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Supreme Court of Minnesota.

ORDER PROMULGATING AMENDMENTS TO the MINNESOTA GENERAL RULES OF PRACTICE.

No. ADM09–8009.
|
Aug. 12, 2015.

Opinion

LORIE S. GILDEA, Chief Justice.

*1 The Supreme Court Advisory Committee on the Rules of Criminal Procedure ("the Committee") recommended amendments to Rule 4 of the General Rules of Practice to authorize a pilot project that would permit, without the consent of the parties, limited audio and video coverage of certain criminal trial court proceedings. Currently, the General Rules permit audio and video coverage of criminal proceedings only with the consent of all parties and by court order. Minn. Gen. R. Prac. 4.02(c). As proposed by the Committee, the pilot project would allow audio and video coverage of proceedings, such as sentencing, that occur after a guilty verdict has been returned or a guilty plea has been tendered.

The Committee filed its report and recommendations on July 29, 2014. On September 19, 2014, the Court opened a public comment period and scheduled a public hearing for December 16, 2014. Written comments were submitted by 19 organizations and individuals. Nine individuals spoke at the December 16 hearing, including the Chair of the Committee; representatives of the Hennepin County Attorney's Office, the Dakota County Attorney's Office, and the Suburban Hennepin County Prosecutors Association; representatives of media organizations; representatives of the Criminal Law Section ofthe State Bar Association and criminal defense attorneys including public defenders; and representatives of the Minnesota Coalition against Sexual Assault and the Judicial Branch Committee for Equality and Justice.

The court has considered the oral and written comments, along with the proposed format of the pilot project. After careful review, the court has determined that a pilot project should proceed, but only with restrictions on the cases and proceedings in which coverage shall be permitted, and with additional safeguards and conditions to govern that coverage. Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the General Rules of Practice be, and the same are, prescribed and promulgated to be effective as of November 10, 2015.

2. The Advisory Committee on the Rules of Criminal Procedure is directed to work with the State Court Administrator or his designee, and the media coordinators for Minnesota District Courts, to establish procedures to monitor and report on the pilot project. On or before January 1, 2018, the Committee shall file a status report on the pilot project, with recommendations for any further rule amendments; and, recommendations for continuation, abandonment, or modification of the pilot project, or for permanent codification of the rules for the pilot project.

MEMORANDUM

PER CURIAM.

In December 2013 following a 2–year pilot project that allowed cameras and other recording equipment in courtrooms in certain civil proceedings, without requiring party consent, the court directed the Supreme Court Advisory Committee on the Rules of Criminal Procedure ("the Committee") to review a proposal by media representatives for a limited pilot project permitting audio and/or video coverage of certain criminal proceedings. *Promulgation of Amendments to the Minn. Gen. Rules of Prac.*, No. ADM09–8009, Order at 2–3 (Minn. filed Dec. 3, 2013). In July 2014 the Committee proposed amendments to the General Rules of Practice to authorize a pilot project permitting audio or video coverage, without party consent, of certain criminal trial court proceedings. Specifically, as recommended by the Committee, such coverage would be permitted in sentencing and other proceedings held after a guilty verdict has been returned or a guilty plea has been tendered.

***2** After careful and thorough review of the Committee's recommendations, the written comments, and the public-hearing comments, the court authorizes a limited pilot project as follows:

- Except as limited below, electronic coverage shall be permitted at proceedings held in the courtroom in the presence of the presiding judge after a guilty verdict has been returned or a guilty plea has been accepted, provided adequate advance notice of the intended coverage is given as directed by the trial court.

- Regardless of the consent of the parties:

A. No electronic coverage is permitted of any proceeding held with a jury present.

B. No coverage is permitted in any proceeding held in Minnesota's problem-solving courts, including drug courts, mental health courts, veterans court, and DWI courts.

C. No coverage is permitted in cases involving crimes of criminal sexual conduct and/or family or domestic violence.

D. No coverage of any testifying victim is permitted unless that victim, before testifying, affirmatively acknowledges and agrees in writing to the proposed coverage.

- In all other instances, the presiding judge may limit or exclude media requests for electronic courtroom coverage based on the interests and safety concerns of the participants to the proceedings, the decorum and dignity of the proceedings, and the impartial administration of justice.

We adopt the recommendation for a pilot project, with the additional limitations and restrictions set forth in the rules as amended, for the reasons explained below.

I.

Proceedings in Minnesota's courts are, generally, public. *See State v. Brown,* 815 N.W.2d 609, 616 (Minn.2012); *Minneapolis Star & Tribune Co. v. Schumacher,* 392 N.W.2d 197, 202 (Minn.1986) ("[W]hat transpires in the courtroom is public property." (quoting *Craig v. Harney,* 331 U.S. 367, 374 (1947) ("A trial is a public event."))); *see also* Minn. R. Pub. Access 2 ("Records of all courts ... are presumed to be open to any member of the public for inspection"). We have therefore held that excluding the public from judicial proceedings is justifiable only when there are overriding interests. *See, e.g., State v. Fageroos,* 531 N.W.2d 199, 203 (Minn.1995) (remanding for an evidentiary hearing on reasons for closing the courtroom during the testimony of minor victims); *State v. Schmit,* 273 Minn. 78, 88, 139 N.W.2d 800, 807 (1966) (holding that the exclusion of the public from a criminal trial violated the defendant's constitutional right to a public trial).

The individual member of the public, generally unable to attend trials for a host of reasons, depends on the information provided by those who do attend, including media representatives. *See Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 572–73 (1980) (plurality opinion) ("Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media."). The media's right to be present at public court proceedings as a representative of the public is not at issue here. Rather, a narrow question is presented: whether electronic coverage by the media of public criminal proceedings in trial courts should be allowed without party consent.[1] Because we have faced this question before, we begin by reviewing the history of electronic coverage of Minnesota court proceedings.

***3** The Minnesota Code of Judicial Conduct adopted in 1974 prohibited "broadcasting, televising, recording, or taking photographs in the courtroom ... during sessions of court," Minn.Code Jud. Conduct 3A(7) (1978), unless the coverage did not distract the participants or impair the dignity of the proceedings; all parties and witnesses had consented; the "reproduction" was not exhibited until after all proceedings, including a direct appeal, were exhausted; and the reproduction was exhibited only for "instructional purposes in educational institutions." *Id.* In 1981, media representatives petitioned the court to amend Canon 3A(7) to allow coverage of trial court proceedings without regard to party consent. A court-appointed commission took testimony and in a report filed January 12, 1982, recommended that "video and audio coverage of trial court proceedings [be permitted] on an experimental basis for a reasonable period of time." *In re Modification of Canon 3A(7) of the Minn.Code of Jud. Conduct,* No. C7–81–300, Rep. of the Minn. Advis. Comm'n on Cameras in the Courtroom at 20 (Jan. 12, 1982).

The Commission majority concluded that Minnesota should "gain some experience on" media coverage in trial courts, rather than react to the experiences of other states. *Id.*, Mem.

at 1. One member of the Commission dissented because the claimed benefits of courtroom coverage were unproven and were "far outweighed by the potential risk inherent in allowing" such coverage. *Id.*, Recommendations of Comm'r Kaner, Mem. at 7. Following a public hearing in June 1982, by a 7–2 decision, the court authorized a 2–year experimental program for audio and video coverage in the trial courts. *In re Modification of Canon 3A(7) of the Minn.Code of Jud. Conduct*, No. C7–81–300, Order at 2 (Minn. filed Apr. 18, 1983). Participation in the program was voluntary; that is, the Canon's consent requirement was retained. *Id.* at 3. Coverage was limited to proceedings in the courtroom, in the presence of the judge and jury. *Id.* No coverage of jurors or objecting witnesses was allowed, nor was coverage permitted in family or juvenile proceedings or in cases involving police informants, relocated witnesses, sex crimes, trade secrets, or undercover agents. *Id.* at 3–4.[2]

The experimental program expired in 1987.[3] In October 1988, a media committee petitioned the court to reinstate the program, with the consent requirement removed. *In re Modification of Canon 3A(7) of the Minn.Code of Jud. Conduct*, 441 N.W.2d 452, 453 (Minn.1989). The petitioners argued that "the initial consent requirements were so restrictive as to frustrate the intent of the experiment," and thus media was "consistently met with refusals by parties involved in litigation to allow coverage." *Id.* Following a public hearing, the court denied the petition but reinstated the experimental program authorized by the April 1983 order. *Id.* ("[T]he experimental program originally authorized by this Court by order of April 18, 1983 be, and the same is, reinstated ..."). After balancing the public interest in camera coverage of trials against the "specific, identified interests and rights of participants" in those trials, the administration of justice, and its responsibility to "assure the continued availability of a public forum in which parties to civil or criminal proceedings may present their disputes for resolution ... free from active or subtle distractions or influences," the court maintained the consent requirement. *Id.* at 454.[4]

***4** In January 1996, the court continued the experimental program until further order of the court. *In re Modification of Canon 3A(7) of the Minn.Code of Jud. Conduct*, No. C7–81–300, Order (Minn. filed Jan. 11, 1996).[5]

In March 2007 a Joint Media Committee petitioned the court to "reconsider and revise portions of its rules that, for decades, have effectively prevented audio and video coverage of trial court proceedings" by establishing a presumption in favor of coverage in most proceedings. *In re Proposed Amendments to Minn.Code of Jud. Conduct Canon 3A(11) & Minn. Gen. R. Prac. 4*, Petition of Minn. Joint Media Comm., et al., No. CX89–1863 (Mar. 12, 2007). Petitioners argued that advances in technology and the expanding use of recording technologies in Minnesota courts (for some purposes) and in other states demonstrated that the court's concerns from the 1980s had largely been "obviated" or could be accommodated without barring "nearly all electronic coverage." *Id.* at 5–6.

The court referred the petition to the Supreme Court Advisory Committee on the General Rules of Practice ("General Rules Committee"), which took public testimony and gathered its own research and information. Finding "insufficient evidence to support relaxation of the current rules," *Recommendations of the Minn. Supreme Ct. Advis. Comm. on Gen. Rules of Prac.*, No. CX–89–1863, Final Rep. at 6 (Mar. 31, 2008), a majority of the General Rules Committee recommended that the court retain the existing rule without substantial change. The General Rules Committee noted the continuing opposition to electronic coverage voiced by a majority of justice system participants; the absence of an identifiable benefit to the administration of justice; the potential chilling effect on the testimony of victims and witnesses; and the potential for increased costs borne by the judicial branch. *Id.* at 7–8.

Three members of the General Rules Committee, noting that the courts "do the public's business," concluded that a more relaxed rule should be adopted unless it could be shown that doing so "will degrade or detract from the quality of administration of justice in Minnesota's trial courts." *Id.* at 20–21. The minority proposed a continuation of the experimental program, with modified rules to allow individual judges to exercise their discretion to prohibit electronic coverage. *Id.* at 24.

Following a public comment period and a public hearing, the court directed the General Rules Committee to develop and propose a pilot project to study the impact of electronic coverage on victims and witnesses, which in turn would "provide the court with additional information important to any final decision it might make regarding the presence or absence of cameras in the courtroom." *Promulgation of Amendments to the Minn. Gen. Rules of Prac.*, No. CX–89–1863, Mem. at 1 (Minn. filed Feb. 12, 2009).[6] Pending the General Rules Committee's recommendation, the existing requirement for consent of all parties to electronic coverage of trial court proceedings was retained.

***5** In March 2011, having considered the recommendations of the General Rules Committee for possible research studies, the court concluded that "it is time for Minnesota to move forward with a pilot project allowing cameras in courtrooms in certain civil proceedings." *Promulgation of Amendments to the Minn. Gen. Rules of Prac.*, No. ADM09–8009, Mem. at 8 (Minn. filed Mar. 11, 2011).[7] Thus, a 2–year pilot project permitting cameras in courtrooms in certain *civil* proceedings with the consent of just the district court judge was approved. *Id.*, Order at 1–2. Criminal cases and civil cases involving child custody, dissolution, juvenile proceedings, child protection proceedings, paternity, civil commitment, orders for protection, and trade secrets were excluded from the pilot. *See id.*, Order at 2; *see also* Minn. Gen. R. Prac. 4.02(c)(vi). The existing limitations on media coverage of trial court proceedings, which exclude coverage of jurors and objecting witnesses and limit coverage to proceedings in the courtroom and in the presence of the presiding judge, were continued in the pilot. *Promulgation of Amendments to the Minn. Gen. Rules of Prac.*, No. ADM09–8009, Order at 2 (Minn. filed Mar. 11, 2011).

On October 1, 2013, the Advisory Committee on the General Rules of Practice reported on the status of the pilot project. *Recommendations of Minn. Supreme Ct. Advis. Comm. on Gen. Rules of Prac.*, No. CX–89–1863, Final Rep. (Oct. 1, 2013). Although noting the "paucity of requests" for electronic coverage in civil trials in the preceding 2 years, the Committee recommended that the court consider either extending the pilot project or codifying the rules for the project. *Id.* at 3, 6. The Committee also recommended that the court consider expanding the pilot to some criminal proceedings. *Id.* at 6–7. The Committee offered no opinion on how the pilot could be implemented in criminal proceedings, but proposed instead that a "thorough examination of the criminal justice process" be undertaken to "assess the wisdom of this extension and the appropriate limits" to electronic coverage. *Id.* at 7.

On December 3, 2013, the court codified the pilot rules as the "final procedures for requesting, permitting, and using cameras and other recording equipment in certain civil-court proceedings." *Promulgation of Amendments to the Minn. Gen. Rules of Prac.*, No. ADM09–8009, Order at 2 (Minn. filed Dec. 3, 2013). The court also directed the Supreme Court Advisory Committee on Rules of Criminal Procedure to review the proposal by certain news media petitioners to expand the civil pilot project "to certain criminal proceedings where concerns previously expressed regarding witnesses and jurors are minimized or largely absent, such as arraignments, pretrial hearings, and sentencing proceedings." *Id.*

In response to the December 3, 2013, Order, the Committee filed a report on July 29, 2014. *Report and Proposed Amendments to the Minn. Gen. Rules of Prac.*, No. ADM10–8049 (filed July 29, 2014). A majority of the Committee —11 of 15 members voting—recommended that Rule 4 of the General Rules of Practice be amended to permit electronic coverage in criminal cases of sentencing and other proceedings held after a guilty verdict has been returned or a guilty plea has been tendered, regardless of the consent of the parties.[8]

***6** In summary, Minnesota has allowed electronic coverage of public criminal proceedings since at least 1983. Practically speaking, however, the requirement for party consent has operated to prevent that coverage.[9]

II.

Proceedings in Minnesota's courts are public. *See Minneapolis Star & Tribune Co. v. Kammeyer,* 341 N.W.2d 550, 559 (Minn.1983); *State v. Schmit,* 273 Minn. 78, 80, 139 N.W.2d 800, 802–03 (1966). While the public status of court proceedings is not "absolute in the sense that everyone who wishes to attend may do so," *Schmit,* 273 Minn. at 81, 139 N.W.2d at 803, we have said that the "general public is free to attend" a criminal proceeding, and therefore the "doors of the courtroom are expected to be kept open." *Id.* at 83, 139 N.W.2d at 804–05. The United States Supreme Court has said the public nature of criminal proceedings is "one of the essential qualities of a court of justice." *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 567 (1980) (citation omitted). The constitutional right to a public trial, *see* Minn. Const. art. I, § 6, ensures that an accused is "dealt with justly, protected ... against gross abuses of judicial power [and] petty arbitrariness" in a proceeding that "hopefully promotes confidence in the fair administration of justice." *Schmit,* 273 Minn. at 86–87, 139 N.W.2d at 806–07. Public scrutiny of judicial proceedings also provides "a form of legal education." *State v. Brown,* 815 N.W.2d 609, 617 (Minn.2012) (citation omitted).

Thus, there "can be no blinking the fact that there is a strong societal interest in public trials." *Gannett Co. v. DePasquale,* 443 U.S. 368, 383 (1979). While the constitutional right to a public trial is a personal right of the defendant, *Kammeyer,* 341 N.W.2d at 554, the right of the public and the media to attend trials is "implicit in the guarantees of the First Amendment." *Richmond Newspapers, Inc.*, 448 U.S. at 580; *see also id.* at 584 ("[T]he First Amendment protects the public and the press from abridgment of their rights of access to information about the operation of their government, including the Judicial Branch ...") (Stevens, J., concurring). To be sure, the fundamental right of a defendant to a fair trial takes precedence over the media's right to cover a public trial. *See Press–Enter. Co. v.Super. Ct. of Calif. Riverside Cty.*, 464 U.S. 501, 508 (1984) ("No right ranks higher than the right of the accused to a fair trial."). But together, these constitutional public-trial rights promote compelling interests in the fair, open, and impartial administration of justice. "The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; ... [o]penness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Id.* at 508; *see also In re Post–Newsweek Stations, Fla., Inc.*, 370 So.2d 764, 780 (Fla.1979) ("It is essential that the populace have confidence in the [judicial] process, for public acceptance of judicial judgments and decisions is manifestly necessary to their observance." (citation omitted)).

*7 For 30 years, we have debated the consent requirement for electronic media coverage of courtroom proceedings. The content of the debate has not changed, nor have the voices in the debate. There is no question that Minnesota's consent requirement operates to effectively bar electronic coverage of public criminal courtroom proceedings. The only question is whether we should continue to allow the parties, through a consent requirement, to effectively control the nature of media coverage in the courtroom.

The objections to electronic media coverage of courtroom criminal proceedings raise credible concerns. Certainly there are instances in which electronic media coverage of courtroom proceedings has prejudiced a defendant's right to a fair trial. *See Sheppard v. Maxwell,* 384 U.S. 333, 355, (1966) ("Bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom, hounding most of the [trial] participants ..."); *Estes v. Texas,* 381 U.S. 532, 538 (1965) ("[T]here had been a bombardment of the community with the sights and sounds [of the hearing] during which the [trial participants] were highly publicized."). But irresponsible media coverage is not limited to its electronic form, nor does withholding party consent to electronic coverage of courtroom proceedings prevent prejudicial media coverage. *See, e.g., State v. Blom,* 682 N.W.2d 578, 607–611 (Minn.2004) (noting that "[t]he court indicated that it shared [the defendant's] concern that he be given a fair trial by impartial jurors" in light of pretrial publicity, and described steps taken to control courtroom procedures during trial to protect against "prejudicial publicity"); *Thompson v. State,* 289 Minn. 270, 273, 183 N.W.2d 771, 773 (1971) ("[T]he news media's lack of restraint preceding the trial left much to be desired ...").[10]

On the other hand, some commentary suggests that responsible electronic coverage and the fair administration of justice can co-exist in the courtroom. *See* Alex Kozinski & Robert Johnson, *Of Cameras and Courtrooms,* 20 Fordham Intell. Prop. Media & Ent. L.J. 1107, 1114–15 (2010) (reviewing "empirical evidence from the states" and noting that "[a]necdotally, witnesses, judges, jurors and attorneys report that once a trial gets under way they tend to forget the cameras are there"); Ralph E. Roberts, Jr., Comment, *An Empirical and Normative Analysis of the Impact of Televised Courtroom Proceedings,* 51 SMU L.Rev. 621, 631 (1998) ("The [study of a pilot allowing cameras in certain federal civil cases] found that the district judges who had some type of experience with cameras in the courtroom believed that the cameras had a minor effect on the trial" and were "nearly unanimous that the presence of cameras did not create a lack of courtroom decorum nor ... have a negative effect on the attorneys."). We are reluctant, however, to take comfort in "anecdotal" reports from other states, which illustrates the problem: our ability to assess the merits of commenters' concerns and the effectiveness of measures that address those concerns is hampered by the absence of actual experiences and outcomes in Minnesota courtroom proceedings. *See* Roberts, *supra,* at 621 ("[T]here has been very little empirical analysis by the legal community to determine the real effects of televised court proceedings."); Jeffrey S. Johnson, Comment, *The Entertainment Value of a Trial: How Media Access to the Courtroom is Changing the American Judicial Process,* 10 Vill. Sports & Ent. L.J. 131, 149 (2003) ("Although there is some concrete evidence on the effect of television cameras on certain parties, much of the commentary is mere speculation based on hypothetical situations.").

***8** Thus, although we share the concerns about the potential for intrusive, disrespectful, or even prejudicial electronic coverage of criminal proceedings, we cannot see that a party-consent requirement is the only means to protect against those risks. Rather, we conclude that a better balancing of the compelling interests in the fair, open, and impartial administration of justice can be achieved when electronic coverage of courtroom proceedings is permitted under the conditions we set out today and subject to the control of the presiding judge. In reaching this conclusion, we do not ignore the examples of irresponsible media coverage that underlie the commenters' concerns. *See, e.g.,* Nancy S. Marder, *The Conundrum of Cameras in the Courtroom,* 44 Ariz. St. L.J. 1489, 1550 (2012) (reviewing state criminal trials "that serve as warnings" about "what can go wrong when there are cameras in the courtroom."). But the potential for prejudicial media coverage is not eliminated simply because electronic coverage is excluded from the courtroom, or because we vest control over the decision to allow that coverage in the hands of the parties. Nor do we foster public confidence in the sound and fair administration of justice by limiting electronic coverage of criminal proceedings to the images captured and the statements delivered outside the courtroom by representatives of the media, the prosecution, and the defense.

We conclude that there is good reason to lift the blanket exclusion of electronic coverage of public criminal proceedings so that we can study the impact of electronic coverage of those proceedings. Thus, with the amendments promulgated today, we lift the consent requirement in limited circumstances.

III.

The dissent criticizes the court for permitting a pilot project without first "requiring that the asserted benefits [of camera coverage] be established with evidence." Based on the potential adverse consequences that could flow from expanded electronic courtroom coverage of certain criminal proceedings, the dissent concludes the pilot project can only facilitate irresponsible and prejudicial media coverage. With respect to the dissent, we disagree.

First, in demanding that the benefits of courtroom coverage initially be established with compelling evidence, the dissent ignores the purpose of the pilot project: to gather data that will assist us in fairly evaluating the asserted benefits and potential consequences of electronic courtroom coverage in certain Minnesota criminal proceedings. The need for data from Minnesota proceedings was acknowledged in 1982, *see In re Modification of Canon 3A(7) of the Minn.Code of Jud. Conduct,* Rep. of the Minn. Advis. Comm'n on Cameras in the Courtroom, Mem. at 1 (Jan. 12, 1982) ("[I]t might be remiss not to gain some experience on this subject in the trial courts of this state ..."), and the debate over electronic courtroom coverage in the intervening years continues to press the same opposing positions.[11] These competing positions convince us that we need concrete evidence drawn from Minnesota proceedings to evaluate the strength of those positions. We cannot simply choose one side and require the proponents of the other position to "prove" their case. In addition, we made the policy decision, 25 years ago, to permit cameras in Minnesota's courtrooms, albeit subject to party consent. Our decision today does not reverse that policy decision; it modifies it. We authorize a pilot project designed to do just as the dissent suggests: gather the concrete data to evaluate the pros and cons of electronic courtroom coverage, but without the party consent requirement that has thwarted the collection of such data.

***9** Second, our decision to use a pilot project to gather data—rather than pre-judge the question—is consistent with our past, cautious approach to electronic coverage of public judicial proceedings, as well as the approach taken by other jurisdictions. We began with a pilot project in 1983, reinstated the pilot in 1989, and approved a different pilot project, for civil cases, in 2011. The federal judiciary has used a similar approach.[12] Other states have also used pilot projects to evaluate a change in their policies for electronic courtroom coverage.[13] The data-gathering tool of a pilot project is a well-established approach for evaluating different methods of implementing our decision to permit limited electronic courtroom coverage. *See, e.g., Chandler v. Florida,* 449 U.S. 560, 582 (1981) ("[U]nless we were to conclude that television coverage under all conditions is prohibited by the Constitution, the states must be free to experiment.").

Third, in assuming that the only result of electronic courtroom coverage is unbalanced, prejudicial, and irresponsible journalism, the dissent fails to appreciate the guidelines that will govern this pilot. The exclusions from coverage far exceed the limited opportunities for post-guilty plea or verdict coverage: no coverage with a jury present, no coverage in any problem-solving court, no coverage in cases involving charges of criminal sexual conduct or family or domestic violence, and no coverage of any testifying victim who does not affirmatively consent, in writing, to that coverage. Further, all coverage is subject to the presiding judge's authority to limit or exclude coverage based on case-specific concerns and the impartial administration of justice. The pilot will allow us to determine whether these prudent measures will lead to balanced coverage while protecting the interests of all participants, including the defendant.

While we disagree with the dissent's conclusions, we respect Justice Page's observation that in reporting on criminal matters, disproportionate media coverage of communities of color, particularly African American community members, has negative repercussions. We will be alert to any such concerns during the pilot and will monitor the pilot coverage.

We remind all who attend courtroom proceedings that the right of access to public courtrooms "is not absolute" and that the trial court judge "must have control of its courtroom." *Kammeyer,* 341 N.W.2d at 559. Trial court judges have a "grave responsibility" and "broad discretion" to "oversee[ ] and regulat [e] courtroom conduct and procedures during ... criminal trials." *State v. Lindsey,* 632 N.W.2d 652, 658 (Minn.2001). It bears repeating that the concerns of victims and other justice system participants are serious. No less important are the concerns of a defendant who, even after a guilty verdict has been returned or a guilty plea accepted, expects and deserves the fair administration of justice. *See Press–Enter. Co.,* 464 U.S. at 508 ("No right ranks higher than the right of the accused to a fair trial."); *Nebraska Press Ass'n v. Stuart,* 427 U.S. 539, 560 (1976) ("It is not asking too much to suggest that those who exercise First Amendment rights in newspapers or broadcasting enterprises direct some effort to protect the rights of an accused to a fair trial by unbiased jurors."). Thus, while we are mindful that the *content* of the coverage falls within the media's realm, *see, e .g., Richmond Newspapers, Inc.,* 448 U.S. at 576–77, we firmly embrace the judicial branch's responsibility to control the time, place, and manner of the media's access. *Id.* at 578 ("Subject to the traditional time, place, and manner restrictions ... a trial courtroom is ... a public place where the people generally—and representatives of the media—have a right to be present"); *see also* Stacy Blasiola, *Say Cheese! Cameras and Bloggers in Wisconsin's Courtrooms,* 1 Reynolds Cts. & Media L.J. 197, 206 (2011) ("[H]aving access to a courtroom with a camera or recording device does not necessarily mean a reporter has an absolute right to stay.").[14]

IV.

***10** We repeat a comment first made in 1982: it is time for Minnesota to gain some experience with electronic coverage of public courtroom criminal proceedings in the context of proceedings in Minnesota courts, with participants subject to the strict guidelines of a pilot and the rules of Minnesota courts. *In re Modification of Canon 3A(7) of the Minn. Code of Jud. Conduct,* Rep. of the Minn. Advis. Comm. on Cameras in the Courtroom, Mem. at 1 (Jan. 12, 1982). The pilot project authorized now is limited to proceedings that do not include a jury and that occur after a guilty verdict has been returned or a guilty plea accepted.[15] In addition, given the fundamental right of a defendant to the fair administration of justice, and the profound privacy and safety interests of trial participants, we conclude that further limits on the scope of permitted coverage are necessary.[16]

First, no coverage is permitted of proceedings held with a jury present, held after a guilty verdict is vacated or reversed and a new trial is ordered, or held after a guilty plea is rejected or withdrawn.

Second, no coverage is permitted in any of Minnesota's problem-solving courts, including drug courts, mental health courts, veterans courts, and DWI courts, or of any juvenile proceedings.

Third, no coverage is permitted in cases involving charges of criminal sexual conduct brought under Minn.Stat. §§ 609.293–.352 (2014), or in cases involving charges of family or "domestic violence," as defined in Minn.Stat. § 609.02, subd. 16 (2014).

Fourth, no coverage is permitted of any victim who testifies at a post-verdict or post-plea proceeding unless that victim affirmatively acknowledges and agrees to the coverage in writing, before testifying.

Fifth, we remind all criminal justice system participants, and particularly the media, that the pilot project authorized here is subject at all times to the authority and broad discretion of the trial judge to control the decorum of the proceedings and ensure the fair administration of justice is preserved.[17]

Finally, we remind all participants that we authorize a pilot project only. Therefore, the Advisory Committee on the *(d)* ***Criminal proceedings: pilot project.*** *Notwithstanding the lack of consent by the parties, for purposes of the pilot project authorized by order of the supreme court, upon receipt of notice from the media pursuant to Rule 4.03(a), a judge must, absent good cause, allow audio or video coverage of a criminal proceeding occurring after a guilty plea has been accepted or a guilty verdict has been returned. To determine whether there is good cause to prohibit coverage of the proceeding, or any part of it, the judge must consider (1) the privacy, safety, and well-being of the participants or other interested persons; (2) the likelihood that coverage will detract from the dignity of the proceeding; (3) the physical facilities of the court; and, (4) the fair administration of justice. Coverage under this paragraph is subject to the following limitations:*