimony in any way?

Hoyt: They can't answer that. We actually asked the judges and the attorneys that about the witnesses. Do you think it did? If the other evidence was next best evidence, I would call this next best next best evidence. It is too far away from me. It is within the realm of possibility, but I

Segell: So you will concede that there is no empirical data as to what the reaction of a witness is

in front of a camera.

Hoyt: I will. As far as I know, the study that I conducted that you have read is a candle in the darkness. I must confess I have been a little bit embarrassed by the great amount of attention that it has attracted and the amount of requests that I have had for reprints of it from almost every state in the country. I considered it to be a fairly modest attempt to provide a little bit of evidence on the subject, but apparently there is essentially nothing else that tried to quantify and measure in that way, rather than to ask people's feelings about what did you think about it.

Segell: And you have no way, therefore, of telling us whether the camera compounds any trauma that there might be on the part of the witness who testifies.

Hoyt: The only type of evidence I have heard on that has essentially been speculative.

Segell: That's all. Thank you.

Pillsbury: Would you like to have any further questions before the Commission asks?

Hannah: No, Mr. Pillsbury.

Pillsbury: Would the Commissioners like to.

Kaner: I have a question Professor Hoyt. Along the lines of Judge Segell's inquiry. We have been furnished

with a number of studies showing the empirical approach in which judges, witnesses, jurors and lawyers were asked about their reaction to the cameras or other cameras in the courtroom. Do you feel that those studies which indicate the answers of these various persons under those conditions, do you think that that's a valid method of making a judgment as that?

Hoyt:

I think it gives us a pretty good feel for how they react to it. Again, I limit how broadly I will accept the implications of those studies, but I think it is important for us to know how the judge reacted to it, how the attorney reacted, if the attorney thought that he or she was affected by it, if the judge thought that the witness was and so on. I think that's important for us to take into account. I think I would be concerned if, in fact, there were problems that showed up in there. That if, in fact, there was the cumulative knowledge of all those various studies that have been conducted in a variety of states did show a considerable amount of concern, that, I think, gives us globally a feel for the type of reactions they have. As far as specific answer to the question, does it or does it not have an affect, I don't think that I would trust it for that. Again, simply because of the factor I had described before -- being kind of next best, asking somebody to tell you something that

that person may not fully be able to respond to, but still I think it is important to find out how they felt about it and if they did think it was a concern. It's not going to answer the question definitively, but it's going to give you a feel, give us a feel for how they respond overall.

Kaner:

If these studies indicate that both witnesses, for example, and jurors feel that there has been some fair and substantial affect upon them during the course of a trial by having the cameras there, do you feel that that has any real affect in determining whether or not that particular thing has some affect on the fairness of the trial? Do you put those two things together?

Hoyt:

I guess if in a particular trial the witnesses did, in a hypothetical case let's say that they did respond with some concern, I would like, first of all, to supplement that with reactions from the attorneys and from the judge in that same trial. By the way, and aside, one of the more interesting pieces of data I thought we gathered was the judges' perception of the attorneys' behavior. The judges often times had a very good context. The attorneys had been in their courtrooms before without cameras present and now they had a base line to measure their behavior against now that there were cameras present.

I thought the question of asking the judges to rate the conduct, the behavior, of the attorneys

was very interesting. For the most part, they felt that there was not any major difference. But in that specific case where hypothetically there was some concern about witnesses, I would like to get other reactions to it also. Try to find out what it was about that particular case, if one did stand out -- placement of cameras, familiarity with televising. In fact, almost without fail the longer the practice continues the smoother it seems to operate. The curve goes down dramatically for the number of problems as television and photography has become more and more a part of the standard day-to-day courtroom operations in Wisconsin. It is less atypical. It is accepted more and more as a standard operating procedure and any effects that can be attributed specifically to it therefore become less and less and less as time goes by.

Kaner: Let me ask you. Should there be anything permitted that could affect the fairness of a trial?

Hoyt: We are back to the First Amendment, Sixth Amendment -- free press, fair trial. I think there are compromises that occur in both directions. Our Wisconsin rules for media conduct in the courtroom are a compromise of any absolute free press and certainly I would think that some of the accommodations that are necessary to guarantee that could conceivably have a fair trial effect. I don't think that they are

I would not advise them in any way necessary, but I think there is a trade-off at times that may be involved in there, simply because our courtrooms are open. Probably conduct of the trials might be much tidier if we didn't have them open to the public, but we don't.

Hannah: Just maybe follow that up for a moment. The fact that a witness says that he felt some impact because of broadcast paraphernalia in the courtroom doesn't mean the trial is unfair. That doesn't automatically follow does it, at least in your opinion?

Hoyt: No, in fact the surprising result of my study, I won't argue it to that extent, but one could, if this had been conducted in more realistic conditions, might even go so far as to argue that the presence of the cameras in the courtroom led to a fairer trial. I am not going to take it that far, but if, in fact, the witnesses did speak more fully, did have more accurate testimony and did have longer and more complete answers. So again I know we tend to rivet our attention on the possible negative occurrences because that's what we are looking for and we consider the absence of a negative to be a virtue in this type of information gathering.

Pillsbury: Commissioner Ahmann, do you have any questions?

Ahmann: One question. Mr. Hoyt, you made the point that

beyond the courtroom was televised is not a legitimate concern.

Hoyt: I said that was essentially our Wisconsin Supreme Court's reaction when those questions were raised.

Ahmann: With the exception of a later event that occurred at a commercial use of that kind of material that was gathered in a courtroom setting, do you know if there was any increase in sequestering of the jury? One of our concerns in a fair trial would be the impact of the selection that is given to the public and what influence that would have on jurors.

Hoyt: I don't know if, in fact, that occurred. I do know that it did come up before our committee and the assumption when it came up was that it probably would.

Pillsbury: Would or wouldn't?

Hoyt: It probably would. That there probably would be cases, especially when a case was being televised live in a local community, that the judge may order a sequestered jury when he or she might not otherwise have done it. There have been only a few cases that I am aware of where a trial has been covered live and in its entirety. The public television stations in Milwaukee have done it on two or three occasions. Some cable systems in communities around the state have done it on occasion.

But that's essentially those cases where they have, in fact, would cover it live during the day and then they would replay it that same night, the entire day. So that a juror could conceivably go home and watch that whole day's testimony over again. In those, I am not aware of where they have sequestered, but I do know that we pretty much accepted that that would go with the territory, if, in fact, cameras were present, that there may be some cases in which there would be more sequestering than there might have been if there were not cameras.

Segell: Can I ask one more question?

Pillsbury: If it's germane to this question, go ahead.

Segell: It has to do with fairness to the defendant.

Pillsbury: All right, go ahead.

Segell: I would like to ask him whether any surveys have been conducted, such as were conducted following the trial of the State of Florida v. Mark Hermann, in which jurors and participants in the trial were asked whether they felt the television and still cameras were fair to the defendant, were fair to the witnesses.

Hoyt: The wording of those questions is very close to the ones we asked the jurors and the witnesses in our Wisconsin trials.

Segell: And how did you fair?

Hoyt: By far the majority response was that there were no problems. If you would like to look, I have got the whole document, I think, which they refer to. They have the document also. There was some concern expressed but it was a small minority.

Segell: Well, here is an example of the question that was put to the people who were surveyed in the Mark Herrmann case. There were eighteen people surveyed, eleven of them were jurors, one was a judge, two were spectators, one was a court reporter and two were bailiffs. So essentially sixteen of the people were participants in the trial, two were not. They were asked this question, "As a participant or observer in this trial, I believe the presence and use of the television and still cameras to be fair to the defendant." Five strongly agreed, four agreed, six were uncertain, two disagreed, one strongly disagreed. Then they were asked as a participant or observer in this trial I believe the presence and use of the television and still cameras to be fair to the witnesses. Again, five and four either strongly agreed.

Hoyt: Agreed that it was fair.

Segell: That it was fair. Four were uncertain, two disagreed and three strongly disagreed. Now did you get that

kind of reaction?

Hoyt: It was in the same direction, more agreeing that it was fair to them.

Segell: About half and half in other words. Half of them agree and the others don't know or disagree.

Hoyt: I wasn't looking at the don't know as being in the other.

Segell: Well, they are uncertain. They don't know whether it was fair or not.

Hoyt: Ours were stronger. Overall summary of the responses would be quite a bit stronger in the affirmative in that, although there was concern that did come up in those. Our report actually doesn't summarize those data, as well as the Florida survey did, or this one I am not familiar with, but that one appears to do. We presented the overall data and actually the protocols of each one of the interviews are in there, but we didn't summarize them very fully.

Segell: This research was conducted by the Department of Communication of the Florida Technological University.

Hoyt: Who was the principal investigator?

Segell: I don't know. I couldn't tell you. That isn't listed. We will have this report before the Commission. I think either Judge Sholts will introduce or I will introduce it later.

Pillsbury: Any further questions of Commissioner Ahmann?
Let me just ask a couple which are really for clarification. I believe you stated, or implied at least, that since your paper which was published
(END OF TAPE) in April of 1976 and this report of the committee. is the subject following that on the press media through friends, court, and so forth informally.

Hoyt: That's correct. Since our committee was disbanded in July of 1979, I have continued, especially with my academic and professional colleagues, to be very involved in it. I have written a couple other articles and, as I said, through a joint committee being set up by the American Bar Foundation are now going to ask the question, is there any data that we might gather that has not now been gathered?

Pillsbury: You say you agreed to participate in that one way or another.

Hoyt: Yes.

Pillsbury: Yes. Another thing I think I understood you to say and this is again for clarification, that you didn't believe that since the Wisconsin rules have been adopted they have increased the number of cases that the media has covered. It's just permitted them a more complete coverage, but it hasn't changed the number of cases that were covered by the media. You didn't think it had caused any great increase

in the number.

Hoyt: There are some data out of Milwaukee, I have got them somewhere in my files, you may or may not have them, over, I believe, the first year of the permanent rules looking at the amount of photographic coverage in the two daily newspapers and the court stories that were assigned by the three commercial television stations in Milwaukee during a one year period. Then compared to other coverage that they have done, it appears that there is not an increase in the number of cases or the types of cases that they cover, it simply is that their cameras are in there using it firsthand rather than sketch artists or hearing a reporter tell about what happened.

Pillsbury: Any of the other Commissioners, any questions?

Kaner: Nothing further.

Pillsbury: Counsel.

Hannah: Nothing.

Pillsbury: Judge Segell.

Segell: Thank you.

Pillsbury: If not, thank you very much. We appreciate it. We do have the report of the Wisconsin committee and the paper written by Professor Hoyt here.

Do we want to introduce those into evidence?

Kaner: I would assume that whatever is offered should be received in evidence.

Pillsbury: Do you wish to offer them?

Hoyt: Yes I do, Mr. Pillsbury.

Pillsbury: All right. Mr. Hoyt's paper will be exhibit what number?

Regan: 17.

Pillsbury: 17. And the report of the committee would be 18. You have seen those. Don't you have copies of those Judge Segell?

Segell: No I do not.

Pillsbury: Oh, you do not. We can certainly see that you get that.

Segell: I think I may have it back in the office. I want to check it. I have drawers full of his material.

Pillsbury: Maybe we haven't given it. You have your next witness who is Mr. Kobin.

Hannah: That's right. William Kobin will be testifying now. He is the president of Twin Cities Public Broadcasting, better known as KTCA Channel 2. Mr. Kobin.

Pillsbury: You will be sworn in first, Mr. Kobin.

(MR. KOBIN SWORN IN).

Kobin: Thank you very much for the opportunity to come and speak to you for just a few minutes.

Pillsbury: I might just say what I said to the previous witness. In addition, to the Commission here we invited other interested and, of course, the petitioners whom you represent here. We invited other interested parties and the one person who has asked to appear and who is here as an interested party is Judge Segell here, who may have some questions when you get through.

Kobin: Certainly. I want to begin by conceding that it has been very difficult to prepare my remarks for this Commission. Difficult because I know you have already listened to hundreds of words on the subject. Carefully prepared statements seeking to demonstrate that allowing cameras in the courtrooms of this state will not disrupt the proceedings, nor improperly influence the participants, nor in any other way harm the legal process. I know too that you are and will become increasingly familiar with the arguments on both sides of this debate. So instead of repeating those arguments I thought it might be more useful to simply try to explain why I believe this debate, and its outcome, are so very important. My premise is that our system of government and the liberty which we identify as uniquely American are not given in most parts of

the world. All of history has shown us that freedom doesn't exist on its own, rather it's been a hard fought for and requires continual replenishment. In other words, freedom has to be exercised or it gradually disappears. In America today we have the best educated population in our history, yet public participation in the democratic process is strikingly low. Crucial to our form of government is public faith in our institutions of government, yet cynicism is high and no generation of Americans appears to have had less self-confidence and hope than ours. Whether you call it alienation or boredom, the phenomenon is widespread and could be measured by any number of yardsticks. For example, one study shows that in less than a decade there has been a fifty percent decline in the number of high school seniors who believe they should play a role in correcting society's inequalities. Who would have guessed that so short a time after the peace demonstrations of the Vietnam era, American youth would have so little idealism and sense of involvement. In the complex and difficult times we live in, it becomes increasingly important that the institutions of democracy appear stable and working and the judiciary is foremost among these institutions. Never before has it been more important for Americans to see justice in action. I think it is pertinent to remember that for all of the tumult that was Water-

gate, the American public knew that the nation had survived with its form of government intact, because they had seen with their own eyes that the center had held and that justice was done. Television is a much criticized medium, yet no form of communications has more power to turn a mirror on our society and show the public more convincingly that their system does work. At its best, television has been the window through which millions of Americans have been able to see their government function. It seems to me evident that nowhere is justice itself more assured than when the judiciary process is under constant public scrutiny. Nowhere is democracy itself more fundamentally tested, revealed and confirmed than when the public can see justice dispensed and see it with its own eyes. So this entire issue seems to be not only one of journalist rights, but also one of society's needs. What in particular are the media likely to do if allowed to have cameras and microphones in the courtrooms in Minnesota? The quality, professionalism, maturity and commitment of the Minnesota medium are truly remarkable, and I say that as someone who has only lived here for a little over four years. The amount of local news coverage and the depth of it is impressive. The fact that many broadcasters devote prime time to specials and documentaries is not only admirable, but frankly it makes the job of public broadcasting more challenging because

the commercial stations here do many of the things that public service programs and public television stations usually do alone in a community. In addition to news coverage of important trials, I would expect to see major specials examining the workings of the judicial process. As for the public television stations I represent, camera and microphone access to the courts will offer us a unique opportunity to further our mission of educating the public and supplementing the coverage of commercial broadcasting. Because KTCA and KTCI television are community stations, we would be in a position to broadcast major testimony in its entirety and to produce lengthy summaries of important trials as a supplement to commercial television stations news coverage. Indeed we are right now in the process of creating a new community affairs unit whose purpose is to provide a forum for important community issues. The issues underlying a significant trial as illustrated by excerpts from that trial would make appropriate subject matter for examination by this unit. In preparation for my appearance here today, I spoke with a public television station in Miami, Florida, WPBT, and I know that you have heard that and that you know that Florida has allowed cameras in its courtrooms for three years. I think that for a duration and scope of media access to the courts, Florida ranks number one among the states. WPBT, the public

television station in Miami, was the first, and I believe is still the only, station in Florida to present a trial from start to finish -- from gavel-to-gavel. As a matter of fact, WPBT has presented gavel-to-gavel coverage of a trial a total of four times. Tallahassee public television station also has engaged in gavel-to-gavel coverage for editing into nightly half hour specials, and it's generally felt that this coverage combined with regular broadcast of excerpts of trials on evening newscasts has helped to erase the stereotype notions ingendered by movies and Perry Mason, as to what trials and judges are really like. Moreover I am told that experience reveals that none of the evils forecast by opponents of access have materialized. It was feared that lawyers would play to the cameras, they haven't. That jurors would play to the cameras, or refuse to serve because of cameras, they haven't. That witnesses would not want to testify, that hasn't happened. That judges would engage in histrionics, that hasn't happened either. In Miami, after three years of courtroom access in a very competitive television news market, where at least one of three commercial stations will show a trial excerpt on its nightly news on any given night, a lesson seems to be that opposition to camera and microphone access seems to disappear under the weight of experience. And conversely those who are the most fearful of access seem to

be those who have had the least experience and exposure to it. In closing I would just like to reiterate that the question of cameras and microphones in the courts has, in my opinion, been miscast by many as a freedom of the press issue. It's not simply an issue of the press' rights, but of the public's needs. Thank you.

Pillsbury: Counsel, have you any questions?

Hannah: Just one. Mr. Kobin, you were describing your community affairs unit. Perhaps you might give the Commission a little idea of what is contemplated even though it is in the formative stages.

Kobin: For the last couple of years we have wanted to create a unit which would enable us to do periodic specials, approximately ten a year, on the issues of major concern to, importance to, the residents of the Twin Cities. It required an expenditure of funds that we didn't have, and only within the past month the funding for this project has been given to us by the St. Paul Companies, so that we are now putting this unit together. It will produce all over the calendar year 1982 beginning in January ten specials which will include, not only traditional documentary segments, but also telephone question and answer segments with viewers. These documentaries will cover extended periods of time and will be an attempt, both to focus attention,

get behind critical issues in the community and really analyze and interpret them and also to enable the public to involve in a two-way communication with all the people in the studio.

Hannah: Sounds like it is going to be interesting.

Pillsbury: Have you some questions?

Segell: Yes sir. Are you familiar with Canon 3A(7)?

Kobin: I am aware of it.

Segell: You understand that Canon 3A(7) prohibits cameras except for televising events in courtroom which, after appeal process has expired, can be shown in educational institutions. You understand that. I suppose a very minor amendment of Canon 3A(7) would allow you to do just what you are talking about. In other words, to the words educational institutions we added documentaries to be shown on public service for commercial television. We could do the same thing, but no one's rights would be impaired in those circumstances.

Kobin: In all candor I don't think I am sufficiently familiar with that Canon to give you an answer to your question of whether or not phrasing certain additional words or sentences would fulfill the needs.

Segell: You are interested in educating the public. The

only way you can really educate them is through a documentary or close gavel-to-gavel coverage, isn't that true? You can't educate them in thirty seconds at ten o'clock.

Kobin: I don't think you can educate the public in very great depth in thirty seconds. I don't think I would be prepared to say that there is no educational value in a thirty second excerpt from the coverage of a trial.

Segell: Even though it is out of context.

Kobin: Even though it is out of context. Absolutely. I have seen many thirty second segments, not only on commercial news programs, but within public television documentaries which were certainly educational. I certainly would not argue that all thirty second segments perform a comprehensive or an educational job, but I don't think I am prepared to say that it is impossible to present a thirty second segment which is educational and constructive.

Segell: Do you think that a thirty second segment is going to give the public a perception of the process, which is really what you are concerned with aren't you if you want to educate them?

Kobin: Certainly.

Segell: Is it going to give you a perception of the judicial

process in thirty seconds?

Kobin: I think that a thirty second, it is conceivable to me. It is very hard to, I think, speak in generalities. It is conceivable to me that a thirty second segment could give a viewer some understanding of an element of the judicial process. I'm certainly in favor of there being more extended coverage than that, as I think I have indicated, but I am really not prepared to say that a thirty second excerpt couldn't do a constructive and educational job.

Segell: I take it that you would concede that an hour long documentary would be a far more benefit to the public than a thirty second segment?

Kobin: I think in most cases yes. An extended presentation, which went more in depth into a subject area, such as the judicial process, would certainly convey more information than a thirty second segment by definition. It would almost have to. But, as I say, I have seen many thirty second segments, for instance on nightly news programs, particularly on national nightly news programs, excerpts from hearings and other activities, which are, at least, similar in nature to a trial, and which I have felt were extremely educational. I certainly prefer the extended treatment.

Segell: I would like to correct this apprehension you have

about the Florida situation. You said something to the effect that there was no situation where witnesses didn't want to testify. Are you familiar with the Palm Beach Newspaper case against the State of Florida?

Kobin: No.

Segell: Where two prisoners refused to testify.

Kobin: No, I am not familiar with that. My intent really was to generalize. I think that there are exceptions probably to almost every generalization, so I would certainly not assume that every opponent of coverage, of microphone and camera coverage, would have been converted, but the majority appear to support the process now.

Segell: I have nothing further.

Pillsbury: Commissioner Ahmann, do you have any questions?

Ahmann: No.

Kaner: I have one question, Mr. Kobin. You have indicated, of course, support for what you say is the educational process that we face if we permit TV cameras and other cameras in the courtroom. How do you meet the criticism, however, that the media would be more interested in the sensational aspects of certain trials, which they would put on more for their entertainment value and for the purpose of obtaining

viewers than they would in the general educational process?

- Kobin: I have two feelings about that. One I guess I give news and public affairs departments more credit than the people who make those kinds of criticisms -- for their integrity, their taste, their concern for public viewership -- and I think that it is my conviction that having really argued so long and forcefully for this kind of access that news departments, public affairs producers would not violate that privilege. From what I have seen of Minnesota newscasters and public broadcasters, my conviction is that there would be far more gain by access than there would be lost by perhaps an occasional abridgement of this right. Again, I think it is possible to generalize one hundred percent, but I think we are losing much more by being prohibited from this kind of coverage than we might suffer if occasion there were a lapse of judgment.
- Pillsbury: Counsel.
- Hannah: Nothing.
- Segell: I just have a comment. I wish we had a videotape of the Rubenshesky trial. One bite of responsibility of television cameras.
- Kaner: That was a long time ago, Judge.

Segell: I appreciate that.

Pillsbury: I guess there is no further questions and we thank you very much, Mr. Robin, for coming and helping us out. I think we will declare a recess and I think we must be pretty precise in declaring this recess for not more than five minutes, ten minutes. What time will our witness come on the telephone?

Hannah: We will be calling him about 11:15, but he promised he would just sit at his desk for a couple of minutes.

Pillsbury: We have a little leeway then.

Beckmann: I would suggest, Mr. Pillsbury, excuse me, that when we reconvene that we stay in a circle around the speaker phone, so that all interested parties can question the Judge. These microphones will not be fed into the telephone. Our voices will have to go into that speaker box.

Pillsbury: In other words, all the voices will not go into these microphones, they will go into the speaker box.

Beckmann: The voices into these microphones do not go into the telephone. Our voices will have to go into that telephone box.

Pillsbury: I imagine we have a couple of other unique problems. Do we swear witnesses over the telephone?

Hannah: The next judge I will take his word for it.

Pillsbury: We might as well do it.

Hannah: Maybe he can send us an affidavit.

(RECESS)

(TELEPHONE CONFERENCE WITH JUDGE COWART)

Beckmann: I shall ask Chairman Pillsbury to introduce everybody.

Cowart: All right, fine.

Pillsbury: Judge.

Cowart: Yes, sir.

Pillsbury: This is John Pillsbury. I am the Chairman of the Commission and this is a unique proceeding, but an interesting one and we hope it works out. I have been on telephone conferences before, but never quite as formal as this. Sitting on my right is Commissioner Ahmann, Mrs. Ahmann. She says Rosemary I should call her. On my left is Commissioner Kaner who is a former district judge. His name is Sid, but we call him from here as Judge Kaner. We have a clerk, Deb Regan, who is a clerk to one of the justices of the Supreme Court. She is acting as our clerk. After a rather informal discussion in this unique thing, we have sworn all the witnesses in and I am going to ask you to raise your right hand and I am going to ask Deb Regan to swear you in.

Cowart: All right, sir.
(JUDGE COWART SWORN IN.)

Pillsbury: We have Mr. Paul Hannah who is the counsel for the Petitioner, who is here. We have invited parties who are interested to appear and specifically we have an appearance from the District Judges Association in Judge Segell of the Ramsey County, Minnesota District Court. He may have some questions after the proceedings start. I don't know how do you want to start with a statement, is that the best way?

Hannah: Perhaps what I can do, Judge Cowart, this is Paul Hannah.

Cowart: Yes sir Paul.

Hannah: I guess I am suppose to tell you for SEC purposes that your voice at this point is being recorded for possible re-broadcast so we have to ask your permission to do that.

Cowart: You mean I could abort all this by not giving permission.

Hannah: You certainly can.

Cowart: All right. You got it. No problem.

Hannah: We also have a television camera on the speaker box and I would like to know, sir, personally are you nervous at this point?

Cowart: I am really upset.

Hannah: Perhaps if you could Judge, we have talked informally, but you could give the Commission members an idea of your background and your present position. I would appreciate it.

Cowart: All right, sir. At the time I really began in 1977 when the experiment of cameras in the courtroom began in Florida. At that time I was the administrative judge in the criminal division, a twelve person court in Dade County, Florida the Eleventh Judicial Circuit of Florida. Immediately after they came in, they came in on July 5 of '77, immediately after that I was elected to chief judge of the circuit and served during the experiment time and during the implementation and also the down time as the chief judge of the Eleventh Judicial Circuit, an 82-man court in Dade County, Florida, the Eleventh Judicial Circuit, as I have said. We were responsible in those position for the implementation of the camera in the courtroom proceedings, both experimentally and finally, in the conduction of the proceedings that took place in Florida. I served in that capacity as chief judge until March 30 or 31 of 1981 in which time I took the position as Associate Dean of the National Judicial College here in Reno.

Hannah: Judge, the first experiment, I believe, was one where the Florida Supreme Court stated that it would try

to televise one civil and one criminal trial, is that right?

Cowart: No sir. That started as the experiment, but never really gained a great deal of momentum and then subsequently effective July 5, 1977 they issued an order amending the Canon allowing the television and still photographers to be in the courtroom for a period of one year. It was blanket across the system. It ran, as I say, from July 5, 1977 to June 30, 1978, at which time statistical and empirical data was supposedly empirical data was gathered concerning the impact.

Hannah: Do you know, I don't know if you are personally aware, but in that first attempt wasn't the requirement that all the parties consent?

Cowart: No sir. That particular segment of it, Paul, did not materialize as such because of inability to freely procure consent and then the Supreme Court just entered the order subsequent to that that I referred to.

Hannah: Okay, so at the time that the order you are talking about was entered, there was no consent of the parties necessary at the time.

Cowart: It was not necessary. That's correct. The order that the Supreme Court came out setting it up as a result of the Post Newsweek litigation.

Hannah: I know this is a few years back Judge, but do you remember your personal attitudes about the whole idea.

Cowart: Yeah, I sure do. I think all judges rather vividly had some impressions on this. When we received notification and we had some lead time on the implementation of the order, we met as circuit judges in the circuit and we asked the then chief judge, who was then Coffert to meet with members of the Supreme Court. Justice Alex Somberg held a session where judge orientation, which he did it then, and we, at that time, felt rather strongly that the Supreme Court had embarked on something that would be paramount to a troublesome process for trial judges to undertake. We asked for some difference or some preference other than statewide and notwithstanding the concept of our particular feelings, and the judges throughout Florida basic particular feelings, the Supreme Court entered the order which we did implement. Of course once the order was entered we set about to implement it in a what we thought was a judicious and expedient manner. We conducted a number of proceedings locally. We formed some organizations locally and our committees. As the administrative judge and as the chief judge, we formed two committees predominantly with two separate functions. A bench media committee which consisted of myself as the chief judge and two other judges on the criminal bench, which was largely impacted with it.

Now the order did not restrict it to the criminal bench alone and was system wide, but we formed the bench media committee and we had two members of the press actively on the committee, as they elected. We held quite a few proceedings to both ourselves and the media to the guidelines set up by the Supreme Court. We formed from that committee a technical subcommittee, which did a survey of all the courtrooms and on that there were two technicians and two court administrators, deputy court administrator. We surveyed all the courtrooms, diagramed them and we (INAUDIBLE) an order from the Supreme Court to have the cameras placed as unobtrusive as possible. We drew the diagram where they would be permanently stationed in the courtroom, isolated that particular area by permanent markings and designated them as areas where the camera and both the still photographer would be during the course of televising of any proceedings. We had some light problems. I guess we sort of found out why most circuit judges (END OF TAPE). We were ready to proceed on July 5.

Hannah: Was the media during this time, and actually after the experiment began, cooperative?

Cowart: Very. In fact, it sort of was a revolution, devolution rather in the process. It was the first time that there were a lot of communications opened up with our bench in the media and especially the

management concept of media. I think the byproduct of that was probably one of the most important contributions that the thing made.

Hannah: This may be a general question, Judge, and I hope it's not too general. Did the presence of the media during the experimental time affect the way you would have tried a case in your courtroom, or the way other judges were trying their cases?

Cowart: No, we did not think so. In fact, there had been a great deal of what we termed rather unhappy experiences with the concept of witnesses in the corridors, jurors as they marched down. The general concept of the television coverage that is going to occur whether they are in the courtroom or not. We tried to make it one time an isolation of this off the floors. The Supreme Court rejected that local rule that we placed in, so they had access to the corridors and to the hallways. We found that once the televisions were in the courtroom and they were receiving firsthand the information that that problem was completely eliminated and our judges were sufficiently happy with it. At the end of the one year experiment, they asked me to file a brief amici curiae for the court urging the continuation of it.

Hannah: So, in other words, the fact that there were cameras in the courtroom and reporters in a pooling area

probably made the hallways a little less wild during breaks. There weren't people trying to get pictures of the witnesses leaving the courtroom and that sort of thing. Is that

Cowart: That's very definitely correct and that's one of the things we worked up with our media people. We were now under a free access to the courtroom. They knew they were in there and they knew they were welcome and they knew they were under the guidelines and under that concept we eliminated the corridor or hall situation.

Hannah: How about the impact on trying to do the business of the court? I presume that there were sometimes during that experiment when a judge might order that a particular witness not be photographed. Did you have that?

Cowart: Yes. We had some experience with that. It comes about from some witnesses need to be particularly protected. For instance, one of the first things that we received coverage with, concern with, was undercover detectives. Then we had some witnesses under the Federal Witness Protection Act. We had young victims involved in crimes -- rapes or something like that -- that we were able to protect. There was a differentiation of opinion during the first concept, or the experiment concept, because the court had not made clear this distinction. How-

ever, taking into consideration what we thought in our circuit was the inherent power of the court. if, notwithstanding their presence, if there was likely to be impeded any justiciable controversy or there was any depravation of what we would call judicial process, we just eliminated the coverage. The Supreme Court in its final opinion that day in '79 approved that procedure by building into the final decision a paragraph, or expanding, that we call a qualitatively different position. It simply means that if you have a witness, or you have a party, or if you have anybody who is in a qualitatively different position with a communication of his image or whatever the case might be, you can exclude the coverage of that particular witness. It takes a hearing for a determination. It is not a capricious allegation. It is one that you establish with fact, such as a witness under the Federal Witness Protection Act. You simply would just not have that particular person filmed.

Hannah: So that at least part of the court's time periodically would be spent being involved in these evidentiary hearings.

Cowart: A very insignificant amount really. We didn't have that many that fell into it. Over the course of the year there were only two or three proceedings like that that had to be held. You find it most frequently really in the area that we were. Unfortunately,

there was a great deal of drug trafficking and a lot of the undercover detectives were working undercover, naturally it would apply. But those we did protect after we established, because the communication of their regular name meant nothing. Because of undercover they were in a different category, but certainly dissemination of that picture would impact them and that's what we really mean by the qualitatively different position.

Hannah: How did the media respond when the court would order that coverage would not be allowed on a particular witness?

Cowart: We worked out a procedure of notice. In other words, we asked the media to give us their counsel that would be on short notice, which they did. If we had a witness like this coming up during one of those trials, we would notify them and hold hearing and after the hearing when they had an opportunity to be present, we had absolutely no opposition. What we did really was to establish some concept of rapport so that they knew, you know, we weren't capricious from a judicial standpoint that there was substance involved. Once that was established and hearings were conducted in those things we didn't have any more problems.

Hannah: How about, and again we have heard some testimony from some other people that this may be difficult

to assess, but at least we will have the benefit of your thoughts. Did you notice yourself any adverse effect upon the lawyers who appeared in your trial court if they were also on camera?

Cowart: I think they probably sold a few more blue suits or something like that. No demeanor concept, no sir.

Hannah: How about the question of the equipment being obtrusive on the proceedings? Was that handled effectively in your circuit?

Cowart: We were under an order, as I said previously, from the Supreme Court to locate it as unobtrusive as possible. It consists of nothing more than the mini-cam, which is a lightless, motionless, noiseless piece of equipment mounted on a tripod, that is just in the courtroom as the chandler or anything else would be. After the placing of them, and that was the purpose of that technical subcommittee, we had no disturbance. Now you were able to hear some still camera clicking once in awhile. Our Supreme Court indicated that the camera should make no more noise than a Leica. Many of the smaller people involved in newspapers did not have Leicas. We tested, as a group of judges, Nikons with a blimp and that was no more noise than the Leica, and those are the two cameras that were generally used. We did hear some noise once in awhile when a still

clicked, but it is nothing more than a very short. You know, you have all heard that particular sound and it was at a minimum. It wasn't a loud shutter opening, grinding type thing. It was just a rather quick situation. As the concept said, no more noise than the Leica and that's a pretty silent camera.

Hannah:

This again may be general and I apologize, but, you know, we are in the middle of looking at this question and some of the issues are pretty important to us and none of us have really ever been involved in the coverage before. My question is after you got a chance to see this system in action, was it a big deal?

Cowart:

In fact, our guidelines, and we certainly say to you that if there is serious consideration, I very seldom brag a great deal on our Supreme Court, but I do brag in this area many times. The guidelines that the Florida Supreme Court set I think were very, very helpful to the trial court. It would be a difficult proceeding without them. I urge you, if you seriously consider the issues, to look at those guidelines and consider their adaptability to your courts. The guidelines required that they be in the courtroom in position before the door opened, and they could not leave during the course of the proceedings, which meant the still photographer and the television photographer were

in the courtroom as long as we were in session. They couldn't just come in, set up, leave and distract everything. With the camera in place when you went in we never thought about it anymore. Most of the people were involved. The voir dire of jurors, I generally, as a presiding judge and most of the presiding judges, would simply ask a question concerning the presence of the camera and in my personal experience I never had but about one or two jurors say that, in fact, that would impact them. Those that did say that we rather discreetly tried to inquire why. If they had some concern, we would just excuse them on the bases of their appearance to go to another courtroom.

Hannah: Perhaps some of the Commissioners have some questions of you.

Pillsbury: Maybe it would be more appropriate if I asked Judge Segell if he would like to ask Judge Cowart any questions.

Segell: Yes Judge I would like to ask you firstly what the temperature is like in Reno this morning?

Cowart: It is pretty doggone cold. It was in the low 20's. We had snow most of the day yesterday.

Segell: I want to say too that I enjoyed having dinner with you and your wife last July up at the Ponderosa.

Cowart: Yes, it was a nice evening wasn't it? How have you

been?

Segell: Just great. Just great Judge.

Cowart: Good.

Segell: Did you find in Florida that you were sequestering more jurors than you would have had you not had cameras there?

Cowart: On any type of trial, Judge, that was a high publicity trial, such as some of the more outstanding, I hate to use the word outstanding, but with more serious cases, yes. We did find that we sequestered probably more jurors than normally just out of plain judicial caution. Although a number of the trials that we have conducted, we did not have to sequester with the usual admonishment that they not look, read or listen. We'd poll each morning after that, but in the more significant trials, yes sir, we did probably sequester a few more jurors.

Segell: Did you feel that in those cases where you didn't sequester that the jurors were possibly watching themselves on TV?

Cowart: Judge, that is really a difficult question to answer. We would re-poll each morning and I don't think the exposure is any more than would be a normal exposure of reading an article in the newspaper, as you know, our general instructions in that area. We would try to re-poll every morning and get

affirmative answers. Our thought on that was to make sure that they were constantly aware of what we were saying. Of course, you can only go on the integrity of the juror, as you know, even from a newspaper article. But I don't think the exposure is any greater really than pictures taken in the hall the newspaper prints of those that you don't sequester.

Segell: Did you, in any of the serious criminal cases, have all the witnesses brought before the court ahead of time in some kind of a pretrial fashion so that you could tell those witnesses not to watch TV, so that they wouldn't be influenced by the testimony of others.

Cowart: Judge, if we had, and it's sort of a colloquialism, legal colloquialism. The rule, in what we call the rule invoked, which is a rule on sequestration of witnesses, we would do that and instruct them as usual under the implication of the rule that they are not to discuss the case with anyone, except the attorneys, and, of course, would add to that preliminary instruction the concept of media coverage.

Segell: Are you talking about talking to witnesses?

Cowart: Yeah, the general instruction that we give we call it, as we said it is sort of a legal colloquialism. (INAUDIBLE) Lawyer says judge we have requested to invoke the rule and then we would call witnesses and

give them the general admonishment instructions.

Segell: That's witnesses who are in the courtroom at the time.

Cowart: Yeah, they are excluded from the courtroom and not to discuss the case among themselves or with anyone else and to do so might lead to the exclusion of your testimony -- the general instruction under that sequestration rule.

Segell: But that didn't necessarily cover all the witnesses in the trial. That was just the witnesses who were in the courtroom at the time.

Cowart: Actually, if it had been invoked, it would cover them all, Judge, progressively. It became the lawyer's responsibility to see that, at any time during the course of the trial, they could be voir dired by opposing counsel.

Segell: You have a rule down there whereby the media can appeal immediately from an order of the trial court, excluding television cameras, do you not?

Cowart: Yes it is. They adopted an appellate rule that allows for summary appeal. In the course of this where hearings are conducted, we didn't have but about, I don't think, I know of only one in our circuit. That was from the early exercise of the inherent power that we fought for the exclusion of coverage. Of course, that was upheld, but there is

a summary process, yes sir. In fact, the rule goes so far as to allow a stay of proceedings, but it's never been invoked to my knowledge where the proceedings were actually stayed. It is a matter of maybe a witness change or something like that, Judge.

Segell: Are you familiar with the case of Palm Beach Newspapers v. The State of Florida?

Cowart: Yes sir I have been into the case.

Segell: That case went to the District Court of Appeal from an order of a trial court. It was decided on December 20, 1979 and there was a stay in that case and then it went to the Supreme Court and it wasn't decided until March 5, 1981. Are you familiar with that?

Cowart: I did not know it had gone up. I knew of the case. I think that was one of the cases, if I am not mistaken, that proceeded without the concept of hearing and exclusion of coverage in its entirety.

Segell: This excluded, or at least Judge Sholts proposed to exclude two witnesses from a prison.

Cowart: It was questionable if whether there was an evidentiary hearing. We had a case in Florida years ago that you might want to look at, it's McIntosh. Before this phase of it came into being and it sort of controlled that concept, and I think that some of the Palm

Beach matters were backed up in the McIntosh, is my recollection.

Segell: The fact of the matter was there was a stay in that case, and after everything was over, at least one of the witnesses was already out of prison and couldn't be found to testify.

Cowart: I think any process is subject possibly to that type of proceeding whether they have got cameras or not, Judge, if you provide an appellate rule that provides for summary appeal.

Segell: That's what I am talking about an appellate rule that provides for summary appeal and calls for a stay of proceedings which cannot do nothing but result in (INAUDIBLE) in justice.

Cowart: I really don't know (INAUDIBLE) what the Supreme Court's thinking was on the adoption of that rule, we don't know. We were cognizant of it and it is a question of how soon the District Court of Appeal could rule on it, and really it was suppose to be a summary process, but that link sure doesn't sound summary.

Segell: It didn't to me.

Cowart: It didn't to me either, Judge.

Segell: The result was the thwarting of justice in that case. Don't you think that that is probably too

stringent a rule to have?

Cowart: We discussed that rule a number of times, in fact, in a number of chief judges meetings with the chief justice. Our particular circuit had no problem with it, maybe because the District Court of Appeal was located in Dade County, the Third District that affected us. I think that possibly one case under the year or years we have had cameras in the courtroom would tell us that maybe there ought to be some way to relax that rule, especially if there is defeat of justice under the case -- either by making advancement of telling their decisions or something under the rule. I don't know that the rule is necessary quite candidly.

Segell: Once you got into your experiment and finally into the permanent rules, did you find that essentially the media was covering criminal cases?

Cowart: No. Predominantly we can say that yes, but there were a number of civil trials covered.

Segell: What kind of civil trials?

Cowart: They covered quite a few civil trials in our jurisdiction. They covered a lot of civil proceedings. They covered some domestic relations cases.

Segell: That's all the questions I have, Mr. Pillsbury.

Pillsbury: Commissioner Ahmann, have you any questions you

would like to ask Judge Cowart?

Ahmann: Yes, Judge Cowart, Rosemary Ahmann. You mentioned in your prepared material that the relationships between the press and the bench had been improved. Could you elaborate a little more on that and in what way?

Cowart: Yes, ma'm. We definitely felt it was because we were in the process of planning an adventure really and that is what it started out to be. The concept that we met on media problems, we met on judicial problems, we met on technical problems and the ability to work in that area was quite beneficial to both them and to us as the bench. A typical illustration is the fact that we were concerned with monitors that were in the halls and various other places. We met with the purpose of trying to work out some permanent station in the building where they could be in. We compromised on cost. We didn't want it to cost the county any money and we were able to work out a situation where I found a room for them in the justice building. They did all the wiring and set up their monitors there and were removed from halls. That type of cooperation we were able to put together where we never had before and we developed a lot of dialogue that we never had before with media.

Ahmann: I am pleased to hear that you were saving the county

money. I am a former county commissioner. You may not have known that.

Cowart: Yes, ma'm. There is no question about that.

Pillsbury: Commissioner Kaner, do you have any questions?

Kaner: Judge, as a former district judge, I am particularly interested, as I know all the judges are, in whatever impact having cameras in the courtroom would have on the fairness of the trial. From your experience, I would like to have your comments, in general, as to whether or not you thought the presence of the cameras did have any affect on the fairness of the trial?

Cowart: Judge, I have not detected any. Of course, this is as sacrasanct to us as it is to any judicial officer located anywhere. We did a number of post-trial studies during the experiment. Florida Technical University gathered the data. Knowing that it was present, yes they were aware of that. Some of them peculiar enough were not even aware that it was present. We detected no impact that I am aware of that said that our quality of proceeding was reduced or that there was any less justiciable disposition of the cases because of cameras in the courtroom. I have looked at that very closely, and I think somewhat analytically, and I can say that statement to you based on our personal experience. I just haven't detected any

on any kind of basis as far as the state is concerned. I would like to say that some judges feel differently, but the thing that we have to understand is that I think there is more distraction with a sketch artist. There's more distraction with media people coming and going like reporters coming in with notebooks. You know jurors and witnesses are aware of that also. They have got a telltale stock in trade, the little pad and etc., and print media has always been in the courtroom. Sketch artists have always been in the courtroom and I think one of the most distractive things really is to watch a sketch artist at work developing pictures. I always kind of lean over myself once in awhile to make sure they get my triple chin and of those kind of things. Those are more distractive to me from a craftsman's standpoint than are the permanent cameras and the still photographers.

Pillsbury: Judge, this is Commissioner Pillsbury. Did you have any difficulties or know of any difficulties in connection with conferences between counsel and client or counsel and the judge or with the media zeroing in on individual jurors? Did this create any kind of a problem?

Cowart: No, sir. Not that I am aware of. We cautioned and it was absolutely understood that part of the guidelines we did make placement. They were under an administrative order from my office where the

microphones could be, the number of microphones, where the pickup could be. They absolutely knew, and this is another thing that one of our committees were able to formulate, that they were not to call me in or not to pickup any sounds from counsel in conference with client or anything else. When we had sidebars during a lot of the trials, and I think I probably developed that technique, I would allow one representative from the booth, not with a camera and not with a microphone, but one person could appear at a sidebar and could nine times out of ten you are discussing scheduling. You are discussing something else and there is no reason for it not to be. We had no problems in that direction. Now they would pan and they have panned. There's no question about that. In some of the image gathering material they would see counsel conferring with a client, etc. but there is no sound that emanates then.

Pillsbury: Was that handled, Judge, by an honor system or by the counsel turning the mike off, or in the case of the judge, by the judge turning the mike off or was it left to the media? This question came up a couple of days ago.

Cowart: All right. In our mike placement, as I say, we made that placement by administrative order. Mikes were placed in such a way where there is sections of the courtroom they just would not pick up. We did not

allow an omni direction mike, a shotgun mike or anything like that. They generally picked up through the court sound system where it was available. The court sound system would have a microphone, generally, on the clerk's desk in front of the bench -- one on the bench and one beside the witness chair -- and that was the microphone coverage. You can do that in a number of ways. I think that the way that we did it was rather successful, because, as I said, we had a time and limited the number of microphones. Now there is permission for that to be executed by the chief judge of the circuit in the Supreme Court order and we exercised that and didn't have any problem with it. There was an honor, it really wasn't an honor it was just a question of limitation of the microphone pickup area.

Pillsbury: Are there any further questions by the Commissioners?

Segell: I would just like to follow up that last question of yours, Mr. Pillsbury, if I may. This is Judge Segell again Judge Cowart.

Cowart: Yes Judge.

Segell: That microphone that was located on the bench then I take it if you were having a sidebar conference, you would have to turn that mike off, would you not?

Cowart: No, it would be placed over on the side of the

bench that's closest to the witness. If we had a sidebar conference, we would be over on the other side.

Segell: So you left the mike on all the time.

Cowart: Yeah, I never. It did in my courtroom. I was absent the day they were explaining electronics. I probably wouldn't even know how to cut it off. We did not get involved in that at all, Judge.

Pillsbury: Mr. Hannah, have you any further questions?

Hannah: Just one that I just thought of. Did the presence of the cameras, Judge in your opinion, increase the number of motions for new trial or add grounds on appeal that somehow the presence of those cameras was violating rights of the defendants? I know it did in at least the Chandler case.

Cowart: Mr. Hannah, until Chandler came out those motions were just as flamboyant as the skilled lawyers could make them. We sort of had to rule in the substance of it and, of course, once Chandler was decided, the Chandler case in the United States Supreme Court as you know, came from our jurisdiction. It was a trial by Judge Schwartz, and they all preserve that particular error, if there was error, there's no question about that. That was rather standard procedure at the defense bar, but the substance of it, and once Chandler has come down I am sure that's

abated.

Pillsbury: Are there any further questions? If not, we thank you again Judge Cowart for participating in this and helping us out. Thank you very much.

Cowart: Thank you and it is interesting to be able to do this at this position. I am to compliment you for the procedures.

Hannah: Except for the fact that we don't know if you are really Judge Cowart.

Cowart: I will tell you what, if you want to come here, here I am.

Pillsbury: Thank you very much.

Cowart: Thank you. Bye-Bye.

Pillsbury: I think that's all the witnesses we have for this morning and we can declare a recess then until 1:30 this afternoon. (END OF TAPE).

(RECONVENE)

Pillsbury: Am I correct represent the Minnesota Trial Lawyers Association, Mr. Hvass and Ms. Grant. Mr. Hvass do you want to step up and Ms. Regan will swear you in with that much formality at least.

(MR. HVASS SWORN IN).

You just identify in addition to the Commissioners here. Mr. Hannah is the counsel for the petitioners and Judge Segell over here is an interested party

and has been following these proceedings on a very regular basis and either or both of them may have some questions from either of you when you get through.

Hvass: I understand that from talking to Mr. Schroeder from the Bar Association. I ran into him on Saturday and he described his experience.

Pillsbury: It wasn't harrowing, I'm sure.

Hvass: He enjoyed it. I am Charlie Hvass, Jr. I am the president of the Minnesota Trial Lawyers Association and for those of you who don't know who we are, we are an association of 1100 lawyers who try cases on a day in, day out basis in the courts of the State of Minnesota. We represent plaintiffs and defendants, government and criminal defendants in all kinds of actions, personal injury, commercial law, family law, every area of law that is practiced in courts. The position of the Minnesota Trial Lawyers Association by vote of the membership and the Board of Governors is that of total opposition to cameras in the courtroom. Just so we are clear on the definition of cameras in the courtroom that would be any electronic or still photography or use of microphones for any kind of broadcast be it commercial or public radio. The reason why we are opposed is because we focus on what is going to happen in the courtroom to the client, the

person or people who are there to litigate their issue. I don't care about what happens with respect to the public, what happens with respect to the lawyers, the judges, the jurors or the press, when we focus on the question of cameras in the courtroom. My first concern is for that person who is there to seek justice. Unless we can show that there is going to be some benefit, we believe that there are enough potential harms from cameras in the courtroom that at this time we are opposed to cameras in the courtroom. I would point out, first of all, that in the Chandler v. Florida decision, which is the real basis I believe for these hearings, sort of the motivating question in several of the states, but the Supreme Court concluded that the courts in the State of Florida were conducting an experiment. The Chandler record was devoid of any scientific evidence to show that there would be harm or there would not be harm from having any type of cameras in the courtroom. Since then I understand there have been some studies that Ms. Grant will elude to, but at this time if we were to decide to go forward with cameras in the courtroom, we would be conducting an experiment. Against that lack of scientific foundation, we then get to the question of what are the pros and what are the cons, who is going to benefit and who is going to be harmed. When we look at it from the standpoint

of the arguments that we get from the media, in using the term media I am including TV, radio and the print media, we get an argument. First of all, that there is going to be some sort of benefit to the public by having cameras in the courtroom, that there is going to be some sort of education. I think that the Chandler case, the record we do have, contradicts that. There were something like two to two and a half minutes worth of tape played on the air and I have serious doubt that any type of camera in the courtroom is going to result in education of the public or some strengthening in the confidence of the public in the court situation. Look at publicity that we have had in any of the significant cases tried in the State of Minnesota in the last five years. We have had several murders, we have had several big verdict cases in the personal injury area. The reports that we see on TV are generally short. The reports that we get in the press are longer, but there is nothing that I see in those that will be aided by any type of presentation from the courtroom itself. We have some idea that there will be better reporting. Somehow the reporters will be better able to do their job by having cameras in the courtroom. Again, I question that. The print media is going to get, they can get verbatim transcripts. The media presentation, as far as TV goes, is simply some type of picture background to a reporter, and I don't see what

changing the photograph in the background is going to do to strengthen what the press is portraying. On the other hand, when we look at what can happen to the client and, again, I stress there is no scientific evidence yet that experienced trial lawyers believe, and I believe firmly, that there is going to be effect in the courtroom. One of them we just had -- there was motion off to my side, and as soon as there was motion, people's eyes in this room would turn and look and see what that motion was, rather than concentrating on what is going on. Any time you get motion in the courtroom, it is going to distract the jury. For example, in Hennepin County we occasionally have high school classes come into view court proceedings. When that door opens and the high schoolers start coming, everything stops because you know if you are going to be going forward with an important piece of evidence, some of the jury is going to miss it. So there can be no motion in the courtroom that is not directed toward trying the case, you are going to have interruptions. Witness reaction. The Supreme Court itself speculated in both the Estes and the Sheppard decisions that witnesses are going to react differently, because they know that a camera is present, whether you have a camera standing up, whether you have a camera behind a one way glass mirror, you are going to change what a witness does. As soon as you change that witness' actions, you have

changed the trial process. A witness is then not coming across honestly. You have changed what the jury's perception of that witness is going to be. I don't see any way to take care of that. I am going to put a witness on the stand, in all honesty, I am going to tell that witness there is going to be a camera behind the mirror or sitting out, it will be photographing you. I have got to tell them that because I don't want a witness coming up to me afterwards and saying hey you didn't tell me. As soon as you tell them that, they are going to focus on that. I had a friend who was a professional photographer. He worked for Prudential and he used to take slide shows that they'd use at their conventions. He, whenever he would go into an office with his still camera, would not load the camera for the first ten to fifteen minutes that he was in there. The reason he did that is because he knew he was going to get wooden posturing out of the person until they got use to that camera being there. It took him ten, fifteen, twenty minutes. He'd then say I have got to change film, he would load the camera, then he'd get the kind of pictures that he wants. We haven't got that kind of time with a witness in the courtroom. We haven't got fifteen, twenty minutes. Most witnesses are on the stand less time than that. If you change the perception, those first thirty seconds or first minute

that it may take a witness to settle down, the jury has gotten a different impression from that witness than they would actually give. You have a problem with jurors, when the jurors know that there is a camera in the courtroom. Again, in the Sheppard and the Estes cases we had a situation where the jurors knew that they were being filmed, they knew that something was being broadcast. The additional pressure there was once the jurors' names were printed by the newspapers, they began getting calls from people about which way they were going to decide the Dr. Sam Sheppard case. The only thing we can do then is every time we have got cameras in the courtroom, and they are going to be running, sequester the jury -- a very expensive alternative -- that I don't favor and I don't think that simply sequestering the jury is going to take care of the impact on the jury. Finally, we have got the problem of the court. We have elected judges in this state. From time to time we have very hotly contested judicial elections. If you want to know what can happen with a judge, who is facing an election, or a prosecutor facing an election, read the Sheppard decision. The reason that they had the problems in the Sheppard case, in part, was because both the prosecutor and the judge were up for election. They began playing to the cameras. They got the additional publicity. It may have helped their election, it did not help the client. There is

some sort of argument that if we lay down enough rules, we will be able to take care of any adverse impact. That's interesting, but I don't think that the other states' experiments focus on the law in the State of Minnesota. We have an old case it's entitled Schwartz v. Minneapolis Suburban Bus Company. In that case one of the jurors on voir dire was claimed by one party had been asked had any member of your family ever been in an accident? And the juror said no. After the verdict came back, it was a verdict for the plaintiff, defendant's investigator went out and asked the jurors all about what had happened in the jury room and discovered that this one juror was claimed had lied on voir dire, when there had been an accident in the family and he said there hadn't been. The Minnesota Supreme Court in that case in a line of many cases since then has said we will not allow a losing party to go out and interview the jurors. We are just not going to allow it. We are not going to let the citizens who come in and serve be harassed by a losing lawyer. We are just not going to let it happen. That has been affirmed many, many times. There have been many cases that have come down. The last one was a case that I took up on appeal about six months ago and the appeal was similarly denied by the Supreme Court, simply because you are not allowed to go out and ask jurors what had happened. The Chandler decision the U.S. Supreme Court said

the burden is on the losing defendant to come forward with evidence that there was some effect. Now we got a problem. What is a Minnesota defendant going to do? You can't go ask a jury. At best you are going to get a hearing before the court. How are you going to prove that cameras in the courtroom affected the jury, if you can't ask the jury? That's a handicap that any experiment on cameras in the courtroom in the State of Minnesota is going to face. It would require that the courts reverse a long line of decisions that it is adhered to, or we are simply going to have part of the experiment missing and we are going to have defendants convicted who are unable to challenge that conviction because of the presence of cameras in the courtroom. We have arguments from the media again that they are responsible. We will not have the kinds of problems that we had with Estes and Sheppard and many of the other cases involving cameras in the courtroom. I would like to believe that, but I don't, and I don't for a couple of reasons. The first one is KSTP's attempt to get the Ming Sen Shiue tapes -- the nine hours of Mary Stauffer being raped by Ming Sen Shiue. I don't know why they wanted those tapes. We know they weren't going to put them on the air, but it sure would make interesting television to say that at the six o'clock news, we are going to have a portion of those videotapes. Any time you have got that type of controversial

or inflammatory evidence in a courtroom, it is going to cause some difficulties. I don't believe that the attempt to get those tapes shows that we have some type of responsibility that I would like to have if we are going to face cameras in the courtroom. Another example is the revelations that we got on Friday in the Minneapolis Star and Tribune concerning the Star's role in the Dome Stadium in downtown Minneapolis. The things that were going on behind the scene, that was not revealed at the time the Star and Tribune was backing the Dome Stadium. Thus, we get down to the final question, which is why experiment because that is really what you are being asked to condone is an experiment in the courts of the State of Minnesota. Seventeen other states are doing it. Seventeen other states are using their courtrooms as a place to experiment. They don't have the Schwartz v. Minneapolis Bus Company handicap that we have. When those seventeen experiments are over, there will be that we would hope. We will have some idea if there is a benefit or a harm to the client. Thirty-three states have said they are not going to experiment. So we can wait, we can see how those seventeen experiments turn out, and at the end we will have some evidence that we can use or not use. We have the Schwartz decision and, when you look at any cameras in the courtroom rules or recommendations that will go up, you are going to have to deal with

that line of cases -- what are we going to do with the jury? Are we going to allow them to be interviewed as part of the experiment? Are we going to continue the Schwartz line of holdings?

Final question is what do we get

Do we gain anything? And at this point there is nothing that can be pointed to that shows that a person is going to get a better trial, or a fairer trial because we are going to have cameras in the courtroom. Indeed, all of the speculation, and the nine justices on the Supreme Court that heard Estes and Sheppard all the way down to the trial lawyers of Minnesota, the people that are in there day in and day out, is we are not going to get any benefit. We are going to have potential harm, and if we have one conviction, if we have one acquittal, if we have one case that gets a wrong verdict because there is a cameras in the courtroom, we have done an injustice and that injustice simply should not happen, so that the media can get some supposed benefit. I would ask that this Commission concentrate on the person in the courtroom -- the litigant. The United States, state, the defendant, the plaintiff, or the civil defendant and concentrate on that person when you are making your decision. Thank you.

Pillsbury:

I have always asked counsel over here for the first question. Judge, maybe I should give you the courtesy. Do you have any questions you would like to ask?

Segell: He seems to share my views. I don't have any questions.

Pillsbury: Counsel for the petitioners, Mr. Hannah.

Hannah: Yes, I do have some questions. My name is Paul Hannah, Mr. Hvass. I am counsel for the petitioners for the media in this case. I want to clear one thing up at the start. We have heard a very eloquent statement by you. Would you tend to characterize that statement as your opinion, the issues involved in this case? We are listening to some speculative matters here, some speculative arguments about may or may not happen in the courtroom. I am just trying to characterize what you have been

Hvass: What you are hearing is what I have gotten out of the Estes case and the Sheppard case and the Chandler case and several other decisions. You are hearing what I have gotten in conversations with trial lawyers around the state. You are hearing some of my own views and the position that I expressed at the outset was the position of the trial lawyers and a lot of the arguments that I gave went into forming that opinion.

Hannah: Let me ask you. Have you also read the Richmond Newspapers case which discusses at some length the common law concept now with some constitutional grounding of an open trial?

Hvass: No.

Hannah: I really won't try, except to say that I believe that case says that there is a First Amendment right of the public through their surrogate, the media, to appear at the trial of the criminal matter. I don't want to, if you haven't read it, I don't want to try and

Hvass: Did that case specifically overrule Estes and Sheppard?

Hannah: I think there were discussions of those cases and the limitations of Estes and Sheppard. For example, Estes is limited simply because the decision in the case was determined by the fifth vote, which stated only that under the record in Estes it was obvious that Billie Sol Estes did not receive a fair trial given the coverage that was available. I would to you that the testimony this Commission has heard would probably indicate that the worst difficulties that occurred in the trial of Mr. Estes are not apparent today, so that, at least in terms of the physical obtrusion that was occurring during that entire trial, that is not the kind of problem we are dealing with.

Hvass: At the trial of Billie Sol Estes, not the pretrial hearing, but the trial, there was a booth in the courtroom with a camera behind it and there was not anyone moving or being seen in the courtroom during the trial process itself. I think the record is pretty clear on that. As I understand it, we are

going to have a camera in the courtroom as opposed to a hidden booth glassed in,

Hannah: That's right.

Hvass: which is probably even more obtrusive than what happened in the Estes case.

Hannah: I don't really want to argue the case. We have also heard a great deal about what it is the media will be putting on TV. I would like, again, to posit something to you. From time to time I will go to a movie or to the Guthrie and I may not like what I see there, but I am also not in a position, except by being a ticketholder, buying a ticket in the future, of changing that at all. My opinion is basically irrelevant to what the Guthrie decides they want to put on or a movie theater decides what it wants to put on. What I hear is that in your opinion you don't believe that the media is responsible enough to be given the right to place a camera and microphones and still photographers in a courtroom. Is that right?

Hvass: What you hear is that we don't know what is going to happen to that client, that accused. Unlike you or I, who can decide not to buy a movie ticket, he is in there fighting for his life. Life term on a murder one any of the other possible sentences and that is where the focus should be. I question, based on what I have seen was some of the actions

of the media whether or not they have that responsibility that they would come before this Commission in claim, but that's not the question. The question is what it is going to do to that person trying his case in the courtroom. I don't care if they sell more commercials or their viewing audience goes up or whatever else, I care about what happens to that client in there.

Hannah: I presume the judicial process is meant to take care of that client, wouldn't you agree with that?

Hvass: It is, yes.

Hannah: Wouldn't you agree that that client's interests would be served by a responsible court determining issues of law in that case. One of the issues may perhaps be the issue of whether or not there will be coverage, in a case with an individual defendant walking in the court.

Hvass: No, because as soon as you raise that issue you put pressures into that courtroom that you shouldn't have. As soon as you give somebody veto power, which as I understand it is not the proposal, you have changed what's going to happen in that courtroom. All I need to do is have a judge tell me Mr. Hvass, I would like to publicize this case and have me walk in and say Your Honor I don't want this case publicized. I have got the risk, and I shouldn't have to run the risk of all the discretion-

ary rulings going against me. That is a risk that should not be injected into that courtroom.

Hannah: Except the Supreme Court, the question of whether or not you want a case publicized in a general context, it is not your decision. The Supreme Court has taken that away from you. They have said the case will be publicized.

Hvass: It never was mine.

Hannah: Then, if the law says a trial should be open to the public and to the public via their surrogate press, and if the court is there to protect the individual defendant's rights in one case, why do we have to simply say no cameras any time? Isn't that judge going to be able to protect that man?

Hvass: No. He didn't protect Estes and he didn't protect Sheppard and Sam Sheppard spent better than ten years in jail because he wasn't protected by the court. As soon as you have that one possibility, you have gone too far. One person should not spend ten years in jail so that the press can get this claim benefit. We shouldn't even run that risk.

Hannah: If that's true, and I noticed at one point you said that the one thing you didn't like in a trial was the fact that there would be people moving around, the movement is suppose to be movement of the trial.

If a trial is open, there will be movement.
There will be people. There may be a lot of
people.

Hvass: Yes.

Hannah: There may be people in the hallways. There may
be cameras in the hallways. The kind of activity
that attends a serious criminal case. You can't
stop that, but you have already said you think
it affects the outcome. The decision has already
been made. The case is already done in your
instance. There is movement in the courtroom,
he is not getting a fair trial. That's not true.

Hvass: That's not what I said. As soon as you abject
the element of additional movement, you have somehow
put more in there than should be there.

Hannah: Nothing should be there though that's the point.
So you can't argue that, because the court said
there's a constitutional right to an open trial
held by the public.

Hvass: The court didn't say there is a constitutional right
to have cameras in the courtroom, that's not the
Chandler holding. The court said that if the states
want to experiment and the defendant cannot demonstrate
prejudice, we are going to allow it. If the
defendant were able to demonstrate prejudice, there
would be more cameras in the courtroom in Florida.

The court did not say it will be open to cameras, it said it will be open to the public, which has always been the Sixth Amendment.

Hannah: Right. That's all I am talking about. Ignore the public here, I mean, ignore the cameras. Talk about the public right to be there, the public right to be somewhat disruptive, if they want to get up and leave or come back in. Do all the things that you said change that trial.

Hvass: Yep.

Hannah: All of which is their constitutional right to do it and, if at some point you felt that that constitutional right and the right of your defendant were in direct at that point tension, you could go to the judge and say change it. Couldn't you?

Hvass: Yes, I could.

Hannah: If it were gross enough, he would change it, couldn't he?

Hvass: He could.

Hannah: If you can do it in that one case where the circumstances warrant, why can't he do it in that one case where the circumstances may warrant with a camera there?

Hvass: Let me ask you this. What benefit do I have to my client in the courtroom, because I now have to get up, have the jury watch me, go to the bench and say

Your Honor that TV cameraman is causing a problem. Why should I have to do that at all? What is the benefit to the client that that camera is there and we have now caused that disturbance? There isn't any. Therefore, it shouldn't have to happen.
(INAUDIBLE)

Hannah: The client is not at issue here at least

Hvass: The client is at issue here. That's the problem. That's why we have the courtrooms in the first place. The only reason that we have open trials under the Sixth Amendment is because the defendant has the right to a public trial, not the public has a right to a public trial.

Hannah: Again, I hate to argue the cases because in Richmond Newspapers you will find that it may be the defendant's right, but it is also the public's right. Because if it is only the defendant's right, he should be able to waive it. I presume when Ms. Grant gets up here, we will find out that criminal defendants, in most cases, would just as soon be tried in a closet. They don't want the publicity. They don't want anybody in that courtroom, in most cases, but they can't waive it.

Hvass: I understand that.

Hannah: It is not only theirs, it is partly ours. And that's a part of the system and your client has to deal with that.

Hvass: No, my client has to deal with the fact that the public can be present in the courtroom. My client doesn't have to deal with the fact that I have an added distraction.

Hannah: How much of a distraction is it going to be? We don't know, do we?

Hvass: No, that's the problem. In the Sam Sheppard case we ended up with twenty members of the press sitting between the jury and the lawyers in front of the bar. That's how far it went. In Estes we ended up with cables all over the courtroom. I don't know how far it is going to go and it is just that one time that causes the problem.

Hannah: And in point of fact, although we do have some empirical evidence of the affect of television cameras, we in Minnesota don't really know what is going to be happening to our witnesses, do we?

Hvass: No, that's the problem.

Hannah: Now I think your numbers were wrong. The latest figures are twenty-six states are experimenting in trial courts and appellate courts. In those states that have had these experiments going, for example, Wisconsin, Iowa, Florida, are three that come up too because they are close to us, one because it was the first, they apparently haven't had the kinds of problems you are worried

about because they are continuing with the experimentation and now the rules are permanent.

Hvass: In Florida when they had veto power, there were no cases televised, okay. In Chandler there was no capability to come in and show there had been an effect. In Minnesota we had a long line of cases that say I, as convicted defendant, or I, as losing party, am not going to be able to go in and challenge that result. That's a real problem. What you are talking about is having to overrule an entire line of cases purely to have Minnesota join the other twenty-six, but frankly the fact that there is twenty-six, I think, lends credence to the position that we have got. Let the twenty-six find out what happens. Let the cases come up from there. If they want to play with the rights of their parties, they can go ahead and do that. That's fine. We don't need to and we shouldn't.

Hannah: How long counsel do we have to wait? Do we now have a four year period since Florida began this experiment? How much longer?

Hvass: I don't know. As soon as we start getting some evidence either way.

Hannah: Isn't the fact that there was no evidence in the Chandler case of any constitutional violation, doesn't that show that there was no constitutional violation, or nothing that could be proved? Are we going to keep

determining this thing based on the fact that you think that somebody ten years from now may go to jail because of some lack of fairness that we can't measure?

Hvass: If need be, yes.

Hannah: How about a hundred years?

Hvass: I don't know. It may be that the human race never gets used to having a camera pointed at their face. I know that from my own experiences from videotape the first time you get a camera pointed at you, you will react differently than you did otherwise. You can look at the training ground that TV reporters go through to get used to having a camera pointed at them. As long as we have, it's not that there has been cameras in the courtroom for a hundred years, it's the fact that that witness is coming on for the first time. It's not that he has had a hundred years to get used to the idea of having a camera pointed at him or her or the defendant. The judges get used to it, the lawyers get used to it, but the jurors are new and the witnesses are new. It may be that in a hundred years we can't come in and say no you won't affect somebody the first time. If that's the problem we have got, then there shouldn't be cameras in the courtroom. We have gotten along fine, since the plains of England and the Magna Carta first gave us the right to a jury

trial, without cameras in the courtroom. We have done just fine. The system has now evolved to a point that it works very well. I don't see why we should affect what can happen until we know what is going to happen. I would strike the balance in favor of the person who is on trial who is accused or who is trying to get justice, rather than striking the balance in favor of the press and saying we don't care what happens to the client because we don't know. The balance should be the other way.

Hannah:

As representing the petitioners here, I will tell you that I do take seriously the role of the press as the surrogate for the public. I think that perhaps our difference of opinion is that, if neither of us can categorically prove to the other that there either is or is not damage to a witness or a juror, then I would opt for the balancing in favor of the public's right to have some conception of what it is that goes on in its trial courts and that right is as protected as are the defendant's rights, and both can be taken care of by a trial judge at the time on a case-by-case basis without simply having to throw the whole idea out.

Hvass:

There is nothing in Chandler in the two and a half minutes that was put on the air that indicates that the public is going to learn what happens in the courtrooms.

Hannah: Counsel, if you take two and a half minutes or three minutes and multiply it by the number of news programs a day and then multiply that by the number of days in a week and then multiply that by the number of weeks in a year, there is going to be some cumulative educational effect, I presume. Now that may be a total presumption on my part. I have no educational expertise, and I don't have anybody to come in and say that, but it seems common sensical to be able for me to say that at some point people are going to feel more accustomed to that courtroom. They are going to feel more comfortable with that courtroom and they are going to feel a little better about the results that come out of the courtroom. That may be important.

Hvass: Then I take it that your position is that the press so far hasn't been doing that by reporting in the newspapers and on TV what is going on. Because I can assure you that when clients come into my office, they have no idea what is going to go on in that courtroom and I take them over and I sit them down and I show them the witness chair and I show them where the jury is and I say this is what is going to happen. Are you telling me that the press has not done it's job so far and you somehow have to get cameras in the courtrooms to do the job better, if at all?

Hannah: It is interesting, because what the public sees from

people in the press is a reporter standing in front of the courtroom. Now if you take your clients to the courtroom to expose them to the witness chair, to the judge's bench and to see it and to feel comfortable in those surroundings and not feel so foreign and frightened by the formality, I presume, then isn't that a direct benefit of having the camera in the courtroom rather than a reporter standing downstairs on the steps of the courthouse. Someone else is seeing that witness.

Hvass: Because I can show them the picture in my office all I want. They have got to get over there and see it.

Hannah: We are obviously not going to convince one another.

Hvass: Do you have any more questions?

Hannah: I do have one other question.

Segell: Or speeches.

Hvass: Yeah, I was going to ask that.

Hannah: Are you really serious when you tell me that you are afraid that if we put cameras in the courtroom our trial judges in the State of Minnesota are going to make decisions based on the affect of that camera on their re-election chances?

Hvass: Yes. The reason I am serious about that because it

may not be something that they consciously decide they are going to do. But somewhere you are going to have that problem. I have talked to judges who are on the municipal bench and one judge in particular who had a very highly publicized trial who had people trying to intimidate his decision. When you put the camera in there and you make that more widespread, you are going to have that problem. That's exactly what happened in Sheppard. If you read the case, it is exactly what happened in Sheppard.

Hannah: If the public reads a newspaper and watches TV now, and some judge is involved in a highly controversial decision, they are going to know about it aren't they?

Hvass: Certainly.

Hannah: Presumably they have the benefit of all of the ability to try and put pressure on him now, don't they?

Hvass: Not in the same way. (END OF TAPE).

Hannah: I can't believe that the incremental amount of publicity that is caused by a camera in somebody's courtroom is going to cause Judge Segell to get fifteen phone calls in his next controversial case, because he probably would have gotten them anyway.

Hvass: That's not what happened in Sheppard.

Hannah: Counsel, that was a long time ago.

Hvass: Twenty-six years. If what you are telling me is that the camera will not have any additional exposure, what you have just told me is there is no reason to have the cameras in the courtroom.

Hannah: That's not what I told you and I explained to you the difference, but I can't see the incremental deficit that is suddenly going to occur that is going to cause all of our judges to be running out writing political speeches from the bench instead of opinions.

Hvass: That's not what I said. What I said was somewhere you are going to affect one judge and when you have done that you have affected the quality of justice in the State of Minnesota and you shouldn't have to take that risk for the client.

Pillsbury: Any further questions? Commissioner Kaner, would you have any questions?

Kaner: Mr. Hvass, I am a member of your Minnesota Trial Lawyers. I was interested in your statement to us today includes the vote of the Association does it?

Hvass: Yes.

Kaner: Can you give us some idea, how many members are there in the Association?

Hvass: Eleven hundred members. We had votes at two different annual meetings and two meetings of the Board of Governors. We had one in '80 and one in '81.

Kaner: Could you give us some idea of the proportion of the lawyers in your Association who voted against the camera as against those who voted in favor of it?

Hvass: There was one vote in favor of cameras in the courtroom out of forty Board of Governors with probably thirty other people attending in 1981. In 1980 it would have been possibly two or three. The committee report that we had come in there were some people on the committee that studied it, it came in in favor of cameras in the courtroom. At both annual meetings, I do not recall that anyone voted in favor of cameras in the courtroom out of probably 50 to 60 people minimum attending each of the annual meetings, one in Rochester, one in Duluth.

Kaner: Was a vote formally held?

Hvass: Yes, sir. We did not poll the membership as such by sending out a survey and asking for returns, that's the only thing that was not done, but it was overwhelming. In addition to that, at the Bar Convention when this question came up in Rochester in 1980, several of our members who had not been at

either of those meetings got up and spoke against the idea of cameras in the courtrooms.

Kaner: Were there any lawyers at the meetings of your Association who spoke in favor of permitting cameras in the courtroom?

Hvass: We had the editor of our news magazine who happens to lobby for the press at the legislature was in favor of cameras in the courtroom.

Kaner: Was he the only one?

Hvass: She. Leanne Burl, yeah. She was the only one that I can recall. There was not a vocal outpouring in favor of cameras in the courtroom at the trial lawyers. Very similar to the vote of the litigation section of the State Bar.

Pillsbury: For clarification, did you say the vote was just taken at your governing body, the Board of Governors, or was it taken from the whole membership?

Hvass: We do it two ways. Before we go to our annual convention, we have a Board of Governors meetings before that. We voted at the Board of Governors meeting and then went to the annual convention, so it would be a vote of the Board first recommending a position to the membership, and then the membership itself voting.

Pillsbury: And the membership did vote?

Hvass: Yes.

Pillsbury: Do you have any further questions?

Ahmann: I have one question.

Pillsbury: Ms. Ahmann.

Ahmann: In your statement you read a comment about your concern that the witnesses might change their positions or that they might be intimidated by the camera. We had testimony this morning from Dr. Hoyt who in an experiment granted one done in a more sterile setting, it was not an actual courtroom setting, found quite the opposite. When people were put under pressure that, in fact, they expanded their testimony. They were more exacting about what they were saying and the outcome of that, at least, the conclusions of that were that they were better prepared and more careful. Did you have, although you didn't elaborate on it, any information or background on how they would change? Did you have another experiment or information that would suggest this?

Hvass: I do not. I have my own results of using a video-tape camera with clients where I want to show them how they are coming across, where I will get their reaction. It is also nice to simulate a jury to some extent to throw a camera at them. What you just told me though about Dr. Hoyt's experiment is that you have changed the courtroom setting. If I had a witness who was normally glib, I am the

one that is going to cross-examine that witness and the witness would normally come in and not really care about what they said and not be exact and drop phrases. Today I get that kind of witness on the stand, he is going to make a mistake. I can cross-examine them and the jury will see the way that witness actually is. If the camera has affected that witness so that that witness is now serious and with a different demeanor, you have changed the trial. You have changed the trial for the negative because now the party that would have been cross-examining does not have the same kind of witness on the stand. So what you are telling me from Dr. Hoyt's experiment is putting the camera is going to change what happens in the courtroom, because a good witness is now less glib. Believe me, you catch a lot of witnesses who are not prepared, who are making statements. If the camera were to sober them up, you are going to change the outcome of the trial.

Ahmann: I'm not speaking for Dr. Hoyt and I'm not hear to understand his thesis

Hvass: I understand that.

Ahmann: Just what I have read and as a Commission member that, in fact, what I recall of that in re-reading it was that they were more careful about what they said. Let me ask you something to

what you just said. Did you say that you use cameras with your witnesses and do this preparatory work before going into courtrooms?

Hvass:

I use cameras with clients where I want my client to come across a certain way. I will prepare my witnesses, I will prepare my client always. Any lawyer who knows how to try cases is going to prepare their witness. They want to know what they are going to say. They want to have phrases. They want to know what is going to happen in there. I myself use a camera for my own preparation. I learned in speech long ago that you get up in front of a mirror with a tape recorder and you get ready by doing that. The National Institute for Trial Advocacy, they videotape. I went out there for training. You will be videotaped and an experienced lawyer will sit down, Bob Olafson from Mitchell in this case, and say okay get your hand out of your pocket because you are changing the way you are coming across, wear a different color, don't gesture any certain way. So I will use cameras to prepare to, in fact, change myself to be more credible or to change, you know, you'll catch a bad phrase. For example, I caught myself with one client I had always thought that he was rolling over forward after he had been knocked off his bicycle. He always thought he was rolling over backwards and

it wasn't until we had had an exchange on video-tape that we realized that there was a difference between what we were doing. It was simply a part of the preparation in using the camera. So it is done. It was done. The best example I could give you was the case of I believe it was against ITT, I can't remember the name of the plaintiff, in Chicago where they ran mock juries. It went so far as to run mock juries to work on how the testimony was done. The reason it was done was to make sure that it would come across the way that they wanted it to come across, so yes it's done, not in the actual courtroom, but in preparation. I can hear the next question coming is why don't, you know you can prepare the witness to do that then again you have changed them. Dr. Hoyt is correct you have changed them. To some extent that happens. You will prepare your witnesses, you will work on the phrases, somebody who doesn't is going to find their witnesses getting caught and that is exactly what you are able to do on cross-examination and the jury will catch that change.

Ahmann:

It also, at least, raises the question about posturing and the concern of various officials in the courtroom who have to run for election. It seems as though they polish their performance beforehand whether a camera is actually in that courtroom or whether it is other press or other means of communicating that

information.

Hvass:

I am not saying that judges are going to posture as a matter of course of the cameras being in there. When you get the right set of circumstances together, you have got a lot of pressure. I think if you read the Sam Sheppard case you will find out how much pressure can be brought to bear. There you had two competing newspapers with large headlines screaming for his indictment. You have got the kind of pressure. You have got one radio station that set up an entire roomful of equipment so they were able to broadcast live from the courthouse. When you start putting that kind of heat on, it can happen. It's not that it is going to, but the possibility bothers me.

Pillsbury:

Mr. Hvass, at the present time the media, of course, are permitted in trials. We are talking about the general situation where they are. That means that they have no books. It means that where they want to get pictures, because they don't have photographs, they do sketches and the like. I guess your position would be that the difference between say getting pictures on television or from reporters' notes and getting them recorded is a material difference that would affect the witnesses or that would affect the outcome of the trial.

Hvass:

I have been on the side of the witness testifying

with sketch artists and reporters. My brother-in-law is state senator Jim Ramsted and he had what we might call a highly publicized trial last December. I happened to be one of the witnesses in that case. Outside the courtroom as we walked in there were several cameras with the lights on all the witnesses coming and going. It was a trial of the court, there was no jury in that case. It was almost as if the courtroom was a refuge, a sanctuary where you got out of the glare of the lights and you got away from the camera and you get down to the serious business of what was going on. There were sketch artists there. They were in the back. They are not obtrusive. A still camera is much more obtrusive than a sketch artist. You can tell that simply by picking up a camera and pointing it at anybody, getting that reaction. It is also the knowledge. In a camera in the courtroom situation, are we going to know that the camera behind that box is on or off, when is it on and when is it off. If I could tell the witness, well Mr. Witness the camera is going to be there, but it is going to be off. That may make a difference to the witness, but it's there. It can be picked up and I see a material difference because you are using a camera as opposed to the sketch artist. We got court reporters and tape recorders now for the court reporters themselves to take down the information and everybody knows it and you are used to it. The witnesses are prepared

for it, but using a camera changes what is going to happen.

Pillsbury: Let me just ask one more question and I don't want you to think that it indicates a point of view. I think one of our jobs is to be what you might call a devil's advocate.

Hvass: I understand that.

Pillsbury: There seems to be, maybe there's an implication in what you say, that the whole procedure, judicial procedure, is perfect now. In other words, it is good leave it alone. Don't take a chance on changing it by bringing in a new element. Maybe an implication that you don't want to take a chance that whether the judge will sit up straighter because he knows he is on television, or wear a better looking suit, or be more careful in selection of his necktie, or that the witness in responding might be more precise, because he knows that what he says is being recorded -- all of these are potential negatives. You seem to dismiss the possibility that they might have some positive impact. I say that, I'm a devil's advocate, and I am going to ask that question. Would you want to comment on that?

Hvass: First of all, as to the idea that courtrooms are now perfect, I wouldn't go that far ever. When we make changes in the courtroom, things are done very carefully. By and large, the changes that we have seen

in courtrooms over the time that I have been looking at trials, we have had a change in the rules of evidence based on several hundred years of history of dealing with the rules of evidence. We have had changes in the sizes of juries -- from twelve people down to six. Again, that was a situation where there was a lot of debate and to this day we do not know if six person juries are giving us different verdicts than twelve person juries and in a lot of states the option has been retained, for example, North Dakota. Even though they have gone to six person juries, you can get a twelve person jury upon request, state or federal. There may be some positives. I am not saying that there aren't. There may be, but I don't see any proof today that there is. I see speculation that there might be, but I have not heard any speculation that there is going to be a positive for the client. What I have heard is that there is going to be better reporting where the public is going to be better educated -- that is the speculation that I have heard that are the benefits. I haven't heard any speculation that the witnesses are going to be more accurate in their recall and that's going to help us. I haven't heard any speculation that the client is going to get a fairer trial because that trial is under the glare of the floodlights. All I have heard on the positive side of the speculation is that the public

is going to get help. I would like to hear some speculation that the client is going to get help and see that that possibility outweighs the potential for harm. Until we get to that point, we are opposed to cameras in the courtroom.

Pillsbury: Are there any other questions? Do you want to ask a question, Judge Segell?

Segell: Mr. Hannah seems to be concerned about open courtrooms. The Richmond case indicated that courtrooms should be opened. I have never had my courtroom closed or had any occasion to close a courtroom. Have you ever been in a closed courtroom? Has anybody closed a courtroom on you?

Hvass: The only time that we have had any type of closing, I don't do much criminal work, I do basically civil work, where we have had closings is where we have had settlements that by agreement of the parties would not be put on the record. That's a private agreement and there was no requirement that the court be informed of the amount of the settlement. Somebody is coming into a lot of money, they don't want the people that like to go after people with lots of money coming in and harassing them. That has been the only situation. In the Nebraska Free Press decision I think the Supreme Court indicated that you have a very high burden to close the courtroom. In that case holding that they couldn't cutoff the

pretrial publicity.

Segell: You have read the Chandler case I take it?

Hvass: Yes.

Segell: You recall that the Chandler case does state that the press or that television media does not have a constitutional right to be in the courtroom.

Hvass: Yes.

Segell: That's directly in the case. That specific language, is it not?

Hvass: Yes, and that follows Estes and Sheppard.

Segell: In one of the concurring opinions, one of the justices indicated that the subtle capacities for mischief are still present, the same set of capacities for mischief that were there in Estes and that were there in Sheppard, isn't that correct?

Hvass: Yes, sir.

Pillsbury: Mr. Hannah.

Hannah: I just, I don't know if we will ever get any place on this. We do, in fact, have empirical evidence, Mr. Hvass, that the presence of a television camera does aid a witness in both the quantity and the quality of the recall of specific data and that's the study that Commissioner Ahmann mentioned. We also have, I know you weren't here this morning,

we have talked to a judge from Florida and may, later on, talk to somebody from Wisconsin who cannot categorically prove to you beyond a shadow of a doubt that there may not be at some point in the future a possible threat to the fairness of a trial to an individual, but who stated in general terms that in the four years that he saw the process in Florida, it worked fine. People were not afraid of the camera. He did not believe it had an impact on the proceedings in his court. It did not impact him personally and he felt that the process moved along just as efficiently as it had in the past. Now I presume that even though the judges in those states will say that it is working fine that that is still not enough for you.

Hvass: I don't think you are going to get any judge who has been on TV for four years that is going to come in and say that any of his opinions have been affected by the fact that he had a camera staring at him.

Hannah: I am not talking about opinions. I am talking about how does he feel -- is he comfortable, uncomfortable, does he notice it?

Hvass: You are not going to get that kind of statement out of a judge.

Segell: You are going to hear it tomorrow from a judge from Florida.

Hvass:

The second thing that you have got is that you have just told me, I think, that witnesses, I don't know what the study is, is it that the witnesses perceive that they actually remember more or they do remember more. Are they given the information told hey you are going to be on TV or given the information saying you are not going to be on TV, is that how it is controlled? Because there is no way you are going to get that message out to the public, that when they see an accident, or think they see an accident, that they are going to say hey I am going to be on TV I'm going to remember this scene better. I know from witness' memories and from interviewing, I don't know how many hundreds of people, that perception is going to vary entirely with the individual and the circumstances that they are looking at. You are not going to change it, because they are on TV or they are not on TV. If they think they are remembering more, you got a problem which is what I pointed out.

Hannah:

The study gave them a very short piece that they were shown or read, I can't remember which, anyway shown something on TV. Three groups -- camera present, camera behind a screen and no camera. They were told exactly the same words. At the end they were told that this camera was going to be taking their picture, that they would later the picture

would be given to show to a wide number of people and then they were asked specific questions about the information that they had received in this two minute film. The results were that those people who responded with the cameras present, knowing they were present, responded with more information and more accurate information from that piece. It didn't have anything to do with recall of two or three years ago. It simply said based on the facts they had in their head they remember more. That is all it says, but it is there and it is empirical. It is, at least, some evidence, not total speculation.

Hvass:

I do not have a strong background in social psychology, but I did have a few courses in it and what you have just described are a lot of studies that have already been made. As far as cameras in the courtroom go, I don't think prove a thing. I can ask you questions about someone who comes and speaks the same words with high authority, the same words with low authority and I will vary what I get from the people as to what they were said. Not only what they recall, but whether they agree with it or disagree with it. If someone went to the scene of an accident and there was a TV camera staring at the scene of the accident, their memory of what they see at the accident may be changed. I might go that far, but

when they are coming into the courtroom a couple years later, I don't see that the study that you have told us about is going to have any influence whatsoever, as far as recall in the courtroom. It changes the way they act in the courtroom. It's made my point.

Hannah: Well, counsel, but you yourself have said that you change the way people act in the courtroom. You prepare a witness.

Hvass: Yes I do.

Hannah: Witness walks into the courtroom prepared to act differently than he would if you had not prepared him. And you say the witness would act differently than he would if there wasn't a camera in the courtroom.

Hvass: You have gone one step further. And, in addition to that, a good advocate on the other side has prepared that witness for what I am going to ask him.

Hannah: Okay, fine.

Pillsbury: Any further questions?

Hannah: None, no.

Pillsbury: Are there any from the Commission? If not, thank you very much, Mr. Hvass, we appreciate your coming over here.

Hvass: Thank you for having me.

Pillsbury: Next one is Ms. Grant.

(MS. GRANT SWORN IN).

Just before we start this by the way, one of the Commissioners asked me about one of the cases, I think you referred a number of times to the Minnesota case of Schultz v. Suburban.

Hvass: Schwartz.

Pillsbury: Schwartz. Do you have the citation of that case?

Hvass: I do. Schwartz v. Minneapolis Suburban Bus Company, 104 N.W.2d 301.

Pillsbury: 14 N.W.2d

Hvass: 104

Pillsbury: 104

Hvass: N.W.2d 301 (1960). And there is a whole progeny of cases that follow that connotation.

Pillsbury: Thank you. Go ahead Ms. Grant.

Grant: I am Carol Grant. Again, to give you a little bit of background I have been employed for six years in the law firm of Meshbesh, Singer & Spence. My practice is almost exclusively criminal. I am speaking today as a representative of the Criminal Bar and also as a member of the Minnesota Trial Lawyers Association. I think it is particularly

appropriate for this group to consider the impact of cameras in the criminal courtroom, since we associate high publicity cases with notorious criminal cases. These cases are those in which it is perhaps most difficult to secure an impartial jury and to obtain a fair trial. Those of us who practice criminal law are very familiar with the issue that this group is considering today. I think that issue is not whether cameras are physically obtrusive in the courtroom, but whether witness' knowledge that proceedings are being televised affect their ability to participate in the fair trial process. I am positive that cameras in the courtroom would impair their trial rights. At the outset, cameras in the courtroom would affect victims. It would make many victims reluctant to come forward. The studies that have been done in Florida indicated that rape victims, for example, are less likely to make complaints. It is a very traumatic ordeal for a rape victim to testify in court. Some prosecutors have referred to the ordeal as a second rape. When these people realize that the horrorifying aspects of that ordeal are going to be aired publicly, they will become more reluctant to point the finger at the guilty party. As it is, rape victims are reluctant to come forward and many prosecutors have difficulty with victims who have initially come forward. They change their mind, they no longer want to testify after they

learn what the process involves. If we bring cameras in the courtroom, that reluctance is going to be exacerbated. Secondly, cameras in the courtroom would traumatize defendants. It is the innocent defendants that are most concerned with the impact of publicity on their cases. I am amazed at how often we are asked will this matter be publicized. This question is asked of us as defense counsel many times even in misdemeanor cases. Defendants are obsessed with the idea that the case may be publicized and innocent defendants are particularly concerned with the displaying of their good names. These are the people who would reject the opportunity to go to trial because of the intended publicity and may opt to enter a guilty plea, even if they aren't guilty. At least they will suffer their sentence in privacy. During the proceedings, of course, if the defendant opts to go to trial, that defendant would be subjected to inevitable close-ups and scrutiny of that person during the court proceedings and there is an element of indignity in that. It certainly makes the situation more of an ordeal for the defendant to go through. These defendants would be traumatized by cameras in the courtroom. Cameras in the courtroom will also make witnesses more reluctant to come forward. I am speaking about both prosecution and defense witnesses. From the defense perspective, it is very difficult to

obtain witnesses in many cases. People just don't like to be associated with an accused. And even witnesses who are sympathetic to a defendant many times are reluctant to participate in the trial process. They tell us we don't want to get involved and when the defense is unpopular or the case is going to be publicized, we have even greater problems with witnesses being willing to become involved. When witnesses know that their faces are going to be disseminated, so to speak, they believe, and I think it is a legitimate belief, that they may be subject to harassment and public pressure that they wouldn't be subject to otherwise. Now we can subpoena these witnesses, and of course that's what we try to do when we feel that a defense witness, a potential defense witness, has important information for our case. But we can't force these people to talk freely and openly with defense investigators. We can't force these people to give us leads. Many times they will simply clam up if they feel that the case is going to be publicized or they are going to gain notoriety in their community. We can't force them to identify other people with sources of knowledge and that's a very real problem that we sometimes have. Of course, people can evade subpoenas, and it has been our experience that people do evade subpoenas. If we can force them to appear, they become hostile, some of them become

resentful. People who by rights should be our witnesses, who have important information for the defense, may become witnesses adverse to the defense case because of the distortion that occurs when they feel that their testimony is going to be widely disseminated. The problem would be exacerbated with cameras in the courtroom. We also believe that cameras in the courtroom will generate anxiety in otherwise willing witnesses, people who are willing to be subpoenaed or to testify for the defense or prosecution. Even if the cameras are silent, they do convert the courtroom into a stage. The average person is not accustomed to public speaking and the very prospect of being a witness frightens almost everyone that we deal with who hasn't had some kind of public speaking experience. They are afraid about the other lawyer, the adverse lawyer. They anticipate that the other lawyer is going to be hostile, and they are worried about the cross-examination. These are true telling people that are worried about cross-examination. They are afraid that they are going to be humiliated by some kind of trick questions. You add to that an immense radio and TV audience and, once again, you are compounding something that is already a problem and that already has an impact on the fair trial process. I would be really interested in dissecting the study that you spoke about, Dr. Hoyt's study, I believe.

I am incredulous about that study because I have seen so many witnesses who will discuss a case with you before they go on the stand and they have relevant and vital information. They sound like they are going to be good witnesses, although they express some kind of apprehension about the trial process. Then they take the stand and they are extremely nervous. Sometimes they don't hear the question. Sometimes you have discussed their testimony with them, what they know, what they have heard, what they have seen and they don't listen to the question, they don't answer as they would want to answer. Sometimes they forget. There will be memory lapses or gaps as a result of their nervousness. When they step down from the stand, they will talk with you in the hall afterward and they will say I was so nervous. It was a terrible experience. It was a frightening experience. I did a terrible job. These people are honest people but they just have difficulty dealing with that situation in which they are put on the stage. What we are talking about when we speak of cameras in the courtroom is making it even more of a stage and certainly it is going to increase the problem for those witnesses. They are going to become more demoralized and frightened and unable to concentrate on questions. On the other hand, we have seen some witnesses who will grandstand, particularly in highly publicized cases. They will overreact. These are

the people that like to be actors and they are many fewer in number than those who become frightened and nervous because of publicity, but there are a few that have the opposite reaction. These people will become cocky. A lot of people will fill in memory gaps and will tend to overstatement. They will want to become the star of the show.

(END OF TAPE)

What they have heard previously, or by the commentary that accompanies the prior testimony, so certainly witnesses are going to be affected by cameras in the courtroom. There is no doubt in my mind. Not only witnesses will be affected, but factfinders will be affected. All of us know that people tend to conform their opinions to what they think others believe. Studies in the 1960's indicate that the more public a decision is the more likely the decision maker will conform his or her opinion to what he or she believes the group believes and that finding, that product of empirical research, certainly has relevance when we increase the visibility of a particular decision through cameras. I do agree with Mr. Hvass. I agree with his statement that telecasting can influence a judge's decision. We are talking here about a conscious decision necessarily, but an irresistible subconscious tendency which has been documented empirically to conform decisions to public opinion. A good example would be rulings on the so-called technicalities. A judge and all of us lawyers

realize that the public doesn't have a full understanding of constitutional law and most members of the public are adamant in rejecting decisions based on the so-called technicalities, which are, in fact, constitutional guarantees for all of us against arbitrary or illegal governmental action. But many members of the public don't realize that these protections are for them. As a result, a judge might subconsciously let evidence in a trial which should, by law, be kept out of the trial which should be suppressed because it was gathered illegally. These are some of the ways in which cameras may affect judicial decisions. Of course, jurors are going to wonder about the impact of their decisions and how their decisions will be received by the public. The juror is basing his decision on the totality of evidence, as opposed to a sixty second squib selected by some film editor. But he obviously is going to be concerned about what his neighbors will say after watching the television. How could you acquit that guy? I saw him on TV. The television broadcast certainly can lend an aura of guilt to a situation in which, after all the evidence is heard, there is more than a reasonable doubt about the guilt of the defendant. Of course, the camera in the courtroom can distract jurors. It can force them to direct their attention, whether subconsciously or otherwise, to that camera, as opposed to paying attention to

the courtroom proceedings where their attention should be. It can always taint jurors in retrial situations. It can make it very difficult to find an impartial jury after a conviction has been reversed. In a highly publicized case you have to select another jury. In one case the United States Supreme Court reversed a conviction because the defendant confessed on TV. That conviction was reversed, but because of the publicity that was spread about that confession, it was impossible for that individual to get a fair trial in the locality. One Wisconsin survey involved a murder and arson case and 59 percent of the respondents remembered that the defendant in this case was convicted of both arson and murder. It was a publicized case. It was televised. Only five percent correctly remembered that he was acquitted of arson. In such a case, if that individual would be retried, that kind of thing would be very difficult, if not impossible, to purge from the mind. All of these matters, I think, are extremely logical concerns. I think the logic behind these concerns is compelling and my own experience with hundreds of witnesses reinforces what I consider to be these very logical arguments. There is also empirical evidence that these fears are founded in fact. The Cleveland Bar Association did a study in May of 1980. They surveyed the attitudes of judges, jurors, attorneys and witnesses involved in televised court

proceedings and this is what they found. 50 percent of the jurors, 30 percent of the witnesses and 54 percent of the lawyers were distracted by cameras in the courtroom. 36 percent of jurors, 43 percent of witnesses and 54 percent of lawyers were nervous in the presence of cameras. 65 percent of jurors, 19 percent of witnesses and 24 percent of lawyers in the survey expressed fear of harm. They asked the question did you watch yourself on television? 53 percent of the jurors said yes, 70 percent of the witnesses said yes and 85 percent of the lawyers said yes. They also asked the lawyers is there danger that the television exposure an attorney would gain during trial would influence his decision and advice to a client on whether to go to trial instead of plead guilty? 84 percent of the attorneys said yes. I think the bottom line question is are the advantages of cameras in the courtroom sufficiently overwhelming to outweigh these disadvantages, the prejudicial impact. I don't see advantages to cameras in the courtroom. I certainly think that freedom of the press is important in our society. It is very important, but freedom to report isn't the issue before this group, because journalists are free to cover trials and the public is free to attend trials. The public's need to know is thereby satisfied in a respectful and dignified manner. I think that is the compelling point. I believe that there is nothing to be

gained and there is everything to lose by having cameras in the courtroom. Do you have any questions?

Pillsbury: Mr. Hannah.

Hannah: Ms. Grant, the study that you discuss from Wisconsin that was by Mr. Kermit Netteberg, is that correct?

Grant: I don't know.

Hannah: I think that was the author. I hope you will take my word for it. The study also ended up by saying that he found a substantial jury pool, 40 percent of the population, in two small towns in Wisconsin, which had no knowledge of that trial at any time and would have been consistent and subjected perfectly believable jurors in a second trial, although there was some difficulty with the question of whether or not the woman had been convicted of one or two crimes.

Grant: I am sure that that statistic would vary depending on the notoriety of the trial. In the Caldwell murder case, of course, in which I had the privilege to participate, the jury selection process took one month. Of course, that was very expensive and very time consuming and very arduous and virtually everybody knew about the Roger Caldwell case. There were a lot of misconceptions regarding Roger Caldwell, and those misconceptions were on a variety of subjects, but this kind of pretrial publicity the more widespread it becomes the more difficult the

situation becomes for the trial lawyers and for the clients to get a fair trial.

Hannah: I am talking about the retrial question. We can maybe get back to the initial pretrial publicity problem. But 40 percent of the population never having heard of a lawsuit, never having heard of a criminal case, is a fairly substantial number in terms of having a resource pool available should the case come back having been overturned on appeal, isn't it?

Grant: Once again, I can't attach much significance to that figure because cases vary in their notoriety.

Hannah: I am just talking about those cases. You cited it to say that 59 percent misunderstood what she was charged with and I said 40 percent of the people in the survey didn't even know she existed.

Grant: I guess what that says to me is that the public's desire to know via television may not be as compelling as advocates of cameras in the courtroom would have us believe.

Hannah: No, doesn't it tell us in that case that 40 percent of the population was available as a jury pool untainted by any knowledge of the first trial, even though it had been televised? That's all I am asking.

Grant: The reason that I have problem with your implication is this. What you are doing is you are eliminating

the people who watch the news and who read the newspaper, the people who supposedly are most informed and most intelligent. I hate to eliminate those people from the jury pool. I would accept your conclusion with that caveat, but it is an unacceptable conclusion to me.

Hannah: Okay, we will move along. The Cleveland Bar Association study that you cited any five percent of the lawyers in that study said a number of things. I believe that they were nervous, that they did notice the camera and are you aware that the total number of lawyers comprising 85 percent of the total population of the lawyers in that survey, was 14?

Grant: No.

Hannah: Ms. Grant, have you ever been in a trial with the camera present?

Grant: No in the courtroom, but certainly I have been involved in some highly publicized proceedings, yes.

Hannah: But you have not been in a courtroom.

Grant: Yes, I have actually. In the Minnesota Supreme Court.

Hannah: Let's talk about a trial courtroom. You have not been in a trial courtroom in a proceeding with cameras present?

Grant: No.

Hannah: So that when you say that you believe that a judge will have an irresistible subconscious impulse to rule on a constitutional technicality in some way other than the correct way, we are hearing our opinion aren't we?

Grant: I cited studies that were done in the 1960's indicating that human beings have a tendency to conform their decisions to what they believe the majority opinion is. From my study in persuasion and psychology when I was going to college, of course, I think that that is axiomatic. Judges are no different from the rest of us. They may try to purge these thoughts from their minds, but I don't think it is humanly possible. I certainly am not questioning their integrity in their attempts to do what is best, but there are certain human motivations that are common to all of us and I can't exclude them from the general population. I don't think they are an aberration.

Hannah: Isn't the law meant to inform a judge of the proper conduct as opposed to his view of public opinion, subconscious or not?

Grant: I guess that I would have to laugh at the conclusion that judges aren't influenced by their own human tendencies, their own biases, everything that is the product of their upbringing, their own

preconceptions, their own prejudices. We all have them. They influence all of our decisions and I couldn't accept the conclusion that judges aren't influenced by these things too. Try as hard as they might to put them aside.

Hannah: I take it I can't say it is your position that the judge will not be influenced by emotional, editorial tirades about a particular violent act that occurred in the community, or discussions in neighborhood parties where he is, or discussions at the place where he eats his lunch, but that suddenly a camera in a courtroom will throw him over the edge and he will be subconsciously running around letting everybody out of every place or putting them back in depending on what he sees public opinion to be. That's not how you are characterizing

Grant: We are simply talking about exacerbation of an undesirable influence.

Hannah: And we can't measure it at all.

Grant: I can't measure it.

Hannah: You haven't been in a courtroom with a camera, so haven't seen it in action, haven't seen a judge do that.

Grant: I have not had the opportunity to see it, and I am glad for that.

Hannah: You haven't seen witnesses who are sitting in a courtroom with a camera present.

Grant: I have seen many witnesses who have been traumatized by the presence of cameras outside the courtroom. It is a terrible experience for them.

Hannah: What if we try to get rid of most of those cameras outside the hall and put just one little one in the courtroom?

Grant: I would prefer not to see any cameras. I don't think that the issue before this group is banning cameras outside the courtroom, but I don't like the impact of those cameras on the litigants either. It is terrible. It is a terrible thing to see.

Hannah: If it was only a question of what would be best for your clients, specific defendants in criminal cases, you would probably have to say it would be in their best interest not to have anybody around the courtroom until they wanted someone to start to portray the exercise of power by the court.

Grant: As an advocate, I think my position is consistent with my duty as an advocate, but I think it is also consistent with my duty as an officer of the court. I would like to see justice done. That's why I spoke about victims and prosecution witnesses, as well as defense witnesses.

Hannah: I know, but the question was, I mean, you would

rather not see cameras at all or newspaper reporters at all.

Grant:

I would certainly draw the line regarding newspaper reporters, but I think we are talking about freedom of the press. The visuals and the substance I think a distinction must be made and that is where I draw the line. The substance -- great. The substance of the testimony, the newspaper reporting I could never object. That is one of our constitutional guarantees. The visuals are frosting on the cake and I still don't know of any benefit to be achieved by these visuals. I have not heard of any benefit. I have not read of any benefit, but I do think, as I said, there is a compelling logic to the approximately eight disadvantages of having these visuals, these cameras in the courtroom. I think the cameras are the most aggravated form of the visuals and, for that reason, I am most strongly opposed to them.

Hannah:

Not wanting to see any of them around any place I could understand why arguments about our benefits would probably not have convinced you. They may be good, but I don't think they are that good. I don't think the Supreme Court would agree with your view of the First Amendment protections for newspapers and not other news media.

Grant:

I am not saying not other news media. I am talking about the distinction between a picture illustrating

the news story. I hope not to discriminate among the news media.

Hannah: You are not convinced by the experience in the twenty-six states who are now experimenting that no major problem seems to be arising. That doesn't convince you that this is something that we should look at ourselves.

Grant: The very fact that you use experimenting indicates to me that there is no conclusive proof.

Hannah: No, it indicates they are experimenting.

Grant: Right, and until those experiments are resolved, I certainly have an open mind. If those experiments once resolved indicate that there are substantial fair trial benefits to be achieved by televising these proceedings, then I would be the first to change my mind.

Hannah: Or free press benefits, or First Amendment benefits or benefits to the public, not just fair trial. We only have to show there probably aren't any fair trial detriment.

Grant: My understanding is that as important as First Amendment rights are, when there is a collision with fair trial rights, there is elasticity in those First Amendment free press guarantees in that they must yield to the right to a fair trial. That is my understanding of the law.

Hannah: We won't probably agree on that totally either. I guess I have said it before. In a way it saddens me to see that so little is thought of the people who make up the judicial process and the people who are going to perform public functions in this state that they somehow can't rise above the presence of a fourteen inch by nine inch camera and I understand the arguments. I obviously don't agree, but I appreciate the amount of time that you spent. Thank you.

Grant: Thank you.

Pillsbury: Have you any questions?

Kaner: Ms. Grant, I am sure you are aware that among other things the media people have claimed that the benefit to be derived generally from allowing cameras in the courtrooms is that, among other things, it will educate our people generally about the judicial proceedings. It may very well generate a greater respect for the courts and for our legal procedures. That it may, among other things, make more accurate the reporting to our people generally of what goes on in the courtrooms. In other words, they will have a natural picture of what goes on which speaks louder than any number of thousands of words as to what is happening. Those are among the things that they claim are the benefits of allowing cameras into the courtrooms.

Do you see that there are actually any of those benefits that are visible to you?

Grant:

The reason that argument baffles me is because it seems that those are the benefits of having open trials and having reporters in the courtroom. I don't see them as being derived from cameras in the courtroom at all. This argument doesn't strike me as logical at all. I think that there can be distortion in any kind of media coverage because it necessarily is truncated. The public can't appreciate why certain rulings are made after watching the television for a brief period of time, two or three minutes. One note that I made, which I thought was extremely interesting, was again a note from a study and this is what I wrote. In the most sensitive area of citizens' rights, the area of crime reporting, the media work closely with police and generally follow what one survey of research calls the police version of the crime. That is quite disturbing to criminal defense lawyers. Most studies agree that crime news generally gives a misleading and prejudicial account of the frequency and nature of crime in a community. Now to the extent that these flaws exist, they are going to be magnified with cameras in the courtroom. To the extent that there are benefits, I think those benefits are all derived from the presence of reporters in the courtroom, not

from the presence of cameras in the courtroom.

Kaner:

Their claim is that the cameras show a much more accurate view than a reporter who sits there and gives you a news version which is affected, to some extent, by his judgment. In other words, you get a firsthand view of what the camera produces as against a secondhand view of what the reporter produces. Is there any sense to that?

Grant:

First of all, I think people tend to focus on superficial things. In speaking with some news people they are bothered by the fact that a lot of their feedback involves the way they are wearing their hair, or what kind of a suit they have on, things that they consider to be irrelevant to the substance of what they are doing. I think that phenomenon would accompany cameras in the courtroom as well. But, secondly, unless the coverage were prolonged, and it is not going to be prolonged except in perhaps the most unusual situation, there still is a great degree of selectivity. I am sure that the kind of things that would be reproduced and broadcast would be the devastating cross-examination or the witness breaking down, whereas perhaps that witness was later rehabilitated or there was a reason that the audience would not know that the witness broke down. It has to be selective and the impact of the visual medium is great. It is greater than the impact of any other

medium, so that selective impression is the one which will be left with the viewer and that may not be an accurate impression.

Kaner: The selective impression is there when the reporter reports it too, isn't it?

Grant: Yes, but I do think it is magnified with a camera.

Kaner: I think that's all.

Pillsbury: Any more questions?

Ahmann: Yes.

Pillsbury: Ms. Ahmann.

Ahmann: Just a little bit of a follow-up to that line of questions. Your imagery of the courtroom as a stage occurring only when the camera is turned on the courtroom was one of interest to me. We have been told here also that a large percentage of the public get their information through television and the electronic media. I mean whether we would agree with that is the only, or best, or whether we should get our information from a variety of sources that, in fact, on surveys this is where the general public is getting their information. Should the decision be made that no cameras in the courtroom, aren't we cutting off a lot of people who view that as a vehicle for their information, and are we not just then continuing a situation where the public is not as well informed as they

should be. As Judge Kaner pointed out, they are getting their information secondhand on what I would think is a very complicated situation, the courtroom setting.

Grant: You are right that the TV medium is the popular, most popular medium, and a place where most people get their news. I suspect though that the reporting will be basically the same whether it is illustrated by moving photographs or by artist's sketches. It is difficult for me to see how the reporter is going to be saying anything different, or that the length of the broadcast will be different. The meat of what has happened is being transmitted right now. I think that the press certainly does an adequate job in many cases of being present at these trials and reporting on these trials and certainly they have the opportunity to do that in any trial. I think that what they are doing is certainly adequate and it fills the public's need to know. What more we need I don't see and given the dangers of cameras in the courtroom I don't see how whatever advantage could be postulated could outweigh those disadvantages.

Pillsbury: Judge Kaner, do you got some questions?

Segell: I'm not Judge Kaner.

Pillsbury: Judge, I am into trouble with names today. I meant, Judge Segell.

Segell: You say that you had some experience in the Supreme Court.

Grant: Yes.

Segell: Was that on some criminal matter?

Grant: I have appeared before the Supreme Court many times. A few of those times, I believe, have been televised. One would be the Marjorie Caldwell murder appeal where we were attempting to foreclose civil litigation, a duplication of that criminal trial. I was there with Ron Meshbesh.

Segell: Did you happen to observe what was shown on TV following that appearance?

Grant: Yes, I did.

Segell: Did you think that what you saw on TV added to the public's perception of the Supreme Court and what they do?

Grant: No, not significantly. As I recall, they basically showed backs and profiles of lawyers at the podium and what the public got was what the reporter was saying.

Segell: In other words, they didn't show what was said by the lawyers.

Grant: No, I don't believe that there was a vocal accompanying the visual. I believe that the vocal was the reporter's vocal.

Segell: Then just some silent motion picture or a videotape of what supposedly transpired there.

Grant: I believe, too, although this occurred sometime ago, that the selection of the visuals was arbitrary. For example, they would photograph a justice when there was no argument occurring and the justice might be writing on the pad, and then when they showed it for TV, it might appear to the viewing audience that argument was occurring and notes were being taken. They would photograph the lawyers arguing less important points of the case. It would appear from the broadcast that they were arguing their most critical point at that juncture, but there was no significant correlation between the visual and the substance.

Segell: Did you appear in any other cases besides that Caldwell case before the Supreme Court where there was television?

Grant: Not before the Supreme Court. That's the only one I have been involved in to my recollection where there was television. Most of my experiences with television have been in the trial situation, where there have been cameras ready to pounce. Actually I guess I recall that there have been cameras outside the courtroom. I think it was on the Donald Larson case. It is so long ago, but I guess that when I argued the Donald Larson

murder case before the Supreme Court, I think there were cameras right outside there too. Only at that point they weren't allowed in the Supreme Court, they were just allowed outside. So I have to admit it was a little unnerving to walk out and then all of a sudden there were all kinds of cameras. I am sure that a witness feels that many times over because I have had the opportunity to be in a situation where the media are present. I feel a lot more comfortable with it now than I did initially, but a witness isn't going to have that second and third and fourth chance.

Segell: There is still an absolute ban, as far as television cameras and still cameras, in all federal courts in this country, isn't that correct?

Grant: To my knowledge.

Segell: You can't even go into a federal courthouse with a camera, isn't that correct?

Grant: Correct.

Segell: That includes all of the district courts, all of the United States district courts, all of the United States Circuit Court of Appeals and the United States Supreme Court.

Grant: Yes.

Segell: As a matter of fact, you couldn't even get into the

Supreme Court with a camera to show the swearing in of Sandra O'Connor, isn't that right?

Grant: Um-hmm (Yes)

Segell: That's all.

Kaner: I probably should have advocated their rule for that occasion.

Pillsbury: Ms. Grant, well I think more than one of our witness, but certainly one witness, Professor Hoyt who was here this morning, made a study in Wisconsin and participated in and had a survey after the rules had been changed. Made the point that he believed all that had occurred, I think I say him stating this correctly, in Wisconsin (INAUDIBLE) had the cameras in the court it tended very much to cut down this. Because of the rules that the court can adopt and the restrictions, the decorum which the rules would require in a court, it really is much better. Makes for better order this way than to have to run that gauntlet either outside the courthouse or outside the courtroom. How would you feel about that?

Grant: I think witnesses are going to be very nervous either way, but I would rather have them from a fair trial perspective be nervous as they are walking in or out of the courtroom than while they are testifying because that's where I think you have the impact on the fair trial.

Pillsbury: His point, I think, was not, just to highlight a little bit, that in the nature of things the judges and the court rules don't have any jurisdiction to restrict the activity outside of the courtroom, whereas they can and do inside the courtroom and, therefore, this would make for a much formal proceeding.

Grant: As far as the court's jurisdiction goes, I guess I would simply refer to what Judge Segell said about the federal courts, there is some ability there and when the press activity reaches the point of impairing fair trial rights, I would think the court may well have jurisdiction to do something about it. I know that there are ethical rules and so on which govern what lawyers can say to the press and what they can't talk about. It seems to me that, at some point, restrictions on what happens outside the courtroom may be warranted for the same reasons restrictions on pretrial publicity are warranted.

Pillsbury: Are there any further questions?

Kaner: Nothing further.

Pillsbury: Counsel has one.

Hannah: You have now been in the Supreme Court at least twice -- one when you said you walked out you were quite startled because there were all kinds

of cameras right outside the courtroom, second when there was television coverage of the matters inside the Supreme Court chambers. Were you startled when you walked out of the courtroom that time because of all the cameras on the outside?

Grant: Now what time are you referring to?

Hannah: The second time. Caldwell case. Coverage inside the courtroom. Were there lights and cameras and confusion outside the door when you left that time?

Grant: I believe there were. I believe that there were numerous reporters that followed us down the stairs and asked us questions and so on.

Hannah: Did you see the complete argument that was telecast by some of the local stations on the Reserve Mining case?

Grant: No.

Hannah: When cameras were first allowed in the courtroom?

Grant: No.

Hannah: I presume you weren't testifying that you have never heard a lawyer speak or a judge speak in a TV piece done on the Supreme Court proceedings here since 1978, were you? You weren't testifying that you have never heard anybody talk on the air, were you?

Grant: No.

Pillsbury: You are talking about the Reserve case. You are talking about the hearing in the Supreme Court.

Hannah: In the Supreme Court. Have you ever seen other than our TV work on Supreme Court proceedings, have you ever seen any televised courtroom, trial courtroom, proceedings at all?

Grant: I have just read about them.

Hannah: You don't remember seeing anything on the Carol Burnett case, for example, a couple of months ago or the Scopes trial in San Diego eight months ago, nine months ago?

Grant: No.

Hannah: You, I presume, haven't seen, we showed the Commission a tape done by a news organization in conjunction with the ABA. You have never seen documentaries done on how conciliation court works, have you?

Grant: I guess I understand what you are driving at and my response to it is I presume that some, if not most of the authorities that I referred to in my constructive presentation, have seen these broadcasts.

Hannah: No, I am simply talking about your opinion about what it is you will see sometime if we get into the courtroom. I am just trying to point out that

there are some programs that you have not seen that have been produced that may not have been exactly the way you describe your idea of what will occur.

Grant: I have to say that's possible.

Hannah: Good. I would hope so. What you were telling us, when you were describing the two minute coverage, is what you think may happen?

Grant: Based on my experiences, yes.

Hannah: Based on your experiences, but we have limited your experiences somewhat. There are some things you haven't been able to look at because, you know, we have been showing the Commission, you weren't here that day, that's all I'm asking you to acknowledge.

Grant: I have seen months, if not years, of days of reporting involving the courtroom artists and I think that we can draw some logical inferences from the manner in which these matters are covered which would be applicable here. That's what I am doing and that's all I can claim to be doing.

Hannah: Fine. That's all I was going to ask.

Pillsbury: Any further questions, Judge Segell? Any others from the Commission?

Kaner: Nothing further.

Pillsbury: Thank you very much for coming and helping us out today.

Grant: Thank you.

Pillsbury: That seems to be all of the witnesses we have today. We will convene tomorrow morning here at 9:30 and we will have a couple of witnesses from Florida, Judge Sholts and Mr. Hirschhorn.

Segell: May I say something about Mr. Hirschhorn at this time? He is trying to get out on a plane at 11:30. I don't know how long his presentation is going to be.

Hannah: It will be short.

Segell: Pardon.

Hannah: I said based on all the time we may want to talk to him, I hope he keeps his presentation short.

Kaner: You mean he wants to get out of here on a plane at 11:30.

Segell: He was going to try.

Kaner: Why don't we take him first?

Segell: We have shifted him around. I have talked to Deb about that, but even with the shift

Pillsbury: Excuse me, I didn't see that. I stated that in the wrong order. She has changed the order on here. When I made the announcement, I neglected to see that. So that Mr. Hirschhorn will be on first.

Regan: Right.

Pillsbury: So that should solve the problem.

Segell: I don't mean to be pushy, but if you could start promptly.

Pillsbury: The two non-Twin City Commissioners are here in town, I think.

Ahmann: This Commissioner also has to make a flight, so I will be prompt and expeditious.

Kaner: I will be here at 9:30.

Segell: That's really what I was talking about.

Pillsbury: What is it they say in the Arab countries, I will be here too, God willing.

(END OF OCTOBER 12, 1981 HEARING).