No. 81-300

STATE OF MINNESOTA

IN SUPREME COURT

In Re

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

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

Petitioners.

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

Transcript of Commission hearing held on Tuesday, October 20, 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.

Pillsbury: I saw that we are getting kind of friendly and perhaps a little interested in each other. I think it would be for me to say as the first order of business that our fine clerk here, Deb Regan, since you saw her last has become a counselor at law. She passed her bar exams, and if you see a big smile, that's the reason. I think that is very nice. She is married and her husband is a lawyer and he passed too, so there is all kinds of reason for pleasure and joy. She hasn't been sworn in yet, but otherwise everything is fine. Is that right, Deb? To get to business we have here a final agenda and witness list. There are two additional witnesses on the list, former Governor LeVander and Ms. Marjorie Burton of the Sexual Offenses Services of Ramsey County. Both of these people got in touch with me sinee the last hearing and asked for an opportunity to appear. Even though we had a deadline for witnesses, the theoretical deadline of September 10, it seemed appropriate to give them an opportunity. I checked with counsel for the petitioners and he had no objection so that they are on the list today. We will start with the first witness who is Judge Rosenbloom, District Judge of Redwood County. Deb, will you swear Judge Rosenbloom in? We got kind of

turned around these days. We swore in the judges and the attorneys.

(JUDGE ROSENBLOOM SWORN IN.)

Rosenbloom: Good morning gentlemen and ladies. I am Noah Rosenbloom. Your secretary returned me ten years back in my life to Redwood County because I now live in Brown County and have since the '60's. I am, however, here during a recess taken for the purpose of coming here in a trial being conducted at Redwood Falls, so there's some colorable compliance with your prediction. I am here out of my interest, and I am sure of the concern I share with all of you to protect and, if possible, improve the trial process in our trial courts. I must confess to some trepidation particularly as my schedule became congested. I seriously wondered whether I ought to take the time to come here today, because I am trying a first degree murder case. I finally decided I would for two reasons. First, I believe, I do not know that I am the only out-state judge you have heard from. If I am wrong, I stand corrected. Second, I have a particular interest in courtroom arrangement and certain of the nuts and bolts of courtroom procedure, which, if they are perspective, you perhaps may not object received from other comments you have heard. I speak from eighteen years now on the trial bench as a district judge. Four or five years before that, as a parttime special municipal judge.

I would like to speak first of all to the general issue -- what is a trial? Over the recorded history of which we are aware, I believe trial has varied from such things as what we would call an ordeal, often conducted in private, the star chamber sort of thing, sometimes gruesomely so, in public. Sometimes it was a political drama -- celebrated trials in ancient Greece. I am thinking of the trial Socrates particularly were, really political events. We have had some of those more recently in Western history also. A little later in history, but before our procedure really evolved, trials were conducted sometimes by combat. Sometimes all of this was combined with a public spectacle for public edification. I suggest to you some of what went on in the coliseum in ancient Rome had elements of this. All of us, I am sure, are glad those days and procedures and brutalities are far behind. We have most significantly down the road ford what I believe a trial ought to be -- a rational, undisturbed search for the truth with an associated judgment process. As we made that movement, among the things we did were to eliminate the persons who were interested in the outcome and playing a part in the decision making. For example, we excluded witnesses from juries, although originally they complied. They were the major components among the jurors. We eliminated physical ordeals -- compelled

testimony, combat, all of these things.
Most important, we moved the sight of the trial from the center of public entertainment and combat to a place remote from the market or other turbulent place where the controversy arose -- that's what a courtroom is. The public aspects we have and desirably so retained. It is deep in our tradition that trials be public. But in present concept, public has never meant public without limit. We do not, though we probably have the capability, conduct trials in Memorial Stadium for 45 to 60,000 people. We do not build courtrooms to meet all conceivable numbers of people who may wish to attend. I recall in my lifetime a judge who was ultimately defeated conducting in my general area a trial in which the courtroom was not large enough. In which he rented a movie auditorium nearby and piped in the sound from the trial, so that he could accommodate everyone who wished to come. I suggest to you the public resoundly rejected his approach to it. He was defeated at the next election. I don't think the public wanted that kind of public trial. There are things in which we still have a way to go.
It is my belief that the more conventional courtroom arrangement, for example, still speaks if you think about it symbolically. More to a spectacle a presentation for the spectators than to the requirements of a rational search for the truth. What am I talking about? Picture yourselves as spectactors

in the conventional courtroom. You will see in a place of prominence,probably in the center before you,the bench and the associated staff utilized by the court nearby. Then to one side you would probably see,equally visible from where you are, the jury box and probably in between you will see the witness stand. Counsel will be probably on either side of a single table, because there isn't any other place to put them by the time you arrange the other participants in this mold. Which of us as trial lawyers, to start with the things that are wrong with our arrangement, hasn't recognized the need to get to the "good side" of the counsel table before one's opponent is there? Nobody likes to try cases with his back to the jury, and yet that arrangement requires it. What about the placement of the witness so close to the jury that he unconsciously modulates his voice to accommodate the fact that he would not seem to be overpowering them. Something we all learn as we grow up and which proceeds psychologically without our being conscious of it. In other words, proximity of witness to court to jury is seen as something to facilitate hearing, but it may, in fact, produce a contra result by reducing the volume of output from the witness stand. Worst of all, in that arrangement invariably the witness is in the line of sight to the judge or put it another way. The judge is the background seen by jurors attendant

to the witness as they should be. That means that the judge, by his reaction no matter how well moderated and restrained, is telegraphing some degree of response to what's being said to the jurors without their being necessarily aware of it. Movie people understand this very well. I had not thought of the concept until I read of a criticism of courtrooms by somebody who had to do with making movies. They spend a lot of money to create the backdrop because they know what an impact it has on the viewer's perception of the main business at hand. In our courtrooms, we don't consider it at all. Now there are some fairly simply fixes that can be adopted to change this. One mode that we have adopted in several courtrooms in my area have been to put the sight lines at right angles, so that the jury looks directly at the witness and counsel look directly at the court. Here is the point. If we suddenly now bring the needs of media into that courtroom, then the considerations that led to the old arrangement again become perhaps paramount. I would not like to see us take that step backwards to accommodate that interest. I believe that in the proposal which is being made and out of which your proceedings arose that could be one consequence. I have come in my thinking to the thought and feeling that media have the same rights as any other member of the public, but no more. Perhaps I would stretch a point in this I think that in any courtroom setting

in which sitting is restricted by the press or people who would be admitted, the reason should be made to assure media access, because, in that sense, they do represent the public and its interest and right to know, but beyond that I would not go. I have in my own courtroom provided within the bar, and I have been criticized for this by my brother judges who think that it is not appropriate, seats at which media print media can sit and write, because I think they should have a place where they can see and in which they can have a suitable arm -- you know, a fold down thing like in a classroom -- which they can note down their notes. I do not see that it is disruptive. I would not have any problem with a change in our standard which would permit any member of the public or of the media to come in with an unobtrusive 35 millimeter camera, if it could be shot in natural light or the available light of the courtroom ambiance. I would not want to see an increase in courtroom lighting specifically to serve those means, because then we run head-on into the things that could be done to improve the courtroom situation. For example, one of the things I think we can and should do and are all starting to do is to make use in the courtroom of something that schools have used for a long time -- overhead projectors. That requires dimming facilities in the overhead lighting. Now surely it should not be a consideration under those circumstances that

somebody no longer is able to use his camera or electronic photographic equipment, because that would impede the practical operation of the trial. I am concerned at something of which I know no study. I believe there has been some studies of impact of courtroom media, particularly electronic media coverage on the participant, particularly witnesses and the like. I know of no study which seeks to essay the impact of that kind of exposure on the availability of people to come to court. By definition those are the people who don't let you know about them, because they don't want that exposure. Any lawyer in out-state Minnesota knows that the biggest problem he has in preparing the case often times is getting people who will be willing to talk frankly and open to him in the first instance, because they fear the second step which might be the need for them to come to court. I am quite certain that the numbers of such people who would be reluctant to talk to investigators or lawyers at all would be significantly increased if we had electronic exposure in the courtroom that they might ultimately have to attend. There is, of course, a significant exception -- some people seek exposure. Would it help the inquiry trial process to increase the numbers relatively speaking of such people among the witnesses with whom we must deal? I am concerned by the possibility. Let us put the increased likelihood, if there is electronic media in the courtroom to protect the fair trial

process by sequestering the jury. Some courts have recently spoken to that, I think rather cavalierly, in the sense that it is sort of talked off as of a side that, of course, we can protect the trial because we can lock up the jury. By what right do we impose on volunteers, correction citizens, who to the extent they do not try to evade it, are compelled to come to court. A species of confinement which may very well not be visited upon the direct participants who after all in some sense ask to be there by the conduct antecedent to the proceeding. I think that is a serious consideration not spoken to in case law of which I have knowledge, precisely because jurors rarely bring lawsuits. Litigation regarding jury composition speaks to the character of the jury, that is what is among its component elements, not to the concerns of people who would prefer not to be there. I think it would be a mistake to draw analogies from other types of public proceeding, for example, this hearing. More particularly, legislative hearings which are probably most usual use of this room. Coverage of legislative bodies in themselves seems to me is not a very good comparison. All of those types of proceedings, in some sense, are not only public as they should be, but they involve quasi-legislative functions in which it is intended that those making the decision represent and be influenced by the public at large, unique in our decision making process in this country. In the

courtroom there is no substitute for that judge and that jury and no amount of community interest can be permitted to properly impact upon their judgment to whom solely and for the purpose of that issue the entire community delegates the process. That is, I think, a distinctly different dimension to the problem we face. Now I have a few closing observations that I would like to share. I have looked through the proposed guidelines that are appended to the petition that started this whole proceeding as I understand it. I am struck for the reliance in a number of things -- arrangement of lighting, positioning of cameras and the like -- and all of this assumes that some such relief is granted the petitioners, the trial judge's control of the ambiance of the courtroom is seriously impeded, if not dispensed with as to those aspects. I do not think we should do that. However important and serious and thought reaching the responsibilities of a chief judge of a district for the trial at hand, he's not the man. The man on the bench is. Nobody but him has the responsibility for assuring the fairness of that trial. Nobody sitting down the hall in another office or across the district, as it would be where I serve, can make the kind of judgment he can and must what the circumstances require. Therefore, whatever arrangements are made, it seems to me must be left to the trial judge. Permissive, yes, but his must be the judgment, subject to the kind of review provided

for in our procedure on all other types of matters, if someone has a grief. I have already mentioned I would not like to see lighting increased even though not at public expense to accommodate media interest that might interfere with our ability to use other types of equipment, for example, overhead projectors and the like. I have some concerns for integrity of the record, although these are not primary ones. If we permit simply voice recording in the courtroom, we do open ourselves to the type of controversy as to what the record actually is and what is an authentic record that may, at least, add to our burden of litigation to make factfinding decisions on that, and, at worst, impune the integrity of the proceeding. I would think then that if we permit that kind of thing we should do it on the basis of letting the single recording, now mandated in all our criminal proceedings, by the court reporter. I don't mean his steno tape, I mean the backup tape recorder he must have, and perhaps add that on the civil side, so that everybody has the same tape, and there is no argument. I call to your attention one serious consequence of electronic media coverage of criminal trials would be the wholesale violation of 631.04, which is on the books, which provides that persons under 17 in Minnesota cannot be present at criminal proceedings without a discretionary order by the presiding judge. That legislative policy is applied in my court. It would be violated wholesale by electronic media

coverage, or, if the legislature could change its mind on that, but until they do, I do not think we ought to authorize a wholesale violation of it. What types of court proceedings could be covered without any problem? I have no difficulty with such coverage as is going on here now. I would not think any appellate proceeding would have any problem, nor do I think any proceeding which went forward, say in the final stages of a trial I am thinking of final argument. I wouldn't see any problem with that. I wouldn't see any undue impact on the jury from that, nor would I see any problems for witnesses or other participants. But beyond those backs in the door, if you like, I would not change the existing rule. Now I have spoken a few minutes longer than I intended and, if there is any inquiry you would like to make to me, I would be very happy to try to respond.

Pillsbury: Thank you very much Judge Rosenbloom. Would counsel for the petitioners like to ask some questions?

Hannah: Given the fact that we are pretty tight this morning, I don't have any burning questions.

Pillsbury: I think we are pretty well on schedule. All right, if you have no questions, would you like to ask a question, Judge Segell? Would some of the Commissioners like to?

Kaner: I have no questions.

Pillsbury: I might just say one thing, Judge Rosenbloom, you are correct that you are the only out-state judge who appears here, but perhaps I should at this time under these proceedings persons were permitted to file statements instead of appearing, and we do have some statements, both for and against, from some other district judges who are not here. Some of them are from judges who are out-state, so that there is some representation in that area. I might say, I don't know whether you are aware of it, we, in our first two days of hearings, had hearing in a courtroom in Ramsey County Courthouse and the second day in a courtroom at Hennepin County Courthouse, and the one purpose was to see how the courtrooms, how it worked out and how the lighting was and so forth. We were able to hold those proceedings without any difference in the lighting. I should say that I am sure that Judge Segell could hardly wait to tell you that we were first going to go to his courtroom, but we found that he seems to have dark mahogany walls and lower lights, so we were unable to use his, so it is true that not in every courtroom would there be no promise in that regard. Thank you very much. I appreciate very much.

Rosenbloom: Thank you for letting me come.

Pillsbury: Governor LeVander, excuse just a minute, until the clerk, Deb Regan, is going to swear you in.

(GOVERNOR LeVANDER SWORN IN.)

LeVander: Members of the Commission, I would like to express my appreciation for the opportunity to make a few remarks this morning. They will necessitate be brief because I am scheduled to take a plane out at 12:00, so I will abbreviate what I probably had intended to say in the first place. I speak this morning not for myself, because I am turning over most of the trial practice to other members of the firm who will be more directly affected in trial procedure in the future than I will. But I speak because I have had 46 years of experience as a lawyer, much of which has been engaged in trial practice, and I have also had four years in public service. From that I have developed a very deep concern for the administration of justice and for what's good and what's bad for our society. As a result of that experience, I state categorically today that I am unaudacitly and adamantly opposed to bringing cameras and TV tape equipment in the courtroom for taking pictures of our trial. I would like to say first of all that I think we are confused in that the right to know does not necessarily include the right to see. We may have a right to know if a rape has been committed, but we have no right to see it. We may have a right to know if there is an autopsy that's been performed, but we don't have a right to see it. I was uphoard when we had a few years ago when Jacqueline Kennedy was pregnant and the TV cameras followed her in from her room into

the delivery room, took pictures all the way down the hall. This is another indication that we go way beyond what is reasonable and necessary for trying to satisfy the desires of the public on particularly the sensational desires of the media. Now the most of the arguments against TV cameras in the courtroom, you probably have heard or will hear. I am sure that the two judges here and the one you have heard this morning have expressed a number that I could only underscore, but I probably can bring you one facet to it that you will not otherwise hear, because I suspect that I am the only ex-Governor who is going to testify at these hearings. I have had some experience as political leaders have in handling and dealing with the media and with TV and with press conferences. I can tell you that it is a very disturbing situation. You call a press conference and you prepare a statement and you give it and, as soon as you have concluded the press conference with your own statement, you are asked questions that have no relationship to what you have called the conference for. You are asked what's happened to the prison today or what's the taxes, what's due to the sales taxes and when it appears on the evening news, what you have called the press conference isn't at all shown. It is what was reported and what some reporter asked you the questions about. So that the only way you can control a press conference is to call a press conference, make a statement and

say you will take no questions. If you do that, then you don't get any attendance and you get very little coverage anyhow, so that's a very unsatisfactory situation. The kind of pictures you take, you have no control over, because if the media is for you, they can take a nice picture, if they are against you, they can take one with your mouth open and your eyes staring, and you get an impression in the public that is anything but wholesome. In addition to that, how many times have you seen the press and the TV cameras at night on the newscast with just a picture of the principal, and then the reporter makes a ten, twenty or thirty second summary of what he said. What he said and what the reporter says and what the TV announcer says has probably been prepared for by some other reporter so that the announcer doesn't even know, except reading his script, what has been extracted out of his speech. You have all seen, and I have noticed particularly since these hearings have been going on, the pictures on the evening news of Reagan, the President, and a picture and then the reporter says this is what he said, or a picture of Governor Quie and then the reporter says what he says. They don't quote him or let him talk and, if they do, it is one sentence. Then the summary of what he said is given by the reporter. After he's gotten into the situation, now we have to have comments by a reporter. Or even after a full fledged speech has been given by the President, we have the newsman telling us afterwards

what he said and what he meant to say, which means that we don't educate the public with the actual facts, we educate them with what the news reporters say in their commentary concerning what they have selected out, and particularly, the most sensational situations. As a result of that, we have misguided the public and that maybe is not quite so bad or it is bad enough in politics, but it is disastrous in the administration of justice to let some reporter decide what is essential and what is important and summarize what the witnesses said. You don't get a constant and enough of it to get a clear, comprehensive view. Because one of the things on newscasts is they try to pile in everything under the sun in that newscast to get as much in that they can allow, except for the commercials, so that they give you ten seconds, or twenty seconds, or thirty seconds. I say that you can't correctly or adequately express an idea or give the content of what is said by some stranger interpreting on a ten or twenty or thirty second statement what has been said in a whole speech. Particularly is that true when you are going to have people who are not equipped and not trained in the trial procedure, who aren't experts in cross-examination, and examination of witnesses To let some stranger come in, who is a layman, and try to second guess what experts in the trial procedure are doing by a ten, fifteen or twenty minute summary, I think is out of the question. It cannnot

be said that this is done in the purpose of educating the public. It will be done in misleading the public, because you will pick out a few statements of sensation and then the jury comes in there with a verdict later, and the public says well gee how could they do that. From what I heard on the radio a couple of statements something there that I don't agree. You will undermine the public confidence in the administration of justice by misguided information and by spotty and sensational statements that do not reflect the whole thing. You will never get the TV to televise the whole trial because they are only going to give ten or twenty or thirty seconds to a statement of the trial, so that you are not going to get a reasoned and a consistent and a whole idea of what's going on in that jury room. Now the extra thing that I have a very serious concern with is that if something goes wrong, if something is missing (END OF TAPE). Keep his name mostly free of controversy in the city that feeds on it. This has become a pseudo for bold and misleading headlines. What with the circulation battle between the Post and the Daily News leading to me generalistic lows. We have had journalists who had to be reprimanded because they filed false stories, but we have no adequate control over the press or over the media. We have no codes. They are not elected. They are not responsible to anybody. They are freewheeling and anytime you criticize

them, they say we got the right under the First Amendment, but there is no one that can criticize or tell or do anything with the media -- they are a god onto themselves. The only thing that can happen is that distraught people gather together and form more associations and say they will boycott the product of the advertisers who are advertising on the media. Then the media kind of gets a link and the advertisers try to take a look and see what kind of stuff they are putting on the TV, and they have some (INAUDIBLE) but that's not a very satisfactory control, not a way of saying what's right or what's wrong or how you correct mistakes. I believe that the extent of the influence of the media in our society is so tremendous and so appaulding, and we haven't researched it. To start out in this way in the courtroom before we know what the effect of the media is on the public, I think would be a very sad mistake. We have yet to assess what the media has done to our family relations, what it has done to morality, what it has done to education, what it has done to the church, what it has done to crime, what it has done to sex. We are in a system of beginning stages of analyzing what the effects and how it has affected and what the ramifications are. To now extend that beyond and try to get them into the display of the sensational parts of a trial in the courtroom, I think, would be a sad mistake. The interesting part of it is that I don't see anybody who is for it, except

the media. They are for it because they want some additional sensational news that they can cover, and it is not for the better administration of justice. Nobody claims that our administration of justice under the present procedure is faulty, and that it is a mistake or that there is anything that is going to be corrected by it by bringing cameras and TV equipment into the courtroom. I think that it is a mistake that we ought not make. I don't see that there is any educational value that can be argued. I think it is going to be a misinformation. and It is not going to educate properly because you don't educate properly in ten, twenty, thirty second spot news sections of some sensational part that some untrained person is picking out in his judgment, as to what is essential, what is important in this particular case, and the same as you get them picking out what the summary of a speech is. This argument has already been made that, if you do this, you are going to have to protect the juries. You are going to have to sequester the jury, or otherwise you are going to have to instruct the jury every morning after they have seen the evening news to disregard what they saw last night on the news, because it is not a part of the trial. It was not evidence that they heard from the witness stand. We are going to have more confusion and more misunderstanding and more mistrials and more lack of confidence in the judicial system than we have ever experienced before. The

very fact of what tremendous consequences can be made by just one statement taken out of context and blown all over the public is indicated by Romne who is a good friend of mine. I was Governor of Minnesota when he was Governor of Michigan, and I got to know him. A very able and a competent man blown out of consideration for the Presidency by one statement that was built up out of context in the press. Now, if you can blow a candidate out of the Presidential race with one statement, that is an indication that you ought not be taking that kind of a procedure and getting it into courtrooms and trying to figure that they are going to improve the administration of justice with a couple of sensational statements. The public is going to be misled into believing that this is the whole situation, and this is the whole trend of the trial. You are going to enlarge those few people who want to play to the public and want to play to the press, and you are going to suppress those people who do not want to get out and who are a little bit reluctant, and who, in the first place, don't want to testify, and, in the second place, won't want to testify if they are going to shown on the evening news. In conclusion, I am further concerned about how this whole procedure got started. I take it, because I tried to find out where the Supreme Court has the power to even establish a code of canons of judicial conduct. I guess the only justifica-

tion is that it comes from what they call inherent powers of the court, which is a philosophy that is very dangerous, and which, I think, ought to be suppressed. To my judgment, there is no such thing as inherent powers of the Supreme Court. They are given powers either by the Constitution or by the legislature and, if you start a philosophy that they have inherent powers, there is no stopping what they can do. Because any time they want to do something, they say we can't find our authority in the statute or in the Constitution, but we have inherent powers, so they take them to ourselves. The idea of the Supreme Court regulating what goes on in every trial, as a judge said here he knows best, and there ought not be a situation where they impose an arbitrating rule that is going to be effective on all trial judges. In addition, the only petitioners here are the media, who are the petitioners and the plaintiffs in this action, and they are uninformed. I hope correctly that they were asked to put up $10,000 to conduct these hearings, and I don't believe that's the kind of a way we ought to conduct the hearings. Because the statute sets out what the Supreme Court is suppose to do in a regular procedure when they are going to amend the TVs and the practice and the procedure, and that calls for the appointment of a Commission that is set out by the statute consisting of a certain representative groups -- eight people from one group

and certain judges and certain other things -- and that procedure isn't being followed in this procedure of changing the canons of judicial conduct. If you have a statutory procedure to change the procedure, the rules and the pleadings and the procedure and the practice of the courts, it seems to me, at least, you ought to follow that procedure instead of going out and charting a whole new course under what, I guess, must be the inherent powers of the court to decide what kind of a procedure they are going to do. It seems to me that requesting the petitioners to pay the costs of the hearing is not, in my way, the way to get an impartial administration or impartial investigation into the hearing. So I urge that this Commission recommend on the basis of just good common sense, on the basis of what you have heard, and the basis of what. The lawyers, I think, are not asking for this, the judges are not asking for it, the courts are not asking for it, the public is not asking for it, the only ones that are asking for it is the media who want some more sensational news to gather and to spread. They don't need it. Their advertising is sufficient now. They are the most highly successful and making the most money of anybody. I don't think we need to expand the idea of the media, and particularly where it is not going to be a sound educational purpose, and where they are trying to get a right to see

interpreted in the right to know, so I urge the Commission to recommend that we do not change the canons as they now exist.

Pillsbury: Thank you, Governor. Just a minute, if you want to answer some questions, if there are any? Counsel, would you like to ask a question?

Hannah: No. Petitioners would thank you, Governor, for giving us your opinions. We don't have any questions.

Pillsbury: Would you like to ask any?

Segell: No, thank you.

Pillsbury: Would any members of the, any questions?

Kaner: No further questions, Governor.

Pillsbury: Thank you very much. I might take this opportunity to sort of catch us up here. We have put into evidence some statements by people who did not appear. You have already marked as an exhibit, I believe, Deb, the statement by a man who is incarcerated in Stillwater, Mr. Edward R. Clark, which generally is in favor of cameras in the courtroom. I would like to put this in as exhibit 23. I believe, Judge Segell, did you have an opportunity to see this statement. Is that correct? Did you have an opportunity to see this letter? Have you had a chance to see this letter from this prisoner?

Segell: No, I haven't.

Pillsbury: We will make it available to you here. You have seen it, haven't you?

Hannah: No, but I am happy it is in the record. We will take a look at it.

Pillsbury: I should also say that among the statements we have of judges, we do have two statements from judges which, I would say, are generally either in favor of cameras in the courtrooms or not opposed, perhaps that's a better characterization -- one from Judge Spellacy and one from Judge Summers. So it isn't all to one side, I thought you should all know that. These are already in the record. We will mark this as exhibit 23 and we will make copies available to you and you can see the record here. There is another document which, or two more, am I right, which the clerk has already marked as exhibits. One is exhibit 24 which is entitled News Media Coverage of Judicial Proceedings with Camera and Microphones: A Survey of the States. This is a survey of all the states as of August 6, 1981 prepared by the Radio Television News Directors Association. It really gives a pretty good record of what's been going on throughout the United States. I am sure that, if you haven't seen it, it is available to you. You have seen it I believe. Have you seen it?

Segell: I'm not sure. I have seen many things.

Pillsbury: We will take this as exhibit 24. Exhibit 25 is the brief of appellants in the Chandler v. Florida case by attorney Joel Hirschhorn, who appeared here as a witness a few days ago, and I believe he left this with you Judge Segell, did he not?

Segell: Yes.

Pillsbury: With the thought that it should go into the record then. We would like to put that in the record too and that will go as exhibit 25.

Hannah: I don't think I had an objection. I do remember, though, when Mr. Hirschhorn was testifying, that I asked that we have some notation on the front, so we wouldn't mislead anybody, saying he lost. But I think that would probably be

Segell: I thought you had made that point the other day.

Hannah: I had. As it was coming into the record, I wanted to make sure it was going to restated.

Pillsbury: I think the fact that he lost is in the record, in any event, as a result of his testimony. I will accept those and will proceed then to the next witness who is Ms. Marjorie Burton here.

Segell: She is here.

(MS. BURTON SWORN IN.)

Pillsbury: Ms. Burton, we thank you for coming and will you

start out by identifying the organization you are with and tell us, generally, what your job is.

Burton: I will. My name is Marjorie Burton and I am with Sexual Offense Services of Ramsey County. To give you a little bit of background on what I do, and why I am here. Our agency provides services to victims of sexual assault and people who are concerned with victims of sexual assault, even family friends, acquaintances, that kind of thing, as well as doing some coordinating work with the various systems the victims come in contact with such as medical systems, legal systems. One of the things that I and my staff do is serve as advocates for victims as they are going through the criminal justice process. For those victims whose cases are charged and do go to trial, I or one of my staff are often there at the victim's request as a support person. I am here today to speak to the issue of victims of sexual assault. Specifically, I think, some of the issues that I will be raising probably can be generalized to other victims of crime, especially other victims of violent crime. I will leave that to you to do some generalizing. I am going to restrict my remarks pretty basically to sexual assault because it is my area of expertise, and, in some ways, because it's the most entance experience that a witness is likely to have. Perhaps it's a good place to start in terms of testifying here. I want to be short and get

questions from the panel. Probably to summarize from the beginning my unawareness of this issue started last week when I saw coverage of the hearings on television. My response to it was an immediate scenario that went through my head, where I saw myself going with the victim to see the courtroom before the trial began, and explaining to her this is where you will be sitting, and the judge will be sitting right there, and the defendant will be sitting right there, and the prosecutor will be sitting right there, and the TV camera will be over there but don't let it bother you. The response that I expect for that kind of situation is that she will walk out the door and never come back. What we are dealing with when we are looking at any investment that we may have in prosecuting sex offenders in this society is the fact that we are dealing with a crime that is very much underreported to begin with. I think that public knowledge that cameras will be used in criminal court will be enough that many people, who are on the border in hesitating about whether to report or not, will decide that the criminal justice system just does not have anything to offer for them, and they will make the choice not to report. In that way, we will be going backwards in terms of the recent increase in reporting that we've been having. Part of what makes it so difficult, specifically for victims of sexual assault, has to do with the nature of the experience that the victim has been through, and how dependent

she is on responses from people around here and systems around her for any sense of a chance to recover and get back to a state of emotional and physical well being. Most victims are pretty scared about how systems are going to respond to them in the first place, and how people are then going to respond to them, and that can be for some pretty decent reasons. Even though we are in 1981 and we have been trying to educate people for a long time, it's not unusual for us to hear from husbands who are unable to relate to their wives anymore because they feel that their wife has been used since she's been a victim of sexual assault -- that she is no longer as valuable. We still here from parents who are feeling that their children are dirty, are not valuable people anymore because they have been degraded by the act of sexual assault. For a victim who is going to testify, she is coming into a court-room knowing that what she is going to have to do is to sit in front of the person who raped her and more than twenty strangers, none of whom are necessarily supportive of her. Thirteen of whom, counting the alternate juror, are there to evaluate whether they think her story is provable beyond a reasonable doubt. When she testifies, she has to, in detail, tell about what happened during her sexual assault. The reason that that is important is that, I think, those of us who don't work with victims of sexual assault, even if someone close to us is sexually assaulted, most

of us hear the story in terms of well, I got off the bus and then somebody grabbed me, and perhaps he pulled her back into some bushes, and then he raped me. Those words, and then he raped me, are usually the basic understanding we get of what happened. In the court, in order to convince a jury beyond a reasonable doubt, in order to prove the elements of the crime, the victim has to go into detail --those details can include oral penetration and anal penetration, as well as genital penetration. Having had the experience of working with a 14 year old who had to get up in front of her rapist in a courtroom and say he put his penis in my vagina, and then had oral sex on me. That's an excruciating thing for most of us to do. We also have to look at the fact that victims in our society range in age from infants to 92 years. We usually think about sexual assault in terms of victims in their early mid-20's. There is a lot of people who are represented in that group, including adolescents and children. One of the things that we find can be really helpful to a victim who wants to follow through in the criminal process is the support of people around her. I believe the quick cameras in the courtroom will mean that some of that support will be withdrawn. A real specific case comes to mind where it was a husband and wife situation. The husband was not the offender. The wife had been assaulted by someone she had met outside of her home. I remember the concerns he

expressed to me about how the jury and the people in the court would respond, because he was feeling a decent amount of guilt that somehow, if I would have been a better husband, this wouldn't have happened. That's something that is very common. That, as parents, if our children are sexually assaulted, we feel there was something wrong with how we parented her, how we protected our children, and still in our society that happens with men too, in terms of older brothers or parents or husbands feeling like I should have been able to protect the victim more. If there would have been a camera there, his instructions to his wife would have been, I feel very confident, that she should not testify. I don't know if she would have had the strength to do it without him. I think we will see a lot of withdrawal of that kind of support. One of the reasons that victims can be hesitant to report in the first place and hesitant to testify in the first place is that they often, during the sexual assault, what victims hear from their assailant is, if you tell anybody, I will be back, or, if you tell anybody, remember that I know where your kids go to school. That kind of threat for someone who knows how vulnerable she is, because he was able to sexually assault her, is very, very real, and the kind of protections that our system is going to offer are actually somewhat limited. So what you had without TV cameras in the

courtroom is a victim who is making a pretty courageous decision under some pretty intense fears and some pretty direct intimidation to start with. The addition of television cameras to the courtroom which implies, indirectly, that not only is she facing the offender again, but all of his friends and family may be watching, and sometimes victims hear that too in terms of, if I can't get you, I will have somebody else take care of it. Also, just the fact that, in terms of her ability to get her life back to some kind of normalcy. If she has to look at the idea of going back to work the next day and hearing well Mary, I saw you on TV last night, or did it really happen the way they said is going to be enough that victims, I believe, will either not testify, or there is another unsure of concern too about how she will be able to testify if she is willing to do it in spite of it. The sexual assault victim has some things that are put on her that are different than they are for victims of other kinds of crimes. There is a poem that starts out getting raped is like being hit by a truck, but nobody asks you if you enjoyed it later if you are hit by a truck. I just misquoted. In a sexual assault trial the victim's attitude, her demeanor, how she speaks is analyzed in a different way than in any other kind of criminal trial. Sometimes it seems to be analyzed more than the behavior of the defendant is analyzed, and victims are aware of that

as they go into trial. Being a "good witness" for the prosecution is really quite a tricky thing. As we know that, if a victim breaks down continually and is highly upset during her testimony, the defense attorney is very likely to point to that as emotional instability and try to impeach her in that way. If she is cool and calm and collected and shows no emotion, she runs the risk that the jury is going to say well, if it really happened the way she said, then maybe she ought to be more upset. All of those funny kinds of evaluations of her, as a human being, go in on a sexual assault trial more, I guess, than I think they do on other trials. Being aware that a camera is in the room, I think, will have an intimidating affect on the victim and her ability to do the best job she can of telling the truth, as well as she can. I think maybe I will stop here and ask people to address questions to me. I feel really strongly about this. I think it is going to be really, really detrimental to the process of continuing to increase reporting and prosecution of sex crimes.

Pillsbury: Have you any questions, Counsel?

Hannah: No, I don't.

Pillsbury: Judge Segell, do you have any questions?

Segell: I have some impression, Ms. Burton, that the kinds of things you were talking about would carry over to victims of other kinds of crimes of violence.

Have the same inhibiting affect?

Burton: I really believe so, especially when we are talking about anything that has to do with domestic abuse. I think the issue of extraneous witnesses -- people who come in to support the crime victims testimony -- again, those people may look at it from a point of personal safety as well a point of publicity and whether they are going to risk that kind of publicity. I have here something that was put together by Mr. Daniel Hollihan,who is a prosecutor in the Ramsey County Attorney's office. We were talking about this yesterday in terms of generalization to other kinds of crimes, and I can submit this to you, if you would be interested in it. It is a semi-informal list of the types of witnesses that he feels would be subject to intimidation by the presence of a camera. Is that acceptable?

Pillsbury: Sure, I think we would be very happy to receive it. (INAUDIBLE) as exhibit number 26. Any objection, Counsel?

Hannah: None.

Pillsbury: All right, we will accept it as an exhibit. Any other questions?

Segell: In domestic abuse cases, there is a considerable reluctance on the part of the wife to come to court to testify against her husband who started what happened.

Isn't that your observation?

Burton: I think that that is true, and I think that we will be running into similar kinds of things. One of the problems that people who advocate for victims of domestic abuse have run into is there seems to be almost like a snowball affect that happens. That's somewhat understandable from the prosecution point of view in terms of even getting these cases charged, because what you run into, if you have enough witnesses drop halfway through a prosecution procedure, is a reluctance to charge the cases to begin with because the assumption is that she will never follow through. What we found is an increase in women in domestic abuse cases who are willing to follow through. I think that the domestic abuse movement has been able to educate out of some of those frameworks, but when I talk about going backwards, I am talking about the attitudes of professionals and the drive of professionals to prosecute these things as well as victim responses.

Segell: That's all I have.

Kaner: One question, Ms. Burton. What is your idea of the percentage of women who report a rape who then refuse to go through to completion of the charge at a trial in court? Or actually reported and then stopped somewhere before the trial?

Burton: I think it's very small. Actually, usually, we run into a reverse pattern which is that people who would like to testify, or who would like to get some sense of justice from the criminal justice system, don't get to. That goes back all the way to the fact that after making a report, the police have to find the defendant and all the things that can go wrong from that point on in terms of getting the case charged and having it actually go to trial. I don't think at this time that very many people who follow through to the point that the case is charged actually back out at that point. I feel that it very, very seldom happens. What we see is more people not reporting in the first place or not showing up for the investigative interview with the police department if they have changed their mind about wanting to pursue it, rather than dropping out in the middle of the prosecution process.

Kaner: But your conclusion apparently is that with TVs in the courtroom, you would have fewer persons actually making the charge, and then you would have greater withdrawal after making the charge, is that what you're talking about?

Burton: Both, yes. I feel very strongly about that and part of that comes from my knowledge of the emotional state that the victim is in at the time that she testifies. For many victims preparing to testify for the sexual assault reinstitutes the early stages

of crisis that she went through right after the sexual assault -- super surges of anxiety, reemergence of eating and sleeping, disturbances, nightmares coming back -- all kinds of things that had stopped for awhile after the initial part of the sexual assault are happening again. Because, in a way, what she actually has to do is to relive the experience on some levels in front of a room full of not necessarily reported strangers, and that's not only frightening, but brings back some of their original impact of the experience. I think that something that is important that I would like to say, maybe in closing, about putting us all into prospect for victims of sexual assault specifically is that we are talking about a person who has been subjected to what the FBI recognizes as the second most violent crime that can happen to a human being, short of homicide, and one with that violence you have an element of personal invasion. When we do educating with police officers and other professionals, we talk about levels of crime, in terms of the fact that most of us feel some sense of invasion if we come home and find out a burglary has taken place. If you can generalize that to the actual physical invasion of a person's body by another person, the impact of that is incredible. Also, combined with the fact that the intent of the rapist, in most cases, is the humiliation and the degradation of the victim, that's usually accomplished to the (INAUDIBLE) degree.

So we are talking about people, when I talk about the courage of people who testify in sexual assault cases, many women have their deciding factor. There are probably two major reasons that people do. One is a personal sense of the need to put some order back in their lives. That maybe if they can get some sense of justice out of the criminal system, that maybe that will help. But apart from that wanting a personal sense of justice, I think what's often stronger for people who are really frightened about testifying is that maybe my going through this one means that other people who would have been his victims won't be. Because the victim knows what we all know from sociological studies and statistics, that rapists don't just rape once and a lot of victims (END OF TAPE).

Pillsbury: Also, prohibitive coverage would substantially increase the threat of harm to any participants or otherwise interfere with the achievement of a fair trial. Have you any opinion? Would you like to comment on, you might say, opening up the courts to the media, if some kind of restrictions like that were a part of the rules?

Burton: I think that might help, and I don't feel qualified to say exactly what situations should be in there. If there was a blanket restriction saying that sexual assault cases, family abuse cases, domestic abuse cases, in terms of spousal kinds of things, were absolutely restricted from cameras in the courtroom

that would satisfy my needs. I am not satisfied with the concept of leaving it up to the discretion of the individual judge. I think that places an unfair burden on the judge in certain times of the year perhaps more than others. Also, without wanting to offend anybody, judges are a group of individuals like any other group in this country, and they vary as individuals in their sensitivity to the needs and emotional state of victims.

Pillsbury: Are there any other questions? Thank you very much. We appreciate your coming here. Can I just ask, you are here as a representative of your office. I don't know whether there are comparable offices in every county in the state.

Burton: Not quite every. We are working on it.

Pillsbury: You represent yourself. You have not been delegated by any of the others to represent them.

Burton: Correct. Correct.

Pillsbury: All right, thank you very much. I think we might have a little recess here before we go to the next witness who will be Judge Segell. So let's have five minutes recess.

(RECESS)

Judge Segell.

Segell: Thank you, Mr. Pillsbury.

Pillsbury: We haven't sworn you in yet have we?

Segell: Not yet.

(JUDGE SEGELL SWORN IN.)

As you know, my name is Hyam Segell. You have heard it enough the last few weeks. For the past 33 years I have been a lawyer, primarily engaged in trial practice. The last twelve of those I have served as a Ramsey County District Court trial judge. Now in order to make a certain point, I would like to tell you a little bit about some of the things I have done in the trial practice. In the middle 1950's, I was Ramsey County public defender and for the balance of that decade, I was a government prosecutor in the United States Attorney's office. While with the government, I was a co-prosecutor of the United States v. Fred O'Sanna, et al. which was the Twin City Rapid Transit fraud case which lasted seventeen weeks. I also obtained the only jury conviction of the notorious Kid Kahn. This was a conviction which was upheld in all the courts in the United States. In private practice I handled, as defense counsel, the trial of T. Eugene Thompson, who was an attorney who was charged with the murder of his wife. Now I tell you these things not for the purpose of proving that I am immodest, although no one has ever accused me of being shy and retiring, but to illustrate for you that I have had a substantial involvement with the print and electronic media in

the so-called sensational case, or notorious case -- cases which have achieved some notoriety. Consequently, I am familiar with the pressure that the media can exert in those kinds of cases. It is, of course, only that kind of case with which you, as a Commission, are concerned and the Supreme Court is concerned in considering whether there should be a revision of the Canon. Because it is only in that kind of case that you are going to see the print and electronic media, in my judgment. Weeks often go by when I don't see the print media, and sometimes as long as a year will go by before I see the electronic media. Now I think I know something about the psychology of the courtroom. By contrast, as I listen to the various people from the media telling us their impression of what goes on in the courtroom, I was reminded of the Irish priest who one Sunday morning gave a very stirring sermon on marriage. When he was all through, one little old lady who was sitting in the congregation leaned over to her neighbor and said I wish to God I knew as little about the subject as he did. There are one or two things I would like to say about the petition which has been filed. Attached to that petition are two exhibits. Exhibit A is a proposed amended Canon 3(A)7 and exhibit B is proposed standards of conduct and technology governing the electronic broadcast coverage. Now, if you, as a Commission, recommend the adoption of either the

Canon as proposed, or the proposed standards of conduct, if you recommend these to the Supreme Court and they are adopted as they are presently written, in effect, it would be the first time in the history of judicial administration that the electronic and print media would have prepared and procured the adoption of a judicial canon of judicial ethics and would have prepared and procured standards of conduct for courts without having any real input from the people who are most immediately affected. In that connection, I would like to tell you that the majority of the Joint Bar Press committee of the Minnesota State Bar Association did adopt certain standards of conduct for electronic broadcast coverage. Many of the petitioners here had representation on that committee and those standards, I should tell you, provided for consent on the part of parties, witnesses and jurors. Now obviously the media rejected that kind of control and filed the petition here and have now proposed standards to you which afford the presiding judge and the litigants, witnesses and jurors virtually no control over the conduct of electronic coverage in the courtroom. Now the great majority of states that have adopted permanent rules for the use of electronic broadcast coverage have at least had the good sense to provide for consent of either litigants, witnesses, or jurors or all of them. If any of those people don't want to be photographed or televised, they

have a right to opt out, and there is an immediate prohibition. Incidentally, if you are interested in the proposed code of rules which was adopted by the Joint Bar, Press, TV and Radio Committee of the Association, I invite your attention to the May-June issue, 1980, of the Bench and Bar, specifically at pages 34 and 35. I prepared a copy of those pages, which I would offer to you. I would like to read to you a couple of things that are said in that proposed code of rules. Should any counsel for any party have a good faith objection to the broadcasting, recording or photographing of the trial, counsel shall so notify the clerk of court in writing, not less than one day before trial or more than three business days after receipt of the request, whichever is earlier. If no such objection is received by the clerk within said time period, and for all proceedings allowed by these rules other than trial, consent shall be presumed. Another item. If any witness has a good faith objection to the broadcasting, recording or photographing of his testimony, such broadcasting, recording or photographing shall be prohibited. Rule 10. Individual jurors shall not be photographed, except in the instances in which a juror or jurors consent. In courtrooms where photography is impossible without including the jury as a part of the unavoidable background, such is permitted, but close-ups which clearly identify individual jurors are prohibited. Trial judges shall enforce this rule

for the purpose of providing maximum protection for juror anonymity. As you know, those rules, those proposed rules were not adopted by the Bar Association because when the report of the Committee came to the floor of the convention, the convention delegates, after considerable discussion on the question and after hearing that the Board of Governors of the Association had recommended the adoption of a minority statement, did, in fact, adopt the minority statement. That was the minority statement that Clint Schroeder, the president of the Association, referred to in his remarks. I don't know whether he submitted a copy of that minority statement to you. I know he read from it in great detail. I might add that the proposed rules prepared by the majority of the Committee, as I pointed out to you, provided for prohibition of television coverage, if either counsel or a witness had a good faith objection. It might be appropriate to tell you at this point about the rules that govern coverage in those states which have decided to permit coverage on a permanent basis. As of May 13, 1981, and I don't have anything updated since then as far as permanent coverage is concerned, there still were only sixteen states in the country that allowed coverage on a permanent basis. Of these sixteen, seven allowed it only in their appellate courts. Of the nine remaining states, seven required substantial consent either of witnesses, jurors, parties, lawyers or the judge. In

two states, in addition to consent, the Supreme Court must approve each coverage plan. It is worth noting too that in the state which started all of this in 1956 -- Colorado -- consent of the accused, witnesses, jurors and judge is still required. Now the second observation I'd like to make about this petition is that there is an absence of the general public from these hearings. While it is true that lawyers and judges have a vested interest in what goes on in the courtroom, the people who are most intimately affected are the litigants, witnesses and jurors. Anticipating that, at some point of time, people like yourselves or the Supreme Court might be interested in the views of the public, I took it upon myself to interview jurors after each case I tried between March, 1978 and March 1980. My court reporter has certified as to the authenticity of all of those transcripts. I might say, however, we don't have jurors names in the transcripts, he just identifies them as jurors who are speaking to me in response to the questions. These transcripts have been compiled in booklet form and I would like to offer those transcripts in evidence at this time. I did not propose to give you the original because in some of the various dog and pony shows that I have been on with Stan Turner I had marked it up and I didn't want you to think I was submitting something to you that had been

highlighted.

Pillsbury: Did you offer these in evidence?

Segell: Yes, these are transcripts in triplicate, and I will give them to Ms. Regan.

Pillsbury: Are you also offering the report you referred to before that?

Segell: I am offering the proposed code of rules to facilitate relaxation of judicial Canon 3(A)7 which was adopted by the majority of the Joint Bar, Press, Radio and TV Committee at the Bar Association.

Pillsbury: I don't think we have that. Do we have that? We don't. Will you identify those as exhibits?

Segell: I will hand all of these to Ms. Regan at a later time.

Pillsbury: Is it agreeable to everyone? Any objection to these?

Hannah: I don't have any objection to them being admitted into evidence. We may want to talk about the validity at some point.

Pillsbury: All right, Accepted.

Segell: All right.

Hannah: Could I just ask, Judge, one or two questions about that? What we have now are transcripts of inter-

views that you conducted with jurors after they had served as a juror?

Segell: After the trial was over, yes. The verdict was in.

Hannah: Are the transcripts complete?

Segell: They are as complete as the questions and answers. There is nothing that's been edited on them.

Hannah: Okay.

Segell: Some of them are very brief, Mr. Hannah, because some jurors were reluctant to talk. In asking this question from time to time I would find that maybe two or three jurors would respond, as opposed to another jury where maybe eight or ten people would respond. There's nothing been edited. These are exactly the way they were taken down by my court reporter.

Hannah: Thank you.

Segell: I would just like to review briefly for you a history of this issue within the Minnesota District Judges Association. I am here today as the chairman of the News Media and Courtroom Committee of that Association and as the authorized representative of the president of the Association, John M. Fitzgerald. So my remarks here today represent the majority view of the Minnesota District Judges Association. As you know, Mr. Kaner, that Association is composed

of 72 district judges. I say that to the rest of you so that you know how many there are of us. There aren't too many of us, but there are 72 district judges in ten judicial districts in Minnesota. To be perfectly fair, there are probably seven or eight members of that Association who are agreeable to having electronic equipment in their courtrooms. Some of them would allow any kind of electronic equipment. Some of them would limit it to recording equipment, that is tape recording equipment only, and prohibit television equipment. In any event, in 1978 the Association at its annual meeting in June adopted the following resolution which I will read as it is very short. It reads as follows:

> Whereas the vast majority of state courts in this country and all of the federal courts recognize the impropriety of cameras and recording devices in trial court, and
>
> Whereas trial lawyers and judges are fully aware that the use of such devices may impair constitutional and other rights accorded to all citizens and may cause irreparable harm to litigants,
>
> Now, therefore, be it resolved that the Minnesota District Judges Association in convention assembled declares its overwhelming opposition to the use of

cameras and recording equipment in all trial courts of this state.

That was adopted, as I recall, by a vote of about 52 to 2. One of the two who dissented at that time is an old friend and colleague of mine, and a neighbor of yours, Ms. Ahmann, Judge Foley, who has since changed his mind. He is now on the other side of the issue, but I remember he was one of the two who voted against the resolution at that time in 1978. On July 28, 1978 at a conference of chief judges of the various districts, Chief Justice Sheran requested that trial judges prepare position papers on the question of cameras in the courts. As a result of that request, the district court judges formulated and adopted a position paper at their meeting in June, 1979. I have prepared copies of that paper in triplicate and would offer the position paper of the Minnesota District Judges Association at this time.

Pillsbury: Any objection?

Hannah: No.

Pillsbury: Let them be received.

Segell: Now that position paper, I think, expresses the views of the vast majority of not only judges in this state, but judges everywhere in regard to the problems

brought about by the use of cameras, as far as litigants, witnesses and jurors are concerned. I think I should call your attention specifically to appendix C in that position paper, because that talks specifically to the issue of what effect cameras have on litigants, jurors and witnesses. Nothing was done further on the cameras issue in the District Judges Association until after January 26, 1981 when the Chandler v. Florida case was decided in the United States Supreme Court. At its meeting on February 28, 1981 the News Media and the Courtroom Committee adopted a resolution, which I was going to introduce, but because it has also been adopted by the Municipal Court Judges of Ramsey and Ramsey County District Judges, I will not introduce the original resolution because it simply referred to the whole Association, as opposed to certain individual judges. However, it was thought that that resolution would be presented to our District Judges Association meeting in June, but after the News Media Committee, some consensus developed among some of the members that there was no need to present the resolution to the annual meeting because our position hadn't substantially change. As Judge Foley, who was a member of the Committee said, there is no reason to wake the baby to hear it cry, and so we didn't present this at our June meeting, but a similar resolution, as I say, was adopted by the Ramsey County District Judges.

I prepared that in triplicate and would offer that and a similar resolution was prepared and adopted by a number of the Ramsey County Municipal Judges and I would offer that in evidence.

Pillsbury: Any objections to those?

Hannah: None.

Pillsbury: Proceed.

Segell: I would like to go back to the petition for a moment. I don't have to remind you that this petition has been brought by the owners of extensive commercial enterprises in the Twin City area. I have no objection to extensive enterprises. I believe in the free enterprise system. I think I own stock in some commercial enterprises, not in companies that Mr. Hannah represents. As a stockholder, I am always happy to receive the dividends which they pay, as a result of the profits which they've made. So I hope that Mr. Hannah's petitioners, who are radio stations and television stations, will continue to flourish and prosper and pay their attorneys and pay their stockholders their dividends, but it would be nice if they would be a little more upfront about these proceedings and stop all this hypocrisy about educating the public. These enterprises, heretofore, have not been noted for their altruism. As a matter of fact, you would have some difficulty in thinking back to the last time you saw any of

these stations put on any kind of public service broadcast that related to the functioning of the trial courts or to the administration of justice. So you will pardon me if I have a little bit of cynicism about this masquerade as public service organizations promoting the public good and public education. I have some difficulty in understanding why they can't come to grips with the other Amendments of the United States Constitution and the concept in which I firmly believe that litigants are entitled to have the issues in their lawsuit considered judiciously by triers of fact who are fair and impartial and have their case heard in a calm, deliberative setting free from the distraction and disruption of extraneous activities. It seems to me that the only value of broader public exposure is for the news media. After all, their primary function is to attract viewers and sell advertising. If the courts are added to their vehicles for entertainment, they can attract more viewers and sell more advertising. The idea that we are trying to keep the courts closed to the public is utter nonsense. Courts of this Republic have been open to the public for 200 years, and the public is encouraged to come to the courtrooms and learn in proper context what transpires in a courtroom, but most of the time courtrooms are completely empty. So you must ask yourselves whether it is the public that is demanding this broader public exposure or

whether it is simply the media. I have some difficulty in understanding what it is about the ten o'clock news that makes the media think that an out of context glimpse of a courtroom trial is going to have substantial educational value. On the contrary, if we assume that it is important that the public have more understanding of courtroom proceedings than they now have, the one way to assuredly mislead them, rather than enlighten them, is to permit film to be taken and edited by those who have no interest in and no understanding of the issues involved and broadcast that for thirty or forty-five seconds at ten o'clock. As my friend, Frank Hammond, once said, Frank Hammond is a prominent trial lawyer in St. Paul, he once said in a letter to me concerning these matters and I quote, anyone with any experience in representation by a television presentation of any event in which he has participated knows that the edited representation is never anything but totally fraudulent. It cannot in the nature of things be otherwise. A purpose of the courtroom is to adjudicate human rights --that has always been its purpose. Whether the controversy is between individuals in civil litigation or between an individual and his government in criminal litigation -- that's the sole purpose of the judicial machinery to adjudicate those rights. Any intrustion which distracts from that purpose is an infringement of the

rights of those whose problems are being adjudicated. I state to you on behalf of the Minnesota District Judges Association and on behalf of every lawyer who is concerned with the rights of his clients in a courtroom that television cameras, still cameras and other distractions of the electronic media are inconsistent with the fundamental purpose of the adjudication of those rights, and they have no place in the courtroom either now or in the future. One or two other things and then I will be prepared to answer any questions you may have. Position of judge today is vastly different from what it was when I came to the bench twelve years ago. Problems today are far more numerous than they were at that time and the pressures and stresses of the job are vastly greater than they were then, including the risk of physical harm, as you have heard. I know it is simple enough to say, if you can't stand the heat, get out of the kitchen, but I still like what I am doing and I think I do a pretty fair job at it, but everyone has a melting point. You, as a Commission, have an unusual opportunity because of the petition that has been filed in this matter. You have an opportunity to act boldly and bravely and not be intimidated by the media and not succumb to their hypocrisy. You have an opportunity to keep the heat from increasing on judges so that they can continue to work in the kitchen and not have to leave it. I hope that

you will remember when you make your decision that the people who are most intimately affected by it, that is the litigants, the witnesses, and the jurors, have not been at these hearings, have not expressed their views to you, except for Ms. Burton, but, if their views were known, they would be opposed to any intrusion in their courts. I want to read to you something that appeared not too long ago in the St. Paul Legal Ledger, that's a legal newspaper that we have in St. Paul, by one of its columnists. He writes as follows: When our Constitution was born in convention in Philadelphia 194 years ago, George Washington was elected to preside. The first order of business was secrecy, no TV cameras. Indeed, and I quote, "Nothing spoken in the House may be printed or otherwise published or communicated without leave." Further, nothing of the convention's proceedings should be disclosed so long as any member yet lived. They even covered the street outside with soft dirt so that horse traffic could pass on the cobblestones in silence. Thus were these men able to deliberate, without interruption or interference, uninfluenced by public clamor. All that has been learned since confirms that those 55 uncommon men were hiding nothing but themselves and the historic document was completed in four months. Had the modern media swarmed the constitution hall, that document might not be completed yet. Thank you.

Pillsbury: Counsel, have you any questions?

Hannah: None at this time. No I don't.

Pillsbury: Do you want to ask any questions?

Kaner: I have a question or two, Judge Segell.

Segell: Yes, sir.

Kaner: As I understand it, you have been involved in what do you call these dog and pony shows with the media now for several years, is that right?

Segell: My friend, Mr. Turner, and I have been involved on a number of things. I guess I have been involved with Mr. Beckmann. Yes, sir.

Kaner: How many years would you say you have been involved on this basis?

Segell: On this issue?

Kaner: Yes.

Segell: Three or so.

Kaner: Would you feel that, perhaps to some extent, does that controversy made to some extent have affected your judgment on the basic issue?

Segell: If you are going to call me paranoic, the way the Minneapolis Trib did, no, I don't think so.

Kaner; I suppose you are aware that the media sort of

considers you a kind of an obstacle on the path of progress.

Segell: Isn't that kind of ridiculous that one man can stand for three years in the path of progress? They may say that. I know I have heard Curt Beckmann say that I have frustrated him. He has frustrated me that I have to keep standing in front of podiums and stand opposing something which I believe in so firmly. I don't know that my judgment is colored by it. I went out to, if I may add just a little bit to that, I went back to Reno this summer, which, as you know, is where the National Judicial College is to take a course in criminal law on the Fourth, Fifth and Sixth Amendment, because I thought I was getting rusty on what the rights of people might be in a courtroom. No, I don't think my judgment is colored by that. I believe so firmly in the Constitution, and I believe in their rights under the Constitution too. I believe in the First Amendment, but you have got to remember what the First Amendment says. It doesn't say that they have a right to have television cameras in the courtroom.

Kaner: You recognize, of course, that the media is very powerful in its effect in this situation.

Segell: I appreciate that.

Kaner: I suppose, if this Commission should recommend to the Supreme Court that they bring their cameras into your courtroom, and if the Supreme Court should adopt that recommendation, I suppose (END OF TAPE).

Pillsbury: I know that you have taken an awful lot of time from a busy schedule, and we very much appreciate that. That is very sincere, whatever we may decide. Are there any further questions at this time? If not, we thank you very much, and if you can bring us these exhibits, we will have them all entered. I think we have one more witness before lunch and that's Judge Godfrey, also Ramsey County.
(JUDGE GODFREY SWORN IN.)

Godfrey: Mr. Chairman and members of the Commission and friends and interested parties, unlike Judge Segell, I have been unable to be present at many of these proceedings. I was here last week. I am on my role as an expert in the field or as a chauffeur for Mr. Hirschhorn. In any event, that is the only portion of it I heard. I hope you remember his remarks this morning as I remember them. Unfortunately, there aren't too many people in this room who have ever sat through a criminal trial. We are very limited, and we are having a lot of advice from people who are interested in the subject, but really don't know too much about it in the opinion of many. Perhaps a lighter note, I recall to mind a St. Paul lawyer by the name of Frank Clayborne. A number of years ago was selected

by then Chief Justice Oscar Knutson to serve as chairman of the committee to come up with goals of criminal procedure. He was selected for a good reason, I think. One was he was well known and respected amongst lawyers, and the other reason, perhaps equally understandable, was that he had no issue in the case. He represented neither plaintiffs or defendants, never had in criminal cases. Frank has a nice sense of humor, and there was a lot of controversy as to the merits of those rules. They have been modified and amended, but, in any event, somebody asked Claybourne that question, what he thought of the rules, and he said I can live with them. Naturally he can live with them, because he is never going to see them or participate very easy. I would like to give you my background very briefly. I have been on the bench since 1961. For some six and a half years I served as a St. Paul Municipal Court judge in a wide variety of matters. For almost fourteen years now, I hate to say that because it makes me sound a little older than I feel, I have been on the District Court in Ramsey County. Part of that time I was in private practice in St. Paul, operated my own law office dealing with a wide variety of cases and a considerable number of those involved criminal matters. I can well remember when now Judge Segell was representing T. Eugene Thompson. Those of us that are old enough and have been around long enough can

remember that trial well. It was great news. I suppose we can speculate and, if you want, just for a moment on how that would have been with cameras in that courtroom in Judge Fossey's courtroom in Minneapolis. I mean where do you go for a change of venue if you are going to have all the television stations covering it in Minnesota. It's that background I would just like all of us to consider, I believe to be the basic issue before this special Commission created by the Minnesota Supreme Court. I would suggest that the ultimate question is will the presence of cameras in the courtroom enhance the right of all parties to a fair trial? That's what we are here about. Under our Constitution, particularly Article VI of the Bill of Rights, which states that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. The role of the judiciary is to secure a steady and impartial administration of the law. It was not always thus. In our history books we read of the star chamber where the British kings conducted secret trials designed to give the accused little chance of avoiding the royal executioner. Within another few years, I am sure we all have heard of the legend of the last Judge Roy Bean, the law west of the Pacos. The old judge expressed it another way -- we are going to have a fair and square trial, and then we are going to string this man up. Perhaps all of us in this room can agree, and I am sure we do, that every person coming before

our courts must have a fair trial as guaranteed by our laws and Constitution. In criminal cases that means an impartial jury, a specific accusation, trial in the locale of the crime, a right to be confronted with the witnesses against the accused, and the assistance of counsel. We are here engaged in an electronic controversy basically. Hitting the rights of such a defendant that I have just described against the all seeing eye of television. I hope I don't seem too nervous, I am not used to being on television. Let us consider the evidence already available -- the influence of television on public images on the courts and other aspects of our lives. The media argues, and perhaps sincerely believes, that permitting televised trials will educate the public and will not adversely affect the participants -- judge and jury, clerks and witnesses, attorneys and defendants. I would submit that these claims cannot stand our critical scrutiny. We all know Paul Hannah has to represent his clients. He does that quite ably. Even the industry would have to agree that television programs -- be they news, drama, sports or music -- are designed with the same basic formula -- to assemble viewers and sell advertising. Perhaps I may be in error on that judge, but that's the way it seems from the outside. Thus, we have amongst us photogenic newscasters, such as Stan Turner. Some of them with pretty smiles. We have Phyllis George covering football, and tough investigative

reporters, like Mike Wallace, selecting stories that will increase ratings. Do you think that those stories on Sixty Minutes selected by Mike Wallace and others are there to educate the public or are they there to increase ratings? I would like to debate Mr. Hannah or anybody else in this room on that subject. Let me suggest just a few examples of how television has affected our national institutions. You can think of other examples, I am sure, but some come to my mind. Pro football games are scheduled to begin and have time outs to satisfy the advertisers. Even the rules were changed in 1980 to encourage more passing and higher scores, thus providing better entertainment. I assume most of us in this room follow the Vikings. I am sure we have all seen that referee with a red hat. I forget now if it comes on or off for the television commercials, but you know what we are talking about. Have the scores increased, and do we have more passing, absolutely, and isn't it wonderful, particularly if we continue winning? A recent championship boxing match was held in Scotland. It started at 2 A.M. to accommodate prime time advertising in the United States of America. I suppose everyone knows that television image of a politician, whether he is a Presidential candidate or (INAUDIBLE) editorial candidate or a city councilman, has become of almost overriding importance. TV can make instant heroes or villains at home and abroad. You have your own

that might come to mind, but I will suggest a few to you -- the Olympic hockey team, the Ayatollah, Jimmy Carter, Cheryl Tiegs, Tommy Kramer, who of us would have ever heard of Jimmy the Greek had it not been for TV, the Beatles got their start on the Ed Sullivan Show, even Anwar Sadat. Let me just give you one tiny illustration of the effect of television. I happen to be a hockey man.Coached us for over thirty years, but here is what happened to a guy by the name of Jim Craig. I don't know whether all of you have ever heard of Jim Craig, but he happened to be the goalie of that Olympic hockey team in 1980. He went down to Washington, was greeted by the President and the Vice President. He got back on the shuttle plane to go back to Boston where he lives, and he walked onto that plane early in the morning. It's a commuter shot between Washington and New York, I suppose filled mostly with lawyers and lobbyists one way or the other. Anyway, Jim Craig, who is about 24 years old at the time, BU grad, walked onto that airplane, and they stood up and cheered for Jim Craig. I would have done so too, if I had been there. Do you know why they did that, because they saw him on the tube, and it's a lot different. It's a lot different than reading about it in the newspaper, with all due respect to the print media. We are talking about differences here -- about what might happen before and after televised trials. It seems to me that rather than educate the public television would only sen-

sationalize a few notorious cases. In the recent trial of Ming Sen Shiue in Federal Court on kidnapping charges the government introduced videotapes which the defendant had taken of the victims of that bizarre crime in order to convince the jury of the defendant's guilt. Within days of the verdict, two of our leading television stations, who are amongst the petitioners in this proceeding, requested copies of all the tapes. I am not impuning anybody's motives, but one might legitimately ask if their purpose was to educate the public or to enhance their news ratings in their never ending battle to be number one. Are they having such a battle? I assume most of us see those billboard ads and those signs on the buses, we are number one. It could be argued, of course, if televised trials would give a more accurate portrayal than our present TV and movie faring. This would be partly so, but only those cases having dramatic appeal would be picked and edited for the viewers and advertisers enjoyment. From the arenas of the Roman Empire to this very day, show trials have been much sought after entertainment. I have read about this perhaps because I am interested in the law, but in the early days of this country people would gather from miles around to that county seat to hear the big lawyers perform. It seemed to be a secondary matter whether they won or lost, so long as the pleading was loud and lengthy. It was a little before my time, but the Scopes trial

in the 1920's, matching Clarence Daro against William Jennings Brian, is perhaps a classic example of such an event. The struggle to remove trials from the public arena is parallel to the fight against secret proceedings, such as the star chamber. Arbitrary power wants no public witness to its private deliberations, but at the same time meets all the publicity it can get to legitimatize its fraudulent actions. Thus we saw massive television trial in China broadcast worldwide. After thirty years of the utmost secrecy to justify the punishment sure to be made it out the Gang of Four. The problem with this particular issue is that the trial of a lawsuit is a deliberative process. It's like a hockey game. It isn't a dramatic moment in history, it's a deliberative process. The entertainment of the public and specific right to the defendant have never mixed well. The jury box must not become a sporting arena. As a result of years of abuses, culminating in the celebrated trial of Bruno Hauptmann in the Lindbergh kidnapping case, in 1937 a Canon of Judicial Ethics was adopted which bans cameras and microphones from the courtroom. I think that has been true mostly nationwide and in all state and federal courts with little exceptions. More recent cases should have educated the public about the real threat that television poses to justice -- one was the 1954 murder trial of Dr. Sam Sheppard in Cleveland, the other the 1965 swindle trial of Billie

Sol Estes. Both of these convictions were reversed by the U.S. Supreme Court because of massive pervasive and prejudicial publicity. A couple of other examples come to mind which I would like to mention in brief and in passing. Our St. Paul Pioneer Press had an article on October 11 on Chrissy Foreman. Interesting reading, I don't know whether I could handle old Chrissy in the courtroom, but he mentioned there, as most famous murder trial, that of Candy Mosler, 1966. How could all that time have passed so fast? But Candy and her lover and apparently nephew, Melvin Powers, were charged with the murder of her millionaire husband, 69 year old Jacque Mosler. I just quoted from that newspaper article. I don't whether you need this as an exhibit, I am just refreshing your recollections. The public went wild. That case had everything -- money, sex and violence. The press went crazy. There were more than one hundred reporters from all over the world working overtime to chronicle Candy and Mel's affair. Let's take another one, more recent --the trial of State v. Jean Harris. All I am asking you to consider, all of us, not just the members of the Commission, but all of us, is a trial without television in the courtroom or in the halls. They were around the stairways and chasing poor Jean around, but they weren't in the courtroom. This is from, again I guess I read the St. Paul paper, and this is from the Dispatch of last February 24, Eileen Putman from the

AP, "All the drawing cards are here," she says, "sex, money, power, death and scandal." And draw they do, bringing in several hundred reporters. Some as famous as the subjects they write about. It says the trial she says is the center of what reporters call a media zoo. That's not poor old Judge Segell, that's what the reporters call it. Maybe Curt Beckmann might have called it that himself if he were there -- a media zoo. So let's just quote one of the media, Joyce Dopkene, New York Times photographer. I suppose she is more restrained than that of her counterpart where the news permits, I don't know, but this article says reporters didn't necessarily enjoy the chase. This is what Joyce Dopkene says, "I resent it. The press, the hoards, the chase, the quarry, the prey." I think it is kind of demeaning for everybody -- for the defendant and the press. The prey wasn't Paul Hannah, the prey wasn't the judge, the prey was Jean Harris. Do we want that sort of thing aggravated by television cameras in the courtroom? In the Estes case, which I referred to earlier, the court refuted the argument that the First Amendment extends the right to televise from the courtroom and held that the press, radio and television reporters have only the rights of the general public, meaning to be present, to observe, and thereafter, if they choose, to report them. That is still the law of this land. In the Estes case, Justice Tom Clarke accurately sets out the conflict

between a fair trial and television. I quote. "A defendant on trial for a specific crime is entitled to his day in court, not in a stadium or city or nationwide arena. A heightened public clamor resulting from radio and television coverage will inevitably result in prejudice. Trial by television is, therefore, foreign to our system." That's Justice Tom Clarke in the Estes case. In this modern day of sophisticated, supposedly unobtrusive equipment, and you saw some of that unobtrusive equipment when you were up in our courts in Ramsey County, I am going to ask whether the camera in courtroom would have any affect on the witnesses, the judge, the jury and the lawyers. All we ask is that all of us justify our own common sense and judgment and with every jury instruction I have given, that's the basic test. That's what we tell those jurors consider the demeanor of the witness on the witness stand, his ability or lack of ability to remember. I bet Mr. Kaner here could almost give that by memory, if we had to give it to him, but you've given that many times, their motive for giving the testimonies they did from the witness stand. Then that jury weighs that witness and his testimony. Let's apply our own good common sense and judgment as to whether or not television cameras would have any affect on this process. Let me ask a couple of rhetorical questions. Do your children or grandchildren act any differently when you point

a camera at them? Is it cold in Minnesota in January? Unless you are going to abandon your common sense in judgment, you know the answers to those questions, and what is going to happen in television cameras in the courtroom. I feel a little inadequate on this particular complaint, having listened to Ms. Burton. Because we aren't talking about statistics, members of the Commission, or assuming a report that somebody in Wisconsin worked up, we are talking about the feelings and emotions of individual people. I heard it right here from Marjorie Burton that that what she said applies, not only to rape victims, every other person who has to come into a courtroom to testify. Sure she is delighted if you are going to come up with a rule or anybody comes up with a rule to exclude rape victims, domestics, so forth, what about them other things? What about poor Jean Harris? Or anybody else who has to testify in a trial such as that, and that's where the media is going to be. You could shoot a cannon in my courtroom, and you're never going to hit a Curt Beckmann or a Paul Hannah or Stan Turner or anybody else, because they are not there until that one biggie comes along. Then they want to cover that Thompson case or that Harris case or that Mosler case or any other case you want to talk about. Just in passing, the New York Daily News had a reporter out here to cover every minute of the T. Eugene Thompson trial in Minneapolis, Minnesota.

I would submit that the awareness alone of telecasting would permeate a trial. The impact on a witness of possibly being viewed by a vast television audience is simply incalculable. A televised trial would be a devious innovation and a serious oppression to the rights of people, their proper access to a dignified courtroom as we conduct the deliberative process of resolving these serious legal issues. Why don't we just consider a hypothetical case. You have heard a lot of testimony from a lot of us, I guess, unfortunately although Judge Segell speaks for the District Judges, some of us have felt so strongly that we wanted to come up here on our own, and I suppose it sounds as if you are listening to a recording, but, although the ideas may be similar, they are those expressed of each of our individual. Let's consider for the moment just a hypothetical, if you will. We are talking about a defendant in one of these sensational televised murder trial. Now we have already got it, right? The public is exposed to days of testimony whether they are doing it for two minutes or thirty seconds or whatever, but days of televised testimony in this murder trial. There is a rape, in my hypothetical, torture, murder of a lovely young girl. Several eyewitnesses testify that the defendant resembles the man who was seen with the victim shortly before her disappearance. The police even present some physical evidence consistent with the defendant's guilt. Let us suppose further in our

hypothetical case the fact the defendant's family and close friends give positive testimony that he was not in the vicinity at the time of the crime. The issue in that criminal case is has the state proven its case beyond a reasonable doubt? Further, and finally, let us suppose that the jury in this case finds the defendant not guilty. That is to say that the charge against him has not been proven beyond a reasonable doubt. Do you believe, do any of us believe for a moment after weeks of a televised trial that that defendant can walk out of the courtroom, return to his neighborhood, go to church on Sunday, go back to his job at General Mills, and live a normal life? Fair but that for the grace of God go I, and it can happen to anybody. The bigger the name, the bigger the corporation, the more sensational the facts, the more likely that little scenario can happen. I would submit that television coverage of the courts would enhance fairness, protect individual freedom nor increase public (END OF TAPE).

Certainly, or for anywhere else, as far as that goes, any personality basis. I referred to a couple of names here of members of the media that I know a little bit, but I don't think this is a personal thing. We are not suggesting, strictly not I, that members of the media, most of them, are not responsible. We are talking about rules. You know, it has to apply to everybody. We do live in a complex society where

each of us brings our own particular talents to our roles, and all acting, I would hope, for the common good --some are teachers, others perform miracles or open heart surgery, some sell life insurance, others perform great symphonies, some write to present the news, others try lawsuits. Each of us are important in our own way. Let us enjoy our differences and our freedom together, but let not one segment of society infringe upon the rights of another. I appreciate the opportunity to present these remarks, and I would ask any questions of me, if there would be any. Thank you very much.

Pillsbury: Thank you, Judge Godfrey. Have you any questions, Counsel?

Hannah: I have nothing, Mr. Pillsbury.

Pillsbury: Have you any you would like to ask, Judge Segell? Members of the Committee?

Kaner: I have one question, Judge, and that is going back to the testimony of Ms. Burton, and the question that Chairman Pillsbury asked her. Do you feel that there is any modified basis upon which a recommendation could be made to the Supreme Court, which would exclude coverage of some or more of the serious offenses, such as the rape cases. I noticed that you tried to make an analogy between that and the murder cases. I suppose that if you eliminate those two maybe the media would not be as interested as it

now purports to be, but do you feel that there are any limitations upon which this Commission could recommend to the Supreme Court? Some permission to put cameras into the courtrooms under certain limited conditions.

Godfrey: If they want to cover title registration proceedings, I guess we could throw that in, as a stop to them if they want something. Now I am trying to be specious, but, you know, let's face it nobody wants to watch a title registration proceedings. It is hard enough on the judge to try to keep awake during some of those proceedings. So what do we want to cover? What is the public interested in? We heard Mr. Hirschhorn awhile back he got into a discussion with the public's insaliciable appetite for the sensational with Mr. Hannah. I don't want to get in the middle of that. I heard a Southerner guy say, when he was invited to participate down in Miami in the Gay Rights fight on the side of Anita Bryant, he declined. He said I ain't got no dog in that fight. But I don't have any suggestions and I think that's the problem. I am well aware of the fact, for example, that I am not interested in censoring the news or telling any of the media what they should present in the way of trial, or what they shouldn't present in the way of trial, or what portions they are going to put on the six and ten o'clock news, or 9:30, whenever they put it at us.

But where do you draw the line? I like television as much as the next guy in certain areas. It has some drawbacks and stuff, but I don't think you can blame everything, our evils of society, on the tube. On this particular thing in a trial, where do you draw the line on this process? Let me just throw one in since you asked. I don't know whether you like this or not and whether it will ever happen. Let's suppose that we've got a trial that's been completed -- or a guy has pled guilty. It is a heinous criminal offense. I spare you any gorey details, but just say it's a heinous criminal offense which would revolt everybody if we knew the facts. Now the defense lawyer, usually a public defender, is arguing in front of that judge. Now I know what his role is. I am trained to understand, hopefully impartially. He knows what his role is, so he stands up, and he says to me, as he must, Your Honor I think there ought to be a leniency in this case. I think this man should be placed on probation. I think he should be put in a halfway house or some other facility which can treat him for his severe psychological and psychiatric problem. We are sorry what happened to the victim in this case, but we think he ought to be. Beautiful, so the camera zooms in with some nice camera on the defense counsel who is doing his job, and that little speech is broadcast over channels four, five, nine and eleven on the ten o'clock news. And you think that whether

or not that would be a chilling prospect on that young public defender. Everybody is getting his name and address. Am I going to tell the television cameras, please don't broadcast the sentencing procedure we don't think it would be appropriate? If I say no you cannot, we know what they do. What they do to Dan Foley. Right up here, gag order. You have seen those headlines. We love it. Judge attempts gag order. You tell me where you draw the line. I will tell you where to draw the line and it is none, and that's very simple. We never get into that little problem. That's my answer.

Pillsbury: Any further questions?

Kaner: Nothing further.

Pillsbury: I would like to articulate one question, which Judge Godfrey I would be very happy to have him comment on, if he would like to, or Judge Segell, but I think it would be something that in presenting our case further that the petitioners should give careful thought to. Having listened to this testimony now for quite awhile, I suppose that for us to make a recommendation that the media should be in the courtroom -- the television, the electronic media -- to any degree, we must, at a minimum, conclude that it does not interfere with a fair trial, whether it is a criminal or civil case. But the question I

would like to ask, and for asking this question I am going to assume that I agree with some of the things I have heard without actually doing it, I am going to assume for the purpose of the question only. The question I said first we must find, I think, that it will not interfere with a fair trial. Must we also find that it educates, that it enhances fairness? Is it wrong if we feel that it entertains, that it contributes to the improvement of the ratings on one television station over another, or even that it contributes to their commerical success? If these factors are present and they do not interfere with a fair trial, should we take these other things into account?

Godfrey: I suppose the question almost answers itself. I don't have the present Canon in front of me, Mr. Pillsbury. I have learned over the years to distrust counsel whom quote decisions without giving you anything in writing, but I will paraphrase it. I think the present Canon says that there are exceptions to televising. One is, and if its purpose is educational and if, if, if with consent of the parties so forth, if none of it is going to shown until after all appeals have been taken from that proceeding, then you can televise the trial. I assume that if it can be used for certain purposes so be it. One thing that Governor LeVander eluded to, and I don't know exactly what the role of this Commission is suppose to be

before the Supreme Court, but in passing we have a state statute which concerns itself with the role of the Supreme Court to adopt any rules. 480.052 says after seeing that the Court has the power to regulate pleadings and practice and so forth and adopt rules in civil actions, Number 480.052 says before any rules are adopted the Supreme Court shall appoint an advisory committee consisting of eight members of the Bar of the State and at least two judges of the district courts and one judge of a municipal court to assist the court in considering and preparing such rules as it may adopt. It goes on about distributing the rules and who has a right to consider them and express views and hearings that might be had thereon. Then down in 480.059, which has to do with criminal actions, I won't repeat all the language, but basically it says exactly the same on criminals. I don't know whether this Commission is suppose to adopt something, recommend something to the Supreme Court having to do with amending of Canon 3(A)7. I suppose then we could ask whether or not that is a rule which is to be applied to trial court levels, but, if such it be, one might wonder why we don't follow the statute in this case. Why it wasn't followed in the first place? I didn't write that rule, it's been there a long time. We have had advisory committees in place, and the Supreme Court is aware of that advisory committee. It is in place.

Last I know I was on it. Why that procedure was not used and why you good citizens were asked to conduct these hearings, I cannot answer, but I think it is a question that we could all ask ourselves, and the adoption of any proposed rules, and whether or not we are going to follow the statute after your recommendation gets to the Supreme Court.

Kaner: Judge Godfrey, let me say this to you. This Commission was appointed pursuant to an Order of the Supreme Court, and I can assure you that this Commission will continue to operate as that Order required, allowing whatever challenges that may later be interposed, be made. We are going to proceed with our function regardless, and we will let the chips lie where they may be later.

Godfrey: As well you may, and I was not suggesting you do anything otherwise.

Kaner: No, I was assuming that you were.

Godfrey: There has been extreme silence concerning this statute. It is eluded to very briefly in passing in Mr. Hannah's petition, but I have not heard it since.

Hannah: May I dramatically remove my glasses as well? Judge Godfrey, the question perhaps could be stated where were you when? You know we had a hearing in front of the Court when this Commission was established and the silence was deafening. I don't know that I

can say anything more than that, sir, except that I am not the Supreme Court. They make their decisions. All I do is file my briefs, and,if you wanted to seriously challenge the jurisdiction of this Commission, that probably would have been the time to do it.

Segell: I did that by letter one time and got no response. I did challenge it and I pointed out the statutes that are involved in this thing. I got absolutely no response to that letter. Incidentally, when you speak of silence, I don't know what point there is in stonewalling a fait accompli. If you think we were going up there in light of what had transpired at that point and argue something which we knew was a fait accompli, well I have got more to do with my time than that.

Godfrey: I regret, if I brought it up, I wasn't implying anything at all that the Commission should not do. You have been appointed, and you ought to carry out your duties. I think we are talking about something that the Supreme Court has to deal with.

Pillsbury: I think on that point that Judge Kaner has expressed, the only point of view that we, as a Commission at this stage, can adopt and I see a nod here that Ms. Ahmann agrees with that.

Godfrey: Mr. Chairman, I would like to give you copies of my remarks, and I have attached to them those two news-

paper clippings or reprints. I hesitate to dignify them with the title of an exhibit, but you can look at them, or throw them away, or whatever you want.

Kaner: They should be received.

Pillsbury: They will be received as exhibits.

Godfrey: Could I just say one thing. I know it is after twelve, and I don't know if you have any closing remarks, but I have not been able to participate in all these proceedings. I hope Mr. Hannah does not consider my absence as a lack of interest, but, unfortunately, I am suppose to be trying lawsuits. While Judge Segell is up here spending his time, the rest of us have to be at work, but we are happy he is here. I would like the opportunity, I have not had a chance, I would like an opportunity to file some brief. Again, I hope the Commission can recognize the time restrictions that are upon a trial judge. Frankly, I haven't talked to anybody and I don't know what the set up is, but I assume

Pillsbury: I can tell you this, Judge. You perhaps were not here when we announced on the first or the second day of hearing. We discussed the question of filing briefs, and it was agreed that petitioners and others, if they wish, could file briefs. We set the date of the 30th of the month, as the date by which they be filed. That may be short, but, in addition to

putting you under some time constraints, we are also under time constraints because the Chief Justice would like to have us report back by the 15th of November.

Godfrey: I don't see that in the Order.

Pillsbury: We would be very happy to have you file a brief.

Godfrey: With all due respect, and meaning no disrespect, I don't see that in the Order, Mr. Chairman. I am going to just say this. Mr. Hannah is here with his counsel, and he has a large legal staff and westlaw at his control. I think it only fair that we be given an opportunity to file some type of summary brief based on the evidence which has been presented here. The last witness is going to be tomorrow.

Pillsbury: Today.

Godfrey: Today, this afternoon, I take that back, today. I would request, Mr. Chairman, with all due respect, that the District Judges Association be given a 60 day period after the filing of any brief by the petitioners. We have a rather unusual action here by any standard. We do not have a plaintiff and a defendant, or a petitioner and respondent. We have a petitioner against the world. Judge Segell and I are here, he in an official capacity, and myself and Noah Rosenbloom here, as individuals.

We do happen to have a State District Judges meeting in December, I think the first or second. I think this matter is of sufficient importance that this Commission, whatever its time restrictions set by yourself or others, ought to consider this thing as carefully as possible and review whatever material has been furnished to you as best you can. I also feel that we ought to be given the opportunity, those of us who do not believe that this is a good move, to file a responsive brief summarizing our attitudes and feelings, and perhaps in a more orderly fashion than is possible at oral testimony. I would respectfully request of the Commission that we be given a 60 day period after Mr. Hannah has filed any brief to respond thereto.

Pillsbury: We will take that under advisement. I just can't remember offhand whether the date of November 15 is in a covering letter or in the rules under which we operate. Do you know?

Regan: It is in the Order setting up the Commission.

Pillsbury: It is in the Order setting up the Commission, I believe. That is where I thought it was, and that was why at the very earliest time possible, I think the first or the second day of hearings, I know that Judge Segell was present, we did bring up this question and agreed on the date of the 30th of October.

Godfrey: I understand you have to operate within, but I would suggest that under the framework of which we have, you know like anything else, as I understand these rules here to be reasonably interpreted and generally following the rules, but I don't think that our request is out of line. I would earnestly suggest that it be granted.

Pillsbury: Thank you. I think that we might as well adjourn for lunch, and we have, as I understand it, after lunch we have one witness and counsel for the petitioners wishes to make a closing statement. I believe you do not want to make a closing statement, is that right?

Segell: (INAUDIBLE)

Pillsbury: So this will be introduced. Let's see you gave us two documents.

Godfrey: I gave you a ccpy of my

Pillsbury: Of your statement

Godfrey: of my statement.

Pillsbury: We won't introduce that, but we will take the other items from the St. Paul papers as exhibits. All right, adjourned.

(RECONVENE)

I am refreshed, and I have before me the Order of Chief Justice Sheran in appointing this Commission, which very specifically states that the findings

and recommendations of said Commission should be filed with the clerk of this court on or before November 16, 1981. With that date in mind, we have discussed it a little bit, and we feel we should adhere to the original ruling which I made on either the first or second day of hearing at which we decided that we would welcome briefs, but they should be filed by the 30th of October. That may be short, but that's the best we can do. We have a short time too.

Godfrey: I guess it is probably apparent to you that unless the Order or the Commission would be willing to seek amendment to that Order that as far as I am concerned personally, and I would suspect as far as the state judges of this state would be concerned, we are effectively forestalling any brief to be filed. I will concede that I wasn't present, nor did I participate in the drafting of that Order. I am assuming, although I don't know this to be a fact, that petitioners did, but we do not have the usual adversary proceedings here, where you have plaintiff and defendant, petitioner and respondent. Frankly, on October 20 to be told that I have to file a brief by October 30 -- ten days from now -- on behalf of myself and others, I think makes an impossible restriction. I have calendars that I am suppose to take care of, criminal sentencing to take care of, and I simply can't do it.

If you want to stick to that Order, I concede to your right to do so, but would earnestly suggest that you might consult with whoever signed that Order and see if some extension of time would not be in order under all the circumstances.

Hannah: Could I be heard for a moment?

Pillsbury: Certainly.

Hannah: I remember during our first day of hearings which was October 5 that Mr. Pillsbury brought up the question of briefing and a briefing schedule. We have been told that Judge Segell was representing the District Judges Association, and Judge Fitzgerald was present during that entire day of hearings. Now, at the time, we were asked if we could get a brief in in time, and we said yes. I can't say I specifically remember Judge Segell agreeing, but he certainly didn't disagree, and Judge Fitzgerald is the President of your organization. For the record, although I don't know exactly why I have to do this, on behalf of the petitioners I took no part in drafting any Order signed by the Chief Justice of the Supreme Court of the State of Minnesota setting up a schedule here.

Pillsbury: I say that Judge Godfrey if you have any further question on this subject, I think really you would have to appeal to the Supreme Court to the Chief

Justice.

Godfrey: I think that's a proper way of doing it. My experience has been in the matters of this type, of course I know here we have a unique proceedings, but I suppose I have set briefing schedules hundreds of times. I would like to have a dime for every time some law firm has requested an extension, including particularly perhaps Mr. Oppenheimer's firm or any other firm that anybody would care to mention. I suppose if we are going to hang tough on that and say we oppose any extension of time for briefing, if that's the way we are going to play the ballgame from this point forward, I suppose that is the way it has to be done. I would like to ask, do the petitioners oppose a requested extension for filing a brief or not?

Hannah: If the District Judges Association wants to file a brief within the confines of the Court's Order, I have no problem with that.

Godfrey: I am requesting an extension of time, Paul. I am telling you that we can't file a brief in ten days from this date. I don't have a firm of lawyers to back me up. Whatever we write is going to be our own. I am asking the petitioners if they have any objection, would you oppose such a request for an extension, that's all I am asking.

Hannah: Extension from what, from October 30?

Godfrey: Yeah.

Hannah: None.

Godfrey: To file a brief.

Hannah: Fine, but the Commission is suppose to have a determination to the Supreme Court by the 15th.

Segell: What he is asking you is if you have any objection to an extension of time which would go beyond the 15th of November?

Hannah: Are you talking about sixty days now?

Segell: That's what he asked for.

Hannah: I do.

Godfrey: I requested sixty, if that's unreasonable, we need some time to file a brief. Frankly, it can't be done in ten days, not with our present position.

Pillsbury: We realized it was a tight schedule, which is one reason that I brought it up on the second day of the proceedings, I am sorry you weren't here. I think you are the one, if you wish to get an extension, to make it possible. With the schedule that we feel we have to meet, I don't think whether the counsel for petitioners consents or not, I don't think we can extend our own arrangement without a change in the Order of the Chief Justice. Would you agree with that?

Kaner: I think that is correct.

Godfrey: We will proceed accordingly.

Pillsbury: We will hear the next witness who is

Hannah: If I might, Mr. Pillsbury, our next witness is Judge Thomas H. Barland. He is a Circuit Court Judge for Eau Claire County in Wisconsin. Judge Barland.

(JUDGE BARLAND SWORN IN.)

Pillsbury: Judge, I think you sat in this morning so you have been here long enough to realize that it is relatively informal. Strict rules of evidence don't apply, and the interested parties over here or the Commission members or, of course, counsel for petitioners may all ask you questions.

Barland: Yes, I understand that, Mr. Chairman. I am Tom Barland, Circuit Court Judge for Eau Claire County, which is a county in Wisconsin approximately 75 miles east of St. Paul. I appear as a friend of Minnesota. Since we are that close to the Twin Cities, we are up here frequently. We consider the Twin Cities our virtual second home. My wife and I have even talked about, when it comes time to retire, of considering retiring to the Twin Cities because we think it's a very exciting place to live and visit. We actively participate in a number of societies here in the Twin Cities. I have been a judge for

fourteen years. I have handled, I think, almost every kind of case I can think of with the exception of water rights. In other words, I have handled traffic, probate, mental commitments, alcoholic commitments. I have handled antitrust legislation, labor legislation, all types of criminal trials, including first, second degree murder, rape. I have handled complex cases. I was a circuit judge, which I think is equivalent to your district judge in Minnesota, prior to the time that Wisconsin re-organized its courts. I have served the circuit of several counties. I have sat in Milwaukee, in Madison. I have sat and held jury trials in approximately one-third to forty percent of the counties in the State of Wisconsin. I have roamed, literally, from the Minnesota border in Duluth, in Superior, down to the southeastern corner of Wisconsin. I have served in the legislature for
(END OF TAPE). some six years. I don't like to talk about myself, but I am attempting to tell you who I am and where I come from. I have been nominated by three federal nominating commissions for the federal judgeship of a western district, and I was nominated as one of five nominees to the Seventh Circuit Court of Appeals nominating commission. I teach court administration in our judicial college, and I have done so for ten years. I have also instructed from time to time at the National Judicial College in Reno. Among the things I have discussed here have

been the handling of complex cases. I served on the Wisconsin State Bar Joint Press Committee, which drafted a series of guidelines to help police officers and to help the press understand the workings of the courts. I presently serve on a national committee designed through the National Conference of State Trial Judges to try to bridge the gap that so often exists between the courts and the press. I am not here as a captive of any one of the petitioners. I am here to tell you of my experience in Wisconsin, and how I view the Wisconsin experiment, which now is approximately four or so years old. I think I am known as a tough judge. I don't tolerate any horseplay in court. I don't tolerate anything that distracts the judge and the jury from doing their job -- to decide the facts, determine the facts, and, as far as the judge is concerned, to apply the law. Therefore, I have done such things as closing the courtroom doors to not permit anyone to go in and out while we are taking testimony. I have had complaints filed against me by some members of the press because they were late. My position was you are welcome in, but you come in on time, and you stay in or stay out, but you do not move in and out, as, for example, Mr. Turner was doing this morning during these proceedings. I won't tolerate that kind of thing in a court session. When Wisconsin considered permitting cameras and voice recordings in the courtroom,

I did not take an active position. I had some mixed feelings about that because I valued so highly the need to do nothing in the courtroom which distracts the jury and the judge as well from our duty. A jury is not accustomed to the courtroom. Any movement, anything unusual, will cause a turning of the heads, and, therefore, I think, a breaking of concentration. Certainly when you are presiding as a judge, if it's a hotly contested case, if it's a notorious case, you are under a great deal of pressure, and it requires all of your concentration as well. Wisconsin adopted its rules, I believe, in July 1, 1979, and prior to that, I recall correctly, we had approximately one year experiment. I have now had approximately twenty to thirty, and I haven't kept track of them, trials and hearings in which cameras and recording equipment were present. I have had trials recorded from start to finish. I have had excerpts of trials covered. I have had criminal trials and civil trials covered by the press. I might further mention, long before this matter of cameras in the courtrooms came along, I happened to be the judge who handled the now infamous Al Capp case, the cartoonist of Dogpatch fame, who sexually accosted a co-ed in Eau Claire. It was a very unfortunate proceedings. I think it eventually led to his demise, but the pressure from the press was enormous. This was now, I think, twelve, thirteen years ago. I had telephone calls from all over the

United States from press representatives. When we were setting up for a hearing, I could see that I was going to deluged by TV cameramen and radio personnel. I then set up some very strict rules and guidelines, governing where cameras, at that time I didn't even allow them in the courtroom, I mean, in the courthouse, not even on the block in which the courthouse was stationed. They were relegated to a parking lot from which they could take pictures of people coming and going. I set up a schedule of handling what I anticipated to be platoons of newspaper reporters. The rules that I adopted were, I found out later, followed by others in other cases because they appreciated the consideration given to both sides of that question. The Wisconsin Press Association adopted it as a model set of rules. Now let me turn to the Wisconsin experience. How is it working in my view? I think it is working well. That is not to say that there have not been some problems, and it is not to say that I have not been upset from time to time with some of the behavior in the courtroom, but these lapses were relatively minor, and I was able to handle them expeditiously. In most instances never to be repeated again because they saw my raft when the rules were violated. Now let me discuss what I feel are some critical points in making these rules work from our experience. I think some of what I have to

say may answer some of the concerns that were expressed to you this morning. First of all, the Wisconsin rules make it clear that the judge controls the courtroom. The judge controls where cameras may go, the judge controls how many cameras there may be. Now the rules say three may be permitted, but there is a loophole in that rule which says the judge may increase or decrease the amount, so for all practical purposes, the judge controls. We have a media coordinator -- a person designated by the press as the liaison between the court and the press. That is not particularly essential. I have seen it operate only once or twice when a dispute arose, and the media coordinator appealed the decision of the judge. It was not my decision. It was in a notorious assault case. It was a change of venue to my county, and the judge did not want any cameras in the courtroom unless he could see what was going to be put on the air because he was afraid of distortion of the presentation of news. The media coordinator appealed that to the Chief Judge, who, in turn, appointed me to handle that. I handled it very readily. I talked to the judge, found out what his concerns were. I told him my views of the local press, that I thought that they were responsible and would handle that adequately, and it was cleared up. As far as I know, that's the only dispute that has ever arisen, not only in my administrative dis-

trict, which is all of northwestern Wisconsin, but, as far as I know, much of western and all of northern Wisconsin. Our rules provide that there is to be no enhancement of the lighting in the courtroom. The press takes it as it is, and, in Judge Segell's case, if the lighting is insufficient, that's their tough luck. Now I have found, since these three years, that the quality of the equipment used has advanced immeasurably. By the way, because of my interest, have always made it a point, when I knew that photography was going on, to try to see what appeared on TV or listen to it on the radio and read it in the newspaper. The first shots were disappointingly dark. The first shots we used, or the press used, was black and white. Now it is in color, and, as far as I can tell, and I have been in courtrooms of varying lighting, it has been adequate for TV purposes without any enhancement. I would suggest that, if you have any rules, that you make it clear that there is to be no lighting enhancement. Under our rules, the judge controls the equipment. Some equipment is noisy. I have had 16 millimeter cameras, and you can hear the burr going, and I have told the cameraman, I am sorry, that is too noisy. We can't have that anymore, and the equipment has been changed. We provide for one operator, and that the operator does not move about. That is particularly important. One

of the mishaps that I eluded to was that in one case, when the cameramen finished with what they were concerned with in a particular proceeding, they started packing up their equipment and were going to leave right in the middle of the proceeding. I called a halt to that very quickly and made them sit down and stay until the session was over. They came back and apologized afterward. Controlling the location is very important, otherwise they could position themselves all over the courtroom. I have positioned them to one side where they are not in the way of the spectators, where they are not in the way of people who may come and go, and they have accepted that. I noticed this morning, listening when cassettes were being changed, there was a loud click and you could hear some banging around. I wouldn't permit that in the courtroom -- that's all distraction, and, if they don't have the equipment that can permit those kinds of changes without noise, then they are not allowed in under the way I operate the courtroom. Our rules prohibit audio pickup of conferences between attorneys and attorneys and clients. I would suggest that, if you have rules, you further enlarge that rule to prohibit camera pickup of such conferences. These are confidential conferences for the most parts, sessions of strategy and so on, and a camera could pickup lip reading for some people. The rules should make it clear that cameras are not to focus on the work

product on the table. This is way back in the beginning. We had an incident where, during a recess, a cameraman moved up and was going to photograph some of the documents on the table. That was caught, he was reprimanded, and made it clear that he should not do that. A controversial aspect of the Wisconsin rule, which I know that our local press does not like but which is acquiescening to for the time being as they really don't have any place to go, is that there is to be no operation of equipment during recess. I think there is a good reason for that. The operation of equipment during recess, again, gets involved in attorney-client conferences, or attorneys may be moving back and forth between one side or the other, people may be discussing the case, and something could be picked up of a confidential nature that should not be. I can state this, categorically, I am not aware of any instance that I have been able to observe either through hearing or vision or whatever way where I felt a witness was intimidated by the presence of a camera. Now what it does do to me as a judge, and I am the one who sees it by the way, because it is back in the spectator section. It is sort of behind the jury, or to the side of the jury, and the jury would have to swing all the way around to see the camera, and the attorneys have their backs to the camera, as well as the defendant, and the witnesses as they come up, except

when the witness faces the camera, so I am aware of when it is going and when it is not. I am not always sure then, when it is going and when it is not, except when I see the operator move something, but I have found, or I have made no observation of any witness who has shown any reluctance to testify. I have never had any complaint made to me by either an attorney or the district attorney that a witness was afraid of the camera, and, therefore, did not want to testify. Now I put on an exception to that. I agree wholeheartedly with witness, Marjorie Burton, who spoke about the matter of problems with sexual assault cases. I view that as a very notable exception, and I have handled a number of rape cases. We now call them sexual assault, but I have handled the old style rape, as well as modern sexual assault, including sexual assaults and abuses of children, young children when they have had to come in and testify. I concur wholeheartedly that that kind of person, particularly a child, should not be placed before a camera, either still or movie or videotape. I would suggest that, if you found the operation of the rules upon the requiring of the consent from all the parties and the judge, that rarely will you ever have a camera in the courtroom. The approach Wisconsin has taken has been to permit cameras in the courtroom subject to objection, and it puts the burden upon the complainant

to raise the issue of the camera in the courtroom. There is an exception to that, and that is you may ban the cameras totally if there is cause, but there is a presumption of validity of cause. This is our rule 61.11. A presumption of the validity of cause when the person objecting is a victim of a crime. It is not restricted there, you can see, just to sexual crimes. A victim of a sex crime, police informants, undercover agents, relocated witnesses, juveniles, suppression hearings, divorce and trade secrets -- all those have presumed validity of cause should an objection be made. I, frankly, have never had an objection made. I do know of some that were made in Milwaukee, where both the district attorney and the defense objected. In that case, the judge allowed cameras in the courtroom. Another important prohibition is, and we have it in our rules, is prohibiting the photographing of jurors. Like Judge Segell, I often quizz jurors after the verdict is in in a case to get their reactions of certain things, and I also send out, and I have been doing this for about four or five years, to every juror, when their term of service is over, a questionnaire. One of the questions on that questionnarie relates to cameras in the courtroom. We also use videotaped depositions, and I have some questions relating to that as well, but as to cameras in the courtroom they are asked their thoughts on that. Every juror, I don't think there has been an

exception in the hundreds of jurors that have answered these questionnaires, they do not want to be photographed. They want to remain anonymous. During our one year experimental period that was not part of the rules, but I made it a local rule. The first time a camera came into the courtroom, I said to the cameraman and their TV reporter you may photograph but you may not photograph a juror. That night on television the newscaster had a pretty, I was very upset, a very hostile comment to the effect that I was abridging the freedom of press because I didn't allow jurors to be photographed. I was angry. I thought it was unfair and I told that reporter so. Approximately a year later I had an arson and second degree murder case, involving four deaths in the burning of one of our hotels in Eau Claire. It burned to the ground. I had to change venue to another city because of pre-trial prejudicial publicity, and it had nothing to do with cameras in the courtroom. The Fire Marshal announced a confession at a news conference. This newscaster who had made that derogatory statement came to the trial, way down 100 and some miles away in southern Wisconsin, and was there the entire week, photographed the entire thing, only parts of which were put on the air. I made it a point to stay up every night and watch that newscast. It was well done. I could not criticize a word in the newscast. He did a beautiful job. I told him so, and

when the trial was over, he said to me, you know I learned a great deal this week. I have come away with a new respect for the courts. That is a dramatic story, but I have seen that happen again and again. When you bring the press in, when you have them there for any length of time, beyond just a snip at a time, and my holding them in the courtroom until recess helps in that educational process, I think that they come away with a new knowledge and new respect, and it improves the working relationship between the press and the courts. I fully understand these tensions, these concerns that were expressed here this morning. Our rules further prohibit the recording for unrelated advertising. I think that's important. We have a local rule, just our judges for northwestern Wisconsin, that a party wanting to close the courtroom to cameras must give 72 hour notice to the court and to the press to give the press an opportunity to appear. I have been asked do cameras in the courtroom help educate the public? I think it does to this extent. Television and radio reach different audiences. There are people who watch television who do not read the newspapers, and I find that out on voir dires on juries in notorious cases whom we polled, as to what the source of their knowledge about a case. It amazes me how few people read newspapers and read anything other than sports and the comics, and it also

amazes me how few people watch television, I might say. It is not just newspapers, but it is a different kind of audience for each. I have had many people speak to me on the street that they had seen this or this on television, who would not have mentioned it had it just appeared in the newspaper because that has been happening for years and years. We get very good coverage in our area. By the way, we have two competing television stations, and we have the University which has its own television station, so I have had up to three cameras in the courtroom at one time. I would suggest something less than three, by the way. I understand your proposal is one, and that's a good starter. On this matter of can you do justice to a whole day trial in a thirty second capsule of events? The answer is obvious. You can't cover the range of events obviously, but I have found that, on the whole, the TV newscasters have done a superb job of in a few sentences telling the public what happened. I can recall a civil case, and I have had a number of civil cases, where cameras have appeared. This was a dispute between the City of Eau Claire and a neighboring township over a sanitary landfill. I eventually found the City of Eau Claire in contempt for having violated an earlier Order of the court relating to the regulation of that landfill, which was located in this town. It was rather complex,

I thought. We had our contempt hearing, and I made it a point to watch television that night. I ordinarily don't watch television to see how it would be handled, because I had a difficult time explaining to my wife in less than five minutes, and this reporter did it, I thought, beautifully in a few sentences. It was not a reporter trained in the law. It can be done, and, obviously, news can be distorted on television and on radio. You can be made to look bad, but I suggest that has been in danger all along in newspapers. A newspaper reporter can just as much distort what is going on in a courtroom as can the TV or a radio reporter. I think I have taken up enough time, and I will open myself to questions.

Pillsbury: Counsel, would you like to ask some questions?

Hannah: Just a very general question, Judge. Based on your experience in Eau Claire County, would you give the Commission some idea of your view of whether the fundamental due process rights of a criminal defendant were violated by the presence of cameras in your courtroom.

Barland: In the trials over which I have presided, I do not think those rights have been violated. I have had some very tricky cases. I will give you two examples. One was an armed robbery case where the defendant had been convicted of two murders a few months before

in a neighboring county, and we had to make sure that the knowledge of this conviction of the murders did not reach the jury on the armed robbery trial in our case. It was covered by the press because it was a very notorious case and by cameras. I called the press people in and told them my problem. I said I can't censor what you are going to do, but you may be subjecting this county to considerable expense if I have to declare a mistrial if this information is revealed. I told them what the problems were. They respected my request. A second case. I had a medical doctor charged with second degree murder of a relative of his because of the ingestion of too many illegal drugs. You can imagine another very notorious case. He was from Milwaukee and we had Milwaukee press involved as well and the medical association. He had earlier pleaded guilty to a lesser charge and had been placed on probation, but spent time in jail for one year. He came back and was permitted to withdraw his plea because of the rearing of an insanity defense. This trial was an insanity trial. Therefore, we had to keep from the jury the fact that he had pleaded earlier guilty to a related offense, the equivalent to a lesser included offense. That was revealed in the middle of the trial on television. Somebody called me immediately. Within minutes we sequestered the jury. This was not first degree so we did not have mandatory sequestration. We immediately se-

questered. We kept that information from the jury. I found out later, a news reporter came up and apologized to me profusely because I also saw to it that what appeared in the press was a story of how much it cost the county, and the press printed that. It was many thousands of dollars. This news reporter told me that he had a dispute with his superiors. He said that information should not go on the air, his superiors overruled him. So you do have to be alert for those kinds of things.

Hannah: That sequestration, was that due to the presence of cameras in the courts or just media coverage?

Barland: That would be just media coverage. It did come over TV, but it was an oral statement, and it was not related to the photography itself, which appeared only as background.

Hannah: What about the impact of cameras and microphones in the courtroom the impact on your energy you must expend to administer your court?

Barland: It takes no more energy. I sit up straighter. I have a tendency to slouch, I think, on the bench, and trials do get to be boring. You have a tendency to lean over, and I find myself sitting up a little more than I would otherwise. It is one more thing that you have to keep an eye on. To say that it is as if they were not there would not be truthful. It does take some more energy. Fortunately, they tend

to come near only in the more significant cases, more newsworthy cases, and those are the cases that are going to demand more energy anyway, I think.

Hannah: I have no further questions for the Judge.

Pillsbury: Judge Segell, have you any questions?

Segell: Yes. You would agree, Judge Barland, that the chief function of our judicial machinery is to ascertain the truth?

Barland: Whatever the truth may be.

Segell: Does the TV camera contribute anything to the objective?

Barland: I think it does. To the same extent that (END OF TAPE). What's going on. We have had segments repeated and recorded and repeated in full. I think it helps inform the public, for example, that not all courtroom trials are Perry Mason kinds of trials, that sometimes they are very dull, as one of the speakers pointed out this morning.

Segell: I didn't ask you whether it had any educational value. I asked you whether having TV cameras contributes to ascertaining the truth in the courtroom.

Barland: I think it does, because an educated public helps bring about the kind of atmosphere that permits the finding of truth. Our juries come from the public and the more they know about our court system and the courtrooms, how a trial is conducted, the better

able they are to handle the issues that come before them.

Segell: You think it is relevant then to the objectives of a particular trial to have a camera there.

Barland: If you ask if it is relevant, I think it is relevant.

Segell: To ascertaining the truth in that particular trial which you are conducting. That's what I am trying to get at. Is it relevant to ascertaining the truth in a particular trial that you are undertaking at the moment?

Barland: Framing it the way you have, you are talking about a particular trial, probably not. I am referring to the overall education and attitude of the public, which, I think, is important in the long run, even though it may not make a direct effect on a particular trial in ascertaining the truth.

Segell: So you don't share Chief Justice Warren's view in Estes v. Texas that the function of a trial is not to provide an educational experience. You think it has that purpose.

Barland: I don't see how you can separate, in some instances, the finding of the truth from an education. The process of determining the truth is an education or process. We are mixing concepts, I think, and you can't separate them completely.

Segell: Do you think, as Chief Justice Warren thought, that there might be a danger in any attempt to use a trial as an educational tool because it might divert the trial from its proper purpose?

Barland: If you were to turn the trial into a classroom to educate the public as a whole and the trial itself became subsidiary, that would be a distortion and a perversion. I would not favor that, so, if you are concerned about using a particular trial as an example, interrupting it or giving comments, that I think would be bad.

Segell: You have had some gavel-to-gavel coverage in Wisconsin

Barland: Yes, we have.

Segell: of sensational cases.

Barland: I can think of one case in particular which was the trial of, I think, it was a minister who had reprimanded a boy in his congregation, and that, as I recall, was presented over closed cable television in Madison. That was covered from gavel-to-gavel.

Segell: Now as people watch that trial some of those people obviously are potential jurors in cases that come up in the future.

Barland: Yes.

Segell: And every judge tries a lawsuit differently.

Barland: That's correct.

Segell: Do you think that it was a benefit to the public for them to see a gavel-to-gavel coverage of a particular trial, and then go in and find that things are done entirely differently in somebody else's courtroom?

Barland: I don't think that that would destroy the public's view of a court, particularly if the judge is sophisticated enough to explain that to the jury, as I think most judges should at some point in the trial. It is a technique I use often. Because we ship jurors back and forth from one judge to the other, I make it a point of reminding the jury that each judge has his or her own approach and method of handling and all of the methods may still be valid. It depends upon personality and attitude and capability of the judge.

Segell: Do you think it might be possible that a juror going into a jury room who has seen a televised trial gavel-to-gavel might reflect on the fact that that judge so and so did this a little differently. This judge isn't doing it right. Do you think that's a possibility?

Barland: That is certainly a possibility, I don't think it is a probability, but that would happen under our system, I think in Milwaukee and other places we have multiple judges and jurors flowing from one courtroom to the

other. They are going to make comparisons between Judge A and Judge B, even if they never saw anything on television.

Segell: Don't you think it would be much more educational if you were to be able to prepare a script which would have across the board implications, as far as the public is concerned, rather than having them see specific little bits of trials here and there. That you could create some kind of an educational tool that could be shown on public television or in educational institutions, which would be far more educational to the public than little bits here and there, or even gavel-to-gavel coverage of a trial of a sensational case in which the judge is sitting up straight because he is expected to sit up straight, and other people are doing all kinds of things that they might not otherwise do if the camera weren't there.

Barland: Certainly, that would be educational, and we have done that in Eau Claire. We have prepared a model trial that we have shown on our public access television from gavel-to-gavel, an armed robbery case.

Segell: As I understood it, you believe very firmly that no juror should be televised under any circumstances?

Barland: Yes. Now our rule, and I adhere to the rule, it affects states that if the layout of the building

is such, the courtroom, that you can't help but pickup some of the jurors, the camera must be sufficiently far away, or the filming must be such that individual jurors cannot be identified. That is the rule that I feel very firmly about that, yes.

Segell: You have had television for about four years in your state. Have there been any trials of cases that have gone to the Supreme Court and then reversed where they had to come back for a retrial in a particular district where the case was televised originally? Do you know of any such case?

Barland: And the reason they were sent back was because of some affect the television had.

Segell: Not necessarily, no. Retried because of some error at law or something that occurred during trial. Not necessarily the fact that the camera was there, but something that occurred during a trial. The case is sent back. Jurors from the community in which that case was rather extensively televised are part of the voir dire for the new trial.

Barland: I can't offhand think of such a case. That hasn't happened in any case that I have handled, or that has been handled in the area near me.

Segell: You would agree that that does present a danger, doesn't it? If there has been substantial television

coverage in the first trial, case is reversed, it is back in the same community for a retrial, after all those people have seen what went on in the first trial.

Barland: Yes, it presents a danger, and to the same extent that newspaper coverage may present that sort of danger or radio coverage.

Segell: In the report of the Supreme Court Committee to monitor and evaluate the use of audio and visual equipment in the courtroom, have you seen that April 1, 1979? It was a long report. This is Professor Fellman, part of that Committee.

Barland: I have read that. It has been a long time since I have read it.

Segell: A number of questions were asked of judges and jurors and witnesses in that case, and I am referring specifically to a Judge William C., he spells his name S-A-C-H-T-G-E-N.

Barland: Sachtgen. William Sachtgen from Dain County, now retired.

Segell: He was asked one of the standard questions in this questionnaire was what, if any, influence do you think the use in the courtroom of (a) television cameras (b) radio equipment and (c) still cameras had on you during the trial. He answered I was conscious of their presence, although I couldn't

hear the camera shutters, for instance. They had an indirect effect in that a large courtroom with good accoustics was used which made it easier to hear the witnesses. Cameras made me more aware of my posture, so I sat erect much of the time. I guess, you had the same reaction. You sit up straight now as you you used to slouch years ago, did you?

Barland: I still slouch.

Segell: You still slouch. That's when the cameras aren't there.

Barland: I have been on camera so much that I am starting to slouch on camera now too.

Segell: Would you agree that you are conscious of the presence of the cameras in the courtroom, as is Judge Sachtgen.

Barland: Yes. Yes, you are, especially at first, and then, as the trial goes on, you become less and less conscious of it.

Segell: He was asked what, if any, impact do you think the use in the courtroom of (a) television cameras (b) radio equipment, still cameras had on the witnesses? He said they were more apprehensive, nervous, scared. The fact that it was a full courtroom with a lot of activity may have combined with the presence of the cameras to cause this. Would you share that?

Barland: No, that hasn't been within my experience.

Segell: He said, if I were charged with a crime, I would not want it to be televised or photographed, would you share that?

Barland: I wouldn't even want it published in the newspaper I would be so ashamed, so I guess I would have to agree with that statement.

Segell: Have you had occasion to sequester a jury as a consequence of trying a case that has achieved substantial notoriety?

Barland: Yes.

Segell: Who has paid the cost of that sequestration?

Barland: The county.

Segell: You have never asked the media.

Barland: No. It was that one case that I gave the example of.

Segell: Would you agree that still cameras distract you from the tasks at hand during a trial to any extent?

Barland: To the extent that the photographer moves it does, but I have not had many still photographs taken. I am a trial court. Still photographs have been taken in the intake court more frequently than in my court.

Segell: This would be a municipal court or a county court of some kind.

Barland: It would be what you would think of as a county court. We have a one level trial court system now.

Segell: All merged.

Barland: That's right. We rotate, by the way.

Segell: This is defense attorney, Jack McManis, of Madison. To what extent did this equipment distract you from the tasks at hand? Now you are asking the lawyer about this. He said the still cameras were too loud, and there was too much movement and jockeying for position by the still photographers, especially during dramatic moments when there was a distracting flurry of activity by the photographers. Have you had that experience?

Barland: No. I know Mr. McManis well. He is a fine lawyer. He is one of Wisconsin's most colorful and flamboyant lawyers who is very strongly opposed to cameras in the courtroom.

Segell: I gather then that, because of his flamboyancy, he is distracted by somebody doing something when he wants to do it.

Barland: I could agree.

Segell: The television cameras in the hallway, this is McManis again, outside followed the jurors entering and leaving

the jury room. I think that this had an undue influence on the jurors, giving them almost a celebrity status.

Barland: I wouldn't permit that.

Segell: Is that done though in other courts?

Barland: Not in my area.

Segell: You say you are a tough judge, but how about some of the other judges in this county?

Barland: I haven't heard of that being done. They haven't tried it in our area.

Segell: You haven't observed that on TV.

Barland: Oh, no.

Segell: In other cases where other judges have been trying a case.

Barland: No, I haven't.

Segell: I suppose you have pretty strict, does your strict rule on jurors encompass the hallways as well as the courtroom, as far as television is concerned?

Barland: Oh, yes. I wouldn't permit the photographing of a juror who is on duty anywhere, coming and going from the hotel or from the courtroom or in the hallways. That cloak of anonymity should apply throughout the entire span of the juror's duty.

Segell: But you said that is a local rule of yours. That juror rule or is that across the board throughout Wisconsin.

Barland: That's the state rule.

Segell: It is.

Barland: Yes.

Segell: Does that include hallways and outside the courthouse?

Barland: Let me read it to you. I don't think it is quite that explicit. Individual jurors shall not be photographed, except in instances in which a juror or jurors consent. In courtrooms where photography is impossible without including the jury as part of the unavoidable background, photography is permitted but close-ups which clearly identify individual jurors are prohibited. Trial judges shall enforce this subsection for the purpose of providing maximum protection for jury anonymity. That, therefore, by my interpretation would apply to coming and going from the courthouse as well.

Segell: I call the Commission's attention to the fact that the precise language that he just read is the language that appears in the rules proposed by the majority of the Bar Association and the Joint Bar Press Committee. That's the rule I think I read to you this morning.

Do you know Judge Fredrick Fink of Wood County?

Barland: I know him well.

Segell: He was asked these same questions, and he was asked, of course, what influence still cameras had on him during the trial. His answer was apprehension. I got a much publicized trial, tried to get a jury in the other place, which is Waukesha County. There was tremendous pressure. I had never worked with cameras in the courtroom. Would you share the view that's his that perhaps some apprehension about cameras?

Barland: I think, especially the first few times, you do. The case he is referring to is the Jennifer Potrey case.

Segell: That's the arson case.

Barland: It was arson, but initially she killed her husband, and the defense was that she had been an abused wife. He had another one of our almost uncontrollable defense lawyers in his court. He was subject to what, I thought, was unfair newspaper publicity. I have a collection of some of the clippings because that figured in our Press Bar Committee's work. Even members, journalism members of my committee, agreed that he was unfairly handled in the newspapers in that particular case. Tremendous publicity, tremendous pressure, and I am sure that

all added up to what he is referring to.

Segell: How was he treated by the television news in that case?

Barland: I didn't see any of the television reports so I really can't speak to that.

Segell: Then he was asked whether the presence of the cameras, etc. increased his supervisory responsibility. Yes, it does, no question. You have got to keep an eye on them to assure that they are following the guidelines. In addition to other things, you have to supervise. Have you had any problems with the media, as far as following the guidelines once they were adopted?

Barland: Oh, yes. I have had instances where they didn't follow the rules, they didn't know the rules. In one case a cameraman walked into the courtroom and somebody else was packing up. Just about that time in walked an attorney, in an unrelated case, walked right up to the bench, and, at that point, I said stop everything. This is turning into a circus. I declared a recess. I called the camera people in and I said now see here I expect you to know the rules. You have been violating the rules. Here is a copy of them, read them, don't come back in until you are ready to follow them. Yes, those incidents will take place, especially as people are learning the rules and learning how to work with them.

Segell: When he was asked, and this is Judge Fink again, what

impact cameras had on the witnesses, he said I think there is always some ham in every human being and a tendency to play up to the media is there. Would you share that?

Barland: If you are taking the whole gammit of personalities, certainly. That's true in a trial without the press. That's true in any situation where you have confrontation in front of other people. People will respond that way. Some people will.

Segell: Do you think that some of the flamboyant lawyers might be even more flamboyant when they know that this is a case from which they are going to get the utmost publicity?

Barland: I think some of the flamboyant tactics that I have seen I don't think will look good on television because I think it looks phony. I view it as phony, and I am sure that in some instances the public is going to view it as phony.

Segell: He was asked if it had any effect on the behavior of counsel. He says very definitely, yes. To some counsel it doesn't make a different. To some, in varying degrees, it makes a tremendous amount of difference. I suppose that's the man who is looking for the publicity, isn't it? That's the observation he is making.

Barland: I didn't conclude that. That is a possibility. It is a possibility that an attorney who is apprehensive

might be more apprehensive. A whole bunch of reasons why that could take place.

Segell: If the witnesses are apprehensive, jurors are apprehensive, judges are apprehensive in sitting up straight, and the lawyers are hamming it up, do you think that this is the atmosphere that we are looking for to assure people a fair trial whether it is a civil or a criminal case?

Barland: Of course you have pulled together the worst of all worlds.

Segell: Those are the comments of your judges in Wisconsin.

Barland: I am here to say that the worst of all worlds has not happened within my experience. Parts of these things have happened at various times, but we have been able to handle them. I have not heard any major complaints from the Wisconsin judiciary about cameras in the courtroom. We have judges who do not like the press and who feel that the press distort, but I think on the whole it has been accepted. I think it is working.

Segell: There are one or two other things I wanted to ask you about and that's Judge Raskins' comments. You know Judge Raskin.

Barland: I have sat in for Judge Raskin.

Segell: Pardon.

Barland: I have sat for him several times in Milwaukee.

Segell: He is in a major metropolitan area.

Barland: In Milwaukee, and he's been retired for seven, eight years, and he is still sitting as a reserve judge.

Segell: He pointed out in one of the cases that he tried, this was a case apparently where a person pleaded not guilty by reason of mental illness and they had to have a bifurcated trial, where they tried his guilt first and then his mental illness later. He said that all witnesses, except expert witnesses relating to the mental condition of the defendant, were sequestered. This presented the problem whether any witness was watching the telecast away from the courthouse before being called to testify. I informed counsel that any witness may be voir dired outside the presence of the jury, but respect to whether a witness listened or watched other witnesses when testifying, no such requests were made. The point, I think, that he is drawing attention to is the fact that one witness may color their testimony to meet the testimony of witnesses that they have observed on television, and that would be the purpose of sequestration I would assume. Have you had any problems with sequestering witnesses and trying to keep them from watching themselves on TV?

Barland: No, I have not. We have a rule of mandatory sequestration when it is requested by either party. It is up to the judge to set the rules, and in an important case I have told the witnesses that they are not to view the case or discuss it, and I have warned them that they are subject to individual voir dire to see if they have followed the rule. I have not had a problem.

Segell: Do you believe that they follow that rule in your own mind?

Barland: Anybody is capable of not being truthful, even jurors can on voir dire say they know nothing about the case and somebody may know something about the case. That is a human condition that we have to deal with all the time at all levels, and I have enough faith in the people that I work with to know that, in my mind, nine-tenths percent of the time I can rely upon them. I am also realistic enough to know that there is the occasional case where somebody is not going to be truthful.

Segell: We admonish jurors starting at the outset of a trial not to read anything about the case, not to observe any television news if there happens to be any television news on a particular case, and yet, I think, we are realistic enough to know that jurors do read the newspapers. A lot of times they read things accidentally. They don't deliberately set out to read something,

but they happen to start reading something, and they realize that it is something about the case that they are involved in. We know that they do these things realistically. I had a case four or five years ago where one of the newspaper men accidentally mentioned the fact that the defendant who was being tried was being tried for the second time. There was a mistrial the first time, etc. etc. I found out the next morning that at least four jurors of the twelve had seen that article. They were truthful about it. But they do read, and they can read accidentally. I guess my concern with their watching television jurors watching television, unless you sequester them, the extraneous influence that can be had on jurors when they see something which reinforces perhaps something they saw in the courtroom or reemphasizes something they saw in the courtroom in a criminal case, now that has to distract from that defendant getting a fair trial, doesn't it?

Barland: Just as it does when the jurors read it in the newspapers. I suggest it is easier to stumble across that information in the newspaper than it is on television. I tell this to the jurors when I admonish them not to read newspapers, not to watch television. I tell them you know when television news is coming on, therefore, you have a duty not even to turn on the set at that particular time. That

actually is more controllable than the newspaper, because you are not always sure where in the newspaper the story may be placed, and it is easier to stumble in the newspaper than it is on television.

Segell: My friend, Stan, over there would like us to think, and I think he is correct, that most people get their news from television. 70% is it, Stan, 75%, in that area, so the impact has to be greater from television than it does from newspapers. People read headlines in newspapers, they don't read stories for the most part. How do you miss it on television?

Barland: If you are a juror, you have been, in effect, ordered not to listen to let's say the ten P.M. news, and they know when ten P.M. is. They don't know whether a story that you are concerned about is on page two or page three.

Segell: They don't know whether they are going to see anything at ten o'clock either. You are just saying don't watch anything that concerns this trial, you are not telling them not to watch the news, are you?

Barland: Tell them not to watch the news.

Segell: I have nothing further.

Pillsbury: Judge Godfrey, do you have a question?

Godfrey: My colleague leaves me little left to cover. I

just had a couple of questions of Judge Barland. Perhaps we should all know what is your population there in Eau Claire County?

Barland: About 83,000.

Godfrey: You have a multiple judge. I gather this covers the circuit judges and also are all the county judges now circuit judges too?

Barland: That's correct. We have a multiple judge bench.

Godfrey: How many judges have you got for how many counties?

Barland: Three of us in our county. There are fourteen in our administrative district.

Godfrey: So you have three, and you handle all municipal, circuit court and everything else.

Barland: That's correct.

Godfrey: Do you go outside the county?

Barland: Oh, yes. As I explained, I have sat in

Godfrey: I mean ordinarily. I am not saying that you couldn't, but I mean ordinarily, do you try cases outside of Eau Claire?

Barland: Oh, yes. I have a jury trial scheduled in Elsworth, Pierce County, just over the border coming up in a month or two.

Godfrey: How many counties do you cover?

Barland: I have covered every county in my administrative district, which are eleven or twelve. In addition, I get assignments outside my administrative district.

Godfrey: On a regular basis do you go to all those counties?

Barland: Not on a regular basis. You are talking like once a week or once every year.

Godfrey: I am trying to find out where you work, not whether you have ever tried a case in Pierce County?

Barland: I work primarily in Eau Claire County, but I handle individual assignments on the average of three or four times a month in other counties. (END OF TAPE). That Eau Claire can be compared to St. Paul and Minneapolis in terms of relative size no, but we do have occasionally television crews down from the Twin Cities.

Godfrey: Again, just to get some flavor. I envy you your location perhaps on occasion, but how many homicide trials do you have in Eau Claire County a year? On an average, what have you been fourteen years on the bench?

Barland: I have been fourteen years on the bench.

Godfrey: Not you yourself, but in the whole county how many homicide trials have you conducted in Eau Claire County in the last ten years, for example?

Barland: Are you talking about first, or all ranges?

Godfrey: Throw them all in. Homicides. I don't demand first degree murder because that is up to the prosecution. Sometimes he can't get a good enough witness to hold that one.

Barland: We probably average ten or twelve a year.

Godfrey: In Eau Claire County.

Barland: Yes.

Godfrey: That's interesting, we have in St. Paul, I think, about twelve or fifteen a year and all of Ramsey County with our population. Are you sure those figures are accurate?

Barland: You have asked me for the whole range.

Godfrey: How many murder cases?

Barland: That we have relatively few. How many a year?

Godfrey: Yeah.

Barland: Maybe two a year.

Godfrey: I guess I don't have any other questions of the witness other than perhaps the comment that I think the statements should be considered in the context. With all due respect to Eau Claire or Judge Rosenbloom, things are a little different in Redwood Falls and Eau Claire than they are in St. Paul or Minneapolis.

Pillsbury: Have you any other questions?

Hannah: I have one question based on that point. Judge, the mere fact that Eau Claire County has two murder trials a year and 83,000 persons mean that you or any other judge there feels less strongly about the rights of a defendant in that criminal case in any nature?

Barland: No.

Hannah: That's all.

Pillsbury: Have you any questions?

Kaner: I have just a very quick question. Judge Barland, were you here this morning when Marjorie Burton was testifying about the situation in Ramsey.

Barland: Yes, I was.

Kaner: Do you have any comment on one of the conclusions that I drew from her testimony that the presence of cameras in the rape cases might very well have a tendency to lessen the number of rapes that would be reported by the victims, and also might very well lessen the number of victims who would decide to go through the trial because of their knowledge that they would be facing TV cameras?

Barland: I think, if women (INAUDIBLE) the impression that if they were sexually assaulted and subject to being

photographed at a trial or hearing arising out of that sexual assault, they would probably tend not to report. I agree with the speaker this morning in that respect.

Kaner: That in itself would be a rather unfortunate result.

Barland: Yes.

Kaner: Secondly, you heard Judge Godfrey also discuss his situation, his testimony.

Barland: I heard his testimony.

Kaner: I would be interested in your comment in connection with the hypothetical that he put to us of a man who was charged with a murder with various TV segments being broadcast. After a lengthy trial the jury finds that there was not sufficient evidence to convict beyond a reasonable doubt. The man walks out of the courtroom with a verdict of acquittal and returns to his home, his job and his friends, all of which is a foreseeable scenario. Do you have any comment on that?

Barland: I see no difference between that situation and the situation of a murder trial and acquittal where it has been thoroughly covered in newspapers.

Kaner: You don't think the broadcast of that entire scene over a period of maybe a couple of weeks by TV would have a greater impact or lesser impact or

similar impact than newspapers probably?

Barland: It depends what is being broadcast. If you did not have cameras in the courtroom, television could still report on the trial and tell what went on and describe how people reacted just as a newspaper would. You have to in that scenario imagine what would actually appear on television, if cameras were permitted in the courtroom. How much greater impact that would have? I suppose if the person went berserk,or, if the person acted sullen, that that would have a negative impact on him, but it also could have the opposite impact. If the person presented a good impression on television, people might feel sorry for that. Just as I saw a jury in a second degree murder that was trifurcated under a mental illness plea, where the jury found the person. This woman had killed her baby shortly after birth. There was a very rational psychiatric explanation for what happened. The jury found her not guilty by reason of mental disease, and they found that she should not be committed. When the trial was over, about three-fourths women on the jury, they all went up to the defendant and put their arms around here. I was astounded. They did that because they were sympathetic to her as a person, her predicament. Her psychiatric problems had been spelled out in full, and, if that kind of a presentation had been made and grasped by

the public, then you would have that kind of a similar reaction. So it depends upon what is shown and that can vary depending upon the case and the operator just as it can vary with the way a news account is written or the radio newscaster or TV newscaster, if there be no photographs, describes it orally.

Kaner: I just have one other question. In your familiarity with the procedure in Wisconsin you indicated some possible manner of excluding the coverage in what the rape cases, the cases involving people who are operating under another identity of some kind

Barland: Undercover.

Kaner: or other, government agents, remember that kind. How does that work out as a practical matter? Does somebody have to make the objection based on that? Who has the burden of proof there?

Barland: Yes. The burden of proof is upon the press because there is a presumption of validity, a presumption of cause. Therefore, those who are opposed to the closing carry the burden to show that it is not good cause.

Kaner: I have no further questions.

Pillsbury: Just to pursue that one point, just a little further. What kind of an appeal procedure do you have if the media does not wish to accept your ruling?

Barland: The appeal is to the Chief Judge of the district. The Chief Judge's decision is final. There is no appeal from that. If the decision of the Chief Judge is, let's say to permit cameras in over the objection of the defense, that question could ultimately be raised on the question of fair trial, of normal fair trial appeal.

Pillsbury: Is the procedure such that it is quite expeditious?

Barland: Yes. In the case that I was involved in it was handled within five or six hours.

Pillsbury: Have you any questions?

Ahmann: No, Mr. Chairman. You followed up on the questions I had. I would only like to thank the witness and just to note that we have had, through the course of all of this testimony, superb witnesses. I think they have brought out all the facets in the discussion of fair trial, but particularly, Judge Barland, your willingness to talk about the controlling and administrative aspects of this from a practical standpoint is something that was very useful to me. (INAUDIBLE) Also that you did note the risks, and it's not easy. I appreciate that.

Barland: Thank you. Thank you very much, and I enjoyed the cross-examination.

Pillsbury: Can I ask you one more? While you were talking, I wrote down three different statements here with re-

spect to media television coverage, and I would be interested in how you feel the relation to these statements. One assumption might be that you feel it's something you can "live with." Another assumption might be that you think it has a positive influence in that it can perhaps enhance justice broadly stated, even if it doesn't have an impact on the precise trial at hand. A third feeling might be it is something we ought to have and to deny it is kind of denying technological progress. How do you feel about those statements?

Barland: I agree with your last two statements.

Pillsbury: The last two.

Barland: Yes.

Pillsbury: In other words, you feel stronger about its desire, better than really "living with it."

Kaner: I have one other question. Judge, as a trial judge, I am sure you share the view of all of us, and I have been a trial judge for nine years too, that the immediate trial judge had better decide things that go right on in his trial forthwith. I am interested in your procedure under which a question raised by the media, or some appeal from some ruling, has to go to the Chief Judge of the district first.

Barland: If the trial judge makes a ruling as to whether or not cameras should be in the courtroom, assuming that

question is raised, the trial judge's decision may be appealed forthwith to the Chief Judge of the district. The Chief Judge's decision is final.

Kaner: No, I am thinking of an incident that occurs during the trial where, for example, the TV people want to put on some certain element, and the trial judge says I think that is unfair to the defendant because it may create an improper inference, then who has to decide that?

Barland: The trial judge, and, for all practical purposes, that's it.

Kaner: He doesn't have to go to the

Barland: No, there would be no cause or reason to delay the trial because of some interim ruling made by the judge.

Kaner: So it would only be in the event of whether or not there should be cameras permitted at all whether or not it would have to go to the Chief Judge.

Barland: That's correct. That's why we enacted a 72 hour advance notice rule by our district. I think about three or four administrative districts in Wisconsin have adopted the same rule, so that resolves the issue of cameras in the courtroom well in advance of the start of the trial. Thereafter, the trial judge is in complete control.

Kaner: You recognize, of course, that what this Commission has to do is balance the equities. You have heard the position of the media that this is an educational process for the public, and it will generate further respect for the court, and that is the sort of basis of their presentation. You heard the testimony on the other side that it interferes unduly with the procedures in the court, that it subjects witnesses, jurors, judges and everyone else to impediments that should not be there, and that it affects the fairness of a trial -- you have all those things in mind. Now in balancing those equities, do you feel that it is more desirable that cameras should be in the courtroom as against the objections raised by the people who do object?

Barland: I do provided the judge is in control. Control of the judge is essential.

Kaner: That's all I have.

Pillsbury: Any other questions? If not, I couldn't state any better our feeling about your willingness to come here and helping out than was expressed by Commissioner Ahmann. We thank you very much. I think we will have a recess for a few minutes.

(RECESS)

We are all set.

Segell: Crank that camera up, Gordie. If you don't get Hannah, you don't want anybody.

Hannah: You know it is interesting the first item on my notes is to set up the informality of the process. I think Judge Segell took care of that without any trouble. They probably won't use any of this, Judge. I would like to think we have gotten to know each other in the last couple of weeks. This is the last chance we have to talk person-to-person. I really have to take advantage of that because what I would like to do is to try and highlight, if I can, what we are really looking at and what the issues really are here. I think that Cathy Cella and I are going to be able to brief some of the legal issues. I presume that Judge Segell will do the same, so I don't want to talk about the law. We have heard about Estes and some of the other cases. Some of the Supreme Court cases, and I think we can let that go. The hearings have been intense every once in awhile. I would really like to try to cut down to what I think are the core issues. Judge Kaner, I think you mentioned some of them today and in your questions when you were speaking to Judge Barland. The first one is: is there a benefit to cameras and microphones in the courtroom? Why should you recommend any change in the procedure that we now have to adjudicate our differences? The second question is: presuming that there are benefits, can the media supply them? The third question is: do the potential risks of changing this system outweigh the benefits? Now

those are deceptively simple perhaps, but I think the first two questions are intertwined, and I do get a little emotional here. Proposition: we will all benefit from broadcast technology in the courtroom. This has nothing to do with coverage of a particular trial or whether we cover it gavel-to-gavel, or whether we give it a two minute spot on the six o'clock news, or a thirty second spot on the ten o'clock news, or whether or not public television runs something in the evening, or whether public radio takes long excerpts as opposed to short excerpts, because we are probably going to do all of those things. At some time in the future, if we are allowed to bring our technology into the courtroom, we will do them. Interestingly enough, I think that Judge Sholts from Florida, who is against the idea of cameras in the courtroom, put it best. His trial in West Palm Beach was one of the most sensational or newsworthy in his community. Judge Sholts is opposed to the use of cameras and microphones in the courtroom, and yet he agreed that there was a benefit to the people who have seen what went on in the courtroom. He indicated that most had seen a courtroom and the insides of that courtroom and the procedures used in that courtroom for the first time in their lives. What did they see? We saw Judge Sholts. They saw a judge, who is a tough judge, who is a hard judge, who administered

the law to the best of his ability, and it was obvious that that wasn't only a job to Judge Sholts, that was something more, and that's what the people in West Palm Beach saw. They saw him acting in a case of intense public interest, and they saw him do it right. They saw him do it, they didn't listen to someone else tell them what he did. Most importantly, they saw the process work. When we were all done with Judge Sholts testifying, and after we had examined Judge Sholts was asked did that defendant get a fair trial. His answer was yes. He was asked do you think that people were informed in a better way about the court process after than before, and his response was yes. People saw the witnesses performing their duties. They saw lawyers as courtroom technicians, not as intimidating cross-examiners, not as Perry Mason. I am willing to bet that the sensational aspects of that case died when people saw the somber nature of the practice of law in that courtroom during that trial. The fact is that the facts of the case, the evidence in the case, became a story, not running up and down a hallway trying to find a witness so that you can put somebody's picture on TV. That trial had to be an incredible lesson for the people who watched. It is one that you don't get in a civics class. How about less dramatic affects? Based on some things that have happened in my practice, I

think there are several possibilities. During my first two years as a lawyer, I spent a great deal of time in conciliation court and in traffic court, and actually in criminal court for petty misdemeanors. I was working essentially in a legal aid process. Now these weren't big murder cases, and I wasn't in front of Judge Godfrey, but the reaction of my clients was universal every time they walked into that courtroom. They were frightened and what they were frightened of is that they didn't understand what was going to happen to them. They really didn't understand. The judge in his robe was imposing, and perhaps too imposing, and that other lawyer was a threat to their well being when they walked in. You saw that tape that we presented you from the RTNDA. That was done in conjunction with the Bar Association. You saw what was done in New Jersey where there was a special on the conciliation court process, in Dade County, Florida where there was a special on a traffic court process. Would it have benefited my clients to see those documentaries, those half hour specials? One of them was only a ten minute special, but it got a little longer run. You bet. You bet it would. If that process of getting disputes resolved, other than going out in the back and trying to beat each other up, if that process is made a little bit more available, not quite so intimidating, then there has got to be a

major benefit. If people trust the process. if they don't think they will be made to look foolish, hopefully they will use it and they will respect the results. Is that a benefit? I should hope so. There is a constitutional basis for our request. We don't have to come in here and convince you that the percentage of people who hold the courts in a favorable light will increase by 20 or 30 or 40 percent. The public has a constitutional right to be in those courtrooms for all sorts of purposes, that is a constitutional right of access. As surrogates of the public, understanding full well what it is the press tries to do, perhaps not successfully in all cases, the Supreme Court said that we have a constitutional right of access. Now I can't say we have a constitutional right to bring in cameras, but the Supreme Court of the United States has told us that there are historical and psychological reasons for keeping the trial open, for keeping that courtroom open. It is not only to see to it that the judge minds his p's and q's, it is to put pressure on that witness so he will tell the truth. In the old days everybody had to come in, they all had to sit around in a circle, and, if anybody lied, anyone else in the audience could simply stand up and say that's a lie. The theory

was, knowing that the public is watching, those witnesses will pay more attention, and, in fact, that's what the Florida survey shows. Jurors are suppose to realize that the community is interested in the result of their deliberations. That's the historical imperative behind the whole idea of open trials. Now I won't tell you we have a constitutional right because at this point no one said we had, but I do say that, if we are there, many of those historical imperatives are satisfied by our presence. If they can be better satisfied by our actual presence with cameras and microphones, then there is a benefit and the reason for the constitutional right of access has been furthered. We have had two weeks, and we have been sitting by fairly quietly, and, frankly, there have been what I might characterize as some cheap shots at the media. We are fair game. We don't come in here with unblemished, I don't know what you have blemished, our skirts aren't clean, but I am somewhat tired of listening to the same old hacking descriptions that you have been hearing from witness after witness. You heard testimony at the beginning of this hearing from people in the business about the plans they have, about the way they try to do their work, about the way they try to edit--those are difficult concepts. Some of them are constitutionally protected. They didn't even have to come in here and say this is why I try to edit the way I do, but they under-

stood your concerns, came in, sat down, tried to get the process out, if they could. They all talked about trying to improve their coverage of the courts. How was that work described? Mr. Hirschhorn is back, "An attempt to satisfy the insatiable desire of the American public for the salacious", not the sensational, the salacious. You saw when we had the words set up right over here, there's a big difference. It has been described as an entertainment medium. You have met some of them. You have gotten to know, to some extent, Curt Beckmann, Chuck Biechlin, Stan Turner. They have been here a lot. If you think, if you really think, that they go home each night thinking boy did we satisfy that insatiable desire for the salacious, thinking god we grabbed them on that one, they are probably laughing from here to Duluth about what it was we just said on the news, then tell me and I will just stop. That is not what happens. There are a lot of public events in this community that get covered only by one medium or another. Some people say the newspapers don't do a good job, some say the TV people don't do a good job, and yet a lot of us watch it. You would be surprised how many of us in this room rely, maybe not every day, but certainly a few days a week, on what we hear on the radio and television to tell us what is going on. I think that the people who are trying to do their job as reporters

are every bit as professional as anyone else in this room. Their job is even harder because Judge Segell can go to a courtroom and nobody comes in for a week, and I can go back to my office and nobody ever comes in there, but every night somebody is taking a look, and somebody is deciding whether or not it is good coverage. Hopefully someone is getting some benefit, but, of course, there are people who will pick at this story or at that story, but these people are professionals. They came before you and they said here are some plans we have. I think they at least deserve some respect for that. I don't think that any of these statements about the fact that they only entertain, or that they attempt to satisfy the salacious, that is disrespectful. I don't care if we get cameras in the courts or not, but, if we don't get it, and we walk away feeling that we have received no respect from the people who are our opponents, that's harmful. That says a lot about what may happen to our process. The final question: Are the risks real? And, if they are real, do they outweigh the benefits? The most important risk, I think, is pretty obvious. That is the question of fairness to the defendant in a criminal case. There is not one shred of evidence on this record, evidence now, that cameras in a courtroom are unfair to the defendant. The U.S. Supreme Court couldn't find any evidence of lack of fairness in the Chandler case.

Even though Mr. Hirschhorn was articulate, he couldn't find any evidence and could present them nothing. As I understand it, he used about three words in his argument to the Supreme Court, and the first question he got was prove it counsel. Where is the proof? Twenty-six states are either experimenting or in some way have decided the coverage is to be permanent. They haven't found any evidence, unless you believe that they are allowing cameras in, even though the presence of the camera violates the rights of the defendant. Judge Cowart, Judge Barland found no evidence. In fact, Judge Sholts, in his case that he presented to you, found no evidence. Judge Sholts was very, very clear in his opposition to the presence of cameras and was very honest about it. He, even under those circumstances, could say no evidence in an incredibly sensational case that had the entire community turned upside down. No evidence of unfairness. Witnesses will refuse to testify. The only evidence that this record has was that presented by Judge Sholts. If Judge Sholts would have made the findings based on evidence that the court required, there wouldn't have been a problem. I think the increased risk from cameras and microphones in the courtroom, in the general cases, is minimum. Under the guidelines, a judge can control it. If he really has a witness who is fearful, and he makes the finding based on that witness' testimony, I don't know what

(END OF TAPE)

we can do. Even if we were to appeal it, what could we say, we don't believe her. He has the control. All we ask is that, if you give him the control, give us the chance to be able to tell him don't be arbitrary, judge. I presume we are not going to have to worry about that too much. Again, the facts in Florida and Wisconsin show that these problems get taken care of very easily and expeditiously, that can't be a major problem. Witnesses and jurors adversely affected, again, no evidence. A lot of speculation, no evidence. There were attempts to monitor now in Florida and in Wisconsin. I have heard something that is starting to sound sort of arrogant to me. It is this argument that says hey these jurors they are not going to tell us if they made a wrong decision. A witness won't impeach himself. The questions weren't all did you make a wrong decision, the questions were were you affected? Did it bother you? Those are easy words. Did it bother you that the camera was there, yes or no? You don't have to say I lied. All you have to say is yeah it bothered me. If that evidence had been profound, I presume other states would be looking at their experiments with a great deal of renewed interest, but that's not what happened. Now Mr. Hvass came in here on behalf of the Trial Lawyers and he said one person moves in my court-room somehow the aura, the mystique, the genre

of the courtroom is destroyed. That one bothered me a little bit until Mr. Hvass also testified that he manipulates his witnesses. He used the word. He tries to make sure that that witness says things in a way most favorable to his case. Now that is a much greater impact than the presence of a very passive camera, that's not doing anything. Mr. Hvass is so worried about the immediate subconscious response of a witness to a camera that he uses one to prepare his witnesses for trial. Judge Segell is worried about the impact of the cameras, and he has suggested, perhaps four times in the last two weeks, that what we could do is put a camera in a trial court and then we could wait until all appeal rights were exhausted. Then we can take that film and we can use it in an educational institution. If it is true that witnesses and jurors are impacted by the mere presence of the camera, then what we will do is we will go over here, and we will write up on the top for educational purposes only and that will take care of it. That's not consistent. We also depose people all the time with cameras. We take the videotape, just like the videotape that's being prepared out in the hall, and we use it in trials, and that's allowed under the rules. If the impact was so devastating, and unfortunately I did not ask Mr. Hvass, but I will bet you he has had a case where

one of his witnesses testified by videotape because it was impossible to be at the trial. It seems to me that the use of videotape testimony in a trial goes the other way. It says hey it's very important to have a witness here for the jury to look at to see if he is telling the truth. Cameras take his reactions so honestly that we can substitute them for the jury's eyes, those aren't consistent. One of my greatest arguments, the spector of political judges. Just in case, God forbid, that any judge would walk in here and say the presence or absence of a camera or a reporter doesn't mean anything to me when I am being re-elected, just in case one judge came in and said that, we heard that this was an "irresistible, subconscious impulse." I can't even respond to it. It is irresistible. It is subconscious so no one can tell me the truth. I can't ask Judge Segell. It's impulsive, so it doesn't have anything to do with the fact he doesn't want to do it. That's interesting, but I don't know how much weight it has. Lack of control over the courtroom. Again, the practicing judges have come in. They have all indicated to you in one way or another that they don't lose control. Judge Segell isn't going to lose control. No judge I have appeared in front of in Minnesota is going to lose a lot of control over his courtroom. We could get more ridiculous. The

riots in south Florida were caused by the media coverage. Remember when we talked at the beginning and I asked you, as trial lawyers do, what you are suppose to do is you plant an idea and then you come back and say remember you promised to do this at the end. Remember I asked you to think about the fact that some of these arguments just don't ring very true. My question to you was why are they being made? Trial judges and trial lawyers, why are they so violently opposed that they will come in here and say that judges are going to lose control of their courtrooms, and they are going to be horribly unlawful during the years of their elections, and that witnesses will somehow just fall to their knees, why? Obviously they are voicing a real concern about the affect of cameras and what is going to happen in the courtrooms. I don't think that's all. Judge Day testified that it was his belief that the legal process cannot be understood unless you go to law school. Now there is an arrogance there that says that a lay person, no matter how long they have been in a courtroom, is never going to understand, unless they are a lawyer or a judge. Now I don't think that's true, and, if you are from the Cities and you read the material prepared by, for example, the reporters from both newspapers whose beat are the courts, that you will know that that is not true. Not only is that comment sort of arrogant, but I

think it really masks a fear, and that is, you know, that we worked really hard to become lawyers. We attain a certain status because we are lawyers. If you are a trial lawyer, you have an even higher status. In fact, people who are the lawyers sort of look at you. Probably nowadays wondering why it is you do what it is you do, but that question is always there. What makes this person different, special? Special, maybe. Now if, and I just posit this, I don't know, I were a trial judge or a trial lawyer and I were not in favor of cameras, perhaps I would be a little concerned that, if my neighbors saw what I did in a courtroom, I would lose some of that status. It is boring. There is nothing more boring than a big fight over whether or not you have enough foundation evidence to let a witness testify to something. It is necessary, but it is boring. I don't win all the time. I don't win all my arguments with the judge, and I guess I might be a little concerned that people are going to see that I don't win all the time, or that when I make an emotional appeal to a jury, that I stumble. I can't remember words sometimes. I can't remember somebody's name. I suppose I would much rather have them think of me as some cross between Perry Mason and Clarence Darrow, or who are those Darrow brothers on TV. I would much rather be thought of in that light, but, if they see me in a courtroom, they are going to know what it is I do. I happen

to think that having people see that process will cause them to feel more respectful about it. I am not so sure that all the trial lawyers and judges believe that, and I think it is in a very personal context. They won't be quite so respected There is something else. Mr. Hvass is certainly aware of the fact that we all go to seminars to learn how to present evidence to juries. If you are a plaintiff's lawyer, you do it so the verdict goes up. If you are the defense lawyer, it is so it gets really low. There are techniques, and not all of us are smart, and those techniques aren't very complicated, but it works. Query: is it going to work if a jury has already seen it? If a potential juror has seen that same stock testimony about pain and suffering two or three times on television, maybe some trial judges think that won't work. I happen to think that's great, because juries will be deciding on the facts and not the techniques of a lawyer, and who has the better lawyer with the better techniques. That could be a problem. I don't want to be followed by a camera day after day, and I think that is a serious objection on the part, especially the trial judges, who, if they haven't been involved in it, think that they are going to come into court and there is going to be a camera there everyday. I couldn't work that way. Of course, it never happens that way either, that's got to be a fear. I

think there are risks, certainly there are. We can't discount them, they are there. To say a defendant's rights may be violated is to raise a risk. I think based on the evidence that the risk is manageable, and that it is outweighed by the benefits we talked about. There are also ways to take care of a lot of these potential risks. Witnesses, fearful witnesses, I have already talked about the standard that we think is in our guidelines, but could be made even more obvious. Victims of sexual assault, simply prohibiting testimony. Juveniles prohibiting, family court prohibiting -- find something that you really don't want. You can exclude it. Judges have the power to act, and they can exclude it. All we ask is that they explain their ruling with the facts. If they do, and we don't understand or don't agree, we can bring that question to a quick resolution. Right now, based on our guidelines, the quick resolution is a telephone call to the Commissioner of the Supreme Court. I am also going to remind you of one other challenge, that's consent. Judge Kaner, you have mentioned that a couple of times. Historically the question of consent is going to kill the issue of coverage. So, if you don't believe we can do this, then just tell us that, but don't give it to us with consent, make us run around and not get any coverage anyway -- everyone will just get

frustrated by that process. We do very much want to be in criminal trials. We have said before we think it is a place where you can show the process working the best. Judge Sholts' trial is the perfect example. Some exceptions can be carved, if you are interested, but not wholesale. Again, how can you go to a civil litigant and say I am sorry we didn't trust there could be presence of cameras in the court-room in a criminal case, but it is only your case, and it is only civil, go ahead. If there are serious objections and you can't get around them, it won't help to change. It will just raise those issues over and over again by the civil litigant. I think the decision comes down to this. Do you trust judges to administer the law fairly, even in an election year? Do you trust lawyers to represent their clients and not try to do some flamboyant move that will get them another client perhaps six months from now? Do you trust witnesses to responsibly relate the facts? Do you trust jurors to decide a question based on the facts and the law as a judge tells it to them? If you don't trust those people to do what they are suppose to do, then deny the petition. But before you do that think of what that means about our legal system. Personally I would like to thank everybody. This has been a very interesting couple of weeks for me. Judge Segell, I want to thank

you for being an honorable opponent. I am glad you were here. The Commissioners and Deb Regan, again, thanks for giving us your consideration. We dragged a little on a couple of days, we apologize, and we are glad you masked your impatience enough so that we could continue on. I really do appreciate the last three weeks.

Pillsbury: Thank you. Anything further anybody wants to say?

Segell: I have got a lot I want to say but I am not going to say it.

Pillsbury: All right. We presume that you will file a brief by the 30th, and I don't know whether you are. Are you going to file one too?

Segell: I honestly don't know. If we don't get some relief on the time, I guess the answer would be no. That wasn't my idea by way. He may want to file his own brief. If I find out that he doesn't get any relief from the November 15th day, what I might do by way of a brief is to forward to you an article that I wrote for the Trial Lawyers Journal, which gives an analysis that I made of the Chandler case. I might revise that a little bit, supplement it (INAUDIBLE) as to my interpretation of Chandler and what it means in relation to Estes, but otherwise, I think, about all I would have time probably would be to file the other (INAUDIBLE).

Pillsbury: I don't know what Judge Godfrey is going to do. I know that during the last recess we had that counsel for the petitioners did to the opportunity he has to appeal, if he wishes. I don't know whether he is going to do it or not, but we will presume to hear about that.

Segell: I assume he's going to contact the Chief Justice, but whether he gets any relief or not, I don't know. As I say if he doesn't, I think I will file my article. I don't have time to write a brief in ten days.

Pillsbury: We appreciate that for your busy schedule, you have been here all the time. We are very happy that you were. (INAUDIBLE)

Segell: (INAUDIBLE)

Pillsbury: I will let you say that. I think everybody has cooperated very much, and I say that for the Commission and the media. (INAUDIBLE) They have done what we asked them to do at the beginning and what they said they would do, so we thank you all. (INAUDIBLE)

Hannah: One other point, which is administerial, I guess. Curt Beckmann has indicated that he is going to continue to monitor periodically from now through the middle of November the availability of some actual experience in Wisconsin, if something pops up. His people are aware that the mere fact that we have

concluded the formal hearings doesn't mean that something like that might not be useful.

Pillsbury: We will have that in mind. If he sees something that looks like an opportunity, if you would let us know, we will decide whether to do it. I think we have had a good exposure to all the problems, and I think by good fortune and by your results, your efforts, and the efforts of Judge Segell that we have had an awful lot of good witnesses from places where this has been tried or experimented with. So I think we have got a lot of things to think about. That's all I will say today.

(END OF OCTOBER 20, 1981 HEARING).