

Opening Up the Courtrooms

BY MARNI SOUPCOFF

My first up-close-and-personal experience with the U.S. justice system was the 1995 O.J. Simpson trial. I wasn't actually involved in the case, of course. I didn't sleep in O.J.'s guest house or know in advance that the glove wouldn't fit. But I watched enough of the trial on television to get a good sense of what the jury had to work with, and how the choices and foibles of Judge Lance Ito, prosecutor Marcia Clark, and defense attorney Johnnie Cochran et al. led to the former NFL star's ultimate acquittal.

The trial was in part a trashy soap opera. Yet by exposing so many Americans to the warts-and-all realities of how a homicide case is decided, it was also an invaluable educational tool. The jury of Simpson's peers found him not guilty. Much of the trial's audience felt otherwise, and was spurred to contemplate what that disparity said about California criminal law (and its players) and about the respect O.J. should be afforded by society. Put it this way: no one resorted to vigilante justice at the end of the trial, but a lot of us vowed never to watch another *Naked Gun* movie.

That case is relevant today because we're moving in a direction that will prevent us from reaping similar public benefits in the future. What television was in 1995, Twitter and Facebook are in 2013. That's where people go to get real-time information about breaking news and current events. But many courtrooms across the country currently ban people from bringing smart phones into a trial or hearing, never mind allowing people to actually live-Tweet or

MARNI SOUPCOFF is managing editor of blogs at *The Huffington Post Canada*.

-blog the proceedings.

This is a real waste. As David Kravets wrote in a piece on *Wired* a couple years ago, the rationale behind these bans is twofold: part security (your smart phone may look like an innocent Angry Birds delivery device, but it could actually be a bomb), and part attempt to comply with existing laws that forbid the "broadcasting" of federal



criminal judicial proceedings. That would be fair enough if there weren't so much to be gained from the increased scrutiny live-Tweeting and -blogging bring to the justice system when allowed.

As Chief Judge Alex Kozinski of the 9th U.S. Circuit Court of Appeals has noted (and Kravets cites him on this point too), broadcasting federal proceedings would bring out the best in the men and women adjudicating life-and-death cases—or at least help suppress the worst. If they know they are being watched by the public, "[j]udges may avoid falling asleep on the bench," Kozinski explains in a law review article on the subject. "[Or they may] take more care explaining their decisions and avoiding arbitrary rulings or excessively lax courtroom management." Anything that keeps a judge conscious has to be counted as a plus in my book.

In the Canadian province of Ontario, where I live, a court recently overturned

a previous ban on smart phones and tablets in court proceedings. It's a step in the right direction. Journalists can now live-Tweet from interesting trials and hearings, as can lawyers and people representing themselves (who may have fools for clients, but will probably come up with hipper hashtags than the real lawyers).

The problem is that the regular Joes who make up the general public are still forbidden from communicating in the same way. That's not good because the courts must not only act justly, they must also *be seen to* act justly. The public's perception is hugely important in order to maintain faith in the system.

But how do you maintain that faith without oversight? Accredited journalists will flock to the high-profile murder trials. However, it's going to take the unemployed actors and rogue amateur bloggers to keep an eye on—and get the word out about—potential injustices and concerns in small claims actions and traffic court. These watchdogs will evolve naturally if you let them. If you don't, the perception that the courts are

closed, secretive, mysterious, and possibly unfair places will continue to grow.

At the very least, it seems as if we should embrace any policy that informs the populace of just how exasperatingly boring, procedure-laden, and time-consuming real-life legal proceedings can truly be. It might help cut down on the filing of frivolous lawsuits, or save parents a lot of money in law-school tuition once young people realize that no one in an actual courtroom looks or sounds anything like anyone on an episode of *The Good Wife*.

Invariably, the truth of what goes on in front of the bench can only help society figure out if it's satisfied with the current system. If it's not, better that realization arrive quickly, through open observation, than be reached only after years of whispers and suspicions about wrongs being done.

Justice is supposed to be blind. The citizens of a free country aren't. **R**