

**FILED**  
OCT 30 1979  
CLERK SUPREME COURT

**REPORT OF THE ADVISORY COMMITTEE ON**

**MEDIA IN THE COURTROOM**

**TO**

**THE SUPREME COURT OF IOWA**

## FOREWORD

It has been my pleasure over the past several months to chair the Iowa Supreme Court's Advisory Committee on Media Coverage of the Courts. In reviewing reports by and critiques of similar committees, I have been convinced that our experience has been rather unique among the twenty or so states dealing with these issues. Stubborn polarization of views many times associated with discussions of this subject matter was notably absent in our proceedings. Agreement on wide ranges of issues, while preserving a healthy exchange of divergent views, marked the proceedings of this committee from its inception.

Our committee membership represented, as nearly as possible, all of the geographical areas of the state and consisted of print, television and radio media as well as representatives of the trial and appellate bench and practicing lawyers.

The committee members are:

<u>Name and Address</u>	<u>Occupation</u>
Justice J. L. Larson, Chairman Harlan, Iowa	Iowa Supreme Court
Judge Janet A. Johnson Des Moines, Iowa	Iowa Court of Appeals
Judge David J. Blair Sioux City, Iowa	Iowa District Court
Judge Maynard Hayden Indianola, Iowa	Iowa District Court
David J. Dutton Waterloo, Iowa	Attorney
Walter A. Newport, Jr. Davenport, Iowa	Attorney
Alfredo G. Parrish Des Moines, Iowa	Attorney
E. G. Foust Atlantic, Iowa	Radio
Edwin J. Lasko Cedar Rapids, Iowa	Television
Jack Shelley Ames, Iowa	Radio & Television
Robert A. Nandell Des Moines, Iowa	Still Photographer

The committee was aided by excellent briefs and arguments by lawyers representing divergent positions on the issues before us.

J. L. Larson, Chairman

#### HISTORY OF THESE PROCEEDINGS

The genesis of this study is found in the order of Chief Justice Reynoldson filed on May 8, 1979, appointing the committee. The order acknowledged improvements in equipment and procedures and the trend toward modification of the canons prohibiting electronic and camera coverage of court proceedings. The committee was requested to study Iowa's canon in view of these factors and to report its findings and conclusions to the supreme court on or before November 1, 1979.

On June 22, 1979, a petition was filed in the supreme court by various members of the media and professional organizations representing media interests, seeking an order by the court under Article V, section 4 of the Iowa Constitution modifying the provisions of Canon 3A(7) of the Iowa Code of Judicial Conduct to allow camera and electronic media coverage of court proceedings. That petition was referred to this committee for study and recommendations as a part of the duties previously assigned to it.

Following the organizational meeting of the committee on June 25, 1979, a public hearing was set for September 18, 1979. Notice of the proposed modification and of the date for hearing was prescribed. A copy of that order, showing the extent of distribution of the notice, is attached as Exhibit "A".

Responses to the proposed modification were received from the following organizations:

Iowa State Bar Association  
Attorney General of Iowa  
Juvenile Justice Advisory Council  
Iowa Broadcast News Association  
Association of Trial Lawyers of Iowa  
Murray L. Underwood, District Court Judge  
National Association of Criminal Defense Lawyers, Inc.  
Brent Harstad, Juvenile Court Judge  
Roger F. Peterson, District Court Judge  
Iowa Defense Counsel Association

These responses understandably ranged from strong opposition to the proposed modification under any circumstances, at the trial court level, to those favoring a very broad liberalization of our rules on media access. Most of the responses fell between these extremes, favoring at least some liberalization of the rule as it now exists. For example, there appears to be virtually no resistance to the requested modification insofar as it would apply to our appellate courts. The written responses may be roughly summarized as follows:

The two district court judges responding opposed the concept, one basically on the ground that it would place our courts in the position of providing "entertainment for the news media," the other on the basis of general disruption of the trial, possible prejudice to criminal defendants, intimidation of prospective jurors, and the fear of erroneous interpretation of court proceedings through selected spot coverage. The latter judge's letter said the writer's opposition was expressed after discussion with other trial judges, who were unnamed and did not file separate responses. C. W. Antes, chief judge of the first judicial district, while he did not respond to the formal notice, had previously written to Chief Justice Reynoldson, indicating that he felt a trial program of expanded media coverage should be permitted and offering the first as a trial district. He stated, however, that "a large majority" of the judges of the first district was opposed to any such modification of the canon.

The parties responding from the viewpoint of juvenile proceedings expressed the fear that they might be exposed to public view through the proposed modification. The Iowa Broadcast News Association favored the proposed modification, as did the Iowa Attorney General and the Iowa Defense Counsel Association. The broadcasters' response was without qualification; the others conditioned their approval on several factors. The Iowa Defense Counsel stated that it had "no objection to the proposal if appropriate controls are enforced to maintain the proper dignity and decorum necessary for the business of the court."

The response of the attorney general, while recognizing the possibility of undesirable effects upon lawyers, witnesses and jurors, concluded they could be satisfactorily dealt with through use of technologically advanced equipment and

watchful supervision by the trial judges, stressing the need for trial court discretion to deny media coverage if required by the particular facts of the case. Increasing openness in all branches of government and a need for increased public understanding of the courts were cited by the attorney general as reasons for favoring modification of the canon.

The Association of Trial Lawyers of Iowa resisted the modification, citing dangers of witness, party and juror intimidation, as well as the spectre of demeaning portrayal of the courts through a selective editing of courtroom events.

The National Association of Criminal Defense Lawyers, while not responding to the petition here, sent a letter to the supreme court clerk stating that that association was generally opposed to any change in the canons which would permit televising of criminal trials over a defendant's objection.

The position of the Iowa State Bar Association is not clear. Its response stated, in part, that "if the cameras and other electronic equipment can live in the courtroom as do other spectators and receive no different or special treatment than other spectators nor be granted any special privileges not given to other spectators, then this Association raises no objection." The focus of this response and of the attached copy of the March, 1979, "President's Letter" seems to be on the disruptive effect perceived to exist in camera and electronic coverage of trials, as well as their effect on the rights of the litigants to a fair trial.

Pursuant to notice, the committee met again in the courtroom of the Supreme Court on September 18, 1979. Attorneys for petitioners and the Association of Trial Lawyers of Iowa presented arguments in favor of and in opposition to the modification request. A demonstration of still photography and television equipment was presented by the petitioners, and the committee spent several hours in discussion of the issues. A meeting was held on October 16, 1979, for purposes of finalizing the committee's report to the supreme court.

#### THE PRESENT CANON

Iowa's Canon 3A(7) now provides:

A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(I) the means of recording will not distract participants or impair the dignity of the proceedings;

(II) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(III) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(IV) the reproduction will be exhibited only for the instructional purposes in educational institutions.

This canon is identical to Canon 3A(7) of the American Bar Association Code of Judicial Conduct. The 1936 trial of Bruno Hauptmann for the Lindberg kidnapping was covered by a veritable horde of news personnel, causing considerable disruption to the proceedings and creating an appearance thought by many to be demeaning to the court system. This spectacle resulted in the adoption of the prohibitory canon in 1937. The only substantial alteration from its original form was the addition of the education exception in 1972. The need for restrictions on mass media coverage was further emphasized by media coverage of the trial of Billie Sol Estes. The Supreme Court in Estes v. Texas, 381 U.S. 532, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965), described the proceedings in this way:

These initial hearings were carried live by both radio and television, and news photography was permitted throughout. The videotapes of these hearings clearly illustrate that the picture presented was not one of that judicial serenity and calm to which petitioner was entitled. Indeed, at least 12 cameramen were engaged in the courtroom throughout the hearing taking motion and still pictures and televising the proceedings. Cables and wires were snaked across the courtroom floor, three microphones were on the judge's bench and others were beamed at the jury box and the counsel table. It is conceded that the activities of the television crews and news photographers led to considerable disruption of the hearings. . . . All of this two-day affair was highly publicized and could only have impressed those present, and also the

community at large, with the notorious character of the petitioner as well as the proceeding. The trial witnesses present at the hearing, as well as the original jury panel, were undoubtedly made aware of the peculiar public importance of the case by the press and television coverage being provided, and by the fact that they themselves were televised live and their pictures rebroadcast on the evening show.

381 U.S. at 536-37, 85 S. Ct. at 1629-30, 14 L. Ed. 2d at 546-47 (citations omitted).

The plurality opinion by Justice Clark held *Estes* was denied due process. It did not, however, hold that media coverage in a manner inconsistent with Canon 3A(7) (then Canon 35) constituted a per se deprivation of due process. It said: "In short, the question here is not the validity of either Canon 35 of the American Bar Association or Canon 28 of the State Bar of Texas, but only whether petitioner was tried in a manner which comports with the due process requirement of the Fourteenth Amendment." *Id.* at 535, 85 S. Ct. at 1629, 14 L. Ed. 2d at 546.

The door was clearly left open by the Supreme Court for moderation of the blanket prohibition in the event of significant technical advances:

It is said that the ever-advancing techniques of public communication and the adjustment of the public to its presence may bring about a change in the effect of telecasting upon the fairness of criminal trials. But we are not dealing here with future developments in the field of electronics. Our judgment cannot be rested on the hypothesis of tomorrow but must take the facts as they are presented today.

*Id.* at 551-52, 85 S. Ct. at 1637, 14 L. Ed. 2d at 555.

These petitioners contend, and over twenty other jurisdictions have concluded, that the "ever-advancing techniques of public communication and the adjustment of the public to its presence" envisioned by Justice Clark in *Estes* now require a re-evaluation of Canon 3A(7).

The National Center for State Courts furnishes the following summary of states which have modified the canon on a permanent or trial period basis, and those actively considering the issue as of July 20, 1979:

**A. STATES WHICH PERMIT COVERAGE ON PERMANENT BASIS FOR TELEVISION, RADIO AND PHOTOGRAPHIC MEDIA:**

<u>State</u>	<u>Authority and Nature of Coverage</u>	<u>Effective Date</u>
1. Alabama	Supreme Court authorizes and approves coverage plan. Consent of parties required.	Feb. 1, 1976
2. Colorado	Judicial Canons permit coverage (first state to allow). Consent of the accused, witness, juror & judge required.	Feb. 27, 1956

<u>State</u>	<u>Authority and Nature of Coverage</u>	<u>Effective Date</u>
3. Florida	Supreme Court ruled in favor of allowing cameras & recording equipment on permanent basis. A one-year experiment completed June 30, 1978 & its evaluation preceded the Court's unanimous decision on April 12. Presiding judge can prohibit coverage for cause. No consent required.	May 1, 1979
4. Georgia	Supreme Court authorizes and approves coverage plan. All plans require prior consent.	May 12, 1977
5. New Hampshire	Supreme Court authorized coverage of its proceedings. Supreme Court also approved a Superior Court resolution to allow trial coverage with the permission of the judge. No consent required.	Jan. 1, 1978
6. Tennessee	Supreme Court rules permit coverage on a permanent basis. Each plan must be approved by trial court and supreme court. Consent required. Parties, jurors and witnesses can bar their individual coverage. Experimental coverage of proceedings lasted from May 24, 1978 to February, 1979.	Feb. 27, 1979
7. Texas	Supreme Court authorized appellate coverage.	Nov. 9, 1976
8. Washington	Supreme Court approved rule. (Test was authorized and conducted in 1974.) If witnesses and jurors express prior objection, no telecast or photographs allowed.	Sept. 20, 1976
9. Wisconsin	Consent not required, except for coverage of individual jurors. A one-year experiment was completed on March 31, 1979.	July 1, 1979

**B. STATES WHICH PERMIT COVERAGE ON EXPERIMENTAL BASIS:**

1. Alaska	Supreme Court authorized one-year pilot program in the Supreme Court and Anchorage Trial Courts. Consent of the parties and the judge required.	Sept. 18, 1978
2. Arizona	Supreme Court authorized one-year experimental coverage of appellate proceedings.	May 31, 1979
3. California	Judicial Council approved one-year experimental coverage. Guidelines, evaluation procedures and the question of consent are being considered by a Special Committee.	Dec. 2, 1978
4. Idaho	Supreme Court authorized a seven-month experiment in coverage of its (the Supreme Court's) proceedings.	Dec. 4, 1978

<u>State</u>	<u>Authority and Nature of Coverage</u>	<u>Effective Date</u>
5. Louisiana	Supreme Court authorized one-year pilot program in Division B of the 9th Judicial District Court. Consent was required. While a report on the experiment is expected soon, other jurisdictions are considering experimenting with television coverage.	Feb. 23, 1978
6. Minnesota	Supreme Court authorized experimental coverage in the Supreme Court.	Jan. 27, 1978
7. Montana	Supreme Court suspended the ban for a two-year experimental period. Consent is not required.	April 1, 1978
8. New Jersey	Supreme Court approved experimental coverage for one-year or until at least six trial-court cases have been covered. No consent required.	May 1, 1979
9. North Dakota	Supreme Court authorized one-year experimental coverage of its proceedings.	Feb. 1, 1979
10. Ohio	Supreme Court authorized one-year experimental coverage of trial and appellate proceedings. Consent not required.	Jan. 1, 1979
11. Oklahoma	Supreme Court authorized one-year experiment. If prior objection is expressed, telecast or photographs not allowed.	Jan. 1, 1979
12. West Virginia	Supreme Court approved a six-month experiment in Monongalia County Circuit Court (Morgantown). Consent not required.	Jan. 22, 1979

According to the National Center for State Courts, states actively considering such coverage include Arkansas, Connecticut, Delaware, Iowa, Massachusetts, Mississippi, Nebraska, Nevada, New Mexico, New York, Rhode Island, Utah and Vermont.

#### THE ARGUMENTS

Persuasive arguments are presented on both sides of this issue. A recent poll of approximately 600 lawyers conducted for the American Bar Association showed a 69 to 24 percentage margin against permitting television coverage, 65 A.B.A.J. 1306 (1979), and the American Bar Association House of Delegates has steadfastly refused to modify the canon despite recommendations of its Fair Trial-Free Press committee to do so. The Conference of Chief Justices, on August 2, 1978, adopted a resolution favoring an amendment to allow such media coverage under rules to be established by the jurisdiction's supervisory appellate court. That resolution provided:

Notwithstanding the provisions of this paragraph, the [name the supervising appellate court or body in the state or federal jurisdiction] may allow television, radio and photographic coverage of judicial proceedings in courts under their supervision consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

It was approved by the conference with 44 favorable votes, one opposed and one abstention.

The arguments against modification cannot be dismissed lightly. If the problems perceived by the opponents of change become a reality, it is almost certain that the delicate balance of fair trial and free press would be upset to the detriment of the former. The advocates of modification, however, contend that the problems perceived are neither so pronounced nor so prevalent as to justify retention of the present rule, and cite actual experiences in such states as Colorado, Florida and Wisconsin to support that view.

The concerns of opponents to modification may be briefly summarized as follows: that witnesses will feel intimidated or ill at ease and might, in fact, attempt to avoid testifying; that coverage, particularly by television, would exploit the court by presenting it as an entertainment medium; that lawyers and judges might "play to the gallery;" that it would invade the privacy of the litigants, unduly emphasize portions of the trial by partial coverage of the proceedings, and cause damage to certain persons such as confidential informants, children, crime victims, and parties to dissolution, custody, and adoption proceedings. A common objection to the proposed coverage is that it would be "disruptive" of the proceedings; however, that appears to be a catch-all for the other specific objections set out.

Proponents of modification counter that these problems are not unique to expanded media coverage, only a matter of degree, because the public is attending and media are already covering the trials, that such coverage presently emphasizes portions of the proceedings by printing excerpts from them and that artists and reporters sketching or scribbling notes evoke some of the same responses from witnesses, jurors and court personnel. Most proponents agree that the presiding judge should have authority to tailor coverage to the particular case, that rules

could be drawn providing for exclusion from coverage of certain classes of persons and cases and use of unobtrusive equipment and operational techniques should be required.

Other considerations tend to favor a modification of the canon. The concept of a public trial would be enhanced, and increased visibility of the judicial process would tend to sweep away some of its aura of mystery and the occasional mistrust resulting from it. Moreover, there is an increasing movement toward openness in government. (It should be noted at this point that no one has advocated media coverage of the decision-making process, such as case conferencing, now closed to the public.)

As stated by the United States Supreme Court in Craig v. Harney, 331 U.S. 367, 374, 67 S. Ct. 1249, 1254, 91 L. Ed. 2d 1546, 1551 (1947),

[a] trial is a public event. What transpires in the courtroom is public property.... Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit or censor events which transpire in proceedings before it.

#### EXPERIENCE OF OTHER STATES

In Florida, a one-year pilot program of expanded media coverage began on July 5, 1977. Proceedings at all levels of the court system were included in the experiment. Participant consent was not required. The Florida Supreme Court reports that over 2750 persons participated as court personnel, lawyers, jurors and witnesses. Petition of Post-Newsweek Stations, Florida, Inc., 370 S.2d 764, 767 (1979). All participants, except judges, who were surveyed separately, were requested to report their impressions to the court on forms provided. The percentage of responses received was as follows:

Witness	44%
Attorney	65%
Court Personnel	72%
Juror	65%
Combined Response Rate	62%

The results of the survey are thus summarized in Post-Newsweek:

(1) Presence of the electronic media in the courtroom had little effect upon the respondents' perception of the judiciary or of the dignity of the proceedings.

(2) It was felt that the presence of electronic media disrupted the trial either not at all or only slightly.

(3) Respondents' awareness of the presence of electronic media averaged between slightly and moderately.

(4) The ability of the attorney and juror respondents to judge the truthfulness of witnesses was perceived to be affected not at all. The ability of jurors to concentrate on the testimony was similarly unaffected.

(5) All respondents were made to feel slightly self-conscious by the presence of electronic media.

(6) Both jurors and witnesses perceived that the presence of electronic media made them feel just slightly more responsible for their actions.

(7) Presence of electronic media made all respondents feel only slightly nervous or more attentive.

(8) The distracting effect of electronic media was deemed to range from almost not at all for jurors, to slightly for witnesses and attorneys.

(9) The degree to which jurors and witnesses felt the urge to see or hear themselves on the media fell between not at all and slightly.

(10) Presence of electronic media affected the different participants' sense of the importance of the case in varying degrees. Jurors felt that it made the case more important to a slight degree; witnesses to a degree between slightly and moderately; court personnel slightly; and attorneys moderately.

(11) To a degree between not at all and slightly, jurors perceived that the presence of electronic media in the courtroom during the testimony of a witness made that witness's testimony more important.

(12) There was no significant difference in the participants' concern over being harmed as a result of their appearance on electronic media broadcast (including still photography) as opposed to their names appearing in the print media. In each instance the concern ranged on the scale between not at all and slightly.

(13) Jurors and witnesses manifested the same attitude concerning the possibility that persons would attempt to influence their decision or testimony. There was no discernible difference in the height of their concern as between electronic and print media; the average response was slightly on the lower end of the spectrum between not at all and slightly.

(14) Court personnel and attorneys perceived that the presence of electronic media made the participating attorneys' actions more flamboyant only to a slight extent.

(15) Court personnel and attorneys were of the attitude that the presence of electronic media affected the flamboyancy of witnesses to a degree between not at all and slightly.

(16) They also felt that witnesses were slightly inhibited by the presence of electronic media and that jurors were made slightly self-conscious, nervous, and distracted, but also slightly more attentive.

The separate survey of Florida judges was summarized in Post-Newsweek:

There was a 54% response to the survey [of trial judges]. Approximately two-thirds of the respondents (96-50) indicated some experience with electronic media during the pilot program. Of these, thirty-six indicated positive reaction, twenty-nine negative reaction, and thirty-seven neutral. The circuit judge under whose direction the survey was administered reported that "the neutrals generally made favorable comments as 'I am neutral but the press were professional, no disturbances, etc.'" In response to questions 6, 7, and 8 of the survey [awareness of presence of electronic media, effect on ability of judge and jurors to judge truthfulness, and ability of jurors to concentrate on the testimony], it was the reaction of the circuit judges (90 to 95%) that jurors, witnesses, and lawyers were not affected in the performance of their sworn duty by the presence of electronic media.

370 So. 2d at 769-70 (footnotes omitted). (It should be noted that, in spite of these favorable responses, the Florida Conference of Circuit Judges officially opposed the proposed modifications.)

A two-year pilot program was instituted by the Washington Supreme Court on September 20, 1976. All 111 of its Superior Court judges responded to the follow-up questionnaire, revealing that 41 judges had had experience with expanded media coverage during that period. At least 60, and perhaps as many as 80, proceedings were involved. Of the 41 responding judges, only seven reported negative experiences. One judge complained of "unrealistic posturing and extended, long-winded arguments" and attorneys trying to "upstage" an opponent; one judge in the seven merely said he had "mixed reactions" to the program. Another complaint was that television cameras adversely affected the "dignity of the court" in brief hearings in which participants did not have time to become acclimated to their presence, while acknowledging no disruptive effect in longer proceedings. Another judge feared juror intimidation. Intra-media squabbling over procedures resulted in disruption in one judge's experience. He also felt a "continuous pressure" from the media coverage. Among the 24 judges expressing positive reactions to the project, the Washington report states the most common response was "no problem." Following the two-year trial project, the advisory committee's recommendation was that expanded media coverage be continued.

Similarly, the Wisconsin experiment resulted in its expanded media rule being made permanent by order of its supreme court filed on June 21, 1979. Its advisory committee, after considering the results of the one-year project and the survey

questionnaires, concluded that the fair trial-free press interests of the participants could all be properly accommodated with expanded media coverage, provided adequate rules and supervisory powers of the court are built into the plan. The committee's report to the court, in recommending permanent status for the modified canon, said in part:

In making these recommendations, the Committee recognizes that various broad objectives must be pursued. It is vitally important that not only should justice be done in our courts, but that justice should appear to be done. Litigants are entitled to fair trials, and all persons who are involved in court proceedings should be treated with respect for their essential dignity as the citizens of a free society. At the same time, trials are public events; our tradition frowns upon secrecy in government, and few events are more abhorrent in our historical experience than secret trials. The guarantee of a public trial, Justice Black once wrote, "has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution." (*In re Oliver*, 333 U.S. 257, 270, 1948). The essential problem is to find a proper balance between these various interests. The task of discovering points of balance between various interests, however, is no novelty in the law. The Committee believes that in respect to the subject matter of this report, an acceptable balance has been struck. If future experience should indicate that the rules are not suitable, then it is within the province of the Supreme Court to revise them. In the present state of our knowledge and available technology, the Committee is satisfied that the amended rules it has recommended to the Court represent a policy with which we can go forward with confidence.

#### CONCLUSIONS AND RECOMMENDATIONS

In Iowa, we have the advantage of observing expanded media programs in other states. Some conclusions may be reached upon examination of reports furnished to the supervisory courts in those states. They confirm that some of the problems anticipated did, in fact, arise. For example, there is some evidence that expanded coverage, especially television, causes witnesses and jurors to feel uncomfortable and causes lawyers (and perhaps judges) to perform unnaturally. Handling the matter of press coverage, even with a media coordinator functioning, will require some of the judge's attention. Some portions, deemed more newsworthy than others, will be emphasized. Other problems certainly exist. Two observations must be made, however.

First, these problems have been neither as frequent in their occurrence nor as damaging in their effect as many had anticipated. Participants who have responded to follow-up questionnaires, including many who had some negative responses on specific questions, largely agree that in their opinion the presence of camera and

electronic media did not affect the fairness of the proceedings. Second, coverage of courtroom proceedings by camera and electronic media does not present new issues of interest weighing, but rather variations or degrees of existing issues. The public, now limited to the reporter and sketch artist for their information, would merely be informed of court proceedings through more modern means.

Some objections relating to disruptions caused by paraphernalia crowding the courtroom and television cables "snaking" across the floor or the "carnival" atmosphere of hordes of media personnel, flashing bulbs, and mass confusion of Hauptmann and Estes may now be minimized through advanced technology, media pooling and appropriate procedural rules.

Other problems, less clearly defined, but perhaps more pernicious in effect, appear to be best handled through substantive rule provisions. A party fearing prejudice in the case, as well as a witness embarrassed or intimidated by the prospect of such coverage should be given the right to object and seek exclusion or modification of such media coverage. Similarly, rules should be drawn to protect certain classes of cases: juvenile, custody, dissolution and adoption proceedings, as well as those pertaining to trade secrets and others deemed to warrant exclusion.

Perhaps most important, any modification on a temporary or permanent basis should preserve in the presiding judge broad authority to assure proper decorum and fairness in the proceedings.

The committee is nearly unanimous in recommending some modification of our Canon 3A(7). The following represents the views of the majority of the committee:

(1) The modification should be initially effective for a trial period of one year, during which time present Canon 3A(7) shall be suspended in its application.

(2) Rules governing technical matters, such as types, number and location of equipment and operators, as well as modification of lighting and sound reproduction systems of existing court facilities should be established.

(3) Procedural rules concerning requests for media coverage, objections, and hearings are necessary.

(4) Certain types of cases should be excluded, including juvenile, dissolution, child custody, adoption and trade secret cases. In addition, participants whose objections have been sustained, should not be photographed or recorded.

(5) The supreme court, with the assistance of this committee, if requested, should monitor the project during the trial period and should assess the results of it through observation and follow-up surveys of judges, lawyers, jurors, witnesses, media personnel and, perhaps, independent court observers. The court should also monitor the continuing experience of other jurisdictions operating under similar modified canons and rules.

(6) At the conclusion of the trial period, an assessment of the project should be made. If the project is continued, the canon and rules should be modified, if necessary, depending upon the experience and information gleaned from the project.

#### **PROPOSED ORDER**

Upon the recommendation of the Advisory Committee on Media Coverage of the Courts, and upon consideration by this court, it is ORDERED that:

(1) Canon 3A(7) of the Iowa Code of Judicial Conduct shall be suspended for a period of one year from the effective date of these rules unless the period of suspension shall be reduced or extended by supplemental order of the supreme court.

(2) That the following be substituted for the present Canon 3A(7) during its period of suspension:

#### Revised Canon 3A(7)

Subject at all times to the authority of the presiding judge to control the conduct of proceedings before the court to ensure decorum and prevent distractions and to ensure the fair administration of justice in the pending cause, electronic media and still photography coverage of public judicial proceedings in the trial and appellate courts of this state shall be allowed in accordance with rules of procedure and technology promulgated by the Supreme Court of Iowa.

[Comment:

This proposed canon is similar to Florida's, however our proposed rules vary from theirs, most significantly in granting broader rights to object to expanded media coverage under our rules. By giving participants the right, upon showing of good cause to prevent or limit coverage, concerns about intimidation and embarrassment of participants and prejudice to a criminal defendant should be minimized. In addition, certain types of cases should not be covered, even if permitted by the judge, unless the parties consent. These include juvenile, dissolution, adoption, child custody, and trade secret cases. Matters of exclusion and objection should be treated in accompanying rules. In addition, technical rules should be adopted by the court to avoid problems of media overcrowding, disruptive techniques and equipment, and to lend some certainty to the procedure for requesting and objecting to expanded media coverage.

It is recommended that pre-trial conferences be utilized by trial judges in those proceedings for which media coverage has been requested, in order to deal with possible objections and technical details so as to minimize any disruption or delay in the trial itself.]

## DEFINITIONS

"Judicial proceedings" or "proceedings" as referred to in these rules shall include all public trials, hearings or other proceedings in a trial or appellate court, for which expanded media is requested.

"Expanded media coverage" includes broadcasting, televising, electronic recording or photographing of judicial proceedings for the purpose of gathering and disseminating news to the public.

"Judge" means the magistrate, district associate judge, or district judge presiding in a trial court proceeding or the presiding judge or justice in an appellate proceeding.

## RULES

### I. General Rules.

The presiding judge may permit broadcasting, televising, recording and taking photographs in the courtroom and adjacent areas during sessions of the court, including recesses between sessions, under the following conditions:

(a) Permission shall have first been expressly granted by the judge, who may prescribe such conditions of coverage as provided for in the attached rules.

(b) A judge shall permit expanded media coverage of a proceeding, unless he or she concludes, on objection and showing of good cause that, under the circumstances of the particular proceeding that such coverage would materially interfere with the rights of the parties to a fair trial.

(c) Such media coverage of a witness may be refused by the judge upon objection and showing of good cause by the witness.

(d) There shall be no photographing or broadcasting of any court proceeding which, under the laws of the state of Iowa, are required to be held in private. No such coverage shall be permitted in any juvenile, dissolution, adoption, child custody, or trade secret cases unless consent on the record is obtained from all parties (including a parent or guardian of a minor child).

(e) There shall be no audio pickup or broadcast of conferences in a court proceeding between attorneys and their clients, between co-counsel, between counsel and the presiding judge held at the bench or between judges in an appellate proceeding.

(f). The number and types of equipment permitted in the courtroom shall be subject to the discretion of the judge within the guidelines set out in the accompanying rules.

(g). Notwithstanding the provisions of any of these procedural or technical rules, the presiding judge, upon application of the media coordinator, may permit the use of equipment or techniques at variance therewith, provided the application for variance is included in the advance notice of coverage provided for in Rule 2(b). Objections, if any, shall be made as provided by Rule 2(c). Ruling upon such a variance application shall be in the sole discretion of the presiding judge. Such variances may be allowed by the presiding judge without advance application or notice if all counsel and parties consent to it.

(h). The judge may, as to any or all media participants, limit or terminate photographic or electronic media coverage at any time during the proceedings in the event the judge finds (1) that rules established under this Canon, or additional rules imposed by the presiding judge, have been violated, or (2) that substantial rights of individual participants or rights to a fair trial will be prejudiced by such manner of coverage if it is allowed to continue.

(i). The rights provided for herein may be exercised only by persons or organizations which are part of the news media.

(j). The present authority of a judge to permit photographic and electronic media coverage of investitive, ceremonial or naturalization proceedings shall neither be abridged nor restricted by any of the provisions of this revised Canon nor its accompanying rules. Media coverage may be permitted in such cases under such conditions as may be prescribed by the presiding judge.

(k). These rules are designed primarily to provide guidance to courts, media and courtroom participants during the one-year trial period and are subject to withdrawal or amendment by the supreme court at any time.

## 2. Procedural Rules.

(a). Media coordinator. Media coordinators shall be designated each year by the board of trustees of the Iowa Freedom of Information Council. The judge and all interested members of the media shall, whenever possible, work with and through the appropriate media coordinator regarding all arrangements for

camera and microphone coverage of the proceedings. In the event a media coordinator has not been designated or is not available for a particular proceeding, the presiding judge may appoint an individual from among local working representatives of the media to serve as coordinator for the proceeding.

A coordinator shall be appointed for each judicial district, and one as appellate coordinator who shall act in proceedings in both the Iowa Court of Appeals and the Iowa Supreme Court. Designations of district coordinators shall be made in writing and shall be furnished to the court administrator and chief judge of each district. Designations of the appellate court coordinator shall be made in writing and shall be furnished to the supreme court administrator, chief judge of the court of appeals and the chief justice of the supreme court.

(b). Advance notice of coverage. All requests by representatives of the news media to use photographic equipment, television cameras, or electronic sound recording equipment in the courtroom shall be made to the media coordinator. The media coordinator shall in turn inform counsel for all parties, and the judge who is designated to preside over the proceedings, of such requests at least seven days in advance of the time the proceeding is scheduled to begin, unless such time is reduced or extended by court order.

(c). Objections. A party to a proceeding objecting to expanded media coverage under Rule 1(b) shall file a written objection, stating the grounds therefor, at least three days before commencement of the proceeding. All witnesses shall be advised by counsel proposing to introduce their testimony of their right to object to expanded media coverage, and all objections by witnesses under Rule 1(c) shall be filed prior to commencement of the proceeding.

All objections shall be heard and determined by the judge prior to commencement of the proceedings. Time for filing of objections may be extended or reduced in the discretion of the judge, who may also in appropriate circumstances, extend the right of objection to persons not specifically provided for in these rules.

(d). Excluded conferences. The media representatives shall avoid audio pickup and shall not broadcast recordings of conferences in a court proceeding between attorneys and their clients, between co-counsel, between counsel and the presiding judge held at the bench, or between judges in an appellate hearing.

(e). Reports of proceedings. In order to evaluate the trial project of expanded media coverage, presiding judges, attorneys, witnesses and jurors will be requested to complete questionnaires in such form and under such procedures as shall be prescribed by the supreme court.

3. Technical Rules.

(a). Equipment specifications. Equipment which is to be used by the media in courtrooms during judicial proceedings must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria, where applicable:

(1). Still cameras. Still cameras are to be standard professional quality single lens reflex or rangefinder 35 mm. cameras or twin lens reflex 120 mm. cameras in good repair. Motor-driven film advances and auto-winders on still cameras are not allowed.

(2). Television cameras and related equipment. Television cameras are to be electronic and, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the judicial proceedings being covered are unable to determine when recording is occurring.

(3). Audio equipment. Microphones, wiring, and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the judicial proceeding being covered. Any changes in existing audio systems must be approved by the presiding judge. No modifications of existing systems shall be made at public expense.

(4). Advance Approval. It shall be the duty of media personnel to demonstrate to the presiding judge reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this section. Failure to obtain advance judicial approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least 15 minutes prior to the scheduled time of commencement of the proceeding.

(b). Lighting. Other than light sources already existing in the courtroom, no flashbulbs or other artificial lighting device of any kind shall be employed in the courtroom. However, with the concurrence of the presiding judge, modifications may be made in light sources existing in the courtroom (e.g., higher wattage light bulbs), provided such modifications are installed and maintained without public expense.

(c). Equipment and pooling. The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the courtroom shall apply:

(1). Still photography. Not more than two still photographers, each using not more than two camera bodies and two lenses, shall be permitted in the courtroom during a judicial proceeding at any one time.

(2). Television. Not more than two television cameras, each operated by not more than one camera person, shall be permitted in the courtroom during a judicial proceeding. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside of the courtroom.

(3). Audio. Not more than one audio system shall be set up in the courtroom for broadcast coverage of a judicial proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the courtroom, if such pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside of the courtroom.

(4). Pooling. Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the media coordinator, and the presiding judge shall not be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular judicial proceeding.

(d). Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the courtroom designated by the presiding judge. The area or areas designated shall provide reasonable access to the proceeding to be covered.

(e). Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the courtroom only when the court is not in session. In addition, such equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the courtroom while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

(f). Decorum. All still photographers and broadcast media personnel shall be properly attired and shall maintain proper courtroom decorum at all times while covering a judicial proceeding.

**FILED**  
JUN 26 1979  
CLERK SUPREME COURT

IN THE SUPREME COURT OF IOWA

IN RE MODIFICATION OF )  
CANON 3A(7) OF THE IOWA )  
CODE OF JUDICIAL CONDUCT )  
IOWA FREEDOM OF INFORMATION )  
COUNCIL, et al. )  
Petitioners. )

No. 63674

NOTICE AND ORDER RE HEARING  
ON PETITIONS FOR MODIFICATION

TO ALL PARTIES CONCERNED IN THE MATTER OF THE PROPOSED  
MODIFICATION OF CANON 3A(7) OF THE IOWA CODE OF JUDICIAL CONDUCT:

You are hereby notified that a petition filed in this court seeks to modify the existing rules of Canon 3A(7) as it respects the use of electronic news media in Iowa district and appellate court proceedings. A copy of that petition is attached.

You are further notified that the Chief Justice of this court has, by order of June 25, 1979, referred this petition to an advisory committee for study prior to court action in regard to it. This committee has determined that a public hearing should be held prior to making its recommendations to the court.

IT IS THEREFORE ORDERED THAT:

1. A hearing on the petition for modification shall be held before the advisory committee in the Supreme Court room in the Statehouse at Des Moines, Iowa at 10:00 a.m., September 18, 1979.
2. That this hearing shall be open to the public.
3. That all parties desiring to respond in opposition to or support of the petition shall be permitted to appear at that time and place, provided that a written request therefor and written brief or summary of argument in support of that position is filed on or before August 15, 1979. Such filing shall be in the office of the Clerk of the Supreme Court, Statehouse, Des Moines, Iowa 50319.
4. That certain data filed in support of the petition is on file in the office of the Supreme Court Clerk, and that these are available for inspection and copying by any interested persons.
5. That following receipt of such requests for hearing and briefs, the advisory committee shall enter an order assigning times and time limitations for appearing parties.

6. That copies of this notice and order shall be mailed to all parties and potentially interested groups, and that the contents thereof be disseminated to the public through news media or other available means.

Dated this 25th day of June, 1979.

  
J. L. LARSON, JUSTICE  
Iowa Supreme Court  
Chairman, Advisory Committee on Media  
in the Courtroom

Copies to be mailed to:

American Bar Association  
Iowa State Bar Association  
Iowa Academy of Trial Lawyers  
Iowa Defense Counsel Association  
National Center for State Courts  
Iowa Civil Liberties Union  
Iowa Trial Lawyers' Association  
American Judicative Society  
Institute for Judicial Administration  
Juvenile Justice Advisory Council  
Iowa County Attorneys' Association  
Iowa Judges' Association  
Iowa Legal Services  
American College of Trial Lawyers  
National Judicial College  
National Association of Criminal Defense Lawyers, Inc.  
National Association of Broadcasters  
Petitioners