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## TV Or Not TV--Statutory Appendix

Christo Lassiter

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## TV OR NOT TV—STATUTORY APPENDIX

CHRISTO LASSITER\*

### I. TOWARDS A MODEL CAMERA ACCESS STATUTE: LIMITATIONS ON CAMERAS IN THE COURTROOM: CONSIDERATIONS FOR A MODEL STATUTE ON TELEVISION COVERAGE OF HEARINGS, TRIALS AND APPELLATE ARGUMENTS

The statutory appendix which follows is a comprehensive compilation of the statutes and ethical canons relating to cameras in the courtroom from among the fifty states and Puerto Rico. The introduction to the statutory appendix provides an executive summary of limiters on camera access.<sup>1</sup> The organization of these limiters herein are meant to provide a basis for formulating a model statute concerning camera access to the courtroom.<sup>2</sup> Since I am opposed to cameras

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\* The author wishes to gratefully acknowledge his research assistant, Jennifer Stainforth, J.D. 1996, for compiling the statutory appendix.

<sup>1</sup> Care was taken in the editing of these statutes to preserve the actual wording of each statute. The appendix is designed to serve varying interests concerned in the administration of justice. Legislators interested in legal reform should find that the appendix provides a ready basis for comparison. Judges may be guided by comparative statutory text of other statutes in interpreting their own statutes. Practitioners and the media may be helped by having a ready reference governing their requests before the court. Finally, academicians and commentators seeking to evaluate events and analyze trends should be aided by this comprehensive compilation.

<sup>2</sup> In the statutory appendix, the term "camera" refers to various descriptions of recording technology including still and live cameras, used for broadcasting, televising, recording, audio taping, motion picture filming and videotaping. "Camera coverage" also includes the public dissemination of recordings of courtroom proceedings. It is assumed that all such implications are raised by statutory references to "camera coverage", unless specifically stated otherwise. Editing guide: these statutes, canons and rules are abbreviated to focus on significant factors including: 1) the purposes to which the recording may be put, 2) the degree of judicial discretion allowed, 3) consent requirements, 4) the types of proceedings which may be recorded, 5) any differences in the treatment of civil and criminal proceedings, and 6) other substantive limitations on camera coverage. Generally, all of the rules which allow camera coverage include technical limitations on lighting, noise, movement, number of cameras allowed, location and type of equipment allowed, conduct and dress of media members, etc. These requirements are meant to minimize or eliminate the distraction caused by equipment and the presence of the media. In addition, unless otherwise stated, all camera coverage is limited to recordings made by members of the media. Generally, all of the rules which allow camera coverage of judicial proceedings also require some form of "pooling" arrangement among those media organizations re-

in the courtroom, my view of the model statute is one which bans all cameras from the courtroom except for limited, educational purposes. However, given the strong commercial interest which television affords all participants of a trial, a complete ban on cameras in the courtroom is not a balanced suggestion. Assuming that cameras in the courtroom are here to stay, it is appropriate for legislators and courts to consider accommodating cameras in the courtroom and to limit their accompanying distortion and politicizing of trials.

#### A. SOURCE OF AUTHORITY

##### 1. *Judicial Canons*

Statutes dealing with cameras in the courtroom are usually found within the judicial codes of conduct. Locating concerns about the due administration of justice in the judicial canons of ethics is a practice which recommends itself because it emphasizes the judge's traditional responsibility to maintain dignity and decorum in the courtroom<sup>3</sup> and obligates the court to act *sua sponte* in the absence of objection by either counsel.<sup>4</sup>

##### 2. *Legal Professional Canons*

Professional ethics already prohibit lawyers from capitalizing on their involvement in litigated matters by acquiring independent interests.<sup>5</sup> There is little reported concern in further developing additional sanctions specifically addressing coverage of high profile cases and the possible exploitation of the associated publicity therefrom.<sup>6</sup>

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questing access.

<sup>3</sup> For example, two states have expanded the judge's contempt power to sanction the media for violations. *State v. Angelico*, 328 So. 2d 378 (La. 1975) (cameraman held in contempt for disobeying order prohibiting the operation of cameras in the halls of criminal court building); *Duffy v. State*, 567 S.W.2d 197 (Tex. Crim. App. 1978) (cameraman arrested for filming jurors as they left the courtroom).

<sup>4</sup> Counsel may be too caught up in proving their case to see the media's impact, or they may be too caught up in using the media to see an inconsistency between publicity and the demands of justice.

<sup>5</sup> MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 5 (1980) and MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-107 (1980). Judges are similarly restricted. THE CODE OF JUDICIAL CONDUCT CANON 1 (1980).

<sup>6</sup> An early response to this point is found in *In re Hearings Concerning Canon 35 of the Canons of Judicial Ethics*, 296 P.2d 465, 469 (Colo. 1956) (en banc) (the first order allowing for camera coverage in Colorado courts and outlining many arguments pro and con). The court argued thus:

It is contended, usually orally and in smothered words or whispers, that some trial judges, and lawyers "who are hungry for publicity, will conclude that they are actors, and by some psychological motivation 'play to the galleries' and so conduct themselves as to satisfy their own vanity, or otherwise exploit themselves."

Any judge or lawyer who so demeans himself before a camera does not change his inherent

Enforcement of the current standards makes new standards unnecessary.

### 3. *Witnesses and Jurors*

There are no ethical codes governing the behavior of witnesses<sup>7</sup> and jurors, even though their actions might well prejudice the trial under certain circumstances. Oklahoma and Utah have statutes dealing with the commercialization of testimony.<sup>8</sup> However, California's statute attempting to limit the potential commercial appeal of a witnesses' testimony or a juror's inside information did not survive state constitutional review by the California Supreme Court.<sup>9</sup> It would appear that limits on commercialization by witnesses and jurors outside the jurisdiction of the court would be barred by First Amendment freedoms.

#### B. WHOLESALE EXCLUSION OF CAMERAS BY FORUM OR SUBJECT MATTER

The Court in *Globe Newspaper*, per Justice Brennan, struck down on First Amendment grounds a Massachusetts law mandating a blan-

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characteristics for that particular occasion. A "show-off" or a "strutter" will be just that whether a camera is present or not. They are readily identified by any person of ordinary intelligence and ultimately are justly disposed of by the people. If a larger segment of society is permitted to witness such offensive conduct the offender will be properly judged by the people sooner than might otherwise be possible. Actual experience, however, has led to the majority view that participants in legal proceedings are far more careful in their conduct and indulge in less bickering in those cases where cameras are permitted to operate under court supervision. Equipment employed in broadcasting, either by radio or television, is such that if any participant evidenced an intention to offend in this matter all the judge would have to do would be to press a button and the offensive conduct would be inaudible and invisible to any person except those in the court room. The capable trial judges of this state can keep full control of any such situation which might arise. It is perfectly obvious that the solution of the problem does not lie in arbitrarily forbidding the photographing or broadcasting of court proceedings. A constitutional right of all citizens cannot be denied because a very few persons may conceivably make fools of themselves before a larger audience than that which might otherwise be subjected to their offensive conduct.

<sup>7</sup> Professional witnesses may have professional obligations apart from the court.

<sup>8</sup> OKLA. ST. ANN. tit. 5, ch. 1, app. 4, Canon 3(A)(7)(g) (West 1994); UTAH CODE JUD. ADMIN. R. 4-401(2)(C) (Michie 1991).

<sup>9</sup> CAL. PENAL CODE § 132.5 (West Supp. 1995). The California legislation sought to generally prohibit witnesses from receiving compensation from any source in return for selling their stories within a year following the criminal act of interest; violators are subject to a civil misdemeanor conviction and punishable by six months imprisonment and a fine up to three times the compensation received. Likewise, California prohibits jurors from benefiting from their participation in a trial or supplying information concerning the trial. CAL. PENAL CODE § 1122.5 (West Supp. 1995). The constitutionality of these statutes has yet to be examined by a court. Henry Weinstein, *The O.J. Simpson Murder Trial; State Justices Restrict Lawyers' Comments Out Of Courtroom; Law: Effective Oct. 1, Rule Inspired By Simpson Trial Bars Remarks When There Is "Likelihood" Of Prejudicing A Case*, L.A. TIMES, Sep. 16, 1995, at A17.

ket denial of camera access in all trials during the testimony of a minor who was the victim of a sexual offense.<sup>10</sup> But in recognition of legitimate Sixth Amendment concerns for a fair trial in cases involving sensitive matters, states have not been precluded from barring cameras entirely from courtrooms, or excluding them in some forums on an *ad hoc* basis.

### 1. Criminal

In criminal matters, juvenile court proceedings are the most prominent statutory exceptions among states which otherwise generally allow cameras in the courtroom. Currently, eleven states<sup>11</sup> exclude cameras by statute in juvenile court, either by absolute bar, or in the absence of consent of all parties.<sup>12</sup>

### 2. Civil

In civil matters, domestic court matters,<sup>13</sup> mental commitment

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<sup>10</sup> *Globe Newspaper Co. v. Superior Court for the County of Norfolk*, 457 U.S. 596, 598 (1982). The Massachusetts law required trial judges to exclude the press and public from the courtroom during the testimony of a minor victim of certain sexual offenses. *Id.*

<sup>11</sup> Arizona, Arkansas, Georgia, Connecticut, Iowa, Missouri, New Jersey, North Carolina, North Dakota, Oregon, and Virginia.

<sup>12</sup> See ARIZ. REV. STAT. ANN. § XI, Sup. Ct. R. 122(a) (1994); ARK. CODE OF JUD. CONDUCT Canon 3(A)(7)(d) (1993); GA. UNIF. JUV. CT. R. 26.2 (Michie 1993) (cameras are allowed but no pictures of the child); IOWA R. OF CT. 119, Canon 3(B)(2)(d) (without consent of all parties) (West 1994); Missouri Order entered October 25, 1994: Adopting Admin. R. 16, 16.02(c); N.J. R. CT. pt. I, app., Code of Jud. Conduct Canon 3(A)(7), Guideline 10 (West 1994); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15 (b)(2) (Michie 1993); N.D. Admin. R. and Orders 21 (E)(2)(iv) (Michie 1992) (without consent of all parties); OR. UNIF. TRIAL CT. R. 3.180(1)(b) (1991); R.I. SUP. CT. R. art VII, Canon 3 (Michie 1993); VA. CODE ANN. § 19.2-266(2) (1994).

<sup>13</sup> Currently, thirteen states exclude cameras by statute in juvenile court, either by absolute bar, or in the absence of consent of all parties. See Alaska Admin. R. 50(c) (1990) (without consent of all parties and guardian ad litem; divorce, domestic violence, child custody, paternity, etc.); ARK. CODE OF JUD. CONDUCT Canon 3(A)(7)(d) (1993) (adoption, guardianship, domestic relations); CONN. R. SUPER. CT. Ch. 1 § 7C(d) (West Practice Book 1993) (family relations matters); IOWA R. OF CT. 119, Canon 3(B)(2)(d) (West 1994) (without consent of all parties in divorce, adoption, child custody); KANSAS S. CT. R. 1001(7) (1993) (divorce upon request of a participant); Missouri Order entered October 25, 1994: Adopting Admin. R. 16, 16.02(c) (adoption, domestic relations, child custody); N.J. R. CT. pt. I, app., Code of Jud. Conduct Canon 3(A)(7), Guideline 10 (West 1994) (custody, divorce, domestic disputes); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15 (b)(2) (Michie 1993) (divorce, adoption, custody, alimony); N.D. Admin. R. and Orders 21 (E)(2)(iv) (Michie 1992) (without consent from all parties in divorce, involuntary commitment, conservatorship, guardianship, adoption, custody); OR. UNIF. TRIAL CT. R. 3.180(1)(b) (1991) (divorce, paternity, custody, mental commitment, family abuse); R.I. SUP. CT. R. art VII, Canon 3 (Michie 1993) (proceedings in which juveniles are significant participants); VA. CODE ANN. § 19.2-266(2) (Michie 1994) (adoption, custody, divorce, spousal support); Wis. ST. ANN., Sup. Ct. R. 61.11(1) (West 1994) (participant's request for denial of coverage in divorce proceedings is presumed good cause).

hearings,<sup>14</sup> and trade secret cases<sup>15</sup> are among the statutory exceptions from states which otherwise generally allow cameras in the courtroom.

C. EXCLUSION OF CAMERAS IN WHOLE OR IN PART IN THE ABSENCE OF CONSENT BY A PARTICIPANT AT TRIAL

Conditioning the admissibility of cameras on pure consent<sup>16</sup> of both of the major parties affords the best mechanism for limiting cameras in the courtroom.<sup>17</sup> However, as the United States Constitution does not prohibit the broadcasting of a criminal trial over the objection of the defendant,<sup>18</sup> states which have expressly authorized the prohibition of cameras from the courtroom have generally, but not always, required a showing of specific prejudice.<sup>19</sup>

1. *Defendants*

Arkansas has twice excluded camera coverage of the entire trial upon objection by the defense, without a showing of specific prejudice.<sup>20</sup> Courts in Oklahoma and New Mexico have found that allow-

<sup>14</sup> Only two states which otherwise generally allow cameras in civil court exclude cameras on this basis. See N.D. Admin. R. and Orders 21 (E)(2)(iv) (Michie 1992); OR. UNIF. TRIAL CT. R. 3.180(1)(b) (1991).

<sup>15</sup> Ten states which otherwise generally allow cameras in civil court exclude cameras on this basis. See CONN. R. SUPER. CT. Ch. 1 § 7C(d)(3) (West Practice Book 1993); HAW. STAT. S. CT. R. 5, § 5.1(f)(5)(ii) (Michie 1993) (good cause for prohibition presumed); IOWA R. OF CT. 119, Canon 3(B)(2)(d) (coverage requires consent of all parties) (West 1994); KANSAS S. CT. R. 1001 (7) (1993) (prohibited upon request of a participant); N.J. R. CT. pt. I, app., Code of Jud. Conduct Canon 3(A)(7), Guideline 10 (West 1994); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15 (b)(2) (Michie 1993); N.D. Admin. R. and Orders 21 (E)(2)(iv) (Michie 1992) (coverage requires consent from all parties); OR. UNIF. TRIAL CT. R. 3.180(1)(b) (1991); VA. CODE ANN. § 19.2-266(2) (1994); WIS. ST. ANN. SUP. CT. R. 61.11(1) (West 1994) (participant's request for denial is presumed to have good cause).

<sup>16</sup> By the term "pure consent" is meant the absence of a burden of proof to show prejudice on the party seeking exclusion of cameras from the courtroom.

<sup>17</sup> Presumably most trial participants, generally, would not consent to camera coverage. See *In re Post-Newsweek Stations, Fla. Inc.*, 347 So. 2d 402 (Fla. 1977). See also Richard P. Lindsey, *An Assessment of the Use of Cameras in State and Federal Courts*, 18 GA.L.REV. 389 (1984); Lynne Reaves, *Cameras in the Court*, 69 A.B.A.J. 1213 (1983).

<sup>18</sup> See *Chandler v. Florida*, discussed *infra* at section II.A. of this article. See also *People v. Parise*, 523 N.Y.S.2d 962 (N.Y. Crim. Ct. 1988); *State v. Wixon*, 631 P.2d 1033 (Wash. Ct. App. 1981).

<sup>19</sup> One court has recognized that camera coverage could affect the subsequent safety of a defendant and therefore held that such coverage should be limited. *People v. Torris*, 529 N.Y.S.2d 954 (N.Y. Sup. Ct. 1988) (court found that defendant's safety would be jeopardy upon incarceration if his face were connected to such a highly emotional and unusual crime (stabbing to death of a 65-year old nun)).

<sup>20</sup> *Jim Halsey Co. v. Bonar*, 683 S.W.2d 898 (Ark. 1985) (camera coverage over the objection of defendant is prohibited but does not in and of itself constitute prejudice); *Ford v. State*, 633 S.W.2d 3 (Ark. 1982); *KARK-TV Channel 4, Inc. v. Lofton*, 640 S.W.2d 798 (Ark. 1982).

ance of camera coverage over the objection of the defendant constitutes reversible prejudicial error.<sup>21</sup> Nine states<sup>22</sup> have enacted statutes, which require exclusion of cameras in the absence of defense consent in criminal cases, civil cases, or in both.<sup>23</sup> The general trend concerning the burden of proof to show prejudice is an exacting standard: specific prejudice that would materially interfere with the defendant's right to a fair trial and which cannot be overcome by less restrictive alternatives to a complete ban on the entire trial.<sup>24</sup> Some

<sup>21</sup> *Brantley v. State*, 610 So. 2d 1139 (Miss. 1992); *Brennan v. Oklahoma*, 766 P. 2d 1385 (Okla. Crim. App. 1988) (per curiam) (involved filming of sentencing hearing, court modified death penalty sentence to life imprisonment); cf. *State v. Hovey*, 742 P.2d 512 (N.M. 1987) (although court did not assign error to allowance of cameras over the objection of defendant under current court rules, it did recognize that coverage may make a defendant nervous or rattled and modification of the rules governing cameras in the courtroom may be necessary to address this danger).

<sup>22</sup> Alabama, Arkansas, Indiana, Maryland, Minnesota, Mississippi, Oklahoma, Pennsylvania, Tennessee, Texas, and Utah.

<sup>23</sup> In general seven states exclude cameras where defense withholds consent. See ARK. CODE OF JUD. CONDUCT Canon 3(A)(7)(b) (1993); IND. CODE ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (West 1994); MISS. CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (1983); PA. CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (West 1994); TENN. R. SUP. CT. 10 Canon 3(A)(7)(C)(iii) (1992) (any time a party objects, the judge shall stop or suspend all further coverage); TEX. R. APP. P. 21(b)(i) (West 1994) (in appellate oral arguments coverage allowed by court order); UTAH CODE JUD. ADMIN. pt. 1, ch. 12, Canon 3(A)(8) (Michie 1993) (except for the Utah Supreme Court). *Criminal only*: ALA. CANONS OF JUD. ETHICS Canon 3(A)(7A)(b) (Michie 1993); MD. R. ch. 1200, pt. I, r. 1209(d)(1) (Michie 1993); OKLA. ST. ANN. tit. 5, ch. 1, app. 4, Canon 3(A)(7)(e) (1994); MINN. STAT. ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii); TENN. R. SUP. CT. 10 Canon 3(A)(7)(C)(ii) (1992). *Civil only*: ALA. CANONS OF JUD. ETHICS Canon 3(A)(7A)(c) (Michie 1993); MD. R. ch. 1200, pt. I, r. 1209(d)(1) (Michie 1993); MINN. STAT. ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii). *Appellate only*: ALA. CANONS OF JUD. ETHICS Canon 3(A)(7B)(b) (Michie 1993) (attorneys and parties present).

<sup>24</sup> ARIZ. REV. STAT. ANN. § XI, Sup. Ct. r. 122(b), (g) (1994) (objections waived unless made prior to commencement; judge has discretionary authority to permit cameras); COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(8)(f)(II), (III) (West 1994) (judge must set forth reasons for any ruling on objections); CONN. R. SUPER. CT. ch. 1 § 7C(h) (West Practice Book 1993) (judge's discretion for coverage of objecting person); CONN. R. APP. P. ch. 70 § 4116B(b) (West Practice Book 1993) (counsel or pro se party of record may object; judge's discretion); HAW. STAT. S. CT. R. 5, § 5.1(f)(3), (4) (Michie 1992) (if party objects, hearing held to determine if there is good cause to prohibit); IOWA R. OF CR. 119, Canon 3(B)(2)(b), (3)(c) (West 1994) (party may file objection 3 days prior to commencement; judge must state on the record reasons why coverage would materially interfere with parties' rights to a fair trial); Missouri Order entered October 25, 1994, adopting Admin. R. 16, 16.03(c) (judge may prohibit visual identification or coverage at request of participant for good cause); NEB. SUP. CT. R. 17(C), (D) (1992) (objections will be heard prior to commencement and on showing of good cause judge may prohibit coverage); N.J. R. CT. Pt. I, app., Guideline 14 (West 1994) (objections will be considered at pretrial conference; media and parties may appeal any decision on camera coverage under standard of manifest abuse of discretion); N.Y. JUD. L. § 218(5)(a) (McKinney 1994) (objections will not limit coverage absent good or legal cause); N.Y. R. Cr. pt. 131 § 131.4(c)(7) (McKinney 1994) (judge shall consider whether there have been objections); R.I. SUP. CT. R. art. VII, Canon 11 (Michie 1993) (judge may prohibit coverage at his/her sole discretion at

courts have recognized that camera coverage may intrude on the attorney-client relationship in the courtroom,<sup>25</sup> but seem prepared to disregard the assertions of defendants that camera coverage would or did interfere with their relationships to counsel.<sup>26</sup> In most states defendants will not be granted a mistrial on the basis of improper televising of trials unless they can show specific prejudice or harm as a result of the camera coverage.<sup>27</sup> Failure of defense attorneys to object to camera coverage does not constitute ineffective assistance of counsel.<sup>28</sup>

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request of participant); *In re Society of Professional Journalists*, 727 P.2d 198, App. (1986) (court shall consider objections); Vt. ST. ANN., R. CIV. P. 79.2(b)(1) (1993) (court may prohibit coverage at the request of a party); W. VA. R. CAMERA COVERAGE OF COURTROOM PROCEEDINGS 1, R. 1.3 (Michie 1993) (presiding judge may sustain or deny objections); WIS. ST. ANN., SUP. CT. R. 61.11(1) (West 1994) (judge may prohibit coverage at request of participant for good cause); WYO. R. CRIM. P. 53(9) (1993) (judge may prohibit coverage at request of participant for cause).

<sup>25</sup> *Callahan v. Lash*, 381 F. Supp. 827 (N.D. Ind. 1974). Camera coverage may intrude on the attorney/client relationship in the courtroom. *Id.* Many courts have disregarded defendants' assertions that camera coverage would/did interfere with their relationships to counsel. *Smith v. State*, 376 So. 2d 455 (Fla. Dist. Ct. App. 1979); *Georgia Television Co. v. Napper*, 365 S.E.2d 275 (Ga. 1988); *cf. State v. Douglas*, 485 N.W.2d 619, (Iowa 1992) (deferred to trial judge's decision to allow media's use of live microphones at the counsel table, but noted that courts would be wise to deny such requests in the future).

<sup>26</sup> *Smith v. State*, 376 So. 2d 455 (Fla. Dist. Ct. App. 1979); *Georgia Television Co. v. Napper*, 365 S.E.2d 275 (Ga. 1988); *cf. State v. Douglas*, 485 N.W.2d 619, (Iowa 1992) (deferred to trial judge's decision to allow media's use of live microphones at the counsel table, but noted that courts would be wise to deny such requests in the future).

<sup>27</sup> *See, e.g., Williams v. State*, 461 So. 2d 834 (Ala. Crim. App. 1983) (despite restrictions, television camera filmed jury through courtroom windows and jury noticed and complained; court found no prejudice and instructed jury that they would be edited out of the recording); *Jim Halsey Co. v. Bonar*, 688 S.W.2d 275 (Ark. 1985) (mistrial not warranted where judge allowed camera coverage of trial over objections of a party, in violation of Judicial Canon 3(A)(7), where no prejudice was shown); *Harris v. State*, 401 S.E.2d 263 (Ga. 1991) (coverage violated Unif. Super. Ct. R. 22 by failing to give defendant pretrial notice of coverage; no harm found); *Studebaker's of Savannah, Inc. v. Tibbs*, 392 S.E.2d 908 (Ga. Ct. App. 1990) (defendant alleged error in allowing cameras in the courtroom where defense was trying to argue that this was an ordinary accident case; court found no harm); *Willard v. State*, 400 N.E.2d 151 (Ind. 1980) (judge violated Canon 3(A)(7) by allowing cameras in the courtroom; court found no prejudice to the defendant); *Stelma v. Juguilon*, 597 N.E.2d 523 (Ohio Ct. App. 1992) (court failed to put permission for cameras in writing as required under court rules; court found no prejudice); *State v. Smart*, 622 A.2d 1197 (N.H. 1993) (cameras photographed jury on a view in violation of court's order to allow no coverage of the jury under any circumstances in any location; court found no prejudice); *State v. Kennedy*, 469 N.W.2d 247 (Wis. Ct. App. 1991) (cameras were allowed in jury box during post-conviction hearings in violation of rule limiting cameras to public areas; no prejudice found).

<sup>28</sup> *Zamora v. State*, 422 So. 2d 325 (Fla. Dist. Ct. App. 1982); *Stafford v. State*, 669 P.2d 285 (Okla. Crim. App. 1983).



## 2. Prosecution or Plaintiffs

Eight states<sup>29</sup> have enacted statutes permitting wholesale exclusion of cameras in a specific case in the absence of consent by the prosecutor or plaintiff in criminal and civil cases, respectively.<sup>30</sup> However these states impose a burden of proof on the prosecution or plaintiff to show specific prejudice that would materially interfere with the administration of justice, which is as stringent on the prosecution or plaintiff as it is on the defense.<sup>31</sup>

## 3. Juries

The developing trends both in common law and in state statutes

<sup>29</sup> Alabama, Arkansas, Indiana, Maryland, Minnesota, Mississippi, Pennsylvania, Tennessee, Texas, and Utah.

<sup>30</sup> ARK. CODE OF JUD. CONDUCT Canon 3(A)(7)(b) (1993); IND. CODE ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (West 1994); MD. R. ch. 1200, pt. I, r. 1209(d)(1) (Michie 1993) (doesn't apply to appellate proceedings); MINN. STAT. ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (except in Supreme Ct. and Ct. of Appeals); MISS. CODE OF JUD. CONDUCT, Canon 3(A)(7)(c)(ii) (1983); PA. CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (West 1994); TENN. R. SUP. CR. 10 Canon 3(A)(7)(C)(iii) (1992) (any time a party objects, the judge shall stop or suspend all further coverage); TEX. R. APP. P. 21(b)(i) (West 1994); UTAH CODE JUD. ADMIN. pt. 1, ch. 12, Canon 3(A)(8) (Michie 1993) (doesn't apply to Supreme Court). *Criminal* (prosecuting attorney): ALA. CANONS OF JUD. ETHICS Canon 3(A)(7A)(b) (Michie 1993); *Civil Plaintiffs*: ALA. CANONS OF JUD. ETHICS Canon 3(A)(7A)(c) (Michie 1993).

<sup>31</sup> ARIZ. REV. STAT. ANN. § XI, Sup. Ct. R. 122(b),(g) (1994) (objections waived unless made prior to commencement; judge has discretionary authority to permit cameras); COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(8)(f)(II), (III) (West 1994) (judge must set forth reasons for any ruling on objections); CONN. R. SUPER. CT. ch. 1 § 7C(h) (West Practice Book 1993) (judge's discretion for coverage of objecting person); CONN. R. APP. P. ch. 70 § 4116B(b) (West Practice Book 1993) (counsel or pro se party of record may object; judge's discretion); HAW. STAT. S. CT. R. 5, § 5.1(f)(3), (4) (Michie 1992) (if party objects, hearing held to determine if there is good cause to prohibit); IOWA R. OF CT. 119, Canon 3(B)(2)(b), (3)(c) (West 1994) (party may file objection 3 days prior to commencement; judge must state on the record reasons why coverage would materially interfere with parties' rights to a fair trial); Missouri Order entered October 25, 1994, adopting Admin. R. 16, 16.03(c) (judge may prohibit visual identification or coverage at request of participant for good cause); NEB. SUP. CT. R. 17(C), (D) (1992) (objections will be heard prior to commencement and on showing of good cause judge may prohibit coverage); N.J. R. CR. PT. I, app., Guideline 14 (West 1994) (objections will be considered at pretrial conference; media and parties may appeal any decision on camera coverage under standard of manifest abuse of discretion); N.Y. JUD. L. § 218(5)(a) (McKinney 1994) (objections will not limit coverage absent good or legal cause); N.Y. R. CR. § 131.4(c)(7) (McKinney 1994) (judge shall consider whether there have been objections); R.I. SUP. CT. R. art. VII, Canon 11 (Michie 1993) (judge may prohibit coverage at his/her sole discretion at request of participant); *In re Society of Professional Journalists*, 727 P.2d 198, App. (1986) (court shall consider objections); VT. ST. ANN., R. CIV. P. 79.2(b)(1) (1993) (court may prohibit coverage at the request of a party); W. VA. R. Camera Coverage of Courtroom Proceedings 1, R. 1.3 (Michie 1993) (presiding judge may sustain or deny objections); WIS. ST. ANN., SUP. CT. R. 61.11(1) (West 1994) (judge may prohibit coverage at request of participant for good cause); WYO. R. CRIM. P. 53(9) (1993) (judge may prohibit coverage at request of participant for cause).

is to restrict cameras so as to not show jury faces in an identifiable way.<sup>32</sup> Another pertinent trend is the exclusion of voir dire from television coverage.<sup>33</sup> Thus jury consent for television coverage of a trial is usually not an issue of concern, although a media presence certainly has implications for the dignity, decorum, and due administration of justice.<sup>34</sup> So far, only one state, New York, has enacted legislation, permitting the exclusion of cameras in the courtroom upon objection

<sup>32</sup> Television coverage publicizing the faces of individual jurors may affect their deliberation in numerous ways including dissuading a juror from considering unpopular decisions. For example, in the Jeffrey Dahmer trial, the concern for neutral decision making was serious enough to warrant a court order preventing the showing of jurors' faces on television. *Film Clips: A Look Inside Hollywood and the Movies*, L.A. TIMES, Sep. 13, 1992, Calendar Section at 23. See Wendy Benjamin, *Shroud of Secrecy Increasingly Veils Trials in Texas*, HOUSTON CHRONICLE, March 13, 1994, at A1 (discussing jury apprehension at disclosure of answers to jury questionnaires). See generally Alaska Admin. R. 50(e)(2) (1990); ARIZ. REV. STAT. ANN. § XI, Sup. Ct. R. 122(k) (1994); CAL. ANN. CODE, R. OF CT. tit. 3, div. IV, R. 980(b)(2) (West 1994); COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(8)(b)(VI) (West 1994); CONN. R. SUPER. CT. ch. 1, § 7C(g) (1993); GA. UNIF. SUPER. CT. R. 22 (I) (Michie 1993); HAW. STAT. S. CT. R. 5, § 5.1 (g)(2) (Michie 1992); IOWA R. OF CT. 119, Canon 3(B)(2)(e) (West 1994); KAN. S. CT. R. 1001(5) (1993); MASS. R. SUP. JUD. CT. 3:09, Canon 3(A)(7)(c) (West 1994); Mich. R. Admin. Order 1989-1(2)(c); Missouri Order entered October 25, 1994: adopting Admin. R. 16, 16.02(c); NEV. REV. STAT., SUP. CT. R. 238(2) (1993); N.J. R. CT. Pt. I, app., Guideline 13(b) (West 1994); N.M. STAT. ANN., S. CT. GEN. R. 23-107(A)(3) (West 1994); N.Y. JUD. L. § 218(7)(d) (McKinney 1994); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(b)(4) (Michie 1993); N.D. ADMIN. R. & ORDERS 21 (B)(3)(v) (Michie 1992); OHIO CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(iv) (Page 1994); OR. UNIF. TRIAL CT. R. 3.180(1)(d) (1991); R.I. SUP. CT. R. art. VII, Canon 10 (Michie 1993); S.C. Code Ann., App. Ct. R. 605(C)(3) (Law Co-op. Supp. 1993); UTAH CODE JUD. ADMIN. R. 4-401(4)(B) (Michie 1991); VT. ST. ANN., R. CIV. P. 79.2(d) (1993); VA. CODE ANN. § 19.2-266(4) (1994); WYO. R. CRIM. P. 53(7) (1993).

Some states allow jury members to be photographed with prior approval or consent by jury members. See generally N.H. STAT. ANN., SUPER. CT. R. 78(a)(7) (1993) (jury members may not be photographed in a criminal trial without prior, express approval of the justice); OKLA. ST. ANN. tit. 5, ch. 1, app. 4, Canon 3(A)(7)(c) (1994) (no juror who expresses prior objection to the judge shall be covered); TENN. R. SUP. CT. 10 Canon 3(A)(7)(C)(iii) (1992) (any time a juror objects coverage shall be immediately stopped as to that juror); WIS. ST. ANN., SUP. CT. R. 61.11(2) (West 1994) (jurors shall not be photographed without consent).

<sup>33</sup> See generally CAL. ANN. CODE, R. OF CT. 980(b)(2) (West 1994); COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(8)(b)(II) (West 1994); IOWA R. OF CT. 119, Canon 3(B)(2)(e) (West 1994); MASS. R. SUP. JUD. CT. 3:09, Canon 3(A)(7)(b) (West 1994); Mich. R. Admin. Order 1989-1(2)(c); Missouri Order entered October 25, 1994: adopting Admin. R. 16, 16.02(c); N.Y. JUD. L. § 218(7)(c) (Consol. 1994); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(b)(4) (Michie 1993); N.D. Admin. R. & Orders 21 (B)(3)(v) (Michie 1992); N.M. STAT. ANN., S. CT. GEN. R. 23-107(A)(3) (West 1994); R.I. SUP. CT. R. art. VII, Canon 10 (Michie 1993); S.C. CODE ANN., APP. CT. R. 605(C)(3) (Law Co-op. Supp. 1993); VA. CODE ANN. § 19.2-266(4) (1994);

<sup>34</sup> At least one jurisdiction has enacted a statutory requirement regulating the interaction of media with the jury to avoid disclosure of suppressed information or attempt to intrude on the deliberative process. See Knox, Div. I, II & III, Tenn. Cir. Ct., Add. R. Concerning Media (1992). "Members of the media shall take special precaution and not make any comment within hearing range of the jurors."

by the jury.<sup>35</sup>

#### 4. Victims

Two separate decisions from the state of Massachusetts held that there is no harm to the defendant by allowing the victim to be exempted from camera coverage.<sup>36</sup> Ten states<sup>37</sup> permit exclusion of cameras for the portion of the victim's testimony.<sup>38</sup> Indeed three states<sup>39</sup> have enacted statutes permitting a prohibition of the complete trial when the charges involve allegations of sexual misconduct.<sup>40</sup> New York has enacted a statute which regulates television coverage of the victim's family members as members of the audience.<sup>41</sup> And two states<sup>42</sup> have enacted statutes prohibiting the televising of family members during their testimony in cases involving allegations of sexual misconduct.<sup>43</sup>

Legal reforms accorded victims of rape or sexual assault could be eroded by liberal rules regarding cameras in the courtroom.<sup>44</sup> Courts may weigh potential harm to victim's emotional well being in deciding whether or not to allow camera coverage.<sup>45</sup> There are appropriate

<sup>35</sup> N.Y. JUD. L. § 218(5)(a) (Consol. 1994) (objections will not limit coverage absent good or legal cause).

<sup>36</sup> *Commonwealth v. Cordeiro*, 519 N.E.2d 1328 (Mass. 1988); *Commonwealth v. Cross*, 605 N.E.2d 298 (Mass. Ct. App. 1993).

<sup>37</sup> Alaska, Iowa, Kansas, Maryland, Missouri, New York, North Carolina, North Dakota, and Ohio.

<sup>38</sup> See generally Alaska Admin. R. 50(e)(1) (1990); IOWA R. OF CT. 119, Canon 3(B)(2)(c) (West 1994) (for coverage of victim/witness in sex crime); KAN. S. CT. R. 1001(7)(a) (1993); MD. R. CT. 1209(d)(2) (Michie 1993); Missouri Order entered October 25, 1994: Adopting Admin. R. 16, 16.03(c); N.Y. JUD. L. § 218(7)(e) (Consol. 1994) (in prosecutions for rape, sodomy, sexual abuse, or other sex offenses may consent on condition that image be visually obscured); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(b)(3) (Michie 1993); N.D. Admin. R. & Orders 21(E)(2)(iii) (Michie 1992) (victim/witness); OHIO CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(iii) (Page 1994); VA. CODE ANN. § 19.2-266(3) (1994) (sex crimes).

<sup>39</sup> Connecticut, New Jersey and Virginia.

<sup>40</sup> CONN. R. SUPER. CT. § 7C(d)(5) (West Practice Book 1993); N.J. R. CT. pt. I, app., Guideline 10(b) (West 1994) (charges of sexual penetration or attempts when the victim is alive); VA. CODE ANN. § 19.2-266(2) (1994).

<sup>41</sup> N.Y. JUD. L. § 218(7)(L) (Consol. 1994) (no focusing on or featuring a family member of a victim or party in a criminal case, except while they testify).

<sup>42</sup> North Carolina and Virginia.

<sup>43</sup> N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(b)(3) (Michie 1993) (no coverage of families of victims of sexual offenses who are witnesses); VA. CODE ANN. § 19.2-266(3) (1994) (no coverage of families of victims of sexual offenses who are witnesses).

<sup>44</sup> Richard P. Lindsey, *An Assessment of the Use of Cameras in State and Federal Courts*, 18 GA. L. REV. 389 (1984).

<sup>45</sup> *In re Katherine B.*, 596 N.Y.S.2d 847 (N.Y. App. Div. 1993) (ten year old sexual abuse victim requested that cameras be barred from courtroom because "It's BBAADD enough that it's in the papers;" court did bar cameras based on potential emotional harm to the victim).

reasons to exclude television coverage for lack of victim consent, namely the psychological effect televised coverage may have on witnesses.<sup>46</sup> While one court held that invasion of witnesses' privacy is not sufficient legal cause to exclude camera coverage of a judicial proceeding,<sup>47</sup> the statutory trend appears to provide for a presumption of good cause in cases involving sex crimes.<sup>48</sup> Two states<sup>49</sup> provide for a presumption of good cause to exclude cameras during the taking of testimony from child witnesses.<sup>50</sup>

### 5. *Police Informant, Undercover Agent, Relocated Witnesses*

Four states<sup>51</sup> statutorily permit exclusion of cameras for the portion of a police informant's testimony.<sup>52</sup> In such cases, statutes generally provide for a presumption of good cause.<sup>53</sup> Five states<sup>54</sup> statutorily permit exclusion of cameras for the portion of an undercover agent's testimony.<sup>55</sup> As with police informant's, statutes regarding the testimony of undercover agents generally provide that for a presumption of good cause.<sup>56</sup> Three states<sup>57</sup> statutorily permit exclu-

<sup>46</sup> Harold R. Fatzner, *Cameras in the Courtroom: The Kansas Opposition*, 18 WASHBURN L.J. 230, 241 (1979).

<sup>47</sup> *In re Application to Conduct Audio-Visual Coverage of People v. Solomon*, 524 N.Y.S.2d 1012 (Suffolk County Ct. 1988).

<sup>48</sup> HAW. STAT. S. CT. R. 5.1(5)(iv) (Michie 1992) (good cause presumed); IOWA R. OF CT. 119, Canon 3(B)(2)(c) (West 1994) (for coverage of victim/witness in forcible felony); N.Y. R. CT. § 131.4(c)(7) (McKinney 1994) (judge shall consider whether there have been objections); N.D. Admin. R. & Orders 21(E)(2)(iii) (Michie 1992) (in forcible felony cases there is a rebuttable presumption of validity); R.I. SUP. CT. R. art. VII, Canon 11 (Michie 1993) (judge's sole discretion); WIS. ST. ANN., SUP. CT. R. 61.11(1) (West 1994) (presumption of validity); WYO. R. CRIM. P. 53(9) (1993) (presumption of validity).

<sup>49</sup> Hawaii and Wisconsin.

<sup>50</sup> HAW. STAT. S. CT. R. 5.1(5)(iv) (Michie 1992) (good cause presumed); WIS. ST. ANN., SUP. CT. R. 61.11(1) (West 1994) (presumption of validity);

<sup>51</sup> Kansas, Missouri, North Carolina and Virginia.

<sup>52</sup> KAN. S. CT. R. 1001(7) (1993); Missouri Order entered October 25, 1994: Adopting Admin. R. 16, 16.03(c); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(b)(3) (Michie 1993); VA. CODE ANN. § 19.2-266(3) (1994) (total prohibition)

<sup>53</sup> CONN. R. SUPER. CT. § 7C(h) (West Practice Book 1993) (great weight given to requests where protection of identity is desirable); N.D. Admin. R. & Orders 21(E)(2)(iii) (Michie 1992) (rebuttable presumption of validity); WIS. ST. ANN., SUP. CT. R. 61.11(1) (West 1994) (presumption of validity); WYO. R. CRIM. P. 53(9) (1993) (presumption of validity).

<sup>54</sup> Kansas, Missouri, New York, North Carolina, and Virginia.

<sup>55</sup> KAN. S. CT. R. 1001(7) (1993); N.Y. JUD. L. § 218(7)(e) (Consol. 1994); Missouri Order entered October 25, 1994: Adopting Admin. R. 16, 16.03(c); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(b)(3) (Michie 1993); VA. CODE ANN. § 19.2-266(3) (1994) (total prohibition).

<sup>56</sup> CONN. R. SUPER. CT. § 7C(h) (West Practice Book 1993) (great weight given to requests where protection of identity is desirable); HAW. STAT. S. CT. R. 5.1(5)(iv) (Michie 1992) (good cause presumed); IOWA R. OF CT. 119, Canon 3(B)(2)(c) (West 1994) (presumed good cause); N.D. Admin. R. and Orders 21(E)(2)(iii) (Michie 1992) (rebuttable

sion of cameras for the portion of a relocated witnesses' testimony.<sup>58</sup> Again, in such cases, good cause is generally presumed.<sup>59</sup>

### 6. *Witnesses Generally*

In general, thirteen states<sup>60</sup> have enacted statutes permitting exclusion of cameras for that portion of the trial relating to the witnesses' testimony upon the objection of that witness.<sup>61</sup> The trend is to place the exclusion within the discretion of the judge and to permit exclusion of cameras in the courtroom once the witness proponent has met its assigned burden of proof to show good cause.<sup>62</sup>

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presumption of validity); Wis. ST. ANN., SUP. CT. R. 61.11(1) (West 1994) (presumption of validity); WYO. R. CRIM. P. 53(9) (1993) (presumption of validity).

<sup>57</sup> Kansas, Missouri and North Carolina.

<sup>58</sup> KAN. S. CT. R. 1001(7) (1993); Missouri Order entered October 25, 1994; Adopting Admin. R. 16, 16.03(c); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(b)(3) (Michie 1993).

<sup>59</sup> CONN. R. SUPER. CT. § 7C(h) (West Practice Book 1993) (great weight given to requests where protection of identity is desirable); IOWA R. OF CT. 119, Canon 3(B)(2)(c) (West 1994) (presumed good cause); N.D. Admin. R. and Orders 21(E)(2)(iii) (Michie 1992) (rebuttable presumption of validity); Wis. ST. ANN., SUP. CT. R. 61.11(1) (West 1994) (presumption of validity).

<sup>60</sup> Alabama, Arkansas, Indiana, Minnesota, Mississippi, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, and Utah.

<sup>61</sup> ALA. CANONS OF JUD. ETHICS Canon 3(A)(7A)(c) (Michie 1993) (any witness); ALA. CANONS OF JUD. ETHICS Canon 3(A)(7B)(b) (Michie 1993) (appellate); Ark. Code of Jud. Conduct Canon 3(A)(7)(b) (1993); IND. CODE ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (West 1994); MINN. STAT. ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (except in Supreme Ct. and Ct. of Appeals); MISS. CODE OF JUD. CONDUCT, Canon 3(A)(7)(c)(ii) (1983); N.Y. R. CT. pt. 131(b)(3) (McKinney 1994) (witnesses have right to have their image visually obscured); OHIO CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(iii) (Page 1994); OKLA. ST. ANN. Canon 3(A)(7)(c) (1994) (witness, party, or juror); OR. UNIF. TRIAL CT. R. 3.180(g) (1991) (except party-witnesses); PA. CODE OF JUD. CONDUCT Canon 3(A)(7)(c)(ii) (West 1994) (see also (d)); TENN. R. SUP. CT. 10 Canon 3(A)(7)(C)(iii) (1992); TEX. R. APP. P. 21(b)(i) (West 1994); UTAH CODE JUD. ADMIN. pt. 1, ch. 12, Canon 3(A)(8) (Michie 1993) (doesn't apply to Supreme Court).

<sup>62</sup> ARIZ. REV. STAT. ANN. § XI, SUP. CT. R. 122(b), (g) (1994) (objections waived unless made prior to commencement; judge has discretionary authority to permit cameras); COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(8)(f)(II), (III) (West 1994) (judge must set forth reasons for any ruling on objections); CONN. R. SUPER. CT. § 7C(h) (West Practice Book 1993) (judge's discretion for coverage of objecting person); IOWA R. OF CT. 119, Canon 3(B)(2)(b), (3)(c) (West 1994) (must show good cause); Missouri Order entered October 25, 1994, adopting Admin. R. 16, 16.03(c) (judge may prohibit visual identification or coverage at request of participant for good cause); N.Y. R. CT. § 131.4(c)(7) (McKinney 1994) (judge shall consider whether there have been objections); N.D. Admin. R. & Orders 21(E)(2)(iii) (Michie 1992) (coverage of witness may be refused upon showing of good cause by witness or party); R.I. SUP. CT. R. art. VII, Canon 11 (Michie 1993) (judge may prohibit coverage at his/her sole discretion at request of participant); W. Va. R. Camera Coverage of Courtroom Proceedings 1, R. 1.3 (Michie 1993) (presiding judge may sustain or deny objections); Wis. ST. ANN., SUP. CT. R. 61.11(1) (West 1994) (judge may prohibit coverage at request of participant for good cause); WYO. R. CRIM. P. 53(9) (1993) (judge may prohibit coverage at request of participant for cause).

## D. LIMITING IN-COURT TELEVISION COVERAGE TO WHAT THE JURY SEES

1. *Suppression Hearings*

Twelve states<sup>63</sup> have enacted statutes disallowing television coverage of hearings on suppression motions.<sup>64</sup> Limiting television coverage of trial proceedings to precisely what the jury sees and hears is consistent with the "television as inspiring confidence in the trial process" rationale placing cameras in the courtroom.<sup>65</sup>

2. *Close-Ups of Attorney-Client Conferences*

Neither the judge, the jury, nor the in-court public are allowed close-up audio-visual access to counsel table or the witness seat.<sup>66</sup> There is a substantial trend against allowing greater audio-visual access by the remote public than that accorded the jury or even the in-court public of spectators.<sup>67</sup> A few states have enacted legislation re-

<sup>63</sup> Colorado, Connecticut, Hawaii, Kansas, Massachusetts, New Mexico, New York, North Carolina, Pennsylvania, Virginia, Wisconsin, and Wyoming.

<sup>64</sup> COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(8)(b)(I) (West 1994) (pre-trial hearings); HAW. STAT. S. CT. R. 5, § 5.1(f)(5)(i) (Michie 1992) (suppression hearings); KANSAS S. CT. R. 1001(7)(b) (1993) (suppression hearings); MASS. R. SUP. JUD. CT. 3:09, Canon 3(A)(7)(b) (West 1994) (motions to suppress, dismiss, or probable cause hearings); N.M. STAT. ANN., S. CT. GEN. R. 23-107(A)(5) (West 1994) (suppression hearings); N.Y. JUD. L. § 218 (5)(b) (Consol. 1994) (no coverage of suppression hearings or arraignments without consent of all parties); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(b)(2) (Michie 1993) (suppression hearings); PA. CONS. STAT. ANN., R. CRIM. P. 27(a)(1) (1989) (no coverage of hearings or summary trials); VA. CODE ANN. § 19.2-266(2) (1994) (suppression hearings); WIS. ST. ANN., SUP. CT. R. 61.11 (West 1994) (request to prohibit coverage of suppression hearing has presumption of good cause); WYO. R. CRIM. P. 53(9) (1993) (request to prohibit coverage of suppression hearing has presumption of good cause). In addition, Connecticut does not permit television coverage of sentencing unless the trial was covered. CONN. R. SUPER. CT. § 7C(d)(2) (West Practice Book 1993).

<sup>65</sup> There states, Connecticut, Oregon and Rhode Island, structure the limitations on cameras in the courtroom in ways that expand camera access most when entry is driven by educational concerns. See generally CONN. R. SUPER. CT. § 7C(d)(4) (West Practice Book 1993); OR. UNIF. TRIAL CT. R. 3.180(c) (1991) (without judge's permission); R.I. SUP. CT. R. art. VII(b) (Michie 1993).

<sup>66</sup> State v. Douglas, 485 N.W.2d 619 (Iowa 1992) (deferred to trial judge's decision to allow media's use of live microphones at the counsel table, but noted that courts would be wise to deny such requests in the future).

<sup>67</sup> See generally Alaska Admin. Bulletin No. 45. (1991); CAL. ANN. CODE, R. OF CT. 980(b)(2) (West 1994); COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(8)(b)(III, IV) (West 1994); CONN. R. SUPER. CT. § 7C(f) (West Practice Book 1993); Delaware Order dated April 29, 1982, In re: Canon 3(A)(7) of the Delaware Judges' Code of Jud. Conduct (Supreme Ct. coverage only allowed); FLA. R. JUD. ADMIN. 2.170(f) (West 1994); HAW. STAT. S. CT. R. 5, § 5.1(g)(3) (Michie 1992); Illinois Order entered November 29, 1983: authorizing the photographing, broadcasting and televising of proceedings in the Supreme and Appellate courts of this state; IOWA R. OF CT. 119, Canon 3(f) (West 1994); KANSAS S. CT. R. 1001(3) (1993) (under (4) no focusing on or photographing of materials on counsel table); KY. S. CT. R. 4(6) (Appendix); MD. R. 1209(e)(5) (Michie 1993); MASS. R. SUP. JUD. CT. 3:09, Canon 3(A)(7)(c) (West 1994); Mich. R. Admin. Order 1989-1(7);

quiring microphones in court to have on-off switches or bar directional microphones.<sup>68</sup>

### 3. *Witness Tampering*

Only New York has enacted legislation which requires the judge to consider whether witnesses who are excluded from the courtroom prior to the giving of their testimony may be tainted by the availability of a television view screen.<sup>69</sup>

#### E. LIMITERS GOING TO DIGNITY, DECORUM AND THE AVOIDANCE OF PREJUDICE

##### 1. *Educational Purposes/Time Delay/Consent of All Parties and Appearing Witnesses*

Apart from a complete ban on cameras in the courtroom, the most restrictive rules, which nevertheless allow cameras in the courtroom, are those which limit camera coverage to educational purposes, impose substantial time delays before broadcasting, and require the consent of all parties and appearing witnesses.<sup>70</sup> By focusing on an educational purpose, imposing a limited temporal ban to suppress sensationalism, and imposing a broad requirement of consent, such

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Missouri Order entered October 25, 1994: adopting Admin. R. 16, 16.02(e) (under (f) no focusing on or photography of materials at counsel tables); NEB. SUP. CT. R. 17(B)(1) (1992); N.H. STAT. ANN., SUPER. CT. R. 78(a)(9) (1993); N.J. R. CT. pt. I, app., Code of Jud. Conduct Canon 3(a)(9), Guideline 6 (West 1994); N.M. STAT. ANN., S. CT. GEN. R. 23-107(6) (West 1994); N.Y. JUD. L. § 218(7)(b) (Consol. 1994); N.Y. R. CT. pt. 29, § 29.2(f) (McKinney 1994); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(h) (Michie 1993); N.D. Admin. R. and Orders 21 (B)(3)(vi) (Michie 1992); OHIO REV. CODE ANN. 9(C)(1) (Page 1994); R.I. SUP. CT. R. art. VII, Canon 9 (Michie 1993); S.C. CODE ANN., App. Ct. R. 605(c)(2) (Law Co-op. Supp. 1993); TENN. R. SUP. CT. 10 Canon 3(A)(7), Media Guidelines 9 (1992); VT. ST. ANN., R. Civ. P. 79.2(c) (1993); VA. CODE ANN. § 19.2-266(5) (1994); WIS. ST. ANN., SUP. CT. R. 61.07 (West 1994); WYO. R. CRIM. P. 53(6) (1993).

<sup>68</sup> Missouri Order entered October 25, 1994: Adopting Admin. r. 16, 16.04(3) (must have on/off switch); NEB. SUP. CT. R. 17(E)(1)(c) (1992) (must have on/off switch); N.H. STAT. ANN., SUPER. CT. R. 78(a)(6) (1993) (no directional microphones).

<sup>69</sup> N.Y. JUD. L. § 218(3)(c) (Consol. 1994) (judge shall consider whether camera coverage will render an order excluding witnesses from the courtroom prior to testimony substantially ineffective).

<sup>70</sup> See IND. CODE ANN., CODE OF JUD. CONDUCT Canon 3(A)(13) (West 1994); LA. REV. STAT. ANN., CODE OF JUD. CONDUCT Canon 3(A)(9) (West 1994) (does not apply to appellate courts, many districts ban cameras entirely); Me. R. Media Coverage, Admin. Order of Sup. Jud. Ct. (West 1994) (does not apply to proceedings of the Supreme Judicial Court sitting as the Law Court); MINN. STAT. ANN., CODE OF JUD. CONDUCT Canon 3(A)(7) (does not apply to Supreme Court or Court of Appeals); MISS. CODE OF JUD. CONDUCT, Canon 3(A)(7) (1983) (all courts); PA. CODE OF JUD. CONDUCT Canon 3(A)(7) (West 1994) (does not apply to trial court non-jury civil proceedings; cameras not allowed in criminal hearings or district courts); S.D. CODIFIED LAWS ANN. tit. 16, ch. 16-2, app., Canon 3(B)(12) (1994), repealed and reenacted by SUP. CT. R. 93-15 (1993) (except no cameras at all in criminal proceedings).

states<sup>71</sup> may be described as effectively excluding cameras from the courtroom.

## 2. Limiters Going to Minimize Technical Distraction

The most common rule aimed at reducing disruptions and distractions caused by cameras in the courtroom is the requirement of media pooling.<sup>72</sup> Many states have passed laws requiring that the camera's location and on-off switch not be made known to jurors.<sup>73</sup>

## G. FUTURISTIC USES OF CAMERA TECHNOLOGY

The admission of cameras into the courtroom adds a new technology to the administration of justice. I would urge court administrators to go slowly. Camera technology may aid the administration of justice, but technology alone, without understanding of, and compensating for, the human element might weaken safeguards for fair trials.

### 1. Audio-Visual Perpetuation of a Trial Record

There is a substantial statutory trend providing for an audio-visual trial record primarily (though not always) in conjunction with a type-written record of trial.<sup>74</sup> There are compelling arguments advanced

<sup>71</sup> Indiana, Louisiana, Maine, Minnesota, Mississippi, Pennsylvania, and South Dakota. *Id.*

<sup>72</sup> See *In re* Hearings Concerning Canon 35, 296 P.2d 465 (Colo. 1956) (en banc); *In re* Post-Newsweek Stations, Fla., 370 So. 2d 764 (Fla. 1979); *State v. McNaught*, 713 P.2d 457 (Kan. 1986); Report of the Minnesota Advisory Committee on Cameras in the Courtroom to the Supreme Court 11 (1982); Statutory Appendix, *infra*.

<sup>73</sup> CAL. ANN. CODE, R. OF CT. 980(b)(3) (West 1994); COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(8)(e)(I)(ee) (West 1994); Idaho Order entered November 12, 1981: *In re* Broadcast and Photographic Coverage of Court of Appeals Proceedings in the Courtroom of the Supreme Court Building in Boise (6); Illinois Order entered November 29, 1983: authorizing the photographing, broadcasting and televising of proceedings in the supreme and appellate courts of this State (E)(2)(c); NEB. SUP. CT. R. 17(E)(1)(b)(1992); N.Y. JUD. L. § 218(6)(b)(iii) (Consol. 1994); N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15(c)(2) (Michie 1993); N.D. R. CRIM. P. 53(B)(4)(i) (Michie 1992); S.C. CODE ANN., APP. CT. R. 605(e)(1) (Law Co-op. Supp. 1993).

<sup>74</sup> ALA. R. APP. P. 14 (Michie 1993); ALA. CANONS OF JUD. ETHICS Canon 3(A)(7)(a) (Michie 1993); COLO. REV. STAT., CT. R. ANN. ch. 24, app., Canon 3(A)(7)(a) (West 1994); CONN. R. SUPER. CT. § 7B(a) (West Practice Book 1993); CONN. R. APP. P. § 4116A(a) (West Practice Book 1993); GA. CODE OF JUD. CONDUCT Canon 3(A)(7)(a) (Michie 1993); HAW. ST. VIDEO REC. RULES (Michie 1992); ILL. ANN. STAT. ch. 705, Act 70, § 5 (Smith-Hurd 1987); IND. CODE ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(a) (West 1994); KAN. S. CT. R., CODE OF JUD. CONDUCT Canon 3(A)(7)(a) (1993); LA. REV. STAT. ANN., CODE OF JUD. CONDUCT Canon 3(A)(9)(a) (West 1994); Me. R. Media Coverage, Admin. Order of Sup. Jud. Ct. II(A) (West 1994); MD. ANN. CODE § 467B(c)(1) (1994); MASS. R. SUP. JUD. CT. 3:09, Canon 3(A)(7)(f) (West 1994); Mich. R. Admin. Order 1990-7; MINN. STAT. ANN., CODE OF JUD. CONDUCT Canon 3(A)(7)(a); MISS. CODE OF JUD. CONDUCT, Canon 3(A)(7)(a) (1983); MO. SUP. CT. R. 2, Canon 3(A)(7)(a) (West 1994); N.H. STAT. ANN., SUP. CT. R. 38 Canon 3(A)(7)(b) (1993); N.Y. JUD. L. app., CODE OF JUD. CONDUCT Canon



in the literature in support of audio-visual trial records as offering greater potential accuracy and more convenience.<sup>75</sup> The audio or audio-visual record may be a useful economizing move, particularly in forums which traditionally would not otherwise have a typewritten transcript. Although the early reported experiences with audio-visual trial records appears favorable,<sup>76</sup> there may be reasons to prefer the traditional written transcript over the audio-visual trial record. First, the audio-visual transcript may be incomplete if voir dire, suppression motions, and other aspects of trial are excluded from coverage or there is a technical malfunction.<sup>77</sup> Second, the stenographer has assumed a traditional role as caretaker and enhancer of the record; the camera technician has not been held to this level of responsibility. Experienced lawyers understand that the court stenographer performs an invaluable service during trial by cautioning witnesses to speak up or slow down, etc. As a person of experience in the courtroom, the stenographer adds to the professionalism and smooth administration of the court. Third, trials may be the one event where the written record seems inherently better for digesting the informational than the audio-visual format.<sup>78</sup> This is particularly true for appellate review, which limits a court to deciding matters of law and not matters of fact.<sup>79</sup>

## 2. Video Arraignment by Closed Circuit Television

In Hamilton County, Ohio, where Cincinnati is located, the Public Defender is supporting an effort to permit video arraignment on felony charges by closed circuit television from the jail cell to alleviate

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3(A)(7)(a) (McKinney 1994); N.D. Admin. R. and Orders 21(B)(1) (Michie 1992); OHIO CODE OF JUD. CONDUCT Canon 3(A)(7)(a) (Page 1994); PA. CODE OF JUD. CONDUCT Canon 3(A)(7)(a) (West 1994); S.C. CODE ANN., APP. CT. R. 501, Canon 3(A)(7)(a) (Law Co-op. 1991); S.D. CODIFIED LAWS ANN. tit. 16, ch. 16-2, app., Canon 3(B)(12)(a) (1994); UTAH CODE JUD. ADMIN. pt. 1, ch. 12, Canon 3(A)(7)(a) (Michie 1993); VT. STAT. ANN. Admin. Order No. 10, Canon 3(A)(7)(a) (1993); WASH. CT. R. 80(b) (West 1994).

<sup>75</sup> Frederic I. Lederer, *Changing Litigation with Science and Technology: Technology Comes to the Courtroom*, *And. . .*, 43 EMORY L.J. 1095 (1994).

<sup>76</sup> Chief Justice Robert F. Stephens, *Kentucky Courts Go Video*, 9 AM. J. TRIAL ADVOC. 359 (1986); Anne-Marie Thompson, *Justice Through a Lens: Cameras in the Courtroom are Still a Matter of Debate. But Will the Pressure of Technology Prove Irresistible?*, 14 PA. LAW. 6 (1992).

<sup>77</sup> During the video taped deposition of Rosa Lopez, Court TV Anchor Fred Graham reported that there was a lengthy court recess due to a power shortage when someone apparently kicked one of the cables loose causing a malfunction of the very high tech system for showing various pictures and documents over monitors conveniently located throughout the courtroom. *Live Trial Coverage - CA v. Simpson - Day 25 - Part 3*, (Court TV broadcast Mar. 2, 1995) (Transcript # 25-16).

<sup>78</sup> Georgi-Ann Oshagan, *Videotaped Trial Transcripts and Appellate Review: Are Some Courts Favoring Form Over Substance*, 38 WAYNE L. REV. 1639 (1992).

<sup>79</sup> One fear is that a video record may entice an appellate court into evaluating witness demeanor.

the cost of transporting dangerous inmates to the courthouse.<sup>80</sup> The program places a television monitor and camera in the courtroom and in the jail so that the judge, prosecutor, and clerk will see the defendant and his attorney in a two-way video-conference. Futuristic ideas are received with mixed feelings about exploiting new technology, but fears for losing important civil liberties as well as our in person personalities. But to date there are no reported cases finding prejudice to video arraignments. Video appearances at trial on the merits, where the witness is otherwise available, is obviously a different matter.<sup>81</sup>

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<sup>80</sup> Kimball Perry, *Cameras to Replace Court Visit*, THE CINCINNATI POST, Dec. 12, 1992, at A1. The savings is estimated to exceed \$100,000 annually. Other jurisdictions have been using video arraignments for years with great success. *Id.*

<sup>81</sup> See Annotation, *Closed-Circuit Television Witness Examination*, 61 A.L.R.4th 1155 (1994 and Supp. 1995).

# AN ANNOTATED DESCRIPTIVE SUMMARY OF STATE STATUTES, JUDICIAL CODES, CANONS, AND COURT RULES RELATING TO ADMISSIBILITY AND GOVERNANCE OF CAMERAS<sup>1</sup> IN THE COURTROOM<sup>2</sup>

CHRISTO LASSITER

## ALABAMA

ALA. CANONS OF JUD. ETHICS CANON 3(A) (MICHIE 1993): ADJUDICATIVE RESPONSIBILITIES.<sup>3</sup>

(7) Generally prohibits cameras in trial and appellate courtrooms, except in the exercise of sound discretion, they may be authorized for:

(A) presentation of evidence, perpetuation of the record, and other purposes of judicial administration.

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<sup>1</sup> Herein the term "camera" refers to various descriptions of recording technology including still and live cameras, used for broadcasting, televising, recording, audio taping, motion picture filming and videotaping. "Camera coverage" also includes the public dissemination of recordings of courtroom proceedings. It is assumed that all such implications are raised by statutory references to "camera coverage", unless specifically stated otherwise.

<sup>2</sup> Editing guide: these statutes, canons and rules are abbreviated to focus on significant factors including: 1) the purposes to which the recording may be put, 2) the degree of judicial discretion allowed, 3) consent requirements, 4) the types of proceedings which may be recorded, 5) any differences in the treatment of civil and criminal proceedings, and 6) other substantive limitations on camera coverage. Generally, all of the rules which allow camera coverage include technical limitations on lighting, noise, movement, number of cameras allowed, location and type of equipment allowed, conduct and dress of media members, etc. These requirements are meant to minimize or eliminate the distraction caused by equipment and the presence of the media. In addition, unless otherwise stated, all camera coverage is limited to recordings made by members of the media. Generally, all of the rules which allow camera coverage of judicial proceedings also require some form of "pooling" arrangement among those media organizations requesting access.

<sup>3</sup> The following statement was part of the persuasive argument leading to the adoption of Alabama's camera provision:

It is now universally recognized that the dignity of a church service is not affected in any degree by photographing or broadcasting by television or radio of a church service when sophisticated and advanced equipment and technology is used. [It] . . . will not distract any church participant or degrade the solemnity of the service. . .

ALA. CANONS OF JUD. ETHICS Comment to Canon 3.

- (b) investitive, ceremonial, or nonjudicial proceedings.
  - (c) instructional and educational purposes, provided (i) the means of recording will not distract participants or impair the dignity of the proceeding; (ii) there is advance consent of all parties and appearing witnesses; (iii) the reproduction will be delayed until the proceedings have been concluded and all direct appeals have been exhausted; and (iv) reproduction will be exhibited only for instructional and educational purposes.
- (7A) Trial judges have discretionary authority to permit camera coverage of a trial or other judicial hearing;<sup>4</sup>
- (A) Pursuant to a plan approved by the Alabama supreme court, covering details concerning dignity, decorum, fairness, and administrative details, and
  - (B) In a criminal proceeding, advance written consent is required from the prosecuting attorney and all accused who will appear in the proceeding,<sup>5</sup> or
  - (C) In a civil proceeding affirmative consent in advance is required from all litigants involved in the case. However, suspension of camera coverage is required where any witness, the parent or guardian of a minor witness, attorney, party, or judge expressly objects to the camera.<sup>6</sup>
- (7B) Appellate courts have discretionary authority to permit cameras;
- (A) Pursuant to plan as noted in (7A), *supra*.
  - (B) Advanced affirmative consent is required from attorneys and parties present; however, suspension of cam-

<sup>4</sup> See *Anderson v. State*, 542 So.2d 292 (Ala. Crim. App. 1987) (defendant convicted of murder of a law enforcement officer) (motion for mistrial due to filming was denied and court found that members of the jury had not been distracted by cameramen); *Williams v. State*, 461 So. 2d 834 (Ala. Crim. App. 1983) (defendant convicted of capital murder and sentenced to death) (upon notice that a television camera had been filming the jury through a courtroom window, the court found no prejudice to support a finding of error, but, ordered that the jurors be edited out the film).

<sup>5</sup> See *Neelley v. State*, 642 So. 2d 494 (Ala. Crim. App. 1993) (defendant convicted of capital murder and sentenced to death) (court held that even though the defense attorney entered into a publicity contract following the trial, his agreement to allow camera coverage during the trial did not adversely affect his client, especially where he did not attempt to try the case to the press).

<sup>6</sup> ALA. CANONS OF JUD. ETHICS Canon 3(A)(7A), makes an interesting distinction between civil and criminal proceedings. In criminal proceedings, consent is required from appearing witnesses, whereas consent is required from all litigants involved in a civil proceeding. Further, in civil proceedings, consent is required from all appearing witnesses or the parents of minor appearing witness, attorneys, parties and judge.

era coverage is required where any witness, the parent or guardian of a minor witness, attorney, party, or judge expressly objects to the camera.

Note: Ala. Canons of Jud. Ethics Canons 3(A)(7) and (7B) are incorporated into the rules of criminal procedure via , ALA. R. CRIM. P. 9.4 (MICHIE 1993).<sup>7</sup>

ALA. R. APP. P. 14 (MICHIE 1993): USE OF RECORDING DEVICES.

Transcription by any electronic recording system is permitted for use in appellate proceedings in lieu of court reporter's transcript with the agreement in writing of the attorneys and the trial judge.

## ALASKA

ALASKA ADMIN. R. 50 (1990): MEDIA COVERAGE OF COURT PROCEEDINGS.

- (A) MEDIA COVERAGE. Camera coverage of court proceedings is allowed under the provisions of this rule. This rule applies at all times throughout state court facilities and is not limited to courtrooms or times when court is in session.<sup>8</sup>

...

- (C) CONSENT OF PARTIES. All parties, including the guardian ad litem, must consent to media coverage of a divorce, dissolution of marriage, domestic violence, child custody and visitation, paternity, or other family proceeding.

- (D) PROHIBITION OF COVERAGE. A court may prohibit or terminate coverage only if: (1) a party does not consent to media coverage under paragraph (c); (2) the prohibition is necessary to ensure the fair administration of justice in any present or future case; or (3) the media fails to comply with reasonable restrictions issued under paragraph (e).

- (E) RESTRICTIONS ON COVERAGE.

- (1) A victim of a sexual offense may not be photographed, filmed, videotaped, or sketched without the consent of the court and victim.
- (2) Jurors may not be covered, except during the return of the verdict. Return of the verdict does not include polling jurors.
- (3) The court may impose reasonable limitations on time, place, and manner of camera coverage in a particular

<sup>7</sup> ALA. R. CRIM. P. 9.4 also allows for cameras as otherwise permitted by law or rule of the court.

<sup>8</sup> ALASKA ADMIN. R. 50. This rule does not apply to state proceedings held in federal court facilities unless coverage is allowed by federal rules.

case. Any restrictions must be stated on the record and must be reasonably related and narrowly drawn by the least restrictive means to : (i) control the conduct of proceedings; (ii) ensure decorum and prevent distractions; (iii) protect the reasonable privacy interests of a minor or any other person; or (iv) ensure the fair administration of justice in pending or future cases.

- (4) The administrative director of the Alaska Court System may establish reasonable statewide procedures and standards for media coverage.<sup>9</sup>

...

(G) CHALLENGE TO DENIAL OF COVERAGE.

A MEDIA ORGANIZATION MAY CHALLENGE A DENIAL OR RESTRICTION OF CAMERA COVERAGE IN WRITING TO THE PRESIDING JUDGE. THE JUDGE'S DECISION IS REVIEWABLE UNDER GENERAL APPELLATE RULES.

ALASKA ADMIN. BULLETIN NO. 45 (1991).

...

- (10) CONFERENCE OF COUNSEL. There may be no broadcast of conferences which occur in the courtroom or court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the judge at the bench.

## ARIZONA

ARIZ. REV. STAT. ANN. § XI, SUP. CT. R. 122 (1994): ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF PUBLIC JUDICIAL PROCEEDINGS.<sup>10</sup>

- A) No cameras shall be allowed in juvenile court or adoption proceedings.
- B) In all other proceedings (civil and criminal) the judge<sup>11</sup> has discretionary authority to permit cameras giving consideration to the (i) impact on a fair trial;<sup>12</sup> (ii) impact on the privacy rights of any party or witness; (iii) impact upon the safety and well-being of any party witness or juror; (iv) likelihood that

<sup>9</sup> The Alaska Court System Office of the Administrative Director has issued Administrative Bulletin No. 45 pursuant to ALASKA R. CT. 50(e)(4) (1990). The bulletin sets forth technical limitations on camera coverage in the courtrooms.

<sup>10</sup> Ariz. Order 93-41 XI, changes wording to use gender neutral language. No substantive changes were made.

<sup>11</sup> ARIZ. REV. STAT. ANN. § XI, SUP. CT. R. 122 (in the case of proceedings in the Arizona Supreme Court and Courts of Appeals, "the judge" shall mean the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals).

<sup>12</sup> See *State v. Cardenas*, 704 P.2d 834 (Ariz. Ct. App. 1985) (defendant convicted of child molestation) (allowing cameras in the courtroom was not prejudicial where the purpose was generic, not for newsgathering).

cameras will distract participants or detract from the dignity of the proceedings. . . .<sup>13</sup>

- c) The judge has sole discretion to prohibit coverage of the appearance or testimony of a witness.
- d) The judge's discretion in limiting or precluding cameras shall not be subject to judicial review.<sup>14</sup>

...

- g) Party's objections will be deemed waived unless they are made prior to the commencement of the proceeding in question. Objections of a non-party witness may be made at any time.<sup>15</sup>

...

- j) No media recording of a judicial proceeding shall be admissible as evidence in such proceeding or in any retrial or appeal.<sup>16</sup>
- k) Coverage of jurors in a manner that will permit recognition of individual jurors by the public is strictly forbidden. Where possible, coverage of jurors in any manner should be avoided.<sup>17</sup>

## ARKANSAS

ARK. CODE OF JUD. CONDUCT CANON 3(A)(7) (1993).

Judges may allow cameras in the courtroom provided:

- (A) the participants will not be distracted nor the dignity of the proceedings impaired;<sup>18</sup>

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<sup>13</sup> See *State v. Atwood*, 832 P.2d 593 (Ariz. 1992), *cert. denied*, 113 S.Ct. 1058 (defendant convicted of kidnapping and felony murder) (televising of proceedings did not diminish from the "solemnity and sobriety" of the courtroom despite venue change and delay).

<sup>14</sup> ARIZ. REV. STAT. ANN. § XI, Sup. Ct. R. 122(d). Although 122(d) does not require judges to state grounds for any decision to permit, limit or preclude cameras, it does allow for review of a judge's discretionary decision).

<sup>15</sup> ARIZ. REV. STAT. ANN. § XI, Sup. Ct. R. 122(g). This provision shall not diminish the judge's discretionary authority to preclude or limit coverage as provided above.

<sup>16</sup> No instant replay. This provision anticipates the creeping influence of technology into the courtroom, as has been seen in the use of video recording for review of calls in athletic events.

<sup>17</sup> *KPNX Broadcasting Co. v. Superior Ct.*, 678 P.2d 431 (Ariz. 1984) (appeal from order that sketches of the jury be approved by judge before release for television broadcast) (though the judge had based the order on the jury's expressed concern over the possibility of retribution and fear for personal and family safety and the rules governing cameras in the courtroom, the court found it to be unconstitutional).

<sup>18</sup> [T]he courtroom must be a place where individuals can come for the solution of their problems in an atmosphere removed from the clamor of public passion and prejudice. The courtrooms of this land represent a place of tradition, dignity and objectivity. The preservation of such a forum is important if we are to maintain the principle that this is a country of rule by law.

*In re* Petition of Arkansas Bar Association for Modification of Code of Judicial Conduct relating to Broadcasting and Photographing Court Proceedings, 609 S.W.2d 28, 29 (Ark.

- (b) no timely objection is made by a party or attorney; a timely objection by a witness shall preclude coverage of that witness;<sup>19</sup>
- (c) rules adopted by the Arkansas Supreme Court are followed;
- (d) cameras shall not be allowed in juvenile court trials or trials concerning adoption, guardianships and domestic relations.<sup>20</sup>

## CALIFORNIA

CAL. ANN. CODE, R. OF CT. 980(B) (WEST 1994): [MEDIA COVERAGE].

Cameras are permitted in the courtroom (criminal and civil) only on written order of the court.<sup>21</sup> The court may refuse, limit, or terminate cameras in the interest of justice to protect the rights of the parties and the dignity of the court, or to assure the orderly

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1980) (per curiam). "[T]he courts are not in the entertainment business and obviously trials should be conducted with that in mind." *Id.* at 30.

<sup>19</sup> ARK. CODE OF JUD. CONDUCT, Canon 3A(7)(b)(1993), implicitly assumes that all witnesses will be informed of their right to refuse camera coverage during their testimony. *KARK-TV v. Lofton*, 640 S.W.2d 798 (Ark. 1982) (judge prohibited cameras and the media appealed) (the trial court properly sustained defendant's objection to the presence of cameras in the courtroom); see *Jim Halsey Co. v. Bonar*, 683 S.W.2d 275 (Ark. 1985) (supplemental opinion denying rehearing) (holding that the court will closely scrutinize any violations of the rule prohibiting camera coverage over the objection of any party; if there is even a hint of prejudice to the objecting defendant, reversal is in order.); compare *Smith v. State*, 863 S.W.2d 563 (Ark. 1993) (Glaze, J., concurring) with 863 S.W.2d 563 (Dudley, J., concurring) (defendant convicted of first-degree murder). These justices disagree on the remedy for violation of Canon 3(A)(7)(b). Justice Dudley asserts that by overruling appellant's objection to camera coverage, the trial court committed reversible error, however, as counsel did not make sufficient record for reversal and no prejudice could be demonstrated, he joined in affirming the lower court's conviction. Justice Glaze asserts that Canon 3(A)(7)(a) gives the trial court more discretion than is indicated by a strict reading of Canon 3(A)(7)(b), and the court should not be able to impose automatic reversal unless that remedy is clearly addressed in the canons and rules. *But see Ford v. State*, 633 S.W.2d 3 (Ark. 1982) (defendant convicted of capital felony murder) (no error in allowing camera coverage of sentencing hearing over the objection of defendant).

<sup>20</sup> See *In re Arkansas Bar Ass'n*, 609 S.W.2d 28 (Ark. 1982) (some trials should not be broadcast because they involve subjects of no concern to the public and broadcasting could harm innocent people).

"We do not perceive this matter to be a First Amendment issue. . . There is no doubt that it is in the public interest for some trials to be available to the public either through photography or broadcasting. On the other hand there are some trials that should not be broadcast or photographed. . . That does not mean that these trials are closed. They are open to the extent that they have always been open."

609 S.W.2d at 30.

<sup>21</sup> See generally *Aisenson v. American Broadcast Co.*, 269 Cal. Rptr. 379 (Cal. Ct. App. 1990) (defamation suit filed by judge). It is interesting to note that the media used Judge Aisenson's refusal to allow cameras in his courtroom to attack his ability and credibility as a judge, inferring that he had something to hide.



conduct of the proceedings.<sup>22</sup>

- (2) [PROHIBITED COVERAGE] Closeup photography of jurors is prohibited. Coverage of jury selection and in chambers proceedings are prohibited. Conferences between attorney and client, witness or aide, between attorneys, or between counsel and the court at the bench shall not be recorded.

- (3) [EQUIPMENT AND PERSONNEL]

- (ii) Signal lights or devices to show when equipment is operating shall not be visible.

1ST APP. DIST., CAL. ANN. CODE, INTERNAL OPERATING PRACTICES AND PROCEDURES III(A), § 28(C) (WEST 1994): MEDIA COVERAGE.

Media coverage is governed by Rule 980 of the California Rules of Court and Policy Statement B, which provides: the presiding justice of each division may grant or deny the request for cameras.

## COLORADO

COLO. REV. STAT., CT. R. ANN. CH. 24, APP., CANON 3(A) (WEST 1994): ADJUDICATIVE RESPONSIBILITIES.<sup>23</sup>

- (7) A judge may authorize cameras for:

- (A) record perpetuation or judicial administration; and  
(B) investitive, ceremonial, or naturalization proceedings

- (8) JUDICIAL SUPERVISION OVER EXPANDED MEDIA COVERAGE OF COURT PROCEEDINGS. Judges may further authorize cameras in the courtroom as follows:

...

- (B) STANDARDS FOR AUTHORIZING COVERAGE. A judge shall consider whether cameras would (I) interfere with parties' rights to a fair trial;<sup>24</sup> (II) unduly detract from the

<sup>22</sup> See *KFMB-TV v. Municipal Court*, 271 Cal.Rptr. 109 (1990) (criminal trial involving the murder of a prominent San Diego attorney and his current wife by his ex-wife). In dicta, the court created a presumption of access to cameras in the courtroom. "[M]edia access should be granted" except where to do so would violate the factors listed in CAL. ANN. CODE, R. of Ct. 980(b), namely, interest of justice, dignity of the court, and orderly conduct. *Id.* at 113. The judge is required to consider those factors and, if access is denied, is encouraged to set forth reasons for so deciding. Once proceedings are recorded, the court may not refuse, limit or terminate the later broadcasting of such proceeding. *Cf.* *People v. Spring*, 200 Cal. Rptr. 849 (Cal. 1984) (defendant, in a delusional state, punched priest who died 17 days later of subdural hematoma caused by the blow) (defendant must show more than juror awareness that the trial attracts the attention of broadcasters to demonstrate prejudice).

<sup>23</sup> See generally *In re Hearings Concerning Canon 35 of the Canons of Judicial Ethics*, 296 P.2d 465 (Colo. 1956) (en banc) (the first order allowing for camera coverage in Colorado courts, outlining many arguments, pro and con).

<sup>24</sup> See *People v. Wiegand*, 727 P.2d 383 (Colo. Ct. App. 1986) (trial involved robbery and murder of waiter in Bennigan's restaurant) (under Canon 3(A)(8), presumption is in

solemnity, decorum and dignity of the court; or (III) create adverse effects greater than traditional media coverage.

- (C) LIMITATIONS ON EXPANDED MEDIA COVERAGE. There shall be no camera coverage of: (I) pretrial hearings in criminal cases, except advisement and arraignments; (II) jury voir dire; (III) bench conferences<sup>25</sup>; (IV) communications between counsel and client or between co-counsel<sup>26</sup>; (V) in camera hearings; (VI) members of the jury.<sup>27</sup>

- (D) AUTHORITY TO IMPOSE RESTRICTIONS ON EXPANDED MEDIA COVERAGE. A judge may restrict or limit cameras as needed to protect parties, witnesses, or jurors and may terminate or suspend cameras at any time upon finding of fact that: (1) rules imposed by this Canon or by the judge have been violated; or (2) substantial rights of participants or to a fair trial may be prejudiced.

- (E) CONDITIONS FOR COVERAGE.

- (I) EQUIPMENT LIMITATIONS.

...

- (EE) OPERATING SIGNALS. No visible or audible light or signal may be used.

- (F) PROCEDURES.

...

- (II) OBJECTIONS. Any party or witness may object to coverage of all or part of a proceeding.<sup>28</sup>

- (III) JUDICIAL AUTHORIZATION. The judge must set forth reasons for any ruling on requests or objections for camera coverage.

- (IV) Media and witnesses may not appeal grants or deni-

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favor of allowing cameras and that party opposing such coverage bears burden of proving adverse effects). See generally *Gonzales v. People*, 438 P.2d 686 (Colo. 1968) (en banc) (defendant convicted of first degree murder) (operation of cameras in the courtroom in accord with the original order allowing camera coverage did not prevent a fair trial).

<sup>25</sup> No camera coverage means no audio recording or "zoom" closeup photography. However, there is no requirement that cameras be turned off or diverted during bench conferences.

<sup>26</sup> No camera coverage means no audio recording or closeup photography.

<sup>27</sup> No camera coverage means no closeup photography.

<sup>28</sup> Under the old Canon 3(A)(10)(b), the courts held that the trial judge could not authorize camera coverage over the objection of the defendant. *Tribe v. District Ct.*, 593 P.2d 1369 (Colo. 1979) (en banc). But see *LaBlanc v. State*, 421 P.2d 474 (Colo. 1966) (defendant convicted of rape, burglary, and assault with a deadly weapon) (holds that the burden is upon the defendant to establish prejudicial error, and that the burden was not met where, despite his objections, pictures were taken of the defendant in the courtroom prior to the start of proceedings).

als of camera coverage. Parties may seek review of rulings.<sup>29</sup>

Note: Colo. St. Code of Jud. Conduct, 3A(8) has been supplemented by 20TH JUD. DIST., COLO. CT. 11 (WEST 1993), which adds various administrative rules for camera coverage in the courtroom.<sup>30</sup>

## CONNECTICUT

CONN. R. SUPER. CT. CH. 1 (WEST PRACTICE BOOK 1993): GENERAL PROVISIONS.

### § 7B. CAMERAS AND ELECTRONIC MEDIA—IN GENERAL

Generally prohibits cameras in the Superior Court and areas immediately adjacent, except a judge may authorize them for:

- (A) evidentiary, record perpetuation, and judicial administration purposes;
- (B) investitive, ceremonial, or naturalization proceedings;
- (C) exhibition provided, (1) the means of recording will not distract participants or impair the dignity of the proceedings; (2) parties and appearing witnesses have consented; (3) reproduction will not be exhibited until proceedings have been concluded and all direct appeals have been exhausted; and (4) the reproduction will be exhibited only for instructional purposes in educational institutions.

### § 7C. CAMERAS AND ELECTRONIC MEDIA—COVERAGE OF COURT PROCEEDINGS

- (A) News media cameras will be allowed in civil and criminal trials in the Superior court.
- (B) A judge may permit cameras in civil and criminal trials except as excluded below.<sup>31</sup>
- (C) The judge may approve media requests for camera coverage if satisfied that coverage will not interfere with parties' rights to fair trial. The judge may limit coverage at any time. A trial judge's disapproval shall be final.
- (D) No camera coverage shall be permitted of (1) family

<sup>29</sup> Review may be achieved by original proceeding, if otherwise appropriate, or by post-trial appeal.

<sup>30</sup> The purpose of this rule is to recognize the right of the public to be aware of judicial proceedings, meet the needs of the media, and allow for minimal disruption of the court and private citizens.

<sup>31</sup> "Trial" refers to proceedings after the jury has been sworn and in non-jury proceedings, commencing with the swearing in of the first witness.

relations matters<sup>32</sup>; (2) sentencing hearings, except in trials where there had been camera coverage; (3) trials involving trade secrets; (4) any proceedings held in the absence of the jury<sup>33</sup>; (5) trials of sex offense charges; or (6) trials of cases which must be closed to the public to comply with state laws.

- (E) No cameras shall operate during a recess.
- (F) No recording of conferences involving counsel and the trial judge at the bench, or between counsel and their clients shall be permitted.
- (G) No juror shall be the subject of any camera coverage. Where it would be impossible to use cameras without including the jury as background, coverage is permitted but closeups which clearly identify individual jurors are prohibited.
- (H) Trial judges, may use discretion, and upon their own motion, or at the request of the participant, prohibit camera coverage of any party, lawyer, or witness at the trial. The judge shall give great weight to requests where the protection of a persons identity is desirable in the interests of justice.<sup>34</sup>

CT. R. APP. P. CH. 70 (WEST PRACTICE BOOK 1993): SESSIONS AND PROCEDURES.

§ 4116A. CAMERAS AND ELECTRONIC MEDIA—IN GENERAL

Cameras are generally prohibited in the appellate courtrooms and areas immediately adjacent except a judge may authorize them for:

- (A) perpetuation of a record or judicial administration;
- (B) investitive or ceremonial proceedings;
- (C) exhibition provided, (1) the means of recording will not distract participants or impair the dignity of the proceedings; (2) parties have consented; (3) reproduction will not be exhibited until proceedings have been concluded and all direct appeals have been exhausted; and (4) the reproduction will be exhibited only for instructional purposes in educational institutions.

§4116B. CAMERAS AND ELECTRONIC MEDIA—COVERAGE OF COURT

<sup>32</sup> Conn. R. Super. Ct. ch. 1, § 7C(d) - as defined by Gen. Stat. § 46b-1.

<sup>33</sup> Applicable only to jury trials. CONN. R. SUPER. CT. ch. 1, § 7C(d).

<sup>34</sup> Examples include: victims of crime, police informants, undercover agents, relocated witnesses, juveniles and individuals in comparable situations. CONN. R. SUPER. CT. ch. 1, § 7C(h).

## PROCEEDINGS

- (A) News media cameras will be allowed in appellate courtrooms.
- (B) Any counsel or pro se party of record may file a written request setting forth reasons why they should be excluded from camera coverage. The jurists may decide at any time to permit, limit or exclude coverage, taking into account the rights of the parties to a fair hearing. The jurists decision shall be final.
- (C) No camera coverage shall be permitted of (1) family relations matters<sup>35</sup>; (2) cases involving trade secrets; (3) cases involving sex offense charges; or (4) cases which were closed to the public to comply with state laws.
- (D) No cameras shall operate during a recess.
- (E) No recording of conferences among members of the court, between co-counsel, or between counsel and their clients shall be permitted.

## DELAWARE

DEL. CODE ANN., CODE OF JUD. CONDUCT CANON 3(A)(7) (1994).<sup>36</sup>

A judge should prohibit camera coverage in the courtroom and areas immediately adjacent, except as authorized by a court rule or administrative directive which has been either promulgated or approved by the Delaware Supreme Court.<sup>37</sup>

ORDER DATED MAY 2, 1983, IN RE: CANON 3A(7) OF THE DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT.

Canon 3(A)(7) of the Delaware Judges' Code of Judicial Conduct is suspended until further Order of this Court for appellate proceedings in the Delaware Supreme Court under the terms and conditions set forth in the Orders of January 15 and April 29, 1982.<sup>38</sup>

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<sup>35</sup> As defined by COLO. GEN. STAT. § 46b-1.

<sup>36</sup> The previous Canon 3A(7), was amended by Order dated December 16, 1993, taking effect on January 1, 1994.

<sup>37</sup> The Delaware Bench-Bar-Media Conference has proposed a draft administrative directive which would allow camera coverage in all courtrooms and adjacent areas subject to conditions. The Delaware Supreme Court is continuing to review this proposal, and has requested the Conference's comments on the decision of the Federal Judicial Conference to prohibit cameras in federal courts. Further, the Delaware Supreme Court has requested a demonstration of how camera coverage would be set up in a superior court courtroom under the proposed rule. Letter from E. Norman Veasey, Chief Justice, Supreme Court of Delaware, to Harvey B. Rubenstein, Esquire, Chair Bar-Bench-Media Conference (Oct. 4, 1994) (on file at the Delaware Supreme Court).

<sup>38</sup> See Order dated April 29, 1982, *infra* p. 1030. Order dated January 15, 1982, sus-

ORDER DATED APRIL 29, 1982, IN RE: CANON 3A(7) OF THE DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT.

Camera coverage of oral arguments in the Supreme Court of Delaware is permitted, provided that the orderly procedures of the Court are not impaired or interrupted. Except as otherwise ordered by the Court, the following guidelines shall be strictly followed:

...  
(6) *Conferences of the Court*

There shall be no audio pickup of conferences which may occur among Justices on the bench.

DEL. CTS. OF THE JUSTICES OF THE PEACE R. CRIM. P. § 2, R. 31 (1992): CONDUCT IN THE COURTROOM.

Cameras shall not be permitted in the courtroom during judicial proceedings, except as may be authorized by higher judicial authority.

DEL. FAM. CT. R. CRIM. P. X, R. 53 (1992): REGULATION OF CONDUCT IN THE COURTROOM.

Cameras shall not be permitted in the courtroom during judicial proceedings.

DEL. CT. COMMON PLEAS R. CRIM. P. X, R. 53 (1992): REGULATION OF CONDUCT IN THE COURTROOM.

Cameras shall not be permitted in the courtroom during judicial proceedings.

DEL. SUPER. CT. R. CRIM. P. X, R. 53 (1992): REGULATION OF CONDUCT

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pends Canon 3(A)(7) for one year for appellate proceedings in the Delaware Supreme Court only. As to all other judicial proceedings, Canon 3(A)(7), prohibiting cameras in the courtroom, is in full force and effect.

[A]s to these dangers to the constitutional right of fair trial, a matter of vital importance in the administration of justice of course, an "experiment" in the subject field should be an "experiment" in the scientifically adequate and acceptable sense of the word—including scientific controls and scientific evaluation which meet advanced testing techniques and requirements of the social sciences. . . but, insofar as this Court is aware, none [of the current experiments in the field] constitutes a study employing scientific experimental design techniques necessary to produce an acceptable objective evaluation of the psychological effect of photographic and electronic media coverage upon the public and the participants in trials

Order dated January 15, 1982, *In re* Canon 3A(7) of the Delaware Judges' Code of Judicial Conduct.

Neither history nor existing research support the contention that television coverage of courts would enhance fairness, protect freedom, increase public understanding, or promote needed court reform. Only an immediate moratorium on televising trials can give us the time and opportunity we need for responsible action. I think it is imprudent; I think it is historically short-sighted; I think it is institutionally reckless to further extend the experiment until the evidence is in, and to use our defendants as guinea pigs.

Dean Gerbner of The Annenberg School of Communications of the University of Pennsylvania, See *American Judicature Society Journal*, April, 1980.

**IN THE COURTROOM.**

Cameras shall not be permitted in the courtroom during judicial proceedings.

**ALDERMAN AND MAYOR, DEL. R. CRIM. P. 30 (1992): CONDUCT IN THE COURTROOM.**

Cameras shall not be permitted in the court during judicial proceedings.

**DISTRICT OF COLUMBIA****D.C. SUP. CT. R. CRIM. P. X, R. 53(B) (MICHIE 1993): PHOTOGRAPHS, RADIO AND TELEVISION BROADCASTING ETC. .**

- (1) **IN GENERAL.** Camera coverage shall not be allowed in any courtroom during judicial proceedings, or in any anterooms adjacent, any cellblocks, the lobby, or corridors of the courthouse:
- (2) **EXCEPTION.** Photographs in any office or other room of the courthouse shall be permitted with the knowledge and consent of the official in charge of such room, and the persons photographed.

**D.C. SUP. CT. R. CIV. P. XIII, R. 203(B) (MICHIE 1993).**

No cameras shall be allowed inside the courthouse in connection with any civil proceeding, whether or not the Court is in session.

**D.C. DOM. REL. R. 203(B) (MICHIE 1993).**

No cameras shall be allowed inside the courthouse in connection with any proceeding in the Domestic Relations court, whether or not the Court is in session.

**D.C. R. JUV. PROCEEDINGS SUPER. CT. X, R. 53(B) (MICHIE 1993): TAKING PHOTOGRAPHS AND RADIO AND TELEVISION BROADCASTING.**

- (1) **TAKING PHOTOGRAPHS, RADIO AND TELEVISION BROADCASTING PROHIBITED.** Camera coverage shall not be allowed in any of the Division's courtrooms during judicial proceedings, or in any anterooms adjacent, any detention rooms, the lobby, or corridors of the courthouse.
- (2) **LIMITED PERMISSION TO TAKE PHOTOGRAPHS.** Photographs in any office or other room of the courthouse shall be permitted with the knowledge and consent of the official in charge of such room, and the persons photographed.

**D.C. R. NEGLECT PROCEEDINGS VIII, R. 30(E) (MICHIE 1993): TAKING PHOTOGRAPHS AND RADIO AND TELEVISION BROADCASTING.**

- (1) **TAKING PHOTOGRAPHS, RADIO AND TELEVISION BROADCASTING PROHIBITED.** Camera coverage shall not be allowed in any of the Division's courtrooms during judicial proceedings, or in

any anterooms adjacent, any detention rooms, the lobby, or corridors of the courthouse.

- (2) LIMITED PERMISSION TO TAKE PHOTOGRAPHS. Photographs in any office or other room of the courthouse shall be permitted with the knowledge and consent of the official in charge of such room, and the persons photographed.

## FLORIDA

FLA. R. JUD. ADMIN. 2.170 (WEST 1994): STANDARDS OF CONDUCT AND TECHNOLOGY GOVERNING ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE OF JUDICIAL PROCEEDINGS.<sup>39</sup>

Subject to the authority of the presiding judge to (i) control the conduct of proceedings, (ii) ensure decorum and prevent distractions, and (iii) ensure the fair administration of justice,<sup>40</sup> camera coverage of proceedings in the appellate and trial courts (criminal and civil) shall be allowed in accord with standards set by the Supreme Court of Florida.<sup>41</sup>

<sup>39</sup> *In re* Code of Judicial Conduct, 643 So. 2d 1037 (Fla. 1994) (revised Canons of Judicial Conduct, removing 3A(7): Standards of Conduct and Technology Governing Electronic Media and Still Photography Coverage of Judicial and moving it to FLA. R. JUD. ADMIN. 2.170, effective January 1, 1995).

<sup>40</sup> See *Grossman v. State*, 525 So. 2d 833 (Fla. 1988) (defendant convicted of first degree murder) (trial court did not err in denying motion to exclude cameras from the courtroom because defendant did not prove prejudice); *Gore v. State*, 573 So. 2d 87 (Fla. Dist. Ct. App. 1991) (defendant convicted of attempted murder, kidnapping, sexual battery, burglary, robbery, and theft) (trial court did not abuse its discretion where defendant claimed that, due to a psychological disorder, camera coverage would prevent him from being able to participate effectively in the trial, and distract him from his testimony).

<sup>41</sup> Limited only by the authority of the presiding judge, consent of participants to coverage is not required. Fla. Canons of Jud. Conduct Commentary to Canon 3.

The presiding judge may exclude electronic media of a particular participant only upon a finding that such coverage will have a substantial effect upon the particular individual which would be qualitatively different from the effect on members of the public in general and such effect will be qualitatively different from coverage by other types of media.

*Maxwell v. State*, 443 So. 2d 967 (Fla. 1983) (quoting *In re* Post Newsweek Stations, Florida, Inc., 370 So. 2d 764, 779 (Fla. 1979)).

The televising of a trial does not per se affect its fairness and impartiality, *Maxwell*, 443 So. 2d 967 (defendant convicted of first degree murder); *Jent v. State*, 408 So. 2d 1024 (Fla. 1981) (defendant convicted of first-degree murder and sentenced to death); *King v. State*, 390 So. 2d 315 (Fla. 1980) (defendant convicted of murder, escape, involuntary sexual battery, robbery, arson, and attempted murder) (general allegations of prejudice are not sufficient); *Clark v. State*, 379 So. 2d 97 (Fla. 1979); *Harnum v. State*, 384 So. 2d 1320 (Fla. Dist. Ct. App. 1980) (police officer altered suspect's DUI records) (must show prejudice due to cameras in the courtroom); *Chandler v. State*, 366 So. 2d 64 (Fla. Dist. Ct. App. 1978) (re-hearing denied) (defendants convicted of conspiracy, burglary, and grand larceny). See also *Smith v. State*, 376 So. 2d 455 (Fla. Dist. Ct. App. 1979) (defendant convicted of second-degree murder) (assertion that camera coverage interfered with meaningful interaction with counsel declared speculative and contrary to Supreme Court holding).

In addition, defense counsel's failure to object to camera coverage is not grounds for a



...

- (F) CONFERENCES OF COUNSEL. There shall be no audio pickup or broadcast of conferences between attorneys and clients, between co-counsel of a client, or between counsel and judge at the bench.
- (G) IMPERMISSIBLE USE OF MEDIA MATERIAL. No recording of a judicial proceeding shall be admissible as evidence in that proceeding, in any proceeding subsequent or collateral, or upon retrial or appeal.
- (H) APPELLATE REVIEW. Review of an order excluding cameras from a proceeding, or from coverage of any particular participant, shall be pursuant to Fla. R. App. Proc. 9.100(d).

## GEORGIA

GA. CODE OF JUD. CONDUCT CANON 3(A)(7) (MICHIE 1993).

Judges should prohibit cameras in the courtroom and areas immediately adjacent, except that a judge may authorize cameras:

- (A) for presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) in investitive or ceremonial proceedings;
- (C) in appropriate court proceedings if (i) they will not distract participants or impair the dignity of the proceedings; (ii) the parties and each appearing witness have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals are exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions and in connection with education programs sponsored by bar organizations.

GA. UNIF. SUPER. CT. R. 22 (MICHIE 1993): ELECTRONIC AND PHOTOGRAPHIC NEWS COVERAGE OF JUDICIAL PROCEEDINGS.

Generally permits cameras in the superior courts, unless otherwise ordered by the assigned judge after appropriate hearing and

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charge of ineffective assistance of counsel. *Zamora v. State*, 422 So. 2d 325 (Fla. Dist. Ct. App. 1982) (fifteen year old convicted of murdering an elderly woman)

Though a judge is usually required to provide an evidentiary hearing before making a determination on a motion to exclude cameras, a proper motion should set forth facts to justify the order. *State v. Green*, 395 So. 2d 532 (Fla. 1981). See also *Times Publishing Company v. Hall*, 357 So. 2d 736 (Fla. Dist. Ct. App. 1978) (request to exclude camera coverage of sixteen year old's testimony) (trial judge required to hold a hearing before ruling on request for exclusion). Affidavits may be sufficient to support an order of exclusion. *State v. Palm Beach Newspapers, Inc.*, 395 So. 2d 544 (Fla. 1981) (witnesses feared retaliation in prison). Litigants and their attorneys are not entitled to actual notice that a trial will be broadcast and must, nonetheless, file objections to potential coverage before proceedings begin. *Maxwell*, 443 So. 2d at 970.

findings<sup>42</sup>, subject to the following restrictions:

...

- (I) Pictures of the jury shall not be taken except where the jury happens to be in the background of other coverage.

GA. UNIF. JUV. CT. R. § 26, R. 26.2 (MICHIE 1993): ELECTRONIC AND PHOTOGRAPHIC NEW COVERAGE OF JUVENILE COURT PROCEEDINGS.

Cameras may be allowed in juvenile proceedings upon the granting of a motion for access and subject to the following restrictions:

...

- (I) No pictures shall be taken of the child. The courtroom may be photographed if there is no disruption to proceedings.

...

- (L) Camera operators will have full access to proceedings within the requirements of due process of law, so long as they operate without detracting from the dignity and decorum of the court.

- (M) There will be no camera coverage on the courthouse floor where the juvenile court courtroom is located, whether or not the court is in session, except as authorized by this rule.

GA. UNIF. PROB. CT. R. 18 (MICHIE 1993): ELECTRONIC AND PHOTOGRAPHIC NEWS COVERAGE OF JUDICIAL PROCEEDINGS.

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<sup>42</sup> Georgia Television Co. v. Napper, 365 S.E.2d 275 (Ga. 1988) (possibility that camera coverage would "stifle, inhibit, frustrate or prevent" dialogue between court and counsel is not an adequate reason to deny coverage unless it constitutes a denial of due process or detracts from dignity and decorum of the court); Georgia Television Co. v. State, 363 S.E.2d 528 (Ga. 1988) (murder trial) (denial of camera coverage is supported by express finding that defendant's due process rights would be substantially violated because coverage would give the case increased notoriety); Multimedia WMAZ, Inc. v. State, 353 S.E.2d 173 (Ga. 1987) (murder trial involving change of venue) (this rule requires presiding judge to make an independent determination as to whether camera coverage of a trial satisfies requirements of due process and can be accomplished without detracting from the dignity and decorum of the court; trial judge cannot prohibit coverage based only on inflexible local policy against cameras); Brooks v. State, 261 S.E.2d 379 (Ga. 1979); Smith v. State, 402 S.E.2d 738 (Ga. Ct. App. 1991) (defendant convicted of battery) (even though the trial court's denial of defendant's motion to exclude cameras because coverage would render him an ineffective witness was based on a false interpretation of the law, reversal was not required because defendant was effective).

Even where these rules have been clearly violated, no error will be found unless specific prejudice is demonstrated. Harris v. State, 401 S.E.2d 263 (Ga. 1991) (trial court did not abuse discretion by allowing cameras where defendant received no pretrial notice regarding coverage and was unable to prove any harm or prejudice). See also Studebaker's of Savannah, Inc. v. Tibbs, 392 S.E.2d 908 (Ga. Ct. App. 1990) (victim of car crash sued business which supplied alcohol to the driver) (defendants unsuccessfully argued that the trial court's decision to allow television cameras in the courtroom in view of the jury and without advance notice to the defendant was prejudicial because it alerted the jury that this was not an ordinary accident case).

Camera coverage is permitted in Probate court except as otherwise provided by rule of the Supreme Court or ordered by the judge, after an appropriate hearing. Cameras are subject to the following restrictions:

- ...  
(I) Camera coverage of the public and the courtroom are allowed if there is no disruption to the proceedings.
- ...  
(L) Camera operators will have full access to proceedings within the requirements of due process of law, so long as they operate without detracting from the dignity and decorum of the court.
- (M) There will be no camera coverage on the courthouse floor where the probate court courtroom is located, whether or not the court is in session, except as authorized by this rule.

## HAWAII

HAW. STAT. S. CT. R. 5, § 5.1 (MICHIE 1992): ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS.

### (D) GENERAL PROVISIONS AND EXCLUSIONS.

- ...  
(2) Nothing in this rule affects the authority to permit camera coverage of investitive, ceremonial, or naturalization proceedings.
- ...  
(4) Nothing in this rule limits or restricts the power of judges to control the conduct of proceedings.

### ... (F) STANDARD FOR CONSENT TO EXTENDED COVERAGE.

- (1) Prior consent of a judge is not required for coverage of appellate procedures, but is required for all other proceedings.
- (2) The judge shall make written findings of fact and conclusions of law if cameras are denied.
- (3) A judge shall grant requests for cameras unless by a preponderance of the evidence, good cause is found to prohibit coverage.
- (4) If a party objects to cameras, there shall be a hearing to determine whether coverage will be allowed.
- (5) Good cause is presumed where (i) the proceeding is to determine the admissibility of evidence; (ii) testimony involving trade secrets is being received; (iii) testimony of a child witness is being received; (iv) testimony of a complaining wit-

ness in a prosecution for a sex offense is being received; (v) a witness would be in substantial jeopardy of serious bodily injury; or (vi) testimony of undercover agents, involved in ongoing undercover investigations is being received.

- (6) Upon finding of good cause, a judge may at any time terminate or limit camera coverage, sua sponte or upon the objection of a witness.

...

- (8) The media or any party may obtain review of an order regarding camera coverage by applying to an administrative judge.

(G) RESTRICTIONS ON EXTENDED COVERAGE.

...

- (2) There shall be no camera coverage of a juror or prospective juror.

- (3) There shall be no audio coverage of conferences between attorneys and clients, or between co-counsel and clients or parties, or between counsel and the judge at the bench.

HAW. ST. VIDEO REC. RULES (MICHIE 1992): TEMPORARY RULES FOR APPEALS WHERE EXPERIMENTAL USE IS MADE OF VIDEOTAPE EQUIPMENT TO RECORD COURT PROCEEDINGS IN CIRCUIT COURT.

RULE 1(B): APPLICABILITY. These rules apply to any court proceeding (trial or appeal) upon the trial judge's use of videotape to record the proceedings.<sup>43</sup>

RULE 2(A): VIDEOTAPE RECORDINGS. The official record of court proceedings shall include two videotape records, recorded simultaneously.

## IDAHO

ORDER ENTERED SEPTEMBER 3, 1980: IN RE BROADCAST AND PHOTOGRAPHIC COVERAGE OF SUPREME COURT PROCEEDINGS DURING TERMS OF COURT OUTSIDE OF THE SUPREME COURT COURTROOM IN BOISE.

Camera coverage of public hearings and appeals before the Court of Appeals during terms of court outside of Boise are authorized for an indefinite period subject to the following guidelines:

1. BEHAVIOR — Coverage must not interfere with the dignity of proceedings, or distract counsel or judges.

...

6. TELEVISION COVERAGE — No camera should give any indication of whether it is or is not operating.

7. OFFICIAL RECORD OF PROCEEDING — No party

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<sup>43</sup> HAW. ST. VIDEO REC. RULES (Michie 1992) supersedes HAW. R. APP. PROC. 10, 11.

shall cite in any court or administrative agency proceeding any recording other than the official record made by the Court of Appeals recording machine. No taping or recording of conversations between co-counsel or counsel and client is allowed.

- ...
11. **LIVE COVERAGE OF COURT OF APPEALS PROCEEDINGS** — Camera coverage shall not be limited by the objection of counsel or parties, except that the Court of Appeals may limit coverage of any hearing or appeal in the interests of the administration of justice.

This authorization may be revoked at any time without prior notice when, in the course of discretion, it appears that camera coverage is interfering in any way with the proper administration of justice.

NOTE: These same guidelines were adopted for camera coverage of court of appeals proceedings during terms of court outside of Boise by ORDER ENTERED NOVEMBER 12, 1981: IN RE BROADCAST AND PHOTOGRAPHIC COVERAGE OF COURT OF APPEALS PROCEEDINGS DURING TERMS OF COURT OUTSIDE OF BOISE.

ORDER ENTERED NOVEMBER 12, 1981: IN RE BROADCAST AND PHOTOGRAPHIC COVERAGE OF COURT OF APPEALS PROCEEDINGS IN THE COURTROOM OF THE SUPREME COURT BUILDING IN BOISE.

Camera coverage of public hearings and appeals before the Court of Appeals in the courtroom in the Supreme Court building in Boise are authorized for an indefinite period subject to the following guidelines:

1. **BEHAVIOR** — Coverage must not interfere with the dignity of proceedings, or distract counsel or judges.

- ...
6. **TELEVISION COVERAGE** — No camera should give any indication of whether it is or is not operating.

7. **OFFICIAL RECORD OF PROCEEDING** — No party shall cite in any court or administrative agency proceeding any recording other than the official record made by the Court of Appeals recording machine.

- ...
12. **LIVE COVERAGE OF COURT OF APPEALS PROCEEDINGS** — Camera coverage shall not be limited by the objection of counsel or parties, except that the Court of Appeals may limit coverage of any hearing or appeal in the interests of the administration of justice.

This authorization may be revoked at any time without prior no-

tice when, in the course of discretion, it appears that camera coverage is interfering in any way with the proper administration of justice.

## ILLINOIS

ILL. ANN. STAT., S. CT. R. 63, CODE OF JUD. CONDUCT CANON 3(A) (7) (WEST 1994), AS AMENDED BY ORDER ENTERED MARCH 13, 1987.<sup>44</sup>

Proceedings should be conducted with fitting dignity, decorum, and without distraction. Cameras are permitted only to the extent authorized by order of the supreme court.<sup>45</sup>

ORDER ENTERED NOVEMBER 29, 1983: AUTHORIZING THE PHOTOGRAPHING, BROADCASTING AND TELEVISIONING OF PROCEEDINGS IN THE SUPREME AND APPELLATE COURTS OF THIS STATE.

Generally allows cameras in the supreme and appellate courts, subject to the following conditions.

...

### (C) GENERAL PROVISIONS AND EXCLUSIONS

...

- (4) A decision by a presiding judicial officer to deny, limit or terminate camera coverage is not appealable.
- (5) Camera coverage shall be conducted so as not to be distracting or to interfere with the solemnity, decorum, and dignity of the court.
- (6) Camera coverage of appellate argument is permitted only in the supreme court courtrooms in Springfield and Chicago; and in the appellate court courtrooms in Chicago, Elgin, Ottawa, Springfield, and Mt. Vernon.

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<sup>44</sup> The function of a court is to do justice in cases that come before it. It is not its role to be a teaching or informational instrument, though, of course, court proceedings, including trials, are public.

A trial is a complex proceeding involving human factors difficult to measure or explicate. There are inherent problems in any trial proceeding which would be exacerbated by the presence of extended coverage. They often involve psychological factors which cannot be reached by rules of court attempting to govern extended coverage of a trial. Trials are too sensitive and important to admit approval of factors that may expose them to prejudicial influences.

We consider that the more acute concerns regarding extended coverage which we have expressed and which are described in the specially concurring opinions would not be present in cases of extended coverage of appellate court proceedings. A court of review considers only questions of law. There is no jury, and witnesses do not appear before the court.

Order entered November 29, 1983 (adopted on a permanent basis by Order entered January 22, 1985 and made applicable to Supreme Court Rule 63(A)(7) by Order entered March 13, 1987, *In re* Photographing, Broadcasting, and Televising Proceedings in the Courts of Illinois, MR No. 2634, Order entered March 13, 1987.

<sup>45</sup> Supreme Court Order, MR No. 2634, applies orders of November 29, 1983, and January 22, 1985, to Supreme Court Rule 63A(7), *see* discussion *supra* note 44. The January 22, 1985 order adopts the provisions of the November 29, 1983 order on a permanent basis.

- (7) No consent is required, however the presiding judicial officer may prohibit coverage of a particular appellate argument.
- (8) There shall be no camera coverage of bench conferences, or among counsel and clients.
- (9) The judicial officer may, for good cause, terminate camera coverage at any time.

...

(E) EXTENDED COVERAGE MEDIA STANDARDS AND "POOLING"  
APPLICABLE

...

(2) Sound and light criteria

...

- (c) No light or signal visible or audible to participants shall be used on any equipment to indicate if it is operating.

ILL. ANN. STAT. CH. 705, ACT 70, §5 (SMITH-HURD 1987): MEANS OF REPORTING — TRANSCRIPTS.

Court reporters are permitted to use electronic devices to supplement stenographic hand or machine notes. The court reporter must be in charge of any audio or video recording systems used by the court to record the proceedings.

## INDIANA

IND. CODE ANN., CODE OF JUD. CONDUCT CANON 3(A)(13) (WEST 1994): A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.

Judges should prohibit cameras in the courtroom and areas immediately adjacent,<sup>46</sup> except that a judge may authorize cameras:

- (A) for presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) in investitive, ceremonial, or naturalization proceedings;
- (C) in appropriate court proceedings if (i) they will not distract participants or impair the dignity of the proceedings; (ii) the parties and each appearing witness have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals are exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational

<sup>46</sup> See *Van Orden v. State*, 469 N.E.2d 1153 (Ind. 1984) (defendant convicted of murder) (defendant does not have the right to have trial televised under the right to a public trial).

institutions.<sup>47</sup>

## IOWA

IOWA R. OF CT. 119, CANON 3 (WEST 1994): A JUDGE SHOULD PERFORM THE DUTIES OF OFFICE IMPARTIALLY AND DILIGENTLY.

A(7). Cameras shall be allowed in the trial and appellate courts in accordance with rules of procedure promulgated by the Iowa Supreme Court and subject to the authority of the presiding judge to control the conduct of proceedings, ensure decorum, prevent distractions, and ensure the fair administration of justice.<sup>48</sup>

### B. RULES FOR EXPANDED MEDIA COVERAGE

...

2. GENERAL. Cameras shall be permitted in the courtroom under the following conditions:

- A. Express permission shall have been granted by the judge.
- B. Unless the judge concludes for reasons stated on the record, the circumstances of the proceeding cameras would materially interfere with the parties' rights to a fair trial.
- C. The judge may refuse coverage of a witness upon objection and showing of good cause by the witness. In prosecutions for sexual abuse, or for charges in which sexual abuse is an included offense, there shall be no camera coverage of the testimony of a victim/witness unless the witness consents. Further, an objection to coverage by a victim/witness in any other forcible felony prosecution, and by police informants, undercover agents, and relocated witnesses, shall enjoy a rebuttable presumption of validity.<sup>49</sup>

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<sup>47</sup> See *Willard v. State*, 400 N.E.2d 151 (Ind. 1980) (trial on conspiracy to commit a felony) (although trial court judge is subject to disciplinary measures for allowing camera coverage of the trial in violation of Canon 3A(7) of the Code of Jud. Conduct, defendant was not prejudiced to the extent that a mistrial should be declared). Note: the provisions on cameras in the courtroom have since been moved to IND. CODE ANN., Code of Jud. Conduct Canon 3(A)(13).

<sup>48</sup> See *State v. Johnson*, 318 N.W.2d 417 (Iowa 1982) (trial for the murder of a young child) (a defendant must demonstrate that cameras will compromise the jury's ability to adjudicate fairly or will affect participants in such a manner as to constitute a denial of due process; no such prejudice was established in this case).

<sup>49</sup> IOWA R. OF CT. 119, Canon 3(B)(2)(c) (West 1994). The presumption is rebutted by a showing that cameras will not have a substantial effect upon the particular individual objecting, which would be qualitatively different from the effect on members of the general public and that such effect will not be quantitatively different from coverage by other



- D. Camera coverage is prohibited in any court proceeding which, under Iowa law, is required to be held in private. No 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.<sup>50</sup>
- E. Camera coverage of jury selection is prohibited. Camera coverage of jurors is prohibited except to the extent it is unavoidable in the coverage of other trial participants or proceedings. However, coverage of the return of the jury's verdict shall be permitted.
- F. There shall be no audio broadcast of conferences between attorneys and their clients, between co-counsel, between counsel and the judge at the bench, or between judges in an appellate proceeding.
- ...
- H. Notwithstanding any of these procedural or technical rules, the presiding judge may permit the use of equipment or techniques at variance with these rules, provided advance notice is given. Objections to variances may be heard, but rulings are in the sole discretion of the presiding judge.<sup>51</sup>
- I. The judge may limit or terminate camera coverage at any time in the event (1) that the rules under this canon or imposed by the judge have been violated, or (2) substantial rights of participants or rights to a fair trial will be prejudiced.

3(c). **OBJECTIONS.** A party objecting to cameras must file a written objection at least three days before the proceeding begins. All witnesses shall be advised of their right to object to coverage.

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types of media.

<sup>50</sup> IOWA R. OF CT. 119, Canon 3(B)(2)(e). Consent of all parties includes consent of a parent or guardian of a minor child.

<sup>51</sup> See *State v. Douglas*, 485 N.W.2d 619 (Iowa 1992) (during a highspeed chase involving eight police cars, defendant shot a state trooper in the shoulder and neck, shot and killed his own wife (and accomplice), then surrendered after being wounded by another state trooper) (court deferred to trial judges decision to permit the use of live microphones at the counsel table under Iowa R. of Ct. 119, Canon 3(B)(2)(e) (an exception to Canon 3B(2)(f) which prohibits audio pickup and broadcast between attorneys and clients) where no evidentiary hearing was requested and no adverse impact was shown). However, the Supreme Court did advise trial judges to "assiduously exercise their authority." *Id.* at 626. "Viewed in retrospect, the trial court would have been well advised in denying the media's request for the type of live microphones at the counsel table used in this case." *Id.* at 625.

- 4(A)(2). Television cameras are to be designed or modified so that participants in the proceedings cannot determine when they are recording.

## KANSAS

KAN. S. CT. R., CODE OF JUD. CONDUCT CANON 3(A)(7) (1993).

A judge may permit camera coverage in the courtroom during sessions of court or recesses between sessions in accord with Supreme Court rule 1001. A judge should otherwise prohibit camera coverage in the courtroom and areas immediately adjacent during session of the court or recesses except that a judge may, by written order, authorize camera coverage:

- (A) for presentation of evidence, perpetuation of a record, or other purposes of judicial administration; and
- (B) of investitive, ceremonial, or naturalization proceedings.

KANSAS S. CT. R. 1001 (1993): ELECTRONIC AND PHOTOGRAPHIC MEDIA COVERAGE OF JUDICIAL PROCEEDINGS.

Camera coverage of public proceedings before the Appellate, District, and Municipal Courts are allowed in accordance with the following conditions and procedures:<sup>52</sup>

1. Recordings shall be used for the purposes of education or news dissemination only.
2. The judge maintains the authority to exclude the media or the public from a proceeding or during the testimony of a witness.
3. Audio pickup and recording of conferences between an attorney and client, between co-counsel, between opposing counsel, or between attorneys and the judge are prohibited regardless of where conducted. Photographing of such conferences is not prohibited.
4. Focusing on and photographing materials on counsel tables are prohibited.
5. Individual jurors shall not be photographed. Where

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<sup>52</sup> The burden is on the defendant to prove that camera coverage prejudiced her right to a fair trial. *State v. Ji*, 832 P.2d 1176 (Kan. 1992) (defendant convicted of murder and attempted murder) (assertion that defendant would not receive fair trial because delusional beliefs may lead him to be excited by camera coverage, or may encourage him to express his delusional beliefs in this forum was not sufficient to show any prejudicial event involving camera coverage; thus, without such express showing and where the trial court explained to the jury that cameras would be in the courtroom but that individual jurors would not be photographed, there was no error in allowing camera coverage); *State v. Mcnaught*, 713 P.2d 457 (Kan. 1986) (defendant convicted of vehicular homicide) (the simple presence of cameras in the courtroom did not deprive the defendant of a fair trial) (historical discussion at 463-465).

- photography is impossible without including the jury as part of the background, photography is permitted, but close-ups which identify individual jurors are prohibited.
6. The judge may, as a matter of discretion, prohibit coverage of a participant in a court proceeding.
  7. The trial judge shall prohibit coverage of a participant, if the participant so requests and (A) the participant is a victim or witness of a crime, a police informant, an undercover agent, a relocated witness, or a juvenile;<sup>53</sup> or (B) the hearing is an evidentiary suppression hearing, divorce proceeding, or involves trade secrets.
  8. No recording made by the media shall affect the official court record of the proceeding for purposes of appeal or otherwise.
- ...
11. Members of the media shall not record interviews in the hallways immediately adjacent to the entrances to the courtroom if it will block the hallways or disturb the proceedings. Photographing through windows or open doors of the courtroom is prohibited. Prior to the verdict, criminal defendants shall not be photographed in restraints as they are being escorted in or out of the proceedings.
  12. The judge may ban cameras from the entire floor on which a proceeding is being conducted.

## KENTUCKY

KY. R. SUP. CT. 4, R. 4.300, CANON 3(A)(7) (MICHIE 1994).

A judge may prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses. However, camera coverage of proceedings in the appellate and trial courts may be allowed subject to the standards set forth in S. Ct. R. 4 and to the presiding judge's continuing authority to (i) control the conduct of proceedings before the court, (ii) ensure decorum and prevent distractions, and (iii) ensure the fair administration of justice.

KY. S. CT. R. 4 (APPENDIX): STANDARDS OF CONDUCT AND TECHNOLOGY GOVERNING ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE OF JUDICIAL PROCEEDINGS.

Cameras are permitted subject to the following requirements:

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<sup>53</sup> Notwithstanding KANSAS S. CT. R. 1001 (7) and subject to § (6), the news media may cover a juvenile who is being prosecuted as an adult in a criminal proceeding as authorized by KANSAS STAT. ANN. § 38-1636.

## 6. CONFERENCES OF COUNSEL.

There shall be no audio pick-up of conferences between attorneys and clients, between co-counsel of a client, or between counsel and the presiding judge at the bench.

## 7. IMPERMISSIBLE USE OF MEDIA MATERIAL.

No recording of a judicial proceeding shall be admissible as evidence in that proceeding, in any proceeding subsequent or collateral, or upon retrial or appeal.

**LOUISIANA**

LA. REV. STAT. ANN., CODE OF JUD. CONDUCT CANON 3(A)(9) (WEST 1994): A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY.

Judges should prohibit cameras in the courtroom and areas immediately adjacent, at least during court sessions and recesses, except that a trial judge may authorize cameras:

- (A) for presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) in investitive or ceremonial proceedings;
- (C) in appropriate court proceedings if (i) they will not distract participants or impair the dignity of the proceedings; (ii) the parties and each appearing witness have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals are exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.<sup>54</sup>

An appellate court may permit cameras in its courtrooms in accordance with the guidelines in the appendix to this Canon,<sup>55</sup> subject to the authority of each court and the presiding judge to (A) control the conduct of proceedings before the court, (B) ensure decorum and prevent distractions, and (C) ensure the fair administration of justice.

9 JUD. DIST., LA. CT. R. 14(H) (WEST 1994).

<sup>54</sup> In *State v. Henry* camera coverage was allowed in the courtroom during preliminary examination without objection from the defendant in the Thirty-Ninth Judicial District Court, Parish of Red River. This coverage did not constitute state participation or conspiracy in the dissemination of publicity and no venue change was warranted. *State v. Henry*, 446 So. 2d 1308 (La. Ct. App. 1984) (defendant charged with possession of marijuana with intent to distribute).

<sup>55</sup> LA. REV. STAT. ANN., Code of Jud. Conduct Canon 3 (Appendix). This appendix sets forth technical guidelines for the operation of cameras in appellate courtrooms. § XII prohibits the operation of cameras during recesses in a proceedings. § XV prohibits audio recording of conferences between attorney and clients, between co-counsel of a client, or between counsel and the presiding judge at the bench.

Cameras are prohibited on the fourth, fifth, or sixth floor of the Rapides Parish Courthouse, including the Detention Center. Cameras are prohibited on any floor of a Rapides Parish Courthouse where a grand jury or a trial jury (civil or criminal) is meeting.

13 JUD. DIST., LA. CT. R. 21 (WEST 1994): GENERAL PROVISIONS.

Cameras are prohibited in the courtroom, or so close the to courtroom as to disturb order or decorum, while a court or grand jury is in session, during recesses, or within fifteen minutes prior to or following a court or grand jury session, except that cameras may be permitted for the perpetuation of a record for the Court.

16 JUD. DIST., LA. CT. R. 4.2 (WEST 1994).

Cameras are prohibited in the courtroom, the hallways,<sup>56</sup> or rooms adjacent to the courtroom, or so close as to disturb order or decorum, while court is in session, at recess, or within fifteen minutes prior to or following a session, except that close circuit televising of the proceedings may be permitted under Court supervision for legal educational purposes. Cameras may be allowed in ceremonial proceedings with permission and under the supervision of the Court.

18 JUD. DIST., LA. CT. R. 8(E) (WEST 1994): PHOTOGRAPHY, TELEVISION, RADIO AND ELECTRONIC DEVICES.

There shall be no camera coverage during any civil or criminal trial, or related proceeding or recess thereof in the courtroom, judge's chambers, court reporter's office, or courthouse rooms used by counsel, litigants, witnesses, or jurors, or in the areas adjacent to them.

During any civil or criminal trial and any recess thereof, there shall be no coverage of jurors or prospective jurors at any place, on or off the courthouse premises.

19 JUD. DIST., LA. CT. GEN. R. 4 (WEST 1994): IMPROPER PUBLICIZING OF JUDICIAL PROCEEDINGS.

Cameras are prohibited in the courtroom, or so close to the courtroom as to disturb order or decorum, while a court or grand jury is in session, during recesses, or within fifteen minutes prior to or following a court or grand jury session, except that cameras may be permitted for the perpetuation of a record for the Court, and close circuit televising of the proceedings may be permitted under Court supervision for legal educational purposes. Cameras

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<sup>56</sup> See *State v. Angelico*, 328 So. 2d 378 (La. 1975) (court found a cameraman in contempt of court for interviewing a grand jury witness as she passed by along a motor vehicle driveway, holding that the driveway fell within a technical definition of 'hallway').

may be allowed in ceremonial proceedings with permission and under the supervision of the Court.

29 JUD. DIST., LA. CT. R. 18 (WEST 1994): GENERAL PROVISIONS.

Cameras are prohibited in the courtroom, or so close to the courtroom as to disturb order or decorum, while a court or grand jury is in session, during recesses, or within fifteen minutes prior to or following a court or grand jury session, except that cameras may be permitted for the perpetuation of a record for the Court.

30 JUD. DIST., LA. CT. GEN. R. 4 (WEST 1994): IMPROPER PUBLICIZING OF JUDICIAL PROCEEDINGS.

Cameras are prohibited in the courtroom, the hallways, or rooms adjacent to the courtroom, or so close as to disturb order or decorum, while a court or grand jury is in session, at recess, or within fifteen minutes prior to or following a session, except that close circuit televising of the proceedings may be permitted under Court supervision for legal educational purposes. Cameras may be allowed in ceremonial proceedings with permission and under the supervision of the Court.

34 JUD. DIST., LA. CT. R. 24 (WEST 1994): PHOTOGRAPHS.

Unless specifically authorized by the Court, no cameras shall be operated in any part of the Court building, nor shall any person block the Court entrance. Ceremonial and other non-judicial proceedings are exempted from this rule and may be covered with prior permission and under the supervision of the Court.

40 JUD. DIST., LA. DIST. CT. R. (MEDIA) (WEST 1994): IMPROPER PUBLICIZING OF COURT PROCEEDINGS IN ALL CASES.

Unless specifically authorized by all Divisions, no cameras shall operate in any part of the District Court Building. Ceremonial and other non-judicial proceedings are exempted from this rule and may be covered with prior permission and under the supervision of the Court.

## MAINE

ME. R. MEDIA COVERAGE, ADMIN. ORDER OF SUP. JUD. CT. (WEST 1994): PHOTOGRAPHIC AND ELECTRONIC COVERAGE OF THE COURTS.

- I. Cameras are allowed to cover the oral proceedings of the Supreme Judicial Court sitting as the Law Court, with the consent of the Court.
- II. Except as provided in Paragraph I, above, cameras are prohibited in any courtroom and adjacent areas during sessions of the court or recesses, except that a judge may authorize them for:
  - A. Presentation of evidence, perpetuation of the record, or

- other purposes of judicial administration;
- B. Investitive, ceremonial, or naturalization proceedings; or
  - C. Appropriate proceedings if (1) the means of recording will not distract participants or impair the dignity of the proceedings; (2) parties, appearing witnesses, and appearing jurors have consented in writing; (3) the reproduction will not be exhibited until after the proceeding and all direct appeals have been exhausted; and (4) the reproduction will be exhibited only for instructional purposes in educational institutions or for other purposes specifically approved by the Supreme Judicial Court.

## MARYLAND

MD. ANN. CODE ART. 27, § 467B (1994): PROHIBITED; EXCEPTIONS.<sup>57</sup>

- (b) Extended coverage prohibited. — Camera coverage of criminal proceedings in the trial courts is prohibited.
- (c) Exceptions. — Notwithstanding subsection (b), the prohibitions do not apply to (1) perpetuation of a court record; or (2) investiture or ceremonial proceedings.

MD. R. CH. 1200, PT. I, R. 1209 (MICHIE 1993): PHOTOGRAPHING, RECORDING, BROADCASTING OR TELEVISIONING IN COURTHOUSES.

...

### B. GENERAL PROVISIONS.

1. Cameras are allowed in the trial and appellate courts<sup>58</sup> unless prohibited in accordance with this rule.
2. Camera coverage of persons present for a judicial or grand jury proceeding is prohibited outside a courtroom and within the courthouse or other facility, or where such coverage is likely to interfere with the proceeding or its dignity and decorum.
3. Possession of cameras and recording/transmitting equipment is prohibited in all courtrooms and adjacent hallways except as necessary for coverage allowed

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<sup>57</sup> Referring to removal of Canon 3(A)(7), current Canon XXXIV, and current Md. Ethics Rule 11 regarding cameras in the courtroom:

Several states have deleted that provision on the grounds that it addresses a question of court administration rather than ethics. The Committee agrees, especially since Rule 1209 of the Md. Rules of Procedure governs media coverage of civil actions, and Md. Code, Art. 27, § 467B prohibits (with limited exceptions) media coverage of criminal trials.

Md. Admin. R. 1231, Code of Jud. Conduct, Canon 3 (Committee note following section A).

<sup>58</sup> This rule governs media coverage of civil courts only. Md. R. ch. 1200, pt. I, r. 1209 (Committee Note). Cameras are prohibited in criminal trials (except for perpetuation of a court record or for ceremonial proceedings) by MD. ANN. CODE art. 27, § 467B.

under this rule, or for media coverage not prohibited under this rule.

- ...
5. Cameras may not interfere with the right of any person to a fair and impartial trial, or with the dignity and decorum of the proceeding.

- ...
7. This rule does not apply to (i) perpetuation of a court record; or (ii) investiture or ceremonial proceedings, provided that the local administrative judge of a trial court and the Chief Judge of an appellate court shall have complete discretion to regulate cameras at the proceedings.

...

D. CONSENT TO EXTENDED COVERAGE.

1. No camera coverage shall be allowed unless all parties to the proceeding have filed written consent.<sup>59</sup>
2. Consent may not be withdrawn, once given. However, any party may move for termination or limitation of coverage.
3. Consent of the parties is not required in appellate proceedings, but parties may move for termination or limitation of coverage.

E. RESTRICTIONS ON EXTENDED COVERAGE.

1. Coverage of the testimony of a witness who is a victim in a criminal case shall be limited or terminated according to the witness' request or objection.
2. Coverage may be prohibited, terminated, or limited on the judge's own motion or on the request of a party, witness, or juror, where the judge finds a reasonable probability that unfairness, danger, undue embarrassment, or hinderance of law enforcement would result from coverage.<sup>60</sup>

- ...
4. Coverage is limited to proceedings in the courtroom in the presence of the presiding judge.
  5. There shall be no audio coverage of private conferences, bench conferences, and conferences at counsel tables.

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<sup>59</sup> Consent is not required if the party is a federal, state, or local government, or an agency or subdivision thereof or an individual sued or suing in official government capacity. Md. R. ch. 1200, pt. I, r. 1209(d)(1).

<sup>60</sup> A presumption of validity attends a request to prohibit cameras in cases involving police informants, undercover agents, relocated witnesses, and minors, and in evidentiary suppression hearings, divorce and custody proceedings, and cases involving trade secrets. This list is not exclusive and there may be cause found in similar situations at the judge's discretion. Md. R. ch. 1200, pt. I, r. 1209(e)(2).



**MASSACHUSETTS**

MASS. R. SUP. JUD. CT. 3:09, CANON 3(A)(7) (WEST 1994).

A judge shall permit cameras in the courtroom subject to the following limitations:

- (A) A judge may limit or temporarily suspend camera coverage, if it appears that such coverage will create a substantial likelihood of harm to any person or other serious harmful consequence.<sup>61</sup>
- (B) Cameras should not be permitted at hearings of motions to suppress or to dismiss or at probable cause or voir dire hearings.
- (C) During a jury trial, a judge should not permit recording or close-up photography of conferences at the bench, between counsel, or between counsel and client. Frontal and close-up photography of the jury panel should not usually be permitted.
- ...
- (F) When authorized by rules of the court, a judge may permit cameras for presentation of evidence, perpetuation of a record, other purposes of judicial administration, or for the preparation of materials for educational purposes.

**MICHIGAN**

MICH. R. ADMIN. ORDER 1989-1: FILM OR ELECTRONIC MEDIA COVERAGE OF COURT PROCEEDINGS.<sup>62</sup>

Generally permits camera coverage in all Michigan Courts subject to the following limitations:

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<sup>61</sup> See *Commonwealth v. Cordeiro*, 519 N.E.2d 1328 (Mass. 1988) (woman gang raped on pool table in a bar) (trial judge did not abuse discretion by prohibiting camera coverage of victim based on her affidavit that she would be harmed by the publicity and no constitutional prejudice to defendant flows from "preferential" treatment of the victim where the judge exercises discretion under MASS. R. SUP. JUD. CT. 3:09, Canon 3(A)(7)).

Defendants have the burden of proving specific prejudice. *Commonwealth v. Cross*, 605 N.E.2d 298 (Mass. App. Ct. 1993) (teacher convicted of having sex with fifteen year old student) (a recognition that jurors may be distracted by television cameras in the courtroom cannot substitute for a showing that defendant was actually prejudiced by the presence of cameras); *Commonwealth v. Burden*, 448 N.E.2d 387 (Mass. App. Ct. 1983) (defendant convicted of breaking and entering, armed assault, armed robbery, aggravated rape, and second-degree murder) (even though the foreman of the jury told the judge that he felt camera coverage might impair his ability to concentrate or render an impartial verdict, and two individual jurors also indicated that they thought coverage would affect their ability to concentrate, there was no showing of actual prejudice and, therefore, the trial court committed no error in allowing camera coverage).

<sup>62</sup> Effective March 1, 1989, this order creates an exception to MICHIGAN CODE OF JUDICIAL CONDUCT, Canon 3A(7).

...

2. LIMITATIONS.

- (A) The court shall provide that the parties be notified of a request for camera coverage.
- (B) A judge may, in the exercise of discretion, terminate, suspend, limit, or exclude camera coverage at any time upon a finding, on the record, that the fair administration of justice requires such action, or that rules under this order or imposed by the judge have been violated. The judge has sole discretion to exclude coverage of certain witnesses.<sup>63</sup>
- (C) Camera coverage of jurors or the jury selection process shall not be permitted.
- (D) A trial judge's decision to terminate, suspend, limit, or exclude cameras is not appealable, by right or by leave.

3. JUDICIAL AUTHORITY. Nothing in these guidelines alters the authority of a presiding Justice or Judge to control the proceedings in the courtroom, ensure decorum, prevent distractions, and ensure the fair administration of justice.

...

7. CONFERENCES. There shall be no audio pickup or close-up photography of conferences between attorney and client, between co-counsel, between counsel and judge at the bench, or between judges.<sup>64</sup>

MICH. R. ADMIN ORDER 1990-7: VIDEOTAPE RECORD OF COURT PROCEEDINGS.

The State Court Administrator is authorized to approve trial courts to use videotape record systems for verbatim court records.

MINNESOTA

MINN. STAT. ANN., CODE OF JUD. CONDUCT CANON 3(A)(7) (WEST 1993).

A judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses, except in the Supreme Court and the Court of Appeals, or:

- (A) for the presentation of evidence, perpetuation of a rec-

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<sup>63</sup> A judge's discretion to exclude coverage of witnesses includes, but is not limited to, victims of sex crimes and their families, police informants, undercover agents, and relocated witnesses. Mich. R. Admin Order 1989-1, 2(a).

<sup>64</sup> The prohibition on coverage of conferences between counsel and the judge at the bench applies to trial courts, and the prohibition on coverage of conferences between judges applies in appellate proceedings.

- ord, or other purposes of judicial administration;
- (b) coverage of investitive, ceremonial, or naturalization proceedings;
- (c) appropriate court proceedings where (i) the recording will not distract participants or impair the dignity of the proceedings; (ii) parties and appearing witnesses have consented;<sup>65</sup> (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

## MISSISSIPPI

MISS. CODE OF JUD. CONDUCT, CANON 3(A)(7) (1983).

A judge should prohibit camera coverage in the courtroom and areas immediately adjacent during sessions of the court and recesses, except that it may be authorized:

- (A) for the presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) for investitive, ceremonial, or naturalization proceedings; or
- (c) for appropriate court proceedings under the following conditions:
  - (i) the means of recording will not distract participants or impair the dignity of the proceeding;
  - (ii) the parties and all appearing witnesses have consented;<sup>66</sup>
  - (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been exhausted; and
  - (iv) the reproduction will be exhibited only for instruc-

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<sup>65</sup> See *In re* Modification of Canon 3A(7) of the Minnesota Code of Judicial Conduct, 441 N.W.2d 452 (Minn. 1989) (denies petition of the Minnesota Joint Media Committee to delete the requirement under which all parties must consent to coverage) (includes history of the laws regarding cameras in the courtroom in Minnesota). In denying the request of the Minnesota Joint Media Committee, the Court defines their view of the decision to allow cameras in the courtroom as being broader than that of the petitioner:

[W]e define the issue presented in a much broader sense than would any of the petitioners or respondents, namely, whether the petitioners have sustained their burden of establishing that the expansion of audio-video coverage of trial court proceedings would contribute to the improvement in the administration and quality of justice in Minnesota.

441 N.W.2d 452.

<sup>66</sup> See *Brantley v. State*, 610 So. 2d 1139 (Miss. 1992) (defendant convicted in lower court for armed robbery and rape) (court found reversible error in allowing camera coverage of the trial over the objection of the accused)

tional purposes in educational institutions.

MISS. UNIFORM R. OF CIR. CT. PRACTICE 8.06 (1983): PRESS COVERAGE.

No camera coverage will be permitted in the courtroom without the prior written approval of the court.

## MISSOURI

MO. SUP. CT. R. 2, CANON 3(A)(7) (WEST 1994).<sup>67</sup>

A judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses, except:

- (A) for the presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) coverage of investitive, ceremonial, or naturalization proceedings;
- (C) appropriate court proceedings where (i) the recording will not distract participants or impair the dignity of the proceedings; (ii) parties and appearing witnesses have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

ORDER ENTERED OCTOBER 25, 1994: ADOPTING ADMIN. R. 16.<sup>68</sup>

...

### 16.02 IN GENERAL.

Camera coverage will be permitted in the courtroom under the following conditions:

- (A) The judge has expressly granted permission.
- (B) Camera coverage shall not be permitted if the judge concludes that under the circumstances of the individual proceeding, such coverage would materially interfere with the rights of the parties to a fair trial.
- (C) Media coverage is prohibited of any court proceeding required to be held in private under Missouri law. Further, no coverage shall be permitted in any juvenile, adoption, domestic relations, or child custody hearing.<sup>69</sup>

<sup>67</sup> MO. SUP. CT. R. 2, Canon 3(A)(7) has been repealed by Order of the Supreme Court of Missouri, dated November 22, 1994, effective July 1, 1995. Mo. Order 94-24.

<sup>68</sup> This rule becomes effective January 1, 1995, as to any court subject to the experimental period under prior Administrative Rule No. 16. As to all other courts, this rule becomes effective July 1, 1995.

<sup>69</sup> Notwithstanding the foregoing, camera coverage of a juvenile being prosecuted as an adult in a criminal proceeding is allowed. MO. ADMIN. R. 16.02(c) adopted by Order

- (D) Camera coverage of prospective jurors, jurors, and jury selection is prohibited.
- (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 judge at the bench or in chambers, or between judges in an appellate proceeding.
- (F) There shall be no focusing on, nor photographing of materials on counsel tables; however, the media will be given access to exhibits received into evidence, absent objection from counsel.

- ...
- (I) If camera coverage is granted, members of the media shall not record interviews for broadcast in the hallways immediately adjacent to the entrances of the courtroom. Photographing through the windows or open doors of the courtroom is prohibited.
  - (J) The judge may terminate coverage at any time if the judge finds that (1) these guidelines, or those imposed by the judge have been violated, or (2) substantial rights of the individual participants, or rights to a fair trial may be prejudiced.

- ...
- (L) At the discretion of the judge, coverage of investitive or ceremonial proceedings may vary from the provisions of this rule.
  - (M) No camera coverage shall be permitted in criminal proceedings until the defendant is represented by counsel or has waived such representation.

#### 16.03 PROCEDURAL.

- ...
- (B) **ADVANCE NOTICE OF COVERAGE.** All counsel to parties, parties appearing without counsel, and the judge shall be notified at least four days in advance of the beginning of the proceeding that camera coverage has been requested.
  - (C) **OBJECTIONS.** The judge shall prohibit camera coverage of a victim of a crime, a police informant, an undercover agent, a relocated witness, or a juvenile, if such participant requests. Upon objection by a party, participant, or sua sponte, and for good cause shown, the judge may prohibit visual identification or coverage of a participant's testi-

mony. Counsel shall be directed to inform their witnesses that they will be subject to camera coverage unless the judge finds good cause to prohibit such coverage.

#### 16.04 Technical.

...

- (3) AUDIO EQUIPMENT. Microphones used for the counsel and judges shall be equipped with on/off switches.

### MONTANA

MONT. CANONS OF JUD. ETHICS REV. CANON 35 (1980): NEWS-GATHERING.<sup>70</sup>

The presiding judge shall permit camera coverage in the courtroom unless convinced by the particular circumstances of an individual case that such coverage would substantially and materially interfere with the court's primary function of fairly resolving the dispute under the law.

The judge must state, on the record, reasons for any prohibition of camera coverage.

These provisions apply in the Supreme Court of Montana and all other courts of the State over which the Supreme Court has supervisory control.

### NEBRASKA

NEB. SUP. CT. R. 17 (1992): MEDIA COVERAGE OF PROCEEDINGS BEFORE THE NEBRASKA SUPREME COURT AND THE NEBRASKA COURT OF APPEALS.

...

- B. GENERAL. Camera coverage is permitted in all judicial courtroom proceedings during sessions of the Supreme Court and the Court of Appeals, and during recesses between sessions, under the following conditions:

- 1) There shall be no audio pickup or broadcast of conferences in a court proceeding between attorneys and their clients, between co-counsel, or between judges.

- C. PRESERVATION OF RIGHTS. Camera coverage shall be permitted in all judicial proceedings unless the court concludes, after objection and showing of good cause, that under the specific circumstances such coverage would materially interfere with with the rights of the parties to a fair trial. The Chief Justice or Chief Judge may, limit or terminate coverage at any time upon a finding that:

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<sup>70</sup> As adopted by Montana Supreme Court Order, In re Canon 35, April 18, 1980.

- 1) these rules, or any rules imposed by the Chief Justice or Chief Judge have been violated; or
- 2) substantial rights of individual participants, or rights to a fair trial, will be prejudiced if coverage is allowed to continue.

D. **OBJECTIONS.** An objecting party shall file written objection with the court. All objections will be heard prior to the commencement of the proceeding. The Chief Justice or Chief Judge may extend the right of objection to persons not specifically provided for in these rules.

E. **TECHNICAL.**

- 1) Equipment must satisfy the following criteria:

...

b. Television cameras shall be designed so that participants in the proceeding are unable to determine when the cameras are recording.

c. Microphones for use of counsel and judges shall be equipped with off/on switches.

NEB. SUP. CT. R. 18 (1992): MEDIA COVERAGE OF PROCEEDINGS BEFORE ANY COURT OTHER THAN THE NEBRASKA SUPREME COURT OR THE NEBRASKA COURT OF APPEALS.

A. Other than as provided in Rule 17, there shall be no camera coverage in courtrooms or areas immediately adjacent during sessions or recesses of a court, except that under rules which may be prescribed by the Supreme Court, a judge may authorize camera coverage in such courtrooms and areas immediately adjacent consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines. Such guidelines would allow coverage in a manner that is unobtrusive, will not distract participants, and will not otherwise interfere with the fair administration of justice.

## NEVADA

NEV. REV. STAT., SUP. CT. R. PT. IV (1993): RULES ON CAMERAS AND ELECTRONIC MEDIA COVERAGE IN THE COURTS.

...

R. 231. **REVOCATION OF PERMISSION.**

The judge may revoke permission to broadcast or photograph the proceedings at any time, without prior notice, if it appears that media coverage is interfering in any way with the proper administration of justice, or if the media fails to comply with the conditions prescribed by the judge.

...

R. 238. LIMITATIONS (JURY).

1. REQUIREMENTS OF SEQUESTRATION OF THE JURY. The jury shall not be sequestered solely because of any activity authorized by these guidelines.
2. PHOTOGRAPHY OF JURY. Consent of the jury shall not be required. The media will not deliberately photograph the jury or individual jurors.<sup>71</sup>
3. If a request for camera coverage in the courtroom is not made, or is denied, the media shall not deliberately photograph the jury or individual jurors in the hallways or immediate areas of the courtroom.

R. 239. LIMITATIONS (CONFERENCES OF COUNSEL).

There shall be no broadcast of any conference between attorneys and their clients, between attorneys, between clients, or between attorneys, clients, and the judge at the bench.<sup>72</sup>

R. 241. LIMITATIONS (USE OF BROADCAST MATERIAL).

Reproductions may not be used for unrelated advertising purposes.

1. OFFICIAL RECORD. Reproductions made in court as a result of these rules shall not be considered as part of the official court record.

R. 242. LIMITATIONS (RESTRICTED ACCESS).

1. Equipment authorized by these rules must not be operated during a recess unless approved by the judge with notice to counsel. If a proceeding is covered in the courtroom, the media shall not be permitted to transmit or record anything regarding that proceeding outside that immediate courtroom area.

R. 242. APPELLATE PROCESS.

No appellate review of the interpretation or application of these rules is available to the media or parties.

...

R. 247. SPECIAL RULE OF JUDICIAL CONDUCT.

Provisions of Canon 3(A)(7) of the Nevada Code of Judicial Conduct are suspended and the following language is substituted:

"Subject at all times to the authority of the judge to: (i)

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<sup>71</sup> It is recognized that it may be impossible not to photograph some jurors as part of the proceeding. NEV. REV. STAT., SUP. CT. R. pt. IV, r. 238(2).

<sup>72</sup> Note that most states prohibit audio pickup and broadcast of conferences between attorneys and clients. Nevada allows audio pickup as long as it is not broadcast.



control the conduct of proceedings before the court; (ii) ensure decorum and prevent distractions; and (iii) ensure the fair administration of justice in the pending cause, electronic media and still photography coverage of public judicial proceedings in the courts of this state shall be allowed in accordance with standards of conduct and technology promulgated by the Supreme Court of Nevada."

## NEW HAMPSHIRE

N.H. STAT. ANN., SUP. CT. R. 38 CANON 3(A)(7) (1993).

A judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of court or recesses,<sup>73</sup> except as provided by the rules of the supreme court and of the superior court, or:

- (A) for investitive, ceremonial, or naturalization proceedings; and
- (B) when authorized for presentation of evidence, perpetuation of a record, or other purposes of judicial administration, or for the preparation of materials for educational purposes.

N.H. STAT. ANN., SUP. CT. R. 19 (1993): MEDIA ACCESS TO COURT PROCEEDINGS.

With the consent of the court, cameras are allowed at the oral proceedings of the supreme court, provided that the orderly procedures of the court are not impaired or interrupted.

N.H. STAT. ANN., SUPER. CT. R. 78(A) (1993).

Camera coverage is generally prohibited in the courtroom in the course of any proceeding, except as specifically provided in these rules.

### COURT-PROMULGATED GUIDELINES

...

- 2. No cameras will generally be allowed unless the courtroom has proper facilities so that cameras and personnel will be obscured from the view of the jury.
- 3. No cameras shall be allowed except upon request and prior approval of the Presiding Justice.

...

- 5. The Presiding Justice may at any time, prohibit or terminate camera coverage, either sua sponte, or on motion of

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<sup>73</sup> Petition of Dover Police Department, 341 A.2d 760 (N.H. 1975) (petition by police to allow camera equipment to record trial proceedings for security purposes was denied due to Canon 3(A)(7)'s prohibition on television in the courtroom).

- an attorney, party, or any witness called to the stand.
6. Ordinarily, directional microphones will not be permitted.
  7. No picture shall be taken of the jury in a criminal case without prior, express approval of the Presiding Justice.<sup>74</sup>
  - ...
  9. No audio pickup shall be allowed of conferences between attorney and client or between counsel and the Presiding Justice at the bench.

N.H. REV. STAT. ANN. TIT. 502-A: 27-D (1983).

In District Courts, at the judge's discretion, a party to the proceedings may be allowed to record the proceedings.

## NEW JERSEY

N.J. R. CT. PT. I, APP., CODE OF JUD. CONDUCT CANON 3(A)(9) (WEST 1994).

A judge should permit cameras in the courtroom and areas immediately adjacent only in accord with the guidelines promulgated by the Supreme Court.<sup>75</sup>

N.J. R. CT. PT. I, APP. (WEST 1994): SUPREME COURT GUIDELINES FOR STILL AND TELEVISION CAMERA AND AUDIO COVERAGE OF PROCEEDINGS IN THE COURTS OF NEW JERSEY.

### GUIDELINE 3. LOCATION OF EQUIPMENT AND PERSONNEL

- ...
- (F) Photographs may be taken in the corridor immediately outside a courtroom, or on the floor on which a courtroom is located, only with the express authorization of the court.
- ...

### GUIDELINE 6. CONFERENCE OF COUNSEL

There shall be no audio pickup of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge at the bench.

### GUIDELINE 7. HEARINGS

The assignment judge, upon motion of the trial judge, or sua sponte, may terminate, limit, or vary the conditions of coverage

<sup>74</sup> See *State v. Smart*, 622 A.2d 1197 (N.H. 1993) (defendant convicted of conspiring to commit murder, tampering with witness, and accomplice to murder) (no prejudice found by allowing camera coverage of the trial even where jury was inadvertently filmed while on a view).

<sup>75</sup> See *State v. Newsome*, 426 A.2d 68 (N.J. Super. Ct. App. Div. 1980) (murder trial) (Court presumes that the relaxation of Canon 3A(7), which prohibited cameras in the courtroom, equals a rejection of the theory that camera coverage is a per se denial of due process rights).

previously permitted in any proceeding.

GUIDELINE 8. APPELLATE REVIEW

Any party or media representative may move for leave to appeal from the decision of the court regarding coverage. Motions shall be granted only where there is a demonstration of manifest abuse of discretion by the court.

...  
GUIDELINE 10. SELECTION OF PROCEEDINGS AND APPELLATE ARGUMENTS FOR COVERAGE

...  
(B) No camera coverage shall be allowed of proceedings in juvenile court or trial courts involving custody of children, divorce or matrimonial disputes, trade secrets, and charges of sexual penetration or attempts thereof when the victim is alive.<sup>76</sup> Coverage may be excluded in any proceeding where it would cause a substantial increase in the threat of, or the potential for, harm to a participant in the case. Coverage of domestic disputes in the municipal courts is prohibited.

(c) Camera coverage of victims of crimes who are under eighteen years of age and of witnesses under fourteen years of age<sup>77</sup> shall be allowed at the trial judge's discretion, subject to review by the assignment judge.

GUIDELINE 11. CONSENT OF PARTICIPANTS NOT REQUIRED

Permission for coverage shall not be conditioned upon obtaining consent of any party, attorney, witness, or participant.

GUIDELINE 12. PERSONS AUTHORIZED

...  
(4) The recording may not be used in any court proceeding and may not be used to contest the accuracy of the official court record.

GUIDELINE 13. REQUIREMENT OF SEQUESTRATION OF THE JURY; PROHIBITION AGAINST VISUAL RECOGNITION OF THE JURY

(A) The jury shall not be sequestered solely because of any activity authorized by these guidelines.

(B) No photography of a jury shall be such as to permit visual recognition of the jurors.

GUIDELINE 14. MANDATORY PRETRIAL CONFERENCE

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<sup>76</sup> Where the victim is deceased, the court may deny permission of coverage in consideration of the victim's survivors or analogous concerns. N.J. R. Cr. Pt. I, app., Guideline 10(b).

<sup>77</sup> Age is considered at the time of the trial, not at the time of the incident at issue. N.J. R. Cr. Pt. I, app., Guideline 10(c).

A mandatory pretrial conference shall be held among the court, attorneys, and media personnel assigned to the proceedings. Objections to camera coverage will be considered at this time.

**GUIDELINE 15. CEREMONIAL PROCEEDINGS**

Permission for camera coverage of ceremonial proceedings involving the judiciary must be obtained from the Court. The Court shall routinely grant such requests subject to compliance with the foregoing guidelines.

**NEW MEXICO**

N.M. STAT. ANN. JUD. VOL., CODE OF JUD. CONDUCT CANON 21-300(A)(8) (1994): A JUDGE SHALL PERFORM THE DUTIES OF OFFICE IMPARTIALLY AND DILIGENTLY.

A judge shall not permit media personnel and equipment in the courtroom except as may be permitted by rules approved by the supreme court.

N.M. STAT. ANN. JUD. VOL., MUN. CT. R. P. ART. I, R. 8-102 (WEST 1994): CONDUCT OF COURT PROCEEDINGS.

A. JUDICIAL PROCEEDINGS. Cameras shall not be permitted to cover judicial proceedings except upon express approval of the supreme court.<sup>78</sup>

B. NONJUDICIAL PROCEEDINGS. Camera coverage of nonjudicial proceedings, designed and carried out primarily as ceremonies, may be allowed with the permission and under the supervision of the court.

N.M. STAT. ANN. JUD. VOL., S. CT. GEN. R. 23-104 (WEST 1994): CONDUCT OF COURT PROCEEDINGS.

A. JUDICIAL PROCEEDINGS. Camera coverage of court proceedings in the appellate, district and metropolitan courts is authorized in accordance with Canon 21-300 of the Code of Judicial Conduct.

B. NONJUDICIAL PROCEEDINGS. Camera coverage of nonjudicial proceedings, designed and carried out primarily as ceremonies, may be allowed with the permission and under the supervision of the court.

N.M. STAT. ANN., S. CT. GEN. R. 23-107 (WEST 1994): BROADCASTING, TELEVISIONING, PHOTOGRAPHING AND RECORDING OF COURT PROCEEDINGS; GUIDELINES.

Camera coverage is allowed in the supreme court, court of appeals, district and metropolitan courts in accordance with the

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<sup>78</sup> Cameras would introduce extraneous influences which tend to have a detrimental psychological effect on participants and to divert them from the proper objectives of the trial. N.M. STAT. ANN. JUD. VOL., MUN. CT. R. P. art. I, r. 8-102(A).

guidelines below.

- A. Live coverage shall not be limited by the objection of counsel or parties, except that the court may deny coverage for good cause.<sup>79</sup>
  - (1) Camera coverage is subject at all times to the authority of the judge to: (A) control the conduct of proceedings; (B) ensure decorum and prevent distraction; and (C) ensure the fair administration of justice.
  - (2) The presiding judge has the sole and plenary discretion to exclude coverage of certain witnesses.<sup>80</sup>
  - (3) Neither the jury, nor any member of the jury may be filmed in or near the courtroom. Jury selection shall not be filmed.
  - (4) The judge may forbid coverage whenever he is satisfied that coverage may have a deleterious effect on the paramount right of the defendant to a fair trial.
  - (5) No coverage of a tender of evidence offered for the purpose of determining admissibility shall be permitted.
  - (6) No coverage of a conference in the courtroom between members of the court, between court and counsel, between co-counsel, or between counsel and client shall be permitted.

...  
G. OBJECTIONS LIMITED.

- (1) An appellate court shall not review any order or ruling of any judge under these rules at the request of the news media seeking to exercise a privilege under these rules.
- (2) Any party may object to cameras in the courtroom. The trial judge shall state on the record the reasons for the ruling on such an objection.

- H. IMPERMISSIBLE USE OF MEDIA MATERIAL. No recording developed during coverage of a judicial proceeding shall be admissible as evidence in the proceeding, in any subsequent or

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<sup>79</sup> See *State v. Hovey*, 742 P.2d 512 (N.M. 1987) (sixteen year old convicted of killing his parents) (defendant's unsupported allegations that television cameras made him nervous was insufficient to show that trial judge acted in error by allowing camera coverage of defendant's testimony; the court does acknowledge, however, that cameras may make a defendant nervous or "rattled" and modification of the Supreme Court rules may be necessary to emphasize this danger of intimidation); *State ex rel. New Mexico Press v. Kaufman*, 648 P.2d 300 (N.M. 1982) (penitentiary riot-related murder case) (a judge's finding of good cause must be supported in the record by evidence sufficient to lead the court to believe that cameras in the courtroom would result in an unfair trial to the defendant).

<sup>80</sup> Includes, but is not limited to, victims of sex crimes and their families, police informants, undercover agents, relocated witnesses, and juveniles. N.M. STAT. ANN., S. CT. GEN. R. 23-107(A)(2).

collateral proceeding, or upon any retrial or appeal of such proceeding.

- I. OTHER COURTS. Cameras are prohibited in any courts other than the appellate, district, and metropolitan courts.

## NEW YORK

N.Y. JUD. L. APP., CODE OF JUD. CONDUCT CANON 3(A) (7) (McKINNEY 1994).

A judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses, except:

- (A) for the presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) coverage of investitive, ceremonial, or naturalization proceedings;
- (C) appropriate court proceedings where (i) the recording will not distract participants or impair the dignity of the proceedings; (ii) parties and appearing witnesses have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

N.Y. JUD. L. § 218 (CONSOL. 1994): AUDIO-VISUAL COVERAGE OF JUDICIAL PROCEEDINGS.<sup>81</sup>

The chief judge of the state or his designee may authorize an experimental program in which presiding trial judges, in their discretion, may permit camera coverage of civil and criminal court proceedings, including trials.<sup>82</sup>

...

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<sup>81</sup> The provisions of this section expire on January 31, 1995. There are two proposed amendments which would extend this allowance of cameras in the courtroom. One, introduced in the New York Senate, S. 496, prefiled January 4, 1995, would extend the application of this section through July 31, 1997. This proposal would also create a committee to review camera coverage and to report on the compliance with and effect of camera coverage both inside and outside the courtroom. The other, introduced in the Assembly, A. 664, prefiled January 4, 1995, would adopt this section as a permanent order.

The New York State Defenders Association, Inc. has expressed its disapproval of any extension of the experiment allowing cameras in the courtroom. See Memorandum Concerning S.496 and A.664 (1995) (Re: Audio-Visual Coverage of Courtroom Proceedings) (N.Y. State Defenders Assoc., Inc.).

<sup>82</sup> *In re Application to Conduct Audio-Visual Coverage of Oles v. Houston*, 525 N.Y.S.2d 1008 (N.Y. Civ. Ct. 1988), was the first case invoking the experimental rule allowing camera coverage in a civil proceeding. The court created a presumption that "absent compelling reasons," all civil proceedings should be open to camera coverage in accord with this rule.

3. REQUESTS FOR COVERAGE OF PROCEEDINGS; ADMINISTRATIVE REVIEW.

...

(B) Permission for camera coverage shall be at the discretion of the presiding trial judge. An order allowing coverage shall be subject to further judicial review by the appropriate administrative judge; there shall be no further review during the pendency of the proceeding before such trial judge.<sup>83</sup>

(C) The presiding judge shall, at a minimum, consider the following factors: (i) the type of case involved; (ii) whether coverage would cause harm to any participant;<sup>84</sup> (iii) whether any order directing exclusion of witnesses from the courtroom prior to testimony could be rendered substantially ineffective; (iv) whether such coverage would interfere with any law enforcement activity; or (v) whether the proceedings involve lewd or scandalous matters.<sup>85</sup>

(D) A request for coverage made after the start of trial proceedings shall not be granted unless, (i) counsel for all parties consent, or (ii) the request is for coverage of sentencing.<sup>86</sup>

4. SUPERVISION OF AUDIO-VISUAL COVERAGE; MANDATORY PRETRIAL CONFERENCE; JUDICIAL DISCRETION.

(A) In supervising camera coverage, in particular, coverage of any proceedings involving lewd or scandalous matters, a judge shall, where necessary for the protection of any participant or to preserve the welfare of a minor, prohibit all or any part of the coverage of such participant, minor or

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<sup>83</sup> See *New York Times Co. v. Bell*, 523 N.Y.S.2d 807 (N.Y. App. Div. 1988) (administrative judge's ruling upholding exclusion of camera coverage is part of the criminal trial record and is not subject to review in an Article 78 proceeding).

<sup>84</sup> See *In re Katherine B.*, 596 N.Y.S.2d 847 (N.Y. App. Div. 1993) (child protective proceeding) (ten year old sexual abuse victim's request that cameras be barred from the courtroom was ultimately granted; court found that opening courtroom to press and public would revictimize the child and harm her emotionally).

<sup>85</sup> See *In re Application to Conduct Audio Visual Coverage of State v. Gregory M.*, 1994 WL 681156 (N.Y. Fam. Ct. 1994) (defendant was convicted of felony murder and manslaughter) (court found that camera coverage would cause harm to participant by making defendant reluctant to testify in his own behalf, would interfere with the fair administration of justice by affecting testimony of witnesses, and would be inappropriate due to the physical structure of the courtroom which wouldn't allow for camera coverage without disturbance).

<sup>86</sup> But see *People v. Shattell*, 578 N.Y.S.2d 694 (N.Y. App. Div. 1992) (defendant convicted of second degree murder) (finding that cameras were not brought into the courtroom until after four witnesses had already testified did not support assertion that jury would give less weight to testimony which wasn't recorded and cause reversible prejudice).

exhibit.

...

- (c) There shall be no limit on the exercise of discretion, except as provided for by law. The presiding judge may, at any time, modify or reverse a prior order.

5. CONSENT.

- (A) Camera coverage of judicial proceedings, except arraignments and suppression hearings, shall not be limited by the objection of counsel, parties, or jurors, except for a finding by the presiding judge of good or legal cause.<sup>87</sup>
- (B) Camera coverage of arraignments and suppression hearings shall be permitted only with the consent of all parties, provided, where a party is not yet represented by counsel, that party has been advised of his or her right to the aid of counsel and has affirmatively elected to proceed without representation at such proceeding.
- (C) Counsel for each party shall advise each non-party witness of the right to have his or her image visually obscured during testimony. Upon such request, the judge shall order the media to obscure the visual image of that witness.

6. RESTRICTIONS RELATING TO EQUIPMENT AND PERSONNEL; SOUND AND LIGHT CRITERIA.

...

(B) SOUND AND LIGHT CRITERIA:

...

- (III) No light or signal visible or audible to trial participants shall be used on any recording equipment to indicate whether it is operating.

7. RESTRICTIONS ON AUDIO-VISUAL COVERAGE. The presiding judge shall have the discretion throughout the proceeding to revoke or limit coverage, including photography or broadcast of the proceedings or the name or features of any participant.

- (A) No audio pickup or broadcast of conferences in a court facility between attorneys and clients, between co-counsel, or between counsel and presiding judge, shall be permitted without the express consent of all participants in the conference;

...

- (c) No camera coverage of the selection of prospective jurors

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<sup>87</sup> See *In re Application to Conduct Audio-Visual Coverage of People v. Solomon*, 524 N.Y.S.2d 1012 (Suffolk County Ct. 1988) (defendant charged with second degree murder) (camera coverage allowed over defendant's objection that coverage would violate witnesses' privacy and unduly influence and prejudice jurors).



during voir dire shall be permitted;

- (D) There shall be no camera coverage of the jury, any juror or alternate juror, while in the jury box, the courtroom, the deliberation room during recess, or while going to and from the deliberation room, provided that, with consent of the foreperson, the judge may allow audio coverage of the verdict delivery;
- (E) There shall be no camera coverage of a witness who, as a peace or police officer, acted in a covert or undercover capacity in connection with the proceeding, without the prior written consent of such witness;
- (F) There shall be no camera coverage of witness who, as a peace or police officer, is currently engaged in a covert or undercover capacity, without the prior written consent of such witness;
- (G) There shall be no camera coverage of the victim in a prosecution for rape, sodomy, sexual abuse, or other sex offenses, except that the victim may request that the judge allow coverage of his or her testimony, or may request that coverage of the testimony be allowed but that his or her image be visually obscured.

...

- (J) There shall be no camera coverage of a participant if the judge finds that such coverage is liable to endanger any person;

...

- (L) There shall be no camera coverage which focuses on or features a family member of a victim or party in the trial of a criminal case, except while such family member is testifying. Camera operators shall make all reasonable efforts to identify these individuals, so that such coverage will not occur.

8. VIOLATIONS. Any violations of an order issued under this section shall be punishable as contempt.

N.Y. R. CT. PT. 29 (McKINNEY 1994): ELECTRONIC RECORDING AND AUDIO-VISUAL COVERAGE OF COURT PROCEEDINGS.<sup>88</sup>

§ 29.1(A) Cameras are forbidden unless permission of the Chief Administrative Judge or Chief Administrator of the court or designee of the above is obtained, and the permission of the presiding justice or judge is obtained.

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<sup>88</sup> This rule is not currently in effect. It will take effect only when a third section, § 29.3, is adopted.

Such permission may be granted if:

- (1) there will be no detraction from the dignity or decorum of the courtroom or courthouse;
- (2) there will be no compromise of the safety of persons having business in the courtroom or courthouse;
- (3) there will be no disruption of court activities; and
- (4) there will be no undue burden upon the resources of the courts.

Permission shall not be granted for cameras in any trial court unless § 29.3 of this Part becomes effective. None of these provisions apply to photographing, taping or videotaping by parties to the litigation and not for public dissemination.

## § 29.2 APPELLATE COURTS

...

- (F) CONFERENCES OF COUNSEL. There shall be no audio pickup of conferences in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge at the bench, without express consent of all participants in the conference.
- (G) CONSENT NOT REQUIRED. Camera coverage of appellate arguments shall not be limited by the objection of counsel or parties, except for good cause shown.
- (H) APPELLATE REVIEW. An order granting or denying camera access shall not be appealable under these rules except as otherwise provided and authorized by law.

N.Y. R. CT. PT. 131 (McKINNEY 1994): AUDIO-VISUAL COVERAGE OF JUDICIAL PROCEEDINGS.

## § 131.4 DETERMINATION OF THE APPLICATION

...

- (B)(1) Except as otherwise provided, consent of the parties, prospective witnesses, victims, or other participants is not required for judicial approval of camera coverage.<sup>89</sup>
- (2) Where an application for camera coverage is made after the commencement of a trial pro-

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<sup>89</sup> See *People v. Parise*, 523 N.Y.S.2d 962 (N.Y. Crim. Ct. 1988) (manslaughter charge; defendant's pit bull attacked and killed the victim) (the Federal Constitution does not prohibit broadcasting of a criminal trial over the defendant's objection).

ceeding in which a jury is sitting, approval shall not be granted unless all counsel to parties consent, except where coverage is limited to the verdict, sentencing or both.

- (3) Counsel to each party shall advise non-party witnesses of the right to request that his or her image be visually obscured during testimony. The judge shall order the media to obscure the visual image of the witness upon request.
- (c) In determining an application for coverage, the trial judge shall consider all relevant factors<sup>90</sup>, including but not limited to:
  - (1) the type of case;<sup>91</sup> and whether
  - (2) coverage would harm any participant;
  - (3) coverage would interfere with the fair administration of justice, advancement of a fair trial, or the rights of the parties;
  - (4) exclusion of a witness from the courtroom prior to their testimony would be rendered ineffective by allowing audio-visual coverage that could be viewed by such witness to the detriment of any party;
  - (5) coverage would interfere with any law enforcement activity;
  - (6) the proceedings would involve lewd or scandalous matters;<sup>92</sup>
  - (7) there have been objections by any parties, prospective witnesses, victims, or other participants;
  - (8) the physical structure of the courtroom will al-

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<sup>90</sup> See *Olesh v. Olesh*, 540 N.Y.S.2d 123 (N.Y. Sup. Ct. 1989) (mem.) (divorce proceedings) (applications for audio-visual coverage should be denied because of the type of case, other statutes enacted by legislature, the age of witnesses, and the testimony to be elicited).

<sup>91</sup> Referring to N.Y. DOMESTIC RELATIONS LAW § 235 (McKinney 1994), which describes why matrimonial cases should not be subject to public view, the *Olesh* court stated:

"[T]he legislature felt [that these cases] were so sensitive, so personal and of such a delicate nature, it mandated that not only could the general public be barred from its view, but that all persons other than the parties and their attorneys are prohibited from examining any of the pleadings, affidavits, findings of fact, conclusions of law, etc. . . . [M]atrimonial matters can involve painful, even embarrassing details, which the parties should have a right to keep private."

*Olesh*, 540 N.Y.S.2d at 124.

<sup>92</sup> In *Olesh*, the court commented that rarely had they seen a case with more lewd and scandalous allegations than in this proceeding where lurid sexual conceptions were pleaded and counterclaimed. "The subject would appeal only to the most prurient of interests and if for no other reason than paragraph 5, this application should be denied." *Id.* at 124.

low for operation of cameras without disturbance to the proceedings or other proceedings in the courthouse; and

(9) coverage would be barred by law.

The presiding judge shall also consider and give great weight to the fact that any party, prospective witness, victim, or other participant is a child.

...

(E) Before denying an application for coverage, the presiding judge shall consider whether approval could be allowed if special limitations were imposed.<sup>93</sup>

## NORTH CAROLINA

N.C. CODE OF JUD. CONDUCT CANON 3(A)(7) (MICHIE 1993).

A judge should exercise discretion with regard to permitting cameras in the courtroom and areas immediately adjacent during civil or criminal sessions of court or recesses, pursuant to Rule 15 of the General Rules of Practice for the Superior and District Courts.

N.C. GEN. R. PRAC. SUPER. AND DIST. CTS. 15 (MICHIE 1993): ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE OF PUBLIC JUDICIAL PROCEEDINGS.

...

(B) COVERAGE ALLOWED.

Cameras shall be allowed in the appellate and trial courts, subject to the conditions below.

- (1) The presiding justice or judge shall, at all times, have authority to prohibit or terminate camera coverage in the courtroom or adjacent corridors.
- (2) Coverage is prohibited in: adoption and juvenile proceedings, proceedings held before clerks of court and magistrates, probable cause proceedings, child custody, divorce, and alimony proceedings, hearings of motions to suppress evidence, proceedings involving trade secrets, and in camera proceedings.

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<sup>93</sup> See *People v. Torris*, 529 N.Y.S.2d 954 (N.Y. Sup. Ct. 1988) (defendant stabbed a 65 year-old nun to death) (where N.Y. R. Cr. pt. 131, § 131.4(c)(2) is at issue, due to the court's concern for defendant's safety in incarceration if his face is associated with this highly emotional and unusual crime, the application for video coverage of sentencing may still be approved with the imposition of special limitations requiring that only the rear of defendant's head should be filmed). Special limitations include, but are not limited to: delayed broadcast, modification or prohibition of coverage of individual parties, witnesses or other participants, or modifications or prohibitions on coverage of portions of the proceeding. N.Y. R. Cr. pt. 131, § 131.4(e).

- (3) Coverage of witnesses who are police informants, minors, undercover agents, relocated witnesses, and victims and families of victims of sex crimes, is prohibited.
- (4) Coverage of jurors is prohibited expressly, including during jury selection. The judge shall inform all potential jurors of this provision at the start of the jury selection process.<sup>94</sup>

(C) LOCATION OF EQUIPMENT AND PERSONNEL.

...

- (2) Those in the courtroom are not to know when or if any cameras are in operation.
- (3) However, at the discretion of the presiding judge, cameras may be permitted to operate without the restrictions of 15(c)(2), if they can operate without distraction to the jurors and other participants. Permission may be withdrawn at any time.

...

(H) CONFERENCES OF COUNSEL.

There shall be no audio pickup of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge at the bench.

(I) IMPERMISSIBLE USE OF MEDIA MATERIAL.

No recording developed during coverage of a judicial proceeding shall be admissible as evidence in the proceeding, in any subsequent or collateral proceeding, or upon any retrial or appeal of such proceeding.

## NORTH DAKOTA

N.D. R. CT. X, R. 10.1(D) (MICHIE 1992).

Cameras are not allowed in the courtroom while proceedings are in progress, except those operated for official purposes, by or under the direction of the court.

N.D. R. CRIM. P. X, R. 53 (MICHIE 1992): REGULATION OF CONDUCT IN THE COURTROOM.

Cameras are not allowed in the courtroom during proceedings, except those operated for official purposes, by or under the direction of the court.

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<sup>94</sup> *But see* State v. Hudson, 415 S.E.2d 732 (N.C. 1992) (defendant murdered wife and daughter) (no basis for error found when court did not inform the jury that coverage of jurors is prohibited because the court did not want the jury to know that cameras were in the courtroom and defendant's counsel agreed that defendant would rather the jury not be informed).

N.D. ADMIN. R. AND ORDERS 21 (MICHIE 1992): ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS.<sup>95</sup>

A. Cameras are authorized in certain proceedings before the Supreme Court pursuant to the following:

...

5. DECORUM. The decorum and dignity of the Court, the courtroom, and the proceedings must be maintained at all times.

B. In the district, county, and municipal courts, a judge shall prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses except for:

1. presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
2. investigative or other ceremonial proceedings;
3. appropriate court proceedings where (i) the means of recording will not distract participants or impair the dignity of the proceedings; (ii) the parties and each appearing witness have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been concluded; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

C. In the district, county, and municipal courts, no cameras shall be allowed in the courtroom while proceedings are in progress, except those operated for official purposes, by or under the direction of the court.<sup>96</sup>

...

E. EXPANDED MEDIA COVERAGE.

...

2. GENERAL. Cameras may be permitted in the courtroom under the following conditions:

- i. The judge has expressly granted permission.
- ii. Coverage may be permitted for all or part of a proceeding, in the judge's discretion, unless the judge concludes for reasons stated on the record, that such coverage would materially interfere with the rights of parties to a fair trial.

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<sup>95</sup> "Proceedings" include all civil and criminal public trials, hearings, or other proceedings in a trial or appellate court, except those specifically excluded. N.D. Admin. R. and Orders 21E(1)(i).

<sup>96</sup> N.D. Admin. R. and Orders 21(C). Official purposes may include presentation of evidence, perpetuation of a record, or other purposes of judicial administration, and the broadcasting or other recording of investigative or other ceremonial proceedings.

- iii. Coverage of a witness may be refused by the judge upon a showing of good cause by the witness or a party. In prosecutions under Chapter 12.1-20, NDCC, or where such offenses are an included offense or essential element of the charge, there will be no coverage of the testimony of an adult victim/witness without consent. There will be no coverage of a juvenile victim/witness in proceedings involving illegal sexual activity as an element of the evidence. Objections to coverage by a victim/witness in any other forcible felony, by police informants, undercover agents, and relocated witnesses, shall enjoy a rebuttable presumption of validity.
- iv. Coverage is prohibited of any court proceeding required under North Dakota law to be held in private. No coverage shall be permitted in any juvenile court, divorce, involuntary commitment, conservatorship, guardianship, adoption, child custody, or trade secret cases without consent, on the record, from all parties.<sup>97</sup>
- v. Coverage of jury selection is prohibited. Coverage of jurors is prohibited except to the extent it is unavoidable in coverage of other courtroom proceedings. Prolonged or unnecessary coverage of individual jurors is prohibited. Coverage of the return of the verdict is permitted.
- vi. There shall be no audio pickup of conferences in a proceeding between attorneys and clients, between co-counsel, between counsel and the judge at the bench, or between judges in appellate proceedings.
- ...
- viii. Notwithstanding other provisions of this Rule, the judge may permit cameras in variance with these rules upon application by the media.
- ix. The judge may limit or terminate coverage at any time if the judge finds that (1) guidelines have been violated, or (2) substantial rights of individual participants or rights to a fair trial will be prejudiced.
- ...
- xi. Coverage of investigative or ceremonial proceedings

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<sup>97</sup> Consent from all parties includes a requirement of consent from the parent or guardian of a minor child. N.D. Admin. R. and Orders 21(E)(2)(iv).

may be authorized at variance with these rules as the judge sees fit.

- xii. There shall be no appeal from any ruling of a judge concerning camera coverage.

...

- 4(i). All equipment must operate such that participants in the proceedings are unable to determine when recording is occurring.

NOTE: Administrative Rule 21 NDRPR has been implemented in Barnes, Dickey, Eddy, Foster, LaMoure, Ransom, Richland, Sargent, and Stutsman county and municipal courts, per SE JUD. DIST., N.D. CT. P. AND ADMIN. R. POLICY 1: ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF COURT PROCEEDINGS. These courts shall prohibit cameras in the courtroom and adjacent areas as provided in Rule 21 and consistent with Rule 53 of N.D. R. of Crim. Pro. and Rule 10.1 of the N.D. Rules of the Court.

## OHIO

OHIO CODE OF JUD. CONDUCT CANON 3(A)(7) (PAGE 1994).<sup>98</sup>

Cameras should be permitted in trial and appellate courtrooms for:

- (A) presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) investitive, ceremonial, or naturalization proceedings; and
- (C) use by news media during sessions of the court, including recesses under the following conditions:
  - (i) advance, written permission should be expressly granted by the trial judge or appellate court<sup>99</sup>;
  - (ii) the trial judge or appellate court determines that cameras would not distract participants, impair the dignity of the proceedings, or otherwise interfere with a fair trial or hearing;<sup>100</sup>

<sup>98</sup> The Canons of Judicial Conduct, including Canon 3(A)(7), are mandatory, not directive. In adopting this Canon, the court assumes that camera coverage of a judicial proceeding is not per se inconsistent with a fair and impartial trial and trial court judges may not question the validity of this presumption. *State ex rel. Cosmos Broadcasting Corp. v. Brown*, 471 N.E.2d 874 (Ohio Ct. App. 1984); *State ex rel. Grinnell Communications Corp. v. Love*, 406 N.E.2d 809 (Ohio 1980).

<sup>99</sup> *But see Stelma v. Juguilon*, 597 N.E.2d 523 (Ohio Ct. App. 1992) (defendants not prejudiced by the court's failure to put oral permission for cameras in the courtroom into writing).

<sup>100</sup> Realtors have a right to notice, to adduce proof, and to cross-examine witnesses in connection with hearings on camera coverage in the courtroom. *State ex rel. Miami Valley Broadcasting Corporation v. Kessler*, 413 N.E.2d 1203 (Ohio 1980) (per curiam).



(III) coverage of objecting victims or witnesses shall not be permitted;

(IV) coverage of jurors shall not be permitted.

OHIO REV. CODE ANN. TIT. 19, R. SUPERINTENDENCE FOR MUN. CTS. AND CNTY. CT. 9 (PAGE 1994): CONDITIONS FOR BROADCASTING AND PHOTOGRAPHING COURT PROCEEDINGS.

(A) The presiding judge shall allow camera coverage as provided by Canon 3(A)(7) of the Code of Jud. Conduct.

...

(C) LIMITATIONS.

(1) There shall be no audio pick-up of conferences in a court facility between attorneys and clients or co-counsel, between counsel, or of conferences between counsel and the judge at the bench.

(2) The judge shall inform victims and witnesses of their right to object to being covered.

...

(4) Media representatives may not transmit or record anything other than court proceedings from the courtroom while the court is in session.

(D) Upon the failure of media to comply with imposed conditions, the judge may revoke the permissions for camera coverage.

NOTE: This rule has also been adopted verbatim in the Ohio Court of Common Pleas, per OHIO REV. CODE ANN TIT. 23, R. OF SUPERINTENDENCE CT. OF COMMON PLEAS 11 (PAGE 1994); and provisions substantially the same have been adopted in the Ohio Superior Court, per OHIO REV. CODE ANN., R. PRAC. OF SUP. CT. XV (PAGE 1994).<sup>101</sup>

## OKLAHOMA

OKLA. ST. ANN. TIT. 5, CH. 1, APP. 4, CANON 3(A)(7) (1994).

A judge may permit camera coverage in the courtroom during sessions of court and recesses, under the following conditions:<sup>102</sup>

(A) permission has been expressly granted by the judge;

(B) media personnel will not distract participants or impair the dignity of the proceedings; and

<sup>101</sup> The only difference being that in, OHIO REV. CODE ANN., R. Prac. of the Sup. Ct. XV(C) (Page 1994), there is no provision for informing victims and witness of the right to object, and the prohibition on audio pickup extends to all conferences at the bench (not limited to those between counsel and the judge).

<sup>102</sup> The decision to allow or exclude cameras in the courtroom is left to the discretion of the judge, and exclusion does not deny defendant the right to a public trial. *Cody v. State*, 361 P.2d 307 (Okla. Crim. App. 1961) (defendant convicted of rape) (no error found in excluding cameras from the courtroom).

- (c) no witness, juror, or party who expresses prior objection to the judge shall be covered.<sup>103</sup>
- (d) There shall be no coverage of proceedings which, under the laws of the state of Oklahoma are required to be held in private; and
- (e) There shall be no coverage of criminal proceedings, until after issues have been submitted to the jury, unless all accused then on trial have given consent, on the record, to the coverage.<sup>104</sup>
- ...
- (g) No witness, juror or party shall give their consent for any consideration, of any kind or character, either directly or indirectly.<sup>105</sup>

14 JUD. DIST., OKLA. CT. R. 9. (WEST 1994): PHOTOGRAPHS, BROADCASTING AND TELEVISION OF JUDICIAL PROCEEDINGS.

- 1. Except as expressly permitted by the judge, cameras are prohibited: (A) inside a courtroom, and (B) in the immediate vicinity of a courtroom.<sup>106</sup>
- ...

- 3. The Presiding Judge or an individual Judge, may promulgate special rules governing camera coverage for specific proceedings and events, notwithstanding the above and foregoing rules.<sup>107</sup>

## OREGON

OR. R. APP. P. (PUBLISHER'S APPENDIX) (1991): TELEVISION CAMERAS, STILL PHOTOGRAPHY AND AUDIO RECORDING IN APPELLATE COURTS.

<sup>103</sup> Where a defense attorney agrees to the presence of cameras in the courtroom, but does not try the case to the press, there is no showing of ineffective assistance of counsel. *Stafford v. Oklahoma*, 669 P.2d 285 (Okla. Crim. App. 1983).

<sup>104</sup> See *Brennan v. State*, 766 P.2d 1385 (Okla. Crim. App. 1988) (per curiam) (murder conviction with death penalty sentence) (trial judge committed prejudicial error in permitting filming of the sentencing hearing over the objection of the defendant). There is no error in allowing camera coverage where the defendant approves of the coverage, and no prejudice results. *Stafford v. State*, 697 P.2d 165 (Okla. Crim. App. 1985).

<sup>105</sup> Oklahoma is one of only two states (Utah is the other) that has recognized a potential problem with witnesses or parties using the consent requirement as a means of making money off of their testimony. It would not be difficult to imagine a witness offering to consent to coverage if the media pays them some sum in compensation. This type of activity would certainly detract from the dignity of the court. In addition, it would create incentive for "juicy" testimony and could perpetuate exaggerated or false testimony. See *infra* note 124.

<sup>106</sup> "Immediate vicinity" includes hallways, except the area between public elevators. 14 Jud. Dist., Okla. Ct. R. 9(1)(b).

<sup>107</sup> Any judge may permit camera coverage of investigative, ceremonial or naturalization proceedings or any moot court trial use for education or scientific purposes. 14 Jud. Dist., Okla. Ct. R. 9.

Camera coverage of public judicial proceedings in appellate courts shall be allowed, subject at all times to the authority of the Chief Justice or presiding judge to (A) control the conduct of proceedings before the court, (B) ensure decorum and prevent distractions, and (C) ensure the fair administration of justice in the pending cause.

OR. UNIF. TRIAL CT. R. 3.180 (1991): MEDIA COVERAGE OF COURT EVENTS.

- (1) Upon request or sua sponte, and after notice to all parties, a judge may allow camera coverage in a trial courtroom or any area of the courthouse in accordance with the following standards of conduct:
  - (A) A judge has the discretion to deny coverage if the judge makes findings, on the record, setting forth substantial reasons for the denial. The judge shall not allow coverage if there is a reasonable likelihood that such coverage would:
    1. interfere with the rights of the parties to a fair trial or would affect the presentation of evidence or outcome of the trial; or
    2. unduly detract from the solemnity, decorum, or dignity of the court; or
    3. interfere with the efficient administration of justice due to any cost or increased burden.
  - (B) No camera coverage of the following proceedings shall be permitted: all dissolution, juvenile, paternity, adoption, custody, visitation, support, mental commitment, trade secrets, and family abuse prevention act restraining order proceedings, and , at a victim's request, sex offense proceedings, and any other proceeding in which the publicity might impair the fairness of a future trial.
  - (C) Without the trial judge's permission, there shall be no camera coverage of the following: recesses, proceedings in chambers, conferences between counsel and the judge at the bench, conferences between counsel and their clients, and proceedings from which the jury is excluded.
  - (D) There shall be no camera coverage of any juror, anywhere in the courthouse.
  - (E) Each witness, except a party-witness in civil cases, shall be informed that television coverage will be allowed. Each such witness shall have the right to refuse to be subject to television coverage in advance of testifying.

- ...
- (c) A judge may, if based on substantial reasons, on the record, impose such restrictions or limitations as necessary to preserve the dignity of the court and to protect the parties, witnesses, and jurors. A judge may terminate coverage at any time upon finding that:
1. rules imposed by the judge or this rule have been violated; or
  2. substantial rights of individual participants or rights to a fair trial will be prejudiced or the outcome of the case will be affected by coverage.

## PENNSYLVANIA

PA. CODE OF JUD. CONDUCT CANON 3(A)(7) (WEST 1994).

A judge should prohibit cameras in the courtroom<sup>108</sup> and areas immediately adjacent during sessions of the court or recesses, except:

- (A) for the presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) coverage of investitive, ceremonial, or naturalization proceedings;
- (C) appropriate court proceedings where (i) the recording will not distract participants or impair the dignity of the proceedings; (ii) parties and appearing witnesses have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.
- (D) However, in any trial court non-jury civil proceeding<sup>109</sup>, subsections (iii) and (iv) of section (c), shall not apply. No witness or party who expresses prior objection to the judge shall be photographed nor shall their testimony be broadcast. Permission for camera coverage of civil non-jury proceedings shall have first been expressly granted by the judge.

42 PA. CONS. STAT. ANN., R. CRIM. P. 27(A)(1) (1989).

<sup>108</sup> See *Commonwealth v. Davis*, 635 A.2d 1062 (Pa. Super. Ct. 1993) (radio personality on trial for criminal homicide) (in criminal cases, if photography is prohibited during judicial proceedings in the courtroom, then it is also prohibited anywhere that such proceedings are held, including where jury is viewing crime scene).

<sup>109</sup> "Civil proceedings" shall not include support, custody, or divorce proceedings. PA. CODE OF JUD. CONDUCT Canon 3(A)(7)(d).

Cameras are not allowed during hearings or summary trials.<sup>110</sup>  
42 PA. CONS. STAT. ANN., R. CRIM. P. 328 (1989).

Cameras are not allowed in the courtroom or its environs during or in connection with any judicial hearing, whether or not the court is actually in session.<sup>111</sup> This rule does not apply to proceedings such as naturalization or investitive ceremonies.

42 PA. CONS. STAT. ANN., R. CONDUCT DIST. JUSTICES 7 (1990).

District justices shall prohibit camera coverage in the courtroom and areas immediately adjacent during sessions or recesses except for:

- (1) presentation of evidence, perpetuation of the record, or other purposes of judicial administration; and
- (2) investitive or ceremonial proceedings.

## PUERTO RICO

P.R. LAWS ANN. TIT. 4, APP. XIX (1993): RULES FOR VIDEOTAPING IN COURTS.

### R. 1.1. USE IN CRIMINAL CASES

Videotaping equipment may be used in criminal cases, with defendant's consent, to: perpetuate expert testimony or testimony of witnesses who will not be available to testify. They may also be used with defendant's and prosecution's consent as a substitute for views and inspections, to warn defendant of his rights, and to give general instructions to the jury.<sup>112</sup>

...

### R. 1.3. DISCRETION OF COURT

The preceding enumeration of uses for videotaping equipment shall not limit the Court's discretion to order other uses it may deem necessary.

## RHODE ISLAND

R.I. SUP. CT. R. ART. VII (MICHIE 1993): MEDIA COVERAGE OF JUDICIAL PROCEEDINGS, RULES OF MEDIA ACCESS.<sup>113</sup>

<sup>110</sup> Recordings may be made only as an aid to the preparation of the written record for subsequent use in a case. Such recordings may not be disseminated in any manner outside a court hearing or trial. 42 PA. CONS. STAT. ANN., R. CRIM. P. 27(a)(2).

<sup>111</sup> The environs of a courtroom is defined as the area immediately surrounding the entrances and exits. 42 PA. CONS. STAT. ANN., R. CRIM. P. 328. The fact that violations take place, not in the courtroom, but in the precincts of the court does not invalidate a finding of contempt for the media's violation of the rule. *In re Mack*, 126 A.2d 679 (Penn. 1956).

<sup>112</sup> This rule applies within the limitations of the Rules of Criminal Procedure, P.R. LAWS ANN. tit. 34 app. II, and the Rules of Evidence, P.R. LAWS ANN. tit. 32 app. IV. P.R. LAWS ANN. tit. 4 app. XIX, R. 1.1.

<sup>113</sup> For a history of the evolution of the Rhode Island rules regarding camera coverage in the courtroom see Provisional Order No. 15, 431 A.2d 423 (R.I. 1981); see also *In re*

## CANON 3 COURT PROCEEDINGS

Cameras are allowed at judicial proceedings in the Supreme Court, Superior Court, District Court, Worker's Compensation Court, and Family Court, except that no media coverage is permitted in respect to juvenile proceedings, adoption proceedings, or other matters of the Family Court in which juveniles are significant participants.

- (A) COVERAGE OUTSIDE COURT PROCEEDINGS PROHIBITED.  
No camera coverage shall take place in the courthouse, except in the courtroom during proceedings. No cameras shall operate during recesses or at any other time when the trial justice is not present and presiding.
- (B) During or immediately proceeding a jury trial, there shall be no camera coverage during hearings which take place outside the presence of the jury.<sup>114</sup>

...

## CANON 9 CONFERENCES OF COUNSEL.

There shall be no audio pickup of conferences in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the trial justice at the bench.

## CANON 10 PHOTOGRAPHING OF JURORS.

There shall be no photographing during voir dire examination of prospective jurors. After jurors are sworn in, individual jurors shall not be photographed unless a juror(s) consents. In courtrooms where camera coverage is impossible without including the jury as unavoidable background, coverage is permitted, but closeups that clearly identify individual jurors are prohibited.

## CANON 11 EXCLUSION OF MEDIA BY TRIAL JUSTICE.

The trial justice may, in his or her sole discretion, prohibit camera coverage of a participant, either sua sponte or on the request of a participant. The trial justice may entirely exclude media coverage, in his or her sole discretion. A trial

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Permitting of Media Coverage for an Indefinite Period, 539 A.2d 976 (R.I. 1988); *In re* Extension of Media Coverage for a Further Experimental Period, 472 A.2d 1232 (R.I. 1984) (per curiam); *In re* Extension of Media Coverage for a Further Experimental Period, 454 A.2d 246 (R.I. 1982) (per curiam).

<sup>114</sup> Such hearings include, but are not limited to, motions to suppress evidence, motions for judgment of acquittal or directed verdict, hearings to determine competence or relevance of evidence, motions in limine, and motions to dismiss for legal inadequacy of the indictment, information or complaint (civil or criminal). R.I. Sup. Cr. R., art. VII, Canon 3(b).

justice's decision to exclude the media in whole or in part is not reviewable by the Presiding Justice, Chief Judge of the trial justice's court, or by the Supreme Court.<sup>115</sup>

**CANON 12 GOVERNANCE OF MEDIA BY CHIEF JUSTICE, PRESIDING JUSTICE OR CHIEF JUDGE.**

The Chief Justice of the Supreme Court, Presiding Justice of the Superior Court, or Chief Judges of the Family or District Court may, in their discretion, issue special orders concerning media and camera equipment in areas of the courthouse outside a courtroom that is subject to the control of a trial justice.<sup>116</sup>

**SOUTH CAROLINA**

**S.C. CODE ANN., APP. CT. R. 605 (LAW CO-OP. SUPP. 1993): MEDIA COVERAGE OF COURT PROCEEDINGS.**

...

**(B) GENERAL PROVISIONS.**

(1) Subject to this rule cameras are allowed in the courts.

...

(3) The presiding judge may refuse, limit, or terminate camera coverage of any case, portion of a case, or testimony of particular witnesses as may be required in the interest of justice.

**(C) LIMITATIONS.**

...

(2) There shall be no audio pickup of conferences in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge.

(3) Coverage of jurors during selection is prohibited. Jurors may not be photographed except when they happen to be in the background of other subjects.

...

**(E)(1) SOUND AND LIGHT CRITERIA.**

Devices which show when equipment is operating shall

<sup>115</sup> Because of their earlier opinions, which stated that the burden imposed on trial justices by the presence of cameras must be balanced by some benefit in increasing public understanding and education, and a finding that to date, the public educational value of camera coverage has been nearly imperceptible, the supreme court adopted rules allowing camera coverage but which stress the discretion reposed in the trial justice. *In re Permitting of Media Coverage for an Indefinite Period*, 539 A.2d 976 (R.I. 1988).

<sup>116</sup> The authority given to the administrative justices in Canon 12 is meant to enable them to deal effectively with problems that may arise in highly publicized trials, and to remove that burden from the trial justice. *Id.*

not be visible.

S.C. CODE ANN., APP. CT. R. 501, CANON 3(A)(7) (LAW CO-OP. 1991).

A judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses, except:

- (A) for the presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) coverage of investitive, ceremonial, or naturalization proceedings;
- (C) appropriate court proceedings where (i) the recording will not distract participants or impair the dignity of the proceedings;<sup>117</sup> (ii) parties and appearing witnesses have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

#### **SOUTH DAKOTA**

S.D. CODIFIED LAWS ANN. TIT. 16, CH. 16-2, APP., CANON 3(B)(12) (1994), REPEALED AND REENACTED BY SUP. CT. R. 93-15 (1993).

A judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses, except:

- (A) for the presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) coverage of investitive, ceremonial, or naturalization proceedings;
- (C) appropriate court proceedings where (i) the recording will not distract participants or impair the dignity of the proceedings; (ii) parties and appearing witnesses have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been exhausted; and (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

S.D. CODIFIED LAWS ANN. TIT. 23A, CH. 23A-44-16, R. 53 (1994): PHOTOGRAPHS, RADIO AND TELEVISION BROADCASTING PROHIBITED.

Camera coverage shall not be permitted in criminal court judicial proceedings.

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<sup>117</sup> "The recording and reproduction of a proceeding should not distort or dramatize the proceeding." Commentary to S.C. CODE ANN., APP. CT. R. 501, Canon 3.



**TENNESSEE**

TENN. R. SUP. CT. 10 CANON 3(A)(7) (1992).

- (A) The Supreme Court authorizes camera coverage of oral arguments in this court, subject to the guidelines below.
- (B) An appellate court may authorize camera coverage by court rule, in compliance with 7(A) above and the guidelines below.
- (C) A trial judge, in the exercise of sound discretion, may authorize camera coverage by court rule, according to the guidelines below. Media coverage in the trial court is subject to the following restrictions:
  - (i) Camera coverage must be pursuant to a plan authorized by the Supreme Court of Tennessee.
  - (ii) In criminal proceedings, all accused persons before the court during camera coverage shall have given written consent.<sup>118</sup>
  - (iii) The trial judge shall notify witnesses, jurors, parties, and attorneys of their right to object. At any time a witness, parent or guardian of a witness who is a minor, or a juror expressly objects to coverage, the judge shall immediately stop or suspend coverage of that person. At any time a party or attorney expressly objects to coverage, the judge shall immediately stop or suspend all further coverage.
  - (iv) Whenever, in the trial judge's discretion, the proceedings appear in immediate danger of becoming prejudicial, the judge shall immediately stop or suspend camera coverage.

**MEDIA GUIDELINES**

1. Camera coverage of proceedings is allowed in compliance with Canon 3A(7) of the Code of Judicial Conduct.
2. No camera coverage should detract from the dignity of court proceedings.
- ...
9. There shall be no audio pickup of conferences in a court facility, between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge at the bench, or of proceedings held when the jury is out.

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<sup>118</sup> *But see* State v. Harries, 657 S.W.2d 414 (Tenn. 1983) (defendant convicted of first degree murder) (no error found where defendant agreed to camera coverage and made no attempt to show that this coverage impacted the jury's decision).

...

13. These restrictions do not apply to investiture, ceremonial, or non-judicial proceedings.

#### HAMILTON COUNTY

HAMILTON, TENN. CRIM. CT. R. XV (1992): NEWS MEDIA COVERAGE.

##### A. AUDIO — VIDEO — PHOTOGRAPHIC EQUIPMENT.

1. One ceiling-mounted stationary television camera is permitted, if designed so that those in the courtroom will be unaware of its operations.

...

3. No other cameras or recording devices will be allowed on the third floor. A trial judge may authorize exceptions for investitive or ceremonial proceedings.

##### B. NOTICE, CONSENT, LIMITATIONS.

...

6. There will be no camera coverage of criminal proceedings, unless all accused persons have given written consent.
7. The trial judge shall notify witnesses, parties, and attorneys of their right to object. At any time a witness, or parent or guardian of a witness who is a minor expressly objects to coverage, the judge shall immediately stop or suspend coverage of that person. At any time a party or attorney expressly objects to coverage, the judge shall immediately stop or suspend all further coverage.
8. No juror or prospective juror will be photographed or recorded.
9. There shall be no audio pickup of conferences in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge at the bench.
10. Whenever, in the trial judge's discretion, the proceedings appear in immediate danger of becoming prejudicial, the judge shall immediately stop or suspend camera coverage.

- C(12). This rule does not apply to equipment used in the presentation of evidence, perpetuation of a record, or other purposes of judicial administration.

#### DAVIDSON COUNTY

DAVIDSON, TENN. JUV. CT. R. 24 (1992): MEDIA PLAN FOR AUDIO AND VIDEO RECORDING AND BROADCASTING OF JUVENILE COURT PROCEEDINGS.

## § 24.01 SCOPE.

Camera coverage in the courtroom of a trial or other judicial hearing is authorized by this plan. The Court reserves the authority to temporarily suspend or stop coverage whenever it finds the proceedings appear in imminent danger of becoming prejudiced.

## § 24.04 NOTICE.

## (A) GENERAL.

The court will notify and advise participants of their right to withhold consent, or to voice objection at any point in the proceeding.

## (B) SPECIAL PROCEDURE IN DELINQUENCY AND UNRULY CHILD CASES, CHILD NEGLECT AND ABUSE AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS, AND CRIMINAL CASES.

In delinquency and unruly child cases, child neglect and abuse and termination of parental rights proceedings, and criminal cases, all unrepresented parties who will be before the court during camera coverage shall have given written consent to such coverage. In proceedings concerning custody, placement, or disposition of a child, the child's attorney or guardian ad litem shall have given written consent. If the child is twelve years old or older, the child shall also have given written consent. In a criminal case, the accused shall have given written consent.

## (C) OBJECTIONS.

With the exceptions set forth in (b) above, it will be presumed that parties, attorneys and witnesses do not object unless they advise the Court otherwise. Objections by a witness will suspend coverage as to that person only.

## KNOX COUNTY

## KNOX, TENN. CRIM. CT. R. V (1992): MEDIA GUIDELINES.

(B) Camera coverage is controlled by Tenn. Sup. Ct. R. 10, Code of Jud. Conduct, Canon 3A(7).

(c) (i) No photography of any nature is allowed through the windows beside the Court's entrance doors.

(ii) The hallway behind the court is considered part of

chambers and no cameras are allowed.

(III) No photographs of jurors will be permitted.

KNOX, TENN. GEN. SESS. R. 14 (1992): MEDIA COVERAGE.

Cameras are allowed at proceedings in Court cases in compliance with Tenn. Sup. Ct. R. 10, Canon 3A(7), except the judge shall notify all witnesses, parties, and attorneys of their right to object to coverage. If objections are expressed, the judge shall suspend or stop coverage. Objections by witnesses will suspend coverage as to that person only. Whenever, in the Court's discretion, the proceedings appear in danger of being prejudicial to parties, the Court may suspend or stop coverage.

KNOX, TENN. CH. CT. R. 26 (1992): PHOTOGRAPHING, VIDEO AND SOUND RECORDING, AND BROADCASTING COURT PROCEEDINGS.

There shall be no camera coverage of Court proceedings without advance Court permission, and then only in accordance with such limitations as the Court may set to promote the administration of justice.

KNOX, DIV. I, II & III, TENN. CIR. CT., ADD. R. CONCERNING MEDIA (1992): GENERAL ORDER, IMPLEMENTED OCT., 19, 1979.

- A. Cameras are forbidden in courtrooms and environs during sessions of the Court, recesses, and arrivals and departures of participants. Interviewing or photographing jurors is prohibited at any time or place prior to the completion of trial.
- B. The Court, exercising discretion for the fair administration of justice and consistent with proper dignity and decorum, may allow cameras in a specific case, invoking Subsection B. The granting of such privilege is conditioned on the following circumstances:

...

4. The parties (prosecutors and defendants), and their respective attorneys shall have given written consent, approved and accepted by the Court.

...

6. Within the guidelines of Tenn. Sup. Ct. R. 10, Canon 3A(7), the Court may authorize camera coverage of all proceedings except:

- (A) jury voir dire;
- (B) out-of-court activities of sequestered jurors;
- (C) appearance and testimony of objecting witnesses;
- (D) proceedings conducted in a jury-out hearing;
- (E) audio pickup of conferences in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and presiding judge at the

- bench; and  
(F) the appearance and participation of any objecting juror.

...

15. Members of the media shall take special precaution and not make any comment within hearing range of the jurors.<sup>119</sup>

...

18. Whenever, in the trial judge's discretion, the proceedings appear in immediate danger of becoming prejudicial, the judge shall immediately stop or suspend camera coverage.

## TEXAS

TEX. R. CIV. P. ANN. 18C (WEST 1994): RECORDING AND BROADCASTING OF COURT PROCEEDINGS.

A trial court may permit camera coverage of courtroom proceedings only in the following circumstances:<sup>120</sup>

- (A) in accordance with guidelines promulgated by the Supreme Court for civil cases, or
- (B) when camera coverage will not unduly distract participants or impair the dignity of proceedings and parties and appearing witnesses have consented, or
- (C) the proceedings are investiture or ceremonial.

TEX. R. APP. P. 21 (WEST 1994): RECORDING AND BROADCASTING OF COURT PROCEEDINGS.

Any trial or appellate court may permit camera coverage of proceedings in the courtroom only in the following circumstances:

- (A) in accordance with guidelines promulgated by the Supreme Court or the Court of Criminal Appeals, or
- (B) when camera coverage will not unduly distract participants or impair the dignity of proceedings<sup>121</sup> and
  - (i) parties and appearing witnesses have consented, or
  - (ii) in the case of oral arguments in appellate courts, when approved by court order, or

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<sup>119</sup> This is a safeguard not explicitly listed in other state statutes. Though the problem may not be exclusive to media members operating cameras in the courtroom, it is, nonetheless, an important protection.

<sup>120</sup> See *Duffy v. State*, 567 S.W.2d 197 (Tex. Crim. App. 1978) (defendant convicted of capital murder) (cameraman arrested for filming jurors as they left courtroom; no prejudice to defendant where incident did not affect jurors' deliberations).

<sup>121</sup> See *Bradley v. State*, 450 S.W.2d 847 (Tex. Crim. App. 1969) (wife killed her husband) (no error where court allowed cameras to operate during recesses, and photos were taken of the court in session from outside the courtroom even following defendant's objection to filming of testimony).

- (c) the proceedings are investiture or ceremonial.

## UTAH

UTAH CODE JUD. ADMIN. PT. 1, CH. 12, CANON 3(A) (MICHIE 1993):  
ADJUDICATIVE RESPONSIBILITIES.<sup>122</sup>

- ...
- (7) A judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses, except:
- (A) for the presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
  - (B) for coverage of investitive, ceremonial, or naturalization proceedings.
- (8) A judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses, except that still photographs of the judge, court personnel, counsel, spectators, parties and witnesses are permissible. Parties and witnesses, must give advance written consent, provided the court shall specifically forbid the taking of any photographs where it finds a substantial likelihood that such activity would jeopardize a fair hearing or trial.

UTAH SUP. CT. ORDER 20269, 727 P.2D 198, APP., DATED OCT. 8, 1986:  
GUIDELINES FOR EXPERIMENTAL USE OF CAMERAS IN THE UTAH SUPREME COURT.<sup>123</sup>

- ...
- (2) Nothing in these guidelines limits or restricts the power of the Chief Justice to control the conduct of the proceedings before the Supreme Court. If media access should be denied, written findings in support of that decision will be made.
- (3) Permission for camera coverage may be revoked at any time if it appears that coverage is interfering with the proper administration of justice.
- ...

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<sup>122</sup> *In re* Petition of KSL TV for Modification of Canon 3(A)(7) and (8) of the Utah Code of Judicial Conduct, 816 P.2d 1222 (Utah 1991) permanently suspends Canon 3(A)(7) and (8) as applied to the Supreme Court, though the Canon remains in effect for all other courts in Utah.

<sup>123</sup> See *In re* Petition of KSL TV for Modification of Canon 3(A)(7) and (8) of the Utah Code of Judicial Conduct, 816 P.2d 1222 (Utah 1991) (makes permanent the authorization in docket number 20269, 727 P.2d 198, dated Oct. 8, 1986). For an overview of the progression of camera coverage rules in Utah, see also Petition of Society of Professional Journalists, Modification of Canon 3(A)(7) of the Utah Code of Professional Conduct, 727 P.2d 198 (Utah 1986); *In re* Modification of Canon 3(A)(7) of the Utah Code of Judicial Conduct 628 P.2d 1292 (Utah 1981) (per curiam).

- (5) The court clerk shall notify all parties of requests for coverage. If a party objects, the Court shall consider objections in determining whether coverage should be granted.
- (6) No reproduction of a judicial proceeding shall be admissible as evidence in any retrial, subsequent, or collateral proceeding.

UTAH CODE JUD. ADMIN. PT. 1, CH. 4, ART. 4, R. 4-401 (MICHIE 1991):  
MEDIA IN THE COURTROOM.

(1) AUTHORITY.

- (A) The authority of a court conferred by statute, rule, or common law to control the conduct of proceedings shall not be diminished.

...

- (D) Still photographic equipment may be allowed in the courtroom at the discretion of the presiding judge.

- (E) The court reserves the right to deny the use of still photography if there is a substantial likelihood that such coverage would jeopardize a fair hearing or trial.

(2) CONSENT.

- (A) Written consent of the parties and witnesses shall be obtained 24 hours prior to coverage, absent good cause shown.

- (B) Any party or witness may withdraw consent by notifying the judge who shall then require the photography to stop.

- (C) No party or witness shall give consent for any consideration, of any kind or character, either directly or indirectly.<sup>124</sup>

...

- (G) Written consent of the parent or guardian of minor parties or witnesses shall be obtained.

...

- (4)(B) Photographing of individual jurors is prohibited in all instances. Special care shall be taken not to photograph or record actions or words of jurors which would allow identification of an individual juror until the jury returns its verdict.

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<sup>124</sup> Utah is one of only two states (Oklahoma is the other) that has recognized a potential problem with witnesses or parties using the consent requirement as a means of making money off of their testimony. It would not be difficult to imagine a witness offering to consent to coverage if the media pays them some sum in compensation. This type of activity would certainly detract from the dignity of the court. In addition, it would create incentive for "juicy" testimony and could perpetuate exaggerated or false testimony. See *supra* note 105.

**VERMONT**

VT. STAT. ANN. ADMIN. ORDER NO. 10, CANON 3(A)(7) (1993).

Except as authorized by Vermont Rules of Civil Procedure, Vermont Rules of Criminal Procedure, Vermont Rules of Probate Procedure, Vermont Rules of Appellate Procedure, and District Court Civil Rules, a judge should prohibit cameras in the courtroom and areas immediately adjacent during sessions of the court or recesses, except:

- (A) for the presentation of evidence, perpetuation of a record, or other purposes of judicial administration;
- (B) coverage of investitive, ceremonial, or naturalization proceedings.
- (C) coverage of appropriate court proceedings where (i) the means of recording will not distract participants or impair the dignity of proceedings; (ii) parties and appearing witnesses have consented; (iii) the reproduction will not be exhibited until after the proceeding and all direct appeals have been completed; and (iv) the reproduction will be exhibited only for instructional purposes.
- (D) coverage of appropriate court proceedings pursuant to an authorization in the Vermont Rules of Appellate Procedure.

VT. ST. ANN., R. CIV. P. 79.2 (1993): RECORDING COURT PROCEEDINGS.

- (A) GENERAL AUTHORITY. Camera coverage is generally permitted in the courtroom and areas immediately adjacent, except when the judge, sua sponte or on motion of a party or request of a witness, directs otherwise.<sup>125</sup>
- (B)(1) The Court may prohibit, terminate, limit or postpone camera coverage of a proceeding sua sponte or on the request of a party or witness.<sup>126</sup> The judge shall consider the following factors in ruling on a request:
  - (i) the impact on the rights of the parties to a fair trial;
  - (ii) the likelihood that a witness, alleged victim, or juror will avoid the obligation to appear, even if under subpoena or order;
  - (iii) the likelihood that a witness, alleged victim, or ju-

<sup>125</sup> "Proceeding" includes any event which occurs in open court in an action or court case to which Vermont Rules of Civil, Criminal, or Probate Procedure or District Court Civil Rules apply. VT. STAT. ANN., R. CIV. P. 79.2(a).

<sup>126</sup> The person seeking the order shall bear the burden of proving, by a preponderance of the evidence, that the court should prohibit, terminate, limit, or postpone the recording. VT. STAT. ANN., R. CIV. P. 79.2(b).



- ror will not responsibly perform his or her function;
- (iv) whether the private nature of the testimony outweighs its public value;
  - (v) the likelihood that physical, emotional, economic, or proprietary injury may be caused to a witness, party, alleged victim, or other person or entity;
  - (vi) the age, mental condition, and medical condition of the party, witness, or alleged victim;
  - (vii) the reasonable wishes of the parties, witnesses, alleged victim, next of kin, or other persons;
  - (viii) whether sequestration of the jury, delay in broadcast until after the verdict is announced, or some other means short of prohibition would protect the interests of the parties, witnesses, or other persons;
  - (ix) other good cause shown.
- (C) **MATTERS EXCLUDED.** There shall be no audio pickup of bench conferences and other conferences between members of the court, between co-counsel, or between counsel and client. No recording is allowed during recesses unless permitted by the presiding judge.
- (D) **PROHIBITION OF COVERAGE OF JURORS.** There shall be no recording of jurors or prospective jurors in the courtroom or areas immediately adjacent, or of sequestered jurors. In courtrooms where coverage is impossible without including jury as background, coverage is permitted, but closeups of individual jurors are prohibited.

- ...
- (G) **INTERLOCUTORY APPEALS.** There shall be no right of interlocutory appeal of any decision under this rule.

**NOTE:** This rule has been adopted verbatim in the Rules of Criminal Procedure, per VT. STAT. ANN., R. CRIM. P. 53 (1993); Rules of Probate Procedure, per VT. STAT. ANN., R. PROB. P. 79.2 (1993); and District Court Civil Rules, per VT. STAT. ANN. DIST. CT. CIV. R. 79.2 (1993).

VT. STAT. ANN., R. APP. P. 35 (1993): **RECORDING COURT PROCEEDINGS.**

- (A) **GENERAL AUTHORITY.** Cameras are authorized in proceedings of the Supreme Court, except where the Chief Justice directs otherwise.
- (B) **MATTERS EXCLUDED.** There shall be no coverage of conferences between members of the Court, between co-counsel, or between counsel and client. There shall be no coverage during recesses.

VT. STAT. ANN. DISCIPLINARY CONTROL R. 8(11) (1993).

Cameras shall not be permitted in the hearing room during the

formal hearing for disciplinary control of a judge, except on order of the Supreme Court.

## VIRGINIA

VA. CODE ANN. § 19.2-266 (1994): EXCLUSION OF PERSONS FROM TRIAL; PHOTOGRAPHS AND BROADCASTING PERMITTED UNDER DESIGNATED GUIDELINES; EXCEPTIONS.

A court may, in its sole discretion, permit camera coverage of the courtroom during judicial proceedings in criminal and civil cases,<sup>127</sup> but only in accordance with the following rules:

### COVERAGE ALLOWED.

1. The presiding judge shall have authority to prohibit, interrupt, or terminate camera coverage. The judge shall advise parties of coverage in advance and allow them to object. For good cause shown, the judge may prohibit coverage in any case and coverage may be restricted as the judge deems appropriate to meet the ends of justice.
2. Coverage of the following types of proceedings is prohibited: adoption, juvenile, child custody, divorce, temporary and permanent spousal support, in camera, those concerning sexual offenses, hearings of motions to suppress evidence, and those involving trade secrets.
3. Coverage of the following categories of witnesses is prohibited: police informants, minors, undercover agents, and victims and families of victims of sexual offenses.
4. Coverage of jurors is expressly prohibited at any stage of a judicial proceeding, including voir dire. The judge shall inform all jurors of this prohibition.
5. There shall be no audio pickup of conferences in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge at the bench.

...

### IMPERMISSIBLE USE OF MEDIA MATERIAL.

None of the reproductions developed during coverage of a judicial proceeding shall be admissible as evidence (i) in the proceeding itself, (ii) in any subsequent or collateral proceeding, or (iii)

<sup>127</sup> See *Savino v. Commonwealth*, 391 S.E.2d 276 (Va. 1990) (defendant plead guilty to capital murder and received death penalty) (court summarily dismissed the argument that trial court abused discretion by allowing cameras in the courtroom); *Diehl v. Commonwealth*, 385 S.E.2d 228 (Va. Ct. App. 1989) (parent beat adopted child to death) (where appellant does not cite any incident where cameras hampered the presentation of his case, deprived him of an impartial jury, or impaired the fairness of the trial, the rule allowing cameras does not violate the equal protection clause of the U.S. Constitution).

upon any retrial or appeal of the proceeding.

## WASHINGTON

WASH. CT. R. PT. 1, R. 16 (WEST 1994): CAMERAS IN THE COURTROOM.

Cameras are authorized in the courtroom during sessions and recesses,<sup>128</sup> under the following conditions:

- (A) Express permission has been granted in advance by the judge.
- (B) Media personnel will not distract participants or impair the dignity of the proceedings.<sup>129</sup>

WASH. CT. R. PT. V, R. 4(2) (WEST 1994).

Cameras in the courtroom shall be governed by the Canons of Judicial Ethics.<sup>130</sup>

WASH. CT. R., BENCH-BAR-PRESS COMMITTEE STATEMENT (WEST 1994).<sup>131</sup>

### CONSIDERATIONS IN THE REPORTING OF CRIMINAL PROCEEDINGS

...

- 4. The media is subject to the Code of Judicial Conduct's Canon 3A(7) which limits camera coverage in the courtroom.

WASH. CT. R. PT. IV(10), R. 80(B) (WEST 1994): RECORDING PROCEEDINGS IN SUPERIOR COURT BY MEANS OF VIDEOTAPE.

All superior courts that elect to use videotape to record proceed-

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<sup>128</sup> Allowing cameras in the courtroom over the objection of defendants does not deny them due process of law:

An absolute constitutional ban on broadcast coverage of trials cannot be justified simply because there is a danger that, in some cases, prejudicial broadcast accounts of pretrial and trial events may impair the ability of jurors to decide the issue of guilt or innocence uninfluenced by extraneous matter. The risk of juror prejudice in some cases does not justify an absolute ban on news coverage of trials by the printed media; so also the risk of such prejudice does not warrant an absolute constitutional ban on all broadcast coverage. A case attracts a high level of public attention because of its intrinsic interest to the public and the manner of reporting the event. The risk of juror prejudice is present in any publication of a trial, but the appropriate safeguard against such prejudice is the defendant's right to demonstrate that the media's coverage of his case be it printed or broadcast compromised the ability of the particular jury that heard the case to adjudicate fairly.

State v. Wixon, 631 P.2d 1033, 1040 (Wash. Ct. App. 1981) (murder and burglary trial).

<sup>129</sup> See State v. Cunningham, 620 P.2d 535 (Wash. Ct. App. 1980) (defendants convicted of manslaughter for killing child during a religious "exorcism" and "humbling" ritual) (prior to allowing camera coverage, the judge had good reason to believe it would be prejudicial, yet, there was no error because no actual prejudice resulted).

<sup>130</sup> The section in the Canons of Judicial Ethics, Canon 3A(7), which dealt with cameras in the courtroom, has been repealed. The governing rule is WASH. CT. R., GEN. R. 16, *supra*.

<sup>131</sup> See State v. Kester, 686 P.2d 1081 (Wash. Ct. App. 1984) (fired worker raped and murdered employer's wife) (where there is no allegation that camera crew did not comply with Bench-Bar-Press Guidelines, there is no error in allowing cameras in courtroom).

ings must follow procedures published by the Office of the Administrator for the Courts.

SNOHOMISH, WASH. SUP. CT. LOCAL R. PT. I, R. 0.02(E)(4) (WEST 1994): RECORDING AND PHOTOGRAPHY.

Camera coverage shall be allowed only with the approval of the court.

## WEST VIRGINIA

W. VA. CODE OF JUD. CONDUCT CANON 3(B)(12) (MICHIE 1993).

A judge may permit cameras in the courtroom and areas immediately adjacent during proceedings and recesses, under guidelines approved by the West Virginia Supreme Court of Appeals.

W. VA. R. CAMERA COVERAGE OF COURTROOM PROCEEDINGS 1 (MICHIE 1993): GENERAL CONSIDERATIONS.

### R. 1.0 TYPES OF PROCEEDINGS.

Camera coverage is limited to proceedings open to the public. There shall be no audio coverage of conferences between or among attorneys and clients; or between or among attorneys, clients, and the presiding judge at the bench.

### R. 1.1 AUTHORITY OF PRESIDING JUDGE OR MAGISTRATE.

The presiding judge or magistrate is the final authority on whether camera coverage of a proceeding will be permitted. In magistrate court, both the presiding magistrate and chief judge of the circuit must concur in the decision to allow coverage. The presiding judge or magistrate may terminate coverage of the proceedings or any portion, if continued coverage will impede justice.

### R. 1.3 OBJECTIONS TO COVERAGE.

Parties, witnesses, and counsel may object to coverage. The presiding judge or magistrate may, at their own discretion, sustain or deny the objection.<sup>132</sup>

### R. 1.7 CEREMONIAL PROCEEDINGS.

These rules shall not limit coverage of ceremonial proceedings.

## WISCONSIN

WIS. ST. ANN., SUP. CT. R. CH. 61 (WEST 1994): RULES GOVERNING

<sup>132</sup> See *State v. Hanna*, 378 S.E.2d 640 (W. Va. 1989) (man kidnapped his ex-girlfriend, she has never been found) (trial court did not abuse discretion by allowing cameras shutters that made an audible sound).

## ELECTRONIC MEDIA AND STILL PHOTOGRAPHY.

Allows cameras in the courtroom in accordance with specified conditions.<sup>133</sup>

...

## R. 61.07. CONFERENCES

Audio pickup of conferences in a court facility between an attorney and client, between co-counsel, or between attorneys and the trial judge at the bench is not permitted.

## R. 61.08. RECESSES

Cameras shall not be operated during a recess.

...

## R. 61.10. RESOLUTION OF DISPUTES

An appellate court shall not review any order or ruling of a trial judge under this chapter. Disputes may be referred only to the chief judge of the administrative district for resolution as an administrative matter.

## R. 61.11. PROHIBITION OF PHOTOGRAPHING AT REQUEST OF PARTICIPANT

(1) A trial judge, may sua sponte or at the request of a participant, prohibit camera coverage for cause. In cases involving victims of crimes, including sex crimes, police informants, undercover agents, relocated witnesses and juveniles, and in evidentiary suppression hearings, divorce proceedings, and cases involving trade secrets, a presumption of validity attends requests to prohibit coverage.<sup>134</sup>

(2) Individual jurors shall not be photographed without consent. Where photography of the proceeding is impossible without including the jury in the background, coverage is permitted, but closeups which clearly identify individual jurors are prohibited.

## R. 61.12. INAPPLICABILITY TO INDIVIDUALS; USE OF MATERIAL FOR ADVERTISING PROHIBITED

<sup>133</sup> See *State v. D'Acquisto*, 359 N.W.2d 181 (Wis. Ct. App. 1984) (defendant convicted of aggravated battery) (no error in allowing camera coverage of voir dire where jurors were notified that they would not be photographed). *State v. Kennedy*, 469 N.W.2d 247 (Wis. Ct.App. 1991) (defendant, pastor, convicted of sexual contact with a child) (defendant's objection to placement of cameras in the jury box during post-conviction hearing was found to be valid, but no prejudice was demonstrated in this instance).

<sup>134</sup> This list is not exclusive, the judge may find cause for prohibition in comparable situations. Wis. ST. ANN., SUP. CT. R. ch. 61, r. 61.11.

Reproductions of court proceedings shall not be used for unrelated advertising purposes.

## WYOMING

WYO. R. CRIM. P. 53 (1993): MEDIA ACCESS TO COURTS.

Cameras may be permitted in the courtroom during judicial proceedings at the discretion of the court. Permission may be granted if there is substantial compliance with the following requirements:

...

- (6) There shall be no audio broadcast of conferences between attorney and client, between counsel, or between counsel and the presiding judge;
- (7) There shall be no close-up photography or visual recording of members of the jury;
- (8) Recordings may not be used for unrelated advertising purposes; and
- (9) The judge may prohibit camera coverage, sua sponte or on the request of a participant, for cause. In cases involving victims of crimes, confidential informants, undercover agents and in evidentiary suppression hearings, a presumption of validity attends such requests.<sup>135</sup> The trial judge has broad discretion in determining cause for prohibition.

## FEDERAL COURTROOMS

In 1994, following a three-year experimental program which allowed television coverage in some Federal trial and appeals courts, the Judicial Conference of the United States voted down a proposal to make the experiment permanent nationwide. The experimental program ended on December 31, 1994.<sup>136</sup> According to judges who participated in the debate, the proposal was rejected because the recordings were used generally only as background or snippets on the news and, therefore, lacked "educational value." They also expressed concern that witnesses at televised trials might be intimidated by the presence of cameras.<sup>137</sup> However, in 1996, the U.S. Judicial Commission reversed itself and by a 14-12 vote to allowed cameras in Federal court

<sup>135</sup> This list is not exclusive. The court may find cause for prohibition in comparable situations. WYO. R. CRIM. P. 53(9).

<sup>136</sup> Linda Greenhouse, *U.S. Judges Vote Down TV in Courts*, N.Y. TIMES, Sept. 20, 1994, at A18.

<sup>137</sup> Linda Greenhouse, *Disdaining a Sound Bite, Federal Judges Banish TV*, N.Y. TIMES, September 25, 1994, at D4.

rooms, if the individual judge chooses to do so.<sup>138</sup> The United States Supreme Court has not formally considered, nor appears likely to approve, any request to televise oral arguments before the Supreme Court.<sup>139</sup>

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<sup>138</sup> Linda Greenhouse, *Reversing Course, Judicial Panel Allows Televising Appeals Courts*, N.Y. TIMES, Mar. 13, 1996, at A1.

<sup>139</sup> *Justice Speaks: No TV in High Court*, USA TODAY, Feb. 13, 1995, at 3A. This article reports on Justice Ginsburg's remarks to the American Bar Foundation session in Miami on Sunday, Feb. 12, 1995. Justice Ginsburg criticized reporters for occasional slips in rushed reporting. *Id.* Justice O'Connor, during a Stanford Alumni gathering, stated her opposition to the use of cameras in appellate proceedings. Tony Mauro, *One Highly Placed Source Speaks in Favor of O.J. Television Coverage*, RECORDER, Oct. 24, 1995, at 3 ("[televising appellate proceedings] would be such a drastic change that it might unduly pressure lower courts to follow suit"). In contrast, Justice Breyer favored cameras in the appellate courtroom as a judge on the First Circuit and may be expected to continue his advocacy on the inclusion of cameras in oral argument before the United States Supreme Court. *The Judge Stephen G. Breyer Confirmation Hearings*, Fed. News Serv., Jul. 12-13, 1994. See also Mauro, *supra* (Justice Breyer stated that "[t]he arguments for [cameras] seem reasonable"). Justice Kennedy also spoke in favor of the use of cameras in the courtroom, at least in the Simpson trial, stating, "I'm glad the trial was on television. I think some very important lessons will come out of it from the standpoint of the legal process." *Id.*