STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009 (formerly CX-89-1863)

ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON A PROPOSED PILOT PROJECT TO ALLOW MORE EXTENSIVE TELEVISED BROADCAST OF DISTRICT COURT PROCEEDINGS

By order filed February 12, 2009, we declined to adopt proposed rules that would allow more extensive televised broadcast of district court proceedings in the absence of additional information on the impact of televised proceedings on victims and witnesses. We directed the Supreme Court Advisory Committee on the General Rules of Practice to recommend draft rules establishing a pilot project on cameras in the courtroom that would include "effective mechanisms for measuring the impact of cameras on the proceedings and on the participants before, during, and after the proceedings, and the financial impact of both the pilot project and study, and the ongoing administration of cameras in the courtroom." On October 29, 2010, the Committee filed its Final Report, which presents two options for the pilot project. A copy of the Final Report is attached to this order. We will consider the proposals, without a hearing, after soliciting and reviewing comments that assess the relative merits of the two options presented in the Final Report.

IT IS HEREBY ORDERED that any individual wishing to provide comments in support of or opposition to one or the other of the options proposed in the attached Final Report of the Supreme Court Advisory Committee on the General Rules of Practice shall submit fourteen copies in writing to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, no later than December 17, 2010.

Dated: November 19, 2010

BY THE COURT:

Lori S. Gildea
Chief Justice

ATTACHMENT # 8

CX-89-1863
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee
on General Rules of Practice

Recommendations of Minnesota Supreme Court
Advisory Committee on General Rules of Practice

Final Report

October 29, 2010

Hon. Elizabeth Anne Hayden
Chair

Hon. Lorie Skjerven Gildea
Liaison Justice

Hon. Steven J. Cahill, Moorhead
Hon. Joseph T. Carter, Hastings
Hon. Mel I. Dickstein, Minneapolis
Francis Eggert, Winsted
Jennifer L. Frisch, Minneapolis
Joan Hackel, Saint Paul
Karen E. Sullivan Hook, Rochester
Hon. Lawrence R. Johnson, Anoka
Hon. Kathryn D. Messerich, Hastings
Hon. Rosanne Nathanson, Saint Paul
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Paul Reuvers, Bloomington
Timothy Roberts, Foley
Daniel Rogan, Minneapolis
Hon. Shari Schluchter, Bemidji
Hon. Jon Stafsholt, Glenwood
Erica Strohl, Minneapolis
Hon. Robert D. Walker, Fairmont

Michael B. Johnson, Saint Paul
Staff Attorney

David F. Herr, Minneapolis
Reporter

Introduction

This report is the committee's follow-up report pursuant to this Court's February 11, 2009, Order on Cameras in the Courtroom.

Committee's Work Following February 11, 2009, Order

The advisory committee has worked diligently to be in a position to recommend draft rules that would comply with the directions contained in this Court's February 11, 2009, Order. The efforts of the committee have focused primarily on the requirement that the implementation include "effective mechanisms for measuring the impact of cameras on the proceedings and on the participants before, during and after the proceedings." Feb. 11, 2009, Order ¶ 6(b). The committee also addressed the additional mandate to address the costs of both the pilot project and the accompanying study. *See id.*

RESEARCH STUDY. The prospect of designing an effective mechanism for measuring the effects of cameras in the courtroom, including in the design a means for measurement of the impact of the mere prospect of cameras and concerns that cameras might be present even in cases where cameras would not be permitted, has been a daunting one for the committee. Additionally, there is a potentially chilling effect on disputes or cases that never reach the courts, and the studies contemplated by both the majority and minority of the committee would not measure this impact. The committee met five times to consider these challenging issues.

The committee approached the four law schools in Minnesota to see if they had interest and the ability to undertake a research project to address the Court's directions in its February 11, 2009, Order. The committee also contacted the National Center for State Courts. The only entity submitting a research proposal was the University of Minnesota, through its Professor Eugene Borgida and a committee of other academic personnel. Professor Borgida, as Principal Investigator, submitted his final proposal following several meetings with either the entire advisory committee or

its Chair, Liaison Justice, Reporter, and Staff. As reflected in the report, those discussions resulted in revisions to the research outline, culminating in the final report, which is attached to this Report as Exhibit A.

The advisory committee is satisfied that the University of Minnesota research proposal would effectively address the Court's mandate for mechanisms to measure the impact of cameras on court proceedings before, during and after the actual court events. Exhibit A outlines an 18-month study that would create two randomly selected samples of cases, and randomly assign them to either a "camera" or "no camera" group. The random assignment is employed to permit statistically valid analyses of the differences in outcome of the two groups. The advisory committee advised the University of Minnesota researchers that it would be unworkable to have a case of significant media interest treated as a "no camera" case in the study. As a result, cases may be "camera" cases either by random assignment or by a request from the news media to be reported by still photograph or video coverage. "Camera" cases that are not the subject of actual media interest would be reported with actual cameras and operators and the recordings preserved for eventual use during the study period. The primary purpose of the recording in these cases would be to create an actual "recorded" experience for the participants despite lack of actual media interest in that particular proceeding. In cases in both categories, "camera" and "no camera," the presiding judge would have to decide if cameras would be permitted. *See* Proposed Minn. R. Gen. Prac. 4.02(c).

The University of Minnesota research would also include substantial efforts to assess "extended effects" of cameras by quantitative and qualitative content analysis of media coverage. (*Ex. A at 7-8*). This extended effects study would attempt to assess the impact of the presence of cameras in ***any*** proceeding on the willingness of victims or witnesses even in proceedings where cameras would nevertheless not be present. This would also determine the effects of cameras on perception of justice in the judicial system.

COST OF STUDY AND COST OF PILOT PROJECT. The research proposal submitted by the University of Minnesota attempts to quantify the costs of the pilot project and to budget for those costs. The committee believes the projected direct costs for the study itself are probably necessary and likely to be incurred, although the committee largely defers to Professor Borgida for the development of those costs. State Court Administration has helped to provide the data on trial and hearing duration used in this forecasting.

The committee has not determined the indirect costs that would undoubtedly be encountered by the judiciary from both the pilot project itself and from the related research study. The committee believes that there will be costs that would undoubtedly be incurred by the judiciary and that would be difficult to quantify or recover from participants, including at least the following:

Pilot Project Judicial Branch Costs Related Only to Research Project

1. Judicial branch personnel will need to be trained on the operation of the research project.
2. Judicial branch personnel will expend time completing surveys or being interviewed about the operation of the pilot project.
3. Judicial branch personnel will be involved in explaining the pilot project and what is needed to be done to participate.
4. Judicial branch personnel will be involved (and expend time doing so) on facilitating the research project, providing access to the judge, jurors, and other participants, and providing case information, updates, rescheduling, and data, including reports and notices.
5. Judicial branch personnel will expend time working with camera operators in setting up cameras and removing equipment from courtrooms.

Pilot Project Judicial Branch Costs Unrelated to the Research Project

1. Administrator's office time spent answering questions about camera coverage. (Some of this would be handled by the District Media

Coordinator, but many questions would be directed to counter staff and courtroom deputies.)

2. The hiring and some supervision of the District Media Coordinator will require some judicial branch resources, even though this person will be employed and funded by the media.
3. Judicial time spent deciding whether to permit camera coverage when requested. This may include actual hearing time, or other judicial attention to the request for coverage. This might include motion practice from the parties in cases where the media propose to cover proceedings.
4. Possible appellate court attention to an appeal or extraordinary writ proceeding relating to the decision to allow or not to allow camera coverage.
5. Judicial attention to details of camera coverage, including compliance with rules, questions or concerns from jurors, witnesses, or other participants.

Intangible Judicial Branch Costs

The committee heard from members about significant potential costs relating to intangible, but hardly negligible, costs that would be incurred in the pilot project research study. These costs could include a variety of "morale" or "PR" costs associated with both the expenditure of substantial sums of money on this research project at a time when funds are scarce, funding for basic court operations are being curtailed, and other efficiency measures (including web and phone payment of citations and centralized processing via a payment center) are being rolled out by the judicial branch. The concerns relate both to certain negative reaction from court personnel as well as the potential for negative reactions from the public. The only evident means to ameliorate this impact is communication that the funds for this study would be raised specifically for this project and are not being shifted from other uses

within the judicial branch budgets (and would not be available for other purposes if the project were not undertaken).

The committee has a related concern about the eagerness or even willingness of judges to order camera coverage of proceedings randomly designated as "camera coverage" cases by the research study but for which no media interest exists and therefore the cameras would essentially record the proceedings for no interested viewers. Again, in a period of conservation of judicial resources and the imposition of numerous fiscal constraints on the courts, whether judges will be receptive to this use of resources, even if separately funded, is not clear to the committee.

These intangible cost factors merit consideration by the court, and are among the more compelling reasons for the minority's vote to favor a substantially more modest research project to assess the impact of cameras.

Non-Judicial Branch Costs

The committee also believes that there will be similar research related costs that would undoubtedly be incurred by the non-judicial branch participants, including prosecutors, defense counsel, and programs serving victims and witnesses. The services of interpreters may also be required. These costs would similarly be difficult to quantify or recover from participants.

FUNDING THE RESEARCH COST. The means for funding the cost of the University of Minnesota research proposal is not certain, but would require raising at least $750,000. Professor Borgida believes that this can be accomplished through a combination of fundraising for dollar support and in-kind contributions of media camera and camera-operator services. The precise allocation of contributions is not set, but would include a substantial grant from the National Science Foundation and lesser financial support from the University of Minnesota. The project would require raising a substantial additional sum of money from law firms, Minnesota corporations, philanthropists who would be interested in this project, as well as substantial support from the news media. These efforts may compete with the efforts of other non-profits serving the justice system.

The committee does not believe that it is particularly qualified to judge either the likely result of fundraising efforts or the realistic timeline for those efforts. It is certain that, given the large cost, this fundraising effort would require a substantial amount of time to complete, potentially as long as a year. In addition, there is some risk that the fundraising efforts would not be successful.

Other Developments Following February 11, 2009, Order

There are two developments that may be of interest to the Court. First, the federal judiciary in September 2010 approved a three-year, national pilot project to allow camera coverage in federal district courtrooms. The federal project will require the courts to conduct the recording of the proceedings, not the media. Because the Judicial Conference of the United States' decision was only recently announced, the advisory committee has not been able to learn more about the federal project than contained in the initial press release. *See* http://www.uscourts.gov/news/NewsView/10-09-14/Judiciary_Approves_Pilot_Project_for_Cameras_in_District_Courts.aspx.

The second development is taking place in South Dakota. The South Dakota Supreme Court conducted a hearing on October 7, 2010, on allowing cameras in that state's courtrooms. In South Dakota, the court considered competing proposals, one similar to the existing rule in Minnesota, requiring consent of the trial judge and the parties before cameras would be allowed and a proposal from the media that would create a presumption that trial courtrooms would be open to camera coverage unless the judge determines cameras would create unfairness in the proceedings. *See* http://www.rapidcityjournal.com/news/article_50649e48-d21f-11df-b620-001cc4c03286.html.

Neither of these developments played a major role in the advisory committee's deliberations.

Committee Recommendations

The committee's recommendations can be briefly stated. First, the committee has accepted the Court's direction that it recommend a resolution based on this committee's Minority Report (Feb. 11, 2009, Order ¶ 6(a), that it include a mechanism to study the effects of cameras on Minnesota court proceedings (*id.* ¶ 6(b)), and that it recommend a funding mechanism that would have a neutral impact on the courts. As the Court is aware, these constraints are in some ways inconsistent, and the committee's recommendations are accordingly neither unqualified nor unanimous.

1. A bare majority of the committee (by vote of 7 members in favor to 6 opposed) recommends to the Court that the minority report rules be adopted on a state-wide basis for a limited period in conjunction with the formal research study on the impact of cameras on participants in covered proceedings as well as non-participants as proposed in the University of Minnesota proposal. *(Ex. A)*[1]. The majority believes this extensive study is necessary to make scientifically valid conclusions about the impacts cameras may have on the participants and users of the judicial system as well as the "chilling" effect that cameras might have even in cases where actual camera coverage would not be possible under the rules.

The majority views the streamlined approach proposed by the minority as the collection of mere anecdotal information that would not effectively address the Court's concerns.

2. A minority of the committee (by vote of 5 members in favor to 8 opposed) recommends a similar approach, but with a substantially scaled-down research study

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[1] There would undoubtedly be minor modifications to the proposed protocol for the study before implementation. The committee heard from one member, for example, who pointed out that, in at least one district, it would not be feasible to study camera coverage of a criminal trial in an 18-month study if the cases were selected at the time of filing, because criminal trials are not generally held within 18 months of filing. Minor modification of the selection criteria should correct this limitation without detracting from the validity of the study.

that involves informal surveys of participants in proceedings where the media asked for camera coverage. These surveys would also elicit anecdotal information from interested groups during the study period and the committee would ask for comprehensive reports from any interested groups at the conclusion of a study period. The minority proposes a 12-month initial pilot project period, with an interim report from the advisory committee or other oversight group at that time. If there are not significant problems during that time, the study would be continued for a second 12-month period. The minority believes this research, although not probably as valuable or scientifically valid, would be inexpensive, could be set up more rapidly, and would still address the Court's concerns about the impacts of cameras not just on individual cases, but also the judicial process and fairness to all participants.

The minority also finds the years of experience from the numerous jurisdictions that do allow camera coverage of some court proceedings provides a significant source of useful information that makes an elaborate scientific study less necessary.

Regardless of the course taken by the Court, the committee believes that the implementation of this project should include the following features:

1. Recognition that funding of this pilot project—even if no research were conducted—probably could not realistically be completely "cost neutral" to the judicial branch with respect to all costs, but direct costs may be covered by independently raised funds.

2. The Court should permit a group of citizens to raise the available funds from outside the courts and in accordance with the restrictions on fundraising imposed by the Minnesota Code of Judicial Conduct.

3. The commitment to funding the cost of the project as ordered should be substantially in place before the commencement of "cameras on" implementation of the pilot project.

4. The assignment of District Media Coordinators, not employed or compensated by the judicial branch, should be completed before implementation of the pilot project.

5. This advisory committee or a separate camera in the courtroom implementation committee should monitor the progress of the project during its operation, with requested interim reports at least annually.

The advisory committee stands ready to provide any further assistance the Court may find useful in the implementation of the changes ordered by the Court.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

August 13, 2010

TO: Minnesota Supreme Court Advisory Committee on the General Rules of Practice for the District Courts

FROM: Eugene Borgida, Professor of Psychology and Law

Principal Investigator, University of Minnesota Working Group on Cameras in the Courtroom[1]

RE: Revised pilot program and budget to study cameras in Minnesota district courts

Our interdisciplinary Working Group on Cameras in the Courtroom is very grateful for the opportunity to revise our proposal for a pilot program to study the impact of cameras in Minnesota district courts. And we apologize for the delay in revising the pilot program proposal; our intent was to resubmit the revised proposal much earlier in the year.

To summarize how we got to where we are now, on February 11, 2009, your committee, in consultation with the media petitioners, was asked by the Minnesota Supreme Court "to design a pilot project that will include a study of the impact of televised proceedings on victims and witnesses. This pilot project will provide [the Minnesota Supreme] court with additional information important to any final decision it might make regarding the presence or absence of cameras in the courtroom on a statewide basis" (p.1, Memorandum, State of Minnesota in Supreme Court, CX-89-1863). For our purposes, there were three key features of the Court's original pilot project implementation Order: (1) a plan should be developed to establish the "effective mechanisms for measuring the impact of cameras on the proceedings and on the participants before, during, and after the proceedings"; (2) an assessment of "the financial impact of both the pilot project and the study" should be undertaken; and (3) an assessment of the financial impact of "the ongoing administration of cameras in the courtroom" also should be developed. In addition, the Court's Order solicited recommendations from the Advisory

[1] Eugene Borgida, Professor of Psychology and Law (borgi001@umn.edu); Jane Kirtley, Silha Professor of Media Ethics and Law, Director, Silha Center for the Study of Media Ethics and Law (kirtl001@umn.edu); Christopher Federico, Associate Professor of Psychology and Political Science, Director, Center for the Study of Political Psychology (federico@umn.edu); Erik Girvan, JD and Ph.D. student in social psychology (girva004@umn.edu); Brad Lippmann, ABD in social psychology (lipp0040@umn.edu); Andrea L. Miller, Ph.D. student in social psychology (mill3160@umn.edu).

Committee for funding the pilot project (i.e., staffing costs and any other costs associated with the proposed study "without additional costs to the judiciary").

The Advisory Committee met twice to discuss our proposed pilot program – on July 23, 2009 and on October 29, 2009. At the October 29, 2009 meeting, the Advisory Committee discussed with Professor Borgida several follow-up questions from the July 23 meeting of the Advisory Committee (questions and answers that are summarized in the November 12, 2009, Advisory Committee meeting minutes). Sufficiency of camera resources, the scope of the pilot project, target sample size, case exclusions, pretrial and other exclusions, inclusion of cases of interest to the media that were not randomly selected for the research, and input from the victim and witness community, along with other questions posed by Committee members, were addressed thoroughly at the October 29th meeting.

As a result of the discussion at the October 29th Advisory Committee meeting, it was decided that the original proposal and budget should be revised and resubmitted to the Advisory Committee for further review. Specifically, it was agreed: (1) that the pilot program and research would be conducted in all ten judicial districts in Minnesota; (2) that the pilot program and associated research effort would be financially neutral to the state's judicial system; (3) that the research would include any case that the media was interested in filming that had not been randomly selected for inclusion in the research design (Mark Anfinson, attorney for the media petitioners, estimates that there might be a total of 25-50 such cases during the pilot program, some of which might well be included in the research design); (4) that victim and witness community professionals would be interviewed and/or surveyed to gauge their views of the issues to be tackled by the pilot program, and be given an opportunity to consult with the research team on the research procedures to be followed; (5) that the revised proposal would clarify what questions the proposed research can and cannot address; (6) that the scope of the research would be expanded to include an examination of the extended media effects associated with camera coverage (e.g., the public's perceptions of justice and crime, perceptions and views of the judicial system held by minority communities in the state vs. perceptions and views of the majority community); and finally (7) that a survey of judges and witnesses who "opt out" of camera coverage would be conducted.

None of these issues and concerns, from a research standpoint, are seen as problematic or difficult to implement. In fact, the Working Group agreed to incorporate all of these suggestions into the pilot program research plan and budget that is included in the present document. Morever, the Advisory Committee reached "consensus" on a pilot study reflecting these elements: that the pilot study be statewide; be conducted over 18 months; exclude cases, including commitment cases, that are currently excluded by rule, but include bail, sentencing, and other pre- and post-trial proceedings; include an examination of extended media effects, including cases of media video coverage that were outside the pilot research design; and include a survey of victim and witness professionals that gathers their input for consideration into the pilot program and implementation of the research design.

Therefore, in the remainder of this revised pilot program proposal we focus primarily on the contours and contingencies of the proposed pilot program and research plan. We offer an overview of (1) the scope and timetable of a pilot program, (2) an overview of the methodology and measurement approach we propose for the research study, and (3) a budget with stable estimates that would enable us (in collaboration with others) to launch and coordinate the pilot program and to staff and implement the research study over the proposed 18-month "shelf life" of the pilot program.

The proposed pilot program

Our revised proposal, as with the original submission to the Committee, is informed by prior research on the effects of electronic media coverage of the courts[2] and draws on our collective expertise in social scientific methodology to reliably assess the impact of cameras on district court proceedings, on the participants in those proceedings, and to begin to estimate the extended effects of such media coverage on public perceptions of the judicial system. The latter research component, which was requested by the Advisory Committee, also has the potential to generate insights into the effects of media coverage on perceptions of trust and confidence in the state's judicial system among minority and majority participants in the study.

Over an 18-month period, beginning on April 1, 2011, and extending through the end of September, 2012, we propose to randomly sample and randomly assign civil and criminal cases (excluding cases currently excluded by rule, and also excluding commitment cases), from all ten of the state's judicial districts, either to *camera coverage* or to a *no-camera coverage control* condition.[3] As we discussed at length at the July 23, 2009 Advisory Committee meeting, our reading of the original Order signed by Chief Justice Magnuson is that the pilot program and research study are to be designed to assess the impact of cameras on district court proceedings more broadly, in routine cases, and not just to assess the impact of courtroom cameras on the proceedings and participants in those select cases judged by some metric to have high media newsworthiness. Accordingly, in contrast to the federal pilot program conducted by the Federal

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[2]See e.g., Borgida, E., DeBono, K.G., & Buckman, L.A. (1990). Cameras in the courtroom: The effects of media coverage on witness testimony and juror perceptions. *Law and Human Behavior, 14*(5), 489-509; Chopra, S., & Ogloff, J.R.P. (2001). *The effects of electronic media coverage in the courtroom: A review of the existing literature*. Report to the Criminal Justice Branch of the Ministry of the Attorney General in British Columbia, Canada; Johnson, M.T., & Krafka, C., *Electronic media coverage of federal civil proceedings: An evaluation of the pilot program in six district courts and two courts of appeals*, Federal Judicial Center, 1994; Lippmann, B., Borgida, E., Penrod, S.D., & Otto, A. (2009). *Electronic media coverage of the courtroom: A field experiment on the effects of courtroom transparency.* Unpublished manuscript, University of Minnesota.

[3] To be perfectly clear, neither the *camera-coverage* condition nor the *no-camera coverage* condition precludes conventional or new media coverage (print, online, or broadcast journalists who bring in reporters' notebooks and take hand-written notes) and our research team will be tracking such coverage of sampled cases in both conditions over the course of the pilot program.

Judicial Center in the early 1990's on electronic media coverage of civil proceedings,[4] we will randomly assign civil and criminal cases to either of these conditions *regardless* of their media-defined "newsworthiness." In other words, rather than wait for media petitions to cover particular cases and then randomly assign only *those* cases to camera coverage or no-camera coverage, the proposed pilot program will include a broad range of civil and criminal cases, only some of which may have media newsworthiness (however, as discussed in footnote 5 below, we are prepared to include those newsworthy cases of interest to the media that have not already been included in the research design). Under this approach, by sheer probability, some cases will be of greater interest to the media than others, but media interest value *per se* will not be driving the sampling strategy.[5] Additionally, this approach has the advantage that the pilot program as proposed should be able to generate a large enough sample size of camera-coverage and no-camera control cases in a relatively short period of time to support more reliable statistical analysis than an approach dependent on media petitions for case coverage.

Thus, we propose to randomly sample and randomly assign civil and criminal cases, from all of the state's ten judicial districts, either to *camera coverage* or to a *no-camera coverage control* condition. For an 18-month period, we will identify criminal cases when filed and civil cases up to 6 months in advance of a scheduled trial. Using the last three digits of the court's file number, we will randomly assign cases to *camera* or *no-camera coverage*. Knowing that consent of trial judges is required during the pilot program time frame[6], a provision that no doubt will reduce the number of cases approved for *camera* coverage (vs. *no-camera coverage*), we will oversample cases on a 2:1 basis for *camera coverage*.[7] Our target sample size will be 500 cases for the *camera coverage* condition and 500 for the *no-camera coverage* condition. We will also take

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[4] Johnson, M.T., & Krafka, C., *Electronic media coverage of federal civil proceedings: An evaluation of the pilot program in six district courts and two courts of appeals*, Federal Judicial Center, 1994.

[5] During the pilot program time frame, in order to preserve the scientific integrity of the random assignment procedure, cases randomly assigned to no-camera coverage preferably should remain without camera coverage even if a particular no-camera case might otherwise elicit a media petition for coverage. Should the media express interest in a case that has been assigned to no-camera coverage, we will include such cases at their request, and make statistical adjustments in order to preserve the validity of the study's design. On the other hand, if a case which has not been assigned to either camera coverage or the no-camera coverage condition during the pilot program time frame draws media interest, camera coverage of such a case is not problematic from a methodological standpoint.

[6] During the pilot program time frame, it is our understanding that trial judges must consent if a case is to be assigned to camera coverage, and also must rule on the exclusion of those specific witnesses who object to participating under camera coverage conditions. We will, as we suggested earlier, carefully monitor those witnesses and judges who "opt out" of the pilot program research, and subsequently we will survey them to better understand their decision-making and concerns. Of course, it would be wise to take steps early on to encourage judges to participate in the pilot program in all cases where they do not see that doing so would be particularly prejudicial.

[7] The archive of camera coverage cases should be made available to the media any time during the pilot program time frame. The terms and conditions for access beyond the pilot program time frame should be addressed by the Supreme Court in its final ruling on whether or not to implement cameras in courtrooms on a permanent basis.

steps to insure that this target sample of 1000 cases will be representative of cases from urban vs. rural districts, and representative of the different types of cases processed by the state's judicial system (major criminal/civil cases vs. minor criminal/civil cases).

Once random assignment to *camera* or *no-camera coverage* has been made and approved, we will immediately notify counsel about the selection and the subsequent procedure associated with the pilot program study. Importantly, once these assignments have been made and approved, victim/witness advocate programs should be able to immediately advise those clients whose cases are eligible for and have been assigned to camera coverage about the assignment as well as provide additional information consistent with what they normally tell their clients about how to handle the possibility of conventional media coverage. The guidelines and procedures for informing clients of camera coverage vs. no camera coverage will be informed by our interviews with and survey of victim and witness professionals prior to the start of the pilot program.

The negligible number of "camera-ready" or high technology courtrooms across the state of Minnesota required that we investigate the viability and use of extant portable electronic video camera systems. Our assessment of these video and audio systems is that they would be neither obtrusive nor distracting and that they would in no way impair the dignity of the courtroom, in accordance with Gen. R. Prac. 4.03. In collaboration with Mark Anfinson, attorney for the media petitioners, we have developed a plan to purchase 12 of these high-grade, portable video camera systems and to identify and hire camera operators in each of the ten judicial districts to cover those cases that have been randomly assigned to camera coverage (see the budget section of this proposal for the financial details associated with this approach). In addition, we will identify and recruit Media Coordinators for each of the state's ten judicial districts. In consultation with media in each judicial district, we will identify and hire one Media Coordinator in each judicial district, though we may need to retain more than one in the larger judicial districts (for a total of no more than 13 coordinators, state-wide). Mark Anfinson's research into how Media Coordinators function in Wisconsin and Iowa where Media Coordinators have been widely used, suggests that these coordinators are crucial to efficient and effective interaction between the courts and the electronic media.

Who and what will be assessed?

Our research plan is to administer a brief (5-10 minute) survey to judges and attorneys at the time of assignment and to survey (also on an anonymous, confidential, and non-discoverable basis) all participating judges, attorneys, jurors, witnesses, and litigants via a web-based survey upon conclusion of all cases that go to trial in both the *camera-coverage* and *no-camera coverage* conditions.[8] Upon conclusion of a trial, all participants will be given a case ID number

[8] Should the Advisory Committee recommend implementation of our pilot program and study proposal to the Supreme Court, and should the Supreme Court concur, then our Working Group will immediately submit our research plan to the University's Institutional Review Board (IRB) for expedited review and approval of research involving human participants. If so approved, then a consent provision will be

that will enable them to log on to a secure website hosted at the University of Minnesota. An on-line menu will then guide each participant to the survey designed for their group category (e.g., judges will complete a survey with customized questions for judges in addition to core questions common to all of the surveys while attorneys, jurors, witnesses, and litigants also will complete surveys that are in part customized to assess their experience along with core questions common to all the surveys).

Figures 1 and 2 present an overview of our data collection from the pre-pilot period to the post-pilot period. Figure 1 summarizes the portion of the pilot study devoted to the immediate effects of camera coverage on court proceedings and on participants in the proceedings. The specifics of our measurement of state-wide case rates and prototypes for our various surveys before, during, and after the pilot program will be developed should the Court green light the pilot program after public comment and a public hearing on the pilot proposal, and once funding has been obtained to support research staff time and effort to accomplish this task. Our general goal is to develop web-based survey instruments that will take no longer than 20 minutes to complete. As with past research on electronic media coverage, however, it should be assumed that we will assess, among other measures, perceptions of attorney performance, judicial behavior, overall impressions of the trial, exposure to televised shows like *CSI* and *Law and Order*, attitudes toward electronic media coverage (including perceived effects of coverage for participants in no-camera control trials), and beliefs and perceptions about trust and confidence in the judicial system. Surveys will be developed and vetted by our research group with input from the Advisory Committee and media petitioners. All qualitative and quantitative data analyses will be conducted by our research group, led by Professors Borgida and Federico (who are both experienced in quantitative social science investigations).

As we discussed earlier, our intent is to examine the impact of cameras on proceedings and participants in both camera-coverage and no-camera coverage cases. We also intend to collect data pertinent to assessing the potentially "chilling" impact of camera coverage on victim and witness participation rates and experiences. With regard to the impact of camera coverage on victims and witnesses, we propose to collect three types of data pertinent to an assessment of the so-called "chilling effect" of camera coverage: (1) we will survey all witnesses and litigants in both camera-coverage and no-camera coverage cases about their experiences as litigants and witnesses before, during, and after the trial, including their willingness to participate in the judicial system in the future; (2) we will ask all participating attorneys on their surveys about their perceptions of the experience of witnesses and litigants, and especially assess the difficulties associated with contacting witnesses and the difficulties experienced by their clients and witnesses before, during, and after trial; and (3) we will work with victim/witness programs prior to and following all trials to determine the total number of witnesses on a case witness list

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included at the outset of the web-based survey for all participants. Initiation of the pilot program study, along with applications to the National Science Foundation and National Institutes of Justice, will depend upon IRB approval which we do not anticipate will be problematic.

and the number who ultimately end up participating at trial. This will require much more collaborative work between our research group and various victim/witness programs, but preliminary conversations about the viability of developing a measure of witness attrition (pre vs. post trial) suggests that such a measure could be constructed or imported into an electronic data base. As we discussed during the Advisory Committee meetings, we intend to measure "chilling effects" of camera coverage. Are victims less likely to step forward? What is the impact of coverage on witnesses' willingness to testify (i.e., how many drop out after cases are filed)? How aware are victims and witnesses of the pilot program before being informed of it? Does the possibility of camera coverage make victim-witness advocacy more difficult? If so, how? Are there actually new hurdles? Does an advocate's level of concern about coverage predict drop-out rate and victim reticence? Do the demographics of those seeking help (or who are willing to step forward) change?

We also intend to collect data with the potential to contribute insights into the effects of camera coverage on perceptions of trust and confidence in the state's judicial system among minority and majority participants in the study. Figure 2 summarizes the portion of the pilot study devoted to the extended effects of camera coverage. With regard to concerns about racial bias and media coverage, our primary pilot program design is focused on the impact of camera coverage on courtroom proceedings and on the participants themselves, and does not include a direct examination of the extended effects of media coverage on communities of color. There is no question, as far as we are concerned, that these so-called "extended effects" of media coverage on communities of color are important to investigate carefully and empirically. Our proposed pilot program and study will enable us to generate some data that is unquestionably pertinent to these concerns. First, we will obtain perceptions of trust and confidence in, and satisfaction with, the administration of justice in Minnesota courts from all participants. In addition, we will collect measures of future willingness to participate in judicial proceedings, crime reporting, fear of crime, and perceptions of social justice and fairness from all participants. We will then be able to compare the response patterns on these measures between those participants in camera-covered trials with those who participated in no-camera coverage trials, and draw some conclusions about the impact of camera coverage in this context (e.g., does experience with camera coverage attenuate or exacerbate beliefs about the likelihood that social justice is achieved in Minnesota courts?).

A second source of data on racial bias and media coverage is more descriptive and will be based on our ability during the pilot program time period to track those cases randomly assigned to camera coverage that are of interest to the media and those cases not assigned in our study to either condition that the media nevertheless petitions to cover. In other words, we will know which cases with pool coverage (or outside of pool coverage) end up being covered by the media, and, at the urging of the Advisory Committee, we will design and conduct a quantitative and qualitative content analysis of media coverage for that sample of cases. While we suspect that this will be a very small sample of cases during the pilot program time frame, and therefore

not determinative of bias or fairness claims, a content analysis of how the media cover even these cases ought to provide some insights into what images and storylines the media projects to the public. Such a study would address questions like: What types of cases do news agencies choose to cover? What features of the cases are emphasized in news coverage? How are video images used to enhance or support news stories? Does the coverage of cases that include video coverage differ systematically from the coverage of cases that do not include video? Does video content vary substantively by medium (e.g., TV versus the internet)? Figure 2 captures this approach and these questions in Phase 1 of our extended effects research plan. Phase II will involve the development of post-case coverage real-time assessment of viewers' beliefs and attitudes about the story lines they perceive in the covered cases. We intend to survey random samples of viewers in selected judicial districts where case coverage has been documented. News viewers who opt in to the study will be surveyed about the news stories that they view at multiple points in time after each broadcast. Questions to be answered in this Phase include: Does camera coverage have an effect on public perception of justice, decorum, or equality in the judicial system? Does camera coverage influence the public's perceptions of certain groups of people in society? Does camera coverage have an effect on public interest or participation in the judicial system (e.g., judicial elections, jury participation)? Phase III of our extended effects plan will be to develop experimental investigations using actual news broadcast footage as stimulus materials. Such studies would involve one group of participants who view the original broadcast with video trial images, one control group that watches the identical broadcast but with the video trial images deleted, and another control group that reads the same information but in a newspaper or web-based format. Such studies, to be developed in greater detail if and when the pilot project is approved, will provide stronger causal inferences about the effects of video coverage on perceptions of fairness in the judicial system. This method will also allow us to measure the longitudinal effects of camera coverage, namely, whether or not the effects of being exposed to these news stories persist over time.

Revised budget

There are two key assumptions associated with our revised budget. First, the *funding of this pilot project will be expense neutral for the judicial system.* The media, according to media petitioners' attorney Mark Anfinson, remain "committed" to conducting this pilot program research, and committed to contributing to its funding (though no specific level of funding has been agreed upon at this stage). Second, our intention, if this project is ultimately approved by the Supreme Court, is to seek funding support not only from the media petitioners, but also from the University of Minnesota civic engagement initiative and from private law firms in the state. The University of Minnesota is deeply committed to its service and outreach mission to the state of Minnesota, and our Working Group views the current pilot program proposal as consistent with the civic engagement mission of the University. Finally, we will submit components of the proposed pilot program (the 18-month pilot program's randomized field experiment and, independently, the extended media effects component) in the form of grant proposals to the

National Institutes of Justice and to the Law and Social Sciences Program at the National Science Foundation (next target date is Jan. 15, 2011). The Working Group's PI (Borgida) has spoken with Wendy Martinek, Program Director for LSS at the National Science Foundation, and we have been encouraged to submit a proposal to the NSF.

For budgeting purposes, the research planning phase of the pilot program would begin in January 2011. We anticipate that it will take 3 months (January-March 2011) to (a) meet with representatives of the victim-advocate community to discuss the logistics of the proposed research and to incorporate their suggestions; (2) to develop and implement a training and education program about the pilot program and research throughout the Minnesota judicial system (at all levels – judges, clerks, administrators, etc.); (3) to develop and implement the administrative and research infrastructure to support the pilot program (including the purchase of mobile video equipment, the hiring of camera operators, and Media Coordinators in each of the state's judicial districts. Our working assumption is that the pilot program would officially begin on April 1, 2011, *if* officially approved by the Minnesota Supreme Court. The pilot program would be conducted for 18 months (until October 1, 2012).

I ***Research Costs***. We estimate that University-based research staff costs (i.e., research assistance and project leader time, salary plus fringe benefits) costs will be as follows:

Spring 2011:	Salary	Fringe
2 - 50% graduate research assistants:	$13,985 ($17.93/hr.)	$14,370 (health/tuition)
1 - 50% administrative fellow	$6992	$7185
Sub-total: $42,532		

Note: During this period, the graduate research assistants will be focused on fine-tuning the research protocol for the pilot program. They will work with the PI and Co-PI and other University Working Group members to select measurement instruments (for web-based surveys and for hardcopy survey administration) and to develop data collection and administrative procedures. The research assistants also will seek input from the victim-advocate community in the form of administering a survey to advocates to ascertain their concerns about the effects they associate with media coverage, as well as to get their input into the pilot program design. The graduate administrative fellow will be focused on training and education in the judicial system, equipment purchases, working with the media petitioners to identify and hire Media Coordinators, and all other aspects of the administrative infrastructure we need to set up to effectively run the pilot program.

Summer 2011:

PI (3 months)	$56,661	$18,870 (33.3%)
Co-PI (3 months)	$29,973	$9981
2 - 50% grad RAs (3 mos)	$9324	$1572 (health)
1 - 50% admin fellow (3 mos.)	$4662	$786

Sub-total: $131,829

Note: During this time period, the PI and Co-PI will coordinate case sampling and oversee all contacts with the judicial districts. The graduate research assistants will be in charge of data management, and will work with the administrative assistant to coordinate case assignment to camera operators via the Media Coordinators in each judicial district.

2011-2012: (2010-11 base rates + 3% increase = total salary + fringe in brackets)

2 - 50% grad RAs	$27,970	$28,740+ [$58,411]
1 - 50% administrative fellow	$13,985	$14,370+ [$29,206]

Sub-total: $87,617

Note: During this time period, the graduate research assistants, in consultation with the PI and Co-PI, will continue to manage data collection from all cases in all ten judicial districts, and will work with the administrative assistant to coordinate case assignment to camera operators via the Media Coordinators in each judicial district. Planning for the research designs to be used in the extended effects portion of the pilot research will begin during this period, including identification and selection of measures to be used and experimental and non-experimental methods to be implemented.

Summer 2012:

PI (3 months)	$58,361	$19,435 (33.3%)
Co-PI (3 months)	$30,873	$10,281
2 - 50% grad RAs	$9324	$1572 (health) + [$11,223]
1 - 50% administrative fellow	$4662	$786+ [$5611]

Sub-total: $135,784

Note: During this time period, the graduate research assistants, in consultation with the PI and Co-PI, will continue to manage data collection from all cases in all ten judicial districts, and will

work with the administrative assistant to coordinate case assignment to camera operators via the Media Coordinators in each judicial district. If all goes well, data collection will be completed by the end of September 2012, though we are prepared to continue data collection through the end of the 2012 calendar year.

2012-2013: (2011-12 base + 3% increase to total salary + fringe in brackets)

2 - 50% grad RAs	$27,970	$28,740 + [$60,163]
1 - 50% administrative fellow	$13,985	$14,370 + [$29,231]

Note: From the end of September through December 2012 the graduate research assistants, in consultation with the PI and Co-PI, will complete data collection and data management from all ten judicial districts. If all goes well, data collection will be completed by the end of September 2012, though, as mentioned above, we are prepared to continue data collection through the end of the 2012 calendar year. For the remainder of the 2012-2013 year, our research staff will focus on cleaning and formatting the data files and beginning and completing our data analyses and project final report for the Supreme Court.

Sub-total: $89,394

Total Research Costs: $487,156

II *Trial coverage costs* (special thanks to Mark Anfinson for his input into this section of the revised budget):

A. Camera/equipment operators. In consultation with media in each judicial district, we would identify and hire operators who live within each judicial district. In the larger judicial districts, we may hire two operators. With the assistance of Sarah Welter (Research Analyst in the State Court Administrator's Office, Court Services Division, Research & Evaluation Unit), and Mike Johnson (Senior Legal Counsel, Legal Counsel Division, State Court Administration, Minnesota Judicial Branch), we are budgeting two 10-hour days (i.e., 20 hours) for each case randomly assigned to camera coverage. The data provided to us by Welter and Johnson suggests that major civil and criminal cases average about 2 days (there will be a small number of cases that exceed this average length, but we have no ways of knowing if these cases will be randomly selected or not), and other cases average just under a day and a half.

Our total target sample size will be 1000 cases (500 assigned to camera coverage, 500 assigned to no-camera coverage). For 500 cases in the camera coverage condition, at $400 per case ($20/hour for 2 10-hour days), operator costs will be at least $200,000 for the pilot project. As a

buffer to cover cases that may exceed our per-case estimate, we are including an additional 10% for estimated operator costs.[9]

Sub-total: $220,000.

2. Camera/equipment acquisition costs: Purchase 12 cameras at Best Buy (1K per unit) plus data storage costs (2K). One camera package per judicial district, with two additional units to be used in the larger judicial districts.

Sub-total: $14,000.

3. Media Coordinators: In consultation with media in each judicial district, we would identify and hire one media coordinator in each judicial district, though we may need to retain more than one in the larger judicial districts (for a total of no more than 13 coordinators, state-wide). Mark Anfinson's research into how media coordinators function in Wisconsin and Iowa, where media coordinators have been widely used, suggests that these coordinators are crucial to efficient and

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[9] These trial and pre-trial length estimates are estimates from Sarah Welter based on judicial time in court during the May, 2009 Judicial Weighted Caseload (WCL) time study with cases excluded to match the proposed scope of the pilot project. Eligible cases are grouped into these categories: major criminal; major civil (including probate); and minor criminal and minor civil as there are substantial differences in the average length between the major and minor groups (see Table 1). Welter excluded probate commitment cases (but included other types of probate cases, e.g. trust, guardianship, conservatorship, formal and informal probate), all juvenile cases (both delinquency and child protection) as well as most of the cases that are grouped in the family category for WCL (including child custody and marriage dissolution), paternity proceedings, petitions for orders for protection, proceedings that are not accessible to the public, and sex crimes. Welter was unable to filter out parts of proceedings that involve motions to suppress evidence, police informants, relocated witnesses, trade secrets, and undercover agents, although these may be statistically irrelevant.

In order to estimate the average length of trials and pretrial activity for criminal and civil cases it was necessary to start with data on detailed case categories, e.g. murders, property crimes, gross misdemeanors, etc. For each case category the approximate amount of judicial time spent on the pretrial or trial phase (event time) was multiplied by the number of cases filed in 2009 that had pretrial activity or went to trial (see Table 2 for number of cases filed in 2009). The result of this calculation is an estimate of the total judicial time in each phase for each case category. Since the event time includes time both in and out of the courtroom and only the in-court time was of interest for this analysis, the proportion of time in-court was calculated for each case category. The average for criminal and civil cases was determined by summing the in-court time across case categories and dividing by the number of cases with activities in each phase. Due to differences in the volume and complexity of the cases, sub-totals for major and minor cases within in area were also calculated.

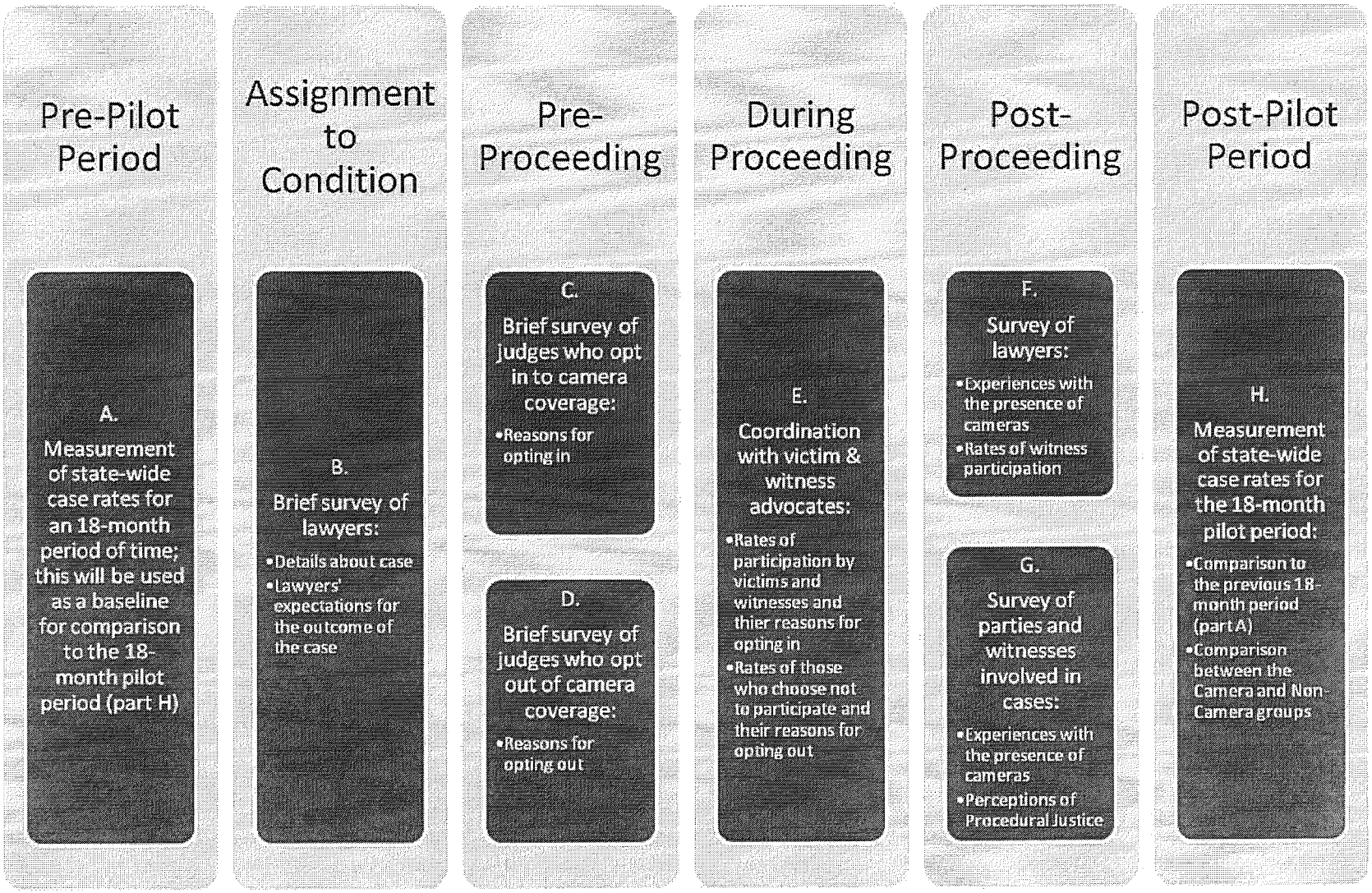
effective interaction between the courts and the electronic media. In virtually all of these instances, the media coordinators (who are typically local working journalists) do not assess any charge for the work they perform. However, to insure commitment to the 18-month pilot program, we propose to offer each media coordinator a $1,000 stipend.

Sub-total cost: $13,000.

Total Trial Coverage Costs: $247,000.

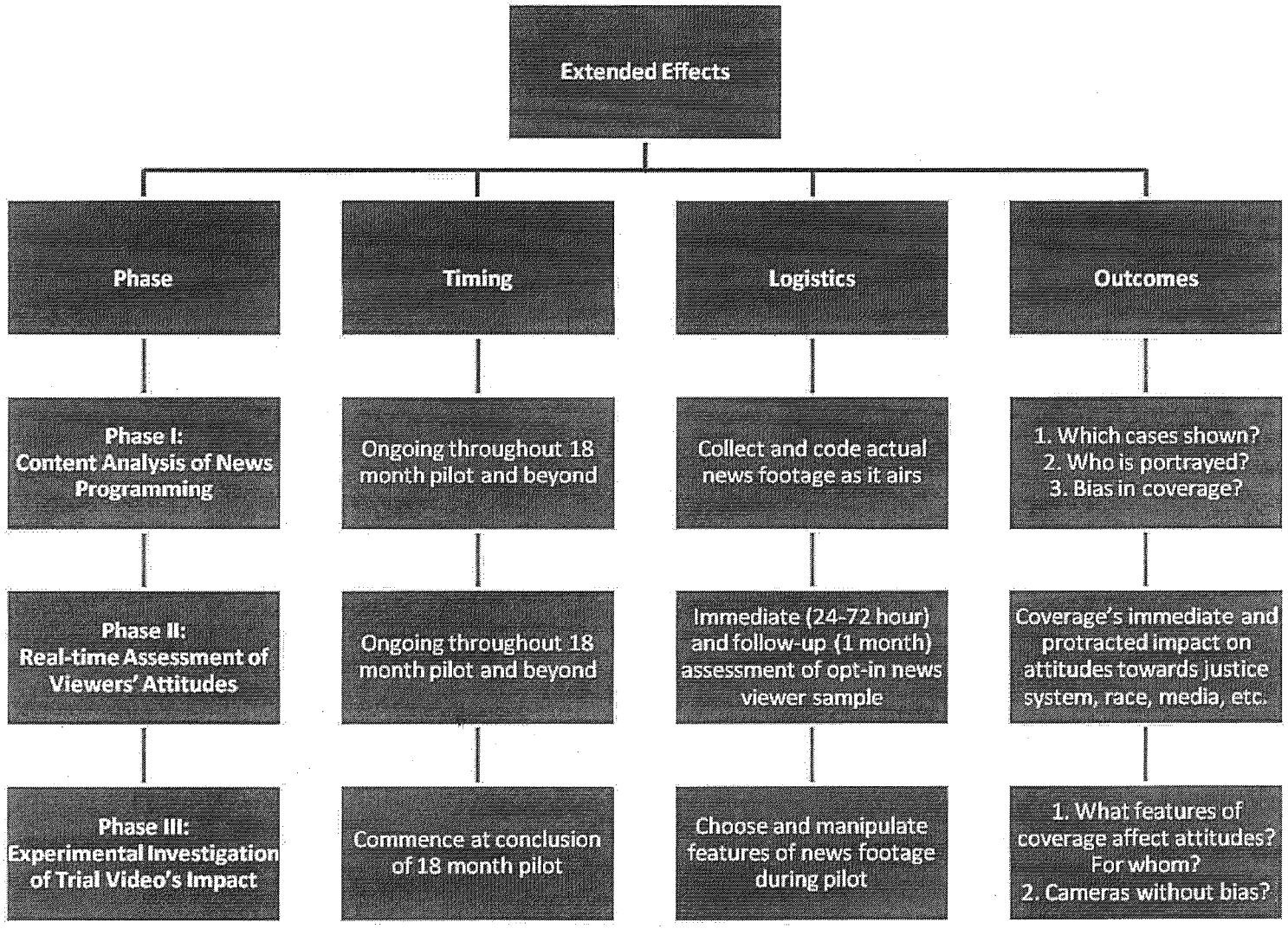
Grand Total: $734,156

Figure 1. Overview of Data Collection: Immediate effects of electronic media coverage on proceedings and participants



ATTACHMENT # 8

Figure 2. Overview of Data Collection: Extended effects of electronic media coverage



ATTACHMENT # 8

Table 1. Estimate of Average Judicial Time In Court

Case Group	Pre-Trial		Trial	
	# Minutes	# Hours	# Minutes	# Hours
Major Criminal	22.7	0.4	814.8	13.6
Minor Criminal	12.1	0.2	38.8	0.6
Total Criminal	**19.5**	**0.3**	**136.0**	**2.3**
Major Civil	21.7	0.4	865.0	14.4
Minor Civil	10.9	0.2	15.4	0.3
Total Civil	**16.1**	**0.3**	**246.3**	**4.1**

Table 2. Cases with Pre-trial and Trial Activities (2009 Estimate)

Case Group	Number of Cases	
	Pre-Trial	Trial
Major Criminal	55319	1299
Minor Criminal	24402	9066
Total Criminal	**79721**	**10365**
Major Civil	20493	1521
Minor Civil	21964	4076
Total Civil	**42457**	**5597**

UNIVERSITY of VIRGINIA
SCHOOL OF LAW

John Monahan, Ph.D.

JOHN S. SHANNON DISTINGUISHED PROFESSOR OF LAW
PROFESSOR OF PSYCHOLOGY
PROFESSOR OF PSYCHIATRY AND NEUROBEHAVIORAL SCIENCES

ADM09-8009

November 29, 2010

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: Comments in Support of the Majority Recommendation of the Supreme Court Advisory Committee on the General Rules of Practice

In Order ADM09-8009 of November 19, 2010, the Minnesota Supreme Court solicited comments on a proposed pilot project to allow more extensive televised broadcasts of District Court proceedings. I write in support of the majority recommendation of the Advisory Committee that a formal research study, rather than informal surveys, be undertaken.

My specific interest in the issue of cameras in the courtroom derives from my broader commitment to improving the use of empirical research in legal decision making. I am the co-author of the law school casebook, *Social Science in Law,* now in its 7th edition.

I have carefully read the proposal by Professor Eugene Borgida of the University of Minnesota. It is a model of conceptual clarity and methodological sophistication. Like the majority of the Advisory Committee, I believe that "this extensive study is necessary to make scientifically valid conclusions" (Report, p. 7) about the important empirical issues in dispute. At the conclusion of this research, the Court would have the answers it seeks to questions about "the impacts of cameras on the proceedings and on the participants before, during, and after the proceedings" (Order, p. 1).

The recommendation of the minority of the Advisory Committee in favor of informal surveys is accurately characterized as "the collection of mere anecdotal information that would not effectively address the Court's concerns" (Report, p. 7). Were this minority recommendation adopted, the Court would be in much the same position at the conclusion of the research as it now finds itself: without adequate answers to empirical questions about the impacts of more extensive televised broadcasts of District Court proceedings.

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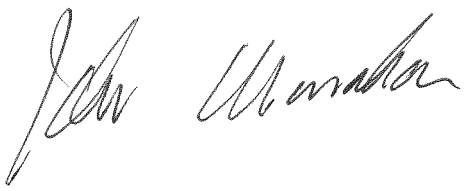
Professor Borgida, the Principal Investigator of the University of Minnesota Working Group on Cameras in the Courtroom, is one of the leading researchers of law and social science in the United States. The study that he and his colleagues propose could have an enormous impact on the issues of cameras in the courtroom throughout the country. Because of this national significance, I believe that the chances of the proposed research being funded by the National Science Foundation or the National Institute of Justice are excellent.



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ADM09-8009

12/1/10

Frederick Grittner
Clerk of the Appellate Courts
25 Reverend Martin Luther King Jr. Blvd.
St. Paul, MN 55155

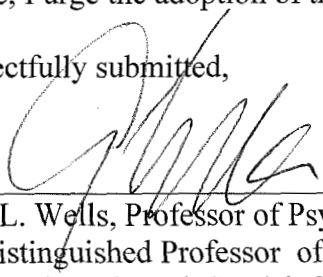
Dear Mr. Grittner:
I have followed with interest the proposed pilot research project on cameras in Minnesota district courtrooms. This has great potential for national coverage and national impact. Unfortunately, the idea (Plan B?) of simply surveying litigants and attorneys in a small sample of cases is something that will guarantee little or no scientific value, no visibility, and no impact. Doing this right requires a much larger sample of cases, random assignment in a true experimental design (the gold standard of scientific methods), and a full set of dependent measures of the type that Professor Borgida has described.

The key here is to do a truly scientific study in which the scientists design the experiment and analyze the data. I have no investment in this issue one way or another. Although I am the country's leading expert on eyewitness identification issues, I have never tqaken a position or conducted a study on cameras in the courtroom But, I have seen firsthand the problems that come into play when the designs proposed by highly capable social scientists are scaled down or modified in ways that fall short or violate scientific standards. This happened in Chicago, for instance, when the Chicago Police Department conducted a flawed study of eyewitness identification, ignoring the advice of social scientists regarding the need for random assignment and proper comparisons to control conditions. This resulted in faulty conclusions, a failure to answer the important questions, and considerable confusion that could only be sorted out later with a proper study.

In this case, I am not suggesting that the conclusions would be flawed using Plan B. By chance, it might reach the right conclusion; we cannot know what it will show. Instead, I am suggesting that Plan B is not a scientific study and, hence, not only misses a great opportunity but also fails to actually answer the questions in any definitive manner. Regardless of what the findings are, other parts of the country will not rely on "data" from Plan B. The plan described by Professor Borgida, in contrast, is extremely sound science and would be the leading study on the subject and would actually answer the critical questions. Of course it is more costly … good science always is. But Plan B is not really worth doing and could be misleading because it relies on subjective impressions, a limited dample of cases, and no proper comparison groups.

Hence, I urge the adoption of the full scale plan as described by Professor Borgida.

Respectfully submitted,



Gary L. Wells, Professor of Psychology
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FACULTY OF SOCIAL SCIENCE AND HUMANITIES

ADM09-8009

November 30, 2010

Mr. Frederick K. Grittner, Clerk of the Appellate Courts
25 Rv. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155
USA

Dear Mr. Grittner and Members of the Supreme Court Advisory Committee:

With interest I read through the Committee's follow-up report concerning the Court's February 11, 2009, Order on Cameras in the Courtroom. As a psychology-law researcher of 25+ years, editor of the scholarly journal *Law and Human Behavior* (the journal of the American Psychology-Law Society, Division 41 of the American Psychological Association), and President-Elect of the American Psychology-Law Society, I strongly support the experiment proposed by the University of Minnesota's team and endorsed by your committee. The proposed 18-month experiment with random assignment of criminal and civil trials to camera and no-camera conditions and extensive pre- and post-testing of key parties would meet the objective of assessing the impact of cameras on court proceedings before, during, and after the actual court events as well as the extended effects of camera coverage. The proposed research would represent an excellent example of an evidence-based approach to legal policy and the adoption of legal innovations. The results of the study would be of great interest to the broader scientific community and would have practice and policy implications for other courts wrestling with issues of cameras in the courtrooms. The proposed research uses best-practices in social psychological and psycho-legal research and meets high scientific standards.

By comparison, the alternative research plan of conducting informal surveys of participants in proceedings in which members of the media have requested coverage has significant limitations. The limitations include the lack of a no-camera comparison group and the reliance on potentially invalid self-reports of factors affecting behavior and decisions. The lack of random selection and assignment are also serious limitations of the alternative research plan. In the absence of random selection, we would not know the extent to which reactions to the cases selected are representative of reactions to cases in general. In the absence of random assignment of cases to conditions, we would not know the extent to which reported reaction to cameras in the courtroom are a product of the media coverage or a product the characteristics of the cases in which media coverage was requested. More generally, the research design of the alternative approach does not meet a high scientific standard, and conclusions drawn from the study will likely be tentative at best.

Thank you for considering these comments. I hope you find them useful. I wish you success in addressing this important problem.

Respectfully,

Brian L. Cutler

Brian L. Cutler, Ph.D.
Editor, Law and Human Behavior
President-Elect, American Psychology-Law Society

District Court of Minnesota
SEVENTH JUDICIAL DISTRICT

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ADM09-8009

December 3, 2010

The Honorable Chief Justice and Justices of the Supreme Court
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: File No. CX-89-1863 "Cameras in the Courtroom"

May it please the Court:

I am a member of the Supreme Court Advisory Committee on the General Rules of Practice, whose Report is under consideration. I authored the Minority Report which the Court endorsed by its Order filed February 12, 2009, and I was in the minority referenced in the Report now under consideration.

I commend to the Court's consideration the editorial published in 93 *Judicature* No. 4 (January-February 2010), entitled "Cameras in our federal courts – the time has come". A complete copy of that editorial is submitted herewith.

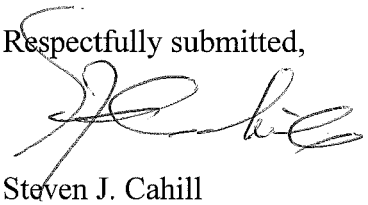
Particularly pertinent to the concerns expressed by the Committee's majority is the following passage from that editorial regarding the Florida experience:

> In response to a petition filed by a group of television stations in 1977, the Florida Supreme Court authorized a one-year pilot program in selected trial courts, during which the electronic media would be permitted to cover proceedings, subject to standards of conduct and technology adopted by the court. Following the conclusion of the pilot program, two surveys were conducted—one directed to jurors, witnesses, attorneys, and court personnel who had participated, and the other to participating judges. The results satisfied the court that most of the concerns now raised by the federal courts were, in fact, unfounded. While it acknowledged that the presence of cameras might

conceivably prove problematic in certain cases, the court concluded that the potential problems could be averted by a carefully crafted procedural rule.

I submit that, as in Florida, a pilot project followed by surveys of the participants in trials covered by electronic media will adequately address the concerns of the majority without expending hundreds of thousands of dollars on a study whose conclusions may be no more helpful than post-trial surveys.

Respectfully submitted,



Steven J. Cahill

Editorial, *Judicature*, Vol.93, No. 4 (January-February 2010):

Cameras in our federal courts—the time has come

Summary

In today's world, where television and the internet occupy such central places in peoples' lives, the most effective means of affording public access is by permitting cameras in our courtrooms.
Posted: 2/21/2010

January/February 2010

The debate regarding cameras in the federal courts is again in the news. The Ninth Circuit Judicial Council recently issued a news release stating that it "ha[d] approved, on an experimental basis, the limited use of cameras in federal district courts within the circuit." The vote was unanimous. Days later, a coalition of media companies requested permission from Chief Judge Vaughn Walker of the United States District Court for the Northern District of California to televise the non-jury trial of the action challenging the constitutionality of Proposition 8, which had amended California's constitution to ban same-sex marriages. Chief Judge Walker subsequently announced that a live audio and video feed of the trial would be streamed to several federal courthouses, and that the trial would also be taped and, upon approval by Chief Judge Alex Kozinski of the Ninth Circuit, broadcast over the internet. Chief Judge Kozinski approved the decision to allow real-time streaming of the trial to the specified federal courthouses, but did not act on the request to broadcast the trial on the internet because of unexpected technical difficulties.

The same day that Chief Judge Kozinski approved the live streaming, Third Circuit Chief Judge Anthony Scirica, who also chairs the Executive Committee of the Judicial Conference of the United States, and James Duff, Secretary of the Conference, wrote to Chief Judge Kozinski asking that he consider the Conference's policy against broadcast of any federal trial court proceeding. Chief Judge Kozinski responded that the pilot program had been approved after considerable research and deliberation. He also noted that technology and public attitudes had changed significantly since adoption by the Conference of the policy against broadcasts; that the public now demands much more transparency from its public institutions; and that, if the courts did not adopt a policy permitting some broadcasts, Congress would step in and do so.

At the same time, proponents of the same-sex marriage ban filed in the United States Supreme Court an application requesting that the Court stay the district court's order pending resolution of their soon-to-be-filed petitions seeking writs of certiorari and mandamus. Four days later the Supreme Court issued a per curiam opinion granting the application for a stay because it appeared that neither the district court nor the Ninth Circuit had "follow[ed] the appropriate procedures set forth in federal law before changing their rules to allow . . . broadcasting."

Although many federal judges support cameras, the federal courts have long had a policy prohibiting broadcast of their proceedings. Electronic media coverage of criminal proceedings has been expressly prohibited since the adoption of Federal Rule of Criminal Procedure 53 in 1946. In 1994, following a three-year pilot program that tested the efficacy of electronic media coverage in selected district and circuit courts, the Judicial Conference's Court Administration and Case Management Committee recommended that the Conference authorize the photographing, recording, and broadcasting of civil proceedings in trial and appellate courts. However, the Conference concluded that the intimidating effect of cameras on some witnesses and jurors was cause for concern, and declined to approve the recommendation.

In 1996, the Conference urged each circuit council to adopt an order reflecting the Conference's 1994 decision not to permit still photography or radio or television coverage in district courts. It did, however, authorize each court of appeals to decide for itself whether to allow coverage of appellate arguments. To date, only the Second and Ninth Circuits have opted to allow cameras in their courtrooms.

The position of the Judicial Conference is based upon its conclusion that cameras in district court proceedings have the potential to undermine the right of citizens to a fair trial. There is also concern that allowing cameras could jeopardize court security generally, as well as the safety of trial participants; intimidate witnesses and jurors; infringe

on privacy rights of participants in the proceedings; and cause participants to "play to the cameras." Finally, there is concern that camera coverage might be used as a negotiating tactic in pretrial settlement discussions, to discourage litigants from exercising their right to a trial.

The attitudes of the states regarding cameras in the courts stand in sharp contrast to that of the federal courts. While the degree of access covers a broad spectrum across the states, all 50 permit cameras and microphones in their courtrooms in some circumstances. Florida, which allows broad access, is worthy of further examination.

In response to a petition filed by a group of television stations in 1977, the Florida Supreme Court authorized a one-year pilot program in selected trial courts, during which the electronic media would be permitted to cover proceedings, subject to standards of conduct and technology adopted by the court. Following the conclusion of the pilot program, two surveys were conducted—one directed to jurors, witnesses, attorneys, and court personnel who had participated, and the other to participating judges. The results satisfied the court that most of the concerns now raised by the federal courts were, in fact, unfounded. While it acknowledged that the presence of cameras might conceivably prove problematic in certain cases, the court concluded that the potential problems could be averted by a carefully crafted procedural rule.

Noting that courts have a "significant effect on the day-to-day lives of the citizenry," the court found it "essential that the populace have confidence in the process, for public acceptance of judicial judgments and decisions is manifestly necessary to their observance," and that "public understanding of the judicial system, as opposed to suspicion, is imperative." The court concluded that, "on balance[,] there is more to be gained than lost by permitting electronic media coverage of judicial proceedings subject to standards for such coverage."

In the 30 years since that decision, cameras have become commonplace in Florida's trial and appellate courts. The presumption is in favor of allowing coverage in all types of cases. Cameras are now routinely installed in such a way as to make them inconspicuous, and most participants are not even aware of their presence. Florida has not experienced any of the problems that concern the critics, notwithstanding its share of high-profile cases, and the presence of cameras in Florida's courts allowed the world to view in real time the proceedings in the 2000 election cases. Florida has managed to accommodate both the rights of litigants and the rights of the public to see how the process works. And Florida is not alone.

The power and authority of the judiciary depend on public respect and support. Respect and support cannot reasonably be expected absent public understanding of, and involvement in, the process; and understanding of, and involvement in, the process cannot reasonably be expected without access. In today's world, where television and the internet occupy such central places in peoples' lives, the most effective means of affording public access is by permitting cameras in our courtrooms.

By making proceedings available for gavel-to-gavel broadcast on television or over the internet, we can educate the public about what actually goes on in our courts. We can let them see for themselves that, in fact, cases are routinely decided fairly and impartially, in accordance with the rule of law—that decisions are reached based on the facts and the applicable law, without regard to outside influences. Allowing such access can also improve the justice system. In a democracy, public institutions thrive when exposed to the sunshine. Such exposure assists in identifying and improving deficiencies and, thereby, in becoming even better.

The time has come for our federal courts to accept cameras. Some of the concerns expressed by the Judicial Conference may be valid, but that does not compel denial of access altogether. As in Florida and other states, procedural rules can be developed to address the legitimate concerns. Pilot programs can be developed to test whether the concerns can be adequately addressed. Failure to act will almost surely lead to the result predicted by Chief Judge Kozinski-Congress will step in with legislation mandating such access. (In fact, bills have been approved by both the House and Senate Judiciary Committees in recent years.) Such a mandate would be undesirable both because it would deprive the courts, as the group best qualified to devise such a plan, of the opportunity to do so, and it would cause an unnecessary confrontation between two coordinate branches of government over the scope of the separation of powers.

Overlying the issue of cameras in federal courtrooms is the dispute between Congress and the Supreme Court over televising Supreme Court hearings. This is an important, but separate, issue. The trial courts should not be a hostage in this debate.

We urge the federal judiciary to act on this important issue.

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ADM09-8009

WATCH

December 14, 2010

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: Comments in Support of the Majority Recommendation of the Supreme Court Advisory Committee on the General Rules of Practice

Dear Mr. Grittner and Members of the Supreme Court Advisory Committee:

Please consider this letter WATCH's support of the University of Minnesota pilot project to study the impact of cameras in Minnesota's district courtrooms. WATCH is a court monitoring and research organization focused on cases of violence against women and children and has weighed in on this issue because we believe in transparency of the justice system. Of equal importance is the protection of defendants, victims/witnesses, and jurors. Our comments to the Advisory Committee in 2007 supported a research study to determine the impact of cameras on Minnesota's courts.

The proposed study as designed by Gene Borgida of the University of Minnesota with input from the interdisciplinary advisory committee encompasses the elements necessary to understand the impact of cameras before, during and after courtroom proceedings. I am especially pleased that the proposal includes notification to victim/witness professionals regarding which cases are chosen at random to have cameras present. It allows for discussion between victims/witnesses and system professionals that will provide invaluable information on how the justice system is perceived and how the use of cameras could impact victim and witness involvement in court proceedings.

In contrast, the scaled-down, survey-based research proposal would not provide the depth of information and would likely continue to leave Minnesota's courts in a quandary about whether to change the General Rules of Practice. The University of Minnesota research will provide the answers needed to clearly decide what sort of rule changes may be warranted. It is extremely important that our state courts take the time and expense to conduct this study. Currently there is not adequate research to determine the effect of cameras in the courtroom and Minnesota taking on such an inclusive research project would add significantly to the body of knowledge locally and nationally.

Thank you for the opportunity to submit these comments.

Sincerely,

Marna Anderson

Marna Anderson
Executive Director

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Tom R. Tyler
University Professor of Psychology/Law

ADM09-8009

12/14/2010

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, Minnesota 55155

Comments on proposed pilot project to allow more extensive televised broadcast of District Court Proceedings.

Dear Sirs:

The Courts of Minnesota have a unique opportunity to contribute to our understanding of the impact of cameras in the courtroom. However, doing so requires an effective research design. The proposal of Professor Borgida utilizes what is currently considered to be the most valid research design for establishing the impact of a court procedure. That procedure involves random assignment to treatments. In this case cases would be randomly assigned to the camera vs. no-camera conditions. The value of such a procedure is that the cases chosen for each condition would not differ systematically from one another and as a consequence the influence of cameras could be most validly evaluated.

The proposal to use informal surveys of participants in proceedings where the media asked for camera coverage does not allow the influence of cameras to be compared to cases in which there is no camera present. Hence, it will not be possible to determine whether cameras changed anything. Research makes clear that participants in legal proceedings are not able to accurately determine whether and how proceedings have changed when they do not know how the procedures would have been enacted if cameras were not present. Those involved in a proceeding are not in a position to provide valid information about how some aspect of that proceeding, such as a camera, altered or did not alter what happened. It is for exactly this reason that randomized field trials are the preferred method for such studies.

The proposed alternative design will not address the impact of cameras in a valid and scientific way. It will not provide the information requested by the Chief Justice. Hence, I am writing in strong support of the proposal of Professor Borgida. If the Courts wish to conduct a study that provides the clearest and most scientific possible information about the impact of cameras on trials the proposal of Professor Borgida should be accepted.

Sincerely,

Tom Tyler
University Professor
Psychology/Law

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ADM09-8009

David L. Faigman
John F. Digardi Distinguished Professor of Law
Director, UCSF/UC Hastings Consortium on Law, Science & Health Policy
Professor, UCSF School of Medicine, Department of Psychiatry

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: Comments in Support of the Majority Recommendation of the Supreme Court Advisory Committee on the General Rules of Practice

On November 19, 2010, the Minnesota Supreme Court solicited comments on a proposed pilot project to investigate the effects of extensive televised broadcasts of District Court proceedings. I write in support of the majority recommendation of the Advisory Committee that a formal research study, rather than informal surveys, be undertaken.

Since my career began more than twenty-five years ago, I have been primarily interested in how the courts use empirical information in their day to day decision making. In addition to my scholarship on this subject – ranging from forensic science to constitutional cases – I have taught scientific methods to both law students and judges. In many respects, the choice presented here between the quasi-experimental design recommended by the Committee's majority and the anecdotal survey design alternatively proposed by a minority of the Committee, is emblematic of the challenges presented at the intersection of law and science. In short, the procedural and substantive demands endemic in ensuring fair legal process create practical obstacles to the use of scientific research designs that would be the most illuminating. Ultimately, this fundamental challenge requires reasonable compromise, so that researchers can employ methods most likely to lead to new discoveries, but without trampling on basic legal values or imposing excessive cost. After having carefully read both the Committee's recommendation and the Revised Proposal, I believe that the research design proposed by Professor Borgida elegantly strikes this balance.

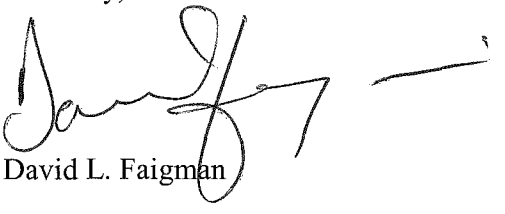
Of course, in all areas involving applied science, research designs must take into account both the ethical limits associated with the subject and the costs of doing the research. This is just as true in basic clinical research involving new drugs or social science research involving the effects of trauma, as it should be regarding research directed, as the Minnesota Court stated, on the "'effective mechanisms for measuring the impact of cameras on the proceedings and on the participants before, during and after the proceedings.'" Feb. 11, 2009, Order ¶ 6(b) (quoted in Final Report, Supreme Court Advisory Committee on General Rules of Practice, at 1). As proposed by Professor Borgida, the quasi-experimental design maximizes the amount of information that might be learned regarding cameras in the courtroom, without treading unnecessarily on basic legal values or concerns. Moreover, the proposed budget for the study appears eminently reasonable.

In comparison, the Committee's minority proposal to use a cost-effective alternative anecdotal research design is unlikely to advance the state of knowledge appreciably. Beyond providing a few insights and, possibly a good number of "sound-bites," the survey design proposed by the minority has little to recommend it beyond its economical cost. But paying little and getting nothing is not a bargain.

Finally, I might note that thirty years ago, when I was in graduate school in psychology at the University of Virginia, I cut my empirical teeth on the research and writings of Paul Meehl, a University of Minnesota researcher and one of the best ever to ply the trade. Over the years, the University has been renowned for its path breaking work in psychology more generally, with the Minnesota Twin Study being, perhaps, the most prominent. Minnesota was, and continues to be, a leader in applied empirical research. The proposed research recommended by the Committee fits within this great tradition.

It is with great pleasure, therefore, that I write in support of the majority recommendation of the Advisory Committee that a formal research study be undertaken.

Sincerely,



David L. Faigman

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JOHN JAY COLLEGE
THE CITY UNIVERSITY OF NEW YORK
OF CRIMINAL JUSTICE

PROFESSOR
DEPARTMENT OF PSYCHOLOGY

Saul M. Kassin, PHD

December 15, 2010

ADM09-8009

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

Dear Mr. Grittner:

I am a distinguished professor of psychology and have spent more than thirty years studying various aspects of human behavior in legal and forensic settings. The reason I am writing this letter is to express my support for the University of Minnesota proposal to study cameras in the courtroom that is currently under consideration by the Supreme Court Advisory Committee on the General Rules of Practice.

I read the Minnesota Supreme Court's November 19, 2009 directive for establishing a pilot project for "measuring the impact of cameras on the proceedings and on the participants before, during, and after the proceedings." I also read Professor Borgida's August 13 2010 proposal to the Advisory Committee as well the Committee's October 29, 2010 Final Report, which included majority and minority recommendations.

The University of Minnesota proposal is for a fully randomized field experiment, informed by prior research an consideration of generally accepted scientific methods, in which self report data are collected from a range of relevant participants, at various times, in both camera-coverage and no-camera coverage conditions. For the purpose of fulfilling the Supreme Court's impact measurement objectives, this approach for assessing immediate and delayed effects is sound and sophisticated.

In contrast, I have serious reservations about the alternative "minority" proposal for informal surveys in proceedings where the media asked for camera coverage. In my opinion, there are three aspects of this alternative that would make it impossible to fulfill the Supreme Court's objective to measure impacts.

The first limitation concerns the restriction of data collection to a non-random, self-selected sample of cases in which camera coverage was requested by the media. Precisely because these cases will represent a special sample, the results cannot be generalized more broadly to a representation of state cases.

The second problem concerns the absence of a comparison group by which to understand the data collected in this special target sample. If communicated satisfaction levels seem low, medium, or high, for example, would that result necessarily reflect on the presence of cameras, on this unique sample of cases, or on satisfaction levels in general across all state courts?

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Third, the use of "informal surveys" suggests that the methods used will not standardized over time or across participants, that some participant groups may be over-sampled relative to other groups, and that the data set will ultimately consist of a mere collection of impressions, anecdotes and war stories--not an assessment of actual impact.

I recently confronted similar issues in research for which I have received funding from the National Science Foundation. To assess the effects of cameras in the interrogation room on the behavior of actual suspects (e.g., the tendency to waive Miranda rights, endure lengthy interrogations, and make admissions), I will be working with the Denver Police Department on an experiment in which we will randomly assign suspects to be informed or not informed that the sessions are being covertly recorded. We could have chosen to handpick a narrow band of cases and interview a nonrandom sample of detectives and suspects concerning their impressions with the procedure. But these data would not answer the target question concerning the actual impact of recording on the behavior and decision of suspects.

It is not always possible to import the scientific method into a high stakes field setting. In this instance, to address the Supreme Court's directive to measure the impact of cameras in the courtroom, the University of Minnesota proposal makes it possible and does so in a way that will produce data that are clear, informative, and valuable.

I would urge your support for the University of Minnesota proposal and thank you for considering the opinions I have expressed in this letter. If you have questions, I would be happy to make myself available for answers.

Sincerely,

Saul Kassin
Distinguished Professor

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December 13, 2010

AD M09809

Frederick K. Grittner
Clerk of the Appellate Courts
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St Paul, MN 55155

To the Clerk of the Court of Appeals:

In my capacity as Dean of the University of Minnesota Law School, I am pleased to write a letter pursuant to the November 19, 2010 Order of the Supreme Court, encouraging and soliciting comments to the October 29, 2010 Final Report of the Minnesota Supreme Court Advisory Committee on General Rules of Practice. Specifically, I wish to express my support for the proposal submitted by Professor Eugene Borgida, as Principal Investigator. The proposal involves a pilot program and research protocol to study the use of cameras in Minnesota district courtrooms.

Professor Borgida is exceptionally well qualified to carry out the pilot program and research study he has proposed. He is a Morse Alumni Distinguished Teaching Professor of Psychology at the University of Minnesota. He has served as Chair of the Psychology Department, Associate Dean of the College of Liberal Arts, and Fesler-Lampert Chair in Urban and Regional Affairs. He has an affiliate faculty appointment with the Law School and is a valued member of our inter-disciplinary faculty, collaborating with Law School faculty over a number of years in both research and teaching endeavors. Professor Borgida's research has been funded by NIMH, NIH, NSF, and the Pew Charitable Trusts. He received the Distinguished Teacher Award from the College of Liberal Arts and the system-wide Morse-Alumni Award for Outstanding Contributions to Undergraduate Education in 1989. With L. Rudman, Professor Borgida won the 1994 Gordon Allport Intergroup Relations Prize, and in 1989, he and colleagues J.L. Sullivan and J. Aldrich won the Heinz Eulau Award for the best paper published in the American Political Science Review. He has served on the Board of Directors for the Association of Psychological Science (APS) and the Social Science Research Council (SSRC). Professor Borgida's research interests include social cognition, attitudes and persuasion, psychology and law, and political psychology.

As nationally recognized scholars and professionals, Professor Borgida and his research group are exceptionally well situated to lead the proposed pilot program and research study. Moreover, their proposal presents an important opportunity to undertake research and assessment of fundamental questions about the effects of transparency and accountability on the administration of justice in the courtrooms, as well as on public beliefs about and attitudes towards the Courts based on public perceptions of media-covered cases. This research could prove to be of great importance, since it offers a unique opportunity for a scientifically valid investigation of the impact of cameras in court.

Professor Borgida has an outstanding scholarly and professional reputation for meticulous research, sound scientific approach to experimental undertakings, and a strong ethical approach to human subject research. The University oversight of such projects is robust and well placed to support the overall conduct of the research. The Advisory Committee in its report was "satisfied that the University of Minnesota research proposal would effectively address the Court's mandate for mechanisms to measure the impact of cameras on court proceedings before, during and after the actual court events."

I hope you will consider Professor Borgida's proposal favorably.

Sincerely

David Wippman
Dean and William S. Pattee Professor of Law

jj

ABF American Bar Foundation
EXPANDING KNOWLEDGE • ADVANCING JUSTICE

Robert L. Nelson
Director and
MacCrate Chair in the Legal Profession

ADM09-8009

December 13, 2010

Mr. Frederick K. Grittner,
Clerk of the Appellate Courts
25 Rv. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155
USA

Dear Mr. Grittner,

We have closely examined the Final Report (October 29, 2010) on the Proposed Pilot Project to Allow More Extensive Televised Broadcast of District Court Proceedings. We write to support the majority recommendations of the Supreme Court Advisory Committee on the General Rules of Practice for the proposed pilot project.

The plan outlined by Professor Eugene Borgida and endorsed by the majority of the committee to conduct an 18-month pilot field experiment is well-designed and based on accepted methodological principles. The proposed design is exactly what is required to provide the court with the information requested on the impact of televised proceedings on victims and witnesses before, during and after proceedings. By randomly assigning cases to "camera" or "no camera" conditions, the experimental design will offer an unambiguous assessment of any impact the cameras may have on trial participants. The post-trial surveys contemplated by the "plan B" design cannot provide evidence that can meet the same objective. In the absence of a comparable control group of cases assigned to a "no camera" condition, it will be impossible to determine what behavior would have occurred in the absence of the cameras.

Professor Borgida is a highly respected and skilled researcher, a sophisticated methodologist, and a scholar familiar with legal practice and the courtroom setting. Based on his impressive research record and well-designed plan for this research on an important topic, we are optimistic that he will be able to obtain funding to support this study.

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Both Shari Diamond and Robert Nelson, the authors of this letter, have worked closely with courts and members of the legal profession in conducting research that has provided empirical evidence to evaluate court innovations. Professor Diamond's recent research on real civil jury deliberations was a unique field experiment in which cameras recorded civil jury deliberations. The State of Arizona Supreme Court supported this project in order to learn about the effects of permitting jurors to discuss evidence during breaks in the trial (Diamond et al. (2003) Jury Discussions During Civil Trials: Studying an Arizona Innovation, 45 *U. of Arizona Law Rev.* 1-81). The project received primary funding from the National Science Foundation and the American Bar Foundation.

Robert Nelson, Director of the American Bar Foundation and Professor of Sociology and Law at Northwestern University, has extensive experience in conducting empirical research on lawyers and the litigation process. He has been the principal investigator on several projects funded by the National Science Foundation and the American Bar Foundation. For the last 7 years he has overseen the research program of the American Bar Foundation, which has an annual research budget of approximately $4M and includes over 30 projects employing various research designs.

In our judgment, the study contemplated by the Borgida proposal would make a substantial contribution by directly addressing the questions of interest to the Minnesota Supreme Court and to courts across the country.

Sincerely yours,

Shari Seidman Diamond, JD, PhD
Howard J. Trienens Professor of Law
and Psychology
Northwestern University

Research Professor
American Bar Foundation

Robert Nelson, JD, PhD
Director and MacCrate
Research Chair
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Professor of Sociology and
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ADM09-8009

December 14, 2007

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: Comments in Support of the Majority Recommendation of the Supreme Court Advisory Committee on the General Rules of Practice

Dear Mr. Grittner and Members of the Supreme Court Advisory Committee:

In Order ADM09-8009 of November 19, 2010, the Minnesota Supreme Court solicited comments on a proposed pilot project to televise District Court proceedings. I support the recommendation of the majority Advisory Committee that the Court undertake a formal research study, rather than simply to conduct an informal survey that would elicit anecdotal evidence. This is an important issue of public policy and justice administration, and the research can inform the Minnesota courts and those around the country.

I have a Ph.D. in sociology as well as my law degree. I have conducted several empirical analyses legislative changes and juvenile justice reforms in Minnesota as well as many other empirical studies. I am familiar with the characteristics of good social science research on legal issues.

I reviewed the proposal by Professor Eugene Borgida, Department of Psychology, University of Minnesota. In all areas of research – e.g. medical research and social science evaluations – randomized and controlled experiments are the "gold standard." Without random assignments and controls, researchers and policy makers have limited bases on which to draw appropriate inferences and conclusions or to reject plausible alternative explanations. Professor Borgida's proposal is a model of social science analysis and methodological sophistication. As the majority of the Advisory Committee observes, "this extensive study is necessary to make scientifically valid conclusions" (Report, p. 7). At the conclusion of this study, the Court would have solid empirical foundation upon which to adopt evidence-based policies about cameras-in-the-courtroom.

The minority of the Advisory Committee apparently favors an informal survey, which the Report accurately characterized as "the collection of mere anecdotal information that would not effectively address the Court's concerns" (Report, p. 7). If the Court adopts the minority recommendation, it would find itself in essentially the same position as it is now without an evidence-base on which to address the

effects of televised broadcasts of District Court proceedings. In every domain, we expect public officials to make evidence-based policy decisions. Here, the Court is confronted with a clear choice between generating information needed to address an important public policy issue and foregoing that opportunity.

Professor Borgida, the Principal Investigator of the University of Minnesota Working Group on Cameras in the Courtroom, is a leading scholar on law and social science research and has written extensively about many of the intersections between psychology and legal policy. The proposed study could generate critical evidence to inform policies about cameras in the courtroom, both in Minnesota and throughout the nation. Because of the crucial role of evidence-based policy, the proposal is likely to receive support from private foundations or the federal government. I strongly urge you to base you decision on the best evidence available and not to rely on the impressionistic, unreliable alternative.

Best regards,

Barry C. Feld
Centennial Professor of Law

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

ADM09-8009

Dear Mr. Grittner and Members of the Supreme Court Advisory Committee:

On November 19, 2010 the Minnesota Supreme Court Advisory Committee on the General Rules of Practice solicited comments regarding the proposed options for a pilot program to examine the effects of more extensive televised court proceedings. I am writing to support the majority recommendation for a formal research study.

In order "to make scientifically valid conclusions about the impacts cameras may have on the participants and users of the judicial system" (Report, pg. 7), it is necessary to conduct a randomized study like the one designed by Professor Borgida and his colleagues. While I recognize the attractiveness of a less complex design, I believe that a simpler design would not provide the data necessary to draw conclusions about the effect of cameras in the courtroom and it is also likely to lead to more questions than it answers.

Random selection of cases for inclusion in the study is vital to ensure that any results can be generalized to a wide variety of case types. Cases where the media asked for camera coverage are likely to have shared characteristics that make them unique from a larger, random set of cases (e.g., more likely to be serious crimes). Therefore, it would be impossible to draw any broad conclusions about the effect of recording from that non-random sample as it is not representative of cases in general.

The presence of a control condition is also necessary to draw accurate conclusions about the effect of recording. Random assignment of cases to a "camera recorded" or "no camera" control condition allows researchers to rule out other explanations for any findings. Furthermore, relying only on anecdotal evidence from invested groups may open the pilot project up to inadvertent, unintended bias. The proposed scientific study would combine both qualitative and quantitative data to provide the most complete picture of the potential effects of recording.

My interest in this project is due to my experience conducting a pilot project that examined the effects of video recording felony interrogations as part of my dissertation research at the University of Michigan. That research was conducted in conjunction with the State Bar of Michigan and partnering police and prosecutor's offices with the goal of informing legislation at the state level. That research has familiarized me not only with the research designs that are ideal to answer complex research questions in law enforcement and legal settings, but also with the importance of having high quality, scientific research to guide rules and policy.

The issue of cameras in the courtroom is of national importance, and I believe the proposed research plan supported by the committee majority has an elegant design that allows it to answer a broad range of pertinent questions. It is scientifically rigorous and I believe that it has an excellent chance of obtaining funding and providing results of interest to both policy-makers and social scientists.

Thank you for your time and I wish you the best of luck as you continue to discuss this important issue.

Sincerely,

Katherine M. Knight Tuttle

Katherine M. Knight Tuttle, Ph.D.

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THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

December 17, 2010

Frederick K. Grittner
Clerk of Appellate Courts
25 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, Minnesota 55155

RE: ADM09-8009. Objections To Proposed Pilot Project To Allow More Extensive Televised Broadcast of District Court Proceedings

Dear Mr. Grittner:

The Minnesota County Attorneys Association remains adamantly opposed to any expansion of cameras in the courtroom. We are opposed to both of the proposed pilot projects for increased cameras in the courtrooms because they can not evaluate the real-world impact on victims and witnesses in deciding whether to report crime, cooperate with law enforcement, and appear to testify. They also do not evaluate the disproportionate impact of cameras in the court on communities of color. Finally, both proposed studies would inflict enormous unfunded costs on the courts, prosecutors, and defense attorneys at a time when each of these stakeholders has been hit hard with significant budget cuts.

This court's General Rules Committee heard testimony from extraordinarily experienced criminal justice professionals representing a broad spectrum, including prosecutors, public and private defense attorneys and victim/witness advocates. These professionals uniformly opposed cameras in courtrooms, not out of some inchoate set of personal biases, but because their extensive experience leads them to believe placing cameras in courtrooms will be harmful to victims, witnesses, defendants, and most importantly, to the cause of justice. Crediting these professionals' uniform view, the Rules Committee voted 16 – 3 to recommend no change.

Against this backdrop, the court has before it proposals to study the issue. To advance the issue in a meaningful way, any study should address the concerns the criminal justice professionals raised. These include the reluctance of victims and witnesses to report crime, to cooperate with law enforcement investigations, and to appear and testify. The study should also carefully and fully address the impact on communities of color as well as public perceptions of these communities. Simply measuring changes in attitudes toward the criminal justice system before and after testifying does not study the concerns the professionals raised. Moreover the University of Minnesota proposal is expensive. This study will have direct costs

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of approximately $740,000 with no way to fund those costs. In addition, the Advisory Committee has recognized that there are substantial additional costs to the courts and court administrators as well as to the "non-judicial branch" participants. The justice system professionals are all currently making painful choices as to priorities within their own budgets. The court should not force the cost of a study they do not want upon a system that is already overburdened.

The second proposal for a "scaled-down" pilot project is even worse. This proposal would place cameras in the courtrooms and then rely on informal surveys and anecdotal evidence to assess the impact of those cameras. This proposal is not free. It will inflict the same unfunded costs on courtroom personnel, court administrators and "non-judicial branch" participants as the U of M study, including prosecutor and public defenders who lack the resources to pay for the cost of this plan. More troubling is that it would not be a "study" of the impact of the cameras on the fairness of the proceedings but rather a collection of anecdotal and scientifically useless responses to informal surveys. The Court will have no way to evaluate what happened as a result of the placement of cameras into its courtrooms.

A third option, which for good reason is not before the court, would involve simply allowing cameras in the courtroom without any study as to the impact. Such a course of action would, of course, fly in the face of the uniform opinion of the justice system professionals which the court solicited through its rules process. More importantly, however, the cause of justice would be harmed by the measure. The court presumably believed a study was necessary because the burden should be on those proposing a rule change to demonstrate that it will actually advance the cause of justice.

In a rare display of unity, experienced prosecutors, defense attorneys, and other justice system professionals were united in their opposition to expanded use of cameras in the courtrooms. All have voiced significant concerns about the impact of cameras on victims, witnesses, defendants, and ultimately the fairness of our justice system. Neither of the proposed pilot projects provides an adequate mechanism to address those concerns. Accordingly, The Minnesota County Attorneys Association respectfully asks the Court to reject both pilot projects and any further expansion of cameras in the courtrooms.

Sincerely,

MICHAEL O. FREEMAN
Hennepin County Attorney
President, Minnesota County Attorney's Association

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STATE OF MINNESOTA
IN SUPREME COURT
ADM09-8009

COMMENTS OF UNIVERISTY OF MINNESOTA LAW SCHOOL FACULTY AND AFFILIATED FACULTY CONCERNING THE PROPOSED PILOT PROJECT TO ALLOW MORE EXTENSIVE TELEVISED BROADCAST OF DISTRICT COURT PROCEEDINGS

We write as faculty or affiliated faculty of the University of Minnesota Law School in response to the Court's request for comments about the Proposed Pilot Project to Allow More Extensive Televised Broadcast of District Court Proceedings. Each of us writes in our individual capacity as scholars and researchers and not on behalf of the institution.

In sum, we believe the proposal submitted by our colleague, Professor of Psychology and Law Eugene Borgida, Ph.D., would provide significant empirical information about the impact (or lack of impact) of using cameras in the courtroom. The less ambitious alternative recommended by a minority in the Final Report of the Advisory Committee on General Rules of Practice ("Final Report") is so unsatisfactory that it would be better for the Court to order no "study" at all than to endorse this initiative.

The debate about television coverage in courtrooms has continued, in Minnesota and around the country, for many years. Yet the substance of that debate remains tied to largely anecdotal information or unscientific predictions about what effect cameras might have. We understand that the Court sought, in its Order of February 12, 2009, to develop better information to guide its decisions about rules and policies concerning video coverage of court proceedings in Minnesota

Among its key features, Dr. Borgida's proposal envisions randomized selection of a control group in order to establish a valid baseline for making comparisons between cases that are otherwise similar except for the presence of cameras. Dr. Borgida's research group would engage in rigorous follow-up study of the effects of those cameras on attorneys, victims, witnesses, litigants, and other participants in the justice system. They would measure whether and how the presence of cameras influences the willingness of individuals (particularly victims) to participate in the judicial system in the future and also whether and how it affects the perception of trust and confidence in the justice system among a variety of groups, including racial minorities and other identifiable sub-groups.

Certainly there are funding and logistical challenges inherent in conducting such a study, as frankly discussed in both Dr. Borgida's proposal and the Committee's Final Report. The

proposal presented some ways to address these challenges. If the challenges can be overcome, the resulting research would make a unique contribution to the "cameras in the courtroom" debate both nationally and in Minnesota. We understand that the study proposed by Dr. Borgida would represent the only methodologically sound large-scale observational study of the effect of videotaping court proceedings in the United States. Certainly, it would provide data and insight to the Court in establishing wise rules for camera coverage in Minnesota courts. We believe these opportunities help explain why a majority of the Advisory Committee supported this research proposal.

In sharp contrast, the approach recommended by a minority of the Advisory Committee in the Final Report offers no improvement over the information about this topic now widely available. The Final Report characterized this alternative as a "substantially scaled-down research study," but it consists only of "informal surveys" to "elicit anecdotal information." In truth, it is not a research study at all. Without any basis for comparison, asking individuals in cases with camera coverage about their experiences will shed no new light on the impact of cameras, because it will be impossible to discern what aspects of their responses were related to the cameras and what aspects arise from other causes. We are concerned that the Court, by providing official approval to such a plan, might inadvertently contribute to distortions of the public debate on this issue, because the unreliable anecdotal information gathered through this process would carry the validation of a judicially-ordered inquiry. In our view, it would be better for the Court to order no "study" at all and decide on the cameras issue based on currently available information than to lend its credibility to an unscientific survey.

The undersigned take no position on the ultimate question of how camera use in court proceedings should be governed. Rather, we write as professors who study legal issues, many of whom engage in significant empirical work of our own, and all of whom rely on methodologically sound empirical research in our scholarship. We wanted to underscore for the Court the strength of Dr. Borgida's proposal and the weakness of the minority alternative.

Respectfully submitted,

E. Thomas Sullivan, J.D.
Senior Vice President and Provost,
Former Dean of the Law School

William McGeveran, J.D.
Associate Professor of Law

Amy Kristin Sanders, J.D.
Assistant Professor of Mass Communication and Law
(M.A. Journalism, Ph.D. Mass Communication Law)

Barry C. Feld, J.D.
Centennial Professor of Law
(Ph.D. Sociology)

Stephen M. Simon, J.D.
Professor of Clinical Instruction

Richard S. Frase, J.D.
Benjamin N. Berger Professor of Criminal Law

David S. Weissbrodt, J.D.
Regents Professor and Fredrikson & Byron Professor of Law

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December 13, 2010

ADM 09-8009

OFFICE OF
APPELLATE COURTS

DEC 17 2010

FILED

Minnesota Supreme Court
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

Re: Cameras in the Courtroom Pilot Project – Public Comment on Majority or Minority Options

Honorable Justices of the Minnesota Supreme Court:

I am writing on behalf of the Minnesota Alliance on Crime (MAC) to provide comment on the two pilot project options for cameras in the courtroom outlined in the Final Report of the Supreme Court Advisory Committee on the General Rules of Practice, dated October 29, 2010.

MAC is a statewide coalition of crime victim service providers, seeking to provide a unified voice for victims of crime and their advocates. We have over 55 member organizations throughout Minnesota in non-profit and county attorney-based programs. Our membership serves approximately 70% of the counties in Minnesota that provide services to general crime victims. Our advocate member programs include MADD, Parents of Murdered Children, ElderCare Rights Alliance, MN Council on Crime and Justice, and Jacob Wetterling Resource Center, among others.

To restate in brief, MAC does not support the relaxing of existing rules with regard to camera and other media recording devices in the courtroom. It is our position that, based on victim advocate's experience working with victims and witnesses, cameras in the courtroom and increased media access and coverage will only work to make the victim's plight more difficult and traumatic. MAC does not support the relaxing of the rule with no evidence of a corresponding public benefit.

Having said this, in keeping with the Court's Order filed November 19, 2010, I will limit my comments to MAC's assessment of the merits of the two pilot project options presented in the Final Report of the Supreme Court Advisory Committee on the General Rules of Practice, dated October 29, 2010.

Being faced with having to choose one option over the other, MAC opts for the majority recommendation of utilizing the more extensive research study as outlined in the University of Minnesota proposal submitted by Professor Eugene Borgida, attached as Exhibit A of the Final Report of the Supreme Court Advisory Committee on the General Rules of Practice, dated October 29, 2010.

At the outset, obviously cost is the most significant issue facing the more formal study recommended by the majority. At a time when the courts, as well as crime victim programs and other criminal justice stakeholders, are facing a Legislature that might significantly cut our budgets, it is difficult to see $750,000 spent on a pilot project that addresses an issue that could be argued is not ultimately necessary at this time.

With significant reservations about cost and timing, however, and if one pilot project must be chosen, MAC's contends that the majority recommendation is the best way to ensure collection of empirical and scientific data as to the true impact of cameras in the courtroom on victims and witnesses. This more formal study has built in mechanisms to include the participation of the victim and witness community and professionals in the planning and implementation of the pilot project. The minority recommendation does not provide these guarantees. MAC believes that these mechanisms are crucial to a valid analysis of this issue. The University of Minnesota's plan provides for this vital input as follows:

- Professor Borgida's study proposes to include victim and witness community professionals prior to the start of the pilot project to be interviewed and/or surveyed to gauge their views of the issues to be tackled by the pilot program, and be given an opportunity to consult with the research team on the research procedures to be followed. (*Ex. A of Oct. 29, 2010 Final Report at page 2*);
- According to the proposed pilot project, as soon as a case is selected as a *camera* or *no-camera* case, the victim/witness programs will immediately notify their clients of the status of the case. The guidelines and procedures for informing clients of camera coverage vs. no camera coverage will be informed by the interviews with and survey of victim and witness professionals prior to the start of the program. (*Id. at 5*);
- The research planning phase sets three months aside, in part to meet with representatives of the victim-advocate community to discuss logistics and incorporate their suggestions as to pilot program design. *(Id. at 9);*
- Professor Borgida's study also proposes to examine the potential "chilling" impact of camera coverage on victim and witness participation rates and experiences, in three ways: 1) surveying all witnesses and litigants before, during and after the trial; 2) survey attorneys about their experiences with witnesses and litigants before, during and after trial; and 3) work with victim/witness programs to determine witness drop-out rates, before and after a trial.

In comparison, the minority's recommendation of an informal study does not provide sufficient protection or mechanisms for victim/witness input. Without more information as to whom and how this informal survey would be conducted, the Court is not ensured that victims and witnesses would be included, to the degree necessary for valid conclusions.

MAC believes that this method would not provide the Court with any additional empirical evidence than we currently have as to the effects of camera coverage in other states. What has been offered so far in Minnesota's discussion of this topic are anecdotal and informal perceptions by those that choose or were asked to come forward to participate in discussion of this topic.

The minority position also recommends "comprehensive reports from any interested group at the conclusion of a study period." Although MAC is a statewide coalition of crime victim service providers, the undertaking of a comprehensive study from a victim or witnesses perspective is a daunting task. MAC has neither the resources nor capacity to adequately represent its constituents to the degree and accuracy necessary, in light of the importance of this issue.

MAC knows of no other organization in Minnesota that could provide this comprehensive study from a general crime victim's point of view. The other Minnesota coalitions representing domestic violence and sexual assault victims (Minnesota Coalition of Battered Women and Minnesota Coalition Against Sexual Assault) would not represent the victims of homicide, drunk driving, robbery, as well as many other crimes. I also believe that sexual assault and domestic abuse cases would in large part be excluded from this pilot project.

In addition, MAC is not certain what value these comprehensive studies contemplated by the minority would hold as they would be prepared from a clearly subjective point of view, by each individual stakeholder in the criminal justice system.

Thank you for the opportunity to provide the Court with comment on this very important issue to crime victims, witnesses and their advocates in Minnesota.

Sincerely,

Stephanie Zugschwert
Executive Director
Minnesota Alliance on Crime

Curtis Beckmann
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612-344-5050
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ADM09-8009

December 16, 2010

RE: ADM09-8009

ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON A PROPOSED PILOT PROJECT TO ALLOW MORE EXTENSIVE TELEVISED BROADCAST COVERAGE OF DISTRICT COURT PROCEEDINGS November 19, 2010

Dear Chief Justice Gildea:

It is heartening to discover that your court appears poised to deal with the once-thorny issue of cameras and microphones in Minnesota trial courtrooms. The effort took root in 1977 and 1978 when I wrote to Chief Justice Robert Sheran to ask whether my station, WCCO Radio, could come into the Supreme Court to record an argument and offer it on the air, on May 1, as a Law Day presentation of the station. Prior to that we had reenacted trials, reenacted a grand jury hearing and debated capital punishment and First Amendment issues for Law Day programming. We won some national awards, together with the Hennepin County Bar Association.

Short of a Law Day program, I suggested, we could begin a process to allow cameras and microphones in all of Minnesota's courtrooms. Justice Sheran passed my letter to his colleagues and in April of 1978 we began to talk about the latter proposal. This led to camera and microphone coverage of the Minnesota Supreme Court, a joint committee of the Minnesota State Bar Association to arrive at rules for

coverage of Minnesota trial courts and when that came to naught, we filed a petition on behalf of Minnesota media for access to trial courtrooms. Justice Sheran established a three-member panel for study…there was a hearing and then establishment of a trial period. Trouble is, all parties had to agree to the presence of cameras. There were no takers. The trial program failed.

In the meantime, as then-president of the Radio Television News Directors Association, I and the association's attorney gathered 16 media-organization signatures on an amicus brief in the Chandler v. Florida case before the U.S. Supreme Court. I was present for oral arguments on that case and remember so clearly when Justice Renquist said to the Chandler people that if they could develop some proof that camera and microphone coverage of trials in Florida led to unfairness, he implied that the Supreme Court would strike down such coverage. As you know, the Burger court ruled unanimously that police officer Chandler's trial was not unfair.

I had hoped against hope that Minnesota could jump in and become number two, behind Florida, to allow cameras and microphones into state courtrooms. That position fell to Wisconsin. And since then, as you know, many states have opened up state judicial proceedings to cameras and microphones.

Given that history, though I admit the issues are different, it's a concern to me that the current proposals will push out implementation of a cameras and microphone program in Minnesota for several more years. Further, the cost factor, as described in the proposals, is daunting. It's my sense that foundations and other charitable groups in Minnesota and beyond will find far more valuable projects for their recession-diminished funds. And many of them may be in states where broadcast coverage of state trial courts is already quite commonplace.

A colleague and I gathered $30,000 from media companies to file the petition with the Minnesota Supreme Court 30 years ago. It became a

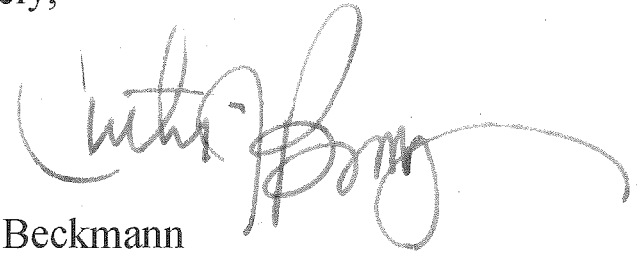
bad investment for the media companies.

In my judgement, objections 30 years ago have long been settled, on issues of fairness and technology. Jitters over victim and witness testimony, it seems to me, have occurred in all courtrooms since the beginning of American justice because those accused have the right to confront witnesses against them. Judges have always found ways to deal with that. Also, the proposed research here seems pre-determined to somehow pin those age-old jitters on the presence of cameras and microphones. In fact, microphones have been in courtrooms, probably since electricity, and these days, television cameras can now be virtually invisible.

The heavy lifting has been done. There is little for us to do in Minnesota but simply to begin, with sufficient rules to protect certain participants. I do not think the research proposed here is necessary nor is it cost effective.

I would be honored to meet with you and/or others you may designate to set a plan in motion for broadcast and photo coverage of Minnesota trial courts which might merit study sometime down the road when we have experiences to study.

Sincerely,



Curtis Beckmann

Lori S. Gildea
Chief Justice, Minnesota Supreme Court
St. Paul, MN 5515

DEPARTMENT OF PSYCHOLOGY

UNIVERSITY OF MICHIGAN

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December 15, 2010

ADM09-8009

Frederick K. Grittner, Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota, 55155

To: The Minnesota Supreme Court Advisory Committee on the General Rules of Practice for theDistrict Courts

From: Phoebe C. Ellsworth, Frank Murphy Distinguished University Professor of Psychology and Law, University of Michigan

Re: Comments on the Committee's final report on research on the effects of cameras in the Courtroom

I am writing to express by strong support for the proposal submitted by the University of Minnesota Working group on Cameras in the Courtroom and my equally strong disapproval of the minority proposal to conduct informal interviews of participants in proceedings where the media request camera coverage.

I am a Fellow of the American Academy of Arts and Sciences, the American Psychology-Law Society, the Law and Society Association (where I am a member of the Board of Trustees), the American Psychological Association, the Association for Psychological Science, and a member of the Board of Directors of the Death Penalty Information Center. I have been conducting research on issues related to Psychology and Law for 40 years, and I have written a textbook on research methodology (Aronson, Ellsworth, & Carlsmith, *Methods of Research in Social Psychology*), as well as several Handbook chapters. I have conducted pilot research, along with my student Katherine Tuttle, on the use of cameras in recording police interrogations. I am a recognized expert in the field of Psychology and Law and in research design and procedure. First, one of the most fundamental criteria of valid science is *comparison*. It is impossible to tell whether a new medicine, educational program, or any other change is beneficial, detrimental, or ineffective without comparing it to something else. Thus interviewing only participants in cases where the media asked for camera coverage can tell us nothing. We will not know whether participants opt out more, less, or in the same numbers as they would in proceedings with no camera coverage, or in proceedings with camera coverage not requested by the media, or in high publicity trials in general, and the same is true for any other measure (e.g., satisfaction) that might be of interest besides opt-out rates.

Second, informal interviews (as opposed to planned surveys of randomly pre-selected and randomly assigned participants) run a serious risk of bias. High–publicity cases tend to involve

highly emotional participants, for reasons that have nothing to do with cameras, and these would be reflected in the interviews. More important, the people who are most willing to be interviewed may be those who are most disgruntled, or those who are most interested, or those who have nothing better to do, and any of these would lead to misleading results even about that particular trial, not representative of the range of responses to the trial, and certainly not representative of citizens' or professionals' responses to cameras.

Third, informal interviews run a serious risk of interviewer bias, which is much reduced in web-based surveys. Interviewers have expectations of their own, which can unconsciously lead them 1) to select respondents who they think will agree with them, and 2) to ask questions in a way that elicits the answers they expect. With nothing standardized this risk is all the greater.
It might seem that asking participants whether a new procedure makes a difference is the most direct way to get the information, but the information is not trustworthy, Inexperienced participants some litigants, witnesses, victims) who are unhappy with their litigation experience may have been just as unhappy if there were no cameras, and without a comparison there is no way to know that. But what about experienced participants (judges, attorneys), who can compare their present experience with past experience? Unfortunately, one of the strongest findings in Psychology is that people, including experts, are not at all good at identifying the reasons for their behavior (Nisbett & Wilson, *On telling more than we can know,* 1977). When people like or dislike a product because of the personal style of the salesperson (which we know is what caused their liking or disliking because we compare friendly and arrogant salespeople, and the products are all the same), they will give confident and detailed explanations of which qualities of the product determined their choice. An interviewer would infer that qualities of the product were what caused their attitudes. So when people say that they refused to testify because of the camera, we cannot trust that answer. It could have been because they didn't like the judge, or the attorney who approached them, or they were afraid of the defendant's relatives, or a host of other things that also exits in trials without cameras. Nor are experts immune from this bias. Judges or attorneys who didn't like a case for some other reason might blame it on the cameras, when asked.

Courts have sometimes relied on anecdotal data instead of systematic research, and in many cases the results have set them on the wrong track. In the early 1970's The U. S. Supreme Court relied on anecdotal data to decide 1) that there was no difference in the representativeness or the performance of 6-person and 12-person juries *Williams v Florida*, 1970, and 2) that there was no difference in the representation of minority points of view or deliberation quality between juries that were required to be unanimous and those that were not (*Johnson v Louisiana*, 1972) Extensive scientific work has revealed that both representativeness and performance are impaired by 6-person and non-unanimous juries relative to 12-person unanimous juries. The Court's holdings would have been entirely different if they had relied on the results of systematic, comparative research rather than on anecdotal evidence.
There are many other flaws in the minority proposal, but the ones I've mentioned are fatal. It may be less expensive, but the money spent would be money thrown away, because the results would be untrustworthy and possibly seriously misleading. The Working Group has proposed an excellent study. If it were absolutely essential to spend less money, it would be

methodologically much better to run that study in fewer jurisdictions. The likelihood that the results would not generalize to other Minnesota jurisdictions is far less than the likelihood of results that would not be valid in *any* jurisdiction if the minority proposal were implemented.

Sincerely,

Phoebe C. Ellsworth

Phoebe C. Ellsworth
Frank Murphy Distinguished University Professor of Psychology and Law,
University of Michigan

MINNESOTA JUDICIAL BRANCH
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December 17, 2010

Justices of the Minnesota Supreme Court
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Public Comment Regarding Proposed Cameras in the Courtroom Pilot Project

Dear Justices of the Minnesota Supreme Court:

I write to convey estimates of the potential impact on trial court time of the pilot study proposed by the University of Minnesota. Observations on the potential impact were collected from District Administrators and a preliminary analysis of data by the Research and Evaluation Unit in the Court Services Division.[1] Based on these observations it appears that the collection of data though surveys will have the greatest impact on judges. In some districts there are concerns about the timing of getting judicial approval of camera coverage and the start of the trial. The burden to track cases as they proceed to trial is expected to rest mostly on the University of Minnesota, but the effort involved will not be without some cost to the courts.

Impact of Surveys on Judges

In order to estimate how many cases need to be considered for inclusion in the study, staff in the Research and Evaluation Unit analyzed 18 months of data on trials scheduled and occurred. This analysis revealed that while cases are often scheduled for trial there is considerable variation in the certainty that a trial will be held, especially for cases scheduled for jury trial. Consequently, the estimated number of cases to be considered for inclusion, approximately 15,000, is considerably larger than the final sample size (N=1000).

Certain types of cases are excluded from the study by rule or Court Order. Some of the factors that would disqualify cases from consideration for the study can be identified with data in MNCIS; however, additional information needed to determine eligibility will need to be collected on a case by case basis through an initial survey of counsel and judges. The initial

[1] SCAO legal staff previously estimated that the proposed study would have a relatively small impact on court administration staff. This estimate is based on court administration spending approximately 50 minutes for each of the 1000 cases in the final sample which translates into an FTE equivalent of between .5 FTE and 1 FTE statewide.

surveys will be administered on-line and the University expects that each survey will take approximately 5 minutes to complete. Based on the estimated number of cases to be assigned to the pilot, the total number of surveys translates into the equivalent of approximately 50 surveys per judge during the 18 month pilot period. Using our estimate of 15,000 cases, the total amount of judicial time involved in completing the initial survey is nearly the equivalent of a judge year for weighted caseload (15,000 cases x 5 minutes = 75,000 minutes). District administrators have expressed concerns about the expectation that judges will be able to complete the initial survey especially in certain districts where the judge is assigned within an hour or less of when the case is scheduled to be heard.

In addition to completing approximately 15,000 surveys to determine eligibility for the study district court judges must also consent, on a case by case basis, to camera coverage. Judges who choose to opt-out will also be asked to complete a survey designed to identify the factors affecting their decision to opt-out. For the cases that go to trial (N=1000) a survey of all participants (judges, attorneys, jurors, witnesses, etc.) will be administered after the case is disposed.

Concerns about Timing

In the two districts that use a master calendaring system, the First and Tenth Districts (some counties), judges are routinely assigned to cases close to, or on the day of, trial. District Administrators in these districts have raised concerns about the limited amount of time judges will have to decide whether to allow cameras in the courtroom. As a result, judges assigned to cases with camera coverage may decide to opt-out after arrangements have already been made to record the proceedings. In addition, limited time will be available in these districts for judges to rule on the exclusion of any witnesses who object to testifying under camera coverage conditions.

The study proposed by the University requires that eligible cases be identified far enough in advance of the trial date that, if assigned to camera coverage, the court will receive sufficient notification and counsel will have the opportunity to make any necessary adjustments to case strategy. The University suggested that at least 4 months be allowed for these activities; however, as some district administrators pointed out, cases in many counties are set for trial less than 4 months in advance.

Ongoing Case Monitoring

For cases assigned to camera coverage, the University of Minnesota requires advance notification and subsequent confirmation of approaching trials and related hearings. Various methods of notification and confirmation may be used depending on the proximity of the approaching trial date. District administrators have raised concerns about using the noticing functionality in MNCIS since it would involve adding the University as an interested party to each case assigned to camera coverage. Requiring the courts to mail the written notices would also incur printing and postage expenses. Another option for providing this information would involve staff from IT in collaboration with staff in Research and Evaluation to develop data extracts or reports from MNCIS. It may also be possible to use existing reports in MNCIS or an

integration service to inform the University when the case status changes. Using existing reports for this purpose would require prior testing of the impact on reports used in the day to day operations of the courts.

Sincerely,

Sue K. Dosal
State Court Administrator

ADM09-8009

4890 Ashley Lane Apt. 329
Inver Grove Heights, MN 55077
December 6, 2010

Chief Justice Lori S. Gildea
Minnesota Supreme Court
c/o Frederick K. Grittner, Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Dear Chief Justice Gildea:

The following comments are in support of the minority recommendation, and in opposition to the majority recommendation, of the Supreme Court Advisory Committee on General Rules of Practice concerning rules establishing a pilot project on cameras in the courtroom. The minority proposal is superior to the majority proposal because the latter is methodologically flawed and because the proposal limits the options that are available to the judiciary.

One methodological flaw in the majority proposal is the failure of the majority of the Committee to explain how the results will be used. The Committee provided no rationale for why any particular set of results would justify any particular action nor did it demonstrate any understanding of the concerns of the justices who could be swayed in their decision-making by the study. Unless the median votes on the Court could be swayed by results that are realistically possible, the study may not be useful. All of the members of the Advisory Committee have already drawn conclusions on the controversy of whether cameras should be allowed in courts, so those members would likely only use the results- regardless of their nature- as justification for their pre-existing position. Failure to explain how the results will be used also suggests that the level of analysis by the Committee was not of sufficient extent to define the goals of the project.

A second methodological flaw in the design of the proposed pilot project is the failure to isolate the effect of study participation on behavior in the court room. Because the study itself will subject the participants to additional scrutiny, the results may not reflect the parameters being estimated. For example, judges may be more diligent and fair when under the additional scrutiny of the study than they would without that additional scrutiny. A major effect of camera coverage is additional scrutiny, so any additional artificial scrutiny could seriously impair the reliability of the results. The proposal was vague concerning the extent to which participants would be forewarned about the study, but apparently all participants will know about the study before the proceedings begin.

A third methodological shortcoming in the majority proposal is the failure of the proposal to include any procedures designed to isolate and quantify the extent to which

cameras in a court room would signal to trial participants that the case was the subject of media interest. This failure is material to the pilot project because the February 11, 2009 comments of both Justice Dietzen and Justice Page cited *Estes v. Texas* in expressing concerns about whether cameras in the courtroom would impair the Fourteenth Amendment rights of defendants. In *Estes*, the Supreme Court of the United States found that camera coverage of a pre-trial hearing violated the defendant's right to a fair trial because, among other reasons, the cameras made clear to the veniremen and other participants that the case was the focus of an unusually high amount of media interest.

Closely related to the first flaw is the failure to include any procedures designed to measure the extent to which the ability of participants to maintain impartiality is affected by their belief that the case is subject to intense media interest.

Another methodological flaw in the majority proposal is the potential allowance, as described in Footnote 5 of the proposal, of camera coverage in cases that are not randomly assigned to the camera coverage group. The researchers warn in the note that the allowance will impair "the scientific integrity of the random assignment procedure..." This flaw in the design of the study- which was imposed on the researchers by the Committee- is particularly perplexing given the *Estes* citations by Justices Dietzen and Page. By tainting the no-camera group of cases with camera coverage and allowing camera coverage in cases not included in the study, a correlation will exist between camera coverage and intensity of media interest. This flaw is also particularly puzzling given Justice Dietzen's concerns about whether the samples would be representative. The Footnote indicates that the researchers will make "statistical adjustments in order to preserve the validity of the study's design," but the proposal provided no elaboration nor independent expert testimony to confirm that such adjustments would not reduce the validity of the study.

Yet another flaw in the design of the University study is the predetermination by the researchers that the cameras will "..be neither obtrusive nor distracting and that they would in no way impair the dignity of the court room." A major rationale for the holding in *Estes* was that cameras were disruptive and negatively impacted the environment of the court room. The proposal made no mention of assessing the existence or magnitude of these potential impacts.

A seventh flaw in the University proposal is its apparent lack of any procedures for determining the reasons for witness attrition. The assumption that witness attrition necessarily vitiates the functioning of courts ignores the historical bases for the right to a public trial. Following is a quote from *Estes* that is itself a quote from *In re Oliver.*

> The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the lettre de cachet. . . . Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the

> guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution.

In re Oliver also included the following passage.

> Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance.

As such, the suppression of testimony and other behaviors may very well advance the cause of justice. That result would be particularly likely if the person who claimed to be a witness was intending to give false testimony but was deterred from doing so out of a fear of scrutiny by those who could detect the dishonesty. Without any reliable evidence about the causes of witness attrition, a simple scalar value that measures the extent of witness attrition would not be useful in determining whether cameras should be allowed in the courts.

An eighth flaw in the proposal is the lack of any attempt to collect any information concerning the ability of the state to provide crime investigators with forensic tools and techniques that compensate for witness attrition. Witness testimony is an archaic and unreliable form of evidence even for the best-intentioned witness, so forcing the state to provide investigators with more reliable forensic tools and techniques might actually advance the cause of justice.

Another problem with the Committee proposal is that it apparently would provide no insight regarding whether Article 1, Section 6 of the Minnesota Constitution should be interpreted as providing a defendant with a right to cameras being allowed in judicial proceedings. If the research included questions for the case participants or the public about whether the "public trial" right included the right to potential camera coverage, the Court would be better able to determine if the right to a public trial should be interpreted, in the present era, to include the allowance of camera coverage. Because the public can vote on amendments to the Constitution, the public's interpretation of Constitutional text should be given consideration by the state courts. I am aware that Justice Page asserted that "[t]he defendant's right to a public trial [granted by the Sixth Amendment of the federal Constitution]...is satisfied when the public and press have the right to 'attend the trial and to report what they have observed.'" I examined Justice Page's assertion and have concluded that it is incorrect. The correct interpretation of his citation from *Nixon v. Warner Communications* is that the Sixth Amendment right to a trial does not grant the public a right to a public trial that can be "...invoke[d] independently of, and even in hostility to, the rights of the accused." The defendant in *Nixon* wanted to prevent the public release of certain testimony, so the Court had no reason to consider whether the Sixth Amendment granted the defendant a right to the allowance of camera coverage. The only basis in *Nixon* for Justice Page's quotations was a single-justice concurrence in the 1965 *Estes* case mentioned earlier. The defendant in *Estes* also

wanted to keep cameras out of his trial so, again, there was no reason for the Court to determine whether the Sixth Amendment granted a defendant a right to a trial that allowed for camera coverage. The only basis given by that single-justice concurrence was a 1954 plurality opinion of the Court of Appeals of the State of New York that did not include the words "Sixth," "Amendment," or "television." In that case, the issue "...[was] whether members of the public at large, including the press...possessed an enforcible right of their own to insist that [a particular defendant's] trial be open to the public." The following passage was typical of the entirety of the New York opinion.

> Whatever concern the public may have for a defendant's right to a fair trial, it can seldom match that of the person whose life or liberty is at stake. The defense may, it is true, sometimes be inept, but for that there are other remedies than delegating, to persons not directly concerned, the authority to control the course of the proceedings. As long as the defendant is assured the right to invoke the guarantees provided for his protection, the public interest is safe and secure, and there is neither need nor reason for outsiders to interject themselves into the conduct of the trial."

A tenth methodological weakness of the majority proposal is the lack of any attempt to enumerate the barriers that the public faces when attempting to access court proceedings and the extent to which those barriers impede access to the courts. For example, do members of the public need to take an entire day off from work to see a ten minute trial? Are critical parts of the process held in places that are inaccessible to the public? Is critical information about impending trials withheld from the public? Are the names of litigants in court schedules replaced by pseudonyms? Barriers to public access undermine the right of defendants to public trials in ways that could be counteracted by camera access.

Another problem with the University proposal is that it specifies that Best Buy will provide the cameras. The researchers should not be biased toward a particular provider when deciding how to acquire equipment.

A twelfth methodological flaw in the majority proposal is the practice of sampling civil cases as readily as criminal cases. The public is a party to criminal cases, so it will be more interested in such cases. (Note that I am differentiating between newsworthiness and the level of public interest.)

Yet another flaw is the failure to differentiate the impacts of camera exposure on different participants in the process. For example, focusing a camera on a judge may have a different effect on the overall process than focusing a camera on an alleged victim.

A final flaw in the study is the apparent lack of any procedures to determine whether cameras in the courtroom effects the extent to which alleged victims and alleged witnesses either feared retaliation for their testimony or feared invasion of their privacy.

The minority proposal may not avoid all of the flaws of the majority proposal, but it can be completed more quickly and it would be less expensive. Those qualities of the proposal would allow the Court to more quickly and easily revise the rules and commission a second study if the results of the first study cause the Court to decide that such actions are necessary. Such a result is likely because the rules being tested do not provide an optimal solution to the problem of subjecting government officials to scrutiny while simultaneously protecting the privacy of private individuals. The order commissioning the pilot project is also problematic. One problem with the rules is that they give the press rights to camera coverage that are superior to the rights possessed by the general public. Specifically, Rule 4.03(a)(1) creates problems for each defendant, alleged witness, alleged victim, member of an alternative media organizations or member of the public who wishes to record a trial when the mainstream press has already committed to cover it. If both the defendant and the alleged victim want to cover the trial, they must enter into a very problematic pooling arrangement with each other. The Rules repeatedly use terms like "media personnel," "television," and "news coverage." The Rules create the impression that the Advisory Committee is completely unaware, or indifferent, to ownership of electronic recording equipment by people not employed by media conglomerates. Rule 4.03(a)(4) is also unfair- not to mention downright bizarre- to members of the public and members of the press who are not part of the mainstream press.

Another problem with the Rules is that they fail to draw important distinctions among the participants in a trial. For example, Rule 4.02(c)(ii) allows a corrupt police officer or incompetent expert witness to avoid public scrutiny. The public has a compelling need to be able to subject employees of the criminal justice system and paid expert witnesses to scrutiny. (Incidentally, the February 11, 2009 order required that the rule recommendations of the minority be included, but the rules attached use the majority rule recommendation for 402(c)(ii). The commenter is unclear about the reasons for this anomaly.) People who are not government employees and who profess no special knowledge, conversely- especially those whose participation in court proceedings is involuntary or non-vocational-, have a heightened claim to needing privacy. Rule 4.02(c)(vi) completely prevents the coverage of even the judge, prosecutor, and expert witnesses in sex crimes and other types of cases. Other parts of state and federal government hold the providers of government services accountable to the public while safeguarding the privacy of the users of those services, so the judicial system can also attempt to draw that important distinction. The defendants, at least, should have the right to record the judge and prosecutors. Among other reasons, doing so would allow the public to see the difficulties prosecutors face when attempting to prove guilt in those cases and, potentially, the need for additional funding.

Another deficiency in the Rules is that they give judges the unqualified right to disallow camera coverage over the objections of the defendant. This right is at odds with the purposes behind the Sixth Amendment to the U.S. Constitution and Article 1, Section 6 of the Minnesota Constitution. According to the U.S. Supreme Court in *In re Oliver*, "[w]hatever other benefits the guarantee to an accused that his trial be

conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution." A concurring opinion in *Estes* included the following sentence. "Clearly the openness of the proceedings provides other benefits as well: it arguably improves the quality of testimony, it may induce unknown witnesses to come forward with relevant testimony, it may move all trial participants to perform their duties conscientiously, and it gives the public the opportunity to observe the courts in the performance of their duties and to determine whether they are performing adequately." These purposes behind the right to a public trial, coupled with the barriers that courts erect to members of the public who wish to view trials, argues against allowing judges the right to arbitrarily close proceedings to cameras.

Rule 4.02(c)(iii) also undermines the right of defendants to public trials. The rule allows corrupt practices to occur outside of the view public scrutiny and potentially undermines any benefits provided by the right to use cameras and the right to a public trial. It also invites the participants to conduct the important parts of the trial outside of the official proceedings, where cameras are not allowed.

The order commissioning the pilot project recommendations is problematic because it does not call for measuring the positive impacts of camera coverage. The positive impacts of camera coverage would potentially include a greater awareness among the public of the need for better funding of the court system, a better appreciation for the services that are performed by the court system, and greater knowledge about which elected officials are using the power that has been entrusted to them responsibly and which ones are abusing that power.

The minority proposal will, in the commenter's opinion, better meet the needs of the Supreme Court.

Sincerely,

Brian Theismann

Brian Theismann

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009 (formerly CX-89-1863)

COMMENTS OF NEWS MEDIA PETITIONERS ABOUT RECOMMENDATIONS OF GENERAL RULES ADVISORY COMMITTEE FOR EVALUATING CAMERAS IN COURT PILOT PROJECT

Petitioners Minnesota Joint Media Committee, Minnesota Newspaper Association, Minnesota Broadcasters Association, and Society of Professional Journalists, Minnesota Chapter, offer these comments in response to the Court's Order of November 19, 2010. That Order sought input regarding the report filed by the Advisory Committee on the General Rules of Practice which addressed options for evaluating the pilot project that the Court has established for the purpose of assessing electronic media coverage of the state's trial courts.

Petitioners believe there is much to commend the evaluation proposal developed by the University of Minnesota group led by Prof. Eugene Borgida. While the concerns expressed by the Committee about the expenses of implementing this proposal can hardly be ignored, the University group has recognized all along that the needed funds would not come from the judicial branch. It is unclear whether the Committee fully appreciated the effort invested by the University group in developing the proposal or the unique set of information that its study would potentially generate.

Though Petitioners are not very well qualified to comment on the validity of the University proposal at a technical level, it does appear to offer an unprecedented opportunity to acquire academically rigorous data concerning the possible impacts of electronic coverage in the trial courts. As this Court knows, while there is an ocean of experiential and anecdotal information about such coverage that has been accumulated throughout the country over more than 30 years, it does not appear that any boat has ever been launched where the crew was charged with comprehensively charting all of the features of that ocean. Thus should the University group's research plan be successfully executed, it will likely provide an abundance of knowledge concerning electronic coverage that has not been previously available.

The University's proposal is particularly attractive to the news media Petitioners because they believe that it would more comprehensively corroborate through scholarship what widespread experience with cameras in other states has almost universally indicated–which is that despite the enormous number of televised court proceedings that have occurred in the more than 35 states where electronic coverage is readily permitted, no substantive evidence has appeared even credibly suggesting that such coverage has, on balance, had a negative impact on the justice system, to say nothing of actually demonstrating such an impact.

Nonetheless, despite their respect for the research design developed by the University group, and the attractiveness of the specific data which it could generate,

Petitioners do have some concerns. Foremost is the prospect of another lengthy delay before the pilot project is implemented. The Advisory Committee was of course required to obtain multiple extensions from the Court in order to complete its final report, as it wrestled with the complexities associated with the University proposal. The Court's Order announcing the pilot project and directing the Committee to study options for evaluating it was filed on February 12, 2009, and established a deadline of January 15, 2010 for submission of a report. However, more than eight additional months were required for the University proposal to be completed and considered by the Committee.

As the Committee's final report notes, the magnitude of the funding that will be required for the University study could consume many more months: "It is certain that, given the large cost, this fundraising effort would require a substantial amount of time to complete, potentially as long as a year." Adv. Comm. Final Report, 6. Petitioners believe that an additional delay of this long (or even longer) is undesirable for a number of reasons.

Furthermore, the Committee report notes "that there is some risk that the fundraising efforts would not be successful." *Id.* Judged simply from the perspective of the news media's ability to contribute to that fundraising, Petitioners believe this risk is not imaginary. The University group has from early in the process indicated that it desired financial assistance from the news media. The Advisory Committee report reflects this, referring to an expectation that the project would require "substantial support

from the news media." *Id.*, at 5.

Unfortunately, however, such expectations are not realistic. News media revenues throughout the country have been stressed over the past few years by the effect of the economic downturn on business activity and advertising budgets, as well as by the changes in the media industry prompted by the growth of the Internet. Thus it is highly unlikely that the state's news media would be in a position to make a substantial contribution to this kind of project.[1]

Petitioners are also concerned that the ongoing problems in the national economy will make general fundraising from any of the traditional sources very challenging. Thus Petitioners can imagine a scenario where many months would be invested in the fundraising effort for the University proposal which, because of the large sums needed, would ultimately turn out to be unsuccessful, leaving the pilot project in limbo.

If the University proposal contemplated permitting the pilot project to launch and

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[1]A related consideration comes into play here as well. Though some may scoff at the claim, the news media do not view the opportunity for expanded electronic coverage of the state's trial courts as being primarily about providing direct benefits to them, and certainly not economic ones. Experience in other states shows that even if requests for camera coverage are routinely allowed, such coverage will occur in only a small percentage of the total cases flowing through the court system. Correspondingly, that coverage will comprise only a small percentage of the total volume of news reported by the news media. No one within the news media community sees cameras in courtrooms as having any real impact on ratings, circulation, or site visits, and therefore on revenues. The news media's fervent support for expanded electronic coverage is a product of its conviction that a more complete and direct depiction of what the trial courts actually do in those high profile cases that are of most importance to Minnesotans will mainly benefit the general public and its confidence in the court system.

move forward while the fundraising campaign was occurring, engaging when sufficient sums had been accumulated, this risk would not exist. But the University group has informed Petitioners' counsel that its research design does not tolerate such an approach.

Again, there is no question that the University proposal would likely provide unique and unprecedented insights. A valid question, however, may be whether that level of illumination–and the time and expense that would be required to generate it–are proportional to the actual needs of the court system at this point, which in the current environment must of course be judged by fairly austere standards of necessity, practicality, and economy.

The Advisory Committee report identified only two options for evaluating the pilot project–the University proposal and the template suggested by a substantial minority of the Committee. As indicated above, Petitioners are not well positioned to judge the merits of the minority approach from a technical or scientific perspective. Petitioners recognize that the University group sees little benefit being derived from that approach.

However, Petitioners submit that there could be other alternatives available which could furnish credible results that are congruent with what the Court requires. In other words, it seems difficult to believe that somewhere between the two very different approaches outlined in the Advisory Committee report there would not exist another possible method for evaluation. The Committee's report does suggest that the Committee itself, or a separate cameras in the courtroom implementation committee, should monitor

the progress of the project during its operation. An expanded alternative might be to establish a smaller implementation committee, separate from the Advisory Committee itself (which has invested an extraordinary effort in this project, and which of course has many other responsibilities). That committee could not only monitor the implementation of the pilot project but also examine other possibilities that might be available for evaluating the project while it gets underway. Through that process, options might be discovered that strike a balance between the two poles presented in the Advisory Committee report.

Petitioners emphasize that they will fully cooperate with whatever evaluation procedure may ultimately be adopted by the Court.

DATED: December 17, 2010

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December 10, 2010

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

ADM09-8009

Dear Frederick Grittner:

University of Minnesota Professor Eugene Borgida has proposed the implementation of a study to explore the role of cameras in Minnesota district courtrooms. The purpose of this important study is to investigate the impact that courtroom cameras might have on victim and witness participation rates as well as overall human behavior in the courtroom. This study also seeks to explore the impact that courtroom cameras might have on the public's perception of judicial quality in Minnesota district courts.

For the findings of such a study to be considered valid and legitimate, a rigorous research design, based on the standard principles of scientific inquiry, is required. Such a design requires the implementation of an experimental framework that allows researchers to establish ascertain the presence of a cause-effect relationship between phenomena.

While a pilot study might provide some interesting facts about individuals opinions about the presence of cameras in the courtroom, it will not provide the kinds of evidence that are necessary to draw firm conclusions as to whether the presence of cameras in the courtroom makes any difference. Surveying a small sample of litigants and attorneys, as would be the case in a pilot study, would be inadequate for addressing the Supreme Court's question about the impact of this innovation on human behavior in the courtroom, on victim and witness participation rates, and on public perceptions of the quality of justice being administered in Minnesota district courts.

A study with an experimental design, as the one proposed by Professor Borgida, can help secure the evidence base that is necessary to draw firm conclusions regarding if and how courtroom cameras affect the behaviors of victims and witnesses. Minnesota is fortunate is have Professor Borgida, who is widely regarded as one the nation's leading researchers of law and social science, to lead the study. I strongly encourage the members of the Advisory Committee to consider having a full implementation of an experimental study that can provide more valid and definitive findings on what impacts, if any, the presence of cameras in the courtroom might have.

Thank you for your consideration.

Sincerely,

Andrew Furco

Andrew Furco
Associate Vice President for Public Engagement

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December 17, 2010

ADM 09-8009

Frederick K. Grittner
Clerk of the Appellate Courts
25 Rev. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

Dear Mr. Grittner:

Please share my comments with the justices of the Minnesota Supreme Court as they consider allowing television cameras into courtrooms.

For 18 years, I served as Executive Producer and then News Director of WWMT-TV in Kalamazoo, Michigan, where cameras have long been allowed under carefully developed guidelines and always under the supervision of the presiding judge. After years of experience, I can attest that decorum in Michigan courts has been preserved, and the overwhelming result has been that people have a much greater understanding and awareness of courtroom proceedings. They also have a much better grasp of the needs of the judiciary, simply because they see the courts at work every day and night on their TV newscasts.

On occasion, one of the judges would ask me to make special arrangements for audio, or would prefer a pool camera be created instead of having more than one camera. At all of the commercial TV broadcast stations in the Grand Rapids-Kalamazoo-Battle Creek region, there was a cooperative attitude among the News Directors of the stations to work with each other to ensure that there was never friction that jeopardized the relationship with the judicial branch.

Most court proceedings did not receive the attention of broadcast journalists, but in cases that were prominent and in the public interest, the presence of TV cameras in the court helped elevate the importance of court processes.

I would be happy to work with the justices to make such a project a success.

Sincerely,

Noel Sederstrom
News Director, KTTC-TV

White Earth Tribal Court

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December 14, 2010
Minnesota Advisory Committee
25 Rev. Dr. Martin Luther King Drive
St. Paul, MN 55155

ADM09-8009

Dear Committee Members;

I write today to express the views of White Earth Tribal Court on the issues of cameras being allowed in district courtrooms and the impact it would have on White Earth Band members. It is my opinion that cameras in the courtroom would negatively impact the judicial process for Band members.

The news media, for obvious reasons, cover the stories that have sensational and salacious fact patterns. The media's coverage of any story is limited to a sound bite and a few moments of air time. This type of coverage does not lend itself to a case by case analysis. Each court case has a fact pattern that is unique to the case. The attorneys, judges, victims, defendants and jurors involved in the case are all well aware of the nuances. It is those nuances that form the opinions of all the parties involved. Condensing that information into a ten second sound bite and a two minute news report of the facts, leaves only the facts that grab the public's attention. In many instances the facts that grab the attention of the public would be the horrendous nature of the crime and the race, ethnicity or religion of the defendant and victims. It would be upon those facts that the viewer would begin to formulate an opinion of the crime, defendants and victims involved.

In areas where the Native American population is greater there would be the perception, by the non-resident public, that the majority of the crimes are committed by one racial group. This perception combined with the cultural disconnect of persons not familiar with certain Annishanabe customs would work to create a negative perception of the defendant, the victim and our culture as a whole. In the traditional Annishanabe it is considered a sign of respect to lower ones eyes when speaking; in other cultures it is considered a sign of untruthfulness or guilt. In Annishanabe culture it is acceptable to allow a family member to raise your child; in other cultures it is considered abandonment of a child. Perceptions and the formulation of opinions based on sound bites will only work to exacerbate biases already in place about Indian people and Indian Country.

The White Earth Band believes that knowledge and understanding are of vital importance to the strengthening of the community. It is the Band's wish that more people would attend district court proceedings to understand the nuances that make each case different. The White Earth Tribal Court does not believe that a few seconds of exposure on the television will enhance the relationship between Band members and the community but would serve to detract from it.

Sincerely,

Anita Fineday

Anita Fineday
Chief Judge of White Earth Tribal Court