

**REPORT OF THE
SUPREME COURT
OF VIRGINIA**

**Concerning Electronic
Media And Still
Photography In
The Courts**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 26

**COMMONWEALTH OF VIRGINIA
RICHMOND
1990**

CHIEF JUSTICE
HARRY L. CARRICO

JUSTICES

A. CHRISTIAN COMPTON
ROSCOE B. STEPHENSON, JR.
CHARLES S. RUSSELL
JOHN CHARLES THOMAS
HENRY H. WHITING
ELIZABETH B. LACY

SENIOR JUSTICE
RICHARD H. POFF

SUPREME COURT OF VIRGINIA
THIRD FLOOR
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
(804) 786-6455

CLERK
DAVID B. BEACH
DEPUTY CLERK
PATRICIA GODING DAVIS
EXECUTIVE SECRETARY
ROBERT N. BALDWIN
ASST. EXECUTIVE SECRET,
FREDERICK A. HODNETT, JR.
CHIEF STAFF ATTORNEY
JOHN THOMAS BRUCE
REPORTER OF DECISIONS
KENT SINCLAIR

January 10, 1990

RECEIVED

JAN 10 1990

TO: **The Honorable Gerald L. Baliles**
Governor of Virginia

and

The General Assembly of Virginia

OFFICE OF THE CLERK
OF THE HOUSE OF DELEGATES

The enactment of Senate Bill 647 of the 1987 Session of the General Assembly required that the Supreme Court of Virginia report its findings concerning the impact of the experimental program of allowing electronic media and still photographic coverage in the courts. Enclosed for your review and consideration is the Court's report.

Respectfully submitted



Harry L. Carrico
Chief Justice

HLC:lgr

Enclosure

REPORT OF THE SUPREME COURT OF VIRGINIA
TO THE GENERAL ASSEMBLY AND GOVERNOR
OF VIRGINIA CONCERNING ELECTRONIC MEDIA
AND STILL PHOTOGRAPHY IN THE COURTS.

December 29, 1989

BACKGROUND

Prior to 1987, electronic media photography, still photography, and the broadcasting of judicial proceedings by radio or television were prohibited in Virginia courtrooms by Code § 19.2-266 and by this Court's Rule 1:14, except for provisions relating to the preservation of the record by electronic means. The Court is advised that similar prohibitions existed, and are still in effect, in the Supreme Court of the United States and in the federal courts sitting in Virginia and throughout the United States.

Effective July 1, 1987, the General Assembly amended Code § 19.2-266 to provide for a two-year experimental program to be administered by this Court. The program was to be conducted over a two-year period in the Supreme Court, in the Court of Appeals, and in two circuit courts and two general district courts to be designated by this Court. In those courts, electronic media and still photography coverage were to be employed, subject to rules prescribed by the statute.

In 1989, the statute was amended to extend the experimental program from two to three years in duration and to increase the number of circuit courts participating in

the experiment from two to three. This Court designated the circuit courts of Bedford County, Henrico County, and the City of Virginia Beach, and the general district courts of Caroline County and the City of Charlottesville to conduct the experiment. Rule 1:14 was amended to conform to the statutory changes. The final provision of Code § 19.2-266, as amended, provides: "The Supreme Court shall report its findings concerning the impact of the experimental program on the Commonwealth's judicial system by December 31, 1989, to the General Assembly and the Governor." This report is made pursuant to that provision.

IMPACT OF THE EXPERIMENT

A. Evaluation by the Media

Television cameras, audio microphones, and still photography have been employed in the designated courts, subject to the statutory guidelines, since July 1, 1987. Participating media organizations have accumulated reports of their experience under the experiments and have forwarded them to this Court. These reports were accompanied by videotapes, audiotapes, and transcripts of broadcast materials which serve as examples of the matters actually broadcast to the public as a result of the experiment. In addition, media representatives interviewed numerous witnesses, jurors, attorneys, clerks, and bailiffs who participated in trials which were photographed. The attitudes expressed by these participants were tabulated and

forwarded to this Court, along with the comments of some of the judges who presided at the photographed proceedings.

Witnesses, jurors, and court personnel commented favorably toward the experiment. Few reported that the presence of cameras and photographers was distracting or intimidating. Attorneys tended to be generally supportive of the experiment, but the presiding judges were divided in their views. There was near-unanimity of opinion that the representatives of media had been cooperative and had made an effort to comply with the rules. There was some criticism of the casual attire worn by photographers and technicians in the courtroom, but these lapses were usually corrected when mentioned.

Several judges observed that the media did their best to avoid distracting noise and movements, but that the layout of their courtrooms, particularly those built in times when photography was not contemplated, rendered some distraction inevitable. Still photography was considered particularly distracting. Shutters were noisy, lens changes attracted attention, and movement around the courtroom by photographers seeking the most advantageous perspective was disruptive. Camera enclosures designed to minimize shutter noise were unsuccessful. Some modern courtrooms have been designed to facilitate videotaped recordkeeping. Photography in these courtrooms should be less disturbing, but the cost of converting older facilities to accommodate concealed cameras would be substantial.

B. Evaluation by the Judiciary

In addition to the evaluations presented by the media, a survey was made of the views of Virginia's active circuit judges. The judges would be more directly affected on a daily basis by the presence of cameras in the courtroom than any other members of the judicial system, and are less likely than others present in the courtroom to be influenced by any considerations other than a concern for the impartial administration of justice.

The survey was initiated by a letter sent to each of the 127 active circuit judges, giving them an opportunity to express their views on the subject, if they wished to do so. Responses were received from 93 judges. Greatly oversimplifying their views, their opinions on the question whether cameras in the courtroom have had a positive or a negative impact on the judicial system break down as follows:

Negative - 74
Positive - 10
Have not reached a conclusion - 9

The following is a summary of the views expressed by the judges:

Positive

1. The media have done their best to minimize disruption during the experiment.
2. The media representatives have been most cooperative with the experimental courts.
3. Courtrooms can be modified to minimize the intrusive nature of photography.
4. Technology will facilitate the use of videotape

transcripts, eliminating current problems with court reporters.

5. The judges, guided by well-devised rules, can always control media excesses.
6. The public's "right to know" outweighs all other considerations.

Negative

1. The experimental program has resulted in sensational, biased, and distorted coverage.
2. Editing has resulted in an unfair and inaccurate picture of what actually took place in the courtroom.
3. The purpose of the media has clearly been to entertain, titillate, and "sell newspapers." The product distributed to the public may have commercial value to the media but has no educational value whatever.
4. The only matters actually broadcast have been the "sensational, spectacular, pitiful, gross, or embarrassing."
5. The public's "right to know" is well served without cameras. The print media have the capacity for thorough and thoughtful coverage. The courtroom is always open to those who wish to see for themselves.
6. Despite what jurors may say in media interviews, they cannot be unaffected. They must return to their families, neighbors and communities. It will be difficult for them to take an unpopular position in a high-profile, televised case.
7. The intimidating effect on witnesses is incalculable, but the effect on a prosecution witness required to point out a defendant "on camera" in a drug case may well be imagined.
8. There is a danger that all participants in a trial may alter their behavior to "play to the camera."
9. Litigation is stressful enough to all concerned. The presence of the camera creates additional stress.
10. The cost of equipping courtrooms to minimize distracting effects will be substantial.
11. The experiment has shown that the pressure of the

camera places a great additional burden on the trial judge, who must do his or her best to assure fairness.

12. In a high-profile case of any length, the benefit of separating the witnesses is completely lost.
13. What will the effect be upon a lawyer asked to undertake an unpopular case? Will a juror vote his conscience in a notorious case? Should a criminal defendant's weeping family be shown on the evening news?

Many of the responding judges, although not in the experimental courts, reside in circuits within the radio and television markets covered by the media involved in the experiment. The circuit judges may fairly be considered as experts on the nuances of judicial proceedings and their reactions arose from that perspective. They indicated that their views were strongly influenced by what they saw of the experimental coverage. Their opinions were overwhelmingly unfavorable.

Of particular interest are the views of the several judges in the three circuit courts in which the experiment was conducted. The negative responses from these judges outnumbered the affirmative responses by a margin of three to one. Of the three chief judges conducting the experiment, one favors its continuation but expresses disappointment with the media's selective coverage; the other two have concluded that cameras in the courtroom have had a negative impact on the administration of justice. One chief judge recommends that the experiment be terminated and none recommends that the use of cameras be expanded.

FINDINGS

Taking all the foregoing reports into consideration along with the views of the justices, the Court finds that the positive, educational effects of the experimental program are outweighed by its many negative effects. The Court is of the view that the public's right of free access to the courts is well served without electronic media, still photography or radio broadcasting of judicial proceedings, and that the state of the law prior to 1987 preserved a proper balance between the free-press requirements of the Federal and Virginia Constitutions, and our traditions of fair, orderly, and impartial trials.

The factors affecting judicial proceedings in the circuit courts apply equally to the general district courts, except for those pertaining to jurors. By contrast, few of them apply to the appellate courts. Media coverage in the Court of Appeals has been so rare during the experiment as to render its impact inconsequential. Coverage in the Supreme Court, although more frequent, has had little discernible impact on the proceedings.

The Supreme Court concludes that, except in the case of the appellate courts, the overall impact of the experimental program upon the Commonwealth's judicial system is negative.

