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| DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, Colorado 80112 | COURT USE ONLY |
| STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual Defendants. | |
| Kevin McGreevy (No. 27407) Ridley, McGreevy & Weisz, P.C. 303 16 th Street, Suite 200 Denver, CO 80202 (303) 629-9700 (303) 629-9702 fax mcgreevy@rmwpc.com | Case No. 2008CV2659 Division: 202 |
| JOINT OPPOSITION BY DEFENDANTS TO KMGH'S REQUEST FOR EXPANDED MEDIA COVERAGE FOR HEARING | |

Defendant Robert Warren, by and through his attorney, Kevin McGreevy of the law firm Ridley, McGreevy & Weisz, P.C., Defendant Mary Warren by and through her attorneys Fredric Winocur and R. Livingston Keithley of the law firm Kamlet & Reichert, LLP, and Defendant Stephenie L. Gardner, through her attorney Ty Gee of the law firm Haddon, Morgan, Mueller, Jordan, Mackey & Foreman, P.C. hereby oppose the *Request for Expanded Media Coverage for Contempt of Court Hearing* filed by television station KMGH-TV on June 1, 2009.

The contempt hearing identified in KMGH-TV's *Request* will not be taking place on June 4, 2009. Rather, this Court ordered on May 29, 2009 that the contempt hearing is now scheduled as an advisement on contempt and a status hearing.

KMGH-TV filed a request for "coverage by one television camera with a distribution point located outside of the courtroom." KMGH-TV's *Request* appears to be

a form pleading that is in no way tailored to the specifics of this case or the hearing to be held on June 4, 2009. *See Request for Expanded Media Coverage for Arraignment* filed in *People v. Midyette*, Boulder County District Court Case No. 07CR918 (identical request in all substantive respects), attached hereto as Exhibit A.

The *Request* should be denied pursuant to an application of the criteria set forth in the Colorado Code of Judicial Conduct, Canon 3A(8). For the Court's convenience, a copy of the Colorado Judicial Branch's May 2, 2002 (updated Feb. 21, 2007) "Media Alert" titled *Expanded media coverage of court proceedings*, which includes this portion of the Canon as well as a sample request, is attached hereto as Exhibit B.

The *Request* fails to meet the express requirements of Canon 3A(8). That Canon specifically states that any request for expanded media coverage "shall include," *inter alia*, "a description of the pooling arrangements required by section (e)(II), including the identity of the designated representatives." Canon 3A(8)(f)(I)(bb). Section (e)(II) provides that "[t]he media shall be solely responsible for designating one media representative to conduct each of the categories of expanded media coverage . . . and for arranging an open and impartial distribution scheme with a distribution point located outside of the courtroom." Here, because the *Request* fails to meet the mandatory requirement to provide the identity of the designated representative, it should be denied.

Alternatively, this Court should exercise its discretion to deny the request upon applying the "Standards for Authorizing Coverage" set forth in Canon 3A(8):

In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:

- (I) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;
- (II) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and
- (III) Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

Canon 3A(8)(b). Tellingly, the *Request* makes no attempt to even discuss these factors, the consideration of which by the Court is mandatory.

A. There is a reasonable likelihood that expanded media coverage would interfere with Defendants' rights to a fair trial.

The danger that a television camera in the courtroom presents to a party's right to a fair trial in a bench trial case such as this lies in the potential for the

impairment of witness testimony or the potential to deter witnesses from coming forward for future hearings, which has been described in detail by the U.S. Supreme Court:

The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to overstatement; memories may falter, as with anyone speaking publicly, and accuracy of statement may be severely undermined. Embarrassment may impede the search for the truth, as may a natural tendency toward overdramatization. Furthermore, inquisitive strangers and “cranks” might approach witnesses on the street with jibes, advice or demands for explanation of testimony. There is little wonder that the defendant cannot “prove” the existence of such factors. Yet we all know from experience that they exist.

Estes v. Texas, 381 U.S. 532, 547 (1965). The concerns expressed by the Supreme Court more than forty years ago in *Estes* have undoubtedly become heightened today, in the age of YouTube, a popular video sharing website launched in early 2005 on which registered users can post a snippet of video/audio footage for the entire world to see. As U.S. District Court Judge Leonie Brinkema presciently stated when denying requests for cameras in the courtroom during the criminal case against Zacharias Moussaoui:

Advances in broadcast technology . . . have . . . created new threats to the integrity of the fact finding process. . . . [O]nce a witness’ testimony has been televised, the witness’ face has not just been publicly observed, it has also become eligible for preservation by VCR or DVD recording, digitizing by the new generation of cameras or permanent placement on Internet web sites and chat rooms. Today, it is not so much the small, discrete cameras or microphones in the courtroom that are likely to intimidate witnesses, rather, it is the witness’ knowledge that his or her face or voice may be forever publicly known and available to anyone in the world.

United States v. Moussaoui, 205 F.R.D. 183, 186-87 (E.D. Va. 2002). Thus, Judge Brinkema found that “audio or visual broadcasting of any portion of these proceedings is likely to intimidate witnesses” and that witnesses “may refrain from coming forward for fear of being ostracized.” *Id.*

The case against Defendants here has already attracted publicity and commentary containing overblown rhetoric adverse to Defendants. *See, e.g., The inhumane society*, Rocky Mountain News editorial published December 12, 2008, attached hereto as Exhibit C. The high degree of public interest in and media attention to this case within the first few days after it was filed suggest that there is more than a reasonable likelihood that expanded media coverage of the Advisement proceeding would interfere with Defendants’ rights to a fair trial by

threatening the integrity of the advisement, the fact-finding process, and the search for the truth.

B. There is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the Court, and that it would create adverse effects that would be greater than those caused by traditional media coverage.

Commentators have recognized television coverage in the courtroom tends to decrease professionalism and decorum, and that television coverage is qualitatively different from print journalism in this regard. *See, e.g.*, Robert A. Pugsley, *This Courtroom is Not a Television Studio: Why Judge Fujisaki Made the Correct Call In Gagging the Lawyers and Parties, and Banning the Cameras from the O.J. Simpson Civil Trial*, 17 Loy. L.A. Ent. L.J. 369, 380 (1997) (“The absence of a camera enabled th[e] [parties’] attorneys to focus all their professional energies in the courtroom, maximized the decorum and efficiency of the trial proceedings, and eliminated any possible anxiety the witnesses . . . might have felt because of the camera’s presence.”); Eileen A. Minnefor, *Looking for Fair Trials in the Information Age: The Need for More Stringent Gag Orders Against Trial Participants*, 30 U.S.F.L.Rev. 95, 152 (1995) (“It is becoming apparent . . . that putting cameras in the courtroom has a direct effect on the events that occur there . . . Cameras in the courtroom may also trigger a ‘journalistic frenzy,’ by elevating the importance of and increasing the availability of information and visual images from an already highly publicized case.”).

Thus, the trial judges in two separate Colorado court cases that received national media attention issued rulings precluding television cameras in the courtroom in whole or in part. *See, e.g.*, Order from Judge Roxanne Bailin in the investigation of John and Patsy Ramsey, attached hereto as Exhibit D, and Order from Judge W. Terry Ruckriegle in *People v. Kobe Bryant*, attached hereto as Exhibit E.

Here too, allowing a television camera in the courtroom at the June 4th hearing can only detract from the decorum and dignity of the Court.

C. Contrary to the implication of the *Request*, Colorado law recognizes no “presumption” in favor of cameras in the courtroom.

The *Request* quotes a portion of the Colorado Court of Appeals opinion in *People v. Wieghard*, 727 P.2d 383, 86 (Colo. App. 1986), which mentions but does not address the fact that the trial court in that case applied such a presumption. The Court of Appeals certainly did not state that there is such a presumption; it merely held that the trial court had not abused its discretion in allowing expanded media coverage. *Id.*

This issue was addressed in detail by Judge Ruckriegle in *People v. Bryant*, who correctly ruled:

Wieghard did not comment, confirm, deny, or actually review the trial court's language regarding a "presumption." Accordingly, this Court will not attach such superfluity to its own reading of the *Wieghard* opinion.

Exhibit E at p. 2.

After further analyzing the legislative history for Canon 3A, Judge Ruckriegle concluded:

[I]t indisputably appears that the Colorado Supreme Court did not intend Canon 3A to include a presumption favoring EMC [expanded media coverage].

Id.; see also legislative history documents for Canon 3A, attached hereto as Exhibit F.

D. Conclusion

The Defendants respectfully reiterates their opposition to the *Request* and ask that it be denied either for failure to comply with the mandatory requirements of Canon 3A(8)(f)(I)(bb) or through the Court's discretionary application of the standards set forth in Canon 3A(8)(b).

The undersigned is authorized to indicate that Mary Warren and Stephenie Gardner join in this opposition to KMGH-TV's request.

Respectfully submitted this 2nd day of June, 2009.

RIDLEY, McGREEVY & WEISZ, P.C.

/s/ Kevin McGreevy

Kevin McGreevy

Ridley, McGreevy & Weisz, P.C.

Attorney for Robert Warren

This document was filed electronically pursuant to C.R.C.P. 121(1-26). The original signed document is on file at the offices of Ridley, McGreevy & Weisz, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2009, a true and correct copy of the above and foregoing **JOINT OPPOSITION BY DEFENDANTS TO KMGH'S REQUEST FOR EXPANDED MEDIA COVERAGE FOR HEARING** was electronically served via Lexis/Nexis File and Serve upon the following:

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Denver, CO 80209
Attorney for Stephenie Gardner

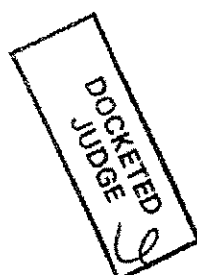
/s/ Nadia S Pidgeon
Nadia S Pidgeon

I hereby certify that on this 2nd day of June, 2009, a true and correct copy of the above and foregoing **JOINT OPPOSITION BY DEFENDANTS TO KMGH'S REQUEST FOR EXPANDED MEDIA COVERAGE FOR HEARING** was electronically served by E-Mail upon the following:

Melissa Krol, Melissa_Krol@KMGH.com

/s/ Nadia S Pidgeon
Nadia S Pidgeon

2007 JUL 16 11:15

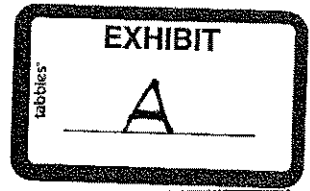
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| DISTRICT COURT, COUNTY OF BOULDER, COLORADO Boulder Justice Center 1777 6th Street Boulder, CO 80302 | <div style="text-align: center;">  <p>7/30</p> <p>▲ COURT USE ONLY ▲</p> </div> |
| Plaintiff: THE PEOPLE OF THE STATE OF COLORADO v. Defendant: Alexander Midyette | |
| Andrew M. Low, #11393 Rudy E. Verner, #34286 DAVIS GRAHAM & STUBBS LLP 1550 Seventeenth Street, Suite 500 Denver, CO 80202 Telephone: (303) 892-9400 Facsimile: (303) 893-1379 E-mail: rudy.verner@dgsllaw.com | Case No.: 07CR918 Division: 6 |
| REQUEST FOR EXPANDED MEDIA COVERAGE FOR ARRAIGNMENT | |

Television station KUSA-TV, on behalf of itself and the Denver Media Group, pursuant to Canon 3A(8) of the Colorado Code of Judicial Conduct relating to judicial supervision over expanded media coverage of court proceedings, requests that expanded media coverage ("EMC") be permitted for the arraignment in this case on July 30, 2007, at 8:15 a.m.

People v. Wieghard, 727 P.2d 383, 386 (Colo. App. 1986), cert. denied, states: "the trial court held that the presumption was in favor of open coverage and that a party opposing such coverage would have the burden of proving adverse effects therefrom. . . . We find no abuse of discretion by the trial court here. . . . The mere presence of a camera in the courtroom does not in itself deny a defendant due process. *Chandler v. Florida*, 449 U.S. 560 (1981)." And see Anderson, *Time To Open The Electronic Eye*, ABA Jnl. at 8 (June 1999).


This EMC request is for coverage by one television camera with a distribution point located outside of the courtroom. Petitioner will comply with all the conditions of Canon 3A(8)(e).

Counsel will not be appearing on the behalf of KUSA-TV. However, if at the time of the hearing the Court desires to discuss any of the legal requirements with counsel, it may contact Andrew Low or Rudy Verner at (303) 892-9400.



Dated: July 16, 2007.

DAVIS GRAHAM & STUBBS LLP

By: 
Rudy E. Verner, No. 34286

ATTORNEYS FOR KUSA-TV

CERTIFICATE OF SERVICE

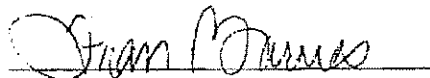
I hereby certify that on July 16, 2007, a true and correct copy of the foregoing **REQUEST FOR EXPANDED MEDIA COVERAGE FOR ARRAIGNMENT** was served by facsimile addressed to the following:

District Attorney:

Kenneth E. Kupfner, Esq.
Boulder District Attorney's Office
Boulder Justice Center
1777 6th Street
Boulder, CO 80302
Ph: 303-441-3700
Fax: 303-441-4703

Defendant's Counsel:

Paul McCormick, Esq.
McCormick & Christoph PC
1406 Pearl St. Suite 200
Boulder, CO 80302
Ph: 303-433-2281
Fax: 303-433-2862



Fran Barnes

Media Alert

Colorado Judicial Branch
Mary J. Mullarkey, Chief Justice
Gerald Marroney, State Court Administrator

May 2, 2002 (updated Feb. 21, 2007)

Contact: Rob McCallum
303/837-3633
1-800-888-0001 Ext. 633

Expanded media coverage of court proceedings

The presence of expanded media coverage in the Colorado court system's courtrooms is controlled by strict standards spelled out in Canon 3A(8) of the Colorado Code of Judicial Conduct effective Dec. 1, 1985. The Canon also outlines each step necessary to garner approval for such coverage.

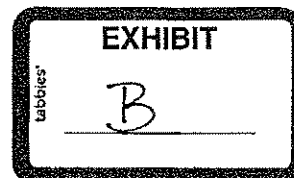
There are several points in the Canon of particular note:

1. A written request for expanded media coverage must be submitted to the judge at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the judge.
2. Copies of the request shall be given to counsel for each party participating in the proceeding.
3. The request must include a description of the pooling arrangements, including the identity of the designated representatives.
4. Any party or witness may lodge with the judge a written objection to expanded coverage of all or a portion of a proceeding.

The complete text of Canon 3(A)(8) is attached along with a sample request.

If you have further questions please do not hesitate to contact the Office of the State Court Administrator.

This information is provided as an e-mail service of the Colorado State Judicial Branch, Office of State Court Administrator, 1301 Pennsylvania Street, Suite 300, Denver, Colo. 80203. To discontinue this service or update your e-mail address, please respond to this message with your name, contact information and any comments.



Request for expanded media coverage in Colorado state courts

Canon 3. A Judge Should Perform the Duties of His or Her Office Impartially and Diligently.

- (8) *Judicial Supervision over Expanded Media Coverage of Court Proceedings.* A judge may authorize expanded media coverage of court proceedings, in addition to those referred to in section (7) of this Canon, subject to the guidelines set forth below.
- (a) **Definitions.** As used in this section, unless the context otherwise requires:
- (I) "Proceeding" means any trial, hearing, or any other matter held in open court which the public is entitled to attend.
- (II) "Photograph" and "photography" means all recording or broadcasting of visual images, by means of still photographs, videotape, television broadcasts, motion pictures, or otherwise.
- (III) "Expanded media coverage" means any photography or audio recording of proceedings.
- (IV) "Judge" means the justice, judge, referee, or other judicial officer presiding over the proceedings. In proceedings with more than one judge presiding, any decision required shall be made by a majority of the judges.
- (V) "Media" means any news gathering or reporting agency and the individual persons involved, and includes newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications, professional journals, or any other news reporting or news gathering agency whose function it is to inform the public or some segment thereof.
- (b) **Standards for Authorizing Coverage.** In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:
- (I) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;
- (II) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and
- (III) Whether expanded media coverage would create adverse effects which would be greater than those caused by traditional media coverage.
- (c) **Limitations on Expanded Media Coverage.** Notwithstanding an authorization to conduct expanded media coverage of a proceeding, there shall be no:
- (I) Expanded media coverage of pretrial hearings in criminal cases, except advisements and arraignments;
- (II) Expanded media coverage of jury voir dire;
- (III) Audio recording or "zoom" closeup photography of bench conferences;
- (IV) Audio recording or closeup photography of communications between counsel and client or co-counsel;
- (V) Expanded media coverage of in camera hearings;
- (VI) Closeup photography of members of the jury.
- (d) **Authority to Impose Restrictions on Expanded Media Coverage.** A judge may restrict or limit expanded media coverage as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors. A judge may terminate or suspend expanded media coverage at any time upon making findings of fact that: (1) rules established under this Canon or additional rules imposed by the judge have been violated; or (2) substantial rights of individual participants or rights to a fair trial will be prejudiced by such coverage if it is allowed to continue.
- (e) **Conditions for Coverage.** Expanded media coverage shall be conducted only under the following conditions:
- (I) **Equipment Limitations.**
- (aa) **Video.** Only one person at a time shall be permitted to operate a videotape, television, or motion picture camera. There shall be only one such camera at a time in the courtroom, except that, at the discretion of the judge, the camera operator may have a second camera. The camera operator may use a tripod, but shall not change location while court is in session.
- (bb) **Audio.** The court's audio system shall be used if technically suitable and, in that event, there must be no interference with the court's use of its system. If the court's system is not technically suitable, then the person conducting expanded media coverage may install an audio recording system at his or her own expense upon first obtaining approval of the judge. All microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the courtroom.
- (cc) **Still Cameras.** Only one person at a time shall be permitted to operate still cameras, which shall make as little noise as possible. The still photographer may use a tripod, but shall not change location while court is in session.
- (dd) **Lighting.** No movie lights, flash attachments, or sudden lighting changes shall be permitted during a proceeding. No modification or addition of lighting equipment shall be permitted without the permission of the judge.
- (ee) **Operating Signals.** No visible or audible light or signal (tally light) shall be used on any equipment.

- (II) Pooling Arrangements. The media shall be solely responsible for designating one media representative to conduct each of the categories of expanded media coverage listed in subsection (I) of this section, and for arranging an open and impartial distribution scheme with a distribution point located outside of the courtroom. If no agreement can be reached on either of these matters, then there shall be no expanded media coverage of the type for which no pooling agreement has been made. Neither judges nor other court personnel shall be called upon to resolve any disputes concerning such pooling arrangements.
- (III) Conduct of Media Representatives. Persons conducting expanded media coverage shall conduct themselves in a manner consistent with the decorum and dignity of the courtroom. The following practices shall apply:
 - (aa) Equipment employed to provide expanded media coverage shall be positioned and operated so as to minimize any distraction;
 - (bb) Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Persons operating such equipment shall not wear clothing bearing any such identifying information;
 - (cc) Equipment used to provide expanded media coverage shall not be placed in, or removed from, the courtroom while court is in session. No film, videotape, or lens shall be changed within a courtroom while court is in session.
- (f) **Procedures.** The following procedures shall be followed in obtaining authorization for expanded media coverage:
 - (I) Request for Expanded Media Coverage. A written request shall be submitted to the judge at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the judge. Copies of the request shall be given to counsel for each party participating in the proceeding. The request shall include the following:
 - (aa) The name, number, date and time of the proceeding;
 - (bb) The type (audio, video, or still photography) of expanded media coverage requested and a description of the pooling arrangements required by section (e)(II), including the identity of the designated representatives.
 - (II) Objections. Any party or witness may lodge with the judge a written objection to expanded media coverage of all or a portion of a proceeding.
 - (III) Judicial Authorization. The judge shall rule on a request or objection within a reasonable time prior to the proceeding or promptly after the request or objection if the proceeding has begun. The ruling shall be made on the record and the reasons therefore set forth briefly.
 - (IV) The media or any witness may not appeal, or seek review by original proceeding, the granting or denial of expanded media coverage. A party may seek review of a ruling by original proceeding, if otherwise appropriate, or by post-trial appeal.

Request for Expanded Media Coverage

The name of media group: _____

Person making request: _____

Contact information (address, fax): _____

Name, address, fax of counsel (if represented): _____

Date of request: _____ Date of proceeding: _____

| Time of the proceeding | Case No. | Case title |
|------------------------|----------|------------|
| _____ a.m/p.m. | _____ | _____ |

The type of expanded media coverage requested: _____ Designated Representative

| | |
|-------------------------|-------|
| _____ audio | _____ |
| _____ video | _____ |
| _____ still photography | _____ |

Description of the pooling arrangements required by section (e)(II), including the identity of the designated representatives:

Requests must be submitted at least one day prior to the proceeding as outlined in Canon 3 (submitting requests five days prior to the proceeding is appreciated to allow for response time) Submit to (clerk of the court) _____.

____ Attached are certificates of service which reflect service on the District Attorney, counsel for Defendant and all other media organizations which have previously filed requests for the same proceeding.

____ I agree to comply with all relevant orders and all criteria set forth in Canon 3.

Signature _____, Title _____
Date _____

Rocky Mountain News

The inhumane society

Attorney general's lawsuit against shelter should only be step one

Rocky Mountain News

Published December 12, 2008 at 12:05 a.m.

It's a venerable institution that dates back to 1881, but several years ago it was allegedly hijacked by a family of scoundrels. We're talking about the Colorado Humane Society, which has been sued by state Attorney General John Suthers over what he contends were gross deceptions and misuse of funds.

According to the state's complaint, the Humane Society has been a renegade outfit since at least 2003, thanks to Robert and Mary Warren and their daughter (his stepdaughter) Stephenie Gardner, who run the shelter. The state claims the nonprofit failed to register properly as a charitable organization or to file necessary financial reports, ignored requirements governing a nonprofit's board of directors, diverted donations to the benefit of shelter officers, lied to the public about its euthanasia policy, lied about solicitations for disaster relief, commingled its finances with personal resources, and on and on. The allegations are mind-boggling in scope, covering offenses big and small.

Without a doubt, the most despicable practice alleged by the state's complaint, which asks a

court to appoint a custodian to take over management of the nonprofit, is that the shelter enticed animal lovers to make donations through a false description of its euthanasia policy.

"Defendants at times misrepresented that CHS operated a 'no-kill' shelter," the complaint says, "when in fact CHS has always had a euthanasia policy and committed euthanasia."

As of Thursday, the Humane Society's Web site assured the public that "We provide shelter, food and medical treatment as long as an animal's health and heart are willing! This can be a day, a week or even months, if necessary. In only the most extreme situations is an animal put to sleep. Grave illness or injury, advanced age with infirmity or aggression are the only criteria considered for euthanasia. Walk through the shelter and look into the eyes of a dog that has been here for months. The eyes twinkle and the tail wags. If he has not given up, how can we?"

The attorney general argues that not only is this cuddly presentation false and that the Englewood facility "routinely euthanizes animals that are not 'adoptable,'" but that its own employee handbook gives away the game.

"When we have an animal . . . whose adoption is so unlikely that its only future is in our shelter," the handbook says, "we can only prevent suffering by humane euthanasia."

You might well wonder what this nonprofit's board of directors was thinking as the shelter's officers were allegedly running roughshod over

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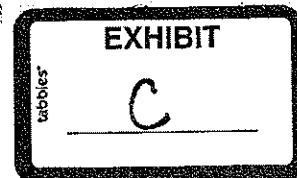
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Rocky Mountain News

every imaginable rule - or why any board would countenance such nepotism to begin with. It turns out that the board was a shell of what it should have been; the shelter's bylaws stipulate seven board members, but that had been ignored since 2004.

From 2004 to 2007, the board consisted of only three people, one of whom was Mary Warren - and for the six months ending in May 2008, the board had only one member (you guessed it: Warren). Currently, just two people, including Warren, serve on the board.

A spokesman for the attorney general's office told us that the three non-Warren board members were apparently not party to the abuses. Maybe so, but the words "incompetent" and "negligent" would seem to hardly do them justice.

Indeed, it's hard to believe that a renegade shelter could get away with such flagrant shenanigans for so long given its high profile. Over the years, it even provided services to jurisdictions such as Littleton, Englewood and Arapahoe County. Yet behind the scenes, if the state's complaint is essentially accurate, a once estimable institution had been transformed into a rogue operation.

If so, legal action clearly shouldn't stop with the attorney general's civil suit. Criminal statutes have apparently been broken, and it's time for the Arapahoe County district attorney to get involved.

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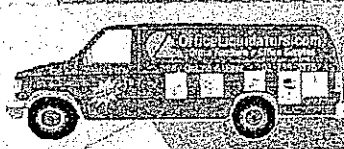
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DISTRICT COURT, BOULDER COUNTY, COLORADO
Case No.

ORDER REGARDING REQUEST FROM TELEVISION CHANNELS 2, 4, 7, AND 9
FOR PERMISSION TO HAVE EXPANDED MEDIA COVERAGE OF THE FIRST
APPEARANCE, BOND HEARING, AND FILING OF CHARGES AGAINST
PATRICIA AND/OR JOHN RAMSEY

This Court, having received a request from certain television channels for permission for expanded media coverage of the first appearance, bond hearing, and filing of charges against Patricia and/or John Ramsey states as follows:

1. All requests from the media shall be addressed to this Court.
2. The request herein is premature as there is no current indication that an indictment of anyone is imminent.
3. In the event that there is an indictment, no expanded media coverage will be allowed. In evaluating this case in the context of Canon 3, the Court concludes that expanded media coverage will interfere with the rights of the parties to a fair trial because this case has already been subjected to extraordinary media coverage and trial in the press. In addition, the Court concludes that, in this case, expanded media coverage will substantially detract from the solemnity, decorum, and dignity of the court and that it will create adverse effects that would be greater than those caused by traditional media coverage.

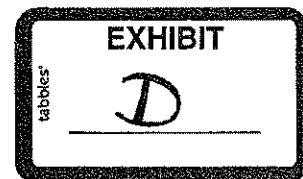
Accordingly, the request is denied.

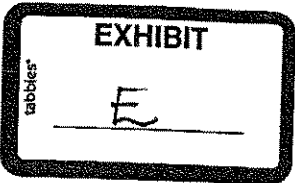
Dated: May 3, 1999

By the Court

**ORIGINAL SIGNED BY
ROXANNE BAILIN**

R. Bailin, Chief Judge





| | |
|---|--|
| DISTRICT COURT, EAGLE COUNTY, COLORADO 885 Chambers Avenue Eagle, Colorado 81631 | |
| Plaintiff: PEOPLE OF THE STATE OF COLORADO | |
| Defendant: KOBE BRYANT | |
| | <input type="checkbox"/> COURT USE ONLY <input type="checkbox"/> |
| | Case No. 03 CR 204 |
| | Division 1 |
| ORDER GRANTING, IN PART, NEWS MEDIA AND COURT TV'S REQUESTS FOR EXPANDED MEDIA COVERAGE OF TRIAL | |

This matter is before the Court on consolidated consideration of the News Media's Application for EMC (Still Photography) of Trial ("News Media's Application") and Court TV's Request for Expanded Media Coverage of Trial ("Court TV's Request"). Both Court TV and the News Media filed these Expanded Media Coverage ("EMC") requests on June 29, 2004.

In a rare display of concurrence, the prosecution, defense and alleged victim all oppose EMC for the trial. Through counsel, the alleged victim submitted her Request to Deny Request for Expanded Media Coverage on July 6, 2004 ("Alleged Victim's Response"). On that same day, the prosecution filed their People's Response to Request for Expanded Media Coverage ("People's Response"). The prosecution also submitted a Supplement to People's Response to Request for Expanded Media Coverage on July 13, 2004 ("People's Supplement"). The defense filed their Defendant's Combined Response to Media's and Court TV's Requests for Expanded Media Coverage ("Defendant's Response") on July 7, 2004.

Court TV submitted a Reply Concerning its Request for Expanded Media Coverage of Trial ("Court TV's Reply") on July 15, 2004. The News Media filed its Reply in Support of its Application for EMC (still photography) of Trial ("News Media's Reply") on July 16, 2004. After careful consideration of these filings and Colorado Code of Judicial Conduct, Canon 3 ("Canon 3"), the Court hereby rules as follows.

The Court begins its analysis with *People v. Wieghard*, 727 P.2d 383, 386 (Colo. App. 1986). Much has been made of the argument that *Wieghard* stands for the existence of a "presumption" in Colorado favoring expanded media coverage of trials. In actuality, the analysis of this issue by the Colorado Court of Appeals was so brief that it merely observed the underlying trial court had found a "presumption... in favor of open coverage." *Wieghard*, 727

P.2d at 386. In its resolution though, *Wieghard* specifically held there was no abuse of discretion by the trial court in permitting open coverage because a hearing was held at which the defendant declined to present any evidence. *Id.* The explicit legal analysis in *Wieghard* confirms only that the “mere presence of a camera in the courtroom does not in itself deny a defendant due process.” *Id.* While Colorado may have a more permissive history regarding electronic coverage in its courts,¹ *Wieghard* did not comment, confirm, deny, or actually review the trial court’s language regarding a “presumption.” Accordingly, this Court will not attach such superfluity to its own reading of the *Wieghard* opinion.

In addition to finding that *Wieghard* does not support a “presumption” favoring expanded media coverage, the Court further concludes that neither the explicit language of Canon 3A nor its legislative history do so. It is axiomatic that the plain language of a rule is probably the best indicator of the drafter’s intent at the time of enactment. Despite its very specific treatment regarding the subject of EMC, the Colorado Supreme Court did not elect to use the word “presumption” anywhere in Canon 3A. If the Colorado Supreme Court had intended a “presumption” to be included, they could have clearly and unambiguously added such language. Equally telling though, the legislative history for Canon 3A discloses that an early draft did actually include the word “presume.” See *Defendant’s Response*, Exhibit C. Accordingly, because such language was eventually dropped from the final, adopted version, it indisputably appears that the Colorado Supreme Court did not intend Canon 3A to include a presumption favoring EMC.

Setting aside the notion that there is a presumption for a trial court to grant EMC, the proper analysis for the Court to undertake is the one set forth in Canon 3A. Where the Court receives a request for EMC, the Canon requires that its “ruling shall be made on the record and the reasons therefor set forth briefly.” Canon 3A(8)(f)(III). In accordance with this prescription, the Court sets forth the basis for its ruling on EMC below.

The three prongs for determining whether expanded media coverage should be permitted are as follows:

- (I) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;
- (II) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the Court; and

¹ From the time *Estes* was announced in 1965 until 1976, Colorado was the only state in the nation that had not banned electronic coverage in its courts. C. Dyer and N. Hauserman, *Electronic Coverage of the Courts: Exceptions of Exposure?*, 75 Geo. L.J. 1633, 1700 (1987). In addition, Colorado appears to have been one of the first six states to actually adopt rules relating to the electronic coverage of trials. See e.g. *Chandler v. Florida*, 449 U.S. 560, 565 (1981); J. Martineau and M. Schultz, *Cameras in Missouri’s Courtrooms: Supreme Court Administrative Rule*, 49 J. Mo. Bar 379, 389 fn.20 (1993).

(III) Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

Canon 3A(8)(b). The Court now gives due consideration to these factors.

I. Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial

In arguing against EMC, the Defendant stated he is "entitled to a fair trial, free from the distraction of the media and their cameras, from trial participants and jurors playing to the cameras, and from the judicially recognized effect cameras have on both witnesses and jurors." Defendant's Response, 4. As partial support, the Defendant relies on *Estes v. Texas*, 381 U.S. 532 (1965). Court TV properly responds that the facts of *Estes* are at least partially distinguishable. Most notably, the trial at issue in *Estes* occurred forty years ago, at a time when many of the technologies being utilized were in their relative infancy. At that time, at least 12 cameramen were engaged in the courtroom, cables and wires snaked across the courtroom floor, three microphones were on the judge's bench, and other microphones were beamed at the jury box and the counsel table. *Id.* at 536. Neither Court TV nor the News Media propose anything that would approach such chaos as was reviewed by the *Estes* court.² Nonetheless, the underlying concerns expressed in *Estes* remain equally pertinent today. In *Estes*, the U.S. Supreme Court found that:

The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to overstatement; memories may falter, as with anyone speaking publicly, and accuracy of statement may be severely undermined. Embarrassment may impede the search for the truth, as may a natural tendency toward overdramatization. Furthermore, inquisitive strangers and 'cranks' might approach witnesses on the street with jibes, advice or demands for explanation of testimony. There is little wonder that the defendant cannot 'prove' the existence of such factors. Yet we all know from experience that they exist.

Id. at 547.

These sentiments are echoed in the decision not to allow EMC at the preliminary hearing³ in the recent case of the *People v. Scott Peterson* in California. People's

² In fact, the *Estes* court itself actually recognized the possibility for future technological developments. It noted the argument "that the ever-advancing techniques of public communication and the adjustment of the public to its presence may bring about a change in the effect of telecasting upon the fairness of criminal trials." *Estes*, 381 U.S. at 551-52. In his concurring opinion, Justice Harlan further observed "the day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process." *Id.* at 595 (Harlan, J. concurring).

³ The Court recognizes that there are some considerations, which distinguish *Peterson* from the instant matter. First and foremost, Judge Girolami's decision was made in the context of EMC requests for a

Supplement, Exhibit A. In discussing his decision not to allow EMC during the *Peterson* preliminary hearing, Judge Girolami noted that witnesses must relinquish to some degree their privacy rights when involved in a criminal trial. *Id.* at 4. However, he also held it simply does not follow that they “must become fair game for such invasive publicity” as was generated in that matter. *Id.* Judge Girolami also expressed a commitment to the “important” consideration of reducing witness “nervousness and apprehension” that would certainly be amplified by “the prospect of having their image broadcast live to millions of persons.” *Id.* at 5.

In *United States v. Moussaoui*, U.S. District Court Judge Leonie Brinkema issued a recent decision denying requests for cameras in the courtroom. *United States v. Moussaoui*, 205 F.R.D. 183 (E.D. Va. 2002). While it was based on the “mandatory” prohibition in Fed. R. Crim. P. 53 against the broadcast of federal criminal trials, Judge Brinkema also held that she would have ruled against cameras in the courtroom anyway. Judge Brinkema further explained this concern as follows:

[O]nce a witness' testimony has been televised, the witness' face has not just been publicly observed, it has also become eligible for preservation by VCR or DVD recording, digitizing by the new generation of cameras or permanent placement on Internet web sites and chat rooms. Today, it is not so much the small, discrete cameras or microphones in the courtroom that are likely to intimidate witnesses, rather, it is the witness' knowledge that his or her face or voice may be forever publicly known and available to anyone in the world.

205 F.R.D. at 187.

This Court shares the foregoing apprehensions regarding the impact of EMC on witness testimony. Such concerns are heightened in this case, which pertains to an allegation of sexual assault and in which the extensive interest stems significantly from Defendant's status as a professional athlete. The witnesses, many of them young and inexperienced in the judicial process, may be asked to provide testimony concerning the most graphic and intimate details of the participants' genitalia, sexual conduct, intimate personal relationships and private emotions. Substantial portions of the testimony may no doubt be embarrassing and humiliating for some of the participants and will likely exact some measure of intense psychological stress, if not a physical distress as well. The District Attorney, Defendant and the alleged victim have all represented to this Court that they have been subjected to physical threats as a result of this prosecution. The Court is also aware of others. Under such circumstances, the potential for witness intimidation, apprehension and reluctance is significant if this matter were to be broadcast to an international audience.

preliminary hearing. So, possible tainting of the jury pool was a factor in Judge Girolami's decision. *People's Supplement*, Exhibit A, 4. Accordingly, the Court only considers Judge Girolami's decision in its appropriate context, for any persuasive and otherwise useful discussion it might provide.

Court TV fails to address the fair trial implications and instead focuses on the third factor found at Canon 3A(8)(b)(III), noting that the witnesses will nonetheless have to testify as to these matters in a packed courtroom. This argument ignores the Court's obligation to be vigilant in the preservation of the participants' fair trial rights. "Court proceedings are held for the solemn purpose of endeavoring to ascertain the truth which is the sine qua non of a fair trial." *Estes*, 381 U.S. at 540. To achieve that objective, this Court is compelled to minimize the distractions and concerns these witnesses will face in order to assure truthful and uninhibited testimony. The increased anxiety and apprehension of witnesses that flow from the public display of an image or live testimony reduces the Court's ability to maintain a fair trial in this matter and exacerbates what is admittedly a problematic situation in a public courtroom. Accordingly, the Court concludes there is a reasonable likelihood that EMC of the witness testimony would compromise the fair trial rights of the participants. However, the Court finds no such risk to the fairness of the proceedings in permitting still photography of the opening arguments and still and video photography of the closing arguments, when witnesses are not providing testimony.

II. Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the Court

In arguing against EMC, the alleged victim cited the statutory right afforded to crime victims in Colorado "to be treated with... dignity... throughout the criminal justice process." C.R.S. § 24-4.1-302.5(1). She further argued that she will be required to provide extremely sensitive testimony during the course of the trial. *Victim's Request*, ¶¶ 2, 4. The Defendant likewise argues that EMC would have a "palpable" impact on the solemnity, decorum and dignity of the Court. Defendant's Response at 15.

The Court is not completely convinced that this is the case. The presence of a video camera and a still camera would not, in and of themselves, produce a "circus-like" atmosphere. This Court's own past experience with cameras in its proceedings does not support this view. In addition, even recent commentators with exposure to the widely criticized *Simpson* trial continue to insist that the question of cameras in the courtroom can only be resolved through a careful case-by-case examination. See e.g. J. Johnson, *The Entertainment Value of a Trial: How Media Access to the Courtroom is Changing the American Judicial Process*, 10 Vill. Sports & Ent. L.J. 131, 147 (2003); B. Morant, *Resolving the Dilemma of the Televised Fair Trial: Social Facilitation and the Intuitive Effects of Television*, 8 Va. J. Soc. Pol'y & L. 329, 390 (2001).

Looking at the present circumstances though, there are several significant factors involved. First, there has undoubtedly been overwhelming media coverage surrounding just about every aspect of this case. Notwithstanding this atmosphere, the Court notes that at least the prosecution and defense attorneys have shown no propensity for showboating or grandstanding in this case. There is nothing to suggest their behavior would change merely with the presence of cameras. Conversely, the Court cannot say the same regarding some of the inexperienced witnesses who have testified with some reluctance and discomfort at pretrial hearings in this case and who might be called at trial.

Having had the opportunity to hear testimony from and having observed a variety of witnesses in this matter, the Court finds there is a reasonable likelihood for EMC to unduly detract from the solemnity, decorum and dignity of the proceedings if permitted during witness testimony.

Arguing that Colorado has a "long and successful experience" with televising trials, Court TV listed twenty-nine Colorado cases where some portion of the proceedings were subject to EMC. *Court TV's July 30, 2003 Response*, Appendix A. Only two seemed to have any alleged sexual assault issues involved. *Court TV's July 30, 2003 Response*, Appendix A. In the instant case, a variety of persons will be called upon to provide unusually graphic testimony, which is also of a most intensely personal nature. The Court concludes that broadcasting this testimony "live" to an international community would unduly detract from the solemnity, decorum and dignity of the Court.

III. Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage

It is difficult to quantify any distinction between the effects of EMC and those of traditional media coverage.⁴ In *Chandler v. Florida*, the U.S. Supreme Court observed in this regard as follows:

[i]nherent in electronic coverage of a trial is a risk that the very awareness by the accused of the coverage and the contemplated broadcast may adversely affect the conduct of the participants and the fairness of the trial, yet leave no evidence of how the conduct or the trial's fairness was affected.

Chandler v. Florida, 449 U.S. 560, 577 (1981). The News Media relies on surveys completed by jurors in *People v. Wiegard*. That case was a 1983 murder case and is not only distinguishable on its facts but also by the surrounding level of media coverage. Both the News Media and Court TV cite cases in which EMC was viewed as having little negative impact. As previously noted, this Court has had those experiences in cases where it has allowed EMC. However, the successful implementation of EMC under significantly distinguishable circumstances does not justify risking the parties' rights to a fair trial in the instant case.

The Court perceives the possibility for an incremental effect that EMC might have on the testimony of witnesses in this matter. Each witness in this case cannot avoid realizing that his or her testimony will be subject to intense media analysis and

⁴ Several recent commentators have suggested that the claims that television harms trials are basically nothing more than conjecture. See e.g. B. Morant, *supra*, 8 Va. J. Soc. Pol'y & L. at 370 ("premise that television coverage of high-profile trials adversely affects performance remains largely conjecture"); J. Johnson, *supra*, 10 Vill. Sports & Ent. L.J. at 149 ("[a]lthough there is some concrete evidence on the effect of television cameras on certain parties, much of the commentary is mere speculation based on hypothetical situations"); J. Sarnier, *Take Two: The Continuing Debate over Cameras in the Courtroom*, 10 Seton Hall Const. L.J. 1053, 1081 (2000) ("[t]he lack of empirical evidence does not decisively disprove the existence of prejudice").

dissemination. Furthermore, the Court finds there are additional factors present that would create adverse effects for expanded media coverage beyond those caused by traditional media coverage. The average witness may have a difficult time testifying about somewhat "normal" subject matter, simply knowing that what is being said will be the subject of wide dissemination and discussion in various sources of traditional media coverage. However, this is an alleged sexual assault case. The knowledge that deeply personal topics are being instantaneously transmitted to millions of people via television adds the potential for the adverse effects on witnesses already previously mentioned

The concerns expressed by the Court, relating to witness impact preclude the use of EMC during witness testimony. Canon 3A(8)(b) also prohibits television coverage of jury voir dire or any EMC whatsoever regarding jurors. The Court concludes that still photography of opening statements and closing arguments and still and video photography of closing arguments will not create an adverse effect that would be greater than those caused by traditional media coverage and the same will be permitted.

In light of the foregoing, the Court hereby ORDERS as follows:


1. As used herein, "Proceedings," "photograph," "photography," "expanded media coverage," "judge," and "media" all have the definitions provided in Canon 3A.
2. The use of one camera by the Media for still photographs shall be permitted during opening statements and closing arguments only. No EMC of any type shall be permitted during witness testimony. The Court's partial grant of the EMC request for still photographs is strictly conditioned on the representations of News Media's counsel at the July 19, 2004 hearing that operation of said equipment will be silent and otherwise non-disruptive to the proceedings. Pursuant to Canon 3A(8)(d) and in the exercise of its discretion, the Court may modify, restrict, limit, suspend, or terminate the use of still photography at any time.
3. During closing arguments only, the use of two cameras by the Media for recording and broadcasting of video and audio coverage shall be permitted. The Court's partial grant of the EMC request for video coverage is strictly conditioned upon the representations of Court TV's counsel at the July 19, 2004 hearing regarding unobtrusive placement of the cameras and also that operation of said equipment will be silent and otherwise non-disruptive to the proceedings. Only one person shall be permitted in the courtroom regarding the operation of both video cameras. The camera operator may use a tripod or other approved method of securing the video cameras. However, the camera operator shall not change location while court is in session.
4. The video and still cameras shall be placed in a location acceptable to the judge.

5. Audio. For purposes of the EMC permitted by subsection 3 of this Order, the court's audio system shall be used if technically suitable and, in that event, there must be no interference with the court's use of its system. If the court's system is not technically suitable, then the person conducting expanded media coverage may install an audio recording system at his or her own expense upon first obtaining approval of the judge. All microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the courtroom.
6. Lighting. For purposes of the EMC allowed in this Order, no movie lights, flash attachments, or sudden lighting changes shall be permitted during a proceeding. No modification or addition of lighting equipment shall be permitted without the permission of the judge.
7. Operating Signals. For purposes of the EMC allowed in this Order, no visible or audible light or signal (tally light) shall be used on any equipment.
8. Pooling Arrangements. The Media shall be solely responsible for designating one media representative for the still camera coverage permitted by subsection 2 of this Order and one media representative for the video coverage permitted by subsection 3 of this Order. The Media are further responsible for arranging an open and impartial distribution scheme with a distribution point located outside of the courtroom. If no agreement can be reached on either of these matters, then there shall be no expanded media coverage of the type for which no pooling agreement has been made. Neither judges nor other court personnel shall be called upon to resolve any disputes concerning such pooling arrangements.
9. Conduct of Media Representatives. Persons conducting EMC, as allowed in this Order, shall conduct themselves in a manner consistent with the decorum and dignity of the courtroom. The following practices shall apply:
 - a. Equipment employed to provide EMC shall be positioned and operated so as to minimize any distraction;
 - b. Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Persons operating such equipment shall not wear clothing bearing any such identifying information;
 - c. Equipment used to provide EMC shall not be placed in, or removed from, the courtroom while court is in session. No film, videotape, or lens shall be changed within a courtroom while court is in session; and
 - d. Media representatives shall remain in their designated place in the courtroom while court is in session. No admittance or departure will be permitted while court is in session. All cameras shall be in position at least 15 minutes prior to the commencement of proceedings.
10. There shall be no expanded media coverage of jury voir dire.

11. There shall be no expanded media coverage permitted of the members of the jury;
12. There shall be no audio recording or closeup photography of bench conferences;
13. There shall be no audio recording or closeup photography of communications between counsel and client;
14. There shall be no audio recording or closeup photography of communications between co-counsel.
15. The defense and prosecution may obtain copies of the still photography and video coverage, as allowed in this Order, in the same manner as other Media.
16. The Media shall have no exclusive proprietary interest in the EMC recordings and photographs made and permitted pursuant to this Order. At the request of the Court, the Media shall make said videotapes and photographs available for copying for continuing legal education, public education, or similar purpose. This provision shall not require the media to take any special or unusual steps to preserve videotapes, photographs or negatives for this purpose.
17. A copy of this Order shall be posted at the location of the still and video cameras and their distribution points outside the Eagle County Justice Center.
18. The partial grant of EMC requests in this Order is subject to the final personal review of the camera location, audio set-up, cabling, and location of pooling equipment by the Court or its authorized personnel and final approval by the judge. The Court reserves the right to vacate this Order if final arrangements are not acceptable to it or to terminate upon any violation of the Order.
19. The Media shall comply with the most recent Amended Decorum Order entered by the Court to the extent that it is not inconsistent with the provisions of this Order.

DATED THIS 24th DAY OF August, 2004.

BY THE COURT


W. Terry Ruckriegle
Chief District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I have, on this _____ day of _____, 2004,
faxed a true and correct copy of the above ORDER to:

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Dana J. Easter, Esq.
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GRETCHEN C. RAU

September 5, 1985

The Honorable Luis D. Rovira
Justice, Colorado Supreme Court
2 East 14th Avenue
Denver, Colorado 80202

Dear Justice Rovira:

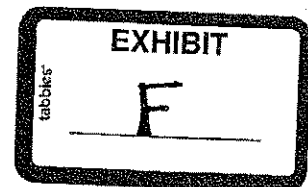
Enclosed please find a final proposed draft for the permanent adoption of Temporary Canon 3 (A)(8) of the Code of Judicial Conduct. This is a draft which is supported by the Colorado Bar-Press Committee. The language of this proposal was formulated by a committee consisting of myself and Ed Kahn as members of the Bar-Press Committee, Dick Holme and Jeffrey Chase as attorneys who represent the press, and Pete Webb as a former press representative. Tom Kelley as legal adviser to the Bar-Press Committee also participated.

I have enclosed an original and seven copies of both a clean draft of the final suggested language and a legislative type draft demonstrating the changes which are suggested to the current language of the temporary canon. The comments following the suggested changes are those of Dick Holme only.

As I indicated to you in a previous letter, the Bar-Press Committee wholeheartedly supports the permanent adoption of the temporary canon. The press representatives indicate that the temporary canon has been used successfully and with a minimum of problems. The Committee has several suggestions concerning changes to be made to the canon in its permanent form.

The major changes which we have included in our draft are the following:

1. In (8)(b) Standards Authorizing Coverage, we suggest that the permanent canon establish a presumption that expanded media be permissible in courtroom settings.



Justice Luis D. Rovira
September 5, 1985
Page Two

2. In 8 (b)(I) and (II) we provide that the presumption will stand unless a judge finds a "substantial probability" of interference with the rights of parties or disruption of the dignity of the court rather than a finding of "reasonable likelihood" that such would occur. The "substantial probability" language is used in the ABA subcommittee recommended rule and the Committee felt this language makes the intent of the presumption clearer.
3. We recommend elimination of 8 (c)(I) which prohibits expanded media coverage of pretrial hearings in criminal cases under any circumstances. The Committee felt that since the print media is present during all pretrial hearings and broadcasting reporters may be present, the presumption should be consistent in favor of expanded media coverage in this situation. The question of whether to allow expanded media coverage of pretrial hearings is better left to the judge in each case who may close a pretrial hearing if appropriate. This procedure would be similar to that provided for other types of evidentiary hearings.

If the Court does not desire to allow expanded media coverage of pretrial hearings in criminal cases, the Committee strongly urges that the Court clarify what is meant by the term "pretrial hearings." It is our information that various judges interpret the phrase differently; some allow coverage of first and second advisements, others do not.

4. We suggest elimination of (8)(f)(IV) which states that neither the media nor any witness may appeal or seek an original proceeding with respect to an expanded media coverage issue. We felt that such appeals would be rare but that the opportunity should be available to the media if an appeal or original proceeding were warranted.

There are other minor changes to clarify the intent of the canon and to articulate the media terms more appropriately. In particular, we have proposed elimination of the term "zoom" photography in 8 (c) (II), (III) and (V) as it was felt this was confusing. We are suggesting that the term "closeup photography" may better define the type of photography to be prohibited. We also included definitions of "photograph" and "photography" to try and clarify the meaning of those terms.

Justice Luis D. Rovira
September 5, 1985
Page Three


I have noted the letter you received from Judge Canon seeking clarification of the type of lenses which may be used. I hope that by specifying those situations when closeup photography is not allowed in 8 (c) (II), (III) and (V), the canon will be clearer on that issue. Closeup photography using telephoto lenses would then be allowed in all other circumstances unless the judge specifically ordered otherwise.

I have also received a copy of Bill Gray's letter to you. The Committee has discussed a suggested requirement that a camera person be present throughout an entire trial. The Committee strongly opposes this suggestion. It is felt that if the camera person is only allowed to leave at recesses, his or her presence or absence will not be distracting to a jury or witnesses. The Committee does not feel that such a requirement serves a legitimate demonstrated purpose. If any media representative wants any portion of a trial taped, he or she has the right to insist on coverage by the designated media representative for that trial or hearing. The Committee believes such a requirement would place an undue burden on the media, particularly those who film in smaller communities for local TV stations which might not have the resources of larger stations.

The Committee feels that the decision of whether to impose such a requirement is best left to each judge's discretion in considering the circumstances of a particular case. If a judge believes that such a requirement is necessary, the judge can impose such a requirement; however, the Committee believes that such a requirement should not be mandated in every case.

Thank you for the opportunity to comment on this issue of great importance to the public. I will be available at the hearing on September 11 for further comment and questions.

Yours truly,



Elizabeth H. McCann, Chairperson
Colorado Bar-Press Committee

EAM/pc

cc: Alex Keller, President Colorado Bar Association
Cliff Dodge, President Colorado Broadcasters Association
William Lindsey, President Colorado Press Association

027aes0801

PROPOSED PERMANENT CANON 3A(8)

(8) Judicial Supervision over Expanded Media Coverage of Court Proceedings. A judge may authorize expanded media coverage of court proceedings, in addition to those referred to in section (7) of this Canon, subject to the guidelines set forth below.

(a) Definitions. As used in this section, unless the context otherwise requires:

(I) "Proceeding" means any trial, hearing, or any other matter held in open court which THAT the public is entitled to attend.

(II) "PHOTOGRAPH" AND "PHOTOGRAPHY" MEANS ALL RECORDING OR BROADCASTING OF VISUAL IMAGES, BY MEANS OF STILL PHOTOGRAPHS, VIDEOTAPE, TELEVISION BROADCASTS, MOTION PICTURES, OR OTHERWISE.

(III) "Expanded media coverage" means any PHOTOGRAPHY OR AUDIO media recording or broadcasting of proceedings, by the use of television, radio, photography or recording equipment.

(IV) "Judge" means the justice, judge, referee, or other judicial officer presiding over the proceedings. In courts PROCEEDINGS with more than one judge presiding, any decision required shall be made by a majority of the judges.

(IV) "Media" means any news gathering or reporting agencies and the individual persons involved, and includes

newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications, professional journals, or any other news reporting or news gathering agencies whose function it is to inform the public or some segment thereof.

Comment: "Photograph" and "photography" are defined in section (a)(II) because those definitions lead to a simple and comprehensive definition of EMC in section (a)(III). In addition, the definition of photography helps simplify and clarify a number of other sections in the Canon. (See, for example, sections (c)(I), (II) and (IV).)

(b) Standards of Authorizing Coverage. In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:

EXPANDED MEDIA COVERAGE SHALL BE PRESUMED TO BE PERMISSIBLE UNLESS THE JUDGE MAKES SPECIFIC FINDINGS OF FACT ESTABLISHING:

(I) whether there is a reasonable likelihood A SUBSTANTIAL PROBABILITY that expanded media coverage would interfere with the rights of the parties to a fair trial, OR;

(II) whether there is a reasonable likelihood A SUBSTANTIAL PROBABILITY that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court, OR;

(III) whether THAT expanded media coverage would create adverse effects which THAT would be QUALITATIVELY greater than those caused by traditional media coverage.

Comment: This language, with one minor change for clarity (addition of the words "to be permissible" in the opening phrase), is taken from the draft of the Model Rule submitted and recommended by the Bar-Press Committee. See substantive comment 1 in KUSA letter dated April 30, 1985, to Justice Rovira.

PROPOSED PERMANENT CANON 3A(8)

(8) Judicial Supervision over Expanded Media Coverage of Court Proceedings. A judge may authorize expanded media coverage of court proceedings, in addition to those referred to in section (7) of this Canon, subject to the guidelines set forth below.

(a) Definitions. As used in this section, unless the context otherwise requires:

(I) "Proceeding" means any trial, hearing, or any other matter held in open court that the public is entitled to attend.

(II) "Photograph" and "Photography" means all recording or broadcasting of visual images, by means of still photographs, videotape, television broadcasts, motion pictures, or otherwise.

(III) "Expanded media coverage" means any photography or audio recording of proceedings.

(IV) "Judge" means the justice, judge, referee, or other judicial officer presiding over the proceedings. In proceedings with more than one judge presiding, any decision required shall be made by a majority of the judges.

(V) "Media" means any news gathering or reporting agencies and the individual persons involved, and includes newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications,

professional journals, or any other news reporting or news gathering agencies whose function it is to inform the public or some segment thereof.

(b) Standards of Authorizing Coverage. Expanded media coverage shall be presumed to be permissible unless the judge makes specific findings of fact establishing:

(I) A substantial probability that expanded media coverage would interfere with the rights of the parties to a fair trial; or

(II) A substantial probability that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; or

(III) That expanded media coverage would create adverse effects that would be qualitatively greater than those caused by traditional media coverage.

(c) Limitations on Expanded Media Coverage. Notwithstanding an authorization to conduct expanded media coverage of a proceeding, there shall be no:

(I) Expanded media coverage of jury voir dire;

(II) Audio recording or closeup photography of bench conferences;

(III) Audio recording or closeup photography of communications between counsel and client or between co-counsel;

(IV) Expanded media coverage of in camera hearings;

(V) Closeup photography of members of the jury.