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OPEN COURTS: HOW CAMERAS IN COURTS HELP KEEP THE SYSTEM HONEST

CLARA TUMA¹

When Patty Falk invited me to come and speak several months ago, I was so excited and so thrilled that for about a second I thought, “I’m so hot, they’re bringing me to Cleveland from Texas.”

Every time I had that thought, I remembered something that happened at one of the first trials I covered for Court TV. I was new to TV and I was in a courthouse in Gainesville, Florida. I was going up a staircase and a woman coming down stopped me and said, “Oh, my God it’s you.” I said, “What?” She said, “You’re Clara Tuma, you’re on Court TV.” I said, “Yes.” She said, “You’re my favorite.” I said, “Oh yes.” She said, “May I tell you why you’re my favorite?” I said, “Of course.” And she said, “Because I am so tired of all those pretty girls on TV!”

I just knew that Patty was going to say, “Listen, we’re tired of all those smart speakers, so we want you.” I agreed. When I got the brochure explaining who was going to be here, I felt overwhelmed and under qualified. Unlike Sam Reese Sheppard, I have not lived this case my whole life. Unlike Jim Neff, I have not researched it enough to write a book about it. Unlike Terry Gilbert and Dean Boland, I did not try the case. Finally, unlike most of you, I am not a legal scholar.

I am a reporter. I covered the *Sam Sheppard* (hereinafter *Sheppard*) civil case for Court TV, a network that televises trials. As such, the *Sheppard* case has special significance, given the debacle of the first trial. I am also at a bit of a disadvantage because I did not live through the first trial. I know the first trial because I studied it in college and studied it again getting ready for the civil case. I think there is no question that a camera in the courtroom during the first trial was trouble.

For years, many thought that because there was a problem in the *Sheppard* criminal case, any camera in any courtroom would unduly influence participants and the outcome of all cases. The U.S. Supreme Court, which had such harsh words for the media in *Sheppard v. Maxwell*,² has since opened the door to having a camera in trial courts. Most states do allow electronic coverage of trials. How we got from there to here, from the original *Sheppard* criminal case to a network that is celebrating its tenth anniversary televising trials, has been a long and sometimes a difficult road.

¹Clara Tuma was a Texas-based reporter for COURT TV for ten years. She covered the first half of the Sam Sheppard trial, when parts of it aired live on COURT TV, and never got used to how much it snowed in Cleveland. While at COURT TV, she covered some of the highest-profile trials in the country, including *South Carolina v. Susan Smith* (convicted of drowning her two young sons), *New York v. Colin Ferguson* (the Long Island Rail Road gunman), and *Georgia v. Ray Lewis* (a Baltimore Raven football player who went on to win MVP honors in the Super Bowl). She also covered the trials related to the dragging death of James Byrd, Jr. in Jasper, Texas, and the death of gay college student Matthew Sheppard in Laramie, Wyoming. Tuma is now the investigative reporter at KVUE-TV, the ABC affiliate in Austin. She earned her bachelor of journalism degree from the University of Texas as Austin.

²384 U.S. 333 (1966).

Cameras were outlawed for many years, but then slowly states began experimenting. Some states said everybody had to agree to have a camera in the courtroom. Other states said individual witnesses could opt out. Finally, the U.S. Supreme Court gave us the guidance we needed. In 1981, the U.S. Supreme Court upheld the constitutionality of a Florida statute and said, televised coverage of a trial is not in and of itself a denial of due process.³ Now forty-eight states allow some form of televised coverage of trials.⁴ Only Mississippi and South Dakota do not. Well those are the figures, now let us get to the facts.

Having a camera in the courtroom is still a hotly debated topic. Any of you who have tried or have been involved with a high profile case know that media coverage of trials in today's world is more than a concern. It is a reality. Balancing the right to a fair trial with the right to a free and vibrant press can be difficult, but judges have shown us time and time again how it can be done.

I get asked a lot about my favorite trial. It is hard to say because there are some trials I liked because I stayed in a great hotel or I met some great guy or I went to the Grand Canyon on the weekend. As a trial, the *Sheppard* civil trial last year was fascinating. Among the most fascinating I have ever seen.

The trial that sticks with me and haunts me still is the *Susan Smith* trial. Susan Smith is the woman in South Carolina who strapped her babies in the car and rolled it into the river. It was interesting, it was horrifying, it was maddening, but mainly it was just sad beyond belief.

In truth, my favorite trial that I have personally seen was the *Louise Woodward* case in Massachusetts. Louise Woodward was the British au pair charged with killing Matthew Eappon. Due to that trial, there was a national debate on who raises our children. The British press was here in force because she was a British citizen. That trial showed our system to the world, warts and all. The judge in that case did something extraordinary to ensure accuracy. At the end of every court day, after all the evidence was done and the camera was off, he invited all the reporters to the bench for an off-the-record gab session. The judge would not comment on the evidence and he never gave an opinion, but he was determined to make sure that the British reporters there understood how the American system worked. Well, as a reporter it was an invaluable resource to get insight into the procedure, including what to expect next, and what and why something happened the way it did. The reporting on that trial was remarkably accurate. I attribute such accuracy to the fact that the world got to watch the televised trial and to the fact that the judge took pains to make sure that people understood the process.

My favorite moment came in a trial that I covered in Detroit, a trial nobody has ever heard of, I am sure. It involved a defendant named Rico Jones accused of stabbing and killing five people: four babies and a woman. The four babies were under the age of three. The defense argued that because the stab wounds were only one inch deep, it must have been a female perpetrator. The defense reasoned that a man would have plunged the knife in deeper. Now, mind you these babies were stabbed in their face, so one inch was pretty relative. The state had a piece of

³Chandler v. Florida, 449 U.S. 560, 586 (1981).

⁴Cameron DeVore, Jessica L. Goldman & Laurie Lee Stapleton, Survey, *Fifty State Survey of the Law Governing Audi-Visual Coverage of Court Proceedings* (July 2000) (on file with author).

evidence that was a little bit difficult for the defense because it was a drop of blood on the kitchen sink right where somebody might have washed off a knife. In that drop of blood there was DNA from the babies, the dead woman and Rico Jones, the defendant.

Jones took the stand and said, "I went over there with a female friend. We go in. I needed something from the car, so I go out to the car, I come back and holy moly, the deed is done. This woman has stabbed the babies and stabbed the other woman." Well, there were many discrepancies of that when you looked at the evidence. But he took the stand and told this story. In cross examination, the prosecutor asked Jones, "OK, let me get this straight, you went to the car and when you came back, the stabbings had happened?" Jones responded, "I don't know." The prosecutor then asked, "You don't know?" Jones said, "Let me check my script." The prosecutor then said, "Your script, what script would that be?" Jones replied, "My script my attorney wrote for me." Jones got out a piece of paper that appeared to be a script and the case went down hill from there. We had a camera in that case.

Another case that sticks out in my mind is the trial of Lawrence Brewer, whose name probably does not ring bells. When I describe him you will know who he is. Lawrence Brewer was one of three men accused of the dragging death of James Byrd Jr. in Texas. I had the unenviable task of covering all three of those trials. In the first trial, the defendant did not testify. The second trial was that of Lawrence Brewer, who did testify and said, "I didn't know we were dragging the man. Somebody else in the car, defendant number three, chained James Byrd to the truck. And I didn't know that we chained him. I didn't know that he was dragged, I didn't know that he was decapitated, I didn't know any of this. Who knew we were dragging a man?" Again, there were many problems with that version when you looked at the evidence. Brewer was convicted and was sentenced to death.

I bring up these two cases because there was a camera at trial in the *Rico Jones* case, in Detroit, and there was not a camera at trial in the *Lawrence Brewer* case, in Texas. In both of those cases, the defendant testified and told what appeared to be a tall tale and the jurors saw through it. The jurors convicted the defendants in both of the cases. Having a camera at trial did not seem to make a difference.

I can also offer examples of people who were acquitted in and outside the presence of a camera. Jose Mesa comes to mind. That was here in Cleveland. Puff Daddy, or maybe the kids can correct me, P. Diddy, was acquitted outside the presence of camera in New York. What we find time and time again is that a camera is a novelty for the first moment or so. Jurors look at it. Attorneys want to know what it will show and if their bald spot will show. Judges are frequently concerned whether their nameplates are visible. Those are cosmetic things and you get over them. The participants quickly get to the business at hand and that is the business of a trial. The camera becomes invisible and is quickly forgotten by the participants.

I have often advised judges to tell jurors to look at the camera as much as they want to. The judges tell the jurors when they first come into the courtroom, to study the camera, look at it, examine it, memorize it, and do whatever they want. What the jury finds is what everybody else knows: namely, that the camera is not very interesting. The jurors look at the camera and they think, oh, there's the camera, and then they look away because they have far more important business at hand: the hearing of a case.

We have found the notion that lawyers play to the camera to be largely unsupported. Before I get laughed out of the symposium, everybody knows the

exception to the rule. That case in California, involved a former football player. Everybody watched Marcia Clark and Johnnie Cochran in that case. It is my contention that the problem with the *Simpson* trial was a problem with the *Simpson* judge and not with the fact that the nation was watching. In fact, not long after the *Simpson* verdict, a special task convened to evaluate California's rules on cameras. As expected, there was widespread concern over the spectacle that the *Simpson* trial had become. The task force found that judges who had experience with cameras in their courtrooms favored continuing to allow cameras in court.

So why is it important to televise coverage in trials? The basic answer is that our judicial system needs to be as open as possible. There is a reason we do not hold trials in private and a reason we open the courtroom doors and invite in the world. The reason is that justice shines brightest in the sunshine. In today's busy world only a few people can actually attend court proceedings. With so many people relying on television as their primary resource of information, televised coverage of trials exposes greater numbers of citizens to our justice system. A camera in the courtroom enhances public understanding of the judicial world by engendering a deeper understanding of legal principles and processes. Should the media be proud of its behavior in the *Sheppard* trial? No. The problems with that trial have as much to do with things outside the courtroom as they did with the way that the camera performed inside the courtroom. Should we repeat that spectacle? No. A thousand times no. A camera in the courtroom today is different. Technology allows trials to be televised by a small piece of stationary equipment. We have even worked with remote wall-mounted cameras on occasions. The pay off for that is great. Allowing the public to watch the justice system at work promotes confidence in the process, helps assure that the proceedings are conducted fairly, and offers an unbiased unblinking look at the system at work.

Several years ago, I was talking to my niece, who was then about five years old, about trials and the justice process. I was telling her that as a grown-up, you cannot go and take something from somebody just because he or she has done something to you. I explained that sometimes if you have a dispute you have to bring in strangers, let them hear the case, and they get to decide. I said to her, "So just because somebody says that you did something, it doesn't mean you did it." She asked, "Like break a garage door opener?" I asked, "Did you break the garage door opener?" She said, "No, but don't ask my mom."

That conversation has stuck with me all these years because it was the first time that I broke the justice system down in my own mind to such an elementary explanation. The idea that the government has to prove its case against you in public to a group of strangers, beyond a reasonable doubt, is a grand idea. When it works, it is part of what makes us a great country. One way to ensure that the system works is to make sure that the public can watch it work.