

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009 (formerly CX-89-1863)

OFFICE OF  
APPELLATE COURTS

NOV 19 2010

FILED

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:

A handwritten signature in cursive script, reading "Lori S. Gildea", is written over a horizontal line.

Lori S. Gildea  
Chief Justice

CX-89-1863  
STATE OF MINNESOTA  
IN SUPREME COURT

In re:

Supreme Court Advisory Committee  
on General Rules of Practice

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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  
Dan C. O'Connell, Saint Paul  
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-](http://www.uscourts.gov/news/NewsView/10-09-14/Judiciary%20Approves%20Pilot%20Project%20for%20Cameras%20in%20District%20Courts.aspx)

[14/Judiciary Approves Pilot Project for Cameras in District Courts.aspx](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-](http://www.rapidcityjournal.com/news/article_50649e48-d21f-11df-b620-001cc4c03286.html)

[001cc4c03286.html](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*)<sup>1</sup>. 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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<sup>1</sup> 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<sup>1</sup>

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

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<sup>1</sup> Eugene Borgida, Professor of Psychology and Law ([borgi001@umn.edu](mailto: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](mailto:kirtl001@umn.edu)); Christopher Federico, Associate Professor of Psychology and Political Science, Director, Center for the Study of Political Psychology ([federico@umn.edu](mailto:federico@umn.edu)); Erik Girvan, JD and Ph.D. student in social psychology ([girva004@umn.edu](mailto:girva004@umn.edu)); Brad Lippmann, ABD in social psychology ([lipp0040@umn.edu](mailto:lipp0040@umn.edu)); Andrea L. Miller, Ph.D. student in social psychology ([mill3160@umn.edu](mailto: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 29<sup>th</sup> meeting.

As a result of the discussion at the October 29<sup>th</sup> 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. Moreover, 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<sup>2</sup> 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.<sup>3</sup> 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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<sup>2</sup>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.

<sup>3</sup>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,<sup>4</sup> 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.<sup>5</sup> 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<sup>6</sup>, 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*.<sup>7</sup> 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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<sup>4</sup> Johnson, M.T., & Krafska, 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.<sup>8</sup> Upon conclusion of a trial, all participants will be given a case ID number

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<sup>8</sup> 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:

<b>Spring 2011:</b>	<b>Salary</b>	<b>Fringe</b>
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.<sup>9</sup>

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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<sup>9</sup> 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

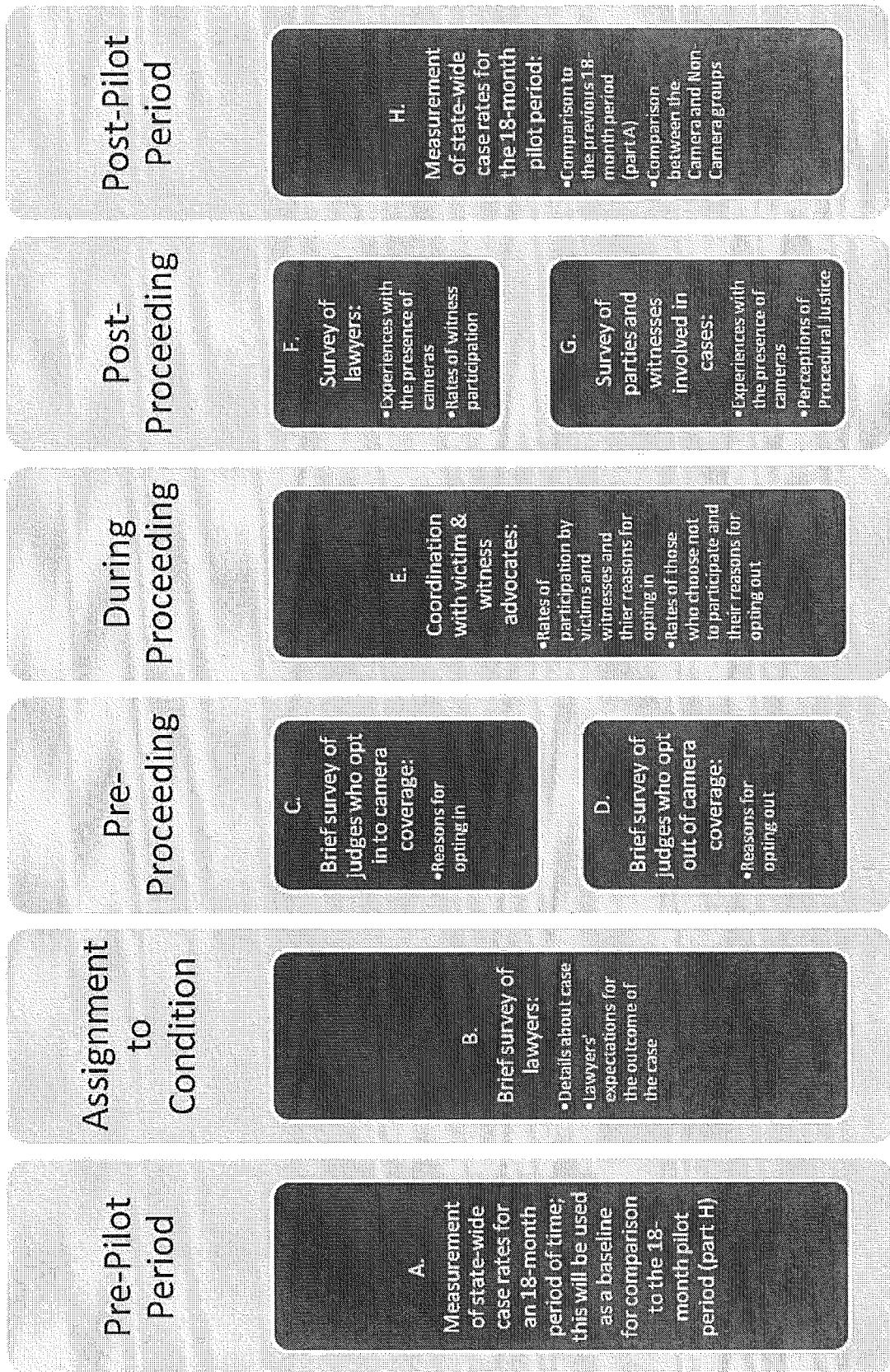


Figure 2. Overview of Data Collection: Extended effects of electronic media coverage

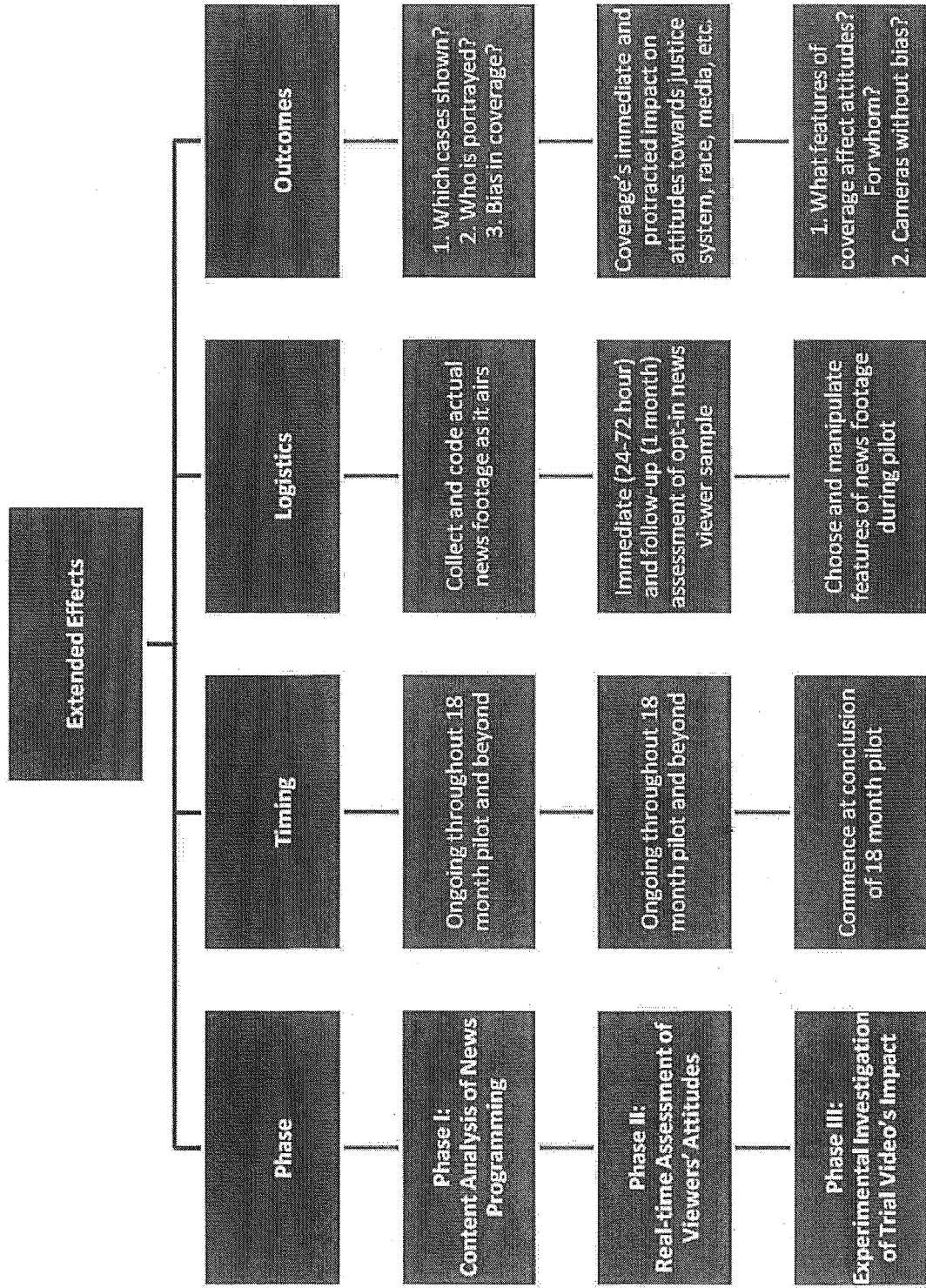


Table 1. Estimate of Average Judicial Time In Court

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
<b>Total Criminal</b>	<b>19.5</b>	<b>0.3</b>	<b>136.0</b>	<b>2.3</b>
Major Civil	21.7	0.4	865.0	14.4
Minor Civil	10.9	0.2	15.4	0.3
<b>Total Civil</b>	<b>16.1</b>	<b>0.3</b>	<b>246.3</b>	<b>4.1</b>

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
<b>Total Criminal</b>	<b>79721</b>	<b>10365</b>
Major Civil	20493	1521
Minor Civil	21964	4076
<b>Total Civil</b>	<b>42457</b>	<b>5597</b>