Electronic Media Access to Federal Courtrooms: A Judicial Response

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“‘Apres moi, le deluge,’” predicts U.S. Supreme Court Chief Justice William H. Rehnquist, foreseeing television-camera access to the nation’s highest court. “I don’t doubt it’s coming sometime. I don’t see it coming soon.” Federal rules of criminal procedure ban electronic media access—television cameras, radio-broadcast equipment and other means of audio-visual recording—to federal courtrooms. Although there is no corresponding rule of federal civil procedure, the vast majority of local federal court rules prevent such access to civil proceedings. A majority of the sitting federal district court judges who responded to a University of Michigan Journal of Law Reform survey concerning electronic media access support...
a continued absolute ban. Yet judicial participants and observers are attempting to alter the scope of the absolute prohibition, and responding judges indicate that they might support changing restrictions on courtroom access.

Despite widespread experimentation at the state court level—forty-four states now permit in-court coverage by electronic media—and indications that the public favors greater audio and visual access to federal courtrooms, federal courts continue to prohibit such access per se. This disparity arises from court decisions that the Constitution neither prevents nor requires electronic media access to the courtroom. The first amendment and sixth amendment arguments once staunchly presented to the courts now seem inapplicable. Federal courts today simply point to existing rules of procedure, local and national, to deny electronic access requests. Congress

5. I conducted the survey with the help of fellow Journal members and the University of Michigan Law School. It is reproduced in the Appendix to this Note.

I mailed the survey, a four-page, 46-item questionnaire, to the 738 sitting United States district judges in December 1989 and collected responses over the next three months. In all, 249 surveys (33.7%) were returned; 16 judges chose to comment in the form of letters to me. I have incorporated those comments into this Note where possible. Results and an index of respondents are on file with the University of Michigan Journal of Law Reform.

Not all judges answered every question, and many judges chose more than one answer or provided an alternative response. The results are reported in this Note, generally, by the number of judges choosing to respond to a particular question rather than as a percentage of the 249 surveys returned.


9. See Estes v. Texas, 381 U.S. 532 (1965); Chandler, 449 U.S. 560; see also infra notes 34-50 and accompanying text.

10. See Conway v. United States, 852 F.2d 187 (6th Cir.), cert. denied, 488 U.S. 943 (1988); United States v. Edwards, 785 F.2d 1293 (5th Cir. 1986); United States v. Kerley, 753 F.2d 617 (7th Cir. 1985); Hastings, 695 F.2d 1278; Dorfman v. Meiszner, 430 F.2d 558 (7th Cir. 1970); see also infra notes 54-57 and accompanying text.
did not encourage the federal judiciary to make procedural changes in this area during the last decade; current changes are occurring at the administrative level.  

This Note examines the ongoing electronic media access dispute and suggests methods to establish access. Because reform of current law would be implemented largely at the judicial “front lines”—the 700-plus U.S. district judges’ courtrooms—the concerns and desires of district judges are of primary importance to any proposed change. The survey documented an institutional resistance to an expanded media presence in federal courtrooms; this institutional inertia may be the strongest single reason that change has not occurred. Part I of this Note presents the federal rules, canons, and resolutions comprising the current prohibition against video- and audio-equipment access, as well as case law illustrating an insistence upon maintaining set rules of procedure. Part II examines necessary influences for affecting procedural change. Part III analyzes the results of the survey regarding proposed procedural change. Finally, Part IV presents a strategy to accommodate the federal judiciary’s stance on electronic media access, as indicated by survey responses. Recommendations include proposals for partial access, the extent and success of which will depend upon the support given by those implementing the change.

I. RULES AND GUIDELINES PROHIBITING ELECTRONIC MEDIA ACCESS TO THE COURTS

A. Rule 53 and the Code of Judicial Conduct

A significant procedural barrier to allowing electronic media access to federal courtrooms is embodied in rule 53 of the Federal Rules of Criminal Procedure: “The taking of photographs in the court room during the progress of judicial

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11. The U.S. Judicial Conference in September 1990 considered recommendations that would allow discretionary experimental access to a handful of federal courtrooms, see infra note 75, and the American Bar Association revised its Code of Judicial Conduct, in August 1990, eliminating ethical considerations from the access decision, see infra note 76.

12. The number of sitting federal district judges at the time of the survey, December 1989, was 738. ALMANAC OF THE FEDERAL JUDICIARY (S. Nelson ed. 1989).
proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court.”13 The Advisory Committee comment accompanying rule 53 states: “While the matter to which the rule refers has not been a problem in the Federal courts as it has been in some State tribunals, the rule was nevertheless included with a view to giving expression to a standard which should govern the conduct of judicial proceedings.”14 Rule 53 took effect in 1946.15

Equally respected standards of judicial procedure exist in the American Bar Association’s judicial canons. Recently restructured, these include canon 3 A(7),16 formerly canon 35. In 1937, the American Bar Association (ABA) responded to concerns about ensuring a defendant’s right to a fair trial by adopting canon 35 of the Canons of Judicial Ethics, barring still photography and broadcast of judicial proceedings.17 In 1952, canon 35 was amended to include a ban on television broadcasts.18 When the ABA replaced the Canons of Judicial Ethics with the Code of Judicial Conduct in 1972, canon 35

13. FED. R. CRIM. P. 53.
16. The full text of canon 3 A(7) states:
A judge should prohibit broadcasting, television, recording or photographing in courtrooms and areas immediately adjacent thereto during sessions of court, or recesses between sessions, except that under rules prescribed by a supervising appellate court or other appropriate authority, a judge may authorize broadcasting, televising, recording and photographing of judicial proceedings in courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

ABA CODE OF JUDICIAL CONDUCT Canon 3 A(7) (1985).
17. 62 A.B.A. REP. 352 (1937). As originally adopted, canon 35 read:
Improper Publicizing of Court Proceedings. Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.

Id. at 767.
was recodified as canon 3 A(7). Finally, in 1982, the ABA enacted a new canon 3 A(7) that, under certain circumstances, allowed electronic media access to the courtroom.

Although they are not legally binding, the judicial canons carry significant weight, particularly when the courts are setting standards for the decorum and integrity of both the legal profession and the legal process. Beside reflecting the general standards adopted by the American Bar Association, canon 35 was endorsed by the Judicial Conference of the United States. Respect for the canon’s importance has led courts to cite it as authority supporting a ban of cameras and other electronic recording devices from federal courtrooms even in civil proceedings.

Before the modern consensus banning electronic media access to the courts, still and newsreel photography emerged as a presence at criminal trials. A particularly sensationalized kidnapping case in 1935, with intense pretrial publicity, prompted the presiding judge to institute strict guidelines requiring a photography pool for both still and newsreel photography and to ban the filming of any actual proceedings. Generally, these restrictions were followed;

23. See Kielbowicz, The Story Behind the Adoption of the Ban on Courtroom Cameras, 63 JUDICATURE 14, 15 (June-July 1979); Note, Right of Access, supra note 21, at 753-56.
25. See Kielbowicz, supra note 23, at 18. Hauptmann was arrested and tried for the 1932 kidnapping of the Charles A. Lindbergh baby. Intense pretrial publicity culminated in representatives from news organizations worldwide descending upon the New Jersey trial site. Some 700 writers and broadcasters covered at least part of the trial, as well as 132 still and newsreel cameramen. Id.
some newsreel photographers, however, continuously and surreptitiously recorded the first part of the trial. 26 This direct violation of the judge's guidelines, discovered only after some of the footage was released for public viewing, led the judge to bar all photographers from further courtroom coverage. 27 Combined with the sensationalist tactics of print journalists, this incited public condemnation of all media trial coverage. 28 Other states halted experimental programs concerning the broadcast of court proceedings, and outright courtroom bans on all photography and broadcasting spread. 29

B. The Cases

Only three states did not adopt canon 35. In Colorado, Oklahoma, and Texas, television news coverage experiments persisted. 30 The first televised trial took place in Oklahoma City in 1953; the presiding judge reserved the right to pull the plug on the camera at any time. 31 A broadcast of a 1955 murder trial in Waco, Texas, was the first live television broadcast of state courtroom proceedings. 32 The presiding judge, jurors, and members of the county bar spoke favorably of the coverage. 33

In 1965, the United States Supreme Court first considered the constitutionality of televising a state criminal trial over the defendant's objections in Estes v. Texas. 34 Faced with the

26. Id. at 19.
27. Id.
28. Id.
30. See Note, supra note 21, at 755-56.
32. Id. (discussing the Dec. 6, 1955 trial of Harry L. Washburn).
33. Id. at 421. Of the 61 members of the county bar, 59 watched at least part of the televised trial. Id.
34. 381 U.S. 532 (1965). The original trial, involving alleged swindling, was preceded by intense pretrial publicity, and only portions of the actual trial—the state's opening and closing arguments and the return of the jury's verdict—were
media's first amendment claims and growing concern about defendants' rights in general, the Court wrote that the sixth amendment's guarantee of a public trial was a protection of the accused, not a grant of unlimited access to the media: "While maximum freedom must be allowed the press in carrying on this important function in a democratic society its exercise must necessarily be subject to the maintenance of absolute fairness in the judicial process." The public trial guarantee could, then, be satisfied by allowing members of the media to attend court proceedings and report later what they had learned.

The Court addressed the defendant's due process claims by distinguishing Estes from cases requiring a showing of identifiable prejudice to the accused. The Court said that the state procedure "involves such a probability that prejudice will result that it is deemed inherently lacking in due process." No particular prejudice needed to be shown here to warrant reversal. "Television in its present state and by its very nature, reaches into a variety of areas in which it may cause prejudice to an accused. Still one cannot put his finger on its specific mischief and prove with particularity wherein he was prejudiced." The Court enumerated subtle ways in which broadcasts could cause unfairness: potential impact upon jurors, impaired quality of testimony, additional judicial responsibilities, and the impact upon the defendant. The Court then stated:

[These considerations] are real enough to have convinced the Judicial Conference of the United States, this Court and the Congress that television should be barred in federal trials by the Federal Rules of Criminal Procedure . . . . They are effects that may, and in some combination almost certainly will, exist in any case in which television is injected into the trial process.
Importantly, the Court limited condemnation of such broadcasts to its current context, admitting that future advanced "techniques of public communication and the adjustment of the public to its presence" might change the effect of telecasting on the fairness of criminal trials.\textsuperscript{44} Such a change came under consideration in \textit{Chandler v. Florida}\textsuperscript{45} in 1981.

In \textit{Chandler}, the Court drastically narrowed \textit{Estes}, distinguishing but not overturning that decision.\textsuperscript{46} During an experimental state court program allowing restricted still photography and electronic media coverage of judicial proceedings, convicted appellants objected that partially televising and broadcasting proceedings denied them a fair and impartial trial. The Court favored leaving states free to continue the controlled, experimental coverage methods.\textsuperscript{47} Concluding that \textit{Estes} did not announce a constitutional rule barring still photographic, radio, and television coverage in all cases and under all circumstances,\textsuperscript{48} the Court said that an absolute ban could not be justified by the mere danger of undue influence by electronic media. "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."\textsuperscript{49} The appropriate safeguard against such prejudice, the Court decided, was the defendant's right to show that media coverage of any kind compromised the fair trial guarantee.\textsuperscript{50}

Stressing the principle of federalism, the \textit{Chandler} Court curbed interference with experimental state programs, absent specific demonstration of media-induced prejudice.\textsuperscript{51} Today, forty-four state programs allow varying degrees of electronic media coverage of judicial proceedings.\textsuperscript{52} The same concept

\textsuperscript{44.} \textit{Id.} at 551-52.
\textsuperscript{45.} 449 U.S. 560 (1981). Charged with conspiracy to commit burglary, grand larceny, and possession of burglary tools, appellants were Miami Beach policemen accused of breaking and entering into a well-known Miami Beach restaurant. They objected to their trial's inclusion in Florida's pilot program for electronic media and still photography courtroom coverage. \textit{Id.} at 564-67.
\textsuperscript{46.} \textit{Id.} at 582.
\textsuperscript{47.} \textit{Id.}
\textsuperscript{48.} \textit{Id.} at 573.
\textsuperscript{49.} \textit{Id.} at 575.
\textsuperscript{50.} \textit{Id.}
\textsuperscript{52.} See \textit{supra} note 6.
of federalism underlies the continued disallowance of similar electronic access in federal courts.

Constitutional arguments almost uniformly have been interpreted to allow coverage of state court proceedings at each court's discretion. Although Chandler declared that television coverage did not inherently violate constitutional rights and therefore allowed state court electronic media access programs to continue, permitting coverage does not mean mandating coverage.\(^{53}\) Parties typically claim that Chandler's failure to impose a constitutional ban on electronic media access implied a constitutional requirement of such electronic access. In what has become a standard response in these cases, the courts of appeals have described limits to the first amendment rights of the press and upheld the validity of rule 53 and its local counterparts.\(^{54}\)

Federal cases of claimed access for television, still photography, and videotape activity\(^{55}\) have seen rule 53 and its local progeny upheld to protect the integrity of court proceedings, yet narrowed to permit recording outside the actual courtroom.\(^{56}\) In other cases, the federal courts have viewed the rule 53 restriction as a type of time, place, and manner restriction.\(^{57}\) More recently, in Westmoreland v. Columbia Broad-

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\(^{55}\) United States v. Kerley, 753 F.2d 617 (7th Cir. 1985) (denying a defendant facing charges of violating draft registration laws permission to videotape the court proceedings).

\(^{56}\) Dorfman v. Meisner, 430 F.2d 558 (7th Cir. 1970). In Dorfman, Chicago press representatives challenged a photographic coverage ban imposed by the U.S. District Court for the Northern District of Illinois. The rule prohibited photography, radio broadcasting, or telecasting "in the courtroom or its environs," not only during courtroom proceedings but in connection with them as well. Id. at 560. The Seventh Circuit supported the basis for the restriction, protecting the integrity of a court's proceedings, but narrowed the scope of allowable prohibition to the actual courtrooms or adjacent areas. Id. at 562. By relying upon court authority to maintain decorum and the integrity of the judicial arena, the court here indirectly validated rule 53, similar local rules, and the constitutionality of such measures.

\(^{57}\) Hastings, 695 F.2d at 1282. Addressing the claim that rule 53 is a per se ban upon electronic media access of the type prohibited by the Supreme Court, the court here characterized the procedural mechanisms as less than an absolute ban: "[R]ather, they merely impose a restriction on the manner of the media's news gathering activities. The press is free to attend the entire trial, and to report whatever they observe." Id. at 1282. Short of an absolute ban, the restriction did not deserve strict scrutiny as to its constitutionality, but merely application of a reasonableness test and the determination that "if it promotes 'significant governmental interest,' and if the restriction does not 'unwarrantedly abridge . . . the
casting System, Inc., the Second Circuit upheld a lower court's reliance on the federal courtroom access prohibition and the accompanying constitutional reasoning. The court repeated the Supreme Court's interpretation that the first amendment does not guarantee unlimited rights to televise federal trials and that television representatives have the same rights of access as the general public, namely, to be present at judicial proceedings and later to report on them. In so doing, the Second Circuit distinguished claimed media rights from actual constitutional rights:

There is a long leap, however, between a public right under the First Amendment to attend trials and a public right under the First Amendment to see a given trial televised. It is a leap that is not supported by history. It is a leap that we are not yet prepared to take. . . .

. . . [U]ntil the First Amendment expands to include television access to the courtroom as a protected interest, television coverage of federal trials is a right created by consent of the judiciary, which has always had control over the courtrooms . . . . 59

Any change in the current system, then, apparently would have to occur at the procedural level, rather than from constitutional argument.

II. THE SOURCE AND LIKELIHOOD OF REFORM

Procedural change is initiated by the United States Supreme Court, with recommendations from the United States Judicial Conference. Headed by the Chief Justice of the
Supreme Court, the Judicial Conference has voiced little interest in amending or abolishing rule 53. In 1984, the Judicial Conference recorded opposition to electronic media access by 78% of the respondents who were active or senior federal judges and by 84% of the respondents who were members of the American College of Trial Lawyers.62 Citing distractions and diversion of judicial time;63 psychological effects of courtroom cameras on jurors,64 witnesses,65 judges and lawyers,66 and the need to preserve the judicial proceedings' solemnity,67 a study committee recommended denying a petition68 seeking audio- and visual-recording access to federal courts:

The principal issue presented by the petition is the potential effect of the requested change on the fair and impartial administration and quality of justice. When human rights, the privacy of individuals, and the search for truth are threatened by a proposed change, the threat should be removed before the requested change is made. The information set forth in the petition and attachments in support of the requested change is sparse when compared with the clear indications that the threat is real.69

62. REPORT OF THE JUDICIAL CONFERENCE AD HOC COMM. ON CAMERAS IN THE COURTHOUSE, submitted to the Judicial Conference of the United States in September 1984 (hereinafter 1984 REPORT). The report was generated in response to a petition by 28 news-related organizations, requesting that canon 3 A(7) and rule 53 of the Federal Rules of Criminal Procedure be amended to allow broadcasting, television, and camera coverage in federal court proceedings. See Julin, supra note 21, at 1306.

During its 1989 national convention, the National Society of Professional Journalists reiterated its opposition to the continued bar to journalists' use of "photographic and electronic equipment to cover the United States Supreme Court and other federal courts. The delegates supported full access to such courts and asked that the resolution be sent to the justices of the Supreme Court." Be it resolved . . . QUILL 46 (Dec. 1989/Jan. 1990).

64. Id. at 5.
65. Id. at 6.
66. Id.
67. Id. at 7. The survey specifically addressed these areas of inquiry. The tone of the survey was questioned by one respondent, who misunderstood the pointed questions concerning these alleged drawbacks as indicating an anti-access bias on my part. No such bias motivated the survey.
68. Id. at 9.
69. Id. at 8.
The Judicial Conference denied the access request.\textsuperscript{70} Similar to its predecessor, a 1989 Judicial Conference Ad Hoc Committee on Cameras in the Courtroom submitted preliminary findings and tentative recommendations on the access issue in September 1989 for comment by the Judicial Conference at large.\textsuperscript{71} Citing two experimental programs already authorized by the Judicial Conference\textsuperscript{72} and the growing view that the federal rules are unduly restrictive, the committee suggested that access rules should be relaxed. In its most pertinent recommendation, the committee recast the access issue as an administrative issue rather than an ethical problem.\textsuperscript{73} In addition, the committee urged that cameras and electronic reproduction equipment be permitted for ceremonial proceedings. During nonceremonial proceedings, however, this equipment "should be utilized only for the presentation of evidence, perpetuation of the record, security, and other purposes of 'judicial administration.'"\textsuperscript{74} Citing the wide availability of electronic media access in state courts, the committee recommended "that the technological advances and the experiences of the states continue to be monitored to determine whether further modifications of the restrictions would be warranted at a future date."\textsuperscript{75}

\footnotesize
70. Judge J. Foy Guin, Jr. of the Northern District of Alabama served as a member of the 1983-84 Ad Hoc Committee on Cameras in the Courtroom. He stated: [That body] unanimously recommended to the Judicial Conference that microphones and cameras be banned from the courtroom. We did not base the decision on ethics, although I realize the canons of ethics do forbid such. Incidentally, I spent eight years on the Advisory Committee on Standards of Conduct, which gave advice to judges when they requested concerning the meaning of the canons in particular situations. It was the opinion of that committee that this question is not an ethical question and that it should be removed from the canons. Letter from Judge J. Foy Guin, Jr. to Laralyn M. Sasaki (Dec. 19, 1989) (commenting upon the survey).

71. For the Committee's final recommendation, see infra note 75.

72. At its September 1988 session, the Judicial Conference authorized six courts to experiment with videotaping methods of taking the official record, as well as using videoconferencing for initial appearances, arraignments, prisoner civil rights cases, and habeas corpus cases. See \textit{REPORT OF THE JUDICIAL CONFERENCE AD HOC COMM. ON CAMERAS IN THE COURTROOM} 4 (1989). Additionally, it allowed the United States Marshals Service to monitor courtroom proceedings by closed-circuit video equipment. \textit{Id.}

73. \textit{Id.} at 5.

74. \textit{Id.}

75. \textit{Id.} at 7. The full text of the actual proposed policy reads:
At the same time that the Judicial Conference Ad Hoc Committee urged a new perspective on the electronic media access issue, the American Bar Association also began to view the question as one of administration rather than ethics. An ongoing revision of its Code of Judicial Conduct shadows the existing 1982 canons but removes the issue of electronic access as an ethical concern. Instead, the access question would be addressed elsewhere by administrative standards.76

Because procedural change (even for lower federal courts) can only be initiated by the Supreme Court and the federal Judicial Conference, most commentators agree that no drastic movement toward reform of the current standards—much less abolition of the absolute ban—will come without the approval

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Policy Statement on the Use of Cameras And Other Recording Means in the Courtroom

A judge may authorize broadcasting, televising, recording, or taking photographs in the courtroom and in adjacent areas during investitive, naturalization, or other ceremonial proceedings. A judge may authorize such activities in the courtroom or adjacent areas during other proceedings, or recesses between such other proceedings, only:

(a) for the presentation of evidence,
(b) for the perpetuation of the record of the proceedings,
(c) for security purposes, or
(d) for other purposes of judicial administration.

When broadcasting, televising, recording, or photographing in the courtroom or adjacent areas is permitted, a judge should ensure that it is done in a manner that will be consistent with the rights of the parties, will not unduly distract participants in the proceeding, and will not otherwise interfere with the administration of justice.

It shall be the responsibility of the circuit councils to oversee the implementation of the foregoing policy within their respective circuits.

Id. at 6.


76. These Code of Judicial Conduct proposals were voted on by the ABA House of Delegates August 7-8, 1990. The ABA has made no attempt to draft administrative guidelines addressing electronic media access, but would defer to the administrative rules of the federal courts. Telephone interviews with Deborah Weixl, American Bar Association, Department for Communications, Chicago, Ill. (Sept. 21, 1989, Apr. 2, 1990 & Aug. 20, 1990).
of the Chief Justice of the Supreme Court.\textsuperscript{77} Former Chief Justice Warren E. Burger was openly hostile to any such reform,\textsuperscript{78} although the Supreme Court as an institution has never taken a formal position on the subject outside of its decisions.\textsuperscript{79} Current Chief Justice William H. Rehnquist has generally followed Burger's example, commenting on the issue in an impromptu, noncommittal manner—never as a formal declaration of position.\textsuperscript{80}

In November 1988, Rehnquist attended a demonstration of how Supreme Court proceedings could be covered.\textsuperscript{81} After the demonstration, sponsored by a consortium of news organizations and attorneys, the Chief Justice thanked the participants and left without comment.\textsuperscript{82} Until the Judicial Conference faces directly any recommendations regarding minimal administrative use of electronic media, the Chief

\begin{itemize}
\item \textsuperscript{77} Telephone interview with Deborah Weixl, \textit{supra} note 76; see generally, Julin, \textit{supra} note 21, at 1305; Note, \textit{Television Coverage of Trials, supra} note 29, at 1275 (citing Philadelphia Inquirer, Nov. 13, 1984, at 8, col. 1); \textit{A Closed Mind}, Nat'l L.J., Nov. 26, 1984, at 12 (editorial). At least one judge, responding to the survey, commented upon the former Chief Justice's stance: "The federal courts suffer the legacy of Warren Burger's antipathy toward television." Comments of Judge Prentice H. Marshall of the Northern District of Illinois.

\item \textsuperscript{78} \textit{Burger Opposes Courtroom TV}, Washington Post, Nov. 13, 1984, at A5, col. 2: "Calling television in the courtroom the 'most destructive thing in the world,' Chief Justice Warren E. Burger declared: 'There will be no cameras in the Supreme Court of the United States while I sit there.' " His prediction proved true. \textit{See Note, Television Coverage of Trials, supra} note 29, at 1275 n.32 (citing Philadelphia Inquirer, Nov. 13, 1984, at 8, col. 1).

\item \textsuperscript{79} Telephone interview with Toni House, public information officer of the U.S. Supreme Court, Washington, D.C. (Sept. 22, 1989).

\item \textsuperscript{80} During an address at the University of Michigan Law School, the Chief Justice was asked if he foresaw television cameras in the Supreme Court. "I'm reminded of the words of Louis XV: 'Apres moi, le deluge.' After me, the deluge. I don't doubt it's coming sometime. I don't see it coming soon. (Pause) I'm not violently opposed to it." W. Rehnquist, Remarks at the University of Michigan Law School (October 19, 1989).

In June, 1990, the Chief Justice reportedly wrote U.S. Representative Robert Kastenmeier, chairman of the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Administration of Justice. According to news reports, Rehnquist wrote, "I am by no means adverse to the idea of a sort of experiment with television and radio coverage in federal courts." \textit{Rehnquist Warming to Cameras}, Nat'l L.J., June 4, 1990, at 24, col. 3. When the Judicial Conference voted to authorize a three-year broadcast experiment in September 1990, Rehnquist made no public comment, although he reportedly spoke in favor of the experiment during the Judicial Conference's private meeting. \textit{See} Greenhouse, \textit{supra} note 75.

\item \textsuperscript{81} Telephone interview with Toni House, \textit{supra} note 79.

\item \textsuperscript{82} \textit{Id.}\ Attorney Timothy B. Dyk was involved with that demonstration and said there have been no further demonstrations for the Chief Justice. Telephone interview with Timothy B. Dyk, \textit{supra} note 75.
Justice's position on this particular alteration of the current policy will remain unknown.

III. FEDERAL DISTRICT JUDGES' SUPPORT OF A REVISED RULE

More than half of the federal district judges responding to the survey said that they would choose to continue a ban of electronic media access to federal courtrooms. More than one-third, however, favored making rules flexible enough to use electronic media for security or administrative purposes, and more than two-thirds would allow access to ceremonial proceedings. Because more than one-third would also allocate discretion to the trial judge regarding access decisions, substantial support seems to exist for a uniform guideline that allows independent determinations of access by judges on a case-by-case basis.83

The general attitudes of the 249 responding judges are presented in Table 1. One hundred thirty judges said that they would like to continue the absolute ban,84 yet eighty-four respondents favored using some recording method for administrative reasons. Security85 and the preservation or

83. Some 51.4% of responding judges said they would agree with the Chief Justice of the U.S. Supreme Court if he advocated leaving access decisions to the discretion of federal district court judges.

84. Many judges marked more than one answer, indicating that they prefer neither an absolute ban nor carte-blanche access, but support some modified version of an access-restrictive rule. For example, 17 of the 130 judges who said that they favored keeping an absolute ban also indicated that they favored using electronic media for administrative purposes.

For clarity, percentages are calculated throughout this Note on the basis of the total number of judges who responded to the particular question under consideration and not as a percentage of the 249 judges who responded to at least part of the survey.

85. Responses to this survey were collected shortly after the December 16, 1989, assassination of Judge Robert Vance of the Eleventh Circuit Court of Appeals.

Although closed-circuit television and video equipment have been offered to improve security methods, Senior U.S. District Judge Robert E. Varner of the Middle District of Alabama wrote in opposition to the publication of audio and video recordings of court proceedings, specifically mentioning the death of Judge Vance: "I confess that my concern thereon is increased by the fact that within the past few days an Alabama federal judge has been assassinated and security measures to protect others have been accelerated and have added tremendously to the cost of
presentation of evidence was figured most often among the administrative reasons for allowing access. Only forty eight judges said that they would favor permitting access for television cameras, radio broadcasting equipment and still cameras during most proceedings. Seventy five respondents said that they favored leaving the access decision to the individual judge’s discretion.

### Table 1: General Attitudes

<table>
<thead>
<tr>
<th>Attitudes Towards Media Access</th>
<th>Responses*</th>
</tr>
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<tbody>
<tr>
<td>Continue absolute ban</td>
<td>130</td>
</tr>
<tr>
<td>Permit for most proceedings</td>
<td>48</td>
</tr>
<tr>
<td>Allow for administrative reasons</td>
<td>84</td>
</tr>
<tr>
<td>Allow at judge’s discretion</td>
<td>75</td>
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Respondents: 249

<table>
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<tr>
<th>Responsibility for Admitting Media</th>
<th>Responses</th>
<th>Percent</th>
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</thead>
<tbody>
<tr>
<td>Set rule governing decisions</td>
<td>111</td>
<td>51.8</td>
</tr>
<tr>
<td>Judge’s discretion</td>
<td>98</td>
<td>45.7</td>
</tr>
<tr>
<td>Appellate decision</td>
<td>2</td>
<td>0.9</td>
</tr>
<tr>
<td>Parties’ decision</td>
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<td>1.4</td>
</tr>
</tbody>
</table>

Respondents: 214

* Respondents frequently gave more than one response.

But when asked how a decision to admit media should be made, judges were fairly divided between case-by-case judicial discretion and a set rule. Roughly 45% of the responding judges said that judges should decide on a case-by-case basis, while more than 50% said there should be a set rule governing courtroom access decisions. Ten respondents checked both preferences, noting that they favored a set access rule with the running the United States Courts and Marshals Service.”

In an accompanying copy of a letter to judicial authorities, Judge Varner wrote: Publication of the photographs and activities of every federal judge makes security even more difficult at this time when our position with the drug trade makes us targets for persons with several interests, not necessarily limited to drugs. Some of us feel that, the less often our pictures are published, the longer we are inclined to enjoy good health.

86. These were specific examples of administrative uses included in the survey question.
accompanying judicial discretion to expand or restrict access in a particular case. Judge Alan B. Johnson of the District of Wyoming, however, noted that "leaving the matter up to the 700+ individual judges creates no rule at all." Only two judges said the appellate courts should decide whether to admit the media, case by case, and only three said the parties should decide.

A. The Influence of State Experimentation

Federal judges generally expressed little interest in extending state experiments to permit cameras into the federal courts because they believed that electronic media access would have negative effects on trial participants and on court proceedings in general. More than 60% of the respondents (136 of 223)\(^{87}\) said that they believed state courts are pursuing an unwise trend by allowing access to cameras and other electronic media. Because most states allow electronic media in the courtroom, this survey asked what the judges saw as the difference between state courts and federal courts, where judges oppose electronic access so strongly. The most common answer was that state court judges are elected while federal court judges serve life appointments. "I think state court judges feel an element of subservience to [the] press which in fact rewards with favorable coverage the judges favoring the media's position on any question," said Judge Charles A. Moye, Jr. of the Northern District of Georgia. Less extreme sentiments were expressed by Judge James M. Ideman of the Central District of California, who viewed state court judges as elected officials, many of whom "don't mind the publicity." Judge Howell Cobb of the Eastern District of Texas said that state courts "are not free to be unpopular" and must present an image of being "tough on crime" and not allowing defendants to take advantage of "loopholes." As one anonymous

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87. Unless otherwise noted, the following percentages will be determined by the number of judges who chose to answer a particular question, often fewer than the total number of surveys returned.
response from the Northern District of Illinois summarized, "Media exposure is generally viewed as helpful to state court judges who must run for reelection. Federal judges, who have lifetime appointments, have no incentive to maximize their public exposure or campaign in this manner."

Other respondents characterized state courts as having a greater volume of cases to dull the impact of electronic access. One judge said that he thought "[s]tate courts are a little more flexible and a little more forward looking than most federal courts." Judge Alan B. Johnson of the District of Wyoming said that federal and state courts do not "differ significantly as to purpose for the institution; however, the federal court historically exists to provide an environment for judicial business that is free from the buffeting of local partisans."

In addition, federal judges expressed little interest in learning about the results of state experiments allowing cameras. Only 10% of responding judges (25 of 249) said that they would like to review state access guidelines or read evaluations of the impact electronic media access has had at the state level. As to experimentation at the federal court level, roughly 30% (63 of 228) said that they would like to allow electronic media access and recording, without actual broadcasting. Commonly suggested limitations to experimental access included:

- not allowing extra lights or sounds;
- recording only appellate proceedings or nonjury or civil cases at first;
- granting access to opening statements and closing arguments only;
- recording jury instructions, pleas, and sentencings only;
- allowing only audio access initially;
- permitting access on a case-by-case basis;
- conditioning access upon the parties' consent, in coordination with counsel, or at the discretion of the judge (who would have the authority to exclude coverage at any time);
- excluding juror and spectator recording;

88. Comments of Judge Lucius D. Bunton, III of the Western District of Texas.
fixing equipment at one location;
recording only naturalization ceremonies or investitures;
allowing only a remote-controlled, fixed "official" camera to provide information to a media pool.

More specific suggestions included allowing media representatives to do "mock-up" pilot broadcasts; allowing access to "public policy" cases (desegregation cases or cases determining the rights of racial or ethnic groups, for example); creating sanctions for "grandstanding" by trial participants; and using the experimental results only for ABA-type seminars.

Federal cases and state cases both received votes for being more attractive to the news media. Some judges relayed the feelings expressed by colleagues at the state court level, in support of and in opposition to access. Judges cited negative and positive personal experiences with electronic access from past state court experiences. Judge Lynn N. Hughes of the Southern District of Texas recalled from previous state court experience that cameras sometimes filmed through the courtroom door window, and "nothing changed. Most trials are absolutely without news content; it is only the already sensational ones where you have problems." But the federal judges who recalled prior negative experiences with cameras were more outspoken: "My media court experiences have proven that they affect the conduct of the trial participants," said an unnamed respondent from the Northern District of Illinois. Judge James M. Ideman, of the Central District of California, said, "I've seen it [access] in state court and it doesn't work." And Judge Harry L. Hupp, of the Central District of California, concluded, "[E]xperience is that TV does not broadcast more than small snippets of no consequence—the main use is to use the courtroom as a sound stage with the reporter telling what happened. . . . So—the question is whether providing a visual background to the reporter is worth the time and nuisance to us."

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89. Suggestion of an anonymous respondent of the Eastern District of Pennsylvania. Suggestions not attributed to a particular judge were offered by more than one respondent.
90. Suggestion of Judge John W. Reynolds of the Eastern District of Wisconsin.
91. Suggestion of Judge John T. Elfvin of the Western District of New York.
92. Suggestion of Judge Alexander Harvey, II of the District of Maryland.
Great concern about adding to the judicial workload and inhibiting the timely disposition of cases seemed to join with widespread belief that access will have negative effects upon the proceedings before the court. These administrative concerns accompanied common fears about the tendency of human nature to allow electronic media access to affect trial participants. In any event, judges said that they feel that the access issue is no longer one primarily for codes of ethics to regulate, but for administrative rules to govern.

1. Effects on witnesses—Of the judges who responded when asked about the effects of electronic media coverage on witness testimony,\(^\text{94}\) approximately 70% (150 of 220) said that they thought such coverage would have a negative effect; about 60% (140 of 221) likewise said that there would be a negative effect on attorneys’ presentation. Judge William L. Beatty of the Southern District of Illinois, in a letter to the 1989 Judicial Conference Ad Hoc Committee on Cameras in the Courtroom, said that he found it “inconceivable” that individual witnesses could ignore the recording of proceedings. “The jury is repeatedly instructed and admonished to observe a witness’ demeanor, behavior, and attitude along with the testimony he or she may present, in order to determine that witness’ credibility,” Beatty said, adding that the presence of a camera and the witness’ performance for the camera’s audience could “possibly destroy the jury’s ability to analyze and arrive at a realistic determination of the witness’ credibility.”\(^\text{95}\)

Judge Nauman S. Scott of the Western District of Louisiana analogized the “inevitable” effect that the presence of electron-

\(^93\) Many of the effects predicted by survey respondents were specifically distinguished as to their short- or long-term nature.

\(^94\) Again, not all judges responded to all questions. Approximately 25 of the survey respondents did not answer these questions regarding electronic media coverage effects upon witnesses, attorneys, the court’s image, public understanding of court proceedings and the administration of cases; roughly 5 routinely said they did not know what the effects would be.

\(^95\) Letter from Judge William L. Beatty to Judge Robert F. Peckham, Chairman of the Ad Hoc Committee on Cameras in the Courtroom (Dec. 21, 1989). (copy, provided by Judge Beatty, on file with the University of Michigan Journal of Law Reform).
ic media would have on court participants. "One has only to see a televised football game. All the fans come to see the game but the game is forgotten immediately and their attention is captured by the camera, as soon as they find that they are on television."96

2. Effects on the public image of the courts—At least one respondent said that the presence of electronic media would have a positive effect on the judge. Judge Richard M. Bilby of the District of Arizona specifically mentioned this idea, and other responses indicated that the fact finder or presiding judge may be affected, either positively or negatively. As to the public's perception of the courts, the responding judges' responses are reflected in Table 2. Roughly 40% said that they thought coverage could have a positive effect; the

<table>
<thead>
<tr>
<th>Effect of Access on Public Perceptions of Judicial System</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive</td>
<td>83</td>
<td>38.2</td>
</tr>
<tr>
<td>None</td>
<td>65</td>
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<td>Negative</td>
<td>69</td>
<td>31.8</td>
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<td>Respondents: 217</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Effect of Access on Public Understanding of Judicial System</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive</td>
<td>100</td>
<td>46.5</td>
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<td>None</td>
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<tr>
<td>Negative</td>
<td>53</td>
<td>24.7</td>
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<td>Respondents: 215</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

remaining 60% divided evenly between predicting negative effects or predicting no effect. Predictions about the effect of television on public understanding of court proceedings are also presented in Table 2. Approximately 45% said media broadcast could have a positive effect upon understanding; 25% foresaw a negative effect; and 30% predicted no effect. Judge Nauman S. Scott of the Western District of Louisiana echoed many respondents' views: "The purpose of the courts . . . is to dispense justice; not to

96. Comments accompanying Judge Scott's completed survey response.
educate the public." Even if education were a goal, some judges doubted that the media's thirty-second portrayals of in-court proceedings would further that goal.

**TABLE 3: ADMINISTRATIVE IMPACT**

<table>
<thead>
<tr>
<th>Impact on Case Administration</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive</td>
<td>17</td>
<td>8.0</td>
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<tr>
<td>None</td>
<td>82</td>
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<tr>
<td>Negative</td>
<td>114</td>
<td>53.5</td>
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Respondents: 213

<table>
<thead>
<tr>
<th>Leaving Access Decisions to Judges' Would Greatly Impede Timely Disposition of Cases</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>66</td>
<td>30.4</td>
</tr>
<tr>
<td>No</td>
<td>151</td>
<td>69.6</td>
</tr>
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</table>

Respondents: 217

<table>
<thead>
<tr>
<th>Exercising Discretion over Access Issues Will Unduly Burden Judges' Workloads</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>70</td>
<td>33.3</td>
</tr>
<tr>
<td>No</td>
<td>140</td>
<td>66.7</td>
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</table>

Respondents: 210

<table>
<thead>
<tr>
<th>Allowing Access Will “Open the Floodgates” to More Appeals</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>46</td>
<td>27.9</td>
</tr>
<tr>
<td>No</td>
<td>119</td>
<td>72.1</td>
</tr>
</tbody>
</table>

Respondents: 165

3. Effects on the timely administration of justice—Table 3 presents the responses regarding the perceived impact on the administration of justice. Slightly more than half said that

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97. Judge Scott continued:
It is my opinion that we have the best and most responsible news media in the world but the newspapers are interested in circulation and that TV is interested in the Nielsen rating. Neither would be interested in financing an objective production of the entire trial but only the more sensational or most famous witnesses. The whole production would be flawed and entirely devoid of objectivity. Many cases involve fundamental issues which are subject to fiery and sometime violent public partisanship. Such issues as the integration of public schools, the civil rights of prisoners and the various other minorities; birth control; burning of the flag and abortion, etc. These are the cases most likely to be televised by news media. . . . The judge must have complete and absolute authority to protect the calm and reflective atmosphere in and around the court so as to assure a reasoned objective consideration of the case by the decision maker.
electronic media coverage would inhibit the administration of justice; less than 10% predicted that such coverage would improve administration. About 40% said that media access would probably have no effect at all. Regarding access decision making, roughly two-thirds said they thought that leaving access decisions to the discretion of the district judge would not greatly impede the timely disposition of each case. A similar number said that exercising discretion over electronic media access would not unduly burden their workloads.

Most federal judges responding did not think that access would "open the floodgates" to appeals. Slightly more than 70% did not believe that access would increase appeals substantially. Almost 30% did fear "opening the floodgates." Many judges commented that the floodgates were already open and access would merely add an issue to be considered while cases were already on appeal.98

4. Effects on decorum in the courtroom—Decorum and dignity seemed to be of the utmost concern when judges considered the potential "circus atmosphere"99 invited by electronic media access. They indicated that they feared that the court proceedings would become a media "event" that "demeans" the court's function and offends the dignity of the courtroom.

Some judges commented that the court's function of providing a fair forum for resolving disputes must remain sheltered, so that the judicial system, "upon which the American public relies, may be utilized for the administration of justice, rather than the administration of sensationalism."100 Others said that courts would become a location for trial participants "to communicate via the media to the public rather than to address[] the tasks at hand."101 Use of phrases like

98. In all, 48 judges of 217 said that access would greatly impede the timely disposition of each case, would unduly burden their workload, and would affect the administration of justice; 56 answered all the preceding questions in the negative. In addition, 17 respondents answered "Yes" to these preceding questions, as well as predicting that the floodgates would be opened to appeals.

99. Many judges expressed this general concern. I selected the terms in this section from typical judicial responses.


101. Letter from District Judge Paul V. Niemeyer of the District of Maryland to Laralyn M. Sasaki (Jan. 2, 1990). Judge Niemeyer continued, "The needs of litigation demand a quiet, balanced, and even handed disposition of issues based on reason,
"showboating," "hams," and "play-acting" suggests that respondents thought that being the focus of the court's attention alone would not cause participants to become actors or individuals enjoying the spotlight; the camera or recorder would prompt more grandstanding.

In contrast to the "grandstanding" potential, several judges indicated that attorneys, who knew they would be covered by video and audio news media, would be better prepared for court proceedings. Judge Robert C. Broomfield of the District of Arizona said, "People tend to do better work when [they] know they are being observed (and judged). Lawyers and judges are no different." Judge Thomas P. Jackson of the District of Columbia agreed: "Participants would be on their best behavior." But Judge Robert G. Doumar of the Eastern District of Virginia qualified his belief that "attorneys would adopt higher standards but that participants and witnesses would utilize the media for personal ends or messages."

In general, when asked whether electronic media access would affect the quality of justice and its administration, almost 65% (146 of 228) said it would, but not all said that the effect would be negative. Several judges pointed to the dubious effect media access has had on Congress.¹⁰² Like many of his colleagues, Judge Gustave Diamond of the Western District of Pennsylvania also expressed concern about the practical aspects of conducting court proceedings: "In a perfect world trials and the administration of justice would be executed without any outside influences or distractions. We do not live in a perfect world, but should not encourage or facilitate any more outside distractions than absolutely necessary." More than 60% (141 of 223) said that electronic media access and subsequent coverage would be too great a temptation to jurors, causing them to view possibly prejudicial news accounts of a case.¹⁰³

Not all judges, however, had a negative outlook. One

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¹⁰² For example, Judge Don J. Young of the Northern District of Ohio commented, "If we look at [audio and video recording's] effect on other aspects of government, we must conclude that its effects would be harmful."

¹⁰³ "Human nature" and "the Apple and Eve," were typical of responses to this question, which was premised on jurors being otherwise obedient to the court's admonition against reading or viewing news accounts of a case.
foresaw "little, if any, risk, especially if sensitive matters not presented to a jury were not presented before the electronic media. If [media access was a risk], I think it usually would be avoided by jurors upon instruction—or the jury could be sequestered when such parts were shown electronically to the public." More than a dozen other judges said that they trust jurors to follow the court's admonition.

An even greater danger, according to many respondents, is presented by friends and relatives of jurors. Those nonparticipants could hear or view "actual" trial proceedings and try to discuss the case with jurors, influence them—or even try to second-guess the jury. Other jurors might be tempted, as the proceedings continue, to explain the proceedings watched by friends or relatives on television.

Responses indicate that judges have sincere concerns about the effect electronic media access would have upon the delivery of justice. Except for those with state court experience in systems allowing electronic media access, however, these fears remain speculative, no matter how sincerely held.

C. Preferred Methods of Coverage

Nearly two-thirds of the judges said they opposed televising courtroom proceedings at all, while just over half of the respondents opposed still photography, videotape recording, and coverage of entire court proceedings; approximately one-

104. Comments of Judge Warren K. Urbom of the District of Nebraska.
105. "You either trust jurors to follow your admonition or you don't. I do!" said Judge Robert C. Broomfield of the District of Arizona.
106. Several judges mentioned this secondary threat, which they believed to be generated by electronic media access. Judge J. Spencer Letts of the Central District of California, in particular, spelled out his concerns:

Ordinarily, the problem which results when jurors talk with others about a case despite admonitions not to do so may not be too great. First, the temptation of the outsider to force the conversation is not too high when he knows little or nothing to begin with, so the admonition may not be too often ignored. Second, both parties are likely to accept the premise that the opinion of the one who is there is probably more valid. When both are 'there,' however, the equation changes dramatically, and it is much harder for the one who must reach the actual verdict to defend his or her opinion. It is, therefore, much more subject to undue influence.

fourth of the survey respondents favored these suggested modes of access. These responses are detailed in Table 4.

When asked their preferences regarding particular methods

107. Survey respondents chose from among the following categories of preference: “strongly oppose,” “oppose,” “neutral,” “favor,” and “strongly favor,” as represented by the numbers 1, 2, 3, 4, and 5. See Appendix. Combining “strongly opposed” with “somewhat opposed” answers (and combining “strongly favored” with “somewhat favored”), the results are as follows:

64.5% opposed television coverage; 24.0% favored,
54.7% opposed still photography; 24.5% favored,
54.4% opposed videotape recording; 28.1% favored,
56.6% opposed gavel-to-gavel coverage; 31.7% favored.

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### TABLE 4: ATTITUDES TOWARD METHODS OF COVERAGE

<table>
<thead>
<tr>
<th></th>
<th>Responses</th>
<th>Percent</th>
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<tbody>
<tr>
<td><strong>Television</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly favor</td>
<td>29</td>
<td>13.4</td>
</tr>
<tr>
<td>Favor</td>
<td>23</td>
<td>10.6</td>
</tr>
<tr>
<td>Neutral</td>
<td>25</td>
<td>11.5</td>
</tr>
<tr>
<td>Oppose</td>
<td>17</td>
<td>7.8</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>123</td>
<td>56.7</td>
</tr>
<tr>
<td><strong>Respondents:</strong> 217</td>
<td></td>
<td></td>
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</tbody>
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<table>
<thead>
<tr>
<th></th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Still Photography</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly favor</td>
<td>27</td>
<td>12.5</td>
</tr>
<tr>
<td>Favor</td>
<td>26</td>
<td>12.0</td>
</tr>
<tr>
<td>Neutral</td>
<td>45</td>
<td>20.8</td>
</tr>
<tr>
<td>Oppose</td>
<td>31</td>
<td>14.4</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>87</td>
<td>40.3</td>
</tr>
<tr>
<td><strong>Respondents:</strong> 216</td>
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<td></td>
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<thead>
<tr>
<th></th>
<th>Responses</th>
<th>Percent</th>
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<tbody>
<tr>
<td><strong>Videotape Recording</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly favor</td>
<td>34</td>
<td>15.7</td>
</tr>
<tr>
<td>Favor</td>
<td>27</td>
<td>12.4</td>
</tr>
<tr>
<td>Neutral</td>
<td>38</td>
<td>17.5</td>
</tr>
<tr>
<td>Oppose</td>
<td>19</td>
<td>8.8</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>99</td>
<td>45.6</td>
</tr>
<tr>
<td><strong>Respondents:</strong> 217</td>
<td></td>
<td></td>
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<table>
<thead>
<tr>
<th></th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>“Gavel-to-Gavel” Coverage</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly favor</td>
<td>38</td>
<td>20.1</td>
</tr>
<tr>
<td>Favor</td>
<td>22</td>
<td>11.6</td>
</tr>
<tr>
<td>Neutral</td>
<td>42</td>
<td>22.2</td>
</tr>
<tr>
<td>Oppose</td>
<td>14</td>
<td>7.4</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>93</td>
<td>49.2</td>
</tr>
<tr>
<td><strong>Respondents:</strong> 189</td>
<td></td>
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</tr>
</tbody>
</table>
of media coverage in specific types of proceedings, about 55% said they strongly opposed television coverage, while 13% said they strongly favored this type of coverage. The judges expressed similar preferences toward still photography (40% to 12%), videotape recording (45% to 15%), and "gavel-to-gavel" coverage (49% to 20%).

Most respondents said that they preferred complete coverage of proceedings ("gavel-to-gavel") to edited segments aired during regular newscasts. But several judges commented that coverage of proceedings in their entirety would generate new problems. For example, a Texas judge asked:

Who determines, in gavel to gavel coverage, when the commercial breaks are to come? Would every trial have a Pat Sumrall [sic] and John Madden? Or better yet, a Howard Cosell, since he was a distinguished member of the N.Y. Bar? I don't know if I need instant replay.¹⁰⁸

Judge J. Spencer Letts, of the Central District of California, echoed the above concerns:

The microphone sees nothing, and the camera does not see all. The camera focused close up on a testifying witness sees things that the jury does not. At the same time, it does not see things which the jury does see, including the reactions of the lawyers, the parties, the judge or other jurors to what is being said while the camera or microphone remains focused on the speaker. It is the totality of the impression received by all of the jurors over the course of the whole proceeding on which they base their verdicts.¹⁰⁹

Because the distortion with television is more subtle, Letts

¹⁰⁸. Additional comments of District Judge Howell Cobb of the Eastern District of Texas, in a letter to Laralyn M. Sasaki, accompanying his survey response. During a telephone conversation with me on January 12, 1990, Judge Cobb reiterated his views, particularly his concerns that: 1) compared with continuous Congressional coverage, the inability of a camera to pan the courtroom, only focusing on a podium, would distort the actual proceedings; 2) the different mission of courts, as opposed to legislatures, lies with the jury and not with the "statesman's obligation" of a legislator; and 3) without commentary, gavel-to-gavel coverage may be too confusing to the viewer, but adding explanation to the broadcast creates the problem of excluding that tempting benefit from jury members.

¹⁰⁹. Letter from Judge Letts, supra note 106.
added, it is more dangerous and a greater concern.

Regarding the type of proceedings to be recorded, the judges' responses are recorded in Table 5. One-half of the responding

**Table 5: Attitudes by Type of Proceeding**

<table>
<thead>
<tr>
<th>Type of Proceeding</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pretrial Proceedings</strong></td>
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<tr>
<td>Strongly favor</td>
<td>28</td>
<td>13.2</td>
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<tr>
<td>Favor</td>
<td>17</td>
<td>8.0</td>
</tr>
<tr>
<td>Neutral</td>
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<td>17.0</td>
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<tr>
<td>Oppose</td>
<td>23</td>
<td>10.8</td>
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<tr>
<td>Strongly oppose</td>
<td>108</td>
<td>50.9</td>
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<tr>
<td>Respondents: 212</td>
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<td></td>
</tr>
<tr>
<td><strong>Trial Proceedings</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly favor</td>
<td>41</td>
<td>19.5</td>
</tr>
<tr>
<td>Favor</td>
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<td>13.3</td>
</tr>
<tr>
<td>Neutral</td>
<td>36</td>
<td>17.1</td>
</tr>
<tr>
<td>Oppose</td>
<td>18</td>
<td>8.6</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>87</td>
<td>41.4</td>
</tr>
<tr>
<td>Respondents: 210</td>
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<td></td>
</tr>
<tr>
<td><strong>Ceremonial Proceedings</strong></td>
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<td></td>
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<tr>
<td>Strongly favor</td>
<td>111</td>
<td>51.9</td>
</tr>
<tr>
<td>Favor</td>
<td>35</td>
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<tr>
<td>Respondents: 214</td>
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judges strongly opposed the coverage of pretrial proceedings, while 40% strongly opposed coverage of trial proceedings. Interestingly, a majority *strongly favored* recording ceremonial occasions, while only about 10% strongly opposed this suggestion.110

More than 90% of the judges (214 of 229) said that the ban on electronic media access should *not* be expanded to include courtroom artists who sketch witnesses, judges, juries, and

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110. Combining "strongly opposed" answers with those "somewhat opposed," and "strongly favored" with "somewhat favored" responses, the results were as follows: 61.7% opposed coverage of pretrial proceedings; 21.2% favored, 50.0% opposed coverage of trial proceedings; 32.8% favored, 14.0% opposed coverage of ceremonial proceedings; 68.3% favored.
Electronic Media Access

attorneys. Roughly three-quarters (146 of 200) said that they did not think the ban should be expanded to preclude coverage of any aspect of pending cases. But 35% (79 of 223) said that they would expand the prohibition to bar electronic media from the court environs; 18 judges noted in particular that the ban should keep electronic media out of the building or at least off the floors occupied by the courts. Only four respondents said that they would expand the ban to prohibit coverage in all of these situations.

D. Approaches to Regulation

Few judges support leaving the question of electronic media access to codes of ethical conduct, such as in the older American Bar Association Code of Judicial Conduct. Most respondents said a combination of federal rules of procedure, judicial administrative guidelines, and local court rules would adequately address the electronic access issue. When asked whether they would agree with less stringent access rules if those rules were proposed by the Chief Justice and the federal Judicial Conference, the judges were split: more than half of the survey responses indicated that the judges would support rules leaving electronic media access discretion with federal district judges, but nearly three-fourths said that they would not agree with allowing absolute electronic access to federal district courts.

Almost 70% (119 of 175) of responding judges said that regulating electronic media access was primarily an issue of court administration, compared with 18% who said that the issue was primarily one of judicial ethics. Ten percent stated that the access issue centers on due process and fair trial guarantees, rather than either administration or ethics. One respondent said that the issue could be considered one of lawyers' ethics.

Another argued that "electronic access to the media is not a law reform issue at all. It is not even

111. See supra note 16.
112. See, e.g., FED. R. CRIM. P. 53.
113. See supra note 4.
114. Recommendations for revision along these lines were considered by the American Bar Association, see supra note 76, and the U.S. Judicial Conference, see supra note 75.
115. See supra note 75.
administrative reform but business." As to the method for implementing regulations on access, over 80% (97 of 117) said that some combination of the federal rules of procedure, local court rules, and judicial administration guidelines would suffice, while only 9 judges, less than 10%, said codes of ethical conduct should be the chosen method.

The results in Table 6 show that the influence of the Chief Justice and the Judicial Conference may not be as much

<table>
<thead>
<tr>
<th>Table 6: Impact of the Positions of the Chief Justice and the Judicial Conference</th>
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<tbody>
<tr>
<td><strong>If the Chief Justice</strong></td>
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<tr>
<td><strong>Supported Complete Access</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td>Respondents: 215</td>
</tr>
<tr>
<td><strong>Supported Partial Access</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Disagree</td>
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<tr>
<td>Respondents: 197</td>
</tr>
<tr>
<td><strong>Supported Leaving Access to the</strong></td>
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<tr>
<td>Discretion of Trial Judges</td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td>Respondents: 209</td>
</tr>
<tr>
<td><strong>If the Judicial Conference</strong></td>
</tr>
<tr>
<td><strong>Supported Some Type of Access</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td>Respondents: 201</td>
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</table>

an issue as commentators have indicated. Although all judges would presumably follow rules allowing electronic media access promulgated by the Judicial Conference, survey

118. See supra note 77 and accompanying text.
119. See supra note 77.
participants were asked if they would agree with rules made along those lines. For example, if the Chief Justice supported absolute electronic media access to the federal district courts, less than one-third of the judges said that they would agree with that position, while over 70% stated they would not agree. Similarly, roughly 55% said that they would not agree with the Chief Justice if he supported partial access; one-third said that they would support that position. Conversely, a majority said that they would agree with the Chief Justice in support of leaving the discretion of such access to federal district judges; roughly 45% would disagree. Regarding support for the Judicial Conference, almost 53% (106 of 201) said that they would not support a Conference decision to allow some type of electronic media access, while nearly 47% (95 of 201) said that they would support that position.

IV. PROPOSALS FOR ELECTRONIC MEDIA ACCESS TO FEDERAL COURTROOMS

These responses indicate an understandable hesitancy to change the time-honored ban against electronic media in federal courtrooms. Nevertheless, modifications of the existing restrictions could still be made. Rather than a succession of incremental changes, however, the time has come to abolish the existing, absolute ban and to replace it with a program of experimentation, education, and general, gradual courtroom access, with reasonable, case-specific restrictions tailored to the demands of the federal courtroom and the justice that it seeks to administer.

Modern technology enables audio and visual recording to occur unobtrusively, especially compared with 1930s vintage electronic media capabilities. Education of the judiciary could likewise modernize the reasoning behind restricted access, dispelling the "unfounded fear and ignorance,"

120. Julin, supra note 21, at 1306; cf. Estes v. Texas, 381 U.S. 532, 551-52. (noting that the access decision was based on the state of recording technology in 1965, when that case was decided).
121. Letter from Judge Patrick F. Kelly of the District Kansas to Laralyn M. Sasaki (Dec. 13, 1989). Formerly a member of a bar association committee that studied and launched a "most successful" access program in Kansas, Judge Kelly wrote, "Momentarily I anticipate that most judges will not agree with my own views.... To
underlying the present ban. One preliminary suggestion of the Judicial Conference’s Ad Hoc Committee—to address the issue of electronic media access by administrative, not ethical, standards—is the correct course for the federal judiciary. Access could highlight the need for conducting judicial proceedings in an expeditious and fair manner. The demand of overloaded dockets and modern pressures on the judiciary make electronic methods of recording the proceedings attractive for ensuring efficient administration and security. A handful of responding judges expressly said that the time has come for changing the federal prohibition, rooted in existence by mere “inertia.”

A. Public Relations Benefits

Beyond administrative uses for electronic media and beyond the interests of the news media in attaining first-hand audio and visual footage, the federal judiciary itself could find great advantage to opening its doors to the viewing public. The two-thirds of responding judges who favored recording ceremonial proceedings may have sensed this public relations benefit. Problems such as shrinking judicial resources and judicial salaries that barely keep apace with inflation call for an increased public awareness. An informed public, aware of the workings, and thus the needs, of the judiciary, can act as a catalyst, influencing dialogue between the judiciary and the Congress or the Executive.

Although legal dramas have increased viewer interest and awareness to a spectator level, the problems of the federal
Electronic Media Access

judiciary suggest that it is time to raise public consciousness from entertainment to education.\textsuperscript{125} As Judge Patrick F. Kelly of the District of Kansas commented, "Today television is the major source of news, and [television] reporters ought to have access to any public place, including any courtroom."\textsuperscript{126} Judge Paul V. Niemeyer, of the District of Maryland, put the opportunity to balance two worlds into perspective: "Could not an effort at reform be addressed to the need to de-sensationalize trials and at the same time honor First Amendment rights? Our method of reasoned disposition of judicial disputes is the envy of history and should be treasured."\textsuperscript{127} Perhaps the time has come for that method to be more truly and completely presented to citizens who have no first-hand experience with the courts.

Judge J. Spencer Letts of the Central District of California said that the debate over electronic media access has concentrated on the wrong issues: "I believe that the widespread acceptance in this country of the rule of law and judicial supremacy rests on public confidence that the system works. Direct media access to courtrooms, in my judgement, weakens rather than promotes such confidence." By reporting high profile cases in minute detail, the public draws its own conclusions, often second-guessing juries and the system, he said. By permitting the media to come "closer and closer to the appearance of showing to the public the 'actual proceedings,' we make it increasingly likely that when jury verdicts differ from public expectations, the public will conclude that the problem is not with the reporting but with the jury, and ultimately the jury system."\textsuperscript{128}


\textsuperscript{126} Judge Kelly noted that the best arguments supporting courtroom access are not based on the first amendment, but rather on the fourteenth amendment: "Surely, if newspaper reporters are authorized to sit in, take notes, and report events of trial, in 1990 TV reporters ought to be afforded the same privilege." Letter from Judge Kelly, \textit{supra} note 121.

\textsuperscript{127} Letter from Judge Niemeyer, \textit{supra} note 101.

\textsuperscript{128} Judge Letts continued his argument:

No one who is not actually there for the entirety of a judicial proceeding should be encouraged to believe that he or she was there 'enough' to have an independent view of what justice requires in a particular case. One hopes we would never permit jurors to decide cases which they had watched only on television—particularly, of course, if they were permitted to tune in and out as they pleased.

Letter from Judge Letts, \textit{supra} note 106.
The sometimes conflicting missions of the courts and the news media underlie this position. The judiciary often views electronic access as a hinderance to completing its assigned task, while media advocates favor such expanded access as a fundamental part of the judiciary's role in a participatory government. The benefits of openness and vulnerability to public scrutiny vie with the concerns of safeguarding and facilitating the dispensation of justice. But legal dramas and stereotypes today grab the attention and belief of the American public, few members of which will ever personally experience the federal court system. If the value of the federal judiciary is not being disseminated through fictional portrayals, perhaps it is the judiciary's role to publicize its true identity and to replace that dramatized by L.A. Law. Electronic media access and broadcast would allow the public to observe courts first-hand, contributing to an improvement of the administration of justice as well as to the appreciation of the role of law. An anonymous survey respondent from the Southern District of New York wrote:

If the public could perceive the exclusionary rule in action it would soon be abolished. Our Anglo-Saxon preference for deciding a criminal case on any available issue except guilt or innocence would soon be obsolete. Malingering and petty tyrant judges, as well as incompetent bungling time wasting lawyers would be deterred. Justice Brandeis said Sunshine is the best disinfectant.

If public scrutiny results in reform or heightened accountability, then the United States' system of self-correcting government again will have succeeded.

B. Expanded Experimentation

The concerns of judges, expressed through their survey responses, are largely valid and should be considered during the gradual implementation of judicially educational and access-oriented initiatives. The few ongoing pilot programs

129. A current popular network television series portraying a California law firm, broadcast on NBC.
allowing electronic media access should become common. The recently authorized Judicial Conference experiment should be national in scope. Although few judges said that they would welcome experimentation into their own courtrooms, many of their concerns might be dispelled if they were familiar with the limits of disruptions caused by access. Data generated by experimentation could accurately reveal the extent of impact upon court participants instead of allowing judicial fears of the unknown to run to the extreme. Judges could learn more about the effects of audio and video recording upon witness testimony, upon the behavior of jurors and other trial participants, and even upon the administration of cases. Some judicial fears may be proven correct, but given the rarity of actual courtroom recording, experimentation could also prove that access has little impact, if any. If each circuit accumulated experimental data to analyze and to compare (and also acquired studies of the strengths and weaknesses of various state media access programs), the federal judiciary itself would become more informed. Concrete demonstration of media effects upon witnesses and jurors would replace fears of the unknown and would also help tailor access guidelines to meet the federal judiciary's needs. Appellate proceedings might be the proper place to initiate electronic access experimentation. Working out logistical and judicial problems with coverage at the appellate level, without juries or actual trial proceedings, would provide a base of data and experience. From there, courtroom access could be "phased in" at the district court level.

130. See supra note 75.
131. The survey showed that roughly one-quarter of the respondents would like to see experimentation at the federal court level. See supra note 107.
132. See Dyer & Hauserman, supra note 6, at 1639.
133. Id. at 1639, 1695. Several studies of state programs found little impact, if any, upon the courts, indicating that those courts gained various benefits. One example of such a study examines Massachusetts's pilot broadcast program, discussed in Note, Right of Access, supra note 21, at 807, 810-12; see also Note, Cameras in the Courtroom, supra note 29, at 487.
134. Several judges suggested allowing access at the appellate level, which presumably would have less dramatic impact upon courtroom proceedings. Judge June L. Green of the District of the District of Columbia, for example, said she "would have no objection to [recording] a motions argument without witnesses or arguments in appellate courts." Letter from Judge June L. Green to Laralyn M. Sasaki (Dec. 21, 1989).
C. Cable Coverage

In addition to judicially controlled experimentation, local cable stations should formulate plans for "gavel-to-gavel" coverage of entire proceedings.\(^{135}\) Former Chief Justice Warren E. Burger, who was publicly hostile to cameras in the courtroom,\(^{136}\) indicated toward the end of his term that complete coverage would be a form of access that even he could support.\(^{137}\) Uninterrupted recording and broadcasting of proceedings, except for material deemed excludable by the judge or perhaps material that the jury was not allowed to learn\(^{138}\) (such as rulings against the admissibility of evidence), would provide a means to educate the public without subjective, distortive media editing of legal proceedings.\(^{139}\) A single, fixed camera could provide unobtrusive cable television access.\(^{140}\) As continuous cable coverage gained acceptance, the courts could consider phasing in more types of

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Judge Filemon B. Vela of the Southern District of Texas said that, "assuming that [disruption] could be avoided for positive public-educational objectives a gavel to gavel type coverage would be indispensable."

\(^{136}\) See *supra* note 78.


\(^{138}\) Judge Patrick Conmy of the District of North Dakota distinguished those matters "out of the presence of the jury," and Judge Warren K. Urbom of the District of Nebraska said that the effect on jurors could be avoided, "especially if sensitive matters not presented to a jury were not presented before the electronic media." Urbom added that jury instructions or sequestration could answer even this worry. See also Dyer & Hauserman, *supra* note 6, at 1695.

\(^{139}\) The two overwhelming concerns of survey respondents seemed to be the effect that electronic media access would have on trial participants during the proceedings, see *supra* Part III.B.1, and the public distortion created by broadcasted snippets of courtroom footage, see *supra* Part III.B.2 & infra note 146. Coverage of entire proceedings could dispel this latter fear.

\(^{140}\) Many judges offered this method as a potentially acceptable form of access to federal courtrooms. Judge Dean Whipple of the Western District of Missouri said he would condition in-court experimentation upon having the cameras "fixed, preferably in the wall so they are not noticeable." Several other judges mentioned allowing only an "official" court camera, perhaps with an official camera operator, feeding a media "pool."
coverage, by releasing the cable station material to a media "pool," for example.\textsuperscript{141} Eventually, each reporter could be allowed to bring her electronic equipment into the courtroom.

\textbf{D. Limitations}

Following the lead of the former state court judges' comments, a set administrative rule that allows electronic media access for news and other public purposes should be promulgated by the Judicial Conference and the Supreme Court.\textsuperscript{142} Three areas of possible, limited restrictions upon access could provide a compromise that safeguards the work of fact-finders seeking undistorted truth, the common necessity of jury anonymity, and even the access desires of the media. An initial curb could be to require witnesses, parties, and other participants to \textit{consent} to being recorded for potential media broadcast.\textsuperscript{143} A consent requirement puts a participant on notice that she will be recorded.\textsuperscript{144} A second restriction upon access could be to exclude, perhaps automatically, the recording and broadcasting of the identities of jurors,\textsuperscript{145} of sex-crime victims, of child victims, or of child offenders.\textsuperscript{146} Avoiding coverage of jurors would prevent jurors from watching broadcasts of the trial merely to see themselves on

\textsuperscript{141} Using one camera to feed a media pool was a popular suggestion in the survey responses. \textit{See also Note, Cameras in the Courtroom, supra} note 29, at 491, 506. Judge John L. Kane, Jr. of the District of Colorado called pooled access "the best solution."

\textsuperscript{142} For more detailed suggestions, see Dyer & Hauserman, \textit{supra} note 6; Note, \textit{Cameras in the Courtroom: A Sixth Amendment Analysis}, 85 COLUM. L. REV. 1546 (1985) (authored by Gregory K. McCall) [hereinafter Note, \textit{Sixth Amendment Analysis}]; Note, \textit{Right of Access, supra} note 21; Note, \textit{Cameras in the Courtroom, supra} note 29.

\textsuperscript{143} \textit{See Dyer & Hauserman, supra} note 6, at 1651-56; Note, \textit{Right of Access, supra} note 21, at 801; Note, \textit{Cameras in the Courtroom, supra} note 29, at 495-97.

\textsuperscript{144} Such a step, even if informally performed, is more of a positive agreement to participate in recorded proceedings than is a blanket rule allowing all broadcast \textit{unless} an objection is made, with the burden on the participant to take the initiative. \textit{See, Note, Sixth Amendment Analysis, supra} note 142.

\textsuperscript{145} This would answer the commonly stated concern of survey respondents that jurors would disobey the court admonition not to view broadcasted courtroom footage, merely out of curiosity to see themselves, \textit{see supra} Part III.B.4. Such an exemption could also aid security measures protecting jurors.

\textsuperscript{146} \textit{See Dyer & Hauserman, supra} note 6, at 1679; Note, \textit{Right of Access, supra} note 21, at 802; Note, \textit{Cameras in the Courtroom, supra} note 29, at 499-502.
television. Not broadcasting the identities of other participants, minors, or victims of sexual crimes, would protect them from public scrutiny. A third, yet greater, encroachment upon access could be to allow electronic media recording and broadcasting of only those parts of proceedings that were also presented to the jury. This restriction would guard against the juror who wants to watch television news for decisions excluding or overruling motions that were made outside the presence of the jury.

Several judges said they would be more likely to grant access to legal proceedings if first they were convinced that the news media would not misuse that privilege. "I have seen nothing to suggest that the media has developed any standards for the use of materials obtained through cameras in the courtroom," said Judge Avern Cohn of the Eastern District of Michigan. "When I am convinced that the media has developed standards for itself I will then feel comfortable supporting cameras in trial courtrooms." Education of communicators inherently means the education, or at least the better-educated informing, of the public.

The judiciary ultimately cannot control the media's use of recorded information, a fact that bothers most of the judges surveyed. In fact, much of the opposition to electronic media access, as expressed in this survey, centered upon the use of material gathered from within the courtroom, more so than the method of gathering the material. But those

147. Comments of Judge Avern Cohn of the Eastern District of Michigan, responding to a letter from Timothy B. Dyk, which had urged the judge's support for cameras in federal courtroom. Judge Cohn illustrated his concerns with the example of a newspaper that "published photographs of defendants in court at the time of sentencing in jail garb and in handcuffs. I think the display of such photographs on the front page of a newspaper demeans a convicted defendant and is simply inappropriate." Letter from Judge Avern Cohn to Timothy B. Dyk (Dec. 19, 1989). Judge Cohn sent me a copy of this correspondence.
148. See Note, Cameras in the Courtroom, supra note 29, at 504-05 (proposing to require balanced reporting, which would require "broadcasters to express the arguments of both the defendant and the prosecution").
149. Judge J. Spencer Letts of the Central District of California stated:

In that regard, I have actually seen a young man whom I had known very well become subject to in-court photography and artists renderings as a defendant in a high profile criminal case which resulted from a serious, drug-induced, violent act. Although his actual face remains as attractive and pleasant as when I knew him, the in-court photographs and artists renderings invariably showed a face which reflected the 'fiend' which the prosecution was portraying him to be.
Letter from Judge Letts, supra note 106.
150. See supra Part III.B.4. Judge Lynn N. Hughes of the Southern District of
who collect and disseminate that information may become educated. 151 Much of the inaccurate reporting feared by judges results from reporters competing with other stations and newspapers. 152 Demands to communicate something about a story, combined with attorneys' or judges' reluctance to explain the legal proceedings, as well as the prohibitions against comment, make reporters eager for anything giving them an advantage over competitors. Today, that "edge" may come in the form of audio or visual courtroom coverage. If access were granted to individual media representatives or to a coverage pool, reporters would no longer need to compete for this advantage, and repeated experience inside a courtroom would educate the reporter, so that each subsequent story would be reported more fully and more accurately. 153 Hopefully, competition eventually would focus on reporting judicial proceedings the most fully and accurately.

Texas said, "I have never heard a rational argument against access and very few rational ones about abuse of access, which is a different question . . . ." Other judges commented upon "unacceptable" media behavior outside their courtrooms, implying a fear of inviting such conduct inside.

151. "[N]ews reporters should have to sit through a dull trial," stated Judge Russell G. Clark of the Western District of Missouri.

152. Judge James M. Ideman of the Central District of California commented: "I think the federal courts have the correct policy. If a thinking person wants to be informed about a case he can read a newspaper. Even they [newspaper reporters], with plenty of time and access to the courts often cannot get the facts straight."

153. See Note, Right of Access, supra note 21, at 812.
APPENDIX

University of Michigan Law School
University of Michigan Journal of Law Reform

Your District__________________ Years On Bench______
Your Name (Optional)__________ Your Age__________

SURVEY CONCERNING ELECTRONIC MEDIA ACCESS

Please check the answers that reflect your attitude toward the use of electronic media (audio recording and video or still photography of any kind, for any purpose) in the federal courtroom:

___ I favor continuing the absolute ban.

___ I favor permitting television cameras, radio broadcast equipment and still cameras access during most federal court proceedings.

___ I favor the use of recording devices for administrative purposes (security, preservation of evidence, presentation of proceedings to parties unable to attend).

Which purposes?

___ I think the decision to allow or prohibit media in a given case should be left to the discretion of the Judge.

___ I would prefer to review the range of state guidelines and any studies of the impact of electronic media access upon the parties and the public before reaching a decision.

___ Other concerns:

How should the decision to admit media be made?

___ There should be a set rule governing all cases.

___ The appellate courts should decide, case by case.

___ The district court Judge should decide, case by case.

___ The parties should decide.

___ Other methods?
Unless otherwise noted below, "electronic media access" means audio or video recording as a method of news coverage:

Would you be interested in allowing a period of experimentation, allowing electronic media access and recording but not actual broadcast? ____________

What limitations or conditions would you like to see implemented if such an experiment were conducted? ____________

Do you have suggestions as to the types of proceedings such an experiment should cover?

Please circle:
What effect do you think electronic media coverage would have:

on witness testimony? positive negative none
on attorneys' presentation? positive negative none
on the court's public image? positive negative none
on public understanding of court proceedings? positive negative none
on administration of cases? positive negative none

Is the issue of electronic media access primarily one of judicial administrative concerns or primarily judicial ethical concerns? ____________

Is the access issue one to be regulated by federal rules of courtroom procedure and by judicial administration guidelines or by codes of ethical conduct? ____________

Do you feel that leaving access decisions to the discretion of federal district judges would greatly impede the timely disposition of each case? ____________

Would such decisions tend to unduly burden your workload? ____________

Would electronic media access affect the quality of justice and its administration? ____________
How so?

If partial access would be granted, how would you feel about allowing each of the following? (Please circle appropriately.)

(strongly oppose........strongly favor)

Television coverage 1 2 3 4 5
Still photography 1 2 3 4 5
Videotape recording 1 2 3 4 5
Gavel-to-gavel coverage 1 2 3 4 5
Recording trial proceedings 1 2 3 4 5
Recording pretrial proceedings 1 2 3 4 5
Recording ceremonial occasions 1 2 3 4 5

Should the existing prohibition on electronic media access be expanded to include recording in the building or on the grounds of the court? _____

Should the existing prohibition be expanded to include courtroom artists who sketch witnesses, judges, juries and attorneys? _____

Should the existing prohibition be expanded to include ANY aspect of pending cases? _____

If jurors are obedient in avoiding reading, listening to or viewing news accounts of a particular case, do you feel that broadcast or publication of the actual trial proceedings will pose more of a threat to that obedience? _____

Why?

If some type of access were granted, would that open the floodgates to too many appeals? _____

Do you think the electronic media access allowed by most state courts is an unwise trend? _____

How do you feel federal and state courts differ in the opportunities and detriments afforded by electronic media access?
If the Chief Justice of the United States supported absolute electronic media access to federal district courts, would you agree? ____

If the Chief Justice supported restricted or partial access, would you agree? ____

If the Chief Justice supported leaving the discretion of such access to federal district judges, would you agree? ____

If the Judicial Conference supported some type of electronic media access, would you support that access? ____

Thank you for your time and consideration.