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Will Cameras in the Courtroom Lead to More *Law and Order*?¹ A Case for Broadcast Access to Judicial Proceedings

BY SHELLY ROSENFELD

I. INTRODUCTION

“I can tell you the day you see a camera come into our courtroom, it’s going to roll over my dead body.”²

-Justice David H. Souter

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”³

-U.S. Const. amend. I

“If [the glove] doesn’t fit, you must acquit”⁴

-Johnnie L. Cochran, Jr.

Defense attorney Johnnie Cochran’s statement became a key slogan of the O.J. Simpson trial, and its impact reached far beyond the jury box. Due largely to public fascination, the trial transformed from a standard criminal case to a courtroom drama. Triggered both by the unique circumstances of the case, such as the defendant’s celebrity status and the fact pattern of the murder, and by the courtroom camera, which unquestionably enabled the public’s fascination, the story was made-for-T.V. from the beginning. Ninety-five million people watched on television as O.J. Simpson led police officers on a high-speed chase down the Los Angeles freeways in 1994.⁵ After the former football player was charged with the murder of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman, seventeen million people watched the second day of Simpson’s preliminary hearing.⁶ For nine months, the nation tuned in every day to watch the daytime saga that unfolded in the courtroom.⁷ While Simpson was ultimately acquitted, the trial proceedings were of great importance in establishing precedent regarding the presence of media cameras in the courtroom. After much



debate, Judge Lance A. Ito ruled that a single television camera could remain in his courtroom.⁸ Should Judge Ito have pulled the plug instead?

This Note will address precisely the conflict with which Judge Ito wrestled and use the lessons of his courtroom to further analyze the issue of camera access at the Supreme Court level. The debate regarding freedom of press and access to fair trials is more relevant than ever because of the public’s growing interest in high-profile trials, the dedication of the media in covering them, and the proliferation of television and Internet as sources of judicial news. This last factor is especially significant because most members of the public can neither attend the trials in person nor take the time to read Supreme Court opinions. People also may not have time to watch an entire trial, depending on video clips shown on television or the Internet. Granting cameras access to the courtrooms helps the public to have a greater understanding of the judicial system and the legal issues involved in a case.⁹ Furthermore, technological innovations have made news equipment far less intrusive and thus barely noticeable, to courtroom participants.

The judge’s main motivation in issuing an order restricting press coverage is to ensure and protect a criminal defendant’s constitutional right to a fair trial. The Sixth Amendment of the United States Constitution says, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial”¹⁰ The right to a “public trial” does not mean, however, that criminal trials must be accessible to anyone who wants to watch from their homes. In other words, that specific “right” is not absolute.

The accused’s Sixth Amendment right to an impartial jury must be balanced with the First Amendment rights of the press and public.¹¹ The primary concern is that legally inadmissible information made available by the press may contaminate the jury pool, leading to the possibility of jurors deciding a case based on improper evidence.¹² Also, some worry that prosecutors and defense attorneys, hoping to get more attention about their case or to rally public support, would further dramatize

the case.¹³ Will a televised case turn into an episode of *Law and Order*? However, if the public only watched the televised court proceedings of celebrities or public officials and sought only the most sensational parts of the coverage, would they not still be learning about the crime, its potential penalties, and judicial procedure? If cameras are banned from criminal proceedings, are we not missing out on an opportunity to educate the public?

To address these questions, this Note will present the relevant case history regarding press coverage of the administration of justice. It will explain how cases, such as *Estes v. Texas*,¹⁴ *Chandler v. Florida*,¹⁵ *Sheppard v. Maxwell*,¹⁶ *Richmond Newspapers Inc. v. Virginia*,¹⁷ and *Nebraska Press Association v. Stuart*,¹⁸ have negotiated the rough terrain between the public's right to know and the desire to protect the integrity of trial. Earlier cases addressed print journalism, since television news technology has only been widely used during the second half of the twentieth century.¹⁹ The lessons learned from cases involving print journalism, however, inform both past and future policies regarding broadcast press access.

In addition, this Note will provide the history of regulations involving camera access to the courts. In response to early excessive media coverage, the American Bar Association (A.B.A.) drafted Canon 35 in support of curtailing camera access to the courts. The Federal Rule of Criminal Procedure Rule 53 followed suit, applying the recommendation to the federal court system. This Note will call attention to such statutes as California Rule 1.150 (formerly California Rule 980), which regulates "photographing, recording, and broadcasting in [state] court,"²⁰ in addition to other proposed bills that would lead to greater camera access to trials. Among these are the "Sunshine in the Courtroom" bill (Sunshine Bill), which would allow federal judges to permit video cameras in the courtroom,²¹ and Senator Arlen Specter's bill, which aims to get a camera into the nation's highest court.²² Finally, this Note will conclude that the Supreme Court should to change its "no cameras allowed" policy and to enable a television camera and microphone to serve as much a part of courtroom coverage as a pen and paper.

II. A SNAPSHOT OF TELEVISION NEWS CAMERA REGULATION

An early source of courtroom camera regulations arose as a result of the extensive media attention during the trial of Bruno Richard Hauptmann. Hauptmann was accused of kidnapping and murdering the son of Charles Lindbergh, the first person to make a transatlantic flight.²³ Although the judge imposed restrictions on film camera use in the courtroom, the trial demonstrated that the issue of courtroom cameras could no longer be ignored.²⁴ In 1937, the A.B.A. recommended in Canon 35 to forbid courtroom radio broadcasting, televising, or photograph-

ing, but Canon 35 was not binding on courts.²⁵ Following the A.B.A.'s recommendation, however, Congress enacted the Federal Rule of Criminal Procedure's Rule 53, which states, "[t]he taking of photographs in the courtroom during the progress of judicial proceedings . . . shall not be permitted."²⁶ This prohibits all audio or visual recording of federal criminal cases, even if the defendant requests a televised trial.²⁷

Whether television coverage is allowed depends on the jurisdiction. In civil cases, each U.S. court of appeals can decide whether to allow broadcasting of appellate arguments.²⁸ In state superior courts, judges have the power to decide on a case-by-case basis whether to allow television coverage of courtroom proceedings.²⁹ In the federal district courts, however, there is a general policy of prohibiting broadcast coverage.³⁰ Federal appellate court judges can decide whether to televise their court proceedings.³¹ In recent years, the Ninth Circuit Court of Appeals has allowed "[television] coverage of some high-profile appeals."³² Then in December 2009, the Ninth Circuit took a further step by announcing that it would "experiment with a 'limited use' of cameras in its trial courts."³³

In 2005, Iowa Republican Senator Chuck Grassley and New York Democratic Senator Charles Schumer introduced the "Sunshine in the Courtroom" bill. This bill would give federal judges the option of allowing cameras in the courtrooms and would promote greater public access to the courtrooms, thus "ensur[ing] the sun shines in on the federal courts."³⁴ A particularly helpful feature of this bill is that it offers guidelines for judges to refer to in deciding whether to permit video camera access in their court.³⁵ It also instructs the Judicial Conference, the policymaking branch of the federal courts, to "issue mandatory guidelines for obscuring vulnerable witnesses such as undercover officers, victims of crime, and their families."³⁶ Yet even if this bill becomes law, the mandate would not be permanent; the "Sunshine Bill" includes a sunset clause calling for its automatic expiration after three years.³⁷ As of April 2010, the bill was still awaiting consideration by the full U.S. Senate and had yet to take effect.³⁸ While this bill is a step in the right direction, as it does not require a judge in federal court to allow camera access during judicial proceedings, this step could also be largely illusory. Since a judge has wide discretion in this matter, it is unnecessary for him or her to specify a reason for prohibiting camera access; this is truly a matter of the judge's personal preference. However, forty-eight states currently allow for some method of audio-visual coverage in their courtrooms, and almost forty states directly televise trials.³⁹ Grassley has stated that studies conducted in many of the states that televise trials confirm that televised trial coverage educates the public about the courts and does not interfere with proceedings.⁴⁰

If the "Sunshine Bill" becomes law, it may look similar to California Rule 1.150, which permits the judge to allow television, radio, and photographic coverage in the courtroom.⁴¹ In

deciding whether to allow camera coverage, the California Rule 1.150 lists nineteen different factors for judges to consider.⁴² These factors include the type of case, whether the parties support the request, the degree of difficulty in selecting a jury, and the effect on any minor who is a party, witness, or victim.⁴³ Under the rule, the judge must prohibit media coverage of the following: “(1) Proceedings held in chambers; (2) Proceedings closed to the public; (3) Jury selection; (4) Jurors or spectators; or (5) Conferences between an attorney and a client, witness, or aide; between attorneys; or between counsel and the judge at the bench.”⁴⁴

Perhaps the most troubling of all courtroom camera restrictions is that to this day the Supreme Court still does not allow camera access in its courtroom. Greta Van Susteren,⁴⁵ who appeared regularly on television as a legal analyst during the O.J. Simpson trial, called the lack of camera coverage in the Supreme Court “dangerous.”⁴⁶ She was especially frustrated that the Supreme Court determines critical issues but also operates without the public’s scrutiny; “[s]ome people get really mad about taxes or traffic or food additives . . . But there is nothing that gets my blood boiling more than the fact that there is a group of people in this country whose decisions affect our lives and who get to do their work in secret.”⁴⁷ To better examine this issue, it may be helpful to consider the Supreme Court’s analysis in cases that have strong arguments both for and against media access to trials.

III. CAMERA SHY: LESSONS FROM CASE LAW INVOLVING CAMERAS IN THE COURT

The Supreme Court in *Estes v. Texas* recognized the influence of courtroom cameras by holding that the use of such cameras may distort a criminal trial to such an extent that the only remedy is a reversal of the defendant’s conviction.⁴⁸ Defendant, Billy Sol Estes, was accused of swindling after essentially duping farmers into buying farm equipment that never existed.⁴⁹ His pretrial hearing to determine whether to admit television cameras was covered live on television and radio.⁵⁰ The Court said that the use of television cameras deprived a defendant of due process as guaranteed by the 14th Amendment, even if it did not provoke specific prejudice against the accused.⁵¹ In addition to encouraging public condemnation of the accused, the

Court ruled that coverage of an already sensational trial created too great a risk of influencing or distracting the judge, jurors, witnesses, and lawyers.⁵² Furthermore, the Court said that the presence of a camera, which it called a “powerful weapon,” deliberately damaged the defendant and subjected him to “a form of mental—if not physical—harassment, resembling a police line-up or the third degree.”⁵³ The magnification of the defendant’s movements further intensify the trial and “transgress his personal sensibilities, his dignity, and his ability to concentrate on the proceedings before him—sometimes the difference between life and death”⁵⁴

The *Estes* case was decided in 1965, at a time when cameras were quite large and when “twelve cameramen jostled for position, and bright lights and a tangle of wires and equipment turned the courtroom into a broadcast studio.”⁵⁵ This activity disrupted court proceedings. Yet the dissents in *Estes* are as noteworthy as the majority opinion on this note. Justice William Brennan said that the decision “is not a blanket constitutional prohibition against the televising of state criminal trials,” but a prohibition against televising the most sensational ones, where the defendant is most susceptible to the community’s interest and hence judgment.⁵⁶ Justice Potter Stewart followed by stating

that if the proceeding itself did not deprive the defendant of his right to a fair trial, “then the fact that the public could view the proceeding on television has no constitutional significance.”⁵⁷ This argument means that an image, duplicated via a camera’s broadcasts, did not automatically establish a constitutional violation. Instead, “[t]he Constitution does not make us arbiters of the image that a televised state criminal trial projects to the public.”⁵⁸

Almost twenty years after *Estes*, the Supreme Court tackled another noteworthy case involving cameras in the courts. In *Chandler v. Florida*, the Court ruled that televising a criminal trial over the defendant’s objection did not automatically render the trial unfair.⁵⁹ Before the case reached the Supreme Court, two Florida policemen were convicted of several crimes including burglary. At the time Florida was running a pilot program where the courts allowed camera coverage in the courtroom, and the case went to trial during this time.⁶⁰ Since the defendants had objected to televising the trial, the judge allowed taping only of the closing arguments and a segment of the prosecution’s presentation.⁶¹ The *Chandler* decision did not directly establish that there is a constitutional right to have cameras in the courts.

Perhaps the most troubling of all courtroom camera restrictions is that to this day the Supreme Court still does not allow camera access in its courtroom.

Yet the case is significant because although the court denied the defendants' request not to televise the trial, the Supreme Court still upheld the defendants' burglary conviction.⁶² For a court to decide that camera coverage led to prejudice against a defendant, the defendant had to show that the media's coverage compromised the jury's ability to decide the case fairly.⁶³ The defendants could not meet that burden with any identifiable evidence in this case.

The Supreme Court Justices relied in part on the changes in technology following *Estes*; television coverage was no longer a burdensome physical imposition, as large cameras, bright lights, and heavy cables were a thing of the past. Moreover, during jury selection each juror said that they would be "fair and impartial despite the presence of a television [news] camera in the courtroom."⁶⁴ Further, "[t]he risk of juror prejudice in some cases does not justify an absolute ban on news coverage of trials by the printed media; so such also the risk of such prejudice does not warrant an absolute constitutional ban on all broadcast coverage."⁶⁵ Instead of directly overturning the previous ruling, the Supreme Court said it was reading *Estes* more narrowly, so that the holding would only apply to cases of widespread interest.⁶⁶ Many states interpreted *Chandler* as an implicit message of support for televising trials.⁶⁷

A. TRIAL PUBLICITY AND AN IMPARTIAL JURY

In *Sheppard v. Maxwell*, the Supreme Court discussed the circumstances in which media coverage would be so pervasive as to damage a defendant's due process rights, such that public access to proceedings should be limited.⁶⁸ Due process requires that one accused of a crime be judged by an "impartial jury" that is not affected by any "outside influences."⁶⁹ This case attracted much publicity because it involved a doctor who was charged with murdering his pregnant wife, and was described as a case involving "murder and mystery, society, sex and suspense."⁷⁰ Numerous newspaper articles were published convicting Sheppard in the court of public opinion; "The newspapers portrayed Sheppard as a Lothario, fully explored his relationship with Susan Hayes, and named a number of other women who were allegedly involved with him. The testimony at trial never showed that Sheppard had any illicit relationships besides the one with Susan Hayes."⁷¹ Based on the "carnival"⁷² atmosphere that ensued inside the courtroom, the Court overturned Sheppard's conviction and remanded for retrial.

The Court outlined several steps that trial courts could use to provide a fair trial in a highly publicized case. For example, it was suggested that the judge tell all police, witnesses, and attorneys not to disclose information to the media that jurors are not allowed to discover.⁷³ Much of the information released was inaccurate and confusing, and affected the jurors' perception of the defendant. Specifically, the prosecutors shared information with the media that they were not allowed to present at trial.⁷⁴

In doing so, they circumvented the rules of evidence, which are designed to enhance the reliability of information presented to the jurors. The Supreme Court suggested that given the extensive pretrial publicity, the trial court should have been on notice that the proceedings could go awry and should have considered sequestering the jurors or moving the trial to an alternate location.⁷⁵ Although the case did not specifically focus on television news coverage of trials, but rather the danger of excessive media publicity, it did bolster those who were against cameras in the court.⁷⁶

B. EXCLUSION OF THE PRESS

So far, courts have not supported the idea that there is a First Amendment right to televise a trial. In *Richmond Newspapers, Inc. v. Virginia*, there were several mistrials in a murder case.⁷⁷ As a result, the defendant's attorneys asked that the trial be closed to the public and the media, and the prosecution did not object.⁷⁸ The trial judge closed the proceedings to the public and the media, but two reporters from *Richmond Newspapers, Inc.* claimed that doing so violated the First and Sixth Amendments.⁷⁹ They argued that "[t]o work effectively, it is important that society's criminal process 'satisfy the appearance of justice,' . . . [which] can best be provided by allowing people to observe such process."⁸⁰ The Supreme Court said that in the enumerated constitutional guarantees, there are also "certain unarticulated rights" which are tools for exercising those rights that are spelled out.⁸¹ The right to attend criminal trials, the Court held, is not explicitly stated in the First Amendment but was implicitly guaranteed.⁸² The Court held that the freedom of speech clause of First Amendment not only protected the right to speak, but also the right to "receive information and ideas."⁸³ The other First Amendment guarantee the Court discussed was the right of assembly, which is necessary for meeting the freedom of speech prong of the First Amendment. The right of assembly is protected for a public place, such as a trial court room, "where the people generally—and representatives of the media—have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place."⁸⁴

C. INCRIMINATING INFORMATION

In *Nebraska Press Association v. Stuart*, a trial judge ordered reporters to refrain from publishing incriminating information about the defendant, including accounts of his confession.⁸⁵ Erwin Charles Simants was charged with killing six people, the Henry Kellie family, in a rural Nebraska community.⁸⁶ The court order was designed to protect the defendant from the disclosure of information that could be extremely prejudicial.⁸⁷ The Supreme Court invalidated this order, relying in part on past case law that places a high burden on the party moving for a restraint of media coverage.⁸⁸ Just as criminal or civil

punishments of a newspaper's publishing of a story "chills" free speech, "prior restraint 'freezes' it at least for the time."⁸⁹ The Court looked at several factors in analyzing the validity of these restrictions—first, the pervasiveness of pretrial news coverage because it can provide a preview of what actual trial coverage will look like; second, whether less drastic measures could mitigate the publicity's effects, so that a minimal level of camera access could be allowed in a way that protects the defendant's rights; and third, to what degree an order that restricts the press would be effective in directly minimizing any danger that a trial poses when it receives a huge amount of trial publicity.⁹⁰ The Court accepted the trial judge's finding that the pretrial publicity was intense and pervasive.⁹¹ However, the Court found no basis for concluding that the less restrictive measure of allowing camera access in the courtroom could not guarantee a fair trial.⁹² The Court also doubted that the restraining order itself would be effective in guaranteeing a fair trial, noting that the order would be difficult to police, that media beyond the court's jurisdiction might publish prejudicial information, and that rumors in the small community would travel "swiftly by word of mouth."⁹³

IV. ANALYSIS: CANDID CAMERA: HOW TO RESOLVE THE ISSUE OF TRIAL BY SOUNDBITE

"We are not part of a national entertainment network."⁹⁴

-Justice Anthony Kennedy

The Supreme Court has overruled its previous decisions on a wide variety of cases, but there is one precedent that seems always to hold firm—no televising of its proceedings. Ironically, even in cases where the Supreme Court rules that televising trials in other courts is constitutionally permissible, the Court has not allowed their proceedings in making those decisions to be televised.⁹⁵

A. DOWNSIDE TO CAMERAS IN THE COURTS

The concern with this issue is whether media coverage could allow a jury pool to be contaminated by information that would be inadmissible in the courtroom, thus allowing them to decide against the defendant not on proper evidence, but rather on prejudicial information reported by the press. For instance, information inadmissible in court and substantially prejudicial to the defendant includes legally irrelevant information about the defendant's life, such as if he was unfaithful to his spouse. Other potentially prejudicial information includes reporting whether the defendant has had previous criminal convictions, discussing a confession where there is a chance it was not obtained by legal means and describing evidence that police obtained during an illegal search. The risks of televising trials could also

increase the potential of the viewers' heightened condemnation of the accused so that if the defendant were acquitted, he may have difficulty integrating back into society. Moreover, there is also the concern that the presence of television cameras could intimidate witnesses thus making them less willing to testify.⁹⁶

In responding to the argument that broadcasting judicial proceedings would enhance the judicial system's esteem in the eyes of the public, Judge Ito stated that broadcasting Congressional hearings had not helped enhance Congress's approval rating among viewers.⁹⁷ Moreover, the Judge was concerned that small portions of testimony might be taken out of context and broadcasted for its dramatic flair.⁹⁸ Several others shared this concern. Supreme Court Justice Souter's "over my dead body" quote referenced the fact that while he was Associate Justice of the New Hampshire Superior Court, the presence of a camera limited the questions he would ask because he was worried about his statements being "taken out of context on the evening news."⁹⁹ It is true that no judge wants to be second-guessed. If the public can watch someone performing their job, there is thus more of an opportunity for them to also critique it. But the opposite is also true; even if the public generally disagrees with a court's decision, the public might accept the ruling as fair because they have heard the arguments of each side along the way. In addition to "trial by sound bite," Judge Ito was worried that a televised trial would lead to "nervous witnesses" and "grandstanding lawyers."¹⁰⁰ He was further concerned that television coverage would only pick out the "most salacious sound bites" and would encourage lawyers to play to the camera and not to justice.¹⁰¹ Other arguments include that which holds the televising of a trial would violate "decorum" and "intimidate witnesses and jurors."¹⁰²

Further, there is the chance of "media overkill."¹⁰³ If television networks cover a trial and ratings are high, the media may cover the story in too much detail, even when there is nothing new to report. The endless supply of useless details about the case could cause viewers to become bored with its minutiae and tune out from courtroom coverage altogether. In the O.J. Simpson case the media coverage was incessant, to the point that one poll "showed 74% of Americans could identify Kato Kaelin but only 25% knew who Vice President was."¹⁰⁴ If people rely on television news as their source of information, and the networks are running coverage only of a case they know will draw ratings, there is other valuable information that this coverage is displacing. Arguably, it is not worth jeopardizing the criminal procedure protections of the Sixth Amendment for the First Amendment because the trials provide little societal value. In fact, when the freedom of the press allows the media to sensationalize a trial, people obsess about celebrity trials at the expense of engaging other valuable news.

B. BENEFITS TO HAVING A CAMERA IN THE SUPREME COURT

In the Supreme Court, there are neither jurors nor witnesses. Yet in thousands of courts across the country, judges are able to control the proceedings despite the presence of a camera.¹⁰⁵ Clara Tuma, a truTV news anchor, stated that while initially cameras can be distracting to jurors, they quickly adjust to the presence of the cameras:

What we find time and time again is that a camera is a novelty for the first moment or so. Jurors look at it. Attorneys want to know what it will show and if their bald spot will show. Judges are frequently concerned whether their nameplates are visible. Those are cosmetic things and you get over them. The participants quickly get to the business at hand and that is the business of a trial. The camera becomes invisible and is quickly forgotten by the participants.¹⁰⁶

As a television reporter covering the courts, I had firsthand experience delivering stories directly to the camera, which in reality, is communicating with viewers. The jury is composed of the same people who watch the news; i.e., members of the general public. In televising trials, these same people, now as jurors, are still making decisions about the case and are present in the courtroom anyway. The greater risk of contaminating the jury is grandstanding, which may occur regardless of the presence of a camera.

In the O.J. Simpson case, “given the public’s right to attend court proceedings and the paucity of seats in the courtroom—9 to 15 spots are set aside for the public—television coverage represented the only alternative to holding court in the Los Angeles Coliseum.”¹⁰⁷ In fact, “[o]ne study estimated that U.S. industry lost more than \$25 billion as workers turned away from their jobs to follow the trial.”¹⁰⁸ Both sides also felt that allowing cameras in the court would help to legitimize the verdict. When Ito ruled in favor of the television camera in court, his position was summarized as follows: “[R]ather than encourage irresponsible reporting, cameras could both check and correct it, and that in a case crucial to public faith in courts, television was essential.”¹⁰⁹

This issue came to the forefront during the 2000 presidential election. The Supreme Court in *Bush v. Gore*¹¹⁰ decided whether to continue recounting the ballots in Florida, a decision which would potentially determine the next president of the United States.¹¹¹ C-SPAN Chairman Brian Lamb wrote to Chief Justice William Rehnquist requesting to broadcast the proceedings so that the public may have a greater acceptance of the Supreme Court’s ruling.¹¹² However, Rehnquist denied his request, writing that “a majority of the Court remains of the view that we should adhere to our present practice of allowing public attendance and print media coverage of argument sessions, but not allow camera or audio coverage.”¹¹³ However, the Court did allow the immediate release of an audiotape of the *Bush v. Gore* argument, whereas could the release of such tapes often took take several months.¹¹⁴ Justice Rehnquist’s statement left open the possibility that some Justices may have been supportive of letting the cameras access the courtroom.¹¹⁵ Either way, the Supreme Court has seats for only 300 people.¹¹⁶ Once those spaces fill up, lawyers who are Supreme Court Bar members “can listen to arguments over a speaker system in a nearby room.”¹¹⁷ As for anyone else who has an interest or stake in the case, they are out of luck. Broadcast news reporters can enter the courtroom, but in order to share the information with the public, they must rely on their notes and personal recollection

of what happened, which is not the case with actual recordings.¹¹⁸

While the Court did provide an expedited transcript released on the day of argument, the transcript failed to identify which Justices were asking the questions.¹¹⁹ Hence, “[t]he court missed an opportunity when it failed to allow the millions following the case [outside the courtroom] to be eyewitnesses to history, instead of mere eavesdroppers.”¹²⁰ True, the public does have a constitutional right to attend a judicial proceeding, but in practice such a right means very little when seating is limited and individuals do not have secondary viewership if television cameras are not allowed.¹²¹ The Supreme Court does a disservice to the constitutional principles it seeks to uphold if it places barriers of the truthful reporting of matters of public

concern. At this point, when so many media consumers rely on television news for their source of information, merely releasing printed transcripts is not a reasonable alternative.

True, the public does have a constitutional right to attend a judicial proceeding, but in practice such a right means very little when seating is limited and individuals do not have secondary viewership if television cameras are not allowed.

At the Supreme Court level, there is no jury that needs to be sequestered. Surely no one expects the Justices to close their eyes and ears to nightly news reports. Given the Justices' lifetime appointments, there is no reason for them to be concerned about being closely scrutinized. Furthermore, jurors for lower courts are told that observing a case firsthand and making a personal determination of its facts is a civic duty and promotes justice. However, if they would actually like to watch a case unfold at the nation's highest court, they would have to travel to Washington, D.C. A case that is decided upon constitutional principles is an opportunity to educate the public and galvanize a vigorous public debate on issues of national importance.

V. PROPOSAL: "A TRIAL RUN" FOR PLACING A TELEVISION NEWS CAMERA IN THE SUPREME COURT

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.¹²²

-Justice Harlan

That day has already arrived. Right now, the public gets most of their knowledge about the legal system from celebrity run-ins with the law, such as Paris Hilton or Winona Ryder, or from several especially heinous crimes that garner media attention, such as the trials for the Menendez Brothers and Scott Peterson. Other sources of information about the court include reality shows such as *Judge Judy* or television dramas such as *Boston Legal* and *Law and Order*. Instead of continuing its courtroom ban on cameras and tape recorders, the Supreme Court should revise its policy, and the Court should be required to allow press coverage in the form of radio and television broadcasts. Would the television coverage of the nation's highest court turn the proceedings into a television drama? Television networks push the hardest to televise only the most sensational trials that often have limited significance, so would not allowing cameras in the courts merely elevate these less important cases and give them dignity that they do not deserve?

The other two branches of government, the executive and the legislative branches, both allow camera access; "[i]f you wish, you can watch Congress in session, debating issues, on C-Span. The President of the United States routinely gives televised press conferences and answers questions."¹²³ These branches do the public a great service when they allow for better transparency. Supreme Court Justice confirmation hearings are televised. There appears to be no justification to forbid seeing the Justices at work. What justifies the Supreme Court from blocking such transparency? If cameras were to be allowed in

the Supreme Court, then television news organizations could pool, or share, their footage, so that only one camera would need to be present. Not televising courtroom proceedings, some argue, "is like locking the courtroom door."¹²⁴

The "Sunshine in the Courtroom" bill should become law and be applied to the federal courts. In March 2006, the Senate Judiciary Committee approved the bill, which would amend Chapter 45 of Title 28 of the United States Code.¹²⁵ But the Supreme Court should go even further than required by the bill and California Rule 1.150. Pennsylvania Senator Arlen Specter sponsored a Senate bill that would allow television coverage of all Supreme Court open sessions, "as long as a majority vote of justices allows it or unless they rule that it would constitute a violation of due process rights of one or more parties."¹²⁶ It is important to emphasize that the bill would not allow the Justices' deliberations to be televised, just the oral arguments. As much progress as this bill could make, it still would leave the ultimate decision about whether to televise proceedings to the Justices themselves. It builds in a safeguard to protect parties' constitutional rights. This bill should be the model for the Supreme Court's camera access policy. The Supreme Court, as a governmental entity, should not be in the business of telling the public what to watch. Of course, whether in state, federal, or the nation's highest court, there may be exceptional reasons not to televise. An example where direct coverage would unduly burden the judicial branch would be a rape case, especially one involving a minor, because a victim especially may be discouraged to come forward. Also, coverage may be curtailed if there is a concern that stating a victim's name may place them in harm's way. In these cases, it would be legitimate to exclude televised coverage of court proceedings. In certain cases, individual judges, or in the case of the Supreme Court, the aggregate of Justices, should be given discretion to make individualized decisions.¹²⁷

As the Justices are appointed for life, they do not need to be concerned with the public's approval rating, and therefore they should not be influenced by the public's perception of their work. The trick is to navigate between two competing interests; an individual privacy interest would have to be weighed against publishing information that is of public importance. Simply put, "[t]here is a reason we do not hold trials in private and a reason we open the courtroom doors and invite in the world. The reason is that justice shines brightest in the sunshine."¹²⁸ At minimum, a presumption should be created that cameras are allowed in the Court. The burden of proof would fall upon the Court or the parties of a case to show that the presence of cameras would adversely affect the outcome.

There is some hope for progress in the movement in allowing cameras in the Supreme Court. Justice Sonia Sotomayor replaced Justice Souter, who was extremely vocal against having Supreme Court proceedings televised. Justice Sotomayor was

careful not to directly say she would favor camera access, but during her confirmation hearings, she did state that she would be open to a dialogue: “I have had positive experiences with cameras when I have been asked to join experiments using cameras in the courtroom.”¹²⁹ We live in an era of blogs, podcasts, and TiVo. If the Court does not make some effort to coexist with trials’ television coverage, it will leave the education of the public about the court system to those who do. Writer Dahlia Lithwick, who covers the Supreme Court for *Slate Magazine*, posits that if the Justices want to maintain the Court’s prestige, it is in their best interest to televise its proceedings.¹³⁰ She argues that new technology, specifically the Internet, makes it so easy for others to flood the web with satire and “updates” about the Supreme Court that it must use the television airwaves to reach out to the public and preserve its image.¹³¹

“People want to know what happens in the marble temple: If they aren’t allowed in to watch the real thing, they will enter via snarky anonymous blog. If the high court doesn’t make at least some concessions to the public, the American people will get to know its justices and their jobs through parody and politics alone.”¹³²

In essence, not only would the public be missing out on the important details of a case, but also people who consult sources with incorrect information could be misinformed.

VI. CONCLUSION: “T.V. OR NOT T.V.?”¹³³ THAT IS THE QUESTION

In the O.J. Simpson trial, the ubiquitous presence of the television camera turned a criminal trial into a courtroom drama. Given the pervasiveness of cable news outlets, local, and national news shows, it seems that there is an opportunity to indulge the public’s fascination with celebrity trials and to teach some powerful lessons about crimes, civil wrongs, and how the judicial system functions. Presently, most states allow television coverage of criminal and civil trials in superior courts. In California, for example, California Rule 1.150 (formerly Rule of Court 990) allows, but does not require, television, radio, and photo coverage.¹³⁴ Federal courts have experimented with television coverage in certain courts but under very limited circumstances.

So far, courts have rejected the argument that the First Amendment gives the right to televise a trial. While legislators may have the ability to encourage federal courts to open their doors to the camera, they have not taken steps to do the same at the Supreme Court level. It is a direct blow to democracy to not allow the public to understand how the Justices interpret the Constitution in light of a specific set of facts. Television news

equipment is no longer disruptive and can preserve the decorum of the nation’s highest court. Further, it can provide a window to its functions.

If a main concern is truth during a trial, it is best to not make it more difficult for those disseminating the facts, the reporters, to gather information. It behooves the public to allow the mild intrusiveness of a camera for the increased possibility of transparency and accountability of the courtroom. The public has more confidence in the judicial system when they see its processes step by step. Televising courtroom proceedings also serves as a check in making sure the process ensures justice, because seeing the actual trial is the most direct way to see the judicial system function. It is a foolproof way to get the story right because the information is disseminated in its purest form—through the trial itself. **CLB**

¹ *Law & Order* (NBC television broadcast 1990-2010) (depicting the police investigation of crimes and then the subsequent prosecution in court).

² *On Cameras in Supreme Court, Souter Says, ‘Over My Dead Body.’* N.Y. TIMES, Mar. 30, 1996, <http://www.nytimes.com/1996/03/30/us/on-cameras-in-supreme-court-souter-says-over-my-dead-body.html>.

³ U.S. CONST. amend 28, 19

⁴ 95, at *t doesn’t fit, you must acquit’: Defense attacks prosecution’s case; says Simpson was framed*, CNN, Sept. 28, 1995, at <http://www.cnn.com/US/OJ/daily/9-27/8pm/>.

⁵ See Albert Kim, *Pulp Nonfiction: When 95 million people tuned in to the ex-football star’s car chase, the media industry cashed in*, ENTERTAINMENT WEEKLY, July 8, 1994, <http://www.ew.com/ew/article/0,,302832,00.html> (considering that the Simpson trial characterized a “true-life drama” and discussing how news stations covered the trial relentlessly).

⁶ See David Margolick, *Simpson Judge Allows Camera to Stay*, N.Y. TIMES, Nov. 8, 1994, <http://www.nytimes.com/1994/11/08/us/judge-in-simpson-trial-allows-tv-camera-in-courtroom.html> (arguing that televised coverage of the trial was the sole mechanism for much of the public to view the trial proceedings).

⁷ See Bill Cunningham & Cynthia McFadden, *O.J. Simpson Case: 10 Years Later*, ABC NEWS, June 10, 2004, <http://abcnews.go.com/GMA/story?id=127778> (contending that viewers were “riveted” by Simpson’s trial and were captivated particularly by the high speed chase that led to Simpson’s arrest).

⁸ See Margolick, *supra* note 6 (emphasizing the importance of “public faith in [the] courts” and concluding that television cameras were allowed in the courtroom, provided that news stations did not conduct irresponsible reporting).

⁹ See Clara Tuma, *Open Courts: How Cameras in Courts Help Keep the System Honest*, 49 CLEV. ST. L. REV. 417, 420 (2001) (arguing that the benefits of filming courtroom proceedings far outweigh the risks given that modern technology is minimally intrusive).

¹⁰ U.S. CONST. amend. VI.

¹¹ See *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966) (noting that trial court judges must take strong precautions to ensure that this balance never weighs against the accused).

¹² See *id.* at 351 (discussing that the very purpose of the open court system is to adjudicate controversies with calmness and solemnity according to certain legal procedures, including the requirement that a jury verdict

be based upon evidence received in open court and “not from outside sources”); *see also infra* Part IV. a.

¹³ *See* Chandler v. Florida, 449 U.S. 560, 572 (1981) (describing how “[t]here is certainly a strong possibility that the ‘cocky’ witness having a thirst for the limelight will become more ‘cocky’ under the influence of television. And who can say that the juror who is gratified by having been chosen for a front-line case, an ambitious prosecutor, a publicity-minded defense attorney, and even a conscientious judge will not stray, albeit unconsciously, from doing what ‘comes naturally’ into pluming themselves for a satisfactory television ‘performance?’”).

¹⁴ *Estes v. Texas*, 381 U.S. 532 (1965).

¹⁵ *Chandler*, 449 U.S. at 560.

¹⁶ *Sheppard*, 384 U.S. at 333.

¹⁷ *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980).

¹⁸ *Neb. Press Ass’n v. Stuart*, 427 U.S. 539 (1976).

¹⁹ *See, e.g., New Jersey v. Hauptmann*, 180 A. 809 (N.J. 1935), cert. denied, 296 U.S. 649 (1935) (discussing how newspaper publications of the Lindbergh baby trials resulted in the taint of the jury pool during the criminal trial).

²⁰ CAL. RULES OF COURT 1.150.

²¹ *See* Press Release, Senator Chuck Grassley, Grassley, Schumer Promote Greater Public Access to Federal Courtrooms (Mar. 20, 2009) [hereinafter Senator Chuck Grassley Press Release], available at http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=19895 (arguing that a cameras in the courtroom will lead to a deeper understanding of the judicial branch among Americans).

²² *See* Melissa Drosjack, *Pols Consider Cameras at Supreme Court*, FOX NEWS, Nov. 10, 2005, <http://www.foxnews.com/story/0,2933,175239,00.html> (contending that cameras in federal courts, including the Supreme Court, will establish a better understanding of the judicial system in the U.S.); *see also* Press Release, Senator Arlen Specter, Significant Progress on Cameras in the Supreme Court: Specter’s Resolution and Legislation to Permit Televising Supreme Court Proceedings Clear Judiciary Committee (Apr. 29, 2010), available at http://specter.senate.gov/public/index.cfm?FuseAction=NewsRoom.NewsReleases&ContentRecord_id=4b092430-ad1f-ee34-2c77-25d791032a40.

²³ *See* HEDIEH NASHERI, CRIME AND JUSTICE IN THE AGE OF COURT TV 10 (2002) (suggesting that “[b]ecause Lindbergh was the first person to make a successful transatlantic flight, the case drew world-wide interest”).

²⁴ *See id.* at 10-12 (illustrating that “[c]rowds of citizens, as many as 20,000 per day, lined the streets around the courthouse, and savvy entrepreneurs sold souvenirs On appeal, Hauptmann claimed the disturbances in the courtroom denied him a fair trial, but the appellate court disagreed and stated that Hauptmann should have objected to the media presence at the time of the trial.”).

²⁵ *Id.* at 12-13. “Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.” *Id.* at 13.

²⁶ MARC A. FRANKLIN, DAVID A. ANDERSON, & LYRISSA BARNETT LIDSKY, MASS MEDIA LAW, CASES AND MATERIALS 702 (7th ed. 2009).

²⁷ *See id.* (discussing how prohibiting televised court proceedings was important to guarantee “maintenance of decorum” and to prevent “unfairness”).

²⁸ *See id.* at 704 (mentioning that the Ninth Circuit particularly would consider televised proceedings in civil cases).

²⁹ Paula Canning & April Thorn, *New Hampshire Supreme Court Rules in Favor of Cameras in Courtrooms; Other Courts Limit Access*, 27 THE

NEWS MEDIA & THE LAW 3, 44 (Winter 2003), available at <http://www.rcfp.org/newsitems/index.php?i=5991>.

³⁰ *See* David G. Savage & Carol J. Williams, *Prop. 8 trial video barred — for now*, L.A. TIMES, Jan. 12, 2010, <http://articles.latimes.com/2010/jan/12/local/la-me-prop8-cameras12-2010jan12> (discussing how O.J. Simpson’s trial led to a general prohibition on cameras in federal courts because of the frenzy of media attention in particular cases).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Senator Chuck Grassley Press Release, *supra* note 21.

³⁵ *See* S. 657, 111th Cong. § 2 (as reported in the Senate on March 19, 2009) (giving discretion to the trial judge to determine whether cameras are appropriate in the courtroom).

³⁶ Senator Chuck Grassley Press Release, *supra* note 21.

³⁷ *See id.* (concluding that “to provide a mechanism for Congress to study the effects of this legislation on our judiciary,” it is important to include a sunset provision).

³⁸ Press Release, Senator Arlen Specter, Significant Progress on Cameras in the Supreme Court (April 29, 2010), http://specter.senate.gov/public/index.cfm?FuseAction=NewsRoom.NewsReleases&ContentRecord_id=4b092430-ad1f-ee34-2c77-25d791032a40.

³⁹ Senator Chuck Grassley Press Release, *supra* note 21.

⁴⁰ *See id.* (providing that studies from fifteen states show there may be “educational benefits” from the use of camera access in courts and “contributes to greater understanding of the judicial system”).

⁴¹ CAL. RULES OF COURT 1.150.

⁴² *Id.*

⁴³ *Id.* The other factors a judge may take into account include: “1) the importance of maintaining public trust and confidence in the judicial system; 2) the importance of promoting public access to the judicial system; 3) the nature of the case; 4) the privacy rights of all participants in the proceeding; 5) the effect of any ongoing law enforcement; 6) the effect on any unresolved identification issues; 7) the effect on any subsequent proceedings; 8) the effect of coverage on the willingness of the witnesses to cooperate; 9) the effect on excluded witness who have access to televised testimony; 10) whether the jury might be unfairly influenced or distracted; 11) the difficulty of jury selection if a mistrial is declared; 12) the security and dignity of the court; 13) undue administrative or financial burden to the court or participants; 14) interference with neighboring courtrooms; 15) the maintenance of orderly conduct of the proceedings; 15) any other factor the judge deems relevant.” *Id.*

⁴⁴ *Id.*

⁴⁵ Greta Van Susteren is a former criminal defense and civil trial lawyer. She currently hosts a show on the Fox News Channel entitled *On the Record with Greta Van Susteren*.

⁴⁶ GRETA VAN SUSTEREN & ELAINE LAFFERTY, MY TURN AT THE BULLY PULPIT: STRAIGHT TALK ABOUT THE THINGS THAT DRIVE ME NUTS 93 (2003).

⁴⁷ *Id.*

⁴⁸ *Estes v. Texas*, 381 U.S. 532, 535 (1965) (discussing the dangers of some distorting the criminal trial with the use of radio and television broadcasts during the earlier proceedings in the trial).

⁴⁹ *Id.* at 534 n. 1.

⁵⁰ *Id.* at 554.

⁵¹ *Id.* at 578.

⁵² *See id.* at 549 (ruling that the risk of substantial prejudicial effect outweighs the benefits of television cameras in the courtroom in this case).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Law: Cameras in the Courtroom*, TIME, July 23, 1979, <http://www.time.com/time/magazine/article/0,9171,947079,00.html>.

⁵⁶ *Estes*, 381 U.S. at 617.

- ⁵⁷ *Id.* at 614-15 (relying on *Speiser v. Randall*, 357 U.S. 513, 525 (1958), Justice Stewart continued, “[t]he idea of imposing upon any medium of communications the burden of justifying its presence is contrary to where I had always thought the presumption must lie in the area of First Amendment freedoms”).
- ⁵⁸ *Id.* at 614.
- ⁵⁹ See *Chandler v. Florida*, 449 U.S. 560, 582 (1981) (holding that the *Estes* court did not create a per se rule against cameras in the court, and in this case, there is no constitutional violation of court rules that permit media and photography during certain judicial proceedings).
- ⁶⁰ See *id.* at 576 n. 11 (concluding that while data is “limited,” states often can “minimize the problems” that occur during media coverage of trials).
- ⁶¹ See *id.* at 568, 583 (discussing how the judge restricted the use of cameras in the back portion of the courtroom).
- ⁶² See *id.* at 583 (affirming the conviction and upholding the constitutionality of Canon 3A(7), regulating media and cameras in the courtroom).
- ⁶³ See *id.* at 574-75 (underscoring the argument that “[a]n absolute constitutional ban on broadcast coverage of trials cannot be justified simply because there is a danger that, in some cases, prejudicial broadcast accounts of pretrial and trial events may impair the ability of jurors to decide the issue of guilt or innocence uninfluenced by extraneous matter”).
- ⁶⁴ MARJORIE COHN & DAVID DOW, *CAMERAS IN THE COURTROOM: TELEVISION AND THE PURSUIT OF JUSTICE* 23 (1998).
- ⁶⁵ *Chandler*, 449 U.S. at 575.
- ⁶⁶ See *id.* at 570-75 (reiterating that *Estes* did not announce a constitutional rule that all photographic or broadcast coverage of criminal trials is inherently a denial of due process).
- ⁶⁷ See SUSTEREN & LAFFERTY, *supra* note 46, at 95 (suggesting that a narrow interpretation of *Estes* implicitly signals a trend towards allowing televising trial proceedings).
- ⁶⁸ See *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966) (discussing how the “court could also have requested the appropriate city and county officials to promulgate a regulation with respect to dissemination of information about the case by their employees”).
- ⁶⁹ *Id.*
- ⁷⁰ *Id.* at 356 (citing and agreeing with the Ohio Supreme Court’s finding about the nature of the publicity that surrounded Sheppard’s trial).
- ⁷¹ *Id.* at 340-41.
- ⁷² *Id.* at 358.
- ⁷³ See *id.* at 360 (contending that judges should emphasize the importance of the “accuracy of [the reporters’] accounts” of the case and significance of “imposing control over the statements made to the news media”).
- ⁷⁴ See *id.* (illustrating that the prosecution’s dissemination of information regarding the defendant’s refusal to complete a lie detector test was inappropriate because “[t]he exclusion of such evidence in court is rendered meaningless when news media make it available to the public”).
- ⁷⁵ See *id.* at 362-63 (concluding that a new trial is necessary if pre-trial publicity prevents a fair trial).
- ⁷⁶ See COHN & DOW, *supra* note 64, at 21-22 (noting the “prejudicial impact of pretrial publicity on jurors and the local community”).
- ⁷⁷ See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 559 (1980) (mentioning the series of mistrials for one defendant after jurors were excused for having read about the defendant’s trial in the newspaper).
- ⁷⁸ See *id.* at 559-60 (noting that the judge “ordered ‘that the Courtroom be kept clear of all parties except the witnesses when they testify’”).
- ⁷⁹ See *id.* at 560, 580 (holding that the right to attend a criminal trial is implied by the First Amendment to promote freedom of speech and the press).
- ⁸⁰ *Id.* at 571-72.
- ⁸¹ *Id.* at 579 (“For example the rights of association and of privacy, the right to be presumed innocent, and the right to be judged by a standard of proof beyond a reasonable doubt in a criminal trial as well as the right to travel, appear nowhere in the Constitution or the Bill of Rights.”).
- ⁸² *Id.* at 580.
- ⁸³ *Id.* at 576.
- ⁸⁴ *Id.* at 578.
- ⁸⁵ *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 541 (1976) (questioning whether such an order violates the constitutional right to freedom of the press).
- ⁸⁶ *Id.* at 542.
- ⁸⁷ See *id.* at 541 (mentioning that the defendant’s confession highly implicated him in the murder).
- ⁸⁸ *Id.* at 558. “Any prior restraint on expression comes to this Court with a ‘heavy presumption’ against its constitutional validity.” See, e.g., *Carroll v. Princess Anne*, 393 U.S. 175, 181 (1968); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).
- ⁸⁹ *Id.* at 559.
- ⁹⁰ *Id.* at 562 (noting that the exact text of the restraint is important to consider the type of coverage that was limited).
- ⁹¹ *Id.* at 562-63.
- ⁹² *Id.* at 563 (arguing that the trial judge’s determination was “speculative, dealing as he was with factors unknown and unknowable”).
- ⁹³ *Id.* at 567.
- ⁹⁴ Linda Greenhouse, *The Election; Not Exactly Made for TV, But Think of the Ratings*, N.Y. TIMES, Nov. 26, 2000, <http://www.nytimes.com/2000/11/26/weekinreview/the-election-not-exactly-made-for-tv-but-think-of-the-ratings.html?pagewanted=1> (quoting Justice Kennedy’s argument against allowing cameras in the Supreme Court).
- ⁹⁵ See, e.g., *Chandler v. Florida*, 449 U.S. 560, 582 (1981) (concluding that there is no per se rule against the constitutionality of allowing media in the courtroom).
- ⁹⁶ See Margolick, *supra* note 6 (noting that other concerns include “grandstanding lawyers and salacious sound bites”).
- ⁹⁷ See *id.* (challenging the “educational value” of establishing a deeper understanding of the judicial system through televised criminal trials).
- ⁹⁸ *Id.*
- ⁹⁹ See *On Cameras in Supreme Court, Souter Says, ‘Over My Dead Body,’ supra* note 2; see also Jennifer J. Miller, *Cameras in Courtrooms: The Lens of the Public Eye on Our System of Justice*, 13 S.C. LAWYER 25, 26 (2002) (illustrating that despite Justice Souter’s concerns, the Chief Justice “released an audiotape immediately after the argument, for the first time in the Court’s history”).
- ¹⁰⁰ Margolick, *supra* note 6.
- ¹⁰¹ *Id.*
- ¹⁰² SUSTEREN & LAFFERTY, *supra* note 46, at 99.
- ¹⁰³ Thomas L. Jones, *The O.J. Simpson Murder Trial: Prologue*, TRUTV, http://www.trutv.com/library/crime/notorious_murders/famous/simpson/index_1.html.
- ¹⁰⁴ *Id.*
- ¹⁰⁵ See SUSTEREN & LAFFERTY, *supra* note 46, at 99 (arguing that televised court proceedings does not “comprise[] justice”).
- ¹⁰⁶ Tuma, *supra* note 9, at 419.
- ¹⁰⁷ Margolick, *supra* note 6.
- ¹⁰⁸ Jones, *supra* note 103.
- ¹⁰⁹ Margolick, *supra* note 6.
- ¹¹⁰ *Bush v. Gore*, 531 U.S. 98 (2000).
- ¹¹¹ See *id.* at 103 (explaining the closeness of the elections in combination with the error in ballots cast for the presidential elections led to the recount of legal ballots).
- ¹¹² See Marjorie Cohn, *Let the Sun Shine on the Supreme Court*, 35 HASTINGS CONST. L.Q. 161, 161-62 (2008) (discussing the release of the

Bush v. Gore oral arguments on audiotape).

¹¹³ Greenhouse, *supra* note 94.

¹¹⁴ Cohn, *supra* note 112.

¹¹⁵ *See id.* (explicating that the word “‘majority’ implied, without saying so explicitly, that one or more justices might have been willing to relax the ban on cameras, at least for this case”).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *See id.* (describing how the court would “allow ‘public attendance and print media coverage of argument sessions, but not allow camera or audio coverage’”).

¹¹⁹ *See Televising the Highest Court*, N.Y. TIMES, Dec. 5, 2000, at A28 (criticizing that those who listened to the Supreme Court’s audiotapes of the oral arguments were mere “eavesdroppers,” instead of “eyewitnesses”).

¹²⁰ *Id.*

¹²¹ *See* Greenhouse, *supra* note 94 (illustrating that only a fraction of individuals can attend trials in person).

¹²² *Estes v. Texas*, 381 U.S. 532, 595 (1965) (concurring in the opinion).

¹²³ SUSTEREN & LAFFERTY, *supra* note 46, at 94.

¹²⁴ John G. White III, *Celebrating the 30th Anniversary of Cameras in the Courts*, 83 FLORIDA BAR JOURNAL 4, 6 (2009).

¹²⁵ *See* Cohn, *supra* note 112, at 165 (reiterating that the bill would allow “television coverage of all open sessions”).

¹²⁶ Drosjack, *supra* note 22.

¹²⁷ *See* Henry Schleiff, *Cameras in the Courtroom: A View in Support of More Access*, 28 HUM. RTS. 14, 15 (2001) (mentioning that legislation is pending before the House of Representatives and the Senate to determine whether cameras should be available in federal courts).

¹²⁸ Tuma, *supra* note 9, at 420.

¹²⁹ John Eggerton, *Sotomayor Raises RTNDA Hopes For Court Cameras*, BROADCASTING & CABLE, Aug. 6, 2009, http://www.broadcastingcable.com/article/326766-Sotomayor_Raises_RTNDA_Hopes_For_Court_Cameras.php.

¹³⁰ *See* Dahlia Lithwick, *The Letterman Justice*, SLATE, (Dec. 8, 2005, 4:33PM), <http://www.slate.com/id/2131895/> (arguing that allowing cameras in the courtroom promotes both public legitimacy and scrutiny simultaneously).

¹³¹ *See id.* (suggesting that “gossipy blogs and parody sites will inexorably conspire to make the court appear more and more ridiculous”).

¹³² *Id.*

¹³³ RONALD L. GOLDFARB, *TV OR NOT TV: TELEVISION, JUSTICE AND THE COURTS* 154 (1998).

¹³⁴ CAL. RULES OF COURT 1.150. “This rule does not create a presumption for or against granting permission to photograph, record, or broadcast court proceedings.” *Id.*

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