



217 east redwood street
21st floor
baltimore, maryland 21202
410.783.3550
410.783.3530 fax

1455 pennsylvania avenue
suite 100
washington, dc 20004
202.625.4355
202.625.4363 fax

www.agtlawyers.com

IN SUPPORT OF HOUSE BILL 77 CAMERAS IN THE CRIMINAL COURTROOM

This written testimony is submitted by James B. Astrachan, counsel of the Maryland-District of Columbia-Delaware Broadcasters Association. Those additional entities whose names appear on the last page or pages hereof support this testimony and favor allowing cameras in the criminal courtrooms for all purposes, including sentencing.

Brief History of Cameras in the Courtroom.

The argument for allowing cameras in the criminal courtroom is basic: The United States Constitution demands a fair trial and a key guaranty to a fair trial is a public trial. Televising a trial makes it accessible, more public and more fair. For O.J. Simpson's murder trial, there were only 8 public seats available. Technology allows full trials to be streamed on the Internet, or portions to be shown on the TV or on the websites of newspapers and radio stations.

Florida has allowed cameras in its courtrooms since 1977 when its highest court ruled there is more to be gained than lost by allowing cameras in the courtroom subject to the imposition of certain standards. The Florida standards, which allow a presiding judge the discretion to permit cameras in the courtroom without the consent of the parties, were upheld as Constitutional by the U.S. Supreme Court in the 1981 decision, *Chandler v. Florida*.¹

49 states permit some form of broadcast of court proceedings. The degree of coverage varies from state to state, but Maryland clearly lags behind the majority of the states in permissiveness, as it only permits coverage of (i) civil trials proceedings if all parties consent, and (ii) appellate proceedings. Maryland law absolutely prohibits televised criminal trials although in 1981 the Maryland Court of Appeals experimented

with cameras in the criminal courtrooms but that experiment was terminated by the Legislature.²

34 states permit coverage of most civil and criminal proceedings at both the trial and appellate court level – including Virginia and West Virginia. 19 of those 34 states give the trial judge discretion to determine whether to permit cameras in the courtroom on a case-by-case basis, and presume that coverage should be permitted.³

15 of those 34 states permit coverage under similar standards, with mandatory exceptions – such as coverage of certain witnesses or types of trials, such as sex offense cases.⁴

Finally, 15 states, including Maryland, have rules concerning cameras in their courtrooms that virtually eliminate coverage by, for example, requiring the consent of all parties or restricting coverage to appellate proceedings.⁵ The 50th state, Indiana is in the midst of a one-year pilot program allowing cameras in designated trial courtrooms.

Studies.

The affect of cameras in the courtroom has been the subject of many studies, which without exception, have sustained the benefit of cameras and overruled objections. 21 states⁶ have studied cameras in their courtrooms and the results were similar – initial skepticism was replaced by general acceptance after experimenting with television.⁷ No single state that experimented with cameras in the courtroom rejected their use completely.⁸

4 studies in particular are instructive as to benefits and objections: 1) a 1980 report conducted by the Public Awareness Committee of the Maryland Judicial Conference; 2) a 1994 Federal Judicial Center Study; 3) 1981 and 1996 follow-up California Studys; and 4) 1983 Arizona Study. These reports establish the benefits from a broad rule allowing cameras in the courtroom, and debunk detriments. There are additional reports.

In contrast, those persons who testified in opposition in November 2007 before a panel of judges convened by the Court of Appeals provided nothing more than anecdotal evidence in opposition to cameras in the criminal courts, and most of that appeared to be second and third-hand knowledge.

Benefits of Cameras in the Courtroom

The Maryland Report, submitted to the Maryland Court of Appeals in 1980, reviewed the experience with cameras in the courtroom of those states that allowed cameras in their courtrooms. The Maryland Report also reviewed those studies and writings that considered extended media coverage of court proceedings.⁹ It strongly recommended that Maryland conduct an 18-month study in its trial and appellate

courts, permitting extended coverage of criminal and civil proceedings.¹⁰ The study began on January 1, 1981, but was cut short on July 1, 1981, when the Maryland Legislature abruptly banned cameras and recording devices from all courtrooms.

The reports cite these benefits:

1) The Fair Trial Rights.

The Maryland Report noted that “increased public scrutiny and awareness will promote efficiency and fairness, and may actually ‘sharpen’ performance of trial participants.”¹¹

2) Public Education.

- a. The Maryland Report noted that cameras can provide the public with insight into the judiciary, and cited Judge Irving Kaufman’s article in 63 ABA Journal 1567 (Nov. 1977):

. . . the authority of judges depends on their ability to articulate their pronouncements in comprehensible terms. Communication with the public is the very life blood of the ‘third branch’ of government. . .¹²

The Maryland Report noted also, that taped proceedings could be made available as teaching aids in schools at all levels, and would provide effective models for Maryland law schools. *Id.*

- b. The Federal Study reported that educating the public on how federal courts work, was a benefit of media coverage, and most judges thought that this benefit could be more fully realized with electronic media rather than print media.¹³

3) Crime Deterrence.

The Maryland Report noted that televising sentencing procedures could serve the cause of general deterrence¹⁴; likewise researchers David P. Phillips and John E. Hensley, concluded that immediately following media reports of severe punishment of violent crime, there was a significant decrease in reported homicides.¹⁵ This benefit fits clearly within the parameters of H.B. 77.

4) Confidence in the Courts.

- a. The Maryland Report noted that televised court proceedings could provide the public with “additional assurance that those charged with the operation of the judicial system will act in a responsible manner”,¹⁶

and that this increased public awareness “will reinforce confidence of citizens in the courts.”¹⁷

Retired Baltimore City Circuit Court Judge Edward Angeletti agreed. He was quoted in an article published in The Daily Record as follows: “We [judges] serve the public. We have to be accountable to the public for what we do. [Allowing cameras in the courtroom] is an extremely important device to let the public know that the shroud of secrecy of what goes on in a courtroom isn’t necessary.”¹⁸

Studies Disprove Arguments Against Cameras in the Courtroom.

Studies and experiments with cameras in the courtroom disprove the commonly cited negatives to televising court proceedings.¹⁹

1) Participants are not Distracted.

- a. The Maryland Report concluded that technological advances and media pooling have made extended coverage possible “with a minimum of physical intrusion.” Since 1980 cameras have become less intrusive.²⁰ Arizona surveyed all participants – Judges, jurors, lawyers and court personnel. The response was overwhelming that cameras did not distract.
- b. The results of California’s study were similar even when revisited after the Simpson murder trial.
- c. The Federal study reported that overall, those judges and lawyers who had participated in electronically covered trials found that the cameras had little to no effect on the participants in the proceedings.²¹ All parties overall favored expanding the use of cameras to criminal proceedings.²² Furthermore, the interaction between the media and the participants was pleasant, and the pooling arrangements worked extremely well.
- d. Most importantly, the Federal study reviewed the results from studies conducted in 12 state courts and concluded that the cameras did not distract witnesses or jurors, or greatly increase the nervousness of witnesses.²³

2) Cameras will not Cause Attorneys, Judges and Witnesses to “Showboat.”

- a. The Maryland and Arizona Reports concluded that judges and lawyers were not more prone to “showboating” when cameras are in the courtroom and did not affect the dignity of the proceedings.²⁴

The California Study concluded that a large majority of attorney and juror interviewees perceived no change in judicial behavior due to the electronic media coverage.²⁵ And judges, opposing counsel and jurors generally saw no change in attorney behavior when electronic media was present.²⁶

- b. The judges participating in the Federal Study reported that the use of the cameras did not affect the decorum of the proceedings. Some felt the cameras helped to increase the decorum of the proceedings.²⁷

3) Judges will not Fear Pressure from the Public and their Rulings will not be Affected.

Both the Maryland Report and the Federal Study concluded that cameras in the courtroom would not affect judicial decisions.²⁸

4) Witnesses will not be Apprehensive nor Fear Coming Forward to Testify.

- a. The Maryland Report concluded that any undue witness apprehension could be controlled by the presiding judge²⁹ and recommended that judges be given broad discretion to deal with witness privacy. It also recommended that certain witnesses be afforded appropriate protection,³⁰ including undercover police officers, victims of tender years in sex assault cases, prisoners testifying for the state and children testifying in custody matters.³¹ If the prosecution, defense or the witness makes a showing that a witness reasonably fears retaliation if his or her testimony or other pertinent portions of a trial are televised, the trial judge should bar coverage. This issue has been cited as the single biggest deterrent to coverage by prosecutors and some judges, but there is no reason to distrust a trial judge's ability to appropriately exercise that discretion.
- b. The Arizona study reported that 88% of jurors or witnesses responding said knowing that cameras would be present in the courtroom did not make them more nervous before the proceedings.³² 80% of responding judges and attorneys said that the anticipated presence of cameras in the courtroom did not make them more nervous.³³
- c. Most judges, attorneys and jurors participating in the California study saw no change in witness behavior due to electronic media coverage.³⁴
- d. Judges participating in the Federal Study believed that witness privacy issues were not a problem, and that even if they became an issue, the presiding judge would be able to address problems as they arose. Some federal judges expressed the opinion that the public's right to know outweighs the privacy issues.³⁵

5) Jurors will not Fear Pressure from the Public nor will their Findings be Affected.

The Maryland Report concluded that any alleged increased pressure on the jury due to media exposure could be dealt with by trial judges conducting careful voir dire and giving cautions during trial.³⁶

The Arizona, Federal and California Studies concluded that the participating judges and attorneys believed that the broadcast media's presence in the courtroom did not make jurors more sensitive to public opinion. Likewise, the state studies reviewed by the Federal Study.

6) Cameras in the Court will be Costly.

If the media uses existing equipment, there will be nominal costs associated with coverage.

Proposed Standards

The Maryland-District of Columbia-Delaware Broadcasters Association does not disagree with the restrictions set forth in H.B. 77 as they pertain to what can be covered and the procedure for doing so. The following suggestions and observations are provided for consideration regarding allowing the recording and broadcast of criminal trials in their entirety:

- Allow the conduct of an 18-month pilot program.
- Trust the trial judges; the discretion to permit coverage should rest with the trial judge but there should be a presumption in favor of coverage.
- The presiding judge should allow coverage unless he or she finds that there is a reasonable probability of harm or unfairness that would result from allowing media coverage.
- The consent of parties should not be required.³⁷
- The trial judge should have the discretion to prohibit coverage of certain witnesses such as: 1) victim witnesses; 2) undercover police officers; and 3) minors.
- Coverage of jury selection; jurors; spectators; proceedings held in chambers; proceedings closed to the public; and conferences between an attorney and a client, witness or aid, between attorneys or between counsel and the judge would be prohibited.
- The electronic media should enter into pooling arrangements and television coverage should be limited to one video camera in each courtroom participating

in the study – that camera would remain fixed – and one still photographer. Those are the arrangements commonly used in other states.

- A media coordinator would be court appointed and advance notice of intent to cover a trial would be necessary.

Respectfully Submitted:

The Maryland D.C. Delaware Broadcasters
Association;

WBAL-TV;

Entravision Washington, D.C. (WFDC – Univision
Washington, D.C., WMDO – Telefutura Washington,
D.C., WJAL – Independent Hagerstown, MD);

Delmarva Broadcasting Company (WSTW – FM,
WDEL – AM, WSTW – FM, WDEL – AM, WAFL- FM,
WYUS – FM, WNCL – FM, WXJN – FM, WICO – FM,
WICO – AM, WQJZ – FM, WXMD – FM, WXCY – FM);

Allbritton Communications Company (WJLA-TV,
Washington D.C., NewsChannel 8, Washington-
Virginia-Maryland);

Reporter’s Committee for Freedom of the Press;
Radio-Television News Director’s Association;

WJZ – TV; and

WUSA – TV.

¹ *Chandler v. Florida*, 449 U.S. 560 (1981).

² Md. Code Ann., Crim. Pro. § 1-201.

³ Those nineteen states are: California, Colorado, Florida, Georgia, Idaho, Kentucky, Michigan, Montana, Nevada, New Hampshire, New Mexico, North Dakota, South Carolina, Tennessee, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

⁴ Those fifteen states are: Alaska, Arizona, Connecticut, Hawaii, Iowa, Kansas, Massachusetts, Missouri, North Carolina, New Jersey, Ohio, Oregon, Rhode Island, Texas and Virginia.

⁵ Those fifteen states are: Alabama, Arkansas, Delaware, Illinois, Louisiana, Maine, Maryland, Minnesota, Mississippi, Nebraska, New York, Oklahoma, Pennsylvania, South Dakota and Utah.

⁶ Florida, Wisconsin, Massachusetts, Minnesota, Arizona, Hawaii, Nevada, Alaska, Virginia, Maine, New York, Arkansas, Connecticut, Delaware, Mississippi, Missouri, Oregon, Rhode Island, South Dakota, Utah, and Vermont

⁷ Ronald L. Goldfarb, *TV or not TV* 76 (1998) (hereinafter “*TV or not TV*”).

⁸ *Id.*

⁹ *Report on the Proposed Modification of the Maryland Canons of Judicial Ethics to Permit Extended Media Coverage of Court Proceedings* 3 (1980)

¹⁰ *Id.* at 32-34.

¹¹ Maryland Report, at 29.

¹² Maryland Report, at 28.

¹³ Federal Judicial Center, *Electronic Media Coverage of Federal Civil Proceedings, An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeal* 24 (1994) (hereinafter “Federal Judicial Center Evaluation”)

¹⁴ Maryland Report, at 28.

¹⁵ Susan Barber, *News Cameras in the Courtroom: A Free Press – Fair Trial Debate* 96 (1987) (hereinafter “*News Cameras in the Courtroom*”). Citing David E. Phillips & John E. Hensley, *When Violence is Rewarded or Punished: The Impact of Mass Media Stories on Homicide*, 34 J. Comm. 101-116 (1984).

¹⁶ Maryland Report, at 29.

¹⁷ *Id.*

¹⁸ Patty Reinert, *Drama Offered on Both Sides of the Courtroom Camera*, Md. Daily Record, Feb. 5, 1994, at 13.

¹⁹ For example, Missouri established a task force to determine whether cameras should be allowed in the courtroom on an experimental basis. After monitoring and evaluating the experiment, the task force adopted Court Operating Rule 16 to allow cameras in the courtroom, giving the trial judge broad discretion while prohibiting certain coverage such as jury selection and prospective jurors.

²⁰ Maryland Report, at 13.

²¹ Federal Judicial Center Evaluation, at 12, 25.

²² *Id.* at 12 – 19, 28.

²³ *Id.* at 39, 41.

²⁴ Maryland Report, at 24.

²⁵ California Evaluation, at 221.

²⁶ *Id.*

²⁷ Federal Judicial Center Evaluation, at 25.

²⁸ Maryland Report, at 23, Federal Judicial Center Evaluation, at 15.

²⁹ Maryland Report, at 17.

³⁰ *Id.*

³¹ *Id.*

³² Arizona Evaluation, at 26. *Id.*

³³ *Id.* at 27.

³⁴ California Evaluation, at 221.

³⁵ Federal Judicial Center Evaluation, at 24-25.

³⁶ Maryland Report, at 23.

³⁷ See *In re Petition of Post-Newsweek Stations, Florida, Inc.*, 347 So. 2d. 402 (Fla. 1977).