

STATE OF MINNESOTA  
IN SUPREME COURT  
CX-89-1863

OFFICE OF  
APPELLATE COURTS

FEB 12 2009

FILED

PROMULGATION OF AMENDMENTS  
TO THE MINNESOTA GENERAL RULES OF PRACTICE  
FOR THE DISTRICT COURTS AND RELATED RULES,  
AND IMPLEMENTATION OF A PILOT PROJECT  
ON CAMERAS IN THE COURTROOM

**ORDER**

In its report filed March 31, 2008, the Supreme Court Advisory Committee on the General Rules of Practice recommended amendments to the General Rules of Practice for the District Courts in response to a petition filed by the Minnesota Joint Media Committee, Minnesota Newspaper Association, Minnesota Broadcasters Association, and Society of Professional Journalists, Minnesota Chapter (“Petitioners”). This Court held a hearing on the report on July 1, 2008. The Court has reviewed all submitted comments and is fully advised in the premises.

IT IS HEREBY ORDERED that:

1. The attached amendments to the General Rules of Practice for the District Courts be, and the same are, prescribed and promulgated to be effective on March 1, 2009.
2. The attached amendments to the Code of Judicial Conduct be, and the same are, prescribed and promulgated to be effective from March 1, 2009, through June 30, 2009, and thereafter the provisions of the revised Code of Judicial Conduct adopted in the *Order Promulgating Revised Minnesota Code Of Judicial Conduct*, No. ADM08-8004 (Minn. Dec. 18, 2008), to be effective July 1, 2009, shall apply.
3. The following orders are vacated effective March 1, 2009:
  - a. *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Apr. 18, 1983);

- b. *Order Permitting Audio and Video Coverage of Supreme Court Proceedings*, No. C6-78-47193 (Minn. Apr. 20, 1983);
- c. *Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings*, No. C7-81-300 (Minn. Sept. 28, 1983);
- d. *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Extend the Period of Experimental Audio and Video Coverage of Certain Trial Court Proceedings*, Order, No. C7-81-300 (Minn. Aug. 21, 1985);
- e. *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings , No. C7-81-300 (Minn. May 22, 1989); and
- f. *In re Modification of Canon 3A(10) of the Minnesota Code of Judicial Conduct*, Order, No. C7-81-300 (Minn. Jan. 11, 1996) (reinstating April 18, 1983, program and extending until further order of Court).

4. Except as otherwise provided herein, the attached amendments shall apply to all actions pending on the effective date and to those filed thereafter.

5. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

6. The Advisory Committee on the General Rules of Practice shall, in consultation with the Petitioners, recommend draft rules establishing a pilot project on cameras in the court that includes:

- a. the rule recommendations of the minority of the Advisory Committee set forth in the March 31, 2008, report;
- b. 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; and

- c. recommendations for funding the pilot project, including any additional staff required to administer the project and any costs associated with the study, all without additional costs to the judiciary.

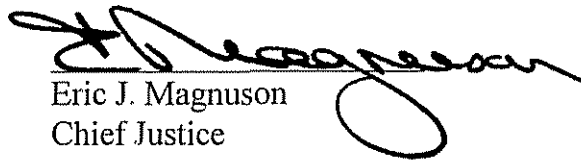
The Advisory Committee shall submit its recommendations to this Court on or before January 15, 2010, and upon submission the recommendations will be posted on the state court website ([www.mncourts.gov](http://www.mncourts.gov)).

7. All persons, including members of the bench and bar, desiring to submit written statements on the forthcoming recommendations regarding a pilot project on cameras in the trial court shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard., St. Paul, MN 55155, on or before February 15, 2010.

8. The Court's memorandum on this matter is attached to this order.

DATED: February 11, 2009

BY THE COURT:

  
Eric J. Magnuson  
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

MEMORANDUM

The General Rules of Practice Committee, and all those that appeared before it, have carefully examined the topic of cameras in the courtroom. The court very much appreciates the thoroughness and thoughtfulness with which both the Committee majority and minority explored the issues and presented their conclusions. The majority report of the Committee concluded that, in the absence of a clear benefit, and in light of concerns about a potential chilling impact on victims and witnesses, there was no compelling reason to change the current rule. The minority report concluded that there are sufficient safeguards in place to address any issues relating to victim or witness participation.

Most states allow cameras in the courtroom, and the evidence seems clear that cameras themselves do not impact the actual in-court proceedings. But this court remains concerned by the fact that there is no empirical evidence addressing whether the prospect of televised proceedings has a chilling impact on victims and witnesses. Numerous participants in the justice system who work on a regular basis with victims and witnesses expressed the firmly held view that televised proceedings would make a difficult situation even more problematic. Under the order filed today, the charge to the Committee and the media is 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 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.

In addition, because of the serious budget constraints that currently face the judiciary, it is vital that any pilot project and study not rely upon the judicial

branch for funding. Although it may be asking a great deal, the court has directed the Committee to explore methods of funding the pilot project and study that will result in no fiscal impact for the courts.

The court once again wishes to express its thanks to the Committee and those who appeared before it and looks forward to receiving additional recommendations.

## CONCURRENCE

DIETZEN, Justice (concurring).

I concur in the majority's opinion to not make any substantive changes to the court rules that restrict cameras in the courtroom at this time. Further, I concur that a properly conducted pilot study may provide useful information to assist the court in considering whether to relax those restrictions. I write separately to express my concerns that cameras in the courtroom may deprive a defendant of the right to a fair trial, that a pilot study may not produce reliable results, and that the judiciary does not have the financial resources to pay the related costs of the study.

First, I consider the constitutional implications of cameras in the courtroom. While the Due Process Clause does not prohibit electronic media coverage of judicial proceedings, the First and Sixth amendments to the United States Constitution do not mandate electronic media in judicial proceedings. In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 610 (1978), the U.S. Supreme Court concluded that there is no constitutional right to have witness testimony recorded and broadcast and that the constitutional guarantee of a public trial confers no special benefit to the press. The *Nixon* court concluded that “[t]he requirement of a public trial is satisfied by the opportunity of members of the public and the press to attend the trial and to report what they have observed.” *Id.* at 610. Thus, the press has no constitutional right to have cameras in the courtroom.

A defendant, however, has a constitutional right to a fair trial. In the landmark case of *Estes v. Texas*, 381 U.S. 532 (1965), the U.S. Supreme Court held that a

defendant was deprived of his right under the Fourteenth Amendment to due process and a fair trial by the broadcasting of his notorious, heavily publicized and highly sensational criminal trial. In *Estes* there were two concurring opinions. The concurring opinions expressed a concern that the very presence of media cameras and recording devices at a trial inescapably gives rise to an adverse psychological impact on the participants in the trial. *See id.* at 567-70, 591-92. In his concurring opinion, Justice Harlan observed that “[p]ermitting television in the courtroom undeniably has mischievous potentialities for intruding upon the detached atmosphere which should always surround the judicial process,” and that although such distortions may produce no telltale signs, “their effects may be far more pervasive and deleterious than the physical disruptions which all concede would vitiate a conviction.” *Id.* at 587, 592 (Harlan, J., concurring). Justice Harlan also observed that the “countervailing factors” were the educational and informational value of a trial proceeding to the public. *Id.* at 587, 594-95.

In *Chandler v. Florida*, 449 U.S. 560 (1981), the U.S. Supreme Court held that a state court could provide for radio, television, and still photographic coverage of a criminal trial for public broadcast. In doing so the court rejected the defendant’s argument that *Estes* prohibited all photographic or broadcast coverage of criminal trials under the due process clause. *Id.* at 573-74. The court noted, among other things, that the general issue of the psychological impact of the broadcast coverage upon the participants in a trial, and particularly upon the defendant, is a subject of sharp debate. *Id.* at 575-76. That debate continues to rage today. The *Chandler* court observed that:

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

*Id.* at 577. I share those same concerns.

Second, I have concerns regarding the pilot study. Specifically, the pilot study must be properly constructed to gather empirical evidence of the potential impact of cameras in the courtroom. Although it is useful to gather information of actual trials that have occurred, it is also important to measure the potential impact of cameras on victims and witnesses who choose not to participate in criminal investigations because of the potential media coverage. Unless the pilot study is based on a representative sample, the results may be biased and therefore unreliable.

In my opinion, the best evidence of the potential impact of cameras on victims and witnesses is prosecutors, public defenders, and advocacy groups representing individuals directly affected. Those individuals are directly involved in interviewing the victims and witnesses involved in the criminal investigations and trials. Unless their experience is measured, the pilot study will be deficient.

Third, I am concerned about the pilot study's financial impact on the judiciary and the potential hidden costs associated with having cameras in the courtroom. The judiciary will incur indirect costs associated with the study that are not insignificant. If this court ultimately approves cameras in the courtroom, I fear that the judiciary will absorb ongoing indirect costs from the operation of cameras in the courtroom that will



need to be offset by additional cuts to our already strained budget. At a time when the State of Minnesota and its judiciary are struggling under severe fiscal constraints, it seems unwise to divert badly needed resources to this pilot study.

## DISSENT

PAGE, Justice (dissenting).

I dissent from that part of the court's order, as set out in paragraphs six and seven of the order, that requires the Supreme Court Advisory Committee on General Rules of Practice to recommend draft rules establishing a pilot program that expands camera usage in the courtroom. The right to due process and a fair trial before an impartial tribunal militate against expanding the use of cameras in our trial courts.

Before recommending that the current camera-usage rule not be changed, the advisory committee solicited information, heard testimony and presentations from interested parties, and conducted research into how other jurisdictions approached the use of cameras in the courtroom. The testimony and presentations came from members of the media, representatives from jurisdictions that permit expanded camera access, public defenders, prosecutors, judges, private attorneys, victim advocates, and this court's racial fairness committee.

The media proponents of changing the current rule to expand the use of cameras in our state's trial courtrooms argue that the rule should be changed because a significant majority of other states have implemented more liberal access without noticeable adverse effects, the public may have an interest in greater access to judicial proceedings, and technological advances have eliminated the obtrusive impact of cameras in the courtroom. Supreme Court Advisory Committee on General Rules of Practice, *Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of*

*Practice 6* (Final Report 2008) (hereinafter *Advisory Recommendations*). They further argue that expanded use of cameras in our trial courts will provide increased public understanding of the judiciary. *Id.*

Prosecutors, public defenders, private attorneys, advocates for victims, and this court's racial fairness committee expressed strong opposition to changing the rule. In addition, the committee heard from at least one victim who opposed changing the rule.

The advisory committee's majority report concluded that the rule should not be changed.<sup>1</sup> *Id.* at 2. This conclusion was based on the majority members' findings that cameras do not further the core mission of the courts to provide a fair tribunal and may instead interfere with that mission. *Id.* at 7. The committee's minority report recommended that cameras be allowed at the discretion of the trial court judge, with specific limitations. *Id.* at 20. In making this recommendation, the authors of the minority report reasoned that the opponents of a more liberal rule, not the proponents, have the burden of proof, and that the opponents failed to demonstrate that expanded camera coverage would actually interfere with the administration of justice. *Id.* For the reasons discussed below, I would deny the petitioners' request for expanded use of cameras in our state's trial courtrooms and would not order the advisory committee to develop a pilot program.

The Due Process Clause of the United States Constitution "entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of

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<sup>1</sup> The majority report was endorsed by 16 of the advisory committee's 19 voting members; the minority report was endorsed by the remaining three members. *Id.* at 2.

neutrality . . . safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process . . . .” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

Moreover, a fair trial is the “most fundamental of all freedoms” and “must be maintained at all costs.” *Estes v. Texas*, 381 U.S. 532, 540 (1965) (5-4 decision) (plurality opinion). In *Estes*, the court noted that cameras do not “contribute materially” to ensuring a fair trial and may even interfere with it. *Id.* at 544. That notion is as true today as it was when *Estes* was decided.

In concluding that the rule should not be changed, the advisory committee majority was concerned with, among other things, the potential chilling effects that the expanded use of cameras would have in criminal, juvenile, family, and order-for-protection proceedings. *Advisory Recommendations* 6-8. The advisory committee found that:

Even if cameras were limited to prevent their use in particular categories of cases, the committee heard and credited the view of numerous participants in those proceedings that crime victims and witnesses, and other interested parties, would be deterred from reporting crimes or from agreeing to testify. This is a significant problem that cannot be readily mitigated; the mere fact that camera coverage of court proceedings is generally known to exist is, according to witnesses before the committee, likely to cause crime and domestic abuse victims and witnesses to decline to report crimes and to refuse to come forward to testify. This chilling effect on victims and witnesses occurs even in types of cases where cameras are not likely to be allowed, as the victims or witnesses would have the impression that being in court subjects one to camera scrutiny.

*Id.* at 7. Prosecutors, defense attorneys, and victim advocates raised the concern that the expanded use of cameras would have a chilling effect on crime victims and witnesses. Their concerns and the advisory committee's findings should not be set aside.

Interestingly, after studying the issue and conducting a three-year pilot program, the Judicial Conference of the United States opposes the use of cameras in federal trial courts and Congress has not authorized the use of cameras in federal district courtrooms. Testifying before the House Committee on the Judiciary, Federal District Court Judge John Tunheim explained the Conference's opposition, noting that a desire for "increased public education should not interfere with the Judiciary's primary mission," which is to protect "citizens' [rights to] enjoy a fair and impartial trial." *Sunshine in the Courtroom Act of 2007: Hearing on H.R. 2128 Before the H. Comm. on the Judiciary*, 110th Cong. 8, 10 (2007) (statement of John R. Tunheim, Judge, U.S. District Court for the District of Minnesota, on behalf of the Judicial Conference of the United States). According to Judge Tunheim, the

use of cameras in courtrooms [has the potential] to undermine the fundamental right of citizens to a fair trial. It could jeopardize court security and the safety of trial participants, including judges, U.S. attorneys, trial counsel, U.S. marshals, court reporters, and courtroom deputies. The use of cameras in the trial courts could also raise privacy concerns and produce intimidating effects on litigants, witnesses, and jurors, many of whom have no direct connection to the proceeding. In addition, appearing on television could lead some trial participants to act more dramatically, to pontificate about their personal views, to promote commercial interests to a national audience, or to increase their courtroom actions so as to lengthen their appearance on camera. Finally, camera coverage could become a

negotiating tactic in pretrial settlement discussions or cause parties to choose not to exercise their right to have a trial.

*Id.*

In 2005, Judge Jan DuBois, who participated in the federal court pilot project that permitted cameras in civil cases, testified before the Senate’s Judiciary Committee that “cameras in the district courts could seriously jeopardize” judges’ paramount role of ensuring that citizens have a fair and impartial trial. *Cameras in the Courtroom Act of 2005: Hearing on S. 829 Before the S. Comm. on the Judiciary*, 109th Cong. 14 (2005) (statement of Jan E. DuBois, Judge, U.S. District Court for the Eastern District of Pennsylvania). She emphasized that the “right to a fair trial” should not be sacrificed “to make courtrooms more open.” *Id.* at 15. The concerns identified by Judge Tunheim and Judge DuBois are equally applicable to the use of cameras in Minnesota’s district courts.<sup>2</sup>

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<sup>2</sup> The advocates for expanded camera access argue that the media has a right to such access under the First and Sixth Amendments to the United States Constitution. This argument does not carry the day. The First Amendment prohibits laws that abridge the “freedom of speech, or of the press.” The Sixth Amendment guarantees that “[i]n all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.” The right to a public trial, however, is a right unique to the defendant and does not guarantee the public access. *Gannett Co. v. DePasquale*, 443 U.S. 368, 379-80 (1979) (plurality opinion) (analyzing public access to a pretrial hearing). The defendant’s right to a public trial does not include the “right to have such testimony recorded and broadcast” but rather is satisfied when the public and press have the right to “attend the trial and to report what they have observed.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 610 (1978). Under the current rule, there can be no serious claims that the public and the press have been denied the right to “attend the trial and to report what they have observed.”

The First Amendment protects the public’s right to observe trials over the objection of the defendant. *Globe Newspaper Co. v. County of Norfolk*, 457 U.S. 596, 604-06 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564, 580-81

(Footnote continued on next page.)

An issue raised, but not fully considered by the advisory committee,<sup>3</sup> was the impact that the expanded use of cameras in our trial courts would have on people of color who use our judicial system. In 1993, our court issued a report from the Task Force on Racial Bias in the Judicial System. In its report, the task force found that, for Minnesota's communities of color, our court system lacked fairness. In response to the report, we set up a committee to implement the report's recommendations. That committee, which is now called the Racial Fairness Committee and which now reports to

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(Footnote continued from previous page.)

(1980) (plurality opinion). The press, however, has "no right to information about a trial superior to that of the general public." *Nixon*, 435 U.S. at 609. Further, the public's right to observe trials is not absolute. The public's access may be limited upon demonstrating that it is necessary to "protect the defendant's superior right to a fair trial." *Richmond Newspaper*, 457 U.S. at 564. That is to say, when the right to a fair trial before an impartial tribunal conflicts with the public's right under the First Amendment, the First Amendment must yield. See *Sheppard v. Maxwell*, 384 U.S. 333, 350-51 (1966) (The right to free speech "must not be allowed to divert the trial from the 'very purpose of a court system . . . to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.'" (quoting *Cox v. Louisiana*, 379 U.S. 559, 583 (1965) (Black, J., dissenting)); *Estes*, 381 U.S. at 540 ("We have always held that the atmosphere essential to the preservation of a fair trial - the most fundamental of all freedoms - must be maintained at all costs."); *Pennekamp v. Florida*, 328 U.S. 331, 347 (1946) ("Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice."); *In re Dow Jones & Co.*, 842 F.2d 603, 609 (2nd Cir. 1988) ("When the exercise of free press rights actually tramples upon Sixth Amendment rights, the former must nonetheless yield to the latter."); *State v. Palm Beach Newspapers, Inc.*, 395 So. 2d 544, 549 (Fla. 1981) ("[I]t remains essential for trial judges to err on the side of fair trial rights for . . . the defense. The electronic media's presence in . . . courtrooms is desirable, but it is not indispensable. The presence of witnesses is indispensable.").

<sup>3</sup> It appears that this issue was not fully considered because the early consensus among the advisory committee was that no change would be recommended and, therefore, there would be no change from the status quo. *Advisory Recommendations* 9.

the Judicial Council, continues today in its effort to eliminate racial bias from our judicial system. By letter dated June 19, 2008, the Racial Fairness Committee strongly supported the advisory committee majority's recommendation that the current rule on the use of cameras in Minnesota's trial courts be retained. Underlying that support was the Racial Fairness Committee's belief that in communities of color the expanded use of cameras in trial courtrooms would diminish public trust and confidence in the judicial system. I agree. More importantly, however, the expanded use of cameras will do nothing to assist in the elimination of racial bias from our judicial system and will, in fact, exacerbate the problem.

The media spends a great deal of time reporting on crime. Franklin D. Gilliam Jr. & Shanto Iyengar, *Prime suspects: The influence of local television news on the viewing public*, 44 Am. J. Pol. Sci. 560, 560 (2000). Crime reporting is one of the reasons for seeking the rule change to allow the expanded use of cameras in the courtroom. Unfortunately, studies indicate that the media consistently portrays crime in a way that emphasizes crime when perpetrated by African Americans and other people of color<sup>4</sup> and portrays African Americans who are accused and/or convicted of crimes in a more negative light than their white counterparts.

One comparison of crime reports with news coverage revealed that local television news is more likely to cover crime when committed by African Americans, while simultaneously over-representing whites as victims. Travis L. Dixon & Daniel Linz,

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<sup>4</sup> While the examples discussed below relate to African Americans, it is not at all clear that the media treats members of other racial minorities any different.



*Overrepresentation and underrepresentation of African Americans and Latinos as law-breakers on television news*, 50 J. Comm. June 2000, at 131, 131-54; Travis L. Dixon & Daniel Linz, *Race and the Misrepresentation of Victimization on Local Television News*, 27 Comm. Res. Oct. 2000, at 547, 568. A 14-week analysis of the 11 p.m. Philadelphia news revealed that 72% of crimes perpetrated by blacks were reported in contrast to only 47% of crimes against blacks. Daniel Romer, Kathleen H. Jamieson & Nicole J. De Coteau, *The treatment of persons of color in local television news: Ethnic blame discourse or realistic group conflict*, 25 Comm. Res. 286, 286-305 (1998). Black congress members involved in the 1992 House banking scandal received more negative press than their white counterparts. Robert M. Entman, *Young Men of Color in the Media: Images and Impacts*, Joint Center for Political and Economic Studies Health Policy Institute Background Paper 13 (2006) (citing David Niven, *A fair test of media bias: Party, race and gender in coverage of the 1992 house banking scandal*, 36 Polity 637, 637-49 (2004)).

The media also portrays black and white perpetrators of the same crime differently. Local networks are more likely to show African Americans in handcuffs and to broadcast their mug shots. Robert M. Entman, *Modern racism and the images of blacks in local television news*, 7 Crit. Stud. in Mass Comm. 332, 332-45 (1990). A 55-day study of Chicago local television news revealed that blacks accused of a crime were shown in the grip of a restraining police officer twice as often as their white counterparts. Robert M. Entman, *Blacks in the news: Television, modern racism, and cultural change*,

69 Journalism Q. 341, 341-61 (1992). The Entman-Rojecki Index of Race and Media (2002) reports that “it is four times more likely for the mug shot of an accused to be shown on TV if the suspect is black and it is two times more likely that a suspect will be shown restrained by police if she or he are black.”

Media coverage of Hurricane Katrina provides another recent example of the media’s slanted coverage of race and crime. The Agency France-Press labeled a photo of a young white couple carrying bags of food and a case of soda as “finding bread and soda from a local grocery store,” but the Associated Press labeled a similar photo of a young black man as “looting a grocery store.” Neil F. Carlson & Leonard M. Baynes, *Rethinking the Discourse on Race: A Symposium on how the Lack of Racial Diversity in the Media Affects Social Justice and Policy*, 21 St. John’s J. Legal Comment. 575, 581 (2007). Eighty-three percent of photos from the New York Times, Washington Post, USA Today, and The Wall Street Journal depicted African Americans as looting, while whites were depicted as guarding property 66% of the time. *Id.* Blacks were also overly represented as victims and whites as rescuers. *Id.*

Finally, a March 2002 article from the Journal of Broadcasting and Electronic Media reported that:

Tests of whether or not race has an impact on the presentation of prejudicial information revealed that stories featuring Black and Latino defendants and White victims were more likely than stories featuring White defendants and non-White victims to contain prejudicial information. More than a third of both Blacks and Latinos were associated with prejudicial information. . . . Blacks and Latinos were more than twice as likely as Whites to have prejudicial information aired about them. Latinos who victimized Whites

were almost three times as likely as Whites to be associated with prejudicial information.

Travis L. Dixon & Daniel Linz, *Television news, prejudicial pretrial publicity, and the depiction of race*, 46 *Am. J. Pol. Sci.* 112, 112-36 (2002).

In the end, my disagreement with the court's order is premised on two simple points. First, given the concerns raised by the prosecutors, defense attorneys, and victim advocates who work in our trial courts on a daily basis, I cannot conclude that changing our rules to allow the expanded use of cameras in our trial court courtrooms will "contribute materially" to ensuring a fair trial by promoting "participation and dialogue by affected [witnesses and victims] in the decision-making process." In fact, expanded access may have the opposite effect. Second, given the media's documented treatment of African Americans and other people of color accused of crime, I can only conclude that expanding the use of cameras will not assist in the court's obligation to prevent "unjustified and mistaken deprivations."

For these reasons I respectfully dissent.

## AMENDMENTS TO MINNESOTA CODE OF JUDICIAL CONDUCT

### Canon 3A(11):

(11) ~~Except in the Supreme Court and the Court of Appeals, a~~ A judge shall prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto ~~during sessions of court or recess between sessions. A judge may, however, authorize:~~ except as permitted by order or court rule adopted by the Minnesota Supreme Court.

- ~~(a) — the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;~~
- ~~(b) — the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings;~~
- ~~(c) — the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
  - ~~(i) the means of recording will not distract participants or impair the dignity of the proceedings;~~
  - ~~(ii) the parties have consented, and the consent to be depicted or recorded has been obtained from each witness appearing in the recording and reproduction;~~
  - ~~(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and~~
  - ~~(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.~~~~

#### General Rules Advisory Committee Comment—2008

This rule is amended to delete the specific standards to be followed in considering whether electronic recording and transmission should be allowed of Minnesota court proceedings. The material deleted is adopted in part in Rule 4 of the Minnesota General Rules of Practice, applicable in all court proceedings other than appeals or similar proceedings in the Minnesota Court of Appeals and Minnesota Supreme Court. Rule 4 is modified, however, to incorporate salient provisions of a series of orders dealing with a multi-decade experiment to permit some recording or broadcast of court proceedings with the agreement of all parties. See *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983); *Order Permitting Audio and Video Coverage of Supreme Court Proceedings*, No. C6-78-47193 (Minn. Sup. Ct. April 20, 1983); *Amended Order Permitting*

Audio and Video Coverage of Appellate Court Proceedings, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983); In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Conduct and Extend the Period of Experimental Audio and Video Coverage of Certain Trial Court Proceedings, Order, C7-81-300 (Minn. Sup. Ct. Aug. 21, 1985); In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct, Order re: Audio and Video Coverage of Trial Court Proceedings (Minn. Sup. Ct. May 22, 1989); and In re Modification of Canon 3A(10) of the Minnesota Code of Judicial Conduct, Order, No. C7-81-3000 (Minn. Sup. Ct. Jan. 11, 1996)(reinstating April 18, 1983, program and extending until further order of Court).

The reason for amendment of Canon 3A(11) is to state in the Code of Judicial Conduct the simple requirement that judges adhere to the Minnesota Supreme Court's orders and rules relating to recording and broadcast of court proceedings, and that the actual substantive requirements be contained in a single place. Rule 4 of the Minnesota General Rules of Practice, adopted at the same time as the amendment of Canon 3A(11) now sets forth all the surviving portions of this canon and the intervening orders that have modified it. All of these provisions were updated to reflect current recording technologies.

## AMENDMENTS TO MINNESOTA GENERAL RULES OF PRACTICE

### Rule 4. Pictures and Voice Recordings

**Rule 4.01. General Rule.** Except as set forth in this rule, No pictures or voice recordings, except the recording made as the official court record, shall be taken in any courtroom, area of a courthouse where courtrooms are located, or other area designated by order of the chief judge made available in the office of the court administrator in the county, during a trial or hearing of any case or special proceeding incident to a trial or hearing, or in connection with any grand jury proceedings.

This rule ~~shall~~ may be superseded by specific rules of the Minnesota Supreme Court relating to use of cameras in the courtroom for courtroom security purposes, for use of videotaped recording of proceedings to create the official recording of the case, or for interactive video hearings pursuant to rule or order of the supreme court. This Rule 4 does not supersede the provisions of the Minnesota Rules of Public Access to Records of the Judicial Branch.

**Rule 4.02 Exceptions.** A judge may, however, authorize:

- (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;
- (b) the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings;
- (c) upon the consent of the trial judge in writing or made on the record prior to the commencement of the trial, the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
  - (i) There shall be no audio or video coverage of jurors at any time during the trial, including *voir dire*.
  - (ii) There shall be no audio or video coverage of any witness who objects thereto in writing or on the record before testifying.

- (iii) Audio or video coverage of judicial proceedings shall be limited to proceedings conducted within the courtroom, and shall not extend to activities or events substantially related to judicial proceedings that occur in other areas of the court building.
- (iv) There shall be no audio or video coverage within the courtroom during recesses or at any other time the trial judge is not present and presiding.
- (v) During or preceding a jury trial, there shall be no audio or video coverage of hearings that take place outside the presence of the jury. Without limiting the generality of the foregoing sentence, such hearings would include those to determine the admissibility of evidence, and those to determine various motions, such as motions to suppress evidence, for judgment of acquittal, *in limine* and to dismiss.
- (vi) There shall be no audio or video coverage in cases involving child custody, marriage dissolution, juvenile proceedings, child protection proceedings, paternity proceedings, petitions for orders for protection, motions to suppress evidence, police informants, relocated witnesses, sex crimes, trade secrets, undercover agents, and proceedings that are not accessible to the public. No ruling of the trial court relating to the implementation or management of audio or video coverage under this rule shall be appealable until the trial has been completed, and then only by a party.

**Rule 4.03. Technical Standards for Photography, Electronic and Broadcast Coverage of Judicial Proceedings.** The trial court may regulate any aspect of the proceedings to ensure that the means of recording will not distract participants or impair

the dignity of the proceedings. In the absence of specific order imposing additional or different conditions, the following provisions apply to all proceedings.

**(a) Equipment and personnel.**

- (1) Not more than one portable television or movie camera, operated by not more than one person, shall be permitted in any trial court proceeding.
- (2) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding in any trial court.
- (3) Not more than one audio system for radio broadcast purposes shall be permitted in any proceeding in any trial court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court. If no technically suitable audio system exists in the court, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the trial judge.
- (4) Any “pooling” arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the trial judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude from a proceeding all media personnel who have contested the pooling arrangement.

**(b) Sound and light.**

- (1) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Excepting modifications and additions made pursuant to Paragraph (e) below, no artificial, mobile lighting device of any kind shall be employed with the television camera.



- (2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, such still camera equipment shall produce no greater sound or light than a 35 mm Leica "M" Series Rangefinder camera, and no artificial lighting device of any kind shall be employed in connection with a still camera.
- (3) Media personnel must demonstrate to the trial judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light requirements of this rule. A failure to demonstrate that these criteria have been met for specific equipment shall preclude its use in any proceeding.

**(c) Location of equipment and personnel.**

- (1) Television camera equipment shall be positioned in such location in the court as shall be designated by the trial judge. The area designated shall provide reasonable access to coverage. When areas that permit reasonable access to coverage are provided, all television camera and audio equipment must be located in an area remote from the court.
- (2) A still camera photographer shall position himself or herself in such location in the court as shall be designated by the trial judge. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once a photographer has established himself or herself in a shooting position, he or she shall act so as not to attract attention by distracting movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.
- (3) Broadcast media representatives shall not move about the court facility while proceedings are in session.

**(d) Movement of equipment during proceedings.** News media photographic or audio equipment shall not be placed in, or removed from, the court

except before commencement or after adjournment of proceedings each day, or during a recess. Microphones or taping equipment, once positioned as required by (a)(3) above, may not be moved from their position during the pendency of the proceeding. Neither television film magazines nor still camera film or lenses may be changed within a court except during a recess in the proceedings.

(e) **Courtroom light sources.** When necessary to allow news coverage to proceed, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions do not produce distracting light and are installed and maintained without public expense. Such modifications or additions are to be presented to the trial judge for review prior to their implementation.

(f) **Conferences of counsel.** To protect the attorney-client privilege and the effective right to counsel, there shall be no video or audio pickup or broadcast of the conferences which occur in a court between attorneys and their client, co-counsel of a client, opposing counsel, or between counsel and the trial judge held at the bench. In addition, there shall be no video pickup or broadcast of work papers of such persons.

(g) **Impermissible use of media material.** None of the film, videotape, still photographs or audio reproductions developed during, or by virtue of, coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceedings.

**Rule 4.04. Camera Access in Appellate Court Proceedings.**

(a) Unless notice is waived by the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals, notice of intent to cover appellate court proceedings by either audio or video means shall be given by the media to the Clerk of the Appellate Courts at least 24 hours prior to the time of the intended coverage.

(b) Camera operators, technicians, and photographers covering a proceeding must:

- avoid activity which might distract participants or impair the dignity of the proceedings;
- remain seated within the restricted areas designated by the Court;
- observe the customs of the Court;

- conduct themselves in keeping with courtroom decorum; and
- not dress in a manner that sets them apart unduly from the participants in the proceeding.

(c) All broadcast and photographic coverage shall be on a pool basis, the arrangements for which must be made by the pooling parties in advance of the hearing. Not more than one (1) electronic news gathering (“ENG”) camera producing the single video pool-feed shall be permitted in the courtroom. Not more than two (2) still-photographic cameras shall be permitted in the courtroom at any one time. Motor-driven still cameras may not be used.

(d) Exact locations for all camera and audio equipment within the courtroom shall be determined by the Court. All equipment must be in place and tested 15 minutes in advance of the time the Court is called to order and must be unobtrusive. All wiring, until made permanent, must be safely and securely taped to the floor along the walls.

(e) Only existing courtroom lighting may be used.

**Advisory Committee Comment—19942008 Amendments**

~~This rule is was initially derived from the current-local rules of three districts~~

~~It appears that this rule is desired by the benches of three districts and it may be useful to have an articulated standard for the guidance of lawyers, litigants, the press, and the public.~~

The Supreme Court adopted rules allowing cameras in the courtrooms in limited circumstances, and it is inappropriate to have a written rule that does not accurately state the standards which lawyers are expected to follow. See *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, No. C7-81-300 (Minn. Sup. Ct. May 22, 1989). The court has ordered an experimental program for videotaped recording of proceedings for the official record in the Third, Fifth and Seventh Judicial Districts. *In re Videotaped Records of Court Proceedings in the Third, Fifth, and Seventh Judicial Districts*, No. C4-89-2099 (Minn. Sup. Ct. Nov 17, 1989) (order). The proposed local rule is intended to allow the local courts to comply with the broader provisions of the Supreme Court Orders, but to prevent unauthorized use of cameras in the courthouse where there is no right to access with cameras.

~~This rule is amended in 1994 to make it unnecessary for local courthouses to obtain Supreme Court approval. The rule was amended in 2008 to add Rule 4.02, comprising provisions that theretofore were part of the Minnesota Rules of Judicial Conduct. This change is not intended to be substantive in nature, but the provisions are moved to the court rules so they are more likely to be known to litigants. Canon 3(A)(11) of the Minnesota Code of Judicial Conduct is amended to state the current obligation of judges to adhere to the rules relating to court access for cameras and other electronic reporting equipment.~~

The extensive amendment of Rule 4 in 2008 reflects decades of experience under a series of court orders dealing with the use of cameras in Minnesota courts. See *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983); *Order Permitting Audio and Video Coverage of Supreme Court Proceedings*, No. C6-78-47193

(Minn. Sup. Ct. April 20, 1983); Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983); In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct to Conduct and Extend the Period of Experimental Audio and Video Coverage of Certain Trial Court Proceedings, Order, C7-81-300 (Minn. Sup. Ct. Aug. 21, 1985); In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct, Order re: Audio and Video Coverage of Trial Court Proceedings (Minn. Sup. Ct. May 22, 1989); and In re Modification of Canon 3A(10) of the Minnesota Code of Judicial Conduct, Order, No. C7-81-3000 (Minn. Sup. Ct. Jan. 11, 1996)(reinstating April 18, 1983. program and extending until further order of Court). The operative provisions of those orders, to the extent still applicable and appropriate for inclusion in a court rule, are now found in Rule 4.

Amended Rule 4.01 defines how this rule dovetails with other court rules that address issues of recording or display of recorded information. The primary thrust of Rule 4 is to define when media access is allowed for the recording or broadcast of court proceedings. Other rules establish limits on access to or use of court-generated recordings, such as court-reporter tapes and security tapes. See, e.g., Minnesota Rules of Public Access to Records of the Judicial Branch.

Amended Rules 4.02(a) & (b) are drawn from Canon 3A(11)(a) & (b) of the Minnesota Code of Judicial Conduct prior to its amendment in 2008. Rule 4.02(c) and the following sections (i) through (vii) are taken directly from the Standards of Conduct and Technology Governing Still Photography, Electronic and Broadcast Coverage of Judicial Proceedings, Exhibit A to *In re Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct*, Order re: Audio and Video Coverage of Trial Court Proceedings, No. C7-81-300 (Minn. Sup. Ct. April 18, 1983)

Amended Rule 4.04 establishes rules applicable to the appellate courts, and is drawn directly from *Amended Order Permitting Audio and Video Coverage of Appellate Court Proceedings*, No. C7-81-3000 (Minn. Sup. Ct. Sept. 28, 1983).