

Cameras in Court: Justice's loss or gain?

A man, charged with driving under the influence, arrives in court to make a bail application. Suddenly, he lunges forward and punches a court official square in the jaw. The pair then roll around under the judge's bench to the dismay of onlookers.

Disorder in the Court is an American TV show in which 'trials gone wild' are broadcast for all to see on the *truTV* (formerly *Court TV*) network. The image of the US courtroom garnered from its schedule is something akin to *The Jerry Springer Show*: with lawyers.

It is therefore unsurprising that many legal professionals have failed to welcome Kenneth Clarke's announcement that the ban on cameras in court will be lifted. Many fear that the move will do little more than expose the justice system to frivolous reporting. Taking into account the quality of legal commentary broadcast on *truTV*, it is hard to argue that reducing the administration of justice to prurient entertainment is not a legitimate concern.

So why does the justice secretary intend to let TV crews loose in the Court of Appeal, and later allow them to film sentencing in the Crown Court? A cynic may explain away the latter as a political ploy to portray the government as 'tough on crime'. Criminals will be sentenced in the full light of publicity, yet no cameras will capture the many not-guilty verdicts and directed acquittals that occur daily.

The less cynical, including the Bar Council Chairman and the Director of Public Prosecutions,¹ argue that subjecting courts to the glare of television scrutiny will ensure wider, more accessible communication about how courts operate. That the public know and understand what is going on in their law courts is an essential element of democratic accountability, and fundamental to maintaining public confidence in the judiciary.

¹ See BBC News UK, 'Televised sentencing in English courts 'considered'' (6 September 2011), available at <http://www.bbc.co.uk/news/uk-14798203> [last accessed 28 November 2011]; and James Robinson, 'DPP Kier Starmer in favour of allowing cameras in court', *The Guardian* (1 June 2011), available at <http://www.guardian.co.uk/media/2011/jun/01/dpp-keir-starmer-cameras-in-court> [last accessed 28 November 2011].

Presently the only way to know for sure what is going on in any courtroom is to take a seat in the public gallery. In theory this is a model of open justice. In practice it excludes anyone who goes to work or school (given that courts sit during working hours) or who can't afford the expensive train fare to London to peek inside the Royal Courts of Justice. By letting in the cameras these limitations are stripped away. The audience grows from tens to potentially millions.

The problem is that if those tuning-in see little more than sensationalism and sound-bites, this will do little to enhance public understanding and confidence in the system. A study by the Canadian Forum on Civil Justice has found sensationalised reporting to be the main informant of public opinion. Distorted perspectives on law and justice are fuelled by coverage of extraordinary cases.²

But the fact of the matter is that even without the intervention of television cameras the public already has a misinformed view of the justice system, fuelled by selective and indulgent newspaper coverage portraying our judges as bleeding-heart liberals, and our law as too pro-human rights.³ Taking judges' comments out of context creates inaccurate stories about illegal immigrants being saved from deportation by their pet cat, as reported in *The Telegraph* and made famous by the Home Secretary.⁴ *The Sun* wrongly reported that a judge ordered a convicted murder be allowed access to pornography in his cell because of his human rights.⁵

Why then should we exclude the medium that could potentially shed the most light on what is really going on? Rolling cameras ensure an accurate record. Although final bulletins will always be at the mercy

² Mary Stratton & Diana Lowe, 'Public Confidence and the Civil Justice System: What do we know about the issues?', *Canadian Forum on Civil Justice*, available at <http://cfjc-fcjc.org/docs/2006/cjsp-confidence-en.pdf> [last accessed 28 November 2011].

³ See 6th Report of the Select Committee on Constitution (11 July 2007), available at <http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15102.htm> [last accessed 28 November 2011], chapter 4.

⁴ David Barrett, 'Immigrant allowed to stay because of pet cat', *The Telegraph* (17 October 2009), available at <http://www.telegraph.co.uk/news/newstoppers/howaboutthat/6360116/Immigrant-allowed-to-stay-because-of-pet-cat.html> [last accessed 28 November 2011].

⁵ Oliver Harvey & Michael Lea, '35,000 back Sun on rights', *The Sun* (13 May 2006), available at <http://www.thesun.co.uk/sol/homepage/news/article48194.ece> [last accessed 28 November 2011].

of editorial bias, allowing proceedings to be scrutinised by a variety of media will expand the potential for more varied and comprehensive reporting.

Kenneth Clarke's reforms are steps in the right direction. Filming has been allowed in the Supreme Court since 2009 and the justice system hasn't fallen apart, nor have judges and barristers been seen playing to the cameras. However, the reforms do not go far enough. The *only* way of ensuring that the administration of justice is fairly represented is to make cameras permanent fixtures in court, maintaining a complete record and providing context for those who seek it. Given that we live in a YouTube age it is unlikely to be particularly complicated or expensive to have proceedings uploaded to an online archive, as is currently the case with Parliamentary procedures. The media, as well as the justice system, would be kept in check.

This means allowing the whole course of a trial to be shown on camera, not just the sentencing. After all, sentences are passed in the context of what comes before. For the public to only play witness to the very end of a lengthy legal process may actually lead to more confusion, not less. Furthermore, the trial of Levi Bellfield prompted outcry at how defence lawyers treat victims, despite the public never actually witnessing the defence team's questioning of the Dowler family.⁶ If trials were captured on camera the public would be able to judge for themselves when lawyers and judges should be held to account, and whether reform is needed. The proliferation of online legal commentators could offer thoughts from a variety of perspectives and better educate the public.

Of course, consideration would have to be given to cases involving children and vulnerable adults. However, seeing as safeguards already exist to exclude the public and the media from the court where necessary - without destroying the principle of open justice for the majority of cases - it is unlikely that any such issues will prove insurmountable.

⁶ Caroline Davies & Karen McVeigh, 'Milly Dowler family say Bellfield trial was 'mental torture'', *The Guardian* (24 June 2011), available at <http://www.guardian.co.uk/uk/2011/jun/24/dowler-family-bellfield-trial-mental-torture> [last accessed 28 November 2011].

In 1924 Lord Chief Justice Hewart proclaimed that for justice to be effective it must be both done and seen to be done.⁷ He must have been dismayed when just a year later the Criminal Justice Act introduced the ban on cameras in court. Decades later, despite a technological revolution and unprecedented public access to information, the goings on in courtrooms remain poorly understood. Allowing cameras inside is just what is needed to inspire interest in, and better public understanding of, the legal system.

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⁷ *R v Sussex Justices, Ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER 233).