

SUPREME COURT

FILED

JAN 13 1982

JOHN McCARTHY
CLERK

SUMMARY OF TAPE RECORDINGS
OF
HEARINGS OF THE
MINNESOTA ADVISORY COMMISSION
ON CAMERAS IN THE COURTROOM

Monday, October 5, 1981, Room 13 - Ramsey County Courthouse

Tape 1, Side 1

Mr. Pillsbury began the proceedings, noting that the proceedings were being televised and recorded in accordance with the Supreme Court rules.

Appearances noted: attorneys for the petitioners, Paul Hannah and Catherine Cella; Judge Segell; Judge Godfrey, Judge Fitzgerald; and Norton Armour, general counsel for Minneapolis Star and Tribune.

052 Paul Hannah:

Because the Supreme Court found the Florida plan constitutional, the petitioners patterned their proposed rules after Florida's.

Mr. Hannah outlined what the petitioners' proposed rules require. He then listed 3 arguments against cameras in the courtroom and the petitioners' responses:

- (1) violates due process rights - response:
 - (a) Chandler says this is not true in all cases
 - (b) courts can make this decision on a case-by-case basis
 - (c) most defendants would rather have a trial with no spectators, but that is not the law.
- (2) witnesses "quaking in their boots" at the thought of being televised - response:
 - (a) scientific studies showed that witnesses and jurors felt more responsible during a covered case.
- (3) judges and lawyers will grandstand - response:
 - (a) both take an oath to uphold the law
 - (b) lawyers have clients
 - (c) jurors don't like lawyers grandstanding, either

260 Curtis Beckman:

News Director, WCCO Radio, Minneapolis

Mr. Beckmann described what has been going on to date with this issue.

Tape 1, Side 2

He stated that the petitioners' goal is experimentation. "How can a final decision be made without experience?"

Q. by Mr. Pillsbury:

Comment on highlighting the important vs. giving prominence to the spectacular.

A: "Often we hear the complaint: you're only going to be there for the sensational cases. That's not true. We will be there for those celebrated cases. What better time for the public to learn something about its legal system than when they're interested in what's going on."

071 Recess

Mr. Hannah introduced Norton Armour, who asked questions of Kent Kobersteen.

088 Norton Armour:

General Counsel, Minneapolis Star and Tribune.

The purpose of Kent Kobersteen's testimony:

- (1) to look at the new technology (in still cameras) and see if it is sufficiently unobtrusive
- (2) to demonstrate the manner in which a photographer conducts himself
- (3) to understand the types of pictures which photographers might consider newsworthy.

117 Norton Armour introduced Kent Kobersteen

Kent Kobersteen:

Minneapolis Tribune photographer

Mr. Kobersteen demonstrated several cameras, and concluded that the Nikon or Leica Rangefinders were the least noisy and least obtrusive appearing.

Mr. Kobersteen also demonstrated where he would sit and how he would take pictures during a trial.

Mr. Armour pointed out that the pictures are normally taken while someone is talking.

Mr. Armour asked how Mr. Kobersteen felt about being bound to his seat as inhibiting him from getting the pictures he needed. He responded that it's the "price you pay for being unobtrusive, and being a professional."

Mr. Kobersteen did not feel that it would be necessary for him to stand from time to time. He also said that no extra light would be needed. There would be no change in the procedure for taking pictures in rural courtrooms, either.

Mr. Kobersteen felt that there were four newsworthy parts of the trial: (1) the opening, (2) key witnesses, (3) verdict, and (4) sentencing.

Q. by Ms. Ahmann:

How is the decision made what photographs to take?

A: He would make the initial group, select some of those, and the final decision would be made by the editor. As to what extent decisions are made in the field vs. by direction from the editor, he stated that sometimes there is discussion before, but the photographer is free to take the pictures he chooses with the final decision made by the editor.

Tape 2, Side 1

019 Ron Handberg:

General Manager, WCCO-TV, representing Midwest Radio TV. Inc.,
Management.

The Minneapolis-St. Paul TV stations are looked upon as one of the best in the country. They are also highly competitive, but this does not mean they will do anything to get a story. They have not gained the reputation they have today by sensational, irresponsible coverage

"We aren't asking for forever. We're asking for a limited time to prove that the news media can perform as responsibly as we say we can. It seems incredible to deny us the opportunity on the basis that we may act irresponsible or our actions may interfere with the fair trial process. To do so would be to deny us a fair trial."

Mr. Handberg also stated that it would be "simplicity at its worst" to suggest that all of the coverage would be in 30-40 seconds on the ten o'clock news. The question is accuracy, not how many seconds. Also, they would do documentaries and special programs. Judge Segell pointed out that he (Mr. Handberg) is permitted to do documentaries now. Mr. Handberg replied that he is in commercial broadcasting, and if he did a documentary, he'd like to show it on the air.

Q. by Mr. Kaner:

What about the impact of the coverage on the ultimate fairness of the trial?

A: Coverage will provide the public with a fairer sense of what goes on.

Q. by Judge Fitzgerald:

Do you know of any study about witnesses not wanting to testify?

A: No knowledge of any such study; but still has two responses:

- (1) witnesses would today still be identified by name and sketch
- (2) look to the other states: if that had arisen as a problem, experiments would not have been sustained.

At this point, everyone adjourned to Judge Segell's courtroom.

375 LUNCH

408 Paul Hannah:

Mr. Hannah summarized what transpired in Judge Segell's courtroom (i.e. pictures without the help of other light would be of poor quality, and probably would not be aired).

Tape 2, Side 2

013 Stan Turner:

Reporter/anchorman, KSTP-TV

Mr. Turner demonstrated old and new cameras with the help of Mr. Bill Jentman.

A small section of the filming from the morning session was shown to the Commission.

The Commission then went outside the courtroom to look at the equipment set up in the hall.

Q. by Mr. Pillsbury:

What about the witness seeing things he should not with the equipment in the hall?

A: The equipment would be removed to a room out of the way if the experiment were granted. (Judge Segell pointed out the Ramsey County Courthouse has no rooms for equipment.)

Mr. Hannah:

Also, no one would be able to hear the audio, because the reporter uses an earphone.

Q. by Ms. Ahmann:

How many actual pieces are there?

244 Mr. Jentman:

A monitor, a distributor amplifier, a mult-box, and a power supply. If it were more permanent, it could be consolidated to a cart.

The Commission then returned to the courtroom.

Mr. Beckmann then pointed out that the setup in the room was extraordinary, because this is a hybrid situation.

At this point, there was a discussion about audio coverage. Judge Segell pointed out a problem--that the trial can't be stopped every time counsel wants to confer with his client. Mr. Hannah stated that all microphones were equipped with on/off switches. Judge Segell still felt it was a problem unless, as technical directors, we turn off our switches every time.

Tape 3, Side 1

001 Wayne Ludkey:

News Director, KTTC-TV, Rochester (worked in Green Bay prior to Rochester)

Mr. Ludkey explained how the equipment was set up in Wisconsin courts. He also noted that few people complain when full day city council meetings are condensed into a minute or a minute and a half. "Journalists are trained to condense an event into a professional package of the most essential facts." He then showed some courtroom news stories that appeared on the news in Green Bay.

Q. by Mr. Kaner:

What was your experience in Wisconsin with lawyer/court, lawyer/client conferences?

A: It was up to the reporter to not turn on his recorder, and he never experienced a violation of that.

219 Bob Jordan:

News Director, KSTP-TV, Saint Paul (worked as News Director in Florida prior to moving to the Twin Cities).

The novelty of the presence of cameras in the courtroom wears off very quickly, and the equipment is less obtrusive than the sketch artist.

Mr. Jordan also believes that it forces people to be on their toes, and jurors take their job more seriously, because they think it's important. In Florida, sex and murder cases were covered, but so were the mundane cases (e.g. bond validation, small claims court, and labor disputes). The rule is now permanent in Florida.

Tape 3, Side 2

Q. by Mr. Pillsbury:

There was no friction between the media and the presiding judge?

A: None that he was personally aware of.

Q. by Judge Fitzgerald:

Do you know of any sequestered witness examples where the witness saw something he should not have?

A: Yes, in the Bundy trial; he didn't recall the result. Pictures aren't taken of rape victims, children, or undercover narcotics agents (by their own judgment, although it is illegal to publicize rape victims).

Q. by Mr. Kaner;

What about the example from Green Bay where the defendant was doing something with his fingers while the charge was being read?

A: Okay if it was simultaneous; he would find fault if the reporter simply waited for the defendant to fidget and then put it with the reading of the charge. He is careful to let the words and pictures speak for themselves.

Q. by Ms. Ahmann:

Did change of venue increase, decrease, or stay the same?

A: He had no empirical data to answer that.

060 Q. by Judge Segell:

But judges have had to sequester juries; the Herman case cost the county \$11,000 and no media picked that up.

A: The benefit to society far outweighs an occasional \$11,000 fee.

125 Chuck Biechlin:

News Director, WTCN-TV, Minneapolis.

The Patty Hearst case started to change his mind about cameras in the courtroom (before he didn't see that it would matter one way or the other). At the time, he was working as an assistant news director in San Francisco. The world press descended on San Francisco, and they just didn't have the facilities to handle it. He feels that the misrepresentations which occurred would not have been so bad with cameras in the courtroom. He then went to Oregon, where the Rideout marital rape trial occurred. There was a hallway circus at every break, and there would have been no need for that if cameras had been allowed in the courtroom. Finally, another case he was involved in concerned a school teacher who molested twelve girls. None of the girls' names were revealed, even though there were no admonishments not to.

Q. by Mr. Kaner:

Is California permitting cameras in its courtrooms?

A: Yes, in a one year experiment (NOTE: that experiment was just extended for one more year).

Q. by Judge Segell:

Are you suggesting that hallway interviews would be eliminated?

A: No, but there would be much less need for them.

303 Recess

306 Mr. Pillsbury:

Briefs are due by October 30, unless someone has an objection (No one objected).

355 Joyce Holm Strootman:

News Director, KWLM-AM, Willmar.

In the rural areas, people are much more interested in what is going on. Crime is of a more routine nature; therefore, the coverage will be different. Coverage in these areas may lead to prevention of crime (e.g. if you see that writing a bad check is a crime, might not do it). Civil cases are usually more important.

Tape 4, Side 1

If she could tape the proceedings, she could better explain to the listening public what is actually going on.

Q. by Mr. Kaner:

Have you observed your local courtrooms to see how they compare, for example, with us?

A: It is a new courtroom with its own audio system.

Q. by Mr. Kaner:

Does your station have equipment comparable to what we've seen here?

A: Yes, we would have any equipment required, and this is true of most stations (if called upon, they could come through). There is a great deal of cooperation between the stations.

059 Nancy Reid:

Legal reporter, KDLH-TV, Duluth.

Ms. Reid covered a murder trial in Superior, Wisconsin. There was no pooling--the reporters just met with the judge. Mikes were set up by the witness and the attorney podium. The mike near the witness was also near the judge, but private conversations on the other side of the bar between the judge and the attorney could not be heard. The judge was satisfied with the coverage.

Q. by Mr. Kaner:

You're familiar with our courts in Duluth. Do you consider that those would be adequate for these purposes?

A: Yes. She thought coverage could occur with everyone's cooperation.

151 Reid Johnson:

News Director, WCCO-TV.

The media has done an inadequate job of informing the public of what is going on in their courts. With recording, the media can be more accurate--and can give the actual words instead of paraphrasing, and can give the videotape instead of crayon drawings.

Mr. Johnson also noted that the staff would be fully informed of the guidelines.

Q. by Mr. Kaner:

Would you like to comment about the highly selective nature of what you put on the air? The part you are selecting will generally educate the public?

A: The education process will be over time.

Q. by Mr. Kaner:

What about the editing process in a particular case?

A: That is our craft as journalists. We're called upon to do it for every case. We do it now--the question is what tools we can use to do it, and better tools would seem to mean a better job.

Q. by Ms. Ahmann:

To what extent do you required an education before you allow reporters to cover the courts?

400 A: The assignment system is geared toward research before the reporter goes out. Each reporter covers about a story per day. But there is no special education other than what is required of all reporters.

Q. by Judge Segell:

What is it about these events that would be so enhanced by a camera that you would suddenly start to cover them?

A: We have covered them. We haven't given the information as well or as effectively as with cameras in the courtroom.

Tuesday, October 6, 1981, Room 1753, Hennepin County Courthouse

Tape 1, Side 1

012 Mark Durenberger:

Twin Cities audio consultant.

Mr. Durenberger described the audio equipment on hand. The audio goes into a multibox, and from one input you can get several outputs.

Q. by Mr. Kaner:

What about rural courtrooms?

A: If there were no sound system, the PZM (pressure zone mike) would be used.

Q. by Mr. Pillsbury:

Would you use the audio system in this courtroom?

A: Yes.

Q. by Ms. Ahmann:

What about picking up confidential communications?

A: We would put a master switch in front of the court reporter, so the entire system could be turned off momentarily (with one switch).

217 The Commission then moved into an anteroom where it viewed the equipment situated outside the courtroom. Mr. Pillsbury again voiced his concern that witnesses would see something they should not. One of the reporters, Roberto Tschuden-Lucheme, commented that in Wisconsin, the judges figured out the geography and just kept the witnesses and jurors away from the monitoring equipment.

The Commission then returned to the courtroom.

308 Norton Armour introduced John Finnegan and Charles Bailey, noting that they were concerned with still photography.

338 John Finnegan:

Executive Editor, St. Paul Dispatch and Pioneer Press.

Cameras within the court should improve understanding and eventually raise the image of the court. It is not practical for people to attend, and we can't expect them to. Also, the use of tape recorders will enhance our reports by insuring accuracy in our notetaking. Reporters will be able to concentrate on the significance of what's being said, rather than the words.

"Judges aren't being asked to give up control of their court, and guidelines can be written to protect the defendant's right to a fair trial without closing off the court to the media."

458 Charles Bailey:

Editor, Minneapolis Tribune

Tape 1, Side 2

The judge can still exercise control. The Sheppard decision is more critical of the judge not exercising control than it is of what the media published.

The photographer can serve a valuable part in helping the press fulfill its responsibility to monitor the operation of the court: to serve as the eyes and ears of those citizens who can't do it in person.

Q. by Mr. Pillsbury:

Would you like to comment on the question of distinguishing between what is spectacular and what is objective news?

A: The question of what is allowed to be photographed will remain in the hands of the judge. The question has no good answer. To do the oversight function, we must be free to make editorial decisions; but given that freedom, it may not always be used wisely. It is unlikely that you would have a rerun of Sheppard.

We try not to sensationalize the handling of, e.g., criminal stories, but we can't change public nature (you can hide them, and people will find them). Also, the absence of presence of photos will make a story neither more nor less accurate as far as the words are concerned.

358 Q. by Judge Segell:

Why have you proposed rules like in Florida--they are the most liberal (i.e. no consent required), and have generated lots of litigation?

Mr. Hannah:

Where consent is required, there won't be trial coverage.

Judge Segell:

Without consent, you get litigation.

Mr. Hannah:

The litigation comes from both sides.

Tape 2, Side 1

Q. by Judge Segell:

Isn't it true that with deadlines, the concept of a news reporter monitoring a tape is something of a myth?

A. No; used to go back and check your quotes--check the accuracy of your notes.

Q. by Mr. Kaner:

How do you escape the criticism that the small item you put on will influence the result?

A: If you're overly selective, you may distort--but the danger is always there. We try to use experienced people for trials.

As for influencing fairness, we must exercise our responsibility in covering a trial; but it is the responsibility of the court to insulate the jury (this is preferable to closing to the public).

Q. by Ms. Ahmann:

What about the very fragile presumption of innocence?

A: A defendant who is acquitted after a well-publicized trial doesn't come away clean. I don't know how to avoid that. I don't think it can be avoided by not allowing photography in the courtroom.

383 Recess

430 Curtis Beckmann:

Discussed pooling arrangements. The court will not have to bother with it.

Q. by Mr. Pillsbury:

Is pooling no more difficult out state than in the Twin Cities?

A: If something is of statewide interest, the pooling rules would be invoked, and the station would have to come up with the necessary equipment. If Twin Cities stations were involved, they would bring it with them.

Tape 2, Side 2

022 Q. by Mr. Pillsbury:

Are the smaller stations equipped to cut in on a pool if you are conducting it?

A: Yes, that is easily done.

Q. by Mr. Pillsbury:

You would not see any more equipment without a pool than with it?

A: Just the tape recorder at his feet, so he doesn't have to move around.

Each district court should have a media coordinator to act as a buffer between the court and the media. He would become active with two or more requests for coverage. He would be designated, we propose, through the Minnesota Chapter of the RTNDA (Radio Television News Directors Association).

Q. by Mr. Kaner:

It really isn't any problem for the courts at all then? It's a problem for the media?

A: Yes.

Q. by Ms. Ahmann:

How far away is it that you might be plugging it in back at the newsroom?

A. If there is ever gavel to gavel coverage, it could now be covered in the newsroom.

LUNCH

315 Clint Schroeder:

President, Minnesota State Bar Association.

Mr. Schroeder reported on the actions of the Minnesota State Bar Association concerning cameras in the courtroom (which opposes any change in the present rule).

Tape 3, Side 1

Q. by Mr. Kaner:

The media argues that coverage will be of general enlightenment and will further education. Would you like to comment?

A: Yes, that has been discussed before; but the counter-argument is that it will be distorted and limited compared to the fair view of evidence by someone in attendance. It is unlikely that education will work.

Q. by Mr. Kaner:

But the media points that this selection process goes on now, and they are responsible people in making the selection of what goes out.

107 A: I have no disagreement. But since the coverage would be minimum, the impact on the public would be minimum.

Q. by Mr. Pillsbury:

What can you tell us about empirical evidence about the psychological evidence on witnesses and jurors?

A: Participating as a witness at trial is traumatic, and the prospect of also a TV camera would have some impact--maybe some won't volunteer to participate.

Judge Segell:

Most witnesses are not volunteers--they are there by compulsory process, which is what makes the experience so traumatic.

Mr. Hannah:

Doesn't the witness come to the courtroom with some trepidation about what he's going to perform there?

A: Yes, no question about it.

Mr. Hannah:

And if this is a major trial, he might be photographed walking into the courtroom.

A: Yes.

Mr. Hannah:

He could be named in the newspaper; so there are many reasons why he is already nervous. You can't blame it all on cameras.

A: Not at all. I think that's the point. The witness is already being subjected to a certain amount of trauma, and now you're adding to it.

Mr. Hannah:

Wouldn't it seem reasonable then to experiment and see if in fact it did impact on witnesses?

A: That's a reasonable position.

Q. by Judge Segell:

You've never heard a witness impeach his testimony have you? You haven't heard a witness who was on TV to say "I lied."

262 A: Witnesses are reluctant to admit that they lied.

Q. by Judge Segell:

So those statements we get out of Florida and Wisconsin about the "effect" on witnesses and jurors isn't exactly empirical evidence is it?

A: It may not be completely reliable. I'm not sure that I'm an expert in these things as a bar officer.

Q. by Judge Segell:

Do you react when a TV camera and mike are in front of you?

A: Yes.

Mr. Segell:

And we know that happens to many, many people.

Mr. Hannah:

Were you aware that these proceedings were being televised and there might be a camera and microphone present?

A: Yes.

Mr. Hannah:

And you managed to step away from that fear and trepidation long enough to perform your duty as a witness before this Commission?

A: I think there is a higher duty that I'm responding to.

Mr. Hannah:

Do you think that several of the citizens of this state, in being a witness or a juror, would also feel that that was a higher duty?

A: I assume that that would be the case.

334 Judge Jack G. Day:

Judge of the Eighth District Court of Appeals, Cleveland, Ohio.

We, as judges, are not in the business of theatricality. I doubt it is education to pan in on some dramatic part of the trial and then forget it.

Tape 3, Side 2

Courts are concerned solely with the integrity of the trial--the search for the truth. I admire the concept of an open trial, but the openness is not because it is a vehicle for entertainment. It is designed to prevent chicane or skullduggery in the course of a trial. No one that I know of that opposes cameras in the courtroom is doing it because he wants to close a trial. Instead, he is doing it because it involves courts in things which are not their concern, and it exacerbates the difficulty of getting the truth from a witness, and because it interferes with the court process. Once you have a trial you may have a mistrial and may have a problem finding an untainted juror. The degree that the public is educated is incidental--peripera to the main concern of the court.

The jury must be insulated from the interpretations of the media. Sequestration may help, but it's a highly expensive proposition, and it doesn't cover witnesses.

147 What if a witness is asked a question, which to a layman makes great sense, but it's hearsay and the court sustains the objection?

Q. by Mr. Kaner:

We'd appreciate your comments about the argument that it will educate the people and further develop their respect for the judicial process.

A: I think it will further their disrespect for the judicial process because it presents it in a fragmented way. And they may come away with the impression that the judiciary is functioning in a mysterious and inappropriate, if not to say illegal, way. Education about what we do is really hard to come by. The technical aspects of a trial cannot be grasped on the fly.

What about covering one, and not covering another; do I have the right to argue if my trial isn't covered, that I didn't receive a public trial?

Q. by Ms. Ahmann:

Would you object to an educational piece?

304 A: Not as long as it served to illustrate, and not just dramatize the events of a particular trial. If you really want to educate stage a mock trial.

Q. by Mr. Hannah:

Any witness who comes to this courtroom is going to have a fright, because the courtroom is wired for sound. If we aren't successful can you honestly tell us that the witness will react any differently looking out at a roomful of reporters?

A: No I can't tell you that any more than you can tell me the contrary. These are immeasurable impacts and because of this, we should not get the courts involved.

Tape 4, Side 1

Q. by Mr. Kaner:

Any comment about the task of a trial judge when a camera comes into his courtroom?

A: I have a great deal of sympathy for the trial judge, especially in areas where he has to be elected. There's going to be a little tendency to put the heat on the judge if he doesn't allow it. I don't think they should be subjected to that kind of pressure.

Q. by Mr. Kaner:

How about the actual courtroom procedure. How does it affect them there?

A: He has to be nervous, and he may make mistakes, and not from incompetence. He's nervous about 200,000 voters seeing him on TV.

Q. by Mr. Hannah:

What is the difference between having a reporter outside the court saying, "Today, Judge _____ rules on XYZ piece of evidence, and it was not admitted." or having the judge say, "Based on your hearsay objection, counsel, I'm not going to let it in"?

A: Yes, in the one case, there is time, in the print media to make a full statement of what the judge did. The electronic media can also summarize and make a statement. Print doesn't have the same impact as seeing.

Q. by Mr. Hannah:

I don't think you mean to say that we must show the whole process--every second--for the public to be educated. If the jurors go home today, they may hear a summary by a reporter. Wouldn't it be better to have them see what they already saw?

A: Do you ever get a witness to repeat what he said for impact?

This is an extraneous emphasis.

Q. by Mr. Kaner:

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

A: Hard to say a flat yes. Maybe a controlled experiment. As long as there is a chance that we might infringe on liberty, we must bend over backwards to protect this.

Recess

338 Rick Lewis:

Station manager, KSJN, Saint Paul.

On public radio, we would be unlikely to broadcast a trial just for the courtroom drama, or a trial that only affects that defendant. We would be likely to broadcast trials that will set new precedent--those whose impact will be felt for a long time after.

Just because a story is short, doesn't mean it's inaccurate. We do it every day, and we believe we do it well.

Tape 4, Side 2

"We do not seek a license to be irresponsible. All of us have the ability, whose danger we recognize, to distort, to mislead, to twist the facts, to cover the arguments and issues selectively--even to lie--and it has nothing to do with whether or not our cameras and microphones are in the court. It does have to do with people and their principles, and the idea that no one in this business who makes a practice of deception can long survive."

Lack of access discourages well-intentioned reporters, but it won't discourage those who aren't.

069 Irving Fang:

Professor, University of Minnesota School of Journalism and Mass Communication.

Q. by Ms. Ahmann:

To what extent is it required that you be a graduate of a journalism school to be employed?

A: It isn't required at all. But the competition is getting so great more and more news directors prefer broadcast journalism students.

Mr. Pillsbury:

The thrust of your testimony is that journalism students do come out with technical knowledge of the broadcast system and ethics.

A: Yes. We've given them the best introduction possible, and beyond that, we feel they will learn on the job.

The Commission then listened to a videotape prepared by the RTNDA and the National Association of Broadcasters on Cameras in the Courtroom.

Tape 5, Side 1

Short Conclusion

Monday, October 12, 1981, Hearing Room 15, State Capitol

Tape 1, Side 1

Dr. James L. Hoyt:

Professor, School of Journalism and Mass Communication, University of Wisconsin--Madison.

Dr. Hoyt explained the experiment he conducted using three groups: a conspicuous camera, a hidden camera, and no camera. He found that the group with the conspicuous camera gave more complete and longer more correct information.

Dr. Hoyt has been asked to serve on an ABA committee to see if any other study is do-able.

192 Q. by Mr. Hannah:

You didn't have the judge, jury, etc. present, so you isolated it to the effects of the camera.

A: If anything, we stacked the cards against us. The Wisconsin rule did not make certain coverage absolutely forbidden. It simply changes the burden of proof in rape, undercover agents, etc. We presume that these people's reasons for not wanting to be televised are valid.

The system, as set up in the rules, has worked quite well.

Tape 1, Side 2

Q. by Mr. Hannah:

What about the relationship between the media and judges?

A: I sensed that both sides wanted to make it work.

Q. by Judge Segell:

I gather you're not a trained psychologist?

076 A: No, not specifically.

Q. by Judge Segell:

And your experiment was conducted in a vacuum; you didn't use real witnesses or jurors?

A: No.

Q. by Judge Segell:

So those persons were essentially volunteers? None arrived because of a court subpoena?

A: Yes.

Q. by Judge Segell:

Do you think a witness or a juror who in good faith believes that a camera should not be put on them has the right to have the camera turned off?

A: When they are involved in a public proceeding by law open to the public, I find it difficult to come up with a reason why they should not be included, if it is just a personal desire. My preference in a case like that is to trust the judge. I would like to see some reasoning for not doing it rather than the desire not to be photographed in and of itself.

Q. by Judge Segell:

You think witnesses have no reaction after a minute or two?

A: The witnesses we talked to essentially told us that.

Q. by Judge Segell:

They're not going to impeach their testimony . . .

A: We can answer the question, "Were you aware of it?" Most said no.

Q. by Judge Segell:

You will concede that there is no empirical data as to what the reaction of the witness is.

A: The study I conducted is a "candle in the darkness."

Q. by Judge Segell:

You have no way of telling us whether the camera compounds any trauma on the part of the witness who testifies?

A: The only evidence I've heard on that has essentially been speculative.

Q. by Mr. Kaner:

Do you feel that the studies asking participants questions is a valid method of making a judgment on this?

254 A. I think it gives us a pretty good feel for how they react to it.

Q. by Mr. Hannah:

The fact that the witness says he felt some impact because of broadcast paraphernalia in the courtroom doesn't mean the trial's unfair; that doesn't automatically follow, does it?

A: No, one might even go so far as to argue that the presence of cameras in the courtroom led to a fairer trial. I'm not going to go that far.

384 Q. by Ms. Ahmann:

Do you know if there was any increase in sequestering of the jury? One of our concerns is the selection that is given to the public and what impact that would have on jurors.

A: I don't know if in fact that occurred. It came up before the committee and the assumption was that it probably would.

Q. by Judge Segell:

Have any surveys been conducted like in Herman in which jurors and other participants in the trial were asked whether they felt the TV cameras were fair to the defendants or witnesses?

A: The wording of those questions is very close to what was asked in Wisconsin.

Q. by Judge Segell:

And how did you fare?

A: By far the majority response was that there were no problems. There was some concern expressed, but it was a small minority.

Tape 2, Side 1

Q. by Mr. Pillsbury:

The coverage hadn't increased the number of cases being covered; just improved it, did you think?

A: There is some data ~~from~~ Milwaukee over the first year of the permanent rules looking at that. It appeared there was not an increase in the number or types of cases that they covered.

048 William Kobin:

President, Twin Cities Public Broadcasting, KTCA, Channel 2.

It is important that institutions of democracy, in these troubled times appear stable and working; and the judiciary is foremost on the list.

TV has been criticized, but no other medium has the power to turn a mirror on society and show it that its system does work. No where is justice itself more assured than when the judicial process is under constant public scrutiny, and no where is democracy more fundamental tested, revealed and confirmed than when the public can see justice dispensed, and see it with its own eyes.

None of the fears have materialized in Florida. Those who have the most fears have the least experience with cameras.

Q. by Judge Segell:

Well, you're interested in educating the public. The only way you can educate is to do documentaries or close to gavel to gavel coverage. You can't educate them in 30 seconds at 10 o'clock.

200 A: I don't think you can educate the public in very great depth in 30 seconds, but I don't think I would be prepared to say that there is no educational value in a 30 second exerpt.

Q. by Judge Segell:

I take it you would concede that an hour long documentary would be of far more benefit to the public than a 30 second segment.

A: I think in most cases, yes. By definition, it would almost have to. But I have also seen several 30 second segments that I thought were highly educational.

Q. by Judge Segell:

How do you meet the criticism that the media would be more interested in the sensational aspects of certain trials which they would put on more for their entertainment value and for the purpose of obtaining viewers than the general education process?

A: I give news and public affairs departments more credit than the people who make those criticisms ~~for their integrity~~ and ~~concern~~ for viewers. My conviction is there is much more to be gained than lost by coverage.

Recess

329 Judge Edward D. Cowart:

Associate Dean, National College of the Judiciary, Reno, Nevada, formerly Chief Judge, Circuit Court, Dade County, Florida (testimony by telephone interview).

Judge Cowart gave the background of how the experiment came about in Florida. The judges felt very strongly that the Supreme Court had embarked on a troublesome process for a trial judge to undertake.

Tape 2, Side 2

Q. by Mr. Hannah:

Was the media cooperative?

A: Very. It was the first time communication was opened up, and I think that was one of the most important by-products.

Q. by Mr. Hannah:

Did the presence of the media affect how you would have tried a case in your courtroom?

A: No, we did not think so. We had experienced corridor mobs, and once they were in the courtroom, it stopped.

Q. by Mr. Hannah:

What about interference with the workings of the court?

A: Some witnesses need particular protection.

Q. by Mr. Hannah:

So at least some of the court's time would involve dealing with this.

A: A very insignificant amount, really.

090 Q. by Mr. Hannah:

Did you notice any adverse affect on the attorneys in your courtroom if they were also on camera?

A: No demeanor change; probably saw more blue suits.

Q. by Mr. Hannah:

How about the obtrusiveness of the equipment on the proceedings--was that handled effectively in your circuit?

A: We were under an order that the equipment be as unobtrusive as possible. You were still able to hear the still cameras.

Q. by Mr. Hannah:

After you got a chance to see this system in action, was it a big deal?

A: The guidelines set by the Supreme Court were very, very helpful to the trial judge. I never had but one or two jurors who said it would have an impact.

Q. by Judge Segell:

Did you find in Florida you were sequestering more jurors than you would have without cameras?

A: On any type trial which was high publicity, we did sequester more than normal out of plain judicial caution.

Q. by Judge Segell:

Did you feel in the cases where you didn't sequester, the jurors were probably watching themselves on TV?

172 A: I don't think the exposure was greater than a newspaper article.

Q. by Judge Segell:

You have a rule for immediate appeal when the media is excluded?

A: Yes, the rule allows for summary appeal. I know of only one in our circuit.

Q. by Judge Segell:

Are you familiar with the Palm Beach Newspaper case? There was a stay in that case, and one witness was out of jail after the stay and could not be found.

A: I think that could arise in any case where you provide summary appeal.

275 Q. by Judge Segell:

Did you find that the media was covering essentially criminal cases?

A: Predominantly, yes. There were a number of civil trials covered.

Q. by Mr. Kaner:

I am interested in what impact having cameras in the courtroom would have on the fairness of the trial. Did you think, in your experience cameras had an effect on the fairness of the trial?

A: Judge, I had not detected any. We did a number of post-trial studies, and we detected no impact that said our quality of proceeding was reduced or there was any less justiciable disposition of the cases.

349 I think there is more distraction with a sketch book, and the media
433 people coming and going. Also, the mikes were left on all the time
with no problem. No multidirectional mikes were allowed, so there
were certain areas of the courtroom it just would not pick up.

Q. by Mr. Hannah:

Did it add grounds on appeal?

A: Yes, until Chandler.

501 LUNCH

Tape 3, Side 1

Charles Hvass, Jr.:

President, Minnesota Trial Lawyers Association.

024 The reason we are opposed: we focus on the person(s) there to litigate their issue. Unless we can show some benefit, we believe there are enough harms that we are opposed. From the media, we get the argument that it will benefit the public--some sort of education. I think the Chandler case refutes that. The media argues that reporters will better do their job. I question this, because, they can get verbatim transcripts today.

You are changing what the witness does, and therefore you have changed the trial.

109 In Chandler, the burden is on the defendant to come forward and show there was some effect on the jury. So what is a Minnesota defendant going to do? He can't ask the jury (Schwartz v. Minneapolis Bus Co.: losing party may not interview the jurors).

The media argues they are responsible--I don't believe that. What about KSTP's attempt to get the Ming Sin Shu tapes, or the Star's role in the stadium?

Why experiment? Seventeen other states are doing it, but they don't have the Schwartz v. Minneapolis Bus Co. handicap. When those experiments are over, there will be data, so we can wait.

If we have one conviction, one acquittal--if we have one case that gets a wrong verdict because of cameras, we have done an injustice.

Q. by Mr. Hannah:

Wouldn't you agree that that defendant would be served by a responsible court determining issues of law in that case, including the issue of coverage?

A: No, as soon as you raise that issue, you're putting pressure there that you should not have. You have changed what is going to happen in that court. As soon as the judge tells me "I want this case televised," and I object, I run the risk of all the discretionary rulings going against me.

Q. by Mr. Hannah:

If the law says the trial should be public and public via its surrogate the press, and if the court's there to protect the individual defendant's rights, then why do we have to say no cameras at anytime? Isn't that judge going to be able to protect that man?

A: No. You didn't protect Estes and you didn't protect Sheppard, and Sam Sheppard spent better than 10 years in jail because he wasn't protected by that risk.

Q. by Mr. Hannah:

If it's only the defendant's right (right to a public trial), he should be able to waive it. So it's the public's right, too. It's a part of the system, and your client has to deal with that.

A: No, my client has to deal with the fact that the public can be in the court. He doesn't have to deal with the fact that I have an added distraction.

Q. by Mr. Hannah:

We don't know in Minnesota what effect it will have on our witnesses.

A: No, that's the problem.

Mr. Hannah:

But the other states haven't had a problem.

A: "We've done just fine without cameras, and I don't see why we should change that until we know. I would strike the balance in favor of the defendant who is on trial and trying to get justice, rather than saying we don't care what happens to the defendant because we don't know."

Q. by Mr. Hannah:

Are you really serious when you tell me you're afraid that if we put cameras in the courtroom, our trial judges in the state are going to make decisions based on the effect of that camera on their re-election chances?

A: Yes, it may not be something they consciously decide they're going to do. But somewhere you're going to have that problem, and I have talked to judges, one judge in particular, who had a highly publicized trial, who had people trying to intimidate his decision. And when you put the camera in there, and make it more widespread, you're going to have that problem.

Q. by Mr. Hannah:

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

A: Sure.

Q. by Mr. Hannah:

And presumably they have the ability to put pressure on him now, don't they?

A: Not in the same way.

Tape 3, Side 2

Q. by Mr. Pillsbury:

Your implication is that the procedure now is good--don't change it. You seem to dismiss any positive impact.

A: There may be some positives. But I don't see any proof today that there is. I see speculation that there might be. I have not heard any speculation that the client will benefit.

327 Ms. Carol Grant, Esquire.

The question is whether the witnesses' knowledge that the proceedings are being televised will affect that witness' ability to participate in the fair trial process, and I'm positive that it will affect fair trial rights. It would traumatize defendants and the innocent defendants are most concerned with the despoiling of their name. He might enter a guilty plea, so he can suffer his sentence in silence. Even witnesses who are sympathetic to the defendant, when they find out they're being televised, they don't want to get involved--they don't want to be associated with an accused.

Tape 4, Side 1

Fact finders will be affected, too, by conforming their decision to what the public believes. The judge might subconsciously let evidence in when it should be kept out. The juror is basing his decision on the total trial, but is concerned with his neighbor saying, "How could you acquit that guy? I saw him on TV." The jury selection for re-trial is tainted, too.

Are the advantages sufficient enough to outweigh the disadvantages? I see no advantages--nothing to be gained, and everything to lose.

The visuals are the frosting on the cake. I still have not heard of an benefit.

Q. by Mr. Hannah:

And you're not convinced by the experiment in 26 other states that no major problems seem to be arising?

A: The very fact that you use the word experiment indicates to me that there is no conclusive proof.

Mr. Hannah:

No, it indicates they're experimenting.

A: And until those experiments are resolved, I certainly have an open mind, and if those experiments show there are substantial fair trial benefits to be achieved by televising these proceedings, then I would be the first to change my mind.

Mr. Hannah:

--or free press benefits, or first amendment benefits, or public benefits--not just fair trial. We probably only have to show there are no fair trial detriments.

A: When there is a collision with fair trial rights, there is elasticity between the First Amendment / Sixth Amendment guarantees, and they must yield to the right of a fair trial.

Q. by Mr. Kaner:

The media claim that it will educate the public, generate respect for the judicial system and make reporting more accurate. Do you see any of these benefits?

A: That baffles me, because those arguments seem to be the benefit of having open trials. I don't see them as being derived from cameras in the courtroom at all. Most agree that coverage sides with the police version, and to the extent these flaws exist, they're going to be magnified with cameras in the courtroom.

Q. by Ms. Ahmann:

Should the decision be made not to allow cameras in the courtroom, aren't we cutting off a lot of people who use that as a vehicle for their information?

A: You're right that TV is where most people get their news. I suspect, though, that the reporting will be basically the same whether illustrated by moving photographs or artists' sketches. The meat of what has happened is being transmitted right now, and it fills the public's need to know.

Q. by Mr. Pillsbury:

Which is better, outside or in?

A: I would rather, from a fair trial standpoint, have the witness be nervous walking in or out of the courtroom than while they're on the stand, because that's where I think you have the impact on the fair trial.

Tape 4, Side 2

The end of Ms. Grant's testimony, through 096.

Tuesday, October 13, 1981, Hearing Room 15, State Capitol

Tape 1, Side 1

Judge Sholts introduced Joel Hirshhorn

058 Joel Hirschhorn:

Attorney, Miami, Florida (argued Chandler v. Florida before the United States Supreme Court)

There is nothing wrong with coverage of appellate proceedings. Televising the trial doesn't contribute to the search for the truth. The jury is instructed to take the witness' demeanor into account. When the camera is present, the jury wonders if the witness is squirming because of the camera or because he is being tripped up.

I have no problem with a rule that says if the defendant objects, the judge has an absolute responsibility to prohibit the televising of the trial.

226 The media say that this is a way to educate the public. That is pure hogwash. If the media was really concerned about educating the public, then they would pick the kind of trial the public needs to be educated about.

How can we hope to educate the average man and woman when all that is shown is 2:55 of the best part of the trial? The public doesn't see the long cross-examination where the small points are made.

In the back of everyone's mind is that we've got to give the media a fair chance. But the media isn't going to give the accused a fair chance. They aren't bound to a canon of ethics.

465 I challenge the media to allocate some of their resources to socio-psychological studies that will prove or disprove the propositions that we are dealing with.

Tape 1, Side 2

The witness and Mr. Hannah exchanged words, and Mr. Hannah points out Mr. Hirshhorn's arguments for broad First Amendment protections in the distribution of allegedly pornographic movies. Mr. Hannah tried to show that the witness has taken inconsistent positions in the same area.

Q. by Mr. Kaner:

Why don't you tell us what you feel Chandler really holds insofar as our guidance is concerned.

A: Read quotes from Chandler:

"If it could be demonstrated that the mere presence of photographic and recording equipment and the

knowledge that the event would be broadcast invariably and uniformly affected the conduct of participants so as to impair fundamental fairness, our task would be simple; prohibition of broadcast coverage of trials would be required."

"At the moment, however, there is no unimpeachable, empirical support for the thesis that the presence of the electronic media, ipso facto, interferes with trial proceedings."

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

"Experiments such as the one presented here may well increase the number of appeals by adding a new basis for claims to reverse, but this is a risk Florida has chosen to take after preliminary experimentation."

"Even the amici supporting Florida's position concede that further experimentation is necessary to evaluate the potential psychological prejudice associated with broadcast coverage of trials."

"To say that the appellants have not demonstrated that broadcast coverage is inherently a denial of due process is not to say that the appellants were in fact accorded all of the protections of due process in their trial."

"Dangers lurk in this, as in most, experiments, but unless we were to conclude that television coverage under all conditions is prohibited by the Constitution, the states must be free to experiment."

Q. by Mr. Kaner:

Would you say that Chandler holds that the United States Supreme Court recognizes the risk in this procedure, but in that particular case and on that particular record, you were unable to prove that the trial was unfair because of TV coverage?

A: Absolutely.

Tape 2, Side 1

019 Q. by Mr. Pillsbury:

I'm wondering whether you're not totally against the media in the court but merely would like the defendant to have some right to appeal it on some basis.

A: I take the position, like with any other right, the defendant should be able to waive or invoke that right. I'm not opposed to a rule that says the media has the right to come in and televise any or all or a portion of a trial. However, in a criminal case when the defendant objects, the trial judge must exclude electronic coverage. If a trial participant objects, e.g. witnesses or jurors, then the trial judge must balance the media's right under the first amendment against the juror's or the witness' objection.

Q. by Mr. Pillsbury:

You do not think there is adequate protection for the defendant if he asks the court for a ruling, and there is an appeal from that decision?

A: No, I do not. Your trial judges are already pushed to the limit. The witness then attempted to dispell the validity of the Hoyt study (i.e. the students knew in advance that they were going to be tested about what they saw).

Q. by Ms. Ahmann:

Isn't it true that it would be very difficult to put to the test in a scientific manner the courtroom proceedings, and that no matter how much empirical evidence we have, that's all we'll have when we're finished; that in fact, we cannot test this question scientifically?

A: You're right. To do so would be to make a mockery of the trial because everyone would have to commit a crime to participate in the trial.

Q. by Ms. Ahmann:

You did suggest some kind of a study. What would be convincing evidence to the court which would prove this one way or the other?

A: I think that objective, socio-psychological and pyschiatric analysis by analogy of witnesses and individual in structured settings that closely simulate a courtroom setting could then be interpreted by objective experts. There are fields of discipline that aren't connected with journalism that could help this commission

Q. by Judge Segell:

Since the permanent rule has been adopted, hasn't there been considerable litigation as a result of having cameras in your courtroom?

A: Yes.

205 Recess

Judge Thomas E. Sholts:

Circuit Judge, Fifteenth Judicial Circuit, West Palm Beach, Florida

Judge Sholts gave a brief history of how the rule came about in Florida.

Tape 2, Side 2

See Exhibit 20 (Judge Sholts read from it almost verbatim, pp. 6-21).

Tape 3, Side 1

245 Judge Sholts is opposed to the use of cameras in the courtroom for these reasons:

- (1) The potential impact of TV on jurors is significant.
- (2) The quality of the testimony may be impaired.
- (3) Invocation of the witness rule is frustrated.
- (4) Additional responsibilities are directly placed on the trial judge.
- (5) The impact of courtroom TV on a defendant is extremely important.
- (6) Because of excessive pretrial publicity and the media's presence in the courtroom the voir dire process takes much longer, which unnecessarily prolongs the trial.
- (7) An important state's witness in the Herman trial was granted a change of venue in his subsequent trial for first degree murder based on excessive pretrial publicity, attributable to his TV exposure.
- (8) Counsel for the co-defendant of Ronny Zamora received permission to voir dire grand jurors who would be considering an amended indictment for murder because the first was dismissed on technical grounds.
- (9) Gavel to gavel TV coverage is expensive.
- (10) The presence of the media in the courtroom unnecessarily gives each defendant another ground for reversal should there be a conviction, which adds additional burdens to an already clogged and overworked appellate court system.

Tape 3, Side 2

Judge Sholts' recommendation was not to amend the rule.

Cross-examination by Mr. Hannah.

Tape 4, Side 1

Q. by Mr. Pillsbury:

Some of the concerns you have expressed would be present even without the television media being present--would you like to comment?

A: I think there's a qualitative difference between the presence of the TV camera and the presence of the print media and the possible bad or dilatory effect on trial participants.

Tape ends at 174

Tuesday, October 20, 1981, Hearing Room 15, State Capitol

Tape 1, Side 1

Judge Noah Rosenbloom:

Judge for Brown County.

What is a trial? A rational, undisturbed search for the truth, with an associated judgment process. We moved the site of the trial from the center of public entertainment and combat to a place remote from the market. The public aspects have remained, but public has never meant public without limits. We don't build courtrooms to fill all conceivable numbers who wish to attend.

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 mm camera if it could 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 needs.

If we permit voice recordings, what is the official record?

What type of coverage would not have a problem? Appellate, closing arguments, and the coverage here. Beyond that, I would not change the rule.

344 Former Governor LeVander:

I'm unabashedly and adamantly opposed to bringing cameras into the courtroom. The right to know does not necessarily include the right to see. You can't correctly cover in 10/20/30 seconds what occurred in an entire speech. You'll undermine the public confidence in our administration of justice by misguided information and by spotty and sensational statements that do not reflect the whole thing.

Tape 1, Side 2

We have no adequate controls over the media. They have no codes, they're not elected; they're not responsible to anybody. I don't see anybody for it except the media. No one claims it will better the administration of justice.

I'm concerned about how this whole procedure got started. I've tried to find out where the Supreme Court ever has the power to establish canons of judicial conduct. The only justification is that it comes from the inherent powers of the court, which is a philosophy that's 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. It is given powers by the Constitution or by the legislature, and if you start a philosophy that they have inherent powers, there's no stopping what they can do. The only petitioners here are the media, and they have put up \$10,000 to conduct these hearings and I don't believe that's the kind of way we ought to conduct the

hearing because the statute sets out what the Supreme Court is supposed to do in a regular procedure, and the statutory procedure isn't being followed.

I urge that this Commission recommend, on the basis of good common sense, to not change the rule as it stands.

125 Marjorie Burton:

Sexual Offenses Service of Ramsey County.

Ms. Burton's agency provides services to victims of rape, and she restricted her remarks to sexual assault.

Public knowledge that coverage occurs may cause those on the borderline to decide that the criminal justice system just doesn't have anything to offer them, and they will make the choice not to report, and in that way we'll be going backwards in terms of the recent increase in reporting that we've been having.

The addition of TV cameras implies that all of her attacker's friends and family may be watching.

Q. by Mr. Kaner:

Your conclusion is that with cameras you'd have fewer persons actually making the charge and then you'd have greater withdrawal after making the charge?

A: Both. I feel very strongly about that.

Tape 2, Side 1

Q. by Mr. Pillsbury:

The guidelines prohibit coverage when it would substantially increase the threat of harm to any of the participants or otherwise interfere with the achievement of a fair trial. Have you any opinion on opening up the courts to the media if some kind of restrictions like that were a part of the rule?

A: I think that might help. 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'm not satisfied with leaving it up to the discretion of the individual judge.

026 Judge Hyam Segell:

Judge of the Ramsey County District Court

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 done so without having any real input from the people who are most immediately affected.

The majority of the joint bar-press committee of the Minnesota State Bar Association did adopt certain standards of conduct for electronic broadcast coverage, and many of the petitioners here had representation on that committee; and those standards provided for consent on the part of the parties, witnesses and jurors. Now, obviously the media rejected that kind of control and filed the petition here, proposing standards which afford the presiding judge no control of the conduct of electronic coverage in the courtroom.

Offered as exhibits: juror interviews, position papers of the Minnesota District Judges Association, and resolutions of the Ramsey County District Judges, and the Ramsey County Municipal Judges.

It seems to me the only value of broader public exposure is for the news media. Most of the time the courtroom is empty, so you must ask yourself whether it is the public that is demanding this broader public exposure, or is it simply the media. If we think the public should have more knowledge than they have, 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 30 or 45 seconds at ten o'clock.

The sole purpose of the trial is to adjudicate human rights. Any intrusion which distracts from that purpose is an infringement of the rights of those whose problems are being adjudicated.

Tape 2, Side 2

Blank

Tape 3, Side 1

016 Judge Otis Godfrey:

Judge of Ramsey County District Court.

You are hearing a lot from people who are interested in the subject, but don't know too much about it.

The ultimate question is: will the presence of cameras in the courtroom enhance the right of all parties to a fair trial? The media argues that permitting coverage will educate the public and will not adversely affect the participants. I would submit these claims can not withstand our critical scrutiny. It seems to me rather than educate the public, TV would only sensationalize a few notorious cases.

Tape 3 , Side 2

Q. by Mr. Kaner:

Do you feel there is any modified basis upon which a recommendation could be made to the Supreme Court which would exclude coverage of some of the more serious offenses, such as rape and murder cases?

A: Well, if they want to cover the title registration proceedings, I guess we could throw that in. What do we want to cover? What's the public interested in? I don't have any suggestions, and I think that's the problem. I don't want to tell the media what to broadcast but where do you draw the line?

Q. by Mr. Pillsbury:

I suppose that for us to make a recommendation that the media should be in the courtroom to any degree, we must, at a minimum, conclude that it does 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 in ratings of one TV station over another, or even that it contributes to their commercial success? If these factors are present, and they do not interfere with a fair trial, should we take these other things into account?

A: Well, I suppose the question almost answers itself. I think there are exceptions in the present canon to televising, and one is, that if its purpose is educational, then you can televise it in an educational institution.

I don't know what the role of this Commission is supposed to be before the Supreme Court. We have a state statute the concerns itself with the role of the Supreme Court to adopt any rule - § 480.052. One might wonder why we don't follow the statute in this case . . .

Mr. Kaner:

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--that we will let the chips lie where they may be later.

Mr. Hannah:

Judge Godfrey, the question could perhaps be stated, "Where were you when?" You know we had a hearing in front of the Court when this Commission was established. The silence was deafening, and 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, Judge, that probably would have been the time to do it.

Judge 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. And if you think we were going to go up there and argue something which we knew was a fait accompli--well, I've got better things to do with my time than that.

A: Judge Godfrey at this time requested 60 days to file a brief, and the Commission took it under consideration.

LUNCH

After lunch, Mr. Pillsbury announced that the Commission had decided to adhere to the original ruling, which required that briefs be filed by October 30. When Judge Godfrey objected, Mr. Pillsbury told him that he would have to appeal the ruling to the Supreme Court

468 Judge Thomas H. Barland:

Circuit Judge, Branch 1, Eau Claire County, Wisconsin.

Tape 4, Side 1

When Wisconsin considered the question of cameras in the courtroom, I did not take an active position. I had 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.

How is the Wisconsin experience working in my view? I think it's working well. That's not to say that there have not been some problems, and it's 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 and, in most instances, never to be repeated again because they saw my wrath when the rules were violated.

Critical points in making these rules work:

- (1) The Wisconsin rules make it clear that the judge controls the courtroom.
- (2) We have a media coordinator--a person designated by the press as the liaison between the court and the press.
- (3) No enhancement of the lighting in the courtroom, and if, in Judge Segell's case, the lighting is insufficient, that's their tough luck.
- (4) The judge controls the equipment.
- (5) One camera operator, and he is not allowed to move about.
- (6) Our rules prohibit audio pickup of conferences between attorneys, and attorneys and clients. I would suggest that you further enlarge it to prohibit camera pickup of such conferences. Also, the rules should make it clear that cameras are not to focus on the work product laying on the table.
- (7) No operation of equipment during recesses.
- (8) Jurors cannot be photographed.

Wisconsin permits cameras in the courtroom subject to objection. It puts the burden upon the complainant to raise the issue of a camera in the courtroom. You may ban the cameras totally if there is cause, and there's a presumption of validity of cause when the person objecting is: the victim of a crime, a police informant, an undercover agent, a relocated witness, a juvenile, or in suppression hearings, divorce and trade secrets.

Do cameras in the courtroom help educate the public? I think it does, to this extent: TV and radio reach different audiences, and I have had many people stop me on the street to say they heard this or that on TV who would not have stopped had it only been in the newspaper.

355 Can you do justice to a full day trial in a 30 second capsule of events? The answer is obvious--you can't cover the range of events. 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. It can be done. And a newspaper reporter can just as much distort what is going on in the courtroom as can a TV or radio reporter.

Q. by Mr. Hannah:

Based on your experience in Eau Claire county, can you give the Commission your view of whether the fundamental due process rights of a criminal defendant were violated by the presence of cameras in your courtroom?

A: In the trials over which I have presided, I do not think those rights have been violated.

Q. by Mr. Hannah:

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

A: It takes a little more energy. I sit up straighter. It is one more thing that you have to keep an eye on. Fortunately, they only seem to come in on the more significant cases--the more newsworthy cases that are going to demand more energy anyway.

Q. by Judge Segell:

You would agree that the chief function of our judicial machinery is to ascertain the truth?

A: Whatever the truth may be.

Q. by Judge Segell:

Tape 4, Side 2

Does the TV camera contribute anything to that objective?

A: I think it does,. I think it helps inform the public for example, that not all trials are Perry Mason kinds of trials.

Q. by Judge 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.

A: 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 how a trial is conducted, the better able they are to handle the issues that come before them.

Q. by Mr. Kaner:

You recognize that what this Commission has to do is balance the equities. Now, in doing that, do you feel it is more desirable that cameras should be in the courtroom as against objections made by the people involved?

A: I do, provided that the judge is in control. Control of the judge is essential.

210 Mr. Hannah's closing argument.

Tape 5, Side 1

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 to pull some flamboyant move that will perhaps get them another client 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 the judge tells it to them? If you don't trust those people to do what they're supposed to do, then deny the petition. But before you do that, think about what that means about our legal system.

Tape ends at 264.