

# **CAMERAS IN THE COURTROOM: A COMPREHENSIVE EXAMINATION**

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## **Abstract**

*This paper will examine the utilization of cameras within the courtroom and will discuss the historical context of broadcasting court proceedings as well as the current legal regulations pertaining to the use of cameras in and outside of the court. The strengths and weaknesses of utilizing cameras in court are explored. A section is devoted to the discussion of the diverse implications associated with utilizing cameras in court proceedings as well as the precarious influences correlating to the members thereof. An assessment of the behavioral and theoretical perspectives will be considered in regards to the sociological, psychological and criminological aspects of the community, citizens, and members of the criminal justice system.*

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## **Introduction**

The employment of cameras within the courtroom is a predominant factor pertaining to the public's opinion of a case; therefore, with as much publicity as certain cases receive, this attention may be positive or negative in relation to the judiciary process (Roschwalb, 2004). The historical context in relation to publicizing trials dates back to English common law, providing no evidence that criminal trials and proceedings were held in the privacy of the court, even by the request of the defendant upon trial (Nasheri, 2002). The theory supporting the concept of a public trial operated beneath the provision that it was vital to protect the overall integrity and appearance of the legal systems as well as safeguard against the partiality of the court system (Nasheri, 2002).

During the Puritan era, witch trials were considered to be an event of kinship, in which the community would gather together to observe trials such as these in addition to witnessing the execution of convicted witches (Howard, n.d.). The colonists in the New World maintained the utilization of the jury system and public trials through implementing these fundamental elements into the colonial charters and state constitutions. Subsequent to the colonies declaring independence from England, the customary establishments concluded that the determination of one's culpability or virtue by the public is to be preserved in the form of the Sixth Amendment to the Constitution (Nasheri, 2002). The Sixth Amendment states: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed' (American Bar Association, 1969).

The construction of courtrooms were built to accommodate citizens of the community who were interested in observing judicial proceedings; however, due to the fact that the population of our communities have developed immensely, the courts are no longer able to permit public access to all trials (Nasheri, 2002). Therefore, during the 1924 trial of Leopold and Loeb, Judge John R. Caverly permitted public coverage of this trial through the utilization of newsreel photography and a radio microphone.

## **A Case Examination**

The following case will discuss the elements associated with a highly publicized trial in relation to the rules and regulations pertaining to media coverage.

### *The Hauptmann Trial*

The Hauptmann Trial (1935) took place in Flemington, NJ, and was the first case that generated national and international public interest. During this case, Bruno Richard Hauptmann was accused of kidnapping and murdering the 20-month-old son of the infamous aviator, Charles A. Lindbergh. The capacity for the courtroom accommodated seats for 260 individuals and had up to 275 observers who were eager to assemble in, to witness the legal proceedings of immense interest. Editor and critic H.L. Mencken claimed that this trial was the 'biggest story since the Resurrection.' There were several times that Judge Thomas W. Trenchard had to threaten to clear the courtroom due to the abrupt level of noise violations from spectators at the trial. The Hauptmann trial was the first court case to display the legal proceedings by audiovisual technology to the remote public. Judge Trenchard permitted a camera to

be placed within the court that overlooked the body of the jury and the witness stand; however, the filming only occurred during the recess periods. There was a silent camera in the balcony of the courtroom and permission was given to four photographers that were able to take photographs in addition to the newsreel cameras that were present and accepted to film before session, at the scheduled noon recess, and after the evening adjournment. There were approximately 141 reporters and photographers, 125 telegraph operators, and 20 messengers that attended the trial (Martin, 1999). The adjacent streets of the court held up to twenty thousand people per day that gathered to take in the excitement of all the publicity that this trial had to offer. The footage of the 'most sensational American murder trial of the century' was aired in approximately 10,000 of the nation's 14,000 movie theaters (Roschwalb, 2004). Although there was no gag order placed over the restriction of material for the members of the court or upon the journalists that were covering the case on a daily basis, there was only one violator of the rules given by Judge Trenchard. Bruno Richard Hauptmann was ultimately convicted of murder in the first degree and as the trial spectators cheered rather enthusiastically inside and outside of the court, Hauptmann was sentenced to be put to death by electrocution. Hauptmann argued and declared that the disturbances within the courtroom during his trial denied him the opportunity to receive a fair trial; however, the appellate court opposed his argument stating that if in fact, the media that was present during the trial was bothersome, then Hauptmann should have expressed his objections at that particular time.

Harold G. Hoffman, the Governor of New Jersey executed confidential trips to the prison to visit with Hauptmann due to the fact that he was not entirely convinced beyond reasonable doubt that Hauptmann in fact kidnapped and murdered the son of Charles A. Lindbergh single handedly. The Court of Pardons denied clemency on two different occasions and Hauptmann was electrocuted on April 3, 1936 (Nasheri, 2002). This case was highly debated and Hauptmann's wife fought for the case to be reopened until she was 92 years old. This trial illustrates the results of the first highly publicized trial that the public followed and monitored in a religious fashion of sorts. The claim of Hauptmann's argument in correlation to the disturbance of the cameras and highly publicized trial may indeed be a rational principle in relation to the ruling of the case.

In 1937, the House of Delegates of the American Bar Association adopted Canon 35, a regulation cautioning judges to prohibit the right of photographing during legal proceedings as well as in the broadcasting of trials. The American Bar Association aimed to develop a specific set of rules and standards within the court system in regards to the highly publicized trials. It was concluded that any individual that was found in violation of the regulations could be found in contempt of court citations (Nasheri, 2002). However, the press did not concur with the concept of this rule and deemed it unfair in addition to a violation of their First Amendment rights. The First Amendment states that: 'Congress shall make no law abridging the freedom of speech or the press' (American Bar Association, 1969). Almost every state permits the utilization of cameras in the courtroom and the Federal court system has implemented various pilot projects in consideration of whether cameras should be permitted within Federal trials and appellate legal proceedings. Due to innovative rulings and proceedings that have the propensity to occur among the Supreme Court level, the public would appreciate the utilization of cameras within proceedings at this level. However, the Supreme Court has not initiated steps to incorporate the press into their

judiciary process at this time (Roschwalb, 2004). There is an apprehensive agreement between the court of public opinion and the opinion of public courts, due to the fact that members of the press tend to choose sides prior to court proceedings and establish firm objectives to persuade and influence members of the public (Roschwalb, 2004).

The state legislatures and requirements on using cameras within the courtroom to document and record legal proceedings vary based upon the particular state the trial is in. In regards to the state of Maryland, the utilization of media coverage within the courtroom is permissible during civil proceedings only. There are specific consent requirements that the media must abide by, confirming all the members of the legal process give their permission to participate in the trial while recorded. This consent must be given in the form of a written statement and once this consent has been formally given, it may not under any circumstances be withdrawn. However, representatives of federal, state, or the local government may be recorded, filmed, or photographed without having to provide consent. In regards to the type of equipment that is permitted, trial court cases allow no more than one portable television camera or videotape electronic camera that is operated only by one person from each media organization. On the Appellate court level, no consent is required to record legal proceedings and at any time a party may refuse to participate in coverage. No more than two cameras, operated by only one individual, are permitted from each media organization in regards to the standards set on the Appellate level.

In Maryland, the protocol to request permission to film legal proceedings must be received in writing by the clerk of the court at the location of the trial five days prior to the date the trial is to begin. The state regulations require that all equipment be set up outside of the courtroom rail, or the area that is specifically reserved for court observers. Once the equipment is assembled and situated, operators may not, under any circumstances readjust or relocate the equipment. One photographer is allowed to represent each media group; however, the use of two cameras is permitted. Photographers must maintain their position given within the courtroom and may not use artificial light or make any sudden movements that may divert the attention of the members of the court. In regards to still camera equipment, a tripod must be used when photographing and if the operator uses a hand held camera, they must remain seated at all times to limit any distraction that may interrupt and divert focus from the legal process. Each media group is permitted to use one audio system; however, a representative from the media organization may install microphones in their assigned spots. Any microphones that are strategically placed near the counsel tables or at the judge's bench should have a temporary cutoff switch to cease any perceived sound. Due to limited distraction requirements, operators of all equipment may set up before the trial begins and may not collapse the equipment until after the last trial is complete. Operators are only allowed to change film or lenses during the time that is allotted for recesses. Also, while court is in session, operators are prohibited from entering and leaving the courtroom during the trial. All coverage outside of the courtroom is prohibited, including the filming or photographic images of individuals present for judicial or grand jury arrangements.

The judge may at any time require coverage to cease with the goal of preventing an unfair, dangerous, or embarrassing situation for a member of the court, or when coverage of the trial may hinder the current efforts being implemented by the local law enforcement. Cameras are never permitted within the judges' chambers, court

cases that are closed to the general public, during jury selection, to film jurors and fellow spectators, and during confidential conferences that occur between the attorney and client or witness and between judge and counsel (Maryland Judiciary, 2001). The state of Maryland may permit cameras in the courtroom to record and film legal proceedings in civil cases; however, there are stipulations that members of the media must adhere to when participating in these cases. The next section will thoroughly examine the potential strengths and weaknesses of filming legal proceedings as well as discuss the various implications associated with utilizing cameras within the courtroom.

## **The Effects of Cameras in the Courtroom**

### *Potential Strengths*

Cameras within the courtroom may provide considerable information to the public in relation to the comprehensive dynamics of a trial. However, the publicity may damage accurate representation of the members participating in legal proceedings including legal counsel, members of the jury, the plaintiff and defendant, judge, witnesses, and victims of crime. Research studies indicate that pretrial publicity may not affect the impartiality of a jury (Martin, 1999). There are situations in which the defendant of a given trial may feed off of the publicity and hype surrounding their case while others may choose to hire a public relations specialist to seek advice during a highly publicized trial (Roschwalb, 2004). The use of cameras within the courtroom may cause participants within a given proceeding to conduct themselves in a more civilized manner due to the public display of behavior.

There is a tendency for the media to desire to televise exhilarating cases; however, the viewing of court proceedings has generated significant improvement in relation to educating citizens of the judicial process. When the media participates in legal proceedings and is permitted to televise a case, there is a condensed level of opportunity for information pertaining to the case to be falsified due to the fact that the public can view the dynamics of the case firsthand and formulate their own opinions based upon individual observation. If a judge should suspect that the utilization of cameras within the courtroom may result in any form of imminent danger or harm in relation to the defendant's right to a fair trial, action will be executed to cease coverage (Howard, n.d.). The utilization of cameras within the court system has produced positive results in relation to the public's comprehension of the judiciary process as well as to train others who are specializing in the area of law. A program entitled 'Cable in the Classroom' authorizes students ranging from grade school to college, the opportunity to view authentic courtroom proceedings at no charge (Court TV News, 1995).

### *Potential Weaknesses*

According to Alfred Friendly (1967), the media coverage of high profile criminal cases may potentially cause harm during a trial for several explanations. Reports utilize specific aspects of information correlating to a case that members of the court would not permit within legal proceedings as grounds of evidentiary information. The leak of false elements in relation to the character of those being tried, witnesses and victims of crime, and legal counsel, may produce positive or negative results that are skewed by the public population. Intense reactions from supporters and

opponents that are enthusiastic about the trial may generate considerable partiality and prejudice within our communities as facts unfold during a highly publicized trial (Martin, 1999).

According to Roschwalb (2004), there are select members of the public who are aware of the manipulative actions reporters are employing when delivering the news. One of the weaknesses pertaining to the broadcast of court proceedings is the violation of a defendant's right of due process within the Sixth and Fourteenth Amendments. It was noted earlier that the Sixth Amendment states: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed' (American Bar Association, 1969). The Fourteenth Amendment also supports the Sixth Amendment in that it states: '...Nor shall any state deprive a person of life, liberty, or property without due process of law' (American Bar Association, 1969). According to Nasheri (2002), the very presence of cameras within the courtroom and the media coverage of a case preceding the trial is a violation of a defendant's right to due process and may even result in a prejudicial jury pool producing partiality before the evidence and facts of the case are ever dispersed. Although the court may deny application, the defendant has the right to request a change of venue to receive a fair trial. According to Konefal (2004), the measures that may be enforced to guarantee impartiality within the jury selection includes extensive *voir dire*, sequestration, venue changes, trial continuances, delays during the trial, gag orders, the prohibition of publication, and the exclusion of cameras to be used within the case proceedings. Jury selection aside, the presence of media coverage within a highly publicized case can produce unfavorable results among the members of the legal counsel and the participating judge (Konefal, 2004). Commentary and opinions that are addressed and distributed in the form of factual information to the public may positively or negatively influence the ruling of a trial. Furthermore, the coverage of highly publicized cases tends to be perceived as a form of entertainment to the public versus a respectable technique of journalism.

### *Restrictions*

It is plausible to state that televising a trial alters the performance of participants during the time of the trial and can permanently affect the ruling of a case. Therefore, at any time, the judge may grant a motion to restrict statements made by all members of the judicial process including: officers, witnesses, prosecuting attorneys and defending attorneys. Judges also have the right to hold reporters in contempt of court as well as impose sanctions due to the fact that there may be reports given that have refused to identify their specific source of information (Howard, n.d.). A study conducted in 2001 by a committee member of the New York Bar Association discovered that approximately 33 states authorize cameras within the courtroom at the trial level of civil and criminal cases and do not require prior consent from parties and witnesses participating in legal proceedings. As mentioned before, state legislatures regarding the rules and regulations associated with utilizing cameras in the courtroom, vary from state to state (Smallman, 2008). State restrictions regarding filming may range dependent upon that particular state, but may also include restraints prohibiting any videotaping of underage witnesses to banning any filming of jurors, the *voir dire* process, informants or undercover agents, private and confidential conversations between legal counsel and clients, and informative sessions that occur between the judge and legal counsel that is typically held in



chambers (Smallman, 2008). The next section of the paper will discuss behavioral and theoretical perspectives in relation to the effects of participants when utilizing cameras within the courtroom.

### *Behavioral Perspective*

In *Counseling in an Organization*, published by Roethlisberger and Dickson (1966), the Hawthorne Effect was the result of experiments performed to illustrate the modification of behavior during observation. The Hawthorne Effect is a term employed by behavioral scientists to refer to the correlation of test subjects in relation to behavior. Behavioral scientists have conducted research studies concluding that subjects have the propensity to alter their behavior as the result of being watched, regardless of the variables that are supposed to be the point of the study. The Hawthorne experiment attracted the application of social science to organizations and is credited for forming the foundation of the human relations movement in addition to the field of organizational behavior (Zaleznik, 1984). This principle supports the notion that participants of the legal process are likely to modify their behavior and alter their normal representation conducted within the court system while there are cameras present. This behavior modification may not necessarily be a conscious change; however, due to the fact that participants are aware that they are being observed or recorded within the legal proceedings, there is an elevated level of inclination that proves their behavior will alter.

The Heisenberg Uncertainty Principle is a strategy that is referred to when discussing the overall implications associated with the validity and efficacy of witnesses testifying while being recorded, and how the utilization of cameras distract, embarrass, violate, and affect the overall performance of an individuals' testimony (Collins, 2007). Witnesses to crime, including victims of criminal acts of violence, may appear in court to testify during a trial may reduce their overall quality of speech or participation due to their concern of public approval. Those with the propensity to being reticent may shun from involvement to avoid public humiliation and embarrassment (Delmore, 2004). The use of cameras within the courtroom may have an adverse effect on witnesses called to the stand to testify within a given case.

Although the presence of cameras may motivate witnesses to be as precise as possible when answering questions and providing information to the court, there are witnesses who will refuse to participate in legal proceedings if they are aware that the public will be observing their testimony and members of the public will be able to distinguish their identity and involvement within the case. An example of this took place during the Menendez brothers' murder case, in which a witness was not willing to testify due to the public perception upon the case and would have testified if the exposure was diminished (Konefal, 2004). Although the presence of cameras within the courtroom may greatly reduce the willingness for witnesses to participate in the case trial, there are others who voluntarily choose to participate in the contribution of elaborative information and at times falsify facts pertaining to a case (Konefal, 2004).

### *Community-Policing*

The overall advancement and structure of community policing imparts the criminal justice system with the opportunity to promote public safety while improving the quality of life according to specific needs and concerns within the community

(Bureau of Justice, 1994). An effective community-policing strategy incorporates the cooperation of law enforcement and members of the community in the identification and solution to community concerns (Bureau of Justice, 1994). With a community consisting of countless institutions that collaborate as a coalition, the recognition of issues within a community is necessary to confront the issue of deviant behavior in addition to defining an approach to crime prevention (Carter, 2002). In relation to a case that may utilize cameras within the courtroom, the media is a dominant factor associated with human behavior and can significantly influence the ruling of a high profile case. The public's perception of a case can generate preconceived notions that positively and negatively influence the ruling.

According to Carter (2002), it is unrealistic to expect the public population to rationalize the concept of crime; however, public opinion polls convey substantial interest in role of law enforcement in criminal apprehension. It is plausible to believe that the public may miscalculate the issue of crime within the community based on the influence of police, statistical data reported, and information portrayed by the media (Carter, 2002). In association to high profile trials that are televised to the public, the fundamental influences of society mandate perception of the members within a given community as well as members within the criminal justice system. Criminal behavior and activity, police function and presentation, and daily concerns are just as important as the public perception of these concepts (Carter, 2002).

Cameras in the courtroom can hinder the productivity of community policing in a variety of ways. Dependent upon the case, the broadcast of a trial may expose error and generate reservations in how society perceives those in authority within law enforcement. It is quite challenging to conquer the stigma of implementing erroneous procedures and inappropriate actions within a given case. With this being said, police are advised to refrain from projecting condemnation towards the media for televising imperfections and shortcomings that will inevitably occur, and to represent an accountable and dutiful demeanor at all times (Carter, 2002). With the increase of interest and speculation received from the public during a high profile case, the fundamental element of concern correlates with the level of propaganda, misinformation, partiality, and distorted reports that misrepresent the facts of a trial. In association to the results of the trial and representation of the trial, a public opinion poll conducted from 1972 to 2000 demonstrated superior assurance in the media versus the government altogether (Carter, 2002). In summation, it is evident that televising court cases and permitting cameras within the courtroom can be beneficial regarding public education; however, detrimental aspects may surface in relation to social and community conflict.

### *Theoretical Perspective*

Karl Marx (1818-1883) is best known as a modern capitalist and supported the theory in which societies were predominantly under the management of the affluent due to the increase in production while others were abridged to laborious occupations (Elster, 1986). Conflict theory in association with the Marxist perspective highlights the materialistic analysis of the past while implementing a judicious stance in relation to social assembly (Straus, 2002). Radical criminology, also known as critical criminology, is a derivative of conflict theory and allied with the Marxist perception of society. Marx believed that work is methodical in a social manner and that when technology is used in production, the result is substantial upon every aspect of society



(Straus, 2002). The fundamental elements of his theory centered on feudalism, capitalism, and socialism. The contradiction and conflict within society is prevalent among the divisions and instability of class as economic interests vary (Elster, 1986).

Correlated with the contradiction and production aspect of the Marxist perspective, the generation and incorporation of technological equipment may pertain to the development of video equipment and technology and how this equipment is implemented within the criminal justice system is symbolic of the partition among society. In relation to the criminal justice system, thievery in association with a just and fair trial is a conflict in and of itself when the media influences public perception. The law enforcement community may benefit from the utilization of cameras within the courtroom and can even contaminate public perception on purpose during a given trial. Cases that are not considered high profile or do not necessarily involve the famous or wealthy are deprived recognition, broadcast, and societal attention that may be interpreted as a form of prejudice and discrimination of justice. For all the many trials that are not acknowledged within communities and for the rare, high profile cases and those of the wealthy, the utilization of cameras within the courtroom exhausts assorted attitudes and positions in relation to the overall benefit of this tactic.

### **Conclusion**

In conclusion, cameras may serve a variety of purposes within the legal system today; furthermore, one may justify the utilization of cameras in videotaping confessions, depositions, demonstrative evidence, teleconferencing of trials, videotaping and recording transcripts, providing security for buildings and boundaries, in addition to media coverage. There are positive and negative aspects pertaining to the use of cameras in high profiles cases; therefore, the decision to implement this technique into a legal proceeding should be addressed with caution. The use of cameras within the courtroom directly influences sociological and behavioral aspects of members within the community as well as members associated with the criminal justice system.

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