

## “Cameras in Court: Justice’s Loss or Gain?”

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Lights, camera, justice – but who will be watching? Media campaigners, politicians and even a significant number of practitioners have enthusiastically received the Lord Chancellor’s recent announcement of plans to introduce television cameras into certain courts. In fact, it is almost impossible to read an article on the subject that doesn’t invoke Lord Hewart’s solemn mantra that it is in the public interest not only for “*justice to be done, but to be seen to be done.*”

But what does this really mean? And what are the public supposed to gain by ‘seeing justice done’?

Kenneth Clarke’s answer appears to be twofold: Firstly, public confidence in the administration of justice will be increased by making the judicial process more transparent. Secondly, public understanding of judicial decision-making will be increased by placing those decisions in context.

Neither justification is convincing. In fact, the group that stands to gain the most from televising court proceedings is not the general public, but the legal profession itself.

In theory, opening up the court system to a wider audience could go a long way towards ensuring that those who adjudicate on matters of immense public importance are all reading from the same script.

In practice, however, this benefit is unlikely to be realised, given the limited scope of the proposed reforms: If broadcasting takes places, then it is likely to be subject to judicial veto and coverage restricted to appellate courts and judges’ summary remarks. Victims, witness, offenders and juries will not be filmed, nor could they be, given that there would be a serious risk of deterring witnesses from coming forward and prejudicing a defendant’s right to a fair trial. Faced with a choice between the two, it is clearly preferable that justice be done and not merely seen.

In the Supreme Court, which hears appeals on matters deemed to be of the highest public importance, cameras have been present for two years, but interest in the footage and uptake by broadcasters has been disappointing.<sup>1</sup> The reason would seem to be that the style of appellate litigation (where there are no witnesses, no searing cross-examination and no juries) is a bit of turn-off for a public raised on Rumpole, Kavanagh and Perry Mason. We'd rather watch the new series of Silk.

There is, it seems, a gulf between what is deemed to be in the public interest, and what the public is actually interested in. All the high-talk about the constitutional importance of increasing confidence, accountability and transparency aside, what we would really like is a bit of entertainment. Unfortunately for the proponents of reform, this is an appetite which the judicial system has no business satisfying.

The second purported benefit of having cameras in court – education and increasing public understanding by enabling us to see decisions in context – is equally spurious.

It is unclear how seeing, or more accurately, 'hearing' a judge explain a decision in his own words is meant to dramatically improve the public's understanding of sentencing policy. Broadcasting would provide us with only a snapshot of the case, the final frame in an often long and complicated story. In reality, many decisions are determined by factors like the credibility of particular witness testimony, which would continue to be withheld from the television audience. This limited picture would become even more truncated when edited down to a thirty-second sound bite for the nightly news.

Likewise, it is unlikely that the presence of TV cameras would have increased the public's understanding and dispelled the many misconceptions that surrounded the major legal controversy of the summer – the cross-examination of Milly Dower's father during the trial of Levi Bellfield. There was a public outcry when Bob Dowler was scrutinised on the stand and the defense barrister, Jeffrey Samuels QC, had to be provided with police protection. What the public didn't know was that Samuels's questions had been entirely appropriate given the other evidence in the case and particularly, the fact that Bob Dowler had been the initial focus of the police investigation. What is more, it was

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<sup>1</sup> Lord Neuberger of Abbotsbury, Master of the Rolls, *Open Justice Unbound?* Judicial Studies Board Annual Lecture, 16<sup>th</sup> March 2011 [34]

his professional duty to put the matters, in order to “*fearlessly promote and protect his client’s best interests.*”<sup>2</sup>

Television cameras would not have informed the general public about either of these crucial facts. Instead, their presence would only have inflamed tensions and anger in the face of a perceived injustice. In both cases what is required is full and accurate court reporting and higher standards of legal journalism.

Like any good legal thriller, however, there is perhaps a twist in the tale. With all the focus on the purported public interest in televising court proceedings, the benefits to legal professionals have been largely overlooked.

The standard of legal education in the UK has come some way since the early days of ‘bar school’. Back then, the first opportunity an advocate had to learn his craft was often his first appearance in court. Even now, however, vocational legal training remains deficient. The art of advocacy – the essentials of presence and command, judgment and persuasion, order and clarity – are almost impossible to teach and even harder to learn in the safety of the classroom.

The recording and broadcasting of court proceedings has the potential to revolutionise the style in which legal education is delivered. While it may be some time before ‘Grabner’s Greatest Hits’ or ‘Mansfield’s Memorable Moments’ become compulsory viewing, footage could be consolidated by practitioner or by subject matter and students could review the first principles of opening and closing a case, responding to judicial interventions or applying for bail, disclosure, summary judgment and everything else in between.

Students have the most to gain from the Lord Chancellor’s reforms and the greatest incentive to support them. Televising court proceedings opens the door to improving the quality of the training provided by law schools and the standard of the young professionals called to the bar each year. Surely that is how we increase public confidence in the judicial system and its main protagonists?

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<sup>2</sup> Code of Conduct of the Bar of England and Wales, Rule 303