Cameras in the Courts--A Revival in West Virginia and the Nation

Larry V. Starcher
17th Judicial Circuit, larry.starcher@mail.wvu.edu

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol84/iss2/3

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
CAMERAS IN THE COURTS—A REVIVAL IN WEST VIRGINIA AND THE NATION

LARRY V. STARCHER*

I. INTRODUCTION

In May, 1981, the West Virginia Supreme Court of Appeals adopted permanent rules allowing the electronic media—television, radio, and still photography—access to judicial proceedings. Under its General Rules for Cameras in Courtrooms,\(^1\) the court now permits electronic coverage of all magistrate and circuit courts as well as the state supreme court. This action should not have come as a surprise. In recent years, the media have conducted a national campaign to expand judicial coverage through use of still and video cameras and audio hook-ups.

This campaign, and the resistance to it, has resulted in confrontations between the media and the courts: the media asserting their right to inform the public about events affecting the administration of justice; the courts seeking to guarantee criminal defendants fair and impartial trials. These conflicts have focused national attention on the question of electronic coverage. Consequently, considerable effort has been made in the legal community to harmonize the existence of the public's first amendment right to freedom of the press and the defendant's sixth amendment right to a fair trial.

\* A.B., West Virginia University, 1964; J.D., West Virginia University, 1967; Chief Judge, 17th Judicial Circuit, 1977-present.

The author oversaw the operation of the two-year experimental electronic coverage program in the 17th Circuit. The West Virginia Supreme Court of Appeals adopted, with some modification, rules governing electronic coverage developed by the author for the experimental program.

\(^1\) General Rules For Cameras In Courtrooms (promulgated by the West Virginia Supreme Court of Appeals May 7, 1981).

267
This conflict involves three categories of rights: the fair trial right of a criminal defendant, the right to privacy of litigants, jurors and witnesses, and the free press rights of the media and the public. This article will focus primarily on the media's first amendment right and duty to inform the public through the "re-introduction" of electronic media hardware into the courtroom. The article will trace the movement to return electronic coverage to the courtroom and will examine regulations adopted by several other jurisdictions. The article will then discuss the new West Virginia rules and how they should be implemented throughout the state.

Electronic coverage is being "re-introduced" into the courtroom because the prior ban on such coverage evolved years after radio and photography. Prior to the 1935 trial of Bruno Hauptmann, the man convicted of kidnapping and murdering the son of Charles Lindbergh, courts did not bar the media via fixed rules. The pervasive ban on radio, television and photographic courtroom coverage is generally traced back to this trial, an apparent response to the extensive and often disruptive media coverage. It is noteworthy, however, that New Jersey appellate courts rejected Hauptmann's argument that his conviction resulted from prejudicial publicity. Nevertheless, the case set the stage for a major shift in court-media relations.

Until the late 1970s, news photographers and television cameras systematically were excluded from America's courtrooms. By various methods, the respective states implemented the basic recommendation of the American Bar Association, which in 1937 adopted Canon 35 of the then Canons of Judicial Ethics. This canon originally read:

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.

It is interesting to note that early concerns, as exemplified by

---

4 A.B.A. CANONS OF JUDICIAL ETHICS No. 35 (1937).
this canon, focused primarily on courtroom dignity and decorum rather than a defendant’s right to a fair trial. Canon 35 remained essentially unchanged until 1952 when the ABA amended it to include a ban on television courtroom proceedings and the addition of a new justification—distraction of witnesses. The amendment did provide, however, a limited exception for coverage of naturalization proceedings.

Additionally, radio broadcasts and photography were also banned from criminal cases in federal courts by Rule 53 of the Federal Rules of Criminal Procedure. This federal rule was expanded further in 1962 to apply the media ban to the “environs of the courtroom”.5

It was not until Supreme Court decisions began focusing on prejudicial publicity that judicial concern shifted from courtroom decorum to a defendant’s rights. This shift in emphasis can be observed in Estes v. Texas6 and Chandler v. Florida.7 In each case, the Court examined the effect of media equipment’s presence in the courtroom on a defendant’s opportunity for a fair trial.

From its inception, Canon 35 was under almost constant attack by the news media. The ABA restriction, coupled with the Federal Rules of Criminal Procedure, closed all federal courts, and all state courts everywhere but in Colorado and Texas, to electronic reporting. States enforced Canon 35 either by statute or court rule.

Canon 3A(7) represents the current ABA position, but the difference between it and the old rule is insignificant. The present language allows electronic and photographic equipment in the courtroom, but only for limited educational purposes.

Obviously, from the standpoint of news reporting, Canon 3A(7) might as well have been an absolute bar. While reflecting a concern for the educational use of video-taped proceedings,8

---

5 FED. R. CRIM. P. 53.
6 381 U.S. 532 (1965).
8 Canon 3A(7) provides:
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, except that a judge may authorize:
the canon still restricts the discretion of the courts and is consistent with old Canon 35. Thus, the ABA's position on camera coverage remains unchanged. In 1979, the ABA House of Delegates refused to repeal or amend the rule9 despite the fact that 44 of 45 state supreme court chief justices had voted to relax the canon only a few months earlier.10

Despite the fact that ABA canons are advisory only and do not carry the force of law,11 states have only recently begun to modify their positions on electronic coverage. For example, by January, 1977, only Colorado, Alabama and Washington permitted television cameras in courtrooms.12 Currently, 34 states provide for some type of electronic media coverage. Additionally, six states are moving toward allowing some degree of camera coverage.13

As noted earlier, West Virginia adopted permanent camera coverage in 1981. The state supreme court has revised its camera coverage rules once since they were promulgated. Issuance of the rules culminated a process begun in 1976 when a West Virginia University student reporter, Wayne Scarberry, photographed a criminal defendant and his attorney seated in the courtroom. He took the picture from a courthouse hallway.

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration:
(b) the broadcasting, televising, recording, or photographing of investive, ceremonial, or naturalization proceedings:
(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
   (i) the means of recording will not distract participants or impair the dignity of the proceedings;
   (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
   (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
   (iv) the reproduction will be exhibited only for instructional purposes in educational purposes.
11 Estes, 381 U.S. at 595.
The photograph appeared in the school newspaper, and other newspapers in the state subsequently published it. A circuit court judge cited the student photographer for contempt and sentenced him to three days in the county jail.  

Following this incident and the election of new judges, WVU journalism professor William O. Seymour began to pursue the development of a media breakthrough in West Virginia. In 1977, he and other media personnel provided Monongalia County judges and other interested persons with a demonstration of media equipment. In 1978, the idea of a media demonstration project in Monongalia County was proposed to the West Virginia Supreme Court of Appeals. The court approved the idea and a joint court/media committee developed operating guidelines. On November 14, 1978, then Chief Justice Fred L. Caplan authorized the demonstration project. Camera coverage would begin in Monongalia County courtrooms January 1, 1979, and run for one year. The court later extended the demonstration for an additional year.

The first photograph legally snapped under the project was taken January 22, 1979. This photograph received wide publication because it concerned an extradition hearing of a person accused of killing a Maryland police officer. The photograph appeared in both West Virginia and Maryland newspapers.

During 1979 and 1980, both still and television cameras were used to report judicial proceedings from the Monongalia County courthouse. Additionally, radio stations utilized audio hook-ups for courtroom coverage. Surveys taken by the court of trial participants, although too limited to be conclusive, indicated only minimal distraction and objections to the use of media equipment.

II. CHANDLER V. FLORIDA: GREEN LIGHT FOR ELECTRONIC COVERAGE

Before discussing the electronic coverage rules of other jurisdictions and comparing them with West Virginia’s, it is necessary to discuss a recent Supreme Court case which gives renewed impetus to expanded coverage. In Chandler v. Flori-
da, the Court ruled that broadcast coverage did not *per se* violate a defendant’s constitutional right to a fair trial. Since this decision, seventeen states have initiated or expanded electronic coverage.

The *Chandler* decision appropriately had its roots in Florida, the state whose media experiment has been most publicized. The case involved two defendants, Noel Chandler and Robert Granger, both Miami policemen apprehended during a burglary attempt. The state’s main witness was an amateur radio operator who overheard a conversation between the defendants over the police radio used during the burglary. Naturally, the facts of the case attracted the media.

The jury returned guilty verdicts on all counts—conspiracy to commit burglary, burglary, grand larceny, and possession of burglary tools. The case’s import, however, lies in the defendants’ challenge that Canon 3A(7) of the Florida Code of Judicial Conduct, permitting in-court media coverage, be declared unconstitutional on its face and as applied.

This challenge began with pre-trial motions. The trial court denied defendants’ motion to have the rule declared unconstitutional. However, the court did certify the constitutional issue to the Florida Supreme Court. The appeals court refused to rule on the question, holding that the issue was not directly relevant to the criminal charges against the defendants.

During *voir dire*, attorneys questioned each prospective juror concerning the presence of media equipment and the possible effect it might have on his ability to serve as a fair and impartial juror. All jurors selected responded that coverage would not affect their deliberations.

Next, the defense requested that the jury be sequestered. Although the trial judge denied the relief, he specifically instructed the jury to “avoid the local news and watch only the national news on television.” During the trial, a television camera was in the courtroom only briefly. Less than three minutes of

---

16 449 U.S. 560.
18 State v. Granger, 362 So.2d 175 (Fla. 1977).
19 *Chandler*, 449 U.S. at 567.
20 *Id.*
the trial was broadcast. Subsequent to the guilty verdicts, defendants moved for a new trial. One of the assigned grounds was that the media coverage denied them a fair and impartial trial. However, the defendants produced no evidence to support this contention and the trial court denied relief.\(^\text{21}\)

On appeal, the Florida District Court of Appeals affirmed the lower court's action. This court refused to act on the constitutional challenge to Canon 3A(7); instead, it certified the question to the Florida Supreme Court. That court declined to review the case, ruling the challenge moot because of the court's recent action in *In re Petition of the Post-Newsweek Stations, Florida, Inc.*\(^\text{22}\) In *Post-Newsweek*, the court had concluded that the Florida electronic media experiment would become permanent.

On *certiorari*, the United States Supreme Court addressed two issues: (1) whether a state rule which permitted media coverage using electronic and other equipment in criminal proceedings over an accused's objection was *per se* unconstitutional, and if not, (2) whether the defendants in this particular case were denied due process and therefore a fair and impartial trial as a result of the permitted coverage.

The Court announced its ruling January 26, 1981. In a unanimous decision,\(^\text{23}\) the Court held that the United States Constitution did not prohibit a state from experimenting with electronic camera coverage of judicial proceedings.\(^\text{24}\) Television coverage of a criminal proceeding over the objection of the defendant did not automatically violate his constitutional right to a fair trial.

Early in the Court's opinion, Chief Justice Burger noted that the Florida media program resulted from the state supreme court's supervisory authority over the Florida courts and not upon any constitutional imperative.\(^\text{25}\) Therefore, the technical issue before the Court was the narrow question of the Florida Supreme Court's authority to promulgate such a rule. This concern was summarily resolved by the Chief Justice's assertion that the Supreme Court has no supervisory jurisdiction over

\(^{21}\) Id. at 568.
\(^{22}\) 370 So.2d 764 (Fla. 1979).
\(^{23}\) Justice Stevens did not participate in the decision.
\(^{24}\) Chandler, 449 U.S. at 583.
\(^{25}\) Id. at 569-70.
state courts. Therefore, in reviewing state court judgments, the Supreme Court is limited to "evaluating it [a state court's judgment] in relation to the Federal Constitution."[28]

However, the convicted police officers argued that *Estes v. Texas* had announced a *per se* rule against televised criminal trials, based on denial of due process. This presented the Court with a problem. If the defendants correctly interpreted *Estes*, then the Court would be obligated to reverse the convictions or overrule the earlier case. The majority of the justices chose not to follow this route. They attempted to distinguish the cases and perhaps to "restate" *Estes*. In concurring opinions, Justices Stewart and White criticized the logic of the Chief Justice's opinion and urged that *Estes* be overruled.[27]

Thus, to fully understand *Chandler*, one must first have some knowledge of *Estes*. Billie Sol Estes was a wealthy businessman convicted in 1962 for swindling. Television cameras were permitted to cover the trial over the defendant's objection. The Supreme Court overturned Estes' conviction on prejudicial publicity grounds. The extent of the media-caused disruption is controverted; an examination of the six opinions in *Estes* leaves this question unanswered. But whether it was an almost circus atmosphere as suggested by some or "relatively unobtrusive" as suggested by Mr. Justice Harlan[23] is immaterial. What is significant is that Chief Justice Burger, along with five other justices in *Chandler*, concluded that *Estes* did not announce a constitutional rule banning all photographic and broadcast coverage of criminal trials. The Chief Justice relied on the following statement by Mr. Justice Harlan in limiting *Estes*.

(T)he day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process. If and when that day arrives the constitutional judgment called for now would of course be subject to re-examination in accordance with the traditional workings of the Due Process Clause.[29]

Thus, the Chief Justice concluded in *Chandler*:

---

[28] *Id.* at 570.
[27] *Id.* at 583 (Stewart, J., concurring in result); *id.* at 586 (White, J., concurring in result).
[23] *Estes*, 381 U.S. at 588 (Harlan, J., concurring).
[29] *Id.* at 595.
Justice Harlan's opinion, upon which analysis of the constitutional holding of Estes turns, must be read as defining the scope of the holding; we conclude that Estes is not to be read as announcing a constitutional rule barring still photographic, radio and television coverage in all cases and under all circumstances. It does not stand as an absolute ban on state experimentation with an evolving technology, which, in terms of modes of mass communication, was in its relative infancy in 1964, and is, even now, in a state of continuing change.30

Once the Court disposed of the facial constitutional challenge, it addressed whether such a rule should be promulgated. The Court reviewed the problems related to trial publicity naturally surrounding many criminal trials, the necessity of the trial court to be especially vigilant to guard against any impairment of a defendant's right to a fair trial, the advancement in media technology, and the concern for permitting states to experiment in activity without interference by the federal government. The conclusion was clear, Chief Justice Burger wrote.

An absolute constitutional ban on broadcast coverage of trials cannot be justified simply because there is a danger that, in some cases, prejudicial broadcast accounts of pretrial events may impair the ability of the jurors to decide the issue of guilt or innocence uninfluenced by extraneous matter. . . . The risk of such prejudice does not warrant an absolute constitutional ban on all broadcast coverage.31

Finally, the Court addressed the second issue: whether the defendants in this particular case had been denied due process and therefore a fair and impartial trial because of electronic media coverage. The lower courts had consistently held that the defendants had not shown any prejudice, particularly of constitutional dimension, caused by electronic media coverage. The Court did, however, recognize that this would be an appropriate concern provided the facts supported such a contention. Specifically, Chief Justice Burger suggested that "the appropriate safeguard against such prejudice is the defendant's right to demonstrate that the media's coverage of his case—be it printed or broadcast—compromised the ability of the particular jury that heard the case to adjudicate fairly."32

---
30 Chandler, 449 U.S. at 573-74. [Footnotes omitted].
31 Id. at 575.
32 Id. (emphasis added).
He further supported recognition that one has the right to a fair trial without being affected adversely by media coverage by drawing upon Mr. Justice Harlan's opinion in *Estes*. It suggested that some cases may simply be so notorious that to allow electronic media coverage would result in an infringement upon the defendants' right to due process despite first amendment concerns.\(^{23}\) Mr. Justice Harlan identified the Billie Sol Estes trial as such a case. One may conclude from this analysis that should there be a conflict of rights—those of the accused and the press—that the Court will elevate the defendant's sixth amendment rights over the first amendment rights of the media and public.

In conclusion, *Chandler* does not provide a constitutional right for the media to use photographic, electronic or other equipment in courtrooms. It simply states that such activity is not *per se* unconstitutional, even if the criminal defendant objects. It further provides that states are free to pursue such activity without interference from the federal courts. Thus, the states move forward.

### III. ELECTRONIC COVERAGE IN OTHER STATES

West Virginia's expansion of electronic media coverage is part of a nationwide trend. The state, however, is by no means a leader in the field. To understand the development of its electronic coverage rules, it will be helpful to examine how other jurisdictions have handled the question. The following states are appropriate for this purpose: Colorado, since it was the first state to allow such coverage and because of the rule's "skeleton" nature; Florida, because of the publicity its experimental program has generated; and Maryland because of its geographical proximity to West Virginia and the differing results which have occurred.

#### A. Colorado

Colorado was the first state to adopt permanent rules relating to television, still photography and audio recording of judicial proceedings. The Colorado Supreme Court amended Canon 35 of the Colorado Canons of Judicial Ethics in 1956 to

\(^{23}\) *Estes*, 381 U.S. at 587 (Harlan, J., concurring).
permit electronic and photographic media coverage after more than a year of study.\textsuperscript{34}

Unlike other states which have more recently authorized coverage, the Colorado high court provided only limited guidelines for trial courts to follow. Colorado's rules are based solely on the wording of the judicial canon which vests great discretion in the trial judge.

1. Subject Matter and Extent of Coverage

The Colorado rules restrict a trial judge's ability to permit electronic coverage, although they vest the trial court with discretionary authority. For example, Canon 3A\textsuperscript{35} place the initial decision regarding such coverage with the trial judge. The canon, however, is stated in the negative. It prohibits coverage "unless permitted by order of the trial judge and then only under such conditions as he may prescribe."\textsuperscript{36} Additionally, Colorado Canon 3A(9) prohibits electronic coverage if the judge finds that it would detract from courtroom dignity, distract a witness, degrade the court or otherwise materially interfere with the achievement of a fair trial.\textsuperscript{37} Thus, these rules require the trial judge to affirmatively find that coverage will not result in any offense to the court. Conversely, other jurisdictions require the court to allow coverage unless a finding of disruption or prejudice is found.\textsuperscript{38}

Additionally, Canon 3A(10)(a) allows any witness or juror under subpoena or court order to appear to object to coverage.\textsuperscript{39} Moreover, subparagraph (b) of that rule prohibits coverage of a criminal proceeding unless the defendant affirmatively consents.\textsuperscript{40}

One may conclude, then, that very little photographic and broadcast coverage occurs in Colorado courts. In normal court proceedings, it is likely that someone in the parade of court ac-

\textsuperscript{34} In re Hearings Concerning Canon 35, 132 Col. 591, 296 P.2d 465 (1956).
\textsuperscript{35} Canon 3A(8), Code of Judicial Conduct, COLO. REV. STAT (1977).
\textsuperscript{36} Id.
\textsuperscript{37} Id. at Canon 3A(9).
\textsuperscript{38} See generally, In re Petition of Post-Newsweek Stations, Florida, Inc., 370 So.2d 764 (Fla. 1979).
\textsuperscript{39} Canon 3A(10)(a), Code of Judicial Conduct, COLO. REV. STAT.
\textsuperscript{40} Id. at Canon 3A(10)(b).
tors will object—the judge, juror, subpoenaed witness, or criminal defendant.

2. Equipment and Personnel

The Colorado rules do not detail what equipment and personnel are permitted in court. Only states which have recently adopted rules have addressed these matters. Some deal with it simply by stating a rule that equipment must meet a certain standard. Other jurisdictions, such as Florida, include lengthy lists of specific equipment which may be utilized.

B. Florida

Unquestionably, Florida's coverage rules have attracted more attention than those of any state. There are several reasons for this. First, the state has prosecuted notorious criminal defendants such as Ronnie Zumora, who relied on "television intoxication" as a defense in a murder case; Theodore Bundy, a former law student who insisted on representing himself in a murder trial; and Noel Chandler, a police officer who transformed the tools of his trade into burglary tools. Second, despite a rocky beginning, the Florida Supreme Court seemed determined to conduct a media experiment and make a decision based on the empirical data it collected.

In 1975, a television company owned by The Washington Post petitioned the Florida Supreme Court, requesting that the court modify Canon 3A(7) of the Code of Judicial Conduct. Florida's Canon 3A(7) was then identical to the ABA's Canon 3A(7). The court rejected the new canon proposed by the company, but did agree to evaluate the request. In June, 1976, the court approved an on-site experiment in one particular court involving the televising of one civil and one criminal trial. The experi-

---

41 Post-Newsweek, 370 So.2d at 785.
42 State v. Zamora, No. 75-1684 (Cir. Ct. Dade Co.), aff'd without op., 33 So.2d 42 (Fla. Dist. Ct. App. 1976) (Zamora asserted that "television intoxication" prevented him from appreciating whether he was acting in a television drama or engaging in real-life violence.)
43 State v. Bundy, No. 54793 (Cir. Ct. Leon Co.), aff'd without op., 362 So.2d 1051 (Fla. 1978) (Bundy insisted on representing himself in a sensational murder trial which attracted national attention).
44 Chandler, 446 U.S. 560.
45 Post-Newsweek, 370 So.2d 747.
ment required the consent of all participants and was subject to specific guidelines. Additionally, the experiment was to include still camera coverage.

Consent of all parties proved impossible to obtain, however, despite the court's expansion of the experiment. The experiment termination date passed. However, just a few days following the termination date, on April 7, 1977, the state supreme court announced that a one-year experiment would begin in selected Florida courts. Having learned its lesson, the court did not require trial participants' consent.

After the one-year experiment, the Florida court amended Canon 3A(7) to allow media coverage. The court recognized that public concern and knowledge of the justice system might be improved through electronic coverage. The Canon now provides:

Subject at all time to the authority of the presiding judge to (i) control the conduct of proceedings before the court, (ii) ensure decorum and prevent distractions, and (iii) ensure fair administration of justice in the pending cause, electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts of this state shall be allowed in accordance with standards of conduct and technology promulgated by the Supreme Court of Florida.

Therefore, effective May 1, 1979, Florida permitted electronic and photographic media on a permanent basis in trial and appellate courts. Coverage was subject to the authority of the presiding judge. Standards of Conduct and Technology were simultaneously promulgated by the court.

1. Extent of Coverage

Florida permits coverage of all public proceedings, but the rules do not interfere with a judge's right to hold proceedings in camera when appropriate under law. Consent of participants in the proceeding is not required; however, audio pick-up or broadcasting of in-court conferences between attorneys and their clients, between co-counsel, and bench conferences is pro-

---

43 Id.
45 Post-Newsweek, 370 So.2d at 792 (app. 3).
hibited. Florida's new Canon 3A(7) provides that only the presiding judge of a particular judicial proceeding has the authority to restrict coverage. The judge may deny or discontinue coverage whenever he believes it may have a deleterious effect on the paramount right of a defendant to a fair trial.

2. Equipment and Personnel

Florida allows only one portable television camera operated by one person in trial courts. Two cameras are permitted in appellate courts. Cameras are specified as "self-blimped" with 16mm sound or a video tape electronic camera. In both trial and appellate courts, only one still photographer may take photographs. He can use only two cameras and carry only two lenses for each camera.

For radio, only a single audio system is permitted. It must adapt to an existing court system where possible. If no system exists, media-installed microphones and wiring must be unobtrusive. Installation must be done in advance in places fixed by the chief judge of the judicial circuit or district in which the court facility is located.

The equipment may not produce distracting sound or light. No camera may use artificial lights; however, with the concurrence of the chief judge, existing lights may be modified or additional lighting installed in a court facility at the media's expense. Florida's standards include an extensive list of permissible equipment.

The chief judge designates the location of media equipment in the courtroom. All equipment used in television proceedings, other than the camera, must be placed and operated in as remote an area as practical. Equipment and personnel must be in place prior to the commencement of a proceeding and may not be removed until a recess or adjournment. Television film maga-

---


50 Canon 3A(7), Fla. Code of Judicial Conduct.

51 Id. at Standards, 1.

52 Id.

53 Id. at 1(c).

54 Id. at Schedule A.
zines and still camera film or lenses can be changed in the courtroom only during a recess.\textsuperscript{55} Personnel must assume a fixed position in the designated area and are not permitted to more about to obtain a better view. Once in this location, personnel must act in such a manner as not to attract attention.

3. Pooling

Pooling arrangements are the sole responsibility of the media. Disputes are not to be settled by the judge. If a dispute arises which the media cannot resolve, the presiding judge must exclude all contesting media personnel from the proceeding.\textsuperscript{56}

\textsuperscript{55} \textit{Id.} at 3.
\textsuperscript{56} \textit{Id.} at 1(d). A pooling agreement was utilized in the case of State v. Bundy, \textit{supra} note 43. It provided:

\textbf{POOL AGREEMENT}

1. This agreement shall govern still photographic and television coverage of the trial of State of Florida \textit{v.} Theodore Robert Bundy, 2d Judicial Circuit, in and for Leon County, Florida, Case No. 78-670.
2. Copies of this agreement have been mailed to all members of the Florida Press Association, the Florida Association of Broadcasters, and the Capital Press Corps.
3. This agreement will be filed with the presiding trial judge and with the Chief Judge of the Second Judicial Circuit.
4. The purpose of this agreement is to effectuate the decision of the Florida Supreme Court, \textit{In Re: Petition of Post-Newsweek Stations, Florida, Inc.}, Case No. 46,835 April 12, 1979.
5. The Pool Committee shall be composed of a representative of each of the following:
   a. Associated Press
   b. United Press International
   c. \textit{Tallahassee Democrat}
   d. WFSU-TV
   e. The commercial radio and television stations covering the trial
   f. The Florida daily newspapers covering the trial
   g. The out-of-state media covering the trial, and shall be responsible for resolving any disputes regarding any portion of the pool coverage. The committee may appoint a person to coordinate coverage.
6. Still Photographic Coverage:
   a. All photographs taken within the courtroom shall be deemed pool photographs.
   b. To qualify as a pool photographer, a person must hold press credentials from the Leon County Sheriff, and must possess two 35 mm camera bodies which qualify under Supreme Court guidelines and at least three lenses, one of which shall be in the 100 mm range and of which shall be in the 200 mm range. All lenses must have a maximum aperture of at least f/4.
4. Restrictions on Use

The product of media coverage cannot be admitted into evidence in the proceeding reported on, in any later or collateral use.

c. One of the bodies shall be loaded with Tri-X black and white film to be shot at a minimum of 1600 ASA. One of the bodies shall be loaded with Type B Ektachrome color transparency film.

d. All black and white film shall be processed at the Associated Press (AP) or the United Press International (UPI) office as soon as possible after it is exposed.

e. All color film will be processed at The Tallahassee Democrat as soon as possible after it is exposed.

f. After processing, the film shall be retained at the processing location for use by any accredited photographer until noon of the following day, at which time it shall be available for pick up by the photographer who shot the film.

g. During the time black and white film is held at the processing location, it shall be available to be printed by any accredited photographer at the processing location. Color film shall be duplicated, at a cost of $10 per transparency, by The Tallahassee Democrat, on the next available color run.

h. Photographers utilizing pool film and facilities are encouraged to donate film and other supplies to the pool.

i. Representatives of the AP, UPI, Tallahassee Democrat, a major state daily newspaper, and a major national magazine, as selected by the Pool Committee, shall comprise the Photographic Committee, and shall be responsible to the Pool Committee for photographic coverage.

j. For any day of the trial for which any photographer submits a request to be the pool photographer, the Photographic Committee shall designate the pool photographer for that day. Requests to be the pool photographer shall be submitted to the Photo Committee not later than noon Thursday of the week preceding the day for which the request is made. Not later than noon Friday, the Committee shall publish the list of pool photographers for the succeeding week. The designated pool photographer is responsible for providing coverage for all proceedings on the day he is designated. He may relinquish his position for any part of the day upon the request of any other accredited photographer. Notification of any such substitution shall be made immediately to the guard at the door of the courtroom nearest the still photographic area.

7. Television Coverage:

a. Continuous television coverage, including audio, will be provided during the entire trial by WFSU-TV, Channel 11, Tallahassee. No other television or motion picture cameras will be permitted.

b. Audio and video signals will be fed to the Eighth Floor of the Lewis State Bank Building, adjacent to the Courthouse, where
proceeding, upon retrial, or appeal of the proceedings.\textsuperscript{57}

C. Maryland

Maryland's media experiment, like Florida's, was initiated by a major media company. On September 25, 1979, a division of the Hearst Corporation filed a petition with the Maryland Court of Appeals seeking modification of Maryland Canon XXXIV, Canons of Judicial Ethics.\textsuperscript{58} The court ordered that the matter

\begin{verbatim}
said signal will be available for recording or further transmission by any accredited media.
c. No recording of said signal will be made available by WFSU-TV to any other media. Any recording must be accomplished "live".
d. Line level outputs for audio of 600 ohm, XLR Type Plugs will be available to pick up the feed. BNC-connectors will be provided for video outputs.

8. All communications or complaints to the Pool Committee shall be delivered to the office of the Florida Press Association, Florida Press Center, 306 Duval Street, Tallahassee, Florida, 32601, and shall be addressed to the Bundy Trial Pool Committee.

9. During the trial, all communications concerning this agreement shall be posted in the Florida Press Center and the Eighth Floor, Lewis State Bank Building.

\begin{tabular}{l}
NAME \\
ORGANIZATION \\
ADDRESS \\
TELEPHONE NUMBER
\end{tabular}
\end{verbatim}

\textsuperscript{57} It should be noted that Judge Paul Baker, who presided over the Zamora case, suggested that the high court reconsider its limitation of use and consider the use of the material for appellate review purposes. Judge Baker said:

The printed record standing alone does not indicate voice inflections, facial expressions, witness' demeanor, the demeanor of the trial judge or the conduct of counsel. It is recommended the Supreme Court reevaluate its prohibition against the use of film, videotape, still photographs and audio reproductions for the purpose of appellate review at the conclusion of this pilot program.


\textsuperscript{58} Report on the Proposed Modification of the Maryland Canons of Judicial
be held in abeyance until it had received a report from the Public Awareness Committee of the Maryland Judicial Conference. This committee had begun to review the media issues, some time prior to the Hearst Corporation's petition.

The committee filed its report with the Maryland Court of Appeals April 29, 1980. After reviewing the matter, a split court entered an order November 10, 1980, which provided for an electronic coverage experiment. Two of the seven judges refused to sign the order. Another signed only with the understanding that television could cover only appellate courts while radio could report on all courts. The court of appeals ordered that:

[C]ommencing January 1, 1981, for the purpose of conducting an experiment of extended media coverage of trial and appellate proceedings, Canon XXXIV and Judicial Ethics Rule 11 of Maryland Rule 1231, prohibiting the use of still cameras, television cameras and sound pickup or recording devices in the courtroom, shall be suspended as to all Judges except Judges of Orphans' Courts for a period of eighteen months terminating on June 30, 1982. . . .

The court also adopted Rule 1209 to govern coverage during the suspension period. Prior to the suspension, Maryland greatly restricted electronic coverage. Canon XXXIV provided, as did most state rules, that proper dignity should be maintained in the courtroom, and that the taking of photographs and televising or broadcasting of court proceedings during sessions of court or at recesses should be prohibited. The canon, again like most states' rules, upheld the concepts of dignity, distraction, and public misconceptions. It is, however, in Maryland's Judicial Ethics Rule 11 that the state's restrictive position appeared. It provided that "(a) judge shall not permit any photograph or moving picture to be taken or radio or television broad-

---

Ethics to Permit Extended Coverage of Court Proceedings, The Public Awareness Committee of the Maryland Judicial Conference [hereinafter cited as Maryland Report].

59 The Maryland Judicial Conference is the professional association of all state appellate and trial judges in the State of Maryland.

60 Maryland Report, supra note 58.

61 7 Md. Reg. 24 (Nov. 28, 1980).

62 Id.


64 Id. at Rule 1231, Ethics Rule 11 (1976).
cast, transmission, or recording during judicial proceedings, during recess or before or after proceedings, in the courtroom, or in adjoining corridors or offices.\(^{65}\) This language is akin to that found in Rule 53, Federal Rules of Criminal Procedure; however, it is not contained in most state rules. Both Canon XXXIV and Ethics Rule 11 did, however, permit a judge to allow electronic coverage in investitures, ceremonies, or naturalization proceedings as long as the dignity of the court was maintained.

Maryland's electronic coverage experiment has not proven successful. On November 11, 1980, the day after the Maryland Court of Appeals entered its order, Steven K. Sklar, the son of a state circuit judge and a member of the Maryland House of Delegates, introduced legislation which eventually became part of the Maryland Criminal Code.\(^{65}\) The legislation provides that "extended coverage\(^{67}\) of criminal proceedings in the trial courts of this state is prohibited.\(^{68}\)

Apparently, media opponents were determined to stifle the experiment from the beginning. Mr. Sklar's bill was not the only legislation proposed relative to the court-media project. During the January-March 1981 session of the Maryland Legislature, three bills were introduced which proposed to either curtail or ban coverage. Prior to the limiting legislation becoming law June 1, 1981, media organizations made approximately 25 requests for coverage permission. Only four were granted. Since June 1, 1981, there have been no requests.\(^{69}\) There is currently a coverage ban in criminal trial court proceedings and participants' consent is needed in civil cases; consequently, in the cases that the media are most likely to pursue, coverage is either unavailable or impeded.

1. Extent of Coverage

Rule 1209, operative during suspension of the coverage ban and subject to the previously discussed legislative curtailment, allows electronic coverage of all trial and appellate proceedings

---

\(^{62}\) Id. (emphasis added).
\(^{63}\) Md. ANN. CODE art. 27, § 467B (1981 Supp.).
\(^{64}\) Id. at § 467B(1).
\(^{65}\) Id. at § 467B(3)(b).
\(^{66}\) Interview with Deborah Unitus, Extended Media Coordinator, Administrative Office of the Courts, in Annapolis, Md. (Sept. 4, 1981).
except as limited by the rule.\textsuperscript{79} In Maryland, the media must request permission to cover a proceeding. The request must be made in writing to the court clerk at least five days prior to the proceeding.\textsuperscript{71}

Written consent of all parties must be obtained and filed in the record, except when a governmental entity is a party. Once consent is given, it cannot be withdrawn, but a party may move for termination or limitation of coverage. Consent is not required in appellate courts.\textsuperscript{72}

Rule 1209 specifies several limitations on coverage. Persons involved in grand jury proceedings are impermissible subjects for media exposure in the courtroom or its environs. A victim of a crime may request limited or no coverage when testifying. A judge has broad discretion to limit or prohibit coverage on his own motion or at the request of a party, witness, or juror if he finds a reasonable probability exists of unfairness, embarrassment, or danger to someone, or hinderance of law enforcement. The court must afford a presumption of validity to a coverage limitation request from informants, undercover agents, relocated witnesses, minors, suppression hearing witnesses, domestic relations witnesses, or in cases involving trade secrets. Also, audio coverage of bench or counsel table conferences is not permitted. Furthermore, any proceeding closed to the public is not subject to media coverage. Finally, any permitted media coverage must be done in the presence of the judge.\textsuperscript{73}

2. Equipment and Personnel

The first equipment restriction precludes anyone from possessing media equipment in courtrooms or adjacent hallways except when required for media coverage.\textsuperscript{74} Thus, one cannot wander about a Maryland courthouse with cameras or recording equipment. A court's traditional contempt powers have been extended by inclusion of a provision in the recent legislation sanctioning contempt action for a violation of the ban in criminal proceedings.\textsuperscript{75}

\textsuperscript{71} Id. at Rule 1209(c)(1).
\textsuperscript{72} Id. at Rule 1209(d).
\textsuperscript{73} Id. at Rule 1209(e).
\textsuperscript{74} Id. at Rule 1209(b)(3).
\textsuperscript{75} Md. Code Ann. art. 27, § 467B(d).
Rule 1209 limits media equipment and personnel to one portable television camera and one operator in trial courts, and two cameras and operators in appellate courts. Cameras either must be 16mm sound on film (self-blimped) or video tape electronic cameras. Only one still photographer, with no more than two cameras, may be present in either the trial or appellate courts. The photographer is restricted to two lenses per camera and the equipment must be approved by the presiding judge.  

For radio coverage, only one audio system may be implemented in any court. The media must, if technically possible, adapt to any existing court system. If they cannot, then a suitable system must be installed in the least obtrusive manner, with the judge designating locations for wiring and microphones. Any microphones on the bench and counsel tables must be equipped with a cut-off switch. Also, directional microphones may be mounted on television or film cameras, but no parabolic microphones are allowed.

Equipment must not produce distracting sound or light, and no artificial light may be used. Film movie cameras, video tape cameras and recorders must meet sound standards not exceeding those listed in an extensive schedule. Still cameras may not employ artificial lights and must be at least as quiet as the 35mm Leica "M" Rangefinder series. Media personnel are responsible for demonstrating to the judge that their equipment is appropriate. Failure to do so precludes its use.

Like Florida, extra light for cameras may not be provided by the equipment itself. Modification of existing lighting systems may be approved by the judge, provided that the media bears the expense of installation.

All equipment and personnel shall be located outside the rail of the courtroom. If no rail exists, the judge may designate the location. When possible, transmission equipment should be placed outside the courtroom. Still photographers must remain seated in their designated area while working unless positioned in or beyond the last row of spectators or in an aisle. Camera operators may not move about or assume a position likely to at-
tract attention. Media equipment may not be installed or removed from the courtroom during proceedings. Film magazines, film, or camera lenses can be changed only during a recess.80

3. Pooling

Both Maryland and Florida require the media to arrange pooling. The judge shall not resolve a dispute, and contesting parties will be excluded from the proceedings.81

4. Restrictions on Use

Unlike Florida and West Virginia, the Maryland rule does not address use of media material obtained during a proceeding. Presumably, Maryland would place the same restrictions on its use as other states have done.

IV. ELECTRONIC COVERAGE IN WEST VIRGINIA

In an administrative conference May 7, 1981, the West Virginia Supreme Court of Appeals adopted rules allowing permanent electronic coverage of all state courts—magistrate, trial and appellate. The court acted under its constitutional authority to supervise the state court system.82 The rules adopted by the court parallel those utilized during the two-year coverage experiment in Monongalia County. The court has modified its rules slightly since May, 1981, and also has reviewed a pooling agreement regarding coverage of appellate arguments.

Unlike other jurisdictions, the state supreme court has not modified West Virginia's Canon 3A(7).83 It now reads the same as the canon adopted in 1972 by the ABA. It is anticipated that the court will act to bring Canon 3A(7) into compliance with the new rules covering electronic coverage.

The remainder of this article will focus on various aspects of the West Virginia rules controlling electronic and still camera coverage of the courts. A commentary follows the text of each rule.

80 Id. at Rule 1209(f)(8-11).
81 Id. at Rule 1209(f)(4).
82 W. VA. CONST. art. 8, § 3.
A. Subject Matter of Coverage

1. Camera coverage shall be limited to proceedings open to the public, and in those proceedings, in order to protect the attorney-client privilege and the right to effective assistance of counsel, there shall be neither audio pickup nor broadcast of conferences occurring between attorneys and their clients, between attorneys, between clients, or between or among attorneys, their clients, and the judge when he calls for a colloquy at the bench.

Comment: All judicial proceedings presently open to the public are subject to the electronic coverage rule, unless the trial judge determines that such "coverage will impede justice." This rule should be construed as permitting in camera proceedings without electronic coverage. This provision is consistent with those of most states regarding bench and counsel table conferences.

Like Florida, and unlike Maryland, consent of parties is not required although they may object as hereafter provided.

2. The Court, based upon requests made in advance of the proceedings, shall decide whether to allow coverage of a given case. A party, witness, or attorney may object to coverage of any portion of the proceedings, and the judge shall rule upon such an objection. After the proceedings have commenced, the judge shall terminate coverage of any portion, or of the remainder of the proceedings, if he determines that coverage will impede justice.

Comment: This section represents a departure from the rule which controlled the Monongalia County experiment with respect to the obligation of the media of make a request in advance of the proceedings. Florida does not have this provision; Maryland does. As a practical matter the rule creates problems. It has no specified time limit unlike the Maryland rule which requires a request to be filed at least five days in advance of a proceedings. This requirement creates a hardship on the media because the press often has to cover "breaking news," such as the arraignment of one arrested for murder. Without discussing whether any criminal pre-trial matters should be subject to coverage, it is apparent that the five-day Maryland provision could effectively eliminate some of the most desired coverage.

84 General Rules for Cameras in Courtrooms, Rule I(B).
However, the West Virginia rule is not so restrictive. The notification probably will consist of a telephone call to the judge's office.

Another problem concerns how the judge rules on whether to allow coverage. Again, it will probably be by a verbal response to the telephone request. The better method would be for the court to state on the record, at the commencement of any proceeding to which a media coverage request has been made, his decision and reasons for it. And, if the judge grants the request, he should question any "party, witness, or attorney" as to whether any of them objects and then rule on the objection.

A judge's broad discretion to control and maintain the dignity of the courtroom and to insure all parties a fair and impartial proceeding is vested in the final sentence of this provision. Although stated differently, the rule gives the judge the same authority as the strong Colorado language. The Maryland rule, in addition to its grant of broad discretion, lists several specific instances in which the judge is encouraged to disallow coverage.  

3. Coverage in the magistrate court shall be determined by the concurrence of the involved magistrate and chief judge of that circuit, or any circuit judge thereof in the absence of the chief judge, in accordance with these guidelines.

Comment: The permanent rule encompasses the magistrate courts; the Monongalia County experimental rule did not. Supervising judges of magistrates should, in anticipation of requested coverage, plan the implementation of the rules with their magistrates. Again, there is the "pre-trial problem". It is very likely that local media photographers will desire to cover certain arraignment procedures. At some point, the appropriateness of this particular coverage needs to be addressed.

Colorado no longer has justices of the peace nor do they have magistrates. The same is true with Florida and Maryland. However, the county courts of Colorado and Florida and the district court of Maryland include in their duties those of our magistrates. In each instance, these courts are subject to the

same media rules as the particular state's courts of general jurisdiction.

B. **Equipment and Personnel**

1. Not more than one portable television camera (film camera—16mm. sound on film [self-blimped] or video tape electronic camera), operated by not more than one person, shall be permitted in any proceeding.

2. Not more than two still photographers, using not more than two still cameras each with not more than two lenses per camera and necessary related equipment for print purposes, shall be allowed in any proceeding. When television cameras are present, not more than one still photographer may be present.

*Comment:* Section 1 is consistent with the Florida and Maryland rules. West Virginia has not, however, provided the long list of acceptable equipment as an appendix to the rule as the other two states have.

Section 2 language represents a change from the experimental Monongalia County rule, from the rule adopted May 7, 1981, and from the rules of Florida and Maryland. This May 28, 1981, revised provision now permits two still photographers provided that no television media person is present. Granted, there will still be a maximum of two persons, but if the goal is to create a minimum distraction, then logic would suggest the number of photographers should have been maintained at one person, thereby forcing the use of pooling.

3. Not more than one audio system for radio broadcast purposes shall be permitted in any proceeding. Audio pickup for all purposes, including radio and television, shall be accomplished from audio systems already present in the court facility. If no technically suitable audio system exists in the facility, microphones and essential related wiring shall be unobtrusive and shall be located in places designated in advance of any proceeding by the chief judge of the judicial circuit in which the facility is located.

*Comment:* The West Virginia rule on audio pickup is nearly identical to those of Florida and Maryland in that it is limited to a single system and must use an existing court system if possible. When it is necessary to add a system, the judge has complete control over locations. The Maryland rule specifies that a
directional microphone may be mounted to a television camera, but no parabolic microphones will be permitted. Additionally, Maryland provides that the microphones on the bench and counsel tables must be equipped with cutoff switches. Although not technically required by the West Virginia rule, any judge supervising the installation of an audio pickup system should require this feature. Otherwise, unless a hand is placed over the “mike” as necessary, the audio pickup will include bench and counsel conferences. Theoretically, this could result in live broadcast of a bench conference. The burden should be on the media and not the court to relieve this potential problem. Microphones for media purposes should be kept at a minimum. A microphone on the bench might be helpful, but no microphones should be allowed on counsel tables for media purposes. This obviously will necessitate modification of some existing systems because microphones are frequently found at counsel tables. The bench, the witness stand, and some place appropriate to pick up attorneys’ examinations of witnesses should suffice. During the Monongalia County experiment, the audio media generally placed a microphone on the bannister railing of the jury box to pick up attorneys’ final arguments.

The Colorado rule, again, does not specifically address “equipment”, but simply gives the judge broad discretion to permit coverage under any conditions he prescribes.

4. Any “pooling” arrangements among those seeking to provide camera coverage that are required by these limitations on equipment and personnel shall be the sole responsibility of those persons, without calling upon the court to mediate any dispute about the appropriate representative or equipment authorized to cover a particular proceeding. In the absence of advance agreement by such persons on disputed equipment or personnel issues, the court shall exclude all contesting personnel from a proceeding.

Comment: Maryland, Florida, and West Virginia each make pooling a media responsibility. The respective rules are almost identical. Colorado does not address the matter in its rule. However, the broad Colorado rule certainly would permit a judge to do so.

The first written pooling agreement in West Virginia was made by the supreme court’s Administrative Office of the Courts with the West Virginia Press Association and the West
Virginia Broadcast Association in 1981. This agreement sets forth permanent rules for media coverage in the West Virginia courts.

The text of the pooling agreement between the Supreme Court of Appeals of West Virginia, through the Administrative Office of the Courts, and the West Virginia Press Association and the West Virginia Broadcasters Association is as follows:

RULES CONCERNING CAMERAS IN COURTROOMS:
THE CONDITIONS AGREED TO BY THE ADMINISTRATIVE
OFFICE OF THE COURTS; THE WEST VIRGINIA
PRESS ASSOCIATION; AND THE
WEST VIRGINIA BROADCASTERS ASSOCIATION
May 12, 1981

1. There shall be rotation of admissions to cameras in courtrooms for the Supreme Court and for circuit courts in counties having more than one daily newspaper; i.e., morning and afternoon newspapers will take turns at providing coverage, at the discretion of the Chief Justice or Circuit Judge.

***

2. Newspapers and broadcast media must provide professional photographers.

***

3. Both Charleston newspapers, the Gazette and Daily Mail, will make photo prints available to both the Associated Press and United Press International "wirephoto" services, so that out-of-town papers may benefit therefrom.

***

4. If competing media seek coverage for more than one case in one day, and a pool cameraman is designated, the pool photographer must take photos for all cases in which any participant has an interest. Otherwise, the presiding judge may exercise his right to bar all media.

***

5. Two print media photographers may be admitted at the discretion of the presiding judge if no television camera is present. Broadcasters, however, will be restricted in all cases to only one camera.

***

6. For the Supreme Court, the Administrative Office of the Courts will designate the pool photographer(s) when multiple requests are received. Such designation shall be on a rotating basis in accordance with the provision of Rule 1 above, to the greatest extent practicable.

***

7. If two requests are received at the same time on the same case, the appropriate "cycle" photographers would be obligated to be the pool photographer (i.e., morning sessions covered by photographers for afternoon newspapers and afternoon or evening sessions covered by photographers for morning newspapers). Such pool photographers...
Supreme Court of Appeals, a specific court facility where extensive media coverage is naturally expected.

Although the agreement could be a good example for circuit courts in our larger communities, most West Virginia courts should not need a permanent pooling arrangement. Nevertheless, even smaller communities should not overlook the possibility of a pooling agreement in anticipation of extensive coverage of a particular matter with potential wide public interest. Most judges will not have to look too far into the past to identify a trial of such a nature in their court. It should be emphasized that it is the responsibility of the media to arrange for pooling and not the court.

C. Light and Sound Criteria

1. Only television, photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera.

2. Only still camera equipment that does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, such still camera equipment shall produce no greater sound or light than a 35mm. Leica "M" Series Range-

would be obligated to provide rapid coverage, using the nearest available darkroom facilities and utilizing wire service transmission services.

***

8.—Broadcast pool obligations are constant; i.e., a station must take its turn when it comes up, or it may be excluded from benefits of the pool. All photographs, videotapes or recordings must be made available to all radio or television media participating in the pool. This is an affirmative obligation.

***

9.—No local newspaper is obligated to provide coverage for out-of-town newspapers if it is not interested in covering a courtroom proceeding itself. While newspapers need not fulfill assignments requests from other newspapers, when such an agreement is reached, cost-sharing arrangements must be worked out by the media themselves. The court specifically will not "referee" any item relating to costs.

***

10.—Broadcast media also must work out their own cost-sharing arrangements, but the pool station may insist that stations in the pool provide their own blank videotapes or to make reimbursement for the same.
finder camera, and no artificial lighting device of any kind shall be employed in connection with a still camera.

3. It shall be the affirmative duty of media personnel to demonstrate to the court sufficiently in advance of any proceeding that the equipment sought to be used does not produce distracting sound or light. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.

Comment: Each of these provisions is essentially the same as those found in the Maryland and Florida rules except that, with respect to Section 1, Florida and Maryland attach an appendix to their rules which specifically lists acceptable types of movie film, video taping and recording equipment which is acceptable. All three states list the 35mm. Leica "M" Series Rangefinder as setting the maximum sound limits for still cameras. Also, each places the responsibility on the media to prove the equipment as acceptable. Colorado is silent as to equipment; the individual judge dictates that standard.

The exact manner in which equipment shall be demonstrated to a judge remains to be determined. It is likely that few, if any, judges will be able to make a sound judgment in comparison with a Leica "M" Series camera. The media will simply have to comply with the rule. Should there be sound or light distraction, the court will have to act pursuant to the rule to preclude the use of the equipment.

D. Location of Equipment and Personnel

1. Television camera equipment shall be positioned in such location in the court facility as shall be designated by the court. The area designated shall provide reasonable access to coverage. If and when areas remote from the court facility which permit reasonable access to coverage are provided, all television camera and audio equipment shall be positioned only in such area. Video tape recording equipment that is not a component part of a television camera shall be located in an area remote from the court facility.

Comment: The West Virginia rule provides that the judge shall designate the location for equipment. Florida and Maryland rules are similar. Both West Virginia and Florida suggest that reasonable access for camera coverage must be made. Furthermore, the standards of all three states provide that equipment such as television audio and radio broadcast which need not necessarily be in the courtroom be placed in a remote area.
As a practical matter this should not be in the hallway immediately before the courtroom entrance. A rear hall, closet or nearby office would be more acceptable. Normally, there will be one or more individuals who must monitor such equipment; therefore, this must be considered when determining placement locations. Colorado relies on the sole discretion of the judge.

2. A still camera photographer shall position himself in such location in the court facility as shall be designated by the court. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once a photographer has established himself in a shooting position, he shall act so as not to call attention to himself through further movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.

3. Representatives of broadcast organizations shall not move about the court facility while a proceeding is in progress, and neither microphones nor taping equipment, once positioned as required by II(C) above, shall be moved during the pendency of the proceeding.

Comment: The Florida and West Virginia rules are very similar. Maryland is more specific, particularly as it relates to the still camera photographer. Nevertheless, the consensus is that once any camera operator, still or television, is in place, he is not to move about the courtroom. His work is restricted to the designated area despite the fact that he might obtain better coverage from another area. Not only must the cameraman stay in the designated area, he must also refrain from assuming a position or making movements likely to attract attention.

Maryland specifically provides that all media persons shall be stationed outside the rail of the courtroom, or if there is no rail, then in the spectator area. Even though the West Virginia rule does not mention the rail, it is anticipated that judges will establish media locations outside the rail.

E. Movement During Proceedings

Neither photographic nor audio equipment shall be placed in or removed from the court facility except prior to commencement of or after adjournment of proceedings each day, or during a recess. Neither television film magazines nor still camera film or lenses shall be changed within a court facility except during a recess in the proceeding; provided, however, that television
cameramen may change video tape cassettes if done in such a manner as not to intrude upon the proceedings.

Comment: West Virginia, Florida, and Maryland have the same basic restrictions relative to placement of media persons. All equipment and personnel must be in place prior to the commencement of the proceeding and may not be removed (including personnel) except during a recess or at the conclusion of the proceeding. Each of the respective rules likewise prohibit the changing of still camera lenses or television camera film; however, the permanent West Virginia rules do allow video tape cassettes to be changed quietly. The experimental rule did not allow this. A presiding judge should insist on strict compliance with this provision to avoid disruption. Enforcement of this rule did occur a few times during the Monongalia County experiment.

F. Courtroom Light Sources

With the concurrence of the court, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense.

Comment: There is a practical problem of how to allocate "maintenance costs" to the media. This will probably never occur because of the sophistication of modern photographic equipment. With the exception of Colorado, the others states adhere to the rule.

G. Impermissible Use of Material

None of the film, video tape, still photographs, or audio reproductions developed during or by virtue of the pilot program shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceeding.

Comment: Maryland and Colorado are silent on use of material resulting from media coverage of a court proceeding. The West Virginia and Florida rule are identical except that the word "coverage" is in the place of "pilot program". It is suggested that the West Virginia rule should be the same as Florida's since presumably our pilot program is also concluded. It has been suggested that perhaps trial media coverage would be appropriate

---

Report, supra note 57.
material for appellate review. While it might have some beneficial effects, there is greater likelihood that it would create a different standard of appellate justice for litigants whose trials received media coverage than those whose did not. Furthermore, if “visual transcripts” of trial are to be used on appellate review, then it should be made by court staff as a court function and not by the media who are likely to only present “transcripts” of the sensational events or highlights of the trial.

V. CONCLUSION

The arguments will continue. There will be persons who maintain that extended media coverage (beyond the print media) is distracting and distorts justice. They will argue that the judicial process is not designed or intended to educate, inform or entertain the public. They will argue that attorneys, judges and other courtroom actors will be susceptible to “playing to the cameras” or intimidated or embarrassed by them. Additionally, the argument that the media will be attracted to the sensational and that coverage will make the administration of justice more difficult in such matters as jury selection will be made.

On the other hand, persons will argue that it's time to end the restrictions and the traditions that prevent the public from understanding their courts, that “sunshine” law concepts should extend into our courtrooms, and that properly administered courts will safeguard against injustice and prejudicial effect that may result from extended coverage. Now that most states provide some type of electronic coverage, media pressure likely will appear in a different form. Since virtually all rules provide that a presiding judge is to have ultimate control over extended media coverage, the focus can be expected to shift to the establishment of judicial guidelines to assist the courts with this task. Initially, the justice system must trust the judgment of trial judges as to when coverage will be permitted, and must trust the media to pursue its “newly acquired right” in instances when courts are arbitrary, unreasonable, or simply wrong. The failure of the media to pursue this right will result in a court-dictated ban in many localities.

Practical problems will unquestionably arise. Our larger communities will be compelled to evaluate the rules and make arrangements for regular coverage while our more rural areas should designate some official to whom initial responses for oc-
casional coverage will be made. Other questions involve who will provide copies of the rules for distribution and who will be initially contacted by the media to request coverage permission? These questions will need to be answered by court officers responsible for each court facility. Courts in larger population areas which have regular media coverage should immediately create a court-media committee composed of judges, administrative staff, county commissioners and media personnel to plan for anticipated coverage. This committee should assist the court in determining locations within the courtroom, non-courtroom space accommodations, wiring and lighting needs, and an understanding of proceedings which may or may not become subject to coverage.

In less populous areas, the court may be obligated to perform this task with minimal or no media assistance. In these areas, the most likely office to have initial responsibility should be the office of the circuit clerk. Traditionally, this office receives most inquiries concerning court rules, procedures, and customs. Obviously, a request would have to be forwarded to a judge.

When projecting what to expect in the future, court administrators, judges, county commissioners, and media personnel should study existing court facilities toward determining the least obtrusive possible location for media equipment. Should new facilities or modification of existing ones be planned, the media issue should be addressed. Simple and inexpensive “hidden booth” arrangements, two-way mirrors and pre-wired sound systems are possibilities.

Magistrate court facilities also will have to be considered. The issue of photographic coverage of preliminary procedures needs to be addressed. Whether there is a significant difference between prejudices which may result from an individual being photographed entering a magistrate facility shackled, cuffed and in the escort of police officers or in a formal court setting remains unanswered by the courts. Surely the court scene would be less detrimental than the street scene.

To best determine what to expect, judges should look to those who have experienced such change. Associate Dean Edward Cowart, a member of the National Judicial College and a former state trial judge, makes several points concerning ex-
tended to media coverage. Dean Cowart maintains that the new rules simply add another media. He further suggests that cameras in the courtrooms adds to the credibility of the print media, are less distracting than "sketch artists", and reduces media congestion in the hallways approaching the courtroom. He further contends, from a trial judge's standpoint, that it is easier to maintain control with the press in the courtroom than just outside of it. On the negative side, Dean Cowart states that in areas with local television stations, there may be some additional difficulty in impanelling a jury in a trial of wide interest. This may result in more motions for change of venue and/or sequestration of jurors. He believes that the latter will result more from judicial caution than actual necessity.

Electronic coverage of judicial proceedings is simply the addition of another media form. Therefore, resistance of extended coverage in most instances will prove unsuccessful in the long run. Because radio, television and the print media have replaced or reduced the town square speaker, the lecturer at the local auditorium, and public attendance at trials, it is only logical that this media be permitted to report on public events which could be attended by the public should it choose.

Implementation of extended courtroom media coverage should be done in a spirit of cooperation and a recognition that even though there are some risks, the democratic system of government works best when its citizens are informed about its workings. Courts particularly should be acutely aware of the public's perception of their position in our society. Consequently, judges should welcome any opportunity to assist in general public education of the court's role in our society. Perhaps the media will become an ally of the courts in this respect. As Chief Justice Warren Burger has noted: "Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public."89

---