

The Future of Cameras in the Courts: Florida Sunshine or Judge Judy

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Abstract

This paper explains why electronic broadcasting devices, including both video and audio, should be standard equipment in any courtroom given that newspaper readership is declining sharply and newspapers are cutting staff. The public now looks to so-called reality courts such as Judge Judy for how the legal system operates. It begins with an introduction discussing what many consider the trial that quashed momentum on broadcasting court proceedings: the O.J. Simpson trial. The article then considers a brief legal history of cameras in the courts, recent legislation on the topic, and arguments against cameras in the courts, including why those arguments fail. It concludes with the rationales for why broadcasting court proceedings is important to the public interest.

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Preface

I have worked as a radio news reporter for the past 15 years, covering the courts for the past 10. I have covered state and federal trials, state and federal appellate court proceedings, and arguments at the United States Supreme Court. Minnesota's appellate courts – the Court of Appeals and the Supreme Court – allow video and audio recording and broadcasts. Currently, computer users can view the state Supreme Court's oral arguments as streaming video or as archival footage.¹

Meanwhile, state and federal district courts are off limits to cameras. One case that screamed out for broadcast coverage was *State of Minnesota v. Philip Morris*, Minnesota's landmark tobacco trial.² The testimony from that trial had worldwide importance for public health. Yet because the state barred cameras from that courtroom, the public received only a fraction of what then Minnesota Attorney General Hubert "Skip" Humphrey called the "smoking howitzers" of damning tobacco documents.³ The public never saw the documents come up on the screen one after another. They never saw the CEOs of America's tobacco companies unravel on the witness stand. Reporters in the courtroom did. I kept thinking throughout the trial that the public should see *all* of this case. To be sure, they could read about it in the newspapers but they could not see it or hear it. Those who watched television news only saw and heard the attorneys talking outside the court, spinning their versions of the testimony that occurred inside the court. Cameras would have performed a monumental public service in that case, and can perform that same service in other cases throughout the country.

¹ Minnesota Supreme Court Oral Arguments-Videos, <http://www.tpt.org/courts/> (last visited Nov. 8, 2007).

² *Minnesota v. Philip Morris, Inc.*, 551 N.W.2d 490 (Minn. 1996).

³ *All Things Considered: State Rests in MN Tobacco Trial* (NPR radio broadcast Mar. 24, 1998), available at LEXIS, Transcript No. 98032412-212.

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O.J. Simpson

Whenever the issue of placing cameras in courtrooms for broadcast arises, O and J follow right behind. The O.J. Simpson murder case in 1995 attracted national attention as the “trial of the century.”⁴ A California court, with Judge Lance Ito presiding, tried Simpson for the murders of Simpson’s wife, Nicole Brown Simpson, and Ronald Goldman.⁵ Because California allows cameras in its courtrooms, Americans had the opportunity to watch nearly nine months of this high-profile trial.

What if the Simpson case had *NOT* been easily accessible to the American public? While it is true that reporters from all over the world likely would have covered the trial, the public would not have had the opportunity to see and judge the case for itself. It is one thing to hear about Johnnie Cochran’s “If it doesn't fit, you must acquit,”⁶ it is another to watch it in the courtroom. The most valuable benefit that came from televising the O.J. Simpson trial was that it exposed the divergent views of how people of color and whites viewed the case, and on a larger scale, the justice system itself.⁷

Those who watched the televised trial saw in large part the same evidence as the jury. If the cameras had not been there, the public would have read about the case in the newspapers or heard reporters talk about the trial on radio or television.

There is no way that a journalist can cover every detail in a trial, however. Print journalists cannot capture every inflection or nuance in a person’s voice. Audio and

⁴ Arenella, *Levenson & Co.: The Legal Pad—The O.J. Simpson Murder Trial*, L.A. TIMES, September 2, 1995, at A26. The author notes that many trials have been called the “trial of the century”.

⁵ *People v. Simpson*, No. BA097211, 1995 WL 697928 (Cal. Super. Ct. Jan. 24, 1995).

⁶ Transcript of Closing Argument at *46, *People v. Simpson*, No. BA097211, 1995 WL 697930 (Cal. Super. Ct. Jan. 24, 1995).

⁷ See Cathleen Decker, *The Times Poll: Most in the County Disagree with Simpson Verdicts*, L.A. TIMES, October 8, 1995, at A1 (“The telephone poll . . . illustrated the deep racial divide on the Simpson matter, a stark disagreement in which blacks and whites are frequently polarized and Latinos reside generally in the middle.”).

video equipment can, and it did. Those who disagreed with the Simpson verdict could not argue that reporters left out key information that would have explained the decision. It is doubtful that this nation would have had the same kind of discussion about race and the courts if it had not been for the cameras in that courtroom.

Before O.J., There Was Hauptmann

Bruno Hauptmann stood trial in Flemington, New Jersey for kidnapping the baby son of flying ace Charles Lindbergh. The press was at its worst. Reports say more than 130 cameramen tried to cover the trial and even though the judge banned them from photographing witnesses, many did so anyway.⁸ As Gillmor and Barron wrote, “Few cases in the annals of American crime received wider attention or gave greater impetus to criticism of the press than the Lindberg kidnapping trial.”⁹ The American Bar Association was so incensed it adopted Canon 35 of Judicial Ethics, which bans cameras in court.¹⁰

Then in 1965, the Supreme Court considered television coverage of court proceedings in *Estes v. Texas*.¹¹ Billy Sol Estes appealed a Texas County jury’s verdict that found him guilty of swindling. Estes argued that the live radio and television broadcasts of his trial denied him Due Process under the 14th Amendment.¹² The Supreme Court agreed. Writing for the Court,¹³ Justice Tom C. Clark ran through a parade of horrible consequences in which jurors are distracted by “the camera telltale red

⁸ See Richard B. Kielbowicz, *The Story Behind the Adoption of the Ban on Courtroom Cameras*, 63 *Judicature* 14, 17-19 (1979).

⁹ DONALD M. GILLMOR & JEROME A. BARRON, *MASS COMMUNICATION LAW: CASES AND COMMENT* 392 (2nd ed. 1974).

¹⁰ *Estes v. Texas*, 381 U.S. 532, 596-97 (1965) (citing 62 A.B.A.Rep. 1134-1135 (1937) (proceedings of the House of Delegates as adopted on September 30, 1937)).

¹¹ *Id.* at 534-35.

¹² *Id.* The Fourteenth Amendment prohibits any state from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, §1.

¹³ There were six opinions in *Estes*.

lights,”¹⁴ and in which witnesses “*may* be demoralized and frightened.”¹⁵ Yet at the same time, Justice Clark acknowledged that the Court had no proof to support its position.

At the outset the notion should be dispelled that telecasting is dangerous because it is new. It is true that our empirical knowledge of its full effect on the public, the jury, or the participants in a trial, including the judge, witnesses, and lawyers, is limited.¹⁶

As I will detail later in this article, many of Justice Clark’s arguments are still used today even though Clark had no empirical evidence that cameras caused any harm to defendants. In addition, the 1965 televised courtroom atmosphere would never occur today. At Estes’ trial, there were 12 cameramen in the courtroom with wires and microphones strung across the court like a labyrinth.¹⁷ Today, cameras and audio recording devices are small, unobtrusive, and quiet. Nevertheless, these same arguments against broadcasting court proceedings persist.

Cracking Open the Courtroom Door with Richmond Newspapers

In *Richmond Newspapers, Inc. v. Virginia*, the Supreme Court ruled for the first time that the public had a constitutional right to physical access to the courts.¹⁸ Richmond Newspapers had appealed a Virginia trial judge’s decision to hold a murder trial in secret.¹⁹ The Virginia Appeals and Supreme Courts upheld closing the courtroom but the United States Supreme Court reversed. Chief Justice Warren Burger said open trials have been the norm for centuries and that open courts not only assure defendants

¹⁴ *Estes*, 381 U.S. at 546.

¹⁵ *Id.* at 547 (emphasis added).

¹⁶ *Id.* at 541.

¹⁷ *Id.* at 536.

¹⁸ *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (“[T]he right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and ‘of the press could be eviscerated’” (quoting *Branzburg v. Haynes*, 408 U.S. 665, 681 (1972))).

¹⁹ *Id.* at 561.

that their trials will be managed fairly but they also have “therapeutic value” in helping the community deal with a crime’s aftermath.²⁰ He said,

Free speech carries with it some freedom to listen . . . What this means in the context of trials is that the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time the Amendment was adopted.²¹

Supreme Court Allows Florida Sunshine into Chandler Court

The Court went further in *Chandler v. Florida*.²² In *Chandler*, two Miami Beach police officers faced charges of burglary and grand larceny in connection with breaking and entering a well-known Miami Beach restaurant.²³ The case drew widespread attention. At the time, Florida was experimenting with a program (Canon A-3 (7)) to allow cameras in its courtrooms.²⁴ The officers objected to televised coverage of their trial but were overruled.²⁵ A camera was in the court for one afternoon when the state’s chief witness testified; there was nothing broadcasted of the defense.²⁶ The jury found the police officers guilty on all counts.²⁷ They appealed arguing that the televised coverage violated their right to a fair trial under the Sixth and Fourteenth Amendments.²⁸

Writing for the court, Chief Justice Warren E. Burger said there is always a risk of juror prejudice by news coverage. Nevertheless, he said the risk “does not justify an

²⁰ *Id.* at 570.

²¹ *Id.* at 576. *See also Id.* at 587 (Brennan, J., concurring) (“The First Amendment embodies more than a commitment to free expression and communicative interchange for their own sakes; it has a *structural* role to play in securing and fostering our republican system of self-government”).

²² *Chandler v. Florida*, 449 U.S. 560 (1981).

²³ *Id.* at 567.

²⁴ Fla. Code of Jud. Conduct Canon 3A (7). While the carefully worded rule did not prohibit electronic media coverage per se, it did not mandate it either.

²⁵ In *Chandler*, 449 U.S. at 567, Chief Justice Burger wrote that the officers made several “fruitless attempts” to prevent electronic coverage of the trial.

²⁶ *Id.* at 568.

²⁷ *Id.*

²⁸ *Id.*

absolute ban on news coverage of trials by the printed media; so also the risk of such prejudice does not warrant an absolute constitutional ban on all broadcast coverage.”²⁹ Moreover, what was especially important in the *Chandler* opinion was that it put *Estes* in the past, particularly from a technological perspective. *Chandler* spoke about how factors in *Estes* were no longer issues.³⁰ For example, cameras are smaller and do not require the kind of lighting as in 1962, or the number of technicians.³¹

State courts currently run the gamut in allowing electronic taping and broadcasting of their proceedings. Some like Florida expressly allow cameras in their courts without any request to the judge.³² Others such as Utah do not allow any electronic taping unless necessary to preserve the record or for special ceremonies.³³ States like Wisconsin presume cameras and audio will be in the courtroom unless the judge can articulate good cause in a particular case.³⁴ Florida completed the pilot project in action during the *Chandler* case and conducted its own study.³⁵ The court retained the cameras in the courtrooms with an order so detailed it specified the brands of acceptable cameras and audio equipment.³⁶

Recent Legislation Supporting Cameras in the Courts

When legislators met during the 109th Congress (Jan. 3, 2005 to Jan. 3, 2007) they considered five bills that would have required courts to allow cameras and audio in the

²⁹ *Id.* at 575.

³⁰ *Id.* at 576 (“Not unimportant to the position asserted by Florida and other states is the change in television technology since 1962, when *Estes* was tried.”).

³¹ *Id.*

³² Fla. R. Jud. Admin. 2.450.

³³ Utah R. Jud. Admin. 4-401(1)(a)-(b).

³⁴ Wis. Sup. Ct. R. 61.01-61.12.

³⁵ *In re Post-Newsweek Stations*, 370 So. 2d 764, 767-70 (1979) (including surveys of judges, attorneys, witnesses, and jurors, as well as the experiences in other states).

³⁶ *Id.* at 785.

federal courts. These bills included: H.R. 2422, H.R. 4380, S. 829, and S. 1768. House members later amended H.R. 1751 to authorize electronic media coverage in the courts.

H.R. 1751, H.R. 2422, and S. 829 focused on federal (district and appellate) courts, and H.R. 4380 and S. 1768 focused on the Supreme Court. The three bills that centered on the district and appellate courts included safeguards for witnesses. They also required judges to inform witnesses that they had the right to have their faces obscured and their voices altered as ways to shield their identities. H.R. 1751 additionally required judges to inform jurors of this same right.

In all of the bills, presiding judges retained the discretion to close the proceedings to cameras. In the Supreme Court, a majority of the justices could vote to close the arguments to cameras. Overall, the legislation was similar to that which Congress considered but failed to pass during its 105th Session. Sadly, the 109th Congress also failed to pass any of the five bills relating to cameras in the federal courts. None of the bills made it through the House. Opponents made a variety of objections to the bills, subjects to which I now turn.

Opposition

There are myriad reasons for keeping cameras and audio equipment out of America's courtrooms. Some of these reasons are legitimate, some are specious, and some are downright silly.

1. Cameras in Court Intimidate Witnesses and Jurors

One of the most valid concerns about cameras in the courts is that they alter the proceedings in such a way that denies defendants the right to fair trials. Specifically,

opponents such as U.S. District Court Judge Jan DuBois (Eastern District of Pennsylvania) argue that cameras will intimidate witnesses and jurors.³⁷

The paramount responsibility of a district judge is to uphold the Constitution, which guarantees citizens the right to a fair and impartial trial. In my opinion, cameras in the district court could seriously jeopardize that right because of their impact on parties, witnesses, and jurors.³⁸

Supreme Court Justice Stephen Breyer has expressed similar concerns that cameras in courtrooms will negatively affect participants in court proceedings.

The risks are that the witness is hesitant to say exactly what he or she thinks because he knows the neighbors are watching. The risk might be with some jurors that they are afraid that they will be identified on television and thus could become the victims of a crime.³⁹

In federal criminal courts, the Federal Rules of Criminal Procedure (Rule 53) bar the use of cameras and audio equipment for recording or broadcasting. Nevertheless, in the early 1990s, the Judicial Conference (the policy-making arm of the federal courts) embarked on a 3-year pilot project from Jul. 1, 1991 to Dec. 31, 1994 to allow⁴⁰ electronic media into six district and two appellate courts for civil matters.⁴¹ The courts participating in the project were: the U.S. District Courts for the Southern District of Indiana, the District of Massachusetts, the Eastern District of Michigan, the Southern District of New York, the Eastern District of Pennsylvania, and the Western District of

³⁷ *Cameras in the Courtroom: Hearing Before the Comm. on the Judiciary*, 109th Cong. 14 (2005) (statement of Jan DuBois, J., U.S. Dist. Ct., E.D.P.A.).

³⁸ *Id.*

³⁹ *Q & A: Interview with Justice Breyer* (C-SPAN television broadcast Dec. 4, 2005).

⁴⁰ Electronic journalists who wanted to cover the proceedings in the pilot courts had to apply to the court and secure permission from the presiding judge. Eighty-two percent of the applications were approved. MOLLY TREADWAY JOHNSON & CAROL KRAFKA, FED. JUDICIAL CTR., ELEC. MEDIA COVERAGE OF FED. CIVIL PROCEEDINGS: AN EVALUATION OF THE PILOT PROGRAM IN SIX DIST. COURTS AND TWO COURTS OF APPEALS 7 (1994), available at [http://www.fjc.gov/public/pdf.nsf/lookup/elecmediacov.pdf/\\$file/elecmediacov.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/elecmediacov.pdf/$file/elecmediacov.pdf).

⁴¹ *Id.* at 5.

Washington. The U.S. Courts of Appeals for the Second and Ninth Circuits also participated. The study evaluated the period from July 1, 1991 through June 30, 1993.⁴²

In 2000, Chief Judge Edward R. Becker of the U.S. Court of Appeals for the Third Circuit told the Senate Judiciary Subcommittee on Administrative Oversight and the Courts that the study revealed that nearly two-thirds of judges who took part in the project said that, “at least to some extent,” cameras make witnesses more nervous than they otherwise would be; and 46% of the judges believed that, at least to some extent, cameras make witnesses less willing to appear in court.⁴³

The Judicial Conference in its role as the policy-making body for the federal Judiciary has consistently expressed the view that camera coverage can do irreparable harm to a citizen's right to a fair and impartial trial. We believe that the intimidating effect of cameras on litigants, witnesses, and jurors has a profoundly negative impact on the trial process.⁴⁴

At the time, Becker was testifying against S. 721, a senate bill that would have allowed cameras in federal courts. He cited the murder trials of O.J. Simpson; the Menendez brothers; Dr. Sam Sheppard; and even the Lindbergh baby kidnapping trial as examples where cameras created a “media spectacle” around court proceedings.⁴⁵

What is interesting about Becker’s testimony is that it bears little resemblance to the study’s actual findings. The study found that judges who had been neutral on cameras in their courts became more favorable after their pilot program experiences.⁴⁶

Judges and attorneys in the program generally reported observing small or no effects of

⁴² *Id.* at 4.

⁴³ Press Release, Administrative Office of the U.S. Courts, Judicial Conference Opposes Bill to Bring Cameras into Federal Courts (Sept. 6, 2000), *available at* http://www.uscourts.gov/Press_Releases/press_090600.html.

⁴⁴ *Id.*

⁴⁵ *Media Coverage of Court Proceedings: Hearing on S. 721 Before S. Subcomm. on Administrative Oversight and the Court*, 106th Cong. 3 (2000) (statement of Edward R. Becker, member, Executive Comm. of the Judicial Conference of the United States) [hereinafter *Becker*].

⁴⁶ TREADWAY JOHNSON & KRAFKA *supra* note 40, at 7.

camera presence on participants in the proceedings, courtroom decorum, or the administration of justice.⁴⁷ Judges and court staff reported that members of the media were very cooperative and complied with the program's guidelines and any other restrictions imposed.⁴⁸ Moreover, unlike Becker's address, the study recommended that the federal civil courts *expand* access to the electronic media.⁴⁹ It found that cameras did not disrupt the courts proceedings, affect the participants, or most importantly, interfere with the administration of justice.⁵⁰

Becker's concern, which mirrors Justice Breyer's, is that cameras will intimidate witnesses, particularly the vulnerable ones. Consider an extreme example. Suppose a child must testify against his or her sexual abuser in open court in full view of cameras that are televising the case live.⁵¹ Would such a child be victimized not only a second time for recounting the abuse, but also a third time for having his or her identity known to a television audience? Yes. This is an argument many opponents put forward, but it is one laden with faulty assumptions.

First, there is no evidence that journalists would identify a child victim. Journalists have long protected the identities of rape victims by not naming them. There is no reason why they would not protect a child abuse victim's identity – both in name *and* in appearance and voice. Second, legislation introduced in the past several Congresses, as explained earlier, specifically called for obscuring and altering witness

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 43.

⁵⁰ *Id.*

⁵¹ Compare *Coy v. Iowa*, 487 U.S. 1012 (1988) (screen between child accuser from accused violates Sixth Amendment right of confrontation) with *Maryland v. Craig*, 497 U.S. 836 (1990) (closed screen television of child's testimony in proper circumstances not a violation of Sixth Amendment right of confrontation) and *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982) (blanket closure of sex offender trials during minor's testimony violates the First Amendment right of public access).

faces and voices in order to protect their identities. Third, this same legislation also gave judges discretion to close the proceedings.

2. Impeding the Fair Administration of Justice

Unlike Justice Clark's opinion in *Estes*, we do have empirical evidence about cameras in courtrooms. Consider the state of Wisconsin, which has authorized cameras in its courtrooms since 1979.⁵² If placing cameras in Wisconsin's courts had caused problems, Wisconsin would not have continued the practice for nearly 30 years, as it has. There is no better case study regarding the effects of cameras in courtrooms than an entire state that has continually allowed them for nearly three decades.

Over the past 20 years, courts have evaluated the effects of videotaping and broadcasting equipment on the legal process. They prove that modern unobtrusive cameras and audio equipment have not replicated the so-called media circus of the Hauptmann case of more than 70 years ago. In *Katzman v. Victoria's Secret Catalogue*, the New York court found that a camera in court "does not impede the fair administration of justice, does not compromise the dignity of the court, and does not impair the orderly conduct of judicial proceedings."⁵³ In *Katzman*, a class sued the catalogue for violating the RICO Act⁵⁴ by charging different prices to different consumers for the same merchandise.⁵⁵ *Court TV* wanted to broadcast the oral arguments of the catalogue's motion to dismiss.⁵⁶ In granting *Court TV's* request, the court said there could no longer

⁵² Rules Governing Electronic Media and Still Photography Coverage of Judicial Proceedings, Wis. Sup. Ct. R. 61.01-61.12, effective Jul. 1, 1979.

⁵³ *Katzman v. Victoria's Secret Catalogue*, 923 F. Supp. 580, 585 (S.D.N.Y. 1996).

⁵⁴ Organized Crime Control Act, 18 U.S.C. §§ 1961-1965 (1970) (Ch. 96 is the Racketeer Influenced and Corrupt Organizations Act or "RICO").

⁵⁵ *Katzman*, 923 F. Supp. at 582.

⁵⁶ *Id.*

be a distinction between the print and electronic media.⁵⁷ From 1987 to 1997, New York courts allowed audio-visual access under Judiciary Law Sec. 218. Unfortunately, the Legislature let it sunset which revived Sec. 52, a per se ban on audio-visual courtroom coverage.⁵⁸

Several years later, the New York Supreme Court took up the cameras issue again. It struck down the state's blanket prohibition on televising court proceedings as unconstitutional.⁵⁹ The case was a high profile one. Four white New York City policemen stood trial for killing New Guinea immigrant Amadou Diallo.⁶⁰ Diallo, who was unarmed, died of 19 gunshots.⁶¹ The court said Sec. 52 was not only invalid but also discriminatory. "This court can hardly envision any serious argument that a rational basis can be crafted to justify what appears to be a clear discrimination against the electronic media."⁶²

3. Cameras in the Courts Will Lessen the Dignity of the Courts

If cameras in California's courts, even in the Simpson trial, had corrupted the public's view of the legal system, then subsequent studies would have reflected that. They have not. In fact, that trial actually helped teach viewers about legal principles. In 1998, the American Bar Association commissioned a nationwide study to assess the public's understanding of and confidence in the justice system.⁶³ The study found that

⁵⁷ *Id.* at 588.

⁵⁸ N.Y. CIV. RIGHTS LAW § 52 (Consol. 2002).

⁵⁹ *People v. Boss*, 701 N.Y.S.2d 891, 895 (2000) ("This ban arises not from scholarly debate but rather the . . . failure of the Legislature to maximize the press and public's legitimate constitutional access to the courts.").

⁶⁰ *People v. Boss*, 261 A.D.2d 1, 3 (1999).

⁶¹ Kevin Finn, *Report Offers Details on Police Bullets That Hit Diallo*, N.Y. TIMES, May 4, 1999, at B5.

⁶² *Boss*, 701 N.Y.S.2d at 893.

⁶³ M/A/R/C RESEARCH, AMERICAN BAR ASS'N., PERCEPTIONS OF THE U.S. JUSTICE SYSTEM (Aug. 1998) [hereinafter *Perceptions*]. The study surveyed 1,000 Americans by telephone between Aug. 6 and Aug. 31, 1998.

despite O.J., public confidence in the U.S. court system had *increased* since a study 10 years earlier.⁶⁴ The research concluded that knowledge and experience influence an individual's confidence in the justice system and those individuals who possess more knowledge and have positive court experiences are more satisfied and less critical of the legal system.⁶⁵

The study also found that the public's knowledge of the legal system varies widely, but nearly all the participants knew that a person accused of a crime has the right to a lawyer and that a person acquitted in a criminal trial can still face a civil suit.⁶⁶ The editors hypothesized that "people learned this information from the widespread media coverage of the O.J. Simpson trials."⁶⁷

On the other hand, the study found that one-third of the respondents thought that a defendant is guilty until proven innocent.⁶⁸ Disturbingly, the public's confidence in attorneys rated only 14%, which was only better than the media at 8%.⁶⁹ While opponents of cameras in the courtroom will argue that the study's findings support barring cameras, it does not. As with many analyses of journalism, the ABA's report did not break down the findings attributable to different *kinds* of media. For example, the report includes national newspapers with radio talk shows and even *Judge Judy* under the "media" umbrella.⁷⁰

⁶⁴ *Id.* at 7.

⁶⁵ *Id.*

⁶⁶ *Id.* at 9.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 95.

More recently, the state of California issued its own findings and recommendations about *Trust and Confidence in California Courts*.⁷¹ The report specifically addressed the issue of cameras and knowledge about the legal system. The research found Californians' knowledge of the courts increased with exposure to court information in newspapers, the Internet, actual televised trials, and the actual court itself.⁷² Unlike the ABA study, the California report distinguished between the different kinds of media. While it found that residents learned about the law from newspapers and televised trials, it found just the opposite for those who watched fictional court dramas.⁷³ Californians rated their court system highest in "respect and dignity," as well as procedural fairness.⁷⁴

4. Sound Biting and Misrepresenting the Court

Chief Judge Edward R. Becker also criticized news agencies in the federal court experiment for reducing the court proceedings to "short sound bites" and "not in-depth" reports.⁷⁵ The study found that the reporters used an average of 56 seconds of courtroom footage per story.⁷⁶ In journalism, as in the law, context is everything. While 56 seconds may sound brief, it is not brief in terms of broadcast stories that often are only several minutes long. In addition, the federal court's pilot project did not take into account that

⁷¹ JUDICIAL COUNCIL OF CALIFORNIA, NAT'L CTR. FOR STATE COURTS, TRUST AND CONFIDENCE IN THE CAL. COURTS: A SURVEY OF THE PUBLIC AND ATTORNEYS (Sep. 2005), available at http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf.

⁷² *Id.* at 3.

⁷³ *Id.* ("Exposure to fictional representations of how the courts work is associated with lower self-ratings of familiarity with the courts by members of the public.")

⁷⁴ *Id.* at 6.

⁷⁵ See Becker, *supra* note 45.

⁷⁶ TREADWAY JOHNSON & KRAFKA *supra* note 39, at 34.

Court TV provides live broadcasts of daily trials from nine to three Monday thru Friday.⁷⁷

Moreover, C-SPAN has had a standing offer to broadcast the Supreme Court gavel-to-gavel, without breaks, interruptions, or commentary.⁷⁸

Nevertheless, the Supreme Court, which is regarded as the forefront of all logic and analysis, makes some of the most illogical and contradictory statements in arguing against cameras in its court. Take the often-caustic Supreme Court Justice Antonin Scalia, who said cameras in his court would “miseducate and misinform.”⁷⁹

Most of the time the court is dealing with bankruptcy code, the internal revenue code, [the labor law] ERISA -- stuff only a lawyer would love. Nobody's going to be watching that gavel-to-gavel except a few C-SPAN junkies . . . For every one of them, there will be 100,000 people who will see maybe 15 second take-out on the network news, which I guarantee you will be uncharacteristic of what the Supreme Court does.⁸⁰

Yet this very Supreme Court does not always offer gavel-to-gavel viewing even when the public physically lines up on the Courthouse steps waiting to get a seat. It is my understanding that when there are high-profile arguments, the court limits individuals to 15 minutes to watch the proceedings. This is hardly gavel-to-gavel. Moreover, Justice Scalia assumes no one would watch “except a few C-SPAN junkies.” In 2006, the Pew Research Center for the People & the Press released a survey that found an estimated

⁷⁷ COURTTV.COM: Program Schedule,

<http://www.courttv.com/schedule/index.html?tempDate=2&nextWeek=no> (last visited Jan. 10, 2008).

⁷⁸ Letter from Brian P. Lamb, Founder and Chairman, C-SPAN, to John G. Roberts, Chief Justice of the United States Supreme Court (Oct. 3, 2005), *available at* http://www.c-span.org/pdf/supreme_crt_letter.pdf.

⁷⁹ Georgetown University: Supreme Court Justice Antonin Scalia Gives Civics Lesson, Oct. 20, 2006, <http://www1.georgetown.edu/explore/news/?DocumentID=19322>.

⁸⁰ *Id.*

20% of Americans sometimes or regularly watched C-SPAN.⁸¹ More than half of these viewers were less than 50 years old.⁸²

There are also ways of enhancing the information that would educate and inform the public about the legal system. Lorraine H. Tong, an analyst in American National Government and Finance Division for the Congressional Research Service suggests the Supreme Court Justices explain the context of oral arguments themselves. Tong recommended, they explain how the High Court works in a televised “Day in the Life of the Supreme Court.”⁸³ The Justices would talk about what happens when they decide to hear a case, what happens during oral arguments, and how they write opinions.⁸⁴ The same could be true for any court.

Even if Justice Scalia and Judge Becker were correct that cameras would reduce the proceedings to short sound bites, that is no different from newspapers reducing court proceedings to their version of sound bites known as “quotes.” The courts have not thrown out print journalists for reporting only small bits of judicial proceedings, yet at the same time as the judicial branch speaks of fairness and justice, it bars journalists from using their electronic equipment to cover the courts. The broadcast reporter’s tape recorder and video camera are the print journalist’s pen and notebook.

It is common for journalists after covering a trial or other court proceeding to seek comment from the parties. Print journalists whip out their notepads and interview parties right outside the courtroom doors. Electronic media have no choice but to persuade these

⁸¹ THE PEW CTR. FOR THE PEOPLE & THE PRESS, MATURING INTERNET NEWS AUDIENCE – BROADER THAN DEEP: ONLINE PAPERS MODESTLY BOOST NEWSPAPER READERSHIP 64 (2006), *available at* <http://people-press.org/reports/display.php3?PageID=1064>.

⁸² *Id.*

⁸³ LORRAINE H. TONG, CRS REPORT FOR CONGRESS: TELEVISIONING SUPREME COURT AND OTHER FEDERAL COURT PROCEEDINGS: LEGISLATION AND ISSUES 20 (2006), *available at* <http://www.fas.org/sgp/crs/secrecy/RL33706.pdf> [hereinafter *CRS Report*].

⁸⁴ *Id.*

same individuals to hold their comments until they can get outside the courthouse for reaction where they can record. It is also common after talking to print journalists to say, “Sorry, I’ve said everything I wanted to say just now.”

Justices and judges concerned about the accuracy of court reporting should welcome audio and video accounts of court proceedings. Audio and video do not lie; they do not record sound bites never said. That is not the case with a print journalist’s notebook. There is room for error in a print reporter scurrying to catch every quote. They go back to the office having only what they wrote down. They cannot go back to the tape to check their quotes. Electronic journalists can verify the accuracy of their accounts by reviewing their recordings, and indeed this is what they do.

In cases outside of courtrooms where I was allowed to tape, print reporters have approached me and asked if they could listen to my tape because they missed the last half of a good quote. Any good reporter who does not get the whole quote will likely avoid using any of it. That means that the public does not get that piece of information. A bad reporter will simply go by memory and that is not good for the public either. Moreover, quotes in newspaper articles convey only part of a speaker’s communication. Voices express meaning through cadence, nuance, and volume. Faces express communication through movement of facial features, particularly the eyes.

5. Justices, Judges, and Lawyers Will Grandstand

In March of 2006, U.S. Senators Orrin Hatch, Jeffrey Sessions, and Thomas Coburn voiced their opposition to cameras in courtrooms. The comments were in connection with S. 829 and S. 1768, which would have allowed cameras in federal

district and appellate courts, as well as the Supreme Court, respectively.⁸⁵ Sen. Coburn (R-OK) warned that broadcasting courtrooms would “ruin the third branch of government.”⁸⁶ Sen. Hatch (R-UT) said, “Judges are not politicians – they should not be making speeches from the bench.”⁸⁷ Sen. Jeffrey Sessions, (R-AL) said, “[P]olitical pressure should not be placed on the courts.”⁸⁸

The Supreme Court has already let the political genie out of the courtroom bottle in its ruling, *Republican Party of Minnesota v. White*.⁸⁹ In that case, Golden Valley, Minnesota attorney Greg Wersal challenged the state’s judicial ethics rule (Canon 5), which barred judicial candidates from announcing their views on political and legal issues. Wersal, a slightly balding, avuncular-looking man held press conferences tethered to a blue ball and chain emblazoned with “Canon 5.” Although losing at all of the lower courts, Wersal and the Republican Party challenged the case to the Supreme Court. The Supreme Court granted certiorari and by a vote of 5-4, the High Court ruled the state’s well-intentioned ethics rule imposed an unconstitutional gag order.⁹⁰

Some Minnesota judges who asked not to be named have said Wersal and the Republican Party’s challenge was rooted in an attempt to inject issues like abortion into judicial campaigns. Coincidentally, Wersal and the Republican Party hired James Bopp, Jr., to argue their case at the High Court. Bopp has served as general counsel for the James Madison Center on Free Speech for the past five years but has also served as

⁸⁵ *Id.* at 12.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Republican Party of Minn. v. White*, 536 U.S. 765 (2002) (“The role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance.”) (quoting *Wood v. Georgia*, 370 U.S. 375 (1962)).

⁹⁰ *White*, 536 U.S. at 788.

general counsel for the National Right to Life Committee for the past 24 years. Wersal and his attorney Bill Mohrman said no abortion groups funded the case, but the abortion issue did play a role in spurring the challenge.⁹¹

I don't think there's any question that groups such as pro-life activists - whose goals have are being thwarted primarily through the judicial system - will be very happy with [the] ruling. That's what they want.⁹²

Three years later, the Eighth Circuit went further. A majority of the Eighth Circuit Court of Appeals ruled judicial candidates could attend political party conventions, seek political party endorsement, and personally solicit campaign funds as long as the candidate did not know the donor's identity.⁹³ The court said the rules prohibiting such activities violated free speech rights.⁹⁴

These cases speak directly to why cameras are important in today's courtrooms on two levels: (1) whether judges will now feel freer to inject partisan political issues into their courtroom proceedings and (2) if not, whether private interests will pour money into attack ads that give voters the lion's share of information about judicial candidates.

It has never been more vital to have the public viewing judicial courtroom behavior. Now that judges have a legal basis to speak more publicly about controversial issues, the public needs to watch them even more closely. In these new circumstances, cameras in courtrooms do not prevent fair trials, they *enhance* fair trials. They are the eyes and ears of the public. Justice Louis Brandeis' words, "Sunlight is said to be the

⁹¹ Elizabeth Stawicki, *Supreme Court Overturns Speech Restraints on Judge Candidates*, MPR, June 27, 2002, available at http://news.minnesota.publicradio.org/features/200206/27_stawickie_scotus.

⁹² *Id.*

⁹³ *Republican Party v. White*, 416 F.3d 739 (8th Cir. 2005).

⁹⁴ *Id.* at 758.

best of disinfectants; electric light the most efficient policeman,”⁹⁵ wholly apply to cameras. As the Court itself observed, “[I]nformed public opinion is the most potent of all restraints upon misgovernment.”⁹⁶

With the Supreme Court and Eighth Circuit rulings, special interest groups have stepped up their financial support to sway elections. Legal scholar Deborah Goldberg of New York University law school's *Brennan Center* co-authored a study that found the flow of money into judicial races more than doubled from 1994 to 2000.⁹⁷ She called the court's Minnesota ruling on judicial speech unfortunate.⁹⁸ "It's likely to exacerbate the trend that we saw in the 2000 cycle, with increasing spending in judicial campaigns and decreasing civility in judicial campaigns," Goldberg says.⁹⁹ Since those rulings, the judicial campaign landscape has changed even more. Attack ads against judicial candidates have increased even in states that never had such ads, and money from special interests to pay those ads soared to new levels.¹⁰⁰

In November 2006, the *Brennan Center* at NYU Law School and a non-partisan Washington D.C.-based group updated their report and found special interest groups had poured an unprecedented amount of money into TV ads for judicial campaigns. *Justice*

⁹⁵ LOUIS BRANDEIS, *OTHER PEOPLE'S MONEY* 62 (1936) (“Publicity is justly commended as a remedy for social and industrial diseases.”).

⁹⁶ *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936).

⁹⁷ DEBORAH GOLDBERG, CRAIG HOLMAN & SAMANTHA SANCHEZ, *THE NEW POLITICS OF JUDICIAL ELECTIONS: HOW 2000 WAS A WATERSHED YEAR FOR BIG MONEY, SPECIAL INTEREST PRESSURE, AND TV ADVERTISING IN STATE SUPREME COURT CAMPAIGNS* 7 (2002).

⁹⁸ Stawicki, *supra* note 91.

⁹⁹ *Id.*

¹⁰⁰ Press Release, *Justice at Stake Campaign, Once Courtly, Campaigns for America's High Courts Now Dominated by Television Attack Ads* (Nov. 2, 2006), *available at* <http://www.justiceatstake.org/contentViewer.asp?breadcrumb=7,55,928>.

at Stake reported that the money spent on those ads had jumped nearly 20% in the past two years in judicial races around the country.¹⁰¹

Jesse Rutledge of *Justice at Stake* said since Minnesota's case in 2002, special interest groups increased their spending on judicial races from \$1.1 million in 2004 to \$1.8 million in 2006.¹⁰² "We've seen higher levels of fundraising in almost every state, much more active roles for 3rd party interest groups in the campaigns; and we're seeing TV ads that look like they should be for governor," said Rutledge.¹⁰³

If the public gets the bulk of its information about judges from public interest group attack ads then the judiciary will go to the highest (and partisan) bidder. The public will not have the option of viewing those ads in the context of what judges actually do in their courtrooms. The public will have to take the word of the attack ads that candidate A has a bad temper in the courtroom and candidate B is always respectful. If the public could see into the very courtrooms and watch the judges, it could put those attack ads into context. The public could watch a judge in action and decide for itself.

Judges should favor cameras in their courtrooms based on their own self-interest. Cameras show how judges manage their courtrooms. The public will judge the judges based on their on the job performance, not an attack ad. Moreover, the only people who regularly know what judges are like are the attorneys that practice before them. Counsel

¹⁰¹ *Id.*

¹⁰² Elizabeth Stawicki, Minnesota Public Radio, MPR: PACs pouring money into judicial campaigns – just not in Minnesota (Oct. 16, 2006), *available at* <http://minnesota.publicradio.org/display/web/2006/10/06/judiciaelection/>.

¹⁰³ *Id.*

is hardly in a position to criticize. In addition, cameras also see other elected officials in the courtroom – county attorneys.

Judges may not like what they see, however. In 2001, Minnesota’s Fourth District Court judges subjected themselves to scrutiny. The Fourth District includes the city of Minneapolis and surrounding counties. It is the busiest court district in the state of Minnesota. The judges asked an independent observer to analyze their courtroom conduct in hopes of improving the fairness of the justice system.¹⁰⁴ They hired St. Cloud State University Communications Professor Rin Porter to watch the judges’ body language. What she saw was stunning. Judges often did not speak directly to litigants, they spent an inordinate amount of time pouring and mixing coffee, and some even put their feet up on their desks.¹⁰⁵ Prof. Porter said that their demeanor was sending messages that they did not care about the cases before them.¹⁰⁶ They had not realized how they appeared until they saw it on videotape for themselves.

Barnard College psychology department chairman Larry Heuer’s research shows a direct correlation between a judge’s demeanor and a litigant’s view of justice.¹⁰⁷ He said people who believe their judge heard and respected them throughout the process are more likely to abide by the judge’s final instructions, even if they disagree with the outcome.¹⁰⁸ The Fourth District’s then Chief Judge Kevin Burke says the more people comply with judges’ orders, such as child visitation rules, for example, the fewer cases return to court.

¹⁰⁴ Judges in Minneapolis being critiqued to improve body language and courtroom conduct: Morning Edition (NPR radio broadcast Sept. 4, 2001).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

We have the highest caseload in the country, and at the end of the legislative session, they gave us a lot of money and we still have the highest caseload in the country because our bench got no new judges. If we could get a 10 percent better compliance with our orders based upon improving what happened in the courtroom, we would have a quantum decrease in our workload.¹⁰⁹

6. A Sign to Congress: Stay Off the Judicial Turf

The United States Supreme Court sets the tone and precedence for the rest of the courts. It has never allowed cameras to broadcast its oral arguments. The aversion (if not downright hostility) to cameras in courtrooms starts at the top. More than 10 years ago, Supreme Court Justice David H. Souter uttered the now iconic words, “I can tell you that the day you see a camera come into our courtroom, it’s going to roll over my dead body.”¹¹⁰

Justice Souter’s use of the words “*our courtroom*” speaks volumes about the undercurrent of arrogance that runs through the Court. The Supreme Court is not his personal or the justices’ collective treasure to hoard; it is the American people’s court. The public pays the justices’ salaries, the public pays for the robes they wear, the public pays for the Supreme Court building’s upkeep, and most importantly, it is the public’s business that those justices decide. Justices are public servants and are therefore accountable to the public.

Supreme Court justices have argued that the Separation of Powers prevents Congress from telling them how to manage their courtrooms. At a time when Justices Clarence Thomas and Kennedy were asking Congress for court funding, Kennedy testified on the cameras in the court issue.

¹⁰⁹ *Id.*

¹¹⁰ See Liz Harper, The Online NewsHour: Profile of Justice David H. Souter, http://www.pbs.org/newshour/bb/law/supreme_court/judge_souter.html (last visited Nov. 9, 2007)

It is not for the court to tell Congress how to conduct its proceedings...We feel very strongly that we have intimate knowledge of the dynamics and the mood of the court, and we think that proposals mandating and directing television in our court are inconsistent with the deference and etiquette that should apply between the branches.¹¹¹

There is one problem with Justice Kennedy's argument; the Framers of the Constitution demanded an open court to avoid the extremes of the infamous Star Chamber and Spanish Inquisition.¹¹² The Sixth Amendment guarantees the right to a public trial. Disallowing cameras in courts in the modern day is akin to closing the courtroom doors before the advent of television. A camera is another *means* for the public to view courtroom proceedings; it is not a new *right*. In 1947, Justice William Douglas, who was no fan of trusting government, even his own branch, said,

A trial is a public event...What transpires in the courtroom is public property...There is no special perquisite of the judiciary, which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.¹¹³

Justice Douglas made those statements in *Craig v. Harney*.¹¹⁴ In *Craig*, the Supreme Court reversed a Texas Court of Appeals ruling that upheld the contempt convictions for a publisher, an editorial writer, and a reporter.¹¹⁵ The journalist and editorial writer had written critical articles about how a County Court Judge in Nueces County, Texas managed a case. As a result, the judge sentenced the three to three days in jail.¹¹⁶ The

¹¹¹ Cameras in the Court, <http://www.c-span.org/camerasinthecourt/> (last visited Jan. 10, 2008) [hereinafter *Cameras*].

¹¹² *In re Oliver*, 333 U.S. 257, 266–70 (1948).

¹¹³ *Craig v. Harney*, 331 U.S. 367, 374 (1947).

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 378.

¹¹⁶ *Id.* at 368.

Texas Court of Appeals denied the defendants' applications for a writ of *habeas corpus*.¹¹⁷

Yet today, our same Supreme Court Justices argue that they are “teaching” the American public by keeping television viewers out of their court. Consider this statement from Justice Kennedy while asking for court funding from Congress.

We teach, by having no cameras, that we are different. We are judged by what we write. We are judged over a much longer term. We are not judged by what we say. But, all in all, I think it would destroy a dynamic that is now really quite a splendid one and I don't think we should take that chance.¹¹⁸

What if the Nuremberg judges had barred cameras from the trials in order to show they were different? Without those filmed segments, newsreels could not have shown Hitler's Third Reich elite such as Hermann Göring and Rudolf Hess facing trial for the entire world to see. As a result, historians now and in years to come have those films to study. I doubt that any of the current U.S. Supreme Court justices would turn down a chance to *watch* the film of Robert H. Jackson giving his famous opening statement.¹¹⁹ Indeed, most if not all of them have probably watched that film.

Still, there is a glimmer that some of the justices are in favor of cameras at the High Court. The newest member of the court, Justice Samuel L. Alito said he would not oppose them.

I had the opportunity to deal with this issue actually in relation to my own court a number of years ago. All the courts of appeals were given the authority to allow their oral arguments to be televised if it wanted. We had a debate within our court

¹¹⁷ *Id.*

¹¹⁸ Cameras, *supra* note 111.

¹¹⁹ American Experience: Transcript of the Nuremberg Trials (Jan. 3, 2006), <http://www.pbs.org/wgbh/amex/nuremberg/filmmore/pt.html> (“The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating that civilization can not tolerate their being ignored, because it can not survive their being repeated. . .”).

about whether we would or should allow television cameras in our courtroom. I argued that we should do it.¹²⁰

Chief Justice John G. Roberts also left the door open.

The oral argument is a valuable and important part of that, and we're going to be very careful before we do anything that will have an adverse impact on that, and I think that same perspective applies to the civil trials. I appreciate very much the argument that the public would benefit greatly from seeing how we do things.

Public surveys show the Supreme Court majority is out of step with the American public and that division is widening. In 2000, a Gallup poll asked 1,011 adults nationwide whether the Supreme Court should broadcast its oral arguments.¹²¹ Fifty percent said yes, 48% said no, and 2% did not know.¹²² In 2006, the Roper organization polled 900 registered voters nationwide and asked whether the Supreme Court should televise its oral arguments.¹²³ Those who supported cameras increased to 70%, 18% said no and 11% said they did not know.¹²⁴

As Newspapers Decline, So Does the Public's Access to Courts

Our courts are essentially closing to the public if it relies solely on print journalists to detail what occurs in America's courtrooms by pad and pencil. Newspaper readership has declined sharply in the past few decades.¹²⁵ As the *Project for Excellence in Journalism* and Rick Edmonds of the *Poynter Institute* revealed in 2007, newspaper circulation fell, both daily and Sunday, in the six months ending September 2006.¹²⁶

¹²⁰ Cameras, *supra* note 111.

¹²¹ CRS Report, *supra* note 83, at 1.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2007: AN ANNUAL REPORT ON AMERICAN JOURNALISM (2007), available at http://stateofthemediamedia.org/2007/narrative_newspapers_intro.asp?media=3.

¹²⁶ *Id.*

Daily circulation fell 2.8% and Sunday fell 3.4% compared to the previous year, which was 2.6% for daily and 3.1% for Sunday.¹²⁷ Edmonds wrote, “2005 results were considered dramatic, producing headlines about the possible death of the industry.”¹²⁸ Readership is in a nosedive. According to Scarborough Research in 1999, 42% of adults between the ages of 18 and 24 read a newspaper.¹²⁹ In 2005, that same group fell to 35%.¹³⁰ Compare the statistics with Justice Scalia’s “news-junkie network” of 52 million in which more than half are younger than 50 years old.¹³¹

Although the number of newspapers in the United States has remained relatively static, that is far from the entire story. From 2005 to 2006, the nation lost five daily newspapers.¹³² Regardless if newspapers still maintain readership and stay in business, they are cutting staff with layoffs and buyouts. In buyouts, the most senior reporters leave. These reporters have the most experience, know the institutional history, and can hold public officials more accountable than their cub reporter counterparts. As a result, when they leave, their expertise goes with them. In legal reporting, that is particularly important because law has a steep learning curve. It takes years for a legal reporter to begin to understand the complexities of the system, the legal jargon and terms of art, and to be able to translate that information into a language the public can easily grasp. When these reporters walk out the door, they take with him more than just a general assignment reporter’s ability to file stories, they take with them the expertise to provide an in-depth context to the judicial branch of government. If these reporters are gone, the only option

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See THE PEW CTR. FOR THE PEOPLE & THE PRESS, *supra* note 81, at 64.

¹³² *Id.*

is for the public to view these legal proceedings by television. If the courts do not allow this access then the public will learn about law through entertainment.

Real People, Real Cases, and Learning Law From *Judge Judy*

The strongest reason for opening the courts to television is that it educates the public about the judicial branch of government. It counterbalances what Kimberlianne Podlas calls “syndi-court.”¹³³ Syndi-courts according to Podlas are syndicated courtroom shows such as *Judge Judy* and *Judge Joe Brown*. If the public does not see how the legal system really works, it assumes *Judge Judy* is the real legal system.¹³⁴ *Judge Judy* has been on the air for 11 years. There are other similar programs in addition to *Judge Joe Brown* such as *Judge Mathis* and *The People’s Court*. All of these are small claims courts.

Podlas embarked on a study to find out just what viewers learned from watching shows like *Judge Judy*. She surveyed 225 prospective jurors from Manhattan, New York, and Hackensack, New Jersey.¹³⁵ In addition, Podlas surveyed 326 adults that were jury-eligible and had entered college.¹³⁶ She divided syndi-court viewers into frequent viewers (FV) or non-frequent viewers (NV). Frequent viewers watched syndi-court shows between two and three times per week; non-frequent viewers watched no more than once per week. Of the total, 62% were FV and 38% were NV.¹³⁷

Podlas found FVs “looked to syndi-court representations to learn about the rules and procedures of the justice system” (FVs 79% compared to NVs 21%).¹³⁸ The FVs

¹³³ Kimberlianne Podlas, *Broadcast Litigiousness: Syndi-Court's Construction of Legal Consciousness*, 23 CARDOZO ARTS & ENT. L.J., 465, 468-69 (2005).

¹³⁴ *Id.* at 487.

¹³⁵ *Id.* at 489-91.

¹³⁶ *Id.*

¹³⁷ *Id.* at 491.

¹³⁸ *Id.* at 493.

were also more likely to go to court to settle a dispute (FVs 77% compared to NVs 42%)¹³⁹ and would do so pro se (FVs 54% compared to NVs 18%).¹⁴⁰ Podlas' research shows that viewers do learn from watching televised court. Nevertheless, without an actual local trial to which they can relate, they will have no frame of reference for how skewed Judge Judy law really is.

Court TV is Getting Engaged and Moving On

It used to be that *Court TV* was an example that supporters could point to as a network that televised more than sound bites. Although it was criticized for concentrating on criminal trials, it has provided a national service in showing that there are judges unlike Lance Ito who manage their courtrooms with dignity and respect.

Court TV is changing, however. On Mar. 13, 2007, Turner Entertainment Networks President Steve Koonin announced that *Court TV* would change its name because "it's too limited" beginning Jan 1, 2008.¹⁴¹ Trial coverage from nine to three will continue but the network will start airing several new reality series to target what it calls "Real Engagers" or young adult males.¹⁴² These viewers like watching action shows about "real people."¹⁴³ One of the news shows, "Bounty Girls," will feature a team of female bounty hunters in Florida.¹⁴⁴ In the afternoon, Nancy Grace and Star Jones will host talk shows.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Court TV Gears Up for Major Branding Initiative (Mar. 13, 2007),

<http://www.timewarner.com/corp/newsroom/pr/0,20812,1598600,00.html>.

¹⁴² *Verdict Is In On Court TV: Change*, Cox News Service (Mar. 13, 2007).

¹⁴³ *Id.*

¹⁴⁴ *Court TV*, *supra* note 141.

Conclusion

In sum, as discussed earlier, each of the reasons for barring cameras from courtrooms fails. I have covered Minnesota's court system for more than 10 years. The state allows cameras and tape recorders in its appellate courts. A few years ago, I was attending a Minnesota Supreme Court oral argument on a case that I do not remember. What I do remember was seeing a little boy who could not have been more than 6 years old. I had gotten to the court early to ensure that I had a seat where I could plug in my tape recorder to the only microphone jack in the room.

The boy, his father, and I were the only ones in the court. This father could not have been more proud to show his son the courtroom -- where he would stand before the wooden podium and where the justices would sit and ask him questions. The little boy wore a navy suit and tie in that one size larger to handle the next growth spurt. The father knelt down at the boy's level and pointed to the large-backed chairs facing them. The boy looked around the court and up at the ornate ceiling with eyes as wide as the sea. During the arguments, the little boy watched the justices. The bench was comprised of people of different colors, creeds, backgrounds, and genders. The little boy's eyes were still wide even during the arguments.

Regardless if this boy decides to pursue law, he has seen it in action. He knows it can exist for him. He can see himself as lawyer and a justice. But what about the children who cannot afford to visit the United States Supreme Court or any court, particularly those who do not have parents who are lawyers or even professionals? If they cannot see that the legal profession exists for them, how can they pursue it? With

cameras in courtrooms, they could. They could watch Supreme Court justices and aspire to become them.

Compare that to current Supreme Court justices who argue that cameras will destroy their anonymity. Justice Ruth Bader Ginsberg told the *Ottawa Sun* in October of 2000 that she did not object to cameras at the United States Supreme Court. She was in Canada to celebrate the 125th anniversary of the Supreme Court of Canada, a court that provides both audio and televised feeds of oral arguments.¹⁴⁵ Despite Justice Ginsberg's support for cameras at the High Court, she understood that her other colleagues like the anonymity; "Justice David Souter can go to the supermarket and never be noticed."¹⁴⁶

Tell the bedridden, the disabled, the poor, and most importantly the children who cannot watch the Supreme Court proceedings in person that they are less important to this nation than Justice Souter's ability to buy groceries in public.

¹⁴⁵ Supreme Court of Canada, Access to the Court, http://www.scc-csc.gc.ca/mediaportal/accesscourt/index_e.asp (last visited Jan. 10, 2008).

¹⁴⁶ *Congress Considers Camera bills; State Courts Open Doors*, THE NEWS MEDIA & THE LAW, Fall 2000, at 37, available at <http://www.rcfp.org/news/mag/24-4/bct-camrndup.html>.