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THE GLOBAL VILLAGE AND THE COURTS

by Tyson Lies*

I. INTRODUCTION

In this article, I will show how the “electronic global village” introduces unprecedented transparency in the courtroom. I will investigate how the severity of this transparency places a strain on both the due process rights of the accused as well as the dignity of the courts. After considering some of the serious complications that the global village creates for the United States’ state and federal court systems, I will propose three courses of action that the courts must take in order to adequately adjust.

II. HISTORY AND CONTEXT

A. *Public Trials and Cameras*

According to the Sixth Amendment of the U.S. Constitution, “the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.”¹ Drawing on a lengthy tradition of public trials inherited from Britain,² the framers of the U.S. Constitution hoped

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1 U.S. CONST. amend. VI.

2 Robert Hardaway & Douglas B. Tumminello, *Pretrial Publicity in Criminal Cases of National Notoriety: Constructing a Remedy for the Remediless Wrong*, 46 AM. U.L. REV. 40 (1996).

that keeping trials open would 1) guarantee that the accused would be fairly dealt with and 2) provide a safeguard against any attempt to employ our courts as instruments of persecution.³ For about a century following the drafting of the Constitution, the Sixth Amendment and its protection of public trials underwent little to no revision.⁴ Then, along came the camera.

B. Cameras

By providing the public with a new means for experiencing court hearings, cameras brought a new dimension to the notion of a public trial. Even after several decades of debate, the concept of a “public trial” remains unclear. But even if the place of cameras within the courtroom remains undecided today, it is clear that the idea of “public” and “courtroom” have been thrown into flux through the influence of cameras.

New Jersey v. Hauptmann in many ways marks the beginning of the long and conflicted history of cameras in the courtroom. In 1935, Bruno Hauptmann was tried for kidnapping the young daughter of Charles and Anne Lindbergh. The media frenzy that erupted around the proceedings was intense. For the first time in United States judicial history, newsreel cameras crammed into the courtroom balcony,⁵ bringing with them the disruptive “running about of messenger boys and clerks.”⁶ The judge was eventually forced to bar all cameras from the courtroom in order to preserve order in the hearing, and Hauptmann was found guilty soon thereafter. *Hauptmann* stands out in the historical legal landscape because it demonstrated for the first

3 *In re Oliver*, 333 U.S. 257 (1948) as quoted in *Estes v. Texas* 381 U.S. 532, 538-39 (1965); see also *Richmond v. Virginia* 448 U.S. 555, 564-576 (1980) (presenting the history of public trials in greater detail).

4 Sanjay Chhablani, *Disentangling the Sixth Amendment*, 11 U. PA. J. CONST. L. 487, 492 (2009).

5 Christo Lassiter, *The Appearance of Justice: TV or not TV—That is the Question*, 86 J. CRIM. L. & CRIMINOLOGY 928, 936-938 (1996).

6 *New Jersey v. Hauptmann*, 115 N.J.L. 412, 444 (1935).

time how “spectacular publicity and broadcast”⁷ could significantly disrupt the basic functioning of the court. These disruptions in turn unleashed a slough of questions that the courts had, up to that point, never been forced to address.

One of the most significant questions to come out of *Hauptmann* was whether courtroom walls can or should impose a limit on the public’s ability to witness a trial. The pressing hordes of photographers and journalists that descended on the *Hauptmann* trial proved that high-profile cases could garner substantial public interest. Though cameras did enable journalists to become the intermediaries between the interested public and the courts, the massive influx of media representatives overwhelmed the court and made it difficult for the trial to proceed. Consequently, court officials worried that such media frenzies could lead to the “degradation [of] the court and . . . misconceptions with respect thereto in the mind of the public.”⁸

Hauptmann also increased concern over prejudicial publicity. Though not a new subject of concern,⁹ prejudicial publicity before *Hauptmann* was effectively limited to the printed word. With a camera, however, every picture could be a tool in declaring the guilt or innocence of a party. Catch the defendant on a gloomy day or in a sinister pose, for instance, and the photographer could create an unfairly compelling argument for a guilty verdict.

The disruptions that cameras caused overshadowed their potential usefulness and led the courts to eventually oppose their use inside of the courtroom. Soon after *Hauptmann*, the American Bar Association, federal courts, many state courts, and Congress all took steps to

7 Estes v. Texas, 381 U.S. 532, 597 app. (1965) (Harlan, J., concurring).

8 Rich Curtner and Melissa Kassier, “Not in Our Town” *Pretrial Publicity, Presumed Prejudice, and Change of Venue in Alaska: Public Opinion Surveys as a Tool to Measure the Impact of Prejudicial Pretrial Publicity*, 22 ALASKA L. REV. 255, 262-263 (citing MODEL CODE OF JUDICIAL ETHICS CANON 35 (1937)); cf. *Estes*, 381 U.S. at 596-601.

9 Jonathan M. Moses, *Legal Spin Control: Ethics and Advocacy in the Court of Public Opinion*, 95 COLUM. L. REV. 1811, 1816 (1995).

oppose cameras entering the courtroom.¹⁰ These restrictions did not, however, preempt the possibility of future experimentation on the state level.¹¹ And as photographic technology progressed, the issues that cameras presented in *Hauptmann* only seemed to multiply.

Sheppard v. Maxwell was one of a few different cases that reaffirmed many of the concerns that arose in *Hauptmann*. *Sheppard* considered the potential for jury bias that is inherent with the encroachment of cameras on the courtroom and asked how due process could be maintained in the face of greater transparency.

The trial of Dr. Sam Sheppard in 1954 fostered a “carnival atmosphere” like *Hauptmann* in large part because the details of the case were so bizarre.¹² In 1954, Dr. Sam Sheppard was accused of brutally murdering his wife, though he insisted that a “bushy haired intruder” had bludgeoned his wife to death.¹³ The police and the public condemned Sheppard immediately, which led to a laxness in the trial proceedings and enhanced the potential for jury bias.¹⁴ Coverage of the trial’s participants was constant, invasive, and one-sided, placing enough pressure on the jurors¹⁵ that their verdict became suspect.¹⁶ After an eleven year battle, suspicions of jury bias led to Sheppard’s exoneration,¹⁷ a decision that underscored how visual coverage could dismantle the judicial process.

Though cases like *Hauptmann* and *Sheppard* established some unsettling precedents, the legal community’s opposition to cameras began to yield over time. Though an affirmation of the courts’ long-

10 Joshua Sarner, *Justice Take Two: The Continuing Debate Over Cameras in the Courtroom*, 10 SETON HALL CONST. L.J. 1053, 1066-67 (2000).

11 Lassiter, *supra* note 5, at 937.

12 *Sheppard v. Maxwell*, 384 U.S. 333, 342-349 (1966).

13 Fred Graham, *Sheppard—Fair Trial Issue Raised*, N.Y. TIMES, Nov. 21, 1965, at E6.

14 *Sheppard*, 384 U.S. at 337-349.

15 *Id.* at 342-345 (jurors had their names and photos printed in the paper before and during the proceedings of the trial).

16 *Id.* at 356-363

17 *Id.* at 363.

standing resistance to cameras, *Estes v. Texas* (1962) marked a turning point in the camera debate. In the first Supreme Court decision related to cameras in the courtroom,¹⁸ Justice Clark noted that in the future when “the advances in these arts permit reporting by printing press or by television without their present hazards to a fair trial we will have another case.”¹⁹ *Estes* therefore did not question whether cameras should ever be allowed in the courtroom, but instead conceded that cameras would eventually find a place in the courtroom. This concession, in turn, raised questions of how the courts would in due course determine the appropriateness and manner in which cameras entered a trial.

Building on the decision reached in *Estes*, the Court in *Chandler v. Florida* (1981) later considered whether the time of technical advances foretold by Clark had been reached. Justice Burger, writing for the majority, still upheld the general rejection of “the argument ... that the first and sixth amendments to the United States Constitution mandate entry of the electronic media into judicial proceedings,” yet he did note “the change in television technology since 1962, when *Estes* was tried” and recognized that cameras did not pose the disruption that they once did.²⁰ In *Chandler*, the Court also determined that “no per se constitutional rule exists barring still photographic, radio and television coverage in all cases and under all circumstances”²¹ and advanced pressing questions such as if cameras are no longer a physical disruption, to what extent are the actors in the courtroom affected by their general presence?²²

A similar contribution to the progressive immersion of cameras into the courtroom, *Richmond Newspapers v. Virginia* (1980) found that the public and the media did retain certain rights of access to a trial.²³ These findings, in conjunction with the findings in cases like

18 Lassiter, *supra* note 5, at 938.

19 *Estes*, 381 U.S. at 540.

20 *Chandler*, 449 U.S. at 569, 576.

21 *Id.* at 573-574.

22 *Id.* at 572, 575-579.

23 *Richmond v. Virginia*, 448 U.S. 555, 577-78, 580 (1980).

Chandler, have left us with a heritage in which the “fair administration of justice” is pitted against the rights of the media.²⁴ Judges always possess the authority to bar cameras from a trial if they feel “that coverage may have a deleterious effect on the paramount right of the defendant to a fair trial,”²⁵ but beyond this restriction the fate of cameras in courtrooms is still uncertain.

Understanding the impact that cameras have had on the courts and the idea of a “public trial” provides an appropriate legal background for understanding the eventual impact that new media will have on the courts. The issues surrounding Smartphones, social networking sites, and online forums all grow out of, or at least resemble, questions raised over decades of the camera debate. But while cameras offered a limited venue for experiencing a handful of cases, today’s technology has dismantled all barriers and opened the entire world to greater public scrutiny. Technology has enabled the individual to connect with others constantly and access information effortlessly, and in the process has transformed the world into what noted communication theorist Marshall McLuhan called a “global village.”

C. The Global Village

McLuhan notes that electronic technologies change the way we interact and think, effectively shrinking the world and renovating social and political operations in the process:

Today, after more than a century of electric technology, we have extended our central nervous system itself in a global embrace, abolishing both space and time as far as our planet is concerned. . . . Electric speed in bringing all social and political functions together in a sudden implosion has heightened

24 Daniel Stepniak, *A Comparative Analysis of First Amendment Rights and the Televising of Court Proceedings*, 40 IDAHO L. REV. 315, 346 (2004); see also *Chandler*, 449 U.S. at 566.

25 *Chandler*, 449 U.S. at 566.

human awareness of responsibility to an intense degree.... As electrically contracted, the globe is no more than a village.²⁶

Cameras introduce some serious concerns about the integrity of a hearing, but cameras can be restricted at the court's behest. The global village, however, is more unwieldy, for as McLuhan notes it compresses the world and enhances human ability to oversee social and political processes. Through the power of Smartphones, posting, texting, instant-messaging, uploading, etc. people can become "cameramen" capable of broadcasting the events of a trial to the outside world. The key issues that cameras introduced have therefore not only been revived in the global village, but, because of increased connectivity and enhanced speed of transmission, have been magnified to a new level of urgency.

The next three sections will detail some of the complications and benefits that have arisen as the global village has encroached on the courts. Rather than attempt to detail all the ways that the global village can affect the law I will only consider three key issues directly related to the global village: transparency, threats to due process, and the maintenance of court dignity. To further restrict the scope of my considerations, I will show how these issues affect only four of the basic players within the courtroom (jurors, judges, witnesses/informants, attorneys). Taking into consideration the benefits and issues set forth below, the final section will propose some general actions that the courts can take in order to ease their transition into the global village.

III. TRANSPARENCY

The term "practical obscurity" has been used to refer to public records that, though open to the public, are stored in such a way that they do not easily lend themselves to public perusal.²⁷ One could ar-

26 MARSHALL MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN 3,5 (McGraw Hill 1964).

27 Will Thomas DeVries, *Annual Review of Law and Technology: III. Cyber Law: A. Privacy: Protecting Privacy in the Digital Age*, 18 BERKELEY TECH. L.J. 283, 300-02 (2003).

gue that the courts as a whole have always operated with a measure of “practical obscurity,” for though the judicial process is open to the public the courts have always maintained a certain mystique which distances them from public scrutiny. Centuries of judicial practice have culminated in customs and procedures that assume the courtroom’s impregnability to exposure only to have the global village threaten to strip this vital sense of security away.

A. *Rising Issues Concerning Transparency*

Cases like *Hauptmann* or *Sheppard* displayed early on that too much transparency can overwhelm the courts’ basic functions. In the global village, methods of communication like texting, posting, uploading, or tweeting “broadcast” court proceedings just like cameras, but, unlike cameras, they do so inconspicuously. The global village therefore allows for greater exposure of courtroom participants’ identities (like jurors, judges, or witnesses) while at the same time helping to conceal the identities of those who would broadcast such information.

The functional difficulty of protecting identities is obviously a paramount concern as the courts move forward, yet it is not the only concern that the courts must address in the global village. As the public expectation to have information provided effortlessly and abundantly grows, the traditional direction that jurors decide cases based solely on the evidence before them destabilizes. For instance, in a recent Florida drug trial eight jurors each decided to use hand-held devices to perform outside research while they deliberated on a case.²⁸ These jurors’ offenses denote an underlying shift in the public’s behavioral patterns which portend greater problems than a simple “no search” policy may be able to amend. As people become accustomed to wirelessly searching the Internet, the tendency to seek information becomes more of an ingrained behavior than

28 John Schwartz, *As Jurors Turn to Google and Twitter, Mistrials Are Popping Up*, N. Y. TIMES, Mar. 18, 2009, at A1; see also Editorial, *Mistrial by Google*, THE BOSTON GLOBE, November 6, 2009, at 15.

a random action.²⁹ Proscribing the use of handheld devices to perform online research therefore opposes the common tendencies of potential jurors and thus demands that judges and courtroom officers become more vigilant in patrolling for devices capable of connecting to the Internet.

The global village not only undermines the directive that jurors decide cases based solely on the evidence at hand, but it also augments the pressure that jurors feel by placing them under constant surveillance. This awareness of constant surveillance arises out of the fact that as people have reached a level of comfort with technology in their daily lives that same technology has introduced more facets to the concept of a personal identity. For instance, many people maintain presences on online social-networking sites. Because these sites allow for the expression of personal beliefs and interaction with other individuals, they become an extension of a person's identity. Just as a camera broadcasts a person's image, social-networking sites broadcast a person's reputation and allow for criticism from other members of that person's online community. When people are called to serve on juries, therefore, the prospect of audience members posting to online forums could influence juror decisions just as the broadcasting of their images might.³⁰ As Justice Burger noted with cameras, it is difficult to determine the extent to which new technologies affect juror deliberations,³¹ and thus courts must diligently monitor the tweeting, texting, or posting that takes place during a trial.

29 See PEW INTERNET & AMERICAN LIFE PROJECT, WIRELESS INTERNET USE 14-15 (PEW Research Center 2009) ("The rate at which Americans went online with their handheld on the typical day increased by 73% in the sixteen months between the 2007 and 2009 surveys. The measure for "ever having used the internet on a handheld" increased by 33% in that time frame.").

30 Cf. Audrey Winograde, *Cameras in the Courtroom: Whose Right is it Anyway?*, 4 SW. J.L. & TRADE AM. 23, 36 (1997).

31 See Marcy Strauss, *Sequestration*, 24 AM. J. CRIM. L. 63, 80-83 (1996) (the uncertain effect of publicity on a verdict).

A dramatic increase in transparency also means that judges must worry about their performance before the eyes of the global village. Some judges might feel as anxious by the presence of texters or bloggers as they would performing before a camera³² given the “instant retrievability” of the Internet.³³ On the flip side, the very possibility of public broadcasting, no matter what form, carries with it the temptation for those judges up for reelection, as well as those judges who just like attention, to show off for a Smartphone or other mobile device.³⁴ In either case, the ability of judges to control the trial and deliver satisfactory and clear decisions may become impaired.

Anything that exposes witnesses and informants to the outside world threatens their safety and thus undermines the role of informants in a trial. Texting or uploading posts on Twitter or Facebook pose such a threat, but another more shocking example is the web site whosarat.com. Whosarat.com was created in 2004 by Sean Bucci, a Boston disc jockey convicted in a marijuana conspiracy case, and is devoted to revealing the names and identities of police informants.³⁵ A representative for the site claims that “it helps defendants and their attorneys discover misdeeds by informants or government agents—such as plagiarism or thefts of government funds—that can be used to attack their credibility.”³⁶ The possible negative and violent outcomes, not to mention the deterrent effect that sites like this may have on witness and informant participation, have already been exhibited in a recent federal drug trial. In 2006, a witness’s information and photo were posted on the site in order to intimidate the

32 See Sarner, *supra* note 10, at 1064.

33 Gene Policinski, *The “New Media” and the Courts: Journalists and Judges Consider Communications By and About Courts in the Internet Era*, 2009 REHNQUIST SYMPOSIUM 14.

34 See Sarner, *supra* note 10, at 1064. See also Estes, 381 U.S. at 548.

35 Emilie Lounsberry, *Site that Snitches on Snitches Irks Judges: Whosarat.com, Which Profiles Informants, Worries Some Jurists*, PHILADELPHIA INQUIRER, July 22, 2007, at B1.

36 Dan Browning, *On the Internet: Controversial Website Names Names; Its Founder Says its Goal is to Help Defendants and Their Attorneys, but Others See an Effort to Intimidate*, STAR TRIBUNE, Feb 15, 2008, at A10.

witness. The witness's safety was compromised and he had to be relocated to a secret location.³⁷ Though the witness still provided key testimony that helped lead to a conviction, the impact that this event had on future witnesses' testimonies is indeterminable. Without reliable witness testimony in criminal cases, the judicial process suffers and justice is left hanging in the balance.³⁸

The courts have traditionally been removed from the possibility of exposure, but now the global village has challenged the courts' security. Of course, cameras opened the courtroom to the public in a new and vivid manner, but the tools of the global village are much more invasive and inconspicuous. If the courts wish to function within the global village, they must adjust their procedures and customs to accommodate for unprecedented transparency.

B. Benefits of Transparency

Transparency can introduce so many problems that the potential for educating the public about the courts can often go overlooked. Some modern technologies have, in fact, destructed boundaries without destroying court dignity, and as Judge Lipez noted in a petition hearing for *Sony BMG et. al.*, "dramatic advances in communications technology have had a profound effect on our society. These new technological capabilities provide an unprecedented opportunity to increase public access to the judicial system in appropriate circumstances."³⁹

In many ways, increased public exposure to court proceedings through different media can be positive. Just as Justice Harlan noted in *Estes* concerning cameras, the tools of the global village "might

37 Emilie Lounsberry, *Stoking a Culture of Fear for Witnesses: A Web Site Called the "New Enemy" of Those Aiding Prosecutions has Played a Key Role in a W. Phila. Case*, KNIGHT RIDDER TRIBUNE BUSINESS NEWS, July 26, 2007, at 1.

38 *Id.* (Philadelphia serves as a perfect example of how a "don't snitch culture," enhanced by sites like whosarat.com, can create an environment in which justice suffers. Police there have reported that witnesses and informants are becoming increasingly hesitant to come forward.)

39 *Sony BMG et al.*, 564 F.3d 1, 11-12 (2009).

well provide the most accurate and comprehensive means of conveying their content to the public.”⁴⁰ They might also be “capable of performing an educational function by acquainting the public with the judicial process in action.”⁴¹ If the original thought behind public trials was to ensure public oversight of the judiciary, then the global village allows for the fulfillment of that ideal in a more efficient and comprehensive manner. An educated citizenry could mean a more engaged citizenry, which could mean more productive and cooperative juries.

The global village also offers the courts efficiency and mobility that they need in order to handle an ever-increasing caseload nationwide.⁴² For instance, judges and judiciary personnel can now perform business remotely over Smartphones and personal computers.⁴³ The advancements of case-management systems, like CMECF and PACER, have also made the court systems more efficient and increased public access to court records.⁴⁴

Though the prospect of transparency has some negative aspects, some patrons of the global village have turned transparency on its head and made it work for informants rather than against them. A few different communities have initiated anonymous texting programs that allow people to send tips to the authorities without revealing their identities.⁴⁵ Such systems are obviously in their infancy and the legal ramifications are still yet to be determined, but these

40 *Estes*, 381 U.S. at 589 (Harlan, J., concurring).

41 *Id.* at 589.

42 Workload of the Federal Courts Grows in Fiscal Year 2008 (Mar. 17, 2009), http://www.uscourts.gov/Press_Releases/2009/caseload.cfm.

43 ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR 16 (2007).

44 Lynn M. LoPucki, *Court-System Transparency*, 94 IOWA L. REV. 481 (2009); see also Rebecca Love Kourlis & Pamela A. Gagel, *Panel Three: Systematic Justice: Reinstalling the Courthouse Windows: Using Statistical Data to Promote Judicial Transparency and Accountability in Federal and State Courts*, 53 VILL. L. REV. 951, 952-53 (2008).

45 See Denise Lavoie, *Anonymous Texts Aid Police, Weary Tipsters*, THE BOSTON GLOBE, Nov. 29, 2009, at 6.

systems offer an example of how the global village can be used to increase transparency, bolster the pursuit of justice, and offer individuals greater opportunities for anonymity.

To navigate the transparency of the global village the courts must alleviate the pressure of potentially constant exposure while still managing to harness the opportunity to instruct the public and increase efficiency. Though it may be difficult to negotiate a perfect balance, the courts must address the dramatic increase in transparency if they wish to continue functioning properly. If the courts do not address the global village, they will stumble in their ability to carry out the demands of the law and the due process rights of the accused will suffer.

IV. DUE PROCESS

The direct consequence of increased transparency is the endangerment of due process. Cases like *Estes* or *Chandler* have shown that opening a trial and a courtroom to the world creates a constant suspicion of the fairness and impartiality of that trial. Moreover, all of the issues raised in the previous section can be viewed as obstacles to the proper functioning of the courts, but they can also be viewed as direct threats to the due process rights of the defendant.⁴⁶ A few more examples will show that the precedent set by cameras translates directly into the global village, wherein threats to due process are inherent due to mass connectivity.

46 *See Sheppard*, 384 U.S. at 362 (“Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused... The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function.”).

A. Threats to Due Process

From the beginning, opponents of allowing cameras into the courtroom have insisted that the exposure of jurors could be damaging to the due process rights of a defendant in a criminal case.⁴⁷ As noted above, holdings in cases like *Estes* and *Sheppard* have powerfully displayed the potential for jury bias, and have introduced questions of whether a jury that is filmed (or, in the case of the global village, observed and broadcast) can actually be fair and impartial.

The global village carries much of the same dangers for jurors and due process that cameras introduced only the threat to due process has increased because the tools for broadcasting in the global village are more personalized and unruly. The case noted above in which numerous jurors performed outside research is an example of how jurors in the global village can unwittingly complicate a trial simply by performing actions that have become part of their everyday behavior. In another case, a juror posted updates to Twitter and Facebook as he sat through the corruption trial of Pennsylvania state senator Vincent Fumo, an action that contributed to an eventual mistrial.⁴⁸ These cases are not isolated incidents, but are part of a growing epidemic that some have labeled “Google mistrials.”⁴⁹ Of course, it would seem that by banning all cell phones and other broadcasting devices from the courtroom the courts could stave off any potential endangerments to due process. Such a move, however, stands at odds with the general trend towards the acceptance of cameras noted above. Moreover, because Smartphones and other more contemporary broadcasting devices are often for personal communication purposes, they do not easily fit into the same category as the tools of the professional media.⁵⁰ Banning the use of these new

47 *Estes*, 381 U.S. at 544-546

48 *United States v. Fumo*, No. 06-319, 2009 U.S. Dist. LEXIS 51581 at *53-61 (D. Penn. June 17, 2009); *see also* Emilie Lounsberry & Craig R. McCoy, *Fumo Lawyers Target Juror; Deliberations*, McCLATCHY-TRIBUNE BUSINESS NEWS, Mar. 16, 2009.

49 Editorial, *Mistrial by Google*, THE BOSTON GLOBE, Nov 26, 2009, at 15.

50 *See Estes*, 381 U.S. at 540.

communication technologies raises new questions related to the audience's freedom of speech and the suppression of public oversight.

Transversely, if witnesses are permitted to carry tools to communicate wirelessly inside and out of the courtroom, the legitimacy of their testimony becomes suspect. Take a civil fraud case in Florida, wherein a witness texted with another courtroom participant about his testimony during a break in the hearing.⁵¹ This case shows that seemingly harmless behaviors like texting and posting to web sites are potential methods for coordinating and tampering with witness testimony and can thus obstruct the defendants' access to a fair trial.

The impact of transparency on defendants' due process rights is a major consideration for the courts as they move forward into the global village. Prejudicial publicity becomes more of a reality as channels of online communication open up new possibilities for mobilizing public opinion. Not only is this a concern for high profile cases, but even common cases with the proper online support have the potential of "going viral."

B. Benefits to Due Process

In addition to advancements like CMECF systems, the work of judges and legal professionals in general has been enhanced by blawgs—law-related weblogs—which allow for greater communication and peer review at a faster pace and with greater exposure. Jack Balkin notes that the more numerous avenues of communication created by digital technologies "affect the style, subject matter, tempo, intermediaries, and audience for legal scholarship."⁵² He also asserts that by decreasing the time it takes to publish legal findings and increasing the opportunity for peer review and feedback, online media can shape future legal practice by opening up the legal debate to individuals who previously were forced to sit on

51 Sky Dev. Inc. v. Vista View Dev. Inc., No. 07-32308 (Fla. Cir. Ct. 2009) (order granting defendant's motion to dismiss with prejudice).

52 Jack M. Balkin, *Online Legal Scholarship: The Medium and the Message*, 116 YALE L.J. Pocket Part 23, 25-26 (2006), available at <http://thepocketpart.org/2006/09/06/balkin.html>.

the sidelines.⁵³ Obviously, anything that affects the quality of legal arguments impacts judges, attorneys, and others in the legal process and allows them to be better informed and to conduct better hearings. Moreover, more consistency or dialogue on legal issues could help to streamline the legal process and could help the courts to more adeptly handle their rising caseloads.

Facebook and other social networking applications can also enhance the practice of the law in interesting ways. Recently, the Supreme Court of the Australian Capital Territory accepted the service of a default judgment via the social networking site Facebook when those being served proved nearly impossible to reach.⁵⁴ As the prominence of social networking sites grows, one can expect that these sites will similarly become a useful way for tracking down individuals involved in a case. Researchers have also begun looking into how social-networking platforms like Facebook could assist in streamlining the patent approval process.⁵⁵ Because online forums are so open and accessible, they hope that they will be able to enhance the “review and feedback” step in the approval process and circumvent repetition of previously patented art.

As the world moves forward to even greater connectivity, the boundaries for protecting due process must quickly be defined in order to stem the crushing tide of transparency that the global village creates. In doing what they can to control the effects of transparency, the courts can improve their own functioning as well as help build a wall around individuals’ due process rights. By accomplishing both, the courts will then be able to protect against what cases like Hauptmann posed as a serious concern: the degradation of the courts’ dignity.

53 *Id.* at 25-26; *see also* Christopher A. Bracey, *A Blog Supreme?*, 116 YALE L.J. Pocket Part 16, 17-18 (2006), *available at* <http://www.thepocketpart.org/2006/09/06/bracey.html>.

54 Andriana L. Shultz, *Superpoked and Served: Service of Process VIA Social Networking Sites*, 43 U. RICH. L. REV. 1497 (2009).

55 Jean Thilmany, *Facebook for Patents*, MECHANICAL ENGINEERING, N.Y., May 2009, at 15; *see also* Shultz, *supra* note 54, at 1520-28.

V. DEGRADATION OF COURTS' DIGNITY

Concerns over the dignity of the courts that arose in Hauptmann have become even more pressing as the global village draws judges and other courtroom participants into the spotlight. While cameras provided only a single, straightforward view of the courtroom, the global village allows for uncensored criticism of courtroom participants. If the courts sit by without continually assessing and, in some cases, responding to this unrestricted commentary, their reputations could be dragged into the mire with potentially harmful consequences for all involved. Judges stand to suffer the most by this potential criticism, and by looking at how judges will be affected we can get a sense of how the global village will negatively affect the dignity of the courts in general.

A. Impact on Courts' Dignity

Open, online forums create venues that, if not monitored properly, allow for the defamation of judges and thereby cast a pallor over the legitimacy of judicial holdings. Web sites like *RobeProbe* and *The Robing Room*, for example, each offer opportunities for the public and legal professionals to comment on judges. While sites like these can be a positive opportunity for public and professional oversight, the inherent bias of online forums could overshadow their use-

fulness.⁵⁶ Angry responses from frustrated judicial participants, if not closely monitored by a web sites' manager, could cast the courts in a negative light and unfairly degrade judges in the eyes of view-

56 Chrysanthos Dellarocas, *The Digitization of Word of Mouth: Promise and Challenges of Online Feedback Mechanisms*, 49 MANAGEMENT SCIENCE 1407, 1410, 1418 (Oct. 2003) (Dellarocas notes that feedback mechanisms, like those found on online markets like eBay, have the innate potential for manipulation because they create a dialogue in spheres where personal physical interaction is completely compromised (1410). She describes the shortcomings of online feedback mechanisms, saying "Economic theory predicts that voluntary feedback will be underprovided. There are two main reasons for this. First, feedback constitutes a public good: once available, everyone can costlessly benefit from it. Voluntary provision of feedback leads to suboptimal supply, because no individual takes account of the benefits that her provision gives to others. Second, provision of feedback presupposes that the rater will assume the risks of transacting with the ratee. Such risks are highest for new products. Prospective consumers may, thus, be tempted to wait until more information is available. However, unless somebody decides to take the risk of becoming an early evaluator, no feedback will ever be provided" (1418)); see also Tal Z. Zarsky, *Law and Online Social Networks: Mapping the Challenges and Promises of User-Generated Information Flows*, 18 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 741, 753-757 (2008).

ers.⁵⁷ Not only could this criticism undermine the public's respect for judges, but it could also encourage people to act rashly with only the few isolated incidents recorded on a web site as justification.

Just as causes for criticism take many forms, backlash from increased exposure can range from a soiled reputation to threats against the judges' physical safety. Again, the precedent set by cameras provides insight into the ramifications of unrestricted exposure: in 1980 a trial court in Miami chose to televise a trial. When the verdict was announced a riot erupted and fifteen people were killed.⁵⁸ If this instance of violence serves as any sort of indicator as to how exposure can incite violence against the courts, then the unlimited exposure of the global village becomes an eerily daunting prospect. Indeed, one must wonder how new media and the global village could have contributed to the recent increase in violence against judges.⁵⁹

57 Robeprobe, <http://robeprobe.com/about.php> (last visited Mar. 13, 2010); The Robing Room, <http://therobingroom.com/> (last visited Jan. 14, 2010) (Both RobeProbe and The Robing Room express a commitment to monitor the integrity of posts to both their sites. RobeProbe states on their web site that "The purpose of this website is to help the public become better informed about the judges who may be presiding over their case. This site puts a mirror to those public servants who make-up our courts. Judges can also become better informed about how others (particularly, lawyers) view them. RobeProbe serves as a report card that lawyers and litigants can use to grade the best performing judges and the worst performing judges. This site is not intended as a medium for airing gossip, scandal, political or personal attacks against judges. As the RobeProbe community continues to grow, such criticism will not be tolerated and those who would try to turn RobeProbe into a gossip and scandal site will be shunned and will not be permitted by fellow members to participate." The Robing Room has printed that "All Postings reflect the opinions of the contributors and are not those of the owner, North Law Publishers, Inc. Anyone who believes a posting is inaccurate or otherwise unfair should contact North Law Publishers, Inc.... We reserve the right to delete comments and ratings which we believe are libelous or not submitted in good faith.").

58 Brief of the California State Public Defenders Association et al. as Amicus Curiae Supporting the Appellants at 15, *Chandler v. Florida*, 449 U.S. 560 (1981) (NO. 79-1260) 1980 WL 339564.

59 Jerry Markon, *Threats to Judges, Prosecutors Soaring*, WASHINGTON POST, May 25, 2009, at A1.

Concerns over the dignity of the courts that arose in Hauptmann have been magnified in the global village. Online venues open up the reputations of judges and other court figures to public criticism, and as interest in court proceedings intensifies so too can concerns over the safety and integrity of the courts.

B. Benefits that the Global Village Offers to the Courts

The opportunities of cheap and constant communication enable the courts to represent themselves more completely than ever before. As F. Dennis Hale remarks, “Unlike many sources of quotations and facts, information from court decisions is legally safe to publish. . . . The good news about appellate court decisions as sources of information is that today they are more public and convenient than ever before.”⁶⁰ To some, posting court materials online may seem more negative than beneficial, yet as the courts adopt new technologies they similarly gain access to unprecedented opportunities for representing themselves, opportunities which may allow them to circumvent the hordes of the media that some have claimed harm the image of the judiciary.⁶¹ Supreme Court correspondent Tony Mauro said, “Presidents and legislators have used television and radio for decades to speak to the public without the filter of the media; for broadcast-shy judges, the Internet offers the same direct pipeline to the public.”⁶² The global village, therefore, puts power in the hands of the courts to partially fashion public oversight and make it what judges and other legal professionals have always wished it would be.

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- 60 F. Dennis Hale, *Court Decisions as Information Sources for Journalists: How Journalists Can Better Cover Appellate Decisions*, 23 U. ARK. LITTLE ROCK L. REV. 111, 113 (2000).
- 61 Charles Lane, *From Justices, Static on Televising Proceedings*, THE WASHINGTON POST, May 2, 2005, at A15.
- 62 Tony Mauro, *Covering the Appellate Courts: Five Ways Appellate Courts Can Help the News Media*, 9 J. APP. PRAC. & PROCESS 311, 316 (2007).

VI. ANALYSIS AND SUGGESTIONS

The incidents listed above are by no means an exhaustive treatment of how the global village affects the courts; rather, they are examples of how an environment of constant communication can alter the setting and circumstances within a courtroom. Because technology is changing constantly it may seem unproductive to prescribe any sort of specific actions to address the global village, yet there are some general actions that the courts, both federal and state, can undertake in order to combat problems without sacrificing potential benefits.

A. Implement a System of Continuous Assessment.

There must be a uniform, central entity established within each of the state and federal court systems devoted to following technological advancements and updating the legal community on how the progress of new media is affecting the courts. By forming a single authoritative entity rather than leaving the matter up to a conglomeration of entities spread out between different legal associations, the courts will be able to centralize all efforts and ensure that they have the most current information about the constantly evolving global village. This central entity could serve as both an authoritative source on how communication technologies affect the practice of law and could also facilitate an online forum where different professionals could post concerns, questions, and experiences with new media. An online forum would similarly help the legal community to avoid “reinventing the wheel” and would be an efficient, low-cost way for the courts to remain up-to-date on rising issues.

B. Use New Media Offensively to Minimize Damages Caused by Transparency.

New media and other communication technologies are weapons against themselves.⁶³ Online forums and social networking sites provide the judiciary with numerous online venues for reaching different demographics and increasing public awareness of judicial news. The cost and time required to maintain these online profiles are minimal and can be adopted into individual courts or the court systems at large without great difficulty. This could help to demystify the legal world to the layman, making it more comprehensible and less imposing in the mind of the public.

C. Uphold Uniformity and Consistency across Court System

Much in tune with the federal court system's current opposition to cameras in the courtroom⁶⁴ the administrative bodies of the separate court systems' must take an immediate stance against the admittance of externally controlled new media technologies inside the courtroom. While some facets of the global village offer great advancements in terms of communication and raising public awareness, a varied and inconsistent stance will open the courts to the risk of negative exposure and could undermine the dignity of the judicial process and its participants.

VII. CONCLUSION

The global village has altered human communication, making it faster, more efficient, and more constant. The impact of new electronic technologies and the transparency that they introduce can be both positive and negative. If handled properly, the global village can become a great opportunity for the courts rather than becoming a tremendous burden.

63 Doug Berman, *The New Media and the Courts: Journalists and Judges Consider Communication By and About Courts in the Internet Era*, 2008 REHNQUIST CENTER SYMPOSIUM 8.

64 FED. R. CRIM. P. 53.