CHAPTER EIGHT: CAMERAS IN THE COURTS

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Introduction

The question of whether to allow cameras into courtrooms has been hotly contested during the past 20 years. Although the overall trend has been toward greater access to courtrooms, progress has been slow. In addition, the mayhem of the O.J. Simpson murder trial has provided ammunition to opponents of cameras in the courtroom. The traditional battle between the interests of the media and public, on the one hand, and the interests of the litigants and judicial system, on the other, continues to be fought in a variety of arenas, including courts and legislatures.

Bills that would open federal courtrooms to cameras have been introduced in both houses of Congress. Federal judges have registered strong opposition to the bills, however, and the bills' backers will undoubtedly face an uphill battle in passing such legislation. In the courts, a New York state trial judge recently found that the state's ban on cameras in the courtrooms was an unconstitutional restriction on First Amendment rights. The issue of cameras in the courtroom is a complicated constitutional question because it implicates not only the First Amendment freedom of the press but also criminal defendants' Sixth Amendment right to a fair trial.

In Illinois, state appellate courts remain open to cameras, with restrictions, whereas trial courts do not allow cameras. Federal courts based in Illinois, which include not only federal

district courts but also the Chicago-based United States Court of Appeals for the Seventh Circuit, continue to prohibit cameras in the courtroom.

Illinois Courts

Illinois has allowed cameras in its state supreme and appellate courts, subject to the discretion of the presiding judicial officer, for nearly two decades. Cameras were first allowed under an experimental program in 1984. In 1985, the Illinois Supreme Court adopted the new rules on a permanent basis.[1] Cameras are still prohibited in Illinois trial courts. Camera coverage in the supreme and appellate courts, so-called "extended coverage," is subject to a number of regulations:

- Proceedings will not be delayed to allow for camera coverage.
- Decisions by presiding judicial officers regarding access are not appealable, and the presiding judicial officer may, for good cause, terminate camera coverage at any time.
- There is no coverage of bench conferences.
- There are also explicit procedures for members of the media wishing to cover proceedings through extended coverage:
- For coverage of the Supreme Court, the media must notify the marshal, in writing, five days before the argument.
- The notice must contain the title and docket number of the case to be argued; the date and time, if available, on which the case is to be argued; the name, address, and telephone of

[1] Ill. S. Ct. Rule 63.

the media representative making the request; the representative's employer; and the kind of extended coverage to be used.

- For coverage in all except the First[2] and Fourth Districts,[3] the media representative must notify the clerk of the appellate court, in writing, at least five days before the argument.
- In the Fourth District, the Supreme Court marshal, as opposed to the clerk of the appellate court, must be notified five days prior to the argument.
- In the First District, the media representative must specify which division of the court will hear the argument and must apply to the court's administrative assistant, as opposed to the clerk of the court.
- A notice for extended coverage in any district must otherwise contain the same information that must be included in the Supreme Court notice.
- Finally, there are equipment regulations, including:
    - Equipment from only one television station or network is permitted. Additional television stations must make pooling arrangements, and it is the responsibility of television and radio personnel to make their own pooling arrangements.
    - Only one videotape electronic camera or 16mm film camera is permitted. The camera itself must be silent, and only one cameraperson will be admitted to cover the proceeding.
    - Only one audio system for broadcast will be permitted in a proceeding, and, where possible, audio for the media shall employ the existing audio system in the courtroom. Only one person may operate the audio system.

[2] The First District is composed of Cook County.
[3] The Fourth District is composed of Adams, Brown, Calhoun, Cass, Champaign, Clark, Coles, Cumberland, DeWitt, Douglas, Edgar, Ford, Greene, Jersey, Livingston, Logan, Macon, Macoupin, Mason, McLean, Menard, Morgan, Moultrie, Piatt, Pike, Sangamon, Schuyler, Scott, Vermilion, and Woodford Counties.

- Operators should ensure that they have sufficient audio and videotape capacities to obviate tape changes except during recesses.
- Only one still photographer and two still cameras, with no more than two lenses for each camera, are permitted.
- Artificial lighting is not permitted.
- The court has specified a Schedule A, which identifies appropriate video cameras, and a Schedule B, which identifies appropriate photographic equipment, to govern the types of video cameras and photographic equipment that can be used.
- No signals or lights may be visible to participants in the proceeding.
- Equipment operators cannot do anything to call attention to them and may not use equipment or wear clothing that bears the insignia of the operator's employer.

Federal Courts

Cameras and microphones are banned in federal courtrooms in Illinois, as they are in federal courtrooms throughout most of the country. In 1996 the U.S. Judicial Conference, which makes policy for the federal courts, eased its stance and allowed the appellate courts to decide whether to allow cameras in their courtrooms.[4] Nonetheless, only the Second Circuit, which includes New York, Connecticut, and Vermont, and the Ninth Circuit, which includes California, Arizona, Nevada, Idaho, Montana, Oregon, Washington, Alaska, and Hawaii, has moved to allow coverage in their appellate courtrooms.[5]

[4] S.L. Alexander, Covering the Courts 19 (University Press of America 1999) (hereinafter "Alexander"); Michael Fletcher, "Court Camera Measure Rolls," The Washington Post, June 1, 2000, available in 2000 WL 19611982.
[5] Alexander 19.

Comments made by members of the Supreme Court indicate that the Court will not open itself to television broadcast access in the near future. Chief Justice Rehnquist, in particular, has been a vocal opponent of cameras in the Supreme Court, and Justice Souter has stated that a camera will have to "roll over my dead body" to get into the Supreme Court.[6] The Court did authorize the expedited release of audiotapes of the oral arguments in the two Florida cases it heard regarding the 2000 presidential election, although it declined requests to televise the proceedings.[7]

Recent legislation in Congress, however, has given new life to the debate. In May 2000 the House of Representatives passed H.R. 1752 which gave federal appellate courts and federal district courts the authority to allow cameras in their courts subject to the consent of all parties. The bill also gave witnesses the option of obscuring their faces and voices in the event of a televised trial.[8] The Senate has been working on a similar bill that does not require the consent of the parties and leaves the decision to the presiding judge.[9] The bi-partisan Senate bill, however, has been delayed in sub-committee because of opposition from the chairman of the Judiciary Committee.[10] The Judicial Conference has strongly opposed the Senate bill.[11]

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[6] Editorial, Courts Why No Cameras? Let Sunshine In, Cinc. Enquirer, Dec. 5, 2000.
[7] Marjorie Cohn & David Dow, Cameras in the Courtroom 120 (McFarland & Company, Inc. 1998) (hereinafter "Cohn & Dow").
[8] H.R. 1752, 106th Cong. (2000).
[9] S. 721, 106th Cong. (1999).
[10] "Bill to Open Courtrooms to Cameras Opposed by Judiciary, Key Lawmaker," { HYPERLINK "http://www.cnn.com/2000/LAW/09/06/camerasincourt.ap/index.html" } (visited 9/17/00).
[11] Stephanie Francis Cahill, "Courtroom Camera Bill Draws Fire of Federal Judges," Chicago Daily Law Bulletin, Sept. 7, 2000.

Other States

Other states continue to wrestle with the issue of cameras in the courts. In New York, a justice on the New York Supreme Court (that state's trial court) ruled that the state's three-year-old ban on cameras in courtrooms violated the First Amendment.[12] Though the decision was criticized, the successful broadcast of the high-profile Amadou Diallo case motivated the governor and state legislature to introduce legislation authorizing audio-visual coverage for two years, subject to certain restrictions.[13] In contrast, courts in Oklahoma and New Hampshire denied requests for camera access because of concern that coverage would jeopardize the due process rights of the parties.[14]

Forty-eight states have permitted some camera coverage in their courts.[15] Mississippi, South Dakota, and the District of Columbia have an absolute prohibition on cameras in the courtroom. Florida has led the way in allowing coverage of its state courts with such innovations as broadcasts of oral arguments before the Florida Supreme Court on the Internet and through cable television, as well as coverage of thousands of trials.[16]

History of Cameras in the Courtroom

Federal and state courts have historically been hostile to the idea of recording courtroom proceedings. Because of a fear that the presence of cameras would trivialize the judiciary and

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[12] "Controversies Continue Over Camera Access to Courts," 21 The News Media & The Law, Summer 2000; Nat Hentoff, "Cameras Get Another Crack at the Courtroom," { HYPERLINK "http://www.lawnewsnetwork.com/opencourt/stories/A16296-2000Feb16.html" } (visited 9/17/00).
[13] 3/17/2000 N.Y.L.J. 1 (col. 1); 5/10/2000 N.Y.L.J. 1 (col. 1).
[14] "Controversies Continue Over Camera Access to Courts" 22.
[15] Alexander 18; Cohn & Dow 24.
[16] Robert Schwaneberg, "Jersey's Doing Better, But It's No Florida," The Star-Ledger, Aug. 7, 2000, available in 2000 WL 25181165; Cohn & Dow 24.

interfere with proceedings, electronic recording devices were prohibited from federal criminal trials in 1946 and federal civil trials in 1972.[17]

The Supreme Court first spoke to the issue in *Estes v. Texas* when it overturned the conviction of a defendant in part because of the live coverage of the trial and a pre-trial hearing.[18] Although the plurality could not point to any direct evidence that the media presence had prejudiced the defendant, it discussed at length the possible detrimental psychological effects on those involved in the trial.[19]

The Court next addressed the issue in *Chandler v. Florida*, where it held that although there was no First or Sixth Amendment right to have a televised trial, doing so was not a denial of due process.[20] Writing for the majority, Chief Justice Burger emphasized that the *Estes* decision did not announce a constitutional rule barring television or radio coverage of trials.[21] Although it recognized that broadcast coverage might intrude upon judicial proceedings, the Court stressed the absence of empirical data to suggest that the broadcast media harm the judicial process.[22] The Court's decision paved the way for states to experiment with allowing cameras in their courts.[23]

Despite the willingness of states to experiment with cameras, the federal judiciary has remained reluctant. In 1990, however, the U.S. Judicial Conference approved a three-year experiment with cameras in civil courts.[24] The program ran from 1991 until 1994 in six district

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[17] Molly Treadway Johnson & Carol Krafka, Federal Judicial Center, Electronic Media Coverage of Federal Civil Proceedings 3 (1994) (hereinafter "Johnson & Krafka").
[18] 381 U.S. 532 (1965); Alexander 17; Cohn & Dow 19.
[19] 381 U.S. at 545-50.
[20] 449 U.S. 560 (1981); Johnson & Krafka 3.
[21] Chandler, 449 U.S. at 573-74; Cohn & Dow 23.
[22] Chandler, 449 U.S. at 578-79.
[23] Id. at 582-83.
[24] Alexander 19; Johnson & Krafka 4.

courts and two appellate circuits.[25] The program's guidelines required reasonable advance notice to request coverage of a proceeding; prohibited photographs of jurors in court, in the jury deliberation room, or during recesses; allowed only one television camera and one still camera in trials and two television cameras and one still camera in appellate proceedings; and required pooling arrangements for multi-organizational coverage.[26]

After analyzing the results and finding that the guidelines were well received by the courts and had little detrimental impact on the proceedings, the Federal Judicial Center recommended that the guidelines be extended to federal courts nationwide.[27] The Center concluded that:

> The converging results from each of our inquiries suggest that members of the electronic media generally complied with program guidelines and that their presence did not disrupt court proceedings, affect participants in the proceedings, or interfere with the administration of justice.[28]

Despite the recommendation of the Center, the U.S. Judicial Conference rejected its findings and retained the ban on cameras in federal courts.[29] Some observers believed the media hype surrounding the televised O.J. Simpson trial was a factor in the Conference's decision.[30]

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[25] Johnson & Krafka 4. The six district courts were the Southern District of Indiana, the District of Massachusetts, the Eastern District of Michigan, the Southern District of New York, the Eastern District of Pennsylvania, and the Western District of Washington. The two appellate circuits were the Second and Ninth.
[26] Johnson & Krafka 5.
[27] Id. at 7, 43.
[28] Id. at 43; Cohn & Dow 114.
[29] Cohn & Dow 115.
[30] Tony Mauro, "The Camera-Shy Federal Courts," in Covering the Courts 68 (Robert Giles & Robert Snyder eds., Transaction Publishers 1999); Cohn & Dow 115-16.

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