



DRAFT

COMMONWEALTH of VIRGINIA

JOHN A. BANKS, JR.
DIRECTOR

DIVISION OF LEGISLATIVE SERVICES

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 786-3591

February 23, 1984

TO THE INDIVIDUAL ADDRESSED:

At our final meeting this morning the Commission by a unanimous vote (9-0) adopted the first 7 pages of the enclosed proposed report. Due to the diversity of views and to an inability to arrive at a consensus as to what recommendations, if any, should be made to the General Assembly, the Commission deleted the remainder of the report beginning with the Recommendations section on page 7.

Each member has been requested to send me a short summary of their recommendations. All of these recommendations will be attached to the final report for submission to the General Assembly.

Please send your conclusionary comments to me as soon as possible. A final printed copy of the report will be mailed to you when it is completed.

Sincerely,

Oscar R. Brinson
Commission Counsel

ORB:asc
Enclosure

Members:

Franklin P. Hall, Chairman
C. Richard Cranwell
Richard J. Holland
Johnny S. Joannou
William F. Parkerson, Jr.

Justice A. Christian Compton
Judge Henry D. Kashouty
Aubrey E. Loving, Jr.
Judge Edgar A. Massenburg
Josiah P. Rowe, III
Philip M. Sadler

REPORT OF THE
COMMISSION EVALUATING THE USE OF PHOTOGRAPHY
AND TELEVISION DURING COURTROOM PROCEEDINGS

HISTORICAL TREND AND BACKGROUND OF THE COMMISSION

Cameras and electronic recording devices were first used to cover courtroom proceedings in this country during the 1930's--with disastrous results. In the aftermath of these initial abuses by the news media, the American Bar Association in 1937 adopted Canon 35 of the Canons of Judicial Ethics which recommended against allowing cameras in courtrooms. Virtually every state, including Virginia, adopted Canon 35 by rule of court or statute following its promulgation.

The movement to permit camera coverage of the judicial process did not begin to surface again until the mid-1950's. Over the next several decades an ever-increasing number of states rescinded past prohibitions and began experimenting with such coverage.

In 1981, in the case of Chandler v. Florida , 101 S. C.T. 802, the U.S. Supreme Court put to rest arguments that cameras in the courtroom were unconstitutional infringements upon a defendant's right to a fair trial. In that case, the court clearly enunciated the rule that a state can provide for radio, television and still photographic coverage of criminal trials and not, on a per se basis, violate a defendant's constitutional guarantees.

During the same year, the Virginia State Bar commissioned its Public Information Committee and Bar-News Media Committee to study this issue and report their findings to the Bar's governing Council. These reports, which reached opposing conclusions, were presented to the State Bar Council which, in late 1981, adopted the Public Information Committee's recommendation against allowing camera coverage of courtroom proceedings in Virginia.

Encouraged by the Chandler decision, the nationwide movement to open courtrooms to electronic media coverage accelerated. In 1982, the American Bar Association's House of Delegates voted to end their forty-five-year opposition to cameras in the courtroom, bringing the ABA into step with the thirty-eight states already permitting some level of camera coverage of judicial proceedings.

Recognizing this historical trend toward such coverage, the 1982 Session of the General Assembly created this Commission. Under its charter, the Commission was directed to evaluate the experiences of other jurisdictions, make whatever studies, surveys or experiments it deemed necessary, and determine if opening our courtrooms to electronic recording devices would be appropriate for and in the best interests of the Commonwealth.

During the course of its study, the Commission attempted to work closely with and receive input from the statewide bar associations. At the Commission's request, the Virginia State Bar recently reviewed the issue of camera coverage of judicial proceedings. To assist in the review

of the current status and most recent analyses of this issue, the Commission turned the bulk of its files over to the State Bar. These various materials included a preliminary staff report with updated figures and status charts; numerous reports, summaries and surveys from other states; copies of rules governing the use of electric recording devices in the courtrooms of several other states; various related articles; and copies of the minutes of all Commissions meetings and public hearings. Thereafter, on October 21 of this year, the State Bar Council adopted a resolution urging the General Assembly to authorize a two-year pilot project to experimentally allow cameras and recording devices into the Commonwealth's courtrooms.

CONSIDERATIONS

The Commission has reviewed and evaluated reports, rules and surveys from a number of other states on this issue. Numerous articles, court cases and dissertations have also been examined. Additionally, the Commission has held three public hearings in various areas of the Commonwealth and solicited and received testimony from numerous groups and individuals including bar association representatives, educators, trial lawyers, an expert from the National Center of State Courts, TV and radio spokesmen, newspaper editors, eminent jurists and other individual citizens.

Among the testimony received by the Commissioner was that of John Rockwell who directs studies of the cameras in the courtroom issue for the National Center of State Courts.

Mr. Rockwell concluded with his belief that courtroom cameras have the impact of making trials fairer rather than vice versa. He urged the Commission to at least recommend an experimental program in Virginia. Judge James B. Wilkinson, a circuit court judge from Richmond who presided over the Bar News Media Committee's mock televised trial last year, informed the Commission that initially he was opposed to opening courtroom to camera coverage. However, he was impressed with the medias' coverage and analysis of the mock trial and now believes that permitting electronic media coverage would result in a better educated public and greater respect for our legal system. Judge James H. Bailey, Sr., Chief Judge of the Superior Court in Raleigh, North Carolina, and Judge Billy Ray Paxton, a Court of Appeals judge from Kentucky were solicited to testify in order to receive a first-hand report from jurists in states which allow camera coverage. Both judges enthusiastically commended such coverage to the Commission.

Members of the Commission have also witnessed demonstrations of state-of-the-art photographic equipment and video cameras. Portions of one hearing were videotaped in the Marshall Wythe School of Law courtroom.

As mentioned above, the thrust of the Commission's deliberations has been directed at evaluating the impact the courtroom use of cameras and recording devices would have upon our judicial system and determining whether such coverage would be appropriate for the Commonwealth. To this end, the Commission has encouraged participation by both

opponents and proponents in an attempt to receive a total and comprehensive response from a wide cross section of interested individuals and organizations.

CONCERNS

The Commission believes that technological advances in recent years have substantially lessened the threat to courtroom decorum posed by the physical distraction of cameras and recording devices.

Most members also recognize that these advances have made it possible to institute good, workable systems which seem to adequately protect defendants and juveniles, assure privacy in sensitive cases and maintain courtroom decorum in other jurisdictions.

However, at the same time, the Commission has a number of concerns involving the potentially negative impact of allowing cameras into our courtrooms. The possibility of adverse effects on courtroom participants has been considered at great length. These include the fear that cameras would 1) elicit "performances" from publicity-minded defense attorneys, ambitious prosecutors and cocky witnesses, 2) intimidate and frighten timid or reluctant witnesses 3) have a prejudicial effect upon jurors and evoke their fear of condemnation and scorn by neighbors and friends following the trial, 4) allow witnesses to view the testimony of preceding witnesses and shape their own testimony to maximize its impact, 5) lead to a distortion of the trial process by TV editing for dramatic effect, 6) result in the coverage of only notorious trials or infamous

defendants to meet commercial objectives of the media and higher dramatic appeal and 7) erode the protections now afforded the innocent, children and others in sensitive positions such as police informants and undercover agents.

Basic to these concerns is the possibility that a defendant's right to a fair trial would be impaired by violating his right to privacy due to the distraction of wide public surveillance, by the impact of prejudicial and unfair publicity upon a supposedly impartial jury, or by violating the concept of the courtroom as a sanctuary from outside influences.

Some members are concerned that there has not been more public interest in or a demand for opening our courtrooms to cameras and recording devices. A number of members also doubt whether there is a valid need which justifies the use of electronic recording devices in the courtroom. Some members are concerned as to whether the risks involved are warranted if no significant advantage accrues to the public. Others feel that public understanding of the judicial process would be enhanced, leading to a greater respect for the law and increased public confidence in our judicial system.

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DELETED FROM REPORT BY COMMISSION VOTE

RECOMMENDATIONS

The Commission recognizes that there may be some merit in allowing electronic recording devices and cameras in our courtrooms as relates to public education and the possibility of deterrence of crime. They are also aware that such coverage seems to work well in other

jurisdictions. However, there is concern for the Commonwealth's judicial system and the impact another state's solution to this controversy would have here.

The Commission will not attempt to pass judgment on whether judicial proceedings should be televised and broadcast in the Commonwealth. Rather, the Commission believes this to be a question of public policy which should be decided by the General Assembly.

Should the General Assembly be so inclined, it is recommended that a pilot project be established for two years and be instituted in two trial courts of general jurisdiction to ensure coverage of all aspects of the judicial process. The Commission further recommends that one circuit court and one district court be utilized, with one of the courts being in an urban location and the other in a rural location. The experiment might also be extended to allow coverage of some Supreme Court proceedings.

The Commission is of the opinion that the Supreme Court would be the appropriate body to administratively oversee such a pilot project. As guidelines for the experiment, the Commission recommends the use of the rules established for the current North Carolina pilot project, modified as the Supreme Court deems appropriate. (See North Carolina Supreme Court Order attached.) These rules, in part, provide:

1. That the presiding judge have absolute and total control over when and if cameras and recording devices can be used in the courtroom.

2. That coverage of certain types of trials be expressly prohibited in all circumstances (e.g. juvenile and domestic relations proceedings).

3. That the location of recording and camera equipment be strictly regulated so as not to be intrusive.

4. That no distracting lights or sounds be permitted.

5. That coverage of certain categories of witnesses be expressly prohibited (e.g. police informants, minors, victims of sex crimes and those victims' families, etc).

6. That designated media associations appoint a committee to serve as sole liaison between those judges whose courtrooms are used in the experiment and the press on all matters pertaining to courtroom coverage by electronic recording devices and cameras.

This pilot project should be conducted at no cost to the Commonwealth, with all partitioning devices, microphones and related essential wiring being installed and maintained at media expense.

If the pilot project is conducted, the Commission recommends that it be continued on a basically inactive basis to serve in an advisory capacity for the pilot project, to receive final reports from participating trial judges and the Supreme Court at the conclusion of the project, and to assess the experiment's impact on our judicial system and the people of the Commonwealth.



City of Hampton

OLDEST CONTINUOUS ENGLISH SPEAKING SETTLEMENT IN AMERICA

Hampton, Virginia 23669



Circuit Court of the City of Hampton

May 23, 1984

Eighth Judicial Circuit
of Virginia

EDGAR A. MASSENBURG
JUDGE

NELSON T. OVERTON
JUDGE

JOHN D. GRAY
JUDGE

DRAFT

RESPOND TO:
P. O. BOX 40

Mr. Oscar R. Brinson
Division of Legislative Services
P. O. Box 3-AG
Richmond, VA 23208

In re: Commission Evaluating the Use of Photography
and Television During Courtroom Proceedings

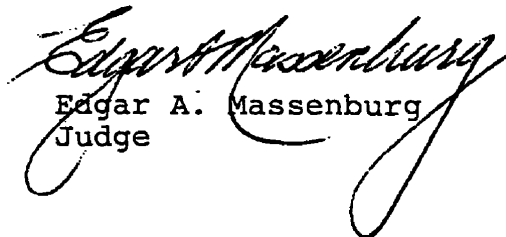
Dear Mr. Brinson:

I am in receipt of your letter of May 9, 1984 requesting me to make a statement of recommendations for inclusion in a final report.

I assume you were present at our last meeting in Richmond at which time a majority of the proposed report was adopted. Your letter states that this was done by unanimous vote, but my recollection is that I did not vote on this matter.

I must reiterate that I was shocked to learn that at the same time we met to consider a report, legislation had already been introduced providing for a pilot program, and this legislation had passed the House. I understand that legislation was killed in the Senate. Since the findings and opinion of the Committee were not considered prior to the introduction of the legislation, I can see no reason for me to comment on the proposed recommendations.

Very truly yours,


Edgar A. Massenburg
Judge

EAM:skb

CC

I remain unconvinced of the need for camera coverage of courtroom proceedings in the Commonwealth. The concerns that I have are basically those reflected on pages 6 and 7 of the Commission report.

On the other hand, there is evidence that such coverage could provide a benefit to the public and not impact adversely on our judicial system.

Therefore, I am willing to support a limited pilot project to determine firsthand the effects of this coverage. I am reassured that the rules proposed to govern such an experiment are tightly drawn to prevent any abuse and that coverage of certain inappropriate types of trials will be prohibited.

William F. Parkerson, Jr.

COMMONWEALTH OF VIRGINIA

City of Hampton General District Court
8th Judicial District



JUDGES
T. H. WILSON, II
HENRY D. KASHOUTY



CLERK
DANIEL L. WHIPPLE

February 28, 1984

Oscar R. Brinson
Commission Counsel
Division of Legislative Services
Post Office Box 3-AG
Richmond, Virginia 23208

Re: Report of Commission Evaluating the Use of Photography and
Television During Courtroom Proceedings

Dear Mr. Brinson:

Please find enclosed a statement to be attached to the final draft of
the Commission Report. Kindly send me a copy of the revised Report when it
has been completed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry D. Kashouty".

Henry D. Kashouty
Judge
General District Court

HDK/bte

Enclosure

cc: Franklin P. Hall, Chairman
C. Richard Cranwell
Richard J. Holland
Johnny S. Joannou
William F. Parkerson, Jr.
A. Christian Compton
Aubrey E. Loving, Jr.
Edgar A. Massenburg
Josiah P. Rowe, III
Philip M. Sadler

Statement to be Attached to the Study
Commission's Report Evaluating the Use of Electronic
Media in the Courtrooms of Virginia

* * *

It is of the highest importance in a free society that the public understand the role of the judicial system. In determining what contributes to this understanding, it is necessary to make clear the distinction between sensation and knowledge. When stimulated by emotional problems, the response of the public is emotional. The media has a duty to perform while reporting to the public. That duty is to stimulate reason through knowledge. When the interest of the public has been captured, you have a fertile condition for learning. If that which captures the attention and interest of the public is emotional, the response is negative and cannot be channeled in a positive direction. The highest motive, therefore, of all public service is to stimulate the public's interest for the purpose of education. The media has the means to influence the public; therefore, its power is great. To use this power to increase the understanding of the public, is the highest responsibility of the media.

The material and testimony presented to the Commission has not, in my opinion, supported the conclusion that this important understanding of the role of the judiciary in a free society will be furthered in any significant way. The media does have an important role to play, together with the judiciary, in the development of this understanding; and it is my opinion that the time has come to begin this undertaking with the highest commitment of responsibility from both institutions. I do not feel that opening the courtrooms of Virginia to electronic media is the way to achieve this important goal at this time.


Henry D. Kashouty,
Member of the Commission

February 28, 1984

Gilmer, Sadler, Ingram,
Sutherland and Hutton

MIDTOWN PROFESSIONAL OFFICE BUILDING
P. O. BOX 878
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TELEPHONE (703) 980-1360

LAW OFFICES

February 28, 1984

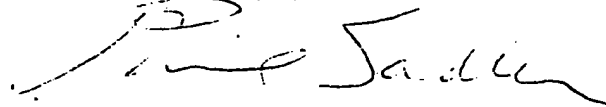
Mr. Oscar R. Brinson
Commission Counsel
Commonwealth of Virginia
Division of Legislative Services
P. O. Box 3-AG
Richmond, Virginia 23208

Dear Oscar:

Although it may not be in the proper form, I authorize you to use the letter I wrote to Chairman Hall as my comments on the Commission's report. I assume that you have a copy of this; if not, I am enclosing a copy to you.

With best personal wishes to you, I am,

Sincerely yours,



l/pas

enclosure

HOWARD C. GILMER, JR. (1906-1975)
ROBY K. SUTHERLAND (1909-1975)
PHILIP M. SADLER
ROBERT J. INGRAM
JAMES L. HUTTON
THOMAS J. MC CARTHY, JR.

RANDOLPH D. ELEY, JR.
JOHN J. GILL (VA. & N.Y. BARS)
GARY C. HANCOCK (VA. & D.C. BARS)
H. GREGORY CAMPBELL, JR.
JACKSON M. BRUCE
GRAHAM MARTIN PARKS
ROBERT JETT INGRAM, JR.
MICHAEL J. BARBOUR
SAMUEL D. CAMPBELL

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GALAX, VIRGINIA 24333
TELEPHONE (703) 236-6441

GILMER, SADLER, INGRAM, SUTHERLAND & HUTTON

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ROBERT J. INGRAM
JAMES L. HUTTON
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~~EDWARD J. BROWN~~
RANDOLPH D. ELEY, JR.
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SAMUEL D. CAMPBELL

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February 20, 1984

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GALAX, VIRGINIA 24333

TELEPHONE (703) 236-6441

The Honorable Franklin P. Hall, Chairman
Commission on the Study of Cameras in the
Courtroom
General Assembly Building
Richmond, Virginia 23219

Re: Commission on the Study of Cameras in the Courtroom

Dear Mr. Chairman:

I am sorry I cannot attend the last meeting of this Commission. I appreciate very much the opportunity I have had to participate with other members of that Commission in the study of this most important question.

I would like this opportunity to express my feelings and state my opinions on the use of television cameras in the Courtrooms of the Commonwealth.

First, after listening to the guests we have had from other states, I am persuaded that using cameras in the courtroom, under the guidelines that have been set up in these states, would do no violence to the orderly conduct of criminal trials in the Commonwealth, despite the comments of my good friend, Delegate Jester. Second, I am deeply concerned with the use that may be made of the television film by members of the television media. I am not persuaded that all of the television personnel who will be supervising the uses of such film in their newscasts are really concerned about the proper administration of justice. We all know that television broadcasting is a highly competitive industry and that sensationalism attracts viewers; the more viewers a station attracts, the better its rating which, in turn, means higher advertising rates, which, in turn, means more dollars.

As a member of the legal profession, I am appalled at the present rapid erosion of our basic constitutional rights which guarantee certain freedoms to all our citizens, be they innocent or guilty of crimes. The most sacred and fundamental of these is that any person charged with a crime is presumed to be innocent until proven guilty beyond a reasonable doubt. Public opinion in our Country at this time is putting pressure on our Courts and legislative bodies to permit short cuts, omissions and commissions which seriously threaten these constitutional guarantees. If we lose these safeguards that protect the defendants in criminal cases, we all lose our freedom and our Country, in time, could become a police state.

Perhaps putting cameras in the courtroom is thought to be a small drop in the bucket, but we must remember that television is today the prime molder of public opinion in our State and Nation.

The Honorable Franklin P. Hall
February 20, 1984
Page 2

To insure that the use of television to portray criminal trials does not adversely affect the rights of a person charged with a crime, I believe the Commission, or the study group set up by the Supreme Court on the proposed pilot project, should adopt the following guidelines:

- (a) That if the filming of a trial is permitted, such filming should be of the entire trial, gavel to gavel;
- (b) That the videotape of the entire trial be stored with the Supreme Court, or some agency designated by it, such as the Virginia State Bar.
- (c) That a copy of the part of the videotape which is aired by any television station should also be stored with the Supreme Court, or the group which it might designate;
- (d) A viewing of the videotape of the entire trial be made by an impartial panel and that the same panel view those portions of the proceedings which have been used by any television station to determine whether such portion is a fair presentation to the public when compared with the entire proceedings, or whether or not its use might be considered unfair to the accused or the Commonwealth.

I realize that this suggestion may well be criticized because it will be time consuming and will entail the outlay of funds for the screening. However, I believe that the protection it will give will justify the time and expense involved.

With my best personal wishes to you and the other members of the Commission, I am

Very truly yours,

FMS:kcf

xc: The Honorable William F. Parkerson, Jr.
Senate of Virginia
General Assembly Building
Richmond, Virginia 23219

bxc: The Honorable Daniel W. Bird, Jr.
The Honorable J. Robert Dobyns
Mr. N. Samuel Clifton



THE TELEVISION CORPORATION STATIONS

GENE LOVING
Chairman of the Board

March 7, 1984

Mr. Oscar R. Brinson
Commission Counsel
Division of Legislative Services
General Assembly Building
P. O. Box 3-AG
Richmond, VA 23208

Re: Report of Commission
Evaluating the Use of
Photography and Television
During Courtroom Proceedings

Dear Mr. Brinson:

I am enclosing a statement to be attached to the final draft of the Commission Report. Please send me a copy of the Report when it has been completed.

Sincerely,

ljp

Enclosure

156 Newtown Road / Suite A2 / Virginia Beach, Virginia 23462 / (804) 499-9800

WTVZ Norfolk / Portsmouth / Newport News WJTM TV Greensboro / High-Point / Winston-Salem WRLH TV Richmond / Petersburg

Supreme Court of Virginia

P. O. BOX 1315

RICHMOND, VIRGINIA 23210

CHAMBERS OF
JUSTICE A. CHRISTIAN COMPTON

February 23, 1984

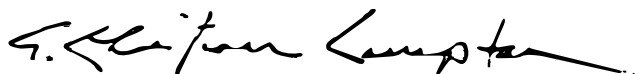
Mr. Oscar R. Brinson
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Division of Legislative Services
General Assembly Building
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Re: Report of Commission
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During Courtroom Proceedings

Dear Mr. Brinson:

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Sincerely,



A. Christian Compton

ACC/jat
Enclosure

cc: Franklin P. Hall, Chairman
C. Richard Cranwell
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William F. Parkerson, Jr.
Henry D. Kashouty
Aubrey E. Loving, Jr.
Edgar A. Massenburg
Josiah P. Rowe, III
Phillip M. Sadler

Statement to be Attached to the Final
Report of the Commission Evaluating the
Use of Photography and Television
During Courtroom Proceedings

* * *

I have considered and studied the information, written and oral, presented to the Commission. Based upon this analysis, and drawing on experience as a trial and appellate judge, I have concluded that the intrusion of electronic media into the state courtrooms of Virginia would be harmful to the system of justice in the Commonwealth. I am also of the belief that such intrusion would do little to strengthen public confidence in that system.

Accordingly, I vote against any action by the Commission that would endorse the use, experimental or otherwise, of still photography, tape recording, or television in courtrooms during court sessions. The reasons for my conclusion essentially are the same as those set forth in the Report of the Virginia State Bar Public Information Committee, dated October 19, 1983, filed among the Commission documents.


A. Christian Compton,
Member of the Commission

February 23, 1984

On the basis of the information presented to the Commission during the course of its study, I approve permitting the use of electronic recording devices or cameras in the courtrooms of the Commonwealth, either as an experimental or permanent basis.

Johnny S. Joannou