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*New
File -
Cameras in Ct Rooms*

Steven Brill
Chairman and
Chief Executive Officer

July 26, 1995

Because the Simpson case has generated renewed interest in the issue of cameras in the courts, we have prepared the attached background memo.

I thought you'd be interested in reading it.

Best regards.

FACTS AND OPINIONS ABOUT CAMERAS IN COURTROOMS

July 1995

COURT
TELEVISION

July 1995

FACTS AND OPINIONS ABOUT CAMERAS IN COURTROOMS

INTRODUCTION

What you are about to read has been written by the journalists of Court TV. We have written it because we believe in what we do -- serious journalism about the U.S. judicial system, a serious, and seriously misunderstood, branch of government. We are alumni of some of the world's leading newspaper, magazine and television news organizations. At Court TV, we see ourselves as being involved in an exciting effort to provide viewers in America and ultimately around the world with a new, unique source of ethical, purposeful journalism about the American legal system.

We are proud of what we do. And we are eager to answer questions about it.

Thus, the purpose of this paper is to provide perspective and factual background on the issue of camera coverage of courtroom proceedings.

Indeed, there is quite a bit of factual background. Despite new interest in this issue arising out of the O.J. Simpson case, this is not a new debate.

Nor should it be in any way a speculative debate about "what might happen" when cameras come to court. For in almost all of the 47 states that allow camera coverage of court proceedings there was first an experiment or study of the issue; thus, whereas other favorite legal system debate topics -- tort reform, the death penalty, the exclusionary rule -- are permeated with speculation about the effects of various suggested changes, in the case of cameras there is concrete, empirical evidence. And it all goes in one direction.

All the studies of the last two decades have concluded that camera coverage of the courts of the least understood and most often misportrayed branch of government -- and the only branch of government which the Constitution requires to do its business in public -- provides a dignified, important view of how the legal system is actually working, that it fulfills the essence of journalism's mission in a democracy, and that it does not impede the process or negatively affect the participants. Thus, despite the current controversy in the Simpson case, many countries including Italy, Argentina, Norway, Mexico, Spain, France, Paraguay, Greece, Israel, Russia, and El Salvador as well as the World Court at The Hague, have now allowed camera coverage of trials. Several other countries, including England, Ireland, Scotland, Canada, New Zealand and Australia, are now conducting or considering experiments with cameras.

On the other side of the argument are old concerns -- articulated anew because of the Simpson case. These concerns include:

- **Cameras in the courtroom create a "media circus."**

Sensational trials and sensational press coverage existed long before television cameras. In the last 75 years a dozen or more American trials have been dubbed "the trial of the century" and generated enormous media and community interest. Until the Simpson trial none of these sensational legal battles were recorded by a television camera.

In fact, the camera inside the courtroom acts as an antidote to the abuses of the "circus" by allowing viewers to make their own judgments independent of the circus elements.

- **The camera's supposed effect on participants.**

The empirical evidence shows that while participants may, indeed, be affected by the pressure and publicity of high-profile cases, they are not affected in any special way by the presence of a silent camera in the courtroom and certainly less affected than they were in the last century when major community trials were much-heralded spectator events and the talk of the town.

- **The length of the Simpson trial and the lengthy testimony in the first months of that trial prove that the camera prolongs trials.**

In fact, the evidence shows that, if anything, cameras tend to keep trials moving. In some states high-profile murder cases are often long, drawn-out affairs, but this is true with or without cameras. In California, for example, the "Hillside Strangler" case took 23 months and the Charles Manson case nine months; neither case was televised. Similarly, if the "Chicago Seven" trial had been televised, the camera surely would have been blamed for the antics of the defendants and judge.

- **The media only want to televise sensational cases.**

Court TV has televised more than 100 civil cases in areas ranging from torts, product liability, civil rights, parental custody, copyright, and sexual harassment. Ironically, federal rules currently prohibit camera coverage of the most important civil and criminal cases. Thus, proceedings like the Noriega drug trial, the Michael Milken sentencing, the Microsoft antitrust settlement hearing, or the Waco trial cannot be shown, while the Menendez brothers' trial can -- a situation that this January allowed coverage of the Simpson case but not the World Trade Center terrorist bombing conspiracy trial that started at the same time.

- **This is really entertainment, not journalism.**

In fact, however intriguing or even "entertaining" courtroom trials may be (and always were for spectators in old-time large-gallery courtrooms), camera coverage of the Simpson case has now generated the most intense debate in recent memory about the criminal justice system. It has shown people the legal system and provoked them to debate it. However, this new debate will be distorted by the exceptional nature of the Simpson case if, as a result of the Simpson case, it becomes more difficult for cameras to cover more typical trials.

And while important trials may involve an element of "entertainment," this is not a new phenomenon or one related to television. In 1965, legal studies cited by the Supreme Court noted: "In early frontier America, when no motion pictures, no television, and no radio provided entertainment, 'trial day in the county was like fair day, and from near and far citizens young and old converged on the county seat. The criminal trial was the theater and spectaculum of old rural America.'"

- **The media profit from coverage of these cases.**

All free enterprise media, print as well as broadcast, hope to profit from their coverage of news events. But to a degree unparalleled in other arenas of news coverage, courtroom camera coverage is now being used in numerous non-profit educational efforts from grade school to law school.

- **Camera coverage fosters disrespect for the system.**

In fact, camera coverage has been shown to enhance respect for the system in most cases. The camera shows what happens; it does not create it. When the camera shows the system working well, it tends to boost public confidence. Conversely, the camera becomes a catalyst for change when it shows some aspect of the courts (or government, generally) that is not working well.

- **Camera coverage is just plain distasteful.**

In fact, in-court camera coverage is, by definition, as dignified as the process and arguably more "tasteful" than out-of-court tabloid coverage or docudramas of courtroom trials. Moreover, everything in the American tradition and American law suggests that such taste decisions are not the province of government rulemakers.

We will return to the "taste question" in a later section. First, however, let's review the facts -- lots of them. For amid the Simpson controversy it has occasionally been forgotten that this is an issue that is actually long on facts.

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APPENDIX A: INFORMATION ON COURT TV AND
THE PEOPLE BEHIND IT

I. EMPIRICAL EVIDENCE REGARDING THE EFFECTS OF CAMERAS IN COURTROOMS:

Coverage of court proceedings with modern audio-visual equipment is now allowed in some fashion in 47 states. The opening of courts to cameras began long before Court TV aired the first nationally televised trial in 1991.

Since 1974, 41 states have conducted studies or surveys concerning the effects of cameras on thousands of court proceedings. These studies have examined the impact of audio-visual coverage on the dignity of the proceedings, the administration of justice, and the effect of in-court cameras on witnesses, jurors, attorneys, judges and other interested and involved parties.

A. THE STATE EXPERIMENTS:

The evidence gathered by the states' studies has repeatedly and overwhelmingly concluded that television coverage does not disrupt court proceedings or impair the administration of justice. In fact, the evidence points to significant benefits to the public and often to the process itself.

Of the 28 states that produced evaluative or empirical studies, 24 focused specifically on the effect of cameras on judges and/or attorneys, as well as the attitudes of judges and attorneys toward cameras. Twenty-three of these 24 states (all but Virginia) concluded that cameras did not alter the behavior of judges and attorneys. (Virginia's report was based on the evaluation of judges who had, for the most part, no direct experience with cameras. A contemporaneous Virginia survey of judges and trial participants who actually had experienced cameras yielded conclusions more consistent with the other states.)

These concrete results should not be forgotten amid the controversy over the O.J. Simpson case -- a controversy that reflects understandable disdain for the out-of-court media circus and, in some instances, the in-court, unflinchingly accurate depiction of how the court system is operating in this particular case.

Here are some examples of these studies:

Alaska

Alaska, reported that "[m]any of the judges interviewed originally had grave reservations about the presence of cameras in their courts. Paradoxically, these were the same judges who were placed in situations where they had to face cameras in their courts on a daily basis and the result was most surprising to them." After the Alaskan experiment, the Alaska Judicial Conference found that "a great majority of judges [viewed this] as a great step forward."

Indeed, Alaska found that "[f]ar from creating a courtroom spectacle, cameras in the courtrooms have become accepted tools for bringing elements of our justice system into the everyday lives of the public."

Arizona

Following Arizona's one-year experiment, 82 percent of judges responding to the question "How would you classify your experience with cameras and recorders in the courtroom?" reported a "favorable" experience, with 64 percent responding that permitting camera coverage to continue would be "beneficial" to the administration of justice. Ninety-one percent of responding judges said the media equipment did not affect the dignity of the proceedings, and the same percentage said the presence of media equipment did not affect the conduct of business. Similarly, 84 percent of attorneys responding said that during trial the presence of the media and its equipment was not distracting, and 64 percent of responding attorneys said the presence of media personnel and their equipment did not affect the dignity of the proceedings.

California

Perhaps the most laborious study of all was done in California, which commissioned an exhaustive analysis following 18 months of courtroom experiments. Consistent with the other states, the California results indicate that "around 70 percent" of all trial participants had "little awareness" of the cameras. Eighty-three percent of judges responded that they were "not at all" distracted or distracted "only at first." California also surveyed "experienced judges and attorneys" about three-fourths of whom detected no impairment of dignity and decorum (the remainder indicated only slight effects).

Connecticut

Similarly, following a one-year experiment, Connecticut found that its experience with cameras was "a success. We believe that the introduction of electronic coverage by the media into Superior Court proceedings has been accomplished without threatening the rights of parties and without interfering with the orderly disposition of cases."

Hawaii

In authorizing its two-year experiment with cameras in the courtroom, Hawaii noted that "[t]he empirical evidence does not support the hypothesis that cameras disrupt proceedings." Following its experiment with cameras in the courtroom, Hawaii reported that of jurors responding to the question "Did media exposure influence your deliberations?" 264 responded "no," and only 5 responded "yes," with 24 giving no response or responding "difficult to determine."

Iowa

The Iowa Committee on Media Coverage in the Courts noted in its 1979 preliminary report, which followed a two-year experiment, that "[p]articipants who have responded to follow-up questionnaires, including many who had some negative responses on specific questions, largely agree that in their opinion the presence of cameras and electronic media did not affect the fairness of the proceedings." Following a two-year experiment with cameras in the courtroom, 83.7 percent of Iowa judges polled responded that they did not feel that the presence of expanded media jeopardized a fair trial.

Massachusetts

After experimenting for two years, a Massachusetts advisory committee concluded that "the presence of the electronic and photographic media in the courtroom during the past two years has been without any serious adverse incident." The committee concluded, "[t]he problems encountered have been minor. They are of a type which can be remedied or minimized in the future. They are not of a nature that would argue for the removal of the electronic and photographic media from the courtroom."

Michigan

Michigan discovered that throughout its one-year experiment with cameras, "[n]o problems were reported by the courts regarding the recording of courtroom proceedings by the film or electronic media."

Nevada

Following a one-year experiment in Nevada, "as a group, judges were the most supportive of the rule governing cameras, with 75 percent completely in favor and 11 percent slightly in favor."

New Jersey

In New Jersey, 92.5 percent of that state's judges responding to a survey on the effects of cameras in the courtroom reported no distraction by the presence of camera equipment and personnel, and 94.4 percent of the judges believed the presence of camera equipment and personnel had no effect on the conduct of any other trial participants.

New York

After two lengthy experiments, New York's committee "concluded that the benefits of the program are substantial, with little or no adverse effect on anyone. Cameras in the courts serve a valuable educational function and promote public scrutiny of the judicial system. This in turn provides a deterrent against injustice and fosters a sense of confidence and respect for the judicial process."

B. STUDIES OF WITNESSES AND JURORS:

"I was in the [O.J. Simpson trial] courtroom a couple of weeks ago, and my colleagues will be pleased to know it wasn't really much different from any other courtroom that we try cases in. The judge, the jury, the witnesses, the spectators -- all of the circus atmosphere -- is created outside the courtroom and doesn't affect the jurors in any way. And the camera was very unobtrusive."

— former U.S. Attorney General Richard Thornburgh, *Charlie Rose*,
June 23, 1995

The various state studies have also found that witnesses and jurors behave the same whether or not there is a camera in the courtroom.

Twenty-five of the 28 states producing evaluative or empirical studies reviewed the effect of cameras on jurors and/or witnesses, as well as the attitudes of jurors and witnesses toward cameras. Fifteen of these states relied on polls or surveys of witnesses or jurors. Overall, 24 of the 25 states focusing on this issue

concluded that cameras did not pose a problem regarding jurors and witnesses, and only one state (Virginia) arguably reached negative conclusions on this issue. These evaluations demonstrate that cameras in the courtroom do not result in adverse effects on jurors and witnesses, both in the view of jurors and witnesses themselves and also in the view of judges and attorneys.

It is also important to remember that every state that permits camera coverage requires that witnesses be shielded when appropriate to protect their safety, to protect those who are children, and to protect those for whom the camera will, indeed, pose a particular burden.

The Federal Judicial Center, as part of its study of cameras in federal courts, examined the reports and conclusions of 12 states (Arizona, California, Florida, Hawaii, Kansas, Maine, Massachusetts, Nevada, New Jersey, New York, Ohio, and Virginia) of the potential effects of cameras on witnesses and jurors. The Federal study concluded that "[r]esults from state court evaluations of the effects on jurors and witnesses indicate that most participants believe electronic media presence has minimal or no detrimental effects on jurors or witnesses."

New York State's committee reported in 1994 that it "has learned of no prosecutor or defense attorney who has lost a witness because of camera coverage."

Indeed, state studies have refuted arguments that witnesses become overly distracted or nervous or that they distort or modify their testimony when cameras are present. Although witnesses in high-profile cases are sometimes nervous, their nervousness may be attributable to publicity surrounding a trial or anxiety about speaking in front of a group. There is no evidence that it is related to the camera, or that they would be less nervous in the presence of the judge, jury, defendant and three dozen furiously-scribbling reporters.

Jurors, who have the central and most sensitive and difficult jobs in any jury trial, also tend to have the least familiarity with the legal system and court procedures. The evidence from all of the studies shows that jurors are not adversely affected by the presence of cameras.

II. THE SIMPSON CASE EXPERIENCE:

Should the experience of the Simpson case -- however one interprets it -- negate all of this prior experience?

Some judges and lawyers might think so, because they believe the Simpson case has cast the legal system in a bad light; but if it did, then isn't that usually a reason to favor journalistic sunlight?

The Simpson case should not be allowed to overwhelm all of the prior experience. Some may be distressed by much of what the courtroom camera has shown. But if the camera has revealed flaws in the legal system, the correct response is to fix the problems -- not bar the medium that identified them.

Moreover, isn't it illogical to use this undeniably atypical case as a reason to keep cameras from now showing more typical cases?

But what about the argument that the cameras are what caused the Simpson case to drag on and the lawyers to engage in delay and histrionics? The fact is that high-profile, high publicity cases in California often take a long time -- even when they do not have camera coverage. For example, the "Hillside Strangler" case took 23 months -- without a camera. The Manson case took nine months without a camera.

On the other hand, there have been dozens of high profile murder cases tried in courtrooms outside California that have taken a week or ten days -- with a camera present. Indeed, in June, during the 12th week of the Simpson trial, Court TV televised another trial involving alleged spousal murder, *Florida v. Trice*. Locally, the case was arguably as high-profile as the Simpson case, and the forensic issues every bit as complicated. But the medical and forensic testimony took less than a day, and the entire trial -- again, with cameras present -- took six days.

It should be noted, too, that the judge has the responsibility and authority to control courtroom decorum regardless of the presence of cameras. If an attorney or even a judge behaves inappropriately, he or she should be stopped. Improper behavior by trial participants is not a reason to exclude the camera. No one would argue that a newspaper reporter to whom an inappropriate comment is made should be kicked out.

III. THE COURT TV JUDGES' SURVEY:

It may be true that a judge whose reputation has suffered, rightly or wrongly, because of camera coverage may regret that coverage (just as a judge whose reputation has suffered, rightly or wrongly, as a result of a newspaper article may wish that his courtroom were not opened to print reporters).

Nonetheless, Court TV's own survey of 277 judges who had hosted Court TV's cameras as of June 1995 corroborates the various states' conclusions about judges and cameras. The survey, which drew 197 responses, including responses from 29 federal judges, found that 98 percent of the judges agreed that the presence of Court TV's cameras had not impeded the fairness of the judicial process. In fact, only two of the judges disagreed -- and one of the two added that "[t]he value of your presence greatly outweighs the negative." (Two judges did not answer either "yes" or "no.")

IV. CAMERAS AND THE FEDERAL COURTS:

Affirmative action. Microsoft. Waco. Whitewater. The NBA antitrust case. Abortion. School prayer. These are all major legal and social issues that affect us and that are being played out in our courts today. They are prime subjects of journalism at its best. But they cannot be shown on television, because the federal courts recently ended their brief experiment with cameras in the courtroom and cameras are again barred from federal courts.

A. THE FEDERAL EXPERIMENT:

In July 1991, the federal Judicial Conference authorized an experiment allowing camera coverage in federal civil trials in six trial court districts and two appellate districts. Thus, Court TV and other media were able to cover a wide range of civil rights, copyright, antitrust, contract, torts and other cases, often with high viewership.

The judges who participated in that experiment overwhelmingly supported its continuation and expansion. A study by the federal Judicial Conference's own Federal Judicial Center found that "[o]verall, attitudes of judges toward coverage ... were initially neutral and became more favorable after experience with electronic media coverage ..."

As in the case of the states' studies, those judges and attorneys involved in the initial federal experiment reported significant educational and social benefits and, according to the Federal Judicial Center's report, "generally reported observing little or no effect of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice."

The report recommended that the Judicial Conference "authorize federal courts of appeals and district courts nationwide to provide camera access to civil proceedings in their courtrooms..."

B. REACTION TO FEDERAL EXPERIMENT:

Nonetheless, in September 1994 (in the aftermath of the initial burst of television coverage of the Simpson pretrial hearing), the Judicial Conference, faced only with a choice of extending camera coverage to all courts or allowing the experiment to die at the end of 1994, voted to allow the experiment to die. However, the conference subsequently re-opened the door to new experimentation and the issue could be considered again.

The irony here, of course, is that it may be that some judges have allowed their distaste for what has transpired and been shown to the American people in the Simpson case to influence their decision about cameras in federal courts. And in doing so, they have now caused the Simpson case -- rather than the federal cases that they preside over -- to become the abiding image that Americans have of their justice system. This is an irony that is not lost on many other judges, and, thus, the issue of camera coverage in federal courts is far from resolved.

C. THE CONTINUING DEBATE:

"[R]esponsible camera coverage is arguably an extension of Americans' right to an open trial. And the federal courts, no less than the state courts, belong to the people who come before them seeking justice, more than to the judges behind the bench."

-- Los Angeles Times editorial, September 29, 1994

In March 1995, another committee of federal judges charged with proposing long range plans for the improvement of the federal courts, recommended that "[t]he Judicial branch should act to enhance understanding of the federal courts and ensure that the fundamentals of the litigation process are understood by all who use it. The federal courts should encourage feedback from the public on how successfully the judicial branch meets public expectations about the administration of justice."

Then, in June 1995, the federal judges' Committee on Court and Case Management reiterated to the Judicial Conference its recommendation that the successful 1991-1994 experiment be extended, while at the same time 13 of the 15 chief judges of the federal appellate circuits urged that the appeals courts be open to cameras.

The irony and illogic of federal civil cases not being open to cameras has not been lost on well-informed observers of the federal courts:

"It is my understanding that the report prepared by your committee showed that the experiment was a success and that the feared disadvantages did not materialize. Thus, the Federal Judicial Center's favorable report is consistent, of course, with the experience of the 47 states that now allow televised coverage of trials.

"When I was Chief Justice of the Supreme Court of Alabama, it was decided to open the courts to television cameras... It is my understanding that this has worked well over the years, with virtually no problems... I hope that you and your colleagues do not view the matter as closed..."

-- *(October 13, 1994 Letter to Chief Justice William Rehnquist from Sen. Howell Heflin (D-AL), Chairman of the Senate Subcommittee on the Courts and Administrative Practice)*

"I was surprised and disappointed to learn of the Judicial Conference's decision to terminate the pilot program of camera access to the federal courts. I am writing to ask you, as Chairman of the Judicial Conference, to urge reconsideration of this unfortunate decision."

-- *(October 14, 1994 Letter to Chief Justice William Rehnquist from Sen. Herb Kohl (D-WI), Chairman of the Senate Subcommittee on Juvenile Justice)*

"I request that the Judicial Conference review this decision [to terminate the pilot program] and, at a minimum, opt to continue its experimentation with television cameras in federal courtrooms."

"The Conference's decision appears to run counter to the recommendations of the Federal Judicial Center and its Committee on Court Administration and Case Management and Committee on Long Range Planning. Each of these entities reviewed the pilot program and concluded that federal judges should have discretion to allow cameras into their courtrooms."

-- *(February 22, 1995 Letter to Chief Justice William Rehnquist from Sen. Arlen Specter (R-PA), Chairman of the Senate Subcommittee on Terrorism, Technology and Government Information)*

"I am writing to communicate my view that experimentation should continue with cameras in the federal district and circuit courts...[C]ontinued experimentation based on the recent experience is warranted."

-- *(February 7, 1995 Letter to Chief Justice William Rehnquist from Rep. Carlos Moorhead (R-CA), Chairman of the House Subcommittee on Courts and Intellectual Property)*

"Cameras have been in hundreds of state and local courtrooms across the country for a number of years. There is absolutely no valid reason for still and television cameras being kept out of the nation's federal courtrooms. We are living in an electronic age and many people (regrettably) do get their information solely from radio or TV. To deny reporters who work in these media equal access to court proceedings is to deny access to a large segment of the nation's

population. To deny those reporters equal access is to make a mockery of the principle of open judicial proceedings."

-- (*Houston Post* editorial, *October 1, 1994*)

"Are federal trials inherently so different that television would, despite the recent experimental evidence to the contrary, undermine the judicial process? Or is it more likely that federal judges, who have life tenure, are simply more resistant to change in their routines? The federal Judicial Conference should reconsider its total ban on cameras. If it doesn't, Congress ought to think about making its own rules in this area... [R]esponsible camera coverage is arguably an extension of Americans' right to an open trial. And the federal courts, no less than the state courts, belong to the people who come before them seeking justice, more than to the judges behind the bench."

-- (*Los Angeles Times* editorial, *September 29, 1994*)

"Unfortunately, the Judicial Conference could not consider extension of the pilot program as an option: rules governing adoption of policy required it to choose between maintaining its total ban on cameras in federal courts or reversing its ban and permitting electronic media coverage of civil proceedings in all district courts and courts of appeals at the discretion of the presiding judge..."

"The Standing Committee on Federal Judicial Improvements therefore recommends that the House of Delegates adopt the attached resolution which urges the Judicial Conference to authorize experimentation with electronic media coverage of federal civil proceedings by re-instituting a pilot project to allow electronic media coverage of civil proceedings in selected federal courts under guidelines promulgated by the Judicial Conference."

-- (*Report of the American Bar Association's Standing Committee on Federal Judicial Improvements accompanying Recommendation 106 (adopted by the ABA House of Delegates, February 13, 1995)*)

In short, the cumulative evidence of the numerous state and federal studies and the experience of the American judiciary point to only one conclusion: cameras in the courtroom do not harm the process, and do provide significant social and educational benefits. As a *Washington Post* editorial put it on April 9, 1995: "No state that has allowed cameras in criminal trials has ever rescinded that decision. Since Court TV went on the air in 1991 it has televised approximately 272 trials in 28 states. During that time not one verdict has been overturned nor one charge dropped against a defendant because of a Court TV broadcast."

Nonetheless, despite what we already know, questions are now being raised regarding the influence of cameras on court proceedings, about whether there is any legitimate educational value associated with camera coverage, and about whether the image of the judicial system is being tarnished and public confidence in the judiciary eroded. Let's look at some of those issues.

V. SENSATIONALISM AND THE MEDIA CIRCUS:

A. "TRIAL(S) OF THE CENTURY":

It has by now become fashionable to think that the Simpson case has become "the trial of the century" because of cameras. In fact, in this century at least a dozen cases have been dubbed (at the time they happened) "the trial of the century." Most were accompanied by lurid and sensational tabloid headlines, interviews of lawyers and witnesses on the courthouse steps, self-promotion and books by trial participants, news reports of public obsession with the trial, and general public distaste for the whole circus. None of these trials were televised.

They include:

1. The three trials of comedic actor Fatty Arbuckle for rape and murder. The first two ended in hung juries and he was acquitted in the third.
2. The Scopes "Monkey Trial" case.
3. The Bruno Hauptmann trial (Lindbergh kidnapping)(which was attended by hordes of photographers and reporters using technology inside the courtroom that clearly would violate current rules that require no special lighting or wiring and no more than one pool camera).
4. The Sacco and Vanzetti trial.
5. The trial of "Murder Inc." boss Charles "Lucky" Luciano.
6. The Charlie Chaplin paternity suit.
7. The espionage trial of Ethel and Julius Rosenberg.
8. The Sam Sheppard murder trial.
9. The trial of Patty Hearst.
10. The trial of Charles Manson (which took nine months in a California courtroom).
11. The "Boston Strangler" case.
12. The trial of the "Chicago Seven."

Pull the old clips or television news soundbites of these trials and it becomes clear that the circus atmosphere, the lurid sensationalism, baseless speculation, and inaccurate reporting are neither unique to the Simpson trial nor dependent on the presence of television cameras.

And certainly if a trial like the "Chicago Seven" had been on television the camera would have been blamed for the antics of the defendants and the judge.

Indeed, what is different about the Simpson case and other televised trials is that there is a full, sober record of what actually goes on in court available to balance -- and correct -- the abuses of the media circus.

B. CAMERAS INSIDE COURTROOMS ARE PART OF THE SOLUTION, NOT PART OF THE PROBLEM:

"[W]ithout the ability to witness the actual proceedings on television, many Americans could be left only with the sensationalist distillations of the supermarket tabloids."

-- (New York Times editorial, September 22, 1994)

We may not like what we have seen in court in the Simpson case, but at least we know what has gone on in court. We do not have to rely on tabloid headlines or courthouse spin-session interviews to evaluate what happened when the defendant tried on those gloves. Or on a witness' "up close and personal" television interview a few weeks later. Witnesses and lawyers can go on television interview shows -- and put their best spins on trial developments -- or they can leak their spins anonymously, but people have seen what actually happened in court where witnesses were under oath and cross-examined by lawyers rather than celebrity interviewers.

As Marvin Kitman wrote in *Newsday* on June 15, 1995, "Everybody is saying the trial is out of control because of TV -- let's pull the plug on TV coverage. That is not the answer. Court TV is doing a responsible, intelligent job. What's bad is the desperate media frenzy to annotate, comment on, go beyond the actual proceedings, notably the tabloid magazine shows."

Early in the case, Judge Ito made the same assessment himself when he noted that the damage done by an erroneous local news report about some forensic test results had been mitigated by his own comments about it in open court -- because those comments had been televised. "It is to the [defendant's] benefit that the false reports in the press have been unmasked" on television, he stated.

Although Judge Ito could do little about media abuses, such as the one he deplored in the instance cited above, because of cameras in the courtroom he could have -- and other judges have -- done more to prevent the interviews and courthouse-steps post mortems that have been common in the Simpson case and that are much more common when cameras are not in the courtroom. When a judge knows that the news media can record what happens inside the courtroom that judge usually feels more comfortable requiring the lawyers to keep silent outside of court during the trial. Moreover, their comments are not nearly as important when the media can use actual trial footage to report on the case.

Similarly, indictment press conferences by prosecutors -- which used to be the only way that the people who vote for them saw them perform -- become not nearly as important to a public assessment of their work when there is also camera coverage available showing them and their subordinates at work in the courtroom.

Now, a new "trial of the century" is on the horizon: the one involving the alleged Oklahoma bombers. In just the early pretrial phases of that case, with no cameras allowed, we have already seen the first signs of a circus in the making -- unsubstantiated media speculation about the case and an attempt by one defense lawyer to secure interviews with his client that will make him seem sympathetic. The absence of cameras in the courtroom will only ensure the public's reliance on these questionable tactics.

As University of Southern California law professor Susan Estrich has written: "What is truly disgraceful to me, as someone who teaches young people to be lawyers, is that the effort is being directed by [McVeigh's] lawyers. In 1995, this is how you conduct a vigorous defense. Try the case in public. Turn Timothy McVeigh into O.J."

Estrich, who has criticized cameras (wrongly, we think) in the Simpson trial for having caused the process to be prolonged, at least recognizes that the circus is not the product of the camera in the courtroom.

VI. A CHECK ON, AND SUPPLEMENT TO, TRADITIONAL REPORTING ABOUT THE LEGAL SYSTEM:

Americans get information about their legal system in two ways: through traditional news reporting and through fictionalized versions of American justice seen on television, in novels, and in the cinema. This is true of all areas of public and governmental activity, but the legal system is different; for the inherent drama of legal conflicts has made it much more typically and indelibly the fare of fiction than is true of other branches of government.

A. AN ANTIDOTE TO FICTIONAL JUSTICE:

"I think it's great that the public is getting to see the real world of courtrooms -- a far cry from P. Mason and L.A. Law."

-- (Federal Judge, Eastern District of Pennsylvania)

And in fictionalized versions of justice -- those that suit our tastes and those that don't -- our legal system is simplified, glorified, demonized or just plain distorted, leaving all Americans with unrealistic expectations, unjustified cynicism, or both.

We watch Perry Mason and expect trials always to be crisp, truth-seeking affairs in which right always prevails and the wrongdoer will always break under cross examination. We watch a police show on television and we come to believe that only technicalities, not real constitutional protections, save those who are arrested.

Thus, Professor David Harris wrote in the *Arizona Law Review* in 1993 (in the only academic study done thus far on the effect of televised trials on the public perception of justice):

"While the portrayal of police in conventional television has often been sympathetic, it has conditioned viewers to expect much more of law enforcement, prosecutors, and courts than they can realistically deliver Regardless of the fact that forensic science solves very few cases, jurors expect such evidence, or an explanation for its absence, in every case. Jurors become so conditioned by the 'law' and 'police work' on television that the actual evidence becomes secondary. As an officer interviewed in another study said, jurors expect the impossible: 'The public gets the impression that you can take fingerprints off water.'

"Whatever one thinks of the portrayal of criminal justice on conventional television, no one would dispute that Court TV at least

does a better job of showing viewers what a trial really is. No slick actors here; rather, we see real attorneys make their way through thickets of complex issues. Even the very good attorneys do not emerge as hot, exciting performers. Rather, we see that slow, careful, patient work represents the lawyer's stock in trade. Painstaking precision, backed by conscientious preparation, wins cases. Flash and excitement seldom show up on Court TV."

B. A SUPPLEMENT TO TRADITIONAL JOURNALISM:

One need not be critical of traditional television and print reporting about the legal system (and certainly we at Court TV are not, since we are also involved in publishing ten legal newspapers and magazines) to appreciate how the camera in the courtroom can supplement and enhance more traditional reporting.

As Professor Harris wrote in the *Arizona Law Review*:

"Even the most accurate part of conventional television, news broadcasts, can offer only an incomplete version of any important trial. The whole event will be summarized in two minutes by a reporter with little or no knowledge of the legal process. Thus the person interested in a case depends on a highly derivative filtered source of information.

"By contrast, those who see Court TV can make up their own minds about the case and the evidence. Court TV's virtually uncut live coverage of trial testimony allows anyone to see the trial as if present. The viewer sees an almost unmediated version of the proceedings, rather than interpretations of the event."

The camera takes away the traditional reporters' monopoly on the information about what actually happened in the trial. The reporter is still there to report on the significant developments and to attempt to explain and assess them, but he or she is no longer the only one among his editors or readers who has seen the event.

Camera coverage also allows other legal journalists and commentators to add analysis to their coverage. This commentary has, on occasion, angered members of the legal community. Liking it to sports commentary, these critics argue that it demeans the legal system and the lawyers. For those of us at Court TV involved in our sister publication, *The American Lawyer* magazine, this reaction is reminiscent of the criticism we received when we began publishing columns by veteran Supreme Court journalist Lyle Deniston, in which Deniston critiqued lawyers' performances in oral argument before the high court. However uncomfortable people become when their work is watched and commented on by others, this is one of the prime purposes of good journalism.

The camera also provides an important check in those rare cases where the press becomes so used to the stories and system that it covers that it becomes more tolerant than the public would be of how that system is working. This is classically true in the Simpson case, where court reporters -- long used to delays in California trials -- were initially far more tolerant than the rest of the world, which now got to watch such a trial.

Thus, Professor John Langbein of Yale Law School, who believes that the system is far too tangled in a procedural morass, recently told CBS news, referring to the Simpson case, "[t]hose cameras are an absolute godsend because the public has been educated to think that criminal trials are what they saw on Perry Mason and it ain't true. What it's showing people is the way the system really works."

VII. DEBUNKING CLICHÉS, REAFFIRMING VALUES:

The camera in the court punctures myth and reaffirms the reality of the legal system. For example:

- Redeeming the Goal of Deterrence.

In the past many criminal defense lawyers have opposed cameras in criminal trials because the televising of a trial would further punish the defendant by embarrassing him if he were convicted. This is an understandable position for defense lawyers to take for their clients, but it is contrary to one of the basic purposes of any criminal law system: deterrence. Historically, one of the prime ways of achieving deterrence was the specter of embarrassment in the community resulting from being caught committing a crime.

- Distinguishing the "technicalities" from the constitutional safeguards.

The Simpson case, as is true of other televised cases before it, has reminded Americans about, and reaffirmed for them, the presumption of innocence and burden of proof that attach to every criminal case. As the *Arizona Law Review* article referred to above, noted, "Court TV offers citizens the chance to actually see their system of justice at work, along with expert analysis and commentary. . . . For example, it is one thing to be aware of the presumption of innocence; it is quite another to watch the system do the best that human institutions can to be fair to an individual accused of the most horrible acts possible."

At the same time the Simpson case has focused debate on whether the criminal justice process can become too bogged down in procedural issues when the defense has the resources to press all of these issues. And it has ignited anew a debate over whether the solution is to give every defendant these resources or remove some of those procedural hurdles.

- There has always been a tendency among the public and even in some of the media to confuse fame with quality when it comes to lawyers.

At the beginning of this trial all of the lawyers involved were famous. Now, however, not all of them are considered to be stellar lawyers. That's because people have watched them work, rather than simply see them on the courthouse steps and in newspaper headlines.

VIII. CAMERAS AND DEFENDANTS:

In 1981, the United States Supreme Court ruled in *Chandler v. State of Florida* that the presence of a camera televising a trial does not inherently deprive a criminal defendant of a fair trial.

Nonetheless, as mentioned above, many in the defense bar have historically opposed cameras in courts. Many defense lawyers have now changed their view, for two reasons:

a. Defense lawyers increasingly believe that the presence of a camera strengthens the integrity of the process, insuring that their clients' rights are protected by judges and prosecutors alike.

This is why many observers now believe that camera coverage could be an especially important dynamic in preserving the rights of defendants who lack the resources to mount a vigorous defense or who may feel that there are inequities in the system.

Thus, the Texas NAACP supported cameras in the courtroom "to ensure fairness and equity in our criminal justice system, which after all, is accountable to the general public. The public scrutiny that cameras afford is extremely helpful in keeping trials fair to all parties and ensuring that minorities are treated with courtesy and adherence to the rules. We are concerned about any perpetuation of stereotypes, but we are proud to recognize that existing entities such as Court TV have done a good job in avoiding this problem."

b. Defense lawyers in high profile cases, and their clients, say the camera will help restore the reputations of those who are acquitted because the public will see what the jury saw when it made its decision. Similarly, and particularly in high profile cases, many defense lawyers want jurors to know that if they render a decision to acquit that seems at odds with the initial pretrial publicity, they will return from jury service to friends and co-workers in the community who, will have seen the evidence in what might otherwise be an unpopular decision.

Thus, just one year after Court TV was launched, the network received an award from the Criminal Justice Section of the New York State Bar Association for its "Outstanding Contribution in the Field of Public Information."

IX. COURTROOM CAMERA COVERAGE AS "CLASSIC" JOURNALISM:

A debate about courtroom camera coverage tends to make electronic journalists defensive. For they often have to justify what they do in terms of negatives: it is not merely entertainment; it doesn't endanger the rights of defendants; it doesn't impede the process.

In fact, there is a simple, positive statement that can also be made about courtroom camera coverage: when done well it is journalism at its best -- journalism that defines the core purpose of journalism and the First Amendment.

For television coverage of trials tells the whole, real, true story about a complicated, often misunderstood and under-reported subject. It allows the participants in a democracy to judge for themselves how well the government institution that makes the most fundamental decision that any government makes -- liberty or prison -- is working.

And this is true even with regard to the most "sensational" trials. We can see for ourselves whether William Kennedy Smith and his lawyers corrupted the system or fooled the jury. Or, we can see whether O.J. Simpson was railroaded in a way that we could not see, for example, whether Mike Tyson (whose rape trial in Indiana could not be televised) received a fair trial.

Court TV began four years ago at a time when it would be hard to argue that the public understood its legal system well or that journalism was doing a complete job of showing it to those who are ruled by it. This, after all, is the most misunderstood branch of government -- the branch where who wins and who loses has heretofore dominated most of the news coverage, with little attention given to the process of deciding who wins and who loses.

In the wake of the Simpson case some may have been made uncomfortable by this new and unforgiving eye of journalism. The temptation may be to criticize the messenger rather than focus on the message (that, at least in this case, the system may need some changing.) Journalists have often faced that kind of reaction, especially when their medium or their method was new. But rarely have they had to face it against the backdrop of laws and rules that could restrict their coverage.

X. COURTROOM CAMERA COVERAGE AS A BUILDER OF CONFIDENCE IN THE LEGAL SYSTEM:

"It is essential that justice is seen to be done, and television lets the citizenry see our justice system in action. Television viewers have demonstrated great interest, and their interest should be encouraged. The televising of court proceedings is the best thing that ever happened to our profession, because it inspires confidence in our judicial processes."

-- U.S. Court of Appeals Judge Roger Miner, *New York State Bar Journal*, February 1995

On the surface, it seems inconsistent to celebrate coverage of the Simpson case as classic journalism that shows flaws in the system and acts as a catalyst to change the system, and then to argue also that camera coverage builds confidence in the legal system. It would, indeed, be inconsistent were it not for one overriding factor: the dramatic ways in which the Simpson case is the exception that proves the more general rule.

The Simpson case may be an anomaly all its own. Or it may be emblematic of problems with trial procedure in California. Or it may be emblematic of an imbalance in the system between the protections afforded defendants based on their economic resources. But it is not typical of the system in general.

Nor has reaction to its telecast been typical. Public opinion polls report that people generally have less confidence in the legal system after watching the Simpson case. But previous research and polling suggest even more strongly that, as a rule, when people watch trials they come away with more confidence in the system.

Thus, in 1994 the independent Times Mirror Center For The People And The Press conducted a study that found that by a margin of 49 percent to 28 percent Court TV viewers said "they have a better impression of the fairness of the judicial system as a result" of watching Court TV.

This result has been repeatedly reflected in the comments of Court TV viewers and in the reactions reported by judges and lawyers who have participated in trials televised on Court TV.

XI. CAMERA COVERAGE AND EDUCATION:

Courtroom television coverage has generated dramatic improvements in how Americans are helped to understand that branch of government that determines liberty and organizes our social and business affairs. Videotapes of actual trials are now used regularly to train law students, paralegals and lawyers. Special tapes have been made by Court TV of especially important cases -- for example, a Philadelphia appellate argument on affirmative action, and a free speech/civil rights case in New York -- and distributed for free to civil rights leaders and educators.

Through the "Cable In The Classroom" program, students from grade school to college across the United States now regularly receive tapes of actual courtroom proceedings, for free, and discuss them in classroom presentations led by teachers who receive supporting materials from Court TV.

Court TV has also created and distributed, for free, an interactive CD ROM based on the Rodney King trial that allows students to review and organize the actual trial tapes and transcripts and present their own opening and closing arguments to other students. This trailblazing interactive learning tool, created in cooperation with the leaders of the interactive learning laboratory at New York's Dalton School, has been used in classes ranging from middle school at Dalton to Evidence at Harvard Law School. Other law schools -- among them Stanford, Notre Dame, Syracuse and Case Western -- regularly acquire courtroom footage as a resource for their libraries and classrooms.

Also on Court TV, six hours a week are devoted to special continuing legal education programs for lawyers; and on weekday evenings regular shows use trial footage as a departure to explain the legal process to lay audiences. These shows include "In Context," with Harvard Law Professor Arthur Miller, which takes a significant legal issue presented by a current trial and explains and analyzes it; "The System," which tracks criminal cases from crime complaint, to arrest, to pretrial hearings, to trial or plea bargain, to imprisonment and parole; and "Verdicts & Justice," which attempts to assess whether justice was done in a recently completed case.

A. TEACHERS' SURVEY:

It should be no surprise, then, that an independent survey of educators across the country completed in 1994 found that teachers consider Court TV a highly valuable curriculum tool for educating students about the workings of the American justice system. Among key findings:

- 90 percent of respondents who indicated they had viewed Court TV said the network is important because it provides students the opportunity to see the U.S. judicial system in action;
- 80 percent of those who watched Court TV said the network helps students understand many aspects of the law;
- 85 percent of respondents who viewed the network said they believe Court TV presents current issues of social interest such as free speech, crime, and violence in a constructive manner;
- 87 percent of Court TV viewing teachers said that the network's trial programming focuses on resolving social disputes in a civilized and fair manner, as compared to many television programs which show violence and violent outcomes in public and individual disputes;
- Of all the teachers surveyed, 77 percent are in favor of Court TV being available for educational instruction. And 75 percent of the respondents would recommend that their students watch Court TV on their own. (Malarkey Taylor Associates Survey, 1994.)

B. COMMENTS ON EDUCATIONAL VALUE OF CAMERAS:

Across the country, judges and other community leaders have expressed equal appreciation for the educational value of televised trials:

"I am a firm believer of 'cameras in the courtrooms' as applied under the law. It is a wonderful educational tool and a marvelous way to show 'the entire picture' to the public which is in dire need of a 'true picture' of what actually transpires in our courtrooms."

-- *(Judge, Circuit Court, Palm Beach County, FL)*

"The few opportunities I had to watch the evening recaps and listen to the callers' questions convinced me your audience was intelligent, paying close attention and learning about the system. I am proud about contributing to the public's understanding about the system."

-- *(Judge, Denver District Court, CO)*

"Indeed, the benefits of televising trials far outweigh any burdens - even in the much-criticized O.J. Simpson case. People learn from trials. As aberrant as the Simpson case is, it has become a civics class on the rights against search and seizure, the role of judges and

the duties of jurors ... The Simpson case is bringing to light differences in how blacks and whites view the legal system Compare those public conversations to what's emanated from federal courthouses in New York during the trials for the World Trade Center bombing. A sad silence Now, the Oklahoma City bombing may get similar treatment. By keeping cameras out, federal courts make it more difficult for society to learn from and come to terms with this tragedy. And should the accused be let go, a public deprived of televised access may find it hard to understand why."

-- (*USA Today* editorial, May 5, 1995)

"The courts are public institutions, and the televising of proceedings is a powerful educational tool. People learn a tremendous amount about the judicial process by watching trials and appeals on television. Think of what is being learned about our legal system -- both for better and for worse -- by the televising of the O.J. Simpson trial."

-- (*Washington Post* editorial, April 8, 1995)

"The rules in Texas are working well as regards cameras in court, and there is no record of their disrupting proceedings, violating defendants' rights or otherwise creating havoc. So why mess with it? ... The O.J. Simpson trial has demonstrated, often painfully, both the positive and negative aspects of cameras in court. The illuminations of the indecorous attorneys have been deplorable, and some of that egregious excess may be blamed on the unblinking camera. But the camera also makes the larger public privy to the entire display and not just subject to after-court sound bites orchestrated by the various lawyers involved."

-- (*Austin American-Statesman* editorial, April 4, 1995)

"Fifteen of the 28 states addressed the educational benefits associated with allowing cameras in the courtroom, and all of these states determined that camera coverage contributed in one way or another to public understanding of the judicial system."

-- (*Electronic Media Coverage of Federal Civil Proceedings, Federal Judicial Center* evaluation, 1994)

"Many of the small sample of Court TV viewers interviewed said they have a better understanding of the legal system and think the courts are fairer as a result of watching trials on TV. Specifically, 66 percent said their viewing gave them a greater understanding of the way the American court system works."

-- (*Times Mirror Center for The People & The Press*, 1994)

XII. THE LAW AND CAMERAS:

We often hear that there is "no constitutional right to cameras in the courts." Right now, this is true. But there is no constitutional bar either. In fact, the courts have opened the way to cameras in the courtroom, and the issue of whether there is a constitutional right, given the non-obtrusive nature of modern video technology, is not at all settled.

There are three Supreme Court cases that bear directly on the issue of cameras in courts:

A. RICHMOND NEWSPAPERS v. VIRGINIA, 448 US 555 (1980):

In *Richmond Newspapers v. Virginia* the Supreme Court held that the Sixth Amendment right to a public trial is not a right afforded only to defendants -- that the constitutional right to a public trial also belongs to the public. "Without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and of the press would be eviscerated," the court ruled. "The First Amendment can be read as protecting the right of everyone to attend trials."

However, not everyone can actually attend trials. In a world in which community interest is now often defined on a regional, national or even worldwide basis, trials that are the major focus of regional, national or world community attention often take place in courtrooms that have one or two dozen seats for spectators and that are far away from most members of that "community." Which is a far different reality than a century ago when "community" was a much smaller place and when courtrooms had cavernous audience galleries to accommodate those who wanted to come see a trial that had become the talk of the town.

B. BILLIE SOL ESTES v. STATE OF TEXAS, 381 US 532 (1965):

On the other hand, The *Richmond* case talks about "attending trials," not seeing them on television. Which brings us to the second major courtroom camera case: *Billie Sol Estes v. Texas*. This is the case that is most often cited -- and accurately so -- for the proposition that there is no constitutional right of camera access.

In the *Estes* case the Supreme Court, indeed, ruled that camera coverage was not a constitutional right and overturned the criminal conviction of Billie Sol Estes because the publicity attendant to his trial, including the presence of cameras, had deprived Estes of due process.

However, in that case the Supreme Court focused on the physical attributes of camera coverage -- the lights, the wires, the noise, the chaos. Indeed, the circus.

In his plurality opinion in that case Justice Clark said, "When advances in the [television] arts permit reporting ... by television without [its] present hazards, we will have another case."

Obviously, there are none of those hazards today. The camera is small, silent, usually wireless and often mounted on the wall with no more intrusion than a standard security camera. So, perhaps we may soon have another case.

C. CHANDLER v. STATE OF FLORIDA, 449 US 560 (1981):

In 1981, the Supreme Court clarified its position on cameras when it ruled in *Chandler v. Florida* that the presence of a camera in and of itself (without any attendant circus atmosphere of lights, tangled wiring, reporters and photographers bustling through the courtroom) did not deprive a defendant of a fair trial.

So, the state of the constitutional law on cameras is as follows: The Supreme Court has frowned on cameras but primarily because of the circus that once attended a camera set-up in court (*Estes*); the Court has ruled that public trials (but not camera-covered trials) are a public, First Amendment right (*Richmond Newspapers*); and the Court has ruled that cameras alone do not deprive the defendant of a fair trial (*Chandler*).

Against that backdrop, 47 states have now passed laws allowing some kind of camera coverage. All of those laws afford the presiding judge discretion, however, to rule on individual cases. Some states require the judge to allow cameras unless there is some tangible reason why they should not be allowed, while others simply give the judge (or in some cases the participants) broad discretion to keep cameras out. In short, while cameras have increasingly been allowed, they do not yet enjoy in the law the same right of access that reporters and their notepads do.

D. A NEW CASE?

Thus, the question now becomes whether the technological advances referred to by Justice Clark in the *Estes* case as opening the way for camera coverage as a matter of right aren't now here. For if they are and if, therefore, the physical set-up of the camera isn't destructive to the trial, then all of the arguments about the effect of cameras on making a trial more public would not be relevant; for the *Richmond* case and the Sixth Amendment require public trials, which means that if a camera simply makes a trial more public it should be welcomed, not barred.

To take a specific example, there have been typically seven or eight seats at the Simpson trial open to the public. In a trial that has generated so much community interest in such a large national community can that be what the founding fathers meant about a "public trial" when an unobtrusive technological means is now available to make it so much more public? And if the lone, silent camera on the wall is now no more obtrusive than a few dozen reporters scribbling away on their pads, can there be a justification for keeping the camera out? It cannot be that the justification is that participants will act differently (even though the empirical evidence is that they don't) knowing that the trial is so much more public -- because the founding fathers always wanted public trials.

Put differently, it would seem that all of the current controversy about the Simpson case should -- when juxtaposed against the public trial requirement of the *Richmond Newspapers* case and the technological advances that make the physical presence of the camera no more (and arguably less) an event than the presence of lots of reporters -- be matters of debate about taste, not about rules and restrictions.

As the *Houston Post* declared in an April 7, 1995 editorial, "The public has a right to know what happens in the courtrooms. Through newspapers, they have long known. But recorders and television cameras serve as more modern eyes and ears for the public. The laws and judicial rules and procedures should accommodate these technologies to enhance the public's right to know."

The *Atlanta Journal and Constitution* put it this way on September 21, 1994: "When the forefathers drafted the First Amendment, assuring a watchdog media, and the Sixth Amendment, guaranteeing the criminal defendants a 'public' jury trial, they knew what they were doing. While they didn't envision television, they meant those guarantees to be kept consistent with the times."

Or as U.S. Court of Appeals Judge Roger Miner explained in an article in the *New York State Bar Journal* in February 1995, "Today, of course, except in sensational trials, the courtrooms are empty. But there is a way to fill up those courtrooms and to secure the desirable attendance of the citizenry. That way is television."

In short, as Justice Clark foretold, we may now "have another case." Restricted camera access as a matter of taste should be a thing of the past. Imagine the reaction if a legislature or judge could restrict other media based on assessments of the prospective tastefulness or benefits of coverage.

Camera access should be a right to be withheld only when the judge finds that the camera -- not publicity, but the camera -- will unduly affect a witness or impede a trial. And certainly this right should apply to coverage of appellate arguments, including those in the Supreme Court, where there are no witnesses or jurors to be intimidated by cameras and where the issues are rarely the "sensational" ones that the camera-taste critics decry.

XIII. SO, WHY IS THERE STILL A CONTROVERSY ABOUT CAMERAS IN COURTS?:

"The obsession with this particular television trial should not lead to a rejection of televised trials..."

-- New York Times editorial, June 11, 1995

If all of the empirical evidence about the balance of harmful effects versus the benefits of camera coverage is so clear, and if the policy arguments and legal arguments are so good, how come courtroom camera coverage is still so controversial, with so many sincere, highly regarded people in opposition?

One simple answer is the Simpson case. The general revulsion with the media frenzy surrounding that case has motivated people to want to do "something." And the only thing that really can be done under current law is to remove the camera in the courtroom -- which is not responsible for any of the abuses that people are upset about, and which, it could be argued, is actually an antidote to those abuses.

Similarly, the Simpson case has clearly been an exception in many quarters to most prior experience, in which camera coverage has inspired enhanced confidence in the legal system. Thus, many of those who want to protect the system -- for good reason, because it is generally a system well worth protecting -- are now disenchanted with cameras. Put differently, there are many who have been made uncomfortable by the undeniably true story told by the camera in the Simpson case.

Most important, the broad viewership of the Simpson trial and the attendant publicity may itself be one reason the camera in the courtroom has come under fire. For many people, who have not previously paid much attention to courtroom cameras, the Simpson trial has made the issue of cameras in the courts a "new" issue, rather than the decades old issue (with accompanying reams of empirical studies) that it actually is.

Looked at as a new issue and against only the backdrop of the distasteful Simpson case, camera coverage has gotten swept up in the overall backlash from this trial.

And many people instinctively are leery of something that seems so new, especially when it presumes to intrude upon an old system that in their perception has generally worked well.

This problem of "newness" has always been a hurdle for cameras in courts. It is probably true that a majority of judges who have not had cameras in their courtrooms oppose cameras. But it is definitely true that an overwhelming majority of judges who have presided over televised trials -- including, to our

knowledge, every single judge who has presided over a trial televised by Court TV -- favors camera coverage with appropriate safeguards.

Thus, according to news reports at the time, when the Judicial Conference voted to allow the 1991-94 experiment with civil trials to lapse, all but two or three of the judges who voted had never had a camera in their courtrooms, while those who had experience with cameras voted for continued camera coverage and those federal judges not on the Conference who had participated in the experiment were overwhelmingly in favor of continuation of coverage.

The purpose of this paper, therefore, has been to provide perspective on a debate that seems new but is not.

And to convey the clearest message possible that journalism using cameras in the courtroom is journalism that is effective, that tells the truth, that can -- and among most journalists, does -- have a high purpose, and that now deserves the same protection as any other journalism from those who would want their own taste to become rules that apply to what everyone reports and what everyone gets to see.

Cameras in the courtroom provide many benefits. They offer the public the chance to see the legal system at work and to judge with their own eyes whether it has performed as it should. They can heighten public understanding of the system, counter rumor and speculation, and provide important insurance against abuses of defendants' rights.

The Simpson trial has raised important questions about our system of justice and our ability to preserve its integrity in trying circumstances. But, far from being the source of the problem, the courtroom camera may be part of the solution. We must remember that as we decide its future.



COURTROOM TELEVISION NETWORK

WATCHING THE REAL LIFE DRAMA OF JUSTICE

Courtroom Television Network (Court TV) is a 24 hour basic cable television service that provides live and taped coverage of the nation's most important and compelling trials to approximately 22 million American households. Since its launch on July 1, 1991, Court TV has covered 380 trials and hearings, including *California v. Powell* (The Rodney King Case), *Florida v. William Kennedy Smith*, the *Libya v. Great Britain and United States Pan Am* hijacking hearing from the World Court at The Hague, *California v. Menendez*, *Michigan v. Kevorkian*, the QVC/Paramount Viacom takeover fight, the *Flynn v. Goldman Sachs* sex discrimination case, the Gregory K "divorce-your-parents" case, the *Zion v. New York Hospital* wrongful death case, the General Motors truck crash case, and *California v. OJ Simpson*. In addition to gavel-to-gavel trial coverage and regular updates of legal news from around the country, Court TV offers a variety of programs that help viewers better understand all aspects of the judicial system.

WHO IS BEHIND COURT TV?

Court TV is managed by American Lawyer Media, L.P., the largest legal journalism company in the world, and the publisher of nine regional legal newspapers and *The American Lawyer* magazine — which has been nominated for 22 National Magazine Awards since its founding 16 years ago and has won the Award four times.

WHY A NETWORK DEVOTED TO THE LAW?

At Court TV, we feel strongly that trials can be educational as well as entertaining. The framers of the Constitution intended that trials that were important to a community should be open to that community. But in the modern age the "community" can no longer fit in any courtroom's spectator gallery. So, until Court TV, most Americans had to learn second hand about what happened in important trials - from newspapers, radio broadcasts, movies, documentaries and television newscasts. While reporting can be valuable in helping to sort out issues, it cannot replace the understanding gained from viewing actual courtroom proceedings. Court TV wants to educate Americans about the real legal system; we want to substitute real law for "LA Law."

HOW DOES COURT TV DECIDE WHICH TRIALS TO COVER?

Court TV weighs several factors when choosing which trials to air, including how important and interesting the issues in the case are, the notoriety and newsworthy nature of both the case and the people involved, the quality of the "story," its educational value, and the expected duration of the trial. To ensure that there is no bias for covering trials based solely on how popular they are, Court TV declines all requests to release the ratings of a specific trial, and its production staff is never privy to that information.

EDITORIAL POLICIES

Court TV, as do all American Lawyer Media editorial endeavors, has a unique policy of making corrections on air quickly and candidly and otherwise holding itself as accountable as those it seeks to report about. Court TV has an extensive set of editorial rules and guidelines that allow the network to comport with ethical standards and standards of taste that go well beyond the narrower restrictions of the law. For example, Court TV operates on a time delay device to protect privacy. Thus, we will bleep out any testimony or other court comments that contain obscene language that is not central to the case, the name of any juror, or the address of any witness or other party. Court TV also has a stringent policy not to show young children or autopsy photos on camera, even when allowed to do so by law.

LEGAL JOURNALISM'S FINEST

STEVEN BRILL. As chairman and editor in chief of American Lawyer Media and founder and ceo of Court TV, Brill brings a distinguished background and a unique vision to the cable service. Brill, prior to founding *The American Lawyer* in 1979, was a columnist and writer for *Esquire* and *New York* magazines and the author of the 1978 best selling book, *The Teamsters*. He is a graduate of Yale College and Yale Law School.

FRED GRAHAM. After a distinguished career as a practicing attorney, government official, New York Times legal writer and law correspondent for CBS News, Graham joined the Court TV team in 1991 as chief anchor, managing editor and host of the network's weekly public affairs program, *Washington Watch*.

During his 15 years at CBS News, Graham covered the activities of the Supreme Court, the Justice Department and the FBI. His insightful reporting on those critical beats, combined with his coverage of headline-making court trials such as the Watergate, Daniel Ellsberg and John DeLorean cases and his work on major CBS documentaries and investigative reports, have made Graham one of television's most respected journalists.

Brill and Graham are supported by the world's largest team of legal journalists and expert legal commentators.

LIVE COVERAGE; EXPERT COMMENTARY

By day, the Courtroom Television Network offers more live-event coverage than any network in TV history. The network's cameras and reporters are in courts throughout the country to feed live coverage and, in some cases, taped trials to an anchor desk in New York. But we also understand that this is not enough. So we explain trials and the law to the television audience in a fashion that informs and educates them. Extensive, on-screen graphics always let viewers know who is on the stand, what case is airing, and what the important legal issues are. Expert commentators are always on hand to guide viewers through complex legal issues. Regular guest analysts include attorneys Ruth Jones, Kym Worthy, Floyd Abrams, Burt Neuborne, Raymond Brown, James Tierney, Roy Black and Barry Slotnick.

THE AMERICAN LAWYER MEDIA ORGANIZATION

In addition to the monthly *The American Lawyer*, the company owns nine publications: *Legal Times* (Washington, D.C.), *Texas Lawyer*, *The Connecticut Law Tribune*, *New Jersey Law Journal*, *Miami Review*, *Palm Beach Review*, *Broward Review* (Fort Lauderdale), *The Recorder* (San Francisco), and the *Fulton County Daily Report* (Atlanta). Most are the officially recognized legal publications of the courts in their jurisdictions.

Although the ten publications serve different constituencies, each shares an operating philosophy demonstrated first in *The American Lawyer*. The publishing strategy starts with the premise that legal and business reporting does not have to be boring and that lively, important journalism reported by the field's top professionals attracts a readership willing to pay significant prices for critical professional information. In turn, advertisers have been attracted to publications that reach select, committed readers.

ONE OF THE NEWEST MEMBERS OF THE AMERICAN LAWYER MEDIA, L.P.: LEXIS COUNSEL CONNECT.

Recently, American Lawyer Media, L.P., joined forces with Lexis/Nexis, the world's leading full-text, online legal, news, and business information service to create LEXIS COUNSEL CONNECT, an online service targeted to the legal community. LEXIS COUNSEL CONNECT has more than 23,000 subscribers who hold online discussions with legal experts, download briefs and court opinion, and visit the Internet through the LEXIS COUNSEL CONNECT gateway.

EDUCATIONAL EFFORTS

Court TV's goal of bringing courtroom trials to the public makes the network an ideal teaching aid for teachers. Each month, as a part of Cable in the Classroom, Court TV airs one-hour summaries of trials involving important legal and social issues affecting kids today. The cases are selected to encourage discussion of these issues and how our judicial system attempts to settle disputes in our society.

Court TV's Law Center, an online area that can be accessed through America Online, Prodigy, and CompuServe enables consumers to get information about what is going on at Court TV and in the legal system. Online users can access program guides, court documents and transcripts of legal proceedings and participate in discussion groups with each other and the network's staff.

Court TV also offers legal professionals a variety of Continuing Legal Education (CLE) programs. Each weekend, Court TV airs six hours of CLE programming of seminars on topics of national interest from accredited CLE providers.

WHO IS THE AUDIENCE FOR COURT TV?

Of course, lawyers and other members of the legal profession are interested in the network's daytime trial coverage and prime time legal issues programming. But Court TV's programming appeals more to a wide audience of non-lawyers who tend to be active citizens, likely to express their views by writing to newspapers or magazines and calling TV or radio programs.

Since launch, Court TV's viewership ratings have been competitive with those of the leading basic cable networks. During highly-publicized trials such as the case involving Rodney King, Court TV has drawn significant audiences. In those homes that receive both Court TV and CNN, Nielsen research indicates that more people watched high-profile trials on Court TV than on CNN. And, Court TV is a powerful source of local news. Research demonstrates that when Court TV covers a trial in a particular market, its viewership is on par with the local broadcast stations.

Court TV is currently available in approximately 22 million cable and satellite dish households in 48 states, the District of Columbia, Puerto Rico and the Virgin Islands.