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Eye on Justice

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U.S. Circuit Judge

UNITED STATES SUPREME COURT
WASHINGTON, D.C.
MAY 23, 1994

EYE ON JUSTICE

The Second Circuit Committee on Historical and Commemorative Events, which I am privileged to chair, is happy to join with the Federal Bar Council and the Supreme Court Historical Society as sponsors of this morning's ceremonies. Our congratulations to all who have been admitted today to practice before the Supreme Court. May you contribute to the advancement of our jurisprudence as members of the Supreme Court bar and, if possible, earn substantial fees in the process.

We who maintain an interest in legal history long have been awed by the quantity and quality of the work of the Supreme Court Historical Society. In recent years, under the leadership of our own Leon Silverman, the Society has grown and prospered, with more publications, more lectures and more members than ever before. It also has assumed increased responsibility for the Supreme Court Documentary History Project, an ongoing and very important contribution to the preservation of the past.

I am very pleased to take this opportunity to recognize the very important support that the Federal Bar Council has provided for the various projects of the Second Circuit History Committee. George Yankwitt has been especially helpful to us during his tenure as President of the Council. We very much appreciate his advice as well as his special interest in the oral history

project that is now under way. It is a source of great satisfaction to me that we could all come together on this felicitous occasion.

We meet this morning in majestic surroundings. When the Justices first moved into this building in 1935, Chief Justice Stone is reported to have said that he felt like a beetle entering the temple of Karnak.¹ He is also quoted as having said: "Whenever I look at that building, I feel that the justices should ride to work on elephants."² The atmosphere in this marble temple is rarefied indeed. There is also a deceptive serenity here. In the words of Justice Oliver Wendell Holmes: "We are very quiet there but it is the quiet of a storm centre."³ It is from here, of course, that the word issues forth -- sometimes clearly, sometimes obscurely, but always finally. For all who live their lives in the law, this is a very special place.

The Justices always have approached their own tasks with solemnity, ever aware that their writ extends to a vast area. That awareness was demonstrated in a significant way by Chief Justice John Marshall, who presided over the Court from 1801 to 1835. According to Justice Joseph Story, Marshall established the tradition of serving wine to the Justices during conferences following dinner. However, the custom was to break out the wine only in wet weather. The Chief Justice often asked Justice Story to step to the window to see if it was raining. When Story reported that the sun was shining, Marshall would respond: "All

the better; for our jurisdiction extends over so large a territory that . . . it must be raining somewhere."⁴ Justice Story is also quoted as saying: "You know that the Chief was brought up upon Federalism and Madeira, and he is not a man to outgrow his early prejudices."⁵ Justice David Brewer, who served on the Court from 1890-1910, once was asked whether the tale of the wine tradition was historically accurate. He confirmed that it was, and added "that the Court sustained the constitutionality of the acquisition of the Philippines so as to be sure of having plenty of rainy seasons."⁶

History is very much with us in this place, and those whose names were entered today on the roll of attorneys of the Supreme Court bar have become a part of the Court's history. It goes without saying that history is important to all lawyers. In the words of Sir Walter Scott: "A lawyer without history or literature is a mechanic, a mere working mason. If he possess some knowledge of those, he may venture to call himself an architect."⁷ Lawyers and judges commonly refer to "legislative history," to "historical facts" and, of course, to "precedent," which invokes the past in a special way. We often make very practical use of history in our work, referring to primary and secondary historical sources, as well as to the testimony of historians, in a variety of cases.⁸ But it is a rare case indeed in which a court invokes history as *ratio decidendi*. Such a case was Richmond Newspapers v. Commonwealth of Virginia.⁹

In Richmond Newspapers, the Supreme Court was confronted

with a scenario in which newspaper reporters were barred from a state murder trial on the defendant's motion for closure. The prosecutor stated that he had no objection to the closure, which was granted by the trial court. A state statute conferred upon the court discretionary authority to exclude any persons whose presence would impair the conduct of a fair trial. The defendant made no evidentiary showing that closure was necessary to protect his right to a fair trial, and the trial court made no specific findings in that regard. The Supreme Court identified constitutional error in the closure and decided that, "[a]bsent an overriding interest articulated in findings, the trial of a criminal case must be open to the public."¹⁰ It was this decision, issued in 1980, late in the history of the Republic, that first announced the independent right of the citizenry to attend trials. The right of an accused person to demand a public trial was, of course, established in the Sixth Amendment. The fascination of the Richmond Newspapers decision, and what sets it apart, is that its rationale is historical rather than legal.

The Court began its discussion by observing that throughout the evolution of criminal trials in the Anglo-American Justice System, even stretching back into pre-history, "the trial has been open to all who care to observe."¹¹ Before the Norman Conquest, cases were brought before the local court of the hundred or the county court, where attendance on the part of all freemen was compulsory. As the jury system developed after the Norman Conquest and all freemen no longer were required to

present themselves, those who were excused were permitted to attend. Records of the Eyre of Kent, a general court held in 1313 - 1314, reported that the King desired "the community of the county by their attendance there to lend him their aid in the establishing of a happy and certain peace."¹² Continuing its walk through history, the Supreme Court quoted Sir Thomas Smith, who in 1565 wrote that all except the indictment is "doone openlie in the presence of the Judges, the Justices, the enquest, the prisoner and so manie as will or can come so neare as to heare it."¹³

Without yet a glance in the direction of the Constitution, the Supreme Court referred to the words of Hale, Blackstone and Bentham on the value of open justice. The following passage in Blackstone's Commentaries seems especially germane:

This open examination of witnesses, viva voce, in the presence of all mankind, is much more conducive to the clearing up of truth, than the private and secret examination taken down in writing before an officer, or his clerk, in the ecclesiastical courts, and all others that have borrowed their practice from the civil law: where a witness may frequently depose that in private, which he will be ashamed to testify in a public and solemn tribunal.¹⁴

Blackstone also wrote that the requirement for a judge to make his rulings in public "must curb any secret bias or partiality that might arise in his own breast."¹⁵ Examining the adoption of these concepts by the American colonies, the Court put forth as an example the open courts provision of the 1677 Concessions and Agreements of West New Jersey.¹⁶ According to

that provision, the inhabitants of the province were afforded the right to attend freely the sessions of all courts, civil and criminal, to the end "that justice may not be done in a corner nor in a covert manner."¹⁷ The Court also took note of the Pennsylvania Frame of Government, which provided "[t]hat all courts shall be open."¹⁸ Although no mention is made in the Bill of Rights (or in the Constitution itself, for that matter) of any right of the public to attend trials, the Court observed that "[t]he Bill of Rights was enacted against the backdrop of the long history of trials being presumptively open."¹⁹

At the conclusion of its long exegesis on open courts, and still without identifying any specific constitutional right that might be implicated in its analysis, the Court issued the following astounding declaration:

From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice.²⁰

And there you have it! History as ratio decidendi! Not the law, not the Constitution, but history as the reason for requiring that trials be conducted "in the presence of all mankind."

This is not to say that the Court ignored the Constitution altogether in Richmond Newspapers. Ancillary to the historical rationale, the plurality opinion invoked a number of constitutional sources, or, as Justice Blackmun put it in his concurrence, "a veritable potpourri of them -- the Speech Clauses of the First Amendment, the Press Clause, the Assembly Clause,

the Ninth Amendment, and a cluster of penumbral guarantees recognized in past decisions."²¹ After noting that "certain unarticulated rights are implicit in enumerated guarantees," the plurality came up with the following:

We hold that the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and "of the press could be eviscerated."²²

The Court is saying here that "centuries of history" have implanted in the First Amendment the right of the citizenry to attend trials. The right was of course applied to the State of Virginia in the Richmond Newspapers case through the operation of the Fourteenth Amendment.

It seems to me a little strange, however, to say that anything so far removed from the language of the First Amendment is implicit there. The freedoms enumerated are articulated clearly: speech, press, assembly, petition and religion. Freedom to attend court proceedings is not even hinted at. I think that the right of access to trials lies in the Sixth Amendment provision conferring upon the accused in all criminal proceedings the right to a public trial. Four Justices were of this opinion in Gannett Co. v. DePasquale,²³ a case decided by the Supreme Court one year before the Richmond Newspapers case was decided.

After the Gannett decision was issued, many despaired that the citizenry ever would have a constitutional right of access to

trials. In Gannett, a trial judge had granted a motion by defendants accused of murder and other crimes to exclude the public and press from a pre-trial suppression hearing. The voluntariness of confessions was at issue in the hearing, and the defendants contended that a buildup of adverse publicity was jeopardizing their right to receive a fair trial. The District Attorney did not oppose the motion. After reviewing precedent, the Supreme Court held to a literal reading of the Sixth Amendment and concluded "that members of the public had no constitutional right under the Sixth and Fourteenth Amendments to attend criminal trials."²⁴ Because it was dealing with pretrial closure, because a transcript of the hearing later was made available and because it found that any right of access was outweighed in this case by the right to a fair trial, the Court decided that closure was consistent with any right of access that might be available under the First and Fourteenth Amendments.

My own opinion is that the right of access is rooted in the Sixth Amendment, rather than in the First. The same history informs the Sixth Amendment, which includes specific "public trial" language, as informs the First, which has no such language. The right of an accused to demand a public trial does not mean that the accused can compel a private trial. And even when an accused has no objection to a public trial, why should he or she be burdened with the task of seeking access for others? I do not believe that the Sixth Amendment means to impose such a burden. I think that it confers standing upon all who seek

access. While it is true that the Constitution makes no provision for a public trial, a plan presented to the Constitutional Convention by Charles Pinckney of South Carolina contained this provision: "The trials shall be open and public, and shall be by jury."²⁵

It is familiar lore that the lack of a Bill of Rights became a rallying cry for the Anti-Federalists, who opposed ratification of the Constitution; that the state ratification conventions urged adoption of certain individual rights amendments; that James Madison, who originally opposed a Bill of Rights, caused the First Congress to submit 12 amendments to the states for ratification; and that 10 of those amendments were ratified.²⁶ What is not so familiar is that four states requested inclusion of a public trial provision. It is worth noting that New York urged Congress to propose an Amendment stating that "trial should be speedy, public and by an impartial jury,"²⁷ language very similar to that proposed by Pinckney. Even today, the New York provision for a public trial, set forth in the Judiciary Law, does not condition public access on the demand of the accused. It provides simply that, with certain exceptions, "[t]he sittings of every court within this state shall be public, and every citizen may freely attend the same."²⁸

The cases that followed Richmond Newspapers all reflect an expansive view of the right of access. In Globe Newspaper Co. v. Superior Court²⁹, decided by the Supreme Court in 1982, the Court found constitutionally infirm a Massachusetts statute

mandating closure for the testimony of minor victims of sex crimes. A 1984 decision required that jury voir dire be public,³⁰ and a 1986 decision established a right of access to transcripts of preliminary hearings.³¹ Just last year, the Supreme Court invalidated a provision of the Puerto Rico Rules of Criminal Procedure that provided that preliminary hearings "shall be held privately."³²

It is now established for the guidance of the lower federal courts that closure is justified only where there is an overriding interest that is likely to be prejudiced, the closure is no broader than is necessary to protect that interest, the trial court considers reasonable alternatives to closure and findings adequate to support closure are made by the trial court.³³ Only exceptional circumstances justify the closing of a courtroom. Jeopardy to an ongoing investigation or risk to the lives and safety of undercover government agents are examples.³⁴ Even in those situations, less restrictive measures than closure of the entire proceedings may be undertaken. I note here that there are no good reasons why the right of access to criminal proceedings should not extend to civil proceedings as well.³⁵

The societal benefits of open trials are many and varied. The great Holmes, writing as a member of the Supreme Judicial Court of Massachusetts, put it this way:

It is desirable that the trial of causes take place under the public eye . . . because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy

himself within his own eyes as to the mode in which a public duty is performed.³⁶

Holmes thus spoke to the importance of having the public eye focused on the courts. This is of course consistent with the ancient aphorism, known to all lawyers: justice must not only be done; it must be seen to be done. History teaches us that to have justice, we must keep an eye on justice.

Open proceedings establish a more complete understanding of the judicial system; promote public discussion of ways and means to improve the law and the legal process; curb bias or partiality on the part of judges and juries; encourage witnesses to testify truthfully; impress upon all concerned the solemn nature of the search for truth; afford those who have relevant evidence the opportunity to come forward; enhance public perceptions of fairness in the trials of wrongdoers, and instill confidence in, and respect for, the work of the men and women of the bench and bar.³⁷ In view of the interests involved, I suggest that attendance of the citizenry in the courtroom is most desirable.³⁸

When I started out as a state trial judge riding circuit nearly 20 years ago, one of my first assignments was to preside in the most rural county in my district. Only two terms of court were held in that county each year. On opening day, the county clerk addressed all those assembled in the large courtroom. Included in the group were those summoned for service as grand and trial jurors during the term as well as a number of spectators and a newspaper reporter or two. The clerk introduced

me, gave a short summary of my background, and explained that I was sitting in the county for the first time. He told those present that he was sure that I would be fair to all and urged the citizenry to cooperate with me. He expressed the hope that the four-week term would be marked by the satisfactory disposition of a great number of cases. His remarks were met with applause, and we proceeded with the court's business.

As we worked through the cases, day-by-day, there always were people present in the courtroom, coming and going. There were curious citizens, along with excused jurors, retirees who came every day, lawyers who were in town for conferences, local reporters and others. Always, there were people in the courtroom. The old courthouse in which I sat had a bell tower, and I understand that it was the custom in times past to ring the bell to summon the townspeople when a verdict was about to be announced. A lawyer who obtained a verdict in his client's favor was said to have "rung the bell," a phrase that still is in use in that area.

I suppose that I was present at the end of an era. I remember my father telling me that in his early days of practice, courtrooms were places to which rural townspeople regularly repaired for amusement as well as enlightenment. The reputations of lawyers and judges were often at risk under the watchful eye of the people in those days. My father told me that there were some laymen who attended these trials who could do a pretty good critique of a case. Today, of course, except in sensational

trials, the courtrooms are empty. But there is a way to fill up those courtrooms and to secure the desirable attendance of the citizenry. That way is television. Justice Harlan, in his concurring opinion in Estes v. Texas,³⁹ written in 1965, foretold the future. He said:

[T]he day may come when television will have become so commonplace an affair in the daily lives of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process.⁴⁰

The day foreseen by Justice Harlan has come. Television now is commonplace in the daily affairs of the average person. No longer is telecasting the obtrusive presence in the courtroom noted in the Estes case and in Sheppard v. Maxwell,⁴¹ which came to the Supreme Court a year later. In those days, the television equipment was cumbersome; large cameras, heavy cables, special lighting and numerous technicians were necessary. The trials in Estes and Sheppard were out of control, with massive, pervasive and prejudicial publicity, and the Court had no alternative but to identify due process violations in both cases. The indication then was that the televising of criminal trials is inherently a denial of due process.

More recently, however, the Court came around to hold that television in the courtroom in criminal cases may be allowed by the states, notwithstanding the objections of an accused. In a 1981 case, Chandler v. Florida,⁴² the Court decided that the risk of juror prejudice in some cases does not justify an absolute ban on broadcast coverage. At issue were rules and

guidelines issued by the Supreme Court of Florida allowing television coverage of trials under strict conditions. Chief Justice Burger, writing for the Court, noted the changes in television technology since the trial of the Estes case in 1962 and concluded that there was no "empirical support" for the proposition "that the presence of the electronic media, ipso facto, interferes with trial proceedings."⁴³ Ultimately, the Chief Justice sent the case off on a theory of federalism:

Absent a showing of prejudice of constitutional dimensions to these defendants, there is no reason for this Court to endorse or to invalidate Florida's experiment.⁴⁴

Only 27 states allowed broadcasting of trials or appeals when Chandler was decided. The broadcast of courtroom proceedings is no longer an experiment, however. All but a few states now permit some form of television coverage of trials and appeals.⁴⁵ In New York last week, a special committee that studied the state's six-year experience with cameras in the courtroom released its report.⁴⁶ The committee, after hearing witnesses, recommended that permanent legislation allowing access be adopted when the current authorization expires in 1995.⁴⁷ The program in New York generally has been considered a success. As in the other states, various protective safeguards are in place.

And what of the federal judiciary? In September 1990, the Judicial Conference of the United States at long last approved a three-year pilot program for electronic media coverage of civil

proceedings.⁴⁸ Eight pilot courts were selected for the program, six district courts and two appellate courts. One of the district courts is the Southern District of New York and one of the appellate courts is the Court upon which I sit -- the Second Circuit Court of Appeals. Media representatives must apply for access on a case-by-case basis and coverage must proceed under guidelines established by the Judicial Conference and local rules.⁴⁹ The Federal Judicial Center recently reported on the pilot program, providing an evaluation for the period July 1, 1991 to June 30, 1993. The report was a very positive one, and the program has been extended until December 31, 1994.⁵⁰

According to the evaluation, judges generally were neutral at first but became more favorably disposed to have cameras in the courtroom after having some experience with coverage. Both attorneys and judges reported little or no effect of camera presence on participants or decorum. The guidelines were found to be workable by all concerned, and the media was most cooperative. These findings comport with my own observations as Chair of the Cameras in the Courtroom Committee for the Second Circuit. Trials were covered more frequently than appeals in the pilot program. I fear that appellate arguments are often very dull fare. The Judicial Center report indicated that courtroom footage was most often used to illustrate a reporter's narration rather than to tell the story through the lips of the on-screen participants. This, of course, is one of the great criticisms of

courtroom television coverage -- that only small snippets of film are used, and then only as background. It is true that, except for the Court TV Network and C-Span, full trials rarely are shown. It is also true that only sensational cases seem to make the grade.⁵¹ I take note of the fact that federal criminal trials and appeals are not part of the pilot program due to a prohibition in the Federal Rules of Criminal Procedure.⁵² A Committee of the Judicial Conference is holding hearings this year on a proposal to change the rule.⁵³

Permit me to give you my "take" on this matter. I think that there should be a strong presumption in favor of television cameras in the courtroom. The technology is far advanced and small, fixed cameras that operate in the normal courtroom light are virtually unseen. There is no reason why anyone in the courtroom should be any more self-conscious with the camera lens facing him or her than he or she is in facing any spectator in the courtroom. I think that all trials and appellate arguments should be open to television and that all measures short of excluding the cameras should be first explored. Cases involving sexual assault, children of tender years, trade secrets, national security and the like can be dealt with without closing the courtroom altogether. But wherever the courtroom is open, there the cameras should be allowed.

As to the charge that the cameras will cover only the sensational, I say "So be it." I think that the average citizen gets a better appreciation for the judicial system and for the

lawyers and judges who make it work through the televising of sensational cases as well as non-sensational cases. Yes, one of the reasons for the bad image of lawyers and judges is that nobody understands what we do. I think that televising the guilty plea of Tonya Harding demonstrated how methodical and careful we are about permitting a guilty plea. I think that the televised trial of Lorena Bobbitt demonstrated what juries are confronted with in assessing the testimony of witnesses and arriving at the truth. I think that the televised trial of the Menendez brothers showed that lawyers and judges and jurors are just hardworking men and women who are doing their best to achieve that elusive goal of justice. Of course, these are sensational cases, but they illustrate as well as any what it is that we do. It is essential that justice is seen to be done, and television lets the citizenry see our justice system in action. Television viewers have demonstrated great interest, and their interest should be encouraged.⁵⁴ The televising of court proceedings is the best thing that ever happened to our profession, because it inspires confidence in our judicial processes.

And one more thing while I am worked up about the issue. Let's get the cameras into the Supreme Court! Is there any possible reason that you can think of not to televise Supreme Court arguments? Is there any possibility of prejudice to anyone? And wouldn't televising those arguments provide the greatest civic lessons the nation could have? There are some

indications that the Court considers that televised sessions would be an affront to its dignity. I think that is ridiculous. As lawyers and judges, we revere the Court. Yet, a recent survey reported in American Enterprise Magazine indicates that only thirty-one percent of those surveyed in the general population have a great deal of confidence in the Court.⁵⁵ This is most unfortunate. I think that it derives in large part from the fact that the public is not fully aware of what the Court does and how it does it. It seems to me insufficient to squeeze spectators into that small courtroom to hear a few minutes of oral argument before rotating them out to make room for more. If the Court does not provide more expansive access, perhaps Congress will.⁵⁶ The people of the nation should have the opportunity at their leisure and in their homes to see and hear the men and women of the Court and of its bar as they search for answers to the important issues of the day. Only the eye of the camera can provide that opportunity, for in these times it is the principal eye on justice.

1. Peter Hay, The Book of Legal Anecdotes 31 (1989).
2. Id. at 28.
3. Oliver W. Holmes, Law and the Court, in Collected Legal Papers 291, 292 (1920).
4. Hay, supra note 1, at 287-88.
5. Id. at 288.
6. Id.
7. Sir Walter Scott, Guy Mannering 249 (1815).
8. Roger J. Miner, Preserving the Past, 47 Record of the Assoc. of the Bar of the City of New York 757, 762 (1992).
9. 448 U.S. 555 (1980).
10. Id. at 581.
11. Id. at 564.
12. Id. at 566 (quoting 1 William S. Holdsworth, A History of English Law 268 (3d ed. 1927)).
13. Id. (quoting Sir Thomas Smith, De Republica Anglorum 101 (Leonard Alston ed. 1972) (1583)) (emphasis added by Court). For further discussion of the historical context of the right to public access, see In re Oliver, 333 U.S. 257, 264-70 (1948).
14. 3 William Blackstone, Commentaries *373.
15. Id. at *372.
16. Richmond Newspapers, 448 U.S. at 567 (citing to reprinted versions in Sources of Our Liberties 188 (Richard L. Perry ed. 1959) and 1 The Bill of Rights: A Documentary History 129 (Bernard Schwartz ed. 1971)).
17. Id. (quoting Sources of Our Liberties, supra note 16, at 188).
18. Id. at 568 (quoting Sources of Our Liberties, supra note 16, at 140).
19. Id. at 576.
20. Id. at 573.
21. Id. at 603.

22. Id. at 580 (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)).
23. 443 U.S. 368 (1979).
24. Id. at 391. For a discussion of the Sixth Amendment's application to cameras in the courtroom, see Gregory K. McCall, Comment, Cameras in the Criminal Courtroom: A Sixth Amendment Analysis, 85 Colum. L. Rev. 1546 (1985).
25. James Madison, Journal of the Federal Convention 58 (Library Press 1970) (E.H. Scott ed. 1893).
26. Roger J. Miner, Identifying, Protecting and Preserving Individual Rights: Traditional Federal Court Functions, 23 Seton Hall L. Rev. 821, 830-32 (1993).
27. Amendments Proposed by New York (1788), quoted in *Gannett Co. v. DePasquale*, 443 U.S. 368, 426 (1979).
28. N.Y. Jud. Law § 4 (McKinney 1983).
29. 457 U.S. 596 (1982).
30. *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) ("Press-Enterprise I").
31. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) ("Press-Enterprise II").
32. *El Vocero de Puerto Rico v. Puerto Rico*, 113 S. Ct. 2004 (1993).
33. See Press-Enterprise I, 464 U.S. at 509-10.
34. See *United States v. Cojab*, 996 F.2d 1404, 1408 (2d Cir. 1993).
35. See generally, Jeanne L. Nowaczewski, Comment, The First Amendment Right of Access to Civil Trials After Globe Newspaper Co. v. Superior Court, 51 U. Chi. L. Rev. 286, 312-14 (1984).
36. *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884).
37. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569-72 (1980); *United States v. Simone*, 14 F.3d 833, 839 (3d Cir. 1994).
38. For a contrary view, see Max Radin, The Right to a Public Trial, 6 Temp. L.Q. 381 (1931).
39. 381 U.S. 532 (1965).

40. Id. at 595 (Harlan, J., concurring).
41. 384 U.S. 333 (1966).
42. 449 U.S. 560 (1981).
43. Id. at 577 n.11.
44. Id. at 582.
45. See More States OK Use of Cameras in Courtrooms, 16 News Media & the Law 54, 55 (1992).
46. Frances A. McMorris, Report Urges Permanent Spot for Cameras in Courtroom, N.Y.L.J., May 17, 1994, at 1.
47. Id.; see also Gary Spencer, Session on Cameras in Courts Weighs Legislative Realities, N.Y.L.J., Mar. 9, 1994, at 1.
48. Federal Judicial Center, Committee on Court Administration and Case Management of the Judicial Conference, Electronic Media Coverage of Federal Civil Proceedings: An Evaluation of the Pilot Program in Six District Courts and Two Courts of Appeals (1993).
49. See Federal Judicial Center, U.S. Court of Appeals Evaluation Manual, Pilot Program on Photographing, Recording, and Broadcasting in the Courtroom (1991); Guidelines of the Court of Appeals for the Second Circuit Cameras in the Courtroom (1991).
50. Administrative Office of the United States Courts, Preliminary Report of Actions Taken by the Judicial Conference of the United States 4 (Mar. 15, 1994); see also Deborah Pines, U.S. Judges Vote to Extend Cameras Experiment, N.Y.L.J., Mar. 17, 1994, at 1.
51. See David A. Harris, The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System, 35 Ariz. L. Rev. 785 (1993); Laura Morice, Court of Appeal, US, Apr. 1994, at 43.
52. Fed. R. Crim. P. 53.
53. Preliminary Draft, Proposed Amendments to Fed. R. Crim. P. 53 (Oct. 1993).
54. See Elizabeth Kolbert, A Full Docket, but No Profits, for Court TV, N.Y. Times, Jan. 31, 1994, at D6 (noting that for a "start-up cable channel," Court TV's Nielsen ratings were "surprisingly strong").
55. Public Opinion and Demographic Report: Confidence in Institutions, American Enter., Nov./Dec. 1993, at 94, 95.

56. Todd Piccus, Note, Demystifying the Least Understood Branch: Opening the Supreme Court to Broadcast Media, 71 Tex. L. Rev. 1053, 1098 (1993).