CAMERAS IN THE COURTROOM

by

DONNA M. TURKO

B.A., The University of British Columbia, 1982
L.L.B., Dalhousie University, 1991

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

in

THE FACULTY OF GRADUATE STUDIES

Department of Anthropology and Sociology

We accept this thesis as conforming
to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

April 2002

© Donna Mary Turko, 2002
In presenting this thesis in partial fulfilment of the requirements for an advanced degree at the University of British Columbia, I agree that the Library shall make it freely available for reference and study. I further agree that permission for extensive copying of this thesis for scholarly purposes may be granted by the head of my department or by his or her representatives. It is understood that copying or publication of this thesis for financial gain shall not be allowed without my written permission.

Department of Anthropology

Sociology

The University of British Columbia
Vancouver, Canada

Date July 9, 2002
ABSTRACT

This is a thesis on the interaction between the ideologies and discourses of legal and media professionals in conflict over camera access to criminal court proceedings in British Columbia.

A deconstruction approach is taken to penetrate some of the rhetoric of the ongoing debate. The ideologies and discursive underpinnings of the respective professional groups provided the framework from which to examine some of the reasons for the controversy and the potential areas for convergence of legal and media perspectives.

A detailed examination of court precedents and public policy on cameras access is offered, followed by a discussion of social science writings that help to frame the controversy.

Issues regarding the propriety of cameras in the courtroom are canvassed through interviews with media and legal members, including their opinion of television coverage of the O.J. Simpson trial, the quality of criminal court television coverage, and the potential for the television media to influence trial proceedings and public reaction.

The data gathered underscore differences between media and legal groups over whether cameras should be allowed to broadcast court proceedings. Evident in the findings is a variation of opinion on the quality of television news coverage: the media anticipate that improvement would occur if video coverage was permitted, while legal members stress the media's lack of knowledge about the courts and in the profit-making motives. There was a clear recognition by the majority of all interviewees that cameras were detrimental in the O.J. trial, potentially problematic for future court proceedings, and that audiences could be negatively influenced by publicly televised proceedings; nevertheless the media group was adamant about gaining camera access to the courtroom. The majority of the legal group was strongly opposed to the idea.

The different positions of the legal and media members are traceable in part, to differences in their respective professional discourses. The noted disparate elements and contradictions are identified as potential grounds of convergence for the two sides of the debate.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Abstract</th>
<th>ii</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of Contents</td>
<td>iii</td>
</tr>
<tr>
<td>Acknowledgement</td>
<td>iv</td>
</tr>
<tr>
<td>Chapter One</td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Chapter Two</td>
<td></td>
</tr>
<tr>
<td>Literature and Legal Case Review</td>
<td>10</td>
</tr>
<tr>
<td>Chapter Three</td>
<td></td>
</tr>
<tr>
<td>Sociological Constructs</td>
<td></td>
</tr>
<tr>
<td>3.1 Legal Ideology and the Discourse of Justice</td>
<td>36</td>
</tr>
<tr>
<td>3.2 Media Ideology and the Discourse of Objectivity</td>
<td>43</td>
</tr>
<tr>
<td>Chapter Four</td>
<td></td>
</tr>
<tr>
<td>Methodology</td>
<td>62</td>
</tr>
<tr>
<td>4.1 Field Methods</td>
<td>62</td>
</tr>
<tr>
<td>4.2 Procedures</td>
<td>65</td>
</tr>
<tr>
<td>Chapter Five</td>
<td></td>
</tr>
<tr>
<td>Findings and Interpretation</td>
<td>69</td>
</tr>
<tr>
<td>Chapter Six</td>
<td></td>
</tr>
<tr>
<td>Discussion and Conclusions</td>
<td>84</td>
</tr>
<tr>
<td>Bibliography</td>
<td></td>
</tr>
<tr>
<td></td>
<td>95</td>
</tr>
<tr>
<td>Appendix A</td>
<td></td>
</tr>
<tr>
<td>Letter to Interview Respondents</td>
<td>103</td>
</tr>
<tr>
<td>Appendix B</td>
<td></td>
</tr>
<tr>
<td>Consent Form</td>
<td>104</td>
</tr>
<tr>
<td>Appendix C</td>
<td></td>
</tr>
<tr>
<td>Semi-structured Interview Schedule</td>
<td>106</td>
</tr>
<tr>
<td>Appendix D</td>
<td></td>
</tr>
<tr>
<td>Itemized Responses (abbreviated form)</td>
<td>107</td>
</tr>
<tr>
<td>Appendix E</td>
<td></td>
</tr>
<tr>
<td>Press Release from British Columbia Supreme Court dated April 18, 2001</td>
<td>114</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

With the greatest of respect, I acknowledge the tremendous support and the essential direction on this thesis received from my advisor Dr. Bob Ratner. Dr. Ratner's dedication to students remains unsurpassed.

I also wish to express my gratitude to committee members Dr. Joel Baken and Dr. Ken Stoddart for their willingness to assist with this work.

Further, I am very appreciative of all the media and legal professionals who took time out of their extremely busy schedules to participate in this study.

This acknowledgement would be incomplete without accolades to Rob, Emma, Jack, Cidalia and Gloria who each sacrificed in their own way to see this work completed.

Finally, I thank my parents for never discouraging my endeavours no matter how impractical to them.
I. INTRODUCTION

The purpose of this thesis is to examine the belief systems influencing proponents of the debate over television broadcast coverage of criminal trials in British Columbia. An attempt will be made to identify the reasons for the continuing conflict over the issue and the potential for agreement between media and legal professionals on the inclusion of broadcast cameras in criminal courtrooms.

The struggle over permitting electronic recording devices in courtrooms has been ongoing for decades in Canada. The debate has been situated in the courtroom in the form of legal arguments, in the form of news coverage and editorials, at the management and policy levels in both professions, and in academic and popular writing. The public appears to have little input on the issue albeit the debate is focused on the protection of the rights of the public as court participants and television viewers.

The arguments presented by members of both camps, media and legal, are steeped in their traditional ideological positions. Ideologies are based upon beliefs and are, therefore, laden with assumptions. It is the intention of this writer to examine the ideologies and discourses held by members of the media and legal community in an
attempt to uncover the less obvious attitudes held on the topic of cameras in the courtroom.

There are a number of reasons for selecting the topic at hand:

Firstly, an examination of this topic will hopefully provide insights to the interaction of two very important social rights - fair trial and freedom of speech/expression - and two very important social institutions - the legal system which regulates our conflicts, and the media, which both informs and entertains us.

Many academics have regarded the media as an important social agency for promoting our ideas of justice and strengthening legal norms. The media has also been regarded by some as a potential agent for change by offering critical comment on private and public institutions. The media has been thought capable of exposing social problems and acting as a catalyst for change that would ultimately result in the strengthening of society.

The Legal System in our society is regarded as a necessary forum for resolving conflict and maintaining order. The Legal System views the media as having an important social role and contributing to the judicial process, by assisting with the principle of openness of courtrooms. Restrictions placed upon the media by the Legal System have been deemed necessary to protect
the right to a fair trial because of the perceived incompatibility between certain priorities in the two professions.

Television news has been firmly established in postmodern culture as an important source of information for the public. It appears that the majority of Canadians rely on television as their major source of news about the legal system. In one Canadian study, 96% of respondents cited the news media as their chief source of information about the criminal justice system. Another Canadian researcher, drawing parallels to American statistics, has indicated that the vast majority of Canadians rely on television news as their major source of news and commentary on current affairs.

Parliament and the Judiciary, while recognizing that our courtrooms must be open to the public, have also felt it necessary to place limitations on media access to our courtrooms. Despite technological advances which have made camera equipment less intrusive, political and legal decision-makers have been concerned that camera coverage of court trials would result in disruption to the proceedings, decorum and fairness of the trial, and a


distorted presentation of the case to the public.

The Legal profession appears to be divided over the issue of courtroom access for the electronic media. Academics and members of the Canadian Bar have spoken both in favour and against permitting cameras in the courtroom. The Judiciary has traditionally been strongly opposed to increased access for cameras in the courtroom. However, even judges are not uniform in their feelings about permitting cameras in our courtrooms.

Over the past four decades, the Canadian broadcast media has frequently challenged restrictions to court access, citing the freedom of speech doctrine and claiming to be the eyes and ears of the public while also maintaining that they will air what is interesting to the public, not necessarily what is of public interest. The battle for ratings and increased profits can provide the catalyst for the media to reconstruct court trials into an entertainment format.

Secondly, the subject matter of this thesis is contemporary and evolving. From April to October 1995, the world watched the live television coverage of O.J. Simpson's murder trial in Los Angeles, California. This was the first time Canadians were able to view a live criminal courtroom trial, albeit an American criminal courtroom trial, on their television sets. The O.J. trial generated renewed debate in the United States, Canada and other
countries as to whether television news cameras and tape recorders should be permitted to broadcast court trials.

During the course of the research and writing of this thesis, the struggle in British Columbia over camera access to criminal courts has been alive and visible.

While there have been experiments permitting cameras in appeal courts in Canada, for the first time in this country, there was television coverage of criminal trial proceedings on July 27, 2000 in Victoria, British Columbia. In this precedent setting case, Regina v. Cho (2000) 146 C.C.C.(3d) 513, broadcast coverage was limited to the closing arguments by counsel, and was regarded only as an experiment.

In April 2001, the Chief Justice of the British Columbia Supreme Court issued a press release stating that the broadcast of a trial can only occur if the court and parties in the case agree to the inclusion of cameras. (see Appendix E)

Most recently (September 2001) in the case of Regina v. Pilarinos and Clark, [2001] B.C.J. No. 1936, a criminal proceeding involving the former Premier of the Province of British Columbia, there was a significant legal ruling against permitting cameras in the courtroom. Counsel for the accused and the amicus curiae argued against the imposition of recording devices. The media lawyers obtained intervenor status to argue for the inclusion of their
tools since it was the type of proceeding that would be of interest to the public; however, the media was not successful in this application.

Thirdly, the author of this thesis has experience in the field of radio and television broadcast journalism on a full-time and part-time basis (1984-1990) as a reporter and producer, as well as a criminal defence counsel (1992-2002). My work in both fields has lead me to observe the phenomena from each vantage point. My experience as a broadcast journalist included some, although limited, coverage of legal stories. As a criminal lawyer, I have been a participant in a number of cases which received a considerable amount of media attention.

Most of the legal and media professionals interviewed for this thesis have been known to the author for at least ten years during which time I have been able to observe or am aware of their experience in legal cases as either lawyers or reporters. At a minimum, I am familiar with the day-to day activities of both professional groups, as well as, their professional argot and technical language. Hopefully, such experience has enhanced this thesis in a meaningful way.

Lastly, although there is a great deal of material written on the issue of cameras in the courtroom, there is limited research on the topic from a sociological perspective. More specifically,
searches of the Social Science Abstracts reveal no writings on the topic of the ideological perspectives of the respective professional groups which underlie the existing conflict over cameras in the courtroom.

Ericson et. al (1991), Postman (1985), Tuchman (1978), Altheide (1985), Hall et al (1978) have looked at the discursive practices of the broadcast media, albeit not in depth on the topic of television broadcast coverage of court trials. A search of the Social Science Abstracts revealed no Canadian sociological writings on cameras in the courtroom. Most of the existing literature on the issue is found in the Legal and Communication disciplines, with a surge of interest following the O.J. Trial.

In this study, the sociological constructs to be applied to the phenomena are that of ideology and discourse. Further to the canvassing of opinions from the two groups to gauge the level of ideological entrenchment, it is hoped that a discursive and ideological analysis of the topic will contribute to the field of sociological knowledge on the issue of Cameras in the Courtroom by identifying assumptions and practices that may escape the awareness even of the participants.

Both professional groups have different methods of creating the appearance of objectivity through their day-to-day routines and ways of controlling the interpretation of phenomena. An analysis
of these discourses of 'objectivity' ought to illuminate their ideological perspectives, without becoming ensnared in the ideologies, and thus distinguish rhetoric from reality.

Members of the broadcast media and the legal profession construct their respective realities to achieve the appearance of objectivity. The routine practices of reporters and lawyers therefore reinforce certain aspects of social phenomena, while excluding others.

Moreover, the media deconstructs the court trial proceedings and evidence, then reconstructs it into a format suitable for profit-making broadcast. At times, an "entertainment-first" format is problematic for the legal system. The media version of a trial process is structured in order to perpetuate the appearance of objectivity, yet the media's account of the trial proceedings may be regarded by legal professionals and/or the public as fiction.

The legal profession is concerned that the entertainment-over-information format can have negative consequences for the legal system's working definition of objectivity. Accordingly, the legal system deconstructs and reconstructs phenomena to foster the appearance of justice, which includes insulation of witnesses and judges from outside influences. There is also a recognised desire on the part of the judicial system to protect participants and encourage testimony. The legal professionals regard themselves as
the gatekeepers to justice.
The focus of this work is on the broadcast media and criminal courts. References to the media and the legal system therefore are made with the television media and the criminal justice system in mind.

This introductory chapter has set out the purpose of this thesis, which is to examine the ingrained professional justifications for the on-going conflict over camera coverage of criminal court proceedings.

The importance of studying this contemporary problem is discussed, the researcher's own interests are acknowledged and the limitations of the existing research are noted. Comment is also made about the potential for this thesis to contribute to the quantum of knowledge on the issue, especially in Canada where current research is even less prevalent than in the United States.
II. LITERATURE AND LEGAL CASE REVIEW

In this chapter, I will provide a brief history of the struggle over cameras in the Canadian courtrooms, and in doing so the American experience will also be considered.

In Chapter Three, I will discuss the concepts of ideology and discourse in the context of this thesis. Some general hypotheses about the ideological perspectives held by the professional groups will be put forth at the end of chapter. These hypotheses will form the framework for an analysis of the interview material.

History of the broadcasting equipment ban

The issue of television cameras in Canadian courtrooms has been a controversial topic for the legal profession and the media in North America for over three decades.³

The general rule throughout Canada is that broadcasting recording equipment is not permitted in trial courts. Both law and policy regarding broadcast coverage in trials has evolved in Canada over the years, and most recently in British Columbia.

³ Film cameras were denied access into the courts in 1961 (Estes V. Texas, 381 U.S. 532 (1965)). Canadian courts closely followed the American lead.
Although there are marked differences in the Canadian and American criminal justice systems, the American precedent of permitting broadcast coverage in the last two decades has been carefully observed north of the border.

UNITED STATES OF AMERICA

The First Amendment of the U.S. Constitution\(^4\) is often cited as a reason why American courts have evolved to be more permissive of cameras in courtrooms:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

In the United States, cameras have been permitted in almost all states on a permanent or experimental basis. According to an Executive from the American Court T.V. Network, 50 states have adopted rules and/or statutes allowing cameras into courtrooms at the appellate level, and 37 of them permit the televising of criminal trials.\(^5\) However, this has not always been the case.

In 1961, when the popularity of television was on its initial

---

\(^4\) U.S. Constitution, Amendment 1, 1787, United States Congress.

\(^5\) Affidavit of Douglas P. Jacobs, Executive Vice-President and General Counsel of Courtroom Television Network, sworn on September 12, 2001, Regina V. Pilarinos and Clark, court file number CC0011403, Supreme Court of British Columbia.
upswing, a U.S. court ruled in *Estes v. Texas* (1968) 381 US 532, that the exemption of all types of electronic recording devices did not violate the freedom of the media, and that the presence of cameras in the courtroom raises the presumption of a denial of a fair trial. Over a decade later, the ban on cameras was challenged in a case known as *Chandler v. Florida*, (1981) 449 U.S. 560, and the Supreme court, determining that there would be no infringement to due process, decided to open its doors to recording equipment despite objections from the defendant.

Aside from a brief experimental period, U.S. Federal Courts have never permitted camera coverage of proceedings.

In 1994, celebrity athlete O.J. Simpson was on trial for the double murder of his wife Nicole Brown-Simpson and her friend Ron Goldman. The media coverage of the trial was unprecedented, including live broadcast coverage on the Court Television channel\(^6\) and Cable News Network (C.N.N.)\(^7\) as well as on-going expert commentary. Current affairs programs constantly discussed the daily proceedings from the O.J. trial. The daily T.V. news aired stories at every opportunity.

\(^6\) The Court Television channel has been in operation in the United States since 1990 and provides exclusive coverage of trial proceedings and court commentary.

\(^7\) The all-news station C.N.N. was established in 1985.
Canadians also had a great deal of exposure to the O.J. trial coverage. Cable television in Canada provided viewers access to the American coverage, in addition to coverage from Canadian networks.

The broadcast coverage of the O.J. Simpson trial, generated a great deal of negative sentiment regarding cameras in the courtroom.\(^8\) The O.J. trial remains as the most notorious media-court event.

Pro-camera advocates cite a number of counter-points to the judges' concerns over the O.J. Trial: that the case would have been high-profile even without the presence of the cameras, and that participants did not alter their behaviour solely for the cameras. Also, it is argued that the publication bans on pre-trial proceedings in Canadian criminal courtrooms are less conducive to the types of abuses that occurred in the O.J. pre-trial proceedings\(^9\) where cameras had access to courtroom evidence.

There have been over 700 trials receiving full or partial


Howard Kurtz, "Murder down, but not on news broadcasts" The Vancouver Sun, August 13, 1997.

broadcast coverage on the Court Television Network. As well, these trials would have received coverage from other media franchises. In recent years, there have been no appeals or stays claimed to be or determined to be founded upon having cameras in the courtroom. However, there has been negative criticism about the influence of cameras on trial proceedings and participants, especially where the case took on a significant profile with the public.

**CANADA**

In Canada, the prohibition on camera access to the courtroom is a matter of common law, statute and policy.

Section 92(14) of the *Constitution Act* of 1867 grants the provinces power to deal with administration of court issues, which has been interpreted to include access for broadcasting equipment. The general prohibitions against electronic recording equipment in courtrooms vary from province to province.

Ontario is the only province which pronounced statute law banning broadcasting recording equipment from the courtroom. The *Ontario*

---

10 See footnote 4.

11 See footnote 4.

12 *Constitution Act* 1867.
Judicature Act R.S.O. 1980, C. 223 expressly provides that no cameras may be used to film any person entering, leaving or inside a courtroom.

British Columbian courts have prohibited electronic recording equipment on the basis of policy and common law. In other provinces, Chief Justices of the Supreme Courts have issued directives over the years banning broadcasting equipment. Precedents in common law refusing camera coverage have been set across the country and although decisions in one province are not binding in another province, the trend of prohibition of cameras appears to be entrenched.

The Criminal Code of Canada and other statutes contain various forms of publication bans on trial proceedings. The Young Offenders Act prohibits the publication of the names of juveniles. There are bans to protect the identity of some victims such as in sexual assault cases in the Criminal Code. Also pursuant to the Criminal Code, an accused can request a publication ban for the early stages of the proceedings such as for bail hearings and preliminary hearings. Where co-accused are tried separately, a ban is often imposed so as to make it easier to find an impartial jury for the second accused. Bans on publication have also occurred in cases involving wardship, the care and treatment of lunatics, and trade secrets.
Bans on publicity are often used to encourage witnesses to testify or as a means of protection.\textsuperscript{13} Publication bans are often used when the courts are dealing with topics of a sensitive nature. The courts take these bans on publication seriously. There are cases where violations have resulted in fines or jail sentences.\textsuperscript{14}

Since the early 1980's, cameras have been permitted in some quasi-judicial hearings in Canada (i.e., Commissions of Inquiry, Royal Commissions and statutory-based tribunals).\textsuperscript{15} There has been some concerns expressed with the coverage of quasi-judicial proceedings,\textsuperscript{16} including camera-shy witnesses and the quality of information being disseminated by the media. However, criticism from quasi-judicial hearings has not resulted in any serious attempts to ban cameras.

\textsuperscript{13} See \textit{Regina v. McArthur} (1984), 13 C.C.C. (3d) 152 (Ont.H.C.)

\textsuperscript{14} For example, \textit{Regina v. Chek TV Ltd} (1987) 33 C.C.C. (2d) 369 (B.C.C.A.), the television station was convicted of criminal contempt. Also see \textit{Regina v. Southam Press} (Ontario) Ltd. (1976) 31 C.C.C.(2d) 175 (Que. C.A.). In both these cases the courts found that the publication of court proceedings infringed on the accused's right to a fair trial.

\textsuperscript{15} Cameras can be permitted in Ontario court trials in rare circumstances. The current criteria in Ontario for the admittance of T.V. cameras into court trials includes: 1) permission by the appointed judge, 2) consent of all parties, and 3) if the video is to be used for educational purposes only (\textit{Ontario Courts of Justice Act}, R.S.O. 1984, C.11, S.146.).

\textsuperscript{16} For example, Mr. Justice Grange, "Justice and the System" (1985) \textit{Law Society of Upper Canada Gazette}, pp. 121-139.
The Chief Justices in the Supreme Court of Canada and the Federal Court of Canada have the inherent jurisdiction to decide the fate of cameras in their courtrooms.

Since 1995, after a 12 year prohibition, cameras have been permitted into the Supreme Court of Canada, and selected cases are broadcast on the Parliamentary channel - CPAC.

In 1981, televising of the Supreme Court of Canada Patriation Reference case was problematic due to sound difficulties. The Court prevented further broadcast coverage until 1993. From 1993-1995, there was tape-delay broadcast by CBC Newsworld of three cases: Symes, Rodrigues, and Thibaudeau. In 1998, the Quebec Secession Reference Case was aired live by radio and time-delayed broadcast on the Parliamentary channel.

In 1993, a Federal court judge of the Trial division intended to permit cameras into a contempt proceeding. However, the case was conducted in one of the Courtrooms in the Provincial Supreme Courthouse of Toronto and the then Chief Justice did not let televising occur. Following that experience, a Federal Court committee arranged a two-year pilot project which included four appeal cases. Surveys of the judges, before and after the pilot
project, indicated a minor increase in pro-camera opinion \(^{17}\), but reluctance among judges remained.

The Court of Appeal in Nova Scotia has permitted cameras on an experimental basis for two years. However, there appears to be little broadcast coverage by commercial news stations of appeal court proceedings. Commercial T.V. news agencies seem more interested in trials with live witnesses rather than the legal arguing found in appeal cases.\(^{18}\) Alberta, Manitoba, Ontario, Quebec and the Northwest Territories have allowed broadcast cameras in courtrooms on various short-lived experimental runs. Despite what is reported as problem-free results from the trial runs, courtrooms in those provinces have not removed policy or statutory bans.

Numerous studies have been conducted by members of the Canadian legal community. Most of these studies have favoured allowing cameras in the courtroom,\(^{19}\) at least on a trial basis. An

\(^{17}\) Report to the Court’s Committee on Cameras in the Courtroom by the Court’s Executive Officer/Judicial Administrator- Allison Small, "Cameras in the Courtroom Pilot Project: Preliminary report and Survey Results", 6 March 1997.

\(^{18}\) Media Liaison Committee, Report at Conclusion of Two-Year Camera Pilot Project (1997).

\(^{19}\) The Law Reform Commission, the Canadian Bar Association, and the Report of the Ontario Courts Inquiry have all made recommendations for the implementation of experimental video taping of court proceedings for broadcast news purposes.
extensive report of the issue was released by the Canadian Bar Association in 1987. This study reached the following conclusions on the pros and cons of permitting electronic equipment access to courtrooms:

For cameras:
Extends the public’s right to access
Confers educational advantages
Enhances public awareness of the judicial system

Against cameras:
Compromises right to a fair trial
Results in distortion in coverage
Offends the dignity of the court
Equipment disruption

However, in 1988, despite the Bar’s positive recommendations, the Judicial Council (an internal policy group composed of chief judges from across the country) voted against permitting cameras in the courtroom. The decision to deny camera access to the courtroom was reaffirmed by the Judicial Council in 1994. No reasons for the Judicial Council’s position on cameras has ever been

---


been provided, although the O.J. Simpson case appears to have caused significant apprehension for the Chief Justices.

Despite the policies and statutory bars to permitting cameras into courtrooms, the evolution of the law on camera access has its roots in the principles of the openness of court proceedings and the media’s rights to the freedom of speech and expression.

An important early precedent for increasing access for the media was set in the case The Attorney-General of Nova Scotia V. MacIntyre.\textsuperscript{22} The issue in this case was whether a news reporter should be allowed access to search warrants and supporting documents. The court stated that the "curtailment to public access can only be justified where there is a need to protect social values of superordinate importance."\textsuperscript{23} The court ruled that the public should be allowed access to the warrants and documentation after the search warrant is executed and in instances where something has been seized.

Of importance to note is that the judge in MacIntyre stated that the "sensibilities of the individuals involved are not a basis for exclusion of the public from judicial proceedings."\textsuperscript{24}

\begin{itemize}
  \item \textsuperscript{22} (1982), 65 C.C.C. (2d) 129 (S.C.C.).
  \item \textsuperscript{23} Ibid, pp. 147.
  \item \textsuperscript{24} Ibid., p.146.
\end{itemize}
In *Regina v. Banville* (1982) 69 C.C.C.(2d) 520, the court determined that a complete publication ban was appropriate only in rare criminal cases.

The Canadian Charter of Rights and Freedoms has provided a springboard for many court challenges to the camera ban based upon the freedom of speech doctrine. Section 2(b) of the Charter states:

> Everyone has the following freedoms: freedom of thought, belief, opinion and expression including the freedom of the press and other media of communication.

Legal scholars and the courts have debated whether this section of the Charter is to be interpreted to allow cameras in the courtroom, or just to allow the broadcasting of court news without video pictures, thus giving the electronic media the same access as the print media.

A key post-Charter case on court openness is *Re: Southam No.1* (1983). This case again confirmed that public access to the courtroom is accepted as a necessary part of ensuring a fair trial. Also of interest is the lengthy discussion on the purpose

---


of a free press and its role in the maintenance of our democratic system. There appears to be a tacit acceptance of the press as a public servant serving as the eyes and ears of the public who are unable to come to a court trial.

However, in *Southam*, the court set out the limitations to the media’s rights under Section 2(b):

> In my view, section 2(b) of the Charter, in its guarantee of freedom of expression, including freedom of the press and other media of communication, confers a right on the media to publish or broadcast information lawfully obtained as they see fit, subject only to reasonable restrictions such as are immunized from constitutional attack under s.1 of the Charter. Section 2(b) does not confer on the media any general constitutional right to compel access to information which they deem newsworthy.

Section 1 of the *Charter* states that:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The Supreme Court of Canada made an important pronouncement in the case *Irwin Toy Ltd. V. Quebec (Attorney-General)* *(1989), 58 D.L.R. (4th) 577 (S.C.C.)* regarding the breadth of the freedom of expression as guaranteed by section 2(b) of the *Charter*. The court determined that not all activity is protected by section 2(b). This case has been applied by the courts to justify limitations on the use of cameras in courtrooms.

In the case of *Re: Edmonton Journal and the Attorney-General of*
Alberta [1989] 2 S.C.R.1326, the court defined what it perceived to be the rights for a free press. The court here ruled that the press had the right to expression plus the right to secure material, but no absolute right of access to the court.

An important legal challenge to the general ban on broadcast camera recording during trial proceedings was in the matter of Regina v. Squires (1989) 23 C.P.R. 31 (Ont. Prov. Ct.). In this Ontario case, a C.B.C. reporter directed a cameraperson to video a person emerging from a trial. The reporter and cameraperson were charged for violating section 67(2)(a) of the Ontario Judicature Act (a ban on videoing individuals entering, leaving or in the courtroom). The C.B.C.‘s lawyers argued that section 67(2)(a) was inconsistent with section 2(b) of the Charter.

Another British Columbia case on the issue of broadcast coverage is that of Regina v. Vander Zalm [1992] B.C.J.No.3065 (S.C.) in which the media made application to televise the proceedings. In denying the application, the court strongly reasserted what it took to be a long-standing and well-known rule against cameras in the courtroom.

R. V. Fleet (1994), 137 N.S.R.(2d) 156 (S.C.) was a Nova Scotian case that reconfirmed that section 2(b) of the Charter does not give the media the right to bring their cameras into courtrooms.
In *Dagenais V. Canadian Broadcasting Corp.*, the Supreme Court of Canada clarified the common law discretion to order a publication ban. The court set down the following test:

A publication ban should only be ordered when:

(a) such a ban is necessary in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and

(b) the salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban. (at page 317)

The *Dagenais* case is also significant as it set out a direct avenue of appeal from the Provincial Supreme Courts to the highest court in the land.

The highly publicized *Regina V. Bernardo* [1995] O.J. No.585 Ont. Ct.of Justice (General Div.) trial was subject to a court imposed total ban on the trial proceedings due to the offensive nature of the evidence.

In *Canadian Broadcasting Corp. V. New Brunswick (Attorney General)*, (1996) 139 D.L.R.(4th) 385 (S.C.C.), also a Constitutional challenge, the court held that it had the jurisdiction to exclude the public and the media from the courtroom.

In July 2000 at Victoria, British Columbia, the trial judge in *Regina v. Cho*, a case involving illegal immigrants transported on
unsafe ships, determined that there was no basis in law for a total exclusion of broadcast technology. However, due to concerns of fairness and potential harm to the accused raised by both Crown and defence, the judge permitted recording only of counsel’s closing submissions and the judge’s instructions to the jury. The court specifically prohibited filming of the accused and jury. It was also treated as an experimental run. Nevertheless, this case was heralded by the media as the first time they had been granted access for their equipment to trial proceedings.27

Another recent application for coverage of trial proceedings in British Columbia was the assault case of hockey player Regina V. McSorley [2000] B.C.J. No.2639 (Prov.Ct.). The trial judge in this matter did not grant the media their request, noting that the Cho case was an experiment.

In September 2000, the Canadian Judicial Council agreed to examine the impact of televisions in the courts. Then in November 2000, an informal consultation on the issue of camera access was held with various interested member groups of the Canadian Bar Association revealing strong positions on both sides of the issue. However, also in November 2000, the Criminal Justice Section of the CBA indicated strong opposition to camera access.

On April 18 2001, Chief Justice Brenner of the Supreme Court of British Columbia issued a Directive setting out limitations upon the access for camera coverage. As noted, the Directive requires that all parties involved in a proceeding must agree to the inclusion of recording devices in the courtroom before a Judge can permit it to occur. This Directive has been regarded by the media as contrary to the freedom of expression section of the Charter.

In a lengthy decision delivered in September 2001, the trial judge in Regina V. Pilarinos and Clark [2001] B.C.J. No.1936 extensively reviewed legal precedents on the issue of electronic devices during trial proceedings. The media applicants challenged the limitation of the recently issued Directive of the Supreme Court of British Columbia under section 2(b) of the Charter. It appears to be the first case in which an amicus curiae was appointed to represent the court's interests.

The Judge denied the application, except to permit the use of tape recorders for the verification of notetaking and not for broadcast purposes. Madame Justice Bennett concluded that legal precedents do not support the notion that an open court is absolute and that the test for proportionality of the impact of the ban was weighted in favour of protection of the trial proceedings.

The effect on the media is minimal. The potential effect on
the trial is significant. The prohibition and the application of the draft policy by a court meets the proportionality test. Therefore, the restriction, if it violates s.2(b), is saved by section 1. (paragraph 221, page 34)

The trial judge further indicated that experiments with cameras in the courtroom should be organized and supervised with the approval of the Judiciary as a whole; moreover, she asserted that such experiments should be controlled and conducted in a scientific manner to determine if fair trial rights would be violated.

Following the Dagenais decision, in which the court set out the procedure for a third party challenge to a publication ban, the appeal of Madame Justice Bennett’s decision to prohibit recording equipment in R. v. Pilarinos and Clark is going directly to the Supreme Court of Canada.

It should also be noted that the media’s challenges to the camera ban have been organized and well-funded. The arguments presented in court by the media are usually well researched and have been fine-tuned over the last decade. The applicant lawyers specialize in the area of media law and provide representation over a number of years. On the other hand, criminal lawyers responding to the media’s application may be less familiar with the issue and the case law. The responding lawyers to a media application may well be preoccupied with the substantive matter before the court, and
are limited in the amount of time and resources they can devote to the camera ban issue. The media has the benefit of a long-term strategy. Further, the media, with its own resources, may be in a privileged position to influence the public. Consequently, the media are now likely to be viewed with concern by many members of the legal profession.\(^{28}\)

The purpose of the preceding historical account has been to set out the background to the current legal struggle over the issue of camera access to our courtrooms. A general conclusion to be drawn is that the Canadian courts have been unwilling to take risks with regard to camera coverage of court proceedings. Implicit in such a position is the notion that the media will intentionally and/or unintentionally have a negative influence on the trial proceedings. Concern is also expressed about the distorted dissemination of news about the court proceedings. The legal strategy to date has been to rely upon so-called common sense, supposedly based on assumptions about the public and court participants. Concurrently, the media make claims which appear to be primarily concerned with their own demands for courtroom access, justified by the public's right to freedom of speech. In the debate, the media emphasize their claims of social responsibility, rather than their commercial purpose.

\(^{28}\) Romilly, Selwyn, The Honourable, Bartalk, Vol.12, No.5, October 2000, pp.3-6.
The following chapter will outline the manner in which this thesis attempts to conceptualize the problem in order to gain a better grasp of the relatively covert law-media tensions in this controversial area.
III. SOCIOLOGICAL CONSTRUCTS

This chapter will discuss the concepts of ideology and discourse in the context of this thesis. Further, some general hypotheses will be put forth at the end of the chapter in an attempt to gauge attitudes of participants on the issues. These hypotheses will form the framework for an analysis of the interview material from media and law professionals.

The process by which goal-oriented members of society are coordinated through the division of labour is referred to by sociologists as an organization. Within various organizations there are formal and informal rules, also referred to as norms, which dictate how members are expected to act under certain circumstances.

The legal system and the media are examples of organizations. The basic organizational structure of the legal system is obvious to most Canadians: The Defence Counsel represents the interests of the accused. The Crown Counsel represents the interests of the state, which can include representing the interests of the police and the victims.

The Judge represents the interests of the court, by monitoring the law and rules of court. The Judge is also a decision-maker in relation to the guilt or innocence of the accused person(s). In
the more serious cases, such as murder and other indictable offenses, the Jury is also a decision-maker in relation to the guilt or innocence of the accused person(s), specifically on the issue of the facts of the case. The Judge is always required to administer legal precedents, even in cases involving a Jury.

The law is administered under an adversarial system: the Defence and Crown are opponents in a general sense. The Crown's job is to ensure that all the evidence is properly put before the trier of fact. The Defence Counsel is required to do that which is necessary, within the law, to attain an acquittal or the best resolution of the matter for his or her client.

The basic organizational structure of the television media is also obvious to most viewers: The Cameraperson videos the pictures of an event. The Reporter conducts the interviews with participants and helps to structure the news report. The Video Editor edits the camera video tape. The Producer determines which events or issues will be covered. The News Director oversees the operation of the newsroom. Some of the duties in a media organization may overlap depending upon the experience or the strengths/weaknesses of each member.

While the justice system is an institution of the state, the majority of lawyers are in private practice and are motivated by financial profits. Some publicity may be of benefit to lawyers.
Salaried Judges and crown counsel are not motivated by profit in the same manner as private practice lawyers, but they are subject to other self-interests that are compatible with publicity.

In Canada, as in other countries, there is also state financed television. The Canadian Broadcast Corporation (C.B.C.) has a mandate to promote Canadian culture; however, it also competes with the private television stations for viewers.

The media and the legal system have both been regarded by social scientists, government and members of society as having important influences on our society.

Within the media organization and the justice system organization there are ideological perspectives held by their respective members which contribute to their way of seeing the world and to structuring their own activity. It is submitted that these ideologies underlie the debate on whether to allow cameras into criminal court trials.

Patricia Marchak (1975:1) has succinctly described the sociologist's notion of the concept of ideology.

Ideologies are screens through which we perceive the social world. Their elements are assumptions, beliefs, explanations, values, and orientations. They are seldom taught explicitly and systematically. They are rather transmitted through example, conversation, and casual observation.
One's ideological perspective can interfere with the understanding of another group's position because they are often formulated on notions that can not be disproved such as is seen with religious and political belief systems. However, ideologies can be critiqued.

Marchak (1975:2) goes on further to describe the role of the sociologist.

One of these is the role of the social critic who points out the inconsistencies, the lack of congruence between empirical evidence and ideological statements. Such critics often seek reforms in the social organization, not so much because they challenge the ideology as because they find discrepancies between it and their observations of social reality.

It is the search for discrepancies and the less obvious notions held by the parties in the debate on freedom of the media and court access that fuels this research herein. There are numerous methods of sociological research that can be looked to for guidance.

Sociologist Robert Merton (1981) discussed the utility of analyzing social phenomena with consideration to the notions of manifest and latent functions. Merton attempted to distinguish between conscious motivations for social behaviour and the objective consequences. Merton adapted the terms 'manifest' and 'latent' from Freud and notes other social theorists including Mead, Durkheim, Sumner, who have also considered similar
distinctions. For example, Mead noted that the manifest hostility directed towards law-breakers has the latent function of uniting community members\textsuperscript{29}.

Merton has applied the concepts of manifest and latent in analyses of problems in the sociology of knowledge. To uncover the so-called hidden latent functions of manifest intentions in our social organizations, sociologists from the social constructuralist to post modernist traditions turn to the analytical practise of interpretation. Interpretative theories differ in relation to the degree they go beyond the individual's own understanding of their beliefs and actions.

The work of the popular theorist Michel Foucault is of assistance to the task of interpreting belief structures. Foucault has focused on the concept of discourse. Foucault stated in "Politics and the Study of Discourse"

\begin{quote}
what I am analyzing in discourse is not the system of its language, nor, in a general sense, its formal rules of construction: for I am not concerned about knowing what makes it legitimate, or makes it intelligible, or allows it to serve in communication. The question which I ask is not about codes but about events: the law of existence of statements, that which rendered them possible...But I try to answer this question without referring to the consciousness, obscure or explicit, of speaking subjects: without referring the facts of discourse to the will - perhaps involuntarily - of their authors; without having recourse to that intention of saying which always goes beyond what is actually said; without
\end{quote}

\textsuperscript{29} George H. Mead, "The psychology of punitive justice", American Journal of Sociology, 1918, 23, 577-602.
trying to capture the fugitive unheard subtlety of a word which has no text.\textsuperscript{30}

Foucault’s writings on knowledge and power are relevant to legal and media discourses. It may be useful to invoke Foucault’s interpretation of discourse when considering whether the law remains in a pre-eminent position in relation to the media. Foucault (1978) sees the effectiveness of government control dependent upon a wide dispersal of technologies of power throughout the social fabric.

The effectiveness of the Legal System is questionable if the media technology portrayals of the courts weaken judicial social control of the courts. While fair and accurate criticism may result in improvements to the legal system, the same cannot be said if distorted media portrayals of court proceedings serve primarily to entertain the audience through presentations of fictional accounts of court proceedings. It has been alleged that in a postmodern society, the line between fiction and reality blurs because of media technology which allows everyone to see everything, everywhere. (Moore and Moore:1997:316)

The following portion of this chapter will attempt to provide a deconstructed version of the ideological beliefs held by the media

and justice system members with regards to their respective discourses of objectivity.

3.1 Legal Ideology and the Discourse of Justice

Justice is an absolute ideal, but it is also culturally relative. What is 'just' in one society may not be so in another society. And what is 'just' to a capitalist may not be so to a Marxist.

Various writers have perceived justice in very different ways. Max Weber's\(^{31}\) notion of Ideal Type is useful for the purposes of this thesis by providing us with a point of departure to compare the theory of justice with the day-to-day reality of legal praxis.

This procedure can be indispensable for heuristic as well as expository purposes. The ideal typical concept will help to develop our skill in imputation in research: it is not "hypothesis" but it offers guidance to the construction of hypotheses. It is not a description of reality, but it aims to give an unambiguous means of expression to such a description. (Weber: 1968: 497)

A discussion of an ideal type of justice in Canadian society

---

demonstrates the difference between 1) what "ought to be", and 2) "what is". Later, the media, in theory and in practice, will be considered.

The conventional notions of justice in Canada have developed along with capitalism. But, the roots of our understanding of the ideal notion of justice trace back to the ideas of the classic Greek philosophers.

It was Aristotle who said "Man is a political animal." He meant by this that man was a social animal and thus interacted with his fellow man. Some sort of order was necessary to maintain the tightrope that man walks between his desire to fulfil his wishes, and his acknowledgement of social responsibility (Bronowski in Waddens: 1973: 411.) According to Hume (1902: 206) in Lucas (1900:1), justice is the bond of society, and without it no association of human individuals could subsist. It follows that justice is a social norm that is a directive for guiding human action (Bird: 1967: 11.)

How social order is maintained differs, of course, depending upon the political, economic and social structure, as well as the ideological perspective that is dominant in a society.

A frequently cited treatise on the liberal theory of justice is John Rawls' A Theory of Justice, (1971), as a defence to the
crisis of legitimacy for the capitalist system and its institutions.

Rawls' idea of justice is 1) freedom of the individual to acquire an equitable share of goods, and 2) a welfare state designed to regulate disparities. Rawls presumes that the situation in a liberal capitalist society is one where rational people make decisions about rules for living together based upon consensus. Rawls bases his theory on a hypothetical situation he calls the "original condition." It follows that the dominant perception of the law and legal structure is that they are the social constructs of the meaning of justice.

The Concept of Law written by H. L. A. Hart, is a text commonly found on the reading lists for law schools in Canada, the U. S. and Britain. In attempting to address the question of 'what is law,' Hart cites a number of classic sources (1961:1)

What officials do about disputes is... the law itself (Llewellyn: 1951: a)

The prophecies of what the courts will do... are what I mean by the law. (Holmes: 1920: 173)

Statutes are 'sources of Law... not parts of the Law itself.' (Gray: 1902: S. 276)

Constitutional law is positive morality merely. (Austin: 1954: 259)

One shall not steal; if somebody steals he shall be punished... If at all, the first norm is contained in the second norm which is the only genuine norm. Law is the primary norm which stipulates the sanction. (Kelsen: 1949:61)
Lucas has noted that most thinkers have construed the concept of justice in terms of rules of utility or equality (1980:1). It is also attributable to the classic Greek theorists that justice originates in the belief that equals should be treated equally and unequals unequally (Ginsburg:1965:7). These last points speak to the idea that justice must be consistent and standardized.

Richard Quinney (1977:7) has noted that:

Justice in contemporary capitalist society equates the idea of equal justice with the formulation and administration of positive law.

The appearance of objectivity is very important for the criminal justice system. In short, not only must justice be done, it must appear to be done.

Ideal justice can not always be fulfilled. Classic and contemporary critics see two kinds of justice: one for the rich, who can afford the best lawyers, and one for the poor and middle class.

In a popular handbook recommended by law schools for first year students of law, titled Introduction to the Study of Law, by S.M. Waddems, the notions of justice and law are discussed:

Everyone knows that the law is not the same thing as justice. Generally, indeed, when the two words are mentioned in the same sentence, it is by way of contrast. It is a rare that a
resolution of dispute leaves both parties equally happy, and it would be Utopian to expect that a working system should satisfy the losing party all the time. The best that can be expected is that the losing party will admit that he has had a fair hearing according to fair procedures and that the result has been determined by principles that he will recognize as the appropriated sort of principles to apply in such a case. (1979:6) [emphasis added]

The court is structured with the intention of insulating itself from interference from the outside. Waddems notes that the isolation of the judge and formalization of his office helps not only the public perception of his role, but it assists the judge’s perception of his own role. (1979:12)

Waddems lists a number of ways this is accomplished: security of tenure and elevated status, the dress worn by judges and counsel, addressing the judge as “My Lord” or “My Lady”. Such rituals are attempts to preserve...the real and apparent impartiality of the judge. It is easier to perceive of the judge as impartial if he is seen not just as an old pal whom you might call on the telephone for a chat about tomorrow’s case. (Waddems:1979:12)

The striving for independence and impartiality contributes to the ability of the courts to make decisions “rationally and consistently.”

If disputes are determined by fair procedures before an impartial tribunal honestly trying to give rational and consistent reasons for its results, we will not satisfy every litigant all the time, but we will come as close as humanly possible to administering justice.
Similar logic is applied to juries in Canada. Members of the jury are also expected to make rational and impartial decisions, and measures are taken in this regard. The jury is sworn in to act in an impartial manner. They are asked not to discuss the case until all the evidence is presented in court. The jury is sequestered to insulate them from outside influences during their deliberations.

In contrast, it is also thought to be a cornerstone of justice that the courts are open to the public.

There is no better guarantee of impartiality and rationality in decision-making than the requirement of reasons open to the scrutiny of the public and of an appellate tribunal. (Waddens:1979:13)

The general rule is that all criminal and civil proceedings are open to the public. Classic judicial statements on the concept of public access are found in the case Scott v. Scott. Following a divorce trial, the wife sent a copy of the court transcript to a family member. The wife was originally charged with contempt of court; however, she was later acquitted of that charge. While the judge in the Scott case noted the openness of the courtroom served to promote honesty in the courtroom, he also commented that access was not absolute.

As the paramount object must always be to do justice, the

\[32\text{[1917]}\ A.C.417.\]
general rule as to publicity, after all only a means to an end, must accordingly yield.\textsuperscript{33}

While there is much well founded criticism of the problematic features and failures of our legal system, the legal system continues to view the media (and specifically courtroom camera coverage) as a threat to the preservation of justice. It is tradition and precedent which provides the foundation of the court’s power. Many critics regard the courts as keepers of the status quo, rather than promoters of social change. Case decisions in British Columbia courts indicate a cautious approach to issues at bar, including the applications for cameras in the courtroom.

In summary, the main elements of the legal system's discourse pertaining to television coverage have been identified as:
- objectivity as an ideal
- court claim to be unbiased decision-maker
- routine practices of the court enhance the appearance of objectivity
- court proceedings open to public observation
- court ban on camera coverage of proceedings
- court constricted by budgetary concerns
- television coverage will have ill affects on court participants and the public

3.2 Media Ideology and the Discourse of Objectivity

The Media also operate in a manner which attempts to project the notion that they are objective. The notion of objectivity is grounded in the routine practices of media members which vary depending upon the medium of communication; i.e. whether audio, visual or print.

Knight (1982), Schiller (1981), Tuchman (1978) and Schudson (1978) have all discussed the emergence of the penny press and its evolution into professional work ethics of objectivity to increase readership. The penny press claimed to speak for everyone, unlike the predecessor partisan journals. This can be considered the beginning of the mass marketing of the media.

Stuart Hall, in "Popular Culture and the State" (1986), discusses the changing nature of the press and broadcast media and their relative autonomy from the state, as they developed along with capitalism and the drive for economic survival and profits.

Ian Connell (1987:79) has pointed out that by adopting procedures of objectivity, the new journalistic institutions secured their relative autonomy (or appearance of it) from other societal institutions - state, political and governmental associations.
Without claims of objectivity, news has no more relevance than gossip heard on the street (Carey:1969:53). Thus, a discourse of objectivity is employed not necessarily for just the public’s benefit.

...news procedures... are actually strategies through which newsmen protect themselves from critics and lay professional claims to objectivity, especially since their special professional knowledge is not sufficiently respected by news consumers and may indeed be the basis of critical attack. (Tuchman: 1972: 664)

Introductions to journalism-type textbooks set out the ideological nature of news. The textbooks tell prospective journalists that they are supposed to get the “facts” - the basic four ‘Ws’ and the ‘H’ (who, what, where, when and how). Print journalists are advised to assemble these facts in the inverted pyramid format, and to be fair, impartial, unbiased and balanced while doing so. Such adverbs are used as synonyms for the concept of objectivity.

However, very few seasoned journalists would claim that true objectivity can be achieved; instead, journalists write often about the problematic nature of objectivity. Two classic writers who have addressed the topic of objectivity are Walt Whitman and Robert Park. More recently, sociologists Tuchman (1978), Schiller (1981) and Knight (1982) have addressed this contentious issue. Some writers have argued that “absolute neutrality is undesirable”. (Knight :1983:39)

Despite awareness of the problem of objectivity, there is an
interesting paradox found within the professional ideology of journalists. Gaye Tuchman, a former journalist, was one of the first sociologists to address this issue. In "Objectivity as Strategic Ritual" (1972), Tuchman notes that whenever journalists are accused of bias or slanted reporting, they employ a defence of claiming objectivity.

Other sociological works which address strategic rituals of objectivity include Breed's (1955) discussion of social control in print newsrooms and Epstein's (1973) analysis of television networks, which also focuses on how such rituals maintain order. These studies reveal how social pressures in newsrooms attempt to substantiate the myth of objectivity because it serves the function of enabling the journalists and management to do their jobs and to justify their work to themselves and others. Without this process of self-justification, media persons would be unable to make their deadlines as they would want to strive for inclusion of all competing interest groups and all related phenomena.

Tuchman (1972), in her analysis of the objectivity code of journalists, has arrived at four "strategic procedures" used by the print journalist to distinguish facts from opinions in order to appear objective:

1) present both sides of the dispute;
2) present corroborating statements;
3) include direct quotations;
4) organize stories with material facts first.

Similar rituals are employed by broadcast journalists; however, anyone who watches television news can attest to missing information from news reports. It is not uncommon to see stories without representation of both sides of the dispute.

Tuchman has also pointed out that such rituals are also useful to help newsworkers meet their tight deadlines. Journalists are able to finish their work as quickly as possible, knowing it will be at least suitable for broadcast. This can be contrasted with novelists, academics or judicial decision-makers who would ponder, question and revise their work.

There are a number of assumptions underlying media rituals such as the above noted checklist. Molotch and Lester (1974:53) have noted that the key arguable assumption is not that the media are objective, but that there is even a world out there to be objective about. Other attempts to create the appearance of objectivity include journalists' use of cynical or sarcastic tones to distance themselves.

Mark Fishman (1980) has also noted that the media tends to over-rely upon certain institutions and certain spokespersons. The result is a dependence upon certain points of view to the exclusion of others. Police departments and government agencies which are set up with media relations spokespersons are constant
and reliable sources for the media, which often results in media omission of opposing perspectives.

Hall et. al. (1978:58) observe that the need to appear objective, combined with time and other constraints "produce a systematically structured over-accessing to the media of those in powerful and privileged institutional positions."

Ericson et al. (1991) have taken an extensive look at the issue of the Canadian media dependence on police and government spokespersons. Similarly, it can be remarked that while the media are able to access media spokespersons for the police department and crown counsel, defence counsel do not always have a mandate to speak to the media or the ability to hire spokespersons. Schiller (1981:196) has noted that those without institutionalized resources have, time and time again, found themselves pilloried and marginalized in the press.

This can be seen to reinforce the existing legitimacy of the state and of capitalist relations generally since it leads "the general public to accept institutional control." (Schiller:1981:196)

Others may have access to the media for other reasons such as their notoriety, support structures, or economic power. The O.J.Simpson case is an example of a situation involving a defendant with large financial resources and strong legal
representation, who appeared to have little difficulty in obtaining media access.

It is of course impossible to publish or broadcast every phenomenon which occurs in the world. It is also impossible to include in a report every aspect of a phenomenon. Thus, any selection process is discriminatory, but to appear objective, newswriters rely upon a ritual of selectivity which they call newsworthiness.

On the basis of a peculiar notion of newsworthiness, journalists select which stories to cover, and what aspects of those stories to emphasize. What constitutes news, therefore is based upon newsroom policies and professional ideological assumptions about the audience. Some critics have accused the media of attempting to please commercial sponsors at the expense of news quality.

Journalism textbooks often attempt to define what news is; ie. famous persons, dramatic events, public events, affects whatever concerns the audience’s lives, and perhaps most importantly, that which is “new” and novel. While the O.J. Simpson murder case did not affect the lives of the public (except for the fact it evolved into a spectacle with devout observers), it did involve many other newsworthy aspects; famous persons (O.J. and other Hollywood types), dramatic event (murder), public event (car chase). Television news has brought an added dimension to what is
considered newsworthy and fit for broadcast. What is considered to make good television is that which is visual. The better the video in terms of interest, colour, action or rarity of pictures, the more likely a story will make the six o'clock news.

Thus, court cases would not warrant broadcast coverage on the six o'clock news unless they passed the media's selection criteria. Further, extended broadcast coverage of a court trial (on for example C.N.N.) would also undergo a selection process which would, by nature of limited air time, result in even fewer court trials receiving coverage.

The courtroom is not a highly visible setting, although the dress and the pomp and circumstance may be somewhat novel for viewers. However, to keep today's television viewer from changing channels, the media incorporates packaging of the event, as was evident in the broadcast coverage of the O.J. Trial. For example, C.N.N packaged the trial much like a sporting event with instant playbacks, commentaries during the proceedings and recaps at the end of the day, as well as short feature reports to fill up time when the court was not in session. The term "Dream Team", used by the media to describe O.J.'s defense counsel, was borrowed from the sportsworld.

News is defined as something that is novel and new. Ericson, et. al., have noted that:
The news institution focuses upon what is out of place: the deviant, the equivocal, and unpredictable. News operatives attend to the more calamitous happenings in other institutions that have proved difficult to classify or that contradict standard expectations in the social structure about rights and the distribution of power. (1991:4)

It is a criticism that journalists seem preoccupied with bad news and disorder. Such a notion suggests that newscast reports would focus on the most unusual and controversial aspects of a trial.

T.V. broadcasters must deal with an additional element (video) that is capable of distracting them from being purveyors of information due to an additional set of rituals and rules surrounding its use. Television news, it is suggested, accentuates certain forms of selection and story construction through the guise of its own version of empiricism.

The emphasis in news story construction upon 'drama,' 'action' and conflict/confrontation points to ways in which the empiricism of news presentation is blended into the emphasis upon extraordinariness as a primary criterion of newsworthiness. (Knight:1982:30)

The television news emphasis on immediacy and actuality is an example of this attempt to appear empirical. Reporters and camerapersons strive to get as close as possible to the action, and be current or live, where possible. The “eyewitness news as it happens” concept is frequently utilized in T.V. newscasts. “Keeping it simple” is an important aspect of formatting T.V. news. Reporters believe that if viewers can not understand the story they will turn off the set. Reporters must format T.V.
reports to compete with distractions in the viewers' homes.

If one accepts the thesis of critical sociologists, then one would expect to see reports on court trials formatted to be as entertaining as possible regardless of whether those reports include video of inside the courtroom, and regardless of whether the entertaining story infringes on the appearance of a fair trial. Consideration for the accused may well be only an afterthought.

There have been a number of articles written by social theorists about the O.J. Simpson trial. Michael C. Moore and Lynda J. Moore (1997) analyze the media-generated process that transformed O.J. from a cultural hero to a brutal murderer. Moore considers several scenarios of postmodern media implosion that embedded the O.J. Trial and implications for such influences in other trials. Another account of the negative impact of cameras on the O.J. Trial and the criminal justice process is offered by George Gerbner (1995) of the Annenburg School of Communications. Gerbner argues that the audience was altered during the O.J. Trial by the media coverage. According to Gerbner, the televising of the trial transformed viewers into witnesses who in turn influenced the

---

court and media participants.\textsuperscript{35}

Sandra F. Chance also writes on the negative impact of the media coverage of the O.J. trial upon the trial process and the public. However, Chance sees the backlash against cameras in the courtroom as a result of the O.J. Trial as an anomaly, since traditional camera coverage of court proceedings is perceived as aiding education of the public. The O.J. Trial is seen to have generated debate in the public sphere on numerous issues including race relations and legal ethics. The author concludes that cameras in the courtroom are controversial precisely because they reveal problems with the legal system.\textsuperscript{36}

It is evident that the O.J. Trial has had a real impact upon those concerned about expanding the media coverage of criminal trials. Recent legal challenges in Canada to the camera ban have not escaped discussion of the O.J. Trial. Case law in Canada on the issue of camera coverage of criminal trials remains most concerned about the influence on the witness, and the potential for a distorted broadcast presentation of the court proceedings.


In summary, the main elements of the television media's discourse pertaining to coverage of legal proceedings have been identified as:

- objectivity as an ideal
- claim to be objective
- claim to be eyes and ears of public
- routine media practices enhance appearance of objectivity
- media driven in part by profit motive
- media right to gain equipment access into courts.
- media compromised if unable to report properly without pictures

The above discussions on media and legal discourses highlight some of the ways knowledge and communication are processed by the two professional groups. As it has been presented in the preceding chapters, objectivity in each group is defined by the practice of presenting phenomena to the public in a manner which is consistent with promoting the principles of fairness. However, fairness for the media may result in unfairness of a legal proceeding.

From the above discussions of the discursive practices of the two respective groups, inferences can be drawn about their attitudes toward permitting camera coverage of court proceedings. Further, the historical overview contained in chapter one offers a
summation of how that issue has evolved to date in court precedents, legislation and public policy.

The purpose of setting out the following hypotheses will be to examine the current beliefs held by participants in relation to the assumptions underlying the relevant cases and studies addressing cameras in the courtroom. The interview questions to be posed to the media and legal professionals are derived from these hypotheses.

HYPOTHESIS ONE

1A) MEDIA PARTICIPANTS WILL BE IN FAVOUR OF PERMITTING CAMERAS IN THE COURTROOM.

1B) LEGAL PARTICIPANTS WILL BE AGAINST PERMITTING CAMERAS IN THE COURTROOM.

The formulation of this basic hypothesis is derived from the cited case law, which is evidence of the media’s continued interest and activity in attempting to expand their coverage territory, while the courts continue to prohibit same. Another source of material relied upon for this hypothesis refers to the proprietary claims discussed earlier for each respective professional group: the media’s position that they are the eyes and ears of the public, and the court’s position that they are the gatekeepers to justice, including a fair trial and preservation of
the court’s dignity.

HYPOTHESIS TWO

2A) MEDIA PARTICIPANTS WILL REGARD ANY LIMITATION ON CAMERA COVERAGE AS UNJUSTIFIED.

2B) LEGAL PARTICIPANTS WILL REGARD CERTAIN LIMITATIONS NECESSARY IF CAMERAS ARE PERMITTED IN THE COURTROOM.

These hypotheses are based upon similar reasoning to that cited above under Hypothesis One. The media’s discourse of objectivity presumably justifies their desire for unfettered access to the courtroom. The legal system’s discourse of objectivity provides self-justification for attempts to protect participants, witnesses and processes in the courtroom, and to protect the dignity of the court despite the recognition that justice is an ideal. Thus, the discourses of objectivity for each respective group on a day-to-day basis reinforce the desire to permit or not permit cameras into courtrooms.

The current case law implies that the media could not self-regulate broadcast coverage compatible with a fair trial or dignity of the court. It is further presumed in case law that the mere presence of cameras would influence participants. Limitations are deemed to be necessary by the courts because participants in a televised trial might alter their behaviour.
Although the courts have stated that individual sensitivities are not enough to make proceedings closed to the public, the courts have concluded that the stress on a witness or participant from a camera would be enough to render a trial unfair.

The media's discourse of objectivity and accompanying rituals direct the media to act as purveyors of knowledge. Hence, the media will submit that limitations on their access to courtrooms is not justified. It appears that the power of the media as a social institution increases with growing access to phenomena consistent with their accompanying claims of professionalism in the public interest and compatible with profit-making objectives.

HYPOTHESIS THREE

3A) MEDIA PARTICIPANTS WILL REGARD THEMSELVES AS PUTTING PUBLIC INTEREST BEFORE PROFITS.

3B) LEGAL PARTICIPANTS WILL REGARD THE MEDIA AS PUTTING PROFITS BEFORE PUBLIC INTEREST.

These hypotheses are derived from the professional ideology of both groups and their perceived reality to date with cameras in the courtroom.

The media, to gain respect from the public and to increase their influence, continue to stress their dedication to the public,
claiming to be the eyes and ears of the public. The cited sociological theories on the media’s reliance upon rituals such as eye witness presentations to appear objective and professional, despite its underlying commercial foundation, provide the basis from which to put forth Hypothesis 3A.

Hypothesis 3B, founded upon the notion of the court’s discourse of objectivity, would include insulation of the proceedings from potential sources of influence extraneous to the evidence at bar. It is suspected that the underlying concerns of the legal profession about the media’s effect upon trials will be greatly influenced by the experience of the O.J. case and other media celebrated trials in Canada and the United States.

Despite media claims, the broadcasted material to date will be regarded by the legal professionals as formatted for entertainment purposes and hence profits, rather than for public enlightenment.

HYPOTHESIS FOUR

4A) Media participants will regard the current quality of television coverage as poor due to the limitation of camera coverage.

4B) Legal participants will regard the current quality of the television coverage of legal trials as poor regardless of limitation of camera coverage.
The media's discourse of objectivity promotes portrayals of immediacy and actuality to give credence to their activity. The media can not attain the maximum impact on the audience without video coverage of court proceedings. There is no substitution for immediacy of video footage of a trial in the eyes of the media, although the length of a report on a news broadcast will be only a few minutes. Claims of accuracy, such as "the camera never lies", will also be attributed to video footage, despite the potential for distortion of the reality.

The legal group participants will regard the media's formatting of information to attract viewers as inaccurate and distorted regardless of the inclusion of video footage of court proceedings since the media's reconstructed version will vary from the law professionals' version of events. The legal profession will regard the broadcast news portrayals of the trials as having an entertainment rather than educational emphasis.

HYPOTHESIS FIVE

5A) MEDIA PARTICIPANTS WILL REGARD THE TELEVISION COVERAGE OF THE O.J. TRIAL AS GOOD.

5B) LEGAL PARTICIPANTS WILL REGARD THE TELEVISION COVERAGE OF THE O.J. TRIAL AS BAD.

The sensational coverage of the O.J. trial will be justified by
the media based upon their discourse of objectivity. The media's definition of news includes coverage of a celebrity murder trial. Further, the media will justify O.J. coverage since the usual rituals were employed by the media; moreover, the public demanded such coverage.

The legal system will regard the coverage in the O.J. matter as a breach of the rules of decorum and a negative influence on the court participants. Further, distorted television news coverage would also be regarded as contrary to the objectives of the legal system which requires that justice appear to be done, as well as be done.

HYPOTHESIS SIX

6A) MEDIA PARTICIPANTS WILL REGARD TELEVISION NEWS MEDIA AS HAVING A POTENTIALLY POSITIVE EFFECT ON THE PUBLIC'S EXPECTATIONS ABOUT THE CRIMINAL JUSTICE SYSTEM.

6B) LEGAL PARTICIPANTS WILL REGARD TELEVISION NEWS MEDIA AS HAVING A POTENTIALLY NEGATIVE EFFECT ON THE PUBLIC'S EXPECTATIONS ABOUT THE CRIMINAL JUSTICE SYSTEM.

These hypotheses address both intentional and unintentional influences upon the public resulting from broadcast trial reports. The legal discourse of objectivity would dictate that the courts be concerned about the potential consequences of unfavourable
portrayals by the media. Reconstructed versions of court proceedings to entertain viewers would not be compatible with the desire of the legal system that justice be seen to be done. While the media professionals may not always intend to cast a negative light on the legal system, the deployment of media rituals will result in material that is offensive to legal professionals. There will also be critical reportage of legal proceedings that may also be regarded as slanted unfairly.

HYPOTHESIS SEVEN

7A) MEDIA PARTICIPANTS WILL REGARD TELEVISION COVERAGE AS HAVING THE POTENTIAL TO INFLUENCE COURT PROCEEDINGS.

7B) LEGAL PARTICIPANTS WILL REGARD TELEVISION COVERAGE AS HAVING THE POTENTIAL TO INFLUENCE COURT PROCEEDINGS.

These hypotheses address the unintended influences upon the court proceedings. The legal discourse of objectivity and case decisions indicate that the courts be protective of such consequences and make every effort to insulate proceedings from any such outside influences; thus, the underlying assumption is that the potential for influence must exist. While the media may claim that their job is only to observe and report, the need to present themselves as professionals, as per the discourse of objectivity, likens them to authorities on the courts and public opinion, which could influence court participants or the public on
a specific case.

The above seven groups of hypotheses form the basis of the interview questions for the media and legal professionals. The next chapter will describe the methods and procedures undertaken in the research process, including a discussion of the interview questions posed to the twenty-six subjects. The questions were designed to consider the issues set out in the hypotheses. Chapter five will consider the data collected during the interviews in relation to the above hypotheses.
IV. METHODOLOGY AND DATA COLLECTION

In the preceding chapters the conflict over whether to permit television cameras into courtrooms was introduced and a number of hypotheses were proposed based upon assumptions identified in the cases and debates on the issue of whether to permit cameras into criminal courtrooms. The remainder of the thesis will document how this issue was examined through personal interviews with media and legal professionals, beginning in this chapter with a detailed account of the research methodology employed in this study.

4.1 Field Methods

A total of 26 participants (13 from each of the two respective groups) were questioned. This researcher had intended to obtain a greater number of participants; however, the sample pool of those having local first-hand knowledge of the issue was limited.

Most of the 13 members of the media sample group were known to the researcher through her personal experience or were referred to the researcher by other interviewees as being knowledgeable on the thesis topic.
The media persons have experience with trials that received extensive media publicity. Many of the participants from both groups have been involved with administrative decisions on the topic of cameras in the courtroom.

The media interviewees include reporters, producers and management, including news directors. Three participants have lectured at broadcast journalism school. Three of the media participants have law degrees, with two of the three working as lawyers on the legal challenges to the court ban on video coverage.

The 13 legal professionals interviewed were also known to the researcher for their involvement in trials receiving media attention. Some members were included in the group because the researcher observed their involvement in trials which were subject to ongoing broadcast media attention. Other legal professionals were chosen due to this researcher's observation of television media coverage of their cases.

The lawyers, prosecutors and judges included in the study have all been involved in high profile criminal cases which attracted media coverage. Some members have been involved with policy-making or
have published commentary on the topic.

For the legal group, the average number of years of experience is 30. The media group's average years of experience is 16. The legal interviewees includes defence counsel, prosecutors and judges, some of whom have lectured on the law.

Data for this thesis was collected by personal interviews. It was intended that the interviews be partially exploratory, although there was a set of predetermined questions which were general in nature and loosely structured upon the hypotheses set out in chapter three of this thesis. The researcher often followed up the semi-structured questions with more direct questioning or/and discussion on issues raised by the subject. (See Appendix C).

Interviewees were also asked to provide comment on issues that they felt were not adequately covered by the researcher's questions.

Data from loosely structured interviews complicates analysis due to the length of transcripts and the lack of uniformity in participant responses. However, the heuristic value of the data is most valuable for this study since consideration will be given to whether explanations other than those given by the participants could account for the ongoing conflicts over the cameras in the courtroom issue.
Since many of the subjects were chosen by the researcher based upon some level of familiarity, selection bias can not be ruled out. However, the nature of the questions are such that familiarity with the researcher is unlikely to affect results in a systematic way. Bias has been controlled by selecting subjects, who for the most part, are mere acquaintances of the researcher and whose beliefs are unknown to the researcher about most of the investigative questions. On the plus side, it is hoped that my previous acquaintance with subjects increased their comfort level and the frankness of their responses to the inquiry.

4.2 Procedures

Subjects were initially contacted via letter which indicated the purpose of the research and requested that the recipients participate in an interview. Contact names of supervisors at the University were also included in this letter. (see Appendix A for introduction letter) The letter was followed by a telephone call to arrange a meeting if respondents expressed an interest in participating in an interview.

Interviews were held in private offices of the respondents, although some of the interviews were conducted in the researcher's
office at the request of the participant. A few of the interviews were conducted over the telephone due to the participants' time constraints. The interviews occurred between April 2000 and November 2001. Thirteen interviews were conducted with media professionals and the same number with legal professionals.

The available pool for selection of the media subjects, especially those with experience in the field of legal reporting experience, was much smaller than that of the legal professionals. Further while the media subjects interviewed for this project were cooperative and supportive of the project, there were a number of media persons who refused interviews or did not return phone messages. One media person who refused a personal interview offered the company's official written policy. Such data was inappropriate for inclusion in this thesis without the opportunity to question the subject. Six television reporters did not return telephone messages. Two to four messages for each person were left at the newsrooms where they work. This disinterest toward the interview process is somewhat ironic in light of the pressures that the media often place upon members of the public to grant interviews.

The legal professionals were quite cooperative and supportive of this project. No one from the legal professional group refused to be interviewed.
Prior to proceeding with the interview, subjects were asked to sign a consent form. Participants were provided with a copy of a standard research consent form as required by the graduate program at the University of British Columbia (see Appendix B). A copy of the signed consent form was provided to each participant, with the identity of participants remaining anonymous, as stipulated in the consent form. None of the participants indicated any difficulties with the purpose of the interview or the consent form.

A number of media participants indicated, for the record, that they would be expressing their own opinion in the interview and not that of the company policy. A few judges indicated prior to the interview that they were somewhat restricted by the court's official policy on the topic.

Interviews were audio-tape recorded with the permission of the participants. The questions asked of participants were in the nature of a semi-structured interview schedule. (see Appendix C). There were three main areas of inquiry covered by the questions: attitudes toward camera coverage of criminal court proceedings, the O.J trial, and suggestions regarding the feasibility of permitting cameras in criminal courtrooms.

37 Many of the participants from both groups indicated on their own initiative that they were not concerned about having their identity revealed.
The questions posed to interviewees were sometimes probed in indirect or circuitous fashion to encourage less guarded and more elaborate responses.

At the conclusion of the interviews, participants were thanked for their involvement. None of the participants indicated any concern with what had transpired during the interview. A number of subjects indicated interest in reading the completed thesis.

All participants conducted their practice in the province of British Columbia at the time of their interviews.

Full transcriptions were completed for each interview. Transcriptions have concealed identities of participants by the use of pseudonyms ("L" for Legal Professional and "M" for Media Professionals, numbered from 1-13). Participants were promised that the tapes and transcripts would remain confidential.

Participant responses have been analyzed in terms of the seven hypotheses derived from the key assumptions emergent in the respective discourses of the legal and media professions bearing respect on the cameras in the courtroom issue.
V. FINDINGS AND INTERPRETATION 38

The following chapter will set out the data gathered with regard to each hypothesis. Responses will be represented both quantitatively and qualitatively. The significance of the responses will be examined in relation to the earlier discussed theories pertaining to each group's ideological discourse.

HYPOTHESES ONE

1A) MEDIA PARTICIPANTS WILL BE IN FAVOUR OF PERMITTING CAMERAS IN THE COURTROOM.

1B) LEGAL PARTICIPANTS WILL BE AGAINST PERMITTING CAMERAS IN THE COURTROOM.

MEDIA

12/13 INDICATED THAT CAMERAS SHOULD BE PERMITTED INTO COURTROOMS.

1/13 INDICATED THAT CAMERAS SHOULD NOT BE PERMITTED INTO COURTROOMS.

LEGAL PROFESSIONALS

10/13 INDICATED THAT CAMERAS SHOULD NOT BE PERMITTED INTO COURTROOMS. 3/13 INDICATED THAT CAMERAS SHOULD BE PERMITTED INTO COURTROOMS.

38 See Appendix D for itemized point-form responses to questions germane to the hypotheses.
The interview results supported the above hypotheses. Clearly, the media was in favour of permitting cameras into courtrooms, whilst the legal group was not.

The media group widely relied upon the claim that they are the eyes and ears of the public who can not be in attendance at trials. Only one media person who did not wish cameras in the courtroom commented that as a member of the public, he/she would not like the potential for an unfair trial.

A few of the media persons expressed concern for the potential problem of an individual convicted in the news and the inability to reverse that perception if the courts find him/her not guilty. The majority of the media recognised the inherent potential for problems and unfairness.

Only one media member argued that the media should have complete access to proceedings, good or bad, regardless of whether media presented coverage in a sensational or distorted manner.

Only three of thirteen legal professionals indicated a desire to place cameras in the court. The great majority of the legal group was not accepting of the media's claim that they are the eyes and ears of the public and essential for communication about the legal justice system. The legal professionals frequently indicated that
the addition of cameras into the courtroom would cause stress for the participants, encourage some participants to act differently, diminish decorum, and present the public with a false glimpse of the proceedings.

The majority of the legal group appeared to be untrusting of the media and uninterested in having cameras in the courtroom for their own personal reasons and as a concern for justice. The legal group emphasized the media's practice of providing the public with a distorted image of proceedings, arguing further that camera coverage would compound the problem.

The three legal professionals in favour of introducing cameras believed that the benefit of broadcasting court proceedings on the news would be to inform the public. However, legal professionals in favour of cameras in the courtroom wanted a number of limitations placed upon the media. Generally, the legal group were uninterested in dealing with the media when preoccupied with the trial. About half of the legal interviewees felt that the media would only be interested in the unusual or celebrated.
HYPOTHESES TWO

2A) MEDIA PARTICIPANTS WILL REGARD ANY LIMITATION ON CAMERA COVERAGE AS UNJUSTIFIED.

2B) LEGAL PARTICIPANTS WILL REGARD CERTAIN LIMITATIONS NECESSARY IF CAMERAS ARE PERMITTED IN THE COURTROOM.

MEDIA

12/13 INDICATED THAT LIMITATIONS WERE NECESSARY.
1/13 INDICATED THAT NO LIMITATIONS WERE JUSTIFIED.

LEGAL PROFESSIONALS

14/14 INDICATED THAT IF CAMERAS WERE PERMITTED, LIMITATIONS WERE NECESSARY.

The respondents' answers to Hypotheses 2A were not as expected and did not confirm the hypothesis as put forth.

Overall, the media were more respectful of the legal system and cognizant of the potential problem areas of court coverage then was predicted based upon underlying assumptions in court decisions and discussed theories of objectivity.

Instead, it appears that the media’s answers support the potential for cooperation of the media with the legal system.
With the exception of one media member, all interviewees (both groups) felt limitations on camera coverage were necessary. 25/26 interviewees recognized the potential need to protect the identity of some witnesses and/or the jury. Many members from both groups expressed the necessity for limitations because of the exposure to unwanted publicity for participants. The problems of the O.J. trial were also cited by many as justification for imposing certain limitations on camera coverage.

The one media person supporting unrestricted access to the courts, expressed no concern about the O.J. Simpson trial coverage.

Media persons also recognized a tendency for their members to ignore limitations imposed by the courts. A few media members stated that it would be inevitable that there will be media who violate limitations if cameras are permitted.

Legal persons cited a greater number of court participants and situations that should be subject to limitations. Many legal group members connected the need for court imposed limits to a tendency for the media to sensationalize, partly due to the media's limited knowledge about the criminal justice system. Two of the legal professionals indicated that they thought cameras should be permitted for appeal cases only.
There were no suggestions by either group as to limitations that should be placed upon the legal profession in the advent of cameras in the courtroom.

HYPOTHESES THREE

3A) MEDIA PARTICIPANTS WILL REGARD THEMSELVES AS PUTTING PUBLIC INTEREST BEFORE PROFITS.

3B) LEGAL PARTICIPANTS WILL REGARD THE MEDIA AS PUTTING PROFITS BEFORE PUBLIC INTEREST.

MEDIA

5/13 INDICATED THAT THE MEDIA PUTS PROFITS BEFORE PUBLIC INTEREST.

3/13 INDICATED THAT THE MEDIA PUTS PUBLIC INTEREST BEFORE PROFITS.

1/13 INDICATED THAT IT IS IRRELEVANT WHETHER PROFITS OR PUBLIC INTEREST ARE PRIORITIZED.

1/13 DEPENDS UPON EDITING IF PUBLIC OR PROFITS PRIORITIZED.

2/13 INDICATED THAT HE/SHE UNSURE IF PUBLIC OR PROFITS PRIORITIZED.

1/13 QUESTION NOT ADDRESSED (OVERSIGHT OF RESEARCHER TO ASK ONE PARTICIPANT)
LEGAL PROFESSIONALS

11/13 INDICATED THAT THE MEDIA PUTS PROFITS BEFORE PUBLIC INTEREST.

1/13 INDICATED THAT THE MEDIA SOMETIMES PUTS PROFITS BEFORE PUBLIC INTEREST.

1/13 INDICATED THAT THE MEDIA PUTS PUBLIC INTEREST BEFORE PROFITS.

The response to Hypothesis 3A) was not as expected and affirmed the expectation only in part. Almost half (6/13) of the media interviewees acknowledged that financial structural constraints influence formatting material for broadcast, all or some of the time. Only three media persons justified camera intervention with the altruistic intention of putting public interest ahead of profits. Two media persons were unsure as to priority. One media person declined to answer the question, and one media interviewee was inadvertently not asked the question.

Given the stress on the media's profit motive, it is questionable whether there is potential for any sort of coverage that is not compatible with favourable viewer ratings.

As for the legal group's response to Hypothesis 3B), the perceived financial motive of the media may be another reason for their lack of faith in the ability of the media to conduct themselves in a responsible manner and to present the public with a fair and accurate picture of court proceedings.
HYPOTHESES FOUR

4A) MEDIA PARTICIPANTS WILL REGARD THE CURRENT QUALITY OF TELEVISION COVERAGE AS POOR DUE TO THE LIMITATION OF CAMERA COVERAGE.

4B) LEGAL PARTICIPANTS WILL REGARD THE CURRENT QUALITY OF THE TELEVISION COVERAGE OF LEGAL TRIALS TO BE POOR REGARDLESS OF LIMITATION OF CAMERA COVERAGE.

MEDIA

4/13 INDICATED THAT THE QUALITY VARIES FROM GOOD TO BAD DEPENDING ON MEDIA OUTLET, REPORTER’S EXPERIENCE AND RESOURCES.

9/13 BAD, BUT WOULD IMPROVE IF CAMERAS WERE PERMITTED INTO COURTSROOMS.

LEGAL PROFESSIONALS

11/13 INDICATED COVERAGE WAS POOR REGARDLESS OF CAMERAS.

2/13 INDICATED COVERAGE WAS GOOD REGARDLESS OF CAMERAS.

The responses here were consistent with the hypotheses only in part. The media group presented mixed responses regarding the relationship between the current quality of trial coverage and the availability of videos. Almost half the media participants claimed that video pictures would result in better quality
coverage. Another claim by the media participants is that the availability of courtroom footage would improve the accuracy of television news reports. A number of media interviewees stated more specifically that the public would benefit from having the ability to observe cross-examinations and the demeanour of trial witnesses, experiencing first hand what reporters now can only offer opinion about.

Two media people felt that their news reports would be longer and/or have more prominence in the newscast if they could include actual video of the courtroom proceedings. In general, the media interviewees believed that allowing cameras in the courtroom would encourage the media to cover more court trials.

One media interviewee commented that there would be less of a need to exploit the process if video were available (i.e. the media would not be forced to obtain comments from neighbours, family, people on the street or on the courthouse steps). It was also indicated by this respondent that public interest groups would have less opportunity to influence opinion as the video would dominate the story.

In general, the media interviewees felt that allowing cameras in the courtroom would encourage the media to cover more court trials.
Although there was recognition by a majority of the media interviewees of room for improvement in their legal reporting, the solution indicated was to obtain video pictures rather than to increase their level of knowledge about legal proceedings.

The greater majority (11/13) of the legal group was disappointed with what they perceived to be a lack of knowledge regarding the legal system as displayed by the media as a whole. Only two of the legal group members ranked the current television coverage of criminal trials to be good. There was little optimism (1/13) from legal interviewees that the quality of television reporting would improve if cameras were permitted into the courtroom.

**HYPOTHESES FIVE**

5A) MEDIA PARTICIPANTS WILL REGARD THE TELEVISION COVERAGE OF THE O.J. TRIAL AS GOOD.

5B) LEGAL PARTICIPANTS WILL REGARD THE TELEVISION COVERAGE OF THE O.J. TRIAL AS BAD.

**MEDIA**

12/13 MEDIA PROFESSIONALS INDICATED THAT THE O.J. COVERAGE WAS BAD BECAUSE IT WAS A POOR REPRESENTATION OF THE REALITY OF THE PROCEEDINGS. DESCRIPTORS USED: CIRCUS, SOAP OPERA, CHEAP, NOT BENEFICIAL FOR PUBLIC OR JUSTICE SYSTEM, RIDICULOUS.
3/13 felt that in addition to the bad coverage, there was some good coverage.

1/13 media persons indicated the coverage of the O.J. case was good, very interesting.

Legal Professionals

11/13 indicated coverage of the O.J. case was bad because it was a distortion of reality.

2/13 indicated coverage of the O.J. case was good representation of reality.

The majority of all participants, media and legal, indicated that the media broadcasts of the O.J. Simpson trial proceedings were problematic. The descriptors used by subjects included: circus, sensational, show biz, abysmal, fictional, distorted.

The two individuals who expressed a positive response to the television coverage of the Simpson trial indicated that it is better to have many alternative sources of information, regardless of the quality of those sources.

In sum, 23/26 participants regarded the television coverage of the O.J. trial proceedings to be poor as it was sensational and distorted, disrupted proceedings, and negatively affected the public's impression of the judicial system. About half of the participants from both groups felt that the coverage may have
affected the conduct of all or some of the witnesses, lawyers, judge and jury.

Many media professionals felt that the T. V. coverage of the O. J. trial was outrageously bad as an accurate reflection of the courtroom reality, but that it made for good entertainment. However, it was thought by a large number of the participants that the O. J. coverage would not be typical of the video coverage of most legal trials.

It is submitted that the above responses can be cited as support for the disinterest of both groups in participating in the type of coverage observed during the O.J. Trial.

HYPOTHESES SIX
6A) MEDIA PARTICIPANTS WILL REGARD TELEVISION NEWS MEDIA AS HAVING THE POTENTIAL TO AFFECT THE PUBLIC’S EXPECTATIONS ABOUT THE CRIMINAL JUSTICE SYSTEM.
6B) LEGAL PARTICIPANTS WILL REGARD TELEVISION NEWS MEDIA AS HAVING THE POTENTIAL TO AFFECT THE PUBLIC’S EXPECTATIONS ABOUT THE CRIMINAL JUSTICE SYSTEM.
9/13 indicated that the television media could affect the public’s expectations of the criminal justice system.
4/13 indicated that the television could not affect the public’s expectations of the criminal justice system.
1/13 offered no comment.

Legal Professionals
11/13 indicated that the television media could affect the public’s expectations of the criminal justice system.
2/13 indicated that the television media could not affect the public’s expectations of the criminal justice system.

Both groups ranked significantly high in holding the view that the media’s coverage could affect the public’s views on the criminal justice system. These findings are troublesome in light of Hypotheses 5A) and 5B): that the media are perceived by themselves and legal professionals as having limited knowledge of the criminal justice system.

Aside from the media’s reconstruction of phenomena that is of concern to the legal professionals, the perceived lack of knowledge of the legal system by the media may also be at the heart of the lack of confidence and/or trust the legal
professionals have indicated towards them.

HYPOTHESES SEVEN

7A) MEDIA PARTICIPANTS WILL REGARD TELEVISION COVERAGE AS HAVING THE POTENTIAL TO INFLUENCE COURT PROCEEDINGS.

7B) LEGAL PARTICIPANTS WILL REGARD TELEVISION COVERAGE AS HAVING THE POTENTIAL TO INFLUENCE COURT PROCEEDINGS.

MEDIA

8/13 INDICATED THAT THE MEDIA COULD INFLUENCE THE PROCEEDINGS.

1/13 INDICATED THAT THE MEDIA COULD NOT INFLUENCE THE PROCEEDINGS.

4/13 OFFERED NO COMMENT.

LEGAL PROFESSIONALS

11/13 INDICATED THAT THE MEDIA COULD INFLUENCE THE PROCEEDINGS.

2/13 INDICATED THEY WERE UNCERTAIN ABOUT WHETHER THE MEDIA COULD INFLUENCE THE PROCEEDINGS.

The legal group expressed greater certainty and concern that trial proceedings could be altered by the intervention of the media. Generally, the concern was about the effects of stresses on participants, and persons playing to the camera. There was also concern for the jury's integrity, once influenced by publicity. A few legal persons commented on media influence over judges.
Over half of the media persons also believed that camera intervention could influence courtroom activity. Thus, the media can not be regarded as adhering blindly to the notion that they merely observe and report. A number of media persons also thought that less influence would occur with the passing of the novelty of cameras in the courtroom.

The above findings are admittedly only suggestive, and are based on relatively small research samples; however, they are nevertheless reflective of the attitudes held by the participants. Following is a discussion of the implications of the findings as related to the struggle over cameras in the courtroom.
VI. DISCUSSION AND CONCLUSIONS

This chapter will provide further analysis of the findings, draw some conclusions, as well as discuss various problems with the research. Areas for contemplated future research will be addressed.

To account for the continuing struggle over cameras in the courtroom in British Columbia, this researcher has attempted to identify the fundamental ideological beliefs held by the media and legal professionals engaged in the controversy. A number of assumptions about the propriety of cameras in the courtroom were identified from within the context of previous court decisions. Theories of ideology and discourse were also discussed in relation to the practises of the media and legal professionals which provided further foundation for the hypotheses regarding the attitudes of participants. A presumption was made that the need to appear 'objective' and the professional groups' working definitions of objectivity would dictate the basis for some of the underlying assumptions in the ongoing debate over camera coverage in criminal trials.

Strongly evident in the interview findings of this thesis is the media's die-hard reliance upon the notion of objectivity when attempting to justify their penetration into the courtroom. However, when further explored, even media members indicate major
problems with their broadcast presentations of court proceedings. Almost all participants were in agreement that the O.J. Trial broadcast coverage was problematic for many reasons. Further, there was wide agreement among all interview participants for the potential of the media to influence the public's expectations of criminal trial proceedings, as well as agreement on the potential of the media to influence the actual court proceedings.

But participants did not agree on the issue of whether cameras should be permitted into criminal courts. The media clearly supported allowing cameras into the courtroom, whereas the legal professionals strongly opposed the idea. However, a large sub-sample in both groups indicated that limitations on coverage would be necessary if cameras were permitted into criminal courtrooms.

A conflicting set of responses was obtained on the issue of the quality of media reports. The legal group did not regard the quality of the reportage to be good due to the media's lack of knowledge about the criminal justice system and trial proceedings. The media group indicated that the quality of the current court reporting would improve if they were able to obtain video footage of the proceedings.

The two groups also differed on their response to the issue of whether the media puts profits before public interest. The legal professionals regarded profits as a priority for the media. The
media was divided amongst themselves as to whether profits took priority over public interest.

While legal members may benefit from publicity due to increased notoriety, the interview results indicated little interest by the legal profession in having cameras in criminal courtrooms. Most of the time, according to a majority of the legal respondents, camera coverage would not be in the best interest of the accused as it is thought to detract from the focus of the proceedings. Refusing to provide comment to the media is also a concern as legal members believe the desire to avoid publicity is misconstrued at times as an indication of client’s guilt. Legal subjects also expressed more concern than the media for the witnesses and victims.

Furthermore, institutional differences between the media and lawyers are traceable to their respective representative obligations: lawyers to their clients and courts, media primarily to their corporate employers. With no formal duty to the public, the media rejects the suggestion that they are an educational institution, despite their on-screen presentation as dedicated public servants. In the interviews conducted for this thesis, many media members acknowledged that the media puts profits ahead of public interest. Nevertheless, the discourse of objectivity of the media provides a strong justification for the media profession to continue to argue for their so-called right to court access on behalf of the public, regardless of the profit-derived notion of
An examination of these discourses of objectivity in both the television media and the legal justice system indicate that each of these professional groups strives for an appearance of objectivity, and that objectivity is no less an ideal in the media as it is in the legal system.

Media persons, for the most part, expressed an entitlement to have courtroom access for broadcast cameras, on the basis that they are the eyes and ears of the public. The struggle to get into the courtroom is important to the media. However, there is some disagreement on how useful videotaped court proceedings would be for newscasts since it is not the most visually exciting material.

While some insight was expressed on the alleged hypocritical nature of their professional ideology, media participants tended to defend same.

M1. That there is a public appetite for trashiness and sensationalism, these are valid appetites (p. 3, para 5) The argument sort of falls down to what the media want...I put it to you, it's what the public want (p. 6 para 3) (Transcript M1)

Other media persons expressed a perspective which indicated a greater awareness of the potential interference with a fair trial:

M2 ...but this is a case where a defendant's interest would probably be more important than the public's right to know. (Transcript M2)
Legal professionals expressed concern about media coverage.

L3 So they are to some extent the eyes, the ears of the public, but how well do they do their job? You know... protecting the public's interest, as opposed to trudging up the dirt. (Transcript L3)

The legal professionals generally tended to see the issue from the perspective that they are the public safeguard inside and outside of the courtroom, in terms of justice.

L5 ...its not unusual for things to be taken out of context... I think currently many people have misperceptions based on the media and largely American television (p. 2, para. 2 & 4) (Transcript L5)

For confirmation of this view, one only has to look to the strong response in this study to the O.J. Simpson trial in California, from the standpoint of both professional groups. The responses from the interviewees in this study indicate a strong belief that such coverage, for various reasons, did not serve the interests of justice, but was largely a highly successful form of entertainment, although affecting participants both inside and outside the courtroom (T.V. audience).

From the interview responses a number of broad conclusions can be drawn about the participants in this thesis:

1) the legal professionals do not trust the media to report cases without distortion due to an overarching profit motive;
2) the legal professionals indicate a disinterest in dealing with the media, especially during trials;

3) the mere presence of the media is viewed by both groups as having the potential to influence courtroom participants;

4) both media and legal professionals agree that the media can influence public opinion about criminal proceedings;

5) the legal professionals are concerned about the level of legal knowledge possessed by the media;

6) the media professionals, on the other hand, indicated little concern for their level of knowledge about the law;

7) both the media and legal professionals regard the style of broadcast coverage in the O.J. Trial as unsatisfactory;

8) a very large percentage of the media group indicated a willingness to work within limitations imposed by the courts;

9) the media appears steadfast in their pursuit of gaining entry to the courtroom for their electronic recording devices.

In general, the results of this inquiry demonstrate the extent to
which each group upholds its respective ideology and discourse of objectivity. Nevertheless, the deconstruction of the ideological perspectives of both groups reveals some disparate and contradictory elements. Such findings could provide policy makers with points of departure for establishing convergences between media and legal positions on the issue of cameras in the courtroom.

As indicated in the interview data, media subjects appear to recognize certain problematic aspects of permitting cameras in the courtroom. Media responses indicate a strong dissatisfaction with the camera coverage in the O.J. Simpson trial, as well as concern for the potential of television media to negatively influence trial participants and public perception of a trial. Moreover, while media subjects are strident about gaining access for their video equipment, the right to a fair trial is not overlooked. Thus, the media members display a sensitivity to the concerns of the legal professionals, despite the structural constraints imposed by the profit-making objective of their business. Herein lies the basis for possible détente with the legal profession, likely around a highly regulated approach\(^3\) to media coverage of

\(^3\)The following aspects of criminal trials are potentially less offensive to members of the Bar for inclusion of cameras coverage; opening arguments, closing arguments, judges' decisions. While parties/witnesses who grant consent to camera coverage may make court decision making less problematic in some regards, it does raise the question of whether it would place unfair pressure on the opponents and other witnesses. Also, concern that future witnesses will have exposure to trial evidence through televised
criminal trials.

The legal subjects interviewed in this study presented as a more cohesive group, registering more uniformity in their responses. They were unimpressed by the television coverage of the O. J. trial, and generally dubious about television news reporting, which intensified their concern about the need to protect trial participants from probable media distortion.

While media professionals have not been indifferent to the problems associated with camera coverage, and have expressed a willingness to cooperate with court imposed limitations, they need to address the legal profession's concern for their lack of knowledge and perceived disregard for the legal system. On this score, however, change may not be possible owing to the inherent economic structure of each institution. Legal specialists in the Canadian media are few. Time constraints for report deadlines affect quality of production. The financial burden to the legal coverage was also regarded as a contentious issue by a small number of legal and media subjects.

Since the news media format generally accommodates snippets of court proceedings only, consideration may need to be given to other forums for cases of public interest, such as a Court regulated internet site or television channel relaying substantial portions of trials. The broadcast of large portions of trials could elevate the overall quality of media coverage as the public would have access to the courtroom reality, and not just brief depictions, allowing for critical comparison.
system is increased by the inclusion of cameras in the courtroom by complicating the proceedings and lengthening the trial process. It remains to be seen which party will finance the strains on the legal system, since it is the media who stands to profit, and yet the public would benefit if the reporting is accurate and fair.

The legal profession may also wish to consider providing articling students and lawyers with training in media relations, as the media shows no signs of giving up the pursuit of courtroom access for their cameras. The courts would likely benefit from the ongoing appointment of an amicus curiae and further development of policy on the issue, in light of the well organized efforts of the media. However, if the interviews with the legal respondents are reflective of the profession in general, as it applies to criminal courts, the media may be waiting a long time for cameras in criminal courtrooms.

Limitations and Areas for Future Research

Possible improvements in this study include a larger interview sample, the canvassing of more issues, and an informant selection process that ensures a representative sample for each group. Since the researcher was familiar with the interviewees for various reasons, there does exist the potential for a systematic selection bias, skewing the range of responses, but any such impact is not
evident to this researcher.

Further research on this topic would likely benefit from a larger sample size of each respective group involved in the courtroom drama, as well as a data breakdown along the lines of the specific tasks; i.e. judges, defence counsel, reporters, editors. It is unclear from the study data at hand whether the decision-makers (i.e. Judges and News Directors) regard the issue in a manner similar to others in their professional group. The small sample size at hand would not allow for a meaningful breakdown along the lines of a division of labour in each profession.

It should be kept in mind that this study deals only with the area of criminal court proceedings. Concern about camera coverage in non-criminal matters may yield different responses from participants.

Also worth noting is that the average age of the legal group is much higher than the average age of the media group. This age difference is a reflection of the more youthful make up of the media, as the more senior management people are fewer in numbers. In contrast, the legal system has a greater number of senior criminal bar members to junior members, especially with media experience. Interview responses may be reflective of the age factor in both groups.
It is also uncertain as to whether inferences from the data could be drawn with regards to actual behaviour of participants in the event that cameras are permitted in the courtroom. Reporters are influenced by producers; thus, their comments during the course of these interviews may not reflect how they would react to the phenomenon while under the pressure and direction of others. Lawyers are influenced by their clients who may be camera shy or publicity seeking.

These qualifications notwithstanding, the findings of this particular study may be regarded as a snapshot of opinion held by media and legal professionals in British Columbia at this time on the issues of cameras in the courtroom. This thesis is, therefore, only a very modest starting point for examining professional belief systems and conflicts in the struggle for cameras in the courtroom in British Columbia, Canada, and in other venues where the media and legal systems operate under similar principles. Hopefully, this study has provided some leads to more intensive research on the issue and will encourage others to pursue inquiry into this controversial and important topic.
BIBLIOGRAPHY

CASES

*Estes v. Texas* (1968) 381 US 532


*Re Southam and the Queen (No. 1)* (1983) 146 D.L.R.(3d) 408 Ont.C.A.

*Symes v. Canada* [1993] 4 S.C.R 695

*Thibaudeau v. Canada* [1995] 2 S.C.R. 627
LEGISLATION


Constitution Act, 1867.

Ontario Courts of Justice Act, R.S.O. 1984, c. 11, S. 146.


U.S.Constitution, Appendix 1, United States Congress, 1787.

REFERENCES


Brock, Reese, Q.C. and Roger McConchie, "Media access to the courts." Continuing Legal Education, Vancouver, B.C., November 1982 (Material prepared for a seminar for the media).


Routledge.


Garnham, Nicholas (1979) "Subjectivity, ideology, class and historical materialism." *Screen*, 20 (Spring), pp.121-133.


Netteburg, Kermit (1980) "Does research support the Estes ban on cameras in the courtroom?" *Judicature, Vol. 63, 10* (May), pp. 467-475.


Report of the Canadian Bar Association's Special Committee on Cameras in the Court, Canadian Bar Association, 1987.


Singer, Benjamin D. (1972) *Communications in Canadian Society,*


Newspaper Articles


"Cameras in court seen as risk to accused" The Vancouver Sun, July 14, 2000.

"Cameras have long history in U.S. Courts" The Vancouver Sun, July

"Judge Okays Cameras in Smuggling case trial" The Vancouver Sun, July 19, 2000.


Letter to Interview Respondents

Date______________________________

Dear______________________________

I am currently conducting research for my Master's degree in Sociology. I am interested in your views on the topic of television camera coverage of criminal trials. I intend to interview legal and broadcast media professionals.

I am currently a criminal lawyer. Prior to entering the field of law, I worked as a television news reporter and producer. My research in the field of sociology began prior to law school and so the issue of television coverage of criminal trials has been of interest to me for many years. Dr. Robert Ratner, Department of Anthropology and Sociology, is the Faculty Advisor for this Thesis. Dr. Ratner can be contacted at 822-3574.

I would be grateful if you could meet with me for approximately one to two hours when it is convenient to your schedule. In the next few weeks, I will be calling you to arrange an interview time.

Participants may withdraw from the study at any time without explanation.

I look forward to meeting with you.

Sincerely,

Donna Turko
Department of Anthropology and Sociology
The research described above has been explained to me, and I voluntarily consent to participate in this study. I have had an opportunity to ask questions and understand that future questions that I may have about the research or about participant's rights will be answered by the investigator. I acknowledge that I have been provided a copy of this consent form.

If you have any concerns about your rights or treatment as a research participant, you may contact Dr. Richard Spratley, Director of the UBC Office of Research Services at 822-8598.

______________________________  _______________________
Signature of Participant        Date
APPENDIX "C"

Semi-structured Interview Schedule

1. What is your opinion on permitting cameras into the courtroom? Benefits? Problems?

2. What is your opinion on the quality of television coverage of criminal trials in local and national courts? Why? Profit vs. Public interest? Lack of video?

3. Did you watch the O.J. Simpson trial? If so, what is your opinion on the quality of television news coverage?

4. Do you feel the television coverage of O.J. Simpson had any impact on the court proceedings?

5. Do you feel that criminal trials pose specific limitations for television coverage from the perspective of the:
   a. Court?
   b. Defence?
   c. Prosecution?

6. Do you believe that television news media can affect the public's expectations of the criminal justice system?

7. Do you have any recommendations for the format of the television news coverage of criminal trials? ie:
   a. Requirement that both (all) sides have opportunity to provide comment each day?
   b. Requirement that news report be of a minimal length or address certain issues?
   c. Reliance upon media spokespersons by crown or defence counsel?

8. Is there anything else you want to add?
APPENDIX "D"

Itemized Responses (abbreviated form)

HYPOTHESIS 1A) MEDIA PARTICIPANTS ARE IN FAVOUR OF PERMITTING CAMERAS IN THE COURTROOM.

M1 yes
M2 yes
M3 yes
M4 yes
M5 yes
M6 yes
M7 yes
M8 no
M9 yes
M10 yes
M11 yes
M12 yes
M13 yes

HYPOTHESIS 1B) LEGAL PARTICIPANTS ARE AGAINST PERMITTING CAMERAS IN THE COURTROOM.

L1 no
L2 no
L3 yes
L4 no
L5 no
L6 no
L7 no
L8 no
L9 no
L10 yes
L11 no
L12 no
L13 yes
HYPOTHESIS 2A) MEDIA PARTICIPANTS REGARD LIMITATIONS AS UNJUSTIFIED.

M1  generally no restrictions
M2  limitations on occasion
M3  restrictions necessary
M4  few limitations necessary
M5  limitations necessary
M6  some limitations
M7  some limitations
M8  cameras should not be permitted
M9  restrictions necessary
M10 some limitations necessary
M11 limitations sometimes
M12 limitation on which stations should be permitted access
M13 limitations necessary

HYPOTHESIS 2B) LEGAL PARTICIPANTS REGARD LIMITATIONS AS JUSTIFIED.

L1  limit coverage to appeal courts
L2  cameras should not be permitted
L3  permit camera coverage, but limitations very necessary
L4  cameras should not be permitted
L5  limit coverage to appeal courts
L6  cameras should not be permitted
L7  cameras should not be permitted
L8  cameras should not be permitted
L9  cameras should not be permitted
L10 permit camera coverage, but limitations necessary
L11 cameras should not be permitted
L12 cameras should not be permitted
L13 permit camera coverage, but limitations necessary
HYPOTHESIS 3A) MEDIA: MEDIA PUBLIC INTEREST FIRST

M1  Public interest first
M2  Profits first
M3  Profits first
M4  Public interest first
M5  Profits first
M6  Public interest first
M7  (not addressed)
M8  Profits first
M9  Profits first
M10 Unsure
M11 Profits first
M12 Unsure
M13 Irrelevant

HYPOTHESIS 3B) LEGAL: MEDIA AS PUTTING PROFITS FIRST.

L1  Profits first
L2  Profits first
L3  Public interest first
L4  Profits first
L5  Profits first
L6  Profits first
L7  Profits first
L8  Profits first
L9  Profits first
L10 Sometimes profits, sometimes public interest
L11 Depends on how edited
L12 Profits first
L13 Profits first
HYPOTHESIS 4A) MEDIA REGARD COVERAGE AS POOR DUE TO NO CAMERAS

M1  Poor due to camera exclusion
M2  Room for improvement
M3  High profile cases are well covered, lower profile cases are less so
M4  Good and bad, would improve if cameras permitted
M5  Good to cheap
M6  Need more coverage, need cameras in courtroom
M7  Quality would go up if cameras permitted into courts
M8  6/10 just above mediocre
M9  National coverage better
M10 Varies
M11 Will vary with or without camera footage of trials
M12 Depends on media outlet
M13 Some has news value, some sensational

HYPOTHESIS 4B) LEGAL REGARD COVERAGE POOR REGARDLESS OF BAN

L1  Poor, inaccurate
L2  Good
L3  Some reporter know nothing about system, some poor collectors of information
L4  Poor
L5  Poor, not as good as it could be
L6  Limitations on time, usually distorted
L7  Poor, only snippets
L8  Poor, uneven
L9  Poor, sensational
L10 Low quality now, would improve if cameras permitted in courtroom
L11 Completely inadequate: inaccurate and incoherent
L12 Poor:sensational
L13 Very good
HYPOTHESIS 5A) MEDIA PARTICIPANTS REGARD COVERAGE OF THE O.J.TRIAL AS GOOD.

M1 Bad, People magazine-type coverage
M2 Outrageously bad
M3 Circus, disruptive to the court
M4 Good, very interesting coverage
M5 Good to cheap
M6 Good to sensationally poor
M7 Circus
M8 Ridiculous and over-saturated
M9 Too much coverage
M10 Varied from good to bad
M11 Soap opera, lost focus
M12 No benefit to public or justice system
M13 Concerning

HYPOTHESIS 5B) LEGAL PARTICIPANTS REGARD COVERAGE OF THE O.J.TRIAL AS BAD.

L1 Circus
L2 Well-covered
L3 Not good
L4 Harmful to justice
L5 Not serve justice
L6 Showbiz
L7 Fictional
L8 Most sensational, distorted
L9 Circus
L10 Positive
L11 Abysmal
L12 Sensationally poor
L13 Awful
HYPOTHESIS 6A) MEDIA PARTICIPANTS REGARD T.V. NEWS AS EFFECTING THE PUBLIC ON COURTS

M1  yes, public see legal system at fault
M2  yes, public see media at fault
M3  yes, public see legal system at fault, but also see media as bad
M4  no conclusion
M5  unsure, a lot of incorrect assumptions about public
M6  depends on quality
M7  sometimes
M8  yes, public believes what media tells them
M9  sometimes
M10 not sure
M11 reject media
M12 yes, see problems with legal system
M13 no

HYPOTHESIS 6B) LEGAL PARTICIPANTS REGARD T.V. NEWS AS EFFECTING PUBLIC ON COURTS

L1  yes, negatively
L2  yes
L3  yes, see the problems with legal system
L4  yes, misrepresent legal system
L5  not sure
L6  not know
L7  yes, improperly about legal system
L8  yes, inaccurate on legal system
L9  yes, distorted on trials
L10 yes, but fairly
L11 yes, improperly about legal system
L12 yes, misrepresent
L13 yes, blame legal system for problems
HYPOTHESIS 7A) MEDIA PARTICIPANTS REGARD TELEVISION TO INFLUENCE COURT PROCEEDINGS

M1 yes, but not negatively
M2 yes
M3 yes
M4 no conclusion
M5 yes
M6 yes
M7 yes, depends on situation
M8 yes
M9 yes
M10 not sure
M11 no comment
M12 changes by media’s presence
M13 yes

HYPOTHESIS 7B) LEGAL PARTICIPANTS REGARD TELEVISION TO INFLUENCE COURT PROCEEDINGS

L1 yes, participants
L2 yes, participants, especially lawyers and judges
L3 yes, participants
L4 yes, participants
L5 not sure
L6 yes, witnesses especially
L7 yes, participants
L8 yes, participants
L9 yes, participants
L10 yes, but not necessarily in a negative manner
L11 yes, participants
L12 yes, participants
L13 yes, big risk
PRESS RELEASE

The British Columbia Supreme Court has adopted the following with respect to the televising of court proceedings:

The Court has agreed as a matter of court policy that:

There shall be no broadcasting, televising, recording or taking of photographs in the courtroom, or areas immediately adjacent thereto, during sessions of court or recesses between sessions, unless the parties to the proceeding consent, and unless prior permission has been expressly granted by the presiding judge, following application upon timely notice to the parties, and subject to such conditions as the presiding judge may prescribe to protect the interests of justice and to maintain the dignity of the proceedings.

The Court will also be preparing guidelines for the broadcast or televising of court proceedings. To ensure general acceptance these will be prepared by the judiciary in consultation with the bar, the media and others with a demonstrable interest.

Vancouver, B.C.
April 18, 2001

Donald I. Brenner,
Chief Justice