

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. C7-81-300

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

WCCO Radio, Inc; WCCO Television,  
Inc.; WCCO FM, Inc.; WTCN Television,  
Inc.; United Television, Inc.-KMSP-TV;  
KTTC Television, Inc.; Hubbard Broad-  
casting, Inc.; Northwest Publications,  
Inc.; Minneapolis Star and Tribune  
Company, Minnesota Public Radio,  
Inc.; Twin Cities Public Television,  
Inc.; Minnesota Broadcasters Associ-  
ation; Minnesota Newspaper Association;  
Radio and Television News Directors  
Association, Minnesota Chapter; and  
Sigma Delta Chi/Society of Professional  
Journalists, Minnesota Chapter,

O R D E R

Petitioners.

On March 18, 1981, the petitioners named above filed a petition to modify Canon 3A(7) of the Minnesota Code of Judicial Conduct to permit audio and video coverage of trial court proceedings. On August 10, 1981, after public hearing, this Court established, by order, a commission to prepare findings of fact and recommendations concerning the use of broadcast and photographic equipment in the courts of the State of Minnesota. The order designated the commission as "The Minnesota Advisory Commission on Cameras in the Courtroom", adopted rules governing the proceedings of the commission and appointed members to the commission.

On January 12, 1982, the commission filed its report containing specific findings and recommendations concerning the use of broadcast and photographic equipment in Minnesota courts and on June 4, 1982, a public hearing was held before this Court to determine whether the recommendations of the commission should or should not be adopted.

On the record, files and proceedings herein and the Court being fully advised of the premises,

IT IS ORDERED:

I. The court accepts the report of the commission and adopts its conclusion that petitioners have failed to sustain the burden of showing that they are entitled to the relief requested in their petition. The petition, therefore, except as hereinafter provided, is denied.

II. The court believes, however, that further study, including monitoring of programs in other jurisdictions, is advisable, and, to that end, adopts the recommendation of the majority of the commission that audio and video coverage of trial court proceedings in this state be permitted on a restricted experimental basis for a reasonable period of time.

III. Compliance with Canon 3A(7) is, therefore, waived for a period of 2 years from the date of this order in those trials where audio and video coverage is implemented on an experimental basis as follows:

1. Subject to further order of this Court, an experimental program for audio and video coverage of trial court proceedings in this state is established in accordance with the rules provided in this order and in the Standards of Conduct and Technology attached hereto as Exhibit A and made a part of this order.

2. Participation by the court and the parties in this experimental program shall be voluntary. Consequently, there shall be no audio or video coverage of any trial court proceeding without the consent of the trial judge and all parties in writing or made on the record prior to the commencement of the trial.

3. There shall be no audio or video coverage of jurors at any time during the trial, including voir dire.

4. There shall be no audio or video coverage of any witness who objects thereto in writing or on the record before testifying.

5. 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 which occur in other areas of the court building.

6. 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.

7. During or preceding a jury trial, there shall be no audio or video coverage of hearings which 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.

8. There shall be no audio or video coverage in cases involving child custody, marriage dissolution, juvenile proceedings, motions to suppress evidence, police informants, relocated witnesses, sex crimes, trade secrets, and undercover agents.

9. No ruling of the trial court relating to the implementation or management of this experimental program shall be appealable until the trial has been completed, and then only by a party.

10. In trials where this experimental program is used, the judges and lawyers involved are directed, and media personnel are requested, to report to this Court their impressions, particularly whether or not there were any difficulties which created special burdens for the presiding judge and any special problems with respect to counsel, witnesses, litigants, jurors or media representatives.

Dated: April 18, 1983

BY THE COURT:

  
Chief Justice

EXHIBIT A

STANDARDS OF CONDUCT AND TECHNOLOGY  
GOVERNING STILL PHOTOGRAPHY, ELECTRONIC AND  
BROADCAST COVERAGE OF JUDICIAL PROCEEDINGS

1. Equipment and personnel.

(a) Not more than one portable television camera [film camera--16 mm sound on film (self blimped) or videotape electronic camera], operated by not more than one person, shall be permitted in any trial court proceeding.

(b) 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.

(c) 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.

(d) 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.

2. Sound and light.

(a) 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 5 below, no artificial, mobile lighting device of any kind shall be employed with the television camera.

(b) 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.

(c) It shall be the affirmative duty of media personnel to demonstrate to the trial judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein. A failure to demonstrate that these criteria have been met for specific equipment shall preclude its use in any proceeding. If these Guidelines should include a list of equipment approved for use, such equipment need not be the object of such a demonstration.

3. Location of equipment and personnel.

(a) 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 which permit reasonable access to coverage are provided, all television camera and audio equipment shall be located in an area remote from the court.

(b) 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 call attention to himself or herself through distracting movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.

(c) Broadcast media representatives shall not move about the court facility while proceedings are in session.

4. Movement of equipment during proceedings.

News media photographic or audio equipment shall not be placed in, or removed from, the court except prior to commencement or after adjournment of proceedings each day, or during a recess. Microphones or taping equipment, once positioned as required by 1(c) above, shall not be moved from their position during the pendency of the proceeding. Neither television film magazines nor still camera film or lenses shall be changed within a court except during a recess in the proceedings.

5. 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.

6. 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.

7. 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.



YETKA, Justice (dissenting).

I must dissent. If there had been presented from any source evidence that cameras in the courtroom would enhance and improve the administration of justice, I might feel otherwise, but I have not been given any such evidence.

It seems to me that the proposed majority opinion causes these problems:

1. The proposed opinion places an inordinate burden on trial courts and on the individual lawyers in difficult cases in permitting them to decide whether to consent to TV coverage. I can envision many cases where the trial court will simply say no. In others, the court may want the case televised and call the lawyers in, seeking their consent. It is possible that the lawyers, in deference to the trial court, might consent to TV coverage against their better judgment.

2. I simply cannot conceive of a single instance where TV coverage would not cause serious difficulties in a criminal case. More requests for a change of venue can be expected, as well as appeals for post-conviction relief, by defendants claiming that trial publicity either will affect the outcome or has already done so. This will result in a higher cost to taxpayers in conducting criminal proceedings.

3. The majority opinion agrees with the finding of our special commission that the petitioners have failed in their burden of proof to establish a need for cameras in the

courtroom. The logical question then follows: Why permit them? There are a number of states now experimenting with cameras in the courtroom. Why not wait several years for further reaction as a result of the coverage in those states?

4. The argument is made that Colorado, Florida and several other states permit cameras and they have found that, after extensive use of cameras when permission was first granted, the interest tapers off and only important trials are covered thereafter. If that is true, then it proves the point that there is no demand and the case is simply not proven that we need them. Moreover, if they are used only in the sensational cases, there is even more reason to deny coverage since those are the very types of cases where appeals to appellate courts will take place on the grounds of prejudicial publicity.

5. A trial is serious business. It has as its primary objective the seeking of the truth. It is not intended to be entertaining, although at times it may be. We need not await the results of studies to know that most people are reluctant to speak before even small groups, let alone large audiences and that they will be intimidated by the use of cameras in the courtroom. If the use of cameras would encourage jurors to seek waiver of service or witnesses to refuse to come forward, there is a great loss to all in a democratic society. For, after all, trials held in the United

States must be distinguished from those held in most totalitarian nations where the trial is merely a political event held to dramatize a result previously ordained.

6. It is argued that TV is nothing more than modern technology and that we cannot obstruct progress. Is it progress to use cameras in the trial of a lawsuit? That is the real issue, and I submit the answer is in the negative.

7. It is said that, since we now permit reporters for the written press to cover trials, there is no difference in allowing cameras as well. It is true that this court has been one of the most zealous in the nation in protecting the rights of the written news media to cover trials. Reporters writing for newspapers and magazines can write much more extensively on the subject matter and there are usually at least several separate competitive articles appearing in at least several different newspapers on each trial. In the case of TV coverage, because of the tremendous cost of time in the short newscast, the TV media in effect censor and show only brief blurbs of what is occurring. Moreover, only one pooled camera can be allowed in the courtroom. A written account is likely not only to be more detailed, but also more accurate in depicting what is occurring.

8. We allow TV coverage in the Supreme Court it is said. Indeed, we do; but, because we are an appellate court and only lawyers appear before us, there are no jurors and no witnesses to be intimidated. Even here, I have noticed

some showboating on the part of lawyers when they know the TV media are present.

9. If a trial court were to allow commercial TV to cover a trial, what would happen if several members of the public demanded an equal right to film the trial with their own cameras? Do the media have a greater right than the members of the public generally? Perhaps not.

10. If the public wants to know what is going on in the trial of a lawsuit, and I hope they do and agree they have a right to know, how can they find out?

a. The first and most logical answer is that they can attend the trial.

b. They can also read about the case in newspapers, magazines or books, in addition to hearing or watching accounts over radio and TV.

c. As Justice Wahl points out in her dissent, there could be one or two civil cases selected each year where a waiver of the rule would be requested so the entire trial could be televised. That trial, in its entirety, could then be shown on television. If too expensive for commercial TV, it could be shown on educational, public television. In this way, the public could see, without being present in the courtroom, entire trials at least several times a year and be able to react to those portions of the proceedings that they found objectionable and where they believe changes in procedure are justified. The film should be shown after the

trial is completed because I submit it would be undesirable for jurors, witnesses, or the judge to be affected by reactions from the public while the trial is going on. But comments after the trial and the decision has been concluded would, I believe, always be desirable.

Therefore, I would not amend the rules at this time to allow TV coverage of trials because there is absolutely no showing that fairness or impartiality in the administration of justice would be enhanced in any way. As a matter of fact, the evidence appears to be to the contrary--that jurors would be encouraged to seek waivers of service; that witnesses would fail to come forward to testify; that the inherent censorship by the media of what the public would see might create an impression far different from what in fact is going on; and that TV coverage, especially in criminal cases, could lead to a greater expense to the taxpayers in the trial of those cases and, even more importantly, to the denial of a fair trial.

WAHL, Justice (dissenting).

The Minnesota Advisory Commission on Cameras in the Courtroom unanimously found that the petitioners failed to sustain the burden of showing that they are entitled to the relief requested in their petition.

For legitimate educational purposes Canon 3A(7) of the Minnesota Code of Judicial Conduct can be waived at the present time on a case-by-case basis. Petitioners are not asking and have not asked that this be done. They want cameras in the courtrooms at the trial of those very sensational criminal cases where it is most difficult for our judicial system to provide a fair trial and fair retrial with present media coverage.

The proposed rule would require written consent of the trial judge and all parties prior to televising a trial. The State of Florida had such a rule at the beginning of its experiment and removed that requirement when consent of the parties was not forthcoming. I would not place this additional pressure on trial judges, parties, witnesses or jurors.

I would deny the petition.