

Cameras in Courts: Justice's Loss or Gain?

The current proposal to allow cameras into courts to film judges' summary remarks has sparked a wider debate on whether or not televised coverage of the courts should be more extensive, including counsel, witnesses, defendants, victims, and even jurors. There are essentially two arguments for this move. The first is that televising the whole of a trial will broaden public access to the courts: the principle of open courts and publicly available transcripts will be furthered.¹ The second is that broadcasting may improve public understanding of court proceedings: the public at large will no longer need to rely on the written press, which may distort or edit reality, for information on trials but can see what happens for themselves. The principle underlying both arguments is the same: in a democratic society that proclaims the rule of law, justice must be open and understandable to all. The principle is a strong one; but does it stand up to the practical difficulties that face extending coverage of courts? Further, will opening up the courts satisfy any desire of the public's to exercise their democratic right to see justice done? I shall outline three difficulties, which, in my view, show that extending broadcasting in courts will result in a loss for justice, not a gain.

The first difficulty arises when one considers how coverage of trials will be aired and edited. It seems highly likely that television coverage of courts will reach viewers by way of highly edited clips. The danger of the editing process is that it will distort reality, sacrificing a balanced picture to a sequence of dramatic moments. As a result, public understanding will not necessarily be advanced at all; it might even regress. Suppose a news program shows a clip of a defendant behaving reticently and *prima facie* unusually in the face of a tough cross-examination. Viewers, not having been shown more evidence, may form assumptions about

¹ The physical restrictions imposed on open access courts by the size of the public gallery can sometimes be a problem: in the recent trial of Vincent Tabak, the public gallery was overcrowded and seats were awarded on a lottery system. Televised trials would solve this problem.

the defendant's guilt on the basis of their behaviour.² The next clip on the program shows the jury acquitting. Viewers may be surprised and left wondering how the law could let someone with such an air of guilt escape punishment. How does this better understanding? It seems that it doesn't; the second argument in favour of broadcasting which I mentioned above appears to be vitiated.

A further undesirable effect of editing is that it may leave an acquitted defendant's reputation in tatters. If edited coverage leads a public to conclude a defendant is guilty notwithstanding acquittal, the effect on their reputation may be as bad as a wrongful conviction. The problem exists already but will only be made worse with the introduction of televised trials. Not only is it intuitively unfair that an innocent person should suffer adverse public opinion, but it is a principle that finds strong expression the common law and so should be upheld: slander involving the imputation of a criminal offence punishable by imprisonment is actionable *per se*.

The second difficulty is that screening trials before a potentially vast audience will rob witnesses, victims and jurors of a degree of vital protection. Witnesses are already often reluctant to give evidence: they may, for example, come from a background where association with the police or courts is stigmatized. The CPS has even introduced special measures to combat this problem.³ They will only be made more hesitant if their appearance is likely to attract special attention and be watched by thousands, especially where their evidence may run contrary to popular sentiment. The same is true of victims, who may be unwilling to relive harrowing experiences before such an audience.⁴ Jurors, who could be vilified for delivering an unpopular verdict, must remain anonymous. It is important for

² The public evidently take behaviour into account in assessing a defendant's guilt or innocence. Many, for example, judged Amanda Knox harshly on the grounds that she behaved oddly following Meredith Kercher's death.

³ *Archbold*, ed. Richardson, 8.71-131.

⁴ Again, criminal procedure recognizes this problem: part of the rationale for encouraging early guilty pleas by reducing sentence is to save victims, particularly in sexual offence cases, from suffering the trauma of being examined on their experience.

justice that ordinary people should not see jury service as potentially dangerous and so avoid it; this will not be the case if juries are televised.⁵

The third difficulty involves the possible effect of televised trials on counsel. Protection is relevant here also: the barrister defending Levi Bellfield came under intense public criticism for his cross-examination of Milly Dowler's family, notwithstanding his duty to put the best case he could; had he been filmed, the attention would have been worse. Another worry, however, is that broadcasting could prompt playing up to the cameras at the expense of responsible advocacy, as barristers attempt to advance their careers through popularity. Perhaps these fears are exaggerated: the Bar Code of Conduct places strict limits on self-publicity and advertising.⁶ But as the publicly funded Bar struggles for survival, might the temptation to use court broadcasts as marketing tools be too great for some? The coverage of parliamentary debate has, according to some MPs, had this kind of adverse effect.⁷

The above three practical difficulties suggest that extending televised coverage of the courts would be unwise. Of the two arguments for this move, the first loses force in the face of the second and third difficulties and the second is cast in serious doubt by the first difficulty. On top of all this, we should ask ourselves whether there is a public demand for understanding and insight that needs to be satisfied. The recent press coverage of the Tabak, Bellfield, and Abramovich trials demonstrates the kind of cases that most people focus on: those undeniably dramatic or glamorous trials steeped in gory details, human interest, or celebrity scandal.⁸ Are people interested because they want to bear witness to their justice system? Or are the criminal courts arenas of human suffering, drawing crowds, as did the stocks and the gallows? Perhaps the latter is closer to the mark. If so, the point of televising trials seems even weaker.

⁵ The jurors in the televised trial of Casey Anthony earlier this year received death threats when their identities were made public.

⁶ *Code of Conduct of the Bar of England and Wales* 710.1-2.

⁷ Concerns have been voiced in the press that judges could be affected in a similar way but I do not find these convincing: not only are judges very used to bearing responsibilities to the public at large, but their careers are unlikely to be advanced by celebrity.

⁸ The recent judgments handed down by the Supreme Court on property law provide a further example: *Berrisford v Mexfield* is arguably of far greater significance in legal and practical terms but *Jones v Kernott*, which involved a degree of human interest, was far more extensively covered in the press.