To Harris
ACKNOWLEDGMENTS

I have had the benefit of a wonderful mentor and adviser—Professor Sandra Chance—for nearly 10 years. She has seen me through my first days in graduate school, fresh from a reporting job and eager to learn all I could about freedom of information, through law school, and to this current milestone in my career. I relied on her encouragement and support to make the leap from law firm life back to school, and have never looked back. In the doctoral program, I was able to gain invaluable teaching, research, and community advocacy experience under Professor Chance’s lead. She has led me through the dissertation process and I am so thankful for all of her time, energy, and amazing ideas. Likewise, the rest of my committee—Dr. Johanna Cleary, Professor Lyrissa Lydsky, and Dean John Wright—have made this process a success, and I am forever grateful for their time and attention to my humble work.

I would also like to thank the other support system I found in Weimer Hall, a group of friends and colleagues whose support and knowledge has made completion of this goal possible: Ana-Klara Anderson, Courtney Barclay, Wendy Allen-Brunner, Jody Hedge, Alana Kolifrath, Kimberly Lopez, and Kristen Rasmussen. I am also indebted to my colleagues at the Northern District of Florida, who have encouraged me while working full-time and completing my dissertation: the Hon. Gary R. Jones, Liz Brown, Amisha Sharma, and Lita Tinaya-Miller.

Finally, I thank my family and friends who have seen me through this journey, especially my husband, Harris, and my mother, Stephanie Locke. Along with my in-laws Jim and Shelley Faubel and best friends Amy Saavedra, Judy Keebler, Miriam Hill, and Stephanie Gocklin, they stuck by my side this past year as I juggled dissertation
writing and wedding planning. I am truly lucky to have such an amazing support system.
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ACKNOWLEDGMENTS</th>
<th>page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIST OF TABLES</td>
<td>4</td>
</tr>
<tr>
<td>LIST OF FIGURES</td>
<td>9</td>
</tr>
<tr>
<td>ABSTRACT</td>
<td>10</td>
</tr>
<tr>
<td>CHAPTER</td>
<td>11</td>
</tr>
<tr>
<td>1 INTRODUCTION</td>
<td>13</td>
</tr>
<tr>
<td>New Technology and the Courts</td>
<td>14</td>
</tr>
<tr>
<td>Statement of Purpose and Research Questions</td>
<td>15</td>
</tr>
<tr>
<td>Methodology</td>
<td>17</td>
</tr>
<tr>
<td>Dissertation Outline</td>
<td>19</td>
</tr>
<tr>
<td>2 FREE PRESS, FAIR TRIAL AND CAMERAS IN THE COURTROOM</td>
<td>21</td>
</tr>
<tr>
<td>What is a Free Press?</td>
<td>21</td>
</tr>
<tr>
<td>Freedom from Prior Restraints</td>
<td>25</td>
</tr>
<tr>
<td>Freedom from Compelled Content</td>
<td>27</td>
</tr>
<tr>
<td>Freedom to Gather News</td>
<td>28</td>
</tr>
<tr>
<td>Freedom to Criticize the Government</td>
<td>30</td>
</tr>
<tr>
<td>What is a Fair Trial?</td>
<td>33</td>
</tr>
<tr>
<td>Cameras in the Courtroom</td>
<td>45</td>
</tr>
<tr>
<td>The State of the Law Today</td>
<td>52</td>
</tr>
<tr>
<td>3 LITERATURE REVIEW</td>
<td>55</td>
</tr>
<tr>
<td>Social Sciences Approaches to Media Coverage of the Courts</td>
<td>55</td>
</tr>
<tr>
<td>Legal Approaches to Media Coverage of the Courts</td>
<td>60</td>
</tr>
<tr>
<td>Technological Change and Live Coverage of Court Proceedings</td>
<td>68</td>
</tr>
<tr>
<td>4 TRADITIONAL CAMERAS IN THE COURTROOM</td>
<td>76</td>
</tr>
<tr>
<td>50-State Survey of Cameras in the Courtroom</td>
<td>76</td>
</tr>
<tr>
<td>Cameras in Federal Courts</td>
<td>96</td>
</tr>
<tr>
<td>5 MOBILE TECHNOLOGIES IN THE COURTROOM</td>
<td>99</td>
</tr>
<tr>
<td>State Law and Mobile Technology in the Courts</td>
<td>100</td>
</tr>
<tr>
<td>Arkansas</td>
<td>100</td>
</tr>
<tr>
<td>California</td>
<td>100</td>
</tr>
</tbody>
</table>
Connecticut ................................................................. 101
Delaware .......................................................................... 104
District of Columbia ........................................................... 104
Florida ........................................................................... 104
Hawaii ............................................................................ 114
Maine .............................................................................. 114
Michigan .......................................................................... 114
Nevada ............................................................................ 115
New Hampshire ............................................................... 115
Pennsylvania ................................................................... 116
Rhode Island ................................................................... 120
Utah ................................................................................ 121
Vermont ........................................................................... 121

Federal Law and Mobile Technology in the Courts ................... 122
In re Sony BMG Music Entertainment: Webcasting Motions Hearing .... 122
Hollingsworth v. Perry: Streaming of the Proposition 8 Civil Trial ........... 125
United States v. Shelnutt: Tweet Coverage of a Federal Criminal Trial .... 127
Instances of Permitted Electronic Coverage in Federal Courts .......... 128
  United States v. Libby (D.D.C.) ........................................ 129
  United States v. Nacchio (D. Colo.) ................................. 131
  United States v. Miell (N.D. Iowa) .................................... 133
  United States v. Fumo (E.D. Pa.) ..................................... 136
  United States v. Harris et al. (D. Kan.) ......................... 139
  United States v. White (W.D. Va.) ................................. 140

6 ANALYSIS AND CONCLUSION ..................................................... 142

  Research Foundations ..................................................... 143
  Summary of Findings and Answers to Research Questions ............ 150
    Research Question 1: How do current laws treat mobile technology tools
    that enable the contemporaneous dissemination of photos and
    information captured by journalists in a legal proceeding? ........... 150
    Research Question 2: What would a model court policy on mobile
    technology use by journalists in trial courts look like? .............. 151
  Best Practices for Journalists ............................................ 154
  Conclusions and Recommended Future Research ....................... 157

APPENDIX A: MODEL POLICY ....................................................... 159

APPENDIX B: BEST PRACTICES FOR JOURNALISTS ................. 161

LIST OF REFERENCES .......................................................... 162

  Articles ........................................................................... 162
  Books ............................................................................ 166
  Cases and Related Material ............................................... 167
  Internet Sources ............................................................ 170
Periodicals and Reports .................................................................................................................. 171
Statutes and Related Material ....................................................................................................... 174

BIOGRAPHICAL SKETCH ............................................................................................................ 180
<table>
<thead>
<tr>
<th>Table</th>
<th>page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6-1</td>
<td>Overview of state law of cameras in the courtroom</td>
</tr>
</tbody>
</table>
## LIST OF FIGURES

<table>
<thead>
<tr>
<th>Figure</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-1</td>
<td>Excerpt from the <em>Time-Union’s</em> interactive live blog in the Dubose trial.</td>
<td>108</td>
</tr>
<tr>
<td>5-2</td>
<td>Excerpt from the <em>Orlando Sentinel’s</em> live chat during the Anthony trial.</td>
<td>112</td>
</tr>
<tr>
<td>5-3</td>
<td>Screenshot from the <em>Orlando Sentinel’s</em> Twitter feed (@oscaseyanthony) on the day of the verdict.</td>
<td>113</td>
</tr>
<tr>
<td>5-5</td>
<td>Screenshot from the TheRacetotheBottom.org blog during the Nacchio trial.</td>
<td>132</td>
</tr>
<tr>
<td>5-6</td>
<td>Screenshot of Mehaffey’s live coverage of sentencing.</td>
<td>135</td>
</tr>
<tr>
<td>5-7</td>
<td>Screenshot of Moran’s live coverage—via blog and Twitter—showing that deliberations resumed at 10:41 a.m. and by 11:27 a.m., a verdict had been reached.</td>
<td>138</td>
</tr>
</tbody>
</table>
The "cameras in the courtroom" legal issue has recently expanded to include handheld image dissemination and real-time reporting using cell phones, laptops, and third-party platforms such as Twitter. This new system of technology is often referred to as "Web 2.0." The judiciary and the press constantly face new legal and ethical issues related to the use of such technology, and this study is one of the first comprehensive scholarly analyses of this legal problem.

While every state permits some type of camera coverage and has a law on the subject, few states have laws that specifically address the use of electronic devices to send information (text, audio, video, photo) directly from the courtroom. The result is an area of the law with few published court opinions and great uncertainty.

This study examined the legal status of live-reporting with mobile devices in state and federal courtrooms across the country. Using court opinions, examples of successful live reporting, and existing laws, a snapshot of this evolving and understudied area was created. From this data, a model policy for courts on the use of electronic devices and list of best practices for journalists was developed. The model
policy combined the experiences in different jurisdictions to offer a tool for courts to use in dealing with the increased demand for permission to live-report with mobile devices. The policy presumes that coverage is permitted, a presumption supported by the historical and legal foundations of the law in this area, but also considers the logistical requirements of managing a court and the essential need for respect for the court and the judge. The best practices approach the issue from the perspective of journalists, providing a framework for practicing journalists that will aid them in educating court professionals and enhancing their chances for initial and continuing permission to report live from courtrooms.
CHAPTER 1
INTRODUCTION

The controversy over press access to courtrooms, especially with cameras in tow, pits the right of the press to monitor the halls of justice against the fundamental tenets of fairness that underlie the judicial system. High profile cases, such as O.J. Simpson’s murder trial, draw attention to the pros and cons of televised justice. Television coverage can increase public knowledge of the legal system and encourage dialogue on matters of public concern. But such intense scrutiny can also result in a biased jury and courtroom pandering to the camera. Despite the conflict, all state courts permit some sort of electronic coverage of court proceedings. The same is not true in federal courts, though, where a longstanding ban on televised coverage remains in effect, despite continued attempts at injecting some “sunshine” in the federal judiciary.

---


2 Football player and actor O.J. Simpson was tried for the murder of his wife and her friend “through 266 days, 126 witnesses, 20 attorneys, 1105 pieces of evidence, and 45,000 pages of transcript, plus many more episodes kept from the jury as potentially prejudicial, irrelevant, or inflammatory, but all seen by the television audience.” Gerbner, supra note 1. “If there ever was a need to demonstrate that cameras can transform, prolong, and make a travesty of a trial, we had it in the O.J. Simpson Show's spectacular run for over a year. It has begun to turn the tide that threatened to make high-profile justice a captive of show business,” Gerbner wrote. Id.


4 Id.

5 See Gerbner, supra note 1.


7 Id.
The debate over “cameras in the courtroom” has been brewing ever since the 1935 trial of Bruno Hauptmann, accused of the kidnapping and murder of aviator Charles Lindbergh’s infant son. This prompted the American Bar Association to disapprove of cameras in the courtroom, and this was the status quo until the 1970s, when less obtrusive broadcast technology and a pilot program in Florida (which led to a key U.S. Supreme Court decision) opened the way for the many states to allow broadcast coverage of the judiciary. The federal system conducted a pilot program in the 1990s and began a second test study in 2011, but has resisted broadcast coverage.

**New Technology and the Courts**

Camera technology has changed dramatically over the course of the 20th century, and today anyone can fit a camera capable of broadcasting video coverage in the palm of her hand. This has produced what might be a paradigm shift in the cameras in the courtroom debate, as both print and broadcast journalists have the ability to provide live coverage of legal proceedings with minimal or no interruption of the proceedings. Journalists can use unobtrusive cameras to broadcast proceedings via television or the internet. They can also “broadcast” instant written accounts of proceedings from the courtroom, using the internet and platforms such as Twitter or blogs. This new system of technology is often referred to as “Web 2.0”: “the much-lauded participatory Internet spaces consisting mainly of user-generated content (UGC) within social networks.”

The dramatic increase in the ability of journalists to expose the inner workings of the courtroom has provided a myriad of new problems to presiding judges.

---

In Florida, for example, an appellate court overturned a trial judge’s decision to ban live blogging from proceedings, ruling that the judge’s application of a two-camera limit to laptop technology was incorrect. In California, live-blogging helped bridge the gap in coverage when the U.S. Supreme Court blocked a federal district court’s attempt to broadcast arguments in a trial on the constitutionality of the state’s ban on same-sex marriage. As technology continues to saturate all levels of society, these incidents will only increase.

**Statement of Purpose and Research Questions**

This study focuses on the expansion of the “cameras in the courtroom” legal issues to include handheld image dissemination and real-time reporting using cell phones and laptops, often with third-party platforms such as Twitter. The judiciary and the press constantly face new legal and ethical issues related to the use of such technology, and this study is one of the first comprehensive scholarly analyses of this emerging area of the law. Specifically, this research looks at the use of such technology by journalists to communicate news to the public. The use of Web 2.0 technologies by judges, attorneys, jurors, and spectators is beyond the scope of this

---


dissertation. Journalist use of these technologies is unique because they are not participants in the legal process and so do not have the restrictions inherent in being a judge, attorney, juror, or party. However, unlike mere spectators, journalists have the power to widely disseminate information in a way that can influence public perception of specific proceedings and the legal system as a whole.

The research questions this study investigates are:

**RQ1**: How do current laws treat mobile technology tools that enable the contemporaneous dissemination of photos and information captured by journalists in a legal proceeding?

**RQ2**: What would a model court policy on mobile technology in trial courts look like?

Defining a journalist has become increasingly problematic as the internet has given a voice to many non-traditional and individual sources. For the purposes of this study, a journalist is defined as a person engaged in information gathering with the intent to disseminate it to the public. This functional definition includes members of the traditional press as well as nontraditional news gatherers who publish online.

---

12 The problems presented by the use of technology in the courtroom are not limited to journalists. Incidents of jurors using Wikipedia and Google to look up information about evidence or vet attorneys have caused mistrials. Tony Mauro, *Are judges using Facebook?*, NAT’L L.J., Aug. 31, 2010. Lawyers are increasingly using the internet to conduct on-the-spot background inquiries, often using social media profiles to learn more about potential jurors. Julie Kay, *Vetting jurors via MySpace*, NAT’L L.J, Aug. 11, 2008. Social media and the internet also raise issues for judges, such as using the internet for trial research, anonymously posting comments on newspaper websites, or “friending” attorneys on Facebook. Eric P. Robinson, *Using the Internet During Trial: What About Judges?*, CITIZEN MEDIA LAW PROJECT, Mar. 29, 2010, www.citomedical.org/print/3399.

13 Shield laws and related literature on who is entitled to their protection offers extensive analysis of the difficulties of defining a journalist in the age of new media. See, e.g., Bulow v. von Bulow, 811 F. 2d 136 (2d Cir. 1987) (holding that “the individual claiming privilege must demonstrate, through competent evidence, the intent to use material-sought, gathered or received-to disseminate information to the public and that such intent existed at the inception of the newsgathering process.”); Joseph S. Alonzo, *Restoring the Ideal Marketplace: How Recognizing Bloggers as Journalists Can Save the Press*, 9 N.Y.U. J. LEGIS.
purposes of this study, mobile technology is defined as the various portable electronic
devices that permit wireless transmission of text, images, audio, or video. Examples
include smartphones, laptops, netbooks, and tablet computers. Legal proceedings, as
contemplated in these research questions, are events associated with litigation at the
trial level in both criminal and civil settings. The trial court is where evidence is
presented and findings of fact are made, while appellate courts rely solely on the
“record” below (i.e., transcripts, court filings). Trial court events contemplated by the
term “legal proceeding” include not only the trial itself, but bond hearings, pre-trial
suppression hearings, evidentiary hearings, jury selection, and other relevant
proceedings.

**Methodology**

Legal research methods are the most appropriate to answer the questions posed
by this study. Primary sources include the U.S. Constitution, rules promulgated by the
federal and state judiciaries, state statutes, and court decisions. A compilation prepared
by the Radio Television Digital News Association (RTDNA) was a starting point to

& PUB. POL’Y 751, 752 (2006) (“Journalists should be defined not by the institution by whom they are
employed or the medium by through which they communicate, but by the function they serve. This
definition of ‘journalist’ already has been adopted by some federal circuits and should be adopted
uniformly across jurisdictions.”). State shield laws also offer some direction for defining a journalist.
Florida’s shield law, for example, defines a professional journalist:

[A] person regularly engaged in collecting, photographing, recording, writing, editing,
reporting, or publishing news, for gain or livelihood, who obtained the information sought
while working as a salaried employee of, or independent contractor for, a newspaper,
news journal, news agency, press association, wire service, radio or television station,
network, or newsmagazine. Book authors and others who are not professional
journalists, as defined in this paragraph, are not included in this provision.

FLA. STAT. § 90.5015 (2012).
identify relevant sources of legal authority. These citations were retrieved using the LexisNexis legal database. Using the Shepard’s Citation Service in LexisNexis, each source was analyzed for citing sources such as court decisions, other statutes or rules, legal briefs, and legal periodicals. These citing sources were reviewed for relevancy to the study. Information about the federal judiciary’s rules regarding cameras in the courtroom was obtained from the United States Courts website and then retrieved from the LexisNexis legal database. The relevant rules were analyzed for citing sources using Shepard’s Citation Service.

Although some laws relevant to mobile technology and coverage of the courts were obtained through the aforementioned process, because this is an emerging area of the law, additional methods were used to identify cases and controversies. The secondary scholarly literature, articles from the popular press, and resources from interested organizations (such as the Conference of Court Public Information Officers and Citizen Media Law Project), were reviewed to find cases. These served as key sources of initial inquiry because individual courts may have applicable standing orders or rules that might not be easily accessible in a legal research database.

Relevant legal authority identified in secondary sources was then accessed in the LexisNexis legal database and a citation check was performing using Shepards. Finally, a keyword search was performed in the LexisNexis legal “Federal & State Cases, Combined” database. Using the “Terms and Connectors” search type, the

---


following series of words were used to search the cases: “blog OR Facebook OR Twitter w/p reporter OR media OR news.”\textsuperscript{16} The results were refined for only those cases involving press use of mobile devices to disseminate information about court proceedings. Relevant cases were Shepardized for additional citing sources. Another “Terms and Connectors” search of the “Federal & State Cases, Combined” database was performed, this time with the search string “broadcast! AND Facebook OR Twitter OR blog.”\textsuperscript{17} The results were refined for relevancy to the study and then Shepardized.

The legal authorities obtained through these methods were analyzed to answer the research questions. For Research Question 1, the legal authorities were examined for the rule of law that would govern the use of mobile electronic devices during court proceedings. The rules of law, as well as the court and rulemakers’ reasoning articulated therein, were used to answer Research Question 2, resulting in a proposed model court policy on mobile electronic device use by journalists as well as a discussion of best practices for journalists covering the courts.

Dissertation Outline

Following the current introductory chapter, Chapter 2 examines the theoretical, historical, and legal bases for access to courts, touching on general First Amendment theory and exploring the evolution of law relating to cameras in the courtroom. Major historical and legal events such as the Bruno Hauptmann trial, Florida’s pilot program, and coverage of the 2000 election re-count are also presented. Chapter 3 examines the current body of literature on cameras in the courtroom, drawing from legal, mass

\textsuperscript{16} The search term “w/p” means within the same paragraph.

\textsuperscript{17} The search term “broadcast!” searches for words that begin with “broadcast” as well as alternative endings, such as broadcaster and broadcasting.
communications, and social science literature. Studies and reports on social media and its use in the courtroom are examined. Next, Chapter 4 analyzes the laws governing cameras in the courtroom in the traditional sense—i.e., television cameras—at both the state and federal levels. A parallel analysis of state and federal laws on mobile technology—i.e., live-blogging, tweeting—in the courtroom is presented in Chapter 5. Chapter 6 discusses the findings presented in Chapters 4 and 5 and proposes a model court policy on mobile technology use by journalists and a list of best practices for journalists. Chapter 6 also offers study conclusions and suggestions for future research.
CHAPTER 2
FREE PRESS, FAIR TRIAL AND CAMERAS IN THE COURTROOM

The controversy surrounding press coverage of legal matters and access to courtrooms is often referred to as the “free press-fair trial” debate. The First Amendment of the U.S. Constitution guarantees a free press, and the Sixth Amendment guarantees criminal defendants a fair trial. If press coverage of a case prejudices jurors, a judge may consider various remedies to combat jury bias and preserve the defendant’s right to a fair trial. This chapter first explores what a “free press.” Next, the concept of a “fair trial” is defined, with a focus on U.S. Supreme Court case law on prejudicial publicity and the various remedies available to judges to combat bias. Finally, the historical and legal background of cameras in the courtroom, and their place in the free press-fair trial debate, is discussed.

What is a Free Press?

The First Amendment to the U.S. Constitution was ratified in 1791 and established several freedoms:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. ¹⁸

The meanings of the speech and press freedoms guaranteed in the 45-word First Amendment have been developed by philosophers, legal theorists and U.S. Supreme Court jurisprudence and include the following theories.19

• **INDIVIDUAL AUTONOMY.** The freedom of the individual to form thoughts by unrestricted listening and reading and then to express them is an essential aspect of human dignity.20

• **DISCOVERY OF TRUTH.** Ideas exist in a marketplace, where good ones will survive and bad ones not. A diversity of ideas in the marketplace helps us find the truth.21

• **SELF-GOVERNANCE.** In a democracy, the ultimate political responsibility lies in individuals. Free speech and deliberation are key to effective self-governing.22

• **CHECK ON THE GOVERNMENT.** The First Amendment guarantee of a free press allows the media to function as a watchdog. It is the “Fourth Estate”; a fourth branch of government providing checks and balances on the other three.23

---

19 Although the text of the First Amendment says “Congress shall make no law” the First Amendment applies to state and local government action as well. This was established in 1925, when the U.S. Supreme Court applied the First Amendment to the states via the 14th Amendment due process clause. Gitlow v. New York, 268 U.S. 652 (1925). In that case, Socialist Benjamin Gitlow was convicted under New York’s criminal anarchy statute for writing and distributing his “Left Wing Manifesto.” The Court upheld his conviction, reasoning that it was a reasonable exercise of state police power. The Court stated:

> It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.


21 “Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously, by licensing and prohibiting, to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?” JOHN MILTON, AREOPAGITICA (1644).

22 ALEXANDER MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT (1948). “The primary purposes of the First Amendment is, then, that all the citizens shall, so far as possible, understand the issues which bear upon our common life. That is why no idea, no opinion, no doubt, no belief, no counterbelief, no relevant information, may be kept from them. Under the compact upon which the Constitution rests, it is agreed that men shall not be governed by others, that they shall govern themselves.” Id.

23 In a 1977 address to Yale Law School, U.S. Supreme Court Justice Potter Stewart remarked: “The primary purpose of the constitutional guarantee of a free press was…to create a fourth institution outside the Government as an additional check on the three official branches.” Vincent Blasi, The Checking Value in First Amendment Theory,” AM. B, FOUND. RES. J. 523 (1977).
Many of these theories, most notably the marketplace of ideas, have guided the U.S. Supreme Court in its interpretation of the First Amendment. In 1919, the Court decided *Schenck v. United States*. In *Schenck*, Charles Schenck and other members of the Socialist Party were convicted of espionage after publishing 15,000 leaflets critical of the U.S. involvement in World War I. Schenck and his co-defendants argued that their First Amendment rights of free speech and a free press were violated by the prosecution. The U.S. Supreme Court, however, rejected these claims, finding that the leaflets posed a “clear and present danger” of interfering with the war.

The “clear and present danger” test enunciated by Justice Oliver Wendell Holmes in *Schenck* was eventually replaced with the current standard for assessing government punishment of advocacy speech—“imminent lawless action.” Other legal tests used in determining whether government restrictions on speech are protected by the First Amendment include strict scrutiny, intermediate scrutiny, and the time,

---


25 249 U.S. 47 (1919). In 1907, the U.S. Supreme Court considered free speech and press provisions in *Patterson v. Colorado*. In that case, a Denver newspaper publisher was convicted of “contempt” for articles and a cartoon criticizing the state supreme court. However, the U.S. Supreme Court held that it didn’t have jurisdiction to decide the case. 205 U.S. 454 (1907).

26 249 U.S. 47 (1919).

27 Id.

28 Id.


30 Under the doctrine of strict scrutiny, content-based regulations on speech must: 1) advance a compelling government interest, and 2) be narrowly tailored. *See, e.g.*, Arkansas Writers’ Project v. Ragland, 481 U.S. 221, 231 (1987).

31 Intermediate scrutiny applies when the speech regulation is content-neutral or the speech is of low value. It requires the government to have a substantial interest and that the regulation “is no greater than is essential to the furtherance of that interest.” United States v. O’Brien, 391 U.S. 367, 376-77 (1968).
place, manner test.\textsuperscript{32} The doctrines of overbreadth\textsuperscript{33} and vagueness\textsuperscript{34} are also bases for deeming a speech restriction to be unconstitutional.

The next section uses U.S. Supreme Court caselaw to describe four broad "freedoms" identified by the author that characterize a free press:

\begin{itemize}
  \item Freedom from prior restraints
  \item Freedom from compelled content
  \item Freedom to gather news
  \item Freedom to criticize the government
\end{itemize}

It is important to note that the word "freedom" is used here loosely, since none of these freedoms granted to the press are absolute.\textsuperscript{35} Some speech receives lower or no protection.\textsuperscript{36} However, "core" First Amendment speech—the type of speech that is often implicated in free press cases—receives the most protection.\textsuperscript{37}

\begin{footnotes}
\item[32] When regulations regulate the time, place and manner of expression, they must be "content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 44 (1983).
\item[33] Overbreadth is the doctrine "whereby a law may be invalidated as overbroad if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" United States v. Stevens, 130 S. Ct. 1577, 1587 (2010) (citing Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 n.6 (2008)).
\item[34] If a regulation is so vague that those potentially subject to its provisions are unsure of its applicability, it may be declared invalid under the First Amendment. \textit{See, e.g.}, Keyishian v. Bd. of Regents, 385 U.S. 589, 604 (1967) (quoting N.A.A.C.P. v. Button, 371 U.S. 415, 433 (1963)) (citing Stromberg v. California, 283 U.S. 359, 369 (1931); Cramp v. Bd. of Pub. Instruction, 368 U.S. 278 (1961); Baggett v. Bullitt, 377 U.S. 360 (1964)).
\item[35] Under circumstances, explained in detail later in this Chapter, prior restraints, compelled content, restrictions on newsgathering and punishment for criticizing government officials could potentially be constitutional.
\item[36] See Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (finding no protection for certain types of speech that "are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality"); Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557 (1980) (different protection for commercial speech). \textit{But see} R.A.V. v. City of St. Paul, 505 U.S. 377, 382-84 (1992) (clarifying that certain types of speech, such as fighting words, are not "entirely invisible to the Constitution, so that they may be made vehicles for content discrimination unrelated to their distinctively proscribable content").
\end{footnotes}
Freedom from Prior Restraints

Perhaps the most clearly established doctrine of a free press is the presumption against prior restraints. Two modern Supreme Court cases solidified this presumption against prior restraints on publication: *Near v. Minnesota*\(^ {38}\) and *New York Times v. United States*.\(^ {39}\)

At issue in *Near* was a Minnesota law that allowed the government to enjoin publication of "malicious, scandalous, or defamatory" material. Anti-Semitic publisher Jay Near's *Saturday Press* contained articles alleging "that a Jewish gangster was in control of gambling, bootlegging and racketeering in Minneapolis, and that law enforcing officers and agencies were not energetically performing their duties."\(^ {40}\) A trial court enjoined Near from further publication of similar material. The Minnesota Supreme Court upheld the injunction, but the U.S. Supreme Court declared the injunction an unconstitutional prior restraint. Chief Justice Charles Evan Hughes, writing for the majority in the 5-4 opinion, drew upon the tradition of disfavor for prior restraints in holding that prior restraints were presumptively unconstitutional:

> The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right. Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain the publication of newspapers and periodicals. The general principle that the constitutional guaranty of the liberty of the press

---

\(^{38}\) 283 U.S. 697, 704 (1931).


\(^{40}\) 283 U.S. 697, 704 (1931).
gives immunity from previous restraints has been approved in many decisions under the provisions of state constitutions.\textsuperscript{41}

The presumption against prior restraints established in \textit{Near} was dramatically tested some 40 years later in \textit{New York Times v. United States}, often called the Pentagon Papers case.\textsuperscript{42} Former Pentagon analyst Daniel Ellsberg secretly leaked classified documents—a study of the Vietnam War known as the Pentagon Papers—to \textit{The New York Times} and the \textit{Washington Post}.\textsuperscript{43} Publication of the 47 volumes began on June 13, 1971 in the \textit{Times}.\textsuperscript{44} President Richard Nixon asked the Justice Department to enjoin further publication to protect national security and diplomatic relations.\textsuperscript{45} In New York, the U.S. Court of Appeals for the Second Circuit enjoined the \textit{Times} from publication, but in Washington, the D.C. Circuit refused to keep the \textit{Post} from publishing.\textsuperscript{46} The U.S. Supreme Court agreed to review the case and temporarily stopped publication at the \textit{Post}. Within a week of oral arguments in the case, the Court ruled that an injunction would violate the First Amendment.\textsuperscript{47}

The Court’s unsigned, per curiam opinion stated:

“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”\textsuperscript{48} Government “thus

\textsuperscript{41} Id. at 718-19.

\textsuperscript{42} N.Y. Times Co. v. United States, 354 U.S. 298 (1971).

\textsuperscript{43} Id.

\textsuperscript{44} Id.

\textsuperscript{45} Id.

\textsuperscript{46} Id.

\textsuperscript{47} Id. at

carries a heavy burden of showing justification for the imposition of such a restraint." 49

The Court held that the government had not met its burden for enjoining publication. 50

**Freedom from Compelled Content**

Another characteristic of a free press is the freedom from government-compelled speech. 51 The seminal case in this area is the 1974 decision in *Miami Herald Publishing Co. v. Tornillo*. 52 In *Tornillo*, a candidate for state office sued the *Herald* after it refused to print his responses to the newspaper’s editorial. 53 Pat Tornillo invoked a Florida “right to reply” statute which afforded candidates targeted in editorials the right to demand, at no charge, space in the newspaper to print replies. 54 The trial court ruled in favor of the *Herald*, but the Florida Supreme Court reversed, declaring the statute constitutional and in furtherance of the "broad societal interest in the free flow of information to the public." 55 A unanimous U.S. Supreme Court rejected the arguments that forced access to the press was necessary in an era of increasingly concentrated news ownership. It held that the statute was unconstitutional because it intruded on the editorial functions of the press:

49 *Id.* (quoting Org. for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971)).

50 403 U.S. 713, 714 (1972). The nine justices each wrote separate opinions in the case, with six finding the injunction would be an impressionable prior restraint and three dissenting from the majority’s ruling (mostly objecting to the swift pace of the case).

51 A general exception from the idea of a prohibition on government-compelled speech can be found in some of the programming requirements of broadcasters. Justification for these requirements is based on the idea of a scarcity of the spectrum as described in *Red Lion Broad. v. FCC*, 395 U.S. 367 (1969).


53 *Id.* at 244.

54 *Id.*

55 *Id.* at 245 (quoting Tornillo v. Miami Herald Publ’g Co., 287 So.2d 78, 82 (1973)).
A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.\textsuperscript{56} 

Thus, freedom from compelled content and the ability for the press to independently exercise its editorial processes is a hallmark of a free press.

**Freedom to Gather News**

Of the four broad press “freedoms” described herein, the freedom to gather news is the most tenuous. Neither the Constitution nor the U.S. Supreme Court has established a general right of the press to gather news. The most affirmative statement of the Court in support of newsgathering came in the 1972 landmark case *Branzburg v. Hayes*, when Justice White wrote for the Court that “without some protection for seeking out the news, freedom of the press could be eviscerated.”\textsuperscript{57} *Branzburg* involved the cases of three different reporters who refused to testify before grand juries. Reporters Paul Branzburg, Earl Caldwell, and Paul Pappas argued that the First Amendment protected them from being compelled to testify before grand juries. The Court framed the issues as “whether requiring newsmen to appear and testify before state or federal grand juries abridges the freedom of speech and press guaranteed by the First

\textsuperscript{56} Id. at 258. But see Red Lion Broad. v. F.C.C., 395 U.S. 367, 400 (1969) (upholding requirement for television and radio broadcasters to discuss public issues and give each side fair coverage in light of “the scarcity of broadcast frequencies, the Government’s role in allocating those frequencies, and the legitimate claims of those unable without government assistance to gain access to those frequencies for expression of their views”); Turner Broad. System, Inc. v. F.C.C., 520 U.S. 180 (1997) (upholding laws requiring cable television to carry local broadcast stations).

\textsuperscript{57} Branzburg v. Hayes, 408 U.S. 665, 681 (1972).
A 5-4 majority of the Court rejected the First Amendment privilege to refuse to testify before grand juries. Justice Potter Stewart, in a dissenting opinion, argued that a reporter’s privilege would “insure nothing less than democratic decision-making through the free flow of information to the public.” Stewart articulated a three-part test the government must meet in order to compel information from journalists:

1. show that there is probable cause to believe that the newsman has information that is clearly relevant to a specific probable violation of law;
2. demonstrate that the information sought cannot be obtained by alternative means less destructive of First Amendment rights; and
3. demonstrate a compelling and overriding interest in the information.

This test has been utilized by lower courts and state legislators in crafting privileges for reporters to defend themselves against government requests for information and sources.

The ability to protect sources is only one aspect of an overarching press freedom to gather news. Access to sources is also critical. The U.S. Supreme Court has weighed in on the press’s right of access—which is generally no greater than that of the general public—on several occasions. The Court has upheld restrictions on access

---

58 Id. at 667.
59 Id. at 708.
60 Id. at 738 (Potter, J., dissenting).
61 Id. at 743.
63 Branzburg v. Hayes, 408 U.S. 665, 684 (1972) (“it has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally”).
to prisons but struck down restrictions on access to trials, jury selection, and pretrial hearings.

**Freedom to Criticize the Government**

The landmark 1964 decision in *New York Times Co. v. Sullivan* protects the news media against defamation claims from public officials unless “actual malice” is proved. This decision, according to Peters and Simonson, “with its ringing declaration that public debate must be ‘robust and uninhibited,’ was part of the background that gave rise to the kind of investigative journalism and cultural inquiry that helped topple President Nixon in the Watergate scandal.”

---


> That the First Amendment speaks separately of freedom of speech and freedom of the press is no constitutional accident, but an acknowledgement of the critical role played by the press in American society. The Constitution requires sensitivity to that role, and to the special needs of the press in performing it effectively. A person touring Santa Rita jail can grasp its reality with his own eyes and ears. But if a television reporter is to convey the jail’s sights and sounds to those who cannot personally visit the place, he must use cameras and sound equipment. In short, terms of access that are reasonably imposed on individual members of the public may, if they impede effective reporting without sufficient justification, be unreasonable as applied to journalists who are there to convey to the general public what visitors see.

*Houchins*, 438 U.S. at 17 (Stewart, J., concurring).

65 Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) (declaring an implicit First Amendment right of the public to attend criminal trials) (discussed in detail in this Chapter, infra)


69 MASS COMMUNICATION AND AMERICAN SOCIAL THOUGHT, supra note 22, at 269.
While once a criminal offense, press criticism of the government is the capstone of the modern press, and, many argue, the essential function of the press. \(^{70}\) *Times v. Sullivan* arose at the height of the Civil Rights Movement in the South. \(^{71}\) The speech at issue was an editorial advertisement in *The New York Times* paid for by civil rights activists who hoped to garner support for the movement and for Dr. Martin Luther King Jr. \(^{72}\) The ad, titled “Heed Their Rising Voices,” outlined violent reactions to the peaceful protests of those seeking equal rights. \(^{73}\) Incidents throughout the South were described, including one in Montgomery, Alabama:

In Montgomery, Alabama, after students sang “My Country, ‘Tis of Thee” on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission. \(^{74}\)

Police commissioner L.B. Sullivan, who was not named in the ad, unsuccessfully demanded a retraction from the *Times*. \(^{75}\) Sullivan and four other government officials sued the newspaper for defamation, winning a $500,000 award from the jury. \(^{76}\) The Alabama Supreme Court upheld the award, which was based on a strict liability theory.

---


\(^{72}\) Id. at 256.

\(^{73}\) Id. at 256-57.

\(^{74}\) Id. at 257.

\(^{75}\) Id. at 258, 261.

\(^{76}\) Id. at 256.
of libel where the intent or diligence of the publisher was not considered. The U.S. Supreme Court unanimously voted to reverse the judgment.

The Court acknowledged that there were falsities in the ad. For example, the students were expelled for demanding service at a lunch counter, not for singing; the dining hall had not been padlocked in an attempt to starve students; and police didn’t surround the campus. However, the Court noted that the “erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the ‘breathing space’ that they ‘need . . . to survive.’” In light of the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public official,” the Court held that public officials must demonstrate that defendants in libel suits acted with actual malice. Thus, unless a public official plaintiff proves that the press acted with knowledge of falsity or reckless disregard for the truth, the press will be protected from liability. The actual malice requirement was subsequently extended to public figures—

77 Id. at 267.
78 Id. at 292.
79 Id. at 254.
80 Id. at 259.
81 Id. at 271-72 (1964) (quoting NAACP v. Button, 371 U.S. 415, 433 (1963)).
82 Id. at 270.
83 Id. at 280.
individuals of public importance not necessarily affiliated with government—thereby affirming the freedom of the press to criticize individuals of public concern.

What is a Fair Trial?

The freedom of the press is only one side of the story. In any free press-fair trial controversy, the value of First Amendment protections are necessarily weighed against the competing value of the Sixth Amendment right to an impartial jury. The Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.85

The potential for media coverage of a case to affect the impartiality of jurors is at the heart of the free press-fair trial debate. The U.S. Supreme Court has, on several occasions, addressed the circumstances in which media coverage of a case might impact the defendant’s constitutional right to a fair trial.86

In Marshall v. United States, decided in 1959, the Court granted a new trial to a man convicted of dispensing drugs without a prescription.87 Jurors were exposed to news stories which recounted Howard Marshall’s previous felony convictions and unlicensed practice of medicine.88 Marshall reportedly prescribed pills to the late...

85 U.S. CONST., AMEND. VI.

86 The cases in this discussion deal more generally with prejudicial publicity. Camera-specific cases are discussed in the next section in this Chapter on cameras in the courtroom.


88 Marshall, 360 U.S. at 311-12.
country singer Hank Williams. The Court, in an 8-1 decision citing “the exposure of jurors to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence,” granted a new trial.

The defendant in the 1961 case *Irvin v. Dowd* was Leslie “Mad Dog” Irvin, convicted of a murder and sentenced to death. In addition to the death for which Irvin was convicted, five other murders occurred near the rural Indiana county where Irvin was prosecuted. Shortly after his arrest for a December 1954 killing, prosecutors and police issued press releases stating that Irvin had confessed to all six murders. During Irvin’s trial for the December 1954 murder, the judge denied several motions to change venire and continue the trial. Irvin challenged his conviction on the grounds that he was denied his Sixth Amendment right to a fair trial and impartial jury. In its opinion deciding Irvin’s constitutional claim, the Court first expounded on the fine line between an informed juror and a biased juror:

> It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror’s impartiality would be to establish an impossible standard.

---

89 *Id.* at 312.

90 *Id.*


92 *Id.*

93 *Id.* at 719-20.

94 *Id.* at 720.
It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.\textsuperscript{95}

However, in Irvin's case, the "build-up of prejudice" that occurred prior to the trial, including "a barrage of newspaper headlines, articles, cartoons and pictures was unleashed. . .during the six or seven months preceding his trial"\textsuperscript{96} was enough to warrant a new trial. In addition to the government press releases declaring Irvin confessed to six murders, other problematic facts gave rise to the Court's determination that Irvin's fair trial rights were violated: reporting on Irvin's previous criminal history, court martial charges during the war, and alleged parole violations; police statements that he was identified in a line-up and failed a lie detector test; and 90% of the hundreds of potential jurors thought Irvin was guilty.\textsuperscript{97} The Court unanimously granted Irvin a new trial: "Where one's life is at stake -- and accounting for the frailties of human nature -- we can only say that in the light of the circumstances here the finding of impartiality does not meet constitutional standards."\textsuperscript{98}

Just two years after the decision in Irvin, the Court overturned another murder conviction due to prejudicial publicity.\textsuperscript{99} In \textit{Rideau v. Louisiana}, Wilbert Rideau was accused of robbing a bank, kidnapping three bank employees, and killing one of them.\textsuperscript{100} Police arrested Rideau hours after the incident, and during a filmed "interview"

\textsuperscript{95} \textit{Id.} at 722-23 (citing Spies v. Illinois, 123 U.S. 131; Holt v. United States, 218 U.S. 245)

\textsuperscript{96} \textit{Id.} at 725.

\textsuperscript{97} \textit{Id.} at 727.

\textsuperscript{98} \textit{Id.} at 727-28.


\textsuperscript{100} \textit{Id.} at 724.
with the sheriff, he confessed. The local television station broadcast the “interview,” with more than 100,000 of the 150,000 residents of Calcasieu Parish watching. In addition to the prejudicial effects of the broadcasts, the jury selected for Rideau contained three people who admitted to seeing the “interview” and two local sheriff deputies. Further, the trial judge denied a motion for change of venue. The Court, in a 7-2 opinion, granted Rideau a new trial, concluding that the televised interrogation of Rideau by law enforcement served as Rideau’s real trial, and “subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.”

Perhaps the most famous case involving prejudicial publicity is *Sheppard v. Maxwell*, in which the Court overturned the conviction of physician Sam Sheppard. At his 1954 trial, a jury convicted Sheppard of bludgeoning his pregnant wife to death in a trial described as “a madcap bazaar of popping flash bulbs, vindictive reporters and hideous uproar, what the New York Times would later describe as a ‘Roman circus.’” Prior to the trial, intense media coverage ensued, including editorials with headlines such as “Why Isn’t Sam Sheppard in Jail?” and news stories emphasizing evidence

101 *Id.*

102 *Id.*

103 *Id.* at 725.

104 *Id.*

105 *Id.* at 726.


108 *Sheppard*, 384 U.S. at 341.
that tended to incriminate Sheppard.\footnote{\textit{id.} at 340.} The atmosphere at trial was no better for Sheppard, with a courtroom filled to capacity and journalists moving in and out of the room to the extent that hearing testimony was difficult and confidential conversations between Sheppard and his attorneys was nearly impossible.\footnote{\textit{id.} at 344.} While photography was not permitted while court was in session, it was allowed during recesses, and photos were commonplace.\footnote{\textit{id.} at 345.} And, while jurors were sequestered during deliberations, they were permitted to make daily telephone calls without supervision of what information they were receiving during the calls.\footnote{\textit{id.} at 349.} Sheppard was convicted of second-degree murder.\footnote{\textit{id.} at 335.}

The Court prefaced its 8-1 reversal of Sheppard’s guilty verdict by noting the traditional watchdog role the press has played in criminal proceedings:

A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.\footnote{\textit{id.} at 350.}

However, in the case of Sheppard’s prosecution, the Court found that the nature of the intense media coverage, combined with the denial of a change of venue, jurors who were unsupervised and inadequately admonished, and the “bedlam” at the

\footnotesize{
\begin{itemize}
  \item \textit{id.} at 340.
  \item \textit{id.} at 344.
  \item \textit{id.} at 345.
  \item \textit{id.} at 349.
  \item \textit{id.} at 335.
  \item \textit{id.} at 350.
\end{itemize}
}
courthouse where trial participants and jurors had “to run a gauntlet of reporters and photographers each time they entered or left the courtroom” all added up to an unconstitutional deprivation of Sheppard’s right to a fair trial.\textsuperscript{115} Measures the trial judge could have taken to ensure a fair trial included granting the change of venue, permitting defense counsel to question potential jurors regarding their exposure to news coverage of the trial, adopting stricter rules for press conduct in the courtroom (i.e., limiting the number of press representatives, placing them further away from the bar, and prohibiting them from handling evidence), insulating witnesses from press coverage, and restricting statements by witnesses and law enforcement.\textsuperscript{116} After a second trial in 1966, Sheppard was acquitted. He died four years later.\textsuperscript{117}

The Court’s most recent ruling on prejudicial publicity occurred in a 2010 decision involving former Enron CEO Jeffrey Skilling.\textsuperscript{118} In \textit{Skilling v. United States}, a 6-3 Court found that Skilling was not deprived of his Sixth Amendment right to an impartial jury due to pretrial publicity. Enron went bankrupt in 2001 and the federal government prosecuted corporate executives, including Skilling, for lying about the company’s financial results.\textsuperscript{119} Prior to his trial on charges of securities fraud, wire fraud, insider trading, and misrepresenting Enron to auditors, Skilling requested the trial be moved

\textsuperscript{115} Id. at 355.
\textsuperscript{116} Id. at 355-60. See also James Robertson, \textit{A Distant Mirror: The Sheppard Case From the Next Millenium}, 49 CLEV. ST. L. REV. 391 (2001).
\textsuperscript{117} \textsc{Great American Trials: From Salem Witchcraft to Rodney King} 472 (Edward W. Knappman, ed., 2003). Id. at 474. Sheppard’s son unsuccessfully tried to sue for his father’s wrongful imprisonment. His claim was denied due to lack of standing.
\textsuperscript{118} \textit{Skilling} v. United States, 130 S. Ct. 2896 (2010).
\textsuperscript{119} \textit{Skilling}, 130 S. Ct. at 2900.
from Houston due to pretrial publicity and community hostilities toward him. The trial court denied the motion, finding that coverage had been largely objective and concluding that voir dire procedures would effectively protect Skilling’s right to an impartial jury. The Court held that Skilling failed to demonstrate a presumption of juror prejudice and that the size of the Houston community (the fourth largest city in the nation) permitted a diverse jury pool. The Court distinguished the Skilling trial and news coverage from that in Irvin and Rideau, where the circumstances warranted a new trial.

As the Court’s jurisprudence on prejudicial publicity has demonstrated, there are a variety of remedies available to judges to safeguard fair trial rights. These remedies include a change of venue (moving the trial), change of venire (bringing in jurors from another community), continuing the trial to allow publicity to die down, weeding out biased jurors during voir dire, sequestering the jury, and instructing jurors to base verdicts solely on evidence presented in court. More drastic measures include issuing gag orders and closing proceedings. Judges wishing to gag the press or close

\[\text{\cite{120 Id.}}\]
\[\text{\cite{121 Id.}}\]
\[\text{\cite{122 Id.}}\]
\[\text{\cite{123 Id.}}\]
\[\text{\cite{124 In addition to the cases discussed in detail above, other cases relevant to prejudicial publicity jurisprudence include Stroble v. California, 343 U.S. 181 (1952) (affirming conviction and death sentence where publicity receded in weeks prior to trial, defendant did not seek change of venue and voir dire was thorough); Murphy v. Florida, 421 U.S. 794 (1975) (declining to declare an unfair trial where news coverage recounted armed robbery defendant “Murph the Surf’s” extensive criminal history); Patton v. Yount, 467 U.S. 1025 (1984) (refusing to order a new trial for defendant convicted of rape and murder because publicity did not reveal the kind of “wave of public passion” that would make a fair trial unlikely); and Mu’Min v. Virginia, 500 U.S. 415 (1991) (affirming murder conviction and refusing to order new trial based on assertion that trial court should be required to question jurors on specific news reports).}\]
courtrooms must meet stringent requirements in order to comport with the First Amendment.

However, while a gag order is a remedy available to judges hoping to protect a defendant’s rights, if it applies to the media, it is considered a restriction on the media’s ability to publish information. This is a prior restraint and is therefore presumptively unconstitutional. The Court’s seminal case in this area is *Nebraska Press Association v. Stuart*, holding a trial court’s prohibition on publication of news gathered during public, pretrial proceedings violated the First Amendment.\(^{125}\) The case stemmed from the murders of a family of six in the tiny Nebraska town of Sutherland. A neighbor confessed to the murders the next day. Three days later, a county judge issued an order prohibiting anyone in attendance at pretrial proceedings from “releas[ing] or authoriz[ing] the release for public dissemination in any form or manner whatsoever any testimony given or evidence adduced.”\(^{126}\) The order also required the press to abide by the voluntary Nebraska Bar-Press Guidelines.\(^{127}\) The order was largely upheld by the Nebraska Supreme Court, and the defendant was convicted of murder in 1976.\(^{128}\)

The U.S. Supreme Court unanimously struck down the publication ban as a prior restraint, finding that while the trial judge was justified in concluding that intense pretrial publicity would ensue and possibly impair the defendant’s right to a fair trial, there were other measures available to mitigate the effects of publicity. The Court established a


\(^{126}\) *Neb. Press Ass’n*, 427 U.S. at 542.

\(^{127}\) *Id.*

\(^{128}\) *Id.* at 546.
test that must be met if a prior restraint to prevent prejudicial publicity is justified. Specifically, the trial judge must conduct a hearing and make findings on the record based on evidence of:

(a) the nature and extent of pretrial news coverage;
(b) whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity; and
(c) how effectively a restraining order would operate to prevent the threatened danger.\textsuperscript{129}

Applying these factors to the Nebraska trial, the Court found that there was little in the record reflecting a determination of whether other measures might be effective.\textsuperscript{130} The Court “reaffirm[ed] that the guarantees of freedom of expression are not an absolute prohibition under all circumstances, but the barriers to prior restraint remain high, and the presumption against its use continues intact.”\textsuperscript{131}

While \textit{Nebraska Press Association} fleshed out the “heavy burden” that must be met for a judge to prohibit the press from reporting on court proceedings, a case decided four years later established a qualified First Amendment right to attend trials.\textsuperscript{132} That decision, \textit{Richmond Newspapers v. Virginia}, arose from a murder case that went to trial three times, the first conviction overturned due to new evidence and the latter two declared mistrials due to juror problems.\textsuperscript{133} Prior to the fourth trial of John Stevenson

\textsuperscript{129} Id. at 562.

\textsuperscript{130} Id. at 563.

\textsuperscript{131} Id. at 570.


\textsuperscript{133} Richmond Newspapers, 448 U.S. at 559.
for the murder of a hotel manager, the trial judge closed the trial.\footnote{134} Richmond Newspapers unsuccessfully fought the closure, arguing that the trial judge failed to make any evidentiary findings warranting the closure and did not consider less drastic means of ensuring a fair trial.\footnote{135} The trial judge sustained the defense’s motion to close the trial, also noting that “having people in the Courtroom is distracting to the jury” and when the new courthouse was constructed, the rules might change.\footnote{136} Stevenson was eventually found not guilty when the trial judge threw out the prosecution’s evidence.\footnote{137}

Nearly two years after Stevenson was cleared of the charge and set free, the U.S. Supreme Court ruled on Richmond Newspaper’s bid to have the closure order reversed. Although reversal of the closure order would have no practical effect on the Stevenson case, the Court still considered the case appropriate for review because the dispute was “capable of repetition, yet evading review.”\footnote{138} In holding that the closure was unconstitutional, a plurality of the Court noted the lack of findings by the trial court judge and the failure to consider alternative measures to protect the defendant’s Sixth Amendment rights.\footnote{139} In crafting a qualified First Amendment right of the public to attend criminal trials, the Court drew on the long history of open access to criminal trials dating back “beyond reliable historical records.”\footnote{140} From the days before the Norman

\footnote{134 Id.}
\footnote{135 Id. at 560-61.}
\footnote{136 Id. at 561.}
\footnote{137 Id. at 562.}
\footnote{138 Id. at 563 (quoting S, Pac. Terminal Co. v. ICC, 219 U.S. 498, 515 (1911)).}
\footnote{139 Id. at 580-81 (“Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public.”).}
\footnote{140 Id. at 564.}
Conquest to the evolution of the jury system in England, criminal trials have traditionally been open to the public:

[One] of the most conspicuous features of English justice, that all judicial trials are held in open court, to which the public have free access, . . . appears to have been the rule in England from time immemorial.141

The American legal system, which grew out of the English system, carried on the tradition of open trials. Guarantees of openness were explicit in some colonies, such as in the 1677 Concessions and Agreements of West New Jersey:

“That in all publick courts of justice for tryals of causes, civil or criminal, any person or persons, inhabitants of the said Province may freely come into, and attend the said courts, and hear and be present, at all or any such tryals as shall be there had or passed, that justice may not be done in a corner nor in any covert manner.”142

The Court went on to recognize the numerous benefits of an open court system, including assuring that proceedings were conducted fairly; discouraging misconduct and perjury; increasing public confidence;143 “providing an outlet for community concern, hostility, and emotion”;144 increasing public understanding of and respect for the judicial system; acting as a restraint on judicial abuse of power; aiding accurate factfinding; and even providing a public pastime that functions as a form of legal education.145 From this rich history of openness, the Court concluded “that the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such

---


142 ibid. at 567 (quoting Sources of Our Liberties 188 (R. Perry ed. 1959)).

143 ibid. at 569.

144 ibid. at 571.

145 ibid. at 572. (“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”)
trials, which people have exercised for centuries, important aspects of freedom of speech and ‘of the press could be eviscerated.’”

While the press’s right is technically no greater than the right of the public to attend criminal trials, the Court did point out, in a footnote, that “since courtrooms have limited capacity, there may be occasions when not every person who wishes to attend can be accommodated. In such situations, reasonable restrictions on general access are traditionally imposed, including preferential seating for media representatives.”

The Court continued its support of access to Courts in a series of cases decided within a few years of *Richmond Newspapers v. Virginia*. In *Globe Newspaper Co. v. Superior Court*, the Court, 6-2, struck down a Massachusetts statute that called for automatic exclusion of the public during testimony of minor victims of sex offenses was unconstitutional. Two years later, in *Press-Enterprise I*, the Court unanimously ruled that jury selection is presumptively open. In *Press-Enterprise II*, decided in 1986, the Court, 7-2, held that pretrial hearings should also be open.

The Court has established a First Amendment right of the public and press to attend criminal trials, voir dire, and pretrial hearings. But the press’ interest in covering trials is not limited to observations by journalists; the desire for audio-visual coverage of

---

146 *Id.* at 580 (quoting Branzburg v. Hayes, 408 U.S. at 681 (1972)).

147 *Id.* at 581, n. 18.

148 *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 (1982) (noting that the state’s interest in protecting minors could be served by case-by-case determinations, which "ensures that the constitutional right of the press and public to gain access to criminal trials will not be restricted except where necessary to protect the State’s interest."). There are several types of proceedings where access is commonly limited to protect competing interests, such as cases of minor victims, victims of sex offenses, juvenile proceedings, terrorism proceedings, and domestic relations cases.


Cameras in the Courtroom

While the historical and First Amendment right to attend trials and other legal proceedings is well-established, the right of the press to record courtroom proceedings is grounded in statutory law and varies among jurisdictions. The U.S. Supreme Court has, however, ruled that the presence of cameras in the courtroom is not inherently prejudicial.\textsuperscript{151}

The debate over whether to allow cameras in the courtroom dates back as early as 1917, when photographic coverage of a trial was prohibited by the Illinois Supreme Court.\textsuperscript{152} But it was the aftermath of the 1935 trial of Bruno Hauptmann, accused of kidnapping and murdering aviator Charles Lindbergh’s young son, that marked a strong shift in attitudes towards cameras in the court.\textsuperscript{153} Media coverage of the trial was intense, with almost 700 journalists covering the trial in Flemington, New Jersey.\textsuperscript{154} The chaos inside the courtroom and on the courthouse steps was perhaps prompted more by the notorious publicity surrounding the case and the sheer number of observers rather than the presence of cameras.\textsuperscript{155} Still, following Hauptmann’s guilty verdict, the American Bar Association (ABA) convened a special committee to analyze the case. The head of the committee, former Minnesota Supreme Court Justice Oscar Hallam,

\textsuperscript{151} Richmond Newspapers v Virginia, 448 U.S. 555 (1980).

\textsuperscript{152} SUSANNA BARBER, NEWS CAMERAS IN THE COURTROOM: A FREE PRESS – FAIR TRIAL DEBATE 1 (1987).

\textsuperscript{153} \textit{Id.} at 2-3.

\textsuperscript{154} \textit{Id.} at 4.

\textsuperscript{155} \textit{Id.} at 7.
remarked: “There never was a case that lent itself to greater temptation to lurid or excessive publicity, never a case more provocative of trial out of court, never a case best with greater menace of disorderly procedure.” In 1937, the ABA passed Canon 35 of its Canons of Professional and Judicial Ethics, which called for a ban on photography and radio broadcasts in the courtroom. The ABA later revised the Canon to specifically prohibit television cameras.

While the ABA Canons are not laws (the ABA is a private, non-profit organization of attorneys), they are influential and were observed by some, but not all courts. As television became a staple in American households, camera coverage increased. In 1956, Colorado was the first state to allow cameras in the courtroom on a permanent basis, giving the trial court judge ultimate discretion but still allowing jurors or witnesses to object to coverage. But in 1965, the ABA’s views were bolstered by the U.S. Supreme Court, who in Estes v. Texas ruled that a Texas businessman’s constitutional rights were denied due to camera coverage.

Texas grain dealer Billy Sol Estes was accused of swindling farmers into buying nonexistent fertilizer equipment. The trial court denied Estes’ motion to exclude broadcast coverage of the trial. During a two-day motion hearing:

---

156 Id. at 8 (quoting Oscar Hallam, *Some Object Lessons on Publicity in Criminal Trials*, 24 MINN. L. REV. 453, 454 (1940).

157 Id. at 9. Canon 35, ABA Canons of Prof. & Judicial Ethics.

158 Id. at 10.

159 Id. at 12.

160 Id. at 14 (citing Estes v. Texas, 381 U.S. 532 (1965)).


162 Id. at 535.
[T]he picture presented was not one of that judicial serenity and calm to which petitioner was entitled. Indeed, at least 12 cameramen were engaged in the courtroom throughout the hearing taking motion and still pictures and televising the proceedings. Cables and wires were snaked across the courtroom floor, three microphones were on the judge’s bench and others were beamed at the jury box and the counsel table. It is conceded that the activities of the television crews and news photographers led to considerable disruption of the hearings.\textsuperscript{163}

However, at the trial, live broadcasts were prohibited, with the exception of opening and closing arguments and the return of the jury verdict.\textsuperscript{164} In ruling whether cameras in the courtroom impaired Estes’ right to a fair trial, the Court stated that televised proceedings do not contribute to ascertaining the truth and instead “amount[s] to the injection of an irrelevant factor into court proceedings.”\textsuperscript{165} Televised proceedings could bias and distract jurors,\textsuperscript{166} impair the quality of witness testimony,\textsuperscript{167} distract the judge,\textsuperscript{168} and harass the defendant.\textsuperscript{169} The television camera, according to the Court, “is a powerful weapon. Intentionally or inadvertently it can destroy an accused and his case in the eyes of the public.”\textsuperscript{170} A 5-4 Court held that Estes’ due process rights were violated, with four of the five Justices who voted in Estes’ favor declaring that mere presence of cameras was an inherent violation of his rights. The Court did, however, leave open the possibility that technological advances could change the analysis, noting

\textsuperscript{163} Id. at 536.
\textsuperscript{164} Id. at 537.
\textsuperscript{165} Id. at 544.
\textsuperscript{166} Id. at 545-47.
\textsuperscript{167} Id. at 547-48.
\textsuperscript{168} Id. at 548-49.
\textsuperscript{169} Id. at 549.
\textsuperscript{170} Id.
that “the ever-advancing techniques of public communication and the adjustment of the public to its presence may bring about a change in the effect of telecasting upon the fairness of criminal trials.”¹⁷¹

In 1967, just two years after the Court’s decision in Estes v. Texas, the American Newspaper Publishers Association published Free Press and Fair Trial, a report that was the result of a two-year study.¹⁷² The special committee of the ANPA reached several conclusions during its research:

- There is no real conflict between the First Amendment guaranteeing a free press and the Sixth Amendment which guarantees a speedy and public trial, by an impartial jury.
- The presumption of some members of the Bar that pretrial news is intrinsically prejudicial is based on conjecture and not on fact.
- There are grave and inherent dangers to the public in the restriction or censorship of the source of news, among them secret arrest and secret trial.
- The press is a positive influence in assuring fair trial.
- The press has a responsibility to allay public fears and dispel rumors by the disclosure of fact.
- No rare and isolated case should serve as cause for censorship and violation of constitutional guarantees.
- The people’s right to a free press which inherently embodies the right of the people to know is one of our most fundamental rights, and neither the press nor the Bar has the right to sit down and bargain it away.

The report attached a comprehensive review of relevant case law and proposed press guidelines for covering courts.¹⁷³ While the findings of the ANPA committee

---

¹⁷¹ Id. at 551-52

¹⁷² AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, FREE PRESS AND FAIR TRIAL (1967).

¹⁷³ Id. See also S.L. ALEXANDER, COVERING THE COURTS (1999) and S.L. Alexander, Media and American Courts (2004). In Covering the Courts: A Handbook for Journalists, Alexander offers a primer to the legal system and the free press/fair trial debate as well as a source of practical advice for journalists covering
certainly didn’t reflect the views of legislatures and the judiciary at the time, over the next decade, cameras became more acceptable, despite the ruling in *Estes*.

As cameras became more common and less intrusive, states became more receptive to allowing them in courtrooms. In the mid-1970s, during the aftermath of the Watergate scandal, the press began to lobby for increased electronic coverage of court proceedings. At the same time, many states began allowing cameras in the courtroom, sometimes on a trial basis. Florida initiated a yearlong pilot program in 1977, making it “[o]ne of the forerunners in the fight to gain electronic access to courtrooms” and the first state to allow permanent trial coverage without the consent of witnesses, jurors or defendants. Former Florida Supreme Court Chief Justice Gerald Kogan recalled the fears present in those early days:

---

174 In 1973, the major networks pooled their resources to air 37 days of hearings before Congress in the Watergate Scandal (a political scandal involving criminal conduct in the White House that led to President Richard Nixon’s impeachment). The major networks, at great expense, aired more than 300 hours of the coverage. A scholar described the coverage as “unprecedented in length, scope, and cost” and paling in comparison to previous coverage of Congressional hearings. Millions of Americans tuned in for gavel-to-gavel coverage of the Senate Judiciary Committee’s hearings. *See, e.g.*, Michael J. Robinson, *The Impact of the Televised Watergate Hearings*, 24 J. COMM., Issue 2 (June 1974).

175 Dean Emeritus of the University of Florida College of Journalism and Communications Ralph Lowenstein recalled these efforts in a 2000 interview:

> Florida is one of the most liberal states in the United States, one of the most open states. We have what is called the Sunshine Law, which not only [requires] open meetings but really open records as well. Florida was actually the first to get cameras in the courtroom. That happened after I came, and people worked with FSNE and the Florida Association of Broadcasters on that.


176 *Barber, supra* note 152, at 20. *See also* *Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764, 781 (Fla. 1979) ("In view of the lack of any serious problems of disruption occurring during the term of the pilot program, and supported by the limited empirical data developed through the surveys, it is our judgment that Canon 3A(7) should be amended to permit access to the courtrooms of this state by electronic media subject to standards adopted by this Court and subject also to the authority of the
[W]hen we decided to start broadcasting these things, I am talking now not only in appellate arguments but also trials in Florida, I had the same misgiving that the U.S. Supreme Court has today. But over the years, I realize that these were not horribles, that the benefits far outweighed what we thought were problems. Most of the problems never really came to fruition at all. We were afraid, for example, that judges would start playing to the cameras. We also were afraid that the attorneys would do the same thing. We were afraid [that] in jury trials, it would have a chilling effect on jurors, a chilling effect on witnesses that testified at the trial. We discovered over a period of time that none of this came about. We also developed a technique to the point where the cameras literally in most courtrooms were almost invisible. People did not even know that they were there. The judges and the attorneys became so used to them being there that it really did not affect us at all.177

Florida was a leader in the movement to allow cameras in the courts not only by way of its pilot program and the groundbreaking access it permitted thereafter, but also because it was a Florida case that led to the U.S. Supreme Court’s ruling that that cameras in the courtroom were not inherently a violation of the defendant’s right to a fair trial.178 In Chandler v. Florida, the defendants, like Billy Sol Estes, argued that the broadcast of their trial against their objections violated their rights to a fair trial.179 The defendants were Miami Beach police officers arrested for burglary.180 Less than three minutes of the trial were broadcast.181 The officers appealed their convictions, alleging that television coverage deprived them of a fair trial.182 The Court, in a unanimous

presiding judge at all times to control the conduct of the proceedings before him to ensure a fair trial to the litigants.”).  


179 Id. at 568.

180 Id. at 567.

181 Id. at 568.

182 Id.
decision, noted that in *Estes*, only four Justices ruled that cameras were *per se* unconstitutional. The *Chandler* Court held that states were permitted to experiment with cameras in the courtroom:

An absolute constitutional ban on broadcast coverage of trials cannot be justified simply because there is a danger that, in some cases, prejudicial broadcast accounts of pretrial and trial events may impair the ability of jurors to decide the issue of guilt or innocence uninfluenced by extraneous matter. The risk of juror prejudice in some cases does not justify an absolute ban on news coverage of trials by the printed media; so also the risk of such prejudice does not warrant an absolute constitutional ban on all broadcast coverage. A case attracts a high level of public attention because of its intrinsic interest to the public and the manner of reporting the event. The risk of juror prejudice is present in any publication of a trial, but the appropriate safeguard against such prejudice is the defendant's right to demonstrate that the media's coverage of his case--be it printed or broadcast--compromised the ability of the particular jury that heard the case to adjudicate fairly.  

The Court decided *Chandler* in 1981, noting that increases in technology made cameras less intrusive and distracting than ever before. After that ruling, states (and the American Bar Association) began a departure from the general ban on cameras in the courtroom that existed for the previous forty years. In 1982, the ABA changed its position on cameras, favoring discretion for news camera coverage to be exercised by each state's high court rather than a blanket ban.  

Shortly after the *Chandler* decision, many states made experimental coverage permanent, and states with no coverage initiated pilot programs.

---

183 *Id.* at 574-75.
184 *Id.*
185 Barber, *supra* note 152, at 19.
186 Barber, *supra* note 152, at 17-19.
The State of the Law Today

Through changing attitudes of courts, states and the ABA, cameras have now become commonplace in courtrooms. Although federal and state laws on cameras in the courtroom will be discussed in detail in Chapter 4, a brief overview is helpful in contextualizing the literature presented in Chapter 3.

The law governing access to state courts varies from state to state and comes in the form of statutes and judicial rules. Judicial rules (sometimes called canons) are functionally the same as statutes but are often developed and adopted by the judiciary, not the legislature.\(^{187}\) The Radio Television Digital News Association (RTDNA) maintains a website that links to each state’s law on camera access to courts.\(^{188}\) RTDNA categorized the laws into three “tiers.”\(^{189}\) Tier I states allow the most coverage.\(^{190}\) Florida is a Tier I state; its rule allows exclusion of electronic media only if a “qualitative difference” between electronic media and other forms of coverage is demonstrated.\(^{191}\) Prohibition of coverage of important cases or large categories of witnesses are the hallmarks of RTDNA’s Tier II states, such as Virginia. Virginia law prohibits electronic coverage of, among other types of cases, sexual offense trials.\(^{192}\)


\(^{189}\) In the newest version of its cameras in the court guide issued in November 2012, RTDNA did not categorize the states into tiers. However, the tiers and their descriptions are still helpful in getting oriented to the area of law and for that reason are still described in this section.

\(^{190}\) Id.

\(^{191}\) Id. See also Fla. Rule. J. Admin. 2.170; Florida v. Palm Beach Newspapers, 395 So. 2d 544 (1981).

Finally, Tier III states allow appellate coverage only or their rules are so restrictive that trial coverage is virtually impossible.\textsuperscript{193} Alabama, for example, permits coverage only if all parties agree; even then, if a witness, juror, attorney, or party to the case objects, the camera coverage must stop.\textsuperscript{194} In addition to statutes, rules, and canons, case law also comprises the “access law” governing a particular proceeding. Each state has its own body of court decisions interpreting the applicable statute, rule, or canon.

At the federal level cameras are not allowed in trial courts. Federal appellate judges have discretion to allow cameras, but only two U.S. Courts of Appeal, the Second and Ninth Circuits, have permitted coverage of oral arguments.\textsuperscript{195} The U.S. Supreme Court does not permit television coverage of appellate arguments, though it does release audio recordings of oral arguments.\textsuperscript{196}


\textsuperscript{194} Id. See also Canon 3A(7), 3A(7A), and 3A(7B), Ala. Canons of Judicial Ethics, ALA. CODE, § Vol. 23A.

\textsuperscript{195} Cameras in Courts, United States Courts, http://www.uscourts.gov/Multimedia/Cameras.aspx

In the 1990s, federal courts conducted a three-year experiment with cameras in the courtroom. Even though judges participating in the experiment supported its continuation and research by the federal judiciary dispelled many concerns expressed by judges, the judiciary declined to allow cameras in federal courts. The predominant concerns of judges against allowing coverage were “the potential for cameras to intimidate witnesses and jurors,” despite research to the contrary. Judges were also concerned with soundbite clips used in broadcasts.

These concerns have persisted. In October 2009, a federal trial judge was reprimanded for allowing cameras in his court. In his memorandum reprimanding the lower court judge, Judge Frank Easterbrook wrote: “The role of cameras in the courtroom is a subject of ongoing debate in the legislative and judicial branches, and among members of the public.” This debate continues, and in 2011 the federal judiciary launched another trial program to study cameras in the courts.

---


198 Chance, supra note 3.

199 Chance, supra note 3.

200 Chance, supra note 3.


202 Id.

203 See Chapter 5, infra, for a discussion of the current federal pilot program.
CHAPTER 3
LITERATURE REVIEW

Scholars have devoted extensive attention to the issue of pretrial publicity and cameras in the courtroom. Psychology and legal scholars produce much of the literature, with the former focused on the effects pretrial publicity and the latter focused on the tensions between First and Sixth Amendment rights. Within the legal approach to cameras in the courtroom, scholars have just begun to address the implications of new technology on access to courts.

Social Sciences Approaches to Media Coverage of the Courts

At the heart of the free press/fair trial debate is an assumption that exposure to news accounts of a crime by jurors can prejudice them and therefore detract from the Sixth Amendment guarantee of an impartial jury. While jurors are not expected to be completely ignorant of alleged crimes, they cannot be so biased that they cannot set


aside preconceived notions of guilt. The line between jurors’ mere knowledge of the issues surrounding a case and irreversible bias is one that can be hard to draw. A rich body of literature exists that examines the effects of publicity on trial outcomes.

Harry Kalven Jr. and Hans Zeisel’s classic work *The American Jury* (1966) was the result of the University of Chicago Law School Jury Project, which applied behavioral science methods to study the modern jury. Researchers recorded actual jury deliberations, interviewed jurors after deliberations, and surveyed judges (in addition to other techniques such as simulated juries, public opinion surveys, and statistical analysis of existing court records). The results showed that most criminal cases are not decided during jury deliberations, but during the trial itself.\textsuperscript{206} The study also found that juries and judges came to the same conclusion about 80% of the time.\textsuperscript{207} The study did not specifically deal with the impact of publicity on jurors. However, Kalven would later note that “the jury is a pretty stubborn, healthy institution not likely to be overwhelmed by either a remark of counsel or a remark in the press.”\textsuperscript{208}

Geoffrey P. Kramer, Norbert L. Kerr, and John S. Carroll examined the effectiveness of three judicial remedies to combat jury bias from pretrial publicity. The authors first divided publicity into two categories: factual and emotional. Factual

\begin{footnotes}


\textsuperscript{208} Donald Gillmor, *Free Press v. Fair Trial: A Continuing Dialogue—“Trial by Newspaper” and the Social Sciences*, 41 N.D. L. Rev. 156 (1965) (quoting Letter from Harry Kalven, Jr. to Hon. Herbert F. Goodrich, Director of the American Law Institute, Sept. 16, 1960). See also Rita Simon, *Does the Court's Decision in Nebraska Press Association Fit the Research Evidence on the Impact on Jurors of News Coverage?* 29 Stan. L. Rev. 515, 528 (1977) (analyzing behavioral science research to date on the effects of pretrial publicity, concluding that “for the most part juries are able and willing to put aside extraneous information and base their decisions on the evidence. The results show that when ordinary citizens become jurors, they assume a special role in which they apply different standards of proof, more vigorous reasoning and greater detachment.”)
\end{footnotes}
publicity contained incriminating information; emotional publicity did not contain incriminating information but did have information likely to arouse negative emotions. Of the three judicial remedies examined—judicial instructions, deliberation, and continuance—only continuance served as an effective remedy. The authors studied 791 mock jurors, and using content analysis of deliberation and social decision scheme analysis, concluded that a delay of several days between exposure to publicity and the trial served to lessen the effects of factual publicity but not emotional publicity.  

Edith Greene and Elizabeth F. Loftus studied the potential influence of unrelated but well-publicized news events on trials. In two experiments, student subjects were given a booklet containing judicial instructions and descriptions of major pieces of evidence in the hypothetical crime and a questionnaire indicating a verdict and demographic information. During the first experiment, a high profile case involving a man mistakenly identified and convicted of rape, but later exonerated, had captured headlines in the area where the students attended school. During the second experiment, a similar booklet was distributed, but the researchers looked at whether the subjects read Reader’s Digest, which had recently featured a story about another wrongly convicted man. The authors concluded that subjects in the first experiment who participated in the study while the news story was prominently featured (as opposed to three months before or afterward) were less likely to convict; in the second

---

experiment, subjects who had read the magazine article were also less likely to convict.210

Perhaps the most recent comprehensive look at the impact of pretrial publicity is Jon Bruschke and William E. Loges’ Free Press v. Fair Trials: Examining Publicity’s Role in Trial Outcomes (2004).211 Bruschke and Loges reviewed all of the existing social science literature on pretrial publicity—less than 50 studies, a number the authors describe as “tiny” compared to other areas of research.212 Expanding on the data, Bruschke and Loges conclude that current reviews of the literature “have vastly overstated the case for a pretrial publicity effect.”213 The theory that pretrial publicity can result in unfair trials is “tenuous” and “there is not a pretrial publicity effect that is powerful and able to survive all remedies.”214 Some types of publicity actually benefit defendants. The authors identify four conditions that must exist before pretrial publicity might materially damage the interests of a defendant: juror exposure to publicity; all remedies (i.e., voir dire, judicial admonitions, continuances, trial evidence, and deliberations) fail at the same time; the evidence is close; and finally, the pretrial information is of probative value.215 The authors conclude that the absence of pretrial

---


213 Id. at 134-35.

214 Id. at 136.

215 Id. at 136-37.
publicity effects is largely due to remedies in place to combat bias, and encourage “continued vigilant application” of methods such voir dire and judicial instructions. These remedies are effective and much less costly than remedies such as change of venue.\footnote{Id. at 150.}

In addition to studies of pretrial publicity, social scientists have tested the effects of cameras in the courtroom, primarily through experimental research. In a study that focused on the effects of cameras in the courtroom on witness testimony and juror perceptions, Eugene Borgida, Kenneth G. DeBono, and Lee A. Buckman used undergraduate students to serve as witnesses or jurors in three different types of trials: one where a video camera was present, one where a reporter was present, and one where neither a media representative nor equipment was present. The authors determined that witnesses and jurors in the trial where a camera was present had significantly more favorable attitudes toward electronic media coverage of trials. Though witnesses and jurors in the camera trial reported more witness nervousness, distraction and awareness than the trial with just a reporter, the camera presence “did not impair witnesses’ ability to accurately recall the details of the crime or witnesses’ ability to communicate effectively.”\footnote{Eugene Borgida et al., *Cameras in the Courtroom: The Effects of Media Coverage on Witness Testimony and Juror Perceptions*, 14 LAW & HUMAN BEHAV. 489 (1990). See also ERNEST H. SHORT, *EVALUATION OF CALIFORNIA’S EXPERIMENT WITH EXTENDED MEDIA COVERAGE TO THE COURTS* 228 (1981) (concluding that “there is little evidence in this evaluation to suggest that EMC [electronic media coverage] causes significantly more changes in behavior than does conventional media coverage”); D. Slater & V.P. Hans, *Methodological issues in the evaluation of “experiments” with cameras in the courts*, 39 COMM. Q. 376-380 (1982); V.P. Hans & J.L. Dee, *Media coverage of law*, 35 AM. BEHAV. SCI. 136 (1991); M.E. KATSH, *THE ELECTRONIC MEDIA AND THE TRANSFORMATION OF LAW* (1989). Saul Kassin conducted an experiment with mock jurors who deliberated either in the presence or absence of a camera. Kassin
concluded that although the mock jurors were at first nervous and distracted, the
distracting effect diminished over time.\textsuperscript{218}

\textbf{Legal Approaches to Media Coverage of the Courts}

The conflict between the First Amendment right to a free press and the Sixth
Amendment right to a fair trial has often been the subject of analysis for scholars and
practitioners.\textsuperscript{219} Much of the available free press/fair trial literature, especially since the
1980 \textit{Richmond Newspapers} decision finding a First Amendment right of the public and
press to attend trials, is grounded in First Amendment theory and jurisprudence.

Though not discussed in detail in this literature review, this researcher would note that
within the body of literature on cameras in the courtroom, two significant sub-categories
have emerged—one wave of inquiry prompted by the 1995 murder trial of O.J.

\textsuperscript{218} S. Kassin, \textit{TV cameras, public self-consciousness, and mock jury performance}, 20 J. EXPERIMENTAL

\textsuperscript{219} See also Jennifer L. Johnson, \textit{Empowerment lawyering: The role of trial publicity in environmental
ST. LOUIS L.J. 505 (1997); Travis L. Dixon & Daniel Linz, \textit{Television News, Prejudicial Pretrial Publicity,
and the Depiction of Race}, 46 J. BROAD. & ELEC. MEDIA 112 (2002); C. Danielle Vinson & John S. Ertter,
\textit{Entertainment or Education: How Do Media Cover the Courts?} 7 HARV. INT’L J PRESS/POLITICS 80 (2002);
Circuit’s Interpretation of First Amendment Rights During Jury Selection in High-Profile Celebrity Trials,12
VILL. SPORTS & ENT. L.J. 297 (2005); Samuel A. Terilli, et. al, \textit{Lowering the Bar: Privileged Court Filings as
Substitutes for Press Releases in the Court of Public Opinion}, 12 COMMC’N LAW & POL’Y 143 (2007); Gary
A. Hengstler, \textit{The Court of Public Opinion: The Practice and Ethics of Trying Cases in the Media:
Sheppard v. Maxwell Revisited-Do the Traditional Rules Work for Nontraditional Media?} 71 LAW &
and the Courts Have Struggled to Resolve Competing Claims of Constitutional Rights}, 57 KAN. L. REV.
1075 (2009).
Simpson and another devoted to the somewhat notorious aversion to cameras in the federal courts, especially the Supreme Court.

In *Justice and the Media: Reconciling Fair Trials and a Free Press*, Matthew D. Bunker analyzes the free press/fair trial debate from a traditional First Amendment perspective. Bunker suggests a categorical approach to protecting speech about the criminal justice system, placing such speech “in a category that cannot be abridged.” Bunker argues that some precedent for such a categorical approach exists in *Cox Broadcasting v. Cohn* and *Nebraska Press Association v. Stuart*. Bunker articulates his categorical rule:

---


The First Amendment compels press and public access to all judicial proceedings involving a criminal defendant, regardless of countervailing considerations. Moreover, prior restraints of any duration and post-publication criminal sanctions against speech related to the criminal justice system violate the First Amendment, unless that speech is of a sort that would result in direct, immediate, and inevitable harm to national security. In addition, civil sanctions against reasonably accurate speech directly pertaining to criminal proceedings, as well as to pretrial events such as arrests, searches, interrogations, and the like, violate the First Amendment. These principles also apply to quasi-criminal proceedings that enforce ethics or disciplinary codes against public officials, including judges.  

Bunker rejects a balancing approach in favor of categorical protections for media coverage of the criminal justice system.  

Communications scholar Peter E. Kane uses five famous court cases to illustrate the tensions between the First and Sixth Amendments in his book *Murder, Courts, and the Press: Issues in Free Press/Fair Trial* (1986). Kane focuses on the responsibilities of the trial judge to employ various techniques to guarantee a fair trial by an impartial jury. As described by the U.S. Supreme Court in *Sheppard v. Maxwell*, these techniques include: issuing orders controlling conduct of officers of the court; postponing the trial; granting a change of venue; thorough voir dire examination of jurors; and sequestering jurors to prevent outside influence. Kane notes that these techniques do not interfere with the First Amendment rights of the press and public, and

225 BUNKER, supra note 222, at 143.

226 Id. at 145.


228 Id. at 64-65.
that the tension between the First and Sixth Amendments “is more illusion than real.”

However, Kane acknowledges that problems still remain, especially because First Amendment rights will generally remain intact regardless of whether the media acts responsibly.

As Kane points out, individual trial judges play a powerful role in managing media access and activity. The access law of many states affords judges a great degree of discretion in allowing cameras in courtrooms. Attorney and First Amendment Center contributor Douglas Lee notes that “state courts have been more receptive to broadcasters’ arguments, but none has recognized a right to broadcast a trial. Rather, the courts most receptive of cameras allow judges broad discretion in deciding whether to permit televised coverage.” This “broad discretion” is where judges’ attitudes are of great importance, and why studies of their attitudes are helpful.

Some surveys of state judges show resistance to cameras in the courtroom. A survey of New York judges, administered as part of that state’s consideration of cameras in the courtroom, showed that 36% of judges felt that television coverage of criminal trials should not be permitted; 43% thought coverage should be denied unless the defendant consented. An overwhelming majority, 80%, thought television

---

229 Id. at 67.

230 Id. at 68.


233 Id.
coverage would be a source of entertainment rather than education for the public.\textsuperscript{234} Another survey of state supreme court justices found that cameras in the courtroom garnered the least support from justices among the nine free speech subjects studied.\textsuperscript{235} Interestingly, access to courts gained the most support from the surveyed judges.\textsuperscript{236} As the author of that study noted, state attitudes are important because most press issues involve state courts interpreting state law.\textsuperscript{237}

When trial judges are presented with a high-profile case that might garner throngs of reporters and spectators, both legal and non-legal techniques can be employed to manage the proceedings. David A. Sellers, Assistant Director for Public Affairs at the United States Courts, wrote in a 2008 law review article that “[b]y expeditiously and thoroughly addressing cameras in court, advancing technology, and media seating —the three areas with the greatest potential for court and media confrontation— the latest trial of the century will be just another day in court.”\textsuperscript{238} Sellers asserts that to balance the various interests at play during a high profile trial—the judge’s desire to conduct a fair trial; the community’s desire to be free from disruption;

\textsuperscript{234} \textit{Id.}
\textsuperscript{235} Dennis Hale, \textit{State Supreme Court Justices’ Views on Free Expression}, 22 NEWSPAPER RES. J., 33 (2001). The nine subject areas were: media protection against libel suits; media protection against privacy suits; reporters privilege, access to government meetings and records; cameras in the courtroom; access to trials; high school student freedom of speech; pamphleteering; and possession of erotic materials. See also F. Dennis Hale, \textit{Cameras in Courtrooms: State Supreme Court Justices’ Attitudes}, 5 VISUAL COMM’N Q. Issue 1 (1998).
\textsuperscript{236} Hale, \textit{State Supreme Court Justices’ Views on Free Expression}.
\textsuperscript{237} \textit{Id.} at 28.
\textsuperscript{238} David A. Sellers, \textit{The Circus Comes to Town: The Media and High-Profile Trials}, 71 LAW & CONTEMP. PROBS. 181, 181 (2008).
the media’s desire for complete access; and the jurors’ desire to be released quickly—there are a wide variety of options available to judges and court administrators.239

Sellers first recommends a court media plan addressing logistical issues such as parking and access to evidentiary exhibits. The plan can be used as an outline for a decorum order the judge can issue to manage media access.240 Trial courts should make available online their rules for camera coverage of court proceedings. Courts can require pooling of cameras, a written application by the media to gain access, and restrict movement of camera operators during court.241 Sellers notes that while almost every court has an established camera policy, policies regarding laptops, cell phones, and other electronic devices are less clear.242 Finally, because courtroom seating is “perhaps the most valuable commodity a court possesses during a high-profile trial,” managing seat assignments can be a difficult task. Sellers recommends working with a representative of the media to negotiate reserved seating for the media, and notes that defining a member of the “press” is increasingly difficult in light of increasing numbers of bloggers and citizen journalists who do not work for traditional media organizations.243

Within the broader debate over free press and fair trial, the question of whether to even permit televised court proceedings often looms large. In her 1987 book News Cameras in the Courtroom: A Free Press-Fair Trial Debate, Susanna Barber concludes that televised trials usually fail to fulfill a true public education function because the

---

239 Id. at 184.
240 Id.
241 Id.
242 Id. at 191.
243 Id. at 197-98.
sensational nature of trials that are chosen for broadcast offers a distorted view of the legal system. She characterizes the “most crucial yet most difficult questions” as those relating to the impact of televised trials on the defendant. Barber concludes that future research should focus on the comparative effects of newspaper versus broadcast coverage.

Furman University professors Danielle C. Vinson and John S. Ertter came to similar conclusions as Barber in regards to the potential for distorted perceptions of the legal system. Vinson and Ertter concluded that their content analysis of coverage (though limited in scope) showed that “audiences can gain some knowledge of the judicial process through the media, especially newspapers. However, they are likely to learn the most about the unusual cases that have the least significance to the community or the public.”

The public education aspect of televising courtroom proceedings is one often cited by proponents of cameras in the courtroom. Chief Judge of the U.S. Court of Appeals for the Ninth Circuit Alex Kozinski recently co-authored a law journal article wherein he urged opponents to rethink their aversion to cameras in the court, calling them “an essential tool to give the public a full and fair picture of what goes on inside

---


247 Id.
the courtrooms that they pay for." Chief Judge Kozinski and co-author Robert Johnson posit that increased public scrutiny can improve the trial process if judges, attorneys, and trial participants are motivated to act more conscientiously. The authors also point to surveys of jurors and witnesses that demonstrate that cameras neither affected nor distracted them. Advocating transparency, the authors state that “[i]f we don’t like the way courtrooms look on camera, the solution is to change the courtrooms, not toss out the cameras.” The authors use new technology—such as the ability to cover trials in real-time via Twitter—to illustrate that the public has no way to evaluate such coverage (or statements from the public posted to Twitter) when cameras are prohibited.

249 Id. at 1114.
250 Id. at 1115. See Fed. Judicial Ctr., Electronic Media Coverage of Federal Civil Proceedings: An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeals (1994); Marjorie Cohn & David Dow, Cameras in the Courtroom: Television and the Pursuit of Justice 62-64 (1998) (reviewing studies and finding that “all the studies arrived at the same conclusion: that camera coverage generally did not affect the proceedings negatively”).
251 Id. at 1119. In 2001, CourtTV (now TruTV) Chairman and CEO Henry Schlieff wrote that allowing cameras in the courtroom “will increase public understanding of the judicial branch of government; it will also increase accountability. As former U.S. Supreme Court Justice Louis Brandeis said about government, ‘sunshine is the best disinfectant. . . .’” Henry Schlieff, Cameras in the Courtroom: A View in Support of More Access, Human Rights, Fall 2001, at 14, available at http://www.abanet.org/irr/hr/fall01/schleiff.html.
Technological Change and Live Coverage of Court Proceedings

Kozinski and Johnson touched on some of the new dimensions that electronic devices are adding to the traditional debate over cameras in the courtroom. The body of literature devoted to newer technologies such as streaming audio and courtroom blogging and tweeting is scarce—a gap this study is intended to fill. The LexisNexis legal database of law reviews and journals was used to identify and retrieve relevant scholarly work. Because this an emerging area of scholarship, student notes and case comments were included for review. In addition to scholarly articles, a report on the issue of new media and the courts prepared by the Conference of Court Public Information Officers is also examined.

Elizabeth A. Stawicki, an attorney and longtime legal affairs correspondent for Minnesota Public Radio, asserts that electronic broadcasting devices—both audio and video—are not just desirable on an abstract level but on a practical level are necessary due to the decline of the newspaper industry. 253 “Our courts are essentially closing to the public if it relies solely on print journalists to detail what occurs in America’s courtrooms by pad and pencil,” Stawicki opines. 254 Public education is the strongest reason for opening up the judicial branch to electronic broadcast coverage, according to Stawicki. If coverage is not available, the public will turn to other sources for an understanding of the legal system—namely, reality shows such as Judge Judy and legal

---


254 Id. at 28.
talk shows by the likes of Nancy Grace—which will serve as a poor substitute for the real thing.\textsuperscript{255}

The ability of individuals with mobile electronic devices to capture images and recordings in public and broadly disseminate them is referred to as “pervasive image capture” by Professor Seth F. Kreimer of the University of Pennsylvania Law School.\textsuperscript{256} Kreimer contends:

With the diffusion of digital image technology in the last decade, pervasive image capture and sharing has become an increasingly "salient" medium of expression both in public and in private. In public, pervasive image capture grants authority to a range of unofficial voices; it provides a means of holding the conduct of the powerful to account. . . it follows that the First Amendment protects the right to record images we observe as part of the right to form, reflect upon, and share our memories.\textsuperscript{257}

Though Kreimer doesn’t specifically address the contours of his proposed extension of First Amendment protections in the context of courtroom activity, his reasoning can easily be extended to justify permitting “pervasive image capture” for the public at court proceedings. Kreimer asserts that this now commonplace technology is a foundation of public discourse and can open up channels of dialogue for “individuals and groups without firm economic or political bases or established public credibility.”\textsuperscript{258}

Adriana C. Cervantes makes the case for tweets in the courtroom in her Note addressing the variety of legislative and judicial responses to reporters who wish to use

\textsuperscript{255} Id. at 30-31.


\textsuperscript{257} Id. at 408-09.

\textsuperscript{258} Id. at t 344.
Twitter as a means of covering court proceedings instantly. Cervantes contends that existing laws restricting broadcasting are overbroad and do not take into account new technologies such as Twitter. Because a complete ban on mobile electronic devices is unrealistic, Cervantes proposes that judges:

[R]equir[e] reporters who want to broadcast during trial to make a written media request to the judge, indicating the scope and type of broadcasting coverage sought. This written request will allow the judge to address any potential broadcasting problems, such as a parties who do not want the trial broadcast or trials in which witnesses are uncomfortable with their testimony being broadcast. Most importantly, the judge will know whether an individual wants to take pictures, video, or tweet. A judge who is opposed to cameras can still allow the broadcasting of notes. While this middle ground would still allow judges to restrict cameras in the courtroom, it will make news regarding trials available instantly and in larger quantities than ever before.

The request can serve as an agreement between the judge and the media and lay ground rules for courtroom behavior. In the end, Cervantes argues, Twitter can help increase both public understanding of the legal system and transparency in the courts, benefits that justify careful consideration before prohibiting its use.

In a real-world example of how Twitter served to inform the public of court proceedings when cameras were banned, the U.S Supreme Court stayed the Northern District of California from broadcasting proceedings related to a challenge to Proposition 8, an initiative narrowly passed by California voters which outlawed same-sex marriage.

---


260 Id. at 157.

261 Id. at 156.

262 Id. at 156-57.

263 Id. at 157.
in that state. The challenge to the constitutionality of the law was initiated in federal
court, and the district judge permitted live audio and video streaming of the trial. In
staying broadcasts of the trial, the Supreme Court determined that the district court did
not amend its local rules in compliance with federal law.  

Attorney Matthew E. Feinberg analyzed the Proposition 8 decision, and in a law
journal article published the same year as the decision, “argues that the Court ought to
impose a rebuttable presumption that video broadcasting of civil court proceedings is
permitted absent a compelling interest asserted by the party seeking closure.” Feinberg asserts that the Supreme Court, if properly presented with the issue, would be likely to impose such a presumption, based on its prior holdings as well as its “unofficial
treatment of the issue” in dicta of those decisions. If his rule were applied in the
Proposition 8 case, broadcast coverage would have been permitted, Feinberg states.
According to Feinberg: “With the technological advances of the YouTube age that allow
video cameras and instant Internet uploads in the palm of one's hand, video access to
courtrooms is not the disruption it once was. These cases will shape the lives of the
American people. The courts simply need to let the people watch it all unfold.”

264 Hollingsworth v. Perry, 130 S. Ct. 705 (2010). This researcher will analyze the Hollingsworth v. Perry
case in depth in Chapter 5 of this study.

265 Matthew E. Feinberg, The Prop 8 Decision and Courtroom Drama in the YouTube Age: Why Camera
Use Should be Permitted in Courtrooms During High Profile Civil Cases, 17 CARDOZO J.L. & GENDER 33
(2010).

266 Id. at 51.

267 Id. at 62.

268 Id. at 63. See also Jordan K. Schwarz, Comment, Local District Court Rule Does Not Provide Judge
Authority to Order “Narrowcast” of Motion Hearing – In re Sony BMG Music Entertainment, 564 F. 3d 1
(1st Cir. 2009), 43 SUFFOLK U. L. REV. 787, 795-96 (2010) (concluding that “[u]ntil the appropriate bodies
take action to update the policy concerning electronic media coverage of federal civil cases, decisions such as [the First Circuit’s decision to that the trial judge did not have authority to permit webcasting of
The Conference of Court Public Information Officers (CCPIO) released its *New Media and the Courts: The Current Status and a Look at the Future* in August 2010.²⁶⁹ The project was the result of an informal idea sharing site on Ning.com²⁷⁰ as well as a national survey of judges, magistrates and court administrators.²⁷¹ The report identified seven categories of new technologies that impact the courts:

1. Social Media Profile Sites (e.g., Facebook, MySpace, LinkedIn, Ning)
2. Microblogging (e.g., Twitter, Tumblr, Plurk)
3. Smart Phones, Tablets & Notebooks (e.g., iPhone, Droid, Blackberry)
4. Monitoring and metrics (e.g., Addictomatic, SocialSeek, Social Mention, Google’s Social Search, Quantcast)
5. News categorizing, sharing and syndication (e.g., blogs, RSS, Digg, Reddit, del.iciou.us)
6. Visual media sharing (e.g., YouTube, Vimeo, Flikr)
7. Wikis²⁷²

The National Center for State Courts administered the online survey to 16,000 individuals in the court community during June 2010.²⁷³ Approximately 810 respondents completed the entire survey while 789 submitted partially completed surveys.²⁷⁴ Highlights of the survey: Of the judges surveyed, 40% reported use of a proceedings] will strike the public as an impractical impediment to the use of technology for the betterment of society”.


²⁷⁰ This researcher was a member of the project’s Ning site and posted links to various news articles.


²⁷² Id.

²⁷³ Id.

²⁷⁴ Id.
social media profile, mostly Facebook. This mirrors the percentage of the U.S. adult population using social media profile sites. More than half of judges responding reported using routine juror instructions that included references to using new media during the trial. Slightly less than 10% of judges reported seeing jurors use new media in the courtroom. Few courts reporting using social media, microblogging, or visual media sharing sites. About 25% of respondents reported that new media are necessary for public outreach.

The report predicted that in the future, more courts would create official social media profiles; judges would increasingly use social media sites for professional and personal use; courts would continue to provide primary content, often multimedia content; and PIOs and information technology officers would form stronger partnerships. The recommendations of the report included continuation of the CCPIO New Media Ning site; more collaboration among national judicial associations; administration of the survey as a longitudinal study to monitor trends; development of a survey for the general public; and development of tools such as best practices and

\[^{275}\text{Id.}\]
\[^{276}\text{Id.}\]
\[^{277}\text{Id.}\]
\[^{278}\text{Id.}\]
\[^{279}\text{Id.}\]
\[^{280}\text{Id.}\]
\[^{281}\text{Id.}\]
checklists to assist courts in responding to new media while balancing free speech and access to courts.\textsuperscript{282}

CCPIO conducted similar studies in 2011 and 2012 for comparison. In 2011, CCPIO found that an increasing number of judges used jury instructions with a provision on the use of electronic devices.\textsuperscript{283} Institutional social media profiles gained acceptance by the respondents in comparison to 2010, and there was a 5.1\% increase in respondents who reporting working at a court with a profile on a social media site.\textsuperscript{284} The 2012 study found that judges were more willing to participate in the survey and reported increased used of the technologies surveyed.\textsuperscript{285} The percentage of judges who strongly agreed that their personal use of social media did not threaten professional ethics doubled since the first year of the survey, as did the percentage of judges who strongly agreed that courts as institutions can use technology without compromising their ethics and that new media are necessary for public outreach.\textsuperscript{286}

In summary, the extant literature on media coverage of the courts has focused on the effects of pretrial publicity and the tensions between the First and Sixth Amendments. Other areas of focus include the repercussions of the O.J. Simpson trial and the tradition in the federal courts of an aversion to televised proceedings. A handful

\begin{footnotesize}

\begin{itemize}
\item \textsuperscript{282} \textit{Id.}
\item \textsuperscript{284} \textit{Id.}
\item \textsuperscript{285} Conference of Court Public Information Officers, 2012 CCPIO New Media Survey, New Media and the Courts: The Current Status and A Look at the Future, \textit{available at} http://ccpio.org/publications/reports/
\item \textsuperscript{286} \textit{Id.}
\end{itemize}
\end{footnotesize}
of scholars have begun to tackle the problems posed by new technology and access to courts, but further analysis is warranted. This study seeks to fill the gaps in the literature related to new media and coverage of the courts.
CHAPTER 4
TRADITIONAL CAMERAS IN THE COURTROOM

While the ultimate goal of this study is to identify the law of mobile technology in the courtroom, that law is rooted in the law governing “traditional” cameras in the courtroom—the type of technology that shaped most of the major jurisprudence in this area. This Chapter examines the law of cameras in the courtroom in the traditional broadcasting context, typically by television news media outlets. A 50-state survey of the law of cameras in the courtroom is presented, followed by a discussion of the federal law on the issue. As discussed in Chapter 1, the methodology for identifying this area of the law involved using the Radio Television Digital News Association (RTDNA) “Cameras in the Court: A State by State Guide.” This source is well regarded in the field and was most recently updated in the fall of 2012. Using this compilation as a starting point, the relevant law was further researched using the LexisNexis legal database. The laws of cameras in federal courtrooms was initially identified at the U.S. Courts website and then further analyzed, also using the LexisNexis legal database.

50-State Survey of Cameras in the Courtroom

Before launching into the 50-state survey of the law of cameras in the courtroom, it is helpful to identify some of the common issues that the laws address. First, states that permit coverage often have different rules for different types of court. The broadest distinction would be between trial courts (where witnesses testify, evidence is presented, and factfinding occurs) and appellate courts (where the facts of the case are established and appellate judges review cases based on paper records and sometimes

oral argument by attorneys). Many of the concerns raised by opponents of camera coverage are applicable only in the trial context, where the effects on witnesses, jurors, and defendants have greater potential to jeopardize the fairness of the proceeding. At the appellate level, there are no witnesses, and if a case does come before the appellate judges for oral arguments, the process generally consists of attorneys making time-limited arguments interspersed with questions by the judges. Accordingly, there is usually little real or perceived harm that can come from televising appellate proceedings, although in high profile cases, courtroom decorum can be problematic.

In addition to the trial/appellate distinction, some states also allow different types of coverage depending upon the type of proceeding—i.e., probate, family, juvenile court, administrative proceedings, jury selection, and cases involving minors or sex offenses. Another factor the state laws often address is the number of devices permitted, such as one television camera and one still photographer. Although they will not be addressed in detail below, nearly all states who permit coverage have these limitations, and generally limit the press to 1-2 each still cameras, television cameras, and audio recording systems. These restrictions give rise to the common practice of “pooling” by media outlets, and most statutes expressly give the media responsibility for making pooling arrangements. Finally, the laws often outline who must provide consent for coverage (i.e., the judge and parties) and who may object to coverage.

Alabama allows cameras in trial and appellate courts in both criminal and civil proceedings if a plan for coverage has been approved by the Supreme Court of Alabama. If the judge chooses to exercise her “sound discretion” and permit coverage,

---

288 The word “coverage” is used throughout the descriptions of state laws in this chapter to describe electronic coverage, audio and visual.
all parties and their attorneys must provide written consent. The same standard applies in appellate courts. Trial court coverage must be halted any time a witness, party, juror, or attorney objects.289

**Alaska**’s broad coverage law permits coverage in not just all trial and appellate courtrooms but anywhere in a state court facility. However, the press must first obtain the consent of the presiding judge, at least 24 hours prior to the proceeding. All parties must also consent in family290 proceedings. The law prohibits photographing or filming jurors in the courtroom. Similar prohibitions apply to sex crime victims unless the victim and court consent. Coverage privileges can be suspended for up to a year if the media coverage plan is violated.291

**Arizona** permits cameras at all court levels. Judges have discretion to keep cameras out, but only if the likelihood of harm outweighs the benefit to the public. The media can use personal audio recording devices that are not distracting to others in the courtroom. The media should request coverage two days prior to a proceeding unless the proceeding is scheduled on short notice. Artificial lighting is prohibited absent the consent of the judge. Coverage is not permitted in juvenile court proceedings, though there is specific exception in the rule for adoption proceedings where the parties agree to coverage for purposes of memorializing the event.292

---

289 **AL. CODE** § Vol. 23A; Canon 3A(7), 3A(7A), and 3A(7B) of the Ala. Canons of Judicial Ethics.

290 The general term “family law” or “family relations” is used throughout this chapter’s descriptions of state laws to cover a variety of matters that are often expressly described in the statute, i.e., adoption, paternity, divorce, custody, and domestic violence.

291 Rule 50, R. Governing the Admin. Cts., Alaska R. Ct..

292 Rule 122, R. Ariz. S. Ct.; **ARIZ. REV. STAT.** § Vol. 17A.
Arkansas allows judges to authorize camera coverage so long as “the dignity of the proceedings” is not impaired and the participants will not be distracted. If a party objects, all coverage is excluded, but if a witness objects, only coverage of that witness will be banned. Juvenile, probate, drug court, and domestic matters cannot be covered. Prohibitions also exist on coverage of jurors, minors without consent, sex crime victims, undercover law enforcement, and informants.293

California, home to many high-profile, televised legal proceedings, such as the trials of O.J. Simpson and Michael Jackson, has a cameras in the courtroom law that permits coverage by written order of the judge. The request must be made five days prior to the proceeding on an official form provided by the courts. There are prohibitions on coverage of jury selection, in-chamber proceedings, attorney conferences, and proceedings closed to the public. Coverage of jurors and spectators is also prohibited.294 Of note, Los Angeles Superior Court has a local rule (2.17) that bans anyone inside a courtroom from using a camera or broadcasting device without express permission. Restrictions extend beyond the courtroom, with coverage only permissible in designated media areas or with prior permission.295

In Colorado, cameras are allowed in all courts, and if judges want to prohibit coverage, they must make a finding that there is a substantial likelihood that the coverage will interfere with a fair trial, a reasonable likelihood it will detract from the

294 Rule 1.150, Cal. R. Ct.
295 Rule 2.17, L.A. Super. Ct. Local R. See also San Francisco Superior Court Standing Order (prohibiting coverage in hallways and public areas of the courthouse), available at http://www.sfsuperiorcourt.org/sites/default/files/pdfs/Media%2BCCC%2BSStanding%2BOrder.pdf.
dignity of the court, or that it will create unique harm that is different from other types of media. Written requests for coverage must be submitted at least a day in advance. No coverage of jury selection is allowed, and most pretrial hearings are not subject to camera coverage.\textsuperscript{296}

\textit{Connecticut} permits camera coverage in trial and appellate courts, with appellate court proceedings (except sex offense or family cases) presumed open to such coverage. Appellate judges can limit or exclude cameras if “there is good cause to do so, there are no reasonable alternatives to such limitations, and the limitation is no broader than necessary to protect the competing interests at issue.”\textsuperscript{297} In trial courts, media organizations who want to cover proceedings must be approved by the Office of Chief Court Administrator. The rules define media as “any person or entity that is regularly engaged in the gathering and dissemination of news.”\textsuperscript{298} Coverage is not allowed in cases related to family relations, juvenile matters, sexual assault, or trade secrets. Notably, coverage in jury trials is limited to when the jury is present in the courtroom, though coverage of jury selection is not allowed. Connecticut law also has rules specific to the type of trial court proceeding—criminal or civil. Criminal coverage requires written notice three days in advance, and the court has the discretion to limit or exclude coverage. Equipment should not be distracting and must remain stationary during proceedings.\textsuperscript{299}

\textsuperscript{296} Ch. 38, R. 2, Colo. S. Ct. R.

\textsuperscript{297} §§ 70-9, 70-10, Conn. R. App. Proc.

\textsuperscript{298} §§ 1-10, 1-11, Conn. R. Super. Ct.

\textsuperscript{299} Id.
The Supreme Court of Delaware permits appellate coverage, which is allowed in the form of an indefinite extension of an appellate experiment initiated in 1982. Limited coverage is permitted in some trial courts, which began in 2004 with a six-month experiment. The trial court experiment was also extended indefinitely, but only permits coverage of non-confidential, non-jury, civil proceedings in specified courts and counties. The rules of the trial criminal, family, and justice of the peace courts all forbid coverage.\(^{300}\)

The District of Columbia does not allow camera coverage. Exceptions may be made for photographs at the discretion of court officials. D.C.’s rules are similar to the federal rules.\(^{301}\)

It is not surprising that Florida, whose cameras in the courts pilot program and resulting U.S. Supreme Court decision in Chandler v. Florida helped pave the way for widespread state adoption of laws allowing coverage, has a camera-friendly law. Cameras are permitted in both appellate and trial courts, subject to the approval of the presiding judge. Coverage can be prohibited only if a showing is made that there is a “qualitative difference” in the effect on the proceedings by electronic media versus other forms of coverage.\(^{302}\) Coverage equipment must not be distracting and artificial lighting is prohibited, though changes can be made to the existing lighting in the courtroom. The court chooses where to place the cameras.\(^{303}\)


\(^{303}\) Fla. R. J. Admin.2.450.
Camera coverage is allowed in Georgia trial and appellate courts, with the various levels of courts (i.e., municipal, superior, intermediate appellate, and supreme court) each customizing the guidelines for access in the rules of court. The main trial court, for example, requires that coverage be granted without preference to a particular person, agency, or medium. Requests for coverage must be “timely” and made in writing. Photos of children in juvenile proceedings are prohibited. In the Court of Appeals, written requests for coverage must be received at least a week in advance, and radio and television media must provide the court with a tape of all proceedings covered. In the Georgia Supreme Court, the media does not need prior consent for coverage, but the court maintains authority over the coverage.304

In Hawaii, cameras are permitted in trial and appellate courts. The judge’s consent is required in trial courts but not in the appellate courts. Requests for trial coverage will be granted unless there is good cause to prevent it—i.e., those involving child witnesses, determinations of admissibility of evidence, trade secrets, or testimony of undercover officers. Juvenile, grand jury, and family law proceedings are exempt from coverage. Individuals, even non-media, can also request to record proceedings.305

Idaho allows cameras in trial and appellate courts as long as advance permission is obtained from the presiding judge. Juror coverage, as well adoption and mental health proceedings, is prohibited. No artificial lighting is permitted, and any television


305 Rules 5.1 and 5.2, R. S. Ct. Haw.
cameras must not “give any indication of whether it is operating.” Judges’ decisions to limit or prohibit coverage are non-appealable.306

In Illinois, cameras are only permitted in appellate courts. However, a pilot program announced in 2012 also allows coverage in trial courts. To participate in the pilot program, trial courts must apply to enter the program. Media can then request, at least two weeks prior to proceedings, to cover events in participating courts. Decisions to deny coverage are non-appealable. Judges have the discretion to permit or exclude cameras, but witnesses and victims can object to the coverage. Excluded from the pilot program are cases involving juveniles, family law, evidence suppression, and trade secrets. Coverage is not allowed during jury selection. In appellate courts, consent is not required, although the presiding officials may limit coverage. The media must notify the appellate court of intent to cover at least five business days in advance.307 In announcing the pilot program, Illinois Chief Justice Thomas L. Kilbride noted that the program would bring more “transparency and accountability” to the state’s court system.308 He also nicely summed up the competing interests at stake:

The provisions of this new policy keep discretion in the chief circuit judge and the trial judge to assure that a fair and impartial trial is not compromised, yet affords a closer looks at the workings of our court system to the public through the eyes of the electronic news media and news photographers.309

306 Idaho Ct. Admin. R. 45 and 46.


309 Id.
Indiana only allows coverage in appellate courts, with requests to cover made 24 hours in advance at the Indiana Supreme Court and 48 hours in advance the Indiana Court of Appeals. Limited pilot projects experimenting with cameras in trial courts were conducted in 1997 (ending with less than 10 test cases) and again in 2012. The 2012 program is projected to last 18 months and permits one media organization to webcast from three trial courtrooms. The webcasts will have a two-hour delay and some types of proceedings—i.e., those involving informants, jury selection, family relations—cannot be webcast.  

Coverage is permitted in all Iowa courts, provided coverage is requested at least two weeks in advance. Parties who object to coverage must show good cause as to why coverage should be disallowed. In sexual abuse trials, however, the consent of witnesses and parties must be obtained prior to coverage. Jury selection may not be covered. Supplemental lighting is prohibited and equipment must meet certain specifications. In the Supreme Court of Iowa, coverage is not subject to objections by witnesses or parties.  

Appellate and trial courts in Kansas are subject to camera coverage, but coverage is allowed only by the press and educational television stations for purposes of news or education. A week’s notice is usually required, and there are restrictions on coverage of jurors, undercover agents, juvenile witnesses, family law proceedings,  

---


311 Ch. 25, Iowa Ct. R.
suppression motions, and trade secrets. Criminal defendants cannot be photographed in restraints prior to the return of a verdict.\textsuperscript{312}

In \textit{Kentucky}, coverage is allowed in trial and appellate courts. The parties are not required to consent, but the presiding judge has discretion over coverage. Juvenile proceedings are not subject to coverage. Media interested in covering proceedings must make a request with the judge.\textsuperscript{313}

Appellate coverage is permitted in \textit{Louisiana}, but the rules mostly prohibit coverage at the trial level. At the trial level, coverage will generally only be permitted for ceremonial proceedings or educational purposes, is consented to, and is not broadcast until the matter is finalized. In Louisiana appellate courts, judges have discretion to allow coverage, with no consent of the parties required. Requests for coverage should be submitted at least 20 days in advance.\textsuperscript{314}

\textit{Maine} allows coverage in trial and appellate courts, subject to the sole discretion of the judge. Orders regarding coverage are non-appealable. In the Supreme Judicial Court, a notice of intent to cover is required but not prior approval. Civil proceedings at the trial level are permitted except for those involving family relations, sexual assault or misconduct, or trade secrets. Victims and people with detectable disabilities may choose to be excluded from coverage. Jury coverage is prohibited. In criminal proceedings, coverage must be approved in advance and only non-testimonial portions of pre- and post-trial matters are allowed. At trial, jury coverage and witness testimony

\textsuperscript{312} Rule 1011, Kan. S. Ct.


are prohibited. Written notice of intent to cover a proceeding is required. Equipment 
should not be distracting or bear any display of affiliation.\textsuperscript{315}

In \textit{Maryland}, coverage is permitted at the trial and appellate levels, but only for 
civil proceedings, and only if all parties consent. Consent is not needed from 
government parties. Coverage requests should be submitted at least five days in 
advance. Jurors and courtroom spectators are not allowed to be covered. It is 
presumed that good cause exists to exclude coverage when the case involves family 
relations, relocated witnesses, minors, or trade secrets.\textsuperscript{316}

\textit{Massachusetts} allows coverage of most public proceedings. Jury selection and 
hearings on motions to suppress, dismiss, or probable cause are not subject to 
coverage. Close-up shots of jurors are generally not permitted. Media must request to 
cover proceedings in advance. Notably, before a party or witness can move to limit 
media coverage, it must notify the Bureau Chief, Newspaper Editor, or Broadcast Editor 
of the \textit{Associated Press}. In 2012 National Public Radio (NPR) received permission 
from the Massachusetts Supreme Court to launch a pilot program called OpenCourt, 
which broadcasts proceedings in the Quincy Division trial court live on the internet.\textsuperscript{317}

All courts in \textit{Michigan} permit coverage. Requests for coverage must be 
submitted at least three days prior. Judges may end or modify coverage if a finding is 
made that the coverage rules have been violated or that the interests of justice require 
it. These decisions are non-appealable. Jury coverage is prohibited. Coverage of

\textsuperscript{315} Admin. O. JB-05-15 (A. 9-11), Cameras and Audio Recording in the Courts (Maine).

\textsuperscript{316} Md. R. Proc. 16-109.

certain witnesses, such as sex crime victims and undercover agents, is at the sole discretion of the judge.\textsuperscript{318}

\textit{Minnesota}’s coverage rules apply to both trial and appellate courts, but at the trial level all parties must consent to coverage. A two-year pilot program was initiated in July 2011 that authorized recording of criminal proceedings with the consent of all parties and civil proceedings without the consent of all parties. Courtroom coverage must take place only when the presiding judge is present. Coverage of jurors and objecting witnesses is prohibited, as are hearings that take place when the jury is not present. Family relations cases, hearings on evidence suppression, and proceedings involving police informants, undercover agents, sex crimes, trade secrets, or relocated witnesses cannot be covered. The media must give notice at least 10 days in advance, and any objecting party must make the objection at least three days before the start of the proceedings. A party may appeal a judge’s decision regarding coverage, but only after the proceedings have concluded. Equipment should not be distracting. In appellate courts, consent of parties and witnesses is not required. Intent to cover should be provided at least 24 hours in advance.\textsuperscript{319}

\textit{Mississippi} courts at all levels allow cameras. Presiding judges maintain discretion over coverage and may limit or terminate if necessary to control the conduct of the proceedings, maintain decorum, prevent distraction, or ensure fairness. Parties

\textsuperscript{318} Mich. Ct. R. 8.115.

can object to coverage but must do so at least 15 days in advance. Media who plan to
cover proceedings should notify the clerk of court at least 48 hours in advance. Several
types of witnesses and parties are not permitted to be covered, such as police
informants, undercover agents, minors, relocated witnesses, sex crime victims and their
families, and jurors. Coverage is prohibited in family relations cases, suppression
hearings, proceedings involving trade secrets, and in camera proceedings. If media
cannot agree to a pooling arrangement, they will all be excluded. Coverage should not
be distracting and artificial lighting is prohibited.320

In Missouri, coverage is permitted at trial and appellate levels. Family relations
cases, juvenile cases, and jury selection, however, are not subject to coverage.
Coverage requests should be made in writing at least five days prior to the proceeding.
The court’s media coordinator will in turn notify the parties and the judge. If participants
are crime victims, police informants, undercover agents, relocated witnesses, or
juveniles, coverage is prohibited if the individual objects.321

Montana courts are open to coverage at trial and appellate levels. Coverage can
be restricted by the presiding judge if there is a finding that coverage will “substantially
and materially interfere with the primary function of the court to resolve disputes fairly
under the law.”322

Nebraska allows coverage in appellate courts, but trial court coverage is
generally prohibited. However, some trial courts allow coverage under an experimental

320 Miss. R. Elec. & Photographic Coverage of Judicial Proceedings. See also In re WLBT, Inc., 905 So. 2d 1196 (Miss. 2005) (holding that “the complete exclusion of cameras should be resorted to only after less restrictive measures have been considered and found to be inadequate.”)

321 Admin. Rule 16, Mos. S. Ct. R.

322 Canon 35, Mont. Canons of Judicial Ethics.
policy. Requests for coverage must be made two weeks in advance, and trial judges will generally grant requests unless it is determined that coverage would interfere with a party’s right to a fair trial. Coverage is not allowed under the experimental rules however, for family, juvenile, or trade secrets cases unless all parties consent. Witnesses may object to coverage of their particular testimony, and good cause is presumed to exist for witnesses who are police informants, undercover agents, or relocated witnesses. Jury coverage is prohibited, although the judge may allow coverage of the return of the verdict.\footnote{Rules 2-117 and 2-118, Neb. Ct. R. App. Practice; Rules for Expanded Coverage in Nebraska Trial Courts, \textit{available at} \url{http://supremecourt.ne.gov}}

\textit{Nevada} courts have broad rules permitting coverage in trial and appellate courts, but reporters must first obtain permission from the judge by submitting a written request at least 24 hours in advance. Factors the judge will consider are the right to a fair trial, the right of privacy, the well-being of parties and witnesses, the likelihood that coverage will be distracting, the court’s physical facilities, and fairness. Reporters must get permission from the court in order to be eligible to participate in the media pool. Recordings of court proceedings cannot be used for advertising purposes.\footnote{Nev. S. Ct. R., Part IV: Rules on Cameras and Electronic Media Coverage in the Courts (2012), \textit{available at} \url{http://www.leg.state.nv.us/CourtRules/SCR.html}}

In \textit{New Hampshire}, coverage is allowed at both the trial and appellate levels. Prior notice to the court is required. Persons requesting coverage do not have to be members of the established media. At the trial level, parties and interested parties may request that coverage be prohibited or limited. In that case, the court must hold a hearing and the objecting party must show “(1) that the relief sought advances an
overriding public interest that is likely to be prejudiced if the relief is not granted; (2) that
the relief sought is not broader than necessary to protect that interest; and (3) that no
reasonable less restrictive alternatives are available to protect the interest.” Flash
deVICES are prohibited.\textsuperscript{325}

Members of the “bona fide media” can cover courts in \textit{New Jersey}. The judicial
canon allowing coverage is geared towards openness, but judges have some discretion
in limiting coverage, especially if coverage might result in a substantial likelihood of
harm to parties or witnesses. The media has the right to appeal orders regarding
coverage. Juror coverage is prohibited, as is coverage of juvenile, family law, and sex
crime proceedings.\textsuperscript{326}

\textit{New Mexico} allows coverage at both the trial and appellate levels. Judges
maintain wide discretion over the breadth of coverage. No coverage of jurors or jury
selection is permitted. Coverage requests should be submitted 24 hours prior to the
proceeding. Prior to limiting coverage, judges must provide the media with advance
notice and an opportunity to object. Judges must consider the competing interests of the
parties and the public and should also consider reasonable alternatives to restricting
coverage.\textsuperscript{327}

Only appellate coverage is permitted by \textit{New York} law. Consent is not required,
but parties can object and must show good cause for limitation of coverage. Prior to


\textsuperscript{326} Canon 3A(9), N.J. Code of Judicial Conduct.

\textsuperscript{327} Rule 23-107, N.M. S. Ct. Gen. R.
1997, another provision in state law allowed coverage of trials in limited circumstances, but the legislature failed to renew the provision when it expired.\textsuperscript{328}

All \textit{North Carolina} courts allow coverage. Equipment and personnel must be “invisible” inside the courtroom and set apart in a booth or partition. Trial judges might permit coverage without use of the booth/partition, if it would not be distracting. These requirements may be waived by judges at the appellate level. Juror coverage is prohibited, as is coverage of juvenile, family, or trade secret cases. Coverage of witnesses such as sex crime victims, minors, and police informants is not allowed.\textsuperscript{329}

\textit{North Dakota} allows coverage in all courts, and a judge can deny or limit coverage if she determines that it would materially interfere with a party’s right to a fair trial. A judge can also deny or limit coverage if a witness or party objects and shows good cause. Coverage of jury selection is prohibited, as is close-up photography of jurors. Coverage requests to the Supreme Court must be made 72 hours in advance, by regular mail, with fax copies to counsel if possible. Requests at the trial level must be made at least a week in advance, with notice also given to counsel and any \textit{pro se} parties. The notice should be in writing and must be filed, with proof of service, with the clerk of court.\textsuperscript{330}

\textit{Ohio} permits coverage at the trial and appellate levels, and the law requires judges to allow coverage of public proceedings, with some exceptions. At trial, the judge must inform victims and witnesses of their right to object to coverage, and if they

\textsuperscript{328} 22 N.Y.R.R. §§ 29.1-29.2; N.Y. CLS Standards & Administrative Policies § 231.


\textsuperscript{330} Admin. R. 21, N.D. Ct. R.
object, the coverage will be prohibited. Coverage requests must be submitted in advance to the presiding judge.\(^{331}\)

*Oklahoma* currently does not have a rule on cameras in the courtroom. Coverage was previously governed by Oklahoma Judicial Code of Conduct Canon 3, which prohibited coverage without express permission from the judge. The Canon was superseded in 2011 and has not yet been replaced.\(^{332}\)

*Oregon* permits coverage in its trial and appellate courts. At the appellate level, a judge may deny coverage to maintain decorum, ensure fairness, and limit distractions. At the trial level, a judge can deny coverage if a "reasonable likelihood" exists that the coverage would interfere with fair trial rights, affect the presentation of evidence, or interfere with the "efficient administration of justice." Coverage is prohibited in family or trade secret cases. Victims in sex offense proceedings can request exclusion of coverage. The court can require those covering a proceeding to provide a copy of the coverage to the court, and—if actual copying expenses are paid—to any other person who requests it.\(^{333}\)

Coverage in *Pennsylvania* is largely prohibited, with recording only allowed in civil, non-jury trials. Within this narrow scope of proceedings, coverage of family law cases is prohibited, as is coverage of objecting witnesses. Coverage requests should be made in advance and require the consent of the presiding judge. Proceedings of the Pennsylvania Supreme Court are recorded by Pennsylvania Cable Network but may

---

\(^{331}\) Rule 12, R. Superintendence Cts. Ohio.


only be broadcast after approval; only robotic cameras can be used, and the broadcast must be “gavel-to-gavel.”\textsuperscript{334}

Coverage is permitted in the courts of Rhode Island, with judges granted sole discretion to grant or deny coverage. Coverage of proceedings in juvenile or family court where “juveniles are significant participants” is prohibited. Hearings that take place out of the jury’s presence cannot be covered. Individual jurors, with consent, can be photographed after a jury is impaneled.\textsuperscript{335}

In South Carolina, coverage is permitted in all courts, with great discretion afforded to the presiding judge. Coverage requests should be made to the judge reasonably beforehand. Coverage of perspective jurors is prohibited, and jurors may not be photographed unless they happen to be in the background. Equipment must not “bear the insignia or marking of any media agency” and the person operating the camera must wear “appropriate business attire.”\textsuperscript{336}

If all parties and the judge consent, coverage is permitted in South Dakota courts. Jurors cannot be photographed, and proceedings that occur outside the jury’s presence are prohibited. The court is entitled to copies of any recordings. The rules for coverage in the Supreme Court are similar.\textsuperscript{337}

All Tennessee courts allow coverage. Coverage requests must be made in writing at least two days in advance. Coverage of minors and jurors is prohibited. If

\textsuperscript{334} Canon 3A(7), Penn. Code of Judicial Conduct; Section 11, Internal Operating Procedures of the Supreme Court; Rule 112, Publicity, Broadcasting, and Recording of Proceeding, Penn. R. Crim. Proc. (prohibiting coverage).

\textsuperscript{335} R.I. S. Ct. R., Article VII – Media Coverage of Judicial Proceedings


coverage is requested in a juvenile court proceeding, the court will notify the parties of
the request and their right to object. If a defendant in a juvenile criminal case or any
party in a juvenile civil action objects, coverage is prohibited in its entirety.^{338}

Coverage of civil proceedings is expressly allowed in Texas, which permits
coverage so long as the judge, parties, and witnesses consent to coverage. At the
appellate level, coverage requests should be filed five days in advance. The Supreme
Court of Texas provides live and archived webcasts of oral arguments. Coverage of
criminal trials in Texas is not governed by a particular law or rule, but does occur on a
case-by-case basis as part of the court’s inherent power to control the procedural
aspects of a case.^{339}

Current Utah rules governing cameras in the court only allow coverage at the
appellate level. However, on April 1, 2013, new rules take effect that will expand trial
coverage to the trial courts. If a judge wishes to restrict coverage, she must articulate a
compelling reason to do so. Coverage requests must be in writing and submitted 24
hours in advance.^{340}

Vermont courts permit coverage in appellate and trial courts. Coverage of the
Supreme Court is subject to the consent of the Chief Justice. In trial courts, the
presiding judge has discretion to limit or exclude coverage either sua sponte^{341} or upon

^{338} Rule 30, Tex. S. Ct. R.

Ct. App. 2003); FREEDOM OF INFORMATION FOUNDATION OF TEXAS: CAMERAS IN THE COURTROOM, available

^{340} Rule 4.01, Utah R. Jud. Admin.; New Rule 4-401.01, Electronic Media Coverage, effective Apr. 1,

^{341} Sua sponte is a Latin term describes an act taken by the court on its own, without prompting b a party.
the motion of a party or witness. Juror coverage, other than unavoidable background coverage, is prohibited. Notes accompanying the pertinent rule suggest that it may be inappropriate to cover family law, sex offense, minor victim, or trade secret cases. The trial judge has discretion to evaluate coverage in these cases on an individual basis. Decisions to prohibit or limit coverage are non-appellable.\textsuperscript{342}

Coverage is allowed in all \textit{Virginia} courts. Coverage of jurors, police informants, undercover agents, minors, and sex offense victims and their families is prohibited. Proceedings involving family law, sexual offenses, trade secrets, or suppression motions are not subject to coverage.\textsuperscript{343}

\textit{Washington} state allows cameras at appellate and trial levels. Coverage requests must be made in advance to the presiding judge. The judge is obligated to take measures to ensure that coverage is not distracting and does not impair the dignity of the proceedings. Judges who find coverage should be limited must make specific findings on the record. “Generalized views” cannot be used to justify coverage limitations.\textsuperscript{344}

Trial and appellate coverage is permitted in \textit{West Virginia}, with great discretion afforded to the presiding judge. Coverage requests must be made a day in advance. The judge can terminate coverage if she “determines that coverage will impede justice


\textsuperscript{343} VA. CODE ANN. § 19.2-266.

\textsuperscript{344} Rule 16, Gen. R., Wash. Ct. R.
or create unfairness for any party.” Identifying coverage of jurors is prohibited without consent of the juror.\textsuperscript{345}

All Wisconsin courts allow coverage. The trial judge has sole discretion to limit or exclude the media. Coverage objections by participants in cases involving victims of crimes, police informants, undercover agents, juveniles, relocated witnesses, family law, suppression motions, or trade secrets is presumed to be valid. Identifying close-up coverage of jurors is prohibited unless prior permission is obtained from the juror. Orders on coverage are non-appealable.\textsuperscript{346}

Finally, in Wyoming, coverage is permitted at the trial and appellate levels. Coverage requests must be submitted at least 24 hours in advance. Close-up coverage of jurors is prohibited. Equipment must remain stationary during the proceeding. Objections to coverage in cases involving victims of crimes, confidential informants, undercover agents, and suppression motions carry a presumption of validity.\textsuperscript{347}

**Cameras in Federal Courts**

Coverage is prohibited in federal courts, especially in criminal proceedings. Rule 53 of the Federal Rules of Criminal Procedure states: “Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.”\textsuperscript{348} The rule and policymaking body for the federal courts, the Judicial


\textsuperscript{346} Ch. 61, . S. Ct. R.


\textsuperscript{348} FED. R. CRIM P. 53.
The United States, has a policy on cameras that prohibits coverage in both criminal and civil cases. Circuit courts of appeal have discretion to allow coverage of appellate arguments; only the Second and Ninth Circuits allow camera coverage. The U.S. Supreme Court does not allow camera coverage, but does release audio recordings of its oral arguments at the end of each week, with speedier release in high profile cases.\textsuperscript{349}

The federal judiciary experimented with cameras in civil proceedings, first in a three-year pilot program that began in 1991. At the conclusion of the pilot program, the Court Administration and Case Management Committee recommended that the Judicial Conference authorize coverage in federal civil proceedings, at both the trial and appellate levels. However, “the Conference concluded that the intimidating effect of cameras on some witnesses and jurors was cause for concern, and the Conference declined to approve the Committee’s recommendation to expand camera coverage in civil proceedings.”\textsuperscript{350}

The federal judiciary’s second attempt at experimentation with cameras in its courtrooms took the form of another three-year pilot project, which launched in June 2011. The pilot program authorized coverage of civil cases in 14 federal courts, with more than 100 U.S. district judges participating.\textsuperscript{351}

\begin{footnotes}


\footnote{The courts participating in the 2011-2014 pilot program are: Middle District of Alabama; Northern District of California; Southern District of Florida; District of Guam; Northern District of Illinois; Southern District of Iowa; District of Kansas; District of Massachusetts; Eastern District of Missouri; District of Nebraska; Northern District of Ohio; Southern District of Ohio; Western District of Tennessee; and}
\end{footnotes}
were available online at the federal judiciary’s website. The guidelines for the pilot program specify that only the court can cover its proceedings, and only in civil proceedings where the parties consent. The media can request that a proceeding be covered, but the presiding judge actually selects cases for the pilot. Recordings made in the pilot program are not simulcast but posted after the proceeding, preferably “within a few hours.” At the conclusion of the most recent pilot program in 2014, the Conference will have another opportunity to consider permitting coverage in civil cases, though it seems unlikely, based on the scope of the pilot program, that any relaxing of the current policies would include allowing the media to record proceedings.


CHAPTER 5
MOBILE TECHNOLOGIES IN THE COURTROOM

It is on the foundation of the diverse body of law discussed in the previous Chapter that the courts rely in order resolve disputes arising from the introduction of newer, mobile technologies into courtrooms. This Chapter offers a snapshot of the current landscape of the law of mobile technologies in the courts—circa 2013. This is an emerging area of the law that is constantly changing both as the disputes arise and as technology changes. While the law in this Chapter will likely change before this study is complete, the overview is helpful in identifying patterns in the law, common disputes, and best practices for all parties involved. The notion of examining the state of the law in other jurisdictions in order to develop law in a particular jurisdiction is common in American jurisprudence, and in that sense the data presented in this Chapter might also be of help to judges as they face new laws and technologies.

As discussed in Chapter 1, the methods used to identify the state of the law in this area were somewhat more flexible than traditional methods of legal research because the area is relatively new. Articles from the popular press, white papers and reports from legal and media organizations, and scholarly literature were all used to supplement legal research in online databases.

It is worth noting that this area of the law is somewhat unique in that relevant rules, policies, and statutes that may have a great impact on the media’s ability to report using mobile technology may have been written from an entirely different perspective—to prevent disruption by the various noises that these devices make. The potential for disruption has increased as most people carry at least a cell phone on their person at all times. The relevant policies identified below are a mix of general electronic device
policies and policies geared specifically toward the media’s use of electronic devices, though the analysis focuses on the effect of policies on journalists.

State Law and Mobile Technology in the Courts

If a pertinent, broadly applicable law or a court decision was not identified during research, that state was omitted.\textsuperscript{354} The omission of a state does not mean, however, that individual courts do not have their own individual policies; a collection of individual policies from the every court in the country is beyond the scope of this study.

Arkansas

The Administrative Order of the Arkansas Supreme Court titled “Broadcasting, Recording, or Photographing in the Courtroom” contains a provision specific to mobile electronic devices. The provision, which applies in all courts:

Electronic devices shall not be used in the courtroom to broadcast, record, photograph, e-mail, blog, tweet, text, post, or transmit by any other means except as may be allowed by the court.\textsuperscript{355}

California

Many high-profile cases originate in Los Angeles Superior Court, and its Local Rule 2.17 provides:

No one may carry any camera, microphone, or recording equipment, or activate the image or sound capturing feature of any computer, mobile telephone, watch or other similar equipment in a courtroom without express written permission from the appropriate judicial officer.\textsuperscript{356}

\textsuperscript{354} Alabama, Alaska, Arizona, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

\textsuperscript{355} Admin. Order, No. 6(d)(7), Ark. S. Ct.

\textsuperscript{356} Local R. 2.17, L.A. Super. Ct.
Coverage is also prohibited outside the courtroom—including entrances, exits, hallways, elevators, escalators, and parking garages—unless it occurs in a designated media area or with prior permission from a judge. Los Angeles Superior Court also has “Rules Regarding Filming in the Courthouses and in Courtrooms” which warns that the prohibition against coverage in the public spaces of the courthouse, “applies to all devices capable of capturing images, including cell phones” and violators may be hauled before a judge immediately to face sanctions. In addition, “[i]mages captured will be deleted from the device.” While cell phone use in the courtroom is strictly prohibited, laptops may be used, depending upon the policy of the judge, but they must run on battery power. The rules also state that “[h]and-held audio recorders, pda’s and other electronic devices are not permitted for use in the courtroom unless permission is given to do so.”

A standing order in the San Francisco Superior Court issued February 2, 2012 specifically includes cell phones in its definition of “media coverage equipment,” which may only be used in designated media areas in the courthouse.

**Connecticut**

The rules of the Superior, Appellate, and Supreme Courts of Connecticut all address the use and possession of electronic devices. In Superior Courts, cell phones

---


358 Id.

359 Id.

360 Standing Order (Photography, Broadcasting and Recording in the Civic Center Courthouse), San Francisco Superior Court (Feb. 2, 2012), available at http://www.sfsuperiorcourt.org/sites/default/files/pdfs/Media%2BCCC%2BStanding%2BOrder.pdf.
and computers can be taken into the courtroom but are not permitted to take photos or video, and personal computers can only be used for note taking.\textsuperscript{361} In the appellate courts, cell phones, PDAs, personal computers, and other electronic devices can be taken into the courtroom but cannot be used to photograph, record, or broadcast.\textsuperscript{362}

**State v. Komisarjevsky:** The issue of new technology as a reporting tool came to a head in the triple-homicide trial of Joshua Komisarjevsky, a New Haven case that aroused intense media interest.\textsuperscript{363} The case stemmed from the July 2007 kidnapping and murders of 48-year-old Jennifer Hawke-Petit and her two daughters, ages 17 and 11, at their home in Cheshire, Connecticut. Two parolees were arrested shortly after fleeing the home, which had been set on fire. Joshua Komisarjevsky and Steven J. Hayes were arrested on July 23, 2007 and charged with capital murder in connection with the deaths.\textsuperscript{364} The pair was tried separately, and it was Komisarjevsky’s 2011 trial that prompted a ruling on Twitter in the courtroom.

In addition to the murder charges—of which he was convicted and ultimately sentenced to death—Komisarjevsky was also accused of sexually assaulting one of the victims. Because of the sexual assault charge, Connecticut law prohibited “broadcasting, televising, recording or photographing” the trial.\textsuperscript{365} The media sought to

\begin{small}


\textsuperscript{365} CONN. PRACTICE BOOK § 1-11(b).
\end{small}
use Twitter to report from the trial. The defendant responded by filing a motion seeking to prohibit “the use of electronic devices by spectators . . . during the course of all court proceedings.”\textsuperscript{366} He claimed that Twitter was a form of broadcasting and was therefore prohibited by Connecticut law.\textsuperscript{367}

Tracing the origins of the term “broadcast” to its beginning as an agricultural term describing seed being scattered, the trial court declined to extend the categorical prohibition on broadcasting to Twitter.\textsuperscript{368} It emphasized the caution that courts should demonstrate in extending old legislation to new technologies, suggesting that the rulemaking process would be a more appropriate venue to extend the ban to Twitter and similar technology. The court also declined restrict electronic devices in the courtroom, pursuant to its discretionary authority under a separate rule. It rejected the Defendant’s argument that Twitter reports “tend to be either trivial or inaccurate and thus play no useful role in educating the public about the judicial process,” stating:

The short answer to this contention is that control of the substance of courtroom reporting is not an appropriate exercise of the judicial function in a free society. Jurors are routinely instructed to avoid media reports concerning the case. The court should ignore such reports as well. This limited judicial role is recognized throughout the English-speaking world . . . Although the court retains the ability to restrict disruptive activity, the content of electronic or other reporting cannot be considered in making this determination.\textsuperscript{369}

\begin{flushright}
\textsuperscript{367} \textit{Id.} at *2.
\textsuperscript{368} \textit{Id.} at *10.
\textsuperscript{369} \textit{Id.} at *11-12 (internal citations and quotations omitted).
\end{flushright}
Delaware

Policies on personal electronic devices vary among the types of courts and the locations. In Superior Courts in Delaware, cell phones, PDAs, notebooks and any other type of personal electronic devices are prohibited. Some authorized individuals are allowed to bring electronic devices into courtrooms at Justice of the Peace locations.

District of Columbia

Although Superior Court rules prohibit the use of electronic devices in D.C. courtrooms, “members of the media may be given permission by the presiding judicial officer to use electronic devices in the courtroom for official business.” Even with permission, no photographs, recordings, or transmissions are permitted. There may, however, be some opportunities to live-blog at the discretion of the presiding judge.

Florida

While the rules relating to cameras in the courtroom in Florida do not specifically address mobile technology, the law does not preclude it. In fact, Florida has both an appellate decision on the issue as well as a high-profile trial that recently illustrated the utility of mobile technology to journalists.


373 Id.

**Morris Publishing Co. v. Florida:** Despite previous success in live-blogging from high-profile murder trials, the *Florida Times-Union* was booted from the courtroom on the second day of a murder trial.\(^{375}\) Brothers Tajuan, Terrell, and Rasheem Dubose faced first-degree murder charges in the death of an 8-year-old girl killed in a drive-by shooting in Jacksonville.\(^{376}\) The 2006 murder was compelling not only for its circumstances—the girl was watching “Cat in the Hat” with her younger cousins and protectively dove on top of them—but also because it was in many ways the “final straw” for a community weary of having the highest murder rate in the state of Florida.\(^{377}\) It was no surprise then, that the live-blog of the trial was popular with readers.\(^{378}\) The blog not only provided updates on the trial, but had an interactive component that allowed online users to ask questions about the proceedings or notify the newspaper of technical difficulties.\(^{379}\)

*Times-Union* reporter Bridget Murphy blogged from the back of the courtroom near an electrical outlet. To her surprise, on the afternoon of the second day of trial, the judge ordered Murphy and another reporter to leave the courtroom. The judge said the computer was distracting for the jury and violated rules on the number of cameras permitted in a courtroom.\(^{380}\) The newspaper’s attorneys arrived within the hour and

---


\(^{376}\) *Id.*

\(^{377}\) *Id.*

\(^{378}\) *Id.*

\(^{379}\) *Id.*

\(^{380}\) *Id.* See also Fla. R. Jud. Admin. 2.450.
argued that Murphy should be allowed to stay, but Haddock denied the request. The newspaper appealed, arguing that trial court failed to consider less restrictive alternatives when it prohibited the reporter from blogging and engaging in newsgathering, especially in a Florida courtroom that is presumptively open. The *Times-Union* also argued that the judge’s strict interpretation of Rule 2.450 of the Florida Rules of Judicial Administration as allowing no more than two transmitting devices in courtroom was in error.

In its short, unpublished opinion on the matter, the First District Court of Appeal granted the *Times-Union*’s emergency petition for review in part, quashing the order and remanding the issue to the trial court.\(^{381}\) The First District found that Rule 2.450 “does not apply to the use of laptop computers, regardless of whether the device is used to transmit information outside the courtroom.”\(^{382}\) The trial court, did however, retain the discretion to prohibit any device it found to be disruptive or distractive to the proceedings.\(^{383}\) Because the trial court initially claimed the laptop was distracting but later issued an order relying on Rule 2.450, the First District sent the issue back to the trial judge “with directions to allow petitioner’s reporter the use of a laptop computer in the courtroom unless the court finds a specific factual basis to conclude that such use cannot be accommodated without undue distraction or disruption.”\(^{384}\)


\(^{382}\) *Id.*

\(^{383}\) *Id.*

\(^{384}\) *Id.*
After the First District’s decision, the judge continued the restrictions, resulting in the reporter and a photographer for the newspaper working shifts to cover the trial—they were not permitted to use the camera and laptop at the same time. However, when one of the brothers went on trial again the following month—the first trial resulted in a hung jury—the judge agreed to let the *Times-Union* blog from the courtroom at all times. The judge told the newspaper’s attorney that he was pleased with the newspaper’s coverage and how it answered readers’ questions online.

---


387 *Id.* An estimated 15,000 people viewed the trial blog. The newspaper even brought together some of the more active participants on the blog to meet, with an appearance by the prosecutor. Bridget Murphy, *Bloggers unmasked: Dubose murder trial junkies meet face to face*, FLA. TIMES-UNION, Mar. 17, 2010, available at http://jacksonville.com/news/metro/2010-03-18/story/bloggers_unmasked_dubose_murder_trial_junkies_meet_face_to_face.
### DUBOSE CRIMINAL TRIAL BLOG

**Wednesday, January 13, 2010**

<table>
<thead>
<tr>
<th>Time</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>12:42</td>
<td>Times-Union moderator: Good afternoon. We are currently waiting for opening arguments to begin in the Dubose Trial. At that point we will begin our live coverage.</td>
</tr>
<tr>
<td>3:28</td>
<td>Bridget Murphy: If she was alive, DreShawna Davis would be 12 right now. She likely would be in seventh grade. This trial will be the forum for jurors to decide if three Jacksonville brothers with the last name DuBose ended her life on July 26, 2006. She was 8 then and watching a The Cat in the Hat video in her bedroom with 2 younger cousins.</td>
</tr>
<tr>
<td>3:29</td>
<td>Bridget Murphy: As court employees prepare for the trial to begin in a few minutes, I will catch you up on the case a bit.</td>
</tr>
<tr>
<td>3:32</td>
<td>Bridget Murphy: DreShawna died on top of her cousins’ bodies to protect them when one of 29 bullets that pierced her grandmother's Third Avenue home in Jacksonville's Riverview section killed her.</td>
</tr>
<tr>
<td>3:33</td>
<td>Bridget Murphy: Prosecutors believe the run-by shooting was payback for an attempted robbery by the 8-year-old's uncle that same day. He has been serving prison time for that crime but is expected to testify at the trial.</td>
</tr>
<tr>
<td>3:34</td>
<td>Bridget Murphy: On trial for their lives are Rasheem Dubose, 25, and his younger brothers Terrell &quot;PJ&quot; DuBose, 23, and Tajuan &quot;Hammer&quot; DuBose, 21. All three defendants face the death penalty if convicted.</td>
</tr>
<tr>
<td>3:45</td>
<td>Bridget Murphy: I was among the reporters who covered the homicide when it happened. I have interviewed members of the victim's family and the grandmother of the defendants. I also was one of the many people in Jacksonville who looked upon DreShawna in her white coffin at Bethel Baptist Institutional Church. Her death stirred an outcry against the city's rising homicide rate, getting the attention of both Jacksonville News &amp; Is top crime fighter and top politician.</td>
</tr>
<tr>
<td>3:35</td>
<td>Bridget Murphy: Along with daily articles in The Florida Times-Union by Paul Pinkham, I will be doing live blogging from the court room. You can get involved in the discussion by posting comments. Our TV news partner First Coast News will be providing a live image and sound of what happening's also on the Times-Union's &amp; Is Web site at Jacksonville.com.</td>
</tr>
<tr>
<td>3:37</td>
<td>Bridget Murphy: I believe there are two juries because the prosecution plans to use a statement that only one of the brothers made to police. The other two are getting a separate jury. They didn't say much in police interviews.</td>
</tr>
<tr>
<td>3:38</td>
<td>Bridget Murphy: Court officials erected a second jury box in the court room to seat the second jury. It actually is a band podium that's been used at the Jacksonville Landing for performances, court officials confirmed.</td>
</tr>
</tbody>
</table>

---

**Figure 5-1.** Excerpt from the *Time-Union*'s interactive live blog in the Dubose trial.³⁸⁸

---

**State v. Casey Anthony:** While the Dubose trial was high-profile in the Jacksonville community, the 2011 trial of Casey Anthony garnered international attention. Anthony was accused of the murder of her 2-year-old daughter, and the 36-day trial of the young Orlando mother was one of the most intensely watched in recent

³⁸⁸ The full transcript of the blog prior to the trial court's decision to eliminate the laptop is available in the appendix to the *Time-Union*'s brief on appeal to the First District Court of Appeal, which is available at [http://www.citmedialaw.org/threats/circuit-court-v-florida-times-union](http://www.citmedialaw.org/threats/circuit-court-v-florida-times-union).
legal history. Coverage of the Anthony trial is remarkable in that despite the throngs of spectators and members of the press, the intense scrutiny, and the high stakes of the trial, there were no major disputes over coverage. The trial was televised, tweeted, live-blogged, and covered in print. Demand for coverage was so great that users of iPhone, iPad, or iPod could download an app to watch a live stream of the trial. At one point during the trial, the app was the top seller in the “News” app category and ranked 64th overall.

Coverage of the Anthony trial proceeded under an order governing members of the press. The order also incorporated the Ninth Judicial Circuit’s standing order Governing Special Interest/High Profile Proceedings. The order recognized the changing nature of the media, and for the purposes of issuing media credentials defined “new media”:

An online organization which was a previously established, independent site that contains regularly updated original news content above and beyond links, forums, troubleshooting tips and reader contributions; said content is thoroughly reviewed by an independent editor before publication; has a readership of more than 1,000 hits per month; and has previously


covered the judicial branch. Fan sites, web logs and personal web sites do not qualify as “new media.”

The media, unlike the public, were permitted “to use their cell phones in the courtroom for sending and receiving written, electronic information only,” with the use of cameras in cell phones “absolutely prohibited.” Members of the press not seated in designated media seats (available on a first-come, first-serve basis) were required to adhere to rules governing the public, which included a prohibition on use of cell phones, laptops, or other electronic devices. Due to the potential for distraction, only “virtual, silent keyboards” were permitted.

The Orlando Sentinel, which covered the case before it made national headlines, covered the trial in a variety of ways, including a live chat on its website and frequent Twitter updates. The live chat on the Orlando Sentinel website featured updates on courtroom events combined with questions and comments by readers. The reporter often answered questions about the legal process. In Figure 5-2, the reporter explains why a Miranda issue did not pose a problem in the case. The live chat was powered by CoveritLive, which describes itself as “the leading live-event publishing platform” and boasts clients such as ESPN, USA Today, the NFL, BBC, ABC, and Mattel. The

---


394 Id.

395 Id.

396 Id.

397 In Miranda v. Arizona, 384 U.S. 436 (1966), the U.S. Supreme Court established the right of criminal suspects to be advised of their rights prior to criminal interrogation. Suspects must be notified of their right to counsel and their protection against self-incrimination.

Twitter feed provided periodic updates on courtroom events, often describing interactions between participants in addition to descriptions of the testimony (see Figure 5-3 for an excerpt of the Twitter page).

According to the Orlando Sentinel, “[s]ocial media sites Twitter and Facebook revolutionized the 36-day Casey Anthony trial by casting a far-reaching net of news across the globe, bringing minute-to-minute updates directly into people’s smartphones, tablets and work and home computers.” When Anthony’s controversial “not guilty” verdict was handed down on July 5, 2011, the keywords “casey anthony” were used 34,000 times on Twitter. On Google, “caylee anthony” was the third-most searched term in the world shortly after the verdict was handed down. On a local level, more than 75,000 subscribers to Orlando Sentinel electronic alerts received word that the verdict had been reached.

---


400 Id.

401 Id.
Live Chat: Casey Anthony murder trial, Monday, June 13

8:24 a.m. EDT, June 13, 2011

Casey Anthony Trial June 13

8:56 Dorothy Famiano: Is there any sound yet?

8:56 rupdike3: good morning from Upstate New York!

8:56 Maureen Belanger: it's on the jail house tape. she told her brother she was read her rights

8:56 CaseyGulity: Not yet, Dorothy.

8:56 OrlandoSentinel: Whomever asked about the Miranda issue, that has repeatedly been argued and settled. She was eventually read her rights. But early on in the case she wasn’t a suspect. She was the mother of a missing child.

If you are new to this chat, please keep in mind a few guidelines we have: Expletives or acronyms for expletives are never allowed. We do not like you to write in all caps. Do not launch any type of informal poll.

And most importantly, we ask that you stay on topic and discuss what is actually unfolding in court at this moment. There are thousands of readers on this chat at any given time and there are only two Sentinel employees who moderate this. We ask that you respect your fellow readers who want a lively discussion about what is occurring today. We can and do delete comments and block users who cannot respect our guidelines. Thank you!

Figure 5-2. Excerpt from the Orlando Sentinel's live chat during the Anthony trial.402

---

402 Image associated with "Dorothy Famiano" has been obscured by the author of this study.
Figure 5-3. Screenshot from the Orlando Sentinel's Twitter feed (@oscaseyanthony) on the day of the verdict.
Hawaii

Hawaii’s rules on cameras in the courtroom expressly permit anyone—including non-media members of the public—to seek permission to “tape record” proceedings. The person must use “a small, handheld recorder with a built-in microphone and operated from the seat of the person who made the request.”

Maine

A statewide administrative order requires that cell phones, computers, and other electronic devices be turned off in the courtroom. Devices with cameras that are not authorized for use could be subject to confiscation.

Michigan

Use of electronic devices in Michigan courtrooms is governed by Michigan Court Rule 8.115, which authorizes individual court facilities to determine policies outside the courtroom and the chief judge to determine policies inside the courtroom. The chief judge’s policy is subject to the following conditions:

[N]o photographs may be taken inside any courtroom without permission of the court. The policy regarding the use of cell phones or other portable electronic communication devices shall be posted in a conspicuous location outside and inside each courtroom. Failure to comply with this section or with the policy established by the chief judge may result in a fine, including confiscation of the device, incarceration, or both for contempt of court.

---

403 Rule 5.2(a)(2), R. S. Ct. Haw.


Nevada

Portable electronic devices such as cell phones and laptops can be used if a judge permits it. If a member of the press wants to use a portable electronic device to record or broadcast proceedings, he would need to go through the same procedures set forth for traditional cameras. Electronic devices can be used in the courtroom to transmit and receive data communications (presumably covering live-blogging, tweeting, etc.) but not for phone calls.\textsuperscript{406} Rule 246 of the Nevada Supreme Court, titled “Other devices,” states:

1. Unobtrusive tape recorders or other electronic devices such as cellular phones, personal digital assistants (PDAs), laptop computers or other similar functioning devices used to take notes located on or near the news reporter may be allowed by the judge. It will be understood that these devices will be used only for accurate transcriptions of the court proceedings, and are not to be used for broadcast.

2. Electronic devices may be used in the courtroom to transmit and receive data communications, provided that the equipment does not make any disruptive noise or interfere with court equipment. Electronic devices may not be used for telephone calls in the courtroom.

3. Notwithstanding the provisions of Rule 230, tape recorders or other electronic devices may be used as described in this rule. Electronic devices may not be used for photography, or audio or video recording for broadcast or transmission, however, unless permission is obtained pursuant to Rule 230. Use of an electronic device without permission, other than as described in this rule, may result in the confiscation of the device.\textsuperscript{407}

New Hampshire

Cell phones, laptops, and other portable electronic devices can be carried in New Hampshire courtrooms but must be put on silent mode. Photographic or recording

\textsuperscript{406} Part IV (Rules 229-246), Rules on Electronic Coverage of Court Proceedings, Nev. S. Ct. R., \textit{available at} http://www.leg.state.nv.us/Division/Legal/LawLibrary/CourtRules/SCR.html.

\textsuperscript{407} \textit{Id.} at Rule 246.
capabilities in electronic devices can only be used in compliance with traditional cameras in the courtroom law.\textsuperscript{408}

\textbf{Pennsylvania}

While there is no statewide policy directly addressing electronic devices in courtrooms, the practice does occur.\textsuperscript{409} The high-profile trial of Jerry Sandusky, a former Pennsylvania State University (Penn State) assistant football coach who was convicted in 2012 of dozens of counts of molesting children, is a good example of how a trial judge struggled with the new technology in the courtroom.

\textbf{Commonwealth v. Sandusky}: The trial of Gerald “Jerry” Sandusky in Centre County, Pennsylvania, was covered intensely by the press, as the nation wondered if the one-time beloved football coach and founder of a charity for underprivileged children would be convicted of molesting 10 children.\textsuperscript{410} The Sandusky investigation also resulted in criminal charges against Penn State officials for covering up earlier allegations, the firing of head coach Joe Paterno in 2011, and the vacating of all of Penn


State’s wins from 1998 through 2011. Sandusky, 68 at the time of the trial, was convicted and sentenced to 30-60 years in prison.

Cameras are not permitted in Pennsylvania criminal proceedings (and only in limited civil proceedings), so the media looked to text-based transmissions such as live-blogging and Twitter to provide real-time coverage. Presiding Judge John Cleland issued a decorum order governing jury selection and trial on May 30, 2012, wherein members of the public were prohibited from bringing in electronic devices, but an exception was made for the press:

Only reporters with proper credentials, as determined by the Sheriff, will be permitted to possess or use in Courtroom 1 or the satellite courtroom any cell phone, laptop computer, smart phone, or similar electronic device. Such devices may be used during trial for electronic based communications. **However, the devices may not be used to take or transmit photographs in Courtroom 1 or the satellite courtroom; or to record or broadcast any verbatim account of the proceedings while court is in session.**

The prohibition on sending “any verbatim account of the proceedings” raised concerns among members of the press, who questioned whether the language of the decorum order permitted direct quotations in their courtroom dispatches. As a result, several media entities moved to intervene for the limited purpose of seeking clarification of the

411 Id.

412 Id. (emphasis in original).


decorum order. The media intervenors argued that they understood the provision only prohibited transmitting photos, audio, and video, but they were advised by a court administrator that the order barred the press from using direct quotations in text-based reports sent from inside the courtroom. The media argued that the administrator’s interpretation was inconsistent with the order, which permitted direct quotations on its face, and that several other reasons warranted unrestricted transmissions of direct quotes. A prohibition on direct quotes would result in less accurate coverage, impose an impractical burden on reporters, and would be unconstitutional, the media argued in its motion. Furthermore, direct quotes published during the trial would not prejudice any interest at stake in the trial or impede the judicial process.

Judge Cleland ultimately decided to relieve the press of the burdens of a restriction on sending direct quotations from the courtroom, albeit not in the way the

---


417 Id.

418 Id.

419 Id. In discussing the difficulties of implementing a restriction on direct quotations, the media wrote:

Would a 140-character tweet that contains a single sentence from a witnesses’ testimony be considered a “verbatim account”? Would a blog that contains a quoted phrase from a lawyer’s question cross the line? Would an email from a reporter that uses the single word “overruled” after Your Honor rules on an evidentiary objection, or “yes” or “no” in quoting a response to a question be prohibited? There is simply no workable way for reporters to avoid using any direct quotes in their text-based reports, and there is no clear line that can be drawn to inform them about what is permissible and what is prohibited, which will possibly subject them to serious sanctions.

420 Id.
press intended. In response to the motion for clarification, Judge Cleland still allowed credentialed reporters to have electronic devices in the courtroom, but with the following restriction:

Such devices shall not be used during trial for electronic based communications, and shall not be set in a mode that permits transmission of any form of communication to any person or device either in or out of the Courthouse or Courthouse Annex.

As the proceedings moved forward, reporters would be able to use devices as “tools of the trade,” presumably for note-taking purposes, but not as tools to provide real-time coverage. In explaining the change, Judge Cleland first explained how he came to the initial conclusion that text-based, non-verbatim reports would be permitted under Pennsylvania law. He explained that he initially interpreted the controlling authority—Rule 112 of the Pennsylvania Rules of Criminal Procedure and Canon 3(7) of the Pennsylvania Code of Judicial Conduct—to permit courtroom updates. Judge Cleland reasoned that tweets and texts were not equivalent to the “broadcasting” prohibited by the law “as long as the communication did not include a verbatim

---


423 In his order directing that the decorum order be amended, Judge Cleland wrote that the order “shall be amended to specifically provide that while credentialed reporters admitted to Courtroom 1 or the satellite courtroom may possess and use specified electronic devices as ‘tools of the trade’ such devices shall not be set in a mode that permits transmission of any form of communication to any person or device either in or out of the Courthouse or Courthouse Annex.” Commonwealth v. Sandusky, Case No. CP-14-CR-2421-2011 and CP-14-CR-2422-2011, Memorandum and Order, (Court of Common Pleas of Centre County, June 4, 2012), available at http://www.co.centre.pa.us/media/sandusky.asp.

424 Id.
He also pointed to a report by the Criminal Procedural Rules Committee that described these communications as a misinterpretation of the Rule:

Permitting reports from the courtroom while court is in session did not, in my view, constitute “broadcasting” as long as the reports did not contain simultaneous verbatim quotations. It is readily apparent from the allegations in the Media’s motion, however, that the standard I applied in my definition is confusing to reporters, unworkable, and therefore, likely unenforceable.

If reporters are permitted to electronically transmit reports from the courtroom while court is in session and which contain verbatim accounts of the proceedings, it cannot be considered anything other than exactly the kind of broadcasting explicitly prohibited by the Rule.

Therefore, based on the Media’s own arguments, I am compelled to rescind paragraph 7 of the Decorum Order. While I will permit reporters to bring their electronic “tools of the trade” into Courtroom 1 and the satellite courtroom, they must not be in a mode that permits transmission of any form of communication to any person or device either in or out of the Courthouse or Courthouse Annex.

While real-time coverage of the Sandusky trial ultimately failed to occur, the issues surrounding Judge Cleland’s initial willingness to push the limits of the controlling authority and his reaction to the media’s pushback are highly illustrative of the obstacles posed by the application of current law to new technology.

Rhode Island

Cell phone use is strictly prohibited in Rhode Island courtrooms. This includes the use of cell phones for audio recording, video recording, or photography.

425 Id.

426 Id. See also Proposed rules changes in Pennsylvania address tweeting in court, CONNECTED, Feb. 2012, www.ncsc.org/Newsroom/Connected/2012/0212-Connected.aspx. The rules committee proposed changes that would prohibit the “transmission of communications” using cell phones, computers, or tablets during court proceedings. Id.

Courthouse rules also prohibit any type of photographic or audio-visual equipment other than that contemplated by the state’s other rules regarding coverage (which limit one television camera per trial court).\textsuperscript{428}

**Utah**

Utah’s new rule governing electronic coverage in courtrooms, effective April 1, 2013, addresses portable electronic devices. Their use in courtrooms is allowed if done so quietly, and the rule appears to permit live-blogging and tweeting without additional permissions. However, requests to use the portable electronic device to record or transmit images or sound must be made 24 hours in advance and are subject to approval by the presiding judge. The rule allows the judge to further restrict usage of electronic devices, but encourages them “not to impose further restrictions unless use of a portable electronic device might interfere with the administration of justice, disrupt the proceedings, pose any threat to safety or security, compromise the integrity of the proceedings, or threaten the interests of a minor.”\textsuperscript{429}

**Vermont**

Electronic devices can be carried into Vermont courthouses but must be powered off before the person enters the courtroom. The judge may grant permission, however, to use the devices in the courtroom. Image recording or photographing capabilities in


electronic devices can be used only if the subject consents to being photographed or recorded.  

Federal Law and Mobile Technology in the Courts

There is published case law in the area of mobile technology in the federal courts. This case law evolved in the context of Rule 53 of the Federal Rules of Criminal Procedure, which prohibits “broadcasting” as well as the Judicial Conference’s general prohibition on coverage in criminal and civil trials. Accordingly, live blogging and tweeting simultaneous coverage of federal proceedings offers a new and unique opportunity to cover this part of the judiciary.  

In re Sony BMG Music Entertainment: Webcasting Motions Hearing

When record companies went after individuals who downloaded songs for free, a consolidated set of the lawsuits made its way to the District of Massachusetts. In December 2008, defendant Joel Tenenbaum asked the court to allow the webcast of a non-evidentiary motions hearing. Courtroom View Network would record and transmit the proceedings to a Harvard Law School site, and from there the proceedings would be streamed to the general public. Despite the objections of the record companies, District Court Judge Nancy Gertner granted the motion. In response, the record

---


companies asked the First Circuit Court of Appeals to intervene, arguing that the district court’s local rule prohibited the webcasting,\textsuperscript{434} as did the stated policy of the Judicial Conference of the United States.\textsuperscript{435}

The First Circuit recognized that it must address a question of first impression: “does a federal district judge have the authority to permit gavel-to-gavel webcasting of a hearing in a civil case?”\textsuperscript{436} The court started its analysis by looking at the district court’s Local Rule 83.3, which prohibited recording or broadcasting “[e]xcept as specifically provided in these rules or by order of the court.”\textsuperscript{437} Judge Gertner granted the motion for coverage based on this proviso, interpreting “by order of the court” as a discretionary catchall provision that permitted an ad hoc, case-specific determination of whether broadcasting should be permitted. The First Circuit rejected Judge Gertner’s interpretation. The court reasoned if that interpretation, based on subsection (a) of Rule 83.3, were allowed to persist, subsection (c) of the same Rule would be rendered “wholly superfluous.”\textsuperscript{438} Subsection (c) only permits the court to allow photography, recording, and broadcasting to preserve evidence, perpetuate the record, or in connection with investitive, ceremonial, or naturalization proceedings.\textsuperscript{439}

The court also determined that the narrow interpretation of the local rule was “strongly supported” by the Judicial Conference of the United States’ policy on

\textsuperscript{434} At issue was Local Rule 83.3 for the U.S. District Court for the District of Massachusetts.

\textsuperscript{435} \textit{In re Sony BMG Music Entm’t}, 564 F.3d 1 (1\textsuperscript{st} Cir. 2009).

\textsuperscript{436} \textit{id.} at 2.

\textsuperscript{437} \textit{id.} at Appendix A; Local R. 83.3, Photographing, Recording and Broadcasting, D. Mass. Local R.

\textsuperscript{438} \textit{id.} at 5.

\textsuperscript{439} \textit{id.} at Appendix A.
broadcasting. A second source of support was found in the archives of the First Circuit Judicial Council, which in 1996—in response to the urging of the Judicial Conference—passed a resolution “to continue to bar the taking of photographs and radio and television coverage of proceedings in the United States district courts within the circuit, except as otherwise provided for ceremonial occasions.” Accordingly, the court held, the local rule, Judicial Conference Policy, and the circuit council resolution, “[s]eparately and collectively . . . undermine the district judge’s assertion of authority to allow webcasting.”

In a concurring opinion, Circuit Judge Lipez wrote that “the inescapable legal conclusion does not discredit the policy concerns that animated, at least in part, the district court decisions.” Judge Lipez pointed out the irony that only those physically present in the courtroom will be able to hear the parties argue the merits of the motion in district court, but almost immediately after oral argument in the First Circuit ended, the public would be able to access a recording. Judge Lipez noted the importance of public access to court proceedings, and recommended that the rule, policy, and resolution all be promptly reexamined in light of “new technological capabilities [that] provide an unprecedented opportunity to increase public access to the judicial system in appropriate circumstances.”

---

440 Id. at Appendix C.
441 Id. at 8.
442 Id. at 10-11 (Lipez, J., concurring).
443 Id. at 11-12.
**Hollingsworth v. Perry: Streaming of the Proposition 8 Civil Trial**

A dispute over streaming coverage of civil trial proceedings made its way to the U.S. Supreme Court, which prohibited the coverage on other grounds but still took the opportunity to voice concerns about cameras and technology in the court. The case, *Hollingsworth v. Perry*,\(^444\) originated in the Northern District of California, where two same-sex couples challenged the constitutionality of Proposition 8, an amendment to the California Constitution that restricted the recognition of marriage to opposite-sex couples. The amendment was adopted in 2008 and in 2009 became the subject of a federal lawsuit.\(^445\) The District Court issued an order allowing the nonjury trial to be broadcast live by way of streaming audio and video. The order was made possible by an amendment to the local rules that occurred shortly before trial. The live broadcast would not be on the internet but rather to viewing areas in federal courthouses around the country.\(^446\) The broadcasts would be made available online after a delay.\(^447\)

The defendants challenged the streaming, “arguing that the District Court violated a federal statute by promulgating the amendment to its local Rule without sufficient opportunity for notice and comment and that the public broadcast would be


\(^{445}\) Id.

\(^{446}\) Id. Closed-circuit feeds were utilized in the 1997 trial of Timothy McVeigh, who was convicted and eventually executed for his role in the 1995 bombing of a federal building in Oklahoma City that left 168 dead and more than 500 injured. Congress passed a law requiring the closed-circuit feeds when a criminal trial was moved out of state or more than 350 miles so that survivors could follow the proceedings. McVeigh’s trial was moved from Oklahoma City to Denver. The trial judge rejected defense arguments that Congress was impermissibly exerting power over the judiciary. Steven K. Paulson, *Judge Rules To Allow Closed-Circuit Coverage of Bombing Trial*, Assoc. Press., July 15, 1996, available at http://www.apnewsarchive.com/. See also Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, § 235, 110 Stat. 1214 (1996); 42 U.S.C. § 10608 (2000).

\(^{447}\) Id.
violate their due process rights to a fair and impartial trial.” The Ninth Circuit denied the defendants’ bid to block the streaming of the trial, so the defendants requested that Supreme Court stay the order permitting streaming.

The Supreme Court, in a per curiam opinion, began its discussion of the case by noting that it would not “express any views of the propriety of broadcasting court proceedings generally” but would instead confine its review to the “narrow legal issue” of whether the District Court complied with federal law in amending its local rules. The Court concluded that it had not, and instead “attempted to change its rules at the eleventh hour to treat this case differently than other trials in the district.” In discussing the importance of notice and the opportunity for public comment on the broadcasting rule changes, the Court emphasized the irreparable harm that could come to trial participants:

The trial will involve various witnesses, including members of same-sex couples; academics, who apparently will discuss gender issues and gender equality, as well as family structures; and those who participated in the campaign leading to the adoption of Proposition 8. This Court has recognized that witness testimony may be chilled if broadcast. See Estes v. Texas, 381 U.S. 532, 547 (1965); id., at 591 (Harlan, J., concurring). Some of applicants’ witnesses have already said that they will not testify if the trial is broadcast, and they have substantiated their concerns by citing incidents of past harassment. These concerns are not diminished by the fact that some of the applicants’ witnesses are compensated expert witnesses. There are qualitative differences between making public appearances regarding an issue and having one’s testimony broadcast throughout the country . . . And witnesses subject to harassment as a result of broadcast of their testimony might be less likely to cooperate in any future proceedings.450

448 Id.
449 Id.
450 Id.
Justice Breyer, joined by Justices Stevens, Ginsburg, and Sotomayor, authored a dissent, arguing that there was in fact adequate notice and opportunity for public comment on the rule changes. Justice Breyer rejected the Court’s conclusion that defendants and witnesses would suffer irreparable harm if the broadcasts took place, noting that “[n]either the applicants nor anyone else ‘has been able to establish that the mere presence of the broadcast media inherently has an adverse effect on [the judicial] process.’” Justice Breyer also rejected the Court’s claim that witnesses would be irreparably harmed, especially where the witnesses had not asked the Court to set aside the District Court’s order and were “already publicly identified with their cause” and had appeared on television or internet broadcasts. Justice Breyer noted that the broadcasts would only be delivered to five other courtrooms, coverage which paled in comparison to the hundred of news outlets already covering the trial.

**United States v. Shelnutt: Tweet Coverage of a Federal Criminal Trial**

In *United States v. Shelnutt*, decided in 2009, a reporter for the *Columbus Ledger-Enquirer* in Columbus, Georgia, requested to use his cell phone during the criminal trial of an attorney accused of laundering money from a drug organization. The reporter wanted to send tweets directly from the courtroom. The court refused the reporter’s request, finding that Rule 53 of the Federal Rules of Criminal Procedure,

---

451 *Id.* (Breyer, J., dissenting) (citing Chandler v. Florida, 449 U.S. 560, 57879 (1981) and M. COHN & D. DOW, CAMERAS IN THE COURTROOM: TELEVISION AND THE PURSUIT OF JUSTICE 62-64 (1998) (canvassing studies, none of which found harm, and one of which found that witnesses “who faced an obvious camera, provided answers that were more correct, lengthier and more detailed.”)).

452 *Id.*

453 *Id.*


455 *Id.*
which prohibits “broadcasting” from criminal proceedings, did not permit it. The court took a broad view of the term broadcasting, pointing out that the word also meant “casting or scattering in all directions” and “the act of making widely known.” “It cannot be reasonably disputed that ‘twittering,’ as previously described, would result in casting to the general public and thus making widely known the trial proceedings,” the opinion stated.\footnote{456} The court also looked to the legislative history of Rule 53, finding that drafters intended to take a broad view of the term and the technology it covered. A footnote to the opinion pointed out that due to the media interest in the case, a “media room” would be available during the trial. The room would be close to the courtroom entrance and would offer members of the press the opportunity to “use their electronic reporting devices near but outside of the courtroom.”\footnote{457}

**Instances of Permitted Electronic Coverage in Federal Courts**

*In Re Sony, Hollingsworth, and Shelnutt* illustrate instances where federal courts rejected various types of live coverage. *In Re Sony* and *Hollingsworth* both involved trial court judges who were open to the idea and higher courts who disapproved the plans based on court rules. However, the cases discussed below illustrate cases where federal district court judges successfully experimented with live coverage from federal

\footnote{456}{Id. The Court described Twitter and its process as:

Twitter is a social networking and micro-blogging service that invites its users to answer the question: “What are you doing?” Twitter’s users can send and read electronic messages known as “tweets.” A tweet is a short text post (up to 140 characters) delivered through Internet or phone-based text systems to the author’s subscriber. Users can send and receive tweets in several ways, including via the Twitter website.

*Id.*}

\footnote{457}{Id. at n. 2.}
courts, finding a way to reconcile Rule 53 with the requests of modern journalists to use mobile technology in the courts.

**United States v. Libby (D.D.C.)**

One of the earliest forays into live-blogging in federal courts occurred in the 2007 trial of I. Lewis “Scooter” Libby for perjury and obstruction of justice. Libby was former Vice President Dick Cheney’s Chief of Staff and was indicted for allegedly lying to government agents and a grand jury during an investigation of the leak of covert CIA agent Valerie Plame Wilson’s identity. Libby was indicted in 2005 and went to trial in early 2007. For the first time in federal court, two of the 100 seats in the federal courthouse reserved for the press were reserved for bloggers. The press credentials were the result of lengthy efforts by the Media Bloggers Association to gain access for bloggers. While the bloggers weren’t able to live-blog directly from the courtroom, they were able to watch video of the proceedings in a nearby room and make blog posts using the court’s wireless internet connection.

---


459 *Id.*


461 *Id.*

Zeidenberg

Russett treated exactly same as Woodward, Kessler, Pincus. Why would the lure of this be so great with Russett, but Woodward, Kessler and Pincus could resist. BC of feud? Bad blood? You’d have to believe that when Russett got call from Eckenrod, and he told Russett that Libby said Russett told him, that would have been his chance to stick it to Libby. He’d have to continue that lie. Evidence of the feud is completely absent from Trial. Wouldn’t you think that Libby would have known about the bad blood when he went before GJ? Wouldn’t you think that Martin who said Russett was [an easy mark]? It’s a sign of how desperate the defense is to discredit Russett that they would even suggest such a thing. He doesn’t remember any of those other conversations. But this one, he says he remembers it perfect.

What’s next. Cooper.

You remember Cooper said at end of conversation. He said What have you heard about Wilson’s wife sending him on the trip. Libby’s response, “yeah, I’ve heard about that.” Wells suggested that differences between Libby’s version and Cooper’s version, is just difference between a few words. Cooper said, I heard that too. And Libby said, I heard that too, but I don’t know if it’s true. But is that the evidence in the case. Do you remember what Libby ACTUALLY said what occurred in that conversation? I’d like to play portion of what Libby said he said to Cooper.

Libby, then Cooper said, why did Wilson say it?

[Libby’s GJ tape: I would have thought, off the record, that CIA wouldn’t tell, who asked about it. Conversation VP has is supposed to be confidential. They’d said that CIA tried to do it. I wouldn’t have thought that he heard this, but if it’s possible he heard something unofficial, it was wrong. In that context, I said, off the record, reporters telling us that Amb Wilson’s wife works at CIA. I don’t know if true. But if it’s true, it may explain why Wilson got some bad information at agency.]

By anybody’s count, that is not a few words. By any account, that is not what Cooper said Libby said. He never told Cooper, I don’t know if it’s true. It’s made up, made out of whole cloth. Ladies and gentleman, Cooper could never have taken as confirmation the things Libby had told him. Cooper took this as confirmation. How could he have taken it as confirmation?

Mr Cooper corroborated Cathie Martin. Martin was present. She never heard ANY of what you heard Libby just hear it. She never heard, “I don’t know if it’s true.” If she had heard it, she would have said something, because SHE knew it was true. Finally you heard from Cooper that this was a conversation that kept playing through his head. It was significant. Confirmation for a story that got a lot of attention. He is sure about what he testified. No reason he would say it if he wasn’t sure.

10:38

Some comments about charges. You’re going to hear the term “materiality.” Remember Agent Bond, talking about investigation. Remember nature of comments. Libby has tried to obscure where he learned this information. Doing an investigation into spread of classified info, if you learned about through classified channel, then spread it, it can eb a violation. If you heard about it as gossip, then it’s not a crime. Think about how hard it is to investigate these charges if you hide how you found out.

Three separate statements. Want to make clear three things. [puts up three charged lies]
Live coverage was permitted in the trial of Joseph Nacchio, former CEO of telecommunications company Qwest, who was indicted on 42 counts of illegal insider trading. Nacchio went to trial in March 2007, before Judge Edward Nottingham in the District of Colorado. Real-time coverage was permitted from jury selection through the 20-day trial and sentencing. In addition to live online coverage by newspapers the Denver Post and the Rocky Mountain News, other organizations also live-blogged from the courtroom. ThetRacetotheBottom.org, a collaboration of students and faculty at the University of Denver Sturm College of Law, provided daily coverage of the trial. Jeralyn Merritt, a Denver criminal defense attorney and author of the blog TalkLeft: The Politics of Crime, also live-blogged the proceedings for Denver magazine 5280. Earlier in the year, Merritt also blogged from the Libby trial in Washington, D.C.

---

463 United States v. Nacchio, Case No. 05-cr-00545-EWN (D. Colo.). Full coverage of the case can be found at the Denver Post’s site: http://www.denverpost.com/nacchio.


467 Id.
Day 1: Jury Selection

We are in courtroom on the second floor of the Arraj Courthouse, named after a legendary trial judge in Denver. The courtroom is not entirely full, although the space for the press is. There is a second room, on the 7th floor, with seats for 65, and a video feed.

The prosecution is sitting to the right, with four attorneys, Cliff Stricklin in the seat closest to the judge. The defense has five lawyers, with Stern next to Nacchio on the left hand side of the table. Stern is wearing a grey suit, with a red tie and white shirt. Both the suit and shirt look almost a size too large, giving him a slightly rumpled and non-threatening appearance. Nacchio appears impeccable, in a grey suit, with a matching blue tie and shirt, his jacket always buttoned.

Just before the arrival of Judge Nottingham, 18 jurors filed in, followed by approximately 50 or so alternates. Punctually at 8:30, Judge Nottingham entered the courtroom. He noted having received filings at 2:30 yesterday and reading them until late in the evening. It was a clear message to the lawyers that he intended to be on top of things.

Judge Nottingham noted that the jury had been selected randomly through the use of a computer program. He then turned to the jury. Although it looked like he had a script or notes, he mostly talked without reference to them, speaking directly to the jurors. He first asked whether anyone had a conflict that made it difficult or impossible to serve for the length of the trial. One juror, an older man, raised his hand and after a side bar (with three defense lawyers and two government lawyers) was dismissed. Questions about health, hearing or vision problems elicited some responses about bad ears and compressed discs but no dismissals.

The most detailed set of inquiries involved information known to

Figure 5-5. Screenshot from the TheRacetotheBottom.org blog during the Nacchio trial.
United States v. Miell (N.D. Iowa)

A “tech-savvy judge in a district with high-tech courtrooms” offered Cedar Rapids Gazette reporter Trish Mehaffey the perfect opportunity to try her hand at posting live blog updates from a trial in January 2009. The judge was Judge Mark Bennett of the Northern District of Iowa in Sioux City, and the trial was that of a local landlord accused of tax fraud. Mehaffey emailed Judge Bennett for permission to use a laptop in the courtroom to post live updates. Judge Bennett granted permission for the reporter to live-blog, on the condition she sit farther back in the courtroom so her typing would not create a distraction. Bennett’s “tech-savvy” status stemmed from his daily reading of blogs, willingness as practicing attorney to pay an “outrageously expensive” amount to make his small firm the first in the state to have desktop computers, and his status as arguably the first federal judge to have an email address.

Mehaffey viewed the coverage as a reflection of changes in the newspaper industry. “Times are changing, and it’s all about the digital industry. It’s a way for us to meet the demands of our readers,” she told the ABA Journal. The defendant’s


469 Weiss, supra. Mehaffey was also allowed to live-blog during hearings in the same case before Chief Magistrate Judge Paul Zoss, under the same terms as Judge Bennett. Live-Blogging and Tweeting From Court: Experiences from the Field, CITIZEN MEDIA LAW PROJECT, http://www.citmedialaw.org (last visited Jan. 3, 2013).

470 Weiss, supra.

471 Id.

472 Id.

473 Id.
attorney didn’t find the coverage disruptive but was concerned about jurors accessing Mehaffey’s subjective analysis during the trial.\textsuperscript{474} For his part, Judge Bennett thought the scales tipped in favor of transparency: “I thought the public’s right to know what goes on in federal court and the transparency that would be given the proceedings by live-blogging outweighed any potential prejudice to the defendant,” Judge Bennett told the \textit{ABA Journal}.\textsuperscript{475}

\textsuperscript{474} \textit{Id.}

\textsuperscript{475} \textit{Id.}
Figure 5-6. Screenshot of Mehaffey's live coverage of sentencing.
When Philadelphia politician Vincent Fumo, a former Democratic state senator, went on trial for corruption in October 2008, it provided the perfect opportunity for The Philadelphia Inquirer to live-blog a trial. The paper used the CoveritLive platform as well as Twitter. Judge Ronald Buckwalter presided over the four-month trial, which resulted in convictions on all 137 counts, and approved the live-blogging. “Cameras are not allowed in federal courtrooms, so this was the closest thing to ‘live’ coverage that anyone could offer,” reporter Bob Moran, who covered the trial for The Inquirer, told the Knight Digital Media Center.

During jury deliberations, one of the jurors made posts to Facebook and Twitter, including: “Stay tuned for a big announcement on Monday everyone!” Fumo’s attorneys sought to remove the juror and halt the deliberations, which had been ongoing for two weeks. As the judge and parties met to determine what would happen as a result of the posts, the cause of the chaos—Twitter—also became the solution for reporter Moran as he was forced to stay on the move while the situation was resolved. Moran posted updates on Twitter from his cell phone, and when the jury returned to the courtroom to deliver the verdict, Fumo switched back to live-blogging on CoveritLive.

Chris Krewson, executive editor of online news for The Inquirer, later wrote that the “live

---

476 United States v. Fumo, Case No. 06-319 (E.D. Pa.).

477 Coverage is available at http://www.philly.com/philly/news/special_packages/inquirer/fumo/


479 Id.

480 Id.
blog provided us with an edge in posting this type of news that other local media could not match. While nearly every TV station broadcast news of the verdict shortly after we did, Moran’s rolling updates were far superior to every other report available.” In fact, a television news anchor was spotted outside the courthouse reading the live blog on camera, noting that it came from philly.com. Editor Krewson concluded that philly.com’s “users were hooked” and that Twitter helped the newsroom break a story.

---

481 Id.
482 Id.
483 Id.
Figure 5-7. Screenshot of Moran’s live coverage—via blog and Twitter—showing that deliberations resumed at 10:41 a.m. and by 11:27 a.m., a verdict had been reached.
One of the earliest print reporters to seize the opportunity to provide live updates from the courtroom via Twitter was Ron Sylvester of the *Wichita Eagle* in Kansas.\(^{484}\)

Prior to the early 2009 trial of six “Crips” gang members on racketeering charges in Kansas federal court, Sylvester had been using Twitter for more than a year to cover state court proceedings.\(^{485}\) When he asked District Judge J. Thomas Marten for permission to use Twitter during the trial, Judge Marten obliged. Although some attorneys were concerned that jurors might read Sylvester’s posts, Judge Marten noted that jurors are always admonished to avoid newspaper, broadcast, and online reports, and “[y]ou either trust your jurors to live with the admonishment or you don’t.”\(^{486}\)

Among Sylvester’s tweets sent from his cell phone:

- “Judge Marten is talking to reluctant witness in chambers with a court reporter transcribing the conversation.”
- “The witness who was yelling in the hallway earlier has not returned to the courthouse.”
- “Defendants are chatting and laughing among themselves.”
- “Exhibits are shown electronically. Every juror has a monitor in the box. There is a monitor at each lawyer’s table and one for the gallery.”\(^{487}\)

Judge Marten, who Sylvester described on his blog as “tech-savvy,” led efforts to update the federal courthouse in Wichita to include wireless internet connections in courtrooms.\(^{488}\) “The more we can do to open the process to the public, the greater the

---

\(^{484}\) [www.twitter.com/rsylvester](http://www.twitter.com/rsylvester). Sylvester is currently a gaming reporter at the *Las Vegas Sun*.


\(^{486}\) *Id.*

\(^{487}\) *Id.*

public understanding – the more legitimacy the public system will have in the eyes of the public,” Marten told The Associated Press.\(^{489}\)

Sylvester was one of the first reporters on the legal beat to adopt Twitter as a standard tool for courtroom reporting. “If you say no to tweeting, you might as well say no reporting allowed,” Sylvester told News Media and the Law in 2011.\(^{490}\) “I come from the industry formerly known as newspapers. All my life we were a second day news source and people would get their breaking news from broadcast. But now (Twitter) puts all news organizations on equal footing,” he added.\(^{491}\)

*United States v. White (W.D. Va.)*

Just as Sylvester sought unprecedented access to federal court in Kansas, Laurence Hammack of The Roanoke Times broke new ground with his coverage of the trial of William White.\(^{492}\) White, leader of a Roanoke neo-Nazi group, spent eight days on trial in federal court for a campaign of racial harassment against people from Virginia Beach to Canada. He was eventually convicted of four of the seven charges against him.

*The Roanoke Times* sought special permission from Judge James Turk of the Western District of Virginia to use an internet-connected netbook and cell phone in the


\(^{491}\) Id.

\(^{492}\) United States v. White, Case No. 7:08-CR-00054 (W.D. Va.).
courtroom. Judge Turk granted the request, and the result was a blog dedicated to the trial, which contained several daily updates on the proceedings. Though the initial plan was to blog directly from the courtroom, technical issues apparently resulted in a different process, where the reporter emailed reports to the newsroom and they were then posted to the blog, usually within minutes. The same newsroom producer would then tweet the posts. The newspaper was happy with the end result of the coverage, despite technical difficulties, and acknowledged that “it would not have been possible without Judge Turk’s gracious approval.”

---


494 Id.

CHAPTER 6
ANALYSIS AND CONCLUSION

The purpose of this study was to examine the current state of reporting in real-time from courtrooms using mobile technology. What at one time was a "cameras in the courtroom" issue reserved for broadcast journalists has become a broader issue as the traditional classifications of news outlets are blurred by digital convergence. Most current laws were written before the widespread adaptation of technologies such as Twitter, Facebook, smartphones, and blogs. The laws were written with television cameras and radio stations in mind, not iPads and live chats. As a result, when a dispute arises over reporting in the courtroom using mobile devices, judges are often forced to reconcile old laws with new technology. This process itself might create new law in the form of a written opinion. This area of the law is constantly evolving, and comprehensive analysis is scant.

This study seeks to fill the gap in the literature by presenting a thorough examination of the law of mobile technology in the courtroom—as used by the press—in the 50 states and at the federal level. This final Chapter of the study first summarizes the theory, literature, and law that provides the foundation for a discussion of how this area of the law is evolving. Next, the key findings of this study are discussed, using the research questions identified in Chapter 1 as a guide. RQ1 asks how current laws treat mobile technology tools that enable the contemporaneous dissemination of information captured by journalists in legal proceedings. The examples and law identified in Chapter 5 are summarized in an attempt to answer RQ1. Next, RQ2 asks what a model court policy on mobile technology use by journalists in trial courts would look like. Using the research gathered in Chapter 5, as well as extant court policies, this model policy is
presented and discussed. To complement this model policy for courts, the findings in Chapter 5 were used to create a list of best practices for journalists who cover the courts. Finally, study conclusions and suggestions for future research are presented.

**Research Foundations**

In discussing press coverage of the court system and the competing interests at play, we engage in the “free press-fair trial” debate, which highlights the tension between the First Amendment guarantee of a free press and the Sixth Amendment right of a criminal defendant to a fair trial. A discussion of the feasibility or fairness of mobile technologies in the courtroom would be incomplete without consideration of the law and principles implicated by the free press-fair trial debate. Chapter 2 presented the theories and law underlying this debate.

What is a free press? The idea has evolved since prior to the existence of the First Amendment, with various values at play, such as autonomy, the free flow of ideas, self-governance, and government checking. The author’s interpretation of Supreme Court case law on press freedoms resulted in four broad “freedoms” that characterize a free press: freedom from prior restraints, freedom from compelled content, freedom to gather news, and freedom to criticize the government. While none of these freedoms are absolute, they are freedoms to be considered any time government restrictions on the press are involved.

The freedom from prior restraints is well-established in American jurisprudence. In fact, prior restraints are presumptively unconstitutional, as established in *Near v. Minnesota* and confirmed 40 years later in *New York Times v. United States*. Just

---

496 283 U.S. 697 (1931).
as the government cannot generally tell the press what not to print, it also cannot tell the press what it must print. This freedom from compelled content was articulated in *Miami Herald Publishing Co. v. Tornillo*.\(^{498}\) The freedom to gather news is the most tenuous of the four broad freedoms identified by the author of this study, but it is still a value that has been recognized by the Supreme Court and is important for journalists seeking to gather news in the courtroom.\(^{499}\) Finally, the freedom to criticize the government is a freedom the press enjoys and one that plays a role in the importance of press coverage of the legal system. Government parties and the judicial system are subject to the scrutiny of the press, and this activity is at the heart of the First Amendment’s guarantee of a free press.

What is a fair trial? The Sixth Amendment sets out a criminal defendant’s right to a fair trial, and the right to an “impartial jury” is at the heart of controversies over press coverage. Jurors can be biased as a result of exposure to inflammatory coverage. *Sheppard v. Maxwell* is perhaps the epitome of prejudicial publicity, where a media circus ensued surrounded the trial. That “Roman circus” resulted in the reversal of Sheppard’s murder conviction, inspiring the U.S. Supreme Court to note that “[a] responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field.”\(^{500}\) While the press can certainly be a source of prejudicial publicity, trial judges must consider the variety of remedies available to them to ensure a fair trial, such as change of venue, continuance, jury

\(^{497}\) 354 U.S. 298 (1971) (the “Pentagon Papers” case).


questionnaires, sequestration, and jury instructions. These remedies should be considered before closing proceedings or issuing gag orders. These alternatives help safeguard an open press and our legal system’s long tradition of open courts.

Cameras in the courtroom have themselves been subject to several instances of Supreme Court scrutiny in the past hundred years, with the disdain for cameras expressed in *Estes v. Texas* 501 eventually giving way to the conclusion in *Chandler v. Florida* 502 that the mere presence of cameras does not automatically result in an unfair trial. The literature on cameras in the courtroom is generally produced by either psychology or legal scholars, as discussed in Chapter 3. Bruschke and Loges’ meta-analysis of existing social science literature on the issue resulted in the conclusion that the area is under researched and the literature that does exist has “vastly overstated the case for a pretrial publicity effect.” 503 Legal approaches to the issue focus on the autonomy of trial judges, 504 the array of legal and logistical tools to effectively manage proceedings, 505 and the public education aspect of televised proceedings, 506 among other topics. However, the body of literature devoted to the use of mobile technologies in the courtroom 507 is still scarce, though this study should narrow the gap.

---

503 BRUSCHKE & LOGES, FREE PRESS V. FAIR TRIALS, supra note 212, at 134-35.
504 Kane, supra note 227.
505 Sellers, supra note 238.
506 See Barber, supra note 244; Vinson & Ertter, supra note 246; and Koszinsky & Johnson, supra note 248.
507 See Stawicki, supra note 253; Kreimer, supra note 256; Cervantes, supra note 259; Feinberg, supra note 265; and Schwarz, supra note 268.
In Chapter 4, the law of traditional cameras in the courtroom in the 50 states and at the federal level was examined. This law applies not only to traditional cameras, but in many instances where more specific law is unavailable, has also been crafted to apply to questions regarding the propriety of using mobile technology to report live from the courtroom. Cameras are permitted in all states (the District of Columbia does not permit cameras), with varying degrees of openness. In five states—Alabama, Maryland, Minnesota, South Dakota, and Texas—consent of the parties is required, which poses a significant obstacle to coverage because the media is at the mercy of the whims of the parties. Some states, such as Delaware, Illinois, Indiana, Louisiana, Nebraska, and New York only permit coverage in the appellate courts, which eliminates what is arguably the level at which cases are the most newsworthy—the trial level. In Maryland, Pennsylvania, and Texas, cameras are not permitted in criminal proceedings, though the majority of states do allow criminal coverage.

At the federal level, cameras are prohibited, especially in criminal proceedings. This stems from Rule 53 of the Federal Rules of Criminal Procedure, which bans “the taking of photographs . . . or broadcasting” in the courtroom, and the policy of the U.S. Judicial Conference, which advocates a prohibition of coverage in both civil and criminal trials. Circuit courts of appeal have the discretion to allow coverage of appellate arguments. Only the Second and Ninth Circuits have done so. The U.S. Supreme

---

508 Oklahoma currently does not have a rule on cameras in the courtroom—coverage was previously governed by the Oklahoma Judicial Code of Conduct Canon 3, which prohibited coverage without express permission from the judge. The Canon was superseded in 2011 and has not yet been replaced.

509 Although Texas does not expressly permit coverage of criminal trials, it does occur on a case-by-case basis as part of the court’s inherent power to control the procedural aspects of a case.
Court does release audio recordings of its oral arguments, prompted by press demand during the *Bush v. Gore* case in 2000.

The federal courts have experimented with camera in civil proceedings, first with a 3-year pilot program in the early 1990s and again with another 3-year pilot program set to conclude in 2014. The recent pilot takes place in 14 federal courts, but only permits coverage by the court itself, not the media.
<table>
<thead>
<tr>
<th>State</th>
<th>Trial</th>
<th>Appellate</th>
<th>Civil</th>
<th>Criminal</th>
<th>Party consent required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>California</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>•</td>
</tr>
<tr>
<td>D.C.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hawaii</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kansas</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michigan</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td>•</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trial</td>
<td>Appellate</td>
<td>Civil</td>
<td>Criminal</td>
<td>Party consent required</td>
</tr>
<tr>
<td>----------------</td>
<td>-------</td>
<td>-----------</td>
<td>-------</td>
<td>----------</td>
<td>------------------------</td>
</tr>
<tr>
<td>New Jersey</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>New Mexico</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>West Virginia</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td></td>
</tr>
</tbody>
</table>
Summary of Findings and Answers to Research Questions

Building upon the law presented in Chapter 4, Chapter 5 addressed case law and case studies of mobile technology being used (or its attempted use) by the press to report from the courtroom. To answer the research questions, legal research methodology was used. Primary sources were gathered using the guide to cameras in the courtroom produced by the Radio Television Digital News Association (RTDNA), law review and journal articles, keyword searches on the LexisNexis legal database, and the websites/reports of relevant organizations (i.e., Citizen Media Law Project, Conference of Court Public Information Officers). Articles from the popular press were also key in identifying relevant developments in this area of the law.

Research Question 1: How do current laws treat mobile technology tools that enable the contemporaneous dissemination of photos and information captured by journalists in a legal proceeding?

Overall, only a handful of states have statewide laws or rules specific to the use of mobile electronic devices.\(^5\) In federal courts, policies on reporting from the courtroom vary widely, and often hinge on the presiding judge’s openness to the practice and her interpretation of the existing rules. There are three written decisions from federal courts, and in all three, live coverage has been denied.\(^5\) Despite those three federal cases where live coverage was not permitted, there have been several


instances of reporters successfully covering federal criminal trials using mobile technology. 512

In analyzing the current state of the law on mobile technology and press coverage from the courtroom, it is clear that there is little guiding precedent on the matter. As a result, trial judges are forced to interpret old rules and apply them to new technologies. If the judge is familiar with technology and open to the coverage, he can often justify allowing text-based transmissions from the courtroom, crafting an interpretation of existing law that would permit the practice. However, if a judge is cautious of the practice and takes a more conservative approach to interpreting existing law, a case can just as easily be made against allowing live coverage from the courtroom. Accordingly, the uncertain state of the law in this area is a double-edged sword. It leaves plenty of leeway for judges to push the envelope but can also cultivate a fear of the unknown that might lead to blanket bans on mobile technology. Either way, in the absence of a clear statutory mandate, these judges have the power to craft the law through their inherent powers to control the courtroom.

Research Question 2: What would a model court policy on mobile technology use by journalists in trial courts look like?

A model court policy is one that would fairly take into account the variety of competing interests at play: the media’s interest in providing coverage in as timely a manner as possible; the public’s interest in receiving information about the judicial system; the parties’ interest in a fair legal proceeding; and the judge’s interest in maintaining order and decorum in the court.

The model policy addresses these factors:

- What are the relevant laws and rules?
- What level of discretion is afforded to the judge?
- Is there a presumption that coverage, or certain types of coverage, are permissible?
- What are the competing policy concerns at play?
- Are credentials required?
- Who is a “journalist” for the purposes of the credential process?
- Is prior permission required?
- What types of mobile technology are contemplated by the policy?
- Where can journalists use mobile technology for live coverage?
- When can journalists use mobile technology for live coverage?
- How can mobile technology be used inside the courtroom (i.e., note-taking, transmitting text-based reports, sending photos)?
- What types of keyboards are permitted?
- How will the court’s technology infrastructure affect the policy?
- How will the policy be publicized?
- How will court personnel be trained on journalists’ use of mobile technology?

The policy is intended as a guideline for individual courts to adopt and then adapt to any jurisdictional requirements are needed. As fitting with the scope of this study, the policy is limited to the use of electronic devices by journalists in trial courts. A separate, media-specific policy is beneficial because it can serve to (1) preserve and enhance the media’s ability to cover high-profile cases as they arise; and (2) it lessens the risk that a broad ban on electronic devices will also apply to journalists. A separate policy is also appropriate because many of the security and decorum concerns that underlie policies
for the general public are less relevant to media use of devices, which is more likely to raise concerns of fairness and publicity that might impact the fairness and integrity of the proceeding. The model policy:513

- **Guiding Principles:** Transparency in the courts has numerous benefits. It can increase public knowledge of the courts, enhance confidence in the system, and promote more unbiased and truthful proceedings. Transparency also extends the historical tradition of open courts that underlies our legal system. The media plays a key role in exposing the public to the judicial system. Just as technology has changed the way courts operate, it has also influenced the way in which the media disseminates and citizens receive information. Mobile technologies such as smartphones and laptops enable instant, on-demand news, and as the public rapidly adopts these technologies, the media works to supply coverage as quickly as possible. With these factors in mind, the use of mobile technology in this Court is presumptively permitted, subject to the guidelines explained below. However, regardless of any general policy adopted by the Court, a presiding judge has the inherent authority to control activities in his or her courtroom. Accordingly, electronic device usage may be prohibited or restricted at the presiding judge’s discretion, where usage might interfere with the integrity of the proceedings, is disruptive, or poses a security threat.

- **Defining Media:** New technology has blurred the lines between the traditional news media and regular citizens, as internet access and software make it possible for a single person, with very low overhead, to create content that is available globally. For the purposes of this policy, the Court adopts a broad and adaptable definition of journalist: a person engaged in information gathering with the intent to disseminate it to the public. Credentials are not required to use mobile technology to transmit text-based coverage of court proceedings unless space limitations and demand necessitate pooling or reserved seating.

- **Compliance with Applicable Laws:** Nothing in this policy should be construed in contravention to applicable state and federal laws or judicial rules, including this Court’s local rules.

- **Usage Guidelines:** Inside courtrooms, members of the media may use electronic devices to takes notes and/or transmit text-based communications without seeking prior permission from the presiding judge or judicial officer. Electronic devices may not be used inside courtrooms to capture or send photos, videos, audio, or any other form of non-text based transmission without prior permission from the presiding judge or judicial officer. Electronic devices must

513 See also U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, PRINCIPLES AND PRACTICES FOR ELECTRONIC DEVICES (Feb. 25, 2010); MEDIA LAW RESOURCE CENTER, MODEL POLICY ON ACCESS AND USE OF ELECTRONIC PORTABLE DEVICES IN COURTHOUSES AND COURTROOMS & MEMORANDUM IN SUPPORT FOR MLRC’S MODEL POLICY ON ELECTRONIC DEVICES (July 2010).
be muted, and their use should be as minimally disruptive as possible. Use of a keyboard specifically designed to minimize noise disruption is highly recommended. Media use of electronic devices outside the courtroom (i.e., lobbies, hallways) is permitted without restriction as to the types of capture or transmission, subject to reasonable restrictions on use incidental to safety and decorum concerns. This policy is subject to the discretion of the presiding judge or judicial officer, who may prohibit or restrict the use of electronic devices as part of his or her inherent authority to control activities in the courtroom.

- **Administration of this Policy:** The feasibility of using mobile technology in the courts relies upon the quality of the court's technological infrastructure. Adequate wireless communication capabilities should be maintained for the benefit of not only the media but also the court, litigants, and observers. This policy shall be distributed to all court personnel and displayed prominently in the interior of the courthouse as well as on the Court's website. Any questions regarding the administration of this policy should be directed to the Court's Public Information Officer or equivalent administrator.

This policy serves as a guide for the courts and the media as they navigate new coverage scenarios. It is intended to complement the best practices for journalists discussed below, and may be helpful to journalists as they advocate for the right to report live from the courtroom using electronic devices.

**Best Practices for Journalists**

As this study demonstrated, because there is a lack of statutory law directly addressing mobile technology as a live-reporting tool, individual judges’ decisions are where much of the law is currently being made. As such, journalists would be well advised to consider adopting best practices to optimize their chances of being permitted to report live with mobile technology.

Even if laws were adopted in all jurisdictions regarding the courtroom use of mobile technology by journalists, judges will still retain the inherent authority to regulate conduct in their courtrooms. As such, one best practice that reporters covering legal affairs should adopt is to attempt to develop a professional relationship, rapport even, with the judges they are likely to encounter on their beat. While judges might be
resistant at first for fear of any appearance of impropriety, if the judge and reporter are at least acquainted, the lines of communication may be more open. For example, Trish Mehaffey’s coverage of a tax fraud trial in Iowa federal court began when she sent an email to Judge Bennett and asked permission to send live updates from the court. Court personnel, especially public information officers, are more likely to be a first point of contact for journalists and may also be the primary contact with the judge on issues of media access. A good working relationship with court personnel can also go a long way toward effecting permission to live-report with electronic devices.

In addition to developing relationships with judges and court personnel when possible, journalists should also be prepared to educate them on the issues surrounding live-reporting from the courtroom. To counteract the negative court opinions currently published in legal databases, journalists should keep a “portfolio” of instances where live coverage has successfully occurred, locally or elsewhere. This could help assuage any fears judges and court personnel have about coverage, especially if it will be the court’s first experience with the process. The best time to present this “portfolio” would be well before a high-profile event might call for the coverage. This could put journalists in a good position to help develop court policies on live-coverage in advance, before the pressures of a high profile case come into play.

If journalists are granted permission to cover proceedings live—especially where it is apparent that the judge may be “pushing the envelope” in order to let the coverage occur—the press should acknowledge the judge’s actions. The Roanoke Times, for example, recognized the “gracious approval” of Judge Turk in allowing it to live-report the White trial. In contrast, the coverage of the Sandusky trial was curtailed after the
press questioned the parameters of the trial judge’s order allowing tweets. In his opinion, Judge Cleland explained that he was already taking a risk with his interpretation of the criminal rule. Rather than turning that leeway into a First Amendment battle, he eventually decided to reverse his original position and prohibit live reporting.

A commonsense best practice worth repeating is adhering to the rules as set out by the court regarding usage of mobile technology. These rules might be onerous and even repugnant to the reporter, but while the rules are in place, they must be followed. Journalists should assume that the judge (and parties) will read the coverage at some point, and if anything is out of the scope of coverage, penalties could be imposed. Beyond penalties to the specific reporter or media outlet, the “bad press” that might result from one reporter’s misstep could make judges more hesitant to permit live coverage. Though incidents like that in Kansas—where a mistrial was declared after a reporter tweeted a photo of a juror after the judge had ordered no photos of jurors could be taken—are rare, they can be devastating.514

A related best practice is for journalists to be as minimally disruptive as possible. Even if the rules do not specifically require it, the use of touchpads or silent keyboards is recommended. The sound on devices should be set to mute. Devices should not require charging while in the courtroom, but if they do, it is advisable to sit near an electrical outlet to avoid having to move locations in the middle of the proceeding. Journalists should also be as self-contained as possible. While courtrooms might offer

---

514 Kansas journalist tweets juror photo, causes mistrial, CONNECTED, Apr. 2012 (reporter for the Topeka Capital-Gazette inadvertently posted a profile photo of a juror to Twitter, resulting in a mistrial in a murder case).
wireless connections and plenty of outlets, journalists should prepare for the worst and if possible have an internet connection (by cell phone, for example) and back up devices available.

Journalists covering the courts should also consider the feasibility of incorporating a chat function into their live coverage. In this way, the reporter is serving two functions, reporting the events and educating the public. This approach was used in the Dubose murder trial in Jacksonville, the Casey Anthony trial, and the Fumo trial in Philadelphia. Because public education is a value often cited in favor of increased transparency in the courts, journalists who incorporate it into their coverage may find that it helps them gain access to the courts and expands their live-reporting opportunities.

Conclusions and Recommended Future Research

The ability for reporters to provide real-time coverage from the courtroom with a handheld device has the potential to revolutionize legal reporting. The line is continually blurred between print and broadcast journalism, as these distinctions carry less meaning in an era of digital journalism. Accordingly, the cameras in the courtroom issue is no longer only of interest to broadcast journalists. It is an issue that is important for all journalists, and at a time where the law is unclear, there is great opportunity to shape its course through advocacy, responsible reporting, and if necessary, legal challenges. As courts struggle with this uncertainty, consideration of the policies and procedures that will ensure the competing interests are fairly balanced is also important. These policies will also inevitably be developed by individual judges, as they inject their own viewpoints and values into the rules governing their courtrooms. A well-informed and proactive press is key in urging the judiciary to permit coverage.
The constantly changing state of the law is a limitation of this study, and any future research should assess any new case law and develop new instances of successful use of mobile technology reporting in the courts. Future research should focus on perhaps the key players in this game—the judges and journalists. Anonymous surveys and qualitative interviews of judges and journalists will bring a depth that was not within the scope of this study. Research on how consumers use live coverage of court proceedings is also recommended, and favorable results could be used to bolster future arguments for live coverage. Research on specific technologies (i.e., Twitter, CoveritLive) and their utility and effectiveness could help determine what type of coverage works best. Research on the potential for a pilot program involving live coverage from the courts could also help promote coverage, especially for hesitant courts. A limitation of this study that could be remedied by future research is exploration of media committees and their roles in developing policies related to live coverage.
Guiding Principles: Transparency in the courts has numerous benefits. It can increase public knowledge of the courts, enhance confidence in the system, and promote more unbiased and truthful proceedings. Transparency also extends the historical tradition of open courts that underlies our legal system. The media plays a key role in exposing the public to the judicial system. Just as technology has changed the way courts operate, it has also influenced the way in which the media disseminates and citizens receive information. Mobile technologies such as smartphones and laptops enable instant, on-demand news, and as the public rapidly adopts these technologies, the media works to supply coverage as quickly as possible. With these factors in mind, the use of mobile technology in this Court is presumptively permitted, subject to the guidelines explained below. However, regardless of any general policy adopted by the Court, a presiding judge has the inherent authority to control activities in his or her courtroom. Accordingly, electronic device usage may be prohibited or restricted at the presiding judge's discretion, where usage might interfere with the integrity of the proceedings, is disruptive, or poses a security threat.

Defining Media: New technology has blurred the lines between the traditional news media and regular citizens, as internet access and software make it possible for a single person, with very low overhead, to create content that is available globally. For the purposes of this policy, the Court adopts a broad and adaptable definition of journalist: a person engaged in information gathering with the intent to disseminate it to the public. Credentials are not required to use mobile technology to transmit text-based coverage of court proceedings unless space limitations and demand necessitate pooling or reserved seating.

Compliance with Applicable Laws: Nothing in this policy should be construed in contravention to applicable state and federal laws or judicial rules, including this Court’s local rules.

Usage Guidelines: Inside courtrooms, members of the media may use electronic devices to take notes and/or transmit text-based communications without seeking prior permission from the presiding judge or judicial officer. Electronic devices may not be used inside courtrooms to capture or send photos, videos, audio, or any other form of non-text based transmission without prior permission from the presiding judge or judicial officer. Electronic devices must be muted, and their use should be as minimally disruptive as possible. Use of a keyboard specifically designed to minimize noise disruption is highly recommended. Media use of electronic devices outside the courtroom (i.e., lobbies, hallways) is permitted without restriction as to the types of capture or transmission, subject to reasonable restrictions on use incidental to safety and decorum concerns. This policy is subject to the discretion of the presiding judge or judicial officer, who may prohibit or restrict the use of electronic devices as part of his or her inherent authority to control activities in the courtroom.
• **Administration of this Policy:** The feasibility of using mobile technology in the courts relies upon the quality of the court’s technological infrastructure. Adequate wireless communication capabilities should be maintained for the benefit of not only the media but also the court, litigants, and observers. This policy shall be distributed to all court personnel and displayed prominently in the interior of the courthouse as well as on the Court’s website. Any questions regarding the administration of this policy should be directed to the Court’s Public Information Officer or equivalent administrator.
APPENDIX B: BEST PRACTICES FOR JOURNALISTS

- Cultivate relationships with judges and court personnel.
- Be prepared to educate judges and court personnel on the issues surrounding live-reporting from the courtroom.
- Be proactive in advocating for live coverage opportunities, and do so before the pressures of a high profile case come into play.
- Follow the rules on live coverage while they are in place.
- Minimize disruptions by using silent keyboards or touchpads, muting devices, using devices with lengthy battery power, and arranging for a backup source of internet connectivity.
- Incorporate a chat function into coverage if possible. This will help educate the public and give valuable insight into readership/viewership.
LIST OF REFERENCES

Articles


**Books**


KENT R. MIDDLETON et. al, THE LAW OF PUBLIC COMMUNICATION 454 (2003.)


ERNEST H. SHORT, EVALUATION OF CALIFORNIA’S EXPERIMENT WITH EXTENDED MEDIA COVERAGE TO THE COURTS 228 (1981).


Cases and Related Material


Bulow v. von Bulow, 811 F. 2d 136 (2d Cir. 1987).


Curtis Publ’g Co. v. Butts, 388 U.S. 130 (1967).
In re Sony BMG Music Entmt., 564 F.3d 1 (1st Cir. 2009).


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


United States v. Fumo, Case No. 06-319 (E.D. Pa.).

United States v. Miell, Case No. CR07-101-MWB (N.D. Iowa).
United States v. Nacchio, Case No. 05-cr-00545-EWN (D. Colo.). Full coverage of the case can be found at the Denver Post’s site: http://www.denverpost.com/nacchio.


United States v. White, Case No. 7:08-CR-00054 (W.D. Va.).


Internet Sources


Periodicals and Reports


Jordan Fifer, Approach to trial coverage a first for The Roanoke Times, FROM THE NEWSROOM (blog), Dec. 22, 2009,


MEDIA LAW RESOURCE CENTER, MODEL POLICY ON ACCESS AND USE OF ELECTRONIC PORTABLE DEVICES IN COURTHOUSES AND COURTROOMS & MEMORANDUM IN SUPPORT FOR MLRC’S MODEL POLICY ON ELECTRONIC DEVICES (July 2010).


Statutes and Related Material

AL. CODE § Vol. 23A.

Ala. Canons of Judicial Ethics, Canon 3A(7), 3A(7A), and 3A(7B),

Alaska R. Ct., Rule 50, R. Governing the Administration of All Courts,


ARIZ. REV. STAT. § Vol. 17A.

Cal. R. Ct. Rule 1.150.

Colo. S. Ct. R., Ch. 38, R. 2.


Conn. R. Super. Ct. Sections 1-10 and 1-11.


Conn. P.B. § 1-11(b).


FED. R. CRIM P. 53.

Federal: Judicial Conference Committee on Court Administration and Case Management Guidelines for the Cameras Pilot Project in the District Courts,
available at

Fla. R. Jud. Admin. 2.170, 2.450.
Haw. R. Ct. Rules 5.1 and 5.2,
Idaho Ct. Admin. R. 45 and 46.

ILL. REV. STAT. Ch. 735, § 8-701

Ind. Code of Judicial Conduct Rule 2.17


Iowa Cts. R., Chapter 25.


Me.: Admin. Order JB-05-15 (A. 9-11), Cameras and Audio Recording in the Courts


Minn. Gen. R. Practice Rules 4.01-4.03.


Mo. S. Ct. R. 16.

Mont. Canons of Judicial Ethics, Canon 35.


N.J. Code of Judicial Conduct, Canon 3A(9).

22 N.Y.R.R. §§ 29.1-29.2


NORTH CAROLINA COURTS: CAMERAS IN THE COURTROOM,

N.D. Ct. R.21.

Ohio R. Superintendence Cts.12.

OKLA. STAT. § Tit. 5, Ch. 1, Appendix 4

Oklahoma. Canon 3B(10) (superseded on April 15, 2011).


http://www.courts.ri.gov/Courts/SupremeCourt/Supreme%20Court%20Rules/Su
reme-Rules-Article7.pdf

R.I. Courthouse R., available at
http://www.courts.ri.gov/PublicResources/PDF/Court_House_Rules.pdf.


S.D. S. Ct. R. 10-08 and 10-09.

Tex. R. Civ. Proc.18c.

U.S. CONST., AMEND. VI.

Utah R. Jud. Admin., R. 4-401.01 and 401.02, Electronic Media Coverage, effective
April 1, 2013, available at


Vt. R. Civ. Proc. 79.2 & 79.3.

Vt. R. Probate Proc. 79.2.


VA. CODE ANN. § 19.2-266


Wis. S. Ct. R. Chapter 61.


BIOGRAPHICAL SKETCH

Christina Locke Faubel received her law degree from the University of Florida Levin College of Law in 2007 and doctorate in mass communication from the UF College of Journalism and Communications in 2013. She previously received her Master of Arts in Mass Communication in 2007 and her bachelor’s degree in English in 2002, also from UF. During her graduate studies, she was a research assistant and editor at the Brechner Center for Freedom of Information as well as an instructor of record and teaching assistant for the undergraduate law of mass communication course. She has presented her research at national conferences of the Association for Education in Journalism and Mass Communications (AEJMC) and has been invited to speak on media law topics at Loyola Law School Los Angeles and the University of Central Florida. She was a managing editor of the Florida Law Review and executive research editor for the University of Florida Journal of Law and Public Policy.