



news

Colorado Judicial Branch
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FOR IMMEDIATE RELEASE
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Colorado Supreme Court to hear arguments at Columbine High School on Thursday, Oct. 1

DENVER – The Colorado Supreme Court will hear oral arguments in two cases on Thursday, Oct. 1, 2009, at Columbine High School before an audience of students. The public also is invited to attend.

The visit is part of the Colorado Judicial Branch's *Courts in the Community*, the outreach program the Colorado Supreme Court and Court of Appeals initiated on Law Day (May 1), 1986. The *Courts in the Community* program was developed to give Colorado high school students first-hand experience in how the Colorado judicial system works and illustrate how disputes are resolved in a democratic society. These are not mock proceedings. The court will hear arguments in actual cases from which it will issue opinions. The court generally issues opinions within a few months of the arguments.

All seven justices hear cases together. They are Chief Justice Mary Mullarkey and Justices Gregory J. Hobbs Jr., Alex J. Martinez, Michael L. Bender, Nancy E. Rice, Nathan B. Coats and Allison Eid.

The two cases are:

- *08SC970 – Savannah Boles v. Sun Ergoline*: Ms. Boles was injured in 2004 while using an upright tanning booth manufactured by Sun Ergoline Inc. Before entering the booth, she signed a form releasing the manufacturer and

other entities from liability for any harm she might incur while in the tanning booth. Inside the tanning booth, she reached above her head, expecting to find handles. Two of her fingers were partially amputated when they passed through guard wires below a fan. Ms. Boles sued Sun Ergoline, claiming her injury was caused by a defective product. The trial judge dismissed the case, agreeing with Sun that the release form shielded the company from all liability, and the Court of Appeals upheld that ruling. Ms. Boles is asking the Supreme Court to declare that Colorado public policy prohibits releasing a manufacturer from liability for a defective product.

- *08SC936 – People of the State of Colorado v. Allen Bergerud*: Prosecutors asked the Supreme Court to review this case after the Colorado Court of Appeals reversed Mr. Bergerud’s conviction of first-degree murder, second-degree murder and assault on a peace officer. At trial, Mr. Bergerud had told his attorneys he wanted to argue he was innocent because he acted in self-defense. However, his attorneys told the jury in opening statements that Mr. Bergerud “broke” and did something catastrophic and unplanned when his ex-girlfriend showed up with a male companion. Mr. Bergerud then told the judge he wanted to fire his attorneys and replace them with attorneys who would pursue his theory of the case. The judge replied that Mr. Bergerud could either continue with his current representation or represent himself, and Mr. Bergerud decided to proceed without an attorney. The Court of Appeals concluded the trial judge erred by allowing the defense attorneys to withdraw and forcing Mr. Bergerud to proceed without counsel. The appeals court also concluded that defendants have a fundamental constitutional right to present an “innocence-based defense” regardless of defense counsel’s professional judgment.

The proceedings will begin at 8:30 a.m. Thursday, Oct. 1, 2009, in the auditorium at Columbine High School, 6201 S. Pierce St., Littleton, CO 80123. A question-and-answer session, during which the students can ask questions of the attorneys, will follow the arguments in each case. At the conclusion of the second argument, the students also will have the opportunity to participate in a question-and-answer session with the Supreme Court justices.

There will be a limited number of seats for the public. Audio recordings from the two arguments will be available online within one to two days of the arguments at

http://www.courts.state.co.us/Courts/Supreme_Court/Oral_Arguments/Index.cfm.

Editor’s Note:

The documents related to these two cases are located at:
<http://www.courts.state.co.us/Courts/Education/Materials3.cfm>

Additional information on the Courts in the Community program is available at:
<http://www.courts.state.co.us/Courts/Education/Community.cfm>

News media organizations interested in recording the arguments may contact Jon Sarché at the State Court Administrator's Office (contact information below). The following pages contain information about expanded media coverage.

We will be reserving seats for journalists. Please contact Jon Sarché at jon.sarche@judicial.state.co.us or at 303-837-3644 if you plan to attend.

Media opportunity

What: Colorado Supreme Court Oral Arguments
When: 8:30 a.m. – noon, Oct. 1, 2009
Where: Columbine High School, 6201 S. Pierce St., Littleton, CO 80123

Photo opportunities. During oral arguments, the requirements set forth in Canon 3(A)(8) of the Code of Judicial Conduct are in effect. The applicable section of Canon 3 is attached. Highlights include:

- a. A written request for expanded media coverage (form is attached below) must be filed in advance with copies to counsel for the parties.
- b. If granted, only one video camera and/or one still camera is allowed, and that media source must share and pool its coverage with other media.
- c. No flash attachments or lighted television cameras are allowed during the arguments.
- d. The camera operator may use a tripod, but shall not change location while court is in session.

For information, contact Jon Sarché, (303) 837-3644.

Following each argument, during the question-and-answer interaction between the students, lawyers and justices, access is open for media opportunities without the limitations of Canon 3. All media representatives also are welcome to photograph the luncheon immediately following the cases.

Schedule:

8:30 a.m. – 8:45 a.m.	Opening remarks
8:45 a.m. – 9:45 a.m.	<u>08SC970, Savannah Boles v. Sun Ergoline Inc.</u>
9:45 a.m. – 10 a.m.	Justices conference; attorneys answer students' questions
10 a.m. – 10:15 a.m.	Break
10:15 a.m. – 11:15 a.m.	<u>08SC936, People of the State of Colorado v. Allen Bergerud</u>
11:15 a.m. – 11:30 a.m.	Justices conference; attorneys answer students' questions
11:30 a.m. – 11:45 a.m.	Justices answer students' questions
11:45 a.m. – 1:30 p.m. (est.)	Lunch, justices and selected students

Request for Expanded Media Coverage. Requests must be submitted at least one day prior to the proceeding as outlined in Canon 3 (submitting requests three days prior to the proceeding is appreciated to allow for response time). Submit to Susan Festag, Clerk of the Court, Colorado State Judicial Building, 2 E. 14th Avenue, Denver, CO 80203; fax 303-837-2340. Copies also must be sent to the attorneys in the cases. A fill-in-the-blank request form is attached below.

Expanded media coverage of court proceedings

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

There are several points in the Canon of particular note:

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

Request for expanded media coverage in Colorado state courts

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

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

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

- (I) "Proceeding" means any trial, hearing, or any other matter held in open court which the public is entitled to attend.
 - (II) "Photograph" and "photography" means all recording or broadcasting of visual images, by means of still photographs, videotape, television broadcasts, motion pictures, or otherwise.
 - (III) "Expanded media coverage" means any photography or audio recording of proceedings.
 - (IV) "Judge" means the justice, judge, referee, or other judicial officer presiding over the proceedings. In proceedings with more than one judge presiding, any decision required shall be made by a majority of the judges.
 - (V) "Media" means any news gathering or reporting agency and the individual persons involved, and includes newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications, professional journals, or any other news reporting or news gathering agency whose function it is to inform the public or some segment thereof.
- (b) **Standards for Authorizing Coverage.** In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:
- (I) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;
 - (II) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and
 - (III) Whether expanded media coverage would create adverse effects which would be greater than those caused by traditional media coverage.
- (c) **Limitations on Expanded Media Coverage.** Notwithstanding an authorization to conduct expanded media coverage of a proceeding, there shall be no:
- (I) Expanded media coverage of pretrial hearings in criminal cases, except advisements and arraignments;
 - (II) Expanded media coverage of jury voir dire;
 - (III) Audio recording or "zoom" close-up photography of bench conferences;
 - (IV) Audio recording or close-up photography of communications between counsel and client or co-counsel;
 - (V) Expanded media coverage of in camera hearings;
 - (VI) Close-up photography of members of the jury.

- (d) **Authority to Impose Restrictions on Expanded Media Coverage.** A judge may restrict or limit expanded media coverage as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors. A judge may terminate or suspend expanded media coverage at any time upon making findings of fact that: (1) rules established under this Canon or additional rules imposed by the judge have been violated; or (2) substantial rights of individual participants or rights to a fair trial will be prejudiced by such coverage if it is allowed to continue.
- (e) **Conditions for Coverage.** Expanded media coverage shall be conducted only under the following conditions:
- (I) **Equipment Limitations.**
- (aa) **Video.** Only one person at a time shall be permitted to operate a videotape, television, or motion picture camera. There shall be only one such camera at a time in the courtroom, except that, at the discretion of the judge, the camera operator may have a second camera. The camera operator may use a tripod, but shall not change location while court is in session.
- (bb) **Audio.** The court's audio system shall be used if technically suitable and, in that event, there must be no interference with the court's use of its system. If the court's system is not technically suitable, then the person conducting expanded media coverage may install an audio recording system at his or her own expense upon first obtaining approval of the judge. All microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the courtroom.
- (cc) **Still Cameras.** Only one person at a time shall be permitted to operate still cameras, which shall make as little noise as possible. The still photographer may use a tripod, but shall not change location while court is in session.
- (dd) **Lighting.** No movie lights, flash attachments, or sudden lighting changes shall be permitted during a proceeding. No modification or addition of lighting equipment shall be permitted without the permission of the judge.
- (ee) **Operating Signals.** No visible or audible light or signal (tally light) shall be used on any equipment.
- (II) **Pooling Arrangements.** The media shall be solely responsible for designating one media representative to conduct each of the categories of expanded media coverage listed in subsection (I) of this section, and for arranging an open and impartial distribution scheme with a distribution point located outside of the courtroom. If no agreement can be reached on either of these matters, then there shall be no expanded media coverage of the type for which no pooling agreement has been made. Neither judges nor other court personnel shall be called upon to resolve any disputes concerning such pooling arrangements.
- (III) **Conduct of Media Representatives.** Persons conducting expanded media coverage shall conduct themselves in a manner consistent with the decorum and dignity of the courtroom. The following practices shall apply:
- (aa) Equipment employed to provide expanded media coverage shall be positioned and operated so as to minimize any distraction;
- (bb) Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Persons operating such equipment shall not wear clothing bearing any such identifying information;
- (cc) Equipment used to provide expanded media coverage shall not be placed in, or removed from, the courtroom while court is in session. No film, videotape, or lens shall be changed within a courtroom while court is in session.
- (f) **Procedures.** The following procedures shall be followed in obtaining authorization for expanded media coverage:
- (I) **Request for Expanded Media Coverage.** A written request shall be submitted to the judge at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the judge. Copies of the request shall be given to counsel for each party participating in the proceeding. The request shall include the following:
- (aa) The name, number, date and time of the proceeding;
- (bb) The type (audio, video, or still photography) of expanded media coverage requested and a description of the pooling arrangements required by section (e)(II), including the identity of the designated representatives.
- (II) **Objections.** Any party or witness may lodge with the judge a written objection to expanded media coverage of all or a portion of a proceeding.
- (III) **Judicial Authorization.** The judge shall rule on a request or objection within a reasonable time prior to the proceeding or promptly after the request or objection if the proceeding has begun. The ruling shall be made on the record and the reasons therefore set forth briefly.
- (IV) The media or any witness may not appeal, or seek review by original proceeding, the granting or denial of expanded media coverage. A party may seek review of a ruling by original proceeding, if otherwise appropriate, or by post-trial appeal.

Request for Expanded Media Coverage

The name of media group: _____

Person making request: _____

Contact information: _____

Name, address of counsel (if represented): _____

Date of request: _____ Date of proceeding: Oct. 1, 2009

Time of the proceeding	Case Number	Case Caption
8:45 a.m.	08SC970	Savannah Boles v. Sun Ergoline Inc.
10:15 a.m.	08SC936	People of the State of Colorado v. Allen Bergerud

The type of expanded media coverage requested:	Designated Representative:
____ audio	_____
____ video	_____
____ still photography	_____

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

Request for Expanded Media Coverage. Requests must be submitted at least one day prior to the proceeding as outlined in Canon 3 (submitting requests three days prior to the proceeding is appreciated to allow for response time). Submit to Susan Festag, Clerk of the Court, Colorado State Judicial Building, 2 E. 14th Avenue, Denver, CO 80203; fax 303-837-2340. Copies also must be sent to the attorneys in the cases.

The undersigned hereby certifies that on the ____ day of _____, 2009, a true and correct copy of the foregoing Request for Expanded Media Coverage was mailed, faxed or hand delivered to the following persons at the locations or fax numbers indicated:

08SC970 – Savannah Boles v. Sun Ergoline Inc.

For the Petitioner:

James F. Scherer, Miller & Law P.C., 1900 W. Littleton Blvd., Littleton, CO 80120; tel. 303-722-6500; fax 303-722-9270

For the Respondents:

Peter J. Moyson, Hall & Evans L.L.C., 1125 17th St., Suite 600, Denver, CO 80202; tel. 303-628-3339; fax 303-293-3239

08SC936 – People of the State of Colorado v. Allen Bergerud

For the Petitioner:

Paul Koehler, first assistant attorney general, 1525 Sherman St., 7th Floor, Denver, CO 80203; tel. 303-866-5547; fax 303-866-3955

For the Respondent:

Eric A. Samler, Samler and Whitson, P.C., 1127 Auraria Pkwy., #201B, Denver, CO 80204; tel. 303-670-0575; fax 303-670-0574

_____ I agree to comply with all relevant orders and all criteria set forth in [Canon 3](#).

Signature _____ Date _____