Cameras in Court: Justice's Loss or Gain?

"Television? The word is half Latin and half Greek. No good can come of it". So said C.P. Scott (1846-1932), an editor of *The Guardian* in its previous incarnation, in a comment which evinces something of the prejudice against the camera of many who earn a living through the printed word.

In 1925, the year that John Logie Baird gave the first public demonstration of his television on the first floor of Selfridges, section 41 of the Criminal Justice Act 1925 was enacted to prohibit photography in court, later acknowledged to extend to film recording.[1] Justice Secretary Ken Clarke's announcement on 6 September 2011 that courts will be opened up to television cameras "to demystify the process" therefore heralds the end of an 85-year ban on the glare of the camera lens.

Demystifying courts must be the right way to promote transparency and confidence in the justice system. Ultimately, criticisms of proposals to record courtroom proceedings are criticisms of media and public responsibility rather than arguments of justice and fairness which should prevent filming in court. There must be careful regulation. But cameras in court are justice's gain.

[1] *R v Loveridge* [2001] EWCA Crim 973.

Cameras in courts around the world

Currently the only exceptions to the ban in this jurisdiction are Supreme Court and Privy Council hearings, broadcast live by Sky. Public inquiries such as the Leveson Inquiry are also filmed.

The restrictive approach is quite different from that of international courts such as the ICJ and ICTY, and the prominently broadcast trials of Amanda Knox in Italy and Conrad Murray in California. The Supreme Court of Canada has allowed filming for over 20 years, with webcasts archived on its website; broadcasting is permitted in Australia, New Zealand and South Africa. Brazil's Federal Supreme Tribunal, as Lord Neuberger MR points out,[2] now has its own TV channel showing recordings alongside educational programmes about the justice system. Scotland also permits filming in limited circumstances if "the presence of television cameras in the court would be without risk to the administration of justice",[3] most famously including the appeal of Abdelbaset al-Megrahi.

Why should England and Wales be different?

Arguments against: media circus

In summary the arguments against allowing cameras into court are that this would sensationalise and degrade the justice system, reducing public respect for the courts,

[2] Lord Neubeger MR, 'Open Justice Unbound?', Judicial Studies Board Annual Lecture 2011, para.34, available at: http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/mr-speech-jsb-lecture-march-2011.pdf
[3] Practice Directions, 'Television in the Courts' (5 August 1992).

turning trials into media circuses, intimidating witnesses and juries, pressurising judges into making populist decisions or exposing them to tabloid attack.

However these concerns are based on distrust of the media and public more than arguments of justice and fairness. Witnesses and defendants can be protected from injustice by robust restrictions.

Arguments for: open justice

Televising court proceedings would promote transparency and public confidence in the justice system. As Lord Neuberger MR said:

> "If we wish to increase public confidence in the justice system, transparency and engagement, there is undoubtedly something to be said for televising some hearings, provided that there were proper safeguards to ensure that this increased access did not undermine the proper administration of justice."[4]

Fears about soundbites, sensationalism and selective reporting ignore the fact that this is already the nature of much press reporting of court proceedings. It is true that sensational cases will be broadcast. Judges may be criticised for things said on television, but they already experience this based on selective written quotations. Television recording would at least give the public first-hand access. Indeed "media circus" concerns are all

[4] Neuberger, para.35.

arguments for promoting first-hand court viewing, reducing the journalist's power as middleman.

Television should not foster disrespect for the courts. The broadcasting of parliamentary proceedings has in general promoted transparency, accessibility and public confidence in politics. People can see their politicians. Deficiencies are exposed. The main reaction is a comforting boredom. Broadcasting court proceedings is likely to have the same effect. If anything, judges and barristers should be confident that their house is generally in better order than the Houses of Parliament. Lawyers should not fear exposure; they may learn things, especially about making the law more intelligible.

Democratic justice should be as open as possible. Openness also promotes better understanding of the law. Not least among the benefits of televising courts is that lawyers and law students could see courts and advocates at work more easily. That may be very valuable to lawyers in foreign and Commonwealth jurisdictions (especially those where professional training is less developed), who often look to the UK for its high examples of professional skills and ethics.

Protecting parties and witnesses

Robust regulation can meet remaining concerns. The Bar Council, as early as 1989, stated its support for televising the courts subject to "strict rules of coverage and to the supervisory discretion of the trial judge to exclude the camera whenever it was

necessary in the interests of justice."[5] There is no reason why a properly controlled trial should ever descend into media circus like the O.J. Simpson case in 1995.

Vulnerable witnesses, anonymous defendants, children, jurors and private proceedings should not be shown. As the Bar Council proposed, broadcasting should be of the evidence in the case and therefore only people who are speaking should be filmed, as in Parliament; "[s]ensational reaction shots showing judges, lawyers or witnesses should never be permitted to be filmed or broadcast."[6] Television coverage must be unobtrusive. During retrials, the court would be able to order that repeats of the original trial are not broadcast. The usual prohibition on jurors looking at material which is not evidence in the case would apply. It would often be appropriate for broadcasting to be delayed so that nothing improper is televised.

Conclusion

Subject to these restrictions, the principle of open justice should mean that criminal trials as well as civil and appellate proceedings are shown.

Although the media has issues of self-regulation to address, this should not prevent televising court proceedings. Neither should we attempt to second-guess the public's motivation in wanting to see them. It might be for entertainment or information; quite possibly both. But justice is essentially a public affair and must be "demystified" wherever possible.

[5] Report of the Working Party of the Bar Council, chaired by Jonathan Caplan QC, 'Televising the Courts' (1989).
[6] Bar Council's response to DCA Consultation Paper CP28/04 'Broadcasting Reports' (2005), para.30.