

STATE OF MINNESOTA

IN SUPREME COURT

No. C7-81-300

In Re:

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

BRIEF OF MINNESOTA DISTRICT JUDGES
ASSOCIATION IN OPPOSITION TO PETITION

Minnesota Joint Media Committee,

Petitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"1. Televising of trials diverts the trial from its proper purpose, because it has an inevitable impact on all the trial participants.

2. It gives the public the wrong impression about the purpose of trial, thereby detracting from the dignity of court proceedings and lessening the reliability of trials; and

3. It singles out certain defendants and subjects them to trial under prejudicial conditions not experienced by others." (p.565)

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

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

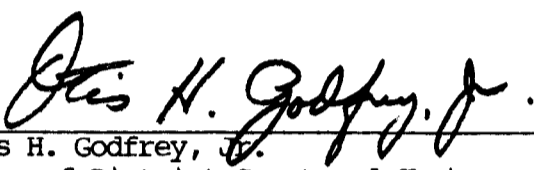
The courts of this country are open to the public, including the media, and the petition does not present any issue of "openness" of trials in Minnesota.

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

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

Respectfully submitted,

MINNESOTA DISTRICT JUDGES ASSOCIATION

BY 

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

DATED: March 23, 1989

Adopted
9/20/84

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

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

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

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

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

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

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

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

II. Activities of the Committee

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

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

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

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

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

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

III. Risks of Camera Coverage

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

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

A. Distractions and Diversion of Judicial Time

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

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

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

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

B. Psychological Effects

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

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

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

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

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

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

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

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

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

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

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

C. Preserving the Solemnity of Judicial Proceedings

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

IV. Educational Benefit

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

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

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

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

V. Conclusion

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

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

VI. Recommendation

Your Committee recommends that the petition be denied.

Respectfully submitted,

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Walter E. Hoffman
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Alfred T. Goodwin
S. Hugh Dillin
Harlington Wood, Jr.**

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

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