Cameras in the Courts: Can We Trust the Research?

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LAW AND THE DELAWARE ENVIRONMENT
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Our Cover: (Learn about the artist, Janet Rontz, page 58)

This view of the Delaware Memorial Twin Bridges shows artifice in harmony with the nature it inhabits. Few passengers crossing these most visible man-made presences in our landscape realize that the bridges doubly benefit us. The Delaware River and Bay Authority, which operates the bridges, is sponsoring a long range program to assess the river estuary and how to enhance its best use, balanced among industry, fishing, and recreation. Tentative findings: despite awesome sewage inputs along the Philadelphia-Trenton stretch of the Delaware, the river’s funnel shape makes it surprisingly resilient in purging itself of these additions. A better grasp of the mechanics of the river, its tides and ecology, will permit more discriminating and exact decisions in the interest of our environment.
Cameras in the Courts: Can We Trust the Research?
DAN SLATER AND VALERIE P. HANS

In several recent court cases, television viewers throughout the nation were able to see excerpts of actual trial testimony on network newscasts. From Florida came the charges and countercharges of the Pulitzer divorce and custody battle. More recently, the television audience was able to follow two controversial trials in California. First was the civil trial pitting the Bank of America, executor of the estate of Groucho Marx, against Erin Fleming, Marx’s cohabitant. The Bank was seeking to recover monies from Ms. Fleming which it said she obtained illegally. When Ms. Fleming called one of the Bank’s attorneys an “assassin” not only the jury heard the outburst, but so did the public. Her diatribe was the centerpiece of that evening’s TV news reports about the trial.

The second California case involved a libel suit against CBS and news anchor Dan Rather. The lawsuit resulted from an investigative report on the CBS newsmagazine program “60 Minutes.” The trial was covered by numerous broadcast news organizations, including Cable News Network (CNN). Viewers of CNN were able to watch lengthy portions of the trial live, including Dan Rather’s now famous defense of CBS News’ investigative procedures. Despite the jury verdict in their favor, CBS executives complained about what they saw as biased television coverage of the trial.

These are just a few examples of the growing use of actual trial testimony in television reporting, allowed under rules permitting cameras in the courts. These opportunities for camera coverage have come about as a result of the U.S. Supreme Court’s 1981 decision in Chandler v. Florida. In that case the Court ruled that each state was free to determine whether to permit “extended media coverage,” including camera coverage, in its courts, and to set appropriate guidelines for such coverage. Extended media coverage refers to a recording or broadcasting of trial proceedings by television, radio, photographic, or recording equipment. This is in contrast to “conventional media coverage” which refers to traditional methods of covering courtroom proceedings, i.e., coverage by news reporters without benefit of still photographic, electronic videotape, audiotape recorders or other equipment in the courtroom.

Before adopting permanent rules for camera coverage, most states have conducted one year tests — which they have called “experiments” — during which time camera coverage is permitted, monitored, and evaluated. But what do these “experiments” tell us? What kind of research has been conducted to evaluate the impact of cameras in the courts? We contend that the research conducted so far provides inadequate evidence on which to base permanent rulemaking.

The Delaware Experience

Delaware is one state that recently has wrestled with the issue of cameras in the courts. In 1978 Chief Justice Herrman of the Supreme Court of Delaware, asked the Bar-Bench-Press Conference (BBPC) of Delaware, a group of lawyers, judges, and news media representatives, to study the issue and provide recommendations concerning extended media coverage.
of the Delaware courts. On April 22, 1980, the Chief Justice requested that any final report be delayed pending the U.S. Supreme Court’s decision in the *Chandler* case. During this period the BBPC received the results of a study it commissioned, which surveyed the attitudes of Delaware judges, attorneys, and news media representatives toward extended coverage. This study concluded that there was “considerable support for a television experiment, particularly among the judges and media representatives” in the sample, but, a majority of the attorneys surveyed opposed change.

On January 26, 1981, the U.S. Supreme Court issued its decision in *Chandler*, which allowed states to decide on camera coverage. Subsequently, the BBPC, on March 16, 1981, submitted its report to the Delaware Supreme Court. The Conference advocated a suspension of rules to permit a one year “experiment,” but it did not address the issue of how that test should be evaluated. On September 24, 1981, the Delaware Supreme Court held a hearing to gather public opinion regarding the Conference’s report and recommendations. We reviewed the report and testified at the hearing. In line with the BBPC recommendation, we advocated a test period for extended media coverage in Delaware. But we argued also that a true scientific experiment on the effects of camera coverage in Delaware be conducted.

On January 15, 1982, the Court issued its Order that current rules be suspended for a period of one year to permit an “experiment” of extended media coverage, but for *appellate proceedings in the Supreme Court only*. Their rationale for limiting the test to the appellate level was the belief that extended media coverage in trial courts might pose two threats:

(a) possible adverse psychological impact upon the public and upon participants in the trial, especially jurors and witnesses; and (b) possible prejudicial publicity and violation of rights of privacy of participants in the trial, especially of jurors and witnesses.

The Court noted that there was little or no evidence about these potential dangers and observed that an experiment “in the scientifically adequate and acceptable sense of the word — including scientific controls and scientific evaluation which meet advanced testing techniques and requirements of the social sciences” was the type of research on which “an informed policy judgment” should be based. Yet, in light of the potential adverse effects and the cost of undertaking a true experimental study, the Justices did not lift the ban on cameras in the trial courts of Delaware.

The Court then asked the BBPC to develop a set of guidelines for the one year test of extended media coverage at the appellate level. On April 29, 1982, the Court adopted these rules, and the test year commenced on May 1. The BBPC guidelines specified acceptable equipment and how it was to be used, but they provided no mechanism for evaluating the effect of even this limited test of extended media coverage. On May 2, 1983, the Delaware Supreme Court extended until further notice the rules permitting extended media coverage of appellate court proceedings.

Obviously, this test period has provided us very little information about how cameras affect trial proceedings. At the appellate level there are no witnesses and no jurors, yet these two groups are the object of most concern in writings about the negative effects of cameras in the courts. Furthermore, as evidenced by the experiences in California, the media are primarily interested in covering trials, not appellate proceedings. This point was made clear in the final report produced by the Sacramento-based research firm of Ernest Short & Associates, which conducted the evaluation of California’s one-year experiment at both the trial and appellate levels. The limited test permitted by the Delaware Supreme Court leaves us in need of more experiments — at the trial level — for information on which courts can rely.

In spite of the fact that little is known about the impact of cameras in the courts, the American Bar Association, in August, 1982, reversed its longstanding opposition to extended media coverage. According to a report in the September/October 1982 issue of the publication *The News Media and The Law*, 38 states have already adopted rules permitting camera coverage; most of these permit extended coverage at the appellate level, and many have permanent rules in place.

For example, Florida adopted permanent rules after conducting an extensive survey of trial participants, including jurors, judges, and attorneys. California extended their test period, an additional year after receiving the results of the Short study, which also included a survey of trial participants. The California evaluation also used in-court observers to collect data. In spite of the quality of both surveys, a critical question remains unanswered, because survey research simply cannot answer it. That question is: what effect does coverage with in-court cameras have on judicial proceedings and trial participants beyond conventional media coverage? To “isolate” the influence of camera coverage requires an experimental, rather than a survey design.

**An Outline for Research**

In our testimony before the Delaware Supreme Court, we outlined a design to evaluate extended media coverage in Delaware, a design which could be adapted for use by researchers in other states. We proposed a true scientific study — a field experiment — involving the random assignment of extended media coverage to trials. Random assignment basically involves flipping a coin to decide whether or not camera coverage would be allowed for a trial. This scientific procedure ensures that an equal number of trials with similar characteristics are represented in both extended media coverage and conventional media coverage groups. Therefore, any difference between the groups can be attributed to the presence of cameras in the courtroom.

Our proposal calls for the following procedures: once the electronic media have expressed interest in covering a trial, and the judge or other authority has declared that extended media coverage will be permitted, that trial is randomly assigned either to the extended media coverage or to the conventional media coverage group. Trials with extended media coverage can then be compared to trials for which extended coverage was requested, approved by the judge, but then for purposes of the research, denied. The process of assignment is random and not biased in any systematic way. With a reasonable number of trials, claims that differences among them were due to the coverage itself and not to
other factors, or that no differences exist, can be supported.

What is a reasonable number of trials? The number of trials necessary for adequate experimental power (the ability of an experiment to reveal true differences between conditions) depends on the variability of the data. The higher the variability, the more trials one must observe. The researcher may estimate the number of trials necessary for the study from information obtained from a pilot study or prior work and a statistical power table.

In such an experimental study, court records, transcripts, in-court observers, and survey data collected from trial participants could be used to test the impact of cameras in the courts. A researcher might explore their effects on decisionmakers, trial participants, and the general courtroom atmosphere. For example, jurors' willingness to serve, as well as their attentiveness, restiveness, length of deliberation, difficulties with the evidence, and reports of the degree to which they were distracted during the trial, could be examined in extended media coverage and conventional coverage trials. The willingness of witnesses and defendants to testify, in addition to their psychological stress, self-consciousness, and demeanor also could be compared for trials with and without camera coverage. The behavior and reactions of attorneys could be compared. Court observers could assess the effects of cameras in the courts on courtroom atmosphere by noting disruptions attributable to camera coverage above and beyond other sources; they could also note differences in the size of courtroom audiences and the degree of judicial note of the presence of cameras.

Perhaps most critically, trial participants' views of the fairness of the proceedings and the verdict, as well as the existence of successful appeals, may give us additional information about the fairness of trials where there are cameras in the courts. Taken together, these variables, measured within the suggested research design, can assist the researcher in determining the effect of cameras in the courts. Without such experimental controls, conclusions drawn either way may be erroneous.

The experimental research component, to date overlooked, should be the centerpiece of future research on extended media coverage of the courts. Experimental studies, such as the one we proposed to the Delaware Supreme Court, may reveal adverse effects or they may clear the media of suspected negative influence by more precisely measuring whether differences among similar trials exist. Without such experimental studies, the influence of extended media coverage on the conduct of trials, the behavior of trial participants, and the judicial process cannot be isolated.

It is also important that such research efforts take place in a number of states. No one study, whether survey or experimental, is enough for an informed policy decision. Armed with numerous experimental studies and data already collected in previous research, judges and policymakers can decide the future of extended media coverage with the advantage of fuller empirical evidence.

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Readers interested in obtaining a more technical report on research procedures on cameras in the courts should write to the authors, care of DELAWARE LAWYER.