

Expanded Media Coverage in Colorado Courts

by Rudy E. Verner and Steven D. Zansberg

This article provides an overview of the constitutional basis for open courts, Colorado's expanded media coverage rule, and the history of television and other news media gaining access to courtrooms. It also discusses the use of blogging, tweeting, and other forms of new media to report on court proceedings.

Expanded media coverage (EMC) refers to the news media's use of cameras and microphones to record judicial proceedings, such as a trial, a sentencing hearing, or other court proceeding. Although courtroom proceedings presumptively are open to the public and members of the press, media organizations are required to get permission from the judge before gaining access for EMC. Private attorneys, prosecutors, and state trial judges will benefit from understanding how the EMC process works and the standards governing EMC.

This article provides an overview of the constitutional basis for open courts, the current Colorado EMC rule, and the history of television stations and other news media gaining access to courtrooms. The emergence of blogging, tweeting, and other forms of new media to report on court proceedings also is briefly discussed.

The Constitutional Right of Access to Court Proceedings

In four landmark cases decided in the 1980s, the U.S. Supreme Court established that the press and general public have a constitutional right of access to criminal trials and related judicial proceedings.¹ Although this right is not expressly granted by the U.S. Constitution, the Court reasoned that the right to attend criminal trials is a fundamental right indispensable to the enjoyment of other, enumerated rights. A brief description of this constitutional guarantee provides context for understanding Colorado's EMC rule and the news media's right to petition courts for expanded coverage of court proceedings.

In *Richmond Newspapers, Inc. v. Virginia*, the Supreme Court explained that the freedoms of speech, press, and assembly, expressly guaranteed by the First Amendment, share a common core purpose of assuring freedom of communication on matters relating to

the functioning of government.² The Court found that in guaranteeing freedoms such as those of speech and press, "the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees."³ The right to freely receive information and ideas means, in the context of trials, that the First Amendment guarantees of speech and press, "prohibit government from summarily closing courtroom doors which had long been open to the public at the time the First Amendment was adopted."⁴

Moreover, the Supreme Court found that the First Amendment's right of free assembly is relevant, having been regarded "not only as an independent right" but also as a "catalyst to augment the free exercise of the other First Amendment rights with which it was deliberately linked by the draftsmen."⁵ Therefore, the Court concluded:

a trial courtroom is a public place where the people generally—and representatives of the media—have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place.⁶

The Supreme Court also has observed that public access improves the functioning of an adversarial trial system by, among other things, ensuring that proper procedures are being followed, encouraging those with information to come forward, and creating incentives for all participants to perform well.⁷ Public access also discourages perjury, misconduct, and bias, and in this respect "is an effective restraint on possible abuse of judicial power."⁸ By permitting the public to serve as a check on the judicial process, the right of access "enhances the quality and safeguards the integrity of the fact finding process."⁹ Indeed, direct, first-hand observation of the judicial system fulfills the constitutional aspiration of the Framers for a transparent and accountable system of justice:

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It is desirable that the trial of causes should take place under the public eye . . . because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, *and that every citizen should be able to satisfy himself with his own eyes* as to the mode in which a public duty is performed.¹⁰

Public access to judicial proceedings improves the actual operation of the justice system and improves the appearance of justice. As the U.S. Supreme Court explained in another seminal case:

The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.¹¹

Of course, in modern times, the vast majority of Americans do not acquire information about trials by first-hand observation, but instead “people now acquire it chiefly through the print and electronic media. In a sense this validates the media claim of functioning as surrogates for the public.”¹²

Although no court has yet recognized a First Amendment right to bring a camera or microphone into a courtroom,¹³ Colorado’s EMC rule is a powerful mechanism to facilitate the people’s constitutional right to “attend” judicial proceedings. When a camera and/or microphone is allowed into the courtroom to record or

broadcast the testimony of witnesses and arguments of counsel, people who cannot be present at the courthouse are provided an opportunity to witness, first-hand, the workings of the judicial system.

Rule 2: The New EMC Canon

Before the enactment of Colorado’s first EMC rule, district court judges were authorized to grant access to the courtroom for cameras and microphones, but only in the event no witness or juror objected to being photographed or recorded.¹⁴ In practice, this meant that any participant in a trial or court proceeding had veto authority over EMC; as a result, the news media stopped seeking permission for such access and Colorado’s courtrooms were effectively closed to still photography and broadcast media. In June 1983, the Colorado Supreme Court authorized an experimental program for EMC in the courts. As a result of that experimental program, a revised Canon of Judicial Conduct was proposed.

Adopted in 1985, Canon 3(A)(8) of the Colorado Code of Judicial Conduct set forth the standard courts were to apply in determining whether EMC should be granted for a particular trial or hearing. The EMC Canon, as the rule came to be called, also placed certain conditions on EMC and established procedures the media had to follow to obtain authorization for such coverage. The television and print media have had a successful twenty-five-year experience operating under Canon 3(A)(8) of the Code of Judicial Conduct.

In 2010, the Colorado Supreme Court amended and adopted Rule Change 2010(14), which re-enacted, effective July 1, 2010, the pertinent provisions of Canon 3(A)(8) as a rule of court procedure.¹⁵ This new “Rule 2” is found in Chapter 38 of the Colorado Court Rules. Except as renumbered, Rule 2 is identical to former Canon 3(A)(8) of the Code of Judicial Conduct and provides that a judge may authorize EMC of court proceedings, subject to certain guidelines set forth in the rule.¹⁶

The first subsection of the rule defines certain terms relevant to requests for EMC. It defines “expanded media coverage” as “any photography or audio recording of proceedings” and defines “proceeding” as “any trial, hearing or any other matter held in open court that the public is entitled to attend.”¹⁷ Although the majority of EMC requests involve access to criminal trials or other criminal proceedings, the rule clearly allows for such requests to be made in the context of civil trials and other proceedings in which the public and press are interested.¹⁸

Subsection (2) states that, when determining whether EMC should be permitted, judges shall consider three factors: (1) whether there is a reasonable likelihood that EMC would interfere with the rights of the parties to a fair trial; (2) whether there is a reasonable likelihood that EMC would unduly detract from the solemnity, decorum, and dignity of the court; and (3) whether EMC would create adverse effects that would be greater than those caused by traditional media coverage.¹⁹

Subsection (3) contains several limitations on EMC. It states that there shall be (1) no EMC of pretrial hearings in criminal cases, except advisements and arraignments; (2) no EMC of jury *voir dire*; (3) no audio recording or “zoom” closeup photography of bench conferences; (4) no audio recording or closeup photography of communications between counsel and client or between co-counsel; (5) no EMC of *in camera* hearings; and (6) no closeup photography of members of the jury.²⁰

The following subsection provides that the judge may restrict or limit EMC “as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors.”²¹ To this end, the rule provides that the judge may terminate or suspend EMC at any time on making findings of fact that:

(1) rules established under this Canon or additional rules imposed by the judge have been violated; or (2) substantial rights of individual participants or rights to a fair trial may be prejudiced by such coverage if it is allowed to continue.²²

The final subsections set forth the conditions under which EMC must be conducted and the procedure for filing a request. Subsection (5) includes limitations on the type of equipment that may be used, directs the media to designate a representative for the purpose of coordinating a pooling arrangement for all interested media, and sets forth standards of conduct for all media representatives in the courtroom.²³ Subsection (6) sets forth procedures for submitting a request for EMC and filing an objection to such a request. It provides that a written request for EMC must be submitted to the judge at least one day before EMC is requested to begin, unless a longer or shorter time is required or permitted by the judge.²⁴

Practitioners filing requests for EMC should check to see whether there are any additional rules or requirements imposed by the judicial district where the case is being heard. For example, the Twentieth Judicial District (Boulder County) has adopted a local rule to implement Rule 2 and its website provides a link to an approved form for EMC requests.²⁵

People v. Wiegard: A Presumption in Favor of EMC

Only one Colorado appellate court decision has addressed the issue of allowing television cameras in the courtroom.²⁶ In *People v. Wiegard*,²⁷ the trial court had held that the presumption under Canon 3(A)(8) (now Rule 2) was in favor of open coverage and that a party opposing such coverage would have the burden of proving adverse effects therefrom.²⁸ In affirming the defendant’s conviction for first-degree murder, the Colorado Court of Appeals held that the trial court did not abuse its discretion in permitting EMC, stating that “[t]he mere presence of a camera in the courtroom does not in itself deny a defendant due process.”²⁹ Although it did not undertake an exhaustive analysis of the EMC rule, the *Wiegard* court held that the trial judge did not err when he applied a presumption in favor of allowing EMC, a presumption that can be rebutted only if the defendant shows that the coverage interfered with his or her right to a fair trial. The language of *Wiegard* also suggests that a trial court should receive evidence and hold a hearing before making its determination.³⁰

The Colorado Supreme Court and EMC

The Colorado Supreme Court has not had occasion to hear a case in which EMC under Rule 2 or its predecessor Canon of Judicial Conduct was a basis for appeal. This state’s highest court has, however, made several public statements regarding the importance of open courts and the educational benefits of allowing the public to watch judicial proceedings.

In 2002, Chief Justice Mary Mullarkey entered an Order that allowed trial courts in the state to waive all restrictions of the EMC rule and allow a national television network to videotape and broadcast entire criminal proceedings, including trial preparation, pretrial motion hearings, jury *voir dire*, and even jury deliberations.³¹ The former Chief Justice was quoted as saying that she was “convinced that the benefits of opening up the courts outweighed the disadvantages.”³²

Former Justice Rebecca Love Kourlis similarly stated that:

The Supreme Court’s support of this program reflects the high priority we place on public education and jury reform. We believe that we do have a responsibility to educate the public about what really goes on in the courts and criminal trials specifically, and this program serves that goal.³³

Consistent with these sentiments, the Colorado Supreme Court has allowed one oral argument to be televised and permitted audio recordings of both its oral arguments and those of the Court of Appeals to be streamed and archived online.³⁴

Television Coverage of Federal Court Proceedings

The U.S. judiciary has had a longstanding prohibition on television or other electronic coverage of federal court proceedings by the media. However, recent efforts have been undertaken to broaden access to federal courts, including introduction of a bill in the U.S. Senate to permit television coverage of all open sessions of the U.S. Supreme Court,³⁵ and a decision by the U.S. Judicial Conference to expand a two-year pilot program that made audio

recordings of court proceedings available through Public Access to Court Electronic Records (PACER) at a handful of federal district and bankruptcy courts nationwide.³⁶

In 2010, the Ninth Circuit Court of Appeals allowed C-Span to televise oral argument in the Proposition 8 case, the legal challenge to California’s voter-approved ban on same-sex marriage. Beginning in July 2011, fourteen federal trial courts are taking part in a three-year pilot program, which will evaluate the effect of cameras in courtrooms.³⁷ The pilot program—in which Colorado was not chosen to participate—involves participation by more than 100 U.S. district judges, including judges who favor cameras in court and those who are skeptical of coverage.³⁸ Districts volunteering for the pilot program must follow guidelines adopted by a committee of the U.S. Judicial Conference and the program will be limited to civil proceedings in which the parties have consented to having their cases recorded.³⁹

Experience Under the EMC Rule

The first case in which cameras were permitted to cover a criminal trial in Colorado occurred during the experimental program that predated adoption of the prior EMC Canon. In October 1984, Boulder County District Judge Murray Richtel presided over the prosecution of Danny Arevalo, who was convicted of murdering Michael Manning, the three-year-old son of his girlfriend. In the twenty-six years since the *Arevalo* trial, television stations have been granted access to broadcast portions of criminal and civil trials statewide in Colorado, both live and on videotape. Moreover, many

high-profile trials have been televised, along with numerous sentencing hearings, advisements, and arraignments. A number of these cases were appealed, but none has been overturned on the basis that EMC was granted.

In one recent example, Weld County District Court Judge Thomas J. Quammen granted the media's request for EMC of the sentencing of Vance Fulkerson, the University of Northern Colorado professor who pleaded guilty to making surreptitious video recordings of students using the bathroom in his home. In his ruling, Judge Quammen explained why, in his view, granting EMC coverage of a sentencing hearing furthered the same objectives as opening other judicial proceedings, such as trials and arraignments, to public attendance:

The fact that we have a TV camera or a newspaper representative here doesn't change the public nature of these proceedings. . . .

Anybody can come in here and observe what is happening. This isn't my court, this belongs to the people of the State of Colorado. . . .

The People have a right to know not only what the Court does, they have a right to know how the Court does it, they have a right to know how their prosecutors handle cases, and this is up for public review, up for public scrutiny. . . .⁴⁰

Judge Quammen also explained why the sentencing hearing in that case should not be closed to the public, as the defendant had requested, and again described the role that EMC plays:

Only in very, very defined areas do we take the drastic step of closing a courtroom.

Now the Court is satisfied that there has not been a sufficient showing that there is a clear and present danger to warrant that extreme remedy in this case. . . .

[A]s the Court indicated, what happens here is public information and the people have a right out there to draw whatever conclusions that they want to about what happened, why it happened, and whether it should have happened or not have happened, but they can't make those decisions, informed decision[s], unless they are informed.

And so the Court finds that expanding the media coverage is not going to interfere with the rights of the parties to be treated fairly and have a fair trial; and in this case, a fair sentencing.⁴¹

Numerous other criminal proceedings have been opened to EMC in recent years. For example:

➤ In 2009, Chief Judge Stephen J. Schapanski of the Larimer County District Court granted EMC for the sentencing of Richard Heene, the Fort Collins man who duped police, the Federal Aviation Administration, and the public into believing that his son had accidentally been carried away by an experimental balloon in an attempt to gain publicity for a reality show pitch.

➤ In 2008, Judge John Madden II of the Denver District Court granted EMC in the trial of Jon Philips, the custodial father charged with child abuse resulting in death for the forced starvation of 7-year-old Chandler Grafner.

➤ Former Weld County Chief Judge Roger A. Klein granted EMC in *People v. Nelson*, the murder trial of the Greeley police dispatcher charged with killing the wife of a police officer with whom she was having an affair.

➤ In another high-profile case, Denver District Court Judge Christina Habas granted EMC for the sentencing of Lisl Auman, the woman who pleaded guilty to accessory to first-degree murder in the slaying of a Denver police officer, and whose case prompted a national debate on the limits of the felony murder rule.

In the civil arena:

➤ Retired Chief Judge Larry Naves of the Denver District Court granted the media's request to show live coverage of the trial in Ward Churchill's wrongful termination and First Amendment retaliation suit against the University of Colorado.⁴²

➤ A judge has granted EMC in a state enforcement action under the Colorado Consumer Protection Act,⁴³ a suit against the Colorado Rockies for the right to distribute team programs on the sidewalk in front of Coors Field,⁴⁴ and a defamation and invasion of privacy case brought by a manager of the Denver Athletic Club.⁴⁵

➤ Additionally, as noted above, the Colorado Supreme Court has allowed arguments to be televised in *Lorenz v. State*,⁴⁶ a case involving the constitutionality of a statute prohibiting public officials from holding interests in gaming establishments.

➤ The Colorado Court of Appeals permitted television coverage of the arguments in *People v. Kribo*,⁴⁷ a case in which a juror was held in contempt for failing to disclose information during *voir dire*, and *People v. Auman*,⁴⁸ an appeal involving the applicability of the felony murder rule to a suspect in police custody.

Denial of EMC

Courts periodically will exercise their discretion to deny EMC requests or impose additional restrictions on coverage to protect a

litigant's rights. Sometimes, the denial or restriction is motivated by a professed concern for the safety of the parties or witnesses. For example, in advance of the trial of Willie Clark, the gang member convicted of murdering Denver Broncos cornerback Darrent Williams, Judge Christina Habas denied EMC for still and video cameras, citing concerns over the safety of witnesses (including one in the federal witness protection program) but granted access for microphones and audio transmission of the trial.⁴⁹

The EMC Rule in Practice

Practitioners faced with a request for EMC should consult the standards for granting coverage in subsection (a)(2) of the EMC rule⁵⁰ and the procedures for filing an objection in subsection (a)(6).⁵¹ Because the facts and circumstances of criminal matters tend to vary significantly, there are no standard grounds for opposing EMC. In the past, defendants have argued that photographs or video showing them entering a not guilty plea or appearing in prison clothes during an advisement or arraignment could taint the pool of potential jurors and substantially prejudice their right to a fair trial. Also, concerns are frequently raised that the presence of cameras will have a chilling effect on a witness's willingness to testify openly and fully about the events at issue. Finally, counsel has objected on grounds that allowing video coverage will cause opposing counsel to "play to the camera" and foster a "circus atmosphere" by encouraging inflammatory sound bites and histrionic performances, above and beyond what would be done for the benefit of the seated jurors and others attending the trial.

By and large, such grounds have not been deemed a sufficient basis to deny EMC. Judges have on occasion imposed limitations on

EMC by, for example, prohibiting the media from recording the testimony of minors or sexual assault victims. However, judges have not required the news media's representatives to be present during the entire course of a trial, rejecting claims that such a requirement was necessary to avoid the impression on the part of jurors that a certain witness's testimony should be afforded greater weight than others.

New Media Coverage of Judicial Proceedings

In advance of the Supreme Court's 2010 rule change, there had been some preliminary discussion about extending the EMC rule to Blackberries, iPhones, and other electronic devices that allow live text transmission—but not video, photographs, or audio from the courtroom. Reporters and members of the public increasingly use Twitter, blogs, and other forms of new media to report on judicial proceedings. The Supreme Court did not extend the Rule 2 requirements to these relatively novel methods of reporting. Therefore, tweeters, bloggers, and other reporters sending live text transmissions generally do not need to seek permission from the court before reporting on a trial or hearing. However, such persons should be aware of any standing orders from the court in a given case regarding the use of such technology.

Recent experience with live text transmission in Colorado courtrooms has been positive. For example, the *Greeley Tribune* blogged live from the trial of Shawna Nelson, the Greeley police dispatcher convicted of killing the wife of a police officer with whom she was having an affair. The *Tribune* reportedly experienced a record number of hits to its website during the trial,⁵² bolstering the role of blogging as an effective tool for reporting on high-profile trials. A number of other recent trials have been successfully covered by live blogging from the courtroom, including the trial concerning the firing of CU professor Ward Churchill and, from a "spillover" courtroom, the murder trial of Willie Clark.

Conclusion

EMC in Colorado has been successful for more than two decades; as a result, Colorado citizens have had the opportunity to observe first-hand the workings of the state's judicial system. Colorado's recently re-adopted EMC rule facilitates the people's constitutional right to "attend" judicial proceedings and does not specifically require users of new media technology to gain permission from the judge to report on courtroom proceedings. As video and audio signals continue to be disseminated over more convenient and accessible platforms—from streaming video over websites to mobile digital television—the citizens of Colorado will have additional opportunities to monitor the conduct of their government, ensuring that the Founders' vision for a transparent and accountable system of justice is not lost.

Notes

1. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580, and n.17 (1980) (news media and members of public possess First Amendment right to observe criminal trials); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982) (recognizing right to attend testimony at criminal trial of minor victim of sexual offense); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) (*Press-Enterprise Co. I*) (right to attend *voir dire* examinations of jury venire in criminal case); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (right to attend preliminary hearing in criminal case).

2. *Richmond Newspapers, Inc.*, *supra* note 1 at 575.

3. *Id.*

4. *Id.* at 576.

5. *Id.* at 577.

6. *Id.* at 578.

7. *Id.* at 569-70.

8. *Id.* at 592 (Brennan, J., concurring) (citation and internal quotations omitted).

9. *Globe Newspaper Co.*, *supra* note 1 at 606.

10. *Gannett Co. v. DePasquale*, 443 U.S. 368, 429 n.10 (1979) (Blackmun, J., concurring in part and dissenting in part), quoting *Cowley v. Pulsifer*, 137 Mass. 392 (1884) (Holmes, J.) (emphasis added).

11. *Press-Enterprise Co. I*, *supra* note 1 at 508.

12. *Richmond Newspapers, Inc.*, *supra* note 1 at 572-73. See also *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491 (1975) ("in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he necessarily relies upon the press to bring him in convenient form the facts of those operations"); *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) (the press "guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism").

13. One court has expressly rejected the claims of a First Amendment-based "right" to televise trials. See *Courtroom Television Network LLC v. New York*, 5 N.Y.3d 222 (2005) (noting that in the twenty-five years since *Chandler v. Florida*, 449 U.S. 560 (1981), which held that televised trials do not violate due process, "no Federal Circuit Court has opined that the Federal Constitution guarantees the media a right to televise trials"). Recently, the U.S. Supreme Court granted a stay prohibiting "televising," to five federal courts, the trial challenging the constitutionality of California's Proposition 8. See *Hollingsworth v. Perry*, ___ S.Ct. ___, 2010 WL 105264 (Jan. 13, 2010). Although the stay was grounded exclusively on procedural grounds, in that 5-4 ruling, the majority expressed significant concerns about the effect of televising witness testimony. See *id.* at *7. Nevertheless, the majority opinion recognized that "the arguments in favor of developing procedures and rules to allow broadcast of certain cases have considerable merit." *Id.* at *8.

14. See *In re Hearings Concerning Canon 35 of the Canons of Judicial Ethics*, 296 P.2d 465 (Colo. 1956).

15. See www.courts.state.co.us/Courts/Supreme_Court/Rule_Changes/2010.cfm.

16. The Code of Judicial Conduct is an appendix to the Colorado Rules of Judicial Discipline, found at Chap. 24 of the Colorado Court Rules (Rules) (West Pub., 2009). The Code contains fourteen Canons, delineated as Canons 1 through 9.5.

17. Rule 2(a)(1)(A) and (C).

18. For example, expanded media coverage has been granted in a disciplinary proceeding involving allegations that a district attorney had lied and threatened prosecution to gain advantage in a civil case (*People v. Chambers*, Case No. 06PDJ036 (Dec. 26, 2006)), and in an enforcement action brought under the Colorado Consumer Protection Act involving alleged fraud by a building contractor (*State v. Martinez*, June 2005) (Judge Don Marshal).

19. Rule 2(a)(2)(A) to (C).

20. Rule 2(a)(3)(A) to (F).

21. Rule 2(a)(4).

22. *Id.*

23. Rule 2(a)(5)(A) to (C).

24. Rule 2(a)(6). The Office of State Court Administrator has prepared a form to request expanded media coverage (EMC), available at www.courts.state.co.us/userfiles/File/Media/rqst_exp_media.doc.

25. See Twentieth Judicial District Administrative Order 02-102 dated Sept. 9, 2009, Re: Expanded Media Coverage of Court Proceedings, available at www.courts.state.co.us/Media/Index.cfm. This Order alters the time frame for submitting EMC requests and objections under the Canon as follows:

(c) A written request for coverage, using the attached Request for Expanded Media Coverage of Court Proceedings, must be in possession

of the assigned judge per the following unless a longer or shorter time is required or permitted by the judge:

- (1) By 11:00 a.m. on the advisement date;
 - (2) At least 48 hours before the scheduled arraignment;
 - (3) At least 2 weeks prior to the scheduled trial date;
 - (4) At least 2 weeks prior to the scheduled sentencing date.
- (d) Objections must be submitted, in writing, directly to the assigned judge per the following unless a longer or shorter time is required or permitted by the judge:

- (1) By noon on the advisement date;
- (2) At least 24 hours before the scheduled arraignment;
- (3) At least 5 days prior to the scheduled trial date.

26. This is likely due to the fact that only a party to the case, and not the media, can appeal a decision concerning expanded media coverage. Canon 3(A)(8)(f).

27. *People v. Wieghard*, 727 P.2d 383 (Colo.App. 1986).

28. *Id.* at 386.

29. *Id.*, citing *Chandler*, *supra* note 13.

30. *Id.* (noting that “[a] hearing was conducted” and that “[c]ounsel were given an opportunity to present evidence”).

31. Order dated Oct. 10, 2002 from Office of the Chief Justice, Permitting Electronic and Photographic Access to Court Proceedings (on file with the authors). This was an extraordinary situation, because a typical EMC request does not seek a waiver of the restrictions in Rule 2.

32. “ABC to Eavesdrop on Colorado Trials,” *The Denver Post* A1 (Dec. 12, 2002).

33. *Id.*

34. See www.courts.state.co.us/Courts/supreme_court/oral_arguments/index.cfm; www.courts.state.co.us/Courts/court_of_appeals/oral_arguments/index.cfm.

35. See Bill to Permit the Televising of Supreme Court Proceedings, S. 446, 111th Cong. (2010).

36. “Judicial Conference Moves Federal Courts Toward More Public Access,” available at www.law.com/jsp/article.jsp?id=1202446305242.

37. “14 U.S. Courts, Not Colorado, Will Pilot Courtroom Cameras,” available at www.lawweekonline.com/2011/06/14-u-s-courts-not-colorado-will-pilot-courtroom-cameras.

38. *Id.*

39. *Id.*

40. *People v. Fulkerson*, Case No. 09-CR-1187, 38 Med.L.Rptr. (BNA) 1513 (Weld Cty. Dist. Ct., March 3, 2010) (reporter’s transcript of motions hearing on file with authors).

41. *Id.*

42. *Churchill v. Univ. of Colorado*, Case No. 06-CV-11473 (Denver Dist. Ct., Nov. 24, 2010).

43. *Martinez*, *supra* note 18.

44. *Lewis v. Colorado Rockies Baseball Club, Ltd.*, 941 P.2d 266 (Colo. 1997) (Judge Herbert Stern III).

45. *Roberts v. Scheriff*, July 1995 (Judge Edward Simons).

46. *Lorenz v. State*, 928 P.2d 1274 (Colo. 1996).

47. *People v. Kribo*, 996 P.2d 158 (Colo.App. 1999).

48. *People v. Auman*, 67 P.3d 741 (Colo.App. 2002), *rev’d*, 109 P.3d 647 (Colo. 2005).

49. Judge Habas also imposed a strict prohibition on photography outside the courtroom and in the hallways of the fourth floor of Denver’s City and County Building while court was in session. Although blogging and tweeting were prohibited from the courtroom, in this case they were permitted from the nearby spillover courtroom. Judge Habas later authorized still and video photography EMC for Willie Clark’s sentencing hearing.

50. See Rule 2(a)(2)(A) to (C).

51. See Rule 2(a)(6).

52. See Machuca, “Web readers can’t get enough of Shawna Nelson trial,” *The Tribune* (March 3, 2008), available at www.greeleytribune.com/article/20080303/NEWS/329307688&parentprofile=search. ■