Cameras in the Courtroom: An Experiment Continues

by Katherine White

This regular Insight *feature focuses on how the judicial system affects public policy-making. This column examines the N.C. judicial branch's four-year-old experiment allowing cameras in the courtroom.*

North Carolinians watching the evening news one day in February 1983 were treated to a most remarkable vision: their lieutenant governor for the past six years, James C. Green, sitting in the dock as he went on trial on charges of bribery and corruption. It was not just that the state's second-ranking executive had been indicted and was on trial. What was equally important was that viewers could see and hear Green on television as he testified in his trial, and that they could see published photographs of Green on the witness stand in the next day's newspapers. That trial, more than any other, brought home to North Carolinians what the cameras-in-court issue was all about—and it helped them see that prosecutors *did not* have a solid case to convict Green.

But had the Lieutenant Governor been tried just a few years earlier, his trial never would have hit the airwaves. For it was not until October 1982 that the N.C. Supreme Court cautiously allowed the microchip technology of radio and television to record court proceedings—the first time in decades that such media coverage in state courts was permitted. (Cameras in courtrooms generally means more than cameras alone. The phrase includes still and motion picture cameras, microphones and tape recorders, and television video cameras and recorders.) Still cautious after four years of what it calls an "experiment," the Court has yet to give photographic coverage rules a permanent place on the books. The Court has approved temporary rules which have been extended three times. A decision on whether to make the rules final could come later this year, when the current extension expires on December 31, 1986.

Introducing video cameras and sound equipment to the state's trial courts in 1982 was not easy. The N.C. Association of Broadcasters and the Radio-Television News Directors Association of the Carolinas petitioned the Supreme Court in October 1981 to allow recording equipment into courtrooms for broadcasting trials and other court proceedings. The broadcasters and press groups argued that it would help the public understand the judicial system and open up the judicial process for those who otherwise would never be able to witness trial proceedings firsthand. During a year of court review, trial and appellate judges alike expressed fears that they would lose control of their courtrooms and that the pressure of cameras would intimidate jurors and witnesses. They also questioned whether criminal defendants could get a fair trial if the public were exposed to daily coverage. As a compromise, the Supreme Court approved rules that allowed coverage for a two-year period.

Generally, according to an informal, unpublished survey of trial judges by the N.C. Supreme Court,[1] those judges who have allowed radio, television and press photographers into their domains support the continuation of the rules. "I feel that electronic and photographic media coverage assists the public in understanding the courts and particularly the results of a specific trial," said Superior Court Judge Donald L. Smith in his survey response. Judge Smith has presided at several trials covered by electronic and photographic media.

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However, the survey also shows that judges who have refused such access continue to believe that the publicity will undermine the court system. "I don't think the television media has a thing to offer the judiciary," said Superior Court Judge Frank Snepp in the survey. As senior resident judge for his district, which includes Mecklenburg County, Snepp has banned live coverage. Allowing it, Snepp said, would give "a distorted idea of what goes on in court because [reporters] only have three seconds to tell the story. [Reporters] are not going to go in depth."

The national trend allowing cameras and radio equipment to record proceedings began in 1976 after more than 40 years of a virtual blackout. The American Bar Association House of Delegates first adopted a canon of judicial ethics barring photographers in 1937—largely in response to the circus-like press coverage of the 1935 trial of Bruno Hauptmann, accused of kidnapping the child of famed aviator Charles Lindbergh. The Hauptmann trial judge allowed 141 newspaper reporters and photographers, 125 telegraph operators and 40 press messengers to accompany the defendant to court.[2] Reporters chased witnesses in the aisles of the courtroom for interviews, and cameras flashed and disrupted testimony.

The distaste of state courts for cameras and microphones in courts was bolstered in the mid-1960s when the U.S. Supreme Court ordered new trials for defendants who were convicted in criminal proceedings during which the press and television media loomed like vultures in the the courtrooms.[3] By 1965, most states had adopted the ABA proscription on cameras, and North Carolina courts officially banned cameras and sound equipment in 1970.

A trend relaxing the ban on cameras began with technological advances in television and radio that made equipment less obtrusive and that allowed pooled coverage where one microphone or camera can serve any number of news gathering agencies. Then, in 1981, the U.S. Supreme Court ruled that trials could be broadcast without necessarily impairing a defendant's right to a fair trial.[4] With the 1981 decision—and a 1982 relaxation of the ABA canon—the North Carolina justices approved rules for television, newspaper, and magazine photographers and radio reporters on an experimental basis. The guidelines, similar to those in the 40 *other* states (see chart above) that allow electronic media in trial or appellate courts, restrict the media to a single, unobtrusive area of the courtroom. In Wake County, a black booth in the middle of a trial courtroom conceals all equipment and its operators. In Guilford County, a conference room at the rear of a courtroom has a newly installed glass panel through which cameras can record proceedings.

Number of States Allowing Cameras in the Courtroom

Approved for Trial and for Appellate Courts	22
Approved for Appellate Courts only	6
Experimental, for Trial or for Trial and for Appellate Courts (including North Carolina)	8
Experimental, for Appellate Courts only	5
Considering allowing cameras in courts	1
Do not allow cameras in courtroom	8
Total	50

Source: National Center for State Courts, May 1986

The senior resident Superior Court Judge of each judicial district decides whether to allow cameras and microphones and, where no booth is available, some judges have allowed photographers to shoot pictures as long as they maintain a low profile. At the heart of the North Carolina experiment's rules is the basic tenet that the judge must retain full control of his court. Certain cases, such as child custody hearings, and certain witnesses, including informants and victims of sex crimes, cannot be recorded or photographed under the North Carolina rules.

In September 1984, the UNC Institute of Government in Chapel Hill prepared a report[5] for the News Media-Administration of Justice Council of North Carolina (a group of judicial and news media officials) in an attempt to gauge the effect of cameras in the courts. The report examined the trials of Green, who was found not guilty of misconduct charges, and Navas Villabona Evangelista, a Colombian who was convicted of taking hos-

tages and murder aboard an Amtrak train in Raleigh.

The Institute found that 48 jurors and alternates in the two cases were aware of cameras but were not concerned about them. Only one potential juror acknowledged apprehension, saying the presence of cameras made her "a little nervous." Of 29 witnesses interviewed, two said that cameras added to their tension before taking the stand but not after they began their testimony. The other 27 witnesses said they were unfazed by the presence of electronic equipment. Said one witness, "The cameras, no. The people, they're the ones that scared me." And one federal agent said he had opposed cameras until he testified. "After this trial, I saw no dramatics or other effects. The real theatrics come on the steps of the courthouse," he said.

Similar results are found in other studies in other states.[6] A California study concluded that "although witnesses may be aware of the presence of the videotape apparatus, this awareness is of little consequence when compared to the pressures and demands made upon witnesses as a part of the normal testimony process."[7] An Alabama judge has said that cameras in the courtrooms there tend to keep "all the personnel in the courtroom on their toes."[8]

Although the N.C. Supreme Court has not decided whether to make cameras and sound equipment permanent fixtures in the state's courtrooms, the Court has sanctioned a pilot project that will begin this fall in Wake County to use video equipment to record trials. The tapes, instead of the usual transcript, will serve as the official court record for appeals. Dallas Cameron, assistant director of the N.C. Administrative Office of the Courts, believes that the new technology will be cheaper than the present system of using court reporters. The court equipment might obviate the need for news reporters to bring their equipment because videotapes could be reproduced easily and cheaply for the evening news, he added. Whether the project will succeed, however, is unclear. Kentucky has used videotapes as court records for about two years, but with mixed results, Cameron says. And even the most zealous judicial supporters of allowing the electronic media in courtrooms don't want to lose the court reporters who have doubled as their secretaries from time to time. Judge Smith predicts, "It will not be successful."

Studies show that electronic media coverage—if handled properly—does not infringe upon the rights of parties, witnesses and jurors. Why, then, does the judiciary remain reluctant to make the rules permanent? Perhaps Superior Court Judge D. Marsh McLelland detects in his colleagues a basic human concern rather than a legal objection. The objections raised [to cameras in court] are prompted not by intellectual or legal reservations, but by a "reluctance to expose one's gaffes . . . to wide dissemination and, even worse, relatively permanent recording," says McLelland. "I suspect that judges, trial and appellate, fear that the all-seeing eye will be edited on projection on television to nose-blowings, drowsiness, mutterings, incomprehensible utterings and the like."

For Mark J. Prak, a lawyer for the N.C. Association of Broadcasters, the state's four-year experiment shows that early concerns "have proved to be largely unfounded." Technology now makes it possible to bring the courts to the public, he says, "when in today's society, very few citizens have time to go observe trials in person. It's up to the press to bring it home to the people."

FOOTNOTES

[1]Former Chief Justice Joseph Branch, who retired September 1, 1986, periodically requested comments from trial judges on their experience with electronic or photographic media coverage. Most of the state's 72 Superior Court judges have had no experience because they have received no requests or because the resident chief judges of their judicial district refuse to allow cameras and microphones. The trial judges' comments are not available from the Supreme Court for public review. Judges who *have* conducted court proceedings with electronic or photographic media present include Judges C. Walter Allen, Napoleon B. Barefoot, F. Gordon Battle, Wiley F. Bowen, Coy E. Brewer Jr., C. Preston Cornelius, B. Craig Ellis, William H. Freeman, William H. Helms, Robert H. Hobgood Jr., D. Marsh McLelland, James M. Long, Mary Pope, Edwin S. Preston, Hollis M. Owens Jr., Claude S. Sitton, and Donald L. Smith. This list was compiled partly from the Administrative Office of the Courts' records and partly from news clippings.

[2]*State v. Hauptmann*, 115 NJL 412, 180 A 809, cert. denied 296 U.S. 649 (1935).

[3]*Estes v. Texas*, 381 U.S. 532, 85 S. Ct. 1628 (1965); *Sheppard v. Maxwell*, 384 U.S. 330, 86 S. Ct. 1507 (1966).

[4]*Chandler v. Florida*, 449 U.S. 560, 101 S. Ct. 1802 (1981).

[5]"Report on Experiences with Courtroom Cameras," Institute of Government, UNC-Chapel Hill, September 24, 1984.

[6]Among these studies are: *Lyles v. State*, 330 P2d 734, 742 (Okla. Crim. 1958); Colorado See Simonberg, TV In Court: The Wild World of Torts, 1 *Juris Doctor* 41 (April 1977); *In Re Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764 (Fla. 1979); Wisconsin *See* Hoyt, Courtroom Coverage: The Effects of Being Televised, 21 *J. of Broadcasting* 487 (1977).

[7]Ernest H. Short & Associates, Inc., "A Report to the Judicial Council on Videotape Recording in the Criminal Justice Systems: Second Year Findings and Recommendations" 30 (1976, California).

[8]Judge Robert Hodnette Jr., *Broadcasting Magazine* at 30 (Dec. 20, 1976).