

TASTE

Who's Afraid of Cameras in the Courtroom?

By Cameron Stracher

Updated July 2, 2010 12:01 a.m. ET

Readers of The Wall Street Journal on June 22 could be forgiven for thinking that the newspaper (finally) was printing comic strips. There on the front page was a cartoon of Faisal Shahzad, the admitted Times Square bomber.

Not a cartoon, exactly, it was an artist's rendering of Mr. Shahzad pleading guilty in federal court to terrorism charges. Mr. Shahzad's visage was sketched in quick strokes of black and beige, while his handcuffs were secured by a man whose face is no more than a dozen pen strokes and whose bald head looks like Charlie Brown's.



From the Journal's June 22 front page ASSOCIATED PRESS

The Journal and other media outlets were not mocking the proceedings. Rather, they were doing the best they could to bring the sights and sounds of the courtroom to the public, without the use of modern recording devices. In a digital age, much of the judiciary remains mired in a pencil and ink world, suspicious of any technology more sophisticated than the ballpoint pen.

While notebooks and sketchpads are permitted in every courthouse, federal courts in particular have refused to recognize any right to record trial proceedings. Indeed, cameras (and audio recordings) are specifically banned there

by Rule 53 of the federal rules of criminal procedures.

In 1965, in *Estes v. Texas*, the Supreme Court held that a defendant's constitutional rights had been violated because of the televised broadcasting of his trial. The Court found that cameras had a prejudicial impact on pre-trial publicity, affected the truthfulness of witnesses, and generally impacted (negatively) a defendant's fair-trial rights.

Below the federal level, most states now allow some form of electronic coverage in courtrooms, but only at the discretion of the trial judge. And New York State has categorically banned recording, apart from an "experiment" from 1987 to 1997. In 2005, New York's highest court rejected a constitutional challenge to the ban, finding that although the public (and the press) had a right to attend trials, that right did not include the right to attend remotely by technological means.

Despite these limitations, courts are not troubled by reporters scrambling to jot down testimony or courtroom artists rattling off pages of sketches. Such "recordings" find their way onto the nightly news and major newspapers, and are reproduced and distributed across the Internet, just as if they were captured in electronic form.

Why, then, the ban? It can't be the obtrusiveness of recording devices, as seemed to concern the court in *Estes*: Although cameras used to be bulky and tethered to snaking cables and hot lights, an entire day of testimony can now be recorded on an iPod nano. It

can't be fear of pre-trial publicity: Major trials are front-page news, with or without a video feed, and the days of the blissfully ignorant jury pool are long gone.

It can't be a concern for privacy or decorum: For better or worse, high-profile trials (the only ones anyone is interested in) are a media circus even without cameras in the courtroom. The only explanation is that judges don't trust technology, and actually prefer imprecision to exactitude.

Take the drawing of the man handcuffing Mr. Shahzad. The cartoonish rendition would make him mostly unrecognizable to anyone but his immediate family. The judge in the case of convicted 9/11 conspirator Zacarias Moussaoui (in which I represented the media along with other attorneys) noted this when she rejected Court TV's request to televise the trial. "The drawings produced by sketch artists," she said, "are not so true as to make it easy to identify the people depicted if they were seen walking down the street."

In other words, imprecise drawings are OK; accurate photographs are not. Similarly, verbatim written transcripts are not problematic, but a sound recording capturing the nuance of a person's voice poses a real threat.

A rule that discriminates against certain forms of "recordings" is not only unfair, it ignores more narrowly tailored alternatives like prohibiting certain witnesses from being recorded. In the end, we have a system that encourages openness and access, but only when it's partial, inexact and tailor-made for short attention spans. Do we want the full picture, or just some nice cartoons?

Mr. Stracher is a writer and media lawyer in New York.

Copyright © 2017 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit <http://www.djreprints.com>.