

ATITUDINI

Of Cameras and Courtrooms

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Rezumat:

În 1965 Curtea Supremă opinează că prezența camerelor și a echipelor de televiziune, a microfoanelor duce la întreruperi considerabile în cadrul proceselor. În prezent, bazele pentru interzicerea accesului camerelor de filmat în sălile de judecată nu s-au schimbat față de cele din anul 1965. Centrul Federal Judiciar și curțile federale consideră în continuare că transmisiunile televizate în direct distrag atenția participanților, afectează negativ rezultatul proceselor și diminuează demnitatea curților.



Televiziunile continuă să argumenteze că transmisiunile nu mai întrerup și distrag atenția și că atât sistemul juridic, cât și publicul beneficiază atunci când audierile sunt televizate. Instanțele de stat au fost mai receptive la argumentele televiziunilor, dar niciuna nu a recunoscut dreptul de a transmite un proces.

Cele mai receptive instanțe privind camerele de filmat permit judecătorilor un anumit grad de discreție în a hotărî acceptarea sau nu a transmisiilor televizate. Alte state limitează această discreție în cazurile de abuzuri sexuale, cazurile care implică minori și cazurile în care anumiți martori protestează. În cel mai restrictiv stat, transmisia cazurilor este permisă numai la consimțământul părților.

Alex Kozinski este de părere, însă, că publicul trebuie să aibă acces la audieri, mai ales acum, când mijloacele de comunicare moderne permit difuzarea informațiilor privitoare la audieri, fără să aducă atingere desfășurării proceselor.

Abstract:

In 1965 the Supreme Court expresses the opinion that the presence of television cameras and crews and of the microphones leads to considerable disruption in the trials. Currently, the basis for denying the access of the cameras in courtrooms have not changed from those in 1965. Federal Judicial Center and the federal courts further held that television live broadcasts distract participants, adversely affect the outcome of processes and diminishes the dignity of the courts.

Television broadcasts continue to argue that the transmissions do not interrupt and distract attention, and both the judiciary and the public benefit when hearings are televised. State courts have been more receptive to the arguments of the televisions, but none has recognized the right to broadcast a lawsuit.

The most receptive courts regarding the cameras allow to judges a certain degree of discretion to decide whether or not to accept broadcasts. Other states limit this discretion in cases of sexual abuse, cases involving minors and certain cases where witnesses protest. In the most restrictive state, the transmission is permitted only on consent of the parties.

Alex Kozinski believes, however, that the public should have access to the hearings, especially now, when modern communication media allow spreading the information regarding the hearing, without prejudice to the conduct of trials.

Keywords: judicial system, U.S.A. courts, justice, public trust, transparency, court proceedings, media recording and broadcast, hearings, conduct of trials.

INTRODUCTION

You can't talk about cameras in the courtroom without talking about The Juice. And we'll get there. But this tale actually begins earlier, with a 1935 trial described by H.L. Mencken as "the greatest story since the Resurrection." The defendant, Brun Hauptmann, was charged with kidnapping and murdering the one - year - old child of Charles Lindbergh, famous transatlantic aviator.

An estimated 700 reporters came to town for the trial, and over 130 cameramen jockeyed for pictures. The gallery was unruly and vocal. Messengers ran back-and-forth, updating journalists outside the room. Spectators "posed for pictures in the witness chair and the jury box, carved their initials in the woodwork, and carried off spittoons and pieces of tables and chairs as souvenirs."

Ginger Rogers and Jack Benny came to watch. And footage of the spectacle played in movie theaters nationwide.

Why should we care about any of this today? The first answer is that the

Hauptmann trial inaugurated a profound distrust of cameras in the courtroom. Just a few years later, the American Bar Association incorporated a ban on cameras into its canon of judicial ethics, opining that cameras "are calculated to detract from the essential dignity of the proceedings" and that they "create misconceptions with respect [to the court] in the mind of the public." With some variations, critics of courtroom cameras have been making the same arguments ever since: Cameras poison the atmosphere inside the courtroom, and they distort the public's view outside it.

The second possible answer to the question of why we should care about the Hauptmann trial today is that, truth be told, we shouldn't. Opponents of cameras in the courtroom posit a pre-Hauptmann Garden of Eden to which we should aspire to return: a small, rural courtroom, presided over by a stern but kindly judge vaguely reminiscent of Fred Gwynne in *My Cousin Vinny*. The lawyers, the judges, the witnesses and the litigants are the only ones in the room, except, perhaps, a local journalist and a few spectators from the neigh-

borhood. Everyone knows everyone. The room is open to the public, but this is effectively a quasi-secret proceeding. For the vast majority of the population - those lacking the time or resources to travel to this out-of-the-way destination - the trial will be experienced, if at all, via second-hand accounts in the press.

The Hauptmann proceedings shattered this world, if it ever existed, and many felt the change was for the worse. But a lot has happened in the seventy-five years since Bruno Hauptmann stood trial: We invented the ballpoint pen, the microwave and Velcro; swing music came and went; you (probably) were born. We live in the twenty-first century. After so long, the time has come to rethink our aversion to cameras in the courtroom. In fact, cameras have become an essential tool to give the public a full and fair picture of what goes on inside the courtrooms that they pay for.

I. IN THE COURTROOM

The first criticism of cameras sounded by the ABA after the Hauptmann trial had to do with their effects inside the courtroom. Let's start there.

There was a time when cameras could legitimately be expected to disrupt the pre- Hauptmann ideal by creating chaos in the courtroom. As late as 1965, in an opinion that temporarily put the constitutional kibosh on courtroom cameras, the Supreme Court described a courtroom with "at least 12 cameramen," "cables and wires... snaked across the courtroom floor, three microphones... on the judge's bench and others... beamed at the jury box and the counsel table." Not exactly a low profile operation; the

parties conceded that "the activities of the television crews... led to considerable disruption." But a mere sixteen years later, in an opinion lifting the prohibition, the Court noted evidence that those concerns were "less substantial factors" in 1981. Today's cameras are small, easily concealed and capable of operating without obtrusive lighting or microphones. Even during the O.J. Simpson trial, widely considered a low point for cameras in the courtroom, nobody criticized the equipment or its operators as a physical distraction.

Critics also worry that cameras disrupt the status quo and cause lawyers, judges, witnesses and jurors to alter their behavior. And that's undoubtedly true. Cameras in the courtrooms mean change, and if there's one thing you can say about change, it's that it changes things. Critics tend to focus on the negative aspects:

Some lawyers will ham it up for the camera. Some jurors won't be able to forget the camera is in the room. Some witnesses will feel extra nervous. And some judges won't be able to resist the temptation to make themselves the central character in their own reality TV show. Take Judge Larry Seidlin (a.k.a. "Judge Larry"), a former Bronx cab driver who presided over the Anna Nicole Smith body custody hearing. That judge's antics - including lengthy and personal monologues, crying while delivering the judgment and making an appearance on *Larry King Live* - inspired ridicule and led some to speculate that he was hoping to launch his own "Judge Judy"- esque show. Judges, it turns out, are sometimes human too.

It's natural to focus on what can go wrong when things change, and to

ignore what could go right. It's much easier to anticipate problems than imagine improvements.

But when it comes to cameras in the courtrooms, there may be significant benefits. The first of these is mentioned by no less of an authority than Judge Judy: "Citizens of this country pay for a very expensive judicial system and they are entitled to see how it's functioning." The public can better monitor the judiciary - to ensure that its processes are fair, that its results are (generally) just and that its proceedings are carried out with an appropriate amount of dignity and seriousness - if it has an accurate perception of what happens in the courtroom.

Increased public scrutiny, in turn, may ultimately improve the trial process. Judges may avoid falling asleep on the bench or take more care explaining their decisions and avoiding arbitrary rulings or excessively lax courtroom management. Some lawyers will act with greater decorum and do a better job for their clients when they think that colleagues, classmates and potential clients may be watching. Some witnesses may feel too nervous to lie; others may hesitate to make up a story when they know that someone able to spot the falsehood may hear them talk. Conscience, after all, is that little voice in your head that tells you someone may be listening after all. And that someone might be the guy who was walking his dog on the golf course and knows for certain that you, the witness, couldn't possibly have been across town at eleven o'clock Wednesday morning. And some jurors may pay greater attention, and approach their task with greater seriousness, when they know their friends and family will be following the

trial on TV and will be ready to second-guess the verdict after the trial is over.

There was a time when we had no idea how these changes would add up, and it may have been reasonable to assume that the risks outweigh the potential benefits. But that time is long gone. In 1991, the Federal Judicial Center launched a three-year pilot program in the trial courts of six districts, and the appellate courts of two circuits, that studied the question. The study concluded that judges and attorneys reported "small or no effects of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice." In fact, the study concluded, the "attitudes of judges towards electronic media coverage of civil proceedings were initially neutral and became more favorable after experience under the pilot program."

You can peruse the data from the pilot program in this article's appendix, but here are a few of the highlights: Only 19% of lawyers thought cameras made witnesses even moderately more nervous (only 2% thought they had this effect to a very great extent); only 10% of lawyers thought cameras even moderately distracted jurors (and none thought they had this effect to a very great extent); 25% of judges thought cameras at least moderately increased jurors' sense of responsibility for their verdict (although none saw this to a very great extent); and 32% of judges thought cameras made attorneys at least moderately better prepared (7% thought they had this effect to a very great extent). Anyone who thinks that allowing cameras in the courtroom will bring the end of civilization as we know it should give those numbers (and the

other numbers in the appendix) a second look.

Ever since a study by the Florida judiciary concluded that “on balance there is more to be gained than lost by permitting electronic media coverage of judicial proceedings,” we’ve also seen a growing presence of cameras in state courts. In fact, perhaps the most telling statistic about cameras in the courtroom is this one: After decades of experience, forty-four states now allow at least some camera access to trial courts. Many of those states, including California, leave the question of access largely to the discretion of the presiding judge. The decisions of so many states, over so many years, tell us more than any survey data ever could.

And, if that’s not enough for you, empirical evidence from the states is also positive. After reviewing multiple studies of state judiciaries, the Federal Judicial Center concluded that “for each of several potential negative effects of electronic media on jurors and witnesses, the majority of respondents indicated the effect does not occur or occurs only to a slight extent.” For instance, 90% of surveyed jurors in Florida and New Jersey thought cameras “had no effect on their ability to judge the truthfulness of witnesses;” “most witnesses reported that the presence of electronic media had no effect on their testimony;” and “most jurors...indicated they were not distracted or were distracted only at first” by the presence of cameras. Anecdotally, witnesses, judges, jurors and attorneys report that once a trial gets under way they tend to forget the cameras are there. Nobody seriously believes that cameras should be allowed for every moment of every trial. Where there are legitimate concerns

with witness safety, or other special circumstances, cameras can be turned off or witnesses’ faces can be blurred. As with any question of courtroom management, judges may be trusted to use their good sense and judgment to ensure a fair trial and balance competing concerns. But decades of experience in state courts, and ample empirical evidence, simply does not support a blanket prohibition on cameras in the courtroom.

Those who say that cameras will change the atmosphere of the courtroom must do more than blindly oppose the new and the different. The pre-Hauptmann ideal isn’t enshrined in any rule book as *The Way Things Ought to Be*. Things change, and that’s not a bad thing. Otherwise, why not reach back further, to a time when every juror was also a neighbor and close acquaintance of the defendant? I’m sure that system had its advantages. Or why not even earlier, to a time when we tried defendants by ordeal? Was it really so bad? There’s no reason to think that allowing cameras in the courtroom will prove any worse than all the changes that have come before, and there’s plenty of reasons to think it will be a good thing. The premise that transparency and accountability are good for institutions has animated our traditional preference for open courtrooms, and there’s no reason to turn our back on it today.

But, you’re probably thinking: What about O.J.? The case against cameras in the courtroom may begin with Hauptmann, but it ends with O.J. And so does the very brief story of cameras in the federal courts. The Judicial Conference of the United States, the main policymaking body for the federal judiciary, appeared in the early 1990s

Legislation is currently pending that would authorize district judges to allow media recording and broadcast of court proceedings. If the federal courts don't change with the times, others will institute change for us.

to be on the verge of approving cameras in both the circuit and district courts. And then Judge Lance Ito, after some initial hesitation, decided to allow a single pool camera operated by Court TV into the O.J. Simpson courtroom. An estimated 150 million people watched the verdict on live TV; smaller, but still significant, numbers watched the rest of the trial. The spectacle was widely thought to be a disaster and a circus, many blamed the camera, and plans for cameras in the federal district courts were put on ice, and largely remain there today - with the notable exception of two districts in New York.

A lot of people have called the post - O.J. backlash an overreaction. But I won't deny that the camera in the O.J. courtroom changed that proceeding in a host of ways. Every person in that courtroom, for better or worse, undoubtedly believed he was part of the biggest television event of all time. Not being omniscient, I won't try to imagine exactly how the trial would have looked without the dynamic created by that belief. Maybe Judge Ito would have kept firmer control of the proceedings, or maybe he would have felt less reason to exert any control at all. Maybe some lawyers would have acted with greater dignity; maybe some would have felt even greater license to engage in bad behavior.

But one thing is certain: However all the changes added up, it's dollars to doughnuts the jury would still have voted to acquit, although the public wouldn't be in nearly as good a position to judge the rightness or wrongness of that verdict or to evaluate the process that led the jury to reach it. We'd all assume the jury had its reasons; after all, we weren't there to see the whites of Kato Kaelin's eyes. We'd assume the judge, lawyers and other trial participants did their level best; the defense attorneys were latter-day Perry Masons, the prosecutors were Robert Jackson personified and the jurors were twelve little Solomons. O.J. would be a celebrity in good standing, acquitted by an impartial jury of his peers and rewarded with his own reality TV show and a sponsorship deal for the Ford Bronco. Some might well prefer this model of the trial-as-black-box over the knowledge that somebody they believe committed murder is (or at least was) walking free, writing memoirs and pawning off his sports memorabilia. It's the "ignorance is bliss" school of justice.

So of course we blame the camera, just like generations before us have always shot the messenger. We blame the camera for letting us see the evidence, so that we could know we disagree with the way the case was decided. We blame the camera for exposing us to the lawyers, the judge and the witnesses - all of whom have been accused of falling short. We blame the camera for making the entire trial less legitimate, when in fact the only thing that tainted the trial was the trial itself. Better for the whole thing to have proceeded in sleepy obscurity, we say. At least then, if the defense decided to ask for nullification, and the jury decided to oblige, we wouldn't have to see it in such vivid detail.

The problem with this response to the O.J. trial is that the public has a right and even an obligation to know the truth. We can't bury our heads in the sand when it comes to matters as important as the administration of justice; that's the very reason trials are public. If the jury acquits a guilty man, the public absolutely should be upset; nothing says a man found not guilty by a jury has a right to be considered innocent by the world at large. If prosecutors misbehave, or judges fail to do their job, the public should express its disapproval and demand change. And if defense attorneys cross an ethical line, they should pay the price in diminished reputation. As Justice Brandeis put it, "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." If we don't like the way courtrooms look on camera, the solution is to change the courtrooms, not toss out the cameras. At least that's how a free and open society ought to work.

OUTSIDE THE COURTROOM

Which brings me to the second concern advanced by the ABA after the Hauptmann trial: that cameras "create misconceptions with respect [to the court] in the mind of the public." Cameras in the courtroom have been accused of sensationalizing courtroom proceedings and of giving the public a less accurate description than might be gleaned from a written report. If the goal of camera access is increased transparency and public access, this argument goes, cameras are actually counterproductive.

Once again, we have to be careful to avoid turning cameras into scapegoats. We know that a trial can

be transformed into a spectacle, and the rights of a defendant unfairly prejudiced, without any help from cameras in the courtroom. Consider *Sheppard v. Maxwell*, the trial of a Cleveland surgeon for the murder of his wife (and the inspiration for *The Fugitive*). In that case, newspapers did the job - publishing articles that "emphasized evidence that tended to incriminate Sheppard" and "portray[ing] Sheppard as a Lothario" based on evidence that was never introduced in court. The Supreme Court concluded that Sheppard's trial compared unfavorably to a proceeding that *had* been filmed and broadcast: "The press coverage of the *Estes* trial was not nearly as massive and pervasive as the attention given...to Sheppard's prosecution." Likewise, in the O.J. Simpson trial, many of the worst media practices - including sensationalist coverage and excessive pretrial publicity - had nothing to do with cameras. Sensational reporting, and its effect on the public, is the inevitable price we pay for public trials.

Sensational press coverage may be unfair to individuals caught in the justice system, and it may complicate the job of the court, but it's also essential that the public have a full and fair understanding of what goes on in court. If the public instead lacks the tools to understand why cases are decided as they are, those outcomes will come to seem arbitrary and capricious, and the public will lose respect for our system of justice. My former boss, Chief Justice Burger, put it nicely: "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."

What the guarantee of an open trial means has changed over the years.

There was a time, back in the pre-Hauptmann Garden of Eden, when the cost and time required to travel to see a distant proceeding was so great that few, if any, would ever undertake it. Today, even if a trial is held in California, residents of New York are able to exercise their right to see it, at least so long as they are willing to shell out the cost of a cross-country flight. Trials have opened in other ways, as well, as observers have begun twittering and live blogging from the gallery. Outside the federal courts - in Congress, state courts and most other public institutions - the definition of a "public" proceeding has also come to include cameras. If courts fail to provide forms of access that accord with those changing expectations, limits on access that once seemed perfectly reasonable will appear increasingly secretive, and judicial proceedings will lose a measure of the public's respect as a result.

At a time when we've had gavel-to-gavel coverage of both houses of Congress for over two decades, it's hard to explain why the prospect of broadcasting a judicial trial to a courtroom across the country merits the emergency intervention of the Supreme Court.

At the same time, change doesn't have to be a suicide march. Trials would be more open and transparent if they were held in Madison Square Garden, and that would certainly be technologically feasible. Yet the Supreme Court has said that a defendant "is entitled to his day in court, not in a stadium." If cameras in the courtroom rob criminal defendants and civil litigants of their dignity, and promote a public perception of trials as more about sensational entertainment than a sober search for truth, courts may be justified in parting ways with other public institutions, and public

expectations, to exclude cameras in favor of forms of reporting that better advance respect for the rule of law and the guarantee of a fair trial.

Unlike concern with the effect of cameras inside the courtroom, this argument retains real bite after the O.J. experience. Consider footage of the verdict (available now on YouTube). It's high drama: As the courtroom waited, the camera zoomed in for an intense close-up of O.J.'s face, and remained there for the agonizing moments before - and during - the verdict. Because the camera was positioned above the jury, O.J. appeared to gaze ominously into the camera's eye. Ron Goldman's sister began to cry, and the camera pivoted for a close-up of her face. From there, to the stunned faces of the prosecution. And back to Ron Goldman's sister. As the Supreme Court has said, "the television camera is a powerful weapon" and "inevitable close-ups of [the accused's] gestures and expressions during the ordeal of his trial might well transgress his personal sensibilities [and] his dignity."

That's to say nothing of the impact on the victim's family, or the public perception of a trial depicted in such a manner.

No doubt many would prefer to return to the pre-Hauptmann ideal of the stalwart beat reporter, alone in the courtroom with his pad and pencil. I'm thinking of journalists like the Supreme Court's Linda Greenhouse and Nina Totenberg, but at the trial level; repeat-players in the courtroom who have incentives to maintain a sterling reputation, who know and understand what they're seeing and who earn their living making courtroom drama intelligible to a lay audience. The trusty beat reporter doesn't sensationalize, if

only because it will sour his relationship with the court.

And he knows how to give an account of judicial proceedings for a lay audience that is in some ways superior to a seat inside the courtroom. When the public sees a trial for itself, or through the lens of the camera, there's always a risk of misunderstanding: The public may mistake zealous advocacy for obstruction of justice, or vice versa. A judge's impartial ruling, based on binding law, may seem arbitrary or even biased; when a defendant prevails on an obscure legal ground like immunity or jurisdiction, some will see injustice. On the other hand, the trusty beat reporter can fairly and accurately explain the trial so as to educate the public while avoiding misunderstanding.

Sounds good, and if the choice were between that and the O.J. media circus, we would have a hard choice indeed. But, in truth, we may never have had the ability to restrict media coverage to these super-journalists. Such reporters have occasionally walked the earth, but print media isn't uniformly composed of the best of the best. The *Sheppard* case, for example, illustrates what can happen when newspaper journalism goes bad. And even if print media were all goodness and light, banning cameras from the courtroom wouldn't prevent TV coverage. Many people, disappointed at not being able to watch the recent trial of Michael Jackson, watched a daily reenactment on the E! network instead.

And the TV media also can't be stopped from capturing sensationalist footage of the defendant or the victims outside the courtroom.

The trusty beat reporter is also proving increasingly elusive, and will only become more so in the future. We've seen a long, slow decline in the

newspaper industry, and it recently got a lot worse: In 2009, over one hundred newspapers closed, and over 10,000 newspaper jobs were lost. There's no reason to think those papers and jobs will come back; if anything, the state of the print industry is only going to decline further. Craig killed the classifieds; newspaper.com cannibalized The Newspaper; JDate wooed away the personals; Monster devoured help wanted; and the fastest way to get the news is through the blogosphere (or, better yet, the Twitterverse). The old business model is no longer sustainable, and as newspapers decline the beat reporter will disappear along with them.

Instead, we're witnessing the rise of a much more diffuse style of reporting. Consider the recent criminal prosecution of the chemical company W.R. Grace (of *A Civil Action* fame) for mining practices that allegedly caused a lung cancer outbreak in Libby, Montana. The trial was in Missoula, but the prosecution requested the creation of an overflow room in Libby - a four-hour drive away. The court denied the request in light of the ban on cameras in federal criminal trials. But the result wasn't that members of the Libby community had to wait patiently for a trusted beat reporter to file an evening dispatch. The trial was covered in real-time via Twitter, at feeds such as *msIngracetrials* (a local print journalist), *UMGraceCase* (a group of students from the University of Montana), *wrgracetrials* (a local TV station) and *asinvestigates* (an investigative reporter).

Some of this coverage may have been provided by impartial journalists, but much of it wasn't. Tweets from

asinvestigates, for instance, were stridently pro-prosecution. When the defense seemed to score points, asinvestigates suggested that “Grace lawyers team[ed] up to stifle government expert witness.” Or, in another tweet: “Second week of Grace trial ends with defense using usual tricks to discredit physicians.” On the other hand, when the prosecution scored points it was a triumph of justice: “Defense fails to prove that EPA’s top emergency response wizard was a cowboy who made bad decisions.” Asinvestigates also made his feelings about the judge quite clear: “A statue of Lady Justice in Judge Molloy’s courtroom would need earplugs along with her blindfold.” Without the context of a video recording, the public had no way to evaluate the truth of these observations.

Because the internet gives a platform to everybody who cares enough to make his voice heard, it’s often inevitable that the loudest voices will be those who care the most. During a recent medical malpractice trial in Massachusetts, a blogger named “Dr. Flea” provided a strongly pro-defense account. The blog attracted a sympathetic following, even won an award as one of the best medical blogs on the internet. Surprise: It turned out that Dr. Flea was none other than the defendant. It may not usually be litigants themselves who take to the blogs, but members of the public who feel some sort of a personal stake in a trial - because they know a litigant or victim, because they have had some similar experience or simply because they feel passionately about the issue - will frequently use the internet to disseminate their views. And they won’t always make their biases explicit.

Let’s be clear: There’s absolutely nothing wrong with opinionated people

making their opinions known; it is every citizen’s right and privilege to express discontent with the way a trial has been handled, or to declare a firm belief that a defendant is guilty as sin (or innocent as virtue) and deserves to be convicted (or not). The problem arises when such coverage becomes the public’s primary means of experiencing a trial and - in particular - when the public lacks the tools to evaluate those opinions. If partisans dominate the public’s understanding of what goes on inside the courtroom, the public will become more likely to mistake a correct verdict for a miscarriage of justice, or to miss a genuinely unjust verdict because the wrongly prevailing party made a lot of (metaphorical) noise online. That can only erode the public’s respect for the business of the courts and, ultimately, the public’s regard for the rule of law.

The trusty beat reporter can’t help us out of this new paradigm; even if he weren’t disappearing, no single voice could rise out of the online din to establish itself as sufficiently authoritative to serve that function today. Nor is the solution to keep new forms of media out of the courtroom. If judges banish laptops and smart phones, bloggers will simply wait to post until after court is out, and tweeters will run across the hall to tweet where the tweeting’s good. If judges forbid tweeting in the hallway, they’ll just tweet on the courthouse steps. Judges obviously can’t ban the public from using the internet altogether, and the reality today is that the internet gives every member of the public a platform to make his opinion known. When a high-profile case attracts attention, the people who care the most will seize that platform and make every effort to skew the public’s perception of the trial. What we urgently need is an impartial voice,

capable of truthfully and authoritatively recounting the events of trial for the absent public in order to set the record straight.

Luckily, the courtroom camera is ready, willing and able to step into that role. It's no longer the case that the courtroom camera must be operated by the media, as it was during the O.J. trial. Video cameras have become cheap and ubiquitous, and many courtrooms already have cameras installed for internal court use: to create video records, to allow participants to make remote appearances, to provide overflow facilities in nearby rooms.

The internet has also made it possible to cheaply disseminate video worldwide. It's only a small step - both in terms of expense and technical knowhow - for courts to make footage from a court - operated camera available online. In fact, a number of jurisdictions, including the Ninth Circuit, have already taken or considered such measures. Combined with a delay before posting, this approach gives judges and litigants an opportunity to prevent dissemination of video if the need arises. And such video can be presented in as boring and straightforward a fashion as you please: no close-ups, no moving camera and no filming of the defense table or the gallery.

Perhaps most significantly, footage of the trial can also be posted online in full, without editing or interruption. This matters because, although the camera doesn't lie, editors sometimes do: Choice selection of footage can pull words out of context and warp the meaning of statements by lawyers, witnesses and judges. Editing will also often focus public attention on the sensational aspects of the trial, at the expense of the proceedings' bread and

butter. This, in turn, distorts public perceptions and diminishes public respect for the seriousness of the judicial process. In fact, when the Federal Judicial Center ran its pilot program of cameras in federal courts, the lack of gavel-to-gavel coverage was one of its few negative findings, although the study nevertheless found that judges overwhelmingly believed that cameras in the courtroom helped to educate the public about the courts. If courts control the cameras, those already considerable benefits will be magnified, and the public will be provided with the impartial and authoritative account of proceedings that is required in our present internet age.

While the choice between the court-operated camera and the trusty beat reporter might be a tough one, the choice between the camera and the Twittiverse isn't. The days when a trial could proceed in sleepy obscurity, unless reported by "reputable" and trustworthy journalists, are gone - if they ever existed. The spectators have arrived, and they're armed with laptops, Blackberries and iPhones. If the public is going to judge the resulting cascade of information, it must be given the tools and information necessary to decide for itself whom to believe. We must let cameras into the courtroom for the same reason that we kicked them out 75 years ago: to advance the public's understanding of the justice system.

CONCLUSION

And yet, in the federal district courts, the pre-Hauptmann status quo remains remarkably unchanged, at least when it comes to cameras. So far, Congress has been patient with that glacial pace of change, but such forbearance cannot last forever. Legislation is currently

pending that would authorize district judges to allow media recording and broadcast of court proceedings. If the federal courts don't change with the times, others will institute change for us.

Rightly so. If the public is to appreciate our justice system, and the legal regime that it upholds, the public must have full and fair information about

proceedings in the courts. That means something different today than it did in 1935, when courts and members of the bar first considered the issue of cameras in the courtroom. We must consider the issue again, in light of the world today.

APPENDIX

Table 1. Ratings of Effects by District Judges Who Experienced Electronic Media Coverage Under the Federal Judicial Center Pilot Program, by Percentage

Effect	To Little or No Extent	To Some Extent	To a Moderate Extent	To a Great Extent	To a Very Great Extent	No Opinion
Violates witnesses' privacy	37	34	10	7	5	7
Makes witnesses less willing to appear incourt	32	27	15	2	2	22
Distracts witnesses	51	22	15	2	2	7
Makes witnesses more nervous than they would otherwise be	24	37	22	5	0	12
Increases juror attentiveness	46	22	7	7	2	15

Effect	To Little or No Extent	To Some Extent	To a Moderate Extent	To a Great Extent	To a Very Great Extent	No Opinion
Signals to jurors that a witness or argument is particularly important	51	15	10	5	7	12
Increases jurors' sense of responsibility for their verdict	49	15	15	10	0	12
Prompts people who see the coverage to try to influence juror-friends	54	10	7	0	0	27
Motivates attorneys to come to court better prepared	32	32	15	10	7	5
Causes attorneys to be more theatrical in their presentation	29	37	20	2	5	7

Continue – Table 1

Effect	To Little or No Extent	To Some Extent	To a Moderate Extent	To a Great Extent	To a Very Great Extent	No Opinion
Prompts attorneys to be more courteous	44	20	15	17	2	2
Increases judge attentiveness	63	10	15	10	2	0
Causes judges to avoid unpopular decisions or positions	88	2	5	2	0	2
Prompts judges to be more courteous	56	22	15	7	0	0
Disrupts courtroom proceedings	83	15	0	2	0	0
Educates the public about courtroom procedure	12	20	12	24	30	2

Table 2. Attorney Ratings of Electronic Media Effects in Proceedings in Which They Were Involved During the Federal Judicial Center Pilot Program, by Percentage

Effect	To Little or No Extent	To Some Extent	To a Moderate Extent	To a Great Extent	To a Very Great Extent	No Opinion
Motivate witnesses to be more truthful than they otherwise would	58	3	2	0	0	38
Distract witnesses	52	18	9	5	0	17
Make witnesses more nervous than they otherwise would be	46	21	12	5	2	15
Increase juror attentiveness	26	6	8	6	0	55
Distract jurors	30	9	6	4	0	52

Effect	To Little or No Extent	To Some Extent	To a Moderate Extent	To a Great Extent	To a Very Great Extent	No Opinion
Motivate attorneys to come to court better prepared	71	11	7	4	1	6
Cause attorneys to be more theatrical in their presentation	78	7	9	2	3	2
Distract attorneys	73	20	6	1	0	1
Prompt attorneys to be more courteous	80	12	3	1	0	5
Increase judge attentiveness	54	17	10	6	1	12
Prompt judges to be more courteous	62	12	8	4	3	11
Disrupt the courtroom proceedings	77	10	8	3	0	3

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