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The 2004 Pulliam-Kilgore Report

A Public Trial in the 21st Century:
Cameras in the Courtroom – Public Access for All

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By Ellia Thompson
2004 Pulliam-Kilgore Intern

Bruce W. Sanford
Robert D. Lystad
Bruce D. Brown
Malena F. Barzilai
Baker & Hostetler LLP
Washington, D.C.

Counsel to the Society of Professional Journalists
INTRODUCTION

The alleged “20th hijacker” in the September 11th attacks and a member of the Al Qaeda network is indicted and a trial begins that could unravel some of our nation’s security and intercommunication problems that prevented FBI and CIA officials from stopping the attacks.

The trials of two of this country’s worst serial killers, who terrorized an entire region for weeks as they randomly selected their victims by aiming and shooting high-powered rifles from hundreds of yards away, take place in separate courtrooms and potentially shed light on two very troubled and destructive minds.

One of the world’s most famous and successful pop stars of all time is arraigned by a grand jury on charges of molesting young boys over a number of years, all the while working closely with and advocating for the rights and welfare of children around the world.

What do all of these cases have in common? The daily judicial proceedings of each criminal trial were or will be shielded from the vast majority of Americans with a vested interest in the outcome, as well as the details and nuances, of each case. Though the media has made some progress in gaining access to proceedings previously closed to broadcast, television cameras are still banned in the majority of American courtrooms – state as well as federal – despite the fact that every state has a law theoretically permitting cameras in the courtroom, usually at the discretion of the presiding judge. In each of the cases highlighted above, the judge decided not to allow cameras or audio equipment in the courtroom or determined that the current ban on cameras in federal courtrooms prevented such coverage.

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1 Ellia Thompson is the 2004 Pulliam-Kilgore intern for the Society of Professional Journalists. She is a 2005 J.D. candidate at The George Washington University School of Law and has spent the last six years working as a broadcast news writer as well as a Congressional press secretary. She earned a B.A. in English at the University of California, Los Angeles.
More than 200 years ago, our founding fathers made it clear that they expected an open, representative government to maintain public access to our courtrooms to ensure a free and informed society that safeguarded each individual’s rights. In a letter written just before the Declaration of Independence, John Dickinson, who represented Pennsylvania in the first Continental Congress wrote, “next great right, is that of trial by jury ... upon a fair trial and full enquiry, face to face, in open court, before ... as many of the People as chuse to attend.” At the time, many leaders advocated for courthouses to be built as large as necessary to accommodate all members of the community who might share an interest in the trial’s proceedings and outcomes.

Today, providing public access to all individuals who share a common interest in the court proceedings of a highly important or highly publicized trial requires that the trial be broadcast on television, because “television is the means by which most people get their news.”

Since the infamous trial of O.J. Simpson and the subsequent backlash against the media for the circus atmosphere that pervaded that case, many judges have been reluctant to open up their courtrooms to the broadcast media. Also, legislation that would grant federal trial judges discretion to permit camera coverage of proceedings has repeatedly stalled in Congress and appears set to do the same this session.

However, some judges are not only allowing broadcast media access into their courts, they are strongly advocating for more judges to do the same and for elected officials to change the laws to give the media greater access to courts. Events such as the Supreme Court’s

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decision to allow a live audio feed of the *Bush v. Gore* oral arguments in 2000 bolster claims of those favoring broadcast media access, as do studies strongly indicating that allowing cameras in the courtroom does not affect the outcome of a trial or preclude a defendant from receiving a fair and impartial jury.

This year’s Pulliam-Kilgore report will examine the issue of cameras in the courtroom and the arguments for and against allowing cameras inside. Opponents offer a wide variety of reasons for placing courtrooms off limits to widespread public access. While their arguments are, in the minds of camera proponents, misguided, ill-founded or even completely baseless, they resonate with many judges, lawyers and elected officials and keep the public from receiving accurate, unfiltered, and timely information on many of the most important judicial proceedings of this century. This report will highlight: 1) the movement to allow camera access into courts before and after the infamous O.J. Simpson trial; 2) arguments by advocates for and opponents against allowing cameras into the courts, including reasons judges cite for not permitting cameras; 3) signs that the tide may be turning in favor of increased access by broadcast journalists to courts across the country as well as the international trend toward allowing televised coverage of court proceedings; and 4) steps members of the broadcast media can take to gain further access into courtrooms.

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PART I: IMPACT OF THE “TRIAL OF THE CENTURY”

Until the mid-1990’s, approval of cameras in the courtroom was steadily increasing. The movement had been dealt a substantial blow in 1965 in Billie Sol Estes v. Texas,⁵ in which the U.S. Supreme Court reversed the defendant’s conviction on the grounds that he was denied due process of law, specifically because of the “circus atmosphere” created by the numerous cameras, lights, and other broadcast equipment at the trial. The opinion described the intense activity related to the trial coverage: “Indeed, at least 12 cameramen were engaged in the courtroom throughout the hearing taking motion and still pictures and televising the proceedings. 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. It is conceded that the activities of the television crews and news photographers led to considerable disruption of the hearings.”⁶ Although the Court ruled against allowing TV coverage of a trial conducted in a circus atmosphere, it stopped short of saying that TV coverage was inherently unconstitutional.⁷

The following year, the Supreme Court ordered a new trial for Sam Sheppard, the infamous doctor accused of bludgeoning his wife in 1954, on the grounds that his trial had been prejudiced by excessive press attention.⁸ He was acquitted in a second trial in 1966, after spending more than ten years in prison. Although the antics of the media inside the courtroom

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⁶ Id. at 536.


⁸ Fox Butterfield, ‘The Fugitive’ Didn’t Do It, New York Times, Pg. 2 (Feb. 9, 1997).
were problematic, it was the excessive and prejudicial pretrial publicity that the Supreme Court cited when they threw out Sheppard’s conviction. The majority opinion wrote, “three months before trial he was examined for more than five hours without counsel in a televised three-day inquest conducted before an audience of several hundred spectators in a gymnasium.”

Although Estes, and to a lesser degree, Sheppard, were setbacks to the movement to put cameras in courts, as equipment became smaller and fewer people were required to run them, more states began to permit coverage. Then, in the early 1980s, two monumental cases in favor of media access to courtrooms seemed to propel the movement forward.

In response to a trial judge’s decision to close a criminal trial to the public and members of the media, in 1980 the Supreme Court in Richmond Newspapers, Inc. v. Virginia ruled that a courtroom is a public place where the public’s and the media’s presence historically have been thought to enhance the integrity and quality of the proceedings. In the majority opinion, the Court further stated that the media’s function as a public surrogate in attending and reporting on the trials is of great value in ensuring fair trials and accountability on the part of the court’s officials. “Historically and functionally,” the Court stated, “open trials have been closely associated with the development of the fundamental procedure of trial by jury, and trial access assumes structural importance in this Nation’s government of laws by assuring the public that procedural rights are respected and that justice is afforded equally, by serving as an effective restraint on possible abuse of judicial power, and by aiding the accuracy of the trial factfinding process.”

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11 Id. at 556.
Then in 1981 in *Chandler v. Florida*, the Supreme Court was finally called upon to decide whether TV coverage of criminal trials violates defendants’ rights *per se*, even when it does not create a circus-like atmosphere. The Court ruled that it does not.\(^{12}\) "The risk of juror prejudice in some cases does not ... warrant an absolute constitutional ban on all broadcast coverage.”\(^{13}\)

In *Chandler*, the Florida Supreme Court, following a pilot program for televising judicial proceedings in the State, promulgated a revised Canon 3A (7) of the Florida Code of Judicial Conduct to permit electronic media and still photography coverage of judicial proceedings, subject to control of the presiding judge.\(^{14}\) Appellants, who were charged with a crime that attracted media attention, were convicted in a jury trial in a Florida trial court over objections that the televising and broadcasting of parts of their trial denied them a fair and impartial trial.\(^{15}\) The Florida District Court of Appeals affirmed the convictions, finding no evidence that the presence of a television camera hampered appellants from presenting their case, deprived them of an impartial jury, or impaired the fairness of the trial.\(^{16}\) The U.S. Supreme Court affirmed the right of each state to allow electronic and still photographic coverage of criminal trials without the consent of the accused.\(^{17}\)

Subsequently, many states dropped their bans on electronic media, while other states began experimenting with the use of television in the courtroom. “When we started Court TV


\(^{14}\) *Id.*

\(^{15}\) *Id.*

\(^{16}\) *Id.*

back in 1991, about half the states allowed cameras in the courtroom, and by 1995 it went to
about two-thirds,” recalled Fred Graham, Chief Anchor and Managing Editor of Court TV.

“The phenomena of having cameras in the courtroom and gavel-to-gavel coverage was
very successful. The public was very perceptive and the judicial officials felt it was positive.\textsuperscript{18}

But then, just a decade ago, a popular former NFL running back was charged with the
murder of his wife and her male friend, and the nation tuned in to one of the most emotional
and embarrassingly unprofessional courtroom dramas that had ever been shown on live
television. Few who watched the proceedings, regardless of whether they agreed with the
verdict, felt that justice had been served by any of those charged with that responsibility. Judge
Lance Ito, who presided over the judicial proceedings, was largely viewed as being unable to
control the antics of the prosecuting and defense attorneys. Lawyers on both sides were
accused of grandstanding and playing to the cameras – both in the courtroom and outside on
the steps at “impromptu” press conferences. Careers were made and destroyed and among the
casualties was the impetus to allow cameras into the nation’s courtrooms.

“Before O.J. there was terrific momentum on both the state and federal level. Then we
had the O.J. trial and things went back to square one,” said Kathleen Kirby, who serves as First
Amendment Counsel to the Radio, Television, News Directors Association and Foundation
(RTNDA). “Judges are certainly less willing to allow cameras inside their courtrooms, no doubt
about it.”\textsuperscript{19}

Court observers were harsh in their criticism of the media’s coverage of the trial and
everything from the accused grandstanding and posturing of the attorneys to the jury’s surprise

\textsuperscript{18} Telephone Interview with Fred Graham, Chief Anchor and Managing Editor of Court TV (July 7, 2004).

\textsuperscript{19} Telephone Interview with Kathleen Kirby, attorney with Wiley Rein & Fielding, LLP and First Amendment Counsel
to the Radio-Television News Directors Association and Foundation (RTNDA) (June 21, 2001).
verdict were blamed on the presence of the cameras. "Certainly, many observers voiced the opinion that the 'not guilty' verdict in the Simpson case intone(d) a death knell for cameras in the courtroom."²⁰

The fallout from the Simpson trial was immediate and felt by the media across the country. In California, then-Governor Pete Wilson launched an ultimately unsuccessful campaign to ban television coverage of trials throughout the state, citing a need "to preserve the integrity of the judicial process."²¹ In Connecticut, a bill that would have expanded media access to allow coverage of executions did not pass. In Philadelphia, where cameras had previously been allowed in City Hall, they were now forbidden past the front door of the new Criminal Justice System.²²

Individual judges were also taking action to bar the media from their courthrooms. A Sonoma County California Superior Court judge, citing the "media saturation" of the O.J. Simpson trial, refused to permit live or still cameras during the trial of Richard Allen Davis, who was accused of the kidnapping and murder of Polly Klaas.²³ Just three days after the Simpson verdict, Lyle Menendez’s attorney persuaded Los Angeles County Superior Court Judge Stanley M. Weisberg to change his mind and ban live coverage.²⁴ He did so despite the fact the district attorney’s office said it favored coverage of the case.²⁵

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²⁰ Switzer, supra note 17 at 5.


²² Switzer, supra note 17 at 5.

²³ Id.

²⁴ Id.

²⁵ Id.
Momentum to obtain access to the federal courts also stalled following the O.J. trial. In May 1990, then-Rep. Robert Kastenmeier, the chair of the House Judiciary Committee's subcommittee on the courts, had written to the Judicial Conference, the body authorized to make with regard to the administration of the United States courts, that "it is timely for the federal courts, at both the trial and appellate levels, to permit electronic and photographic news coverage in the courtroom." The next year a pilot program allowing cameras in the courts was conducted in civil and appellate courts. The federal pilot program lasted three years and camera access was granted to about 200 proceedings. An extensive study conducted by the judiciary's own research arm, the Federal Judicial Center, found that the reaction to the pilot programs was favorable. "Overall attitudes of judges toward electronic media coverage of civil proceedings were initially neutral and became more favorable after experience under the pilot program," the Center's report concluded.

Tony Mauro, Supreme Court Correspondent for Legal Times and American Lawyer Media, covered the federal courts at this time and strongly believed that the outcome would have been more positive at the federal level if not for the infamous Simpson trial. "The experiment in the early 1990's to allow cameras in a few appellate courts was pretty positive," he said. "The Judicial Conference was debating whether to continue the experiment at the same time the O.J. trial was getting underway. [But] the members of the committee were so shell-shocked by the antics going on in that trial that they decided not to go forward."

27 See id.
28 See id.
29 Telephone Interview with Tony Mauro, Senior Court Correspondent, Legal Times and American Lawyer Media (July 1, 2004).
Instead, the Judicial Conference in September 1994 rejected the recommendation to expand camera coverage in civil proceedings and did not approve a proposed amendment to Federal Rule of Criminal Procedure 53, which expressly prohibits electronic media coverage of criminal proceedings. Because nearly every federal district also has in place a local rule prohibiting camera coverage of civil proceedings, the Judicial Conference’s inaction essentially placed a ban on all camera coverage in federal trial courts in both criminal and civil cases.

As for the issue of cameras in the appellate courts, the Judicial Conference in 1996 adopted a resolution stating that “each court of appeals may decide for itself” whether to permit coverage. So far, only the Second and Ninth Circuits have approved of cameras in appellate proceedings.

Many experts believe the ramifications of the Simpson verdict have continued to reverberate through courtrooms, stifling televised public access to trials for nearly a decade.

“Judges have been completely spooked by the [Judge] Lance Ito experience,” explained Jeffrey Toobin, CNN’s Senior Legal Analyst. “He drew so much criticism because of his inability to control the courtroom. But a fear of being embarrassed is not a legitimate reason to ban cameras from the courtroom.”

For at least one judge, however, the O.J. Simpson trial did not spook him, but instead steeled his resolve to fight for cameras in the courtrooms. “I’m a big advocate of cameras in the

(continued)


31 Id.


33 Telephone Interview with Jeffrey Toobin, Senior Legal Analyst, CNN (June 30, 2004).
courtroom because of the Simpson case,” declared Judge Ted Poe, a widely respected Texas criminal judge who has served on the bench for 22 years and has presided over more than 1,000 cases.34

“Cameras only showed the truth of what was really going on in the courtroom. Judge Ito lost control of the trial...all the cameras did was show that. Unfortunately [today] people gauge the criminal justice system on that one trial.”35

**PART II: BOTH SIDES OF THE DEBATE**

In 2002, Judge Poe made history when he fought to allow cameras to film jury deliberations in a Texas capital murder trial of a 17-year-old defendant. The judge had approved a request from producers of the PBS documentary series “Frontline” to film the trial in its entirety, including jury selection and deliberations.36

In making his decision, Poe has said only 14 of the 110 jurors who filled out jury questionnaires voiced a concern about the filming, and no law in Texas prevents it.37

Furthermore, Poe and his legal team argued that showing the public the jury proceedings provided an educational benefit. “There is an educative function to be performed

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34 Telephone Interview with Honorable Ted Poe, 228th Criminal District Court, Harris County Texas (June 25, 2004).

35 Id.


37 Id.
by allowing people to see on film and with audio after the fact how a jury makes a life and death decision,” said Poe’s attorney, Charles “Chip” Babcock.\footnote{Id.}

Ultimately, Poe and the Frontline team were defeated when the Texas Court of Criminal Appeals held that an unmanned camera qualifies as a person and the presence of another person in the jury room “violates the cardinal principle that the deliberations of the jury shall remain private and secret in every case.”\footnote{Rosenthal v. Poe, 98 S.W.3d 194, 2003 Tex. Crim. App. LEXIS 37 (Feb. 12, 2003).}

However, the Texas judge continued to maintain that the public would benefit from greater access. As he stated on his webpage, “(I) continue to believe that serving on a jury frightens most people,” he said. “But if more people understood the process, possibly they would not try to avoid jury duty, and be more willing to take the responsibility seriously.”\footnote{Honorable Ted Poe web page, available at http://www.aimpress.com/tedpoe.htm}

In her testimony at a Senate hearing in September 2000, United States District Court Judge Nancy Gertner of Massachusetts also stressed the educative benefits that come from allowing court proceedings to be televised. “At a time when polls suggest that the public is woefully misinformed about the justice system, more information, and relatively unmediated information, is better than less information,”\footnote{Testimony of the Honorable Nancy Gertner, supra note 3.} stated Gertner.

Judge Gertner urged lawmakers to look at televised trials in the context of simply expanding the public’s access to our country’s courtrooms. “Public proceedings in the Twentieth Century necessarily mean televised proceedings.”\footnote{Id.}
Judge Gertner made her comments during a hearing to consider the merits of a bill, introduced by Senator Chuck Grassley (R-IA) and Senator Charles Schumer (D-NY), that would allow the photographic, electronic recording, broadcasting, and televising of federal court proceedings.\textsuperscript{43}

Termed the “Sunshine in the Courtroom Act”, this measure would give federal trial and appellate judges the discretion to permit cameras in the courtroom on a three-year trial basis. The bill would also allow the Judicial Conference, the principal policy-making entity for the federal courts, to draft advisory guidelines that judges can refer to in making a decision pertaining to the coverage of a particular case.\textsuperscript{44}

Senator Grassley, who re-introduced the bill for this Congressional session, stated in a press release that he believes televising trials is the only way to protect our nation’s history of public trials. “When our judicial system was established, trials were meant to be highly public events. Citizens were able to attend trials and directly access the judicial process. Life today is obviously much different and broadcast coverage of trials is required.”\textsuperscript{45}

This past May, the Senate Judiciary Committee approved the legislation. It is uncertain whether it will come to the Senate floor sometime this year for a vote.

\textsuperscript{43} S. 554, Introduced by Senators Grassley, Schumer, DeWine, Allen, Craig, Graham of South Carolina, Talent, and Allard (Mar. 6, 2003).

\textsuperscript{44} Senate Judiciary Committee Approves Initiative to Allow Cameras in the Federal Courts, News Release from RTNDA (May 23, 2003).

\textsuperscript{45} Press release from Senator Chuck Grassley (August 29, 2000).
Senator Grassley has also said an open system fosters government accountability. “The best way to maintain confidence in the system is to let the sun shine in by opening up the courtroom to public view through broadcasting.”\(^\text{46}\)

Indeed, more American judges appear to be calling for greater camera access to courtrooms in order to foster better understanding and realization, on the part of the public, of what important issues are decided in a trial. During a speech to an audience of fellow judges, Los Angeles Superior Court Judge Larry P. Fidler said, “I want the public to see what we do. The alternative is to allow biased or ignorant ‘talking heads’ to shape the public perception of what goes on in the courtroom.”\(^\text{47}\)

Fidler presided over the highly-publicized Sara Jane Olson bomb-making trial\(^\text{48}\) during which he allowed cameras into the courtroom. In his address to the California Judges Association in Newport Beach, Fidler acknowledged the fear many judges have of appearing as though they have lost control over their courtrooms in front of televised audiences. He stated that experiences like that of his “good friend” Judge Lance Ito (who was in attendance at Fidler’s speech) “should not deter trial jurists from exercising their discretion under Rule 980 of the California Rules of Court and opening at least portions of their proceedings to television.”\(^\text{49}\)

Advocates contend that it is particularly important to televise celebrity trials. Barbara Cochran, President of the Radio-Television News Director Association & Foundation (RTNDA),

\(^{46}\) Id.

\(^{47}\) Cameras in Courtroom May Aid Judiciary’s Image, Fidler Tells Fellow Judges, Metropolitan News-Enterprise (Oct. 15, 2002).

\(^{48}\) Fugitive radical-turned-housewife Sara Jane Olson was sentenced to two consecutive 10-year prison terms for conspiring to commit murder in a 1975 bomb plot involving the Symbionese Liberation Army, of which she was a member. Olson had lived quietly as a Minnesota housewife and soccer mom for two decades before being tracked down and arrested.

\(^{49}\) Id.
wrote that the public needs to see that the system works for everyone. “One could argue that trials involving celebrities should be especially open and transparent, so that the public has confidence that those on trial are not getting special treatment – or unfair treatment – just because they are rich or famous,” stated Cochran in a newsletter piece.⁵⁰

Recently, the media worked to obtain access to the now-dismissed sexual assault trial of NBA superstar Kobe Bryant. Although Colorado judge Frederick Gannett initially allowed one video and one still camera to film the advisement hearing, he barred video and still cameras from the preliminary hearing. In a short written opinion, Gannett said Colorado law barred expanded media coverage during preliminary hearings.⁵¹ Court TV, in an earlier motion, had urged Gannett to allow cameras in the courtroom “so that the country could see the true nature of the case."

“The cameras would prevent the misreporting and misconstruction of the trial proceedings,” network said in documents.⁵²

While the dismissal of the Bryant case took away an opportunity to test the limits of the law this summer, a recent celebrity trial that many claim should have been opened to cameras is that of Martha Stewart. Because the trial was in federal court and it was criminal, there was no possibility of television or radio coverage.

“Martha Stewart’s trial should have been open to cameras – even though it was in federal courts,” stated CNN Legal Analyst Jeffrey Toobin. “It was important to the public because she is an extremely prominent person and the trial dealt with corporate corruption at a


⁵¹ Agence France-Presse (via ClarinNet) (Sept. 8, 2003).

⁵² Id.
time when it was on everyone’s minds. I don’t see any reason why we should stay away from federal courts.\(^{53}\)

One high-profile case in federal court that was broadcast – at least via radio – was the federal case against Microsoft Corporation. The U.S. Court of Appeals for the D.C. Circuit allowed media organizations to air live audio of oral arguments. The audio feeds were also available to the general public via the Internet at ABC news and C-Span websites.\(^{54}\)

Some judges feel that in addition to raising public confidence in the judicial system, an open trial can maintain the peace in an embittered community.

New York Supreme Court Judge Joseph Teresi\(^{55}\) was all too aware of the importance of preventing an outraged community from losing confidence in the courts after Amadou Diallo, an unarmed West African man living in the Bronx, was gunned down by four New York Police Department officers.\(^{56}\) Judge Teresi permitted Court TV to televise the proceedings of the ensuing trial of the four officers in order to enable the entire community to view the proceedings. Many legal experts attributed the lack of expected rioting after the acquittals were announced to Judge Teresi’s decision to allow the trial to be televised.

"The judge thought it was important for folks in the Bronx (where the incident happened) to see what was going on with the case since it had been moved to Albany," explained Kathleen Kirby.\(^{57}\) "Court TV broadcasted the entire trial and it was clear by the time

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\(^{53}\) Interview with Jeffrey Toobin, \textit{supra} note 33.

\(^{54}\) RTNDA Applauds Court Decision to Allow Live Audio Feed at Microsoft Trial, RTNDA Press Release (Feb. 15, 2001).

\(^{55}\) Honorable Joseph Teresi, Criminal Judge Presiding over the Supreme Court of New York, Albany County.


\(^{57}\) Interview with Kathleen Kirby, \textit{supra} note 19.
the jury reached a verdict that the prosecutors never made their case, which in turn, helped squelch any incentive to riot.”

The same sentiment had been expressed twenty years earlier in the Supreme Court’s holding in Richmond Newspapers. “When a shocking crime occurs, a community reaction of outrage and public protest often follows. . . . Thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion.”

In his opinion allowing coverage, Judge Teresi took issue with New York’s ban on cameras in the courtroom at the trial level. “This court is not holding there is an unfettered right to televise all aspects of every proceeding. However, this court does find that section 52 of the Civil Rights Law, as an absolute ban on audio-visual coverage in the courtroom, is unconstitutional.”

The judge discussed the history of the New York statute banning broadcast coverage. In 1987, the New York Legislature approved an 18-month experiment of audio-visual coverage of civil and criminal trial court proceedings. Through legislative reenactment of this experiment, audio-visual coverage in the courtroom was permitted for almost ten years. However, on June 30, 1997, despite the reports of Chief Administrative Judge Albert M. Rosenblatt and Chief Administrator of the Courts Matthew T. Crosson recommending permanent adoption of the law, the legislature failed to reenact the law and audio-visual coverage in the courtroom came to an end. It does not appear as though there was any major resistance by legislators and judges to

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60 See id. at 703.
permanently allow cameras in the courtroom. Rather, in this instance, the state legislature simply failed to maintain the broadcast media’s access to courtrooms, and the expired law became, in Judge Teresi’s words, “a monument to politically created procrastination and inaction.”

Although a number of trial court judges agreed with Judge Teresi and declared unconstitutional New York Civil Rights Law § 52 and its *per se* ban on all broadcast coverage of trial court proceedings, ultimately the law was upheld this past summer by a unanimous appeals court panel. The five-judge panel held that “there is no federal or New York State constitutional right to televise court proceedings.” The court also summarily rejected the argument that the public has a right to observe trials on television without physically attending the proceedings.

Judges such as Teresi and Poe have fiercely fought for camera access to courts, but judges who favor allowing cameras in the courtroom are in the minority. Far more often than they grant them, judges deny requests to permit cameras in the courtroom, citing numerous reasons. These reasons, while perhaps compelling or plausible, arguably are in conflict with the high standard set forth by the Supreme Court in *Press-Enterprise Co. v. Superior Court*. The

61 *Id.*

62 See *People v. Barron*, 30 Media L. Rep. 2120 (Sup. Ct. Kings Co. 2002) (holding § 52 unconstitutional and approving television and still camera coverage of the bribery trial against a Brooklyn judge); *People v. Schroeder*, 726 N.Y.S.2d 226 (Co. Ct. Sullivan co. 2001) (“It is elemental that in a capital case, cameras and photographers ... should be allowed in the courtroom.”); *People v. Boss*, 182 Misc. 2d 700, 701 N.Y.S.2d 891 (Sup. Ct. Albany Co. 2000) (camera ban is a barrier to the “presumptive First Amendment right of the press to televise court proceedings, and of the public to view those proceedings on television”); *Coleman v. O'Shea*, 184 Misc. 2d 238, 707 N.Y.S.2d 308 (Sup. Ct. Nassau Co. 2000) (also finding § 52 a violation of the equal protection clause of the Fourteenth Amendment because “no safeguards were included to ameliorate the effect of denying coverage to a segment of the press in the face of consent”).


64 *Id.*
Court wrote that the presumption of openness of court proceedings “may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” While the Court was, of course, addressing the issue of public access, not televised coverage, why shouldn’t this stringent test be applied when judges bar the one mode of trial coverage that would ensure the widest dissemination outside of the courtroom: cameras?

In the trial of Scott Peterson for the murder of his wife and unborn child, Judge Alfred Delucchi refused requests to allow cameras in the courtroom during Peterson’s preliminary hearing or the subsequent trial. In his statement to the media, Judge Delucchi cited the need to protect Scott Peterson’s right to a fair trial and the privacy rights of witnesses and victims in the case. “(This trial) involves members of the public who never asked to be involved in a high-profile case and who would, under almost all circumstances, retain significant privacy rights in having their likenesses broadcast over national television.”

The victim’s family members were pleased with the decision and put out a press statement affirming how much pain “it would cause them to have the details of Laci’s death broadcast to a national audience.”

Other high-profile cases not televised due to concerns over the defendants’ ability to obtain a fair trial include the trials of the two Washington, D.C. snipers – John Allen Muhammad and Lee Boyd Malvo. A memorandum filed in support of the media plaintiffs’ motion for leave

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67 Id.

68 Memorandum of Law in support of consolidated motion for leave to record and telecast proceedings (January 30, 2003) (“Media Memorandum”). The memo was signed by RTNDA, Virginia Association of Broadcasters, ABC, Inc., (continue)
to record and telecast the proceedings cited case law as well as the Virginia Code in arguing that "a court may prohibit the recording and telecast of proceedings only upon a finding of 'good cause', and the party opposing coverage bears the significant burden of demonstrating 'good cause' that justifies prohibiting coverage."\(^{70}\)

The media plaintiffs further argued that the good cause standard cannot be met by conclusory allegations of prejudice.\(^{71}\) However, Circuit Judge Jane Marum Roush expressed concern over whether the defendant would receive a fair trial as her main reason for prohibiting cameras in her courtroom. In a brief statement at the hearing she declared, "I am concerned with the possible prejudice to Mr. Malvo, whether (it arises from) still cameras or TV cameras."\(^{72}\)

Another area where camera advocates and critics disagree is whether cameras, by their very presence, upset the judicial process. Advocates point to the success of a motion by Court TV, in April 1996, for permission to televise oral argument in a price discrimination action under the Racketeer Influenced and Corrupt Organizations Act (RICO) by consumers against Victoria's

\(^{69}\) VA Code Ann. § 19.2-266, Coverage Allowed (1).


\(^{71}\) Media Memorandum, citing Vinson v. Commonwealth, 258 Va. 459, 470, 522 S.E.2d 170, 178 (1999) (on review of capital murder conviction, Virginia Supreme Court rejected defendant's 'conclusory argument' that television cameras prejudiced defendant's 'right to a fair and impartial jury' and found no abuse of discretion in permitting television cameras in the courtroom).

Secret Catalogue. 73 Despite the fact that the Judicial Conference had recently voted in favor of urging each judicial circuit counsel not to allow cameras in the courts, U.S. District Judge Robert Sweet of the Southern District of New York ruled in favor of allowing Court TV to cover arguments on a motion to dismiss a proposed class-action suit against the lingerie makers. Relying on a local district rule that prohibited cameras in the courtroom except with written permission of a judge, Judge Sweet ruled that cameras were not intrusive and neither hindered nor harmed the judicial process. 74

"During the last thirty years," he wrote, "studies conducted by state and federal jurisdictions to evaluate the effect on the judicial process of the presence of cameras in courtrooms have demonstrated that televised coverage of trial court proceedings does not impede the fair administration of justice, does not compromise the dignity of the court, and does not impair the orderly conduct of proceedings." 75

Many judges also deny cameras access to courtrooms on the basis that they are disruptive to court proceedings. But proponents of camera access assert that modern technology has rendered moot arguments about the disruptiveness of cameras in the courtroom.

"In many situations, the cameras are just a hole in the wall, and most studies show that people forget the cameras are even there," stated Kathleen Kirby. 76

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74 S.D.N.Y. & E.D.N.Y. R. 1.8 (formerly Local General R. 7).
75 Id. at 585.
76 Interview with Kathleen Kirby, supra note 19.
Judge Ted Poe echoed that sentiment. "Nowadays, the jury doesn’t even see the camera. In Texas, most cameras in the courtrooms are located behind a one-way mirror glass so that people don’t get distracted."\(^7\)

But concerns over the intrusive or disruptive nature of broadcast equipment in the courtroom are being supplanted by concerns about security. Those concerns were front and center in the recent debate over media coverage related to the upcoming trial of Zacarias Moussaoui, the suspected “20\(^{th}\) hijacker” in the September 11\(^{th}\) terrorist attacks. Although the trial proceedings are being held in federal court – which of course currently has a ban on cameras filming or televising any court proceeding of a criminal nature – media organizations filed motions asking U.S. District Judge Leonie Brinkema to overturn the ban, stressing the extraordinary national and international public interest in the case.

Interestingly, the defendant wanted cameras to be allowed in the courtroom as well. His lawyers said that they believed live coverage of the proceedings would help ensure fairness give Moussaoui “an added layer of protection.” However, the defendant did make a point of supporting a televised trial only if the jury was sequestered.

Prosecutors, on the other hand, opposed allowing any part of the pre-trial proceedings or actual trial to be broadcast and claimed that televising it might help members of Al Qaeda retaliate against those who testified against the terrorist organization.\(^8\)

Citing security issues, Judge Brinkema upheld the ban on cameras in federal courts. "Significant concerns about the security of trial participants and the integrity of the fact finding process justify a ban on photographing and broadcasting this trial,” she wrote. “In particular

\(^7\) Interview with Judge Ted Poe, supra note 34.

[this court] find[s] that audio or visual broadcasting of any portion of these proceedings is likely to intimidate witnesses and jurors, as well as threaten the security of the courtroom and all those involved in this trial.  

Judge Brinkema also cited the growing concern about image replication through the use of the Internet and other methods. "Once a witness’ testimony has been televised, the witness’ face has not just been publicly observed, it has also become eligible for preservation by VCR or DVD recording, digitizing by the new generation of cameras and permanent placement on Internet web sites and chat rooms. It is the witness’ knowledge that his or her face or voice may be forever publicly known and available to anyone in the world."  

The judge also mentioned in her opinion another possible reason judges are reluctant to allow cameras in the courtroom: "[W]orld wide broadcasting of these proceedings, either by television, radio or the Internet, would be an open invitation to any trial participant to engage in showmanship or make a public spectacle for the world to see and hear."  

But other legal experts firmly disagree. "Lawyers don’t play to the cameras – they play to the jurors. The judges must control the courtroom," argued Judge Poe. "Overall, the more the public can see a criminal case, the better the case is served. It gives [the public] a better belief in judicial proceedings, promotes better understanding and creates a sense of appreciation of the criminal justice system."  

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80 Id. at 187.
81 Id.
82 Interview with Judge Ted Poe, supra note 34.
Officials in one particular court dispute the idea that having information available on the Internet is a negative. In fact, up until July 2004, Wise County Circuit Court in Virginia maintained a webcast of all of its court proceedings. The court has since switched to cable, which brings video of its court proceedings to between 100,000 and 150,000 people.

The Clerk of Court, Jack Kennedy, said he strongly feels that the court's first obligation is to its constituents. "We believe in open government as a principle that applies to all three branches of government. The judicial branch is far too often clouded in a fog of obscurity. Our principles of open government demand that we provide access to our constituents."63

PART III: SIGNS THE TIDE MAY BE TURNING

A. **THE SUPREME COURT TAKES A BIG STEP**

"After the O.J. trial, the pendulum definitely swung in the direction away from camera coverage (of trials), but with the Supreme Court's decision to allow audio feeds, the pendulum has swung back," declared Barbara Cochran, President of RTNDA, referring to the Supreme Court's decision to allow audio tapes of oral arguments in *Bush v. Gore*,64 the 2000 Presidential Election case, to be released to the public.

"This was a case in which every American had a stake in the outcome. It was so significant that the Supreme Court needed to have the public understand that everything was

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63 Telephone Interview with Jack Kennedy, Clerk of Court for the Wise County Circuit Court and Court for the City of Norton (July 16, 2004).
fair and above-board and the only way they could do this was to allow some kind of taping that the American public could hear for itself.”

Thus, in an unprecedented move, the Supreme Court allowed audio recordings of the proceedings, which aired on radio and TV stations. A spokesperson from the Supreme Court stated that *Bush v. Gore* was the first time that an audiotape of a hearing had ever been provided to the public on the same day as arguments. The Supreme Court normally maintains the tapes in the Marshall’s office for a year or so, after which they are transferred to the National Archives, which can take months to make them available to the public.

Since *Bush v. Gore*, the Supreme Court has allowed the quick release of audiotapes in several high-profile cases. In 2003, the Court released same-day audio tapes in the affirmative action in college admissions cases and the case involving new campaign finance regulations. In April of this year, the Court released audio tapes immediately after oral arguments about the legal rights of prisoners in the U.S. Navy’s prison camp at Guantanamo Bay, Cuba. It did so again a week later in the case involving U.S. Vice-President Dick Cheney’s closed door sessions to develop a national energy policy that many environmental and government watchdog groups claimed was drafted by and friendly to industry. Also the Court allowed quick release of the two cases involving United States citizens who had been apprehended and kept indefinitely in

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85 Telephone interview with Barbara Cochran, President of Radio-Television News Directors Association & Foundation (RTNDA) (July 6, 2004).


custody. The public expressed great concern in all of these cases and many attribute that as the sole reason the Supreme Court granted quick access to the audio feeds.

Bruce Sanford, who serves as legal counsel to the Society of Professional Journalists, affirmed the significance of the Supreme Court's allowance of audio feeds. "It shows the acceptance by the Court of the notion that real-time news coverage of the Supreme Court is important to the general public," he said. "This is the first step on the road to understanding the immediacy of news dissemination in the 21st century."91

"I believe there will be visual images of the court in time, although initially it will probably be controlled by the courts."

Though some see Bush v. Gore as a step toward camera access in the future, others argue this may very well be all we can expect from the Supreme Court on this issue for a very long time to come. "Although having audio feeds of oral arguments in front of the Supreme Court was a good thing, the downside is that the Supreme Court may have done all it wants to do in terms of recognizing the 21st century and may not take another step toward technology until we enter the 22nd century," said Supreme Court correspondent Tony Mauro.92

One reason the Supreme Court might be slow to expand media coverage of its proceedings is simply because it can. The Court, being appointed rather than elected, is less beholden to public opinion than other branches of government. Bruce Collins, the Corporate Vice President and General Counsel to C-SPAN, contrasted the fight to gain media access in the Supreme Court with his network's struggle to get cameras into the House and Senate in the


91 Interview with Bruce W. Sanford, Partner, Baker & Hostetler LLP (July 21, 2004).

92 Interview with Tony Mauro, supra note 29.
mid-1980’s. “Our fight to get cameras into Congress was nothing like what Court TV has gone through with the courts,” Collins stated. “There was some resistance, but frankly courts have been dragged kicking and screaming, while the Congress was fairly amenable. I think that is owed to the fact that one branch is elected while one is not.”

B. **Movement on the State Level**

Although the fight to get cameras into the Supreme Court may continue for another century or two, camera access in state courts has gained momentum in state legislatures and courtrooms across the country in recent years.

On April 2, 2001, the Mississippi Supreme Court began allowing video coverage of its hearings. Two years later, Mississippi’s Rules for Electronic and Photographic Coverage of Judicial Proceedings were implemented, providing for electronic media coverage of judicial proceedings (trial, pre-trial hearings, post-trial hearings and appellate arguments) in Mississippi’s Supreme Court, Court of Appeals, chancery courts, circuit courts and county courts.

In July 2001, South Dakota became the 50th state to allow cameras in the courtroom. In the ruling, the South Dakota Supreme Court announced it will allow video and audio coverage of oral arguments during state Supreme Court sessions. Guidelines for covering state Supreme Court proceedings were proposed during a study by court employees, attorneys and news media representatives.

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93 Telephone Interview with Bruce Collins, Corporate Vice President and General Counsel for C-SPAN, (July 7, 2004).

94 Although New York’s law bans coverage of trials, it does allow broadcast media coverage into appellate courts.


96 [South Dakota Allows Cameras in Courtroom](https://www.quill.com), The Quill, (Sept. 1, 2001).
In December 2002, the New Hampshire Supreme Court expanded the right of broadcast media access in its state courts by holding that judges cannot bar cameras from their courtrooms without a hearing and valid reasons. “Fear of jurors being exposed to potentially prejudicial information or of witnesses being exposed to the testimony of other witnesses generally will not be a valid basis for denying electronic coverage. The trial court’s findings should not be based upon speculation, but rather upon the specific facts of the case at hand.”97

RTNDA has been extremely active in lobbying state legislators and judges for increased camera access to courts. Barbara Cochran explained how her organization was able to make some headway. “In South Dakota, the State Supreme Court Justice met with one of our members and carefully planned a way they could experiment with cameras and determined that they are not disruptive in courtrooms. The same thing is happening in Indiana. When journalists can show a judge in one state how well cameras in the courtroom work in another state, they can be persuasive.”98

C. COURTS IN OTHER COUNTRIES OPEN DOORS TO MEDIA

In addition, important court decisions in foreign nations providing increased media access may signify that courts in other democratic societies are embracing modern means of news gathering and distribution.

In July 2000, the trial of nine South Korean sailors accused of human smuggling made history as the first trial in British Columbia to be recorded by media cameras and microphones. Judge Ronald McKinnon agreed to allow recording on a limited basis, breaking a long-standing


98 Interview with Barbara Cochran, supra note 86.
Canadian practice against electronic media in courts. There are no specific laws banning broadcast from courtrooms, but an absence of cameras has been the norm in the Canadian judicial system. However, television cameras are allowed at the Supreme Court of Canada and at public inquiries and many quasi-judicial procedures across Canada.  

Officials in Great Britain are taking the first steps toward allowing television cameras into their courtrooms. Late last year, senior judges agreed to a pilot program in which an appeals hearing would be filmed sometime this year. Lord Donaldson, the former head of England’s court of appeals civil division before his retirement, said he had an open mind about televising appeals.

“It’s obviously a good idea that people should know more about the way justice is administered,” he stated. “There’s no harm in doing a pilot. You would have to see what the results of the pilot was.”

Even more important to watchful members of the English media and judiciary was the Soham trial, the highly publicized trial of a man charged with murdering two young girls. The case commanded the attention of English citizens for weeks when the two friends went missing. Many broadcasters believed the trial of the accused killer was an important step in the long process of getting cameras into English courtrooms.

In this instance, the media took a proactive approach with the court administrators in obtaining access. Before the Soham trial, reporters with Sky News began discussing with the

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100 Matt Wells and Clare Dyer, First Step to Put TV Cameras into Courtroom, The Guardian (Nov. 17, 2003).

Old Bailey court authorities how to provide line-by-line coverage to their viewers and were eventually allowed to put their stenographer in the media seating area. The Sky stenographer took down every word of the evidence, periodically saved it onto a disk, which was then handed off to another journalist to be checked and made available to viewers of the Sky Active service.\(^{102}\)

The trial marked the first time in England that anyone has ever provided line-by-line coverage of a trial.

D. **OVERALL INCREASE IN MEDIA ACCESS TO COURTS ACROSS THE COUNTRY**

A further positive step in the effort to get cameras into courtrooms is the increasing openness of juvenile courts and proceedings related to juveniles to the public and print media. Oregon was the pioneer, opening the doors to all delinquency and abuse hearings in 1980. Eight years later, Michigan followed, then New York four years ago. In Pennsylvania, judges are increasingly allowing juvenile courts to be open to the print media, as are many courts in Florida, Minnesota, Alaska, and Indiana. Other states such as Arizona, Maine and Kansas have begun researching opening hearings in abuse and neglect cases. Overall, twelve states now routinely admit the press or public to hearings at which judges decide whether to remove children from parents accused of abuse or neglect.\(^{103}\)

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\(^{102}\) See Matt Wells and Clare Dyer, *supra* note 101.

Indianapolis Judge James Payne believes secret hearings are destructive. "I think we do a lot of good work in our system and people don’t know about it," he declared, "and they don’t know about it because we keep the hearings closed."\textsuperscript{104}

Furthermore, Judge Payne scoffs at the idea that opening the courts to the media will exploit the children, dismissing such arguments as disingenuous because child welfare agencies and other nonprofit groups use the names and pictures of the children when it suits their purpose. "When a nonprofit organization wants to raise money for repairs at its group home, it will run a picture of one of its cute clients in a newsletter saying how well she is doing. Right next to her darling face will be a plea for a donation of $2,500."\textsuperscript{105} The same argument could be applied to the broadcast media. Although most child welfare agencies object to allowing cameras in the courts for fear of exploiting children, these same agencies do not hesitate to put children on news segments commonly called "Monday’s (or some other day of the week) Child" in order to get the children adopted.

The biggest fight over opening juvenile courts to the public and media took place in New York. Up until late 1995, New York kept child welfare records and juvenile court hearings under wraps and away from the public eye. But then a young girl who had been tortured and starved for years by her depraved mother was killed and the city became outraged at a child welfare system that had operated in secret for decades.

New York Chief Justice, Judith S. Kaye found herself caught between daily editorials from the New York Daily News demanding open hearings and others who claimed that open


\textsuperscript{105} \textit{Id.}
courts would further victimize abused and neglected children. But Kaye, a crusading court reformer, felt secrecy let the system escape accountability, and she believed citizens in a free society have a right to observe, question and criticize their governmental institutions.

When reporters did get into New York’s juvenile court buildings, they wrote about much more than the hearings. They detailed the overall state of decay and deterioration – crowded hallways, filthy and dilapidated buildings, poorly kept bathrooms and grinding delays. In time, judges began calling attention to reporters in the hope that the media’s interest would help spark improvements. It did.

Judge Kaye’s deputy, Jonathan Lippman, chief administrative judge for the New York State Unified Court System, stated that even former opponents are happy with the results of allowing the courts to be opened to the media. “It has been 100 percent positive with no negatives,” he said in an interview. “There is not a negative that I could think of, and believe me, I am very sensitive on this issue. Our worst critics will say it was the best thing we ever did. Their fears were unfounded.”

E. The Real Law & Order

Another sign that courts are becoming more accessible to cameras is the success of the NBC reality courtroom series, “Crime & Punishment,” which is now in its third season. The premise of the show relied on Executive Producer Bill Guttentag’s ability to get his cameras in the courtroom during trial, certainly no easy feat.

107 Id. at 2.
108 Id.
"When we were launching the show, that was our line. We had to go and basically tell people that we weren't (the O.J. Simpson trial)," recalled Guttentag. "I think judges and, frankly, the public in general had such a negative view of cameras in the courtroom."109

The show may be an important indicator of the real interest that Americans have in their judicial system. Though it did not boast a single celebrity trial, the show ranked in the top 20 last summer in all but one episode. This season's premiere case -- a compelling, yet barely publicized, San Diego trial involving two drag-racing friends who destroyed a family with their carelessness -- attracted more than 3 million viewers one weekend this past summer.110 "There were three cameras present for the entire trial and justice was served anyway," proclaimed Guttentag.111

PART IV: STEPS THE MEDIA SHOULD TAKE

Two years ago, the public watched in horror as David Westerfield's trial for the murder of seven-year-old Danielle Van Dam unfolded. People from all areas of the country tuned in to watch the proceedings in a San Diego courtroom. How could these parents have been so careless? How was it possible someone so monstrous was able to raise two of his own children and live in this community for such a long period of time before acting out this ghastly nightmare? Had the police really gotten the right guy? The questions circled and gained intensity as the weeks went by. When the guilty verdict was announced, all major cable news


110 Id.

111 Id.
networks cut into their programming, and it was the lead story in almost every news program throughout the evening.

But during the trial, Superior Court Judge, William Mudd, who oversaw the proceedings, threatened twice to ban the broadcast media from covering the trial. His concern was not with any state regulations, nor was it whether the defendant was able to receive a fair trial, whether witnesses were being influenced, or whether his own ability to control the courtroom was being undermined. His threats were initiated solely by the behavior of the members of the media during the trial.

The first incident occurred after the judge ordered the defendant's son not to be photographed in the courtroom; a freelance photographer attempted to get pictures of the young man when he was walking in the hallway of the San Diego Courthouse. The second incident involved an unidentified individual who followed two jurors to their cars and wrote down their license plate numbers. Judge Mudd raised the possibility that the individual was a member of the media and gave an angry lecture to the media in the courtroom. "If it happens again, the television camera goes, the still camera goes, and the live radio input is off," Mudd warned.112

Another courtroom incident involving negligent journalists was the naming of a juror in the corruption trial of former Tyco chief executive L. Dennis Kozlowski and former finance chief Mark H. Swartz. The journalists printed the name of the juror after some members of the media claimed that she made a gesture of support to the defense. But the print media did not stop at reporting the incident of the juror's alleged signal. Instead, they printed the 79-year-old

woman's name and address along with artist character sketches of her likeness and derisive comments about her reported unwillingness to convict the defendants. Labeled the “batty blueblood” and “Ms. Trial” by the New York Post, and the “holdout granny” by other newspapers, the intense media commentary took its toll on Ms. Jordan. After a week of receiving threatening calls and letters following the news articles, Ruth Jordan had a private conversation with New York State Supreme Court Justice Michael J. Obus and told him she was extremely frightened for her safety. Immediately after the conversation, the judge declared a mistrial.

Mike Steger, Counsel for STF Productions, Inc., the producers of America's Most Wanted, stressed the importance of the media to keep their distance from jurors. “The biggest problem I see is when the media is trying to get in touch with jurors before the trial has ended,” he explained. “This type of behavior encourages judges to create more barriers to allowing cameras in the courtroom.”

Other judges confirm that the media must obey the rules and not create additional problems for the presiding judge. In particular, Judge Poe believes that judges must establish strong rules upfront if they are to maintain order. “My rules are you can film jury selection, but you may not film the jury,” he declared. “Also, you cannot film children or sexual assault victims. That has worked very well. I've never had a problem with the media breaking any rules. My rules are very clear. We have one camera and one feed and that's it. The media is not


114 Carrie Johnson, Tyco Case Juror Told Judge of Her Fears; Phone Call, Letter Upset Holdout, Washington Post, at E3 (April 8, 2004).

115 Telephone Interview with Mike Steger, Counsel for STF Productions, Inc., the producers of America's Most Wanted (June 29, 2004).
allowed to film witnesses leaving the courtroom. If one media source violates the rules, then you either punish all of them, or figure out a way to punish the one person who broke the rules.\textsuperscript{116}

Continuing education programs may provide an opportunity for reporters to meet with judges and discuss the benefits of media access. The National Judicial College in Reno, Nevada has a program with their National Center for Courts and the Media that offers training to both state trial justices, as well as a class devoted to training courtroom staff such as public affairs officers. This summer it is doing its first training for journalists assigned to cover trials.

"In August, we are training 50 – 55 journalists to cover the courts," said Gary Hengstetler, the Director of the National Center for Courts and the Media.\textsuperscript{117} "The biggest criticism that we hear from judges about journalists is that they don’t understand the general procedures of a courtroom, let alone the subtle, but important nuances of a trial."

The institute offers two sets of courses. One course is for judges to learn more about balancing the First Amendment rights of free speech and a free press with the Sixth Amendment right of a free trial, and also to learn about First Amendment issues from reporters, including cameras in the courtroom. A second session instructs court personnel, such as public information officers, on how to deal with the media in high profile cases.

"Our goal is to evenly show the philosophical and logistical issues – both pros and cons of each – in allowing cameras in the courtroom. We hope to minimize, if not eliminate the tension and problems with this issue," declared Hengstetler. If more judges who obtain instruction on how to work with the media, establish ground rules, and maintain full control

\textsuperscript{116} Telephone Interview with Judge Poe.

\textsuperscript{117} Telephone Interview with Gary Hengstetler, Director of National Center for Courts and the Media, (July 19, 2004). For more information, visit the center’s website at www.judges.org/nccm
over the behavior of the reporters covering a particular case, perhaps they will feel confident in allowing cameras in the court because they will be more capable of asserting control over all aspects of the court.

Bruce Sanford, who has been asked to serve on the board of the National Judicial College in Reno, said it is a wonderful opportunity for journalists and judges to understand and respect each other’s viewpoint. “You cannot fully appreciate another person’s perspective unless you have the chance to hear their concerns and understand their point of view.”

Another problem judges may have with the broadcast media is the need to condense an entire day’s trial into a 30-second news story. By doing so, only the sensational facts of the trial are reported to the public, without proper context and understanding of the judicial process. Trial broadcasters or commentators may be the real problem with judges who detest speculation of trials. Gary Hengstetler explained, “News talk shows are what really hurt and escalate the situation. Judges don’t appreciate it when broadcasters turn a trial into a sporting event with ‘quarter-backing’ done by attorney and prosecutors on major news shows.”

Fred Graham and his Court TV team have gone out of their way to reach out to hesitant judges over the years. He encourages other members of the media to do the same. “One thing we can do is relieve judges’ concerns and fears on the technological side – such as one of the questions frequently asked – Where are you going to put the microphones? Are they going to be in places where privileged conversations take place?”

“Something that we did was videotape our camera crews setting up in a courtroom and narrated the tape explaining what the process was and how non-disruptive the equipment is.

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118 Interview with Sanford, supra note 92.

119 Interview with Hengstetler, supra note 118.
We send these tapes to judges who are considering whether to allow cameras in their courtroom.\textsuperscript{120}

In addition, the Court TV team has also sent out brochures with its pitch to judges. Graham added, \textquotedblleft Since Billie Sole Estes v. Texas, no verdict has been overturned because of cameras in the courtroom. It's that kind of argument we can make.\textquotedblright\textsuperscript{121}

**CONCLUSION**

According to documents written at the time of this country’s conception, our founding fathers desired public access to courtrooms and advocated that courts be built big enough to accommodate entire communities and that trials should be held before as many people that have a vested interest in the judicial proceedings. Given that it is fundamentally impossible to build a courtroom large enough to hold all Americans with a keen interest in observing our judicial process and ensuring that justice is served, camera coverage is the only way to fulfill our forefathers dream for a judicial system open to all.

Although both sides of the debate present strong arguments as to whether cameras should be granted access to courts, it appears as though some of the arguments on the side of preventing camera access are, or will be, moot as technology continues to advance and cameras become smaller, quieter, and less disruptive. However, the advancement of technology may pose additional problems relating to the saturation and proliferation of images and text that are not easily solved.

\textsuperscript{120} Interview with Fred Graham, supra note 18.

\textsuperscript{121} Id.
However, it appears unlikely there will soon be another landmark Supreme Court case such as *Richmond Newspapers* or *Press Enterprises* that will firmly decide the question of whether there is a fundamental First Amendment right belonging to the public to have televised judicial proceedings. Instead, the broadcast media must work with judges and court officials on a court-by-court and case-by-case basis in order to obtain access. The media will need to rely on its past actions and trial coverage in order to convince judges of its ability to fairly and accurately report on judicial proceedings and that coverage of trials is not damning to defendants. In that regard, the behavior of the media itself is one of the biggest factors in determining whether a judge is confident that members of the broadcast media are willing to observe the court’s decorum, restrictions and rules. Reporters must take care to accurately report the judicial proceedings and not deceptively take comments out of context and create a more sensationalized version of the trial to grab viewers’ attention.

Facilitating communication among court officials and the media may also alleviate many of the concerns and tensions between the two groups. Perhaps judges who obtain instruction on how to work with the media, establish ground rules, and maintain full control over the behavior of the reporters covering a particular case will feel comfortable in allowing cameras in the courtroom because they will be more skilled in asserting control over the proceedings and in not allowing trials to be compromised by the presence and subsequent coverage by the broadcast media.

The public will be best served when two things occur: when our nation’s judges exercise the courage and public spirit to admit cameras in the courts, and when broadcast journalists present trials in a manner that responsibly informs viewers.122

122 See Fred Graham, *Doing Justice with Cameras in the Courts*, supra note 5, at 37.