Cameras in the Courts: A Case For Increased Judicial Transparency

Michael T. Martínez

American Journalism Historians Association

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Abstract

From 1991 to 1994, cameras were allowed in federal courts on an experimental basis. A report evaluating the program found the presence of cameras in the court had little or no detrimental effect on the proceedings and recommended that the program be continued and expanded to all courts. Despite the success of the program and a favorable recommendation, the Judicial Conference decided to continue the ban of cameras in federal courts once the experiment was completed.

The conflict between the media and the courts over cameras in the court centers on the First Amendment right of a free press versus the Sixth Amendment right to a fair trial. However, the specific arguments by media and the judiciary are usually framed differently. The judiciary argues that media coverage is disruptive to trial proceedings, the camera's presence may be intimidating to witnesses and attorneys may play to the camera. The media argue that camera access is vital to their role in a democracy; it provides transparency to the judicial process, enhances the credibility of the courts by taking the mystery out of the judicial process and provides a societal good by being a surrogate for the public.

This study contributes to the theoretical concept of judicial transparency through examination of the arguments that were made by the media and the judiciary in favor of and opposed to electronic media access in federal judicial civil proceedings from 1991 to 1994.

Federal Ban on Cameras in the Court

"We will have a man on the moon before there will be cameras in this courtroom."— Chief Justice Earl Warren [1]

For three years, from 1991 to 1994, cameras were allowed in federal courts on an experimental basis. The Judicial Conference of the United States, the governing body of the federal courts, authorized a pilot program to allow cameras in six district and two appellate courts for civil matters. A report evaluating the program found the presence of cameras in the court had little or no detrimental effect on the proceedings and recommended that the program be continued and expanded to all courts.[2] Despite the success of the program and a favorable recommendation, the Judicial Conference decided to continue the ban of cameras in federal courts once the experiment was completed.[3]

The Sixth Amendment guarantees the accused the right to a public trial. Common law and case law provide legal argument for press access to court proceedings supporting the concept of a transparent court system. However the same cannot be said for electronic media. All 50 states allow cameras in the court in some fashion. The District of Columbia is the only non-federal jurisdiction that prohibits trial and appellate coverage entirely. With the exception of two courts of appeal, cameras are still not allowed in federal courts.

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[1] Albert Scardino, "Courtoom TV Is a Fixture, Even as New York Is Deciding," *The New York Times*, January 22, 1989. According to constitutional lawyer Floyd Abrams, Chief Justice Earl Warren made this statement to one of his clerks.
[2] Molly Treadway Johnson and Carol Krafka, "Electronic Media Coverage of Federal Civil Proceedings," (Federal Judicial Center, 1994), 44.
[3] William H. Rehnquist, "Report of the Proceedings of the Judicial Conference of the United States," (Washington, D.C.: 1994), 46-47.

Studies have shown that the presence of cameras in the courtroom does not adversely affect participants, disrupt the decorum nor interfere with the fair administration of justice.[4] However a disparity of accessibility still remains between the federal and state court systems.

The conflict between the media and the courts over cameras in the court centers on the First Amendment right of a free press versus the Sixth Amendment right to a fair trial. However, the specific arguments by media and the judiciary are usually framed differently. The judiciary argues that media coverage is disruptive to trial proceedings, the cameras presence may be intimidating to witnesses and attorneys may play to the camera. The media argue that camera access is vital to their role in a democracy; it provides transparency to the judicial process, enhances the credibility of the courts by taking the mystery out of the judicial process and provides a societal good by being a surrogate for the public.[5]

In 1948, Justice Hugo Black wrote of the value of an open court system pointing out that the secret trials of the Spanish Inquisition, the Star Chamber in England and French monarchy's abuse of the lettre de cachet were used as tools of persecution.[6] In 1980, Chief Justice Warren Burger wrote of the democratic benefits of the open judicial system stating that there is therapeutic value in letting the community know that justice has been served.[7]

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[4] Kathryn M. Krygier, "The Thirteenth Juror: Electronic Media's Struggle to Enter State and Federal Courtrooms," *CommLaw Conspectus*, no. 3 (1995): 81.
[5] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (U.S. 1980).
[6] *In Re Oliver*, 333 U.S. 257, 69-70 (U.S. 1948).
[7] *Richmond Newspapers, Inc. v. Virginia*, 556.

This study will define judicial transparency using Chief Justice Burger's opinion in *Richmond Newspapers, Inc. v. Virginia* when he said that trials are presumptively open "giving assurance that the proceedings were conducted fairly to all concerned and discouraging perjury, the misconduct of participants, or decisions based on secret bias or partiality."[8] This purpose of this study is to add to the theoretical concept of judicial transparency through examination of the arguments that were made by the media and the judiciary in favor of and opposed to electronic media access in federal judicial civil proceedings from 1991 to 1994. The third branch of government, the judicial branch, remains dark and is the least transparent of the three branches.

Historical Perspective

The judicial branch of the federal government was the least defined of the three branches in the Constitution.[9] The framers were so focused on "curtailing gubernatorial authority and establishing legislative supremacy" that the judiciary was virtually ignored and thought of as an adjunct of "feared magisterial power."[10] John Marshall, the fourth Chief Justice of the Supreme Court, established the concept of judicial review in *Marbury v. Madison*. With this, the Court established for itself the authority to declare the actions of the other two branches inconsistent with the fundamental law of the land.[11]

By supporting this concept of judicial review, the other two branches and the American public have come to accept judicial supremacy. "[J]udges play God with

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[8] Ibid.
[9] "U.S. Constitution," in *Black's Law Dictionary*, ed. Bryan A. Garner (St. Paul, MN: Thomson West, 1999), 1772-73.
[10] Gordon S. Wood, *The Creation of the American Republic 1776-1787* (New York: W.W. Norton & Co., 1993; reprint, 2nd), 454.
[11] Jeffrey Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge: Cambridge University Press, 2004), 20-21.

regard to the life, liberty and property of those who appear before them."[12] Courtrooms, judicial attire and procedures have been established to perpetuate this image. Jeffery A. Segal and Harrold J. Spaeth wrote, judges wear black robes, the "most solemn and mysterious of outfits." Courthouses and courtrooms are designed in the same manner as churches and temples. Instead of altars, courtrooms contain elevated benches forcing all who enter to look up at the judge. The proceedings are ritualized through pomp and ceremony. The decision-making process is shrouded in mystery and secrecy.[13]

There is some justification for this deference; however, all branches of government should be open to scrutiny by the American public. The public sees the activities of the president and the executive branch through news reports on television and in newspapers. The activities in Congress are also readily publicized in the media. The judiciary is not nearly as transparent as the other two branches of government. Even though there is case law that guarantees the media a First Amendment right to attend trials, judges still maintain tight control of their courtrooms. Electronic media have been the target of that control.

Some of this is perpetuated through ritualistic procedures that drive decorum judges demand in their courtrooms. Under the Code of Conduct for United States Judges, federal judges "should maintain order and decorum in all judicial proceedings."[14] There are three primary forms of courtroom disruption: personal conduct, audible sounds and

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[12] Ibid., 26.
[13] Ibid.
[14] Jona Goldschmidt, "'Order in the Court!': Constitutional Issues in the Law of Courtroom Decorum," *Hamline Law Review* 31 (2008): 7.

visual distractions.[15] The media have violated all three forms.

Cameras in courtrooms were common during the early twentieth century. However, poor judgment and bad behavior led to the banning of still cameras, newsreel cameras, radio microphones and later television cameras.

Bruno Richard Hauptmann was tried and convicted in the kidnapping and murder of Charles Lindbergh's 18-month-old son. Because the case involved the famed aviator, it drew heavy international media attention. The courtroom "featured photographers leaping about like acrobats, witnesses tripping over cables and broadcasting equipment and a constant traffic of messengers to the media."[16] While Hauptmann was convicted in a court of law, some argued he was also convicted in the court of public opinion because of the circus-like atmosphere.[17] This spurred a free press versus fair trail debate. After his trial, Hauptmann unsuccessfully argued that his conviction was a result of the sensational nature of the publicity surrounding the trial.

As a result, the American Bar Association (ABA) formed a committee to study cameras in the court. In 1937 they voted to adopt Canon 35 of the Canon of Judicial Ethics stating that courts should be conducted with fitting dignity and decorum and banned the use of electronic media. [18] The Judicial Conference followed the ABA's lead in 1946 by enacting Rule 53 of the Federal Rules of Criminal Procedure barring cameras

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[15] Ibid.: 25.
[16] Jane E. Kirtley, "'A Leap Not Supported by History:'" The Continuing Story of Cameras in the Federal Courts," *Government Information Quarterly* 12, no. 4 (1995): 368.
[17] Kathryn M. Krygier, "The Thirteenth Juror: Electronic Media's Struggle to Enter State and Federal Courtrooms," *CommLaw Conspectus*, no. 3 (1995): 72.
[18] Kirtley, "'A Leap Not Supported by History:' The Continuing Story of Cameras in the Federal Courts," 369.

from federal criminal trials and eventually extended the rules to include civil trials[19] In 1952, the ABA extended the ban to include television coverage. While this canon was not mandatory, many states adopted it as a binding rule. As a result of the actions of the Judicial Conference and the ABA, all federal courts and all state courts, except Texas and Colorado, banned televising judicial proceedings either by state statute or court rule.[20] The media were not the only ones to suffer by this ban, so did judicial transparency.

The United States Supreme Court first addressed the issue of whether the media had the right to cover trials electronically in *Estes v. Texas*.[21] The Supreme Court overturned the conviction of swindler Billy Sol Estes in 1965 because of television coverage of the trial.[22] "Cables and wires were snaked across the courtroom [floor;] three microphones were on the judge's bench [and,] others were beamed at the jury box and the counsel table."[23] The Court found that the Sixth Amendment right to a fair trial outweighed the media's right to cover the trial electronically. Judicial transparency suffered once more. Some members of the media have argued that the prohibition of the electronic media; television, radio and still photography favored print reporters over television or radio reporters.[24] Justice Clark disagreed writing in the majority opinion that "[t]he news reporter is not permitted to bring his typewriter or printing press. When the advances in these arts permit reporting by printing press or by television without their

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[19] Ibid.
[20] Ibid.
[21] *Estes v. Texas*, 381 U.S. 531 (U.S. 1965).
[22] Ibid.
[23] Ibid., 536.
[24] ———, "'A Leap Not Supported by History:' The Continuing Story of Cameras in the Federal Courts," 370.

present hazards to a fair trial we will have another case."[25] However, in a concurring opinion Justice John Marshall Harlan wrote, "the day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process. If and when that day arrives, the constitutional judgment called for now would of course be subject to re-examination…"[26]

That time came in the mid-1970s when photographic and video equipment became less obtrusive and new technology permitted smaller, quieter equipment to operate in available light.[27] The ABA again studied the issue of electronic media but remained steadfast in their opposition to cameras in the court. Despite the ABA's stance, in 1976 state courts began to adopt rules that relaxed the ban on cameras in the court. In 1978, the Conference of State Chief Justices approved a modification of the ABA canon to allow the highest court of each state to decide if the use of cameras should be permitted in its courtrooms during trial.[28] This started opening the doors of state courtrooms throughout the country. In 1982, 35 states allowed cameras in the courtroom.[29] Judicial transparency regained some of the ground it had lost as a result of *Hauptmann* and *Estes*.

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[25] *Estes v. Texas*, 540.
[26] Ibid., 596.
[27] _____, "'A Leap Not Supported by History:' The Continuing Story of Cameras in the Federal Courts," 371.
[28] Richard P. Lindsey, "An Assessment of the Use of Cameras in State and Federal Courts," *Georgia Law Review*, no. 18 (1984): 389.
[29] Jeremy Cohen, "Cameras in the Courtroom and Due Process: A Proposal for a Qualitative Difference Test," *Washington Law Review* 57 (1982): 277.

In 1981, the Supreme Court once again addressed the issue of electronic media in the courtroom in *Chandler v. Florida*.[30] The case involved two Miami Beach police officers, Noel Chandler and Robert Granger, who were charged with burglary of a local restaurant. A television camera recorded the prosecution's chief witness and covered closing arguments. Only about three minutes of the coverage was broadcast.[31] In an eight to zero decision, the Court found that the presence of television cameras at a criminal trial did not inherently violate due process and banning electronic media was not a violation of the constitution.[32] *Chandler* did not overrule *Estes* because the ruling was narrowly confined to the facts of the case. This failure has presented lower courts with a dilemma of which case to follow.[33]

Respect for the decorum of the court by the media and changes in technology went a long way in regaining access to state courts after the poor behavior and judgment in *Hauptmann* and *Estes.*

The Three-Year Federal Experiment

With the growing number of state courts permitting cameras in the court, several media organizations petitioned the Judicial Conference to allow cameras in federal courts. This was an attempt at providing more judicial transparency in the federal court system. The 27-member Judicial Conference, which was headed by Chief Justice William H. Rehnquist, consisted of the chief judges of the 13 federal appellate circuits and judges from district courts in each circuit. In 1983, a coalition of 28 broadcasters, publishers,

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[30] *Chandler v. Florida*, 449 U.S. 560 (U.S. 1981).
[31] Ibid., 568.
[32] Ibid., 574.
[33] Lindsey, "An Assessment of the Use of Cameras in State and Federal Courts," 399.

news organizations and others led by CBS, petitioned the Judicial Conference to ask for changes in Canon 3A(7) and Rule 53. The group suggested the Florida guidelines as a model since the Supreme Court in *Chandler* had supported them.[34] The initial request was denied, but the issue was brought up again after several court cases were brought challenging the federal prohibition of electronic media coverage. In 1990, the Judicial Conference authorized the experimental program. The conference's hostility to cameras in the courtroom was long-standing and well known, so it was a surprise when the group approved the pilot project. That action came after prodding by Robert W. Kastenmeier, a former member of the House of Representatives from Wisconsin, who at the time headed the House Judiciary subcommittee that oversees the administration of the federal courts.[35] Taking part were the Southern District of Indiana, District of Massachusetts, Eastern District of Michigan, Southern District of Pennsylvania and Western District of Washington.[36]

A set of guidelines was devised to govern the pilot program. One still photographer with one camera, one television operator with one camera and one stationary sound person were allowed in criminal courts. Two television cameras and two operators were allowed in appellate courts. The equipment should not produce distracting sound or light, and changing lenses, film or tape during the proceedings was prohibited. Journalists were required to wear appropriate business attire. Logos and markings of the

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[34] Kirtley, "'A Leap Not Supported by History:' The Continuing Story of Cameras in the Federal Courts," 372.
[35] Linda Greenhouse, "U.S. Judges Vote Down TV in Courts," *The New York Times*, Sept. 20, 1994.
[36] Johnson and Krafka, "Electronic Media Coverage of Federal Civil Proceedings," iii.

news organization were forbidden. Pooling or sharing of the material with members of the media without access was required. Coverage of the jurors was prohibited.[37]

The first case covered actually took place three weeks before the official start date of the experiment. On June 10, 1991, New York District Court Judge William Connor allowed a Court TV crew in to cover a copyright dispute between the estate of actor James Dean and photographer Roy Schatt over fees for marketing Dean's image. Judge Connor said, "After a few hours you forget the camera is even there."[38]

The Federal Judicial Center, the research arm of the Judicial Conference, was charged with monitoring the experiment and providing a report at the end of the three-year experiment.[39] The report was favorable and stated that the attitudes of judges toward electronic media coverage of civil proceedings were initially neutral and became more favorable after experience under the pilot program and judges and attorneys generally reported observing small or no effects of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice.[40] The report recommended that the Judicial Conference permanently extend coverage to civil trials in federal courts.[41] It appeared that the door to increased judicial transparency was going to open, with the exception of the United States Supreme Court, throughout the entire federal judicial system.

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[37] Jane E. Kirtley, "'A Leap Not Supported by History:' The Continuing Story of Cameras in the Federal Courts," *Government Information Quarterly* 12, no. 4 (1995): 377.
[38] Ibid.: 378.
[39] Ibid.: 377.
[40] Molly Treadway Johnson and Carol Krafka, "Electronic Media Coverage of Federal Civil Proceedings," (Federal Judicial Center, 1994), 7.
[41] Ibid., 43.

In a secret vote, the Judicial Conference rejected the recommendation by the Federal Judicial Center and decided to continue the ban on cameras in federal courts. Spokesman David H. Sellars announced the decision at a press conference at the Supreme Court on Sept. 21, 1994. He said the Conference had convened on the prior day and voted roughly two-to-one in favor of upholding the absolute ban. The issue had taken 20 minutes of the six-hour meeting. The Conference offered no explanation for the decision, but Sellars said, "The tenor of concern was the potential impact on witnesses and jurors."[42] The decision came on the heels of media extravaganzas, mostly in the California state courts: O.J. Simpson, the Menendez brothers and Rodney King.[43] Judge Lance Ito had just threatened to eject cameras in the double-murder trial of O.J. Simpson because KNBC, NBC's Los Angeles affiliate reported that DNA tests linked blood found on socks at Simpson's house to Nicole Brown Simpson, his slain ex-wife using unnamed sources. "I am very concerned, because this news operation was put on notice yesterday that this was incorrect information," said the disgusted judge. "They have chosen not only to republish it, but to embellish upon it, and this is fundamentally unfair."[44]

The decision by the Judicial Conference surprised some federal judges in Seattle, including Judge John Coughenour, who served on the conference committee that had jurisdiction over the pilot project. Coughenour said "Three years was not enough time to

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[42] Joan Biskupic, "Federal Ban Continued: Panel of Top Judges Breaks from Trend Taken by Majority of the States," *Washington Post*, Sept. 21, 1994.
[43] Greg Kueterman, "Elimination of Cameras Surprises Federal Judge," *The Indiana Lawyer*, Nov. 2, 1994.
[44] Deborah Hastings, "Judge Threatens to Yank Courtroom TV, But Can He Do It?," *Associated Press*, Sept. 24, 1994.

determine the impact of having television cameras in the courtroom."[45] Sarah Evans Barker, the chief judge in U.S. District Court in the Southern District of Indiana expected the experiment to be made permanent. "I had seen the report and knew that it was uniformly positive. I thought it was nearly a guaranteed result," she said. "Judges were neutral when (the pilot) started out. Many had a 'Well, let's see attitude.' But by the end, it was quite positive."[46] Gilbert S. Merritt, chief judge for the 6th Circuit, based in Cincinnati, cited his fears of "sound-bite journalism."[47] Snippets rather than extended footage are all that most viewers of televised court coverage ever get to see. Judges spoke of the coverage lacking "educational value." The judges were offended at being used as backdrops or visual aids for the talking heads of network news.[48]

When supporters, at the time, pointed to the fact that 47 states now allow cameras in their courtrooms, opponents responded that state judges are elected and thus not free to stand up against a popular tide. There was also a certain cynicism about the electronic media and its motives. "It's really just something the media wants for its own profit, and that's not much reason to do it," said one judge who requested anonymity.[49]

Judges also expressed concern that witnesses at televised trials might feel chilled or intimidated by the presence of cameras. Among the studies they reviewed was a survey of people who had testified at televised state court trials in Florida. Twenty-nine

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[45] Ellis E. Conklin, "Federal Judges End Experiment Allowing Cameras in Courts," *Seattle Post Intelligencer* 1994.
[46] Kueterman, "Elimination of Cameras Surprises Federal Judge."
[47] Joan Biskupic, "Vote on Cameras Reveals Judges' Deep Concern: Mistrust of Media Is Called a Factor in Decision against Televising Federal Court Hearings," *Washington Post*, Sept. 23, 1994.
[48] Linda Greenhouse, "Disdaining a Sound Bite, Federal Judges Banish TV," *The New York Times* 1994.
[49] Ibid.

percent said they had some concern, ranging from slight to extreme, about being harmed as a result of having appeared on television. Some judges found the number alarming, although a nearly identical 28.1 percent of the Florida witnesses reported the same concern about newspaper coverage. "How does one know which witnesses never even came forward because they knew they could be on television?" another judge who also requested anonymity asked. "The public-education benefit is exceedingly low and the risks are high."[50] Federal appeals Judge Jon O. Newman once believed television cameras should be allowed in federal courts. He has a "bias toward openness." But when the call for a vote came in the Judicial Conference, Newman voted against it. He said, "Over the years, I began to oppose it. What I saw was that the public benefit was very slight and insufficient to overcome the risks of adversely affecting witnesses and jurors... A trial is always an emotional, dramatic event. Television inevitably escalates the emotion."[51]

Trial Judge Donald E. O'Brien pointed to data collected by the Federal Judicial Center, the research arm of the judiciary, in which some witnesses surveyed said they feared repercussions if they were televised testifying at a trial. He said that even if only 10 percent of the survey respondents expressed concerns about having their testimony broadcast, "that outweighs all the nice things about" television access. A chief judge who spoke only on the condition of anonymity stressed the judges' mistrust of the media: "The general sentiment [among judges] was that TV always wants to use people saying something bad."[52] Judicial transparency at the federal level was dealt a severe blow.

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[50] Ibid.
[51] Biskupic, "Vote on Cameras Reveals Judges' Deep Concern: Mistrust of Media Is Called a Factor in Decision against Televising Federal Court Hearings."
[52] Ibid.

In a letter to the editor to *The New York Times*, First Amendment attorney Floyd Abrams wrote "We are convinced that justice is best served when the public is well informed about judicial processes, and that exposure through television is a powerful and effective way for the public to keep informed. The benefits also include the role of such coverage in promoting the integrity of the judicial system itself." In 1980 a plurality of the United States Supreme Court quoted enlightenment philosopher Jeremy Bentham on the value of open justice: "Without publicity, all other checks are insufficient; in comparison of publicity, all other checks are of small account."[53]

Conclusion

The media did themselves a disfavor with the 1935 trial of Bruno Hauptmann and the 1965 trial of Billy Sol Estes by exhibiting poor behavior. Slowly they redeemed themselves and were allowed back in state courts. A lot has changed since 1935 or even 1965. Technology has advanced and society has become more accustomed to television and still cameras. While cameras are allowed in state courts, they are still excluded from federal courts and as a result judicial transparency suffers.

American democracy is built on a bedrock principle of openness, and the courts have protected the media's First Amendment right of access to trials. That access does not automatically include the electronic media. Cameras are allowed in courts at the discretion of the judge, and so far the judges in federal courts are saying no.

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[53] Floyd Abrams, "The Public Needs TV to Oversee the Courts," *The New York Times* 1994.

The debate between a First Amendment Right of a free press and a Sixth Amendment right to a fair trial is the heart of the conflict, but the courts frame the concern as an issue of disrupting the trial proceedings while the media frame the issue as a responsibility they have to inform the public through judicial transparency. This continuing debate was exemplified in the decision by the Judicial Conference to ignore the recommendations of the Federal Judicial Center to make cameras in the courtroom permanent in federal civil proceedings, thus, continuing the ban in federal courts. Most scholarly research concludes that the tension between the two amendments can be resolved in favor of permitting televised proceedings, all other things being equal. The argument then extends to say that because so many states allow televised court proceedings, there is no logical reason why televised proceedings should be prohibited in federal courts.[54]

The decision by the Judicial Conference appeared to be made on emotion and fear rather than logical reasoning based on empirical evidence. It completely disregarded a scientific study that showed the presence of cameras in federal court did not affect the trials. Rather, the reasoning was based on concern that cameras *may* affect the proceedings of a trial.

A flat ban on cameras prevents thousands, or, in high profile cases, millions of citizens from observing the trial. Unless physical space can be provided for all those who

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[54] Ralph E. Roberts, "An Empirical and Normative Analysis of the Impact of Televised Courtroom Proceedings," *SMU Law Review*, no. 51 (1998): 622.

wish to attend, those who are excluded should be able to see as much of the trial as possible.[55]

Proponents of the ban on cameras have argued that the presence of reporters can serve as a substitute for actually observing the trial. However, while newspaper reports are valuable, they can never replace actual presence in the courtroom. Television cameras are the closest possible replacement for actual presence. Anything less denies large segments of the public access to criminal trials and eliminates or reduces the potential benefits of public access.[56]

The right to a fair trial is one of the fundamental rights guaranteed by the Constitution and is clearly a compelling state interest. The court also has a strong interest in maintaining decorum in the federal courtrooms. These interests, however, are not served by the ban on cameras. Before considering the costs and benefits of the ban on cameras, it is interesting to note that many courts and commentators have reversed the burden of proof in this regard. The two federal courts that have considered this issue looked to the media to prove the beneficial effects of cameras rather than looking to the government to prove the harmful effects.

Those who wish to ban cameras should have the burden of proving with empirical evidence that the media coverage is harmful. Regardless of who has the burden of proof, recent studies now make it clear that the benefits of electronic media access outweigh the

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[55] Susan E. Harding, "Cameras and the Need for Unrestricted Electronic Media Access to Federal Courtrooms," *Southern California Law Review*, no. 69 (1996).
[56] Ibid.: 829-30.

harms. In the words of one commentator, the "[e]xperiment was successful; it's time to allow the public access."[57]

Public access to trials is a beneficial and essential element of any truly democratic system. One way to accomplish this is through judicial transparency. This is reflected in the history of the American legal system and is embodied in the Constitution. The First Amendment does not expressly guarantee a right of access to trials, but the Supreme Court has held that laws that deny the public access to criminal trials can abridge First Amendment rights. These rights are grounded in the American legal tradition that allows the public access to most trials and virtually unlimited access to criminal trials.[58]

In *Richmond Newspapers, Inc. v. Virginia*, Chief Justice Burger stated that the First Amendment was drafted and enacted against a backdrop of open trials. He noted that conducting trials before all people who chose to attend was regarded as one of the fundamental institutions of the English legal system. The Constitution must be read so as to guarantee "the right of everyone to attend trials so as to give meaning to those explicit guarantees."[59]

The U.S. Supreme Court has ruled that there is a presumption of transparency in the court system. Society has become accustomed to 24-hour news coverage. Technology has evolved to the point that television and still cameras are not intrusive anymore. No longer should there be a distinction between the journalist who use pens to take notes and the visual journalist who presents the news in pictures. It is time the federal courts moved

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[57] Ibid.: 833.
[58] Ibid.
[59] Ibid.

away from anecdotal concerns about disruptions in the courtroom and followed the empirical evidence to shed light on federal court proceedings.

Chief Justice Earl Warren retired from the United States Supreme Court on June 23, 1963. Roughly one month later Neil Armstrong and “Buzz” Aldrin walked on the moon.

Bibliography

Abrams, Floyd. "The Public Needs TV to Oversee the Courts." *The New York Times* 1994.

Biskupic, Joan. "Federal Ban Continued: Panel of Top Judges Breaks from Trend Taken by Majority of the States." *Washington Post*, Sept. 21, 1994.

———. "Vote on Cameras Reveals Judges' Deep Concern: Mistrust of Media Is Called a Factor in Decision against Televising Federal Court Hearings." *Washington Post*, Sept. 23, 1994.

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

Cohen, Jeremy. "Cameras in the Courtroom and Due Process: A Proposal for a Qualitative Difference Test." *Washington Law Review* 57 (1982).

Conklin, Ellis E. "Federal Judges End Experiment Allowing Cameras in Courts." *Seattle Post Intelligencer* 1994.

Estes v. Texas, 381 U.S. 531 (U.S. 1965).

Goldschmidt, Jona. ""Order in the Court!": Constitutional Issues in the Law of Courtroom Decorum." *Hamline Law Review* 31 (2008).

Greenhouse, Linda. "Disdaining a Sound Bite, Federal Judges Banish TV." *The New York Times* 1994.

———. "U.S. Judges Vote Down TV in Courts." *The New York Times*, Sept. 20, 1994.

Harding, Susan E. "Cameras and the Need for Unrestricted Electronic Media Access to Federal Courtrooms." *Southern California Law Review*, no. 69 (1996).

Hastings, Deborah. "Judge Threatens to Yank Courtroom TV, But Can He Do It?" *Associated Press*, Sept. 24, 1994.

In Re Oliver, 333 U.S. 257 (U.S. 1948).

Johnson, Molly Treadway, and Carol Krafka. "Electronic Media Coverage of Federal Civil Proceedings." Federal Judicial Center, 1994.

Kirtley, Jane E. ""A Leap Not Supported by History": The Continuing Story of Cameras in the Federal Courts." *Government Information Quarterly* 12, no. 4 (1995): 367-89.

Krygier, Kathryn M. "The Thirteenth Juror: Electronic Media's Struggle to Enter State and Federal Courtrooms." *CommLaw Conspectus*, no. 3 (1995): 71.

Kueterman, Greg. "Elimination of Cameras Surprises Federal Judge." *The Indiana Lawyer*, Nov. 2, 1994, 7.

Lindsey, Richard P. "An Assessment of the Use of Cameras in State and Federal Courts." *Georgia Law Review*, no. 18 (1984): 424.

Rehnquist, William H. "Report of the Proceedings of the Judicial Conference of the United States." Washington, D.C., 1994.

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (U.S. 1980).

Roberts, Ralph E. "An Empirical and Normative Analysis of the Impact of Televised Courtroom Proceedings." *SMU Law Review*, no. 51 (1998).

Scardino, Albert. "Courtoom TV Is a Fixture, Even as New York Is Deciding." *The New York Times*, January 22, 1989.

Segal, Jeffrey, and Harold J. Spaeth. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press, 2004.

"U.S. Constitution." In *Black's Law Dictionary*, edited by Bryan A. Garner. St. Paul, MN: Thomson West, 1999.

Wood, Gordon S. *The Creation of the American Republic 1776-1787*. New York: W.W. Norton & Co., 1993. Reprint, 2nd.