The Entertainment Value of a Trial: How Media Access to the Courtroom Is Changing the American Judicial Process

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I. INTRODUCTION

Recent interest by the American public in high profile court cases has led to an increased media presence in the courtroom. At the time of the O.J. Simpson trial, every American had the power to turn on their televisions and witness the unfolding of a real-life courtroom drama at any time of day.¹ More recently in 2000 and 2001, the “hockey dad” trial dominated headlines across the country.² In that case, two fathers engaged in a physical altercation stemming from rough play at their children’s hockey practice, resulting in one of the fathers beating the other to death.³ These are only two examples of the media’s presence in the courtroom.⁴ Such high profile trials have left courts and scholars debating the role and significance of television cameras in the courtroom.⁵ Does the media presence taint the jury or influence how a lawyer may


2. See Hockey Dad Manslaughter Trial, at http://www.courttv.com/trials/junta/index.html (last visited Sept. 18, 2002) (discussing facts and holding of case). This Massachusetts case drew national attention due to its violent and unfortunate nature. See id. The “hockey dad,” Thomas Junta, was convicted of involuntary manslaughter and sentenced to six to ten years in prison. See id.

3. See id. (describing cause of death as result of severe beating).


5. See Marjorie Cohn & David Dow, Cameras in the Courtroom: Television and the Pursuit of Justice 124-36 (McFarland & Co. 1998). The authors note that Court TV is a major player in media-related issues and often sues to gain access to trials and proceedings. See id. Court TV founder Steven Brill often speaks to promote the idea of television coverage of trials around the nation. See id. at 127.
address the jury?\textsuperscript{6} Are jurors distracted by the way they appear on camera, instead of focusing on the matter at hand?\textsuperscript{7} Does the media have a constitutional right to videotape in-court proceedings?\textsuperscript{8} All of these are questions that must be answered when examining the proper role of television cameras in the courtroom.\textsuperscript{9}

Gone are the days when reporters observed a trial and then published a story about it in the next edition of the paper.\textsuperscript{10} Today, in addition to regular media coverage, homes have access to \textit{Court TV}, an independent cable network devoted entirely to broadcasting courtroom trials and related commentary.\textsuperscript{11}

\textit{Court TV} was founded by Steven Brill in 1991.\textsuperscript{12} Since its first broadcast, the network has televised over seven hundred trials.\textsuperscript{13} Though \textit{Court TV}'s popularity may have peaked with the O.J. Simpson verdict when its TV ratings were at their highest, the network

\begin{itemize}
  \item \textsuperscript{6} See Lassiter, \textit{supra} note 4, at 933-35 (discussing effect of cameras on trial process). Lassiter mentions Roy Black, the defense attorney for William Kennedy Smith, who was accused of rape. See \textit{id}. at 994. Black stated that his cross-examination of alleged rape victim Patricia Bowmen was heavily influenced by the presence of television cameras. See \textit{id}. Black said, "I could not do anything but handle her with kid gloves. On national television - with my mother watching - I had to get her to explain the mechanics of sexual intercourse on the Kennedy lawn at three o'clock in the morning." \textit{Id}.
  \item \textsuperscript{7} See Corbett, \textit{supra} note 1, at 1563 (discussing media's negative impact on witnesses like Kato Kaelin).
  \item \textsuperscript{8} See Sarner, \textit{supra} note 1, at 1060-67 (countering media's First Amendment argument).
  \item \textsuperscript{10} See Ronald L. Goldfarb, TV or NOT TV: TELEVISION, JUSTICE, AND THE COURTS 2-3 (N.Y. Univ. Press 1998) ("During the nineteenth century, a public of local spectators was supplemented by reporters who came to trials and reported what they observed to a distant reading audience."); see also Corbett, \textit{supra} note 1, at 1549-50 (noting reporters can observe trials, but televising them is not necessarily constitutional right).
  \item \textsuperscript{11} See \textit{About Court TV}, at http://www.courttv.com/about/ (last visited Oct. 30, 2002) [hereinafter \textit{About Court TV}] (discussing history of \textit{Court TV}). \textit{Court TV} was founded in July of 1991, and has broadcast over seven hundred trials. See \textit{id}. The goals of \textit{Court TV} are to "inform" and "entertain," and cases often involve the hot topics of the day. See \textit{id}; see also Cohn & Dow, \textit{supra} note 5, at 124-35; Goldfarb, \textit{supra} note 10, at 124-53 (devoting entire chapter to \textit{Court TV}, its founding and popularity, entitled "The Crucible").
  \item \textsuperscript{12} See Lassiter, \textit{supra} note 4, at 928 (discussing founding of \textit{Court TV}); \textit{About Court TV}, \textit{supra} note 11 (discussing same).
  \item \textsuperscript{13} See \textit{About Court TV}, \textit{supra} note 11 (providing history and details of \textit{Court TV}'s growth).
\end{itemize}
claims that interest in televised trials remains constant. While critics may blast Court TV for being a cheap take on the popular television program L.A. Law, the network has its avid followers and supporters, who laud the educational value of the programming.

Court TV is experiencing steadily increasing ratings, as Americans' appetite for original reality television continues to grow. The popularity of programs such as The People's Court, Judge Judy, and Divorce Court cannot be disputed. Yet, such popularity causes concern for how far public access to real-life trials will go. For example, in a recent California case, the media was granted access to an execution. Also, the media has desired television access to jurors post-trial to observe their deliberations.

Today, forty-seven states permit television coverage of trials and their respective proceedings. In the federal court system, however, television cameras are not permitted in courtrooms at the trial level.

14. See Cohn & Dow, supra note 5, at 125, 133-35 (discussing peak of Court TV and its future).

15. See id. at 125-26 (discussing critics and fans of network). Some see the network as educational, providing the American public with a wide degree of exposure to criminal and civil cases. See id. Critics see Court TV as presenting "an incomplete picture of the American justice system and, therefore, a potentially distorted one." Id.

16. See generally David A. Harris, The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System, 35 Ariz. L. Rev. 785, 797-807 (1993) (discussing Court TV's history, growth, format, and goals); Lassiter, supra note 4, at 928 (discussing founding of Court TV).

17. See Kimberlianne Podlas, Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry, 39 Am. Bus. L.J. 1, 6-7 (2001) (discussing popularity of courtroom reality television shows such as Judge Judy and The People's Court). Podlas noted that these shows play a significant role in the way people perceive the judicial system. See id.

18. See Cohn & Dow, supra note 5, at 124-25 (noting Court TV's popularity despite inability to generate profit).


20. See Ban on Media Interviews of Jurors About Deliberations Is Constitutional, 66 U.S.L.W. 1300, 1300-01 (Nov. 18, 1997) ("A federal district court's ban on media questioning, absent court approval, of jurors about their deliberations in a high-profile criminal trial has been upheld against constitutional challenge by the U.S. Court of Appeals for the Fifth Circuit." (citing United States v. Cleveland, 128 F.3d 267, 271 (5th Cir. 1997))).

21. See Sarner, supra note 1, at 1054 (noting only New York, South Dakota and Mississippi "prohibit all television coverage of court proceedings at the trial level"); see also Corbett, supra note 1, at 1543 (discussing forty-seven states permitting camera access of some sort).

22. See Fed. R. Crim. P. 53. The rule states: "The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court."
This Comment analyzes the distinction between courts that allow television coverage and those that do not. It further examines the logic behind both positions and reviews several important cases. This Comment also discusses the effects of television cameras on the judge, jury, counsel, and key witnesses, and whether such effects support allowing or banning television cameras in the courtroom.

II. HISTORY OF TELEVISION CAMERAS IN THE COURTROOM

Members of the media have pitted themselves against the courts consistently on the issue of televised trials by claiming a First Amendment right of access to judicial proceedings. The courts find against media presence in the courtroom by holding that defendants have a Sixth Amendment right to a fair trial and a Fourteenth Amendment right to due process.

Id.; Corbett, supra note 1, at 1549-52 (discussing federal view on cameras). Corbett noted:

Despite the Supreme Court findings on the matter, the demand for camera access to federal judicial proceedings has nonetheless continued. In March 1996, the Judicial Conference of the United States (the Judicial Conference) relented somewhat to the pressures of the media in deciding that a federal appellate judge may allow camera access to the federal courtroom at his or her discretion. This decision reversed a long-standing rule unequivocally barring the camera from the federal courtroom. The access, however, is severely limited; only federal appellate judges, and not federal trial judges, have the discretion to admit the camera.

Id. at 1550-51; see also Larelyn M. Sasaki, Comment, Electronic Media Access to Federal Courtrooms: A Judicial Response, 23 U. Mich. J.L. Reform 769, 771-72 (1990) (noting rule was effective as of 1946 and is single most significant barrier to allowance of television access to federal courtrooms).

23. For a discussion of the differing views among the courts about media access, see infra notes 82-104 and accompanying text.

24. For a discussion of the history of television access to the courtroom, see infra notes 26-81 and accompanying text.

25. For an analysis of the costs and benefits of media access, see infra notes 105-38 and accompanying text.


27. See id. (discussing conflicting views on Fourteenth and Sixth Amendments). The Sixth Amendment argument revolves around the defendant’s right to a fair trial, and that this right is infringed on by allowing television cameras in the courtroom. See id. In one Supreme Court case, the Court did not hold that all cameras must be banned at all times, but only that defendants must show they were actually prejudiced by the presence of the cameras. See Estes v. Texas, 381 U.S. 532, 550-52 (1965); Roberts, supra note 26, at 623. The Court relied on the due process clause of the Fourteenth Amendment in determining whether the defendant’s rights were violated by the presence of cameras during his trial. See Estes, 381 U.S. at 550-52; Roberts, supra note 26, at 623.
Several significant cases have guided state and federal courts’ perceptions of television cameras in their courtrooms.\textsuperscript{28} Many state courts that allow media presence in courtrooms believe it is an exercise of the media and public’s constitutional right to access public information.\textsuperscript{29} Other courts view media presence as a violation of a party’s Sixth Amendment right to a fair trial.\textsuperscript{30} In response to these arguments, federal courts have banned cameras at the trial level.\textsuperscript{31} At the appellate level, however, cameras are often permitted.\textsuperscript{32}

This controversy first gained national attention in \textit{Estes v. Texas}.\textsuperscript{33} The opinion was issued in 1965, when media access to the courtroom surfaced in America.\textsuperscript{34} Because of the significance of this issue, the Supreme Court granted certiorari.\textsuperscript{35} The main issue for the Court was whether the defendant was prejudiced by the presence of cameras during his trial.\textsuperscript{36} The Court responded in the affirmative, holding that the defendant was prejudiced and was denied due process under the Fourteenth Amendment due to the chaotic nature of his trial.\textsuperscript{37} The State argued that there was no

\textsuperscript{28}See, e.g., Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580-81 (1980) (indicating factors that would lead to unfair trials when cameras are present). In this case, the Supreme Court held that the public right of access to criminal trials was also applicable to preliminary hearings. See id.; see also Press-Enter. Co. v. Superior Court, 478 U.S. 1, 9 (1986) (holding that closure of courts is only necessary when accused’s rights outweigh First Amendment right to access).

\textsuperscript{29}See Corbett, supra note 1, at 1542-43 (discussing arguments in favor of allowing media access to courtrooms).

\textsuperscript{30}See Roberts, supra note 26, at 621 (discussing conflict between “the First Amendment’s freedom of the press guarantee and the Sixth Amendment’s declaration of a defendant’s right to a fair trial”).

\textsuperscript{31}See Joan Biskupic, \textit{A New Eye on Federal Courts: Committee Votes to Permit Cameras in Appeals Hearings}, Wash. Post, Mar. 13, 1996, at A12 (reporting judicial conference voted to allow cameras at appellate level). The author noted that the committee was still avidly opposed to cameras at the trial level in federal courts. See id.; see also Lassiter, supra note 4, at 931-32 (discussing lack of cameras in federal courts at trial level).

\textsuperscript{32}See Biskupic, supra note 31, at A12 (discussing cameras at appellate level).

\textsuperscript{33}See id., at 532 (1965).

\textsuperscript{34}See id., at 546-47 (noting chaotic nature of courtroom due to media presence).

\textsuperscript{35}See id., at 536. The circus atmosphere at the defendant’s trial was a major factor in the Court’s holding. See id. This was a matter of first impression before the Supreme Court. See id., at 538.

\textsuperscript{36}See id., at 534-35 (stating issue on appeal was “whether petitioner was tried in a manner which comports with the due process requirement of the Fourteenth Amendment”).

\textsuperscript{37}See id., at 544 (explaining use of television in courtroom “would be inconsistent with our concepts of due process in this field”). In his concurrence, Justice Warren opined television “is not entitled to pervade the lives of everyone in disregard of constitutionally protected rights.” Id. at 585 (Warren, C.J., concurring). Thus, on these grounds the defendant’s conviction was overturned. See id., at 551-52.
showing of actual prejudice as a result of the cameras, but the Court reasoned that a showing of actual prejudice was not necessary.\textsuperscript{38} The high probability of prejudice in such an atmosphere was sufficient to persuade the Court that the defendant’s Fourteenth Amendment right was violated.\textsuperscript{39}

In its analysis, the Supreme Court examined several factors that contributed to the defendant’s being prejudiced by cameras in the courtroom.\textsuperscript{40} These factors included the impact on the jury, the impact on the quality of the testimony from witnesses, the additional responsibilities placed on the judge, and the impact of cameras on the defendant.\textsuperscript{41} Interestingly, the Court did not examine the possible effects of cameras on counsel.\textsuperscript{42} Subsequent courts, however, found the Court’s decision unclear as to whether \textit{Estes} represented a ban on all cameras at all trials.\textsuperscript{43} While in fact it did not, the Supreme Court did not answer this question until 1981.\textsuperscript{44}

\textsuperscript{38} See \textit{Estes}, 381 U.S. at 550 (refuting state’s argument that there was actual prejudice against victim).

\textsuperscript{39} See id. The Court noted that the circus-like atmosphere of the trial played a role in its decision. See id. at 553-57 (Warren, C.J., concurring). The trial court denied defense counsel’s motion to exclude the cameras. See id. at 553. Consequently, according to the Supreme Court, “the show went on.” See id. at 557.

\textsuperscript{40} See id. at 544-50 (discussing factors that explain why television in courtroom would cause unfairness).

\textsuperscript{41} See id. (examining factors used by Court in its analysis); see also Sasaki, \textit{supra} note 22, at 775 (discussing \textit{Estes} Court’s analysis).

\textsuperscript{42} See Sarner, \textit{supra} note 1, at 1064-65 (noting camera’s effect on counsel can lead to poor representation). Sarner noted:

Television coverage may impair a Defendant’s Sixth Amendment right to effective assistance of counsel. The concern is that lawyers may be more concerned with posturing and playing to the cameras than focusing on effective representation. Defense lawyers may view coverage as an opportunity to advertise their services; prosecutors may see the trial as a forum to garner votes for political office. Both sides might attempt to sway public opinion, thus infecting the jury pool in case of a retrial. Attorneys could have more to gain by fueling the sensationalism of a trial than by effectively litigating it. Moreover, the lure of instant celebrity may impact the decision whether the case will go to trial at all.

\textit{Id.}

\textsuperscript{43} See id. at 1071-72 (recognizing \textit{Estes} decision as not creating ban on cameras in courtrooms). In his concurrence, Chief Justice Warren commented that “so long as the television industry, like the other communication media, is free to send representatives to trials and to report on those trials to its viewers, there is no abridgement of the freedom of the press.” \textit{Estes}, 381 U.S. at 585-86 (Warren, C.J., concurring).

\textsuperscript{44} See Chandler v. Florida, 449 U.S. 560, 574 (1981) (recognizing \textit{Estes} did not stand for constitutional ban on television access to courts because action was not inherent denial of due process); \textit{Estes}, 381 U.S. at 540. Justice Clark believed “[w]hen the advances in these arts permit reporting by printing press or by television without their present hazards to a fair trial we will have another case.” \textit{Estes}, 381 U.S. at 540.
In Chandler v. Florida, the Supreme Court again addressed the issue of allowing cameras in the courtroom. The Chandler case arose out of Florida's experimentation with allowing cameras in the courtroom. In Chandler, the State of Florida had taken precautions to ensure that the defendant's constitutional rights were protected in the event that cameras were used in a courtroom. These precautions included protecting the identities of certain witnesses, protecting a defendant's right to a fair trial, and letting the defendant's objections to media coverage be heard and considered by the court.

The Court in Chandler found for the State of Florida, holding that the Estes decision did not require a ban on all cameras in courtrooms. The Court further held that the defendants were not prejudiced by the presence of television cameras in the courtroom. The Court explained that when claiming prejudice because of the presence of television cameras, one must show actual prejudice in order to establish a violation of Sixth or Fourteenth Amendment rights. Showing the mere possibility of prejudice is not enough.

After the Estes and Chandler decisions, scholars concluded that "the Constitution neither prohibited or mandated televised coverage of trial proceedings where there were safeguards in place to ensure the court could honor the defendant's right to a fair trial

46. See id. at 562; see also Lassiter, supra note 4, at 943-45 (explaining issue of Chandler); Sarner, supra note 1, at 1073 (discussing holding of Chandler).
48. See Chandler, 449 U.S. at 576-77 (discussing safeguards used by Florida courts to prevent prejudice during trial).
49. See id. (noting objections on record allows them to be raised on appeal).
50. See id. at 582-83. The Chandler Court explained: "In this setting, because this Court has no supervisory authority over state courts, our review is confined to whether there is a constitutional violation. We hold that the constitution does not prohibit a state from experimenting with the program authorized by revised Canon 3A(7)." Id.
51. See id. at 581-82 ("Absent a showing of prejudice of constitutional dimensions to these defendants, there is no reason for this Court either to endorse or to invalidate Florida's experiment.")
52. See id. at 582 (noting lack of prejudice in Chandler). The Chandler Court noted that the Estes decision did find prejudice, but that was due to the nature of the case and its circus-like atmosphere. See id. Such problems were absent in Chandler. See id.
53. See Chandler, 449 U.S. at 582.
and there was no showing of specific prejudice." 54 Scholars also note that every case is unique, requiring fact-specific precautions in order to protect the defendant from prejudice. 55

In Richmond Newspapers, Inc. v. Virginia, 56 the Supreme Court confronted the issue of public access to trials. 57 The Court interpreted the Constitution broadly and held that public access to trials, while not an absolute right, could be implied from the First and Fourteenth Amendments. 58 "Closure," the closing of a trial to public access, can only be justified by extenuating circumstances, such as where the defendant is prejudiced or where there is need to protect witnesses. 59 Therefore, as a rule, there are no mandatory closures of trials. 60 A trial can be closed only upon a significant showing of need. 61 This standard is very strict, but is satisfied by showing a substantial probability of prejudice. 62

In light of these decisions, several core concepts emerge regarding public access to courtroom proceedings. First, "courtrooms are closed to the public in extreme circumstances" where

54. Lassiter, supra note 4, at 942 (discussing Supreme Court's logic in regards to matters of televised courtroom proceedings).
57. See id. at 564 (discussing issue in case as one of first impression).
58. See id. at 580. The Court in Richmond Newspapers held, "the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and "of the press could be eviscerated." Id. (quoting Branzburg v. Hayes, 408 U.S. 665, 681 (1972)); see also Corbett, supra note 1, at 1572-73 (discussing facts and holding of Richmond Newspapers).
59. See Richmond Newspapers, 448 U.S. at 580 (explaining trial court made no findings to support closure of case). The Court identified other options that would protect the integrity of the trial as well as witnesses, such as sequestering the witnesses or excluding them from the courtroom. See id. at 581. The Court found that, "[a]bsent an overriding interest articulated in findings, the trial of a criminal case must be open to the public." Id.
60. See id. at 580-81 (noting need to provide findings in order to request closure).
61. See id.; see also Press-Enter. Co. v. Superior Court, 478 U.S. 1, 9 (1986) (describing closure as necessary only in situations where rights of accused outweigh First Amendment right to access). This case involved access to a preliminary hearing in addition to the actual trial. See id. at 5. The Court held that access is permitted if two criteria are met. See id. at 10-11. First, "there has to be a tradition of accessibility to preliminary hearings of the type" in question, and second, "public access to preliminary hearings as they are conducted ... [must] play[] a particularly significant positive role in the actual functioning of the process." Id.
62. See Richmond Newspapers, 448 U.S. at 564 (discussing substantial probability standard to determine whether proceeding should be open). For further discussion of the substantial probability standard, see infra note 80 and accompanying text.
closure is necessary to carry out a fair trial. Second, all proceedings are open to the public if they meet the standards created by the Supreme Court. Third, if claiming prejudice, a defendant must prove actual prejudice and not merely the possibility of prejudice. Fourth, Estes banned cameras when a trial becomes "circus-like" and the presence of cameras is very likely to prejudice the defendant, while Chandler found no prejudice because the State of Florida had taken significant safeguards. Therefore, cameras are permitted in certain circumstances where the risk of prejudice is low and safeguards are in place. When the risk of prejudice is high, making it substantially probable that prejudice will result, cameras should not be permitted.

In most cases, the media's argument is based on the First Amendment right of access to all trials and proceedings. Specifically, the media in Estes argued, "to refuse to honor this privilege is to discriminate between the newspapers and television." Justice

63. Corbett, supra note 1, at 1576 (discussing closure as means to protect integrity and purpose of judicial process).

64. For a discussion of public access to trials, see supra note 58 and accompanying text.

65. For a discussion of defendants' requirement of showing actual prejudice, see supra notes 37-39, 51-53 and accompanying text.

66. For a discussion of the Estes holding, see supra notes 37-39 and accompanying text. For a discussion of the Chandler holding, see supra notes 45-53 and accompanying text.

67. For a discussion of the risk of prejudice when cameras are used, see supra notes 37-39, 51-53 and accompanying text.

68. For a discussion of the risk of prejudice, see supra notes 37-39, 51-53 and accompanying text.

69. See Press-Enter. Co. v. Superior Court, 478 U.S. 1, 10-11 (1986) (discussing media's First Amendment argument that hearings are presumptively open to public); see also U.S. CONST. amend. I ("Congress shall make no law . . . abridging the freedom of speech, or of the press."); U.S. CONST. amend. VI ("[I]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."); U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment states:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.


Clark reasoned differently, labeling this argument "a misconception of the rights of the press."\footnote{Id. (noting Court's refusal to accept this interpretation of First Amendment).}

Several federal court cases have followed the Supreme Court's lead by not allowing televised trials despite the media's analogy of such action to the right of a person to attend a trial.\footnote{See Corbett, supra note 1, at 1549 (distinguishing between right to attend trial and rights of press and media to broadcast trial).} An example of this can be seen in \textit{Westmoreland v. Columbia Broadcasting System, Inc.}\footnote{752 F.2d 16 (2d Cir. 1984). The court analyzed what previous courts had done when confronted with the issue in denying the media's right to televise trials. See \textit{id.} at 23.} The Second Circuit reasoned that there was a huge difference "between a public right under the First Amendment to attend trials and a public right under the First Amendment to see a given trial televised."\footnote{Id.} The same reasoning was applied in \textit{United States v. Hastings}.\footnote{695 F.2d 1278 (11th Cir. 1983).} In Hastings, the court ruled that the media misconceived that the First Amendment right to attend trials extended to televising the trial.\footnote{See \textit{id.} at 1280 (noting media's desire to televise trials extends beyond intentions of First Amendment).}

In addition to the First Amendment, the media has argued for access to proceedings based on the due process clause of the Fourteenth Amendment and the Sixth Amendment's guarantee of a "public trial."\footnote{See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580-81 (1980); \textit{see also} Lassiter, supra note 4, at 938, 944 (discussing Fourteenth and Sixth Amendments).} Both of these arguments have merit, but must be considered in light of the concerns of the court involving prejudice to a defendant.\footnote{See Lassiter, supra note 4, at 938-45 (discussing merits of Fourteenth and Sixth Amendment arguments).} Defendants to the litigation counter that media presence during trial creates prejudice against the integrity of the trial and infringes upon the Sixth Amendment right to a fair trial.\footnote{\textit{See Richmond Newspapers}, 448 U.S. at 580-81; \textit{see also} Estes v. Texas, 381 U.S. 532, 538-39 (1965). The Estes Court described the purpose of the Sixth Amendment's call for public trials as being a "guarantee that the accused would be fairly dealt with and not unjustly condemned." \textit{Estes}, 381 U.S. at 538-39.}

The Supreme Court has stated that a proceeding should be closed only if there is a "substantial probability" that the right to a fair trial will be prejudiced, if closure would prevent the prejudice, and if reasonable alternatives to closure cannot adequately protect...
the right. Moreover, some defendants argue that the cameras violate their Fourteenth Amendment rights to due process because of the prejudice they cause.

III. Analysis

A. State Experimentation

Subsequent to the decisions above, many states experimented with the idea of television cameras in the courtroom. Some states viewed this as a great addition to the trial process, while other states viewed it as detrimental to both the defendant and the judicial process.

Florida is one state that viewed cameras as a valuable addition to the trial process. Florida conducted a two-year experiment beginning in 1975 and found "no indication of any of the adverse effects predicted by the proponents of the ban on cameras and concluded that more was gained than was lost by the admission of cameras." This experiment eventually led to the Chandler decision because the defendant claimed he was prejudiced by the presence of cameras while on trial in Florida for burglary and grand larceny.

Other states soon followed Florida's example and found that cameras provided no harm to defendants. Many states noted the


81. See Estes, 381 U.S. at 543-44 (discussing defendant's Fourteenth Amendment claim); see also Sarner, supra note 1, at 1068-71 (discussing defendant's Fourteenth Amendment claim that camera presence deprived him of due process).

82. See Lassiter, supra note 4, at 940 (noting adoption of cameras by six states and experimentation with cameras by ten more states); see also Roberts, supra note 26, at 628-30 (discussing status of states experimenting with television cameras). Roberts noted the federal judiciary's experimentation with television cameras at certain levels, which have received favorable responses from those involved. See id. at 630-34; see also Sasaki, supra note 22, at 785-87 (discussing state experimentation with television cameras).

83. For a discussion of differing views among judges on topic of cameras in courtrooms, see supra note 82 and accompanying text.

84. See Harding, supra note 47, at 834-35 (noting positive results of Florida experiment).

85. Id.

86. See id. at 827-28 (noting Supreme Court's determination that no empirical evidence existed to support notion that electronic media interferes with trial process); see also Chandler v. Florida, 449 U.S. 560, 567 (1981) (discussing nature of defendant's offense).

87. See Lassiter, supra note 4, at 964-65 (discussing results of state experiments). Lassiter noted, "[t]he results from the state studies were unanimous: the
importance of public access to the judicial process and the benefits of an informed and involved citizenry.\textsuperscript{88} Also, many states have adopted or incorporated into their court rules Canon 3 of the ABA Code of Judicial Conduct, which allows a judge in his or her discretion to permit the broadcast of a courtroom proceeding. The amount of discretion permitted by a presiding judge varies for each state, as do the restrictions that each state court employs. Some state courts allow a participant to object to the presence of the camera at the proceeding, but reserve the ultimate decision regarding access to the judge's discretion. A minority of state courts find that any objection to the camera by the defendant is sufficient cause for its exclusion. Other state courts, conversely, impose a high evidentiary burden on a defendant, requiring a demonstration of actual harm before barring the broadcast media from the proceeding. Demonstration of actual harm by a defendant is rarely successful, however, because of the typical absence of tangible evidence of prejudice or bias.\textsuperscript{89}

Thus, numerous states deem in-court cameras to be a valuable tool, while at the same time acknowledging the potential for prejudice.

B. Viewpoints from Around the Nation

This section examines how other jurisdictions are approaching the issue of television cameras in the courtroom and discusses past methods for dealing with the issue. California and New York are at

\textsuperscript{88} See Harding, \textit{supra} note 47, at 829 (discussing importance of public's access to judicial process).

\textsuperscript{89} Corbett, \textit{supra} note 1, at 1555-57 (discussing differing approaches among states) (footnotes omitted). Canon 3A(7) of the ABA Code of Judicial Conduct states:

A judge should prohibit broadcasting, televising, recording or photographing in courtrooms and areas immediately adjacent thereto during sessions of court, or recesses between sessions, except that under rules prescribed by a supervising appellate court or other appropriate authority, a judge may authorize broadcasting, televising, recording or photographing of judicial proceedings in courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

the forefront of state experimentation of television cameras in courtrooms. A recent New York case, People v. Boss, held that New York's statute banning cameras in state courtrooms was unconstitutional. The case was highly publicized and involved New York police officers who shot an unarmed West-African immigrant, Amadou Diallo, nineteen times on his front porch after firing forty-one rounds. Presiding Judge Teresi reasoned that allowing cameras in the courtroom would "further the interest of justice, enhance public understanding of the judicial system and maintain a high level of public confidence in the judiciary."

The statute at issue in Boss states: "[n]o person, firm, association, or corporation shall televise, broadcast, take motion pictures . . . within this state of proceedings, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in this state." New York had recently ended a ten-year experiment with cameras in the courtroom, and despite positive results, it was not renewed. Therefore, as of 1997, New York was one of only three states to ban televised trials, even though cameras have been permitted at other proceedings, such as state appellate proceedings.

California, another leading state on this issue, conducted experiments in 1980 and 1981 that yielded positive results showing that in-court cameras had no effect on judicial proceedings. Following these experiments, California permitted televised trials at

90. See Nelson, supra note 9, at 8 (noting experiences of California and New York involving experimentation with cameras in courtrooms).
92. See Sarner, supra note 1, at 1053-54 (mentioning facts of case and history of New York statute banning cameras (citing Boss, 701 N.Y.S.2d at 891)).
93. See id. at 1053-55 (citing Boss, 701 N.Y.S.2d at 891).
94. Id. at 1055 (discussing positive effects of cameras in courtroom).
95. Id. at 1054 n.6.
96. See id. at 1054-55; see also Nelson, supra note 9, at 8 (discussing New York experiment and its positive results).
97. See Sarner, supra note 1, at 1054. The two other states banning televised trials are South Dakota and Mississippi. See id. at 1054 n.7.
98. See Nelson, supra note 9, at 8 (discussing California's positive experience with cameras in courtrooms). As a result of these experiments and the report that was issued on their findings by an independent consulting firm, "California enacted a rule permitting extensive coverage of criminal and civil trials." Id. A new study conducted by a special task force after the O.J. Simpson trial found that cameras did not affect trial outcomes and did not affect judges' proceedings. See id. "Ninety-six percent of . . . judges reported that the presence of a video camera did not affect the outcome of the trial in any way." Id. Furthermore, most judges "reported that the cameras did not affect their ability to maintain courtroom order or control of proceedings." Id.
both the criminal and civil divisions.99 Today, Hollywood benefits from this twenty-year-old study, providing America with much of its legal drama.100 At the same time, Hollywood provides Court TV with much of its business.101

California continues to push the limits of televised trials, demonstrated in a recent case where a reporter desired access to an actual execution.102 While the access was granted, there is still no live coverage of such an event and no plans for pay-per-view screenings in the near future.103 Also, California has an open court statute, opening all civil proceedings to the press and public "unless

99. See id.; see also Harding, supra note 47, at 835-37 (discussing California experiment). Over two hundred trials were televised between 1980 and 1981. See id. at 835. The California experiment focused on two questions:

1. Will the presence and operation of broadcast, recording, or photographic equipment in a courtroom be a significant distraction for trial participants, disrupt proceedings, or impair judicial dignity and decorum? and

2. Will trial participants or prospective trial participants, knowing that their words or pictures will be or are being recorded, broadcast or taken for possible use on television, radio or in newspapers or magazines, change their behavior in a way that interferes with the fair and efficient administration of justice?

Id. at 836.

100. See Harding, supra note 47, at 836 (noting electronic media access was incorporated in California following experiment).

101. See Sherwin, supra note 1, at 835-36 (analyzing Court TV's attraction to cases involving Hollywood celebrities). Sherwin noted:

Steve Brill [the founder of Court TV] knew perfectly well when he established the Court TV network that his main competitors were CNN and afternoon soap operas. He would have to combine the best of both if he was to make his commercial venture a success. Little wonder, then, that a vastly disproportionate number of the trials that viewers see on Court TV are criminal trials of the most titillating sort: murders, sex crimes, and, if an occasional civil case sneaks through, odds are it will involve a celebrity. For example, actress Pamela Anderson of Bay Watch fame appeared in a rarely featured type of dispute, a contract case. This allowed the network to promote its trial coverage of the case by showing scenes of the bikini-clad defendant from the internationally popular TV series in which she starred.

Id.

102. See Ninth Circuitonders Media's Right to Witness Executions by Lethal Injection, supra note 19, at 2378. The attorneys seeking access argued executions have always been public affairs. See id. David Fried, on behalf of the ACLU, said, "we want to see how the execution's accomplished, the demeanor of the inmate," and "how the execution is performed." Id. In countering this argument, California Attorney General Karl Mayer stated that "[t]he general public does not have standing to go into a state prison to witness an execution or for any other purpose. Our point is that the plaintiffs don't have standing to expand the First Amendment rights of the public." Id. Consequently, the court issued a permanent injunction preventing the state from limiting press witnesses, citing a strong history of public access and the goal of an informed public. See id. This, however, does not mean that executions will be broadcast live on television anytime soon. See id.

103. See id. (noting injunction to prevent limitations applied to press only).
notice of intent to close is given, there is [an] overriding interest that may be prejudiced absent narrowly tailored closure order, and there are no less restrictive means of achieving that interest.\textsuperscript{104}

Ultimately, two of the most populous, most highly regarded, and most watched jurisdictions have reached differing views on the topic of in-court cameras. California praises the benefits of televised trials, while New York decrees their liabilities.

C. Cost/Benefit Analysis of the Presence of Television Cameras

1. The Benefits

According to supporters of televised trials, the potential benefits of television cameras in the courtroom are numerous.\textsuperscript{105} One of the supporters’ arguments is that cameras bring out the truth.\textsuperscript{106} This is because witnesses are less likely to lie, and judges and the jury may pay more attention to the facts of the case if a camera and thousands of viewers are watching them.\textsuperscript{107} These advocates of in-court cameras also believe that televised trials “enhance public scrutiny of the judicial system.”\textsuperscript{108}

Cameras in the courtroom play a positive role for judges as well because they are more likely to take precautions to ensure a fair trial for defendants if they know the entire public is watching.\textsuperscript{109} Judges will not be inclined to nod off while cameras are taping, thus ensuring their full attention.\textsuperscript{110} Judges may also use cameras to elicit truth because the in-court scrutiny represents a constant re-

\textsuperscript{104} Excluding Press from California Courtroom in Civil Suit Violated State’s Open Court Law, 68 U.S.L.W. 1076, 1076-77 (Aug. 10, 1999) (describing court’s injunction to prevent limitations of press only).

\textsuperscript{105} See Grygiel, supra note 9, at 1047 (discussing positive effects of cameras); see also Nelson, supra note 9, at 8-9 (noting benefits of cameras in courtroom, compared to only minimal inconvenience).

\textsuperscript{106} See Lassiter, supra note 4, at 933-35 (discussing positive effects of cameras).

\textsuperscript{107} See Nelson, supra note 9, at 8-9 (noting cameras’ positive effect on judicial demeanor).

\textsuperscript{108} See id. at 8; see also Lassiter, supra note 4, at 959-65 (discussing arguments for, and benefits of, cameras in courtroom).

\textsuperscript{109} See Corbett, supra note 1, at 1559 n.80 (discussing effects of cameras on Judge Lance Ito during O.J. Simpson trial).

\textsuperscript{110} See Susanna Barber, News Cameras in the Courtroom: A Free Press-Fair Trial Debate 76 (Ablex Publishing Corp. 1987). Barber looked at the conclusions of several surveys and noted “27% of attorneys surveyed said judges were more attentive as a result of camera coverage.” Id. Barber further explained other surveys involving judges, attorneys, jurors, witnesses, court personnel, and spectators as having findings with mixed results. See id.
minder to witnesses that they are under oath.111 Moreover, the presence of cameras may affect witnesses positively because they will be compelled to tell the truth under the pressure of a camera peering at them.112 This helps to ensure that the defendant receives a fair trial and that justice is served.113 In addition, many studies show that witnesses do not become overly nervous at the presence of cameras in the courtroom.114

On the whole, the effect on jurors is minimal because they are not the focus of the cameras.115 Yet, jurors may be less likely to acquit a defendant because they fear being chastised by their community.116 Further, jurors will focus more on the trial, resisting the urge to daydream.117

As for the effect on counsel, cameras may compel attorneys to be more prepared when they know countless watchful eyes are upon them.118 Counsel may exert more effort knowing that the world is watching, including potential clients.119 These factors play a role in the defendant’s receiving a fair trial and in ensuring a just result.120 Such are the goals of the judicial system; nonetheless, there are strong arguments for banning such approaches to courtroom decorum.

111. See Cohn & Dow, supra note 5, at 30-36 (discussing how judges use cameras to aid judicial process).

112. See Barber, supra note 110, at 74-75 (discussing effect of cameras on witnesses as perceived by witnesses, jurors, attorneys, and judges); Harding, supra note 47, at 837-38 (discussing effect of cameras on witnesses).

113. See Barber, supra note 110, at 74-75.

114. See id. But see Lassiter, supra note 4, at 970 (noting negative effect on witnesses).

115. See Cohn & Dow, supra note 5, at 36 (noting extra steps Judge Lance Ito took to protect jury from being photographed).

116. See id. at 37 (quoting Memorandum from New York State Bar Association to House of Delegates (1994)). The memorandum states:

Cameras in the courtroom signal the jury that the case is especially notorious, that its verdict will be highly publicized and that the jurors’ decision will likely be scrutinized by their neighbors and friends. This not-so-subtle message influences jurors to accept general public perceptions of guilt and thus vote to convict and is far less likely to bolster jurors who harbor reasonable doubt.

Id.

117. See Barber, supra note 110, at 73 (noting positive side effect of television cameras on jurors was “increased juror attentiveness”).

118. See id. at 77-78 (explaining effects of television cameras on attorneys).

119. See id. at 78 (discussing judges’, jurors’, and court personnel’s opinions about positive effects of cameras on attorneys).

120. See generally Sasaki, supra note 22, at 788-93 (noting how cameras may affect judges, jurors, witnesses, and counsel during trial and rest of judicial process).
2. The Costs

The possible detriments to the judicial system that arise from allowing cameras in the courtroom include prejudice to the defendant and his or her right to a fair trial, distraction from the court's need to "maintain decorum," and frustration to the public's interest in a fair system.\(^\text{121}\) Another downfall is the possibility of lawyers' grandstanding for the jury to the detriment of their client, witnesses, and jurors.\(^\text{122}\)

Witnesses may seem nervous in the presence of cameras and appear unreliable to the jury.\(^\text{123}\) Some witnesses may appear arrogant, seeming to strive for the limelight, such as Kato Kaelin in the O.J. Simpson trial.\(^\text{124}\) Also, witnesses may not be inclined to testify, fearing national coverage of their testimony.\(^\text{125}\) Further, witnesses may be encouraged to lie to protect themselves or loved ones from media ridicule.\(^\text{126}\)

Cameras may have a negative effect on juries because jurors might focus on the cameras and not the trial.\(^\text{127}\) Jurors may view witnesses as not credible by the way they react to the cameras, thereby thwarting their ability to assess the evidence properly.\(^\text{128}\) In addition, an overall feeling of uneasiness that can lead to distraction may overcome members of the jury, thereby negatively affect-

\(^{121}\) See Harding, supra note 47, at 833 (discussing possible negative impact on judicial system from cameras); Sasaki, supra note 22, at 788 (weighing positive versus negative impacts of cameras in courtrooms).

\(^{122}\) See Corbett, supra note 1, at 1560-64 (discussing influence of cameras on witnesses and jury); Sarner, supra note 1, at 1061-65 (listing effects of cameras on counsel, judges, juries, and witnesses).

\(^{123}\) See Corbett, supra note 1, at 1563-64; Sarner, supra note 1, at 1063-64.

\(^{124}\) See Corbett, supra note 1, at 1563-64; Sherwin, supra note 1, at 835 (discussing Kato Kaelin as practical example of witness playing to camera).

\(^{125}\) See Corbett, supra note 1, at 1563-64; Sarner, supra note 1, at 1063-64.

\(^{126}\) See Corbett, supra note 1, at 1563-64 (suggesting possible negative impact of cameras on witnesses).

\(^{127}\) See Sarner, supra note 1, at 1061-62 (citing Estes v. Texas, 381 U.S. 532, 545-46 (1965)). Sarner noted that:

Once a judge announces that cameras will be permitted, the case becomes a "cause celebre" that captures the interest of the whole community. This knowledge may so pervade jurors' minds so as to impair their ability to evaluate the evidence before them. As jurors become preoccupied with the presence of the camera, their attention may be directed away from the testimony, thereby inhibiting their function in the trial process.

Id.; see also Goldfarb, supra note 10, at 198 (discussing same).

\(^{128}\) See Corbett, supra note 1, at 1560-63 (discussing negative effects on jury); see also Lassiter, supra note 4, at 969-70 (referring to studies noting effects of camera presence on juries). Lassiter presented surveys and studies on how juries, witnesses, judges, and attorneys responded to cameras in the courtroom. See id. at 968-70. In most cases, all felt that cameras created some negative impact. See id.
ing the trial process. "The camera may also impact jurors indirectly, by affecting the duration of a trial, the length of which directly affects jurors' attitude, or [by] motivat[ing] attorney 'grandstanding,' behavior that may influence jurors as well."130 Jurors may make a decision that the public wants, and not what the law mandates.131

Regarding the effect on judges, cameras may have a negative impact on a judge who, if elected or seeking political office, could use television as a means to promote his or her candidacy.132 Many courts give judges discretion as to how cameras may be used in their courtrooms, which may amount to an additional burden on the judge during the trial.133 These factors can distract a judge from conducting a fair trial for the defendant.134

Counsel for both parties may also be affected negatively by the presence of television cameras.135 Specifically, lawyers may not expend their best efforts in representing their clients because they are more concerned with being presented favorably by the media.136 Lawyers may use the publicity to further their own interests,

129. See Barber, supra note 110, at 72-74; see also Goldear, supra note 10, at 96-123. Goldfarb wrote a chapter analyzing how people react to being observed and how they may change their mannerisms and their minds when under observation or when being video-recorded. See id.

130. Corbett, supra note 1, at 1562-65 (citing Christo Lassiter, Put the Lens Cap Back on Cameras in the Courtroom: A Fair Trial Is at Stake, N.Y. St. B.J., Jan. 1995, at 8); see also Betsy Streisand, And Justice for All, U.S. News & World Rep., Oct. 9, 1995, at 50. These indirect effects may be the ones not noticeable on a survey or in an experiment. See id. Americans need to be wary of these subtle effects. See id.

131. See Lassiter, supra note 4, at 999-1000 (noting jurors will do what is popular, not what is right). For a discussion of how jurors will not always do what is right, see supra notes 127-30 and accompanying text.

132. See Sarner, supra note 1, at 1064 (suggesting elected judges may use camera as "political weapon"); see also Barber, supra note 110, at 76 (noting eighty-four percent of attorneys responding to survey about effect of cameras on judges felt "elected judges may have been influenced by camera coverage" (emphasis in original)).

133. See Sarner, supra note 1, at 1064 (discussing effect of cameras on judges); see also Barber, supra note 110, at 76-77 ("The vast majority of court personnel, witnesses, and spectators also said that judges were not intimidated by the presence of cameras.").

134. See Sarner, supra note 1, at 1064. The added duties placed on a judge may distract him from his duty of administering justice and thus impair a defendant's right to a fair trial. See id.

135. See Barber, supra note 110, at 77-78 (noting effects of cameras on attorneys). Barber noted, however, that most judges and jurors found that cameras did not affect lawyers negatively in any way. See id. at 78. One judge found "that camera presence encouraged attorneys to strive for perfection" and another judge witnessed "initial nervousness [in front of cameras] but this soon dissipated." Id.

136. See Sarner, supra note 1, at 1064-65.
whether political or personal.\textsuperscript{137} Some lawyers may avoid settlement so that the case will proceed to trial and their faces will be seen on television, thus raising ethical concerns.\textsuperscript{138}

3. \textit{The Result}

Ultimately, those harmed most by cameras in the courtroom are the parties to the litigation themselves.\textsuperscript{139} Those whom the justice system is designed to protect must deal with the consequences.\textsuperscript{140} The parties to the litigation are the real victims who are directly affected by the above-mentioned possibilities, including prejudice.\textsuperscript{141} Further, these people may have very little power to fight the issue.\textsuperscript{142}

Although there is some concrete evidence on the effect of television cameras on certain parties, much of the commentary is mere speculation based on hypothetical situations. Even so, if any of these situations were to become reality, the judicial system would be vulnerable to constant ridicule due to its degeneration from justice to entertainment. Cameras affect people in different ways; some love the limelight, while others shun it.\textsuperscript{143} Some people perform well under the pressure of a gazing public eye, while others fare much worse.\textsuperscript{144} Should we risk a judge’s failure to reach a just result simply because of his or her response to being on camera?

The reality of the above concerns cannot be denied.\textsuperscript{145} When a defendant is sentenced to prison or even death, the issue of cameras in the courtroom should not be undervalued.\textsuperscript{146} More worri-
some is that some of the scenarios mentioned above are currently occurring, but they may go unrecognized until a defendant’s rights have already been violated.147 Therefore, it is imperative that more studies be conducted. The result depends on how certain people, whether a witness, attorney, juror, or judge respond to certain situations.148 Inevitably, results will vary because studies involve different people and circumstances, but that should not hinder development in this area.149

Fundamentally, cameras present too great a risk of prejudice to the defendant and should therefore be banned from all courts at all times. Access to proceedings is already available through other sources such as transcripts, or one can simply attend the trial in person. If Americans are so interested in the judicial system, and Judge Judy is inadequate, they can exercise their constitutional rights to observe a trial as it unfolds, using one of the traditional methods of public access.150

IV. CONCLUSION

The debate over cameras in the courtroom is ongoing and may not be resolved in the near future.151 Federal courts may someday allow cameras, and more experiments are certain to be performed.152 State courts are volatile and may change their rules

147. See id. at 1564-68 (discussing media’s role in educating Americans about justice system as pitted against goal of fair proceedings).
148. See id. at 1557-72 (noting human nature will always be silent factor in these types of experiments).
149. See Barber, supra note 110, at 72-80 (noting variety of results from different surveys). These results vary so much that they appear inconclusive and unreliable. See id.
150. See Podlas, supra note 17, at 6-7 (discussing Judge Judy).
151. See Barber, supra note 110, at 72-80; Corbett, supra note 1, at 1557-72 (discussing inconclusive results and need for more experimentation).
152. See Barber, supra note 110, at 72-80; Corbett, supra note 1, at 1557-72. There is an obvious need for more experimentation before flat out banning or granting total access. See Barber, supra note 110, at 72-78; see also Harding, supra note 47, at 837-47 (noting federal experiment ongoing). Harding discussed the results of several experiments:

The Federal Judicial Center looked to many of these state experiments when conducting its own experiment and noted the similarity of the findings. The Federal Judicial Center summarized the state experiments and found that the “[r]esults from [the] state court evaluations of the effects of electronic media on jurors and witnesses indicate that most participants believe electronic media presence has minimal or no detrimental effects on jurors or witnesses.” The Federal Judicial Center concluded their experiment by stating that the state experiments “are consistent with our findings from the judge and attorney surveys; that is . . . the majority of respondents indicated the [potential negative] effect does not occur or occurs only to a slight extent.
based on public opinion at any time.\textsuperscript{153} In September of 1989, the Judicial Conference Ad Hoc Committee on Cameras in the Courtroom made recommendations and findings on this issue.\textsuperscript{154} The Committee found that the monitoring of state court experiments should continue to gather more information.\textsuperscript{155} The Committee also thought current rules should be relaxed to allow access to nontrial hearings.\textsuperscript{156} Furthermore, the Committee believed access should be allowed to maintain the record, provide security, present evidence, and uphold other purposes of judicial administration.\textsuperscript{157}

The Supreme Court tends to remain silent about its thoughts on television cameras in the courtroom.\textsuperscript{158} The Supreme Court justices rarely speak of cameras in the courtroom or expressly state their opinions.\textsuperscript{159} Most commentators and observers believe that no action can be taken without the approval of the Chief Justice of the Supreme Court.\textsuperscript{160} Former Chief Justice Warren E. Burger "was openly hostile to [cameras in the courtroom], although the Supreme Court as an institution has never taken a formal position on the subject outside of its decisions."\textsuperscript{161} Thus, the current views of the Supreme Court justices are difficult to decipher due to their silence on the issue.\textsuperscript{162}

In the meantime, judges can invoke remedies such as gag orders or other limits on the press, exercising their discretion to disallow prejudicial information.\textsuperscript{163} Ultimately, this issue is wholly

\textsuperscript{153} Id. at 839; see also Barber, supra note 110, at 72-80 (noting obvious need for more experimentation before banning or granting total access).

\textsuperscript{154} See Nelson, supra note 9, at 17-19 (discussing changing state views, specifically in Oklahoma).

\textsuperscript{155} See Sasaki, supra note 22, at 780 (noting Committee recommended continued observation of state courts).

\textsuperscript{156} See id.

\textsuperscript{157} See id. (discussing how Committee advised that cameras and electronic reproduction equipment be allowed for ceremonial proceedings).

\textsuperscript{158} See id. at 781-83 (discussing silence of Chief Justice of Supreme Court on cameras in courtroom).

\textsuperscript{159} See Sasaki, supra note 22, at 781-84 (discussing views of Chief Justice on televised proceedings).

\textsuperscript{160} See id. (explaining former Chief Justice Burger's dislike of television cameras in courtrooms).

\textsuperscript{161} Id. (noting silence of Supreme Court outside of its decisions).

\textsuperscript{162} See id. (stating most justices remain silent or vague on issue). This silence may only add to the confusion of the situation. See id.

\textsuperscript{163} See Chance, supra note 69, at 170-74. Chance pointed out the increasing number of gag orders and their potential to violate one's right to freedom of the press. See id.; see also Flynn, supra note 1, at 83-88 (discussing Georgia bill including penalties for violating court orders regarding videotaping and/or recording). The bill, Ga. Code Ann. §§ 15-1-10.1 (1996), includes factors for a court to examine
is highly doubtful the Supreme Court will ever issue a total ban on television cameras, or allow for total access to trials and proceedings.¹⁶⁵ The question, however, should be decided on a case-sensitive basis.¹⁶⁶ This would protect certain trials and the participants of those trials who are significantly vulnerable to prejudice as a result of the nature of the proceeding.¹⁶⁷

Foreseeably, television will remain prevalent in our society forever, thereby making it likely that cameras will infiltrate courtrooms in some form for years to come. As technology improves and the physical burdens of carrying and installing cameras in the courtroom diminish, the day may come when television cameras enter even the Supreme Court.¹⁶⁸ Until technology becomes that pervasive, Court TV and Judge Judy will have to suffice.

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when deciding whether to allow cameras in the courtroom. See id. These factors include:

[T]he nature of the judicial proceeding; the consent or objection of witnesses or parties; the possibility of increased access to judicial proceedings; the impact cameras might have on the integrity, dignity, and administration of the court; due process concerns; the effect media access would have on justice; any special circumstances any participant might have regarding protection or safety; and any other factor the court deems appropriate for consideration. In addition, the Act provides that courts may hear from trial participants and media representatives in order to aid them in coming to a decision.

Id. at 86-87. (quoting GA. CODE ANN. §15-1-10.1 (1996)).

¹⁶⁴ See Roberts, supra note 26, at 628-34 (noting variety of differing views on topic among states, judges, scholars, and lawyers).

¹⁶⁵ See Sasaki, supra note 22, at 805 ("A set administrative rule that allows electronic media access for news and other public purposes should be promulgated by the Judicial Conference and the Supreme Court."). For a discussion of the uncertainty of Supreme Court views on camera access to courtrooms due to the justices' silence, see supra notes 158-62 and accompanying text.


¹⁶⁷ See Sasaki, supra note 22, at 805-07 (noting limitations on use of cameras in court). The need to protect the identity of jurors, victims of certain crimes, and the identity of children are strong concerns. See id. Many also fear the media may misreport or abuse their privilege to record proceedings. See id.

¹⁶⁸ See Harding, supra note 47, at 837-47 (referring to technology and state experiments).