

# Justice Must Not Only Be Done—It Must Be Seen to Be Done

*Why the camera belongs in the courtroom.*

by Rikki J. Klieman



In the O.J. Simpson case, those opposed to cameras in the courtroom have found a *cause celebre*—and a backlash that has swelled their ranks. The members of this opposition group seem strange bedfellows—government officials, members of the judiciary, and the criminal defense bar. That fact alone should give thinking champions of the citizens accused some reason to pause and reflect on their position.

The unblinking, unforgiving “warts and all” aspect of the courtroom camera is threatening to its opponents, preventing them from realizing its enormous value. As a journalist who was a criminal defense lawyer for many years, I believe that we should not allow a celebrity trial in California to obscure the reality of justice in the rest of the country. In fact, we can learn from the flaws exposed by the courtroom camera. In that way, flaws may become virtues.

Many of the most vocal defense lawyers in opposition to the camera are people who have never tried a case with gavel-to-gavel coverage. Rather, they fear what they do not know . . . what they believe might happen to the rights of their clients. Yet, many others who may have been opponents before have become advocates after they experience the benefits that the camera provides.

The reality underlying the camera-phobic hue and cry among lawyers today is that attorneys do not agree with the *Simpson* verdict and they fear a backlash against their clients because of that decision. So, they join California Governor Pete Wilson, whose response to the verdict was (a) eliminate cameras, (b) eliminate unanimous verdicts, and (c) curtail what defense lawyers can say in their closing arguments. Criminal defense attorneys should be at the barricades screaming against such rhetoric, instead of appearing to support parts of his program.

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Contrast this current push for a camera ban to the respect accorded the camera during and after the William Kennedy Smith trial. There, the camera recorded that a person of privilege was not afforded preferential treatment; he received a fair trial like every other citizen wants to receive, and no more. There, the camera was praised for its reflection. In *Simpson*, it is derided because it revealed egregious excesses.

For critics to personify the camera and give it the weight of justice misses the point. Justice should be the rule of law but human beings decide and administer justice. Susan Smith in South Carolina and Timothy McVeigh in Oklahoma are not *Simpson* in California. The legal system is as varied as the places where the trial occurs and the people who participate in it. California has an interminably ponderous legal process; Indiana prosecuted Mike Tyson in 15 days. On average, cases take twice as long in California, with or without a camera. The Hillside Strangler case took 23 months; Charles Manson’s trial took nine-and-a-half months. Neither case had a camera present.

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With the camera in the courtroom we are able to scrutinize the work of elected officials (district attorneys), as well as public defenders and superstars of the bar. Public scrutiny is essential, not only for justice, but for the appearance of justice in a system of balanced government.

The legislative branch now has hearings on television. The third branch of government, the judicial branch, is the least understood and yet is the one that may have the greatest effect on the lives of Americans.

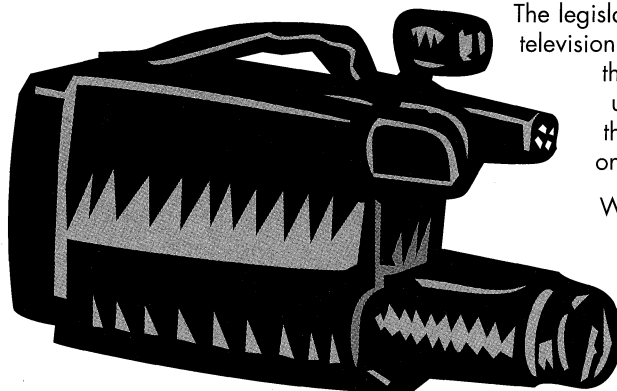
Would we be better off leaving our legal proceedings, the most cherished ritual of democracy in action, to interpretation from journalists and sketches from artists, closed to mass analysis and commentary? Should the reporting be done by those outside the courtroom, lying in

wait to ambush the lawyer, client, or witness?

It’s a chilling thought. The camera is a brutal reflector. It’s also a great teacher, a constant reminder of the critical, often overlooked human element of the law. I speak from experience. I learned to live with the camera in the courtroom when I practiced law as both a prosecutor and defense attorney for 20 years.

In Massachusetts, as of the late 1970s, cameras were a fixture in the courtroom. It was these brutally instructive—and often painful—times, watching myself on replay, that I came to understand the power of the camera in the development of my craft. I blessed the camera when certain judges were kept honest, rather than being arbitrary or capricious. I learned the value of thorough preparation. Through years of experience, I learned that jurors and witnesses were no more affected by one camera in the back of the courtroom than they were by one more spectator. The camera simply became part of the landscape.

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Often, in some of the more sensational cases that I tried, the stories in the papers hardly reflected the trial I was involved in. The discrepancies could be astounding. The camera, however, does not and cannot lie or misinterpret.

Consider, for example, O.J. Simpson trying on those infamous gloves. Did they fit or didn't they, as we read in conflicting media reports? With the camera, you could see the event and judge for yourself. As the jurors said, those gloves "just didn't fit." It wasn't the surgical gloves beneath or acting by the defendant—they weren't "snug"—only the camera could have made people realize the truth.

***Is it reasonable to believe that if television existed 200 years ago, the writers of the Constitution would have said that print reporters could enter the courtroom, but no devices that accurately recorded the proceedings would be permitted to deliver the trial to the public?***

And what better way to expose police perjury and misconduct than to see and hear it? During the Simpson trial, affluent and middle-class white people were stunned by these developments. Others of us, who are accustomed to such events as a way of life in the courts today, were not. Remember, only the government with something to hide benefits from a blackout of scrutiny of those charged with upholding the law. We cannot and must not remain silent about these issues—the camera in

the courtroom is the defense attorney's best ally, not his or her worst enemy.

I firmly believe that cameras in the courtroom do not, in any way, compromise the rights of defendants to fair trials. First, there is no evidence that jurors are tainted by cameras. There is more activity for jurors to notice in the courtroom when the sketch artist is working with his or her colors and charts, when the still camera is clicking away and reporters are furiously writing and moving about, looking for a better view.

There is no evidence of even a single witness being frightened away by a courtroom camera as opposed to the media circus outside the courtroom door. In fact, there is documented evidence of witnesses, previously silent, coming forward with relevant, probative evidence that might help a defendant or the government as a result of seeing a trial proceeding on television.

The only other argument that a defense attorney might muster is that of damage to the client's reputation. I agree with Steve Brill, founder of Court TV—any damage done by making more public what is already intended to be a public proceeding is a consequence that is not always unfortunate. Those who are acquitted may have been on the front page at the time of arrest but may find their victory buried in the back of the paper. Often, the defendant's reputation appears irreparably tarnished by the prosecution's press conference at the time of the indictment. Actually seeing the evidence often levels the playing field. Even the physical image of seeing the

accused citizen, seated with his or her counsel during the trial, is a far better image than the person being filmed in handcuffs and a prison jumpsuit upon arrival at the courthouse.

We ought to remember that one of the greatest fears of our country's founding fathers was government abuse of justice. We see that in the right to a jury trial, the prohibitions of ex post facto laws and bills of attainder. Public scrutiny was the best defense against government attempts to corrupt the system. Is it reasonable to believe that if television existed 200 years ago, the writers of the Constitution would have said that print reporters could enter the courtroom, but no devices that accurately recorded the proceedings would be permitted to deliver the trial to the public?

Justice William Brennan wrote for the court in *Globe Newspapers Co. v. Superior Court*, 457 U.S. 596, 606 (1982), as follows:

Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the fact-finding process, with benefits to both the defendant and to society as a whole. Moreover, public access to the criminal trial, fosters an appearance of fairness, thereby heightening public respect for the judicial process. And in the broadest terms, public access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government.

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