

EXHIBIT D

Excerpts from brief of *amicus curiae* Courtroom View
Network in support of Respondent (1st Cir., case
no. 09-1090).

No. 09-1090

**United States Court of Appeals
For the First Circuit**

**IN RE: SONY BMG MUSIC ENTERTAINMENT;
WARNER BROS. RECORDS, INC.;
ATLANTIC RECORDING CORPORATION;
ARISTA RECORDS LLC;
AND UMG RECORDINGS, INC.**

PETITIONERS

ON PETITION FOR EXTRAORDINARY WRIT TO THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

**District Court Case No. 07-11446-NG (D. Mass.)
(Consolidated with District Court Case No. 03-11661-NG (D. Mass.))
Hon. Nancy Gertner, United States District Judge, presiding**

**BRIEF *AMICUS CURIAE* OF COURTROOM VIEW NETWORK IN SUPPORT
OF RESPONDENT AND AFFIRMANCE OF DECISION BELOW**

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of them) continue to have rules that permit the discretionary exercise of authority to permit cameras in adversarial proceedings. Thus, federal courts in New York, notwithstanding the policy of the Conference, have permitted coverage under the Rule in force in those localities.⁶ E.D.N.Y. & S.D.N.Y. R. 1.8. They have done so over the objections of parties, for trials, *e.g.*, *E*Trade Financial Corp. v. Deutsche Bank AG*, 582 F. Supp. 2d 528 (S.D.N.Y. 2008); evidentiary hearings, *In re Zyprexa Products Liability Litigation*, Case No. 04-md-1596, 2008 WL 1809659 (E.D.N.Y. March 4, 2008); and oral arguments. *E.g.*, *Scotchtown Holdings LLC v. Town of Goshen*, No. 08-cv-4720 (S.D.N.Y. Dec. 11, 2008) (Addendum at 3)⁷

These rulings have not precipitated a “flood of applications,” as Petitioner

⁶ In response to the first of these rulings, *Marisol v. Giuliani*, 929 F. Supp. 660 (S.D.N.Y. 1996), the Conference approved a resolution “to strongly urge each circuit judicial council to adopt” Conference policy banning cameras, and to “abrogate any rules of court” that conflict with that policy. (#720 [Nesson Decl. Ex. 12]) To our knowledge, no circuit judicial council has done so.

⁷ Much of the Petition seeks to rely on Conference policy to provide guidance in passing upon *whether* Rule 83.3 permitted Judge Gertner to act at all. But the unambiguous language of the Judiciary Code, and the case law, have made clear that this is not up for dispute. In the absence of a federal rule of procedure, district courts have the authority to enact their own rules, *see* 28 U.S.C. § 2071(a), and only a majority of judges on the district court or the First Circuit Judicial Council have the power to amend or abrogate these rules. Here there is no applicable federal rule, *compare* Fed. R. Crim. P. 53, and Rule 83.3 is the only rule of court in Massachusetts covering this subject matter. It, *not* the Conference, grants authority. *See* Fed. R. Civ. Proc. 83(a)(1); *In re Zyprexa Products Liability Litigation*, 2008 WL 1809659, at *1 (“The position of the Judicial Conference . . . does not bind federal district courts.”); *accord United States v. Merric*, 166 F.3d 406, 412 (1st Cir. 1999).