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# PERSPECTIVE

## CAMERAS IN VIRGINIA COURTROOMS

*Teresa D. Keller\**

### I. INTRODUCTION

On July 1, 1992, Virginia joined forty other states by allowing cameras into state courtrooms on a permanent basis.<sup>1</sup> A pilot program had been underway since 1987, allowing news coverage by television cameras, audio recorders, and still cameras in a handful of state courtrooms.<sup>2</sup> Lawmakers had extended the experiment twice, delaying a permanent decision in the face of varying opinions about the success of the program.<sup>3</sup> The Supreme Court of Virginia issued two reports over the five year span indicating the pilot program had produced a negative effect on the judicial process.<sup>4</sup> Broadcasters, on the other hand, consistently claimed the pilot program had run smoothly.<sup>5</sup> Despite the Virginia Supreme Court's

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1. Act of Mar. 30, 1992, ch. 557, 1992 Va. Acts 710 (codified at VA. CODE ANN. § 19.2-266 (Cum. Supp. 1992)).

2. Act of Mar. 27, 1987, ch. 580, 1992 Va. Acts 932.

3. In 1989, the pilot program was extended for one year, until July 1, 1990. Act of Mar. 25, 1989, ch. 582, 1989 Va. Acts 869. The 1990 session of the General Assembly added an additional two years, providing for expiration of the experimental program on July 1, 1992. Act of Mar. 24, 1990, ch. 243, 1990 Va. Acts 335.

4. REPORT OF THE SUPREME COURT OF VIRGINIA CONCERNING ELECTRONIC MEDIA AND STILL PHOTOGRAPHY IN THE COURTS, S. Doc. No. 26 (1990) [hereinafter SUPREME COURT REPORT I]; REPORT OF THE SUPREME COURT OF VIRGINIA CONCERNING ELECTRONIC MEDIA AND STILL PHOTOGRAPHY IN THE COURTS (Jan. 15, 1992) [hereinafter SUPREME COURT REPORT II].

5. Virginia Press Association and Virginia Association of Broadcasters, Comments on Proposal to Continue Experimental Program Allowing Photographic and Broadcast Coverage of Court Proceedings (1989) [hereinafter VAB Assessment Report].

official recommendations, during the 1992 session the General Assembly approved permanent provisions for cameras in state courts to be implemented beginning July 1, 1992.<sup>6</sup>

The beginning of a new relationship between Virginia courts and the news media provides a timely opportunity to review the history of cameras in courtrooms, both in Virginia and throughout the nation. With history as a guidepost to the future, this article attempts to predict some reactions to Virginia's new policy of providing greater media access to its public tribunals.

## II. HISTORY OF CAMERAS IN COURTROOMS

### A. *Supreme Court Precedent*

Whether to allow cameras in courtrooms has almost always been a controversial issue. Although the vast majority of states allow camera coverage of trials, there are no uniform national standards or procedures.<sup>7</sup> The federal judiciary, especially resistant to the presence of electronic media, maintained a ban in all federal courts until July 1, 1991, when the Judicial Conference of the United States established a three year pilot program in six federal district and two appellate courts.<sup>8</sup> The judicial system lags behind the legislative branch, where television news reporters and photographers have long had access to town, county, and state governmental proceedings. On the national level, the House of Representatives established a television system to cover floor debate in 1979. The United States Senate began allowing broadcast coverage of its deliberations in 1986.<sup>9</sup>

Television cameras first operated in American courtrooms in the early 1950s. In 1956, Colorado led the way among states by allowing cameras into its courtrooms on a permanent basis.<sup>10</sup> Concern about the effect of electronic coverage of courts was not surprising in light of earlier worries about the impact of newspaper

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6. Act of Mar. 30, 1992, ch. 557, 1992 Va. Acts 710 (codified at VA. CODE ANN. § 19.2-266 (Cum. Supp. 1992)).

7. For an analysis of the varied approaches among the states, see SUSANNA BARBER, *NEWS CAMERAS IN THE COURTROOM: A FREE PRESS-FAIR TRIAL DEBATE* 18-19 (1987).

8. *Federal Courts Begin Experiment With Cameras*, *THE NEWS MEDIA AND THE LAW*, Summer 1991, at 18-19. Participating district courts include those in Indiana, Massachusetts, Michigan, Pennsylvania, New York, and Washington. The two participating federal circuit courts of appeal are located in New York City and San Francisco. *Id.* at 19.

9. SYDNEY W. HEAD & CHRISTOPHER H. STERLING, *BROADCASTING IN AMERICA* 403 (1990).

10. BARBER, *supra* note 7, at 12-14.

coverage on trials. Even Mark Twain complained that the advent of newspapers and telegraphs had so defeated the notion of impaneling impartial jurors that courts were forced to "swear in juries composed of fools and rascals, because the system rigidly excludes honest men and men of brains."<sup>11</sup> Further skepticism developed in concert with the emergence of new technologies; some feared the impact of still photography, film, radio, and television.

The trial of Bruno Hauptmann on charges of kidnapping the Lindbergh baby<sup>12</sup> was recorded on film and marks the most noteworthy trial regarding early problems with media coverage. Approximately 700 newspaper reporters, of which 129 were photographers, covered the 1935 trial.<sup>13</sup> After reporting by still and newsreel photographers was labeled as "sensational," the American Bar Association adopted a policy against photographing and broadcasting courtroom activities. The policy was formalized in 1937 and is commonly referred to as Canon 35.<sup>14</sup> A ban on cameras in federal criminal trials<sup>15</sup> was put into force in 1946.<sup>16</sup>

The tradition of fear and criticism regarding cameras in the courtroom grew out of disruption of trials such as Hauptmann's and those of Billy Sol Estes<sup>17</sup> and Dr. Sam Sheppard<sup>18</sup> in the 1950s and 1960s. Such concerns may have been justified in the days of bulky equipment and accompanying bright lights. The objection to cameras was widely shared throughout the nation, and after the

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11. MARK TWAIN, *ROUGHING IT* 307 (Paul Baender, ed., 1972).

12. *See State v. Hauptmann*, 180 A. 809 (N.J.), *cert. denied*, 296 U.S. 649 (1935).

13. BARBER, *supra* note 7, at 4.

14. Shelly B. Kulwin, Note, *Televised Trials: Constitutional Constraints, Practical Implications, and State Experimentation*, 9 LOYOLA U. CHI. L.J. 910 (1978). Canon 35 was later embodied in Canon 3A(7) of the Code of Judicial Conduct, which provided in pertinent part: "[a] judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions . . . ." ABA CODE OF JUDICIAL CONDUCT No. 3A(7) (1972). The ABA has since reversed its position and this canon has not been incorporated in subsequent versions. *See MODEL CODE OF JUDICIAL CONDUCT* (1990); *see also* Frank, *infra* note 33, at 800.

15. FED. R. CRIM. P. 53 provides:

The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the courtroom shall not be permitted by the court.

Civil proceedings in federal courts are governed by local rules of court. *See* Frank, *infra* note 33, at 751.

16. Kulwin, *supra* note 14, at 910.

17. *See Estes v. Texas*, 381 U.S. 532 (1965).

18. *See Sheppard v. Maxwell*, 384 U.S. 333 (1966).

Supreme Court's 1965 decision in *Estes v. Texas*, court doors were virtually closed to cameras.<sup>19</sup>

In *Estes*, the United States Supreme Court first examined the constitutionality of televising a criminal trial over the defendant's objections. At the time all but two states prohibited cameras in courtrooms.<sup>20</sup> *Estes*, a Texas businessman and personal friend of President Lyndon Johnson, attracted national attention in proceedings where he was convicted of swindling. Pretrial hearings on a motion to prevent broadcasting and news photography were carried live on television and radio. The coverage was considered disruptive with cables and wires stretched around the floor of the courtroom for the operation of at least two dozen cameras. Microphones were placed on the judge's bench. The motion to prohibit television coverage was denied, but the judge allowed a continuance during which a booth was set up in the rear of the courtroom for television equipment and personnel. During the trial, pictures of the state's opening and closing arguments and the jury's return of verdict were broadcast live.<sup>21</sup>

On appeal, the Supreme Court reversed *Estes*' conviction and held in a 5-4 decision that broadcasting a trial of such notoriety over the objections of the defendant was inherently invalid and infringed on the defendant's rights to a fair trial and due process guaranteed by the Fourteenth Amendment.<sup>22</sup>

In *Sheppard v. Maxwell*,<sup>23</sup> the Supreme Court also overturned a conviction because of prejudicial publicity. In 1954, the trial of Dr. Sam Sheppard received widespread media attention in the Cleveland, Ohio, area. The Supreme Court, twelve years after Sheppard's trial, reversed the doctor's conviction for strangling his pregnant wife. Three months before trial, Sheppard was subjected to more than five hours of questioning, without legal representation, in a gymnasium where television cameras and several hundred observers were present.<sup>24</sup> Numerous media covered the story, often with reports showing why Sheppard was guilty. When the

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19. Kermit Netteburg, *Does Research Support the Estes Ban on Cameras in the Courtroom?*, 63 JUDICATURE 467, 468 (1980).

20. T. BARTON CARTER, MARC A. FRANKLIN, & JAY B. WRIGHT, *THE FIRST AMENDMENT AND THE FIFTH ESTATE* 552 (1986).

21. *Estes*, 381 U.S. at 535-37.

22. *Id.* at 550-52.

23. 384 U.S. 333 (1966).

24. *Id.* at 339-40.

trial began, the judge made room for reporters in the courtroom so close to Sheppard that he and his attorneys could not confer in private. Reporters basically took over the courtroom and caused general disruption as they moved in and out of the room during the nine-week trial.<sup>25</sup> Comparing the courtroom atmosphere to a carnival because of the bright lights and loud equipment, the Supreme Court reasoned that the defendant's right to a fair trial had been violated in a court where the judge had lost control. The decision required trial courts to take stronger action to maintain balance between the right to a fair trial and the right to a free press.<sup>26</sup>

### B. *State Experimentation*

Beginning in the mid-1970s, the situation changed rapidly, partially because of the portable and unobtrusive qualities of new electronic camera equipment. Special lighting was no longer required, and technological advancement had made the equipment much smaller.<sup>27</sup> In 1975, Alabama and Washington amended their rules and opened the door to empirical evidence about the impact of cameras.<sup>28</sup> In 1976, with overwhelmingly positive reactions to the experiment, Washington reversed Canon 35.<sup>29</sup> By 1978, seven states were allowing cameras into their courtrooms for the purpose of televising trials.<sup>30</sup>

In 1981, with more than half the states allowing cameras in their courtrooms, the Supreme Court took a kinder view of the practice in *Chandler v. Florida*.<sup>31</sup> The trial of two police officers on burglary charges was broadcast as part of Florida's experiment with cameras in courtrooms. Approval of trial participants was not required. The justices determined in a narrow consideration that camera coverage does not necessarily deny a defendant the right to a fair trial. The opinion focused on the experimental nature of Florida's practice and concluded that the Constitution cannot pro-

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25. *Id.* at 342-45.

26. *Id.* at 356-58.

27. See Albert B. Blashfield, *The Case of the Controversial Canon*, 48 A.B.A. J. 429, 433 (1962).

28. Netteburg, *supra* note 19, at 468.

29. BARBER, *supra* note 7, at 19.

30. Kulwin, *supra* note 14, at 912 n.13. States permitting cameras were Alabama, Colorado, Florida, Georgia, Montana, Washington and Wisconsin. *Id.* Texas had gone against the trend, having opened courts to cameras in the 1950s, but banning cameras from courts in 1976. BARBER, *supra* note 7, at 14.

31. 449 U.S. 560 (1981).

hibit a state from experimenting with such a program. As a practical matter, the decision left the issue up to the states.<sup>32</sup>

In August 1982, the ABA overturned its long ban on cameras in courts, suggesting that trial judges should decide whether to allow access under certain guidelines.<sup>33</sup> By the time the ABA House of Delegates reached this decision, 38 states were already allowing cameras in their courtrooms in some manner.<sup>34</sup>

### III. IMPLEMENTING A PERMANENT MEDIA ACCESS STATUTE IN VIRGINIA

#### A. *A Trial Run*

In 1987, the Virginia General Assembly amended a ban on electronic media and still photography to allow two-year experimental coverage in six court jurisdictions.<sup>35</sup> The experiment became effective July 1, 1987, and the state supreme court was placed in charge of administering and evaluating the experiment. Locations were chosen in consideration of opening both district and circuit courts in rural and urban locations.<sup>36</sup> The selected courtrooms were the Virginia Supreme Court, the court of appeals, circuit courts in Bedford County and the City of Virginia Beach, and general district courts in Caroline County and the City of Charlottesville.<sup>37</sup> In 1989, the legislature extended the experiment until July 1990 and included an additional circuit court in Henrico County.<sup>38</sup>

In 1990, the General Assembly extended the experiment for an additional two years, until July 1992.<sup>39</sup> At the time of the 1990 vote, lawmakers faced conflicting reports on the impact of cameras. The report from the Virginia Supreme Court asserted that electronic courtroom coverage had been negative, sensational, and unfair.<sup>40</sup> The conclusion was based on a survey of 127 active circuit

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32. *Id.* at 582-83.

33. Richard H. Frank, *Cameras in the Courtroom: A First Amendment Right of Access*, 9 COMM/ENT L.J. 749, 800 (1987).

34. Note, Joseph M. O'Connor, *Cameras in Maine's Courts: Has the Time Come? Will It Ever?* 42 ME. L. REV. 483, 488 (1990).

35. Act of Mar. 27, 1987, ch. 580, 1992 Va. Acts 932.

36. *Id.* The Supreme Court of Virginia designated the jurisdictions included in the experiment.

37. SUPREME COURT REPORT I, *supra* note 4, at 2.

38. Act of Mar. 25, 1989, ch. 582, 1989 Va. Acts 869. The supreme court designated Henrico as the additional urban circuit court added by the amendment.

39. Act of Mar. 24, 1990, ch. 243, 1990 Va. Acts 335.

40. SUPREME COURT REPORT I, *supra* note 4, at 2-3.

court judges in the state, most of whom were not involved in the experiment. Surveys of courtroom participants, including attorneys, witnesses, and jurors, indicated a strong positive reaction to the presence of cameras and recorders. However, these responses were not included in the supreme court report.<sup>41</sup> In contrast, the Virginia Association of Broadcasters submitted a positive analysis of the experiment, calling it a very solid success.<sup>42</sup>

In *Diehl v. Commonwealth*<sup>43</sup> the Virginia Court of Appeals addressed a criminal defendant's claim that the experimental statute had deprived him of his rights to a fair trial and a fair and impartial jury. Noting the similarity between Virginia Code section 19.2-266 as it was then codified and the Florida rule upheld in *Chandler v. Florida*,<sup>44</sup> the court held that the Virginia statute did not, on its face, violate state or federal constitutional guarantees.<sup>45</sup> The court also held that the defendant had failed to show that application of the statute to his case "in any way impaired the fairness of the trial."<sup>46</sup> The court noted further that the Virginia Supreme Court implicitly endorsed the validity of the statute by adopting a rule of court to implement it.<sup>47</sup>

As the end of the experimental period approached in February 1992, legislators were again advised by the supreme court that the impact of the pilot program on the judicial system had been negative. The court continued to rely on reviews from the state's circuit court judges, regardless of their participation in the pilot program. However, this time the court acknowledged its survey of court participants showed "an increase in favorable opinions in varying degrees by all categories of participants after experiencing the actual use of electronic media during judicial proceedings."<sup>48</sup>

Broadcasters reiterated their claim that the pilot program had been successful. The position was bolstered by the appearance of Bedford County Circuit Court Judge William W. Sweeney before the Senate Courts of Justice Committee during a hearing on the

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41. The court tabulated responses by the judiciary, noting it had received 74 negative, 10 positive, and 9 undecided responses from 93 circuit court judges. *Id.* at 4. Tabulated responses by attorneys, witnesses, and jurors were not incorporated into the report.

42. VAB Assessment Report, *supra* note 5, at 6.

43. 9 Va. App. 191, 385 S.E.2d 228 (1989).

44. 449 U.S. 560 (1981).

45. *Diehl*, 9 Va. App. at 198, 385 S.E.2d at 232.

46. *Id.*

47. *Id.*

48. SUPREME COURT REPORT II, *supra* note 4, at 3.



bill. Judge Sweeney told legislators that although he initially objected to the presence of electronic media in his courtroom, his experience administering one of the courts in the pilot program had led him to favor camera coverage.<sup>49</sup> In the absence of evidence of negative impact on the judicial process from the presence of electronic media, lawmakers approved Senate Bill 480 to take effect on July 1, 1992.

### B. *Statutory Outline*

Under the new Virginia statute, as is typically the case, the presiding judge has ultimate authority over electronic media and may interrupt or terminate coverage at any time. Coverage may be prohibited "for good cause shown" in order to "meet the ends of justice."<sup>50</sup> Several types of coverage are prohibited, including proceedings involving juveniles, divorce issues, and sexual offenses. No pictures of jurors, police informants, minors, undercover agents, or victims or families of victims of sexual offenses may be published or broadcast.<sup>51</sup>

The law requires media equipment to be unobtrusive and media personnel are not allowed to enter, leave, or transport equipment while proceedings are in session. Specifications prohibit the use of distracting lights and restrict the number of cameras allowed in the courtroom to two television news cameras and one camera for still photography.<sup>52</sup>

### C. *Expected Reactions*

As we look to a future of electronic coverage in Virginia courtrooms, how might courtroom participants be expected to react? The answer lies in a history of research dating back to the mid-1950s documenting a litany of fears about the effects of cameras in

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49. Hon. William W. Sweeney, Address Before the Senate Courts of Justice Committee (Feb. 9, 1992).

50. VA. CODE ANN. § 19.2-266 (Cum. Supp. 1992). For a comparison of judicial discretion in other states, see BARBER, *supra* note 7, at 103-04.

In Diehl v. Commonwealth, 9 Va. App. 191, 385 S.E.2d 228 (1989), the court of appeals rejected the defendant's claim that he had shown "good cause" for excluding cameras from his trial by offering the testimony of "an experienced trial attorney" who opined that the presence of cameras "may" have an adverse impact on the defendant's interests. *Id.* at 197, 385 S.E.2d at 232.

51. VA. CODE ANN. § 19.2-266 (Cum. Supp. 1992).

52. *Id.*

courtrooms, but generally failing to find objective evidence to support those fears. The expected problems include grandstanding attorneys, intimidated jurors, frightened witnesses, and distracted judges.<sup>53</sup> In fact, surveys of jurors and witnesses consistently show that most are not adversely affected by the presence of cameras.<sup>54</sup> Nor do attorneys and judges report that cameras interfere with their effectiveness.

By 1982, nineteen research studies from eleven states over an eight year period showed a pervasive lack of "behavioral prejudice caused by news cameras in courtrooms."<sup>55</sup>

In 1987, Richard Frank documented consistently favorable results of cameras in courtroom experiments:

Of vast importance is the states' monolithic conclusion that electronic trial coverage neither significantly detracts from the dignity and decorum nor causes physical disruption of courtroom proceedings. . . . In contrast to the near absence of perceived negative effects, the experimental programs reported substantial benefits from electronic coverage.<sup>56</sup>

Florida is often cited as the state with the most liberal and long-standing regulations regarding cameras in courtrooms.<sup>57</sup> Jurors may be photographed and cameras are permitted in trials relating to sexual assault.<sup>58</sup> Florida led the way for the common acceptance of cameras in courtrooms in 1978, and researchers point to its televising of thousands of cases with no great concern about a lack of justice.<sup>59</sup>

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53. Frank, *supra* note 33, at 789.

54. The Virginia Court of Appeals has implied that the mere presence of cameras in the courtroom does not adversely affect the conduct of the proceeding, observing that video tapes are being increasingly relied on as a means of preserving the trial record for appellate purposes. *Diehl v. Commonwealth*, 9 Va. App. 191, 197 n.4, 385 S.E.2d 228, 232 n.4 (1989). For examples of surveys studying the impact of cameras on trial participants, see Netteburg, *supra* note 19, at 469, and Anna R. Paddon, *Television Coverage of Criminal Trials with Cameras and Microphones: A Laboratory Experiment of Audience Effects* (1985) (unpublished Ph.D. dissertation, University of Tennessee (Knoxville)).

55. BARBER, *supra* note 7, at 87.

56. Frank, *supra* note 33, at 810, 812 (citations omitted).

57. *See, e.g.*, Frank, *supra* note 33, at 803-06; O'Connor, *supra* note 33, at 488.

58. *See In re* Petition of Post-Newsweek Stations, Florida, Inc., 370 So.2d 764, 792-95 (Fla. 1979) (amending Canon 3A(7) of FLA. CODE OF JUDICIAL CONDUCT).

59. Netteburg, *supra* note 19, at 77.

Virginia surveys during the pilot program showed the same result: after participating in a trial with cameras present, the majority of witnesses, jurors, and other court personnel reported favorable opinions toward cameras in courtrooms.<sup>60</sup> Attorneys were evenly divided about inviting cameras in on a permanent basis. Judges were more skeptical, and the majority reported negative responses.<sup>61</sup>

Later, the supreme court acknowledged that all categories of court participants — judges, jurors, witnesses, and attorneys -- reported an increase in favorable opinions after experiencing the actual use of electronic media during judicial proceedings. The court reported the “consensus of all . . . participants that the presence of cameras and recording systems had no effect on the dignity of the proceedings or on orderly conduct of the court’s business.”<sup>62</sup>

Critics expect cameras to upset courtroom decorum, interfere with the judicial process, and to abridge the defendant’s right to a fair trial.<sup>63</sup> If Virginia follows the consistent national pattern, courtroom participants, including skeptical judges and attorneys, will quickly adopt a positive opinion of the practice.

#### D. *Dispelling Old Myths*

A closer examination of traditional fears about the impact of cameras may indicate why the apprehensions are not supported in the research.

There is, of course, no guarantee that some witnesses will not be intimidated by cameras. Certain individuals may be very upset by the presence of cameras. However, in most cases the cameras are likely to be only slightly more intimidating than the court appearance itself. Facing an attorney, answering questions in front of a judge and jury in a formal court setting, usually before a room full of spectators, provides plenty of cause for stress. A news camera, probably located in the back of the room, if not totally out of sight, is not likely to be the primary cause of anxiety.<sup>64</sup>

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60. SUPREME COURT REPORT II, *supra* note 4, at 3.

61. SUPREME COURT REPORT I, *supra* note 4, at 3.

62. SUPREME COURT REPORT II, *supra* note 4, at 4.

63. *See id.* at 8-11.

64. In fact, under the statute, members of the press are prohibited from using “intrusive” or “distracting” devices and techniques. VA. CODE ANN. § 19.2-266 (Cum. Supp. 1992).

To avoid the possibility of intimidation, Virginia law precludes photographing members of the jury.<sup>65</sup> However, other states do allow jurors to be photographed, and the majority of jurors in media-covered trials conducted in those states continue to report positive reactions to cameras in courtrooms.<sup>66</sup>

The concern that media coverage will cause attorneys to grandstand and play to the cameras appears equally unfounded. The notion of performing for the cameras in an effort to appeal to a broad television audience conflicts with the major task in the courtroom. The attorney's first priority in a court proceeding is to convince the *judge* and the *jury*, not the television audience, of a specific point of view. Since the courtroom is not set up as a television studio, it will be difficult for the attorney to address the camera.<sup>67</sup> In short, an attorney who attempts to play to the camera is making a big mistake. Moreover, the level of drama involved in an attorney's presentation is more a matter of personal style than acting ability. In one Virginia circuit court taking part in the pilot program, there were accusations that the prosecuting attorney was guilty of grandstanding. However, the judge, and journalists who had covered the court both with and without cameras present, reported that the prosecutor made lively, animated, and dramatic presentations regardless of whether cameras were present.<sup>68</sup>

### E. *Challenges for the Media and the Judiciary*

The generally positive nationwide reaction to cameras in courtrooms does not preclude difficulties and growing pains associated with new freedoms and responsibilities in Virginia, both for the judicial system and for news operations. As explained below, complaints of sensationalism and inadequate coverage can be expected.

#### 1. Determining the Proper Scope of Coverage

The state supreme court report's complaint that television coverage of judicial action focuses on the most "sensational" cases will likely persist at all court levels because of the nature of news. The criteria that determine news value can be considered sensational,

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65. *Id.*

66. BARBER, *supra* note 7, at 72. For a comparison of state approaches to this issue, see *id.* at 103-04.

67. See the discussion *infra* regarding the William Kennedy Smith trial.

68. *On the Record* (WDBJ-TV television broadcast, Oct. 9, 1990, Roanoke, Va.).

although reporting textbooks use other terms such as "uniqueness" to describe similar characteristics.<sup>69</sup> As much as seventy-five percent of all news stories fall into two general categories: (1) consequences to the public, such as information about health, taxes, pollution or elections results, or (2) interest. Stories of interest include the unusual, strange, and bizarre — translate "sensational."<sup>70</sup> Even though the story is sensational, it may have important news value. For example, crime is often unusual and bizarre, therefore sensational. Although disturbing as a daily diet in the evening news, the reporting of crime and its adjudication is important. An informed and perhaps fed-up citizenry will be better equipped to deal with an increasingly violent society. In *Richmond Newspapers, Inc. v. Virginia*,<sup>71</sup> Chief Justice Burger explained the close tie between the "natural yearning to see justice done" and the importance of media coverage toward that end:

When a shocking crime occurs, a community reaction of outrage and public protest often follows. Thereafter, the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated . . . .<sup>72</sup>

Regardless of the distasteful aspects of crime reporting, any notion of suppressing news is in direct conflict with constitutional guarantees of a free press. The public can expect to continue to see coverage of horrific murders, including the judicial process following the crime, because murder remains uncommon enough in our daily lives to be newsworthy. In many localities, bank robberies, sexual assaults, and other acts of violence are so common they are not included in the evening newscast. In some places, "routine" homicides are not reported, only the most bizarre or multiple murders.

Television court coverage in Virginia during the pilot program showed remarkable balance in story presentation. During one three-month period, thirty-three percent of total court stories at commercial television stations related to public issues such as util-

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69. See, e.g., MELVIN MENCHER, NEWS REPORTING & WRITING 572-94 (5th ed. 1987).

70. *Id.* at 54.

71. 448 U.S. 555 (1980).

72. *Id.* at 571 (citations omitted).

ity rate and labor disputes, charges of police brutality, questionable pollution discharges, and sexual discrimination. A full ten percent of the television news stories throughout the state were devoted to the sexual discrimination suit against Virginia Military Institute<sup>73</sup> for denying admission to women.<sup>74</sup> Because the case was tried in federal court, cameras were not allowed. Even so, stations from around the state sent reporters, satellite trucks and crews to Roanoke for the trial.<sup>75</sup> Additionally, even though only seven state courtrooms were open to camera coverage, ninety-five percent of court coverage regarded trials in courts that denied access to electronic media.<sup>76</sup> This data suggests that if the trial is important, television news crews will be there, regardless of whether cameras are allowed inside the courtroom. Even when they may not approve of media decisions, it is the responsibility of judges and attorneys to recognize that news judgment must be left to news professionals, just as control of the courtroom remains in their jurisdiction.

Judges and attorneys are also typically concerned that news stories inadequately represent the trial process.<sup>77</sup> They do not approve of the narrow selectivity in story choice, or that an entire day's testimony is represented by a short soundbite. The concern is a valid one and is shared by professional journalists who desire more time and space for each story. Judges and attorneys will likely continue to express dismay at seeing a story which sums up, in less than two minutes, an entire day in court. The soundbite will undoubtedly be a short section of the most emotional part of the day. Broadcasters will point out, however, that there are fewer complaints about the editing in newspapers. Television, with its color, sound, and motion, seems to have greater impact.

Surprisingly enough, the new cameras-in-courts statute may contribute to more detailed coverage of courtroom activities. Television reporters need pictures to cover the words they record describing the courtroom action. Without access to the courtroom, photographers are limited to pictures of the trial participants and

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73. *United States v. Virginia*, 766 F. Supp. 1407 (W.D. Va. 1991).

74. Teresa D. Keller, *Cameras in Courtrooms: An Analysis of Television Court Coverage in Virginia 109-112* (1992) (unpublished Ph.D. dissertation, University of Tennessee (Knoxville)). The survey presented a content analysis of court stories at 12 Virginia television stations during the period March-May 1991.

75. *Id.* at 112.

76. *Id.* at 115.

77. SUPREME COURT REPORT I, *supra* note 4, at 5.

often show the defendant being ushered in and out of the courtroom in handcuffs. Sometimes, simply because of the shortage of pictures, the "perp walk" is even shown in slow motion. The limited video opportunities make it difficult to cover a detailed story, but with camera access, television news reporters can actually provide more information.

A side effect could also prove to be more satisfying to defense attorneys and their clients. Under past exclusionary regulations for cameras, television news personnel were often forced into ambush-style photography of a defendant who did not want to be photographed. The cat and mouse approach often resulted in suspects trying to hide their faces or making gestures to the camera that would prevent the pictures being included in the newscast. With new access, the defendant may be seen in a more dignified manner, sitting beside the attorney at a table, or testifying on the witness stand.

The opportunity exists for court coverage as an educational tool, but education is not likely to be a consistent benefit of camera access to courts.<sup>78</sup> Television news stories generally summarize the day's courtroom activity in a one- to two-minute story incorporating a short excerpt from testimony. This presentation method does not provide an opportunity for extensive insight into judicial procedures.

Extended coverage, however, is more likely to educate the audience, as in the full coverage of the William Kennedy Smith rape trial by the Cable News Network. While viewers may have been attracted originally to the Kennedy family name, some became more intrigued by the judicial process itself, and may have acquired some information about the necessary evidence for rape convictions. Observers may also have noticed how slowly and deliberately the court system truly operates and how repetitive and boring the details of a trial can be. Watching gavel to gavel trial coverage would educate a viewer to some degree about the difference in actual court proceedings as opposed to courtroom dramas such as "Perry Mason" or "L.A. Law," where the pace is always fast and the drama level always high.<sup>79</sup>

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78. See Netteburg, *supra* note 19, at 475.

79. Interestingly, judges responding to the Supreme Court's second survey indicated that "all who watched [the *Smith* trial] benefitted from seeing justice well served." SUPREME COURT REPORT II, *supra* note 4, at 6.

The Smith trial was also instructive in showing that cameras are not disruptive of court proceedings. The camera was located in the back of the courtroom, and in fact, viewers could only see the backs of the attorneys. Additionally, because broadcasts were electronically altered viewers did not see her face.<sup>80</sup> The judge, however, was clearly visible, and also clearly in charge. While a circus-like atmosphere may have existed outside the courtroom as reporters and photographers elbowed each other to photograph the defendant, members of the Kennedy family, and other well-known trial participants, the quiet decorum inside the courtroom provided a sharp contrast.

For those who hope that Virginia's new law will be an educational opportunity, the best opportunity could come from cable companies interested in providing gavel to gavel court coverage on local access channels. Commercial television cannot provide adequate programming time to accommodate extended court coverage.

## 2. Consistency in Administration

Although there were no major problems during Virginia's pilot program, members of the news media were displeased at several judicial decisions which excluded them from the courtroom. Although the Virginia law is clear that cameras will be present at the sole discretion of the judge, members of the news media hope for more liberal interpretations of the new law than the following judgments made during the pilot program.

In Henrico County, cameras were excluded from the trial of a young woman charged with killing two classmates from her exclusive private high school in an alcohol-related automobile accident. The judge justified the exclusion based on the potential for psychological damage to the defendant, even though she was of majority age at the time of the trial. News directors saw the case as an example of the significant social problem of teenage drinking and driving. They thought the case was worthy of public attention and were frustrated at the exclusion.<sup>81</sup>

In another experimental court, cameras were excluded from a medicare fraud case with little explanation. Faced with criticism

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80. Florida law prohibits broadcasting the likenesses of sexual assault victims. See FLA. STAT. ANN. § 794.03 (West 1992).

81. Keller, *supra* note 74, at 122-23.



for too much coverage of "sensational" cases and criminal cases, media professionals were especially puzzled by this exclusion.<sup>82</sup>

Cameras were excluded from a murder appeal before the state supreme court because the defense attorney reportedly planned to argue that the appellant had been abused as a child. State regulations prohibited coverage of proceedings concerning sexual offenses.<sup>83</sup> Ironically, the sexual abuse argument was never made.<sup>84</sup>

In a similar case in Staunton, a college coed had been beaten with a rock and killed. Whether there had been sexual assault in connection with the murder had not been determined. While the original trial in circuit court was not in an experimental courtroom, cameras were banned in the supreme court due to the potential for allegations arising concerning sexual assault. Cameras and microphones were excluded even though the victim was dead and no admissible evidence was on record regarding a sexual assault.<sup>85</sup>

In one situation, a television station completely terminated coverage of an experimental district court as a protest. Broadcasters objected to the judge's insistence that news organizations withhold use of audio and video recordings from preliminary hearings for twenty-four hours. The judge also attempted to require that videotape be withheld from broadcasts until the end of a jury trial if one was scheduled. Rather than agree to the judge's demands, the station management instituted a moratorium on all coverage of that court until a new judge was appointed.<sup>86</sup>

Judges in Virginia have the authority to interpret the new law narrowly and in a way that effectively avoids camera coverage. The news media has little opportunity for redress, except by returning to the General Assembly and asking for an amendment to the statute. Whether judges have positive or negative expectations about the impact of cameras may be crucial to the success of media coverage in courtrooms.

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82. *Id.* at 122.

83. VA. CODE ANN. § 19.2-266 (Repl. Vol. 1990).

84. Keller, *supra* note 74, at 123.

85. *Id.*

86. *Id.* at 124.

## F. *Current Opinion*

Reports in the news media as new regulations were going into effect showed that some judges and attorneys are open to the idea of camera coverage. However, the tradition of fears and apprehensions is also present.

One judge reported a concern that cameras in the courtroom "could interfere with court hearings." This individual also expected that witnesses might grandstand while testifying or lawyers would do the same while examining witnesses. This person did suggest that negative effects from camera coverage would probably wear off with time.<sup>87</sup>

A Commonwealth's Attorney expressed fear that witnesses and other participants would be unable to concentrate on the trial because of the presence of cameras. Others expressed concern that sensational testimony would be singled out, and that coverage would not be complete and fair.<sup>88</sup>

More positive attitudes included the idea that enhanced opportunity to view courtroom proceedings will increase public support for the court system. The new law was also described as an opportunity to correct misconceptions about the court system engendered by fictional television.<sup>89</sup> Others were confident that the positive effects would outweigh any negative ones.<sup>90</sup>

## V. CONCLUSION

The early months of interaction between the judiciary and the news media will be crucial in determining the success of integrating electronic media into Virginia courtrooms. The attitude with which judges approach the new media access will shape the relationship in each courtroom. Some judges will likely resist media coverage, while others will be very relaxed with the idea of an extended audience for the work they do. It is doubtful, however, that the Commonwealth will suffer any adverse impact from the presence of cameras that has not been shown elsewhere in nearly fif-

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87. Bonnie Millard, *Officials Concerned About New Cameras-In-Courts Law*, BRISTOL HERALD COURIER, July 1, 1992, at 1.

88. *Id.*

89. *Id.*

90. Laurence Hammack, *Cameras Getting Their Day in Court*, ROANOKE TIMES & WORLD-NEWS, June 29, 1992, at A3.

teen years of widespread broadcast trial coverage. Most court participants can be expected to react positively to the presence of cameras. Virginia was this nation's crucible of democracy. Now is the time for the Commonwealth to catch up in allowing electronic media access to its courtrooms.