STATE OF MINNESOTA

IN SUPREME COURT

C7-81-300

In Re Modification of Canon 3A(7)
of the Minnesota Code of Judicial
Conduct to Allow a Period of
Experimental Audio and Video Coverage
of Certain Trial Court Proceedings

ORDER FOR PUBLIC HEARING

- AMENDED DATE

WHEREAS, the Supreme Court of the State of Minnesota has, in an order dated October 20, 1988, set a public hearing on the above-captioned matter, for 9:00 a.m. on February 8, 1989, in the Supreme Court Chambers in the State Capitol in St. Paul; and

WHEREAS, the Minnesota State Bar Association has requested that the hearing be postponed until its House of Delegates can meet to discuss and communicate its views on this matter to this Court.

NOW, THEREFORE, the order of October 20, 1988 is rescinded and it is hereby ordered that a public hearing concerning this petition be held at 9:00 a.m. on April 13, 1989, in the Supreme Court Chambers in the State Capitol in St. Paul.

IT IS FURTHER ORDERED THAT:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of the hearing, but who do not desire to make an oral presentation at the hearing shall file 10 copies of such statement with the Office of Appellate Courts, 230 State Capitol, St. Paul, MN, 55155, on or before March 24, 1989, and

2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the material to be so presented with the Office of Appellate Courts together with 10 copies of a request to make the oral presentation. Such statements shall be filed on or before March 24, 1989.

Dated: December 1, 1988

BY THE COURT

Douglas K. Amdahl
Chief Justice

BEFORE THE

MINNESOTA SUPREME COURT

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

COMMENTS OF

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

The Reporters Committee for Freedom of the Press submits these comments in response to the petition to modify Minnesota court rules affecting cameras in state trial courts.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association established in 1970 by news editors and reporters to defend the First Amendment and freedom of information rights of the print and broadcast media. The Reporters Committee publishes a quarterly magazine, The News Media & The Law, as well as a biweekly newsletter, News Media Update.

The Reporters Committee also operates a hotline service project, the FOI Service Center, which advises reporters on issues of access to governmental records and proceedings.

Purpose of the Reporters Committee's Comments

The Reporters Committee commends the Minnesota Supreme Court for its previous experiments with electronic media coverage in state trial courts. The Committee believes it is now time for the rules governing coverage to be expanded to allow more extensive media coverage. The rules provided for in the Minnesota Supreme Court Order of April 18, 1983 greatly restrict the amount of coverage allowed in state trial courts. The primary restriction is the rule requiring the consent of both parties to allow coverage. As a result of this virtually insurmountable restriction, the trial courts have received little if any coverage during the previous experiments. The Court should take advantage of the opportunity currently before it to formulate a more flexible set of rules allowing coverage. The Committee trusts that the successes from permanent rules allowing extended media coverage in Minnesota's appellate courts will be influential in the current consideration of the petition to establish less restrictive rules allowing coverage in trial courts.

Execution of a state's laws through its court system is of paramount concern to its public. But that public must, almost exclusively, receive accounts of the operation of the courts from others, since the number of individuals who may attend a specific case is limited by courtroom space and by other demands on their time.

The accuracy of those accounts depends, quite simply, upon the manner and degree of access afforded to the media. The more comprehensive the access, the better the public will understand the operation of the judiciary.

The Reporters Committee recognizes that the judiciary must ensure that trials are fair and believes that it can do so while also ensuring that trials are public. The Reporters Committee urges the court to fully consider the public's interest -- both as a general concept and in the rules governing electronic coverage of trials -- and take note of the technological advances in cameras and recording equipment that in 1989 permit unobtrusive coverage.

The Reporters Committee is concerned that the experimental rules provided for in the Order of April 18, 1983 permit too little access to the trial courts. The purpose of these comments is to urge that the rules allowing coverage be less restrictive, and in this vein we bring to the court's attention the notable successes achieved in other states through electronic coverage. We specifically ask the Court to change Rule 2 requiring the consent of all involved parties and the trial judge before extended media coverage is allowed. We ask the Court to reexamine and change Rule 3 prohibiting juror coverage and Rule 4, which allows witnesses to deny coverage of themselves. We also ask the court to change Rule 8, which imposes an unreasonable blanket prohibition of coverage of a variety of cases.

I. ELECTRONIC COVERAGE HAS PROVEN SUCCESSFUL

In 1987 the Reporters Committee joined WDIV-TV in Detroit and several news organizations to urge the Michigan Supreme Court to allow electronic media coverage of the courts. We reiterate below the information we brought to the attention of the judiciary in that state.

Although extended media coverage was at one time unheard of, it is now commonplace and accepted in courtrooms throughout the country. Both the United States Supreme Court[1] and the American Bar Association[2] have endorsed the concept and there are now forty-five states which permit some form of extended media coverage.[3] Moreover, the actual experience of the states which have permitted it indicates that there is no basis for the objections which are typically voiced to extended media coverage, and many states have reported definite benefits.

Although commonly described as "Cameras in the Courtroom," extended media coverage would significantly enhance coverage of the courts not only by television but also by radio and the

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[1] Chandler v. Florida, 449 U.S. 560 (1981).

[2] The Canons of Judicial Ethics, Canon 3A(7) (adopted August 11, 1982 by the ABA House of Delegates).

[3] Radio-Television News Directors Association, News Media Coverage of Judicial Proceedings with Cameras and Microphones: A Survey of the States (as updated by supplements through October 1, 1988) (hereinafter "RTNDA").

print media. A temporary implementation of extended media coverage will provide to all interested parties the opportunity to assess the concept in actual usage and to make such recommendations or adopt such changes as are considered appropriate, not as a result of speculation or conjecture, but rather in light of actual experience.

A. History Shows an Increasing Use of Cameras in the Courts

For many years the American Bar Association officially opposed extended media coverage. The ABA's position was fortified by the Supreme Court's decision in Estes v. Texas, 381 U.S. 532 (1965) in which at least four justices indicated that televising a criminal trial was a violation of a defendant's constitutional rights.

As a consequence of the ABA's opposition and the Estes decision, extended media coverage of judicial proceedings was virtually unheard of in the late 1960's and early 1970's. Beginning in 1975, however, Post-Newsweek Stations of Florida began a successful effort to obtain the Florida Supreme Court's approval of extended media coverage. In 1979, after several experimental programs, the Florida Supreme Court approved extended media coverage on a permanent basis. A year earlier, the Conference of Chief Judges had adopted a resolution providing for extended media coverage subject to the supervision

of the highest appellate court in the jurisdiction.[4] Finally, in Chandler v. Florida, 449 U.S. 560 (1981), the United States Supreme Court affirmed the constitutionality of Florida's extended media coverage in a televised criminal trial. In response to the decision in Chandler, the ABA in 1982 abandoned its historical opposition to the concept and amended Canon 3A(7) to permit extended media coverage.[5]

Since Chandler, the movement toward extended media coverage has been dramatic. As late as 1976, only three states permitted camera access to their courtrooms. As of October, 1988, forty-five states permitted extended media coverage of judicial proceedings in some fashion on either a permanent or experimental basis.[6]

B. The Objections To Extended Media Coverage Are Without Merit

The objections to extended media coverage are neither new nor novel. Indeed, many of these speculative concerns were mistakenly relied upon as "fact" by the Supreme Court in its earlier decision in Estes. Extended media coverage is usually objected to out of concern that it will impair the dignity of

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[4] Resolution I, Television, Radio, Photographic Coverage of Judicial Proceedings, adopted by the Conference of Chief Judges at its 1978 Annual Meeting.

[5] See supra, n.2.

[6] See RTNDA, supra, n.3.

the courtroom, or will distract participants in the trial and thereby adversely affect their behavior.

The short answer to all of these fears is that actual experience has demonstrated that they are not supported by fact. As the Supreme Court observed in Chandler, there is no support for the speculative criticisms of extended media coverage:

> [A]t present no one has been able to present empirical data sufficient to establish that the mere presence of the broadcast media inherently has an adverse effect on that process.

[7] Additional evidence of the lack of support for these unsubstantiated concerns is the current widespread adoption of extended media coverage. Some 33 of the 45 states which permit extended media coverage in some fashion have done so on a permanent basis, and most did so only after a period of experimentation. Many of these states carefully monitored their experiences with extended media coverage, and there is now a substantial body of empirical research on the subject. A thorough analysis of this data can be found in News Cameras in the Courtroom: A Free Press - Fair Trial Debate, by Susanna Barber of the Division of Mass Communication of Emerson College.[8] The author's conclusion is noteworthy:

> [I]t seems fairly striking that nineteen pieces of independent research, conducted in eleven states over a span of eight years, reached similar conclusions about

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[7] Chandler, 449 U.S. at 578.

[8] S. Barber, News Cameras in the Courtroom: A Free Press -- Fair Trial Debate (1987).

> the relative lack of prejudice caused by news cameras in courtrooms. Contrary to the Estes arguments, based on a series of suppositions, it seems that camera coverage of trials (even sensational criminal cases) does not necessarily influence the majority of trial participants to behave in ways that are noticeably different from behavior in non-televised trials. This is not to say that many trial participants do not have mixed or negative attitudes toward camera coverage, but the bulk of empirical research conducted to date shows little correlation between the presence of cameras at trials and perceived prejudicial behavior on the part of jurors, witnesses, judges, or attorneys.

[9] The failure of the conjectural criticisms of extended media coverage to manifest themselves in actual experience is undoubtedly in large part the result of advances in technology, as noted by the court in Chandler:

> It is urged, and some empirical data are presented, that many of the negative factors found in Estes -- cumbersome equipment, cables, distracting lighting, numerous camera technicians -- are less substantial factors today than they were at that time.

[10] While no significant adverse effects have been reported, the states have reported substantial benefits from extended media coverage. A Massachusetts advisory committee on extended media coverage recommended a permanent rule change permitting extended media coverage after a two-year experimental period, concluding:

> [T]he presence of the electronic and photographic media in the courtroom during the past two years . . . appears to have opened up court proceedings to a much broader public audience. This, we believe, has given the public an enhanced awareness of the skill and

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[9] Id. at 87 (emphasis in original).

[10] Chandler, 449 U.S. at 576 (footnote omitted).

dignity with which justice is administered in the Courts of the Commonwealth.

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The benefits of increased public awareness of the courts and how they function cannot be understated. Of all the public institutions, the judicial system in particular must garner public acceptance and support if it is to be strong and effective. It is therefore especially disquieting that a survey commissioned by the National Center for State Courts reveals that a large segment of the public has little knowledge of or familiarity with the workings of the courts, and the level of confidence in the courts is not high.[12] Similar results are found in a public opinion survey performed by the Institute for Social Research at the University of Michigan for the Citizens' Commission to Improve Michigan Courts. That survey showed that before cameras were allowed in Michigan courts, 84% of Michigan residents believed that court proceedings were too hard to follow, and only 36% expressed a high level of confidence in the Michigan Supreme Court.[13]

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[11] Report of the [Massachusetts] Advisory Committee To Oversee the Experimental Use of Cameras and Recording Equipment in Courtrooms to the Supreme Judicial Court (July 16, 1982, I.1).

[12] Yankelovich, Skelly and White, Inc., The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders (1978).

[13] Citizen's Commission to Improve Michigan Courts, Final Report and Recommendation to Improve the Efficiency and Responsiveness of Michigan Courts (1986), Appendix D.

The benefits to the public afforded by extended media coverage and the diversity of coverage are convincingly described by Norman Davis, a former vice president of Post-Newsweek station WPLG in Miami, Florida and an early advocate of extended media coverage:

> Viewers in Florida have seen nothing whatever that remotely resembles Perry Mason or the Defenders. Instead, they see a process which is mostly low-key, arguments which focus on technical procedure, and attorneys and judges who look just like the rest of us. The courtroom doesn't resemble a movie set and the participants don't look and act like a Hollywood cast . . . .
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> Even in the brief digests which typically appear on television news broadcasts, there are accumulating images of the way the system works.
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> We saw a judge one day patiently explore with a teenage defendant the consequences of his plea of no-contest to a murder charge, and learned something of the safeguards built into the process.
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> We saw a judge strongly admonish an accused killer not to lecture the judge threateningly with a pointed finger, and learned something of the discipline the court environment requires and exacts.
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> We watched one day as a female judge pronounced the death penalty to an angry and disruptive convict and we realized that women, too, impose discipline and perform the hard tasks of justice; the momentous words she spoke which sent the man to the electric chair had vivid meaning for those who support as well as those who oppose capital punishment.
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> We saw a close-up one day of the roster of more than a hundred cases facing a judge in traffic (court), and understood why he sent a nervous shoemaker off into a corner of the courtroom to bargain with the arresting officer and the prosecutor on a lesser charge.
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> We looked in on a Small Claims Court as an elderly citizen complained to the judge that he'd been gypped by a merchant on the purchase of a house trailer, and we saw something of the necessary reliance on common sense as well as intricate procedural rules.

> We watched in some horror as a beleaguered criminal court judge on a Monday morning waded through an incredible stack of felony cases -- scores of them -- and negotiated with a herd of lawyers milling around before the bench.
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> We watched for several minutes one night as a mother testified about the early life of her murdered son, and were a little less surprised that events had brought him to that trial.
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> We've had various glimpses of the juror-screening process as competing lawyers probed for strength and weakness in ordinary people.
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> Hollywood? Not for a minute . . . .

[14] Contrast the foregoing with the comments of Fred Graham, former legal correspondent for CBS News:

> The present technique of using artists' sketches is so primitive and expensive that frequently judicial matters are simply not covered. The use of courtroom sketches seems so stilted and archaic that often, in a situation of borderline news value, TV editors now opt not to cover court proceedings. Once cameras become routine in courts, the coverage of hearings will increase and with it public understanding of what goes on there.

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It is indeed one of the ironies of our day that television, the most modern and widely accepted medium of communication, must in some few states resort to such primitive techniques to report on judicial proceedings:

> Full and effective television news coverage is not covering a trial with an artist and a sketch pad. Nor

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[14] Davis, "Courtroom Television on Trial: It's Here. It Works," Television Quarterly, Fall 1981, at 13, 15.

[15] Graham, Cameras in the Courtroom: A Dialogue, 64 A.B.A.J. at 545, 547 (1978).

> is it having a reporter read over the air what he saw occur in the court. Television coverage is sound-on-film coverage -- an audio and video portrayal of an event with both elements critical to its dissemination of the news.
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> With exclusion of the principal newsgathering tool of television -- the motion picture sound camera -- television can fulfill only a small portion of its First Amendment capability.
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Fears of cameras in the courtroom, although sincerely voiced, are similar to many other fears in that they are not based upon fact or actual experience but rather are the result of a lack of information and experience. In short, it is fear of something different, fear of the unknown. This is graphically illustrated by the results of a number of "before and after" surveys. Without exception they indicate that judges, attorneys and jurors who were skeptical of extended media coverage changed their minds after they had experienced camera coverage. Typical is the change experienced by Judge Paul Baker of Florida who presided over the notorious Ronny Zamora murder trial, in which the defendant advanced the unique defense of temporary insanity induced by exposure to television violence. Before the trial, Judge Baker had said he was "horrified at the thought of a televised trial." But after the trial, he said, "I think we have found a common ground to

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[16] Wilson, Justice in Living Color: The Case for Courtroom Television, 60 A.B.A.J. at 294, 295-296 (1974).

protect the First Amendment right of the press to be in the courtroom and not have to give up the defendant's right to a fair trial under the Sixth Amendment."[17] After presiding over a trial with extended media coverage, Judge Guy E. Humphries, Jr. of Louisiana reported to the Louisiana Supreme Court:

> This experiment indicated to the writer that many, many of the fears expressed in the past about the presence of cameras and electronic equipment in the courtroom were totally unfounded.

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All in all, five different case studies indicate the judges, attorneys and jurors who were skeptical of extended media coverage changed their minds after participating in a televised trial.[19] Another survey reported that more judges and attorneys with extended media coverage experience than without were in favor of the practice,[20] and another survey concluded that judges with extended media coverage experience were less

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[17] Baker, Report to the Supreme Court of Florida Re: Conduct of Audio-Visual Trial Coverage (1977).

[18] Humphries, Report on Pilot Project On The Presence of Cameras and Electronic Equipment in the Courtroom (1979).

[19] Washington Bench-Bar-Press Committee, Subcommittee on Canon 35, Report (April 5, 1975); Report of the Wisconsin Supreme Court Committee to Monitor and Evaluate the Use of Audio and Visual Equipment in the Courtroom (April 1, 1979); Hawaii State Bar Association Case Studies and Survey (1982); Cameras in the Courtroom: The Rhode Island Experience, 17 Suffolk U. L. Rev. 299-311 (1983); Report of the Chief Court Administrator on the "Cameras-In-The-Court" Experiment of the State of Connecticut (May 1, 1983).

[20] Strawn, Buchanan, Pryor, and Taylor, Report To The Florida Supreme Court In Re: Petition of Post-Newsweek

apprehensive about distraction and disruption than those without it.[21] Even criminal defense lawyers, who are usually the most vocal opponents of extended media coverage, express favorable opinions after participating in an extended media coverage trial. Thus Edward Harrington, one of the defense lawyers in the so-called New Bedford rape trial, said of his experience with extended media coverage that "[i]t had no impact on the trial. As soon as the trial started, you were oblivious to the fact that the camera was there."[22] Another defense lawyer in the same case reported: "I used to be opposed to cameras in the courtroom because a lawyer could grandstand, but I no longer feel that way. Good lawyers are not affected by the cameras."[23] In the highly publicized Ronny Zamora trial in Florida,[24] defense counsel Ellis Rubin told reporters that "the televising of the Zamora trial is the greatest educational

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[20] Continued
Stations, Florida, Inc. For Change in Code of Judicial Conduct (1978).

[21] Washington State Superior Court Judges' Association Committee on Courts and Community, Cameras in the Courtroom -- A Two Year Review in the State of Washington (1978).

[22] Advokat, TV In the Courtroom, Detroit Free Press, May 6, 1984.

[23] Id.

[24] News Photography, November 1977, at 11.

tool this country will ever have as to what goes on in a court of law . . . I think it's a wonderful thing."[25]

The case for extended electronic media coverage in trial courts has been tried successfully in many state forums. The Reporters Committee hopes that the Minnesota Supreme Court will consider these successes as it adopts its own rules for extended coverage.

II. THE PARTY AND WITNESS CONSENT REQUIREMENTS UNNECESSARILY RESTRICT COVERAGE OF TRIALS

Rule 2 of the Order of April 18, 1983, requires the consent of the trial judge and both parties to allow camera coverage. It permits the judge or either party to exclude cameras and microphones from the trial. The objecting party is not required to prove electronic coverage will jeopardize his right to a fair trial. Rule 4 of the Order prohibits coverage of any witness objecting to it. Again, the witness is not required to state a valid reason for prohibiting coverage; he may limit coverage as he pleases. Conceivably, a party or witness could exclude electronic coverage for any reason at all -- or for no reason.

These rules place unnecessary restrictions on electronic coverage. Previous experiments in Minnesota's trial courts have shown that such restrictions result in virtually no coverage of trials. One of the parties, usually the defendant, will

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[25] Id. at 10-12.

perceive camera coverage to be prejudicial to his right to a fair trial and will object to the coverage. The Reporters Committee feels any experimental program incorporating a consent requirement is no program at all because of the lack of coverage which invariably results.

The United States Supreme Court has determined that defendants must prove camera coverage will adversely affect the right to a fair trial.[26] The appropriate safeguard against the possible infringement of rights to a fair trial, the court held, rests in the defendant's right to demonstrate that the media's coverage of his or her case -- whether by the print or broadcast media -- compromised the ability of the jury to adjudicate fairly.[27]

Beyond the Chandler decision, the inclusion of a consent requirement is ill-advised, both pragmatically and as a matter of policy. Indeed, Minnesota does not require the consent of the parties involved at the appellate level. The experience from other states indicates that the inevitable inability to obtain the necessary consent will lead to a virtual absence of extended media coverage:

> Several states . . . mandate exclusion of cameras from the proceeding upon the objection of a single participant, regardless of his motive. The latter approach is the functional equivalent of a total ban

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[26] Chandler, 449 U.S. at 560.

[27] Id. at 577-580

since there is virtually always at least one participant who will object to camera coverage.

(Footnote omitted.)[28]

In practice, however, the consent positions have not permitted a significant increase in access to the courtroom for cameras. Generally, the consent required from participants is not granted. The press is thus in the identical position under the rules requiring consent as under the rules totally prohibiting cameras from the courtroom.

(Footnote omitted.)[29]

While established as a compromise, consent requirements have the effect of turning media access rules into empty promises.

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The foregoing conclusions are fully supported by the actions of a number of states which have, after some measure of experience, abandoned a consent requirement. The pioneering experimental program in Florida originally contained a consent requirement until it was clear that "the attempt to conduct the experimental trials, subject to participating consent, met with total failure." Petition of Post-Newsweek Stations, 370 So. 2d 764, 766 (Fla. 1979). The Florida Supreme Court therefore eliminated the consent requirement so as to permit the experiment to continue. Id. The recommendation of the

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[28] Cameras In The Criminal Courtroom: A Sixth Amendment Analysis, 85 Colum. L. Rev. 1546, 1563 (1985).

[29] An Assessment Of The Use Of Cameras In State And Federal Courts, 18 Ga. L. Rev. 389, 408 (1984).

[30] New Rules For Open Courts: Progress Or Empty Promise?, 18 Tulsa L.J. 147, 157 (1982-83).

Committee on Cameras in the Courts of the District of Columbia is to similar effect:

> A realistic appraisal of the effect of the party-consent requirement suggests that it will lead to the broadcast of very few trials. . . . We do not believe that the adoption of a party-consent requirement is justified.

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California also offered the opportunity to consider the impact of extended media coverage both with and without the consent requirement. The consultant's report analyzing that experience was unequivocal in its assessment of the impact of the consent requirement and the advisability of such a requirement:

> The requirement in the first seven months of the experiment that party consent to EMC in criminal trial level proceedings be obtained resulted in little criminal case EMC activity. The removal of the party consent requirement resulted in a sharp increase in EMC criminal case activity.
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> . . . .
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> If the Judicial Counsel decides to allow electronic and photographic coverage of court proceedings on a permanent basis, it is the opinion of the evaluators that it should do so without a criminal case party consent requirement. The result of such a requirement would be to stifle the extended media process to the extent that it may as well not be allowed at all. Since the evaluation has not produced evidence to indicate the necessity of reverting to a complete prohibition of extended coverage, it is recommended that the rules continue with no party consent required,

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31 Sallet, Report Of The Committee On Cameras In The Courts Of Division IV Of The District Of Columbia Bar, (1984).

given that the trial judge has the ultimate authority to allow or disallow EMC.

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The experience in Hawaii was the same:

> Your Committee preliminarily recommended a procedure whereby the litigants and/or witnesses, as opposed to the court, choose whether the court proceeding or, in the case of witnesses, their testimony may be broadcast.
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> . . . .
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> Your Committee has benefitted from the past year's experience under the existing canon and from the reported in other jurisdictions where broadcasting is allowed. It has become apparent that, as a practical matter, parties and witnesses generally will exercise the veto power conferred by Hawaii's canon to prevent videotaping of civil and criminal trials, even for educational purposes. . . .
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> Your Committee thus concludes that its preliminary recommendation would not achieve the desired goal. The intent was to avoid appeals by requiring consent, not to require consent to avoid broadcasting.

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Colorado had a similar experience. Colorado has permitted extended media coverage since 1956, initially only with the consent of the parties. As a consequence, extended media coverage was so uncommon that it was described by the Director of Public Affairs for the Colorado Bar Association as being

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[32] Ernest H. Short & Associates, Inc., Evaluation of California's Experiment With Extended Media Coverage of Courts, Sept. 1981, at 219 and 234-35.

[33] Final Report of the Hawaii State Bar Association Committee on "Cameras in the Courtroom", 17 Hawaii B. J. 4 at 19 (1982).

"pretty much meaningless."[34] The Colorado provisions were ultimately amended in 1985 to eliminate the consent requirements.[35]

New York is currently conducting a camera experiment until May 31, 1989. The state's rules expressly state that consent of parties, witnesses, victims or other participants in the trial is not required.[36]

Similarly, the Alaska requirement that a criminal defendant consent to extended media coverage was suspended for the experimental period July 1, 1985, to January 15, 1989. An evaluation conducted by the Alaska Judicial Council found that dropping the consent requirement proved to be highly beneficial to the experiment:

> The July 1985 change in the media plan is viewed by a great majority of judges and virtually every member of the press as a great step forward. . . . Our quantitative analysis shows that this new-found understanding and cooperation has led to increased coverage of the courts by both the broadcast and print media. And, while it is difficult to evaluate the quality of the increased coverage, increased public awareness of the courts and their functions can only be positive.

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[34] 69 A.B.A. J. 1213 (1983).

[35] Colorado Code of Judicial Conduct, Canon 3A(8), Colo. Rev. Stat. Vol. 7A (1988 Court Rules), Appendix to Chapter 24.

[36] N.Y. Jud. Law 218.5 (McKinney 1987).

[37] News Cameras In The Alaska Courts: Assessing The Impact, Alaska Judicial Council, at 69, 1988.

Finally, of those states which have adopted permanent rules for trial court coverage, only three have incorporated a party consent requirement as a precondition to any extended media coverage,[38] and only seven have incorporated a provision which permits any witness by the withholding of consent to preclude extended media coverage of him or herself.[39]

In addition to the fact that consent requirements virtually eliminate extended media coverage, there are substantial policy considerations which militate heavily against such provisions. The fundamental flaw with a unilateral consent requirement is that no attempt is made to inquire into the reason for withholding the consent.

Although the presumption should always be in favor of extended media coverage, the Reporters Committee recognizes that the law, as always, has been prepared to accommodate the legitimate interests of a party or witness. The issue of courtroom closure offers an appropriate analogy: It is recognized that although judicial proceedings are presumptively open, a courtroom may, upon a proper showing, be closed to the public. Press-Enterprise v. Riverside County Superior Court,

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[38] Alabama, Maryland and Tennessee. In Alaska and Oklahoma criminal trials, the consent of the defendant is required. Alaska, however, suspended the consent requirement for the experimental period July 1, 1985 to January 15, 1989. See RTNDA, supra fn. 3, Part II(D), at B-8, et seq.

[39] Alabama, Alaska, Ohio, Oklahoma, Tennessee, Utah and Washington. Id.

464 U.S. 501 (1984). Courts have been traditionally willing to do so, for example, during the testimony of certain minor witnesses, undercover agents, and victims of sexual offenses.[40] In each such instance, however, an appropriate showing is required. Indeed, a Massachusetts statute which failed to require an individualized showing of need but rather mandated a blanket closure of rape trials involving minor victims was held unconstitutional in Globe Newspapers v. Superior Court, 457 U.S. 596 (1982).

Extended media coverage is clearly a variant of the courtroom access issue and similar principles should logically apply. There may be valid reasons for denying extended media coverage, but it should not be denied in the absence of a valid reason. A decision whether to permit extended media coverage in a given instance should be based upon a consideration of the competing interests. A unilateral consent requirement forecloses such an inquiry.

Such a requirement is fundamentally flawed for the additional reason that it places a very important decision in entirely the wrong hands. It is in the wrong hands because it is in the hands of an individual who is, to say the least, unlikely to consider any interests beyond his or her own and who will invariably make the decision based solely upon a

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[40] See, United States v. Kobli, 172 F.2d 919 (3d Cir. 1949); United States v. Vincent, 520 F.2d 1272 (2d Cir. 1975).

determination of whether extended media coverage is perceived as helping or hurting the one making the decision. All of this is done at the expense of the judge's authority to control the proceedings and, to the extent consent is given or withheld by individual witnesses, makes distortion of the resulting coverage a very real possibility. Such an approach makes little sense in light of the obvious alternative:

> Since a trial is often an emotion-packed proceeding, these important decisions should properly be left to the sound discretion of the trial judge, who is in the best position to balance and safeguard the rights of all parties -- the individual participants, broadcasters, the press, and the public.

(Footnote omitted.)[41]

Finally, a unilateral consent requirement is conceptually at odds with the now almost worn concept that a trial is a public event:

> A trial is a public event. What transpires in the court room is public property . . . . Those who see and hear what transpired can report it with impunity.

[42] Thus in Cox Broadcasting v. Cohn, 420 U.S. 469 (1975), the Supreme Court held that admittedly highly sensitive information disclosed during the course of a trial could be the subject of greater publicity by the media. To similar effect is Oklahoma

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[41] New Rules For Open Courts: Progress Or Empty Promise?, 18 Tulsa L.J. 147, 157 (1982-83).

[42] Craig v. Harney, 331 U.S. 367, 374 (1974).

Publishing Co. v. District Court, 430 U.S. 308 (1977). As one court has observed:

> The law does not recognize a right of privacy in connection with that which is inherently a public matter.

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This is not to suggest that any individual involved in a judicial proceeding is "fair game" without regard to the nature of the hunt. It is intended to suggest, however, that a party or a witness should not be permitted to unilaterally compromise the public's access to one of its most public institutions.

A party may exercise the veto power conferred by a unilateral consent requirement in a number of circumstances. In the first, the party may prefer for no articulable reason that extended media coverage not be permitted. That "reason" is in reality not a reason and is not entitled to consideration. Secondly, a party may feel that the mere presence of cameras will deprive him or her of a fair trial. That argument, however, was expressly rejected in Chandler. In neither of these instances should a party have the power to impede the flow of information to the public provided by extended media coverage. Finally, a party may for articulable reasons feel that extended media coverage will affect the proceedings in an

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[43] In Re Hearings Concerning Canon 35, 296 P.2d 465, 470 (Colo. 1956). Accord, Lyles v. State, 330 P.2d 734, 741 (Okla. 1958).

adverse and identifiable manner. In only this instance, and only after a sufficient showing has been made, should a trial judge consider prohibiting media coverage.[44]

The Reporters Committee urges the Minnesota Supreme Court to look favorably at the "qualitatively different" test which has been used successfully in Florida:

> The presiding judge may exclude electronic media coverage of a particular participant only upon a finding that such coverage will have a substantial effect upon the particular individual which would be qualitatively different from the effect on members of the public in general and such effect will be qualitatively different from coverage by other types of media.
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The Florida Supreme Court explained its adoption of the "qualitatively different" standard as follows:

> What is called for is an articulated standard for the exercise of the presiding judge's discretion in determining whether it is appropriate to prohibit electronic media coverage of a particular participant. Implicit in this statement, of course, is the conclusion that in certain instances it is appropriate to prohibit electronic media coverage of particular participants. This is so because, for certain trial participants, there is a qualitative difference between the printed word and a photograph. Electronic proceedings could have a devastating impact on the welfare of the child participant. The future well-being of the child far outweighs the public's interest in being informed of such proceedings. And we can conceive of situations where it would be

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[44] Essentially the same analysis applies to the circumstances in which an individual witness does not consent to extended media coverage of his or her testimony.

[45] Petition of Post Newsweek Stations, 370 So. 2d 764, 779 (Fla. 1979).

> legally appropriate to exclude the electronic media where the public in general is not excluded. Similar considerations can present themselves where prisoners, confidential informants, sexual battery victims, relatives of victims, and witnesses under protection of anonymity are concerned. However, we deem it imprudent to compile a laundry list or adopt an absolute rule to deal with these occurrences. Instead the matter should be left to the sound discretion of the presiding judge to be exercised in accordance with the . . . ["qualitatively different"] standard . . . .
>
> 46

The two-pronged "qualitatively different" test has worked successfully in Florida over time as a standard for considering the competing interests of those who are directly involved in a trial and of the public at large. The test provides, in our view, an alternative preferable to a rule requiring the consent of the judge and both parties to allow camera coverage. The Reporters Committee believes such a test would placate the fears of some who feel that electronic coverage necessarily demands the sacrifice of rights to privacy and a fair trial. The test is also compatible with the media petition for less restrictive electronic coverage rules.

III. PROHIBITION ON JUROR COVERAGE IS TOO RESTRICTIVE

The prohibition on electronic coverage of jurors in Rule 3 is contrary to the spirit of the Supreme Court's decision in Press-Enterprise v. Riverside County Superior Court, 464 U.S. 501 (1984), in which the Court held unconstitutional the exclusion of the public from juror voir dire, saying that a

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[46] Id. at 778-779 (footnote omitted).

juror could be questioned in private only when no alternatives were available or when "interrogation touches on deeply personal matters that the person has legitimate reasons for keeping out of the public domain."[47] Press Enterprise contemplated that instances of closure should be decided on a case-by-case basis.[48]

The rule's failure to consider the possibility of jurors being portrayed as part of the background creates enormous difficulties for journalists covering the trial. The task of providing solid, consistent trial coverage would prove exceedingly difficult for cameramen if they could not record attorneys' movements in front of the jury or were forbidden to pan the courtroom.

Vermont, which began a camera experiment in state trial courts January 2, allows coverage of jurors as part of the background if such coverage is unavoidable. The rule on juror coverage states:

> In courtrooms where recording of trial participants is impossible without including the jury as part of the background, such recording is permitted but closeup photographs or videotapes of individual jurors are prohibited.

[49] Vermont's rules are the result of four years of study by

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[47] Press Enterprise, 464 U.S. at 511.

[48] Id. at 510.

[49] Vt. R.C.P. § 53(d); Vt. R.C.P. § 79.2(d); Vt. R.P.P. § 79.2(d); Vt. R.C.P. § 79.2(d) (Sept. 23, 1988).

the Vermont Supreme Court's Advisory Committees on Civil, Criminal and Probate Rules.

In the overwhelming majority of cases, the public has a substantial interest in jury selection process. The Reporters Committee hopes that the Minnesota Supreme Court will consider a more flexible rule that will allow the trial court to weigh the particular concerns of a case before prohibiting jury coverage and that will not, in any event, inhibit coverage of actual trial proceedings.

IV. THE BLANKET BAN ON COVERAGE OF CERTAIN PROCEEDINGS FAILS TO DISTINGUISH INDIVIDUAL CIRCUMSTANCES

Rule 8 of the Order of April 18, 1983 absolutely prohibits coverage of certain testimony in cases involving child custody, marriage dissolution, juvenile proceedings, motions to suppress evidence, police informants, relocated witnesses, sex crimes, trade secrets and undercover agents.

An inflexible list of closed proceedings is dangerous and overbroad. It precludes the possibility of coverage of certain trials in which the public has a definite interest and which may need not be closed.

The Committee urges the Minnesota Supreme Court to adopt instead a rule allowing the trial judge discretion in deciding whether to close an individual trial. Such decisions should be made on a case-by-case basis by the judge, not by a blanket rule indifferent to the discrete circumstances of a particular case.

The rules Vermont adopted for its experimental period state:

> Subject to the provisions of this rule, authorization is hereby granted to record proceedings of the court . . . which are generally open to the public, except when the presiding judge, on the judge's own motion or on a motion of a party or request of a witness, directs otherwise prior to or during the proceeding in question.

50 The advantage of this rule is that the trial judge makes the final decision, not one of the parties involved, a witness or a blanket rule. The judge is the highest authority in a trial; he should have the authority to decide whether camera coverage should be allowed.

The Reporters Committee appreciates the Court's consideration of these comments.

Respectfully submitted,

Jane E. Kirtley, Esq.
Executive Director

* Thomas E. Cooney, a Reporters Committee intern, provided research and assistance in preparing these comments.

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50 Id. at (a).

No. C7-81-300

STATE OF MINNESOTA

IN SUPREME COURT

In Re

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

Minnesota Joint Media Committee,

Petitioner.

MINNESOTA TRIAL LAWYERS ASSOCIATION'S REQUEST FOR ORAL PRESENTATION

On behalf of the Minnesota Trial Lawyers Association, Charles T. Hvass, Jr. herein requests an oral presentation of approximately 15 minutes in length to respond to the Petition for Modification of Rule 3A(7) of the Minnesota Code of Judicial Conduct.

DATED: 3/20/89

By _____
CHARLES T. HVASS, JR.
Suite 2100
100 South Fifth Street
Minneapolis, Minnesota 55402
Telephone: 612-333-0201
Atty. Reg. No.: 48598

No. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re

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

Minnesota Joint Media Committee,

Petitioner.

RESPONSE OF THE MINNESOTA TRIAL LAWYERS ASSOCIATION TO PETITION FOR MODIFICATION OF RULE 3A(7) OF THE MINNESOTA CODE OF JUDICIAL CONDUCT

PROCEDURAL BACKGROUND

On August 10, 1981, the Supreme Court ordered the creation of the "Minnesota Advisory Commission on Cameras in the Courtroom". Findings of Fact were submitted to the Court on January 11, 1982. Following argument and briefs, the Court ordered, on April 18, 1983, a two year period allowing experimental audio and video coverage under Canon 3A(7) of the Minnesota Code of Judicial Conduct.

That period expired in April of 1985.

Subsequent thereto, the Court, on August 21, 1985 extended the experimental period until April 18, 1987.

There was no further activity on the issue of cameras in the courtroom until the Petition was filed on October 3, 1988.

STATEMENT OF FACTS

Two distinct factual bases are before this Court on the issue of cameras in the courtroom.

The first has to do with the findings of the Commissioners in 1982. Detailed findings were submitted which include the following:

1. Cameras cannot be totally muted in the courtroom. (Report of the Commission dated January 11, 1982) (Page 7).

2. Cameras may be a distraction (Page 7).

3. Conversations at the bench could be picked up (Page 8).

4. Experiments predating the Commission report were inconclusive (Page 8).

5. The rights of litigants must prevail over all other rights (Page 9).

6. There was strong evidence (emphasis added) of a "real absence in good taste and in concern for sensibilities of individuals. . ., including specific evidence of rather poor taste directed against the presiding judge when rulings adverse to the media were made by him (Page 11).

7. There was no evidence of any meaningful education or informational value to the public from the "limited" coverage characteristic of video and audio coverage (Page 17).

These findings were adopted by the Court in its Order of April 20, 1983.

The extensive hearings by the Commission, followed by extensive arguments at the Supreme Court, led to the conclusion that there should be no permanent modification of 3A(7). An experimental period was permitted, with the parties and the court given the right to prevent the requested coverage.

When the first experimental period ended, the Court issued its Order of August 21, 1985. Two paragraphs of that Order stand out:

> "Whereas, the Supreme Court has collected some information from persons who have participated in judicial proceedings which have been covered by electronic media regarding their impressions of such coverage, but needs more information regarding the subject; and
>
> Whereas the Supreme Court has not received information from media representatives regarding the results of their request to cover judicial proceedings and wishes to have such information;"

The Court was saying that some information had been provided, but that the media had failed to inform the Court of what was happening as a result of the experimental period.

The current Petition, now before this Court, contains no additional information concerning the number of requests and the results of the those requests for coverage.

The Minnesota Trial Lawyers Association, on behalf of its members, and those they represent, opposes any additional experimental period, and supports Canon 3A(7) as currently written.

ARGUMENT

I. CANON 3A(7) SHOULD NOT BE MODIFIED.

The new Petition requests a further experimental period during which the trial court and the parties, counsel and witnesses would not be permitted to object to electronic coverage. The basis for this deletion is a claim for "the need for further study of the issue" (Petition, Page 6) and that "no such coverage will be available if it is required that all parties to a proceeding must consent to such coverage." The implication of this argument is that the earlier experimental periods were a failure.

The earlier experimental periods did not fail.

This Court, seeking to remedy the lack of information from the media, requested that the media, the courts, and the lawyers, report the results of the experimental period as the trials took place. (Order of August 21, 1985).

The media, apparently then and now, do not have any evidence to give the Court to support the claim that the experimental period failed. Instead, they report a few months' effort, followed by three plus years of no, or virtually no, requests.

The media also does not report the results of any trials which were covered by the electronic media.

Such a failure to produce evidence would get most plaintiffs a quick ride out of town on the directed-verdict railway. The Petitioners here deserve a similar trip.

The experimental period did not fail. It taught us that: (1) the media was so concerned with the experimental period that it did not know it had expired in 1985; (2) the media was so delighted with the extension granted in 1985 that it did not bother to read the Court's request for information; and (3) the media, now petitioning, has not bothered to go back and gather the information the Court requested.

The requested experiment should be refused because of the danger to the litigation process.

It will be virtually impossible for a litigant, whose trial is changed by this experiment, to get proper review before the appellate courts. The reason for this is (1) the difficulty of obtaining the review of jury misconduct under Schwartz v. Minneapolis Suburban and Bus Company, 104 N.W.2d 301 (1960) and (2) the non-reviewable nature of the refusal of a witness to testify, or the settlement of a case because the parties did not want to go forward with a televised trial.

Under Schwartz, supra, there is virtually no way to poll the jury after the trial to determine the impact of cameras. The poll itself would result in the denial of a Schwartz hearing. Absent some juror complaining of the coverage, the trial court would have no reason to grant a Schwartz hearing. The subtle influence, or even a more overt influence, could not be challenged.

The virtual inability to prove media influence on the courtroom process was highlighted by the decision of the United States Supreme Court in Chandler v. Florida, 449 U.S. 560 (1981), where it was stated at Page 577:

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

As it was stated by Commissioner Kaner in his dissent to the recommended first experimental period, "it is difficult to understand why such a 'risk' of an entirely irrelevant factor should be incurred. To incur such a 'risk' violates the accused right, not only to a fair trial, but to his right to know that he had a fair trial."

In addition to the impossibility of proving juror perception, a greater danger is presented. Some cases that will be influenced by cameras are non-reviewable.

If, for example, a trial were scheduled in a negligent transmission of herpes case, a hotel-rape case, a racial discrimination case, or some other case where the party did not

wish to go forward because of media coverage, there would be no way to get that matter before this Court. This type of case, of course, is precisely the type that will attract the attention of the electronic media.

I will not review for this Court in this Memorandum the decision of the United States Supreme Court in Estes v. Texas, 381 U.S. 532, (1965) and Sheppard v. Maxwell, 384 U.S. 333, (1966). Suffice it to say, those decisions are not so old that they do not speak to what can happen in today's courtroom.

Of more recent vintage is the conduct of KSTP and WCCO in attempting to obtain the Minghsen Shiue videotapes showing his rape of Mary Stauffer, which application was denied by Judge Devitt. In Re: Application of KSTP Television, 504 F.Supp. 360 (D. Minn. 1980). The coverage of publicity surrounding Judge Crane Winton was of such a nature that the Minnesota State Bar Association felt compelled to comment on the activities of WCCO.

Although the media would like to claim it has grown up, it has not.

CONCLUSION

If the Petition is granted, we may never know whether a trial result changed because of the presence of cameras in the courtroom or because of the possibility of electronic media coverage.

DATED: March 20, 1989

By _____
CHARLES T. HVASS, JR.

Suite 2100
100 South Fifth Street
Minneapolis, Minnesota 55402
Telephone: 612-333-0201
Atty. Reg. No.: 48598

ST. PAUL
PIONEER PRESS
DISPATCH

John R. Finnegan
Sr. Vice President / Assistant Publisher
(612) 228-5406

345 Cedar Street
Saint Paul, Minnesota 55101-1057
(612) 222-5011

March 21, 1989

Clerk Office of Appellate Court
230 State Capitol
St. Paul, MN. 55155

Dear Sir:

In re: Modification of Canon 3A(7) File #C7-81-300.

This is a summary of a survey conducted by John R. Finnegan, chairman of the Minnesota Joint Media Committee, regarding media activity in the experimental process for allowing cameras and tape recorders in the courtroom.

The material will be presented on behalf of the Joint Media Committee on April 13 by Curtis Beckman.

I sent letters to every daily newspaper in Minnesota and to radio and television media in all of the major population centers of the state in February asking that they list all requests, written or verbal, that they have made to bring cameras or tape recorders into trial courtrooms since 1983 when the experiment began.

The results of that survey:

Newspapers made 22 requests during that period. They were allowed to bring still cameras into trial courtrooms on seven occasions.

Television stations made 41 requests and were allowed into trial courts six times.

Radio stations made four requests and were rejected each time. (This figure does not include the number of requests made by WCCO-Radio which piggy-backed on WCCO-TV's requests.)

The total: 67 requests were made. Access was granted 13 times. (The survey did not identify where the requests of newspapers, television and radio stations involved the same

trials). In one case where access was granted, no audio was allowed. In another, there was no jury. The survey reports no complaints made about the resulting coverage of the various proceedings.

One southern Minnesota television station, KAAL, also reported making five requests to cover Iowa trials. It was granted access all five times.

Many of the requests for access were rejected by defense attorneys directly or by the judge after contact with defense lawyers.

John Froyd, news director at KCCO/KCCW said, "We requested cameras in the court nine times. After that we pretty well gave up."

Dale Olmstead of KKAQ-AM at Thief River Falls said that they have been refused of a tape recorder there. "We would very much like to be able to record all or part of any trial for use as actualities or for review at a later time to make sure our notes and stories are correct."

Doug Stone of WCCO-TV said, "...we have been successful in getting cameras in two cases: (1) a hearing before the late Joe Sommers on spraying for gypsy moths and (2) the Vikings lawsuits final arguments in Hennepin county district before Judge Odland."

In their response to the survey, the Star Tribune's Bob Franklin said, "It is quite possible that we would have sought greater photo coverage except that:

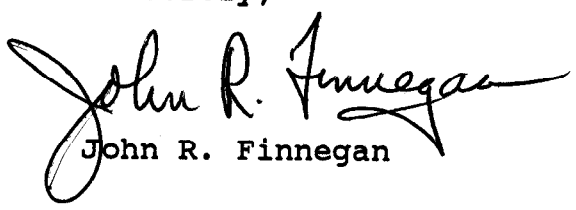
"Many of the cases in which we have an interest are far from the Twin Cities, and that can make photography logistically difficult. And with fewer than a half-dozen reporters to cover 80 counties in Greater Minnesota, the Star Tribune must rely on other media, including the Associated Press, to cover some court proceedings of interest.

"Securing agreement of all parties is time consuming and cumbersome. My experience is that judges and lawyers are more amenable to photo coverage after they see how cameras are set up in the courtroom and after they listen to an explanation of the procedure. However, if camera coverage were permitted routinely, it would be easy to have a demonstration for the parties at the start of a trial, rather than making an additional trip beforehand and then awaiting a decision by each party.

"On the basis of my experience, I think it is fair to conclude that photographs help to give readers a better understanding of the courtroom procedures and issues, help to dispel the mystery with which many readers regard the judiciary and help to reduce the potential for sensationalism in important cases."

I will not appear before the court because I will be out of town at the time of the hearing.

Sincerely,



John R. Finnegan

Associated Press

Charles Hill
Chief of Bureau

March 20, 1989

Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

Re: Modification of Canon 3A7 of the Minnesota Code of Judicial Conduct; File C7-81-300

Dear Clerk:

The Associated Press joins in the petition for access of cameras and microphones to Minnesota trial courts.

We believe the increased openness is in the public interest because it provides more information about the trial to those citizens who are not present for the proceedings but are interested in reading, watching or listening to reporting about the trial. We believe it is beneficial to provide more information about the specific case being covered as well as to shed light on our system of justice in general.

Our experience in other states and our more limited experience in Minnesota convinces us that such coverage can be done in an inobtrusive way so as not to disrupt court proceedings. Our experience during the experimental period is limited, largely because by the time cases we were interested in went to trial, it became apparent from others' failed attempts in other cases that efforts to get approval to photograph trials had little chance for success. Our staff photographer, Jim Mone, was among the participants in the photo pool for the Morris Commission hearings. We were pleased with that experience. The photographers worked well together to make sure their photo equipment and behavior at the hearings were inobtrusive and we were pleased with the access.

The Associated Press, the world's largest newsgathering organization, is joined in support of this petition by two of its membership groups: the Minnesota Associated Press Association, which represents the newspaper members, and the Minnesota Associated Press Broadcasters Association, which represents the radio and television station members. The AP, a not-for-profit news cooperative with Minnesota news bureaus in Minneapolis and St. Paul, serves 22 daily newspapers and more than 100 radio and television stations in Minnesota.

Sincerely,

511 11th Ave. So., Suite 404, Minneapolis, Minn. 55415 612 332-2727

RadioCity NEWS

March 21, 1989

Ladies and Gentlemen:

RE: Modification of Canon 3A(7), File No. C7-81-300

This is a formal request to make an oral presentation as part of the Minnesota Supreme Court hearing April 13, 1989, 9:00 A.M. I will appear on my own behalf and on behalf of the Minnesota Joint Media Committee.

It will be a great honor to appear before the Minnesota Supreme Court. I am confident that my presentations can add significantly to the body of information the Supreme Court now seeks.

Sincerely,

Curtis Beckmann
President

CJB;cmf

cc: Paul Hannah

Office of Appellate Courts
230 State Capitol
St. Paul, MN 55155

900 Ceresota Building • 155 5th Avenue South • Minneapolis, Minnesota 55401 • (612) 339-5050 • FAX (612) 339-1801

K M S P

KMSP Television
6975 York Avenue South
Minneapolis, MN 55435
612.926.9999

A United
Television Inc.
Station

March 21, 1989

In Re: Modification of Canon 3A (7) of file #C7-81-300

Office of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Dear Clerk:

I am hereby requesting to make an oral presentation on the above matter at the hearing of April 13, 1989 at 9:00 AM.

Sincerely,

Steven A. Goodspeed

Steve Goodspeed
Reporter

PAUL R. HANNAH
ATTORNEY AT LAW
SUITE 1122, PIONEER BUILDING
336 ROBERT STREET
SAINT PAUL, MINNESOTA 55101

FAX (612) 223-5802
TELEPHONE (612) 223-5525

March 24, 1989

Clerk of Appellate Courts
230 State Capitol
Saint Paul, Minnesota 55155

Re: **In Re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct**

Dear Clerk:

I desire to make an oral presentation to the Court at the hearing on this matter on April 13, 1989.

Very truly yours,

Paul R. Hannah

PRH:ps

STATE OF MINNESOTA

IN SUPREME COURT

C7-81-300

In Re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Allow Audio and Video Coverage of Certain Trial Court Proceedings

COMMENTS OF STAR TRIBUNE

INTRODUCTION

The Star Tribune makes these comments in support of the Petition to Modify Canon 3A(7). These written comments will be the only presentation made by this newspaper and no oral argument is requested.

An outline of the Star Tribune's attempts to use expanded coverage under the experimental rules will be submitted as part of the comments of the Joint Media Committee.

In an attempt not to duplicate material submitted by other parties supporting the petition, these comments will be restricted to the issue of the experience of other states with rules similar to those proposed by the Petitioners.

COMMENTS

A number of studies have been done on the issues presented in this petition. These include: disruption, distraction, the effect on trial

participants, and administrative burdens placed on the trial courts. The results of these studies is outlined in a memorandum prepared by the National Center for State Courts (NCSC) and attached here as Exhibit A.

This review notes that all of the studies and reports of on-going experiments are generally favorable in their evaluation of experience with expanded coverage of trial courts. A particularly thorough study was done for the California Supreme Court in 1981. This 18-month study revealed that if the rules for extended coverage are adhered to, there were no significant adverse consequences from the coverage. The conclusions and recommendations of this study are also included in Exhibit A.

The memorandum of the NCSC notes that one study with negative reaction was published by the State Bar of Michigan. This was a national study of 600 attorneys. The survey found antipathy for expanded coverage was highest where this coverage was not used.

Subsequent to the publication of the Michigan study, the Supreme Court of Michigan began a one-year experiment on February 1, 1988. This experiment was similar to the one initiated in Minnesota (consent required from all parties). In June of 1988, the Michigan Court modified the rules for five counties providing for consent of the trial judge only. On January 13, 1989, the Michigan courts made permanent and statewide rules similar to those in effect in the five counties. That Court's rules as well as its "press kit" are attached as Exhibit B.

In Michigan, as in the overwhelming majority of other states, the states highest court evaluated carefully the burden on trial judges as well as the effect on participants. They were, undoubtedly, also influenced by the modifications to Canon 3A(7) which were approved the the American Bar Association's (ABA) House of Delegates on August 11, 1982. The new rule reads as follows:

> (7) A judge should prohibit broadcasting, televising, recording or photographing in courtrooms and areas immediately adjacent thereto during sessions of court, or recesses between sessions, except that under rules prescribed by a supervising appellate court or other appropriate authority, a judge may authorize broadcasting, televising, recording and photographing of judicial proceedings in courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

This rule clearly indicated a new view by the ABA in regard to expanded coverage. It acknowledges the fact that courts can, in fact, draft rules that protect the administration of justice. In New York, this is being done by the legislature. A proposal to make the experimental period authorized by the legislature is currently being debated. See Exhibit C.

There is no reason to believe that the experience of so many other states will be different in Minnesota. Indeed, in the few cases where expanded coverage was used here, the results have been favorable according to the parties involved. None of the dire consequences predicted by opponents of this petition have occurred.

Indeed, if one separates out the arguments that appear to be based on assumptions that the media (1) are evil and/or (2) have no business in trial courts anyway, the only argument that remains to be addressed is that of scarce judicial resources. It is undeniable that the first time a trial judge deals with this procedure it will take more time. He or she will have to read the rules and meet with a media representative. However, in other states this has proven to become routine and less time consuming as the practice continues.

For example, the Arizona study (at page 29) found that:

1. 82% of the attorneys responding said the presence of the media and its equipment did not obstruct or delay the orderly conduct of the court's business.

2. 90% of the judges responding said they did not have to reschedule any hearings as a result of the media problem.

3. 95% of the court personnel responding said that the presence of the media did not delay the orderly conduct of the court's business.

4. 83% of the judges and attorneys responding said that media coverage requests were made within an appropriate amount of time.

5. 91% of the judges responding said that there was proper advance notification by the media to allow appropriate time for the presence of the media in the courtroom, prior to the convening of the trial.

6. 72% of the attorneys responding said the amount of people involved with coverage of the proceedings from the media stationed outside the courtroom did not cause the attorneys to be concerned.

7. 55% of the judges and attorneys responding said that objections to the media were raised during the proceedings.

Similarly, the California study found that in 75% of trials where expanded media coverage was used, the judge reported little or no increase in their

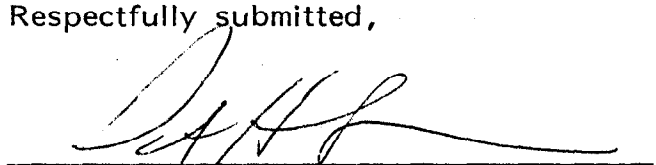
supervisory responsibility. (See page 221 of California study.) The study concludes that there will be times when the administrative support system will be burdened when major cases are covered by cameras and microphones. It also concludes that judges will occasionally feel burdened in their decision-making role. (See page 227.)

It is undeniable that these burdens on Minnesota's trial courts will occur as well. However, the long history of cooperation between the media and the courts is likely to resolve these problems faster than they have been resolved in many other states. It is very possible that Minnesota, in spite of its late entry into this area, will become a model for expanded trial coverage.

Should this Court deny the petition, we hope it will state specific facts about Minnesota's trial courts that make them different from so many of their counterparts. This will enable Petitioners to consider addressing the Court's concerns in whatever forum is appropriate before bringing the petition again.

Dated: March 22, 1989

Respectfully submitted,



Patricia Hirl Longstaff
License No. 45408

Associate General Counsel
Star Tribune
425 Portland Avenue
Minneapolis, MN 55488
(612) 372-4171

KARE 11
8811 OLSON MEMORIAL HIGHWAY, MINNEAPOLIS, MINNESOTA 55427 (612) 546-1111

March 22, 1989

Office of Appellate Court
230 State Capitol
St. Paul, Mn 55155

RE: Modification of Canon 3A (7) (April 13, 1989 "cameras" petition oral argument) file # C7-81-300

To Whom It May Concern:

I wish to make an oral presentation at the hearing on this matter to be held on April 13, 1989. I will be presenting several video tape interviews.

Sincerely,

Janet Mason
Vice-President/News

WCCO TELEVISION
11th on the Mall
Minneapolis
MN 55403

RON HANDBERG
Vice President &
General Manager
(612) 330-2410

March 22, 1989

Office of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: Modification of Canon 3A (7) File No. C7-81-300

Dear Clerk

I desire to make an oral presentation at the hearing in this matter on April 13, 1989. Thank you for your consideration.

Sincerely

RH/jeo

KTCA2
KTCI17

OFFICE OF
APPELLATE COURTS

MAR 23 1989

FILED

March 23, 1989

Office of the Appelate Courts
230 State Capitol
St. Paul, Minnesota 55155

IN RE MODIFICATION OF CANON 3A(7)
FILE #C7-81-300

I desire to make an oral presentation at the hearing on the above matter on April 13, 1989.

Sincerely,

Bill Hanley
Executive Producer, News & Current Affairs
TWIN CITIES PUBLIC TELEVISION

1640 Como Avenue
St. Paul, Minnesota
55108-2786
(612) 646-4611

KTCA2
KTCI17

March 23, 1989

Office of the Appelate Courts
230 State Capitol
St. Paul, Minnesota 55155

IN RE MODIFICATION OF CANON 3A(7)
FILE #C7-81-300

I wish to submit the enclosed materials in support of my oral presentation at the hearing on the above matter on April 13, 1989.

These materials represent a very brief sampling of the more than 250 viewer comments received at KTCI-TV following broadcast of the Morris Commission Hearings during the Summer of 1985. This sampling was originally prepared for KTCA/KTCI management in the weeks following the broadcasts. Copies of the original recordings are available to the court upon request.

Sincerely,

Bill Hanley
Executive Producer, News & Current Affairs
TWIN CITIES PUBLIC TELEVISION

1640 Como Avenue
St. Paul, Minnesota
55108-2786
(612) 646-4611

Morris Hearings calls---

Tape 0, side A calls from 8/19/85

000 Glad you're covering the hearings. The coverage in the paper has been biased from the beginning. Without these being televised, a number of us would never really know what's gone on... B+

against (2) 007 I think it's really a public service to see this on T.V. In my opinion they should oust her. There's been irreparable damage done. B+

(3) 011 I thoroughly enjoy the coverage you've given the Morris case. I hope she's vindicated. It's obvious someone in Scott Co. is out to get her...I think it's for really sad a woman has to be subjected to this type of turmoil- when she obviously did her job so well. B

(4) 019 I'm a Hennepin Co. foster parent. I heard Kathleen Morris speak a year ago about child abuse. She is absolutely right. I don't know why she's being for crucified. I'm ashamed to say I'm from the state of Minnesota...I think it's a crime what these people are doing to her. B

(5) 033 I think this is great. Brings the whole context of the story out much better than what you read in the papers. B+

(6) 037 If the purpose for you seeking comments is to see if you're getting a lot of viewers, it's a really stupid and banal purpose...It's clear to me that Kathleen for Morris is a good person. This is purely a witch hunt. All these people that attack her are just afraid of dealing with the horrible realities. She did the best she could. She didn't have enough strength to fight the whole society and win. B-

for (7) 068 I think Minnesota is a sad state if they have to prosecute someone who does what she thinks is really right. I really think this is really, really bad that this is happening. B-

for (8) 073 I feel htat these proceedings for Kathleen Morris is great. We need to give her a vote of confidence and we also need to give you a vote of confidence for doing it. I back her 100%. Seeing it in reality has made me so steadfast in my feelings, that I feel that she's very honest and forthright and natural. A-

for (9) 083 I find it hard to believe that this woman could have concocted a story like she's being accused of having done. I believe her. B-

(10) 088 WE appreciate very much seeing the pictures of the Kathleen Morris investigation. It's very interesting and informative. B+

(11) 093 I think the Kathleen Morris hearings are neat. And in my opinion, you're doing a real community service by broadcasting them... A-

against (12) 097 Kathleen Morris goes out and gets these people--and when she knows she can't win, she goes for plea bargaining... C-

(13) 101 I have been viewing the proceedings for Kathleen Morris. I feel very strongly that Kathleen Morris carried on her duties in a very sincere and fair for manner. She should not be removed. This case appears to have very strong political overtunes... B-

(14) 110 The more I listen to these hearings, the more convinced I am that Attorney General Humphrey should be the one removed. The B.C.A. should be dissolved, the for F.B.I. should be removed from the state and Gov. Perpich should apologize to the state of Minnesota for ever calling this commission. It is obvious that Kathleen morris is the only one who has any concern at all for the abused children. A-

Tape 0, side A calls from 8/19/85 (con't.)

for (15) 119 I think it's good that you have this kind of program on for the public to witness. I believe Kathleen Morris is getting the raw end of this deal. The people who don't think anything happened out there are either covering something up or are complete idiots. B

(16) 125 I'm really glad you're airing the Morris hearings. I think it's very valuable to the community to put it on TV and let everyone watch what happened. A-

(17) 129 Tuned in to watch Firing Line, but I've been watching this for a week now, and am enjoying it very much. B

(18) 134 I've been watching them from the very beginning and I think it's a great thing that you're (garbled) them. It certainly brought a lot of information to me. I support you following her case... C+

(19) 142Why do you think that when Kathleen Morris was telling about her past she neglected to mention that she had been married to Mr. Doyle--the one who's defending her now. I'm curious. C

(20) 148 I think it's about time we're finally hearing Kathleen Morris' side of the story. It's very evident from watching it this evening that what we read in the papers and what actually took place are two different things...And I think it's about time that the public knows what really went on. She has my whole-hearted support. The only sad thing, the relevency of children giving their stories in court doesn't seem to hold up..... A-

for (21) 179 Just give the Scott Co attorney a break. She did her job. B

(22) 182 I'm just calling to comment on the Kathleen Morris hearings. And I want to thank whomever for allowing us to watch them. B

(23) 186 I think theproceedings you are showing that are concerning the trial or the...ah...hearing of Kathleen Morris are in the interest of the public. This is an opportunity for each individual to see the hearings as they were held under oath, and the justice system working--and our structure of gov't. A-

(24) 199 First of all, I want to thank you very, very much for bringing us these Kathleen Morris hearings. I think that I never would have known...the truth of what has happened with out them. Certainly would not have gotten the news from the local newspapers over television. I think that Kathleen Morris is somebody that Scott Co. should be proud to have as an attorney. Thanks again for teh programming. B+

for

(25) 210 Following the attornies testimony on TV is a lot different than getting it piecemeal from the papers and from the local news. She's normally painted as on a witch hunt and so forth, but when you actually follow it, without taking it out of context, she comes off as an entirely different person. I think you're doing a fantastic job. And I think it's in the interest of justice that people should see the entire...the entire hearing rather than take it piecemeal as the news media want to pick out the worst parts, without showing any emotion on her part.. Keep up the good work! A-

Morris Hearings calls---

Tape 0, side A calls from 8/19/85 (con't.)

for (26) 221 I think it's a good thing that you have been doing it. I'm quite impressed with Kathleen Morris, and hope that she survives this. I also think Judge Olson, who is presiding, is also quite impressive. I think you've done quite a public service by bringing this on television. Thank you A-

(27) 230 I'm really impressed with the coverage. I think it's brought out significant amount of information that were not accessible to the normal population by other media. The information that's coming out shows a whole different light to what was actually portrayed on other channels and in the newspaper about what went on during the dismissals, and what went on with the children etc. I think it's just exceptional. Thanks for broadcasting it. A

(28) 244 I'd like to thank Channel 17 for carrying this because it's a...wide open type of coverage and it's not like anything you see on the evening news--nor is it what you read in the paper. It's an unbiased type of reporting. It's needed. for I've been following this since it started and it appears to me to be a political coverup for Hubert Humphrey. It seems he hasn't been doing his job. My sympathies would be to Kathleen Morris... Thank you again for carrying this and providing the service to the public. A

(29) 262 Yes, concerning the Tv coverage of the Kathleen Morris hearings--I think it's excellent. I thank you very much. I look forward to it every night. Again, thank you, it's been very revealing about what's going on in Scott Co. Also about the judicial system... A

for (30) 270 Yes, I feel Mr. Humphrey should be dismissed and replaced by Kathleen Morris. B

(31) 273 Our family wishes to thank KTCI-TV for doing an excellent job of viewing the possible dismissal of Kathleen Morris. We have viewed the program every for evening and our opinion is that Kathleen Morris should not be dismissed. Being residents of Scott Co., we feel very confindent that Kathleen Morris did a good B+ job in tring her best to protect all of the children.

against (32) 286 ---call against Kathleen Morris.

(33) 293 I hope I'm right in assuming the reason they dropped the sex charges is to pursue the murder charges. If that is correct, I think it's really crazy the way they're nit-picking on technicalities instead of following the letter of the law..B-

for (34) 311 I'm very interested in the Kathleen Morris hearings, and I think we should have more people that speak up and try to defend the children. B-

for (35) 317 I feel she's being a scape-goat. I feel by her testimony on Channel 17, that she's being as sincere as possible. I don't think she could have willingly gone against the law...I don't think she's guilty of any wrong-doing. B

for (36) 338I sincerely believe that she is what we needed in a public servant.

(37) 344 I just wanted to register my appreciation for the Morris hearings and also any other public broadcasting you do of this type in the future. A-

(38) 350 I think the broadcasts on Channel 17 are extremely useful. And any time that your station can carry this kind of broadcast, it really is a public service, and I think people would support this more and more. Good work! A

Tape 0, side A calls from 8/19/85 (con't.)

(37) 362 I really appreciate you showing these programs, I think it's of great public interest. I think that these proceedings are showing a true fallacy and injustice of our justice system. They have not focused on the main issue, which is the abuse of the children. That is of number one concern...I appreciate you guys showing these. I feel you should do more of this type of thing to inform the public so they can be more well educated on the systems of our American Gov't. B+

(40) 396 I felt positive about the fact that the hearings are being taped. I haven't watched them each evening and I haven't watched them completely--but what I've seen, I've formed the impression that this is a very complex matter, that simple coverage on the news --on television new and radio reports, through the newspaper-- wouldn't adequately present the situation. I feel like the public gets a more accurate picture, and I think it would be nearly impossible to present all the information in a newspaper report, or a television or radio report... A-

(41) 421 I am calling to thank you.for carrying the Kathleen Morris hearings. B+

(42) 428 I want to express my appreciation for the opportunity to observe the Commission's hearings on Kathleen Morris. B+

(43) 435 I'know the judges involved and the attornies involved, and I feel that looking into the matter even more closely might turn up more...more cover up by the court system...and the judges... There seems to be almost a network of coverup... C+

Tape 0, side B calls from 8/19/85

(44) 002 Congratulations on showing the Kathleen Morris hearings--and in particular on running the closing arguments out in their entirety, even though it ran to midnite or there abouts. You've done a great service to the community, and again congratulations. A

(45) 006 A comment of the Kathleen Morris televised series. I believe it was a tremendous public service to permit those of us who are interested in the process, to be able to observe what actually happened during that trial. The newscasts, frequently would highlight some very dramatic thing. It usually appeared to be negative towards Ms.Morris. The same evening, inwatching the proceedings on Channel 17,it was a completely different perspective that was gained from watching the people testify. A

(46) 017 I was very pleased to see that you've got the hearings on Kathleen Morris on channel 17. I was very interested in the case, and I think it's just a great idea that you have cameras in there. The public is made aware of both sides of the situation. It has enlightened me a lot. A

(47) 024 I appreciate very much your coverage of the Morris ,Scott Co. case. It is so nice to hear the entire story, instead of bits and pieces we get from the other stations. A-

(48) 029 I think it's really nice that you televise that. I think we get more of an insight into what was really going on. And I think she's getting a really bad deal from a lot of people--including Humphrey....(rambles on)I think it's great that you televise it because that's the only way we get the whole story, not out of the newspaper, that's for sure... B+

for

049 Th[illegible]

Tape 0, side B calls from 8/19/85 (con't.)

(49) 049 The series of Morris hearings has been very, very helpful and educating to our family...What bothered us the most is that our legal system seemed to be breaking down. Judge Mansur was very hostile to the children and to the protector of the children, Kathleen Morris. Another thing that really opened our eyes, was to see the performance of a man I voted for. And that was Attorney General Humphrey. He was not responsive to any questions , he rambled, he tossed in extraneous material...I found out by listening to testimony on your station that they did not believe the children. I think he saw Kathleen Morris as a possible opponent when Skip Humphrey runs again. And that's why I think they're doing what they're doing... A-

for (50) 084 I wish the Tv coverage would have been gavel to gavel...I fully support Kathleen Morris and I wish whe would run against Hubert Humphrey. B+

(51) 090 ...I appreciate your doing that. I'll be very interested to see what the Governor has to say. I feel mr. Humphry was very weak in his comments... I feel the people who questionher, are sort of making their opinion after the fact. B

for (52) 103 I think she's doing a crusading job. And she deserves the support of all women ...and men in this area. I think there's a witch hunt sort of feeling against her...I really think she deserves praise as a crusader in the interest of children. B

for (53) 114 WE've really enjoyed those night...(unintellibible) on channel 17 on the Kathleen Morris trial. We went into it not knowing very much about it--only what we read in the paper-- We've made up our minds that they should fire the judge —Mansur, and keep Kathleen. B

(54) 123 The broadcast of the Morris Commission hearings was a powerful public service. It's the only way people who are concerned about what is actually going on there, and are unable to attend the hearings, can witness it, and draw their own conclusions which is very important. A

(55) 128 Just wanted to tell you how much we out here in Scott Co. appreciate you broadcasting the Morris hearings, because without you we wouldn't know really what was going on...because the other news media are not even beginning to give us everything let alone anything. And we really appreciate it. A-

against (56) 135 It's really interesting, I'm sure glad you put it on. It gives you an insight into what county attornies can do--how they can run away with the justice system. B

for (57) 142 I feel htat she is coming off as a very competent attorney. I think she did the very best job she could. Our legal system is set up to protect the guilty and hurt the innocent. I hope if nothing else comes out of this, besides the proof of her competence, it is a way to protect these innocent children... It's a shame we're wasting all our money being protagonists against Kathleen Morris, when we should be protectors of the children. B

(58) 166 It's educational to see how our system works. It's enjoyable because here you get first hand information, you don't get it second hand...they can persuade your thoughts how they want to present it a lot of times. I enjoy it this way because you can see it first hand and you can see things develop, and watch the reaction and watch the emotions go through...This is very welcome...and you get a better idea versus how the movies portray it. B

A-1

Tape 0, side B calls from 8/19/85 (con't.)

for (51) 188 I think it's great taht you've been showing on Channel 17 the Kathleen Morris trial. It give's me a greater understanding of what all is involved in the case...I applaud Kathleen Morris for what she has been trying to do over the years. Thank you for having it on. B

against (1c) 202 I think she should be removed from office and disbarred. It's a shame that innocent people had to suffer... B-

(1) 214 I've really enjoyed watching those and I think they're just extremely valuable and I hope htat you can do that kind of coverage with other major events as well. I think it gives the audience a real insight into the people that are involved. But I really have enjoyed watching them--I don't know if enjoy is the right word, but I've found them extremely interesting. B+

total calls TAPE 0 = 61

total calls for Kathleen Morris ~~++++ ++++ ++++ ++++ ++++ ||~~ (27)

" " against Kathleen Morris ~~++++~~ (5)

W C C O

TELEVISION

ELEVENTH

ON THE MALL

MINNEAPOLIS

MINNESOTA

5 5 4 0 3

612 339 4444

March 22, 1989

Office of Appellate Courts
230 State Capitol
St. Paul, Mn. 55155

Re: Modification of Canon 3A (7) File No. C7-81-300

Dear Clerk:

I desire to make an oral presentation at the hearing in this matter on April 13, 1989. Thank you for your cooperation.

Sincerely,

Doug Stone

Doug Stone
Assistant News Director

MARK R. ANFINSON

ATTORNEY AT LAW

LAKE CALHOUN PROFESSIONAL BUILDING
3109 HENNEPIN AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55408

612-827-5611

March 24, 1989

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

RE: Petition of Minnesota Joint Media Commmittee to Modify Canon 3A(7) of the Minnesota Code of Judicial Conduct
Court File No. C7-81-300

Enclosed for filing with respect to the above-captioned matter is the Affidavit of Mark R. Anfinson on behalf of the Minnesota Newspaper Association in support of the above-captioned Petition. I have enclosed an original and eleven copies.

Thank you for your assistance, and please let me know if you should have any questions.

Yours truly,

Mark R. Anfinson

MRA/ch
Enclosure

No. C7-81-300

STATE OF MINNESOTA

IN SUPREME COURT

In Re:

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

AFFIDAVIT OF
MARK R. ANFINSON FOR
MINNESOTA NEWSPAPER
ASSOCIATION

Minnesota Joint Media
Committee,

Petitioner.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In support of the above-captioned Petition, the undersigned Mark R. Anfinson submits the following Affidavit, as attorney for and on behalf of the Minnesota Newspaper Association:

1. I currently act as attorney for the Minnesota Newspaper Association. I have held this position for several years, and in this capacity, I am a primary source of legal counsel to publishers, editors, and reporters throughout the state of Minnesota. Each month I talk to dozens of such persons about a wide variety of questions concerning newspaper and media law issues.

2. The Minnesota Newspaper Association (MNA) is a voluntary trade association of all the general interest

newspapers in the state. It acts on behalf of newspapers in all major public forums, including the courts and the Legislature. It also provides a wide variety of information and services to its members, and it coordinates their relationship with other public and private groups. MNA is a member of the Minnesota Joint Media Committee, the Petitioner in the above-captioned matter.

3. I am submitting this Affidavit in support of the Joint Media Committee's Petition. The Affidavit concentrates on describing practical experience accumulated during the previous experimental period adopted by the Court with respect to certain audio and video coverage of court proceedings. As a member of the Minnesota Joint Media Committee, MNA strongly supports the relief requested in the Petition herein. However, MNA believes that other submissions to the Court thoroughly address the philosophical and theoretical issues related to whether an additional experimental period should be permitted.

4. My experience as attorney for MNA demonstrates graphically that the previous experiment was ineffective in producing evidence helpful in answering the question of whether audio and video coverage of courtroom proceedings materially interferes with those proceedings. The terms and conditions to which the previous experiment was subject had the effect of defeating nearly all attempts by newspapers to take advantage of the experiment.

5. I could cite a number of specific examples where requests were made to cover court proceedings with still cameras, but such a recitation would be largely anecdotal. Therefore, I will focus on the general conclusions that I reached in my capacity as attorney for MNA, involved on behalf of newspapers throughout Minnesota in attempting to use and apply the terms and conditions of the previous experiment. I should note that the primary coverage sought by newspapers in all these cases was by the use of still photography: photographs of the trial proceedings, without associated sound recording.

6. In the early phases of the previous experiment, many Minnesota newspapers sought to obtain permission to cover court proceedings. I know this from my own experience, because almost invariably if a newspaper sought such coverage, they would first contact me and ask for my counsel. During the entire period of the experiment, I probably received fifteen to twenty such requests, concentrated in the first months of the experiment.

7. Of all such requests I received, only a small number ultimately resulted in photographs being taken of court proceedings. The simple explanation for this was that we could not satisfy the concerns and objections raised by all of the persons whose approval was required. It proved very difficult to obtain the unanimous consent of the trial judge and all of the attorneys, although frequently some of these persons would be agreeable.

8. I personally negotiated several of the requests for coverage. The procedure that I followed (and counselled others to use) was to first contact the trial judge and solicit his or her views. Almost invariably when we did this, the trial judge indicated no preliminary hostility to the proposal, but asked that we get the approval of the attorneys involved as well. The judge typically would indicate that he or she would defer to the wishes of the attorneys.

9. What I repeatedly observed when the attorneys were contacted was some initial interest in the proposal, followed by a period of reflection and ultimate denial. The attorneys tended -- as probably they should -- to consider only the interests of their immediate clients when such a request was received. As they reviewed the request, I could see that they generally concluded that their clients had virtually nothing to gain through such coverage, and that therefore even the remotest and most speculative possibility that something untoward might occur as a result of the coverage dictated that they decline our request.

10. We frequently attempted to counter this by arguing that the court system served more than specific clients in particular cases, and that there was great value in allowing the general public to obtain some better sense of how the courts function. Even still photographs might dispel misconceptions that members of the public have about court proceedings, and we said that in the longer run this would

benefit future clients of the attorneys by potentially making the public more supportive and better served by the system. However, such abstractions rarely had any impact in tempering the concerns of the moment.

11. On a handful of occasions we did obtain all the consents required, and did take photographs of actual court proceedings. However, nearly all these cases were relatively uninteresting civil proceedings of only marginal significance. The photographs appeared more as a curiosity -- an actual picture from the inside of a courtroom -- rather than constituting coverage of any active news event.

12. As our experience accumulated concerning the extreme difficulty of obtaining all the required consents, newspapers rapidly became discouraged and the number of requests declined significantly. There simply was no incentive to continue making the requests when we knew in advance that it was highly unlikely that they would be granted, especially in the cases that were newsworthy.

13. Your affiant believes and represents to the Court on behalf of the Minnesota Newspaper Association that there is great interest among the newspapers of Minnesota in providing some photographic coverage of court proceedings. Based on many conversations with news reporters and editors over the years, your affiant is convinced that such coverage could be of major benefit to the entire system of justice. The less remote a particular institution seems to be, the more

confident the public is that it is functioning as intended on their behalf. Certainly we understand the various problems that could be produced by video and audio coverage. But where such coverage is subject to appropriate conditions, we believe that on balance the benefits outweigh the problems, and amply justify a brief experimental period, as described in the Petition herein. Without an experimental procedure that actually produces a significant number of examples of video and audio coverage, there is no way to evaluate whether the benefits of such coverage do indeed outweigh the liabilities.

FURTHER YOUR AFFIANT SAITH NOT.

DATED: March 24th, 1989

Respectfully submitted,

By: Mark R. Anfinson

Mark R. Anfinson
Attorney for Minnesota Newspaper Association
Lake Calhoun Professional Bldg.
3109 Hennepin Avenue South
Minneapolis, MN 55408
(612) 827-5611
Attorney Registration No. 2744

Subscribed and sworn to before me this 24th day of March, 1989.

Richard E. Powell
Notary Public

RICHARD E. POWELL
NOTARY PUBLIC - MINNESOTA
WASHINGTON COUNTY
My commission expires 6-1-94

No. C7-81-300

STATE OF MINNESOTA

IN SUPREME COURT

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

REQUEST FOR ORAL PRESENTATION

Minnesota Joint Media Committee,

Petitioners.

TO: THE JUSTICES OF MINNESOTA SUPREME COURT:

1. The undersigned, an attorney licensed before this Court, requests leave of the Court, to appear and present oral argument to the Court at its hearing on April 13, 1989, regarding a Petition which has been filed to modify Canon 3A (7) of the Minnesota Code of Judicial Conduct, to allow expanded audio and video coverage in the Minnesota District Courts.

Dated: March 22, 1989

Submitted By:

Timothy J. Shields, Esq.
900 Ceresota Building
155 5th Avenue South #900
Minneapolis, Minnesota 55401
(612) 339-1462 #130916

No. C7-81-300

STATE OF MINNESOTA

IN SUPREME COURT

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

WRITTEN STATEMENT AMICUS CURIAE

Minnesota Joint Media Committee,

Petitioners.

I. IDENTITY OF AMICUS CURIAE

1. In accordance with this Court's Order allowing members of the bench and bar to submit Written Statements on this matter to the Court, Timothy J. Shields, attorney at law, submits this Statement. The author is a private attorney at law, and submits this brief solely on his own behalf. This Statement is not submitted on behalf of the Minnesota State Bar Association Bar Media Committee, as statements and information that the author has submitted to this Court in the past have sometimes been. While the MSBA Bar-Media Committee has voted to support the Petition, the Minnesota State Bar Association voted to not allow the Bar-Media Committee to submit its view to the Court, and it does not.

II. STATEMENT OF POSITION

2. The author supports the Petition as filed by the Joint Media Committee, believing that a further, expanded, experiment in coverage should be allowed. However, the author also feels further procedures should be ordered by the Court to control the experimental period and the actual news media coverage thereunder, in order to provide the Court and parties data necessary to properly evaluate the matter at the close of the experiment.

II. PROCEDURAL HISTORY

3. On March 18, 1981, the Supreme Court was petitioned by news organizations and journalism associations to amend Canon 3A (7) of the Minnesota Code of Judicial Conduct to permit audio and video news coverage of trial court proceedings. After a public hearing on the petition, the court established a commission, "The Minnesota Advisory Commission on Cameras in the Courtroom", to study the issue. In January, 1982, the commission issued its report and the Court held another public hearing on the issue in June 1982.

4. On April 18, 1983, the Supreme Court issued an Order and Exhibit A, establishing a two-year period in which some audio and video coverage of some District Court trials would be allowed, the Order waiving Canon 3A (7).

5. On August 21, 1985, the Supreme Court issued an Order amending its original Order and extending the original Order for two years until April 18, 1987, at which time the Orders lapsed.

6. In September 1987, the Supreme Court, upon request of a news media organization, allowed audio and video coverage of a criminal trial under the terms of the original experimental Orders. Since that time, no further coverage of trials has been allowed, and no further Orders of the Court have been issued on the subject.

III. TRIAL COVERAGE TO DATE

7. Pursuant to the experimental rules, the author is aware of three District Court trials, two criminal and one civil, that have been covered by the news media. In each case, audio recordings, video taping, and still photography were used by the media inside the courtroom. Additionally, the Governor's Hearings under Executive Order 85-10 involving the Conduct of then Scott County Attorney R. Kathleen Morris, which used the Rules of Civil Procedure, were also covered by the media and surveyed by the Bar-Media committee.

8. Copies of the surveys, and summaries of the coverages along with exhibits have been previously supplied to the Court by correspondence dated November 12, 1987 and March 1, 1986. In the interest of reduction of redundancy and duplication, these reports are omitted from this Statement.

9. Other requests at news coverage have been made, but were met with negative response from the trial participants. Negative responses to news media requests in the early period of the experiment discouraged the media from making requests during the latter part of the experimental period.

IV. EXPERIMENT ANALYSIS

10. The author believes that the four-year experiment allowing cameras and microphones in the Minnesota trial courts has failed. It has failed from both the perspective of an experiment designed to elicit data on which to base a permanent judgement; and it has failed in its attempt to foster a greater understanding among the citizenry of Minnesota in our judicial system by allowing greater access to the news media.

11. There are two basic reasons for this failure, and they are not complex: The principle reason for failure of the experiment are the consent provisions of paragraphs Two (2) and Four (4) of the Terms and Conditions of Audio and Video Coverage contained in the Court's Order in this matter. These two provisions allow a privatization of District Court trials, thereby precluding media access.

12. The secondary reason for the failure is the reluctance by the organized bar to accept something which they see as an unwanted diminishment of their control over litigation and the judicial system. The author sees as a lessor problem the reluctance on the part of only some district court judges to accept the additional responsibility of having media members present in their courtrooms.

V. PROPOSAL FOR CHANGE

13. In the seven years since this matter was first brought before the Court, many other states have adopted rules allowing audio, video, and still photography in their trial courts. A good example of this is the State of Iowa which has adopted a comprehensive procedure for requesting expanded trial coverage, by amending its applicable rules. Wisconsin also allows coverage and has adopted a different procedure. A study of the Rules allowing expanded access in the various states display several different ways of instituting the access. But common factors are the use of forms pursuant to Rules governing the access and procedures.

14. The experience of other states, and that of the participants of the Minnesota cases which have been covered, lead to a clear conclusion: There is no compelling reason not to allow audio, video, and still photographic coverage in the trial courts of Minnesota.

15. Even without the favorable experience of the other states, the experience of the Minnesota courts, limited as it has been, dispels arguments that have traditionally been raised against allowing the news media and their equipment, and thus the public, into the trial courtroom.

16. For example, the participants in the State vs. Krautkremer trial were surveyed (see coverage summary previously supplied) for their reactions and opinions. When the survey participants were asked if the presence of cameras made them disrespectful of the court, 86% said it did not. Studies done by the National Center for State Courts, and other states, support the Minnesota experience: Expanded access simply is not prejudicial, disruptive, or distracting.

17. The reports have shown that the judges, lawyers, parties and witnesses who have participated in covered trials, do not find the presence of the cameras detrimental to the proceedings of the trial court. The question then is not should it be allowed, but how and under what circumstances.

18. The author believes the Court should take the following steps in implementing a new experimental period leading to the adoption to a permanent Rule regarding media access to district court proceedings:

a. Modify Canon 3A(7) of the Minnesota Code of Judicial Conduct, and Order a one-year experiment which allows expanded audio and video news media access to district court trials;

b. The presumption of access shall be granted the media upon written request by the media to the trial court judge at least Three (3) days before the first day of trial;

c. The trial judge shall allow access unless the judge finds, in written findings, that access would create a substantial likehood of interference with the trial, and that no other reasonable alternatives exist to denial of full access;

d. The Rules for Uniform Decorum in the District Courts be amended to provide in Rule 30 for forms for requests by the media for expanded coverage access, findings by the trial judge, objections of a party to expanded media coverage, and objections by a witness to expanded media coverage of testimony;

e. Media coordinators for each judicial district in Minnesota be appointed by the Court from a list submittted by petitioners of members of the bar and media;

f. The court set a date one- year hence for a hearing to determine whether the new Rules should become permanent.

VI. CONCLUSION

18. The author believes that only by an expansion of the rules governing the previous four years of allowing expanded news coverage, can meaningful data be gathered. It is past the time when the citizens of Minnesota should be allowed into the courtoom by listening to their radios, watching their televisions, and reading their newspapars and magazines. Our trial courts are a public institution, not one for the private use of the bar, bench or litigants. Private mediation services are available for those who do not wish their claims be heard in public.

The author urges the Court to instill public confidence in, and understanding of our judicial system, by letting the people see, and hear, for themselves what we do. Expanded access by news journalists is the means to that end.

Dated: March 22, 1989

Submitted By:

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(612) 339-1462 #130916

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1630 South Sixth Street Ste. 1402
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Ms. Faith Amdahl
Court Marshall
Minnesota Supreme Court
230 State capitol
St. Paul, Minnesota 55155

March 8, 1989

RE: April 13, 1989 "cameras" petition oral argument

Dear Ms. Amdahl:

In accorance with our telephone conversation today, and pursuant to Canon 3A (7) which allows broadcasting of Supreme Court proceedings, the media request to video and audio record the hearing on April 13, 1989 relating to the joint media petition to allow cameras in the trial courts. (I realize that sounds odd-doesn't it?). I believe WCCO may provide the pool feed. More details will follow.

Thank you for your cooperation inthis matter.

Sincerely yours,

Timothy J. Shields, Esq.

P.S. My new office address is:

Timothy J. Shields, Esq.
900 Ceresota Building
155 5th Avenue South #900
Minneapolis, Minnesota 55401
(612) 339-1462
339-1801 (Fax)

cc: Doug Stone
WCCO-TV
Janet Mason
KARE-TV
Penny Parish
KMSP-TV

MINNESOTA STATE BAR ASSOCIATION

MINNESOTA BAR CENTER • SUITE 403, 430 MARQUETTE AVE. • MINNEAPOLIS, MN 55401

February 20, 1989

Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

Dear Sir or Madam:

Enclosed is the original and ten copies, as specified by your office, of written comments related to the petition to modify Canon 3A(7) of the Minnesota Code of Judicial Conduct.

Sincerely,

Tim Groshens
Executive Director

TG:jg

Enclosures

TELEPHONE 612-333-1183 • In-state 1-800-292-4152 • TDD 612-333-1216 • FAX 612-333-4927

MINNESOTA STATE BAR ASSOCIATION

MINNESOTA BAR CENTER • SUITE 403, 430 MARQUETTE AVE. • MINNEAPOLIS, MN 55401

February 20, 1989

Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

C7-81-300

Re: In re petition of the Minnesota Joint Media Committee for modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct

On February 11, 1989, the House of Delegates of the Minnesota State Bar Association voted to consider the request of the Bar-Media Committee that the MSBA support the petition of the Minnesota Joint Media Committee to modify Canon 3A(7) of the Minnesota Code of Judicial Conduct. The motion to support the petition failed on a 34 to 106 vote. A motion was then made that the MSBA oppose the petition; this motion passed on a voice vote.

The Minnesota State Bar Association requests permission to appear through its President, A. Patrick Leighton, at the April 13 hearing before the Minnesota Supreme Court on the petition. Mr. Leighton's presentation should take no more than five minutes.

Sincerely,

Tim Groshens
Executive Director

TG:jg

c: A. Patrick Leighton

DAVID E. ACKERSON
JUDGE OF THE DISTRICT COURT
SIXTH JUDICIAL DISTRICT
ST. LOUIS COUNTY COURT HOUSE
HIBBING, MINNESOTA 55746
Tel: (218) 262-4841 Ext. 149

2-3-89

January 31, 1989

OFFICE OF APPELLATE COURTS
FEB 3 1989
FILED

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: CZ-81-300; Written Statement of the Honorable David E. Ackerson, Judge of District Court

Dear Sir:

Please substitute the enclosed corrected 10 copies of Written Statement of Honorable David E. Ackerson, Judge of District Court for the 10 copies that were mailed to your office on January 30, 1989.

Sincerely,

David E. Ackerson

Hon. David E. Ackerson
Judge of District Court

STATE OF MINNESOTA
IN SUPREME COURT

CZ-81-300

In Re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Allow a Period of Experimental Audio and Video Coverage of Certain Trial Court Proceedings

Written Statement of the Hon. David E. Ackerson, Judge of District Court

---

The undersigned, for his written statement relative to the above matter, respectfully submits the following:

I am a Judge of District Court in the Sixth Judicial District of Minnesota with chambers in Hibbing, St. Louis County, and have been a member of the trial bench since January of 1982. I have been involved in trial court administration as Assistant Chief Judge and Chief Judge of the district, and as a member of the Executive Committee of the Conference of Chief Judges and Assistant Chief Judges.

The purpose of this statement is to voice my opposition to the opinion of those trial judges who believe that any rule concerning audio and video coverage of trial court proceedings should be similar to the previous experimental rule and allow coverage only if the judge and other participants agree and consent. In my opinion, such a rule is an indirect means of keeping broadcast media out of practically all court proceedings, and the judiciary is justly criticized for allowing such a rule

to enable us to effectively avoid the whole issue for several years.

It should also be noted that several judicial districts have special rules that restrict cameras in courthouses. These rules are not uniform between the districts, and are in my opinion generally much broader than necessary to address reasonable judicial concerns about courthouse environments.

I believe that Minnesota should be progressing measurably towards adopting rules that will allow controlled coverage of matters open to the public without the consent of the trial judge or participants, so long as conditions are met that will preserve the integrity of the proceedings. Other states have reached an accommodation between the legitimate interests of the judiciary in conducting fair trials, and the legitimate interests of the media in freely reporting on court proceedings of public concern. I believe the public interest will be served by reaching such an accommodation in Minnesota as well.

During my tenure as Chief Judge of the Sixth District, I was approached by several members of the broadcast media from Duluth, who expressed an interest in covering court proceedings in the Sixth District, and whose market area includes the Sixth District in northeastern Minnesota, as well as northwestern Wisconsin, where broadcast media coverage of newsworthy court proceedings has been commonplace since 1979.

One proposal of the Duluth media was to cover a major felony trial with a single camera and microphone, existing lighting, with the transmission to be collected in another location outside the courtroom, and the three network television stations as well as public television and radio stations to share the audio and video recordings. Media coverage of the case was already intensive. The addition of a camera and microphone would not have resulted in an undue burden or risk of prejudice to anyone involved. However, neither party would agree to allow the coverage, and reaction from some of the Duluth trial bench was likewise negative.

The Duluth broadcast media is competent, responsible and has expressed a willingness to work with the Minnesota judiciary on any reasonable basis. They have experience and expertise from covering court in Superior, Wisconsin, but have been denied access to northeastern Minnesota courts. They are ideally suited for a pilot project involving coverage of Minnesota trial courts. I am sure the broadcast media in other areas of the state are likewise capable of properly covering trial court proceedings. Does not the Minnesota public have the same right of access to what is happening in our courts as the Wisconsin public does to theirs?

I believe that modern technology, together with minor structural modifications of some courtrooms, can effectively eliminate the often expressed concern over a "circus atmosphere" that could

distract participants and interfere with a fair trial. Although some of us are also concerned that the media will take portions of proceedings out of context or report in an inaccurate manner that will sensationalize or distort the proceedings, the judiciary ultimately cannot control the news and we must allow the media the full freedom our Constitution requires.

I believe it to be far preferable for the relationship between the judiciary and the media to be constructive than adversarial. Although trial judges may at times be inconvenienced by audio and video coverage of their courts, and although many of us believe we have been damaged by unfair treatment from the media and have reason to be wary, we should concede that the media is generally professional and accurate in their treatment of judicial matters, and that we as public officials have our own access to the media should responsive comment be appropriate. An example of the commitment of the media in Minnesota to high professional standards is the Minnesota News Council, the first of its kind in the nation (1972), which includes a Justice of the Minnesota Supreme Court.

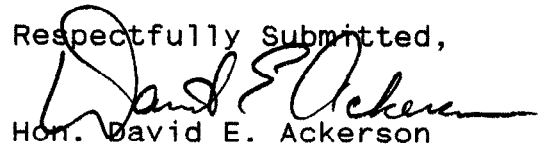
As a trial judge, I request the Supreme Court to affirmatively declare that in Minnesota the First Amendment applies to all courtrooms. So long as we retain control through rules that will protect the integrity of our proceedings and insure fair trials and hearings, I believe the Constitution compels us to make reasonable efforts to accommodate the media.

We should acknowledge that the public has a legitimate interest in the expanded access to public court proceedings that modern technology can provide. When the broadcast media does come to court, the Minnesota judiciary has much to be proud of and nothing to hide. We stand to benefit from the increased public understanding of court activities that will surely result from greater media access. The State Bar of Wisconsin in cooperation with the Wisconsin Broadcasters Association and the Wisconsin Newspaper Association publishes a 50 page "News Reporters Legal Handbook" containing the Wisconsin Supreme Court Rules Governing Electronic Media and Still Photography Coverage of Wisconsin Judicial Proceedings, principles and guidelines regarding fair trials and free press, and other information relative to the courts and the laws affecting news reporting. This publication exemplifies an approach that is good for the bar, bench, media, and public.

In summary, as one trial judge in Minnesota, I wish to state my request that the Supreme Court decisively establish a policy of openness of the trial courts to all of the media, and promulgate rules that will embark us upon a course of reasonable progress in that direction.

Dated: January 27, 1989

Respectfully Submitted,



Hon. David E. Ackerson
Judge of District Court
St. Louis County Courthouse
Hibbing, MN 55746
Tel: (218) 262-4841 Ext. 149

Minnesota District Judges Association

March 23. 1989

OFFICE OF
APPELLATE COURTS

MAR 23 1989

FILED

Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55155

Re: File No. C7-81-300

Enclosed herein please find ten copies of the brief of the Minnesota District Judges Association in opposition to the petition which has been filed herein. In addition please find ten copies of a motion to remove which was brought on behalf of the Minnesota District Judges Association, together with attached memorandum and exhibits, said motion being for the removal of Chief Justice Peter S. Popovich from any further participation in these proceedings.

Please be advised that the undersigned desires to make an oral presentation on behalf of the Minnesota District Judges Association at the hearing to be held on April 13, 1989. The material to be covered at the oral presentation will consist of comments on the other briefs to be filed herein, as well as pertinent material and comments in connection with our written brief.

Sincerely,

Otis H. Godfrey, Jr.

OTIS H. GODFREY, JR.
Judge of District Court and Chairman
of the Committee on Cameras in the Courtroom.

OHG:re

Encl.

STATE OF MINNESOTA

IN SUPREME COURT

No. C7-81300

In Re:

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

MOTION TO REMOVE PETER S. POPOVICH

Minnesota Joint Media Committee,

Petitioner.

Pursuant to Section 3C(1) of the Code of Judicial Conduct, the Minnesota District Judges Association, a party to these proceedings, does hereby move the Supreme Court for the removal of Chief Justice Peter S. Popovich from participation in this matter before the Court. Said motion is based on the attached memorandum and exhibits, and upon Canon 3C(1).

Respectfully submitted,

MINNESOTA DISTRICT JUDGES ASSOCIATION

BY Otis H. Godfrey, Jr.

Otis H. Godfrey Jr
Judge of District Court and Chairman
of the Committee on Cameras in the Courtroom

DATED: March 23, 1989

STATE OF MINNESOTA

IN SUPREME COURT

No. C7-81300

In Re:

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

MEMORANDUM IN SUPPORT OF MOTION TO REMOVE

Minnesota Joint Media Committee,

Petitioner.

A hearing has been set by the Supreme Court upon a petition, brought by the Joint Media Committee, to amend the Code of Judicial Conduct so as to permit the use of cameras in the trial courts of Minnesota. This issue has been hotly contested since 1981, when the original petition was presented to the Court. Briefs opposing the petition have been and will be filed by the Minnesota District Judges Association, the State Bar Association and its affiliates, and by members of the public.

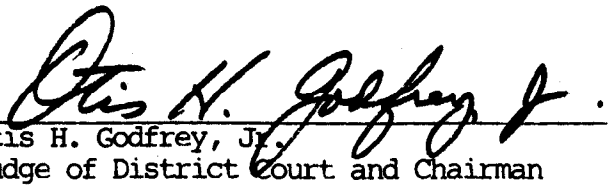
Attached hereto as Exhibit A is the affidavit of Mary Ann McCoy, the Executive Director of the Ethical Practices Board of Minnesota. Under state law all lobbyists are required to register with this agency. The attached Exhibit B contains photocopies of records from that agency which relate to the activities of Peter Popovich.

From these exhibits it is apparent that the Chief Justice was a lawyer lobbyist for Northwest Publications, one of the petitioners, from February, 1975 until 1976. It would further appear that Justice Popovich represented the Minnesota Broadcasters Association from February, 1975 until 1983, when he was appointed Chief Judge of the Court of Appeals. The petitioners herein

We would accordingly move and request that Chief Justice Peter S. Popovich not participate in the matter pending before the Court upon the petition of the Joint Media Committee.

Respectfully submitted,

MINNESOTA DISTRICT JUDGES ASSOCIATION

BY 

Otis H. Godfrey, Jr.
Judge of District Court and Chairman
of the Committee on Cameras in the Courtroom

DATED: March 23, 1989

AFFIDAVIT

STATE OF MINNESOTA)
) S.S.
COUNTY OF RAMSEY)

Mary Ann McCoy, being first duly sworn, states that she is the Executive Director of the Ethical Practices Board of the State of Minnesota.

Affiant further states that the Ethical Practices Board has in its files a listing of all lobbyists who have been required to file, pursuant to the provisions of Minnesota law. Affiant states that the records reflect that Peter Popovich was a registered lobbyist as of February 14, 1975 for Northwest Publication, Inc., and that his registration as a lobbyist for that corporation was terminated in 1976. The records further reflect that Peter Popovich registered on February 11, 1975 as a lobbyist for the Minnesota Broadcasters Association, and that said registration continued until it was terminated in 1983.

Further Affiant sayeth not.

Mary Ann McCoy
Mary Ann McCoy

Subscribed and sworn to before
me this 21st day of March, 1898.

Robert A. Erdmann
Notary Public

ROBERT A. ERDMANN
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXPIRES MAR. 21, 1991

Exhibit A

Popovich, Peter
2-14-75

~~M-0204-LOIA~~ 0469 T
5-1631 1976

314 Minn. Building, St. Paul 55101, 222-5515

Northwest Publication, Inc.

legislation affecting newspapers

Popovich, Peter
2-11-75

~~M-0203-LOGL~~ 0478
5-1630 T
1983

314 Minnesota Bldg., St. Paul, Minn. 55101
222-5515

Minn. Broadcasters Assn.

broadcasting and legislation affecting
the industry

Lot 86-210
Box 6

Exhibit B

SUNDAY, DEC. 25, 1988

Exhibit C

paper, public's right to know sturdier in Finnegan's wake

hn Finnegan's 37-year career with
e Dispatch, including 17 years as
mething his associates here can
her detachment or objectivity. So
egan's record here and achieve-
apering as he prepares to retire
ior vice president and assistant
rned to George Hage, journalism
ue at the University of Minnesota.
own each other since 1946, when
journalism student and Hage a
t the university. Hage, who retired
ast winner of the Distinguished
rnalism Award of the Society of
rnalists, Sigma Delta Chi.
— The Editor

e state Supreme Court calls him
f the courts."
Minnesota professor who is an ex-
hics and law calls him "Mr. First
adds, "that's his reputation nation-

nager of the Minnesota Newspaper
him "the one indispensible man" in
tles for the public's right to know
ess.
ays, "Essentially, he's a teacher."
an, senior vice president and assist-
he Pioneer Press Dispatch, will re-
ter 37 years with the paper, first as
ccessively as editorial writer, edi-
cutive editor, executive editor and
r.
ed with him in his office at the pa-
ing to fit Band-aids to fingertips
g carpentering on a doll house for
Erin and Kelly Deeney.
o value his enormous contribution,
alism but also to the larger commu-

EORGE HAGE

re a lot of us), need not worry that
to the sidelines at age 64. The red
ut it's still red, the manner is still
till quick, sharp and punny, and the
still avid.

now?
number of reasons, and Finnegan-
narshals them succinctly in this or-
ve an excellent staff, the paper is
asonably good health. I have a num-
want to work on, and Knight-Ridder
etirement program for senior exec-
time to go.
eflectively, "I had a bout with pros-
le ago, but after my last checkup,
very positive."

en elected president of the First
gress, a national umbrella organiza-
ajor media associations, in which
nts the American Society of News-
he mission of the organization is to
lic's understanding of their First
ts — "all their rights," Finnegan
t press freedom rights."
urrently is developing an education-
t the First Amendment that will be
ll school grades. A three-year fund-
l be necessary to finance the pro-

a number of First Amendment is-
ontinuing study and reassessment:
acy; what is pornography; limits on
ech — how much freedom ad-
have and how specific product la-

sponsored by the congress recom-
ge in the wording of the First
commendation that Finnegan found

nost frightening is the attitude we
in surveys, the attitude that 'I,
ve these freedoms, but not you, not
's a tremendous lack of tolerance in
ing about the First Amendment."
question whether the public thinks
Amendment at all, but Finnegan is

Jerry Gay/Staff Photographer

Finnegan in newsroom of paper he's leaving after 37 years.

It was with this purpose that the elder Finnegan brought together an ad hoc group that called itself the Joint Media Committee back in 1973. It consisted of Peter Popovich, now a state Supreme Court justice but then a lawyer lobbying for the broadcasting industry; Robert M. Shaw, then manager of the Minnesota Newspaper Association; Rodgers Adams, chairman of the First Amendment Rights Committee of the Star Tribune; and Professor Donald M. Gillmor of the School of Journalism and Mass Communication at the University of Minnesota.

"We used to meet in Jack's living room," Popovich recalls. "I wrote the new Open Meeting Law with Jack looking over my shoulder. It was Jack who proposed the section on penalties for violation of the law. If a public official violates it once, the penalty is $100. But for three violations, the offender forfeits the right to serve on a public body for the period of the term of his or her office.

"There have been some prosecutions for a second violation, but none for a third."

Popovich admires Finnegan's writing style ("very succinct, very clear") and his personal manner ("never offensive.") "When he used to testify at the Legislature in support of open meetings or open records or the shield law, some of the legislators could get pretty rough in examining him. Maybe they were sore about something the newspapers had said about them. But Jack never, ever lost his cool."

Popovich thinks Finnegan has been a great spokesman for the media "as one segment of the public." Popovich continues, "He has shown great insights. I call him the conscience of the courts, causing judges to think about the implications of an issue. No doubt about it, he has had a very salutary effect on the courts."

For Shaw, Finnegan was "a different kind of editor who cared personally about openness and was willing to spend his own time to head off efforts to shut out the public. Jack was always there. He had a consistent value: Meetings and records must be open so the public can know how business is conducted."

Shaw attributes the Minnesota Newspaper Association's continuing legal battles for access to information to Finnegan's presence on the MNA board of directors. "He pushes the issue."

And from the academy, Gillmor, now director of the University's Silha Center for the Study of Media Law and Ethics, notes that Finnegan has chaired the Freedom of Information Committees of the Associated Press Managing Editors and American Society of Newspaper Editors more often than any other editor. "He really deserves the title of Mr. First Amendment," Gillmor says.

While Finnegan was fighting First Amendment battles, the paper he helped run was gaining muscle, largely through the merger of the Knight and Ridder groups. In recent years, the Pioneer Press Dispatch has won two Pulitzer Prizes for in-depth reporting: John Camp's "Life on the Land" in 1986 and Jackie Banaszynski's "AIDS in the Heartland" in 1988.

Finnegan is proud of the awards, but more proud of the building of news staff strength that made winning the awards possible. In the Knight-Ridder system, managers plan by objective, and Finnegan's five-year plan, articulated in 1980, was to expand the news staff so that it would have the capacity for a Pulitzer winner by 1985.

"I missed it by one year," he says of the first Pulitzer. "The second one proved the first was no fluke. It demonstrated our depth of staff, that we had the people to cover the day-to-day news while freeing up a writer-photographer team for the extended reporting necessary to make a strong impact."

A news staff with such capabilities is not built overnight on a shoestring, and Finnegan had to fight for the essential budgeting. Tom Carlin, publisher emeritus of the St. Paul papers, whose relationship with Finnegan goes back many years, gives Finnegan high marks as a team player.

"When Jack moved into top management, he had a new role, had to make hard personnel decisions, hard budget decisions. Jack was always an effective advocate for the news side.

"An editor has a tough line to walk. He wants to improve the quality of the news operation, but he has to recognize the needs of the business side. There used to be a sort of parochialism among the departments of the paper — circulation, advertising, promotion, news. We needed to knock down the walls and look at the whole. Jack responded beautifully to that need, while still being an articulate advocate for the news operation."

Carlin likes to remember, as well, the imp in Finnegan. It's never far from the surface.

He recalls the day in December 1980 when they broke ground for the new printing plant across the river.

"This was an investment of $50 million by corporate Knight-Ridder, and corporate Knight-Ridder was very concerned that the site we had chosen had enough elevation so we wouldn't get flooded out. We made a number of careful studies, brought in the Corps of Engineers, and finally got the corporate go-ahead.

"Well, on the big day, all the brass and the invited dignitaries were gathered at the site, and I was all ready to turn the first shovel, when Jack came up to me real quiet, pulled me aside and said, 'Tom, maybe you shouldn't go ahead. Look what I just found,' and he opened his hand on a clamshell. I nearly died."

More often the Finnegan imp is evidenced in outrageous puns — groaners, the family call them, and the innumerable examples are perhaps best forgotten. Ozzie St. George, a copy editor at the paper whose friendship with Finnegan goes back to their first jobs on the Rochester Post-Bulletin, says, "I always try to put 'em out of my mind."

But St. George will never forget Finnegan's first car, a used Studebaker, and Jack's pride on the winter mornings when it would start — until the morning the steering wheel shattered in his hands. One of Jack's boasts, according to St. George's wife Mimi, is that he has paid cash for every car he has ever owned.

St. George also remembers that Jack, as a new reporter in St. Paul, first impressed his editors when he covered by phone a fire at the Chase Hotel in Walker, Minn. "They couldn't believe the amount of detail Jack worked into his story. They didn't know until later that the hotel had been owned by Jack's grandfather and then by his father, and that Jack had practically grown up in it."

St. George also recalls that Finnegan got his start in Newspaper Guild activity in Rochester ("a very slim unit") that eventually led to his becoming president of the Newspaper Guild of the Twin Cities at the time of a strike against the Pioneer Press and Dispatch in 1957. "He was a very take-charge kind of guy, an ideal trade union leader," says John Carmichael, at that time executive secretary of the Guild.

Finnegan himself says of those days: "One of the things I fought for then, as now, gives equal pay for women for the same work."

The Chase Hotel episode suggests the depths of Finnegan's roots in the state, and the Walker home town perhaps explains his enthusiasm for outdoor activity. He's an ardent (but high handicap) golfer and an even more ardent fisherman.

"There's not a state park in the state that he hasn't taken the family camping in," John Jr. attests, "and he's good at it."

But Finnegan's wife Norma remembers that after a couple of boating mishaps, family speculation ran high as to what lake Finnegan Sr. would fall into next.

Several Finnegan offspring and spouses share with their parents the possession and use of a bass boat. "It's sort of a consortium," Norma explains. "There was a time when John and I worried about a son and a son-in-law who were riding motorcycles. We thought it would be healthier for them to share ownership of a boat."

Given the demands of Finnegan's "free time" (he has given countless speeches; chaired the parish council of St. Luke's Catholic Church; chaired the Metropolitan Planning Commission, which preceded the Metro Council; served as the first lay member of the State Board of Professional Responsibility, which enforces lawyers' ethics code; and many, many more), one might expect his sons and daughters (three of each) to feel some resentment at the time taken from family. But John Jr. will have none of it.

"I think we understood the high value both Mother and Dad put on education, and these jobs were all part of his role as teacher," the younger Finnegan said.

And he's won lots and lots of awards. Forgive my prejudice if I mention just one: the Outstanding Achievement Award of the University of Minnesota in 1974. (He earned the B.A. in journalism, magna cum laude, in 1948, and a master's degree in 1965).

"He's a man of fine principles and the will to stand

Veteran journalist shares insights

On the reporting of private lives of public officials and candidates:

"I think the growing tendency to dig more deeply is a good thing if the private aspects bear on the official conduct; for example, the official's judgment. A danger is that the herd instinct takes over, and disclosures go too far in competition when a story may be overplayed for impact."

■ ■ ■

On charges that newspapers are arrogant:

"It's hard to avoid the appearance of arrogance, at least, when the newspaper must make hundreds of value judgments every day. You're

STATE OF MINNESOTA

IN SUPREME COURT

No. C7-81-300

In Re:

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

BRIEF OF MINNESOTA DISTRICT JUDGES ASSOCIATION IN OPPOSITION TO PETITION

Minnesota Joint Media Committee,

Petitioner.

Cameras in the courtroom would not enhance the right of a defendant to a fair trial. The latest petition of the media addressed to the Supreme Court should therefore be denied. It is in actuality a motion for amended findings of the April 18, 1983 Order of the Supreme Court. There have been no substantial changes in circumstances which would warrant the granting of this extraordinary relief.

The Court appointed an Advisory Commission on cameras in the courtroom in 1981. That Commission heard evidence and reviewed a vast amount of written material and memoranda filed on behalf of all interested parties. In its order of April 18, 1983, the Court adopted the Commission's conclusion that the petitioners had "failed to sustain the burden of showing that they are entitled to the relief requested in the petition." (Emphasis supplied)

For perhaps the first time in Minnesota judicial history, the Court nevertheless proceeded to grant the petition, in the interests of "further study". The dissents of Justice Yetka and Justice Wahl make as much sense today as they did in 1983.

The question before this Court is simple: "Will justice be served in Minnesota by permitting television coverage of the occasional sensational criminal case? If this Court is concerned about the right of a defendant to a fair trial,

and the continued integrity of the trial courts of Minnesota, the answer must be in the negative.

Justice Tom Clark summed it all up in Estes v. U.S., 381 U.S. 532, 549 (1965):

> "A defendant on trial for a specific crime is entitled to his day in court, not in a stadium or a city or a nationwide arena. The highlighted public clamor resulting from radio and television will inevitably result in prejudice. Trial by television is therefore foreign to our system."

The media campaign for cameras in the courtroom has nevertheless persisted since the 1960s, without significant support from any elements of the knowledgeable legal community. In March, 1983 some twenty-eight national media organizations filed a petition with the Federal Judicial Conference, requesting that Canon 3A(7) be amended to permit cameras in Federal courtrooms.

After a number of hearings, a review of the existing literature, and a survey of Federal judges, an Ad Hoc Committee concluded that "the alleged public benefits of the requested changes in the rules governing media coverage of currently open-to-the public courtroom proceedings are outweighed by the risks to the administration of justice." See Exhibit A, attached.

The District Judges of Minnesota discussed and debated this issue in depth when it was first formally raised by the media almost ten years ago. Our Association appointed a committee which studied the problem for over three years, and its report in opposition to cameras was adopted by the State District Judges Association in June, 1980, with only two or three dissents.

At our recent meeting in December, 1988 the State District Judges Association, now representing all of the trial bench of Minnesota, again voted almost unanimously to oppose the petition of the Joint Media Committee.

We have surveyed the trial judges of Minnesota, and by an overwhelming margin the judges are opposed to any change to permit cameras in the courtroom. It should perhaps be noted that a questionnaire was mailed to all trial judges

in Minnesota after the 1983 experimental rule had been in effect for about a year. Responses were received from some 154 judges from throughout the State. They reported 16 requests for telelvision coverage and two requests for the use of still cameras during the survey period.

The requests for camera coverage during that period were as might be expected, i.e. a wife charged with murder of a Baptist minister, the Jenkins murder case (where the young defendant shot the local banker), the arraignment of scores of Honeywell protestors in Minneapolis. With one exception all the requests for camera coverage were in criminal cases having some newsworthy or sensational feature. One request was denied by court and counsel since the venue had already been changed due to excessive media coverage.

It should seem obvious to even a casual observer that the sensational trials, fortunately few in Minnesota, are the very ones where difficulties in management of the trial are certain to arise, and the judge must take great care to maintain proper decorum to ensure a fair trial without the burden of television coverage.

The State Bar Association has likewise consistently rejected the proposal to modify Canon 3A(7) of the Code of Judicial Conduct, going back to the 1980 convention. The issue was again debated at length at the February 11, 1989 meeting of the bar delegates, who voted by a 3 to 1 margin to oppose the petition.

The State District Judges Association agrees with the philosophy of Justice Benjamin Cardozo who observed that "the purpose of a trial is to determine whether or not the accused is guilty." That purpose cannot be aided by permitting cameras to cover the proceedings. We do not dispute that cameras today can be relatively quiet, but submit that the mere presence of television may create immeasurable psychological pressure on any one put on public display by its all-seeing eye. What will the reaction be of that unknown subpoened witness in a future murder trial, as she walks up to the witness stand and sees that 'unobtrusive' silent camera pointed in her direction?

Unfortunately we do not have the answer to that question, but neither does the media nor the Supreme Court. Counsel for petitioner has nevertheless argued in the past that any risk of violating the rights of a defendant or other participants in a televised trial is "manageable." If this is the viewpoint of petitioners, it is not shared by the public, and it has been rejected by an overwhelming majority of the trial judges and experienced attorneys in Minnesota, and also by the Federal judiciary.

Cameras in the courtroom would not enhance the right of a defendant to a fair trial. The logic of Estes, supra is still compelling:

> "1. Televising of trials diverts the trial from its proper purpose, because it has an inevitable impact on all the trial participants.
> 2. It gives the public the wrong impression about the purpose of trial, thereby detracting from the dignity of court proceedings and lessening the reliability of trials; and
> 3. It singles out certain defendants and subjects them to trial under prejudicial conditions not experienced by others." (p.565)

As stated by Justice Clark in Estes, p. 544, "Ascertainment of the truth is the chief function of the judicial machinery. The use of television cannot be said to contribute materially to that objection, rather its use amounts to the injection of an irrelevant factor into court proceedings."

We are not persuaded that there is any legal or factual basis presented to this Court to warrant a radical amendment to the Code of Judicial Conduct. This latest petition goes far beyond the original request of the media, which was the subject of the experiment from 1983 to 1987. The media now argues that since the parties and/or witnesses have consistently vetoed the presence of cameras during court proceedings (on the relatively few occasions when requests were made), the Supreme Court should not only permit televising, but it should also remove any right of the participants to be shielded from public glare.

The courts of this country are open to the public, including the media, and the petition does not present any issue of "openness" of trials in Minnesota.

While we welcome any coverage of legal proceedings, the trial bench is not persuaded that the public would gain any better understanding of our courts by viewing a 30 second sound bite on the evening television news.

The petition proposes a rule change which directly affects the trial courts. The District Judges of this state respectfully urge the Supreme Court to re-affirm its role as guardian of the rights of parties to a fair trial, and since the suggested rule change will not enhance that constitutional right, the petition should be denied.

Respectfully submitted,

MINNESOTA DISTRICT JUDGES ASSOCIATION

BY Otis H. Godfrey, Jr.
Otis H. Godfrey, Jr.
Judge of District Court and Chairman
of the Committee on Cameras in the Courtroom

DATED: March 23, 1989

adopted 9/20/84

REPORT OF THE JUDICIAL CONFERENCE AD HOC COMMITTEE ON CAMERAS IN THE COURTROOM

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

Having considered the petition filed by the media to lift the ban on photographing and broadcasting Federal court proceedings, your Committee respectfully reports as follows:

I. Petition to Lift The Ban on TV and Still Camera Coverage of Judicial Proceedings

On March 8, 1983, twenty-eight separate radio, TV, newspaper and related organizations filed a petition with the Judicial Conference requesting that Canon 3A(7) of the Code of Conduct for United States Judges and Rule 53 of the Federal Rules of Criminal Procedure be amended to allow radio broadcasting, televising, motion picture and still camera coverage of Federal court proceedings, and further that the Federal Rules of Appellate Procedure and the Federal Rules of Civil Procedure be amended to include provisions allowing such coverage.

Subsequently, amendments to the petition were filed which did not alter the basic request. The petitioners also submitted and periodically updated a document entitled "News Media Coverage of Judicial Proceedings with Cameras and Microphones: Survey of the States" prepared by the Radio-Television News Directors Association and summarizing experiments in State courts.

The petition alleged that the introduction of cameras in courtrooms would not be disruptive of court proceedings nor reduce courtroom decorum and would serve the purpose of educating the public concerning the operation of the Judicial Branch of Government.

Exhibit A

The Conference assigned the petition to the Committees on Court Administration, Rules of Practice and Procedure, and the Advisory Committee on Codes of Conduct. The chairmen of these committees each selected four members of their committees to form the Ad Hoc Committee on Cameras in the Courtroom.

II. Activities of the Committee

The Committee held an organizational meeting on September 27, 1983. At this meeting, the petition and petitioners' submissions were closely examined, the reports of State court experiments were studied, and the text and history of Canon 3A(7) of the Code of Judicial Conduct, previous Conference resolutions banning courtroom photography, and Rule 53 of the Federal Rules of Criminal Procedure were reviewed.

The Committee decided at this session that a principal focus of its study should be whether the requested changes in rules governing media coverage of Federal court proceedings would improve or detract from the quality of justice and its administration. Legal issues mentioned in the petition were recognized as not within the province of the Committee. The Committee also reviewed reports of those State experiments which have been concluded and those which are currently underway on the effects of the presence of cameras in State courts. The Committee further determined that it should gather as much information as possible within a reasonable time. The Committee authorized a study of the existing literature and a survey of Federal judges, and agreed to receive the demonstration and presentation requested by petitioners.

The Committee met again on January 27, 1984. At this meeting the Committee saw video-tapes of recorded State judicial proceedings, observed a demonstration of equipment, and heard a presentation by

counsel for the petitioners, including oral responses to questions posed by petitioners' counsel to a State judge and to representatives of the bar and news media. The Committee reviewed a survey of the published literature dealing with the pros and cons of camera coverage of court proceedings, examined the history of the American Bar Association consideration of the issue, and reviewed the results of its survey of the Federal judiciary. The Committee further determined to obtain comments from experienced trial lawyers and agreed that members of the Committee should informally seek the views of State judges who have had experience with cameras in their courtrooms.

The Committee met on May 30, 1984 to evaluate the petition in the light of the material gathered and to consider what appropriate recommendations might be made. The summary of the survey responses of Federal judges, updated reports of State experience submitted by the petitioners, extensive correspondence from members of the bench and bar, and reports of Committee members on their discussions with members of the State judiciary had previously been distributed to the Committee members.

The Committee's deliberations led to the conclusion that the alleged public benefits of the requested changes in the rules governing media coverage of currently open-to-the-public courtroom proceedings are outweighed by the risks to the administration of justice.

III. Risks of Camera Coverage

The surveys demonstrated overwhelming opposition to the introduction of cameras in Federal courtrooms as being inimicable to the fair and impartial administration of justice. Seventy-eight percent of the 600 active and senior Federal circuit and district judges and eighty-four

percent of the 636 members of the American College of Trial Lawyers who responded to the Committee's survey were opposed to camera coverage of judicial proceedings. Opposition was based on these perceived risks to the administration of justice:

A. Distractions and Diversion of Judicial Time

While the disruptive effects on decorum created in the past by the presence of cameras in the courtroom and the broadcasting of judicial proceedings have been reduced by technological advances in equipment design, the added activities of picture taking, taping, and broadcasting create new problems requiring expenditure of additional time of judges on administration and oversight.

Judges carry great responsibilities in the management of courtrooms and to the persons present on court business. Controlling the operation with intense concentration is difficult enough without having to supervise those visitors from the media, some of whom do not understand the functions of judges, lawyers, litigants and jurors.

Additional costs in time and dollars face a court that permits broadcast or camera coverage while seeking to guarantee the impartiality of a judicial proceeding. Direct costs include increased sequestration of juries, increased difficulty in empaneling an impartial jury for retrial, larger jury panels, and increased use of marshals.

Indirect costs include a lessening of the effectiveness and efficiency of court proceedings by induced activities directed at the vastly increased viewing audience, activities which would otherwise not occur in the courtroom.

B. Psychological Effects

Risks perceived in the psychological effects of cameras in court are less tangible and less susceptible to elimination by rule or guideline. They nonetheless relate fundamentally to the basic objectives of court proceedings: the search for truth and the protection of individual rights and liberties.

The potential psychological effects on participants in judicial proceedings, which may be subtle, range from encouraging histrionics to producing inhibition. They are seen as tending to undermine the search for truth in judicial proceedings. In each class of person involved, the desire to appear better than they are, if their appearance is to be broadcast to a large audience, tends to change people and color their actions, speech, and what they say.

(1) Jurors. Absent sequestration, the potential prejudicial effect on jurors who observe television coverage and commentary is seen as great. Notwithstanding instruction to the contrary, the temptation to watch television news is ever present. Even when jurors are sequestered, media coverage is likely to transform a case into a "cause celebre" and the presence of cameras in the courtroom is a tip-off to jurors that their action and decision will be widely publicized.

A risk lies in a potential for direct effect on the verdict. In criminal cases, jurors may be more reluctant to acquit or convict defendants in cases receiving camera notoriety. Jurors are likely to give more attention to witnesses whose testimony is being filmed for television.

Jurors are also seen as likely to be distracted by electronic media coverage. The potential for juror distraction is not limited to the physical presence of the camera. Jurors can not help being aware of television

coverage, a fact felt by them throughout the trial. That a juror may become accustomed to the camera does not mean a juror is unaware of its presence, nor that such awareness does not produce a level of distraction.

(2) Witnesses. Some witnesses are timid, uneducated, and unsophisticated. They may be inhibited from coming forward and, if called to testify, may be uncomfortable. Witnesses unfamiliar with cameras and microphones may be intimidated by them. Others may tend toward overstatement and overdramatization. They are less likely to admit that they don't remember a fact or more likely to embellish true recollection.

Either result can impede the search for truth. The administration of justice is not seen as improved by a step that may encourage witnesses to become more interested in how their testimony will appear to friends, acquaintances, and a vastly increased audience, than in the accuracy of their testimony.

(3) Judges and Lawyers. Some lawyers have been motivated to theatrics and posturing, the cameras being viewed as an effective means of advertising by those who desire public recognition. Others may feel a natural sense of inhibition in the knowledge that an extended audience is viewing their performance. Some judges may be susceptible to similar influences, including a felt need to meet the presumed reactions of the watching public, a susceptibility that may operate prejudicially to parties involved in the proceeding.

Presence of the public and reporters at a trial may produce a certain risk level in the noted psychological effects. That level, however, is seen as significantly increased when a fixed number of identifiable people in a

courtroom becomes a greatly extended, indefinite, and unseen viewing audience.

C. Preserving the Solemnity of Judicial Proceedings

To the participants in a judicial proceeding the courtroom, and all that occurs in it, is and should be of great personal significance. By tradition and design, court proceedings have a solemn character commensurate with the importance of the administration of justice. The sense of solemnity encourages acceptance of rulings and verdicts. Whatever may detract from the solemnity of the courtroom atmosphere undermines the effective functioning of the courts. Introduction of cameras into the courtroom risks the transformation of judicial proceedings into media events and jeopardizes the required sense of solemnity, dignity, and the search for truth. The dignity of the courtroom is a key part of the chemistry that produces good judicial results.

IV. Educational Benefit

The assertion that broadcasting of judicial proceedings will increase public understanding of the operation of the judicial system is not supported by experience with media coverage of State court proceedings. On the contrary, there appears a great potential for miseducation and presentation of distorted images occasioned by the necessity of limiting most broadcasts to short segments of selected sensational cases. Economic considerations and time constraints preclude the universal televising of entire trials, requiring selection of trials and parts of trials sufficiently sensational to attract viewers.

State court experience with media coverage establishes that the public sees at most a "minute to a minute and a half" film or tape clip on the evening news of a trial that may have lasted for days. Television and

still camera coverage does not itself explain a complex trial; nor does it add to the potential for public understanding of the judicial system present in existing print media coverage; it merely substitutes "live" background shots for the drawings now accompanying voice-over commentary. Often the background shots have had nothing to do with the commentary. Still camera pictures have not added to print coverage anything significant to public education on the operation of the judicial system. There is of necessity an inability to display on TV the full bases of trial and appellate decisions. Those bases involve the study of written memoranda, motions, and briefs.

If full camera coverage of trials were feasible and guaranteed, it would not necessarily lead to an increased accuracy in public knowledge about the law and court procedures. Judicial proceedings are customarily interrupted by bench conferences, objections, and rulings, and are determined in part on the bases of writings listed above. The viewing public could not be made privy to such conferences, objections, rulings, and writings.

V. Conclusion

The principal issue presented by the petition is the potential effect of the requested change on the fair and impartial administration and quality of justice. When human rights, the privacy of individuals, and the search for truth are threatened by a proposed change, the threat should be removed before the requested change is made. The information set forth in the petition and attachments in support of the requested change is sparse when compared with the clear indications that the threat is real. The instincts of the vast majority of the experienced bench and bar on this issue are most persuasive. Experience has shown that the educational value

alleged to result from the requested change is minimal or nonexistent and that the change could produce a distorted impression of the judicial process. The primary function of a court is to administer justice in resolving disputes. The Federal judicial system owes a duty to safeguard the administration of justice in Federal courtrooms against any activity or experiment which conveys the risk of directly or indirectly eroding, compromising, or adversely affecting the fair and impartial achievement of equal justice under law in each case.

VI. Recommendation

Your Committee recommends that the petition be denied.

Respectfully submitted,

Peter T. Fay
Frederick A. Daugherty
Jon O. Newman
J. Foy Guin, Jr.
Walter E. Hoffman
Walter R. Mansfield
Eugene A. Wright
Bailey Brown
Alfred T. Goodwin
S. Hugh Dillin
Harlington Wood, Jr.

Elmo B. Hunter
Edward T. Gignoux
Howard T. Markey
Co-Chairmen

NOTE: Judge Ruggero J. Aldisert was unable to attend the Committee meetings and did not participate in the deliberations. He took no part in the preparation of this report.

THOMAS L. JOHNSON
COUNTY ATTORNEY

(612) 348-3091

OFFICE OF THE HENNEPIN COUNTY ATTORNEY
2000 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

March 24, 1989

Fred Grittner
Clerk of Appellate Court
230 State Capitol
St. Paul, Minnesota 55155

Dear Mr. Grittner:

I respectfully submit the enclosed position paper expressing the opinion of the staff of the Hennepin County Attorney's Victim Witness Assistance program on the issue of television coverage of courtroom activity in criminal matters.

Please contact me if you need any additional information or if the Court would like to hear public testimony on this issue.

Very truly yours,

Mykelene Cook
Director
Hennepin County Attorney Victim Witness Assistance Program
348-4053

MC/sf

STATEMENT TO THE SUPREME COURT OF MINNESOTA CONCERNING TELEVISION COVERAGE OF CRIMINAL AND JUVENILE COURT CASES

Prepared by the staff of the Victim Witness Assistance Program
Of the Hennepin County Attorney's Office

March 20, 1989

The staff of the Victim Witness Assistance Program of the Hennepin County Attorney's Office is convinced that uncontrolled TV coverage within the criminal courtroom would result in a number of highly negative effects on both public safety as well as the rights of crime victims and witnesses.

Crime victims and witnesses obviously have a large stake in the criminal justice process. Historically, there has been little acknowledgement of the importance of their role. Successful prosecution is dependant upon their willingness to cooperate. The impact of being a victim or a witness of a crime can and very often does dramatically alter an individual's perception of self and safety. Being a victim or a witness of a crime also means that they may now become participants within the criminal justice system. However televised coverage of courtroom activities could have a profound effect on their decision to report a crime to the police. Already the overall rate of crime reported to police is only 37%.[1] A recent U.S. Department of Justice study shows, "the most frequent specific reason given by victims for not reporting violent crimes to the police was that the event was a private or personal matter".[2] Unwelcome publicity will lower this rate even further. Likewise, witnesses who might otherwise step forward to offer testimony will be hesitant and unlikely to do so. Receiving a subpoena and testifying in court further

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1. US Department of Justice, Bureau of Justice Statistics, Criminal Victimization in the United Stated, 1986, 10 (1988)

2. Id.

disrupts victim's and witnesses' lives. Most victims and witnesses are not familiar with the legal process, so testifying in court is a fearful experience.

We believe that if TV cameras were allowed into the courtroom at the discretion of the media, victims and witnesses would be further traumatized by their experience with the criminal justice system.

Vulnerable victims of sexual assault, domestic violence and child abuse have historically been reluctant to participate in the criminal justice process principally because they did not want to be put in the public eye. These cases in particular almost always require the victim to testify as to private, personal and embarrassing facts. Victims of sexual assault have incredible reservations about making the humiliating, degrading details of their rape public in a courtroom. Battered women, encouraged to recite painful accounts of their victimization at the hands of their partners are already silenced by their shame for airing "family matters" in public. Children, probably the most vulnerable of victims, recoil at the prospect of public disclosure in a courtroom where strangers abound in a formal and unfriendly arena of fear.

All of these victims fear retaliation on the part of the defendant. Most are reluctant to testify. Those who work with them agree that these issues would become magnified immensely should all or portions of a trial be publicly broadcasted. Innocent victims of these crimes who are brave enough to come forward deserve the protection of their privacy and their safety by the courts.

To assess victims and witnesses reactions to the prospect of having TV cameras in the courtroom, sixty-five (65) victims and witnesses were selected from a cross-section of felony cases that had been scheduled for trial during the period of September 1988 through February 1989 in Hennepin County.[3] These individuals received a letter (See Appendix A) advising them that a public hearing was scheduled in April to consider the issue of allowing TV cameras in the courtroom, as well as a questionnaire (See Appendix B) seeking information about their perspective on this issue.

The following information is a summary of the responses that we received to our survey.

Three (3) letters were undeliverable and returned to sender

Thirty (30) questionnaires were completed and returned with the following results:

Question #4: . . . did you have to testify?
Yes-22 No-8

Question #5: . . . should TV cameras be allowed in the courtroom?
Yes-7 N-21 Undecided-2

Question #6: . . . willingness to testify if cameras were allowed.
Just as willing -15
Less willing -11
Chosen not to testify -04

To summarize, the response by victims and witness was three to one opposing courtroom TV cameras. More importantly, 50% of those surveyed indicated that they would be less willing to

3. Excluded from the study were cases involving child abuse, sexual assault and domestic violence.

testify at trial or would choose not to testify at all with cameras present.

Additional space was provided on the questionnaire for victims and witnessed to add written comments about the issue of TV cameras in the courtroom. A few of their pertinent comments are as follows:

> "I don't want the world to know all the details of my personal life!"
> "I would have been uncomfortable. I was upset enough without TV cameras."
> It's a very trying experience anyway, so this would be added stress for the witness."
> 'It's threatening enough testifying in a criminal case- presence of TV cameras would increase fear and uncertainty, decrease witness willingness to testify and likely violate some basic rights of confidentiality."

A poll of Hennepin County prosecutors in the Criminal and Juvenile divisions drew a four to one response against TV coverage. (See Appendix C) Prosecutors expressed a variety of concerns regarding TV coverage, including distortion of the process as presented to the public, possible grandstanding on the the part of some courtroom participants, and decreased cooperation on the part of victims and witnesses. The following is a summary of the response to our poll:

1. Do you think TV cameras should be allowed in the courtroom?

Yes	-3
Yes, with the ability for veto	-3
No	-24

2. If cameras were allowed, do you think victims and witnesses would be more or less likely to testify?

More likely to testify	- 0
Depends	- 1
Less likely to testify	-25
No change	- 3
No reply	- 1

The successful prosecution of criminal cases relies heavily upon the cooperation of crime victims and witnesses. Most victims and witnesses are fearful of testifying under the best of circumstances. When gang involvement is a factor, or the defense seems likely to impugn the motives or character of a victim or witness, cooperation with the prosecution becomes a fragile alliance. Television coverage under these circumstances could tip the balance against cooperation in these cases. The cost to society, in terms of crimes not reported and defendants not convicted is too great and outweighs any probative value of TV coverage in the courtroom.

The personal cost to crime victims of TV coverage is very high. The increase in publicity may set these individuals up for re-victimization in numerous ways. Retaliation by the defendant's family and friends becomes more possible when the victim's name and face are televised. According to one survey, 26% of victims and witnesses have received some type of threat.[4] Other problems resulting from the increased visibility may include being targeted for harassment by bizarre and perverse individuals.

Additionally, TV courtroom coverage represents a massive invasion of a crime victims's rights to privacy. The attendant loss of dignity when an intensely personal pain becomes public diminishes the crime victim, court participants, and the spirit of justice. The long term effects are not yet known, but if the

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4. Connick and R. Davis, Examining the problem of witness intimidation, 66, Judicature, 439, 439 (1983).

TV limelight prolongs the pain or slows the healing for even a few crime victims, the cost is too high.

The staff of the Victim Witness Assistance Program of the Hennepin County Attorney's Office strongly recommends that the court maintain all of the veto powers entrusted to attorneys, judges and other trial participants in Canon 3A(7) of the Minnesota Code of Judicial Ethics prior to the experiment. Crime Victims and witnesses should not be photographed or filmed without their prior written consent under any circumstances. This is vitally needed to safeguard the rights of crime victims and ensure maximum possible cooperation with prosecution.

In conclusion, media journalist already have free access to most court hearings and documents. The flow of information to the public is in no way impaired through the prohibition of intrusive TV coverage from within the courtroom. By contrast, the rate of unreported crime and unconvicted criminals due to noncooperation with prosecution would likely rise. The potential cost to crime victims in terms of retaliation, re-victimization and the loss of privacy is unconscionable. The interest of media journalists cannot overcome the heavy burden of these additional costs to those suffering as the result of crime.

ARPENDIX A

OFFICE OF THE HENNEPIN COUNTY ATTORNEY
2000 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

February 21, 1989

[redacted]

Dear

You have been chosen to receive this letter and questionnaire because recently you were scheduled to testify in a felony case set for trial. A public hearing is scheduled before the Minnesota Supreme Court on April 13, 1989, to consider the issue of allowing TV cameras in the courtroom during trials. Therefore we at the Hennepin County Attorney's Office, Victim Witness Assistance Program would appreciate your input on this issue, so that we can present the opinions of victims and witnesses at this public hearing. Your cooperation in completing the attached questionnaire would be helpful in verifying the position we present at the hearing. Participation in this survey has nothing to do with the processing of your case. Completion of this survey should be done anonymously.

Additionally, if you would be interested in speaking at this public hearing, please contact the Legal Services Specialist you worked with during the case or contact Mike Schumacher at 348-2566. Likewise if you have any questions about this issue please contact the Legal Services Specialist or myself.

Sincerely,

Michael D. Schumacher

Michael D. Schumacher
Legal Services Specialist

MC/gs

CAMERAS IN THE COURTROOM SURVEY

APPENDIX B

Please indicate by marking the answer that best pertains to the case that you were recently scheduled to testify in, or expresses your opinion about the issue of having TV cameras in the courtroom during trials. Thank you for your cooperation.

THIS QUESTIONNAIRE IS ANONYMOUS, SO PLEASE DO NOT PUT YOUR NAME ON IT.

1. On the case that you were recently scheduled to testify you were a:
   ___ Victim ___ Witness
   ___ Police Officer ___ Other Professional (ie. Medical Staff, etc)

2. The case involved a charge of:
   ___ Property Theft ___ Domestic Assault
   ___ Auto Theft ___ Assault (nondomestic)
   ___ Burglary ___ Criminal Sexual Conduct
   ___ Forgery ___ Homicide
   ___ Drugs (Sales/Poss) ___ Aggravated Robbery
   ___ Unknown ___ Other (Please specify)

3. How did the case get resolved in court?
   ___ Plea Negotiation ___ Trial
   ___ Case Dismissed ___ Case still Pending
   ___ Case was continued ___ Unknown

4. If the case was resolved by a trial, did you have to testify?
   ___ Yes ___ No

5. Do you think TV cameras should be allowed in the courtroom?
   ___ Yes ___ No ___ Don't Know

6. If TV cameras were allowed in the courtroom on the case that you were recently scheduled to testify in, would you have:
   ___ been just as willing to testify
   ___ been less willing to testify
   ___ chosen not to testify

7. Please indicate in what age group you are:
   ___ under 16 yeard old ___ 41 - 50 years old
   ___ 17 - 20 years old ___ 51 - 60 years old
   ___ 21 - 30 years old ___ 61 - 70 years old
   ___ 31 - 40 years old ___ over 71 years old

8. Please add any additional comments you have regarding the issue of TV cameras in the courtroom during trials.

_____

_____

_____

_____

Please return questionnaire by March 1, in the enclosed envelope.

APPENDIX C

HENNEPIN

DATE: 2/9/89

TO: Attorneys

FROM: Victim/Witness

SUBJECT: Cameras in the courtroom

A public hearing is scheduled before the Minnesota Supreme Court on April 13, 1989 to consider the issue of allowing TV cameras in the courtroom during trials. We in victim/witness would appreciate your input on this issue.

- Do you think TV cameras should be allowed in the courtroom?

  ____ Yes ____ No

- If cameras were allowed, do you think victims and witnesses would be more or less likely to testify?

  _____

Comments:

_____

_____

_____

_____

_____

_____

Please return to Kathy Woxland in Victim/Witness by March 1, 1989

ENCLOSURE 1

POLICY OF:

NATIONAL ORGANIZATION OF VICTIM ASSISTANCE

RESOLVED: NOVA believes that states which do not not allow television and still cameras in courthouses should not change the policies because not enough is known about the immediate impact of their presence on victims and witnesses, nor about the long term effects on victims and witnesses from the publicity that results from having their photographs broadcast or printed

NOVA believes that states which have allowed television and still cameras in courtrooms should examine the guidelines which govern photographic coverage, and should be sure that such guidelines protect victims' and witnesses' right to dignity and privacy, and give to victims and witnesses the right to refuse to be televised or photographed, and to be informed of this right.

Adopted by the Board of Directors, September 1982